



Sale of Goods Act 1896

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Reprint note

Earlier versions of this reprint included a minor grammatical error in section 27(2). This version was corrected on 10 March 2017.

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Queensland

Sale of Goods Act 1896

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Sale of Goods Act 1896

An Act for codifying the law relating to the sale of goods

Part 1 Preliminary

1 Short title

This Act may be cited as the *Sale of Goods Act 1896*.

2 Commencement

This Act shall come into operation on 1 January 1897.

3 Interpretation of terms

(1) In this Act—

action includes counterclaim and 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 has the same meaning as it has in the Factors Act.

Factors Act means the *Factors Act 1892*.

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 includes all chattels personal other than things in action and money, and also 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 a defendant counterclaiming.

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

quality of goods includes their 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.

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

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 is done negligently or not.
- (3) A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay the person's debts in the ordinary course of business, or cannot pay the person's debts as they become due, whether the person has committed an act of insolvency or not.
- (4) Goods are in a *deliverable state* within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

Part 2 Formation of the contract

Division 1 Contract of sale

4 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*.
- (1A) There may be a contract of sale between one part owner and another.
- (2) A contract of sale may be absolute or conditional.
- (3) When 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 when 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*.
- (4) An agreement to sell becomes a sale when the time has elapsed or the conditions have been fulfilled subject to which the property in the goods is to be transferred.

5 Capacity to buy and sell

- (1) Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.
- (2) However, when necessaries are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, the person must pay a reasonable price therefor.
- (3) In this section—
necessaries means goods suitable to the condition in life of such infant or other person, and to his or her actual requirements at the time of the sale and delivery.

Division 2 Formalities of the contract

6 Contract of sale, how made

- (1) Subject to the provisions of this Act and of any statute in that behalf, 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 3 Subject matter of contract

8 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) When 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.

9 Goods which have perished

When 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.

10 Goods perishing before sale, but after agreement to sell

When 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 avoided.

Division 4 The price

11 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) When the price is not determined in accordance with subsection (1) the buyer must pay a reasonable price.
- (3) What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

12 Agreement to sell at valuation

- (1) When 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 such third party cannot or does not make such valuation, the agreement is avoided.
- (1A) However, if the goods or any part thereof have been delivered to and appropriated by the buyer the buyer must pay a reasonable price for them.
- (2) When such 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 5 Conditions and warranties

13 Stipulations 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.

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- (1A) Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.
- (2) In a contract of sale—
month means prima facie calendar month.

14 When condition to be treated as warranty

- (1) When 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.
- (2A) A stipulation may be a condition, though called a warranty in the contract.
- (3) When a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or when 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 a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.
- (4) This section does not affect the case of any condition or warranty, the fulfilment of which is excused by law by reason of impossibility or otherwise.

15 Implied undertaking as to title etc.

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 the seller has a right to sell the goods, and that in the case of an agreement to sell the seller 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;
- (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.

16 Sale by description

When 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 is 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.

17 Implied conditions as to quality or fitness

Subject to the provisions of this Act and of any statute in that behalf, 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) when 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 the seller is the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose;
- (b) however, 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;

- (c) when goods are bought by description from a seller who deals in goods of that description (whether the seller is the manufacturer or not) there is an implied condition that the goods shall be of merchantable quality;
- (d) however, if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed;
- (e) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade, if the usage is such as to bind both parties to the contract;
- (f) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Division 6 Sale by sample

18 Sale by sample

- (1) A contract of sale is a contract for sale by sample when 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;
 - (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 3 Effects of the contract

Division 1 Transfer of property as between seller and buyer

19 Goods must be ascertained

When 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.

20 Property passes when intended to pass

- (1) When 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 intended it to be transferred.
- (2) For the purpose of ascertaining the intention of the parties regard is to be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

21 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

When 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, is or are postponed.

Rule 2

When 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 into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

Rule 3

When 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 is done and the buyer has notice thereof.

Rule 4

- (1) When 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 the buyer signifies the buyer's approval or acceptance to the seller, or does any other act adopting the transaction;
 - (b) if the buyer does not signify the buyer's 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.
- (2) What is a reasonable time is a question of fact.

Rule 5

- (1) When 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.
 - (1A) Such assent may be express or implied, and may be given either before or after the appropriation is made.
 - (2) When, 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, the seller is deemed to have unconditionally appropriated the goods to the contract.

22 Reservation of right of disposal

- (1) When there is a contract for the sale of specific goods or when 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.
- (1A) In such 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.
- (2) When goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or the seller's agent, the seller is *prima facie* deemed to reserve the right of disposal.
- (3) When 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 the buyer does not honour the bill of exchange, and if the buyer wrongfully retains the bill of lading the property in the goods does not pass to the buyer.

23 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.
- (2) However, when 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.

