

## TOPIC 1 - INTRO TO COMMERCIAL LAW

Sources of commercial law  
Types of commercial dealings / security interests  
Sale (aka purchase)  
Lease  
Licence  
Bailment  
Consignment  
Mortgage  
Lien  
Pledge  
Charge

### Business Finance

Methods of obtaining finance  
Bonds, Debentures and Promissory Notes

## TOPIC 2 – WHAT IS PROPERTY?

### Abandonment

Finder Cases

### Chattel vs Fixture

FACTOR ONE: Degree of Annexation  
FACTOR TWO: Object of Annexation

## TOPIC 3 – EQUITY AND EQUITABLE PROPERTY

EXAMPLE: Beneficiary under a *fixed* trust  
SIDE NOTE: Role of Equitable Proprietary  
Interests in Commercial Law  
Commercial trusts cont  
EXAMPLE: Beneficiary under a *discretionary* trust

## TOPIC 4 – BAILMENT

Examples: Bailment or licence?  
Enforcement of bailment  
Sub-bailment  
SUB-BAILEE EXCLUSION CLAUSES – this is all you'll likely need to know  
Duties of bailee at common law  
Duties of bailor at common law

## TOPIC 4 – AGENCY

SUMMARY FOR PROBLEM QUESTIONS

### Intro to Agency

What is agency?  
Examples of agency  
Creation of agency  
Duties of agent  
Rights of agent / duties of principal  
Liabilities of agent  
Undisclosed principal

### Types of Agency – Summary & Cases

Actual authority  
Apparent or ostensible authority  
Ratification

## TOPIC 5 – STATUTORY INTERPRETATION

Presumptions  
Tips for statutory interpretation

## TOPIC 6 & 7 – SALE OF GOODS ACT

### Contract of Sale

### Types of Goods – Specific, Unascertained, Future

### Passing of Property in Goods

STEP 3: Did they reserve the right of disposal (i.e. retention of title clause)? Look at section 24 (below)

### Nemo Dat Rule & Exemptions

NEMO DAT RULE  
EXCEPTION 1: S 26 Conduct by the owner  
EXCEPTION 2: S 27 Voidable Title  
EXCEPTION 3: S 28(1) Seller in possession  
EXCEPTION 4: S 28(2) Buyer in Possession

### Implied Conditions

Sale by Description  
Fitness for Purpose  
Merchantable Quality  
Sale by Sample

### Exclusion of Implied T&Cs (i.e. contracting out)

### Remedies and Damages

Seller's action for price – section 51  
Seller's action for damages for non-acceptance – section 52

Buyer's action for damages for non-delivery –  
section 53

Buyer's remedy for breach of warranty – section  
54

## **TOPIC 8 – ACL PART 1 (SPECIFIC PROTECTIONS)**

### **Intro**

#### **Consumer Guarantees – INTRO**

STEPS

Cannot contract out / exclusion terms

Definition of consumer

#### **Consumer Guarantees in respect of GOODS**

STEPS

S 54–59: definition of “Trade or commerce”

54 Guarantee as to acceptable quality

55 Guarantee as to fitness for any disclosed  
purpose etc.

56 Guarantee relating to the supply of goods by  
description

58 Guarantee as to repairs and spare parts

59 Guarantee as to express warranties

#### **Consumer Guarantees in respect of SERVICES**

STEPS

60 Guarantee as to due care and skill

61 Guarantees as to fitness for a particular  
purpose etc.

62 Guarantee as to reasonable time for supply

### **Enforcement and Remedies**

#### **Product Liability – Safety defects**

Product liability general principles

138 Liability for loss or damage suffered by an  
injured individual

139 Liability for loss or damage suffered by a  
person other than an injured individual

140 Liability for loss or damage suffered by a  
person if other goods are destroyed or damaged

141 Liability for loss or damage suffered by a  
person if land, buildings or fixtures are destroyed

9 Meaning of *safety defect* in relation to goods

142 Defences to defective goods actions

## **TOPIC 9 – ACL PART 2 (GENERAL PROTECTIONS)**

Cannot contract out / exclusion terms

### **Misleading or deceptive conduct**

### **Unfair contract terms – laws**

### **Unfair contract terms – remedies**

### **Unconscionable conduct**

SECTION 20 Unconscionable conduct under the  
‘unwritten law’

