

Transfer of Ownership and Delivery of Goods

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Introduction:

The term 'property in the goods' may be defined as the legal ownership of the goods. On the passing of the property to the buyer, he becomes the owner of the goods and acquires all the rights held by the seller in respect of the goods sold. The term 'property in the goods' must be distinguished from the term 'possession of the goods'.

Introduction(Cont..):

The term 'property in the goods' means the ownership of the goods, whereas the term 'possession of goods' Simply means the custody or physical control over the goods. Thus, the transfer of possession is merely the delivery of the goods, and not the transfer of ownership. The ownership of the goods may pass with or without the transfer of possession.

Introduction(Cont..)

The transfer of ownership is of great significance in a contract of sale due to the following reason:

1. Risk passes with the ownership
2. Proprietary rights over the goods
3. Seller's right for price
4. Insolvency of the seller or the buyer

Transfer of Ownership in case of Sale of Specific Goods

1. The ownership is transferred at the time of making the contract **(Section 20)**: The general rule, in case of specific goods, is that the ownership of goods is transferred from the seller to the buyer at the time of making the contract. However, the ownership is transferred at the time of the contract only if all the following conditions are fulfilled:

Transfer of Ownership in case of Sale of Specific Goods

- (a) The Sale must be of specific goods
 - (b) The goods must be in a deliverable state
 - (c) The contract of sale must be unconditional
2. The ownership is to transfer at some other time: if any of the above stated conditions is not satisfied, then the ownership will not be transferred at the time of contract of sale.

Transfer of Ownership in case of Sale of Specific Goods

(a) Where the specific goods are to be put in a deliverable state by the seller: In this case, the ownership is transferred as soon as the seller has put the goods in a deliverable state and the buyer comes to know about the act of the seller **(Section 21)**.

Transfer of Ownership in case of Sale of Specific Goods

(b) Where the specific goods in a deliverable state are to be weighed or measured by the seller to ascertain the price: In this case, the ownership is transferred to the buyer as soon as the seller has done the act of ascertaining the price and the buyer comes to know about this act of the seller **(Section 22)**.

Transfer of Ownership in case of Sale of Unascertained Goods

The unascertained goods are the goods which are not specifically identified at the time of making the contract of sale. In case of sale of unascertained goods, the ownership is transferred to the buyer on the fulfilment of both the following conditions:

Transfer of Ownership in case of Sale of Unascertained Goods

(a) When the goods are ascertained, and

(b) When the goods are appropriated to the contract

1. It is the process by which the goods to be delivered under the contract are identified and set apart. It is a unilateral act of the seller alone to identify and set apart the goods.



Transfer of Ownership in case of Sale of Unascertained Goods

2. It is the process by which the goods to be delivered under the contract are identified and set apart with the mutual consent of the seller as well as buyer. It is a bilateral act of the seller and the buyer to identify and set apart the goods. The appropriation may be done either by the seller with the consent of the buyer, or by the buyer with the consent of the seller. Such consent may be express or implied **[Section 23 (1)]**.

Transfer of Ownership in case of Sale of Approval

The term 'sale on approval' may be defined as the sale in which the buyer may return the goods within a reasonable time, if the goods do not serve his purpose. It may be noted that the seller cannot ask for the return of the goods. He can only recover the price of the goods if the goods are not returned within a reasonable time.

Transfer of Ownership in case of Sale of Approval

This rule is contained in **Section 24** of the Sale of Goods Act which provides that in case of sale on approval, the ownership is transferred to the buyer in any of the following three ways:

- 1.** When the buyer accepts the goods: The acceptance by the buyer may be express or implied.

Transfer of Ownership in case of Sale of Approval

2. When the buyer adopts the transaction:
The buyer may adopt the goods by doing some act which shows that he has accepted the goods e.g., where he further sells or pledges the goods.
3. Where the buyer fails to return the goods within fixed or reasonable time:
In this case, the position is an under:

Transfer of Ownership in case of Sale of Approval

- (a) When the time is fixed for the return of the goods: In such cases, if the buyer fails to return the goods within the fixed time, the ownership is transferred to the buyer on the expiry of such fixed time.
- (b) When no time is fixed for the return of the goods: In such cases, if the buyer fails to return the goods within a reasonable time, the ownership is transferred to the buyer on the expiry of the reasonable time. The term 'reasonable time' is a question of fact in each case.