- (3) This section does not affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Division 2 Transfer of title

24 Sale by person not the owner

- (1) Subject to the provisions of this Act, when 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 the owner's conduct precluded from denying the seller's authority to sell.
- (2) This Act does not affect—
- (a) the provisions of the Factors Act, or any enactment enabling the apparent owner of goods to dispose of them as if the apparent owner were the true owner thereof;
 - (b) 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.

25 Sale under voidable title

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

26 Revesting of property in stolen goods on conviction of offender

- (1) When goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the

person who was the owner of the goods, or the person's personal representative, notwithstanding any intermediate dealing with them.

- (2) Notwithstanding any enactment to the contrary, when goods have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods does not revert in the person who was the owner of the goods, or the person's personal representative, by reason only of the conviction of the offender.

27 Seller or buyer in possession after sale

- (1) When a person, having sold goods, continues 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 the person, 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 the previous sale, has the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.
- (2) When 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 the person, 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, has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.
- (3) In this section—
mercantile agent has the same meaning as in the Factors Act.

28 Effect of writs of execution

- (1) A writ of fieri-facias or other writ of execution against goods binds the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it is the duty of the sheriff upon the receipt of any such writ to endorse upon the back thereof the hour, day, month, and year when the sheriff received it.
- (1A) But the delivery of such a writ to the sheriff does not 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 the person acquired the person's title notice that such writ or any other writ 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.
- (2) In this section—
sheriff includes any officer charged with the enforcement of a writ of execution.

Part 4 Performance of the contract

29 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.

30 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.

31 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.
- (1A) Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if the seller has one, and if not, the seller's residence.
- (1B) However, 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.
- (2) When 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.
- (3) When the goods at the time of sale are in the possession of a third person, there is no delivery by the seller to the buyer unless and until such third person acknowledges to the buyer that the third person holds the goods on the buyer's behalf.
- (4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour.
- (4A) What is a reasonable hour is a question of fact.
- (5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.
- (6) This section does not affect the operation of the issue or transfer of any document of title to goods.

32 Delivery of wrong quantity

- (1) When the seller delivers to the buyer a quantity of goods less than the seller contracted to sell, the buyer may reject them,

but if the buyer accepts the goods so delivered the buyer must pay for them at the contract rate.

- (2) When the seller delivers to the buyer a quantity of goods larger than the seller contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or the buyer may reject the whole.
- (2A) If the buyer accepts the whole of the goods so delivered the buyer must pay for them at the contract rate.
- (3) When the seller delivers to the buyer the goods which the seller 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 the buyer may reject the whole.
- (4) The provisions of this section are subject to any usage of trade special agreement, or course of dealing between the parties.

33 Instalment deliveries

- (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery of them by instalments.
- (2) When 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 1 or more instalments, or the buyer neglects or refuses to take delivery of or pay for 1 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.

34 Delivery to carrier

- (1) When, in pursuance of a contract of sale, the seller is authorised 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 authorised 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.
- (2A) If the seller omits so to do, 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 herself, or may hold the seller responsible in damages.
- (3) Unless otherwise agreed, when 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 the buyer to insure them during their sea transit, and if the seller fails to do so, the goods are deemed to be at the seller's risk during such sea transit.

35 Risk where goods are delivered at distant place

When the seller of goods agrees to deliver them at the seller's 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.

36 Buyer's right of examining the goods

- (1) When goods are delivered to the buyer, which the buyer has not previously examined, the buyer is not deemed to have accepted them unless and until the buyer 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 goods to the buyer, the seller 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.

37 Acceptance

The buyer is deemed to have accepted the goods when the buyer intimates to the seller that the buyer has accepted them, or when the goods have been delivered to the buyer, and the buyer 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, the buyer retains the goods without intimating to the seller that the buyer has rejected them.

38 Buyer not bound to return rejected goods

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

39 Liability of buyer for neglecting or refusing delivery of goods

- (1) 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, the buyer is liable to the seller for any loss occasioned by the buyer's neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.
- (2) This section does not affect the rights of the seller if the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

Part 5

Division 1 Rights of unpaid seller against the goods

40 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;
 - (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—

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 or herself paid, or is directly responsible for, the price.

41 Unpaid seller's right

- (1) Subject to the provisions of this Act, and of any statute in that behalf, 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 right to retain the goods for the price while the unpaid seller is in possession of them;
 - (b) in case of the insolvency of the buyer—a right of stopping the goods *in transitu* after the unpaid seller has parted with the possession of them;
 - (c) a right of resale as limited by this Act.

- (2) When the property in goods has not passed to the buyer, the unpaid seller has, in addition to the unpaid seller's other remedies, a right of withholding delivery similar to and coextensive with the unpaid seller's rights of retention and stoppage *in transitu* when the property has passed to the buyer.

