## Contract of Sale of Goods

|  |
| --- |
| Concept of Goods  |
| S 1**- “goods”** | A – all chattels personalB – growing crops n things attached to / forming part of land* If agreed to be severed b4 sale / under K of sale
 |
| **Interest in land or Good?****Look to intention of parties –** chattel or not?Fredkin* Land – growing naturally
	+ Intended to remain there
	+ derive benefit from land
* goods - If deliberately put there to make it good🡪
	+ if meant to be delivered – even by seller or retrieved by buyer
	+ do not derive benefit from land
* time period – irrelevant

**timing of severance -** Carlson* Land – property transfer b4 severance
* goods – property transferred after transfer
 |
| Requirement of Sale – is it k of Sale? |
| S 6**-** sale and agreement to sale**Must fit in to b K of sale** | s 6 (1) –1. **Intention – transfer property of good from seller 🡪 buyer*** **Seller** – transferring/ agree to transfer property in good
	+ Includes – starts been a SG but transfer didn’t take place cuz things went wrong
	+ Excludes - If no reasonable expectation to transfer property

**2. Money consideration - price*** **Buyer** – money consideration – price
	+ Payment – has to be something of value
		- Does not have to be cash, can be object
		- need to assign value to object or else not SG Messenger
			* sale – fixed price barter – no fix price
	+ ascertainment of price – 12, 13
 |
| **3. absolute vs conditional K** (3) - **can be*** Absolute – done right now
* Condition – anticipation of absolute sale later on
 |
| **4. Has to be either:*** (4) sale – property transfers become sale
	+ Excludes – lease, license, k that incidentally sell the good
* (5) agreement to sell – transfer of property takes place
	+ At future OR
	+ Subject to some conditions to be fulfilled later
 |
| Sale vs other Transaction  |
| 1. **K for labour & Material**
 | **Approach –** look at which is primary vs incidental Look at essence of what K is really for? Robinson* + Buying the skill - labour
		- If artistic ability / skill that’s of significance / person very skillful
			* Transfer of goods is ancillary
	+ Buying the object – good
		- If sth of significance is transferred – k of goods

Factors to consider* + If delivery cost >> goods 🡪 K of labour
		- Proportion of payment White Spot
		- For good vs labour
 |
| SGA in Labour* K of labour+gd– obligations implied by SGA even though technically doesn’t apply Young
	+ Should be under at least as high degree of obligation wrt to gds supplied n work he does
 |
| **2. Lease/ Hire-Purchase** | **Approach –** **Lease** * Title does not pass
	+ Except – if no value at the end
* Compulsory period
	+ When return – still has value
* True Option – SGA apply when exercise option to buy
	+ If option to terminate lease w/out breach Helby
		- Even if lessee become owner at end of pmt
			* Reason – no legal obligation to buy
	+ No fixed price
		- If Fixed price – if mkt price is known when fixing it
* B4 lease end – lease
* Property passed – sale
 |
| **Sale** * title does pass
* compulsory period –
	+ when returned – has no value
* option – not true
	+ automatic option
		- inevitable lessee has to become owner 🡪 SGA apply from beginning Lee
			* Requires – absolute obligation to pay + automatic ownership at the end
	+ Fixed price
		- If price is difficult to fix ahead of time
	+ Token amt
		- * Would be fool not to exercise
 |
| **3. Consignment**  | **Approach – look at actual conduct** Stephanian’s Carpets * + more consignee acts like buyer-🡪 sale

**Consignment*** Agency – Weiner
	+ power to sell only – bound to account to principal for proceeds of sale
		- Duty towards owner to sell -
* Consignee return if no sale Stephanian’s Carpets
* No owner obligation
 |
| **Sale** –– sale  * Agent has chance to become owner of property – Weiner
	+ Ie – agent has to buy it if can’t sell it
* Owner obligation - Agent has too much responsibility wrt to care
	+ Pay for care, tax,
	+ Reason – looks like have become owner – cuz obligations tend to go with ownership
 |
| Element of K |
| **Common Law -**  73 | * All of k law applies – except if inconsistent w/ the express provision of SGA
 |
| **Capacity –**  7(3) |  7(3) – must pay reasonable price – * if sold n delivered to person who’s mentally incapable / drunk at time o K

If enter into K with sth doesn’t exist – No k Momentary incapacity – voidable K * When regain capacity – can elect whether to affirm k or not
	+ Must do it as soon as possible when regain capacity Bawlf
	+ Ex. intoxication
 |
| **Price –** 12-13 | **Ascertainment of P*** 12 (1) – price may be
	+ - A – set by k
		- B- left to be set as agreed in k
		- C – determined by course of dealing
	+ (2)- not determined🡪 reasonable price
		- when party silent on price🡪 reasonable price, k not void
	+ (3) – depending on the circumstances

(1) and (2) – mutually exclusive * Reasonable price only applies when parties say nth about price
	+ If have method for coming up with price – does not apply
 |
| **Valuation by 3rd party** * 13(1) – if price is set by 3rd party – and 3rd cannot or does not do so – agreement void
	+ (2)- reasonable price
		- If delivered and appropriated – (1) – doesn’t apply
	+ (3) – if 3rd party prevented cuz of fault by seller/ buyer
		- One not at fault – may maintain action for damage against party at fault
 |
| **Subject matter of K -** **Categorization of Gd –** 9, 1 | **existing vs future -** only be one or the other s9 * **existing** – owned/ possess by seller
	+ sale/ agreement to sell
* Or
* **future** – gds to be manufactured, / acquired after the sale s1
	+ not yet owned by seller
	+ agreement to sell s 9(3)
		- Must have intention that future gd will become existing gd
 |
| **\*\*Specific vs unascertained good\*\*****Specific**  - gds id and agreed on at time of k of sale s 1* Sale/ agreement to sale
* Ex. “the car” not a car

**Unascertained –** * a good, not “the good”
	+ ex. give specific pre-req for the gd
* agreement to sell
* appropriation
	+ Process of transforming unascertained to ascertain
	+ After appropriation – becomes ascertained good
		- **Never** becomes specific gd
* K – Cannot start out with ascertained good – that’s k for specific gd
 |
| **Obligations –** 1, 15(2) | **1. Condition –**main purpose, * + Not defined in act
* Breach - termination +damages s15(2)
	+ Reason – goes to the heart of the K
 |
| **2. Warranty –*** Def’n – reference to gds that are subject of K but collateral to main purpose of K s 1
* Breach – s15(2)
	+ Claim for damages
	+ No right to reject gd n treat K as repudiated
 |
| **I3. Intermediate terms** - depends on seriousness of breach HK Fir* There are k terms that we don’t know in advance of the consequence of the breach
	+ Need to wait till the breach actually occurs
* Brings intermediate term into SGA – Cehave
	+ Obligation wrt to quality – is intermediate term so have to wait till breach occur to see how serious
	+ Terms that are not specifically labelled in SGA can be intermediate term
 |
| **Categorization** depends on construction of K s15(2)* Doesn’t matter if its called warranty, determined by court 15(3)
* look to intention of party in light of surrounding circumstance Bunge
* Representation vs term
	+ Cannot be both terms and representation – Leaf International
* Factors to consider
	+ most likely condition - Anything with quantification measure
	+ Need for certainty Bunge
		- Court – dislike intermediate terms
	+ Time – not condition unless Bunge
		- Parties expressly stipulate OR
		- Nature of subject/ surrounding showing it
		- Party who has been subject to unreasonable delay – gives notice to party in default
			* Makes time of essence
 |
| **Choice*** 15(1)(a) – may wave the condition OR
	+ B – elect to treat it as breach of warranty
 |
| **Implied Terms –** 69 | **Source of implied terms**1. Statute * Allow to k out of implied terms - s 69
	+ S 20(2) - BC – cannot K out of ss 16-19
	+ Even if K out – can K out of things that are substantive in nature
		- Cannot K out of legal defn

