

Chapter 251.  
***Goods Act 1951.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 251.

***Goods Act 1951.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Goods Act 1951,*

Being an Act to consolidate the law relating to dealings in goods.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

(1) In this Act, unless the contrary intention appears—

“**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 a voluntary transfer of possession from one person to another;

“**document of title**” includes—

- (a) a bill of lading, dock warrant, warehouse-keeper’s certificate, wharfinger’s certificate; and
- (b) a warrant or order for the delivery of goods; and
- (c) any other document used in the ordinary course of business—
  - (i) as proof of the possession or control of goods; or
  - (ii) authorizing or purporting to authorize, by endorsement or by delivery, the possessor of the document to transfer or receive the goods represented by the document;

“**fault**” means wrongful act or default;

“**future goods**”, in relation to a contract of sale, means goods to be manufactured or acquired by the seller after the making of the contract;

**“goods”** includes–

- (a) all chattels personal other than things in action and money; and
- (b) emblements and things attached to or forming part of any land that are agreed to be severed before sale or under the contract of sale;

**“mercantile agent”** means a mercantile agent having, in the customary course of his business as such an agent, authority–

- (a) to sell goods; or
- (b) to consign goods for the purpose of sale; or
- (c) to buy goods; or
- (d) to raise money on the security of goods or of documents of title;

**“plaintiff”** includes a defendant counterclaiming;

**“property”**, in relation to title to or ownership of goods, means the general property in goods and not merely a special property;

**“quality of goods”** includes their state or condition;

**“sale”** includes a bargain and sale and a sale and delivery;

**“seller”** means a person who sells or agrees to sell goods;

**“specific goods”** means goods identified and agreed on at the time when a contract of sale is made;

**“warranty”** means an agreement with reference to goods that are the subject of a contract of sale–

- (a) that is collateral to the main purpose of the contract; and
- (b) the breach of which–
  - (i) gives rise to a claim for damages; but
  - (ii) does not give a right to reject the goods and treat the contract as repudiated.

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

(3) A person who–

- (a) has ceased to pay his debts in the ordinary course of business; or
- (b) cannot pay his debts as they become due,

is insolvent within the meaning of this Act, whether or not he has committed an act of insolvency.

(4) Goods are deemed to be 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.



**2. SAVING OF COMMON LAW POWERS OF AGENTS.**

This Act shall be construed in enlargement and not in derogation of the powers exercisable by an agent independently of this Act.

**PART II. – SALE OF GOODS.*****Division 1.******Formation of Contract.*****3. SALE AND AGREEMENT TO SELL.**

(1) A contract of sale of goods is a contract where 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—

(a) the property in the goods is transferred from the seller to the buyer, the contract is called a sale; and

(b) the transfer of the property in the goods is to take place at a future time or subject to a condition to be fulfilled, the contract is called an agreement to sell.

(5) An agreement to sell becomes a sale when—

(a) the time elapses; or

(b) the conditions are fulfilled,

subject to which the property in the goods is to be transferred.

**4. CAPACITY TO BUY AND SELL.**

(1) In this section, “**necessaries**”, in relation to a person, means goods suitable to—

(a) the condition in life of the person; and

(b) his actual requirements at the time of the sale and delivery.

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

(3) Where necessaries are sold and delivered to—

(a) an infant; or

(b) a person who by reason of mental incapacity or drunkenness is incompetent to contract,

he shall pay a reasonable price for them.

**5. MAKING OF CONTRACT OF SALE.**

(1) Subject to this and any other Act a contract of sale—

(a) may be made—

- (i) in writing, with or without seal; or
  - (ii) by word of mouth; or
  - (iii) partly in writing and partly by word of mouth; or
- (b) may be implied from the conduct of the parties.
- (2) This section does not affect the law relating to corporations.

**6. CONTRACT OF SALE FOR K20.00 OR MORE.**

(1) A contract for the sale of goods of the value of K20.00 or more is not enforceable by action unless—

- (a) the buyer—
  - (i) accepts part of the goods sold and actually receives them; or
  - (ii) gives something in earnest to bind the contract or in part payment; or
- (b) a written note or memorandum of the contract is made and signed by the party to be charged or his agent for the purpose.

