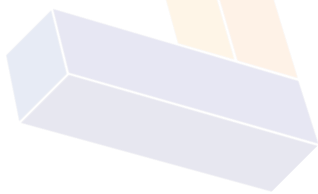


Introduction to the law relating to the sale of goods

1

Applicable law

- The sale of Goods Ordinance (No. 11 of 1896) and its amendments



2

What is a contract of Sale of goods ?

- “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 money consideration, called the price.”

Section 2 (1) of the sale of Goods Ordinance (No. 11 of 1896)

3

Contract of sale Vs agreement to sell

Contract of sale	Agreement to sell
“The property in the goods is transferred from the seller to the buyer.” [Section 2 (2)]	“where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled”. [Section 2 (3)]

4

How “an agreement to sell” become a “contract of sale” ?

- The elapsing of time, or
- Fulfilment of the conditions,

Subject to which the property in the good is to be transferred.

5

Contract of sale v contract for works and material

Contract of sale	Contract for works and material
1.Concerns the delivery of a chattel/goods. Ex:Johnny sees a beautiful painting and contacts with the artist to buy it.	1.Concerns the exercise of skill, and the delivery of the chattel/ goods is secondary. Ex:Johnny commissions the artist to paint his portrait for Rs. 100,000. The artist supplies the canvas and other materials.

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How do you formulate a contract of sale ?

- In writing
- By word of mouth
- Partly in writing and partly by word of mouth
- By implied conduct of parties

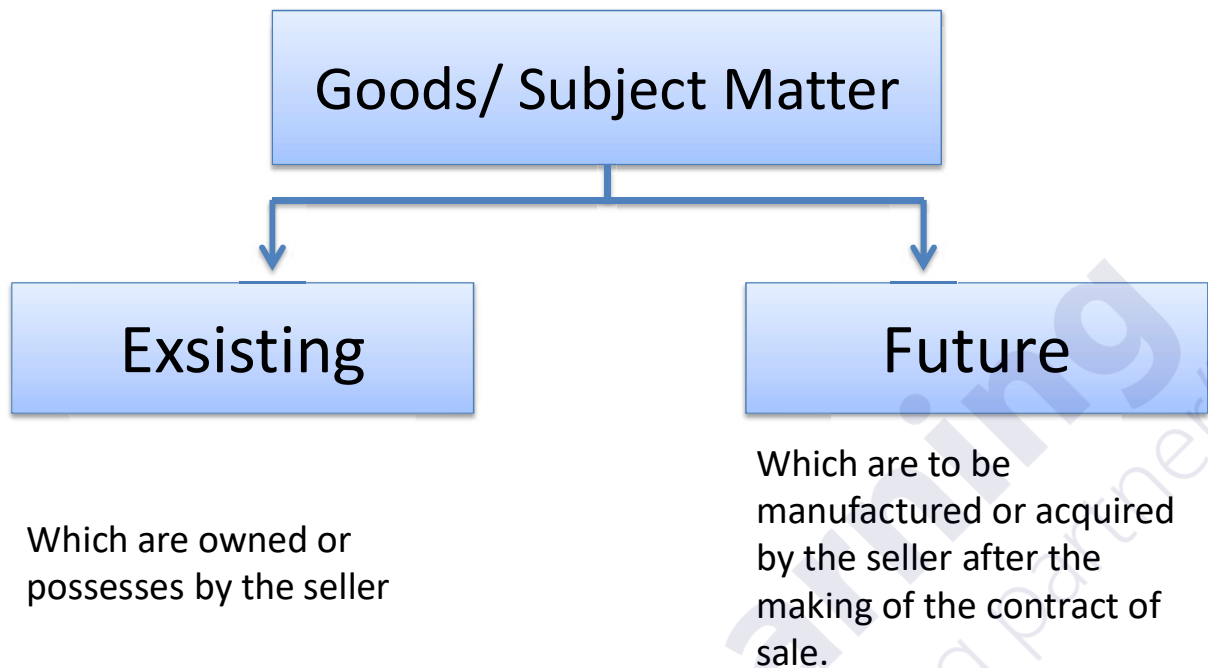
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Subject matter of contract

- Goods
- Based on the existence goods/ subject matter is classified in to different types

8

Subject matter of contract



9

Subject matter of contract

- When a contract of sale is made for a present sale of future goods, it operates as an agreement to sell.

