

PROPERTY OR OWNERSHIP

The Sale of Goods Act does not define property but it can be taken to be ownership or title in the goods.

The two principal rules are contained in ss.16 & 17.

S.16 - 'Where there is a contract for the sale of unascertained goods no property in the goods is transferred unless and until the goods are ascertained.'

Healey v Howlett [1917] 1 KB 337

Howlett (*in Ireland*) supplied fish to England, via an agent in Holyhead, the agent, at Holyhead, selected parcels of fish for dispatch to customers in England. Howlett sent 122 boxes of mackerel to the agent who sent 20 boxes to London. Because the fish were delayed at Holyhead it had gone bad by the time it arrived. The appellant refused to pay for the fish.

Held – The fish had gone rotten before the goods were ascertained, there was no appropriation until the boxes were earmarked by the agent in Holyhead, so property could not pass to the buyer, therefore, the buyer could reject the goods.

It is possible that goods not identified can become identified not by selection but by the removal of the remainder.

Karlshamns Oljerfabriker v East Navigation Corp [1982] 1 All ER 208

The plaintiffs bought 6,000 tons of copra on one ship which was part of a load of 22,000 tons.

The ship docked at Hamburg and offloaded 16,000 tons, on arrival in Sweden it was found that the remaining cargo was damaged by water; the buyer claimed that property had not passed.

Held – Property had passed. It was only when the copra left on the ship was for the plaintiff, that the goods became ascertained by process of `exhaustion` and property passed to the plaintiff

S.17 - 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.

The rules for ascertaining intention are contained in Section 18

Dennant v Skinner and Collom [1948] 2 KB 164

At auction, a van was bought by cheque. When paying the buyer signed a statement stating that ownership would not pass to him until the cheque was cleared. He sold the car to a third party and there was a dispute regarding ownership of the car

Held – The contract was complete when the auctioneers hammer fell, the third party therefore had good title to the car. (*If s18 r1 is satisfied, property passes immediately.*) The statement was made too late.

Thus the first thing necessary is to determine when the contract is made.

Subject to these two sections there are 5 rules in s.18 to be applied.

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.

Kursell v Timber Operators & Contractors Ltd [1927] 1 KB 298

The seller agreed to sell all merchantable timber defined in the agreement. The contract was to remain in force for 15 years. Forest expropriated by Latvian Government. Seller sued buyer for the price, but to succeed, had to prove that property had passed. The seller argued that the goods were specific, and that property had passed at the time the contract was made as per s. 23(2).

Held - The goods had not been identified at the time of the contract. Only trees conforming to certain measurements could be cut. This was because merchantable timber was subject to change over time as the trees grew, and there was no identification of which trees were included.

Underwood Ltd v Burgh Castle Brick and Cement Syndicate [1922] 1 KB 343

The plaintiffs sold a “condensing engine” which was bolted to a floor. It was damaged by the sellers when it was lifted from its fixings. Plaintiffs argued property passed when contract was made.

Held - They lost because the engine was not in a deliverable condition when the contract was made, as the engine was a fixture.

Rule 2 is merely the other side of Rule 1, if something needs doing then property passes when it is done and the buyer has notice.

Rule 3 is a specific instance of Rule 2 on weighing and measuring or doing anything else to ascertain the price.

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.

London Jewellers v Attenborough [1934] 2 KB 206

Waller got the jewellers to give him jewellery "on approval" and signed a note "goods on appro". The intention was that he would then sell the items to a well-known actress. He didn't, but put them in pawn. Waller was charged with theft and Attenborough for the return of the goods.

Held – Attenborough had good title and was not liable because when Waller pledged the goods, it was an act that signalled "adoption of the transaction". It was not material that the first buyer was guilty of a criminal offence

Rule 5 is the only one relating to unascertained goods and provides that property passes when goods are unconditionally appropriated to the contract.

Re Blyth Shipbuilding Co [1926] Ch 494

"A" agreed to build a ship for "B", the price paid in installments as the work progressed, the contract stated that on payment of the first installment "*the vessel and all materials and things appropriated for her should become and remain the property of the purchaser*". "A" went bankrupt before the ship was completed and there was semi fabricated materials lying about the yard that were to be used on the ship.

Held – The incomplete ship was the property of the buyers and that which was affixed to the ship. The materials lying in or around the yard had not been sufficiently appropriated to become the property of the ship buyers.

The main importance of these tests to decide on the passing of property is apportionment of the risk

s.20 Unless otherwise agreed, the goods remain at the seller's risk until 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.

(4) **In a case where the buyer deals as consumer** or, in Scotland, where there is a consumer contract in which the buyer is a consumer, subsections (1) to (3) above must be ignored and the goods remain at the seller's risk until they are delivered to the consumer.