(2) This section applies to every contract referred to in Subsection (1) notwithstanding that—

- (a) the goods—
  - (i) may be intended to be delivered at a future time; or
  - (ii) are not made, procured, provided or fit or ready for delivery at the time when the contract is actually made; or
- (b) some act is required for making or completing the goods or making them fit for delivery.

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

**7. EXISTING OR FUTURE GOODS.**

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

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

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

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

**8. PERISHED GOODS.**

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

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

**9. PRICE.**

(1) The price in a contract of sale may be—

- (a) fixed by the contract; or
- (b) left to be fixed in a manner agreed by the contract; or
- (c) determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with Subsection (1), the buyer shall pay a reasonable price.

(3) What is a reasonable price in any particular case is a question of fact.

**10. AGREEMENT TO SELL AT VALUATION.**

(1) Where—

- (a) 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
- (b) the third party cannot or does not make the valuation,

the agreement is avoided.

(2) If in a case to which Subsection (1) applies the goods have been delivered to and appropriated by the buyer, he shall pay a reasonable price for them.

(3) Where the third party referred to in Subsection (1) is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

**11. STIPULATIONS AS TO TIME.**

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

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

(3) In a contract of sale, unless the contrary intention appears, “month” means a calendar month.

**12. CONDITIONS OF CONTRACTS OF SALE.**

(1) Subject to this section, where a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may—

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

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

- (a) a condition the breach of which may give rise to a right to treat the contract as repudiated; or
- (b) a warranty the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated,

depends in each case on the construction of the contract.

(3) A stipulation may be a condition even though it is called a warranty in the contract.

(4) Where—

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

the breach of a condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated unless there is an express or implied term of the contract to that effect.

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

**13. IMPLIED UNDERTAKINGS AS TO TITLE, ETC.**

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

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

**14. IMPLIED CONDITION IN SALES BY DESCRIPTION.**

(1) Subject to Subsection (2) where there is a contract for the sale of goods by description, there is an implied condition that the goods correspond with the description.

(2) Where there is a contract for the sale of goods 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, ETC.**

(1) Subject to this Part and any other law there is no implied warranty or condition as to the quality or fitness for a particular purpose of goods supplied under a contract of sale.

(2) Notwithstanding Subsection (1) but subject to Subsections (3) and (4)–

(a) where–

(i) the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgement; and

(ii) the goods are of a description that it is in the course of the seller's business to supply (whether or not he is the manufacturer),

there is an implied condition that the goods are reasonably fit for that purpose; and

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

(c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade; and

(d) an express warranty or condition does not negative a warranty or condition implied by this Part unless the express warranty or condition is inconsistent with the implied warranty or condition.

(3) 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 a particular purpose.

(4) If the buyer has examined the goods, there is no implied condition as regards defects that the examination ought to have revealed.

**16. SALE BY SAMPLE.**

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

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

- (a) the bulk will correspond with the sample in quality; and
- (b) the buyer will have a reasonable opportunity of comparing the bulk with the sample; and
- (c) the goods are free from any defect making them unmerchantable that would not be apparent on a reasonable examination of the sample.

***Division 2.***

***Effects of the Contract.***

**17. UNASCERTAINED GOODS.**

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

**18. TIME OF PASSING OF PROPERTY.**

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

(2) For the purpose of ascertaining the intention of the parties for the purposes of Subsection (1), regard shall be had—

- (a) to the terms of the contract; and
- (b) to the conduct of the parties; and
- (c) to the circumstances of the case.

(3) Unless a contrary intention appears, the following rules apply in the ascertainment of the intention of the parties as to the time when the property in goods is to pass to the buyer:—

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

- (c) where—
  - (i) there is a contract for the sale of specific goods in a deliverable state; and
  - (ii) 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—
  - (iii) the act or thing is done; and
  - (iv) the buyer has notice that it is done; and
- (d) where 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 signifies his approval or acceptance to the seller, or does any other act adopting the transaction; or
  - (ii) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then—
    - (A) if a time has been fixed for the return of the goods—on the expiration of that time; or
    - (B) if no such time has been fixed—on the expiration of a reasonable time; and
- (e) where—
  - (i) there is a contract for the sale of unascertained or future goods by description; and
  - (ii) goods of that description and in a deliverable state are unconditionally appropriated to the contract—
    - (A) by the seller with the assent of the buyer; or
    - (B) by the buyer with the assent of the seller,

the property in the goods passes to the buyer on the appropriation.

