

**Reprint
as at 1 September 2017**



Sale of Goods Act 1908

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Sale of Goods Act 1908: repealed, on 1 September 2017, by section 345(1)(i) of the Contract and Commercial Law Act 2017 (2017 No 5).

Contents

	Page
Title	3
1 Short Title	4
2 Interpretation	4
Part 1	
Formation of the contract	
<i>Contract of sale</i>	
3 Sale and agreement to sell	5
4 Capacity to buy and sell	6
<i>Formalities of the contract</i>	
5 Contract of sale, how made	6
6 Contract of sale for £10 and upwards [<i>Repealed</i>]	6
<i>Subject matter of contract</i>	
7 Existing or future goods	6
8 Goods which have perished	7

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

9	Goods perishing before sale but after agreement to sell	7
	<i>The price</i>	
10	Ascertainment of price	7
11	Agreement to sell at valuation	7
	<i>Conditions and warranties</i>	
12	Stipulations as to time	8
13	When condition to be treated as warranty	8
14	Implied undertaking as to title, etc	8
15	Sale by description	9
16	Implied conditions as to quality or fitness	9
	<i>Sale by sample</i>	
17	Sale by sample	9
	Part 2	
	Effects of the contract	
	<i>Transfer of property as between seller and buyer</i>	
18	Goods must be ascertained	10
19	Property passes when intended to pass	10
20	Rules for ascertaining intention	10
21	Reservation of right of disposal	11
22	Risk prima facie passes with property	12
	<i>Transfer of title</i>	
23	Sale by person not the owner	12
24	Market overt	12
25	Sale under voidable title	13
26	Revesting of property in stolen goods on conviction of offender	13
27	Seller or buyer in possession after sale	13
28	Effect of writs of execution	14
	Part 3	
	Performance of the contract	
29	Duties of seller and buyer	14
30	Payment and delivery are concurrent conditions	15
31	Rules as to delivery	15
32	Delivery of wrong quantity	15
33	Instalment deliveries	16
34	Delivery to carrier	16
35	Risk where goods are delivered at distant place	16
36	Buyer's right of examining the goods	17
37	Acceptance	17
38	Buyer not bound to return rejected goods	17
39	Liability of buyer for neglecting or refusing delivery of goods	17

Part 4		
Rights of unpaid seller against the goods		
40	Unpaid seller defined	18
41	Unpaid seller's rights	18
<i>Unpaid seller's lien</i>		
42	Unpaid seller's lien	18
43	Part delivery	19
44	Termination of lien	19
<i>Stoppage in transitu</i>		
45	Right of stoppage <i>in transitu</i>	19
46	Duration of transit	19
47	How stoppage <i>in transitu</i> is effected	20
<i>Resale by buyer or seller</i>		
48	Effect of subsale or pledge by buyer	20
49	Sale not generally rescinded by lien or stoppage <i>in transitu</i>	21
Part 5		
Actions for breach of the contract		
<i>Remedies of the seller</i>		
50	Action for price	21
51	Damages for non-acceptance	22
<i>Remedies of the buyer</i>		
52	Damages for non-delivery	22
53	Specific performance	22
54	Remedy for breach of warranty	22
55	Interest and special damages	23
Part 6		
Supplementary		
56	Exclusion of implied terms and conditions	23
56A	Exclusion where Consumer Guarantees Act 1993 applies	23
57	Reasonable time a question of fact	23
58	Rights and duties under Act enforceable by action	24
59	Auction sales [<i>Repealed</i>]	24
60	Savings	24
Schedule		
Enactments consolidated		
25		

An Act to consolidate certain enactments of the Parliament of New Zealand relating to the sale of goods

Title: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

1 Short Title

- (1) The Short Title of this Act is the Sale of Goods Act 1908.
Enactments consolidated
- (2) This Act is a consolidation of the enactments mentioned in the Schedule.
- (3) All matters and proceedings commenced under the said enactments, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.
- (4) This Act is divided into Parts, as follows:
 - Part 1—Formation of the contract (sections 3 to 17)
 - Part 2—Effects of the contract (sections 18 to 28)
 - Part 3—Performance of the contract (sections 29 to 39)
 - Part 4—Rights of unpaid seller against the goods (sections 40 to 49)
 - Part 5—Actions for breach of the contract (sections 50 to 55)
 - Part 6—Supplementary (sections 56 to 60).

