



CONTEMPORARY APPLICABILITY OF THE MAXIM 'NEMO DAT QUOD NON HABET' UNDER THE SALE OF GOODS ACT, 1930

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ABSTRACT

The Sale of Goods Act's enactment in the year 1930 emerged as an important milestone in the history of commercial law by creating an ordered system for transactions involving the sale and purchase of goods. This Act provided a systematic code of principles to govern the rights, obligations, and liabilities of buyers and sellers and to ensure fairness and predictability between them on the aspect of commercial transactions. Sections 18 to 30 represent some of its greatest significance since these sections unequivocally outline the legal implications that emanate due to the passing of ownership (or property) of goods from the seller to the buyer. They outline the circumstances under which ownership is passed, the risks, and the occasions upon which the buyer obtains a rightful title to the goods. The underlying principle behind these sections is the maxim of "nemo dat quod non habet," meaning "no one can transfer a superior title than that which he holds." Such a maxim ensures the sanctity of ownership by permitting only a rightful proprietor to be able to provide a valid title to the other party. However, over time, various statutory exceptions and judicial interpretations have developed to balance the maxim with the need to protect innocent buyers and facilitate commercial transactions. A thorough analysis by way of historical and judicial perspectives identifies the maxim's constant relevance to modern-day commercial law.

Keywords: Ownership, Sale of Goods, Estoppel, Possession.

SALE OF GOODS ACT

The Sale of Goods Act of 1930 was an Act to define and amend the law relating to the sale of goods.¹ The Sale of Goods Act primarily sets out the legal framework for the exchange of

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¹ The Sale of Goods Act, 1930.

goods between buyers and sellers. The Sale of Goods Act, first enacted in 1930, is one of the oldest Mercantile laws in the world. It is a special type of Contract that governs the sale of goods and is complementary to the Contract Act. The basic provisions of the Contract Act are also applicable to the Sale of Goods Act. Its main objectives are to ensure fairness, protect the rights of consumers, and establish clear guidelines for commercial transactions involving tangible products. The sale of goods involves the involvement of two distinct parties: the seller and the buyer. A "buyer" means a person who buys or agrees to buy goods,² and a "seller" means a person who sells or agrees to sell goods.³

The concept of delivery⁴ is defined as a voluntary transfer of possession. Delivery can be either actual or constructive. Actual delivery occurs when the buyer obtains the products or a key to the warehouse in which the goods are stored. Constructive delivery occurs when the item is not in the possession of the buyer, such as when the item is acknowledged or when a symbolic delivery is made. A contract of sale can be absolute or contingent.⁵ A contract of sale is a contract between two parties⁶ in which the seller sells the property in goods to the buyer.⁷ When a contract of sale is between two parties, it is called a sale. However, if the property is to be transferred to the buyer at a later date or if certain conditions are to be met at a later date, it is called an agreement to sell.⁸ If the conditions of the agreement to sell are met, the contract becomes a sale.⁹ The contract of sale must include all the necessary elements for the contract to be valid.

THE CONCEPT OF “NEMO DAT QUOD QUOD NON HABET”

The legal concept of Nemo Dat Quod Non Habet, which translates to 'No One Gives What He Doesn't Have', implies that a person is prohibited from selling a property he does not possess. Furthermore, a person who sells a property is obligated to possess the property. He is not allowed to transfer or sell the property unless he possesses the property as a whole. This principle helps in determining the owner of the said property or the rights of a third party with

² Sale of Goods Act 1930, s 2(1)

³ Sale of Goods Act 1930, s 2(3)

⁴ Sale of Goods Act 1930, s 2

⁵ Sale of Goods Act 1930, s 4(2)

⁶ Sale of Goods Act 1930, s 4(3)

⁷ Sale of Goods Act 1930, s 4(4)

⁸ Sale of Goods Act 1930, s 4(3)

