|  |  |  |
| --- | --- | --- |
| **SECTION** | **USE/REQUIREMENTS** | **CASES** |
| **Concept of Goods** |
| s.1 – “goods” | (a) - Chattels personal (except things in action and money)(b) - Growing crops to be severed before sale or under K of sale | *Marshall v. Green –* ppty to be removed immediately = goods*Fredkin v. Gliens –* look at intention of parties; no time limit for when severance must occur*Carlson v. Duncan –* if ppty transfers before severance = land; after severance = goods; introduces requirement that **removal must be done reasonably soon** after K entered into |
| **Sale Distinguished from other Transactions** |
| s.6 | (1) – k of sale = **transfer of ppty for money consideration**(2) – can be sale K between part owners(3) – K of sale may be absolute or conditional(4) – if ppty transferred from S to B = **sale**(5) – if ppty transfer takes place in future or subject to condition = **agreement to sell**(6) – agreement to sell becomes sale (when time elapses, conditions are fulfilled)Idea that ppty transfers is main aspect of SGA | **LABOUR vs. SALE OF GOODS – no clear answer, argue for your client’s needs***Clay v. Yates* – emphasis on extent K is based on need for S’s skill/ability*Young v. Martens –* adopt sale of goods standard even though technically SGA doesn’t apply; obligations should be implied into sale K and labour K*Lee v. Griffin –* substance of K; is labour or goods more important*Robinson v. Graves –* K for production of something = goods; K for skill involved in production (transfer of goods is ancillary) = labour*Canada Banknote –* as long as you are getting something you didn’t have = goods*Gee v. White Spot –* sale of food = goods; US approach – cheap restaurant = goods, expensive restaurant = labour**BARTER vs. SALE OF GOODS***Mason & Risch –* if consideration is wholly or in part other goods = barter*Messenger v. Greene* – set money value for trade in item to fit within SGA**LEASE OR HIRE-PURCHASE***Lee v. Butler* – required payments + automatic ownership transfer at end = conditional sale*Helby v. Mathews* – optional payments, optional ownership, can terminate w/o breach K = true lease |
| **Elements of Contract** |
| s.73 | **Preserves common law**Rules of CL and equity continue to apply to sale of goods transactions |  |
| s.12 | **Price – preserves K where parties haven’t agreed on price**(1) – methods to set price(2) – if undetermined, price will be ‘a reasonable price’(3) – what is a ‘reasonable price’ depends on facts | *May v. Butcher* – can only set reasonable price where parties are silent on price*Montana Mustard Seed* – supports *May v. Butcher*; example of court using 12(2) where parties silent as to price |
| s.13 | **Price set by third party**(1) – if 3rd party can’t/doesn’t set price agreement is over |  |
| **Categorization of Goods** |
| s.1 – “future goods” | goods to be manufactured or acquired by the S after the K of sale is madecan be in existence but not owned by S yetexpectation of parties that at some point future goods will become existing goods |  |
| s.1 – “specific goods” | Goods identified and agreed on at the time K of sale is made |  |
| s.9 | **Existing or future goods**(1) – goods are either existing (in existence and owned by S) or future; can’t be both at the same time(3) – K for future goods = agreement to sell (sale of future goods is impossible) |  |
| **Types of Obligations** |
| s.1 – warranty | term relating to goods that is collateral to main purpose of Kbreach gives rise to damages, but no right to reject**labeling as condition or warranty – done at time K is formed** | *Cehave NV* – brings ‘intermediate term’ distinction into operation of SGA; **remember** where breach goes to core of K B could reject goods*Hong Kong Fir* – reject where breach deprives party of substantially whole benefit*Bunge v. Tradex* – limits use of intermediate terms in sales K; prefers certainty in K law |
| s.15 | **Condition treated as warranty – affect remedies available**(2) – whether term is condition or warranty depends on K(3) – court will decide; calling it a warranty or condition is useless(4) – breach of condition treated as breach of warranty if: a. K is not severable b. B has accepted goods or part of them (see **s.39**) OR c. K is for specific goods and ppty has passed to B |  |
