

CONSOLIDATION OF SALE OF GOODS ACT
R.S.N.W.T. 1988,c.S-2

(Current to: August 20, 2008)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

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S.N.W.T. 1995,c.11

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

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Territorial Printer
Legislation Division
Department of Justice
Government of Nunavut
P.O. Box 1000, Station 550
Iqaluit, NU X0A 0H0

Tel.: (867) 975-6305
Fax: (867) 975-6189
Email: Territorial.Printer@gov.nu.ca

GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the Revised Statutes of the Northwest Territories, 1988.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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SALE OF GOODS ACT

INTERPRETATION

Definitions

1. (1) In this Act,

"action" includes a counterclaim and set-off; (*action*)

"agreement to sell" means a contract of sale under which the transfer of the property in the goods is to take place

- (a) at a future time, or
- (b) subject to a condition that is to be fulfilled after the making of the contract; (*engagement de vente*)

"buyer" means a person who buys or agrees to buy goods; (*acheteur*)

"contract of sale" means a contract by which means the seller transfers or agrees to transfer the property in goods to the buyer at a price and includes an agreement to sell and a sale; (*contrat de vente*)

"contract of sale by sample" means a contract of sale in which there is an express or implied term making it a contract of sale by sample; (*contrat de vente sur échantillon*)

"delivery" means voluntary transfer of possession from one person to another; (*livraison*)

"document of title to goods" means a document of title to goods within the meaning of the *Factors Act*; (*titre*)

"fault" means wrongful act or default; (*faute*)

"future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale; (*objets futurs*)

"goods" includes

- (a) personal chattels other than things in action or money,
- (b) emblements, and
- (c) industrial growing crops and things attached to or forming part of the land that are agreed to be severed before sale or under the contract of sale; (*objets*)

"in a deliverable state", in relation to goods, means goods that are in a state that, under the contract, the buyer would be bound to take delivery of the goods; (*livrable*)

"in good faith", in relation to an act, means an act that is done honestly, whether it is done negligently or not; (*de bonne foi*)

"insolvent", in relation to a person, means the person has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due; (*insolvable*)

"price" means the money consideration in a contract of sale; (*prix*)

"property" means the general property in goods and not merely a special property; (*propriété*)

"quality of goods" includes the state or condition of the goods; (*qualité des objets*)

"sale" means a contract of sale under which the property in the goods is transferred from the seller to the buyer on the making of the contract and includes

- (a) a bargain and sale, and
- (b) a sale and delivery; (*vente*)

"seller" means a person who sells or agrees to sell goods; (*vendeur*)

"specific goods" means goods identified and agreed on at the time a contract of sale is made; (*objets déterminés*)

"warranty" means an agreement with reference to goods that are the subject of a contract of sale but collateral to the main purpose of the 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. (*garantie*)

Reasonable time

(2) Where this Act refers to a reasonable time, the question what is a reasonable time is a question of fact.

APPLICATION

Common law

2. (1) The rules of the common law including the law merchant, except to the extent that they are inconsistent with this Act, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress, coercion, mistake or other invalidating cause continue to apply to contracts of sale.

Other enactments

(2) This Act does not affect enactments relating to bills of sale or other enactments relating to the sale of goods that are not expressly repealed by this Act.

Application to mortgages and other security

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

Implied right, duty or liability

- 3.** Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by
- (a) express agreement;
 - (b) the course of dealing between the parties; or
 - (c) usage that binds both parties to the contract.

FORMATION OF A CONTRACT OF SALE

Part owner

- 4.** A part owner of goods may enter into a contract of sale with another person.

Absolute or conditional contract

- 5.** A contract of sale may be absolute or conditional.

When agreement becomes sale

- 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.

Definition of "necessaries"

- 7.** (1) In subsection (3), "necessaries" means goods suitable
- (a) to the condition in life of the minor or person to whom the goods are sold; and
 - (b) to the actual requirements of the person referred to in paragraph (a) at the time of the sale and delivery.

Capacity to buy and sell

- (2) Subject to subsection (3), capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.

Payment for necessaries

- (3) Where necessaries are sold and delivered to a minor or a person who by reason of mental incapacity or drunkenness is incompetent to contract, the minor or other person shall pay a reasonable price for the necessaries.

