

- accept the quantities he has ordered (must pay at the contract rate) and reject the rest.

**(19) ACCEPTANCE OF THE GOODS (Section 35)**

- Acceptance is deemed to take place when the buyer:
  1. intimates to the seller that he has accepted the goods; or
  2. does any act to the goods which is inconsistent with the ownership of the seller; or
  3. retains the goods, after the lapse of a reasonable time, without intimating to the seller that he has rejected them.
- Section 34 - If the buyer has not previously examined the goods, he is deemed not to have accepted them unless he has reasonable opportunity to examine them upon delivery.

**(20) AN UNPAID SELLER (Section 38)**

- The seller of goods is deemed to be an "unpaid seller":
  - when the whole of the price has not been paid or tendered;
  - 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.

**(21) RIGHTS OF AN UNPAID SELLER (Section 39)**

- Notwithstanding that the **property in the goods may have passed to the buyer**, the unpaid seller of goods, has by implication of law-
  1. a **lien** on the goods or right to retain them for the price **while he is in possession of them**;
  2. 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**;
  3. a **right of re-sale**.
- **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.
- A lien (Section 40):
  - A lien is a **right to retain possession** of goods **until payment** of the price.
  - Section 41 - The unpaid seller **loses his lien**:
    - (a) when goods have been **delivered to a carrier** for the purpose of transmission to the buyer;
    - (b) when the **buyer or his agent obtains possession** of the goods lawfully;
    - (c) by **waiver**.
- Right of stoppage in transit (Section 43):
  - The right of **stopping the goods while they are on transit** and retaining possession **until the payment** is made.
  - It is available when:
    - (a) the **buyer** becomes **insolvent**; and
    - (b) the **goods are in transit**
- Right of resale (Section 47):
  - The exercise of the right of lien or stoppage does not rescind the contract.
  - However, where an unpaid seller who has exercised his right of lien or retention or stoppage in transit resells the goods, the buyer acquires a good title thereto as against the original buyer.
  - The seller has the right to resell when:
    - (a) the goods are of a **perishable** nature; or
    - (b) when the unpaid seller gives **notice** to the buyer **of his intention to resell** and the **buyer does not within a reasonable time pay the price**;

(c) where the seller **expressly reserves the right to resell.**

**(22) ACTIONS FOR BREACH OF CONTRACT**

- BY SELLER:

- *FOR THE PRICE* - This action applies only when **the property has passed to the buyer** and the buyer **wrongfully neglects or refuses to pay** (Section 48).
- *DAMAGES FOR NON ACCEPTANCE* - When the buyer **wrongfully neglects or refuses to accept** the goods **and pay** (Section 49).

- BY BUYER:

- *DAMAGES FOR NON DELIVERY* - When the seller **wrongfully neglects or refuses to deliver** the goods (Section 50).
- *TO RECOVER THE PRICE* - If the buyer has **paid the price and the goods are not delivered.**
- *FOR SPECIFIC PERFORMANCE* – This is an **order of a court** which requires a party to **perform a specific act**; in this case what is stated in the contract. (Section 51)