

# **Rights Of Unpaid Seller**

*Prepared By: Dr. Vibha Jain*  
*Mercantile Law*

# Unpaid Seller

## Definition:

The term ‘unpaid seller’ may be defined as the seller to whom the full price of the goods sold has not been paid. The legal definition of ‘unpaid seller’ is given in **Section 45** of the Sale of Goods Act, as under:

**“The seller of the goods is deemed to be an unpaid seller within the meaning of this Act:**

# Unpaid Seller(Cont..)

- (a) When the whole of the price has not been paid or tendered;
- (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 dishonor of the instrument or otherwise.”

# Rights of an Unpaid Seller

**(A) Rights against the Goods:** Unpaid seller's rights against the goods may be discussed under the following two heads, namely:

1. **Where the ownership of the goods has transferred to the buyer:** In this case, the unpaid seller has the following rights:
  - (a) Right of lien. (b) Right of stoppage of goods in transit.
  - (c) Right of resale.

# Rights of an Unpaid Seller (Cont.)

2. Where the ownership of the goods has not transferred to the buyer: In this case, the unpaid seller has the right of withholding the delivery of goods sold.

**(B) Rights against the Buyer:** Unpaid seller has the following rights against the buyer:

- (a) Suit for price.
- (b) Suit for damages.
- (c) Suit for interest.
- (d) Suit for repudiation of contract.

# Unpaid Seller's Right of Lien

The Unpaid seller of goods who is in possession of them is entitled to retain his possession until payment or tender of the price in following cases, namely:

- (a) Where the goods have been sold without any stipulations as to credit,
- (b) Where the goods have been sold on credit, but the term of credit has expired, and
- (c) Where the buyer becomes insolvent.”

# Unpaid Seller's Right of Lien (Cont.)

This right can be exercised by the unpaid seller if the following conditions are satisfied:

- (i) The unpaid seller must be in actual possession of the goods sold.
- (ii) The unpaid seller can retain the goods only for the payment of the price of the goods.

# Unpaid Seller's Right of Lien (Cont.)

The right of lien is linked with the possession of the goods and not with the title of the goods. Thus, the goods must be in actual possession of the seller. It is, however, not necessary that he should possess the goods as an owner. He can exercise the right of lien, even if he is possessing the goods as an agent or bailee for the buyer [**Section 47 (2)**].



# Unpaid Seller's Right of Lien (Cont.)

The important legal provisions relating to the unpaid seller's right of lien may be stated as under:

1. Where the goods are sold without any stipulation as to credit (i.e. in case of cash sale), the unpaid seller may retain the goods if the buyer fails to pay the whole price **[Section 47(1)(a)]**. He cannot retain the goods for any other charge e.g. maintenance, charge of storage during the exercise of lien.

# Unpaid Seller's Right of Lien (Cont.)

2. Where the goods are sold on credit, the unpaid seller may retain the goods if the buyer fails to pay the whole price after the expiry of credit period.

**[Section 47 (1) (b)]**

3. Where the buyer becomes insolvent, the unpaid seller may retain the possession of the goods until the whole price is paid. It is so because, the law does not compel a person to deliver the goods to an insolvent **[Section 47 (1) (c)]**.

# Unpaid Seller's Right of Lien (Cont.)

4. Where the unpaid seller has delivered a part of the goods, he may exercise his lien on the remaining part of the goods. But where the part delivery is made under the circumstances which show an agreement to waive a lien, the seller cannot retain the goods **[Section 48]**.
5. The right of lien is indivisible in nature. And, the seller cannot be compelled to deliver a part of the goods on payment of proportionate price of the goods.

# Termination of Lien or Loss of Lien

1. By delivery of goods to the carrier: The unpaid seller loses his right of lien over the goods when the goods are delivered to some person ( a carrier or other bailee) for the purpose of transmission to the buyer [**Section 49 (1) (a)**].

# Termination of Lien or Loss of Lien (Cont..)

2. By delivery of goods to the buyer: The unpaid seller also loses his right of lien when he delivers the goods to the buyer or his agent **[Section 49 (1) (b)]**.
3. By waiver of the lien; The right of lien is for the benefit of the seller. If he like, he may waive his right. And by waiver, the lien is lost **[Section 49 (1) (c)]**. The waiver may be express or implied.

# Unpaid Seller's Right of Stoppage in Transit

This right is contained in **Section 50** of the Sale of Goods Act, which provides that where the buyer becomes insolvent, and the unpaid seller has parted with the possession of the goods, he can stop the goods in transit until the price is paid or tendered (I.e., offered) to him.

