

• Termination of Transit



Termination Scenario **Anticipation by buyer**

Buyer/agent obtains delivery before arrival at appointed destination.



Termination Scenario **Attornment of carrier**

After arrival, carrier/bailee acknowledges to buyer they hold goods on their behalf. Transit ends even if further destination indicated.



Termination Scenario **Wrongful refusal**

Carrier or bailee wrongfully refuses to deliver goods to buyer/agent.



Termination Scenario **Part delivery**

Transit ends for remainder unless circumstances show agreement to give up possession of the whole.



Termination Scenario **Rejection by buyer**

Goods rejected and carrier continues in possession. Transit is NOT deemed at an end (even if seller refuses to receive them back).



Termination Scenario **Delivery on ship**

If delivered to ship chartered by buyer, it is a question of circumstances if master is acting as carrier or agent of buyer.

• How Stoppage in Transit is Effected

The unpaid seller may exercise his right either—



(a) by taking actual possession of the goods; or



(b) by giving notice of his claim to the carrier or other bailee in whose possession the goods are.

Notice may be given to the person in actual possession or to their principal. If to the principal, it must be given in time to prevent delivery to the buyer.



Effect:

Carrier/bailee shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

• Lien and Stoppage in Transit Distinguished

Both come into existence only when property has passed to buyer. In both, seller is unpaid.

Aspect	Lien  	Stoppage in transit  
Essences	To retain possession.	To regain possession.
Insolvency	Exercised irrespective of whether buyer is insolvent.	Exercised only when buyer is insolvent.
When lost	Lost when possession is lost.	Lost when buyer acquires possession.
Possession	Subsists so long as seller holds possession.	Commences when seller loses possession; continues as long as middleman holds it.
Begins & Ends	When this right ends, the right of stoppage begins.	This right begins when the right of lien ends.

• Right of Re-sale

Section 54 deals with re-sale by an unpaid seller who has exercised right of lien or stoppage in transit. They can re-sell under these circumstances:



- ◆ Where the goods are of a perishable nature.



- ◆ Where unpaid seller gives notice to the buyer of his intention to re-sell.

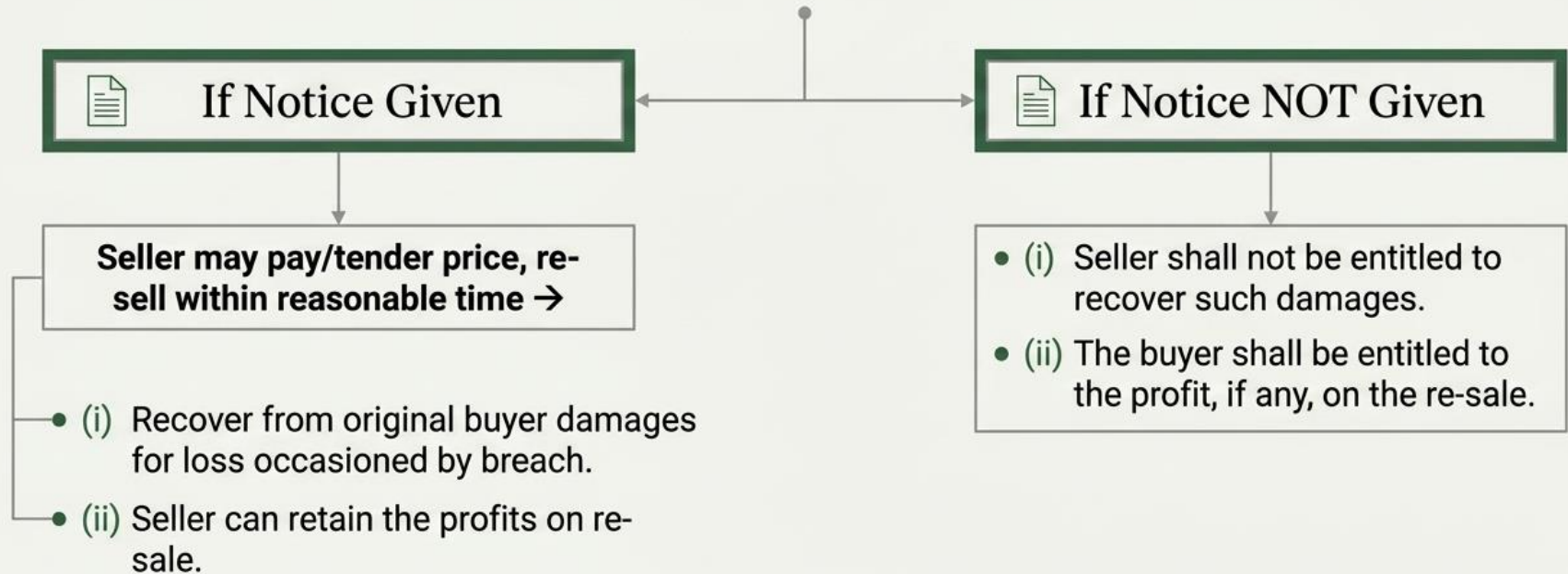


- ◆ Where the seller expressly reserves a right of re-sale in case the buyer should make default.



