TABLE OF CONTENTS

1. UNDERSTANDING THE CONTRACT OF SALE AND THE MULTIPLE LEGAL CONCEPTS OF GOOD................................. 10
   1.1 “Goods”: What are they?.................................................................10
   1.2 A Contract for the Sale of Goods......................................................13
   1.3 Sale or Supply ..................................................................................14
   1.4 Is it a contract of sale of goods?......................................................15
   1.5 Perishable Goods............................................................................17
   1.6 Bailment ...........................................................................................18

2. CONTRACTUAL AND STATUTORY TERMS OF CONTRACTS OF SALE.................................................................22
   2.1 Overview of the Legislative Scheme ..............................................21
   2.2 Exclusion of Liability .....................................................................22
   2.3 Conditions and Warranties...............................................................22
      (1) Condition .....................................................................................22
      (2) Intermediate terms .....................................................................23
   2.4 Implied Terms..................................................................................23
      2.4.1 Title and Quiet Possession.......................................................24

3. CORRESPONDENCE WITH DESCRIPTION........................................ 26
   3.1 What is a ‘sale of goods by description’?.......................................26
   3.2 Do the goods “correspond with the description”?.........................28

4. Fitness for Purpose...........................................................................30
   4.1 Making known the particular purpose...........................................32
   4.2 Reliance ...........................................................................................34
   4.3 Goods of a description in the course of the seller’s business to supply/goods supplied in the course of a business..........36
   4.4 Sale of a specified article under patent or trade name .....................37
   4.5 Are the goods reasonably fit for the purpose?...............................37

5. MERCHANTABLE QUALITY ..........................................................40
   5.1 Goods are bought by description....................................................41
   5.2 Seller deals in goods of that description........................................41
   5.3 Examination....................................................................................41
   5.4 Are the goods of merchantable quality?........................................42
5.4.1 The Statutory Test................................................................................45

6. PROBLEMS OF OWNERSHIP, PROPERTY, POSSESSION AND TRANSFER OF RISK ............................................................... 47
   6.1 Transfer of Property.............................................................................48
   6.2 The Type of Goods...............................................................................49
   6.3 Possession, Property, Title .................................................................50
   6.4 When does Property Pass? .................................................................51
      6.4.1 Cases on s23 Rule 1.....................................................................54
      6.4.2 Specific but not deliverable (rule 2)..............................................57
      6.4.3 Sale or Return Goods – Rule 4....................................................58
      6.4.4 Unascertained or Future Goods – Rule 5.......................................60
   6.5 Risk prima facie passes with property ...............................................63
      6.5.1 Contrary intention and ascertainment.........................................65
   6.6 Insurance Contracts............................................................................65
   6.7 Guarantee............................................................................................68

7. THE TRANSFER OF TITLE (BY NON OWNER) ......................... 71
   7.1 The conduct of owner .......................................................................72
      7.1.1 Representation of apparent ownership......................................73
      7.1.2 Negligent omission.......................................................................74
   7.2. The seller with a voidable title..........................................................76
   7.3. Seller in possession.........................................................................77
      7.3.1 Documents of title.......................................................................78
      7.3.2 “Continues or is in possession”.....................................................78
      7.3.4 Sale, pledge or other disposition................................................81
      7.3.5 Good faith, no notice of the previous sale...................................82
   7.3.6 What is the effect of the delivery or transfer? .............................82
   7.4 The Buyer in possession.................................................................82
      7.4.1 Bought or agreed to buy...............................................................82
      7.4.2 Delivery or transfer by that person (or by a mercantile agent) ......85
      7.4.3 What is the effect of a delivery or transfer under a sale by the buyer in possession? ..........................................................86

