

## Sale of Goods Act 1895 (WA)

- Must be incorporated into contract, where VC doesn't cover OWNERSHIP RULES
- GOVERNING LAW is Western Australia. VC also applies.

Rules on passing property:

- **Nemo Dat rule** – you cannot give what you did not have. Must have title/ownership of goods to transfer to another party. **3 exceptions:**
  - Seller in possession
  - Buyer in possession
  - Sale by mercantile agent s25
- **Specific vs unascertained goods**
  - S60(1) – specific goods are goods identified (separated) and agreed upon at time of contract
  - S17(1) – specific goods pass at time parties intend to pass.
  - s17(2) – Intention – express or implied (incoterms, conduct, circumstances)
  - S16 - unascertained goods passes when goods are ascertained
  - S18 rule 5(1) – property of unascertained goods passes when goods are in deliverable state and are unconditionally appropriated (separated out and placed to contract [Re Wait])
- **FOB vs. CIF**
  - FOB – imply property should pass to buyer earliest, upon shipment [Carlos v Charles]
  - CIF – bill of lading in seller's name, transferred to buyer as consignee when property passes. Seller prima facie deemed to reserve right of disposal in goods (retain title) s19(2)
    - [Carlos v Charles] – Goods not delivered on ship. Parties intended property to pass upon shipment (can fail on both FOB and CIF term)
- **S18 rules:**
  - Rule 1 – unconditional contract, goods in deliverable state = property passes at time of contract. Deliverable state = in state that buyer would be bound to take delivery of them under contract s60(4)
  - Rule 2 – seller required to do something for goods to be in deliverable state = property passes when something is done, and buyer got notice [Underwood v Burgh]
  - Rule 3 – seller required to weigh/measure/test the goods to determine the price = property passes when something is done, and buyer got notice [Nanka v Commonwealth]
  - Rule 4 – contract is based 'on approval' or 'sale or return' = property passes when (a) buyer signifies approval/acceptance by conduct [Kirkham v Atenborough] OR (b) buyer retained goods for longer than agreed period [Poole v Smith]
  - S18 rule 5(1) – property of unascertained goods

## Incoterms 2010

- E term – buyer collect from seller at seller's country
- F term – main carriage unpaid, buyer pays for carriage. Buyer responsible & bears the risk of damage during carriage. Risk passes at ship's rail (FOB)
  - FOB – buyer nominates place of delivery & ship, pays for contract of carriage (bill of lading issued in buyer's name)

- FOB – clause B7 need to give notice of vessel, loading point, delivery time
  - FOB – clause B6 additional cost payable by buyer for storage, refrigeration, transport
- C term – seller pays for carriage. Risk passes at ship's rail
  - CIF – cost, insurance, freight borne by seller
  - CIF – bill of lading in seller's name, intention for property to pass upon delivery of bill of lading (not upon delivery of goods)
- D term – seller takes on responsibilities until goods arrive in buyer's country
  - DDP – seller clears customs, responsible for arrival of goods at destination, risk passes at destination (BUYER'S COUNTRY)