

The Doctrine of Nemo Dat Quod Non Habet and Its Exceptions

Elham Balavar*

Department of law, Rafsanjan Branch, Islamic Azad University, Rafsanjan, Iran

Received: February 5 2014

Accepted: March 13 2014

ABSTRACT

The old common law rule on Nemo Dat Quod Non Habet (*'no one can give what he has not'*) is found in the English section 21(1) and in the equivalent Malaysian Sale of Goods Act 1957 section 27(1), the latter which states that:

'Subject to this Act and for any law for the time being force, where goods are sold by a person who is not the owner thereof, and does not sell them under the authority or with consent of the buyer, 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.'

The rule means no one can transfer a better title than he himself has. Thus if goods are purchased from a person who is not the owner and who does not sell them under owner's authority, the buyer does not acquire a title to any of the same notwithstanding that he has paid value for the same in good faith. In this research we discuss around this subject and their results.

KEYWORDS: Doctrine; Nemo Dat Quod Non Habet

INTRODUCTION

The old common law rule on Nemo Dat Quod Non Habet (*'no one can give what he has not'*) is found in the English section 21(1) and in the equivalent Malaysian Sale of Goods Act 1957 section 27(1), the latter which states that:

'Subject to this Act and for any law for the time being force, where goods are sold by a person who is not the owner thereof, and does not sell them under the authority or with consent of the buyer, 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.'

The rule means no one can transfer a better title than he himself has. Thus if goods are purchased from a person who is not the owner and who does not sell them under owner's authority, the buyer does not acquire a title to any of the same notwithstanding that he has paid value for the same in good faith. Hence, if Tom owns a pen and sells it to Dick, the latter obtains a good title of ownership. However if the pen is thence stolen and the thief sells it to Harry, Harry would not get title to or ownership in the pen either because the thief did not have any title or ownership. The pen would still be owned by Dick and he could claim it back from Harry. Thus the object of this rule is to protect the right of ownership, with the right of the original owner retained in event of his possession stolen and sold to an unsuspecting third party. Both the unauthorized seller and the innocent purchaser may be sued for the tort of conversion which is a civil action against a person for dealing with goods of another inconsistent with that person's ownership.

In civil code of Iran, aspects of right have various dimensions. In division of privacy of Iran law, right has to be divided into two categories; financial rights and non-financial rights. Financial rights means; it is a privilege that each country's legal gives individual in order to meet the material needs of persons. The financial rights have ability to transfer and ensure its existence is right. Article 247 civil code of Iran state that; contracts regarding the property except those entered into by natural guardians, executors or legal representatives, of property inwardly agrees, there to; if however, after the contract has been made the owner of the property signifies his consent, the contract becomes binding. In civil code, whether written or the common law legal systems, as a general rule in the contract; in all cases, the transfer of rights, the transferee cannot has more than rights, which transferor would have. It is true that, necessary to transfer is existence of right. But, in many cases, appearance is such transferee with full confidence that status quo, there is a right that is deemed non-existent and in exchange for, will pay consideration.

It is a principle rule that no one can give what he has not got. Section 27 Of the SOGA sets out the general rule as follows:

... where goods are sold by a person who is not the owner

*Corresponding Author: Elham Balavar, Department of law, Rafsanjan Branch, Islamic Azad University, Rafsanjan, Iran.

This rule means no one can transfer a better title than he has himself. Thus if goods are purchased from a person who is not the owner and who does not sell them under owner's authority, the buyer does not acquire a title even if he has paid value in good faith.

The object of this rule is to protect the right of ownership so that if, for example, goods are stolen and subsequently sold, the right of the original owner is retained. Both the unauthorized seller and the innocent purchaser may be sued for the conversion which is a civil action against a person for dealing with goods of another inconsistent with that person's ownership. In *Lim Chui Lai v Zeno Ltd* [1964] 30 MLJ 314, Zeno Ltd entered into an agreement with a contractor named Ahmad who had

The rule that someone without title cannot without authority transfer title is illustrated in

Greenwood v Bennet*. In this case, Bennet, the original owner of a Jaguar car entrusted it to one Searle for some repairs to be carried out. Searle was a rogue and used it for his own purposes. He had a crash and damaged it extensively. Entirely without authority he sold it for 75 pounds to Harper, a garage proprietor who was not aware that Searle was not the owner. Harper spent 226 pounds on repairing it and sold it to the finance company. The court held that the car still belonged to Bennet. Searle did not have the title and therefore could not transfer it to Harper.

