

The Sale of Goods Act, 1930

Unit IV

Unpaid Seller

By:

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LEARNING OBJECTIVES

- ❖ *Understand the concept of Unpaid Seller*
- ❖ *Know the rights of Unpaid Seller*
- ❖ *Analyze the effect of sub-sale or pledge by the buyer*
- ❖ *Distinguish the right of lien and right of stoppage in transit*
- ❖ *Know the rights of parties in case of breach of contract*
- ❖ *Understand the concept of sale by auction.*

MEANING OF UNPAID SELLER

A seller who has not received the full price of the goods sold is termed as unpaid seller.

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

(A) THE WHOLE OF THE PRICE HAS NOT BEEN PAID, OR

(B) TENDERED, OR

(C) A BILL OF EXCHANGE OR OTHER NEGOTIABLE INSTRUMENT WAS GIVEN AS PAYMENT, BUT THE SAME HAS BEEN DISHONoured

❖ According to Section 45(a) of the Sale of Goods Act, 1930

Examples: (1) X sold certain goods to Y for ' 5,000. Y paid ` 4,000 but fails to pay the balance. X is an unpaid seller.

EXAMPLES:

- X sells goods of Rs. 5,00,000 to Y on a credit of one month, but after expiry of one month he did not pay the price, here X is said to be unpaid seller.
- X sells goods of Rs. 5,00,000 to Y and Y issued a cheque for payment, but it is dishonored, here X is said to be unpaid seller.
- X sells goods of Rs. 5,00,000 to Y on a credit of one month, but after expiry of one month he has paid only 1,00,000 the price, here X is said to be unpaid seller.

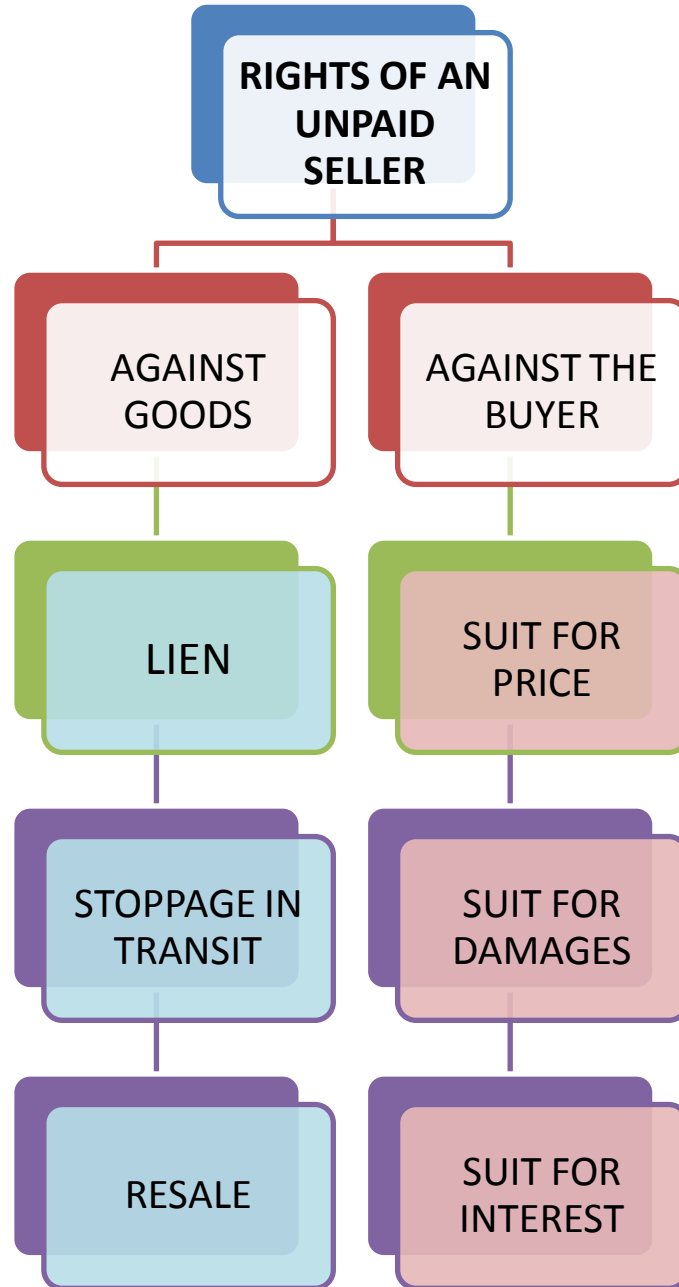
Thus, a seller is said to be unpaid seller when following conditions satisfied :