2 Interpretation

- (1) In this Act, if not inconsistent with the context,—
 - 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 as well as a sale
 - delivery** means voluntary transfer of possession from one person to another
 - document of title to goods** includes any bill of lading, dock warrant, warehouse keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented
 - fault** means wrongful act or default
 - future goods** means goods to be manufactured or acquired by the seller after the making of the contract of sale
 - goods** includes—
 - (a) all chattels personal other than money or choses in action; and
 - (b) emblements, growing crops, and things attached to or forming part of the land that are agreed to be severed before sale or under the contract of sale; and
 - (c) to avoid doubt, computer software

plaintiff includes defendant counterclaiming

property means the general property in goods, and not merely a special property

quality of goods includes their state or condition

sale includes a bargain and sale, as well as 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 a contract of sale is made

warranty means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such 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

writ of execution means any writ of sale, warrant to seize property, or other writ or warrant of execution under which chattels of any kind may be seized or taken to satisfy process issued out of any court.

- (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 is 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, whether he has committed an act of bankruptcy or not.
- (4) Goods are in a **deliverable state** within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

Compare: 1895 No 23 s 2

Section 2(1) **goods**: replaced, on 8 July 2003, by section 3 of the Sale of Goods Amendment Act 2003 (2003 No 35).

Section 2(1) **writ of execution**: amended, on 14 April 2014, by section 43 of the District Courts Amendment Act 2011 (2011 No 30).

Part 1

Formation of the contract

Contract of sale

3 Sale and agreement to sell

- (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 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.

Compare: 1895 No 23 s 3

4 Capacity to buy and sell

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

provided that where necessaries are sold and delivered to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

- (2) **Necessaries** in this section means goods suitable to the condition in life of the person, and to his actual requirements at the time of the sale and delivery.

Compare: 1895 No 23 s 4

Section 4(1) proviso: amended, on 1 January 1970, by section 18 of the Minors' Contracts Act 1969 (1969 No 41).

Section 4(2): amended, on 1 January 1970, by section 18 of the Minors' Contracts Act 1969 (1969 No 41).

Formalities of the contract

5 Contract of sale, how made

Subject to the provisions of this Act and of any statute 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:

provided that nothing in this section shall affect the law relating to corporations.

Compare: 1895 No 23 s 5

6 Contract of sale for £10 and upwards

[Repealed]

Section 6: repealed, on 19 October 1956, by section 4(1) of the Contracts Enforcement Act 1956 (1956 No 23).

Subject matter of contract

7 Existing or future goods

- (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or ac-

quired by the seller after the making of the contract of sale, in this Act called **future goods**.

- (2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.
- (3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Compare: 1895 No 23 s 7

8 Goods which have perished

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

Compare: 1895 No 23 s 8

9 Goods perishing before sale but after agreement to sell

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

Compare: 1895 No 23 s 9

The price

10 Ascertainment of price

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

Compare: 1895 No 23 s 10

11 Agreement to sell at valuation

- (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided:
provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.
- (2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

Compare: 1895 No 23 s 11

*Conditions and warranties***12 Stipulations as to time**

- (1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale.
- (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 **month** means prima facie calendar month.

Compare: 1895 No 23 s 12

13 When condition to be treated as warranty

- (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated.
- (2) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.
- (3) Where a contract of sale is not severable, and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.
- (4) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

Compare: 1895 No 23 s 13

Section 13(3): amended, on 1 April 1980, by section 14(1)(a) of the Contractual Remedies Act 1979 (1979 No 11).

