

Goods: Sales and Securities

Third Edition

Judith Sihombing



Hong Kong University Press
香港大學出版社

Hong Kong University Press
The University of Hong Kong
Pokfulam Road, Hong Kong

© Hong Kong University Press, 1989, 1991, 1997
First Published 1989
Second Edition 1991
Third Edition 1997

ISBN 962 209 432 5

All rights reserved. No portion of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage or retrieval system, without permission in writing from the publisher.

Printed in Hong Kong by Condor Production Ltd.

Contents

General Editor's Foreword	xi
Preface to the Third Edition	xiii
1. Introduction	1
1.1 Introduction	1
1.2 Bailment	2
1.3 The Bona Fide Purchaser for Value Without Notice	3
1.4 Conversion	5
1.5 Deceit	7
1.6 Distress	8
1.7 Execution	9
1.8 Fiduciary Relationship	10
1.9 Gifts	11
1.10 Injunction	13
1.11 Interpleader	14
1.12 Liens	14
1.13 Misrepresentation Ordinance	15
1.14 Options	17
1.15 Personal Property	17
1.16 Possession	18
1.17 Privity	19
1.18 Property	20
1.19 Rescission	22
1.20 Small Claims	22
1.21 Specific Performance	23
1.22 Waiver	23
2. Contracts for the Sale of Goods	25
2.1 Introduction	25
2.2 Work and Materials	27
2.3 Transactions Which Do Not Come Within SOGO	28

2.4	Excepted Goods and Fixtures	28
2.5	Classification of Goods	30
2.6	Contracts for the Sale of Goods	31
2.7	Capacity	32
2.8	Form	33
2.9	Conditions and Warranties	34
2.10	Implied Terms	37
2.11	Exclusion Clauses	47
2.12	Unconscionable Contracts	50
3.	Transfer of Property: Goods	53
3.1	Introduction	53
3.2	Gifts and Other Transfers	53
3.3	Fixtures	54
3.4	Passing of Property and Title	57
3.5	The Passing of the Risk	60
3.6	Mistake and Frustration	62
3.7	<i>Nemo Dat Quod Non Habet</i>	64
3.8	Exceptions to <i>Nemo Dat</i>	66
3.9	Reputed Ownership	76
3.10	Retention of Title	77
4.	Performance of the Contract of Sale	83
4.1	Introduction	83
4.2	Delivery	84
4.3	Acceptance by the Buyer	93
5.	Real Remedies of the Seller	95
5.1	Introduction	95
5.2	Unpaid Seller's Lien	98
5.3	Stoppage <i>in Transitu</i>	99
5.4	Resale	103
5.5	Other Remedies	104
6.	Seller's Remedies	107
6.1	Introduction	107

*Contents**ix*

6.2	Action for the Price and Damages	108
6.3	Anticipatory Breach	116
6.4	Mitigation and Remoteness	117
6.5	Special Damages or Interest	119
7.	Buyer's Remedies	121
7.1	Introduction	121
7.2	The Right to Reject	121
7.3	Damages: Misrepresentation Ordinance	125
7.4	Damages	126
7.5	Specific Performance	129
7.6	Recovery of Money Paid	130
7.7	Other Remedies	130
7.8	Use of Goods in the Payment of Debts	130
8.	Contracts for the Sale of Goods — International Sales	133
8.1	Introduction	133
8.2	C.I.F Contracts	133
8.3	F.O.B Contracts	136
8.4	Letters of Credit	139
9.	Credit Agreements and Personal Property	147
9.1	Historical Introduction	147
9.2	Credit Sales	151
9.3	The Nature of Security Transactions	152
9.4	Mortgages	154
9.5	Charges	156
9.6	Pledge	156
9.7	Hire-purchase	158
9.8	The Trust Receipt	167
	Table of Statutes	171
	Table of Cases	175
	Index	179

Chapter 1

Introduction

1.1 Introduction

1.1.1 This book concerns goods. It is designed:

- to explain the provisions of the *Sale of Goods Ordinance* (SOGO) and the remedies associated with the operation of those provisions,
- to show how goods can be used as security for borrowing money and how goods can be purchased when the buyer has insufficient funds to pay at the time of purchase,
- to discuss the ways in which the owner of goods can lose property in them unwillingly,
- to note the terms which can be or must be inserted in a contract for the sale of goods, and
- to mention certain contract principles associated with these matters.

Part of this area of the law is very technical for it involves not only the matters raised in SOGO but it also deals with concepts of property, as well as other matters. It is especially in relation to the property concepts that problems of interpretation occur. To help in the understanding of SOGO and the allied topics, terms which have a legal or technical meaning will be discussed in this chapter. The discussion will be brief but it is designed to enable those who do not have legal training to understand the meaning lawyers give these terms.

The use of legal terms is a type of shorthand. The term may seem to have an everyday meaning, but sometimes the meaning to the lawyer will be different. A lawyer should know the concepts behind the term and its use and operation in any situation. As a result the lawyer has a special comprehension of the term, different from the comprehension of the term by the layman. When a lawyer sees a legal term he understands the principles which it represents. In many cases if it was necessary to use a term or phrase which explains the principle,

we would have to use many words and even then there may be confusion in the meaning. For this reason legal terms really are legal shorthand.

Sections of SOGO which are referred to in the following chapters will not be reproduced, except in limited cases. The reader should obtain a copy of SOGO and read it in conjunction with the text.

1.2 *Bailment (3.5.1)* (See also below under 'Ownership' and 'Property').

1.2.1 Bailment occurs where one person (the bailee) knowingly and willingly comes into the possession of the goods belonging to another (the bailor) to keep them for a particular time and return them to the bailor or to pass them to another as required by the bailor. The bailee will usually have certain functions to perform with the goods, for example to repair them. In rare cases the bailment will be classified as 'unconscious' because the bailee does not know he has possession of the goods of another.

Generally, bailment requires possession of the goods to be delivered to the bailee who does not become the owner. The bailor retains ownership although the bailee has physical and legal possession. The bailor has a right to recover possession on the termination of the bailment.

Most types of bailment are based on a contract. There are three elements which make up bailment. *First*, the bailee has a duty to take care of the goods and return them to the owner in due course or deliver them to another as directed by the owner. The nature of the bailment, including whether it was for consideration or gratuitous, will determine the extent of the duty of care: *Always Wing Ltd v Autofit Ltd* [1995] 2 HKC 48. *Secondly* where loss or damage occurs, the bailee has to prove that he was not negligent in caring for the goods or that his failure to take care did not cause the loss: *Dense Billion Ltd v Hui Ting Sung* (1996) CA No 135/96. *Third* the bailee is estopped from denying that the goods belong to the bailor.

In some cases the bailee can create a sub-bailment, as for example where the bailee sends goods to another person for a repair which the bailee is unable to effect himself. It has been held that the bailor is bound by the terms of an authorized, or not unauthorized, sub-bailment contract whether or not he had been advised of its terms. In

Chapter 2

Contracts for the Sale of Goods

2.1 *Introduction*

The Sale of Goods Legislation

2.1.1 SOGO is based on the English Sale of Goods Act 1893 which codified, or put into statutory form, all the elements of the existing common law and the law merchant relating to goods. These elements had been developed by the practice and customs of merchants over the centuries, and by the court's interpretation of these customs and practices and of legislation dealing with particular aspects of goods. SOGO was first enacted in 1896 and has been amended from time to time since then. In its present form (Sale of Goods Ordinance Cap 26), it still follows the English legislation very closely (see now the Sale of Goods Act 1979).