SECTIONS 21 & 22 Unconscionable conduct  
affecting consumers

### **Remedies**

## **TOPICS 10 & 11 – PPSA**

### **Step 1: Exclusions**

#### **Step 2.1: In-substance security interest?**

12(1) IN-SUBSTANCE SECURITY INTEREST  
Times when it didn't apply (i.e. no security  
interest)

10 The Dictionary (PERSONAL PROPERTY,  
GRANTOR, SECURED PARTY)

#### **Step 2.2: Deemed security interest?**

12(3) DEEMED SECURITY INTEREST

13 PPS LEASE

13(2) cont.

Finance vs true lease

#### **Step 2.3: Purchase Money Security Interest (PMSI)**

#### **Step 3: Perfected?**

Attachment of the security interest (s 19)

Enforceability against third parties (s 20)

Perfection through possession, control or  
registration (s 21)

#### **Step 4: Competing security interests?**

#### **Step 5: Enforcement rules (Ch 4)**

Seizure of collateral

Redeeming

Reinstatement

#### **Step 6: Taking free (extinguishment) rules (Pt 2.5)**

# TOPIC 1 - INTRO TO COMMERCIAL LAW

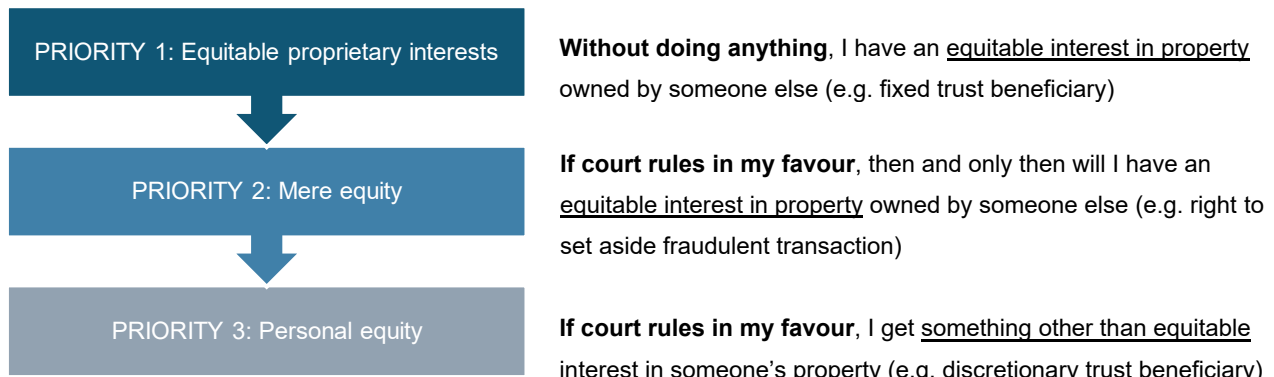
NOTE: This is only a sample of the topic 1 content.

