

# CHAPTER S1 - SALE OF GOODS LAW

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## SALE OF GOODS LAW

**A Law to consolidate the law relating to sale of goods.**

[KWS 31 of 1991.]

[Date of commencement: 31st August, 1991]

- 1. **Short title**

This Law may be cited as the Sale of Goods Law.

## 2. Interpretation

(1) In this Law, unless the context otherwise requires—

**"action"** includes counterclaim and set off; **"buyer"** means a person who buys or agrees to buy goods;

**"condition"** means a term which goes directly to the substance of the contract for the sale of goods and so essential to its very nature that its non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all and so gives him the right to repudiate the contract and reject the goods, in addition to a claim for damages;

**"contract of sale"** includes an agreement to sell as well as 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 authorising, or purporting to authorise, either by endorsement or by 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"** includes all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

**"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;

**"plaintiff"** includes defendant counterclaiming;

**"pledge"** includes any contract pledging, or giving a lien or security on, goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability;

**"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 Law 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 Law 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 Law when they are in such a state that the buyer would under the contract be bound to take delivery of them.

## PART 1

### *Formation of the Contract*

#### *Contract of Sale*

### **3. Sale and agreement to sell**

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

(5) Where under a contract of sale 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.

(6) 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.

### **4. 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) Where necessities are sold and delivered to an infant or to a person, who by reason of mental incapacity is incompetent to contract, he must pay a reasonable price for them.

(3) In this section "necessaries" means goods suitable to the condition in life of the infant or such other person as is mentioned in subsection (2) and to his actual requirements at the time of the sale and delivery.

### *Formalities of Contract*

### **5. How a contract of sale may be made**

(1) Subject to this or any other enactment 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) Nothing in this section shall affect the Law relating to corporations.

### *Subject Matter of Contract*

#### **6. 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 goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Law called "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.

#### **7. 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.

#### **8. 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.

### *The Price*

#### **9. 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 a manner agreed by the contract or may be determined by the course of dealing between the parties.

(2) Where the price is not determined as mentioned in subsection (1) above, the buyer must pay a reasonable price.

(3) What a reasonable price is a question of fact depending on the circumstances of each particular case.

#### **10. Agreement to sell at valuation**

(1) 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 such third party cannot or does not make such valuation, the agreement is avoided.

Provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price for them.

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

### *Conditions and Warranties*

#### **11. Stipulations as to time**

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

(2) Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

#### **12. 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 the 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; and a stipulation may be a condition, though called a warranty in the contract.

(3) Where a contract of sale is not severable, and the buyer has accepted the goods, or part of them, the breach of a 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 an express or implied term of the contract to that effect.

(4) Nothing in this section affects a condition or warranty whose fulfilment is excused by law by reason of impossibility or otherwise.

#### **13. Implied undertaking as to title, etc.**

(1) In a contract of sale, other than one to which subsection (3) below applies, there is 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 in the case of an agreement to sell he will have right at the time when the property is to pass.

(2) In contract of sale, other than one to which subsection (3) below applies, there is also an implied warranty that—

- (a) the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made; and
  - (b) the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.
- (3) This subsection applies to a contract of sale in the case of which there

appears from the contract or is to be inferred from its circumstances an intention that the seller should transfer only such title as he or a third person may have.

(4) In a contract to which subsection (3) above applies there is an implied warranty that all charges or encumbrances known to the seller and not known to the buyer have been disclosed to the buyer before the contract is made.

(5) In a contract to which subsection (3) above applies there is also an implied warranty that none of the following will disturb the buyer's quiet possession of the goods, namely—

- (a) the seller;
- (b) in a case where the parties to the contract intend that the seller should transfer only such title as a third person may have, that person;
- (c) anyone claiming through or under the seller or that third person otherwise than under a charge or encumbrance disclosed or known to the buyer before the contract is made.

#### **14. Sale by description**

(1) Where there is a contract for the sale of goods by description, there is an implied condition that the goods will correspond with the description.

(2) 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 correspond with the description.

(3) A sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer.

#### **15. Implied conditions as to quality or fitness**

(1) Except as provided by this section and section 16 below and subject to any other enactment, there is no implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.

(2) Where the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality, except that there is no such condition—

- (a) as regards defects specifically drawn to the buyer's attention before the contract is made; or
- (b) if the buyer examines the goods before the contract is made, as regards defects which that examination ought to reveal.

(3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods, are commonly supplied, except where the circumstances show that the buyer does



not rely on the skill or judgment of the seller.

(4) An implied condition or warranty about quality or fitness for a particular purpose may be annexed to a contract of sale by usage.

(5) The preceding provisions of this section apply to a sale by a person who in the course of a business is acting as an agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.

(6) Goods of any kind are of merchantable quality within the meaning of subsection (2) above if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable for a buyer fully acquainted with the condition of the goods to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances.

### *Sale by Sample*

#### **16. Sale by sample**

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

(2) In the case of a contract for sale by sample there is an implied condition—

(a) that the bulk will correspond with the sample in quality;

(b) that the buyer will have a reasonable opportunity of comparing the bulk with the sample;

(c) that the goods will be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

(3) In subsection 2 (c) above "unmerchantable" is to be construed in accordance with section 15 (6) above.

