## Unit Outline

<table>
<thead>
<tr>
<th>Unit name</th>
<th>COMMERCIAL LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit number</td>
<td>200014</td>
</tr>
<tr>
<td>Teaching period</td>
<td>Autumn</td>
</tr>
<tr>
<td>Year</td>
<td>2009</td>
</tr>
</tbody>
</table>

### Contents:

- **Section A**: General information
- **Section B**: Unit details
- **Section C**: Assessment details
- **Section D**: Assignment cover sheet
- **Section E**: Important information, policies and procedures for students
- **Section F**: Additional information (including mode of delivery, unit plan, seminar guides)

### First point of contact for this unit:

<table>
<thead>
<tr>
<th>Name</th>
<th>Telephone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ralph Melano (unit co-ordinator)</td>
<td>02 9685 9608</td>
<td><a href="mailto:r.melano@uws.edu.au">r.melano@uws.edu.au</a></td>
</tr>
</tbody>
</table>

### Section A: General Information

<table>
<thead>
<tr>
<th>Unit weighting (credit points)</th>
<th>10 credit points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level</td>
<td>Level 3</td>
</tr>
<tr>
<td>Pre-requisites</td>
<td>Both 200006 Introduction to Law and 200007 Law Foundation. <strong>NOTE CAREFULLY</strong>: At UWS students are responsible for ensuring they have met all relevant pre-requisites and/or co-requisites for any unit(s) in which they are currently enrolled.</td>
</tr>
<tr>
<td>Co-requisites</td>
<td>Nil</td>
</tr>
</tbody>
</table>
| Units not to be counted for credit with 200014 | 69007 - Commercial Law  
  F2001 - Commercial Law |
| Assumed knowledge             | 200011 Contracts |

### Contact details

<table>
<thead>
<tr>
<th>Seminar convenor Parramatta day:</th>
<th>Ralph Melano (unit co-ordinator)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone:</td>
<td>02 9685 9608</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:r.melano@uws.edu.au">r.melano@uws.edu.au</a></td>
</tr>
<tr>
<td>Office location:</td>
<td>Building EK room G10 Parramatta Main Campus</td>
</tr>
<tr>
<td>Seminar convenor Parramatta eve:</td>
<td>Adrian Coorey</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:adriancoorey@yahoo.co.uk">adriancoorey@yahoo.co.uk</a></td>
</tr>
<tr>
<td>Office location:</td>
<td>Building EK Parramatta by appointment only</td>
</tr>
</tbody>
</table>

### Student consultation

For staff consultation times see the UWS web site for this unit.

### Mode of delivery and teaching schedule

Weekly three hour seminars. Students must register for one seminar using the UWS online class registration system. For timetable information see online at [www.uws.edu.au](http://www.uws.edu.au) under 'Current Students'.

### Attendance requirements

There are no formal attendance requirements, but it is very strongly recommended that students attend the seminar for which they are registered for all of the teaching weeks in the session. **NOTE CAREFULLY**: UWS policy is that no additional resources will be made available to any student who chooses not to attend classes.

### Essential equipment/resources

Details of the prescribed materials for this unit are in section B below.

### Occupational health and safety

No special requirements for this offering of 200014 Commercial Law.

### Criminal record checks

Nil for this offering of 200014 Commercial Law.

### Immunisation requirements

Nil for this offering of 200014 Commercial Law.

### Changes and improvements as a result of feedback

The University values student feedback in order to improve the quality of its educational programs. As a result of student feedback, the following changes and improvements to this unit have recently been made: Further refinement of in-session assessment.
## Section B: Unit Details

| Objectives | The approved unit objectives are as follows:  
This unit provides an introduction to the general principles of commercial law. It also examines key aspects of substantive commercial law principles as they arise in a practical context with reference to current developments in the business community. |
|---|---|
| Outcomes | The approved unit learning outcomes are as follows:  
1) Apply relevant commercial law principles, legislation and international instruments to analyse and resolve legal problems.  
2) Using a range of legal research tools, locate and evaluate relevant international legal sources.  
3) Provide written legal advice to resolve a commercial law problem demonstrating understanding of the interaction of domestic and international law.  
4) Write clearly and accurately in a professional context and cite references according to AGLC citation style. |
| Content | The main unit topics are:  
- Sale of Goods  
- Trade Practices and Consumer Protection including Product Liability  
- Bailment  
- Principal and Agent  
- Guarantee  
- Credit  
- Insurance  
- Negotiable Instruments |
| Student workload | For a 10-credit point unit students are expected to spend about 10 hours per week in total in study and in attending any classes. You should also note that some topics contain less reading than others, and so in some weeks the reading load is higher or lower than average. |
| Texts/materials | Prescribed materials:  
◊ Commercial Law 200014 Unit Materials 2008 Volumes One and Two (available from the Uni Co-op bookshop, combined cost approximately $65).  
◊ Commercial Law 200014 Lecture Notes, author Dr Stephen Janes UWS SOL (available on the unit website).  
There is no prescribed text for this unit. Instead you are to obtain the prescribed materials above. The Unit Materials contain your required readings, which when read together with the lecture notes from the unit website take the place of a textbook. Prior to attending each class you need to download the relevant lecture notes, read these, and bring them to class with you.  
If you feel you would like to buy a textbook then be careful to ensure it covers the topics contained in the unit and in appropriate detail. Carefully check the contents of any text against this unit outline. Also be aware that United Kingdom texts reflect the considerable differences from Australian law that have arisen since the legal foundation of New South Wales, particularly in the last fifty years.  
There is no text that adequately covers the topics contained in this unit and which appears to be justified on grounds of price. However, many students find the following general text useful, although only some chapters are relevant to the unit.  
  
  
  Another text similar to Turner, and of a similar quality, is:  
  
  
  The following texts were written primarily for LLB students, although the topic coverage in each does not correspond completely with the topics in this unit:  
  
  
  
  
  
  Most of the legislative provisions that you will need to refer to are extracted in the lecture notes. Sometimes you will also need to refer directly to other provisions, which can be obtained from [www.comlaw.gov.au](http://www.comlaw.gov.au) and [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au), or which may be obtainable from the library in hard copy.  
  
  There is also the following compendium text in the UWS Library which contains extracts of most of the necessary legislation, together with other legislation not relevant to this unit, although this text is now |
becoming a bit out of date.


The following materials are available in the library. They should be consulted where necessary in relation to the appropriate topics. Later editions of some works may be found in other libraries or in bookshops.

**Sale of Goods**

CCH Australia, *Australian sales & fair trading law reporter*, online edition.


**International Sale of Goods**

See the unit web site.

**Consumer Protection**

CCH Australia, *Australian sales & fair trading law reporter*, online edition.


**Misleading or Deceptive Conduct**


**Manufacturer’s Liability**


**Bailment**

Agency

Guarantee

Credit
CCH Australia, *Australian consumer credit law reporter*, online edition.

Insurance
Kelly D St L & Ball M C, *Kelly and Ball principles of insurance law*, LexisNexis Australia, online edition.

