

WEEK 4: SALE OF GOODS (DOMESTIC)

NOT EXAMINABLE: Australian Consumer Law and Consumer Guarantees (Part 3-2 ACL, Competition and Consumer Act 2010 (Cth) Sch 2) are not examinable this semester. Do not run the s 3 ACL 'consumer' analysis or the consumer guarantee remedies. Run only the Goods Act 1958 (Vic) regime when you see a sale of goods.

TRIGGER FACTS

- One party agreeing to transfer goods to another for a money price; the deal is a contract of sale (s 6 Goods Act)
- Goods turn out to be defective, wrong description, wrong quantity, or not fit for the stated purpose
- Buyer paid but never got the goods, OR seller delivered but buyer refuses to pay
- Goods are damaged or destroyed between contract and delivery; who bears the loss?
- Seller delivers but says 'title stays with me until paid' (retention of title / Romalpa clause)
- Seller turns out not to own the goods; third party claiming the goods back
- Buyer wants out of the contract and asks if they can reject the goods

FIRST QUESTIONS

- Are these 'goods' under s 3 Goods Act? Excludes land, choses in action, money
- Is the contract a sale (property passes) or an agreement to sell (property to pass later)?
- What term is breached, and is it a condition (right to reject + damages) or a warranty (damages only)?
- When did property in the goods pass? Apply s 22 to s 26 rules and the parties' intention under s 22
- When did risk pass? Default: risk follows property (s 25), unless agreement says otherwise
- If seller did not own the goods, run nemo dat under s 27 and check the s 28 to s 31 exceptions

KEY RULES AND SECTIONS (GOODS ACT 1958 VIC)

s 6: definition of contract of sale and agreement to sell.

s 17: implied condition that seller has the right to sell.

s 18: sale by description; goods must correspond with description.

s 19(1): implied condition of fitness for purpose where buyer makes purpose known and relies on seller's skill or judgment.

s 19(2): implied condition of merchantable quality where goods bought by description from a seller dealing in goods of that description.

s 22 to 26: passing of property; five rules under s 23 for specific or ascertained goods. Property in unascertained goods cannot pass until ascertained (s 22).

s 25: risk passes with property unless otherwise agreed.

s 27: nemo dat quod non habet; seller without title cannot pass title.

s 28 to 31: nemo dat exceptions including market overt, sale under voidable title, sale by mercantile agent, seller in possession after sale, buyer in possession after sale.

Remedies: buyer may reject for breach of condition (s 16); sue for damages; specific performance (s 56). Seller may sue for the price (s 51) or damages for non-acceptance (s 52).

KEY CASES

Beale v Taylor [1967] 3 All ER 253: sale by description; description becomes a term even where the buyer sees the goods.

Ashington Piggeries v Christopher Hill [1974] AC 441: merchantable quality and fitness for purpose; partial reliance on seller is still reliance.

Grant v Australian Knitting Mills (1936) 54 CLR 49: implied conditions of fitness and merchantability; sulphites in underwear caused dermatitis.

Varley v Whipp [1900] 1 QB 513: sale by description includes sale of specific goods the buyer has not seen.

Ashford Shire Council v Dependable Motors (1960) 104 CLR 139: fitness for purpose; reliance on seller's skill or judgment.

Aluminium Industrie Vaassen v Romalpa [1976] 1 WLR 676: retention of title clauses are valid; seller retains property until paid.

Re Moore & Co and Landauer & Co [1921] 2 KB 519: strict compliance with description; tins packed differently was a breach even with right quantity.

RED HERRINGS

- Do NOT analyse ACL consumer guarantees this exam, even if the facts mention a household buyer; stay on Goods Act 1958 (Vic)
- Do not confuse 'condition' (essential term, right to reject) with 'warranty' (collateral term, damages only)
- Risk and property are separate; the parties can split them by contract

- Romalpa / retention of title clauses now intersect with the PPSA; if the seller is unpaid, also run PPSA security interest and perfection
- If the contract is international and parties are in different CISG states, the CISG may displace the Goods Act; run that topic instead

EXAM TIP: Open with: 'This is a contract of sale of goods under s 6 Goods Act 1958 (Vic).' Then sequence: passing of property, then risk, then implied conditions, then remedies. The ACL is off the table.