



Max Planck Institute  
LUXEMBOURG  
for Procedural Law

# "English Law and Legal Terminology"

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# Topics to be Covered this Semester

Main focus on:

- Contracts - 08.04;
- Torts - 15.04;
- Commercial Law - 13.05;
- Company Law - 20.05.

Exam: 03.06, 16.00-18.00 (HS 2).

Final class and return of exams: 17.06.



# Short Presentations and Written Exam

- Presentation of 3-5 minutes;
- 10 points for the presentation;
- 90 points for the final exam.



# What is commercial law?



# Introduction to Commercial Law

- Laws governing legal relationships arising from trade or business – contract law at the heart of commercial law.
- Focus: sale and supply of goods.
- Contracts regulating the sale and supply of goods.
- Key questions: what are contracts for the sale/supply of goods? How to distinguish contracts for the sale/supply of goods and contracts for non-sale of goods?



# Introduction to Commercial Law

- Various other areas of law:
  - e.g. banking law;
  - contracts for carriage of goods (for the transport by land, sea or air);
  - for the insurance of goods;
  - agency (contract where one person, the agent, is authorised to act as the representative of the principal);
  - consumer law;
  - e-commerce;
  - competition law.



# Sale and Supply of Goods Law

- Governed by statute:
  - Sale of Goods Act 1979 (SOGA 1979)
  - Sale and Supply of Goods Act 1994
  - Sale of Goods (Amendment) Act 1995
  - Sale and Supply of Goods to Consumers Regulation 2002
  - Consumer Rights Act 2015



Sale of Goods Act 1979

1979 CHAPTER 54

- Please look at the SOGA 1979 here:
- <https://www.legislation.gov.uk/ukpga/1979/54>



# What are Contracts for the Sale of Goods?

Characteristics of a SOG contract:

- (Section 2(1) and (4) SOGA 1979); (Section 2(1) and (4) SOGA 1979);
- A contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a monetary consideration (the price);
- No formalities are required to create contracts for the sale of goods and they may be written or oral.





# What are Contracts for the Sale of Goods?

Agreement in a SOG contract:

- The seller and the buyer must both have capacity and be committed to selling and buying the goods: an intention to pass property under the contract.
- Property = the general property in the goods and means the transference of the absolute legal title or ownership (Section 61 SOGA).
- Contracts of sale must be distinguished from those contracts where a lesser interest is transferred.



# What are Contracts for the Sale of Goods?

Consideration in SOG contract:

- Consideration in contract for the sale of goods **must be money** (Section 2(1) SOGA 1979);
  - Can be paid immediately (sale for cash) or a promise to pay at a later date (sale for credit);
- Price = crucial term in the contract;
  - Price can be fixed in contract or be fixed in a manner to be determined by the contract; if not fixed, must be reasonable (Section 8 SOGA 1979).



# What are Contracts for the Sale of Goods?

- If consideration is not monetary (but e.g. a contract where the seller delivers goods or services in exchange for other sale of services) = contract of barter or exchange (not SOG).
- Normally, the same statutory rules apply to contracts for sale of goods and for services if services/goods form substance of the contract;
- E.g. a painter agrees to paint a piece of art; is the contract one for services (the painting of the art itself) or for the sale of goods?



# What Contracts are not for the Sale of Goods?

Hire Purchase: supply of goods on credit, with security given to the supplier; option to purchase goods after hiring.

Work and Materials: performance of services; problematic where both goods and services are transferred.

Exchange and Barter: where the consideration for a contract is not money.

Hire and Bailment: characterised by a possessory interest in the goods as opposed to a legal interest (no transfer of property).



# What are Goods? Section 61 SOGA 1979

- “Goods” = all personal chattels; does not include “things in action” or “money”.
- Chattels = all property other than land.
- “Personal chattels” = tangible, movable goods.
- “Choses/things in possession” = things that can be seen, touched and moved.

Does not include:

- “Chattels real” = interests connected to land (e.g. lease)
- “Choses/things in action” (part of chattels) = cannot be seen, are intangible (e.g. debts, copyright, patents);
- Money (chose in possession but excluded from “goods”).