Negotiable Instruments
Section C: Assessment Details

<table>
<thead>
<tr>
<th>Assessment component</th>
<th>Type of assessment</th>
<th>Value</th>
<th>Unit learning outcomes (see section B above) addressed by this assessment component</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Mid-session test</td>
<td>25%</td>
<td>(1)</td>
</tr>
<tr>
<td>B.</td>
<td>Assignment</td>
<td>30%</td>
<td>(1) – (4)</td>
</tr>
<tr>
<td>C.</td>
<td>Final examination</td>
<td>45%</td>
<td>(1)</td>
</tr>
</tbody>
</table>

Due dates and expected return dates for assessment

<table>
<thead>
<tr>
<th>Assessment component</th>
<th>Name of assessment component</th>
<th>Due time and date</th>
<th>Expected date of release of marks</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Mid-session test</td>
<td>10am Sunday 5 April 2009, at the Parramatta campus, at a venue to be published on the unit web site.</td>
<td>20 April 2009</td>
</tr>
<tr>
<td>B.</td>
<td>Assignment</td>
<td>6pm Wednes 29 April 2009</td>
<td>20 May 2009</td>
</tr>
</tbody>
</table>

Assessment component | Length (eg, number of words in written assignments) | Duration (eg, duration of tests and exams) | % of total assessment |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Mid-session test 90 minutes open book, except UWS Library books.</td>
<td>The test will be an assessment of the substantive law, and will cover the topics Sale of Goods I &amp; II (not including CISG), Consumer Protection, Misleading or Deceptive Conduct and Manufacturer’s Liability. The test will be worth 25% of total marks for the unit and will comprise a series of multiple choice and written short answer questions. The test will be given under examination conditions at the Parramatta campus at 10am on Sunday 5 April 2009, at a venue which will be published on the unit web site.</td>
<td>25%</td>
</tr>
<tr>
<td>B.</td>
<td>Assignment 1500 words</td>
<td></td>
<td>30%</td>
</tr>
<tr>
<td>C.</td>
<td>Final Examination 3 hours duration with 10 minutes reading time. See below under ‘Formal examinations' for further details.</td>
<td></td>
<td>45%</td>
</tr>
</tbody>
</table>

TOTAL 100%

UWS Grading Standards

<table>
<thead>
<tr>
<th>Grade</th>
<th>Notation</th>
<th>Percentage</th>
<th>Descriptors</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Distinction</td>
<td>H</td>
<td>85-100</td>
<td>Work of outstanding quality, broadly speaking, which may be demonstrated by means of criticism, logical argument, interpretation of materials or use of methodology. This grade may also be given to recognise particular originality or creativity.</td>
</tr>
<tr>
<td>Distinction</td>
<td>D</td>
<td>75-84</td>
<td>Work of superior quality demonstrating a sound grasp of content, together with efficient organisation and selectivity.</td>
</tr>
<tr>
<td>Credit</td>
<td>C</td>
<td>65-74</td>
<td>Work of good quality showing more than satisfactory achievement.</td>
</tr>
<tr>
<td>Pass</td>
<td>P</td>
<td>50-64</td>
<td>Work showing satisfactory achievement.</td>
</tr>
</tbody>
</table>

NOTE CAREFULLY: Final marks and grades are subject to confirmation by the School and College Assessment Committees, who may scale, modify or otherwise amend the marks and grades for the unit, in accordance with University policies.

Assessment requirements

All three items of assessment (ie, the test, the assignment and the exam) must be attempted bona fide, and an overall mark of 50% or greater attained, in order to pass the unit.

Formal examinations

The final examination will be held during the formal examination period and will be worth 45%. The examination will be open book, except UWS Library books. The final examination will cover the topics Bailment, Principal and Agent, Guarantee, Credit, Insurance and Negotiable Instruments. If you miss the final exam and have clear evidence of unavoidable and serious illness or misadventure, you should apply immediately and urgently through the UWS Student Centre for a deferred exam. See the UWS web site for details, including the strict time limit for lodging applications.

Assignment cover sheet and due date

Assignments must be accompanied by a signed Assignment Cover Sheet available on the unit web site and be submitted by 6pm on Wednesday 29 April 2009, in the manner described below.
| **Submission of assignments** | Assignments are to be submitted in hard copy. See the assignment questions for full details of the format that must be followed. Students are required to keep a hard copy of the assignment as submitted. |
| **DAY STUDENTS:** Students officially enrolled as day students must arrange for their assignments to be placed in the assignment box marked ‘200014 Commercial Law’ inside building EK near reception before 6pm on Wednesday 29 April 2009. Do not submit your assignments in class. |
| **WARNING FOR STUDENTS OFFICIALLY ENROLLED AS DAY STUDENTS:** Do not hand your assignment in during the evening class on 29 April (see below) – you will be treated as late and a 3% penalty applied, even if you have regularly been attending the evening class. |
| **EVENING STUDENTS:** Students officially enrolled as evening students must either hand their assignments in to the seminar convenor at the beginning of the class at 6pm on Wednesday 29 April 2009 or place these in the assignment box marked ‘200014 Commercial Law’ inside building EK near reception before 6pm on Wednesday 29 April 2009. |
| **WARNING FOR STUDENTS OFFICIALLY ENROLLED AS EVENING STUDENTS:** Students who arrive late on 29 April while the class is in progress, and who want to hand in assignments, must not disrupt the class by drawing attention to their situation (eg, by trying to submit the assignment immediately on arrival). Any such disruption will incur a 3% late penalty. Any late arrival who wants to hand in an assignment must instead wait until a break in the class before handing in the assignment to the seminar convenor. To avoid a 3% penalty for not handing in by 6pm a written request for an extension must accompany the assignment, carefully stating the circumstances which led to late arrival. |

| **NOTE CAREFULLY:** Absolutely no assignment submissions by e-mail, under any circumstances. |

| **Referencing** | The School of Law’s referencing requirements are as per the Australian Guide to Legal Citation (Melbourne University Law Review Association Inc). Full details of referencing styles can be found at: |
| | A full range of resources for searching and citing references is available at: |

| **Resubmission** | Not available for any item of assessment in this offering of 200014 Commercial Law. |

| **Penalties for late assignments** | Under UWS rules a student who submits an assignment late and without an approved extension will be penalised by 10% per day up to 10 days, ie, marks equal to 10% of the assignment’s weight will be deducted as a daily ‘flat rate’ from the mark awarded. So for the assignment, which has a possible highest mark of 30, the student’s awarded mark will have 3 marks deducted for each late day in submitting the assignment. Saturday and Sunday count as one day each (ie, two days together, or three days for Friday, Saturday and Sunday). |

| **Extension of Due Date for Submission of Assessment Task** | If students need to apply for a short extension of time to complete an assessment item a form of ‘Request for Extension’ to extend the due date should be submitted with supporting documentation and contact details (phone and student email account address) to the 200014 Commercial Law unit coordinator no later than 3 working days prior to the due date. After this time students should apply for special consideration. The form is available on the UWS web site. An application for an extension does not automatically mean that an extension will be approved. |

| **Special consideration** | The strict requirements of the UWS Special Consideration Policy apply. The Policy is available on the UWS web site. The Policy only allows special consideration in unavoidable cases of serious illness or misadventure, requires clear documentary evidence be provided, and imposes strict time limits on applying for special consideration. The UWS Special Consideration Policy provides that the routine demands of employment and the stress and anxiety normally associated with assessment do not of themselves allow for special consideration to be given. Where special consideration is sought for either the mid-session test or the assignment, students must complete in hard copy an ‘Assessment/Unit Special Consideration Application—In Teaching Session’ (or other form promulgated by UWS in place of this), available from the UWS web site or the UWS Student Centre, and submit the application to the UWS Student Centre. Carefully read the application form for the evidence required to be included with an application. There are strict time limits to lodge an application. The Policy provides: ‘Applications must be submitted no later than 5.00 p.m. of 2nd working day after the due date of the assessment task ... Students who can provide evidence to support extenuating circumstances affecting submission of the application may be granted permission to submit applications after this time.’ Where a student does not attempt the mid-session test, a deferred test is only available in unavoidable cases of serious illness or misadventure, and all the requirements of the UWS Special Consideration Policy are satisfied. A special consideration application must be lodged in the manner and form described above, and within the applicable time limit. Where special consideration is sought for the final examination, students must complete a final examination special consideration application, available from the UWS web site or the UWS Student Centre, and lodge this with the Student Centre. A strict time limit also applies to these applications. |

| **Return of assessment material** | The mid-session tests will not be returned to students, but students will be given an opportunity to review their marked test paper. |
Section D: Assignment Cover Sheet: Available on the unit web site.

