**Class 1**

**Methods of Payment**

* passing of ownership of property
* Usually one person gets tangible property and the other gets intangible property (money)
* two types of payment: negotiable instrument (documentary intangible) and a letter of credit.
* Nature of entitlement to property = “property interest”

**Property Interests**

* Commerce is about shifting things around and getting something you didn’t have before. This law is about transferring of the property, how you transfer the property. You don’t transfer the property itself but rather interests in it and the question is the means the law recognizes for transferring the property from one person to another.
* Intangible property: property/value you can’t see. A $20 bill’s intangible property is the promise in it from the bank that issued it that they’re going to pay you a certain amount. The tangible property is just the paper that the bill is made of.
* when goods are sold internationally, there is often another piece of paper printed to represent the goods – the bill of lading, another piece of paper that represents an entitlement.
* Property for our purposes mostly means ownership, that interest, not the property itself.
* Security interest is the back-up interest to this. I have an interest in yoru computer because you promised to pay me $1000 but just in case you didn’t, I can use this interest in the computer. It is a conditional interest. It can be possessory – I can hold onto the computer and only give it back when you pay me. Most are non-possessory though – you keep it until you don’t pay
* Bailment = possessory interest. My interest is the possession of the object, but not the ownership.

**Transferring and Asserting Interests and Rights**

* Sale: only works for tangible property.
* Assignment: equivalent of sale but for intangibles.
* Both sale and assignment can be absolute or conditional. It could be that I transfer for you now (absolute) with you immediately becoming owner of the property. Conditional is that you have to do something first, or (security interest) not do something first.
* Who’s involved in this: rules are the same whether you’re an individual or a corporation
* Privity is an issue: who is a buyer and who is a seller, who can the buyer complain against
* The property right is that you own something because you can assert your claim against everybody. Personal right: the claim against someone who sold you a computer that turned out to be a dud. You can assert the claim about the thing and its quality only against the person who sold it to you. Here, privity limits you to only that one person.
* what I promise to do in the contract, you can only assert against me, but the effect of the fulfillment of that promise is that you have rights now that you can assert against everybody. But only upon my fulfillment of my promise. Prior to that, the rights you have can only be asserted against me, one person.

**Class 2**

**Contracting Out of the SGA**

* s.20 says that you can’t contract out of s.16-19 in certain types of consumer transactions. This means that unless you fit in s.20, you can generally contract out of s.16-19.
* So even though consumers are protected generally, sellers may try to contract out of them.
* s.73 preserves the rest of contract law and it continues to apply to these contracts.

**When does the statute apply:**

* s.6(1): key to getting into the statute.
* S.6(1) Says a contract of sale 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. It must be a sales contract. The BC statute also applies to certain leases .
* It must be an ownership interest that is passed. No other interest will suffice.
* s.3: contract of sale can be absolute or conditional. Whole point is to transfer ownership. An absolute contract of sale is where you buy something and as soon as contract is entered into, you are the owner. Even if the item has not yet been delivered to you or you have yet to even see it, once you enter into the contract, you are the owner.
* Conditional Contracts: contracts with conditions. Most common one is that the buyer gets possession of the goods right away but doesn’t have to pay for them right away and the buyer while in possession doesn’t get title to the goods until payment is made. I have a possessory interest but not ownership, the sale only occurs once I pay you. This is a Conditional Sale Agreement
* Important to distinguish sales contract from labour contract: it only applies to sales contract so you can’t go after someone over quality of work, only quality of goods under SGA.

**CSA**

* If you have a CSA, you have unwittingly triggered the whole of the PPSA because that type of contract is assumed by the PPSA to be a security agreement.
* This means that if you have a CSA the seller becomes a secured party and the buyer becomes the debtor while the goods become collateral.
* There are really no form requirements about what the contract looks like, no writing requirements or registration required under SOG. But because your contract of sale looks like CSA, the PPSA does have a writing requirements

**Sale/Agreement of Sale (More on When the SGA Applies)**

* If under s.6 the property of the goods is transferred from seler to buyer, it’s called a sale. Once the seller is the owner, it’s called a “sale”. This can happen immediately.
* if under the transfer of the property of the goods is to happen later or is subject to a condition later, it’s called an agreement to sell. It has to be the intention of the parties for it to become a sale: statute doesn’t apply if it isn’t the intention for the buyer to eventually become the owner.
* If a sale is impossible or we can pretty much predict that the sale will be impossible, it has to be a breach for statute not to apply, it has to be intended that the buyer would never become the owner. However, unless that breach happens, it is an agreement of sale.
* Statute thus applies to contracts of sale, which are either an agreement to sell or a sale.
* fulfillment of the condition or passing of the property in itself is enough to convert the agreement to sell into a sale. No other formality required to effect that.
* Requirements: has to be a contract, or statute doesn’t apply. The contract has to be for a sale, though it need not happen right away. It has to be for goods and the consideration has to be money. If it’s not a contract for goods or not intended to transfer property eventually or right away, statute doesn’t apply, and if it’s not for money, statute doesn’t apply. Must be a transfer of property

**Goods**

* defined in s.1 as including tangible, personal property, all chattels personal, which excludes chattels real and real property and excludes things in action and money. Chattels are things/choses, which are divided into choses in possession and choses in action, or tangible and intangible. Choses in action is property that can only be defended in court, can’t possess it physically. So this definition of goods says that chattels do not include choses in action, money
* B: includes certain things that CL would consider land. If you buy something that’s been growing on the land or was extracted from the land somehow. CL says that in terms of things growing, there’s a difference between what the CL called natural fruits of the land (naturally growing crops) and industrial crops (Fredkin). Distinguished between a contract for trees growing naturally on the land, that’s a land contract, however if I deliberately planted trees to harvest as Christmas trees, that’s industrial crops, they’re not real property/land.
* The other issue was with respect to bits of the land itself, normally about rocks or sand just lying there and contract for that that was already ready to go might be good, but if you had to process it somehow before removing it, that was land.
* growing crops, whether or not they are industrial, if are agreed to be severed before the sale or under the sale, those are also goods.
* Fredkin: issue about crops that are growing wild on the land and there was a contract to remove them. The buyer here didn’t like the quality so is trying to determine whether or not there are implied warrantees of title under the statute, s.16 of the SOG, put in by SOG....but these wouldn’t exist if just a sale of land, need SOG to apply to do that.
* SOG says regardless of whether they are naturally growing or industrial, if they are crops, the SOG applies, they are goods.
* Carlson: removing timber, contract to allow someone to remove timber from someone else’s property.
* Court says that, looking at definition of goods, it knows that goods include things that are part of land that are agreed to be severed before sale or, as in here, under the K of sale. Court says this doesn’t cover it here, as it has simply been too long since the K was created. It has to happen fairly quickly, if you’re waiting years to remove it, it’s no longer goods, it’s a land interest
* if you do have a contract to go onto someone’s land and remove something on it later on, you have to be careful as if you wait too long (unclear how long) courts may say you have a land contract and not a goods contract and had to register in order to do so.

**Barter Contracts**

* One direction gets chattels person the other gets money consideration. This means that the contract cannot just be a barter contract. If what’s given in exchange isn’t money but rather a thing, then SOG doesn’t apply. If it’s a combination of things, it depends.
* if I give the item for barter a monetary value, even if you’re not getting money, you’re getting monetary consideration and the statute applies. So I can give monetary consideration through giving an item that I assign a monetary value.
* Mason: if you don’t give a value, you’re out, even if the consideration is mixed. A contract for one piano and what they’re paying in exchange is $500 and a trade-in of an upright piano; SGA didn’t apply as although much of the consideration was money, no value was assigned to the trade-in piano.
* If the goods are not given a monetary value or not entirely given one, the statute doesn’t apply. Courts can be helpful however and say through custom or usage that you must have intended them to have a monetary value
* Messenger: about a seller wanting access to SGA remedy. Buyer getting goods from General Store on credit and the idea was that he would be paying in wood later on. But he hasn’t paid, so action for the price is brought. The buyer says you can’t, because paying you in wood and not in money. The court says while paid in wood, the accounts were kept in money so we know what the wood was valued at and that satisfies requirement.

**Class 3**

**Sale Contract vs. Labour Contract**

* Labour cases are not caught by SGA, no goods change hands. What about contracts for both?
* Young v. Martin: tendency to try where possible to make the distinction not so important. Here, a contract to repair the roof and supply the material. Question was whether the buyer could complain because of the quality of the materials supplied. Seller says SGA doesn’t apply because this is a labour contract, no implied warrantee.
* Court takes up problem of having to characterize contract as one thing or another, can’t be both. Say it doesn’t matter here; SGA was just codification of contract law as it existed in 1890s, so these implied terms in SGA relating to quality must come from the common law, since just codified, and since they come from common law anyway, don’t need the statute to imply them into the contract, don’t need contract to be characterized as a sale of goods to get them implied in. Even though they are party of labour contract, to the extent that materials are supplied in it, these terms will apply even if SGA doesn’t.
* There are many SGA terms, however, that are clearly not part of the common law; were put in the SGA over the years that weren’t originally there, like in BC s.20. Thus, in many cases it’s true that in a labour contract where materials are supplied, if you’re complaining about the materials, it doesn’t matter whether SGA applies or not as the common law would imply it anyway, but for other provisions…
* Robinson v. GravesThere’s no consistent or predictable result as to whether you have a labour or sales contract. (though you can cure this by just splitting your transaction into two contracts – a labour contract and a goods contract – courts may do this splitting themselves).
* Court alludes to different approaches: Clay decision (the essence of the contract and what the contract really for, whether it’s buying the skill of the person or are you buying the object). If there’s an artistic or skill of some significance in the contract, it’ll probably be labour, but this is very impressionistic. It can depend on who it is doing the work and how skilful that person is (famous artist to paint is labour, random dude would be).
* Leigh v. Griffin approach: case was about creation of dentures, whether it was for sale of goods or labour. Here court seemed to favour the protection of the buyer. Court takes view that as long as you get something under the contract, that you’re getting ownership of some personal property you didn’t have before, it’s a goods contract. Do you get some goods or don’t you?
* Some courts will parse out which is the bigger element that you’re paying for, others try to parse out the essence of the contract, while others just see if you’re getting something you didn’t own before no matter how much labour is involved.

Gee v. White Spot (labour vs. sale/goods for restaurants)

* Food poisoning. Problem is that if it’s a labour contract, unless Young can be used, your contract doesn’t have those terms about quality you received, so you want access to SGA which will allow you to claim that the seller is obliged to give you goods of merchantable quality and fit for the purpose for which they were intended.
* two different approaches to this: one which emphasizes more the labour or skill side of things and the other which emphasizes the goods side of things. US authority stresses the type of restaurant you’re in and if you’re in a fancy one, you have less protection, as you’re thought to be paying more for the atmosphere, skill, service, etc and the goods are just food on a plate, so the contract’s essence is a labour contract so no implied terms unless Young applies.
* Other line is to stress the significance of the food element, as Gee did, that what people are trying to get in going to a restaurant is food, which is clearly goods. Here, court found this was so, it was a goods contract, and these terms were thus applied (implied warrantee)
* Court does limit its finding to items on menus for fixed price, a finished product. So restaurants with no fixed price on a menu and you’re paying for atmosphere, you may be on your own regarding quality of food. So better off eating at cheap restaurant unless you negotiated the contract prior to ordering.
* Young often doesn’t apply to food contracts, but applies to most others, meaning distinction isn’t too big a deal

Leases vs. sales

* Leases where the lessee is acquiring goods for personal household purposes, consumer leases are covered under SGA.
* usually leases are not covered at all in other jurisdictions. They are bailment contracts where someone else is given actual possession of goods for a specific period of time and certain other entitlements but that property interest is intended to end at a certain point, owner still has property interest and it reverts.
* conditional sale and the lease look very similar (both involve regular payments) except with big difference that with sale, at end of payments, the buyer becomes owner of the goods whereas in lease at the end of the transaction, the possession reverts to lessor. Seller tries to avoid the SGA by characterizing a conditional sale as a lease.
* Courts don’t care how parties characterized them, not a sale or a lease just because you say it is.
* If under the “lease” the lessee is entitled to terminate the lease agreement early and not be in breach or otherwise responsible for damages that constitute the value of the goods than it is truly a lease and SGA doesn’t apply.
* If the lease is for a mandatory period of time and you can’t terminate early and at the end of it, the lessee does not become the owner, then it’s a true lease.
* If there’s a compulsory lease period that exhausts the value of the goods, it’s a sale, even if the goods are returned to the lessor. This is because there is no value left in those goods at the end.

Lee v. Butler (leases and leaseholder trying to sell the property)

* contract to lease goods or “hire” goods for a particular period of time and at the end of this lease time, the lessee becomes the owner of the goods.
* makes it look like a conditional sale, not a lease, but on the other hand, the lessee is not REQUIRED to make all the payments, not in breach of contract if they terminate. This distinction is relevant because the lessee purported to sell the goods to someone else; i am leasing goods to you, but you’re not the owner of them, if you try to sell them to someone else, can that third party claim to own those goods, that is, taking a better title than the lessee who sold them had to those goods. The SGA has a clause to help those third parties.
* SGA contains exceptions to nemo dats: s. 30(3): if you are not yet the owner but you’re in a party in a contract of sale where you’re meant to become the owner of the goods, like a party under conditional sale, then the buyers from you are protected and you act as an agent. A buyer in possession of goods, even if they don’t have title to them yet, can pass on good title to third parties like C. If C has no notice (if C has notice, s.30 will not protect him) of the defect of title, then B is deemed to be in essence agent of A. Only applies where someone has bought or agreed to buy. Thus, doesn’t protect C if B is leasing the goods, not a conditional sale.
* court held that even though this was a lease, this was a sale – there was no option to stop payment, the rent payments HAD to be paid, the person who was the lessee will thus, unless contract was broken, eventually become the owner. No option to stop paying.

Helby and Matheson(more on leases and conditional sales)

* If the lease payments mandatory and at the end, lessee becomes owner, then courts will characterize as a sale with all these obligations to the buyer. So here, the lessee did not have to complete the transaction, the lessee is not in breach if they terminated the contract early.
* Court goes out of its way here to say that this transaction was probably intended to result in the purchase of the goods involved, but it was not inevitable that it would result in that. Parties needed to know because the lessee in possession of the piano decides to use it as collateral
* court finds there was no sale because while parties were expected to continue to pay rent payments, it was not required and not been completed when the lender entered the picture.

Options

* If there’s a lease with an option, it’s not a true lease, but then have to see whether it’s a true option. True option means you will not be able to predict at time contract is entered into whether or not the option will be exercised, the lessee really has a choice to exercise or not. If it’s a true option, then your transaction from the outset is only a lease and SGA doesn’t apply until option to purchase is actually exercised.
* A false option has to do with price paid under the option – if the price is not a realistic pre-estimate of the fair market value of the goods when the option is to be exercised, it’s probably not a true option, if it looks like the amount that’s pulled out of the air then courts are apt to say it’s not a true option and therefore this transaction is a sale from the outset, as the option will almost certainly be exercised. Just a token amount – if there’s any value left in the goods at the end when option comes about (remember, if value is exhausted, it’s a true option) and all you’re paying is token, then this is a sale, this is just a trick to try to make it look like a lease.
* If price is to be determined later, it’s probably a true option. If it’s on threshold of reasonable, lessor just has to be able to justify the price.

Consignment

* Consignment = owner of goods who wants to be a seller. Consignment is owner who does want to have a buyer, wants a contract of sale governed by SGA. But consignment is that they don’t want to do the actual work of selling the goods, so they get an agent, an intermediary, and they have agency contract with that person. Agent is to find a buyer.
* This is important for the ultimate buyer: if there’s a problem with the goods, sue agent or seller? Seller and agent are interested because agent may have problem with the goods and want to claim that it is a buyer of the goods and that the agency contract was a sales contract.
* Under true consignment contract, seller is the consignor and the agent is the consignee.
* If consignment contract IS a sale contract, it’s almost always a conditional sale, one where payment is made later, and so it will be secured transaction under PPSA, so owner is a secured party and the other party is a debtor and seller has to register its interest to protect itself.
* True consignment: A is clearly the owner and C is clearly a buyer and B is purely an agent and the SGA only applies between A and C. Agent is not involved in contract of sale.
* Contract of sale or return: A is the owner/seller, B is the agent in possession. If B finds a buyer, C, the ownership is passed through the agent, the agent becomes for a moment in time, the buyer, and then instantly a seller to C. So there are thus two contracts governed by SGA, between A and B and between B and C.
* Then you have situation where A is owner, B is agent, and then you’re hoping for a C, buyer, but one never appears and under that contract, once the period expires, the agent is required to buy the goods, so the SGA applies between A and B, as they are now the seller and buyer.
* when does the SGA apply: In true consignment, it’s when C comes along and agrees to buy the goods. In third situation, SGA applies from outset as intention may be that either B finds a buyer and becomes a buyer itself title and until C comes along, B is going to be the buyer.
* In sale or return situation, SGA only applies between A and B when C comes along. It’s only in third situation that the SGA applies from the outset. Note though that sale or return, if no C shows up, often turns into third situation.

