The

Sale of Goods Act

(Act No. III of 1930)

Second Edition

1999

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Sale of Goods Act

(Act No. III of 1930)

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Preface to 2nd Edition

The Sale of Goods Act originally formed a part of the Contract Act, IX of 1872 and was dealt with in Chapter VII in Sections 76 to 123. The Law became an Independent Law with the title "The Sale of Goods Act 1930" (Act No. III of 1930).

In fact, this Act broadly relates to the subject matter of contract. The first edition of the Sale of Goods Act was published in 1975 and the whole stock was sold out long ago. Becuse of popularity and growing demand DLR has taken venture to publish the second edition in spite of fund constraint and exorbitant price escalation of printing materials.

The present edition has maintaind its tradition of improving upon the standard of perfection. Sincere efforts have been made to maintain the original style and structure of this book. This edition will cover a distinctive feature with exhaustive index at the end.

We greatly appreciate the service of Mr MA Sattar, M Com LLB Advocate, Supreme Court, High Court Division who has revised and enlarged this edition by incorporating the amendments and up to date case laws, appeared in the DLR, BLD, BLC, etc so as to make a comprehensive publication.

We are equally thankful to Mr. Rahmatullah Sarker, Advocate, Supreme Court, High Court Division for his suggestions to make this edition a worthwhile compilation.

We do hope that this will meet the need of the Bench and the Bar and our humble efforts will be amply rewarded, if it could be of any help to those for whom it is intended.

Any suggestion to improve the book will be much appreciated.

Dhaka
February 1999

Publisher

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The Sale of Goods Act[1]
(III of 1930)

[15th March, 1930]

An Act to define and amend the law relating to the sale of goods

Whereas it is expedient to define and amend the law relating to the sale of goods;

It is hereby enacted as follows—

Chapter I
Preliminary

1. Short Title, Extent and Commencement — (1) This Act may called the [2]* Sale of Goods Act, 1930.

[3][(2) It extends to the whole of [4]Bangladesh].

(3) It shall come into force on the first day of July, 1930.

2. Definitions—In this Act, unless there is anything repugnant in the subject or context,—

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

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

(3) goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them;

(4) "document of title to goods" includes a bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, 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;

(5) "fault" means wrongful act or default;

(6) "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;

(7) "goods" means every kind of moveable property other than actionable claims and money; and includes [5][electricity, water, gas,] stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(8) a person is said to be "insolvent" who 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 insolvency or not;

(9) "mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods or to consign goods for the purposes of sale, or to buy

goods, or to raise money on the security of goods;

(10) "price" means the money consideration for a sale of goods;

(11) "property" means the general property in goods, and not merely a special property;

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

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

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

(15) expressions used but not defined in this Act and defined in the Contract Act, 1872, (IX of 1872) have the meanings assigned to them in that Act.

Case-Law

Section 2—Definitions—A delivery chit which is received without payment is not a document of title. *1941 Sind 78; 1951 C. 137.*

Section 2—A railway receipt is a document of title. *1934 PC246 ; 39 C. WN 209: 37. Bom. LR130; 68 MLJ. 26; 152 IC 730.*

Section 2—A souda chithi is not a document of title. *1949 Nag. 186.*

Section 2—The interest of a partner in partnership comes within the definition of goods and a contract for sale thereof may be effected in the manner laid down in *sec 5(2) 1950 Nag. 89* .

Section 2—A broker in jewellery who is given jewelleries by their owner is a mercantile agent. *1934 Rang. 198 : 151 IC 413.*

Section 2—Specific goods are not identical with ascertained goods; it does not mean goods which have been examined by the buyer. *1937 Cal. 140; 169 IC 128.*

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Section 2—Specific goods are not identical with ascertained goods; it does not mean goods which have been examined by the buyer. *1937 Cal. 140; 169 IC 128.*

Section 2—Specified good may be goods in existence and may even be future goods if they get specified by some other circumstances. *1949 Nag. 178.*

Section 2(7)—The right of pre-emption is attached to immovable properties, but the shares of a company are not properties in that sense, they are goods as defined and described in Sale of Goods Act. *United Chemicals and Pharmaceuticals Ltd vs Niranjan Dey. 47 DLR 423*

Section 2(7)—In the present case concerning adjustment of Loanby Share certificates, the provisions of Banking Companies ordinance shall be read and Construed in addition to Section 171 of the Contrcct Act. From the provision of the Sale of goods Act it appeats that the Shares of a company are also goods, and as such moveable property. Money is a Species of goods over which lien may be exercised. Where a bauker has advanced money to another, he has a lien on all securities which come within his hand for the amount of higeneral balance unless there is an express contract to the Contrary. *Sonali Bank vs Bengal Lner Ltd 42 DLR 487.*

Section 2(14)—Specific goods—"Specific goods" according to the definition given in sub-section (14) of section 2 of the Act, means "goods identified and agreed upon at the time contract for sale is made". *(1958) 10 DLR 348—8 PLR (Dac.) 576.*

3. Application of Provisions of Act IX of 1872—The unrepealed provisions of the Contract Act, 1872, (IX of 1872) save insofar as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts for the sale of goods.

