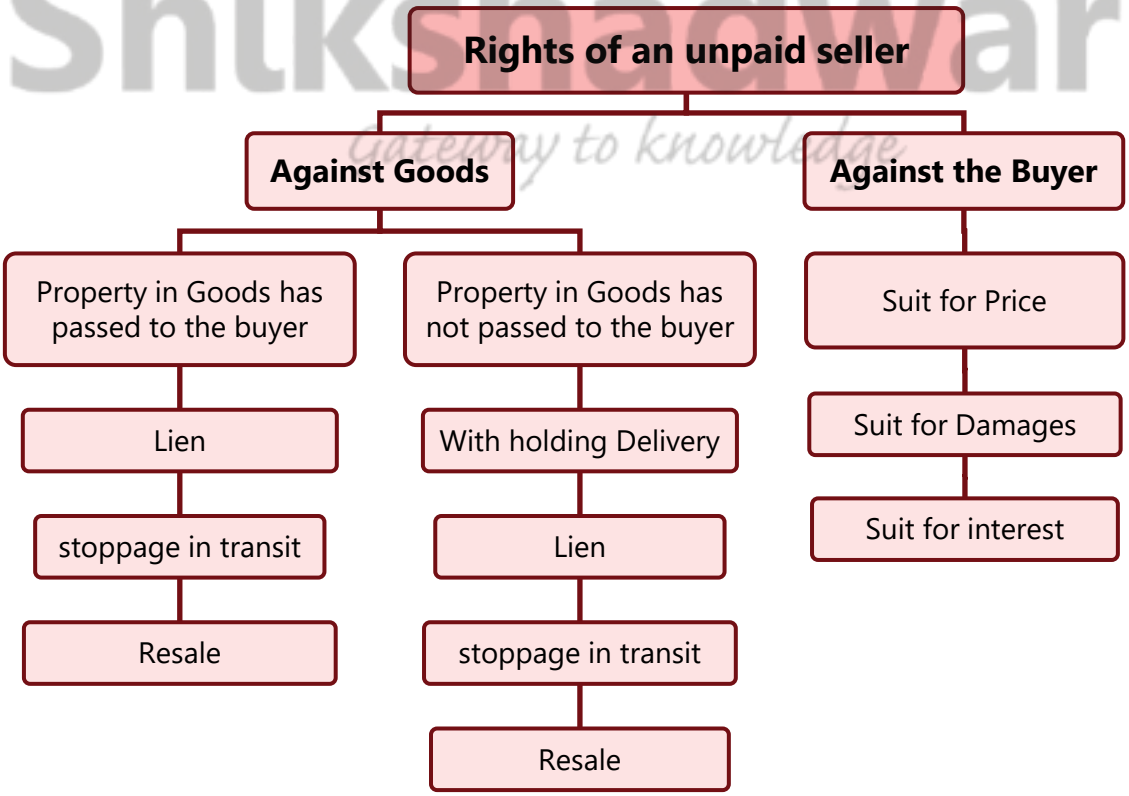
UNIT – 4: UNPAID SELLER

LEARNING OUTCOMES

After studying this unit, you would be able to understand-

- The concept of Unpaid Seller
- The rights of Unpaid Seller
- Effect of sub-sale or pledge by the buyer
- Distinction between the right of lien and right of stoppage in transit
- Rights of parties in case of breach of contract
- Concept of sale by auction.

UNIT OVERVIEW



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4.1 UNPAID SELLER

A contract comprises of reciprocal promises. In a contract of sale, if seller is under an obligation to deliver goods, buyer has to pay for it. In case buyer fails or refuses to pay, the seller, as an unpaid seller, shall have certain rights.

According to Section 45(1) of the Sale of Goods Act, 1930, the seller of goods is deemed to be an 'Unpaid Seller' when-

(a) The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

(b) 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 reason of the dishonour of the instrument or otherwise.

The term 'seller' here includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price [Section 45(2)].

Example 1: X sold certain goods to Y for ₹ 50,000. Y paid ₹ 40,000 but fails to pay the balance. X is an unpaid seller.

Example 2: P sold some goods to R for ₹ 60,000 and received a cheque for a full price. On presentment, the cheque was dishonoured by the bank. P is an unpaid seller.

