

Commercial Law Concentrate: Law Revision and Study Guide (6th edn)
Eric Baskind

p. 44 3. Passing of property and risk

Eric Baskind, Senior Lecturer in Law, Liverpool John Moores University Visiting Research Fellow, Oxford Brookes University

<https://doi.org/10.1093/he/9780192897206.003.0003>

Published in print: 05 August 2022

Published online: September 2022

Abstract

Each Concentrate revision guide is packed with essential information, key cases, revision tips, exam Q&As, and more. Concentrates show you what to expect in a law exam, what examiners are looking for, and how to achieve extra marks. This chapter focuses on the transfer of property and risk from the seller to the buyer as agreed upon in a contract of sale of goods. It explains the difference between ownership and possession and discusses the rules on the passing of property, as well as which party bears the legal risk in cases where, for example, the goods are destroyed or in the event of insolvency. The rules relating to both consumer and non-consumer buyers are included. Finally, the chapter examines the unconditional appropriation of the goods to the contract, appropriation by delivery to a carrier, ascertainment and appropriation 'by exhaustion', and undivided shares in goods forming part of a bulk.

Keywords: transfer of property, risk, seller, buyer, contract, sale of goods, ownership, possession, appropriation

Key facts

- It is essential to determine precisely when property (ownership) and risk in the goods passes to the buyer.
- The rules on the passing of property are different for specific goods and unascertained goods.
- Risk often passes to the buyer with property, but this is not always the case.
- The parties are generally free to agree when property and risk passes to the buyer.
- In the absence of such agreement, the **Sale of Goods Act 1979** (hereafter referred to as the **SGA**) has certain 'Rules' that will apply.
- Which party bears the legal risk in cases where the goods are destroyed or in the event of insolvency will determine who suffers the loss.

- Different rules apply to consumer buyers.

p. 45

Introduction

The main purpose of a **contract of sale** of goods is to transfer property (ownership) in the goods from the seller to the buyer. The parties to a contract of sale of goods are, subject to certain rules, free to agree terms as to the transfer of property and of risk.

It is important to remember that ownership and possession are two different things. The **SGA** is concerned with ownership. We are not, therefore, discussing the physical delivery and possession of the goods.

Sometimes, the transfer of ownership in the goods will occur at the same time as their physical delivery, but this is not necessary. A seller might therefore:

- still have physical possession of the goods even though property in them has passed to the buyer; or
- deliver the goods to the buyer yet still retain property in them.

Looking for extra marks?

You should explain the reason why it is important to know precisely when the property in the goods passes from the seller to the buyer under a sale of goods contract. Unless the parties have agreed otherwise, as soon as the buyer has paid the price, they are entitled to take *delivery* of the goods whether or not *property* in them has passed to him. This means, of course, that the buyer can take possession of the goods even if they are not the owner. You should emphasise, where appropriate, that ownership and possession are different concepts.

Why is it important to know when the property in the goods passes?

The following examples explain why it is important to know when the property in the goods has passed to the buyer:

Payment

Unless otherwise agreed, the seller may only sue the buyer for the price once property in the goods has passed (**s 49 SGA**).

Insolvency

If either the seller or the buyer becomes insolvent, then the rights of the other (non-insolvent) party may depend on whether or not property in the goods has passed to the buyer.

Subsequent transfer of ownership

Unless the buyer has acquired ownership in the goods, they cannot transfer that ownership to another party. (This rule is subject to a number of exceptions, which are dealt with in Chapter 7, ‘Transfer of ownership by a non-owner’.)

p. 46 **Risk**

Unless the parties have agreed otherwise, risk is borne by the owner of the goods (**s 20 SGA**). Risk in this context means the risk of theft, loss, or damage to the goods but not the risk of non-payment. Different rules apply, depending on whether or not the buyer is a consumer.

The **SGA** sets out a number of rules explaining the precise time when property in the goods passes to the buyer. It is crucial to know whether the goods in question are specific or unascertained (see Chapter 1, ‘Specific goods and unascertained goods’) because the point at which property in them passes will depend on this distinction.