## **PART II**

### *Effects of the Contract*

#### *Transfer of Property as between Seller and Buyer*

#### **17. Goods not 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.

#### **18. 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.

## **19. Rules for ascertaining intention**

Unless a different intention appears, the 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 are as set out in this section.

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

### *Rule 4.*

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 he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (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.

### *Rule 5.*

(1) Where there is a contract for the sale or 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; and the assent may be express or implied and may be given either before or after the appropriation is made.

(2) 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.

## **20. Reservation of right of disposal**

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; and 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.

## **21. Risk prima facie passes with property**

(1) Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

(2) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.

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

### *Transfer of Title*

## **22. Sale by person not the owner**

(1) Subject to the provisions of this Law where goods are sold by a person who is not their owner, and who does not sell them under the authority or with the consent of the owner, or where a joint owner of goods sells them without the consent of the other joint owner, the buyer acquires no better title to the goods than the seller had, unless the owner or other joint owner of the goods, as the case may be, is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this Law affects—

- (a) the provisions of any other enactment enabling the apparent owner of goods to dispose of them as if he were the true owner; or
- (b) the validity of any statutory power of sale or a sale under the order of a court of competent jurisdiction.

## **23. Sale under voidable title**

When the seller of goods has a voidable title to them, but his title has not been voided 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.

**24. Seller in possession after sale**

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 documents of title under any sale, pledge, or other disposition of them 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 authorised by the owner of the goods to make the same.

**25. Buyer in possession after sale**

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 of them, 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 mercantile agent in possession of the goods or documents of title with the consent of the owner.

*Disposition by Mercantile Agents*

**26. Powers of mercantile agent with respect to disposition of goods**

(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Law be as valid as if he were expressly authorised by the owner of the goods to make the same: provided that the person taking under the disposition acts in good faith, and at the time of the disposition he has no notice that the person making the disposition has no authority to make the same.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition, which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent provided that the person taking under the disposition has no notice at the time of taking that the consent has been determined.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first-mentioned documents shall, for the purposes of this Law, be deemed to be with the consent of the owner.

(4) For the purposes of this section the consent of the owner shall be presumed in the absence of evidence to the contrary.

**27. Effect of pledges of documents of title**

A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

**28. Pledge for antecedent debt**

Where a mercantile agent pledges goods as security for a debt or liability due from the pledger to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

**29. Rights acquired by exchange of goods or documents**

The consideration necessary for the validity of a sale, pledge, or other disposition, of goods, in pursuance of this Law, may be either a payment in cash or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or any other valuable consideration but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, document or security when so delivered or transferred in exchange.

**30. Agreements through clerks, etc.**

For the purpose of this Law an agreement with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent.

**31. Provisions as to consignors and consignees**

(1) Where the owner of goods has given possession of the goods to another person for purpose of consignment of sale, or has consigned the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods and may transfer any such lien to another person.

(2) Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition, by a mercantile agent.

**32. Effect of transfer of documents on vendor's lien or right of stoppage in transit**

Where a document of title to goods has been lawfully transferred to a person as a 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, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage in transit as the transfer of a bill of lading has for defeating the right of stoppage in transit.

**33. Mode of transferring documents**

For the purposes of this Law, the transfer of a document may be by endorsement, or, where the document is by custom or by its express terms transferable by delivery, or makes

the goods deliverable to the bearer, then by delivery.

**34. Saving for rights of true owner**

(1) Nothing in this Law shall authorise an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability, civil or criminal, for so doing.

(2) Nothing in this Law shall prevent the owner of goods from recovering the goods from an agent or his trustee in bankruptcy at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent, would by law be entitled to retain the goods or the documents of title to them, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

(3) Nothing in this Law shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same or any part of that price subject to any right of set-off on the part of the buyer against the agent.

**35. Saving for common law powers of agents**

The provisions of sections 26 to 34 shall be construed in amplification and not in derogation of this Law.

**36. When person deemed to be in possession of goods**

For the purpose of sections 26 to 34 above, a person is deemed to be in possession of goods or of the document of title to goods, where the goods or document are in his actual custody or are held by any other person subject to his control or for him or on his behalf.

**37. Effect of writs of execution**

(1) A writ of fieri facias or other writ of execution against goods shall bind 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 shall be the duty of the sheriff, without fee, upon the receipt of any such writ to endorse upon the back of it the hour, day, month, and year when he received the same.

(2) No writ as referred to in subsection (1) above shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person has at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached has been delivered to and remained unexecuted in the hands of the sheriff.

(3) In this section the term "sheriff" includes any officer charged with the

enforcement of a writ of execution.

### PART III

#### *Performance of the Contract*

#### **38. 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.

#### **39. 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.

#### **40. 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 express or implied contract between the parties and apart from any such contract express or implied, the place of delivery is the seller's place of business, if he has one, and if not, his residence.

(2) Where 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 such third person acknowledges to the buyer that he holds the goods on his behalf: provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(5) Demand or tender or delivery may be treated as ineffectual unless made at a reasonable hour, what is reasonable hour being 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.

