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RIGHTS OF UNPAID SELLER UNDER SALE OF GOODS ACT, 1930- Krishna Singh¹**INTRODUCTION:**

In every contract of sale, there is a reciprocal promise to be performed by the seller and buyer. Any seller becomes an unpaid seller when the whole price of the good has not been paid to them. Whereas the term unpaid seller has been defined clearly under the Section 45 of sale of goods act,1930².

A seller can be a “Unpaid seller”, *when the whole of the price has not been paid or tendered; 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* as defined under section 45 of the sale of goods act.³

Section 45(2)⁴ of the Sale of good act,1930 mentions that *a seller would also encompass an individual who is acting as the agent to the seller, or also the person on whom the bill of lading has been issued, or an endorsed or agent who has himself paid, is or directly responsible for the price.* A seller, when the price of goods hasn't been paid in part, would be an unpaid seller to that extent.

Also, A seller would not be classified as an unpaid seller when he has received a negotiable instrument, like a bill of exchange, promissory note or cheque but if the good has been delivered and that particular instrument gets dishonoured, then the seller would be an unpaid seller and accordingly he can make use of his rights. Furthermore, it is also assumed that the

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²Ishika Mittal, Rights of an Unpaid Seller under the Sale of Goods Act, 3.3 JCLJ 756 (2023)

³ §45, Indian Contracts Act,1872

⁴§45(1), Indian Contracts Act,1872

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negotiable instrument always functions on conditional basis and when it gets dishonoured, the condition does not fulfil.⁵ However the buyers who have rejected the goods don't come under the ambit of Unpaid seller and they also do not enjoy the same rights as an unpaid seller.⁶

All the different rights pertaining to the unpaid sellers have been enumerated under the Chapter V of Sales of goods act named as "Rights of Unpaid Sellers against the goods". There are three rights available to an unpaid seller if in the case any default has been made by the buyer are, Right to Lien, Right to Stoppage in Transit and Right of Resale.

These rights of an Unpaid seller do not depend upon any agreement express or implied, between the parties. They arise by the implication of law. These rights typically assume that ownership of the goods has transferred to the buyer. However, to ensure that the seller has been given the same rights and protections even when ownership has not passed, Section 46(2)⁷ of the sale of goods act, 1930 explicitly states that in cases where ownership of the goods has not transferred to the buyer, the seller still retains the same rights of lien and stoppage in transit as if the ownership had been transferred.⁸

There are a few characteristics that must be taken in to notice while classifying a seller as unpaid seller. They are Seller must be unpaid either partly or wholly and payment of the goods hasn't not been received during the specified time period, and the seller shouldn't have refused the payment when the buyer has endorsed a negotiable instrument it got violated.

This paper attempts to delve into the intricacies of the rights provided to an unpaid seller under sale of goods act, 1930. It also looks forward to critically highlighting various judicial pronouncements where a significant dictum has been stated. It is also going to examine the veracity and significance of the rights provided to an unpaid seller.

RESEARCH QUESTIONS:

1. Whether the recourses available to an unpaid seller are effective in nature?

⁵Laxmi Lal v Paras Ram, AIR 2008 Raj 302: 2007 AIHC (NOC) 109 (Raj),

⁶J.L. Lyons & Co Ltd v May & Baker Ltd (1923) 1 KB 685: (1923) 129 LT 413

⁷ §46(2), Sale of Goods act, 1930

⁸*Bloxam v Sanders*, (1825) 4 B&C 941, 948: 28 RR 525.

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2. Whether the unpaid seller can resell the goods after exercising right of lien under the sale of good act, 1930?
3. Whether the buyer be held liable for the costs incurred by the seller while exercising the right of lien?

RESEARCH METHODOLOGY:

This research uses primary sources such as case laws and the provisions from the constitution of India and also makes use of secondary sources such as journal articles, books, and certain legal websites.

