

UNIT 1

COMMERCIAL LAW

PART IV

THE SALE OF GOODS ACT 1930

The law relating to the sale of goods or movables in India is contained in the Sale of Goods Act, 1930 which came into force on 1st July, 1930. Prior to the enactment of the Sale of Goods Act, 1930, the law of sale of goods was contained in Chapter VII of the Indian Contract Act 1872. The Act contains sixty-six sections and extends to the whole of India, except the State of Jammu and Kashmir.

Contract of sale

Under Section 4 (1) of the Sale of Goods Act, 1930, the contract of sale of goods is defined as follows:

“A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.”

A contract of sale may provide for:

- a) **Sale:** A contract of sale may be absolute or conditional. Where the right of ownership in the goods is transferred from the seller to the buyer, the contract is sale.
- b) **Agreement to sell:** Where under a contract of sale the transfer of property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

Essentials of a Valid Contract of Sale

- 1) **Contract:** All the essential elements of a contract must be present in a contract of sale.
- 2) **Two parties:** There must be two parties to constitute a contract of sale namely; a buyer and a seller. The same person cannot both be a seller and a buyer.
- 3) **Goods:** The subject matter of a contract of sale will always be goods. The goods may be either existing goods, future goods or contingent goods.
- 4) **Transfer of property:** In a contract of sale, the seller must transfer or agree to transfer property in the goods to the buyer.
- 5) **Price:** The consideration for a contract of sale must be money called the price.

Distinction between Sale and Agreement to Sell

Basis	Sale	Agreement to Sell
1. Transfer of property	The property or ownership in the goods immediately passes from seller to buyer.	The property in goods transfers on some future date or subject to fulfillment of some conditions. The seller continues to be the owner of goods.
2. Kinds of goods	Sale is always of existing, specific or ascertained goods.	An agreement to sell may relate to existing goods, unascertained goods and mostly to future or contingent goods.
3. Type of contract	Sale is an executed contract.	It is an executor or future contract.
4. Risk	The goods belong to the buyer even if they remain in the possession of seller. In case of loss or damage, the buyer will suffer the loss.	The goods belong to the seller and he will suffer the loss if goods are destroyed, even if these are in the possession of the buyer.
5. Remedy for breach of contract	If the buyer fails to pay the price, the seller can sue him for price, but cannot resell the goods.	The seller can recover the goods, can sue for damages and can resell the goods, but cannot sue the intended buyer for recovery of price.
6. Insolvency of buyer	If buyer gets insolvent before he pays the price, the seller cannot retain the goods. He must return the goods to the buyer's Official Receiver and shall be entitled only to a reteable dividend.	The seller can recover the goods, can sue for damages and can resell the goods, but cannot sue the intended buyer for recovery of price.
7. Insolvency of seller	If seller gets insolvent, the buyer can recover goods from seller's Official Receiver.	If the buyer has already paid the price, buyer cannot recover the goods. He can only claim reteable dividend.

CONDITIONS AND WARRANTIES

Stipulation

‘Stipulation’ means a requirement or a specified item in an agreement”. In a contract of sale of goods, stipulation refers to representations made by the buyer and the seller reciprocally as a part of negotiation between them before they enter into a contract.

Meaning of Conditions and Warranties

Condition: According to Section 12(2), a condition is a stipulation essential to the main purpose of the contract, the breach of which gives a right to repudiate the contract.

For example: B wanted to purchase a car, suitable for touring purpose and M suggested him a ‘Burgatti’ car. B purchased the car from M, a car dealer. After some use, car was found unfit for the touring purpose. Held there was a breach of condition.

Warranty: According to Section 12(3), a warranty is a stipulation collateral to the main purpose of

the contract, the breach of which gives a right to a claim for damages but not a right to reject goods and to treat the contract as repudiated.

For example: X purchased a car from a dealer with assured gifts and discount schemes. Dealer defaulted in delivery of these schemes as intended. There is a breach of warranty.

Express and Implied Conditions and Warranties

The conditions and warranties may be express or implied. 'Express' conditions and warranties are those, which have been expressly agreed upon by the parties at the time of the contract of sale. 'Implied conditions and warranties are those, which the law incorporates into the contract unless the parties stipulate to the contrary. They may be cancelled, or varied by an express agreement or by the course of dealing or by usage and custom.