- a) The goods have been sold
- b) The price of goods sold is due
- c) The price has not yet been paid or tendered
- d) A negotiable instrument has been received as payment but has dishonored.

NOTE:

- A seller is termed as unpaid seller even if a part payment of price remains unpaid.
- However, the seller cannot be termed as unpaid for non-payment of expenses

RIGHTS OF AN UNPAID SELLER



(A) RIGHTS OF AN UNPAID SELLER AGAINST THE GOODS

(1) Rights of lien (Section 47): lien is a right to retain the goods in the possession until certain conditions fulfilled.

An unpaid seller has a right to retain the possession of the goods, until the payment or tender of the price of such goods.

Example: *A sold certain goods to B for a price ` 500 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.*

It can be exercised by him in the following cases only:

- ❖ GOODS HAVE BEEN SOLD WITHOUT ANY STIPULATION OF CREDIT
- ❖ GOODS HAVE BEEN SOLD ON CREDIT BUT THE TERM OF CREDIT HAS EXPIRED;
- ❖ THE BUYER BECOMES INSOLVENT.
- ❖ THE GOODS MUST BE IN THE POSSESSION OF SELLER
- ❖ THE POSSESSION MUST BE CONTINUOUS

It can be exercised by him in the following cases only: Cont..

- ❖ THE SELLER MAY EXERCISE LIEN EVEN SELLER HAS POSSESSION OF GOODS AS A BAILEE OR AGENT OF BUYER
- ❖ WHEN PART DELIVERY HAS MADE SELLER CAN RETAIN REMAINING GOODS FOR UNPAID PRICE
- ❖ THE WHOLE GOODS CAN BE RETAINED FOR PART DUE PAYMENT
- ❖ LIEN CAN BE EXERCISED EVEN AFTER OBTAINING A DECREE FOR PRICE OF GOODS

The Unpaid Seller Loses His Right Of Lien The Under Following Circumstances:

1

- *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.*

2

- *Where the buyer or his agent lawfully obtains possession of the goods.*

3

- *Where seller has waived the right of lien.*

4

- *By Estoppel i.e., where the seller so conducts himself that he leads third parties to believe that the lien does not exist.*

EXAMPLE

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.



Right of stoppage goods in transit

Meaning :

The right of stoppage in transit means to stop the goods while they are in transit with an Object to regain and then retain the possession until the price is paid .