| s.38 | **B’s right to examine goods** | s.38 subordinate to acceptance (under s.39); where acceptance is deemed, lose right to examine |
| s.39 | **Deemed acceptance**(a) – when B intimates to S that they have accepted them(b) – goods delivered to B and B acts inconsistent w/ownership of S(c) – B retains goods after lapse of reasonable time w/o intimating rejection to S | *Leaf v. International Galleries* – 15(4) + 39 = breach of condition and no action in reasonable time = election to treat as breach of warranty |
| **Consumer Protection** |
| s.69 | Allows contracting out of obligations implied by law (affected by **s.20**) |  |
| s.20 | **Prevents S from contracting out of protections SGA provides to B – affects s.69**(1) – protection is for context of retail sale(2) – prevents contract out of **ss.17-19** EXCEPT for used/represented as used goods(3) – prevents contracting out of **s.16** – applies to used and new goods | Doesn’t provide much protection to consumer - easy provision to get around |
| **Passing of Property/Ownership** |
| s.15(4) | If K for specific goods where ppty has passed | Combined w/s.23(2) – lose right to reject goods when K formedCourt will try to interpret goods as ascertained to avoid this consequence |
| s.21 | Goods must be ascertained – property can’t pass until goods are ascertained |  |
| s.22 | Property passes according to intention of parties | Starting presumption is that parties decide when ppty passesCan include explicitly in K when ppty is to pass – or look for clues of intention (delivery, risk, payment, etc.) |
| s.23 | **Rules for when ppty passes (only use when can’t determine intention)** |  |
| s.23(2) | K for specific goods – ppty passes when K is made**Avoid this provisions by:**1. goods aren’t in deliverable state (s.4 ‘deliverable state’) – ex. in wrong place, work still to be done2. not an unconditional K – some courts have said K w/o terms that are conditions3. K for future goods – can’t transfer ppty in future goods4. K out of these provisions – include in K when ppty supposed to pass5. characterize goods as ‘unascertained’ not ‘specific’ | *Kursell v. Timber Operators* – shows court attempting to get around s.23(2) [characterizes goods as unascertained, not specific]; to allow right to reject |
| s.23(3) | K for specific goods and S has to do something to them to make them deliverable; ppty passes when:S does the thing required and B has notice of it | Only if S has to do something (not 3rd party)*Jerome v. Clement Motors* – S was to do repairs on car; repairs done but B never given notice, therefore ppty hadn’t passed to B and S bore risk |
| s.23(4) | **K for specific goods price not fixed,** ppty passes when:S does something to determine price and B has notice of it |  |
| s.23(7) | **K for unascertained or future goods:** ppty passes when goods unconditionally appropriated to K with assent**Loss of rejection only results from acceptance** (not appropriation, or property passing)When goods are appropriated they are considered **ascertained** | *Carlos Federspiel* – principles to determine when appropriation occurs (s.23(7)): 1. common intention 2. actual or constructive delivery – strongest inference 3. when risk passes – weakest inference 4. when goods leave S’s hands*Caradoc Nurseries* – appropriation = when goods leave S’s control and are in B’s hands*Sells v. Thomson* – unconditional appropriation requires assent; previous assent can be revoked w/notice*Flynn v. Mackin* – no appropriation when S could still decide not to deliver; emphasis on delivery |
| **Passing of Risk** |
| s.25 | Risk passes with property (not associated with time of delivery)[can allocate risk in the terms of K itself; express or implied through insurance] | *Jerome v. Clement Motors –* fire destroyed car; if ppty hadn’t passed S hadn’t fulfilled obligation to deliver car; if ppty had passed S had fulfilled obligation and B bears risk (ppty hadn’t passed) |
| **Seller’s Obligations – TITLE** |
| s.16(a) | Implied **condition** that S has right to sell – **gives right to terminate K** | *Rowland v. Divall* – failure to transfer ownership isn’t 16(a) it is **failure of consideration***Butterworth* – feeding of title may rectify title problem and prevent further claims under 16(a)*Niblett Ltd* – goods were commercially unuseable (prohibited from dealing in goods w/this label*J. Barry Windsor –* no right to sell because lamps didn’t comply w/government regulations*Sloan* – difficult to K out of 16(a), be precise; BUT s.16 seems to allow “if circumstances of K show a different intention”*Microbeads –* right to sell is limited to the moment K is entered into; not ongoing obligation |
