

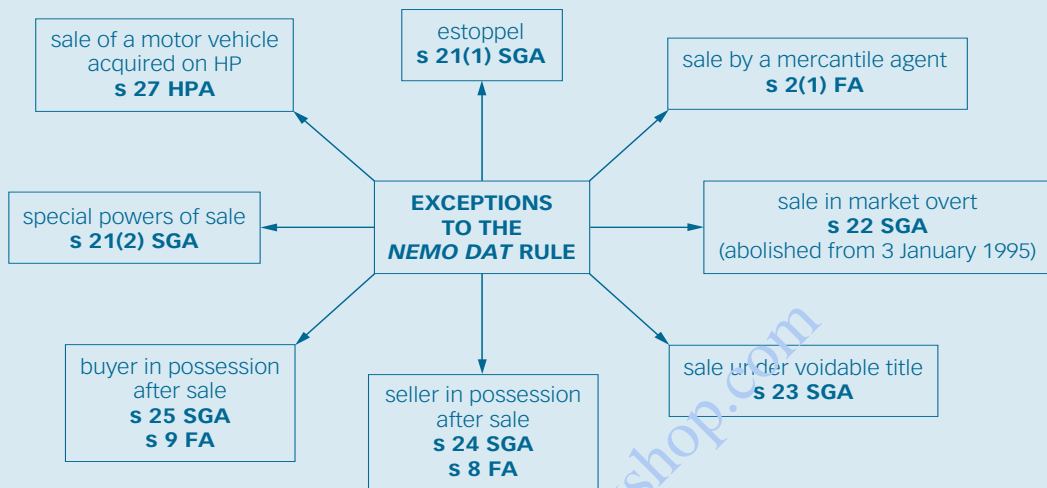
#7

Transfer of ownership by a non-owner

Key Facts

- *Nemo dat quod non habet* is often abbreviated to *nemo dat*. It means 'no-one can transfer what he has not got'.
- Therefore, a seller can only pass ownership of goods to a buyer if he owns or has the right to sell them at the time of sale.
- The *nemo dat* rule might apply where a buyer purchases stolen property but also arises where a seller has no right to sell the goods but nevertheless sells them.
- The *nemo dat* rule protects the true owner of the goods and the innocent purchaser gets no title whatever.
- There are several exceptions to the *nemo dat* rule. They are contained in the **Sale of Goods Act 1979** (hereafter referred to as the **SGA**), the **Factors Act 1889** (referred to as the **FA**), and the **Hire Purchase Act 1964** (referred to as the **HPA**). When any of these exceptions apply, the original owner of the goods loses his title in favour of the purchaser who would have lost out if the exception did not apply. These exceptions protect the innocent purchaser.

Chapter overview



Introduction

This chapter deals with the situation where a seller, who has no right to the goods, is nevertheless able to pass good title to a third party.

Typical situations where this might arise include:

- A steals the goods and sells them to B who buys them in good faith for value.
- A sells the goods to B1 but retains possession of them and then wrongly sells them again to B2.
- A passes his goods to B to seek offers for sale but B sells them without A's authority and keeps the proceeds of sale.
- A buys goods on credit terms and then resells or pledges them to B with no intention of paying for them.

The typical question that arises in such circumstances is which of two innocent parties should suffer for the fraud of a third? The courts have to choose between upholding the rights of the original owner of the goods and protecting the interests of a purchaser who buys the goods in good faith and for value.

Nemo dat quod non habet

The position was explained by Lord Denning in *Bishopgate Motor Finance Corporation Ltd v Transport Brakes Ltd* (1949):

In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by the common law itself and by statute so as to meet the needs of our own times.

The first of Lord Denning's principles can now be seen in **s 21(1) SGA**:

s 21(1) SGA:

Subject to this Act, where goods are sold by a person who is not their owner, 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.

Looking for extra marks?

The words in the above section 'where goods are sold' do not cover a situation where there is a mere agreement to sell goods (*Shaw v Commissioner of Police of the Metropolis* (1987)).

