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BASIC DISPUTES UNDER THE SALE OF GOODS ACT, 1930

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Tantum bona valent quantum vendi possunt
Goods are worth what they will sell for.

Nowadays people know the price of
everything and the value of nothing

... Oscar Wilde

Transition in the nature of disputes

- Earlier, disputes under the Act were essentially commercial in nature. In recent times, the law of sale of goods is also developing through disputes relating to income tax, sales tax/VAT, excise and customs laws, and payment mechanisms.
- Online sales have added complexities, including conclusion of the sale contract and when title passes from seller to buyer, because the seller is usually not the manufacturer, and payment is through payment gateways, and there are unique “returns” policies etc.
- Point of liability is also becoming increasingly complex, especially for food and medicinal products, clothing, exports, imports etc.

Transition in modes of sale

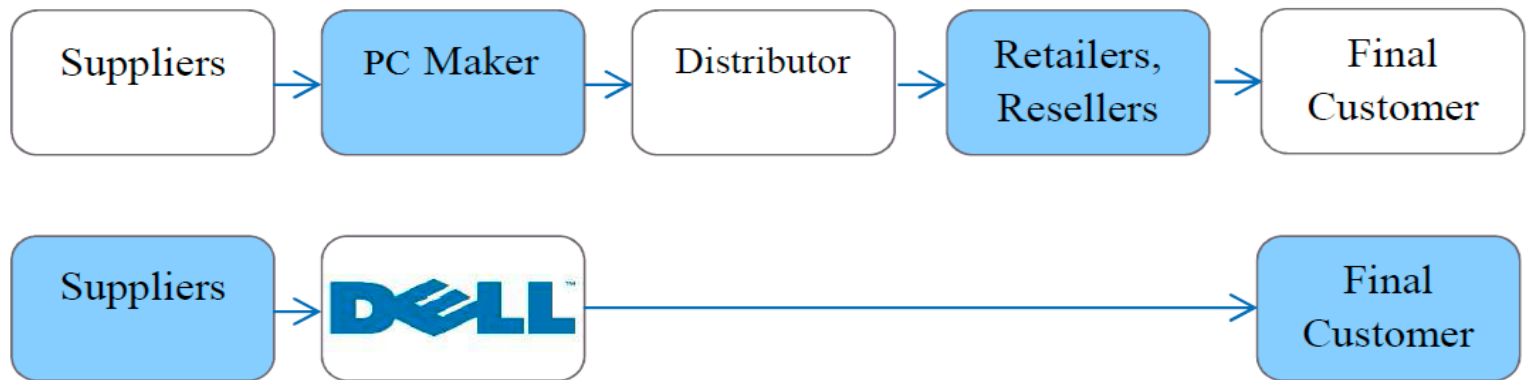
- Barter Sales
- ↓
- Monetary Sales
- ↓
- Street Vendors
- ↓
- Tele-Shopping
- ↓
- E-commerce

Dell – Direct Business Model of sale

- Direct sales from the PC manufacturer to the consumer.
- Rather than using a traditional supply-chain model, Dell uses a direct model to market and sell its products directly to customers.
- Once an order is complete, a production invoice is electronically forwarded to the production facility and the requisite parts are ordered from the vendors.

