

UNIT IV

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TRANSFER OF PROPERTY AND RIGHTS OF AN UNPAID SELLER

INTRODUCTION

Transfer of property in goods from the seller to the buyer is the main object of contract of sale. Property in goods means the ownership of goods, whereas 'possession of goods' refers to the custody, or control of goods. The important rules for ascertaining when the property in goods passes to the buyer are as follows:

Goods must be ascertained (Sec. 18) 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. Property passes when intended to pass (Sec. 19)

(a) 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 intend it to be transferred.

(b) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

(c) Unless a different intention appears, the rules contained in Secs. 20-24 are the rules for ascertaining the intention of the parties as to the time when the property in the goods is to pass to the buyer.

Specific goods in a deliverable state (Sec. 20)

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, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Specific goods to be put into a deliverable state (Sec.21)

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

Specific goods in a deliverable state when the seller has to do anything thereto in order to ascertain price (Sec. 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 an act or thing is done, and the buyer has notice thereof.

Sale of unascertained goods and appropriation (Sec. 23)

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 there upon passes to the buyer. Such an assent may be expressed 'or implied, and may be given either before or after the appropriation is made.

Delivery to carrier

Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or any 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' (Sec. 24)

When goods are delivered to the buyer on approval or 'on sale or return' or other similar terms, the property therein passes to the buyer.

(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 or acceptance to the seller, but retains the goods without giving a notice of rejection, then, if a time has been fixed for the return of the goods, on the expiry of such time, and, if no time has been fixed, on the expiry of a reasonable time.

Risk prima facie passes with property (Sec. 26)

Unless otherwise agreed,

(a) The goods remain at the seller's risk until the property therein is transferred to the buyer.

(b) However, when the property therein is transferred to the buyer, the goods are at the buyer's risk, whether the delivery has been made or not.

(c) Where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault.

TRANSFER OF TITLE BY NON-OWNERS (SECS. 27-30)

General Rule as to Transfer of Title (Sec. 27)

The general rule is that only the owner of goods can transfer a good title. No one can give a better title than he himself has given. This rule is expressed by the maxim 'Nemo dat quod non habet,' which means 'that no one can give what he himself has not'. If the seller, therefore, has no title, or a defective title, the buyer's title will be equally wanting, or defective as the case may be, though he may be a purchaser.

According to Sec. 27 of the Sale of Goods Act, 1930, where goods are sold by a person, who is not the owner, and who does not sell under the authority, or with the consent of the owner, the buyer acquires no better title to the goods than what the seller had, unless the owner is precluded by his conduct from denying the seller's authority to sell.

Exceptions to the Rule

To the above rule, there are several exceptions. They are laid down by Secs. 27 30 and are as follows:

Sale by Non-owners Exceptions

- Sale by a mercantile agent
- Sale by an unpaid seller Sale by a pawnee / pledgee
- Sale by one of joint owners Sale by owner / estoppel
- Sale by finder of goods Sale by official receiver or Sale by seller in possession assignee after sale
- Sale by person in possession
- Sale by buyer in possession under voidable contract before transfer of ownership

Sale by a mercantile agent Sec. 2(9) defines a 'mercantile agent' as an agent having in the customary course of business, such an agent authority either to sell goods, or to raise money on the security of goods. In case of sale by a mercantile agent, who is in possession of either the goods or documents of title to . the goods, with the consent of the owner, sells the goods in the ordinary course of business as a mercantile agent, the buyer gets a good title to the goods provided he buys them in the good faith and for value.

Thus, a person, who in good faith buys goods of a factor, or auctioneer, will get good title to them, even though the seller has exceeded his authority, or the authority has been revoked by the true owner before sale.

for example: A 'mercantile agent' obtained some diamonds from the true owner falsely pretending that he had a customer who wanted to purchase them, and he afterwards fraudulently pledged the goods to secure an advance for himself. Held, the owner was bound by the transaction of pledge [Oppenheimer Vs. Attenborough (1908) (K.B. 221)].

Sale by a joint-owner (Sec. 28) Where one of the, several joint owners of goods has the sole possession thereof, with the consent of the others, any purchaser from such a person, for value without notice at the time, or the seller's want of authority to sell, acquires a good title thereto, against the other joint-owners.