⁹ Case Study on Application of the Sale of Goods Act 1930' (LawTeacher.net, 11 November 2013) <https://www.lawteacher.net/free-law-essays/contract-law/the-sale-of-goods-act-1930-contract-law-essay.php?vref=1> accessed 10 October 2025

ownership rights. The principle helps promote dealings in good faith between parties and encourages every buyer to verify the owner of the property before purchasing to avoid fraudulent and unauthorised transfers and maintain legal certainty in commercial transactions. It ensures that innocent people do not suffer if a seller lacks the ownership of the property being sold. This rule is associated with the transfer of possession of a property in law. The Sale of Goods Act, 1930, and the Indian Contract Act, 1872, are associated with the underlying provisions of this rule. Sections 18 to 30 of Chapter 3 of the Sale of Goods Act address the effects of the contract on the transfer of property between the seller and the buyer.

Greenwood v Bennett (2003)¹⁰ was a dispute between the defendant and a garage owner, Mr Searle. The defendant had entrusted the car to Searle for repairs, but Searle used the vehicle for personal purposes, resulting in a car crash and extensive damage. Searle then sold the Jaguar for £75 to Mr Harper, who was unaware of its ownership. Mr Searle spent £226 on the repairs and then sold the vehicle to a finance company for an undisclosed sum. The Court ruled that the defendant was the rightful owner of the car, and Searle, who had no title over the vehicle, was unable to transfer the title to Mr Harper. Consequently, Mr Searle was also unable to transfer the car title to the insurance company, as he was not the legal owner of the vehicle. Mr Searle was subsequently ordered to pay Mr Harper back the money he had spent on the repairs.

The Supreme Court held that the general principle of the *Nemo Dat* principle was applicable in *Morvi Mercantile Bank Ltd. And vs Union of India*,¹¹ it also held that certain exceptions relating to the particular business of the mercantile bank were necessary for the successful conduct of transactions and to ensure that the buyers acted in good faith and without any malpractice or wrongful intent, thinking that it was an ordinary course of conduct.

POSSESSION

The concept of possession is of having something. This is achieved through the acquisition of possession through the acquisition of *animus propidendi* and the acquisition of *corpus propidis*. *Animus propidendi* is the expression of an intention or the statement that a thing has its own meaning. The statement is made in such a way as to completely exclude. *Corpus possession* states that the intention to prevent interference with the property must be accompanied by an

¹⁰ *Greenwood v Bennett* 208 Ala 680, 95 So 159 (Ala 1923)

¹¹ *Morvi Mercantile Bank Ltd v Union of India* AIR 1965 SC 1591

exercise of physical control over the property; without an act, it would be difficult to establish intent.

The concept of possession can be divided into two distinct categories: "Possession in fact" or "de facto possession," and "Possessing in law" or "de jure possession". Owning a property does not entitle you to transfer it to another party unless you are the owner of the property or have the authority to act on its behalf. This implies that you only possess the title to the property and nothing more. For instance, if you have a property in a foreign country and hire a real estate agent to sell the property in your country, the real estate agent will possess the physical ownership of the property and will be able to locate potential buyers and close the sale.

OWNERSHIP

Under the Sale of Goods Act of 1930, ownership of goods refers to the legal right of possession and control over a tangible item that has been sold or is in the process of being sold. Ownership typically determines who has the authority to use, sell, or transfer the goods and is a fundamental concept in property law. The Act specifies that ownership can be transferred from the seller to the buyer in a sales contract once certain conditions are met, such as the intention to transfer ownership and the existence of a valid contract. The Act also addresses issues related to when and how ownership passes from the seller to the buyer, protecting the interests of both parties and establishing a clear legal framework for the transfer of property rights in commercial transactions.

The sale of goods is governed by a number of fundamental elements. Firstly, the buyer must have entered into a valid agreement with the seller, usually consisting of an offer and acceptance. Secondly, the buyer must intend to transfer ownership to the seller. Thirdly, the buyer must be able to ascertain the goods and determine the price. Fourthly, the seller is legally entitled to the sale of the goods. Finally, the buyer must meet the agreed-upon terms, such as payment. When all of these requirements are met, the ownership of the goods is transferred to the buyer, thereby conferring the buyer's legal right to possession, use, and control of the goods and extinguishing the seller's legal right to the goods.