Making of contract

- 8.** (1) Subject to this Act and any other Act in that behalf, a contract of sale may be
- (a) made
 - (i) in writing, with or without seal,
 - (ii) orally, or
 - (iii) partly in writing, with or without seal, and partly orally;
 - (b) implied from the conduct of the parties.

Corporations

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

Acceptance of goods

9. (1) There is acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods that recognizes a pre-existing contract of sale, whether or not there is an acceptance in performance of the contract.

Enforcement of contract

(2) A contract of sale for goods of the value of \$50 or more is not enforceable by action unless

- (a) the buyer accepts part of the goods and actually receives part of the goods and gives something in earnest to bind the contract or in part payment; or
- (b) a written note or memorandum of the contract is made and signed by the party to be charged or the agent of that party in that behalf.

Application

(3) Subsection (2) applies to every contract of sale for goods of the value of \$50 or more notwithstanding that the goods

- (a) may be intended to be delivered at a future time;
- (b) may not at the time of the contract be made, procured or provided or fit or ready for delivery; or
- (c) may require an act to make or complete the goods or to render them fit for delivery.

Existing or future goods

10. (1) The goods that form the subject of a contract of sale may be

- (a) existing goods owned or possessed by the seller; or
- (b) future goods.

Acquisition dependent on contingency

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

Present sale of future goods

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

Where contract void

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

Where contract avoided

(2) Where there is an agreement to sell specific goods and after the agreement is made, the goods, without fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is avoided.

Price

- 12.** (1) The price may be
- (a) fixed by the contract of sale;
 - (b) left to be fixed in the manner agreed to in the contract of sale; or
 - (c) determined by the course of dealing between the parties.

Reasonable price

(2) The buyer shall pay a reasonable price where the price is not determined in accordance with subsection (1).

Reasonableness of price

(3) For the purposes of subsection (2), the reasonableness of a price is a question of fact dependent on the circumstances of the case.

Valuation

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

Reasonable price

(2) The buyer shall pay a reasonable price for the goods delivered where all or part of the goods referred to in subsection (1) have been delivered to and appropriated by the buyer.

Damages

(3) Where the third party referred to in subsection (1) 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

Time of payment

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

Other stipulations

(2) Whether a stipulation as to time, other than as to time of payment, is of the essence of a contract of sale depends on the terms of the contract.

Definition of "month" in contracts

(3) In a contract of sale, "month" means, in the absence of evidence to the contrary, a calendar month.

Contract subject to condition

15. (1) Where a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may

- (a) waive the condition; or
- (b) elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

Condition or warranty

(2) Whether a stipulation in a contract of sale is

- (a) a condition, the breach of which may give rise to a right to treat the contract as repudiated, or
- (b) 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 on the construction of the contract.

Condition

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

Breach of condition

(4) Where

- (a) a contract of sale is not severable and the buyer has accepted all or part of the goods, or
- (b) the contract of sale is for specific goods, the property in which has passed to the buyer,

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 expressed or implied term of the contract to that effect.

Exception

(5) This section does not affect a condition or warranty the fulfillment of which is excused by law by reason of impossibility or otherwise.

Implied conditions and warranties

16. Unless the circumstances of a contract of sale show a different intention, in a contract of sale there is

- (a) an implied condition on the part of the seller that
 - (i) in the case of a sale, the seller has a right to sell the goods, and
 - (ii) 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; and

- (c) an implied warranty that the goods will 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 the contract is made.

Sale by description

17. In a contract of sale

- (a) by description, there is an implied condition that the goods will correspond with the description; and
- (b) 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.

Quality or fitness of goods

18. (1) Subject to this Act or any other Act 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) where
 - (i) 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 skill or judgment of the seller, and
 - (ii) the goods are of a description that it is in the course of the business of the seller to supply, whether or not the seller is the manufacturer, there is an implied condition that the goods will be reasonably fit for the purpose;
- (b) where goods are bought by description from a seller who deals in goods of that description, whether or not the seller is the manufacturer, there is an implied condition that the goods will be of merchantable quality;
- (c) an implied warranty or condition as to quality or fitness for a particular purpose may be added by the usage of trade;
- (d) an express warranty or condition does not negative a warranty or condition implied by this Act unless the express warranty or condition is inconsistent with the implied warranty or condition.

