

SALE OF GOODS

Rules relating to transfer or passing of property.

Establishing rules of passing goods is necessary & following words:

1. It determines when risk passes to the buyer.
2. Determines when seller can sue the price.

These rules are:

1. Sale of unascertained goods pass when goods become ascertained.

Categories of unascertained goods

- Goods to be manufactured by seller.
- Crops to be grown by seller.
- Generic goods: unspecified goods.

Goods to be manufactured by seller
Crops to be grown by seller

2. Sale by conditional reservation - property will pass when condition is fulfilled.

3. Sale by auction - goods pass when auctioneer announces its completion by fall of the hammer.

4. Sale by specific goods which are supposed to be weighed, measured or tested pass when the goods are measured, weighed or tested in the buy is modified.

5. Sale by specific goods not in a deliverable state goods pass when they are put in a deliverable state.

6. Sale by description - Goods pass when they are put in that description.

7. Sale by approval - goods pass when the buyer does any of the following:

- He signifies acceptance.
- He approves to the buyer/seller.
- Conduct that signifies he has adopted with transaction e.g. selling goods.
- If he retains with goods even after expiration of stipulated time.

Transfer of title by a non-owner (Nemo Dat Quod Non Habet)

General rule: Non owner cannot pass goods title & thus a sale of goods by non-owner is incompetent.

Exceptions:

1. Sale of merchantile agent or factor

- He can only pass a good title only if:

- Acting as an agent.
- Ordinary course of business.
- He has principal's consent.

Merchantile agent or factor
Statutory power
Common law
estoppel
avoidable title

2. Sale by buyer in possession - Buyer in possession is the one who has bought the goods but document of title indicates seller as owner. He passes a good title.

3. Resell by seller in possession to a third party.

4. Sale by statutory power

5. Sale under common law (court order)

6. Sale under avoidable title. If seller's title is voidable but seller sells the goods before it is avoided, he passes a good title.

7. Sale by estoppel - A non-owner can pass a good title if the true owner makes it appear that some other person is the owner. The true owner is estopped from denying the apparent ownership of the other.

Delivery.

- It's voluntary transfer of goods ^{possession} from one person to the other.

Terms it takes

- Physical transfer of goods
- Delivery of means of control e.g. keys
- Delivery of document of title.
- Delivery of common carrier e.g. G & S
- Delivery by attornment - i.e. situation where seller of goods retain them as a bailor of buyer.

Rules of Delivery.

1. Where specific goods are in some other place known to both parties & the other place is not seller's place of business, the other place is place of delivery.
2. Unless otherwise agreed, the place of delivery is seller's place of business & if not his residence.
3. The cost of putting goods in deliverable state, is born by seller unless otherwise agreed.
4. Delivery by common carrier is complete when goods are handed over to the carrier.
5. Seller must transmit the goods to the buyer within stipulated time.
6. If seller delivers ^{less} goods, buyer may deny them or accept & pay at contract rate.
7. If seller delivers more goods, buyer may reject the goods or accept those in contract or accept all & pay in contract rate.
8. If goods delivered are mixed with those of different description, the buyer may reject the goods ^{or accept those in the contract} ~~as exercising his right~~.
9. If buyer rejects the goods as exercising his rights, is not bound to return the same to the seller, but must notify him on fact of rejection.
10. Unless otherwise agreed, the buyer is not bound to accept delivery by installment.
11. As a general rule, delivery of goods depends on agreement b/w the buyer and the seller.

Contract Emptor (Buyer be ware).

- Means without fraud or misinterpretation, seller is not liable if the goods do not have the quality the buyer expected to have.
- This doctrine has been modified by its exceptions to protect consumers.
- Exceptions to this rule doctrine include: Conditions & warranties implied by sale of goods Act.

Void Contracts of Sale of Goods.

- They include the following:-

- (i) Sale of specific goods which without the seller's knowledge has perished.
- (ii) An agreement to sell specific goods whose price is to be fixed by the valuation of a third party who fails to do so.
- (iii) An agreement to sell specific goods without the fault of either party perishes before with the risk passed.

Obligation of the Parties / Duties of The seller.

1. Deliver the goods.
2. Put The goods into a deliverable state.
3. Pass a good title.
4. Supply goods of The right quality.
5. Supply goods of The right quantity.

Duties of the buyer.

1. To pay for the price.
2. To take delivery.

Remedies of Breach of Contract available to the Unpaid seller.

1. Right of lien
2. Right of stoppage in goods in transit
3. Right of resell.
4. Right of withholding delivery.
5. Sue for damages
6. Action of price.

1. Right of Lien.

- Lien is retention of the goods.
- Act as security of the price.
- The seller can exercise lien in the following circumstances:
 - When goods have been sold on credit.
 - The seller goods have been sold on credit but term of credit has expired.
 - When the buyer becomes insolvent.
- Lien is lost in:-
 1. If payment is made.
 2. Court order
 3. Waive of price by the seller.
 4. If seller delivers goods to a common carrier.

2. Right of stoppage on transit.

- If the seller has parted with the possession & he realises the buyer is not going to pay, he can stop them as they are transiting. However, the right is lost in:
 - * The buyer intervenes the goods before arrival at the agreed destination.
 - * The carrier of the goods upon notifying the buyer/agent that he holds the goods on his behalf, the notification can only be after arrival.
 - * The carrier neglects to deliver the goods to the buyer.

3. Right to resell, withhold delivery.

- In action for price.
- The seller can sue that the buyer is compelled by court to pay for the price.

4. Right to withhold delivery resell.

- This is when the seller resells the goods to recover the price.
- He can only resell upon reselling in following conditions:
 - * If goods are of perishable nature.

- * Where right of resale is clearly stated in the contract.
- * Where seller notifies the buyer of his intention to resell the goods & buyer does not pay the price for reasonable time.

5. Sue or damages.

- If the seller buyer refuses to take delivery of goods, the seller can sue for damages for non-acceptance.

Remedies of Buyer.

1. Damages for non-delivery.
2. Specific performance or deliver the goods.
3. Recovery of price.
4. Damages for breach of contract.
5. Rejection of goods. He can reject goods in the following ways:-
 - If seller delivers more goods than quantity contracted for.
 - If seller delivers less goods than quantity contracted for.
 - If seller delivers goods mixed with those of different description.
 - If seller delivers by installment contrary to agreement.