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SCENARIOS WHERE MULTIPLE TOPICS APPLY:

- SOGA, unconscionable conduct, unfair terms, ACL goods guarantees
 - ACL + international
 - Bailment + PPSA

SOGA 1923 (NSW)

STEP 1: DOES SOGA APPLY?

SOGA applies where a contract of sale of goods has formed within NSW with the objective of transferring property in goods from seller to the buyer in exchange for a money consideration (s 6(1)).

- NSW jurisdiction
- Seller =
- Buyer =
- Contract of sale = [ELEMENT 1]
- Goods = [ELEMENT 2]
- Property passes = [ELEMENT 3]
- Price = [ELEMENT 4]

ELEMENT 1: CONTRACT OF SALE

S 5(1): CONTRACT OF SALE = sale or agreement to sell

S 6(1):

(2) Can be **absolute or conditional**.

(3) **Sale** = property transferred from the seller to the buyer

Agreement to sell = property transfer at future time, or subject to some condition

(4) An agreement to sell becomes a sale when time elapses or condition fulfilled + property is transferred.

NOT:

- A license, lease, hire purchase, bailment
- A contract for **work and materials (Hewett v Court)**
 - "A contract to construct a house and erect it on the land which is intended to be its site is not a contract for the sale of goods" (**Hewett v Court**)
 - "The test is the parties' intention as to ownership of the goods to pass to the buyer before or after installation" (**Collins Trading**)
 - If property pass before installation, 2 contracts → supply of goods (house) + work and materials
 - Chosen specific goods
 - If property pass after installation, 1 contract → work and materials (making addition to land)
 - Ordered custom made future goods

ELEMENT 2: GOODS

S 5(1): GOODS = chattel personal other than in action and money - chose in possession - **movable tangible**
→ includes things attached to land which are agreed to be severed before sale.
→ does not include real property - land, fixtures

- **Future goods** = to be manufactured or acquired by seller after contract forms (s 5)
 - S 10(3): Sale of future goods = agreement to sell
- **Specific goods** = identified and agreed on when contract made (s 5)
 - E.g. "I want that black BWM right there"
- **Ascertained goods** = identified after time contract is made
 - E.g. "I want a black BMW"
- **Unascertained** = not identified or agreed upon at time of contract

ELEMENT 3: PROPERTY PASSES

TITLE/RISK PASSING

Check SOGA applies first [ABOVE]

S 21: Property does not pass until **goods have been ascertained**
i.e. setting aside of particular goods for the specific transaction

S 22: Property passes in **specific** or **ascertained** goods **WHEN INTENDED** by the parties with regard to (2):

- Terms of the contract
- Conduct of parties
- Circumstances of the case.

S 23: RULES FOR ASCERTAINING INTENTION

RULE	SITUATION	WHEN PROPERTY PASSES
Rule 1	<u>Unconditional</u> contract for <u>specific</u> goods in deliverable state	Contract is made
Rule 2	<u>Specific</u> goods but seller bound to <u>do something</u> to put in deliverable state	Thing is done and buyer notified
Rule 3	<u>Specific</u> goods in deliverable state but seller bound to weigh and measure to <u>determine price</u>	Thing is done and buyer notified
Rule 4	Goods <u>on approval</u> or on ' <u>sale or return</u> '	Buyer signifies acceptance Buyer retains goods without rejection for time fixed or reasonable time
Rule 5	<u>Unascertained</u> or <u>future</u> goods <u>by description</u>	Goods are unconditionally appropriate to the contract

S 24: Reservation of right of disposal

For sale of specific goods or where goods are appropriated to the contract, seller by terms of contract can reserve right to dispose of goods until conditions are fulfilled.

- Property does not pass to buyer until conditions imposed by seller are fulfilled
→ e.g. Romalpa/ROT clause = seller has title until buyer pays (**Associated Alloys**)