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# VIRTUAL COACHING CLASSES ORGANISED BY BOS, ICAI

## FOUNDATION LEVEL PAPER 2A: BUSINESS LAWS

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# THE SALE OF GOODS ACT, 1930

## UNIT – 3 : TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS



# Session Layout

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**PASSING OF  
PROPERTY (SEC.  
18-26)**

**RISK PRIMA  
FACIE PASSES  
WITH PROPERTY  
(SEC.26)**

**TRANSFER OF  
TITLE (SEC.27-30)**

**PERFORMANCE  
OF THE  
CONTRACT OF  
SALE (SEC.31-44)**



# TRANSFER OF OWNERSHIP

Passing of Property	Delivery of Goods	Passing of Risk
STAGE 1	STAGE 2	STAGE 3
Decides the legal rights and liabilities of sellers and buyers	Voluntary transfer of possession of goods	Risk Prima facie passes with the Property
RISK	RISK	RISK



# PASSING OF PROPERTY

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- Passing of **Property** implies Passing of **Ownership**.
- Hence, if the property has passed to the buyer, the **RISK** in the goods sold is that of the buyer and **NOT** of the seller.



# Specific or Ascertained Goods

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Goods identified and agreed upon at the time a contract is made (these goods exist at the time of contract)

Ascertained goods is not defined in the Act but has been judicially *interpreted*

When from a large quantity of unascertained goods, the number or quantity contracted for is identified, such goods become *ascertained goods*



# Specific Goods

Identified and agreed upon at the time,  
a contract of sale is made





# Ascertained & Unascertained goods

**Ascertained Goods:** Those goods which are identified in accordance with agreement after contract is made

**Unascertained goods:** Goods not specifically identified at the time of making the agreement



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# Specific & Ascertained goods

## Example

“A” owns 10 Maruti Cars. “B” contracts him to buy his Maruti Car bearing No. OR-02 AT 8800. This is a contract to buy **specific goods**.

## Example

“A” owns 10 Maruti Cars. “B” contracts with “A” to buy one out of them. After the contract, “A” keeps out one car to be given to “B”. This car is now **ascertained goods**.



# Passing of Property in case of Specific or Ascertained Goods

## Rule

Transferred at such time as the parties *intend* it to be transferred :

1. Conduct of the Parties
2. Circumstances of the Case





# Specific Goods in Deliverable Stage

X buys a TV and asks for home delivery.....but the property becomes X immediately



**RULE:** Unconditional contract for sale of specific goods in a deliverable state, the Property in goods passes to the buyer when the contract is made irrespective of time of the payment or delivery or both.



# Specific Goods to be put in Deliverable Stage

X buys Oil but they need to be put in Casks by the seller to make it deliverable.



- RULE : Contract for sale of specific goods and seller bound to do *something to the goods for the purpose of putting them in a deliverable state*, the Property in goods passes to the buyer when such thing is done
- It may be packing, polishing or putting them into containers.
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# Specific Goods in a Deliverable Stage when seller has to do anything to put it in deliverable stage



A sold Carpets to the company which were required to be laid . If stolen before it was laid then the carpet was not in deliverable state

**RULE:** Contract for sale of specific goods but seller is bound to *weigh, measure, test or do something for purpose of ascertaining price* then the Property in goods passes to the buyer only when such thing is done and **buyer has notice of it.**

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## Unascertained Goods

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When there is a sale of Unascertained Goods, no *property is transferred* to the buyer unless the goods are *ascertained*.



# Specific and Unascertained goods

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## Example

“A” owns 10 Maruti Cars. “B” contracts him to buy his Maruti Car bearing No. OR-02 AT 8800. This is a contract to buy **specific goods**.

## Example

“A” owns 10 Maruti Cars. “B” contracts with “A” to buy one car out of them. This is a contract of sale of **unascertained goods**.





# Future goods

1000 quintals of potatoes to be grown in “A” s field



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All the milk that the cow may yield during the coming year







# Sale of unascertained or future goods by description

Goods identified by description



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**RULE: A Valid appropriation of goods is needed :**

1. The goods to match with description and quality
2. Goods must be in deliverable state
3. Unconditionally appropriated (seller does not reserve the right of disposal until certain conditions are fulfilled, like payment of price)



# Contd.....

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Goods identified by description



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**RULE: A Valid appropriation of goods is needed :**

4. The appropriation must be by seller with the assent of the buyer or vice versa
5. The assent may be express or implied
6. The assent may be given before or after the appropriation



# Delivery to the Carrier or bailee

X sends goods by courier



**RULE:** Seller delivers the goods to the buyer or carrier or other bailee for the purpose of transmission and *does not reserve the right of disposal*, the goods are appropriated

- In case of any accidental loss, the seller will NOT be liable

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# Previous Year Question Paper

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**May, 2018 and Nov., 2018**

Explain the provisions relating to Sale of unascertained goods and its appropriation (6 marks)

# GOODS SENT ON APPROVAL OR “SALE OR RETURN”- PASSING OF PROPERTY

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1. When he signifies his approval or acceptance
2. Retains goods without giving notice of rejection
3. Does something to the goods which is equivalent to acceptance

# When he signifies his approval or acceptance

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P bought the musical instrument on the condition that he will purchase if he likes it else return

# Retains the goods without notice of rejection

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P bought the musical instrument on the condition that he will purchase if he likes it else return.....within one week.

But fails to return within one week



# Does something to the goods which is equivalent to acceptance

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P bought the musical instrument on the condition that he will purchase if he likes it else return within a week.

