



**SALE OF GOODS ACTS 1893
AND PART II OF 1980
RESTATEMENT**

**Certified by the Attorney General on 27 February 2003 under
section 2(1) of the Statute Law (Restatement) Act 2002 (No. 33 of 2002)
to be a statement of the law contained in the Sale of Goods Act 1893
and Part II of the Sale of Goods and Supply of Services Act 1980.**

TABLE OF CONTENTS

| | |
|---------------------------------|----|
| Foreword | 3 |
| Arrangement of Paragraphs | 5 |
| Chapter 1 | 9 |
| Chapter 2 | 32 |
| Chapter 3 | 40 |

Foreword

This publication is a Restatement of—

- The Sale of Goods Act 1893 (an Act passed in the Second Session of the 25th Parliament of the United Kingdom of Great Britain and Ireland, Chapter 71), and
- Part II of the Sale of Goods and Supply of Services Act 1980 (No. 16 of 1980).

This Restatement is an administrative consolidation of the Act of 1893 and Part II of the Act of 1980. It is certified by the Attorney General under the Statute Law (Restatement) Act 2002 (No. 33 of 2002) to be *prima facie* evidence of the law restated in it.

The long title to the Sale of Goods Act 1893 (the ‘Act of 1893’) states that it is “An Act for codifying the Law relating to the Sale of Goods”. Its short title is the Sale of Goods Act 1893 and it came into operation on 1 January 1894.

The long title to the Sale of Goods and Supply of Services Act 1980 (the ‘Act of 1980’) states that it is “An Act to amend the law relating to the sale of goods, hire-purchase agreements and contracts for the supply of services and to provide for related matters”. Its short title is the Sale of Goods and Supply of Services Act 1980 and it came into operation on 30 December 1980.

To assist you in your understanding of the content and layout of Restatements, it is recommended that you read the document entitled “Modernising Legislation in Ireland — A Guide to Restatement” produced by the Statute Law Revision Unit of the Office of the Attorney General. This paper is available on the Office website at www.attorneygeneral.ie.

Contents

The Restatement has three chapters:

- Chapter 1: the Act of 1893, as amended;
- Chapter 2: Part II of the Act of 1980, as amended, other than those sections of that Part that have been incorporated into Chapter 1;
- Chapter 3: individual sections of Acts which do not fit logically into the preceding Chapters, where the Act of 1893 or the Act of 1980 have been applied or disapplied, as the case may be.

Layout

Within the Chapters, sections of the Acts being restated are set out in paragraphs. In this way, the integrity of the Act of 1893 is retained and therefore, the paragraph numbers of Chapter 1 correspond to the original section numbers of the Act of 1893.

Each paragraph has a green heading that corresponds to the side note of the section being restated.

The paragraph heading is followed by square brackets containing a reference to the source of the paragraph, i.e. the original section number, followed by the number and year of enactment of the legislation in question. The Act of 1893 is referred to by its Chapter number.

Examples

Paragraph 1, the heading reads — **Sale and Agreement to sell [s.1: 71/1893]**

Paragraph 69, the heading reads — **Terms of guarantee [s.16: 16/1980]**

In Chapter 2, the paragraph numbers follow in consecutive order from Chapter 1. Accordingly, they do not correspond with the original section numbers in Part II of the Act of 1980. To facilitate the reader however, where there is a cross reference to a section of that Act, the reader is referred to the paragraph where the relevant materials are found.

Example

Paragraph 71, s.17 (3) 16/1980 originally provided “Sections 16, 18 and 19 of this Act . . .” so the Restatement states “Sections 16, 18 and 19 of this Act [paragraphs 70, 72 and 73]. . .”

Textual amendments

Where a section of one of the restated Acts has been affected by a textual amendment, the paragraph is set out in the manner in which it has been affected. The paragraph is followed by details (in light green font) of the relevant affecting provision or provisions. The word ‘textual’ indicates the type of amendment.

Example

Paragraph 11 sets out section 11 of the Act of 1893. That section was subsequently amended by section 10 of the Act of 1980 by the substitution of a new section. Section 11 is therefore restated as amended. The paragraph is followed by details of the relevant affecting provision —

Affecting Provision (textual) — 16/1980, s.10.

Non-textual amendments

Where a section has been amended by a non-textual amendment, the relevant amending provision is set out in full at the end of the paragraph. The text is indented and the words ‘non-textual’ are set out to indicate this type of amendment. An example of this may be found at paragraph 14.