**Class 4**

Lease vs. Sale cont’d

* If no option involved, then characterization of a lease is that if the lease can be ended early without a breach, then it really is a lease. If the period of the lease will expire and something of value goes back to lessor, it’s a lease. If there’s a compulsory period but at the end of the compulsory period, nothing of value is returned to the lessor, it’s a sale and SGA applies.
* If it’s a lease with an option then if the lease is characterized as a sale already, then it’s SGA from outset. If it’s a lease that’s a true lease and at the end there’s an option to purchase, if the option is not a true option, then the whole transaction is characterized as a sale from the start.
* not a true option if the price to be paid at end of period to exercise option is not a fair value and just a random number picked out of the air or a token amount, then it’s not a genuine option, the whole transaction is said to be a sale and SGA applies.

Weiner (consignment – doctrine of authority of the agent)

* owner of jewelry leaves it with someone to find a buyer. This is all they are allowed to do and if they can’t find buyer, it’s to go back to the buyer. Instead, the consignee takes the jewelry and uses it as a collateral to raise money, a pawn transaction.
* Court is trying to figure out if there’s a way to protect C, who didn’t know about this. If this is a sale, the third party can be protected under s.30. . Court says this isn’t a sale, the consignee is never intended to become the owner. In context of this transaction, sale or return just meant you have the goods, find someone to buy them, if can’t, return to owner (second scenario).
* the court finds another provision, s.59, that when a mercantile agent is in possession of your goods and enters into a transaction with respect to them that appears above board to third parties, then the principle is bound by what the agent has done even if it is in breach of the agency contract. Doctrine of authority of the agent.

Re Stephanian’s Persian Carpets (consignment – is it a true consignment or a sale?)

* idea is that you need to know whether you have a transaction that is a true consignment or is actually a sale because secured transaction law/PPSA applies if it’s a sale but only sometimes applies if true consignment.
* while carpets were still in possession of the consignee, the consignee goes bankrupt. Now there’s a trustee in bankruptcy trying to get as much property as possible from B to give to the unsecured creditors. This triggers the PPSA, which says that if someone is in possession of property under a secured transaction, including a conditional sale, then if the owner of the property has not registered it’s interest, the trustee in bankruptcy can just take that property
* This case says that there are things that look like true consignment but will be treated as a sale.
* If under the consignment contract the consignee has responsibilities, duties, and burdens that look like the duties an owner or buyer would have, then it may well be that the transaction is deemed a sale and not a consignment. For example, consignee is required to pay taxes on the property or required to maintain it and keep it in a particular condition
* even if you don’t fit under sale or return or third category, court may still say this is a sale because the responsibilities look like a sale.
* Overriding factor here was that this consignee would never become the owner and if they couldn’t find a seller, goods would be returned to owner, so this is a true consignment.

Formal Requirements (Must be a Contract, Capacity)

* Last part of s.6 is that it has to be a contract. To be governed by SGA, it must be a contract (offer and acceptance, certainty of terms, determined by common law as per s.73)
* Capacity: You can’t have a contract if the person you’re dealing with doesn’t have capacity to enter into that transaction. S.7 of SGA tells us that more usual situation is that the capacity problem arises because of a mental incapacity or drunkenness or (not in BC SGA) age. S.7 says that capacity to buy and sell is regulated by the general law concerning capacity, just confirms that common law continues to apply.
* S.7(3), if necessaries are sold and delivered to a person who is incompetent to contract, then that person has to pay a reasonable price. Implication is that if someone without capacity appears to be entering into a contract for necessaries, than it is a contract. Necessaries are defined in s.1: goods suitable to the conditions of the life of the person
* Bawlf and Ross: somebody while drunk agreed to sell some grain for a particular price. Court here is trying to work through whether the inebriation or lack of capacity, these are not necessaries, whether that makes the contract void or voidable. Court says it make the contract only voidable, brings an element of fairness back into the contract because while the voidability puts it in the control of the previously inebriated person as to whether it’ll be affirmed or avoided, that person has to act fairly quickly. If you do enter into a contract while drunk, you do have a contract but it’s voidable, which means it can be set aside, but it must be set aside pretty soon after you sober up, and if you wait too long (like this guy did to play the market), you will be deemed to have elected to affirm it.
* If it’s a person with a permanent incapacity or age, usual result is that it’s void unless it’s for necessities but if it’s a temporary mental incapacity, then follows Bawlf: it’s voidable
* BC SGA, on formalities, says in s.8 says it may be in writing, with or without sale, or it may be oral, implied by conduct of the parties, or partly written or partly oral. No formalities.

Requirement of Price, Implying Price (s.12)

* The contract must be for a money consideration called the price.
* S.12 tells us that this price in a contract of sale can be determined in one of three ways: the contract sets it out, there’s a method that the parties have agreed upon which will generate the price later, or there’s simply a customary usage.
* S.12(2) says if the price isn’t determined in accordance with s.12(1), then you pay a reasonable price. This is to save contracts. What constitutes a reasonable price is a question of fact
* May and Butcher: s.12(2) was rendered fairly useless because the parties said they’d agree on the price later on and that if they didn’t agree, then they’d have a third party decide for them. They didn’t agree and one party claimed contract was saved on basis of s.12(2) but court said no: if the price is meant to be determined by one of the methods in s.12(1), you can’t get to s.12(2), if price was meant to be determined via a method set out in the contract but that method doesn’t work, you can’t go to s.12(2) to get a reasonable price. S.12(2) only works if the contract is entirely silent on price – there’s no method laid out in the contract, no price laid out, and no customary usage between the parties.
* Mustard Seed: Because the contract said something about the price about some of the goods one grade but not the other), but was totally silent about the price on the rest of the goods, s.12(2) applied and this was not a May and Butcher situation. If you can’t figure out the price or contract is silent on the price, many courts will try their best to avoid May and Butcher.

Categorization of Goods (Existing vs. Future, Specific vs. Unascertained)

* Existing and future goods: s.9 tells us that the goods that form the subject matter of the contract of sale may be existing goods (which are owned or possessed by the seller) or are future goods (goods that are to be manufactured or acquired by the seller after the creation of the contract). Existing goods is the default. s.9(2): there can be a contract for the sale of goods the acquisition of which depends upon a contingency that may or may not happen.
* s.9(3): impossible to have a contract which is a sale for future goods. A sale involves an immediate transfer of property or ownership to the buyer and if the goods aren’t owned by the seller yet or don’t exist, it’s only an agreement to sell.
* for specific goods or it’s for unascertained. Unlike existing and future, that characterization never changes. Specific goods is a defined term: goods that are identified and agree on at the time a contract for sale is made. Everything else is unascertained.
* I’ll buy one of those chairs – that’s for unascertained goods, don’t know which I’ll get. If i say “that chair” it’s for specific goods. If I have contract for your shipload goods, it’s specific goods, but if it’s for half of it, it’s unascertained, as we dont’ know which half.
* Can only get order of specific performance for specific goods.
* If the contract is for unascertained goods, then the contract must contain some kind of description of the goods.
* When the process is completed whereby you do know exactly which goods you’ll be getting, the goods which before that time were known as unascertained are now known as ascertained. The process of moving from unascertained to ascertained goods is known as “appropriation.” Once goods are appropriated, you know exactly what you’re getting. They do NOT become specific goods; specific goods must start as such, otherwise they are ascertained.
* A contract for unascertained goods must be an agreement to sell at the outset, cannot have a contract of sale for unascertained goods – impossible to become an owner of unascertained goods because you don’t what it is. Meanwhile, for specific goods, you are the owner the moment the contract is entered into.

**Class 5**

Perished Goods

* Once you have classified goods as future or existing, probably have to look at whether there are goods at all. May be perished (s.10-11) due, for instance, to frustration
* Re Wait: cargo of wheat, contract was for half. Court ruled it was unascertained. However, if ship sunk and all wheat lost, result would have been the same.
* If the goods perish before the risk passes to the buyer, the agreement is avoided. If there’s a contract to sell something and the goods are destroyed, you can say the contract is frustrated, that’s the usual response, if the parties are not at fault. However, this says that the agreement is instead avoided at that stage. This is usually thought to mean that the contract is rescinded.

Characterizing the obligations

* This characterization issue has to do with the availability of the particular type of relief in the event of breach of contract. If you have statements made, some of those statements make it into the contract while others don’t. The ones that are not of legal significance are puffs. Then you have mere representations and terms that are in the offer.
* if you’re buying unascertained goods than what is being said is not being said about anything in particular, just a promise that what you’re going to get will meet those specifications. Contracts for unascertained goods thus are much easier to argue that anything said about the goods, describing them, are actually terms, a promise.
* What is said in a contract of specific goods, good historical argument that all that is said in terms of describing those goods are representations, just statement of fact about what they are like. If that’s all that is then there’s no breach of contract that’s involved because there was no promise involved; what was involved was simply a misstatement and if it’s a misstatement, then you have a choice of holding the other party to the truth or to the falsehood. If you hold them to the truth, then misrep, and if holding them to falsehood, then using estoppel. Misrep leads to a claim in tort or rescission

Importance of Specific Goods categorization

* Leaf v. International Galleries: s.15(4) says that if in a contract of sale the contract is for specific goods and the property has passed, then the breach of any condition can only be treated as a breach of warrantee.
* S.23(2): if there’s unconditional contract to sell specific goods in deliverable state (like this case) then the property passes to the buyer when the contract is made, doesn’t matter when delivered. Property passes immediately but when this is combined with s.15(4) it also means you can’t reject the goods and terminate the contract, because if you have a contract for specific goods and property is passed, you can’t terminate the contract/get rid of the goods.
* Can’t get rid of the painting – can’t terminate the contract and refuse delivery due to s.15(4). As such, the parties tried to argue misrepresentation, that this claim it was a Constable painting was a representation and not a term Denning says however that if it’s a representation, then it’s nature as a rep merges with its characteristic as a term, so it’s misrep nature disappears. It’s status as a term is the higher term
* Remedy of rescission can be put in a contract, even if it’s not a misrepresentation
* Contract for specific goods in a deliverable state: cannot rescind the contract unless the contract says you could. Deliverable = it’s ready to go, not that it’s delivered.

Conditions and Warrantees

* to have access to termination, you must have characterized the term as a condition and not as a warrantee, possibly as an intermediate term. Statute says once it’s specific goods and property has passed, it can only be a warrantee, this means you can’t terminate the contract at that point, once property has passed (which will be once the goods are ready to go/deliverable)
* Intermediate: hard to know whether you should be able to reject and terminate at the time of creation.
* S.15(2): SGA treats things as conditions and warrantees. Breaking a condition means you’re rejecting the contract and your fundamental obligations under it. Breach of condition is a repudiation, gives you the other party the election: elect to either affirm the contract anyway and continue on with it (only remedy is damages or debt) or elect to terminate and reject.
* Or the term may not be so important, cannot give rise to the idea that contract is repudiated
* Hong Kong Fir: developed intermediate terms, terms in contracts where you can always predict that a breach of that term will result to a fundamental undermining of the purpose of that contract, so conditions, and others a breach of which will never do so, warrantees. But there are other terms, intermediate terms, where you simply wait and see until the breach has occurred and if the consequences of the breach are serious, then you get the same remedy as though it had been a condition.
* Cehave: Denning brings intermediate terms into the SGA. The quality of the delivered goods was poorer than expected; buyer said this was breach of condition, and I could terminate the contract and reject the delivered goods. The buyer then went out and bought the same pellets for a much lower price and use them for the same purpose.
* Denning said terms like this are intermediate, so you simply wait till the breach occurs, see how serious the consequences of the breach are and if not serious, buyer is stuck with damages. Denning said this was intermediate terms (even though SGA said conditions can only be either conditions or warrantees in sales contracts).
* If the statute says a particular obligation is particular condition or warrantee, you’re stuck with
* Bunge: when something has to be done, how much of something must be delivered, quantity, it is very commercially inconvenient for those things to be described as intermediate, so generally speaking, where you have a number involved in a mercantile contract, the promise relating to that measurement (quantity, time, etc) is going to be a condition. Mercantile contracts = contract between two commercial entities.
* Big exception to that is time of payment, which is not usually going to be a condition, it’s a warrantee, the other party can’t terminate unless it’s in the contract.

Classifying Obligations process, implied and express terms

* First figure out if you have a term in the contract. Some can be implied or expressed. If they are primary obligations and not secondary obligations then primary can be characterized as a condition or warrantee or intermediate term, characterization will be at the time of acceptance.
* if implied term is only in there because of SGA, you look to SGA to find out the characterization
* Very unusual for a sale contract to be formal (which means sealed). Parole evidence rules applies, but only for express terms. terms can be used to get around PER.
* s.69 says that you can take thing and alter things the statute implies/implied terms expressly or through dealings/customer usage.

**Class 6**

CB Hotels (implying terms)

* law itself can be a basis for implying terms into the contract. Otherwise, necessary implications or customary usage can result in that as well.

Exclusionary or limitation clause

* exclude or limit the liability that stronger party has for consequences of the breach.
* heavily regulated, law often finds them to be penalty clauses.
* Hunter: first construe the clause and see if it was meant to apply in the first place, then see if there was notice of it, then the clause must pass a test of unconscionability (can’t use it if unconscionable). Disagreement was whether there is other control after this.
* Wilson in Hunter recreated the doctrine by saying that in addition to the idea of notice and construction as tests and unconscionability, Wilson says there’s no doctrine of fundamental breach but you can test the clause for unfairness or unjust. Dickson was silent and seemed to think unconscionability was the end of it. (Construction, then notice, then unconscionability, then, for Wilson, unfairness)
* Tercon: Court is split on outcome of the case based on the construction of the clause. Majority didn’t think the clause was specific enough and didn’t apply. This tends to be where courts stop. Minority thought it was fine so had to look at other tests
* agreeing no such thing as doctrine of fundamental breach and implies that other cases say Wilson was incorrect and so no test of unfairness that would apply.
* The test of unfairness, remember, is applied after. Notice, construction, and unconscionability are all pre-contract. These are all things you test at the time the contract comes into existence. Wilson felt there must be something post-contract; things could happen after contract came into existence that made a term that was okay at creation unfair. Court in Tircon seems to say you can’t do that. Assuming the limitation clause is fine when contract was created, it’ll probably survive and the only reason it might fail outside of those three reasons (notice, construction, unconscionability) is public policy.

Standard form mercantile contract

* SGA sees your contract as having various obligations and pre-conditions in it. If you don’t say anything to the contrary, the statute tells you when you are supposed to pay, when risk passes from seller to buyer, how and when delivery.
* What buyers and sellers have done over the years is come up with basic forms of contract that re-arrange the obligations in the SGA and if you use one of these forms of contract, don’t have to worry about changing obligations yourself as the form of the contract indicates that you are using different rules other than those that govern SGA.
* COD (cash on delivery, talks about when payment and delivery obligations arise, changing the usual rules that apply from SGA).
* FOB contract (seller’s obligations are to get the goods onboard a ship and the obligations of the sellers end at that point – however, parties in a case had worded their contract so that even though it was labelled a FOB contract, the seller’s obligations continued until the goods reached the buyer. So these forms of contract can still be tinkered with)

Basic obligations of parties in contracts in SGA

* Seller’s basic obligation is to transfer title. Subsidiary obligations to this: quality, risk, delivery, and no third party claims that’ll effect buyer’s use/ownership of the goods
* Buyer’s obligations: payment, risk. Standard form contracts are just shorthand ways for saying how risk will be transferred, delivery of goods, etc.
* Title = ownership and entitlements to possession. You can pay through a documentary form. Also, passing title can be done in a documentary form. However, this must be agreed on – there’s no obligation to accept delivery of possession/title in documentary form. There’s also no obligation to accept payment in paper form unless parties agreed.

Manbre (standard form CIF Contracts)

* ship sank before goods got to the buyer. Is seller in breach by not delivering the goods?
* used a CIF contract: when using a CIF contract these sellers’ obligations are to provide the goods (seller has to have the goods and title to them that can be passed to the buyer). The delivery of the goods does not necessarily mean delivery to the buyer, it’s delivery to the ship. What the buyer is entitled to get from seller is not the goods themselves but the documents, including the insurance documents, that are generated once the goods are loaded on-board the ship.
* CIF contract is delivery of goods to insurer who is then responsible for the goods getting to the buyer. So third party is interposed between the parties that takes on certain responsibilities that would otherwise be allocated to the buyer or the seller.
* Contract is saying seller has obligation to get them to the ship, and is responsible for risk up until this occurs but once it gets to ship, papers are generated and seller is responsible for getting those documents to the buyer, but goods themselves are responsibility of someone else. If buyer has complaint of goods not being available because they sank , complaint is not against the seller but rather the insurer.

Gaertner v. Fiesta Dance studio (buyer protection through common law fairness concerns)

* no doctrine here, contract is just thrown out because it isn’t right. Dumped the contract just because it wasn’t right/fair, that it was based on a demeaning and cruel hoax by an unscrupulous party.
* So common law can just simply refuse to deal with a contract for whatever reason. But generally the law is more precise about why it doesn’t like something and what aspect of the contract it doesn’t like, not necessarily the whole contract, as in Gaertner, that the law doesn’t want to tolerate.

More Protection of the Buyer from Common Law

* Tilden: Basic doctrine is that if you sign a contract, the signature is taken to satisfy the requirement of notice, that you read, understand, and accept the contents. Majority disagrees – says that may work in some situations, but the more onerous the clause the less likely we’re going to agree that the signature in itself means you understood and agreed to the clause, so even without a statute, court would modify.
* Harry: Buyer who is clearly sophisticated and pushy taking advantage of a seller who isn’t in a sale of goods. Seller was clearly taken advantage of and judges are able to use doctrine of unconscionability to dump it. So it also protected the seller through this common law doctrine.

