

<b>Course Name</b>	<b>LL.B 2<sup>nd</sup> sem</b>
<b>Subject</b>	<b>Special Contract Law</b>
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<b>Concept</b>	<b>Transfer of property and title</b>

## **Transfer of property and Title**

The term passing of goods or property means that there is a transfer of ownership which is governed by the principles of the Sale of Goods Act, 1930. In order to understand the rights, duties and liabilities of both the seller and the buyer it is very important to understand the concept of passing of property. It is a settled principle of law that along with the ownership of the goods or property, the risk is also transferred from the seller to the buyer. This article will be dealing with the various principles and provisions pertaining to Passing of property in the light of the Sale of Goods Act, 1930.

### **Types of Goods under the Act**

There are three types of goods under the umbrella of the Sale of Goods Act, 1930 and they are as follows:

1. Existing Goods
2. Future Goods
3. Contingent Goods

### **Existing Goods**

As per [Section 6](#) of the Sale of Goods Act, 1930, those goods which are present (in existence) at the time of formation of a contract are known as existing goods. The existing goods can be further classified as:

### **Specific Goods**

As per [Section 2\(14\)](#) of the Sale of Goods Act, 1930, specific goods are those goods which are specifically identified and ascertained by the buyer which he intends to buy at the time when the contract of sale is formulated.

For example, Deepak wants to sell his old guitar. He put an advertisement in the local newspaper with its picture, make and other details. Rahul agrees to buy the guitar and thereby formed a contract with Deepak. The guitar is a 'Specific Good' in this case.

### **Ascertained Good**

Ascertained goods are not defined under the Sale of Goods Act, 1930 and many jurists have considered specific Goods and ascertained Goods as alike. However, ascertained goods can be called those goods which are specifically selected from a large set of goods.

For example, Deepak went to buy oranges in a wholesale market. He specifically selected 300 oranges from a larger set of unspecified oranges. These 300 oranges will be ascertained goods.

### **Unascertained Good**

Unascertained goods are those goods which are not specifically identified by the buyer at the time when the contract for sale is formulated.

For example, Deepak from his 300 oranges wants to sell 100 oranges; however he doesn't specify which oranges he wants to sell. This is called a sale of unascertained goods.

### **Future Goods**

As per [Section 2\(6\)](#) of the Sale of Goods Act, 1930, future goods have been characterised as those goods which at the time of formation of the contract will either be "manufactured, produced or acquired by the buyer". There will not be an actual sale in the sale of future goods, it will always be an "agreement to sell". For example, Deepak has an orange grove with oranges in it. He agrees to sell 500 oranges to a buyer once the oranges are ready for market. This is a sale which will happen in the future. However, the goods have already been identified along with the agreement to sell. Such goods are known as future goods.

### **Contingent Goods**

Contingent goods are a subtype of future goods. In contingent goods, the sale happens in the future. The sale will always come with some contingency clause in it. For example, if Deepak sells his oranges from his orange grove when the trees are yet to produce oranges, then the oranges are contingent good. This sale of contingent goods will be dependent on a condition that the trees will produce oranges, which may or may not happen.

## **Legal Principles regarding Transfer of Goods**

There are four principles regarding the transfer of goods under the umbrella of The Sale of Goods Act, 1930, which the article will be talking about and they're as follows:

### **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:

1. 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.
2. 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.
3. 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.

Example: Rishabh sells a wooden bed to Deepak and agrees to assemble it in Deepak’s bedroom as it was a part of the agreement. Rishabh delivers the wooden bed and makes a call to him informing Deepak that he will assemble the wooden bed the next day. That night the wooden bed gets stolen from Deepak’s premises. In this case, Deepak will not be liable for the loss since the wooden bed was not passed to him. According to the terms of the contract, the wooden bed would be in a deliverable state only after it is assembled.

**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 “sale or return”**

When goods are disposed on the basis of “sale or return” by the seller, the ownership of the goods aren't transferred to the buyer unless the buyer gives assent to the goods. However, if these goods are held by its buyer without giving an approval then they're taken as goods whose ownership is yet to be transferred. In that case, they're treated as goods which belong to the seller and not the buyer.

### **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.

Example: "A" the seller of a precious necklace gives it to "B" the buyer on "Sale or return" basis. B after observing the necklace finds it very beautiful and put forth his consent on buying the necklace. In this case, the goods will be transferred to the buyer. However, if the buyer doesn't wish to give the acknowledgement for the product then the goods shall be duly returned back to B.

In case of right to disposal

The intention behind reserving the right of disposal of the goods is to make sure that the value of the product is paid before the property is transferred to the buyer. However, under the prepared value system, the ownership follows the possession. That is to say, the seller transfers the possession of the goods but retains the ownership until the buyer pays the appropriate amount.

