

# **TITLE 23.**

## **LAW OF SALES**

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### **CHAPTER 1.**

#### **SALE OF GOODS**

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**PART I - PRELIMINARY****§101. Short title.**

This Chapter may be cited as the "Sale of Goods Act 1986". [P.L. 1986-31, §1.]

**§102. Interpretation.**

- (1) In this Chapter, unless the context or subject matter otherwise requires:
- (a) "action" includes cross-claim;
  - (b) "buyer" means a person who buys or agrees to buy goods;
  - (c) "contract of sale" includes an agreement to sell as well as a sale;
  - (d) "delivery" means voluntary transfer of possession from one person to another;
  - (e) "document of title to goods" includes any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented;
  - (f) "fault" means wrongful act or default;
  - (g) "future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale;
  - (h) "goods" include all movables except monies, and include 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;
  - (i) "lien" includes the right of retention;
  - (j) "plaintiff" includes the defendant making a cross-claim;
  - (k) "quality of goods" includes their state or condition;
  - (l) "sale" includes a bargain and sale as well as a sale and delivery;

(m) “seller” means a person who sells or agrees to sell goods;  
(n) “specific goods” means goods identified and agreed upon at the time a contract is made;

(o) “title” means the general title in goods and not merely a special title;

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

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

(3) A person is deemed to be insolvent within the meaning of this Chapter when that person has ceased to pay debts in the ordinary course of business, or cannot pay debts as they become due, whether an act of insolvency has been committed or not, and whether such person has become insolvent or not.

(4) Goods are in a “deliverable state” within the meaning of this Chapter when they are in such a state that the buyer would under the contract be bound to take delivery of them. [P.L.1986-31, §2.]

## PART II- FORMATION OF THE CONTRACT

### Division 1 - Contract of Sale

#### **§103. Sale and agreement to sell.**

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the title in goods to the buyer for a money consideration, called “the price”. 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 title in the goods is transferred from the seller to the buyer the contract is called “a sale”, but where the transfer of the title in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called “an agreement to sell”.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the title in the goods is to be transferred. [P.L. 1986-31, §3.]

#### **§104. Capacity to buy and sell**

Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property; provided, that where necessaries are sold and delivered to a minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor. The term “necessaries” as used in this Section means goods suitable to the condition in life of such minor or other person, and to his actual requirements at the time of the sale and delivery. [P.L. 1986-31, §4.]

### Division 2 - Formalities of the Contract

**§105. Contract of sale; how made.**

Subject to the provisions of this Chapter and of any enactment in that behalf, a contract of sale may be made in writing, 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; provided, that nothing in this Section shall affect the law relating to corporations. [P.L. 1986-31, §5.]

**§106. No contract to be in force unless in writing and signed.**

(1) A contract for the sale of any goods shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or pay the price or part thereof, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

(2) The provisions of this Section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or rendering the same 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 recognizes a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not. [P.L. 1986-31, §6.]

Division 3 - Subject Matter of Contract

**§107. Existing or future goods.**

(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Chapter called "future goods."

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

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods. [P.L. 1986-31, §7.]

**§108. Goods which have perished.**

Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void. [P.L. 1986-31, §8]

**§109. Goods perishing before sale but after agreement to sell.**

Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish before the risk passes to the buyer the agreement is thereby avoided. [P.L. 1986-31, §9.]

Division 4 - The Price

**§110. Ascertainment of price.**

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

(2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. [P.L. 1986-31, §10.]

**§111. Agreement to sell at valuation.**

(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided; provided, that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault. [P.L. 1986-31, §11.]

Division 5 - Conditions and Warranties

**§112. Stipulations as to time of payment.**

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

(2) In a contract of sale “month” means prima facie calendar month. [P.L. 1986-31]

**§113. When condition to be treated as warranty.**

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

(2) Whether a stipulation in a contract of sale is a condition (the breach of which may give rise to a right to treat the contract as repudiated) or a warranty (the breach of which may give rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated) depends in each case on the construction of the contract. 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 a part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express or implied, to that effect.

