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# Syllabus

# Commercial Law

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Revised for August 2023

Candidates are advised that the syllabus may be updated from time-to-time without prior notice.

Candidates are responsible for obtaining the most current syllabus available.



## Commercial Law

### PART I: Secured Transactions

#### 1. Background to Personal Property Security Act ("P.P.S.A.")

See: Secured Transactions in Personal Property, Cases, Texts and Materials, eight edition (2018) by Anthony Duggan (hereafter "**Duggan**"), Mark Selick and Michael Burke (Emond publishers).

**Note to students:** *This textbook does not cover those portions of this Commercial Law course that involve the sale of goods, and penalties/liquidated damages.*

The Personal Property Security Act, R.S.O. 1990, cP10 (hereafter "**P.P.S.A.**"), including amendments

Personal Property Security Regulations, R. Reg. O. 1990, Reg. 912 (am. O. Reg 76/92)

See: Duggan at p. 1-6; 18-20; 99-100

#### 2. Application of P.P.S.A.

##### a) Conditional Sale Agreements and Chattel Mortgages

- Duggan at p. 509 (precedent of a conditional sale agreement)
- Duggan at p. 510 (precedent of a chattel mortgage)
- Duggan at p. 9 - 11
- *National Trailer Convoy of Canada v. Bank of Montreal* (1980), 10 B.L.R. 196 (Ont. H.C.)
- *Joseph Group of Companies v. Pickles Tents and Awnings Ltd* (1981), 127 D.L.R. (3d) 176 (Man. C.A.)

##### b) Accounts - s. 1(1) P.P.S.A.

- *Grosvenor Park Media v. Arc Productions* 2020 ONSC 5651 (Ont. S.C.)

##### c) Consignments - s. 2(a) P.P.S.A.

- Duggan at p. 66-68
- *Re Toyerama* (1980), 34 C.B.R. (N.S.) 153 (Ont. S.C.)
- *Re Stephanians Persian Carpets* (1980), 34 C.B.R. (N.S.) 35 (Ont. S.C.)
- *Newcourt Credit Group v. G.A. Finance* (1998), 13 P.P.S.A.C.(2d) 372 (Ont. Gen. Div.)
- B. COLBURN, "Consignment Sales and the P.P.S.A." (1981-82), 6 Can. Bus. L.J. 40 at 62



d) Chattel Leases - s. 1 new definition of “lease for a term of more than one year”; and s.2(c) P.P.S.A. as amended by S.O. 2006, chap. 34, Schedule “E”

- Duggan at p. 64 – 66; p. 269 – 270. P. 417 - 418
- Re Connacher Oil and Gas 2017 ABQB 769, reprinted in Duggan at p. 419
- Re Doran (2006), 9 P.P.S.A.C.(3d) 99 (N.S.S.C.)
- *Re Speedrack* (1980), 11 B.L.R. 220 (Ont. H.C.)

e) Assignment of Accounts Receivable - s. 2(b); 40(2) PPSA as amended by S.O. 2006, chap. 34, Schedule “E”

- Duggan at p. 29
- *Dimmitt and Owens Financial v. Big V Pharmacies* (1999) 14 P.P.S.A.C.(2d) 47 (Ont. Gen. Div.)

### 3. Attachment and Perfection of a Security Interest

#### a) Attachment

- When does a security interest attach - s. 11; 19 P.P.S.A.
- Duggan at p. 75 - 81; p. 110 - 113
- *Credit Suisse Canada v. 1133 Yonge St. Holdings* (1999), 14 P.P.S.A.C.(2d) 61 (Ont. C.A.)

#### b) Registration of a Security Interest

i. By registration of a financing statement - s. 23; 28(5); 45; 46(5); 51 P.P.S.A.

- Duggan at p. 158 -170; p. 512

ii. Lapse - s. 48(1), (2), (3), (5); 30(6); 69 P.P.S.A.

- *Heidelberg Graphic Equipment v. Arthur Anderson Inc.* (1992), 4 P.P.S.A.C.(2d) 116 (Ont. Gen. Div.) reprinted in Duggan at p. 173
- *Bank of Nova Scotia v. Royal Bank* (1999), 14 P.P.S.A.C. (2d) 10 (B.C.S.C.)
- *Asklepeion Restaurants v. 791259 Ontario Ltd.* (1998), 13 P.P.S.A.C.(2d) 295 (Ont. C.A.)
- *Thomas v. Input Capital Corp.* (2020), 12 P.P.S.A.C. (4<sup>th</sup>) 339 (Sask. C.A.)
- Duggan at p. 134; p. 180

iii. Errors in the Financing Statement - s. 46(4), 46.1, 46.2, 46.3 P.P.S.A.; R. Reg.O. 1990, Reg. 912, s. 1, 2, 3, 9(2), 16, 18

- Duggan at p. 189 – 194; p. 204 - 206
- Re Lambert (1994), 20 O.R. (3d) 108 (C.A.) - reprinted in Duggan p. 194



- Fairbanx Corp v. Royal Bank of Canada 2010 ONCA 385 – reprinted in Duggan p. 246

iv. By Possession of the Collateral: s. 22 P.P.S.A.

