

Law and Business

Exploring the Boundaries of Section 61 of the United Kingdom Sale of Goods Act 1979, Prior to the Textual Amendment

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Abstract *Section 61 of the Sale of Goods Act 1979 defines specific goods as “goods identified and agreed upon at the time of contracting.” This definition was later expanded by the textual amendment introduced through the Sale of Goods (Amendment) Act 1995 to include “an undivided share in an identified bulk.” The existing literature is not clear on the precise identification needed for goods to be deemed “specific.” The case law remains too fact-specific and provides only a fact-specific standard. After examining existing definitions and interpretations, the author proposes a refined definition for “specific goods,” according to which “specific goods” should be understood as “goods identified to such an extent that, if they were sold to a third party or lost, the buyer would be able to definitively recognise the goods as theirs.” Any broader or vaguer interpretation would risk obscuring the meaning of Section 61 and undermine its clarity.*

Keywords

Specific Goods • Section 61 • Sale of Goods • English Law • Definition

Introduction

The Sale of Goods Act 1979 (UK) Section 61(1) classifies specific goods as “goods identified and agreed upon at the time the contract is made.” Classification of goods plays an important role in determining when ownership and risk transfer from the seller to the buyer. If the goods are specific, the ownership generally passes at the point of contracting.¹ However, if the goods are unascertained, ownership does not transfer until the goods are ascertained.² Since the Sale of Goods Act 1979 links ownership to risk, that, too, passes with ownership.³ Therefore, when goods are classified as specific, the risk lies with the buyer, provided the ownership has passed from seller to the buyer. In other words, the buyer must pay the agreed-upon price even if the goods are lost or damaged after the contract is made. The classification of goods as either specific or unascertained thus has significant consequences that go beyond a simple legal distinction.

In disputes, this dynamic often leads buyers and sellers to attempt to shift the risk of loss onto the other party. This is generally achieved by disputing the classification of the goods. Parties may choose whichever classification serves their interests the best by arguing that the subject matter of the contract should be treated as either specific or unascertained. The existing legal framework remains ambiguous as Section 61 of the Sale of Goods Act has failed to clearly explain the degree of identification required for goods to qualify as specific.

According to Roy Goode, “ascertainment occurs when the goods are identified as those intended to be sold, by being separated or otherwise distinguished from other goods.”⁴ This step is important to transfer ownership and for the contract to be enforceable with certainty. Property cannot pass until goods are ascertained.⁵

This article seeks to interpret Section 61 by examining academic definitions, illustrations, and relevant case law. The aim is to understand the true meaning intended by this provision. The focus of this is not on the definition of an undivided share in an identified bulk, but rather on the process of identification and agreement required to make goods specific. To this end,

¹ *Sale of Goods Act 1979 (UK)*, s. 18.

² *Sale of Goods Act 1979 (UK)*, s. 16.

³ *Sale of Goods Act 1979 (UK)*, s. 20.

⁴ Roy Goode, *Commercial Law*, 5th ed. (London: Penguin, 2015), 162.

⁵ Furmston, *Cheshire, Fifoot and Furmston's Law of Contract*, 607.

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this paper explores how legal scholars and case laws have sought to define the boundaries of specific goods with the aim of interpreting the ambiguous language of Section 61.

Definition of Specific Goods Prior to the Textual Amendment

Section 61 of the Sale of Goods Act 1979 defines “specific goods” as “goods identified and agreed upon at the time of contracting.” Atiyah highlights that specificity in goods provides certainty and reduces disputes by clearly defining the subject matter of the contract.⁶ This emphasises the importance of specificity for the predictability of commercial transactions. Section 61 does not expressly require both parties to physically inspect the goods for the goods to be considered specific, nor does it reference to identification of goods done through other means (such as identifying through an identification number). Furthermore, whether goods reserved by the seller for the buyer with or without the buyer’s consent can be considered as specific goods under the contract has not been addressed.

Manteaw notes that the definitions of “specific goods,” “ascertained goods,” and “unascertained goods” are quite similar, despite all three terms relating to the identification of goods at different stages of a sale-of-goods transaction.⁷ Goode and McKendrick define “specific goods” as those that are fully identified by either handing over or setting aside with the buyer’s consent.⁸ The act of handing over goods suggests a narrow interpretation of identification for specific goods. However, setting goods aside with the buyer’s consent implies a broader understanding that would potentially classify goods reserved for the buyer as specific, even if the buyer has never physically seen them.