Reservation of Right of Disposal

Where the seller has reserved his right of disposal, the ownership of the goods is not transferred to the buyer even if the goods are delivered to the buyer or some carrier for the purpose of transmission to the buyer. The ownership is transferred to the buyer only when the conditions imposed by the seller are fulfilled [Section 25 (1)].

Reservation of Right of Disposal

1. By taking the documents of title in his own name or his agent's name **[Section 25 (2)]**.
2. By sending the bill of exchange for the price, to the buyer, alongwith the documents of title **[Section 25 (3)]**.

Risk Passes with the Property (Ownership)

The general rule in the contract of sale is that ‘the risk prima facie passes with the ownership’, I.e., the risk and the ownership of the goods go together. In other words, the goods are at the risk of the party who has the ownership of the goods.

Risk Passes with the Property (Ownership)

This means that in case of loss of the goods, the loss shall be borne by the party who has the ownership of the goods at the time of loss. Thus, the actual delivery of goods is immaterial for the passing of the risk. It is only the ownership, which is relevant for the purpose.

Transfer of Title by Non-Owners

“Nemo dat quod non-habet”.

This means that ‘no one can transfer a better title than he himself has’. Thus, the buyer cannot get a better title than that of the seller. If the seller’s own title is defective, the buyer’s title will also be defective, e.g., where a thief sells the goods, the buyer from such a thief gets no title to the goods.

Transfer of Title by Non-Owners

This rule is contained in **Section 27** of the Sale of Goods Act, which reads as under:

“ Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or

With the consent of the owner, the buyer acquires no better title to the goods than that the seller had.”

Transfer of Title by Non-Owners

1. Title by estoppel
2. Sale by a mercantile agent
3. Sale by a joint owner
4. Sale by a seller in possession of goods after their sale
5. Sale by a buyer in possession of goods after their sale
6. Sale by a finder of goods

Transfer of Title by Non-Owners

7. Sale by a person in possession under avoidable contract

(a) The seller must have obtained the possession of the goods under avoidable contract and not under a void contract.

(b) The contract must not have been rescinded (i.e., put to an end) at the time of sale, i.e., at the time of sale the voidable contract should be in existence.

(c) The buyer must act in a good faith. And he should not have any knowledge about seller's defective title.

Modes and Rules of Effective Delivery of Goods

1. When the goods are physically put in possession of the buyer, the delivery is said to be actual.
2. When the goods are not physically delivered to the buyer but are delivered by indicating or giving a symbol, the delivery is said to be symbolic.
3. The term 'constructive delivery' may be defined as the delivery when a third person, in possession of the goods, acknowledge to hold the goods on behalf of the buyers.

Rules Regarding Effective Delivery of Goods

1. The delivery of the goods may be made in any of the modes discussed above. But it must have the effect of putting the goods in the possession of the buyer or his authorized agent. **(Section 33)**
2. It is seller's duty to be ready and willing to deliver the goods to the buyer. But he is not bound to deliver the goods unless the buyer makes a demand for the delivery of the goods **(Section 35).**

Rules Regarding Effective Delivery of Goods(Cont..)

- 3.** Where the place is so specified, the goods must be delivered at such place during the business hours and on a working day. But where no place is specified in the contract, then the following rules, contained in **Section 36 (1)**, shall apply:
- (i)** In case of sale, the goods sold are to be delivered at the place where they are, at the time of sale;

Rules Regarding Effective Delivery of Goods(Cont..)

- (ii) In case of an agreement to sell, the goods are to be delivered at the place where they are, at the time of agreement to sell;
- (iii) If at the time of agreement to sell, the goods are not in existence they are to be delivered at a place where they are manufactured or produced.