Chapter II

Formation of the Contract

Contract of Sale

4. 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 price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer for 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.

(4) 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.

Case-Law

Section 4—Sale and agreement to sell—In the absence of evidence as to price of the article there cannot be a concluded contract for sale. *1934 All. 203 ; 147 IC 982.*

—In CIF contracts the property in goods does not pass to the buyer on the mere acceptance of the draft but passes only on the payment of the draft. *1937 Lah. 566. 174 IC 945.*

—Hire purchase agreement is ordinarily so complex that it may be described as a compound of agreement of hiring and agreement to sell tinged with an agreement of hypothecation *1938 Nag. 18 ; 175 IC 337.*

An essential feature of a contract for hire purchase is the option given to the prospective purchaser to terminate the contract and return the goods. *1944 Mad. 526 ; (1944) 2 MLJ 74.*

—The distinguishing mark of an agreement which is a sale and not a hire purchase agreement is that the "hirer" should be bound to pay the full value of the goods by way of instalments without any option to cancel the agreement if he so wished, before the full value of the goods is paid. *1932 All. 607 : 141 IC 615.*

Formalities of the contract

5. **Contract of Sale how Made**—(1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Subject-matter of contract

6. **Existing or Future Goods**—(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

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

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

7. Goods Perishing Before Making of Contract—Where there is a contract for the sale of specific goods, the contract is void if the goods, without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

8. 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 or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

Price

9. Ascertainment of Price: (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in 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 shall pay the seller a reasonable price What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Case-Law

Sections 9 and 23—FOB Contract Property in Goods passes to the buyer on shipment unless the parties intend otherwise *Bishmillah Oil Mills vs Arag Ltd 1981 BLD 138.*

10. Agreement to Sell at Valuation—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 thereby avoided.

Provided, that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall 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 a suit for damages against the party in fault.

Conditions and warranties

11. **Stipulation as to Time** : Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Case-Law

Stipulation as to time—In mercantile contracts for the sale of commodities liable to fluctuation in price day to day, time is always regarded as of the essence. Where time is of the essence and is extended, the extended date is also of the essence of the contract. *1953 Nag. 345.*

In ordinary commercial contracts for sale of goods time is prima facie of the essence with respect of delivery. *1954 Orissa 254.*

12. **Condition and Warranty**—(1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation 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.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

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 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) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof,6 *** 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.

(3) 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.

Case-Law

Section 13—Buyer's option—Buyer's option either to waive the condition in a contract the breach of which entitles him to treat the contract as repudiated or he may treat such a breach of warranty and stick to the bargain with a right to claim damages. *10 DLR 348.*

Section 13—The section does not contemplate the case of a seller failing to tender delivery of goods. *10 DLR 348.*

When condition to be treated as warranty—This section is not limited to a breach of an express condition but extends also to breach of an implied condition. *50 CWN 213.*

Section 13 (1) (2)—Buyer's option of treating a breach of a condition in a contract as a breach of warranty.

Both sub-section (1) and the first part of sub-section (2) of section 13 are based on the same principle which gives the buyer the option of as a breach of warranty. In the one case he exercises his option by express words and in the other law presumes exercise of the option from his conduct. *10 DLR 348.*

Section 13(1)(2) Fraud etc, on a contract of sale—There was no provision in the Sale of Goods Act bearing on the effect of fraud, misrepresentation, coercion and undue influence on a contract of sale. Therefore, the relevant provisions of the Contract Act on these questions continued to be applicable to contracts of sale despite the provisions of section 13, Sale of Goods Act, That section also did not contain any reference to cases of fraud, etc., and apparently contemplated such cases as involved a breach of condition, without fraud, misrepresentation and the like affecting the formation of the contract itself, in its inception.

If thus interpreted, there was no difficulty in holding that section 19, Contract Act, could stand with section 13 of the Sale of Goods Act. The result was that in cases of fraud and misrepresentation, etc., vitiating the contract unless there was a waiver on the part of the party affected, the right of recision was not lost.

Accordingly, the remedy of recision of the contract was open to the respondent in the present case on the condition that restitution in integrum took place in a just manner. *PLR (1960) 2 (WP) 524.*

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 shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

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.

16. Implied Conditions as to Quality or Fitness —Subject to the provisions of this Act and of any other law for the time being in force, 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 which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose :

Provided that, in the case of 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.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer 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 defect 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.

Case-Law

Implied conditions as to quality or fitness—There is an implied condition that the goods are reasonably fit for the particular purpose for which they are required and a purchaser, if he does not find them so, is legally entitled to reject them. *1939 Nag. 19.*

Section 16—Whether a sale was of goods under a patent or trade name or of goods by description is a question of fact. *52 CWN 45.*

Section 16—In the case of a sale by description there is an implied condition in the contract of sale that the goods sold is of merchantable quality. When in such a case a latent defect which is not expected in a goods of that description is discovered subsequently the buyer can treat such a breach as a breach of warranty and claim damages without repudiating the contract of sale, *50 CWN 213.*

Section 16—The proviso to section 16(2) protects the seller from such defects as are apparent on reasonable examination. *1937 Mad. 40: 166 IC 313.*

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;

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

Chapter III

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.