As explained in Cheshire, Fifoot and Furmston’s *Law of Contract*, specific goods are goods that are individually distinguished at the moment the contract is formed.⁹ Unascertained or generic goods, such as “a dozen bottles of 1919 port” or “500 quarters of wheat,” do not meet this definition because the seller can fulfil the contract by delivering any dozen or any 500 quarters, and stresses the importance of goods having individuality at the time of the agreement. They note that even if the source of the goods is known, as in the case of “a dozen bottles of the 1919 port now in my cellar,” the goods are still considered unascertained if no particular items have been set aside and earmarked for the contract.

As long as the seller has not set aside the contractual goods, but has merely agreed to sell a part of a bulk, this explanation helps ascertain what the specific goods are. However, if the seller sets aside certain goods for the buyer with the buyer’s consent, the question remains whether the goods are specific in circumstances where the buyer does not know exactly which items have been set aside and only knows that the goods have been reserved. This problem arises because, although the goods were reserved with the buyer’s consent, the buyer does not know which goods were reserved, either through inspection or earmarking. In situations like this, it also remains difficult to classify goods as unascertained, since they have been set aside. This problem could not be resolved with reference to the language used in Section 61 of the Sale of Goods Act 1979, as it is not explicit about the precise degree of identification required for goods to be classified as specific. The illustrations exemplifying the definition of specific goods in Cheshire, Fifoot and Furmston’s *Law of Contract* suggest that as long as the seller can use any item to fulfil a contract, the contract will not be a contract to sell specific goods.¹⁰ This implies that goods must be either earmarked or identified with a reference in order for them to be specific.

Accordingly, the interpretation of specific goods by Goode and McKendrick contradicts¹¹ that of the interpretation given in Cheshire, Fifoot and Furmston’s *Law of Contract*. Goode and McKendrick contend that setting aside goods with the buyer’s consent suffices for goods to be considered specific, whereas according to Cheshire, Fifoot and Furmston, regardless of whether goods are set aside, if the seller is free to use any item to fulfil the contract, the goods will not be specific.

Goode and McKendrick illustrate the concept of specific goods with the following examples:¹² purchasing two kilos of potatoes from a shop, and trying on and buying a suit. The goods in both of these illustrations qualify as specific goods primarily because the exact items being purchased are clearly identified and known to both parties. In both illustrations, there is no room for later selection or change of mind. Therefore, these illustrations have adopted a narrow interpretation of specific goods that

6 Christian Twigg-Flesner and Rick Canavan, *Atiyah and Adams’ Sale of Goods*, 14th ed. (Harlow, England; New York: Pearson Education Ltd, 2021), 78.

7 S. O. Manteaw, “Resolving Definitional Inconsistencies in Unascertained, Ascertained and Specific Goods under the Sale of Goods Act, 1962 (‘Act 137’),” *International Journal of Educational Research and Development* 6, no. 4 (2024): 32–38, <https://www.allinnovationjournal.com/assets/archives/2024/vol6issue4/6065.pdf>

8 Roy Goode and Ewan McKendrick, *Goode and McKendrick on Commercial Law*, 6th ed (London: Penguin, 2021), 262

9 M. P. Furmston, *Cheshire, Fifoot and Furmston’s Law of Contract*, 16th ed. (Oxford: Oxford University Press, 2012), 889.

10 Furmston, *Cheshire, Fifoot and Furmston’s Law of Contract*, 889.

11 Goode and McKendrick, *Goode and McKendrick on Commercial Law*, 262.

12 *Ibid.*

requires the contractual goods to be identified to the extent that they are clearly known to both parties, rendering no room for speculation.

It is noteworthy that both illustrations used by Goode and McKendrick emphasise the necessity of physical identification of the items for goods to be classified as specific. In the first example, the buyer has physically inspected and purchased the potatoes, and in the second, the buyer has not only identified the item, but has also tested its suitability. Section 61 of the Act does not explicitly require physical identification coupled with a physical inspection for goods to be classified as specific. Nevertheless, these illustrations imply that identification should be made through visual inspection in order for a contract involving specific goods to arise.

