



RIGHTS OF BONA FIDE PURCHASERS: LEGAL IMPLICATIONS OF TITLE TRANSFER IN SALE OF GOODS

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Abstract

The Sale of Goods Act, 1930, establishes the legal rights, obligations, and liabilities in commercial transactions, particularly regarding the transfer of title. Under Sections 27-30, the Act follows the principle of Nemo dat quod non habet—a seller cannot transfer a better title than he possesses. If the seller's title is defective, the buyer's title is also defective. For instance, if a thief sells a stolen car, the buyer acquires no valid title. However, exceptions exist under the Sale of Goods Act and the Indian Contract Act, allowing a buyer to obtain a good title despite the seller's defective ownership. These exceptions protect bona fide buyers and facilitate smooth transactions while preventing fraud. This article examines the concept, its exceptions, and their significance in legal contexts.

Introduction

The general rule of law is derived from the maxim *Nemo dat quod non habet*. This maxim protects and ensures the security of property rights and maintains trust in commercial transactions.ⁱ It tries to protect the interests of the owner from losing its property through unauthorized sale and ensures that the buyer exercises due diligence before making any purchase. However, in practice, there are instances where a buyer had purchased goods from a person who has all the trappings of ownership but in truth no proper title of the goods.ⁱⁱ There are exceptions to the general rule of law which aim to protect the rights of bona fide buyers. The purpose of this section is to study the exceptions which aim to reduce the harshness of the common law.

Exceptions to the Rule

Below are the exceptional situations under which the seller may confer a better title than he himself possesses. Exceptions ensure buyer's title will not be a bad one.ⁱⁱⁱ

1) Transfer of Title by Estoppel- (Section-27)

Doctrine of Estoppel - it prevents someone from going back on its word or promise. Once the owner, by his words or by his conduct, makes third party (buyer) to believe that the seller has all the rights to sell, subsequently the owner cannot deny the existence of such rights.^{iv} For example, a son sells the watch which belongs to his father in his presence, the father had no objection at that time. The father is not permitted, in future, to deny his son's authority to sell the watch. The sale becomes binding in nature.^v

Conditions for the application of doctrine of Estoppel:

1. The representation must be made in words or by conduct by one person to another.
2. The representation must be about an existing fact not about law.
3. The representation must be made with the intention that the other party (buyer) believes it to be true.
4. The individual to whom the representation is made relies on it, alters its position accordingly, and suffers a disadvantage as a result.
5. The other party to whom representation is made must suffers a loss if the promise is not kept.
6. The other party must have acted in good faith and without knowledge that the seller has no authority to sell.
7. The only way to avoid injustice is to enforce the promise.^{vi}

Case: Mercantile Bank v. Central Bank^{vii}

In this case, a fraudulent agent presented himself as the rightful owner of certain goods and pledged the same with Mercantile Bank. The actual owner (Central Bank) had granted the possession of the goods to the agent, inadvertently, created the impression that the agent had the authority to transact. Trusting this apparent authority, Mercantile Bank accepted the pledge in good faith. When the fraud was discovered, Central Bank sought to reclaim the goods, asserting that the agent had no legal right to pledge the goods. The Bombay High Court held that the Central Bank, through its conduct, had allowed the agent to present himself as having the authority to manage the goods. Consequently, it was stopped from contesting the validity of the pledge. As a result, Mercantile Bank, acting in good faith, acquired the valid title to the pledged goods.^{viii}

2) Sale by Mercantile agent (Proviso to Sec.27)

Mercantile agent means^{ix}- one who acts as an intermediary between the principle and the third party.

Mercantile agent appointed for the purpose:

1. He can sell and buy the goods on behalf of his principle.
2. Consign goods for the purpose of sale which means giving goods to a third party to sell on its behalf. The sender of goods is called the consignor and the party to whom goods were sent is called consignee. For example, Artists consign their artwork to galleries. The galleries display the artwork, handle the marketing, the sales, and take a commission on each sale.^x

How Does Consignment Work?

The consignor (sender of goods) retains the ownership of the goods until they are sold. The consignee (who is taking the goods) sells the goods and pays the consignor a percentage of the sales proceed. The consignor has the authority to specify how the goods would be sold. If the goods were unsold, the consignor can get back them.^{xi}

3. To raise money on the security of goods. A mercantile agent can raise money by pledging goods as a security for loan. Section 27- Sale by Mercantile Agent constitutes an exception to the rule *Nemo dat quod non habet*. A sale by a Mercantile Agent who has no authority to sale is valid under the *Sale of Goods Act, 1930* if the following conditions are met.^{xii}

Conditions that are to be satisfied:

1. Sale must be by a Mercantile Agent and not by an ordinary agent.
2. The Mercantile agent must be in possession of goods or the documents of title to the goods.
3. The possession of goods or documents must be in his hands with the consent of the owner.
4. Sale must be made in the ordinary course of his business as a Mercantile agent. (Means during business hours, at a proper place, and in the usual way of his normal business).
5. The buyer of the goods must have acted in good faith.
6. The buyer must not be in receipt of any notice suggesting that the Mercantile Agent has no authority to sell^{xiii} at the time of the sale.