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4.2 RIGHTS OF AN UNPAID SELLER

Unpaid seller's right (Section 46): 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 passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

(a) a lien on the goods for the price while he is in possession of them;

(b) 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;

(c) a right of re-sale as limited by this Act. [Sub-section (1)]

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. [Sub-section (2)]

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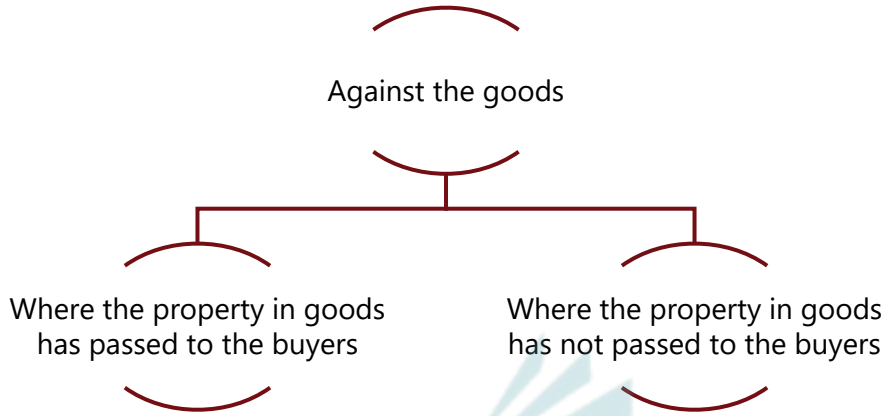
An unpaid seller has been expressly given the rights against the goods as well as the buyer personally which are discussed as under:

(a) Rights of an unpaid seller against the goods: The right of unpaid seller against goods can be categorized under two headings.



4.3 RIGHT OF UNPAID SELLER AGAINST THE GOODS

The unpaid seller has the following rights against the goods:

(1) Seller's lien (Section 47)

Rights of 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. It is the right to retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered.

The unpaid seller's lien is a possessory lien i.e. the lien can be exercised as long as the seller remains in possession of the goods.

Exercise of right of lien: This right can be exercised by him in the following cases only:

(a) where goods have been sold without any stipulation of credit; (i.e., on cash sale)

(b) where goods have been sold on credit but the term of credit has expired; or

(c) where the buyer becomes insolvent.

Example 3: A sold certain goods to B for a price ₹ 50,000 and allowed him to pay the price within one month. B becomes insolvent during this period of credit. A, the unpaid seller, can exercise his right of lien.

Seller may exercise his right of lien even where he is in possession of the goods as agent or bailee for the buyer.

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The term insolvent refers to "a person is said to be insolvent who has ceased 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".

Part delivery (Section 48): Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien (Section 49): The unpaid seller loses his right of lien under the following circumstances:

(i) 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.

(ii) Where the buyer or his agent lawfully obtains possession of the goods.

(iii) Where seller has waived the right of lien.

(iv) By Estoppel 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. (This means even if the seller has taken a price for the goods under a court case, he can still exercise his right to lien on those goods.)

Example 4: A, sold a car to B for ₹ 1,00,000 and delivered the same to the railways for the purpose of transmission to the buyer. The railway receipt was taken in the name of B and sent to B. Now A cannot exercise the right of lien.

(2) Right of stoppage in transit (Section 50 to 52):

Meaning of right of stoppage in transit (Section 50): The right of stoppage in transit means the right of stopping the goods while they are in transit, to regain the possession and to retain them till the full price is paid.

When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.

This right is the extension of the right of lien because it entitles the seller to regain possession even when the seller has parted with the possession of the goods.

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

(a) The seller must be unpaid.

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(b) He must have parted with the possession of goods.

(c) The goods are in transit.

(d) The buyer has become insolvent.

(e) The right is subject to provisions of the Act. [Section 50]

Example 5: A of Mumbai sold certain goods to B of Delhi. He delivered the goods to C, a common carrier for the purpose of transmission of these goods to B. Before the goods could reach him, B became insolvent and A came to know about it. A can stop the goods in transit by giving a notice of it to C.

Duration of transit (Section 51): The goods are deemed to be in course 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 on that behalf takes delivery of them from such carrier or other bailee.