Illustration: Sarah, a computer manufacturer, sells a brand-new laptop to John, a customer. Initially, Sarah owns the laptop, and John is interested in purchasing it. When they agree on the terms and price, they enter into a sales contract. As per the Sale of Goods Act, once the contract is formed and the conditions for transferring ownership are met, ownership of the

laptop shifts from Sarah, the seller, to John, the buyer. This means that John now has the legal right to possess, use, and control the laptop as its rightful owner, while Sarah relinquishes her ownership rights in favour of John.

SECTION 27 OF THE SALE OF GOODS ACT

Section 27¹² of the sale of goods act embodies the principle of “Nemo Dat Quod Non Habet”. The first part of the section states that “where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell” which means that even if the seller can sell the property, the contract will be invalid because the seller did not own the property at the time of the sale.

The second part states that “Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.” which means that if a Mercantile agent has the goods or a document of title and has the owner's permission to do so, then any sale made by the Mercantile agent when acting in the normal course of business is as good as if the owner had given explicit permission for the sale to be made, as long as the buyer acted in good faith and didn't know when they signed the contract of sale that the seller had no authority to sell.

In *Folker V. King*,¹³ the plaintiff delivered his car to a mercantile agent to sell it for not less than 575 pounds. However, the mercantile agent sold it to the defendant for 140 pounds and misappropriated the amount. In an action by the plaintiff, it was held that the defendant (buyer) had a good title to the goods.

In the case of *Pearson v. Rose and Young Ltd*,¹⁴ a car was left with a mercantile agent and authorised only to receive offers and not to sell. The agent obtained the registration book from the owner without consent and sold it to the defendant. It was held that the sale without a

¹² Sale of Goods Act 1930, s (2)

¹³ *Folkes v King* [1923] 1 KB 282 (CA)

¹⁴ *Pearson v Rose and Young Ltd* [1950] 2 All ER 1027 (KB) 1031

registration book would not have been good, and the registration book was obtained without the consent of the owner; therefore, the buyer did not acquire a good title.

Section 27 gives an exception for transfer of title by estoppel signifies the reliance of one person on the conduct of another to believe a particular thing. It particularly means that if the original owner of the goods, by their act or in particular some sort of omission, makes the seller believe that he has the authority, he can go ahead with the sale. It also legally safeguards the same by explicitly stating and making it clear that no one besides the actual owner has the full authority to transfer the title of goods except when the owner himself, by his conduct, in essence means an act or omission fails to deny the seller's incapability to sell the goods.

As established in *Eastern Distributors Ltd v. Goldring* (1957),¹⁵ the van owner sought to purchase a car from the car dealer, but was unable to do so. As a result, the claimant and the car dealer embarked on a fraudulent scheme to deceive the finance company. The claimant filled out forms in which the car dealer indicated that they were the original owners of the van, while the claimant stated that he wished to purchase the vehicle. The agreement was signed by the car dealer, meaning that the claimant was effectively prevented from asserting his own ownership of the vehicle. Consequently, the title of the vehicle was passed onto the finance company on the basis of the estoppel doctrine. This is due to the fact that the terms of the hire purchase do not allow the ownership of the vehicle to be transferred back to the initial owner until all payments have been made.

Section 28 of the Sale of Goods Act 1930,¹⁶ addresses the rules regarding the delivery of goods in cases where the seller is bound to send them to the buyer. It stipulates that it is the seller's responsibility to deliver the goods to a carrier for transmission to the buyer. The seller must follow the buyer's instructions and comply with reasonable requirements regarding the transportation of goods. This section outlines the seller's obligations in ensuring that the goods reach the buyer's destination safely and specifies that the risk in the goods passes to the buyer upon delivery to the carrier, emphasising the importance of proper shipping arrangements.