Example

Rohan went out for a week and left his valuable dog with his neighbour in safe custody. The neighbour, who also happens to be an auctioneer, sold the dog in auction. The

buyer will not acquire a good title because the neighbour (seller) did not get possession of the dog in the capacity of a Mercantile Agent, but as a neighbour or a bailee.

Example

A jeweller entrusted a mercantile agent with a diamond ring, instructed the agent to arrange for assessing the market value of the ring. The agent was authorized solely to assess the value and not to sell the ring. However, the agent fraudulently sold the diamond ring to a third-party and misappropriated the proceeds. Upon discovering that the ring was in possession of a third party, the jeweller sued the buyer to recover it, arguing that the agent had no rightful authority to sell the ring.^{xiv} The court ruled in favour of the third-party, holding that, as a bona fide purchaser, he had acquired a good title under the exception to the Nemo Dat Quod Non Habet rule. Since the mercantile agent had been acting in the ordinary course of business and was entrusted with possession of the ring, the sale was considered legally valid. Consequently, the jeweller lost the case, as his voluntary act of entrusting the ring to the agent facilitated the transaction.^{xv}

Case: Folik v. King^{xvi}

The plaintiff entrusted his car to his Mercantile agent with instructions to sell it at a certain price or higher. The Mercantile Agent sold the car for a lower price, without owner's knowledge. The buyer acquired a good title of the car despite the agent exceeding its authority. The owner disputed the sales transaction. The Court held that since the buyer purchased the car in good faith from the Mercantile Agent who was in the possession of the car with apparent authority to sell, the buyer got the valid title to the car. Had the Mercantile Agent in possession of the car without the consent of the principal (for example, the car obtained by theft), the Mercantile Agent would not have conveyed a good title.

3) Sale by one of the joint owners- (Section- 28)

Generally, a co-owner can transfer his share of goods to its partners. Section 28 enables a co-owner to sell not only his own share but also that of his co-owners. Often, goods are jointly owned but are held solely by one of the co-owners with mutual consent. If that co-owner, who has exclusive possession, sells the goods, the ownership is validly transferred to the buyer. Provided that the buyer purchases in good faith and is unaware of any restriction on the seller's right to sell, the transaction remains legally valid.

Consequently, under this provision, a sale by one joint owner serves as an exception to

the nemo dat quod non habet rule. This section lays down some conditions that must be fulfilled for the validation of the sale by the co-owner.^{xvii}

Conditions for validating the sale by one co-owner:

1. One of the several joint owners is in sole possession of the goods.
2. He must be in the possession of goods with the permission of the other co-owners.
3. The buyer must have purchased the goods in good faith.
4. The buyer must have no notice at the time of the contract of sale that the seller had no authority to sell.

Example-

‘A’ and ‘B’ jointly own a gold necklace. Both agree that ‘A’ will have the possession and can use it in functions like marriage, party etc. ‘A’, without informing ‘B’, sells the necklace to ‘C’, the third party who purchased the necklace in good faith. Under Section 28, ‘C’ gets a valid title even though ‘A’ was only a joint owner because ‘A’ was in possession of the necklace with ‘B’s consent.

4) Sale by a Person in Possession under a Voidable Contract-(Section-29)

As per Sections 19 and 19A of the Indian Contract Act, if a contract is formed through fraud, coercion, misrepresentation, or undue influence, it remains voidable at the discretion of the affected party. Nevertheless, these sections uphold the validity of a sale made by an individual who obtained possession of goods under such a voidable contract, provided that the transaction occurs before the rightful party revokes the contract. In such a scenario, the buyer secures a legitimate title, but only if they purchased the goods in good faith and without any awareness of defects in the seller’s ownership.^{xviii}

Conditions for validating a sale by a person in possession under a voidable contract:

1. The person must have obtained the possession of goods under a voidable contract, not under void contract. (For example, if seller obtained the possession of goods by theft, then it has no title to the goods at all).
2. Seller sold the goods before the contract could be rescinded by the party entitled to do so.
3. The subsequent buyer must have purchased the goods in good faith.
4. The subsequent buyer must not be in receipt of any notice of the seller's defective title.

