

Unit 3 - SOGA



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Introduction.

Sale of goods involves transfer of ownership of property from seller to buyer.

Importance of the time of transfer.

The general rule is that 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 or transfer of property constitutes the most important element & factor to decide legal rights & liabilities of sellers & buyers. Passing of property implies passing of ownership. If the property has passed to the buyer, the risk in the goods sold is that of buyer & not seller, though the goods may still be in the seller's possession.

■ The rules regarding transfer of property in goods & from the seller to the buyer depend on two basic factors.

1] Identification of Goods.

Where there is a contract of sale for unascertained goods, the property in goods cannot pass to the buyer unless & until the goods are ascertained. The buyer can get the ownership right on the goods only when the goods are specific & ascertained.



2] Intentions of parties



The property in goods is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

For the purpose of ascertaining the intention of the parties regard shall be:

- a] To the terms of the contract
- b] To the conduct of the parties
- c] To circumstances of the case.

The primary rules determining the passing of property from seller to buyer are as follows:

- 1] Property passes when intended to pass
 - where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract.
 - Terms of the contract, the conduct of the parties & the circumstances of the case

STAGES OF GOODS WHILE PASSING OF PROPERTY

Specific goods in a deliverable state

Specific goods to be put into a deliverable state

Specific goods in a deliverable state when seller has to ascertain price.

1] Specific goods in a deliverable state:
Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, & it is immaterial.

2] Specific goods to be put into deliverable state:

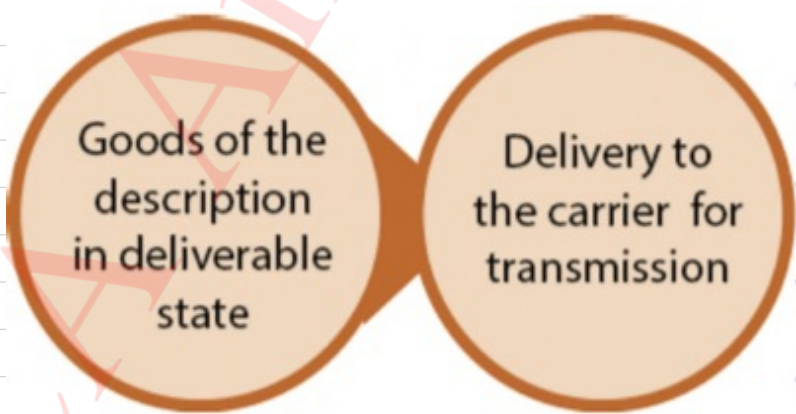
Seller is bound to do something to the goods for the purpose of putting them into a deliverable state [the property does not pass until such thing is done & the buyer has notice thereof.]

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

Where there is a contract of sale of specific goods in a deliverable state, but 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 & the buyer has notice thereof.

2) Goods must be ascertained.

Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless & until the goods are ascertained.



Goods of the description in deliverable state

Delivery to the carrier for transmission

1] Sale of unascertained goods by description:
Where there is a contract for the sale of unascertained or future goods by description & goods of that description & in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer with the assent of the seller. Such assent may be express or implied, & may be given either before or after the appropriation is made.

2] Delivery to the carrier:
Seller delivers the goods to the buyer (whether named by the buyer or not) for the purpose of transmission to the buyer, & does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.



GOODS SENT ON APPROVAL OR "ON SALE OR RETURN."

When goods are delivered to the buyer on approval, the property therein passes to the buyer.

i] When he signifies his approval or acceptance

ii] When he does not signify his approval to the seller but retains the goods without giving notice of rejection, if a time has been fixed for the return of the goods.

iii] He does something to the goods which is equivalent to accepting the goods.



1 week



Sale for Cash Only OR Return.

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 with, i.e. cash is paid for.

Reservation of Right of Disposal

Where there is a contract for the sale of specific goods, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled.

- for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions implied by the seller are fulfilled.

- Circumstances under which the right to disposal may be reserved:

2] If the goods are shipped to a railway administration for carriage & by the bill of lading, 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.

3] Where the seller draws a bill on the buyer for the price & sends to him the bill of exchange together with the bill of lading, the buyer must return the bill of lading, if he does not accept or pay the bill. And if he wrongfully retains the bill of lading, the property in the goods does not pass to him.

■ "conditional appropriation" as distinguished from 'unconditional appropriation' dealt with.



Risk Prima Facie passes with Property

The goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

- It is provided that, where delivery has been delayed because of the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

- However, Section 26 also lays down an exception to the rule that 'risk follows ownership.' The goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

- The parties may by special agreement stipulate that 'risk' will pass sometime after or before the 'property' has passed.

The aforesaid rule is, however, subject to two qualifications:

i] IF delivery has been delayed by the fault of the seller or the buyer, the goods shall be at the risk of party in default.

ii] The duties & liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally.



Transfer of title by non owners :

Where goods sold by a person who is not the owner thereof & who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

■ Provided that, where a mercantile agent is, with the consent of the owner, when acting in the ordinary course of business of a mercantile agent, shall be as valid.

Provided that, the buyer acts in good faith & has not at the time of contract of sale notice that the seller has no authority to sell.

■ The title of the buyer shall be the same as that of the seller. This rule is expressed in the Latin maxim "Nemo dat quod non habet" which means that no one can give what he has not got.