Revision tip

The *nemo dat* rule is simply stated in that no-one can transfer that which he does not have. There are exceptions to this rule and it is the exceptions that are key to your understanding of this subject.

Before looking at the exceptions to the *nemo dat* rule, let's briefly consider the position of a sale by an agent. It can be seen from **s 21(1)** that unless the goods are sold with the authority or consent of the owner then a buyer can acquire no title in them. However, the opening words in the subsection ('Subject to this Act') means that the section is subject to the provisions of the Act, **s 62(2)** of which preserves the common law rules pertaining to principal and agent. Therefore, a sale that is within the usual or ostensible authority of an agent will bind the owner of the goods even if outside the agent's actual authority.

See, further, Chapter 12, 'The creation of agency and the agent's authority', p 160.

Estoppel—s 21(1) SGA

The exceptions to the *nemo dat* rule are as follows:

Estoppel—s 21(1) SGA

Estoppel applies in cases where the owner of the goods acts in such a way that it appears that the seller has the right to sell the goods. As a consequence, the owner is then prevented (estopped) from denying the facts as he represented them to be. The third party purchaser then becomes the owner of the goods at the expense of the original owner.

The concluding words of s 21(1) ‘... unless the owner of the goods is by his conduct precluded from denying the seller’s authority to sell’ set out this exception. This is little more than the common law doctrine of estoppel. Nothing is said in the section as to when the owner is by his conduct precluded from denying the seller’s authority to sell although merely giving the third party possession of the goods will not amount to a representation that the third party is the owner or has the right to sell the goods (*Jerome v Bentley & Co* (1952)).

There are two distinct categories of estoppel to which s 21(1) applies.

- estoppel by representation; and
- estoppel by negligence.

Estoppel by representation

Estoppel by representation might arise where the owner of the goods has by his words or conduct represented to the buyer that the seller is the true owner of the goods, or has his authority to sell the goods. This category of estoppel is, therefore, sometimes sub-divided into estoppel by words and estoppel by conduct.

Shaw v Commissioner of Police of the Metropolis [1987] 1 WLR 1332

The owner of a Porsche advertised his car for sale. He was contacted by a swindler, Mr London, who claimed to be interested in purchasing it on behalf of a client. The owner allowed London to take delivery of the car. He also gave London a note stating that he had sold the car to him. This was, in fact, untrue as the owner merely authorised London to sell it on his behalf. C agreed to purchase the car from London (who had not paid the owner for it). London subsequently vanished and the ownership of the car became an issue. Notwithstanding that C had not paid London (or indeed anyone) for the car, he claimed that he had acquired good title under s 21(1). This was rejected by the Court of Appeal although on the rather unsatisfactory basis that s 21(1) only applies to a party who has actually purchased goods and not to one who has merely agreed to do so. This is unsatisfactory because s 21(1) appears to be a simple restatement of the common law principle of estoppel and, as such, ought to protect a party which has on the representation made acted to its prejudice. On this basis, the Court of Appeal could easily have rejected C’s claim simply because he had not acted to his prejudice as he had not paid the price.

A good example of the operation of the doctrine of estoppel can be seen in *Eastern Distributors Ltd v Goldring* (1957) (overruled on another ground by *Worcester Works Finance v Cooden Engineering Co* (1972)).

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Eastern Distributors Ltd v Goldring [1957] 2 QB 600

M wanted to raise finance on a van that he owned. He got together with a motor dealer (G) and they devised a scheme to deceive a finance company (E). They completed forms stating that M's van was in fact owned by G and M wished to acquire it on HP. E approved the HP agreement believing that the van was owned by G. This sort of transaction operates by the finance company (in this case E) purchasing the vehicle from the dealer (G) and then supplying it on HP terms to the customer (M). M failed to make his HP payments to E and sold the vehicle to an innocent purchaser (X). When the deception was discovered a dispute arose as to the ownership of the van. M was clearly the original owner and as such would be free to pass good ownership to X unless he had lost his ownership because of the deceit. It was held that because of M's representation that the van was not owned by him but by G he was estopped from asserting his ownership of it. Therefore, M had lost his title to the van under the doctrine of estoppel and E obtained good title when it purchased the van from G. E's ownership of the van did not pass (back) to M because under an HP agreement ownership is not transferred until all instalments have been made. Thus, as M did not own the van he could not transfer ownership to X.