REVIEW OF LITERATURE:

- **Deepa Paturkar, LAW OF SALES OF GOOD(EASTERN BOOK COMPANY 2021):** Deepa Paturkar's work provides an in-depth examination of the rights available to an unpaid seller under the Sale of Goods Act, 1930, with a specific focus on the right of lien and stoppage in transit. The text elucidates the practical application of these rights and their legal implications. Paturkar emphasizes the significance of possession in the exercise of lien and discusses the conditions under which an unpaid seller can retain goods until payment is made. The author's discussion on Section 47 and Section 32 of the Act is particularly useful in understanding the concurrent nature of payment and delivery in the context of lien.
- **Dr.Jyoti Rattan, SALES OF GOOD ACT (BHARAT HOUSE PVT.LTD 2022):** Dr.Jyoti Rattan's analysis of the Sale of Goods Act, 1930, complements Paturkar's work by offering a detailed examination of the rights of the unpaid seller, especially concerning the right to resale. Rattan explores Section 54 of the Act, discussing the conditions under which the seller can resell goods after exercising the right of lien or stoppage in transit. The book provides valuable insights into the legal nuances of resale rights and their practical application in protecting the interests of sellers.
- **Ishika Mittal, "Rights of an Unpaid Seller under the Sale of Goods Act," 3.3 JCLJ 756 (2023):** This article has helped to understand the various rights provided to an unpaid worker and it also helped to understand their efficacy and efficiency in practical life. It has also dealt with the various judicial pronouncements where a significant dictum has been pronounced.

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- **Maitreyee Dubey, “An Analysis of Sale Of Goods Act, 1930,” 1.2 LMLJ, (2022):**
Maitreyee Dubey’s analysis offers a broad overview of the Sale of Goods Act, 1930, with particular attention to the rights of unpaid sellers. Dubey’s work is instrumental in understanding the broader legal framework within which these rights operate. The author provides a detailed examination of the termination of lien under Section 49, emphasizing the conditions that lead to the cessation of the lien, such as delivery to a carrier or lawful possession by the buyer. Dubey also discusses the right to stoppage in transit in depth, focusing on the criteria that define whether goods are in transit and how this impacts the seller's rights. The article provides a valuable context for understanding the practical application of these rights and their effectiveness in safeguarding the seller’s interests

CHAPTER 1- UNPAID SELLER- RIGHT TO LIEN.

Lien is a right to retain the possession until some certain amount which was supposed to be paid has not been paid. The unpaid seller has the right to retain the possession of the articles and good until he or she recovers its price from the buyers. Possession plays a quintessential role while exercising right to Lien. Lien must be exercised while keeping section 47 and section 32 together in the mind.

Section 47(1)⁹ of Sales of goods act, 1930 mentions that right of lien can be exercised when the goods are not sold on credit and simultaneously seller expects the buyer to pay for the goods and services. Furthermore, Section 32¹⁰ of the act mentions that payment and delivery are concurrent in nature unless an agreement contrary to that exists. It implies that seller can expect the buyer to pay for the goods at the time of purchase and if the buyer refrains from paying the price, then the seller accordingly can deny the delivery of goods.

Furthermore, if the goods are sold on credit, the seller’s right to lien gets suspended and during that term, however it gets revived once the time period which has been specified gets over. Additionally, even if the seller transfers the documents of title (the legal ownership) to the buyer, the seller can still retain a “lien” on the goods as long as they physically possess

⁹ §47(1), Sale of Goods act,1930

¹⁰ §32, Sale of Goods act,1930

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them.¹¹ Even, when the seller issued the delivery orders which further makes him bailee instead of the owner, his right to lien is not defeated.¹²

The right of lien would only survive until the payment of the price of goods. The seller's right to lien must be directly connected to the payment or performance issues of the specific purchase order or contract under which the goods were sold and the reason must be directly related to the specific transaction for which the seller is exercising his lien right.¹³

Furthermore, in the case of *Somes V British Empire Shipping Co*¹⁴, it was held by the House of Lords that when the buyer pays the amount of good, he can't be compelled to pay for further expenses like storage which has been incurred by the seller while exercising his right to lien.

