



## Miles and Dowler, *A Guide to Business Law 21st edition*

### Study Aid – Chapter summaries

#### Chapter summary – ch 18 – sale of goods

1. State and Commonwealth laws relating to consumer protection and legal rights are found in statutes such as the:
  - (a) *Sale of Goods Acts*;
  - (b) *Fair Trading Acts*;
  - (c) *Trade Practices Act 1974* (until end 2010);
  - (d) *Competition and Consumer Act 2010* (from 1 January 2011).
2. The law relating to the sale of goods is contained in the *Sale of Goods Act 1923* (NSW). Similar Acts apply in the other States so that, to some extent, the law is uniform throughout Australia. This Act has limited application in that it only applies to contracts involving the sale of goods.
3. A contract for the sale of goods is identified as a contract involving a sale (of some sort) where there is a buyer and seller and the objective is to transfer ownership in goods from the seller to the buyer for money (price).
4. “Goods” include personal chattels other than choses in action. Land is not goods, nor are services or labour: see *Robinson v Graves*. Normal legal tender (money) are not goods unless being sold as such eg rare coin or bank note. A “gap” in legislative protection appears to be software packages sold electronically do not meet the definition of “goods” under the Act. See *Gammasonics Institute for Medical Research Pty Ltd v Comrad Medical Systems Pty Ltd*.
5. There are two types of contracts covered by the Act:
  - (a) contract of sale: executed contract – ownership passes to buyer at time of contract; and
  - (b) agreement to sell: executory contract – ownership will pass at a later time.
6. The Act places goods into specific categories and the type of goods is usually indicated when ownership passes to the buyer:
  - **Specific goods:** goods identified and agreed upon at time of contract.
  - **Unascertained goods:** goods not yet identified and agreed upon at the time of contract.



- **Ascertained goods:** unascertained goods become ascertained when parties agree, expressly or by implication, which goods are the subject of the contract.
  - **Present, or existing goods:** goods that exist at the time of contract.
  - **Future goods:** goods to be manufactured or acquired by seller after the making of contract.
7. The Act also provides rules about when ownership in the goods is transferred to the buyer. This is important to know because **when ownership (property) passes, risk passes and when ownership passes, the right to pass ownership to another passes.**
8. These rules include two general rules:
- In a contract for the sale of specific goods, ownership passes at the time the parties intended. Intention is discovered by looking at the contract, conduct and surrounding circumstances.
  - In a contract for sale of unascertained goods, ownership cannot pass until the goods have become ascertained.
9. The Act sets out sub-rules for determining when ownership passes, unless parties agree otherwise:
- Unconditional contract for sale of specific goods in deliverable state – ownership passes at time of contract.
  - Contract for sale of specific goods but something still needs to be done to put them in a deliverable state – ownership passes when that thing is done.
  - Contract for sale of specific goods in deliverable state, but they need to be weighed, measured or tested to fix price – ownership passes when they are weighed, measured or tested and the buyer advised.
  - Goods sold on approval or on sale or return – ownership passes when goods are either retained for a specific time, or after a reasonable time, or when buyer does something “adopting the transaction”.
  - Contract for the sale of unascertained or future goods by description – ownership passes when goods of that description are selected and identified by the seller or buyer with the others consent: see *Warders (Import & Export) v Norwood*.
10. The Act recognises that a seller usually cannot sell goods that they do not own; ie a buyer cannot get any better ownership to the goods than the seller. This is called the nemo dat rule. If the seller has a defective title (ownership) then any buyer gets the defective title as well. The Act however, provides a number of exceptions to this rule:



- **Estoppel:** an owner of goods who leads others to believe that someone else has the right to sell those goods is estopped (prevented) from denying the seller's right to pass ownership.
  - **Sale by mercantile agent:** such as an auctioneer, passes good title to a bona fide buyer for value, even where the agent had no authority to do so: see *Folkes v King*.
  - **Sale under voidable title:** a person who has a voidable title can pass good title to a bona fide buyer for value if the title has not been voided before the sale: see *Phillips v Brooks* and *Lewis v Avery*.
  - **Sale by seller in possession:** where ownership in goods has passed to the buyer, and the goods are left in possession of the seller with the buyer's consent, sale by the seller to a bona fide buyer for value will pass good title.
  - **Sale by buyer in possession:** where ownership in goods has not passed to the buyer, and the goods are in possession of the buyer with the seller's consent, sale by the buyer to a bona fide buyer for value will pass good title.
11. The Act provides various rules about delivery of goods and these may apply in the absence of any agreement by the parties.
12. As with delivery of goods, there are specific rules that apply to acceptance of goods by the buyer. These apply in the absence of any express/implied agreement between the parties.
13. The Act provides remedies for the seller for breach of contract:
- Against the goods:
    - withhold delivery;
    - lien; or
    - stoppage in transit.
  - Against the buyer:
    - sue for price if ownership has passed; or
    - sue for damages for non-acceptance.
14. The Act also supplies a number of remedies for the buyer when the contract is broken by the seller. The buyer can:
- sue for damages for non-delivery or breach of warranty;
  - rescind for breach of condition and/or sue for damages; or



- seek specific performance if the goods are unique.
15. Romalpa clauses (also known as retention of title clauses) were developed as a remedy for a seller after *Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd*. It enables the seller to recover products made by the buyer using the seller's unpaid goods. However, there are limits on its effectiveness if products used in buildings: see *CSR v Casaron*.
  16. The introduction of the Personal Property Securities Register imposes greater care on suppliers who rely on retention of title clause to also register their interests.
  17. The Act implies certain conditions into every contract for the sale of goods. Parties can agree to exclude conditions but parties to a “consumer sale” in New South Wales cannot exclude conditions as to correspondence with description, merchantable quality, fitness for purpose and correspondence with sample. A consumer contract is where goods are normally bought for private use or consumption *and* not for resale.
  18. These implied conditions and warranties benefit the buyer and impose obligations on the seller indicated in the following outlines.
  19. Correspondence with description: s 18.
  20. Fitness for purpose: s 19(1): see *David Jones v Willis* and *Grant v Allied Knitting Mills*. The seller promises that the goods sold will be reasonably fit for the purpose for which they were sold. The condition does not operate unless:
    - the buyer expressly or by implication tells the seller the purpose for which the goods were acquired (presumption where goods have only one purpose);
    - the buyer relies on the seller's skill and judgment (generally presumed with a commercial seller);
    - the goods are of a kind which are in the course of the seller's business to sell; or
    - the buyer did not request by trade name.
  21. Merchantable quality: s 19(2). The seller promises that the goods sold are of merchantable quality. Merchantable quality is generally what a reasonable person would expect having regard to price, type, purpose and circumstances of the sale.

The condition does not operate unless:

- it is a sale by description; and
- the seller deals in goods of that description: see *Grant v Allied Knitting Mills* and *Liaweena Pty Ltd v McWilliams Wines*.



22. Correspondence with sample: s 20. The seller promises that where goods are sold by sample the bulk will correspond with the sample.
23. The *Sale of Goods Act* only implies conditions in contracts for the sale of goods between seller and buyer. It does not imply conditions:
  - into contracts for the supply of services;
  - into contracts for the supply of labour and materials; or
  - between buyer and manufacturer or importer.
24. Other State and Commonwealth laws protect consumers in various ways including implied conditions and warranties. Note that there is a new national consumer law in 2011 that changes the consumer laws to apply as a single law across Australia. See Chapter 19 for more details.