



The Sale of Goods Act by Douglas A.S. Paterson, Q.C.

Of course, modern Canada is a consumer society. Our economy largely depends on people purchasing goods that have been produced for our use and enjoyment. So, it is not surprising that the province has a *Sale of Goods Act* to define and regulate this very important and pervasive activity in life.

The *Act* itself is quite long, complex and at times fuzzy and gray. Some nuggets, however, are worth passing on to you.

If a warranty comes with the goods, and the buyer claims breach of warranty, the goods cannot be rejected but only a claim for damages can then prevail.

Where necessities of life are sold to and delivered to a minor or to a person of mental incapacity or a drunkard, those buyers still must pay a reasonable price for same!

Where specific goods have been bought but have perished without the seller knowing so at the time of sale, the contract is void.

There are usually implied conditions as to quality or fitness of goods in a sale contract. Where a buyer advises the seller the goods are needed for a certain purpose, this tells the seller his skill and judgment are important to the deal. If the goods are ones in the usual course of his/her business to supply, then the implied condition that the goods shall be reasonably fit for the purpose is part of the contract.

One interesting section, and somewhat surprising, says where a specific, ascertained item is being sold, the property rights in it passes when the parties intend it to pass. This is a little surprising in that the property transfer does not depend on something objective – like delivery or full payment – just intention. This no doubt has and does lead to disputes between buyer and seller.

Quite logically, the *Act* denotes the fact that, unless agreed differently, the goods are at the seller's risk until the property rights pass to the buyer, whether

delivery has been made or not (with some specific exceptions).

The *Act* says that no matter what, where goods have been obtained by “fraud or other wrongful means not amounting to theft” (deceit for example), the property in the goods shall not revert in the owner just because the offender is convicted. The rationale for this is difficult to grasp but it does respect the fact we have a criminal -system and a civil – system of justice. A conviction in the criminal courts does not necessarily determine civil property rights.

Unless agreed differently, when the seller delivers the goods, the buyer must be given a reasonable chance to inspect the goods to see if they conform to the contract.

The approach of the *Act* to unpaid seller's rights is important. Even if the property rights have passed, where the seller is unpaid, the law implies a lien against the goods in favour of the seller. This lien may end by unconditional delivery to the buyer, or the

buyer receives lawful possession, or waiver by the seller.

Regarding auction sales, each lot or item is deemed to be a separate sale contract. The sale is complete when the hammer falls but a bidder can withdraw at any time before then. Unless stated otherwise, the seller cannot bid at auction.