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See, also, *Moorgate Mercantile Co Ltd v Twitchings* (1977), under 'Estoppel by negligence'.

Estoppel by negligence

Estoppel by negligence is where the owner of goods, by reason of his negligence or negligent failure to act, allows the seller of the goods to appear to the buyer as the true owner or as having the true owner's authority to sell the goods. For this kind of estoppel to arise it must first be shown that the owner of the goods had a duty to take care so as not to act negligently.

In *Moorgate Mercantile Co Ltd v Twitchings* (1977) both estoppel by representation and estoppel by negligence were pleaded. Both failed. C was a finance company and supplied a car on HP to X. C failed to register the HP transaction with HPI (an organisation set up by finance companies to prevent fraud in connection with the supply of vehicles on HP). Registering such a transaction with HPI was not compulsory although the majority of HP transactions were registered with it. X then offered to sell the car to D (a motor dealer). As X had not paid all the instalments he did not own the car and therefore didn't have the right to sell it. D contacted HPI to see if the car was registered with them (as having outstanding finance) and was told that it was not. D then bought the car from X. When the finance company discovered what had occurred they commenced proceedings against D. D contended that the finance company was estopped from asserting their title to the car arguing that:

- there existed an estoppel by representation because HPI had represented that the car was not the subject of an outstanding HP agreement and that this representation was given as agent of the finance company; and

Sale by a mercantile agent—s 2(1) FA

- there also existed an estoppel by negligence on the ground that the finance company failed to register the HP agreement with HPI.

By a majority, the House of Lords rejected both limbs of the doctrine and upheld the claimant finance company's claim. They rejected the argument based on estoppel by representation because the statement made by HPI was in fact true. HPI did not say that there was no outstanding finance on the car but only that nothing was registered with them. Furthermore, when responding to the finance company's request for information, HPI were acting in their own capacity and not as agents for them. Estoppel by negligence was rejected (Lords Wilberforce and Salmon dissenting) because the registering of HP agreements with HPI by its members was not compulsory and therefore the finance company was not under a duty to do so (or do so with reasonable care).

✓ Looking for extra marks?

The doctrine of estoppel in relation to the transfer of ownership by a non-owner is almost identical to the apparent or ostensible authority of an agent to transfer title in the goods in excess of his actual authority to do so.

Sale by a mercantile agent—s 2(1) FA

A mercantile agent is defined in s 1(1) FA:

s 1(1) FA:

The expression 'mercantile agent' shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

This exception to the *nemo dat* rule refers *only* to a person who is acting as a *mercantile agent* and is able to satisfy *all* of its requirements. Whether an agent will be considered in law to be a mercantile agent is not dependent on him being labelled as such in the contract but will be a matter of substance (*Weiner v Harris* (1910)). These will be difficult to establish. However, if this person (whether a mercantile agent or not) has actual or apparent authority to sell the goods then ownership will pass to the buyer under common law agency rules and it will be unnecessary to consider the rules of mercantile agency.

Section 21(2)(a) SGA expressly preserves the FA, s 2(1) of which sets out (together with the various cases) the requirements of mercantile agency, *all* of which must be satisfied:

1. He must be independent from the person for whom he is agent (his principal).
2. He must act in a business capacity (even if only occasionally).
3. He must be in possession of the actual goods or documents of title to the goods when he sells them on to the third party.