Rules Regarding Effective Delivery of Goods(Cont..)

4. When the time is so specified, the delivery is to be made by the seller within the specified time. Where no times is specified in the contract, then the delivery of goods must be made within a reasonable time **[Section 36(2)]**. The term ‘reasonable time’ is a question of fact depending upon the facts and circumstances of each particular case.

Rules Regarding Effective Delivery of Goods(Cont..)

5. The demand of delivery by the buyer and the tender of goods by the seller must be made at a reasonable hour **[Section 36 (4)]**.
6. Sometimes, at the time of sale, the goods are in the possession of a third person. In such cases, the effective delivery takes place when such person acknowledge to (i.e., inform) the buyer, that he holds the goods on his (buyer's) behalf **[Section 36 (3)]**.

Rules Regarding Effective Delivery of Goods(Cont..)

7. The expenses of putting the goods into a deliverable state are borne by the seller. And the expenses of receiving the goods are borne by the buyer. However, the seller and the buyer may also agree otherwise, I.e., they may agree that the expenses of delivery shall be borne by the buyer **[Section 36(5)]**.

8. Delivery of Wrong Quantity

Rules Regarding Effective Delivery of Goods(Cont..)

- 9. Delivery of goods by Instalments
- 10. Delivery to a carrier or wharfinger
- 11. Deterioration of goods during transit
- 12. This is generally done when a huge quantity of goods is to be delivery. In such cases, the following rules, as contained in **Section 34**, shall apply:

Rules Regarding Effective Delivery of Goods(Cont..)

(i) Where the part delivery is made in progress of the whole delivery, then it is treated as a delivery of the whole. And the ownership of the whole quantity is transferred to the buyer.

(ii) Where the part delivery is made with the intention of separating it from the whole, then it is not treated as a delivery of the whole. And the ownership of the whole quantity is not transferred to the buyer.

Delivery of Goods in Contracts Involving Sea Transit

- C.I.F. Contracts:

The term 'C.I.F.' means 'cost, insurance and freight'. And a 'C.I.F.' contract is a contract for the sale of goods at a price which includes the cost of goods, insurance and freight charges. Thus, in such contracts, the charges of insurance during transit and the freight charges are borne by the buyer as these are included in the price of the goods.

Delivery of Goods in Contracts Involving Sea Transit

The Ownership of the goods is transferred to the buyer when the shipping documents are delivered to the buyer and he receives them by paying price of the goods. Thus, on buyer's refusal to take the shipping documents, the Seller can claim the damages for the breach of contract, and not the price of the goods.

Delivery of Goods in Contracts Involving Sea Transit(Cont..)

F.O.B. Contracts:

The buyer is bound to pay the price of the goods when the shipping documents are presented to him even if the goods have been lost by the that time. In case of F.O.B. contracts, the ownership of the goods is transferred to the buyer as soon as the goods are loaded on board the ship. The ownership is so transferred even if the goods are not specific or ascertained.

Delivery of Goods in Contracts Involving Sea Transit(Cont...)

However, the ownership of the goods will not be transferred to the buyer, if, by the shipping documents, the seller has reserved his right of disposal. Thus, if the seller does not reserve his right of disposal, the goods are at buyer's risk after they are loaded on the ship.

Multiple Choice Question(MCQ'S)

1. The ownership of goods is transferred to the buyer at the time of making the contract only if the following condition is/are satisfied.
 - (a) The sale is of specific goods
 - (b) The goods are in a deliverable state
 - (c) The contract of sale is unconditional
 - (d) All of the above

Multiple Choice Question(MCQ'S)

1. The ownership of goods is transferred to the buyer at the time of making the contract only if the following condition is/are satisfied.
- (a) The sale is of specific goods
 - (b) **The goods are in a deliverable state**
 - (c) The contract of sale is unconditional
 - (d) All of the above

Multiple Choice Question(MCQ'S)

2. In an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the
- (a) Price is paid by the buyer
 - (b) Goods are delivered by the seller
 - (c) Goods are accepted by the buyer
 - (d) Contract is made