There has long been discussion on whether the concept behind the term 'common law' in this legislation referred to the principles of Equity also. If it did then the provisions of the legislation were not exclusive and settled with the result that Equity could be used to modify the terms of the legislation when and as necessary. If Equity did not apply then only the terms of the legislation were to be applied and interpreted. In this case the legislation acted as a 'code' on the sale of goods, i.e., the legislation contained all the law on the topic and no outside regulations were appropriate.

One argument following the second approach is that as special provision was made, in s54, enabling the buyer of goods to obtain the equitable remedy of specific performance (1.21) of the contract in certain circumstances, then this express reference to the equitable remedy meant that this was to be the only inclusion of equity in the Act. Thus the legislation acted as a code. This is the view favoured in *Re Wait* ([1927] 1 Ch 606, 635-6), where it was said that:

The [Act] was passed at a time when the principles of equity and equitable remedies were recognized and given effect to in all our courts, and the particular remedy of specific performance is specially referred to in [s54]. The total sum of legal relations . . . arising out of the contract for the sale of goods may well be regarded as defined by the [Act]. It would have been futile in a code intended for commercial men to have created an elaborate structure of rules dealing with rights at law, if at the same time it was intended to leave subsisting with the legal rights equitable rights inconsistent with, or more extensive, and coming into existence earlier than the rights so carefully set out in the various sections of the [Act].

The other view is that as the term ‘common law’, in section 62 (2) in particular, was used to mean both common law and equity, and because there is no definition of ‘common law’ in SOGO, then equity must have been included in the interpretation of the provisions of SOGO. Both views have their supporters. The result is that there is no uniformity in decisions because some judges enforce strictly the words of the legislation, whilst other judges will use external rules and principles.

Even if the legislation is a codification of all the law relating to goods, its provisions are not exclusive because by the express terms of s62(2), unless inconsistent with SOGO, the common law including the law merchant, general contractual principles relating to the avoidance of contracts (such as mistake or misrepresentation, including thereby some equitable principles), and the law of agency continue to apply to contracts for the sale of goods. An examination of the law relating to the sale of goods must cover, therefore, several areas of the general law, as well as a study of SOGO.

Goods

- 2.1.2 SOGO applies to contracts for the sale of ‘goods’, and these are defined in s2(1) as including:

All chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

The most usual example of the goods under the provisions of SOGO are the things which are bought in a store, for example vegetables in a supermarket. In law these are referred to as movables (1.18), that is, those things which are able to be seen, are easily moved, and which are classified as items of personal property. Another legal term for these movables is choses in possession (commonly called chattels) for they can be physically held and transferred by being handed over. The other group of items of personal property is called choses in action. A chose in action gives one a right to an interest which can only be satisfied or exercised by taking action in court. Choses in action are not covered by SOGO.

SOGO does not deal with land nor with those chattels which have become attached to land and which are treated by law as being land (these chattels are then called fixtures; 2.4.2). The list in s2(1) is not exhaustive however, so that for example rare coins can come within the operation of the ordinance as goods, for they are not treated as money or currency.

2.2 Work and Materials

2.2.1 SOGO does not apply to contracts for work and materials. These are contracts in which goods may be included but where the main reason for the contract is the carrying out of services or the performance of work involving skill. In some cases it is difficult to distinguish these contracts from those contracts for the sale of goods. The test seems to be that if in substance the transaction is a contract for the production of something to be sold, then it is a sale of goods contract, whereas if the main purpose of the agreement is a contract concentrating on the exercise of skill and labour for which any resulting chattel or product is 'only ancillary', the contract is outside the provisions of SOGO as being one for work and materials.

In *Robinson v Graves* [1935] 1 KB 379 it was held that a contract to paint a portrait was a contract for work and materials because the artist's skill and labour were the most important elements of the contract. However, the making of two sets of false teeth was held to be a contract for the sale of goods in *Lee v Griffin* [1861-73] All ER Rep 191 for when a 'contract is such that a chattel is ultimately delivered . . . the cause of action is goods sold and delivered'.

The classification of the contract is irrelevant in one case. This is

Transfer of Property: Goods

3.1 Introduction

- 3.1.1 A person may transfer or pass property or title (in some circumstances the terms may be interchangeable) in his goods in a number of ways including sale, gift, exchange, and under a contract for work and materials. In addition, title to goods can be lost involuntarily where goods owned by one party are attached:
- to the land of another (and the goods become fixtures (2.4.2), or
 - to the goods of another (by accession), or
 - by the intermixing with the goods of another (by confusion or specification).

These terms are explained later (3.3.1).

The law recognizes this type of involuntary acquisition as sufficient to pass title from the owner to the other party. Generally the original owner will have no recourse against the new owner and will not only lose his chattels but will have no right to compensation.

Title can also be lost when a rogue (the term used to describe a person who has possession of the goods of the true owner and who is the conduit for the passing of title to a third party) purports to sell the goods to a bona fide third party for value and that third party does not have knowledge of defects of the rogue's title. The exceptions to *nemo dat* operate to cause the owner to lose title in these cases.

3.2 Gifts and Other Transfers

- 3.2.1 A gift of goods, whereby the legal title to the goods can be transferred without consideration, can be effected in several ways. These include:
- (a) by deed which ensures that the legal title passes to the donee, although possession does not have to pass at the time the deed is executed;

Performance of the Contract of Sale

4.1 *Introduction*

- 4.1.1 Performance of a contract for the sale of goods involves the observance of technical rules on matters such as delivery, acceptance, and rejection; these rules are provided for in SOGO (ss29–39). ‘Performance’ requires the delivery of the goods by the seller, and their acceptance and payment for them by the buyer(s29). In examining whether this has occurred, and the effects of failure to ‘perform’, it is necessary to look at other relevant sections. These include:
- s30 which provides that payment and delivery are concurrent conditions;
 - s31 which lists several rules as to the delivery of goods, all of which go to establish whether or not there has been delivery in a variety of circumstances;
 - s32 which provides for the interpretation of ‘wrong delivery’ and the effect of this;
 - s33 which provides for delivery by instalments;
 - s34 which provides for delivery to a carrier;
 - s35 where the effect of delivery on risk is dealt with;
 - s36 whereby the buyer is given a right to examine the goods in stated cases;
 - s37 which provides for the acceptance of the goods by the buyer, and what constitutes acceptance;
 - s38 which provides that the buyer is not bound generally to return goods which he has rejected; and
 - s39 which provides for the buyer’s liability on refusing or neglecting to take delivery of the goods.

Real Remedies of the Seller

5.1 *Introduction*

- 5.1.1 Real remedies, or remedies *in rem* (1.18) are those which entitle the holder to take action against the goods themselves rather than merely having to sue for their price or for damages. These rights *in rem* or real rights enable the unpaid seller to look to the goods as a kind of security for payment of the price. They are additional to the seller's personal action for damages on the contract, in cases where the buyer breaches the contract by non-payment. SOGO (s41) lists three real remedies over the goods to which the unpaid seller is entitled by implication of law.

