

SGA TRANSACTIONS?

6 (1) A contract of sale of goods is 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**.

REQUIRMENT #1 - Intention to transfer property in goods

Primary intention vs. incidental intention – excludes situations where no reasonable expectation to transfer property.

Contract for labour and materials?

1. Has the bulk of the money paid for labour or goods? [**Gee v White Spot**].
2. The essence of the contract [**Robinson v Graves**: an undertaking by the artist to exercise such skill as he was possessed of in order to produce for reward a thing which would ultimately have to be accepted by the client].
3. Obligations implied into the sale K and labour K [**Young and Marten**: “[A] person contracting to do work and supply materials warrants that the materials which he uses will be of good quality and reasonably fit for the purpose for which he is using them, unless the circumstances of the contract are such as to exclude any such warranty”].

Lease or an agreement to sell? [**Lee v Butler**: the lease was a mandatory one where the lessee had to finish the lease and become the owner of the furniture. **Helby v Mathews**: the hirer was not obliged to complete the lease]. // other relevant provision: 30(3)

Consignment or an agreement to sell? [consignee’s obligations, whether consignee becomes the owner when the consignee fails to find a buyer?] [**Weiner v Harris** “sale and return”, **Re Stephanian’s Persian Carpets**: no obligation on the consignee to pay the consignor until the goods are sold. In addition, the consignee can return the unsold goods whenever].

REQUIRMENT #2 - Property

Not restricted to ownership – see total failure of consideration

REQUIRMENT #3 – “Goods” s. 1 all chattels personal, other than things in action and money

Intention as evidenced by the contract is the determining factor in arriving at the conclusion whether the article in question is, or is not, a chattel [**Fredkin**]. Therefore, trees/grass sold for the purpose of being cut and taken away, they are goods [**Frekin**: grass which was not deliberately planted to be harvested].

On the other hand, when the buyer is allowed to go onto the land and take “as much time as he desires” to remove trees, the timber is viewed as an interest running with the land [**Carlson v Duncan**].

Comparing Fredkin and Carlson: “required” vs. “allowed”, time

REQUIRMENT #4 –Price

The essence of a sale is a transfer from the buyer to the seller for a money consideration, called the price, which the buyer pays or agrees to pay; but, if the consideration for the transfer is wholly or in part, other goods, the total price not being fixed in money, the transaction is an exchange or barter [**Mason**].

Sales include all agreements by which property is parted with for valuable consideration, whether there be a money payment or not, provided that considered is made and value measured in monetary terms, i.e. assigned monetary value [**Messenger**].

s. 12 and 13

ELEMENTS OF CONTRACT

General Proposition

Rules of CL and equity continue to apply to sale of goods transactions except when it is inconsistent with express provisions of the SGA [s. 73].

Bona fide purchaser for value - When the seller of goods has a voidable title to them, but the seller's title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, if they are bought in good faith and without notice of the seller's defect of title [s. 28]. // good faith is defined in s. 2 – honest.

Capacity

Capacity to buy and sell [s. 7] - Incapacity can make a contract void or voidable [**Bawlf Grain**], which result applies depends on the reason for the incapacity. Section 7 requires an incapacitated person in some cases to pay a reasonable price for “necessaries”.

Formalities

Writing requirements are not present in the SGA but could be in others.

*email exchange meet the written requirement but email address alone does not meet the signature requirement [see **Mehta**]. v

Price

Price is an important part of a contract of sale [see s. 6] but the parties might not have to agree on price. This is related to the element of certainty of terms.

s. 12 Price – preserves K where parties haven't agreed on price

(1) – methods to set price: (a) set by contract, (b) left to be set as agreed in the contract, or (c) determined by the course of dealing between the parties.

(2) – if undetermined, price will be ‘a reasonable price

(3) – what is a ‘reasonable price’ depends on facts

s, 13 Price set by third party

CATEGORIZATION OF GOODS – SUBJECT MATTER OF CONTRACT

The parties cannot contract out of the definition section. To this end, the label that parties use to concerning goods is not determinative as to the nature of the categorization. However, the parties can stipulate the consequences flowing from a breach.

Existing and future goods // specific goods and unascertained goods.

Existing or future goods

Future goods may become existing goods but not vice versa. The key concepts involved here are ownership and possession.

- 9 (1) The goods that form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.
(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends on a contingency that may or may not happen.
(3) If by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

s. 1 “**future goods**” means goods to be manufactured or acquired by the seller after the making of the contract of sale;

Specific Goods

Specific goods are goods identified and agreed upon at the time a contract of sale is formed [see **Kursell: unascertained goods**. Steps had to be taken by both parties to ascertain them; therefore, property hadn’t passed] .

Future goods can be ascertainable, if the goods have been described in detail. Unascertained goods can become ascertained but not specific.

UNASCERTAINED GOODS - The distinguishing characteristic of a contract for the sale of unascertained goods is that, at the date of contract formation, the particular goods which will form the subject matter of the transaction are not yet physically identified. This may be because: a) the goods have only been generically described, e.g. “100 tons of Western White Wheat”; b) they have not yet been separated from a larger bulk of which they form a part, e.g. “500 of the 1000 tons of wheat in elevator #324 at New Westminster, B.C.”; or c) the goods do not yet exist (future goods), e.g. “4 of the chairs I shall manufacture next week”

CATEGORIZATION OF GOODS – SUBJECT MATTER OF CONTRACT

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Existing and future goods // specific goods and unascertained goods.

Ascertainable Goods

Specific Goods

~condition + ~rejection

15(4) the buyer has accepted the goods or part of them, or if the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, **unless** there is a term of the contract, express or implied, to that effect.

Perished Goods

Goods that have perished

10 A contract for the sale of **specific goods** is void if, without the knowledge of the seller, the goods have perished at the time when the contract is made.

Goods perishing before sale but after agreement to sell

11 If there is an agreement to sell **specific goods**, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is avoided.

Effect of breach

Specific good +property has passed: 15(4) + 23(2) – cannot reject – treated as breach of warranty: Damages only

➤ **delivery state // conditional contract for the sale of specific goods //~specific goods**

Unascertained can reject gd if not in accordance with description 21- Property passed when ascertained; exception – 15(4) if accepted the goods

➤ S. 38 reasonable opportunity to examine to verify if the goods conform with description

➤ **to get around s. 39 deemed acceptance – sale by sample 19(2)**

WAYS TO GET AROUND S. 15(4) - If a contract of sale is not severable and the buyer has accepted the goods or part of them, or if the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

S. 34(3) - If the seller delivers to the buyer a quantity of goods larger than the seller contracted to sell, the buyer may (a) accept the goods included in the contract and reject the rest – 34(3)(a) would apply if the second delivery is more than the quantity articulated in the contract.