### **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.

[Section 25\(3\)](#): A few perspectives pertaining to the transfer of property during a sale of goods or property are encapsulated in Sales of Goods Act, 1930. The liabilities of the buyer and seller are determined in consonance with the provisions enshrined from section 18 to 25 of The Sale of Goods Act. The concept of possession of goods differs from passing of the goods as the latter in essence means transfer of ownership from the seller to the buyer while the former is confined to the custody of goods.

### **Cases pertaining to Transfer of Property**

#### **Badri Prasad Vs. State of Madhya Pradesh**

In the case of [Badri Prasad Vs. State of Madhya Pradesh](#), the appellant entered into a contract in respect of certain forests in Madhya Pradesh. He was entitled to chop teak trees with girth over 12-inch. After the passing of the Abolition of Proprietary Rights (Estates, Mahals. Alienated Lands) Act, the appellant was prohibited from cutting trees in the exercise of his rights under the contract.

He filed a suit claiming specific performance of the contract on the grounds:

- (1) The forest and trees did not vest in the State under the Act;
- (2) Even if they vested, the standing timber, having been sold to the appellant, did not vest in the State;

(3) In any event, a new contract was completed on 5 February 1955, and the appellant was entitled to its specific performance.

The court held: The forest and trees vested in the State under the Act. The plaintiff was entitled to cut teak trees of more than 12-inch girth. However, it had to be ascertained which trees would be falling in that Description. Till this was ascertained, they will not be ascertained goods as per Section 9 of the Sale of Goods Act.

### **Multanuak Chempalal Vs. C.P Shah & Co.**

In the case of [Multanuak Chempalal Vs. C.P Shah & Co.](#), Section 26 of the Sale of Goods Act 1930 was discussed and it was held that the risk passes only after the property in the agreement has been passed. Thus, the parties can enter into a contract which provides for the passing of risk before the passing of property.

### **Hoogly Chinsurah Municipality vs Spence Ltd**

In the case of [Hoogly Chinsurah Municipality vs Spence Ltd](#), the Hoogly Chinsurah Municipality contracted with Spence Ltd to buy a tractor on the condition that if the municipality is not satisfied then it will reject the tractor. The municipality took possession of the tractor, used it for a month and a half and then rejected it. The suit was filed upon the unwillingness of Spence Ltd to accept it. The Court while dismissing the appeal held that, the municipality had not only used the tractor but also extinguished a reasonable time. Hence the property in the tractor had passed to the municipality and they could not reject it now.

### **Passing of Risk**

#### **Passing of Risk (Section 26)**

When goods are sold, they remain at the seller's risk until the property in the goods is transferred to the buyer. Once the property is passed, the goods are at the buyer's risk even if the delivery has not been made.

There are some points that you need to remember about the passing of risk:

1. It holds true unless the buyer and seller have agreed to some other terms.
2. In cases where the delivery has not been made, if the delay in delivery is due to the fault of the seller, then the risk lies with the seller. If the delay is due to a fault of the buyer, then the goods are at the buyer's risk.
3. Regardless of the buyer or the seller bearing the risk, the duties and responsibilities of both of them as a bailee of goods for the other party, remain unaffected.
4. Hence, we can say that under ordinary circumstances, the seller bears the risk until the property is passed to the buyer which also passes the risk to him. The parties may, however, decide to pass the risk before or after passing the property in the goods to the buyer.
5. Let us take a look at an example. Peter is auctioning his great-grandfather's wristwatch at a function. In a true auctioneer style, he manages to get a gavel (hammer used by auctioneers) and sets up a table inviting bids for the historical watch. He manages to get the highest bid of Rs 25,000
6. As he strikes the gavel to signify acceptance of the bid, he accidentally damages the watch. In this case, the property had not passed to the bidder. Hence, the risk was Peter's and he will have to bear the loss.

### **Transfer of Title**

A Latin maxim says: 'Nemo dat quod non habet' which means that no one can give what he doesn't have. This is the ground principle regarding the transfer of title. Sections 27 to 30 of the Sale of Goods Act, 1930 specify these laws about the transfer of title. Let us take a look.

### **Transfer of Title**

Section 27 deals with the sale by a person who is not the owner. Imagine a sale **contract** where the seller –

- Is not the owner of the goods
- Does not have consent from the owner to sell the goods
- Has not been given authority by the owner to sell the goods on his behalf

In such cases, the buyer acquires no better title to these goods than the seller had, provided the conduct of the owner precludes the seller's authority to sell.

