Resolution of Rival Claims to Ownership – Or is it?

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Introduction

The Latin maxim *nemo dat quod non habet* (the “nemo dat rule”) – which means “the transferor of goods cannot pass a better title than he himself possesses”¹ is neither a new rule nor a surprise to commercial law. It is also unmistaken that due to developments in technology and policies, such old maxim is no longer useful in its traditional form. But the time taken for the Hong Kong Special Administrative Region (the “HKSAR”) to come to terms with its economy’s needs to the nemo dat rule and in its development as a world class international financial center is astonishingly slow and sluggish. Since publishing the reform report in 2002 on the nemo dat rule by the Hong Kong Law Reform Commission,² Things are yet to be.

This article will first examine the underlying exceptions to the nemo dat rule as provided by the HKSAR legislations and its common law counter part. It will than reflect on the problems which the exceptions rises as granted by the legislation and common law. Last, the article will argue that reform is needed to the piecemeal nature of the law and make suggestions for reform to retain a just and balanced position between the true owner and the bona fida purchaser.

The rule

The idea behind the nemo dat rule is the preservation of proprietary interest of the true owner. The common law has a long history of protection of proprietary rights and has always chosen to cooperate on the side of the proprietary right owner. This strong protection of proprietary rights in the nemo dat rule was induced by the Roman law during the thirteenth century. It was not until the eighteenth century that, because of the recognition of the idea of credit and also the evolution of trade and commerce was there a need to bring in some kind of legally recognized protection to bona fida purchasers of goods.³

The nemo dat rule is codified by section 23(1) of the Sales of Goods Ordinance (Cap 26) (the “SOGO”) in the HKSAR. It reads:

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³ Ibid n.1 at p 451
“(1) Subject to the provisions of this Ordinance, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had....”

Section 23(2) of the SOGO further reads:

“Provided, also, that nothing in this Ordinance shall affect-

(a) the provisions of the Factors Ordinance (Cap 48), or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof; or
(b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.”

It is clear that the nemo dat rule is embedded in section 23(1) of the SOGO. However, to sustain a balance between the true owner and the bona fide purchasers of goods, both section 23(1) and section 23(2) provides for the limited exceptions to the nemo dat rule.

**Estoppel**

The latter part of section 23(1) of the SOGO give rise to the first exception to the nemo dat rule – the concept of equitable estoppel, however the wording of the section does nothing more than direct the law back to the equitable estoppel as commonly understood. The SOGO does not clearly state out or define the acts and conducts necessary to evoke the protection of this section. As the legislation does not clearly define “estoppel” in light of the nemo dat rule, it is therefore argued that the true owner of stolen goods can evoke this exception under three heads, namely; estoppel by words, estoppel by conduct and estoppel by negligence. It is however noted that there are debates as to whether estoppel by words and estoppel by conduct are truly two species of estoppel but are coupled together under the head of “estoppel by representation”. Such debate is beyond the scope of this paper and will not be discussed. It had been suggested that all three kinds of estoppel are based on some sort of representation. Estoppel by words or by conduct is a positive representation by word of mouth or by gesture, while negligence is the non-action or omission to represent a statement which should be made.

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4 “…unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.”

5 Approved by Popplewell J in *Lenn Mayhew-Lewis v Westminster Scaffolding plc*, 5 March 1999 (unreported)

Estoppel by words

The case of *Shaw and another v Commissioner of Police of the Metropolis*[^7] can give a good illustration of the confusion which section 23 of the SOGO can bring. The rogue in *Shaw’s* case obtained a signed statement from the owner representing the false ownership of a car. The plaintiff agreed to buy the car from the rogue, but before the transaction was completed and price paid for, the rogue disappeared. The plaintiff’s case fail at the Court of Appeal, which held that section 21 of the Sale of Goods Act in the UK (the “SOGA”) (same as section 23 of the SOGO) does not apply to buyers who had only agreed to purchase but had not yet completed the contract. This decision raises doubts on the direction of which one should interpret and apply section 23 of the SOGO. As the SOGO does not define the means to evoke “estoppel”, one can only rely on the principles at common law. The general principle of estoppel under common law does not base its action on whether someone had bought or just agreed to buy a particular item, but on the reliance and detriment suffered due to the statement made, as stated in the dictum of Ashurst J in *Lickbarrow v Mason*[^8].