10

What happens when specific goods perish ?

- Specific goods: “ goods identified and agreed upon at the time a contract of sale is made.”

Specific goods in a contract for sale	Specific goods in an agreement to sell
If they have perished without the knowledge of the seller at the time the contract was made, then the contract is void.	If they have perished without any fault on the part of the seller or buyer, before the risk passes on to the buyer, then the agreement to sell is avoided.

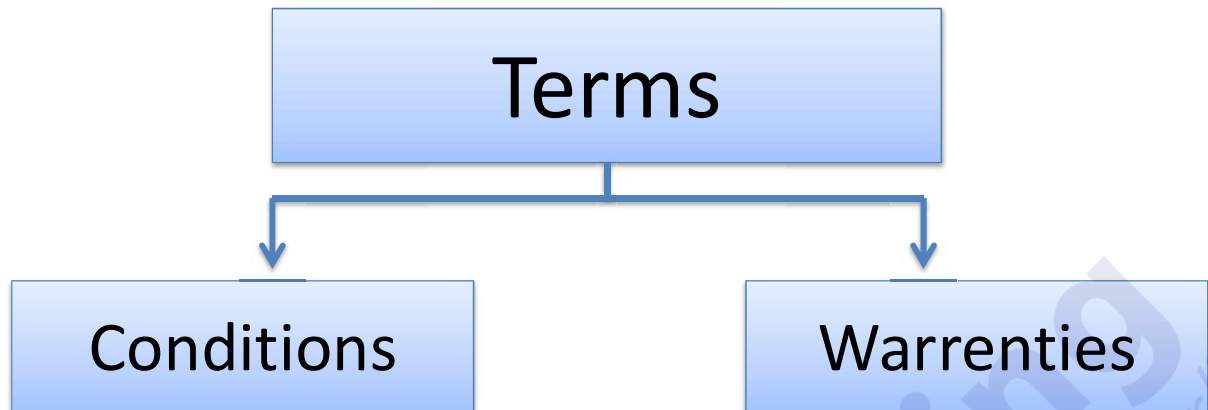
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Price

- In a contract of sale, the price may be :
- Fixed, or
- Left to be fixed , or
- Determined by the course of dealing, between the parties. If a price is not determined as above the buyer must pay a reasonable price, depending on the circumstances of each particular case.

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Terms



13

Terms

Condition	Warranty
A stipulation which goes to the root of the contract	A stipulation which is not so important as to go to the root of the contract, but is collateral to the main purpose of the contract.
A breach of a condition gives rise to a right to treat the contract as repudiated.	The breach of a warranty gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

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When can you treat a condition as a warranty?

- The buyer may waive the condition.
- The buyer may elect to treat the breach of a condition as a breach of warranty.
- In a contract of sale which is not severable and where the buyer has either fully or partly accepted the goods, the breach of a condition by the seller can only be treated as a breach of a warranty, unless the contract expressly states otherwise.
- In a contract of sale of specific goods, where the property in goods has passed to the buyer, the breach of a condition by the seller can only be treated as a breach of a warranty, unless the contract expressly states otherwise.
- If the fulfilment of such condition, is excused by law by reason of impossibility or otherwise.

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Implied terms

- Unless circumstances show otherwise, certain conditions and warranties are implied by the sale of Goods Ordinance in every contract.