In the case of part delivery as defined under Section 48 of sales of good act,1930, "*Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.*"¹⁵

However, it is pertinent to note that if part of the delivery is intended to stand for the entire delivery. Then the seller can't exercise his right to lien. The consent of both the parties is necessary to classify a part delivery as a delivery of whole.¹⁶ The burden of proof lies upon the alleging party who contends that part delivery was intended to operate as a delivery of the whole.¹⁷

Furthermore, if a contract deals with the delivery of goods by instalment and the buyer fails to pay one of the instalments, then the seller can't stop the buyers from receiving the delivery of rest of instalments of good. However, if the buyer has been openly declared as an insolvent¹⁸ or the buyer default has led to the repudiation of contract¹⁹, then the seller can legitimately stop the delivery of the rest of goods after such default.

¹¹*Imperial Bank v London & St Katharine Docks Co Ltd*, (1877) LR 5 Ch D 195

¹²*Le Geyt v Harvey*, ILR (1884) 8 Bom 501

¹³*Rama Gum Industries-India-Ltd v STS Products Inc*, 2018 SCC OnLineGuj 3110

¹⁴*Somes V British Empire Shipping Co (1860)* 8 HLC 338: 30 LJQB 229 (HL)

¹⁵ §48, Sale of Goods act,1930

¹⁶*Kemp v Falk*, (1882) LR 7 AC 573, 586 (HL) per Lord Blackburn.

¹⁷*Cooper, ex p*, (1879) LR 11 Ch D 68 (CA).

¹⁸*SooltanChund v Schiller*, ILR (1878) 4 Cal 252

¹⁹*Steinberger v Atkinson & Co*, (1914) 31 TLR 110

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TERMINATION OF LIEN:

Section 49 of sales of good act, 1930 deals with the instances when the Lien can be terminated. They are as follows:- “Termination of lien.—(1) The unpaid seller of goods loses his lien thereon— (a) 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; (b) when the buyer or his agent lawfully obtains possession of the goods; (c) by waiver thereof²⁰ Lien is coextensively linked to possession. They aren’t independent of each other.

The delivery of the goods to a carrier for the purpose of transmission to the buyer operates as a delivery to the buyer himself²¹ and therefore the right to lien doesn’t exist here. The seller doesn’t have any responsibility of safety of goods once they have been delivered to a carrier unless an agreement contrary to that exists. The risk associated with the goods during transit falls on the buyer.²² Delivery to a carrier ceases a lien to exist but the seller has every right to stoppage in transit and if he exercises his right of stoppage in transit, his right to lien again comes in the picture. However, if he takes back the good from the carrier for any other purpose, the lien doesn’t exist.²³

In the case of Valpy v. Gibson,²⁴ the goods sold were delivered to the buyer’s shipping agents, who loaded them onto a ship. However, the goods were returned to the sellers for repacking. While the goods were still with the sellers for this purpose, the buyer became insolvent. Since the sellers had not yet been paid, they asserted their right to retain the goods by exercising their lien. It was held by the hon’ble court that their right of disposal doesn’t exist after them transferring the delivery of goods to a carriage.

When the possession has been legally entitled by the buyer then the seller loses it right to lien and for instance, when the goods are delivered back to the seller for specific purpose , such as repair of a machine sold, that doesn’t reinstate the seller’s lien.²⁵ Furthermore, the seller’s lien is not derailed when the buyer has obtained the possession without the consent of seller

²⁰ §49, Sale of Goods act,1930

²¹ Deepa Paturkar, *LAW OF SALES OF GOOD* 161(EASTERN BOOK COMPANY 2021)

²²*T.T. Ltd v Golden Eagle Co Ltd*, 2018 SCC OnLine Del 9250.

²³*Valpy v Gibson*(1847) 4 CB 837: 72 RR 740

²⁴ Id

²⁵*E.C. Eduljee v Cafe John Bros*, ILR 1944 Nag 37: AIR 1943 Nag 249

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by any wrongful act or for a temporary purpose, such as trial. Also, where the seller has reserved the right of disposal of the goods his lien continues till the end of transit.

