

## Sale of Goods Act 1896

### Threshold requirements

For the SGA to apply, the transactions described by **XX** must satisfy the provisions of 4. K's of sale includes agreements to sell (3, 8(2)). These K's may be in writing, orally or implied by conduct (6). Assuming that there has been a K of sale and money consideration for the goods, the SGA applies on the facts (4). The SGA provides for different categories of goods (3, 8). If goods are characterised as unascertained, property in the goods cannot pass to the buyer (19). Goods may become ascertained by application of common law principles or by legislation, when they are separated from the bulk (21 r5(2), *Re Goldcorp*). Once the property in the goods has transferred to the buyer, prima facie risk passes (23(1)).

### Categories of goods

**Existing:** may be existing goods, owned or possessed by the seller (8(3)).

**Future:** goods acquired or manufactured by the seller after the K of sale (3), future goods (8(1)), can never be specific goods, they are an agreement to sell (8(2)) because some condition needs to be fulfilled before property can pass i.e. modifications (4(3))

**Akron Tyre Co:** goods ascertained when brought into existence and appropriated to the K in accordance with intention of the parties i.e. pre-ordering goods

**Specific:** goods identified & agreed upon at the time a K of sale is made (3) i.e. the exact car in a show room

**Unascertained:** no definition in legislation

**\*Ascertaining goods:** no property can pass if not ascertained

*Re Goldcorp:* goods need to be removed from the bulk

*Re Stapylton Fletcher:* appropriation means that needs to be evidence of intention that the goods belong to the buyer, held – some inventory of wine not sufficient to appropriate goods

**\*By appropriation:**

*Carlos Federspell:* not merely setting goods aside

*Chateau Tahbilk:* exception, if implied/express assent of buyer

*Canberra Washed Sand:* can be done by selecting goods, labelling or loading for delivery, good authority

*James v Cwth:* can be done by shipping specified amount, but problem if mixed with goods of other customers

**\*By exhaustion:**

*Wait & James:* by exhausting complete stock of the seller, goods ascertained even though not unconditionally appropriated to the K

**Requirements**

*Re Goldcorp:* an ascertainable bulk

*Re London Wine Co:* no other supply source

### Property passing

19: When K for sale of unascertained goods, no property in the goods can be transferred to the buyer until the goods are ascertained.

*Jansz:* cannot K out of s19, facts – in new K for sale of tobacco, no labelling or details of tobacco to be supplied, term said "property in goods pass on upon signing of the K", held – not appropriated, not specific enough

*Re Wait:* ascertained goods are identified in accordance with the agreement after the K was made, facts – wheat not appropriated into K, couldn't identify what wheat belonged to each customer

20: Property passes when the parties intend if K for sale of specific or ascertained goods. Consider: terms of the K, conduct of the parties, circumstances of the case.

21: Set of rules to ascertain intention of parties.

**Rule 1:** Specific goods in a deliverable state

**Requirements**

1. Unconditional K

*McPherson v Dench Bros:* facts – cow sold at auction, cow ran away before buyer collected it, express intention of the parties that property passed at the time of K i.e. when the hammer went down

2. Sale of specific goods (3)

3. Goods in deliverable state (3(4))

*Kursell:* timber not cut to K'd length, not bound to accept

*Tarling:* haystack case, buyer chose specific haystack, didn't take hay home then, destroyed overnight in fire

**\*Conclusion:** Property will pass when the K is made, even if no payment or delivery takes place

**Rule 2:** Goods needing processing to be in deliverable state

**Requirements:**

1. Sale of specific goods (3)

2. Seller needs to do something to the goods to put them in a deliverable state (3(4))

*Wallace v Safeway Caravan:* facts – caravan purchased on condition that seller installed shower, stolen before work completed, held – property & risk hadn't passed

3. Buyer has notice

*Worcester Works:* not that seller gives notice, rather a knowledge requirement, hard to prove

