

Business Law
Chapter:- The Sale of Goods Act 1930

B.COM (SEM:-I)

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I. Buyer And Seller

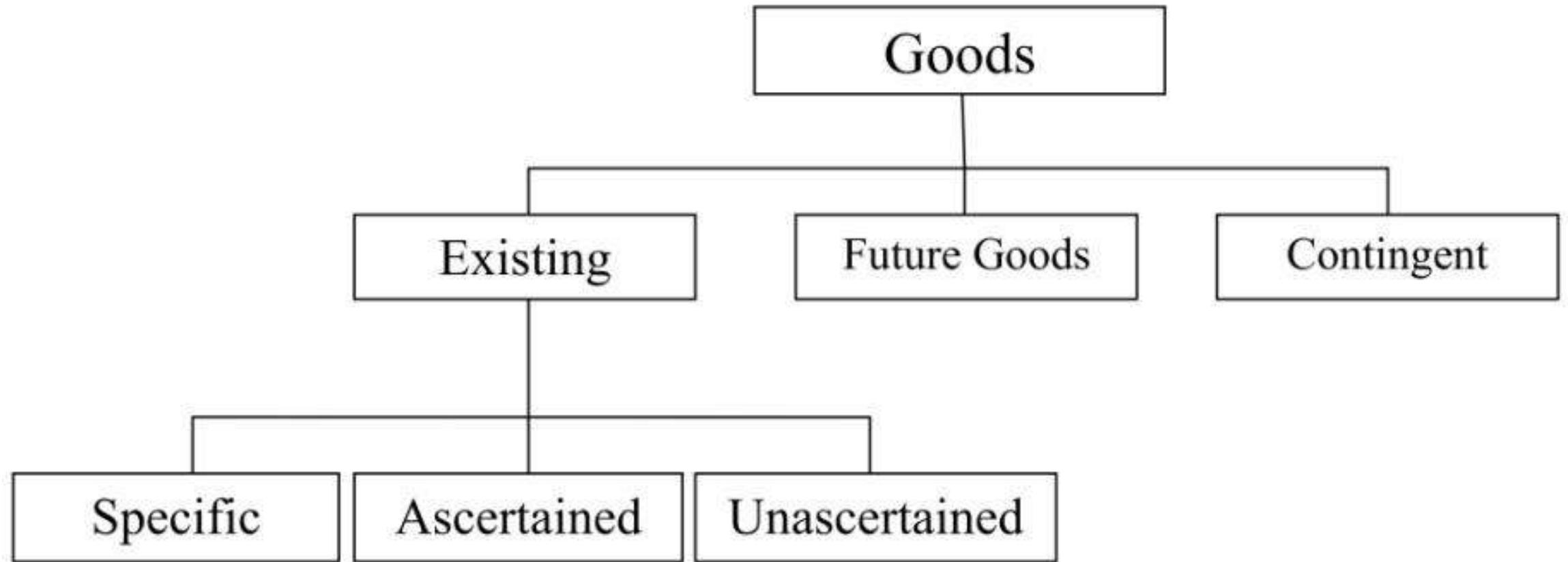
As per the sec 2(1) of the Act, a buyer is someone who buys or has agreed to buy goods. Since a sale constitutes a contract between two parties, a buyer is one of the parties to the contract.

The Act defines seller in sec 2(13). A seller is someone who sells or has agreed to sell goods. For a sales contract to come into existence, both the buyers and seller must be defined by the Act. These two terms represent the two parties of a sales contract.

II. Goods

One of the most crucial terms to define is the goods that are to be included in the contract for sale. The Act defines the term “Goods” in its sec 2(7) as all types of movable property. The sec 2(7) of the Act goes as follows:-

“Every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale will be considered goods”



Delivery

The delivery of goods signifies the voluntary transfer of possession from one person to another. The objective or the end result of any such process which results in the goods coming into the possession of the buyer is a delivery process. The delivery could occur even when the goods are transferred to a person other than the buyer but who is authorized to hold the goods on behalf of the buyer.