Revision tip

You must first decide whether or not the goods in question are specific or unascertained because different rules will apply to each. It is equally important to remember that in the case of a contract for the sale of **unascertained goods**, no property in them can be transferred to the buyer unless and until the goods are ascertained (**s 16 SGA**).

The transfer of property in specific goods

You should *first* apply **s 17(1) SGA**, which provides that property in **specific or ascertained goods** will transfer to the buyer when the parties to the contract intend it to pass. For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case (**s 17(2)**).

Where the parties fail to make clear their intentions as to when property in the goods will be transferred to the buyer, you will need to consider the four Rules contained in **s 18**. These provide the rules for ascertaining the intention of the parties and are summarised in Table 3.1.

See Figure 3.1 for a diagram of when property in goods passes to the buyer.

3. Passing of property and risk

Table 3.1 The Rules for ascertaining the intention of the parties

RULE	CIRCUMSTANCES WHEN RULE APPLIES	PROPERTY IN THE GOODS PASSES TO THE BUYER WHEN ...
1	where there is an unconditional contract for the sale of specific goods in a deliverable state	the contract is made. This is irrespective of whether the time of payment or the time of delivery, or both, are postponed
2	where there is a contract for the 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 thing is done and the buyer has notice that it has been done
3	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 act or thing is done and the buyer has notice that it has been done
4	when goods are delivered to the buyer on approval or on sale or return or other similar terms	(a) the buyer signifies their approval or acceptance to the seller or does any other act adopting the transaction; (b) if they do not signify their approval or acceptance to the seller but retain 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