4. Such possession must:

- (i) be with the owner's consent (*National Employers Mutual General Insurance Association Ltd v Jones* (1990)). However, such consent may be established even if the owner was tricked into giving the agent possession (*Pearson v Rose & Young* (1951));
 - (ii) be in his capacity as mercantile agent and for a purpose connected with his business as a mercantile agent and the sale (*Pearson v Rose & Young* (1951)). Thus, possession of the goods by a mercantile agent for the purpose of, for example, repairing them would not satisfy this requirement; and
 - (iii) amount to current possession of the goods and not where he had been in possession in the past (*Beverley Acceptances Ltd v Oakley* (1982)).
5. He must actually sell or dispose of the goods. A mere agreement to sell them will not be enough.
6. The dealing in the goods by the mercantile agent must be in the ordinary course of business of mercantile agents generally. This means that the sale or disposition:
- (i) must be made during business hours;
 - (ii) from business premises; and
 - (iii) acting in such a way as the third party would expect a mercantile agent to act (*Oppenheimer v Attenborough* (1903)).
7. The third party must acquire the goods in good faith and without knowing that the mercantile agent lacked the authority to sell them. The burden of proof in this regard rests with the third party (*Heap v Motorists Advisory Agency Ltd* (1923)). The test of good faith is subjective and is satisfied when it is done honestly, irrespectively as to whether it is done negligently (s 61(3) SGA).

These requirements are lengthy and complex and will be difficult to establish. Unless all have been satisfied a non-owner will not be able to pass good title to a third party under s 2(1).

Finally, it should be noted that a mercantile agent is only able to pass that title which the person who consented to him having the goods or documents of title had in the first place. If that person was not in fact the owner of the goods (for example, because he had stolen the goods) then no title will be passed by the mercantile agent to the buyer.

Example:

Jim has bought a new hi-fi system and leaves his old one with his friend Peter who owns an electrical goods shop. Jim asks Peter to sell it for him but for no less than £500. Although Peter's main business is selling general electrical goods, he does occasionally sell hi-fi systems and therefore agrees to sell Jim's old one. Peter is absent-minded and sells Jim's old hi-fi for only £200 to Fred. Had Peter had authority (actual or apparent) to sell the hi-fi for this price then the contract with Fred would have been binding without there having been any need to consider the rules of

Sale under a voidable title—s 23 SGA

mercantile agency. However, Peter had no such authority and therefore whether or not Fred is now the owner of the hi-fi turns on whether the requirements of **s 2(1) FA** have been satisfied. In this example, they have been satisfied and Fred has thereby become the owner of the hi-fi system. Jim would, of course, have a claim against Peter for breaching his duty as agent to obey Jim's instructions. See Chapter 13, 'The relationships created by agency—the rights and liabilities of the parties', p 174.

Sale under a voidable title—s 23 SGA

It's important first to understand the difference between a **void contract** and one that is merely **voidable** since s 23 will only operate in the case of the latter.

Section 23 is only relevant in cases where the third party has actually bought the goods: it has no application in cases where there was merely an agreement to buy them. Further, **s 23** is distinguishable from the other exceptions in that it is incumbent on the original owner to show that the third party did not act in good faith (*Whitehorn Bros v Davison* (1911)). This can be contrasted with the other exceptions where it is for the third party purchaser to show that he did act in good faith.

Section 23 provides that if a party who has a voidable title to the goods resells them to an innocent third party then that third party will gain good title to them provided that the original contract has not by then been avoided. If the party with the voidable title resells the goods to an innocent third party after the contract has been avoided then there will no longer be any title in the goods which would be capable of being passed to the third party.

This calls for consideration of two points:

In what circumstances might a contract be voidable?

Examples of situations where a seller has a title that he may choose to avoid are where he has obtained possession of the goods by fraud (unless the fraud is such that the offer or acceptance is nullified) or where a person induces another to sell goods by means of duress, undue influence, or misrepresentation. In such situations the seller can choose, if he so wishes, to avoid the contract.

What needs to be done to avoid a contract that is voidable?

