

BUSINESS LAW

UNIT 4: The Sale of Goods Act, 1930

TOPIC- TRANSFER OF PROPERTY IN GOODS

Monika Arya, Associate Professor, Bharati College , Delhi
University

TRANSFER OF PROPERTY

Transfer of property means transfer of ownership of goods. Property/ownership in goods is different from possession/custody of goods. It may be possible that property in goods has passed to the buyer whereas its possession is still with the seller or vice versa. It is important to determine the precise time at which property in goods passes from seller to the buyer in order to decide the following issues-

- 1) Risk prima facie passes with property(sec.26) -As a general rule the risk of loss of goods is to be borne by the person in whom the property is. So, the goods are at sellers risk until property is transferred to the buyer, but when property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. If after the contract, the goods are destroyed, then whosoever was owner of those goods at the time of loss, would have to bear the loss. But the proviso to sec.26 lays down an exception to the above rule and states that where the delivery of goods has been delayed because of the fault of either seller or buyer, then the party in default shall have to bear the risk of loss.
- 2) Action against third parties- If after the contract of sale, the goods have been damaged by a third party, it is only the person in whom the property vests who can take action against the wrongdoer.
- 3) Suit for price- Generally , the seller can sue the buyer for the price only if the property in goods has passed to the buyer.
- 4) Insolvency of the seller or the buyer- In case of insolvency of either the buyer or the seller, whether the official receiver can takeover the goods or not , shall depend on whether the property in goods was with the party who has become insolvent or not. If the insolvent (buyer or seller) had the property in goods, his official receiver can claim those goods otherwise not.

Rules regarding Transfer of Property

Transfer of property in specific or ascertained goods- The property in goods is transferred to the buyer as per the intention of the parties which is ascertained from the terms of the contract, conduct of the parties and the circumstances of the case. Contracting parties may intend to pass the property- when the contract is made/or when goods are delivered/or when payment is made. But if this intention is not ascertainable in the above manner, then the following rules apply

Situation	Time of transfer of property	Example
Sale of specific goods in deliverable state i.e. goods are fully ready to be taken and nothing remains to be done by seller on them (sec.20)	Property passes to buyer as soon as contract is made . Time of payment of price or time of delivery is immaterial	P buys a chair for Rs.5000 on a weeks credit and arranges to take its delivery the next day. A fire broke out in that shop and the table is destroyed. The property in table has passed to P and so he must pay for it
When goods have to be put in a deliverable state i.e. seller has to do something(like packing/polishing etc.)with respect to goods (sec.21)	Property passes to buyer when seller has done the act which brings them into deliverable state + buyer has notice of it	A agrees to sell B the entire oil in the drum which is to be put into casks by A before B takes them away. Some of the casks are filled in the presence of B but before they are removed or remainder filled, the whole is destroyed accidentally by fire. B must bear the loss of oil filled casks as the property in them had passed to B but the property in casks not filled up remained in seller and he must bear the loss pertaining to them

Rules regarding Transfer of Property

Transfer of property in specific or ascertained goods-

Situation	Time of transfer of property	Example
Sale of specific goods in a deliverable state but seller has to do something like weighing, measuring, counting testing etc. to ascertain price. (Sec.22)	Property passes to the buyer when the seller has done the the required act wrt. the goods to determine their price + Buyer has notice thereof	A sold to B 289 bales of goat skins, each bale containing 5 dozen skins, and the price was for certain sum per dozen. It was the duty of A to count the goat skins in each bale . Before A could do the same, the bales were destroyed by fire. Held , the property in the goods had not passed to the buyer as something (counting) still remained to be done by the seller for ascertaining the price, and as such the loss by fire had to borne by the seller A. (Zagury vs Furnell)
When the goods are delivered to buyer on approval basis or on ‘ sale or return basis ’ (Sec.24)	Property passes to buyer when <ol style="list-style-type: none"> 1. He signifies his approval /acceptance to the seller or 2. He adopts the transaction by acts like using/ pledging/ reselling the goods 3. Without giving any notice of rejection , he retains the goods beyond time fixed for return/beyond reasonable time 	<p>EXAMPLE- A delivered a horse to B on the terms of ‘sale or return within 8 days’. The horse died on the 3rd day without any fault on B’s part. Held, A was to bear the loss as the horse was still his property when it perished.</p> <p>EXAMPLE- A delivered a horse to B on trial for 8 days. B continued to retain the horse after the expiry of 8 days without giving notice of rejection to A. B automatically becomes the owner of the horse on the expiry of 8 days and if anything happens to horse now , B will bear the loss.</p>

Rules regarding Transfer of Property

Transfer of property in unascertained goods and future goods (Sec.18 and 23)

Where unascertained or future goods are contracted to be sold, then property in those goods passes to the buyer only **when goods are ascertained/ unconditionally appropriated to the contract for bringing them into a deliverable state + the buyer is given the notice** thereof.