| s.16(b) | Implied **warranty** that B will have and enjoy quiet possession of goods –**gives damages****[**S probably wants to K out of this – creates ongoing risk**]** | *Niblett Ltd*  - probably fits better here; title passes but B can’t use goods*Microbeads –* quiet possession is ongoing; relates to 3rd party impact on B’s quiet enjoyment 16(b) imposes continuing risk obligation on S |
| s.16(c)  | Implied **warranty** that goods are free from charge or encumbrance (S has disclosed all charges affecting goods) – **gives damages** | If S doesn’t reveal any charge/encumbrance – liable for damagesS probably wants to K out of this – may be charges they don’t know about, aren’t registered, etc |
| **Seller’s Obligations – DESCRIPTION** |
| s.17 | **Sale by description –** in SBD implied **condition** that goods match descriptionSale of unascertained goods always = SBD (can’t ascertain goods w/o description)*Hart-Parr* – to K out of s.17 protection must be reasonably precise Court is reluctant to find contracting out of core K obligations (ie. providing what K  called for) | *Frey v. Sarvajc* – “as is” sale Ks you out of s.17; unless fundamental problem*Torpey* – product is labelled and B chooses specific item = sale by item (not sale by description)*Sams* – as long as something said about description = SBD (even if B selects specific item) *Varley v. Whipp* – specific goods sale where B hasn’t seen goods, relying on description = SBD*Beale* – used goods almost always = SBD; anything said describing (even inferentially) = SBD***Taylor v. Combined Buyers*** – what constitutes description to use s.17: Unascertained goods: any term in K relating to description; makes all terms conditions  Specific goods: only fundamental/essential components of description; no different than CL*Arcos v. Ronaasen* – goods that don’t match description can be rejected; even if still useable*Ashington Piggeries* – if in essence what you get is what was described no breach of s.17, even if unusable (go to **18(a)** for impact of goods) |
| **Seller’s Obligations –QUALITY** |
| s.18(a) | **Fitness for Purpose** (implied **condition**) requirements:1. B makes known purpose of goods (express or implied) – court will often imply2. B relies on S’s skill and judgment – can depend on nature of B/S; only need some reliance3. S deals in goods of that description4. no implied condition if sale by patent or trade name – has been narrowed  | **Purpose/Reliance***Marshall* – court will imply purpose; here where goods are only used for one purpose *Crowther -* test for fitness for purpose at time of sale; imply where ordinary purpose is obvious*Kendall v. Lillico* – presumption of reliance by B; consider all knowledge; ongoing obligation dependent on purpose of goods; may imply purpose from price |
| **Trade Name***Baldry v. Marshall* – B has decided and wants article because of trade name = don’t fit in 18(a) |
| **Allergies***Esborg* – consider who is normal/abnormal for this product; S only liable for reaction in normals*Griffiths v. Peter Conway* – B must notify S of abnormality; focus on innocuous product not B*Ingham v. Emes* – B has duty to notify S of abnormality for 18(a) to apply |
| s.18(b) | **Merchantable Quality** (implied **condition**) requirements:1. SBD – but mostly all sales are SBD2. S deals in goods of that description – not precise, include S w/new product, new S3. Only covers goods whose title is going to pass4. If B examines – no implied condition for defects examination could have revealedImplied condition of MQ is easily satisfied – this doesn’t provide B much protection | **Standard of MQ***Bartlett v. Sidney Marcus –* if goods are useable for some purpose then they are of MQ*Ashington Piggeries* – if feed could be eaten by some animal = MQ*Kendall v. Lillico*- take into account all knowledge, even if not available at time of K formation |
| **Price and MQ***BS Brown* – price can affect MQ; limits potential uses; if no B would pay such high price for such basic use*IBM* – goods can be rejected as not MQ even if defect is minor and easily/cheaply fixed |