34(3)(b) may not apply to installment contract – can you reject everything that delivered to you; retroactively.

Section 34 allows you to reject everything – retroactively.

Severable contract

Delivery by installment s. 35

CATEGORIZATION OF PRIMARY OBLIGATIONS

The SGA categorizes all primary obligations as either conditions or warranties. Labeling by the parties is not determinative of the nature of the terms. The parties should identify the consequence flowing from the breach of the term.

Labeling of a term as a condition or a warranty, on its own, is not determinative [s. 15(2)].

Warranty

Condition

Warranty

s. 1 - “warranty” means an agreement with reference to goods that are the subject of a contract of sale, but collateral to the main purpose of that contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

Condition may be treated as warranty

15 (1) If a contract of sale or lease is subject to any condition to be fulfilled by the seller or lessor, the buyer or lessee may
(a) waive the condition, or
(b) elect to treat the breach of the condition as a breach of warranty, and not as a ground for treating the contract as repudiated.

15 (4) If a contract of sale is not severable and the buyer has accepted the goods or part of them, or if the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

The Hansa Nord – Denning: “ship in good condition” - % of the goods that does not meet the standard – not all or nothing.

The buyer may no longer be able to reject the goods if 1) the buyer intimates to the seller that the buyer has accepted them, 2) the goods have been delivered to the buyer, and the buyer does any act in relation to them which is inconsistent with the ownership of the seller, or 3) after the lapse of a reasonable time, the buyer retains the goods without intimating to the seller that the buyer has rejected them [see. S. 39].

IMPLIED TERMS

Three ways to imply terms into a contract – implication by law (statutes or common law), customary usage, necessary terms to give other terms meaning.

S. 69 Exclusion of implied terms and conditions

Any right, duty or liability that would arise under a contract of sale by implication of law may be negated or varied

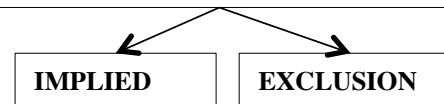
- (a) by express agreement,
- (b) by the course of dealing between the parties, or
- (c) by usage, if the usage is such as to bind both parties to the contract.

20(2) in the case of a retail sale or lease of brand new goods, any term of a contract of sale or lease, or any collateral or contemporaneous contract or agreement, that purports to negative or in any way diminish the conditions or warranties under sections 17, 18 and 19 of this Act, is,

- (a) if a term, severable from the contract and void, or
- (b) if a collateral or contemporaneous contract or agreement, void.

(3) in the case of a retail sale or lease of new or used goods,

- (a) any term of a contract of sale or lease, or
- (b) any collateral or contemporaneous contract or agreement, that purports to negative or in any way diminish the condition or warranty under section 16 is,
- (c) if a term, severable from the contract and void, or
- (d) if a collateral or contemporaneous contract or agreement, void.



s. 16 – implied undertaking as to title, and implied warranty of quiet possession

s. 69, s. 20(2)

Sale by description – s. 17

Implied conditions as to quality or fitness – s. 18

s. 69, s. 20(3)

Sale by sample – s. 19

Bhasin v Hrynew 2014 SCC 74

Two things about all contracts –

There is an implied duty of good faith **in contract**: an organizing principle of good faith, including many doctrines, e.g. misrepresentation, unconscionability. Facts of the case- the party did not exercise good faith but regarding issues outside of the contract – so no remedy based on this.

BUT A new duty applies to all contract – a duty of honest performance! A duty not a term – so you cannot contract out of it. You cannot eliminate it out of the contract. You cannot do something that would mislead the other party. Though not a term in the contract, the remedy of the breach of which is damages award.

BWM- Misrepresentation in the performance of the contract not in the stages leading to the formation of the contract.

IMPLIED TERMS – section 16 Implied undertaking as to title, and implied warranty of quiet possession.

← **IMPLIED**

EXCLUSION →

s. 16 – implied undertaking as to title, and implied warranty of quiet possession

16 In a contract of sale or lease, **unless the circumstances of the contract are such as to show a different intention**, there is

(a) **an implied condition [s. 15(4)]** on the part of the seller or lessor that

(i) in the case of a sale or lease, the seller or lessor **has a right to sell or lease the goods**, and

(ii) in the case of an agreement to sell or lease, the seller or lessor will have a right to sell or lease the goods at the time when the property is to pass or the lessee is to take possession of the leased goods,

(b) **an implied warranty** that the buyer or lessee is to have and **enjoy quiet possession of the goods**, and

(c) **an implied warranty** that the goods are free from any charge or encumbrance in favour of any third party, not declared or known to the buyer or lessee before or at the time when the contract is made.

s. 69, s. 20(3)

Although the seller cannot contract out from the obligation to transfer title [ss. 6, 16, 20(3)], the seller can contract out from the implied conditions and warranties stated in s. 16.

- Rowland v. Divall** – failure to transfer ownership isn't 16(a) it is **failure of consideration**
- Butterworth** – feeding of title may rectify title problem and prevent further claims under 16(a)
- Niblett Ltd** – goods were commercially **unuseable** (prohibited from dealing in goods w/this label)
- J. Barry Windsor** – no right to sell because lamps didn't comply w/government regulations
- Sloan** – difficult to K out of 16(a), be precise; BUT s.16 seems to allow "if circumstances of K show a different intention"
- Microbeads** – right to sell is limited to the moment K is entered into; not ongoing obligation

The implied warrant that the buyer or lessee is to have and enjoy quiet possession of the goods [16(b)] is an on-going warranty [**Microbeads**]. // **commercially unusable** [**Niblett**]

Section 16(c) states an implied warrant that the goods are free from any charge or encumbrance in favour of any third party, not declared or known to the buyer or lessee before or at the time when the contract is made. Registration of a charge or encumbrance is not sufficient to constitute as a notice to the buyer.