If the buyer defaults and the seller re-sells under express reservation, the original contract of sale is rescinded, but without prejudice to any claim which the seller may have for damages.

• Right of Re-sale: Notice Implications



(Note: For perishable goods, no notice is necessary).

Good Title Rule: When an unpaid seller re-sells the goods, the new buyer acquires a good title thereto against the original buyer, even if no notice of the re-sale has been given to the original buyer.

• Sub-sale or Pledge by Buyer

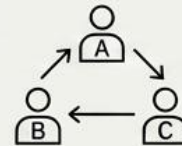
General Rule

The unpaid seller's right of lien 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 thereto.

The Document of Title Exception

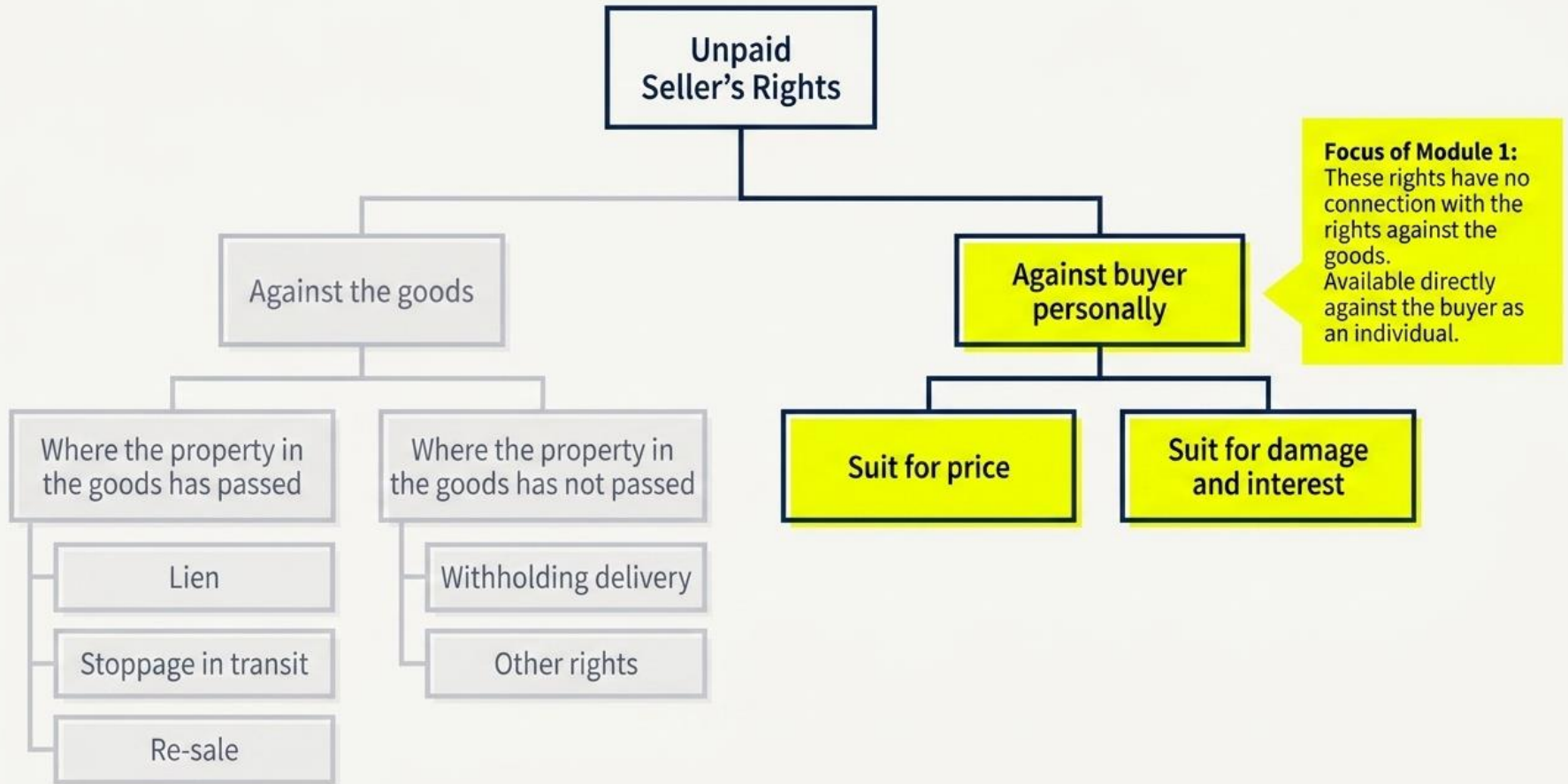
If a document of title is lawfully transferred to a person as buyer/owner, and that person transfers it in good faith and for consideration:

- If transfer was by way of sale: Unpaid seller's right is defeated.
- If transfer was by way of pledge: Unpaid seller's right can only be exercised subject to the right of the transferee.



A sells and consigns goods to B. B becomes insolvent. While goods are in transit, B assigns the bill of lading for cash to C, who is not aware of B's insolvency.

Result: A cannot stop the goods in transit.