The first remedy is that of the lien: ss41(1)(a) and 43–45. This can only exist however if the unpaid seller is still in possession of the goods because this statutory lien is similar to a common law lien which requires possession by the lien-holder. If property in the goods has not passed to the buyer, then the seller, as lien-holder, will also be able to withhold delivery of the goods: s42.

In *Ward v Bignall* [1967] 1 QB 534 the buyer agreed to buy two cars from the seller. He paid a deposit but before he paid the balance he repudiated the contract and refused to take delivery or pay the balance. The seller wrote to the buyer saying that property in the cars had passed to the buyer and he was liable to pay their price. The seller then sold one of the cars. The court held that the seller could not sue for the price of the unsold car for by his resale of one of the cars, the seller had rescinded the original contract and he could receive damages only for the breach caused by non-acceptance. The court found that there were insufficient factors present for the property to have passed to the buyer. Amongst the factors which the court looked at were the mode of payment, the failure to leave a cheque for the balance, and the absence of arrangement for the buyer to remove the cars or to arrange their insurance. In the circumstances the court held

that property had not passed to the buyer. In such a case the seller would have had a lien on the cars until the buyer had paid; but here the seller acted in such a way to discharge the contract and with it the lien.

The *second* remedy of the seller, where the buyer is insolvent, is that of a right of stoppage *in transitu*. This remedy is exercisable where the seller has already sent the goods on their way to the buyer but they have not yet reached him ss 41(1)(b) and 46–48.

In *Johann Plischke & Sohne v Allison Bros* [1936] 2 All ER 1009 the seller contracted to deliver, free of charge, goods at the buyer's premises in London. However, the carriers delivered the goods to a dock warehouse in accordance with the buyer's instructions. The buyer then became bankrupt and the seller sought recovery of the goods on the basis that they had not yet reached the buyer. The seller supported its claim by saying that the contract required the seller to be responsible for the costs of delivery until the goods were delivered to the buyer's premises. The court held that there was no right to stoppage *in transitu* because the goods were stored at the buyer's request so that the goods were no longer in transit, but had reached the buyer's agent.

The *third* remedy is a right of resale (ss 41(1)(c), 49 and 50). There may also be a power of sale (s 50(2)):

- when the seller has the property in the goods, or
- when, although the property in the goods has passed to the buyer, yet the seller is in possession under s 27 (1), or
- where, although the property in the goods has passed, the seller has a right of stoppage *in transitu*.

Real remedies are rights developed by the law merchant over the centuries which were taken into the common law during the nineteenth century.

- 5.1.2 The law merchant and the common law were codified in 1893 into the Sale of Goods Act, and the real remedies were incorporated into the Act (2.1.1). But developments since then, especially in relation to commercial (that is, non-consumer) transactions and international contracts, have meant the statutory rights *in rem* were less necessary or efficacious for the sellers under these contracts. The emergence of the c.i.f. and f.o.b. contracts in international trade (Chapter 8) aided by developments in respect of the international contractual transaction, especially the bankers documentary credits, have diminished the unpaid seller's reliance on real rights in international sales.

Under the letter of credit the unpaid seller is entitled to payment once the documents listed in the contract have been delivered to the issuing bank, regardless of any problems with the operation of the contract of sale. Thus even if the buyer does not wish to pay because, for example, there has been a breach of the contract of sale by the seller, the bank must (except in the cases of fraud and discrepancies) pay. The bank will only be excused if the failure to pay on production of the documents enables the seller to sue the bank; the seller cannot lose unless he is guilty of fraud, and he does not have to resort to any remedy associated with the contract of sale.

Much of the law behind ss41–50 reflects the concern of the law merchant with the commercial, or non-consumer, unpaid seller, but in a nineteenth century mould when transport was not as speedy as nowadays, and when fewer buyers had the means of transporting goods they had purchased, and when payment was not as speedily checked as now. The assistance given to the international seller of goods has been enhanced to the extent that now the unpaid seller has few problems in collecting the purchase price. This development in international contracts did not match that of the domestic unpaid seller who has to rely on the provisions found in SOGO (ss41–50), unless a letter of credit, in the usual international form as adapted to the local sale, is used.

- 5.1.3 In recent years the domestic, commercial (non-consumer) unpaid seller has protected himself outside the terms of SOGO by use of the conditional sale especially one in which there is a reservation of title clause, commonly called the *Romalpa* clause (3.10). This clause gives the unpaid seller the right to retain property in, or title to, the goods until paid. Dependent on the particular terms of the clause, the unpaid seller may be able to reclaim the goods even where the buyer is insolvent. The unpaid seller may be able to go further if the clause has been well drafted so that he can trace his goods (or even perhaps the proceeds of sale of those goods) into the hands of a third person (1.3). This device makes up for some of the deficiencies or complexities of the real rights provided for in SOGO.

Where the buyer is a consumer, the unpaid seller will have to rely on the remedies given by SOGO and the common law.

- 5.1.4 Where property in specific goods has passed and the goods have been delivered to the buyer, then the unpaid seller has relinquished his right to look to the goods for the price and he must fall back on his personal

right of action against the buyer for the price (6.2.3). If the unpaid seller seizes the goods, he is in breach of his warranty implied by s14, and he will be liable to the buyer in conversion (1.4). Conversion is a tort, and is committed when there is a wrongful interference with the goods of another in a manner which is inconsistent with the possessory rights of that other buyer; usually damages to the value of the goods at the time of conversion will be payable to the buyer.

- 5.1.5 The unpaid seller will have real remedies over the goods also where there has been a sale of specific goods in which the property has passed to the buyer but where the goods have not yet been delivered to the buyer, or they are in transit to the buyer; in these circumstances the unpaid seller has a right of resale enabling him to pass a good title to a third party. The seller is not liable to the buyer if he (the seller) sells to the third party, for the buyer has not paid for the goods and the seller remains the owner. In this case there may not be any liability on the seller's part to the buyer for the breach of the contract of sale.

The seller has no obligation to deliver particular goods to the buyer under an agreement to sell specific or unascertained goods where the property in the goods has not passed to the buyer if those goods have not yet been ascertained or selected. In such a case the seller does not need to be given a statutory power to sell, for the goods are his own property and he can transfer them to a third party, even though it is possible for him to be liable to the first buyer on the contract.

5.2 *Unpaid Seller's Lien*

- 5.2.1 The first remedy *in rem* of the unpaid seller is that of the special statutory lien (1.12) over the goods provided for in SOGO (s43). The effect of the lien is to give the unpaid seller the right to retain the goods until the whole of the purchase price has been paid or tendered. SOGO gives a right of resale of the goods affected by the lien, subject to certain conditions and therefore if the sale is effected pursuant to s50 (as a result of the exercise of the lien under s43) the unpaid seller can pass good title to a third party. The lien is exercisable where the unpaid seller is still in possession of the goods, regardless of whether property in the goods has yet passed to the buyer.

The exercise of the lien is subject to three conditions. *First*, the

Seller's Remedies

6.1 *Introduction*

6.1.1 An unpaid seller is given three real remedies by SOGO (Chapter 5), the right to a lien, the right of stoppage *in transitu*, and the right of resale. The last right may not need statutory protection, for depending on the conduct of the contract, the seller may retain his ownership of the goods and thus be able to pass good title to a third party, without the need for statutory assistance. In addition to his real rights, the seller has two possible personal actions: the action for the price and the action for damages for non-acceptance. Personal actions are not enforceable against the goods but are exercised by way of damages; or by action for the price. The action for the price is not an action for damages. The seller may not have a choice as to which action he takes because the remedies vary depending on the stage to which the contract has progressed.

