THE NATURE OF TRANSFER OF RISK IN SALE OF GOODS CONTRACTS: A CRITICAL ANALYSIS

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Abstract.
The transfer of risk in the contract of sale is a question of great practical significance because of its potential for harsh consequences that has intrigued numerous jurists, judges and practitioners since the Roman Period. As a consequence of attracting so much attention, different theories about it have been developed and it is clear that there is more than one approach to the problem. This article critically examines the nature of transfer of risk in sale of goods contract with particular focus on the provisions of sections 20, 6, 7, 31, 32 and 33 of Sale of Goods Act of 1979, it also briefly discusses the provisions of other International Trade Laws. Legal conclusion shall be drawn based on our analysis and recommendation made based on empirical facts deduced from varied legal systems. The article recommends that to avoid confusion and conflict on the transfer of risk in sale of goods contracts of international dimension, INCOTERMS should be used by the contracting parties. For domestic trade disputes, the amended version of the Sale of Goods Act of 1979 may be adopted to clarify the position of the contracting parties regarding transfer of risk but this should only be an interim measure pending the enactment of a contemporary fit-for-purpose Sale of Goods Act.

1. Introduction:

The rules on passing of risk answer the question of whether the buyer is obliged to pay the price for the good even if they have been accidentally lost or damaged or whether the seller is entitled to claim their price. Because of its harsh and sometimes unfair consequences, passing of risk forms a subject, which the parties specifically refer to in their contract in an attempt to avoid confusion and possible litigation. In some rare cases where there are no previous arrangements, national laws or international convections regulating the matter will apply.

In 1936 the International Chamber of Commerce (ICC) published a set of rules that define responsibilities for the delivery of goods under sales contracts. These rules are referred to as International Commercial Terms (INCOTERMS) and are recognised worldwide in international contracts for the sale of goods.[1] Incoterms are commonly used in international freight; shippers use them to spell out who is responsible for the arrangement and payment of shipping, insurance and customs duties. The main goal of incoterms is to reduce confrontation and misunderstandings between traders and thereby, minimize trade disputes and litigation. Since their establishment in 1936, the Incoterms have been developing and improving with each update of the rules. The process of review of *Incoterms* takes place every 10 years and includes a real attempt by the drafter to expand that applicability of the rules beyond their traditional realm of international sales contracts to include domestic sale contracts. The latest set of rules was published in 2010 and remains in effect to date although the ICC has announced preparation for publication of *Incoterms* 2020.

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[1] The major incoterms recognized world over are: EXW FCA CPT CIP DAT DDP, FAS, FOB CFR and CIF.

It is often stated that the principal aspect of the problem of risk is whether the buyer is bound to pay the price although the goods are lost or damaged. In German jurisprudence, this aspect of risk is called the *preisgefahr*.[2] The concept of 'preisgefahr' or 'sales risk' is clearly reflected in the Uniform Law on International Sale of Goods (ULIS) which provides in article 96 that 'Where the risk has passed to the buyer, he shall pay the price notwithstanding the loss or deterioration of the goods.' The provision on the passing of risk in Incoterms are said to be founded on the same concept[3] but do not contain an express reference to the payment of the price.

1.1 The Concepts of Commercial Risk

It is believed that the true concept of risk is not revealed if the risk is solely treated as meaning price risk. In ordinary cases in which there is no breach of contractual terms, risk appears only in the form of price risk but the position would be different in cases in which the party is in breach of contract. In such cases, many municipal and international laws provide that the risk shall be on the defaulting party. Thus, reference to risk here cannot denote the price risk because the defaulter, if he is a buyer will rarely have to pay the price; the normal remedies against him are of compensatory character such as damages, compensation etc. There is therefore a danger of confusing two concepts which are different from each other, *viz* the passing of the risk and the financial obligation incumbent upon the person on whom the risk falls.[4]

The word 'risk' in a deal involving carriage of goods seems in both Greek Law, English Law and the Convention to cover casual physical loss, damages to or deterioration of goods. A survey of the leading commentaries and cases suggests that the rules on risk would govern loss or damages caused by sinking or stranding of a ship or other vehicle used for transport, loss of goods in a warehouse fire, damage to goods by a stranger[5], adulteration of spirit by the admixture of inferior liquid[6], mixing of oil, the oil carried by a vessel with oil of inferior quality, deterioration of goods due to delay in their arrival (without fault), confusion of goods sold with other goods, loss of weight due to heat, deterioration of corn due to moisture, loss of goods by theft, emergency unloading, negligent act or omission by the carrier or his employee during loading[7] or transit, rough cargo handling or improper storage, or deterioration of goods due to the fact that they had been left outside a cold store. Although, risk as a rule covers casual loss or damages during transit, it has also been suggested that it covers wrongful delivery of goods to another person.