2. Implied by CP Hotels * 1. Custom usage, industry/ area they situated
	+ Personal – already dealt with each other before
	+ Industry – unless specifically k out o fit
	+ Presumptive – parties themselves want the term in K
* 2. Necessary for business efficacy
	+ By virtue of their conduct in the other part of k
		- **Necessary** NOT reasonable
	+ Officious bystander test
	+ Whether this was sufficient to constitute a custom/usage
 |
| Exclusion and Limitation Clause | **Applies when** * **1. Notice** – other party have notice
	+ Esp for onerous clause
* **2. Interpretation**
	+ Interpret against the party who’s relying on it
* **3. Control –** if contrary to public policy, can’t use it Tercon
 |
| Consumer Protection and K of sale  |
| **Statute Protection –** 20, 69 | S 20 – prevents you to K out of implied term in 16-19* \*\*only in BC\*\*- peculiar definition of consumer situation
* (1) – includes all retail sales in ordinary course of business
	+ Excludes:
		- A – sublet
		- B – gds for business purpose
		- C – to corp
		- D – by trustee
* (2) - retail sale – **cannot K out of** 17-19
	+ despite s 69 allows you to K out
		- Excludes – used goods
			* appear to be used gds
			* seller say they are used goods
* (3) – retail sale – **cannot K out of 16**
	+ Includes new/ used good
 |
| **Common Law** | **idea of notice –** if other party doesn’t know its part of K, may not be part of k Tilden* requirement
	+ other party has obligation to pt out- esp onerous clause
	+ signature – can but not always constitute notice
		- depends on situation – if done in a hurry, maybe not

**unconscionability** Harry * Test 1 – better in BC
	+ 1. Look at bargaining of power btw parties
	+ 2. Content of the K - substantial unfairness in bargain?
* Test 2 –
	+ Is it sufficiently divergent from comm standard of morality ?

**Equity – to do justice** * Don’t need doctrine, just to do justice Gaertner
 |

# Obligations of Suppliers and Manufacturers

|  |
| --- |
| Privity Problem  |
| **Vertical privity** | * manufacturer chain
	+ Consumer may not have K with manufacturer/ supplier
	+ Manufacturer cannot restricts consumer rights against retailer Chabot
		- Not party to the K btw consumer n retailer
 |
| **Horizontal privity** | * A enter into K with B for benefit of C
* A cannot sue for C if A is not agent, Lyons
	+ C cannot sue cuz not party to K
 |
| Privity Problem |
| US | * no reason why can’t sue even tho not party to Ki if there’s injjury Henningsen
	+ Should include ppl who in the reasonable contemplation of parties to sale
		- Might be expected to use the product
 |
| Quebec – GM | * In K of sale – 2 things are transferred
	+ 1. Property / ownership
	+ 2. Other K obligation
* “other K obligation” is also transferred –
	+ Reason – when bought gd, also bought the “other k obligation” so can sue
 |
| Canada- Common law  | * + If a K contains a defence to you – even tho not party to K London Drugs
		- Can use that defence –
	+ Test Fraser River
		- 1. Did parties to K intend to extend the benefit in question to the 3rd party seeking to rely on the k provision
		- 2. Are the activities performed by the 3rd party seeking to rely on the K provision the very activities contemplated as coming w/in the scope of k in general
	+ Cannot waive the benefit once the benefit has crystalized Fraser River
 |

# Passing of Property and Risk

|  |
| --- |
| Significance of Property Position  |
| **Importance** | * The ONE thing that buyer receives
	+ Has to occur **under the K** or else -🡪 **total failure of consideration**
		- Breach of k – the whole pt of the K does not operate
* Risk passes s 25
* Property and right to sue for price – go together
* Can impact other rights liberty wine
 |
| **Timing** | Reason for importance* Other property rights that pass - 3rd party liability, insurance
* Triggering device for “other K obligation”
* 3rd party – may be affected by it
* Certain regimes depend on it
 |
| Consider* 1. What are the obligations in K
* 2. When are the obligations breached
* 3. Who bears the risk?
 |
| Presumption* Property – when transfer of property occurs
	+ Risk passes to buyer
	+ Presume all obligations occur at the same time
* Unless clearly stated to contrary
 |
| Rules Governing Passing of Property  |
| **Passing – intention**22 | (1)- property passes when parties **intend it to** * (2) – look to conduct of parties and circumstances
* If no intention🡪 presumptive intention 23
 |
| Approach  | **1. find intention** 22(1) Jerome* + 22(2) - By looking at terms of k, parties conduct, circumstances

**2. If no intention found** 🡪 23 * **not applicable if clear intention is found**
	+ parties’ intention – governs the basic principle
* Specific gd / ascertained gd?
	+ Specific – 23(2-5)
	+ Unascertained – 23(7)
 |
| **Specific Goods-** 23(2-5) | 23(2) – **specific gd + deliverable state +unconditional K-** **right away** * Property pass – as soon as K is made
	+ Immaterial – whether time of pmt/ delivery are postponed
* Doesn’t apply if:
	+ Not specific gd and/or not in deliverable state kursell
	+ K is conditional
* Problem - if combined w 15(4)- can never reject specific gd cuz own it as soon as the K was made
 |
| 23(3) –**specific gd + put in deliverable state** – **buyer notice*** agreed by parties, not default
* **Property pass:**
	+ When did sth
	+ **Buyer has notice of it** –
	+ need to communicate to buyer otherwise, no passage
 |
| 23(4) – **specific gd** + **action to ascertain price- buyer notice*** Property pass:
	+ When ascertain price
	+ Buyer has notice
 |
| 23(5) – **sold on approval** - **accepts/ retain beyond time*** A- buyer accepts/ action that adopts transaction
* B – retains beyond time
 |
| **Unascertained good-** 23(7), 21 | 21 –**required to be ascertained b4 property passes** |
| 23(7) – **unconditional appropriation** * property pass- when gds are unconditionally appropriated
	+ ie when one does the appropriation n one accepts this🡪 property passes

**requirement of unconditional appropriation** Carlos Federspiel1. Parties’ intention2. Involves both parties – * Agreement by both that appropriation is made
* 23(7) - **assent of other party**
	+ requirement
		- need some sort of communication- active involvement
		- Diff from 23(3) &(4) – more than just telling the party
		- But In some case- notification is enough
	+ Assent can be - Sells
		- implied
		- waived if specifically stated
		- withdraw with notice

3. Actual / constructive delivery –* Seller should have gds and send them to buyer
* Need to have delivery –
	+ - Ie. Seller has gds for immediately collection by buyer

4. Ownership and risk are usually associated* If gds were still at seller’s risk – *prima facie* that property has not passed

5. Appropriating is the last activity performed by seller* usually but not necessarily
	+ if there’s further act – that’s important n decisive act to be done by seller
	+ *prima facie -*  property doesn’t pass until its done
* ex. Delivery –usually not enough to constitute appropriation
* Control – should have passed from seller and is un-retrievable
 |
| **Interaction with** 15(4) | Requirement -Either * + - 1. K is not severable n buyer has accepted gds or part of it OR
			* Applies to any type of goods
		- **2. Specific good** which property has passed
			* + 23(2) - Buyer can never reject the goods
			* Solution- find some words in the subsection that is not applicable
		- re-characterize as unascertained good
		- Not in deliverable state – defined in s 4
		- Have conditional K