Sections 19, 20, 30, 39 and 51 are relevant to the action for the price. Sections 52 and 56 are relevant to the action for damages.

6.1.2 Either of the two actions may be available:

- where property (that is title to the goods (1.18)) in the goods has passed, and the buyer has accepted the goods, the seller can sue for the price;
- where property in the goods has not passed and the buyer refuses to pay, the seller can seek damages;
- where property in the goods has passed and the buyer refuses to accept the goods, then the seller can sue for the price or can seek damages.

In addition, in the special circumstances of s51(2) where property in the goods has *not* passed but payment is linked to a time requirement, then the seller can sue for the price on default.

In all cases the seller will need to show that he was able and prepared to perform but that the buyer wrongfully failed to do so.

6.2 Action for the Price and Damages

(i) Introduction

- 6.2.1 Under s39 if the buyer refuses to accept delivery of the goods after the seller is ready and willing to deliver, the buyer will be liable to the seller for any loss suffered because of his refusal. The buyer will also have to pay storage charges to the seller. A proviso to s39 says that if the buyer's refusal amounts to a repudiation of the contract, the seller is discharged from further performance if he wishes, and can take action for damages. Prior to this the seller would have been required to deliver had the buyer sought delivery.

(ii) Action for the price

- 6.2.2 There are several sections relevant to the action for the price:
- s19 states that property in the goods passes when the parties intend it to pass;
 - s20 provides five rules for ascertaining when property in the goods is to pass if the parties do not otherwise provide;
 - s21 enables the seller to reserve title in the goods until paid in full. Often such a clause in a commercial contract will be called a 'Romalpa' clause;
 - s30 provides that delivery and payment are concurrent conditions unless the parties had otherwise agreed;
 - s39 enables the seller to sue the buyer for damages where the buyer neglects or refuses to take delivery of the goods;
 - s51(1) provides that an action for the price may be brought where the property in the goods has passed and the buyer has failed to pay;
 - s51(2) states that, regardless of the passing of property in the goods, if the parties have agreed that payment is to be made on a day certain, then on default the seller may bring an action for the price.

The sum sought in the action for the price is the contract price and

Buyer's Remedies

7.1 Introduction

- 7.1.1 On the seller's breach of the contract for the sale of goods, the buyer has five possible remedies: to reject the goods (ss13, 32, 33 and 36–38), to rescind the contract (under the Misrepresentation Ordinance), damages, specific performance (s54), and an action for return of the price.

7.2 The Right to Reject

- 7.2.1 Several sections are relevant in the buyer's rejection of the goods:
- s13 which provides for the circumstances in which a condition is to be treated as a warranty,
 - s32 where the buyer has a right to reject the goods when there has been a delivery of the wrong quantity,
 - s33 relating to the effect of the defective delivery of goods by instalments,
 - s36 under which the buyer has a right to examine the goods, and
 - s38 whereby the buyer is not bound to return the goods which he has rejected.
- 7.2.2 The right to reject arises where the seller has failed to perform a condition which had to be performed before the liability of the buyer to accept and pay for the goods arises; as a result of this breach the buyer is entitled to repudiate the contract and reject the goods. This means that if the seller has breached a term which goes to the root of the contract, then there has been a breach of a condition or a breach of a particular type of innominate term (2.9.2). The buyer has the right to elect to continue and seek damages or terminate and seek damages.

Contracts for the Sale of Goods — International Sales

8.1 *Introduction*

- 8.1.1 There are two main types of contracts used in international contracts for the sale of goods where the goods are shipped from one country to another. These are the c.i.f.(cost, insurance, freight) contracts and the f.o.b. (free on board) contracts. These sales also involve the use of documentary credits (which are also called bankers' credits or letters of credit) to facilitate the payment due under these international contracts. Part of the documentary material relevant to the international contract of sale is the bill of lading. A bill of lading is the receipt given by the master of the ship, on which the goods have been despatched, acknowledging shipment of the goods.

8.2 *C.I.F. Contracts*

- 8.2.1 In general if the parties to the contract classify it as either a c.i.f. contract or a f.o.b. contract then it will be treated by the court as being of that particular type. However, the use of a particular name for the contract by the parties is not conclusive, because the interpretation of the classification depends on all the terms of the contract. In many cases the contract will contain *incoterms* which are a series of definitions of trade terms used in international trade that are promulgated by the International Chamber of Commerce and accepted by most countries.
- 8.2.2 A *c.i.f. contract* for the sale of goods is one under which the contract price includes the cost of the goods, the premium for their insurance, and the freight charges to ship the goods to the buyer.

Credit Agreements and Personal Property

9.1 Historical Introduction

9.1.1 There are several methods of obtaining credit in Hong Kong where personal property is used in some way. Some of these are true security transactions involving the use of personal property as the collateral for the loan. Other transactions are treated as quasi-securities, for example the conditional sale, the credit sale and the hire-purchase agreement. For example the form of the conditional sale, commonly called a *Romalpa* contract, is not that of a security but is an example of a retention of title situation; however, dependent on the terms of the particular contract, the courts will usually find that the *Romalpa* contract is a security transaction.

Hong Kong still retains much of the legislation enacted in the nineteenth century first in England and then later in Hong Kong, dealing with credit transactions involving goods and other forms of personal property. As the legislation is from that time, the factors which were influential then — such as usury, money lending, Equity's intervention to avoid the consequences of penal bonds — continue to influence the forms of security over goods and personal property in Hong Kong today. For example, the Bills of Sale legislation has been little altered since the last century, and the money lenders legislation reflects the earliest English enactments in 1900 and 1911; the Pawnbrokers legislation however has undergone a change.

The modern Hong Kong legislation dealt with in this chapter, whilst continuing to reflect the factors which produced it last century, has not been amended to produce 'consumer' oriented legislation. Any beneficial relief to consumers has come from outside the specific 'security' legislation. Thus for example, the recent Unconscionable Contracts Ordinance and the Supply of Services (Implied Terms)

Ordinance may well be able to be relied upon to result in the consumer obtaining better terms than given formerly.

9.1.2 Under early English legislation, usury, that is the charging of interest on a loan, was prohibited. From 1290 until 1571, a series of statutes provided penalties for any person who lent money and charged interest in excess of 10%. Any such excessive interest was prohibited. By 1854 when the prohibition of usury was abolished, the permitted rate had dropped to 5%. After 1854 the creditor under a loan agreement could charge whatever interest rate to which the debtor had agreed. In Hong Kong by Ordinance No. 7 of 1844, the usury laws of England were declared not to apply; instead the parties to an agreement were entitled to fix whatever rate they wished, and if they failed to do so the Ordinance set the rate at 12% per year. The traditional rate for customary Chinese loan agreements was 3-1/2 % per lunar month. There was in the 1840s some attempt to change the interest rate provided for in Ordinance No. 7 to the customary rate but these attempts were unsuccessful. In 1886 the Usury Ordinance was enacted to make clear that the usury laws of England had and never had any operation in Hong Kong.

The effect of the abolition of the usury laws in England was that money lending transactions were not regulated in any way and exorbitant interest rates were charged. Rates of three or even four figures were not uncommon.