Protection of Buyer from SGA (and whether you can contract out)

* s.16-19 are terms implied into the contract, largely related to quality of the goods and third party claims, to benefit the buyer, buyer protection.
* S.69 says you are allowed to contract out of SGA so sophisticated parties will try to contract out of those protections for their buyers. In s.20, BC has a prohibition on doing that. Says in most consumer contracts you can’t contract out of s.16-19.
* S.20(1) defines a retail sale (which is what’s regulated): a sale made by seller in ordinary course of the seller’s business but doesn’t include sales of particular types – seller in business of selling goods to consumers. Question is what the ordinary course of business is – what if you’ve never sold those goods before or the goods are unique.
* S.20(2) says that despite s.69 which would usually let you contract out, in case of retail sale of goods other than goods that on reasonable inspection are used goods, or are described by the seller as used, any term in a contract that purports to negative or diminish the conditions and warrantees under s.17-19 are void. You can’t contract out of them in retail sales of new goods.
* s.20(3) says that despite s.69, in case of retail sale of new or used goods, any term that purports to negative the conditions or warrantees s.16 is void – these are the conditions about third party claims. Even in used goods, in retail sales, you cannot contract out of protections of s.16.
* s.16 however says “unless shows different intention,” so s.16 seems to leave an opening to contract out of that provision

Deceptive Acts, Unconscionable Acts, Unsolicited Goods

* Deceptive contract/act: Any contract or conduct by a supplier that has the capability of deceiving or mislead a consumer. Can occur before, during, or after creation of the contract.
* s.5 says a supplier must not commit or engage in a deceptive act or practice, but s.5(2) says that if it is alleged that the supplier engaged in a deceptive act or practice, the burden of proof that it is not committed is on the supplier, that what they said does not have the tendency to mislead.
* s.7: unconscionable acts or practices. Statute borrows from CL. S.8 says that the unconscionable act or practice by supplier can occur before, during, or after transaction and court must consider all the surrounding circumstances the supplier knew or ought to have.
* No specific remedies given for deceptive acts or practices, but for unconscionable there are specific remedies that apply in addition to any other remedies – s.10: the consumer transaction is not binding.
* The person who engaged in the deceptive act or practice or unconsionable need not be party to the contract, so you the seller may find that your contract isn’t binding for no fault of your own
* s.11: unsolicited goods and services: that goods simply arrive and consumers are led to believe they have to do something to reject them or they’re responsible for them, but s.11 says you have no responsibility for unsolicited goods and services unless you do something that acknowledges you have responsibility. Includes credit cards.
* s.17: specific types of contracts regulated: funeral contracts, direct sales contracts (where the transaction isn’t entered into at the seller’s place of business), distant sales contracts, future performance contracts. In most cases the consumer can rethink the deal and cancel.
* s.189: general offences and penalties in addition no the specific stuff earlier. A person who commits a deceptive act or practice or unconscionable act commits an offence.

Who is the seller?:

* Raises the issue of privity of contract. SGA is affected by privity and does not abolish it.
* Horizontal is A and B who have a contract to benefit C and horizontal says C is not a party so A is not liable to C in contract.
* Vertical privity is the chian of contracts so that A has a contract with B and B has a contract with C, so C can’t sue A. No problem as people can just sue each other up the chain, but if one party goes out of business, there’s a break in the chain and so one part will have no cause of

**Class 7**

Privity

* Lyons: no breach of contract as the injury was to the child, who did not have the contract with the seller – the mother was the buyer and was the one in the sales contract, she can only sue for her damages in contract (cost of the bottle), not the child’s injury.
* horizontal privity – you buy something for the benefit of someone else, but they cannot sue as they are not privy to the contract.
* strong authority against this idea that you can have more than one person on one side of the contract where those parties have different interests.
* Argument made here was that the contract was actually the child’s, mother is just the agent. but court decided mother was entering into contract for her own benefit

Using Privity to Protect a Part

* Vertical privity: you have the retailer, the consumer, and the manufacturer, and there’s contracts between the parties, but question is whether the consumer can bring actions against the manufacturer or the extent to which the manufacturer can in some contract they don’t have directly with the consumer, interfere with the rights the consumer would otherwise have.
* Chabot: question is whether the manufacturer had done anything that limited the consumer’s ability to complain about car’s quality in contract or tort. The manufacturer was saying there was an ability to interfere with rights consumer would otherwise have, manufacturer used a warranty, the retailer acts as an agent in creating a contract that the consumer has with the manufacturer (a warranty or guarantee contract). As a result of getting this protection through the contract, they are giving up the rights they would otherwise have against the manufacturer
* Despite the reasonably clear language, the court said it can’t be the case that the consumer was consenting to the elimination of any rights it had against the retailer in the contract with the manufacturer, so anything in the warranty contract must be interpreted as being in addition to what the consumer had against the retailer, so despite clear language, it was not meant to reduce the rights against the retailer from SGA. Consumer was to gain rights, not reduce them in any way.
* the court also said that despite the clear language, this couldn’t have meant to reduce any of the conditions in the contract. it might be intended to effect some warranty in the contract, but not any conditions (the fundamental underlying parts of the agreement).

Ways Around Privity

* Agency: contract was meant to be the person for whom it was the benefit, the other person was agent of that person.
* Say there were two contracts: B was entering into a contract with A for their own benefit, but also in a contract with B as agent for C.
* Trust law
* Henningsen case (US): if the contract was intended to benefit a third party and the seller should or does know that, then seller is liable not just to the person who buys in contract but also to the other people who will be the usual users of it.
* General Motors v. Kravitz (Quebec): again no problem with privity. here vertical privity – can the consumer complain in contract against the manufacturer about problems with the vehicle. The SCC said there’s no problem in doing that and says that when a consumer buys goods from a retailer, if you analyze this contract, consumer is getting property, rights in rem, that you didn’t have before, you own it. You are also getting contract rights and those are rights in personam and you can only exercise those rights against the other contracting party, while in rem rights can be enforced against anybody. Same for retailer to manufacturer.
* the rights in personam between consumer and retailer are not the same as those between retailer and manufacturer. However, the right in rem between manufacturer and retailer and retailer and consumer are the same, that right in rem is the same right just passed on
* Civil law has different perspective, they say when contract is entered into between retailer and consumer, there are new rights in personam created against the retailer, but you are buying two things: you are buying rights in rem from the retailer/manufacturer contract but also the in personam rights from that contract, so you can sue the manufacturer – you bought the right to sue the manufacturer. In our system, you only bought the in rem rights that existed between retailer and manufacturer and gotten new in personam rights against retailer.

The Fraser River/London Drugs Exception to Privity

* Fraser River case: tcan you use a term in somebody else’s contract to defend yourself against a claim by somebody who is a party to that contract?
* The court says yes, relying on earlier London Drugs case. If there is a term in someone else’s contract that is intended to benefit you by giving you a defence, then you are allowed to use that defence you otherwise wouldn’t have, even if it’s in a contract to which you’re not a party. However, you can’t use someone else’s contract that benefits as the basis of a cause of action
* Although parties to contract are free to change their contract, if in an earlier state a contract had a clause to protect someone, that right crystallizes for the third party. You use the contract that existed at the time the tort happened, even if the action wasn’t started – the defence crystallizes, not effected by later changes to the contract by the parties that would deprive the third party of that defence

Transfers or Rights in SGA Contracts, the Property Interest

* a buyer ends up with rights it didn’t have before, rights of two types – property rights in the ownership and the contract rights. It is possible to have a contract for sale of goods that eliminates all of these rights. Just have a bare transfer of ownership and that’s it, I have no right to sue you for any reason other than that you didn’t transfer the rights in rem to me. Nothing about when the goods are delivered, transferred, quality, or third party rights. These are all in personam rights and you can eliminate those and just have in rem.
* you cannot have a sales contract without the passing of the in rem/ownership/passing of property rights. that’s the heart.
* Buyer immediately becomes the owner of the property, even if they don’t see it or have it yet. Parties can have a contract but delay the transfer of ownership, however.
* Property is defined in SGA: general property is the basic property in the goods, the property which is not derived from someone else’s property, as opposed to special property which is derivative. Property is general property in SGA: It’s ownership, the basic property interest.
* You have to have a contract in which that property is transferred or agreed to be transferred, or you are not in s.6 and not in the statute. if you get the general property, what you get is all the rights of an owner , the only property interest that entitles you to destroy the property.)
* Property ownership gives claims against the world, and if they infringe on it, they’ve committed a wrong – a tort. Because you are the owner, the world can assert certain claims against you – you become the basic risk holder if there is damage to someone else’s property caused by your property, you will face tort.

When Does Property Pass?

* s.22 tells us that property passes at the time the parties of the contract intended. Specific or ascertained goods = depends on parties’ intention.
* Unascertained goods...you can’t become the owner if you don’t know what the goods are.
* s.22(2) to ascertain intentions of the parties, regards must be had to terms of the contract, conduct of the parties, and the circumstances of the case. Clients should put into contracts when property is supposed to pass, crucial, as the rules statute gives if you don’t have your own rule is unsatisfactory.
* Unless the contract causes the property to pass as soon as contract is entered, iff under the contract the seller is supposed to pass property at a particular time, that doesn’t mean that the property necessarily passes when that time arises, it could be the seller is CALLED upon to do something at that time and property passes, but can be breaches. Property is supposed to pass at that time and doesn’t, so that leads to right in personam. Buyer only gets rights in rem when that obligation is fulfilled, so claim is against the seller only.
* If you don’t have your own rule for when in your contract: s.23(1): unless different intention appears, the intention as to the time at which property passes is according to these rules:
* S.23(2): in an unconditional contract for goods in a deliverable state, the transfer occurs at the moment the contract is made. Time of payment or delivery don’t matter, it’s when contract is entered into that property transfers. Of course, specific goods, and remember s.15(4) says once property passes, no termination, so if s.23(2) operates, never any termination
* This rule DOES NOT apply for goods not in a deliverable state.
* S.23(3) is for specific goods not yet in a deliverable state. Here, property transfers the moment the condition is met and the seller notifies the buyer that the goods are deliverable.
* Kursell: the trees were not yet cut, so the goods were not in a deliverable state, meaning goods did not pass. The buyer cannot be bound to take delivery of unidentified, unascertained wood.

Unascertained Goods/Appropriation

* Not clear at time the K is entered into what precisely the goods are – may be future goods, a portion of a larger bulk, or only generically described.
* S.21: There cannot be a transfer of possession until the goods are ascertained (separated, manufactured, whatever). They do not pass until they are unconditionally appropriate to the contract, that is that they have been picked out for delivery and no way to change which goods will be delivered.
* Carlos Federspiel: in order for there to be appropriation, both parties must have the intent to attach the contract irrevocably to the goods in question. Both parties must agree to the appropriation, though buyer may have agreed in advance through the contract. Appropriation will involve delivery or constructive delivery. The location of risk creates a presumption of ownership.
* The appropriating act will typically be the final obligation of the seller and the goods are out of his possession (merely sitting in a warehouse may not be enough – seller could still switch them)

**Class 9**

Passing of Risk

* Unless parties stipulate otherwise, risk is presumed to pass at the same time that title to the property passes. If something happens to the property prior to the passing of title, the seller will be in breach if he cannot pass title to the property
* This is why time property passes is important: also tells you when responsibility for risk passes.
* Jerome: majority seem to have decided what decision they want and make the rules fit. Buyer pays the cash for new car but before the work is completed there is a fire that destroys the car. The fact that what she got was not in her possession is irrelevant, as it would be at her risk. The disagreement here is whether property can be said to have passed to her even though the property was still in the hands of the seller.
* Dissent: the property had passed at her; way contract is structured, she becomes owner of vehicle at earlier time, it’s her risk. Seller cannot be faulted for breach. Majority: she wasn’t owner of the vehicle yet and wasn’t supposed to be owner until the work had been completed and she had been notified that it had been completed and she could go get it. This hadn’t happened yet so seller still had obligation to pass the vehicle to her and they are in breach, the owner didn’t have title yet.
* The parties’ intention should govern over basic principles, the entire contract is ultimately about risk allocation. Intention when contract was made is predominant, with exception of mistake and frustration, which is where you argue you made a mistake in the risk allocation.

Seller’s Title Obligations

* Obligation to pass the property is a contractual obligation between seller and buyer but when it is performed it results in rights that can be asserted against everybody; sometimes the statute says that happens automatically so there isn’t even a promise to deliver the goods if they are already in a deliverable state and seller owns, in which case as soon as contract is entered into, the goods pass. Or at a particular point, the goods can pass, the seller doesn’t have to do anything, just promising that at that point in time, there will be goods that will pass.
* Seller’s title obligations: other things associated with the passing of property that the statute says the seller is responsible for. These obligations can all be contracted out of – you could eliminate these obligations and still have a good contract of sale, as property is still passed.
* You cannot contract out of the obligation to pass property we just dealt with, or you don’t have a contract of sale.
* s.16: says there are three terms that are implied into the contract: first is a condition and the other two are warranties so the breach of the first gives buyer right to terminate (but if for specific goods and property has passed, we know from s.15(4) that even if it’s a condition, you can’t reject the goods and terminate). s.16(b) and (c) are warranties and no matter how important the statute doesn’t allow the buyer to terminate because of the breach of these obligations, just damages.
* s.16 opens up by saying that if you have a contract of sale (both sale and agreements to sell), unless the circumstances of contract show different intention, there is an implied condition on the part of the seller that the seller has the right to sell the goods or, if an agreement to sell, WILL have the right to sell the goods. B is a warranty that the buyer will have and enjoy the quiet possession of the goods. C is the warranty that the goods are free from any charge or encumbrance in favour of any third party that isn’t declared to the buyer before or at the time the contract is made.

s.16(a) (seller’s first title obligation – third parties)

* saying that even if the seller has ownership and could pass it to the buyer, that the seller is not in some other obligation to someone else that prevents them from selling. For instance, seller may not have right to sell for not owning the goods.
* 16(a) is to provide the buyer a guarantee that the buyer is not going to be faced with a claim from govn’t or some third party that the seller having passed the title to the buyer, that the seller is in breach of some obligation by having done that, like if the seller has a contract with some other party that says the seller is not supposed to sell something like that to the buyer.
* will not PREVENT the seller from passing the property to the buyer, even if they were supposed to sell to someone else, and it doesn’t prohibit the sale from taking place, just imposes fine or restraint on use of the goods if statute/provision is broken.
* 16(a) says there’s an implied condition and s.15(4) says if there is a breach of condition you can’t reject the goods if property has passed to the buyer and they are specific goods or if the goods have been accepted. If there is a breach of 16(a) that I don’t have right to sell you the goods but I sell them to you anyway, in many cases you can’t reject them because they are specific and property has already passed to you.

Rowland (buyer selling goods he has no title to)

* seller is arguing you can’t give vehicle back and I can keep money, knowing full-well the buyer can’t get the vehicle, only has title which they will have to give back to true owner
* Courts agree: Buyer has to have a way to get money back, shouldn’t be stuck with the goods, when they’re stolen goods.
* Strutten says where you have such a profound breach of the right to sell, you don’t need to have to worry about being said to accept the goods, you should always be able to reject the goods when there is a breach like this, cannot be the case that the buyer is deprived of his right to get his money back because he can’t restore the goods, which in the nature of the transaction aren’t the goods of the seller at all.
* Akin (more accepted view): we don’t need to worry about s.16 in this case, it’s not necessary in this situation. Where you have a contract of sale, the basic point of the contract is to pass the title from seller to buyer and if the seller never has that property to pass (stolen goods), that’s not just breach of a condition in the contract or a misrepresentation, it’s a total failure of consideration, which goes to the very heart of the contract, meaning that the buyer, or one of the parties in the contract, got nothing and never will get anything under the contract, totally undermining it and making it void. You treat it as though the contract has no effect at all. .
* BC has s.27: as long as the goods are bought in good faith (“in market overt”), the buyer has good title to them. This applies to stolen goods. Prevents total failure of consideration.
* S.29 makes this tenuous: if offender is prosecuted to conviction for theft, property in the stolen goods revests in the person who was the owner of the goods, regardless of operation of s.27.
* Akins’ path > s.16(a), which does not undermine the contract, it just allows you to terminate it in certain places, but the contract remains in place. Only way to get out of the bargain entirely so that all effects of the contract disappear is to argue that the contract never existed at all. – that one party appeared to be promising something but that promise was totally empty because it was impossible for that party to give anything
* Attempted as a way to get around s.15(4)’s impact on the result for breach of condition by appealing to idea that there has been nothing given, buyer should be able to get out of a transaction because they effectively got nothing under the transaction.