(4) What is a reasonable time for the purposes of Subsection (3)(d)(ii)(B) is a question of fact.

(5) For the purposes of Subsection (3)(e)—

- (a) where in pursuance of the contract the seller—
  - (i) delivers the goods to the buyer or to a carrier or other bailee (whether or not named by the buyer) for the purpose of transmission to the buyer; and
  - (ii) does not reserve the right of disposal,



he shall be deemed to have unconditionally appropriated the goods to the contract; and

- (b) assent may be express or implied, and may be given before or after the appropriation.

## 19. RESERVATION OF RIGHT OF DISPOSAL.

(1) Where—

- (a) there is a contract for the sale of specific goods; or  
 (b) 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 a case to which Subsection (1) applies, notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(3) 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.

(4) Where the seller—

- (a) draws on the buyer for the price; and  
 (b) transmits together the bill of exchange and bill of lading to the buyer in order to secure acceptance or payment of the bill of exchange,

the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

## 20. RISK PASSING WITH PROPERTY.

(1) Subject to Subsection (2), unless otherwise agreed—

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

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

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

**21. SALE BY PERSON NOT THE OWNER.**

(1) Subject to this Part, where goods are sold by a person who—

(a) is not the owner; and

(b) 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 precluded by his conduct from denying the seller's authority to sell.

(2) This Part does not affect—

(a) the provisions of Part III. or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner of the goods; or

(b) the validity of a contract of sale under—

(i) a special, common law or statutory power of sale; or

(ii) an order of a court.

**22. SALE UNDER VOIDABLE TITLE.**

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

**23. MARKET OVERT.**

(1) Where goods are sold in market overt according to the usage of the market, the buyer acquires a good title to the goods, if he buys them—

(a) in good faith; and

(b) without notice of any defect or want of title on the part of the seller.

(2) This section does not affect the law relating to the sale of cattle.

**24. REVESTING OF PROPERTY IN STOLEN, ETC., GOODS.**

(1) Where goods have been stolen and the offender is convicted, 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.

(2) Notwithstanding any other enactment, where goods have been obtained by fraud or other wrongful means not amounting to larceny the property in the goods does 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.

**25. SELLER OR BUYER IN POSSESSION AFTER SALE.**

(1) Where a person who has sold any goods is in possession of the goods or of the documents of title to the goods, the delivery or transfer by him, or by a mercantile

agent acting for him, of the goods or documents of title under a sale, pledge or other disposition of the goods to a person receiving them in good faith and without notice of the previous sale has the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make it.

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

## **26. EFFECT OF WRITS OF EXECUTION.**

(1) In this section, “**the Sheriff**” includes any officer charged with the enforcement of a writ of execution.

(2) Subject to Subsection (3), a writ of execution against any goods binds the property in the goods of the execution debtor as from the time when the writ is delivered to the Sheriff to be executed.

(3) On the receipt of a writ referred to in Subsection (2), the Sheriff shall endorse on the back of the writ the date and the hour when he received it.

(4) The delivery to the Sheriff of a writ referred to in Subsection (2) does not prejudice the title to goods acquired by a person in good faith and for valuable consideration unless the person, at the time when he acquired his title, had notice that the writ, or any other writ 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 Sheriff.

### ***Division 3.***

#### ***Performance of the Contract.***

## **27. DUTIES OF SELLER AND BUYER.**

It is the duty of—

- (a) the seller, to deliver the goods; and
- (b) the buyer, to accept and pay for them,

in accordance with the terms of the contract of sale.

## **28. PAYMENT AND DELIVERY CONCURRENT CONDITIONS.**

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions and accordingly—

- (a) the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price; and
- (b) the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

## 29. RULES AS TO DELIVERY.

- (1) Whether it is the duty—
  - (a) of the buyer to take possession of the goods; or
  - (b) of 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) Subject to Subsection (3), unless there is a contract (express or implied) to the contrary, the place of delivery is the seller's place of business if he has one, and if not, his residence.

(3) If the contract is for the sale of specific goods that to the knowledge of the parties are in some other place when the contract is made, that place is the place of delivery.