| **Examination***Thornett* – if examination done must be “reasonable examination” or no implied condition*Van Doren v. Perlman* – “reasonable examination” depends on knowledge of B, nature of goods |
| **Durability***Buckley v. Lever Bros* – MQ only assessed at time ppty passes; SGA not to make S insurer*Mash & Murrell* – MQ requirement continues after ppty passes for a “reasonable time” |
| s.18(c) | **Durability** (implied **condition**) – goods will be durable for a reasonable time considering use to which they would normally be putGives B strong protection – no limitations as in 18(a)(b)**S – K out of this to avoid onerous obligations and unknowns**  | Only in BC, recently introduced, no case lawImposes continuing obligation on S – “reasonable time” not definedIncreases cost of doing business in BC – because it imposes unknown obligations on S |
| **Seller’s Obligations – SALE BY SAMPLE** |
| s.19(1) | SBS = if there is term in K to that effect | **\*** If you fail under s.19, you can still bring claims under other sections*Cudahy* – SBS = goods shown constitute standard which goods not shown will correspond |
| s.19(2)(a) | **Bulk will correspond with sample in quality** – if not you can reject | *Steels v. Busks* – correspondence between bulk and sample only has to be **general**  |
| s.19(2)(b) | **B has reasonable opportunity to examine**No deemed acceptance until reasonable examination opportunityNot subject to s.39 – deemed acceptance |  |
| s.19(2)(c) | **Goods must be free from defect rendering unMQ that would be apparent on reasonable examination of sample**Creates obligation on B to reasonably examine – if claiming unMQ | ‘Reasonable examination’ – dependent on circumstances, parties, product, potential uses *Godley v. Perry* – ‘reasonable examination’ = common sense standard, basic tests B would conduct |
| **Seller’s Obligations – DELIVERY** |
| s.1 – “delivery” | Voluntary transfer of possession from one person to another | Transfer of possession = act of delivery |
| s.5 | **Possession** – deemed in possession if goods are in your custody |  |
| s.14(1) | **Time of payment –** not “of the essence”; just a warranty; no right to reject |  |
| s.31 | **Duty of S to deliver; Duty of B to accept and pay** |  |
| s.32 | **Payment/delivery = concurrent conditions** | CL – unless parties alter this, all K obligations are supposed to be performed at same timeCL – **in mercantile K time of delivery if stipulated = condition; not stipulated = warranty***Bowes v. Shand* – **time of delivery** = condition; equally a breach to delivery too early or too late*Charles Rickards* – can waive importance of timing; can reinstate importance w/adequate notice |
| s.33 | **Default rules as to delivery** | Appropriation often takes place when goods are deliveredUnless K says otherwise, payment of price, property passes, risk passes, etc. all at delivery*Beaver Specialty Ltd.* – importance of delivery, court will tie other obligations to this time |
| s.34(1) | **Quantity delivered** – quantity of goods is a condition; can reject if wrong quantity |  |
| s.34(5) | **Mixed Goods** [trumps 15(4)]S delivers K goods mixed with other goods B may:(a) accept K goods and reject the rest(b) reject the whole | *In Re Moore* – quantitative issues not in SGA still conditions; packaging was quantitative obligation = breach of condition*Arcos v. Ronaasen* – description/quantity often overlap; dimension is a quantity issue |
| s.35(2) | **Installment deliveries** requires:1. non-severable K2. each delivery paid for separately3. “defective deliveries” in one or more installment – not specified; any defect | *Maple Flock* – to determine between 35(2)(a) or (b):1. consider ratio quantitatively which breach bears to K as a whole – big breach = terminate (a)2. probability that breach will be repeated – if high = terminate (a) |
| **Buyer’s Remedies – RIGHT TO REJECT** |
| s.15(4) | **Condition treated as warranty (methods of affirming K)**:Acceptance = loss of right to rejectSpecific goods ppty in which has passed to B = loss of right to reject |  |
| s.23(2) | **Specific goods – ppty passes to B when K is made**Deemed to have elected to affirm K immediately when K is madeSeems to imply never have right to reject specific goods – case law alters this | *Wojakowski* – court reluctance that right to reject specific goods is immediate on K formation |