Butterworth (attempt to use Rowlands)

* R is buying a car under a conditional sale agreement, she doesn’t own it yet. Contract between R and seller has a provision that says R isn’t allowed to sell it. She sells it and there’s a series of transactions whereby the various parties thought that they had ownership of the vehicle and then it is revealed, as she realizes that she sold the vehicle in contravention of the contract.
* NEMO DAT. She couldn’t sell, so none of those parties can own it. All the buyers are claiming that they should be able to reject the goods and get damages and question is whether there is a basis for them to reject the goods – no one’s denying there’s a damage claim.
* s.16(a)” that there was no right to sell the goods. The seller, R, did not have the right because she was in breach of her contract in doing so. However, if they want to reject the goods, s.15(4) appears to kick in, which says that if you have accepted the goods, you are not allowed reject the goods and terminate the contract, whether they are specific or ascertained. If you are said to have accepted the goods, regardless of whether property has passed, you cannot reject
* Court uses Rowlands to get around s.15(4): Say that where a buyer is supposed to get something in terms of title and ownership and the seller does not pass it on because they do not own the goods, the buyers are simply allowed to reject on the basis that the whole purpose of the contract has been undermined. So ignore s.16(a) and s.15(4) so just applies Rowlands to entitle the final possessor to reject the goods, despite the fact that buyer had been using them
* Macdougall says this is wrongly decided, as these were not stolen goods – R had an interest and if you have contract to sell a greater interest than you have than the common law says you passed on the interest you had, the other person gets what you had to give.. When owner does become the actual owner by acquiring title, the buyer gets “fed” this title.

**Class 10**

Title by Estoppel

* as against the rest of the world there isn’t a title/property interest that passes between the two parties, but as between the two of them, they can have an agreement that there is such a title and that it has passed from one party to another. Person has election to claim that there is a title that has passed/the falsehood (estoppel) or that there is a breach of contract/thetruth (reject the goods), but there is a possibility for the title to be recognized between them.
* If you elect the former, if A gets the title eventually, the title is fed, which means the title that is only recognized between the two of them is fed to B, and THEN it is effective against the rest of the world, which it couldn’t be when it was purely by estoppels between the two parties.
* there was no actual passage of title or property between the two but there was an estoppel, and when the one party DID get the title that was necessary, it was automatically fed through to the other person.
* if you don’t actually get goods but you think you do, it is possible to reject the goods on that basis, but not required to do that, you can assert as between the two of you that the title exists, though that’s tenuous as it doesn’t affect the rest of the world, so the true owner can always come along and take the goods, but if you hang in long enough then if the other party eventually does get title, it is fed through and the problem disappears. You can still sue for damages for not getting title when you were supposed to, with the breach being the timing. That said, you can also elect instead to sue for breach, as in Butterworth, total failure of consideration (no title)

Total failure of Consideration cont’d

* when someone is supposed to get a title of some sort and because of the way the world works, they get absolutely no property interest at all. If you get less than you were supposed to get, but you get something, that’s not a total failure of consideration, though you have some claim.
* Sloan: where you get less of a property interest or an encumbered property interested where you thought you were not going to get an encumbered interest. Court allowed the buyer to reject the goods in this situation because the goods were subject to a property interest that wasn’t disclosed. Court says according to Rowland, this is failure of consideration with the basis of contract was undermined, you can reject. Macdougall says this is wrong, as there is breach of contract, but it’s not a total failure. Getting less than what you were supposed to get is just a breach of obligation.

Breaches of s.16(a)

* s.16(a) has to do with the right to sell and clearly if the seller doesn’t have a title then there’s a breach of a right to sell because you don’t have title when you’re supposed to have it, but you generally don’t need s.16(a) to justify your claim.
* s.16(a) can work where there’s a breach of a contract with someone else – the seller has a contract with someone else that he breaches by selling to someone else, or that there’s a government control that your contract breaches. In that case, the sale is prevented, the seller is just in breach of an obligation. Third one is where there is IP rights, claims that third party can assert, that would deny the person who owns the property the ability to sell it.
* Niblett: example about a breach of s.16(a). contract to sell cans of milk, but cans have labels on them that say “Nestle” and Nestle say this was breach of their IP. Infringement of Nestle’s trademark and that constituted a breach of s.16(a) and that the seller here does not have the right to sell goods that are in breach of someone else’s IP rights. Buyer can only sell by tearing off the labels. This is almost a quiet enjoyment right; buyer can get the property but he is encumbered in his use of them by having to tear labels off
* Windsor: example of government regulation. Here, there were lamps and the lamps were supposed to have a standard certification before they were sold. Legislation didn’t prevent the contract, but it wasn’t supposed to be entered without that standard certification, so court held there was a breach of s.16(a) – the seller didn’t have right to sell the goods where there has been non-compliance with the government regulations concerning such sales
* In most cases, the buyer won’t know about the breach until it’s too late: he’ll already have used them, title has already passed. so in many cases, particularly where damages are trivial, there are no consequences, as the goods can’t be rejected and the contract can’t be terminated. And you get no damages since you’ve already been using the goods with no problems.
* whether there are encumbrances and such, it’s only tested at the time the property passes, there isn’t an ongoing promise, that’s not the seller’s responsibility.

Contracting out of s.16(a)?

* Sloan: quite an onus put on the seller to be responsible that the seller may know nothing about, he may know nothing about the IP rights of someone else. Most commonly the problem are these charges or encumbrances – how can you know, yet you’re responsible for it. A wise seller will thus always contract out of the obligations in s.16.
* hat’s what they try to do here, the contract specifically says that there are no implied conditions in the contract and the only terms are the ones set out in the agreement itself.
* Here, the there’s a sense of justice, so court go out of their way to make these contracts effective. They read into the contract all sorts of other terms or promises, or say this couldn’t mean this or that. They read something in the contract as bringing back in all of the s.16 implied
* To really contract out of s.16, you have to spell it out, can’t just use a catch-all provision like Sloan, you have to really spell out expressly and explicitly.
* S.16 does say however that it doesn’t apply if the contract expresses a contrary intention

s.16(b)’s Duration Beyond the Passing of Property

* Microbeads: s.16(b) is ruled to preserve the risk with the seller for a period of time in terms of the buyer’s ability to enjoy or continue using the goods in the way intending. Here there was a party coming along asserting new IP rights that couldn’t be asserted at the time the property passed but can be asserted now IS a breach of 16(b). Doesn’t allow buyer to reject the goods, but can bring down their value, which can give them a claim in damages
* s.16(b): that goods are of merchantable quality or fit for the purpose. Short fuse on that though, it’s only fit at the time you get them, when property passes. If the thing breaks later, too bad, it was fit for use at the time the property passed.
* Microbeads determined that s.16(b) rights can be asserted for a reasonable time after the agreement, not limited only to the time of sale. Preserve the risks with the seller for a reasonable time.
* s.18(c) that operates in similar way: implied condition that the goods will be durable for a reasonable time.

s.16( c)

* it says there is an implied warranty that the goods are free of any charge or encumbrance of a third party not known by the buyer before or at the time the contract is entered into. So when contract is entered into, seller has an obligation to reveal any charges or encumbrances that may effect the goods, even if the seller doesn’t know that they exist.
* Charge or encumbrance is simply a security interest; somebody has a security interest in the goods, it doesn’t matter how important that security interest is or how likely or unlikely the party is to use it, doesn’t matter what the priority of the secured party is in its claim, seller is in breach if he didn’t reveal it.

**Class 11**

Adjectital Rights

* S. 17: a condition that the goods must correspond to the description. If the goods are described and are not as described, buyer can reject them. In almost all contracts of sale.
* s.18: guarantee that the goods are fit for the purpose for which it’s intended (condition). It says it doesn’t exist where there’s a sale of a specific article under its patent or trade-name but this has been ignored by courts.
* s.18(b): this is related: the goods have to be of merchantable quality.
* Both a and b can only be used when the seller is in the business of selling goods like that; can’t use it between two consumer parties. You might be able to use s.17, but can’t use 18 a or b unless you can show it was my business to sell things at yard sales or whatever.
* s.18c there’s also a condition that the goods would be durable, unique to BC. Like s.17, broad availability and it applies to almost all contracts of sale.

s.17

* where there is sale by description, there is condition that the goods must correspond to description. Problem is that no one has figured out why the provision is there and what it’s doing – does it simply codify the law as it would exists otherwise or does it change the law?
* if anything is said about goods that is at all factual, a fact related to state of the goods, then it is not part of the term of the contract it is just a representation about the goods. No such thing about promises about quality or conditions of the goods because parties are expected to look at the goods first, check it out, before entering contract – caveat emptor. So the starting position is that these are not terms in contract, merely representation.
* if there’s a description in a contract for unascertained goods, since we don’t know what the goods are, it can’t be a fact and thus can’t be a mere representation. With specific goods, anything said about the goods is probably not going to be a term in the contract, simply a representation. Idea is that you could go check it out and if you didn’t, it’s your own problem.
* Courts have moved to say that s.17 ALSO covers specific goods. First they said it only covered specific goods you haven’t seen, you couldn’t see them for various reason
* But then, the next authority said that even if you saw the goods before you entered the contract to buy them, description can still be a promise. If I’m promising that that’s what it will be when you get it.

Applying s.17 and patent/latent defects

* Frey: Court is considering whether the buyer has a source/claim against the seller in these situations where you buy a specific item and the vehicle is sold “as is”.
* it’s possible for the buyer to rescind the contract on basis of misrepresentation but the problem is that there actually has to BE a representation. Nothing was said here, it’s just as is. So court is trying decide when you can have a representation through silence.
* The court differentiates between two types of defects: patent defects and latent defects. If it is a patent defect then it’s caveat emptor with respect to representations – if nothing is said, there is no misrepresentation, if you don’t ask and require an answer, there is no obligation by the seller to say anything about a defect which should be obvious by any party, caveat emptor.
* For latent defects, the law is different, if it can be said that that the seller is concealing or preventing in some way the discovery of the latent defect by the buyer, then the law treats that as tantamount to fraud. If there is something that is an active concealment or a step taken to prevent the buyer from discovering the problem, then there is an implied representation and the contract can be rescinded.
* s.17 in BC and says that there’s an implied condition in the contract that the goods must correspond with the description and here the court says that there’s an advertisement that the truck was a 1972 Dakota, as though it were one homogenous unit, but that’s not true, it’s made up of more than one vehicle. THAT is part of the description and there is a breach of s.17
* even though this was specific goods, was related to fact, and came before the contract was entered into, the court says that the statute makes that representation a term in the contract and it’s a condition in the contract. And there’s breach of it. Here the goods have already been accepted, so can’t reject it, but can get damages for breach of the description
* Despite Leaf, court says something may well be a representation but on top of that, you can claim that s.17 converts at least part of the description/representation into a term.

Hart and Jones

* the parties here explicitly say in the contract that the courts are not sold by description. The court says the parties can’t mean that. That part of the contract can’t relate to the important parts of the description. Court is basically saying that the vital parts of the description cannot be excluded so readily.
* Court is saying that if I contract to sell you a bike and we talk about make and condition and what I deliver to you is a canoe, you cannot claim that there’s not been a breach of contract – you can’t say that because we’re contracting out of description that you can deliver just anything and not be in breach. Extremely difficult to contract ouf of the s.17 guarantees.

What Does s.17 Apply to?

* Varley: Court found that it was possible where there was a contract for specific goods, where the goods are not seen and the description was used by seller to convince buyer to buy, it is a description for s.17 and there is implied condition that the goods will match the description.
* If there’s a breach of description under s.17, what can buyer do though? It was for specific goods and they were in a deliverable state, so you’d think the buyer can’t reject and is stuck with them. Court just says this can’t be what the parties intended, they must have intended that where you actually haven’t seen the goods that the buyer have the chance to inspect the goods to see if they are in conformity with the contract, so s.23(2) doesn’t apply here.
* Where specific goods haven’t been seen, the buyer ought to have a chance to inspect before it can be said that property has passed. Where the goods arrive and aren’t in conformity with the description, seller in breach, the buyer can reject the goods and not be required to pay.
* Beale: Court says here again that in contracts for specific goods, even when you have seen them, that the description can amount to not just a representation about the state the goods are in but a promise that the goods will match that description. Court accepts in certain cases, also, that property won’t pass until buyer has had a chance to inspect the goods.
* If anything is said expressly or implicitly about what the goods are in a contract, it is a sale by description and triggers s.17. Conclusion is that all contracts for sale of goods except bizarre example that no one knows what it is but you have desire to buy it, is a sale by description and then question is what s.17 does.

Specific vs. unascertained contracts under s.17

* Taylor: for unascertained goods, anything that is said by way of identifying whether you got the right goods or not is part of the description. In that context, EVERYTHING said about the goods is part of a promise and s.17 converts that promise into a condition so when it’s a complaint about description of unascertained goods, it’s always a condition, the warranty/condition categorization is irrelevant, can always reject if it doesn’t match.
* With respect to specific goods, while s.17 applies, it’s not intended to change the law: have to examine the contract and the intentions of the parties themselves and if they intended the representation to be a condition, warranty, or mere representation (it’s an assurance by the buyer that the goods are in fact as described). If it’s a mere representation, it’s not a term/promise and so not a sale by description.
* With respect to specific goods, if it was intended to be a term in the contract, s.17 doesn’t re-characterize what the parties meant to be a warranty as a condition. Description can only be a warrantee for specific goods, unless the breach of the condition makes the thing sold under the contract different in kind from the description (an erroneous statement which goes to the essential nature of the goods)

**Class 12**

Ashington (goods that match the description but are not of merchantable quality)

* it’s about what constitutes the description. Wilberforce: fact that the meal contained some sort of chemical that did in the animals didn’t bother him, didn’t change the nature of it, it was still Nowregian Herring Meal.
* The test of whether the goods meet description is whether a person in the market using the normal test would find that the goods meet the description . Here the buyers and sellers and arbitrators in the market would have described this as "herring meal", so it did meet description
* Arcos: conditions must be met strictly and a breach thereof may allow termination . In the case of unascertained goods since the whole of the description is conditions, any breach of condition, whether seen as material or not, will allow rescission.
* While the goods may have been commercially marketable, and may have been fit for the purpose described, they did not match the description, consumer is entitled to get what was described, irrespective if the goods were fit for the purpose and commercially marketable.
* The inquiry is not whether there was "susbstantial compliance"it is about whether or not the conditions of the description were met.
* Both cases say s.17 is not about fitness of purpose. So you can have something that is perfectly ill-suited to your purposes but still conforms to the description you have in the contract. That said, there are cases where courts try to use s.17 as a way to attack suitability for purpose. This Ashington view is the narrower approach.

s.18 (fitness for purpose and merchantable quality)

* 18a is that goods must be fit for a particular purpose and 18b, that they be of merchantable quality. 18(b) is always discussed before 18(a).

18b (merchantable quality)

* Pre-requisities: the goods are bought by description. Seller deals in goods of that description. Question is how specific the description must be.
* If you meet this prerequisite, the goods must be of merchantable quality under 18(b). However, if the buyer has examined the goods, there is no implied warrantee as to the defects that the inspection ought to have revealed.
* Bartlett: merchantable quality simply means that the goods are usable for some purpose that some buyer would buy those goods for. As long as they are of some use, they are of merchantable quality. In sale of second-hand car, it is merchantable if it is in usable condition. As long as it has some usable quality to it, it will probably be of merchantable quality.
* To figure out what merchantable quality is, must figure out what the description is. If description is x, y, z, you must come up with a list of possible uses for such goods. Make up a, b, c, d of possible uses for goods of that sort and even if the buyer wants it for b, the goods are in conformity with 18b if they meet any of a, b, c, and d.

18(a)(fitness for purpose) vs. 18(b) (reliance? When is the list of possible uses made?)

* 18a is about guaranteeing the buyer that that buyer’s particular purpose is satisfied by the goods that are supplied. To get that, the buyer must be more specific about what he wants, must set that out, whereas 18b is about the fitness for purpose in a general sense, the purposes that buyers in general would want goods of that sort.
* Kendall: buyer was using animal feeds to birds and it killed them, but it wasn’t known that they would kill the birds at the time. The question is when you come to make list of possible uses for the goods that are supplied, when do you bring into account knowledge and what these possible uses might be.
* Sophistication of the Buyer: 18a must show that you relied on the seller to supply goods of that description. May have hard time doing that if you know more about the goods than the seller does. 18b does NOT have this reliance requirement it just says the goods must be of merchantable quality with nothing about the buyer having to rely on the seller.
* For 18b, figure out what the description is and list the possible uses this might have. Court says this list of possible uses is not fixed at the time the contract is entered into; you can add to the list if other uses have come to light by the time of trial. The knowledge that was in existence at the time the contract was entered into that the seller or a reasonable seller would have is irrelevant; the seller is responsible nonetheless even if seller could not have known at the time that goods may not be used for certain purposes, they are still strictly liable under 18b.
* Nonetheless, merchantable just means that somebody would buy those goods. It’s true the seller is responsible for consequences even if they don’t know that, but they may find out even later that these goods may be used for some other purpose and get off
* Dissent: Must take price into account in coming up with description and the uses those goods can be put to. If they’re paying a high price, says there are qualities the goods should have,

Brown (Price’s role in 18(b))

* Rayon has two main purposes – industrial purposes and manufacture of clothing. Rayon for industrial purposes is cheaper and lower quality. Seller supplied the rayon and it was of the quality not suitable for use in clothing and buyer wanted to reject it on failure of 18b.
* buyer said price here was significant, higher than what would be charged for industria, price is added to the description as another element and if you add price, that knocks out other uses, as no one would pay that price and get goods that are suitable only for those industrial purposes.
* Court is equivocal on that argument, they say there’s something to it, but worried that buyers will use this to get out of bad bargains. In interpreting 18b, you can bring price into play, so in certain cases where there is an EXTREME difference in prices for what one would pay for one use and not the other, that is relevant, but the difference must be extreme. Not enough here

Hartnett (failure to trigger 18(b) – dealing in the goods, price cont’d)

* revealed that while watch was made by parts from Patek, it wasn’t actually put together/manufactured by Patek. In world of watch collecting, this makes it substantially less valuable than if it had been deliberately made by Patek.
* Court accepted that this was sale by description, but the actual language used in the description is of significance here: the goods here are described as being manufactured FOR Patek and not BY Patek. So yes, it was sale by description, but description only indicated that the parts were Patek but didn’t say it was manufactured by Patek. But still, it’s a description, so you’re in 18b –
* Was the seller dealing in goods of that description? The seller’s son in this case had sold other items on ebay and is a self-employed collector who sells or brokers expensive items.
* Court says this isn’t enough to trigger 18b to be considered a dealer in those goods. This evidence is short of establishing that his sales activities were significantly comprised of the sale of goods like that described in this sale. Dealing in expensive items wasn’t enough to trigger 18b to say that he had been dealing in goods of that description. Very narrow interpretation.
* Price: that of a genuinely manufactured Patek is much higher than one like this, but court again takes the common narrow view like Brown that the difference wasn’t enough. Still not extreme even though the overpayment was HUGE.
* It was also fit for purposes that people would buy this watch for, so it is of merchantable quality, regardless of its manufacture.

