



Australian Capital Territory

Sale of Goods Act 1954 No 15

Republication No 3

Republication date: 9 April 2002

Last amendment made by Act 2001 No 77

Amendments incorporated to 14 March 2002

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Sale of Goods Act 1954* as in force on 9 April 2002. It includes any amendment, repeal or expiry affecting the republished law to 14 March 2002 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

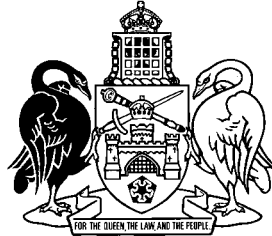
Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Sale of Goods Act 1954

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Amendments incorporated to
14 March 2002



Australian Capital Territory

Sale of Goods Act 1954

An Act relating to the sale of goods

Part 1 Preliminary

1 Short title

This Act may be cited as the *Sale of Goods Act 1954*.

5 Interpretation for Act

(1) In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

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, in relation to goods, includes—

- (a) bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's certificate and warrant or order for the delivery of the goods; and
- (b) any other document used in the ordinary course of business as proof of the possession or control of the goods or authorising or purporting to authorise, either by endorsement or delivery, the possessor of the document to transfer or receive the goods it represents.

fault means wrongful act or default.

future goods means goods that are 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 and also includes emblements, industrial growing crops, and

things attached to or forming part of the land, that are to be severed before sale or under the contract of sale.

mercantile agent means a mercantile agent having in the customary course of his or her 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.

plaintiff includes a defendant counterclaiming.

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

quality, in relation to goods, includes a state or condition of the goods.

sale includes a bargain and sale as well as a sale and delivery.

seller means a person who sells or agrees to sell goods.

sheriff includes any officer charged with the enforcement of a writ of execution.

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

warranty means an agreement with reference to goods that are the subject of a contract of sale, but collateral to the main purpose of the contract, 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) For this Act—

- (a) a thing is done in good faith when it is in fact done honestly, whether it is done negligently or not; and
- (b) what is a reasonable time, a reasonable hour or a reasonable price is a question of fact; and
- (c) a person is insolvent who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not and whether he has become a bankrupt or not; and

Part 1 Preliminary

Section 5

- (d) goods are in a deliverable state when they are in such a state that the buyer would, under the contract, be bound to take delivery of them.

Part 2 Formation of the contract

Division 2.1 Contract of sale

6 Sale and agreement to sell

- (1) A contract of sale of goods is a contract by which the seller transfers or agrees to transfer property in goods to the buyer for a money consideration, called *the price*.
- (2) There may be a contract of sale between one part owner and another.
- (3) A contract of sale may be absolute or conditional.
- (4) If, under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called *a sale*.
- (5) If the transfer of the property in the goods is to take place at a future time or subject to a condition to be fulfilled after the transfer of the property in the goods, the contract is called an *agreement to sell*.
- (6) An agreement to sell becomes a sale when the time elapses at which, or the conditions are fulfilled subject to which, the property in the goods is to be transferred.

7 Capacity to buy and sell

- (1) Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.
- (2) If necessaries are sold to an infant or to a person who, because of mental incapacity or drunkenness, is incompetent to contract, he or she must pay a reasonable price for the goods.
- (3) In this section:

necessaries means goods suitable to the condition and life of the infant or other person and to his or her actual requirements at the time of the sale and delivery.

Division 2.2 Formalities of contract

8 Manners of making contracts of sale

- (1) Subject to this Act and to any other law, a contract of sale may be made—
 - (a) in writing, either with or without seal; or
 - (b) by word of mouth; or
 - (c) partly in writing and partly by word of mouth;or may be implied from the conduct of the parties.
- (2) This section does not affect the law relating to corporations.

Division 2.3 Subject matter of contract

10 Existing or future goods

- (1) The goods that form the subject of a contract of sale may be either existing goods that are owned or possessed by the seller or future goods.
- (2) There may be a contract for the sale of goods the acquisition of which by the seller depends on a contingency that may or may not happen.
- (3) If, by the contract of sale, the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

11 Goods that have perished

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

12 Goods perishing before sale but after agreement to sell

If 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 avoided.

Division 2.4 The price

13 Ascertainment of price

- (1) The price in a contract of sale—
 - (a) may be fixed by the contract; or
 - (b) may be left to be fixed in a way agreed by the contract; or
 - (c) may be determined by the course of dealing between the parties.
- (2) If the price is not determined in accordance with subsection (1), the buyer must pay a reasonable price.

