



CHAPTER - 3

THE SALE OF GOODS ACT, 1930

UNIT - 3

TRANSFER OF OWNERSHIP AND
DELIVERY OF GOODS

General Introduction

- Sale of Goods involves transfer of ownership of property from seller to buyer.
- It is essential to determine the time at which the ownership passes from seller to buyer.

Time of Transfer

General rule is that
Risk prima facie
passes with property

When Goods are Lost or Damaged

- In case where goods are lost or damaged
- Burden of loss will be borne by person who is owner at the time when goods are lost/damaged.

Goods damaged by Act of Third Party

- When Goods are damaged by act of third party, it is the owner who can take action.
- Suit for price by seller can only be filed when property is passed to buyer

Passing of Property [Section - 18 to 26]

👉 The Rules Regarding transfer of Property in Goods from the Seller to the buyer depend on two basic factors :-

Identification of Goods [Section 18]

👉 Section 18 provides that where there is a Contract of Sale for Unascertained Goods, the Property in Goods Cannot pass to the buyer Unless and Until Goods are ascertained.

Intention of Parties [Section 19(C)]

👉 The Property in Goods is transferred to the buyer at such time as the parties to the Contract, intend it to be transferred.

• The buyer Can get the Ownership right on the Goods

↳ only when the Goods are

Specific
+
Ascertained

Ascertaining Intention of the Parties [Section 19C2]

☞ For the purpose of Ascertaining the Intention of parties regard shall be :-

To the terms of the Contract

+

To the Conduct of the parties

+

To the Circumstances of the Case.

Rules for Passing of Property

☞ Primary Rules determining the passing of property from Sellers to Buyers are as follows :-

Property [Specific (or) Ascertained Goods] passes when Intended to Pass [I] [Section 19 to 22]	Goods Must be Ascertained [II] [Section 23]	Goods sent on Approval (or) on Sale/ Return [III] [Section 24]	Transfer in case of Reservation of Right to Disposal [IV] [Section -25]
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I Property [Specific (or) Ascertained Goods] Passes when Intended to Pass [Section - 19]

Section 19(1) → Where there is a Contract for Sale of Specific (or) Ascertained Goods, the property in them is transferred to buyer at such time

↳ as the parties to the Contract intended it to be transferred.

Section 19(2) → For the purpose of Ascertaining the Intention of the parties regard shall be had to

- the terms of the Contract
- the Conduct of the parties and
- the Circumstances of the Case.

Section 19(3) → Unless a different intention appears
 ↳ the Rules Contained in sections 20 to 24 are rules for Ascertaining the Intention of the parties as to the time at which the property in Goods is to pass to the buyer.

Stages of Goods while passing of Property. [Section 20, 21, 22]

Specific Goods in Deliverable state [Section-20]

Specific Goods to be Put in Deliverable state [Section-21]

Specific Goods in deliverable state when seller has to ascertain Price [Section-22]

Specific Goods in a deliverable state [Section 20]

☞ Where there is an Unconditional Contract for the sale of specific Goods in deliverable state
 ↳ the property in Goods passes to the buyer when the Contract is Made.

 It is immaterial whether

{	the time of Payment of price (or)	}	is postponed
	time of delivery of Goods (or)		
	both		

Example → Arjun goes to a electronic store to buy Television. and asks for home delivery. Shopkeeper Agrees to do it. Television Immediately becomes the property of Arjun.

Specific Goods to be put into deliverable state [Section 21]

 When there is a Contract for the sale of Specific Goods and

the seller is bound to do something to the Goods for the purpose of putting them into deliverable state