# Unpaid Seller's Right of Stoppage in Transit(Cont..)

The right can be exercised if the following conditions are satisfied:

- (a) The buyer has become insolvent.
- (b) The goods are in the course of transit, i.e., the goods have gone out of the actual possession of the seller. But they have not reached in the possession of the buyer.
- (c) The unpaid seller can stop the goods in transit only for the payment of the price of the goods.

# Duration of Transit

The duration of transit is the period between the commencement and end of transit. The transit commences from the time when the goods are delivered to the middleman (i.e., carrier or other bailee), and it continues till the buyer or his agent takes the delivery of the goods [**Section 51 (1)**].

The important provision relating to duration of transit are as follows:



# Duration of Transit(Cont.)

- (a) Where the goods are rejected by the buyer and the carrier continue to have the possession of the goods, the transit does not come to an end **[Section 51 (4)]**.
- (b) Where the goods are delivered in parts, the seller may stop the remainder of goods unless the delivery of part of the goods shows an intention to give up the possession of the whole of the goods **[Section 51 (7)]**.

# Duration of Transit(Cont..)

(c) Where the goods are delivered to a ship chartered by the buyer, then it is a question of fact in each case whether the carrier is acting independently or as an agent of the buyer. If the circumstances show that the carrier is acting as an agent of the buyer, then the transit comes to an end as soon as the goods are loaded on board the ship **[Section 51 (5)].**

# Termination (or Loss) of Right of Stoppage in Transit

Under the following circumstances, the transit comes to an end and the right of stoppage in transit is lost.

1. **Interception by the buyer:** Sometimes, the buyer or his agent takes the delivery of the goods from the carrier (middleman) before the goods arrive at the appointed destination. In such cases, the transit comes to an end. **[Section 51 (2)].**

# Termination (or Loss) of Right of Stoppage in Transit

2. Carrier's acknowledgement to the buyer: Sometimes, after the arrival of the goods at the appointed destination, the carrier acknowledges to the buyer or his agent that now he is holding the goods on buyer's behalf. In such cases, the transit comes to an end. **[Section 51 (3)]**.

# Termination (or Loss) of Right of Stoppage in Transit(Cont..)

## 3. Carrier's wrongful refusal to deliver the goods to the buyer: **(Section 51(6))**

The important point here is that the refusal should be wrongful i.e. without any just cause.

Eg. If the carrier refuse to deliver the goods because of non payment of freight charges, the refusal is not wrongful.

# Unpaid Seller's Right of Resale

Unpaid seller's right of resale is contained in **Section 54 (2)** of the Sale of Goods Act, which provides that if the buyer fails to pay or offer the price within a reasonable time, the unpaid seller has the right to resell the goods in the following circumstances:

# Unpaid Seller's Right of Resale(Cont..)

- (a) Where the goods are of perishable nature, or
- (b) Where the unpaid seller has exercised his right of lien or stoppage in transit and gives a notice to the buyer of his intention to resell the goods. And also
- (c) Where the unpaid seller has expressly reserved his right of resale.

# Unpaid Seller's Right of Resale(Cont.)

1. Where the goods are perishable: The seller may resell the goods to another person within a reasonable time. The term 'reasonable time' is a question of fact in each case.
2. Where the seller expressly reserves his right of resale: 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.



# Unpaid Seller's Right of Resale(Cont.)

3. Where the unpaid seller has exercised his right of lien or of stoppage in transit and gives notice to the buyer of his intention to resell the goods: If after the receipt of such notice, the buyer does not pay or tender the price within a reasonable time, the seller may resell the goods. In such cases, on the resale of the goods, the seller is also entitled to:

# Unpaid Seller's Right of Resale(Cont.)

- (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.

However, if the goods are resold by the seller without giving

# Unpaid Seller's Right of Resale(Cont.)

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)]**. In this sense, the notice of resale becomes obligatory, i.e. legally compulsory.

# Right of Withholding Delivery and Rights against Buyer

## Right of Withholding Delivery:

Sometimes the ownership of the goods sold is not transferred to the buyer. In such cases the seller has the right of Withholding Delivery of the goods sold, if the buyer fails to pay the price. It may be noted that this right is in addition to other remedies available to the seller. This right is similar to and co-extensive with the right of lien and stoppage in transit **[Section 46 (2)]**.

# Right of Withholding Delivery and Rights against Buyer

## Rights Against the Buyer:

The unpaid seller has the following rights against the buyer:

1. Suit for price: Where the buyer fails to pay the price of the goods in terms of the contract, the seller can file a suit against the buyer for recovery of the price **[Section 55]**.