Miscellaneous non-textual amendments

Miscellaneous amendments which could not easily be incorporated into the preceding Chapters are contained in Chapter 3.

Abbreviations

Abbreviations used are in accordance with the list in the database of the Chronological Tables of the Irish Statutes available on the website of the Office of the Attorney General (www.attorneygeneral.ie).

Schedules

For ease of reference, Schedules are set out immediately following the paragraph in which they are first referred to.

Short titles and commencement provisions

Short titles of legislation other than the restated Acts are used for convenience. Commencement provisions are referred to where necessary.

Surplus provisions

Surplus provisions have been omitted and notes are inserted in place of the provisions.

Notes

Notes are used for explanatory detail, where appropriate.

Ministerial Powers

By virtue of the Enterprise and Employment (Alteration of Name of Department and Title of Minister Order 1997 (S.I. No. 305 of 1997), the Minister for Enterprise, Trade and Employment currently exercises the ministerial powers in the restated legislation.

ARRANGEMENT OF PARAGRAPHS

CHAPTER 1

PART I

FORMATION OF THE CONTRACT

Contract of Sale

Paragraph

1. Sale and Agreement to sell.
2. Capacity to buy and sell.

Formalities of the Contract

3. Contract of sale, how made.
4. Contract for sale for ten pounds and upwards.

Subject matter of Contract

5. Existing or future goods.
6. Goods which may have perished.
7. Goods perishing before sale but after agreement to sell.

The Price

8. Ascertainment of price.
9. Agreement to sell at valuation.

Conditions and Warranties

10. Stipulations as to time.
11. When condition to be treated as warranty.
12. Implied undertakings as to title, etc.
13. Sale by description.
14. Implied undertakings as to quality or fitness.

Sale by Sample

15. Sale by Sample.

PART II

EFFECTS OF THE CONTRACT

Transfer of Property as between Seller and Buyer

16. Goods must be ascertained.
17. Property passes when it is intended to pass.
18. Rules for ascertaining intention.
19. Reservation of right of disposal.
20. Risk *prima facie* passes with property.

Transfer of Title

21. Sale by person not the owner.
22. Market overt.
23. Sale under voidable title.
24. Revesting property in stolen goods on conviction of offender.
25. Seller or buyer in possession after sale.
26. Effect of writs of execution.

PART III

PERFORMANCE OF THE CONTRACT

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

PART IV

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

- 38. Unpaid seller defined.
- 39. Unpaid seller's rights.

Unpaid Seller's Lien

- 40. *Surplus provision — omitted.*
- 41. Seller's lien.
- 42. Part delivery.
- 43. Termination of lien.

Stoppage in transitu

- 44. Right of stoppage in transitu.
- 45. Duration of transit.
- 46. How stoppage in transitu is effected.

Re-sale by Buyer or Seller

- 47. Effect of subsale or pledge by buyer.
- 48. Sale not generally rescinded by lien or stoppage in transitu.

PART V

ACTIONS FOR BREACH OF THE CONTRACT

Remedies of the Seller

- 49. Action for price.
- 50. Damages for non-acceptance.

Remedies of the Buyer

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

PART VI

SUPPLEMENTARY

- 55. Exclusion of implied terms and conditions.
- 55A. Conflict of laws.
- 56. Reasonable time a question of fact.

- 57. Rights, &c. enforceable by action.
- 58. Auction sales.
- 59. *Surplus provision — omitted.*
- 60. Repeal.
Schedule — Enactments Repealed
- 61. Savings.
- 62. Interpretation of terms.

CHAPTER 2

- 63. Citation and construction of Part II.
- 64. Statements purporting to restrict rights of buyer.
- 65. Implied warranty for spare parts and servicing.
- 66. Implied condition on sale of motor vehicles.
- 67. Liability of finance houses.
- 68. Definition of guarantee.
- 69. Terms of guarantee.
- 70. Liability of seller under guarantee.
- 71. Exclusion of buyer's rights under guarantee.
- 72. Right of action under guarantee.
Interpretation Provisions (ss. 2 and 3) of the Act of 1980.
Penalties and Prosecution Provisions (ss. 6 and 7) of the Act of 1980.

CHAPTER 3

- 73. Section 8 of the Trading Stamps Act, 1980.
- 74. Section 3(3) of the International Carriage of Goods by Road Act, 1990.