In case of sale by a co-owner, a good title can pass to the purchaser only if the co-owner was in possession with the consent of the other co-owners.

Sale by a person in possession under avoidable contract (Sec. 29) A person who has obtained possession of goods under a contract, which is voidable on the grounds of fraud, misrepresentation, coercion, or undue influence, can convey a good title, provided the sale takes place before the voidable contract is avoided. For example, X, by way of undue influence, buys a car from Y at a very low price and sells it to Z, an innocent purchaser. Z has a good title, and Y cannot recover the car from him, even if the contract is subsequently set aside.

Sale by the seller in possession of goods after sale (Sec. 80) Where a seller having sold goods, continues in possession thereof or of the documents of title to the goods, the delivery or transfer by such a person or by a mercantile agent acting for such a person, of the same, by way of sale, pledge, or other disposition, will pass a good title to the transferee, if such a person has acted in good faith, and without notice to the previous sale. The following two conditions must be satisfied, namely:

(a) The seller must be in possession of the goods as the seller and not in any other capacity. Thus, where the buyer asks the seller to keep the goods as his bailer, the section will not apply.

as the purchaser must be a bona fide purchaser and for value,

For example, A sold 100 bags of sugar to B. B delayed in taking the bags away. In the meantime, A sold those bags again to another innocent purchaser C, who took it without notice of the prior sale and for value. C gets a good title.

Sale by buyer in possession of goods Where a person having bought or agreed to buy, obtains with the consent of the seller, possession of the goods or of the documents of title to the goods, the delivery or transfer by such a person or by a mercantile agent acting for such a person, of the goods or documents, by way of sale, pledge, or other disposition thereof will be valid and effective, if the person receiving the same, acted in a bona fide manner and without notice of the seller's lien, if any. .

Sale by an unpaid seller According to Sec. 54(3), an unpaid seller of goods, who has exercised his right of lien or stoppage in transit can, even though the ownership in them has passed to the buyer, resell the goods, and convey a valid title to another buyer, though no notice of resale has been given to the original buyer.

Exceptions under other acts Sec. 169 of the Indian Contract Act provides that the sale by a finder of lost goods under certain circumstances shall be valid even against the true owner. A finder of goods may sell the goods found:

- a. If the owner cannot with reasonable diligence be found. If found, he refuses to pay lawful charges of the finder.
- b. If the goods are in the danger of perishing, or of losing the greater part of their value.
- c. If the lawful charges of the finder, in respect of the goods found, amount to two-thirds of their value.
- d. Sale by a pawnee or pledgee under Sec: 176 of the Indian Contract Act,
- e. Sale by an official receiver or r official assignee or liquidator of companies.

Rules Regarding Delivery of Goods

Delivery (Sec. 33) Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery, or which has the effect of putting the goods in the possession of the buyer, or of any person authorised to hold them on his behalf.

Effect of part delivery (Sec. 34) A delivery of a part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, 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.

Buyer to apply for delivery (Sec. 35) Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

1. Mode of delivery Sec. 33 provides that the mode of delivery may be actual, symbolic, or constructive.
2. Place of delivery Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.

Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the 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: Where under the contract of sale, the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

Demand or tender of delivery may be treated as ineffectual, unless made at a reasonable hour.

Goods in possession of a third party: Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such a third person acknowledges to the buyer that he holds the goods on his behalf. However, nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

Delivery of wrong quantity (Sec. 37)

Where the seller delivers to the buyer a quantity of goods less 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.

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

Where the seller delivers to the buyer 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 the contract and reject the rest, or may reject the whole.

The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

Installment deliveries (Sec. 38) Generally, the buyer of goods is not bound to accept delivery thereof in installments. Where there is a contract for the sale of goods to be delivered by stated installments which are to be separately paid for, and the seller makes no delivery or a defective delivery in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more

installments, it is a question in each case depending on the terms of the contract, and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Delivery to carrier or wharfinger [Sec. 39 (1)]

(a) When the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.