3. Passing of property and risk

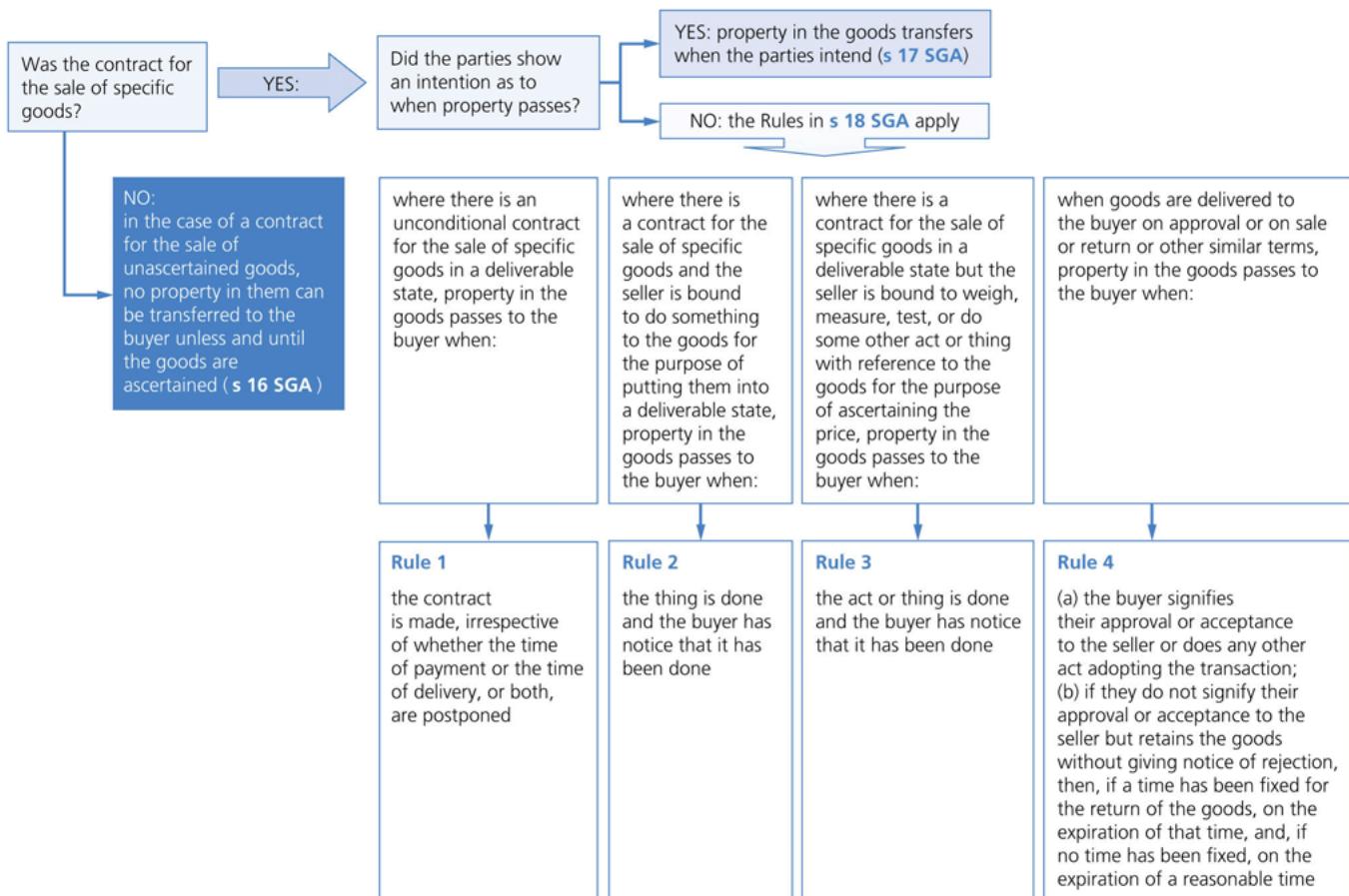


Figure 3.1 When does property in goods pass to the buyer?

The transfer of property in unascertained goods

You should recall from the above that s 16 SGA provides that in the case of a contract for the sale of **unascertained goods**, no property in them can be transferred to the buyer unless and until the goods are ascertained. This is the case even if the parties agree otherwise.

Revision tip

Section 16 SGA is subject to s 20A SGA, which was added by the **Sale of Goods (Amendment) Act 1995** and is concerned with undivided shares in goods forming part of a bulk. This will be considered later in the chapter, 'Undivided shares in goods forming part of a bulk', p 51.

p. 47

- Since property in the goods cannot be transferred to a buyer until the goods are ascertained, it is important to understand when goods will become ascertained. This was simply stated by the Court of Appeal in *Re Wait* (1927) as when the goods are identified as *the* goods to be used in the performance of the contract.

Looking for extra marks?

You should explain that although **unascertained goods** will never become **specific goods**, once the goods have become ascertained they are, in effect, not that dissimilar to specific goods.

In the case of unascertained goods, you should apply the statutory sections in the following order:

- **s 16 SGA**, which explains that no property in the goods can be transferred to a buyer unless and until the goods are ascertained;
- **s 17(1) SGA**, which explains that once the goods become ascertained, property in them will pass to the buyer when the parties to the contract intend it to pass;
- then (and only if the goods are ascertained *and* it is not possible to determine when the parties intended ownership to pass) you should apply **s 18, Rule 5**.

p. 49

↳ Rule 5 deals with the transfer of property in unascertained or **future goods** by description.

Unconditional appropriation

You will see from Table 3.2 that in addition to the requirement that the goods need to be ‘in a deliverable state’, the goods must also be ‘unconditionally appropriated to the contract’. In *Carlos Federspiel & Co SA v Charles Twigg & Co Ltd (1957)*, Pearson J held that:

Table 3.2 Transfer of property in unascertained or future goods by description

RULE	PROPERTY IN THE GOODS PASSES TO THE BUYER WHEN ...
5(1)	goods that match the contract description and in a deliverable state are unconditionally appropriated to the contract. This can be by either the seller or the buyer but must be with the other’s assent, which may be express or implied and may be given either before or after the appropriation is made

To constitute an appropriation of the goods to the contract, the parties must have had, or be reasonably supposed to have had, an intention to attach the contract irrevocably to the goods, so that those goods and no others are the subject of the sale and become the property of the buyer.