Void	There was no contract from the start – no damages.
Voidable	The contractual party can reverse the contract – maybe damages.
Total Failure of Consideration	<p>The party cannot retain the goods but can sue for damages.</p> <p>Rowland v Divall – stolen car</p> <p>Scrutton - There shall be "An implied condition on the part of the seller that he has a right to sell the goods." It being now a condition, wherever that condition is broken the contract can be rescinded, and with the rescission the buyer can demand a return of the purchase money, unless he has, with knowledge of the facts, held on to the bargain so as to waive the condition.</p> <p>Atkin - a total failure of consideration, that is to say that the buyer has not got any part of that for which he paid the purchase money.</p> <p>Butterworth v Kingsway Motors – the sale of leased vehicle.</p> <p>Rowland was inappropriately applied here because possessory interest in the vehicle was passed. There was no total failure of consideration. To this end, the buyers can no longer rely on s. 16(a) because the goods have been accepted. It is too late to reject goods.</p> <p>A word on bona fide purchaser – bona fide purchaser does not apply to situations of total failure of consideration.</p>

IMPLIED TERMS – section 17 sale by description – conditional sale: if specific goods, 23(2) does not operate.

← **IMPLIED**

EXCLUSION →

17 (1) In a contract for **the sale or lease of goods by description**, there is an **implied condition** that the goods must **correspond** with the **description**.
 (2) If the sale or lease is by sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

s. 69, s. 20(2)

Use **common law** then s. 17 [**Frey v Sarvajc**]. section 17 is an addition to the existing structure of law: it co-exists with tort, restitution, estoppel, and contract law.

Reasonably notice defect // latent defect // explicit representation untrue

REQUIREMENT #1

a contract for the sale of goods by description

All contract of sale are sale by description [**Varley v Whipp, Beale**].

REQUIREMENT #2

description

The trade name label was a description of the goods even though the seller didn't describe the goods to the buyer in person [**Sams**]

Unascertained [**Taylor**]

With respect to unascertained goods, description consists everything said about the goods. Statements about goods are not differentiated as to their importance. **BMW**: mere puff does not constitute as description.

Specific [**Taylor**]

With respect to specific goods, statements about goods can be categorized as representation, condition, or warranty. Section 17 only applies to statements that relate to the **essential quality and character** of the goods. To this end, s. 17 does not exist for specific goods.

REQUIREMENT #3

correspond with the description

Specific size

To “correspond[] with description”, especially a numbered measurement or time, the goods must comply exactly with the description.

Generic description

“Norwegian herring meal” is general and superficial. As such, the requirement of to “correspond with description” does not command a exact fit as in Arcos.

Frey v. Sarvajc – “as is” sale Ks you out of s.17; unless fundamental problem

Varley v. Whipp – specific goods sale where B hasn't seen goods, relying on description = SBD

Beale – used goods almost always = SBD; anything said describing (even inferentially) = SBD

Taylor v. Combined Buyers – what constitutes description to use s.17:

Unascertained goods: any term in K relating to description; makes all terms conditions

Specific goods: only fundamental/essential components of description; no different than CL

Arcos v. Ronaasen – goods that don't match description can be rejected; even if still useable

Ashington Piggeries – if in essence what you get is what was described no breach of s.17, even if unusable (go to **18(a)** for impact of goods)

IMPLIED TERMS – section 18(a) Implied conditions as to quality or fitness – ABOLISH PRIVILEGE

← IMPLIED

EXCLUSION →

18 Subject to this and any other Act, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale or lease, except as follows:

(a) if the buyer or lessee, expressly or by implication, makes known to the seller or lessor the **particular purpose** for which the goods are required, so as to show that the buyer or lessee **relies on the seller's or lessor's skill or judgment**, and the goods are of a description that it is in the course of the seller's or lessor's business to **supply**, whether the seller or lessor is the manufacturer or not, there is an implied condition that the goods are reasonably **fit for that purpose**; except that in the case of a contract for the sale or lease of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

s. 69, s. 20(2)

REQUIREMENT #1	Particular purpose	<p>The buyer, <u>expressly [a particular purpose] or by implication [normal]</u>, makes known to the seller or lessor the particular purpose for which the goods are required. [Specific + particular purposes – this point is also relevant to damages]</p> <p>BUT</p> <p>The absence of particular purpose is not a bar to s. 18(a). Court will imply purpose [Marshall]. However, the more specific/particular a purpose is, the more difficult it is for the seller to satisfy the purpose [Henry Kendall]. // for the facts at hand, 10% of the purchasers buy the feed for poultry. Thus, the purpose of feeding poultry is considered to be a usual reason for the purchase. The fact that the feed kills poultry provides ground for unfitness for the above purpose and thereby the seller breached s. 18(a).</p>
REQUIREMENT #2	Reliance	the buyer or lessee relies on the seller's or lessor's skill or judgment
REQUIREMENT #3	Supply	the goods are of a description that it is in the course of the seller's or lessor's business to supply
REQUIREMENT #4	Fit	<p>reasonably fit for that purpose [the seller must supply goods reasonably fit to enable the buyer to carry out his purpose in any normal way]</p> <p>Allergies and idiosyncratic users - whether they know of this allergy or whether their allergy is common.</p> <ul style="list-style-type: none"> ➤ Reasonably foreseeable and appreciable class or number of potential users [Esbory; Griffiths]. S only liable for reaction in foreseeable, normal users. ➤ Innocent// disclose one's abnormal condition [Ingham]
Relevant Time	<p>At the time of sale, whether the goods reasonably fit the purpose [Crowther]</p> <p>Crowther: Jaguar – good for three weeks and it had gone 2,354 miles. // Comparing to Bartlett - It may not be in perfect condition but yet it is in usable condition. It is then merchantable; the buyer failed on the 18(b) claim due to a rather general description.</p>	
Provision	Baldry narrows the application of the 18(2) proviso.	

Also relevant to delivery state: 23(2); therefore 15(4)

IMPLIED TERMS – section 18(b) Implied conditions as to quality or fitness.

← IMPLIED

EXCLUSION →

18 (b) if goods are **bought by description** from a seller or lessor who **deals** in goods of **that description**, whether the seller or lessor is the manufacturer or not, there is an implied condition that the goods are of **merchantable quality**; but if the buyer or lessee has examined the goods there is no implied condition as regards defects that the examination ought to have revealed;

s. 69, s. 20(2)

REQUIREMENT #1

Dealing of Goods of THAT description

The court took a narrow view – sufficient dealing = ongoing basis + close correspondence with what is sold and what has been sold. // some cases demonstrate that intention to sell similar goods in the future is sufficient to constitute dealing. [Hartmann]
18(b) concerns about the heart of the description whereas 17 cares about everything said about goods [Hartmann]

Barlett [secondhand car] It may not be in perfect condition but yet it is in **usable condition**. It is then merchantable. **If the description is wide that goods required for different purposes were commonly bought under it, and if the goods were suitable for some of the purposes, the goods are merchantable.**

REQUIREMENT #2 – Merchantable Quality

Factor #1

Price: Price in some circumstances can come into play to narrow down the purposes of goods. There is a difference between the contract price and that which the goods would fetch if sold for a different use. [Brown – rayon]

Factor #2

Realistic purposes: the more complex the description – the fewer purpose it can serve.