International Business Machines

* sometimes the price doesn’t have to be very significant at all under 18b, but can reject if you have the right judge.
* despite the fact that the cost to replace this thing was insignificant, no one would buy it because the glass cover was missing. Minority says this decision sucks: court shouldn’t be concerned with such trivial amounts of money. But still says that sometimes even when the amounts of money is just pennies, the difference in value is enough to make it not of merchantable quality, generous interpretation of 18b.

Limitations of 18(b) and Why You’d Use it At All

* little protection here because the courts are willing to say that the goods could be used by somebody, even if they would’ve paid a lot less for that quality, there’s been no breach
* Generally 18b can be used only where the description is so specific that the only possible use the buyer could have for the goods is the very one the buyer wanted the goods for. If that’s case though, that’s just bringing yourself into 18a, so you’re just using 18b instead so that you don’t have that reliance requirement in 18a.
* buyers may also use 18b because it has a limited but ongoing quality about it that 18a doesn’t have: the goods have to be of merchantable quality not just at the time they are delivered to the buyer, it is extended – not long, but may be long enough to give buyer basis for making a claim that wouldn’t otherwise exist. Mash and Buckley cases show this.

Duration of s.18(b) (particularly where transit/delivery of goods is involved)

* Mash: contract to his potatoes. Buyer became the owner the moment they were loaded onto the ship in Cyprus and, at that point, they were perfectly usable. But by the time they got to England, they had gone bad and had no use whatsoever.
* Court reluctantly said that although the goods were of merchantable quality the moment they were delivered to the buyer (when buyer became owner), given the nature of the contract, that merchantable quality guarantee extended for some period afterward. Because the buyer knew seller had to ship goods to England and seller knew there was this transit, this guarantee of merchantable quality lasted for a reasonable time, the time reasonable in the circumstances, which in this case was the transit to the destination.
* Buckley: clothespin used a couple times then shattered and injured plaintiff. Question was whether complaint can be brought under 18b. Again, courts said possible that merchantable quality has some duration to it. Not very much, not a guarantee for long period of time, but in this case, in the context of the goods involved, they should last longer than 2 or 3 uses to be of merchantable qualities.
* it’s not so much when the buyer got them, it’s about when they used them.
* In BC we thus have s.18c: implied condition that the goods will be durable for reasonable period of time with regard to the use they would usually be put and the circumstances.

Examination’s Effect on s.18(b)

* if the buyer has examined the goods, there is no implied condition for defects that the examination ought to have revealed.
* Seems that it should be limited by the thoroughness of your examination, that the more thorough the examination, the more the defects should have been revealed, whereas 18b protects you if you did a crappy, casual examination. Cases address this.
* Thornett: Buyer looked at the barrel but didn’t open them, which is only way to discover the defect, and now he’s arguing not of merchantable quality. Seller is relying on this proviso in 18b that the buyer examined the goods and the examination ought to have revealed the defects, while buyer is saying that the examination that I did, not opening the barrel, wouldn’t reveal.
* Court says that where buyer undertakes ANY examination of the goods, the buyer is required to do a reasonable examination and if a reasonable examination would have revealed the problem, then the buyer cannot complain under s.18b.
* If there is a problem with the goods that SOME examination would have revealed, then only way buyer gets benefit of 18b is by not examining the goods at all.
* if you make an examination of any sort, it is required to be thorough and if it would have revealed a defect, no complaint under 18b.

**Class 13**

Contracting In Quality

* Arcos shows that some courts take a strict line – if anything about the dimensions or quality are not in conformity, you can reject. Depends on court.
* can have a term in the contract itself that says that the goods must be of a particular size, dimension, whatever, don’t have to fit that term in s.17, 18, 19, it’s just a term/promise in the contract that is a condition, warrantee, or intermediate term with the recourse of the intermediate term allowing the court to say you CAN have a breach without it having to be either a condition or warrantee, we can wait and see how serious the consequences of breach

s.18(a) pre-conditions

* buyer makes known to the seller the particular goods for which they are required (by expression or implication), must set out the particular purpose that you want the goods for.
* you must also show that you rely on the seller’s skill or judgment to supply the goods for that purpose, so second element is reliance.
* And the goods must be of a description that is in the course of the seller’s business to describe/sell. Then there’s an implied condition that the goods are reasonably fit for that purpose.

S.18(a)’s protection for Things Supplied with the Goods

* 18b says that if goods are bought by description then the must be of merchantable quality must complain about the quality of the goods you own or will own unless contract is terminated. in
* 18a, on the other hand, the language brings in the idea of supplying, where what you are complaining about is not the goods you are becoming the owner of, but the problem is what comes with the goods or what you have to give back that you don’t become the owner of.
* it used to be the case that when you bought sweet drinks, you’d buy them in bottles that you’d return – you’re the owner of the contents of the bottle, but not the bottle
* if you’re complaining about the bottle that you don’t own, you can’t bring complaint under 18b, as you’re not buying the bottle: the drink is of merchantable quality, it’s the bottle, which you are not the owner of. Under 18a however, you are in contract of sale which is for the drink inside, but 18a is wide enough to cover not just what you are buying but also the goods supplied along with the goods you are buying and if those goods that are supplied are not fit for the purpose you wanted them for, you can complain under 18a.

Meeting the Pre-Conditions

* 18a says you have to make statement regarding purpose, but can be by implication, and courts are very good and finding implication – you can say nothing about what it’s for, and the court will just say that it was obvious what you wanted it for.
* You must also show the buyer relied. I may tell you why I wanted these goods, but may not mean I’m relying on you to supply something that satisfies that – I may be an expert in that area and know more about the goods than you do. I have to show that I’m relying on you.
* There are some judges, like Denning, that just presume reliance. They say that as long as representation is made, presumption is that the other party relied on it insofar as the representation will be fulfilled. Generally though, you must show more than that, must show that it would be reasonable why this party would rely on the other, usually because that party has expertise, seller knows more about the goods than the buyer does, or the discussion between the parties indicate that the buyer is putting himself in the hands of the seller to get something suitable for whatever the buyer’s purpose is.
* Reliance doesn’t have to be the ONLY reason why the entered into the contract, just A reason of some significance. It has to be one of the motivations for the buyer’s entering the contract.
* This is tied to other prerequisite that someone is in the business of selling goods of this description – you have to show this to get 18a, but there’s a tendency that this sets up the reliance scenario, that if you’re in the business of selling goods of this type, naturally people will be relying on you.

Case Law for Meeting Pre-Requisites

* Croaker: not much to distinguish it from Bartlett, just that the problems were worse and the argument was more strongly argued under 18a than 18b. In Bartlett, they just said as long as the car is suitable for some purpose, caveat emptor. Here, they said the car had to be suitable for a very particular purpose. Court says it’s a difference of degree and bring in price, saying that it’s relevant as to deciding what the purpose of the car is.
* Courts are more willing under 18a to make price a significant factor as opposed to hesitance in 18b. You don’t specifically state what you particular purpose is, but fact you paid a high price for a product is apt to cause the court to imply into your contract a particular purpose.
* Kendall: court said as long as something could eat the feed and live, no breach. But under 18a, it’s a different .
* Reliance was easily satisfied: if that’s your business and the person is in the business of supplying goods, you are relying on seller to sell you something that won’t kill your poultry and satisfy the purpose. Problem of course was that the buyers were at least as expert in this area as the sellers. Court was unwilling to simply presume reliance, given this, but said there was enough said here that there could be reliance. IN other words, just because you know more about the product than the seller, it doesn’t mean your precluded on relying on the seller, can still make it clear that you are relying on the seller to provide you with something.
* Other issue was whether the goods were reasonably fit for this purpose. No, just because it can be fed to other animals doesn’t matter when it kills the bird it’s fed to. So buyer gets satisfaction under 18a

Specified goods (exception to 18a)

* If you’re dealing with specific goods and they are sold under some brand name, then it would seem you can’t ever complain under 18b. Reasonably early on the courts got around this.
* Baldry: says that when something is bought with a brand name on it, there are three different scenarios into which this specific situation might fit: if it is the seller who comes up with the brand-name and the buyer didn’t propose it, the proviso doesn’t apply. Where the buyer says to the seller that they have been recommended a particular article, mentions the trade-name, and asks if it will suit that purpose and the seller sells it, the proviso doesn’t work
* even if the buyer is mentioning the trade name but either expressly or by implication (courts read this is in often) asking the seller whether the item under that trade name will satisfy that purpose, then proviso has no application.
* Third case is the only case where the proviso applies and precludes 18a: where the seller says that they have been recommended this particular item under this trade name and I don’t care what your opinion is on the item, just sell it to me. This is obviously really rare.

The Idiosyncratic User (Allergy Sufferers) and s.18(a)

* The only time when 18a doesn’t help: the poor old allergy seller, or the idiosyncratic user. humans that are personally and physically affected by goods.
* Puts burden on buyers to say more to get something under 18a in these situations. Normally courts are good at implying things, like implying in reliance or statement of purpose. In this area, courts are reluctant to imply anything, put burden on buyers to reveal their individual susceptibility to products in terms of allergic reactions.

Allergen Cases

* wasn’t able to reveal this susceptibility because she didn’t know about it. Are the sellers liable?
* Court accepted that it was the chemical that caused it and that various people would suffer. Is there a breach of 18a when she expressed the purpose, she relied on it (they are in the business of tinting hair), and it wasn’t fit for the purpose given that it caused a terrible reaction.
* Court said not liable though as she is required to show yet another pre-condition, which isn’t in 18a but is read in, that she must be part of a big enough crowd to have this complaint. That she must establish that this negative reaction is going to affect a sufficient number of people before her seller can liable for her specific reaction. if you can’t show that you are a part of a class of people that is big enough, then the seller is not responsible.
* Griffiths: court says for certain products, you just can’t bring a claim for your allergic reaction. It is because the product is somehow “normal” and if it is, you can’t complain about it. Court here says that may not be fit for purpose intended, but the plaintiff had an idiosyncracy which is why they had this disease, and normal skin wouldn’t have been affected by this material. No matter how big the class might be, can’t complain, because this type of product is immune
* Ingham: hair dye, allergic reaction. Manufacturer knew that the product affected certain people in negative ways; you had to go through this skin test before you could have the product applied to you, which establishes significant class. Her test came back negative, but she still had a reaction. Turned out that she had had this applied on earlier occasion and she had a reaction
* court said no complaint under s.18(a): she KNEW, or ought to have known, she was susceptible. Regardless of negative test, she had obligation to reveal that to the seller and because she did not, she is not counted as having revealed her specific purpose, which was having hair tint applied to someone with this susceptibility.

**Class 14**

s.19: sale by sample pre-conditions

* Cudahy: court ruled that the sample HAD to be something chosen or at least acknowledged by the seller and there had to be an express or implied provision from the seller that what the buyer was going to get would be just like this that was presented.
* Cudahy says that sale by sample includes situation where buyer sees part of what the buyer is going to get, then seller says or implies that rest will be like that. There are contexts where the court has said, however, that sale by sample isn’t where you see part of what you’re going to get, only where the goods you’re going to get are actually unseen.
* Clearest case that you have sale by sample is that you do not see what you are going to get and the seller chooses to show you something and says what you’re going to get is like this. But there are other situations that can fit: Cudahy suggests that if you see part of what you’re going to get, that’s a sale by sample, or if the buyer selects the sample, but only if there is express or implicit acknowledgement by the seller that this is like what you’re going to get.

s.19’s implied conditions, inspection

* if you do have sale by sample, three implied conditions: implied condition that the bulk will correspond with the sample in quality (a), implied condition that the buyer will have a reasonable opportunity to compare the bulk with the sample (b)
* unlike s.18, don’t need to show that the seller is in the business of supplying goods like this. There’s also not a correspondence with description problem.
* Seller must be careful to keep the sample or they are in breach of the second implied condition, as the buyer can’t compare the bulk with the sample. Seller should be aware that selling the sample may lead to breach of the second implied condition, allow buyer to reject
* s.19(2)(b) is also significant because buyer is not deemed to accept the goods until he has the chance to inspect them. Remember that if you have accepted the goods or part of them, you can’t claim to terminate the contract for breach of a condition. If specific goods, there’s another provision s.15(4) just too bad, you’re now the owner, can’t reject them anymore. But for other goods like unascertained, if you’ve not accepted them you can reject them and s.38 says you haven’t accepted them until you’ve had a reasaonable chance to inspect them.
* But s.39 is the definition of when you’re said to accept and prevails over s.38, so if something has occurred under s.39 that says you’ve accepted then despite the fact that you’ve not yet had a reasonable chance to examine them, you’ve accepted them, and so under s.15(4), you can’t reject them. Upshot of that is that generally speaking there’s not much of a reasonable opportunity to examine goods, because not much is left of s.38 after s.39.
* s.19(2)(b) however gives a separate right to examine the goods
* third implied condition: bulk goods must be free from any defect that would make them unmerchantable. However, for sale by sample, you must first establish that this unmerchantibility was not in the sample goods or that if it were it could not have been reasonably discovered upon examination. If a reasonable examination of the sample would have revealed the problem, there is no basis on relying on s.19(2)(c), just as there would not have been under s.18(b). 192c is expecting the buyer to do a reasonable examination
* Have to decide which section you want: if you do not examine, you won’t be covered by 19(2)(c), but if you do examine, you MIGHT not get 18b.

19(2)(a): implied correspondence between bulk and sample

* Question is how close the correspondence must be. There generally has to be a rough correspondence, more or less the same, but doesn’t have to be identical
* Steels: sample was white and the product the buyer got quickly faded from the original white to a yellow. Was there a breach of 19(2). Problem was that the sample had a chemical component in it that the sample didn’t have. But here court said there was enough of a correspondence – court runs away from chemical analysis. This was a latent defect that seller couldn’t know about, could only be discovered by this sophisticated chemical analysis. All the parties was really concerned about was a visual correspondence – when they arrived, they looked the same. The fact that it deteriorated over time was not a problem that the buyers could complain about.
* This case may also be about the time period involved in the buyer having it for a while before it faded – court may have been wary of making the seller an insurer.
* if the sample had the same problem as the bulk, then you can’t complain under s.19(2)(c), your complaint under merchantability had to be s.18.

Applying 19(2)(c)

* If you are complaining under s.19(2)(c), you must show in addition to being unmerchantable, you have to show that there isn’t a correspondence between the sample and the bulk. Steels, the court ruled that the chemical composition wasn’t a big enough difference to say that the sample didn’t correspond with the bulk – they are ruled the same product despite the chemical difference between them. Court just don’t seem to care about chemical composition.
* If what you’re complaining is that both what you saw and what you got aren’t merchantable, you’re back in s.17 and 18, because your complaint isn’t about the lack of correspondence between the sample and the bulk. If you’re in s.19, the correspondence provisions are 19(2)(c) and 19(2)(a), and fundamentally, they’re the same thing.
* Godley: argument was brought under s.19(2)(c) and question was whether there was a reasonable examination or not. Defendant argued that if you had done a reasonable examination of the sample, you’d find that the bulk, the one you bought would break, so can’t argue under s.19. The court said that you have to do a *reasonable examination*, you do not have to do a lot of elaborate tests to try to see what the sample is like in terms of quality. Court said you just need a reasonable examination, here, finding rough correspondence favored the buyer
* Court doesn’t expect exact correspondence between bulk and sample for it to be found that they correspond, so there’s a bit of give. Court says buyer did a reasonable examination and the sample didn’t break and therefore the goods buyer got were unmerchantable and that problem of breaking would not have been apparent in the sample. Seller did show that the goods actually are the same since the sample does break but for legal purposes, they are different – because we know the bulk breaks, but sample is different because having tested the sample the fact that they break wasn’t evident on reasonable examination so for legal purposes, we say it doesn’t correspond with the bulk in terms of this breaking property.