**\*Conclusion:** Property doesn't pass until work is done and buyer has notice thereof

**Rule 3:** K for specific goods in deliverable state by seller bound to weigh, measure, test or do some other thing to ascertain price

**Requirements:**

1. Sale of specific goods (3)

2. Goods in deliverable state (3(4))

*Kursell:* timber not cut to K'd length, not bound to accept

*Tarling:* haystack case, buyer chose specific haystack, didn't take hay home then, destroyed overnight in fire

*Turley v Bates:* if onus on buyer, property deemed to be in a deliverable state

3. Seller needs to weigh, measure or test to ascertain price, needs to be a condition precedent to the K, cannot merely confirm what the buyer is getting but must determine price

*Nanka-Bruce:* weighing was merely to confirm buyer was getting what was K'd as price had been set

4. Buyer has notice

*Worcester Works:* not that seller gives notice, rather a knowledge requirement, hard to prove

**\*Conclusion:** Property doesn't pass until such act or thing is done & the buyer has notice

**Rule 4:** Goods on approval for sale or return

i.e. *seller gives the buyer products to try out, buyer says yes/no*

**Requirements**

1. Goods delivered on approval

**\*Conclusion:** Property passes when either the...

a) Buyer signifies approval/acceptance: express or implied from buyer's actions i.e. usage, hiring, pledging

b) Buyer retains goods: without notification of acceptance a time fixed by K has elapsed, or if no fixed time, after a reasonable time.

*Poole v Smiths:* the sellers conduct may be relevant in determining reasonable time i.e. requests to return

**Rule 5:** Unascertained or future goods

**Requirements:**

1. Goods of that description

2. Goods in deliverable state (3(4))

*Kursell:* timber not cut to K'd length, not bound to accept

*Tarling:* haystack case, buyer chose specific haystack, didn't take hay home then, destroyed overnight in fire

3. Unconditionally appropriated to K

a) Ascertainment by appropriation

b) Ascertainment by exhaustion

4. With the assent (express/implied) of the other party (r5(1A))

i.e. *if ordered something that you know will chosen from bulk, once chosen for you = risk and title may pass*

**NB:** If seller delivers goods to buyer, the seller is deemed to have appropriated the goods to the K (r5(2))

34: If seller is authorised by the buyer to use a carrier, delivery of the goods to the carrier = delivery to the buyer.

*Healey v Howlett:* but if goods in carrier for number of customers, goods not appropriated to the individual K's

## Risk

23(1): Unless otherwise agreed, risk prima facie passes with property, whether delivery has been made or not.

23(2): **But**, if delivery delayed through fault of buyer or seller, the goods are at the risk of the faulting party.

a) If goods perish after agreement to sell, but before sale: agreement is avoided (10), only applicable to specific goods, like CL frustration

*Asfar:* perished doesn't require the goods to be totally destroyed, just altered by damage/deterioration that they have become something other than what is described in K

*Horn v Minister for Food:* rotten potatoes weren't perished

b) If goods have already perished at time of sale:

K is void (9), like CL doctrine of mistake

*McRae:* no application if the goods have never existed

23(3): Bailee duties of seller or buyer still apply

i.e. *if risk has passed to buyer, but seller still has goods*

*Houghland:* seller must take reasonable care of goods

*Edwards v Newland:* seller must comply with any express terms of bailment, not excused of liability even if accidental damage, unless loss would have occurred without breach

*Tarling:* buyer could have bailee obligations under RoT

## Performance of the contract

### Duties of the parties

29: Duty of the seller to deliver the goods. Duty of the buyer to accept & pay for them.

30: Seller must be ready & willing to give possession of the goods to the buyer. Buyer must be ready and willing to pay the price in exchange for possession.

