

SYNOPSIS

- 27. Sale by person not the owner
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- 29. Sale by person in possession under voidable contract
- 30. Seller or buyer in possession after sale

27. Sale by person not the owner

A buyer shall acquire only such title to the goods as the seller possesses.

Section 27 states the general rule expressed by *nemo dat quod non habet*, meaning “no one can give what they do not have.” It means that a person who is not the owner and sells goods without the owner’s authority or consent generally cannot give the buyer a better title than they possess. For example, A steals B’s refrigerator and sells it to C, who purchases honestly without knowing that it was stolen. Since A has no title, C acquires no ownership, and B may recover the refrigerator from C despite C having paid for it in good faith.¹ Thus, good faith and payment alone do not establish ownership. This rule is subject to statutory exceptions, including where the owner’s conduct prevents them from denying the seller’s authority (estoppel) or where a mercantile agent makes a sale satisfying Section 27’s conditions.

Estoppel: Section 27 (“unless the owner of the goods is by his conduct precluded from denying the seller’s authority to sell”) also recognises estoppel, where the owner’s conduct prevents them from denying the seller’s authority.

Mercantile agent: A mercantile agent can pass good title when possessing the goods or documents of title with the owner’s consent, selling in the ordinary course of business, and dealing with a buyer who acts in good faith without notice of the agent’s lack of authority.²

¹ The maxim *nemo dat quod non habet* is illustrated by *Rowland v Divall* [1923] 2 KB 500, where the buyer of a stolen car acquired no title and recovered the full price despite having used it; by *Cundy v Lindsay* (1878) 3 App Cas 459, where a fraudster obtained goods under a contract void for mistake as to identity and could therefore transfer no title to an innocent buyer; and by *Helby v Matthews* [1895] AC 471, where a hirer with a mere option to buy, free to return the piano, could not give a good pledge to a pawnbroker acting in good faith, because he had not “agreed to buy”.

² Proviso to section 27 of Sale of Goods Act, 1930

28. Sale by one of joint owners

A good-faith buyer without notice of lack of authority shall acquire ownership from a joint owner possessing the goods with the co-owners' permission.

Section 28 is an exception to *nemo dat quod non habet*. It means that where one of several joint owners has sole possession of goods with the permission of the other co-owners, a buyer acquires ownership of those goods if they purchase in good faith and without notice, at the time of the contract of sale, that the joint owner lacks authority to sell. For example, A, B and C jointly own a refrigerator and permit A to keep it in his sole possession. A sells it to D without B's and C's authority. If D purchases honestly without notice of A's lack of authority, D acquires good title to the entire refrigerator, and B and C cannot recover it from D merely because they did not authorise the sale. Thus, permission to possess is distinct from authority to sell: the provision protects the innocent buyer despite the absence of selling authority. It requires sole possession with the co-owners' permission; merely being a joint owner is insufficient.

29. Sale by person in possession under voidable contract

A buyer acting in good faith and without notice of defective title shall acquire good title from a seller in possession under an unrescinded voidable contract.

Section 29 is an exception to *nemo dat quod non habet*. It means that where a seller obtained possession of goods under a voidable contract—one that the aggrieved party may set aside because of fraud, misrepresentation, coercion or undue influence—a subsequent buyer acquires good title if the original contract has not been rescinded at the time of resale and the buyer acts in good faith and without notice of the seller's defective title. For example, B fraudulently persuades A to sell and deliver a refrigerator by falsely representing his financial position. Before A rescinds the contract, B sells it to C, who purchases honestly without notice of the fraud. C obtains good title, and A cannot recover the refrigerator from C by subsequently rescinding the original contract. Thus, "unrescinded voidable contract" means a contract that remains effective until the entitled party sets it aside.

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This protection does not apply under Section 29 if the original contract was void from the outset or had already been rescinded before the resale.

### **30. Seller or buyer in possession after sale**

#### **30.1 A transfer by a seller remaining in possession shall bind the owner where the transferee acts in good faith and without notice of the previous sale.**

Section 30(1) is an exception to *nemo dat quod non habet*. It means that when a seller has already sold goods but retains possession of them or their documents of title, a subsequent sale, pledge or other disposition accompanied by delivery or transfer can bind the first buyer, provided the recipient acts in good faith and without notice of the earlier sale. For example, A sells a specific refrigerator to B, and ownership passes to B, but B leaves it with A for later collection. A then resells and delivers it to C, who honestly has no notice of the earlier sale. C obtains good title, and B cannot recover the refrigerator from C. Thus, “shall bind the owner” means that the first buyer must recognise the later transfer as effective, as though they had authorised it. Mere resale without delivery or transfer of the goods or documents of title does not satisfy this provision.

#### **30.2 A buyer in possession with the seller’s consent shall pass the goods free of the seller’s lien or other rights to a transferee acting in good faith without notice of those rights.**

Section 30(2) is an exception to “*nemo dat quod non habet*.” It means that when a person has bought or agreed to buy goods and obtains possession of them or their documents of title with the seller’s consent, a subsequent sale, pledge or other disposition accompanied by delivery or transfer can defeat the original seller’s lien or other rights, provided the recipient acts in good faith and without notice of those rights. For example, A agrees to sell a refrigerator to B and allows B to take possession, while reserving ownership until full payment. Before paying in full, B resells and delivers it to C, who acts honestly without notice of A’s retained ownership. C obtains good title, and A cannot recover the refrigerator from C on the basis of that reservation. Thus, “free of the seller’s lien or other rights” means that the original seller cannot enforce those rights against the protected transferee.

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BL 3.3.2n Transfer of title

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The provision requires a purchase or an agreement to purchase; mere possession as a hirer with only an option to buy is insufficient.

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