Realistic purposes depend on the nature of the goods – durability; also see 18c.
For perishable goods, i.e. susceptible to deterioration, as long as the goods arrive in merchantable quality, 18(b) has met.

Factor #3

Whether a hypothetical buyer would be satisfied with the goods

IBC – glass cover – majority // dissent: trivial.

Factor #3

Knowledge: all knowledge is relevant to breach of contract [Henry Kendall].

Proviso – inspection

If a reasonable examination would have revealed defects, the buyer can no longer complain about such defects.

The key question remains what constitutes the beginning of an examination. This may discourage the buyer from engaging in examination of goods [Thornett].

18(b) built in durability

Buckley v. Lever Bros – MQ only assessed at time ppty passes; SGA not to make S insurer
Mash & Murrell – MQ requirement continues after ppty passes for a “reasonable time”

IMPLIED TERMS – section 18(c) Implied conditions as to quality or fitness.

Three ways to imply terms into a contract – implication by law (statutes or common law), customary usage, necessary terms to give other terms meaning.

S. 69 Exclusion of implied terms and conditions

Any right, duty or liability that would arise under a contract of sale by implication of law may be negated or varied (a) by express agreement, (b) by the course of dealing between the parties, or (c) by usage, if the usage is such as to bind both parties to the contract.

IMPLIED

EXCLUSION

18 (c) there is an implied condition that the goods will be **durable** for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale or lease; **s. 18(b) provides durability in some situations, depending on the nature of the goods and purpose of the goods [Mash]**

s. 69, s. 20(3)

Durability

only if the goods at the time of the accident were in the condition they were in at the time of the transfer to the purchaser [**Buckley**].

IMPLIED TERMS – section 19 sale by samples // Difficult to argue SBS if the buyer is selecting the sample [Cudahy Packing].

←
IMPLIED

→
EXCLUSION

Sale by sample

19(2) In a contract for sale or lease by sample,

- (a) there is an implied condition that the bulk must **correspond** with the sample in quality,
- (b) there is an **implied condition** that the buyer or lessee must have a **reasonable opportunity** of comparing the bulk with the sample, and

(c) there is an **implied condition** that the goods must be free from any defect rendering them unmerchantable that would not be apparent on reasonable examination of the sample.

!(a) and (c) should be argued together!

s. 69

Sale by sample –

1. **Seller selects the sample; it is difficult to argue SBS if the buyer selects the sample [Cudahy Packing]**
2. **Express/implied assertion that the rest of what the buyer is getting is what the buy has seen via sample.**
 - It is not enough to satisfy 19 by merely allowing the buyer to inspect the goods.

ss. 38, 39 and 19(2)(b).

Section 38 entitles the buyer to examine goods prior to acceptance. However, s. 39 deems three situations where the acceptance occurs without examination. After acceptance, the buyer can no longer reject specific goods [s. 15(4)].

To acquire extra time to examine the goods, the buyer can rely on s. 19(2)(b) where the lack of an opportunity for the buyer to examine goods allows the buyer to reject the goods – argue that initial delivery was a “sample” and the bulk delivered later must correspond with the sample under s. 19(2).

19(2)(a) – correspondence

The fact that the chemical composition was different doesn't make the bulk/sample different in essence, and essentially still the same product [**Steels**].

- As long as upon reasonable examination, which does not include submitting a sample for lab testing, the bulk corresponds with sample, s. 19(2)(a) is fulfilled.
- Reasonable examination = common sense [**Godley**]

19(2)(c) – reasonable examination & defect – an obligation on B to reasonably examine

“Quality” - ought to be restricted to those that are patent, or discoverable from reasonable examinations. Reasonable inspection – visible can be enough [**Steels**].

Reasonable examination: common sense [Godley].

17 (2) If the sale or lease is by sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

EXCLUSION AND LIMITATION CLAUSES – SECONDARY OBLIGATION

Freedom of contract only applies to primary obligations and not secondary obligations. For example, the law prohibits penalty clause and limits exclusion clauses. In consumer context, three types of constraints on secondary obligations are: 1) SGA ss. 20 and 69, 2) BPCPA, and 3) common law **Tercon**.

SGA

TERCON

No waiver of warranties or conditions

20 (1) For the purpose of this section, retail sale or lease includes every contract of sale or lease made by a seller or lessor in the ordinary course of the seller's or lessor's business but does not include a sale or lease of goods

- (a) to a purchaser for resale or to a lessee for subletting,
- (b) to a purchaser or lessee who intends to use the goods primarily for business purposes,
- (c) to a corporation or an industrial or commercial enterprise, or
- (d) by a trustee in bankruptcy, a liquidator or sheriff.

(2) Despite section 18 (e) or 69, in the case of a retail sale or lease of goods, other than goods that on reasonable inspection appear to be used goods or goods that are described or represented by the seller or lessor to be used, any term of a contract of sale or lease, or any collateral or contemporaneous contract or agreement, that purports to negative or in any way diminish the conditions or warranties under sections 17, 18 and 19 of this Act, is,

- (a) if a term, severable from the contract and void, or
- (b) if a collateral or contemporaneous contract or agreement, void.

(3) Despite section 18 (e) or 69, in the case of a retail sale or lease of new or used goods,

- (a) any term of a contract of sale or lease, or
- (b) any collateral or contemporaneous contract or agreement, that purports to negative or in any way diminish the condition or warranty under section 16 is,
- (c) if a term, severable from the contract and void, or
- (d) if a collateral or contemporaneous contract or agreement, void.

Exclusion of implied terms and conditions

69 Any right, duty or liability that would arise under a contract of sale by implication of law may be negated or varied

- (a) by express agreement,
- (b) by the course of dealing between the parties, or
- (c) by usage, if the usage is such as to bind both parties to the contract.

