

CHAPTER 214
THE SALE OF GOODS ACT
[PRINCIPAL LEGISLATION]
ARRANGEMENT OF SECTIONS

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CHAPTER 214

THE SALE OF GOODS ACT

An Act to provide for the law relating to the sale of goods.

[15th May, 1931]

Ords. Nos.
18 of 1931
55 of 1963

PART I

PRELIMINARY PROVISIONS

Short title 1. This Act may be cited as the Sale of Goods Act.

Interpretation 2.-(1) In this Act, unless the context otherwise requires-
“action” includes counterclaim and set-off;
“buyer” means a person who buys or agrees to buy goods;
“contract of sale” includes an agreement to sell and a sale;
“delivery” means the 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 represented by that document;
“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 chattels personal other than things in action and money, 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;

“plaintiff” includes defendant counter-claiming;
“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, a sale, and 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 the contract, the breach of which gives rise to a claim for damages, but not a right to reject the goods and treat the contract as repudiated.

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

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

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

PART II

FORMATION OF CONTRACT

(a) Contract of Sale

Sale and
agreement of sale

3.–(1) A contract of sale of goods is a contract whereby, the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price, and there may be a contract of sale between one part owner and another.

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

(3) Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale; but where the transfer of the property in the goods is to

take place at a future time or subject to some condition to be fulfilled after the transfer, the contract is called an agreement to sell.

(4) 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.

Capacity to buy and sell; and sale of necessities to persons incompetent to contract

4.-(1) Capacity to buy and sell is regulated by the general law concerning capacity to contract, and transfer and acquire property.

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

(3) Necessaries in this section mean goods suitable to the condition in life of an infant or minor or other person, and his actual requirements at the time of the sale and delivery.

(b) Formalities of Contract

Making a contract of sale

5.-(1) Subject to the provisions of this Act and any other written law in that behalf, a contract of sale may be made in writing either with or without seal or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

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

Certain contracts of sale to be in writing

6.-(1) A contract for the sale of goods of the value of two hundred shillings or more shall not be enforceable by action unless the buyer accepts part of the goods sold, and actually receives the goods, or gives something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract is made and signed by the party to be charged or by his agent in that behalf.

(2) The provisions of this section shall apply to a contract, notwithstanding that, the goods may be intended to be

delivered at some future time or may not at the time of the contract be actually made, procured or provided, or fit or ready for delivery, or that some act may be requisite for the making or completing thereof, or rendering them fit for delivery.

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

(c) Subject Matter of Contract

Existing or future goods

7.—(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 Act referred to as “future goods”.

(2) There may be a contract for the sale of goods, the acquisition of which 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.

Sale of perished goods

8. 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.

Goods perished after agreement to sell

9. 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.

(d) The Price

Ascertainment of price

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

(2) Where the price is not determined in accordance with the provisions of subsection (1), the buyer must pay a reasonable price; and what is a reasonable price is a question of fact depend on the circumstances of each particular case.

Agreement to sell
at valuation

11.—(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 the third party cannot or does not make the valuation, the agreement is avoided.

(2) where under subsection (1) of this section, the goods or any part thereof have been delivered to and appropriated by the buyer, the buyer shall pay a reasonable price for the goods.

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

(e) Conditions and Warranties

Stipulations

12.—(1) Unless a different intention appears as to the time from the terms of a contract, stipulations as to the time of payment are not deemed to be of the essence of the contract of sale and whether any other stipulation as to the time is of the essence of the contract or not depends on the terms of the contract.

(2) In a contract of sale, “month” means, *prima facie*, a calendar month.

When condition
to be treated
as warranty;
and saving of
stipulations
where condition
or warranty is
excused by law.

13.—(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 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 the goods, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any conditions to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(4) This section shall not affect the case of any condition or warranty, fulfillment of which is excused by law by reason of impossibility or otherwise.

Implication by
law of condition
as to title, quiet
possession and
encumbrances

14. In a contract of sale, unless the circumstances of the contract show a different intention, there is-

- (a) an implied condition on the part of the seller that, in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;
- (b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;
- (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

Conditions
implied by
description

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

Circumstances
in which implied
warranty as to
quality or fitness
arises

16. Subject to the provisions of this Act and any other written law in that behalf, there is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows-

- (a) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that, the buyer relies on the seller's skill of judgment and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for that purpose:

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

- (b) where goods are bought by description from a seller who deals in goods of that description, whether he be the manufacturer or not, there is an implied condition that, the goods shall be of merchantable quality:

Provided that, where the buyer has examined the goods, there shall be no implied condition as regards defects which the examination ought to have revealed:

- (a) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- (b) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent with that warranty or condition.