He meanwhile uses the guitar in an event



# Sale for Cash ONLY or RETURN

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In such sales, the goods will remain the property of the SELLER till they are paid for and until the buyer fulfils the terms of the contract i.e. Cash is paid for.

# RESERVATION OF RIGHT OF DISPOSAL UNTIL FULFILLMENT OF CERTAIN CONDITIONS

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X sends furniture to a company by truck and instructs the driver not to deliver the goods until the payment is made by the company.....*the property will pass only when the payment is made.*

**•This is known as conditional appropriation**

# RISK *PRIMA FACIE* PASSES WITH PROPERTY (SEC.26)

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Unless otherwise agreed, the goods remain at the ***seller's risk*** until the property has passed to the buyer. After that event, they are at the ***buyer's risk*** whether delivery has been made or not

# RISK *PRIMA FACIE* PASSES WITH PROPERTY (SEC. 26) – TWO CONDITIONS

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1. If ***delivery is delayed*** by the fault of the seller or the buyer - the goods remain at the risk of the party in default ( seller or buyer as per the case)
2. The duties and liabilities of the seller or the buyer as ***bailee*** of goods for other party will not be affected even when risk has passed.

# Previous Year Question Paper – May, 2018

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Caselet : Will be discussed in the end after rules relating to delivery of goods are discussed

# TRANSFER OF TITLE (SEC. 27)

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Where goods are sold by a person who is not the owner and who does not have the authority or with the consent of the owner :  
buyer does not acquire a good title

**SALE BY A PERSON NOT THE OWNER**

# **NEMO DAT QUOD NON HABET – No one can give what he has not got**

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Exceptions :

1. Sale by a Mercantile Agent
2. Sale by one of the joint owners
3. Sale by a person in possession under a voidable contract
4. Sale by a person who has already sold goods but continues possession

# **NEMO DAT QUOD NON HABET – No one can give what he has not got**

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Exceptions :

5. Effect of Estoppel

6. Sale by an unpaid seller

7. Sale by a buyer obtaining possession before the property vested in him

8. Sale under provisions of other Acts



# Previous Year Question Paper – May, 2019

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*“ A non owner can convey better title to the bonafide purchaser of goods for value.”*  
Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of Sale of Goods Act, 1930 (6 marks)

# PERFORMANCE OF THE CONTRACT OF SALE (SEC. 31 – 44)

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DELIVERY means the voluntary transfer of possession of goods from one person to another

Seller should be ready to deliver and buyer to accept and pay as per terms of contract

# Delivery – How made ?

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DELIVERY may be made by doing anything which the parties agree -

- physical possession
- any person authorised to hold

# Delivery – Effect of Part Delivery

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A DELIVERY of part of goods, in progress of the delivery of the whole, has the same affect (for passing of property) as a delivery of whole.....unless there is intention of severing it

# Delivery – Who to apply, Place and Time

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3. Who to apply : BUYER (unless agreed otherwise)

4. Place : AS AGREED ( else place of manufacture or produced)

5. Time : AS FIXED (else reasonable time)

# Delivery – Goods in possession of a third party

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When the third party acknowledges to the BUYER that he has the goods on his behalf

# Delivery – Time for Tender of Delivery and Expenses

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Time : Reasonable hour (facts of the case)

Expenses : Unless otherwise agreed ,  
by the SELLER

# Delivery – Delivery of Wrong Quantities

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Less Quantity, More Quantity or Mixed Quantity :

Buyer may accept or reject or reject the whole but need to pay at the contracted price



# Delivery – Instalment Deliveries

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Unless otherwise agreed, the buyer **NEED NOT** and is not bound to accept deliveries in instalments

# Delivery – Delivery to Carrier

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Subject to the terms of the contract, delivery of goods to the carrier for transmission to the buyer, is prima facie deemed to be DELIVERY to the BUYER

# Delivery – Deterioration during transit & right to examine the goods

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Deterioration during course of transit : Risk of Buyer

Examine goods : Entitled to a reasonable opportunity of examining (unless otherwise stated)



# RULES REGARDING ACCEPTANCE OF DELIVERY

1. Intimates to the seller that he has accepted goods (acceptance is deemed) :

2. Does any act which is inconsistent with the ownership (acceptance is deemed) :



Buyer took delivery of wheat without proper inspection and resold a part of it.....subsequently buyer cannot reject even of goods not of description



# RULES REGARDING ACCEPTANCE OF DELIVERY

3. Retains the goods (after lapse of reasonable time) without intimating that he has rejected – acceptance deemed



1. Buyer not bound to return the goods only to intimate.

2. Buyer liable for loss due to his own neglect or refuse to take delivery

# Previous Year Question Paper – May, 2018

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What do you mean by delivery of goods? State the various modes of delivery of goods (4 marks)

**Voluntary Transfer.....**



# Modes of Delivery

## • Actual Delivery



## • Constructive Delivery : Seller directs the warehouse manager to transfer goods to buyer



## • Symbolic Delivery





# Previous Year Question Paper

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**Nov., 2018** Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods to be taken away from godown to enable him to store other goods. After a day, since Mr. H did not take away the goods, Mr. G kept them outside in open space and due to rain some goods were damaged.

- (a) Decide who will be responsible
- (b) Will your answer be different if the dues were not settled in cash and still pending (6 marks)





# Answer :

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- (i) Give the Legal Provisions regarding delivery of goods. Risk of loss of goods prima facie passes with the property
- ✓ Buyer is liable for loss due to his neglect or refusal to take delivery
  - ✓ (ii) Unpaid Seller – Unit 4



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# Thank You