

TOPIC 2: CHOSSES IN POSSESSION

Abandoning goods

- Must be intention to relinquish goods (*Re Jigrose*)
- New owner must also show an act of appropriation: intention to possess (*Re Jigrose*)
- Possession requires that a person have sufficient control over the object. Control does not necessarily mean complete dominion as it is subject to the particular context and type of property (*The Tubantia*)

Legal Possession (*The Tubantia*)

- Necessary Elements –
 1. **Control**
 - Only applicable to tangible things
 2. **Intention**
 - Acts of control reveal intention to possess
 - **An intention to possess it**
 - The acts of control reveal an intention to possess

Engaging in Dealings in Choses in Possession

i) Concept of Delivery

- Where delivery occurs there is a change in possession of tangible property from one person to another (*Re Cole*)

ii) Transfer of Ownership

a) By losing & finding (*Parker v British Airways Board*)

1. **Has the chattel been abandoned or lost?**
2. **What is the basis for their claim?**

- *Owner*
- *Occupier*
 - ⇒ Superior rights to finder over chattels in or attached to land, whether or not aware of presence
 - ⇒ Occupier of building has superior rights over chattels attached to building, whether or not aware of presence
 - ⇒ Occupier of building has superior rights over chattels upon or in a building, if manifested intention to exercise control over building & things prior to finding
 - ⇒ Occupier manifesting such intention must take reasonable measures to ensure lost chattels are found & to notify owner & to care for chattels
- *Finder*
 - ⇒ No rights unless item has been abandoned or lost & finder takes it into his/her care & control
 - ⇒ Very limited rights if finder takes dishonestly or when trespassing.
 - ⇒ Acquires right to keep against all but true owner or person asserting prior right at time of finding.
 - ⇒ Servant or agent finding in course of employment or agency finds on behalf of employer or principal (if employer only provides occasion for finding, doesn't constitute the same principle)
 - ⇒ Obligation to take reasonable measures to notify owner & to care for it.

3. Where is the chattel (location)?

- Is it in or attached to land? Is it on the land?

b) By sale

- Role of common law (*SOGA* s 4(2)) = The rules of the common law, incl. the law merchant, save insofar as they are inconsistent with the express provision of this Act...shall continue to apply to contracts for the sale of goods...

1. Is the contract a contract of sales of goods within SGA?

- Meaning of goods (s 5)
 - 'includes all chattels personal other than things in action & money...'
 - Shares excluded (*Colonial Bank v Whinney*)
 - Human tissue excluded
- Meaning of 'contract of sale' of goods (s 6) (*Helby v Matthews*)
 - 'A contract of sale of goods is a contract whereby the *seller* transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price...' (s 6)
 - Includes agreement to sell
 - How is the contract made (s 8)
 - ⇒ It may be made 'in writing (either with or without seal), or by word of mouth, or partly in writing & partly by word of mouth, or may be implied from the conduct of the parties:
 - Provided that nothing in this section shall affect the law relating to corporations.'
- Working out when such a contract exists (*Robinson v Graves*)
 - Test = what is substance of K?
 - ⇒ 'Production of something to be sold' or 'For the exercise of skill & it was only incidental that some materials would have to pass'
- Giving effect to the terms of the contract (*McEntire v Crossley*)

2. When does property pass under a contract of sale of goods?

- Starting point:
 - Intention of parties (s 22), subject to ascertainment (s 21) (*Goldcorp*)
 - ⇒ Starting point = s 22
 - (a) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
 - (b) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties & the circumstances of the case.'
 - ⇒ Have to read in the words 'to be' before ascertained so that we understand that where there is a contract for the sale of specific/to be ascertained goods, then property is transferred at such time as the parties intend
 - ⇒ (1) Starting point, irrespective of classification of goods = intention
 - ⇒ General view that (2) is a hierarchy: i.e. – terms of contract → conduct of parties → circumstances of the case in that order
 - ⇒ Watch out for terminology: specific, unascertained, ascertained
 - *Specific* – 'goods identified & agreed upon at time of contract of sale is made' (s 5)

- *Unascertained (Re Goldcorp Exchange Pty Ltd)* – generic, generic from particular source, future by description (‘goods to be manufactured/acquired by seller after making of contract for sale’)
 - *Ascertained* - ‘unidentified when the contract was made but become identified subsequently as the contract goods’
- ⇒ S 21 exception: ‘Subject to s 25A, where there is a contract for the sale of unascertained goods, no property is transferred to the buyer unless & until the goods are ascertained.’ – Purchaser cannot acquire title until you know what goods purchaser wants to ascertain title (*Re Goldcorp*)
- ⇒ S 25A: contracts of sale for goods forming part of bulk quantity (designed to protect pre-paying buyer):
1. This section applies to a contract of sale for a specified quantity of unascertained goods of which some or all form part of a single bulk quantity of goods of the same kind (“the bulk”) if:
 - The bulk is identified, either in the contract or by subsequent agreement b/w the parties, &
 - The buyer has paid for some or all of the goods that form part of the bulk.
 2. Unless the parties agree otherwise:
 - Property in an undivided share in the bulk is transferred to the buyer, and
 - The buyer becomes an owner in common of the bulk,
 As soon as both of the conditions referred to in subsection (1) have been met
 - NB: Still problem in *Goldcorp* but assuming buyer has prepaid, then buyer will be a ‘co-owner’ of the bulk, so there is some protection
- ⇒ S 23 *Default Rules*:
- ‘Unless a different intention appears the following are rules for ascertaining the intention of the parties’ as to the time at which property in the goods is to pass to the buyer.’
 - **‘Rule 1.** Where there is an unconditional contract for the sale of specific goods in a **deliverable state**, the property in the goods passes to the buyer when the contract is made, & it is immaterial whether the time of payment or the time of delivery, or both, be postponed.’
 - ‘Deliverable state’ = In such a state, that the buyer would, under the contract, be bound to take delivery of them
 - **Rule 5(1).** ‘Where there is a contract for the sale of unascertained or future goods by description, & goods of that description & in a deliverable state are unconditionally appropriated to the contract either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, & may be given either before or after the appropriation is made.’ (look to *Carlos Federspiel* case)

- Need unconditional appropriation - The goods must be irrevocably earmarked and attached to the relevant contract (*Federspiel*)
 - Appropriation needs to be afforded the proper assent (*Federspiel*)
- Rule 5(2) deals with situation where a seller delivers goods to a carrier/bailee for the purpose of transmission to the buyer. In those circumstances, there is deemed to be appropriation (*Matthew Short*)