1. notice requirement

- Generally, signature signifies one's knowledge of the content in the agreement. However, signature itself may not be sufficient [**Tilden Rent-a Car**].

2. construction – narrow

3. unconscionability

- bargaining power [**Kretziger**]
- commercial morality and assess the transaction as a whole [**Lamer dissenting in Kretziger**]

4. public policy

PRIVITY

BCCPA abolished privity 18(a). Also see New Brunswick. Section 18 of the BC SGA partially abolishes the doctrine of privity.

PRIVITY PROBLEM		
Vertical privity [specific performance]	Chabot v Ford Motor Co. of Canada	<p>manufacturer chain: in the context of a guarantee contract</p> <ul style="list-style-type: none"> ○ Consumer may not have K with manufacturer/ supplier ○ Manufacturer cannot restricts consumer rights against retailer
Horizontal privity [agency]	Lyons v Consumers Glass	<p>A enter into K with B for benefit of C A cannot sue for C if A is not agent, C cannot sue cuz not party to K</p>
MODELS OF REFORM		
US	Henningsen	<p>Third party beneficiary can enforce a contract. The wife can bring a claim on her own though she was not a party of the contract.</p> <ul style="list-style-type: none"> ○ Should include ppl who in the reasonable contemplation of parties to sale ○ Might be expected to use the product <p>*horizontal privity</p>
Quebec	Kravitz	<p>In K of sale – two things are transferred: 1) real rights in property and 2) personal rights in the form of quality promises.</p> <p>Personal promises are intangible property and can be assigned. In the alternative, the courts can imply assignment.</p>
Canada- Common law	<p>Fraser River – horizontal privity</p> <p>Also London Drugs</p>	<p>London Drugs: if a K contains a defence for you – even tho you are not party to K, you can rely on the defence.</p> <p>Fraser River</p> <ul style="list-style-type: none"> ▪ 1. Did parties to K intend to extend the benefit in question to the 3rd party seeking to rely on the k provision ▪ 2. Are the activities performed by the 3rd party seeking to rely on the K provision the very activities contemplated as coming w/in the scope of k in general <p>FR: cannot waive the benefit once the benefit has crystalized</p>

THE PASSING OF PROPERTY AND RISK

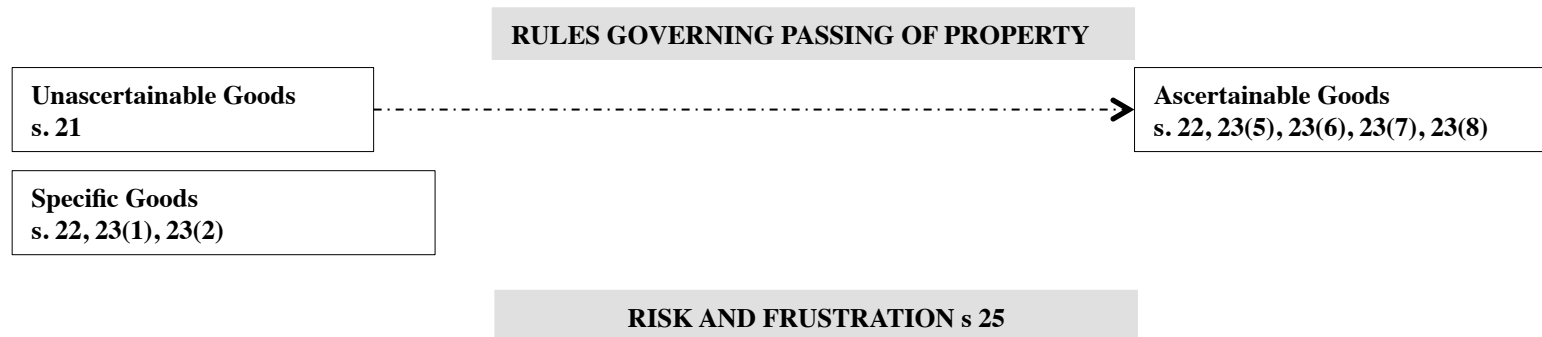
The time at which property is transferred from seller to buyer is a function of the parties' intention [s.22], subject to the qualification [s.21] that, in a contract for the sale of unascertained goods, property may not pass until the goods are ascertained. Where the parties' intention is not discoverable in accordance with s. 22(2), s.23 imputes intention in the cases stipulated.

Liberty Wine – important of intention

[18] Liberty relies on Rule 3 [i.e. s.23(3)] and contends that once appropriated, the goods are specific goods requiring something to be done by the seller to put them in a deliverable state. Property under the rule does not pass until they are in a deliverable state, when they have become wine.

[19] Specific goods are defined to mean “goods identified and agreed on at the time a contract of sale is made”.

Mr. Godwin stressed all the s. 23 rules are subject to the qualification of the opening words “Unless a different intention appears,”. He submitted that the Rack It and its customers intend to have property pass immediately when a kit is taken from inventory and opened for the customer.



Risk passes with property

25 (1) 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.

Property rule: if you are the owner, you are responsible for your goods.

“Unless otherwise agreed” – contract rule!

Interesting: you cannot impact third party, privity. The contract is only enforceable against the other contractual parties.

Jerome v Clement Motor Saless

where the vendor has undertaken to perform certain things to the subject-matter of the sale, it is important to ascertain whether the performance thereof is meant to precede the vesting of the property or not.

Notice requirement – prior to the transfer of risks

Other relevant provisions: perished goods

Goods that have perished

10 A contract for the sale of specific goods is void if, without the knowledge of the seller, the goods have perished at the time when the contract is made.

Goods perishing before sale but after agreement to sell

11 If there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is avoided.

RULES GOVERNING PASSING OF PROPERTY

Unascertainable Goods

Until such time as the goods have been selected, separated or manufactured and separated, as the case may be, there can be no transfer of property because s. 21 of the *S.G. Act* provides that property shall not pass until the goods are ascertained. Until such time the contract can only operate as an agreement to sell.

Ascertainment of the goods is a necessary precondition to the passing of property, but mere ascertainment will not cause property to pass. The intention of the parties is the governing factor and, if no intention is discoverable in accordance with s. 22(2), subsection 6 of s. 23 applies.

