NORTHERN TERRITORY OF AUSTRALIA

SALE OF GOODS ACT

As in force at 14 December 1999

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 14 December 1999. Any amendments that commence after that date are not included.

SALE OF GOODS ACT

An Act relating to the Sale of Goods

Part I Preliminary

1 Short title

This Act may be cited as the *Sale of Goods Act*.

3 Repeal and saving

(1) The Sale of Goods Act 1895 of the State of South Australia ceases to have application in the Territory.

(2) Privileges, obligations, duties, rights and liabilities acquired, accrued or incurred under the Sale of Goods Act 1895 of the State of South Australia in its application to the Territory are not affected by subsection (1), and no investigation, legal proceeding or remedy in respect of such privileges, obligations, duties, rights or liabilities is so affected.

4 Savings

(1) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto notwithstanding anything contained in this Act.

(2) The rules of the common law, including the law merchant, save insofar as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress, or coercion, mistake, or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(3) Nothing in this Act, or in any repeal effected thereby, shall affect the enactments relating to bills of sale, or any enactment relating to the sale of goods which is not expressly affected by this Act.

(4) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.

5 Interpretation of terms

(1) In this Act, unless the context or subject-matter otherwise requires:

action includes counterclaim, set-off and cross-action pleaded by way of set-off.

buyer means a person who buys or agrees to buy goods.

contract of sale includes an agreement to sell as well as a sale.

delivery means voluntary transfer of possession from one person to another.

document of title to goods includes any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented.

fault means wrongful act or default.

future goods means goods to be manufactured or acquired by the seller after the making of the contract of sale.

goods include all chattels personal other than things in action and money. The term includes emblements and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

plaintiff includes defendant counterclaiming or pleading a set-off or cross-action by way of set-off.

property means the general property in goods and not merely a special property.

quality of goods includes the state or condition.

sale includes a bargain and sale as well as a sale and delivery.

seller means a person who sells or agrees to sell goods.

Sheriff includes any officer charged with the enforcement of a writ or warrant of execution.

specific goods means goods identified and agreed upon at the time a contract of sale is made.

suit includes set-off and counter-claim.

warranty means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) A thing is deemed to be done ***in good faith*** within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not.

(3) A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not.

(4) Goods are in a ***deliverable state*** within the meaning of this Act when they are in a state that the buyer would under the contract be bound to take delivery of them.

Part II Formation of the contract

Division 1 Contract of sale

6 Sale and agreement to sell

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price.

(2) There may be a contract of sale between one part owner and another.

(3) A contract of sale may be absolute or conditional.

(4) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(5) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled, subject to which the property in the goods is to be transferred.

7 Capacity to buy and sell

(1) Subject to this section, capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.

(2) Where necessaries are sold and delivered to an infant or a person who, by reason of mental incapacity or drunkenness, is incompetent to contract, he must pay a reasonable price therefor.

(3) In this section ***necessaries*** means goods suitable to the condition and life of the infant or other person obtaining them and to his actual requirements at the time of the sale and delivery.

8 Contract of sale how made

(1) Subject to this Act and other laws for the time being in force in the Territory, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

(2) This section does not affect the law relating to corporations.

Division 2 Subject-matter of contract

10 Existing or future goods

(1) The goods which form the subject of a contract of sale may be either existing goods owned or possessed by the seller or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

11 Goods which have perished

Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

12 Goods perishing before sale but after agreement to sell

Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish before the risk passes to the buyer, the agreement is thereby avoided.

Division 3 The price

13 Ascertainment of price

(1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer must pay a reasonable price.

14 Agreement to sell at valuation

(1) Subject to subsection (2) where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and the third party cannot or does not make the valuation, the agreement is avoided.

(2) If the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(3) Where the third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

Division 4 Conditions and warranties

15 Stipulation as to time

(1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale.

(2) Whether any other stipulation as to time is of the essence of the contract depends on the terms of the contract.