> “We may lay it down as a broad general principle that, whenever one of two innocent persons suffers by the acts of a third party, he who had enabled such third party to occasion the loss must sustain it.”

However, if we examine the decision of the *Shaw’s* case, we can see that the result of the judgment was not based on reliance or detriment of the plaintiff on the owner, but the court’s judicial interpretation of the legislation, that section 21 of SOGA applies only to situations where there is an actual sale of the goods in question.

Estoppel by conduct

It is still imprecise as to exactly what acts or conducts would give rise to estoppel under section 23(1) of SOGO. However, it has been held in the leading case of *Farquharson Bros v J King & Co Ltd*[^9] that acts or conducts which were no more than allowing another to hold possession of the goods were not sufficient to give rise to the plead of estoppel by conduct. It is argued that some positive actions which were misleading or gave away the ownership may be necessary. This is shown in the case of *Eastern Distributors Ltd v Goldring*. In *Goldring*, the true owner of a vehicle

[^7]: [1987] 1 WLR 1332
[^8]: (1787) 2 Term Rep 63
[^9]: [1902] AC 325
made a pretention to a finance company and represented that another party had the right to sell the car. The court held that the original true owner could not evoke the protection of section 23(1) of the SOGO as his action of pretention gave rise to estoppel and could not claim back his title.

_Estoppel by negligence_

Estoppel by negligence could be proven if the true owner by his faulty actions or omissions allowed a third party to represent to another that the third party was the true owner or that the third party had the authority from the true owner to sell the goods. However, the notion of estoppel by negligence needs to also follow the rules as set forth by the tort of negligence. To establish a claim of estoppel by negligence, the claimee not only have to prove that the true owner had in fact been in fault, but also need to show that there was a relationship which gave rise to a duty of care, the breach of that duty and also damages caused by the breach. Because an owner of any property owns no general duty of care that the owner needs to stay in possession of the goods, it is only in exceptional cases where estoppel by negligence could be pleaded. In the case of _Mercantile Credit Co Ltd v Hamblin_ the court held that due to the circumstances of the factual situation, a duty of care was establish, which fulfilled the first part of the requirement of estoppel by negligence, but the plaintiff could not establish a breach of that duty – the chain of causation was held to be broken. In _Hamblin_, a car-owner who entrusted the borrowing of money, the documents and procedure with the intention to buy a new car to a car-dealer who was “apparently solvent, respectable and prosperous” and whom the car-owner knew in the social context for many years. The car-dealer requested the car-owner to sign forms in blank and promised that he would later pass her the money. In fact, the car-dealer made a fraudulent transaction and absconded with the money which he got from selling the car-owner’s car to a financial company – the Plaintiff. With the current tendency that liability in negligence should be controlled, especially in cases where contractual liabilities are expressed. It is unclear how, if at all, estoppel by negligence fits in to the picture of the exception to the nemo dat.

_Market overt_

The market overt exception began its history in the Middle Ages in England, when there were very little shops, and most goods were purchased at markets and fairs. The market overt exception was considered to be an exception which promoted honestly between the parties in a sale of goods contract within the markets of the city.

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10 [1965] 2 QB 242
of London. Sales between individuals were highly discouraged back in those days.\textsuperscript{11} This exception encouraged sales to take place in recognized markets by allowing the transfer of good title in goods with defective title. If the purchaser was a bona fida purchaser without notice of the defective title and brought the goods in a market overt, the bona fida purchaser would get the goods free from any prior defect in title.