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Implied terms on title

- In the case of a sale, there is an implied condition on the seller that he has a right to sell the goods.
- In the case of an agreement to sell, there is an implied condition on the seller that he will have a right to sell the goods at the time the property in such goods passes onto him.
- There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.
- There is an implied warranty that the goods shall be free from any charge or encumbrance, which was not known to the buyer before the contract was made.

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Implied terms on merchantable quality

- Where the buyer makes known to the seller the purpose for which the goods are required, so as to show that the buyer is relying on the skills or judgment of the seller and the goods are supplied by the seller in the course of his business, there is an implied condition that the goods shall be reasonably fit for such purpose.
- Exemption to the above: In the case of an article specified under its patent or trade name, there is no implied condition as to its fitness for any particular purpose.
- When goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality.
- Exemption to the above : If the buyer has examined the goods, there shall be no implied condition with regard to defects which such examination ought to have revealed.
- An implied term regarding merchantable quality may be annexed by the usage of trade.

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Implied terms in a sale by sample

- There is an implied condition that the bulk of the goods should correspond with the sample in quality.
- There is an implied condition that the buyer shall have a reasonable opportunity to compare the bulk with the sample.
- There is an implied condition that the goods are free from any defect which will make them unmerchantable, and which defect would not be apparent upon a reasonable examination of the sample.

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Implied terms in a sale by description

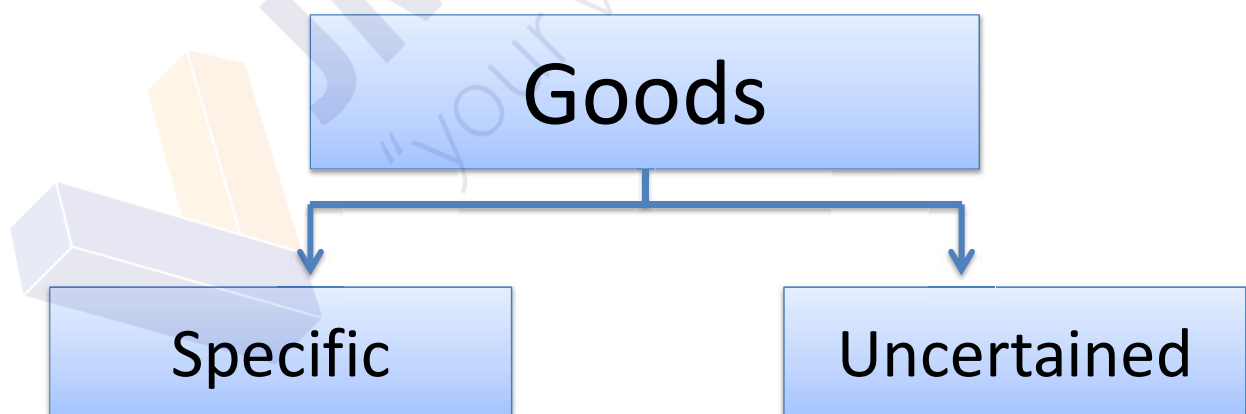
- In a contract for sale of goods by description, there is an implied condition that the goods shall correspond with the description.
- In a contract for the sale of goods by sample as well as by description, there is an implied condition that the bulk of the goods should correspond with the sample as well as with the description.

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Transfer of property between seller and buyer

21

Specific and unascertained goods



The goods that have been identified and agreed upon by the parties, when the contract is being made.

The goods that have been defined by description only and not goods identified and upon when the contract was made.

22

Passing of property in unascertained goods

- In a contract for the sale of unascertained goods, the property in goods is not transferred to the buyer until the goods are ascertained.

i.e. The property transfers from the seller to the buyer at the time the goods are ascertained.

23

Passing of property in unascertained goods

- But property in unascertained good can be passed onto the buyer under the following instance,

In a contract for the sale of unascertained goods by description, where the goods of that description which are in a deliverable state, are unconditionally appropriated to the contract by either party, the property passes onto the buyer, at the time of such appropriation.

