

Transfer of property in goods

Meaning of Passing of Property/Transfer of Property

Passing of property implies transfer of ownership and not the physical possession of goods. For example, where a principal sends goods to his agent, he merely transfers the physical possession and not the ownership of goods. Here, the principal is the owner of the goods but is not having possession of goods and the agent is having possession of goods but is not the owner.

Significance of Transfer of Property

The time of transfer of ownership of goods decides various rights and liabilities of the seller and the buyer. Thus, it becomes very important to know the exact time of transfer of ownership of goods from seller to buyer to answer the following questions:

1. Who shall bear the risk?

It is the owner who has to bear the risk and not the person who merely has the possession.

2. Who can take action against third party?

It is the owner who can take action and not the person who merely has the possession.

3. Whether a seller can sue for price?

The seller can sue for the price only if the ownership of goods has been transferred to the buyer.

4. In case of insolvency of a buyer whether the official receiver or assignee can take the possession of goods from seller?

The Official Receiver or Assignee can take the possession of goods from seller only if the ownership of goods has been transferred to the buyer.

5. In case of insolvency of a seller whether the official receiver or assignee can take the possession of goods from buyer?

The official receiver or assignee can take the possession of goods from buyer only if the ownership of goods has not been transferred to the buyer.

Transfer of property in sale of Specific or Ascertained Goods

Section 19 to section 22 of The Sale of Goods Act, 1930 are a few sections which govern the transfer of goods in a case where the goods are specific and ascertained in nature:

Property when intended to pass (Section 19)

Section 19 of The Sale of Goods Act, 1930, is divided into further subsections and they're as follows:

Where a contract for sale of ascertained or specific goods exists, a specified time is fixed as per the convenience and consensus of both the parties at which the property is intended to be transferred from the seller to the buyer.

One has to pay attention to the circumstances and conduct of both the parties to the contract in order to understand the true intention of the contracting parties. Also, the terms of the contract should be given equal importance in the existing case.

Except if an alternate intention shows up, the principles laid under the Section 20 to 24 of the Act will help in finding out the intention of the contracting parties in respect with the time at which the goods are about to get transferred from the seller to the buyer.

Specific goods in a Deliverable state (Section 20)

Section 20 of The Sale of Goods Act, 1930 relates to specific goods in a deliverable state, and it states:

In a contract for the sale of specific goods, which is unconditional in nature, the goods are transferred from the seller to the buyer at the time of formation of the contract. However, the only precondition required for the transfer of property is the fact that the goods must be existing in a deliverable state. The delay in the payment or delivery of goods or both is not something which holds importance.

Example: A goes to a big electronic shop in order to buy a television set. He selects a big plasma Television set and asks the shopkeeper to deliver the television at his house which is at the other end of the town. The shopkeeper agrees to it. With this, "A" will become the owner of the television, and the Television set will become his property.

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

Section 21 of The Sale of Goods Act, 1930: certain goods to be put in a deliverable state:

Where there is an existence of a contract for the sale of specific goods, the property concerned in the transaction will only be passed to the buyer, if the seller performs the necessary acts and omissions in

order to put the goods in a deliverable state. Also, it is mandatory for the seller to notify the buyer regarding the alterations.

Example: A goes to a mall to buy a smart television from an electronics store. He selects a big fancy smart TV from the electronic section and asks for its home delivery. The manager agrees to deliver it to A's home. However, at the time where he selects the smart TV, it doesn't have an operating system installed. The manager promises to install the operating system and on the next day, he informs "A" that his smart TV is now installed with the operating system and is ready for its delivery. Further, he asked for his permission to make the delivery.

In order to summarize the example, the goods will only be transferred to "A" if the manager has installed the operating system making the smart TV ready for its use.

Specific goods are in a deliverable state but the seller has to do something to ascertain the price (Section 22)

Section 22 of The Sale of Goods Act, 1930: Specific goods are in a deliverable state but the seller has to do something to ascertain the price:

Where there is a contract for the sale of specific goods in a deliverable state, the seller is undoubtedly bound to weigh, measure, test or do the necessary demonstration or anything which is required in reference with the sale of those particular goods. He'll be doing this to ascertain the appropriate value of the goods. The property in the goods will not pass until such demonstration or particulars are done and the buyer has acknowledged it thereof

Transfer of property in sale of Unascertained Goods

Section 23 of The Sale of Goods Act, 1930 govern the transfer of goods in a case where the goods are unascertained in nature:

Sale of unascertained goods and appropriation (Section 23)

Section 23 of The Sale of Goods Act, 1930, is divided into further subsections and they're as follows:

Section 23(1) Sale of unascertained goods by description:

In a contract, for the sale of unascertained goods by description, if goods of a specific description are appropriated either by the seller with the consent of buyer or by the buyer with the consent of the

seller, then the goods are passed to the buyer. The consent can be expressed or implied and can be given before or after the appropriation is made.

Section 23(2) Delivery to the carrier:

The seller has unconditionally appropriated the property if he delivers the property to the buyer/ carrier/ bailee for the reason of transmission to the buyer, however, he doesn't reserve the disposal rights to the property, then it can be said that he has appropriated the contract.

Goods sent on approval or "on sale or return" (Section 24)

Section 24: In a case where the goods are delivered to the buyer either on approval or on "sale or return" or on other comparable terms then:

(a) The goods therein will only pass to the buyer if the buyer either portrays his consent or acknowledges to the seller or does any act by which the transaction would be adopted.

(b) The goods therein will only pass to the buyer if the buyer doesn't express his consent or acknowledgement to the seller that he intends to reject the goods, however, holds the goods without giving a notice to the buyer then on the expiration of time frame for the return of the goods or if time hasn't been fixed, then on the completion of a reasonable time, the property will be passed to the buyer.

Reservation of Right to Disposal (Section 25)

Section 25 of Sale of Goods Act, 1930 deals with the conditional appropriation of goods and is bifurcated into the following subsections:

Section 25(1): As per the terms and conditions of the contract the seller of goods reserves the right of disposal of the goods in a situation where the sale of specific goods is concerned. Despite the delivery of the goods, the goods will not get transferred from the seller to the buyer unless the subsequent terms of the contract aren't appropriated or fulfilled.

For example, A sends certain goods by rickshaw to B and instructs the rickshaw driver not to deliver the goods until B pays him the price which was set between them as per the agreement. The rickshaw reaches the destination in time. However, the buyer "B" refuses to pay the amount as he had no money with him at the moment. Here the rickshaw driver can refuse to deliver the goods and the seller can rightly exercise his right to disposal