Dell – Direct Business Model of sale

Indirect distribution channel of the PC industry

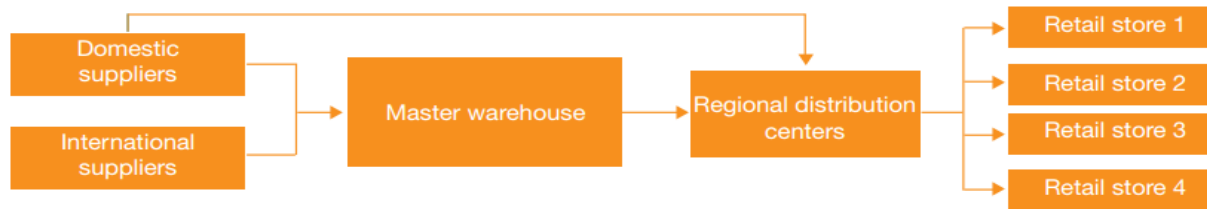


Dell' direct distribution channel

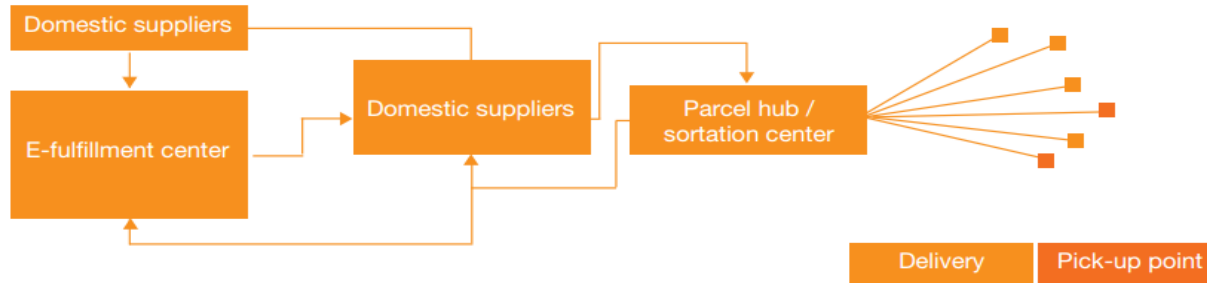
Retrieved from: <https://ueanbs.wordpress.com/2013/12/03/dell-went-private/>

Conventional retail model of sale vis-à-vis E-tail model of sale

Conventional retail model



E-tail model



Retrieved from: 'Evolution of e-commerce in India'
<http://www.pwc.in/assets/pdfs/publications/2014/evolution-of-e-commerce-in-india.pdf>

Who's liability is it?

- The consumer deals with the portal, makes payment to the portal and follows up with the portal.
- When a problem arises, the portal can shun responsibility by claiming it is only a trading platform to bring the buyer and the seller together, and is in no way liable.

Complex turnkey projects

- Projects and contracts are becoming more and more complex. Projects often involve multiple suppliers of goods, and services. They may also involve several contractors and sub-contractors each with a distinct role which must be coordinated to achieve the desired result.

Definition of Goods

Morgan Stanley Mutual Fund vs. Kartick Das, (1994) 4 SCC 225

- **Issue:** Whether shares for which an application of allotment is made would be considered goods?
- **Held:** Till the allotment of shares takes place, the shares do not exist. Therefore, they cannot be called goods. Under the Act, all actionable claims and money are excluded from the definition of goods.

Definition of Goods (Cont.)

R.D. Goyal vs. Reliance Industries, (2003) 1 SCC 81

- **Issue:** Whether debentures, although convertible into shares, fall within the definition of goods?
- **Held:** Debentures would not come within the definition of goods as it is simply an instrument of acknowledgement of debt by the company, whereby it undertakes to pay the amount covered by it and till then, it undertakes further to pay interest thereon to the debenture-holders. In any event, a debenture would be an actionable claim and therefore, outside the definition of goods.

Definition of Goods (Cont.)

Bharat Sanchar Nigam Ltd. & Anr. vs. Union of India & Others,
(2006) 282 ITR 273 (SC) (BCAJ)

- **Issue:** Whether mobile phone connections, provided by telephone companies amounts to the sale of goods or a service?
- **Held:** Goods in telecommunication do not include the carriage of electromagnetic waves or radio frequencies. Hence, there cannot be any transfer to the user of any good. With respect to the telephone service/call itself, there are no deliverable goods involved.

Definition of Goods (Cont.)

Sunrise Associates vs. Govt. of NCT of Delhi, (2006) 5 SCC 203

- **Issue:** The constitution bench was called upon to consider the decisions in the case of in *H. Anraj v. Government of Tamil Nadu (1986) 1 SCC 414* as well as *Vikas Sales Tax Corporation & Anr. v. Commissioner of Commercial Taxes and Anr. (1996) 4 SCC 433* which had held that the sale of lottery tickets fell under the definition of goods, and were thus liable to be taxed.
- **Held:** Though lotteries being actionable claims are generally speaking “goods” or movable property, lotteries are not “goods” for the purpose of sales tax laws, as they fall under the definition of actionable claims, thus being expressly excluded from the definition of goods for the purpose of sales tax laws.
- As lottery tickets, being actionable claims, are only evidence of the transfer of a right to a conditional benefit of winning a prize. An actionable claim may be existent in praesenti, accruing, conditional or contingent.