The market overt exception is entailed in section 24 of the SOGO in HKSAR. Its counter part was abolished in the UK by the Sales of Goods (Amendment) Act 1994. Before the abolition, the UK government’s Consultation Paper titled “Transfer of Title: ss21-26 of the Sale of Goods Act 1979” recommended that section 22 of the SOGA (the corresponding section of section 24 of SOGO) be modified to grant bona fida purchasers with good title if they purchased questionable title goods from retail shops and/or auctions. Instead of following the proposal, section 22 of SOGA was repealed with no substitution. Similarly, in the HKSAR, the Law Reform Commission of Hong Kong published a report in 2002 titled “Report on Contracts for the Supply of Goods” which dealt with, amongst others, the market overt exception. The Law Reform Commission proposed that section 24 of the SOGO should follow the fate of section 22 of SOGA, and be repealed in the absolute. However, up to 2009, no amendment had been made to either abolish or amend the market overt exception.

Section 24 of SOGO, titled “Market Overt” does not contain the words market overt. Instead, the section talks about shops and markets in Hong Kong, it reads:

“Where goods are openly sold in a shop or market in Hong Kong, in the ordinary course of the business of such shop or market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.”

It is worth noting that the wording of section 24 of SOGO has a larger scope than that of the repealed section 22 of SOGA. Section 24 of SOGO includes “shop” in the exception, while the repealed section 22 of SOGA referred strictly to market overts. Furthermore, the word “shop” is not defined by the HKSAR legislation, therefore potentially; the scope of this exception could have a much larger consequence than its original purpose. However, courts in the HKSAR have tried to limit the scope by giving a somewhat narrow and purposive interpretation to the legislation. In the case of \textit{Au Muk Shun v Choi Chuen Yau}\textsuperscript{12} the court did not lay down a definition of a “shop”, but held that the key features that should be taken into account in section 24

\textsuperscript{12} [1988] 1 HKLR 413
of SOGO was the “shop’s” retail nature. But the court further stressed that a case by case consideration should be given. The Au case was decided in 1988, when e-commerce and internet “shops” were not common. Nowadays, e-shops and sales of goods over the internet can be counted by the millions; such case by case decision on the definition of shop, without taking into consideration the development of the internet is highly undesirable and outdated. Another narrowing of the definition of shop by the court which is potentially problematic was the case of R v Tai Shing Jewellery. In Tai Shing Jewellery, the court used a purposive approach in interpreting the SOGO and held that section 24 did not protect shop-owners when buying stock even in a shop, if that shop happens to be his own. It is worth questioning whether such precise class-defining decision was the actual purpose of the market overt exception as codified into section 24 of SOGO, when the section itself is unequivocal about it.

Sale under a voidable title

A seller of goods may have a void title or a voidable title. A void title is one which the seller never had legal title, while a voidable title is where the seller has title until it was avoided. Under section 25 of the SOGO, a bona fida purchaser of goods may be able to obtain good title of goods purchased from a seller with voidable title, if at the time of purchase, the seller’s title had not be avoided. This effectively allows the bona fida purchaser better protection and title over the true owner in situations of fraud. To gain this protection, the purchaser must have purchased the goods before the title of the third party had been avoided. This is all about timing. In the case of Car and Universal Finance Ltd v Caldwell the court held that the notification of fraud to the police was considered to be effective rescission of title by the true owner. This submission is not without its controversy. It was recommended by the Twelfth Report of the Law Reform Committee in the UK in 1966 (one year after the case of Caldwell) that, notification of avoidance of title to the third party in question is required. But like that of the market overt exception, the law had not changed as per the suggestions by the relevant committees, which is considered to be a more sensible approach.

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13 [1983] 2 HKC 441
14 [1965] 1 QB 525
Seller or buyer in possession after sale

Seller in possession

Unlike its UK counter-part, where these two exceptions are counted for in two separation sections of the SOGA, it is only contained in one section in the HKSAR SOGO; section 27. However, these two exceptions does have its statutory similarities to its UK counter-part and that is that these two exceptions are also embodied as two separate sections in the Factors Ordinance (Cap 48); sections 9 and 10.