Effect* + Breach of any condition – only treated as breach of warranty
		- Cannot
			* reject gds
			* treat K as repudiated
		- Unless – term in K to that effect
 |
| Risk and Frustration  |
| S 25 (1) | **when property** 🡪 **buyer, risk** 🡪 **buyer** * Regardless whether delivered to buyer
* Unless – otherwise agreed
	+ Could be expressed / in other provision
 |
| **Approach*** Need to determine when property passes
	+ Party’s intention – **overrides** statutory presumptions Jerome
 |

# Sellers’ Obligation

* **Title**
* **1. Title –** 16(a)
	+ Implied condition – right to sell
* **2.. quiet possession** – 16(b)
	+ Implied warranty
	+ Continuation after property pass
* **3. Goods free from encumbrance** 16(c)
	+ **Implied warranty**
* **4. Delivery**
	+ 1 – defined
	+ 31 – duty of seller to deliver
	+ 32 – concurrent condition with payment
	+ Time of the essence – 14(2)
	+ Rules as to delivery – 33
		- Place of delivery – 33(2)
		- Reasonable time – 33(4)
	+ **Quantity-** 34
	+ Instalment deliveries – 35
* **Description and quality**
* **5. Correspondence with description** – 17
	+ Implied condition – if sale by description
		- Identity vs quality
		- Essential vs incidental characteristic
* **6. Merchantable quality –** s 18(b)
	+ Implied condition if:
		- Gds bought by description
		- From seller dealing in gds
	+ Merchantable for reasonable period
		- Exclude by examination
	+ Price- can narrow down the list of possible purpose
* **7. Fitness for purpose**  - 18(a)
	+ Implied condition if:
		- In course of seller’s business
		- Knowledge by seller o purpose
		- Reliance on seller’s skill / judgment
* **8. Sale by sample**  - 19, 17
	+ Implied condition
		- 19(2)(a) – bulk to correspond to sample in quality
		- 19(2)(b) – reasonable time to compare
		- 19(2)(c) - free from hidden defects
* **9. Durability –** 18(c)

## Title

|  |
| --- |
| Nature of Right to Sell Goods |
| **Implied undertaking as to title, quiet possession** -s 16 | (a) **– implied condition on seller that has right to sell the goods*** prob – right to sell ≠ seller owns the goods
	+ when is obligation breached?
	+ Right to sell – important to be condition
		- Reason – condition🡪 terminate,
			* warranty 🡪 only damages n have to take the gd, but buyer hasn’t suffered any damages
* purpose of section – addressing 3rd party claims
	+ 20(3)- cannot waive s 16

**Application** * if prevents K from coming into existence-
	+ total failure of consideration AND breach
* if makes K unuseable – breach of 16(a) only

**Scope** * Even if have ownership –
	+ if had no right to sell – breach 16(a) Niblett, Windsor
* K out of 16(a) Sloan
	+ Court will make it very narrow – and very difficult to K out
 |
| **(b) – implied warranty – buyer have and enjoy quiet possession of gd** * Often combine to use it with 16(a) /(c)
	+ Reason – if you can’t sell them, I can’t use them
* If breach 18(a) – gds have to be fit for purpose which intended
	+ Also breach 16(b) – since purpose include – right to have quiet possession
* Prob
	+ Ongoing nature and insurance quality to the provision
	+ Seller obligation – extends to the future –
		- Should k out of it

**Application*** For a period of time after the sale – use of property will not be interfered Microbead
 |
| **(c) – implied warranty 🡪 protection from charges and encumbrance not known to buyer*** Powerful provision for buyers
* Seller’s obligation
	+ Require to tell you abt the encumbrance n charges b4 hand
* Prob
	+ Only a warranty – can only claim damages
		- Can try to make it a condition in K
	+ Seller – want to K out completely
		- Requires them to reveal all encumbrance / charges- even if don’t know it
 |
| Breach of 16(a) v (c) | * Look to the nature of the security interest
* Look at who owns the ultimate title
 |
| **When seller doesn’t have title**  | **2 breaches** **1. Breach of s 16(a)*** Just a breach of term in k
* Remedy – terminate the K

**2. Breach obligation to transfer title** 🡪 **total failure of consideration (**preferred) Rowland* Principle
	+ breach that goes to the heart of the K- more profound than breach of condition
	+ one party has given the other party nth under k
* reason-
	+ 15(4) –irrelevant
		- even if accepted/ specific but breach was so profound so doesn’t matter
			* property doesn’t pass
	+ remedy - brings K to an end – everything back to original state
		- if gd cannot be returned – monetary compensation
			* \*\*better position than termination \*\*
* Factors
	+ Irrelevant whether buyer have possession / have used the gd Rowland
		- Profound prob here – seller had no ownership
	+ Timing – if property/ownership is passed on afterwards/ during claim Butterworth
		- Still good title
		- NO total failure of consideration – only breach of warranty
			* Breach of time of transfer – not breach of transfer
 |
| **Why the remedy’s better*** **Breach of condition –** don’t get to undo the K
	+ Can’t get things back that’s already done – ie money
		- So other party gest to keep whatever is done under K
		- Can only claim damages
	+ Only terminate obligation from now on -
* **Total failure of consideration –**
	+ K – gets undone 🡪 restitution
		- Gets everything back that was given
	+ Partly rescinds – since still get to claim damages
	+ May be able to argue out of 15(4)- altho rare
 |

## Description and Quality

|  |
| --- |
| Sale by Description |
| S 17(1) – **sale by description** | **Pre-condition** * K – sale by description
	+ No requirement on type of buyer/ seller
 |
| **Application** * If it’s a **sufficiently fundamental description** – protection comes in place Frey
	+ Caveat emptor – irrelevant
		- Principle – can’t complain of defects if had opportunity to inspect b4hand
			* Unless evidence of fraud
* **Apply to all k -** Taylor
	+ Specific gd that’s seen +inspected Beale
	+ unascertained good purchase – when ordered by description n gds unseen Hart
		- Triggered – cuz bought gd by description
	+ Specific gd + unseen but described Varley
		- Reason – seller is implicitly promising that’s what buyer will get
 |
| **Effect of application**  Taylor* **Specific gd –** not much diff
	+ Doesn’t really make a different to how the law would operate
	+ Reason – s 17 says very limited things about the gd
* **Unascertained gd-** profound diff
	+ Anything said about the gd –
		- Include rep – are brought into k as term and implied condition
	+ Effect
		- Gds have to correspond absolutely in a strict way – if dealing w/ unascertained gd
 |
| **requirement – Correspondence**If measurement / quantification +unascertained good Arcos* must correspond absolutely
	+ unless included in K there can b discrepancy
* may argue common sense approach Ashington Piggeries
	+ if in essence what you are getting is what u described- no breach
	+ prof – probably went overboard,
* prob- CA – still stringently applied
	+ seller
	+ exclude in K
		- minimize the scope / precision of description
	+ buyer – make description quite complex – so easier to reject
 |
| **Rejection of gd** Varley* Even if had it for a period of time – can still reject
* Reason - Unconditional sale –
	+ Cuz had s 17 🡪 conditional sale
	+ 23(2) doesn’t operate
* Prob – doesn’t make sense that 17 applies to all k but 23(2) cannot apply if s 17 does
 |
| **Ways out of s 17**1. **K out of it**
2. **If don’t k out of it:**
	* Not K of sale by description
		+ Prob – very difficult, almost all sale is by description
	* Consider what is the description
		+ Argue- description is the only the pat that goes to the identity of the gd
			- Unimportant parts – not legally part of description
			- If so important – would include in K anyways
	* Focus on the correspondence with the def’n
	* Eliminate it – in certain jurisdiction its eliminated
3. **Argue misrepresentation** Frey
	1. requirement
	2. Latent defect – not revealed by any inquiry purchaser is able to do
		1. If seller know – can argue misrepresentation
		2. If seller does not know – cannot
			1. Difficult – court tend to be generous espf if extensive investigation is required
	3. Of some significance to reasonable buyer
		1. But reasonable buyer would not be able to find out
	4. Seller knows about it
		1. Reason – obligation for seller to reveal info – cuz for benefit of consumer
 |
| Implied Condition as to Merchantable Quality  |
| 18 b – **merchantable quality** | **pre-condition** 1. Sale by description * Almost all k are sale by description – from s 17 cases