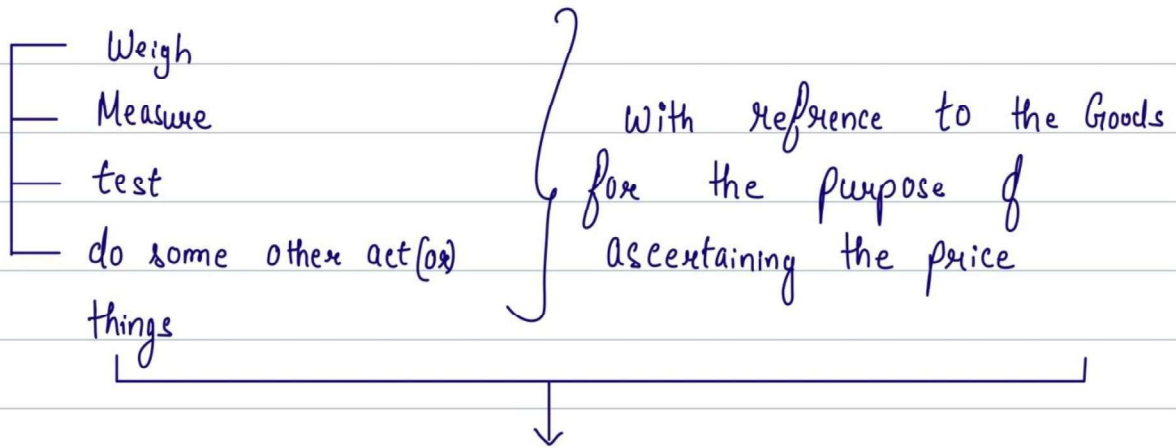
↓

the property does not pass until such thing is done and the buyer has notice thereof

Example → Peter buys a Laptop and asks for Home delivery. Peter wanted Windows 10 to be Installed, shopkeeper promises for the same. In this case property is transferred to Peter only after shopkeeper has Installed windows 10, Making the Laptop ready for delivery and Intimated about it.

Specific Goods in deliverable state, when the seller has to do anything thereto to Ascertain Price [Section 22]

👉 When there is a Contract for the sale of Specific Goods in a deliverable state, but the seller is bound to



Example → A sold Carpets to the Company which were required to be laid and price will be calculated on the basis of Number of Metres of Carpet laid. Carpets were stolen before it was laid. It was held that the Carpet was not in deliverable state, hence the property had not passed to the buyer.

II Unascertained Goods

What about sale of Unascertained Goods

When there is contract of sale of unascertained goods,



no property in goods is transferred to buyer



Unless and Until the Goods are ascertained.

Rules in respect of passing of property of Unascertained Goods

Sale of Unascertained Goods by description and Appropriation [Section 25(a)]

Appropriation of Goods involves selection of Goods with the intention of using them in performance of the contract with Mutual Consent of

[Buyers and Sellers.

 The Essentials are :

1. There is a Contract for the sale of Unascertained (or) future Goods

2. The Goods should Conform to description and Quality stated in the Contract.

3. The Goods Must be in a deliverable state.

4. The Goods Must be Unconditionally appropriated to the Contract either

- by delivery to the buyer (or)
- his Agent (or)
- the Carrier

5. The Appropriation Must be Made by

the Seller with the Assent of the buyer OR the buyer with the Assent of the Seller.

6. The Assent may be

- Express (or)
- Implied

7. The Assent May be given either

- Before (or)
- After

} Appropriation_n

Delivery to the Carrier [Section 23(2)]

When in pursuance of the Contract, the Seller delivers the Goods to

the buyer (or)

a Carrier (or)

other bailee

(whether named by

buyer or not)

for the purpose of transmission

to the buyer and does

not reserve the right

of disposal

he is deemed to have Unconditionally appropriated the Goods to the Contract.

In Depth analysis of Section - 23

Appropriation of Goods

Appropriation of Goods involves selection of Goods, with the Intention of Using them in performance of Contract

and

with the Mutual Consent of the Seller and Buyer.



III Goods Sent on Approval (or) "on Sale or Return" [Section 24]

