

not unconditionally appropriated to the contract in a deliverable state and therefore, the buyers were not liable for the price.

- (II) 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 deliverable state**, the property does not pass **until such thing be done** and the **buyer has notice** thereof.
- (III) 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 such act or thing be done** and the **buyer has notice** of it.
- (IV) When goods are **delivered** to the buyer **on approval**, or other similar terms, the property therein 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 such time**, and, if no time has been fixed, **on the expiration of a reasonable time**.
- (V) 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 **consent** of the buyer or by the buyer with the consent of the seller, the property in the goods thereupon passes to the buyer. Such consent may be express or implied, and may be given either before or after the appropriation is made.
(Unconditional appropriation of goods to a contract means that the goods have been set apart from the bulk of unascertained goods and they would be used for that particular contract without modification.)
2. Where in pursuance of the contract, the seller **delivers the goods** to the buyer or to a carrier for the purpose of transmission to the buyer, and **does not reserve the right of disposal**, he is deemed to have **unconditionally appropriated** the goods to the contract.
 - ***Pignator vs. Gilroy [1919]*** – This involved a sale of unascertained bags of rice. The buyer paid the price and asked for delivery. Two different places of delivery have been stated by the seller for collection. The buyer collected from one place and not from the other place. The goods that were not collected was stolen. It was held that the property in the goods passed and the buyer is at risk.

(13) WHAT IS RESERVATION OF “RIGHT TO DISPOSAL”? (Section 20)

- 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. In such a case, notwithstanding the delivery of the goods to the buyer, or to a carrier 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.

(14) TRANSFER OF TITLE / PASSING OF RISK (Section 21)

- Unless otherwise agreed, goods remain at the seller's risk until the property has passed to the buyer, after which, they are at the buyer's risk, whether delivery has been made or not.
- However, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

(15) SALE BY PERSON NOT THE OWNER (Section 22)

- GENERAL RULE:

- Where goods are sold by a person who is not the 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.
- An innocent purchaser will be entitled to recover the monies paid.
- *Greenwood vs. Bennet [1973]* – original owner of a Jaguar car entrusted it to another for repairs. He used it and damaged it. Consequently, he sold to a third party who in turn sold it to a finance company. It was held that the car belonged to the original owner.

- EXCEPTIONS:

- (1) If the true owner stands by and allows an innocent buyer to pay over money to a third party, the true owner will be estopped from denying the third party's right to sell
- (2) Sale by a Mercantile Agent - A Mercantile Agent is a person who, in the customary course of his business as such Agent, has authority either to sell or to consign goods for the purpose of sale.

Folkes vs. King [1923] – The owner of a car entrusted the car to a mercantile agent and instructed the mercantile agent to sell the car only above a certain amount. The mercantile agent sold the car at a lesser amount and misappropriated the proceeds. However, the Court held that the purchaser obtained good title to the car from the mercantile agent because he was possessing the car with the owner's consent for the purpose of sale.

(16) PERFORMANCE OF THE CONTRACT FOR SALE OF GOODS

- Section 27 - It is the duty of the **seller to deliver** the goods and for the **buyer to accept** the goods **and pay** for them.
- Section 28 - Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

(17) DELIVERY OF GOODS

- Section 29 - In the absence of specific terms and conditions on the delivery of goods, the following rules will apply:
 1. The **place of delivery** is the **seller's place of business**, if he has one, if **not, his residence**. However, if the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.
 2. Where the seller is bound to send the goods to the buyer, but no time for sending them is fixed, **seller must send within a reasonable time and in a reasonable hour**.
 3. If the goods are in possession of a third party, there is **no delivery until such third party acknowledges** to the buyer that he holds the goods on his behalf.
 4. The **expenses of putting the goods into a deliverable state must be borne by the seller**.
 5. Section 32 - Where the seller is authorised or required to send the goods by delivery to a carrier, whether named by the buyer or not, the **delivery to the carrier is prima facie proof of delivery to the buyer**. [Where the carrier is by sea, seller must give the buyer reasonable notice to insure the goods. Otherwise it will be at the seller's risk.]

(18) DELIVERY OF WRONG QUANTITY (Section 30)

- If the seller sends the buyer the wrong quantity of goods that he ordered, the buyer may:
 - reject the whole;
 - accept the whole (must pay at the contract rate);