Applying the Protections

* s.17 and 19 are often considered as a group. s.17 is the broadest. s.18(a) and (b) do the heavy lifting amongst these provisions but are the hardest to get because you have to show that your seller is in the business of selling goods of that description. s.18(a) also requires to show that you relied on the seller. However, s.18 do apply both to specific and unascertained goods.
* s.18(c) is peculiar to BC but it’s never been litigated. s.19 only applies to sale by sample so appears to be only a contract for unascertained goods, but it is conceivable that a contract for specific goods could be by sale by sample – s.19 only relates to what you saw corresponding to what you got.

Delivery

* Remember the obligations: 3rd party interests (s.16), quality (17-19, and delivery (s.31).
* Delivery is defined as the voluntary transfer of possession from one party to another. Possession is defined as a person being in possession if the goods are in the person’s actual custody or are held by another person who is subject to the person’s control or for the person or on the person’s behalf.
* Where, when, how, and how much are all issues of delivery.

When

* the timing of the delivery, when delivery is to occur. When parties say nothing in the contract about time for delivery, the statute has some help for this.
* there are two aspects of time: absolute time and timing in relation to other obligations in the contract. s.14 in the sale of goods act talks about timing of delivery, saying that unless a different intention appears in the terms of the contract, stipulations in terms of time of payment are not deemed to be essence of contract of sale. So even if you’ve stipulated a specific time in the contract, it’s not a condition and whether you’re in breach of contract where you’re late is up to the parties. Whether it is a condition or not depends on the terms of the contract.
* cases are consistent in saying that if the parties have specified a particular date for delivery then that is a condition, despite the fact that the time of payment is not presumptively a condition even where stipulated, but the time for delivery is a condition and a strict one.
* Bowes: contract stipulated that the goods would be shipped from Madras in March. rice arrived and was in perfect condition but it was found that some of the rice had been loaded on the ship in February.
* court still says that the time of delivery when stipulated in contract is to be complied with and just as you’re in breach with the condition if you’re late, you are also in breach of early, and buyer could reject. Loading on ship was time of delivery in this contract and seller is held to time of delivery in the contract unless says not of essence. Presumption is that where stipulated, time of delivery is a condition.

Where Time of Delivery Is Not Stipulated

* if the contract doesn’t say anything about when delivery is to occur, usually means it’s not a condition. It has to BE delivered and if it never is, there’s a breach, since the delivery obligation itself is a condition but since the parties haven’t set out a time for delivery, the lateness or tardiness is probably not something the buyer can complain about.
* s.32 is of some help if you don’t say when goods are to be delivered, saying that delivery of the goods and payment of the price are concurrent conditions, but that doesn’t mean they are conditions and not warrantees, just means one isn’t the precondition of the other. Failure of one party to perform its obligation is no excuse for the other party not performing.
* Concurrent conditions: If you don’t specify in your contract that there are different times for delivery and payment, the statute specifies they are to happen at the same time, so if you say in the contract when the goods are to be delivered, it’s ruled that that’s when price is to be paid, and vice versa. The statute sees them as concurrent conditions. Also, if I want to complain that you didn’t deliver, I have to show the court that I was ready to pay you (if I haven’t already paid you). Otherwise, you have a defence for why you didn’t deliver: didn’t have to deliver if you weren’t ready to pay.
* Default position, as of s.14, is that time of payment is not of the essence, it is presumptively a warranty. If late, you’re in breach, but not breach of condition so other party cannot terminate.
* if the contract stipulates so not default position, they can also be condition precedents and condition subsequent. Condition is when something happens to end someone’s obligation: like as long as you keep delivering, I have to pay, and when the delivery stops, that’s the condition subsequent that ends the obligation to pay.
* Condition precedent: person who is delivering will probably want to structure the contract this way. Here we’re saying the payment at a specific time is presumptively a warranty, and the parties will usually leave that, but if that party is late, if the delivery obligation is required to be after payment (not specified time, just payment is condition precedent to delivery), then if there’s no payment, not delivering isn’t a breach.

**Class 15**

s.32: concurrent conditions remedies

* Payment obligation is a warranty and time of delivery is condition then if there’s no payment on time, a breach, then you don’t have to deliver, you’re excused, because they’re supposed to happen at same time and because person didn’t pay you don’t have to deliver. But because this was warranty, you can’t terminate, but you can sue for lateness.
* But to claim damages because the payment hasn’t been made, to claim the remedy, you have to show that while you didn’t deliver, you were ready to deliver at the time had they showed up with the money.
* where the time of payment were a condition, situation is the same, you can terminate, otherwise have to have the goods continue to be ready to deliver.
* You have to argue that you were the wronged party and you were ready and willing to deliver the goods at that time because if the other party can show that you weren’t, you’re not entitled to a remedy – you yourself might have been in breach, then that’s why the other party might not have paid. If neither of you were ready, there is no wronged party and neither side can claim remedy, since no one was prepared to fulfill their obligation.
* In mercantile contracts, contracts between two commercial parties, time for delivery is a condition. For consumer contracts, the presumption isn’t there so there is great generosity for sellers to consumers, giving lots of leeway for lateness. Consumers just wait.
* Bowes: strictness with which this applies, idea that the time of delivery is important and illustrates that being early is just as bad as being late in eyes of the court, providing for a breach of condition that can lead to termination and rejection of the goods.

Changes in the Time of Delivery/Delays

* Time of delivery in a contract is often changed by one of the parties
* Charles Rickards v. Oppenheim: Work was to be done by a particular time. This was a consumer contract so generally speaking the time for delivery of the work wouldn’t be a condition, but Denning said that here it was. There were several postponements and eventually buyer had enough and said you HAVE to deliver at this day or I will terminate. Question is whether you can re-impose a time and say time is of the essence when you’ve been waiving compliance
* Court rules that you can waive the importance of timing but re-impose later provided you gave adequate notice to seller. Here court ruled seller’s letter was adequate notice.
* Depends on how you characterize it in order to be able to return to a situation that you appear to have waived on a previous occasion. Way to get around this is not to characterize it as an election, but that when the time came the person assured the other person but without making an election that they would suspend the time of delivery until they gave notice.
* Rickards: in mercantile contracts, time of delivery is a condition, presumed to be warranty in consumer contracts unless it is characterized or stipulated otherwise.
* Where time is of the essence for delivery in a contract, the buyer may waive that stipulation rather than terminating immediately. Waiver may act as an estoppel – having waived, the buyer cannot change his mind and rely on that stipulation. However if the buyer thereafter gives reasonable notice, he may terminate the contract for lateness

Place of Delivery

* s.33(1) says whether it is for the buyer to take goods or seller to send them is a question depending on contract but if there isn’t one, then the place of delivery is the seller’s place of business if the seller has one and if not, then it is the seller’s residence. So delivery actually doesn’t mean transportation to the buyer, just means it’s ready to come get, unless contract says otherwise.

Quantity: what if quantity is wrong?

* quantity can be wrong in a couple ways: it can be an absolute – not enough or too much of it, but quantity can also be wrong if the packaging is wrong – you might get the right absolute amount, but you don’t get it in the portions you want.
* s.34-35 deal with the absolute amounts, getting too little or too much, but statute doesn’t really say much about the other issue of packaging.
* Moore and Landauer: supposed to be in boxes with 24 tins per case but some of them came with 30 cans in a case, so question was whether you had to take them, and court said no: you have the right number but there was a reason why you specified for them to be packed in one way and if even some of them are packaged the wrong way, not even all, you can reject. Here it was a condition, but generally, these days, it’s probably see more as an intermediate term
* Statute makes clear absolute quantity is a condition. You can change that, but statute requires strict compliance with quantity and too much is just as bad as too little. s.34 (1) says that if seller delivers to buyer less than amount contracted for, buyer can reject and terminate.
* s.34(2) if the buyer accepts the goods, he must pay for them at the contracted rate. Without this, danger was that if you accepted, you had to pay all of it, then sue to get the difference back in damages. Statute changes this obligation.
* 34(3) if seller delivers more than contracted amount, then the buyer can elect to either accept the goods included in the contract and reject the rest or reject everything. s.34(4) says if you accept everything, have to pay for them at the contracted rate.

Delivery in Instalments

* S.15(4) says once you accept even part of the goods, you can’t reject, to accept some is to accept all. But what if the first few instalments you get are fine, so you accept them, and the rest are problematic?
* if instalment(s) are not delivered at all, solution is probably to shift the problem into s.34 because if you can argue under s.34(1) there was less delivered than there was supposed to be delivered, s.34 says that you can reject the goods.
* if you are purporting to reject the goods on their not being enough delivered, you have to have prior instalments ready to be reject and give back
* Can also try to argue that there is not one contract here but several, separate contracts for each instalment, one transaction but if it can be easily severed into multiple contracts. Problem is that if they’re separate contracts, if you terminate and reject one contract, it doesn’t mean you can reject the other ones – so you can reject a problematic instalment, but you have to remain in business with this person for future instalments.
* s.35 says that sellers can’t force buyers to accept goods in instalments.
* If there’s a contract for goods to be delivered in instalments which are to be separately paid for and the seller makes defective deliveries in respect of one or more instalments, then it is a question in each case whether the breach of contract is a repudiation of the whole contract or a severable breach only giving rise to compensation.
* So if you have one contract, and can’t separate it into separate contracts, but there are instalment deliveries, and they are separately paid for (and the date of payment can be the same, just that the quantum for each instalment is stipulated) and then there’s a defective delivery of one or more instalment (quantum or quality), you simply have to look at overall picture in relation to this one problematic instalment and decide whether common sense indicates that there is a repudiation by the party of the entire contract which allows you to terminate. This termination at that stage allows you to reject further delivers and the defective one, while letting you keep anything else you’ve gotten to that point.
* If it’s not sufficiently serious, it’s just a severable breach, your claim is in damages and the contract continues, not terminated.
* Seems that just because there’s been one determination under s.35 it doesn’t mean that you can’t terminate later on, if, for instance, you get future defective instalments.
* Maple Flock: test for how you know whether you are in s.35(2)(a) or (b) (whether the breach is serious enough to terminate): determine first the ratio, quantity/proportion that the breach carries to the whole and the probability that the breach will recur. If it’s the 14th delivery out of a series of deliveries, not significant enough proportion and also means recurrence is unlikely.

**Class 16**

Remedies for Personal Rights and Real Rights

* For breach of your real rights you can have a real remedy or personal remedy. Same for personal rights – you can have real remedies or personal remedies. Just because what you’re claiming has been broken is a personal right, doesn’t mean remedy is necessarily personal
* Real remedy for persona rights are liens (securities), while for personal remedies for personal rights, you’ve got termination, damages, and debt (common law) and specific performance, injunction, and constructive trust (equity). These rights can all be contractual in nature, let parties decide what exactly they are (such as liquidated damages or receivership).
* Power of termination only arises in certain contexts, where a condition is infringed. It’s not always available: can be lost (contract is affirmed) or never there.

Electing to Terminate

* s.15(1): says that if there’s a condition in the contract to be fulfilled by the seller then the buyer may waive the condition or elect to treat the breach of a condition as a breach of warranty and not as grounds for treating the contract as repudiated, or you can seek termination and say contract is repudiated. so you can say you don’t care about the breach, you can seek damages, or you can terminate the contract.
* 15(2): where it’s a condition that’s broken, can treat contract has been repudiated, that party is rejecting its basic obligations and gives the other party a right to terminate. For a buyer, this means the buyer is allowed to reject the goods and not proceed. 15(4) takes this power away in certain cases: you get it for breach of condition but you lose it if you waive it under 15(1) or if under 15(4) the contract is for specific goods and property has already passed, you also lose it if it’s any kind of goods and you’ve accepted it. Any of this you can change in the contract.
* Elections always operate through communication and it is effective the moment it is communicated. It is irrevocable
* When do you affirm? s.15(a) and (b) it’s generally just a question of evidence, whether you’ve waived it or not, that you’ve elected to go forward with the contract regardless of breach of condition. (b) says you’ve basically decided to confine your claim to damages while (a) says you want no remedy at all and you’re not troubled by what’s occurred.
* just because you’re going for damages doesn’t mean you can’t terminate, they’re concurrent. . has to be something else to that claim of damages to suggest you won’t be seeking termination.
* 15(4) gives two other reasons: adeemed election (you never had ability to terminate in many cases, that is, if the contract is for specific goods and the property is transfer immediately when contract is entered into by the buyer. If you have a contract for specific goods and after property is passed to buyer, buyer can’t terminate. Courts are fairly good at reading around this, implying in a period of examination necessary before you lose the right to reject.
* Wojawkowski: court aware of problem that this was a contract for specific goods and surely the property had already passed – the car was handed over and a ton of time had passed. But kind-hearted judge simply decided that a literal interpretation cannot be given to the words of the statute s.15(4). When they want to do justice, shows court’s reluctance to find that because this is specific goods, property must have passed and B can’t reject.
* courts essentially finding a pre-condition in a contract for a chance to examine and use the goods to ensure they’re in proper order, and it’s a pre-condition that as such, prevented property from passing. This is how they get around s.15(4).
* So three reasons termination won’t be possible: you’ve affirmed the contract, it’s specific goods and it’s passed, or you’ve accepted the goods (in which case, only damages)

Acceptance under s.15(4)

* s.39 sets out 3 possibilities whereby you may be deemed to have accepted the goods: you can expressly do it, you can implicitly do it by action, and you can implicitly do it by inaction.
* For expressly accepting the goods, this is usually done through the signing the receipt for delivery (tho you can try to argue you didn’t know what you were signing it)
* S.39(b): Implicitly by action: where the goods are delivered to the buyer and buyer does things in relation to the goods that are inconsistent with their still being owned by the seller. Can’t use s.39(b) to say buyer accepted unless the goods were delivered (ready to be picked up).
* Hardy and Hillerns: sample found that the wheat was not in conformity with the contract and so the buyer tried to terminate and reject the wheat. s.38 says if the goods are delivered that the buyer hadn’t previous examined then he is not deemed to have accepted them unless and until he’s had a reasonable opportunity to examine them to decide whether they are in conformity
* Seller argued successfully, that the buyer comes within s.39(b), that buyer by delivering these goods on to the sub-purchaser (before examining the sample), he is treating these goods as his own . Also, if you are rejecting the goods, rejection requires that the goods are not out of reach of the seller (must be ready for seller to come get), have to be ready immediately for seller to get and so buyer’s putting them on trains had put them out of reach of the seller, which was an act inconsistent with seller’s continued ownership. And so s.39 trumped s.38.
* Allowing someone else to have entitlement to the goods (like leasing them) can be an act inconsistent. Again, courts are rather generous (as in Rafuse Motors)

Inaction (accepting under s.39©)

* If reasonable time lapses and buyer hasn’t said or done anything to indicate that the buyer is terminating the contract, you’ve elected to keep the goods and affirm the contract.
* Question becomes what a reasonable period of time is. In most contracts, it is a very short period of time, at most days.
* Liability is strict, so it doesn’t matter whether or not buyer realizes there’s been a breach, reasonable period starts from when the problems started, not when you realize it. Can’t argue that the reasonable period of time starts when you start using them...it starts when you first received the goods, so it can end before you’ve even had a chance to look at the goods.
* Motors case gives hope to parties: Argument here was that they had far too long to examine the goods and reject them and the goods had also been used but court disagrees: given the type of goods these were and the conditions they were meant to be used in (all seasons), you had to have the passage of all seasons to test the goods, so no election should be required until that generous period of time had expired. For some goods, examination = testing/use, and testing use has to be done in all the conditions in which goods were meant to be used in.

**Class 17**

Mixed Goods

* if too much is delivered, you can accept what was supposed to be delivered and reject the rest.
* s.34(5) says if the delivery is a mix of goods you bought/contracted for and goods not contracted for, the buyer can reject the whole or reject the stuff he didn’t buy. Doesn’t say what happens if you accept everything.
* Barker: question is it goods mixed in, or you get goods but a definable part is not in conformity with the contract. Strong argument that this section only applies to the former, goods mixed in..
* s.15(4) says where if everything I deliver is not in conformity, but you accept part of it, then you’re stuck with everything I delivered.
* Question in Barker was can you be in a better position as a buyer or a worse position as a seller if your breach is not as bad when you deliver everything not in conformity of the contract? Because if it’s definable quantity that’s wrong, you can accept part and reject the rest, while if everything is wrong, you have to accept everything if you accept part of it.
* court said it is assumed in a contract that the performance be consistent with what the contract call for, the coal wasn’t tested so had to assume it was in conformity with the contract, but part of it could be proven that it wasn’t in conformity so court said yes, this was mixed goods
* Court says s.34(5) does cover this kind of mixture – you can accept what’s in conformity with the contract and reject the rest.