Case-Law

Section 18—Effect of contract for sale of goods—For enforcement of such contract goods must be specific and in a deliverable state.

In order to pass title from the seller to the buyer goods must be specific and in a deliverable state. If these two conditions are not fulfilled then the title to the goods does not pass by the contract.

Title to the goods will pass from the seller to the buyer (irrespective of the time of payment of price or the time of delivery) when there is unconditional contract for sale of goods, which are identified and agreed upon at the time of the contract and are in deliverable state. *Pakistan Mercantile Corpn. vs. Madan Mohan Oil Mills. 18 DLR 487.*

Section 18—Contract of the sale of moveable property— Presumption is that the purchaser has become the owner when the contract is made.

If property in the goods continued to vest in the owner, there could be no question of the hire-purchaser having a right to any part of the sale proceeds. Moreover, the goods in question being moveable property, the ordinary presumption would be that the property in the apparatus passed to the alleged hire-purchaser when the contract was made, it being immaterial whether the time of payment of the price was postponed beyond the date of the contract.

Section 20 of the Sale of Goods Act embodies a principle which may be extended to cover a case where there are terms in the contract which purport to retain ownership in the vendor until the fulfilment of a certain condition relating to the price, alongside with other conditions from which an equally clear conclusion may be drawn that ownership in the goods became vested in the vendee upon the making of the contract. *Shewram Das vs. Arobinda Poddar. 13 DLR (SC) 141.*

Section 18—Goods do not pass until ascertained—Where under an agreement for sale of timber trees the buyer is entitled to cut and remove them only if they attain particular girth within the period specified in the agreement, the sale is of unascertained goods and the property in the trees does not pass so long as the ascertainment has not been made. *1948 All. 396; 1949 ALJ 46.*

Section 18—Where under the agreement the seller is required to treat the goods as ascertained and appropriated to the contract, the seller cannot by a unilateral action, on his part make goods either ascertained or appropriated to the contract, particularly in the face of the insolvency of the purchaser, *1953 Nag. 345.*

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 parities and the circumstances of the case,

(3) Unless a different intention appears, the rules contained in sections 20 to 24 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.

Case-Law

Section 19—Property in ascertained goods passes when intended to pass—In case of contract for sale of specific or ascertained goods the

property in them is transferred to the buyer at such time as the parties intended. The intention of the parties is to be gathered from the terms of the contract, the conduct of the parities and the circumstances of the case. *1935 PC 183; 39 CWN 1217; 37; Bom. LR 866; 69 MLJ 467; 157 IC 891.*

20. Specific Goods in a Deliverable State —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 of the price or the time of delivery of the goods, or both, is postponed.

Case-Law

Section 20—Sale of goods effected not by free agreement between the parties, but under the orders of the Government—Date of such sale is not the date when goods were delivered but the date when Government orders were received and invoices delivered for goods sold.

Sale-tax becomes payable when invoices are delivered and since the Pakistan General Sales-tax Act which imposes the liability to sale-tax came into force on 14-4-48, no sales tax becomes due in respect of sales of goods for which invoices in the manner referred above, were delivered before 1-4-48.

Goods legally passed to the defendant from the date of delivery of invoices though goods were not actually delivered then. *M/s. SM Hanif vs. Mohini Mills 16 DLR 135.*

Section 20—"For re-submission as per instructions" explained.

After receipt of invoices by the defendant the latter sent back the same to the plaintiff with respect "for re-submission as per instructions" and it was thereupon contended that the date of re-submission should be the date on which the invoices should be treated as being sent to the defendant.

Held : The expression used in the letter "for re-submission as per instructions" does not constitute a refusal, rather it means that the defendant accepted the goods but the invoices should have been re-submitted as per instructions given by the defendant. *SM Hanif vs. Mohini Mills 16 DLR 135.*

—Goods in the present case, the subject matter of the suit, had been purchased and not merely agreed to be purchased by the defendant. The mere fact that the plaintiff complained about procrastination of weighment by the defendant does not change the nature of the transaction. In the present case the goods remained with the seller after they were approved and sold and therefore necessity was felt of satisfying the buyers that they had not been tampered with when they had remained in possession with the seller. *Messrs Arog Ltdvs Messrs Muhammad Ismail 20 DLR (WP) 242.*

Section 20—Specific goods in a deliverable state—When 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 of the price or the time for delivery of the goods or both is postponed. *1948 Mad. 122; (1947) 2 MLJ 79.*

Section 20—Transfer of shares is complete when there is nothing more for the transferor to do. *1941 Mad. 769, 200 IC 615.*

21. Specific Goods to be put into a Deliverable State—Where there is a contract of 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.

Case-Law

Specific goods to be put into a deliverable state—Specific goods means goods capable of being ascertained with certainty. A sale of some specified quantity of liquor out of a storehouse of course would not be capable of ascertainment until it is removed or separated. *1941 Bom. 106 : 194 IC 302.*

22. Specfic Goods in a Deliverable State, when the Seller has to do anything thereto in order to Ascertain Price—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.

23. Sale of Unascertained Goods and Appropriation—(1) Where there is a contract for the sale of unascertained or future goods by description and goods of the description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

Delivery to Carrier—(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.