Definition of Goods (Cont.)

Sodexo SVC India Pvt. Ltd. vs. The State of Maharashtra and Ors., 2015 (3) MhLj511

- **Issue:** The Bombay High Court, in its recent decision of 2015, was called upon to determine the nature of meal coupons i.e. whether they fall under the definition of goods under the Act, and to determine whether Octroi or Local Body Tax could be levied on such vouchers.
- **Held:** Vouchers being printed on paper were goods within the meaning of the Act. Further, as the vouchers were printed on paper and are sold to customers for the value which is printed on the said vouchers and in turn, the customers hand them over to a user who uses the same for acquiring food and beverages. Hence, they fall under the category of goods. Thus, permitting the Respondent corporation to levy and/or collect Octroi or Local Body Tax.
- Further, upon discussing the contrast between meal vouchers and lottery tickets, the Court held that since these vouchers are capable of being sold, delivered and possessed, they have their own utility. The same cannot be equated with a lottery ticket which is merely an actionable claim.

Definition of Goods (Cont.)

- The Consumer Protection Act, 1986 does not define the term 'Goods'. Instead, it relies on the meaning of goods as defined in the Sale of Goods Act, 1930.

Essentials of a valid sale of goods

- There must be at least two parties;
- The subject matter of the contract must necessarily be goods;
- A price in money (not in kind) should be paid or promised;
- A transfer of property in goods from seller to the buyer must take place;
- A contract of sale may be absolute or conditional; and
- All other essential elements of a valid contract must be present in the contract of sale.

Essentials of a valid sale (Cont.)

Indian Steel & Wire Products Ltd. vs. State of Madras and Ors.,

AIR 1968 SC 478 :

- The Supreme Court, in the abovementioned case, laid down the essentials of a valid sale as follows:
- to constitute a valid sale, there must be concurrence of the following elements viz. (1) parties competent to contract (2) mutual assent (3) a thing the absolute or general property in which is transferred from the seller to the buyer and (4) a price in money paid or promised.

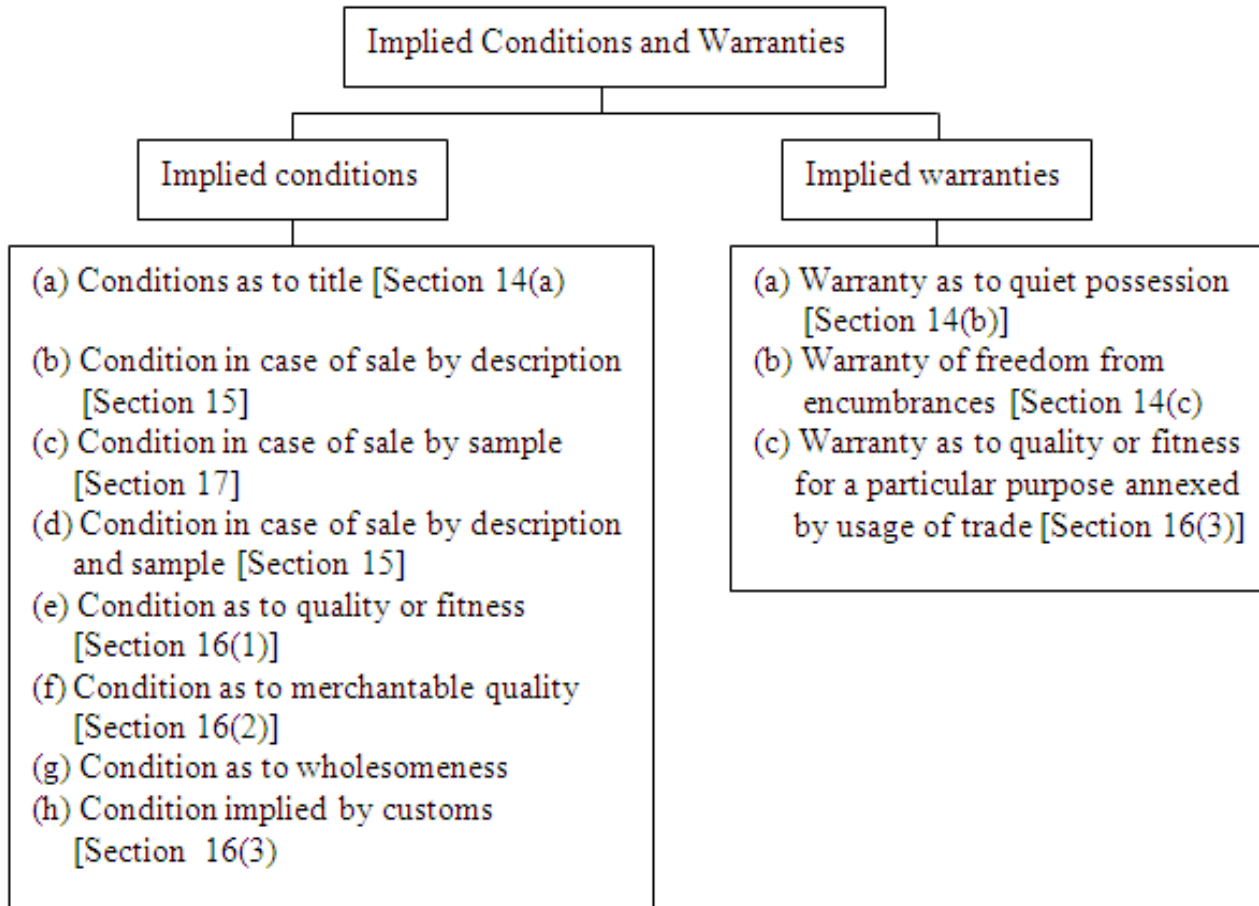
Distinction between Sale and Hire-Purchase