CHAPTER 1

PART I

FORMATION OF THE CONTRACT

Contract of Sale

Sale and agreement to sell. [s. 1: 71/1893]

1. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.

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

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Capacity to buy and sell. [s. 2: 71/1893]

2. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property. Provided that where necessaries are sold and delivered to an infant, or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor. Necessaries in this section mean goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery.

Formalities of the Contract

Contract of sale, how made. [s. 3: 71/1893]

3. Subject to the provisions of this Act and of any statute in that behalf, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties. Provided that nothing in this section shall affect the law relating to corporations.

Contract of sale for ten pounds and upwards. [s. 4: 71/1893]

4. (1) A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.
- (2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.
- (3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.
- (4) *Omitted, relates to Scotland.*

Subject matter of Contract**Existing or future goods. [s. 5: 71/1893]**

5. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called “future goods”.
- (2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.
- (3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods which have perished. [s. 6: 71/1893]

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

Goods perishing before sale but after agreement to sell. [s. 7: 71/1893]

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

The Price**Ascertainment of price. [s. 8: 71/1893]**

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

(2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation. [s. 9: 71/1893]

9.

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

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

Conditions and Warranties

Stipulations as to time. [s. 10: 71/1893]

10.

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

(2) In a contract of sale “month” means *prima facie* calendar month.

When condition to be treated as warranty. [s. 11: 71/1893]

11.

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

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

(3) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express or implied, to that effect.

(4) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

Affecting Provision (textual) — 16/1980, s. 10.

Implied undertakings as to title, etc. [s. 12: 71/1893]

12. (1) In every contract of sale, other than one to which subsection (2) applies, there is—

- (a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass, and
- (b) an implied warranty that the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed to the buyer before the contract is made and that the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed.

(2) In a contract of sale, in the case of which there appears from the contract or is to be inferred from the circumstances of the contract an intention that the seller should transfer only such title as he or a third person may have, there is—

- (a) an implied warranty that all charges or encumbrances known to the seller have been disclosed to the buyer before the contract is made, and
- (b) an implied warranty that neither—
 - (i) the seller, nor
 - (ii) in a case where the parties to the contract intend that the seller should transfer only such title as a third person may have, that person, nor
 - (iii) anyone claiming through or under the seller or that third person otherwise than under a charge or encumbrance disclosed to the buyer before the contract is made,

will disturb the buyer's quiet possession of the goods.

Affecting Provision (textual) — 16/1980, s. 10.

Sale by description. [s. 13: 71/1893]

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

(2) A sale of goods shall not be prevented from being a sale by description by reason only that, being exposed for sale, they are selected by the buyer.

(3) A reference to goods on a label or other descriptive matter accompanying goods exposed for sale may constitute or form part of a description.

Affecting Provision (textual) — 16/1980, s. 10.

Implied undertakings as to quality or fitness. [s. 14: 1893]

- 14.** (1) Subject to the provisions of this Act and of any statute in that behalf, there is no implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.
- (2) Where the seller sells goods in the course of a business there is an implied condition that the goods supplied under the contract are of merchantable quality, except that there is no such condition—
- (a) as regards defects specifically drawn to the buyer's attention before the contract is made, or
 - (b) if the buyer examines the goods before the contract is made, as regards defects which that examination ought to have revealed.
- (3) Goods are of merchantable quality if they are as fit for the purpose or purposes for which goods of that kind are commonly bought and as durable as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances, and any reference in this Act to unmerchantable goods shall be construed accordingly.
- (4) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the seller's skill or judgement.
- (5) An implied condition or warranty as to quality or fitness for a particular purpose may be annexed to a contract of sale by usage.
- (6) The foregoing provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.

Affecting Provisions (textual) — 16/1980, s. 10;
(non-textual) — 24/1995, ss. 1(2) (commencement), 76(2)—

[24/1995 — s. 76(2) Consumer Credit Act 1995]
Implied undertakings as to quality or fitness.

76. (2) Where the owner lets goods under a hire-purchase agreement in the course of a business, there is an implied condition that the goods are of merchantable quality within the meaning of section 14(3) of the Sale of Goods Act 1893, except that there shall be no such condition—

- (a) as regards defects specifically drawn to the hirer's attention before the agreement is made, or*
- (b) if the hirer examines the goods before the agreement is made, as regards defects which that examination ought to have revealed.*

Sale by Sample

Sale by sample. [s. 15: 71/1893]

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

Affecting Provision (textual) — 16/1980, s. 10.

