

Unit - 3 : Transfer of Ownership & Delivery of Goods

1. Importance of time of transfer of PROPERTY

(a) Risk *Parma facie* passes with property

(b) If goods are lost or damaged, loss will be absorbed by owner at the time of such damage.

(c) If goods are damaged by act of third party, owner can take action.

(d) Seller can only sue for price after passing of ownership to buyer.

2. Passing of PROPERTY:

Primarily, passing of property from seller to buyer depends upon type of goods based on that it is determined as follows.

Passing of Property

Specific /
Ascertained
Goods

Unascertained
Goods

Goods are
sent on
return or
approval.

Right
of
Disposal

1 Intend. of
buyer & seller

(i) Ascertain

2 Term &
condition of
contract

(a) are goods
by description
(assent)

(i) Buyer accept
ed goods

If seller
kept rights
on goods

(i) Specific goods
in deliverable
state

(b) Delivery to
carrier

(ii) Not returned
in reasonable
time.

Ownership
cannot
be transferred
to buyer.

(ii) Put to Delive-
rable state.

(iii) Pledge gift
goods sold
for cash
or return

Buyer has
right to
check goods
before
acceptance

(iii) Specific goods
in Deliverable
State. However

seller has to
do something
to ascertain
price

* Risk in Passing - Facie Passes with property:
Section 26:

Explain, goods shall remain seller's property unless ownership passes to buyer. However when property transferred to buyer, goods are now at buyer's risk. However if delivery of goods is delayed by buyer or seller's fault, loss will be borne by party at fault.

* Sale by person not the owner:

"Nemo Dat Quod Non habet" means no one can give what he has not got. This rule says only owner can sale or transfer property (ownership) of goods. However in certain cases a non owner can also pass valid title of goods.

* Sale by merchantile Agent:

A merchantile agent shall pass valid title of goods in following circumstances:

- If he is in possession of goods or Documents

Sale is made in ordinary course of business

Buyer had acted in good faith

Sale by joint owners:

If one of the joint owners of goods has sale possession with permission of co-owners he can pass valid title to a bona fide buyer

Sale by person in possession under voidable contract :

Buyer shall get valid title of goods from seller who have obtained goods by coercion, undue influence, fraud or misrepresentation provided that such contract not rescinded. Until this sale

Sale by a person who have sold goods but continuous in possession

If a person sold goods & continuous in possession of goods, sold them to another person, who obtains goods in good faith then subsequent sale is valid

Sale by buyer obtaining possession before property in goods wasted in him

Where buyer with consent of seller sells goods to third party without getting

property in goods shall pass valid title to third party

Effect of Estoppel:

where seller sells goods to buyer in front of owner representing himself as owner & the owner did not deny, & buyer buys goods in good faith,

Sale by unpaid seller:

where unpaid seller exercised right of lien or resales goods, they pass valid title to buyer

Sale under provision of other acts

- Sale by official receiver / liquidator
- Finder of goods
- Sale by pawnee

* Delivery:

- **Defination:** Voluntary transfer from one person to another
- **Duties of seller and buyer.**

Seller: Deliver goods
Buyer: Accept goods and make payment.

* Rules Regarding Delivery of GOODS:

1. **Delivery**: which party agrees as Delivery

2. **Part Delivery**:

If goods are delivered in parts it is assumed delivery as whole, however it may vary with intention.

3.

3. **Buyer to apply for Delivery**

4. **Place of Delivery**:

As decided by contract between buyer and seller else place of agreement.

5.

5. **Time of Delivery**:

As per contract else reasonable time.

6. **Goods in possession of third party**:

No delivery unless such person acknowledge to buyer.

7.

7. **Time for tender**

Demand of delivery is important. Ineffective unless made in reasonable hour.

8. Expenses of Delivery :

In general borne by seller or as per contract.

9. Delivery of wrong Quantity :

Less : Buyer may reject goods or accept and pay.

More : Reject all goods
Reject extra goods
Accept all goods

10. Installment Delivery :

Buyer is not bound to accept goods in installment.

11. Delivery to carrier :

Delivery to carrier is assumed to be deliver to buyer.