The right of lien is linked by application of law to every contract of sale for the benefit of the seller. The seller may, therefore, if he so likes, waive his right. Waiver can be express or implied, it depends upon the act of seller. Furthermore, if the seller who refused to sell the goods on credit at the first instance, agrees to give possession to the debtor, before receiving payment would presumably amount to a waiver of his lien.²⁶

The right of lien comes to an end when the seller ceases to be an unpaid seller. When the buyer gives the price for the goods, the seller's right to retain goods is terminated and, therefore, the seller cannot, by his voluntary refusal to accept the price, convert himself into an unpaid seller and claim lien.²⁷ Furthermore, even if the unpaid seller has got an decree which requires the buyer to pay the price of goods, the seller does not automatically lose their right to lien on goods until the original payment has not been received.

CHAPTER 2- UNPAID SELLER -RIGHT TO STOPPAGE IN TRANSIT

Unpaid seller has also the option to exercise right to lien against the goods. Where the goods have been delivered to a carrier or a bailee for the reason of the transmission to the buyer, and the buyer has become insolvent due to any of the reason. Because there is an established principle that, one man's asset should not be used in order to pay off the debt of someone else.²⁸

The right to stoppage in transit is an augmentation to right to lien, here the seller is again permitted to gain the possession of goods, which he earlier surrenders to the carriage. However, the key condition is that the seller has to reclaim the possession of good before they reach to the vendee and he must be insolvent.²⁹

²⁶*Bank of Africa v Salisbury Gold Mining Co Ltd*, 1892 AC 281, 284, per Lord WATSON

²⁷ *Levey & Co Ltd v Goldberg*, (1922) 1 KB 688.

²⁸ *Booth Steamship Co Ltd v Cargo Fleet Iron Co Ltd*, (1916) 2 KB 570, 580 (CA).

²⁹*Rowley v Bigelow*, 12 Pick 313

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There is a thin line of difference in Right to Lien and Right to Stoppage in transit and both of them functions simultaneously in the contemporary world. So, it is important to understand the core difference between the application of both the rights.

The differences are-

- The seller's right to lien functions when the buyer defaults, regardless of whether the buyer is solvent or insolvent. However, the right of stoppage in transit only comes into play when the buyer is insolvent.³⁰
- A right to lien can be exercised as long as the seller retains possession of the goods. The right of stoppage in transit, on the other hand, can be exercised as long as the goods are still in transit and have not yet reached the buyer.³¹
- Lien culminates when the right of stoppage comes in play. When the seller hands over the possession to the carrier, his lien ends and the right of stoppage in transit begins.

Sometimes it becomes very complex to identify that whether the goods are in transit or not. There would be some instances where the goods would be in the custody of carrier but still not transit and vice-versa. Here the middleman who holds the good under what capacity, plays an important role in order to identify. For instance, If the middleman holds the goods as an agent for the seller, then no right to stoppage in transit can be exercised, because lien would function and in the same way if the middle man holds the goods as the agent of buyer, then no lien can be exercised because the buyer has already got the possession.

If the middle man holds the good in the capacity as an independent contractor, then the transit comes into play and there lies the question of stoppage in transit. It is not important for the goods to move constantly for exercising this right.³²

Section 51 of the sale of goods act, 1930 has laid down a basic layout in order to identify whether the goods are actually in transit or not. The basic propositions are namely; *“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 for the purpose of transmission to the buyer,*

³⁰Chalmer's SALE OF GOODS, 124 (13th Edn by Seighart, 1957).

³¹*Kendal v Marshall, Stevens & Co*, (1883) LR 11 QBD 356, 368 (CA)

³²*Schotsmans v Lancashire & Yorkshire Rly Co*, (1867) LR 2 Ch App 332: 36 LJ Ch 361

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until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

(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 acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee 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 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 of the buyer.

(6) Where the carrier or 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.