| s.34(5) | **Mixed Goods – right to reject [TRUMPS s.15(4) – because more specific]**If you can argue goods are mixed you can reject later deliveries | *William Barker v. Edward Agius* – presumption that goods conform w/K; B in better position when part goods don’t conform than when all goods don’t conform |
| s.38 | **Right of examining goods** | *Hardy v. Hillerns* – s.38 subject to s.39; even w/ no chance to examine can still be deemed accepted (under s.39 + s.15(4)) |
| s.39(a) | **Acceptance = B intimates to S that B has accepted them** |  |
| s.39(b) | **Acceptance = goods delivered to B and B does an act inconsistent w/S ownership**[MCD: same as 15(4) – lose right to reject when ppty has passed] | *Hardy v. Hillerns* – at moment goods rejected must be immediate access to them to return to S |
| s.39(c) | **Acceptance = B retains goods after reasonable time w/o telling S he rejects goods**Reasonable time – starts when breach is made (even if no knowledge of breach) | *Leaf v. International Galleries* – 5 yrs = passage of reasonable time*Rafuse* – ‘reasonable time’ = over seasons due to nature of goods; unlikely to get this much time |
| **Buyer’s Remedies – RIGHT TO DAMAGES** |
| s.54 | **Calculating damages for nondelivery**(1) – S delivering something B entitled to reject = S’s refusal to deliver(2) – damages under first branch of ***Hadley v. Baxendale*** | **General damages** – no need to know surrounding circumstances of K |
| s.56 | **Calculating damages for breach of warranty**[accept goods = breach of warranty] | *Wertheim* – overarching principle = compensation; provisions are just guidelines |
| s.56(3) | **Breach of quality warranty: damages = value if no breach – value at delivery** | *Ford v. Haley* **–** presumption that value if no breach = K price; presumption value w/breach = 0 |
| s.57 | **Special damages –** second branch of ***Hadley v. Baxendale***Losses claimed on top of basic losses (don’t fit in s.56) | Based on specific context; parties must know at K formation what special circumstances are*Re Hall and Pim* – don’t need detail, just generally what other party might do after entering K |
| **Buyer’s Remedies – RIGHT TO SPECIFIC PERFORMANCE** |
| s.55 | **Specific Performance (**Specific performance is available – at discretion of court)Requirements:1. your behaviour can’t be such as to show K not meant to be performed2. show that damages aren’t adequate – goods are unique; no available substitute | *Re Wait* – only get specific performance if goods are specific goods or ascertained goods*Sky Petroleum*- court generous in awarding equitable rem; award SP despite damages available |
| **Buyer’s Remedies – BUYERS LIEN** |
| s.75(1) | **Preconditions:**(a) - can’t get lien until B pays some or all of price(b) and (c) – usually pre-existing  |  |
| s.75(2) | **Quantum:** Lien is for amount B paid**Security interest in:**(a) – other goods that match description of goods purchased(b) – security interest in S’s bank account |  |
| s.76(1)  | Lien can end completely |  |
| s.76(3)  | Lien can end w/respect to particular ppty that has been transferred to 3rd party |  |
| **Buyer’s Obligations – ACCEPT and PAY** |
| s.6(1)  | Payment must be assigned money value to be w/in SGA |  |
| s.12 | If price hasn’t been determined s.12 may save K; or K may fail for lack of term |  |
| s.31 | Duty of B to accept and pay |  |
| s.32 | Default position – **payment and delivery are concurrent** | *Kay Corporation* – where parties haven’t specified time of payment court will infer from s.32 |
| **Seller’s Remedies – SELLERS LIEN** |
| s.42 |  “**Unpaid seller**” – includes S given a negotiable instrument that isn’t honoured[MCD: wrong - In law negotiable instrument = paid; claim should be w/3rd party] |  |
| s.43(1) | (a) - Unpaid S has lien or right to retain goods – **requires S has possession**(b) – right of stopping goods in transit – facilitates lien process(c) – gives right of resale; gives right to sell even if not owner (B may have ppty) |  |
| s.44 | Sets out when S has lien – is entitled to retain possession (s.44(2) broadens CL) |  |
| s.45 | **Part delivery** – allows S to exercise lien on remainder; only over other K goods[can’t do this in CL – would be turning particular lien into general lien] | *Snagproof* (in Alberta – no s.45) – couldn’t have lien over goods not yet delivered w/respect to money owing on goods no longer in your possession |