Section 29 of the Sale of Goods Act, 1930,¹⁷ deals with the delivery of goods to the buyer when the seller is not required to send them. It outlines that the buyer must request delivery, and unless a different intention is expressed, the seller is not obligated to deliver the goods to the

¹⁵ *Eastern Distributors Ltd v Goldring* [1957] 2 QB 600

¹⁶ Sale of Goods Act 1930, s 28

¹⁷ Sale of Goods Act 1930, s 29

buyer. It also establishes that it is the buyer's responsibility to fetch the goods, and payment is usually due upon the seller's readiness to deliver. This section highlights the importance of a buyer's request for goods and the shift in responsibility for retrieval, often involving payment upon the seller's readiness for delivery.

The decision in *Phillips v. Brooks*¹⁸ involved a situation where a person fraudulently obtained a valuable ring by issuing a worthless cheque, having misrepresented himself as a genuine buyer. The fraudster then pledged the ring to a third party. When the fraud came to light, the key issue was whether the pawnbroker had a valid right to retain the ring. The Court held in favour of the Pawnee, ruling that he had acquired a good title, as he had acted in good faith and without knowledge of the seller's defective title.

The appellant in the case *Lewis v. Averay* (1972)¹⁹ is a postgraduate student who is looking to sell a car. He meets a prospective buyer who is pretending to be Richard Greene, a well-known actor. He agrees to pay £450 for the car with a cheque. He asks the buyer if he recognises him before he receives the cheque. However, the buyer shows him a pass to Pinewood Studios with his name on it and his photograph. The cheque is then cashed by the rogue. They sell the car for £200 to the defendant, but the cheque they receive from the plaintiff bounces. The Court of First Instance held that if someone parts with their goods without clearing their cheque, they must pay the loss.

Section 30(1) of the Sale of Goods Act 1930,²⁰ stipulates that when the buyer is in default in accepting the goods, the seller has the right to sue for damages for non-acceptance. In other words, if the buyer refuses to accept the goods or breaches the contract by failing to take delivery, the seller can seek compensation for the loss incurred due to the buyer's default. The number of damages is generally determined based on the difference between the contract price and the market price of the goods at the time and place of delivery, along with any additional losses directly resulting from the buyer's failure to accept the goods.

Section 30(2) of the Sale of Goods Act,²¹ of 1930, pertains to the implied conditions regarding the sale of goods by description. This provision states that if goods are sold by description and

¹⁸ Shriti Agrawal, 'Case Comment – *Phillips v Brooks Ltd*' (2022) 2(4) *Journal of Legal Research and Juridical Sciences* 1209 <https://www.jlrjs.com> accessed 18 October 2025.

¹⁹ *Lewis v Averay* [1972] 1 QB 198

²⁰ Sale of Goods Act 1930, s 30(1)

²¹ Sale of Goods Act 1930, s 30(2)

the buyer relies on the seller's skill and judgment to select those goods, there is an implied condition that the goods supplied will be of a satisfactory quality.

Other exceptions are: In the event of an unpaid seller re-selling goods to the buyer, even if no notification has been made to the original buyer, the buyer is entitled to a good title against the original buyer.²²

HISTORICAL APPLICABILITY OF THE PRINCIPLE OF NEMO DAT QUOD NON HABET

The roots of the principle “no man gives what he does not have” have a long history and legal basis. Its roots can be found in Roman law, where it was an integral part of property transactions. Over the centuries, the principle has been used in various jurisdictions and contexts and has served as a fundamental principle in property and contractual law.

In Roman law, the principle of "nemo dat quod non habet" was widely accepted as a fundamental principle. This principle was epitomised by the Roman legal maxim "nemo sui iuris ad eligem et ad eligem et quam ipse habet", meaning that no one could transfer more rights than they had acquired. This principle was a fundamental element of Roman property law and formed the basis for subsequent legal developments. In medieval and early modern Europe, the principle continued to have a significant impact on European legal systems. It was widely accepted and played a fundamental role in property transactions in various European countries.