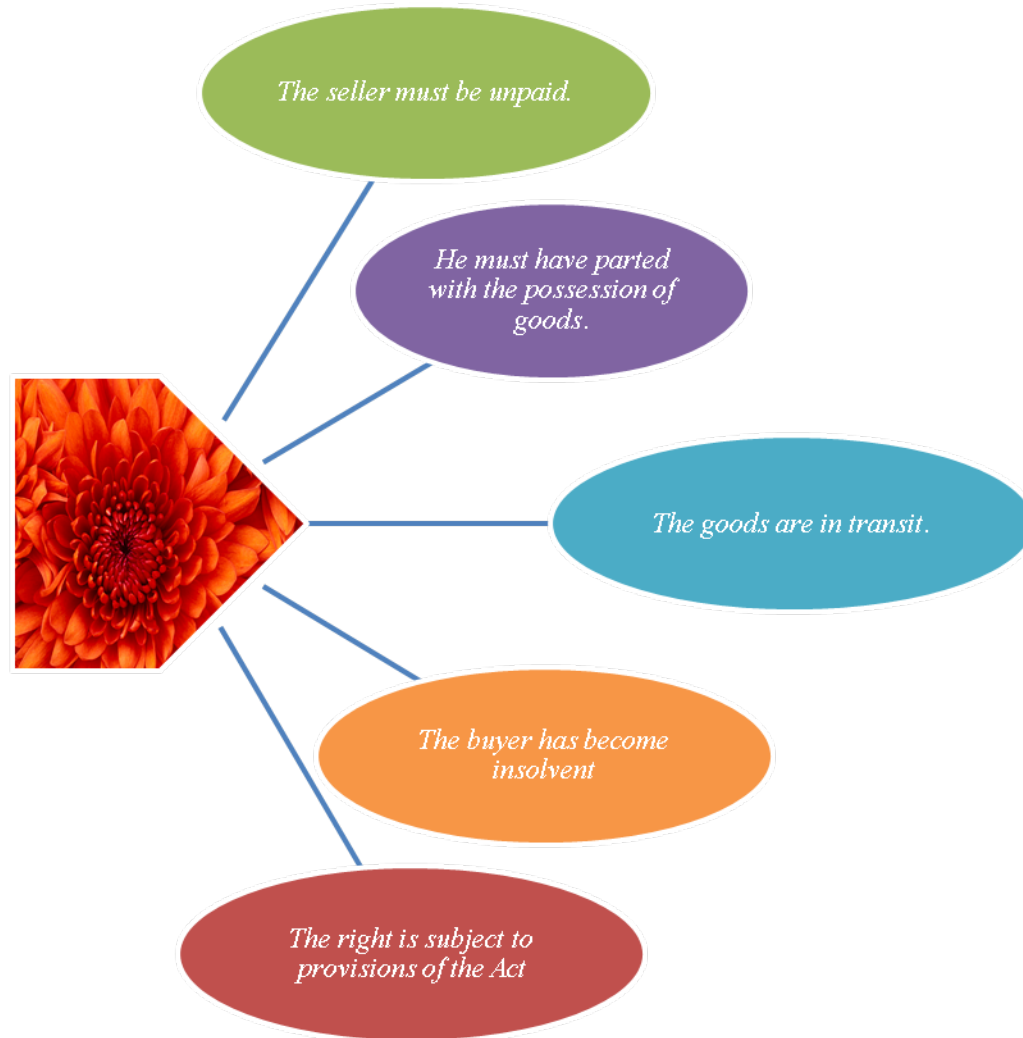
“ The essential feature of stoppage in transit is that the goods should be in the possession of a third person intervening between the vendor who has parted with and the buyer who has Not received them .” Schotsmans v/s Lances

The right of stoppage in transit can be exercised when following conditions are satisfied :

- The seller must have parted with possession of goods
- The goods must be in transit
- The buyer must be insolvent
- NOTE : For this purpose buyer is deemed to be insolvent when he is ceased to pay his debts in ordinary course of business or cannot pay his debt as they becomes due .

(2) Right of stoppage in transit:

The Right Of Stoppage In Transit Is Exercised Only When The Following Conditions Are Fulfilled:



Example:

B at Delhi, orders goods of A, at Mumbai. A consigns and forwards the goods to B. On arrival at Delhi, they are taken to B's warehouse and left there. B refuses to take these goods and stop payment. The goods are in transit and the unpaid seller can take them back.



The goods are said to be in transit when:

A . They are delivered to the carrier for the purpose of transmission to the buyer until buyer or his agent take delivery

B . The goods are rejected by the buyer

C . When part delivery has made with an intention of part delivery and remaining goods are in transit.

The right to stoppage in transit can be exercised by :

A . Taking actual possession of goods

B .Notice to the carrier or other bailee to not to deliver and retain and than redeliver the goods as per the sellers directions

❑ Duration of transit (Section 51)

- i. If the buyer or his agent in that behalf obtains delivery of goods before their arrival at the appointment destination, the transit is at end.[section 51(2)]
- ii. Where the carrier or the other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.
- iii. If the goods are rejected by the buyer and the carrier or the other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

However seller can not exercise his right in the following circumstances:

(i) Where the sub-sale or other disposition by the buyer has been done with seller's consent.[section 53(1)].

(ii) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of buyer.

