



The Transfer of Property and its Significance in Nigeria: Interrogating Key Rules of the Sale of Goods Act Relating to the Rights of the Parties in the Contract

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Abstract

This study examines the transfer of property and the law regulating the values for ascertaining intention before a property in the goods are allowed to pass and it's significant in the contract of sale. This is done by stating the values as provided by the Sale of Goods Act 1979. The property in the goods is said to be transferred from the seller to the buyer when the latter acquires the proprietary rights over the goods and the obligations linked thereto. Property in Goods which means the ownership of goods is different from possession of goods which means the physical custody or control of the goods. The study critically appraises various rules of the transfer of the property from the seller to the buyer as the essence of a contract of sale. The moment when the property in the goods passes from the seller to the buyer is Signiant due the following reasons: ownership, transfer of risk, action against a third party or parties, suit for the price and insolvency. To strengthen the Sale of Goods Act for better performance particularly as it relates to the rights of the parties to a sale of goods contract, the study recommends that a number of amendments need to be carried out. Section 8 of the Act should be amended to avoid appearances of inchoate contracts where the price is not fixed on the contract of sale. This can be done by or

through legislations and not living same to implied judicial pronouncement. The provision of section 39, subsection 1 and 2 are duplication and so unnecessary in the practical sense of contemporary global business transaction and provision section 43 (1) of the Act should be amended to proscribe what constitutes a waiver rather than abandon it to the whims and caprices of the judicial interpretations

Keywords: *Transfer, Property, Significance, Interrogating, Sale of Goods, Contract.*

Introduction

This study examines the law regulating the values for ascertaining intention before a property in the goods are allowed to pass and it's significant in the contract of sale. This is done by stating the values as provided by the Sale of Goods Act 1979¹. That the property in the goods can be transferred between the sellers and buyer as a result of the contract of sale when intention is available. The court decisions shall be illustrated whether or not their decisions reflect the rules regulating. Ascertaining, intention of the parties before the transfer of goods are made; to give justice and equity in the transfer of property.

Moreover, since the transfer of property from sellers to buyer is the cardinal element in all contracts of sale, it is absolutely important that whether or not at what time this transfer is ascertainable depends on a large extent, the control available in the rights and duties of the parties. In many sales of specific articles to be delivered, the property passes on the making of the contract. A man may select, and agree to buy a hat and the shop man may agree to deliver it at the buyer's house. There, notwithstanding the obligation to deliver the hat, the property passes at the time of the contract²

¹ A Repeated Act of 1893, Similar to the sale of goods law. Cap. 150 Vol. 6 LBSN 1976 applicable in Edo and Delta States: sale of good law cap. 125vol. law of Lagos state 1973 as amended: sale of goods law cap. 115 vol of formal western region 19 59 applicable in oyo ogun ekiti state "No general Rule can be laid

down which will answer the question when the properly passes in every contract sale,

² Per Bankers. I., J in under wood. Ltd v. Burgh castle brick and comment syndicate (1921) ALL ER515 at 518

The provision of the law looks at the intention of both parties in their conduct, the terms of contract and other relevant circumstances in determining intentions. For instance, *section 61(1)* defines “property” as the general property in the goods, as a not merely a special property”, and the word “delivery’ means “voluntary transfer of possession from one person to another except that in relation to *section 20A and 20B* above that it includes such appropriation off goods to the contract as results in property in good being transferred by the buyer. “an intention is made in *section 17(1)*³ that “where there is a contract for the sale of specific of ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intent to be transferred to the buyer at such time as the parties to the contract intent to be transferred”. And for *subsection 2* that refer “for the purpose of ascertaining the intention of the parties’ regard shall be had to the forms of the contract, the conduct of the parties and the circumstance of the case,” will determines the passing of ownership or property in the goods from the sellers to the buyers.

Also Lord Wright in *Smyth & Co. ltd vs. Barley Son & co⁴. ltd* explains that *these rules* for ascertaining intentions before the transfers of property in the goods to the buyers are very important for the parties even though such intention is not expressed occasionally when there are passing of property in the goods. Similarly, in *Dennant vs. Kminer and Collom⁵*, where the plaintiff sold, a car to x, who was a swindler, gave a false name and address and asked to be allowed to take the car away in return for a cheque. The plaintiff allowed x to do this on obtaining his signature to a document which stated that the title of the vehicle would not pass on the cheque that was met. X sold the car, which was ultimately resold to the defendant. *Hallett. J* held that the intention of the parties has expressed in the document was too late to prevent the property from passing since it had already done so on the fall of the hammer.⁶ The decision here indicates that for a property to pass, it does not really mean that it must be in an

³ Ward v. Bignall [1967] 1ALL ER 449

⁴ [1940] 3 All ER 60, 67

⁵ [1948] 2KB 164

⁶ Igrm v. little (1961) 1 QB31. P.49: and in a supermarket no property passes until the price is actually paid (Iacis v. cashmarks (1969) 2QB 400 p.407: Davis v. Leighton (1978) crim I.R 575

express term but the property in the goods must pass in a matter of principle when intention of the parties⁷ authorized it to pass.

