

CHAPTER - 3

UNPAID SELLER

According to Section 45(1) of the SOGA, 1930 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 & the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

e.g. X sold certain goods to Y for 50000Rs. Y paid Rs 40,000 but fails to pay the balance. X is an unpaid seller.

e.g. P sold some goods to R for Rs 60,000 & received cheque for full price. On presenting the cheque was dishonoured. P is an unpaid seller.

Rights of an Unpaid Seller

Against the Goods

Against the Buyer personally

Sale	Stoppage in transit	Resale	Repudiation of Contract	Suit for Price	Suit for Damages	Suit for Interest
Sec. 47 to 49	Sec. 50 to 52	Sec. 54	Sec. 60	Sec. 55	Sec. 56	Sec. 61

Lien - Retain possession in goods (Goods are in possession of Seller)
 Stoppage in transit → Regain possession in goods (Goods are in transit)

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	From Seller	To Buyer	
Unpaid Seller Udaipur	- Reserve right of disposal	From Seller To Buyer	Buyer Gujarat
Unpaid Seller Udaipur	- Right of Lien	To Buyer	Buyer Gujarat
Right of Stoppage	From Seller To Buyer		

Distinction between Right of Lien and Right of stoppage in transit

1. The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
2. 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.
3. 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.

4. Right of stoppage in transit begins when the right of lien ends.
5. Right of lien comes to 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.

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.

RIGHT OF UNPAID SELLER AGAINST THE GOODS

The unpaid seller has the following rights against the goods:

2. Right of lien (Section 47) : According to sub-section (1), subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely :

- where the goods have been sold without any stipulation as to credit
 - where the goods have been sold on credit, but the term of credit has expired;
 - where the buyer becomes insolvent
- According to sub-section (2), the seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

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): However, 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 the buyer without reserving the right of disposal of the goods.

eg. A. sold a car to B for Rs 100000 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 to B. Now A cannot exercise the right of lien.

(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.

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Ex.

Right of unpaid seller against the goods.

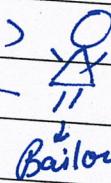
Unpaid
Seller



Cash on Credit

Bailee /
Agent

for free servicing



Buyer

Bailor

~~Right of unpaid seller~~ Right of unpaid seller \Rightarrow Right of lien / with holding right

Duty of Bailee \rightarrow to Return goods

Eg: 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 received from his customers. Now B sold goods to C & C duly paid to B. But anyhow B failed to make the payment to A. A wanted to exercise his right of lien & 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.

2. 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 & to retain them till the full price is paid.

The right of stoppage in transit is exercised only when the following conditions be fulfilled:

1. The seller must be unpaid
2. He must have parted with the possession of goods
3. The goods are in transit
4. The buyer has become insolvent.

Eg: 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.

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Delivery 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 in that behalf takes delivery of them from such carrier or other bailee.

When does the transit come to an end?

In following cases:

- (i) When the buyer or other bailee obtains delivery
- (ii) Buyer obtains delivery before the arrival of goods at destination.
- (iii) Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end.
- (iv) If the carrier wrongfully refuses to deliver the goods to the buyer.
- (v) Where goods are delivered to the carrier hired by the buyer, the transit comes to an end.
- (vi) 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.

How stoppage in transit is effected: There are 2 modes of stoppage in transit (Section 52)

1. By taking actual possession of goods
2. By giving notice to the carrier not to deliver the goods

3. Right of resale (Section 54)

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 resell 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:

- Recover the difference between the contract price & resale price, from the original buyer, as damages.
- Retain the profit if the resale price is higher than the contract price.

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

- (iii) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods - The subsequent buyer acquires the goods & title thereto as against the original buyer, despite the fact that the notice of resale 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 & 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 sell 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.

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

- i. suit for price (section 55)
- ii) Where under a contract of sale, the property in the goods has passed to the buyer & 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))
- iii) Where under a contract of sale, the price is payable on a certain day irrespective of delivery & the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price even the property in the goods has not passed. (Section 55(2))

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.
3. Repudiation of contract before due date (Section 60)
Where the buyer terminate the contract before the date of delivery, the seller may treat the contract as rescinded & sue damages for the breach.
4. Suit for interest (Section 61)
Where there is specific agreement between the seller and the buyer as to interest from the buyer on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. In the absence of any contract, the court may declare rate of interest to the seller in a suit by him at such rate as it thinks fit.

Effects of sub-sale on pledge by buyer (Section 53)

The right of lien on stoppage in transit is not affected by the buyer selling or pledging the goods unless the seller has assented to it.

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

When the seller has assented to the sale, mortgage in transit are defeated or other disposition of the goods made by the buyer.

Ques. 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 & 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.

2. 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 & for value i.e. for price.