(f) Sale by Sample

Sale by sample

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

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

- (a) the bulk shall correspond with the sample in quality;

- (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample; and
- (c) the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

PART III

EFFECTS OF CONTRACT

(a) Transfer of Property as between Seller and Buyer

Property in
unascertained
goods

18. Where there is a contract for the sale of unascertained goods, a property in the goods is not transferred to the buyer unless and until the goods are ascertained.

Property in
specific or
ascertained goods
passes when
intended to pass

19.—(1) Where there is a contract for the sale of specific or ascertained goods, the property in the goods is transferred to the buyer at a 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.

Rules for
ascertaining
intention as
to time when
property passes

20. Unless a different intention appears, the following 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 shall apply—

- (a) where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether, the time of payment or the time of delivery or both be postponed;
- (b) 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 a thing is done and the buyer has notice thereof;

- (c) 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 an act or thing is done and the buyer has notice thereof;
- (d) 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-
 - (i) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
 - (ii) where he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, where a time has been fixed for the return of the goods, on the expiration of a time and if no time has been fixed, on the expiration of a reasonable time; and what is a reasonable time is a question of fact;
- (e) where there is a contract for the sale of unascertained or future goods by description and goods of that description, and in a deliverable state, are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer and that assent may be express or implied, and may be given either before or after the appropriation is made;
- (f) where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodian whether named by the buyer or not for the purpose of transmission to the buyer, and does not reserve the right of disposal, the seller is deemed to have unconditionally appropriated the goods to the contract.

Reservation by
seller of right of
disposal

21.—(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled; and in that case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee or custodian for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

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

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

Risk *prima facie*
passes with
property

22.—(1) Unless otherwise agreed, the goods remain at the seller's risk until the property in the goods is transferred to the buyer, but when the property in the goods 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 in fault as regards any loss which might not have occurred but for such fault.

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

(b) *Transfer of Title*

Sale by person
not the owner

23. Subject to the provisions of this Act, where goods are sold by a person who is not the owner of the goods, and who does

not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct, precluded from denying the seller's authority to sell:

Provided that, this Act shall not affect-

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

Market overt

24. Where goods are openly sold in a market established by law in Tanzania in the ordinary course of the business of the market, the buyer acquires a good title to the goods provided that he buys them in good faith and without notice of any defect or want of title on the part of the seller.

Sale under voidable title

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

Revesting of property in stolen goods on conviction of offender

26.-(1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods stolen reverts in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in accordance with the provisions of section 24 or otherwise.

(2) Notwithstanding any written law to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in the goods shall not revert in the person who was the owner of the goods or his personal representative, by reason only of the conviction of the offender.

Resale by seller or
buyer or the agent
of either party in
possession after
sale

27.—(1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to goods, then the delivery or transfer, by that person, or by mercantile agent acting for him, of the goods or documents of title, under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of 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.

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

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

Effect of writs of
execution

28. A writ of execution against goods shall bind the property in the goods of the judgment debtor as from the time when the writ is delivered to the proper officer to be executed; and, for the better manifestation of the time, it shall be the duty of the officer, upon the receipt of any writ to endorse upon the back of the writ the hour, day, month and year when he received it:

Provided that, a writ shall not prejudice the title of the goods acquired by any person in good faith and for valuable consideration, unless the person had at the time when he acquired his title notice that, the writ or any other writ by virtue

of which the goods of the judgment debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the proper officer.

PART IV

PERFORMANCE OF THE CONTRACT

Duties of seller
and buyer

29. 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.

Payment and
delivery *prima*
facie concurrent
conditions

30. 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.

Rules as to
delivery to buyer

31.—(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties and apart from any contract, express or implied, the place of deliveries, the seller's place of business, if he has one, and if not, his residence:

Provided that, 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.

(2) 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.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by the seller to the buyer unless and until the third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that, this section shall not affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour; and what is a reasonable hour is a question of fact.

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

Delivery of wrong quantity or description

32.—(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but where the buyer accepts the goods 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; and where the buyer accepts the whole of the goods 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 in any usage of trade, special agreement or course of dealing between the parties.

Delivery by instalments

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

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

- (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 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.

Delivery to carrier, seller's duty as to contract with carrier as buyer's agent and insurance on sea transit by seller

34.—(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 the 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 goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make the 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 where the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

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

Risk where goods are delivered elsewhere than at place of sale

35. 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 shall nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's rights of examining the goods

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

(2) Unless otherwise agreed, when the seller tenders delivery of 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.

