

Federation of Law Societies  
of Canada



Fédération des ordres professionnels  
de juristes du Canada

## **NATIONAL COMMITTEE ON ACCREDITATION**

**SYLLABUS**

**COMMERCIAL LAW**

**JANUARY 2010**

**COMMERCIAL LAW****January 2010****Part I: Secured Transactions****1. Background to Personal Property Security Act ("P.P.S.A.")**

See: Secured Transactions in Personal Property and Suretyships, fourth edition (2003) by Jacob Ziegel, R.Cuming, and A. Duggan (hereafter "**Ziegel**"), at p. 1-9; 12-16; 19-21.

The Personal Property Security Act, R.S.O. 1990, cP10 (P.P.S.A.), including amendments from S.O. 2006, chap. 34

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

**2. Application of P.P.S.A.****a) Conditional Sale Agreements and Chattel Mortgages**

Ziegel at p. 629-630 (precedent of a conditional sale agreement)

Ziegel at P. 631 (precedent of a chattel mortgage)

Ziegel at p. 21-23; 41-44; 47; 89-90

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) Assignments - s. 2(a) P.P.S.A.**

Ziegel at p. 632 (precedent of assignment of accounts)

TCE Captial Corp. v. Kolenc (1999), 14 P.P.S.A.C.(2d) 257 (Ont. Div. Ct.)

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

Ziegel at p. 62

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.
- Ziegel at p. 55-56
- 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 Book Debts - s. 2(b); 40(2)as amended: P.P.S.A.
- Ziegel at p. 9-10
- 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.
- Ziegel at p. 97-98; 115-116; 122
- Lamarsh v. D'Lugos (1998), 13 P.P.S.A.C. (2d) 109 (Sask. Q.B.)
- Credit Suisse Canada v. 1133 Yonge St. Holdings (1999), 14 P.P.S.A.C.(2d) 61 (Ont. C.A.)-Reprinted in Ziegel at p. 468
- J. ZIEGEL, "Floating Charges and the OPPSA" (1994), 23 Can. Bus. L. J. 470
- Ziegel at p. 11-12; 99-101; 467-468
- 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.
- Ziegel at p. 159-163
- (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 at 129-131 (Ont).118
- Bank of Nova Scotia v. Royal Bank (1999), 14 P.P.S.A.C. (2d) 10 (B.C.S.C.)
- Asklepeion Restuarants v. 791259 Ontario Ltd. (1998), 13 P.P.S.A.C.(2d) 295 (Ont. C.A.)
- Ziegel at p. 207-210; 225; 268

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

Ziegel at p. 179-182; 189; 198-199

Re Weber (1990), 1 P.P.S.A.C. (2d) 36 (Ont S.C.)

Re Lambert (1995), 20 O.R. (3d) 108 (C.A.)-reprinted in Ziegel at p. 168

- (iv) By Possession of Collateral - s. 22 P.P.S.A.

Ziegel at p. 133-134; 141-142

Re Dzarzinskas (1982), 15 B.L.R. 317 (Ont. H.C.) - reprinted in Ziegel at p. 134

Re M.C. United Masonry (1983), 143 D.L.R. (3d) 470 (Ont. C.A.)

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

Ziegel at p. 585-586; 599-601; 616

R. Thornton, "Enforcing Loan Guarantees" (1991), 8 National Insolvency Review 74 (part one)

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.

Ziegel at p. 10-11

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.

Ziegel at p. 131-132; 257-259; 267-268

#### 4. Priorities

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

Ziegel at p. 239-242; 245-251

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 Ziegel 136

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.

Ziegel at p. 222-223

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)

Ziegel at p. 219-220; 239

Re Giffen (1998), 13 P.P.S.A.C.(2d) 255 (S.C.C.) - reprinted in Ziegel at p. 226

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

Royal Bank v. Dawson Motors (1981), 15 B.L.R. 83 (Ont. Co. Crt)

Ziegel at p. 166-168

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

Ziegel at p. 381; 388-390

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.)

Willi v. Don Shearer (1993), 5 P.P.S.A.C. (2d) 179 (B.C.C.A.)

- f) Proceeds From Disposition of Collateral - s. 1; 25; 30(5) P.P.S.A.

Ziegel at p. 412-413; 416

Re Kryzanowski (1979), 24 O.R. (2d) 18 (Ont. H.C.)

Re River Industries Ltd. (1992), 3 P.P.S.A.C. (2d) 284 (B.C.S.C.)