It might be contended that such an interpretation is too narrow, and that it would unfairly suggest that international buyers can never enter contracts for specific goods (primarily due to their inability to physically inspect and select the items). A reasonable reading of Goode and McKendrick's illustrations may not be that strict, since interpretations have to be adapted to fit modern transactions. Under a modernised interpretation, for goods to be classified as specific, two key elements must be present. Firstly, the buyer must have a clear understanding of what, exactly, they are purchasing. Secondly, the identification must be made by both parties. Goode and McKendrick also state that goods set aside with the buyer's consent can be classified as specific goods.¹³ This calls for clarification, as this statement could be interpreted in two ways.

On the one hand, it could mean that the buyer knows the exact item reserved. On the other, it may be that the buyer knows the seller has reserved certain goods, but has no idea exactly which goods. According to Goode and McKendrick's illustrations, goods classify as specific in cases where the buyer exactly knows the subject matter of the contract, either through a physical inspection, or, in modern setups, through an identification of items by an identification/reference number. Therefore, what is actually meant by "reserving goods with the buyer's consent" must be considered in line with the illustrations adopted by the authors. Accordingly, for goods to be considered specific, reserving goods with the buyer's consent also requires the buyer to know exactly the subject matter of the contract for goods; if the buyer does not know the exact reserved item, it should not be considered a specific good. An interpretation that deviates from this understanding would not align with Goode and McKendrick's illustrations.

Ryder, Griffiths, and Singh state that if the buyer has already seen or inspected the exact items they are going to buy before a sale, the contract is for the sale of specific goods.¹⁴ This view is similar to that of Goode and McKendrick, who emphasise that identification must be done through visual inspection.¹⁵

Ryder, Griffiths, and Singh reference the case of *Kursell v Timber Operators & Contractors Ltd* to illustrate the definition of specific goods.¹⁶ In this case, the seller agreed to sell all merchantable timber in a forest — i.e., trees above a certain size. However, the timber had not been physically marked, separated, or cut down, and hence remained standing in the forest. The court held that the timber — i.e., the goods — were not specific. This case demonstrates that goods must be clearly identified for them to be considered specific. It did not specify whether the buyer must know precisely which timber has been marked, separated, or cut down for it to qualify as specific goods, or if merely reserving the timber with the consent of the buyer would suffice to classify the goods as such. As the situation involved goods that were clearly unascertained, the judges did not explore in depth the precise form of identification that would have been needed for the goods to be considered specific.

Adoption of the narrow definitions of specific goods proposed by Goode and McKendrick,¹⁷ or by Ryder, Griffiths, and Singh¹⁸ to *Kursell*¹⁹ would result in the mere reservation being insufficient to classify timber as specific goods, since the buyer had no way of knowing exactly what was being purchased, having not been informed by the seller of the precise quantity, size, and specific merchantable timber in the forest. It is important to note that with the introduction of the textual amendment, timber constituting an undivided share of an identified bulk would be considered "specific goods." Hence, there would be no requirement for precise identification of exactly which timber forms the basis of the contract, provided the timber constitutes part of an identified bulk. However, if the bulk remained unidentified, the original meaning of Section 61 — prior to the amendment — would determine if the goods in question were specific or unascertained.

¹³ *Ibid.*

¹⁴ Neil Ryder, Michael Griffiths, and Lakhvinder Singh, *Commercial Law: Principles and Policy* (Cambridge: Cambridge University Press, 2012).

¹⁵ Goode and McKendrick, *Goode and McKendrick on Commercial Law*, 262.

¹⁶ *Kursell v Timber Operators & Contractors Ltd* [1927] 1 Ch 123 (UK).

¹⁷ Goode and McKendrick, *Goode and McKendrick on Commercial Law*, 262.

¹⁸ Ryder, Griffiths, and Singh, *Commercial Law*.

¹⁹ *Kursell v Timber Operators & Contractors Ltd* [1927] 1 Ch 123 (UK).