Implied Conditions

1) Condition as to title [Sec. 14 (a)]: In every contract of sale, unless there is an agreement to the contrary, the first implied condition on the part of the seller is that:

- a) In case of sale, the seller has a right to sell the goods, and
- b) In case of an agreement to sell, the seller will have the right to sell at the time when the ownership is to pass from the seller to the buyer.

Example: If the goods can be sold only by infringing the trademark, the seller shall be deemed to have broken the condition that he has a right to sell the goods. [Niblett vs. Confectioners Materials Co. Ltd (1921) 3KB 387]

2) Sale by description [Sec. 15]: Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans." The term 'sale by description' includes the following:

- a) Where the buyer has never seen the goods and buys them on the basis of the description given by the seller.
- b) Where the buyer has seen the goods but he relies not on what he has seen but what was stated to him and the deviation of the goods from the description is not apparent.
- c) Packing of goods may sometimes be a part of description.
- d) Brand may also form part of the description.

For example: A sold B 'a new Maruti 800 car'. On delivery, the buyer finds that it is an old car. The buyer may reject the sale.

3) Sale by sample [Sec. 17]: In the case of contract for the sale of goods by sample, there is an implied condition:

- a) that the goods must correspond with the sample in quality;
- b) that the buyer must have reasonable opportunity of comparing the bulk with the sample.

c) that the goods must be free from any defect which renders them unmerchantable and which would not be apparent on reasonable examination of the sample.

For example: A seller undertakes to supply 100 tonnes of Java sugar warranted to be equal to the sample. The sugar when supplied corresponds to the sample but is not Java sugar. The buyer can repudiate the contract.

4) Sale by sample as well as description (Section 15): Where the goods are sold by sample as well as by description, the implied condition is that the bulk of the goods supplied must correspond with the sample and the description.

5) Condition as to quality or fitness [Sec. 16 (1)]: Usually in a contract of sale, there is no implied condition as to quality or fitness of the articles for any particular purpose. It is the duty of the buyer to see and satisfy himself whether the article will be suitable for the purpose for which he requires them (Caveat Emptor). Section 16 constitutes an exception to the rule of caveat emptor in the following circumstances:

- (i) the buyer makes the seller know, whether expressly or by implication, the purpose for which the goods are required,
- (ii) the buyer relies on the skill and judgement of the seller, and
- (iii) it is the business of the seller to supply goods of that kind in the ordinary course of his business.

For example: A contracts to make and deliver a set of false teeth to B. The false teeth did not fit in the mouth of B. B is entitled to reject the goods.

6) Condition as to merchantability [Sec. 16 (2)]: Where the goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

For example: A agreed to sell B some motor horns. Goods were to be delivered by instalments. The first instalment was accepted but the second contained a substantial quantity of horns which were damaged owing to bad packing. Held, the buyer was entitled to reject the whole instalment, as the goods were not of a merchantable quantity.

7) Condition as to Wholesomeness: This condition applies in the case of provisions and foodstuffs which must not only be merchantable but also be wholesome and suitable for consumption.

For example: X purchased milk from Y, a milk dealer. The milk contained typhoid germs. X's wife, on taking the milk, got infection and died. Held, X was entitled to get damages.

Implied Warranties

1. Warranty of quiet possession [Sec. 14 (b)]: Under the circumstances are such as to show a different intention there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. The buyer, therefore, will be entitled to recover compensation for breach of both, a condition as well as a warranty.

For example: Anil purchased a secondhand typewriter from Rahul. Anil spent some money on its repairs but

was dispossessed of it after six months by the true owner. It was held that Anil was entitled to recover from Rahul not only the price paid but also the cost of repair.

2. **Warranty of freedom from encumbrances[Sec. 14 (c)]:** There is an implied warranty that the goods shall be free from any charge or encumbrance in favour of a third party not declared or known to the buyer before or at the time when the contract is made.

For example: A borrowed Rs. 500 from B and hypothecated his radio with B as security. Later on A sold this radio to C who bought in good faith. Here, C can claim damages from A because his possession is distributed by B having a charge.

3. **Warranty implied by usage of trade [Sec. 16 (3)]:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

For example: There was a sale of drugs by auction. It was a trade usage to declare any sea damage in such cases. It was held that it could be implied that drugs so sold without any such declaration were free from sea damage.

