

Contents

AGENCY: RATIFICATION	5
INTRODUCTION.....	5
PURPORTING TO ACT FOR P.....	6
P'S COMPETENCE.....	6
WHO CAN RATIFY.....	7
ACT OF RATIFICATION	7
COMMUNICATION OF RATIFICATION	8
RATIFICATION BY ACQUIESCENCE AND ESTOPPEL.....	9
MATERIAL FACTS.....	9
RATIFICATION OF WHOLE	10
LIMITS TO RATIFICATION	10
AGENCY BY NECESSITY	13
INTRODUCTION.....	13
DOCTRINE OF UNDISCLOSED PRINCIPAL	14
INTRODUCTION.....	14
RIGHTS AND OBLIGATIONS	14
ELECTION	16
LIMITATIONS	16
RIGHTS AND OBLIGATIONS OF P, TP AND A.....	17
INTRODUCTION.....	17
DUTIES OF AGENTS	17
DUTIES OF PRINCIPALS AND RIGHTS OF AGENTS.....	21
AGENT'S LIABILITY TO TP	23
P'S LIABILITY TO TP.....	24
SETTLEMENT	25
GUIDE TO AGENCY PROBLEM-SOLVING.....	27
CONTRACTS FOR SALE OF GOODS	31
GOODS ACT 1958.....	31
GENERAL	31
PROPERTY	32
GOODS	34
CATEGORIES OF GOODS.....	35
MONEY CONSIDERATION	37
TRANSFER OR AGREEMENT TO TRANSFER THE PROPERTY IN THE GOODS	38
CONTRACT FOR WORK DONE AND MATERIALS SUPPLIED.....	39
HIRE PURCHASE	41
BAILMENT	41
GUIDE TO SALE OF GOODS V CONTRACT FOR WORK DONE AND MATERIALS SUPPLIED.....	42
TRANSFER OF PROPERTY UNDER THE <i>GOODS ACT 1958</i>	43
INTRODUCTION.....	43
UNASCERTAINED GOODS.....	44
ASCERTAINED GOODS.....	45
RULES FOR PASSING OF PROPERTY S 23	46
RULE 1: SPECIFIC GOODS IN A DELIVERABLE STATE	46
RULE 2: SPECIFIC GOODS NOT A DELIVERABLE STATE	48
RULE 3: SPECIFIC GOODS TO BE WEIGHED, MEASURED OR TESTED TO ASCERTAIN PRICE	50
RULE 4: GOODS DELIVERED ON APPROVAL OR ON SALE OR RETURN	51
RULE 5: UNASCERTAINED OR FUTURE GOODS	53
RISK.....	56
NEMO DAT S 27.....	59
EXCEPTIONS TO NEMO DAT.....	60
ESTOPPEL S 27.....	60
MERCANTILE AGENT SS 67-68.....	62
VOIDABLE TITLE S 29	64
SELLER OR BUYER IN POSSESSION SS 30-1	65

POWER OF SALE COURT ORDER S 26	67
GUIDE TO PASSING OF PROPERTY PROBLEM-SOLVING	68
WHERE GOODS ARE SPECIFIC	68
WHERE GOODS ARE UNASCERTAINED	68
TRANSFER OF TITLE BY NON-OWNER	69
IMPLIED TERMS UNDER THE <i>GOODS ACT 1958</i>	70
GOODS ACT OR ACL?	70
INTRODUCTION	71
TITLE – S 17	75
RIGHT TO SELL S 17(A) - CONDITION:	75
QUIET POSSESSION S 17(B) – WARRANTY	76
FREE FROM ENCUMBRANCE S 17(C) – WARRANTY	77
CORRESPOND WITH DESCRIPTION – S 18 – implied condition	78
1) SALE BY DESCRIPTION:	78
2) WHAT WORDS:	79
3) CORRESPOND:	82
FITNESS FOR PURPOSE – S 19(A) – implied condition	82
1) MAKES KNOWN PARTICULAR PURPOSE	83
2) RELIANCE ON SELLER’S SKILL AND JUDGEMENT	84
3) COURSE OF SELLER’S BUSINESS	86
4) PATENT OR TRADE NAME EXCEPTION	87
BREACH	87
MERCHANTABLE QUALITY S 19 (b) – implied condition	88
1) SALE BY DESCRIPTION:	88
2) DEALS IN GOODS OF THAT DESCRIPTION	90
3) PRIOR EXAMINATION	90
BREACH	90
SAMPLE S 20 – implied condition	92
GUIDE TO IMPLIED TERMS <i>GOODS ACT</i> PROBLEM-SOLVING	94
CONSUMER GUARANTEES UNDER THE <i>ACL</i>	96
GOODS ACT OR ACL?	96
INTRODUCTION	96
CONSUMER	99
TITLE S 51	100
QUIET POSSESSION S 52	101
UNDISCLOSED SECURITIES S 53	102
ACCEPTABLE QUALITY S 54	102
FITNESS FOR DISCLOSED PURPOSE S 55	105
SUPPLY BY DESCRIPTION S 56	107
SUPPLY BY SAMPLE OR DEMONSTRATION S 57	107
REPAIRS AND SPARE PARTS S 58	108
EXPRESS WARRANTIES S 59	109
SUPPLY OF SERVICES SS 60-62	109
GUARANTEES NON-EXCLUDABLE S 64	111
LIMITATION OF LIABILITY PERMITTED S 64A & 64A(2)	111
REMEDIES PART 5-2	112
GUIDE TO CONSUMER GUARANTEES PROBLEM-SOLVING	113
INSURANCE: PRE-CONTRACTUAL	115
INTRODUCTION	115
UTMOST GOOD FAITH s 13	118
CONTRACT FORMATION	123
DUTY OF DISCLOSURE	127
MISREPRESENTATION	139
LIFE INSURANCE	143
GUIDE TO PRE-CONTRACTUAL INSURANCE PROBLEM-SOLVING	146
MISREPRESENTATION	146
NON-DISCLOSURE	146