Section E: Important Information, Policies and Procedures for Students

This information is to be read and applied in conjunction with each unit outline of your course.

The ‘Current Students’ page of the UWS web site http://www.uws.edu.au/students contains many important links, including:

- Student Support Services http://www.uws.edu.au/students/ods: This site is a useful resource for students and a hub for coordinating developments to improve your university experience.
- e-learning http://www.uws.edu.au/students/onlinesupport: This is your entry to all aspects of e-learning at UWS
- Students with a disability should visit: http://www.uws.edu.au/campuses_structure/cas/services_facilities/disability_service
- Course and unit rules http://www.uws.edu.au/students/stuadmin/enrolments/enrolmentrequirements: This site provides information on pre-requisites, co-requisites and other matters concerning how your course is structured.
- Policies http://www.uws.edu.au/policies/a-z: This site includes the full details of policies that apply to you as a UWS student.

Important Policies Affecting Students

- Assessment Policy
- Examinations Policy
- Special Consideration Policy
- Review of Grade Policy
- Assessment Practice – Fundamental Code
- Misconduct – Student Academic Misconduct Policy (see extract of the policy below under "What is Academic Misconduct?")
- Misconduct – Student Non-academic Misconduct Policy
- Enrolment Policy (includes a section on the UWS Student Email Account)

WHAT IS ACADEMIC MISCONDUCT?

Academic Misconduct may involve one or more of the following:

Plagiarism

Plagiarism involves submitting or presenting work in a unit as if it were the student's own work done expressly for that particular unit when, in fact, it was not. Most commonly, plagiarism exists when:

- a. the work submitted or presented was done, in whole or in part, by an individual other than the one submitting or presenting the work; and / or
- b. parts of the work are taken from another source without acknowledgment of the original author; and / or
- c. the whole work, such as an essay, is copied from another source such as a web site or another student's essay.

Acts of plagiarism may occur deliberately or inadvertently

- a. Inadvertent plagiarism occurs through inappropriate application or use of material without reference to the original source or author. In these instances, it should be clear that the student did not have the intention to deceive. The University views inadvertent plagiarism as an opportunity to educate students about the appropriate academic conventions in their field of study.
- b. Deliberate plagiarism occurs when a student, using material from another source and presenting it as his or her own, has the intention to deceive. The University views a deliberate act of plagiarism as a serious breach of academic standards of behaviour for which severe penalties will be imposed.

Collusion

Collusion includes inciting, assisting, facilitating, concealing or being involved in plagiarism, cheating or other academic misconduct with others.

Cheating

Cheating includes, but is not limited to:

- a. dishonest or attempted dishonest conduct during an examination or test, such as speaking to other candidates or otherwise communicating with them;
- b. bringing into the examination room any textbook, notebook, memorandum, other written material, or any mechanical or electronic device (including mobile phones), or any other item, not authorised by the examiner;
c. writing an examination or part of it, or consulting any person or materials outside the confines of the examination room, without permission to do so;
d. leaving answer papers exposed to view, or persistent attempts to read other students’ examination papers; or
e. cheating in take-home examinations, which includes, but is not limited to:
   (i) making available notes, papers or answers in connection with the examination (in whatever form) to others without the permission of the relevant lecturer;
   (ii) receiving answers, notes or papers in connection with the examination (in whatever form) from another student, or another source, without the permission of the relevant lecturer; and
   (iii) unauthorised collaboration with another person or student in the formulation of an assessable component of work.

For the full definition of academic misconduct and the severe penalties and consequences of such behaviour, students are advised to read the Academic Misconduct policy in its entirety, refer to:


**Section F: Additional Information**

<table>
<thead>
<tr>
<th>Mode of Delivery</th>
<th>Face-to-face weekly three hour seminars. For timetable information see online at <a href="http://www.uws.edu.au">www.uws.edu.au</a> under ‘Current Students’ and then under ‘Timetables’.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment</td>
<td>See section C above.</td>
</tr>
<tr>
<td>Content</td>
<td>See section above for an outline of unit topics. Further details will be posted on the web site for this unit.</td>
</tr>
</tbody>
</table>

**Unit plan**

<table>
<thead>
<tr>
<th>Week Commencing</th>
<th>Seminar topics</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 February</td>
<td>Sale of Goods I</td>
</tr>
<tr>
<td>02 March</td>
<td>Sale of Goods I &amp; II</td>
</tr>
<tr>
<td>09 March</td>
<td>Sale of Goods II (including CISG)</td>
</tr>
<tr>
<td>16 March</td>
<td>Consumer Protection</td>
</tr>
<tr>
<td>23 March</td>
<td>Consumer Protection / Misleading or Deceptive Conduct</td>
</tr>
<tr>
<td>30 March</td>
<td>Misleading or Deceptive Conduct / Manufacturers Liability</td>
</tr>
<tr>
<td></td>
<td><strong>TEST 90 MINUTES 10 AM SUNDAY 5 APRIL</strong></td>
</tr>
<tr>
<td>6 April</td>
<td>Bailment</td>
</tr>
<tr>
<td>13 April</td>
<td>Principal and Agent</td>
</tr>
<tr>
<td><strong>Mid Session Break Monday 20 April to Friday 24 April</strong></td>
<td></td>
</tr>
<tr>
<td>27 April</td>
<td>Guarantee</td>
</tr>
<tr>
<td></td>
<td><strong>ASSIGNMENT DUE 6pm 29 APRIL</strong></td>
</tr>
<tr>
<td>04 May</td>
<td>Credit</td>
</tr>
<tr>
<td>11 May</td>
<td>Insurance</td>
</tr>
<tr>
<td>18 May</td>
<td>Negotiable Instruments</td>
</tr>
<tr>
<td>25 May</td>
<td>Spare / revision</td>
</tr>
</tbody>
</table>

Note: the order of the topics may be varied during the session, and different seminar groups may follow a different order or timing of topics or sub-topics.
TOPIC ONE    SALE OF GOODS I

Main sub-topics

- Definition and classification of goods.
- Sale of goods distinguished from other sales.
- Warranties as to title.
- Transfers by non-owners.
- Passing of property.
- Risk.
- Retention of title.

Reading

Associated Alloys Pty Ltd v Metropolitan Engineering & Fabrication Pty Ltd (2000) 171 ALR 568 p. 1
Associated Midland Corporation v Sanderson Motors Pty Ltd [1983] 3 NSWLR 395 p. 14
Chattis Nominees Pty Ltd v Norman Ross Homeworks Pty Ltd (Rec’v appt) [in liq] (1992) 28 NSWLR 228 p. 28
Dennant v Skinner [1948] 2 KB 164 p. 33
Gamer’s Motor Centre (Newcastle) Pty Ltd v Natwest Wholesale Australia Pty Ltd (1987) 163 CLR 236 p. 38
Hewett v Court (1983) 149 CLR 639 p. 53
Mercantile Credits Ltd v Upton & Sons (1974) 48 ALJR 301 p. 59
Moorgate Mercantile Ltd v Twitchings [1977] AC 890 p. 62
Patten v Thomas Motors Pty Ltd (1965) 83 WN (Pt 2) (NSW) 378 p. 79
Poole v Smith’s Car Sales (Baldam) Ltd [1962] 1 WLR 744 p. 82
Toby Construction Products Pty Ltd v Computa Bar Sales Pty Ltd [1983] 2 NSWLR 48 p. 88
Wardar’s (Import & Export) Co Ltd v W Norwood & Sons Ltd [1968] 2 QB 663 p. 92

Seminar discussion questions

1. T is commissioned by Y to paint her portrait. Y is dissatisfied with the quality of the portrait. Does Y have any remedy under the Sale of Goods Act 1923?