Exceptions

A non-owner can convey better title to the bona fide purchaser of goods for value.

1] Sale by a mercantile agent.

A mercantile agent can pass a good title to the buyer in following circumstances.

- a. If he was in possession of the goods or documents with the consent of the owner.
- b. If the sale was made by him when acting in the ordinary course of business as a mercantile agent.
- c. If the buyer had acted in good faith & has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell.

■ Mercantile agent. means an agent having in the customary course of business as such agent authority either to sell goods or to consign goods to raise money on the security of goods

2] Sale by one of the joint owners.

If one several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith & has not at

the time of the contract of sale notice that the seller has no authority to sell.

3] Sale by a person in possession under voidable contract:

A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale.

4] Sale by one who has already sold the goods but continues in possession thereof:

If a person has sold goods but continues to be in a possession of them or of the documents of title to them, he may sell them to a third person, & if such person obtains the delivery thereof in good faith & without notice of the previous sale.

5] Sale by buyer obtaining possession before the property in the goods have vested in him: Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of

the goods to a third person, & if such person obtains delivery of the goods in good faith & without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them.

However, a person in possession of goods under a "hire-purchase" agreement which gives him only an option to buy is not covered within the section unless it amounts to a sale.

6) Effect of Estoppel.



Anand sir sold the ^(car) Brio of Ankita Ma'am to Harshad sir, in front of Ankita Ma'am. Ankita mam remained silent during the making of the contract. Here Harshad sir

will get a valid title to the goods even though Anand sir had no title in goods (here Ankita mam's silence had made Harshad sir believe that Anand sir is the owner of the car) & thus such a sale is a valid sale.

Therefore, Ankita mam is estopped by the conduct from denying the seller's (Anand sir) authority to sell, the transferee will get a good title as against the true owner.

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

§ Sale under the provisions of other Acts:

A] Sale by an official Receiver or liquidator of the company will give purchaser a valid title.

B] Purchase of goods from a finder of goods will get a valid title.

C] A sale by pawnee can convey a good title to the buyer.

Performance of the contract of Sale.

The performance of a contract of sale implies delivery of goods by the seller & acceptance of the delivery of goods & payment of price for them by the buyer.

Delivery means voluntary transfer of possession from one person to another. For delivery, physical possession is not important.

▪ Thus, if the possession is taken through unfair means, there is no delivery of the goods.

Delivery of goods is of three types:

- A] Actual delivery
- B] Symbolic delivery
- C] Constructive delivery

▪ Duties of seller & buyer.

It is the duty of seller to deliver the goods & of the buyer to accept & pay for them.

▪ Payment & delivery are concurrent conditions. Seller shall be ready & willing to give possession of the goods to the buyer in exchange for the price, & the buyer shall be ready & willing to pay the price in exchange for possession of goods.

Rules Regarding Delivery Of Goods

1] Delivery: Delivery of goods sold may be made by doing anything which the parties agreeing shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer.

2] Effect of part delivery: A delivery of a part of good in progress of delivery of the whole has the same effect, for the purpose of passing the property, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

3] Buyer to apply for delivery: The seller of goods is not bound to deliver them until the buyer applies for delivery.

4] Place of delivery: Goods sold are to be delivered at the place at which they are at the time sale & goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell or if not then in existence at the place at

which they are manufactured / produced.

5] Time of delivery: The seller is bound to send the goods to the buyer but if no time for sending them is fixed, the seller is bound to send them within a reasonable time.

6] Goods in possession of a third party: Where the goods at the time of sale are in possession of a 3rd person, there is no delivery unless & until such 3rd person acknowledges to the buyer that he holds the goods on his behalf.

7] Time for tender of delivery: Demand of delivery may be treated as ineffectual unless made at a reasonable hour.

8] Expenses for delivery: The expenses of putting the goods into a deliverable state must be borne by the seller in the absence of a contract to the contrary.

9] Delivery of wrong quantity:

When the seller delivers the less quantity of goods than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

- If the seller delivers larger quantity of goods than he contracted to sell, the buyer may accept the goods included in the contract & reject the rest or he may reject the whole.

If the buyer accepts the whole of the goods delivered to him, he shall pay for them at the contract rate.

- Where the seller delivers the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with a contract & reject, or may reject the whole.

10] Instalment delivery: The buyer is not bound to accept deliveries in instalments. The rights & liabilities in case of delivery by instalments & payments thereon may be determined by the parties of contract.

11] Delivery to carrier: The delivery of goods to the carrier for transmission to the buyer, is prima facie deemed to be delivery to the buyer.

12] Deterioration during transit: Where goods are delivered at a distant place, the liability for deterioration necessarily incidental to the course of transit will fall on the buyer, though the seller agrees to deliver at his own risk.

13] Buyer's right to examine the goods: Where 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.

• Rule Related to Acceptance of Delivery of Goods
The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him & he does any act in relation to them which is inconsistent with the ownership of the seller, he retains the goods without intimating to the seller that he has rejected them.

■ Buyer not bound to return rejected goods: Where goods are delivered to the buyer & he refuses to accept them, having the right to do so, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

■ Liability of buyer for neglecting or refusing the delivery of goods:

The seller is ready & willing to deliver the goods & requests to the buyer to take delivery, & the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery & also for a reasonable charge for the care & custody of the goods.