(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 given in such circumstances as to show an agreement to give up possession of the whole of the goods.”³³

These sub-sections are self-explanatory in nature. However, Section 51(3) and (5) requires a further explanation. Section 51(3) mentions the transit comes to an end when the carrier acknowledges that he would be holding the goods on his behalf.

In the case of *Whitehead v Anderson*,³⁴ A quantity of timber that had been sold was loaded onto a ship and sent to its destination. Upon the ship's arrival, the buyer was bankrupt. Despite this, the buyer's agent boarded the ship, inspected the timber, and informed the captain that he was there to take possession of it. The captain agreed to deliver the timber

³³*Reddall v Union Castle Mail Steamship Co*, (1945) 84 LJ KB 360.

³⁴*Whitehead v Anderson* (1842) 9 M&W 518: 60 RR 819.

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once the amount is paid. However, before this could happen, the seller sent a notice to stop the delivery, and as a result, the goods were handed over to the seller's agent. It was held by the court that the carrier was in his full capacity to return the goods to the seller because the transit has not ended.

It has also been a widely held principle that if the goods are passing through multiple stages of transit from one carrier to another, then the seller reinstates his right until the goods are reached at the final destination.³⁵

Section 51(5) of the sale of goods act, 1930³⁶ highlights that when the goods are delivered to a ship chartered by the buyer, then the question arises whether the carrier is an autonomous independent contractor or the agent of buyer. If he is the agent of the buyer then the transit culminates as soon as goods are loaded in the ship. Furthermore, if the goods are loaded in the ship belonging to the buyer and bill of lading has also been endorsed making the buyer as the ultimate person to receive those goods, the transit would end as soon as the goods are put on the board.³⁷ However, even if the ship belongs to the buyer but no direction has been indicated or issued regarding the destination, then it will not make the carrier as the agent of buyers.³⁸

Section 52 of the aforementioned act³⁹ makes it the duty of the seller to send a notice to the carrier or bailee in such a way that he has the reasonable time to exercise his due diligence and communicate the concern to his agent or servant. Furthermore, if the carrier or bailee has received the notice pertaining to the change in events of delivery, he would either redeliver these goods to seller or some other place according to the direction issued by the seller. Further, all the expenses in doing so would be taken care of by the seller.⁴⁰

Section 53 further mentions about that if the unpaid seller has not given his consent for any sale or any other disposition then his right to transit does not get inflicted. Furthermore, if the seller has granted the document of title to the goods and he has sold or pledged the goods by

³⁵*Ibid*

³⁶ §51(5), Sale of Goods act, 1930

³⁷*Schotsmans v Lancashire & Yorkshire Rly Co*, (1867) LR 2 Ch App 332: 36 LJ Ch 361

³⁸*Rosevear China Clay Co Ltd, ex p* (1879) LR 11 Ch D 560 (CA).

³⁹ §52, Sale of Goods act, 1930

⁴⁰Dr.Jyoti Rattan, *SALES OF GOOD ACT* 147 (BHARAT HOUSE PVT.LTD 2022)

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transferring the title then in this instance seller's right to lien and stoppage in transit are defeated.⁴¹

These are the intricacies pertaining to right to stoppage in transit. All the sections have been analysed thoroughly in order to gain a deep understanding of it.

CHAPTER 3- UNPAID SELLER- RIGHT TO RESALE

Section 54 of the sale of goods act, highlights various propositions pertaining to the rights to resale the goods after exercising Lien and transit.⁴² Section 54(1) clearly puts forward that a contract won't merely discharge just because the seller has exercised his right to lien or stoppage in transit. The contract still remains in force and buyer can receive the delivery of goods after paying the required price.⁴³

Furthermore, the unpaid seller has the right to resell the goods to a third person without giving any prior notice to the original buyer, if the goods are of perishable in nature. However, as section 54(2) lays down that if the goods are not of perishable nature, then the seller would have to send a prior notice to the buyer stating his intention to resell. If the buyer does not pay the due amount even after the seller has waited for a reasonable time, then the seller is entitled to resell the goods to third party and he can very well enjoy the profit out of it and can also recover the loss which arises from such resale.