From the analysis above, it can be concluded as a general rule common to the legal systems that every casual event operating on the goods which renders the buyer's or seller's position more disadvantageous should be considered as an event regulated by the rules related to risk. Nevertheless, the word 'risk' has many other applications and is not necessarily related to the contract of sale. Reference can be made to commercial risk that is failure of foreign seller or buyer to perform his contractual obligations through insolvency, default or repudiations of the contract, and insurance risk. We may also refer to political risk that is the danger that political decisions and upheavals will disrupt normal transaction. For example, blockage of funds,

[2]II Rabel, Das Recht des Warenkaufs, 291 et se. (1958) cited in "The Risk of loss in international Sales "Clive M Schmithoff's select essay-Accessed 17/01/2020

[3] *ibid*

[4]ibid, at 324

[5]LS Sealy, "Risk in the Law of Sale (1972) B CLI 225, 229

[6] *Stern Ltd v. Vicker Ltd* (1923) 1QB 78

[7] *Underwood Ltd v. Burgh Castle Brick and Cement Syndicate* (1922) 1KB 123

restrictions on the transfer of foreign currency earnings, cancellation of import licenses, war, revolution.

2. Definition of Contract of Sale:

A contract of sale is not only the contract whereby goods are 'transferred' for a price but may also be an 'agreement' to transfer goods for a price at some later time or under some particular term or condition. Thus, 'sale' and 'agreement to sell' are contracts of sale. The distinction between them however is importance because in a 'sale' the title to the goods and risk in the goods can pass upon making the contract. While in the 'agreement' to sell, the title and risk pass at some later time. The *United Kingdom Sale of Goods Act*[8] defines contract of sale as 'A contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.'[9] A distinction is then made between a 'sale' and 'an agreement to sell'. The Act reads:[10]

> Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale. Where under a contract of sale the transfer of property in the goods is to take place at a future time or subject to some condition later to be fulfilled, the contract is called an agreement to sell.

An agreement to sell becomes a sale when the time lapse or the conditions are fulfilled subject to which the property in the goods is to be transferred.

The *American Uniform Commercial Code*[11] also distinguishes between a 'contract for sale', a 'present sale' a contract to sell goods at a future time and sale. The Code reads[12]:

> Contract for sale includes both a present sale of goods and contract to sell goods at a future time. A 'sale' consists in the passing of title from the seller to the buyer for a price. A 'present sale' means a sale which is accomplished by the making of the contract.

The French *Civil Law*[13] also makes the distinction between sale and agreement to sell but not in precise terms as the Common Law statutes. The Law reads:[14]

> Sale is an agreement by which one party obliges himself to deliver a thing the other obliges himself to pay for it. It is perfected between the parties and the property is acquired by the purchaser as regard the seller; as soon as they have agreed on the thing and the price, although the thing be not yet delivered or the price paid. The promise of sale constitutes a sale where there is a reciprocal consent by both parties as to the thing and as to the price.

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[8] Sale of Good Act 1979 whose ancestor the sale of Goods Act, 1893 is the father of sale of Goods Acts throughout the English speaking world (thereafter referred to as SGA 1979)
[9] ibid, S.2(1)
[10] ibid, S.2(4) (5) (6)
[11] Uniform Commercial Code, 1972 official text (hereafter referred to as UCC)
[12] Ibid, S.2-106
[13] .The civil Code of France was adopted in 1804
[14] Ibid, Art 1583 and 1589

3. The Point of Transfer of Risk:

In the *Sale of Goods Act of 1893 and 1979*, which we are going to focus on, the general rule is that prima facie, the risk passes with the property:

> Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer, the goods are at the buyer's risk, whether delivery has been made or not.[15]