Case-Law

Sale of unascertained goods and appropriation—Under a sale of unascertained goods property in the goods passes when goods answering to the contract description are unconditionally appropriated to the contract with the assent of the buyer. The rule may, however, be varied by the terms of the contract or by reservation made by seller in the act of appropriation. *1938 PC 152; 42 CWN 677; 40 Bom. LR 799, 174 IC 564.*

Section 23—Goods are not unconditionally appropriated if the buyer reserves the right to reject the goods after arrival at his godown. *1945 Mad 383 : (1954) 1 MLJ. 414.*

Section 23—When goods are sent by railway by the seller, the railway receipt being addressed to self, the property in the goods does not pass to the buyer on delivery of the goods to the railway. *1948 Pat. 36.*

Section 23—Where the railway receipt was in seller's name and was to be endorsed in favour of the buyer on receipt of the full price, the property in the goods passed to the buyer only on his payment of the price. *1950 ALJ 145.*

Section 23—It is not correct to say that if a railway or steamer receipt is made out in the name of the buyer the property in the goods passes to the buyer, *1952 Assam 178.*

Sections 23 & 9—FOB Contract Property in Goods passes to the buyer on shipment unless the parties intend otherwise *Bishmillah Oil Mills vs Arag Ltd 1981 BLD 138.*

24. Goods Sent on Approval or "On Sale or Return—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 such time, and, if no time has been fixed, on the expiration of a reasonable time.

25. Reservation of Right of Disposal—(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the

goods to a 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.

[7][(2) Where goods are shipped or are dispatched by railway and are by the bill of lading or by railway receipt 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 [8][bill of lading or railway receipt] to the buyer together, to secure acceptance or payment of the bill of exchange , the buyer is bound to return the 8[bill of lading or railway receipt] if he does not honour the bill of exchange and if he wrongfully retains the [9][bill of lading or railway receipt] the property in the goods does not pass to him.

26. **Risk Prima Facie Passes with Property** —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 :

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Transfer of Title

27. **Sale by Person not the Owner**—Subject to the provisions of this Act and of any other law for the time being in force,

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

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

28. **Sale by one of Joint Owners**—If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

29. **Sale by person in Possession under Voidable Contract**—When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Contract Act, (IX of 1872), but the contract has not been rescinded 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.

30. **Seller or Buyer in Possession after Sale**—(1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the

delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

Case-Law

Section 30—Seller or buyer in possession after sale—Consent of the person who is acting as agent of the owner would be as effective as the consent of the owner himself, *1954 SC 181 : 1954 SCR 391 : 1954 SCJ 54 : 1954 SCA 1133.*

Section 30—Where one of two innocent parties must suffer from the fraud of the third, the loss should be borne by him who has enabled the third party to commit the fraud if he has neglected some duty owing to the other or has done something which has misled the other. *1933 Sind 401 : 149 IC 914.*

Chapter IV

Performance of the Contract

31. 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.

Case-Law

Duties of seller and buyer—Where the goods are sent after the time fixed for performance, the buyer may refuse to accept the goods, *1933 All. 404; 144 IC 82.*

32. 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 shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Case-Law

Sections 32, 33, 36(2)—Sellers were bound to make delivery within a reasonable time.

Except the term "f.o.r." and its necessary implication, there were no terms expressed in contract fixing either the time for delivery or the time for payment. It necessarily follows from the statutory provisions contained in sections 32, 35, 36(2) of the Act that the sellers were bound to make delivery within a reasonable time, subject to the feasibility of obtaining wagons and the buyer was to make payment concurrently with those deliveries *3 DLR 23.*

Section 32—Payment and delivery are concurrent conditions—where the contract is not capable of the interpretation that the failure to pay for any one delivery would mean a breach of the whole contract and when the seller has not delivered the goods in terms of the contract, he is not entitled to treat the buyer's failure to pay as repudiation of the contract particularly when no demand for payment was made. *ILR (1951) 1 Cal 420.*

—Where the delivery was under the contract to be at the seller's option there must be implied an additional term to the contract that the seller shall give to the buyer sufficient notice of his intention to make delivery and a reasonable time to arrange for funds with which to pay for the goods *1940 Rang 294 : 191 IC 766.*

33. Delivery—Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

34. Effect of Part Delivery—A delivery of part of goods, in progress of the delivery of the whole, has the same effect for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Case-Law

Effect of part delivery of goods—When a part delivery of the goods is made in progress of delivery of the whole, the first delivery will have the effect of passing the property in such goods as the delivery of whole, but the delivery of a part of the goods with an intention of severing it from the whole, does not operate as delivery of the remainder or, in other words, does not pass any title in the remainder to the buyer. The word "whole" in this section means the goods identified in terms of section 20 of the Act. *Pak. Mercantile Corporation vs. Madan Mohon Oil Mill 18 DLR 437.*

35. Buyer to Apply for Delivery —Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Case-Law

Section 35—Buyer to apply for delivery—But no notice to the buyer of intention to deliver on the last day is necessary. *1940 Rang 284; 191 IC 766.*

