

ACT 137
SALE OF GOODS ACT, 1962

ARRANGEMENT OF SECTIONS

PART ONE

Nature and Formation of the Contract

1. Contract of sale.
2. Capacity to buy and sell.
3. Contract of sale, how made.
4. Auction sales.
5. Specific and unascertained goods.
6. The price.
7. Agreement to sell at valuation.

PART TWO

Duties of the Seller

Fundamental Obligation of the Seller

8. Fundamental obligation of the seller.

Existence of the Goods

9. Implied condition that specific goods are in existence.

Undertakings as to Title

10. Implied undertakings as to title.

Quality and Quantity of the Goods

11. Sale by description.
12. Sale by sample.
13. Quality and fitness of the goods.
14. Quantity of goods.

Delivery of the Goods

15. Delivery concurrent with payment.
16. Time of delivery.
17. Cost of putting goods into deliverable state.
18. Means of delivery.
19. Place of delivery.
20. Despatch of goods by carrier.

PART THREE

Duties of the Buyer

21. Fundamental obligations of the buyer.
22. Payment concurrent with delivery.
23. Time of payment and accepting delivery.
24. Buyer not bound to accept delivery by instalments.

PART FOUR

Transfer of Property and Risk

Transfer of Property

25. Goods must be ascertained.
26. When property passes.

Transfer of Risk

27. Transfer of risk.

Transfer of Property by a Non-owner

28. Non-owner cannot generally pass good title.
29. Disposition under voidable title.
30. Disposition by merchantile agent in possession of goods.
31. Disposition by seller in possession.
32. Disposition by buyer in possession.
33. Provisions relating to notice of ownership.

PART FIVE

Remedies of the Seller

Real Rights of Seller

- 34. Unpaid seller defined.
- 35. Unpaid seller's rights.

Lien

- 36. Seller's lien.
- 37. Termination of lien.

Stoppage in Transit

- 38. Stoppage in transit.
- 39. Duration of transit.
- 40. How stoppage in transit is effected.
- 41. Position as between seller and carrier.
- 42. Stoppage over goods lost or damaged.
- 43. Effect of resale or other disposition by buyer.

Recovery of Possession from Buyer

- 44. Seller's right to recover possession after delivery.

Resale

- 45. Resale by seller.

Personal Rights of the Seller

- 46. Action for price.
- 47. Damages for non-acceptance.
- 48. Assessment of damages.

PART SIX

Remedies of the Buyer

Rejection of the Goods

- 49. When buyer has right to reject.

- 50. Effect of rejection.
- 51. No rejection after acceptance.
- 52. Acceptance.

Personal Rights of the Buyer

- 53. Damages for non-delivery.
- 54. Assessment of damages for non-delivery.
- 55. Damages for breach of condition or warranty.
- 56. Assessment of damages under section 55.
- 57. No forfeiture of sums paid by buyer.
- 58. Specific performance.

PART SEVEN

Cost, Insurance, Freight and Free on Board Sales

- 59. Parts One to Six to be read subject to this Part.
- 60. Export and import licences.
- 61. Cost, insurance, freight contracts.
- 62. Free on board contracts.
- 63. Payment of price by banker's commercial credit.
- 64. Meaning of proper shipping documents.
- 65. Duties under this Part to be construed as conditions.

PART EIGHT

Hire-Purchase Contracts

- 66. Formalities relating to hire-purchase contracts.
- 67. Authorising seller to enter buyer's premises to be void.
- 68. Special provisions as to determination of contracts.
- 69. Restriction on seller's right to recover possession.
- 70. Action by seller.
- 71. Postponement of order for specific delivery of goods.
- 72. Assignments contrary to contract.
- 73. Duty of seller to supply documents and information.
- 74. Regulations as to hire-purchase contracts.
- 75. Application of Part Eight.

PART NINE

Miscellaneous

- 76. Variation of rights, duties and liabilities.
- 77. Reasonable time a question of fact.
- 78. Application of the Act.
- 79. Act to bind the Republic.
- 80. Savings.
- 81. Interpretation.
- 82. Repeal.
- 83. Statutes ceasing to apply.
- 84. Commencement.

SCHEDULES

- First Schedule Notice to be included in Note or Memorandum of Hire-purchase Agreement
- Second Schedule Statutes ceasing to apply

ACT 137
SALE OF GOODS ACT, 1962(1)

AN ACT to codify with amendments the law relating to the sale and hire purchase of goods and to provide for related matters.

PART ONE

Nature and Formation of the Contract

1. Contract of sale

(1) A contract of sale of goods is a contract by which the seller agrees to transfer the property in the goods to the buyer for a consideration called the price, consisting wholly or partly of money.

(2) Where, by virtue of one or more contracts, a person has agreed for value to bail goods to a bailee on the terms that the property in the goods will or may at the option of the bailee pass to the bailee then, for the purposes of this Act,

- (a) that person has agreed to transfer the property in the goods to the bailee, and
- (b) the bailor is the seller and the bailee is the buyer.

(3) There may be a contract of sale between one part owner and another.

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

2. Capacity to buy and sell

(1) The capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.

(2) Where necessaries are delivered to a person under an agreement which is void because of that person's incapacity to contract, that person is bound to pay a reasonable price for those necessaries.

(3) Necessaries in this section means goods suitable to the condition in life of the person to whom they are delivered and to the actual requirement of that person at the time of delivery.

3. Contract of sale, how made

Subject to this Act and subject to any other enactment, a contract of sale of goods

- (a) may be made in writing or by word of mouth, or partly in writing and partly by word of mouth, or
- (b) may be implied from the conduct of the parties.

4. Auction sales

(1) In the case of a sale by auction,

- (a) where the goods are put up for sale in lots, each lot is prima facie the subject of a separate contract of sale;
- (b) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner;
- (c) until the announcement is made a bidder may retract the bid and, subject to paragraph (d), the seller may withdraw the goods;
- (d) where the sale is expressed to be without reserve, the higher bona fide bidder is entitled to buy the goods at the price bid although the auctioneer refuses to accept the bid or to complete the sale;
- (e) the seller or any one person on behalf of the seller may bid if a right to bid is expressly reserved, but, subject to paragraph (f), not otherwise;
- (f) where the sale is notified to be subject to a reserve price the seller or a person on behalf of the seller may make one bid and no more; and that bid shall be openly declared at the auction before any other bid is received.

(2) Where there is a breach of a provision of paragraph (e) or (f) of subsection (1) the buyer may treat the sale as fraudulent.

5. Specific and unascertained goods

(1) The goods which form the subject of a contract of sale may be specific goods, identified and agreed on before or at the time when the contract is made, or unascertained goods which are not identified and agreed on.