When does the transit come to an end?

The right of stoppage in transit is lost when transit comes to an end. 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. It is also called interception by the buyer which can be with or without the consent of the carrier.
- Where the carrier or other 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 right 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, 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. [section 51]

How stoppage in transit is effected (Section 52):

(1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or

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other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case, the notice, to be effectual, shall be given at such time and in such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

Stoppage in transit

By taking actual possession of goods

By giving notice to the carrier not to deliver the goods.

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Distinction between Right of Lien and Right of Stoppage in Transit

(i) The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.

(ii) Seller should be in possession of goods under lien while in stoppage in transit (i) seller should have parted with the possession (ii) possession should be with a carrier & (iii) buyer has not acquired the possession.

(iii) Right of lien can be exercised even when the buyer is not insolvent but it is not the case with right of stoppage in transit.

(iv) Right of stoppage in transit begins when the right of lien ends. Thus, the end of the right of lien is the starting point of the right of stoppage in transit.

(v) Right of lien comes to an end as soon as the goods go out of the possession of the seller but the right of stopping in transit comes to an end as soon as the goods are delivered to the buyer.

Sometimes it is said that right of stopping the goods in transit is nothing but an extension of right of lien.

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Effects of sub-sale or pledge by buyer (Section 53): 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. This is based on the principle that a second buyer cannot stand in a better position than his seller. (The first buyer).

Example 6: A sold certain goods to B of Mumbai and the goods are handed over to railways for transmission to B. In the mean time, B sold these goods to C for consideration. B becomes insolvent. A can still exercise his right of stoppage in transit. Here we assume that seller did not give his assent for sub sale, therefore he can still exercise his right of stoppage in transit.

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 where unpaid seller's right of lien and stoppage in transit are defeated:

(a) When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer.

Example 7: A entered into a contract to sell cartons in possession of a wharfinger to B and agreed with B that the price will be paid to A from the sale proceeds recovered from his customers. Now B sold goods to C and C duly paid to B. But anyhow B failed to make the payment to A. A wanted to exercise his right of lien and ordered the wharfinger not to make delivery to C. Held that the seller had assented to the resale of the goods by the buyer to the sub-buyers. As a result, A's right to lien is defeated ***(Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd).***

(b) 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 of sub-section (1) stipulates as follows:

(i) If the last-mentioned transfer is by way of sale, right of lien or stoppage in transit is defeated, or

(ii) 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 pledgee.

However, the pledgee may be required by the unpaid seller to use in the first instance, other goods or securities of the pledger available to him to satisfy his claims. [Sub-section (2)].

Effect of stoppage: The contract of sale 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.

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Right of re-sale [Section 54]: The right of resale is a 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 re-sell the goods under the following conditions:

(i) **Where the goods are of a perishable nature:** In such a case, the buyer need not be informed of the intention of resale.

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

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 also 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. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].

(iii) **Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods:** The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.

(iv) **A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale:** Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default.

It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.

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(v) **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". This is the additional right used in case of agreement to sell.

4.4 RIGHTS OF UNPAID SELLER AGAINST THE BUYER (SECTIONS 55-61)

Rights of unpaid seller against the buyer personally: An unpaid seller can enforce certain rights against the goods as well as against the buyer personally. Rights of unpaid seller against the buyer are otherwise known as seller's remedies for breach of contract of sale. The rights of the seller against the buyer personally are called rights in personam and are in addition to his rights against the goods.

The right against the buyer are as follows:

1. **Suit for price (Section 55)**

   (a) 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. [Section 55(1)] *(This is the case of contract of sale)*

   (b) Where under a contract of sale, the price is payable on a certain day 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. [Section 55(2)]. *(This is the case of agreement to sell)*

2. **Suit for damages for non-acceptance (Section 56):** Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies in this case.

3. **Repudiation of contract before due date (Section 60):** Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach of contract'.

4. **Suit for interest [Section 61]:** 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

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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.

In the absence of a contract to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable.