- ***Actual Delivery***: If the goods are physically given into the possession of the buyer, the delivery is an actual delivery.
- ***Constructive delivery***: The transfer of goods can be done even when the transfer is effected without a change in the possession or custody of the goods. For example, a case of the delivery by attornment or acknowledgment will be a constructive delivery. If you pick up a parcel on behalf of your friend and agree to hold on to it for him, it is a constructive delivery.
- ***Symbolic delivery***: This kind of delivery involves the delivery of a thing in token of a transfer of some other thing. For example, the key of the godowns with the goods in it, when handed over to the buyer will constitute a symbolic delivery.

The Document of Title to Goods

From the Sec 2(4) of the act, we can say that this “includes the bill of lading, dock-warrant, warehouse keeper’s certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.”

V. Mercantile Agent [Section 2(9)]

Mercantile agent is someone who has authority in the customary course of business, either to sell or consign goods under the contract on behalf of the one or both of the parties. Examples include auctioneers, brokers, factors etc.

VI. Property [Section 2(11)]

In the Act, property means 'ownership' or the general property i.e. all ownership right of the goods. A sale constitutes the transfer of ownership of goods by the seller to the buyer or an agreement of the same.

VII. Insolvent [Section 2(8)]

The Act defines an insolvent person as someone who ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.

VIII. Price [Section 2(10)]

In the Act, the price is defined as the [money](#) consideration for a sale of goods.

IX. Quality of Goods

In Sec 2(12) of the Act, the quality of goods is referred to as their [state](#) or condition.

Sale and Agreement of Sale (Section 4)

Basis for Comparison	Sale	Agreement to sell
Meaning	When in a contract of sale, the exchange of goods for money consideration takes place immediately, it is known as Sale.	When in a contract of sale the parties to contract agree to exchange the goods for a price at a future specified date is known as an Agreement to Sell.
Nature	Absolute	Conditional
Type of Contract	Executed Contract	Executory Contract
Transfer of risk	Yes	No
Title	In sale, the title of goods transfers to the buyer with the transfer of goods.	In an agreement to sell, the title of goods remains with the seller as there is no transfer of goods.
Right to sell	Buyer	Seller
Consequences of subsequent loss or damage to the goods	Responsibility of buyer	Responsibility of seller
Tax	VAT is charged at the time of sale.	No tax is levied.
Suit for breach of contract by the seller	The buyer can claim damages from the seller and proprietary remedy from the party to whom the goods are sold.	Here the buyer has the right to claim damages only.
Right of unpaid seller	Right to sue for the price.	Right to sue for damages.

Ascertainment of Price

The price in a contract of sale may be fixed by the contract, or it may be left to be fixed in manner thereby agreed or it can be determined by the course of dealing between the parties to the contract.

- Where the price is not determined in accordance with the said provisions, the buyer shall pay the seller a reasonable price. Reasonable price will depend on the individual case or circumstance.

Price of a Contract

- i. the contract, i.e. the price is explicitly mentioned or decided within the contract of sale itself or
- ii. the contract has some clause(s) that has the or defines the authority that will eventually ascertain the price. For example, the contract asks for a valuer to be commissioned for the purpose of the ascertainment of price.
- iii. the price may also be determined by the course of dealings. For example, if the two parties have a long history of dealing with each other, then the price if not specified clearly can be ascertained from the previous history of dealings and prices. Clearly, this portion of the section is only applicable if the parties have a tradition or history of similar deals.

Concept of Condition and Warranty

Basis for Comparison	Condition	Warranty
Meaning	A requirement or event that should be performed before the completion of another action, is known as Condition.	A warranty is an assurance given by the seller to the buyer about the state of the product, that the prescribed facts are genuine.
Defined in	Section 12 (2) of Indian Sale of Goods Act, 1930.	Section 12 (3) of Indian Sale of Goods Act, 1930.
Objectivity	It is directly associated with the objective of the contract.	It is a subsidiary provision related to the object of the contract.
Result of breach	Termination of contract.	Claim damages for the breach.
Violation	Violation of condition can be regarded as a violation of the warranty.	Violation of warranty does not affect the condition.
Remedy available to the aggrieved party on breach	Repudiate the contract as well as claim damages.	Claim damages only.