### Delivery

3: voluntary transfer of possession

31: SGA won't interfere with intentions of parties, but provides assumptions if intention not clear A

**\*Place of delivery**

31(1A): seller's place of business, if none, sellers' residence

31(1B): if specific goods, the place where the goods are held to the knowledge of the parties

**\*Time of delivery**

31(2): as fixed by K, if not, reasonable time

57: reasonable time is a question of fact

31(4), (4A): reasonable hour otherwise ineffectual delivery

**\*Goods in possession of a bailee**

31(3): no delivery until bailee acknowledges goods held for buyer

**\*Cost of delivery**

31(5): costs of putting goods in deliverable state are sellers, unless otherwise agreed

**\*Wrong quantity**

32(4): subject to trade usage & previous course of dealings

32(1): less than K'd – buyer can reject, if accepted then pay at K'd rate

32(2): more than K'd – buyer can accept amount K'd, reject balance or reject whole (if whole, pay K'd rate (32(2A))

32(3): mixed with uncontracted goods – buyer can accept K'd good & reject others, or reject whole

**\*Delivery by instalments**

33(1): buyer not bound to accept, unless agreed

*Beherend:* buyer entitled to receive delivery of the whole amount

33(2): if agreed to instalments & 1 instalment, possible repudiation for whole K or severable breach

*Maple Flock:* can instalments be dealt with separately? consider ratio of instalment to whole & probability of repeated breach

**\*Delivery to carrier**

34(1): delivery to carrier is prima facie delivery to the driver

34(2): seller must K with carrier on reasonable terms

34(2A): if seller not K'd on reasonable terms & goods lost/damaged in transit, seller may be liable for the loss

## Remedies

**Buyer:** (see tabs)

*Chao:* breach of condition gives

right to rescind, lost if property in specific goods has passed (14(3))

52: non delivery & damages

53: specific performance

**Seller** (see tabs)

50: action for price

51: non-acceptance damages

41: unpaid sellers' rights

42-44: retain unpaid goods

45-47: stop goods in transit

49: resell the goods

## Personal Property Securities Act 2009

Came into force 30 January 2012.

### Advantages of granting security interests

Remedy lies in rem, priority over unsecured creditors in bankruptcy or liquidation, self-help remedy, increases possibility of repayment, decreases risks.

### Threshold issues

#### Personal property

10: property other than land, or a right granted by law

e.g. tangible items, intangible items, financial property

8: exceptions inc. wages (8(1)(f)(iv)), statutory interests (8(1)(b)), general law liens (8(1)(c)), pawnbrokers (8(1)(ja)&(6))

#### Security interest

12(1): a SI is an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation

*Dura Construction:* usually arise from a SA between parties, consensual

12(2): specific examples

a) fixed charge – right to cease if debt not repaid

b) floating charge – secures assets that fluctuate i.e. stock

c) chattel mortgage – bank takes lease over trucks

d) conditional sale agreement – RoT

e) hire purchase agreement

f) pledge

h) consignment – giving goods to someone to sell for you

i) lease of goods – could be a PPS lease

**Is it a deemed security interest?**

*Doesn't need to meet the in substance test.*

12(3)(b): commercial consignment

12(3)(c): PPS lease

13: lease/bailment for min. duration of 2 years i.e. café using X's coffee machine for indefinite period without charge, but has to use X's coffee

13(2): not a PPS lease if lessor/bailor not regularly engaged in business of leasing/bailing

*Rabobank:* engaging in business of leasing/bailing for the 1st time is okay

*Re Maiden Civil:* would have been a PPS lease if registered = PMSI

### Attachment

#### Attachment required for enforceability

19(1): SI cannot be enforced against the G until SI attaches to the collateral

#### Attachment rule

19(2): SI attaches when:

(a): G has rights in collateral or power to transfer rights in collateral – e.g. order a car, don't have possession but have K, can finance based on K

**Trade Finance:** beyond legal & equitable rights, full ownership not required, any proprietary interest is enough, even if voidable title, facts – itrade lent money to fraudulent company

**Ontario Inc:** but agreement subject to condition, unusual, facts – condition that machinery had to be electrically cert, not done, held – ALLPAP perfected by reg but K invalid, no SI because condition not completed

*Re Maiden Civil:* lessee can grant SI in leased property, see also 19(5) PPS lease or conditional sale bailment when G has possession = interest, facts – construction vehicles leased long term by MC from

QES, QES didn't perfect SI as PPS lessor, MC granted SI to another financier who had perfected., MC stopped paying lease fee to QES, financier SI okay.