14 Implied undertaking as to title, etc

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

- (a) an implied condition on the part of the seller that in the case of a sale he 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 are free from any charge or incumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

Compare: 1895 No 23 s 14

15 Sale by description

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

Compare: 1895 No 23 s 15

16 Implied conditions as to quality or fitness

Subject to the provisions of this Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

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

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

- (b) 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:

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

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

Compare: 1895 No 23 s 16

Sale by sample

17 Sale by sample

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

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

Compare: 1895 No 23 s 17

Part 2

Effects of the contract

Transfer of property as between seller and buyer

18 Goods must be ascertained

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.

Compare: 1895 No 23 s 18

19 Property passes when intended to pass

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

Compare: 1895 No 23 s 19

20 Rules for ascertaining intention

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

Rule 1 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, is postponed.

Rule 2 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 such thing is done, and the buyer has notice thereof.

Rule 3 Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some

other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done, and the buyer has notice thereof.

Rule 4 Where 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 such time, and if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5 (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. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

- (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.

Compare: 1895 No 23 s 20

21 Reservation of right of disposal

- (1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled.
- (2) In 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.
- (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 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.

Compare: 1895 No 23 s 21

22 Risk prima facie passes with property

- (1) Unless otherwise agreed, the 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:

provided that where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

- (2) Nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Compare: 1895 No 23 s 22

Transfer of title

23 Sale by person not the owner

- (1) Subject to the provisions of 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 that nothing in this Act shall affect—
- (a) the provisions of the Mercantile Law Act 1908, or any other 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 of sale under any special common law or statutory power of sale, or under the order of a court of competent jurisdiction;
 - (c) the provisions of the Personal Property Securities Act 1999 enabling a purchaser of goods to acquire good title to the goods.

Compare: 1895 No 23 s 23

Section 23(2)(c): replaced, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

24 Market overt

The law relating to market overt shall not apply in New Zealand.

Section 24: replaced, on 1 December 1961, by section 2 of the Sale of Goods Amendment Act 1961 (1961 No 98).

25 Sale under voidable title

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

Compare: 1895 No 23 s 25

26 Revesting of property in stolen goods on conviction of offender

- (1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen reverts in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise.
- (2) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in such goods shall not revert in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.

Compare: 1895 No 23 s 26

27 Seller or buyer in possession after sale

- (1) Where a person, having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.
- (1A) Subsection (1) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a security interest that has been perfected under the Personal Property Securities Act 1999, in possession of the goods or documents of title to the goods.
- (2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(2A) Subsection (2) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a security interest that has been perfected under the Personal Property Securities Act 1999, in possession of the goods or documents of title to the goods.

(3) In this section,—

mercantile agent has the same meaning as in Part 1 of the Mercantile Law Act 1908

security interest has the same meaning as in section 17 of the Personal Property Securities Act 1999.

Compare: 1890 No 11 ss 10, 11; 1895 No 23 s 27

Section 27(1A): inserted, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 27(2) first proviso: repealed, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 27(2) second proviso: repealed, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 27(2A): inserted, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 27(3): replaced, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

28 Effect of writs of execution

(1) A writ of execution against 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; and, for the better manifestation of such time, the sheriff shall, without fee, upon the receipt of any such writ, indorse on the back thereof the hour, day, month, and year when he received the same:

provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ under 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.

(2) In this section **sheriff** includes any officer charged with the enforcement of a writ of execution.

Compare: 1895 No 23 s 28

Part 3 Performance of the contract

29 Duties of seller and buyer

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Compare: 1895 No 23 s 29

30 Payment and delivery are concurrent conditions

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

Compare: 1895 No 23 s 30

31 Rules as to delivery

- (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.
- (2) Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he has one, and if not, his residence:
provided that if the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.
- (3) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
- (4) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:
provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.
- (5) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. 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.