2. Bought from seller who deals in gd of that description * Sth you would normally be doing business in
* Scope –
	+ # of transaction – depends on the court 🡪 diff approaches
	+ Strict interpretation
		- Scope is defined narrowly, if first time – let it go Hartmann
		- Certain # of transaction / % of business are needed to qualify
	+ Other case
		- Even when its seller’s first time –
			* If can c will intend to sell gds like that in future – enough
 |
| **Except – inspection** * examination by buyer – no implied condition for defects that exam ought to reveal
* if inspect- assume took reasonable inspection Thornett
	+ 🡪 if will reveal the problem – not entitle to complain about quality of gd
* Prob – that is not what the section says, read in by court
	+ No presumption that one need to take reasonable inspection
* Implication
	+ If do inspect- need to do reasonable and thorough inspection if want to benefit from 18(b)
	+ If can’t do proper inspection – don’t do it
 |
| **standard - merchantable quality** easy condition to meet * usable condition Barlett
	+ quality is irrelevant
 |
| **Approach**  kandall 1. What is the description?* The more complex the description – the fewer purpose it can serve

2. Make a notional list of reasons why reasonable buyer would want the product for – with that description * Requirement
	+ as long as it its with any one of the purpose
		- Even if – only 1 of the purpose is what the buyer wants
	+ Show some reasonable buyer would have bought those gd under that description and would be happy with what they see
	+ Consider –
		- knowledge **at time of trial**
			* Takes into acct subsequent knowledge
		- **Price can be considered-** Brown v Craiks
			* to shorten list of possible purpose
				+ cross off purpose that is of lesser cost
			* if significant diff in price –
			* reason
			* high price can mean gd were meant to meet some higher purpose
		- consideration – need to make sure not let buyer get out of bad bargain
		- minor defect+ minor fixing cost IBM
			* Can still not be merchantable quality
				+ Even if its usable if fixed
* Issue with approach Dissent in Kandall
	+ Should not take into acct subsequent knowledge
	+ Need to take price into consideration
		- Higher price🡪 inference that gd is meant for specific purpose with specific quality
		- Price and quality go hands in hand

3. Durability * durable for reasonable period of time Mash
	+ requirement
		- perishable good – susceptible to deterioration
		- require time for delivery/ other things
			* seller ought to have known
			* once reached destination – not responsible
* timing Buckley
	+ as long as its arrived in merchantable quality – ok
		- reason – not meant to make seller insurer
 |
| **loose protection if:*** goods were used / change in anyway
* reasonable time has passed
* buyer should – proactive check when received good
 |
| Durability  |
| 18c – **durability**  | * gds have be durable for a reasonable period of time
	+ seller have responsibility for a longer period fo time
* pre-condition
	+ K of sale
		- As long as have this – this is implied
* Prob- never interpreted by case
	+ seller will want to K out of this
 |
| Implied Condition of Suitability for Purpose |
| 18(a)- **fitness for purpose** | **Pre-condition** * 1. particular purpose is made known to seller
	+ expressly/ implied
		- tell them why u want the gd
	+ need to reveal to seller in advance –
	+ court will imply your purpose – if it is obvious Crowther
		- not particularly onerous – usually by virtue of your position as buyer- ok
* 2. so as to show relied on seller’s kill/ judgment
	+ More difficult – don’t have to overtly say it
		- But sth in the content that shows you really are relying
	+ Once purpose made known – assume there’s reliance Kendall
		- Onus on seller to est that buyer did not rely on their skill / judgment
* 3. in course of seller’s business
* 4. goods of description
 |
| **Protection – fitness for purpose** * Irrelevant whether its used good or not Crowther
* Purpose for ultimate matters Kendall
	+ If gd not suitable for ultimate buyer- can be read back into transaction
		- Even if intervening buyer has diff purpose

Allergies and idiosyncratic user* gets protection if Esborg
	+ 1. Product contains harmful ingredient
	+ 2. Such product is harmful to reasonable foreseeable class of ppl
		- Duty to reveal belongs to this class of ppl Ingham
	+ 3. Innocently injured when used in the way its supposed to be sued
* Onus – on buyer Griffths
	+ To reveal susceptibility
		- If buyer didn’t know – not seller’s problem
* Product Griffths
	+ If known to cause problems – more susceptible to complaints
	+ If not known – hardly cause prob -🡪 less likely to succeed
 |
| **Exception -bought under trade name / patent** * **doesn’t apply**
	+ 1. Buyer ask seller for article to fulfill certain purpose n seller suggest trade name
	+ 2. Buyer tell seller abt certain trade name n ask will it suit my purpose
* **Only applies**
	+ 3. Buyer tell seller want certain brand name and NOT relying on seller
 |
| **Other Issues**  |
| **Interaction Btw Sections** | **order of arguing****1.** S 17**2.** S 18(b) +18(a)* 18a –
	+ Pros
		- can complain abt the gd and ANYTHING that comes along with it
		- narrower purpose
	+ Cons
		- more stringent precondition – need reliance, make purpose known
* 18 b –
	+ pros
		- So would almost always argue with 18(a)
		- Less stringent condition – don’t need reliance/ make purpose known
	+ Cons –
		- merchantable quality- easily satisfied
		- applies to gd that have been / will be subject of ownership
 |
| **Effect of Breach** | **Effect of breach*** **Specific good +property has passed**
	+ 15(4) – cannot reject – treated as breach of warranty
		- Damages only
* **Unascertained**
	+ can reject gd if not in accordance with description
		- 21- Property passed when ascertained
	+ exception－ 15(4) if accepted the goods
 |
|  | **Way’s around*** **Acceptance**
	+ S 38 – argue did not have reasonable opportunity to examine so not accepted
		- Prob- trump by s 39
* **Sale by sample**
	+ 19(2)(c) – even if have accepted / used some samples
		- If has defects🡪 unmerchantable
			* N wasn not apparent from reasonable examination
		- Applies – trumps s 39 cuz more specific
 |
| **Timeframe to Check** | **Specific good –** no time at all* 23(2) – property pass when K is made
	+ 15(4)- since property passed🡪 no opportunity to reject
	+ Even if test for conformity when delivered – cannot reject
 |
| **Unascertained good** - reasonable period to check * 38 - gives you reasonable opportunity to check whether conform w/ description
	+ Prob－subject to s 39
		- If done any action – that’s consider acceptance by s 39 – consider accepted
 |
| **Best way to get true reasonable period*** 1. Include in K
* 2. Characterize it as sale by sample - follow 19(2)(B) and not s 39
 |
|  | **Problem-** court’s interpretation * Specific good – get lots of time to reject when statue says otherwise
	+ Unascertained good – more n more difficult to test the gd

**Solution** * Argue Sale by Sample 🡪 19(2)(b)
	+ Allow reasonable time to check
		- Never interpreted to be subject to s 39
	+ Adv – allows true testing period
		- Not subject to s 39 – even if action satisfy s 39 – can still argue it’s within reasonable period
 |
| Sale by Sample |
|  | **Precondition – Sale by sample** 1. seller selects the sample / approves of Buyer’s selection 2. assertion that rest of what you are getting is like what you are seeing * expressly / inferred
* not enough – merely by allowing buyer to examine gd
	+ if buyer -can inspect part of the gds one is going to get but not all
		- buyer may choose to see part of gd Or
		- seller – only has part of gd available
 |
| **S 19(2)-Sale by Sample** | **(a)** – **bulk correspond to sample in quality*** Function of sample
* correspondence btw bulk and sample – only has to be **general** Steels
	+ cannot submit a sample to analysis that’s unusual in trade
	+ as long as upon reasonable examination – corresponds – ok
* Reasonable examination – common sense Godley
	+ There are limits as to what should be done