Section 27 subsections (1) and (2) have similar wordings to sections 9 and 10 of the Factors Ordinance with the only difference that the exception contained in the Factors Ordinance has a wider scope. Therefore, this article will focus on the discussion based on the Factors Ordinance in relation to these two exceptions. Sections 9 and 10 of the Factors Ordinance states respectively:

“Where a person, having sold goods, continues, or is, in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.” [Emphasis added]

“Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer, by that person or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.” [Emphasis added]

The words in bold are the only differences between section 27 of the SOGO and sections 9 and 10 of the Factors Ordinance, where those words are absent in section 27 of the SOGO.
It is clear that section 27(1) of the SOGO and section 9 of the Factors Ordinance deals with a situation where the seller of goods is still in possession and on-sell the goods to a third innocent buyer. The law is now clear that to evoke the exception of these sections, a seller simply have to be in continuous physical possession of the goods, despite of the capacity which he holds onto the goods.\textsuperscript{15} This turn of law is argued to be a good logic as a buyer does not have the obligation or duty to enquire into the capacity of the seller. This is especially the case, if the seller had, due to his business nature or otherwise, standout as the “true” seller of the goods in question. Another point to note is that section 27(1) of SOGO or section 9 of the Factors Ordinance only comes into play if the goods have been sold. It does not apply to situations where the goods were involved in an agreement to sell. The way in which the legislations were drafted was understandable. In a situation where the sale of goods contract is only one of agreement to sell, the seller would be in a lawful position to sell to another, therefore the inclusive of “agreement to sell” in the legislation is redundant. However, the legislation does speak of an “owner” without referring to its definition. It is proposed that it should be read as referring to the first buyer only and no one else, as the seller may turn out to be a rogue or a person who has defective title.

To be protected by section 9 of the Factors Ordinance, the third innocent buyer must also have been delivered the goods or have the title of goods transferred to him. This requirement is not itself without problems. In the Australian case of \textit{Gamer's Motor Centre (Newcastle) Pty Ltd v Natwest Wholesale Australia Pty Ltd}\textsuperscript{16} the court held, by a bare majority that the same section of the Austrian provisions does not require physical delivery, but deem constructive delivery as adequate. However, this decision does not sit well with the Privy Council’s decision in \textit{Pacific Motor Auction Pty Ltd v Motor Credits (Hire Finance) Ltd}, where it was held that continuous physical possession was essential. Furthermore, the decision in \textit{Gamer's Motor} deprive the legislation any meaning when it talks of the need to “delivery” or “transfer” and loses the essence where the section is trying to form – a separation of possession of the seller.\textsuperscript{17}

\textsuperscript{15} The Privy Council decision of \textit{Pacific Motor Auction Pty Ltd v Motor Credits (Hire Finance) Ltd} [1965] AC 867 rejected pass English decisions on this point and held the relevant sections of the English SOGA refer to continuous physical possession only and not capacity.

\textsuperscript{16} (1987) 163 CLR 236

\textsuperscript{17} This can be seen from the definition of “delivery” in section 2 of the SOGO, which reads: ““delivery” means voluntary transfer of possession from one person to another.”
Buyer in possession

