

**DE JURE NEXUS LAW JOURNAL**

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**PROPERTY PASSES WHEN IT IS INTENDED TO PASS****Introduction**

Sales of the Goods Act, 1930 is the legislation that is enacted in order to govern the laws related to the sales of goods and the property. The Act of 1930 deals only with the properties that are movable in nature. There is almost every matter related to the sales of the goods is covered by the Act of 1930. The pertinent and main aspect of the Act of 1930 is concerned with the “passing the property” and the transfer of the property. The literal interpretation that can be given to the term passing the property or transferring the property is that either the property is transferred or passed from the seller in the contract to the buyer in the contract on a price that is agreed by both the parties. The ownership is said to be transferred only when there is the transfer of the “proprietary of the property rights from the part of the seller to the buyer”. The fact of the distinction is that there exists a difference between the transfer of the ownership and the possession of the said goods. The possession of the said goods means that the goods under the contract are either in the custody or in the physical control. Under the Act of 1930 the property is a general property in the goods and not the special property in the goods. The essence of the contract of the sale under the Act of 1930 is the transfer of the ownership. Hence, it is very important to analyze the pertinent aspects relating to the passing of the property and its legalities.

**The Essentials of the transfer of the property**

1. The very important factor in relation to the transfer of the property under the Act of 1930 is regarding the “ownership of the property that is to be transferred should be of the

ascertained goods. It is not feasible to transfer the goods that are not the ascertained goods". In order to transfer the unascertained goods such goods to be first converted into the ascertained goods.

2. The second important essential is that the property which is to be transferred should only be transferred when it is intended to be transferred.

### **The importance of the transfer of the ownership of the property**

In the "contract of the sales, the very time at which the ownership is transferred from the seller to the buyer is of great importance and it should be given the due importance". The significance of the transfer of the ownership is discussed as follow:

1. The risk attached with the property passes with the property: "The risk which is attached with the property is with the seller till the time the property is with the seller. The moment the property is transferred from the seller to the buyer then the risk which is attached with the property also transfers from the seller to the buyer".<sup>1</sup>
2. Loss due to delay: If the delivery of the goods could not happen either by the mistake of the seller or the buyer then the party on whose part the fault was there due to which the goods could not be delivered on the time will have to bear the losses that have been incurred due to the delay in the delivery. In a landmark case of "Demby Hamilton & Co. Ltd. v. Barden", the plaintiff and the defendant entered into the contract for selling 30 tons of the juice and that had to be delivered on the very next day. The person named Barden did not show up on time and due to this factor the juice was half spoilt. It was held by the court that the defendant was liable for the loss that was incurred due to the delay in the delivery of the juice.
3. The action that is to be taken against the third party: The buyer gets the "right to sue the third party if due to any reason the property which is to be transferred gets destroyed by the act of any third party". However, if the ownership of the property is still with the seller of the goods then the buyer will have no right to sue the third party for its acts.
4. A suit for the price: In the case of any mishappening the same person will be held liable with whom the ownership of the goods will lie. If the ownership lies with the buyer then

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<sup>1</sup> Dinshah Fardunji Mulla, Kaikobad Sorabji Shavaksha and India (1959). *Indian Sale of Goods Act and the Indian Partnership Act*. Bombay: N.M. Tripathi.

the buyer will be held liable but if the ownership lies with the seller then the seller would be held liable.

5. The buyer or the seller becoming insolvent: The right to decide that “whether the property will be passed to the official assignee” will lie with the party who has become insolvent. If the buyer has become insolvent then the buyer will decide. If the seller has become insolvent then the seller will decide.

### **Section 19: “Property passes when it is intended to pass”**

Section 19 of the Act of 1930 deals with the scheme of the provision that is related to the transfer. In the case of *Contship Container Lines v. DK Lall*,<sup>2</sup> the scheme which is enunciated under section 19 and the provisions in regard to the transfer of title relating to the goods was explained by the Supreme Court. Section 19 of the Act of 1930 enunciates the law that in the contract which is in relation to the sale of the specific goods or the ascertained goods then the property which is in the goods is transferred to the buyer only and only when the parties who entered in the contract intended to transfer it. In order to understand the intention of the parties a due regard has to be given to the terms and conditions that are mentioned in the contract. The conduct of the parties as well as the circumstance of each case must also be considered in order to understand the intention of the parties as to when the parties intended to transfer the property.

