

Unit 3- Transfer of ownership & Delivery of goods

3 stages: \rightarrow Passing of property \rightarrow Delivery of goods \rightarrow Passing of risk
of transfer of ownership

* Essential to determine time at which ownership passes from seller to buyer.

* Importance of Time of Transfer
Risk prima facie passes with property.

If goods lost or damaged \rightarrow Burden of loss borne by person who is owner at time when goods lost or damaged.

When goods damaged by act of third party \rightarrow owner can take action

Suit for price by seller can be filed \rightarrow only when property passed to buyer.

* Passing of Property [Sec 18-26] { Passing of ownership }

If property passed to buyer \rightarrow Risk in goods is of buyer, Not seller, though it may be in seller's possession.

Rules regarding transfer of property in goods from seller to buyer depend on 2 factors:

1. Identification of goods [Sec 18] \rightarrow Goods must be ^{specific/} ascertained
2. ~~Identification~~ of parties [Sec 19(1)]
Ascertain intention \rightarrow to terms of contract
[Sec 19(2)] \rightarrow to conduct of parties
 \rightarrow to circumstances of case

* Primary Rules determining passing of property from seller to buyer:

A. Passing of ascertained / specific goods when intended to pass (Sec 19)

1. Intention of parties [sec 19(1)]
2. Terms of contract, conduct of parties, circumstances of case.
3. ~~But~~ Section 20-24 → Rules for ascertaining intention [sec 19(2)]
[sec 19(3)]

1. Specific goods in deliverable state [Sec 20]
- Property in goods passes to buyer when contract is made.
- Immaterial whether time of payment or time of delivery or both is postponed.

2. Specific goods to be put into deliverable state [Sec 21]
→ seller bound to do something to goods for purpose of putting them into deliverable state.
→ Property does not pass unless such thing done, AND buyer has notice thereof.

3. Specific goods in deliverable state when seller has to ascertain price (Sec 22)
→ seller bound to weigh, measure, test or do some other act or thing with reference to goods to ascertain price.
→ Property does not pass until such act / thing done AND buyer has notice thereof.

B. Goods must be ascertained [Sec 18]

Rules in respect of passing of property of unascertained goods:

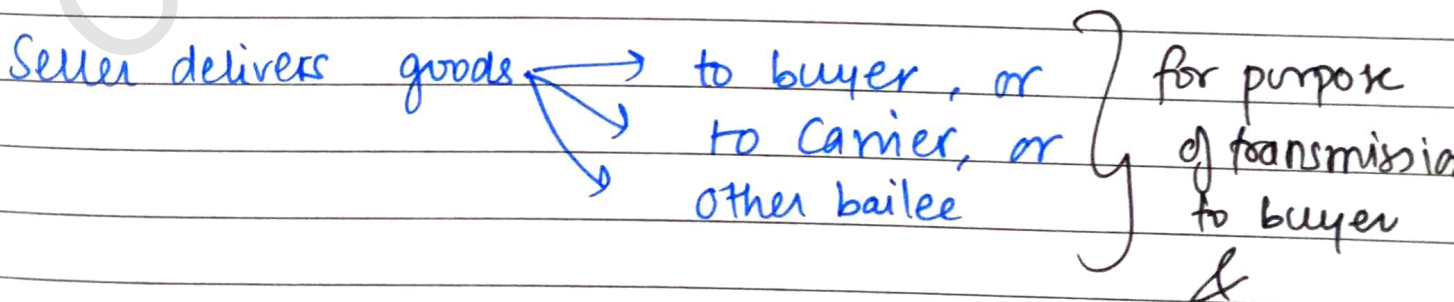
1. Sale of unascertained goods by description [sec 23(1)]

Appropriation of goods involves selection of goods with intention of using them in performance of contract, Δ with mutual consent of seller & buyer.

Essentials:

- a) Sale of unascertained or future goods
- b) Goods \rightarrow of description & quality stated in contract
- c) Goods \rightarrow Deliverable state
- d) Goods unconditionally appropriated. either by deliver to buyer OR his agent OR carrier
- e) Appropriation by
 - seller with assent of buyer
 - buyer with assent of seller.
- f) Assent \rightarrow Expressed OR Implied.
- g) Assent \rightarrow either before OR After appropriation

2. Delivery to carrier [sec 23(2)] \rightarrow Unconditional appropriation



Does not reserve right of disposal, he is deemed to have unconditionally appropriated goods to contract.