4. **Warranty to disclose dangerous nature of goods:** Where the goods are dangerous to the knowledge of the seller and the buyer is ignorant of the same, there is an implied warranty that the seller should warn the buyer about the probable danger.

For example: X sold a tin of disinfectant powder to Y, X knew that the tin was to be opened with special care otherwise it might prove dangerous. He also knew that Y was ignorant about it. He did not warn Y. C opened the tin and his eyes were injured by the powder. It was held that A was liable as he should have warned Y of the probable danger.

Doctrine of Caveat Emptor

The term 'caveat emptor' is a Latin word which means 'let the buyer beware' i.e., a buyer purchases the goods at his own risk. The doctrine of caveat emptor means that the seller is not bound to disclose the defects in the goods, which he is selling. It is the duty of the buyer to satisfy him before buying the goods that the goods will serve the purpose for which they are being bought.

Section 16 of the Sale of Goods Act has enunciated the rule of caveat emptor as follows:

“Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale”.

Exceptions to the Doctrine of Caveat Emptor

The doctrine of caveat emptor is, however, subject to the following exceptions:

- 1) **Fitness for buyer's purpose [Section 16(1)]:** Where buyer lets the seller know the particular purpose and depends on the seller's skill and judgement who deals in goods of that kind, the condition is that the goods must be fit for that purpose.

- 2) **Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose.
- 3) **Condition as to merchantability [Section 16(2)]:** This condition applies (i) where goods are sold by description, (ii) the seller deals in those goods, and (iii) the buyer has no opportunity to examine the goods being bought.
- 4) **Good sold by sample as well as description [Section 15(1)]:** Where the goods are sold by sample as well as by description, the doctrine does not apply if the bulk of the goods supplied do not correspond with the sample and the description.
- 5) **Goods sold by sample [Section 17]:** Where the goods are bought by sample the doctrine does not apply if the bulk does not correspond with the sample.
- 6) **Condition implied by usage or custom of trade:** Where trade usage attaches an implied condition or warranty regarding the quality of fitness of goods for a particular purpose, the doctrine of caveat emptor does not apply.
- 7) **Goods sold by Misrepresentation:** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or where the seller knowingly conceals defects not discoverable on reasonable examination, then the rule of caveat emptor will not apply.

TRANSFER OF OWNERSHIP (PROPERTY) IN GOODS

In a contract of sale of goods, there are three stages in the performance of contract by a seller:

- Transfer of property in the goods;
- Transfer of possession of the goods; and
- Passing of the risk.

The expression 'transfer of property' means the transfer of ownership of goods from seller to buyer so as to constitute the buyer, the owner thereof. The time at which property passes from seller to buyer is important due to the following reasons:

- 1) **Risk prima facie passes with property:** Sec. 26 provides that "unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not."
- 2) **Action against third parties:** When the goods are in any way damaged or destroyed by the action against them.
- 3) **Right of resale:** To determine whether buyer can resell the goods to a third party without incurring any liability is linked with transfer of ownership.
- 4) **Suit for the price:** Transfer of property confers upon the seller the right to sue the buyer for price.
- 5) **Insolvency of the seller or the buyer:** On the insolvency of a person, the Official Receiver or Assignee takes the possession of the property belonging to the insolvent.

Rules regarding Transfer of property

The rules for the transfer of ownership are contained in Sections 18 to 24 of the Sale of Goods Act. These rules determine the time at which the ownership of the goods is transferred from the seller to the buyer. As the general rule, the “transfer of ownership depends upon the intention of both the parties”.

1) Transfer of property in case of Specific or Ascertained Goods –

- a) **When goods are in deliverable state (Sec. 20):** Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both is postponed.
- b) **When goods are not in a deliverable state (Sec. 21):** Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.
- c) **When price of goods is to be ascertained (Sec. 22):** Where there is a contract for the sale of specific goods in a deliverable state but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining price, the property does not pass until such thing is done and the buyer has notice thereof.