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Passing of property in unascertained goods

Case law : appropriating unascertained goods

- G Sold P 140 bags of rice, the bags in question being unascertained. On February 27th, P sent a cheque for the price and asked for the delivery order, G sent the delivery order for 125 bags from a wharf, and wrote saying that the remaining 15 bags were ready for delivery at his place of business. P did not send for the 15 bags until March 25th, when it was found that they had been stolen without any negligence on G's part. P sued to recover from G the price he had paid for the 15 bags.
- Held : He could not succeed, because G had appropriated the 15 bags to the contract and P's assent to the appropriation was inferred from his conduct in not objecting, Therefore the property in the 15 bags passes to P.

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Passing of risk with the passing of property

- Unless the parties have agreed otherwise, the following applies ;
- Until the property in the goods is transferred to the buyer, the goods remain at the seller's risk.
- When the property is transferred to the buyer, the goods are at the buyer's risk, whether delivery has been made or not. But if delivery has been delayed due to the fault of either party, the goods are at the risk of the party at fault.

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Passing of property in specific or ascertained goods

- The property transfers to the buyer at the time the parties to the contract intend to be transferred.
- **In a contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made.**

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Passing of property in specific or ascertained goods

- Case law: passing of property of specific goods in a deliverable state
- S bought a carpet from P. When the carpet was delivered to the place where it was to be laid, it was sent back to P for stitching. P returned it the next day in heavy bales and it was stolen immediately after.
- Held : The carpet, being still in bales at the time. it was stolen, implies that the carpet was not in a deliverable state. Therefore the above rule does not apply and S is not liable to pay P.

Philip Head and Sons v Showfronts [1970] Lloyd's Rep.140

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Passing of property in specific or ascertained goods

- When the seller is bound to do something to put the goods into a deliverable state, the property passes to the buyer only after this act has been performed by the seller, and the buyer being notified.
- When the seller is bound to weigh, measure, test or do something in order to ascertain the price of goods which are already in a deliverable state, the property passes to the buyer only after such thing has been done and the buyer being notified.

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Passing of property in specific or ascertained goods

- When the goods are delivered to the buyer “on approval” or “on sale or return” or similar basis, the property passes to the buyer:
 - When he signifies his acceptance to the seller.
 - If he does not signify his acceptance but retains the goods without giving notice of rejection. Then at the expiry of the time fixed for the return of goods and if no time is fixed, at the expiry of reasonable time.

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Passing of property in specific or ascertained goods

- Case law: passing of property in goods on sale or return basis.
- K delivered jewellery to W on “sale or return” basis. Thereafter W mortgaged it to A.
- Held : The mortgage by W amounted to him adopting the transaction. Therefore the property in the jewellery passed to W. hence K could not recover the jewellery from A.
- **Kirham v Attenborough [1897] 1 Q.B. 201**

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Reservation of title

- In a contract for the sale of specific goods, or for goods which are subsequently appropriated to the contract; the seller can reserve the right of disposal of goods until certain conditions are fulfilled.
- In such a situation, the property in the goods does not pass to the buyer until the fulfilment of these conditions.
- Even if the goods have been delivered to the buyer, or to a carrier or bailee to be transmitted to the buyer, until these conditions have been met, the property in goods does not pass to the buyer.

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Transfer of title

- Sale by person who is not the owner.
- Sale by auction

33

Sale by person who is not the owner

- When a person who is not the owner of the goods, without the consent or authority of the owner, sells those goods to a buyer, the buyer gets the same title to those goods as the seller had. That means the buyer does not become the owner of such goods.
- However, if the owner of those goods, by his conduct, implies that the seller had his consent or authority to sell those goods, then the buyers gets the same title that the owner had on such goods.
- That means that the buyer now becomes the owner of these goods. In such a situation the owner is prevented or estopped from denying the third party's right to sell these goods, as this conduct of the owner is in with the doctrine of estopped.