(4) Nothing in this Section shall affect the case of any condition or warranty, the fulfillment of which is excused by law by reason of impossibility or otherwise. [P. L. 1986-3 1, §13.]

**§114. Implied undertaking as to title, etc.**

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

(a) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when title 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 favor of any third party, not declared or known to the buyer before or at the time when the contract is made. [P.L. 1986-31, §14.]

**§115. Sale by description or sample and description**

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. [P.L. 1986-31, §15.]

**§116. Implied conditions as to quality or fitness.**

(1) Subject to the provisions of this Chapter and of any enactment on 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 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 and judgment, and the goods are of a description which is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose; 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) when 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 if the buyer has examined the goods upon delivery there shall be no implied condition with regard to defects which such examination ought to have revealed.

(2) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(3) An express warranty or condition does not negate a warranty of condition implied by this Chapter unless inconsistent therewith. [P.L. 1986-31, §16.]

**§117. Sale by sample.**

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

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

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

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

(c) there is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on a reasonable examination of the sample. [P.L. 1986-31, §17.]

**PART III - EFFECT OF THE CONTRACT**Division 1 - Transfer of Title Between Seller and Buyer**§118. Goods must be ascertained,**

Where there is a contract for the sale of unascertained goods no title in the goods is transferred to the buyer unless and until the goods are ascertained. [P.L. 1986-31, §18]

**§119. Title passes when intended to pass.**

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

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case. [P. L. 1986-31, §19.]

**§120. Rules for ascertaining intention.**

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

(a) where there is an unconditional contract for the sale of specified goods, in a deliverable state, the title 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, title does not pass until such thing be 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, title does not pass until such act or thing be 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, title therein passes to the buyer when he signifies his approval or acceptance to the seller, or does any other act adopting the transaction. If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, title to the goods passes to the buyer, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact;

(e) where there is a contract for the sale of un-ascertained 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 title in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made;

(f) where pursuant to the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. [P.L. 1986-31, §20.]

**§121. Reservation of right of disposal**

(1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the title in the goods does not pass to the buyer until 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 bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading the title in the goods does not pass to him. [P.L. 1986-31, §21]

**§122. Risk prima facie passes with property.**

Unless otherwise agreed, the goods remain at the seller's risk until title thereto is transferred to the buyer, but when title thereto is transferred to the buyer the goods are at the buyer's risk, whether delivery has been made or not; provided, that where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault with regard to any loss which might not have occurred but for such fault; provided, also, that nothing in this Section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party. [P.L. 1986-31, §22]

Division 2 - Transfer of Title**§123. Sale by person not the owner.**

Subject to the provisions of this Chapter, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is, by his conduct, precluded from denying the seller's authority to sell; provided, that nothing in this Chapter shall affect:

(a) the provisions of any law in force 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 statutory power of sale or under the order of a court of competent jurisdiction. [P.L. 1986-31, §23.]

**§124. Sale under voidable title.**

When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title. [P. L. 1986-3 1, §24.]

**§125. Re-vesting of title in stolen goods on conviction.**

(1) Where goods have been stolen and the offender is prosecuted to conviction, the title in the goods so stolen re-vests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them.



(2) Notwithstanding any enactment to the contrary, where any goods have been obtained by fraud or other wrongful means not amounting to theft, the title in such goods shall not re-vest in the person who was the owner of the goods, or his personal representative by reason only of the conviction of the offender. [P.L. 1986-31, §25]

**§126. Seller or buyer in possession after sale.**

(1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for 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 authorized by the owner of the goods to make the same.

(2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller with respect to 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” shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, to consign goods for the purpose of sale, to buy goods, or to raise money on the security of goods. [P.L.1986-31, §26.]

