



# Syllabus

## Commercial Law

**(Revised for February 2022)**

**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, seventh edition (2018) by Anthony Duggan (hereafter "**Duggan**"), Emond Montgomery 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 from S.O. 2006, chap. 34, Schedule "E"

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

See: Duggan at p. 1-6; 22-24; 29-30; and 33-34

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

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

- Duggan at p. 672 - 676 (precedent of a conditional sale agreement)
- Duggan at p. 670 – 671 (precedent of a chattel mortgage)
- Duggan at p. 6 - 8; and 13 - 14
- *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. 77
- *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. 8; and 75 - 77; 585
  - 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. 9-10; and 681 – 683 (precedent of an assignment)
  - 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. 99; and 126 – 128; 139 - 140
- Credit Suisse Canada v. 1133 Yonge St. Holdings (1999), 14 P.P.S.A.C.(2d) 61 (Ont. C.A.) - Reprinted in Duggan at p. 164

#### 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. 231 – 234
- 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. 279
  - 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. (4th) 339 (Sask. C.A.)
  - Duggan at p. 201 – 203; and 322 - 324
- 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. 242 – 245; and 261 - 262
  - Re Lambert (1994), 20 O.R. (3d) 108 (C.A.)- reprinted in Duggan p.251
  - Fairbanx Corp v. Royal Bank of Canada 2010 ONCA 385 – reprinted in Duggan p. 246



- iv. By Possession of Collateral - s. 22 P.P.S.A.
  - Duggan at p. 183 - 185; and 193 - 194
  - Re Dzarzinskas (1982), 15 B.L.R. 317 (Ont. H.C.) - reprinted in Duggan at p. 185
  - Re M.C. United Masonry (1983), 143 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; and 152 - 154
    - 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. 320 – 322

#### **4. Priorities**

- a) Major Priorities Section - s. 30(1) P.P.S.A.
  - Duggan at p. 297 – 298; and 314
  - 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.)- reprinted at Duggan p. 187
  - 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 203; and 225 – 226
  - Re Giffen (1998), 13 P.P.S.A.C.(2d) 255 (S.C.C.) - reprinted in Duggan at p. 204
  
- d) As Against a Transferee For Value - s. 20(1)(c)
  - Duggan at p. 226; and 228 – 229
  - Royal Bank v. Dawson Motors (1981), 15 B.L.R. 83 (Ont. Co. Crt)
  - Robert Simpson Company v. Shadlock (1981), 31 O.R. (2d) 612 Ont. H.Ct.) – reprinted in Duggan at p. 302



- 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. 450 – 452; and 459 - 460
  - 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. 453
- f) Purchase Money Security Interest - s. 1(1) new amended definition; 33(1),(2), (3) P.P.S.A.; note amendment to s. 33(1)(b) in S.O. 2006, chap. 34, Schedule "E"
- Duggan at p.345; and 349 – 350; 360 – 361; 388 - 389
  - Unisource Canada v. Laurentian Bank (2000), 47 O.R. (3d) 616 (Ont. C.A.) - reprinted in Duggan at p. 357
  - 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. 79 -80
  - Commercial Credit Corp. v. Harry Shields (1981), 122 D.L.R. (3d) 736 (Ont. C.A.) - reprinted in Ziegel at p.78
- b) Security Interests Under Federal Legislation
- s. 427 Bank Act, S.C. 1991, c.46
  - Duggan at p. 615; and 630 - 632

## 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. 541 – 542; and 551
- b) Dispositions Must be Commercially Reasonable - s.57.1; 59(1); 62; 63(1),(2); 64 P.P.S.A.
- Duggan at p. 554 – 555; and 556 - 557
  - 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, (6th 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.

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