14 Agreement to sell at valuation

- (1) If 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 that third party cannot or does not make the valuation, the agreement is avoided, but, if the goods, or a part of them, have been delivered to and appropriated by the buyer, the buyer must pay a reasonable price for them.
- (2) If 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.

Division 2.5 Conditions and warranties

15 Stipulations as to time

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

- (2) Whether any other stipulation as to time is of the essence of the contract depends on the terms of the contract.
- (3) In a contract of sale, unless a different intention appears from the terms of the contract, *month* means calendar month.

16 When condition to be treated as warranty

- (1) If a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat a breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.
- (2) Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as repudiated or a warranty the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated depends in each case on the construction of the contract.
- (3) A stipulation may be a condition although it is called a warranty in the contract.
- (4) This section does not apply to a condition or warranty the fulfilment of which is excused by law because of impossibility or otherwise.

17 Implied undertaking as to title

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

- (a) there is an implied condition on the part of the seller—
 - (i) for a sale—that the seller has a right to sell the goods; and
 - (ii) for an agreement to sell—that the seller will have the right to sell the goods at the time when the property is to pass; and
- (b) there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods; and

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

18 Sale by description

- (1) If there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description.
- (2) If the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

19 Implied conditions as to quality and fitness

- (1) Subject to subsection (2), if 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 the seller is a manufacturer or not), there is an implied condition that the goods shall be reasonably fit for that purpose.
- (2) For a contract for the sale of a specified article under a trade name, there is no implied condition as to its fitness for a particular purpose.
- (3) If goods are bought by description from a seller who deals in goods of that description (whether the seller is a 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 is no implied condition as to defects that the examination ought to have revealed.
- (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 negative a warranty or condition implied by this Act unless inconsistent with it.

Division 2.6 Sale by sample

20 Sale by sample

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

Part 3 **Effects of the contract**

Division 3.1 **Transfer of property between seller and buyer**

21 **Goods must be ascertained**

If 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.

22 **Property passes if intended to pass**

- (1) If there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at the time that 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.

23 **Rules for ascertaining intention**

- (1) Unless a different intention appears from the terms of the contract, the intention of the parties as to the time when the property in the goods is to pass to the buyer is ascertained in accordance with subsections (2) to (8).
- (2) If 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 that the time of payment or the time of delivery, or both, are postponed.
- (3) If 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 in a deliverable state, the property does not pass until the thing is done and the buyer has notice of its having been done.

- (4) If 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 of its having been done.
- (5) If goods are delivered to the buyer ‘on approval’, ‘on sale or return’ or on other similar terms, the property in the goods passes to the buyer—
 - (a) when the buyer signifies his or her approval or acceptance to the seller or does some other act adopting the transaction; or
 - (b) if the buyer does not signify his or her approval or acceptance to the seller but retains the goods without giving notice of rejection—
 - (i) if a time has been fixed for the return of the goods—at the end of that time; and
 - (ii) if no time has been fixed—at the end of a reasonable time.
- (6) If 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.
- (7) The assent referred to in the subsection (6) may be express or implied and may be given either before or after the appropriation is made.
- (8) For subsection (6), if, under 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, the seller is deemed to have unconditionally appropriated the goods to the contract.

24 Reservation of right of disposal

- (1) If there is a contract for the sale of specific goods, or if goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of the disposal of the goods until certain conditions are fulfilled.
- (2) In such a case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee, for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.
- (3) If goods are shipped and, by the bill of lading, the goods are deliverable to the order of the seller or the seller's agent, the seller is prima facie deemed to reserve the right of disposal.
- (4) If 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 the buyer does not honour the bill of exchange and, if the buyer wrongfully retains the bill of lading, the property in the goods does not pass to the buyer.

25 Risk prima facie passes with property

- (1) Subject to subsection (2), unless a different intention appears from the terms of the contract, the goods remain at the seller's risk until the property in the goods is transferred to the buyer but when the property in the goods is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.
- (2) If delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault so far as any loss that might not have occurred apart from that fault is concerned.
- (3) This section does not affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Division 3.2 Transfer of title

26 Sale by person not the owner

- (1) Subject to this Act, if goods are sold by a person who is not the owner of them and does not sell them under the authority or with the consent of the owner, the buyer does not acquire a better title to the goods than the seller had unless the owner of the goods is, by the owner's conduct, precluded from denying the seller's authority to sell.
- (2) Nothing in this Act affects—
 - (a) the provisions of the *Mercantile Law Act 1962* or the *Registration of Interests in Goods Act 1990*; or
 - (b) the validity of a contract of sale under a special common law or statutory power of sale or under the order of a court of competent jurisdiction.