RULES FOR ASCERTAIN INTENTION:

RULE 1 OF SECTION 18

Rule, 1 provides that:

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

Looking at this rule, an “unconditional contract,” according to professor Atiyah⁸ that it means “(a) a contract not containing any condition in the sense of essential stipulations, the breach of which gives the buyer the right to treat the contract as repudiated”.

A case in point is *Varley vs. Whipp*⁹ where the plaintiff agreed to sell and the defendant to buy a reaping machine which the defendant had never seen, and which the plaintiff started to have been new the previous year that it said the machine has only cut fifty to sixty acres of land before. On the delivery, the defendant found that it was older than expected and wrote to the plaintiff for rejection then the plaintiff sued for the price. It was held that there was a contract for the sale of goods by description and that the plaintiff can get the price. On appeal, it was allowed that the letter of refusal of the machine by the defendant does not conform with the machine intended to have bought by the plaintiff. Bucknill, J asserted that the “machine was put on the railway to the defendant after the description is known to both parties and that the defendant has the right to reject or accept the machine when it does to conform with warranty or description of the article intended to be sold.” In a contract of sale of specific

⁷ Ginzberg v. Barrow Haematic steel co (1966) 1 Lloyd's Rep. 343

⁸ Atiyah P.S the sale of goods (7th ed) Pitman: (1985) p24.

⁹ (190)1QB513; *Ollell v. Jordan* (1918) 2KB 41. *Leaf v. International Gallies* (1950) 2KB 86; *Long vs. Loud* (1958) 1 W.L.R. 753

goods, a property in the good must be said to have pass when the good is accepted by the buyer.

The next term in the rule is “specific goods” defined under *section 61(1) of the Act to means* “goods identified and agreed on at, time a contract of sale is made,” in *Kursell v. Timser Operators & Contractors Ltd*¹⁰ in that case, the plaintiff sold to the defendants all the trees in a Latvian forest which conformed to certain measurement on a particular date, the buyers to have fifteen years in which to cut an remove the timber. Almost immediately afterwards the Latvian Assembly passed a law confiscating the forest. The court of Appeal held that the property in the trees had not passed to the defendants as the goods were not sufficiently identified, since not all the trees were to pass but only those conforming to the stipulated measurements.

On the question of “deliverable state”, *section 61(1) states that*; goods are in “deliverable state” within the meaning of the Act when they are in such a state that the buyer would under the contract be bound to take delivery of them”. In *Underwood A Ltd, vs. Burgh Castle Brick & Cement Syndicate*¹¹.” The owners of a condensing engine agreed to sell it free on rail in London. It weighted thirty tons and was bolted to and embedded in concrete. Before it could be delivered on rail, it had to be detached and dismantled. In loading the engine on a railway truck, the sellers accidentally damaged it, and buyer refused to accept it, in an action by the sellers of goods sold, the court of Appeal held that the property in the goods had not passed to the buyers because the seller were bound to do something, which they had not done for the purpose of putting the engine into a deliverable state.

It is asserted that other factors indicating as contrary intention before a property in the goods is transferred to the buyers must be seen as an express agreement. This must be in the area of payment whether is at the time of contract or delivery or both, ne postponed; the intention of the parties must in accordance with the contract of sale.

¹⁰ (1935) 1KB 298; of *Lord Eldion vs. Hedley Bros* (1935) 2KB 1-Sale of haystacks held to be of specific goods though buyer not obliged to take mauling or unmerchantable hay: *Joseph, Pty v. Shultz* (1949). ST (NSW) 231

¹¹ (1922) 1KB 343; *Philip Head & Sons ltd v. show fronts ltd* (1970) 1 Lloyd’s Rep 140.

RULE 2 OF SECTION 18: -

Rule 2 state that:

Where there is a contract for sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until the thing is done and the buyer has notice that it has been done.