Case: Phillips vs. Brooks^{xix}

North fraudulently acquired a ring from a jeweller by impersonating Sir George Bullough and making payment through a cheque in that name. The seller, after confirming the provided address, completed the transaction. Later, the fraud came to light, but before the seller could void the contract, North had pledged the ring with Brooks Ltd. The seller sued Brooks Ltd to reclaim the ring. The court held that although the transaction was fraudulent, no identity mistake had occurred because it was a direct, in-person sale. Since fraudulent contracts are voidable rather than void, ownership had already passed, making Brooks Ltd the rightful owner of the ring.^{xx}

5) Sale by the Seller in Possession- (Section- 30(1))

General rule is that once the seller sells, seller automatically transfers the ownership of such goods to the buyer. He cannot thereafter resell the same goods to another buyer. However, Section 30(1) of the Sale of Goods Act, 1930, offers one more exception to rule of *nemo dat quod non habet*. This will apply when the following conditions are complied with.^{xxi}

Conditions must be satisfied to enable a seller to pass a good title:

1. The seller must continue to be in possession of the goods or of the documents of title to the goods as a seller or as an agent on owner's behalf.
2. The goods must have been delivered or documents of title must have been transferred to the subsequent buyer.
3. The subsequent buyer must have purchased the goods in good faith.
4. The subsequent buyer must be a bona fide buyer without in receipt of the notice of the previous sale.^{xxii}

Example:

'A' (seller) sold a refrigerator to 'B' (buyer) but kept possession of the refrigerator. Later, 'A' fraudulently sold the same refrigerator to 'C', a new buyer, who purchased it in good faith, without knowing about the previous sale. Under Section 30(1), 'C' gets a valid title to the refrigerator. 'B' (the original buyer) may only have a claim against 'A' but cannot recover the refrigerator from 'C'.

Case: Pacific Motor Auctions Pty Ltd. v. Motor Credits (Hire Finance)^{xxiii}

A car dealer sold various motor vehicles to a finance company (Motor Credits Ltd.) under a finance agreement. Despite the sale, the dealer kept possession of the vehicles. Later, the dealer sold the same vehicles to Pacific Motor Auctions Pty Ltd., an

auctioneer, who purchased them in good faith and without any knowledge of the previous transaction. The finance company (Motor Credits) claimed the ownership of the vehicles and tried to obtain the vehicles from Pacific Motor Auctions. The Privy Council ruled in Favor of Pacific Motor Auctions and held that the subsequent buyer acquired a valid title under Section 30(1) of the Sale of Goods Act, 1930.

6) Sale by Buyer in 'Possession'- Section 30(2)

Section 30(2) deals with a case where the buyer is in possession of the goods with the consent of the seller, but the ownership has not passed to the buyer as yet. The following conditions must be satisfied to enable the buyer to pass a good title.^{xxiv}

Conditions must be satisfied to enable the buyer to pass a good title:

1. The buyer has obtained the possession of the goods or documents of title with the consent of the seller.
2. The buyer has either re-sold, pledged, or disposed of the goods to the third person (subsequent buyer).
3. The sale will convey good's title to the third person (subsequent buyer) if the third person had acted in good faith.
4. The transfer will convey good's title to the third person (subsequent buyer) if he does not have any notice regarding any lien or other right of the original seller in respect of those goods.^{xxv}

Example:

'A'(Buyer) purchased a TV on instalments from 'B'(Seller). It was agreed between 'A' & 'B' that 'B' will remain the owner of the TV until the last instalment was paid. Before the last instalment was paid, 'A' sold it to 'C', who bought it in good faith & without any notice of the agreement between 'A' & 'B'. 'C' acquires a good title to the TV.

Case Law: Martinson v. Clowes^{xxvi}

In this case, the plaintiff had delivered goods to a buyer under an arrangement where the buyer had the possession but had not yet acquired ownership. Buyer, while still in possession, sold the goods to the third party. The dispute aroused when the original seller claimed the ownership and sought to recover the goods from third party. The court ruled in favour of the subsequent buyer, holding that since buyer had obtained the possession with the consent of the original seller, the subsequent sale to a bona fide purchaser was protected under Section 30(2) of the Sale of Goods Act, 1930, which deals with sale by a buyer in possession.^{xxvii}

7) Resale by an Unpaid Seller-Sec. 54(3)

According to Section 54(3), of Sale of Goods Act, 1930, if the seller exercises his right, 'Right to Lien' or 'Right to Stoppage in Transit' and the original buyer had not paid then he can resell the goods to another buyer (subsequent buyer). The subsequent buyer will acquire a good title to the goods, even though no notice of resale has been given to the original buyer.