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Sale by person who is not the owner

- Case law: sale by non - owner
- B, the owner of a Jaguar car, entrusted it to S to do some repairs to it. S, without doing the repairs, used it for his own purpose, and subsequently met with an accident. S thereafter sold it in its damaged state, to H, an innocent purchaser. H spent money and repaired the car, and in turn sold it to a finance company.
- Held : The owner, B was entitled to get possession of the car. Further B had to pay H the amount of money H spent to repair the car.
- **Greenwood b Bennett [1973] 1 Q.B. 195.**

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Sale by auction

- The Ordinance imposes the following rules on a sale by auction.
- When goods are put up for sale by auction in lots, each lot will be the subject of a separate contract of sale.
- A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner. Until such announcement is made, the bidder can retract his bid.

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Sale by auction

- Case law : sale by auction
- D sold a motor car by auction. It was knocked down to K was only allowed to take it after giving a cheque for the sales price and after signing an agreement that the ownership will not pass until the cheque is cleared. The cheque was not cleared.
- Held : the property passed to K on the fall of the hammer. Therefore the subsequent agreement did not have the effect of re-transferring it from K.
- **Dennat v Skinner [1948] 2 K.B. 164**

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Sale by auction

- Unless the seller has given prior notice that he also has a right to bid, he cannot bid for his own goods.
- The sale may be made subject to a reserve price, and a right to bid may also be reserved by the seller.

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Performance of a sale of goods contract

- In order to perform a sale of goods contract, it is important that both the seller and buyer comply with their core duty, which is stated as follows in Section 27 of the Ordinance.
- “It is the duty of the seller to deliver the goods, and the buyer to accept the goods and pay for them, as per the terms of the contract of sale.”
- Delivery of goods refers to the voluntary transfer of the possession of the goods from one person to another, Generally, delivery of the goods is not done on an instalment basis, unless so agreed between the parties. Therefore let us consider a special situation when delivery takes place on an instalment basis.

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Performance of a sale of goods contract

Instalment deliveries

- Unless the parties have agreed otherwise, the buyer is not bound to accept delivery of goods by instalments.
- However, these can be a contract of sale of goods where goods are to be delivered in instalments, and each instalment is to be paid separately.
- In such a contract where there are instalment deliveries, in the event of a breach of contract by either the buyer or the seller, the following question need be resolved. That is, whether this breach is a repudiation of the whole contract; or whether it is a severable breach which gives rise to compensation, but not to a right to treat the whole contract as repudiated.
- In determining the answer to this question, the following tests will be applied:
- What is the quantitative ratio that breach bears to the contract ?
- What is the degree of probability or improbability that the breach will not be repeated ?

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Performance of a sale of goods contract

- Case law: instalment deliveries
- AA sold 1,500 tons of meat and bone meal of a specified quantity, to BB. These goods were to be shipped at the rate of 125 tons per month.
- After about half of the goods were shipped and paid for, BB discovered that they were not of the specified quality, and hence could have been rejected. Therefore BB refused to take any further deliveries.
- Held : BB was entitled to reject the future deliveries; as he was not bound to take the risk of having put upon him further deliveries of goods which did not conform to the contract.
- **Robert A. Munro and Co. v Meyer [1930] 2 K.B. 312**

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Actions/ remedies for breach of a sale of goods contract



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Remedies available to the seller

- To maintain an action for the recovery of the price of the goods, in the event that the property in the goods have passed on to the buyer.
- To maintain an action for damages for non-acceptance of delivery, when the buyer has refused to accept the goods.