PART II

EFFECTS OF THE CONTRACT

Transfer of Property as between Seller and Buyer**Goods must be ascertained. [s. 16: 71/1893]**

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

Property passes when intended to pass. [s. 17: 71/1893]

17. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

Rules for ascertaining intention. [s. 18: 71/1893]

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

Rule 1.—Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

Rule 2.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof.

Rule 3.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has notice thereof.

Rule 4.—When goods are delivered to the buyer on approval or “on sale or return” or other similar terms the property therein passes to the buyer:—

- (a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction:
- (b) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been

fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5.—(1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made:

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodier (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Reservation of right of disposal. [s. 19: 71/1893]

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

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

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

Risk *prima facie* passes with property. [s. 20: 71/1893]

20. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

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

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

Transfer of Title

Sale by person not the owner. [s. 21: 71/1893]

21. (1) Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.
- (2) Provided also that nothing in this Act shall affect—
- (a) the provisions of the Factors Acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;
 - (b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Market overt. [s. 22: 71/1893]

22. (1) Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.
- (2) Nothing in this section shall affect the law relating to the sale of horses.
- (3) *Omitted, relates to Scotland.*

Sale under voidable title. [s. 23: 71/1893]

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

Revesting of property in stolen goods on conviction of offender. [s. 24: 71/1893]

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

Seller or buyer in possession after sale. [s. 25: 71/1893]

25. (1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.
- (2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.
- (3) In this section the term “mercantile agent” has the same meaning as in the Factors Acts.

Effect of writs of execution. [s. 26: 71/1893]

26. (1) A writ of fieri facias or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ to endorse upon the back thereof the hour, day, month, and year when he received the same.
- Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.
- (2) In this section the term “sheriff” includes any officer charged with the enforcement of a writ of execution.
- (3) *Omitted, relates to Scotland.*

PART III**PERFORMANCE OF THE CONTRACT****Duties of seller and buyer. [s. 27: 71/1893]**

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

Payment and delivery are concurrent conditions. [s. 28: 71/1893]

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

Rules as to delivery. [s. 29: 71/1893]

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

Delivery of wrong quantity. [s. 30: 71/1893]

- 30.** (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.
- (2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.
- (3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

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

Instalment deliveries. [s. 31: 71/1893]

31. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

Delivery to carrier. [s. 32: 71/1893]

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

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

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

Risk where goods are delivered at distant place. [s. 33: 71/1893]

33. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods. [s. 34: 71/1893]

34. (1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Affecting Provision (textual) — 16/1980, s. 20.

Acceptance. [s. 35: 71/1893]

35. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or, subject to section 34 of this Act, when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller or when, without good and sufficient reason, he retains the goods without intimating to the seller that he has rejected them.

Affecting Provision (textual) — 16/1980, s. 20.

Buyer not bound to return rejected goods. [s. 36: 71/1893]

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

Liability of buyer for neglecting or refusing delivery of goods. [s. 37: 71/1893]

37. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART IV

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

Unpaid seller defined. [s. 38: 71/1893]

38. (1) The seller of goods is deemed to be an “unpaid seller” within the meaning of this Act—
- (a) when the whole of the price has not been paid or tendered;
 - (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

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

Unpaid seller’s rights. [s. 39: 71/1893]

39. (1) Subject to the provisions of this Act, and of any statute in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

- (a) a lien on the goods or right to retain them for the price while he is in possession of them;
- (b) in case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;
- (c) a right of re-sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

[s. 40: 71/1893]

40. *Omitted, relates to Scotland.*

Unpaid Seller’s Lien

Seller’s lien. [s. 41: 71/1893]

41. (1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

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

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

Part delivery. [s. 42: 71/1893]

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

Termination of lien. [s. 43: 71/1893]

43. (1) The unpaid seller of goods loses his lien or right of retention thereon—
- (a) when he delivers the goods to a carrier or other bailee or custodian for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
 - (b) when the buyer or his agent lawfully obtains possession of the goods;
 - (c) by waiver thereof.
- (2) The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

Stoppage in transitu**Right of stoppage in transitu. [s. 44: 71/1893]**

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

Duration of transit. [s. 45: 71/1893]

45. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee or custodian for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee or custodian.
- (2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.
- (3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodian acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodian for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.
- (4) If the goods are rejected by the buyer, and the carrier or other bailee or custodian continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.
- (5) When goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent to the buyer.