**Relux v Docker:** ordering goods is sufficient

**Scott Auto v Becker:** cannot grant SI to stranger to the K

(b) and either:

(i): value is given for the SI – e.g. could be promise to finance

10: value = consideration sufficient to support K

**Pettyjohn:** agreement to provide loan funds at a later date ok

**Erjo Investments:** must represent real legal value

**Re Terminal Moving:** value doesn't need to be provided to SP or G

(ii): G does an act by which SI arises e.g. RoT's, obtaining rights to property, taking possession of the property, signing an agreement

**OR 19(3):** parties can agree on the time of attachment, but timing of attachment doesn't affect operations of the default priority rule (55/Healy Holmberg).

**19(5):** possession of PP by G is sufficient right to grant a SI if: goods leased or bailed to the grantor under a PPS lease (13), consigned to the G, sold to G pursuant to conditional sale agreement.

## Enforceability

### General rule

**20(1):** SI enforceable against 3rd party if:

(a): SI is attached to collateral and

(b): One of the these ...

(i): SP possesses the collateral or

(ii): SP has perfected the SI by control or

(iii): SA for SI covers collateral in accordance with 20(2)

**20(2):** SA needs to ...

\*Be in writing: signed by G (a)(i) or accepted by G by act or omission (a)(ii)

**Carrafa, Goutzos:** letting staff on worksite = acceptance

**Central Cleaning v Elkerton:** trade usage, several invoices in one email

**Universal Handling v Redipac:** person signing must know it is a SA

\*Contain:

(b): One of the these ...

(i): Description of collateral or

**Gateway Hotel v CIR:** merely listing as collateral not enough for SI

**19(4):** "consumer" or "commercial" property (defn 10) + reference to item or class or

**Re Apollo Fitness Academy:** 'equipment' was sufficient, is a question of commerciality

**Canadian Case:** 'shelving' sufficient

**19(5):** "inventory" + only while PP is held/leased by the G as inventory

See **Community Futures v Spargo**

(ii): a statement that SI taken in ALLPAP or

(iii): a statement that SI taken in ALLPAP except specific items/class

## Proceeds

**20(6):** SI in proceeds is enforceable against 3rd party even if proceeds not included in SA. Subject to s32.

## Perfection

Perfection is relevant to priority, but does not affect validity of a SI or enforceability between G and SP (BoM v Innovation Credit Union).

### How to perfect

**21(1):** A SI in particular collateral is perfected if ...

(a): temporary perfection

(b): all of these ...

(i): SI attached to collateral

(ii): SI enforceable against 3rd parties

(iii): 21(2) applies

**21(2):** Subsection applies if ...

(a): effective registration in the collateral or

10: defn of financing statement

153: info needed for financing statement

**588FL Corps Act:** companies have 20 business days to register SI

(b): SP has possession of the collateral or

**Re MC United:** possession of share certificates

24: defn of possession, beyond actual possession

(c): SP has control of the collateral – inc. ADI account, investment instrument, letter of credit, satellites, space objects

25-29: relevant sections

### Effect of registration

**Graham v Portocom:** P (owner) didn't register interest b/c didn't realise it was a SI. G issued ALLPAP to bank. Bank registered SI = perfected. Held – bank had priority b/c perfected interest beat P's unregistered interest.