4.5 REMEDIES OF BUYER AGAINST THE SELLER

Breach of contract by seller

Breach of contract by seller, where he-
• Fails to deliver the goods at the time or in manner prescribed • Repudiates the contract • Deliver non-conforming goods and buyer rejects and revokes acceptance

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If the seller commits a breach of contract, the buyer gets the following rights against the seller:

Rights of buyer

- Damages for non-delivery
- Suit for specific performance
- Suit for breach of warranty
- Suit for anticipatory breach
- Suit for interest

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1. **Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Example 8: A' a shoe manufacturer, agreed to sell 100 pairs of shoes to 'B' at the rate of ₹ 10,500 per pair. 'A' knew that 'B' wanted the shoes for the purpose of further reselling them to 'C' at the rate of ₹ 11,000/- per pair. On the due date of delivery, 'A' failed to deliver the shoes to 'B'. In consequence, 'B' could not perform his contract with 'C' for the supply of 100 pairs of shoes. In this case, 'B' can recover damages from 'A' at the rate of ₹ 500/- per pair (the difference between the contract price and resale price).

2. **Suit for specific performance (Section 58):** 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.

This remedy is allowed by the court subject to these conditions:

(a) The contract must be for the sale of specific and ascertained goods.

(b) The power of the court to order specific performance is subject to provisions of Specific Relief Act of 1963.

(c) It empowers the court to order specific performance where damages would not be an adequate remedy.

(d) It will be granted as remedy if goods are of special nature or are unique.

Example 9: 'A' agreed to sell a rare painting of Mughal period to 'B'. But on the due date of delivery, 'A' refused to sell the same. In this case, 'B' may file a suit against 'A' for obtaining an order from the Court to compel 'A' to perform the contract (i.e. to deliver the painting to 'B' at the agreed price).

3. **Suit for breach of warranty (Section 59):** 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 basis of such breach of warranty. But he may –

(i) set up against the seller the breach of warranty in diminution or extinction of the price; or

(ii) sue the seller for damages for breach of warranty.

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4. **Repudiation of contract before due date (Section 60):** 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 till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

5. **Suit for interest:**

   (1) 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.

   (2) 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 filed 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.

Example 10: In case of a sale of cigarettes which turned out to be mildewed and unfit for consumption, damages were awarded on the basis of the difference between the contract price and the price released.

Example 11: In case of absence of transfer of title or registration, the purchaser cannot claim damages for breach of conditions and warranties relating to sale.

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4.6 AUCTION SALE (SECTION 64)

An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. An auctioneer is an agent governed by the Law of Agency. When he sells, he is only the agent of the seller. He may, however, sell his own property as the principal and need not disclose the fact that he is so selling.

Legal Rules of Auction sale: Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:

(a) **Where goods are sold in lots:** Where goods are put up for sale in lots, each lot is *prima facie* deemed to be subject of a separate contract of sale.

(b) **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. Until such announcement is made, any bidder may retract from his bid.

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(c) **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.

(d) **Where the sale is not notified by the seller:** Where the sale is not notified to be subject to a right to bid on behalf of 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 person; and any sale contravening this rule may be treated as fraudulent by the buyer.

(e) **Reserved price:** The sale may be notified to be subject to a reserve or upset price; and

(f) **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Example 12: P sold a car by auction. It was knocked down to Q who was only allowed to take it away on giving a cheque for the price and signing an agreement that ownership should not pass until the cheque was cleared. In the meanwhile till the cheque was cleared, Q sold the car to R. It was held that the property was passed on the fall of the hammer and therefore R had a good title to the car. Both sale and sub sale are valid in favour of Q and R respectively.

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4.7 INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE (SECTION 64A)

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. Following taxes are applied on the sale or purchase of goods:

- Any duty of customs or excise on goods,
- Any tax on the sale or purchase of goods

The buyer would have to pay the increased price where the tax increases and may derive the benefit of reduction if taxes are curtailed. Thus, seller may add the increased taxes in the price. The effect of provision can, however, is excluded by an agreement to the contrary. It is open to the parties to stipulate anything regard to taxation.

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SUMMARY

A seller is called an 'unpaid seller' when either he has not been paid the whole price or the buyer has failed to meet at maturity the bill of exchange or any other negotiable instrument which was accepted by the seller as conditional payment. In such a circumstance the buyer may exercise lien on goods if he is in possession of them. If goods are in transit to the buyer, he may stop the goods in transit and obtain the possession of the goods.