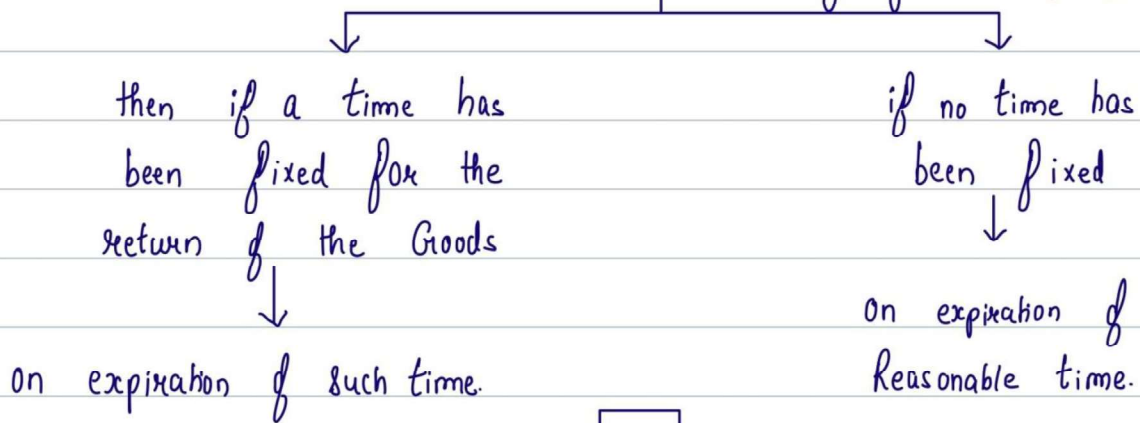


When Goods are delivered to the buyer on Approval (or) "on Sale or Return" (or) other similar terms, the property therein passes to the buyer :-

- When he signifies his Approval (or) Acceptance to Seller (or) does any other act adopting the transaction.

OR

- If he does not signify his Approval (or) Acceptance to the Seller, but retains the Goods without giving notice of rejection



OR

- he does something to the Good, which is equivalent to accepting the Goods [Example → He pledges (or) Sale the Goods].

Example → "A" Sends "B" Water Motor on approval (or) Return in March 2020. "B" to return it after trial in August 2020. Water Motor was not returned within reasonable time and therefore A was not bound to Accept it, B should pay the price.

Example → Stephanie delivered some Jewellery to Nancy on sale or Return basis. Nancy pledged the Jewellery with Arvind. It was held that ownership of Jewellery was transferred to Nancy.

Sale for Cash (or) Return.

Where Goods have been delivered by a person on "Sale or Return" on the terms that the Goods were to remain the property of the Seller till they are paid for
→ the property therein does not pass to the buyer until the terms are complied for i.e. Cash is paid for

Example → A delivered his Jewellery to B on sale for Cash (or) Return basis. B pledged the Jewellery with C, before paying Cash to A. It was held that ownership was not transferred to B. Hence the pledged was not Valid and hence A Can Recover the Jewellery.

IV Reservation of Right of Disposal [Section 25]



This section preserves the Right of Disposal of Goods to secure that the price is paid
 ↳ before the property in Goods passes to the buyer

- When there is Contract of Sale of Specific Goods (OR) Where the Goods have been subsequently appropriated to the Contract as the Case May be } Reserve the right to dispose of the Goods until certain conditions have been fulfilled.

- In such a case inspite of the fact that the Goods have been delivered { to buyer } for the purpose of transmitting the same to the buyer { to carrier } { to bailee }

the property therein will not pass to the buyer till the condition imposed by the seller have been fulfilled.

Example → X sends furniture to Company by a truck and instructs the driver not to deliver the furniture to Company until the payment is made to him. The property passes only when payment is made.

Circumstances Under
which Right of Disposal
May be Reserved.

If the Goods are
shipped [bill of lading],
delivered to Railway
[Railway Receipt] for Carriage

↓
the Goods are deliverable
to the order of the Seller

↓
then the Seller will be
prima facie deemed to
have reserved to the
Right of Disposal.

When the Seller draws
a bill on buyer for
price and sends to him
Bill of Exchange along with
[Bill of Lading] as the
[Railway Receipt] Case May be

↓
to secure payment thereof

↓
the buyer Must Return
the bill of lading, if
he does not Accept (or)
pay the bill.

**DON'T
FORGET**

If Buyer wrongfully Retains
Bill of Lading / Railway Receipt,
the property in Goods does not
pass to him.

Risk Prima Facie Passes with Property [Section 26]

 According to Section 26,

Unless otherwise Agreed, the Goods Remain at Seller's risk
→ Until the property therein is transferred to buyer, but when the property therein is transferred to buyer
↓

the Goods are at buyer's risk, whether delivery has been made or not.

Exceptions of Risk follows ownership

It provides that where delivery of Goods has been delayed through the fault of Either buyer (or) Seller.
↓

the Goods are at risk of party in fault [as regards any loss which might not have occurred, but for such fault.

Ordinary Circumstances.

Risk is borne by buyer only when, the property in Goods passes over to him.

Special Circumstances.