## Types of commercial dealings / security interests

	What?	Terminology
<b>COMMERCIAL DEALINGS</b>		
<b>SALE</b>	A transfer of property for money or money's worth.	<u>seller</u> /vendor/transferor <u>transfers</u> property to the <u>purchaser</u> /transferee OWNER = PURCHASER
<b>LEASE</b>	Paying for possession & use of property for a term	<u>lessor</u> <u>grants</u> the lease to the <u>lessee</u> OWNER = LESSOR
<b>LICENCE</b>	A right <i>in personam</i> , not a right <i>in rem</i>	<u>licensor</u> <u>grants</u> licence to <u>licensee</u> OWNER = LICENSOR
<b>BAILMENT</b>	Borrowing property for the purpose of doing something with it	<u>bailor</u> <u>bails</u> its property to the <u>bailee</u> OWNER = BAILOR
<b>CONSIGNMENT</b>	Owner sends goods to agent to sell on their behalf	<u>consignor</u> <u>delivers</u> goods to a <u>consignee</u> OWNER = CONSIGNOR
<b>SECURITY INTERESTS</b>		
<u>grantor</u> <u>grants</u> an interest to the <u>grantee</u> ...		
<b>MORTGAGE</b>	Conveyance of land (or assignment of chattels) as security for debt payment	<u>mortgagor</u> (person borrowing funds) grants interest to <u>mortgagee</u> (bank) MORTGAGEE = INTEREST IN PROPERTY UNTIL REPAYED
<b>LIEN</b>	You get this property of mine <i>if</i> I fail to meet an obligation / repay you	<u>lienor</u> grants interest to <u>lienee</u> LIENEE = RIGHT TO CLAIM PROPERTY IF NOT REPAYED
<b>PLEDGE</b>	Transfer of possession to the creditor until debt is repaid – form of bailment	<u>pledgor</u> grants interest to a <u>pledgee</u> PLEDGEE = POSSESSION UNTIL REPAYED
<b>CHARGE</b>	Lien but for business. If company breaches terms of loan, lender can take property	<u>chargor</u> (company) grants interest to <u>chargee</u> (lender) CHARGE = RIGHT TO CLAIM PROPERTY IF NOT REPAYED

# TOPIC 3 – EQUITY AND EQUITABLE PROPERTY

NOTE: This is only a sample of the topic 3 content.



PRIORITY 1: Equitable proprietary interests	
What	<b>Equitable (as opposed to legal) choses in action</b> – intangible rights with respect to property owned by another.
Who	Can be enforced against: <ul style="list-style-type: none"> <li>The person holding the legal title to the property (the "legal interest")</li> <li>"Volunteers" – individuals who receive property as a gift or without giving valuable consideration</li> </ul>
If sold to 3 <sup>rd</sup> party	A purchaser who buys the legal interest in the property <b>for value</b> (i.e., pays for it) and <b>acts in good faith</b> (i.e. without any dishonesty or bad intent), and who <b>does not have notice</b> (actual, constructive or imputed) of the equitable interest (i.e. doesn't know that someone else has equitable interest), <b>will not be bound by that equitable interest</b> . I.e. Underlying equitable interest is destroyed. <b>E.g. Latec (below)</b>
Torrens (i.e. land)	Under the Torrens system, once a purchaser registers their legal interest in land, they gain <b>indefeasibility of title</b> , meaning their ownership is secure and cannot generally be challenged. However, exceptions apply, such as cases of fraud or specific unregistered rights.
Creation	Equitable interests can be created by: <ul style="list-style-type: none"> <li>Agreement i.e. intentionally</li> <li>Express trust</li> <li>Operation of law: e.g. by court order as a remedy</li> <li>Implication of law: e.g. resulting trust, equitable lien</li> </ul>
Examples	<ul style="list-style-type: none"> <li>Interest of a <b>partner in assets of a partnership</b>: <b>Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales Finance Pty Ltd (1974) 131 CLR 321, 327-328.</b></li> <li>Equitable interests created by creation of <b>security interests</b> in property – e.g. an <b>unregistered mortgage</b> will be treated as an equitable mortgage (would be a legal interest if it was registered). <b>J H Just (Holdings) Pty Ltd v Bank of New South Wales (1971) 125 CLR 546.</b></li> <li>An <b>equitable charge</b> arising from contractual agreement that property be held as security for a debt.</li> <li>The interest of a <b>beneficiary under a fixed trust</b> (not a discretionary trust) <b>SEE BELOW</b></li> <li>The <b>trustee's right to be indemnified from trust assets</b> in respect of properly incurred trust expenses</li> </ul>