(3) In a contract of sale ***month*** means prima facie calendar month.

16 When condition to be treated as warranty

(1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or may elect to treat the breach of such condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as repudiated, or a warranty the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the

contract.

(3) A stipulation may be a condition although it is called a warranty in the contract.

(4) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract express or implied to that effect.

(5) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

17 Implied understanding as to title, &c.

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is:

(a) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods; and

(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

18 Sale by description

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

19 Implied condition as to quality or fitness

Subject to this Act, and of any other law in force in the Territory, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

(a) where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose but in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose;

(b) where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality but if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed;

(c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade; or

(d) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Division 5 Sale by sample

20 Sale by sample

(1) A contract of sale is a contract for sale by sample where there is a term in the contract express or implied to that effect.

(2) In the case of a contract for sale by sample:

(a) there is an implied condition that the bulk shall correspond with the sample in quality;

(b) there is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample; and

(c) there is an implied condition that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

Part III Effects of the contract

Division 1 Transfer of property as between seller and buyer

21 Goods must be ascertained

Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

22 Property passes when intended to pass

(1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

23 Rules for ascertaining intention

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

Rule 1. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

Rule 2. Where there is a contract for the sale of specific goods, and the seller is bound to do something to the goods for the purpose of putting them in a deliverable state, the property does not pass until such thing be done and the buyer has notice thereof.

Rule 3. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done and the buyer has notice thereof.

Rule 4. Where goods are delivered to the buyer on approval or on "sale or return" or other similar terms, the property therein passes to the buyer:

(a) when he signifies his approval or acceptance to the seller, or does any other act adopting the transaction; or

(b) if he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5. (1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.

(2) Such assent may be express or implied, and may be given either before or after the appropriation is made.

(3) Where in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

24 Reservation of right of disposal

(1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may by the terms of the contract or appropriation reserve the right of disposal of the goods until certain conditions are fulfilled.

(2) In such a case, notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(3) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal.

(4) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

25 Risk prima facie passes with property

(1) Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk, whether delivery has been made or not but where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

(2) Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Division 2 Transfer of title

26 Sale by person not the owner

(1) Subject to this Act, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this Act shall affect the validity of any contract of sale under any special common law or statutory power of sale, or under the order of a court of competent jurisdiction.

27 Sale under voidable title

Where the seller of goods has a voidable title thereto but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

28 Seller or buyer in possession after sale

(1) Where a person having sold goods continues to be or is in possession of the goods or of the documents of title to the goods,

the delivery or transfer by that person or by a mercantile agent acting for him of the goods or document of title under any sale pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

(2) Where a person having bought or agreed to buy goods obtains with the consent of the seller possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have the same effect as if the person making the delivery or transfer were a mercantile agent entrusted by the owner with the goods or documents of title.

(3) In this section the term ***mercantile agent*** means a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

29 Effect of writs of execution

(1) A writ of fieri facias or other writ or warrant of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ or warrant is delivered to the sheriff to be executed, and for the better manifestation of such time it shall be the duty of the sheriff, without fee, upon the receipt of any such writ or warrant, to endorse upon the back thereof the hour, day, month, and year when he received the same.

(2) No such writ or warrant shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration unless such person had at the time when he acquired his title notice that such writ or warrant or any other writ or warrant by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.

Part IV Performance of the contract

30 Duties of seller and buyer

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

31 Payment and delivery are concurrent conditions

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

32 Rules as to delivery

(1) Whether it is for the buyer to take possession of the goods, or for the seller to send them to the buyer, is a question depending in each case on the contract express or implied between the parties.

(2) Apart from any such contract, the place of delivery is the seller's place of business, if he has one, or, if not, his residence but if the contract is for the sale of specific goods which, to the knowledge of the parties when the contract is made, are in some other place, then that place is the place of delivery.

(3) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(4) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until the third person acknowledges to the buyer that he holds the goods on his behalf; but nothing in this section affects the operation of the issue or transfer of any document of title to goods.