However, if the unpaid seller doesn't serve any notice prior the resale of the goods to the original party, then he cannot reclaim from the loss which has occurred and he would also have to hand over any profit which has arisen from resale. Furthermore, section 54(4) highlights that if the seller explicitly mentions the right to resell in the contract beforehand, then the notice is not required.⁴⁴

When the buyer pays the deposit, he is entitled to a refund of it when the seller resells the goods, but subject to the seller's claim for damages.⁴⁵ Furthermore, If the seller fails to

⁴¹*Ibid*

⁴² §54, Sale of Goods act,1930

⁴³ §54(1), Sale of Goods act,1930

⁴⁴ §54(4), Sale of Goods act,1930

⁴⁵*Gallagher v Shilcock*, (1949) 2 KB 765

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provide evidence of the difference between the contract price and the resale price on the date of breach, they are not eligible for any compensation.⁴⁶

Section 54(3) of the mentions that the buyer to whom the goods have been resold, gets a good title over those goods notwithstanding with the fact whether the original buyer has received any notice or not. However, a pertinent question arises that the Can seller who no longer possess the tile of the goods, transfer a good title to the new buyer through resale?

Section 27 generally prohibits the seller from passing a better title than they possess,⁴⁷ but an exception has been carved out under the section 54(3) which makes the new buyer have a good title even against the original buyer even though he is no longer the owner of the goods. The absence of notice only becomes relevant if there is a loss, in which case the seller cannot claim compensation. However, if a profit is made, the seller must share the surplus with the original buyer.⁴⁸

It is pertinent to understand that the resale under section 54(2) can take place only when the buyer has obtained the possession however the section 54(4) entitles the seller to resale before the property passes to the buyer. This is the basic difference between both the sections.

All the various rights pertaining to reselling of the goods after exercising the right to lien and stoppage in transit have been discussed thoroughly.

CONCLUSION:

The rights of an unpaid seller, particularly the rights to lien, stoppage in transit, and resale, are fundamental to the legal framework governing the sale of goods in India. These rights ensure that sellers are protected against the risk of non-payment, enabling them to secure their interests in transactions that involve substantial economic stakes. The Sales of Goods Act, 1930, meticulously outlines these rights, balancing the interests of both buyers and sellers to create a fair and equitable commercial environment.

In the current economic and social scenario, the implications of these legal provisions are far-reaching. The right to lien, for instance, acts as a crucial safeguard for sellers, particularly small businesses, who might otherwise face severe financial strain if buyers' default on

⁴⁶*Mysore Sugar Co Ltd v Manohar Metal Industries*, [AIR 1982 Kar 283](#).

⁴⁷ §27, Sale of Goods act,1930

⁴⁸ §54(3), Sale of Goods act,1930

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payments. This legal mechanism ensures that sellers are not forced into a position of financial vulnerability, thereby promoting stability and trust in commercial transactions. Similarly, the right to stoppage in transit becomes increasingly relevant in today's globalized economy, where goods often cross multiple jurisdictions before reaching the buyer. This right provides sellers with a tool to mitigate the risk of buyer insolvency, which can have a cascading effect on the supply chain and broader economy.

The right to resale, while seemingly harsh on the defaulting buyer, is essential for maintaining the fluidity of commerce. It allows sellers to mitigate their losses and recover from the breach of contract, ensuring that economic activities are not unduly disrupted. However, the legal requirement for notice before resale in non-perishable goods strikes a balance between the rights of the seller and the buyer, ensuring fairness.

On a broader scale, these provisions contribute to the economic stability of markets, fostering an environment where businesses can operate with confidence. Politically, they reinforce the rule of law and the importance of contractual obligations, which are cornerstones of a functioning society. Socially, they protect the interests of sellers, preventing economic exploitation and promoting fair trade practices. Overall, the existing legal framework, while robust, must continue to evolve to address the complexities of modern commerce, ensuring that it remains relevant and effective in protecting the rights of all parties involved.

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