**(b)** – **reasonable time** for buyer to **compare** bulk w/ sample* If sample was not available for comparison
	+ Buyer – can complain been deprived of opportunity to compare

**(c)** – **free from hidden defects** * S 17(b) – sale by description –can be sale by sample
 |
| Delivery |
| General Principles | s 31 – obligation of seller to deliver* s 1- delivery = **voluntary** transfer of possession
	+ involuntary transfer – does not satisfy the obligation
 |
| **requirement*** seller – has to put in custody of buyer –
	+ not necessarily a transfer of property
 |
| **Delivery Obligations** |
| **Time of Delivery** | **1. If k is silent** * S 32 – payment and delivery are **concurrent condition**
	+ Prob- usually want one to occur b4 the other
	+ **considerations**
		- If one party is not ready – the other party doesn’t have to perform
			* But has to show they are ready and willing to perform
		- 14(1) – time of pmt not deemed to be essence of K of sale 🡪 warranty
			* Unless stated other wise
		- 14(2) – whether time is of essence for other stipulation (ex. delivery)
			* Up to court to decide – depend on term of K
				+ Not helpful
* 33(4) –reasonable time if seller is to send the gd
	+ And No time of delivery is set
 |
| **2. If K specified*** Mercantile K –
	+ If expressly stipulated a time for delivery -🡪 time is condition
	+ If not stipulated/ work it out somehow 🡪 presumed warranty
* **Application**
	+ Strict on compliance – if time specified Bowes
		- Irrelevant whether
			* early / late Reasons No damage
	+ even if it’s waived, can be re-imposed and still be condition Richards
 |
| **Where and How** | s 33 – sets out presumptive rules* 2 – takes place at seller’s business place
	+ Be ready for buyer to retrieve – no transportation
* 3 – specific gd
	+ If know gd is at some location – that’s the place for delivery
 |
| **Quantity** | S 34* 1 – if deliver less 🡪 may reject
	+ Reason- quantity= condition
	+ 2 – if accept, have to pay at K rate
* 2 – more
	+ A – accept what’s included in K n reject rest
	+ B – reject whole
	+ 3 – if accept all, pay at K rate
* 5 – mixed with gds of a diff description not included in K may
	+ Accept the ones in accordance w/ k n reject the rest
	+ Reject the whole
* Quantity includes packaging when specified packaged in certain way Re Moore

Implication * Should try to argue its mixed good
	+ Reason – can accept what u want n reject the rest
		- Whereas too much/ too little – have to accept all / reject all
 |
|  | **Delivery by instalment****Solution**1. Put in K expressly2. Argue K is severable – * break up the K into diff transaction🡪 diff K
* prob – allocation of price
	+ esp when single price is paid for whole K
	+ can have pmt coordinate w/ delivery

**approach** 1. If K not severable and not separately paid – * 15(4) – if K is not severable and accepted part of gd
	+ Cannot reject

2. K – unseverable but separately paid for* 35 (1) –not required to accept delivery by installment unless agreed otherwise
* (2) – if **k to be delivered by instalment**
	+ Requirement
		- Separately paid for – separate allocation for pmt
			* Timing is irrelevant – just need to be allocated to each instalment
		- Set out what instalments involves
	+ Breach
		- If seller makes defective deliveries in one / more Or
		- Buyer refuse to take delivery / pay
	+ Effect – depends on K term n circumstance, can be
		- a – repudiation Or
		- b – severable breach – compensation claim only
	+ **S 39 test** Maple Flock
		- 1. Quantitative ratio – breach vs K as a whole
		- 2. Degree of probability it will likely to be repeated
			* If earlier – more likely to reject, later, less likely
* adv – gives you more option

3. Severable* Acceptance of 1st delivery doesn’t affect other deliveries
 |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Sec** | **Buyer** | **Seller** | **Limits** | **Gives (substance)** | **Gives (remedy)** | **Types of K** |
| 17 | Any  | Any | Sale by description/sample | Corres w/ description | Term/damages | K of sale |
| 18(a) | Must reveal purpose & reliance | Supplier | Trade name | Fits particular purpose | Term/damages | K of sale |
| 18(b) | Any | Dealer | Sale by descry/exam limits | Merchantable quality (for some purpose) | Term/damages | K of sale |
| 18(c) | Any | Any | N/A | Durability for reasonable t | Term/damages | K of sale |
| 19(2)(a) | Any | Any | Sale by sample  | Correspondence between bulk & sample | Term/damages | K of sale |
| 19(2)(b) | Any | Any | Sale by sample | Opportunity to compare bulk & sample | Term/damages | K of sale |
| 19(2)(c) | Any | Any | Sale by sample – reasonable exam | Mercha qual unless obvious from sample | Term/damages | K of sale |
| 38 | Any | Any | No price examination & s.39 acceptance | Opportunity examine before accept | Term/damages | Agmt o sell |

# Remedies

## General Principle

* **2 source**
* **Rights** – remedy
* **Power** – can do sth, relief
	+ can be asserted even if can’t find other party
* both- can be
	+ real – against the world
	+ real – against the other party

|  |
| --- |
| **Primary Obligation**  |
| **Sellers** * real - transfer of property rights
* personal:
	+ desc rights
	+ quantity rights
	+ quality rights
	+ delivery rights
 | **Buyers** * personal –
	+ rights
		- pay
		- accept
 |
| **Remedies** |
| **Rights of buyers** * real – lien
	+ get access to certain property that is in possession of the seller
* personal – damages

LEADS TO * personal – sp/injunction
 | **Powers of buyer*** real – seizure
* personal – termination of k (right to reject)
	+ k at an end
* personal – seek sp/ injunction
 |
| **Rights of seller*** personal – damages
* personal – debt
 | **Power of seller*** real- lien
* personal – termination of k
 |

|  |
| --- |
| Money Remedies |
| Compensation | **Compensation & Restitution** | **Punishment & Restitution** |
| * Damages for profit – expect
* Damages for costs – reliance
* Damage for interest
	+ able to gain money by having it for the length of time
	+ assessed using H v Bax
	+ usually have to show u lost the ability to use the $$
 | * Debt/ liquidated damage
* Substitution for Return of Property (Damage)
	+ In certain situation need to return the property but if can’t return then pay money damage instead
 | * Disgorgement of gains
 |
| Basis * Fault/remoteness
* H v Bax –
	+ Natural/general damages
		- no specific info
	+ Specific circumstances
		- Specific info
 | **Basis*** Strict liability
 | **Basis** * Unjust enrichment
 |
| Also consider:* Mitigation
* Time of assessment
* Limit. / exclusion clause
 | **Also consider*** Penalty clause
* Time to value property
 | **Also Consider*** equities
 |
| Look at what P have loss | Middle ground* agreed to this
* has both idea
* no punishment element in it
	+ only compensation
 | Loss at what D has gain * shouldn’t allow to profit from their breach of k
* sometimes in K – can show that even tho haven’t loss anything,
* not fair for other party to keep what they have so have to gorge profit
 |