- (4) Where under the contract of sale—
  - (a) the seller is bound to send the goods to the buyer; and
  - (b) no time for sending them is fixed,

the seller is bound to send them within a reasonable time.

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

(6) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour, and for the purposes of this subsection what is a reasonable hour is a question of fact.

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

(8) This section does not affect the operation of the issue or transfer of a document of title to goods.

## 30. 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 he accepts the goods delivered he shall 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—

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

but if he accepts the whole of the goods delivered he shall pay for them at the contract rate.

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

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

(4) This section is subject to any usage of trade, special agreement or course of dealing between the parties.

### **31. INSTALMENT DELIVERIES.**

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

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

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

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

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

### **32. DELIVERY TO CARRIER.**

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

(2) Unless otherwise authorized by the buyer, the seller shall make a contract with the carrier on behalf of the buyer that is reasonable having regard to the nature of the goods and the other circumstances of the case, and if the seller omits to do so and the goods are lost or damaged in course of transit the buyer may—

- (a) decline to treat the delivery to the carrier as a delivery to himself; or
- (b) 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 shall give such notice to the buyer as will enable him to insure them during the sea transit, and if the seller fails to do so the goods are at his risk during the sea transit.

**33. RISK WHERE GOODS ARE DELIVERED AT DISTANT PLACE.**

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

**34. BUYER'S RIGHT TO EXAMINE GOODS.**

(1) Where goods are delivered to the buyer that he has not previously examined, he shall not be deemed to have accepted them 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.

**35. ACCEPTANCE.**

The buyer shall be deemed to have accepted the goods when—

- (a) he advises the seller that he has accepted them; or—
- (b) the goods have been delivered to him and he does an act in relation to them that is inconsistent with the ownership of the seller; or
- (c) after the lapse of a reasonable time, he retains the goods without advising the seller that he refuses to accept them.

**36. RETURN OF REJECTED GOODS.**

Unless otherwise agreed, where goods are delivered to the buyer and, having the right to do so, he refuses to accept them—

- (a) he is not bound to return them to the seller; and
- (b) it is sufficient if he advises the seller that he refuses to accept them.

**37. LIABILITY OF BUYER FOR NEGLECTING OR REFUSING DELIVERY.**

(1) Where—

- (a) the seller—

- (i) is ready and willing to deliver the goods; and
- (ii) requests the buyer to take delivery; and
- (b) the buyer does not take delivery of the goods within a reasonable time after the request—

the buyer is liable to the seller for—

- (c) any loss occasioned by his neglect or refusal to take delivery; and
- (d) a reasonable charge for the care and custody of the goods.

(2) This section does not affect the rights of the seller if the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

#### ***Division 4.***

#### ***Rights of Unpaid Seller Against the Goods.***

#### ***Subdivision A. – General.***

### **38. INTERPRETATION OF DIVISION 4.**

In this Division—

“**seller**” includes a person who is in the position of a seller, such as—

- (a) an agent of the seller to whom the bill of lading has been endorsed; or
- (b) a consignor or agent who has himself paid or is directly responsible for the price;

“**stoppage in transitu**” “*stoppage in transitu*” has the meaning and effect given to it by Subdivision B;

“**unpaid seller**” includes seller of goods in a case where—

- (a) the whole of the price has not been paid or tendered; and
- (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.

### **39. RIGHTS OF UNPAID SELLERS.**

(1) Subject to this Part and Part III, and to any other law, notwithstanding that the property in the goods has passed to the buyer the unpaid seller of goods as such has—

- (a) while he is in possession of the goods, a lien on them for the price; and
- (b) in case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with their possession; and
- (c) a right of re-sale as provided by this Division.

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

#### 40. SELLER'S LIEN.

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

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

#### 41. PART DELIVERY.

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

#### 42. TERMINATION OF LIEN.

(1) The unpaid seller of goods loses his lien on the goods—

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

(2) The unpaid seller of goods having a lien on the goods does not lose his lien by reason only of the fact that he has obtained judgement for the price of the goods.

#### 43. RIGHT OF STOPPAGE IN TRANSITU.

Subject to this Part and to Part III, where the buyer of goods becomes insolvent the unpaid seller who has parted with the possession of the goods has the right to stop them *in transitu*.