8. PERFORMANCE AND BREACH IN THE SALE OF GOODS IN THE BUYER’S PERSPECTIVE .................................................. 88
8.1 Recession for misrepresentation ........................................................... 89
8.2 Rejection of the goods ........................................................................ 89
8.3 Price ..................................................................................................... 90
8.4 Damages .............................................................................................. 91
8.4.1 Non delivery ................................................................................... 91
8.4.1.2 Effect of buyer accepting the goods ............................................ 94
8.4.1.3 Specific Performance ................................................................. 94
8.4.1.4 Instalment deliveries ................................................................. 95
8.4.2 Breach of Warranty ....................................................................... 95
8.4.2.1 Special Damages ....................................................................... 97
8.4.3 Statutory Termination ................................................................... 99
9. PERFORMANCE & BREACH IN THE SALE OF GOODS-
SELLER’S PERSPECTIVE ........................................................................ 100
9.1 Default position – concurrency of delivery and payment ............ 100
9.2 Repudiation ...................................................................................... 100
9.3 Obligations of the seller .................................................................... 101
9.3.1 What is delivery? ........................................................................... 101
9.3.2 Delivery to whom? ......................................................................... 102
9.3.3 Buyer does not take delivery of goods ......................................... 103
9.3.4 Time of delivery ........................................................................... 103
9.3.6 Risk passes with property (not delivery) ...................................... 103
9.3.7 Delivery by instalment .................................................................. 104
9.4.1 Acceptance of goods .................................................................... 106
9.4.2 When the buyer may be said to have accepted the goods ........ 107
9.5.1 Rights of seller against buyer (ie in personam) ......................... 108
9.5.2 Damages for non acceptance ...................................................... 109
9.5.3 The available market rule ............................................................. 110
10. MERCANTILE AGENTS AND PROBLEMS OF APPARENT
AUTHORITY .............................................................................................. 111
10.1 Representation of Apparent Ownership ....................................... 111
10.2 Representation of Apparent Authority ......................................... 112
10.3 Negligent Omission ....................................................................... 114
10.4 The possession of a mercantile agent ......................................... 115
10.4.1 Who is a mercantile agent? .............................................................116
10.4.2 When has the mercantile agent been entrusted as such?..............117
10.4.3 Is the disposition by the mercantile agent in the ordinary course of business of a mercantile agent?.................................................................119
10.4.4 Does the buyer take in good faith and with no notice? ................120
10.5 Other types of agents .........................................................................121

11. RESERVATION OF TITLE.............................................................. 123
11.1 Types of Romalpa clauses .....................................................................123
11.2 Risks for the seller ...............................................................................125
The seller may not be able to rely on the Romalpa Clause if:......................125
11.3 Sub-sales: Tracing ...............................................................................128

12. CHEQUES ....................................................................................... 128
12.1 Definition of a cheque...........................................................................129
12.2 Types of cheques ..................................................................................129
12.3 Liability issues .....................................................................................130
12.4 Presentment and dishonour of cheques ..............................................131
12.5 Duties and liabilities of banks and financial institutions .................131