Exception

(2) Notwithstanding paragraph (1)(b), if the buyer has examined the goods there is no implied condition as regards defects that the examination ought to have revealed.

Implied condition in sale by sample

19. In a contract of sale by sample, there is an implied condition that

- (a) the bulk of the goods will correspond with the sample in quality;
- (b) the buyer will have a reasonable opportunity of comparing the bulk of the goods with the sample; and

- (c) the goods will be free from any defects rendering the goods unmerchantable that would not be apparent on reasonable examination of the sample.

TRANSFER OF PROPERTY

Unascertained goods

20. In a contract of sale for unascertained goods, no property in the goods is transferred to the buyer until the goods are ascertained.

Specific or ascertained goods

21. (1) In a contract of sale for specific or ascertained goods, the property in the goods is transferred to the buyer at the time that the parties to the contract intend it to be transferred.

Intention

(2) For the purpose of ascertaining the intention of the parties, the terms of the contract, the conduct of the parties and the circumstances of the case shall be taken into account.

Ascertaining intention

22. (1) This section governs how the intention of the parties as to the time at which the property in the goods is to pass to the buyer is to be ascertained, unless a different intention appears.

Unconditional contract for specific goods in deliverable state

(2) In an unconditional contract of sale for 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.

Contract of sale for specific goods

(3) In a contract of sale for specific goods, where the seller is bound to do something to the goods for the purpose of putting the goods into a deliverable state, the property in the goods does not pass until the thing is done and the buyer has been given notice that the thing is done.

Contract of sale for specific goods in deliverable state

(4) In a contract of sale for specific goods in a deliverable state, if the seller must weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property in the goods does not pass until the act or thing is done and the buyer has notice that the act or thing is done.

Goods on approval

(5) When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property in the goods passes to the buyer

- (a) when the buyer signifies his or her approval or acceptance to the seller or does any other act adopting the transaction; or
- (b) where the buyer does not signify his or her approval or acceptance to the seller but retains the goods without giving notice of rejection and
 - (i) a time has been fixed for the return of the goods, on the expiration of that time, or
 - (ii) no time has been fixed for the return of the goods, on the expiration of a reasonable time.

Unascertained or future goods

(6) In a contract of sale for unascertained or future goods by description, where goods of that description and in a deliverable state are unconditionally appropriated to the contract by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods passes to the buyer on the appropriation of the goods.

Assent

(7) The assent referred to in subsection (6) may be expressed or implied and may be given before or after the appropriation is made.

Delivery to bailee

(8) Where under a contract of sale for unascertained or future goods the seller delivers the goods to

- (a) the buyer, or
- (b) a carrier or other bailee, whether or not named by the buyer, for the purpose of transmission to the buyer,

and does not reserve the right of disposal, the seller shall be deemed to have unconditionally appropriated the goods to the contract.

Reservation of right of disposal

23. (1) In a contract of sale for 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.

Fulfillment of conditions

(2) The property in the goods referred to in subsection (1) does not pass to the buyer until the conditions imposed by the seller are fulfilled notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

Right of disposal

(3) Where goods are shipped and the bill of lading makes the goods deliverable to the order of the seller or an agent of the seller, the seller, in the absence of evidence to the contrary, shall be deemed to have the right of disposal.

Bill of exchange

(4) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange with the bill of lading to the buyer to secure acceptance or payment of the bill of exchange,

- (a) the buyer shall return the bill of lading if the buyer does not honour the bill of exchange; and
- (b) the property in the goods does not pass to the buyer if the buyer wrongfully retains the bill of lading.

Risk

24. (1) Unless otherwise agreed,

- (a) the goods remain at the risk of the seller until the property in the goods is transferred to the buyer; and
- (b) when the property in the goods is transferred to the buyer, the goods are at the risk of the buyer, whether or not delivery has been made.

Delay

(2) Notwithstanding subsection (1), where delivery is delayed through the fault of the buyer or seller, the goods are at the risk of the party in fault for loss that might not have occurred but for the fault.