(6) Where the carrier or other bailee or custodian wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

How stoppage in transitu is effected. [s. 46: 71/1893]

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

(2) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee or custodian in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

Re-sale by Buyer or Seller

Effect of subsale or pledge by buyer. [s. 47: 71/1893]

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

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage in transitu is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transitu can only be exercised subject to the rights of the transferee.

Sale not generally rescinded by lien or stoppage in transitu. [s. 48: 71/1893]

48. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage in transitu.

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage in transitu re-sells the goods, the buyer acquires a good title thereto as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to resell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

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

PART V

ACTIONS FOR BREACH OF THE CONTRACT

Remedies of the Seller

Action for price. [s. 49: 71/1893]

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

Damages for non-acceptance. [s. 50: 71/1893]

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

Remedies of the Buyer

Damages for non-delivery. [s. 51: 71/1893]

51. (1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

Specific performance. [s. 52: 71/1893]

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

Note: Second paragraph of s. 52 omitted, relates to Scotland.

Remedy for breach of warranty. [s. 53: 71/1893]

- 53.** (1) Subject to subsection (2), where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods, but he may—
- (a) set up against the seller the breach of warranty in diminution or extinction of the price, or
 - (b) maintain an action against the seller for damages for the breach of warranty.
- (2) Where—
- (a) the buyer deals as consumer and there is a breach of a condition by the seller which, but for this subsection, the buyer would be compelled to treat as a breach of warranty, and
 - (b) the buyer, promptly upon discovering the breach, makes a request to the seller that he either remedy the breach or replace any goods which are not in conformity with the condition,

then, if the seller refuses to comply with the request or fails to do so within a reasonable time, the buyer is entitled:

- (i) to reject the goods and repudiate the contract, or
- (ii) to have the defect constituting the breach remedied elsewhere and to maintain an action against the seller for the cost thereby incurred by him.

(3) The onus of proving that the buyer acted with promptness under subsection (2) shall lie on him.

(4) 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.

(5) In the case of breach of warranty of quality such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(6) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price or that the seller has replaced goods or remedied a breach does not of itself prevent the buyer from maintaining an action for the same breach of warranty if he has suffered further damage.

Affecting Provision (textual) — 16/1980, s. 21.

Interest and special damages. [s. 54: 71/1893]

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

PART VI

SUPPLEMENTARY

Exclusion of implied terms and conditions. [s. 55: 71/1893]

- 55.** (1) Subject to the subsequent provisions of this section, where any right, duty or liability would arise under a contract of sale of goods by implication of law, it may be negated or varied by express agreement, or by the course of dealing between the parties, or by usage if the usage is such as to bind both parties to the contract.
- (2) An express condition or warranty does not negative a condition or warranty implied by this Act unless inconsistent therewith.
- (3) In the case of a contract of sale of goods, any term of that or any other contract exempting from all or any of the provisions of section 12 of this Act shall be void.
- (4) In the case of a contract of sale of goods, any term of that or any other contract exempting from all or any of the provisions of section 13, 14 or 15 of this Act shall be void where the buyer deals as consumer and shall, in any other case, not be enforceable unless it is shown that it is fair and reasonable.
- (5) Subsection (4) shall not prevent the court from holding, in accordance with any rule of law, that a term which purports to exclude or restrict any of the provisions of section 13, 14 or 15 of this Act is not a term of the contract.

(6) Any reference in this section to a term exempting from all or any of the provisions of any section of this Act is a reference to a term which purports to exclude or restrict, or has the effect of excluding or restricting, the operation of all or any of the provisions of that section, or the exercise of a right conferred by any provision of that section, or any liability of the seller for breach of a condition or warranty implied by any provision of that section.

(7) Any reference in this section to a term of a contract includes a reference to a term which although not contained in a contract is incorporated in the contract by another term of the contract.

(8) This section is subject to section 61(6) of this Act.

Affecting Provision (textual) — 16/1980, s. 22.