Compare: 1895 No 23 s 31

32 Delivery of wrong quantity

- (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.
- (2) 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. 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 the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer

may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

- (4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

Compare: 1895 No 23 s 32

33 Instalment deliveries

- (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 1 or more instalments, or the buyer neglects or refuses to take delivery of or pay for 1 or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach, giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

Compare: 1895 No 23 s 33

34 Delivery to carrier

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

- (2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

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

Compare: 1895 No 23 s 34

35 Risk where goods are delivered at distant place

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 any risk of deterioration in the goods necessarily incident to the course of transit.

Compare: 1895 No 23 s 35

36 Buyer's right of examining the goods

- (1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.
- (2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Compare: 1895 No 23 s 36

37 Acceptance

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or (except where section 36 otherwise provides) when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time he retains the goods, without intimating to the seller that he has rejected them.

Compare: 1895 No 23 s 37

Section 37: amended, on 1 April 1980, by section 14(1)(b) of the Contractual Remedies Act 1979 (1979 No 11).

38 Buyer not bound to return rejected goods

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

Compare: 1895 No 23 s 38

39 Liability of buyer for neglecting or refusing delivery of goods

Where the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

Compare: 1895 No 23 s 39

Part 4

Rights of unpaid seller against the goods

40 Unpaid seller defined

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

Compare: 1895 No 23 s 40

41 Unpaid seller's rights

- (1) Subject to the provisions of this Act, and of any statute in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has, by implication of law,—
- (a) a lien on the goods, or right to retain them for the price, while he is in possession of them;
 - (b) in case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them;
 - (c) a right of resale, as limited by this Act.
- (2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.

Compare: 1895 No 23 s 41

Unpaid seller's lien

42 Unpaid seller's lien

- (1) Subject to the provisions of 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, namely:
- (a) where the goods have been sold without any stipulation as to credit;
 - (b) where the goods have been sold on credit, but the term of credit has expired:

- (c) where the buyer becomes insolvent.
- (2) The seller may exercise his right of lien, notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Compare: 1895 No 23 s 42

43 Part delivery

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

Compare: 1895 No 23 s 43

44 Termination of lien

- (1) The unpaid seller of goods loses his lien or right of retention thereon—
 - (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods:
 - (b) when the buyer or his agent lawfully obtains possession of the goods:
 - (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.

Compare: 1895 No 23 s 44

Stoppage in transitu

45 Right of stoppage *in transitu*

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.

Compare: 1895 No 23 s 45

46 Duration of transit

- (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land 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 such carrier or other bailee.
- (2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

- (3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf, and continues in possession of them as bailee for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.
- (4) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.
- (5) When goods are delivered to a ship chartered by the buyer, it is a question, depending on the circumstances of the particular case, whether they are in 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 in that behalf, the transit is deemed to be at an end.
- (7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

Compare: 1895 No 23 s 46

47 How stoppage *in transitu* is effected

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

Compare: 1895 No 23 s 47

Resale by buyer or seller

48 Effect of subsale or pledge by buyer

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

provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the

document to a person who takes the document in good faith and for valuable consideration, then, if such 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 such 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.

Compare: 1895 No 23 s 48

49 Sale not generally rescinded by lien or stoppage *in transitu*

- (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien 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 in case the buyer should make default, and on the buyer making default resells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

Compare: 1895 No 23 s 49

Part 5

Actions for breach of the contract

Remedies of the seller

50 Action for price

- (1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.
- (2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.

Compare: 1895 No 23 s 50

51 Damages for non-acceptance

- (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.

Compare: 1895 No 23 s 51

*Remedies of the buyer***52 Damages for non-delivery**

- (1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.
- (2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.
- (3) Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or if no time was fixed, then at the time of the refusal to deliver.

Compare: 1895 No 23 s 52

53 Specific performance

- (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) The judgment may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as the court deems just; and the application by the plaintiff may be made at any time before judgment.