The principle was also adopted and applied in English common law, which has had a lasting impact on the development of legal theories relating to the transfer of rights and the enforcement of contracts. The principle was incorporated into common law during the Middle Ages, particularly in England, and served as the foundation of the legal system. It emphasised the legitimate possession of property by the seller in a transaction and provided a means of resolving disputes and establishing clear property rights. This principle was widely adopted in the American colonies and has had a significant impact on property and contract law throughout the United States.

Today's contract law is based on the principle of 'nemo dat quod non habet', which is a fundamental principle of contract law. This principle plays an important role in property transactions, particularly when it comes to selling goods. It guarantees that the transfer of

²² Sale of Goods Act 1930, s 54(3)

property is legitimate and prevents illegal or fraudulent transactions. This principle continues to play an important role in the settlement of disputes and in the preservation of legal certainty. It also plays a vital role in international trade, where the transfer and acquisition of property rights is of paramount importance. This principle facilitates cross-border trade by ensuring that the parties have the power to transfer property.

Talking about India, its legal system is also steeped in the concept of *Nemo Dat Quod Non Habet*, a Latin maxim that translates to "Do not give what you do not have". This principle has been consistently applied throughout India's legal history and has a long-standing and enduring significance in the field of property and contractual law.

During British colonial rule, English common law, including the principle of “*Nemo dat dat habet*”, was introduced into the Indian legal system and formed the basis of Indian contract law and property law. The Transfer of Property Act (1882)²³ played an important role in the development of property law in India. The provisions of this act are based on ‘*Nemo dat quod non habet*’ and are closely related to the concept of legitimate ownership and the transfer of property. The Indian Contract Act (1872)²⁴ regulates and includes provisions that uphold the principle of ‘*Nemo dat quod non habet*’ in relation to contracts. It states that a person may only transfer rights that he has legitimately acquired.

The application of this principle has been strengthened by several judgments in India’s jurisprudence. These judgments have made clear the significance of legal ownership and limitations on the transfer of rights you do not possess. This principle continues to play an important role in modern Indian jurisprudence, as it has played a role in determining the ownership and property rights of individuals in various legal matters, including sales of goods, real estate transactions, and contract agreements.

This principle has played a critical role in determining the legitimacy and lawfulness of property transactions and contract agreements in India and other countries.

²³ Transfer of Property Act 1882

²⁴ Indian Contract Act 1872

MODERN-DAY APPLICABILITY OF THE PRINCIPLE “NEMO DAT QUOD NON HABET”

Even in the current scenario, we can see the principle of Nemo Dat Quod Non Habet being used prominently in the field of contract law as it plays a vital role in determining the rightful owner of the property and upholding the integrity of contractual agreements. This principle is used widely, from real estate transactions to cryptocurrency. The transfer of ownership is widely used in modern contract law. It applies to transfers of ownership of real estate and intellectual property, as well as digital goods.

It is essential to ensure that the seller (or licensor) has the legal right to transfer ownership (or rights) to the buyer or licensor. Unlawful transfers can result in conflicts and legal disputes. It is also important in commercial transactions. For example, when selling goods, buyers and sellers need to verify the seller's title and the buyer's legal capacity to sell goods. This is essential to avoid issues such as defective titles, fake goods, and stolen property. In today's digital age, it is important to ensure that intellectual property rights (copyright, trademarks, patents, etc.) are properly licensed by the licensor. This will prevent unauthorised use and an infringement claim. Real estate transactions are governed by the principle of "nemo dat quod non habet", as it ensures that the rightful owner of the property is established and that the transfer or sale of the property is legally valid.

Unauthorised transfers can lead to conflicts over property rights. Similarly, digital goods and services are governed by this principle, as it guarantees that the consumer or user is receiving the product or service they have paid for and helps to protect against fraudulent or unlawful transactions. Blockchain and Cryptocurrency are two emerging fields of technology that require the proper ownership and transferability of digital assets. This principle is particularly important in decentralised and peer-to-peer systems, as it verifies the legitimacy of transactions. The buying and leasing of vehicles exemplify the applicability of this principle. Buyers expect that the seller or lessor possesses a clear title to the vehicle and the right to transfer it. This principle protects consumers from unknowingly purchasing stolen or encumbered vehicles and reinforces the legality of transactions in the automotive industry.