In other words, goods will become unconditionally appropriated to the contract when they are irrevocably earmarked as *the* goods to be used to satisfy the contract. See also *Re London Wine Co (Shippers) Ltd (1986)* discussed at p 57.

Looking for extra marks?

You should explain that the unconditional appropriation may be by either the seller or the buyer, but must be with the other's assent (**Rule 5(1) SGA**). This assent may be express, or more likely it will be implied and may be given either before or after the appropriation is made. You should also point out that once the goods have been irrevocably appropriated to the contract, then those goods, and no others, become the property of the buyer (per Pearson J, in *Carlos Federspiel*, above), and that it is for this reason that the seller cannot then supply substitute goods in the purported performance of the contract.

In practical terms, goods will often be ascertained and unconditionally appropriated simultaneously.

Looking for extra marks?

You will impress the examiner by providing an example, taken from the criminal law, of the requirement for unconditional appropriation of the goods as required by **Rule 5** (under the **SGA 1893**). In *Edwards v Ddin* (1976), D drove into a garage and requested the attendant to fill up the tank with petrol and put oil in the engine. After the attendant had done so, D drove off without paying. He was charged with theft, contrary to **s 1 of the Theft Act 1968**, which requires a dishonest appropriation of property *belonging to another* with the intention of permanently depriving the other of it. P contended that the property in the goods had not passed to D because the garage had reserved its rights of disposal over the goods under **s 19(1) SGA** until the condition of payment had been met and that therefore the goods still belonged to the garage and were capable of being stolen. It was held that once the petrol and oil had mixed with the petrol and oil in D's car, the garage could not be said to have reserved, as a term in the contract, the right of disposal under **s 19** and that the delivery of the petrol and oil was an unconditional appropriation of the goods to the contract with the assent of both parties. This meant that under **Rules 5(1) and (2) of s 18 1893 SGA**, the property passed to D the moment it was placed in his car and, as it was then his property, he did not appropriate the goods of *another* (the owner of the garage) as was required to satisfy the offence of theft. Of course, in civil law, the garage could have sued D for the price of the fuel.

p. 50

Appropriation by delivery to a carrier

See Table 3.3.

Table 3.3 Appropriation by delivery to carrier

RULE	PROPERTY IN THE GOODS PASSES TO THE BUYER WHEN ...
5(2)	the seller delivers the goods to the buyer or carrier for the purpose of transmission to the buyer and does not reserve the right of disposal, they are to be taken to have unconditionally appropriated the goods to the contract

Revision tip

This Rule will not apply in cases where the seller reserves the right of disposal. This simply means where they have reserved title in the goods. Reservation of title is dealt with in Chapter 4, 'Retention of title clauses'.

Ascertainment and appropriation 'by exhaustion'

Rules 5(3) and 5(4) were added to s 18 SGA by the **Sale of Goods (Amendment) Act 1995** (see Table 3.4) and placed on a statutory footing by the decision in *Karlshamns Oljefabriker A/B v Eastport Navigation Corp (The Elafi)* (1981). They apply to cases where the buyer agrees to buy goods out of a specified bulk, as the following example shows:

Table 3.4 Ascertainment and appropriation by exhaustion

RULE	PROPERTY IN THE GOODS PASSES TO THE BUYER WHEN ...
5(3) SGA	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 that 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
5(4) SGA	Rule 5(3) applies also (with the necessary modifications) where a bulk is reduced to (or to less than) the aggregate of the quantities due to a single buyer under separate contracts relating to that bulk and they are the only buyer to whom goods are then due out of that bulk

p. 51

Example

Bob owns a fuel distribution business and has 10,000 litres of fuel in stock, which is stored in his tank. Bill and Mike both agree to buy 4,000 litres each. Eric agrees to buy the remaining 2,000 litres. Bob delivers Bill's and Mike's fuel, leaving 2,000 litres in the tank. As soon as the bulk has reduced to 2,000 litres (or less), the property in it passes to Eric under Rule 5(3).