2) Transfer of property in case of Unascertained Goods –

- a) **Goods must be ascertained (Sec. 18):** Where there is a contract for the sale of unascertained goods, no title of property in the goods is transferred until the goods are ascertained.
- b) **Appropriation of goods to the contract (Sec. 23):** The term ‘appropriation’ means the process by which the goods to be delivered under the contract are identified and set apart with the consent of the seller as well as buyer. The seller may appropriate the goods in one of the following ways:
 - (i) By separating the contracted goods from the other with the consent of the buyer.
 - (ii) By putting the contracted quantity in suitable receptacles with the consent of the buyer.
 - (iii) By delivering the contracted goods to the common carrier for transmission to the buyer without reserving the right of disposal.

3) When goods are sold on approval (Sec. 24) – When the goods are sent to the buyer on ‘approval’ or on ‘sale or return basis’, the property in the goods will pass from seller to buyer when any of the following conditions are satisfied:

- a) When he accepts the goods;
- b) When he adopts the transaction; or
- c) When he fails to return the goods.

Sale by Non-owners

The general rule is that if a person, who has no right or title to the goods, sold the same, the buyer, cannot obtain any right or title to the goods which he purchased even though he may have

acted honestly and paid the value for the goods. Thus a buyer cannot get a good title to the goods unless he purchases the goods from a person who is the owner thereof or who sells them under the authority or with the consent of the owner.

This is based on the following important Latin maxim, “Nemo dat quod non habet,” which means that ‘no one can give what he has not got’. Section 27 of the Sale of Goods Act also provided that “where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had. . .”

Exceptions to the Rule ‘Nemo dat quod non habet’

- 1) **Title by estoppels [Sec. 27]:** When the owner of goods, by his conduct or by statement, wilfully leads the buyer to believe that the seller has the authority to sell, then he is stopped (i.e., prevented) from denying the seller’s authority to sell.
- 2) **Sale by merchantable agent [Sec. 27 (2)]:** This exception will apply if the following conditions are satisfied:
 - a) The goods must have been sold by a mercantile agent;
 - b) He must be in possession of the goods or any document of title to the goods with the consent of the real owner;
 - c) The sale should be in the ordinary course of business;
 - d) The buyer must act in good faith; and
 - e) The buyer should not have, at the time of contract, notice that seller had no authority to sell.
- 3) **Sale by a joint owner (co-owner) [Sec. 28]:** In order to get a valid title to the buyer who buys the goods from one of the co-owners, the following conditions should be satisfied:
 - a) The co-owner must be in the sole possession of goods with the consent of other co-owners.
 - b) The buyer should purchase the goods for consideration and in good faith.
 - c) The buyer should not have notice or suspicion, at the time of sale, of any defect in seller's authority to sell.
- 4) **Sale by person in possession under voidable contract [Sec. 29]:** when the seller of goods has obtained possession of the goods under a voidable contract and he sells those goods before the contract is repudiated, the buyer of such goods acquires a good title provided the buyer acts in good faith and without notice of the seller's defect of title.
- 5) **Sale by seller in possession after sale [Sec. 30 (1)]:** Where a person, having sold the goods, continues to be in possession of the goods or of the documents of title, and sells them over again to a buyer, the buyer gets a better title provided he has acted in good faith and without notice of the previous sale.
- 6) **Sale by buyer in possession after sale [Sec. 30 (2)]:** Where by the buyer has bought or agreed to buy the goods, with the consent of the owner obtains possession of the goods or documents of title to the goods, but the seller still has some lien or right over the goods, if the buyer sells the goods to a second buyer, who buys them in good faith, the second buyer gets a better title.

- 7) **Sale by unpaid seller [Sec. 54 (3)]:** Where an unpaid seller who is in possession of goods after having exercised the right of lien or stoppage in transit, resell the goods the buyer gets a good title there to as against the original buyer.
- 8) **Exceptions under the provisions of other Acts:** The following are valid transactions:
- a) Sale by finder of lost goods u/s 169 of Contract Act;
 - b) Sale by pawnee or pledgee u/s 176 of the Contract Act;
 - c) Sale by an Official Receiver or Assignee in case of insolvency of an individual and Liquidator of companies.
 - d) The legal maxim 'nemo dat quod non habet' does not apply to negotiable instruments.

PERFORMANCE OF THE SALE OF CONTRACT

A contract of sale consists of two reciprocal promises:

- (i) The seller's duty to deliver the goods; and
- (ii) The buyer's duty to accept the goods and pay the price.

It may be noted that the delivery of goods and the payment of their price are the concurrent conditions, i.e., both these conditions should be performed simultaneously.

