



## Sale of Goods/ Contractual Relations 9<sup>th</sup> July 2024



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### An Overview of the Liabilities Arising from Contracts for the Sale of Goods (1)<sup>1</sup>

#### 1. Introduction

In a contract of sale of goods, various incidents arise, especially in the 21<sup>st</sup> century where the sale of goods has moved from a physical location to various online spaces, including social media. In most of these online markets, especially those on social media, the vendors and the purchasers hardly have written contracts, which makes it difficult to clearly ascertain their duties and responsibilities when disputes arise.

The most common disputes that arise in these online markets is a situation where goods are ordered but before they are delivered, the goods suffer damage or are lost in transit. Also, there have been instances where the price of goods ordered and paid for doubled or tripled within a very short period before delivery due to the prevailing high inflationary trend in Nigeria. In such situations, some sellers have refused to permit the buyers to take delivery of the goods and insisted on the buyers paying the prevailing higher price for the goods even where there was a clear agreement that the buyer would take delivery on a certain date in the future.

In the first situation where goods are lost or damaged in transit, in the absence of express agreement by the parties, who bears liability for the loss or damage? In the second situation can a seller insist on the current market price of goods in his possession where the buyer has made a full payment before the increase in the price of the goods? If not, what remedy does the buyer have?

This article will seek to interrogate these questions and provide the position of the law in Nigeria on the issues.

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## 2. The Nature of Ownership Rights in a Contract for Sale of Goods

The purpose of a contract of sale of goods is to transfer the property or what is generally known as ownership rights in the goods from the seller to the buyer. To understand who bears liability for loss or damage or where liability for any other kind of default lies, it is necessary to know exactly when the ownership rights in the goods pass from the seller to the buyer.

The question therefore is, at what time does ownership of goods pass from the seller to the buyer? Is it at the time of making the contract, at the time of payment or at the time of delivery? It is important to know the point at which ownership of goods is transferred from the seller to the buyer because liability for lost or damaged goods would ordinarily be borne by the owner of the goods.

## 3. The passing of Property/ownership rights in a contract for sale of goods

The concept of property or ownership rights in goods is a legal concept. It does not mean the same thing as mere possession. Accordingly, the ownership rights in goods may be transferred to the buyer before or after he has taken possession of them or at the time the goods are delivered to him.<sup>2</sup>

At this juncture, it is pertinent to distinguish between a contract of sale of goods and an agreement to sell because it has serious legal effects on the rights of the parties. Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale but where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement to sell. For example, a contract for the sale of a Toyota Corolla saloon car with a specific chassis and engine number is a contract of sale because the subject matter of the contract is specific and ascertainable whilst a contract for the production and delivery of a Toyota Corolla saloon car to be manufactured to the buyer's specification is an agreement to sell and only becomes a contract of sale after the car is manufactured. In that case, the ownership of the car will not pass to the buyer until the car is manufactured.<sup>3</sup> An agreement to sell thus becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

In **Afrotec Tech. Serv. (Nig.) Ltd. v. MIA & Sons Ltd.**,<sup>4</sup> a contract for the sale of Parker Crushing Plant with its auxiliary equipment which provided for payment of the

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<sup>2</sup> See, *Afrotec Tech. Serv. (Nig.) Ltd. v. MIA & Sons Ltd* (2000) 15 NWLR (Pt. 692) 730.

<sup>3</sup> See, M. C. Okany, *Nigerian Commercial Law*, African-Feb Publishers Limited (2019) at p. 241.

<sup>4</sup> *Ibid.*

purchase price by instalment and gave the seller a lien and right to repossess the goods if the buyer fell short on payment of any of the instalments was held to be a conditional contract. The Supreme Court held that the contract would only become a contract of sale if the buyer paid the full purchase price.