(2) There may be a sale of goods to be manufactured or grown or acquired by the seller after the making of the contract.

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

6. The price

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

(2) Where the price is not determined in accordance with subsection (1) and for that purpose the buyer shall pay a reasonable price, a reasonable price is a question of fact dependent on the circumstances of each particular case.

7. Agreement to sell at valuation

(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and the third party cannot or does not make the valuation, the agreement is void.

(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.

PART TWO

Duties of the Seller

Fundamental Obligation of the Seller

8. Fundamental obligation of the seller

(1) In a sale of specific goods the fundamental obligation of the seller is to deliver those goods to the buyer.

(2) In a sale of unascertained goods the fundamental obligation of the seller is to deliver to the buyer goods substantially corresponding to the description or sample by which they were sold.

(3) A provision in a contract of sale which is inconsistent with, or repugnant to, the fundamental obligation of the seller, is void to the extent of the inconsistency or repugnance.

Existence of the Goods

9. Implied condition that specific goods are in existence

In a contract for the sale of specific goods there is an implied condition on the part of the seller that the goods are in existence at the time when the contract is made.

Undertakings as to Title

10. Implied undertakings as to title

(1) In a contract of sale there is an implied warranty on the part of the seller that the seller has a right to sell the goods at the time when the property is to pass.

(2) Subsection (1) is not affected by an agreement to the contrary where the goods are of a description which is supplied by the seller in the ordinary course of the seller's business.

Quality and Quantity of the Goods

11. Sale by description

In a contract for the sale of goods by description, whether or not the sale is by sample as well as by description, there is an implied condition that the goods shall correspond exactly with the description.

12. Sale by sample

In a contract for the sale of goods by sample, whether or not the sale is by description as well as by sample there is an implied condition that the goods shall correspond exactly with the sample.

13. Quality and fitness of the goods

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

- (a) that there is an implied condition that the goods are free from defects which are not declared or known to the buyer before or at the time when the contract is made, but that condition is not an implied condition
 - (i) where the buyer has examined the goods in respect of defects, which should have been revealed by the examination;
 - (ii) in the case of a sale by sample, in respect of defects which could have been discovered by a reasonable examination of the sample;
 - (iii) where the goods are not sold by the seller in the ordinary course of the seller's business, in respect of defects of which the seller was not, and could not reasonably have been aware;
- (b) that where the goods are of a description which are supplied by the seller in the course of the seller's business and the buyer expressly or by implication makes known the purpose for which the goods are required, there is an implied condition that the goods are reasonably fit for that purpose.

(2) The condition implied by paragraph (a) of subsection (1) is not affected by a provision to the contrary in the agreement, where the goods are of descriptions which are supplied by the seller in the ordinary course of the seller's business.

(3) The condition implied by paragraph (b) of subsection (1) is not affected by a provision to the contrary in the agreement unless the seller proves that before the contract was made the provision was brought to the notice of the buyer and its effect made clear to the buyer.

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

(5) An express warranty or condition does not negate a warranty or condition implied by this Act unless inconsistent with this Act.

(6) This section applies to goods delivered in pursuance of the contract and extends to the boxes, tins, bottles or any other containers in which the goods are contained.

14. Quantity of goods

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

(2) Where the seller delivers to the buyer a quantity of goods larger than what the seller had contracted to sell, the buyer may not reject the goods delivered by reason only of the excess in quantity, but the buyer may accept the goods so delivered, paying for the extra goods at the contract rate, or the buyer may accept the goods which should have been delivered and reject the remainder.

(3) Where the buyer rejects the remainder of the goods, the buyer may recover damages from the seller representing the cost of separating the goods which should have been delivered from the remainder.

(4) Where the seller delivers to the buyer the goods which the seller had contracted to sell together with goods of a different description not included in the contract,

- (a) the buyer may accept the goods so delivered, paying a reasonable price for the extra goods, or
- (b) if the goods which the seller contracted to sell and has delivered are less than the quantity specified in the contract, the buyer may reject the whole, or
- (c) the buyer may accept the goods included in the contract and reject the remainder; but where the buyer rejects the remainder, the buyer may recover
 - (i) damages from the seller representing the cost of separating the goods included in the contract from the remainder, and
 - (ii) damages in respect of the deficiency in the goods delivered.

Delivery of the Goods

15. Delivery concurrent with payment

(1) Unless otherwise agreed the seller shall be ready and willing to deliver the goods in exchange for the price.

(2) Tender of delivery may be treated as ineffectual unless made at a reasonable hour.

16. Time of delivery

(1) Where a time is not fixed for the delivery of the goods, the goods shall be delivered within a reasonable time.

(2) Unless a contrary intention appears, stipulations as to the time of delivery are conditions of a contract of sale.

(3) The parties to a contract of sale may, whether with or without consideration, agree that delivery of the goods shall be made at a date or time other than that stipulated for in the contract, and in this event, the seller is bound to deliver and the buyer is bound to accept delivery of the goods, at that date or time unless the parties agree to a further change.

(4) Where the buyer agrees to accept delivery from the seller at a date later than that stipulated in the contract without substituting another date for the delivery, the seller shall deliver the goods within a reasonable time, having regard in particular to the reasons for the postponement of the delivery, and the buyer may, on reasonable notice to the seller, notify the seller of the latest date on which delivery will be

accepted.

(5) Where the seller contracts to use the seller's best endeavours to deliver the goods on, or not later than, a given date the seller shall, unless a contrary intention appears, but without prejudice to the obligations so to use the best endeavours, deliver the goods within a reasonable time after that date.

17. Cost of putting goods into deliverable state

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

18. Means of delivery

(1) Unless otherwise agreed, the seller may deliver the goods to the buyer by

- (a) transferring to the buyer the actual physical control over the goods, or
- (b) transferring to the buyer the means of obtaining actual physical control over the goods, or
- (c) transferring to the buyer the documents of title to the goods.

(2) Unless a contrary intention is apparent, delivery of the goods to the buyer's agent or to the buyer's order is a delivery to the buyer.

(3) Unless a contrary intention is apparent, delivery of the goods to a carrier, pursuant to, or consequent on a contract of sale, for transmission to the buyer is a delivery to the buyer.

(4) Where the goods are in the possession of a third party, they are delivered to the buyer when the third party acknowledges to the buyer that the third party holds the goods on behalf of the buyer.

(5) Subsection (4) does not affect the operation of the delivery of a document of title.

19. Place of delivery

(1) Unless a contrary intention is apparent, the place of delivery is the seller's place of business, if the seller has one, and if not, the residence of the seller.

(2) In a contract for the sale of specific goods which to the knowledge of the parties when the contract is made are in some other place, then subject to a contrary intention that place is the place of delivery.