(iii) Where a document of title to goods has been issued or lawfully transferred to any person as buyer and that person transfers the document in good faith and for consideration.[Provision to section 52(1)].

(3) Right of Re-sale:

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 the goods are of non perishable nature:

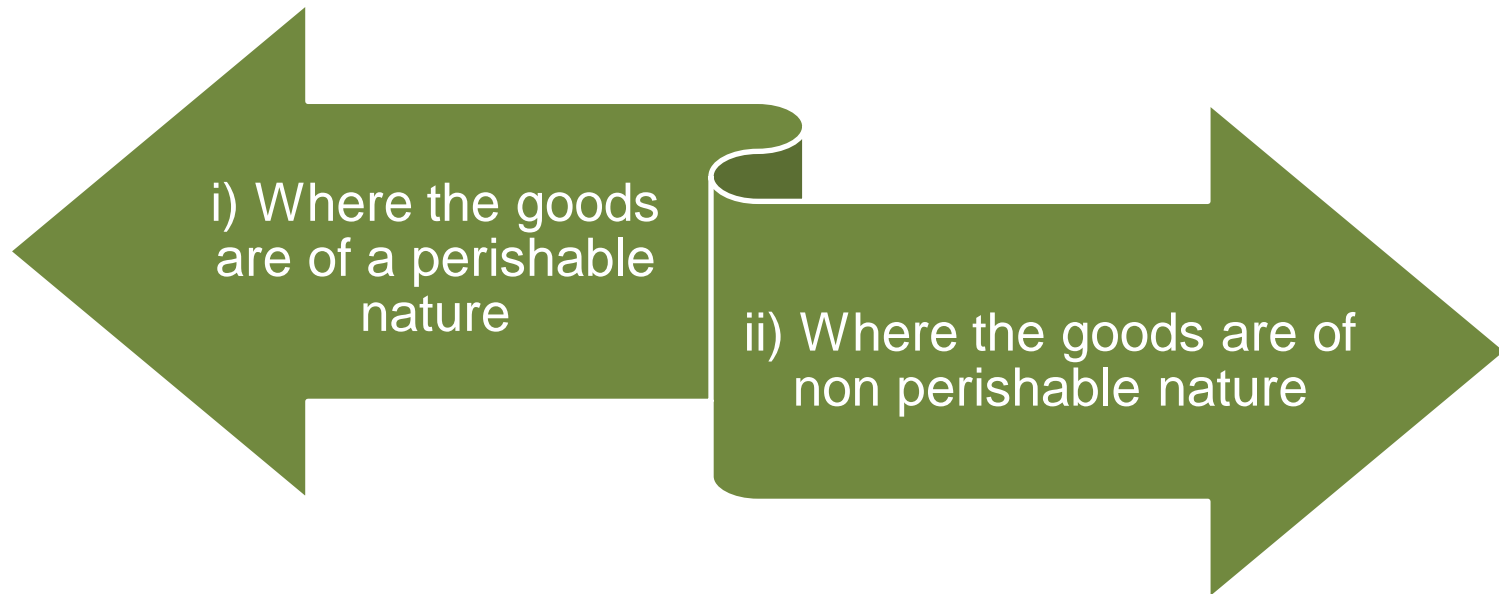
(a) Where he gives notice to the buyer of his intention to re-sell

- ❖ the losses of resale can be reimburse from buyer***
- ❖ the profit of resale is of seller***

(3) Right of Re-sale: Cont...

(b) Where he fails to give notice to the buyer of his intention to re-sell

- ❖ *the losses of resale can not be reimburse from buyer*
- ❖ *the profit of resale can be claimed by buyer*



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

*This rights of unpaid seller against the buyer is otherwise known as seller's remedies for breach of contract of sale. These rights are called rights in **personam** and are in addition to his rights against the goods. The right in personam are as follows:*

(1) Suit for price (Section 55)

(a) Property in goods has passed:

Where buyer wrongfully neglects or refuses to pay for the goods even after transfer of property in goods to him , the seller may sue him for the price of the goods. [Section 55(1)]

(B) RIGHTS OF UNPAID SELLER AGAINST THE BUYER (SECTION 55-61):Cont...