Unpaid
Seller

→ Buyer → Second
- Pledge Buyer

this will not affect sellers' right.

Specific performance means defaulting party is required to perform his obligation as per terms & conditions of contract.

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RIGHTS OF BUYER

1. Suit for damages for non delivery (Section 56)

Where the seller wrongfully or negligently refuses to deliver the goods, the buyer may sue him for damages for non delivery.

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.

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

- The contract must be for the sale of specific and ascertainable goods.
- It empowers the court to order specific performance where damages would not be an adequate remedy.
- It will be granted as remedy if goods are of special nature or are unique.

Eg. 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, the buyer is not entitled to reject the goods only on

the basis of such breach of warranty. But he may sue the seller for damages for breach of warranty.

4. Repudiation of contract before due date (Section 60) where 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 & sue for damages for the breach.

5. Suit for Interest

Nothing in this act shall affect the right of the seller or the buyer to recover interest or special damages.

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

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, the parties would become entitled to read 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 & may derive the benefit of reduction if taxes are curtailed.

CHAPTER - 4TRANSFER OF OWNERSHIP AND DELIVERY OF GOODSTRANSFER OF TITLE BY NON-OWNERS

The general rule regarding the transfer of title is that the seller cannot transfer to the buyer of goods a better title than he himself has. If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be the same as that of seller. This rule is expressed in the Latin maxim "Nemo dat quod non habet" which means no one can give what he has not got.

If A sells some stolen goods to B, who buys them in good faith, B will get no title to that and the true owner has a right to get back his goods from B.

Exceptions : In the following cases, a non owner can convey better title to the bona fide purchaser of goods for value.

1. Sale by one of the joint owners (section 28)

If one of joint owners of goods has the sole possession of them by permission of the joint owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith & has not at the time of the contract of sale notice that the seller has no authority to sell.

eg

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A, B, and C are three brothers & joint owners of a TV & VCR and with the consent of B & C, the VCR was kept in possession of A. A sells the TV & VCR to P who buys it in good faith & without notice that A had no authority to sell it. P gets a good title to VCR & TV.

2.

Sale by a Mercantile Agent

A sale made by mercantile agent would pass a good title to the buyer in the following circumstances; namely;

- If he was in possession of the goods or documents with the consent of the owner.
- If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
- If the buyer had acted in good faith & has at a time of the contract of sale, no notice of the fact that the seller had no authority to sell (Provision to section 27).

3.

Sale by one who has already sold the goods but continues in possession thereof

If a person has sold goods but continues to be in possession of them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith & without notice of the previous sale, he would have good title to them.

Eg. During IPL matches, P buys a TV set from R. R agrees to deliver the same to P after some days. In meanwhile R sells the same to S, at a higher price, who buys in good faith & without knowledge about the previous sale. S gets a good title.

4. Sale by unpaid seller: where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer.

5. Sale by a person in possession under voidable contract: A buyer would acquire a good title to the goods sold to him by a seller who has obtained possession of the goods under a voidable contract.

Eg. X fraudulently steals obtains a diamond ring from Y. This contract is voidable at the option of Y. But before the contract could be terminated, X sells the ring to Z, an innocent purchaser. Z gets the good title & Y cannot recover the ring from Z.

6. Sale by buyer obtaining possession before the property in the goods has vested in him: where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a 3rd person, & if such person obtains delivery of the goods in good faith, he would get a good title to them.

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Effect of Estoppel

Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner.

Ex:

A said to B, a buyer, in the presence of C that he (A) is the owner of the house. But C remained silent though the house belonged to him. B bought the house from A. Here the buyer (B) will get a valid title to the house even though the seller (A) had not title to the house. Here C's silence has induced B to believe that A is the owner of house.

8.

Sale under provisions of other Acts
Sale by an official receiver or liquidation of the Co.

will give the purchaser a valid title
Purchase of goods from a finder of goods will get a valid title under circumstances.

A sale by pawnee can convey a good title to the buyer

PASSING OF PROPERTY

Specific or Ascertained Goods

Passing of Unascertained Goods

Goods sent on approval or "on sale or return"

Transfer of property in case of succession of right to disposal

- Contract for the sale of specific or ascertained goods
Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(i) Specific goods in a deliverable state (Section 20):

- The property in the goods passes to the buyer when the contract is made.

e.g. X goes into a shop & buys a television & asks the shopkeeper for its home delivery. The shopkeeper agrees to do it. The television immediately becomes the property of X.

(ii) Specific goods to be put into a deliverable state (Section 21):

- The property does not pass until such thing is done & the buyer has notice thereof.
- e.g. Peter buys a laptop from a shopkeeper & asks for a home delivery. The shopkeeper agrees to it. However, the laptop does not have a Windows operating system installed. The shopkeeper promises to install it & call Peter before making the delivery. In this case, the property transfers to Peter only after the shopkeeper has installed the OS making the laptop ready for delivery, and intimated the buyer about it.