9.1.3 By 1900, in England, things were so bad that after many complaints the Moneylenders Act was enacted:

- to regulate the rate of interest,
- to provide for the registration of money lenders, and
- to empower the court to re-open harsh and unconscionable loan agreements with a view to setting them aside.

The 1900 legislation was amended in 1911, and an almost identical ordinance was passed in Hong Kong. In 1927 the Act was amended, *inter alia*,

- to licence rather than to register money lenders,
- to require money lending transactions to be in writing, and
- to provide that interest charged in excess of 48% per annum was to be presumed to be excessive.

Only minor changes were made in the Hong Kong legislation before major amendment in 1980.

9.1.4 A bill of sale is a written document which either evidences a sale of goods where the possession does not pass to the buyer (called an absolute bill), or a chattel mortgage where the owner of the goods (an individual) remains in possession of them (called a conditional bill). The bill can be registered under the Bills of Sale Ordinance with the result that the registration acts as notice to all of the sale or the loan. However, unless the strict terms of the ordinance are observed, the registration will be ineffective. Where the mortgage deals with the goods of a corporation, then the mortgage is registrable under s80 of the Companies Ordinance as a charge but is not registrable under the Bills of Sale Ordinance.

The first English Bills of Sale Act was passed in 1854 to require registration of these transactions in order to prevent the original owner of goods being able to give a false impression of absolute ownership by his possession of goods which he had already sold or mortgaged.

The conditional or security bill of sale was used from the 1850s by moneylenders to support loans; this meant that because the legislation gave a right to the mortgagee to seize and sell the goods when the borrower defaulted in payment, the moneylender was able to have double protection. On default he could seize the goods and sell them, and if this was inadequate repayment, the moneylender could then sue on the debt. Often also the moneylender required the borrower to execute a promissory note which was a document evidencing a promise to pay on delivery. So the legislation which was enacted to give protection in respect of goods used as security, became an enactment which assisted those who already had other means of protection.

The 1854 Act was amended in 1878 and 1882. One effect of the amendments was to make registration more technical with the result that failure to register meant the mortgage was ineffective. The provisions were complex and stringent, and strict compliance was essential. In Hong Kong the English Bill of Sales Act 1854 was in force from 1856 by reference to the Application of English Laws Ordinance but in 1864 local legislation, Ordinance No. 10, provided for the regulation of bills of sale in almost identical terms to the English legislation. The current Bills of Sale Ordinance (Cap 20) is very little different from the earliest English legislation.

9.1.5 The next factor which was influential in the development of credit transactions was that of the law's approach to penal bonds. These were early devices used to evade the prohibition against the charging

of interest on a loan (that is, usury). Under this device a loan would be made which was said to be repayable within a very short time and for which no interest could be charged legally, but if the loan was not repaid on the due date then the lender could exact a penalty from the borrower (i.e. the interest). There was no intention to repay by the due date, as the lender expected to recover the loan plus the penalty. By the seventeenth century the penal bond transaction had become very onerous because lenders would enforce the penal provision through to the extent of forfeiture of the borrower's goods so that the unfortunate borrower paid back as much as possible and then lost his goods to pay for the balance.

Equity therefore intervened against unconscionable claims especially where the creditor dishonestly said the borrower had failed to pay by the due date thereby enabling him to enforce the penal term. This equitable relief was granted on the basis of distinguishing penalties and forfeiture from genuine claims on default. This ultimately became the practice at common law of allowing liquidated damages under a contract but disallowing penalties (*Hong Kong Contracts* 8.2 and 8.3). The penal bond became very popular with borrowers in the nineteenth century because Equity could be counted on to step in and relieve against harsh terms.

- 9.1.6 In 1889 the Factors Act was enacted in England, to enable persons in possession of goods or documents of title to goods, where these goods were owned by another, to pass good title to a third party (Chapter 3 on the exceptions to *nemo dat quod non habet*). Under the Act a person meeting the description of a mercantile agent could pass title thereby estopping the true owner in his attempt to recover the goods.

In Hong Kong the Factors Ordinance 1896 was enacted in almost identical terms to the English Act. No clearer definition of 'mercantile agent' is contained in the local legislation from that in the English legislation; this definition has remained troublesome since the last century.

- 9.1.7 All these elements combined to produce the atmosphere in which the hire-purchase transaction was developed in England. Thus,
- firstly, soaring money lending interest rates which were unchecked until 1900,
 - secondly, the complexities of the bills of sale form and registration requirements,
 - thirdly, the introduction of the Factors Act enabling a person other than the true owner to pass title in goods, and

- fourthly, the court's sympathetic approach to borrowers under the penal bond,
led to the invention of the hire-purchase agreement.

- The hire-purchase agreement was designed.
- to avoid the bills of sale legislation,
- to keep interest rates (classified as rental under these new agreements) high in light of impending restrictive legislation, and
- to seek to avoid the court's intervention in re-opening the transaction on the basis that it was an unconscionable example of a penal bond.

In addition the hire-purchase transaction was not within the operation of the Factors Ordinance, because as it was not a sale, nor even a conditional sale, the hirer did not have possession as buyer. The result of the operation of the hire-purchase agreement may have enabled the buyer, with insufficient funds, to obtain goods before payment, but the terms usually contained in the agreement were those set by the owner, thereby in many cases producing hardship particularly when there was early termination of the agreement.

9.2 Credit Sales

9.2.1 There are several types and forms of security transactions in Hong Kong. The least effective of these from the point of view of the creditor is that of the credit sale which occurs where title and possession to goods pass immediately to the buyer on purchase and where there is no reservation of title clause and the seller gives the buyer credit for the price (3.10). The seller is an unsecured creditor for he has lost title and he has no right to possession. Unless the contract has authorized him to repossess the goods on default, the seller has no right to enter the premises of the buyer and take back the goods. This is contrasted to the right given by the *Romalpa* clause in cases such as *Re Bond Worth Ltd* (3.10). But under the credit sale, the buyer has title and possession and is able, as owner, to pass title to a third party. In passing title to a third party, the buyer does not have to rely on any exception to *nemo dat* because he is the owner in possession.