This rule is drawn from the term of contract of sale and the circumstances of the case to the parties. In *Underwood, ltd. vs. Burgh Castle & Cement syndicate (supra)*. It was held that because of the risk and expense involved in dismantling and moving the engine, the proper inference to be drawn was that the property was not pass until the engine was safely placed on rail in London. Consequently, the property did not pass under Rule 2.

RULE 3 SECTION 18:

Rule 3 state that:

Where there is a contract for the sale of specific goods in a deliverable state but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does pass until the act or thing is done and the buyer has notice that it has been done.

This rule specifically deals with the act of doing some performance in the references to the goods in the area “to weigh, measure test, or do some other act”, must be done before the property in goods is passed and the buyer must have the notice that the acts in reference to the goods have been done.

In *Nanka Bunce vs. Commonwealth Trust Ltd*¹² the plaintiff sold cocoa to the defendant at agreed price of per 60-1b weight, it bring arranged that the cocoa would then be weighed by the third party, on their receipt, with a view to ascertaining the total amount due to the plaintiff from the defendant set aside on the ground that property had not passed to the defendant or, therefore, to the third party until the weighing took place.

It was held by Gold coast (Ghana) courts that, the transaction between the plaintiff and the defendant had been a completed state as price has not been determined. On appeal to the Privy Court, the judgment of the lower courts was affirmed, for the Board held that weighing did not make the contract conditional, and that the property passed to the buyer before this price was ascertained.

RULE 4 OF SECTION 18

Rule 4 state that:

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 of acceptance to the goods, on the expiration of that time, and, if no time has been fixed, on the expiration of a reasonable time,”

Where the buyer does not intend to buy the goods, he must not retain them beyond a reasonable time, In *Poole vs. Smith Carsale Ltd*¹³, the Court held that a car had been retained beyond a reasonable time and therefore the buyer was liable to pay. The buyer has been responsible for retaining the goods beyond a reasonable time as seen in referrie case This rule deals with buyer’s approval of the goods before the property can pass. In Rule 4(a) the cause of *Kirkhan vs. Attenborough*¹⁴, where the plaintiff allowed W to have jewelry on sale or return,

¹² (1926) A.c. 77; *Handson Meyer* (1805) 6 last 614; *Andreson v. Ryan* (1967) 1R34: p.37

¹³ *Ibid*

¹⁴ (1898) 1QB. 201; *London Jewelers Ltd v. Allen Borugh* (1934) 2Kb 206; *Weineer v. Gill* (1906) 2KB 574; *R.v Eaton* (1966) 50 Cs App Rep. 189.

and w pawned the jewelry with the defendant. The plaintiff brought an action to recover the jewelry from the defendant. It was held that, the action must fail as w's act of pawing the jewelry was an act adopting the transaction," and therefore, the property in the jewelry passed to him, so that the plaintiff cannot recover from the defendant.

Lord Esher, MR asserted that "by the act the property is to pass to the buyer when he signifies his approval or acceptance to the seller or does any other act adopting the transaction." This is when the buyer does something on the goods received from the seller. Similarly, leather was sold when was intended to be used in making of handbags but the buyer started working on the leather supplied. It was held that as soon as the buyer started to work on the leather, the property passed to him despite the reservation that the title clause that was not complied with¹⁵.

In Rule 4(b) also signifies buyer's approval or adopting the transaction can be regarded that the property in the goods has passed where there are elements such as retentions of "the goods without giving notice of rejection," "a time has been fixed for the return of the goods," and "no time has been fixed on the expiration" of the goods delivered.

In *Poole. D. Smith; s sar Sales (Bathem) Ltd*,¹⁶ a car was handed over to the defendant by the plaintiff "on sale or return". The defendant returned the car to the plaintiff nearly three months later in poor condition and the car had been driven 16,000 miles. It was held by the court or Appeal that, property had passed under Rule 4(b) to the defendants, since more than a reasonable time has elapsed, and so the defendant was bounded to pay 325, the price of the car.

But in *Re ferries*¹⁷ where goods were delivered to x on sale or return within one week and two days later they were seized by execution creditors of x, who retained them until after a week was over, it was held that, the property had not pass to her under Rule 4(b), and the seller was entitled to recover the goods.