- Duggan at p. 121-125
- *Re Dzarzinskis* (1982), 15 B.L.R. 317 (Ont. H.C.)
- *Re M.C. United Masonry* (1983), 142 D.L.R. (3d) 470 (Ont. C.A.)

c) Personal Guarantees - s.17 P.P.S.A.

- *First City Capital v. Hall* (1993), 11 O.R. (3d) 792 (C.A.)
- *Toronto Dominion Bank v. McCowan* (1995), 9 P.P.S.A.C. (2d) 176 (Ont. C.A.)
- *Bank of Nova Scotia v. Antoine* (1998), 13 P.P.S.A.C. (2d) 231 Ont. Gen. Div.)

d) Property Acquired in the Future

i. After Acquired Property - s. 12(1); 45(4) P.P.S.A.

- Duggan at p. 11 - 12; p. 96 - 97
- *Pickles Tents and Awnings* (supra)
- *Re West Bay Sales and Hitachi* (1978), 88 D.L.R. (3d) 743 (Ont. S.C.)

ii. Future Advances - s. 1(1); 13; 30(3), (4); 38 P.P.S.A.

- Duggan at p. 100 - 101; p. 231 - 233

**4. Priorities**

a) Major Priorities Section - s. 30(1) P.P.S.A.

- Duggan at p. 153 -154; p. 219 - 221; 226 - 227
- *B.M.P. and Daughters Investment Corp. v. 941242 Ontario Ltd.* (1992), 11 O.R. (3d) 81 (Ont. Gen. D)
- *Sperry v. CIBC* (1984-85), 4 P.P.S.A.C. 314 (Ont. C.A.)
- *CIBC v. Otto Tim Enterprises* (1995), 10 P.P.S.A.C.(2d) 228 (Ont. C.A.)

b) Judgment Creditors - s. 20(1)(a)(ii) P.P.S.A.

- *Re CMHC* (1995), 22 O.R. (3d) 190 (Ont. Gen. D.)

c) Effect of Non-perfection as Against Trustee in Bankruptcy - s. 20(1)(b)

- Duggan at p. 136; p. 155 - 156
- *Re Giffen* (1998), 13 P.P.S.A.C.(2d) 255 (S.C.C.) - reprinted in Duggan at p. 134



**d) As Against a Transferee for Value - s. 20(1)(c)**

- Duggan at p. 151 - 152
- *Royal Bank v. Dawson Motors* (1981), 15 B.L.R. 83 (Ont. Co. Ct)
- *Robert Simpson Company v. Shadlock* (1981), 31 O.R. (2d) 612 Ont. H.Ct.) – reprinted in Duggan at p. 221

**e) Purchases in the Ordinary Course of Seller's Business - s. 28(1) and 28(1.1)  
P.P.S.A. as amended**

- Duggan at p. 327 - 329; p. 334 - 335
- *Fairlane Boats v. Leger* (1980), 1 P.P.S.A.C. 218 (Ont. H.C.)
- *Ford Motor Credit v. Centre Motors* (1982), 137 D.L.R. (3d) 634 (Ont. H.C.)
- *Camco Inc. v. Olsen Realty* (1986), 50 Sask R. 161 (C.A.), reprinted in Duggan at p. 330

**f) Purchase Money Security Interest - s. 1(1) new amended definition; 33(1),(2)  
P.P.S.A.; note amendment to s. 33(1)(b) in S.O. 2006, chap. 34, Schedule “E”**

- Duggan at p. 253 - 258; p. 274 - 277; p. 285 - 286
- *Unisource Canada v. Laurentian Bank* (2000), 47 O.R. (3d) 616 (Ont. C.A.) - reprinted in Duggan at p. 265
- *Re: 1151162 Ontario Ltd.* (1998), 13 P.P.S.A.C. (2d) 16 (Ont. Gen. Div.)
- *First City Capital v. Arthur Anderson Inc.* (1984-85), 4 P.P.S.A.C. 74 (Ont. H.C.)