#### *Subdivision B. – Stoppage in Transitu and Seller's Lien.*

#### 44. NATURE OF RIGHT OF STOPPAGE IN TRANSITU.

Where an unpaid seller has under this Division a right of stoppage *in transitu* in relation to any goods, he has the right—

- (a) to resume possession of the goods so long as they are in course of transit; and



- (b) to retain them until payment or tender of the price.

#### 45. DURATION OF TRANSIT.

(1) For the purposes of the right of stoppage *in transitu*, goods are in course of transit—

- (a) from the time they are delivered to a carrier or other bailee by land or water for transmission to the buyer; and
- (b) until the buyer, or his agent for the purpose, takes delivery of them from the carrier or other bailee.

(2) If the buyer, or his agent for the purpose, 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—

- (a) the transit is at an end; and
- (b) it is immaterial that a further destination for the goods has 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 shall be deemed not to be at an end even if the seller has refused to receive them back.

(5) Where 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 agent for the purpose, the transit shall be deemed to be at an end.

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

#### 46. EFFECTING STOPPAGE IN TRANSITU.

(1) The unpaid seller may exercise his right of stoppage *in transitu* by—

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

(2) Notice under Subsection (1) may be given to the person in actual possession of the goods or to his principal.

(3) To be effectual, a notice given to the principal under Subsection (1) shall 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.

(4) Where notice under Subsection (1) is given by the seller to the carrier or other bailee in possession of the goods, the carrier or other bailee shall re-deliver the goods to the seller or according to his directions.

(5) The expenses of re-delivery under Subsection (4) shall be borne by the seller.

#### **47. SUB-SALE OR PLEDGE BY BUYER OF GOODS SUBJECT TO STOPPAGE IN TRANSITU OR SELLER'S LIEN.**

(1) Subject to this Part, the unpaid seller's right of lien or stoppage *in transitu* is not affected by a sale or other disposition of the goods made by the buyer, unless the seller has assented to the sale or disposition.

(2) Where—

- (a) a document of title to goods has been lawfully transferred to a person as buyer or owner of the goods; and
- (b) the transferee transfers the document to a person who takes it in good faith and for valuable consideration,

then if the last-mentioned transfer was—

- (c) by way of sale—the unpaid seller's right of lien or stoppage *in transitu* is defeated; and
- (d) by way of pledge or other disposition for value—the unpaid seller's right of lien or stoppage *in transitu* can be exercised only subject to the rights of the transferee.

#### **48. RESCISSION OF SALE 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 right of lien or stoppage *in transitu*.

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

(3) Where—

- (a) the goods are of a perishable nature; or
- (b) the unpaid seller gives notice to the buyer of his intention to re-sell,

and the buyer does not, within a reasonable time, pay or tender the price, the unpaid seller may—

- (c) re-sell the goods; and
- (d) recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller—

- (a) expressly reserves a right of re-sale if the buyer makes default; and
- (b) on the buyer making default—re-sells the goods,

the original contract of sale is rescinded, but without prejudice to any claim of the seller for damages.

### ***Division 5.***

#### ***Actions for Breach of Contract.***

##### ***Subdivision A. – Remedies of the Seller.***

#### **49. ACTION FOR PRICE.**

(1) Where under a contract of sale—

- (a) the property in the goods has passed to the buyer; and
- (b) he 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—

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

the seller may maintain an action for the price even if—

- (c) the property in the goods has not passed; and
- (d) the goods have not been appropriated to the contract.

#### **50. DAMAGES FOR NON-ACCEPTANCE.**

(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods—

- (a) the seller may maintain an action against him for damages for non-acceptance; and
- (b) the measure of damages is, subject to Subsection (2), the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract.

(2) 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—

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

***Subdivision B. – Remedies of the Buyer.*****51. DAMAGES FOR NON-DELIVERY.**

(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer—

- (a) the buyer may maintain an action against him for damages for non-delivery; and
- (b) the measure of damages is, subject to Subsection (2), the estimated loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract.

(2) 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—

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

**52. SPECIFIC PERFORMANCE.**

(1) In an action for breach of contract to deliver specific ascertained goods, if it thinks fit the court, on the application of the plaintiff, at any time before judgement, may, by its judgement direct that the contract be specifically performed without giving the defendant the option of retaining the goods on payment of damages.