27 Resale under voidable title

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

28 Revesting of property in stolen goods on conviction of offender

- (1) If goods have been stolen and the offender is prosecuted to conviction, the property in the goods reverts in the person who was the owner of the goods, or in the person's personal representative, notwithstanding any intermediate dealing with them.
- (2) Notwithstanding any other law to the contrary, if goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in the goods does not revert in the person who was the owner of the goods or in the person's personal representative only because of the conviction of the offender.

29 Seller or buyer in possession after sale

- (1) If a person who has 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 the person, of the goods or documents of title under a sale, pledge or other disposition to a person receiving the goods or documents of title in good faith and without notice of the previous sale has the same effect as if the person making delivery or transfer were expressly authorised by the owner of the goods to make the delivery or transfer.
- (2) If a person who has bought, or agreed to buy, goods obtains, with the consent of the seller, 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 the person, of the goods or documents of title under a sale, pledge or other disposition of the goods or documents of title to a person receiving the goods or documents in good faith and without notice of any lien or other right of the original seller in respect of the goods has 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.

30 Effects of writs of execution

- (1) Subject to subsection (2), a writ of execution against goods binds the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed.
- (2) It is the duty of the sheriff, without fee, on the receipt of the writ, to endorse on the back of the writ the hour, day, month and year when the sheriff receives it.
- (3) A writ of execution against goods does not prejudice the title to the goods acquired by a person in good faith and for valuable consideration unless that person had, at the time when the person acquired the person's title, notice that the writ, or any other writ under which the goods of the execution debtor might be seized or

attached, had been delivered to and remained unexecuted in the hands of the sheriff.

Part 4 Performance of the contract

31 Duties of seller and buyer

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

32 Payment and delivery are concurrent conditions

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller 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.

33 Rules as to delivery

- (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.
- (2) Apart from the contract, the place of delivery is the seller's place of business, if the seller has one, or, if not, the seller's residence, but if the contract is for the sale of specific goods that, to the knowledge of the parties when the contract is made, are in some other place, then that place is the place of delivery.
- (3) If, under the contract of sale, the seller is bound to send the goods to the buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
- (4) If the goods at the time of sale are in the possession of a third person, there is no delivery by the seller to the buyer unless and until the third person acknowledges to the buyer that the third person holds the goods on behalf of the buyer.
- (5) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour.

- (6) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.
- (7) This section does not affect the operation of the issue or transfer of a document of title to goods.

34 Delivery of wrong quantity

- (1) If the seller delivers to the buyer a quantity of goods less than the seller contracted to sell, the buyer may reject them.
- (2) If the buyer accepts the goods so delivered the buyer must pay for them at the contract rate.
- (3) If the seller delivers to the buyer a quantity of goods larger than the seller contracted to sell, the buyer may accept the goods included in the contract and reject the rest or the buyer may reject the whole.
- (4) If the buyer accepts the whole of the goods so delivered, the buyer must pay for them at the contract rate.
- (5) If the seller delivers to the buyer the goods the seller contracted to sell mixed with goods of a different description or quality not included in the contract, the buyer may accept the goods that are in accordance with the contract and reject the rest or the buyer may reject the whole.
- (6) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

35 Instalment deliveries

- (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery of them by instalments.
- (2) If 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 1 or more instalments, or the buyer neglects or refuses to take delivery of or pay for 1 or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract or is a severable

breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

36 Delivery to carrier

- (1) If, under the contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether known 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 a contract with the carrier on behalf of the buyer that is reasonable, having regard to the nature of the goods and the other circumstances of the case.
- (3) If the seller omits to do so and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or herself or may hold the seller responsible in damages.
- (4) Unless otherwise agreed, if goods are sent by the seller to the buyer by a route involving sea transit, the seller must give notice to the buyer that will enable the buyer to insure the goods during their sea transit and, if the seller fails to do so, the goods shall be deemed to be at the seller's risk during the sea transit.

37 Risk if goods are delivered at distant place

If the seller of goods agrees to deliver them at the seller's 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.