Parties May by Special Agreement stipulate that risk will pass sometime after/ Before "Property" has passed

Owner of the Goods,
Must bear the loss
(or) Damage of Goods
↓
Unless otherwise Agreed
to

According to Section
26, unless otherwise Agreed
↓

the Goods Remain at the Sellers risk
until property therein has passed to
the buyer.


After that event they are at
Buyers Risk, whether delivery has been
Made or not.

Qualification to Above
Rule.

- If Delivery has been delayed by fault of Seller or Buyer, Goods shall be at Risk of party in default.
- Duties and Liabilities of Seller (or) Buyer as Bailee of Goods for other party Remain Unaffected.
→ even when the Risk has passed Generally.

Example → A Contracted to sell 100 bales of Cotton to B, to be delivered in February. B took delivery of part Cotton but Made a default in Accepting the balance. Consequently Cotton become Unfit for use. The loss will have to be borne by buyer.

Transfer of title by Non Owners [Section 27 to 30]

 Subject to Provision of the Act and Any other law for time being in force

↳ Where Goods are sold by person who is not the owner thereof

and

who does not sell them under authority (or) with Consent of owner ↳

the buyer acquires no better title to the Goods than the Seller had, unless the owner of the Goods is by his conduct precluded from denying the Seller's authority to sell.

Analysis

• The General Rule Regarding the transfer of title is seller cannot transfer to buyer of Goods a better title than he himself has.

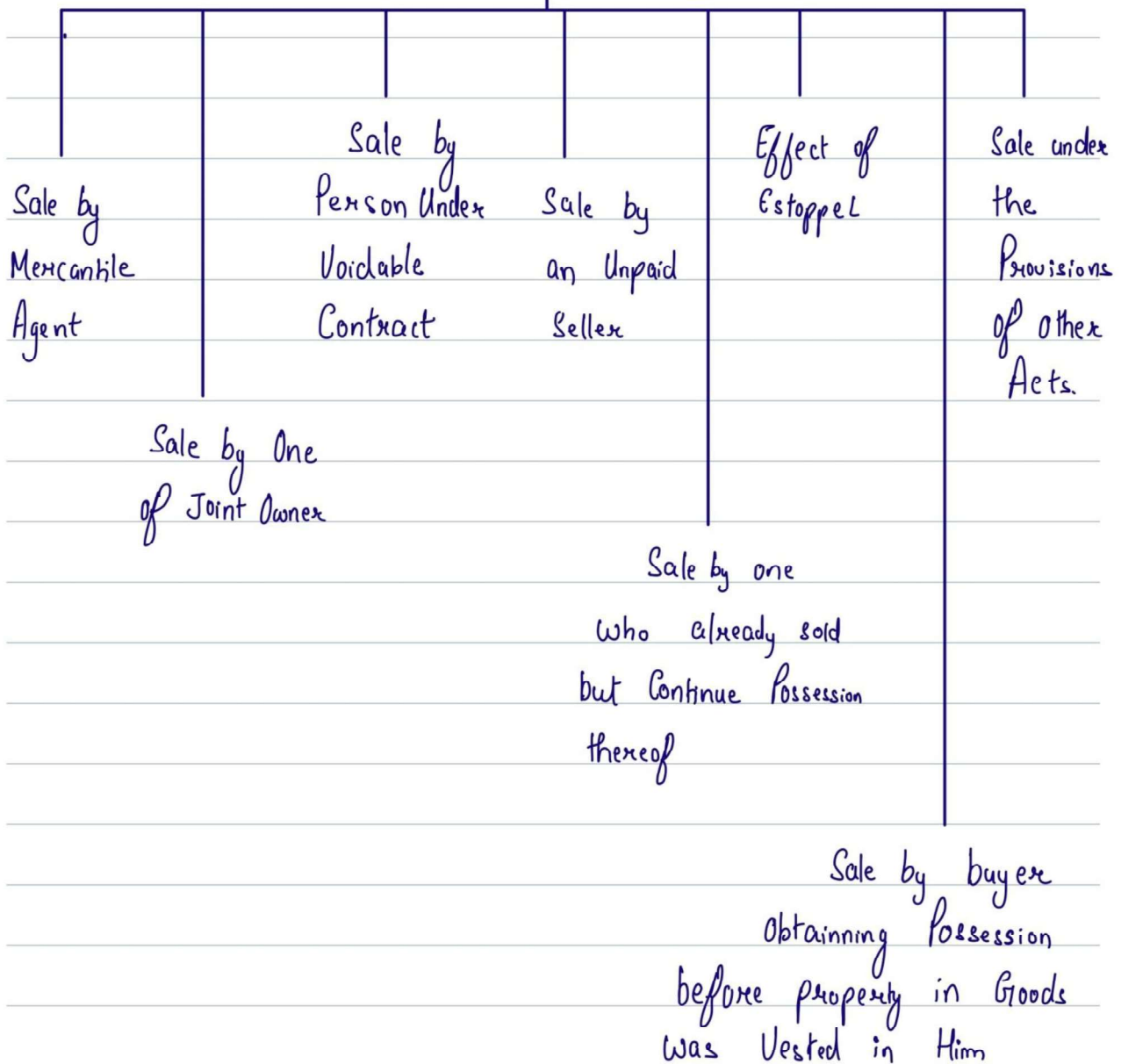
• If Seller is not owner of Goods then buyer will not become the owner