Provided all of the following conditions (taken from Rule 5(3)) are satisfied, the goods will be unconditionally appropriated by *exhaustion*, which will mean that the property in them will be transferred to the buyer:

- the goods must be in a deliverable state;
- the sale must be of a specified quantity of **unascertained goods** that form part of a bulk;
- the bulk referred to must have been identified by the contract or alternatively by subsequent agreement between the parties;
- the bulk must have been reduced to the amount of, or less than, the goods due to the buyer; and
- the buyer is the only buyer remaining who is entitled to the goods from the bulk.

Undivided shares in goods forming part of a bulk

This is dealt with by s 20A SGA (inserted by s 1 of the Sale of Goods (Amendment) Act 1995).

p. 52

↳ It might be useful first to consider the judgment of the Court of Appeal in *Re Wait* (1927) so as to understand the kind of injustice that s 20A sought to remedy.

Re Wait [1927] 1 Ch 606

W purchased 1,000 tons of wheat that was then loaded on a ship for delivery. The following day, he sold 500 tons of the bulk to a sub-purchaser (X), who paid W for the goods. By the date the ship docked, W had been declared bankrupt and his trustee in bankruptcy claimed the entire consignment of 1,000 tons. The Court of Appeal held that W's trustee in bankruptcy was entitled to succeed and that X was entitled to nothing, even though he had already paid W for his 500 tons of wheat. As X's 500 tons had not been ascertained (i.e. separated from the 1,000 tons bulk and identified as the goods to be used in the performance of the contract), property did not pass to him.

Section 20A SGA permits a buyer who has purchased a specified quantity of **unascertained goods** from an identified bulk to become co-owner of the bulk (together with other co-owners) provided that they have paid for some or all of the goods. In other words, such a buyer may obtain a share in the ownership of the bulk.

Revision tip

The section does not alter the rule that property must be ascertained before it can pass to a buyer, but it provides some protection to a buyer who has paid for a specified quantity of otherwise **unascertained goods** from an identified bulk from the consequences of a seller becoming insolvent before the property is ascertained.

The following conditions must be met for s 20A to apply:

- the contract must be for the sale of a specified quantity of **unascertained goods**. This must be expressed in units of quantity (e.g. 50 or 1,000) and not fractions or percentages (such as a quarter or 25 per cent);
- the goods (or some of them) must form part of a bulk which is identified either in the contract or by subsequent agreement between the parties; and
- the buyer must have paid the price for some or all of the goods which are the subject of the contract and which form part of the bulk.

Provided the above conditions have been satisfied, then, unless the parties agree otherwise, s 20A(2) explains that:

- property in an undivided share in the bulk is transferred to the buyer; and
- the buyer becomes an owner in common of the bulk.

p. 53

↳ The undivided share of a buyer in a bulk at any time shall be ‘such share as the quantity of goods paid for and due to the buyer out of the bulk bears to the quantity of goods in the bulk at that time’ (s 20A(3)).

Revision tip

To calculate the extent of a buyer’s co-ownership at any time, you should divide the quantity of the goods paid for by the buyer and due to them by the quantity of goods in the bulk. Applying this to the facts in *Re Wait*, the sub-purchaser would have become a 50 per cent co-owner of the goods, with the remaining 50 per cent belonging to Wait’s trustee in bankruptcy.

You should also note that where the aggregate of the undivided shares of buyers in a bulk determined under s 20A(3) would at any time exceed the whole of the bulk at that time, then the undivided share in the bulk of each buyer shall be reduced proportionately so that the aggregate of the undivided shares is equal to the whole bulk (s 20A(4)).

Deemed consent by co-owner to dealings in bulk goods

As we have just seen, the effect of s 20A SGA is to create undivided shares in an identified bulk. This would create a problem because it would require *all* of the co-owners to be joined in order to transfer any part of the bulk. In some cases, this would also require the tracing of title to each part share.

To overcome this problem, s 20B(1) states that:

a person who has become an owner in common of a bulk by virtue of section 20A shall be deemed to have consented to any delivery of goods out of the bulk to any other owner in common of the bulk, being goods which are due to him under his contract.

