

### ***Transferring ownership of choses in possession by sale***

Here, the question is whether S or B has the stronger claim to ownership of the #. If S validly transferred ownership of the # to B, B will have the better claim. This may have occurred through sale, governed by the ***Sales of Goods Act 1923 (NSW)***. The common law continues to apply unless inconsistent with express provisions in the Act (***SGA s 4***).

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

*The SGA likely applies as the agreement appears to amount to a contract for the sale of goods within the meaning of SGA s 6.*

1.1. # would fall under the SGA definition of goods as it is a chattel personal and not a CIA

- ***Colonial v Winney***: shares are choses in action
- Not money, but antique coins are: not currency but commodity

***SGA s 5(1)***: Goods include all chattels personal other than things in action and money. The term includes emblements and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

1.2. The contract between S and B involves S transferring/agreeing to transfer the # for money consideration (SGA s 6(1)).

***SGA 6(1)*** 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. There may be a contract of sale between one part owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled, subject to which the property in the goods is to be transferred.

1.2.1. It does not matter that this contract was made orally/by conduct (***s 8***)

***SGA s8***: a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties:

1.2.2. It is an agreement that imposes a binding legal obligation on both parties. (***Helby***)

- However, it may be in substance a hire purchase contract, which is not a sale as the hirer is under no legal obligation to buy the goods (***Helby v Matthews***).
- Looking at the transaction as a whole, it was/was not the intention of the parties that property should pass (***McEntire v Crossley***): RoT arrangement = sale
- There is nothing inconsistent with contract to pass goods (***McEntire***)

1.3. The contract must be in substance for the production of the good to be sold, not for the provision of skill/care/labour, with goods passing only incidentally (***Robinson v Graves***).

- Here, the contract in substance is for the sale of #. Although labour/skill is required in making it, this is incidental and is not sufficient to move the contract outside of one for sale (***Lee v Griffin***). Making a bargain for the manufacture of future goods to be delivered when they come into existence (***Robinson v Graves***)
- Not an intricate design
- Unlike in ***Robinson***, where the contract was for the artist's skills and the transfer of the paint and materials was ancillary, here...
  - Not SOG: electricity, information (a service): ***Telstra v Hurstville Council***
  - Not SOG: Software by remote download: ***Gammasoncis v Comrad***
  - Not SOG: contract with printer to print and deliver book (***Clay v Yates***)
  - SOG: supply of software and information where it is incidental to the sale of a tangible computer disk (***Amlink Tech v Aus Trade Commission***)
  - SOG: delivery of hardware, with incidental intellectual property (software): ***Toby Constructions v Computer Bar***
  - SOG: Contract to manufacture false teeth: ***Lee v Griffin***
  - Other: lawyer drafting will (not); tailor producing custommade suit (goods); artist providing 10 signed copies of original painting (goods)

## 2. Has property passed under the **SGA**?

*Second, it needs to be established when ownership actually passed: if it has not passed yet, S still retains ownership.*

- **S 5**: Property transfer requires totality of interests, not limited interest e.g. possession
- 2.1. The starting point is determining when the parties intended that the property be transferred (**s 22(1)**).

**SGA 22 (1)** 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.

(2) 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, and the circumstances of the case.
  - 2.2. However, whatever the intention, a potential problem arises in that the goods may not be actually ascertained. No property is transferred to the buyer unless and until the goods are ascertained (**s21**).
  - 2.3. **S 22** applies to goods that are specific or to be ascertained
    - 2.3.1. Specific goods are those identified and agreed upon at the time a contract of sale is made (**s5(1)**). Here, at the time of contract...
    - 2.3.2. Unascertained goods have not yet been identified and will not be identified until after the contract has been made. Under **Goldcorp**, these may be generic, generic ex bulk, or future goods by description.
      - Generic = no predetermined source, get # from anywhere and deliver
      - Generic ex bulk = get x # from particular source e.g. my farm
      - Future: to be manufactured to particular specification (specific/unascertained)
  - 2.4. However, the goods may have become identified and agreed upon after the date of the contract and are therefore ascertained (**Goode textbook**) as they were segregated from bulk/ascertainment by exhaustion of all other #
    - 2.4.1. If they are ascertained, they potentially can pass. However until the parties are agreed on the specific individual goods, the contract is merely a contract to supply goods answering a particular description (**Goldcorp**): even equity cannot pass unascertained goods
  - 2.5. Here, it is unclear when parties intended property to pass
    - 2.5.1. Intention is drawn from the terms of the contract, the conduct of the parties, and the circumstances of the case (as a hierarchy)
      - Significance of payment: payment on signing contract does not mean property has passed, it is unclear
  - 2.6. If intention cannot be established from the **s22(2)** elements, **s23** provides default rules.
    - 2.6.1. As # are specific goods, **rule 1** applies

**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, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed. s 5(4): 'Deliverable state' when they [the goods] are in such a state that the buyer would under the contract be bound to take delivery of them. Relevant time property passes – time at which the contract is made. NB – default rule, parties may have intended otherwise.

      - Payment/delivery don't need to have happened, just deliverable state
    - 2.6.2. As # are unascertained/future goods by description at the date of contract, **rule 5** applies:

**Rule 5: (1)** Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and 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, and may be given either before or after the

s 5(4)"Goods are in a "deliverable state" within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them"

(2) Where in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer and does not reserve the right of disposal, the seller is deemed to have unconditionally appropriated the goods to the contract.

      - Deliverable state (seller doesn't need to do more)
      - Need unconditional appropriation with relevant assent (**Carlos Federspiel**)