¹⁵ Re Peachedlart (1983) 3 All R 204; Hendry Lenno ltd. v. Grahame Putticle Ltd (1984) 2 AllER 152

¹⁶ (1963) 2 A: cr 482

¹⁷ (1944) Ch. 295: Weiner v. Harris (1910) 1Kb. 285; Pacrity Edward Ltd v. Vanghan (1910) 26 TLK 545

RULE OF SECTION 18

Unconditional appropriation, this deal with unascertainable goods and provides under rule 5(1) that:

“where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditional appropriated to the contract either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods there upon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriating is made”.

This rule must be read along with section 16 which says that property in unascertainable goods will not pass until they have been ascertained. Rule 5 (1) says that when there is a sale of unascertainable goods in a deliverable state, property will not pass when the goods have been unconditionally appropriated to the contract. To constitute an appropriation of the goods to the contract, the parties must have attached the contract irrevocably to those goods. Assent to appropriation may come before and after the appropriation and may be express or implied¹⁸

In *Pignataro vs. Gilvoy & Son*¹⁹ where G sold to P. 140 unascertained nags of rice. P. paid the price and G sent a delivery order for 125 bags from a wharf and wrote saying that the remaining 15 were ready for delivery at his place of business, p. delayed for a month at which period the goods were stolen without negligence on G’s part. It was held that G had appropriated the 15 bags to the contract. P has assented to the appropriation and property has passed to him and he will bear the loss of the 15 bags.

¹⁸ Ucheakonam C. J Transfer of Property (Commercial Law) Lawhub.com.ng/transferofproperty accessed On the 12/12/2021

¹⁹ (1919) 1KB459; Warders (Import & Export) Ltd vs. Wormwood & Sons Ltd (1968) 2 QB 663; Carlos Fedespiel & Co. SAV. Charles Twigg & Co ltd (1975) 1 Lloyd’s Rep 240; Re wait (supra)

RULE 5(2) STATE THAT

“Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodian (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is to be taken to have unconditionally appropriated the goods to the contract”.

The rule is saying that “for the purpose of transmission to the buyer”, the seller is obliged to allow the property to pass and he “does not reserve the right of disposal” where in the contract, the seller is to deliver the goods to the buyer²⁰. But in *Healey vs. Howlett & Son*²¹ were out of 190 boxes of fish bought by three buyers and the goods were delivered together and the defendant found his 20 boxes un-merchantable. It was held that the property had not passed to him as there was no unconditionally appropriation by the buyer out of 190 boxes delivered, 20 were found to be bad and this affects all the contract in general.

RULE 5(3) STATE THAT

“Where there is a contract for the sale of a specified quantity of unascertained goods in a deliverable state forming part of a bulk which is identified either in the contract or by subsequent agreement between the parties and the bulk is reduced to (or to less than) that quantity, then, if the buyer under the contract is the only buyer to whom goods are then due out of the bulk.

- (a) The remaining goods are to be taken as appropriated to that contract at the time when the bulk is so reduced; and
- (b) The property in those goods then passes to that buyer.

This subsection of this rule explains in clear terms that where an identification of bulk of goods is reduced, and difference from the “quantity specified.” The rule is saying that the property in goods has passed to the extent that “the bulk is so

²⁰ *Calm v. Poucett's Bristol Channel Steam Packed Co. Ltd.* 1 QB 643

²¹ (1917) KB 337; *Laure & Morewood v. John Dublin & Sons* (1926) 1 KB223

reduced” by the parties on equitable assignment²². Equity in this respect, requires to mitigate against the stringent rule of common law that goods only pass when the good is ascertainable.

Rule 5(4) state that

Paragraph (3) above applies (with the necessary modifications)

(a) Here a bulk is reduced to (or less than) the aggregate of the quantities due to a single buyer under separate contracts relating to that bulk and he is the only buyer to whom goods are then due out of that bulk.

This rule is saying that “the quantities due to a single buyer “is the “aggregate” of goods that must be transferred to the buyer “under separate contracts” and that this reduction cannot be allowed to be on the whole contract of sale. Therefore, means that where “a bulk” of goods is reduced, it is only equitable that only the bulk so reduced can pass to the buyer under a contract of the same quantities with the parties. But Lord Atkins in *Tailby vs. Official Reiver* (supra) takes a look at this position in respect of equity in future goods in the following words:

The values of transfer of property as between seller and buyer, performance of the contract rights of the unpaid seller against the goods, unpaid seller’s lien, remedies of the seller, remedies of the buyer, appear to the complete and exclusive statement of the legal relations both in law and Equity.