C. Goods sent on approval or "on sale or return" (Sec 24)

Property passes to buyer when.

- signifies approval or acceptance to seller or does any act
- does not signify approval / acceptance but retains goods without notice of rejection.

↳ If time fixed for return of goods → on expiry.
 ↳ If no time fixed → on expiry of reasonable time.

- does something to goods which is equivalent to accepting goods (Pledges or sells goods)

Sale for cash only or Return

Property does not pass to buyer unless cash paid.

D. Reservation of right of disposal (Sec 25)

↳ Conditional Appropriation

Reserving right of disposal of goods till price paid or certain conditions fulfilled.

Where this right can be reserved:

- If goods shipped, delivered, to railway adminⁿ for carriage & bill of lading or railway receipt, goods deliverable to order of seller/agent.

- Seller draws bill on buyer for price, send him BOE + bill of lading, buyer must return bill of lading, if doesn't pay/accept bill

* Risk Prima facie Passes with Property [Sec 26]

Exception to Risk follows ownership.

1. Goods delayed through fault of either buyer or seller; goods at risk of party in default.
2. Duties & liabilities of seller or buyer as bailee of goods for other party remains unaffected even when risk has passed generally.
3. Special agreement -

* Transfer by non owners [Sec 27-30] of title

Sale by person not owner (Sec 27)

→ Buyer acquires no better title to goods than seller.

Rule → 'Nemo dat quod non habet'

Exceptions to Non owners cannot convey better title to bona fide purchase (Means non owners can convey better title in following cases).

1. Sale by Merchantile Agent (Sec 27)

- possession of goods or documents with consent of owner
- Sale made in ordinary course of business
- Buyer acted in good faith, & had no notice that seller had no authority to sell.

2. Sale by one of joint owners (Sec 28)

- One of joint owner has possession, had
- Property transferred to buyer in good faith & no notice that seller had no authority to sell.

3. Sale by person in possession under voidable contract (sec 29)

Buyer acquires good title if seller had obtained goods through voidable contract (Coercion, fraud, misrepresentation, undue influence)

4. Sale by one who already sold goods but continues possession thereof [sec 30(1)]

5. Sale by buyer obtaining possession before property in goods has vested in him [Sec 30(2)]

6. Effect of Estoppel.

7. Sale by unpaid seller [Sec 54(3)]

8. Sale by provisions of other Acts.

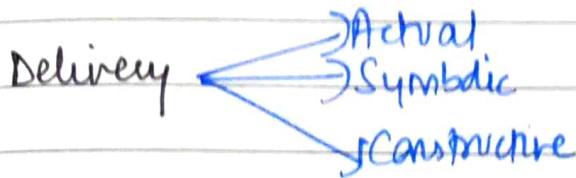
→ Sale by official Receiver or liquidator of co. will give purchaser a valid title.

→ Purchase of goods from finder of goods will get valid title [Sec 169 of ICA]

→ Sale by pawnee can convey good title to buyer [Sec 176 of ICA]

* Performance of contract of sale (Sec 31-44)

↓
Implies delivery of goods by seller & acceptance & payment by buyer.



Rules regarding delivery of goods

1. Delivery (Sec 33)
 - ↳ doing anything parties agreed
 - ↳ putting possession of buyer / agent
2. Effect of Part Delivery (Sec 34) : same effect as delivery of whole
3. Buyer to apply for delivery. (Sec 35)
4. Place of Delivery [Sec 36(1)]
5. Time of Delivery [Sec 36(2)]
6. Goods in possession of third party (Sec 36(3))
7. Time for tender of delivery. (Sec 36(4))
8. Expenses for delivery [Sec 36(5)]
9. Delivery of wrong quantity (Sec 37)

- 10. Instalment deliveries (sec 38)
- 11. Delivery to carrier [sec 39(1)]
- 12. Deterioration during transit (sec 40)
- 13. Buyer's right to examine goods [sec 41]

14. Rule related to Acceptance of Delivery of Goods (sec 42)

- Acceptance deemed when buyer:
- intimates seller, that accepted.
 - does act, inconsistent with ownership
 - retains goods after lapse of reasonable time without intimating seller that he rejected them.

