

Unit 3 - Transfer of Ownership and Delivery of Goods

* Risk prima facie passes with the property. In case where goods are lost or damaged, the burden of loss will be borne by the person who is the owner at the time when the goods are lost or damaged.

* Passing of Property

→ Passing of property implies passing of ownership.

→ The risk in the goods sold is that of buyer and not of seller, though the goods may still be in seller's possession.



Depends upon two basic factors :-

(i) Identification of goods [Sec. 18]

→ Where there is a sale for unascertained goods, the property in the goods cannot pass to buyer unless the goods are ascertained.

→ Buyer can get ownership rights only when goods are specific and ascertained.

(ii) Intentions of parties

→ The property in goods is transferred to the buyer at such time as the parties intend it be transferred. [Sec. 19(1)]

→ Purpose of ascertaining the intention of parties regard shall be :- [Sec. 19(2)]

- Terms
- Conduct of parties
- Circumstances of the case

* Primary Rules determining the Passing of Property :-

[A] Property passes when intended to pass [Sec. 19]

- For intention of parties regard shall be had to the terms of the contract, the conduct of the parties and circumstances of the case.
- Unless a different intention appears, the rules contained in Section 20 to 24 are rules for ascertaining the intentions of the parties as to the time at which the property in goods is to pass to the buyer.

• Specific goods in a deliverable state [Sec. 20]

- the property in the goods passes to the buyer when the contract is made, and it is ^{im}material whether time of payment of price or time of delivery of the goods, or both.

• Specific goods to be put into a deliverable state [Sec. 21]

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

• Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price [Sec. 22]

- The seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

[B] Goods sent on approval or 'on sale or return' [Sec. 24]

→ The property therein passes to the buyer:-

- signifies his approval or acceptance to seller
- returns the goods without giving notice of rejection
- does something to the goods which is equivalent to accepting

• Sale for cash only or Return

→ Unless cash is paid for property or if not then return.

[C] Unascertained Goods

→ No property in goods is transferred to buyer unless and until goods are ascertained [Sec. 18]

• Sale of unascertained goods by description [Sec. 23(1)]

→ There is a contract for sale of unascertained goods by description:

→ In a deliverable state are unconditionally appropriated to the contract, either by the seller with assent of buyer

→ or by buyer with assent of seller → then property in goods thereon passes to the buyer.

→ Assent may be express or implied or given before or after appropriation is made.

• Delivery to the carrier [Sec. 23(2)]

→ In pursuance of contract, the seller delivers the goods to the buyer or to carrier or to other bailee for purpose of transmission to buyer → and does not reserve the right

of disposal → he is deemed to have unconditionally appropriated the goods the contract.

[D] Reservation of right of disposal [Sec. 25]

- To secure that price is paid before the property in goods passes to buyer.
- Seller may, by terms of contract or appropriation → reserve the rights to dispose of the goods, until certain conditions have been fulfilled:

* Risk Prima Facie passes with Property [Sec. 26]

- Unless otherwise agreed → the goods remain at seller's risk until the property is transferred to the buyer.
- But when property is transferred to buyer, risk is at buyer (irrespective delivery made or not)
- It provides that where delivery is delayed by fault of either buyer or seller, the goods are at risk of party at fault

* Transfer of title by Non-Owners

- Seller can sell only such goods of which he is absolute owner.
- This rule is expressed in Latin maxim "Nemo Dat quod Non habet" → no one can give what he has not got.

Exceptions to transfer of title by Non-owners

(i) Sale by Mercantile Agent.

- possession of goods or documents with consent of owner.
- sale in the ordinary course of business.
- buyer had acted in good faith & notice of the fact that seller had no authority to sell.

(ii) Sale by one of the joint owners.

- If one of the joint owners of goods has sole possession by permission of co-owners.
- Then property in goods is transferred to any person who buys them from such joint owner in good faith.
- At time of sale → He had no notice that seller has no authority to sell.

(iii) Sale by someone who has already sold goods but continues in possession thereof.

- If person has sold goods but continues to be in possession of them → he may sell them to a third person.
- If such third person obtains delivery in good faith without notice of previous sale, he would have good title to them.

