

Commercial Law Notes

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Sale of Goods

Section 6: Sale and agreement to sell

- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price. There may be a contract of sale between one part owner and another.
- (2) A contract of sale may be absolute or conditional.
- (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.
- (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Element 1: Contract of Sale

Option 1: There is a contract for the sale of goods

[A] agreed to transfer the property in [GOODS] to [B] for a money consideration known as the price of [PRICE]. The property in [GOODS] is transferred from [A] to [B] at the time of the transaction. This constitutes a sale of goods and the contract is a contract of sale: s **6(1) Goods Act 1958 (Vic)**.

Option 2: There is an agreement to sell in future/conditions

[A] has agreed to transfer the property in [GOODS] to [B] at some point in the future or conditional upon [CONDITION]. Once the property is transferred, the agreement to sell becomes a sale: s **6(4) Goods Act 1958 (Vic)**. A contract of sale is defined to include both an agreement to sell and a sale: s **3(1) Goods Act 1958 (Vic)**.

Option 3: There is a gift

[A] gave [GOODS] to [B]. A gift of goods will not constitute a sale because there is no money consideration for the transfer of property in the goods.

Option 4: There is barter or an exchange of goods

[A] agreed to transfer [GOODS] to [B] in exchange for [GOODS]. Whether a barter or exchange of goods can be considered a sale will depend upon whether the elements of a price can be made out e.g. did the parties agree on a money price or value of the goods: **Aldridge v Johnson (1857) 7 El & Bl 885**.

Option 4: There is a contract for work and incidental materials

[A] agreed to [WORK] for [B] which incidentally involved the procurement of [MATERIALS]. A contract for work and incidental materials is not a contract of sale of goods.

Option 5: There is a contract for work done + materials supplied

[A] agreed to transfer property in [GOODS] to [B] as well as to [WORK]. To determine whether this is a contract for work or contract for the sale of goods the court will consider the relative importance of the work done and the goods supplied: **Robinson v Graves [1935] 1 KB 579**. In the case of a contract for work done and materials supplied the property in the materials will not pass at the time of contract but only once the work has been done and the materials supplied/installed: **Aristoc Industries Pty Ltd v RA Wenham (Builders) Pty Ltd [1965] NSW 581**.

Option 5A: The work is more important than the goods

The [WORK] appears to be more important than the [GOODS] in the contract between [A] and [B]. In these circumstances the contract is for work, not a contract for the sale of goods: **Lockett & A v M Charles Ltd [1983] 4 All ER 170**.

Option 5B: The goods are more important than the work

The [GOODS] appear to be of more importance than the work done in the contract between [A] and [B]. In these circumstances, the contract will be construed as a sale of goods: **Lee v Griffith (1861) 1 B & S 272.**

Option 6: Intangible Goods

Sale of goods if:

- Hardware or software (Toby Constructions Pty Ltd v Computa Bar (Sales) Pty Ltd)
- Sale of goods if attached to physical medium (Amlink Technologies Pty Ltd v Australian Trade Commission)
- ❖ Not sale of goods if:
 - Gammasonics Institute for Medical Research Pty Ltd v Comrad Medical Systems Pty Ltd)
 - Program code delivered by online download
 - Incapable of download and only accessible online (contract of services)

Option 7: Rights

- ❖ Rights (e.g. intellectual property)
- ❖ Known as choses in action
- ❖ Need to sue to recover
- ❖ Choses in action can be goods

Option 8: Emblements

- ❖ Emblements + things attached to or forming part of the land agreed to be severed before or under contract of sale are included in chattels personal
- ❖ Includes:
 - Timber growing on land agreed to be felled under contract of sale: **Egmont Box Cp Ltd v Registrar General Lands)**
 - Fixtures agreed to be severed such as whole house being removed and relocated (**Symes v Laurie)**
 - Affixation of goods to land: **Tranquility Pools & Spas Pty Ltd v Hunstman Chemical Co Australia Pty Ltd**

Option 9: Not included

- ❖ Things growing naturally on land: **Scully v South**
- ❖ Contract to locate and extract minerals from soil: **Amco Enterprises Pty Ltd v Wade**
- ❖ Real Property or fixtures generally: **Theo Holdings Pty Ltd v Hockey**

Option 10: Resulting Chattels

If the contract results in sale of a chattel, it is a sale of goods: **Lee v Griffin.**

Option 11: Installation + fixtures

Where a sale and installation were to become a fixture, this is a contract for work and materials. In the case of a contract for work done and materials supplied the property in the materials will not pass at the time of contract but only once the work

has been done and the materials supplied/installed: **Aristoc Industries Pty Ltd v RA Wenham (Builders) Pty Ltd [1965] NSW 581.**

- ❖ Supply and installation of plant and equipment for carrot processing is contract for work and materials: **North East Equity Pty Ltd v Proud Nominees Pty Ltd (No 2)**
- ❖ Lecture seats which had to be installed was a contract for work and materials: **Aristoc Industries Pty Ltd v R.A. Werham Builders Pty Ltd**