(2) The judgement may be—

- (a) unconditional; or
- (b) on such terms and conditions as to damages, payment of the price and otherwise as to the court seems just.

**53. REMEDY FOR BREACH OF WARRANTY.**

(1) Where—

- (a) there is a breach of warranty by the seller; or
- (b) the buyer elects, or is compelled, to treat a breach of a condition on the part of the seller as a breach of warranty,

the buyer is not entitled, by reason only of the breach of warranty, to reject the goods but he may—

- (c) set up against the seller the breach of warranty in diminution or extinction of the price; or
- (d) 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) Breach of warranty of quality is *prima facie* the difference between—

- (a) the value of the goods at the time of delivery to the buyer; and
- (b) the value that 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.

### ***Subdivision C. – Saving of Other Rights.***

#### **54. INTEREST AND SPECIAL DAMAGES.**

This Division does not affect the right of a buyer or a seller to recover—

- (a) interest or special damages in a case where by law interest or special damages are recoverable; or
- (b) money paid in a case where the consideration for the payment of it has failed.

### ***Division 6.***

#### ***Supplementary.***

#### **55. EXCLUSION OF IMPLIED TERMS AND CONDITIONS.**

Where a right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by—

- (a) express agreement; or
- (b) the course of dealing between the parties; or
- (c) usage, if the usage is such as to bind both parties to the contract.

#### **56. PROOF OF REASONABLE TIME.**

Where reference is made in this Part to a reasonable time, the question, what is a reasonable time, is a question of fact.

#### **57. AUCTION SALES.**

In the case of a sale by auction—

- (a) where goods are put up for sale in lots, each lot shall *prima facie* be deemed to be the subject of a separate contract for sale; and
- (b) the sale is complete when the auctioneer announces its completion—

- (i) by the fall of the hammer; or
  - (ii) in any other customary manner,  
and until the announcement is made a bidder may retract his bid; and
- (c) where the sale is not notified to be subject to a right to bid on behalf of the seller—
- (i) the seller shall not bid himself or employ a person to bid at the sale; and
  - (ii) the auctioneer shall not knowingly take a bid from the seller or any such person,  
and a sale contravening Subparagraphs (i) or (ii) may be treated as fraudulent by the buyer; and
- (d) the sale may be notified to be subject to a reserved price, and a right to bid may be reserved expressly by or on behalf of the seller; and
- (e) where a right to bid is expressly reserved, the seller or one person on his behalf may bid at the auction.

#### 58. SAVINGS OF RULES IN INSOLVENCY AND COMMON LAW.

(1) This Part does not affect the provisions of the *Insolvency Act 1951* relating to contracts of sale.

(2) Subject to this Part—

- (a) the rules of the common law of England (including the law merchant); and
- (b) in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress, coercion, mistake, or other invalidating cause,

continue to apply to contracts for the sale of goods.

(3) This Part does not affect any other enactments relating to bills of sale, or the sale of goods.

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

**PART III. – MERCANTILE AGENTS, CONSIGNEES AND BILLS OF LADING.**

***Division 1.***

***Preliminary.***

**59. INTERPRETATION OF PART III.**

(1) In this Part, unless the contrary intention appears–

“**goods**” includes goods, wares and merchandise;

“**pledge**” includes a contract, pledging or giving of a lien or security on goods in consideration of–

- (a) an original advance; or
- (b) a further or continuing advance; or
- (c) a pecuniary liability.

(2) For the purposes of this Part, a person shall be deemed to be in possession of goods, or of the documents of title to goods, when the goods or documents, as the case may be, are–

- (a) in his actual custody; or
- (b) held by another person–
  - (i) subject to his control; or
  - (ii) for him or on his behalf.

**60. AGREEMENTS THROUGH CLERKS, ETC.**

For the purposes of this Part, an agreement made with a mercantile agent through a clerk or other person, authorized in the ordinary course of business to make contracts of sale or pledge on his behalf, shall be deemed to be an agreement with the agent.

***Division 2.***

***Dispositions by Mercantile Agents.***

**61. DISPOSITION OF GOODS BY MERCANTILE AGENTS.**

(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, a sale, pledge or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent is, subject to this Part, as valid as if he were expressly authorized by the owner of the goods to make it if the person taking under the disposition–

- (a) acts in good faith; and
- (b) has not, at the time of the disposition, notice that the person making the disposition has no authority to make the disposition.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, a sale, pledge or other disposition that would have been valid if the consent had continued is valid notwithstanding the determination of the consent, if the person taking under the disposition has not, at the time of the disposition, notice that the consent has been determined.