As already stated above, section 10 of the Factors Ordinance contain a very similar provision to section 27(2) of the SOGO. Like other exceptions to the nemo dat rule, the courts have always taken the interpretations of the relevant legislation provisions narrowly; the buyer in possession is no exception to the narrow interpretation. To satisfy and be protected by these sections, the innocent buyer must satisfy certain criteria as specified in the legislation, and there are several which are worth special mentioning. First, the innocent buyer must have either bought the goods or agreed to buy the goods. It is noted that this is a noticeable difference from section 9 of the Factors Ordinance in relation to the seller in possession exception. But it must be remembered that this provision does not include agreements which are similar to a sales of goods contracts eg. hire purchase agreements. Second, the buyer must have obtained consent from the seller to be in possession. The way in which the consent was obtained does not matter, as long as there was real consent. In relation to consent, one must also think about the situations where the consent was withdrawn. It is noted that even if consent was withdrawn from the seller, as long as the innocent buyer does not come to know of it, it does not bar the innocent buyer to be protected by this section. It is also unclear as to what capacity must the innocent buyer be in, in relation to having possession of the goods in question. Last, the way in which good faith is conveyed is vaguely different from section 9 of the Factors Ordinance. The good faith element of section 10 enclose not only of previous sale, but of any “lien or other right of the original seller in respect of the goods”, therefore is slightly larger in scope. But, it is hard to see how a seller may have a lien over the goods but would still voluntarily give possession to the buyer. On the other hand, the requirement of notice is not difficult, it refers to actual notice, and constructive notice has been rule to be insufficient.

One must note that many of the problems that occur in the UK in relation to the nemo dat rule and hire purchase agreements may be sorted out by or at least dealt in part by the Hire Purchase Act 1964, but the HKSAR has no equivalent legislation in this regards and are still haunted by the problem.

Sale by agents including mercantile agent

Section 3 of the Factors Ordinance serves as another section outside the SOGO which provides for an exception to the nemo dat rule. Section 3 of the Factors Ordinance

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18 Cases in Australia express doubts of the view that the capacity of possession does not matter: See Langmead v Thyer Rubber Co Ltd [1917] 2 KB 480
safeguard innocent buyers’ title to goods if he or she purchased goods from a mercantile agent with good faith without notice of the mercantile agent’s defective title and/or authority, who at the time of purchase the agent had in his or her possession the goods with the consent of the owner, and that the agent was acting in the ordinary course of business as a mercantile agent. One must note that, this provision will not avail an innocent buyer if the contract is one of agreement to sell with the conditional precedent that title is only transferred upon payment of purchase price.19

In reading into the protection governed by section 3 of the Factors Ordinance, one must remember that the law does not impose on the owner an obligation or a duty to a third party to safeguard his or her property against the third party. In this regards, whether the owner deposit his or her property with a mercantile agent, does not automatically give rise to the operation of section 3. Such operation would only occur if the owner had directed the mercantile agent to sell the goods in one way or another, therefore mere disposition of goods with the mercantile agent, will not evoke the protection of this section. The direction of sale will suffice even if the mercantile agent went beyond the instruction given, eg. the owner instructed the mercantile agent to sell the goods for not less than a certain price, but the mercantile agent sold it at a much lower price, the owner cannot deny title of the innocent buyer as the mercantile agent had direction to sell, but instead should claim the mercantile agent for breach of contract.

In connection with the possession of the goods by the mercantile agent, the agent must have possession of the goods with the consent of the owner. It had been argued that “consent” must be meant to be “real” consent, which is without larceny or fraud. However, this view was not accepted in Pearson v Rose & Young20 where the court held that even when the consent was obtained by larceny, it was nevertheless consent in accordance with the Factors Act of the UK. Furthermore, section 3(2) of the Factors Ordinance provides that if the consent from the owner was withdrawn, but the innocent buyer had no notice to the withdrawal, such withdrawal will not affect the innocent buyer. Also subsection 4 of the same section further presumes consent of the owner is given unless proven otherwise. These are sections put in place to balance the rights between the owner and the innocent buyer. But to claim protection of section 3, the innocent buyer would still need to provide that he or she purchased the goods in good faith and without notice of the defective authority of the mercantile

19 Shaw v Commissioner of Police of the Metropolis [1987] 3 All ER 405; See also, Foster A, Sale by a Non-Owner: Striking a Fair Balance Between the Rights of the True Owner and a Buyer in Good Faith Cov. LJ 2004, 9(2), 1-15
20 [1951] 1 KB 275
agent. Although it is not entirely sure as to who bears the burden to prove the good faith element, it has been argued that it is the innocent buyer who bears such burden, as it is more reasonable for the innocent buyer to prove his good faith than the owner to disprove it.\(^\text{21}\) It is however submitted that such interpretation is not expressly given in the relevant section and leave the legislation prone to interpretation.