*Howell v Coupland*²⁰ presents a perspective that contrasts with that in *Kursell*.²¹ Atiyah and Adams note that *Kursell*²² was decided differently from the Australian case of *Joseph Reid Pty Ltd v Schultz*, despite bearing similar facts; in the latter case, a sale of all the marketable hardwood timber on a specified site was held to constitute a sale of specific goods. This shows the uncertainty surrounding this area of law.²³

In *Howell*, the defendant had contracted to sell the plaintiff 200 tonnes of potatoes grown on a specific parcel of land.²⁴ The court held that the contract concerned the sale of specific goods (the potatoes cultivated on the designated parcel of land). Manteaw explains that the potatoes were classified as specific goods because they were identified by their source (the particular piece of land on which they were to be grown).²⁵ He further adds that the fact that the contract pertained exclusively to potatoes from that land, and not just any potatoes, influenced the court's decision to classify them as specific.

Manteaw also draws a parallel between this reasoning and the view of dissenting judge Lord Justice Atkin in *Re Wait*.²⁶ Lord Justice Atkin stated that since the contract for the purchase of wheat involved a definite portion of a specific parcel of wheat to be shipped within a fixed period on a named vessel, the wheat should be regarded as specific goods.

Manteaw suggests that a strained and artificial distinction could be made between *Howell* and *Re Wait*,²⁷ contending that in *Howell*,²⁸ the potatoes were linked from the outset to a clearly identifiable parcel of land. He maintains that in *Re Wait*, unlike in *Howell*, the wheat was part of a larger, undivided bulk, and that the contract did not specify an exact portion of that bulk from which the 500 tonnes would be taken. Contrary to Manteaw's suggestion in *Re Wait*, however, the contract did specify the portion of the larger bulk, as it involved the purchase of 500 tonnes out of a 1,000-ton bulk. Thus, the only distinction between the two cases is that in *Howell*, the exact numerical value of the identified bulk was not provided.

Nevertheless, both *Howell* and *Re Wait* would lead to the same outcome under the textual amendment to Section 61 under its consideration of goods forming an undivided share of an identified bulk as specific goods. In *Howell*, the potatoes formed a part of the identified bulk (the produce from a specific land parcel), and in *Re Wait*, the wheat came from a known 1,000-tonne bulk. Therefore, in both cases, the goods can be regarded as specific. Manteaw also raises the question of whether the contract in *Howell* specified a particular portion of the potato field from which 200 tonnes were to be harvested. It must be noted that *Howell* did not assign numerical value to the identified bulk, while in *Re Wait*, a numerical value was given to the identified bulk (1,000 tonnes). Nevertheless, it can be said that the potatoes grown on the parcel of land still constituted an identified bulk.

I.C. Saxena illustrates the meaning of Section 61 with the following example: An agreement to sell a particular blue horse constitutes a contract for specific goods, and an agreement to sell any blue horse (not a particular one) involves non-ascertained goods.²⁹ The term "identified" in Section 61 emphasises that the goods are distinguishable and not merely part of a general category. This interpretation emphasises the need for specificity regarding the goods involved. Manteaw states that the phrase "agreed on" signifies that there must be a mutual consensus between the parties regarding the identified goods. Accordingly, he emphasises the need for both parties to be fully in agreement about the exact goods being sold and purchased. This shall ensure clarity about the contract's subject matter.

Consequently, most scholars maintain that the buyer should know precisely what they are purchasing for the goods to be classified as specific. Thus, the majority view suggests that when goods are identified either physically or by earmarking, so that the buyer knows with exact precision what they are purchasing, a contract's subject matter qualifies as specific goods.

This line of thinking was supported in *Ward v Bignall*,³⁰ in which the plaintiffs had advertised two vehicles, a Vanguard Estate and a Ford Zodiac, and the defendant had examined both cars and made an offer to purchase them. The court held that the contract of sale was for specific goods. This was because the subject matter of the contract was well-known to both the seller and the buyer. There was no doubt about this, as the items had been visually inspected and specifically chosen.

In *Re Wait*, the buyer contracted to buy 500 tonnes of white wheat out of a bulk of 1,000 tonnes.³¹ The majority of judges upheld that the goods in question were not specific, as the subject matter was mentioned only as 500 tonnes, and no attempt was

20 *Howell v Coupland* [1876] LR 1 CP 144 (UK).