↳ this rule is expressed in Latin Maxim


"Nemo dat quod non habet", which means that No one can give what he has not got.


Example → If "A" sells some stolen Goods to "B", who buys them in Good faith. "B" will get no title to that and the true owner has a right to get back his goods from "B."

Exceptions



In the following cases, a Non-Owner can convey better title to bonafide purchase of Goods for Value.

1. Sale by Mercantile Agent  Exception - 1

 A Sale made by a Mercantile Agent of Goods for document of title to Goods, would pass a good title to buyer in the following circumstances

- If he was in possession of Goods/document with the Consent of the buyer.
- If the sale was Made by him when acting in ordinary Course of business as a Mercantile Agent.
- If the buyer had Acted in Good faith and has at the time of the Contract of sale
 ↳ No Notice of the fact that the seller had no authority to Sell.


Meaning of Mercantile Agent:

Means an Agent having in the Customary Course of business as such Agent Authority

- To Sell Goods
- To Consign Goods for sale
- To buy Goods
- To Raise Money on Security of Goods

2. Sale by one of the Joint Owners [Section 28]

Exception - 2

 If one of several joint owners of Goods has sole possession of them by permission of the Co-owners
 ↳ the property in Goods is transferred to any person who buys them from such joint owner in Good faith

and has not at the time of Contract of sale
 ↳ Notice that the Seller has no authority to sell.

Example → A, B, C are three brothers and joint owners of T.V. With Consent of B and C, T.V. was kept in possession of A. A sells T.V. to P. P will get Good title.

3. Sale by Person in Possession under Voidable Contract [Section 29]

Exception - 3



A Buyer would acquire a Good title to the Goods sold to him by a Seller

who obtained possession of Goods under a Contract Voidable on the Ground of

Coercion	}	provided that the Contract had not been rescinded until the time of the Sale.
fraud		
Misrepresentation		
Undue Influence		

Example → Shyam fraudulently obtains Diamond Ring from Stephanie. This Contract is voidable at the option of Stephanie, but before the Contract could be terminated, Shyam sells Ring to Nancy [an innocent purchaser]. Nancy gets a Good title and Stephanie cannot recover Ring from Nancy.

4. Sale by an Unpaid Seller [Section 54 (3)]

Exception - 4




Where an Unpaid Seller who had exercised his Right of lien (or) Stoppage in transit

resell the Goods, the buyer acquires a Good title to the Goods as Against Original Buyer.

5. Sale by one who has Already Sold the Goods but Continues in Possession thereof [Section 30(i)]

Exception - 5


 If a person has sold Goods, but Continues in possession of Goods (or) of document of title to Goods
 ↳ he may sell them to a third person
 and if such person obtains delivery in Good faith
 and without notice of previous sale

↓
 he would have Good title to them [although the property in Goods has passed to first buyer Earlier]

- A pledge (or) other disposition of the Goods/ Documents of title by seller in possession are equally Valid.

6. Effect of Estoppel

Exception - 6

 Where the owner is estopped by conduct from denying the seller's authority to sell
 ↳ the transferee will get a Good title as against true owner.