The goods remain at the seller's risk until the property in them is transferred to the buyer but when the property in them is transferred to the buyer, the goods are to the buyer's risk whether delivery has been made or not. Unless there is an express agreement to the effect that one party is to bear the risk in which case effect has to be given to such agreement. *Res perit domino* is generally an unbending rule of law arising from, the very nature of property.[16]

It is important to note that risk is completed with the passing of property and not physical possession. For instance in a contract for sale of specific goods, the risk might be on the buyer from the time the contract is made even though he has not taken physical delivery of the goods. The situation would be different if the goods are unascertained. In that case, the property in the goods cannot be transferred to the buyer until the goods are ascertained. Thus, there is no transfer of risk to the buyer.[17]

3.1 Exceptions to the General Rule:

The basic rule in section 20(1)[18] is not without qualifications. The following are situations where risk does not pass with the property:

(a) Express Provision in the Agreement:

The term unless otherwise agreed, implies that the parties can contract outside this risk rule. That is the parties can by express provision determine who bears the risk irrespective of the passing of property or possession. In the *Comptoir D'Achatet de Vente du Boerenbond Belge S/A v Luis de Ridder Lida (The Julia*).[19] It was said that 'It may be conceded that the parties can agree to some purely artificial allocations of the risk and if they express that agreement in suitable language in the contract it must somehow be given effect'. In the case of *Martineau v Kitching,*[20] the parties contracted for the sale of specific sugar loaves and that the goods were to be at the seller's risk for two months after the contract of sale. The buyer paid approximate price of four identified lots of sugar and took delivery of some. The price paid was subject to adjustment on delivery depending upon the weight of the sugar sold. The seller's premises were destroyed by fire after the expiration of two months after the contract. It was held that after the expiry of two months after the contract, it was implied that the risk was on the buyer.

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[15] .S. 20(1) SGA 1979

[16] *Hansen v Craig & Rose* (1895) 21D 432 p. 438 per lord President ingilis, quoted by Lord Normaid in *Comptoir d' Achat de vente v luis de ridderLimitada* (hereafter referred to as *the Julia*) (1049) Ac 293 at 319

[17] Comptoir S' Achat de Vente Luis De RidderLimitada (1949) A/C 293 at 319 (hereafter referred to as The Julia)

[18] SGA 1979

[19] Supra, note 16

[20] (1972) LR 7 QB 436

(b) Where there is a Retention of Title Clause (CIF Contract):

It appears also that the risk would be on the buyer even when he has no property in the goods in a situation where there is a retention of title clause in a contract of sale. That is, the property remains in the sellers until the buyer pays for the goods. The risk passes to the buyer as soon as the goods are delivered to him. This type of contract is often seen in *CIF* where the property in goods remain in the seller until the shipping documents e.g. bill of lading in respect of the goods are handed over to the buyer but the risk passes to the buyer as soon as the goods cross the ship's rail at the port of shipment.

(c) Unascertained Goods:

From the cases above, it is clear that risk may pass to the seller if the goods are specific or ascertained goods before the property is transferred to him. But the situation would be different if the goods are unascertained. In *Sterns v Vickers Ltd,*[21] the seller agreed to sell 120,000 gallons of white spirit as part of a larger quantity of 200,000 gallons to the buyer, the total quantity was in a storage tank of a third party. Delivery warrant for the spirit was given to the buyer which was accepted by the third party. The buyer indorsed the warrant to a sub-buyer. However, the exceptional nature of this case was emphasized by the House of Lords in *The Julia*[22] where Lord Porter said:

> It is difficult to see how a parcel is at the buyer's risk when he has neither property nor possession except in such cases as *lnglis v Stock and Sterns Ltd* where the purchaser had an interest in an individual part of a bulk parcel on board a ship or elsewhere obtained by attornment of bailee to him.

