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Topic 4: sale of goods

Goods Act: Transfer of Property, transfer of title to third parties by non-owner

Sale of goods – definitions

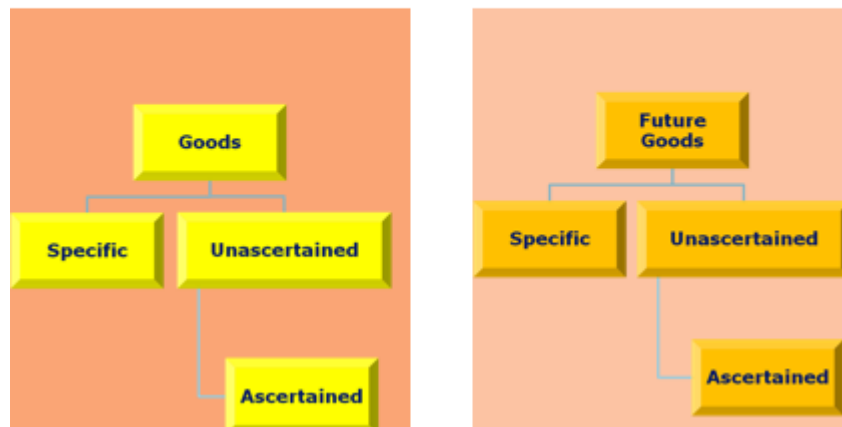
When does property pass?

Importance:

1. Risk usually passes with property
2. Whose property in case of bankruptcy
3. Rights of parties to sue on default
4. Buyer's right to on sell
5. Buyer's right to reject goods

Rules vary for different classes of goods

Goods - Classification



1. Transfer of specific goods

S 22(1): Property in specific goods passes from seller to purchaser when parties intend.

- Express or implied
- Regard to terms, conduct of parties and circumstances (s 22(2)).
- *Underwood Ltd v Burgh Castle Brick and Cement Syndicate* (1922) 1 KB 343

In short, s 22 makes intent of parties a paramount concern in determining when property is to pass.

If no intention shown, apply the rules in s 23.

1.1 Transfer of specific goods: S23 Rule 1

Rule 1: Unconditional contract of goods in deliverable state:

- Unconditional: Not subject to conditions precedent – *McPherson, Thom, Kettle & Co v Dench Bros* [1921] – Sale of heifer by auction. Heifer disappeared before delivery. Seller sued buyer for price.
- Deliverable state: s 3(4) – state in which buyer bound to take delivery: *Underwood Ltd v Burgh Castle Brick and Cement Syndicate*.

S 23 Rule 1: Unconditional contract of goods in deliverable state

- Property passes when contract made
 - Time of payment & delivery not relevant
 - Rule 1 can be overruled by agreement.

- COD shows intention that property only passes on payment
 - Credit card – property passes when card tendered
- Bodilongo Pty Ltd v Webb Projects (1990)
 - Contract for sale of office equipment provided for a price to be paid in 10 monthly instalments
 - B (purchaser) went into liquidation after 5th instalment
 - W (seller) sought to recover goods rather than sue for debt (claims property has not passed)
 - HELD: No specific intention evident. Rule 1: Property passed to B when contract made as in deliverable state. W unable to recover goods

S23 Rule 2: Property does not pass until goods put in a deliverable state

- There must be a contract for sale
- If goods not in deliverable state, seller must put into deliverable state: Wallace v Safeway Caravan Mart (1975)
- Property passes when buyer is notified that work has been done – no rules on how this is to be done
- NOTE: constructive notice probably insufficient – Worcester Works Finance Ltd v Cooden Engineering Co Ltd [1972]
- Underwood v Burgh Castle Brick (1922):
 - U agreed to sell machinery to B. Written contract of sale
 - Heavy machinery
 - U had to unfasten it (2 days)
 - U had to dismantle it (2 weeks)
 - U had to place it on rail (damaged)
 - Issue: Had property passed prior to damage?
 - HELD: Property did not pass until engine on rail. Inferred intention because of expense and risk involved. Also did not consider it in deliverable state

S23 Rule 3: Property does not pass until goods measured

- There is a contract of sale
- Goods in deliverable state
- **Seller** must weigh, measure, test etc. goods to determine price: Nanka-Bruce v Commonwealth Trust Ltd [1926]
- Property passes when buyer is notified that work has been done – no rules on how this is to be done

S23 Rule 4: Goods delivered on sale or return. Buyer has discretion to accept or reject goods

- Property passes when:
 1. Purchaser signifies approval or acceptance to seller or does any other act adopting the transaction e.g. selling/pawning goods
 2. Does not signify but retains goods without notice of rejection
 - Expiration of term fixed under agreement
 - Otherwise a reasonable time (question of fact)
- Kirkham v Attenborough:
 - HELD: There are three ways in which property may pass:
 - a. Price may be paid
 - b. Goods retained beyond reasonable time for return
 - c. Some other act inconsistent with option to return
 - Here, pawning was inconsistent with returning. K could not recover goods, K will have to sue W for the price
- Poole v Smith's Car Sales (Balham) Ltd (1962):
 - Poole was to leave a car with Smith's on sale or return

- Smith's would sell it and then give Poole £325
- The car was not sold after 3 months