Doctrine of Caveat Emptor

- ✓ The doctrine of Caveat Emptor is an integral part of the Sale of Goods Act. It translates to “let the buyer beware”.
This means it lays the responsibility of their choice on the buyer themselves.
- ✓ It is specifically defined in Section 16 of the act “*there is no implied warranty or condition as to the quality or the fitness for any particular purpose of goods supplied under such a contract of sale*”
- ✓ A seller makes his goods available in the open market. The buyer previews all his options and then accordingly makes his choice. Now let’s assume that the product turns out to be defective or of inferior quality.
- ✓ This doctrine says that the seller will not be responsible for this. The buyer himself is responsible for the choice he made.

However, the buyer can shift the responsibility to the seller if the three following conditions are fulfilled.

- if the buyer shares with the seller his purpose for the purchase
- the buyer relies on the knowledge and/or technical expertise of the seller
- and the seller sells such goods

Exceptions to the Doctrine of Caveat Emptor

1] Fitness of Product for the Buyer's Purpose

When the buyer informs the seller of his purpose of buying the goods, it is implied that he is relying on the seller's judgment. It is the duty of the seller then to ensure the goods match their desired usage.

2] Goods Purchased under Brand Name

When the buyer buys a product under a trade name or a branded product the seller cannot be held responsible for the usefulness or quality of the product. So there is no implied condition that the goods will be fit for the purpose the buyer intended.

3] Goods sold by Description

When the buyer buys the goods based only on the description there will be an exception. If the goods do not match the description then in such a case the seller will be responsible for the goods.

4] Goods of Merchantable Quality

Section 16 (2) deals with the exception of merchantable quality. The sections state that the seller who is selling goods by description has a duty of providing goods of merchantable quality, i.e. capable of passing the market standards.

So if the goods are not of marketable quality then the buyer will not be the one who is responsible. It will be the seller's responsibility. However if the buyer has had a reasonable chance to examine the product, then this exception will not apply.

5] Sale by Sample

If the buyer buys his goods after examining a sample then the rule of Doctrine of Caveat Emptor will not apply. If the rest of the goods do not resemble the sample, the buyer cannot be held responsible. In this case, the seller will be the one responsible.

Passing of Property

Passing of Property

There are four primary rules that govern the passing of property:

- Specific or Ascertained Goods
- Passing of Unascertained Goods
- Goods sent on approval or “on sale or return”
- Transfer of property in case of reservation of the right to disposal

Goods Sent on Approval

When a seller sends good to a buyer on approval basis or on terms similar to 'on sale or return', the property passes to the buyer only when:

- The buyer communicates his approval to the seller or does an act which signifies acceptance of the transaction.
- He does not give his approval or acceptance to the seller but accepts the goods without giving notice of rejection. There are two possibilities here:
 - A time has been fixed for the return of goods – In this case, if the approved time has elapsed, then the property is passed to the buyer.
 - A time has not been fixed for the return of goods – In this case, the property is passed to the buyer once a reasonable time has elapsed.
- The buyer does something to the goods which signifies acceptance of goods. For example, he sells the goods or pledges it.

Passing of Risk

When goods are sold, they remain at the seller's risk until the property in the goods is transferred to the buyer. Once the property is passed, the goods are at the buyer's risk even if the delivery has not been made.

There are some points that you need to remember about the passing of risk:-

1. It holds true unless the buyer and seller have agreed to some other terms.
2. In cases where the delivery has not been made, if the delay in delivery is due to the fault of the seller, then the risk lies with the seller. If the delay is due to a fault of the buyer, then the goods are at the buyer's risk.
3. Regardless of the buyer or the seller bearing the risk, the duties and responsibilities of both of them as a bailee of goods for the other party,

Transfer of Title

It deals with the sale by a person who is not the owner. Imagine a sale contract where the seller –

- Is not the owner of the goods
- Does not have consent from the owner to sell the goods
- Has not been given authority by the owner to sell the goods on his behalf