**§127. Effect of writs of execution.**

A writ of execution against goods shall bind the title in the goods of the execution-debtor as from the time when the writ is delivered to the appropriate authority to be executed; and for the better manifestation of such time, it shall be the duty of such authority, without fee, upon the receipt of any such writ, to endorse upon the back thereof the hour, day, month, and year when he received the same; provided, that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title, notice that such writ or any other writ, by virtue of which the goods of the execution-debtor might be attached or seized, had been delivered to and remained unexecuted in the hands of such authority. [P.L. 1986-31, §27]

#### **PART IV - PERFORMANCE OF THE CONTRACT**

**§128. Duties of seller and buyer**

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale. [P. L. 1986-31, §28]

**§129. Payment and delivery are concurrent conditions.**

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions in which 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

the goods. [P.L. 1986-31, §29]

**§130. Rules as to delivery.**

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, the place of delivery is the seller's place of business, if he has one, and if not, his residence; except that, if the contract be 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 seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.

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

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

(6) Nothing in this Section shall affect the operation of the issuance or transfer of any document of title to goods. [P.L. 1986-31, §30]

**§131. Delivery of wrong quantity.**

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

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

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

(4) The provisions of this Section are subject to any usage of trade, special agreement, or prior course of dealing between the parties. [P.L. 1986-3 1, §31]

**§132. Installment deliveries.**

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

(2) Where there is a contract for the sale of goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries with respect to one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, 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. [P.L. 1986-31, §32.]

**§133. Delivery to carrier.**

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

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits to do so and the goods are lost or damaged in the 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 such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit. [P. L. 1986-31, §33.]

**§134. Risk where goods are delivered at distant places.**

Where the seller of goods agrees to deliver them to a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit. [P.L. 1986-31 , §34.]

**§135. Buyer's right of examining the goods.**

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

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, the seller is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract. [P. L.1986-31, §35.]

**§136 Acceptance.**

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller; or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. [P.L. 1986-31, §36.]

**§137. Buyer not bound to return rejected goods.**

Unless otherwise agreed, when goods are delivered to the buyer and he refuses to accept them, having the right to do so, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them. [P.L. 1986-31, §37.]

**§138. Liability of buyer for neglecting or refusing delivery of goods.**

When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods; provided, that nothing in this Section shall

affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract. [P.L. 1986-31, §38.]

## PART V - RIGHTS OF UNPAID SELLER AGAINST THE GOODS

### Division 1 - Unpaid Seller's Rights

#### §139. “Unpaid seller” defined.

- (1) The seller of goods is deemed to be an “unpaid seller” within the meaning of this Part:
- (a) when the whole of the price has not been paid or tendered; or
  - (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.
- (2) In this Part the term “seller” includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price. [P.L. 1986-31, §39.]

#### §140. Unpaid seller's rights.

- (1) Subject to the provisions of this Chapter and of any enactment in that behalf, notwithstanding that the title in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law:
- (a) a lien on the goods or right to retain them for the price while he is in possession of them;
  - (b) in case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them; and
  - (c) a right of resale as limited by this Chapter .
- (2) Where the title 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 coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer. [P.L.1986-31, §40.]

### Division 2 - Unpaid Seller's Lien

#### §141. Seller's lien.

- (1) Subject to the provisions of this Chapter , the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases:
- (a) where the goods have been sold without any stipulation as to credit;
  - (b) where the goods have been sold for credit, but the term of credit has expired;
  - (c) where the buyer becomes insolvent.
- (2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. [P.L. 1986-31, §41.]

#### §142. Part delivery.

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien

or retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention. [P.L. 1986-31, §42]

**§143. Termination of lien.**

- (1) The unpaid seller of goods loses his lien or right of retention thereon:
  - (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
  - (b) when the buyer or his agent lawfully obtains possession of the goods; or
  - (c) by waiver thereof.
- (2) The unpaid seller of goods, having a lien or right of retention thereon, does not lose the lien or right of retention by reason of the fact that seller has obtained judgment or decree for the price of the goods. [P.L. 1986-31, §43.]

Division 3 - Stoppage in Transitu

**§144. Right of stoppage in transitu.**

Subject to the provisions of this Chapter, 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, may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price. [P. L. 1986-3 1, §44.]

