

Uganda

Sale of Goods Act

Chapter 82

Legislation as at 31 December 2000

Note: Ordinance **repealed** on 2018-08-17 by [Sale of Goods and Supply of Services Act, 2018 \(Act 10 of 2018\)](#).

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Sale of Goods Act (Chapter 82)

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Uganda

Sale of Goods Act

Chapter 82

Commenced on 1 January 1932

[This is the version of this document at 31 December 2000.]

[Note: This legislation was revised and consolidated as at 31 December 2000 and 31 December 2023 by the Law Reform Commission of Uganda. All subsequent amendments have been researched and applied by Laws.Africa for ULII.]

[Repealed on 17 August 2018 by [Sale of Goods and Supply of Services Act, 2018 \(Act 10 of 2018\)](#)]

An Act relating to the sale of goods.

Part I – Interpretation

1. Interpretation

- (1) In this Act, unless the context otherwise requires—
- (a) “**action**” includes counterclaim and setoff;
 - (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, 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 it;
 - (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**” includes all chattels personal, other than things in action and money, and all 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;
 - (i) “**plaintiff**” includes a defendant counterclaiming;
 - (j) “**property**” means the general property in goods, and not merely a special property;
 - (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 of sale is made;
 - (o) “**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 to a right to reject the goods and treat the contract as repudiated.

- (2) A thing is deemed to be done “in good faith” within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not.
- (3) A person is deemed to be insolvent within the meaning of this Act who either 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, whether he or she 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 such a state that the buyer would under the contract be bound to take delivery of them.

Part II – Formation of the contract

Contract of sale

2. Sale and agreement to sell

- (1) A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.
- (2) There may be a contract of sale between one part-owner and another.
- (3) A contract of sale may be absolute or conditional.
- (4) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale; 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 later, the contract is called an agreement to sell.
- (5) 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.

3. Capacity to buy and sell

- (1) Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property; but 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 or she must pay a reasonable price for the necessities.
- (2) In this section, “necessaries” means goods suitable to the condition in life of the infant or minor or other person, and to his or her actual requirements at the time of the sale and delivery.

Formalities of the contract

4. Contract of sale, how made

- (1) Subject to the provisions of this Act and of any Act 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) Notwithstanding subsection (1), nothing in this section shall affect the law relating to corporations.

5. Contract of sale for goods with a value of 200 shillings or more

- (1) A contract for the sale of any goods of the value of two hundred shillings or more shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive them, or give 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 his or her agent for that purpose.

- (2) This section applies 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 the contract be actually made, procured, provided, or fit or ready for delivery, or some act may be requisite for making or completing the goods 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 preexisting contract of sale whether there is an acceptance in performance of the contract or not.

Subject matter of contract

6. Existing or future goods

- (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called “future goods”.
- (2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.
- (3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

7. Goods which have perished

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

8. Goods perished after agreement to sell

Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

The price

9. Ascertainment of price

- (1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in the manner agreed in the contract, or may be determined by the course of dealing between the parties.
- (2) Where the price is not determined in accordance with subsection (1), the buyer must pay a reasonable price.
- (3) What is a reasonable price is a question of fact dependent on the circumstances of each case.

10. Agreement to sell at valuation

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

Conditions and warranties

11. Stipulations as to time

- (1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale; whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.
- (2) In a contract of sale, “month” means *prima facie* calendar month.

12. Breach of condition or warranty

- (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.
- (2) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract.
- (3) A stipulation may be a condition, though called a warranty in the contract.
- (4) 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.
- (5) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

13. Implied undertaking as to title, etc.

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

- (a) an implied condition on the part of the seller that in the case of a sale he or she has a right to sell the goods, and that in the case of an agreement to sell he or she 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.

14. Conditions implied by 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 is by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

15. Implied conditions as to quality or fitness

Subject to the provisions of this Act and of any 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 the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment,

and the goods are of a description which it is in the course of the seller's business to supply, whether the seller is the manufacturer or not, there is an implied condition that the goods shall be reasonably fit for the purpose; except 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 the seller is the manufacturer or not, there is an implied condition that the goods shall be of merchantable quality; except that if the buyer has examined the goods, there shall be no implied condition as regards defects which the examination ought to have revealed;
- (c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- (d) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent with it.