(5) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(6) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

33 Delivery of wrong quantity or mixed goods

(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole.

(3) If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(4) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(5) This section is subject to any usage of trade, special agreement, or course of dealing between the parties.

34 Instalment deliveries

(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

35 Delivery to carrier

(1) Where in pursuance of a contract of sale the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, is prima facie deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case.

(3) If the seller omits to do so and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(4) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

36 Risk where goods are delivered at a distant place

Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

37 Buyer's right of examining the goods

(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of the goods to the buyer he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

38 Acceptance

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.

39 Buyers not bound to return rejected goods

Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

40 Liability of buyer for neglecting or refusing delivery of goods

(1) Subject to subsection (2), when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.

(2) Nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

Part V Rights of unpaid seller against the goods

Division 1 General

41 Unpaid seller defined

(1) The seller of goods is deemed to be an ***unpaid seller*** within the meaning of this Act:

(a) when the whole of the price has not been paid or tendered; or

(b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part the term ***seller*** includes any person who is in the position of a seller, as for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid or is directly responsible for the price.

42 Unpaid seller's rights

(1) Subject to this Act and any other law in force in the Territory, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods as such has by implication of law:

(a) a lien on the goods for the price while he is in possession of them;

(b) in case of the insolvency of the buyer a right of stopping the goods in transitu after he has parted with the possession of them; and

(c) a right of resale as provided by this Act.

(2) Where the property in goods has not passed to the buyer the unpaid seller has in addition to his other remedies a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

Division 2 Unpaid seller's lien

43 Seller's lien

(1) Subject to this Act the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(a) where the goods have been sold without any stipulation as to credit;

(b) where the goods have been sold on credit but the term of credit has expired; and

(c) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

44 Part delivery

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

45 Termination of lien

(1) The unpaid seller of goods loses his lien thereon:

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(b) when the buyer or his agent lawfully obtains possession of the goods; or

(c) by waiver thereof.

(2) The unpaid seller of goods having a lien thereon does not lose his lien by reason only that he has obtained judgment for the price of the goods.

Division 3 Stoppage in transitu

46 Right of stoppage in transitu

Subject to this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

47 Duration of transit

(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land, air or water or other bailee for the purpose of transmission to the buyer until the buyer or his agent in that behalf takes delivery of them from the carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If after the arrival of the goods at the appointed destination the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent to the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless the part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

48 How stoppage in transitu is effected

(1) The unpaid seller may exercise his right of stoppage in transitu either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. The notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice to be effectual must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transitu is given by the seller to the carrier or other bailee in possession of the goods, he must redeliver the goods to or according to the directions of the seller. The expenses of the redelivery must be borne by the seller.

Division 4 Resale by buyer or seller

49 Effect of subsale or pledge by buyer

(1) Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale or other disposition of the goods which the buyer may have made unless the seller has assented thereto.

(2) Where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then if such last-mentioned transfer was by way of sale the unpaid seller's right of lien or stoppage in transitu is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value the unpaid seller's right of lien or stoppage in transitu can only be exercised subject to the rights of the transferee.

50 Sale not generally rescinded by lien or stoppage in transitu

(1) Subject to this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of this right of lien or stoppage in transitu.

(2) Where an unpaid seller who has exercised his right of lien or stoppage in transitu resells the goods, the buyer acquires a good title thereto as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to resell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may resell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller expressly reserves a right of resale in case the buyer should make default, and on the buyer making default resells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

Part VI Actions for breach of the contract

Division 1 Remedies of the Seller

51 Action for price

(1) Where under a contract of sale the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2) Where under a contract of sale the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract.

52 Damages for non-acceptance

(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or if no time was fixed for acceptance, then at the time of the refusal to accept.

53 Damages for non-delivery

(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller of damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or if no time was fixed, then at the time of the refusal to deliver.

