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Sale

SALE OF GOODS ACT 1896 (QLD)		
S 19	When 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.	Goods must be ascertained.
S 20	(1) Where there is a contract for ascertained goods, the property is transferred to the buyer at such time the parties intended it to be transferred. (2) In ascertaining intention, regard is had to the terms of the contract, the conduct of the parties and the circumstances of the case.	Property passes when intended to pass – ascertained from contract terms, conduct and circumstances.
S 21	Unless a different intention appears, ascertain intention through: RULE 1 For an unconditional contract for sale of specific goods in a deliverable state – when the contract is made, regardless of whether payment or delivery are postponed. S 3: goods are in a deliverable state when under the contract, the buyer would be bound to take delivery of them. RULE 2 For a contract where the seller needs to put the goods into a deliverable state, property does not pass until such thing is done and the buyer has notice thereof. RULE 3 Where there is a contract for sale of specific goods in a deliverable estate, but the seller is bound to weigh, measure, test or do some other active thing with reference to the goods for the purpose of ascertaining price, property does not pass until such thing is done and the buyer has notice thereof. RULE 4 When goods are delivered on approval or 'on sale or return' or other similar terms, the property passes when: (a) the buyer signifies their approval or acceptance, or does any other act adopting the transaction; (b) the buyer retains the good without giving notice of rejection, on expiration of a fixed time or a reasonable time (which is a question of fact). RULE 5 When there is a contract for sale of unascertained or future goods which are in a deliverable state and unconditionally appropriated to the contract, by one party with the assent of the other, the property in the goods thereupon passes to the buyer. S 3: future goods are to be manufactured or acquired after making the contract. (a) assent may be express/implied and before/after the appropriation. (b) when in pursuance of the contract, the seller delivers the goods to a buyer or carrier or other bailee, for the purpose of transmission to the buyer who does not reserve the right of disposal, goods have been unconditionally appropriated.	When in a deliverable state, property passes when the contract is made. When not in a deliverable state, property passes when the item becomes deliverable and the buyer is notified. When price must be ascertained by weighing, measuring or testing the goods, property passes when the item becomes deliverable and the buyer is notified. When goods are delivered on approval or sale/return, the property passes when they signify their acceptance or retain the good until expiration of a time. When there is a contract for sale of unascertained/future goods to be delivered, they pass when unconditionally appropriated by one party with the assent of the other.

SYDNEY CORPORATION V WEST

A car owner, upon arriving at a carpark, was issued a ticket stating it must be presented for timestamping and payment before receiving the vehicle back. A term also said they would not take responsibility for loss or damage in or upon a vehicle.

The Court found a relationship of bailment arose, but the term could be relied on as an exemption clause to exclude liability for negligence.

SHIPBUILDERS V BENSON

It was agreed that Shipbuilders would slip, store and re-slip a boat, but its owner could access the boat during its storage to do maintenance on it while it was out of the water. A fire in the shed destroyed the boat. The Court found Shipbuilders were a bailee.

There does not need to be complete relinquishing of control for there to be a bailment, there just has to be such a delivery as to amount to relinquishment of exclusive possession for the duration of the relationship.

Security Interests

The debtor is entitled to the asset until such time that there is a default on payment, upon which the debtor becomes entitled to possession.

LIEN: a charge that arises by operation of law, implied as a way of making the transaction work as it is intended to work.

HEWETT V COURT

Hewett agreed a company would construct a prefabricated house, and paid the first two instalments. The company then went into liquidation and the house was not finished. Mr Hewett had a lien implied by law, creating a security for the refund of the paid instalments.

FIXED CHARGE: a fixed relates to a specifically identified asset as the security.

FLOATING CHARGE: a charge over all of the assets of the debtor, or all assets of a particular class.

RETENTION OF TITLE: a clause under which the seller is said to retain title to the goods and anything the goods are converted into.

ALUMINIUM INDUSTRIE V ROMALPA ALUMINIUM

The contract provided that ownership of the foil would only be transferred to Romalpa after full payment, with Romalpa storing products made from the foil separately as security for the unpaid price. Upon Romalpa's insolvency, its bank claimed the aluminium under a floating charge, while AIV asserted its retention of title clause.

The court upheld AIV's claim, ruling the retention of title clause created a fiduciary relationship. This required Romalpa to account for and hold sub-sale proceeds for AIV. AIV could trace the funds into the receiver's account, prioritising their claim in the liquidation.

