The Sale of Goods Act

being

Chapter S-1 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan*, 1979-80, c.39; 1980-81, c.83; 1993, c.P-6.2; and 2015, c.21.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER S-1

An Act respecting the Sale of Goods

SHORT TITLE

Short title

1 This Act may be cited as *The Sale of Goods Act*.

INTERPRETATION

Interpretation

2(1) In this Act:

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

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

(c) **"contract of sale"** includes an agreement to sell as well as the sale;

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

(e) **"document of title to goods"** has the same meaning as it has in *The Factors Act*;

(f) **"fault"** means a 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 or money and includes 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) **"property"** means the general property in goods and not merely a special property;

(j) **"quality of goods"** includes their state or condition;

(k) **"sale"** includes a bargain and sale as well as a sale and delivery;

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

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

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

(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 debts in the ordinary course of business or cannot pay his debts as they become due.

(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.

R.S.S. 1978, c.S-1, s.2.

PART I
Formation of the Contract
CONTRACT OF SALE

Sale and agreement to sell

3(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price.

(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 is subject to some condition thereafter to be fulfilled 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.

R.S.S. 1978, c.S-1, s.3.

Capacity to buy and sell

4(1) Subject to subsection (2), capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.

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

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

R.S.S. 1978, c.S-1, s.4.

FORMALITIES OF THE CONTRACT

Formalities

5(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) Nothing in this section affects the law relating to corporations.

R.S.S. 1978, c.S-1, s.5.

When contract enforceable by action

6(1) A contract for the sale of goods of the value of $50 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold and actually receive the same 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 agent in that behalf.

(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 or provided or fit or ready for delivery or that some act may be requisite for the making or completing thereof or rendering the same fit for delivery.

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

R.S.S. 1978, c.S-1, s.6.

SUBJECT-MATTER OF CONTRACT

Existing or future goods

7(1) The goods that form the subject of a contract of sale may be either existing goods owned or possessed by the seller or 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.

R.S.S. 1978, c.S-1, s.7.

Goods perishing before agreement of sale

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

R.S.S. 1978, c.S-1, s.8.

Goods perishing before sale

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

R.S.S. 1978, c.S-1, s.9.

THE PRICE

Ascertainment of price

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

(2) Where the price is not determined in accordance with subsection (1) the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each case.

R.S.S. 1978, c.S-1, s.10.

Agreement to sell at valuation

11(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party who cannot or does not make the valuation the agreement is avoided but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where 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.

R.S.S. 1978, c.S-1, s.11.

CONDITIONS AND WARRANTIES

Stipulation as to time

12(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 contract stipulation as to time other than one described in subsection (1) is of the essence of the contract or not depends on the terms of the contract.

(3) In a contract for sale **"month"** means *prima facie* calendar month.

R.S.S. 1978, c.S-1, s.12.

Condition treated as warranty

13(1) Where a contract of sale is subject to a 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 serverable and the buyer has accepted the goods or part thereof or where 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 a term of the contract expressed or implied to that effect.

(5) Nothing in this section affects a condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

R.S.S. 1978, c.S-1, s.13.

Implied undertaking as to title

14 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 has a right to sell the goods and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of a third party not declared or known to the buyer before or at the time when the contract is made.

R.S.S. 1978, c.S-1, s.14.

Sale by description

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

R.S.S. 1978, c.S-1, s.15.

Implied conditions as to quality or fitness

16 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:

1. 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 that it is in the course of the seller's business to supply, whether he be the manufacturer or not, there is an implied condition that the goods shall be reasonably fit for that purpose;

2. Where goods are bought by description from a seller who deals in goods of that description, whether he is the manufacturer or not, there is an implied condition that the goods shall be of merchantable quality but if the buyer has examined the goods there shall be no implied condition with regard to defects which such examination ought to have revealed;

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

4. An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

R.S.S. 1978, c.S-1, s.16.

SALE BY SAMPLE

Sale by sample

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

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

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

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

(c) there is an implied condition that the goods shall be free from any defect rendering them unmerchantable that would not be apparent on reasonable examination of the sample.