Section 35—A seller is not bound to deliver goods until the buyer applied for delivery. If the buyer does not apply he is responsible for the breach *ILR (1949) Nag. 555.*

Section 35—When the buyer applies for delivery, the time within which the seller is to comply with the demand depends on circumstances of the contract. *1935 PC. 67 : 37 Bom; LR. 538 : 39 CWN. 632 : 58 M 670 : 154 IC 1097.*

Section 35—The buyer can only be relieved from the obligation to apply for delivery by an express stipulation to the contrary. *1947 Bom 293 : 48 Bom. LR 821.*

Section 35—Delivery order on a third person does not amount to delivery of goods unless the purchaser has agreed to make that third person his agent and asked him to hold the goods on his behalf. *1944 Bom 21 : 211 IC 93.*

36. Rule as to Delivery—(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or if not then in existence, at the place at which they are manufactured or produced.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller

to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf :

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

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

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

Case-Law

Rules as to delivery—Where no place for delivery has been mentioned, the place of delivery is where the vendors have their office and where they accepted the indents *1943 Bom. 229 ; 208 IC 301.*

—Where no time is fixed for performance of the contract the law implies a reasonable time for its performance. Reasonable time must depend upon the particular circumstances, the nature of the commodity, the question of transport, the times during which the contract was entered into and so on. *1947 Bom. 293 : 48 Bom LR. 821.*

37. 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 shall pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may 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 shall 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 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.

Case-Law

Section 37(1)—Delivery of lesser quantity of goods. Buyer can either accept it or he can reject it—If he accepts, he will have to pay for it at the contract rate. *(1958) 10 DLR 348.*

It follows that when the part which was not tendered previously is tendered afterwards it cannot be referred back to any subsisting contract between the buyer and the seller. *10 DLR 348.*

Section 37—Delivery of wrong quantity.—If the seller tenders a quantity which is very short of the warranty and out of the goods tendered half are utterly worthless, the seller is guilty of a breach of two warranties and the buyer can reject the goods ; but if the buyer accepts the goods so delivered he must pay for them at the contract rate, *1949 Nag. 178.*

Section 37—Mixing of an inferior quality is not mixing of goods of different description. *1949 Nag. 178.*

Section 37—Where the seller delivers goods he had contracted to sell mixed with goods of a different description the buyer may reject the whole, *1933 Mad. 176 : 56 M. 304: 141 IC 632.*

Sections 37(1) and 38 (1)—When a part of the goods contracted to be sold is offered and accepted by the buyer, he is not bound to accept the remaining part when offered later on. *10 DLR 348.*

38. **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 no delivery or defective delivery 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 in each case depending on the terms of the contract and the circumstance 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.

Case-Law

Section 38—Instalment deliveries—Where under the contract goods are deliverable by instalments the general rule is that a breach by one party in connection with one instalment does not of itself entitle the other party to rescind the contract as to the other instalments. But if the breach is of such a kind or takes place in such circumstances as reasonably to lead to the inference that similar breaches will be committed in relation to subsequent deliveries, the whole contract may be regarded as repudiated and may be rescinded. *52 CWN 45.*

Section 38—The main tests for applying sub-section (2) are, first, the quantitative ratio which the breach bears to the contract as a whole and secondly, the degree of probability that such a breach will be repeated. *1943 All 370 : 210 IC 55.*

Section 38—Where the buyer repudiates an instalment the seller may elect to keep the contract alive. *1933 Mad. 176 : 141 IC 632.*

Section 38—A default in payment for one instalment does not, by itself, necessarily amount to a repudiation of the whole contract by the buyer. *1938 Rang. 364 : 178 IC 538.*

39. Delivery to Carrier or Wharfinger—(1) Where, in pursuance of a contract of sale, the seller is authorised or requied 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, or delivery of the goods to a wharfinger for safe custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger 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 or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger 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, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

Case-Law

Section 39—Provisions of the section explained—Section 39 of the Sale of Goods Act merely contemplates that *prima facie* the seller discharges his duties as soon as he delivers the goods to a carrier for the purpose of transmission to the buyer or he delivers the goods to a wharfinger for safe custody. In such cases under section 39 of the Sale of the Goods Act the buyer may decline to treat the delivery to a common carrier or wharfinger as a delivery to the buyer himself. Section 39 of the Sale of Goods Act will assume importance if a dispute is raised with regard to passing of title from the seller to the buyer or if any risk is involved after the delivery of the goods by the seller to a common carrier or wharfinger. In the present case no such dispute has been raised by either party. *Tatti Brothers vs. Abul Lais, (1973) 25 DLR 99.*

Section 39—Delivery to carrier or wharfinger—Where goods are delivered to the railway company and the consignee is the seller, the

delivery to the railway company cannot be deemed to be delivery to the buyer. *1946 Cal. 245 : 80 CLJ 170.*

Section 39—In CIF contracts the buyer is bound to accept the documents which represent the goods and honour the draft and is not entitled at that stage to raise the question as to whether goods are in accordance with the contract or not. *1954 Mad. 268.*

Section 39—Under a CIF contract the seller can give symbolical delivery of the goods by tendering to the buyer three documents, viz. a bill of lading, an invoice and a policy of insurance. The buyer is bound to accept these documents and pay the price. *1946 Bom 469 : 226 IC 503.*

Section 39—If the contract for sale provides for payment being made by a draft upon the buyer , the property in the goods does not pass to the buyer until the payment of the draft. *1937 Lah 566 : 174 IC 945.*

40. 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 shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

41. 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.