INSURANCE: POST-CONTRACTUAL	148
INTRODUCTION.....	148
EXPIRATION, RENEWAL AND CANCELLATION	151
OTHER PARTIES	153
CLAIMS.....	155
BREACH BY INSURED OF TERM OF POLICY.....	157
PROFESSIONAL INDEMNITY POLICIES	159
FRAUDULENT CLAIMS	159
LOSS FALLS WITHIN POLICY.....	163
SUMMARY OF CHANGES FROM ICAA	163
GUIDE TO POST-CONTRACTUAL INSURANCE PROBLEM-SOLVING	165
CLAIMS.....	165

AGENCY: RATIFICATION

INTRODUCTION

General:

- ***Bedford Insurance Co Ltd v Instituto de Resseguros do Brasil***
 - o Unauthorised act by an agent, whether lawful or unlawful, is capable of being ratified
 - o Cannot ratify illegal transaction
- Possible where A exceeded authority or had no authority at all (***Firth v Staines***)
- Once ratified, P cannot withdraw

5 preconditions (***Firth v Staines***):

- 1) A must have purported to act for P
- 2) At time of A's act, P must have been competent (***Firth v Staines***)
- 3) Must ratify within reasonable time (***Life Savers Australasia v Frigmobile Pty Ltd***)
- 4) P must know all material facts
- 5) P must ratify whole transaction

Retrospective application:

- Ratification is retrospective (***Taylor v Smith***)
- Once ratified, it is valid and effectual from time of agent's act rather than time of ratification (***Danish Mercantile Co Ltd v Beaumont***)
- Treated as though agent had authority at the time (***Irvine v Union Bank of Australia***)
- Ratification must take place at a time when the ratifier might himself have lawfully done the act he is ratifying (***Bird v Brown***)
 - o This has been criticized as too wide. See ***Bolton Partners Ltd v Lambert*** instead.

Benefits to principal:

- **Hagedorn v Oliverson**
 - Not bound until ratification
 - Has the option to adopt or not

Subject to ratification:

- Not valid until ratification communicated to T by P (**Watson v Davies**)

PURPORTING TO ACT FOR P

General:

- A must have purported to act for P (**Byas v Miller**)
- Undisclosed principal cannot ratify (**Trident General Insurance v McNiece**)

Identity of P:

- **Keighley, Maxted & Co v Durant**
 - A authorised to buy wheat at a lower price. Bought at a higher price without disclosing it was for undisclosed P.
 - **Where A does not purport to act for P, or appears to act for himself, P cannot ratify**
 - P need not be named, but must have reasonable designation of who will be bound (P must be known or ascertainable (e.g. description) at time of contract (**Lyell v Kennedy**)
 - Potential beneficiary not an ascertainable P (**Trident General Insurance v McNiece Bros**)

Fraud:

- Irrelevant whether A, in assuming to act for P, has fraudulent intent (**Tiedemann and Ledermann Freres**)
- Forgery not capable of ratification (**Brook v Hook**)
 - Exception: Can simply make a new agreement with consideration (**Rowe v B & R Nominees Pty Ltd**)
 -

P'S COMPETENCE

General:

GUIDE TO PASSING OF PROPERTY PROBLEM-SOLVING

WHERE GOODS ARE SPECIFIC

- 1) Look for an intention (s 22). If intention, property passes with that intention.
- 2) If no intention, then go to section 23 rules.
 - a. Rule 1: Unconditional contract in a deliverable state. Passes when contract made.
 - b. Rule 2: Goods not in a deliverable state. Property passes when in a deliverable state and buyer notified.
 - c. Rule 3: Weighing/measuring to ascertain price. Property passes that is done and buyer notified.
 - d. Rule 4: Contract for sale or return. Property passes when buyer indicates approval, adopts the act, or doesn't return after reasonable time.
- 3) Also look at passing of risk (s 25) if this is an issue
 - a. If parties have stipulated this in the contract, that is what applies.
 - b. If not, then risk passes when property passes, unless:
 - i. Delay in delivery due to fault of one of the parties, which has caused damage/destruction; or
 - ii. Seller holding goods at bailee and breached obligation to take reasonable care

WHERE GOODS ARE UNASCERTAINED

- 1) Have goods become ascertained? If not, property cannot pass (s 21)
- 2) If yes, look for parties' intention (s 22). Property passes with their intention if it can be given effect to (i.e. not before they became ascertained).
- 3) If no intention or intention cannot be given effect to, apply s 23 rule 5
 - a. Passes when goods unconditionally appropriated to contract by seller with assent of buyer, or by buyer with assent of seller
 - b. Deemed unconditionally appropriated when loaded onto delivery truck