Unpaid seller may resell the goods under the following conditions:

1. If the goods are perishable(decomposable) in nature.
2. If the seller has given notice to the original buyer about the intention to resell, the original buyer had not paid within a reasonable time.
3. If the right to resell has been expressly reserved in the contract.

If a resale is made in accordance with above conditions, the seller is entitled to recover damages from the original buyer if the resale price is lower than the original contract price.^{xxviii}

Right to Lien: an unpaid seller has a right to retain the possession of the goods until he is paid for.

Stoppage in Transit: if the goods are in transit (on the way), the original buyer becomes insolvent, the seller can regain possession of the goods before they reach the buyer.

Following conditions must be fulfilled for the application of Section. 54(3):

1. The seller must be an unpaid seller.
2. The buyer must be unable to pay the amount for the goods or he becomes insolvent.
3. The unpaid seller can exercise his right to lien or stoppage in transit and resell the goods.
4. The subsequent buyer acquires good title thereto as against the original buyer.
5. Even though no notice of the resale has been given to the original buyer, the subsequent buyer acquires good title.^{xxix}

Example:

'A' agreed to sell 100kg of apples to a 'B' for Rs5,000/-, with payment to be made before delivery. The buyer failed to pay and the seller refused to deliver the goods. Since apple is a perishable commodity, the seller resold the goods to another subsequent buyer for Rs.4,500/- after giving the notice to original buyer. The seller can sue the

original buyer for the Rs.500/- loss. The subsequent buyer will acquire a good title to the goods, even though no notice of the resale has been given to the original buyer.

8) Sale under the Provisions of Other Acts

A. Sale by the Official Receiver or Liquidator under the Companies Act, 2013.

1. Under Sale of Goods Act, 1930, "A sale by the official receiver, liquidator, or official assignee" is considered an exception to the legal doctrine *Nemo Dat Quod Non Habet* because, even though they have no title over the company's assets, they are legally authorized to sell the assets on behalf of the company during liquidation proceedings.
2. The law empowers a buyer to acquire a valid title to the property even though the seller is not the owner of the company's assets.
3. The law recognizes the authority of the court appointing a liquidator to transfer the ownership under the relevant insolvency laws, which essentially creates an exception to the *Nemo Dat Quod Non Habet* principle.^{xxx}

Example:

If a company got insolvent and is liquidated, then the official receiver, who is appointed by the Court, can sell the company's machinery to the third-party. The buyer will acquire the valid ownership of the machinery even though the official receiver was not the owner of that machinery.

B. Sale by Pawnee – Section 176 Indian Contract Act

Section 176 of the Indian Contract Act is considered another exception to the principle of *nemo dat quod non habet*. It grants the Pawnee (who holds pledged goods as security) the right to sell the goods if the Pawnee (the borrower) failed to repay the loan. Under this section, the Pawnee can recover his debt by selling the goods kept in his possession as a security. However, before exercising this right, the Pawnee must provide reasonable notice to the Pawnee. Upon sale, the buyer acquires a good title, even though the Pawnee does not have full ownership of the goods.^{xxxii} Generally, the Pawnee has a duty to return the pledged goods to the Pawnee once the debt, the interest, and other necessary expenses incurred for the preservation of the goods have been fully received.^{xxxiii}

Example

A person (borrower) pledged his gold ring and a chain with a bank as security for a loan. The borrower defaulted. The bank provided reasonable notice and then

auctioned the ring and the chain. The buyer of the jewellery gets a valid title, despite the bank not being the original owner.

C. Sale by Finder of Goods – Sec. 169 Indian Contract Act

If the true owner of the goods cannot be found, the finder of goods may have the right to sell under specific conditions mentioned in section 169. A finder of goods is one more exception to the rule of *Nemo Dat Quod Non Habet* (No one can give what they do not have). If a person is in possession of lost goods and the true owner cannot be found despite reasonable efforts, the finder may acquire the goods title against everyone except the rightful owner. Furthermore, if the finder sells the goods under statutory provisions or through legal authority, the buyer of the goods may obtain a good title.

Conditions that are to be satisfied:

1. The true owner could not be found with reasonable diligent efforts.
2. The true owner of the good refuses to pay the lawful charges that he is legally bound to pay to the finder of goods.
3. The goods are perishable in nature or lose the greater part of its value. Therefore, there is an urgent need to dispose of. For example, perishable goods such as edible items like fruits and vegetables.
4. The reasonable expenses amount to two-thirds of the value of the property under consideration.