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

Case-Law

Section 42—Acceptance—Where the purchaser re-sells the goods he loses the right to refund of the price if the goods are subsequently discovered to be defective. *1932 Lah 52 : 135 IC 498.*

Section 42—Rejection of goods must be made within reasonable time. *1946 Mad 69 : (1945) 2 MLJ 418.*

Section 42—Where the rejection was made only 4 days after receipt of the goods there was no acceptance, *ILR (1950) All. 112.*

43. **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.

44. **Liability of Buyer for Neglecting or Refusing Delivery of Goods**—When the seller is ready and willing to deliver the goods and requests the buyer to take delivery and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.

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

Chapter V

Rights of Unpaid Seller Against the Goods

45. "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 Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

46. Unpaid Seller's Right—(1) Subject to the provisions of this Act and of any law for the time being in force, 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 for the price while he is in possession of them;

Stoppage in Transit

50. Right of Stoppage in Transit —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 transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

Case-Law

Section 50—Right of stoppage in transit—The right of stoppage continues so long as the goods are in the possession of a carrier or other bailee for transmission. *1936 Sind 106 : 163 IC 875.*

Section 50—Mere non-payment of freight, although it sometimes raises a presumption that the transit is not at an end is not sufficient and each case must depend on its own merits. *1936 Sind 106 : 163 IC 875.*

51. Duration of Transit: (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

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

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

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the

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

(c) a right of re-sale 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 transit where the property has passed to the buyer.

Case-Law

Sections 46 (1) (c) and 56—So far as the right of unpaid seller is concerned it is the quantum of damages for non-acceptance of goods property in which already passed to buyer—Measure of damages is the difference between the contract price and the market price as prevailed on the date when non-acceptance took place. *M/s. Arag. Ltd. vs. Messrs. Muhammad Ismail. 20 DLR(WP) 242.*

Unpaid seller's rights—The section. does not apply where the buyer has already taken possession of the goods, *1949 Bom. 334 : 51 Bom. LR 480.*

Section 46—Seller is not entitled to a lien over the goods in respect of charges for care and custody. *ILR (1951) Nag. 40.*

Section 46—But if there is a contract to that effect there may be a lien for storing charges. *943 Nag. 207 IC 145.*

Unpaid Seller's Lien

47. 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.

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

49. Termination of Lien—(1) The unpaid seller of goods loses his lien 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 thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Case-Law

Sectio 49—Seller's lien—Seller's lien subsists only so song as he has the possession of the goods. *1954 All 195 : 1953 ALJ 656.*

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 of 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 maybe stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

52. How Stoppage in Transit is Effected—(1) The unpaid seller may exercise his right of stoppage in transit 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, shall be given at such time and in 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 transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

Transfer by Buyer and Seller

53. Eeffect of Sub-Sale or Pledge by Buyer—(1) Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit 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 issued or 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 consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit 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 stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

54. Sale not Generely Rescinded by Lien or Stoppage in Transit—(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 stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, re-sell the goods within a reasonable time and recover

from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the resell. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

(3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default. re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

Case-Law

Section 54—Sale not rescinded by lien or stoppage in transit.—A vendor will not be entitled to resale the goods and claim the difference without giving notice of the resale to the purchaser who refused to take delivery of the goods *(1951) 2 MLJ 492.*

Section 54—Unpaid seller can resale after giving due notice. *1936 Oudh 308 : 162 IC 745.*

Section 54—The arbitration clause in the agreement is not wiped out on the recission of the contract by the seller by the exercise of his right of re-sale under the contract. *1946 Lah. 116 : 227 I.C. 546 FB.*

Chapter VI

Suits for Breach of the Contract

55. **Suit 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 sue him for the price of the goods.

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

Case-Law

Suit for price—Unpaid vendor has a right to resale or to sue the buyer for price of goods *1935 Nag. 66 : 156 IC156.*

56. **Damages for Non-Acceptance**—Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Case-Law

Section 56—Damages for non-acceptance—A buyer who has repudiated the contract for sale without justifiable reason cannot sue to recover the purchase price from the vendor who is willing to perform the

contract. He can recover only if the vendor had also treated the contract as at an end or a reasonable time has elapsed beyond which it is not right for the vendor to sit down and do nothing . *1935 Mad. 903 : 158 IC 827.*

Section 56—Where the vendor sues for damages for breach of contract, he must give the defendant credit for any earnest money paid by him in assessing the amount of damages. *1936 All 566 : 164 IC 317.*

Section 56—Before a seller may claim damages for breach of contract he must prove his readiness and willingness to perform his part of the contract *1941 Mad. 108 : 193 IC 751.*

Section 56—If the breach is on the part of the purchaser the earnest money is liable to forfeiture unless the forfeiture is excluded by express or implied terms of the contract. *1936 Cal. 51 : 40 CWN 659 : 161 IC 166.*

