



# Sale of Goods Act 1979

## 1979 CHAPTER 54

### PART III

#### EFFECTS OF THE CONTRACT

##### *Transfer of property as between seller and buyer*

#### **16 Goods must be ascertained**

Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

#### **17 Property passes when intended to pass**

- (1) 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.
- (2) 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.

#### **18 Rules for ascertaining intention**

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

*Rule 1.*— Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

*Rule 2.*— Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a

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*Status: This is the original version (as it was originally enacted).*

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deliverable state, the property does not pass until the thing is done and the buyer has notice that it has been done.

*Rule 3.*— Where there is a contract for the sale of specific goods in a deliverable state but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until the act or thing is done and the buyer has notice that it has been done.

*Rule 4.*— When goods are delivered to the buyer on approval or on sale or return or other similar terms the property in the goods passes to the buyer: —

- (a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction ;
- (b) 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 expiration of that time, and, if no time has been fixed, on the expiration of a reasonable time.

*Rule 5.*—

- (1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods then passes to the buyer; and the assent may be express or implied, and may be given either before or after the appropriation is made.
- (2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodian (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is to be taken to have unconditionally appropriated the goods to the contract.

## **19 Reservation of right of disposal**

- (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled; and in such a case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee or custodian for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.
- (2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent the seller is prima facie to be taken to reserve the right of disposal
- (3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

## **20 Risk prima facie passes with property**

- (1) Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.
- (2) But where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.
- (3) Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.

### *Transfer of title*

## **21 Sale by person not the owner**

- (1) Subject to this Act, where goods are sold by a person who is not their owner, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.
- (2) Nothing in this Act affects—
  - (a) the provisions of the Factors Acts or any enactment enabling the apparent owner of goods to dispose of them as if he were their true owner;
  - (b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

## **22 Market overt**

- (1) Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.
- (2) This section does not apply to Scotland.
- (3) Paragraph 8 of Schedule 1 below applies in relation to a contract under which goods were sold before 1 January 1968 or (in the application of this Act to Northern Ireland) 29 August 1967.

## **23 Sale under voidable title**

When the seller of goods has a voidable title to them, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

## **24 Seller in possession after sale**

Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, has the same effect as if the person making

the delivery or transfer were expressly authorised by the owner of the goods to make the same.

## **25 Buyer in possession after sale**

- (1) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.
- (2) For the purposes of subsection (1) above—
  - (a) the buyer under a conditional sale agreement is to be taken not to be a person who has bought or agreed to buy goods, and
  - (b) "conditional sale agreement" means an agreement for the sale of goods which is a consumer credit agreement within the meaning of the Consumer Credit Act 1974 under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.
- (3) Paragraph 9 of Schedule 1 below applies in relation to a contract under which a person buys or agrees to buy goods and which is made before the appointed day.
- (4) In subsection (3) above and paragraph 9 of Schedule 1 below references to the appointed day are to the day appointed for the purposes of those provisions by an order of the Secretary of State made by statutory instrument.

## **26 Supplementary to sections 24 and 25**

In sections 24 and 25 above "mercantile agent" means a mercantile agent having in the customary course of his business as such agent authority either—

- (a) to sell goods, or
- (b) to consign goods for the purpose of sale, or
- (c) to buy goods, or
- (d) to raise money on the security of goods.