Although *Sterns* is a good law but it has been a controversial decision in that the goods were unascertained goods and the risk passed to the buyer on the basis of implied agreement. It must be noted that the acceptance of delivery warrant was regarded as a crucial factor in the case, since it was this which gave the buyer immediate right to possession. In *The Julia,* the risk was held not to have passed to the seller in an 'Ex Ship' contract for purchase of 100 tons of Rye, which were shipped as a larger consignment covered by a single bill of lading which was retained by the seller even though the buyer had received a delivery order for the Rye. Lord Normand emphasized that the buyer had no more than a promise to deliver a part of the bulk cargo and the case is typically one for the general rule *res perit domino*.[23]

(d) Undivided shares in goods, forming part of a bulk:

Due to difficulties inherent in determining who should bear the risk in individual shares S.20A and B were added to the Sale of *Goods Act of 1979*, to address such situations. In contracts for the sale of unascertained goods, there can be co-ownership of an identified bulk. This new provision is however silent on the issue of risk but it appears that risk passes to the buyer when he becomes a co-owner or unless the parties agree otherwise.[24] Unfortunately,

[21] (1923)1KB 78

[22] Supra note 21

[23] The maxim *res perit domino* means the thing perishes for the owner. The maxim refers to the contractual principle that risk in the goods pass with ownership. www.oxfordreference.com › acref-9780195369380-e-1840 accessed 20/4/20

[24] Sale of Goods forming part of a Bulk (Law Com No. 215, Scot Law Com No.445(1993) para 4:14

these sections 20A and 20B are not in *SOGA 1893* which is still applicable in Nigeria thus leaving buyers to their fate.

The *Law Commissions*[25] had suggested that risk of partial destruction vested with the seller so long as the destroyed quantity was within the limit of the quantity retained by him so that any goods retained by him is deemed to be destroyed first and thereafter the co-owner would suffer a loss proportionally. This section applies to a contract for sale of a specified quantity of unascertained goods. Section 61(1) defines specific goods as 'goods identified and agreed on at the time a contract is made; and includes an undivided share, specified as a fraction or percentage, of goods identified and agreed on as aforesaid'. This wording was added to this Section by the *Law Commissions* in 1995.

(e) Another exception to the general rule in S.20(1) (*res perit domino*) is where there is an *express provision in the contract of sale*. We have before considered cases where the risk was transferred to the buyer before the property. There are also situations where property might be transferred to the buyer before the risk i.e. the risk remains in the seller. In *Head v. Tattersal*[26]the Plaintiff bought a horse from the defendant which was said to have been hunted with the Bieester bounds and there was a provision in the contract that the Plaintiff (buyer) could return the horse within one week if it did not answer the description. The horse was accidentally injured before the one week elapsed and the plaintiff claimed to return it. Having discovered that it had not been hunted with the Biseeter bounds, it was held that although the property had probably passed to the buyer, the risk was still on the seller.

(f) Delay in the delivery of goods:

The general rule in S.20(1) is further circumscribed by the provision of S.20(a) which reads:

> But where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.[27]

Remember that in the sale of specific goods as earlier mentioned, property in it could pass to the buyer as soon as contract is concluded. In other words, risk would pass to the buyer on conclusion of contract. But where there is a delay by the seller to deliver the 'goods' (and not necessarily the property in the goods) then the seller would be deemed to be in default and he must bear the risk which in this situation have been on the buyer. In the case of *Demby Hamilton & Co. Ltd v. Barden, [28]* the seller agreed to sell 30 tons of apple juice to the buyer in accordance with sample. The buyer delayed in taking delivery and some of the juice went bad. Applying S.20(2), the learned judge held that the buyer was liable.

(g) Where either of the parties act as a Bailee:

The general rule in S.20(1) is also circumscribed by the provision of S.20(3) which provides that 'Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.' This provision contemplates a situation where

[25] Ibid
[26] (1871) LR 77 Exch 7
[27]Note that delay in the above provision is in delivery and not in the passing of property in the goods.
[28](1949) 1 All ER 435

property in the goods has passed to the buyer but the seller remains in possession of the goods. In that case he (the seller) is deemed to be bailee for the buyer. He must take reasonable care of the goods. In the case of *Wiehe v. Dennis Bros,*[29] the buyer agreed to buy from the seller a Shetland pony called 'Tiny.' The Pony was left in the custody of the seller so that the animal could attract money for '*Our Dumb Friend League'* at the international horse show at Olympia. Tiny was injured before delivery and the seller could not explain how the injuries were caused. It was held that the seller was liable in damages as a gratuitous bailee for failing to take reasonable care of the pony. The reverse is equally true of a buyer.