Compare: 1895 No 23 s 53

54 Remedy for breach of warranty

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

- (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (b) maintain an action against the seller for damages for the breach of warranty.
- (2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.
- (3) In the case of breach of warranty of quality, such loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.
- (4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

Compare: 1895 No 23 s 54

55 Interest and special damages

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

Compare: 1895 No 23 s 55

Part 6 Supplementary

56 Exclusion of implied terms and conditions

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

Compare: 1895 No 23 s 56

56A Exclusion where Consumer Guarantees Act 1993 applies

Nothing in section 10 or in sections 13 to 17 or in section 38 or in section 54 shall apply to any supply of goods to which the Consumer Guarantees Act 1993 applies.

Section 56A: inserted, on 1 April 1994, by section 48 of the Consumer Guarantees Act 1993 (1993 No 91).

57 Reasonable time a question of fact

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

Compare: 1895 No 23 s 57

58 Rights and duties under Act enforceable by action

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

Compare: 1895 No 23 s 58

59 Auction sales

[Repealed]

Section 59: repealed, on 18 December 2013, by section 28(3) of the Auctioneers Act 2013 (2013 No 148).

60 Savings

- (1) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act.
- (2) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to contracts for the sale of goods.
- (3) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.
- (4) Nothing in this Act shall affect the enactments in force relating to chattels transfer, or any enactment in force relating to the sale of goods.

Compare: 1895 No 23 s 61

Schedule
Enactments consolidated

Mercantile Agents Act 1890 (1890 No 11)

Sections 10 and 11.

Sale of Goods Act 1895 (1895 No 23)

Layby Sales Act 1971

Public Act	1971 No 80
Date of assent	8 December 1971
Commencement	8 December 1971

1 Short Title

This Act may be cited as the Layby Sales Act 1971, and shall be read together with and deemed part of the Sale of Goods Act 1908.

Section 1: Layby Sales Act 1971: repealed, on 17 June 2014 (but continuing to apply in relation to a layby sale (having the meaning given to it by section 3) entered into before that date), by section 42(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

2 Interpretation

In this Act, unless the context otherwise requires,—

buyer means a person who buys or agrees to buy goods by a layby sale, and, if the rights of that person are assigned or are transferred by operation of law, includes the person for the time being entitled to those rights

cancel, in relation to a layby sale, means cancel, rescind, or terminate by any means whatsoever except by performance; and **cancellation** has a corresponding meaning

purchase price means the total sum of money required to be paid by the buyer under a layby sale plus the value of any other consideration provided or required to be provided by the buyer to purchase the goods to which the sale relates

seller means a person who sells or agrees to sell goods by a layby sale, and, if the rights of that person are assigned or are transferred by operation of law, includes the person for the time being entitled to those rights.

3 Layby sale defined

- (1) For the purposes of this Act a layby sale is a contract of sale of goods at retail under terms, express or implied, which provide that—
- (a) the goods are not to be delivered to the buyer until the purchase price or a specified part or proportion thereof is paid, whether or not any charge is expressed to be payable for storage or delivery of the goods; and
 - (b) the whole or part of the purchase price—
 - (i) is to be paid by instalments (whether the number of instalments or the amount of all or any of them is fixed by the contract or left at the option of the buyer) payable over a fixed or ascertainable period; or

- (ii) is to be paid at the expiration of a fixed or ascertainable period with the option, express or implied, for the buyer to make payments in respect of the purchase price during that period;

but a contract of sale of goods to be delivered by instalments, where the whole of the purchase price of each instalment is payable at the time that instalment is delivered, is not a layby sale.

- (2) Where, by virtue of 2 or more agreements, none of which by itself constitutes a layby sale, there is a transaction which is in substance or effect a layby sale, the agreements shall be treated for the purposes of this Act as a layby sale made at the time when the last of those agreements was made.

