
TRANSFER OF PROPERTY IN UNASCERTAINED GOODS

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ABSTRACT

The transfer of property in unascertained goods is an important topic when it comes to commercial law, specifically in the preview of global trade or e-commerce etc. This paper focuses on the legal framework looking after the transfer of property in unascertained goods under Indian law specifically Sales of Goods Act, 1930 comparing it with Sales of goods act, 1979 of United Kingdom. Now. What do we mean by unascertained goods? It means goods that are not identified at the time of the contract, which have a legal challenge in determining when ownership can be transferred from seller to buyer.

The paper starts by defining the terms and establishing their importance in modern commerce. It showcases the conditions under which circumstances property in unascertained goods pass, showcasing the provision such as section 18 which says about necessity of ascertainment, section 23 which says unconditional appropriation and delivery to carrier, section 25 which says reservation of rights by seller and section 26 which talks about passing of the risk. This paper also has various case laws which affirm that property cannot be passed unless clearly identified and appropriated. Furthermore, a comparative analysis with U.K. law which has more options for bulk sales under section 20A, showing needs of modern commercial.

The study further deals with recent case laws and explores the gaps and challenges it has in current legislative system of India, specifically lack of clarity in defining ascertainment. International frameworks such as the United Nations Convention on Contracts for the International Sale of Goods are briefly used to highlight global trends in Contract law.

In conclusion, while both Indian and U.K. laws provide a basis for the transfer of property in unascertained goods, there are still some gaps remaining. These reforms should be focused to align local laws with international standards and address modern commercial thereby enhancing legal clarity and smooth transactions.

Introduction

As per oxford dictionary of law ‘unascertained goods’ is defined as “goods that are not specifically identified at the time of contract of sale is made”.¹ The concept of unascertained goods under sales of goods act 1930, is not explicitly defined, however ‘goods’ are defined under section 2(7) which categorizes them into various categories which include generic or unascertained goods.²

This concept is essential in transactions which involves bulk goods, e-commerce etc. As the specific goods are determined at the later stage of the contract.

The provisions related to transfer of property in unascertained goods in India is given under section 18,26 and further related section 25,26 under sales of goods act 1930.³ Here, section 18 which states that “unascertained goods are not passed further until and unless the goods are ascertained”. Section 23 further states sales of unascertained goods and appropriation.⁴

Similarly, the same principle is being followed by United Kingdom laws as per their authority under section 16,17,18,20A of sales of goods act 1979.⁵

The concept of transfer of property in unascertained goods is important in today’s modern commerce and after covid-19 also. The reason is the increasing complexity in e-commerce and online retail, global supply chains and Bulk transactions also remains highly relevant as it ensures fairness and smooth commercial transactions.⁶

The aim of the research project is to analyse the law and highlight the gaps and challenges in implementing these laws in today’s scenario. While, also doing a comparative study between India and United Kingdom for the given concept.

Research Objectives

- To Analyse legal provisions in transfer of property in unascertained goods under sales

¹ *Oxford Dictionary of Law* (Jonathan Law(ed), 9th ed. Oxford University Press 2018).

² *Sale of Goods Act of 1930*, s 2(7) (India).

³ Id.ss 18,25,26.

⁴ Id. s 23.

⁵ *Sales of Good Act 1979*, ss 16,17,18,20A (UK).

⁶ Nikhil Agarwal, ‘Effect of COVID-19 on Performance of Contracts Where Time Is of the Essence and Passing of Risk in Sale of Goods Contracts’, Bar & Bench (May 9, 2020).

of goods act 1930 and relevant laws.

- To compare the laws related to Transfer of property in unascertained goods between India and U.K.

Research Questions

- Whether the transfer of property in unascertained goods takes place under sales of goods act 1930 and when.
- Whether the Indian law at par with UK law and its relevance and applicability in both India and in international scenario.

Analysis

Meaning and Definition

“Section 2 (7) defines ‘goods. Goods means any type of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale.”.⁷

Goods can be classified in three categories one of them are existing goods these are those goods which exist and is physically in the possession of the owner. These goods are of two types, i. specific goods and ii. generic or unascertained goods.

Here, this research project deals with unascertained goods and can a property transfer in these kind of goods.

Legal Essentials

The legal essentials for “transfer of property in unascertained goods” are as follows-

- a. Valid Contract- there must be a valid contract for doing sale of unascertained goods.
- b. Goods should be unascertained- the goods should be ‘unascertained’ when contract is

⁷ Dr. Madhusudan Saharay, *Sale of Goods and Hire Purchase* (3rd ed, Universal Law Publishing, 2017).

made that is it should not be separated from the bulk when the contract is made.