The most obvious way of avoiding a voidable contract in this type of situation is for the party defrauded etc to inform the other party that the contract is no longer binding or by evincing an intention to do so and by taking all possible steps such as notifying the police in cases of fraud (*Car & Universal Finance v Caldwell* (1965)).

Car & Universal Finance v Caldwell [1965] 1 QB 525

A rogue bought a car and fraudulently induced the seller to part with it in return for a cheque which later proved worthless. As soon as the seller was aware of this fraud he informed the police and the Automobile Association. The Court of Appeal held that this was enough to avoid the (voidable) contract. However, before the car or the rogue could be traced the rogue sold the car to an innocent third party. Because by this time the title had already been avoided by the seller the innocent purchaser acquired no title under s 23.

✓ Looking for extra marks?

The decision in *Car & Universal Finance* is rather harsh on the innocent third party purchaser. It is also rather arbitrary in application as the innocent party's claim to the goods bought in good faith will depend on the speed that the original owner takes in avoiding the contract and the speed taken by the rogue to resell the goods. In the almost factually-identical Scottish case of *McLeod v Kerr* (1965) the Court of Session held that 'by no stretch of imagination' could the seller's conduct amount to rescission of the contract.

Given the difficulty faced by an innocent purchaser in gaining title under s 23, he should consider a claim under s 25 ('Sale by a buyer in possession after sale—s 25 SGA/s 9 FA', p 92) as he is also likely to be a 'buyer in possession after a sale'.

Sale by a seller in possession after sale—s 24 SGA/s 8 FA

This exception to the *nemo dat* rule allows a seller who, after a sale, remains in possession of the goods or of the documents of title to them, to pass a good title to a second buyer. Section 24 SGA is almost identical to s 8 FA although s 8 is slightly wider in its application than s 24. Provided the requirements are satisfied the effect shall be 'as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same'.

This exception operates in the following way:

Example

Suppose a seller (S) sells goods to a buyer (B1). B1 now owns the goods. Therefore, as S no longer has any interest in them he clearly cannot pass title to anyone else. But let's say that S keeps possession of the goods (or the documents of title to them) for a few days until B1 is able to collect them and during this time he sells them again to a second buyer (B2). In this example, even though S no longer has any ownership in the goods and therefore would not ordinarily be in a position to transfer title to anyone, B2 obtains good title to the goods at the expense of B1. B1, of course, could sue S for non-delivery of the goods.

Sale by a buyer in possession after sale—s 25 SGA/s 9 FA

It was once the position that for a third party to succeed under this exception he was required to show that the seller was in possession of the goods as a seller and not in some other capacity (*Staffordshire Motor Guarantee Ltd v British Wagon Co Ltd* (1934); *Eastern Distributors v Goldring* (1957)). However, the Privy Council in *Pacific Motor Auctions Pty Ltd v Motor Credits Ltd* (1965) said that these decisions had been wrongly decided and held that the words 'continues or is in possession' (under the New South Wales equivalent to our s 24) referred only to the continuity of actual possession rather than the capacity in which the seller had the goods in his possession. Being a decision of the Privy Council this decision is only of persuasive authority in the English courts although it has since been followed by the Court of Appeal in *Worcester Works Finance Ltd v Cooden Engineering Co Ltd* (1972) which held that the correct approach is one of continuity of possession rather than examining whether the seller was in possession of the goods 'as seller' or in some other capacity, such as **bailee**. Thus, provided the seller remained, without interruption, in physical possession of the goods, then the innocent second buyer gets good title under this exception to the *nemo dat* rule.

It is important that the seller disposes of the goods to the second buyer under a 'sale, pledge or other disposition'. A 'disposition' will occur whenever a new legal or equitable interest is created although it won't by merely giving possession of the goods to the second buyer (*Worcester Works Finance Ltd v Cooden Engineering Co Ltd* (1972)).