Delivery of Goods

Section 2 (2) of the Act defines, delivery to mean "voluntary transfer of possession from one person to another." Such voluntary transfer can, as Sec. 33 states, be made by doing anything which has the effect of putting the goods in the possession of the buyer or his authorized agent.

Modes of Delivery

Delivery of goods may be made in any of the following ways:

- a) Actual delivery: Where the goods are physically handed over by the seller to the buyer, the delivery is said to be actual.
- b) Symbolic delivery: Where the goods are bulky and incapable of actual delivery, there are other means of obtaining possession of goods are delivered by the seller to the buyer.
- c) Constructive or Delivery by attornment: Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf."

Rules Regarding Effective Delivery of Goods

- 1) **Delivery and payment are concurrent conditions [Sec. 32]:** The seller shall be ready and willing to give possession of goods to the buyer in exchange for the price and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.
- 2) **Delivery may be either actual, symbolic or constructive [Sec. 33]:** The delivery of goods must have the effect of putting the goods in the possession of buyer or his authorized agent.

- 3) **Effect of part delivery [Sec. 34]:** A delivery of part of the goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.
- 4) **Buyer should apply for delivery [Sec. 35]:** Apart from any express contract the seller is not bound to make delivery until the buyer applies for delivery.
- 5) **Place of delivery [Sec. 36 (I)]:** The goods must be delivered at the specified place during the business hours and on a working day. But where no place is specified in the contract, the following rules contained in Section 36(1) shall apply:
 - (a) In case of sale, the goods sold are to be delivered at the place where they are, at the time of sale;
 - (b) In case of an agreement to sell, the goods are to be delivered at the place where they are, at the time of agreement to sell;
 - (c) If at the time of agreement to sell, the goods are not in existence they are to be delivered at a place where they are manufactured or produced.
- 6) **Time for delivery of goods [Sec. 36(2)]:** Where under the contract of sale the 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 the reasonable time. Demand for and the making of delivery must be done at reasonable hours [Sec. 36(4)].
- 7) **Effect of goods in possession of a third party [Sec. 36(3)]:** Where the goods at the time of sale are in the possession of a third person, effective delivery takes place when such person acknowledges to the buyer that he holds the goods on his behalf. However, if goods are sold by transfer of documents to title, the consent of third person having possession of the goods is not required.
- 8) **Expenses of delivery [Sec. 36(5)]:** Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.
- 9) **Delivery of wrong quantity [Sec. 37]:** "Wrong quantity" may include short or excess delivery of goods than the agreed quantity, and also the delivery of agreed quality mixed with another quality. Section 37 deals with the following three cases:
 - a) **Short delivery [Sec. 37(1)]:** If the seller delivers a quantity less than he has contracted to sell, the buyer may reject them. But if he accepts the goods so delivered, he shall pay for them at the contract price.
 - b) **Excess delivery [Sec. 37(2)]:** If the seller delivers a larger quantity than he contracted to sell, the buyer has the option of accepting the quantity as per the contract and reject the rest or he may reject the whole. If he accepts the entire quantity, he has to pay for the excess at the contract price.
 - c) **Mixed delivery [Sec. 37(3)]:** If the seller delivers the goods mixed with the goods of a different description, the buyer may accept the contracted goods or reject the whole quantity of goods.

10) Instalment deliveries [Sec. 38(1)]: Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

11) Delivery to carrier or wharfinger [Sec. 39]: Where, in pursuance of a contract of sale, goods are delivery to a carrier for the purpose of transmission to the buyer or to a wharfinger for safe custody, delivery of goods to them is prima facie deemed to be a delivery of the goods to the buyer. In addition to delivery to the carrier or wharfinger, the seller has to perform the following duties:

(a) **To make a suitable contract with the carrier or wharfinger [Sec. 39(2)]:** The seller shall make a suitable contract with carrier or wharfinger for safe transmission or custody of goods as may be reasonable keeping in view the nature of goods and other circumstances. If the seller fails to do so, the buyer may refuse to treat the delivery to himself, or may hold the seller liable for damages.

(b) **To give notice to the buyer to enable him to insure the goods [Sec. 39(3)]:** This duty attaches when the goods are to be sent by a sea route.