What would be the position of a party who is deemed 'to be a bailee' when delivery is delayed due to the fault of the other party? It would appear that the baileee still owe the duty of taking reasonable care of the goods. In the case of *Demby Hamilton & Co Ltd v. Barden*[30]Seller J, stated that it was the duty of the seller to act reasonably and to avoid any loss if possible. It is submitted that S.20(3) simply preserves the liability of a bailee at Common Law and such a breach could lead to a claim in damages.

Following the line of reasoning by Sealord in *Demby*, what would be the decision if both parties were in default? That is, the buyer delays in taking delivery and the seller breaches the duty of reasonable care as a gratuitous bailee? We speculate that the *Law Reform* (*Contributory Negligent) Act of 1945* might be called in to aid. If this is applied, then the loss would be apportioned between the both parties. S.32(1) provides:

> Where in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of goods to a carrier (whether named by the buyer or not) for the purpose of transmission to the buyer is prima facie deemed to be delivery of goods to the buyer.

The import of combined effect *S.32(1),* s.*18,(2)* and *s.20 (1)* is that risk *prima facie* passes with the property on delivery of goods to the carrier and the buyer bears the risk during transit. The carrier is deemed to be the buyer's agent more so if he chooses the carries by himself. Note the terms 'prima facie' in S.32(1). This means that in a normal situation, it is a prima facie rule that the transmission is deemed to be delivery of the buyer.[31]Where the terms of the contract or appropriation provide that the carrier is the seller's agent, the property in the goods and the risk would only pass to the buyer when the goods are actually delivered to the buyer or his agent.[32] Again where the seller agrees to deliver the goods at a particular place, the carrier will usually be regarded as the seller's agent and no property risk is passed until delivery in that place.[33]
Another important provision to note in this regard is S.33 which provides:

> Where the seller of goods agrees to deliver them at his own risk at a place other than where they are sold, the buyer must nevertheless (unless otherwise agreed) take any risk of determination in the goods necessarily incident to the course of transit.

[29] (1913) 29 TLR 250
[30] (1949) 1ALL ER 435, 438 per Sellers J.
[31] *Wait v Baker* (1848) 2 Exch 1, 7 per Parke B
[32] Ibid
[33]*Dumlop v Lamber* (1939) 6 CL & Fin 600, 621 per Lord CottenhamLc.

In *Bull v. Robinson,*[34]the buyer refused to accept (iron) which was 'perfectly clean and bright' when dispatch by the seller but suffered some rusting while in transit due to delay and cold weather. The court considered the deterioration as necessarily and unavoidable and held that the buyer must accept the goods. Determination of what constitute deterioration in goods necessarily incident to the course of transit is a question of fact which depends on individual cases. We submit that the technological advancement, modern transport system and improved packing method will no doubt play a considerable role when considering cases of this nature.

4. Perished goods:

There is no definition of the word 'Perish' in S.61 or any other part of the *Act.* Going by the normal usage of the word, it will be correct to say that it refers to where goods have been totally destroyed. However, the judicial decisions have extended the meaning of the world perished to situation probably not contemplated by the original intentions of the draftsmen. In *Horn v. Minister of Food*[35], the seller agreed to sell to the buyer a specific lot of 33 tons of potatoes which out of the fault of the seller the goods rotted and were useless and could not be delivered. Morris J. considered that S.7 did not apply to relieve the buyer of his liability to pay the price because potatoes still answer to the description of potatoes, however grave were the determination of their condition. It was thus held that risk had passes to the buyer. This decision in *Horn's* case may not represent the true position of the law.

The proposition that goods may perished in a commercial sense without their being totally destroyed was applied in New Zealand case of *Oldfield Ashalts Ltd. v. Grovedale Coolslores Ltd.*[36] In the case, the buyer agreed to buy from the seller a 'blast freezer' which was badly damaged by fire before the property in the goods passed to the buyer without the fault of either party. The buyer contended that the seller should deliver the goods in its original form but claimed that the goods had perished and that the contract was consequently void. Under the New Zealand *Sale of Goods Act,* which is *impari materia* with S.7,[37] it was held that the fundamental change to the nature of goods meant that it had perished and it was unacceptable to assert the term 'perished' was restricted to goods that were perishable in sense that food stuff is.