2. In Hewett v Court Wilson and Dawson JJ at 655 make reference to the test for determining whether the contract is one for the supply of goods or for work done and materials supplied. What is that test? In to which category does the supply and installation of a chattel to land so that it becomes a fixture fall? Was a different test applied in Toby Construction Products Pty Ltd v Computa Bar Sales Pty Ltd to a computer? Is software goods or services?

3. By reference to Dennant v Skinner explain the difference between the passing of property and the passing of possession. Why in that case was the memorandum requiring that property not pass until the cheque making payment had cleared ineffective?

4. A delivers to B a clothing retailer a quantity of clothing on terms ‘sale or return’. B sells the clothing to various customers. Some customers are dissatisfied with the quality of the clothing and B is forced to accept the clothing back and refund the customer’s money. B then attempts to return the clothing to A. A refuses to accept the clothing and insists B pay for the clothing. Can B refuse to pay? What does Poole v Smith’s Car Sales (Baldam) Ltd say about the transfer of property under a sale or return contract? Were the motor vehicles able to be returned to the seller in that case? If not why not?

5. J contracts to purchase 50 tons of wheat from a silo at $100 per ton. When does property pass?

6. H walks into a retailer of doors and contracts to purchase a Regal Double Entry Door set including sidelights. It is a term of the contract that the doors are to be stained ‘golden oak’. When does property pass?

7. Bill drove into a sand and soil merchant and ordered one ton of white sand. When does property pass?

8. When did property pass in the goods and why did it pass at this time in Wardar’s (Import & Export) Co Ltd v W Norwood & Sons Ltd? What were the consequences for the parties of when property passed in this case?

9. How may the owner of goods be estopped by negligence from asserting title? Was this estoppel made out in Moorgate Mercantile Ltd v Twitchings?

10. How does the Factors (Mercantile Agents) Act 1923 offer the buyer protection? What must a buyer to show in order to receive that protection? How has the term ‘the ordinary course of business of a mercantile agent’ been defined? See Associated Midland Corporation v Sanderson Motors Pty Ltd at 400-402.

11. How does the Registration of Interests in Goods Act 1986 offer the buyer protection? What must a buyer to show in order to receive that protection?
12. H delivers her BMW car to R who carries on the business of selling motor vehicles with instructions that R may sell the vehicle for the best price obtainable above $20,000. R sells the BMW to X for $18,000. R then goes bankrupt. Can H recover the vehicle from X? What if H only gave possession to R for the purpose of valuation of the motor vehicle?

13. How is a voidable title an exception to the nemo dat rule? By reference to Car & Universal Finance Co Ltd v Caldwell discuss what the owner must do to avoid title passing.

14. What is meant by ‘feeding title’, and what effect does this have on the nemo dat rule? How did Miss Persch feed the title in Patten v Thomas Motors Pty Ltd and what effect did this have on the result in the case?

15. How does section 28(1) and 28(2) of the Sale of Goods Act protect an innocent buyer from the nemo dat rule? What is said in Gamer’s Motor Centre (Newcastle) Pty Ltd v Natwest Wholesale Australia Pty Ltd about possession in section 28(2)? Cf the requirement of possession in section 28 (1); see Mercantile Credits Ltd v Upton & Sons.

16. What are some of the dangers in holding that the retention of title clause in the Associated Alloys case amounted to a trust? How might this affect the position of other unsecured creditors of the buyer company? Why are some of the difficulties a seller may have in making these clauses work? See Associated Alloys and Chattis Nominees.

17. G agrees to sell chemicals to Z Pty Ltd. The terms of the agreement state that the chemicals remain the property of G until paid for. Z Pty Ltd is expressly authorised to sell the chemicals as part of its business. Z Pty Ltd goes into liquidation. At the time of liquidation there remained some unsold stock of the chemicals as well as money in an account that represented the proceeds from the sale of some of the chemicals. Can G claim the unsold chemicals and the balance of this account in priority to the creditors of Z Pty Ltd? Can G recover the chemicals sold to V but still unused? If Z Pty Ltd used the chemicals to make paint which it sold to S in the ordinary course of its business, can G claim the paint?

**TOPIC TWO**

**SALE OF GOODS II**

*Main sub-topics*

- Implied terms – general.
- Implied terms – fitness for purpose.
- Implied terms – merchantable quality.
- Sale by Sample.
- Delivery.
- Remedies – buyer.
- Remedies – seller.
- Vienna Convention.

*Reading*

Ashington Piggeries Ltd v Christopher Hill Ltd [1972] AC 441 p. 99
Crowther v Shannon Motor Co Ltd [1975] 1 WLR 30 p. 128
Drummond & Sons v Van Ingen & Co (1887) 12 App Cas 284 p. 130
David Jones v Willis (1934) 52 CLR 110 p. 138
Grant v Australian Knitting Mills (1936) 54 CLR 49; [1936] AC 85 p. 150
Speedway Safety Products Pty Ltd v Hazell & Moore Industries Pty Ltd [1982] 1 NSWLR 255 p. 161

*Seminar discussion questions*

1. Distinguish between the terms ‘fitness for purpose’ and ‘merchantable quality’. Make specific reference to what Lord Diplock says at 503-507 in Ashington Piggeries Ltd v Christopher Hill Ltd and to what is said in Grant v Australian Knitting Mills. Do these terms differ in the case of a consumer sale?

2. What are the elements necessary to establish the implied terms of fitness for purpose and merchantable quality?

3. Define a sale by description and a sale by sample. Make reference to the cases. What implications exist for an affirmative finding in each case?

4. A goes to shoe store and tells the shop assistant that she wishes to buy a pair of shoes for walking to work. A is shown a pair, which she subsequently buys. 2 days later while walking to work the heel on the left shoe breaks causing A to fall and injure herself. Does A have an action against the shoe shop?

5. Q is jeweler who needs an exceptionally strong lamp under which to work. Q goes to the lamp shop and buys a lamp. Q takes the lamp home and finds that it is not strong enough. Q can Q obtain damages or recover his money?

6. J buys a valuable clock from W. The clock runs for 5 days before ceasing to work. Is it fit for purpose or of
merchantable quality? What if the clock ran for 5 years before ceasing to work? Discuss Crowther v Shannon
Motor Co Ltd.

7. C goes to D's shop to buy a made to measure suit. C's measurements are taken and C is shown some cloth
and is told that the suit is to be made from the same type and colour as the cloth shown. C approves and pays
in advance for the suit. When the suit is made it is of a shade of colour different to that previously shown. Can C
obtain his money back or damages?

8. In Grant v Australian Knitting Mills did it matter as to whether the garments were unmerchantable whether the
defect could have been removed by washing before wearing? If not why not?

9. Where property has not passed to the buyer what is the seller's remedy? What is the measure of damages?

10. What remedies does an unpaid seller have against the goods? With respect to each remedy what are the
elements the unpaid seller must establish to be entitled to the remedy?

11. E agrees to supply B with 100 cases of bottled wine at $100 per case, payable 30 days from delivery. When the
wine arrives B discovers that a couple of bottles are broken and that other bottles have damaged labels. B
refuses to pay for the wine. What remedies has E? What can E do if E learns of B's insolvency while the goods
are in transit to B?