#### **41. Delivery of wrong quantity**

(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, but if the buyer accepts the whole of the goods so delivered



he must pay for them at the contract rate.

(3) 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.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

#### **42. Instalmental deliveries**

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

#### **43. Delivery to carrier**

(1) Where, 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 and 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.

#### **44. 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 incidental to the course of transit.

#### **45. Acceptance**

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or (except when section 44 above otherwise provides) 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.

**46. Buyer's right of examining the goods**

(1) Where goods are delivered to the buyer, and he has not previously examined them, 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 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.

**47. Buyer not bound to return rejected goods**

Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them 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.

**48. Liability of buyer for neglecting or refusing delivery of goods**

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: provided that 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 IV**

*Rights of Unpaid Seller against the Goods*

**49. Unpaid seller defined**

(1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Law—

- (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 of this Law 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 indorsed, or a consignor or agent who has himself paid (or is directly responsible for) the price.

**50. Unpaid seller's rights**

- (1) Subject to the provisions of this Law, and of any written law 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 lien on the goods or right to retain them 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 transit after he has parted with the possession of them;
  - (c) a right of re-sale as limited by this Law.
- (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 with-holding delivery similar to and coextensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

### *Unpaid Seller's Lien*

#### **51. Seller's lien**

(1) Subject to the provisions of this Law, 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;
- (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.

#### **52. Part delivery**

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

#### **53. Termination of lien**

(1) The unpaid seller of goods loses his lien or right of retention in respect of them in the following cases—

- (a) when he delivers the goods to a carrier or other bailee for the purposes of transmission to the buyer without reserving the right of disposal of goods;
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver thereof.

(2) An unpaid seller of goods, who has a lien or right of retention in respect of them, does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

### *Stoppage in Transit*

#### **54. Right of stoppage in transit**

Subject to the provisions of this Law, 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 transit, 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.

#### **55. Duration of transit**

(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier 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 such 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 for carriage in a means of conveyance chartered by the buyer, it is a question depending on the circumstances of the particular case, whether the goods are in the possession of the person in charge of the means of conveyance 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 transit, 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.

#### **56. How stoppage in transit is effected**

(1) The unpaid seller may exercise his right of stoppage in transit 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.

(2) The notice may be given either to the person in actual possession of the goods or to his principal.

(3) If the notice is given to the principal, it is ineffective unless 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.

(4) When notice of stoppage in transit 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 and the expenses of such re-delivery must be borne by the seller.

#### *Resale, etc., by Buyer*

#### **57. Effect of subsale, etc., by buyer**

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

(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 it in good faith and for valuable consideration, then—

- (a) if such last-mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage in transit is defeated; and
- (b) if such last-mentioned transfer was made by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transit can only be exercised subject to the rights of the transferee.

#### *Rescission and Resale by Seller*

#### **58. Rescission and resale by seller**

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

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage in transit re-sells the goods, the buyer acquires a good title to them 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 re-sell, and the buyer does not within reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

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

### **PART V**

#### *Actions for Breach of the Contract*

### *Remedies of the Seller*

#### **59. 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.

#### **60. 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.

### *Remedies of the Buyer*

#### **61. 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 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) 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.

#### **62. Specific performance**

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

(2) The plaintiff's application may be made at any time before judgment or decree.

(3) The judgment or decree may be unconditional, or upon such terms and

conditions as to damages, payment of the price, and otherwise, as seems just to the court.

**63. 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 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 the goods would have had if they had fulfilled 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.

**64. Interest and special damages**

Nothing in this Law shall affect the right of the buyer or the 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.

**PART VI**

*Supplementary*

**65. Implied terms, etc., not to be excluded**

(1) Where a 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 such usage as binds both parties to the contract.

(2) Nothing in subsection (1) of this section shall be construed to permit the exclusion by express agreement or otherwise of any condition or warranty implied by this Law.

**66. Reasonable time a question of fact**

Where, by this Law, any reference is made to a reasonable time, the question "what is a reasonable time?" is a question of fact.

**67. Rights, etc., enforceable by action**

Where any right, duty or liability is declared by this Law, it may, unless otherwise

provided by this Law, be enforced by action in a court of competent jurisdiction.

**68. 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* deemed to be the subject of a separate contract of 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; and until the announcement is made any bidder may retract his bid;
- (c) where 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 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;
- (d) any sale contravening this rule may be treated as fraudulent by the buyer;
- (e) a sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller;
- (f) where in respect of a sale by auction a right to bid is expressly reserved (but not otherwise) the seller, or any one person on his behalf, may bid at the auction.

**69. Savings**

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

(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 Law, 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 causes shall continue to apply to contracts for the sale of goods.

(3) Nothing in this Law shall affect any written law relating to bills of sale, or the provisions of any written law relating to the sale of foods, drugs, or any particular kind or class of goods, or (subject to the provisions of section 67) to sales by auction.

(4) Except as otherwise provided, the provisions of this Law 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) Nothing in this Law shall affect transactions carried out under Islamic law or under Customary law.

CHAPTER S1  
SALE OF GOODS LAW  
SUBSIDIARY LEGISLATION

*No Subsidiary Legislation*