21 *Kursell v Timber Operators & Contractors Ltd* [1927] 1 Ch 123 (UK).

22 *Ibid.*

23 *Joseph Reid Pty Ltd v Schultz* [1979] 26 ALR 203 (FCA).

24 *Howell v Coupland* [1876] LR 1 CP 144 (UK).

25 Manteaw, "Resolving Definitional Inconsistencies in Unascertained, Ascertained and Specific Goods," 32-38.

26 *Re Wait* (1927) 1 Ch 606 (CA).

27 Manteaw, "Resolving Definitional Inconsistencies in Unascertained, Ascertained and Specific Goods," 32-38.

28 *Howell v Coupland* [1876] LR 1 CP 144 (UK).

29 I. C. Saxena, revised by L. P. Lukose and V. Vabini, *Commercial Law*, accessed December 17, 2025, https://www.academia.edu/43684588/Commercial_Law

30 *Ward v Bignall* (1967) 1 Ch 673 (UK).

31 *Howell v Coupland* (1876) LR 1 CP 144 (UK).

made to particularly identify the 500 tonnes constituting part of the bulk. The case would be decided differently today with the introduction of Section 15A of the Sale of Goods Act 1979.

However, if at the time of contracting, the seller set aside the 500 tonnes of white wheat without informing the buyer, would the 500 tonnes fall within the “specific goods” category? If a seller sets aside 500 tonnes of wheat without informing the buyer, the goods cannot be considered specific under either the original Section 61 of the Sale of Goods Act 1979 or its amendment.³² This situation clearly does not fall within the textual amendment because when 500 tonnes are reserved for the buyer, it constitutes a divided share rather than an undivided share. The Section 61 amendment specifies that only an undivided share of an identified bulk is considered “specific goods.” It does not state that a divided share qualifies as specific.

The likely reason for this is that the legislature did not see the need to address the issue further, possibly assuming that a divided share of goods is inherently specific. However, based on the scholarly analysis above, even if the contractual subject matter is reserved and divided, the item cannot be considered specific goods unless the buyer knows exactly which items are reserved, either through inspection or by a serial number. I.C. Saxena’s illustration is particularly relevant here; simply reserving “a blue horse” does not create a contract for specific goods, and the buyer must clearly know which blue horse they are purchasing.³³ On the other hand, if 500 tonnes of wheat are set aside at the time of contracting and the buyer is informed, would that be classified as specific goods (assuming the goods are not part of an identified bulk, as otherwise the textual amendment would render the goods specific)?

This situation differs from the case in *Re Wait*.³⁴ In the said case, the buyer only knew that the contract involved 500 tonnes of wheat from a defined bulk, but was not informed whether those 500 tonnes were separated from the rest. Section 61 of the Sale of Goods Act 1979 does not provide a clear answer to this issue, as it does not specify the degree of identification required for goods to be considered specific. As illustrated by Goode and McKendrick, the identification of goods must leave no doubt for either party as to the contracted goods in order for them to be considered specific.³⁵ *Re Wait* also demonstrates that the goods have to be particularly identified for them to qualify as specific goods.³⁶

Accordingly, contracting to buy 500 tonnes of wheat from an unidentified bulk and setting it aside with the buyer’s consent at the time of contracting may not necessarily classify the goods as specific, unless the buyer has specific information about the goods. The degree of identification must be such that if the seller were to transfer the goods to another party, the buyer would still be able to recognise them as the contractual goods. For example, in a situation where the seller sells 500 tonnes of wheat, or a portion of it, to another buyer, if the original buyer cannot be certain whether the resold goods are contractual goods or not, it is reasonable to conclude that the contract is not for the sale of specific goods.

However, the situation may not be so straightforward when the parties are located internationally, or when the nature of the goods makes identification inherently difficult. Some items carry serial numbers through which they can be traced and specifically identified, thus making the identification of goods less cumbersome;³⁷ identifying a vehicle by its serial number is less cumbersome than identifying 500 tonnes of wheat from a bulk. For instance, if a seller places an order to purchase one thousand (1,000) mobile phones, the goods will be considered specific, provided the phones are identified with reference to a serial number. Section 61 does not require the parties to physically inspect the goods, and therefore, it is not impossible to create international contracts to buy specific goods. This remains true even though Section 61 does not mandate that goods be identified by a mark, number, or any other particular feature for them to be considered specific.