Ascertainable Goods

22 (1) If there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at the time the parties to the contract intend it to be transferred.
(2) For ascertaining the intention of the parties, regard must be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

23 (1) **Unless a different intention appears**, the intention of the parties as to the time at which the property in the goods is to pass to the buyer is governed by the rules set out in this section.
(7) If there is a contract for the **sale of unascertained or future goods by description**, the property in the goods passes to the buyer when goods of that description and in a deliverable state are unconditionally appropriated to the contract [property passes on unconditional appropriation by buyer or seller with assent of the other]
(a) by the seller with the assent of the buyer, or
(b) by the buyer with the assent of the seller.
(9) If, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee, whether named by the buyer or not, for transmission to the buyer, and does not reserve the right of disposal, the seller is deemed to have unconditionally appropriated the goods to the contract. [delivery without reservation of right of disposal is deemed appropriation]

Carlos Federspiel & Co SA v Charles Twigg

1. Ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer unless a different intention appears. **COMMON INTENTION**
 1. To constitute an appropriation of the goods to the contract, the parties must have had, an intention to attach the contract irrevocably to those goods, so that those goods and no others are the subject of the sale and become the property of the buyer.
2. It is by agreement of the parties that the appropriation, involving a change of ownership, is made, although in some cases the buyer's assent to an appropriation by the seller is conferred in advance by the contract itself or otherwise.
3. An appropriation by the seller, with the assent of the buyer, may be said always to involve **an actual or constructive delivery**. If the seller retains possession, he does so as bailee for the buyer.
4. On the construction of the relevant documents, that the goods were, at all material times, still at the seller's **risk**, that prima facie an indication that the property had not passed to the buyer.
5. Usually but not necessarily, the appropriating act is that the **last act** to be performed by the seller.

[Varley] conditional K in which parties must've intended for property not to pass until the buyer has at least seen the goods.

Sells v Thomson

ACTION FOR THE PRICE – the seller needs to prove that the title has passed to the buyer.

Implied assent can be withdrawn by **notice**. Because the buyer said that they don't want these goods, there was no assent.

RULES GOVERNING PASSING OF PROPERTY

Specific Goods

- 22** (1) If there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at the time the parties to the contract intend it to be transferred.
- (2) For ascertaining the intention of the parties, regard must be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Intention of the parties as to the passing of the property in the goods

23

- (1) **Unless a different intention appears**, the intention of the parties as to the time at which the property in the goods is to pass to the buyer is governed by the rules set out in this section.
- (2) If there is an **unconditional contract** for the sale of **specific goods in a deliverable state**, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, are postponed.
- (3) If there is a contract for **the sale of specific goods**, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until that thing is done and the buyer has **notice** of it. [**Jerome**: S was to do repairs on car; repairs done but no notice to B; ~passing of title].
- (4) If there is a contract for **the sale of specific goods in a deliverable state**, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of **ascertaining the price**, the property does not pass until that act or thing is done and the buyer has **notice** of it.
- (5) When goods are delivered to the buyer on approval or "on sale or return", or other similar terms, the property passes to the buyer as follows:
- (a) when the buyer signifies approval or acceptance to the seller or does any other act adopting the transaction;
 - (b) if the buyer does not signify approval or acceptance to the seller, but retains the goods without giving notice of rejection, then, if a time has been set for returning the goods, at the end of that time, and, if no time has been set, at the end of a reasonable time.
- (7) If there is a contract for the **sale of unascertained or future goods by description**, the property in the goods passes to the buyer when goods of that description and in a deliverable state are unconditionally appropriated to the contract [**property passes on unconditional appropriation by buyer or seller with assent of the other**]
- (a) by the seller with the assent of the buyer, or
 - (b) by the buyer with the assent of the seller.

Subsection 2 has been narrowly construed. The parties would not rely on s. 23(2) if there is implied intention as the passing of property. If s. 23(2) applies, the courts are likely to focus on two factors: 1) deliverable state and 2) implied/explicit conditions in the contract.

K for future goods – cannot transfer property in future goods.

“deliverable state” [s. 4] - Deliverable state” means a state where the seller can compel the buyer to accept the goods as corresponding to the agreement [**Jerome**].

Kursell v Timber Operators and Contractors

Before the trees can be cut down, the land become part of government’s property. The buyer said that I don’t have to pay you because I don’t have trees. I should sue you for the failure to deliver trees.

Seller: unconditional contract for specific good in delivery state. You are the owner of the trees. Pay us.

No contract for specific goods. Contract for ascertained goods.

We don’t know which trees are parts of the contract.

DELIVERY: “the transfer of possession of the goods to the buyer” [s. 1].

General principle: s. 31: It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

WHEN 33(4), 14, 32

If one party is not ready, the other party does not have to perform – READY AND WILLING TO PERFORM

Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale [s. 14(1)]. Whether time is a condition or warranty depends on interpretation of the contract [14(2)].

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions [s. 32].

If under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is set, the seller is bound to send them within a reasonable time [33(4)].

If K specified:
mercantile K

if expressly stipulated a time for delivery → time is a condition

if not stipulated → presumed warranty

Application

Strict on compliance – if time specified, condition [**Bowes**]; irrelevant whether early or late

Even if it is waived, the condition can be re-imposed with sufficient notice [**Richards**]

WHERE 33, 36, 37

Apart from any such contract, express or implied, the place of delivery is the seller’s place of business, if the seller has one, and if not, the seller’s residence [33(2)]. The seller needs to get the goods ready for the buyer to pick up.

36 Delivery by mail // 37 risks

HOW MUCH

If the seller delivers to the buyer a quantity of goods **less** than the seller contracted to sell, the buyer may reject them [s. 34(1)]. Pursuant to s. 34(3), if the seller delivers to the buyer a quantity of goods **larger** than the seller contracted to sell, the buyer may (a) accept the goods included in the contract and reject the rest, or (b) reject the whole.

If the buyer accepts the delivered goods, regardless if the amount is more or less than agreed, the buyer must pay for them at the contract rate [s. 34(2)].

In **Re Moore**, the goods were not delivered according to package description and the buyer rightfully rejected the goods pursuant to s. 34: right quantify per package. Section 34 overlaps with s. 17 [see *Acros v Ronassen*].

FOR THE DELIVERY OF MIXED GOODS

34(5): If the seller delivers to the buyer the goods the seller contracted to sell mixed with the goods of a **different description** not included in the contract, the buyer may (a) accept the goods that are in accordance with the contract and reject the rest, or (b) reject the whole.

