

TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

PASSING OF PROPERTY: Passing of property means passing of ownership.

- ❖ **PROPERTY (SPECIFIC OR ASCERTAINED GOODS) PASSES WHEN INTENDED TO PASS:** Where there is a contract for sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend to be transfer.

STAGES OF GOODS WHILE PASSING OF PROPERTY:

- **SPECIFIC GOODS IN A DELIVERABLE STATE:** The property in the goods passes to the buyer **when the contract is made**, immaterial of payment.
- **SPECIFIC GOODS TO BE PUT INTO A DELIVERABLE STATE:** Where 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 and the buyer has notice thereof.**
- **SPECIFIC GOODS IN A DELIVERABLE STATE, WHEN THE SELLER HAS TO DO ANTHING THERETO IN ORDER TO ASCERTAIN PRICE:** 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 thing is done and the buyer has notice thereof.**
- ❖ **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 and until the goods are ascertained.**
- **SALE OF UNASCERTAINED GOODS BY DESCRIPTION:** Where there is a contract for the sale of unascertained or future goods by description and **goods of that description and in a deliverable state are unconditionally appropriated to the contract**, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.
- **DELIVERY TO THE CARRIER:** **Where the seller delivers the goods to the buyer or to a carrier or other bailee** (whether named by the buyer or not) for the purpose of transmission to the buyer, **and 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":** The property therein passes to the buyer-
 - ♣ **When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;**
 - ♣ **If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or**
 - ♣ **He does something to the goods which is equivalent to accepting the goods e.g. he pledges or sells the goods.**
- ♣ **SALE FOR CASH ONLY OR RETURN:** Where the goods have been delivered 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.

UNIT - 3

- ♣ **RESERVATION OF RIGHT OF DISPOSAL:** The right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer. Seller may reserve the rights until certain conditions have been fulfilled. Even if the goods are transferred property would not be transferred.

CIRCUMSTANCES UNDER WHICH THE RIGHT TO DISPOSAL MAY BE RESERVED:

- ♥ **If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller will be prima facie deemed to have reserved to the right of disposal.**
- ♥ **Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, 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 or the railway receipt, the property in the goods does not pass to him.

RISK PRIMA FACIE PASSES WITH PROPERTY

“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 the buyer, the goods are at the buyer’s risk whether delivery has been made or not”.

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

- ◆ **If delivery has been delayed by the fault of the seller or the buyer, the goods shall be at the risk of the party in default, as regards loss which might not have arisen but for the default.**
- ◆ **The duties and liabilities of the seller or the buyer as a bailee of goods for the other party remain unaffected even when the risk has passed generally.**

TRANSFER TO TITLE

SALE BY PERSON NOT THE OWNER: The general rule regarding the transfer of title is that the seller cannot transfer to the buyer of goods a better title than he himself has. If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be 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:

- ♣ **SALE BY A MERCANTILE AGENT:** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;
 - If he was in possession of the goods or documents with the consent of the owner;**
 - If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and**
 - If the buyer has acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell**
- ♣ **SALE BY ONE OF THE JOINT OWNERS:** The property in the goods is transferred to any person who buys them of such joint owner in **good faith** and **has not at the time of the contract of sale notice that seller has no authority to sell.**

UNIT - 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.
- ♣ **SALE BY ONE WHO HAS ALREADY SOLD THE GOODS BUT CONTINUES IN POSSESSION THEREOF:** The goods are sold to the third person, and such person obtains the delivery thereof in *good faith and without notice of the previous sale*, he would have good title to them.
- ♣ **SALE BY OWNER OBTAINING POSSESSION BEFORE THE PROPERTY IN THE GOODS HAS VESTED IN HIM:** Buyer with the consent of the seller sells, *pledge or otherwise dispose of the goods to a third person and* third person obtains the delivery of the goods *in good faith and 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.
- ♣ **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.
- ♣ **SALE BY AN UNPAID SELLER:** *Where an unpaid seller who has 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 PROVISION OF OTHER ACTS:** Sale by official receiver or liquidator, purchase of goods from finder of goods, sale by pawnee can convey a good title to the buyer.

PERFORMANCE OF THE CONTRACT OF SALE

DEFINITION OF DELIVERY: voluntary transfer of possession from one person to another

DUTIES OF SELLER AND BUYER: it is the duty of the *seller to deliver the goods and of the buyer to accept and pay for them.*

PAYMENT AND DELIVERY ARE CONCURRENT CONDITIONS: *unless otherwise agreed*, both things to be done at the same time.

RULES REGARDING DELIVERY OF GOODS:

- ♣ **DELIVERY:** Putting the goods in possession of buyer.
- ♣ **EFFECT OF PART DELIVERY:** A delivery of part of the goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as delivery of the whole.
- ♣ **BUYER TO APPLY FOR DELIVERY:** Apart from any express *contract seller is not bound to deliver them until the buyer applies.*
- ♣ **PLACE OF DELIVERY:** *Firstly as specified in the contract, otherwise 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 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 or produced.
- ♣ **TIME OF DELIVERY:** If no time fixed then at *reasonable time.*
- ♣ **GOOD IN POSSESSION OF A THIRD PARTY:** There will be no delivery unless and until such third person acknowledge to the buyer that he holds the goods on his behalf.
- ♣ **TIME FOR TENDER OF DELIVERY:** Should be at *reasonable hour.*
- ♣ **EXPENSES OF DELIVERY:** *Borne by the seller* unless contrary to the contract.

UNIT - 3

- ♣ **DELIVERY OF WRONG QUANTITY:** *If less quantity*, buyer may reject them or if buyer accepts the goods he shall pay for them. *More quantity*, buyer may accept as contracted and reject extra, he may reject the whole, accept the whole and pay for whole. *Mix goods*, buyer may accept which are in accordance of contract and reject balance, reject the whole goods.
- ♣ **INSTALLMENT DELIVERIES:** *Unless otherwise agreed*, buyer is not bound to accept the delivery in instalments.
- ♣ **DELIVERY TO CARRIER:** *Is prima facie deemed to be delivered to buyer* unless otherwise agreed in contract.
- ♣ **DETERIORATION DURING TRANSIT:** *Liability will fall on buyer.*
- ♣ **BUYER'S RIGHT TO EXAMINE THE GOODS:** *Buyer is entitled to reasonable examine the goods* as specified in contract. *Unless otherwise agreed* in the contract.

RULES RELATED TO ACCEPTANCE OF DELIVERY OF GOODS

Acceptance is deemed to take place when the buyer:

- ♥ *Intimates to the seller that he had accepted the goods; or*
- ♥ *Does any act to the goods, which is inconsistent with the ownership of the seller; or*
- ♥ *Retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them.*

BUYER NOT BOUND TO RETURN REJECTED GOODS: *Unless otherwise agreed*, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, 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.

LIABILITIES OF BUYER FOR NEGLECTING OR REFUSING DELIVERY OF GOODS: *Buyer will be 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.