Division 2 Unpaid seller's right of retention

42 Seller's right of retention

- (1) Subject to the provisions of 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) when the goods have been sold without any stipulation as to credit;
 - (b) when the goods have been sold on credit, but the term of credit has expired;
 - (c) when the buyer becomes insolvent.
- (2) The seller may exercise the right of retention notwithstanding that the seller is in possession of the goods as agent or bailee for the buyer.

43 Part delivery

When an unpaid seller has made part delivery of the goods, the unpaid seller may exercise the right of retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive that right.

44 Termination of right of retention

- (1) The unpaid seller of goods loses the right of retention—

-
- (a) when the unpaid seller 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 the buyer's agent lawfully obtains possession of the goods;
 - (c) by waiver thereof.
- (2) The unpaid seller of goods, having a right of retention thereof, does not lose that right by reason only that the unpaid seller has obtained judgment for the price of the goods.

Division 3 Stoppage in transitu

45 Right of stoppage in transitu

Subject to the provisions of 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, the unpaid seller 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.

46 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 or water, or other bailee, for the purpose of transmission to the buyer, until the buyer, or the buyer's agent in that behalf, takes delivery of them from such carrier or other bailee.
- (2) If the buyer or the buyer's 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 the buyer's agent, that the carrier or other bailee holds the goods on the buyer's behalf and continues in possession of them as bailee for the buyer or the buyer's 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) When the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or the buyer's agent in that behalf, the transit is deemed to be at an end.
- (7) When part delivery of the goods has been made to the buyer, or the buyer's agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

47 How stoppage in transitu is effected

- (1) The unpaid seller may exercise the right of stoppage *in transitu* either by taking actual possession of the goods, or by giving notice of the unpaid seller's claim to the carrier or other bailee in whose possession the goods are.
 - (1A) Such notice may be given either to the person in actual possession of the goods or to the person's principal.
 - (1B) 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 the principal's 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, the carrier or other bailee must re-deliver the goods to, or according to the directions of, the seller.

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- (3) The expenses of such re-delivery must be borne by the seller.

Division 4 Resale by buyer or seller

48 Effect of sub-sale or pledge by buyer

- (1) Subject to the provisions of this Act, the unpaid seller's right of retention 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) However, 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 retention 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 retention or stoppage *in transitu* can only be exercised subject to the rights of the transferee.

49 Sale not generally rescinded by lien or stoppage in transitu

- (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of the right of retention or stoppage *in transitu*.
- (2) When an unpaid seller who has exercised the right of retention or stoppage *in transitu* resells the goods, the buyer acquires a good title to them as against the original buyer.
- (3) When the goods are of a perishable nature, or when the unpaid seller gives notice to the buyer of the unpaid seller's 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 the original buyer's breach of contract.

- (4) When 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 that the seller may have for damages.

Part 6 Actions for breach of the contract

Division 1 Remedies of the seller

50 Action for price

- (1) When, 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 the buyer for the price of the goods.
- (2) When, 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.

51 Damages for non-acceptance

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

Division 2 Remedies of the buyer

52 Damages for non-delivery

- (1) When the seller wrongfully neglects or refuses to deliver the goods to the buyer the buyer may maintain an action against the seller for 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) When 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.

53 Specific performance

- (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, by its judgment direct 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, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment.

54 Remedy for breach of warranty

- (1) When there is a breach of warranty by the seller, or when the buyer elects, or is compelled, to treat a 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 the buyer 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 which 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 the buyer from maintaining an action for the same breach of warranty if the buyer has suffered further damage.

55 Interest and special damages

This Act does not affect the right of a buyer or a seller to recover interest or special damages in any case in which by law interest or special damages are recoverable, or to recover money paid when the consideration for the payment of it has failed.

Part 7 Supplementary

56 **Exclusion of implied terms and conditions**

When 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 is such as to bind both parties to the contract.

57 **Reasonable time a question of fact**

Whenever, in this Act, reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

58 **Rights etc. enforceable by action**

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

59 **Auction sales**

- (1) In the case of a sale by auction—
 - (a) when goods are put up for sale by auction in lots, each lot is prima facie deemed to be the subject of a separate contract for sale;
 - (b) a sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner: until such announcement is made any bidder may retract his or her bid;
 - (c) when a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it is not lawful for the seller to bid himself or herself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person: any sale

contravening this rule may be treated as fraudulent by the buyer;

- (d) a sale by auction may be notified to be subject to a reserved price, and a right to bid may also be reserved expressly by or on behalf of the seller.
- (2) When a right to bid is expressly reserved, but not otherwise, the seller, or any one person on the seller's behalf, may bid at the auction.

61 Savings

- (1) The rules in insolvency relating to contracts of sale continue to apply thereto, notwithstanding anything in this Act contained.
- (2) The rules of the common law, including the law merchant, save in so far 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, continue to apply to contracts for the sale of goods.
- (3) Nothing in this Act or in any repeal effected by it affects the enactments relating to bills of sale, or any enactment relating to the sale of goods which is not expressly repealed 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.