Application

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

TRANSFER OF TITLE TO GOODS**Sale not by owner**

25. (1) Subject to this Act, where goods are sold by a person who

- (a) is not the owner of the goods, and
- (b) does not sell the goods under the authority or with the consent of the owner,

the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his or her conduct precluded from denying the authority of the seller to sell.

Application

(2) This Act does not affect

- (a) the *Factors Act* or any enactment enabling the apparent owner of goods to dispose of the goods as if the apparent owner were the true owner of the goods; or

- (b) the validity of a contract of sale under
 - (i) a special common law or statutory power of sale, or
 - (ii) the order of a court of competent jurisdiction.

Sale under voidable title

26. Where the seller of goods has a voidable title to the goods but the title has not been voided at the time of sale, the buyer acquires a good title to the goods if the buyer buys them in good faith and without notice of the defect of title of the seller.

Definitions

27. (1) In this section,

"mercantile agent" means a mercantile agent as defined in the *Factors Act*; (*agent de commerce*)

"Registry" means the Personal Property Registry established by the *Personal Property Security Act*; (*réseau d'enregistrement*)

"security agreement" means a security agreement as defined in the *Personal Property Security Act*"; (*contrat de sûreté*)

"security interest" means a security interest as defined in the *Personal Property Security Act*. (*sûreté*)

Transfer of goods or document of title by seller

(2) Where a person who has sold goods continues or is in possession of the goods or of the document of title to the goods, the delivery or transfer by the seller or by a mercantile agent acting for the seller of the goods or document of title under a sale, pledge or other disposition of the goods to a person receiving the goods in good faith and without notice of the previous sale has the same effect as if the person making the delivery or transfer was expressly authorized by the owner of the goods to make it.

Effect where registration in Registry

(2.1) Subsection (2) does not apply to a sale, pledge or other disposition of goods or of documents of title to goods, other than negotiable documents of title to goods, that is out of the ordinary course of business of the person who has sold the goods where, prior to the sale, pledge or other disposition, the interest of the owner of the goods is registered in the Registry in accordance with regulations made under the *Personal Property Security Act*.

Application of Part IV, *Personal Property Security Act*

(2.2) The interest of an owner referred to in subsection (2.1) may be registered in the Registry and Part IV of the *Personal Property Security Act* applies to the registered interest with such modifications as the circumstances require.

Transfer of goods or document of title by buyer

(3) Where a person who has bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the document of title to the goods, the delivery or transfer by the buyer or by a mercantile agent acting for the buyer of the goods or document of title under a sale, pledge or other disposition of the goods to a person receiving them in good faith and without notice of a 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 the possession of the goods or documents of title with the consent of the owner.

Effect where possession under security agreement

(3.1) Subsection (3) does not apply to a sale, pledge or other disposition of goods or of documents of title to goods by a person who has obtained possession of the goods pursuant to a security agreement under which the seller has a security interest.
S.N.W.T. 1994,c.8,s.82(2),(3),(4); S.N.W.T. 1999,c.5,Sch.C,s.1(3)(c).

PERFORMANCE OF THE CONTRACT

Duties of seller and buyer

28. The seller shall deliver the goods and the buyer shall accept and pay for the goods in accordance with the terms of the contract of sale.

Possession and payment

29. Unless otherwise agreed, 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.

Application

30. (1) This section and sections 31 to 34 do not affect the operation of the issue or transfer of a document of title to goods.

Possession

(2) Whether the buyer is to take possession of the goods or the seller is to send the goods to the buyer depends on the express or implied contract between the parties.

Delivery at place of business or residence

(3) Where there is no express or implied contract between the parties, the place of delivery is the place of business of the seller if the seller has one or, if not, the residence of the seller.

Delivery at place where goods located

31. Notwithstanding section 30, if the contract of sale is for specific goods that to the knowledge of the parties when the contract is made are in some other place, that place is the place of delivery.

Time for delivery

32. (1) 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.

Third party

(2) Where at the time of the sale the goods are in the possession of a third party, there is no delivery by the seller to the buyer until the third person acknowledges to the buyer that he or she holds the goods on behalf of the buyer.

Reasonable hour

33. Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour and the reasonableness of the hour is a question of fact.

Expenses

34. Unless otherwise agreed, the seller shall bear the expenses of and incidental to putting the goods into a deliverable state.