The second buyer must take delivery of the goods or of the documents of title to them. A question arose in *Michael Gerson (Leasing) Ltd v Wilkinson* (2001) that in respect of a sale and leaseback agreement where the original machinery doesn't actually leave the premises, a constructive delivery of the goods will suffice.

Sale by a buyer in possession after sale—s 25 SGA/s 9 FA

This exception allows a buyer in possession of the goods to pass good title even where such a buyer has not got any such title to pass. This operates in the following way.

Example

A buyer (X) takes possession of goods that he has agreed to buy although he has not yet acquired title to them. The reason why he has not yet acquired title is immaterial but might be because of a retention of title clause in the contract or because his cheque in payment of the goods has been dishonoured by his bank and it was a condition of the contract that title will not pass until the goods have been paid for. He then sells the goods to Y. Y obtains good title to the goods even though X did not himself have ownership of them.

The following conditions need to be satisfied for this exception to operate:

1. The protection afforded to a third party is only available if the goods or documents of title were in the possession of the buyer with the consent of the seller. Thus the seller

of the goods must have consented to the first buyer obtaining possession of the goods or of the documents of title to the goods.

2. As can be seen from the statute, delivery to the second buyer must be made under a sale, pledge, or other disposition.
3. It will only apply to transactions where the first buyer actually buys or agrees to buy the goods. It will not operate if he merely acquires the goods on hire purchase (*Helby v Matthews* (1895)). It will not apply to a contract to provide services or where the first buyer acquired the goods under a 'sale or return' contract.
4. It operates to defeat the title only of an owner who has entrusted to a buyer the possession of his goods or documents of title. Consent only of the owner in respect of such possession is crucial (*National Employers Mutual General Insurance Association Ltd v Jones* (1990)).
5. The goods or the documents of title to the goods must be delivered to the second buyer. As noted under 'Sale by a seller in possession after sale—s 24 SGA/s 8 FA, p 92, constructive delivery will suffice.
6. The second buyer can only succeed under this exception and thereby take good title if he takes the goods in good faith and without notice of the first buyer's defect of title.
7. When selling or otherwise disposing of the goods, the first buyer must act in the way a mercantile agent acting in the ordinary course of business of a mercantile agent would act.

Any title passed under this exception is the same title as the original owner had. It follows, therefore, that if the original owner himself had no title in the goods (for example if he had stolen them) then s 25/s 9 will not pass any title to the innocent buyer (*National Employers Mutual General Insurance Association Ltd v Jones* (1990)).

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Newtons of Wembley Ltd v Williams [1965] 1 QB 560

In this case a rogue bought a car in exchange for a cheque which later proved to be worthless. The seller attempted to trace the rogue and informed the police. Before the rogue could be traced, he sold the car in a market to an innocent purchaser. The Court of Appeal held that the innocent buyer acquired good title. It was significant that the market was one where dealers commonly sold cars because it meant that the rogue had sold it in the way a mercantile agent acting in the ordinary course of business of a mercantile agent would have sold it.

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Sale of a vehicle acquired on hire purchase—s 27 HPA

As noted above s 25/s 9 only apply to transactions where the first buyer actually buys or agrees to buy the goods and not to a person who acquires the goods on hire purchase.

Sale of a vehicle acquired on hire purchase—s 27 HPA

It follows, therefore, that a person who has acquired goods on hire purchase and sells them before he pays the final instalment will pass no title to a buyer.

Part III of the HPA makes an exception to the above but only in the case of a sale of a motor vehicle that was acquired by hire purchase. In broad terms, this means that a bona fide purchaser of a motor vehicle from a person in possession under a hire purchase agreement or conditional sale agreement obtains good title to the vehicle. The sale of anything other than a motor vehicle is not covered under this exception. So, if X acquires a car and a piano on hire purchase and sells them both to Y before he has paid the final instalment then (provided the requirements of s 27 are satisfied) Y will obtain good title to the car but not the piano.