3.4 Delivery by Installments s. 35

35 (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery by installments. (2) If there is a contract for the sale of goods to be **delivered by stated installments, which are to be separately paid for**, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is (a) a repudiation of the whole contract, or (b) a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

Maple Flock 35(2) test

Test if 35(2) applies: (1) The ratio quantitatively which the breach bears to the K as a whole; (2) The degree of probability/improbability that such a breach will be repeated. Here, breach wasn’t big proportion of deliveries, and didn’t happen again, so 35(2)(a) doesn’t apply and buyer can’t terminate whole K, just get damages.

BUYER'S REMEDIES

REJECTION

If condition, s. 15(4); if intermediate term and grave consequences; if wrong quantity of mixed goods – 34; if instalment deliveries – 35; right of examining goods -38, B intimates to S that B has accepted the goods -39(a), good delivered to B and B does an act inconsistent with S' ownership – 39(b) [**Hardy**: at the moment goods rejected must be immediate access to them to return to S. B retains goods after reasonable time without telling S that B rejects goods [Rafuse: reasonable time depends on the nature of goods] – 39(c).

Consequences of Proper Rejection

- Refuse to pay price – or recover price if already paid
- Not bound to return goods – 40
- Damages still available.

15(4) If a contract of sale is not severable and the buyer has **accepted** the goods or part of them, or if the contract is for **specific goods** the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

Acceptance + ~rejecting the goods

Passing of title in specific goods + 23(2) + ~rejecting the goods BUT Wojawkowski

Court says that until the goods are **accepted by the purchaser, only a conditional property passes** – not truly “unconditional acceptance.”

Specific goods – second hand car – unfit for the purpose + seller volunteered to remedy the defects

34(1)-(4) Delivery of wrong quantity + rejecting the goods!

34 (1) If the seller delivers to the buyer a quantity of goods less than the seller contracted to sell, the buyer may reject them.

(2) If the buyer accepts the delivered goods, the buyer must pay for them at the contract rate.

(3) If the seller delivers to the buyer a quantity of goods larger than the seller contracted to sell, the buyer may

(a) accept the goods included in the contract and reject the rest, or

(b) reject the whole.

(4) If the seller delivers to the buyer a quantity of goods larger than the seller contracted

34(5) Delivery of wrong quality + rejecting the goods!

34(5) If the seller delivers to the buyer the goods the seller contracted to sell mixed with the goods of a different description not included in the contract, the buyer may

(a) accept the goods that are in accordance with the contract and reject the rest, or

(b) reject the whole.

WILLIAM BARKER v EDWARD AGIES

FACTS: the coal below deck did not conform with the contract and above deck did → Mixed goods!!!

34(5) – accept the part that is in conformity with the contract and reject the goods that is not // OR reject everything.

35 Delivery by Instalment

19 Delivery by sample: examination // // // // + mixed goods?

75 – Buyer's Lien

Requirements 75(1)

1. **Buyer paid:** part of price or full
2. **Unascertained/future goods** – future goods can be specific goods
3. **Buyer must have acted in good faith and the goods are purchased for household/private use**

75(2) – **Buyer's Lien** – the buyer gets for the amount paid

1. against all goods that come into seller's possession
 - i. in possession of seller for resale: any goods seller currently has or will have in the future; held for resale; the seller does not have to be the owner
 - ii. Corresponds to description
 - iii. Property has not passed to another buyer
2. Lien against any acting in saving institute – where usually deposits proceeds of sale

Loose lien if **76(1)(a)** – seller fulfills K or **76(1)(b)** seller refund the money

76(2) – whether a buyer's lien is discharged does not affect buyer's right to argue breach of K

76(3) – if goods are appropriated to sale made in good faith to a different buyer – **ambiguity**: how about specific future goods?

BUYER'S REMEDIES – overarching principle: never over compensate [Wertheim]

54 – non-delivery	1 – damages for <u>no delivery</u> - for nonfeasance/ non-performances – including the situation where B rejects the goods 2- measure of loss – loss <u>directly n naturally resulting</u> Damages to sub-contract can be compensated if other party has “general knowledge” that you intend to enter into K [Re Hall] 3 – damage measurement – <u>mkt/current price – K price</u> @time of delivery – when it ought to occur, additional money you have to pay to purchase the item back Idea of what is the mkt – question of fact
Late Delivery	54(2) general damages Either cost of substitute during delay or difference in market price between date of breach and date of delivery Bowlay – timber sale
56 – breach of warranty or condition	56(1) can elect to treat breach of condition as breach of warranty 56(2) the measure of damages of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty. 56(3) breach of warranty [market value test] = value of gd would have had if k performed [fair market value of contract goods]– value of gd at time of delivery <u>Burden</u> on buyer to establish: breach <u>Presume</u> – goods are not worth anything unless evidence to contrary Ford Motors <u>Onus</u> – on party in breach to establish the value of gd Ford Motors 56(4) – under the same breach of warranty claim, the buyer can sue for further damage. Cullinane – cannot recover both the whole of the original capital loss and the whole of the profit which he could have made. Sunnyside Greenhouses - Loss of profit (or similar loss) which is the direct + natural consequence of the breach, may be claimed in addition to capital loss (diff between value of panels), if NO overcompensation.
Sub-contract	If sub-sale – s. 57 –special damages also see 54(2) 54(2) – [Koufos] – there was a market for sugar; not too remote for sub-contract: damages that would occur in majority of cases and would be fairly and reasonably be considered arising naturally from such a breach, so would be in contemplation of parties
57 – Special Damages	This Act does not affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid if the consideration for the payment of it has failed. Based on specific context; parties must know at K formation what special circumstances are: Re Hall and Pim – don’t need detail, just generally what other party might do after entering K

Quantification of damages - joy, happiness, mental distress – still have to meet the remoteness test – think about the essence of the contract
Wharton v Tom Harris - Cadillac – a car is supposed to give you joy [awesome ride] but Cadillac buzzes – breach of warranty 18(a).

DUTY TO MITIGATE	if the plaintiff contributes to the unreasonable high costs [Sunnyside House]. .
RE MOTENESS	[Parsons : pigs’ death + E. coli] - The type or kind of damage was foreseeable even though the extent of it was not

S 55 Specific Performance

idea – damage is not adequate - all the money couldn't get you what u want
requirement

1. Has to be specific/ ascertained good
Need to know what exactly they are ordering
2. Why is it that money can't buy you substitute
Need to be unique in certain sense

Extremes

Only specific performance for specific/ ascertained gd *Re wait*
Can get injunction for future/ unascertained gd even if there's mkt for it

VIP petroleum - If will go out of business

BUYER'S OBLIGATION TO ACCEPT AND PAY

31 – Basic Obligation

If the buyer sues the seller for late delivery, the buyer needs to prove that if the seller were to deliver on time, the buyer is ready and able to accept the goods and pay for them.