| s.46 | **Termination of lien** – terminates when payment obligations fulfilled |  |
| **Seller’s Remedies – RIGHT OF RESALE** |
| s.51 | **Where S is: unpaid, in possession of goods, has exercised a lien**(1) – lien doesn’t terminate K – K obligations still exist; delivery obligation deferred(2) – gives new B good title, defence against claim by orig B; not a defence for S(3) – gives defence to S; can resell if perishable goods or notice to B and no payment(4) – deals with situation where K allows S to resell | *R. v. Ward & Bignall* – where S is allowed to resell (by 51(3) or (4)) transfer of title under K is reversed and title returns to S; can still claim damages but title is returned to S |
| **Seller’s Remedies – ACTION FOR PRICE** |
| s.52 | (1) – if no payment date specified; requires ppty has passed to B(2) – requires price payable on certain day (no requirement of delivery, ppty pass) | *Standard Radio Inc* – shows difference between damages and debt claim; defences relating to damages are irrelevant for debt claim*Colley v. Overseas* – can’t claim action for price until ppty has passed*Stein Forbes and Co* – even if B’s actions prevent ppty from passing still can’t use action for price |
| **Seller’s Remedies – DAMAGES FOR NON-ACCEPTANCE** |
| s.53 | **General Damages – non-acceptance**(1) – available where B wrongfully doesn’t accept and pay for goods(2) – measure of damages = estimated loss directly & naturally flowing from breach(3) – if ‘available market’ damages = market price – K price |  |
| s.57  | **Special Damages** | *Charter v. Sullivan* – no lost profits where S’s market; S couldn’t supply cars to meet demand*Victory Motors* – awarded lost profits where B’s market; S could have sold another car if more B |
| **Transfer of Title by Non-Owner** |
| s.26(1) | **Estoppel situation – nemo dat unless TO estopped from denying S authority to sell**Constructive agency situation – person was not an agent, but perceived as agentLimited to ownership – B claiming to get property; not applicable to lesser interests | *Shaw and another* – “sale” does not include an agreement to sell; can’t use 26(1) unless B purported to and did transfer title to you |
| s.30(1) | **“Seller in Possession” – defence for 3rd party; treated as though S is agent for TO**1. B has to show good faith and no notice2. S must have been original owner of goods3. S has continued possession of goods – has never given up possession4. Interest received is not greater than interest true owner had | *Pacific Motor Auction* – to use 30(1) person who sells goods must never have parted w/possession of goods; doesn’t matter if SiP permitted to sell; focus on what 3rd party knew*Worcester Works Finance* – person to whom disposition is made can be orig S; can be any interest; S must remain in possession – consent not relevant |
| s.30(3) | **“Buyer in Possession” – defence for 3rd party; S has possession but not ppty yet**1. S has possession2. S was supposed to get property but hadn’t yet3. B has to show good faith and no notice4. Interest received is not greater than interest TO had |  |
| s.59 | **Agency situation – mercantile agent acts outside authority**1. Show person dealt w/ is an agent – s.1 definition of “mercantile agent”2. Transaction and B not aware anything untoward about this transaction3. agent acting in ordinary course of businessCan use for lesser interests than ownership (unlike s.26) | *Weiner v. Harris* – consignment arrangement; 3rd party protected under s.59; argue sale to get out of s.59*St. John v. Horvat* |
| s.27 | **Market overt – protects B in market overt, not S**1. goods are sold in market overt – public place where people buy/sell goods2. other party buys in good faith w/o notice of any defect | *St. John v. Horvat* – indirect authority for s.27No limitations; applies to stolen goods (English jurisprudence); never successfully used in BC |
| s.28 | **Voidable Title – B gets good title**1. S has voidable title2. S’s title has not been avoided at time of sale3. Goods bought in good faith and w/o notice  | *Car and Universal Finance* – no formula for rescinding K; have to notify other party; if can’t notify other party (they are rogue) do what is necessary to attempt notification – before new BVoidability affects K formation – B wasn’t involved so don’t get voidable character |