A purchaser will acquire good title to a motor vehicle provided the requirements of s 27 are satisfied. (Bicycles, caravans, and the like are not motor vehicles and are therefore not covered):

1. There needs to be a disposition, the timing of which is important. See *Kulkarni v Manor Credit (Davenham) Ltd (2010)*, p 95.
2. The seller must be in possession of the motor vehicle either as a hirer under a hire purchase agreement or purchaser under a conditional sale agreement.
3. **Section 27** only applies to pass title to a private purchaser. A few notes about a private purchaser are needed:
 - (a) once the private purchaser has acquired title under s 27, he can then pass title on to anyone;
 - (b) **section 27** protects only the first private purchaser who buys the vehicle in good faith. This means that if X acquires a motor vehicle on hire purchase and before making the last payment wrongly sells it to Y, a motor dealer, who then resells it to Z, a private purchaser, who buys it in good faith and without notice of the hire purchase arrangement and therefore is unaware of the defect in both X's and Y's title, Z acquires good title to the vehicle notwithstanding that he has purchased it from Y rather than from X who was the original hirer and even though Y did not acquire any title himself. Note that in this example, s 27 does not pass ownership to Y as Y is not a private purchaser. Z is the first private purchaser and, as such, acquires good title to the vehicle. Z can then pass title in the ordinary way to a subsequent purchaser as he now owns the vehicle;
 - (c) a person who is a motor dealer, even part-time, is not deemed to be a private purchaser for the purposes of s 27 even if he buys the car for his own personal use (*Stevenson v Beverley Bentinck Ltd (1976)*); and
 - (d) neither is a person who buys several cars for the purpose of selling them on for gain (*G E Capital Bank Ltd v Rushton (2006)*).

4. The private purchaser must either purchase the motor vehicle or acquire it on hire purchase.
5. The private purchaser must act in good faith and without notice of the hire purchase or conditional sale agreement.

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Kulkarni v Manor Credit (Davenham) Ltd [2010] EWCA Civ 69.

K ordered a new car from a dealer (G). G then acquired the car from a finance company (M) under a hire purchase agreement and, in breach of that agreement, sold and delivered it to K later that same day. Three days earlier G had given K the car's registration number so K could insure it. When M discovered G's fraud they repossessed the car. K brought a claim against M in conversion, asserting title under s 27. The key issue was whether there had been a disposition of the car at a time when G was a hirer of it. It was K's case that there could be no transfer of the property in the car until delivery because the car had not been in a deliverable state until its registration plates had been attached. The Court of Appeal held that as there was no evidence that the registration plates had been attached to the car prior to delivery, K would not have been bound to take delivery and therefore the car was not in a deliverable state before delivery. On that basis K was a purchaser under a disposition which first took place upon delivery. The exception under s 27 therefore applied meaning K succeeded in his claim against M.

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It was noted above that the seller must be in possession of the motor vehicle either as a hirer under a hire purchase agreement or purchaser under a conditional sale agreement. In *Shogun Finance Ltd v Hudson* (2003) a rogue took possession of a vehicle under a hire purchase agreement by using a stolen driving licence as evidence of his name and address. He then resold the vehicle to Mr Hudson and disappeared. When the finance company found out about the fraud they sued Mr Hudson in conversion. The House of Lords held the agreement to be void for mistake as the finance company clearly intended to deal with the person actually named on the agreement rather than the rogue. As the rogue was not a seller in possession of the vehicle under a hire purchase agreement Mr Hudson could not rely on s 27 to acquire title.

Finally, it should be noted that any title that passes under s 27 will be the same as the creditor had who let the motor vehicle. As with the other exceptions, no title will pass if the creditor had no title in the first place.

Even in cases where a private buyer acquires title under s 27, it does not exonerate the seller from either civil or criminal liability for making the sale (s 27(6); *Barber v NWS Bank plc* (1996)).

Sale in market overt—s 22 SGA (now repealed)

This was the oldest of the exceptions to the *nemo dat* rule. A sale in market overt occurred when goods were sold in an established market between the hours of sunrise and sunset. The basis of this exception was that a dishonest person would be unlikely to sell stolen goods or goods that he did not own in such a market. The rule seems to reflect the high degree of supervision that was seen in established markets in the Middle Ages.

