

UNPAID SELLER

The seller of goods is deemed to be an '**Unpaid Seller**' when-

- ♣ **The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.**
- ♣ **When 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 the reason of the dishonour of the instrument or otherwise.**

RIGHT OF UNPAID SELLER:

Subject to the provisions of this act and of any law for the time being in force, notwithstanding that the property in the goods may have been passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

- ♣ **A lien on the goods for the price while he is in possession of them;**
- ♣ **In case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;**
- ♣ **A right of resale as limited by this act.**

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

The unpaid seller has the right against the goods as well as buyer:

♥ RIGHT OF AN UNPAID SELLER AGAINST THE GOODS:

- i) **SELLER'S LIEN:** *An unpaid seller has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods.*

The lien can be exercised as long as the seller remains in possession of the goods.

Exercise of right of lien: In the following cases only:

- **Where goods have been sold without any stipulation of credit;(i.e. on cash sale)**
- **Where goods have been sold on credit but the terms of credit has expired; or**
- **Where the buyer becomes insolvent.**

TERMINATION OF LIEN:

- **When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.**
- **Where the buyer or his agent lawfully obtains possession of the goods.**
- **Where seller has waived the right of lien.**
- **By estoppels i.e. where the seller so conducts himself that he leads third parties to believe that the lien does not exist.**

EXCEPTION: *The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.*

♥ RIGHT OF STOPPAGE IN TRANSIT: Can be exercised if following conditions are fulfilled:

- **The seller must be unpaid.**
- **He must have parted with the possession of goods.**
- **The goods are in transit.**
- **The buyer has become insolvent.**
- **The right is subject to provisions of this act.**

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DURATION OF TRANSIT: From the time *when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer*, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

When does the transit comes to an end?

In the following cases:

- ◆ *When the buyer or other bailee obtains delivery.*
- ◆ *Buyer obtains delivery before the arrival of goods at destination.*
- ◆ *Where the carrier or bailee acknowledges to the buyer or his agent that he holds the goods as soon as the goods are loaded on the ship, unless the seller has reserved the rights of disposal of the goods.*
- ◆ *If the carrier wrongfully refuses to deliver the goods to the buyer.*
- ◆ *Where goods are delivered to the carrier hired by the buyer, the transit comes to an end.*
- ◆ *Where the part delivery of the goods has been made to the buyer, there the transit will come to an end for the remaining goods which are yet in the course of transmission.*
- ◆ *Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end.*

EFFECT OF SUB-SALE OR PLEDGE BY BUYER: *The right of lien or stoppage in transit is not affected by the buyer selling or pledging the goods unless the seller has assented to it.* The right of stoppage is defeated if the buyer has transferred the document of title or pledges the goods to a sub buyer in good faith and for consideration.

EXCEPTIONS:

- ♣ *When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer.*
- ♣ *When a document of title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value i.e. for price, then, the proviso stipulates as follows:*
 - *If the last mentioned transfer is by way of sale, right of lien or stoppage in transit is defeated, or*
 - *If the last mentioned transfer is by way of pledge, unpaid seller's right of lien or stoppage only be exercised, subject to the rights of the pledge.*

EFFECT OF STOPPAGE: The contract is not rescinded when the seller exercises his right of stoppage in transit. *The contract still remains in force and the buyer can ask for delivery of goods on payment of price.*

♥ **RIGHT OF RE-SALE:** *The right of resale is very valuable right given to an unpaid seller.* In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.

The unpaid seller can exercise the right to resell the goods under the following conditions:

- ♠ *Where the goods are of perishable nature.*
- ♠ *Where he gives notice to the buyer of his intention to re-sell the goods:* If after the receipt of such notice buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

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It may be noted that in such cases, on the resale of the goods, the seller is also entitled to:

(a) *Recover the difference between the contract price and resale price*, from the original buyer, as damages.

(b) *Retain the profit* if the resale price is higher than the contract price.

It may be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer.

- ♣ *Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods:* The subsequent buyer acquires the good titles.
- ♣ *A re sale by the seller where a right of resale is expressly reserved in a contract of sale:* In such a case seller is not required to give notice of resale. Can recover damages from original buyer.
- ♣ *Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien".*

RIGHT OF UNPAID SELLER AGAINST THE BUYER

♥ SUIT FOR PRICE:

- Where under a contract of sale *the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods* according to the terms of the contract, the seller may sue him for the price of the goods.
- Where under *a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price*, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

♥ SUIT FOR DAMAGES FOR NON ACCEPTANCE: Where the *buyer wrongfully neglects or refuses to accept* and pay for the goods.

♥ REPUDIATION OF CONTRACT BEFORE DUE DATE: If the buyer does this then the seller may treat the *contract as rescinded and sue damages for the breach*.

♥ SUIT FOR INTEREST: *Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer.* If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

REMEDIES OF BUYER AGAINST THE SELLER

- ♦ DAMAGES FOR NON-DELIVERY: Where the *seller wrongfully neglects or refuses to deliver the goods* to the buyer may sue the seller for damages for non-delivery.
- ♦ SUIT FOR SPECIFIC PERFORMANCE: *Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance.* The court can order for specific performance only when the goods are ascertained or specific.
- ♦ SUIT FOR BREACH OF WARRANTY: *Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty*, the buyer is not entitled to reject the goods only on the bases of such breach of warranty.

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- ◆ **REPUDIATION OF CONTRACT BEFORE DUE DATE:** Where either party to a contract of sale repudiates the contract before the date of delivery, **the other may either treat the contract as subsisting and wait the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.**
- ◆ **SUIT FOR INTEREST:**
 - **Nothing in this act shall affect the right of the seller or the buyer to recover interest or special damages,** in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.
 - **In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer** in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.

AUCTION SALE

An 'auction sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder.

RULE OF AUCTION SALE:

- ♣ **WHERE GOODS ARE SOLD IN LOTS:** Each lot is *prima facie* deemed to be subject of a separate contract of sale.
- ♣ **COMPLETION OF THE CONTRACT OF SALE:** The sale is complete when the auctioneer announces its **completion by the fall of hammer or in any other customary manner** and until such announcement is made, nay bidder may retract from his bid.
- ♣ **RIGHT TO BID MAY BE RESERVED:** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, **but not otherwise, the seller or any one person on his behalf may bid at the auction.**
- ♣ **WHERE THE SALE IS NOT NOTIFIED BY THE SELLER:** It shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such other person and any sale contravening this rule may be treated as fraudulent by the buyer.
- ♣ **RESERVED PRICE. Upset price.**
- ♣ **PRETENDED BIDDING:** If the **seller does it to raise the price**, the sale is voidable at the option of the buyer.

INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE

- ♣ *Where after a contract has been made but before it has been performed, tax revision takes place.*
- ♣ *Where tax is being imposed, increased, decreased or remitted in respect of any goods without any stipulations to the payment of tax, the parties would become entitled to read just the price of the goods accordingly.*
- ♣ **The buyer would have to pay the increased price where the taxes increases and may derive the benefits of reduction if taxes are curtailed.**
- ♣ **Thus, seller may add the increased taxes in the price. However this can be excluded by an agreement.**