Multiple Choice Question(MCQ'S)

2. In an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the
- (a) Price is paid by the buyer
 - (b) Goods are delivered by the seller
 - (c) Goods are accepted by the buyer
 - (d) Contract is made**

MultipleChoice Question(MCQ'S)

3. Where the specific goods are in a deliverable state but the seller has to do some act to ascertain the price, the property in the goods is transferred to the buyer when the
- (a) Seller does that act
 - (b) Buyer comes to know about the same
 - (c) Both (a) and (b)
 - (d) Only (a)

MultipleChoice Question(MCQ'S)

3. Where the specific goods are in a deliverable state but the seller has to do some act to ascertain the price, the property in the goods is transferred to the buyer when the
- (a) Seller does that act
 - (b) Buyer comes to know about the same
 - (c) Both (a) and (b)**
 - (d) Only (a)

Multiple Choice Question(MCQ'S)

4. The legal provisions relating to transfer of ownership in case of sale of specific goods, are contained in
- (a) Sections 17 to 19
 - (b) Sections 20 to 22
 - (c) Section 23
 - (d) Section 24

Multiple Choice Question(MCQ'S)

4. The legal provisions relating to transfer of ownership in case of sale of specific goods, are contained in
- (a) Sections 17 to 19
 - (b) Sections 20 to 22**
 - (c) Section 23
 - (d) Section 24

Multiple Choice Question(MCQ'S)

5. In case of sale of unascertained goods the ownership is transferred to the buyer, when the goods are
- (a) Ascertained
 - (b) Appropriated to the contract
 - (c) Weighed and measured
 - (d) Both (a) and (b)

Multiple Choice Question(MCQ'S)

5. In case of sale of unascertained goods the ownership is transferred to the buyer, when the goods are
- (a) Ascertained
 - (b) Appropriated to the contract
 - (c) Weighed and measured
 - (d) Both (a) and (b)**

Multiple Choice Question(MCQ'S)

6. The 'appropriation' is a process by which the goods to be delivered under the contract are identified and set apart by the

- (a) Seller only
- (b) Buyer only
- (c) Mutual consent of both
- (d) Third party

Multiple Choice Question(MCQ'S)

6. The 'appropriation' is a process by which the goods to be delivered under the contract are identified and set apart by the

- (a) Seller only
- (b) Buyer only
- (c) **Mutual consent of both**
- (d) Third party

Multiple Choice Question(MCQ'S)

7. A contract for the sale of unascertained goods is an agreement to sell. It becomes sale when the goods are
- (a) ascertained
 - (b) appropriated
 - (c) delivered only
 - (d) both (a) and (b)

Multiple Choice Question(MCQ'S)

7. A contract for the sale of unascertained goods is an agreement to sell. It becomes sale when the goods are
- (a) ascertained
 - (b) appropriated
 - (c) delivered only
 - (d) **both (a) and (b)**

Multiple Choice Question(MCQ'S)

8. In case of sale on approval, if the goods are not returned within a reasonable time, the seller
- (a) can ask for return of goods
 - (b) can recover compensation for failure to return goods
 - (c) becomes entitled to recover the price of goods
 - (d) both (a) and (b)

Multiple Choice Question(MCQ'S)

8. In case of sale on approval, if the goods are not returned within a reasonable time, the seller
- (a) can ask for return of goods
 - (b) can recover compensation for failure to return goods
 - (c) becomes entitled to recover the price of goods
 - (d) both (a) and (b)

Multiple Choice Question(MCQ'S)

9. A delivered some jewellery to B on 'sale or return' basis. B sold the jewellery to C on similar terms. In this case, the ownership passes to B
- (a) on sale by B to C
 - (b) If C fails to return the goods to B
 - (c) If C returns the goods and B accepts return
 - (d) If C pays the price to B

Multiple Choice Question(MCQ'S)

9. A delivered some jewellery to B on 'sale or return' basis. B sold the jewellery to C on similar terms. In this case, the ownership passes to B
- (a) **on sale by B to C**
 - (b) If C fails to return the goods to B
 - (c) If C returns the goods and B accepts return
 - (d) If C pays the price to B

Multiple Choice Question(MCQ'S)

10. Which of the following statement is incorrect in relation to 'sale on approval'?

- (a) The seller cannot ask for the return of the goods sold.
- (b) The seller cannot recover the price if the goods are not returned within a reasonable time.
- (c) The seller can recover the price if the goods are not returned within a reasonable time.
- (d) The ownership of goods is transferred to the buyer if he fails to return the goods within fixed time or reasonable time.