Also in *Re wait* ²³it is assured that it is only cases where goods have been unconditionally appropriated in the transfer of goods are satisfied only under Rule 5. It is also asserted that unascertained goods must be transferred on reality of purpose by the parties that the goods get to the buyer on the term of contract

²² *Tailby v. Official Receiver* (1888), 13 AppCas 523, p. 533 per Lord Waston:

²³ (1927) 1 Ch 606

of sale; and equity in all ramifications must be allowed to take a central consideration when goods can pass to the buyer.

Significance in-Commercial Transactions

According to Atiyah²⁴ the significance on why the passing of property in goods is vital is as follows:

- A. If the seller is a company, the buyer will generally have a good title in the event of the company being wound up while the goods are still in possession.
- B. If the goods are delivered subject to a reservation of property by the seller, the seller may have a good title should the buyer become insolvent.
- C. The right to sue a third party for damages to, or loss of the goods, may depend on who has the property.
- D. The risk passes prima facie when the property passes.
- E. Generally speaking, the seller can only sue for the price if the property has passed.”

The significance in the transfer of property in the goods in Atiyah's point of view is seen in the areas of title to the property, the right to sue a third party who may appropriate the goods in transmission, the right to bear the risk by the seller in transferring of the property and finally, the right to sue for the price by the seller after the goods have been delivered; are all elements that require an attention that transferring of property in the goods must be done in accordance with the intention that the property has to pass after a contract of sale has been made by the parties.

However, *law son*²⁵ asserts in the common law system that transfers of property in the goods are not always regulated and because of this, there has been a lot of waste and criticism as well as frictions available between parties. In his words.

If we look at the other effects (than passing of risk) of the transfer of property between a seller and buyer in the common law systems, we shall see that

²⁴ Atiyah. P.s. "The sale of goods" (seventh ed): Pitman Publishing London (1985) P221

²⁵ Law son, 65 LQR 352 p.39

they are for the most part, if not entirely, illusory: As we have seen this is a slight exaggeration. There are, moreover, sign of some increase in the importance of the passing of property in recent years.

It is assumed here that the significance of obeying the rules guiding the transfers of property in the goods is a help that will make us to be free from problems which always know to associate with the transfers of goods to the buyer, will be avoided; and harmony; can exist between buyer and sellers. In *span terza*,²⁶ the House of Lords held that a dispute between a chartered and a mortgagee of the ship in question could be resolved by simply asking whether the fuel (which had been bought and paid for by the chatters) had been sold to the ship owners so that property had passed to them.

It was held it had not, so that the chatters still owned the oil and had a prior right to that of the mortgagees, who should only claim through the owners. The position of the law is clear that no property in the goods must be allowed to pass where the buyer has not express document creating a legal relationship.

Recommendations

To strengthen the Sale of Goods Act for better performance particularly as it relates to the rights of the parties to a sale of goods contract, a number of amendments need to be carried out.

- A. Section 8 of the Act should be amended to avoid appearances of inchoate contracts where the price is not fixed on the contract of sale. This can be done by or through legislations and not living same to implied judicial pronouncement.
- B. The provision of section 39, subsection 1 and 2 are duplication and so unnecessary in the practical sense of contemporary global business transaction.
- C. The provision section 43 (1) of the Act should be amended to proscribe what constitutes a waiver rather than abandon it to the whims and caprices of the judicial interpretations

²⁶ (1984) I Lloyd's Rep. 119

Conclusion

The Sale of Goods Law is a statute of general application in Nigeria. Though a number of states of the federation have re-enacted them into their state legislations with slight amendments to suit their local requirements, the vast of the majority of states where this has not been done still rely on and Sale of Goods Act, 1893. This study evaluates the section 18 where Rule 1-5 gives the regulation an intention acceptable before the property in the goods should have passes. We are able to assume that a property in the goods must pass where a contract of agreement has been reached by the parties in ascertain goods. But where the goods is ascertained, the goods can still pass to the buyers where equitable assignment should be done to avoid problems in respect to passing of property in goods.²⁷ The significance of the rule in *section 18 of S.G.A. 1979* extent to the contractual arrangement between the parties and the third party which is carriers²⁸ and any breach must give the right to sue. The right of possession²⁹ by the seller until fully paid is also consideration to be identified in this respect.

²⁷ The Alba Sero (1977) Act 774

²⁸ Margarine Union Gmbtt v. Combery Prince (1969) 1 QB 219

²⁹ Lord v. price (1874). LR9 EX 54; Ice Coofer v. CII Jeakins & Sons ltd (1967) 2 OBI.