Exceptions

1] Sale by a Mercantile agent

Consider a mercantile agent, who is in possession of the goods or a document to the title of the goods, with the consent of the owner. Such an agent can sell the goods when acting in the ordinary course of business of a mercantile agent. The sale shall be valid provided the buyer acts in good faith and has no reason to believe that the seller doesn't have any right to sell the goods. The transfer of title is valid in such a case

2] Sale by one of the Joint Owners (Section 28)

Many times goods are purchased in joint ownership. In many cases, the goods are kept in the possession of one of these joint owners by the permission of the co-owners. If this person (who has the sole possession of the goods) sells the goods, the property in the goods is transferred to the buyer. This is provided the buyer acts in good faith and has no reason to believe that the seller does not have a right to sell the goods.

3] Sale by a Person in Possession of Goods under a Voidable Contract

Consider a person who acquires possession of certain goods under a contract voidable on grounds of coercion, misrepresentation, fraud or undue influence. If this person sells the goods before the contract is terminated by the original owner of the goods, then the buyer acquires a good title to the goods.

4] Sale by a Person who has already sold the Goods but Continues to have Possession

Consider a person who has sold goods but continues to be in possession of them or of the documents of title to them. This person might sell the goods to another buyer.

If this buyer acts in good faith and is unaware of the earlier sale, then he will have a good title to the goods even though the property in the goods was passed to the first buyer. A pledge or other disposition of the goods or documents of title by the seller in possession are valid too.

5] Sale by Buyer obtaining possession before the Property in the Goods has Vested in him

Consider a buyer who obtains possession of the goods before the property in them is passed to him, with the permission of the seller. He may sell, pledge or dispose of the goods to another person.

If the second buyer obtains delivery of the goods in good faith and without notice of the lien or any other right of the original seller, he gets a good title to them.

6] Estoppel

If an owner of goods is stopped by the conduct from denying the seller's authority to sell, the buyer gets a good title. However, to get a good title by estoppel, it needs to be proved that the original owner had actively suffered or held out the seller in question as a person authorized to sell the goods.

7] Sale by an Unpaid Seller [Section 54 (3)]

If an unpaid seller exercises his right of lien or stoppage in transit and sells the goods to another buyer, then the second buyer gets a good title to the goods as against the original buyer. So in such a case transfer of title will occur.

8] Sale under the Provisions of other Acts

- Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.

Rights of Unpaid Seller Against Goods

An unpaid seller has certain rights against the goods and the buyer. In this article, we will refer to the sections of the Sale of Goods Act, 1930 and look at the rights of an unpaid seller against goods namely rights of lien, rights of stoppage in transit etc.

Rights of Lien

Seller's Lien (Section 47)

According to subsection (1) of Section 47 of the Sale of Goods Act, 1930, an unpaid seller, who is in possession of the goods can retain their possession until payment. This is possible in the following cases:

1. He sells the goods without any stipulation for credit
2. The goods are sold on credit but the credit term has expired.
3. The buyer becomes insolvent.

Subsection (2) specifies that the unpaid seller can exercise his right of lien notwithstanding that he is in possession of the goods acting as an agent or bailee for the buyer.

Part-delivery (Section 48)

Further, Section 48 states that if an unpaid seller makes part-delivery of the goods, then he may exercise his right of lien on the remainder. This is valid unless there is an agreement between the buyer and the seller for waiving the lien under part-delivery.

Termination of Lien (Section 49)

According to subsection (1) of Section 49 of the Sale of Goods Act, 1930, an unpaid seller loses his lien:

- If he delivers the goods to a carrier or other bailee for transmission to the buyer without reserving the right of disposal of the goods.
- When the buyer or his agent obtain possession of the goods lawfully.
- By waiver.

Right of Stoppage in Transit

This right is an extension to the right of lien. The right of stoppage in transit means that an unpaid seller has the right to stop the goods while they are in transit, regain possession, and retain them till he receives the full price.

If an unpaid seller has parted with the possession of the goods and the buyer becomes insolvent, then the seller can ask the carrier to return the goods back. This is subject to the provisions of the Act.

Duration of Transit

Goods are in the course of transit from the time the seller delivers them to a carrier or a bailee for transmission to the buyer until the buyer or his agent takes delivery of the said goods.