5 Ownership of Land

Tenure

TENURIAL OWNERSHIP	ALLODIAL OWNERSHIP
The Crown is the absolute owner of the land, and the individual holds a lesser interest.	The landowner has actual ownership free of any reciprocal duties.
Used to distinguish ownership of land without feudal duties from ownership by feudal tenure.	

RELEVANCY TO AUSTRALIA

- (a) Tenurial ownership (originally relevant to feudal tenure), became tenurial ownership without feudal duties after feudalism was abolished. This was known as **common socage**.
- (b) The British Crown laid claim to the entire land mass of Australia, assuming the theory of common socage in Australia.

PROPERTY LAW ACT 2023	
S 15	When the State grants land as a fee simple estate, the owner holds it freely, without any obligations to the State, known as 'free and common socage'.

Tenure and native title

Native title was not reconciled with tenurial ownership until *Mabo* (1992).

UNINHABITED COUNTRIES	CEDED/CONQUERED COUNTRIES
Sovereignty acquired under an 'enlarged notion of <i>terra nullius</i> ,' and the laws of the British immediately apply to the extent applicable.	The laws of the native people remain in force until they are changed by incorporation of Imperial legislation.

MABO – BRENNAN J [46], [51]-[52]

Though the rejection of the notion of *terra nullius* clears away the fictional impediment to the recognition of indigenous rights and interests in colonial land.

By attributing to the Crown a radical title to all land ... over which the Crown has assumed sovereignty, the common law enabled the Crown [to grant interests in land].

The radical title ... cannot itself be taken to confer an absolute beneficial title to the occupied land ... The doctrine of tenure applies to every Crown grant of an interest in land, but not to rights and interests which do not owe their existence to a Crown grant.

MILIRRPUM V NABALCO

Aboriginal groups sued a mining company and the Commonwealth for the possession and enjoyment of areas of land where the mineral leases were granted by the Commonwealth to the company.

The Court found native title did not exist, or if it did, it was extinguished by statute. The English common law applied to all settled land, although it was acknowledged the Yolngu people had a sophisticated legal system which was simply not recognised under Australian law. This left open the possibility of future acknowledgement of land rights.

6 Creation and Transfer of Interests in Land

At common law

PROPERTY LAW ACT 2023	
S 8	The creation of a legal or equitable interest in land must be in writing and signed by the person creating the interest.
S 9	An interest in land not in writing and signed has the effect of an interest at will only .
S 10	Exception: short term leases.

Equity

LYSAGHT V EDWARDS

If a person who is purchasing under a contract for the sale of land, and that contract is capable of specific performance, then the purchaser has an **equitable interest** in the land being sold. The seller holds the land on **constructive trust** for the purchaser.

BUNNY INDUSTRIES V FSW ENTERPRISES

FSW makes a contract with Bunny Industries agreeing to transfer the land for a set price. After the contract is made but before the settlement date, FSW discovers a bona fide purchaser is prepared to pay a higher price, and transfers it to them, in breach of the contract with Bunny Industries.

- (a) Under common law, Bunny Industries can claim damages.
- (b) Under equity, Bunny Industries can argue the property was held on constructive trust by FSW and Bunny Industries had an equitable interest.

Bunny Industries was entitled to the proceeds of sale which FSW would otherwise have received – that is, the amount paid by the third party purchaser minus the amount that would have been paid by Bunny Industries.

“Equity looks upon that as done which ought to be done.”

1 SPECIFIC PERFORMANCE

- (1) a valid contract;
- (2) the common law remedy (damages) would not be adequate;
- (3) the purchaser is ready, willing and able to perform its obligations under the contract.

TANWAR ENTERPRISES V CAUCHI

Contract for sale of land in instalments, with term stating time was of the essence. The purchaser stopped paying their instalments, and the seller purported to terminate the contract. The purchaser argued he had an equitable interest in the land, and that terminating the contract would also forfeit the interest in the land.

The Court held that whether the purchaser had an equitable interest in the land depended upon the contract being capable of specific performance. However, the contract was not capable of specific performance because the purchaser was not **ready, willing and able** to perform its obligations. Therefore, there was no equitable interest to be forfeited.

PROPERTY LAW ACT 2023	
S 7	A contract for the disposition of land is not enforceable unless the contract is in writing or some memorandum or note of the contract is recorded in writing and signed.