- (iii) Specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act on thing (Section 22).
 The property does not pass until such act on thing is done & the buyer has notice thereof.
 Eg. A sold carpets to the comp. which were required to be laid. The carpets were delivered to comp's premises but was stolen before it could be laid. It was held that the carpet was not in deliverable state as it was not laid, which was part of the contract & hence, the property had not passed to the buyer comp.

- Passing of property of Unascertained Goods
 Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless & until the goods are ascertained.

- Sale of unascertained goods by description (Section 23(1))
 → The property in the goods passes to the buyer when goods are appropriated.
 → Appropriation of goods involves selection of goods with the mutual consent of the seller & the buyer.

AT
 The essentials of Appropriation are :

- There is a contract for the sale of unascertained or future goods

- The goods should conform to the description & quality stated in the contract.
- The goods must be in deliverable state
- The goods must be unconditionally appropriated.
- The appropriation must be made by:
 - ↳ the seller with the assent of the buyer; or
 - ↳ the buyer with the assent of the seller
- The assent may be expressed or implied.
- The assent may be given either before or after appropriation.

Delivery to the carrier [Section 23(2)]

- The property in the goods passes to the buyer as soon as goods are delivered to carrier.
- e.g. M places an order for book with a book seller in Mumbai. He asks him to sent the book by courier. Payment of the book was to be made by cheque. The seller sends the book by courier. The book was lost in the ways. The seller want the buyer to bear the loss.

- Goods sent on approval or "on sale or return" (Section 24)

When goods are delivered to buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer -

- (i) when he signifies his approval or acceptance to the seller.
- (ii) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the

expiration of such time, and, if no time has been fixed on the expiration of a reasonable time; or eg.

A sends to B a water motor on approval on return in March 2020. B to return it after trial in August 2020. The water motor has not been returned within a reasonable time, and therefore, A is not bound to accept it and B must pay the price.

(iii) If he does something to the good which is equivalent to accepting the goods eg. he pledges or sells the goods.

Eg. A delivered some jewellery to B on sale on return basis. B pledged the jewellery with C. It was held that the ownership of the jewellery had been transferred to B.

• Reservation of Right of disposal (Section 25)
Where there is a contract for the sale of specific goods the seller may, by the terms of the contract of appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

Eg. X send furniture to a comp. by a truck & instructs the driver not to deliver the furniture to the co. until the payment is made by co. to him. The property passes only when payment is made.

RISK PRIMA FACIE PASSES WITH PROPERTY (Risk follow ownership)

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer. In case of control of sale there is general rule the risk prima facie passes with property.

e.g. A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. The loss will have to be borne by the seller, because the ownership of goods has not yet passed from the seller to the buyer.

The aforesaid rule is, however, subject to two exceptions:

Delay in transit : If delivery has been delayed by the fault of the seller or the buyer, the goods shall be at the risk of the party in default.

Duty of bailee : In case of Bailment, Bailee is liable if Bailee makes inconsistent use of goods or fails to take reasonable care of goods.

DELE DELIVERY

- Definition of delivery [Section 2(2)]
- Delivery of goods is of three types - - - .
- Rules regarding delivery of goods (Section 33-41)

The SOGA, 1930 prescribes the following rules of delivery of goods.

Buyer to apply for delivery
Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

2. Time of delivery

Where under the contract of sale, seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

3. Expenses for delivery

The expenses of putting the goods into a deliverable state must be borne by the seller in the absence of a contract to the contrary.

4. Instalment deliveries

Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.

5. Delivery to carrier

Subject to the terms of contract, the delivery of goods to the carrier for transmission to the buyer, is prima facie deemed to be delivery to the buyer.

6. Delivery of wrong quantity [Section 37]

When the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods

so delivered he shall pay for them at the contract rate. [Sub section (1)]

where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract & reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

[Sub section (2)]

where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract & reject, or may reject the whole.

[Sub section (3)]

7. Deterioration during transit

Where goods are delivered at a distant place, the liability for deterioration necessarily incidental to the course of transit will fall on the buyer.

e.g. P sold to Q a certain quantity of iron rods which were to be sent by proper vessel. It was rusted before it reached the buyer. The rust of the rod was so minimal & was not effecting the merchantable quality & the deterioration was not necessarily incidental to its transmission. It was held that Q was bound to accept the goods.

Buyer's right to examine the goods
When goods are delivered to the buyer, who has
not previously examined them, he is entitled
to a reasonable opportunity of examining them in
order to ascertain whether they are in
conformity with the contract.