Section 56—In CIF contract the buyer is bound to accept the documents which represent the goods and honour the draft and is not entitled to raise at that stage any question as to whether the goods are in accordance with the contract or not. *1954 Mad. 268.*

Section 56—The measure of damages is that market price at the date of the breach. *1943 Nag. 210 : 207 IC 167.*

57. **Damages for Non-Delivery**—Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Case-Law

Section 57—Damages for non-delivery—It is not necessary for the purchaser to show that he actually made a tender of price. *135 IC 606.*

Section 57—The measure of damages is the difference between the contract rate and the market rate. *1944 Nag. 279 : 1944 NLJ 283.*

58. **Specific Performance**—Subject to the provisions of Chapter II of the Specific Relief Act, 1877 (I of 1877), in any suit 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 decree direct that the contract shall be

performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

Case-Law

Section 58—Specific performance—One of the conditions for applying the doctrine of part performance is that the contract must be such as is enforceable by the court *1933 Mad. 364 : 150 IC 660.*

Section 58——A breach of an implied negative covenant cannot be restrained by injunction. *1940 Cal. 466 : 191 IC 847.*

Section 58—In a suit for specific performance of a contract of moveable property which can only be instituted under section 58 of the Sale of Goods Act, the court is to be guided by the principles laid down in Chapter II of the Specific Relief Act. *Bazlur Rahman Bhuiyan vs Bangladesh Shipping Corporation 34 DLR (AD) 42, 1981 BLD (AD) 443*

Section 58—Contract of sale of ship—Specific per-formance—Court has wide discretionary power to vary terms of the relief sought or the terms of the contract in passing the decree of specific performance. *Bazlur Rahman Bhuiyan vs Bangladesh Shipping Corporation 1981 BLD 320.*

59. 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) sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

Case-Law

Section 59—Remedy for breach of warranty—Where a machine sold is a defective one, the buyer can sue for damages treating the breach of condition as a breach of warranty. *1951 Cal. 470.*

Section 59—The measure of damages is case of breach of warranty is not the full consideration but the difference between the actual value of the property and its value if the property had been what it was represented to be. *1939 Oudh. 186 : 180 IC 879.*

60. **Repudiation of Contract Before Due Date**—Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

Case-Law

Section 60—"Anticipatory breach."—Section 60 of the Sale of Goods Act avoids the difficulties wrapped up in the phrase "an anticipatory breach". *(1951) 3 DLR 23.*

Section 60—Repudiation of contract before due date—Where a party repudiates the contract before time for performance the other party may either treat it as subsisting or treat it as rescinded ; if he elects to treat the contract as still in force he keeps it alive for the other party as well *1935 Mad. 345 : 157 IC 640.*

Section 60—Upon a breach of contract by the buyer, the seller is bound to treat the contract as cancelled and exercise his right of re-sale within a reasonable time. *1938 All272 : 175 IC 552.*

61. **Interest by way of Damages and Special Damages**—(1) Nothing in this Act shall affect the right of the seller or

the buyer to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price—

(a) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable;

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller— from the date on which the payment was made.

Case-Law

Section 61—Interest by way of damages and special damages—A creditor can claim interest (1) on the basis of agreement, (2) on the basis of a statute or (3) on the ground of usage. *1941 Oudh 254 : 192 IC 885.*

Section 61—A purchaser obtaining possession before payment of price must, in the absence of express agreement to the contrary, pay interest on the purchase price as from the date when he gets possession until the date of payment. *1941 PC. 114 : 197 IC 186.*

Section 61(2)—Awarding of interest to a seller—No interest payable on damage for breach of contract.

Sub-section (2) of section 61 of the Sale of Goods Act empowers the Court to award interest to seller for the price of his goods at such rate as it thinks fit. Under this section a party, however, cannot claim interest on damages for breach of a contract. *AZ Co vs Maula Bakhsh 17 DLR (SC) 405.*

Chapter VII

Miscellaneous

62. 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 negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

63. Reasonable Time A Question of Fact : Where in this Act any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

64. Auction Sale : In the case of a sale by auction—

(1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and , until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved but not otherwise, the seller or any one person on his behalf may,

subject to the provisions hereinafter contained, bid at the auction;

(4) where the sale 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 such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(5) the sale may be notified to be subject to a reserved or upset price;

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Case-Law

Section 64—Auction sale—The position of an auctioneer is that of a stake-holder and where the sale goes off due to default of seller the auctioneer is bound to return the money paid to him by the buyer even where the money has been handed over to the seller. *1942 All. 90 : 199 IC. 302.*

Section 64—In case of tort special damages are those which a plaintiff. has suffered and which can be measured with accuracy and generally are those expenses to which the plaintiff. has been put as a result of the acts complained of; special damage in connection with nuisance is that which the plaintiff. has suffered over and above the inconvenience met with by others. *1937 Pat. 302 : 169 IC 66.*

Section 64—In the case of village pathway no question of special damage arises. The question arises only in case of public highway. *39 CLJ 347 : 26 CWN 587, 23 CWN 91, 17 CWN 73.*