Division 2 Remedies of the buyer

54 Remedy for breach of warranty

(1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods, but he may:

(a) set up against the seller the breach of warranty in diminution or extinction of the price; or

(b) maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting in the ordinary course of events from the breach of warranty.

(3) In the case of breach of warranty of quality such loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

55 Interest and special damages

Nothing in this Act shall affect the right of the buyer or seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

56 Saving of proceedings in equity

(1) In an action for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, direct by its judgment that the contract shall be performed specifically without giving the defendant the option of retaining the goods on payment of damages.

(2) The judgment may be unconditional or upon such terms and conditions as to damages, payment of the price or otherwise, as the Court thinks fit.

(3) The application by the plaintiff may be made any time before judgment.

Part VII Miscellaneous

57 Exclusion of implied terms and conditions

Where any right, duty, or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement, or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

58 Reasonable time a question of fact

For the purposes of this Act, what is a reasonable time or a reasonable price is a question of fact.

59 Rights, &c., enforceable by action

Where any right, duty, or liability is declared by this Act, it may, unless otherwise by this Act provided, be enforced by suit or action.

60 Auction sales

In the case of a sale by auction:

(a) where goods are put up for sale by auction in lots, each lot is prima facie to be the subject of a separate contract of sale;

(b) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and until such announcement is made any bidder may retract his bid;

(c) where the sale is not notified in the conditions of sale to be subject to a right to bid on behalf of the seller, it is not lawful for the seller to bid himself or to employ any person to bid at the sale, or for the auctioneer knowingly to take a bid from the seller or any such person, and, if the sale contravenes this rule, the sale may be treated as fraudulent by the buyer;

(d) the sale may be notified in the conditions of sale to be subject to a reserved price, and a right to bid may also be reserved expressly by or on behalf of the seller; and

(e) where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Sale of Goods Ordinance 1972 (Act No. 38, 1972)
Assent date 31 July 1972
Commenced 31 July 1972

Ordinances Revision Ordinance 1973 (Act No. 87, 1973)
Assent date 11 December 1973
Commenced 11 December 1973 (s 12(2))

Amending Legislation

Ordinances Revision Ordinance 1974 (Act No. 34, 1974)
Assent date 26 August 1974
Commenced 11 December 1973 (s 3(2))

Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)
Assent date 24 October 1974
Commenced 11 December 1973 (s 3)

Ordinances Revision Ordinance 1976 (Act No. 27, 1976)
Assent date 28 June 1976
Commenced ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss 3 and 4: 11 December 1973; s 5: 24 October 1974

Statute Law Revision Act (No. 2) 1979 (Act No. 128, 1979)
Assent date 15 October 1979
Commenced 15 October 1979

Statute Law Revision Act 1983 (Act No. 58, 1983)
Assent date 28 November 1983
Commenced 28 November 1983

Sale of Goods Amendment Act 1999 (Act No. 59, 1999)

Assent date	14 December 1999
Commenced	14 December 1999

3 LIST OF AMENDMENTS

lt	amd No. 58, 1983, s 3
s 1	amd No. 58, 1983, s 3
s 2	rep No. 128, 1979, s 37
s 3	amd No. 87, 1973, s 3; No. 58, 1983, s 3
ss 4 – 5	amd No. 58, 1983, s 3
s 8	amd No. 58, 1983, s 3
s 9	amd No. 87, 1973, s 2; No. 58, 1983, s 3 rep No. 59, 1999, s 2
s 14	amd No. 87, 1973, s 3
s 19	amd No. 58, 1983, s 3
s 26	amd No. 58, 1983, s 3
s 33	amd No. 58, 1983, s 3
s 40	amd No. 87, 1973, s 3
ss 41 – 43	amd No. 58, 1983, s 3
s 46	amd No. 58, 1983, s 3
ss 49 – 50	amd No. 58, 1983, s 3
s 55	amd No. 58, 1983, s 3
ss 58 – 59	amd No. 58, 1983, s 3