The transaction is not one, even if in writing, to which the Bills

Table of Statutes

Hong Kong Ordinances

Age of Majority (Related Provisions) Ordinance No 3 of 1990	2.7.1
Application of English Laws Ordinance (Cap 88)	9.1.4
Bankruptcy Ordinance (Cap 6)	3.9.1, 3.10.4, 7.8.2, 9.3.1, 9.4.1, 9.8.2
Bills of Sale Ordinance (Cap 20)	2.8.1, 3.10.4, 5.1.2, 9.1.4, 9.2.1, 9.4.1
Companies Ordinance (Cap 4)	2.8.1, 3.9.1, 3.10.2, 3.10.4, 9.1.4, 9.3.1, 9.4.1-2, 9.8.1, 9.8.3
Control of Exemption Clauses Ordinance (Cap 71)	1.10.1, 1.13.4, 2.10.1, 2.11, 9.7.5
Disposal of Uncollected Goods Ordinance (Cap 294)	1.12.2
Factors Ordinance (Cap 48)	1.2.1, 3.7.6, 3.8.7, 3.8.9-10, 5.3.4-5, 5.4.2, 7.2.9, 8.4.9, 9.1.7, 9.7.2, 9.8.1
Landlord and Tenant (Consolidation) Ordinance (Cap 7)	1.6.1, 7.8.4, 9.1.6, 9.7.7
Mental Health Ordinance (Cap 136)	2.7.1
Misrepresentation Ordinance (Cap 284)	1.1.3, 1.10.1, 2.9.1, 7.1.1, 7.3.1, 7.2.18
Money Lenders Ordinance (Cap 163)	9.4.2
Pawnbrokers Ordinance (Cap 166)	9.3.2, 9.6.1
Rules of the Supreme Court	7.8.3, 9.5.1, 9.7.8
Sale of Goods Ordinance (Cap 26)	
s2	2.10.1, 2.12, 2.4.2, 2.5.1-2, 2.6.1, 2.10.11, 2.10.13, 2.10.15, 3.4.1, 4.2.6
s2A	2.10.1, 2.10.11, 2.10.13
s3	2.3.1, 2.6.1, 3.7.1
s4	2.7.1
s5	2.8.1
s7	2.5.1-2
s8	3.6.1
s9	3.6.2, 4.2.3, 5.3.5
s12	4.2.3-4, 6.2.10
s13	2.9.1, 2.9.3, 4.3.1, 7.2.2, 7.2.6
s14	2.10.2-4, 2.10.7, 3.7.5, 5.1.4, 6.3.4
s15	2.10.1, 2.10.7-8, 2.10.10, 2.10.15, 2.11.2-3, 4.2.10, 7.2.4

s16	2.10.1, 2.10.7, 2.10.11, 2.10.15, 2.11.1-3, 3.5.2, 4.2.19
s17	2.10.1, 2.10.7, 2.10.9, 2.10.16, 2.11.2-3, 7.2.4
s18	3.4.1-2
s19	3.4.1-2, 4.2.1, 6.2.2
s20	3.4.2, 4.2.1-7
s21	3.4.1-2, 3.4.6, 6.2.2
s22	3.4.1-2, 3.5.1-2, 4.2.1 4.2.16
s23	3.4.1, 3.7.4-5, 3.7.7, 3.8.1, 7.2.10
s24	3.4.1, 3.7.4-5, 3.7.7, 3.8.5
s25	3.4.1, 3.7.4-7, 3.8.5
s27	3.4.1, 3.7.4-7, 3.8.7-9, 3.10.3, 5.3.5-6, 5.4.2, 9.8.3
s30	4.1.1, 6.2.2
s31	4.1.1, 4.2.3, 4.2.5, 4.2.7
s32	4.1.1, 4.2.9-11, 4.2.13, 7.2.2
s33	4.1.1, 4.2.14-15, 4.2.18, 7.2.2
s34	4.1.1, 4.2.16-17, 5.3.1 3, 5.5.1
s35	4.1.1
s36	4.1.1, 4.2.19, 4.3.1-2, 7.2.2, 7.2.13
s37	4.1.1, 4.2.19, 4.3.1-2, 7.2.2, 7.2.13
s38	4.1.1, 7.2.2-9
s39	4.1.1, 6.2.1-2
s40	5.3.2
s41	5.1.1-2
s42	5.1.1
s43	5.2.1-2, 5.3.5
s45	5.3.1
s46	5.3.2
s47	5.3.2
s48	5.3.4
s49	5.3.6
s50	3.5.1, 5.1.1-2, 5.2.1, 5.3.5
s51	6.2.2-4, 6.2.7, 6.2.9
s53	7.2.15
s54	2.5.2, 7.2.16
s55	7.2.16
s56	6.2.22
s57	2.10.1, 2.10.7, 2.11.2-3, 3.1.5, 7.2.4
s62	2.1.1, 3.6.1
Small Claims Tribunal Ordinance (Cap 338)	1.7.1, 1.20
Supply of Services (Implied Terms) Ordinance (Cap 457)	2.2.1, 2.10.1, 7.2.3, 9.1.1

Supreme Court Ordinance	9.7.8
UCP 500	8.4
Unconscionable Contract Ordinance (Cap 458)	2.10.1, 2.12.1, 7.2.3, 9.1.1, 9.7.5, 9.7.11
Usury Ordinance	9.1.2

United Kingdom Statutes

Bills of Sale Act	9.1.4
Companies Act	3.10.2
Consumer Credit Act	9.7.3
Factors Act	9.1.6-7, 9.7.2
Moneylenders Act	9.1.3
Sale of Goods Act	2.11, 9.7.2
Torts (Interference with Goods) Act	1.4.6
Unfair Contracts Act	2.11.2

Table of Cases

<i>AG v Reid</i> [1993] 3 WLR 1143	1.8.2
<i>AG v Rising Sun Trading</i> [1972] HKLR 423	3.8.5
<i>Ailsa Craig Fishing v Malvern Fishing</i> [1983] 1 All ER 101	2.11.4
<i>Akron Tyre v Kittson</i> (1951) 82 CLR 477	3.3.1
<i>Alderslade v Hendon Laundry Ltd</i> [1945] KB 189	2.11.1
<i>Alecos M, The</i> [1991] 1 LL R 120	7.4.1
<i>Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd</i> [1976] 1 WLR 676	3.10.1, 3.10.2
<i>Always Win Ltd v Autofit Ltd</i> [1995] 2 HKC 48	1.2.1
<i>Armour & Anor v Thyssen Edelstahl-Werke AG</i> [1990] 3 WLR 810	3.10.4
<i>Ashingdon Piggeries v Christopher Hill</i> [1972] AC 441	2.10.14
<i>Associated Japanese Bank (International) Ltd v Credit Du Nord SA & Anor</i> [1989] FLR 117	3.4.2, 6.1
<i>Au Muk Shun v Choi Chuen Yeu</i> [1988] 1 HKLR 413	3.8.5
<i>Bankers Trust Co v State Bank of India</i> [1991] 1 Lloyd's Rep 587	8.4.4, 8.4.5
<i>BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd</i> (In Liquidation) & Ors [1990] 2 HKLR 74	1.4.4
<i>Beale v Taylor</i> [1967] 3 All ER 253	2.10.9
<i>Behrend & Co Ltd v Produce Brokers Co Ltd</i> [1920] 3 KB 530	4.2.12
<i>Borden (UK) Ltd v Scottish Timber Products Ltd</i> [1981] 1 Ch 228	3.10.3
<i>Bunge & Co Ltd v Tradax England Ltd</i> [1975] 2 LL R 235	8.3.1
<i>Business Application Specialists Ltd v Nationwide Credit Corporation Ltd</i> TLR 27.4.1988	2.10.13
<i>Calimex International Co v Enz Information Systems Ltd</i> [1994] 1 HKC 191	2.6.1
<i>Campbell Mostyn (Provisions) Ltd v Barnett Trading Co</i> [1980] 1 LL R 65	6.2.20
<i>Car & Universal Finance Co v Williams</i> [1965] 1 QB 525	3.8.6
<i>Cargill HK Ltd v Hoecheong Products Co Ltd</i> [1993] 2 HKC 103	3.6.2
<i>Cehave NV v Bremer Handelsgesellschaft</i> [1976] QB 44	2.9.2, 2.10.12
<i>Cheung Lee Warehouse & Transportation Ltd v Berthier Godown Ltd VDC</i> [1985] 2 HKC 1	2.11.2