(b) Property in goods has not passed : Where in a contract of sale and 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)].



(B) RIGHTS OF UNPAID SELLER AGAINST THE BUYER (SECTION 55-61):Cont...

(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.

(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 contract’.

(B) RIGHTS OF UNPAID SELLER AGAINST THE BUYER (SECTION 55-61):Cont...

(4) Suit for Interest [Section 61(2)(d)]:

(a) Where there is specific agreement

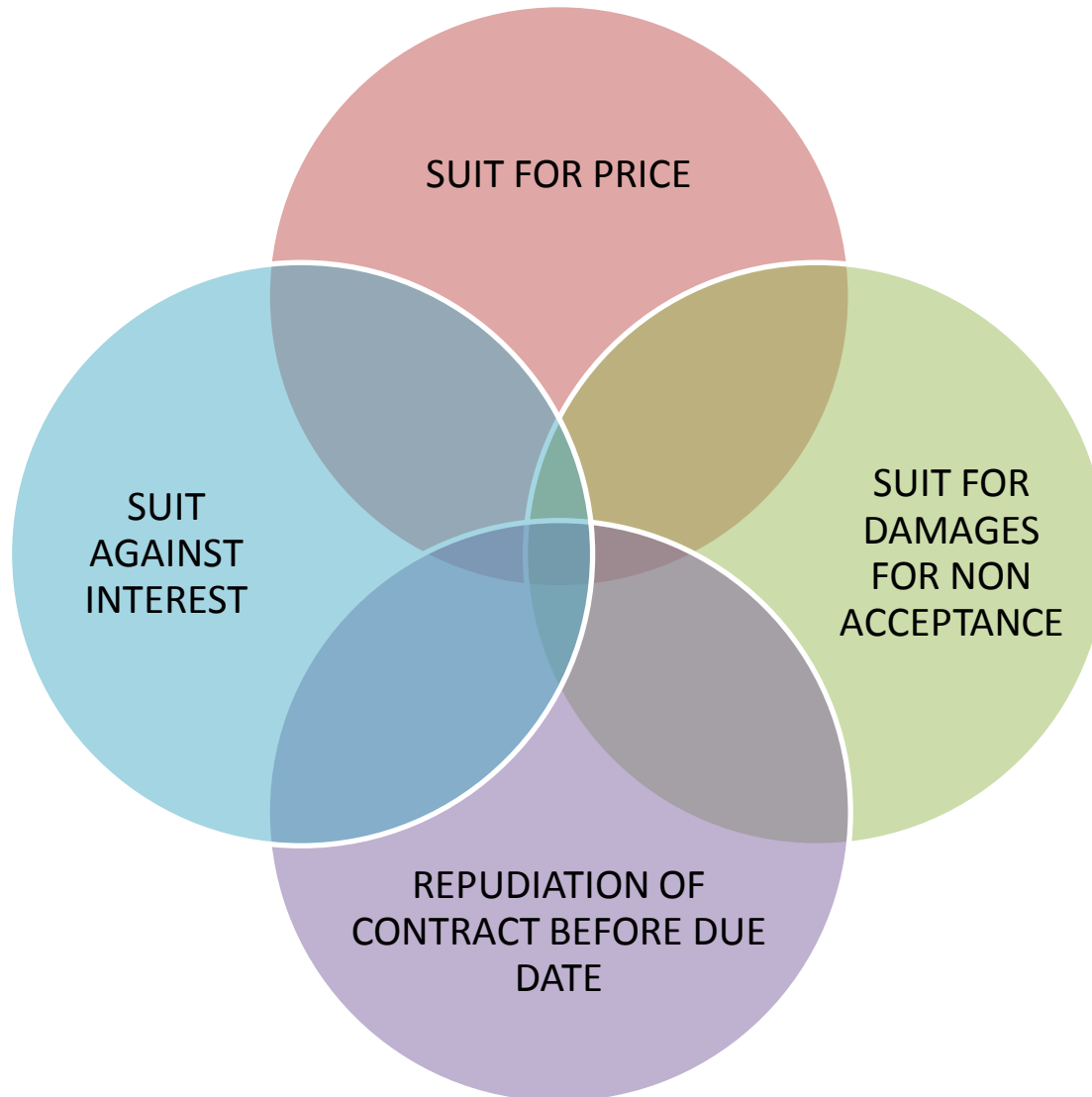
If it has agreed between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer.