**Waller v NZ Bloodstock:** Lock (financier) perfected SI by registration. NZB didn't register SI over horse. G (farm) defaulted under lease with NZB & it was terminated. NZB repossessed horse. Lock claimed horse under registered SI Held – NZB's interest was not registered, Lock had priority.

### Perfection before attachment

**21(3):** SI may be perfected regardless of when attachment occurs

**BC v Advanced Wing:** can register before attachment

**151:** only register early if reasonable belief that there will be an SI, otherwise civil penalty

### Single registration, multiple interests

**21(4):** a single financing statement may perfect multiple security interests

**Why?** Commercially convenient, 1 lodgement fee, SI's must be same type.

## Registration

**150:** A SI is registered by registering a financing statement.

### Effective registration

**153:** Information to be included in financing statement (see tab)

▪ item 1: secured party

▪ item 2: grantor, exception if consumer property described by serial no.

▪ item 3: addresses to give notices to

▪ item 4: description of collateral

\*commercial or consumer? (10)

\*serial numbered?

**PPSR Sch 1 Part 2 Clause 2.2**

(1)(a): class of collateral described as consumer property must be described by serial number: aircraft, intangible property, motor vehicles, watercraft

(1)(c): class of collateral described as commercial property may be described by serial number: aircraft, intangible property, motor vehicles, watercraft

**Examples:** go kart – motor vehicle, light rail carriage – not a motor vehicle, waterski – watercraft, drone – not aircraft

\*class of collateral?

**PPSR Sch 1 Part 2 Clause 2.3:** agriculture, aircraft, ALLPAP, ALLPAP except, financial property, intangible property, motor vehicles, other goods, watercraft, other goods

\*proceeds?

**PPSR Sch 1 Part 2 Clause 2.4:** ALLPAP, a particular item, a class of personal property

### Procedure

Pay fee

**151:** apply to register a SI if belief on reasonable grounds that party will become SP

**161:** may be registered prior to SA & attachment (advise client)

**155:** verification statement, with priority time & date

**156:** give verifications statement to SP

**157:** give notice to grantors, exception if commercial property & grantor waived right to receive notice

**271:** contravention of procedure = grantor can claim damages

### Time of registration

**160:** registration = when description of collateral becomes available for search

**162:** "registration time" = a financing statement may be registered before or after the transfer of SI or of collateral

**163:** "effective registration" = effective until the earliest of these ...

(a): end of time in the financing statement

(b): the amended financing statement time

(c): when description of collateral no longer available for search

### Defects in registration

**164(1):** registration is ineffective because of a defect in the register if ...

(a): seriously misleading defect

(2): don't need to show that someone was actually misled

**Polymers International:** failure to include incorporation number of corporate grantor - SMD

**Re Hoskins/Fairbanx Corp:** recording the G's name incorrectly - SMD

**Service Foods v NZ:** describing collateral as ALLPAP when SI was narrower – not SMD

**Future Revelation v Medica:** stating the SP's ABN, not CAN – not SMD

(b): a defect mentioned in 165

**165:** particular defects

(a): where collateral must be described by serial no & isn't (Kellin v Strasbourg)

(c): if ticked PMSI box when it isn't

**BUT 166(2):** registration is effective for the period starting at the defect time & the end of 5 business days after the day the SP acquires actual or constructive knowledge of the defect.

**NOTE 44:** When the regulations prescribe property may or must be described by serial number on registration & on search of register immediately prior to sale or lease using serial number only it does not disclose registration – the buyer/lessee will 'take free' of the SI, unless buyer/lessor holds the property as inventory.

## Priority

### Default priority rules

**55(1):** Used to determine which SI has the first right of enforcement

\*Unperfected SI vs unperfected SI

**55(2):** first to attach has priority – no specific time limits to register, but advise client to register before another party comes along

**Sperry v Canadian Imperial Bank:** 2 secured parties both unregistered i.e. A and B. A appoints receiver, B goes on register after this. Held – can't register after receiver has been appointed.

See notes on 588FL Corps Act.