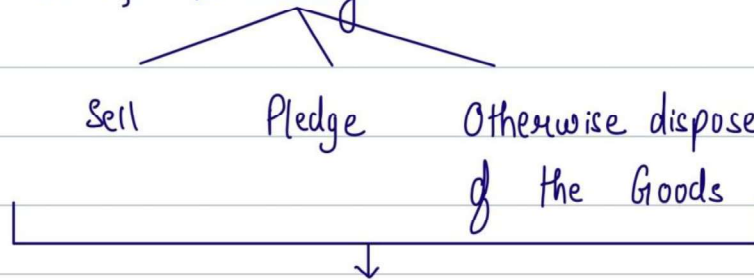


👉 But before a Good title by Estoppel Can be Made it Must be shown that true owner had actively suffered (or) held out the other person in question
 ↳ as the true owner (or) as person authorized to sell the Goods.

7. Sale by buyer obtaining possession before the property in the Goods was Vested in him [Section 30C2]

Exception - 7

👉 Where a buyer with the Consent of Seller obtains possession of Goods before the property in them has passed to him, he may




to third person and if such person obtains delivery of the Goods in good faith and without notice of lien (or) other right of Original Seller in respect of Goods
 ↳ he would get a Good title to them.

A Person in Possession of Goods under "Hire purchase Agreement which gives him only an option to buy is not Covered above, Unless it amounts to sale




8. Sale under the Provisions of Other Acts


Exception - 8

 Sale by an

Official Receiver
Liquidator

 } of the Company will give the purchaser a valid title.

 Purchase of Goods from a finder of Goods will get valid title under circumstances [Section 169 of Indian Contract Act 1872]

 A Sale by Pawnee can convey a good title to the buyer [Section 176 of Indian Contract Act 1872]

Performance of the Contract of Sale [Section 31 & 32]

Performance of Contract:

Performance of Contract of Sale

Implies

delivery of Goods by seller
and
Acceptance of Delivery
and
Payment of price

by buyer
in
accordance
of the
terms of
the Contract.

Meaning of Delivery

Delivery Means voluntary transfer of possession from one person to another

Points to Remember

- For Delivery, physical possession is not Important
- The buyer should be placed in a position so that he can exercise his right over the Goods.

Delivery through Unfair Means

If possession taken through Unfair Means
→ then there is no delivery of Goods


How to Make Delivery

Delivery of Goods sold
May be made by doing anything
which the parties Agree
↳ shall be treated as delivery
or putting the Goods in the
possession of buyer (or) any person
authorised on buyers behalf.

Types of Delivery.


- (a) Actual Delivery
- (b) Symbolic Delivery
- (c) Constructive Delivery.

Duties of Seller and Buyer [Section 31]

 It is the duty of the Seller to deliver the Goods and it is duty of Buyer to Accept and pay for them, in accordance with the terms of Contract of Sale.

Payment and Delivery are Concurrent Conditions [Section 32]

 Unless otherwise Agreed, Delivery of Goods and Payment of Price are Concurrent Conditions.


 The Seller shall be Ready and Willing to Give to Possession and the buyer shall be Ready and willing to pay the Price, in exchange of Goods.




Rules Regarding Delivery of Goods [Section 33-44]



Delivery [Section 33]

 Delivery of Goods may be made by doing anything which the parties shall be treated as delivery (OR) which has the effect of putting the Goods in possession of (OR) of any person the buyer authorised to hold them on his behalf.

Effect of Part Delivery [Section 34]

 A Delivery of part of Goods, in progress of delivery of the whole → has the same effect (for the purpose of passing of property in such Goods) as delivery of the whole.

DON'T FORGET But a delivery of part of the Goods, with an intention of severing it from the whole, does not operate as delivery of Remainder.



Buyer to apply for Delivery [Section 35]

➡ Apart from any Express Contract
the seller of Goods is not bound to deliver them, until the buyer applies for delivery.

Place of Delivery [Section - 35(i)]

➡ Where it is for the buyer to take possession of the Goods (OR) for the seller to send them to buyer } is a question depending in each case on the Contract between the parties.

Where to Deliver the Goods ??

- Goods sold are to be delivered at a place at which they are at time of Sale
- Goods agreed to be sold are to be delivered at the place at which they are at time of Agreement to sell (OR) if not then in Existence at place at which they are Manufactured (OR) Produced.