The next element an innocent buyer needs to prove is that the mercantile agent made the sale in the ordinary course of business. It has been suggested that this particular section cannot be read literally, as it is obvious that if a mercantile agent is not selling within the consent of the owner, he or she cannot be selling in the ordinary course of business.\(^\text{22}\) As such, it has been suggested that the wording of the legislation should be read as “acting as if” the sale was in the ordinary course of business or if we are to stick to the meaning to mean the mercantile agent is selling in the ordinary course of business, than except for the needed consent. Both of which are not the wordings of the legislation. Further, a question is raised as to the need of such illusive wordings in the legislation. It has been held that what concludes whether the mercantile agent acted in the ordinary course of business is a factual question, basing on, for example, proper business address/place, duration of business hours and other things which a reasonable mercantile agents would do.\(^\text{23}\) It would seem that if the innocent buyer had purchased goods from a mercantile agent outside the usual practice of business, it would put the buyer on notice of the lack of authority of the mercantile agent. Therefore, the buyer would not gain title to the goods as he or she failed to purchase the goods in good faith and without notice. With this preposition, it is considered that the illusive wording requiring the action of purchases be within the ordinary course of business is without purpose.\(^\text{24}\)

**Suggestions for reform by the Law Reform Commission of Hong Kong**

From the brief discussion of the exception to the nemo dat rule as above, there is certainty that the law is in a complicated and muddled stage. It is also undoubted that reform is needed to mend the situation. As such, many law commissions or committees have tried to make suggestions one way or another, but not many of them had been put in place.\(^\text{25}\) The Law Reform Commission of the HKSAR tackled the

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\(^{22}\) Ibid

\(^{23}\) Oppenheimer v Attenborough [1908] 1 KB 221

\(^{24}\) Ibid n 20

\(^{25}\) Just to name a few, the Law Reform Commission of Hong Kong, the UK Law Reform Committee, Report by the Crowther committee on Consumer Credit in the UK, the Scottish Law Commission and so forth
issued by making a suggestion to abolish the market overt exception (which had not be put into force). The Law Reform Commission of the HKSAR made no other suggestions to the other exceptions to the nemo dat rule.

It is submitted that the suggestion by the Law Reform Commission of the HKSAR was yet another piecemeal suggestion for reform merely to follow what was done in the UK without substantive research or consideration to the matter. It is further submitted that the abolition of the market overt exception does not create a fair nor just position between the owner and the innocent buyer, but further tilt the balance in favour of the owner in light of the growth and development of e-commerce and e-shop today. It has been argued in support of the abolition that the owners cannot avoid property being stolen, but buyers can purchase from more reputable shops and make more enquires, therefore, the buyers are already in a better position. However, this suggestion ignore the practical situation where, questioning the seller may not yield any positive results and that a reputable shop may, unwilling be selling stolen goods. All of these situations are out of the control of the innocent buyer, but he or she would not be given any protection, as a result of the abolition. Further, with the amount of sales over the internet, such suggested ways to find out the seller’s reputation and trustworthiness further declines. It is therefore suggested that the abolition of the market overt rule is not a solution to the problem. Instead it is suggested that, first a rename of the legislation would be appropriate, as the name of the section is misleading. Second, it is suggested that the word “shop” be defined taking into consideration of e-commerce and e-shop on the internet. It is also suggested that the provision dealing with market overt should be more specific to protection of consumer and not a buyer at large. As suggested by Yap JL, the phrase “deals as a consumer” is already defined by section 2A of the SOGO, therefore, it would not be a radical change, but one the market has already come to term with. By the inclusion of the concept of consumer into the market overt exception, it also brings the legislation in line with the case of *R v Tai Shing Jewellery*. Such change will go smoothly with legislation and does not require the need to restrict the scope of the legislation with judicial interpretation, where such judicial restrictions do not show it in the actual wordings of the legislations. Another reason which HKSAR need to consider more carefully before adopting the Law Reform Commission’s suggestion in abolishing the market overt exception is to keep in mind, that unlike the UK where they have enacted a Hire Purchase Act and a Consumer Protection Act, the HKSAR do not have the equivalent.