<i>Cheung pik-man v Tong Sau-ping</i> [1986] HKLR 921	2.11.2, 3.8.2
<i>Clough Mill Ltd v Martin</i> [1984] 1 All ER 721	3.10.3
<i>Colley v Overseas Exporters</i> [1921] 3 KB 302	6.2.3
<i>Demby Hamilton & Co Ltd v Barden</i> [1949] 1 All ER 35	3.5.2
<i>Dense Billion Ltd v Hui Ting Sung</i> (1996) CA No 135/96	1.2.1
<i>Derry v Peek</i> (1889) 14 App Cas 337	1.5
<i>Devlin v Hall</i> TLR 25.6.1990	2.10.11
<i>East v Maurer</i> [1991] 2 All ER 733	1.5.1
<i>Edgington v Fitzmaurice</i> (1885) 29 Ch D 459	1.5
<i>Edward Owen Engineering v Barclays Bank</i> [1978] 1 LI Rep 166	8.4.9
<i>Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd</i> [1943] AC 32	3.6.2
<i>Foulkes v Willoughby</i> [1841] 8 M & W 540	1.4.3
<i>Gamer's Motor Centre (Newcastle) Pty Ltd v Harvest Wholesale</i> <i>Aust Pty Ltd</i> (1987) 163 CLR 236	3.8.9
<i>Gilman & Co v Ho So-wah</i> [1985] HKLR 29	9.7.11
<i>Gilman v Yokohama Musen</i> [1976] HKLR 821	2.5.2, 3.4.3
<i>Greenwood v Bennett</i> [1973] 1 QB 195	3.3.1
<i>Hadley v Baxendale</i> (1849) 9 Ex 341 (156 ER 145)	6.2.13-14, 6.2.22, 7.2.15-16, 9.7.11
<i>Harbottle (RD) (Merchants) Ltd v National Westminster Bank</i> [1978] QB 146	8.4.9
<i>Harlingdon & Leinster Enterprises Ltd v Christopher Hull Fine Art Ltd</i> [1990] 3 WLR 13	2.10.7
<i>Hedley Byrne & Co Ltd v Heller & Partners</i> [1964] AC 465	1.13.1
<i>Helby v Matthews</i> [1895] AC 457	9.7.2
<i>Henry Kendall & Sons v William Lillico & Sons Ltd</i> [1969] 2 AC 31	2.10.12-14
<i>Hiorrt v Bott</i> [1874] LR 9 Ex 86	1.4.3
<i>Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha</i> [1962] 2 QB 26	2.9.2
<i>Imperial Loan Co v Stone</i> [1892] 1 QB 599	2.7.1
<i>Indian Oil Corp Ltd v Greenstone Shipping SA (Panama)</i> [1988] 1 QB 345	3.3
<i>Jan Albert (Hong Kong) Ltd v Shui Kong Garment Factory Ltd</i> [1990] 1 HKLR 317	3.6.1-2

<i>Johann Plischke & Sohne v Allison Bros</i> [1936] 2 All ER 1009	5.1.1
<i>Keech v Sanford</i> 25 ER 223	1.8.1
<i>Korea Industry Co Ltd v Andoll Ltd</i> [1989] 3 MLJ 449	8.4.4
<i>Lazenby Garages Ltd v Wright</i> [1976] 1 WLR 459	6.2.16
<i>Lee v Butler</i> [1893] 2 QB 318	9.7.2
<i>Lee v Griffin</i> [1861-73] All ER 191	2.2.1
<i>Legrand Jewellery (Mfg) Ltd v Wo Fung Pawnshop</i> [1988] HKLR	9.6.1
<i>Leigh v Taylor</i> [1982] AC 157	2.4.2
<i>Li Mun-chung v East Asia Laundry</i> [1961] HKDCLR 28	2.11.4
<i>Lipe Ltd v Leyland DAF Ltd</i> [1994] BCLC 84	2.11.4
<i>Lloyds Bank v Bank of America</i> [1938] 2 KB 147	9.8.1
<i>Lloyds Bank Plc v Waterhouse</i> [1990] BCLC	3.8.3
<i>Long Year Development v Tse Fuk Man</i> [1991] 2 HKC 393	1.13.4
<i>Maple Flock Co Ltd v Universal Furniture Products (Wembley)</i> [1934] 1 KB 148	4.2.15
<i>McEntire v Crossley Bros Ltd</i> [1895] AC 457	9.7.2
<i>McRae v Commonwealth Disposals Commission</i> [1951] 84 CLR 377	3.6.1
<i>Microbeads AC v Vinhurst Road Markings Ltd</i> [1975] 1 All ER 529	2.10.3-6
<i>Nanyang Credit Card Co Ltd v Yung Wei Cargo Service</i> [1993] HKC 56	2.11.1
<i>Nash v Inman</i> [1908] 2 KB 1	2.7.1
<i>National Employers Mutual General Insurance Associations Ltd</i> v Jones [1988] 2 WLR 952	3.8.7
<i>Naughton v O'Callaghan</i> [1990] 3 All ER 191	7.3.1, 7.4.1
<i>Newtons' of Wembley v Williams</i> [1965] 1 QB 560	3.8.9
<i>Nichimen Corporation v Gatoil Overseas</i> [1987] 2 LL R 46	8.4.2
<i>Nocton v Lord Ashburton</i> [1914] AC 932	1.8.1
<i>Pacific Motor Auctions Pty Ltd v Motor Credits Hire Finance</i> [1965] AC 867	3.8.7, 4.2.5
<i>Phipps v Boardman</i> [1967] 2 AC 46	1.8.1
<i>Port Jackson Stevedoring Ltd v Salmon & Spraggon (Australia)</i> Pty Ltd [1980] 3 All ER 257	8.3.2
<i>Reardon Smith Line Ltd v Yngvar Hansen-Tangen</i> [1976] 1 WLR 989	2.9.1, 2.10.9

<i>Re Bond Worth Ltd</i> [1980] 1 Ch 228	3.10.2
<i>Rendell v Associated Finance</i> [1957] VR 604	3.3.1, 3.4.2
<i>Re Peachdart</i> [1983] 3 All ER 204	3.10.2
<i>Re Wait</i> [1927] 1 Ch 606	2.1.1, 2.5.2, 2.10.8
<i>Robinson v Graves</i> [1935] 1 KB 379	2.2.1
<i>Rogers v Parish (Scarborough) Ltd</i> [1987] QB 933	2.10.13
<i>Royscot Trust v Rogerson</i> [1991] 3 All ER 294	1.13.4, 7.2.13
<i>Ruxley Electronics v Forsyth</i> [1995] 3 All ER 268	6.2.13
<i>Shaw v Commissioner of Police</i> [1987] 1 WLR 1332	3.8.7
<i>Shearson Lehman v Maclaine Watson (No 2)</i> [1990] 3 All ER 723	6.2.17
<i>Shipton Anderson & Co Ltd v Weil Bros & Co Ltd</i> [1912] 1 KB 574	4.2.12
<i>Singer Co (UK) Ltd v Tees & Hartlepool Port Authority</i> [1988] 2 LL R 164	1.2.1
<i>Strover v Harrington</i> [1988] 2 WLR 572	1.10.1
<i>Sun Wah Oils & Cereals Ltd v Gee Tai Trading Co Ltd</i> [1993] 1 HKC 132	6.2.15
<i>Tai Hing Cotton Mills v Kamsing Knitting Factory</i> [1979] AC 10	7.2.14
<i>Thomas Young & Sons Ltd v Hobson & Partners</i> [1949] 65 TLR 365	4.2.17
<i>(WL) Thompson Ltd v Robinson (Gunmakers) Ltd</i> [1955] Ch 177	6.2.15
<i>Torvan Shipping v Gilman</i> [1977] HKLR 460	3.4.3
<i>Trishul (UK) Ltd v Winnie Fung Tong</i> [1987] HKLR 162	8.4.4
<i>Tukan Timber v Barclays</i> [1987] 1 LL R 171	8.4.2
<i>United City Merchants v Royal Bank of Canada</i> [1983] AC 168	8.4.4-5
<i>United Merchants Finance Ltd v Tong Woon-wing</i> [1980] HKDCLR 53	9.7.3, 9.7.11
<i>Walker, In Re</i> [1985] 1 Ch 160	2.7.1
<i>Wayfoong Credit Ltd v Ho Fai</i> [1980] HKDCLR 1	9.7.10
<i>Ward v Bignall</i> [1967] 1 QB 534	5.1.1, 6.2.12
<i>White & Carter (Councils) Ltd v McGregor</i> [1962] AC 13	6.2.5, 6.2.18, 6.3.1
<i>Worcester Works Finance v Cooden Engineering Co Ltd</i> [1972] 1 WLR 210	3.8.7