12. M agrees to sell 100 boxes of fruit at $10 per box to O in 3 weeks time. Payment is to be made at that time
and prior to delivery. 2 weeks later O sells the fruit to N. O refuses to pay for the fruit. M resells the fruit for $8 per
box. What are the rights of each party? What if instead of the 100 boxes of fruit M had agreed to sell O his 1993
Jaguar motor vehicle?

13. To what extent can the terms implied by the Sale of Goods Act and the Trade Practices Act be excluded? Are
consumer sales treated differently under the Sale of Goods Act?

14. What cause of action does the breach of the implied terms as to fitness for purpose and merchantable quality
give rise to? If goods supplied are in breach of either term can the goods be returned and the buyer receive
their money back at common law? What is the effect of section 75A of the Trade Practices Act?

TOPIC THREE CONSUMER PROTECTION

Main sub-topics

- Meaning of consumer.
- Definition 'trade or commerce'.
- Unconscionable conduct.
- False statements with respect to the supply of goods and services.
- Other prohibited conduct.
- Ancillary liability.
- Remedies.
- Door-to-door sales.

Reading

Argy & Anor v Blunts & Lane Cove Real Estate Pty Ltd (1990) 26 FCR 112; 94 ALR 119 p. 166
Bevanere Pty Ltd v Lubidineuse (1985) 7 FCR 325; 59 ALR 334 p. 171
Concrete Constructions (NSW) Pty Ltd v Nelson (1990) 169 CLR 594 p. 175
Demagogue Pty Ltd v Ramensky (1992) 39 FCR 31; 110 ALR 608 p. 180
Given v C V Holland (Holdings) Pty Ltd (1977) 29 FLR 212; 15 ALR 439 p. 190
Henville v Walker (2001) 206 CLR 459 p.194A
Nationwide News Pty Ltd v ACCC (1997) ATPR ¶41-543 p. 219
York v Lucas (1985) 158 CLR 661 p. 231

Seminar discussion questions

1. Why was the vendor not acting in trade or commerce in O'Brien v Smogolov? Does it matter whether a real
estate agent is used? Is that agent acting in trade or commerce even though it is a sale of residential property?
See Argy & Anor v Blunts & Lane Cove Real Estate Pty Ltd.
2. A is builder who is contracted by F to undertake repairs to a city building. During the course of work A erects a
misleading sign which causes J an employee of F to take a wrong turn and fall into a hole thereby suffering injury. Has A acted in trade or commerce in erecting the misleading sign? See Concrete Constructions (NSW) Pty Ltd v Nelson.

3. Can a party be acting in trade or commerce notwithstanding that it is a 'one off' sale of a capital asset? See Bevanere Pty Ltd v Lubidineuse.

4. Define the limits of the term 'consumer'.

5. To what entities does the Trade Practices Act 1974 (TPA) and the Fair Trading Act 1987 (FTA) apply?

6. What elements are necessary to establish ancillary liability under s75B TPA?

7. A Pty Ltd is a seller of goods to B. A is a director of this company who on behalf of A Pty Ltd engages in misleading or deceptive conduct which causes a loss to B. Does B have any cause of action against A under the TPA, and, if so, what must be established to make A liable? See York v Lucas.

8. What is the measure of damages for a breach of the TPA / FTA where the conduct of the defendant is held to be misleading or deceptive? Do common law concepts of causation and remoteness have a role to play? See Marks v GIO and Henville v Walker.

9. Is the phrase 'loss or damage' interpreted differently in section 82 and in section 87? See Demagogue Pty Ltd v Ramensky. What consequences does this have?

10. By reference to Given v C V Holland (Holdings) Pty Ltd discuss the terms 'falsely', 'represent' and 'quality' in section 53(a)(1).

11. To what extent may the supplier of goods be liable for a breach of section 53, notwithstanding the true position may be outlined in the 'fine print', or that there is some qualification made to the representation? See Nationwide News Pty Ltd v ACCC.

12. W Pty Ltd who is the retailer of electrical goods places a sign in its shop saying absolutely no refunds or exchanges whatsoever. Has W Pty Ltd breached the TPA or the FTA?

13. U comes home to find she is the recipient of a set of cookbooks that have been posted to her and which she did not ask for. In what circumstances may U keep the books without paying for them?

14. The XYZ Discount House Pty Ltd advertises in a local newspaper that it has for sale the Zoom Vacuum Cleaner for sale at a reduced price of $49:95. The advertisement also states that the regular price is $89:95. In fact this retailer has only 2 such vacuum cleaners in stock and has never sold this vacuum cleaner for $89:95. Has XYZ Discount House Pty Ltd breached the TPA or the FTA?

TOPIC FOUR   MISLEADING OR DECEPTIVE CONDUCT

Main sub-topics

- Representations.
- Definition of the public.
- Reliance.
- Statements which are literally true.
- Silence as a representation.
- Opinions and predictions.
- Negotiations.
- Exclusion clauses.
- Passing off.

Reading

Eighth SRJ Pty Ltd v Merity (1997) NSW ConvR ¶55-813 p. 240
Fraser & Anor v NRMA Holdings Ltd (1995) 55 FCR 452 p. 247
Henjo Investments Pty Ltd v Collins Marrickville Pty Ltd (1988) 79 ALR 83 p. 251
Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd (1982) 149 CLR 191 p. 266
Taco Company of Australia Inc & Anor v Taco Bell Pty Ltd (1982) 42 ALR 177 p. 285

Seminar discussion questions

1. To what extent is it necessary (if at all) to show knowledge of falsity in a breach of s52?
2. Section 52 although contained in the consumer protection provisions of the TPA is in fact a powerful commercial weapon. Consider this in light of Taco Company of Australia Inc & Anor v Taco Bell Pty Ltd. What commercial implications did the result in this case have for the parties?
3. E Pty Ltd the manufacturer of ladies golf wear produces a skirt with a bear emblem printed on the rear of the skirt. N, a well known professional golfer, who is known as the 'bear' frequently uses a bear emblem of a
different design on products manufactured using his name. N objects to E Pty Ltd’s use of the bear symbol. Has E Pty Ltd breached s.52? If so what remedies might N have?

4. D Pty Ltd is the promoter of a concert, which is billed as featuring Kylie Minogue as the lead performer among a number of unknown performers. On the night of the concert an unknown female singer who bears the name Kylie Minogue appears. Angry concert goers complain to the Australian Competition and Consumer Commission (ACCC). Has D engaged in misleading or deceptive conduct?

5. W, a maker of wines, markets a new product called the Big Mac. M, a maker of hamburgers, has a product marketed under the same name. Has W engaged in misleading or deceptive conduct? Why or why not?

6. In what circumstances can silence amount to misleading or deceptive conduct?

7. S Pty Ltd owns a hotel. The hotel contains 28 gaming machines, which results in a yearly turnover of $70,000. In fact the hotel is licensed for only 10 such machines. Ten machines would produce a yearly turnover of $15,000. S Pty Ltd wishes to sell the hotel to V. V inspects the hotel, its accounts and the gaming lounge in the company of the proprietor of S. The proprietor does not tell V about the licence for only 10 gaming machines. V buys the hotel, and is later required to remove 18 of the gaming machines, resulting in a substantial loss in turnover. Does V have an action against S Pty Ltd and its proprietor?

8. Are commercial persons negotiating at arms length always under a duty to disclose material adverse to their commercial interest?

9. Is there such a thing as mere puffs, which are outside misleading or deceptive conduct? See Eighth SRJ Pty Ltd v Merity. Why were the statements in this case held to be mere puffs?