20. Despatch of goods by carrier

(1) Where in pursuance of a contract of sale the seller is authorised or required to send the goods to the buyer by a carrier, there is an implied condition that the seller shall make the contract with the carrier on behalf of the buyer which is reasonable having regard to the circumstances of the case.

(2) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea or air transit in circumstances in which it is usual to insure, the seller shall give the notice that may be required by the buyer to enable the buyer to insure them during the sea or air transit, and if the seller fails to do so the goods shall be at the seller's risk during that transit.

PART THREE

Duties of the Buyer

21. Fundamental obligations of the buyer

The fundamental obligations of the buyer in a contract of sale are to pay the price and accept delivery of the goods.

22. Payment concurrent with delivery

Unless otherwise agreed, the buyer shall be ready and willing to pay the price in exchange for delivery of the goods.

23. Time of payment and accepting delivery

Unless otherwise agreed, stipulations as to the time of payment or as to the time for accepting delivery are not conditions of a contract of sale.

24. Buyer not bound to accept delivery by instalments

Unless otherwise agreed the buyer is not bound to accept delivery of the goods by instalments.

PART FOUR

Transfer of Property and Risk

Transfer of Property

25. Goods must be ascertained

Where there is a contract for the sale of unascertained goods the property in the goods is not transferred to the buyer unless the goods are ascertained.

26. When property passes

(1) Subject to section 25, the property in the goods passes under a contract of sale when the parties intend it to pass.

(2) Unless a different intention is apparent, the property in the goods passes under a contract of sale when they are delivered to the buyer.

(3) Where goods are delivered to the buyer on approval or “on sale or return” or any other similar terms, then, in the absence of a contrary intention, the property in the goods passes to the buyer

- (a) when the buyer signifies the buyer’s approval or acceptance to the seller or does any other act adopting the transaction;
- (b) if the buyer does not signify the buyer’s approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of that time, and if a time has not been fixed, on the expiration of a reasonable time.

Transfer of Risk

27. Transfer of risk

(1) The risk in the goods in a contract of sale is transferred to the buyer when the parties intend it to be transferred.

(2) Unless a different intention is apparent, the goods are at the seller's risk until the property in them passes to the buyer, after which the goods are at the risk of the buyer.

(3) Where delivery of the goods is delayed through the fault of the buyer or the seller, the goods are at the risk of the party in fault as regards the loss, damage or deterioration which might not have occurred but for the delay.

(4) This section does not affect the duties or liabilities of the seller or the buyer as a bailee of the goods of the other party or a destruction or loss or deterioration of or damage to the goods which is caused by the fault of either party.

Transfer of Property by a Non-owner

28. Non-owner cannot generally pass good title

(1) Subject to this Act and to any other enactment where goods are sold by a person who is not the owner of the goods and who does not sell them under the authority or with the consent of the owner, the buyer does not acquire a better title than the seller had.

(2) Subsection (1) does not affect the operation of the doctrine of estoppel, or a power of sale which may be conferred by or under an enactment or by a contract of pledge or otherwise.

29. Disposition under voidable title

Where a person has a voidable title to goods, a sale, pledge or any other disposition for value made by that person before the title to the goods has been avoided shall be as effective as if that person's title were not voidable, if the person receiving the disposition acts in good faith and without notice of the defect in title of the person making the disposition.

30. Disposition by mercantile agent in possession of goods

(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, a sale, pledge or any other disposition for value of the goods or documents of title made by the mercantile agent apparently in the ordinary course of the mercantile agent's business as a mercantile agent, is as valid as if the mercantile agent were expressly authorised by the owner of the goods to make that disposition, if the person receiving the disposition acts in good faith, and did not have notice, at the time of the disposition, that the mercantile agent does not have the authority to make the disposition.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to the goods, a sale, pledge or any other disposition for value, which would have been valid if the consent had continued, is valid despite the determination of the consent, unless the person receiving the disposition has notice at the time of the receipt, that the consent has been determined.

(3) Where a mercantile agent has obtained possession of the documents of title to goods by reason of the mercantile agent being or having been, with the consent of the owner, in possession of the goods represented by those documents or of any other documents of title to the goods, the mercantile agent's

possession of the first mentioned documents shall, for the purposes of this section, be deemed to be with the consent of the owner.

(4) For the purposes of this section the consent of the owner shall be presumed unless the contrary is proved.

(5) The goods or documents of title to the goods are not in the possession of a mercantile agent within the meaning of this section unless they are in the mercantile agent's possession in that agent's capacity as a mercantile agent.

(6) This section does not affect the liability of a mercantile agent to the owner for a wrongful sale, pledge or any other disposition of the goods or documents to title.

31. Disposition by seller in possession

(1) Where a person having agreed to sell goods continues or is in possession of them after the property has passed to the buyer, the delivery or transfer by the seller, of the goods or documents of title under a contract for sale, pledge or any other disposition for value of the goods, to a person receiving the goods in good faith and without notice of the previous sale, has the same effect as if the seller were expressly authorised by the original buyer to make the delivery or the transfer.

(2) Subsection (1) applies whether the seller is in possession of the goods as bailee or in any other capacity.

(3) This section does not

- (a) derogate from the powers of a seller in whom the property in the goods is vested, or
- (b) affect the liability of the seller to the buyer for a wrongful sale, pledge or any other disposition for value of the goods or documents of title.

32. Disposition by buyer in possession

(1) Where a buyer of goods obtains the possession of the goods or of the documents of title to the goods with the consent of the seller before the property passes to the buyer, the delivery or transfer by the buyer, of the goods or documents of title under a sale, pledge or any other disposition for value of the goods to a person receiving the goods in good faith and without notice of the buyer's lack of title, has the same effect as if the buyer were expressly authorised by the seller to make the delivery or the transfer.

(2) Where a buyer of goods obtains possession of the goods with the consent of the seller before the property passes to the buyer and resells, pledges or otherwise disposes of the goods for value to a third party in the circumstances that the sale, pledge or any other disposition would not, but for this subsection, transfer the rights in the goods to the third party, under this Act or otherwise, the third party may, despite anything in the original contract, retain or recover possession of the goods on tendering to the seller the unpaid balance of the price due to the seller and on the buyer doing so the seller's title shall vest in the buyer but subject to the rights of the buyer against the third party.

(3) This section applies whether the buyer is in possession of the goods as a bailee or in any other capacity.

(4) This section does not

- (a) derogate from the powers of a buyer in whom the property in the goods is vested, or
- (b) affect the liability of the buyer to the seller for a wrongful sale, pledge or any other disposition for value of the goods or documents of title.