# Buyers’ Remedies

* **Right to reject**
	+ **Entitlement to reject**
		- Condition - 15(2)
		- Intermediate term n grave consequences
		- Wrong quantity / mixed gds – 34
		- Instalment deliveries – 35
	+ **Consequence of proper rejection**
		- Refuse to pay price / recover price if already paid
		- Not bound to return goods – 40
		- Damages still available
	+ **Loss of right to reject goods**
		- Specific gd
			* If property has passed – 15(4)
				+ Consider 23(2)
		- Acceptance of gd – 39, 15(4)
			* I- Express acceptance
			* II- Performance of act inconsistent w/ seller’s ownership
				+ 38 – right to examine is subordinate to this
			* Iii- lapse of reasonable time
		- Acceptance of Part of Goods
			* Severable K with instalment deliveries – depend on s 35
			* 15(4) – applies where K is not severable
				+ 34(5)
* **Specific performance**
	+ Authorized by s 55
* **Buyer’s lien** – 74-81
* **Damages**
	+ Non-delivery n late delivery
		- general principles – s 54
			* 2 – measure – loss directly n naturally resulting
			* 3 - -available mkt – mkt price when gds should be delivered
				+ No market – prima facie recover loss of profit
		- Claim for sub-sale 57, 54(2)
			* Need – specific sale, seller knowledge
		- Late delivery
			* Cost of substitute or
			* Diff in mkt price btw date of breach n date of delivery
	+ Breach of condition / warranties
		- Availability – 56
		- If breach, innocent buyer may:
			* Set up warranty against price 56(1)(a) OR
			* Maintain action for damages 56(1)(b)
		- If opt for 56(1)(A) – damage still available 56(4)
		- Measure
			* General principle – 56(2)
		- Breach of quality – 56(3)
		- Subsale – 57

|  |
| --- |
| Right to Reject |
| 15(2)- **right to reject** | **General Principle*** if seller repudiate the K – buyer has right to reject gd
	+ If accept party’s repudiation🡪 terminating the k
 |
| **problem with quantity** 34(1) – can reject if too little 34(3) – too much 34(5) – mixed gd – can accept ones that conform n reject the rest * Applicable in 2 situation
	+ 1. Gds are inconformity mixed with gds that are not in conformity
	+ 2. Gds are delivered but only some are in conformity
		- Diff – severable/ identifiable component
			* Not mixed together
				+ Can also argue – too little is delivered
 |
| **Installment k** * 35 – allows to reject
* constraints on use of remedy
* 15(4)- If not severable n accepted / K for specific gd
	+ - Only treat as breach of warranty – cannot reject
 |
| **Loose Right if** | 1. Specific good* 15(4) – specific gd + property passed
	+ Court – reluctant to find that property in specific gd pass right away Wojawkoski
		- Will attempt to read around it – so have a chance to reject
	+ Solution – s 34(5) – if argue its mixed gd, can reject some n accept the others
 |
| 2. Acceptance - 39, 15(4) - Acceptance of goods - s 39 – buyer is deemed to have accepted gds when* a – **express acceptance**
* b – buyer does any **action** which is **inconsistent with ownership of seller**
	+ often used to make s 39 – kick in earlier
	+ includes
		- 1. Change the product in some way
		- 2. Don’t have them immediately available for seller to retrieve Hardy
			* at moment you reject – must have immediate access to return them to seller
				+ Reason – if put them out of seller’s reach – inconsistent

Can’t reject gds that are outside your control * + - * Implication - If claiming to reject gd n have attempt to send them off
				+ Recall – if in possession when announce rejection

May work – if still w/in reasonable testing period * c – **lapse of reasonable time**
	+ assume u kept the gd for a reasonable time – u r contempt
	+ length of reasonable time – depend on circumstance
		- seller’s inducement – can extend the reasonable period Rafuse Motors

S 38 – if gds are delivered to buyer and had not previously examined* not deemed to accept – unless and until had reasonable opportunity to examine them
* if breached
	+ have opportunity to terminate K
* prob –trumps by s 39
	+ if made acceptance – b4 had reasonable opportunity to examine Hardy
		- then does not come into play
		- comes into operation even if the reasonable period (s 38) has not expired

**effect*** if accepted – cannot terminate
	+ only breach of warranty
 |
| Right to Damages |
| 54 – **non-delivery** | 1 – damages for no delivery * + for nonfeasance/ non-performances

2- measure of loss – loss directly n naturally resulting * + Damages to sub-contract can be compensated if other party has “general knowledge” that you intend to enter into K Re Hall

3 – damage measurement – mkt/current price – K price * + @time of delivery – when it ought to occur
		- Additional money you have to pay to purchase the item back
	+ Idea of what is the mkt – question of fact
 |
| 56 – **breach of warranty**  | **Can elect to treat breach of condition as breach of warranty**1 – breached the warranty -* + perform poorly 🡪can get damages

2- measure – estimated loss * + Hadley v Baxendale *–* first branch
		- General damages- the mere fact of entering into the k leads to the loss if breached

3 – damage = value of gd would have had if k performed – value of gd at time of delivery * + - Applies to all breach of warranty – ignore “quality” in provision

Burden* On buyer to establish: breach
	+ Presume – goods are not worth anything unless evidence to contrary Ford Motors
	+ Onus – on party in breach to establish the value of gd Ford Motors
 |
| 57 – **special damages**  | Hadley v baxendale – second branch * Special circumstances / particular reasons why enter into K
	+ Can recover – if explain to other party special circumstances b4 enter into K
	+ Other party took the burden @ time entering into K to pay for the loss if incurred
 |
| **Approach to damages** | 1. Hadley v baxendale-**Remoteness test*** Basic idea – only responsible for risk that you knew / should have known at time enter into K Koufos
	+ K – about allocation of risk
* As long as the special circumstance was known n probable result – able to claim it Re Hall
	+ Does not matter if it fits in 1st / 2nd branch – as long as the special info is conveyed

Elements* 1. Loss that is fairly and reasonably which arises naturally
	+ Comes from actual obligations of the k terms Koufos
* 2. In reasonable contemplation of the party as a probable breach of it
	+ Have burden to explain the special circumstance Koufos
		- If not – other party not responsible for it cuz did not contractually agree to it
	+ If not in K terms – not part of obligation🡪 special damages Koufos
	+ “general knowledge” is enough- do have to know the special circumstances Re Hall
		- don’t need detail
		- Just need to know in a “general way” that’s what the party’s intention
			* Ie – know intended to enter into sub-k but k wasn’t enter into at time of K