It was clearly an outdated exception and was abolished by s 1 **Sale of Goods (Amendment) Act 1994** for contracts made after 3 January 2005.

Special powers of sale—s 21(2) SGA

Section 21(2) covers miscellaneous situations in which a non-owner of goods may nevertheless pass good title to a purchaser. These situations include:

- common law powers of sale, for example, that of a pawnbroker selling the goods of the pledgor when the loan remains unpaid;
- statutory powers of sale, such as the powers given to law enforcement officers to sell goods seized under a writ of execution. In such a case, it gives a good title to the purchaser of the goods sold by a bailiff which have been taken by the bailiff out of the possession of the execution debtor, irrespective of whether or not the purchaser had notice that the goods in question were not the property of the execution debtor (*Dyal Singh v Kenyan Insurance Ltd* (1954));
- other statutory provisions, such as seen in *Bulbruin Ltd v Romanyszyn* (1994) where the Court of Appeal held that a purchaser who acquired a vehicle from a local authority exercising its power of sale under the **Road Traffic Regulation Act 1984** acquired good title to the vehicle even if the vehicle has been stolen before coming into the hands of the local authority;
- sale by order of a court. A court may order the sale of goods ‘for any just and sufficient reason ...’ despite any objections or claims by the original owner (*Larner v Fawcett* (1950)).

Revision tip

Each of the exceptions to the *nemo dat* rule requires that the purchaser who is claiming good title to the goods must have acted in good faith and he has the burden of proving that he has so acted.

Section 23 is different in that the burden of proving lack of good faith rests with the original owner of the goods.

Key debates

Topic	'The importance of delivery and possession in the passing of title'
Author/Academic	Louise Merrett
Viewpoint	The article evaluates the operation of statutory exceptions to the <i>nemo dat</i> rule. It reviews the exceptions in SGA, ss 24 and 25 governing sales by a seller or buyer in possession of goods and discusses, with reference to case law, the meaning of 'continue in possession', the practical problems caused by the need for continuous physical possession, and the importance of 'delivery' and 'possession' having consistent meanings throughout the Act.
Source	[2008] <i>Cambridge Law Journal</i> 67(2), 376–395

Topic	'No justice for innocent purchasers of dishonestly obtained goods'
Author/Academic	Catherine Elliott
Viewpoint	This article discusses the injustice resulting from the House of Lords' decision in <i>Shogun Finance Ltd v Hudson</i> (2003) on an innocent purchaser of a motor vehicle as it removes from the scope of s 27 a transaction where a rogue impersonates another person in order to acquire a vehicle either on hire purchase terms or under a conditional sale agreement.
Source	[2004] <i>Journal of Business Law</i> 381–387

Exam questions

Problem question

Roger acquired on hire purchase a car from Dave's Finance Ltd. Immediately on taking delivery of the car Roger sold it to Peter, a car dealer, who wanted it as a gift for his wife's birthday. Before buying the car, Peter carried out an HPI check on the car and was told by HPI that it was not registered with them as being subject to any finance arrangement. It appears that Dave's Finance Ltd frequently forgot to notify HPI of their finance agreements. Peter's wife didn't like the car so Peter sold it on to his friend George who is another car dealer. George put the car on his forecourt and sold it to James, a retired local butcher.

Roger has not made any payments to Dave's Finance Ltd who have now found out that Roger no longer has the car. They have contacted James requesting the car's return.

Advise the parties as to who now owns the car.

Exam questions

Essay question

In *Bishopgate Motor Finance Corporation Ltd v Transport Brakes Ltd* [1949] 1 KB 322 Lord Denning stated that:

In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by the common law itself and by statute so as to meet the needs of our own times.

Critically evaluate the principles of transferring ownership in goods by a non-owner in light of this statement.



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