Conflict of laws. [s. 55A: 71/1893]

55A. Where the proper law of a contract of sale of goods would, apart from a term that it should be the law of some other country or a term to the like effect, be the law of Ireland or where any such contract contains a term which purports to substitute, or has the effect of substituting, provisions of the law of some other country for all or any of the provisions of sections 12 to 15 and 55 of this Act, those sections shall, notwithstanding that term but subject to section 61(6) of this Act, apply to the contract.

Inserted by 16/1980, s. 23.

Reasonable time a question of fact. [s. 56: 71/1893]

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

Rights, &c. enforceable by action. [s. 57: 71/1893]

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

Auction sales. [s. 58: 71/1893]

58. In the case of a sale by auction—

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

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made any bidder may retract his bid:

(3) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to

bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person: Any sale contravening this rule may be treated as fraudulent by the buyer:

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

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

[s. 59: 71/1893]

59. *Omitted, relates to Scotland.*

Repeal. [s. 60: 71/1893]

60. The enactments mentioned in the schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned. Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

SCHEDULE
ENACTMENTS REPEALED

| Session and Chapter. | Title of Act and Extent of Repeal. |
|-----------------------------|---|
| 1 Jac. 1. c. 21. | An Act against Brokers. The whole Act. |
| 29 Cha. 2. c. 3.... .. | An Act for the prevention of frauds and perjuries. In part; that is to say, sections fifteen and sixteen.* |
| 9 Geo. 4. c. 14. | An Act for rendering a written memorandum necessary to the validity of certain promises and engagements. In part; that is to say, section seven. |
| 19 & 20 Vict. c. 60. | The Mercantile Law Amendment (Scotland) Act 1856. In part; that is to say, sections one, two, three, four, and five. |
| 19 & 20 Vict. c. 97. | The Mercantile Law Amendment Act 1856. In part; that is to say, sections one and two. |

*Commonly cited as sections sixteen and seventeen.

Savings. [s. 61: 71/1893]

61. (1) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act contained.

(2) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(3) Nothing in this Act or in any repeal effected thereby shall affect the enactments relating to bills of sale, or any enactment relating to the sale of goods which is not expressly repealed by this Act.

(4) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.

(5) *Omitted, relates to Scotland.*

(6) (a) Nothing in section 55 or 55A of this Act shall prevent the parties to a contract for the international sale of goods from negating or varying any right, duty or liability which would otherwise arise by implication of law under sections 12 to 15 of this Act.

(b) In this subsection ‘contract for the international sale of goods’ means a contract of sale of goods made by parties whose places of business (or, if they have none, habitual residences) are in the territories of different States and in the case of which one of the following conditions is satisfied:

(i) the contract involves the sale of goods which are at the time of the conclusion of the contract in the course of carriage or will be carried from the territory of one State to the territory of another; or

(ii) the acts constituting the offer and acceptance have been effected in the territories of different States; or

(iii) delivery of the goods is to be made in the territory of a State other than that within whose territory the acts constituting the offer and the acceptance have been effected.

Affecting Provision (textual) — 16/1980, s. 24.

Interpretation of terms. [s. 62: 71/1893]

62. (1) In this Act, unless the context or subject matter otherwise requires—

“Action” includes counterclaim and set off:

“Buyer” means a person who buys or agrees to buy goods:

“Contract of sale” includes an agreement to sell as well as a sale:

“Delivery” means voluntary transfer of possession from one person to another:

“Document of title to goods” has the same meaning as it has in the Factors Acts:

“Factors Acts” means the Factors Act 1889 and any enactment amending or substituted for the same:

“Fault” means wrongful act or default:

“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale:

“Goods” include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale:

“Plaintiff” includes pursuer, complainer, claimant in a multiple-poining and defendant or defender counterclaiming:

“Property” means the general property in goods, and not merely a special property:

“Quality of goods” includes their state or condition:

“Sale” includes a bargain and sale as well as a sale and delivery:

“Seller” means a person who sells or agrees to sell goods:

“Specific goods” mean goods identified and agreed upon at the time a contract of sale is made:

“Warranty” as regards Ireland means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

Note: Materials relating to Scotland and England omitted.

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

(3) A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he has become a notour bankrupt or not.

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

CHAPTER 2

Note: For ease of reference the interpretation, penalty and prosecution provisions contained in Part I of the Act of 1980 (sections 2, 3, 6 and 7) are set out at the end of this Chapter after paragraph 72.