33. Provisions relating to notice of ownership

(1) For the purposes of the provisions of this Part relating to dispositions of goods to persons receiving the goods in good faith and without notice of defects in title, where a motor vehicle is licensed by a licensing authority under the Road Traffic Act, 2004 (Act 683) a person has notice of the ownership or interest of the person in whose name the motor vehicle is licensed.

(2) The Minister responsible for Trade may, with the concurrence of the Minister responsible for Licensing Authorities, make Regulations by legislative instrument,

- (a) prescribing the forms to be used and fees to be paid by persons wishing to inspect the records of a Licensing Authority;
- (b) providing that a copy of an entry in the records of a Licensing Authority purporting to be signed and certified as a true copy by the person in charge of the licensing office, is admissible in evidence in legal proceedings; and
- (c) generally for giving effect to this section.

PART FIVE

Remedies of the Seller

Real Rights of Seller

34. Unpaid seller defined

(1) The seller of goods is an unpaid seller within the meaning of this Part

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

(2) In this Part the term “**seller**” includes a person who is in the position of a seller as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has personally paid or is directly responsible for the price.

35. Unpaid seller’s rights

(1) Subject to this Act, an unpaid seller of goods has by implication of law,

- (a) whether or not the property in the goods has passed to the buyer,
 - (i) a lien on the goods,
 - (ii) in the case of the insolvency of the buyer, a right of stopping the goods in transit after the seller has parted with the possession of the goods but before the buyer has obtained the possession of the goods, and
 - (iii) a right of resale;
- (b) where the property has not passed to the buyer but the goods have been delivered to the

buyer, a right to recover possession of the goods.

(2) This Part does not derogate from the powers of an unpaid seller where the contract is for the sale of unascertained goods and the goods have not been appropriated to the contract.

Lien

36. Seller's lien

(1) Subject to this Act, an unpaid seller of goods who is in possession of the goods is entitled to retain possession of the goods until payment or tender of the price if

- (a) the seller has not agreed to deliver the goods before payment of the price;
- (b) the goods have been sold on credit but the term of credit has expired; or
- (c) the buyer has become insolvent.

(2) The seller may exercise the right of lien although the seller is in possession of the goods as bailee or in any other capacity.

(3) Where an unpaid seller has made part delivery of the goods, the unpaid seller may exercise the right of lien on the remainder unless the part delivery has been made in the circumstances that show an agreement to waive the lien.

(4) A contract of sale of goods is not rescinded by reason only that the seller has exercised the lien.

37. Termination of lien

(1) An unpaid seller of goods loses the lien on the goods

- (a) when the unpaid seller delivers the goods to a carrier or any other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods, or
- (b) when the buyer obtains the possession of the goods with the consent of the seller, or
- (c) by waiver of the lien.

(2) An unpaid seller of goods does not lose the lien by reason only that the unpaid seller has obtained judgment for the price.

Stoppage in Transit

38. Stoppage in transit

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

(2) A contract of sale is not rescinded by reason only that the seller has exercised the right of stoppage in transit.

39. Duration of transit

(1) Goods are in course of transit from the time when the goods are delivered to a carrier or any other

bailee until the buyer takes delivery of the goods from the carrier or bailee.

(2) If the buyer 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 the other bailee acknowledges to the buyer that the carrier or bailee holds the goods on the buyer's behalf and continues in possession of the goods as bailee for the buyer, then subject to subsection (4), 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 the other bailee continues in possession of the goods the transit is not at an end even if the seller refuses to receive them back.

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

(6) Where the carrier or the other bailee wrongfully refuses to deliver the goods to the buyer, the transit is at an end.

(7) Where part delivery has been made to the buyer the remainder of the goods may be stopped in transit unless the part delivery has been made under the circumstances that show an agreement to waive the right of stoppage in transit.

40. How stoppage in transit is effected

(1) An unpaid seller may exercise the right of stoppage in transit by taking actual possession of the goods, or by giving notice of the claim to the carrier or the other bailee in whose possession the goods are.

(2) The notice may be given to the person in actual possession of the goods or to the principal of that person.

(3) For the purposes of subsection (2), the notice, to be effectual, must be given at the time and under the circumstances that the principal, by the exercise of reasonable diligence, may communicate it to the servant or agent of the principal in time to prevent a delivery to the buyer.

41. Position as between seller and carrier

(1) The right of an unpaid seller to take possession of goods which the unpaid seller has stopped in transit is subject to a particular lien of the carrier or the other bailee in respect of freight due on the goods, but takes priority over any other lien.

(2) Where notice of stoppage in transit is given by the seller to the carrier or the other bailee in possession of the goods, the seller is bound to give instructions within a reasonable time to the carrier or the other bailee with respect to the redelivery of the goods to the seller or the seller's order, and the carrier is bound to deliver the goods according to those instructions.

(3) The expenses of the redelivery and of the original carriage shall be borne by the seller as between the seller and the carrier.

42. Stoppage over goods lost or damaged

Where an unpaid seller exercises the right of stoppage in transit over goods which are lost or damaged, or deteriorates, in transit, then, as between the seller and the buyer, the proceeds of a policy of insurance

in respect of the goods are payable

- (a) to the seller, if the insurance was effected by the seller and the seller exercise the right of stoppage in transit before the loss, damage or deterioration occurs, or
- (b) to the buyer, in any other case.

43. Effect of resale or other disposition by buyer

Where a seller has a right of lien or stoppage in transit over goods,

- (a) if the seller assents to a resale or any other disposition by the buyer, the seller loses the right of lien or stoppage in transit;
- (b) if the buyer resells the goods or documents of title to the goods in circumstances in which the resale is effective to pass a title under section 32 or otherwise, the seller loses the right of lien or stoppage in transit;
- (c) if the buyer disposes of the goods or the documents of title to the goods otherwise than by way of sale, in circumstances in which the disposition is effective under section 32 or otherwise, the seller may exercise the right of lien or stoppage in transit subject to the rights of a person claiming by or under that disposition.

Recovery of Possession from Buyer

44. Seller's right to recover possession after delivery

Subject to this Act and to a contrary intention an unpaid seller may recover possession of the goods from the buyer after they have been delivered to the buyer where

- (a) the property has not passed to the buyer, or
- (b) the property has passed to the buyer but the contract nevertheless expressly confers a right on the seller to recover possession,

and the buyer fails to pay the price in accordance with the terms of the contract, but not otherwise.

Resale

45. Resale by seller

An unpaid seller who is in possession of the goods is entitled as against the buyer to resell the goods

- (a) where they are of a perishable nature and the buyer does not within a reasonable time pay or tender the price;
- (b) where the buyer has repudiated the contract and the seller has accepted the repudiation;
- (c) where the seller gives notice to the buyer of the intention to resell and the buyer does not within a reasonable time pay or tender the price.