- A **restrictive covenant** over land: see **Tulk v Moxhay (1848) 2 Ph 774; 41 ER 1143** which established that there are occasions in which equitable covenants can bind future purchasers of property and 'run with the land'.
- Equitable interest of a **purchaser under a contract for sale**
- **Future property**: **Norman v Federal Commissioner of Taxation (1963) 109 CLR 9**.
- Equitable interests in **assignment of property for value** that do not comply with formalities
- Equitable interests in **voluntary assignment of property** that do not comply with formalities in certain circumstances: **Milroy v Lord (1862) 4 De GF&J 264; 45 ER 1185**, where the donor has done everything necessary to be done by the donor personally which according to the nature of the property is necessary to vest legal title in the intended donee (as interpreted by the High Court in **Corin v Paton (1990) 169 CLR 540**).
- By implication of law – e.g. resulting trusts; equitable lien
- By operation of law – e.g. where the court orders that property be held on constructive trust.

### EXAMPLE: Beneficiary under a fixed trust

**TRUST**: A relationship between a person known as the trustee, who undertakes to hold property, of which it is the legal owner, exclusively for the benefit of others, known as the beneficiaries (NB: a trustee can also be a beneficiary)

**FIXED TRUST**: Beneficiaries have a **direct and definite claim** to trust property (proprietary interest).

- A trust is not a company and has no separate legal entity – it is an undertaking recognised in equity to give a proprietary interest in the beneficiaries.
- Requires three certainties:
  - Certainty of intention (to create a trust)
  - Certainty of subject matter (any presently existing legal or equitable property)
  - Certainty of object (the identity of the beneficiaries)
- In summary, the right of a beneficiary under a fixed trust is considered the **highest form of equitable proprietary right** because their share or entitlement in the trust property is **explicitly determined** and guaranteed by the trust instrument, leaving no room for discretion or uncertainty.

#### EXAMPLE: Beneficiary under fixed trust: **Baker v Archer-Shee [1927] AC 844**

- **FACTS:**
  - American citizen **left the residue property to his daughter, the wife of Lord Archer-Shee, on trust**
  - The property consisted of foreign securities, stocks and shares and income from it was paid into an American bank account
- **ISSUE:**
  - Whether Lord Archer-Shee was liable to pay tax on the income and whether her right under the will was "property". If property (a proprietary right), income could be taxed as part of her estate; if a personal right (a right to enforce obligations against the trustee), would not necessarily qualify for taxation.
- **HELD:**
  - The House of Lords – it was a **"proprietary right", not merely a personal right** against the trustee and **accordingly, the income was taxable**.

*Continued in complete notes.*

# TOPIC 4 – BAILMENT

NOTE: This is only a sample of the topic 4 content.

**WHAT:** 'A bailment comes into existence upon delivery of goods of one person, the bailor, into the possession of another person, the bailee, upon a promise, express or implied, that they will be re-delivered to the bailor or **dealt with in a stipulated way**.' **Hobbs v Petersham Transport Co Pty Ltd (1971) 124 CLR 220, 238** (Windeyer J).

**OWNERSHIP:** No transfer of ownership: typically involves keeping the goods for safe custody or transporting the goods, or doing something to the goods and returning them

**MUST HAVE CONSENT:** The **voluntary assumption of possession** is key; there must be knowledge of the goods and the bailee's **consent** to hold them: **WD & HO Wills (Aust) v State Rail Authority of NSW (1998) 43 NSWLE 336, 353-4**

**MUST BE TANGIBLE:** Can only arise in relation to chattels, not choses in action.

**TERMINATION:** A bailment may come to an end by:

- Expiry of the term
- Demand of bailor from gratuitous bailee, at any time (i.e. give me my car back)
- Wrongful act of bailee
- Re-delivery of goods to the bailor
- Transfer of ownership to the bailee
- Destruction of the goods