Citation and construction of Part II. [s. 9: 16/1980]

63. (1) The Act of 1893 and this Part may be cited together as the Sale of Goods Acts 1893 and 1980.
- (2) The Act of 1893 and this Part shall be construed as one.

Statements purporting to restrict rights of buyer. [s.11: 16/1980]

64. (1) Subsections (2) and (3) apply to any statement likely to be taken as indicating that a right or the exercise of a right conferred by, or a liability arising by virtue of, section 12, 13, 14 or 15 of the Act of 1893 is restricted or excluded otherwise than under section 55 of that Act.
- (2) It shall be an offence for a person in the course of a business to do any of the following things in relation to a statement to which subsection (1) refers:
- (a) to display on any part of any premises a notice that includes any such statement, or
 - (b) to publish or cause to be published an advertisement which contains any such statement, or
 - (c) to supply goods bearing, or goods in a container bearing, any such statement, or
 - (d) otherwise to furnish or to cause to be furnished a document including any such statement.
- (3) For the purposes of this section a statement to the effect that goods will not be exchanged, or that money will not be refunded, or that only credit notes will be given for goods returned, shall be treated as a statement to which subsection (1) refers unless it is so clearly qualified that it cannot be construed as applicable in circumstances in which the buyer may be seeking to exercise a right conferred by any provision of a section mentioned in subsection (1).
- (4) It shall be an offence for a person in the course of a business to furnish to a buyer goods bearing, or goods in a container bearing, or any document including, any statement, irrespective of its legal effect, which sets out, limits or describes rights conferred on a buyer or liabilities to the buyer in relation to goods acquired by him or any statement likely to be taken as such a statement, unless that statement is accompanied by a clear and conspicuous declaration that the contractual rights which the buyer enjoys by virtue

of sections 12, 13, 14 and 15 of the Act of 1893 are in no way prejudiced by the relevant statement.

Implied warranty for spare parts and servicing. [s. 12: 16/1980]

65. (1) In a contract for the sale of goods there is an implied warranty that spare parts and an adequate aftersale service will be made available by the seller in such circumstances as are stated in an offer, description or advertisement by the seller on behalf of the manufacturer or on his own behalf and for such period as is so stated or, if no period is so stated, for a reasonable period.
- (2) The Minister may, after such consultation with such interested parties as he thinks proper, by order define, in relation to any class of goods described in the order, what shall be a reasonable period for the purpose of subsection (1).
- (3) Notwithstanding section 55(1) of the Act of 1893 (inserted by section 22 of this Act) any term of a contract exempting from all or any of the provisions of this section shall be void.

Affecting Provisions (non-textual) — 24/1995, ss.1(2) (commencement), 81—

[24/1995 — s. 81 Consumer Credit Act 1995]

Application of sections 12 and 15 to 19 of Act of 1980 to hire-purchase agreements.

81. Where goods are let under a hire-purchase agreement, section 12 [paragraph 65] (which relates to warranties for spare parts and servicing) of the Act of 1980 and section 15 to 19 [paragraphs 68 to 72] (which relate to guarantees and undertakings) of the Act of 1980 shall have effect as if a contract for the sale of goods were a hire-purchase agreement, the buyer were the hirer and the person by whom the antecedent negotiations were conducted were the seller.

Implied condition on sale of motor vehicles. [s. 13: 16/1980]

66. (1) In this section “motor vehicle” means a vehicle intended or adapted for propulsion by mechanical means, including—
- (a) a bicycle or tricycle with an attachment for propelling it by mechanical power, and
 - (b) a vehicle the means of propulsion of which is electrical or partly electrical and partly mechanical.
- (2) Without prejudice to any other condition or warranty, in every contract for the sale of a motor vehicle (except a contract in which the buyer is a person whose business it is to deal in motor vehicles) there is an implied condition that at the time of delivery of the vehicle under the contract it is free from any defect which would render it a danger to the public, including persons travelling in the vehicle.

(3) Subsection (2) of this section shall not apply where—

- (a) it is agreed between the seller and the buyer that the vehicle is not intended for use in the condition in which it is to be delivered to the buyer under the contract, and
- (b) a document consisting of a statement to that effect is signed by or on behalf of the seller and the buyer and given to the buyer prior to or at the time of such delivery, and
- (c) it is shown that the agreement referred to in paragraph (a) is fair and reasonable.

