

SALE
OF
GOODS ACT

LL.B. II Sem

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Exceptions to the rule "Risk prima facie passes with property."

The rule is subject to following exceptions: as laid down in Section-26

1) Separation of risk from the ownership:-

It is lawful for parties to agree if they please that the risk shall pass at some times or on some condition which is not necessarily simultaneous with the passing of the property, and thus ownership may in particular cases be separated from the risk

2) Goods at the risk of the party in fault:-

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.

Case → Deirly Hamilton and Company Ltd v/s Burden 1949

There was a contract between the defendant and plaintiff for the purchase of 30 tons of apple juice. In order to deliver the juice, the plaintiff crushed the apples

and put the juice in casks ready for delivery to the defendant. On account of the delay in taking the delivery of juice by the defendant, the juice became putrid (rotten) and had to be thrown away. It was held that the defendant (buyer) was liable for the loss.

3) Duties of seller or Buyer not to be affected :- Nothing in the general rule stated above affects the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.