12) Deterioration of goods during transit [Sec. 40]: Where the seller agrees to deliver the goods at his own risk at a place different from that where they were at the time of sale, the buyer shall bear the risk of deterioration of goods incidental to the course of transit.

UNPAID SELLER

According to Sec. 45 of the Sale of Goods Act, the seller of goods is deemed to be an unpaid seller:

- (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 dishonour of the instrument or otherwise.

Rights of an Unpaid Seller

An unpaid seller has two-fold rights, viz:

- I. Right of an Unpaid Seller against the goods; and
- II. Rights of an Unpaid Seller against the buyer personally.

I. Right of an Unpaid Seller against the goods

An unpaid seller has the following rights against the goods notwithstanding the fact that the property in the goods has passed to the buyer:

- 1. Right of lien;
- 2. Right of stoppage of goods in transit;
- 3. Right of resale.

1) Right of Lien [Sec. 47 to 49]

Lien is the right of an unpaid seller to retain the goods in his possession and refuse to deliver them to the buyer until the full payment of the price is made to him, or the price is offered to him. The unpaid seller can exercise lien only in the following cases:

- a) Where the goods have been sold without 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 even though the period of credit may not have yet expired;
- d) Where the unpaid seller has delivered a part of the goods, he may exercise his lien on the remaining part of the goods.

Termination of Lien or Loss of Lien

An unpaid seller of goods loses his right of lien on the goods in the following cases:

- (i) **By delivery to the carrier:** 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.
- (ii) **By delivery to the buyer:** When the buyer or his agent lawfully obtains possession of goods, unpaid seller loses his right of lien.
- (iii) **By waiver:** When the seller expressly or impliedly waives his right of lien, the right of lien is terminated.
- (iv) **By tender of price:** Where the buyer tenders price for the goods purchased by him, seller's lien is lost.

2) Right of stoppage of goods in transit [Sec. 50 to 52]

The right of stoppage in transit means the right of stopping further transit of the goods while they are with a carrier for the purpose of transmission to the buyer, resuming possession of them and retaining possession until payment or tender of the price. The right of stoppage can be exercised only when the following conditions are satisfied:

- a) The seller should be an unpaid seller;
- b) The buyer must have become insolvent;
- c) The seller must have parted with the possession of the goods; and
- d) The goods must be in the course of transit.

Duration of transit

The goods are deemed to be in transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer or his agent takes delivery of them.

Termination of transit and Right of Stoppage

The transit comes to an end in the following cases:

- (i) **Delivery to the buyer:** When the buyer or his agent obtains delivery of the goods before their arrival at the appointed destination.
- (ii) **Interception by the buyer:** When the buyer or his agent takes delivery after the goods have reached destination.

- (iii) **Acknowledgement to the buyer:** When the goods have arrived at their destination and the carrier acknowledges to the buyer or his agent that he holds the goods on his behalf.
- (iv) **Goods delivered to buyer's carrier:** When the goods are delivered to a carrier, who acting as an agent of the buyer, the transit ends as soon as the goods are delivered to the carrier.
- (v) **Wrongful refusal to deliver:** When the carrier wrongfully refuses to deliver the goods to the buyer or his agent.
- (vi) **Part delivery of goods:** When part delivery of the goods has been made to the buyer with an intention of delivering the whole of the goods, transit will be at an end for the remainder of the goods also which are yet in the course of the transit.

3) **Right of Resale [Sec. 54]**

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:

- a) Where the goods are of a perishable nature;
- b) 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;
- c) Where the seller expressly reserve his right of resale.

II. Rights of an Unpaid Seller against the Buyer Personally

On breach of the contract of sale due to seller's default, the buyer has the following remedies (i.e., rights) against the seller.

- 1) **Suit for price [Sec. 55]:** When the property has passed to the buyer, and the buyer wrongly neglects or refuses to pay, the seller can sue him for the price.
- 2) **Suit for damages [Sec. 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) **Suit for repudiation [Sec. 60]:** The repudiation of the contract of sale by the seller before the date of delivery entitles the buyer to treat the contract as rescinded and sue the seller for damages for the breach.
- 4) **Suit for interest [Sec. 61(2)]:** In case of breach of contract on the part of the buyer, while filing a suit for the price, the seller may sue the buyer for interest from the date of the tender of the goods or from the date on which the price was payable.