Step 1: Are we dealing with goods?
- Chattels personal, not chosen in action (IP, shares) or money. Emblems agreed to be severed from the land.

Step 2: Is it an Existing or Future Good?
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Step 4: Contract of Sale
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Step 5: If it is a specific good...
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Step 6: Goods identified and agreed upon when Sale K made.

Step 7: have the goods become ascertainable by appropriation?
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Step 8: have the goods become ascertainable by exhaustion?
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Step 9: property passes when the parties intend
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Step 10: unless a different intention appears – s 21 rules

Rule 1: specific goods in a deliverable state
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Rule 2: Goods needing processing
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Rule 3: weigh, measure, test or some other thing
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Rule 4: Goods on approval for sale or return
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Rule 5: Unascertainable or future goods
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Rule 6: Transferring of Title
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Elements (Eastern Distributors & Golding)

Impact: estoppel binds true owner & confers good title against world

Elements: (Mercantile Credits & Hamble)

Impact: estoppel by negligence

INTRODUCTION

1. INTRODUCTION

Chattels Personal: all property other than real. Includes intangibles (shares, IP, debts)

Chattels Real: leasehold interest

Chose: thing capable of being owned & possessed. ‘In action’: right enforceable by action, not possession (phone K, shares, IP, trademarks)

In Res: personal right to sue for the money. In Rem: exercise right over property, via SL

Guarantee: K obligation to secure debt to creditor (in res) – Neobrock Pty Ltd

II. SALE & TRANSFER OF PERSONAL PROPERTY

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INTRODUCTION
Definition

**Limitation on Access to Remedies**

**Buyer’s Remedies**

- **Delivery**
  - **Definition**: voluntary transfer of possession.
  - **Assumptions**:
    - if not different intention appears
  - (1) Seller must be RVA for buyer to take possession.
  - (1A) Place of delivery is seller’s place of business; or residence if no PoB.
  - (1B) unless goods are specific, and the parties know the goods are in some other place, then that is place of delivery.
  - (2) time of delivery fixed by K, or reasonable time, which is a Q of fact (s 21)
  - (4) delivery must be at a reasonable hour; (4A) outside that time not recognised.
  - (3) if delivery is to bailee (eg storage) then no delivery until bailee acknowledges goods held for Buyer.
  - (5) seller bears costs of putting goods in deliverable state.

**Delivery of Wrong Quantity**

- s 31(1): if less, may reject goods, or accept and pay pro rata.
- s 31(2): if more, may accept amount contracted & reject the balance, or whole.
- s 31(2D): if accept the whole of more → pay pro rata.
- s 31(2F): if mixed with uncontracted goods, may accept the contracted goods and reject the other, or reject whole.

**Delivery by Instalments**

- s 33(1), unless agreed, buyer entitled to receive delivery of the whole of the contracted goods → (Beherend & Co Ltd v Produce
- s 31(2): delivery by instalment, and 1 instalment faulty, either repudiation of K or severable breach based on the circumstances.
  - Maple Flock: two questions [1] the ratio of the instalment as a whole; and [2] the probability of repeated breach.

**Carriers**

- s 34(1): where seller authorised/required to deliver via carrier, delivery to carrier prima facie delivery to buyer.
- s 34(2): seller must carry with carrier on reasonable terms.
- s 34(2A): if fails to do so, and goods lost/damaged, seller may be liable for loss – exception to risk passes with title.

**Buyer’s Remedies**

- **Breach of condition – rescission** (Chao v British Traders).
- **Defective instalment** s 33(3): severance or repudiation. Repudiation requires breach of a condition.
- **Non-Delivery or Delay – s 29(3)**: damages, quantified by looking at the difference between contract price and market value for the goods.
  - Hadley v Blavenda: damage limited to (1) losses arising naturally in usual course of things from breach of K itself OR (2) losses reasonably within parties’ contemplation at time of K as probable result of breach. → S 40A.
  - **Specific Performance – s 35** may be awarded for K breach to deliver specific on ascertainable goods, without option of damage (Dougan v Ley).

**Limitation on Access to Remedies**

- **s 14**: when breach of a condition treated as a warranty, lose right to rescission and repudiation.
  - (1) buyer waives the condition and treats as warranty
  - (2) condition or warranty depends on construction of K
  - (3) when K not severable, and buyer has accepted goods, then breach can only be treated as breach of warranty, not a condition.
  - **s 15**: acceptance when [1] intimates to seller that the buyer has accepted them, or [2] buyer does any act in relation to goods inconsistent with seller’s ownership; or [3] retains goods after reas lapse of time, w/o notifying seller of rejection

**Seller Remedies**

- **Action for Price – s 35**: seller may sue for the K price when (1) property in the goods has passed; or (2) price is payable under the K, irrespective of delivery or passing of property.
- **Damages for non-acceptance – s 45**: if buyer wrongfully refuses to accept goods; (2) damages measured from losses directly/naturally occurring in ordinary course of events; Hadley v Baxendale (3) determined by difference between K price and market price at time of goods should have been accepted.
  - Hadley: recognises the ability to sell off perishable goods.
- **Rights against the goods (in rem) s 33**: (1) or exercise lien on undelivered goods, even if property passed; (2) if fails to do so, and goods lost/damaged, seller may be liable for loss → PoB.
  - Hadley v Blavenda: if delivery by instalment, and 1 instalment faulty, either repudiation of K or severable breach based on the circumstances.
  - Maple Flock: two questions [1] the ratio of the instalment as a whole; and [2] the probability of repeated breach.