Personal Rights of the Seller

46. Action for price

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

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

(3) Where, under a contract of sale of goods, the seller delivers part only of the goods and the buyer accepts or is bound to accept that part, the seller may maintain an action against the buyer for a proportionate part of the price without prejudice to a counterclaim by the buyer for damages in accordance with section 53.

(4) Subsection (3) does not apply to a contract to which Part One of the Contracts Act, 1960 (Act 25) applies.

(5) This section does not prevent a seller from maintaining an action for damages in addition to an action for the price where the circumstances warrant.

47. Damages for non-acceptance

(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods in accordance with the terms of the contract, the seller may maintain an action against the buyer for damages for non-acceptance.

(2) In a contract for the sale of goods to be delivered by instalments,

(a) if each instalment is to be separately paid for, subsection (1) shall apply to each instalment separately, but where the buyer has by words or conduct shown an intention to repudiate the contract the seller may, if the seller accepts the repudiation, maintain an action for damages for non-acceptance in respect of the goods;

(b) in any other case, a breach in respect of one or more instalments shall be treated for the purposes of subsection (1) as though it were a breach in respect of the whole contract or of the remaining part of the contract.

48. Assessment of damages

(1) The measure of damages in an action under section 47 is the loss which could reasonably have been foreseen by the buyer at the time when the contract was made as likely to arise from the breach of contract.

(2) Where there is an available market for the goods, the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price,

(a) if a time has been fixed for acceptance, or if the buyer repudiates the contract before the time of performance, and the seller does not accept the repudiation, at the time or times when the goods ought to have been accepted;

(b) in any other case, at the time or times of the refusal to accept the goods.

(3) In this section a time is not fixed for acceptance by reason only that the goods are to be accepted within a reasonable time.

PART SIX

Remedies of the Buyer

Rejection of the Goods

49. When buyer has right to reject

(1) Subject to this Act, the buyer is entitled to reject the goods and to refuse to pay, or to recover, the price where

- (a) the seller is guilty of a breach of a fundamental obligation; or
- (b) the seller is guilty of a breach, not being of a trivial nature, of a condition of the contract, whether the breach is in respect of all of the goods or, subject to subsection (2), of part only of the goods; or
- (c) the buyer has entered into the contract as a result of fraudulent or innocent misrepresentation on the part of the seller.

(2) Where there is a contract for the sale of goods which are to be delivered by instalments, then

- (a) if each instalment is to be separately paid for, subsection (1) shall apply to each instalment separately, but where there are persistent and grave breaches by the seller in respect of two or more instalments the buyer may treat the whole contract as repudiated; and this paragraph shall not affect the buyer's rights under paragraph (c) of subsection (1);
- (b) in any other case, a breach as is referred to in subsection (1) in respect of one or more instalments shall be treated for the purpose of that subsection as though it were a breach in respect of the whole contract.

50. Effect of rejection

(1) Where goods are delivered to the buyer and the buyer rejects the goods having the right to do so, the buyer is not bound to return them to the seller, but it is sufficient if the buyer intimates to the seller that the buyer rejects the goods.

(2) After the buyer has intimated to the seller that the buyer rejects the goods, the seller is entitled to have the goods placed at the buyer's disposal.

(3) Where the buyer has paid the price or a part of the price, the buyer may retain the possession of the goods until the seller repays or tenders the amounts the seller has received from the buyer.

51. No rejection after acceptance

(1) The buyer may not reject goods which the buyer has accepted.

(2) The acceptance of a part of the goods does not deprive the buyer of the right to reject any other part unless the contract is not severable.

52. Acceptance

The buyer accepts the goods when the buyer

- (a) intimates to the seller that the buyer accepts the goods, or
- (b) does not, within a reasonable time after delivery of the goods, inform the seller that the buyer rejects the goods, or
- (c) wrongfully refuses or neglects to place the goods at the disposal of the seller after notifying the seller that the buyer rejects the goods.

Personal Rights of the Buyer

53. Damages for non-delivery

The buyer may maintain an action against the seller for damages for non-delivery,

- (a) where the seller wrongfully neglects or refuses to deliver the goods to the buyer, in accordance with the term of the contract, or
- (b) where the buyer rejects the goods delivered by the seller having the right to do so.

54. Assessment of damages for non-delivery

(1) The measure of damages in an action under section 53 is the loss which could reasonably have been foreseen by the seller at the time when the contract was made as likely to result from the breach of contract.

(2) Where there is an available market for the goods, the measure of damages is prima facie to be ascertained by the difference between the market or current price and the contract price

- (a) if a time has been fixed for delivery, or if the seller repudiates the contract before the time of performance, and the buyer does not accept the repudiation, at the time or times when the goods ought to have been delivered;
- (b) in any other case, at the time or times of the refusal to deliver the goods.

(3) In this section a time is not fixed for delivery by reason only that the goods are to be delivered within a reasonable time.

55. Damages for breach of condition or warranty

Where the seller is guilty of a breach of the seller's fundamental obligation or of a condition or warranty of the contract, the buyer

- (a) may maintain an action against the seller for damages for the breach complained of, or
- (b) may set up a claim to the damages in diminution or extinction of the price.

56. Assessment of damages under section 55

The measure of damages in an action under section 55 is the loss which could reasonably have been foreseen by the seller at the time when the contract was made as likely to result from the breach of contract.

57. No forfeiture of sums paid by buyer

(1) Where under a contract of sale the buyer has paid a part or all of the price to the seller and the

seller refuses or neglects to deliver the goods to the buyer having the right to do so, or, after delivering the goods, recovers the possession of the goods having the right to do so, the buyer is entitled, without prejudice to any other rights, but subject to a counterclaim for damages by the seller, to recover from the seller the amounts which the buyer has paid.

(2) Subsection (1) applies whether the amounts paid by the buyer were expressed to be by way of part payment or deposit or otherwise, and despite an agreement to the contrary.

(3) This section does not affect a case where the seller's refusal or neglect to deliver the goods, or the seller's recovery of the possession of the goods is wrongful.

58. Specific performance

(1) In an action for breach of contract to deliver specific or ascertained goods, the Court may by its judgment direct that the contract should be specifically performed without giving the seller the option of retaining the goods on payment of damages.

(2) The judgment may be unconditional or on the terms as to damages, costs and otherwise that the Court thinks fit.

PART SEVEN

Cost, Insurance, Freight and Free on Board Sales

59. Parts One to Six to be read subject to this Part

(1) The provisions of Parts One to Six are in relation to cost, insurance and freight and free on board contracts, subject to this Part.

(2) This Part applies with the necessary modifications to contracts analogous to cost, insurance, freight or free on board contracts respectively and in particular to cost and freight contracts, free on rail contracts and free alongside contracts.