Re-defining Section 61 of the Sale of Goods Act 1979

According to Atiyah and Adams, in most cases, the statutory definition of specific goods in section 61 of the Sale of Goods Act remains sufficiently clear and effective in distinguishing contracts for the sale of specific goods from those involving future or generic goods.³⁸ Thus, where A promises to sell B 1,000 tonnes of wheat, the contract is plainly not one for the sale of specific goods, since the goods are not identified at the time the contract is made.

However, Atiyah and Adams also acknowledge that in certain cases, the concept of specific goods becomes problematic.

³² *Sale of Goods Act 1979* (UK), s. 15A.

³³ Manteaw, “Resolving Definitional Inconsistencies in Unascertained, Ascertained and Specific Goods,” 32–38.

³⁴ *Howell v Coupland* [1876] LR 1 CP 144 (UK).

³⁵ Goode and McKendrick, *Goode and McKendrick on Commercial Law*, 262.

³⁶ *Howell v Coupland* [1876] LR 1 CP 144 (UK).

³⁷ Radu Bratucu, “What Are Serial Numbers?” *Rentman*, February 15, 2025, <https://rentman.io/blog/serial-numbers-for-equipment>

³⁸ Twigg-Flesner and Canavan, *Atiyah and Adams’ Sale of Goods*, 78.

This is illustrated by *H R & S Sainsbury Ltd v Street*,³⁹ where a contract for the sale of 275 tonnes of barley to be grown on a particular farm was held not to involve specific goods. This was because, although the goods were linked to a defined source, they were still future goods and therefore incapable of being classified as specific at the time of the contract.

Atiyah and Adams further emphasise that the distinction specific goods and some forms of unascertained goods may at times remain almost negligible. The writers are of the view that even if an individual agrees to sell 9,000 tonnes of wheat from a ship carrying 10,000 tonnes, the goods remain technically unascertained because the precise portion to be transferred has not been identified. The writers also point out that such a contract bears a much closer resemblance to the sale of specific goods than to a sale of entirely generic goods. In summary, according to the writers, the more detailed the contractual description, the more the transaction approximates a sale from a defined bulk or stock.

Atiyah and Adams criticise the law for failing to draw a clear line between these categories; this failure has produced practical difficulties in determining when property and risk pass, and in the application of the doctrine of frustration. They also point out that the statutory definition of “specific goods” does not necessarily carry the same meaning wherever the term appears in the Act, notwithstanding the single definition in Section 61 as goods “identified and agreed upon at the time a contract of sale is made.” This is because, in relation to the passing of property, it has been settled that future goods can never be specific — although they may nonetheless be sufficiently identified to fall within the doctrine of frustration.

A further issue identified by Atiyah and Adams concerns the meaning of the word “identified.”⁴⁰ They maintain that in most cases, this presents no difficulty, as it is usually clear whether the goods have been identified by the contract. However, problems arise when general or descriptive language is employed.

The illustrations and case law surrounding the interpretation indicate that in order for goods to be classified as specific goods, the identification must be precise to the extent that both the buyer and the seller know with certainty what items form the basis or the subject matter of their contract. Though Section 61 of the Sale of Goods Act 1979 does not state the extent of identification and agreement needed to classify goods as specific, it is reasonable to conclude, from the above definitions, that the expected level of identification should be narrow. The definition of “specific goods,” however, varies widely. For example, Goode and McKendrick define “specific goods” as “Goods which are fully identified by either handing over or setting aside with the buyer’s consent.”⁴¹

For items to be considered specific goods, Ryder, Griffith and Singh require the buyer to have already seen or inspected the exact items they were going to buy,⁴² and I. C. Saxena stresses, with an illustration, the need for the buyer to precisely identify the item to be purchased for it to qualify as specific goods.⁴³ The ambiguity surrounding the wording of Section 61 of the Sale of Goods Act 1979 makes it difficult to determine its meaning with clarity and precision. Therefore, it is important to introduce a definition that captures the essence of how the term has been interpreted by both academics and case law.