38 Buyer's right of examining the goods

- (1) If goods that the buyer has not previously examined are delivered to the buyer, the buyer is not deemed to have accepted them unless and until the buyer 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, the seller 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.

39 Acceptance

Subject to section 38, the buyer is deemed to have accepted the goods when—

- (a) the buyer intimates to the seller that the buyer has accepted them; or
- (b) the goods have been delivered to the buyer and the buyer does an act in relation to them that is inconsistent with the ownership of the seller; or
- (c) after the lapse of a reasonable time, the buyer retains the goods without intimating to the seller that the buyer has rejected them.

40 Buyer not bound to return rejected goods

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

41 Liability of buyer for neglecting or refusing delivery of goods

- (1) If 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, the buyer is liable to the seller for any loss occasioned by the buyer's neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

- (2) This section does not affect the rights of the seller if 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

Division 5.1 General

42 Unpaid seller defined

- (1) The seller of goods is deemed to be an *unpaid seller* within the meaning of this part—
 - (a) when the whole of the price has not been paid or tendered; or
 - (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 because of the dishonour of the instrument or otherwise.

- (2) In this part:

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

43 Unpaid seller's rights

- (1) Subject to this Act and to any other law, the unpaid seller of goods, as such, has by implication of law—
 - (a) a lien on the goods for the price while the unpaid seller is in possession of them; and
 - (b) in case of the insolvency of the buyer—a right of stopping the goods *in transitu* after the unpaid seller has parted with the possession of them; and
 - (c) a right of resale as provided by this Act.
- (2) Subsection (1) has effect notwithstanding that the property in the goods may have passed to the buyer.

- (3) If the property in the goods has not passed to the buyer, the unpaid seller has, in addition to his or her other remedies, a right of withholding delivery similar to and coextensive with his or her rights of lien and stoppage *in transitu* if the property has passed to the buyer.

Division 5.2 Unpaid seller's lien

44 Seller's lien

- (1) Subject to this Act, if—

- (a) goods have been sold without any stipulation as to credit; and
- (b) goods have been sold on credit but the term has ended; and
- (c) the buyer of goods becomes insolvent;

the unpaid seller of the goods, if the unpaid seller is in possession of them, is entitled to retain possession of them until payment or tender of the price.

- (2) The seller may exercise the seller's right of lien notwithstanding that the seller is in possession of the goods as agent or bailee for the buyer.

45 Part delivery

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

46 Termination of lien

- (1) The unpaid seller of goods loses his or her lien on the goods—
- (a) when the unpaid seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving a right of disposal of the goods; or

- (b) when the buyer or the buyer's agent lawfully obtains possession of the goods; or
 - (c) by waiver of the lien.
- (2) The unpaid seller of goods who has a lien on the goods does not lose his or her lien only because the unpaid seller has obtained judgment for the price of the goods.

Division 5.3 **Stoppage *in transitu***

47 **Right of stoppage *in transitu***

Subject to 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, the unpaid seller may resume possession of the goods so long as they are in course of transit and may retain them until payment or tender of the price.

48 **Duration of transit**

- (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land, water or air, or other bailee, for the purpose of transmission to the buyer until the buyer, or the buyer's agent in that behalf, takes delivery of them from the carrier or other bailee.
- (2) If the buyer or the buyer's 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 the buyer's agent that the carrier or the bailee holds the goods on the buyer's behalf and continues in possession of them as bailee for the buyer or the buyer's 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 the goods back.
- (5) When the goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of a particular case whether they are in possession of the master as a carrier or as agent of the buyer.
- (6) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or the buyer's agent in that behalf, the transit is deemed to be at an end.
- (7) If part delivery of the goods, has been made to the buyer or the buyer's agent in that behalf, the remainder of the goods may be stopped *in transitu* unless the part delivery was made under such circumstances as to show an agreement to give up possession of the whole of the goods.

49 Method of effecting stoppage *in transitu*

- (1) The unpaid seller may exercise the unpaid seller's right of stoppage *in transitu* either by taking actual possession of the goods or by giving notice of the unpaid seller's claim to the carrier or other bailee in whose possession the goods are.
- (2) The notice may be given either to the person in actual possession of the goods or to the person's principal.
- (3) If the notice is given to the principal, the notice is not effectual unless it is given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to the principal's servant or agent in time to prevent a delivery to the buyer.
- (4) If notice of stoppage *in transitu* is given by the seller to the carrier or other bailee in possession of the goods, the carrier or other bailee must redeliver the goods to, or according to the directions of, the seller.
- (5) The expenses of the redelivery must be borne by the seller.