Vs torts test* Koufos – different test
	+ K – allocation of risk
	+ Tort – abt accidents, must take them as u find them
		- Reasonable foreseeability – generalized way should foresee
* Parsons – same
	+ If can bring in both tort n k claim – no reason to have diff test
		- Prof – think its strong argument
* SCC – seem to be saying its diff test
	+ Uncertainty
 |
|  | **2. Other factors to consider**Principles of compensation * Purpose of K damage Chicoutimi
	+ Merely to compensate – no more n no less
* Principle – trumps all case n statutes
	+ Various cases n statutory provision – simply illustration of basic principle
		- Should not be used if results in things other than compensation
* Expectation interest – put you in place if k were to be carried out
 |
| Mitigation * When considering loss of profit – need to consider mitigation Sunnyside House
	+ At certain stage need to go out n obtain replacement
 |
| Date and time **–** for assessment  |
| Special vs general * Loss incurred/Reliance damage – sustained cost that you ought not to have sustained
	+ General damage – difficult to est
		- Reason – loss are usually very particular to the person
* Loss of profit
	+ Can be general / special damage
 |
| Overcompensation * Profit
	+ If claim all profit + all cost – likely overcompensation
	+ Profit – deduct the cost / expense 🡪 net profit – not overcompensation
* If looks like its overcompensation - Buyer has to elect – loss of profit or cost Cullinane
	+ General proposition – free to elect one or the other
		- Unless one is unclear – then no choice
* Possible to claim both – but court will go through each n decide Sunnyside
	+ May claim for period during which breach is the effective cause of loss
		- +other heads of damages
	+ Consider – mitigation
* If shows will sustain loss when K carried out – no damages awarded Bowlay
	+ Loss> K 🡪 saved from further loss
	+ Reason –damage supposed to compensate n put u in position as if k was carried out
* Usually would use Cullinane to attach others claim and use Sunnyside House to justify own claim
 |
| Emotional distress* Can be compensated
* Requirement
	+ Breach of k puts you in emotional state opposite of what you would be if k has been carried out
* Assessed not calculated – not mean to be precise, meant to be best guess
 |
| Specific Performance and Injunction |
| S 55- **Specific Performance** | **Specific performance –** 55* idea – damage is not adequate
	+ all the money couldn’t get you what u want
* requirement
	+ 1. Has to be specific/ ascertained good
		- Need to know what exactly they are ordering
	+ 2. Why is it that money can’t buy you substitute
		- Need to be unique in certain sense
* Extremes
	+ Only specific performance for specific/ ascertained gd Re wait
	+ Can get injunction for future/ unascertained gd even if there’s mkt for it VIP petroleum
		- If will go out of business
 |
| Statutory Remedies |
| **Types of lien** | Specific – gives you right of some sort / claims over property when that property is the property that gave rise to the claimGeneral lien – allow to have access to property other than property that gave rise to claim  |
| **Buyer’s lien** | Requirement* 75(1) –
	+ A – buyer paid
		- Some / part of price
	+ B – unascertained/ future gds
		- Can be for specific gd – if its future gd
	+ C – buyer: good faith + primarily for household/private use
 |
| Get* 75(2) – amt buyer gets for purchase price – not whole amt
* A - Against all gd that come into seller’s possession
	+ Requirement
	+ I – in possession of seller for resale
		- any gd seller currently has / will get in future
			* Held for resale – doesn’t have to be owned by seller
	+ II – corresponds to description
		- for agreement to sell
			* Consumer situation – won’t be very precise
	+ III – property has not passed to another buyer
* B – lien against any acting in savings institute
	+ Where usually deposits proceeds of sale
 |
| Loose lien if* 76(1)
	+ A – seller fulfills K Or
	+ B – refund the money
* 2 – doesn’t affect buyer’s right to argue breach of K
* 3 – if gds are appropriated to sale made in gd faith to a diff buyer –
	+ Property sold to another
	+ Ambiguity- does not say anything about specific future gd
		- may argue – can go to new buyer n get the good back
 |

# Buyer’s Obligation

|  |
| --- |
| Basic Obligation  |
| S 31 – **Basic Obligation** | **1. Accept the good*** S 39 – how buyer fulfills the particular obligation

**2. Pay for them** * Unless otherwise agreed – pmt should take place at same time as delivery s32
* Time of pmt not of essence unless diff intention appears in K 14(1)
 |
| S 14 -Time of Payment | * stipulation as to payment time
	+ Not deemed to be essence unless stated otherwise
	+ Cannot argue K failed for certainty of terms DeKeyser
		- when there’s no provision regarding pmt time
			* Reason – statute says concurrent obligation with delivery s 32
 |
| **Aspects of payment*** Time
* Aspect
* Form
	+ Who’s currency?
	+ If K is silent – simply cash
 |

# Seller’s Rights and Remedies

* **Real remedies**
	+ **General –** available to unpaid sellers 42
	+ **Lien –** 43(1)(A), 44
		- Does not rescind K – 51(1)
		- Particular/ specific lien
		- Seller must be in possession
		- Part delivery – lien available s 45
		- Termination if:
			* 46(2)- seller paid
			* 46(1)(a) – delivery to buyer’s carrier
			* 46(1)(c), 50 – seller waives lien
	+ **Resale by seller –** 43(1)(c), 51
		- Rescind original K – 51(3) or(4)
		- New buyer – gd title against original buyer -51(2)
		- Available if express clause allows resale – 51(4)
		- Available if perishable gds – 51(3)
		- Avaialble if notice to buyer of intention – 51(3)
		- Rights to damages remain – 51(3) and (4)
* **Personal Remedies**
	+ S 41**- buyer neglect/ refuse to take delivery of gd**
	+ 52 **–** **action for price**
		- Available when property has passed n buyer neglects / refuse to pay 52(1)
		- Available where – no payment on set day 52(2)
			* Thought property has not passed
	+ 53 – **damages for non-acceptance**
		- Available whether or not property has passed
		- Measure
			* General principle- 53(2)- ordinary course
			* Available mkt – 53(3) – ref to mkt price

|  |
| --- |
| Categories of Remedies  |
| **1. Real remedies** | Claim against property – can go out and use the property in particular way * 1. Automatic real remedies – virtue of statute, usually work in particular situation
* 2. Contractually agreed upon – more useful for seller
 |
| **2. Personal remedies** | main remedies – money* 1. Debt - liquidated amt that has not been paid but ought to be paid
* 2. Damage – secondary in nature
	+ Can get on top of damage – usually get the interest

Equitable remedies – possible but usually use money * Unless very particular case
 |
| Real Remedies |
| S 42 | defines unpaid seller |
| 43- **remedies** | (1)- 3 remedies that sort of work together A – **lien on the good u have not been paid*** + In seller’s possession
		- Don’t have to own but have to possess
	+ Particular lien – on the gd for the price
		- Can only exercise lien on the particular gd that give rise
			* If multiple delivery k – cannot exercise lien on gds for later delivery for pmts that’s for earlier delivery Snagproof

B – right of stopping g in transit when buyer insolvent C – **right of resale** * + The “actual” remedy – seller wants
		- Able to sell – even if don’t have property
		- Allows to sell to 3rd party n pass on gd title
	+ **Issues with resale v property**
	+ If property with seller – Protection needed
		- * 1. Against original buyer – breach of k
	+ If property with buyer-Seller needs 2 additional protection
		- * 1. against original buyer- conversion claim
			* 2. Against new buyer – breach of k
				+ Would not be able to pass on gd title according to common law
 |
| (2) - if seller had possession + property* Right of resale provision – not important since have property
* Right to withhold delivery – w/out breaching k
 |
| 45 – **part delivery** | part delivery – unclear section * Unpaid seller – made part delivery
	+ May exercise right of lien / retention on remainder
	+ Unless waived lien
* Apply when- single payment but delivery made at diff times
	+ Part delivery made
	+ Then whole pmt was due – if not made, can hold rest of delivery
	+ Ie one pmt obligation for multiple delivery
 |
| **Effect of exercise the lien / resale on k**  |
| 51- **effect of lien** | (1)- **K is not rescinded** by mere exercise of lien/ retention * Rescind=termination here –
	+ Lien – simply puts a hold on delivery obligation
* K is still alive
 |
| (2)- **new buyer gets good title** * Protection
	+ Only claim against original owner
		- Other ppl w/ interest on property – still has claim
	+ Seller - no breach of K w/ new buyer
* Requirement
	+ New buyer has to act in good faith
		- Incorporated by common law
 |
| (3) – **perishable good/ notice to buyer to resale** * If buyer doesn’t pay w/in reasonable time
* May resell n recover damages from original buyer for loss
* Protects – seller
* Irrelevant whether there’s actual resale
	+ K is terminated and property goes back to seller – Ward
		- Still able to claim damages – but has to give credit to the value of gd
 |
| (4)- **K terminated if** **expressly reserves right** of resale in case buyer default – * Original k terminated – when buyer default
	+ If doesn’t included in K 🡪 51(3)
* Protects – seller from original buyer for conversion
* Prob
	+ Only get here – if put the right of resell in K
		- And does resell the gd
 |
| Personal Remedies |
| **1. Debt -** S 52 | **action for price*** 1 - action against buyer for gd if
	+ Property passed to buyer
		- If property does not pass – only action for damage Cooley
		- Even if buyer is refusing property to pass on purpose – Stein
			* If not pass – no action for price
	+ Buyer refused to pay
* 2 – action for price if
	+ Price is payable on certain day
		- Has to be an actual day
	+ Buyer refuse to pay
	+ Even if property in gd has not passed and gds have not been appropriated