Time of Delivery [Section 36(2)]

☞ Where Under the Contract of Sale, the seller is bound to sell the Goods to the buyer
 ↪ but no time for sending them is fixed, the Seller is bound to send them within reasonable time.

Goods in Possession of a third Party. [Section 36(3)]

☞ Where Goods at time of sale are in possession of third person, there is no delivery unless and until
 ↓
 such third person acknowledges to the buyer, that he holds the goods on his behalf.

☞ Provided nothing in this section shall affect the operation of the Issue or transfer
 ↪ of any document of title to Goods.

Time for Tender of Delivery [Section 36(4)]

☞ Demand (or) Tender of Delivery May be treated as ineffectual
 ↪ Unless Made at Reasonable Hour.

What is Reasonable Hour??

It is a Question of Fact.

Expenses for Delivery [Section 36(3)]

What Expenses will be Borne

The Expenses of and
 Incidental to
 ↓
 Putting the Goods in
 Deliverable state

Who Will Bear the Expenses

In the Absence of
 Contract to Contrary
 ↓
 It Must be borne
 by Seller

Delivery of Wrong Quantity [Section 37]

Section 37 (1)

When the Sellers delivers
 to buyer quantity of Goods
 less than Contracted to sell

↓
 the buyer May Reject them,
 but if buyer Accepts the
 goods so delivered, he
 shall pay for them at
 Contracted Rate

Section 37 (2)

When the Sellers delivers
 to buyer quantity of Goods
 Larger than Contracted to sell

↓
 the buyer May
 ↓
 Accept the Goods in Contract
 and Reject the Rest →
 he shall pay at
 Contracted Rates.

He May Reject the whole.

Section- 37(3)

When the seller delivers to buyer the goods he contracted to sell mixed with the goods of different description not included in contract
 ↳ the buyer may accept the goods which are in accordance with the contract and reject or may reject the whole

<p><u>Section 37(c)</u></p> <p>The provision of this section are subject to</p> <ul style="list-style-type: none"> ↳ Any Usage of Trade ↳ Special Agreement ↳ Course of dealing between the parties.

Example → A agrees to sell 100 Quintals of wheat to B at Rs 1000 per Quintal. A Delivers 1100 Quintal

↓

Accept only 100 Quintals and (OR) B May Reject the whole lot

Reject the Rest and pay for 1000 Quintal at Contracted Rate.



Installment Deliveries [Section 38]


👉 Unless otherwise Agreed, the buyer is not bound to accept delivery in Installments.

👉 Rights and Liabilities in Case } May be determined
of delivery by Installments } by parties of
and } Contract.
Payments there on }

Delivery to Carrier [Section 39(1)]

👉 Subject to the terms of Contract, delivery of Goods to the Carrier for transmission to buyer
↳ is Prima facie deemed to delivery to the buyer.


Deterioration During Transit [Section 40]


 Where the Goods are delivered at a distant place
 ↳ the liability for deterioration necessarily incidental to course of transit will fall on the buyer, though seller agrees to deliver at his own risk.

Example → P sold a certain quantity of Iron Rods which were sent by proper vessel. It was rusted before it reached the buyer. The rust of the rod was so minimal and was not affecting the merchantable quality and deterioration was not necessarily incidental to its transmission


↳ It was held that Q was bound to accept the goods

Buyers Right to Examine Goods [Section-41]

 Where the Goods are delivered to the buyer, who has not previously examined them
 ↳ he is entitled to a reasonable opportunity of examining them in order to ascertain whether they are in conformity of the contract.


 Unless otherwise Agreed, the Seller is bound
↳ on Request, to afford the buyer a Reasonable opportunity of Examining the Goods.

Rules Related to Acceptance of Delivery of Goods [Section 42]

 Acceptance is deemed to take place when the buyer :-

- ↳ Intimates to the Seller that he had Accepted the Goods
(OR)
- ↳ does any Act to the Goods, which is Inconsistent with the Ownership of the Seller.
(OR)
- ↳ Retain the Goods after the lapse of a Reasonable time, without intimating to the Seller that he has Rejected them.

Buyer Not bound to Return Rejected Goods [Section 43]

 Unless otherwise Agreed
↳ Where Goods are delivered to the buyer and he refuses to Accept them [having the Right so to do], he is not bound to Return them to Seller
↓
but it is sufficient if he intimates to Seller that he refuses to Accept them.