Compare: Lay-by Sales Act 1943 s 2(1) (NSW)

4 Act not to apply to certain layby sales

This Act does not apply to any layby sale in which—

- (a) the purchase price exceeds \$7,500; or
- (b) the goods sold or agreed to be sold are mainly or wholly vehicles that are motor vehicles for the purposes of the Motor Vehicle Sales Act 2003 and the seller is a motor vehicle trader registered under that Act.

Section 4(a): amended, on 15 November 2000, by section 3 of the Layby Sales Amendment Act 2000 (2000 No 70).

Section 4(b): amended, on 15 December 2003, by section 145 of the Motor Vehicle Sales Act 2003 (2003 No 12).

5 Act to bind the Crown

This Act shall bind the Crown.

6 Risk not to pass until goods delivered

Notwithstanding the provisions of section 22 of the Sale of Goods Act 1908, goods that are the subject of a layby sale remain at the seller's risk until the property therein is transferred to the buyer and the goods are delivered to him:

provided that where delivery has been delayed through the fault of the buyer, the goods are at the risk of the buyer as regards any loss which might not have occurred but for such fault.

7 Buyer to be entitled to a statement of his present position

- (1) The seller shall, within 7 days after he has received a request in writing from the buyer and the buyer has tendered to the seller the sum of 25 cents for expenses, give to the buyer a statement in writing signed by the seller or his agent showing—
 - (a) the purchase price; and
 - (b) the total amount of the money paid and the value of any other consideration provided by the buyer in respect of the layby sale; and

- (c) the amount which the seller estimates to be the retail value of the goods at the time of the notice or of the cancellation of the layby sale, whichever is the sooner, indicating whether or not such value is the same as at the date of the sale; and
 - (d) the amount which the seller estimates is sufficient to recoup him for selling costs in respect of the layby sale; and
 - (e) the balance estimated to be due to the seller or the buyer as the case may be; and
 - (f) if there is a balance due to the seller, particulars of the time and manner within which that balance is required to be paid.
- (2) The seller need not comply with a request under subsection (1) if—
- (a) the layby sale has been completed by performance; or
 - (b) he has given the buyer a statement complying with that subsection within the 30 days immediately preceding the receipt of the request; or
 - (c) the layby sale has been cancelled by the buyer and more than 30 days have elapsed since the date of cancellation.
- (3) Where the seller cancels a layby sale he shall, upon request, give to the buyer free of charge a statement complying with subsection (1) and, if the address of the buyer is known to the seller, he shall, whether the buyer requests it or not, give to the buyer, free of charge, such a statement within 7 days after the date of cancellation.
- (4) Every seller who makes default in complying with subsection (1) or subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding \$200.
- (5) Nothing in this section shall apply in respect of any layby sale under which the purchase price does not exceed \$10.

Compare: Lay-by Sales Act 1943 s 9(2) (NSW)

8 Right of buyer to cancel layby sale

- (1) The buyer may, at any time before the purchase price has been paid, cancel the layby sale by giving to the seller oral or written notice of his desire to cancel the sale.
- (2) Where a layby sale is cancelled under subsection (1) the date of cancellation shall be the date on which the notice is given.
- (3) Nothing in this section shall prejudice any right of the buyer to cancel a layby sale otherwise than by virtue of this section.
- (4) The right of cancellation conferred on the buyer by subsection (1) may be exercised notwithstanding the winding up or bankruptcy of the seller or the appointment of any person to act as the receiver or manager of the property of the seller.

- (5) Nothing in this section shall apply in respect of any layby sale under which the purchase price does not exceed \$5.