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

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

## **62. PLEDGES OF DOCUMENTS OF TITLE.**

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

## **63. PLEDGE FOR ANTECEDENT DEBT.**

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

## **64. EXCHANGE OF GOODS OR DOCUMENTS.**

(1) The consideration necessary for the validity of a sale, pledge or other disposition of goods under this Part may be—

- (a) payment in cash; or
- (b) the delivery or transfer of—
  - (i) other goods; or
  - (ii) a document of title to goods; or
  - (iii) a negotiable security; or
- (c) any other valuable consideration.

(2) Where goods are pledged by a mercantile agent in consideration of the delivery or transfer of—

- (a) other goods; or
- (b) a document of title to goods; or
- (c) a negotiable security,



the pledgee acquires no right or interest in the goods pledged in excess of the value of the goods, documents or security when delivered or transferred in exchange.

***Division 3.***

***Consignees.***

**65. CONSIGNORS AND CONSIGNEES.**

(1) Where—

(a) the owner of goods has—

(i) given possession of the goods to another person for the purpose of consignment or sale; or

(ii) shipped the goods in the name of another person, and—

(b) the consignee of the goods has not had notice that the other person is not the owner of the goods,

the consignee has, in respect of advances made to or for the use of the other person, the same lien on the goods as if the other person were the owner of the goods, and may transfer the lien to another person.

(2) This section does not affect the validity of a sale, pledge or disposition by a mercantile agent.

***Division 4.***

***Bills of Lading.***

**66. RIGHTS UNDER BILLS OF LADING.**

(1) A consignee of goods named in a bill of lading, and an endorsee of a bill of lading to whom the property in the goods referred to in the bill passes on or by reason of the consignment or endorsement—

(a) has transferred to and vested in him all rights of suit; and

(b) is subject to the same liabilities,

in respect of the goods as if the contract in the bill of lading had been made with him.

(2) Subsection (1) does not prejudice or affect—

(a) any right of stoppage *in transitu*; or

(b) any right to claim freight against the original shipper or owner; or

(c) any liability of the consignee or endorsee by reason or in consequence of—

(i) his being the consignee or endorsee; or

(ii) his receipt of the goods by reason or in consequence of the consignment or endorsement.

**67. BILLS OF LADING AS CONCLUSIVE EVIDENCE.**

In any civil proceedings, a bill of lading in the hands of a consignee or endorsee for valuable consideration that represents goods to have been shipped, is conclusive evidence of the shipment against the master or other person signing the bill of lading, notwithstanding that the goods or part of the goods were not shipped, unless the holder had actual notice at the time of receiving the bill of lading that the goods had not been laden on board.

***Division 5.******Miscellaneous.*****68. TRANSFERRING DOCUMENTS.**

For the purposes of this Part, the transfer of a document may be—

- (a) by endorsement; or
- (b) by delivery, if the document—
  - (i) is by custom or by its express terms, transferable by delivery; or
  - (ii) makes the goods deliverable to the bearer.

**69. SAVING OF CERTAIN RIGHTS.**

This Part does not—

- (a) authorize an agent to exceed or depart from his authority as between himself and his principal, or exempt him from civil or criminal liability for doing so; or
- (b) prevent the owner of goods or documents from recovering them from an agent, or the assignee or trustee in insolvency of an agent, at any time before the sale or pledge of the goods or documents; or
- (c) prevent the owner of goods sold by an agent from recovering from the buyer the price or sum agreed to be paid, subject to any rights of set-off of the buyer against the agent; or
- (d) prevent the owner from having the right to redeem goods or documents pledged at any time before their sale—
  - (i) on satisfying the claim for which the goods were pledged; and
  - (ii) on paying to the agent, if required by him, any money in respect of which the agent would by law be entitled to retain the goods or documents, or any of them, by way of lien as against the owner; or
- (e) prevent the owner from recovering, from a person with whom the goods have been pledged, the balance or sum of money remaining in his hands as the produce of sale after deducting the amount of his lien.

Office of Legislative Counsel, PNG