Sale by sample

16. 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 there is—
 - (a) an implied condition that the bulk shall correspond with the sample in quality;
 - (b) an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
 - (c) an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

Part III – Effects of the contract

Transfer of property as between seller and buyer

17. Property in unascertained goods

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

18. Property in specific or ascertained goods passes when intended to pass

- (1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
- (2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

19. Rules for ascertaining intention as to time when property passes

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

- (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 are 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 that thing is done and the buyer has notice that it is done;
- (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 the act or thing is done and the buyer has notice of that;
- (d) 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—
 - (i) when he or she signifies his or her approval or acceptance to the seller or does any other act adopting the transaction;
 - (ii) if he or she does not signify his or her approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of that time, and if no time has been fixed, on the expiration of a reasonable time;
- (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. Such 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 (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he or she is deemed to have unconditionally appropriated the goods to the contract.

20. 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.
- (2) In the case referred to in subsection (1), notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purposes 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.
- (3) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his or her agent, the seller is *prima facie* deemed to reserve the right of disposal.
- (4) 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 or she does not honour the bill of exchange, and if he or she wrongfully retains the bill of lading, the property in the goods does not pass to him or her.

21. Risk *prima facie* passes with property

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; except that—

- (a) 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 that fault;
- (b) 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.

Transfer of title

22. Sale by person not the owner

- (1) Subject to 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 or her conduct precluded from denying the seller's authority to sell.
- (2) Nothing in this Act shall affect—
 - (a) the provisions of any enactment enabling the apparent owner of goods to dispose of them as if he or she were the true owner of the goods;
 - (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.

23. Sale under voidable title

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

24. Revesting of property in stolen goods on conviction of offender

- (1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods or his or her personal representative, notwithstanding any intermediate dealing with them, whether by sale or otherwise.
- (2) Notwithstanding any enactment 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 or her personal representative, by reason only of the conviction of the offender.

25. 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 or her, 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 it.
- (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 or her, 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 same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.
- (3) In this section, "mercantile agent" means a mercantile agent having, in the customary course of his or her business as such 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.

26. Effect of warrants of execution

- (1) A warrant of attachment or other warrant of execution against goods shall bind the property in the goods of the execution debtor as from the time when the warrant is delivered to the bailiff to be executed; and, for the better manifestation of that time, the bailiff shall, without fee, upon the receipt of any such warrant endorse upon its back the hour, day, month and year when he or she received it; but no such warrant shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless that person had at the time when he or she acquired his or her title notice that the warrant or any other warrant by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the bailiff.
- (2) In this section, “bailiff” includes any officer charged with the enforcement of a warrant of execution.

Part IV – Performance of the contract**27. 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.

28. Payment and delivery *prima facie* concurrent conditions

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

29. 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.
- (2) Apart from any such contract, express or implied, as referred to in subsection (1), the place of delivery is the seller’s place of business, if he or she has one, and if not, his or her residence; but if the contract is for the sale of specific goods which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.
- (3) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
- (4) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer until the third person acknowledges to the buyer that he or she holds the goods on his or her behalf; but nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.
- (5) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour.
- (6) What is a reasonable hour is a question of fact.
- (7) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

30. Delivery of wrong quantity or description

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

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

31. Delivery by installments

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

32. Delivery to carrier

- (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is *prima facie* deemed to be a delivery of the goods to the buyer.
- (2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case.
- (3) If the seller omits to make the contract in accordance with subsection (2) 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 herself or may hold the seller responsible in damages.
- (4) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him or her to insure them during their sea transit; and if the seller fails to do so, the goods shall be deemed to be at his or her risk during the sea transit.

33. Risk where goods are delivered elsewhere than at place of sale

Where the seller of goods agrees to deliver them at his or her own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

34. Buyer's right of examining the goods

- (1) Where goods are delivered to the buyer which he or she has not previously examined, the buyer is not deemed to have accepted them until he or she 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.