# Right of Withholding Delivery and Rights against Buyer(Cont...)

2. Suit for damages for non-acceptance of goods:  
Where the seller is ready and willing to deliver the goods to the buyer, but the buyer wrongfully neglects or refuses to accept the goods and pay for them, then the seller may bring a legal action against the buyer for the recovery of damages suffered due to non-acceptance of the goods  
**[Section 56].**

# Right of Withholding Delivery and Rights against Buyer(Cont...)

3. Suit for damages for repudiation of the contract before the due date of delivery of goods: Where the buyer repudiates (i.e., puts an end to) the contract before the due date of delivery of the goods, the seller has the following options  
**[Section 60]:**

- (i) He may not immediately take any action against the buyer, and treat the contract as subsisting and wait till the date of delivery of goods.

# Right of Withholding Delivery and Rights against Buyer(Cont...)

(ii) He may immediately treat the contract as repudiated and bring the legal action against the buyer for the recovery of the damages.

4. Suit for interest: Where the seller tenders the goods, but the buyer fails to accept and pay for them, then the seller may file a suit for the recovery of the price. In such a suit, the seller may also claim the interest on the amount of price payable by the buyer.



# Right of Withholding Delivery and Rights against Buyer(Cont..)

The court may award the interest from the date of tender of the goods or from the date when the price is payable. The rate of interest to be awarded is at the discretion of the court. It may however, be noted that the interest can be recovered by the seller only when he is entitled to recover the price. Thus, when the seller's only remedy is for damages, he cannot file a suit for interest **[Section 61].**

# Multiple Choice Question(MCQ'S)

1.In which of the following cases, a seller is deemed to be an unpaid seller?

- (a) When whole of the price has not been paid or tendered.
- (b) When a bill of exchange or other negotiable instrument, received in payment, has been dishonored.
- (c) Both (a) and (b)
- (d) None of these.

# Multiple Choice Question(MCQ'S)

1.In which of the following cases, a seller is deemed to be an unpaid seller?

- (a) When whole of the price has not been paid or tendered.
- (b) When a bill of exchange or other negotiable instrument, received in payment, has been dishonored.
- (c) **Both (a) and (b)**
- (d) None of these.

# Multiple Choice Question(MCQ'S)

2.A sold certain goods to B for Rs.50,000 and B made the payment be cheque. However, the cheque, when presented for payment, was dishonored. Here, A in the position of

- (a) Unpaid seller
- (b) Ordinary seller
- (c) Bailor
- (d) None of these.

# Multiple Choice Question(MCQ'S)

2.A sold certain goods to B for Rs.50,000 and B made the payment be cheque. However, the cheque, when presented for payment, was dishonored. Here, A in the position of

- (a) **Unpaid seller**
- (b) Ordinary seller
- (c) Bailor
- (d) None of these.

# Multiple Choice Question(MCQ'S)

3. Where the ownership of the goods is transferred to the buyer, which of the following rights are available to an unpaid seller.

- (a) Right of lien
- (b) Right of stoppage in transit
- (c) Both (a) and (b)
- (d) None of these.

# Multiple Choice Question(MCQ'S)

3. Where the ownership of the goods is transferred to the buyer, which of the following rights are available to an unpaid seller.

- (a) Right of lien
- (b) Right of stoppage in transit
- (c) **Both (a) and (b)**
- (d) None of these.

# Multiple Choice Question(MCQ'S)

4. In which of the following cases, an unpaid seller of goods, who is possession of them, is entitled to retain the possession until the price is paid or tendered?
- (a) Where the goods have been sold without any stipulation as to credit.
  - (b) Where the goods have been sold on credit, but the term of credit has expired.
  - (c) Where the buyer becomes insolvent.
  - (d) All of these.



# Multiple Choice Question(MCQ'S)

4. In which of the following cases, an unpaid seller of goods, who is in possession of them, is entitled to retain the possession until the price is paid or tendered?
- (a) Where the goods have been sold without any stipulation as to credit.
  - (b) Where the goods have been sold on credit, but the term of credit has expired.
  - (c) Where the buyer becomes insolvent.
  - (d) **All of these.**

# Multiple Choice Question(MCQ'S)

5. Where the unpaid seller has parted with the possession of the goods, seller's right of lien is lost.
- (a) True, the lien is lost as soon as the possession is lost.
- (b) False, the lien is lost only when the ownership is transferred to the buyer.

# Multiple Choice Question(MCQ'S)

5. Where the unpaid seller has parted with the possession of the goods, seller's right of lien is lost.

(a) **True, the lien is lost as soon as the possession is lost.**

(b) False, the lien is lost only when the ownership is transferred to the buyer.