Option 12: Goods are hired and hirer has an option to buy on expiry of hiring period
Not a sale of goods

Option 13: Where price is payable by instalments
Contract must say it is an agreement to sell. This is a sale of goods under the Goods Act 1958

Option 14: Bailment

- ❖ BAILMENT+ Delivery of goods by owner (bailor) to another person (bailee)
- ❖ On condition that goods will be returned
- ❖ Involves transfer of possession but not transfer of property o Chapman Bros v Verco Bros and Co

Element 2: Goods

Option 1: The goods are specific goods

The [GOODS] are specific goods as they have been identified and agreed upon at the time the contract of sale was made. Therefore the [GOODS] fall within the definition of goods at **s 3(1) of the Goods Act 1958 (Vic)** and this element is satisfied.

Option 2: The goods are to be manufactured by the seller

[SELLER] needs to manufacture the [GOODS] and therefore the [GOODS] are classified as future goods: **s 3 Goods Act 1958 (Vic)**. Future goods may be specific goods where they have been agreed upon at the time the contract is made. Where a contract for sale deals with future goods, it is an agreement to sell goods: **s 10 Goods Act 1958 (Vic)**

Option 3: The goods are to be acquired by the seller

[SELLER] needs to acquire the [GOODS] from [THIRD PARTY] and therefore they are classified as future goods: **s 3 Goods Act 1958**. Future goods may be specific goods where they have been agreed upon at the time the contract is made. **s 10 Goods Act 1958 (Vic)**

Option 4: Generic Goods

According to the contract, [SELLER] may decide how and from what source he will obtain the goods, so long as they match the contractual description. The [GOODS] are unascertained, generic goods: **Re Goldcorp Exchange Ltd (in rec) [1995] 1 AC 74.**

Option 5: Goods sold ex-bulk (Unascertained becoming ascertained)

According to the contract, the [GOODS] are to be sourced from [SOURCE]. From the [SOURCE], the seller may choose which [GOODS] to supply. These goods are known as unascertained goods sold ex-bulk: **Re Goldcorp Exchange Ltd (in rec) [1995] 1 AC 74**. Once the [GOODS] have been separated from the [SOURCE] they become ascertained goods: **RE Staplyton Fletcher Ltd [1995] 1 All ER 192**.

Element 3: Property passes

Option 1: There is a contract of sale (specific goods)

In a sale, the property in the goods is transferred from the seller to the buyer at the time of the transaction: **s 6(3) Goods Act 1958**. In the present case [A] transferred the property in the [GOODS] to [B] at the time of the transaction.

Option 2: There is an agreement to sell (future goods/unascertained)

In an agreement to sell, transfer of property takes place in the future or on fulfilment of a condition: **s 6(3) Goods Act 1958**. As the goods are future goods, [SELLER] does not have actual property in the goods and is unable to pass property to [BUYER]: **s 6 Goods Act 1958 (Vic)**. Property is transferred in accordance with the intention of the parties after the goods have become ascertained: **Akron Tyre Co v Kittson (1951) 82 CLR 477**. Agreement to sell becomes a sale on the elapse of a specified time or on fulfilment of condition: **s 6(4) Goods Act 1958 Vic**.

❖ Factors that indicate intention may include:

- Postponement of payment/delivery
- Contractual agreement on transfer of risk
- Obligation to insure

If no intention made known, when goods have been unconditionally appropriated to the contract = transfer: **s 23**

Element 4: Price

Section 13 GA

(1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions the [buyer](#) must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Option 1: A price has been decided

For a contract for sale of goods there must be a payment or promise of payment of money: **s 6(1) Goods Act 1958 (Vic)**. [SELLER] agreed to transfer property of [GOODS] to buyer for the agreed upon price of [PRICE], this element is satisfied: **s 13(1) Goods Act 1958 (Vic)**.

Option 2: A price is to be decided in a fixed manner

For a contract for sale of goods there must be a payment or promise of payment of money: **s 6(1) Goods Act 1958 (Vic)**. [A] and [B] have agreed to set the price by [FIXED MANNER], this element is satisfied: **s 13(1) Goods Act 1958 (Vic)**.

Option 3: No price or manner has been decided

For a contract for sale of goods there must be a payment or promise of payment of money: **s 6(1) Goods Act 1958 (Vic)**. Where the parties have not agreed upon a fixed price or a fixed manner for determining the price, the buyer must pay a reasonable price: **s 13(2) Goods Act 1958 (Vic)**. What is reasonable will depend on the circumstances of the case and the previous dealings between the parties

Option 4: Barter

For a contract for sale of goods there must be a payment or promise of payment of money: **s 6(1) Goods Act 1958 (Vic)**. [SELLER] has agreed to transfer property of goods to [BUYER] for [Goods]. This constitutes a barter. A barter is not a sale unless it involves both an exchange of goods and money consideration: **Davey v Paine Bros (Motors) Ltd**