13. MISLEADING AND DECEPTIVE CONDUCT .................................. 134
Table of Cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Source</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ashington Piggeries Ltd v Christopher Hill [1972] AC 441</td>
<td></td>
<td>32</td>
</tr>
<tr>
<td>Ashington Piggeries v Christopher Hill Ltd [1972] AC 441</td>
<td></td>
<td>36, 40, 41, 45</td>
</tr>
<tr>
<td>Ashley Industrial Trust Ltd v Miller [1968]</td>
<td></td>
<td>121</td>
</tr>
<tr>
<td>Associated Alloys Pty Limited v ACN 001 452 106 Pty Limited (2000)</td>
<td></td>
<td>132</td>
</tr>
<tr>
<td>HCA 25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Associated Midland Corporation v Sanderson Motors p/L [1983] NSWR</td>
<td></td>
<td>124</td>
</tr>
<tr>
<td>Atari Corporation (UK) Ltd v Electronics Boutique Stories (UK) Ltd (1998)</td>
<td></td>
<td>63</td>
</tr>
<tr>
<td>C 539</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Australian Consumer Law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Australian Knitting Mills v Grant (1933) 50 CLR 387</td>
<td></td>
<td>30</td>
</tr>
<tr>
<td>Baldry v Marshall [1925] 1 KB 260</td>
<td></td>
<td>41</td>
</tr>
<tr>
<td>Bashtannyk v New India Assurance Co Ltd [1968] VR 573</td>
<td></td>
<td>72</td>
</tr>
<tr>
<td>Bishopsgate Motor Finance Corp Ltd v Transport Brakes Ltd</td>
<td></td>
<td>75</td>
</tr>
<tr>
<td>Bodilingo Pty Ltd v Webb Project Pty Ltd [1990] ASC 56-001</td>
<td></td>
<td>59</td>
</tr>
<tr>
<td>Bostock v Nicolson [1904]</td>
<td></td>
<td>100</td>
</tr>
<tr>
<td>Brambles Security Services Ltd v Bi-Lo Pty Ltd [1992] Aust Torts Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>81-161</td>
<td></td>
<td>22</td>
</tr>
<tr>
<td>BS Brown &amp; Son Ltd v Craiks Ltd [1970] 1 WLR 752</td>
<td></td>
<td>48</td>
</tr>
<tr>
<td>Car and Universal Finance Co Ltd v Caldwell [1965] 1 QB 525</td>
<td></td>
<td>81</td>
</tr>
<tr>
<td>Carlos Federspiel &amp; Co SA v Charles Twigg &amp; Co Ltd [1957] 1 Lloyd's Rep 240</td>
<td></td>
<td>64</td>
</tr>
<tr>
<td>Cavalier Marketing (Australia) Pty Ltd v Rasell (1990) 96 ALR 375</td>
<td></td>
<td>42</td>
</tr>
<tr>
<td>Cavalier Marketing v Rasell (1991)</td>
<td></td>
<td>50</td>
</tr>
<tr>
<td>Cehave NV v Bremer Handelsgesellschaft mbH [1976] QB 44</td>
<td></td>
<td>49</td>
</tr>
<tr>
<td>CGU Insurance Ltd v AMP Financial Planning Pty Ltd (2007) 235 CLR 1</td>
<td></td>
<td>71</td>
</tr>
<tr>
<td>Chattis Nominees Pty Ltd v Norman Ross Homeworks Pty Ltd (in liq) (1992)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28 NSWLR 338</td>
<td></td>
<td>129</td>
</tr>
<tr>
<td>Cheques Act 1966 (Cth)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>City Fur Manufacturing Co. Ltd v Fureenbond (Brokers) London Ltd [1937]</td>
<td></td>
<td>83</td>
</tr>
<tr>
<td>1 All ER 799</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clarke v New Concept Import Services Pty Ltd (1982) 2 TPR 183</td>
<td></td>
<td>19</td>
</tr>
<tr>
<td>Coggs v Bernard (1703) 92 ER 107</td>
<td></td>
<td>22</td>
</tr>
<tr>
<td>Commissioners of Taxation v English Scottish and Australian Bank Ltd [1920] AC 683</td>