(iv) Effect of Estoppel

- Where the owner is stopped by the conduct from denying the seller's authority to sell,
- the transferee will get a good title as against the true owner.

(vi) Sale by buyer obtaining possession before the property in the goods has vested in him

- Where a buyer with the consent of the seller obtains possession of the goods before the property has passed to him.
- then He may sell, pledge or dispose of goods to a third person.
- If such person obtains delivery in good faith without notice of other rights of original seller, he would get a good title to him.

(vii) Sale by unpaid seller

- Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the good, the buyer acquires a good title to the goods as against the original buyer.

* Performance of Contract of Sale

- It implies delivery of goods by seller and acceptance of the delivery of goods and payment of price for them by buyer in accordance of the terms of the contract.

- Delivery means voluntary transfer of possession from one person to another.
- for delivery, physical possession is not important.
- Buyer should be placed in a position so that he can exercise his rights over the goods.
- The possession is taken through unfair means → There is no delivery of goods.

* Duties of the Seller and Buyer [Sec. 31]

- It is the duty of the seller to deliver the goods
- and of the Buyer to accept and pay for them, in accordance with the terms of contract of sale.

* Payment and Delivery are concurrent conditions [Sec. 32]

- The seller shall be ready and willing to give the possession of the goods to the buyer in exchange for the price.
- The Buyer shall be ready and willing to pay the price in exchange for possession of the goods.

* Rules regarding Delivery of goods :-

(i) Delivery [Sec. 33]

- Anything which has effect of putting goods in possession of buyer or any other person concerned.

(ii) Effect of part delivery [Sec. 34]

- A delivery of part of goods has same effect as delivery of the whole.
- But a delivery of part of goods, with an intention of severing it from the whole, does not operate as delivery of the remainder.

(iii) Buyer to apply for delivery [Sec. 35]

- Apart from any express agreement, the seller of goods is not bound to deliver them until the buyer applies for delivery.

(iv) Place of delivery [Sec. 36(1)]

- Goods sold are to be delivered at the place at which they are at the time of sale
- and Goods agreed to be sold are to be delivered at place at which they are at the time of agreement to sell.
- or if not then in existence → at place at which they are manufactured.

(v) Time of delivery [Sec. 36(2)]

- If time is fixed → within specified time
- Otherwise reasonable time

(vi) Goods in possession of a third party [Sec. 36(9)]

- There is no delivery unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.

(vii) Time for tender of delivery [Sec. 36(4)]

- Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour.
- What is reasonable hour is a question of fact.

(viii) Expenses for Delivery [Sec. 36(5)]

→ The expenses of and incidental to putting the goods into a deliverable state must be borne by the seller in the absence of a contract to contrary.

(ix) Delivery of wrong quantity [Sec. 37]

→ Delivered goods < contract → buyer may reject them but if accepts then pay for them at contract rate.

→ Delivered goods > contract → buyer may accept the goods in the contract and reject the rest or he may reject the whole. If buyer accepts whole, he shall pay for whole at contract rate.

(x) Installment deliveries [Sec. 38]

→ Unless otherwise agreed, the buyer is not bound to accept delivery in installment.

(xi) Delivery to carrier [Sec. 39(1)]

→ Subject to the terms of contract, the delivery of goods to the carrier for transmission to the buyer, is prima facie deemed to be delivery to buyer.

(xii) Deterioration during transit [Sec. 40]

→ Where goods are delivered at distant place, the liability for deterioration necessarily incidental to the course of transit will fall on buyer, though seller may agree to deliver at his own risk.

(xiii) Buyer's right to examine goods [Sec. 41]

→ Buyer has reasonable authority to examine goods so that they are in conformity with the contract.

* Rules related to Acceptance of Delivery of Goods [Sec. 42]

→ Acceptance is deemed to take place when the buyer :-

- intimates to seller that he had accepted the goods
- does any act to goods, which is inconsistent with ownership of the seller.
- retains the goods after lapse of a reasonable time.

* Buyer not bound to return Rejected Goods [Sec. 43]

→ Buyer is not bound to return them to the seller, but it is sufficient if he intimates that he has refused to accept them.

* Liability of buyer for neglecting or refusing delivery of goods
[Sec. 44]

→ Buyer is liable to seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.