Application

35. (1) Subsections (2) to (6) are subject to the usage of trade or a special agreement or the course of dealing between the parties.

Delivery of lesser quantity

(2) The buyer may reject the goods where the seller delivers to the buyer a quantity of goods less than the seller contracted to sell.

Contract rate

(3) If the buyer accepts the goods referred to in subsection (2), the buyer shall pay for them at the contract rate.

Delivery of larger quantity

(4) Where the seller delivers to the buyer a quantity of goods larger than the seller contracted to sell, the buyer may

- (a) accept the goods included in the contract and reject the rest; or
- (b) reject the whole.

Contract rate

(5) If the buyer accepts the whole of the goods referred to in subsection (4), the buyer shall pay for them at the contract rate.

Mixed goods

(6) Where the seller delivers to the buyer goods that the seller contracted to sell mixed with goods of a different description not included in the contract, the buyer may

- (a) accept the goods that are in accordance with the contract and reject the rest; or
- (b) reject the whole.

Delivery by instalments

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

Breach

(2) Where there is a contract for the sale of goods to be delivered by stated instalments that are to be separately paid for and

- (a) the seller makes defective deliveries in respect of one or more instalments, or
- (b) the buyer neglects or refuses to take delivery of or pay for one or more instalments,

it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is

- (c) a repudiation of the whole contract, or
- (d) a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

Delivery to carrier

37. (1) Where under a contract of sale the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether or not named by the buyer, for the purpose of transmission to the buyer, in the absence of evidence to the contrary, shall be deemed to be a delivery of the goods to the buyer.

Contract with carrier

(2) Unless otherwise authorized by the buyer, the seller shall make a contract with the carrier referred to in subsection (1) on behalf of the buyer that is reasonable having regard to the nature of the goods and the other circumstances of the case.

Loss or damages

(3) If a seller fails to comply with subsection (2) and the goods are lost or damaged in course of transit, the buyer may

- (a) decline to treat the delivery to the carrier as a delivery to the buyer;
or
- (b) hold the seller responsible in damages.

Insurance for sea transit

38. (1) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit under circumstances in which it is usual to insure, the seller shall give notice to the buyer that will enable the buyer to insure the goods during their sea transit.

Risk during sea transit

(2) If a seller fails to comply with subsection (1), the goods are at the risk of the seller during the sea transit.

Risk of deterioration

39. Unless otherwise agreed, where the seller agrees to deliver the goods at his or her own risk at a place other than the place where they are when sold, the buyer shall take the risk of deterioration in the goods necessarily incident to the course of transit.

Examination on delivery

40. (1) Where goods are delivered to the buyer that the buyer has not previously examined, the buyer shall be deemed not to have accepted the goods until the buyer has had a reasonable opportunity to examine the goods to ascertain whether the goods are in conformity with the contract.

Examination on request

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, the seller shall on request afford the buyer a reasonable opportunity to examine the goods to ascertain whether the goods are in conformity with the contract.

Acceptance

41. The buyer shall be deemed to have accepted the goods when

- (a) the buyer intimates to the seller that the he or she has accepted them; or
- (b) the goods are delivered to the buyer and
 - (i) the buyer does an act in relation to them that is inconsistent with the ownership of the seller, or
 - (ii) after the lapse of a reasonable time, the buyer retains the goods without intimating to the seller that the buyer has rejected them.

Refusal to accept goods

42. Unless otherwise agreed, where goods are delivered to the buyer and the buyer refuses to accept the goods, where the buyer has the right to do so,

- (a) the buyer is not bound to return the goods to the seller; and
- (b) it is sufficient if the buyer intimates to the seller that the buyer refuses to accept the goods.

Neglect or refusal to take delivery

43. (1) If the seller is ready and willing to deliver the goods and requests the buyer to take delivery and the buyer does not take delivery of the goods within a reasonable time after the request, the buyer is liable to the seller for the loss caused by the neglect or refusal of the buyer to take delivery and for a reasonable charge for the care and custody of the goods.

Rights of seller

(2) Subsection (1) 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.

