

**COMMERCIAL LAW  
SUMMARY  
2010**



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**SAMPLE ONLY**

# 1. UNDERSTANDING THE CONTRACT OF SALE AND THE MULTIPLE LEGAL CONCEPTS OF GOODS

## 1.1 “Goods”: What are they?

### Sales of Goods Act 1923 (NSW), section 5(1) “Goods”

In this Act, unless the context or subject matter otherwise requires:

“Goods” include all chattels personal other than things in action and money. The term includes emblems and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

### Trade Practices Act 1979 (Cth), section 4(1) “Goods”

In this Act, unless the contrary intention appears-

“goods” includes-

- (a) ships, aircraft and other vehicles;
- (b) animals, including fish;
- (c) minerals, trees and crops, whether on, under or attached to land or not; and
- (d) gas and electricity.

### ***St Albans City and District Council v International Computers Ltd***

**Facts-** St Albans entered into a contract with International Computers for a computer system (software). Fault in **software** resulted in underestimation of the rate of charge set.

**Held-**

- Software includes both the (tangible) disk and the (intangible) program. Disk is within statutory definition of goods, but program, of itself, is not.
- Where **disks** are sold with **programs encoded onto them**, those programs are part of the disk and so ‘goods’. That was analogous to the **text within an instruction manual**.
- Where programs are supplied separately from disks, those programs are not goods, so SGA would not apply. Thus, **transfer of program (mere licensing) does not constitute a transfer of goods**

- However, C/L would imply a term into the contract that the programs were reasonably fit for the intended purpose. “*An unexpressed term can be implied iff the court finds that the parties must have intended that term to form part of their contract.*” ***Trollope & Colls Ltd v North West Metropolitan Regional Hospital Board*** [1973]

### ***Telstra Corporation Ltd v Hurstville City Council***

**Facts-** whether **electromagnetic signals** passing along the coaxial cables and **content** carried by those signals were ‘goods’, and capable of being subject to excise duty.

**Held-**

- In ***Pont Data***, it was agreed that in the absence of a statutory definition ordaining otherwise, even electricity was not “goods”; and even where a definition included electricity, the word still did not include encoded electrical impulses (analogous to electromagnetic waves).
- In ***Adams v Rau***, approved in ***Mutual Pools***, held that production of shorthand writers of transcript was not goods because they were not brought into existence for sale as a commodity, but for the purpose of enabling employers to have the benefit of services given in the course of a skilled vocation.
- To provide information is to provide service, not “**goods.**”

### ***Elitestone Ltd v Morris [1997] HL***

**Facts:** Chalet resting on concrete pillars set into ground. Chalet connected to usual services. Cannot be taken down and re erected elsewhere. Can only be removed by demolition.

**Held-**

- “**Whether a structure became part and parcel of the land itself depended on the degree and the object of annexation to the land; that, assessed objectively.**”
- Degree of annexation-can chattel be removed w/o injury to itself or the land? **A degree of permanence must also exist.**
- **Purpose** is also important: ***Holland v Hodgson***

## 1.2 A Contract for the Sale of Goods

The transfer of property in goods is regulated by the **Sales of Goods Act** (SGA). **For SGA to apply there must be a 'contract for the sale of goods'**. 'Contract for the sale of goods' is also necessary for the application of other parts of the SGA, notably the implication of terms, rights against the goods and actions for breach of contract.

**Sales of Goods Act 1923 (NSW), sections 4(4), (5), (excerpts), 6(1), (2), (3), (4)**

### Security Agreement

#### SOGA s4(4)

Provisions relating to contract of sale → do not apply to any transaction which is intended to operate as a mortgage, pledge, charge or other security.

### Definition

**5.(1) In this Act, unless the context or subject matter otherwise requires:**

"**Buyer**" means a person who buys or agrees to buy goods

"**Contract of sale**" includes an agreement to sell as well as a [sale](#).

"**Goods**" include all chattels personal other than things in [action](#) and money. The term includes emblements and things attached to or forming part of the land which are agreed to be severed before [sale](#) or under the [contract of sale](#).

"**Seller**" means a person who sells or agrees to sell [goods](#).

### 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.

## 1.3 Sale or Supply

The language of SGA self evidently deals with the sale of goods. The **Trade Practices Act 1974** (Cth) uses the term "supply" in Parts V and VA. It applies to both goods and services. It has a wider meaning than sale as it includes sale and other transactions.

**SAMPLE ONLY**

## Trade Practices Act 1974 (Cth), section 4, 4C

### 4(1) Interpretation

In this Act, unless the contrary intention appears:

'Supply,' when used in a verb includes:

(a) in relation to **goods**--supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

(b) in relation to **services**--provide, grant or confer;

and, when used as a noun, has a corresponding meaning, and **supplied** and **supplier** have corresponding meanings.

### 4C Acquisition, supply, and re supply

#### Acquisition, supply and re-supply

In this Act, unless the contrary intention appears:

(b) a reference to the **supply** or acquisition of **goods** or **services** includes a reference to agreeing to **supply** or **acquire goods** or **services**;

(c) a reference to the **supply** or acquisition of **goods** includes a reference to the **supply** or acquisition of **goods** together with other property or **services**, or both;

(d) a reference to the **supply** or acquisition of **services** includes a reference to the **supply** or acquisition of **services** together with property or other **services**, or both;

- **Clarke v New Concept Import Services Pty Ltd:** goods can be supplied to a passive recipient
- **Cook v Pasmenco:** *supply* of goods must occur as part of a bilateral transaction under which the other party *acquires* them.
- **Portfolio Leasing v Registrar CTT:** if a lease has an automatic renewal clause, there was no resupply and the date of the supply is the initial date.



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