When the unpaid seller has exercised right of lien or stoppage in transit, he may sell the goods after giving a notice to the buyer of his intent to resell. The new buyer shall have a good title on good s as against the original buyer even if the notice of resale has not been given by the seller to the original buyer.

If the seller neglects to deliver the goods the buyer may sue him for damages, or he may sue the seller for specific performance if the property in goods had not been transferred to the buyer. Where the buyer neglects to pay the price, the seller may sue him for the price as well as exercise lien on goods. Where the buyer wrongfully neglects to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Unpaid Seller

Meaning

A seller of goods is deemed to be an unpaid seller when-

- Whole of the price has not been paid or tendered;
- A BOE or other negotiable instrument has been received as a conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

Buyer's Rights for Breach of Contract of Sale

a. Suit for damages for non-delivery of goods.
b. Suit for specific performance.
c. Suit for breach of warranty.
d. Suit for anticipatory warranty.

Rights of an unpaid seller

1. Against the goods:

- Right of lien.
- Right of stoppage in transit
- Right of re-sale

2. Against the buyer:

- Suit for price
- Suit for damages for non-acceptance
- Repudiation of contract before due date
- Suit for interest on the price

Effect of Sub-Sale or Pledge by Buyer (Sec. 53)

The unpaid seller's right of lien or stoppage in transit is to not affected by any sale or pledge of the goods which the buyer may have made, **unless**

- Seller has assented to it.

Or

- A document of title to goods has been transferred to buyer, and the buyer transfers the document to a person who bought it in good faith and for consideration.

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Auction Sale

Meaning

Public sale where different intending buyers try to outbid each other & goods are ultimately sold to the highest bidder.

Rules of Auction Sale

1. Goods put up for sale in lots.
2. Completion of sale by the fall of hammer or in some other customary manner.
3. A right to bid may be reserved expressly by or on behalf of the seller.
4. The sale may be notified to be subject to a reserve price.
5. Sale is voidable in case of pretended bidding to raise the price.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

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1. *The unpaid seller has right of stoppage of goods in transit only where the buyer*
   - *(a) become insolvent.*
   - *(b) refuses to pay price.*
   - *(c) acts fraudulently.*
   - *(d) all of these.*
2. *An unpaid seller is having rights against*
   - *(a) goods only.*
   - *(b) the buyer only.*
   - *(c) both goods and buyer.*
   - *(d) none of the above.*
3. *Under which of the circumstances unpaid seller loses his right of lien*
   - *(a) by estoppel.*
   - *(b) where seller waived the right of lien.*
   - *(c) where the buyer or his agent lawfully obtains possession of the goods.*
   - *(d) any of the above.*

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4. *When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise*

   (a) *right of lien.*

   (b) *right of stoppage in transit.*

   (c) *right of resale.*

   (d) *none of the above.*

5. *The essence of a right of lien is to*

   (a) *deliver the goods.*

   (b) *retain the possession.*

   (c) *regain the possession.*

   (d) *none of the above*

6. *Which of the following right can be exercised by an unpaid seller against the buyer, who is not insolvent*

   (a) *right of lien.*

   (b) *right of stoppage in transit.*

   (c) *both (a) and (b).*

   (d) *none of the above.*

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7. *Which of the following is a buyer's right against the seller in case of breach of contract?*

   (a) *suit for non-delivery.*

   (b) *suit for specific performance.*

   (c) *suit for damages for breach of warranty.*

   (d) *all of the above.*

8. *An auction sale is complete on the*

   (a) *delivery of goods*

   (b) *payment of price*

   (c) *fall of hammer*

   (d) *none of the above.*

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9. *Seller has right of resale where*

   (a) *goods are perishable.*

   (b) *seller has reserved such right.*

   (c) *seller gives notice.*

   (d) *all of these.*

10. *The aggrieved party can claim only damages in case of breach of warranty.*

   (a) *true.*

   (b) *false.*

11. *Under which circumstances, the right of stoppage can be exercised by an unpaid seller*