Section 64—In case of "public right of gopath" the expression "village right of gopath" should be substituted so as to bring the case within the 2nd class of pathway namely, village pathway as enunciated by MrJ Wilson in *15 C460 FB. case. 39 CLJ 347 : 26 CWN 587.*

Section 64—Decree may be obtained of a village road without proof of special damage. *17 CWN 73 : 15 C 460 FB foll, 33 C 950 : 10 CWN. 867 not fol.*

Section 64—In case of public path special damage is to be proved. *18. CWN 92 n.* Special damage means the damage affecting the plaintiff. individually. *25 CWN 95 : 61 IC 405.*

Section 64—Special damage does not mean pecuniary loss only. *23 MLT 258 : 44 IC 834.*

Section 64—Where one member of the public has suffered special damage by the destruction of a public pathway so that he loses convenient access to his house he can maintain a suit for declaration and injunction for the removal of the said obstruction *60 IC 911.*

64A. In Contracts of Sale Amount of Increased or Decreased Duty or Tax to be Added or Deducted—In the event of any duty of customs or excise [11][or tax] on any goods being imposed, increased, decreased, or remitted after the making of any contract for the sale of such goods without stipulation [12][as to the payment of duty or tax where duty or tax] was not chargeable at the time of the making of the contract, or for the sale of such goods [13] [duty-paid or tax-paid where duty or tax] was chargeable at that time,—

(a) if such imposition or increase so takes effect that [14][the duty or tax or increased duty or tax], as the case may be , or any part thereof, is paid, the seller may add so much to the contract price as will be equivalent to the amount paid [15][in respect of such duty or tax or increase of duty or tax] , and he shall be entitled to be paid and to sue for and recover such addition, and

(b) if such decrease or remission so takes effect that the decreased duty [16][or tax] only or no duty [16]or

tax], as the case may be , is paid, the buyer may deduct so much from the contract price as will be equivalent to the decrease of duty [16][or tax] or remitted duty [16][or tax], and he shall not be liable to pay, or be sued for or in respect of, such deduction.]

[17][*Explanation*—The word "tax" in this section means the tax payable under the Sales Tax Act, 1951, (III of 1951).]

65. [Repeal.] —*Rep. by the Repealing Act, 1938 (I of 1938), section 2 and Schedule.*

66. Savings—(1) Nothing in this Act or in any repeal effected thereby shall affect or be deemed to affect—

(a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(b) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability, or

(c) anything done or suffered before the commencement of this Act. or

(d) any enactment relating to the sale of goods which is not expressly repealed by this Act, or

(e) any rule of law not inconsistent with this Act.

(2) The rules of insolvency relating to contracts for the sale of goods shall continue to apply thereto, notwithstanding anything contained in 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 which is intended to operate by way of mortgage, pledge, charge or other security.

These are all the amendments to the Sale of Goods Act and in place of putting them at the bottom of different pages where they occur in the book, they are all put here together.

Amendments

1. For statement of Objects and Reasons and for Report of Special Committee, see Gaz. of India, 1929 Pt V, p 163; for Report of Select Committee, see ibid., 1930, Pt V, p 1.

   This Act has been applied to Phulera in the Excluded Area of Upper Tanawal to the extent the Act is applicable in the N.W. F. P., subject to certain modifications, and also extended to the Excluded Area of Upper Tanawal (N W. F. P) other than Phulera with effect from such date and subject to such modifications as may be notified, see N. W. F. P. (Upper Tanawal) (Excluded Area) Laws Regulation, 1950.

   It has also been extended to the Leased Areas of Baluchistan, see the Leased Areas (Laws) Order, 1950 (G. G. O. 3 of 1950) ; and applied in the Federated Areas of Baluchistan, see Gazette of India 1937, Pt. I, p. 1499.

2. The word "Indian" omitted by the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), section 3 and 2nd such.

3. Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), Section 3 and 2nd Sch. (with effect from the 14th October, 1955), for the original sub-section (2), as amended by A. O.1949 and Act 26 of 1951, section 8.

4. Subs. by Act 53 of 1974.

5. Ins. by the Sale of Goods (Amdt.) Ordinance, 1962 (47 of 1962), section 2.

6. The words "or where the contract is for specific goods the property in which has passed to the buyer" omitted by the Sale of Goods (Amdt.) Ordinance, 1962 (47 of 1962), section 3.

7. Subs. by the Sale of Goods (Amdt.) Ordinance, 1962(47 of 1962) section 4, for sub-section (2).

8. Subs. ibid. for "bill of lading".

9. Subs. by the Sale of Goods (Amdt.) Ordinance, 1962 (47 of 162), section 4, for "bill of lading".

10. Section 64-A ins, by the Indian Sale of Goods (Amdt). Act , 1940 (41 of 1940), section 2.

11. Ins. by the Sale of Goods (Amdt.) Act, 1956 (5 of 1956), section 2.

12. Subs ibid., for "as to the payment of duty where duty".

13. Subs. ibid., for "duty paid where duty".

14. Subs. by the Sale of Goods (Amdt.) Act, 1956 (5 of 1956), section 2, for "the duty or increased duty".

15. Subs. ibid., for "in respect of such duty or increase of duty".

16. Ins . ibid.

17. Explanation added ibid.

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