R.S.S. 1978, c.S-1, s.17.

PART II
Effects of the Contract
TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

Goods must be ascertained

18 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.

R.S.S. 1978, c.S-1, s.18.

Property passes when intended to pass

19(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 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.

R.S.S. 1978, c.S-1, s.19.

Rules for ascertaining intention

20 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:

Rule I. — Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery or both be postponed.

Rule II. — 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 be done and the buyer has notice thereof.

Rule III. — 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 or ascertaining the price, the property does not pass until that act or thing be done and the buyer has notice thereof.

Rule IV. — When goods are delivered to the buyer on approval or "on sale or return" or other similar terms the property therein passes to the buyer:

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection then if a time has been fixed for the return of the goods, on the expiration of that time; and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule V. — (1) 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.

(2) 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 is deemed to have unconditionally appropriated the goods to the contract.

(3) Assent as described in subsection (1) may be expressed or implied and may be given either before or after the appropriation is made.

R.S.S. 1978, c.S-1, s.20.

Reservation of right of disposal

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

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

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

R.S.S. 1978, c.S-1, s.21.

Risk *prima facie* passes with property

22(1) Subject to subsection (2), unless otherwise agreed goods remain at the seller's risk until the property therein is transferred to the buyer but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.

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

(3) Nothing in this section affects the properties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.

R.S.S. 1978, c.S-1, s.22; 1980-81, c.83, s.45.

Sale by person not owner

23(1) Subject to this Act where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Provided also that nothing in this Act affects:

(a) the provisions of *The Factors Act* or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

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

R.S.S. 1978, c.S-1, s.23.

Sale under voidable title

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

R.S.S. 1978, c.S-1, s.24.

Acquisition of title to grain

25(1) Where grain is sold and delivered at an elevator licensed under the *Canada Grain Act*, to the manager or operator thereof as defined in the said Act, or to a track buyer licensed under the said Act, the buyer acquires a good title to the grain so bought and delivered, provided he buys it in good faith and without actual notice of any defect or want of title on the part of the seller in the grain.

(2) Where the manager or operator or any track buyer or other party licensed under the *Canada Grain Act* advances money on the security of grain delivered pursuant to subsection (1), the party advancing the money shall have a charge or lien on the grain to the extent of the advance made and any charges that may accrue for storage or interest in priority to any other claim, provided that the advance is made in good faith and without actual notice of any adverse claim or lien or of any defect or want of title on the part of the party receiving the advance on the grain so delivered.

(3) Notwithstanding *The Personal Property Security Act, 1993*, the interest of a buyer under subsection (1) or (2) takes priority over any security interest in the grain, if the interest of the buyer is acquired under the circumstances described in subsection (1) or (2).

R.S.S. 1978, c.S-1, s.25; 1979-80, c.39, s.3; 1993, c.P-6.2, s.75.

Seller or buyer in possession after sale

26(1) Where a person having sold goods continues or is in possession of the goods or of the documents of title to the goods the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under a sale, pledge or other disposition thereof to a person receiving the goods or documents in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer was expressly authorized by the owner of the goods to do so.

(1.1) Subsection (1) does not apply to a sale, pledge or other disposition of goods or of documents of title to the goods that is out of the ordinary course of business of the person having sold the goods, where, prior to the sale, pledge or disposition, the interest of the owner is registered in the Personal Property Registry in accordance with the regulations made under *The Personal Property Security Act, 1993,* and Part IV of that Act applies, *mutatis mutandis,* to such registration.

(1.2) Subsection (1.1) does not operate so as to prevent a person who receives the goods or the documents of title to the goods in good faith and without notice of the previous sale from selling, pledging or otherwise disposing of the goods or the documents of title to the goods to a person who receives the goods or the documents of title to the goods in good faith and without notice of the first sale, unless the goods are of a type or kind which are required by the regulations under *The Personal Property Security Act, 1993* to be described by serial number and are so described in a registered financing statement.

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

(3) In this section **"mercantile agent"** has the same meaning as in *The Factors Act*.