10. To what extent must there be reliance upon a representation before an action is available under section 52?

11. What additional statutory criteria are applicable to a representation as to future conduct?

12. P Ltd is an investment advisor who publishes a newsletter to which members of the public subscribe. The purpose of the newsletter is to provide advice about future stock market trends. An edition of the newsletter predicts that shares in UES Ltd should double within 2 years. At the time of making this prediction the directors of P Ltd are aware of a possible acquisition of UES Ltd by a major competitor. If this acquisition goes ahead the shares in UES Ltd should double in value. The directors are aware that there is a substantial chance the acquisition may not proceed, and, if this happens, then the share price is unlikely to rise. This information is not contained in the newsletter. Q, a subscriber to the newsletter, buys shares to the value of $100,000 in UES Ltd. There is no acquisition, and 2 years later the shares are worth only $80,000. Advise Q.

TOPIC FIVE   MANUFACTURERS LIABILITY

Main sub-topics

- Common law.
- Deemed manufacture.
- Imported goods.
- Unsuitable goods.
- Non-merchantable quality.
- False descriptions.
- Non correspondence with samples.
- Failure to provide repairs and parts.
- Time limits.
- Strict liability.
- Meaning of defective goods.
- Liability for injury to persons.
- Liability for injury to property.
- Defences.

Reading

Zaravinos v Dairy Farmers Co-operative Ltd (1985) 59 ALR 603     p. 302
Glendale Chemical Products v ACCC (1998) 90 FCR 40      p. 306

Seminar discussion questions


2. How might Grant v Australian Knitting Mills be decided today under the Trade Practices Act? Briefly apply Part...
V Div 2A and Part VA to the facts of that case.

3. In what circumstances may a person be deemed to be a manufacturer?

4. What are some of the major drawbacks with the Part V Div 2A regime?

5. What are the advantages for consumers of Part VA?

6. What defences exist for a manufacturer under Part VA?

7. A buys a toy truck for his son's birthday from the Toy Shop Pty Ltd. The toy truck was acquired by the Toy Shop from Toy Importers Pty Ltd. The toy truck is made in Taiwan by a company with no connection to Australia. A's son is injured when the tip tray is lifted revealing a sharp unprotected edge on the tray's hinge. What rights has A or A's son against either the Toy Shop or Toy Importers or the Taiwanese manufacturer? Assume A suffers nervous shock on seeing his son injured and as a result is forced to take time off work with a resultant loss to his employer B. Can A and B claim under Part VA?

8. Can a product which is otherwise safe be considered as having a defect under Part VA solely by reference to manner in which it is packaged and labelled? Consider Glendale Chemical Products v ACCC.

9. H contracts food poisoning after eating at his local takeaway. This is caused by contaminated food supplied to the takeaway by R a wholesaler and importer. The food was imported from another country where it was processed by X. The contamination was due to unhygienic practices in X's procedures. Discuss the liability of the takeaway, R and X under the common law, the Sale of Goods Act and the Trade Practices Act. Could H's employer claim for loss suffered as a result of H having to take time off work?

TOPIC SIX       BAILMENT

Main sub-topics

• Nature of bailment.
• Types of bailment – gratuitous and reward.
• Duties of the bailee.
• Duties of the bailor.
• Common carriers.
• Innkeepers.
• Statutory modification of liability.
• Uncollected Goods.

Reading

Blower v Great Western Railway Co (1872) LR 7 CP 655 p. 1
Pitt Son & Badgery Ltd v Proulefco (1984) 153 CLR 644 p. 7
Hobbs v Petersham Transport Co Pty Ltd (1971) 124 CLR 220 p. 10
The Pioneer Container KH Enterprise v Pioneer Container [1994] 2 AC 324 p. 23
Sydney CC v West (1965) 114 CLR 481 p. 33
TNT (Melbourne) Pty Ltd v May & Baker (Aust) Pty Ltd (1966) 115 CLR 353 p. 46
Theeman v Forte Properties Ltd [1973] 1 NSWLR 418 p. 53
Waltons Stores Ltd v Sydney CC (1968) 88 WN (Pt 2) (NSW) 153 p. 60
WGH Nominees Pty Ltd v Tomblin (1985) 39 SASR 117 p. 64
WD & HO Wills (Aust) Ltd v SRA (1998) 43 NSWLR 338 p. 69

Seminar discussion questions

1. A gives her car to B to wash while she goes shopping. Is there a bailment?
2. V places her bag in a coin operated locker at a railway station. When she returns the bag is gone. Is there a bailment?
3. C asks F a friend to carry the day's takings of her shop to the bank. F stops at a milk bar and leaves the bag containing the cash on the seat. When F realises what he has done he returns to the milk bar but the cash is gone. Is there a bailment and is F liable for the loss of the cash? What other causes of action might exist against F?
4. Z makes a loan of $1,000 to U repayable in 1 year. The loan is made when Z hands U $1,000 in cash. Is there a bailment?
5. Define the duties and liabilities of a bailee for reward, and discuss how they differ from a gratuitous bailee.
6. How does the liability of a bailee for reward differ from the ordinary duty of care in negligence?
7. S finds a valuable ring which D has lost. S takes the ring home but loses it. J, a friend of D, sees S pick up the
8. What is a sub-bailee? Define the circumstances where such a person may be directly liable to the true owner. See The Pioneer Container KH Enterprise v Pioneer Container.

9. Discuss TNT v May & Baker and Sydney CC v West. Why were the exclusion clauses ineffective in these cases?

10. Discuss the duties and liabilities of a common carrier. How have they been modified by statute in NSW? How does the liability of a common carrier differ from a private carrier?

11. J delivers a box containing highly corrosive chemicals to the Speedy Courier Co for delivery to Dubbo. J does not tell Speedy what the box contains. During transit the box leaks. Realising a potential danger Speedy's driver disposes of the box without making delivery. What rights does J have against Speedy?

12. T checks in to the Lex International Hotel. Behind the door in T's room and at the reception desk there is a notice pursuant to the Innkeepers Act 1968 purporting to limit the hotel's liability for damage or loss to its guest's property. T goes out shopping leaving his bag locked in his room. Contained in the bag is T's laptop computer and $1,000 in cash. When T returns the bag and its contents are missing. Can T claim the value of the lost items from the hotel? What if T had asked for his bag and its contents to be placed in the hotel safe and the bag had gone missing from the safe? Would it make any difference if T were to tell the hotel staff what the bag contained and they then agreed to lock it in the safe?

13. In January K sends her VCR to R, an electrical repairer. In February R telephones K saying the VCR is fixed and available for collection. The cost of the repair is $75. K forgets to collect the VCR until September when she attends R's workshop. R tells K he sold the VCR to H in August to pay for the cost of the repairs. The VCR is valued at $450, but was sold to H for $300. What rights has K against R and H? How must R deal with the money received from the sale that is in excess of the repair charge?

TOPIC SEVEN PRINCIPAL AND AGENT

Main sub-topics

• Definition and creation of agency.
• Authority of the agent.
• Ratification.
• Duties of the agent.
• Rights of the agent.
• Liability of the agent – principal disclosed.
• Liability of the agent – principal unnamed.
• Liability of the agent – principal undisclosed.
• Termination of agency.
• Types of agents.

Reading

Black v Smallwood (1966) 117 CLR 52 p. 82
Bolton Partners v Lambert (1888) 41 Ch D 295 p. 89
Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480 p. 98
Hely-Hutchinson v Brayhead Ltd [1968] 1 QB 549 p. 114

Seminar discussion questions

1. Distinguish between actual, implied, apparent and ostensible authority. Consider the decisions in Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd and Hely-Hutchinson v Brayhead Ltd.

2. N tells Y that he is authorised to buy $1,000 worth of grain on behalf of O. A contract is drawn up for the supply of the grain and is signed by N using the words 'on behalf of O' underneath his signature. O refuses to accept delivery of the grain, stating that N had no authority to order any grain. Who can Y sue, and on what cause of action? Has O any claim against N?