1. Accept the good

S 39 – how buyer fulfills the particular obligation

S 41 – when the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after the request take delivery of the goods, the buyer is liable to the seller for (a) any loss occasioned by the buyer's neglect or refusal to take deliver, and (b) a reasonable charge for the care and custody of the goods.

2. Pay for them

Unless otherwise agreed – pmt should take place at same time as delivery *s32 – concurrent obligation*

Time of pmt not of essence unless diff intention appears in *K 14(1)*

S 14 -Time of Payment

Stipulation as to **payment time**: not deemed to be essence unless stated otherwise [14]

when there's no provision recaring pmt time, cannot argue K failed for certainty of terms [*DeKeyser*] – **concurrent** obligation with delivery s. 32

Aspects of payment

Time – presumptively a warranty

Form

Who's currency?

If K is silent – simply cash

Payment could have been in kind, though the in kind must have a monetary value. Otherwise, it may be a barter situation.

6 (1) A contract of sale of goods is 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**.
Quantum can be implied [s. 12].

SELLER'S REMEDIES

43, 44 – Seller's Lien

Even if the property in the goods may have passed to the buyer, the **unpaid seller**, has a lien on the goods [for unpaid seller's lien, see s. 44] or right to **retain** them for the price while the seller is in possession of them and a right of resale as limited by s. 51.

- **Possessory, specific, the right to retain, the right to resell**

Part delivery: an unpaid seller who has made part delivery of the goods may exercise the right of lien or retention on the remainder, unless that part delivery has been made under circumstances that show an agreement to waive the lien or right of retention [s. 45 – change CL specific nature of the lien].

Termination of lien - terminates when payment obligations fulfilled

51 –resell

When an unpaid seller who has exercised the right of lien resells the goods, the buyer acquires a good title to it as against the original buyer [51(2)]. If the seller could not find a new buyer, the title goes back to the seller [**Bignail**].

If the goods are of **perishable nature**, the unpaid seller may resell the goods and recover from the original buyer damages for any loss occasioned by the buyer's breach of contract [51(3)].

If the goods are of non-perishable nature, the unpaid seller need to give notice to the buyer of the seller's intention to resell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may resell the goods and recover damages [51(3)].

If the seller **expressly** reserves a right of resale in case the buyer should default, and on the buyer defaulting resells the goods, the original contract of sale is rescinded by that act [51(4)].

Debt – IS IT A PENALTY

CL – for debt claims, there is no mitigation duty attached [**Standard Ratio**].

Action for price – if the property has passed, and the buyer fails to pay, the seller may maintain an action against the buyer for the price of goods [52(1)].

A debt claim is not available if the property has yet passed [Stein Forbes].

52(2) if If, under a contract of sale, the price is payable on a day certain, irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.

BUYER FAILURE TO TAKE DELIVERY - Damages

41 (1) When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after the request take delivery of the goods, the buyer is liable to the seller for

- (a) any loss [any loss – no restriction to remoteness; contrary to cl, see Hedley] occasioned by the buyer's neglect or refusal to take delivery, and
- (b) a reasonable charge for the care and custody of the goods.

BUYER FAILURE TO ACCEPT - Damages

53 (1) If the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against the buyer for damages for nonacceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) If there is an available market for the goods in question, the measure of damages is to be ascertained, unless there is evidence to the contrary, by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or if no time was set for acceptance, then at the time of the refusal to accept

- A loss on sales [**Charter**: fixed number of buyers // **Victory Motors**: fixed number of cars but many buyers // **Lazenby Garages**: for specific and unique goods that you can only sell them once, no loss on sales].

Special Damages

57

ANTICIPATORY BREACH

Buyer tells the seller in advance that the buyer will not perform the contract before the time of delivery.

Breach in that situation is in damages.

The seller can elect to affirm the contract and wait for the time. The seller needs to defend why the seller did not proceed to damages right away.

The seller can elect the breach and proceed to damages claims. The damages claims are assessed at the time of breach.

TRANSFER OF TITLE BY NON-OWNER

NEMO DAT + ESTOPPEL

Sale by person not owner

26 (1) Subject to this Act, if goods are sold by a person who is not the owner of them, 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, **unless the owner's conduct precludes the owner from denying the seller's authority to sell [OSTENSITY]**.

- mere possession by intermediate seller with consent of owner does not preclude the owner from asserting title. However, 26(1) only applies where the intermediate seller has purported to transfer the property in the goods; transfer of possession is not enough [**SHAW**].

SALE UNDER VOIDABLE TITLE

28 - When the seller of goods has a voidable title to them, but the seller's title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, if they are bought in good faith and without notice of the seller's defect of title.

- D sold car to rogue. Rogue sold to innocent 3rd party, who took possession of car. Once D found cheque bounced, tried to find the rogue+car. D needs to terminate K before the third party acquires title. D can terminate the K by communicate with parties other than the rogue: public authority, police [**Calderwell**].

SELLER IN POSSESSION

30 (1) If a person having sold goods continues or is in possession of the goods [possession can be wrongful **Worcester Works**], the **delivery or transfer** by that person of the goods to any person receiving the same in **good faith and without notice of the previous sale** has the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the delivery or transfer. **Statutory agency**

Disposition of rights to the bona fide purchaser does not have to be consensual but needs to be lawful. [**Worcester Works**]

Unlike seller's lien s. 51, s. 30(1) does not give the right to the seller to deal with goods but 30(1) protects the BFPV.

BUYER IN POSSESSION

30(3) If a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods, the delivery or transfer by that person of the 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 has 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.

CURE SELLER'S VOIDABLE TITLE

SELLER'S LIEN s. 51
MARKET OVERT ss. 27 + 29

Mercantile Agent

59 (1) If a mercantile agent is, with the consent of the owner, in possession of goods, any sale, or disposition of the goods made by the mercantile agent when acting in the **ordinary course of business of a mercantile agent** is, subject to this Act, as valid as if the mercantile agent were expressly authorized by the owner of the goods to make the sale, if the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make it.

Bona fide purchaser gets ownership via 26, 28, 30(1), 30(3), 51, 27+29.
Bona fide purchaser gets what the principle has via 59.