Section 61 can thus be re-defined by encapsulating the definitions illustrated above as follows: the goods must be identified and agreed upon to an extent that, in the event of loss, damage, or unauthorised resale to a third party, there is sufficient evidence to determine precisely whose goods were affected. Under this definition, goods cannot be considered specific merely because they have been reserved with the buyer’s consent. Mere reservation of goods is not sufficient; a contract for the sale of specific goods only arises if the goods are physically identified, earmarked, or assigned a serial number before or at the time of the contract. Furthermore, if items are reserved without the buyer being informed, they will not qualify as specific goods (even if earmarked or serialized) because Section 61 requires not only identification, but also mutual agreement.

The buyer must be clearly informed that the reserved items are intended for them in order for the goods to be considered specific, and the reserved items, too, must go through a clear process of physical identification, earmarking or identification through a serial or similar number. Such would be the evidence that could be used to determine precisely whose goods were affected in the event of loss, damage, or unauthorised resale to a third party. This definition aligns with the interpretation of specific goods suggested by Cheshire, Fifoot and Furmston’s Law of Contract,⁴⁴ which states that if the seller has the ability to use any item to fulfill his contractual obligations, the contract should not be considered as one to sell specific goods. Accordingly, merely setting aside the goods will not suffice for the goods to classify as specific goods either, as this too gives the flexibility to the seller to fulfil the contract by selling items that are not reserved for the buyer.

39 *H R & S Sainsbury Ltd v Street* [1972] 1 WLR 834 (CA).

40 Twigg-Flesner and Canavan, *Atiyah and Adams’ Sale of Goods*, 78.

41 Goode and McKendrick, *Goode and McKendrick on Commercial Law*, 262.

42 Ryder, Griffiths, and Singh, *Commercial Law*.

43 Manteaw, “Resolving Definitional Inconsistencies in Unascertained, Ascertained and Specific Goods,” 32–38.

44 Furmston, *Cheshire, Fifoot and Furmston’s Law of Contract*, 889.

Conclusion

Section 61 of the Sale of Goods Act's brief and ambiguous definition of "specific goods" has led to varying interpretations across case law and academic commentary. The central issue lies in determining the degree of identification and agreement required at the time of contracting for the goods to be classified as "specific." As demonstrated in this analysis, both judicial decisions and scholarly opinions converge on the view that identification requires a high level of precision to a degree where both parties can unmistakably identify the exact goods forming the subject matter of their contract.

Despite this general consensus, the standard to be applied has not been settled. The requirement for physical inspection, earmarking, or unique identification through serial numbers has often been emphasised by academics and case laws as a standard for determining whether goods are specific. However, this creates difficulties in modern transactions, where physical inspection is not practical since parties are generally not placed in proximity. The analysis revealed that mere reservation without clear identification, even if it is supported by consent, is insufficient to meet the threshold set out in Section 61, even if the Section remains silent on this specific issue. To reconcile these inconsistencies and provide a workable standard, this paper has proposed a refined definition of specific goods: The goods must be identified and agreed-upon to an extent where in the event of loss, damage, or unauthorised resale to a third party, there is sufficient evidence to determine precisely whose goods were affected. Under this definition, goods cannot be considered specific merely because they have been reserved for the buyer with their consent. This definition emphasises that the subject matter of the contract should be unmistakably recognised by both sides.

The paper demonstrates how the ambiguous wording of Section 61, specifically the phrase "goods identified and agreed upon," can lead to varying and inconsistent interpretations. This highlights the need for statutory language that clearly defines the thresholds under which goods are classified as specific. The paper also demonstrates how traditional interpretations that rely heavily on physical inspection and proximity between buyer and seller are becoming increasingly obsolete in the context of modern commerce. Contemporarily, many transactions frequently involve digital or fungible goods. As such, the paper advocates for a more flexible yet precise approach that accommodates contemporary commercial realities.

This paper contributes to legal scholarship by proposing a functional redefinition of "specific goods." This new definition emphasises that goods must be identified and agreed upon to the extent that, in the event of loss, damage, or unauthorised resale, there is sufficient evidence to precisely determine whose goods were affected. Such a definition moves beyond the limitations of physical inspection and instead allows for identification through serial numbers or explicit designation. For these reasons, it is more suitable for modern commercial transactions.

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