RIGHTS OF THE UNPAID SELLER AGAINST THE GOODS

Definitions

44. In sections 44 to 54,

"seller" includes an agent of a seller to whom the bill of lading has been endorsed or a consignor or agent who has personally paid or is directly responsible for the price and any other person who is in the position of a seller; (*vendeur*)

"unpaid seller" means a seller

- (a) to whom the whole of the contract price has not been paid or tendered; or
- (b) who has received a bill of exchange or other negotiable instrument 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. (*vendeur impayé*)

Rights of unpaid seller

45. (1) Subject to this Act or any other Act in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods has by implication of law

- (a) a lien on the goods or right to retain them for a price while he or she is in possession of them;
- (b) in the case of the insolvency of the buyer, a right of stopping the goods in transit after he or she has parted with the possession of them; and
- (c) a right of resale as limited by this Act.

Right of withholding delivery

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

Lien or retention of goods

46. (1) Subject to this Act, the unpaid seller who is in possession of the goods is entitled to retain possession of the goods until payment or tender of the price, where

- (a) the goods have been sold without a stipulation as to credit;
- (b) the goods have been sold on credit but the term of credit has expired; or
- (c) the buyer becomes insolvent.

Exercise of right

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

Part delivery

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

Termination of lien or right of retention

48. (1) An unpaid seller loses his or her lien or right of retention on the goods

- (a) when the 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 an agent of the buyer lawfully obtains possession of the goods; or
- (c) by waiver of the lien or right of retention.

Judgment for price

(2) An unpaid seller does not lose his or her lien or right of retention on the goods by reason only that the seller has obtained judgment or decree for the price of the goods.

Stopping goods in transit

49. Subject to this Act, when a buyer becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping the goods in transit and resuming possession of the goods, and may retain the goods until payment or tender of the price.

Duration of transit

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

Delivery before arrival

(2) When the buyer or an agent of the buyer in that behalf obtains delivery of the goods referred to in subsection (1) before their arrival at the appointed destination, the transit is at an end.

Termination of transit

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

Goods rejected

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

Delivery to ship

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

Wrongful refusal to deliver

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

Part delivery

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

Right of stopping goods

51. (1) An unpaid seller may exercise his or her right of stopping goods in transit by

- (a) taking actual possession of the goods; or
- (b) giving notice of his or her claim to the carrier or other bailee who has possession of the goods.

Notice

(2) The notice referred to in paragraph (1)(b) may be given to the person in actual possession of the goods or to his or her principal.

Notice to principal

(3) Where notice is given to a principal under subsection (2), the notice must, in order to have effect, be given at a time and under circumstances so that the principal, by the exercise of reasonable diligence, may communicate the notice to his or her employee or agent in time to prevent a delivery to the buyer.

Redelivery of goods

(4) When notice under paragraph (1)(b) is given by the seller to the carrier or other bailee in possession of the goods, the carrier or bailee must redeliver the goods to the seller or according to the direction of the seller, at the expense of the seller.

Effect of disposition

52. Subject to this Act, the rights of lien or retention or stoppage in transit of an unpaid seller are not affected by a sale or other disposition of the goods by the buyer unless the seller has assented to the disposition.

Second transfer

53. Where a document of title of goods has been lawfully transferred to a 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, if

- (a) the second transfer was by way of sale, the rights of lien or retention or stoppage in transit of the unpaid seller are defeated; or
- (b) the second transfer was by way of pledge or other disposition for value, the exercise of the rights of lien or retention or stoppage in transit of the unpaid seller are subject to the rights of the transferee.

Exercise of rights

54. (1) Subject to subsections (2) to (4), the exercise by an unpaid seller of his or her rights of lien or retention or stoppage in transit does not alone rescind a contract of sale.

Resale

(2) Where an unpaid seller who has exercised his or her rights of lien or retention or stoppage in transit resells the goods, the buyer acquires a good title to the goods against the original buyer.

Damages

(3) Where the goods are of a perishable nature or the unpaid seller gives notice to the buyer of an 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 caused by the breach of contract by the original buyer.

Contract rescinded

(4) Where a seller expressly reserves a right of resale in case the buyer defaults and on default by the buyer the unpaid seller resells the goods, the original contract of sale is rescinded without prejudice to a claim by the seller for damages.