Index

- Acceptance, 4.3
Accessory clause, 3.3.1
Attornment as delivery, 4.2.5
- Bailment,
acts consistent with, 1.2.1
bailee's right to possession, 1.2.1
forms of, 1.2.1
termination of, 1.2.1
- Bill of sale,
as security, 2.8.1
- Bona fide purchaser for value 1.3.1
and *nemo dat*, 3.7
- Buyer,
right to damages, 7.3, 7.4
right to reject, 7.2
right to recovery of money paid,
 7.2.17
right to specific performance,
 7.5.1, 7.5.2
- Capacity,
generally, 2.7
minority, 2.7.1
unsoundness of mind, 2.7.1
- C.I.F. contract, 8.2
- Conditional sale agreement,
and SOGO, 2.3.1
concept of, 5.1.3
- Contract,
c.i.f., 8.2
f.o.b., 8.3
for goods, 2.6.1
voidable, 3.8.6
- Conversion, 1.4.1
remedy, 1.4.1
- Credit sales, 9.2
- Damages,
unpaid seller, 6.2
- Deceit,
action in, 1.5.1
damages for, 1.5.1
- Delivery,
and risk, 3.5
by instalments, 4.2.14–15
deliverable state, 4.2.7
examination of goods, 4.2.19
goods of different,
description, 4.2.9–12
meaning, 4.2
place, 4.2.18–19
time, 4.2.3–4, 4.2.6–8
to carrier, 4.2.16–17
wrong goods, 4.2.11
wrong quantity, 4.2.12
- De minimis, 4.2.11
- Description,
implied term, 2.10.8–10
- Detinue,
non-delivery of goods, 1.4.1
- Distress, 1.6.1
self-help, 1.6.1
- Equity,
and SOGO, 2.1.1
equitable interest, 1.3.1
- Estoppel,
and *nemo dat*, 3.8.7
by negligence, 3.8.2
by representation, 3.8.4
- Exclusion clauses,
contra proferentem rule, 2.11.1–
 2
meaning, 2.11.2
- Execution, 1.7.1

- Fiduciary relationship, 1.8.1
 - paramountcy of other relationships, 1.8.1
 - tracing, 1.8.3
- Fixtures,
 - accessories, 3.3.1
 - confusion, 3.3.1
 - definition, 2.4.2
 - not within SOGO, 2.4.2
 - specification, 3.3.1, 3.10.3
- Floating charge 9.3.2
- Form and SOGO contracts, 2.8
- Frustration,
 - force majeure*, 3.6.1
 - meaning of, 3.6
- Gifts, 3.2
 - delivery and, 1.9.5
 - nature of, 1.9.1
 - perfection of, 1.9.2
 - trusts and, 1.9.1
- Goods,
 - ascertained, 2.5, 3.4.2
 - charges of, 9.5
 - classification, 2.5
 - definition, 2.1.2
 - frustration and, 3.6.2
 - mortgage over, 9.4
 - not land, 2.1.2
 - not work and materials, 2.1.2
 - passing of property and title, 3.4
 - passing of risk, 3.5
 - pledge over, 9.6
 - specific 2.5, 3.4
- Hire-purchase, 9.7
 - not within SOGO, 2.3.1
- Injunction, 1.10.1
- Interpleader, 1.11.1
- Letter of credit, 8.4
- Lien, 1.12.1
 - unpaid seller's, 5.2
- Merchantable quality,
 - implied condition, 2.10–15
- Mercantile agent
 - and bailment, 1.2.1
- Misrepresentation,
 - fraudulent, 1.13.1
 - interpretation of, 1.13.2
 - Misrepresentation Ordinance, 1.13.1–4
 - remedies, 1.13.3
- Mistake 3.6.1
- Negligent misstatement, 1.13.1
- Nemo dat quod non habet*
 - buyer in possession, 3.8.9–10
 - estoppel and, 3.8.1–3.8.4
 - general rule, 2.10.3, 3.7
 - negligence, 3.8.2
 - sale in shop or market, 3.8.5
 - seller in possession, 3.8.7–8
- Non est factum*,
 - as estoppel, 3.8.3
- Option to purchase, 1.14.1
- Ownership,
 - bailment and, 1.2.1
 - property and, 1.18.3
- Personal property, 1.15.1
 - chose in action, 1.15.3
 - chose in possession, 1.15.3
- Pledge, 1.14.1
- Possession, 1.16.1
 - bailment and, 1.2.1
 - conversion and, 1.4.1
 - custody and, 1.16.4
 - nature of, 1.16.2
- Privity, 1.17.1
- Property, 1.18.5, 2.6.1
 - in rem*, 1.18.1–2
 - ownership and, 1.18.3
 - real right, 1.18.1–2
 - transfer of, 3.1.1, 3.4, 4.2

- Quiet possession,
warranty of, 2.10.3–7
- Remedies,
action for price, 6.2
buyer's right to damages, 7.2.14
buyer's right to reject, 7.2
buyer's right to specific performance, 7.2.1–2
damages for unpaid seller, 6.2
lien and unpaid seller, 5.2
recovery of money paid, 7.6.1
resale, 5.4
stoppage *in transitu*, 5.3
tracing, 1.8.3
unpaid seller and, 5.2, 6.1
- Reputed ownership, 7.3.2–5
nemo dat and, 3.9.1
- Retention of title 3.10
- Risk,
passing of, 3.5
- Romalpa* Clause, 3.10
- Sale by sample,
implied term and, 2.10.16
- Specific performance, 1.20.1–2
- Terms of contract for sale of goods,
2.9
classification, 2.9.1–3
implied, 2.10
title and quiet possession,
2.10.3–7
- Title,
bailment and, 1.2.1
conversion and, 1.4.1
passing of, 3.4
- Trust,
fiduciary, 1.8.2
- Trust receipt,
international contract for goods and, 9.8
- Unpaid seller,
action for price, 6.2
damages, 6.2
lien, 5.2
resale, 5.4
stoppage *in transitu* 5.3
- Waiver, 1.12.1