   (a) *the buyer has become insolvent.*

   (b) *the goods are in transit.*

   (c) *the seller must be unpaid.*

   (d) *all of the above.*

12. *Under which circumstances the unpaid seller can exercise right of re-sale*

   (a) *when the goods are of perishable nature.*

   (b) *when he gives notice to the buyer.*

   (c) *when he gives notice to the buyer of his intention to re-sale and the buyer does not within a reasonable time pay the price.*

   (d) *both (a) and (c)*

13. *Where the seller wrongfully neglects to deliver the goods to the buyer, then the buyer*

   (a) *cannot sue the seller for damages for non-delivery.*

   (b) *may sue the seller for damages for non-delivery.*

   (c) *either (a) or (b)*

   (d) *none of the above.*

14. *Where the buyer is deprived to goods by their true owner, then the buyer*

   (a) *may recover the price for breach of the condition as to title.*

   (b) *cannot recover the price for breach of the condition as to title.*

   (c) *either (a) or (b)*

   (d) *none of the above.*

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15. *Where the buyer wrongfully neglects or refuses to accept and pay for the goods,*

    (a) *the seller may sue buyer for damages for non-acceptance.*

    (b) *the seller cannot sue buyer for damages for non-acceptance.*

    (c) *the seller can sue buyers' banker for damages.*

    (d) *none of the above.*

16. *In an auction sale, the property shall be sold to the*

    (a) *Lowest bidder.*

    (b) *Highest bidder.*

    (c) *All bidders*

    (d) *None of the above.*

17. *In an auction sale, if the seller makes use of pretended bidding to raise the price, then the sale is*

    (a) *valid.*

    (b) *void.*

    (c) *voidable.*

    (d) *illegal.*

18. *In which of the following cases, the unpaid seller loses his right of lien?*

    (a) *delivery of goods to buyer.*

    (b) *delivery of goods to carrier.*

    (c) *tender of price by buyer.*

    (d) *all of these.*

19. *The bidder at an auction sale can withdraw his bid*

    (a) *any time during auction.*

    (b) *before fall of hammer.*

    (c) *before payment of price.*

    (d) *none of these.*

20. *Where in an auction sale, the seller appoints more than one bidder, the sale is*

    (a) *void.*

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(b) *illegal.*

(c) *conditional.*

(d) *voidable.*

21. *Where in an auction sale notified with reserve price, the auctioneer mistakenly knocks down the goods for less than the reserve price, then the auctioneer is*

(a) *bound by auction.*

(b) *not bound by auction.*

(c) *liable for damages.*

(d) *both (a) and (c)*

Descriptive questions

1. *When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act? Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court?*

2. *Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date, Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930.*

3. *Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Can Ram exercise right of stopping the goods in transit?*

4. *Suraj sold his car to Sohan for ₹ 75,000. After inspection and satisfaction, Sohan paid ₹ 25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on, Sohan refuses to give the remaining amount on the ground that the car was not in a good condition. Advise Suraj as to what remedy is available to him against Sohan.*

5. *A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired and goods were still in the possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuses to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930?*

6. *A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller for stopping the goods in transit as the buyer has become insolvent.*

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Referring to the provisions of Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller?

7. *J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R on the basis of the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930?*

8. *Rachit arranges an auction to sale an antic wall clock. Deepa, being one of the bidders, gives the highest bid. For announcing the completion of sale, the auctioneer falls the hammer on table but suddenly hammer brakes and damages the watch. Deepa wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930?*

ANSWERS/HINTS

Answers to MCQ'S

1	**(a)**	2.	**(c)**	3.	**(d)**	4.	**(b)**	5.	**(b)**	6.	**(a)**
7.	**(d)**	8.	**(c)**	9.	**(d)**	10.	**(a)**	11.	**(d)**	12.	**(d)**
13.	**(b)**	14.	**(a)**	15.	**(a)**	16.	**(b)**	17.	**(c)**	18.	**(d)**
19.	**(b)**	20.	**(d)**	21.	**(b)**						

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Answer to Descriptive Questions

1. A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-

(i) the goods have been sold without any stipulation as to credit;

(ii) the goods have been sold on credit, but the term of credit has expired;

(iii) the buyer becomes insolvent.

The unpaid seller can exercise 'his right of lien even if the property in goods has passed on to the buyer. He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer.