Some scenarios of the transit ending:

- The buyer or his agent obtain delivery before the goods reach the destination. In such cases, the transit ends once the delivery is obtained.
- Once the goods reach the destination and the carrier or bailee informs the buyer or his agent that he holds the goods, then the transit ends.
- If the buyer refuses the goods and even the seller refuses to take them back the transit is not at an end.
- In some cases, goods are delivered to a ship chartered by the buyer. Depending on the case, it is determined that if the master is functioning as an agent or carrier of the goods.
- If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent, the transit ends.
- If a part-delivery of the goods has been made and the unpaid seller stops the remaining goods in transit, then the transit ends for those goods. This is provided that there is no agreement to give up the possession of all the goods.

How Stoppage is Affected

There are two ways of stopping the transit of goods:

1. The seller takes actual possession of the goods
2. If the goods are in the possession of a carrier or other bailee, then the seller gives a notice of stoppage to him. On receiving the notice, the carrier or bailee must re-deliver the goods to the seller. The seller bears the expenses of the re-delivery.

	Right of Lien	Rights of Stoppage in Transit
Essence	Retain possession	Regain possession
Who has the possession of the goods?	The seller.	The carrier or other bailee. The buyer should not have received the goods.
Buyer insolvent	Not a mandatory requirement	The right can be exercised only when the buyer becomes insolvent.

Pledge by the Buyer

a. The seller agrees to resale, mortgage or other disposition of the goods

If the seller agrees to the buyer selling, pledging or disposing of the goods in any other way, then he loses his right to lien.

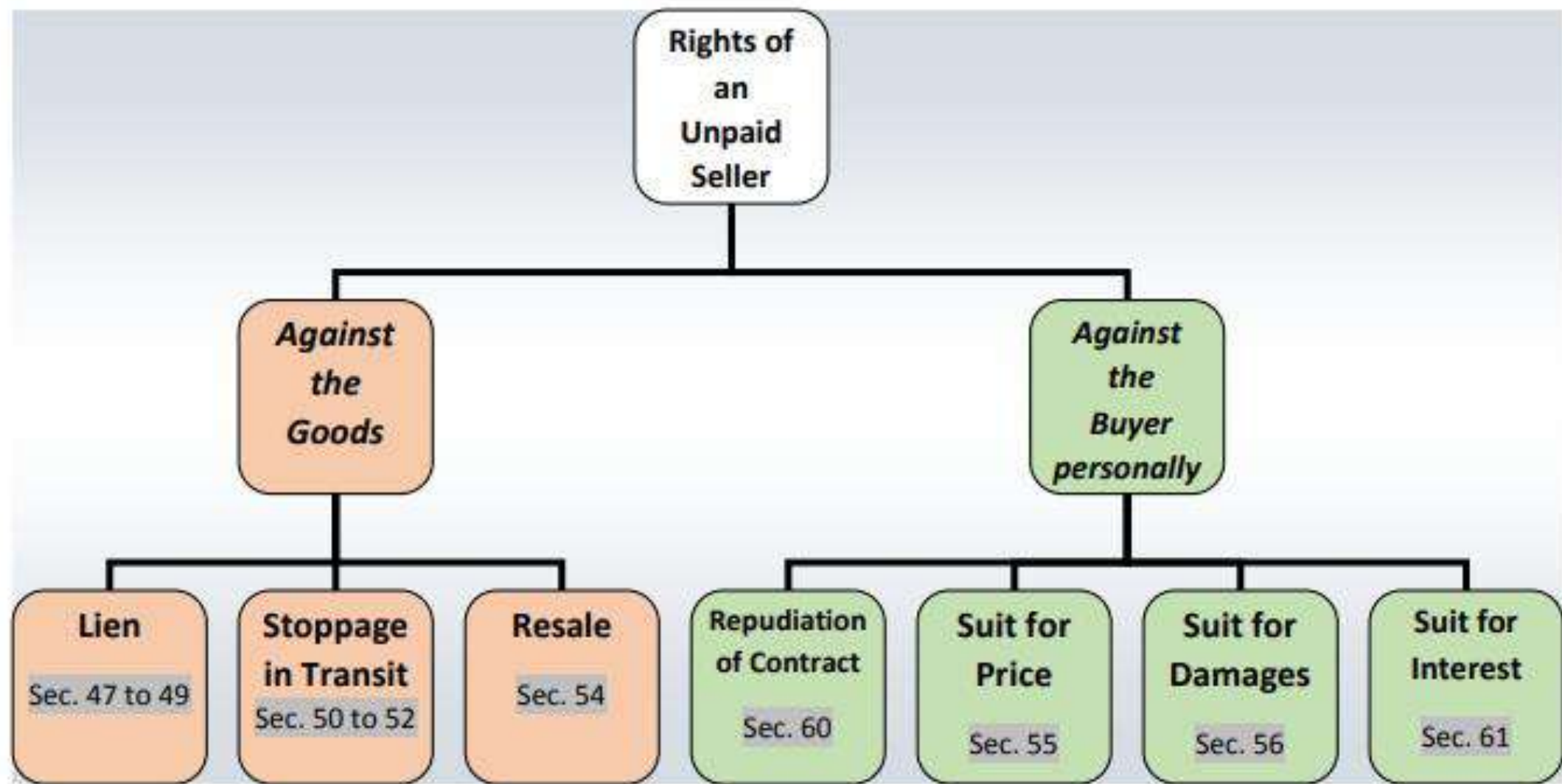
b. Transfer of the document of title of goods by the buyer

