

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER S10

SALE OF GOODS ACT

Showing the Law as at 15 December 2000

Published by Authority

Printed in
The Attorney General's Chambers
ANGUILLA

© Government of Anguilla

All rights reserved. No part of this publication may be reproduced in any form or by any means (including photocopying) without the written permission of the Government of Anguilla except as permitted by the Copyright Act or under the terms of a licence from the Government of Anguilla.

SALE OF GOODS ACT

TABLE OF CONTENTS

PART 1

PRELIMINARY

SECTION

1. Interpretation
2. Application

PART 2

FORMATION OF THE CONTRACT

3. Sale and agreement to sell
4. Capacity to buy and sell
5. Contract of sale how made
6. Contract of sale for $48 or more
7. Existing or future goods
8. Goods that have perished
9. Goods perishing before sale but after agreement to sell
10. Ascertainment of price
11. Agreement to sell at valuation
12. Stipulations as to time
13. When condition to be treated as warranty
14. Implied undertaking as to title, etc.
15. Sale by description
16. Implied conditions as to quality or fitness
17. Sale by sample

PART 3

EFFECTS OF THE CONTRACT

18. Goods must be ascertained
19. Property passes when intended to pass
20. Rules for ascertaining intention
21. Reservation of right of disposal
22. Risk *prima facie* passes with property
23. Sale by person not the owner
24. Market overt
25. Sale under voidable title

26. Seller or buyer in possession after sale
27. Effect of writ of execution

PART 4

PERFORMANCE OF THE CONTRACT

28. Duties of seller and buyer
29. Payment and delivery are concurrent conditions
30. Rules as to delivery
31. Delivery of wrong quantity
32. Instalment of deliveries
33. Delivery to carrier
34. Risk where goods are delivered at distant place
35. Buyer's right of examining the goods
36. Acceptance
37. Buyer not bound to return rejected goods
38. Liability of buyer for neglecting or refusing delivery of goods

PART 5

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

39. Unpaid seller defined
40. Unpaid seller's rights
41. Seller's lien
42. Part delivery
43. Termination of lien
44. Right of stoppage *in transitu*
45. Duration of transit
46. How stoppage *in transitu* is effected
47. Effect of sub-sale or pledge by buyer
48. Sale not generally rescinded by lien or stoppage *in transitu*

PART 6

ACTIONS FOR BREACH OF CONTRACT

49. Action for price
50. Damages for non-acceptance
51. Damages for non-delivery
52. Specific performance
53. Remedy for breach of warranty
54. Interest and special damages

PART 7

SUPPLEMENTARY

55. Exclusion of implied terms and conditions
56. Reasonable time a question of fact
57. Rights, etc., enforceable by action
58. Auction sales
59. Citation

SALE OF GOODS ACT

PART 1

PRELIMINARY

Interpretation

1. (1) In this Act—

"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" shall include 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 all chattels personal other than things in action and money. The term includes emblements, industrial 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;

"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 upon at the time a contract of sale is made;

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

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

(3) A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, 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.

Application

2. (1) The rules in bankruptcy relating to contracts of sale apply to those contracts, notwithstanding anything contained in this Act.

(2) The rules of the common law, including the law merchant, except 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, 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 that is intended to operate by way of mortgage, pledge, charge, or other security.

PART 2

FORMATION OF THE CONTRACT

Sale and agreement to sell

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

(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.

Capacity to buy and sell

4. (1) Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property, but where necessaries are sold and delivered to an infant, or minor or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

(2) In this section, "necessaries" mean goods suitable to the condition in life of an infant or minor or other person and to his actual requirements at the time of the sale and delivery.

Contract of sale how made

5. (1) 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.

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

Contract of sale for $48 or more

6. (1) A contract for the sale of any goods of the value of $48 or more shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every contract, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of the contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

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

Existing or future goods

7. (1) The goods that form the subject of a contract of sale may be either existing goods owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called "future goods".

(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency that 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.

Goods that have perished

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

Goods perishing before sale but after agreement to sell

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

Ascertainment of price

10. (1) The price in a contract of sale may be fixed by the contract, may be left to be fixed in a 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. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation

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

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

Stipulations as to time

12. (1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

(2) In a contract of sale, "month" means *prima facie* calendar month.

When condition to be treated as warranty

13. (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of the condition as a breach of warranty, and not as a ground for treating the contract as repudiated.

(2) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. 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, or where the contract is for specific goods, the property in which has passed to the buyer, 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 be 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.

Implied undertaking as to title, etc.