Let us see an example. Peter steals a mobile phone from his office and sells it to John, who buys it in good faith. However, John will get no title to the phone and will have to return it to the owner when he **demand**s, i.e. there is no transfer of title.

Now, this seems to be a really straight-forward rule. However, enforcing this rule can mean that innocent buyers might suffer losses in most cases. Therefore, to protect the interest of the buyers, certain exceptions are provided.

### **Exceptions to Section 27**

In the following scenarios a non-owner of goods can transfer a better title to the buyer:

#### ***1] Sale by a Mercantile agent (Proviso to Section 27)***

Consider a mercantile agent, who is in possession of the goods or a document to the title of the goods, with the consent of the owner. Such an agent can sell the goods when acting in the ordinary course of business of a mercantile agent. The sale shall be valid provided the buyer acts in good faith and has no reason to believe that the seller doesn't have any right to sell the goods. The transfer of title is valid in such a case.

#### ***2] Sale by one of the Joint Owners (Section 28)***

Many times goods are purchased in joint ownership. In many cases, the goods are kept in the possession of one of these joint owners by the permission of the co-owners. If this person (who has the sole possession of the goods) sells the goods, the property in the goods is transferred to the buyer. This is provided the buyer acts in good faith and has no reason to believe that the seller does not have a right to sell the goods.

Example: Peter, John, and Oliver are three friends to buy a 42-inch television set to watch the upcoming cricket World Cup. They unanimously decide to keep the television set at Oliver's house. Once the World Cup is over, the TV is still at his house.

One day, Oliver's office colleague Julia visits his house and he sells the TV to her. She buys it in good faith and has no knowledge about the fact that it was purchased jointly. In this case, she gets a good title to the TV.

### ***3] Sale by a Person in Possession of Goods under a Voidable Contract (Section 29)***

Consider a person who acquires possession of certain goods under a contract voidable on grounds of coercion, misrepresentation, fraud or undue influence. If this person sells the goods before the contract is terminated by the original owner of the goods, then the buyer acquires a good title to the goods.

Example: Peter fraudulently obtains a gold diamond ring from Olivia. Olivia can void the contract whenever she wants. Before she realizes the fraud, Peter sells the ring to Julia – an innocent buyer. In this case, Olivia cannot recover the ring from Julia since she didn't void the contract before the sale was made.

### ***4] Sale by a Person who has already sold the Goods but Continues to have Possession [Section 30 (1)]***

Consider a person who has sold goods but continues to be in possession of them or of the documents of title to them. This person might sell the goods to another buyer.

If this buyer acts in good faith and is unaware of the earlier sale, then he will have a good title to the goods even though the property in the goods was passed to the first buyer. A pledge or other disposition of the goods or documents of title by the seller in possession are valid too.

### ***5] Sale by Buyer obtaining possession before the Property in the Goods has Vested in him [Section 30 (2)]***

Consider a buyer who obtains possession of the goods before the property in them is passed to him, with the permission of the seller. He may sell, pledge or dispose of the goods to another person.

If the second buyer obtains delivery of the goods in good faith and without notice of the lien or any other right of the original seller, he gets a good title to them.

This rule does not hold true for a hire-purchase agreement which allows a person the possession of the goods and an option to buy unless the sale is agreed upon.

Example: Peter takes a car from John under the conditions that he will pay Rs. 5,000 every month as rent of the vehicle and that he can choose to purchase it for Rs. 100,000 to be paid in 24 equal installments. Peter pays Rs. 5,000 for three months and then sells the car to Oliver. In this case, John can recover his car from Oliver since Peter had neither purchased the car nor agreed to purchase it. He only had an option to buy the car.

## ***6] Estoppel***

If an owner of goods is stopped by the conduct from denying the seller's authority to sell, the buyer gets a good title. However, to get a good title by estoppel, it needs to be proved that the original owner had actively suffered or held out the seller in question as a person authorized to sell the goods.

Let us see an example. Peter, John, and Oliver are having a conversation. Peter tells John that he owns the BMW car parked nearby which actually belongs to Oliver. However, Oliver remains silent. Subsequently, Peter sells the car to John.

In this case, John will get a good title to the car even though the seller is Peter who has no title to it. This is because, Oliver, by his conduct, did not deny Peter's authority to sell the car.

## ***7] Sale by an Unpaid Seller [Section 54 (3)]***

If an unpaid seller exercises his right of lien or stoppage in transit and sells the goods to another buyer, then the second buyer gets a good title to the goods as against the original buyer. So in such a case transfer of title will occur.

## ***8] Sale under the Provisions of other Acts***

- Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
- Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]
- A sale by a pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]