<td></td>
<td>137</td>
</tr>
<tr>
<td>148 CLR 304</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competition and Consumer Act 2010 (Cth)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competition and Consumer Act 2010 (Cth)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concrete Constructions (NSW) Pty Ltd v Nelson (1990) 169 CLR 594</td>
<td></td>
<td>138</td>
</tr>
<tr>
<td>Consumer Transactions Act 1972 (SA)</td>
<td></td>
<td>74</td>
</tr>
<tr>
<td>Contracts Review Act 1980 (NSW)</td>
<td></td>
<td>74</td>
</tr>
<tr>
<td>Cook v Pasmauco Ltd (No 2) [2000] FCA 1819</td>
<td></td>
<td>19</td>
</tr>
<tr>
<td>Cook v Rodgers (1946) SC Eq</td>
<td></td>
<td>122</td>
</tr>
<tr>
<td>Council of the City of Sydney v West [1965] 114 CLR 481</td>
<td></td>
<td>22</td>
</tr>
<tr>
<td>CSR Ltd v Casaron Pty Ltd [2002] QSC 021</td>
<td></td>
<td>130</td>
</tr>
<tr>
<td>Dennant v Skinner (1948)</td>
<td></td>
<td>58</td>
</tr>
</tbody>
</table>
Deta Nominees v Viscount Plastic Products [1979] VR 167
E&S Ruben Ltd v Faire Bros & Co Ltd [1949] 1 K.B. 254
Eastern Distributors Ltd v Goldring (1957) 1 QB 600
Elder Smith Goldsbrough Mort Ltd v McBride [1976] 2 NSWLR 631
Elitestone Ltd v Morris 1997] 1 WLR 687
Expo Aluminium (NSW) Pty Ltd v WR Pateman Pty Ltd (1990) ASC
Expo Aluminium (NSW) Pty Ltd v WR Pateman Pty Ltd ASC 55-978
Factors (Mercantile Agents) Act 1923
Factors (Mercantile Agents) Act 1923 (NSW)
Financial Transactions Reports Act 1988 (Cth)
Ford Credit Australia Limited v Auto Trade Auction Pty Ltd [1982] VR 795
Frank v Grosvenor Motor Auctions Pty Ltd [1960] VR 607
Gamer's Motor Centre (Newcastle) Pty Ltd v Natwest Wholesale Australia Pty Ltd (1987) I63 CLR 236
Garcia v National Australia Bank (1998) HCA 48
George Wills and Co Ltd v Davids Pty Ltd (1957) 98 CLR 77
Golden West Refining v Daly Laboratories [1995] ATPR 41-378
Graham Barclay Oysters v Ryan (2002)
Grant v Australian Knitting Mills [1936] A.C. 562
H Beecham & Co v Francis Howard & Co Pty Ltd [1921] VLR 428
Hadley v Baxendale [1854] EWHC J70
Hammer & Barrow v Coca-Cola [1962] NZLR 723
Harlingdon & Leinster Enterprises v Christopher Hull Fine Art [1991] 1 QB 564
Hartley v Hymans (1920)
Hasell v Bagot, Shakes and Lewis Ltd (1911) 13 CLR 374
Heap v motorists Advisory Agency, Limited [1923]
Henry Kendall & Sons v William Lillico and Sons Ltd [1969] 2 AC 313, 39, 47
Henry Kendall & Sons v William Lillico and Sons Ltd [1968] 1 3 W.L.R. 110
Hobbs v Petersham Transport Co Pty Ltd (1971) 124 CLR 220
Insurance Contracts Act 1984 (Cth)
JN Taylor and Co Ltd v Freeman’s Bay Boats WA SCWA
Joseph & Co Pty Ltd v Harvest Grain Co Pty Ltd (1958) 14 DLR (2d)
Kasler and Cohen v Slavouski [1928] 1 KB 78
Kirkham v Attenborough [1897] 1 Q. B. 201
Knights v Wiffen (1870) LR 5 QB 660
Kursell v Timber Operators and Contractors Ltd [1927] 1 KB 298
Kwel Tek Chao v British Traders and Shippers Ltd [1954] 2 KB 459
Langmead v Thyer Rubber Co Ltd [1947] SASR 29
Leucadia National Corporation v Chichester Metals Pty Ltd (Formerly FMG Chichester Pty Ltd) [No 2] [2011] WASC 301
Lloyds & Scottish Finance Ltd v Williamson [1965] UK AC