When the seller transfers the document of title of goods to the buyer and the buyer further transfers it to another buyer who purchases the goods in good faith and for a price, then:

- If the last mentioned transfer is by way of sale, the original seller's right of lien and stoppage is defeated.
- If the last mentioned transfer is by way of a pledge, the original seller's right of lien or stoppage can be executed subject to the rights of the pledgee.

Right of Resale

- ***Goods are perishable in nature***: In such cases, the seller does not have to inform the buyer of his intention of resale.
- ***Seller gives a notice to the buyer of his intention of resale***: The buyer needs to pay the price of the goods and ask for delivery within the time mentioned in the notice. If he fails to do so, then the seller can resell the goods. He can also recover the difference between the contract price and resale price if the latter is lower. However, if the resale price is higher, then the seller keeps the profits.
- ***Unpaid seller resells the goods post exercising his right of lien or stoppage***: The subsequent buyer acquires a good title to the goods even if the seller has not given a notice of resale to the original buyer.
- ***Resale where the right of resale is reserved in the contract of sale***: If the contract of sale specifies that the seller can resell the goods if the buyer defaults, then the seller reserves his right of sale. He can claim damages from the original buyer even if he does not give a notice of resale to him.
- ***Property in the goods has not passed to the buyer***: The unpaid seller can exercise his right of withholding delivery of goods. This is similar to the right of lien and is called quasi-lien.



Remedies of Buyer Against the Seller

1] Damages of Non-Delivery

If the seller wrongfully or neglectfully refuses to deliver the goods to the buyer, then the buyer can sue for non-delivery of the goods. According to Section 57 of the Sale of Goods Act, if the buyer faces losses due to the wrongful actions of the seller (non-delivery) he can sue for damages caused due to this.

2] Suit for Specific Performance

If the seller commits a breach of contract, the buyer can approach the court to ask the seller for specific performance. The court after deliberation can command the seller for specific performance. One important point to keep in mind is that this remedy is only available if the goods are ascertained or specific.

3] Suit for Breach of Warranty

When the seller breaches the warranty of the goods, the buyer cannot simply reject the goods on such basis. The buyer has two options in such a case,

- set up against the buyer the said breach of warranty in the extinction of the price
- or sue the seller for breach of warranty

4] Repudiation of Contract

If the seller repudiates the contract, the buyer does not have to wait until the date of the contract. He can treat the contract as rescinded and sue for damages immediately. This will be an anticipatory breach of contract.

5] Sue for Interest

The Act specifically states that nothing in the act will affect the right of the seller or the buyer to recover interest or special damages due to him by the contract. And if there is no specific clause in the contract, the court can come to the rescue of the affected party.