Division 5.4 Resale by buyer or seller

50 Effect of sub-sale or pledge by buyer

- (1) Subject to this Act, an unpaid seller's right of lien or stoppage *in transitu* is not affected by a sale or other disposition of the goods that the buyer may have made unless the seller has assented to it.
- (2) If a document of title to goods has been lawfully transferred to a person as buyer or owner of the goods and that person transfers the document to a person who takes the document in good faith and for valuable consideration, if the lastmentioned transfer—
 - (a) was by way of sale—the unpaid seller's right of lien or stoppage *in transitu* is defeated; or
 - (b) was by way of pledge or other disposition for value—the unpaid seller's right of lien or stoppage *in transitu* can only be exercised subject to the rights of the transferee.

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

- (1) Subject to this section, a contract of sale is not rescinded by a mere exercise by an unpaid seller of the unpaid seller's right of lien or stoppage *in transitu*.
- (2) If an unpaid seller who has exercised the unpaid seller's right of lien or stoppage *in transitu* resells the goods, the buyer acquires a good title to them as against the original buyer.
- (3) If the goods are of a perishable nature or the unpaid seller gives notice to the buyer of the unpaid seller's intention to resell and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may resell and recover from the original buyer damages for any loss occasioned by the original buyer's breach of contract.

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

Part 6 Actions for breach of the contract

Division 6.1 Remedies of seller

52 Action for price

- (1) If, under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully 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) If, 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.

53 Damages for nonacceptance

- (1) If the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against the buyer for damages for nonacceptance.
- (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) If 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 at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, at the time of the refusal to accept.

Division 6.2 Remedies of buyer

54 Damages for nondelivery

- (1) If 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 nondelivery.
- (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) If 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 of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, at the time of the refusal to deliver.

55 Specific performance

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

56 Remedy for breach of warranty

- (1) If there is a breach of warranty by the seller, or if the buyer elects or is compelled to treat a breach of a condition on the part of the seller as a breach of warranty, the buyer is not, only because of that breach, entitled to reject the goods but 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) For 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 the buyer from maintaining an action for the same breach of warranty if the buyer has suffered further damage.

57 Interest and special damages

This Act does not affect the right of the buyer or of the seller to recover interest or special damages in any case where by law interest or special damages are recoverable or to recover money paid if the consideration for the payment has failed.

Part 7 Miscellaneous

59 Rights etc enforceable by action

Rights, duties and liabilities declared by this Act may, unless otherwise provided by this Act, be enforced by action.

60 Auction sales

- (1) This section applies in respect of sales by auction.
- (2) If goods are put up for sale in lots, each lot is prima facie to be the subject of a separate contract of sale.
- (3) The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary way.
- (4) Until the announcement is made any bidder may retract his or her bid.
- (5) A right to bid may be reserved expressly by or on behalf of the seller.
- (6) If a right to bid is expressly reserved, but not otherwise, the seller, or any one person on the seller's behalf, may bid at the auction.
- (7) If a sale is not notified to be subject to a right to bid on behalf of the seller, it is not lawful—
 - (a) for the seller to bid himself or herself; or
 - (b) for the seller to employ a person to bid; or
 - (c) for the auctioneer knowingly to take a bid from the seller or any such person.
- (8) The buyer may treat as fraudulent a sale that contravenes the provisions of the subsection (7).
- (9) A sale may be notified to be subject to a reserved or upset price.

61 Draft allowance on wool

Any term, express or implied, in a contract of sale of wool providing that, in computing the price of the wool, a deduction of the kind commonly known as a draft allowance is to be made from the weight of the wool is void.

62 Savings

- (1) The rules of the common law, including the law merchant, except so far as they are inconsistent with this Act, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress, coercion, mistake or other invalidating cause continue to apply to contracts for the sale of goods.
- (2) Nothing in this Act affects, or shall be deemed at any time to have affected, any remedy in equity of the buyer or the seller in respect of a misrepresentation.
- (3) This Act does not affect the law relating to bills of sale.
- (4) The provisions of this Act relating to contracts of sale do not apply to a transaction in the form of a contract of sale that is intended to operate by way of mortgage, pledge, charge or other security.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

The *Sale of Goods Act 1954* was originally the *Sale of Goods Ordinance 1954*. It became an ACT Act on self-government (11 May 1989).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