3. X is the buyer of computers for his employer M. X is known in the computer sales industry as holding this position. X has a dispute with M, and X is then dismissed. Three days after leaving M's employment X orders $50,000 worth of computers from L, a seller of business computers. X knows these computers are incompatible with M's software. L is unaware that X has left M's employment. M refuses to accept delivery of the computers, and L sues M for the price. Is M liable? If so, what should M have done in order to avoid liability?

4. What is required to be done by the principal to effectively ratify the acts of an agent?

5. What is the liability of the agent where the principal is undisclosed?
6. What is the liability of the agent where the principal is unnamed?

7. In what circumstances can an agent be held to have contracted personally?

8. G is the principal director of G Pty Ltd trading as ‘The Furniture Shop’. No where is it stated that the ‘Furniture Shop’ is owned by G Pty Ltd. C is a wholesaler of furniture who attends the ‘Furniture Shop’ and speaks with G who introduces himself as the proprietor. C agrees to deliver furniture to the ‘Furniture Shop’ on sale or return. The furniture is delivered and sold. C is not paid and seeks to recover the price of the furniture from G. G denies liability stating that the contract is with G Pty Ltd. G Pty Ltd is now in liquidation, and has no assets to meet the debt. Can C recover from G?

9. Take the example in 8 above if the furniture was defective and the Furniture Shop was forced to retake delivery from its customers and replace the furniture with other different stock. Could G Pty Ltd bring an action in contract against C for any loss suffered?

10. A sends some paintings to an art gallery for sale. Later A wishes to retain the painting ‘Blue Fields’ and advises the gallery to withdraw this painting from sale. The gallery forgets to withdraw ‘Blue Fields’, and instead sells the painting to B. What rights has A got against the gallery and B?

**TOPIC EIGHT  GUARANTEE**

*Main sub-topics*

- Guarantee and indemnity.
- Consideration.
- Liabilities and rights of guarantors.
- Continuing guarantees and 'all moneys' clauses.
- Subrogation.
- Contribution between co-guarantors.
- Discharge of guarantees.

*Reading*

- Hong Kong Bank of Australia Ltd v Larobi Pty Ltd (1991) 23 NSWLR 593 p. 139
- Re: Taylor; Ex parte Century 21 Real Estate Corp (1995) 130 ALR 723 p. 154
- Vadasz v Pioneer Concrete (SA) Pty Ltd (1995) 184 CLR 102 p. 159

*Seminar discussion questions*

1. Distinguish between a guarantee and an indemnity.
2. Discuss the operation of the doctrine of subrogation in circumstances where the surety has paid the principal debt.
3. A lends $30,000 to B but only if C guarantees B’s obligation to A. B defaults and A asks C for repayment. Can A sue C without first suing B? If C does pay A, what rights has C against B? What practical limitations might exist in any claim by C against B?
4. What are the rights of co-sureties where one has paid the principal debt? In what circumstances will such rights not exist?
5. D lends $50,000 to X Pty Ltd. The loan is guaranteed by G and H the directors of X Pty Ltd. X Pty Ltd goes into liquidation and cannot repay the loan. Can D choose to recover only from G? If so what right has G against H?
6. In Official Trustee in Bankruptcy v Citibank the right to contribution between co-sureties was held not to exist even though there was no agreement between the co-sureties that one would be liable in priority to the other. Why?
7. Are rights to subrogation and contribution based in contract or is there some other basis?
8. List the circumstances in which at common law a guarantor would be discharged from his or her obligations. Can the contract of guarantee modify these conditions?
9. J wants to borrow $100,000 from a bank. The bank will not lend J the money without a guarantor for the loan. J asks W to guarantee the loan for $100,000. W agrees. The guarantee while specifying the sum of $100,000 also contains an ‘all moneys’ clause, making the guarantor liable for all amounts owed by J to the bank. After the loan is made the bank at J’s request lends a further $200,000 to J. J defaults and the bank seeks to recover $300,000 from W. For what sum is W liable?
TOPIC NINE  CREDIT

Main sub-topics

• Pledges.
• Liens.
• Charges.
• Consumer Credit Code – application.
• Consumer Credit Code – obligations on lenders.
• Consumer Credit Code – limitations on interest and charges.
• Consumer Credit Code – enforcement.
• Consumer Credit Code – reopening transactions.
• Consumer Tenancy and Trader Tribunal.

Reading

GE Commercial Corporation (Australia) Pty Ltd v White (2001) 53 NSWLR 513 p.166A
Hewett v Court (1983) 149 CLR 639 p. 167
Majeau Carrying Co Pty Ltd v Coastal Rutile Ltd (1973) 129 CLR 48 p. 176
North Central Wagon Co Ltd v Brailsford [1962] 1 WLR 1288 p. 185
Saltoon v Lake [1978] 1 NSWLR 52 p. 189

Seminar discussion questions

1. Define a bill of sale.
3. To what transactions or instruments will the Security Interests in Goods Act 2005 apply? What transactions does this Act exclude?
4. What benefits are gained from the registration of a security interest in goods under the Security Interests in Goods Act 2005? What are the problems associated with non registration of security interests? For whose benefit is registration?
5. Is registration of a security interest in goods necessary for its validity? Is the position different with respect to agricultural goods mortgages? Compare the position between bills of sale and traders bills of sale under the Bills of Sale Act 1898 (repealed); see Saltoon v Lake [1978] 1 NSWLR 52.
6. What are the requirements for registration of a security interest in goods under the Security Interests in Goods Act 2005? Has much of the formality with respect to registration been removed when compared to the Bills of Sale Act 1898 (repealed)? What was the reason in past times for such level of formality? See GE Commercial Corporation (Australia) Pty Ltd v White (2001) 53 NSWLR 513.
7. What priority does a registered security interest in goods gain over an unregistered security interest in goods under section 31 of the Security Interests in Goods Act 2005?
8. How has the Security Interests in Goods Act 2005 altered the law in respect of priorities compared to the Bills of Sale Act 1898 (repealed)? Has it simplified the law? If so how?
9. What are the agricultural goods mortgages which are covered by the Security Interests in Goods Act 2005? Why is it necessary to make special provisions for these transactions compared to security interests over goods generally?
11. A gives a bill of sale over his car as security for a loan from V. The bill of sale is not registered. A becomes bankrupt and his trustee in bankruptcy claims the car for the benefit of creditors generally. Can V recover the car from the trustee? Suppose that 1 year prior to the bankruptcy A had sold the vehicle to T without telling him of the bill of sale. Could V recover the vehicle from T?
12. Distinguish between a general and a particular lien.
13. S delivers his watch to a watchmaker for repair. Later S returns to collect the repaired watch but claims the watchmaker has damaged the watch. The watchmaker denies the damage and S refuses to pay for the repair, and the watchmaker then refuses to hand over the watch to S. Can the watchmaker retain the watch pending payment?
14. Define a pledge and distinguish it from a Bill of Sale or mortgage.
15. Define the type of transaction to which the Consumer Credit Code applies.
16. In what ways does the Consumer Credit Code protect the borrower? Were such protections available at
common law?
17. What steps must a lender undertake before it can establish that a borrower is in default under the Consumer Credit Code?
18. What steps must a lender undertake before it can exercise a power of sale and seize and sell goods of a borrower in respect of transaction to which the Consumer Credit Code applies?
19. Q buys a second hand car from P a car dealer. Q cannot afford to buy the car outright so she grants a bill of sale over the vehicle to Y Finance Co a company associated with P. The car cost $12,000 and this amount was borrowed and secured by the bill of sale. Q’s monthly repayment is $800, which is two thirds of her take home wage. Interest is charged at 18% p.a. until the loan is repaid. At the time of purchasing the car and obtaining the finance Q was pressured into buying the car by claims made by P that an anonymous person was returning that evening to buy the car and that she would be ‘mad’ not to take it at this price. Q was given some documents to sign in blank and was not given any opportunity to read them. The car was sold at about $2,000 over value. Three months after delivery of the vehicle Q loses her job. She falls in to arrears with her payments but promptly advises Y Finance of her loss of job and that she will be late in making payments. On obtaining a new job she resumes the repayments but is unable to make up the arrears. Some weeks later the car is taken from the street outside Q’s house. Q believing the car stolen reports it to the police. Later Q learns that the car was repossessed by Y Finance and sold at auction for half its value. Advise Q.
20. Which court or tribunal has jurisdiction in respect of the Consumer Credit Code?

