

## Passing of Property

### Notes

The major object of the sale of goods is the transfer of ownership from one person to another. Transfer of property in the goods from the seller to buyer is the essence of contract of sale. Sometimes the property in goods may be transferred when the contract has been entered into and sometimes at a later time. The point of time of passing of property becomes important because in case goods are destroyed or damaged after the contract, the party who is the owner of goods at that time will have to bear the loss.

#### **Risk Prima facie passes with the property**

Section 26 provides that - “Unless otherwise agreed, 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 buyer, the goods are at the buyer’s risk whether delivery has been made or not”.

This section is based on the maxim *res perit domino* which means that when a thing is lost or destroyed, it is the loss of the person who owns it. The general principle contained in Sec.26 is that ‘risk’ and ‘property’ go together and goods are at the risk of the person in whom the property in the goods vests.

However, there are certain exceptions to the general rule that ‘risk prima facie passes with property’, where ‘risk’ may be in one party and ‘property’ may be vested in another.

#### **Exceptions :**

##### **1. Express Agreement**

- Parties through express agreement may agree that though property vests in one, risk must be borne by another.

##### **2. Delay in delivery of goods**

- Proviso to Sec.26 provides that “if the delivery of goods has been delayed due to the fault of either the buyer or seller and there has occurred some loss to the goods due to such a delay, the party at fault has to bear the loss”.
- For example, A sells 100 ton of wheat to B and did not delivered it on the agreed date. Next day due to flood caused by heavy rainfall maximum quantity of wheat got destroyed. Here loss will be borne by A because the wheat would not have destroyed if he had duly delivered it to B.

##### **3. Seller or buyer as bailee of the goods**

- Second proviso to Sec. 26 provides that “the seller or buyer may not be the owner of goods but, if he is in their possession, he may be responsible in his capacity as the bailee of the goods”.
- The bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods (Section 151 of the Indian Contract Act).
- For example, if the seller negligently allows the goods to be damaged, he will be liable for the loss even though the buyer is the owner of such goods.

### **Rules governing passing of property can be divided into following categories :**

- A. Specific Goods or ascertained goods**
- B. Unascertained goods**
- C. Goods sent on approval or “on sale or return”**

### **Transfer of Property in Specific Goods**

Property is transferred when parties intend it to be transferred (Section 19)

Section 2(14) provides that “specific goods are those goods which have been identified and agreed upon at the time of the making of contract”.

According to Section 19(1), where there is a contract for sale of specific goods, the property in them is transferred to buyer at such time as the parties to the contract intend it to be transferred. It is based on basic principle of law of contract that the parties may fix the time when the property in goods shall be treated to have passed.

In ascertaining the intention of the parties, Court will be guided by terms of the contract, conduct of the parties and circumstance of the case.

The rules contained In Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

### **Specific goods in a deliverable state (Section 20)**

According to Section 20, “where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of price or the time of delivery of goods, or both, is postponed”.

- Unconditional contract means a contract which is not subject to any condition precedent or subsequent.



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- According to Section 2 (3), deliverable state means when goods are in such state that the buyer would under the contract be bound to take delivery of them.
- Whenever there is an unconditional contract for sale of specific goods which are in a deliverable state, the ownership in the goods passes to the buyer at the time when contract is made.
- It is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.
- In *Dennant v Skinner* (1948), the plaintiff sold a car by auction to X, who offered to pay by a cheque. He was allowed to do so. Subsequently it was agreed between the seller and buyer that the property in car would not pass to him, until the amount of cheque had been credited to seller's account. The cheque was subsequently dishonoured. The plaintiff sued X to recover back car, which was sold by X to Y; his contention was that X had not become the owner of car as X's cheque dishonoured. It was held that at the time of making of contract i.e. acceptance of X's bid at auction, the contract was unconditional, and of specific goods in a deliverable state. Therefore, X had become the owner of car. Undertaking by X, subsequent to the passing of property to him, that he will not become owner until the cheque encashed, was of no effect. Therefore, plaintiff could not recover the car from X.

### **Specific goods not in a deliverable state**

According to Section 21 “where there is a contract for sale of specific goods, and seller is bound to do something to the goods for purpose of putting them in a deliverable state, the property does not pass until such thing is done, and the buyer has notice thereof”.