The sections 20 to 24 of the Act of 1930 come to the rescue in order to understand the intention of the parties as to when the parties wanted or intended to transfer the property. One such rule is that in the cases of the unconditional contracts in relation to the sale of the specific goods which are in a deliverable state, the property of such goods passes to the buyer when the contract between the parties is made irrespective of the condition that the time in regard to the payment of the price or for that matter the time of the delivery of the goods or both of them are postponed.<sup>3</sup>

Another rule which finds its place in the section 23 of the Act of 2013 is in regard to the fact “when the contract is for the sale of the unascertained or in regard to the future goods by the description which is given to them and goods of such a description are unconditionally appropriated to the contract either by the seller with the permission of the buyer or by the buyer himself with the permission of the seller, the property in such a case will then be passed to the buyer”. Hence, “when the seller has delivered the goods to the buyer or either to the carrier or

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<sup>2</sup> *Contship Container Lines v. DK Lall*, AIR 2010 SC 1704.

<sup>3</sup> Transfer of Property in Unascertained & Future Goods, BARTLEBY RESEARCH, <https://www.bartleby.com/essay/Transfer-of-Property-in-Unascertained-Future-Goods-P3HN5CC43RYYA>.

any other bailee for the reason of the transmission to the said buyer and he did not reserve the right of the disposal then the seller is deemed to have unconditionally appropriated the goods to the said contract.”<sup>4</sup>

The § 26 of the Act enunciates that unless it is “*otherwise agreed then the goods will remain at the risk of the seller until the property in the goods is transferred to the buyer. Once the property in the goods is transferred to the buyer then the goods will be at the risk of the buyer.*”

§ 18 of the Act lays down a very important proposition in regard to the unascertained goods. “*It says that in the case for a contract for the sale of the goods that are unascertained in nature then there will be no transfer of the property in the goods that will pass on to the buyer.*” The property in the goods will only be transferred when the goods that are unascertained in nature can be made ascertained in its nature. Section 19 of the Act of 1930 says that the property only passes when the parties who have entered in the contract intend to pass the property.<sup>5</sup> The stage at which the property is to be passed and the time as to when the property is to be passed should be decided on the case to case basis depending upon the terms and conditions that are mentioned in the contract which is entered between the parties. There arises no confusion and the difficulty when the parties in the clear and unequivocal terms have mentioned in the contract as to when at when stage the property needs to be passed. However, when the intention is not mentioned in the contract regarding the fact that when it is supposed to transfer the property then the same should be inculcated through the contract as a whole and the court in India in this regard have always adopted the rules of construction.<sup>6</sup>

The words in sub-section (1) “at such time as the parties to the contract intend it to be transferred” reflect that the parties’ intention is of very much importance and hence the rules laid down in sections 20 to 24 are presumptive. The said rules can be rebutted by the terms and the conditions that are mentioned under the agreement, it is the parties and their relevant conduct who entered into the contract and the facts of each case that is in the question before the court. In the contract of the sale of the logs of wood, it was provided that the buyer was entitled to inspect,

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<sup>4</sup> Ho, H. (1997). Some Reflections on “Property” and “Title” in the Sale of Goods Act. *The Cambridge Law Journal*, 56(3), 571-598. Retrieved February 11, 2021, from [www.jstor.org/stable/4508378](http://www.jstor.org/stable/4508378).

<sup>5</sup> Chapter 12- Transfer of Ownership, TAXMANN.COM, <https://www.taxmann.com/bookstore/bookshop/bookfiles/Business%20Lawschapter12.pdf>.