In other words, a co-owner will not need the consent of the other co-owners in order to deal with their own share of the goods.

The Consumer Rights Act 2015

Although many aspects of the contractual relationship between traders and consumers are set out in the **Consumer Rights Act 2015** (hereafter referred to as the **CRA**), the transfer of ownership rules are not. Thus, the rules relating to the time when ownership of goods is transferred in cases where the **CRA** applies are the same as those under the **SGA** (**s 4 CRA**). These are:

s 16: goods must be ascertained;

s 17: property passes when intended to pass;

p. 54

↳ **s 18:** rules for ascertaining intention;

s 19: reservation of right of disposal;

s 20A: undivided shares in goods forming part of a bulk;

s 20B: deemed consent by co-owner to dealings in bulk goods.

This position is unsatisfactory not least because consumers often pay for goods in advance of receiving them. This will occur whenever consumers buy goods online and can also occur when they pay for goods in a physical store but for one of a number of reasons the goods are not immediately available to be handed over. If the retailer becomes insolvent before the goods are handed over to the consumer, a question arises as to who owns the goods. As matters currently stand, the answer depends on complex and technical transfer of ownership rules, which have remained largely unchanged since the late nineteenth century. Some of the terminology is outdated and unclear and these rules were not designed with consumer transactions in mind, let alone internet shopping. These matters have now been considered by the Law Commission.

The draft **Consumer Rights (Transfer of Ownership under Sales Contracts) Bill (2021)** gives effect to the Law Commission's recommendations to reform the rules on transfer of ownership of goods under certain consumer contracts. It does so primarily by amending the **CRA 2015**. It also amends the **SGA 1979**, which

contains rules on transfer of ownership of goods. If enacted, the Bill would provide new rules on transfer of ownership of goods under contracts for the sale of goods between a trader and a consumer. These would largely replace the rules in the **SGA 1979** as they apply to certain consumer contracts. The rules in the **SGA** would continue to apply to other contracts.

The background to the Bill can be traced back to July 2016 when the Law Commission published its report on Consumer Prepayments on Retailer Insolvency. This considered, amongst other things, the rules on transfer of ownership of goods in the **SGA 1979**. The Law Commission noted that the rules were developed for commercial contracts and codified in statute in 1893. They were restated in 1979 but not changed in their substance. The Law Commission concluded that the rules were complex and technical and could cause confusion and operate harshly when applied to consumer sales. The report recommended that the rules be simplified so as to provide for ownership of goods to transfer to consumers where the goods had been identified for them. It also recommended that the rules be moved into the **CRA 2015**. In September 2019, the government asked the Law Commission to undertake further work to prepare draft legislation to implement this recommendation. The Law Commission consulted on a draft of the Bill in 2020 (Consultation Paper No 246) and then published the Bill in 2021 in its report 'Consumer Sales Contracts: transfer of ownership' (Law Com No 398).

Passing of risk

Risk in this context means the risk of theft, loss, or damage to the goods but not the risk of non-payment.

p. 55

Who has the risk?

This will depend on whether or not the buyer is a consumer. We will first consider the position of the non-consumer buyer.

Non-consumer buyer

Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer. 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 (**s 20(1) SGA**). See also **s 32(1)–(3)** regarding risk when the delivery of the goods is to a carrier. This is encapsulated in the maxim *res perit domino* ('The thing is lost to the owner').

Delivery to a third-party carrier is *prima facie* delivery to the non-consumer buyer and risk will pass then.

Consumer buyer

Where the **CRA** applies, the question of the passing of risk is different. Section 29 provides that the goods remain at the trader's risk until they come into the physical possession of the consumer (**s 29(2)(a) CRA**) or a person identified by the consumer to take possession of the goods (**s 29(2)(b)**). The position is different if the goods are delivered to a carrier who is commissioned by the consumer to deliver the goods and who is not a

carrier the trader named as an option for the consumer (s 29(3)). In such a case, the goods are at the consumer's risk on and after delivery to the carrier (s 29(4)), although this does not affect any liability of the carrier to the consumer in respect of the goods (s 29(5)). This reflects not only which party a typical consumer buyer would expect to be responsible for the goods purchased from a trader until physical possession has been transferred but also the commercial reality of a trader being in the better (or only) position to insure the goods until such time.