(b) Where there is no specific agreement

if 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 [Section 61(2)(a)].*

RIGHTS OF PERSONAM/ RIGHTS AGAINST BUYER



DISTINCTION BETWEEN RIGHT OF LIEN AND RIGHT OF STOPPAGE IN TRANSIT

RIGHT OF LIEN

- (1) Essence is **to retain** possession
- (2) Seller should be **in possession** of goods under lien
- (3) Can be exercised even when the buyer **is not insolvent**
- (4) Right of lien is the **starting point** of right of stoppage in transit

RIGHT OF STOPPAGE

- (1) Essence is **to regain** possession
- (2) In stoppage
 - (i) parted with the possession
 - (ii) possession should be with a carrier
 - (iii) buyer has not acquired the possession
- (3) Can be only exercised when the buyer **is insolvent.**
- (4) Right of stoppage in transit begins when the right of **lien ends**

REMEDIES OF BUYER AGAINST THE SELLER

the buyer gets the following rights against the seller:

1.Damages for non-delivery :

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

2.Suit for specific performance :

Where the seller commits of breach of the contract of sale, he buyer can appeal to the court for specific performance.

The court can order for specific performance only when:

- (i) the goods are ascertained or specific;*
- (ii) the damages are insufficient; or*
- (iii) the goods are unique and costly.*

REMEDIES OF BUYER AGAINST THE SELLER Cont...

3. Suit for breach of warranty:

- *If 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, in such circumstances the buyer is **not entitled to reject the goods.***

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.

REMEDIES OF BUYER AGAINST THE SELLER Cont...

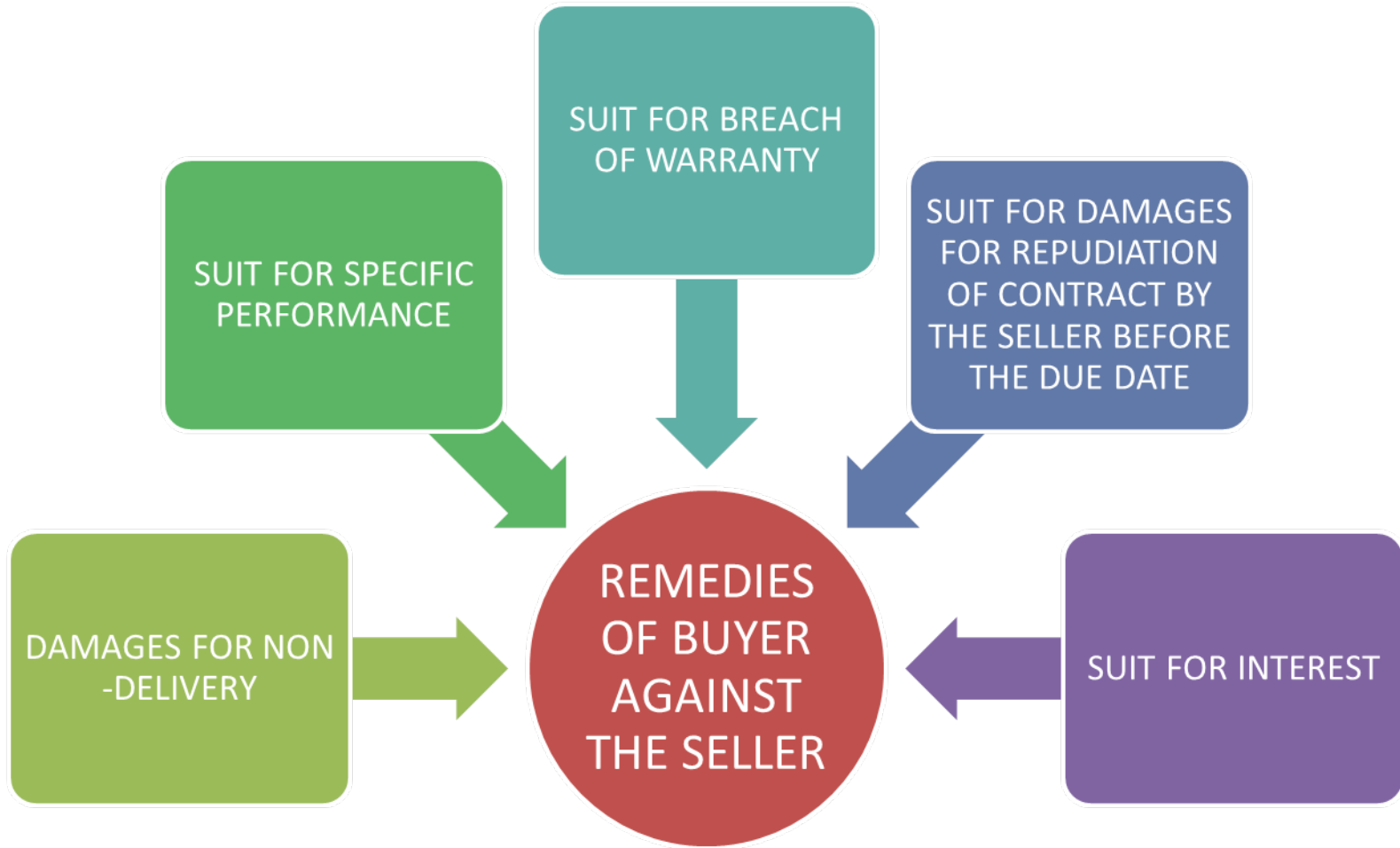
4. Suit for damages for repudiation of contract by the seller before the due date:

- *The buyer may treat the contract as subsisting and wait for the date of delivery, or*
- *He may treat the contract as repudiated and sue for damages for breach.*

5. Suit for interest : *The buyer is entitled to recover interest or special damages to recover the money paid where in consideration for the payment of it has failed.*

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

Remedies of buyer against the seller



AUCTION SALE

Meaning of Auction sale

- ❖ *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.*

Provisions As To Auction Sale

Under Section 64 of the Sale of Goods Act, 1930 in the case of an auction:

(a) Where goods are sold in lots:

Where goods are put for sale in lot, each lot is prima facie deemed to be subject matter 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 and until such announcement is made, any bidder may retract from his bid.

(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.

Provisions As To Auction Sale Cont...

(d) Where the sale is not notified by the seller:

Where the sale is not notified to be subject to the right of the seller to bid, 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 person representing him. 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

❑ **Effect to sub-sale or pledge by buyer (Section 53)**

- i. Subject to the provisions of this Act, unpaid seller's right of lien or stoppage transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.
- ii. Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

❑ Difference between Right of Lien and Right of Stoppage in Transit

Right of lien in Transit

- Goods must be in the actual possession of the seller.
- The purpose of right is to retain possession of the goods.
- This right comes to an end when the seller delivers the goods to a carrier.

Right of stoppage in Transit

- Goods must be in the possession of a carrier or other bailee who is acting as an independent person.
- The purpose of this right is to regain the possession of the goods.
- This right commences only when the seller delivers the goods to a carrier.

❑ Difference between Right of Lien and Right of Stoppage in Transit Cont...

- It can be exercised by the seller himself.
- It can be exercised even when the buyer is solvent but refuses to pay the price.
- It can be exercised by the seller through the carrier or the other bailee.
- It can be exercised only when the buyer has become insolvent.

Questions:-

(1) Goods which are in existence at the time of the Contract of Sale is known as

(a) present Goods.

(b) existing Goods.

(c) specific Goods.

(d) none of the above.

(2) Which of the following is not a form of delivery?

(a) constructive delivery.

(b) structured delivery.

(c) actual delivery.

(d) symbolic delivery.

Questions:-

(3) 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..

(4) 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.

Questions:-

(5) 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.

(6) 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..

Questions:-

(7) Where in an auction sale, the seller appoints more than one bidder, the sale is

(a) void.

(b) illegal.