Termination of lien: An unpaid seller losses his right of lien thereon-

(i) 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;

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(ii) When the buyer or his agent lawfully obtains possession of the goods;

Yes, he can exercise his right of lien even after he has obtained a decree for the price of goods from the court.

2. **Position of Mr. D:** Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. So, Mr. D is an unpaid seller as according to Section 45(1) of the Sale of Goods Act, 1930 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.

Rights of Mr. D: As the goods have parted away from Mr. D and already delivered to E, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:

(i) **Suit for price (Section 55):** In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.

(ii) **Suit for damages for non-acceptance (Section 56):** Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.

(iii) **Suit for interest [Section 61]**: If there is no specific agreement between Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

3. **Right of stoppage of goods in transit:** The problem is based on Section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

(i) The seller must be unpaid

(ii) He must have parted with the possession of goods

(iii) The goods must be in transit

(iv) The buyer must have become insolvent

(v) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit. He may recover the price of other 100 bales sent by lorry by using his rights against the buyer.

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4. As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that

(i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [Section 55(1)].

(ii) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].

This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this, Suraj is also entitled to:-

(1) Interest on the remaining amount

(2) Interest during the pendency of the suit.

(3) Costs of the proceedings.

5. Lien is the right of a person to retain possession of the goods belonging to another until claim of the person in possession is satisfied. The unpaid seller has also right of lien over the goods for the price of the goods sold.

Section 47(1) of the Sales of Goods Act, 1930 provides that the unpaid seller who is in the possession of the goods is entitled to exercise right of lien in the following cases:-

1. Where the goods have been sold without any stipulation as to credit
2. Where the goods have been sold on credit but the term of credit has expired
3. Where the buyer has become insolvent even though the period of credit has not yet expired.

In the given case, A has agreed to sell certain goods to B on a credit of 10 days. The period of 10 days has expired. B has neither paid the price of goods nor taken the possession of the goods. That means the goods are still physically in the possession of A, the seller. In the meantime B, the buyer has become insolvent. In this case, A is entitled to exercise the right of lien on the goods because the buyer has become insolvent and the term of credit has expired without any payment of price by the buyer.

6. The right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. Thereafter the seller regains the possession of the goods.

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This right can be exercised by an unpaid seller when he has lost his right of lien over the goods because the goods are delivered to a carrier for the purpose of taking the goods to the buyer. This right is available to the unpaid seller only when the buyer has become insolvent. The conditions necessary for exercising this right are:-

1 The buyer has not paid the total price to the seller

2 The seller has delivered the goods to a carrier thereby losing his right of lien

3 The buyer has become insolvent

4 The goods have not reached the buyer, they are in the course of transit. (Section 50, 51 and 52)

In the given case A, who is an agent of the buyer, had obtained the goods from the railway authorities and loaded the goods on his truck. After this the railway authorities received a notice from the seller B to stop the goods as the buyer had become insolvent.

According to the Sale of Goods Act, 1930, the railway authorities cannot stop the goods because the goods are not in transit. A who has loaded the goods on his truck is the agent of the buyer. That means railway authorities have given the possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes the possession of the goods.

7. The right of lien and stoppage in transit are meant to protect the seller. These will not be affected even when the buyer has made a transaction of his own goods which were with the seller under lien. But under two exceptional cases these rights of the seller are affected:-

(i) When the buyer has made the transaction with the consent of the seller

(ii) When the buyer has made the transaction on the basis of documents of title such as bill of lading, railway receipt or a delivery order etc.

In the given case, J has sold the machine to K and K gave a cheque for the payment. But the cheque was dishonoured that means J, the seller is an unpaid seller. So, he is entitled to exercise the right of lien, but according to section 53(1) his right of lien is defeated because he has given the document of title to the buyer and the buyer has made a transaction of sale on the basis of this document. So, R who has purchased the machine from K can demand the delivery of the machine.

8. By virtue of provisions of Section 64 of the Sale of Goods Act, 1930, in case of auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner.

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In the instant case, Deepa gives the highest bid in the auction for the sale of an antic wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock.

On the basis of the above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table. Hence, in the given problem, sale is not completed. Deepa will not be liable for loss and can avoid the contract.

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