Acceptance

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

Buyer is not bound to return rejected goods

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

Liability of buyer for neglecting or refusing delivery of goods

39. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within reasonable time after a request, take delivery of the goods, the buyer 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 of custody of the goods:

Provided that, this section shall not affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART V

RIGHTS OF UNPAID SELLER AGAINST GOODS

Definition of “unpaid seller”

40.-(1) The seller of goods is deemed to be an “unpaid seller” within the meaning of this Act when -

- (a) the whole of the price has not been paid or tendered;
- (b) a bill of exchange or other negotiable instrument has been received as conditional payment, and the

condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

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

Rights of unpaid seller

41.—(1) Subject to the provisions of this Act, and of any other written law 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 the goods for the price while he is in possession of them;
- (b) in case of the insolvency of the buyer, a right of stopping the goods in *transitu* after he has parted with the possession of them;
- (c) a right of resale as limited by this Act.

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

(a) Unpaid Seller's Lien

Seller's lien

42.—(1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of the goods 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-

- (a) as agent; or
- (b) bailee; or
- (c) custodian for the buyer.

Lien after part delivery

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

Termination of lien

44.—(1) The unpaid seller of goods loses his lien or right of retention of the goods-

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

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

(b) Stoppage in transitu

Right of stoppage in transitu

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

Duration of transit

46.—(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land, air or water or other bailee or custodian for the purpose of transmission

to the buyer, until the buyer or his agent in that behalf takes delivery of them from a carrier or other bailee or custodian.

(2) Where 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) Where, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodian acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodian 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) Where the goods are rejected by the buyer, and the carrier or other bailee or custodian continues in possession of them, the transit is not deemed to be at an end even if the seller has refused to receive them back.

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

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

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

Mode of stoppage
in *transitu*

47.—(1) The unpaid seller may exercise his right of stoppage in *transitu* either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee or custodian in whose possession the goods are; and that notice may be given either to the person in actual possession of the goods or to his principal; and in the case of the notice being given to the principal, for the notice to be effectual, it must be

given at a time and under the circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in *transitu* is given by the seller to the carrier or other bailee or custodian in possession of the goods, he must re-deliver the goods to, or according to the directions of the seller and the expenses of the re-delivery must be borne by the seller.

(c) *Resale by Buyer or Seller*

Effect of sub-sale or pledge by buyer

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

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

Effect on sale of exercise of lien or stoppage in *transitu*, etc

49.-(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 *transitu*.

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

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to resell, and the buyer does not, within a reasonable time, pay or tender the price, the unpaid seller may resell the goods and recover

from the original buyer damages for any loss occasioned by his breach of contract.

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

PART VI

ACTIONS FOR BREACH OF CONTRACT

(a) Remedies of the Seller

Action for price **50.**—(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 certain day irrespective of delivery and 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 in the contract.

Action for non-acceptance and measures of damages **51.**—(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, at the time of the refusal to accept.

Remedies of the Buyer

Action for
non-delivery
and measure of
damages

52.—(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 or non-damages.

(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, at the time of the refusal to deliver.

Right to specific
performance

53.—(1) In any action for breach of contract to deliver specific or ascertained goods, the court may, where it thinks fit, on the application of the plaintiff, 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 judgment or decree may be unconditional, or upon terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree.

Remedy for
breach of
warranty and
measure of
damage

54.—(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 the breach of warranty entitled to reject the goods; but he may—

- (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
- (b) maintain an action against the seller for damages for the breach of warranty.

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

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

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

Interest and
special damages

55. This Act shall not affect the right of the buyer or the seller to recover interest or special damages in any case, where by interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

PART VII SUPPLEMENTARY PROVISIONS

Variation, etc., of
implied rights

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

Reasonable time

57. Where, by this Act, any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Rights, etc.,
enforceable by
action

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

Auction sales

59.—(1) In the case of 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 an 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 shall not be lawful for the seller himself to bid or to employ any person to bid at the sale, or for the auctioneer knowingly to take any bid from the seller or any person; any sale contravening this rule may be treated as fraudulent by the buyer;
- (d) a sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

(2) Where under subsection (1), a right to bid is expressly reserved, but not otherwise, the seller or any person on his behalf may bid at the auction.

Savings
Act No.
55 of 1963 Sch.

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

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

(3) This Act shall not affect any written law relating to bills of sale or any other written law relating to the sale of goods.

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

(5) This Act shall not affect any customary law relating to contracts for sale, or the sale of goods.

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