ACTIONS FOR BREACH OF THE CONTRACT

Enforcement of right, duty or liability

55. Subject to this Act, a right, duty or liability provided in this Act may be enforced by action.

Action for price after property passes

56. (1) Where under a contract of sale

- (a) the property in the goods has passed to the buyer, and
- (b) 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.

Action for price before property passes

(2) Where under a contract of sale

- (a) the price is payable on a certain day, irrespective of delivery, and
- (b) the buyer wrongfully neglects or refuses to pay the 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.

Interest

(3) This section does not prejudice the right of the seller to recover interest on the price from the date of tender of the goods or from the date on which the price was payable, as the case may be.

Action for non-acceptance

57. (1) Where 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.

Measure of damages

(2) The measure of damages under subsection (1) is the estimated loss directly and naturally resulting in the ordinary course of events from the breach of contract by the buyer.

Available market

(3) Where there is an available market for the goods referred to in subsection (1), the measure of damages is, in the absence of evidence to the contrary, the difference between the contract price and the market or current price

- (a) at the time or times when the goods ought to have been accepted;
or
- (b) if no time was fixed for acceptance, at the time of the refusal to accept.

Action for non-delivery

58. (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.

Measure of damages

(2) The measure of damages under subsection (1) is the estimated loss directly and naturally resulting in the ordinary course of events from the breach of contract by the seller.

Available market

(3) Where there is an available market for the goods referred to in subsection (1), the measure of damages is, in the absence of evidence to the contrary, the difference between the contract price and the market or current price of the goods

- (a) at the time or times when the goods ought to have been delivered;
or

- (b) if no time was fixed for acceptance, at the time of the refusal to deliver.

Specific performance

59. (1) In an action for breach of contract to deliver specific or ascertained goods, on the application of the plaintiff the court may if it thinks fit in 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.

Judgment or decree

(2) A judgment or decree referred to in subsection (1) may be unconditional or on terms and conditions as to damages, payment of the price and otherwise that the court considers just.

Application by plaintiff

(3) An application by the plaintiff under subsection (1) may be made at any time before judgment or decree.

Breach of warranty

60. (1) Where there is a breach of warranty by the seller or 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 breach of warranty alone does not entitle the buyer to reject the goods.

Remedies

(2) A buyer referred to in subsection (1) 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.

Right of action for further damages

(3) The exercise by a buyer of his or her rights under paragraph (2)(a) does not prevent the buyer from maintaining an action for the same breach of warranty if the buyer has suffered further damage.

Payment into court or other security

61. Where a buyer has elected to accept goods that the buyer could have rejected and to treat a breach of contract as only giving rise to a claim for damages, in an action by the seller for the price the court may require the buyer

- (a) to consign or pay into court all or part of the price of the goods; or
- (b) to give other reasonable security for the payment of the price of the goods.

Measure of damages

62. (1) 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.

Warranty of quality

(2) In the case of breach of warranty of quality, the loss referred to in subsection (1) is, in the absence of evidence to the contrary, 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.

Recovery of interest, special damages or money

- 63.** This Act does not affect the right of the buyer or the seller to recover
- (a) interest or special damages, in any case where interest or special damages may by law be recovered; or
 - (b) money paid, where the consideration for the payment of it has failed.

SALE BY AUCTION

Sale by lots

64. Where goods are put up for sale by auction in lots, each lot, in the absence of evidence to the contrary, shall be deemed to be the subject of a separate contract of sale.

Completion of sale

65. (1) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in another customary manner.

Retraction of bid

(2) A bidder may retract his or her bid until the completion of the sale is announced in accordance with subsection (1).

Bid by seller

- 66.** (1) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller,
- (a) the seller shall not bid himself or herself or employ a person to bid at the sale; and
 - (b) the auctioneer shall not knowingly take a bid from the seller or a person employed by the seller to bid.

Contravention

(2) A sale that contravenes subsection (1) may be treated as fraudulent by the buyer.

Reserve or upset price

(3) A sale by auction may be notified to be subject to a reserve or upset price and the right to bid may also be reserved expressly by or on behalf of the seller.

Bid by seller

(4) Where a right to bid is expressly reserved under subsection (3), the seller or one person on behalf of the seller may bid at the auction.

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