**V-VI. INTRODUCTION TO PPFA 2009 (Ch): ATTACHMENT/PERFECTION**

**Step 1: Relevant Time Period**

- **Securities before 30 Jan 2012 need not be registered → 30 Jan 2014.**

**Step 2: Is it personal property?**

- **Rule**: includes tangible goods, intangible (IP, contract rights, medical records – Re Axlrod, seismic data – Gauntlet Energy Corp), investment entitlements (ADI, stockbroker accounts) and both legal and equitable interests – Canadian Imperial Bank.
  - personal property means property (including licenses) other than (a) land and (b) statute-based exceptions.
  - **exclusions** (c) common law lien; (d) right to set-off; (f) right to remuneration; (g) security interest by pawnbroker or < $5,000; superannuation, right to water, interests in insurance, fixtures.

**Step 3: Is it a PPS Lease?**

- **s 12(1)**: PPS Lease is a ‘deemed’ security interest.
  - **Definition of PPS Lease for consideration**
    - Category 1: the lease/baileyness of tangible property for (a) > 1 year; (b) infinite term, even if determinable; < 1 year if auto renewal; then > 1 year; (d) < 1 year if lessee/bailee retains possession > 1 year
    - Category 2: where goods may or must be described by serial no if term > 90 days; (i) > 90 days with auto renewal; (ii) < 90 days & retains possession.
  - Commercial transaction: may register (PP over other than consumer).
  - Consumer transaction: must register (Not by ABN, for enterprise).
  - Goods registrable by serial no: (a) tangible property; motor vehicles and watercraft
  - S 13(2): not a PPS Lease if
    - (a-b) lessor/ bailee or not regularly engaged in the conduct of leasing or bailing, or (c) attached to land; (d) excluded by Reg.
  - Reg: a single transaction not regular. But if first, and intended to be followed by others, start of regular.
  - s 13(2): Only for baileyness for value.

**Step 4: Is there a security interest (SI)?**

- **s 18**: need security agreement, which can cover (2) after acquired property, which (3) can attach without specific appropriation; (4) future advances; (5) covers enforcement expense.
  - Granter: owner of property, granting SI – s 10
  - Secured Party: holds the SI → s 12(1)
  - **s 12(1)**: interest in PP provided for by transaction (Security Agreement) that, in substance, secures payment or performance of an obligation – not a licence.
  - Bank of Montreal: may extend to almost anything serving the function of a SI.
  - Haliburton BS: need a consensual written/local Security Agreement between granter and secured party.

**Step 5: attachment**

- **Definition**: process creating a SI, guaranteeing Granter/SP relationship
  - s 14(1): SI cannot be enforced against granter until attached to the collateral.
  - s 14(2): attachment occurs when
    - (a) Granter has rights in collateral (K, legal, equitable) or power to transfer rights in the collateral to SP; AND
      - Ontario Imo: ag agreement subject to condition precedent, no rights until fulfilled.
    - (b) either (i) value sufficient to support a K for the SP: Agricultural Cred e.g commitment to provide a loan or (ii) Granter does some act to create SI – consideration, signing, agreement.
  - s 15(1): parties may agree time of attachment other than 19(2).
  - s 12(2): if a PPS lease, possession or conditional sale then attachment occurs when Granter gets possession of the goods.

**Step 6: enforceability against Third Parties**

- **s 20(1)**: SI only enforceable against TPs if
  - (a) Attached to collateral; and (b) one of the following
    - (b) SI has possession of collateral.
    - (b) SI perfected SI by control (financial property)
    - (b) SI providing SP ‘covers’ the collateral → s 20(2).
  - s 20(3): SA ‘covers’ collateral if (no particular form/wording required – BC LMD)
    - (a) in writing (i) signed electronically or written (ii) accepted either g click ‘I accept’ and (b) contains a particular description of the collateral or All PAP. S 20(4)(5) must itemise if ‘consumer property’, ‘commercial property’, ‘equipment’ and inventory.
    - Re Apollo Fitness: must be somewhat specific on a case-by-case basis.
    - Question of commercial reality: GC Capital: ‘shelving’ was sufficient, fruit sufficient.
    - s 20(4): SP in proceeds of sale enforceable against TP even if proceeds not included in SA (assume proceeds covered). Priority subject to s 135.

**Step 7: Perfection & Registration**

- **How to perfect**
  - s 11(1)(a): temporarily perfected, or otherwise perfect by this Act; or
  - s 11(1)(b): SI attached to collateral and enforceable against TP and either (2)(a) effective registration; (b) SP has possession of collateral (s 20(2)); (c) by control if finance.
  - s 21(1) – can register before attachment – Advanced Wing Tech
  - s 21(1): One registration can perfect more than one SI (e.g. ROT)

- **How to register – pt. 3 PPFA, Pt 2. Regs**