Damages

* if a promise is broken, main remedy is a money substitute, compensation principle (punitive damages are exception). Any breach of an obligation in contract gives you a right to damages.
* Secondary obligations, consistent with the compensation principle, must reflect the primary obligations – shouldn’t be better off under the secondary obligations than you would have been under primary obligations (like punishment clauses), so no freedom of contract in secondary
* Fact that it’s not your fault that you didn’t perform it or it’s hard to do or expensive doesn’t matter. Strict liability in primary. But there is no strict liability in damages, which are limited by remoteness.
* Test from Hadley and Baxendale is the test for damages: 1st part is actually in the statute from s.53,54,56, while the second part shows up in s.57.
* If it can be shown that result from statute is not consistent with the compensation principle, overcompensation, then you do not use that rule from the statute.

s.56 Quantification

* A basic rule in the statute has to do with what happens if goods are delivered and they’re delivered at the wrong time, and they are accepted, but they’re not what they’re supposed to be in this respect: basic claim for damages will be the difference between the value the goods should have had had they conformed with the contract and the value that they have. So it’s the K goods value versus the delivered goods; value. Use the market to assess what that is.
* Mitigation: get what’s reasonable in the marketplace for the goods you got to keep the losses within reason.
* Wertheim:. If the goods had arrived at the time where they ought to have arrived the market value was 77 a ton. But by the time goods delivered, market value had gone down, 46 a ton. Buyer was just trying to claim the difference between these two amounts, since that’s what the statute said in s.56, but it was proven that the buyer was able to find someone when the goods were delivered to pay 65 a ton.
* So you cannot use the statutory rule for quantification where it can be proven the losses you suffered weren’t as great. Statutory rules are pre-empted by overriding principle of compensation and no more and no less. Compensating buyer based on the market value would have led to him being in a better position than had the contract been performed.
* On the other hand, if you sold for less than the market value, you’ll get the market value. That said, can’t claim greater losses than a reasonable person – won’t get compensated for being a shitty salesperson.

Heads of Damages - Interests

* Expectation Interest: compensate you for your disappointed expectation (that you expected to be in a place that you’re not and money should put you there): lost profits as result of breach
* Reliance interest: compensate you for being out a particular amount of money (expenditures, compensate for what is now waste now that the contract is broken)
* Restitution Interest (disgorgement) where they have to hand over the money they gained thanks to the breach.
* Disgorgement is unpopular because it looks like specific performance/enforcement of the contract (hand over what they got that should’ve gone to you so it’s like contract was performed
* Reliance tends to be wasted expenditure: which can mean some money that I paid to get things or buy things I didn’t need – I only bought them on the assumption that you were going to perform the contract. Another claim is that you paid too much – I paid a certain amount and you gave me something below the quality of what I wanted, I relied on you delivering of a certain quality and you failed to and I wasted the money.
* Traditional rule is you can’t, as it leads to overcompensation, giving you both the profit you would’ve made AND getting compensated for the expenditure youwould’ve had to have made to make that profit.
* can depend on how you describe your claim and how you describe the profit. If It’s income, you shouldn’t get that and the costs, but if what you’re claiming is just basic profits at the end or profits in a very limited sense, then it’s possible for there not to be
* Cullinaid: this is the case that says you can’t get both. One claim was in the difference in the value of the machine – it wasn’t as valuable as it should’ve been under the contract so defendant should pay the difference, a reliance, paid-too-much claim. Also, because it wasn’t what it was supposed to be, it wasn’t as productive, so there was a loss of income/profit. Plaintiff wanted both, but majority said this was overcompensation, as you want the income you would’ve gotten under the contract but also to pay less for that income, it reduces the expenditures to get the same income you would’ve gotten under the contract.
* Sunnyside Greens: Doesn’t follow that every time you get both, you’re overcompensated. Here, lost profits, but had they gotten the right panels, they would NOT have incurred those same installation costs either. Idea is that additional expenditure/costs that arise solely *because* of the breach can be claimed together with expectation, but it’s the “paid-too-much” reliance claim that doesn’t fit with expectation for overreliance.

**Class 18**

Losing Contracts

* prevented from claiming damages where it’s shown that you stand to make more money in breach than under contract. While your plaintiff may be trying to make up costs they claim to have incurred, if you can show that they had entered into a losing contract and their losses, had the contract been performed, would’ve been greater than the expenditure they’re now claiming, so breach saves them from a loss.
* Bowlay Logging – if court accepts evidence that there would have been a loss but for the breach, then you’re off the hook.
* Generally though, plaintiff can claim either lost profits or loss and they don’t have to claim the smaller of the two sums.

Remoteness

* plaintiff may well satisfy concerns about there being no double compensation or overcompensation or that the plaintiff will be better off through damages claim then the contract performed, the court will however draw the line that even if you satisfy those concerns, nonetheless, part of your claim is simply too remote and won’t make defendant responsible.
* Hadley and Baxendale: remoteness test. Need to know what the obligation is, the breach is, and the circumstances. Any claimant who is party to that contract with any defendant would sustain that loss under the first branch of Hadley, regardless of their special circumstances.
* Second branch takes account of special circumstances, special losses for this plaintiff because of the parties circumstances or purposes, beyond considerations of just obligation and breach. All this knowledge, however, must be in the contemplation of the parties when they entered the contract – if you didn’t realize the special circumstances at that time, no reason you’d be liable

Quantification for Mental Distress

* Wharton: s long as you can show that one of the purposes of the contract was not just to get the goods, but that those goods were supposed to cause some positive feeling in you that they would have if the contract was performed, and if the failure to perform leads to you getting the OPPOSITE feeling as a result, then you’re in business.
* This tends to be a consumer contract, not corporations or mercantile.

Mitigation

* in coming up with these figures and what you’ve lost, there is an expectation that the person claiming damages will have mitigated it. Have to do what is reasonable in the market circumstances, like if you paid way too much for a replacement, you have to bear that extra cost

Damages for Non-Delivery

* 54 deals with no delivery at all while 56 is everything else, where you got the goods but they weren’t quite right (late, wrong quality, etc).
* s.54 is where you didn’t, legally speaking, get any goods, including where something was delivered but you were entitled to reject, so you end up with nothing.
* s.54(2) says the measure is the estimated loss directly and naturally resulting from the ordinary course of events from the seller’s breach (first branch of Hadley)
* 54(3) says that if there’s an available market for the goods, the measure of damages is to be ascertained by the difference between the contract price and the market price at the time they were to be delivered (how much more you would’ve had to have paid to get the thing in the market yourself because you didn’t get anything under the contract).
* If there’s advertising, competition, things like that for getting another one of these items in the market, all that is taken into account.
* Remember that non-delivery can be early delivery.
* Anticipatory breach can let buyer play the market: can elect to accept the breach now, when I’ve told you the goods aren’t coming, or wait until the day of delivery and claim breach then, whenever the market is better.

 s.56: damages for breaches of warranty (s.56(1)(b) entitles you to damages for such breaches)

* 1(a): says your damages can be set-off against the other party’s claim for the price. It’s pretty obvious that you can set your claim against someone else’s
* 56(2): first branch of Hadley, that naturally occurring for the ordinary course of events.
* 56(3): if it’s a breach related to quality, the loss is the difference between the value of the goods at the time delivered and the value they’d have had had they been delivered in conformity with the contract. Generally, contract price is used as the value the goods should have had, though no reason that has to be followed (like if you got a really good deal).

s.57 – special damages

* simply confirms that you have a right to special damages as well: second branch of Hadley.
* If you have a claim that fits under s.54 or 56, doesn’t mean you’re limited to the claim for general damages, you can also claim special damages, can get both, the difference with the price in the market AND any special damages to sustained due to your particular circumstances
* Hall and Pim: all you have to show is that I knew that you were going to do that type of thing (enter into sub-contracts for example), but you don’t have to show that you actually HAD entered into those sub-contracts prior to entering those contracts, so I don’t have to know the details of those sub-contracts.
* I do have to know, be conscious of, the special circumstances, generally speaking what it is you intend to do with the goods, but you don’t have to give me much detail

Onus of Quantification

* Ford Motor: if contract price is $10 but the market value of the goods is $15 and the goods received had market value of $7, then the basic damage claim is going to be $8. This is because you paid $10, but expected to get goods worth $15 for that price. Generally the burden is on the plaintiff, when there’s a claim and a rule for quantification, theoretically it’s the plaintiff who has burden for establishing all requisite elements to the claim.
* plaintiff is not going to prevent any evidence that the delivered goods are of any value at all, they’re just going to establish the present value. Courts accept this – court will just presume the value of the delivered goods is $0 if not in conformity of the contract, it is up to the defendant to establish the value of the delivered/defective goods, without evidence from defendant, court will say it’s $0 (ford).

**Class 19**

Equitable Remedies

* discretionary on the part of the court, require you to plead your case.
* Focused on primary obligations, so cannot be combined with common law remedies/secondary. Equitable remedies also cannot stack with each other (like rescission AND injunction)
* Specific performance: an order for someone to do what they promised under the contract, injunction relates to perform a specific part of the contract, while specific performance is to perform the entire contract, all the obligations.
* In pleading for equitable remedies, must first look to what common law does: can only convince the court if you can show that the common law remedies/damages are inadequate.
* Means that the goods that are the subject matter of the contract have to be unique in some way; to get an order of specific performance you have to get a contract for specific goods – CAN be for ascertained goods but the fact that they were unascertained in the first place probably means they were generic at the start and hence in the market. Even for specific goods, if you can show there’s a market, then it’s unlikely you’ll get specific performance
* It has to be something totally unique that you were supposed to get under contract, no market, what you want is only available from the seller.
* Re Wait: already paid for the goods but representative of the seller, who’s since gone bankrupt, is refusing to deliver. Shows that if we don’t know precisely what it is you were supposed to get under the contract, then the court won’t order specific performance, here it was half the wheat, but which half?

Sky Petroleum

* court said that for practical purposes, we need to realize that a claim to damages involves a lot of delay, hardship for the plaintiff in the meantime, and therefore simply because of procedural problems connected with the damages claim (they’d probably be out of business by the time the award was actually given) court though it appropriate to award equitable remedy to get the gas they were promised.
* Contract for petro, price goes through the roof and so the seller wants to break the ocntract. Buyer seeks injunction prohibiting seller from breaking contract. Generic goods, normally damages are adequate (Re Wait), but court deviated for procedural reasons given circumstances

Barriers to Getting an Equitable Remedy

* First barrier: looks first to see what the common law would do, then if it thinks that’s inadequate, will give a different response.
* Second barrier: must not be any complexity at all, cannot carry with it much complexity. Court needs to have a straightforward answer.
* Third barrier: court will look at hardship on other parties, if the order causes hardship, even to the defendant (it’s a lot of work or difficult for defendant to do what’s required) court won’t order it. Generally is where an innocent third party has since come along and gotten an interest, which would be deprived if there was an order given. Hardship to third parties.
* Clean hands doctrine: claimant seeking equitable remedy must come to court with clean hands so in the context of that transaction they have not done anything the court might disapprove of (like if they misrep’d something but other party let them go, or if they’ve gouged the other party in terms of price).
* Timeliness: if they’ve waited too long to come to court, laches. If you’ve waited too long, means that your delay has been an election to remain content with the common law remedies.

Real Remedies

* These are best where it’s pointless pursuing personal remedies:other party is bankrupt and don’t have anything, or can’t get equitable remedy against them because of hardship.
* Two types: consensual (security interests that are contractual in interest) or non-consensual (lien). Security interest = buyer already has a right to property (exercisable upon breach). The breach would be the trigger, allowing the buyer to go after the property consented upon.
* Security interests that are given automatically by the law or statute – liens. Property interests that you have given to you that you can use if certain conditions are met. A lien isn’t technically a property interest in that you can’t sell it, unlike a security interest.

Liens

* in itself doesn’t get you much, it’s just your connection with the property, but it will let you hold the property hostage in a sense – freezes the property in a certain way, which can goad seller.
* Two stages to a lien: lien is the initial stage and then if the other party doesn’t do what they’re supposed to do, you get a remedy.
* lien gives you a tie or connection to a particular property and question is whether what you have the lien over is the property that gives rise to your complaint or is it over other property Particular lien is the former (I have to do work on the car, don’t do it, you get lien on my car), if you get access to my boat because I’ve not done work on the car, that’s general.
* Possessory/non-possessory: in some cases you have to have possession of the property to get a lien on it, lien gives you right to possess it. Non-possessory – lien on your house but I don’t possess it.

Buyer’s Lien in SGA

* s.75: says if in the usual course of the seller’s business he makes an agreement to sell goods and the buyer has paid at least some of the price and the goods are unascertained and the buyer is a consumer, then the buyer has the lien described in s.75(2). So pre-requisite is that you have to be a consumer buying unascertained goods. If so, once you’ve paid money, you get lien.
* The lien is for the amount the buyer has paid towards the purchase price and it’s against the goods described (goods that are like those that you are supposed to get that are not owned by someone else). So you have ordered a fridge from the seller and it’s unascertained and you paid part of the price, as soon as you paid part of the price, you have this lien against any fridges like that as long as the seller has them and they’re not owned by a third party.
* You also have your lien against any account in a savings institution in which the seller usually deposits the proceeds of sale. It must be an account owned by the seller.
* s.76: when does the lien end? 76(1) says buyer’s lien is discharged when the seller delivers the goods or pays back your money or, (3), when some third party in good faith comes along and buys some of the goods that are the subject matter of your lien.
* Remedies you get thanks to the lien has to do with the PPSA

Buyers’ Obligations

* s.31: seller must deliver, but the buyer must accept and pay for them in accordance with the terms of the contract of sale.
* Obligation to accept is very fact-specific. s.39 sets out what constitutes acceptance of the goods – main point is when the buyer can fulfill this obligation (and also when they lost the right to reject the goods).
* Obligation to pay is several smaller obligations: time ( the absolute time (must be paid at time stipulated and not later or earlier) and the extent to which payment is spread across time in instalments), quantum (how much? – should be subject to the agreement of the parties, but s.12 saving provision allows court to estimate a reasonable amount), and the form
* Form: Unless contract states otherwise, you are allowed to pay with legal tender

Time of payment

* s.32: the statute says that unless you otherwise agree, delivery and payment are concurrent conditions, supposed to happen at same time, so if you can work out time for delivery, that is also the time of payment and so that is when you are late.
* If parties don’t agree on a specific time, court make it related to the time of passing of property.
* S.12(2) is a reasonableness indication about the quantum, but there isn’t one for time.
* s.14(1) says that unless a different intention appears in the contract, stipulations as to the time of payment are not deemed to be essence of contract, they are not conditions. You being late in payment doesn’t allow me to terminate the contract, just a breach for damages.
* Kay: price can be implied into the contract by s. 12, so buyer failed to argue he wasn’t late in paying because of no price stipulated. For time of payment, court said contract can be saved on the basis of this concurrent condition: if you can figure out time of delivery, you can figure out time of payment and if you figure out time of payment, you can figure out time of delivery.

**Class 20**

Real Remedies for Sellers

* significant where you have buyer who won’t or can’t pay. The three remedies are listed in s.43,
* First, they have a lien, secondly if buyer is insolvent, you have right to stop the goods in transit, and thirdly the right to resell them.
* Lien doesn’t do much beyond prevent the seller from being in breach, while stopping in transit is just a way of getting the lien that you otherwise wouldn’t have due to not having the goods in possession, both are just preliminary ways to get to the third right, the right to resell.
* If buyer gets possession of property before getting title and if the reason for this is buyer gets credit to pay later, be aware that this is a conditional sale contract – there’s no sale until certain preconditions have been met, the payment, and PPSA says this is a security agreement, Even if the seller doesn’t say what happens if you don’t pay for the goods in your possession, the PPSA says the seller is a secured creditor so can go after the goods.

Requirements to Use Real Remedies

* you need to know whether the seller is in possession of the goods and for that, need to know what the goods are. No point discussing these remedies unless the goods are specific or ascertained, can’t talk rights in rem if you don’t know exactly what the stuff is.
* The goods must be in the actual possession of the seller of an agent.
* also need to know whether property has passed to the buyer. If property has not passed to the buyer, that means the seller owns them and he doesn’t need a statutory right to sell the goods to someone else, despite contract of sale to non-paying buyer.
* the goods must be in the seller’s continuous possession, can’t be a break in the custody
* you should know when delivery was supposed to happen under the contract because again, because in the event that payment and delivery are stipulated to be independent obligations (not independent), the lien will give me an excuse for not delivering where you’ve not paid.
* To use these s.43 rights, you must be an unpaid seller (s.42).
* S.43 applies even if property has passed to the buyer.

Common Law Lien (as codified)

* If you have in possession your property and there is an obligation owing with respect to it, then common law says you need not surrender custody of that property until that obligation is satisfied. It is not a property interest as you can’t sell it to someone.
* This is a specific lien – you can only keep custody of what the unpaid obligation relates to, you can’t use it more generally to include some different property as well or in place of the property to which the obligation relates.
* it is a possessory lien, must have it in your possession for this lien to apply.
* s.44: the unpaid seller of goods who is in possession of them is entitled to retain possession of them if the goods were sold without stipulation of credit, if sold on credit but the term of credit has expired, or if the buyer has become insolvent.

s.45 – Liens in Cases of Unpaid Part Deliveries

* s.45: makes the lien general in certain cases - an unpaid seller who has made part delivery of the goods may exercise lien on the remainder unless that part delivery has been made under circumstances that show an intention to waive the lien or right of retention. So if you deliver goods and buyer isn’t paying for them, but you have rest of delivery, you can hold onto it.
* Stagproof and Brody: life without s.45: part-delivery and it wasn’t paid for. Issue was whether the seller was entitled to withhold rest of the delivery until payment for that first delivery. Court said you can’t, this constitutes the seller exercising a lien on goods in his possession with respect to goods already delivered, makes the lien general. But s.45 now allows this.

s.46 – Losing the Lien

* when seller delivers the goods to someone else, he loses the lien. Or when the buyer has paid for the goods, then the lien disappears. If you remain unpaid, you have to continue to have possession to have a lien, otherwise the lien ends.
* Lien lets you hold the goods hostage, even if you’re supposed to deliver, say you’re not transferring custody because you haven’t paid me. It’s just a preliminary step to resale.