\*Perfected SI vs unperfected SI

**55(3):** perfected interest has priority, as long as in the same collateral, even if later in time

**Graham v Portocom:** Lessor failed to perfect PPS lease, lessee defaulted & bank sought to enforce interest. Held – priority dispute because SI created.

**Re Maiden Civil:** registered SI can beat legal title if person who has legal title also has a registered SI, registration meant that FF had perfected interest.

\*Perfected SI vs perfected SI

**55(4):** first in priority time will prevail

**Advanced Wing Tech:** distinguish between perfection & registration

**Healy Holmberg:** confirmed that register has primacy

**55(5):** "priority time" = the earliest of these ...

(a): registration time

160: usually just after financing statement has been completed

(b): taking of possession or control

(c): temporary perfection/perfected by force of the act

**55(6):** must be continuous perfection

**56: Adelaide Capital v Integrated Transportation:** SI may be continuously perfected in various ways i.e. possession then RoT

**NOTE 61:** SP may voluntarily subordinate SI – agree to rank in certain order

## PMSI – Purchase money security interest

The exception to the rule – PMSI's have super priority.

**62(2)(c)(3)(c):** must indicate PMSI on reg. in accordance with s153 item 7

## Definition

**14(1):** Any of the following ...

(a): RoT – SI taken in collateral to secure part of purchase price

(b): Lender's PMSI – SI taken in collateral by provision of value to enable the G to acquire rights in collateral (but for test) – "provides funds to enable X to do Y", lenders PMSI loses if conflict b/w PMSI's

(c): PPS lease – see 13

(d): Commercial consignment

## Exceptions

**14(2):** A PMSI is not ...

(a): Sale or lease back agreement – selling valuable assets to company, leasing it back from them

(b): An interest in collateral that is a chattel paper, investment instrument, intermediated security debt, negotiable instrument

(c): If collateral at time of attachment is predominantly for domestic, household or personal use, unless described by serial number (2A)

## Super priority

**62(1):** A PMSI gets super priority over other SI's in the same collateral

**Re Clark Equipment:** substance not form, but for test

**Pristas v Landaus:** if lenders PMSI, must be actual intention, about a specific property

**NOTE:** SA can create a general SI and a PMSI, but PMSI must be on a separate financing statement

\*Inventory

**62(2):** If the collateral is inventory or its proceeds, the PMSI must be registered before:

- possession or delivery of goods
- the SI attaches (if not goods)

10: "inventory" = held by person to be provided under a K for services, raw materials, work in progress, used or consumer by the person as materials - i.e. stock, paper for printer

\*Not inventory

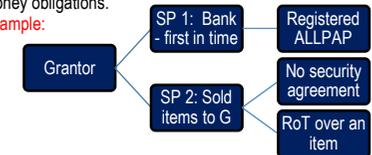
**62(3):** If the collateral is not inventory or its proceeds, must be registered within 15 business days of:

- possession or delivery of goods
- the SI attaches (if not goods)

## Mixed PMSI's

**14(3):** If SI in collateral secures obligations covered by (7) PMSI and other obligations, the SI is a PMSI only to the extent that it secures the purchase money obligations.

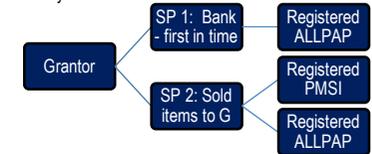
Example:



RoT clause says "property to pass when all monies paid". SP 2's PMSI limited to the one item covered.

**14(4):** If a SI is granted in PP that secures a purchase money obligation, together with other collateral, the SI is a PMSI only to the extent that it is granted in the purchase money collateral.

Example:



SP 2 has SI over collateral, will only have super priority with respect to items sold under the RoT. If G defaults & SP 2 seizes & sells item for 1/2 the value, SP 1 will rank last for remainder of the price. I.e. PMSI limited to the value of the RoT covered item.