Sale	Hire – Purchase
<ul style="list-style-type: none">• Property in the goods is transferred to the buyer immediately at the time of the contract.• The position of the buyer is that of owner of the goods.	<ul style="list-style-type: none">• The goods passes to the hirer on the payment of the last installment.• The position of the buyer is that of a bailee till he pays the last installment

Difference between Condition and Warranty

Condition	Warranty
<ul style="list-style-type: none">• Stipulation essential to the main purpose	<ul style="list-style-type: none">• Stipulation collateral to the main purpose of the contract
<ul style="list-style-type: none">• Breach of condition, contract can be repudiated	<ul style="list-style-type: none">• Breach of warranty, the aggrieved party can claim damages only
<ul style="list-style-type: none">• A breach of condition may be treated as breach of warranty	<ul style="list-style-type: none">• Breach of warranty, cannot be treated as a breach of a condition

Provisions pertaining to Implied Conditions and Warranties.

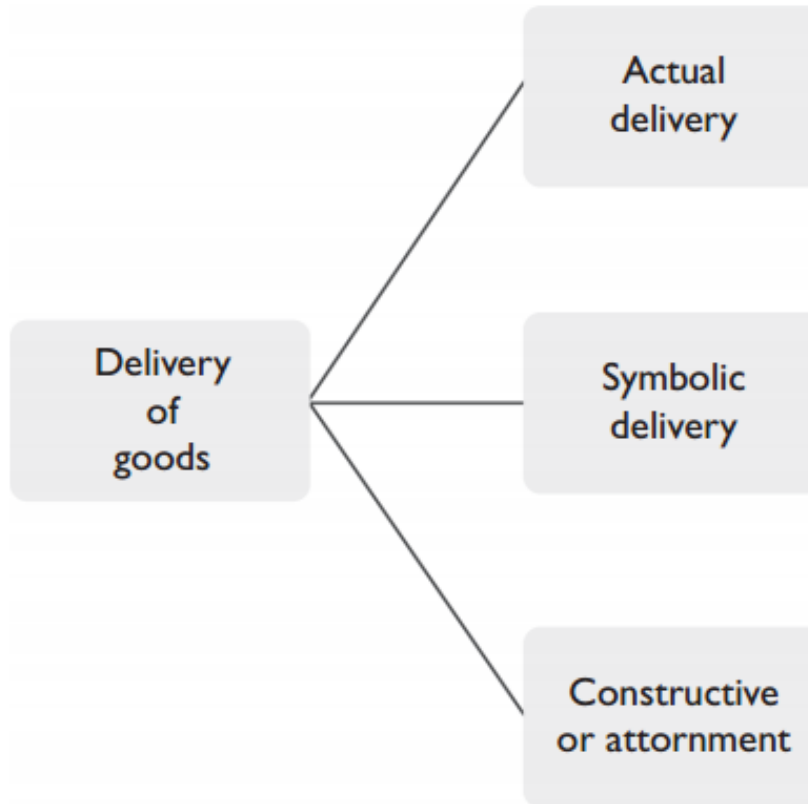


Breach of warranty

Indochem Electronic and Another vs. Additional Collector of Customs, A.P.
(2006) 3 SCC 721

- **Issue:** Whether a breach of warranty would permit a party to repudiate the contract?
- **Held:** It is true, where a stipulation in a contract of sale is a warranty, its breach may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, but, where a stipulation in a contract of sale is a condition, its breach may give rise not only to a claim for damages but also generally to a right to treat the contract as repudiated.

Types of delivery



Delayed delivery

Devidayal Sales Pvt. Ltd v. State of Maharashtra
AIR 2006 Bom 307

- The time period and delivery period was prescribed in the contract between the parties.
- There was also a penalty clause in case of delayed delivery.
- It was found on evidence that there was substantial delay in delivery of the goods of a substantial quantity.
- The Bombay High Court therefore held that the purchaser was justified in withholding the price to the extent of damages as agreed in the penalty clause.

Nemo Dat Quod Non Habet

The Morvi Mercantile Bank Ltd. and Anr. vs. Union of India (UOI)

AIR 1965 SC 1954 :

- “The general rule is expressed by the maxim nemo dat quod non habet, i.e., no one can convey a better title than what he had.”
- Subject to this act, where goods are sold by a person who is not their owner, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Caveat Emptor