TOPIC TEN     INSURANCE

Main sub-topics

- Formation.
- Insurable interest.
- Utmost good faith.
- Misrepresentations and warranties.
- Duty of disclosure.
- Insurers’ rights in cases of misrepresentation and non-disclosure.
- Fraudulent claims.
- Exclusion clauses.
- Statutory restrictions on refusal of claims.

Reading

Alexander Stenhouse Ltd v Austcan Investments Pty Ltd (1993) 7 ANZ Insurance Cases ¶61-166 p. 193
Advance (NSW) Insurance Agencies Pty Ltd v Matthews (1989) 166 CLR 606 p. 197
Ferrcom Pty Ltd v Commercial Union Assurance Co of Australia Pty Ltd (1993) 176 CLR 332 p. 206
FAI General Insurance Co Ltd v Australian Hospital Care Ltd (2001) 204 CLR 641 p. 212
Gosford City Council v GIO General Ltd (2003) 56 NSWLR 542 p. 221G
Lindsay v CIC Insurance Ltd (1989) 16 NSWLR 673 p. 222
Moltoni Corporation Pty Ltd v QBE Insurance Ltd (2001) 205 CLR 149 p. 231
Plasteel Windows Australia Pty Ltd v C E Heath Underwriting Agencies Pty Ltd (1990) 19 NSWLR 400 p. 238

Seminar discussion questions

1. Define insurable interest.
2. What is meant when it is said that a contract of insurance is one of the utmost good faith?
3. Define the duty of disclosure and indicate to what extent an insured can be imputed with knowledge of its agent.
4. In what circumstances does the Insurance Contracts Act 1984 provide that the duty of disclosure has been waived on the part of the insurer?
5. What remedies are available to an insured who has breached the duty of disclosure and whose insurer seeks to avoid the policy?
6. F takes out a policy of car insurance with AMRN Insurance Co. He neglects to tell them that he was fined for speeding three years before. The proposal asked a question as to whether there had been any convictions for criminal offences within the past 5 years. F’s car is stolen and burnt out. The car is insured for an agreed value of $15,000. The insurer refuses to pay and purports to cancel the policy. Advise F. Would it make a difference if F assumed criminal offences did not include traffic offences?
7. T insures his house with OIG Insurance. It is a term of the policy that T must keep his home in a ‘good state of
repair’ otherwise the insurer may avoid the policy. Thereafter T’s home suffers damage due to a fire negligently lit by T’s girlfriend. T fails to repair the damage. Later T’s home is damaged by rainwater entering through a hole in the roof during a storm, this is an event covered by the policy. The hole is caused by a very large hailstone. OIG does not purport avoid the policy but refuses to pay the claim. Advise T. What if the hole had been caused by the fire?

8. What is the difference between an insurance policy written on a ‘claims made and notified’ basis and one written on an ‘occurrence’ basis?

9. W engages U an architect to design a building in 1995. At this time U is insured by I Co an insurance company. The building is constructed in 1996 but in 1999 the building becomes unstable due to U’s negligence in preparing and executing the design. W sues U in 1999 but I Co.’s policy expired in 1997. No other insurance was ever taken out. U is unable to meet any judgement obtained by W. Advise W. Does it matter whether the policy with I Co. was ‘claims made and notified’ policy or an ‘occurrence’ policy?

TOPIC ELEVEN NEGOTIABLE INSTRUMENTS

Main sub-topics

• Definition and elements of a bill of exchange.
• Parties to a bill of exchange.
• Issue, acceptance and negotiation.
• Holders.
• Liability of parties.
• Presentment and dishonour.
• Discharge.
• Promissory notes.
• Definition of a cheque.
• Crossings on cheques.
• Negotiation, endorsement and payment.
• Liability of the parties.
• Post-dated cheques.
• Defences of the paying bank.
• Defences of the collecting bank.
• Electronic banking.

Reading

Arab Bank Ltd v Ross [1952] All ER 709 p. 247

Goodwin v Robarts (1875) LR 10 Ex 337 p. 253

Rosenhain v Commonwealth Bank of Australia (1922) 30 CLR 46 p. 265

Williamson v Rider [1963] 1 QB 89 p. 270

Commissioners of the State Savings Bank of Victoria v Permewan Wright & Co Ltd (1914) 19 CLR 457 p. 280


Commissioners of Taxation v English Scottish and Australian Bank Ltd [1920] AC 623 p. 296

Greenwood v Martins Bank [1933] AC 51 p. 300

National Australia Bank Ltd v Hokit Pty Ltd (1996) 39 NSWLR 377 p. 303

Seminar discussion questions

1. What is meant when it is said that a bill of exchange is a negotiable instrument?
2. Distinguish between a bill of exchange, a bank note and a promissory note?
3. Define the terms – drawer, drawee, payee, indorser, bearer, and holder.
4. What is the difference between a holder, a holder for value, and a holder in due course?
5. What are the requirements for a valid indorsement of a bill of exchange?
6. Distinguish between acceptance, presentment and discharge.
7. A draws a bill of exchange on B directing him to pay C the sum of $1,000 one month from the date shown on the bill. C on receipt of the bill from A approaches D and hands him the bill in return for the supply of goods and services. At the time of giving D the bill C writes on the reverse of the bill ‘Pay D’. C then signs his name beneath these words. An employee of D writes ‘Pay E’ upon the reverse of the bill and underneath these words
forges D’s signature. When the one month expires E takes the bill to B who refuses payment. Discuss the liability of A, B, C and D. What if the signature of C on the reverse of the bill is incorrectly spelt? What if the bill was payable to bearer?

8. What is the effect of marking a cheque 'Not Negotiable’?
9. What is the effect of crossing a cheque?
10. Define the term 'Account Payee Only’.
11. What are the defences of the collecting bank?
12. What duty (if any) does a customer owe to the drawing bank in respect of the drawing of cheques and the custody of its chequebook?
13. What is the liability of a person who without authorisation alters the cheque of another?
14. What are the consequences of post dating a cheque?
15. H draws a cheque on the L bank payable to Z in the sum of $100. H leaves a large space between the $ and 100. A similar large space is left between $ and the words ‘one hundred dollars’. Z inserts further numerals and words so that the cheque then reads $1,100. The alteration appears in a different handwriting but with a similarly coloured pen to the numerals and words written by H. Z takes the cheque to the X bank who pays Z $1,100 on the cheque. The X bank collects on the cheque from the L bank. The L bank then debits H’s account in the sum of $1,100. What rights has H?
16. R has a chequebook with T bank. R keeps his chequebook in his desk drawer at work. One day R notices a number of cheques missing from the book. These cheques were stolen and forged by an ex employee. R does nothing until the bank debits R’s account. What can R do? The ex-employee has disappeared.
17. S buys goods and services from M. S gives M a cheque for their value and takes delivery of the goods and services. The cheque is dishonoured on presentation. What causes of action has M?