**5. Security Interests Excluded from Scope of P.P.S.A.**

**a) Liens - s. 4(1)(a) P.P.S.A.**

- Duggan at p. 69
- *Commercial Credit Corp. v. Harry Shields* (1981), 122 D.L.R. (3d) 736 (Ont. C.A.) - reprinted in Duggan at p.69

**6. Default -- Rights and Remedies Under P.P.S.A.**

**a) Seizure - s. 59(5); 63(5); 64(3); 65; 67(1),(2),(3),(4) P.P.S.A.**

- Duggan at p. 405 - 407; p. 427 - 431

**b) Dispositions Must be Commercially Reasonable - s.57.1; 59(1); 62; 63(1),(2); 64  
P.P.S.A.**

- Duggan at p. 433 - 439
- *Canadian Imperial Bank of Commerce v. Haley* (1979), 100 D.L.R. (3d) 470 (N.B.C.A.)



- Donnelly v. International Harvester Credit Corp. (1983), 22 B.L.R. 66 (Ont. H.C.); aff'd 150 D.L.R. (3d) 184
- Royal Bank v. HCB Thickson Ltd. 2019 ONSC 7084 (Ont. S.C.)

c) Distinction Between Receivership and Bankruptcy

- i. Receivership - s. 60; 63(7)(g) P.P.S.A.
  - Duggan at p. 538; and 574; 578 - 580
  - *Standard Trust Co. v. Turner Crossing Inc.* (1992), 4 P.P.S.A.C. (2d) 238 (Sask. Q.B.) - *reprinted in Duggan at p. 581*
- ii. Bankruptcy
  - *Re Plante* (1996), 11 P.P.S.A.C. (2d) 48 (Ont. C.A.)

## PART II: Penalties and Liquidated Damages

### 1. Case Law

G.H.L. Fridman, Law of Contract, (6<sup>th</sup> ed.). Carswell publishers, at p. 721-728.

- **Note to students:** *it is not suggested that you should purchase this Textbook, since this Course only covers a few pages from this Textbook.*
- *H.F. Clarke v. Thermidaire* (1975), 54 D.L.R. (3d) 385 (S.C.C.)
- *Clydebank Engineering v. Don Ramos*, [1905] A.C. 6 [H.L.]
- *Cellulose Acetate v. Widnes*, [1933] A.C. 20 (H.L.)
- *Campbell Discount v. Bridge*, [1962] A.C. 600 [H.L.]

### 2. Economic Analysis of Law

- Clarkson et al., "Liquidated Damages v. Penalties: Sense or Nonsense" [1978] Wisconsin L.R. 351 <https://repository.law.wisc.edu/s/uwlaw/item/16202>

## PART III - Sale of Goods

### 1. Introduction to Sale of Goods Act

a) Sale of Goods Act, R.S.O. 1990, c. S-1, as amended (hereafter "SGA")

b) Definitions

- i. Contract for goods, or contract for services
  - *ter Neuzen v. Korn*, [1995] 10 W.W.R. 1 (S.C.C.)
- ii. Specific Goods - S.G.A. s.1(1)



iii. Unascertained Goods

**2. Rules for Determining Passing of Property**

G.H.L. Fridman, Sale of Goods (6<sup>th</sup> ed.). Carswell publishers, at p.61-85.

**Note to students:** *it is not suggested that you should purchase this Textbook, since this Course only covers very few pages from this Textbook.*

a) S.G.A. s. 17 and 18; s. 19 Rule 1

b) S.G.A. s. 19 Rule 2

- *Jerome v. Clements Motor Sales* (1959), 15 D.L.R. (2d) 686

c) S.G.A. s. 19 Rules 3 and 4

d) S.G.A. s. 19 Rule 5 (i)

- *Wardar's Import and Export v. Norwood*, [1968] 2 A.E.R. 602
- *Caradoc Nurseries v. Marsh* (1959), 19 D.L.R. (2d) 491
- *Pullman Trailmobile v. Hamilton Transport* (1979), 96 D.L.R. (3d) 322
- *Pignataro v. Gilroy*, [1919] 1 K.B. 459
- *Hayes Brothers v. Can. Perm. Trust* (1976), 15 N.B.R. (2d) 166 (C.A.)



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## Online Resources

The majority of case law and legislative resources needed by NCA students are available on CanLII, the free legal information resource funded by the Federation of Law Societies of Canada ([www.canlii.org](http://www.canlii.org)). That includes all decisions of the Supreme Court of Canada, and all federal, provincial, territorial and appellate courts.

Your exam registration fee also includes free access to the Advance Quicklaw resources of Lexis Nexis. Your ID and password will be arranged and emailed to your email address on file a few weeks after the end of the registration session.





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