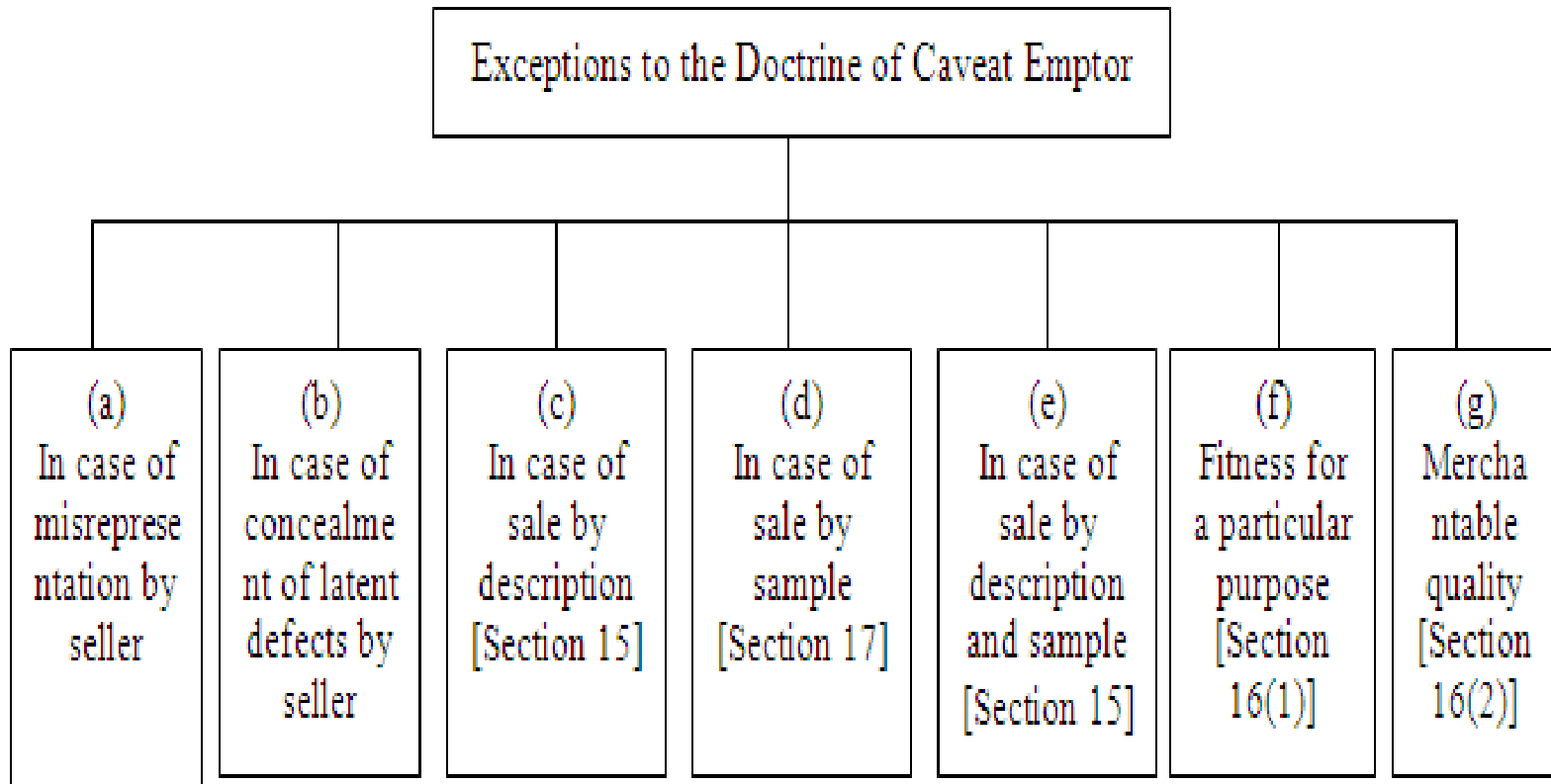
- Caveat Emptor is a Latin phrase for “let the buyer beware”.
- "Caveat emptor does not mean either in law or in Latin that the buyer must take chances. It means that the buyer must take care." *Wallis v. Russell [1902] 2 IR 585*
- Caveat Emptor, or the notion that the buyer takes the risk, is a fundamental principle of commerce. The resulting philosophy is that the buyer is responsible for knowing his rights and protecting himself.
- What follows is that, the buyer must buy the goods after satisfying himself of their quality and fitness.

Caveat Emptor (Cont.)

Eternit Everest Ltd. vs. Abraham, AIR 2003 Ker 273

- *The rule of 'caveat emptor' applies whenever the buyer voluntarily chooses what he buys. But it does not mean that the buyer should 'take chance' but it means he should 'take care'.*
- *The most important exception to the rule of 'caveat emptor' are the implied condition of fitness for a particular purpose and the merchantableness of the product.*
- *When a man sells an article, he thereby warrants that it is merchantable i.e., it is fit for some purpose and if he sells it for some particular purpose, he thereby warrants it for that purpose. In order to attract Section 16 it has to be proved that the buyer expressly or by implication had made known to the seller the particular purpose for which the goods were purchased.*

Caveat Emptor (Cont.)