- c. Goods to be ascertained – given in section 18 of sales of goods act 1930 that “no property in goods is transferred from the seller to the buyer until and unless the goods are ascertained”.⁸

It was also held in the case of *P.S.N.S.A.C. & Co. v. Express Newspaper* where supreme court cited that “no property in the goods is transferred to buyer unless the goods are ascertained”.⁹

d. unconditional appropriation – given under section 23 (1) that “property in unascertained goods passes to the buyer when there is unconditional appropriation”. This is also further elaborated in section 25 of the same act.¹⁰

e. Delivery to carrier- “section 23 (2) states that if the seller delivers goods without reserving the rights of disposal, he is ought to have ‘unconditionally appropriated’ the goods to the contract”.¹¹

f. reservation of rights by the seller- under section 25 of sales of goods act 1930, “the seller may reserve to himself the right of disposal of goods until the fulfilment of certain conditions and thereby it can prevent the passing of property in the goods from him to the buyer”.¹²

Topic Title

“Transfer of property in unascertained goods” under sales of goods act 1930 is an important concept, governing how ownership is transferred from the seller to buyer, if we read section 2 (7) along with section 4 of the act it shows the concept of “sales of goods means transfer of property in the goods for a price”.¹³

There is a general rule for passing of property in unascertained goods, that is section 18 of Sales of goods act 1930, which states that “property in unascertained goods does not pass until

⁸ Id. s 47.

⁹ *PSNSAC & Co. v. Express Newspaper*, AIR 1968 SC 741 (India).

¹⁰ Dr. Madhusudan Saharay, *Sale of Goods and Hire Purchase* (3rd ed, Universal Law Publishing, 2017).

¹¹ Id. s 55.

¹² Id. s 60.

¹³ Id. s 13.

and unless the goods are ascertained”.¹⁴ Ascertained refers to identifying and separating goods that are to be sold under the contract. Example-if P agrees to sell 50 bags of beans from his stock of 100 bags in his warehouse, the 50 bags are unascertained until that are separated from the larger bulk, after separation goods will become ascertained.

The act of separating goods from larger bulk and keeping them for delivery to the buyer is known as appropriation given under section 23 where appropriation requires a clear intention, mutual consent of both buyer and the seller and unconditional identification is required.

There are some rules which applies when passing the property in unascertained goods upon appropriation-

- a) Delivery to carrier- given under section 23(2) of sales of goods act 1930. That “if the seller delivers the goods to the buyer and does not reserve the rights of disposal, he is deemed to have unconditionally appropriated the goods to the contract”.
- b) Right of disposal - given under section 25 of the Act that is “the seller retains the right of disposal until the fulfilment of certain conditions and thereby prevents the passing of property to the buyer”.
- c) Consent of the parties- consent can be either expressed or implied.
- d) Transfer of risk – given under section 26 of the Act states that “risk passes with the property and that the person who is the owner at the time of damage is liable to bear such damages”.

Therefore, the legal framework under section 18,23,25 and 26 provides clarity in transferring of property in unascertained goods, these are both important for buyer and seller to safeguard their rights.

Comparing the above Indian law with U.K. law.

Under UK law the concepts mention in sales of goods act 1979 that is based on old UK laws.

¹⁴ Id.s 47.

According to section 16 of the Sales of Goods Act 1979, “property cannot be passed until the goods are ascertained”. The same rules are applied for delivery of carries and for appropriation that property passes only when goods are appropriated with mutual consent, given under section 18 rule 5.¹⁵

The concept of Rights of Disposal under section 19 and risk of ownership in section 20 of Sales of goods act 1979 is same as sales of goods act 1930.

Briefly, both India and UK follow similar rules, however UK has some modern provisions for bulk sale like pro-rata ownership whereas India follows the traditional method insuring that property to be transferred only when identified and separated. Regardless of this difference, both the laws provide protection to buyer and the seller.

Case laws

Indian case laws-

- S.T. Commissioner v. H. Adamji & Co. - where it was cited by the Supreme Court that goods were unascertained goods, and such property cannot be transferred under S. 18 of the sales of goods act 1930 that is “until the goods were ascertained”.¹⁶
- P.M.R.S. firm v, B.C.J & Sons – here the court addressed the issue of when property in unascertained goods passes from seller to the buyer under the contract. The judgment in this case highlights the importance of clear terms in contracts involving unascertained goods, specifically on when and how the property in the goods passes from seller to buyer.¹⁷

U.K. case laws

- Wait and James v. Midland Bank Ltd. - it was held that the property in unascertained goods does not pass until and unless they are identified and appropriated with consent of both buyer and seller.¹⁸

¹⁵ *Sales of Goods Act 1979*, ss 16,17,18,20A (UK).