<sup>6</sup> *Seathe v. Moore* (1866) 11 App Cas 350.

measure and weigh the goods at the place of destination before taking delivery from the railway. It was held that the parties did not intend to pass property in goods until the buyer had performed the said acts.<sup>7</sup>

Where a contract specifies that the one who is selling the goods shall consign “the goods free on rail”, it was held that “the circumstances showed an intention that the property should not pass to the buyer until the goods were placed in safety on rail”. In case of goods delivered on the basis of “on sale for cash or return within a week” the parties did not have the intention to pass on the property which was in the goods until the price of the goods was paid in a week or the goods are returned within a week.<sup>8</sup>

Whether transfer of movable goods like a motor vehicle would be dependent upon registration? Is there any law that governs the transfer of title in the movable goods? § 4 shows “how the property in goods is to be transferred”, i.e., by the agreement to do so. According to the statutory provisions enunciated in the Act of 1930, the sale of a motor car which is a movable property is ruled and regulated by the statutory provisions of that Act and as soon as a sale of movable property is completed by delivery of possession and acceptance of price in the manner agreed to and accepted by the parties, the contract is complete and the property which is deemed to be goods immediately gets on at the end of the contract to the buyer itself.<sup>9</sup> When the title in the property passes is really based on the intention of parties who entered into the contract and the intention has to be collected through the contract and the terms agreed upon it.<sup>10</sup> Dealing with the issue related to the transfer of title to a motor bus with permit, where the title was intended to pass after all the registration formalities are completed under the Motor Vehicles Act, 1939 and after the payment of price, the “Supreme Court made a distinction between registration of ownership under the Motor Vehicles Act, 1939 and transfer of title under the Sale of Goods Act, 1930” as held in *Vasantha Viswanathan v. VK Elayalwar*.<sup>11</sup>

### **Conclusion**

In order to conclude it can be said that the section 19 of the Act of 1930 is the key provision in regard to the research topic i.e. “the property is passes when it is intended to pass”. The main role is played by “the intention of the parties” hence the due recognition should be given to the

<sup>7</sup> CST, Eastern Division Nagpur v Husenali Adamji & Co, AIR 1959 SC 887.

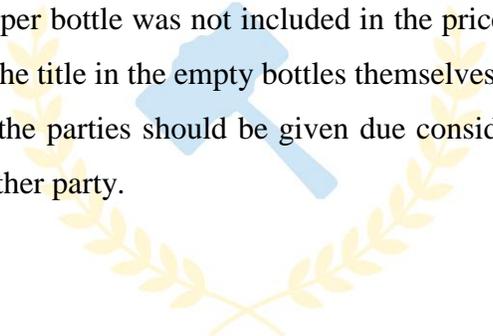
<sup>8</sup> State of Madras v Ramalingam & Co, AIR 1956 Mad 695.

<sup>9</sup> Hoe Kim Seing v Maung Ba Chit, AIR 1935 PC 182.

<sup>10</sup> Contship Container Lines v. DK Lall, AIR 2010 SC 1704.

<sup>11</sup> Vasantha Viswanathan v. VK Elayalwar, AIR 2001 SC 367.

parties intent which can be ascertained through the contract and the specified terms agreed between the parties. The best example is the case of United Breweries Ltd v. State of AP,<sup>12</sup> “a manufacturing company of liquor, while entering into contract of supplies with its dealers/customers, with a view not to lose the bottles and crates in which the beer was supplied, charged 40 paise per bottle as deposit and the customers were also advised to do likewise when they sold the beer to the consumers. The whole intention was to get back the bottles from the consumers through the customers. The scheme was that United Breweries would regularly send trucks with beer to the customers to supply beer and get back the empties.” Consequently, the amount which was collected per bottle was not included in the price calculated for the bottles of beer and held not to involve the title in the empty bottles themselves to determine “Sales Tax”. Hence, it is the intention of the parties should be given due consideration when the property is passed from one party to another party.



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<sup>12</sup> United Breweries Ltd v State of AP, AIR 1997 SC 1316.