

# BUSINESS LAW

UNIT 4: The Sale of Goods Act, 1930

TOPIC-RIGHTS OF UNPAID SELLER

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# RIGHTS OF UNPAID SELLER

A seller is deemed to be an unpaid seller if

1. His entire payment has not been paid or tendered by the buyer i.e. he is unpaid fully or partly. But if he wrongfully refuses to accept the payment when validly tendered by the buyer, then he ceases to be unpaid seller or
2. He is given a bill of exchange /cheque and the same gets dishonoured

An unpaid seller has two-fold rights

- Rights against the goods
  - ✓ Right of lien
  - ✓ Right of stoppage in transit
  - ✓ Right of resale
- Rights against the buyer
  - ✓ Suit for price
  - ✓ Suit for damages for non-acceptance of delivery
  - ✓ Suit for special damages

# RIGHTS OF LIEN

Lien means **right to retain possession of the goods and refuse to deliver them** to the buyer( even though property in goods has passed to him) until the price due on them is paid/tendered. But if property in goods has not passed to buyer, and title is still with seller, then technically it is not lien.. but is *'right of withholding delivery.'*

| <b>CASES WHEN LIEN CAN BE EXERCISED BY UNPAID SELLER</b><br>Where goods are sold without any stipulation as to credit ;<br>When goods are sold on credit but term of credit has expired ;<br>When buyer becomes insolvent before period of credit expires | <b>CIRCUMSTANCES WHEN RIGHT OF LIEN IS LOST</b><br>The unpaid seller's lien is possessory lien i.e. this lien exists as long as seller has possession of the goods. If possession over goods is lost, lien is also lost. |
|---|--|
| Lien can be exercised even if seller is in possession of goods as agent or bailee for the buyer   | When seller delivers the goods to a carrier for transmission to the buyer without reserving the right of disposal of the goods   |
| Lien can be exercised only for non-payment of price and not for other charges, like godown charges, interest etc.   | When buyer or his agent lawfully obtains possession of the goods   |
| Where seller has made part delivery of goods, he may exercise right of lien on the remainder goods in his possession  | When seller waives his right of lien expressly or impliedly eg. by granting fresh term of credit or assenting to a sub sale made by buyer  |
| Lien can be exercised on whole of the goods in sellers possession even if part payment for those goods was made.  | When buyer tenders the price, but the seller refuses to accept it, right of lien is lost.  |
| Lien can be exercised even though seller has obtained a "decree" for the price of the goods.  | Right of lien once lost , will not revive even if buyer redelivers goods to the seller for any particular purpose ,say, for repairs  |

# RIGHT OF STOPPAGE OF GOODS IN TRANSIT

This means right of stopping further transit of the goods while they are in a carrier for transmission to the buyer, resuming their possession and retaining them until payment or tender of the price. Thus, it is an extension of the right of lien.

| WHEN RIGHT OF STOPPAGE IN TRANSIT CAN BE EXERCISED   | WHEN RIGHT OF STOPPAGE IN TRANSIT CAN'T BE EXERCISED  |
|--|---|
| When seller is unpaid, the buyer becomes insolvent and the goods are still in the course of transit.   | When transit comes to an end i.e. the buyer or his agent takes delivery after the goods have reached destination.   |
| Goods in course of transit means that they are in custody of an independent middlemen /carrier & not with seller/buyer/agent   | When the buyer or his agent take delivery of the goods before their arrival at the appointed destination  |
| Transit is deemed to begin when goods are delivered to the carrier or bailee for the purpose of transmission to the buyer and continues till they are not delivered to buyer/his agent                                       | When the goods have arrived at their destination and the carrier acknowledges to the buyer or his agent that he holds goods on his behalf (constructive delivery)   |
| Right of stoppage in transit is exercised by the unpaid seller by taking actual possession of the goods or by giving notice of his claim over the goods to the carrier/bailee possessing the goods                           | When goods have arrived at their destination but the buyer instead of taking delivery requests the carrier to carry goods to some further destination and carrier agrees to do so.  |
| It is the duty of the carrier, after receiving due notice, not to deliver goods to the buyer but to redeliver them to the seller or to some place as per his instructions otherwise he will be guilty of tort of conversion. | When the goods are delivered to a ship chartered by the buyer and the carrier is acting as the agent of the buyer, the transit ends as soon as goods are loaded on the ship and so the right of stoppage cannot be exercised. |
| The expenses of redelivery are to be borne by the seller.  | When part delivery of goods has been made to the buyer with the intention of delivering the whole of the goods  |

# RIGHT OF RESALE

The right of resale is a very valuable right of the unpaid seller without which the right of lien and right of stoppage would have been ineffective. After all, how long can a seller afford to retain goods and particularly when goods are perishable, maintenance costs are high, money gets blocked up in the goods, it is really pinching. So, to give relief to the unpaid seller, the Act grants a limited right to resell the goods in the following cases:

| CASES WHEN RIGHT OF RESALE CAN BE EXERCISED   | EFFECTS OF RIGHT OF RESALE OF GOODS  |
|---|--|
| <ul style="list-style-type: none"><li>✓ Where goods are perishable in nature or</li><li>✓ Where the contract expressly grants 'right to resell' in case the buyer defaults or</li><li>✓ Where the seller has given a notice to the buyer of his intention to resell and still the buyer does not pay the price within a reasonable time</li></ul> | <ul style="list-style-type: none"><li>✓ If on resale there is a loss to the seller, he can recover it from the defaulting buyer.</li><li>✓ If on resale, there is a surplus, the seller can keep it since buyer can't be allowed to take advantage of his own wrong.</li><li>✓ But where neither the goods are perishable nor the right to resell is reserved in the contract and so the notice of resale is required to be given to the buyer before resale but the seller fails to do so, then the above privileges - to claim loss and retain surplus - are reversed i.e. loss on resale cannot be recovered from the buyer whereas the surplus, if any, will have to be handed over to him</li><li>✓ In case of resale of goods by the unpaid seller, the subsequent buyer acquires a good title thereto even when the required notice of resale was not given by the unpaid seller to the original buyer.</li></ul> |

# DISTINCTION BETWEEN LIEN AND STOPPAGE IN TRANSIT

| RIGHT OF LIEN   | RIGHT OF STOPPAGE OF GOODS IN TRANSIT   |
|---|---|
| Lien can be exercised when goods are in actual possession of the seller   | Right of stoppage is exercised when goods are in possession of an independent carrier/ middleman/bailee   |
| Lien can be exercised when the buyer defaults whether he is solvent or insolvent.   | Right of stoppage can be exercised only when the buyer is insolvent.  |
| The right of lien comes to an end once the seller hands over the possession of goods to the carrier for the purpose of transmission to the buyer. | The right of stoppage commences after the seller delivers goods to the carrier for the purpose of transmission to the buyer and ends once the possession of goods is taken by buyer |
| Right of lien consists of retaining the possession of goods.  | Right of stoppage consists of regaining the possession of goods   |

## RIGHTS OF UNPAID SELLER AGAINST THE BUYER PERSONALLY

- **Suit for price**-When property in goods has passed to buyer but he wrongfully refuses to pay the due price, seller can sue him for price irrespective of delivery of goods.
- **Suit for damages for non-acceptance**- Where the buyer wrongfully refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance (rather than action for full price of the goods)
- **Suit for special damages and interest**- The seller can also sue the buyer for special damages for loss which both the parties knew, when they made the contract, to be likely to arise in case of breach. The seller is also entitled to interest at a reasonable rate on the unpaid price of goods sold, from the time it was due until it is actually paid.