Bailment for reward	
<b>What</b>	Bailee is <b>paid</b> for taking custody or control of goods
<b>Eg: paid custody</b>	<ul style="list-style-type: none"> <li>• Carparks, if car left in custody and control of the carpark owner: see <b>Sydney Corp (below)</b></li> </ul>
<b>Eg: paid work</b>	<ul style="list-style-type: none"> <li>• <b>Agistment</b> of cattle on land (if cattle left in the custody and control of landowner, otherwise just a licence): see <b>Big Top Hereford Pty Ltd v Gavin Thomas [2006] NSWSC 1159</b></li> <li>• Car left with a mechanic for <b>repairs</b></li> <li>• <b>Drycleaners</b></li> <li>• <b>Furniture movers</b></li> </ul>
<b>Eg: pledge</b>	<ul style="list-style-type: none"> <li>• <b>Pawnbroker: Palgo Holdings Pty Ltd v Gowans (2005) 215 ALR 253 [17]</b> – offers secured loans to people, with items of personal property used as collateral.</li> </ul>
<b>Eg: hire-purchase</b>	<ul style="list-style-type: none"> <li>• Delivery of goods from the owner to the hirer who holds them for use by the hirer</li> </ul>
Gratuitous bailment (no consideration)	
<b>What</b>	Gratuitous bailments arise where the bailee is <b>not paid</b> for taking possession of the property and the bailment is terminated on demand
<b>E.g. deposit</b>	<ul style="list-style-type: none"> <li>• Delivery of goods for gratuitous safekeeping by the bailee</li> </ul>
<b>E.g. mandate</b>	<ul style="list-style-type: none"> <li>• Delivery of goods for work to be done on the goods without reward</li> </ul>
<b>E.g. loan</b>	<ul style="list-style-type: none"> <li>• Delivery of goods for use by bailee under gratuitous loan. Eg when a person lends their car to another to use and return</li> </ul>
<b>E.g. retention of title sale</b>	<ul style="list-style-type: none"> <li>• Under a sale of goods where title to property does not pass with transfer of possession, such as where there is a Romalpa clause and title will not pass until payment made in full: <b>Hospital Products Ltd v United States Surgical Corp (1985) 156 CLR 41, 105.</b> Purchaser a bailee until payment</li> </ul>

# TOPIC 6 & 7 – SALE OF GOODS ACT

NOTE: This is only a sample of the topics 6 & 7 content.

## Passing of Property in Goods

I.e. when does the buyer gain ownership of the goods?

**STEP 1:** General rule; look at [section 22 \(below\)](#)

**STEP 2:** If you can't tell when the parties intended the property to be transferred, look at [section 23 \(below\)](#)

**STEP 3:** Did they reserve the right of disposal (i.e. retention of title clause)? [Look at section 24 \(below\)](#)

### 22 Property passes when intended to pass

(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

### 23 Rules for ascertaining intention

#### Rule 1. GOODS ARE READY TO GO → SOLD

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.

- Contract must be unconditional, meaning once the agreed conditions are met, title automatically passes to the buyer: **McPherson, Thom, Kettle & Co v Dench Bros [1921] VLR 437**
- Deliverable state: **s 5(4); Underwood Ltd v Burgh Castle Brick and Cement Syndicate [1922] KB 343**
- See **Dennant v Skinner [1948] 2 KB 164; Bodlingo Pty Ltd v Webb Projects Pty Ltd (1990) ASC 56-001; Minister for Supply and Development v Servicemen's Cooperative Joinery Manufacturers Ltd (1951) 82 CLR 621**

#### Rule 2. SELLER MUST DO SOMETHING TO GET THE GOODS READY → NOT UNTIL THEY DO THAT THING & GIVE NOTICE

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 in a deliverable state, the property does not pass until such thing be done and the buyer has notice thereof.