In the leading Malaysian case of **Lim Chui Lai v Zeno Ltd**† the facts of the case are as follows in that Ahmad bin Haji Yacob (a contractor) had secured a contract from Petaling Jaya Authority for the construction of culverts. In January 1961, the respondent company entered into an agreement with Ahmad to provide him with materials of the project and delivered them to the construction site. In June 1961, the respondents discovered that the Petaling Jaya Authority, after having some trouble with Ahmad, had thereafter cancelled his contract. The respondents then informed the Petaling Jaya authority that the materials on the site belonged to them. On attempting to sell the materials, the respondents discovered that the material had been sold by Ahmad to the appellant for \$14,000 in which Ahmad had received \$7,000 in part-payment. The respondents then commenced the action for conversion. The trial judge gave judgment for the respondents. On appeal, the appellants contended that, inter-alia as the respondents caused the chattels to be delivered to Ahmad, he had become the owner of the chattels and as such could pass good title in respect of the chattels to the appellant. It was held that Ahmad was merely a bailee and not an owner of the chattels at the time he sold them to the appellant; having no title nor the authority to sell the same and thus unable to confer good title or ownership to the appellant under the doctrine of Nemo Dat and section 27(1) of the Sale of Goods Act 1957 therein.

However this old common law rule of Nemo Dat Quod Non Habet has been to a large extent eroded by the statute and by the courts so that, provided certain conditions are met, title can be transferred to a bona fide party whom have bought the goods from the person who had no authority to sell in the first place, leaving the original owner of the goods with no title, possession or ownership.

The first of the exceptions to the doctrine of Nemo Dat is the doctrine of Estoppel. Thus if an estoppel is raised, the original owner is estopped from asserting that the sale was unauthorised and or from suing the buyer for the tort of conversion. An estoppel is raised (a plea made by the purchaser) when the original owner by his statements or conduct leads the innocent purchaser to believe that the unauthorised seller in fact had the right to sell the goods. Thus, for the innocent purchaser to obtain a good title by estoppel, the following requirements must be fulfilled in that:

- (i) The original owner must have made representations by his statement or conduct that the seller was entitled to sell the goods
- (ii) The representations must have been made intentionally or negligently
- (iii) The representation must have misled the innocent purchaser
- (iv) The innocent purchaser must have bought and not merely agreed to buy the goods

What conduct by the original owner will thus amount to a representation that the seller has the right to sell the goods? In **Eastern Distributors v Goldring**‡, the customer wished to obtain a loan on his van. He and a motor trader got together to deceive the finance company. They each filled in their respective forms as if the van belonged to the trader and as if the customer wished to acquire the van on hire purchase terms. Everything appeared in order to the finance company, which it duly accepted the forms believing the trader to be the owner of the van. Thus, the finance company bought the van from the trader and transferred it to the customer; the customer in turn sold it to X, an innocent purchaser. The fraud was only discovered when the customer defaulted on the loan and question arose as to who the rightful owner is as to the vehicle. The court held that the customer had by the doctrine of estoppel

* (1972) 1 WLR 691

† [1964] MJJ 314, FC

‡ (1957) C.A

lost his ownership to the finance company. He had submitted through the trader a form offering to acquire the van on hire purchase terms; thus he had represented to the latter that the van was not his but belonged to the trader. He had; also conveyed the message that he did not own the van and that in so far as he was concerned, the seller (trader) had every right to sell it.

From the above discussion, it is clear that mere possession entrusted by the original owner is not enough for a purchaser to raise the plea of estoppel against the original owner for the representation must be intentional or negligent. In **Central Newbury Car Auctions v Unity Finance**[§] a customer wished to acquire a car on hire purchase terms. He and the motor trader filled in the usual forms. Before the finance company's reply was received, the trader allowed the customer to take delivery of the car together with the registration document. The customer thence sold the car to X. The finance company rejected the offers. It was held that the car still belonged to trader. The trader, in allowing the customer to have possession of the car did not amount to a representation that the customer had the right to sell it. His giving him the possession of the car registration document is immaterial since it is not a document of title at law.