- Example – where according to terms of contract, the seller has to get goods packed in bags, the property in goods will not pass to buyer until the seller has packed so and buyer gets notice of the same.
- Buyer must get the notice of the fact that goods have been put in a deliverable state. As soon as the buyer gets notice, property in the goods passes to the buyer. It is immaterial whether fact of the goods being put in a deliverable state comes to his knowledge by an information given to him by the seller or in any other way.

Specific goods in a deliverable state which is to be weighed, measured etc. by the seller to ascertain price

According to Section 22 “where there is a contract for the 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 and the buyer has notice thereof”.

- For the application of this section, something must remain to be done by the seller to ascertain the price of the goods. Once such thing like weigh, measure etc. is done and the buyer gets notice of it the property in the goods passes to the buyer.

## **Transfer of Property in Unascertained Goods**

According to Section 18, “where there is a contract for sale of unascertained goods, no property in the goods is transferred to buyer unless and until the goods are ascertained”.

- Unascertained Goods – Unascertained goods are those goods which are yet to be ascertained. In *Salar Jung Sugar Mills Ltd. V. State of Mysore(1972)*, held that unascertained goods fall in the following categories:
  - i. Future goods;
  - ii. Generic goods;
  - iii. Unidentified part of specific goods.
- In contract of sale of unascertained goods, ownership is not transferred to the buyer until the goods are ascertained.

## **Sale of Unascertained goods and appropriation**

According to Section 23, the property in respect of unascertained goods sold by description passes to buyer, when the following conditions are satisfied:

- a) There is appropriation of goods to the contract either by seller or buyer  
Appropriation means selection of goods with the exclusive intention of using them in performance of the contract. It is an act manifesting intent to identify specific goods to which the contract shall apply. For example, A agrees to supply B a ring which A has yet to manufacture, and after manufacturing some rings he despatches one to B. That particular ring has been appropriated to the contract.
- b) Appropriation must be made by one party with the assent of other  
Appropriation involves element of common intention of parties. A mere setting apart or selection by the seller of the goods which he expects to use in performance of contract is not enough because he can change his mind. To constitute an appropriation, the parties should have had, an intention to attach the contract irrevocably to those goods, so that those goods and no others are the subject of sale and become the property of buyer. Therefore, it is necessary that while making appropriation assent of other party must be taken.  
For example, if A is to supply 100 bags out of a stock of 1000 bags, and A indicates to buyer which 100 bags would be delivered to him and the latter assents to it, there has been an appropriation.
- c) The goods appropriated to the contract should be of same description and in deliverable state.

- d) The appropriation must be made unconditional  
If the appropriation is made with condition, the property in goods does not pass on such appropriation. In such cases seller is deemed to have reserve the right of disposal of goods.

### **Goods sent on approval or on sale or return**

Section 24 provides that when goods are delivered to the buyer on approval or 'on sale or return', the property passes to the buyer in the following cases:-

- a. When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- b. If he does not signify his approval to the seller but retains the goods without giving notice of rejection. In such case, the property passes by failure to return in fixed time or if no time is fixed on the expiration of reasonable time.

When goods are sent on approval, or on sale or return the property passes either by acceptance or by failure to return within a fixed reasonable time. What is a reasonable time is a question of fact in each case.

Acceptance may be express or implied from conduct. For example, if buyer uses the goods or pledges it or resell it, he has impliedly accepted the goods and property has passed to the buyer.

### **Reservation of Right of Disposal**

The reservation of right of disposal allows a seller to retain the ownership of goods sold until certain conditions are met, even after the buyer takes possession.

Under Section 25 of the Sale of Goods Act, a seller may reserve the right to dispose of goods after they have been delivered to the buyer. This is often used in situations involving credit sales.

**The seller can specify conditions under which the ownership will transfer. These may include:**

- i. Payment of the price,
- ii. fulfilment of specific contractual obligations.

### **Legal consequence of reservation of right of disposal**

- a) Until the conditions are fulfilled, the seller retains ownership and can reclaim the goods if the buyer defaults.

The buyer has possession but not full ownership until the terms are met.