#### Rule 3. SELLER MUST DO SOMETHING TO DETERMINE PRICE → NOT UNTIL THEY TELL BUYER PRICE

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. BUYER MUST APPROVE → NOT UNTIL BUYER HAS APPROVED/RETAINED FOR TOO LONG

Where 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 the buyer signifies approval or acceptance to the seller, or does any other Act adopting the transaction,

(b) if the buyer does not signify approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

**Rule 5 (1) UNASCERTAINED OR FUTURE GOODS → BUYER OR SELLER APPROPRIATES & OTHER PARTY AGREES**

(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 appropriation is made.

- **Unconditional appropriation** refers to the point at which the contract becomes linked to specific goods. This occurs when one party (typically the seller) selects the goods, and the other party adopts this selection, agreeing that these are the goods to be sold.
- eg. goods given to carrier for delivery to buyer = ascertained. Then, assent by the buyer (may be express or implied)

**Rule 5 (2) SELLER GIVES GOODS TO CARRIER AND HAS NO FURTHER CONTROL OVER THE GOODS → UNCONDITIONALLY APPROPRIATED (OWNERSHIP FULLY TRANSFERRED TO THE BUYER)**

(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.



# TOPICS 10 & 11 – PPSA

NOTE: This is only a sample of the topics 10 & 11 content.

1. [Is the arrangement excluded from the PPSA? \(s 8\)](#)
2. [Does it involve an 'in substance' security interest? \(s 12\(1\)\)](#)
  - a. [If not, does it involve a deemed security interest? \(s 12\(3\)\)](#)
  - b. [Is it a Purchase Money Security Interest \(PMSI\)? \(s 14\)](#)
3. [If so, has the secured party 'perfected' their security interest? \(ss 19-22\)](#)
  - a. Attachment of the security interest (s 19)
  - b. Enforceability against third parties (s 20)
  - c. Perfection through possession, control or registration (s 21)
4. [If so, are there any other competing security interests over the same collateral? \(if no – go to step 5\) If yes then:](#)
  - a. Apply the priority rules in Pt 2.6 (start with the default rule s 55)
  - b. Check for special types (e.g. PMSI, control over accounts)
5. [Apply the enforcement rules \(Ch 4\) - Are they excluded \(e.g. receiverships\)? \(ss 109-115\)](#)
6. [Check for taking free \(extinguishment\) rules \(Pt 2.5\)](#)

## Step 1: Exclusions

REDACTED FOR SAMPLE

## Step 2.1: In-substance security interest?

REDACTED FOR SAMPLE

## Step 2.2: Deemed security interest?

REDACTED FOR SAMPLE

## Step 2.3: Purchase Money Security Interest (PMSI)

REDACTED FOR SAMPLE

## Step 3: Perfected?

REDACTED FOR SAMPLE

## Step 4: Competing security interests?

If no, skip to next step.

ASSUME ALPAP IS JUST A NORMAL PERFECTED INTEREST

Earlier perfected PMSI

Later perfected interest

PMSI prevails\*\*

s 62

Earlier perfected interest	Later perfected PMSI	<b>PMSI prevails**</b>	<b>s 62</b>
Earlier perfected interest	Later unperfected interest	<b>Perfected prevails</b>	<b>s 55(3)</b>
Earlier perfected interest	Later perfected interest	<b>First to register prevails</b>	<b>s 55(4)*</b>
Earlier unperfected interest	Later unperfected interest	<b>First to attach prevails</b>	<b>s 55(2)</b>
Earlier unperfected interest	Later perfected interest	<b>Perfected prevails</b>	<b>s 55(3)</b>
Interest Perfected by Control	ANYTHING ELSE	<b>Perfected by control prevails</b>	<b>s 57</b>
Interest Perfected by Control	PMSI	<b>Perfected by control prevails**</b>	<b>s 57</b>
Interest Perfected by Control	Interest Perfected by Control	<b>First in time prevails</b>	<b>s 57(2)</b>
<b>REST OF TABLE AVAILABLE IN COMPLETE NOTES</b>			

*Continued in complete notes.*