In **Eastern Distributors v Goldring**^{**}, it was intentional (intentional deception). In **Moorgate Mercantile v Twitchings**^{††} it was held that carelessness did not amount to negligence unless that carelessness was a breach of a legal duty to take care. In the Malaysian case of **Syarikat Batu Sinar Sdn Bhd & Ors v UMBC Finance Bhd & Ors**^{‡‡} a leasing company purchased a reconditioned 'Caterpillar' tractor from a dealer and then leased it to the plaintiff ('the lessee'). The vehicle's registration card showed that the dealer to be the first registered owner and the finance company to be the second registered owner. The card was endorsed with the effect that the right of ownership was claimed by the leasing company. Although the plaintiffs were unaware of the fact, the dealer had earlier sold the tractor to UMBCF, without the registration card. UMBCF failed to register its ownership claim on the registration card, but asked the dealer to effect registration and had claimed ownership in a letter to the dealer. UMBCF hired the tractor to the second defendant and when he defaulted in making payments due, purported to repossess the vehicle. The plaintiffs asserted their ownership. It was held by the High Court that by their failure to register with the Registrar and Inspector of Motor Vehicles, UMBCF were precluded from denying the dealer's authority to sell. The failure constitute estoppel by negligence.

Lastly, an estoppel can only be raised if the representation misled the innocent purchaser. In **Furquharson Bros. v King**^{§§} a timber firm owned some timber which was in the possession of a dock company. The firm told the dock company to deal with the timber according to the instructions of a clerk of the firm. The clerk, who was a rogue, instructed the dock company to hold the timber to the order of 'Brown' which was the clerk under an assumed name. In his assumed name of Brown, he sold the timber to an innocent purchaser. To whom did the timber belong? The House of Lords held that it still belonged to the timber firm. The statement made by the timber firm to the dock company had not come to the attention of the innocent purchaser; it therefore could not have misled him. The only thing which misled the purchaser was Brown's roguery; thus no plea of estoppel could be raised against the timber firm. In short; where an innocent purchaser is able to rely upon the plea of estoppel, property in the goods passes to him as if the seller himself has good title to give.

Another alternative from the doctrine of estoppel is an owner may be precluded from denying the seller's authority to sell wherein the owner has signed a document clearly conveying the implication that the seller is entitled or authorized to sell the goods. Hence, as in the case of **Saunders v Anglia Building Society**^{***} there is a rule that normally a person is bound by his signature and that it also applies to someone signing a document with blanks for the particular transaction not filled in but agreeing to, or authorizing another to fill in the blanks later as in the case of Mrs. Hamblin who not only signed the proposal form which was incompletely filled but also authorized or agreed to the trader to fill in the same later. In Malaysia, with regard to hire purchase agreement, under section of the Hire Purchase Act 1967, section 4B(2), the hire purchase agreement cannot not be signed unless and until it is completely filled failing which according to section 4(B)(3), the agreement is invalid per se.

The second exception to the doctrine of Nemo Dat is the sale by merchantile agent which is defined in section 2 of the English Factors Act 1889 and in the Malaysian equivalent section 2 and the proviso of section 27 of the Sale of Goods Act 1957. Section 2 and the proviso of the Malaysian Sale of Goods Act 1957 are as follows:

[§] (1957) C.A

^{**} ibid

^{††} (1976) H.L

^{‡‡} (1980) 3 MLJ 468

^{§§} (1902) H.L

^{***} (1970) H.L

‘a merchantile agent means a merchantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods or to raise money on security of goods’

‘Provided that where a merchantile 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 merchantile 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 no authority to sell.’

