

Course Name	LL.B 2nd sem
Subject	Special Contract Law
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Concept	Rights of Unpaid Seller

Rights of Unpaid Seller Against Goods

An unpaid seller has certain rights against the goods and the buyer. In this [article](#), we will refer to the sections of the Sale of Goods Act, 1930 and look at the rights of an unpaid seller against goods namely rights of lien, rights of stoppage in transit etc.

Rights of Lien

Seller's Lien (Section 47)

According to subsection (1) of Section 47 of the **Sale of Goods** Act, 1930, an unpaid seller, who is in possession of the goods can retain their possession until payment. This is possible in the following cases:

1. He sells the goods without any stipulation for credit
2. The goods are sold on credit but the credit term has expired.
3. The buyer becomes insolvent.

Subsection (2) specifies that the unpaid seller can exercise his right of lien notwithstanding that he is in possession of the goods acting as an agent or bailee for the buyer.

Part-delivery (Section 48)

Further, Section 48 states that if an unpaid seller makes part-delivery of the goods, then he may exercise his right of lien on the remainder. This is valid unless there is an agreement between the buyer and the seller for waiving the lien under part-delivery.

Termination of Lien (Section 49)

According to subsection (1) of Section 49 of the Sale of Goods Act, 1930, an unpaid seller loses his lien:

- If he delivers the goods to a carrier or other bailee for transmission to the buyer without reserving the right of disposal of the goods.
- When the buyer or his agent obtain possession of the goods lawfully.

- By waiver.

Further, subsection (2) states that an unpaid seller, who has a lien, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

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Pledge by the Buyer (Section 53)

Unless the seller agrees, the right of lien or stoppage is unaffected by the buyer selling or pledging the goods. The principle is simple: the second buyer cannot be in a better position than the seller (first buyer). However, if the buyer transfers the document of title or pledges the goods to a sub-buyer in good faith and for consideration, then the right of stoppage is defeated.

There are two exceptions to make note of:

a. The seller agrees to resale, mortgage or other disposition of the goods

If the seller agrees to the buyer selling, pledging or disposing of the goods in any other way, then he loses his right to lien.

b. Transfer of the document of title of goods by the buyer

When the seller transfers the document of title of goods to the buyer and the buyer further transfers it to another buyer who purchases the goods in good faith and for a price, then:

- If the last mentioned transfer is by way of sale, the original seller's right of lien and stoppage is defeated.
- If the last mentioned transfer is by way of a pledge, the original seller's right of lien or stoppage can be executed subject to the rights of the pledgee.

Right of Resale (Section 54)

The right of resale is an important right for an unpaid seller. If he does not have this right, then the right of lien and stoppage won't make sense. An unpaid seller can exercise his right of resale under the following conditions:

- ***Goods are perishable in nature:*** In such cases, the seller does not have to inform the buyer of his intention of resale.
- ***Seller gives a notice to the buyer of his intention of resale:*** The buyer needs to pay the price of the goods and ask for delivery within the time mentioned in the notice. If he fails to do so, then the seller can resell the goods. He can also recover the difference between the contract price and resale price if the latter is lower. However, if the resale price is higher, then the seller keeps the profits.
- ***Unpaid seller resells the goods post exercising his right of lien or stoppage:*** The subsequent buyer acquires a good title to the goods even if the seller has not given a notice of resale to the original buyer.

- ***Resale where the right of resale is reserved in the contract of sale:*** If the contract of sale specifies that the seller can resell the goods if the buyer defaults, then the seller reserves his right of sale. He can claim damages from the original buyer even if he does not give a notice of resale to him.
- ***Property in the goods has not passed to the buyer:*** The unpaid seller can exercise his right of withholding delivery of goods. This is similar to the right of lien and is called quasi-lien.