(c) conditional.

(d) voidable.

(8) 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) bind with sale

(b) Not bind with sale

(c) Bind to change the reserve price.

(d) none of these..

Questions:-

Q9 Unpaid seller's rights against goods are:

- (a) Right of lien
- (b) Right of resale
- (c) Right of stopping goods in transit
- (d) All the above

Q10 Lien of unpaid seller depends on:

- (a) Ownership
- (b) Possession
- (c) Buyer has paid price or not
- (d) Title

Questions:-

Q11 Seller includes:

- (a) Agent of seller
- (b) Consigner
- (c) Person to whom bill of landing has been endorsed
- (d) All the above

Q12 Essence of a right of lien:

- (a) To deliver the goods
- (b) To retain the possession
- (c) To regain the possession
- (d) To recover price

Questions:-

Q13 A seller becomes unpaid seller:

- (a) Bill of exchange given for payment dishonours
- (b) When whole price has not been paid
- (c) None of the above
- (d) Both (a) and (b)

Q14 Lien can be exercised if:

- (a) Buyer becomes insolvent
- (b) Credit period expired
- (c) Both (a) and (b)
- (d) None of the above

Questions:-

Q15 The unpaid seller loses his right of lien:

- (a) Delivery of goods to carrier
- (b) Delivery of goods to buyer
- (c) Tender of price by buyer
- (d) All of these

Q16 Right to retain goods is known as:

- (a) Pledge
- (b) Bailment
- (c) Lien
- (d) None of the above

Questions:-

Q17 Right of stopping goods in transit can be exercised if:

- (a) Seller has parted with goods
- (b) Buyer becomes insolvent
- (c) Goods are in transit
- (d) If all above condition are there

Q18 The right of stoppage can be exercised by the unpaid seller with an intention to

- (a) Retain the possession of goods
- (b) Regain the possession of goods
- (c) Deliver the goods
- (d) all of the above cases

Questions:-

Q19 Right of stopping goods in transit is lost if:

- (a) Carrier acknowledge to buyer that he holds goods on his behalf
- (b) Goods are delivered to carrier hired by buyer
- (c) Agent of buyer obtains delivery of goods
- (d) In all above cases

Q20 The right of stoppage in transit can be exercised by:

- (a) Giving notice of his claim to the carrier or other bailee who possess the goods
- (b) Taking actual possession of goods
- (c) Both (a) and (b)
- (d) None of the above

Questions:-

Q21 In case of pledge by buyer right of lien:

- (a) Lost if assent by seller
- (b) Exists
- (c) Both (a) and (b)
- (d) None of the above

Q22 unpaid seller may resale the goods:

- (a) After giving notice to buyer in case of non perishable goods
- (b) Without notice in case of goods are of perishable nature
- (c) Both (a) and (b)
- (d) None of the above

Questions:-

Q23 Right of unpaid seller against the buyer, who is not insolvent:

- (a) Lien
- (b) Stoppage in transit
- (c) Resale the goods
- (d) both a & c

Q24 Unpaid seller can retain profits on resale, if:

- (a) Resale is without notice
- (b) Resale is after notice
- (c) In both (a) and (b)
- (d) None of the above

Questions:-

Q25 Unpaid seller has following rights against buyer:

- (a) Right to sue for interest
- (b) Right to sue for price
- (c) Right to sue for damage
- (d) All the above

Q26 When unpaid seller can exercise right of resale:

- (a) Without notice to the buyer if goods are of perishable nature
- (b) He gives notice to the buyer
- (c) He gives notice to the buyer of his intention to resale and the buyer does not within a reasonable time pay the price
- (d) Both (a) and (c)

Questions:-

Q27 What remedies are available to buyer if seller commits breach of contract:

- (a) Sue for breach of contract
- (b) Sue for specific performance
- (c) Sue for damages for non-delivery
- (d) All the above

Q28 An unpaid seller has not given notice of resale to the buyer. On resale there is a loss:

- (a) He can recover it from the buyer
- (b) He cannot recover it from the buyer
- (c) The buyer can recover it from him
- (d) The buyer must compensate the unpaid seller

Thank You

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