



Why is it important to know the exact time when the property in goods passes from a seller to the buyer? Explain with examples the rules regarding the transfer of ownership of goods from seller to the buyer?

The object of the contract of sale is to transfer the ownership (property) of the goods to the buyer. Transfer of property is different from the transfer of possession of goods. Goods may still belong to the seller though the possession may be with the buyer. The seller may still hold the goods, though the buyer has become the owner.

## Importance

It is important to know the point of time when the property in the goods passes to the buyer because of the following reasons

### **(1) Risk prima facie passes with the ownership.**

If the goods are damaged or destroyed, after the contract of sale is made, the loss would fall on the owner, if there is nothing in the contract to the contrary.

### **(ii) Suit against a third party.**

If the goods are damaged by a third party, only the owner of the goods can sue the third party.

### **(iii) Suit for price.**

Sellers can sue the buyer for price when property in the goods has been transferred to the buyer.

### **(iv) Insolvency of seller or buyer.**

In case of insolvency of a person, all the property of insolvent comes in the possession of the official receiver. If a seller or buyer becomes insolvent, it is essential to decide whether he is the owner of particular goods or not.

## Rules regarding the transfer of ownership of goods:

Rules for this purpose are divided into two heads

- Transfer of property in specific or ascertained goods.
- Transfer of property in unascertained goods.

### **(A) Transfer of property in specific or ascertained goods**

Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case [Section 19(1)(2)]. Thus, in the case of specific goods, the transfer of property takes place when the parties intend to pass it. Unless a different intention appears, the rule of ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer, are as follows: **[Section 19(3)]**

**1. When goods are in a deliverable state,**

the contract of sale is considered to be an unconditional one. The property in the goods passes from the seller to the buyer immediately at the completion of the contract. It is immaterial whether the price has been paid or the goods have been delivered, or one of these, or both are to be done at some future date.

The goods are said to be in a deliverable state when they are in such a state that the buyer would under the contract be bound to take delivery of them.

**Example.** A buys a bicycle for \$1,400 on a month's credit and asks the shopkeeper to send it to his house. The shopkeeper agrees to do so. The bicycle immediately becomes the property of A.

**2. When goods are to be put into a deliverable state,**

The contract of sale is a conditional one. The seller has to do something to the goods for the purpose of making them into a deliverable state. Therefore, the property is to pass only when that something has been done by the seller and the notice has been given by him to the buyer.

**3. When seller has to do something to fix its price,**

the property is to pass only when something is done and the price is fixed. If the seller is to weigh, measure, test or do some such other act, then the property in goods will pass only when such a thing has been done by the seller and the notice to this effect has been given by him to the buyer.

**Example.** A stock of bark was sold at an agreed price per ton. The bark was to be weighed by the agents of the seller as also of the buyer for ascertainment of price. A part of the bark was weighed and carried away by the buyer's agent and servant, but the remaining was swept away by the flood. **Held**, the loss of the remainder should be borne by the seller, since the property in remainder had not passed because the required weighing was not done.

**4. When goods are sent on approval or on sale or return basis.**

When goods are sent on approval or on sale or return basis, the property passes to the buyer

- when he signifies his approval or acceptance to the seller or does any other act adopting the transaction.

- if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiry of such time, and if no time has been fixed, on the expiry of a reasonable time.

**Example.** A delivered a horse to B on the terms of 'Sale or return, days'. The horse died on the third day without any fault of B. **Held**, A was within 8 to bear the loss as the horse was still his property when it perished. **[Elphick vs. Barnes]**

**(B) Transfer of property in unascertained goods. If the goods are unascertained, the ownership shall pass to the buyer:**

- when the goods are unconditionally appropriated to the contract,
- when the appropriation may be made by the buyer with the seller's assent or by the seller with the buyer's assent.