

(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);

- accept the quantities he has ordered (must pay at the contract rate) and reject the rest.

(19) ACCEPTANCE OF THE GOODS (Section 35)

- Acceptance is deemed to take place when the buyer:
 1. intimates to the seller that he has accepted the goods; or
 2. does any act to the goods which is inconsistent with the ownership of the seller; or
 3. retains the goods, after the lapse of a reasonable time, without intimating to the seller that he has rejected them.
- Section 34 - If the buyer has not previously examined the goods, he is deemed not to have accepted them unless he has reasonable opportunity to examine them upon delivery.

(20) AN UNPAID SELLER (Section 38)

- The seller of goods is deemed to be an "unpaid seller":
 - when the whole of the price has not been paid or tendered;
 - when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(21) RIGHTS OF AN UNPAID SELLER (Section 39)

- Notwithstanding that the **property in the goods may have passed to the buyer**, the unpaid seller of goods, has by implication of law-
 1. a **lien** on the goods or right to retain them for the price **while he is in possession of them**;
 2. in case of the insolvency of the buyer, a right of **stopping the goods in transit after he has parted with the possession of them**;
 3. a **right of re-sale**.
- **Where the property in goods has not passed to the buyer**, the unpaid seller has, **in addition** to his other remedies, a **right of withholding delivery** similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.
- A lien (Section 40):
 - A lien is a **right to retain possession** of goods **until payment** of the price.
 - Section 41 - The unpaid seller **loses his lien**:
 - (a) when goods have been **delivered to a carrier** for the purpose of transmission to the buyer;
 - (b) when the **buyer or his agent obtains possession** of the goods lawfully;
 - (c) by **waiver**.
- Right of stoppage in transit (Section 43):
 - The right of **stopping the goods while they are on transit** and retaining possession **until the payment** is made.
 - It is available when:
 - (a) the **buyer** becomes **insolvent**; and
 - (b) the **goods are in transit**
- Right of resale (Section 47):
 - The exercise of the right of lien or stoppage does not rescind the contract.
 - However, where an unpaid seller who has exercised his right of lien or retention or stoppage in transit resells the goods, the buyer acquires a good title thereto as against the original buyer.
 - The seller has the right to resell when:
 - (a) the goods are of a **perishable** nature; or
 - (b) when the unpaid seller gives **notice** to the buyer **of his intention to resell** and the **buyer does not within a reasonable time pay the price**;