❖ Rights of Unpaid Seller Against the Buyer Personally ❖

Remedies open to the seller when the buyer fails to carry out his part of the contract.



Suit for Price (Section 55)

Where property has passed, seller can sue for price. Where property has not passed, if price is payable on a certain day, seller can sue for price, even though goods not appropriated.



Suit for Damages for Non-acceptance (Section 56)

Where buyer wrongfully neglects or refuses to accept and pay for goods, seller can sue for damages.



Repudiation of Contract before due date (Section 60)

Where buyer repudiates contract before date of delivery, seller may treat contract as subsisting and wait for delivery date, or treat contract as rescinded and sue for damages.



Suit for Interest (Section 61)

Seller can recover interest on price from date on which price was payable, or if no such date, from date of notice of intention to claim interest. Rate of interest may be agreed, or if not, reasonable.

❖ Suit for Price (Section 55) ❖

(a) Where property has passed :
(Section 55(1))



**Seller may sue him for the price
of goods.**

(b) Where property has not passed :
(Section 55(2))



certain day



goods not
appropriated

If price is payable on a certain day irrespective of delivery, and buyer wrongfully neglects or refuses to pay, seller may sue for the price, although the property in the goods has not passed.

❖ Suit for Damages for Non-acceptance (Section 56) ❖



Buyer



(wrongfully neglects or refuses to accept and pay)



Seller

Seller may sue him for damages for non-acceptance.

❖ Repudiation of Contract before due date (Section 60) ❖

Where the **buyer repudiates** the contract **before** the date of delivery...



Choice 1

Treat the contract as **subsisting** and ⌚ wait till the date of delivery.



Choice 2



Treat the contract as **rescinded** and sue for damages for the breach.

❖ Suit for Interest (Section 61) ❖

The seller may recover interest or special damages.



Date of the tender of
the goods
OR
Date on which the price
was payable

Court may award interest
at such rate as it thinks
fit from the start date.

Note: Money paid where the consideration for the payment of it has failed can also be recovered.

❖ Auction Sales ❖

Meaning: An auction sale is a sale at which the auctioneer, as **agent** for the seller, invites persons present to bid for goods sold.

Agent of the seller

Till the article is
'knocked down'.

Lien: Auctioneer has a lien on the goods to the extent of his charges while they are in his possession.



Auctioneer

Agent of the buyer

After the knock-down.

❖ Rules regarding Auction Sales (Section 64) ❖

Lots



Where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale.

Completion



The sale is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner.

Retraction (The Offer)



A bid is construed as an offer. It can be withdrawn any time before acceptance (fall of the hammer). Auctioneer can also refuse to accept the final bid.

❖ Rules regarding Auction Sales (Reserve Price) ❖



Reserve Price

Sale may be notified to be subject to a reserved or upset price. Every bid is a conditional proposal until this price is reached.



Without Reserve

Goods will be sold to the highest bidder whether the sum bid may be equal to the real value or expected value or not.

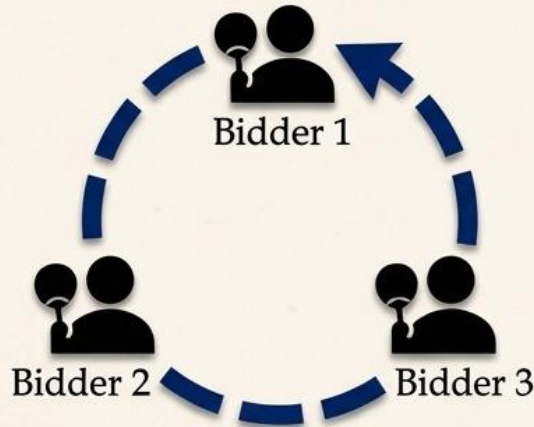


Pretended Bidding

If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

❖ Knock-out or Agreement not to bid against each other ❖

It is an agreement between intending persons or group of persons not to bid against each other.



Only **ONE** shall bid at an auction. They then share the profits obtained by such a bidding.

LEGAL STATUS: It is NOT illegal.

Only if the intention of such an agreement is to defraud a third party the 'knock-out' will be illegal.

❖ Damping ❖



Intention to dissuade would-be intenders from bidding by an overt act. It is illegal. It entitles the auctioneer to withdraw the property from the auction.



(a) Pointing out defects in the goods.



(b) Doing acts so the intending purchaser is not in a position to have a proper estimate of the price.



(c) Scaring away the intending purchasers by some such device.

❖ Knock-out vs. Damping ❖

	Knock-out	Damping
The Action	Agreement between bidders NOT to compete.	Overt act to dissuade or scare away other bidders.
Legality	Legal (unless intention is to defraud a 3 rd party).	Always illegal.
The Result	One person bids, profits are shared.	Auctioneer is entitled to withdraw the property.

❖ Implied warranties in auction sale ❖

In an auction sale, the auctioneer warrants the following:



- ☒ (a) that he has an authority to sell;
- ☒ (b) that he is not aware of any defect in the title of the principal;
- ☒ (c) that he undertakes to hand over the possession of the goods as soon as the price is paid to him;
- ☒ (d) that he undertakes to give a quiet possession of the goods.