Compare: Lay-by Sales Act 1943 s 9(1), (3) (NSW)

9 Rights of seller and buyer on cancellation of layby sale

- (1) Where a layby sale is cancelled by the buyer under section 8 or is cancelled by the seller, the following provisions shall apply:
- (a) if the total amount of money paid plus the value of any other consideration provided by the buyer in respect of the layby sale, together with the retail value of the goods at the time when the layby sale is cancelled, exceeds the purchase price and an amount sufficient to recoup the seller for his selling costs in respect of the layby sale, the buyer shall be entitled, subject to subsection (2), to recover the excess from the seller as a debt due and payable by him to the buyer:
- (b) if the purchase price and an amount sufficient to recoup the seller for his selling costs in respect of the layby sale exceeds the total amount of money paid plus the value of any other consideration provided by the buyer in respect of the layby sale, together with the retail value of the goods at the time when the sale is cancelled, the seller shall be entitled, subject to subsection (3), to recover the excess from the buyer as a debt due and payable by him to the seller, but shall not be entitled to recover any additional sum, whether as penalty or compensation or otherwise in consequence of the cancellation of the layby sale.
- (2) Where a layby sale is cancelled by the buyer, other than by reason of a breach by the seller which entitles the buyer to cancel the sale, the buyer shall not in any case be entitled to a refund exceeding the total amount of money paid plus the value of any other consideration provided by him.
- (3) Where the buyer under a layby sale has paid an initial deposit but has made no other payments at the time when the sale is cancelled the amount that the seller shall be entitled to recover under paragraph (b) of subsection (1) shall not exceed the amount of the deposit.
- (4) Where a layby sale of specific goods is cancelled within 1 month after the date of the sale or where any layby sale (not being a sale of specific goods) is cancelled at any time, the retail value of the goods at the time of cancellation shall, for the purposes of this Act, unless the contrary is proved, be deemed to be the retail value of the goods at the time when the layby sale was made; and any loss of value of such goods whether due to deterioration of the goods or otherwise shall be disregarded.
- (5) Nothing in this section shall apply in respect of any layby sale under which the purchase price does not exceed \$5.

Compare: Lay-by Sales Act 1943 s 10 (NSW)

10 Completion on liquidation, bankruptcy, or receivership of seller

- (1) If on the liquidation or bankruptcy of the seller or on the appointment of any person to act as the receiver or manager of the property of any seller that is a company, the assets of the seller include the goods, or goods of the kind, which the seller has agreed to sell to the buyer, whether those goods have been appropriated to the sale or not, the buyer shall be entitled, on payment of the balance (if any) of the purchase price in the manner and at the times prescribed by the contract, to complete the purchase and obtain the property in, and delivery of, the goods.
- (2) If there are not enough goods to satisfy all buyers, priority shall be governed by the date of the sale so that goods shall be available to earlier buyers in preference to later buyers. Where 2 or more buyers agreed to purchase on the same day priority between them shall be determined by lot.
- (3) No buyer shall be entitled to exercise the right conferred by subsection (1) if—
 - (a) in breach of his agreement with the seller, he has made no payment to the seller on account of the purchase price during the 3 months immediately preceding the filing of the petition on which the seller is adjudged bankrupt, the commencement of the winding up, or the appointment; or
 - (b) he is an officer or employee of the seller or the spouse, civil union partner, or de facto partner of such an officer or employee.
- (4) If any buyer makes any payment on account of the purchase price after the commencement of the bankruptcy or liquidation or the appointment he shall be entitled to have that payment refunded in full unless the purchase is completed in accordance with subsection (1).

Section 10 heading: amended, on 1 July 1994, pursuant to section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 10(1): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 10(3)(b): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 10(4): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

11 Preference on liquidation, bankruptcy, or receivership of seller

- (1) If, on the liquidation or bankruptcy of any seller or on the appointment of any person to act as the receiver or manager of the property of any seller that is a company, there are no goods or not enough goods to enable the layby sale to be completed, or if any buyer is or becomes entitled under section 9 to recover any sum of money, then the buyer shall be a creditor in the liquidation, bankruptcy, or receivership to the extent of the payments that he has made to the seller on account of the purchase price of the goods or to the extent of the sum that he is entitled to recover, as the case may require, with priority, subject to

subsection (2), over all other unsecured creditors and over creditors secured by the kind of security interest described in subsection (1A).