(4) Subsection (2) does not apply to a sale, pledge or other disposition of goods or documents of title to the goods by a person who has obtained possession of the goods pursuant to a security agreement under which the seller has a security interest as defined in *The Personal Property Security Act, 1993.*

R.S.S. 1978, c.S-1, s.26; 1979-80, c.39, s.4; 1993, c.P-6.2, s.75.

PART III
Performance of the Contract

Duties of seller and buyer

27 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.

R.S.S. 1978, c.S-1, s.27.

Payment and delivery concurrent conditions

28 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.

R.S.S. 1978, c.S-1, s.28.

Rules as to delivery

29(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 on the contract express or implied between the parties and apart from a contract express or implied the place of delivery is the seller's place of business if he has one and if not his residence.

(2) If the contract is for the sale of specific goods that 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 the sale are in possession of a third person there is no delivery by seller to buyer unless and until the third person acknowledges to the buyer that he holds the goods on his behalf but that nothing in this section affects 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. What is a reasonable hour is a question of fact.

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

R.S.S. 1978, c.S-1, s.29.

Delivery of wrong quantity

30(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell the buyer may reject them but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell the buyer may accept the goods included in the contract and reject the rest or he may reject the whole and if the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

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

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

R.S.S. 1978, c.S-1, s.30.

Instalment deliveries

31(1) Unless otherwise agreed the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for and the seller makes defective deliveries in respect of one or more instalments or the buyer neglects or refuses to take delivery of or pay for one or more instalments it is a question 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.

R.S.S. 1978, c.S-1, s.31.

Delivery to carrier

32(1) Where in pursuance of 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 named by the buyer or not for the purpose of transmission to the buyer is *prima facie* a delivery of the goods to the buyer.

(2) Unless otherwise authorized by the buyer the seller must make such contract with the carrier on behalf of the buyer as 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 decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages.

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

R.S.S. 1978, c.S-1, s.32.

Risk where goods delivered at distant place

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

R.S.S. 1978, c.S-1, s.33.

Buyer's right of examination

34(1) Where goods are delivered to the buyer that he had not previously examined he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed when the seller tenders delivery of goods to the buyer he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

R.S.S. 1978, c.S-1, s.34.

Acceptance

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

R.S.S. 1978, c.S-1, s.35.

Buyer not bound to return rejected goods

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

R.S.S. 1978, c.S-1, s.36.

Liability of buyer for refusing delivery

37(1) 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 is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

(2) Nothing in this section affects the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

R.S.S. 1978, c.S-1, s.37.

PART IV
Rights of Unpaid Seller against the Goods

"Unpaid seller"

38(1) The seller of the goods is deemed to be an **"unpaid seller"** within the meaning of this Act:

(a) when the whole of the contract 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 **"seller"** includes a person who is in the position of a seller, as for instance, an agent of the seller to whom the bill of lading has been endorsed or a consignor or agent who has himself paid or is directly responsible for the price.

R.S.S. 1978, c.S-1, s.38.

Unpaid seller's rights

39(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 has by implication of law:

(a) a lien on the goods or right to retain them for the price while he is in possession of them;

(b) in the case of the insolvency of the buyer a right of stopping the goods *in transitu* after he has parted with the possession of them;

(c) a right of resale as limited by this Act.

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

R.S.S. 1978, c.S-1, s.39.

UNPAID SELLER'S LIEN

Lien

40(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 right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

R.S.S. 1978, c.S-1, s.40.

Part delivery

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

R.S.S. 1978, c.S-1, s.41.

Termination of lien

42(1) The unpaid seller of goods loses his lien or right of retention thereon:

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(b) when the buyer or his agent lawfully obtains possession of the goods;

(c) by waiver thereof.

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

R.S.S. 1978, c.S-1, s.42.

STOPPAGE IN TRANSITU

Right of stoppage

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

R.S.S. 1978, c.S-1, s.43.

Duration of transit

44(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water or other bailee for the purpose of transmission to the buyer until the buyer or his agent in that behalf takes delivery of them from the carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination the transit is at an end.

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

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

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

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

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

R.S.S. 1978, c.S-1, s.44.