Also, the remedy for failure to deliver goods by the seller or refusal of goods upon delivery by the buyer depends on whether it is a contract of sale or an agreement to sell. In a contract of sale, if the seller fails to deliver the goods or wrongfully disposes of the goods, the buyer may exercise his proprietary rights in respect of the goods by suing the seller under the tort of detinue (where he can recover the value of the goods at the date of trial), or of conversion (where he can recover the value of the goods at the date of conversion), as the case may be. Thus, if the value of the goods has increased since the sale, it would be more profitable for the buyer to sue in detinue, but if the value has reduced the buyer would be better off suing for conversion. On the other hand, if it is the buyer who refuses to accept delivery of the goods, the seller may sue the buyer for the price. But, if the goods, the subject matter of a sale, perish, the loss is borne by the buyer as the ownership of the goods had passed to him immediately the sale was completed.<sup>5</sup>

However, in an agreement to sell, the buyer can, on the seller's default, only sue the latter for damages for breach of contract (where he may only be able to recover what he lost, if any, as a result of the failure of the seller to fulfill the contract), but cannot exercise any proprietary rights, such as he can exercise in the case of a sale. This is because the ownership of the goods has not passed to him. Also, the seller's right against the buyer is, on the latter's default, to sue for damages for the buyer's refusal to take delivery of the goods. However, if the goods perish, the loss falls on the seller, as ownership of the goods still lies with him.<sup>6</sup>

By section 17(1) of the Sale of Goods Act, 1893 where there is an unconditional contract for the sale of specific goods, the property in them is transferred to the buyer at such time as the parties thereto intend it to pass. Problems, however, do arise because most of the times the parties do not have a written contract and there is no stipulation as to when the property in the goods will pass. At other times the contract may be a conditional contract of sale of goods or the goods may not be specific enough to come under the provisions of section 17(1) of the Sale of Goods Act. In such situations, section 18 of the Sale of Goods Act has laid down five rules that

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

would apply to determine when the property, and of course the risk, in the goods would pass to the buyer.

### **Rule 1**

*“Where there is an unconditional contract for the sale of specific goods, in a deliverable state,<sup>7</sup> 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.”*

We have already set out above what it entails for a contract to be unconditional, specific and ascertainable. Once a contract meets all the basic requirements laid down under Rule 1, it means the ownership rights in the goods will pass to the buyer once the contract is made, and the buyer will acquire all the proprietary rights and liabilities that come with ownership even without payment and delivery of the goods, provided that payment or delivery of the goods has not been specifically made a condition precedent for the transfer of the goods.

### **Rule 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 property does not pass until such thing be done, and the buyer has notice thereof.”*

The application of this rule can be illustrated with the case of **Underwood Ltd. v Burgh Castle Brick and Cement Syndicate**<sup>8</sup> where, the plaintiffs sellers agreed to sell a condensing machine to the defendants. The machine weighed 30 tons and was bolted to and embedded in a cemented floor. Under the terms of the contract, the plaintiffs were to dismantle the machine, a task which cost them £100 and took about 2 weeks. While the engine was being loaded on a railway truck, it was damaged. The plaintiffs would only be entitled to sue for the price if property had already passed before the time of the damage. It was held that, the machine was not in a deliverable state until the engine was safely placed on rail in London. Consequently, the property had not passed when the contract was made. As a result, the seller bore the risk of damage to the engine. Similarly, if there is a contract for the sale of a car and the owner has to fix some faults in the car before delivery to the buyer, the property in the car does not pass to the buyer until that fault is fixed. Accordingly, if the car is lost or

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<sup>7</sup> Section 62(4) of the Sale of Goods Act states that “Goods are in a “deliverable state” within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.”

<sup>8</sup> (1921) All E.R. S15.

suffers damage before delivery to the buyer the loss or damage will be borne by the seller.

### **Rule 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 property does not pass until such act or thing be done, and the buyer has notice thereof.”*

This rule is apparently self-explanatory and can be illustrated by the case of **Hanson v Meyer**<sup>9</sup> where the plaintiff sold an entire bulk of starch at a specified price per hundred weight. The bailee, who was instructed to weigh and deliver the goods had only done so with respect to part of the goods when the defendant became bankrupt. The plaintiff thereupon countermanded the delivery order. It was held that the property in the part that had not been weighed did not pass.

It should be noted that the acts to be done under Rule 3 should be required to be done by the seller. Therefore, where such acts are to be done by the buyer or are the responsibility of the buyer, it appears that this will not prevent the property from passing.<sup>10</sup>

## **4. Conclusion**

So far, we have examined three out of the five default rules that would apply where the parties fail to state when the property or ownership rights, with the attendant legal consequences, in a contract of sale of goods will pass to the buyer. In the second part of this article, we shall drive home the discussion by examining the remaining two rules and show how they affect the parties' rights in a contract of sale of goods.

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<sup>9</sup> (1805) 6 East 614.

<sup>10</sup> See, M. C. Okany, *supra*, at 249.