¹⁶ *S.T. Commissioner v. H. Adamji & Co.* [1954] SCR 529.

¹⁷ *P.M.R.S. firm v. B.C.J. & sons*, AIR 1963 SC 271 (India).

¹⁸ *Wait and James v Midland Bank Ltd* [1926] 1 K.B. 209 (Eng.).

- *Carlos Federspiel v, Charles Twigg and co, ltd* – it was held that only intention to appropriate goods is not sufficient, there should be clear act of separation of goods for delivery.¹⁹

Recent Judgements

As of current scenario there are no latest judgements in the year 2023, 2024 on the exact topic title given, but there are 1-2 cases where some essentials have been used for drawing judgements.

1. *Vikas Ahuja (legal heir) v. Assesses 2016* -- in the judgment on of the parts mentioned section 18 of sales of goods act 1930 that “no property in the goods is transferred to the buyer unless the goods are ascertained”. As a result of the case, it cannot be said that the actual purchase as contemplated under the sale of goods act was affected.²⁰
2. *Commissioner of commercial taxes, Thiruvananthapuram, Kerala v. K.T.C. automobiles 2016*—here in this case also provisions like section 4 where agreement to sell goods or transfer of property to the buyer for a price is mentioned, are taken to draw conclusion.²¹

Relevant laws applicability in India and international scenario

There are several laws where the concept of unascertained goods is mentioned one of them is mentioned in section 4(2) of central sales tax act 1956 etc.²²

In international scenario unascertained goods are monitored by various principles which vary across jurisdictions for example in trade practices and contractual terms, united nations convention on contracts for the international sale of goods cigs. Etc.²³

¹⁹ *Carlos Federspiel v Charles Twigg & Co Ltd* [1957] 1 Lloyd's Rep 240 (Eng.).

²⁰ *Vikas Ahuja (Legal Heir) v Assesses* [2016] 2 SCC 148 (India).

²¹ *Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala v K.T.C. Automobiles* [2016] 4 SCC 312 (India).

²² *Central Sales Tax Act 1956*, s 4(2) (India).

²³ *United Nations Convention on Contracts for the International Sale of Goods (CISG)*, Apr. 11, 1980, 1489 U.N.T.S. 3, arts.16-18.

Gaps and Challenges

There are several gaps and challenges in the transfer of property in unascertained goods that creates ambiguity and legal disputes. Some lack of clarity in the time of transferring property, given in section 18 of the act which mentions “property cannot pass until goods are ascertained”. However, it did not mention when goods become ascertained in all situations. Also, there is confusion between property and risk transfer as they do not occur simultaneously. Causes uncertainty in case of damage. It also does not clearly define when ownership transfers in bulk like grain and oil.

Also, when it comes to digital e-commerce transactions, these laws do not clearly mention transfer of property in digital transactions, which also leads to ambiguity.²⁴

Conclusion

Therefore, the transfer of property in unascertained goods is an essential concept it tells us about when property can be transferred from seller to buyer. The sales of goods act 1930 and English Sales of goods act 1979 have similar principles on this concept. However, there is certain differences such as in UK law they follow modern provision for bulk sales like pro rata ownership whereas Indian law follows the traditional method.

Section 18, 23, 25 and 26 under sales of goods act 1930 mentions the importance of ascertainment, appropriation etc. Which are also laid down in cases mentioned above those are *S.T. Commissioner v. H. Adamji & Co* and *P.M.R.S. firm v. B.C.J & sons* which reaffirms that property cannot be transferred until goods are ascertained. Similarly, in United Kingdom cases mentioned above those are *wait and James v. midland bank ltd* and *Carlos Federspiel v. Charles Twigg & co.* where they mentioned that there is necessity of clear acts of separation for property transfer.

Regardless of these principles and cases there are some gaps and challenges which exists in today's commerce for example in digital e commerce. The lack of clarity or confusion between property and risk transfer etc., created ambiguity leads to disputes.

²⁴ Rahul Bajaj, ‘Effect of COVID-19 on Performance of Contracts where Time is of the Essence and Passing of Risk in Sale of Goods Contracts’, Bar & Bench, (June 8, 2020).

Thus, while these provisions provide a strong framework there is also a need for legal reform to address the gaps and challenges coming in modern days too. Aligning Indian law with international practices may enhance certainty and efficiency in commercial transactions.

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