Buyer not bound to return rejected goods (sec 43)
VOA, if goods delivered & buyer refuses to accept, he is not bound to return them to seller, its sufficient if he intimates to sell that he refuses.

Liability of buyer for neglecting or refusing delivery of goods (Sec 44)

When seller ready & willing to deliver goods, & requests buyer to take delivery, buyer does not take within time, buyer liable for loss.

Unit 4 - Unpaid Seller

* Unpaid Seller [Sec 45(1)]

Seller deemed "unpaid seller" when -

- Whole Price **NOT** paid **or** tendered
- Bills of Exchange **or** other negotiable instrument received as conditional payment, & the condition on which received → Not fulfilled by
Dishonour otherwise

* Seller [Sec 45(2)]



here includes seller + Agent + Consignor + Agent who paid

* Rights of unpaid Seller (Sec 46)

1. Rights of unpaid seller against Goods.

(1) When property in goods passed to buyer.

a) Seller's lien (lien on goods while he is in possession)

Unpaid seller entitled to retain possession of goods until payment or tender of price in cases:

- where goods sold without any stipulation to credit,
- where goods sold on credit, but credit term expired,
- where buyer becomes insolvent.

Seller may exercise lien as agent or bailee for buyer.

Part delivery (Sec 48)

↓
Where unpaid seller made part delivery of goods, he may exercise lien on remainder, unless such part delivery made under circumstances as to show an agreement to waive lien.

Termination of lien (Sec 49)

Unpaid seller loses lien :

- a) when delivers goods to carrier or bailee for purpose of transmission to buyer without reserving right of disposal of goods,
- b) when buyer or agent lawfully obtains possession
- c) by waiver
- d) by estoppel → Seller makes third parties believe lien not exist

Unpaid seller does not lose lien by reason that he obtained decree for price of goods.

b) Right of stoppage in transit

When buyer becomes insolvent, unpaid seller who parted with goods, has right to stop them in transit, & may retain them until paid or tendered price

Duration of transit

- Goods deemed to be in transit from time delivered to carrier or bailee for transmission to buyer, until buyer or agent, takes delivery from carrier or bailee.
- If goods rejected by buyer, & carrier or bailee continues in possession of goods, transit NOT deemed to be at end, even if seller refused to receive them back.
- Where goods delivered to chartered ship by buyer. → Question → depending on circumstances of case. Whether in possession of master as carrier or agent of buyer.
- Where part delivery made, remainder may be stopped in transit, unless such part delivery given in circumstances so as to show agreement to give up possession of whole of goods.

How stoppage in transit is effected ?

- Unpaid seller may take actual possession of goods, or
→ by giving notice of his claim to carrier or bailee not to deliver the goods.
- When notice of stoppage given by seller to carrier or bailee, he shall re-deliver goods to seller, & expenses of redelivery borne by seller

When does transit come to an end?

Right of stoppage in transit is LOST when transit comes to end:

- when buyer/bailee obtains delivery
- Buyer obtains delivery before arriving goods at destination
- Carrier wrongfully refuses to deliver goods to buyer.
- Where goods delivered to carrier hired by buyer.
- Where part delivery, transit ends for remaining goods which are in transmission.
- Where goods delivered to ship chartered by buyer.
- Where carrier/bailee acknowledges to buyer/agent that he holds goods as they are loaded on ship. unless seller reserved right of disposal of goods.

* D/b	Right of lien	Right of stoppage in transit
Essence	Retain possession	Regain possession.
Goods	Seller - in possession of goods	seller to have parted ^{with} carrier, buyer not acquired
Exercised	Buyer not insolvent	Buyer insolvent.
Relation	starting point of right of stoppage in transit	Begins when right of lien ends.
End.	Comes to end. as possession go out from seller.	Comes to end when goods delivered to buyer.