Multiple Choice Question(MCQ'S)

- 10.** Which of the following statement is incorrect in relation to 'sale on approval'?
- (a) The seller cannot ask for the return of the goods sold.
 - (b) The seller cannot recover the price if the goods are not returned within a reasonable time.**
 - (c) The seller can recover the price if the goods are not returned within a reasonable time.
 - (d) The ownership of goods is transferred to the buyer if he fails to return the goods within fixed time or reasonable time.

Multiple Choice Question(MCQ'S)

- 11.** While delivering the goods to a carrier, in which of the following cases, the seller is presumed to have reserved his right of disposal?
- (a) Where he takes documents of title in his own name.
 - (b) Where alongwith the documents of title, he also sends the bill of exchange for price.
 - (c) Both of these
 - (d) None of these

Multiple Choice Question(MCQ'S)

- 11.** While delivering the goods to a carrier, in which of the following cases, the seller is presumed to have reserved his right of disposal?
- (a) Where he takes documents of title in his own name.
 - (b) Where alongwith the documents of title, he also sends the bill of exchange for price.
 - (c) Both of these**
 - (d) None of these

Multiple Choice Question(MCQ'S)

12. The goods are at the risk of the buyer when the

- (a) Ownership is transferred to him.
- (b) Possession of the goods is given to him.
- (c) Seller refuses to bear the loss of goods.
- (d) Seller reserves his right of disposal.

Multiple Choice Question(MCQ'S)

12. The goods are at the risk of the buyer when the

- (a) Ownership is transferred to him.**
- (b) Possession of the goods is given to him.
- (c) Seller refuses to bear the loss of goods.
- (d) Seller reserves his right of disposal.

Multiple Choice Question(MCQ'S)

13. A buyer who buys the goods from one of the various joint-owners, gets a valid title to the goods when the

- (a) Buyer buys the goods in good faith.
- (b) Joint-owner was in the sole possession of the goods.
- (c) Joint-owner sells the goods on credit only.
- (d) Both (a) and (b).

Multiple Choice Question(MCQ'S)

13. A buyer who buys the goods from one of the various joint-owners, gets a valid title to the goods when the

- (a) Buyer buys the goods in good faith.
- (b) Joint-owner was in the sole possession of the goods.
- (c) Joint-owner sells the goods on credit only.
- (d) Both (a) and (b).**

Multiple Choice Question(MCQ'S)

14. A purchased a refrigerator from B by fraud. Before the contract is put to an end, A sells the same to C who buys in good faith without any notice of A's defective title. Here C will get

- (a) Good title
- (b) No title
- (c) Defective title
- (d) Limited title

Multiple Choice Question(MCQ'S)

14. A purchased a refrigerator from B by fraud. Before the contract is put to an end, A sells the same to C who buys in good faith without any notice of A's defective title. Here C will get

(a) Good title

(b) No title

(c) Defective title

(d) Limited title

Multiple Choice Question(MCQ'S)

15. In case of sale by non-owners, the

- (a) Sale is void and the buyer gets no title to the goods.
- (b) Sale is voidable and the buyer gets title at the option of the owner.
- (c) Buyer does not get a better title to the goods than that of the seller.
- (d) Buyer gets a better title than that of the seller.

Multiple Choice Question(MCQ'S)

15. In case of sale by non-owners, the

- (a) Sale is void and the buyer gets no title to the goods.
- (b) Sale is voidable and the buyer gets title at the option of the owner.
- (c) Buyer does not get a better title to the goods than that of the seller.**
- (d) Buyer gets a better title than that of the seller.