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

(a) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;

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

(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.

Sale by description

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

Implied conditions as to quality or fitness

16. 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 that 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 the purpose, but 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 but, if the buyer has examined the goods, there shall be no implied condition as regards defects that the examination ought to have revealed;

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

(d) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Sale by sample

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

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

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

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

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

PART 3

EFFECTS OF THE CONTRACT

Goods must be ascertained

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

Property passes when intended to pass

19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at 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.

Rules for ascertaining intention

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

Rule 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, be 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 deliverable state, the property does not pass until the 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 the act or thing is done, and the buyer has notice thereof.

Rule 4. 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; or

(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 the 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. The 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.

Reservation of right of disposal

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

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

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

Risk *prima facie* passes with property

22. 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, but—

(a) where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss that might not have occurred but for that fault; and

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

Sale by person not the owner

23. (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) Nothing in this Act shall affect—

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

(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.

Market overt

24. Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.

Sale under voidable title

25. When 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.

Seller or buyer in possession after sale

26. (1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under 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 the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(3) In this section, "mercantile agent" means a mercantile agent having in the customary course of his business as a mercantile agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

Effect of writ of execution

27. A writ of *fieri facias* or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the Bailiff to be executed and, for the better manifestation of that time, it shall be the duty of the Bailiff, without fee, upon the receipt of any writ to endorse upon the back of it the hour, day, month and year when he received the same, but no writ shall prejudice the title to the goods acquired by any person in good faith and for valuable consideration, unless the person had at the time when he acquired his title notice that the writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the Bailiff.

PART 4

PERFORMANCE OF THE CONTRACT

Duties of seller and buyer

28. 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.

Payment and delivery are concurrent conditions

29. 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.

Rules as to delivery

30. (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 such a contract, express or implied, the place of delivery is the seller's place of business, if he has one, and if not, his residence but, if the contract be for the sale of specific goods that to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

(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 the third person acknowledges to the buyer that he holds the goods on his behalf, but 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 must be borne by the seller.

Delivery of wrong quantity

31. (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 as delivered he may 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 that 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.

Instalment of deliveries

32. (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 that are to be separately paid for and the seller makes defective deliveries in respect of one or more instalments or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question 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.

Delivery to carrier

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

(2) Unless otherwise authorised by the buyer, the seller must make the 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 are deemed to be at his risk during the sea transit.

Risk where goods are delivered at distant place

34. 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.

Buyer's right of examining the goods

35. (1) Where goods are delivered to the buyer and he has not previously examined them, 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.

Acceptance

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

Buyer not bound to return rejected goods

37. 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.

Liability of buyer for neglecting or refusing delivery of goods

38. (1) When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after the request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and for a reasonable charge for the care and custody of the goods.

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

PART 5

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

Unpaid seller defined

39. (1) In this Part, a 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; and

(b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part, "seller" includes any person who is in the position of a seller such as 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.

Unpaid seller's rights

40. (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; and

(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 transitu* where the property has passed to the buyer.

Seller's lien

41. (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—

(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.

Part delivery

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

Termination of lien

43. (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; or

(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 or decree for the price of the goods.

Right of stoppage *in transitu*

44. 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.

Duration of transit

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

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

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

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

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the 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.

How stoppage *in transitu* is effected

46. (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. The 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 re-deliver the goods to, or according to the directions of, the seller. The expenses of re-delivery must be borne by the seller.

Effect of sub-sale or pledge by buyer

47. 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 that the buyer may have made, unless the seller has assented thereto but, where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if the last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage *in transitu* is defeated, and if the last-mentioned transfer was made 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.

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

48. (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* re-sells 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 re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell 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 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 the seller may have for damages.

PART 6

ACTIONS FOR BREACH OF CONTRACT

Action for price

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

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

Damages for non-acceptance

50. (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.

Damages for non-delivery

51. (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.

Specific performance

52. In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree.

Remedy for breach of warranty

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

Interest and special damages

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

PART 7

SUPPLEMENTARY

Exclusion of implied terms and conditions

55. 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.

Reasonable time a question of fact

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

Rights, etc., enforceable by action

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

Auction sales

58. (1) In the case of a sale by auction—

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

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

(c) where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at the sale, or for the auctioneer knowingly to take any bid from the seller or the person. Any sale contravening this rule may be treated as fraudulent by the buyer; and

(d) a sale by auction may be notified to be subject to a reserve or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

(2) Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

Citation

59. This Act may be cited as the Sale of Goods Act, Revised Statutes of Anguilla, Chapter S10.

———————