12. Determination During transit :

This loss is borne by buyer generally.

13. Buyer's

13. Buyer's Right to examine goods :
Buyer must yet reasonable opportunity of examining goods

uls 42 Rules Related to acceptance of Delivery

- (i) Intimates seller that he accepts goods.
- (ii) Does any act to goods, which only owner can do. (sale / pledge)
- (iii) Retain goods after lapse of reasonable time.

uls 43 Buyer not bound to return rejected goods

→ Buyer is expected only to intimate seller about rejection of goods & not returned.

uls 44 Liability of buyer for neglecting or Refusing delivery of goods

Buyer shall be liable to pay to seller loss caused by his action.

4. Unpaid Seller

According to section 45 (1) an unpaid seller is

- (i) Seller who has immediate right to take action for price of goods, However haven't received whole price.
- (ii) When he received bills of exchange or promissory note or any negotiable instrument However when presented, got dishonoured.

* Unpaid seller's right:

Right against goods



When property in goods has passed to buyer

(i) Seller's lien:

Also known as possessionary lien, that can be exercised by seller.

1. Where goods are sold without credit (Cash Sale).
2. Goods are sold for credit but term expired.
3. Buyer is insolvent.

* Lien can be Terminated:

- (i) Where goods are delivered to carrier without reserving right.
- (ii) When buyer / agent obtains possessions
- (iii) By waiver
- (iv) By estoppel

* Right of stoppage in transit:

→ This right is exercised only when following conditions are satisfied:

- (i) Seller must be unpaid.
- (ii) He must have transferred goods to carrier.
- (iii) Goods in transit buyer becomes insolvent.
- (iv) Right are as per act.

* When transit comes to an end:

- (i) When buyer or his agent obtains delivery
- (ii) Buyer obtains delivery before arrival of goods
- (iii) Carrier acknowledges buyer about holding goods.
- (iv) If carrier wrongfully refuses to deliver goods.
- (v) Goods are delivered to carrier hired by buyer.

(vi) Goods delivered to ship chartered by buyer.

Sec 55: Effect of sub-sale or pledge by buyer

Right of lien, stoppage in transit shall not get affected by buyer selling or pledging unless assented to it.

→ However, Rights get defected once document of title transferred.

* Right of Resale section 54.

(i) If goods are perishable:

seller need not inform buyer about seller resale

(ii) If goods are non-perishable:

Seller shall give notice to buyer about intension of resale. If seller fails to give notice then:

Loss of resale shall be borne by seller & profit needs to be transferred to buyer. However if notice is given, loss will be borne by buyer & profit will be taken by seller.

(iii) If property in goods are not passed to buyer

all other rights remain same except one additional right i.e.

• Right of withholding:

This is similar to lien & known as **Quasi Lien**.

* Right of unpaid seller Against buyer:

1. Suit for price [section 55]:

unpaid seller can sue buyer for not paying price of goods sold

2. Suit for damages for non acceptance [sec 56]

where buyer wrongfully denies to accept goods, seller may sue him for damages.

3. Repudiation of contract before due date [sec 60]

Seller may sue buyer for damages of anticipatory breach.

4. Suit for interest:

Seller may sue buyer for interest due from goods price that are yet to be delivered

* Right of buyer: $\text{good mode} \rightarrow \text{reput}$

1. Damages for non Delivery
Suit for specific performance
Suit for breach of warranty
Suit for anticipatory breach.
Suit for interest

* Auction Sale

→ mode of selling property by inviting bides publically.

1 * Where goods are sold in lots:
→ separate contracts are created.

2 Completion of the contract of sale
→ Sale is complete when announces its completion by fall of hammer

3. Right to bid may be reserved:

4. where sale is not notified by seller:
→ It is unlawful for seller to bid himself or to employee any person

5. Reserved Price :

6. Pretended bidding
→ Sale is voidable at option of buyer

7. Change in tax rates:
If increases = before sale but after agreement to sale

→ buyers shall pay higher tax

• If Decreases : Buyers shall pay lower tax

" here tax means : GST "