lawskool.com.au ©
Magnussen v Flanagan [1981] NSWLR ................................................................. 123
Makower, McBeath & Co Pty Ltd v Dalgety & Co Ltd [1921] VLR 365 ........ 23
Manufacturers' Mutual Insurance Ltd v Stargift Pty Ltd (1984) 3 ANZ
Insurance Cases 60-615 ............................................................................... 71
Maple Flock Co v Universal Furniture Products (Wembley) Ltd [1934] 1 KB 148
..................................................................................................................... 108
Mason v MWREDC Limited (includes Corrigendum dated 3 January 2012)
[2011] FCA 1512 ......................................................................................... 16
Matthew Short & Associates Pty Ltd v Riviera Marine (International) Pty Ltd
[2001] NSWCA 281 ................................................................................... 66
McPherson, Thom, Kettle & Co v Dench Bros [1921] VLR 437 ................. 59
McWilliam's Wines v Liaweena (NSW) [1988] ......................................... 101
Metal Roofing and Cladding Pty Ltd v Amcor Trading Pty Ltd [1999]
QCA470 ................................................................................................... 33
Michael Gerson v Wilkinson [2000] 2 All ER (Comm) 890 ....................... 84
Morris v CW Martin & Sons Ltd [1966] 1 QB 716 ..................................... 23
Mortgage, loan & finance co of Australia Ltd v Richards (1932) NSW AC .. 121
Motor credits (Hire Finance) Ltd v Pacific Motor Auctions Pty Ltd (1962) NSWSC... 116
Motor credits (hire finance) Ltd v Pacific Motor Auctions Pty Ltd (1963) HCA
.................................................................................................................... 117
Motor Oil Hellas (Corinth) Refineries SA v Shipping Corp of India (The
Kanchenjunga) [1990] 1 Lloyd's Rep. 391 .................................................... 93
Newtons of Wembley Ltd v Williams (1965) 1 QB 560 .............................. 87
Niblett Ltd v Confectioners' Materials Company Ltd [1921] 3 KB 387 ....... 29
Niblett v Confectioners’ Materials Co [1921] 3 KB 387 ............................ 49
Pacific Motor Auctions Pty Ltd v Motor Credits (Hire Finance Ltd) [1965] AC
867 ........................................................................................................... 82
Permanent Trustee Australia Ltd v FAI General Insurance Co Ltd (in liq)
(2003) 214 CLR 514 ................................................................................ 71
Pignataro v Gilroy & Son [1919] 1 KB 459 35 .............................. 67
Pitt Son & Badgery Ltd v Proulefcgo SA (1984) 153 CLR 644 .................... 23
Pivovaroff v Chernabaeff (1978) 21 SASR 1 ......................................... 23
Portfolio Leasing v Registrar CTT ...................................................... 19
Puma Australia v Sportsman's Australia [1994] 2 Qd R 159 ..................... 132
Re Allied Mills Ltd v Gwydir Valley Oilseeds Pty Ltd (1978) 2 NSWLR 26... 68
Re Australian & Overseas Insurance Co Ltd (1966) 8 FLR 403 ................. 70
Re Ferrier; Ex parte The Trustee v Donald (1944) 60 T.L.R 295 ............... 63
Registration of interests in Goods Act 1986 (NSW) .................................... 75
Richards v Johnson .................................................................................. 77
Robinson Motors Pty Ltd v Fowler ........................................................... 90
Rowland v Divall [1923] 2 KB 500 ......................................................... 28
Sale of Goods Act 1896 (Qld) ................................................................ 74
Sale of Goods Act 1923 (Cth) .................................................................. 64, 67
Sale of Goods Act 1923 (NSW) ................................................................ passim
Sales of Goods Act 1923 (NSW) .......................................................... 44
Seaton v Heath [1899] 1 QB 782 ......................................................... 70
Slater v Finning [1996] 3 WLR 190 ......................................................... 38
St Albans City and District Council v International Computers Ltd [1996] 4
All ER 481 .................................................................. 15
Telstra Corporation Ltd v Hurstville City Council (2000) 105 FCR 322 ....... 15
The Hansa Nord ........................................................................... 27
Thomas Australia Wholesale Vehicle Trading Co Pty Ltd v Marac Finance
Australia Ltd .............................................................................. 78
Thomas Australia Wholesale Vehicle Trading Co Pty Ltd v Marac Finance
Australia Ltd (1985) NSWSC AC .......................................................... 118
Thornett & Fehr v Beers & Son [1919] 1 KB 486 ......................................... 45
Toby Constructions Products v Computa Bar Sales Pty Ltd [1983] 2 NSWLR
.................................................................................. 20
Trade Practices Act 1974 (Cth) ............................................................ 14, 42, 138
Truck Wreckers Pty Ltd v Waters (1994) ASC H56-260 ......................... 50
Underwood Ltd v Burgh Castle Brick and Cement Syndicate [1922] 1 KB
343 .......................................................................................................................... 61
Wallis Son & Wells v Pratt & Haynes [1911] AC 394 ..................................... 27
Walton Stores Ltd v Sydney City Council (1968) 88 VN (NSW) 153 ............... 22
Wardar's (Import and Export) Co Ltd v W Norwood & Sons Ltd [1968] 2 QB
663 .......................................................................................................................... 66
Weiner v Harris [1910] 1 KB 285 .......................................................... 62
Weiner v. Gill [1906] 2 K.B. 574 .......................................................... 62
WGH Nominees Pty Ltd v Tomblin (1985) 39 SASR 117 .......................... 23
Worcester Works Finance Ltd v Cooden Engineering Co Ltd [1971] 3 All ER
708 .......................................................................................................................... 84
World Series Cricket Pty Ltd v Parish (1977) 16 ALR 181 ......................... 138
Yeoman Credit Ltd v Latter [1961] 2 All ER 294 ......................................... 70
Yerkey v Jones (1939) 63 CLR 649 .......................................................... 70, 73
1. UNDERSTANDING THE CONTRACT OF SALE AND THE MULTIPLE LEGAL CONCEPTS OF GOODS