35. Acceptance

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

36. Buyer is not bound to return rejected goods

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

37. Liability of buyer for neglecting or refusing to take 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 the request take delivery of the goods, he or she is liable to the seller for any loss occasioned by his or her neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods; except that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

Part V – Rights of unpaid seller against the goods**38. Unpaid seller defined**

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

39. Rights of unpaid seller

- (1) Subject to the provisions of this Act and of any Act in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—
 - (a) a lien on the goods or right to retain them for the price while he or she is in possession of them;
 - (b) in case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he or she 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 or her other remedies, a right of withholding delivery similar to and coextensive with his or her rights of lien and stoppage *in transitu* where the property has passed to the buyer.

Unpaid seller's lien

40. Seller's lien

- (1) Subject to this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases—
 - (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 or her right of lien notwithstanding that he or she is in possession of the goods as agent or bailee for the buyer.

41. Lien after part delivery

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

42. Termination of lien

- (1) The unpaid seller of goods loses his or her lien or right of retention on the goods—
 - (a) when he or she 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 or her agent lawfully obtains possession of the goods;
 - (c) by waiver of the lien or right of retention.
- (2) The unpaid seller of goods, having a lien or right of retention on the goods, does not lose his or her lien or right of retention by reason only that he or she has obtained a judgment or decree for the price of the goods.

Stoppage in transitu**43. Right of stoppage *in transitu***

Subject to 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 or she may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

44. Duration of transit

- (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land, air or water, or other bailee for the purpose of transmission to the buyer, until the buyer or his or her agent in that behalf takes delivery of them from the carrier or other bailee.
- (2) If the buyer or his or her 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 or her agent, that he or she holds the goods on his or her behalf and continues in possession of them as bailee for the buyer or his or her 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 the 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 or other bailee wrongfully refuses to deliver the goods to the buyer, or his or her 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 or her agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless the part delivery has been made in such circumstances as to show an agreement to give up possession of the whole of the goods.

45. Mode of stoppage *in transitu*

- (1) The unpaid seller may exercise his or her right of stoppage *in transitu* either by taking actual possession of the goods or by giving notice of his or her claim to the carrier or other bailee in whose possession the goods are.
- (2) The notice referred to in subsection (1) may be given either to the person in actual possession of the goods or to his or her principal.
- (3) In the latter case, the notice, to be effectual, must be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his or her servant or agent in time to prevent a delivery to the buyer.
- (4) When notice of stoppage *in transitu* is given by the seller to the carrier or other bailee in possession of the goods, he or she must redeliver the goods to, or according to the directions of, the seller.
- (5) The expenses of the redelivery under subsection (4) must be borne by the seller.

Resale by buyer or seller

46. Effect of subsale or pledge by buyer

Subject to 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 to that sale or other disposition; except 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 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 if 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.

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

- (1) Subject to this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his or her right of lien or retention or stoppage *in transitu*.
- (2) Where an unpaid seller who has exercised his or her 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 or her 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 or her 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 the contract

Remedies of the seller

48. Action for price

- (1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him or her 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 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.

49. Action for nonacceptance

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

Remedies of the buyer

50. Action for nondelivery

- (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 nondelivery.
- (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 when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

51. Right to specific performance

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

52. 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 the breach of warranty entitled to reject the goods; but he or she may—
 - (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (b) maintain an action against the seller for damages for the breach of warranty.
- (2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.
- (3) In the case of breach of warranty of quality, such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value 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 or her from maintaining an action for the same breach of warranty if he or she has suffered further damage.

53. Interest and special damages

Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

Part VII – Supplementary**54. Variation, etc. of implied rights**

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, if the usage is such as to bind both parties to the contract.

55. Reasonable time

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

56. Rights, etc. enforceable by action

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

57. Auction sales

- (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 that announcement is made any bidder may retract his or her 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 to bid himself or herself or to employ any person to bid at

the sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and 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 a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his or her behalf, may bid at the auction.

58. Savings

- (1) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act.
- (2) The rules of the common law, including the law merchant, except insofar 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) Nothing in this Act shall affect the enactments relating to bills of sale or any other enactment 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.