Thus, for the innocent purchaser to obtain a good title in a good purchased from a ‘merchantile agent’ the following requirements must be fulfilled in that:

- (i) the seller must be a merchantile agent i.e a factor
- (ii) the merchantile agent must be in possession of the goods or documents of title and he must have that possession at the time he sells, pledges or otherwise disposes of the goods
- (iii) the merchantile agent must be in possession of the goods or documents of title in his capacity as a merchantile agent
- (iv) the merchantile agent must be in possession of the goods or document of title with the consent of the owner
- (v) the merchantile agent in disposing of the goods must have been acting in the ordinary course of business of a merchantile agent
- (vi) the person taking the goods must have taken them in good faith without notice of the agent’s lack of authority

Hence as for the first requirement the merchantile agent (a factor) must be an independent from his principal for whom he is an agent; thus a mere servant, ‘shopman’ or caretaker is not a merchantile agent. Thus as held in the case of **Lowther v Harris**^{†††} a merchantile agent need not regularly carry on business as an agent but that on that material occasion in question he was acting as a business proposition. Thus, in **Lowther v Harris**^{†††}, an agent was entrusted with a tapestry with a view of selling it but can only conclude a sale by referring back to the principal. In fact he sold the tapestry to an innocent purchaser without first referring to the principal. Wright J held that an agent who had no general occupation as an agent, who normally bought and sold goods on his own account and was agent for only one principal was a merchantile agent. Thus as section 2 of the English Factors Act were fulfilled, the innocent purchaser had good title to the tapestry.

It is also important to note that an agent can only be within the definition of a merchantile agent if he is authorised to deal with goods in his own name without disclosing his agency. Lord Denning M.R. in the case of **Rolls Razor Co v Cox**^{§§§} states that:

‘The usual characteristic of a factor are these. He is an agent entrusted with the possession of goods of several principals, sometimes only one principal, for the purpose of sale in his own name without disclosing the name of this principal and he is remunerated by the omission. These salesmen lacked one of those characteristics. They did not sell in their own names but in the name and on behalf of the principals, the Company. They are agents pure and simple and not factors.’

The second requirement states that the merchantile agent must be in possession of the goods or documents of title and he must have that possession at the time he sells, pledges or otherwise disposes of the goods. A motor vehicle’s registration book alone is not a document of title and without the accompanying vehicle itself cannot convey good title as evidenced in the case of **Beverly Acceptances v Oakley**^{****}. On the other hand, a bill of lading given by a ship owner acknowledging that he has received the shipped goods is a document of title.

The third requirement is that the merchantile agent must be in possession of the goods or documents of title in his capacity as a merchantile agent. This is purely academic in that the car owner who for example, leaves his car with a garage for repairs does not consent to the garage having possession in its capacity as a merchantile agent (i.e as a dealer); therefore the garage cannot transfer good title under section 2 therein.

The fourth requirement is that the merchantile agent must be in possession of the goods or document of title with the consent of the owner. The fact that consent was obtained by

a trick or fraud is irrelevant and it is immaterial so long as the same is given in his capacity as a merchantile agent. Consent must also be able to ‘clothe’ the agent with an apparent authority to sell the goods. In **Pearson v Roe and Young**^{††††}, Pearson left his car with Hunt, a merchantile agent, to see what offers for it were made. He had

^{†††} (1926) K.B.

^{†††} ibid

^{§§§} (1967) C.A

^{****} (1982) C.A

^{††††} (1950) C.A

not authorized Hunt to conclude a sale, nor did he intend to pass the property in the car. In fact he did not intend to leave the registration document but showed it to the dealer who arranged a trick whereby the owner was called away on an imaginary emergency thereby forgetting the registration document. The dealer then sold the car. It was held that even though possession of the car was obtained by a trick, this was sufficient consent for the purpose of the proviso, since possession was with a view of obtaining a sale. With regard to the possession of the registration document, it was held that the agent was not in possession with permission of the owner. Thus, the purchaser could not get a title to the car.

The same position was followed in the case of **Stadium Finance v Robbins**^{****} where the owner left his car with the dealer with instructions to see what offers could be obtained from it. He retained the ignition key though accidentally left the registration document locked in the glove compartment. The rogue dealer supplied his own key, found the registration document and sold the car. It was held that the owner had not clothed the dealer with the apparent authority since he retained the ignition key and had not consented to the dealer having possession of the registration document.