1.1 “Goods”: What are they?

All Australian states and territories have a Sale of Goods Act, with many of the provisions being similar.

In New South Wales, for example, “goods” are defined in the:


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 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.

Moreover, Commonwealth legislation has a significant role in defining goods. The *Trade Practices Act 1974 (Cth)* affected the application of the *Sale of Goods Acts*. The enactment of the *Competition and Consumer Act 2010 (Cth)* was significant in replacing the *Trade Practices Act*. Major changes were made with the introduction of the Australian Consumer Law as Schedule 2 of the *Act*. As it stands, the Australian Consumer Law complements the *Sale of Goods Act*, and has a wider application than the previous *Trade Practices Act*. This is because of the referral of State powers which enable the Commonwealth to legislate with respect to a ‘person’ as opposed to a ‘corporation’. It is important to note that only in situations where the Australian Consumer Law does not apply, the relevant *Sale of Goods Act* is applicable.

Principally, “goods” are defined in the:

*Competition and Consumer Act 2010 (Cth), section 4(1) Interpretation, “Goods”*

In this Act, unless the contrary intention appears-

“goods” includes:
(a) ships, aircraft and other vehicles;
(b) animals, including fish;
(c) minerals, tree and crops, whether on, under or attached to land or not; and
(d) gas and electricity.

Case law is also instructive as to a working definition of “goods” in Australian law.

**St Albans City and District Council v International Computers Ltd** [1996] 4 All ER 481

**Facts**- St Albans entered into a contract with International Computers for a computer system (software). A fault in the **software** resulted in an 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 a 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 the **Sale of Goods Act** would not apply. Thus, **transfer of program (mere licensing) does not constitute a transfer of goods**
- However, **COMMON LAW PRINCIPLES** would imply a term into the contract that the programs were reasonably fit for the intended purpose. “An unexpressed term can be implied if 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** (2000) 105 FCR 322

**Issues**- The issues were whether **electromagnetic signals** passing along the coaxial cables and **content** carried by those signals were “goods”, and were 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*, the court 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* 1 WLR 687

**Facts**- A chalet resting on concrete pillars was set into the ground. The chalet was connected to usual services. The chalet cannot be taken down and re-erected elsewhere, but 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.”
- An issue arose as to the degree of annexation, that being whether the chattel can be removed without injury to itself or the land. It was held that a degree of permanence must exist.
- Purpose is also important: *Holland v Hodgson*.

*Mason v MWREDC Limited (includes Corrigendum dated 3 January 2012) [2011]*

**FCA 1512**

**Facts**- The case concerns a dispute over discovery of documents and whether Mr Mason may claim relief.

**Held**- The court interpreted s 2B of the *Competition and Consumer Act 2010* (Cth) in holding that the definition of persons “involved” in a contravention of the Act should not apply to persons acting in their capacity as officers in the State of Queensland. That is, s 2B was interpreted to limit the application of the Act in relation to the Australian Consumer Law (Schedule 2) regarding persons “involved” in breach.
Leucadia National Corporation v Chichester Metals Pty Ltd (Formerly FMG Chichester Pty Ltd) [No 2] [2011] WASC 301

Facts- A claim was made under s 87 of the former Trade Practices Act 1974 (Cth). As the events occurred before 1 January 2011, claims under the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law are not sought. However, the court relates the proceedings to the current Act so as to follow current law.

Held- The court interpreted ss 5(1), (3) and (4) of the Trade Practices Act, and related the new counterpart provisions in s 5 of the Competition and Consumer Act. It was held that s 5 operates to vitiate ‘any application made to the Court by an applicant otherwise than in accordance with its terms’. It was further held that it is not a matter for the Minister to determine whether the application is ‘effective or valid in relation to a proceeding brought by the applicant’.

1.2 A Contract for the Sale of Goods

The transfer of property in goods is regulated by the Sales of Goods Acts in each state and territory. For the relevant Act to apply there must be a ‘contract for the sale of goods’. A ‘contract for the sale of goods’ is also necessary for the application of other parts of the Sale of Goods Acts, notably the implication of terms, rights against the goods and actions for breach of contract. The Sale of Goods Act 1923 (NSW) will be drawn upon to illustrate the provisions (which are mostly similar across jurisdictions).

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.