



# Sale of Goods Act 1979

## 1979 CHAPTER 54

### PART V

#### RIGHTS OF UNPAID SELLER AGAINST THE GOODS

##### *Preliminary*

#### **38 Unpaid seller defined.**

- (1) The seller of goods is an unpaid seller within the meaning of this Act—
  - (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.
- (2) In this Part of this Act “seller” includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid (or is directly responsible for) the price.

#### **39 Unpaid seller’s rights.**

- (1) Subject to this and any other Act, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—
  - (a) a lien on the goods or right to retain them for the price while he is in possession of them;
  - (b) in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;
  - (c) a right of re-sale as limited by this Act.
- (2) Where the property in goods has not passed to the buyer, the unpaid seller has (in addition to his other remedies) a right of withholding delivery similar to and co-

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extensive with his rights of lien or retention and stoppage in transit where the property has passed to the buyer.

**[<sup>F1</sup>40 Attachment by seller in Scotland.**

In Scotland a seller of goods may attach them while in his own hands or possession by arrestment or poinding; and such arrestment or poinding shall have the same operation and effect in a competition or otherwise as an arrestment or poinding by a third party.]

**Textual Amendments**

**F1** S. 40 repealed (S.) by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), s. 108(3), **Sch. 8**

*Unpaid seller's lien*

**41 Seller's lien.**

- (1) Subject to 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:—
  - (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.
- (2) The seller may exercise his lien or right of retention notwithstanding that he is in possession of the goods as agent or bailee or custodier for the buyer.

**42 Part delivery.**

Where an unpaid seller has made part delivery of the goods, he may exercise his lien or right of retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

**43 Termination of lien.**

- (1) The unpaid seller of goods loses his lien or right of retention in respect of them—
  - (a) when he delivers the goods to a carrier or other bailee or custodier for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
  - (b) when the buyer or his agent lawfully obtains possession of the goods;
  - (c) by waiver of the lien or right of retention.
- (2) An unpaid seller of goods who has a lien or right of retention in respect of them does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

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### *Stoppage in transit*

#### **44 Right of stoppage in transit.**

Subject to this Act, when the buyer of goods becomes insolvent the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

#### **45 Duration of transit.**

- (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee or custodian for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from the carrier or other bailee or custodian.
- (2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.
- (3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodian acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee or custodian for the buyer or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.
- (4) If the goods are rejected by the buyer, and the carrier or other bailee or custodian 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.
- (5) 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 to the buyer.
- (6) Where the carrier or other bailee or custodian wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.
- (7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

#### **46 How stoppage in transit is effected.**

- (1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee or custodian in whose possession the goods are.
- (2) The notice may be given either to the person in actual possession of the goods or to his principal.
- (3) If given to the principal, the notice is ineffective unless given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

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- (4) When notice of stoppage in transit is given by the seller to the carrier or other bailee or custodian in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller; and the expenses of the re-delivery must be borne by the seller.

*Re-sale etc. by buyer*

**47 Effect of sub-sale etc. by buyer.**

- (1) Subject to this Act, the unpaid seller's right of lien or retention or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented to it.
- (2) Where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes it in good faith and for valuable consideration, then—
- (a) if the last-mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage in transit is defeated; and
  - (b) if the last-mentioned transfer was made by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transit can only be exercised subject to the rights of the transferee.

*Rescission: and re-sale by seller*

**48 Rescission: and re-sale by seller.**

- (1) Subject to this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage in transit.
- (2) Where an unpaid seller who has exercised his right of lien or retention or stoppage in transit re-sells the goods, the buyer acquires a good title to them as against the original buyer.
- (3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.
- (4) Where the seller expressly reserves the right of re-sale in case the buyer should make default, and on the buyer making default re-sells the goods, the original contract of sale is rescinded but without prejudice to any claim the seller may have for damages.

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