Another area which the judiciary has given extended meaning to the word 'perish' in S.6 and 7 is where part of the total specific goods has perished. In *Barrow*; *Lane and Ballard Ltd v. Philip Philips & Co. Ltd*[38] there, the seller agreed to sell 700 bags of Chinese groundnut to the buyer, thought to be lying at a wharf. 150 bags were delivered to the seller, when the buyer demanded further delivery it was discovered that 109 of the bags had been stolen at the time of the contract and that all the remaining bags had also disappears. Wright J. held that the contract was for an indivisible parcel of goods and 'the position appears to me to be in no way different from what would have been if the whole 700 bags has ceased to exist.' Accordingly, the contract was held to be void.

[34] (1854) 10 Exch 342
[35] (1948)2 All ER 1036, 65 TLR 106
[36](1998) 3 NZLR 479
[37] SGA 1979
[38] (1929) 1KB 574

5.1 Perished goods without the knowledge of the seller:

Sections 6 and section 7 of SOGA contains two limited rules covering only the situation where specific goods have perished before and after contract for the sale of goods respectively. Where these sections apply, the contract is void. It seems, the original intention of these sections was to address such situations where performance was impossible because the subject matter of the contract had perished in the sense of their having ceased to exist or having been totally destroyed by judicial interpretation and application of these sections appear to have extended the meaning of 'perish" to cover serious deterioration of the goods as we shall see presently.

S.6 relates to 'initial' impossibility whereas S.7 has to do with 'subsequent' impossibility. The provision appears to be based on the rules of common mistake in that, if both the seller and buyer share the mistaken belief that the goods exist, the contract will be void. It is couched in absolute terms with a tone of finality. Section 6 reads:

> 'where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.'[39]

Section 61(1), as already stated, defines specific goods as:

> 'Goods identified and agreed on at the time a contract of sale is made; and includes an undivided share, specified as a fraction or percentage of goods identified and agreed on as aforesaid.'

The provision of S.6 is to free the parties from their obligation where the contract is incapable of performance because the subject matter of the contract has perished as at the time the contract is made. [40]

In *McRae v. Commonwealth Disposal Commission*[41], the seller had advertised for sale an oil tanker which was described as 'lying on Jourmaud Reef, which is approximately 100 miles north off Samarai' and had accepted the buyer's offer to buy it. It was later discovered that no such vessel or reef existed. Meanwhile, the buyer had incurred a considerable expense in fitting-out a salvage expedition to search for the vessel. The buyer's action for delivery was rejected by the trial judge on the basis that the contract was void. Although, this decision was reversed by the High Court on the ground that the construction of the contract included a promise by the seller that there was existence of the subject matter of the contract.

6. Recommendations

The article recommends that to avoid confusion and conflict on the transfer of risk in sale of goods contracts of international dimension, *INCOTERMS* should be used by the contracting parties. There are different version of *INCOTERMS*, the latest being *INCOTERM 2010,* which came into effect on 1, January 2011. This will usually only apply to sales contract if the terms are specifically incorporated. It is always important to refer to a desired specific version of

[39]Note that this section refer to 'specific goods' which have already perished at the time the contract was made.

[40]Note that the meaning of specific goods also includes "an individual share, specified as a fraction or percentage of identified and agreed on as foresaid: Unascertained goods are not within the contemplation of the provision of section 6

[41] (1950)84 CLR 377

INCOTERMS in the contract, particularly where the parties are from different regions of the world. It is hoped that contracting parties in jurisdictions such as United States will increase their reliance on *INCOTERMS* as opposed to default rules found in the applicable version of the uniform commercial code.

In Nigeria, applicable law with regard to sales of goods is still the outdated *Sales of Goods Act of 1893* which has no known specific provision regarding undivided shares in goods forming part of a bulk. There is no reason for Nigeria to still be struggling with an outdated (stone-age) statue which constitutes a serious impediment to trade and commerce in a dynamic world of technological advancement driven by volume of commercial transactions. *SGA* as applicable in Nigeria is in a dire need of replacement and not just amendment. This article recommends that the amended version of *Sale of Goods Act 1979* be adopted to clarify the position of the contracting parties regarding transfer of risk in an undivided share in goods forming part of a bulk. This should be an interim measure pending enactment of a fit-for-purpose *Sale of Goods Act*.