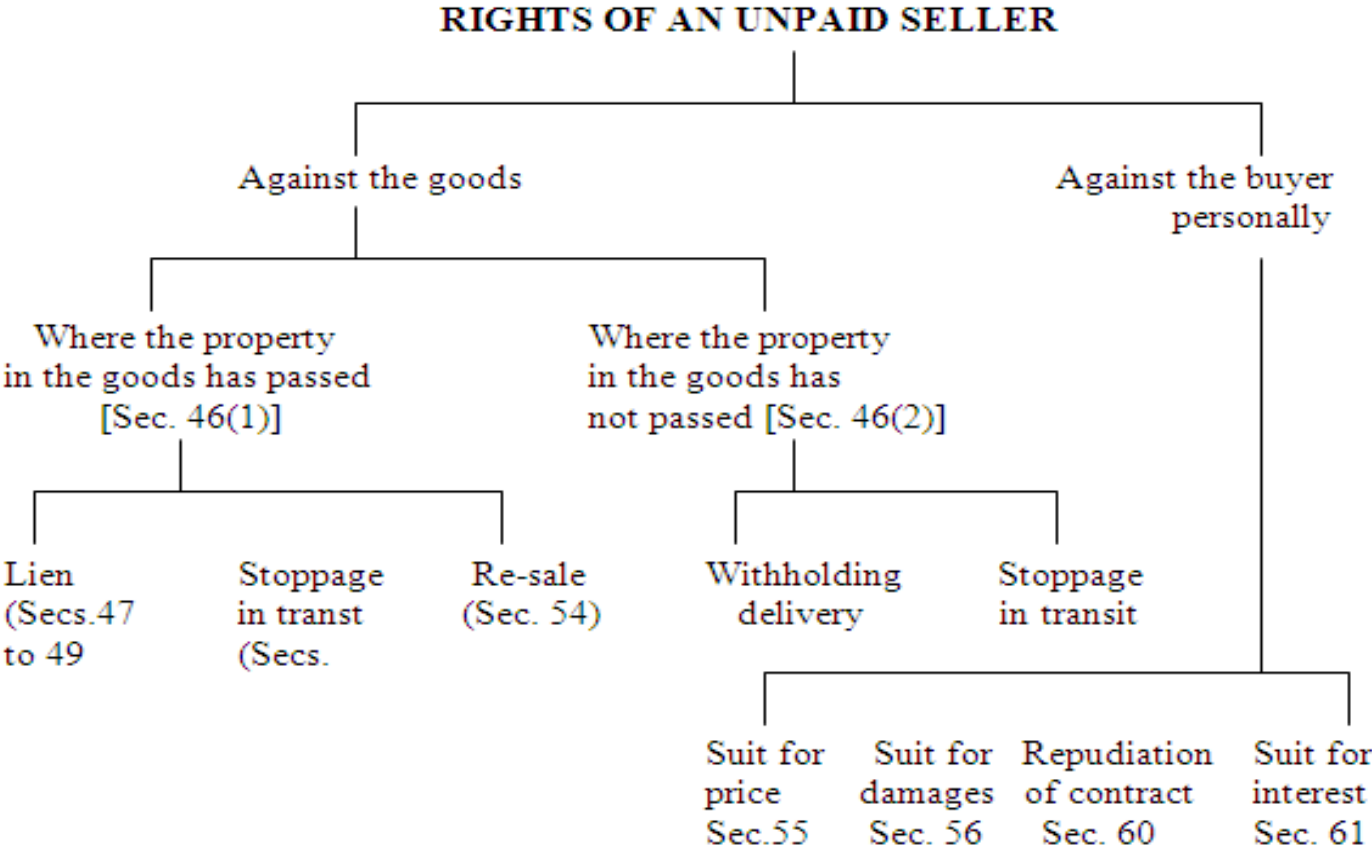
Rights of an unpaid seller

- Under Section 25 of the Act, the seller of goods is deemed to be an unpaid seller when;
 - the whole of the price has not been paid or tendered;
 - a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.

Seller's remedies

- The seller may institute:
 - Suit for price; or
 - Damages for non-acceptance.
- A seller may institute a suit for the price when, despite supply of goods the purchaser fails to pay the fair value/ agreed value of goods.
- Damages for non-acceptance are payable by the purchaser who orders particular goods but fails to accept them, for no justifiable cause.

Seller's remedies (Cont.)



Buyer's remedies

- A buyer has the following remedies in law:
 - A suit for damages for non-recovery;
 - Remedy for breach of warranty; and
 - Specific Performance.

Interest by way of damages

- Under the Act, the Court may allow interest on debts or sums, at a rate not exceeding the current rate of interest, from the time when the amount becomes payable, or where the parties have fixed no time for payment, then from the date when demand for payment is made in writing giving notice to the debtor that interest will so be charged.
- In the case of *Chennai Bottling Co. (P) Ltd. v. Travancore Tea Estates Co. Ltd.*, AIR 1992 Ker 236, where the current rate of interest was 10%, but the arbitrator had awarded interest at a rate of 12%, the High Court would have directed the Tribunal to reduce the interest, however, it had become impossible because the appellant had himself claimed interest on his claim for damages at 12%. That being the position, the award of interest at the rate of 12% was not deemed to be on the higher side.

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