**§145. Duration of transit**

- (1) Goods are deemed to be in the course of transit from the time when they are delivered to a surface or air carrier, or other bailee, for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee.
- (2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.
- (3) If after the arrival of the goods at the appointed destination the carrier or other bailee acknowledges to the buyer, or his agent, that he holds the goods on his behalf, and continues in possession of them as bailee for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.
- (4) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end even if the seller has refused to receive them back.
- (5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case whether they are in possession of the master as a carrier or as agent to the buyer.
- (6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.
- (7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods. [P.L. 1986-31, §45.]

**§146. How stoppage in transitu effected.**

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

(2) When notice of stoppage in transitu is given by the seller to the carrier or other bailee in possession of the goods, the carrier or other bailee must redeliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller. [P.L. 1986-31, §46.]

Division 4 - Resale by Buyer or Seller

**§147. Effect of sub-sale or pledge by buyer.**

Subject to the provisions of this Chapter, the unpaid seller's right of lien, 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, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien, retention, or stoppage in transitu, is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien, retention, or stoppage in transitu, can only be exercised subject to the rights of the transferee. [P.L. 1986-31, §47]

**§148. Sale not generally rescinded by lien or stoppage in transitu.**

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

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

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

(4) Where the seller expressly reserves a right of resale in case the buyer should default, and on default the seller resells the goods, the original contract of sale is thereby rescinded but without prejudice to any claim the seller may have for damages. [P.L. 1986-31, §48.]

**PART VI- ACTIONS FOR BREACH OF THE CONTRACT**

Division I - Remedies of the Seller

**§149. Action for price.**

(1) Where, under a contract of sale, title to 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 for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of

delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although title to the goods has not passed and the goods have not been appropriated to the contract. [P.L. 1986-31, §49.]

**§150. Damages for nonacceptance.**

(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 nonacceptance.

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

(3) Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept. [P. L. 1986-31, §50.]

Division 2 - Remedies of the Buyer

**§151. Damages for non-delivery.**

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

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

(3) Where there is an available market for the goods in question, the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver. [P. L. 1986-31, §51.]

**§152. Specific performance.**

In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just.

The application by the plaintiff may be made at any time before judgment or decree. [P.L. 1986-31, §52.]

**§153. Remedy for breach of warranty.**

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

(a) setup against the seller the breach of warranty in diminution or satisfaction of the price; or

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

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

(3) In the case of breach of warranty of quality, such loss is prima facie the difference

between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4) The fact that the buyer had set up the breach of warranty in diminution or satisfaction of the price does not prevent the buyer from maintaining an action for the same breach of warranty if the buyer has suffered further damage. [P.L. 1986-31, §53.]

**§154. Interest and special damages.**

Nothing in this Chapter shall affect the right of the buyer or the seller to recover interest or special damages in any case where bylaw, interest or special damages may be recoverable, or to recover money paid where the consideration for the payment has failed. [P. L. 1986-31, §54.]

**PART VII- SUPPLEMENTARY**

**§155. Exclusion of implied terms and conditions.**

Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by usage if the usage be such as to bind both parties to the contract. [P.L. 1986-31, §55.]

**§156. Reasonable time a question of fact.**

Where by this Chapter any reference is made to a reasonable time, the question of what is a reasonable time is a question of fact. [P.L. 1986-31, §56.]

**§157. Rights, etc., enforceable by action.**

Where any right, duty, or liability is declared by this Chapter, it may, unless otherwise provided by this Chapter, be enforced by action. [P.L. 1986-31, §57.]

**§158. Auction sales.**

(1) 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.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made any bidder may retract his bid.

(3) 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 to bid or to employ any person to bid at such sale on the seller's behalf or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer.

(4) 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.

(5) Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction. [P.L. 1986-31, §58.]

**§159. Savings.**

(1) The rules in insolvency relating to contracts of sale shall continue to apply notwithstanding anything contained in this Chapter.

(2) The rules of common law, including the law merchant, save insofar as they are not



inconsistent with the express provisions of this Chapter , 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 apply to contracts for the sale of goods.

(3) The provisions of this Chapter 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.

(4) Nothing in this Chapter shall prejudice or affect the landlord's right of hypothecation or lien for rent. [P.L 1986-31, §59.]

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