- g) Purchase Money Security Interest - s. 1 new amended definition; 33(1),(2) P.P.S.A.

Ziegel at p.281-285; 293; 300; 320-321

Unisource Canada v. Laurentian Bank (2000), 47 O.R. (3d) 616 (Ont. C.A.) - Reprinted in Ziegel at p. 290

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.

Ziegel at p. 355-357

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

- b) Security Interests Under Federal Legislation

s. 427 Bank Act, S.C. 1991, c.46

Ziegel at p. 555-558; 566-568

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

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

Ziegel at p. 489

Canadian Imperial Bank of Commerce v. Haley (1979), 100 D.L.R. (3d) 470 (N.B.C.A.)

Royal Bank v. Michaels (1983), 21 Man. R. 2d 184 (Co. Crt)

Donnelly v. International Harvester Credit Corp. (1983), 22 B.L.R. 66 (Ont. H.C.); aff'd 150 D.L.R. (3d) 184

- b) Defects in Notice of Seizure - s. 59(5); 63(5); 64(3); 65; 67(1),(2),(3) P.P.S.A.

Ziegel at p. 512-514; 517-518; 521-523

- c) Distinction Between Receivership and Bankruptcy

- (i) Receivership - s. 60; 63(7)(g) P.P.S.A.

Ziegel at p. 533-534; 541-543

Standard Trust Co. v. Turner Crossing Inc. (1992), 4 P.P.S.A.C. (2d) 238 (Sask. Q.B.) - reprinted in Ziegel at p. 534

- (ii) Bankruptcy

Ziegel at p. 364; 495-497

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, (4th ed., 1999) 809-819  
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

## **PART III - Sale of Goods**

### **1. Bulk Sales**

Bulk Sales Act, R.S.O. 1990, c.B-14  
Interlake Tissue Mills v. Everall (1921), 50 O.L.R. 165  
Paddon v. McFarland, [1930] 3 W.W.R. 632  
A.G. Canada v. Bulletin Publications, [1980] 2 W.W.R. 249  
Catzman, "Bulk Sales" (1983), 8 Can. Bus. L.J. 109

### **2. Introduction to Sale of Goods Act**

- a) Sale of Goods Act, R.S.O. 1990, c. S-1
- 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

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

G.H.L. Fridman, Sale of Goods (4th ed., 1995) 69-97; or

P.S. Atiyah, Sale of Goods (6th ed. only) 177-201

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 (New Brunswick S.C.)

**Canadian Publishers**

Carswell-Thomson Professional  
Publishing Canada  
Corporate Plaza  
2075 Kennedy Road  
Scarborough, ON M1T 3V4

Contact: Lisa Marrello (mention the NCA  
accreditation exams)  
Tel: (416) 609-3800 or 1-800-387-5164

Email: [carswell.customerrelations@thomson.com](mailto:carswell.customerrelations@thomson.com)

Irwin Law Inc.  
14 Duncan St.  
Toronto, ON M5H 3G8

Tel: (416) 862-7690 or 1-888-314-9014

Fax: (416) 862-9236

Email: [contact@irwinlaw.com](mailto:contact@irwinlaw.com)

Emond Montgomery  
60 Shaftesbury Ave.  
Toronto, ON M4T 1A3

Tel: (416) 975-3925

Fax: (416) 975-3924

Email: [info@emp.ca](mailto:info@emp.ca)

Canada Law Books  
240 Edward St.  
Toronto, ON L4G 3S9

Tel: (905) 841-6472

**Access to Quicklaw (Lexis Nexis)**

Please contact the Lexis Nexis Customer Service Department at: [service@lexisnexis.ca](mailto:service@lexisnexis.ca) or call 1-800-387-0899 for a free account. You must provide your NCA File Number which will be used as a student number (CS will contact me directly for further verification). You will be able to get an immediate response to requests evenings and on weekends. CS also offers immediate research and/or technical assistance.

**Internet Sites for Provincial Legislation**

[www.canlii.org](http://www.canlii.org)

This is a listing for all the provinces and is highly recommended

Ontario:

<http://www.attorneygeneral.jus.gov.on.ca/english/legis/>

British Columbia (Queen's Printer):

<http://www.bclaws.ca/>

Alberta (Queen's Printer):

<http://www.qp.alberta.ca/>

**Supreme Court Judgments:**

<http://scc.lexum.umontreal.ca/en/index.html>