# What are Goods?

Classification of goods (Section 5 SOGA 1979):

- Existing goods: goods which are owned/possessed by the seller;
- Future goods: goods which are to be manufactured in the future or are yet to come into the acquisition of the seller.
- Spes: goods which might or might not come into existence (e.g. crops grown); the buyer normally agrees to pay a fixed price, takes the risk that nothing comes into existence; is obliged to pay full amount regardless (not included in SGA 1979).



# What are Contracts for the Sale of Goods?

Classification of goods:

- Specific goods: goods that are identified and agreed upon at the time the contract for sale is made;
- Unascertained goods: goods that are not identified and agreed upon at the time the contract for sale is made (not defined in the SOGA 1979)
- Ascertained goods: goods that were originally unascertained but which are subsequently identified by the parties after the contract is made;
- Generally, property in the goods can only pass when goods have become identifiable, i.e. become ascertained.



# The Seller's Obligations

5 duties of the seller:

1. Duty to pass good title in the goods;
2. Duty to deliver the goods;
3. Duty to deliver goods at the right time;
4. Duty to deliver the right quantity of goods;
5. Duty to supply goods of the right quality.





# The Seller's Obligations (Section 27 SOGA 1979)

## 1. Duty to pass good title in the goods

- Good title = ownership in the goods (which is free from any rights of third parties);
- If the seller owns the goods, the goods will pass directly to the buyer;
- If the seller does not own the goods, he must have a right to sell (i.e. the permission of the owner and must comply with the duty to pass good title);
- And a power to sell (power = ability of the seller to transfer property).



# The Seller's Obligations

## 2. Duty to deliver goods (Section 29 SOGA 1979)

- Goods must be delivered in accordance with the contract;
- Delivery = voluntary transfer of possession from seller to buyer; normally seller makes goods available for collection;
- Buyer normally does not have to send goods anywhere;

Delivery can be physical, symbolic or constructive:

- Physical = sending or collection of physical goods by the seller or buyer;
- Symbolic = delivery of symbol of the goods (e.g. delivery of car keys in a car sale); *Four Points Garage v Carter* (1985) 3 All ER 12.



# The Seller's Obligations

## 2. Duty to deliver goods

- Constructive = goods are held in possession of third party; seller indicates they should be continued to be held on behalf of buyer;
- Delivery is made on acknowledgment by third party (attornment) of holding on behalf of buyer;
- Seller can also transfer relevant documents of title to the buyer – these documents represent the goods and transfer is enough to make transfer of property in the goods.



# The Seller's Obligations

## 2. Duty to deliver goods

- Non-delivery = breach of contract;
- Some contracts contain terms which limit or negate liability for non-delivery;
- If certain conditions are met:
  - If non-delivery was a result of force majeure (events which were not reasonably foreseeable, was not responsibility of seller and made performance impossible);
  - If non-delivery was a result of an Act of God (natural events, which were not reasonably foreseeable, and made performance impossible).



# The Seller's Obligations

## 3. Duty to deliver goods at the right time

- The contract may include a term that states that payment and delivery must be made within a certain period of time;
- The terms may be “of the essence” of the contract, that is:
  - A condition of the contract;
  - A term which allows the party to repudiate the contract and claim damages if breached;
  - Under SGA 1979, determination is a matter of interpretation – is time of the essence of the contract?
- Courts have decided such terms are normally conditions – delay of some minutes or hours will result in breach.



# The Seller's Obligations

4. Duty to deliver the right quantity of goods (Section 30 SOGA 1979)
  - Seller must deliver the right quantity, ie amount of goods;
  - This rule is applied strictly;
  - Any additional or lesser amount will allow the buyer to reject the delivery of the goods;
  - Buyer can accept delivery in installments but does not have to (therefore buyer cannot deliver part at the relevant and then promise to deliver the rest later);
  - If the amount delivered (either more or less) is so small as to be negligible, the buyer cannot reject the goods (unless he or she is a consumer).



# The Seller's Obligations

4. Duty to deliver goods of the right quality:
  - Implied terms included in contract to ensure the goods delivered are of a certain standard and quality;
    - Goods must correspond with their description;
    - Goods must be fit for purpose;
    - In a sale by sample, goods sold must correspond with the sample;
    - Goods must be of satisfactory quality.
  - S14(2A) SOGA = objective standard of satisfactory quality re description of the goods, the price and any other relevant factors (appearance or finish; lack of minor defects; safety; durability).



