

Topic 3: Contracts for the sale of goods

- **Two types of agreement which affects remedies:**
 1. **Sale** – property in the goods transferred at the time of transaction
 - Can sue for price agreed to be paid for the goods: s 55
 2. **Agreement to sell** – property in the goods transferred in the future or is conditional
 - Remedy is damages which may or may not be the contract price: s 56
- Interference with possession
 - (a) **Trespass** – wrongful taking
 - Goods must be in possession on P when wrong occurs
 - Must be a wilful or negligent act: Manton v Brocklebank
 - (b) **Detinue** – wrongly detaining it
 - (c) **Conversion** – wrongly disposing of it (don't return & sell it)

Sale of goods – Definition

- S 6(1) defines a **contract of sale of goods** as one 'whereby the seller **transfers** or agrees to transfer the property in **goods** to the buyer for money **consideration** called the price'.
- S 3(1) defines '**goods**' as including all **chattels personal** other than things in action and money. The term includes **emblemments** and **things attached to** or forming part of the land which are agreed to be severed before sale or under the contract of sale.
- Goods include all '**chattels personal**' other than:
 - Chose in action – e.g. shares
 - Money
 - Does not include real property and fixtures: Theo Holdings
- **Specifically includes:**
 - Emblemments (*annual* crops) grown to be harvested – e.g. crops of grain or potatoes
 - But does not include things growing naturally on the land like fruit trees, which is largely the production of nature as opposed to industry of mankind: Saunders v Pilcher
 - Items attached to land which are agreed to be severed before sale, eg: S 3
 - Timber, provided it was agreed to be felled under the K: Egmont
 - A known and defined mound of rock, mineral from a seller's land: Mills v Stokman
 - House which included removal, relocation, restumping and repair: Symes v Laurie
 - Fibreglass swimming pool affixed to the land by a third part installer: Tranquillity Pools
- **Software**
 - Off the shelf computer hardware and software are goods: Toby Constructions
 - A disc containing software is goods – if the program is defective, then goods are defective
 - **Program code not goods** (sale of software delivered by **online download**): Gammasonics

Classification

1. **SPECIFIC GOODS** (s 3(1)) – specifically identified and agreed upon an actual item at the time of contract – e.g. this particular car (not a similar one)
 - Property passes when contract is made
 - E.g. Brand new car (not specific as not made yet) vs second hand car in front of you
 - These are the unique goods subject to the contract
 - Specific goods can be future goods if reliant on another contract (see below)
 - Therefore it is whether P can identify the good specifically
2. **UNASCERTAINED** – (not defined in GA)
 - Not specifically identified:

- Generic goods – could come from anywhere
 - Ex-bulk goods – from a particular source
 - It is not possible to transfer property in unascertained goods
 - You cannot acquire title until it is known what the title relates to: Re Goldcorp Exchange
 - Can still obtain a claim for damages in contract
3. **ASCERTAINED** – are unascertained goods that have been specifically identified after the contract was entered: Re Wait
- Note: These are not specific goods because they are only identified after the contract is made
 - For example, the sale of wheat from a silo – once it is loaded into a container then it is ascertained.
 - So where the goods are in bulk, ascertainment does not occur until the goods are **separated from the bulk**:
 - Re Stapylton Fletcher – ascertainment occurred because the customer's wine was separated from the common stock and kept in another part of the warehouse. Wineseller had a book recording separation.
 - Re London Wine Co – no appropriation from the bulk to answer particular contracts, but customer received a 'certificate of title'. Orders could be filled from any source, not necessarily existing stocks.
4. **FUTURE GOODS** – not in the possession of the seller – may need to be acquired or manufactured:
- **Ascertained** – E.g. Picasso (Lady in Blue) painting coming up for auction – future because the seller does not yet hold the painting. Another e.g. you're dad's car when he passes (already exists).
 - **Unascertained** – to be manufactured, to be built
 - Where a contract for sale deals with future goods it is an agreement to sell goods – s 10 Goods Act
 - Without property in the goods the seller cannot transfer title. [But see Nemo Dat]
 - After the goods are ascertained the property is transferred as the parties intend: Akron Tyres v Kittson

Money consideration

- S 6(1): Must be a payment or promise of payment of money (not barter/exchange)
- S 13(1): Price may be –
 - Fixed by contract
 - Determined in a manner specified by the contract
 - Determined by a past course of dealing
- S 13(2): If the price cannot be determined, the purchaser must pay a reasonable price
 - What is reasonable will depend on the circumstances of each particular case but, in any event, if a term as to a reasonable price is to be implied, it may only be implied where the parties have reached agreement on all other essential terms: ANZ Banking Group v Frost Holdings

Transfer of goods

- **The agreement to sell or actually selling**
- S 6(3):
 - **Sale**: transfer of property takes place **on the date of the contract**

- **Agreement to sell:** transfer of property takes place in the **future** or on fulfilment of a condition (cooling off period)
- S 6(4):
 - **Agreement to sell** becomes a sale on the elapse of a specified time or on fulfilment of condition.

Contract

Formation

- **Contract for work and materials vs contract for sale of goods**
 - In the case of a contract for work done and materials supplied the property in the materials will not pass at the time of contract but only once the work has been done and materials supplied, or where relevant, installed: Aristoc Industries
- **Contract for supply and installation of an article, whether:**
 - A single contract for work and materials? **Or**
 - 2 contracts: sale of goods and contract to install?
- **No written contract required under GA – S 8**
- **Formation of contract may therefore be:**
 - In writing
 - Orally
 - Partly in writing and partly oral; or
 - Implied from conduct

Sale of Goods vs Work done (W&M)

- **Necessary to establish if property has passed:**
 - In order to determine who bears the risk of loss or damage to goods
 - When B goes bankrupt and S wishes to claim goods (not stand in liquidation line)
 - To determine whether S can sue for price
 - To determine whether B must treat a breach of condition as a breach of warranty: s 16(3)
 - To determine whether B can give good title in the goods to TP

Several tests

1. **Resulting chattel test:** Lee v Griffin (Dentist, Goods)
 - Dentist manufactured dentures then A died after dentures were made and after rejecting an appointment for a fitting. Court held if a contract results in the sale of chattel then it is a contract for the sale of goods.
2. **Installation of fixture:** Brooks Robinson v Rothfield (Lecture theatre, W&M)
 - Court held work and materials supplied because of the need to install the seats
3. **Substance of contract test:** Robinson v Graves (Painting, W&M)
 - Is the substance of the contract skill or the passing of goods?
 - Restaurant meal – sale of goods, the element of service being incidental: Lockett
4. **One contract or two:** Collins Trading Co v Maher (Heater, One contracts)
 - One contract to sell, installation was only ancillary

The tests for distinguishing the one from the other are unsatisfactory and imprecise: Hewett v Court