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Ownership

Legislation:

- Sale of Goods Act 1895 (WA) (SGA); and
- Sale of Goods (Vienna Convention) Act 1986 (WA) (VC).

Cases:

- Re Wait; and
- Carlos Federspiel & Co v Charles Twigg & Co.

Determining ownership is important if one of the parties becomes insolvent.

- Seller wants to claim the goods to resell.
- Buyer wants to claim the goods that they have bought.

Art 4 Sale of Goods (Vienna Convention) Act 1986 (WA): This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

- (a) the validity of the contract or of any of its provisions or of any usage;
- (b) the effect which the contract may have on the property in the goods sold.

VC does not deal with the transfer of property.

1. Are the goods specific or unascertained?

s60(1) Sale of Goods Act 1895 (WA): Specific goods mean goods identified and agreed upon at the time a contract of sale is made.

2. When does ownership of the goods pass?

s16 SGA: Goods must be ascertained

Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

- Refer to **s18 Rule 5** below.
- **Re Wait:**
 - S sold 500 tonnes of wheat to B out of 1000 tonnes.
 - S became insolvent.
 - Buyer paid in advance.
 - Sale was for unascertained goods (s16) and could not be said to be unconditionally appropriated (s18 Rule 5) so property had not passed to B.

- B was an unsecured creditor.

s17 SGA: Property passes when intended to pass

(1) Where there is a contract for the sale of specified 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.

- ***Carlos Federspiel & Co v Charles Twigg & Co:***

- B bought bicycles.
- S went into liquidation before delivering them.
- Under the FOB terms of the contract, S had to deliver the goods onto a named ship; risk passes at the ship's rail.
- Court determined that parties intended for property to pass upon shipment.
- Bicycles were still at S's warehouse so property had not passed.
- B was an unsecured creditor.

s18 SGA: Rules for ascertaining intention

Unless a different intention appears, the rules [below] apply for ascertaining the intention of the parties as to the time at which the 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, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

Rule 2. Where there is a contract for the sale of specific goods, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof.

Rule 3. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price the property does not pass until such act or thing be done, and the buyer has notice thereof.

Rule 4. When goods are delivered to the buyer on approval or on "sale or return", or other similar terms, the property therein passes to the buyer –

- (a) when he signifies his approval or acceptance to the seller, or does any other act adopting the transaction;