Legislation before self-government

Sale of Goods Act 1954 No 15

notified 12 August 1954

commenced 1 October 1954 (s 2)

as amended by

Sale of Goods Ordinance 1967 No 25

notified 27 July 1967

commenced 1 August 1967 (s 2)

Sale of Goods Ordinance 1975 No 39

notified 31 October 1975

commenced 31 October 1975

Ordinances Revision Ordinance 1977 No 65 sch 2

notified 22 December 1977

commenced 22 December 1977

Legislation after self-government

Registration of Interests in Goods (Consequential Amendments) Act 1990 No 20 s 4

notified 21 June 1990 (Gaz 1990 S30)

commenced 30 June 1990 (s 2 and see Gaz 1990 No S46)

Magistrates Court (Enforcement of Judgments) Act 1994 No 61 pt 7 div 5

notified 11 October 1994 (Gaz 1994 No S197)

s 1, s 2 commenced 11 October 1994 (s 2 (1))

pt 7 div 5 commenced 10 April 1995 (s 2 (2) and Gaz 1995 No S75)

Legislation (Consequential Amendments) Act 2001 No 44 pt 353

notified 26 July 2001 (Gaz 2001 No 30)
 s 1, s 2 commenced 26 July 2001 (IA s 10B)
 pt 353 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

Fair Trading Legislation Amendment Act 2001 No 77 pt 5

notified LR 14 September 2001
 s 1, s 2 commenced 14 September 2001 (LA s 75)
 pt 5 commenced 14 March 2002 (s 2 and LA s 79)

4 Amendment history**Commencement**

s 2 om 2001 No 44 amdt 1.3835

Parts

s 3 om 1977 No 65 sch 2

Certain laws to cease to be in force

s 4 om 2001 No 44 amdt 1.3835

Interpretation for Act

s 5 def *sheriff* am 1994 No 61 s 81

Contract of sale

div 2.1 hdg (prev pt 2 div 1 hdg) renum R3 LA

Sale and agreement to sell

s 6 ss renum R3 LA

Formalities of contract

div 2.2 hdg (prev pt 2 div 2 hdg) renum R3 LA

Subject matter of contract

div 2.3 hdg (prev pt 2 div 3 hdg) renum R3 LA

Contracts for sale of 10 pounds and upwards

s 9 am 1967 No 25 s 3
 om 1975 No 39 s 2

The price

div 2.4 hdg (prev pt 2 div 4 hdg) renum R3 LA

Conditions and warranties

div 2.5 hdg (prev pt 2 div 5 hdg) renum R3 LA

When condition to be treated as warranty

s 16 am 1975 No 39 s 3; 2001 No 77 s 23; ss renum R3 LA (see
 2001 No 77 s 24)

Implied conditions as to quality and fitness

s 19 am 2001 No 77 s 25; ss renum R3 LA (see 2001 No 77 s 26)

Endnotes

4 Amendment history

Sale by sample

div 2.6 hdg (prev pt 2 div 6 hdg) renum R3 LA

Transfer of property between seller and buyer

div 3.1 hdg (prev pt 3 div 1 hdg) renum R3 LA

Transfer of title

div 3.2 hdg (prev pt 3 div 2 hdg) renum R3 LA

Sale by person not the owner

s 26 am 1990 No 20 s 4

Effects of writs of execution

s 30 am 1994 No 61 s 82

Delivery of wrong quantity

s 34 ss renum R3 LA

Delivery to carrier

s 36 ss renum R3 LA

Acceptance

s 39 am 1975 No 39 s 4

General

div 5.1 hdg (prev pt 5 div 1 hdg) renum R3 LA

Unpaid seller's lien

div 5.2 hdg (prev pt 5 div 2 hdg) renum R3 LA

Stoppage *in transitu*

div 5.3 hdg (prev pt 5 div 3 hdg) renum R3 LA

Resale by buyer or seller

div 5.4 hdg (prev pt 5 div 4 hdg) renum R3 LA

Remedies of seller

div 6.1 hdg (prev pt 6 div 1 hdg) renum R3 LA

Remedies of buyer

div 6.2 hdg (prev pt 6 div 2 hdg) renum R3 LA

Exclusion of implied terms and conditions

s 58 om 2001 No 77 s 27

Savings

s 62 am 1975 No 39 s 5; ss renum R3 LA

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1990 No 20	31 October 1991
2	Act 1994 No 61	10 April 1995

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