Problem* If property has not passed – only claim for damages
	+ Mitigation n remoteness will come into play
 |
| **2. Damages**   | substitute for sth that’s not money obligation |
| S53 – damages for non-acceptance* 1 –buyer wrongfully neglects/ refuse to accept n pay
	+ Seller – action for non-acceptance for damages
* 2 – damage – directly n naturally resulting
* 3 – general damage calculation = k price- mkt price
	+ If there’s available mkt
	+ Timing – at time gd ought to have been accepted
		- If not set – time of refusal to accept

**Special damage –** can argue would have 2 transaction instead of one if:* 1. Buyer ought to have realize u r in business of selling this gd
	+ Demand – multiple buyers
* 2. Prove would have suffered loss of one sale
	+ Supply – unlimited supply, supply > demand – can claim Bayda
		- If limited supply – demand>supply Charter
			* Haven’t loss a sale
			* Cuz- had no more gds to sell if next buyer comes along
* Exception-
	+ Used goods – cuz they are nature/ unique in nature Lazenby
 |
| S 41 (1)– buyer’s liability if delay in acceptance* A – damage cuz of neglect/ refusal to take delivery
	+ Usually Special damages – need to show buyer knew about circumstance
	+ Remoteness test – doesn’t seem to apply
* B – reasonable charge for care n custody of gds
* Prob
	+ According to wording – as long as seller is ready to deliver then triggered
	+ But seller may be ready too early – buyer not yet has to accept
 |
| S 57 – special damages * Includes - interest, advertising cost, overhead cost
* Special damages – peculiar to special situation
 |
| **Diff btw the two**  | Debt – Standard Radio * Remoteness, mitigation doesn’t apply
* Equity – usually comes in here
	+ Liquidated damage – can be said to be penalty clause- can’t use it
	+ Deposit – might be able to get it back / reduce it
 |

# Transfer of Title by Non-Owner

|  |
| --- |
| Exception to Nemo Dat |
| 26 – **sale by person not owner** | 1 – true owner estopped from denying title in buyer* **Except**- unless owner’s conduct precludes owner from denying seller has authority to sell
	+ true owner create scenario 🡪 estopped to raise true ownership
	+ if 3rd party bought under this situation – can acquire gd title even if seller doesn’t
	+ application
		- only if 3rd party thought they became the owner Shaw
			* not enough if 3rd party will become the owner

effect – depend on statement underlying the estoppel |
| 27 – **market overt** | * Only in BC
* If gds acquired in mkt overt – acquire gd title
	+ Mkt overt- publicly accessible market
* Requirement
	+ Bought in gd faith
	+ w/out notice of defect of title

effect – good title |
| 28 – sale under voidable title | * Seller – voidable title
	+ Voidable title – cuz there was misrepresentation
	+ Ex. Original owner present self as owner but she wasn’t
* Buyer – good title if
	+ Seller’s title not avoided
	+ Gd faith
	+ w/out notice of seller’s defect

Situation * A (original seller) 🡪 B (buyer to A, voidable title, seller to C) 🡪 C (new buyer, good title)
	+ B made misrep/ unconscionable act to A – voidable title

A’s recourse* 1. Can rescind K and get property back –
	+ Requirement
		- At in time – b4 its sold to 3rd party
		- Communicate when made election to void the K
		- Altho required Car and Universal Finance
			* If circumstances doesn’t allow – can comm in another way
				+ Ex. Do it publicly
* 2. If already sold to 3r party – only action against B, cannot get property back

C’s title* Good title – even tho B have voidable title
	+ But other interest –will still attach to it

Effect- buyer acquires gd title if gd faith w/out notice |
| 29 – **if gds are stolen** | **property revest to original owner** * Requirement
	+ Gds stolen
	+ Offender prosecuted to conviction for theft
		- If plead guilty/ charge with sth else – doesn’t lose title
 |
| 30 – **seller / buyer in possession after sale** | 1 – **seller in** *continuous* **possession** – of gds already sold* Seller – having sold gd
	+ Still in possession of gd
* 3rd party – gets title if purchased the gd
	+ as if seller was possessing as the agent for owner of gd
		- even if seller doesn’t own good

requirement - 3rd party has to show* seller – used to be owner of gd
	+ irrelevant if not owner anymore/ agency taken away Pacific Motor
* seller – had to be in continuous possession Pacific Motor
	+ gds cannot have left their possession – since they were owner
	+ possession is all that’s required
		- don’t need authorized to be in possession Cooden
* sale / transfer of interest to 3rd party
	+ irrelevant if voluntary/ not – as long as gd faith Cooden
* acted in gd faith and w/out notice

protection* + 3rd party buyer only
	+ Does not protect the seller – original owner can bring action against them
* Issue – 3rd party – better to be in possession of gd
	+ Can argue – if received some interest but not necessarily possess the goods
* Benefit
	+ Purchaser- can take any interest
		- Covers all transfer of interest

Effect – buyer receives whatever true title owner has  |
| 3 - **buyer in possession*** seller in possession cuz was buyer under earlier K-
	+ but seller doesn’t necessarily have title
* buyer – has gds they don’t own
	+ ex. Buy on credit n get possession but no title until pay off balance
* 3rd party – still get good title
* If enter into agreement to sell the vehicle w/ rogue Head v ICBC
	+ Not theft – cuz rogue is buyer in possession
		- 3rd party gets gd title

Effect – seller deemed to be mercantile agent for true owner – buyer receives whatever title true owner has |
| 51- **lien** | Overlaps with s 30 – allow seller to transfer title even if don’t have title * Effect- buyer gets gd title as against original buyer
* Seller has exercised lien over unpaid good
* 2 – when resell new buyer gets gd title

Effect – buyer get gd title as against original buyer  |
| 59– **disposition by a mercantile agent** | (1) – if agent acting in ordinary course of business 🡪 transaction – is valid * If looked like had authority to enter into transaction
	+ Ie have a K with principal

requirement* agency has to be found
	+ Even if agent is acting out of the authority
* If other party acted in gd faith and no notice
 |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  **Sec**  | **Protects**  | **Protects from**  | **Protected gets**  | **Legal Device**  | **Pre-Req**  | **Caveat**  |
| 26  | buyer  | owner  | title owner had  | agency by estoppel  | owner’s conduct precludes denial of seller’s authority  | need sale?? (not agreement to sell)  |
| 27  | buyer  | owner  | good title  | legal magic  | market overt, good faith, no notice  | could lose title through s. 29 (prosec. to conv. for theft)  |
| 28  | buyer (when seller has voidable title)  | seller to buyer’s seller (previous seller)  | good title  | regular transfer rules  | sale to buyer before rescission of previous contract  |  |
| 30(1)  | transferee/ purchaser  | owner  | interest promised  | quasi-agency  | transferor is seller in possession, good faith, no notice, actual transfer or disposition  | can be affected by PPSA  |
| 30(3)  | transferee/ purchaser  | owner  | interest promised  | deemed mercantile agency  | transferor is buyer in possession, good faith, no notice, actual transfer or disposition  | can be affected by PPSA  |
| 51(2)  | new buyer  | original buyer  | good title  | quasi-agency  | unpaid seller exercising lien  |  |
| 59(1)  | person taking under disposition  | owner  | interest promised  | agency - ostensible authority  | merc. agent in possession, good faith, no notice  |  |