How stoppage effected

45(1) The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are.

(2) A notice pursuant to subsection (1) may be given either to the person in actual possession of the goods or to his principal and in the latter case the notice to effectual must be given at such time and under such circumstances that the principal by the exercise of reasonable diligence may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(3) When notice of stoppage *in transitu* is given by the seller to the carrier or other bailee in possession of the goods he must redeliver the goods to or according to the direction of the seller, and the expenses of redelivery must be borne by the seller.

R.S.S. 1978, c.S-1, s.45.

RESALE BY BUYER OR SELLER

Effect of subsale or pledge by buyer

46(1) 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 that the buyer may have made unless the seller has assented thereto.

(2) Where a document of title to goods has been lawfully transferred to a person as buyer or owner of the goods and that person transfers the document to a person who takes the document in good faith and for valuable consideration 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.

R.S.S. 1978, c.S-1, s.46.

Sale not generally rescinded by lien or stoppage

47(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 retention or stoppage *in transitu*.

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

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

(4) Where the seller expressly reserves a right of resale if the buyer makes 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.

R.S.S. 1978, c.S-1, s.47.

PART V
Actions for Breach of the Contract
REMEDIES OF THE SELLER

Action for price

48(1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract the seller may maintain an action against him for the price of the goods.

(2) Where under a contract of sale the price is payable on a 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.

(3) Nothing in this section shall prejudice the right of the seller to recover interest on the price from the date of tender of the goods or from the date on which the price was payable.

R.S.S. 1978, c.S-1, s.48.

Damages for non-acceptance

49(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods the seller may maintain an action against him for damages for non-acceptance.

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

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

R.S.S. 1978, c.S-1, s.49.

REMEDIES OF THE BUYER

Damages for non-delivery

50(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer the buyer may maintain an action against the seller for damages for non-delivery.

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

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

R.S.S. 1978, c.S-1, s.50.

Specific performance

51(1) In an 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 direct that the contract shall be performed specifically without giving the defendant the option of retaining the goods on payment of damages.

(2) A judgment pursuant to subsection (1) may be unconditional or upon such terms and conditions as to damages, payment of the price and otherwise as to the court seems just and the application by the plaintiff may be made at any time before judgment.

R.S.S. 1978, c.S-1, s.51.

Remedy for breach of warranty

52(1) Where there is a breach of warranty by the seller or where 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 by reason only of the breach of warranty entitled to reject the goods; but he may:

(a) set up against the seller the breach of warranty in diminution or extinction of the price; or

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

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

(3) In 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 from maintaining an action for the same breach of warranty if he has suffered further damage.

R.S.S. 1978, c.S-1, s.52.

Interest and special damages

53 Nothing in this Act affects 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.

R.S.S. 1978, c.S-1, s.53.

PART VI
Supplementary

Exclusion of implied terms and conditions

54 Where a 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 be such as to bind both parties to the contract.

R.S.S. 1978, c.S-1, s.54.

Reasonable time a question of fact

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

R.S.S. 1978, c.S-1, s.55.

Rights enforceable by action

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

R.S.S. 1978, c.S-1, s.56.

Auction sales

57 In the case of a sale by auction:

1 Where goods are put up for sale by auction in lots each lot is *prima facie* deemed to be the subject of a separate contract of sale;

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

3 Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller it shall not be lawful for the seller to bid himself or to employ any person to bid at the sale or for the auctioneer knowingly to take a bid from the seller or any such person. A sale contravening this rule may be treated as fraudulent by the buyer;

4 A sale by auction may be notified to be subject to a reserve or upset price and the right to bid may also be reserved expressly by or on behalf of the seller. Where a right to bid is expressly reserved but not otherwise the seller or any one person on his behalf may bid at the auction.

R.S.S. 1978, c.S-1, s.57.

Existing laws preserved subject to Act

58(1) The rules of the common law including the law merchant save 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.

(2) Nothing in this Act affects the enactments relating to bills of sale or any enactment relating to the sale of goods that is not expressly repealed by this Act.

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

R.S.S. 1978, c.S-1, s.58; 2015, c.21, s.64.

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