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Further suggestions

From the discussion of the different exceptions to the nemo dat rule, it is clear that a single change to the market overt exception just will not do. It is therefore submitted that the following suggestions can also be considered when dealing with future changes to the sales of goods law.

It has been suggested by the Law Reform Committee of the UK in its Twelfth Report, that the distinction between a sale of goods contract that is void due to mistake and a sale of goods contract that is voidable due to fraud should be abolished. The author welcome this suggestion, as it would be impossible for the innocent buyer to distinguish the two. Further the Law Reform Committee of the UK further suggested that the decision in the case of Caldwell be reversed and that communication of rescission of a voidable contract must be made directly to the relevant parties. The author agrees with the principle of this suggestion, however disagrees with the method. It is argued that it would be unjust for the innocent buyer to lose title over goods which he or she had purchased with good faith and without notice because of the action of rescission of the voidable contract which the innocent buyer would have no way of knowing. However, it would be tremendously difficult, if not impossible to notify the relevant parties of the intention to rescind by the owner due to time issues or other physical and practical constrains. It is therefore suggested that, the law should provide methods which would be considered to be a reasonable notice, satisfying the requirement as set out by the Law Reform Committee of the UK to anyone who is intending to purchase the goods in question. As for example, the legislation can provide that the publication of a certain size advertisement in one Chinese and one English newspaper of certain types would be considered to be effective notification of rescission to all parties in question, thus, sorting out the problems rises by the mere reversion of the decision of Caldwell.

It was suggested by this paper that section 24 of the SOGO should be renamed, as the name may be confusing. It is also suggested that the wordings in the relevant sections of the SOGO and the Factors Ordinance be amended to read the same to stop the confusion and the articulation of why the SOGO was worded one way and the Factors Ordinance another, when in fact, the Factors Ordinance provisions also applies to the SOGO. Better streamline and consistency should be appreciated amongst legislations.
Lastly, the author supports Lord Devlin’s suggestion\(^{27}\) that loss(es) might be equally apportioned amongst the innocent parties. This suggestion had been argued to be impractical, as however apportionment should be made in a situation where the goods have passed through several hands. It is submitted that, even if the goods were received by several parties and on-sold, the innocent parties which are without any compensation or at a total lost reminds the true owner – who lost the goods and the end innocent purchaser – who have paid consideration for the goods, but have not received anything for return. It is submitted that, because all intermediate parties does not suffer total lost, they would not be included into the apportionment. It has also been argued that how can lose be apportioned based on two parties that are both innocent. The principle behind the exception to the nemo dat rule is based on principles of fairness and equity; therefore, the apportionment should also be based on the principle of fairness and equity. As such the court can determine the facts of the case to see who was less careless or faulty. In the situation where both parties are equally the same, why can they not bare the loss(es) equally? However, the author agrees that such apportionment is not easy and empirical evidence and large amount of research is needed to ensure the usefulness and adaptability of the proposal coupled with the existing exceptions. Large amount of research would be needed to predict the outcome of such apportionment principle without the traditional exceptions and how it would work in practice. It is admitted that such radical change may cause chaos to the system and it may not be a risk worth taking.

**Conclusion**

With the exceptions to the nemo dat rule in a piecemeal manner and in desperate need of reform in light of the large amount of case law and the growth of the internet, it is almost a fact that any change should be considered as a whole between all the exceptions to achieve a balance between the rights of the owner and the rights of the innocent buyer. Research is the missing link in many of the reforms and answers, and the reform to the exceptions to the nemo dat rule is no exception.

\(^{27}\) The suggestion was made in the case of *Ingram v Little* [1961] 1 QB 31