Revision tip

Understanding the difference between property and possession is essential to the understanding of (sale of goods law generally, including) s 20(1) CRA. You will see from the previous discussion that, unless otherwise agreed, the goods remain at the seller's risk until the property (ownership) in them is transferred to the buyer and that once the property in them has been transferred to the buyer they are then at the buyer's risk whether or not the buyer has possession of them. In other words, property in the goods and the risk are transferred together. This means that a buyer might have to bear the risk of loss even if the seller has possession of the goods. Thus:

- when a buyer is a consumer, risk only passes to them on delivery of the goods;
- when a buyer does not deal as a consumer, risk ordinarily passes to them as soon as the property in the goods passes to them *even if the seller retains possession of them*.

The distinction between property and possession cannot be over-emphasised. By understanding this distinction, you will appreciate that if goods are destroyed whilst at the buyer's risk, they will not be able to claim for non-delivery and must still pay the price. The sensible, well-advised buyer will therefore consider the question of insurance to cover this problem.

p. 56

- ↳ There are two other things to note about risk where the buyer is not a consumer:
 - where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault (s 20(2) CRA);
 - nothing in s 20 will affect the duties or liabilities of either seller or buyer who acts as a **bailee** or custodian of the goods of the other party (s 20(3)). Neither a bailee nor a custodian actually owns the goods they possess. Parties are frequently bailees of goods. For example, a buyer who buys goods on a sale-or-return basis is merely a bailee of the goods until such a time as they either return the goods or otherwise cause the property in them to pass to themselves under s 18, Rule 4 (discussed under 'The transfer of property in specific goods', pp 42–44).

Key cases

CASE	FACTS	HELD/PRINCIPLE
<i>Carlos Federspiel & Co SA v Charles Twigg & Co Ltd [1957] 1 Lloyd's Rep 240</i>	Carlos ordered goods from Charles Twigg, paying for them in advance. The goods were to be shipped to Costa Rica. Charles Twigg packed the goods into cases, marked them with the buyer's name, registered them for consignment, and ordered shipping space in a named ship. However, before shipment took place, Charles Twigg became insolvent and the appointed receiver refused to deliver the goods. Carlos contended that the property in the goods had passed to it.	Pearson J held that the intention of the parties was that the property in the goods should pass on shipment and that there was no such prior appropriation of the goods and assent thereto as would pass ownership by virtue of s 18 SGA, Rule 5 . He stated that: 'To constitute an appropriation of the goods to the contract, the parties must have had, or be reasonably supposed to have had, an intention to attach the contract irrevocably to the goods, so that those goods and no others are the subject of the sale and become the property of the buyer.'
<i>Dennant v Skinner and Collom [1948] 2 KB 164</i>	A bidder, falsely calling himself Mr King, bought several vehicles at auction. The auctioneer allowed him to take the vehicles upon receipt of his cheque, which later turned out to be worthless. 'King' also agreed that the property in the vehicles would not pass to him until his cheque had been honoured. He then sold one of the vehicles to a third party, who in turn sold it to D. The auctioneer sought to recover from D the vehicle or its value.	The court considered whether property in the vehicle had passed to the purchaser. Hallet J quoted s 18, Rule 1 and stated that 'upon the fall of the hammer the property of this car passed to King unless that <i>prima facie</i> rule is excluded from applying because of a different intention appearing or because there was some condition in the contract which prevented the rule from applying. In my view, this was clearly an unconditional contract of sale, and I can see nothing whatever to make a different intention appear.' Accordingly, the property in the vehicles had passed to King when the hammer fell.
<i>Re London Wine Co (Shippers) Ltd [1986] PCC 121</i>	The London Wine Company (LWC) was a company dealing in wines. It ran a scheme whereby customers could purchase quantities of wine for investment. Customers bought wine which remained in LWC's warehouse in bulk. The purchases would be entered in LWC's stock book and allocated an identification number. LWC provided the customers with documents of title confirming them to be the sole owners of the wine purchased. One customer bought LWC's entire stock of a particular wine. In other instances, a number of contracts were made with different buyers exhausting LWC's stock of a particular wine. In each case, LWC issued the	As there were several purchasers of the same kind of wine, it was impossible to determine who owned which wine held by LWC. Even had there been just one customer, it was still impossible to attach specific bottles of wine to that customer's contract. LWC, had it wished, could have purchased further stock for the customers. Oliver J held that, in these cases, there was no appropriation of the wines and therefore no property in the wine passed to the customers. This case illustrates that no appropriation can take place unless there is an intention to attach specific goods irrevocably to the contract.