60. Export and import licences

(1) In a cost, insurance, and freight contract, unless a contrary intention appears,

- (a) the seller shall obtain the necessary export licence, and
- (b) the buyer shall obtain the necessary import licence.

(2) In a free on board contract, unless a contrary intention appears,

- (a) where the buyer is resident in the country from which shipment is to be made, the buyer shall obtain the necessary export licence, or
- (b) in any other case, the seller shall obtain the necessary export licence, or
- (c) the buyer shall obtain the necessary import licence.

(3) Where a party is under a duty, whether under this section or otherwise, to obtain the necessary export or import licence, it is a question dependant on the circumstances of the case whether the duty is discharged where the party has used its best endeavours to obtain a licence, but nevertheless has not obtained the licence or whether that party is still bound to deliver or to accept delivery of the goods.

(4) In a cost insurance, freight or free on board contract the party who is required to obtain the

necessary export licence is, unless a contrary intention appears, bound to pay the export taxes or dues in the nature of taxes, and the party who is required to obtain the necessary import licence is, in the absence of a contrary intention, bound to pay the import taxes or customs duties or dues in the nature of taxes.

(5) In this section export and import licences include the permits without which it would be illegal to export or import the goods from or to the country in question.

61. Cost, insurance, freight contracts

In a cost, insurance, freight contracts, unless a contrary intention appears,

- (a) the seller is bound, at the seller's expense, to ship the goods during the agreed period to the port agreed on or to acquire goods afloat which have been so shipped;
- (b) the seller is bound, at the seller's expense, to effect on the goods an insurance of the type normal for goods and a voyage of the kind in question;
- (c) the seller is bound to transfer to the buyer proper shipping documents in accordance with the terms of the contract;
- (d) the buyer is bound to take up proper shipping documents and, on doing so, to pay the price in accordance with the terms of the contract;
- (e) the goods are delivered to the buyer, and the property in the goods passes to the buyer, on the transfer to the buyer of the bills of lading;
- (f) the risk in the goods passes to the buyer when they are shipped or acquired afloat.

62. Free on board contracts

In a free on board contract, unless a contrary intention appears,

- (a) the buyer is entitled and bound to nominate a ship to the seller calling during the agreed period, at the agreed, or where the buyer has an option, one of the agreed, ports ready and willing to carry the goods;
- (b) the seller is bound, at the seller's expense, to have the goods loaded on the ship nominated by the buyer;
- (c) the seller is bound to give the notice to the buyer that is required by section 20 (2) except where the buyer already has the necessary information;
- (d) the seller is not bound to effect the insurance on the goods;
- (e) the seller is bound to transmit to the buyer bills of lading by which the goods are deliverable to the buyer or to the order of the buyer or to transfer to the buyer bills of lading by which the goods are deliverable to the seller or to the order of the seller;
- (f) where by the bills of lading, the goods are deliverable to, or to the order of the seller, the property passes to the buyer when the bills of lading are transferred to the buyer and where by the bills of lading the goods are deliverable to, or to the order of the buyer, the property passes to the buyer when the goods are shipped;
- (g) the risk in the goods passes to the buyer when they are shipped.

63. Payment of price by banker's commercial credit

Where, in a cost, insurance, freight or free on board contract the price is to be paid by means of a letter of credit opened at a bank to be nominated by the seller, then in the absence of a contrary intention,

- (a) the credit shall be opened not later than the earliest date on which the seller may ship the goods, or where the date of shipment is to be fixed by the buyer, not later than the earliest date on which the seller may be required to ship the goods;
- (b) as against the buyer, the seller is only entitled to draw against the credit on presentation to the bank of the proper shipping documents.

64. Meaning of proper shipping documents

For the purposes of this Part, “**proper shipping documents**” means

- (a) the seller’s invoices for the goods,
- (b) bills of lading which acknowledge that the goods have been shipped and which do not contain a reservation as to the apparent good order and condition of the goods or the packing, and
- (c) in a cost, insurance, freight contract and in any other contract where the seller is bound to effect insurance on the goods, policies of insurance, or, where permitted by commercial custom, the certificates of insurance.

65. Duties under this Part to be construed as conditions

The duties imposed on a buyer or seller under this Part are, unless a contrary intention appears in the contract, conditions and not warranties.

PART EIGHT

Hire-Purchase Contracts

66. Formalities relating to hire-purchase contracts

- (1) Before a hire-purchase contract is entered into in respect of goods, the seller
 - (a) shall state the cash price in writing to the prospective buyer, otherwise than in the note or memorandum referred to in subsections (3) and (4), and
 - (b) shall also state the cash price to the purchaser orally.
- (2) Subsection (1) is sufficiently complied with if the seller states the cash price to the buyer orally, and
 - (a) if the buyer has inspected the goods or like goods and at the time of the inspection tickets or labels were attached to or displayed with the goods clearly stating the cash price of the goods as a whole, or of the different articles or sets of articles comprised in the goods, or
 - (b) if the buyer has selected the goods by reference to a catalogue, price list, or an advertisement, which clearly stated the cash price of the goods as a whole or of the different articles or sets of articles comprised in the goods.
- (3) A seller is not entitled to enforce a hire-purchase contract or a contract of guarantee relating to the hire-purchase or a right to recover the goods from the buyer.

(4) A security given by the buyer in respect of money payable under the hire-purchase contract or given by the guarantor in respect of money payable under the contract of guarantee is not enforceable against the buyer or guarantor by a holder of the security unless the requirement specified in subsection (1) has been complied with, and

(a) a note or memorandum of the agreement is made and signed by the buyer and by or on behalf of any other parties to the agreement, and

(b) the note or memorandum contains a statement of the hire-purchase price and the cash price of the goods to which the agreement relates and of the amount of each of the instalments by which the price is to be paid and of the date or the mode of determining the date on which each instalment is payable, and contains a list of the goods to which the agreement relates sufficient to identify them, and

(c) the note or memorandum contains a notice which is at least as prominent as the rest of the contents of the note or memorandum, in the terms prescribed in the First Schedule, and

(d) a copy of the note or memorandum is delivered or sent to the buyer within fourteen days of the making of the agreement.

(5) Where the Court is satisfied in an action that a failure to comply with the requirement specified in subsection (1) or a requirement specified in paragraph (b), (c) or (d) of subsection (4) has not prejudiced the buyer and that it would be just and equitable to dispense with the requirement, the Court may, subject to the conditions that it thinks fit to impose, dispense with that requirement for the purposes of the action.

(6) For the purposes of this section and of this Part, “cash price” means the price at which the goods may be purchased by a prospective buyer for cash.