- ✓ Ascertainment and Appropriation means earmarking or setting apart the required goods. It involves separating, weighing, measuring, counting or similar acts done in respect of those goods to identify them and bring them into deliverable state
- ✓ Ascertainment is a unilateral act generally done by the seller alone whereas appropriation is bilateral which involves the mutual consent of both the seller and the buyer.
- ✓ Unconditional appropriation means that the seller should not reserve with himself the right of disposal of goods. Reserving right of disposal means the property in goods does not pass to the buyer until certain conditions, like payment of price, or acceptance of bill of exchange etc. are satisfied.
- ✓ If the seller delivers the goods to the carrier for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have unconditionally appropriated goods to the contract. The delivery to the carrier without reserving the right of disposal is delivery to the buyer and the property passes to buyer at once at the time of delivery to carrier.
- ✓ But if the seller loads goods on rail and the railway receipt is sent to the bank with the instruction to deliver it to the buyer only on payment of price, the right of disposal is said to be reserved and no property passes to buyer on delivery to railway company. If goods get damaged in transit, loss will be borne by the seller.

General Rule as to Transfer of Title

There is a maxim ‘ *nemo dat quod non habet*’ i.e. no one can give a better title than he himself has. This means that if the title of the seller is defective, then the buyers’ title will also be subject to the same defect. So, if goods are sold by a person who is neither the owner nor has authority or consent from the owner , the buyer does not acquire title of the goods. This general rule seeks to protect the interests of the true owner and is regarded as necessary in the larger interest of the society. Thus, if a thief steals certain goods and then sells them to some person , then that buyer acquires no title though he may have purchased the goods bonafide for value , and the real owner can recover his goods from the buyer as a matter of right.

However in the following certain exceptional circumstances ,the buyer gets a better title to the goods than what the seller himself has-

- 1. An unauthorised sale by a merchantile agent-** We know that a merchantile agent having authority to sell goods conveys a good title to the buyer. But sometimes a merchantile agent can even convey a good title to the buyer even when he sells goods without having any authority from the principal. But this happens only when the merchantile agent is in the possession of the goods or documents of title to the goods with the consent of the owner; he sells goods while acting in the ordinary course of business ;and the buyer should act in good faith without having any notice that the agent has no authority to sell. **CASE- Folkes vs King**

Transfer of title by non-owners

2. Transfer of title by estoppel- When the true owner of the goods by his conduct or words or act or omission leads the buyer to believe that the seller is the owner of goods or has the authority to sell them, he cannot afterwards deny the seller's authority to sell and the buyer in such a case gets a better title than that of the seller. **CASE- O'Connor vs Clark**

3. Sale by a joint owner- If one of 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 the buyer who buys those goods in good faith from such joint owner without notice of the fact that the seller has no authority to sell. **Eg. There are three brothers A, B and C who jointly own a cow. Since B and C live in the city, they have entrusted the possession and responsibility of looking after the cow to A. One day, A sells the cow to F, a bonafide purchaser for value. F will get a good title of cow**

4. Sale by a person in possession under voidable contract- When a person has obtained possession of goods under a voidable contract and he sells those goods before the contract is rescinded, the buyer of such goods acquires a good title provided he acts in good faith and without notice of seller's defect of title. **Eg. A, by coercion, forces B to sell and deliver to him a cow. A then sells the cow to C before B has rescinded the contract. C purchases the cow in good faith and without notice of the seller's defective title. C acquires a good title.**

Transfer of title by non-owners

- 5. Sale by seller in possession after sale** – Where a seller, after selling the goods, continues to be in possession of those goods and he again sells them either himself or through an agent, he will convey a good title to the buyer provided the buyer acts in good faith and without notice of previous sale.
- 6. Sale by buyer in possession after agreement to sell** – Where a buyer agrees to buy the goods, obtains their possession with the consent of the seller, and sells them further, he will convey a good title of goods to the subsequent buyer provided the subsequent buyer acts in good faith and without notice of right of original seller on those goods.
- 7. Resale by unpaid seller**- Where an unpaid seller, having exercised right of lien or stoppage in transit, resells those goods , the subsequent buyer acquires a good title of goods notwithstanding that no notice of resale has been given to the original buyer.
- 8. Sale by finder of lost goods under certain circumstances**
- 9. Sale by pawnee or pledgee under certain circumstances**
- 10. Sale by official receivers/liquidators in case of insolvency of individuals/companies.**

Cases

- Folkes vs King

F entrusted his car to a merchantile agent for sale at a stated price and not below that. The agent sold it to S, a bonafide purchaser, below the reserve price and misappropriated the proceeds. S resold the car to K, the defendant. Held, S obtained a good title to the car from the merchantile agent and conveyed a good title to K and therefore F was not entitled to recover the car from K.

- O' Connor vs Clark

M, the owner of a wagon allowed one of his employees, K to have his name painted on it. M did so for the purpose of inducing the public to believe that the wagon belonged to K. C purchased the wagon from K in good faith. C acquires a good title as M is estopped from denying K's authority to sell.