Multiple Choice Question(MCQ'S)

- 16.** Delivering the keys of a godown in which the goods sold are stored, amounts to
- (a) Actual delivery
 - (b) Symbolic delivery
 - (c) Constructive delivery
 - (d) None of these

Multiple Choice Question(MCQ'S)

16. Delivering the keys of a godown in which the goods sold are stored, amounts to

- (a) Actual delivery
- (b) Symbolic delivery**
- (c) Constructive delivery
- (d) None of these

Multiple Choice Question(MCQ'S)

17. A sold 250 bags of rice to B which are in the possession of C, a warehouseman. On A's instructions C acknowledges to B that he is now holding goods on B's behalf. In this case, there is

- (a) Actual delivery
- (b) Symbolic delivery
- (c) Constructive delivery
- (d) No delivery at all.

Multiple Choice Question(MCQ'S)

17. A sold 250 bags of rice to B which are in the possession of C, a warehouseman. On A's instructions C acknowledges to B that he is now holding goods on B's behalf. In this case, there is

- (a) Actual delivery
- (b) Symbolic delivery
- (c) Constructive delivery**
- (d) No delivery at all.

Multiple Choice Question(MCQ'S)

18. Where at the time of sale the goods are in the possession of a third person, then the effective delivery takes place when the

- (a) Buyer receives the goods from such third person.
- (b) Third person acknowledge to the buyer that he holds the goods on his (buyer's) behalf.
- (c) Seller instructs the third person to deliver the goods to the buyer.
- (d) Goods are physically put in buyer's possession.

Multiple Choice Question(MCQ'S)

18. Where at the time of sale the goods are in the possession of a third person, then the effective delivery takes place when the

(a) Buyer receives the goods from such third person.

(b) Third person acknowledge to the buyer that he holds the goods on his (buyer's) behalf.

(c) Seller instructs the third person to deliver the goods to the buyer.

(d) Goods are physically put in buyer's possession.

Multiple Choice Question(MCQ'S)

19. Where there is excess delivery of goods, then which of the following options is available to the buyer?

- (a) He may reject the whole quantity.
- (b) He may accept the whole quantity
- (c) He may accept the contract quantity and reject the excess.
- (d) All of the above options are available to the buyer.

Multiple Choice Question(MCQ'S)

- 19.** Where there is excess delivery of goods, then which of the following options is available to the buyer?
- (a) He may reject the whole quantity.
 - (b) He may accept the whole quantity
 - (c) He may accept the contract quantity and reject the excess.
 - (d) All of the above options are available to the buyer.**

Multiple Choice Question(MCQ'S)

20. On seller's wrongful refusal to deliver the unascertained goods to the buyer, the buyer can file a suit for recovery of

- (a) Goods
- (b) Damages
- (c) Both (a) and (b)
- (d) None of these.

Multiple Choice Question(MCQ'S)

20. On seller's wrongful refusal to deliver the unascertained goods to the buyer, the buyer can file a suit for recovery of

(a) Goods

(b) Damages

(c) Both (a) and (b)

(d) None of these.

Multiple Choice Question(MCQ'S)

21. In which of the following contracts, the seller is under an obligation to insure the goods?

- (a) Ex-ship contract
- (b) F.O.B. contract
- (c) C.I.F. contract
- (d) None of these.

Multiple Choice Question(MCQ'S)

21. In which of the following contracts, the seller is under an obligation to insure the goods?

(a) Ex-ship contract

(b) F.O.B. contract

(c) C.I.F. contract

(d) None of these.

Multiple Choice Question(MCQ'S)

22. In case of ex-ship contract, during vovage the goods are at the risk of the

- (a) Seller
- (b) Buyer
- (c) Captain of the ship
- (d) None of these.

Multiple Choice Question(MCQ'S)

22. In case of ex-ship contract, during vovage the goods are at the risk of the

(a) Seller

(b) Buyer

(c) Captain of the ship

(d) None of these.

THE END

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