67. Authorising seller to enter buyer’s premises to be void

A provision in a hire-purchase contract by which the seller or a person acting on the seller’s behalf is authorised to enter on any premises for the purpose of taking possession of the goods, or is relieved from liability for the entry, is void.

68. Special provisions as to determination of contracts

(1) A buyer may, before the final payment under a hire-purchase contract falls due, and despite anything in the contract, determine the contract by returning the goods to the seller.

(2) On the termination of a contract of hire-purchase, whether by the seller lawfully retaking the possession of the goods from the buyer, or under subsection (1) or otherwise, then, without prejudice to the liability which has accrued before the termination, the buyer is liable to pay to the seller the amount by which one-half of the hire-purchase price exceeds the total of the sums of money paid and the sums of money due in respect of the hire-purchase price immediately before the termination.

(3) Where a hire-purchase contract is determined under this section, the buyer is liable to pay damages for the failure to take reasonable care of the goods.

(4) This section does not affect

(a) a right of a buyer to determine a hire-purchase contract otherwise than by virtue of this section, and

(b) a contract of hire purchase which is the subject of an order of the Court under section 70.

69. Restriction of seller’s right to recover possession

(1) Where goods have been delivered to a buyer under a contract of hire-purchase, and at least fifty percent, or the prescribed minimum percentage of the hire-purchase price has been paid or tendered by or on behalf of the buyer, the seller may, by action enforce a right to recover possession of the goods from the buyer.

(2) Where a seller recovers possession of goods in contravention of subsection (1), the hire-purchase contract, if not previously determined, shall determine, and

- (a) the buyer is released from liability under the contract and is entitled to recover from the seller the sums of money paid by the buyer under or in respect of the contract; and
- (b) a guarantor is entitled to recover from the seller the sums of money paid by the guarantor under or in respect of the contract of guarantee.

(3) Subsections (1) and (2) do not apply where the contract has been determined by the buyer by virtue of a right vested in the buyer.

(4) Where by virtue of this section the enforcement by a seller of a right to recover possession of goods is subject to a restriction, and the buyer refuses to give up possession of the goods to the seller, the buyer is not, by reason only of the refusal, liable to the seller for conversion of the goods.

70. Action by seller

(1) Where in a case to which section 69 applies, a seller commences an action to recover possession of goods from a buyer after at least the appropriate percentage of the hire-purchase price has been paid or tendered, the seller shall not, after the action has been commenced, enforce payment of the sum of money due under or in respect of the hire-purchase contract except by claiming the money in the action.

(2) Pending the hearing of the action the Court may, on the application of the seller make the orders that it thinks just for the purpose of protecting the goods from damage or depreciation, including orders restricting or prohibiting the use of the goods or giving directions as to their custody.

(3) On the hearing of the action the Court may, despite anything in the contract to the contrary,

- (a) order the buyer to deliver a part or all of the goods to the seller without giving the buyer the option of retaining the goods on payment of damages;
- (b) order the buyer to pay the unpaid part of the hire-purchase price at the times and in the amounts and subject to the conditions that the Court thinks fit;
- (c) make an order under paragraph (a) but subject to the condition that the seller refunds to the buyer a part of the sums of money paid by the buyer as the Court thinks fit;
- (d) make an order under paragraph (a) but postpone its operation on condition that the buyer pays the unpaid balance of the hire-purchase price at the times and in the amounts and subject to the other conditions that the Court thinks fit; or
- (e) allocate the sums of money which have been paid or a part of the money to a part of the goods and make an order transferring the seller's title in respect of that part to the buyer; or
- (f) make orders under two or more of paragraphs (a) to (e), and may make any further incidental orders that are just.

71. Postponement of order for specific delivery of goods

(1) While the operation of an order for the specific delivery of goods to the owner is postponed under

section 70, the buyer shall hold the goods under and on the terms of the hire-purchase agreement.

(2) For the purposes of subsection (1), a further sum of money shall not be or become payable by the hirer or a guarantor on account of the unpaid balance of the hire-purchase price except in accordance with the terms of the order.

(3) If while the operation of an order for the specific delivery of the goods to the owner is postponed the buyer or a guarantor fails to comply with a condition of the postponement, or with a term of the contract as varied by the Court, or wrongfully disposes of the goods, the seller shall not take civil proceedings against the hirer or guarantor except by making an application to the Court by which the order was made.

(4) In the case of a breach of a condition relating to the payment of the unpaid balance of the hire-purchase price, the seller may recover the possession of the goods unless the order of the Court otherwise directs, but subject to the right of the buyer to apply to the Court under subsection (6).

(5) Where the unpaid balance of the hire-purchase price has been paid in accordance with the terms of the order, the seller's title in the goods shall vest in the buyer.

(6) The Court may, on the application of the buyer or the seller, at any time during the postponement of the operation of the order, revoke or vary the order, and may make any other order under section 70, and where the seller has recovered possession of the goods the Court may order the seller to return the goods to the buyer.

72. Assignments contrary to contract

Where a hire-purchase contract provides that the buyer shall not assign or part with the possession or control of the goods,

- (a) the buyer shall on the written request of the seller, inform the seller where the goods are at the time when the information is given, or if it is sent by post, at the time of posting, and if the buyer fails without reasonable cause to give the information within fourteen days of receiving the request the buyer is liable on conviction to a fine not exceeding two hundred penalty units;
- (b) if the buyer, before the property has passed to the buyer resells, pledges or otherwise disposes of the goods for value to a third party in the circumstances in which section 32 gives rights in the goods to the third party, the buyer commits a misdemeanour.

73. Duty of seller to supply documents and information

(1) Before the final payment has been made under a hire-purchase contract, the seller shall, within seven days of having received a request in writing from the buyer and the buyer has tendered to the seller the sum of money not less than twenty thousand cedis for expenses, supply to the buyer a copy of a memorandum or note of the agreement, together with a statement signed by the seller or the seller's agent showing

- (a) the amount paid by or on behalf of the buyer,
- (b) the amount which has become due under the contract but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each instalment, and
- (c) the amount which is to become payable under the contract, and the date or the mode of determining the date on which each future instalment is to become payable, and the amount of each instalment.

(2) In the event of a failure without reasonable cause to comply with subsection (1), then, while the default continues

- (a) the seller is not entitled to enforce the agreement on the buyer or to enforce a contract of guarantee relating to the contract, and the seller is not entitled to enforce a right to recover the goods from the buyer, and
- (b) a security given by the buyer, in respect of money payable under the contract or given by a guarantor in respect of money payable under the contract of guarantee is not enforceable against the buyer or the guarantor by a holder of the security,

and, if the default continues for a period of one month, the defaulter commits an offence under this section and is liable on conviction to a fine not exceeding two hundred penalty units.

