

"GOODS" - ITS CONCEPT AND MEANING
UNDER THE CONTRACT OF SALE

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GOOD AS SUBJECT MATTER OF CONTRACT OF SALES

- The concept of "property" as opposed to physical possession

As could be seen earlier, Section 4 of SOGO (Malay States) 1957, defines contract of sale as follows:

"a contract whereby a seller transfers or agrees to transfer the property in goods (emphasis added) to the buyer for a price. There may be a contract of sale between one part-owner and another".

From the above definition, what is primary in the contract of sale is the transfer of ownership and not mere physical possession of the goods. Thus under the contract of sale ownership is important and not just physical existence of the goods. By physical existence, is meant that the goods as subject matter under the contract of sale must be existing for example in a custody, control or possession.

Section 6 (I) of SOGO (Malay States) 1957, provides that there "must be existing goods, owned or possessed by seller or goods to be manufactured. "Therefore it is clearly shown that, there must be a physical existence of the good itself. But as stated earlier by having the physical existence, it does not mean that one can have the title or the ownership of the goods.

Osborn's Concise Law Dictionary defines "property" as:

"that which is capable of ownership as the property in goods".

Section 2 of SOGO (Malay States) 1957, in turn defines property as meaning:

"the general property in goods and not merely a special property".

This definition of the Ordinance conceives of property in the sense of "right" and not "to what the right relates", that is the object of the right.

"Property" has been defined further by Austin as follows:-

"the right residing in a person called the owner, availing against other persons generally, to use and deal with the thing, the object of the right in a manner, and to an extent limited only by the general rules of law and not by any particular right over the same object residing in another person".

The definition above, distinguishes the general property from any special property residing in