A COMPARATIVE ANALYSIS AND HISTORICAL PERSPECTIVE

This fundamental legal concept has been a cornerstone of property and contract law for centuries, providing a safeguard against fraudulent or unlawful transfers of goods.

In the past, there was a lack of information available about sellers and their products. Buyers relied on physical inspections, word of mouth, or local reputation, which made it easier for dishonest sellers to defraud buyers. Transactions were typically local, and buyers typically interacted with sellers they knew or by reputation in their local community. Transactions were documented manually, with record-keeping being less standardised. Demonstrating ownership and transferability of property could be difficult. Consumer protection legislation was less developed, making it difficult for buyers to verify the authenticity of sellers and the products they offered.

In the contemporary context, the proliferation of electronic commerce and digital markets has enabled buyers to gain access to a wealth of information, allowing them to conduct thorough research on sellers and products. This has resulted in a heightened level of transparency, as sellers often have extensive profiles and reviews.

Furthermore, cross-border transactions are increasingly common, necessitating adherence to traditional legal principles such as "nemo dat quod non habet". The digitisation of ownership and transactions, as well as the use of blockchain technology and secure databases, has revolutionised the way in which these records are recorded, thus reducing the likelihood of fraudulent transactions. Additionally, modern consumer protection legislation provides buyers with enhanced rights and tools to address issues associated with unauthorised or fraudulent sales. This principle is essential in the digital era, as it covers not only physical goods but also intellectual property rights, as unauthorised use or transfers of digital content are a major concern.

The principle of Nemo dat quod non Habet remains one of the fundamental concepts in modern legal systems, including civil law as well as common law jurisdictions. It continues to play an important role in property transactions, protecting innocent parties in good faith and ensuring that only those who have legitimate ownership of property rights can transfer them. In modern commercial transactions, Nemo Dat Quod Non-Habet is still very important, especially in today's complex business environment. The principle of "Nemo dat quod non habet" has a long history in the Indian legal system, has been included in key statutes, and has played an important role in the development of property and contract law in India. It continues to play a crucial role in determining the legitimacy and lawfulness of property transactions and contract agreements in India.

In both historical and current-day contexts, the principle "Nemo dat quod non habet" stands as a fundamental pillar of fairness, legality, and trust in property and contract law. Its enduring applicability underscores its importance in maintaining the integrity of transactions and upholding the rights and interests of all parties involved. This fundamental legal principle has maintained its relevance over time by comparing its applicability in the context of the Sale of Goods Act and its application in the present context.

In the past, it has been a fundamental element of property and contractual law, providing guidance in the regulation of commerce and ensuring the fairness of transactions. However, as we move into the modern era, it has adapted to the changing landscape of commerce, technology, and consumer protection, from online marketplaces to intellectual property rights, and from real estate transactions to consumer protection laws. It serves as a fundamental safeguard against unlawful sales, fraud, and misrepresentation, demonstrating the continued need for legal security, trust, and justice in commercial exchanges. It is a timeless and essential concept in the constantly changing legal environment.

CONCLUSION

To conclude, the principle "nemo dat quod non habet" is still very applicable in today's legal environment. This fundamental concept in property law and contract law safeguards the interests of all parties involved in trade and commerce, guaranteeing transparency, fairness, and certainty. As the business practices and dynamics of commerce change, the principle "nemo dat quod non habet" remains a timeless reference point for property rights, property ownership, and dispute resolution. In a world characterised by intricate supply chains, electronic commerce, and digital goods, this principle remains essential for determining the rightful ownership of goods and services, as well as safeguarding bona fide buyers' rights. It underlines the importance of ethical and lawful transactions in today's global marketplace and provides a framework that can adapt to the ever-evolving nature of commerce and trade. As a result, the principle's current applicability is demonstrated by its capacity to preserve the fairness of transactions, safeguard property rights, promote trust in goods and assets, and ensure legal certainty.