74. Regulations as to hire-purchase contracts

(1) The Minister responsible for Trade may, by legislative instrument, make Regulations providing for the regulation and control of the selling under hire-purchase contracts of goods or of a class or description of goods.

(2) Without prejudice to the generality of subsection (1), the Regulations may provide for

- (a) the form of contracts;
- (b) limiting the rate of interest and any other charges;
- (c) the minimum deposit to be paid by a buyer;
- (d) the maximum period of payment, and the amount and frequency of instalments or rentals;
- (e) the appropriation of payments as between two or more contracts between the same seller and buyer;
- (f) the information to be given in an advertisement or announcement published or made in a form or manner relating to goods for sale by way of hire-purchase regarding the terms on which the goods will be sold;
- (g) the inclusion in an advertisement or announcement of a statement of the price at which the goods will be sold for cash.

(3) The Regulations may also provide that a person who sells goods to which the Regulations apply is not entitled to enforce an agreement for the sale or a right to recover the goods unless specified provisions of the Regulations are complied with.

(4) The Regulations may also prescribe a minimum percentage for the purposes of sections 69 and 70 in lieu of fifty percent, whether for goods generally or for a class or description of goods.

75. Application of Part Eight

(1) Subject to subsection (2), this section applies to a contract.

(2) The application of this Part, or of a provision of this Part may, in the case of a contract in which the cash price of the goods exceeds four hundred million cedis, be excluded by agreement between the parties.

PART NINE

Miscellaneous

76. Variation of rights, duties and liabilities

Subject to this Act, the rights duties and liabilities of the parties to a contract of sale, as laid down in this Act may, as between the parties themselves, be varied by express agreement, or by the course of dealing between the parties, or by trade usage, or by a custom whether a rule of customary law or not which the parties may be taken to have agreed to be applicable to the contract.

77. Reasonable time a question of fact

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

78. Application of the Act

This Act applies to a contract of sale of goods made after the commencement of this Act.

79. Act to bind the Republic

This Act applies to contracts entered into by or on behalf of the Republic as it applies to any other contracts.

80. Savings

The rules of the common law and of the customary law, except where they are inconsistent with this Act, shall continue to apply to contracts for the sale of goods.

81. Interpretation

(1) In this Act, unless the context otherwise requires,

“**action**” includes a counterclaim and a set-off;

“**agreement to sell**” has the same meaning as “**sale**”;

“**ascertained goods**” means goods identified and agreed on after a contract of sale is made;

“**buyer**” shall be construed in accordance with section 1;

“**contract of sale of goods**” has the meaning assigned to it in section 1;

“**Court**” means a court of competent jurisdiction;

“**delivery**” means voluntary transfer of possession from one person to another;

“**document of title**” means a bill of lading, dock warrant, warehouse-keeper’s certificate 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, by endorsement or delivery, the possessor of the document to transfer or receive goods represented by the document;

“**goods**” includes movable property and growing crops or plants and any other things attached to or forming part of the land which are agreed to be severed before sale by or under the contract of sale;

“**hire-purchase contract**” means a contract of sale of goods in which the price is to be paid in five

or more instalments;

“hire-purchase price” means the total sum of money payable by the buyer under a hire-purchase contract in respect of the goods being sold excluding the sums of money payable as a penalty or as damages or compensation, but including a deposit or an initial payment, and the charges for installation of the goods, paid or payable by the buyer;

“mercantile agent” means an agent having in the ordinary course of business as an agent authority to sell goods, or to consign goods for sale, or to buy goods, or to raise money on the security of goods;

“plaintiff” includes defendant in relation to a counterclaim;

“property” means the general property in the goods and not merely a special property;

“quality of goods” includes their state or condition;

“sale” means a contract of sale of goods;

“seller” shall be construed in accordance with section 1;

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

(2) A person is insolvent within the meaning of this Act if that person has ceased to pay debts in the ordinary course of business, or cannot pay those debts as they become due.

(3) Goods are in a **“deliverable state”** within the meaning of this Act when they are in a state that the buyer would be bound, under the contract to take delivery of them.

82. Repeal

(1) The Hire Purchase Act, 1958 (No. 55) is repealed but shall continue to apply to contracts made before the commencement of this Act.

(2) Section 17 of the Auction Sales Act, 1989(2) shall not apply to the sale of goods.

83. Statutes ceasing to apply

The enactments specified in the Second Schedule shall, in so far as they apply in Ghana, cease to apply to the extent indicated in the third column of the Schedule.

84. Commencement

This Act shall come into operation three months after the date of assent.3(3)

SCHEDULES

First Schedule

NOTICE TO BE INCLUDED IN NOTE OR MEMORANDUM OF HIRE-PURCHASE AGREEMENT

NOTICE

Right of Buyer to Terminate Agreement

1. The buyer may put an end to this agreement by returning the goods to the seller.
2. The buyer must then pay the instalments which are in arrears at the time when the goods are returned. If, when the buyer has paid those instalments, the total amount which has been paid under the contract is less than (*here insert the minimum amount which the buyer is required to pay in accordance with the provisions of section 68 of Act*), the buyer must also pay enough to make up that sum of money.
3. The buyer should see whether this agreement contains provisions allowing the buyer to put an end to the agreement on terms more favourable to the buyer than those just mentioned. If it does, the buyer may put an end to the agreement on those terms.

Restriction of Owner's Right to Recover Goods

1. After (*here insert a figure equal to fifty per cent or other prescribed percentage of the hire-purchase price*) has been paid, then, unless the buyer has put an end to the agreement, the seller cannot take them back from the buyer without the buyer's consent unless the seller obtains an order of the Court.
2. If the seller applies to the Court for an order, the Court may, allow the buyer to keep
 - (a) the whole of the goods on condition that the buyer pays the balance of the price in the manner ordered by the Court, or
 - (b) a fair proportion of the goods having regard to what the buyer has already paid.

Second Schedule
STATUTES CEASING TO APPLY

<i>Session and Chapter</i>	<i>Subject Matter</i>	<i>Extent of Cesser</i>
1 Jac. 1, c. 21 (1603)	Brokers.....	The whole Act.
4 Geo. 4, c. 83 (1823)	Factors.....	The whole Act.
6 Geo. 4. c. 94 (1825)	Factors.....	The whole Act.
5 and 6 Vict., c. 39 (1842)	Mercantile Agents.....	The whole Act.
19 and 20 Vict., c. 97 (1856)	Mercantile Law (Amendment)....	Sections 1 and 2.

Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 11th July, 1962.

2 (Popup - Footnote)

2. [P.N.D.C.L. 230](#).

3 (Popup - Footnote)

3. The Act was assented to on 11th July, 1962.