# Multiple Choice Question(MCQ'S)

6.The 'stoppage in transit' means the stopping of the goods while they are in the course of transmission to the

- (a) Seller
- (b) Buyer
- (c) Seller's agent
- (d) None of these.

# Multiple Choice Question(MCQ'S)

6.The 'stoppage in transit' means the stopping of the goods while they are in the course of transmission to the

- (a) Seller
- (b) **Buyer**
- (c) Seller's agent
- (d) None of these.

# Multiple Choice Question(MCQ'S)

7.The unpaid seller can exercise the right of stoppage in transit where the middleman i.e., carrier holds the goods as an

- (a) Agent of Seller
- (b) Agent of Buyer
- (c) Independent person i.e., in his own name
- (d) Both (a) and (b).

# Multiple Choice Question(MCQ'S)

7.The unpaid seller can exercise the right of stoppage in transit where the middleman i.e., carrier holds the goods as an

- (a) Agent of Seller
- (b) Agent of Buyer
- (c) **Independent person i.e., in his own name**
- (d) Both (a) and (b).

# Multiple Choice Question(MCQ'S)

8.The unpaid seller's right of stoppage in transit is lost when the

- (a) Possession of goods is regained
- (b) Buyer refuses to pay price
- (c) Transit comes to an end
- (d) Both (a) and (b).



# Multiple Choice Question(MCQ'S)

8.The unpaid seller's right of stoppage in transit is lost when the

- (a) Possession of goods is regained
- (b) Buyer refuses to pay price
- (c) **Transit comes to an end**
- (d) Both (a) and (b).

# Multiple Choice Question(MCQ'S)

9. Where the unpaid seller resells the goods without giving a notice to the buyer and there is loss on resale, then the unpaid seller
- (a) Is guilty of breach of contract.
  - (b) Can recover the loss from the buyer.
  - (c) Cannot recover the loss from the buyer.
  - (d) Can recover the loss from mercantile association

# Multiple Choice Question(MCQ'S)

9. Where the unpaid seller resells the goods without giving a notice to the buyer and there is loss on resale, then the unpaid seller
- (a) Is guilty of breach of contract.
  - (b) Can recover the loss from the buyer.
  - (c) **Cannot recover the loss from the buyer.**
  - (d) Can recover the loss from mercantile association

# Multiple Choice Question(MCQ'S)

10.Which of the following statements is correct if an unpaid seller resells the goods after giving a notice to the buyer of his intention to resell the goods?

- (a) The unpaid seller can recover the loss from the original buyer, if the resale price is less then the original contract price.
- (b) The unpaid seller cannot recover any loss from the original buyer.
- (c)The unpaid seller can retain the profit if the resale price is higher than the original contract price.
- (d) Both (a) and (c) are correct.

# Multiple Choice Question(MCQ'S)

10.Which of the following statements is correct if an unpaid seller resells the goods after giving a notice to the buyer of his intention to resell the goods?

- (a) The unpaid seller can recover the loss from the original buyer, if the resale price is less then the original contract price.
- (b) The unpaid seller cannot recover any loss from the original buyer.
- (c)The unpaid seller can retain the profit if the resale price is higher than the original contract price.

(d) **Both (a) and (c) are correct.**

# Multiple Choice Question(MCQ'S)

11. Where the seller has expressly reserved his right of resale and resells the goods without giving a notice to the buyer, then in case of loss on resale the seller is

- (a) Entitled to recover the same from the original buyer.
- (b) Not entitled to recover the same from the original buyer.
- (c) Guilty of breach of contract of sale.
- (d) Entitled to recover the same from mercantile association.

# Multiple Choice Question(MCQ'S)

11. Where the seller has expressly reserved his right of resale and resells the goods without giving a notice to the buyer, then in case of loss on resale the seller is

- (a) **Entitled to recover the same from the original buyer.**
- (b) Not entitled to recover the same from the original buyer.
- (c) Guilty of breach of contract of sale.
- (d) Entitled to recover the same from mercantile association.

# Multiple Choice Question(MCQ'S)

12. Where the buyer repudiates the contract before the due date of delivery of goods, the seller may treat the contract as

- (a) Subsisting and wait till the due date of delivery.
- (b) Repudiated and bring an immediate action for recovery of damage.
- (c) Either (a) or (b).
- (d) Only option (a) is available to the seller.



# Multiple Choice Question(MCQ'S)

12. Where the buyer repudiates the contract before the due date of delivery of goods, the seller may treat the contract as
- (a) Subsisting and wait till the due date of delivery.
  - (b) Repudiated and bring an immediate action for recovery of damage.
  - (c) **Either (a) or (b).**
  - (d) Only option (a) is available to the seller.

**THE END**

*Rights Of Unpaid Seller*