The fifth requirement is that the merchantile agent in disposing of the goods must have been acting in the ordinary course of business of a merchantile agent. Hence as discussed earlier, selling a second hand car without an ignition key or registration document would not be in ordinary course of business and so no good title will be conferred on the new purchaser at all. In the case of **Oppenheimer v Attenborough & Sons**^{ssss}, the merchantile agent is a diamond broker, Schwabacher. Schwabacher induced the diamond merchant, Oppenheimer to let him have some diamonds so that he could show them to potential purchasers. Instead of selling them, Schwabacher pledged them with Attenborough & Sons (a firm of pawn brokers) as security for an advance to himself. The pawnbroker did not know of a custom in the diamond trade that a broker had no authority to pledge diamonds, and they took the diamonds in good faith. It was held that he pledge was valid under the English section 2 Factors Act for the disposition had been made by a merchantile agent acting in the ordinary course of business, even though he had no authority to pledge by the custom of trade. Thus the pledgee obtained good title to the diamonds.

The sixth requirement is that the person taking the goods must have taken them in good faith without notice of the agent's lack of authority. Thus the burden of proof is on the purchaser to show that he takes the goods in good faith and without notice of the agents lack of authority.

The third exception to the rule of Nemo Dat is that of sale under a voidable title where an innocent purchaser takes good title if he is bona fide in a voidable contract that has not yet been avoided. It is provided in section 23 of the English Sale of Goods Act 1979 and the Malaysian equivalent of section 29 of the Sale of Goods Act 1957 states that:

‘Where the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 20 of the Contracts Act 1950, but the contract has not yet been rescinded at the time of sale, the buyer acquires a good title to the goods provided he buys them in good faith and without notice of the sellers's defect of title.

Thus there are three requirements for the transfer of a good title to the purchaser under a voidable contract in that:

(i) The seller of the goods has obtained possession under a contract voidable under section 19 or section 20 of the Contracts Act 1950

(ii) The voidable title or contract has not been avoided by the aggrieved party who consent had been given through the element of fraud, coercion, undue influence and or misrepresentation

(iii) The buyer is bona fide and without notice of the seller's defect in title

What is a voidable contract? A voidable contract, according to section 2(i) of the Malaysian Contracts Act 1950 is ‘an agreement which is enforceable at law at the option of one or more parties thereto, but not at the option of other or others, is a voidable contract.’ An agreement where consent is caused by either fraud, duress, coercion, undue influence and or misrepresentation is an agreement that is voidable at the option of the party so aggrieved by the same but so long the contract is not avoided, it is valid and enforceable giving rights to both parties, and in particular the perpetrator of those element or elements from which consent had been caused. The Malaysian Contracts Act 1950 curiously segregate these elements into different sections. Section 19 states that ‘where consent is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party who is so caused.’ Section 20 states that ‘when consent is caused by undue influence, the agreement is a contract voidable at the option of the party is whose consent is so caused. Any contract may be set aside either absolutely or, if the party who was entitled to avoid it has receive any benefit thereunder upon such terms and

^{****} (1962) C.A

^{ssss} (1904-05) All E.R 1016

conditions as to the court may seem just.’ Thus the conditions giving rise to voidable contracts is wrapped under section 14 in which ‘consent is said to be free when it is not caused by:

- (a) Coercion, as defined in section 15;
- (b) Undue influence, as defined in section 16;
- (c) Fraud, as defined in section 17;
- (d) Misrepresentation, as defined in section 18;

Hence, as for the first requirement, the seller must have obtained the goods under a voidable title, for example the X had fraudulently misrepresented that it was a blue diamond from Pretoria when actually it is a Swarovski crystal manufactured in Switzerland and based on this fraudulent misrepresentation, Y had fully relied on it and it has induced Y to enter into a contract with X. Thus there is no free consent on part of Y notwithstanding that at the time of entering into the contract Y had no knowledge that there is a fraud.

The second requirement is that the voidable title or contract has not been avoided by the aggrieved party who consent had been given through the element of fraud, coercion, undue influence and or misrepresentation. Thus following the fictitious example of the fake blue diamond, if Y did not avoid the contract due to not knowing that it was fraud or that Y, even though he knew it was, decided not to avoid it; then that voidable contract is still a valid contract until it is avoided by Y.

The third requirement is that the buyer is bona fide and without notice of the seller’s defect in title. This is a question of fact for the buyer to prove that the purchase was done in good faith and he has no notice or knowledge of the seller’s lack or defect of title; and as for the fake blue diamond, if Y sold it to Z, Z will get good title if he had been bona fide, having no knowledge that it was bought by X from the seller under a scam.

