

TRANSFER OF PROPERTY IN SALES OF GOODS

Posted on [March 31, 2016](#)[April 8, 2016](#) Written By [Olanrewaju Olamide](#) Posted in [Nigerian Sale Of Goods](#) Tagged [Underwood Ltd vs Burgh Castle](#)

What is Transfer of Property

This is the moment at which it would be believed by the court that the property in the goods has passed from buyer to seller. The application of the rule is different in the instance of ascertained goods and unascertained goods.

Transfer of Specific or Ascertained Goods

In the case of ascertained goods, it is provided by **S.17 (1)** that the property in the goods will be transferred to the buyer at the time which was agreed upon by the parties. In order to pin point the intention of the parties as to when the property in the goods should be passed, **S.17 (2)** provides that regard shall be had to the contract, the conduct of the parties and the circumstances of the particular case.

There are also additional rules provided for ascertaining the intention of the parties. The first rule as provided in **S.18 rule 1** is that when there is an unconditional contract for selling specific goods that are in a deliverable state, the property in the goods will be passed when the contract is agreed upon. This is regardless of whether or not the date for payment or delivery has been postponed.

The second rule under **S.18** is that in the case of goods that are not in a deliverable state and the seller has to do something to the goods to make them deliverable, property in the goods passes when such things are done and the buyer is notified of such.

In the case of *Underwood Ltd vs Burgh Castle*, the plaintiffs intended to sell a condensing machine to the defendants. The machine weighed 30 tons and was bolted to the ground. Thus the machine had to be dismantled and transferred to the defendant. After dismantling the machine, as it was about being loaded on the railway, it got spoilt. The court held that property in the goods had not yet passed to the defendant since the goods were not yet in a complete deliverable state when the machine got spoilt.

The third rule under **S.18** is that when the goods are in a deliverable state but the seller has to weigh, measure, test or do some other thing to the goods in order to ascertain the price, property in the goods passes when such thing is done and the buyer is notified.

The fourth rule provides that where the goods are delivered on a "sale or return" term or any other such term, the property passes to the buyer when he signifies the acceptance of the goods or he does an act that adopts the transaction.

In a situation in which the buyer doesn't signify any acceptance, the property passes when the date specified for rejection is elapsed. If no date is given, the goods will pass after a reasonable time. The determination of a reasonable time is a question of fact.

See: *Bull vs Smith Car Sale 1962 2 All ER*

Â Â Transfer ofÂ Unascertained Goods

By the provision of **S.18 rule 5(1)** in the case of unascertained or future goods by description and they are in a deliverable state, the property passes to the buyer when they have been unconditionally appropriated for such contract whether by the seller with the consent of the buyer or by the buyer with the assent of the seller. The assent could be given before or after the appropriation of the goods.

Unconditional appropriation of goods to a contract means that the goods have been set apart from the bulk of unascertained goods and they would be used for that particular contract without modification.

Also, if the goods are transferred by the seller to a third party or carrier, whether selected by the buyer or not, for delivery to the buyer, and the seller doesn't reserve a right of disposal, the goods will be considered unconditionally appropriated to the contract **S.18 rule 5 (2) SOGA**.

SOURCES

1. Lecture on Commercial Law delivered byÂ Dr. Mrs H.I Saadu, Faculty of Law, University of Ilorin.
2. MC Okany: Nigerian Commercial Law
3. Sales of Goods Act