(b) With the buyer's consent, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable, having regard to the nature of the goods, and the other circumstances of the case(s). If the seller omits to do so and the goods are lost or damaged in the course of transit, or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible for the damages.

(c) When goods are sent by the seller to the buyer by a route involving a sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer, as may enable him to insure them during their sea transit. If the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at a distant place (Sec. 40) Where the seller of goods agrees to deliver them at his own risk at a place other than the place of sale, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily, incident to the course of transit.

RIGHTS OF THE BUYER

Examination of Goods

Suit for damages for non-delivery

Suit for specific

Buyer Suit for breach of warranty

In case of repudiation of contract

Suit for interest

Examination of Goods: The buyer has the right to examine the goods delivered to him before he accepts them. The seller has to give a reasonable opportunity to the buyer for examining the goods who has not previously examined them in order to ascertain that the goods delivered are in conformity with the contract.

Suit for damages for non-delivery: The buyer has the right to sue the seller for damages, if the seller wrongfully neglects or refuses to deliver the goods to the buyer.

Suit for specific performance: The buyer has the right to sue the seller for specific performance of the contract to sell. The Court may order the seller to deliver those specific or ascertained goods which formed the subject matter of the contract.

Suit for breach of warranty: Where there is a breach of warranty by the seller, the buyer has the right to:

- (a) Reject the goods or
- (b) Set up against the seller the breach of warranty in diminution or extinction of the price or
- (c) Sue the seller.

In case of repudiation of contract: The buyer has the right to rescind the contract and sue for damages for the breach, if the seller repudiates the contract before the date of delivery or the buyer may treat the contract as subsisting and wait till the date of delivery.

Suit for interest: The buyer has the right to claim interest on the amount of the price refunded to him from the date on which the payment was made, if there is a breach of contract on the part of the seller.

Acceptance

The buyer is deemed to have accepted the goods:

- a. When he intimates to the seller that he has accepted them.
- b. When the goods have been delivered to him, and he does any act in relation to them, which is inconsistent with the ownership of the seller.
- c. When, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

RIGHTS OF AN UNPAID SELLER

Definition of 'unpaid seller'(Sec. 45) .The seller of goods is deemed to be an 'unpaid seller' within the meaning of this act:

- (a) When the whole of the price has not been paid or tendered.
- (b) When a bill of exchange or any other negotiable instrument has been received as a conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument, or otherwise.

The term 'seller' includes:

1. Any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed,
2. A consignor or
3. An agent who has himself paid, or is directly responsible for the price.

Rights of an Unpaid Seller against Goods (Sec. 46): where property in goods have passed to the buyer
The unpaid seller of goods, by implication of law has:

- (a) A lien on the goods for the price, while he is in possession of them.
- (b) In case of the insolvency of the buyer, a right of stopping the goods in transit, after he has parted with the possession of them.
- (c) A right of resale as limited by this act. Where the property in goods has not passed to the buyer

Withholding delivery of goods The unpaid seller has, in addition to his other remedies, a right of

withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit, where the property has passed to the buyer.

Unpaid seller's lien Seller's lien (Sec. 47) According to Sec. 47 of the Sale of Goods Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases:

a) Where the goods have been sold without any stipulation as to credit.

b) Where the goods have been sold on credit, but the term of credit has expired where the buyer becomes insolvent.

The seller may exercise his right of lien, notwithstanding, that he is in possession of the goods as a agent or a bailee for the buyer. Part delivery Sec. 48 of the act provides that where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such a part delivery has been made under such circumstances as to show an agreement to waive the lien.

. Termination of lien

1. Sec. 49 of the act provides that the unpaid seller of goods loses his lien thereon:

(a) When he delivers the goods to a carrier or any other bailee.

(b) Transmission to the buyer without reserving the right of disposal of the goods.

(c) When the buyer or his agent lawfully obtains possession of the goods.

(d) By waiver.

2. The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Stoppage in transit

Right of stoppage in transit

Sec. 50 of the Sale of Goods Act, 1930 provides that when the buyer of goods becomes insolvent, the unpaid seller, who has parted with the possession of the goods, has the right of stopping them in transit. He may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.