

Unit - 2

Transfer of Ownership and Delivery of goods

* Transfer of ownership

Stage 1 - Passing of Property:

Decides the legal rights and liabilities of sellers and buyers. ~ risk.

Stage 2 - Delivery of goods:

Voluntary transfer of possession of goods ~ risk.

Stage 3 - Passing of Risk:

Risk prima facie passes with the property ~ risk.

* Passing of Property:

■ Passing of Property implies passing of ownership.

■ Hence, if the property has passed to the buyer, the RISK in the goods sold is that of the buyer and NOT of the seller.

* Passing of Property in case of specific or ascertained goods:

=> Rule,

Transferred at such time as the parties intend it to be transferred:

1. Conduct of the parties
2. Circumstances of the case.

* Specific Goods in Deliverable Stage:

Example - X buys a TV and asks for home delivery... but the property becomes X's immediately.

Rule: Unconditional contract for sale of specific goods in a deliverable state, the property in goods passes to the buyer when the contract is made irrespective of time of the payment or delivery or both.

* Specific Goods to be put in Deliverable Stage:

Example - X buys Oil but they need to be put in casks by the seller to make it deliverable.

Rule: i) Contract for sale of specific and seller bound to do something to the goods for the purpose of putting them in a deliverable state, the property in goods passes to the buyer when such thing is done.

ii) It may be packing, polishing or putting them into containers.

* Specific Goods in a Deliverable Stage when seller has to do anything to put it in deliverable stage:

Example - A sold Carpets to the Company which were required to be laid. If stolen before it was laid then the carpet was not in deliverable state.

Rule: Contract for sale of specific goods but seller is bound to weigh, measure, test or do something for purpose of ascertaining price then the property in goods passes to the buyer only when such thing is done and buyer has notice of it.

* Uncertained goods:

When there is a sale of Uncertained Goods, no property is transferred to the buyer unless the goods are ascertained.

* Sale of unascertained or future goods by description:

Goods identified by description

Rule :- A valid appropriation of goods is needed.

1. The goods to match with description and quality.

a. Goods must be in deliverable state

a. Unconditionally appropriated (seller does not reserve the right of disposal until certain conditions are fulfilled, like payment of price.

4. The appropriation must be by seller with the assent of the buyer or vice versa.

5. The assent may be express or implied

6. The assent may be given before or after the appropriation

* Delivery to the Carrier or bailee:

Example - X sends goods by courier

Rule :- Seller delivers the goods to the buyer or carrier or other bailee for the purpose of transmission and does not reserve the right of disposal, the goods are appropriated.

• In case of any accidental loss, the seller will NOT be liable.

(See Pdf in mobile)

* Goods sent on approval or "Sale or Return"

* Sale for Cash only or Return

* Reservation of right of disposal until fulfillment of certain condi

* Risk Prima Facie passes with property (Sec. 26):

Unless otherwise agreed, the goods remain at the seller's risk until the property has passed to the buyer. After the event, they are at the buyer's risk whether delivery has been made or not.

* Risk Prima Facie passes with property (Sec. 26)
Two Conditions:

1. If delivery is delayed by the fault of the seller or the buyer - the goods remain at the risk of the party in default (seller or buyer as per the case).

2. The duties and liabilities of the seller or the buyer as bailee of goods for other party will not be affected even when risk has passed.

* Transfer of Title (Sec. 27):

Where goods are sold by a person who is not the owner and who does not have the authority or with the consent of the owner: buyer does not acquire a good title.

SALE BY A PERSON NOT THE OWNER

* NEMO DAT QUOD NON HABET - No one can give what he has got:

⇒ Exceptions:

1. Sale by a Merchantile Agent

a. Sale by one of the joint owners

3. Sale by a person in possession under a voidable contract.

4. Sale by a person who has already sold goods but continues possession.

5. Effect of Estoppel

6. Sale by an unpaid seller

7. Sale by a buyer obtaining possession before the property vested in him

8. Sale under provisions of other Acts.

* Performance of the contract of Sale (Sec. 31-44):

=> Delivery means the voluntary transfer of possession of goods from one person to another.

=> Seller should be ready to deliver and buyer to accept and pay as per terms of contract.

* Delivery - How made?

=> Delivery may be made by doing anything which the parties agree -

- physical possession
- any person authorised to hold

(See remaining delivery topics in pdf)

* Rules regarding acceptance of delivery:

1. Intimates to the seller that he has accepted goods (acceptance is deemed)

a. Does any act which is inconsistent with the ownership (acceptance is deemed)

ā. Retains the goods (after lapse of reasonable time) without intimating that he has rejected - acceptance deemed

i) Buyer not bound to return the goods only to intimate.

ii) Buyer liable for loss due to his own neglect or refuse to take delivery.

* Modes of Delivery:

1. Actual Delivery

2. Symbolic Delivery

3. Constructive Delivery.