

# Rights and Remedies under the *Sale of Goods Act*

## 1. Is this a sale to a consumer?

- What is a consumer? The goods must be under \$40,000, for domestic, personal or household use under [s 3 ACL](#).
- Or if more than that amount, goods which were of a kind ordinarily acquired for personal, domestic or household use or consumption, or the goods consisted of a vehicle or trailer acquired for use principally on public roads.
- If falls under the definition of consumer then it is ACL, if not, commercial transaction and subject to the SOGA

## 2. Is this a contract for the sale of goods?

In order for SOGA to apply it must satisfy three elements:

Must be a **Contract** for the **Sale** of **Goods**

Contract - [s 6 SOGA](#)

- Regular conditions of contract must apply – offer, acceptance, consideration and capacity
- When goods are to be exchanged at the time of sale, contract = sale
- When agreement to sell at future time/according to a condition, the contract = agreement to sell
- Can be in writing, verbal, express or implied [s 8 SOGA](#)

Sale

- Must be for ownership of the goods

Goods

- [s 5\(1\) SOGA](#) – must be tangible property, not services, only choses in possession not choses in action

## 3. Has risk passed?

*This will determine liabilities between the parties and which party is to bear any loss or damage to the property. Risk will generally pass when property passes*

- General rule is that risk passes when property passes [s 25 SOGA](#)
- Goods must be ascertained for risk to pass with property [s 25 SOGA](#)
- If specific goods have been destroyed at the time of entering into the contract then the contract is void [s 11 SOGA](#)

- Goods perish after contract is made then risk has passed and the contract can only be avoided [s 12 SOGA](#)
- If goods are unascertained there are no grounds for avoiding agreement because there are no particular goods attached to the agreement and seller must find replacement goods to satisfy the performance of the contract and avoid being in breach

#### 4. Has property passed?

- Property passes when the parties intend it to pass [s 22 SOGA](#)
- Property in unascertained goods cannot pass until those goods are ascertained.
- Where the parties have not evidenced a contrary intention, certain sub-rules set out in the [s 23 SOGA](#) apply.

Refer to mind map 'Section 23 Rules for Ascertaining Intention'

#### 5. Has title passed?

- Nemo dat rule
- Seller can only pass as good as title as the seller possesses and the buyer can not obtain a better title to the seller

#### 6. Is there an exception to nemo dat?

- If an exception to the nemo dat operates, the buyer can obtain full title to the goods, regardless of any defects in the title of the seller.
- Consider also whether the PPSA applies. The PPSA applies where the transaction, in substance, secures the performance of an obligation (such as payment of the price) or is otherwise deemed to create a security interest.

[S 26 SOGA](#) sale by person not the owner

Estoppel (owner of goods is prevented by their conduct from denying the seller's authority to sell) *Big Rock v Esanda*

Sale under a voidable title

- *Jiao Chen v Sell* your car fast