- (1A) The kind of security interest referred to in subsection (1) is a security interest that—
- (a) is over all or any part of the seller's accounts receivable and inventory or all or any part of either of them; and
 - (b) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and
 - (c) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the commencement of the liquidation, or at the time of the receiver's appointment, or at the date of adjudication, as the case may be, and that arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).
- (2) Debts to which priority is given by subsection (1) must be paid in accordance with section 312 and Schedule 7 of the Companies Act 1993, or section 30 of the Receiverships Act 1993, or section 274(3) of the Insolvency Act 2006, as the case may be.
- (3) The rights conferred by subsection (1) shall not be available to any buyer of the kind described in paragraph (a) or paragraph (b) of subsection (3) of section 10.
- (4) In subsection (1), the terms **account receivable**, **inventory**, **new value**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.
- (5) The provisions of this section, as in force immediately before the commencement of the Personal Property Securities Act 1999, continue to apply in respect of a seller's property that was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.

Section 11 heading: amended, on 1 July 1994, pursuant to section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 11(1): amended, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 11(1): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 11(1A): inserted, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 11(1A)(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 11(1A)(c): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 11(2): replaced, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 11(4): inserted, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 11(5): inserted, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

12 Service of notices

- (1) Any written notice or other document required or authorised by this Act to be given to any person shall be sufficiently given if it is delivered to that person or if it is left at his usual or last known place of abode or business or at an address specified for the purposes of the layby sale, or if it is posted in a letter addressed to him by name at that place of abode or business or address.
- (2) If the person is absent from New Zealand, the notice or other document may be given to his agent in New Zealand. If the person is deceased, it may be given to his personal representatives.
- (3) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or other document shall be given in such manner as may be directed by an order of a District Court.
- (4) If any such notice or other document is sent to any person by registered letter it shall be deemed to have been delivered to him on the fourth day after the day on which it was posted, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.
- (5) Notwithstanding anything in the foregoing provisions of this section, a District Court may in any case make an order directing the manner in which any notice or other document is to be served or given, or dispensing with the service or giving thereof.
- (6) This section does not apply to notices or other documents served in any proceedings in any court.

Section 12(3): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

Section 12(5): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

13 Buyer's rights protected

- (1) The provisions of this Act shall have effect in favour of the buyer notwithstanding any provision to the contrary in any agreement.
- (2) Nothing in this Act shall prevent any layby sale from having effect according to its tenor in so far as the terms of that sale are more favourable to the buyer than the terms that the buyer would enjoy by virtue of the provisions of this Act.
- (3) Section 56 of the Sale of Goods Act 1908 shall be read subject to the provisions of this section.

14 Application

Sections 6 to 9 shall not apply to layby sales made or entered into before the commencement of this Act.

15 Savings

Nothing in this Act shall derogate from the provisions of the Door to Door Sales Act 1967.

Section 15: amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Reprints notes

1 *General*

This is a reprint of the Sale of Goods Act 1908 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Contract and Commercial Law Act 2017 (2017 No 5): section 345(1)(i)

Auctioneers Act 2013 (2013 No 148): section 28(3)

District Courts Amendment Act 2011 (2011 No 30): section 43

Sale of Goods Amendment Act 2003 (2003 No 35)

Personal Property Securities Act 1999 (1999 No 126): section 191(1)

Consumer Guarantees Act 1993 (1993 No 91): section 48

Constitution Act 1986 (1986 No 114): section 29(2)

Contractual Remedies Act 1979 (1979 No 11): section 14(1)

Minors' Contracts Act 1969 (1969 No 41): section 18

Sale of Goods Amendment Act 1961 (1961 No 98)

Contracts Enforcement Act 1956 (1956 No 23): section 4(1)