# The Buyer's Obligations (Section 27 SOGA 1979)

1. Duty to pay the price;
  2. Duty to take delivery and accept goods;
- 
1. Duty to pay the price (Section 27 SOGA 1979)
    - In line with the contract terms;
    - Unless the parties have agreed, the buyer cannot claim possession until he has made payment;
    - Payment in cash (money or notes), by cheque (negotiable instrument – only paid when honoured by bank) or by credit card (involves three contracts).





# The Buyer's Obligations

## 2. Duty to take delivery and accept goods (Section 35 SOGA 1979)

- Buyer must be ready and willing to take delivery of goods;
  - Failure to collect goods or refusal to take goods when delivered = breach of contract;
- After having taken delivery, the buyer must accept the goods (if they are delivered per the terms of the contract);
- Negative duty – buyer should not unreasonably reject the goods;
  - Acceptance occurs on buyer 1) informing seller he has accepted goods, 2) dealing with them in a way which undermines the seller's ownership or 3) if a reasonable time elapses without indication of intention to reject.



# Effects of the Contract

1. Transfer of Property;
2. Passing of Risk.

## 1. Transfer of Property

- Property in goods will be transferred from the seller to the buyer;
- Property = ownership or title.



# Effects of the Contract

## 2. Passing of Risk (s20 SOGA 29179)

- Risk = the bearing of the costs of accidental damage or destruction of goods;
- Usually risk is held by the owner of goods;
- Under a sales contract, risk normally passes to the buyer at the time when property in the goods passes;
- Exceptions to this rule: where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party at fault.



# Remedies of the Seller (Sections 38-48 SOGA 1979)

- Key obligation of the buyer = payment of the price;
- If buyer does pay = breach; seller can bring an action for payment of the price or for damages for refusal to accept the goods;
- When does a problem arise (and seller is not fully compensated)?
  - If the buyer is insolvent; buyer has no precedence over other creditors;
  - Real remedies: seller can retain some power over goods as security for payment – only if buyer is insolvent and seller has not been paid in full or in part.



# Remedies of the Seller on Breach

- Real remedies:
  - Unpaid seller's lien:
    - The unpaid seller can retain possession of goods until the buyer pays the full contract price; only if he has goods in his control.
  - Right of stoppage in transit:
    - If goods are in transit to buyer, the unpaid seller can stop transit to regain possession and keep it until full price is paid.



# Remedies of the Seller on Breach

- Real remedies:
  - Right to resell the goods:
    - Power to resell: seller can sell again when property in goods has passed to the buyer; good title will be passed to the second buyer. However, the seller will be in breach to the first buyer and liable for damages.
    - Right to resell: seller can sell again without being in breach of the original contract; this right only arises where the contract includes an express provision to this end or if goods are perishable.



# Remedies of the Seller on Breach

- Real remedies:
  - Give a degree of protection to the buyer against non-payment by the buyer;
  - Can only be used if the goods are still in possession of the seller, or in transit to the buyer (ie have not yet reached him);
  - Retention of title clauses: sometimes included in contracts to provide that ownership in goods will be maintained by the seller even after the goods have been delivered; ownership only passes on payment of the full price (protects against insolvency of buyer).



# Remedies of the Buyer (ss51-53 SOGA 1979)

- If seller fails to deliver goods = breach of contract; buyer can bring action for a) specific performance, for b) damages or c) reject the goods.
- Consumers have additional (hierarchical) remedies under the CRA 2015; they have a right to repair or replace goods, to price reduction or to reject the goods (ss48A-F SOGA)
- a) Specific performance: a discretionary remedy; awarded only where the court sees fit and if convinced damages are inadequate (rare; normally only if unique goods).





# Remedies of the Buyer on Breach (s51 SOGA 1979)

- b) Damages:
  - 1) if goods are available on the market but not delivered, damages will be difference between contract price and market price on the day they should have been delivered;
  - 2) if goods are delivered but do not conform to contract, the buyer can either claim damages; or:
- c) reject the goods; if the time for delivery has not yet expired, the seller can retender delivery; if the time has expired or if the breach = breach of condition, the buyer can terminate (repudiate) the contract.



**Next session: 20<sup>th</sup> May - read chapter  
on company law.**





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