

Commercial Law

1. OVERVIEW	2
2. PERSONAL PROPERTY	3
3. SOGA	4
4. ACL	36
5. Financing Sale of Goods and Bailment	59
6. PPSA	66
7. PRIVATE INTERNATIONAL LAW	90
Revision	102

1. OVERVIEW

TOPIC	CONTENTS
Ownership, Possession and Transfer of Rights to PP	<ul style="list-style-type: none"> • Concepts and Principles of PP
Transfer of PP	<ul style="list-style-type: none"> • SOGA • ACL • International Aspects of Commercial Law (Vienna Convention)
Financing/Securing Interests in PP	<ul style="list-style-type: none"> • Bailment and Financing Sale of Goods (Basic Principles/types of interests) • Personal Property Securities Act



2. PERSONAL PROPERTY

- Title and Possession
- What are possessory rights; are they finders rights?
- If title; how and when did title pass?

TOPIC	CONTENT / LEGISLATION / CASE LAW										
Property as 'Bundle of Rights'	<p>'The concept of "property" may be elusive. Usually it is treated as a "bundle of rights".</p> <p><i>Murrandoo Bulanyi Mungabayi Yanner v Graeme John Eaton</i> [1999] HCA 53 ('Yanner v Eaton') Gleeson CJ, Gaudron, Kirby and Hayne JJ at [17]</p> <p>11 key elements to bundle of rights</p> <ol style="list-style-type: none"> (1) right to possess; (2) right to use; (3) right to manage; (4) right to income; (5) right to capital; (6) right to security; (7) power to transfer; (8) absolute, indefinite nature of rights; (9) duty of others to refrain from use; (10) liability to execution; (11) residual rights. 										
Classification of Property	<p>Classification of Property</p> <table border="1"> <thead> <tr> <th>Real Property</th><th>Personal Property</th></tr> </thead> <tbody> <tr> <td>A. Land (including interests in land)</td><td>A. Chattels real</td></tr> <tr> <td>B. Fixtures (things attached to land with an intention to remain fixed)</td><td>B. Chattels personal</td></tr> <tr> <td>C. Incorporeal hereditaments (e.g. easement)</td><td>B1. Choses in possession (chattels – things) <ul style="list-style-type: none"> • Animals • <i>Fructus industriales</i> </td></tr> <tr> <td>D. <i>Fructus naturales</i> (e.g. natural fruits of the land)</td><td>B2. Choses in action (rights enforceable by law or equity)</td></tr> </tbody> </table> <p>Chattel - A personal possession; Item of property other than freehold land, including tangible goods (chattels personal) and leasehold interests (chattels real).</p>	Real Property	Personal Property	A. Land (including interests in land)	A. Chattels real	B. Fixtures (things attached to land with an intention to remain fixed)	B. Chattels personal	C. Incorporeal hereditaments (e.g. easement)	B1. Choses in possession (chattels – things) <ul style="list-style-type: none"> • Animals • <i>Fructus industriales</i> 	D. <i>Fructus naturales</i> (e.g. natural fruits of the land)	B2. Choses in action (rights enforceable by law or equity)
Real Property	Personal Property										
A. Land (including interests in land)	A. Chattels real										
B. Fixtures (things attached to land with an intention to remain fixed)	B. Chattels personal										
C. Incorporeal hereditaments (e.g. easement)	B1. Choses in possession (chattels – things) <ul style="list-style-type: none"> • Animals • <i>Fructus industriales</i> 										
D. <i>Fructus naturales</i> (e.g. natural fruits of the land)	B2. Choses in action (rights enforceable by law or equity)										

3. SOGA

Answer Guide

Sales of Goods Act

Governs contracts for sale of goods → **Mainly relevant to commercial contracts** i.e. not usually consumers involved (businesses)

Step 1 - There must be goods (**s 5**)

Step 2 - There must be a contract (**s 6(1)**)

Step 3 - Implied Terms

(a) Title (**s 17(1)**)

(b) Sale by Description (**s 18**)

(c) Fitness for a Particular Purpose (**s 19(1)**)

(d) Merchantable Quality (**s 19(2)**)

(e) Sale by Sample (**s 20**)

Step 4 - Classification of Goods (**s 5**) Def. Specific, Future, Unascertained and Ascertained.

Step 5 - Remedies Breach of warranty for quality (**s56**)

1. APPLICATION

1.1. ARE THERE GOODS?

s 5(1) Sale of Goods Act 1923 (NSW)

"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.

Does not include:

- **Contracts for work and materials**
Robinson v Graves [1935] 1 KB 579 – if the skill and labour have to be exercised for the production of the contract – and materials produced incidental to this; that is not a sale of goods. Makes no difference as the subject of the contract is skill
- **Land**
- **Choses in action** – things in action – rights enforceable by legal proceedings such as negotiable instruments, debts, intellectual property
- **Fixtures** – but if fixtures removed (or agreed to be removed) prior to sale they are included

Note:

- Contract may set out the price or determined by course of dealings between parties (in some cases failure to fix price or method of ascertaining it – uncertainty).

<p>2. IS THERE A CONTRACT?</p>	<p>s 6 Sale and agreement to sell</p> <ol style="list-style-type: none"> (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. <p>[Note s 4(4) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.]</p>
--------------------------------	--