Example

A person found an abandoned horse wandering along roadside and took care of it. The finder informed the local authorities and made public announcements in nearby areas to identify the owner. Even after a reasonable waiting period, no one claimed the horse. Its upkeep becomes expensive, the finder, with legal authorization under Section 169, may sell it to recover the essential costs. The buyer obtains a valid title unless the rightful owner later comes forward.

Case: Armory v Delamirie (1722) 1 Strange 505, 93 ER 664

Plaintiff (a chimney sweep's boy) found a jewel and took it to defendant's jewel shop to find out its value. The apprentice of defendant goldsmith's shop took the jewel and pretended as he were going to weight the jewel to determine its value. The goldsmith's (master) told the apprentice to reply to the plaintiff that the jewel worth is three halfpence. After listening this the plaintiff requested to the defendant

to return the jewel. The apprentice took the jewel through deceit (out of socket) and offered the plaintiff money for the stone, but plaintiff demanded the stone. The socket was returned without the stone to the plaintiff. The plaintiff sued the defendant demanding compensation for the loss. Court held that the plaintiff had a right of ownership which was sufficient to enable the finder to keep the jewel against any claim save to the rightful owner and awarded the finder the maximum value of the jewel.

Conclusion

The transfer of title under the Sale of Goods Act, 1930, plays an important role in determining the legal ownership of goods in commercial transactions. The Act basically, follows the doctrine of *Nemo Dat Quod Non Habet* (no one can give what they do not have), which makes sure that only the true owner of goods can transfer a valid title. However, to protect the interest of bona fide buyers and facilitate the commercial trade, the Act provides exceptions under Sections 27 to 30, which empowers a good title to pass in certain cases as explained above. In conclusion, while the general rule safeguards ownership rights of the true owner, the exceptions ensure fairness and commercial convenience, balancing the interests of both sellers and buyers in a transaction.

References

- Jyoti Rattan, *sales of goods Act 64* (Bharat Law House, 6th edn, 2024).
 Ashok K.Jain, *Sale of Goods Act 73* (Ascent Publication, Delhi, 1st edn, 1999).
 Pollock and Mulla, *The Sales of Goods Act* (Creative media Partners, LLC, 11th edn., 2021).
 Available at: <https://www.researchgate.net>
 R.K. Bangia, *Contract-II 382* (Allahabad Law Agency, Faridabad (Haryana) 2004, 1st edn, 2009).
 Batuk lal, *The Law of Evidence Sec.115* (Bharat Law House, Delhi, 8th edn., 2023).
 (1938) 40 BOMLR 316
 Available at: <https://www.sobha.com>
Definition of mercantile agent- According to section 2(9) of Sale of Goods Act, 1930, mercantile agent means an entity, in customary course of business, has the authority either to sell goods or consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods
Consignment Definition, available at: <http://www.mit.gov.in/it-bill.asp> (last visited on January 1, 2025.
available at: <http://www.mit.gov.in/it-bill.asp> (last visited on January 1, 2025
 Ashish Kumar Srivastava, *The Sales of Goods Act including Consumer Protection 106* (Law & Justice Publishing Co, 2004, 1st edn).
 R.K. Bangia, *Contract-II 382-383* (Allahabad Law Agency, Faridabad (Haryana) 2004, 1st edn, 2009)
 Available at: <https://www.lawteacher.net>
 S.C.Tripathi, *The Sales of Goods Act 89* (Central law Publication, 2nd edn, 2023).
 (1923) 1 K.B. 282
 Supra note 7 at 384 and available at: <https://blog.ipleaders.in> > contract law

Section 27 of The Sale of Goods Act- Transfer of title of goods available at: [https:// blog.ipleaders.in](https://blog.ipleaders.in)> contract law

1919] 2 KB 243 (King's Bench Division)

Available at: [https:// judextutorials.com](https://judextutorials.com)

Nemo Dat Quod Non-Habet|Legal Service India-Law Articles, available at: [http:// legalserviceindia.com](http://legalserviceindia.com)>legal>article-8513-nemo

Available at: [https:// www.defactojudiciary.in](https://www.defactojudiciary.in)

(1965) AC 867

Available at: [https:// www. Legalbites.in](https://www.Legalbites.in)

Supra note 7 at 385 and available at: [https:// blog.ipleaders.in](https://blog.ipleaders.in)> contract law

(1882) 21 Ch D 857

Available at: [https:// www. Lawctopus.com](https://www.Lawctopus.com)

Supra note 7 at 386-387 and available at: [https:// blog.ipleaders.in](https://blog.ipleaders.in)> contract law

Available at: [https:// www. Legalserviceindia.com](https://www.Legalserviceindia.com)

Section 352, Companies Act, Act No 18 of 2013.