Effects of sub sale or pledge by buyer (sec 53)

Right of lien / stoppage → NOT affected by buyer selling or pledging goods unless seller Assented to it.

Principle - second buyer cannot stand in better position than his seller

Right of stoppage is defeated if buyer transferred document of title for pledges goods to sub-buyer in good faith & for consideration.

Exceptions where unpaid seller's right of lien / stoppage defeated

- a) when seller assented to sale, mortgage / disposition of goods made by buyer
Case law: Mount D.F. Ltd vs Jay & Jay Co Ltd
- b) when document of title to goods transferred to buyer & buyer transfers docs to person who bought in good faith & for value.
 - if last mentioned transfer → sale → Right of lien / stoppage defeat
 - if " " " " pledge - lien / stoppage exercised.

Effect of stoppage - Contract of sale ^{not} rescinded
Contract still in force & buyer can ask for delivery of goods on price payment.

Right of Resale (sec 54)
valuable right given to unpaid seller.

Unpaid seller can exercise right to re-sell goods under following conditions.

1. Where goods are of perishable nature
2. Where he receives gives notice to buyer of his intention to resell goods
3. Where unpaid seller who exercised Right of Lien or Stoppage in transit resells goods
4. Re-sale by seller where right of re-sale is expressly reserved in contract of sale.
5. Where property has not passed to buyer.
in goods

2. Rights of unpaid seller against buyer (Rights in Personam)

↓
Known as Seller's remedies for breach of contract of sale

(1.) Suit for price (Sec 55)

a) Property in goods passes to buyer, buyer neglects / refuses to pay, seller may sue him for price of goods

b) Price payable on certain day, irrespective of delivery, buyer neglects / refuses to pay, seller may sue him for price, even though property in goods not passed & goods not appropriated.

(2.) Suit for damages for non acceptance (Sec 56)

↓
Buyer neglects / refuses to accept & pay for goods, seller may sue buyer for non acceptance.

(3.) Repudiation of contract before due date (Sec 60)

Buyer repudiates contract before date of delivery, seller may treat contract as rescinded & sue damages for breach. → Known as 'Rule of Anticipatory Breach of Contract'

(4.) Suit for Interest (Sec 61)

Already in agreement, when payment becomes due, seller may recover interest on price of goods.

If no agreement → seller may charge interest on price when becomes due. from day he notifies to buyer.

* Rights of Buyer Against seller.

- Breach of contract by seller where he →
- Fails to deliver goods at time or in manner prescribed.
 - Repudiates contract.
 - Deliver non conforming goods & buyer rejects & revokes acceptance.

Rights of buyer:

1. Damages for non delivery [sec 57]

Seller neglects / refuses to deliver goods, buyer may sue seller for damages for non delivery.

2. Suit for specific performance [sec 58]

Buyer may ~~sue~~ appeal to court for specific performance.
 only in ascertained/specific.

- specific / ascertained goods
- provisions of Specific Relief Act 1963.
- damages not adequate remedy
- goods - special nature / unique

Court allows only in these conditions.

3. Suit for breach of warranty [sec 59]

On seller part → breach of warranty, or buyer elects to treat breach of condition as warranty,

Buyer cannot reject goods, but he may

- sue for damages.
- set up in diminution or extinction of price.

4. Repudiation of contract before due date (sec 60)

Either party repudiates contract before date of delivery, other may treat as subsisting & wait till delivery date OR rescind & sue for damages for breach.

5. Suit for Interest

* Auction Sale [Sec 64]



Mode of selling property by inviting bids publicly & property sold to highest bidder.

Auctioneer → agent by law of agency.

may sell his own property as principal & need not disclose fact he is selling his own.

Rules to regulate sale by auction

- Where goods sold in lots
- Completion of Contract of sale
- Right to bid may be reserved
- Where sale not notified by seller
- Reserved price
- Pretended bidding.

* Inclusion of Increased or Decreased Taxes in Contract of sale [Sec 64 A]



Where Contract of sale made but before performed, tax revision takes place

Tax → Imposed, increased, decreased, remitted, parties entitled to read price accordingly.

Taxes on sale/
purchase of goods

← Customs duty / excise on goods
tax on sale / purchase of goods