In **Phillips v Brooks**^{****}, a rogue called North entered a jeweller’s shop, selected some items including the ring and asked to pay by cheque and to take the ring with him. The shopkeeper agreed to this after the rogue told him that he is a Sir George Bullough. In turn, the rogue took the ring to a firm of pawnbrokers and had it pledged for 350 pounds. The cheque proved worthless and the jeweler sued the pawnbroker to recover the ring. It was held that the contract between the jeweler and the rogue was not void but voidable, and since it was not set aside before the pawnbroker took the ring, the pawnbroker thence acquired good title to the ring (which was a form of limited title since the pawnbroker did not buy the ring but this limited title was still legally valid and could therefore enforce it against the jeweler).

In the leading case of **Car and Universal Finance v Caldwell**⁺⁺⁺⁺, a rogue bought a car and by fraud fraudulently induced the seller to accept a cheque which proved to be worthless. On discovering this, the seller immediately informed the police and the Automobile Association. It was held that this operated to avoid the contract. After this, but before the car had been traced, the rogue sold the car to an innocent purchaser. Since, at the time the rogue sold the car, his title had been avoided, it was held that the purchaser acquired no title under section 23 of the English Sale of Goods Act 1979 which is almost the Malaysian equivalent of section 29 Sale of Goods Act 1957.

In **Credit Corp Malaysia Sdn Bhd v The Malaysia Industrial Finance Corp & Anor**⁺⁺⁺⁺, the plaintiffs, a motor company purchased a new motor car and under the hire purchase agreement let it out on hire. The hirer was a registered owner of a car though the plaintiff’s claim on the ownership was also endorsed on the registration card. On the hirer defaulting in hire purchase payments, the plaintiffs repossessed the car as they were entitled under the hire purchase agreement. When the plaintiffs repossessed the car it was in the possession of a second defendant who had purchased it under the hire purchase agreement with the first defendant. On the date the car was repossessed, it was registered under the name of the second defendant with an ownership claim by the first defendant endorsed on the registration card. The plaintiffs claim on the ownership had been cancelled by the registrar on the basis of an application on that behalf. The plaintiffs thereupon sought a declaration that they were the owners of the car. The defendants argued that the hirer must have sold the car fraudulently to the third party from whom they (the defendants) had acquired it. The defence submitted that, with this fraud, the plaintiffs’ title to the car became voidable under section 29 of the Sale of Goods (Malay States) Ordinance (now the Sale of Goods Act 1957) and that since the plaintiffs, with the full knowledge of the facts, had made no attempt to avoid the contract, the hirer passed a good title to the purchaser. It was held that the contract was in this case a hire purchase agreement between the plaintiffs and the hirer, in which the hirer obtained possession of the car. That possession was lawfully obtained. The plaintiffs agreement, could not therefore, be a voidable contract under the Sale of Goods Act (Malay States) Ordinance (now the Sale of Goods Act 1957). If a fraud had been perpetrated, it did not take place at the time when

**** (1919) K.B.

++++ (1965) C.A

++++ (1976) 1 MLJ 83, HC

the hirer was given the possession of the said car but subsequently. And the fraud was committed not upon the plaintiffs but the Registering Authority to cause him to cancel the endorsement of the plaintiffs' ownership claim in the Register. For this reason, section 29 of the Ordinance did not apply. Possession of the registration book of was properly secured by the hirer under the plaintiffs' agreement. Even though the hirer was the registered owner of the motorcar, he was only, in law, the person who had possession and use of the car and this fact does not necessarily make him the legal owner of the car and able to transfer it. The plaintiffs succeeded in their claim therein thus rendering the defendants with no title at all though they were innocent purchasers and without notice.

The fourth exception is sale by joint owners which is not under the English Common law. Section 28 of the Malaysian Sale of Goods Act 1957 states that:

'If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.'