(In addition to the remedies of a “Rights of an unpaid seller”)

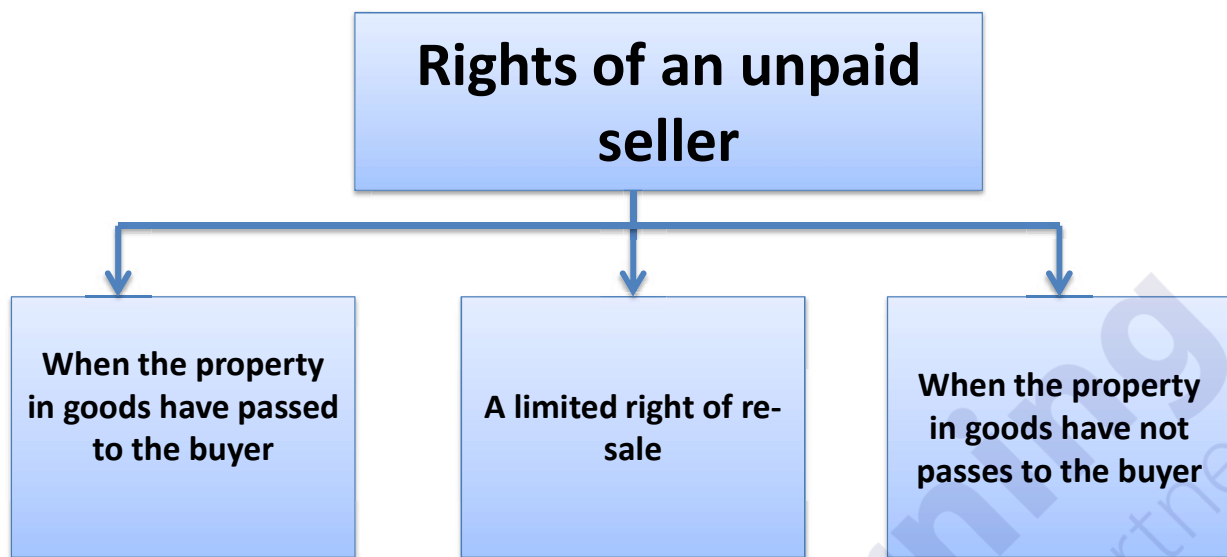
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Remedies available to the buyer

- To maintain an action for damages for non-delivery of goods, when the seller has failed to deliver the goods.
- To initiate action in courts, for the specific performance of the contract of sale of goods.
- To maintain an action for the recovery of the price of the goods he has already paid the seller, in the event the seller has not delivered the goods to him.
- To maintain an action against the seller, for damages for the breach of a warranty in the contract of sale.
- To maintain an action against the seller, for damages for the breach of a condition in the contract of sale.

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Remedies available to the buyer



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When the property in goods have passed to the buyer

- If the unpaid seller is still in possession of the goods, he has a lien on the goods or right to retain them for the price.
- This right is applicable in the following instances:
 - When the goods have been sold, without any stipulation as to credit.
 - When the goods have been sold on credit, but the term of credit has expired.
 - When the buyer has become insolvent.

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When the property in goods have passed to the buyer

This right of lien is lost to the unpaid seller, in the following situations:

- When he has delivered the goods to a carrier or bailee, in order to be transmitted to the buyer, without reserving the right of disposal of goods.
- When the buyer or his agent, lawfully obtains possession of the goods.
- By a waiver of this right.

If the unpaid seller has parted with the possession of the goods, he has a right of stopping the goods intensity (stoppage in transitu).

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When the property in goods have passed to the buyer

This right is available in the following situations:

- When the buyer become insolvent.
- The goods are in transit.

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When the property in goods have passed to the buyer

This right is affected in the following manner:

- By taking actual possession of the goods; or
- By giving notice of his claim, to the carrier or bailee in whose possession the goods are in.

A limited right of re-sale

This right is available in the following situations:

- When the goods are of a perishable nature.
- When the buyer, after being given notice of re-sale, does not pay the price within a reasonable time.
- When the seller has expressly reserved a right of re-sale.

When the property in goods have not passes to the buyer

- To withhold delivery. [This is similar to the right of stoppage in transitu, described in above.]
- Right of lien over the goods [as described above].