CASE	FACTS	HELD/PRINCIPLE
	customers with a document confirming that they were the sole owners of the wine they had purchased. LWC subsequently went into receivership.	
Re Wait [1927] 1 Ch 606	W purchased 1,000 tons of wheat that was then loaded onto a ship for delivery. The following day, he sold 500 tons of the bulk to a sub-purchaser (X), who paid W for the goods. By the date the ship docked, W had been declared bankrupt and his trustee in bankruptcy claimed the entire consignment of 1,000 tons.	The Court of Appeal held that W's trustee in bankruptcy was entitled to succeed and that X was entitled to nothing, even though he had already paid W for his 500 tons. As X's 500 tons had not been ascertained (i.e. separated from the 1,000 tons bulk and identified as the goods to be used in the performance of the contract), property did not pass to him. Such facts would now be decided differently because of s 20A SGA .

Key debates

Topic	The passing of risk and s 20A Sale of Goods Act 1979
Author/academic	Nikki McKay
Viewpoint	Considers the impact of s 20A SGA on the passing of risk.
Source	(2010) 15(1) <i>Coventry Law Journal</i> 17
Topic	Some reflections on 'property' and 'title' in the Sale of Goods Act
Author/academic	Hock Lai Ho
Viewpoint	Discusses the uses and meanings of distinct but related concepts of ownership, property, and title.
Source	(1997) 56 <i>Cambridge Law Journal</i> 571

Exam questions

Problem question

Brian is closing down his electrical wholesale business. Amongst the stock remaining in his warehouse are 400 television sets. He agrees to sell 300 of these televisions to Ian, who pays for them in full by cheque and agrees to collect them the following week. Ian is busy the following week and doesn't get round to collecting them until the end of the following month. Unfortunately, the day before Ian went to collect the televisions, Brian's warehouse was broken into and 200 of the televisions were stolen. Brian cannot obtain any more stock but offers Ian delivery of the remaining 200 televisions.

Advise Ian.

Essay question

The **Sale of Goods Act 1979** and the **Consumer Rights Act 2015** both lay down certain rules relating to the passing of risk.

Critically evaluate these rules and consider whether risk always rests with the party who ought reasonably to bear it.

Online resources

This chapter is accompanied by a selection of online resources to help you with this topic, including:

- multiple-choice questions <https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-3-multiple-choice-questions?options=showName>;
- key facts checklists <https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-3-key-facts-checklists?options=showName>;
- interactive flashcards of key cases <https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-3-interactive-flashcards-of-key-cases?options=showName>;
- problem question guidance <https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-3-problem-question-guidance?options=showName>;
- outline answers to essay questions <https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-3-outline-answers-to-essay-questions?options=showName>.

Related Links

Visit the online resources for this title [<https://learninglink.oup.com/access/baskind-concentrate6e>](https://learninglink.oup.com/access/baskind-concentrate6e)

Test yourself: Multiple choice questions with instant feedback [<https://learninglink.oup.com/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-diagnostic-test>](https://learninglink.oup.com/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-diagnostic-test)

Find This Title

In the OUP print catalogue [<https://global.oup.com/academic/product/9780192897206>](https://global.oup.com/academic/product/9780192897206)