Thus there are three requirements for a transfer of title from the sale effected by one or several owners in that:

- (i) The property are jointly owned by two or more persons at law
- (ii) The possession of the property was entrusted to one or more parties in the joint ownership with permission from all the owners
- (iii) Seller of the property has no authority to sell
- (iv) Buyer purchased the joint property in good faith and without notice of the seller's lack of authority to sell

Sale by joint owners can be illustrated by the following fictitious example. If Mary, Sally and Anne are the joint owners of a piano, in that they had bought the piano together and it was thence agreed that the piano should reside in Anne's house in Cobham, Kent with the three of them using the piano at any time for musical and rehearsal purposes. Suppose that Anne, without permission from Mary and Sally had thence sold off the piano to Martin, it follows that notwithstanding the approval to sell, Martin has now acquired good title to the piano if he has been bona fide and without knowledge of Anne's lack of authority to sell. Mary and Sally have no recourse in law against Martin but can sue Anne among others, for the tort of conversion therein.

The fifth exception is the sale by seller in possession –

Finally, the sixth exception is the sale by buyer in possession -

In conclusion, the doctrine of *Nemo Dat Quod Non Habet*, is capable to cause injustice to an innocent bona fide third party purchaser whom had purchased goods from a party who has no authority to sell or having lack or defect in title of the same in the first place and the courts have and together with the statutes evolved to create exceptions to the principle as enumerated and discussed above.

Acknowledgment

The authors declare that they have no conflicts of interest in the research.

REFERENCES

1. Prof. Akram Shair Ali Lecture Notes, International Islamic University, Malaysia
2. Prof. John Adams Lecture and Tutorial Class Notes 1989-1990, The University of Kent at Canterbury, England
3. John Adams, Cases and Materials on Sale of Goods, Croom Helm 1982
4. The Honourable Society of Lincoln's Inn Class Notes 191-1992, England
5. Benjamin's Sale of Goods, Sweet & Maxwell, 4th Edition 1992
6. R. M. Goode, Commercial Law, Penguin Books 1992
7. Prof. Mohammed Matta, Course Materials on Business law II, Harun Hashim Law Centre
8. P S Atiyah The Sale of Goods, Pitman, 7th Edition, 1989
9. P.S. Atiyah, John. N. Adams, Hector MacQueen, The Sale of Goods, Longman, 10th Edition, 2001
10. Paul Dobson and Rob Stokes, Commercial Law, Sweet & Maxwell, 7th Edition 2008
11. A. P. Dobson Sale of Goods and Consumer Credit, Sweet & Maxwell, 4th Edition 1989
12. Schmitthoff's Export Trade-The law & Practice of International Trade, London Steven & Sons, 8th Edition 1986
13. Carl Pearson, Simon Fisher & Paul Ali Commercial Law, Commentary and Materials, Thompson Lawbook & Co, Second Edition 2004
14. Andy Gibson, Commercial Law in Principle, Thompson Lawbook & Co, 3rd Edition 2005

15. ER Hardy Ivamy, Vincent Powell-Smith, Malaysian Law of Sale of Goods Cases and Materials, Butterworths 1985
16. Beatrix Vohrah & Wu Min Aun, The Commercial Law of Malaysia, Longman 2nd Edition 2000
17. Abdul Majid Bin Nabi Baksh & Krishnan Arjunan, Business Law in Malaysia, LexisNexis 2005
18. Nemo dat quod non habet; G. Ripert, op.cit., No.2040, p.154; Lord Chorley and O.C. Giles - Slaters - Mereantile Law 15th ed., p.257.
19. N. consistory, civil rights (Ayqa), first edition, Tehran, Vancouver, 1370, civil rights (general rules of contracts), 1369,
20. Praised Hasan Tehrani, Business Law, second edition, Tehran, publishing, courthouse, 1375,
21. Fakhr Badri, Civil Code of the Islamic Republic of Iran (English - Farsi) and (Persian - English), Tehran: Scholar, 1380
22. Seyyed Hossein Safaei, Civil Rights Foundation Volume II (general rules of contract), fourth edition, Tehran, Nshrmzyan, 1385.
23. Syed Hasan Imam, civil rights, the first volume, published twenty-fifth, Tehran, Fayed, 1384
24. Ali Abbas life, property and ownership, third edition, Tehran, legal foundation level, 1389



Elham Balavar: she is lecture of Department of law, Rafsanjan Branch, Islamic Azad University, Rafsanjan, Iran. She received the LLM (Master of law executive (business law) from International Islamic University Malaysia.