Right to Resell the Goods

* s.51: Three parties involved – seller (with lien), buyer, and new buyer, two contracts of sale.
* Lien has allowed the buyer to hold onto the goods and not deliver, unpaid.
* If you’re going to resell where property has already passed, need protection against claim by first buyer that that’s conversion. Also, seller needs protection from claim by new buyer, as the new buyer can’t get property if the seller doesn’t have ownership (nemo dat).
* With specific goods, remember s.15(4), property passes immediately when deliverable.
* s.51: moment you exercise a lien, can say that the contract between seller and original buyer is rescinded and ownership comes back to the seller. This section says this DOESN’T happen.
* s.51(2): when an unpaid seller has exercised the right of lien (must have lien to use this section), then if you resell the goods, the buyer acquires a good title to it as against the original buyer; protects the new buyer from original buyer. Doesn’t protect seller from him.
* not even an absolute title, just a good title against the original buyer. There may be other parties interested in the goods, like seller may have leased them as well or there may be a party with a secured interest in those goods before they were sold, or there could be a secured party of the original party, this doesn’t directly say anything about claims by those parties.
* Basically just transfers whatever title the original buyer had to the new buyer,so parties with claims against original buyer could exercise them against new buyer. So it’s not necessarily a title free of charges or encumbrances, which may lead to new buyer arguing s.16

Protections for the Seller in Reselling Goods

* s.51(4): if the seller has expressly reserved a right of resale should buyer default and when the buyer does default, resells the goods, the original contract of sale is rescinded by that act, but without prejudice to any claim seller may have for damages. This suggests that you should do this in your contract, make sure you put a right to resell your goods even where buyer has title, if I still have the goods and a lien.
* Gives a right of rescission and you can still claim damages
* s.51(3) (if no right to resell in the agreement): if the goods are of perishable nature or seller has given notice of intention to resell and buyer doesn’t pay up in reasonable time, then unpaid seller can resell the goods and recover from original buyer any damages sustained.
* For non-perishables, notice is required, exercise the lien and give notice “pay up” and then you have to wait a reasonable period of time, doesn’t have to be long, notice is a demand for payment and saying when this is. Some judges say if you’re owed a lot, you have to give a longer period, but other argument is that if you’re owed a lot, no point giving a longer period since they’re less likely to be able to pay. Probably a couple days. Wait, and then you can resell the goods and buyer has no claim against you.
* Gaping hole: statute does not contemplate if can’t find buyer and want to keep the goods

**Class 21**

Ward and Bignall (ability to resale rescinds passing of title)

* Sale of two cars, as soon as contract entered ownership passed to B. S retained possession, B refused to pay. S exercises lien and finds new B for one of the cars. The other car wasn't purchased. S is claiming damages from original buyer, but still retaining car. S wants the full purchase price by way of damages. B says no payment of full amount and credit should be given for value of car that S is retaining. But seller argues there shouldn’t be credit, as he has no title.
* Ruling: If under s.51(3) or (4) seller is allowed to resell, the contract is truly rescinded, at least for purpose of title. Title transfer that occurred under contract is reversed. The contract isn’t totally gone: can still claim damages, but title transfer is reversed..
* Because title was returned, the seller can’t claim damages for whole value of car. The seller must consider the residual value of the car when asking for any damages from the buyer (no double compensation).

Remedy of Debt

* Standard Radio: debt claim is for a liquidated amount that is supposed to be paid under the contract and hasn’t been paid and what you do to get the money is go to the court with an action of debt, and if there’s breach, court will order that amount paid.
* in many ways specific performance of a money claim, except it’s a common law action, so there’s nothing discretionary about it, it’s automatic. Easiest remedy to get.
* It has to be for a liquidated amount. You can combine it with other common law remedies.
* No such thing as mitigation in context of a debt claim, if I promised you a certain amount of money, you re entitled to it. You can’t bring the claim unless it’s liquidated, you already know what it is, so Hadley issues of remoteness and quantification are not present.
* Requires breach of a primary obligation: if that’s what the party was supposed to do, pay a certain amount of money, the claim is straightforward. If contract says pay something and you don’t, action against you is debt. Often unpaid liquidated damages or forfeiture of deposit.
* If debt claim is remedial in nature, like liquidated damages, equity may say it’s a penalty clause

Action for the Price (Debt)

* s. 52(2) If a price is to be paid on a particular day and the buyer doesn’t pay the price on that day, then the seller can bring an action for the price, even though the property hasn’t passed and the goods haven’t been appropriated to the contract (in other words, regardless of whether the goods have been delivered)
* Powerful buyer will object to this and make delivery a pre-condition to payment or concurrent
* If you don’t say anything about when payment is to be made or just say it’s to be made upon delivery, you can’t use this provision. Must have set out a specific date for payment.
* If you haven’t, can only bring action for price under s.52(1), which says that if under a contract the property in the goods have passed to the buyer, then the seller can bring an action for the price. This is problematic as it brings in the vague discussion about whether or not it’s passed.
* Colley: contract didn’t set out a day for payment to be made, but because form parties had used, that property was passed to the buyer when the goods were loaded upon the ship. Problem was that in both cases, this became impossible or wasn’t done, so seller argued that they ought to have been loaded by now, not his fault, shouldn’t prevent claim.
* court disagreed: property must pass for action for price to be used under s.52(1), regardless of whether it’s impossible, ought to have happened, or wasn’t the seller’s fault. Not the buyer’s burden when the contract makes it so that he’s not to pay until deliver.
* Stein Forbes: buyer deliberately didn’t load it, in breach of contract, so the goods weren’t delivered and even though but for his breach the goods wouldn’t have been delivered, action for price still cannot be claimed, only damages for the breach. Property must pass.

Damages for the Seller

* s.41: discusses losses seller might sustain as a result of buyer’s refusal to take delivery. When the seller’s ready and willing to deliver and requests buyer to take delivery and buyer doesn’t take in reasonable time, then buyer is responsible for losses occasioned for neglect or refusal to take delivery. This is for special damages that the goods qualify for, reasonable charge for the care and custody of the goods.
* Some courts say these damages need not be in the contemplation of the parties, automatic, while others say Hadley does apply: show claim is reasonable and in contemplation of parties.
* Main provision- s.53: if the buyer wrongly neglects to accept or pay for the goods, seller can bring claim for damages - estimated loss naturally and resulting from ordinary course of events from buyer’s breach of contract – the first branch of Hadley.
* Quantification: if there is available market for the goods in question, then the measure for damages is the difference between the contract price and the market price at the time the goods were to have been accepted and if no time for acceptance, then the time of refusal: so difference between what you were supposed to get under the contract and what you now will get by having to go back to the market to sell it there instead.
* The market price need not be assessed immediately, just within a reasonable time.

Anticipatory breach (raises problems for when to assess market price)

* if you have a buyer that tells seller in advance that he won’t intend to accept the goods, is the seller required to accept that anticipatory breach and terminate the contract and therefore immediately proceed to damages or can the seller elect to affirm the contract and wait?
* some court takes strictly logical view and says it’s an election, you are always entitled to wait, other cases that say that where made clear other party won’t perform, proceed to damages ASAP. Courts are all over the map on what to do here.

Claiming for a Lost Sale

* what if the buyer refuses to take the goods and you do find another buyer who pays the same price for the goods, so based on s.53 formula, you’ve suffered zero loss but seller argues new buyer would have bought another one; I would have had two sales were it not for the buyer
* Charter: argued he was out a sale because he could’ve sold new buyer different goods. Court said no, because in this case there was a limited supply – lots of buyers but only a certain number of goods to sell, seller wasn’t out a sale because they sold all the goods they could get.
* Victory Motors: contrasts Charter. Same situation as Charter, a new buyer pays same price, but here there was an oversupply, as is the more usual case. More goods than buyers. So you CAN show you were out a sale, and can thus claim for the lost profit.
* Lazenby Garage: those previous cases were new goods, they were unascertained and then allocated to the contract so idea you’d lost a sale was easier to process where they were new goods and that a new buyer coming along could have bought something near identical. Denning here thought that didn’t apply to context of specific goods; here, it was a used vehicle.
* Seller claimed new buyer would have bought another used vehicle and he had oversupply. Denning said no, this is unique goods, we know the new buyer bought THAT particular vehicle but don’t know if they’d buy another, as they’re not identical, can’t show lost sale.
* Basically, where contract was for a particular item, no assumption of lost sale (Lazenby), where there is a limited supply that you sold out of anyway regardless of buyer not paying, no lost sale (Charter). Only can get for lost sale where there’s oversupply and contract is for new, unascertained goods (Victory Motors).

**Class 22**

Buying from Someone Without Title (Qualifications to Nemo Dat) – s.26 Estoppel

* s.26 –if goods are sold by a person who is not the owner of them or does not have the authority from the owner, the buyer acquires no better title to the goods than the seller has UNLESS the owner’s conduct precludes denying the seller’s authority to sell.
* the true owner by virtue of having done something to the goods makes it appear to the world that the person in possession of them is entitled to deal with them, so someone who does deal with that person can estop the true owner from saying they didn’t own and couldn’t pass title.
* Caveat to that: you have to have a sale and NOT an agreement to sell. (Shaw)
* Shaw: when you put your car in the hands of someone to find someone to sell the vehicle, you are estopped from denying that the person who has possession is authorized to deal with it, even if they’re claiming to own it. Giving it to possession of someone else, making them look like the owner by giving them title documents, you can’t deny their authority to pass title/sell
* But for s.26 to kick in, the buyer must have become the owner, it has to have been a sale, title must have been supposed to have passed under the contract. You can only use s.26 when you’re at the stage where you ought to have title. An agreement to sell is too early for s.26.
* if someone has agreement with purported seller but under the contract, wasn’t YET to have title, then it’s agreement to sell, the goods still belong to original owner.

s.27 – market overt protection

* s.27 says that if goods are sold in market overt, according to the usage of the market, then the buyer acquires good title to the goods as long as they are bought in good faith and without notice of any defect or want of title for the seller. This is broadest provision, it protects you against anyone, just says you get good title if you buy them in market overt.
* never used successfully in BC – courts usually go for another provision or say no market overt
* Gold coins case: owner wanted them back but buyer argued they were bought in market overt and he didn’t know they were stolen. Court declared garage sale wasn’t market overt.
* Market overt according to English cases: anyone who is selling goods in situation that is open to the public, anyone can come in and have a look, usually with some form of license or some form of government certification (having a shop),
* problem is s.29, which says that if the goods have been stolen and the offender is prosecuted to conviction, the property in the goods revests in the person who was the owner of the goods, despite any intermediary dealing with them whether by sale in market overt or otherwise. If you do buy and use market overt provision to get title, you have to be aware that if the person who stole them is prosecuted to conviction, you lose your title.
* It HAS to be a charge of theft, not of anything else, like deceit or fraud. Also, they must be prosecuted to conviction, they CANNOT plead guilty.

s.28 – protection from seller with voidable title/contract

* s.28 says that when the seller of goods has a voidable title to them, but the seller’s title has not been avoided at the time of sale, the buyer gets good title if bought in good faith with no notice of the seller’s defect of title.
* protects the buyer where the contract of sale between the seller and original seller is voidable, probably that there was a misrepresentation or duress or undue influence affecting that contract that made it possible to set it aside.
* if the original seller or seller rescinded the contract *before* the sale to the buyer, the buyer gets nothing, but if the title passed to this buyer before the rescission, then that contract between the seller and original seller can no longer be rescinded. Seller has good title up until his contract with the person he got it from is rescinded.
* Car and Universal Finance: original seller and a buyer who turns out to be a rogue, getting car under false pretences, who then sells to a new buyer and disappears, so there’s a competition between original seller and new buyer as to who is entitled to the car. Question was whether or not this original seller had rescinded the contract before the rogue got around to selling it. Problem was that the original seller found out about the problem in time and wanted to rescind but they couldn’t find the rogue and rescission requires notice – take too long to find, then lapse and you are said to have elected to confirm the contract.
* not being able to find the rogue, they made a report to the police, and the court said that was sufficient communication, contract rescinded: if person you need to communicate with has absconded, reporting to the authorities is a sufficient communication.

s.30 – seller in possession

* person has goods in possession because they were involved in a contract of sale, as a seller or buyer, but under that contract they either already lost title to the other party or haven’t gotten it yet. Usually a buyer under a conditional sale contract – I’ve gotten possession of the goods but haven’t got title yet. What if I purport to have title and try to pass it? Normally, nemo dat.
* s.30(1): if a person has sold goods and that person continues or is inn possession of the goods, the delivery or transfer by that person of the goods or the documents under any sale, pledge, or other disposition of them or any agreement of sale to any person who takes in good faith and without notice of the previous sale has the same effect as if the person were authorized by the owner to make the delivery or transfer.
* s.30(1) protects transferees, any interest as long as there’s a transfer from a seller in possession
* Precondition: seller is in possession, buyer is in good faith and has no notice
* If I have already sold the goods to someone else but I remain in possession of them and then purport to give you an interest in them or sell them to you, you’re protected against the true owner/earlier buyer if you bought in good faith with no notice of the previous sale.
* s.30(3): this is only when the buyer is in possession but doesn’t yet own the goods, the title is still with the seller: this is where the buyer buys through conditional sales contract, where they are in possession but don’t yet own them. They CAN give interests in that property provided good faith and no notice.

Protection in Purchases from Agents

* s.59(1): protects ANY purchaser taking any interest from mercantile agent. Pre-requisite is that you have an agent in possession and there’s good faith.
* Only caveat is that you have to buy through an agent.
* Where an agent has authority to deal with the goods, but not to sell them or engage in whatever transfer they’ve done with you, you still have good title from the true owner/principle, provided you got the interest in good faith with no notice of the agent acting outside his agency.

**Class 23**

Pacific Motors (s.30(1) – continuity of ownership requirement)

* dealer sells vehicles to a finance company but keeps possession of vehicles. While in possession, dealer, with no title now, sells to consumers. Section 30(1) kicks in to protect third party buyer
* as long as dealer is rightly in possession of the property involved, doesn’t matter that the nature of their entitlement has changed nor does it matter whether they have authorization to make sale to someone else, need not examine nature of that possession or entitlement, the possession just has to be legitimate.
* court said that a buyer like these consumers can’t use s.30(1) if there has been a break in the possession of this seller so that between the time that this person did own the goods and the time they purport to sell the goods, that party has been out of possession of those goods.
* Does not matter whether or not the third party buyer knows about the break in continuity

Worcester Works (expands Pacific Motors – note that this is a New South Wales case though)

* If you’re a seller, even if you’re NOT supposed to be in possession, you can pass good title
* Another case where they’ve sold to one party and now they attempt to sell to someone else –
* law prior was that you needed some authorization to have possession plus continuity
* Here, original seller sells to the rogue, who gets possession. They get the goods because they claim they’ll pay for them, which they then never do, but once in possession, they sell them to Worcester, who agrees to give financing on basis that title is transferred to him. Rogue sells and keeps the car again. Original owner meanwhile wants to repossess it.
* Court said this wasn’t a problem – the seller wasn’t in lawful possession of the goods but all you need to show for this provision was that it WAS in possession, the party was the seller, and it was a continuous possession.
* Also, even though it was initiated by the transferee, who just came in and took it, it’s still a valid taking of title as it was known by the transferor and he didn’t object to it.

Head v. ICBC

* she found someone who wanted to buy her car but couldn’t pay right away, so it was agreed that they could take the car and pay over time. That buyer is thus in possession but doesn’t get title because payments have to be finalized before it passes. Buyer stops paying for the car, flees the provinces, and sells it to someone else using forged documents.
* issue isn’t new buyer’s title, but that the original seller is claiming through her insurance that her car is stolen and she wants to be reimbursed.
* Court says this isn’t theft: although she owned the vehicle when it was sold to third party, she had voluntarily surrendered possession to the person she is claiming stole it and because he was rightly in possession, she can’t claim that he stole it.

s.59(1) cont’d

* if it’s a mercantile agent that has possession and purports to make sale, as long as agent is acting in ordinary course of business, if an agent is acting as though he has authority to enter into particular transaction, even though he doesn’t have that authority and is in breach of his agency contract, the principle is nonetheless bound by that transaction. The principle’s recourse is under the agency contract, not the third party’s contract, which is valid.
* Has to be a mercantile agent, in the business of selling goods of a certain type.
* Cannot be deemed agency (court just says they’re acting like one), have to *actually* be an agent.
* It also must be in the ordinary course of business of the mercantile agent, so if there’s something unusual about the transaction that would put the transferee on notice that this may not be what this person is normally allowed to do, they may fall out of s.59.
* Example - St. John: if the price is too good to be true, buying goods in unusual quantity, unusual place, or unusual time, or if the agent does have an ordinary place of operating or way of dealing but you don’t fall within that (like coming in after-hours or buying in alley instead of his store), then you may be put on notice that this is not the ordinary course of business of the agent and you don’t get s.59.
* That said, even if you don’t get s.59, can seek protection from one of the other provisions.