(4) Save in a case in which the implied condition as to freedom from defects referred to in subsection (2) is either not incorporated in the contract or has been effectively excluded from the contract pursuant to that subsection, in the case of every sale of a motor vehicle by a person whose business it is to deal in motor vehicles a certificate in writing in such form as the Minister may by regulations prescribe shall be given to the buyer by or on behalf of the seller to the effect that the vehicle is, at the time of delivery, free from any defect which would render it a danger to the public, including persons travelling in the vehicle.

(5) Where an action is brought for breach of the implied condition referred to in subsection (2) by reason of a specific defect in a motor vehicle and a certificate complying with the requirements of this section is not proved to have been given, it shall be presumed unless the contrary is proved that the proven defect existed at the time of delivery.

(6) Regulations under subsection (4) may apply to motor vehicles generally or to motor vehicles of a particular class or description (defined in such manner and by reference to such things as the Minister thinks proper) and different forms of certificate may be prescribed for different classes or descriptions of vehicles.

(7) A person using a motor vehicle with the consent of the buyer of the vehicle who suffers loss as the result of a breach of the condition implied by subsection (2) in the contract of sale may maintain an action for damages against the seller in respect of the breach as if he were the buyer.

(8) The Statute of Limitations 1957 is hereby amended—

(a) by the insertion in section 11 (2) of the following paragraph—

“(d) An action for damages under section 13 (7) of the Sale of Goods and Supply of Services Act 1980 shall not be brought after the expiration of two years from the date on which the cause of action accrued.”;

(b) by the insertion in section 49 of the following subsection—

“(5) In the case of an action claiming damages under section 13 (7) of the Sale of Goods and Supply of Services Act 1980, subsection (1) of this section shall have effect as if for the words ‘six years’ there were substituted the words ‘two years’.”.

(9) Notwithstanding section 55(1) of the Act of 1893 (inserted by section 22 of this Act) any term of a contract exempting from all or any of the provisions of this section shall be void.

Affecting Provisions (non-textual) — 24/1995, ss. 1(2) (commencement), 82—

[24/1995 — s. 82 Consumer Credit Act 1995]

Application of section 13 of Act of 1980 to hire-purchase of motor vehicles.

82. *Where a motor vehicle is let under a hire-purchase agreement, section 13 [paragraph 66] (which relates to an implied condition on sale of motor vehicles) of the Act of 1980 shall have effect as if a contract for sale were a hire-purchase agreement, the buyer were the hirer and the person by whom the antecedent negotiations were conducted were the seller, and the owner shall, jointly with that person and severally, be answerable to the hirer for breach of the implied condition.*

Liability of finance houses. [s. 14: 16/1980]

67. Where goods are sold to a buyer dealing as consumer and in relation to the sale an agreement is entered into by the buyer with another person acting in the course of a business (in this section referred to as a finance house) for the repayment to the finance house of money paid by the finance house to the seller in respect of the price of the goods, the finance house shall be deemed to be a party to the sale and the finance house and the seller shall, jointly and severally, be answerable to the buyer for breach of the contract of sale and for any misrepresentations made by the seller with respect to the goods.

Guarantees

Definition of guarantee. [s. 15: 16/1980]

68. In sections 16 to 19 [paragraphs 69 to 72], “guarantee” means any document, notice or other written statement, howsoever described, supplied by a manufacturer or other supplier, other than a retailer, in connection with the supply of any goods and indicating that the manufacturer or other supplier will service, repair or otherwise deal with the goods following purchase.

*Affecting Provisions (non-textual) — 24/1995, ss. 1(2) (commencement), 82.
See provision affecting par. 66.*

Terms of guarantee. [s. 16: 16/1980]

69. (1) A guarantee shall be clearly legible and shall refer only to specific goods or to one category of goods.
- (2) A guarantee shall state clearly the name and address of the person supplying the guarantee.
- (3) A guarantee shall state clearly the duration of the guarantee from the date of purchase but different periods may be stated for different components of any goods.

(4) A guarantee shall state clearly the procedure for presenting a claim under the guarantee which procedure shall not be more difficult than ordinary or normal commercial procedure.

(5) A guarantee shall state clearly what the manufacturer or other supplier undertakes to do in relation to the goods and what charges, if any, including the cost of carriage, the buyer must meet in relation to such undertakings.

(6) It shall be an offence for the manufacturer or other supplier of goods to supply in connection with the goods a guarantee which fails to comply with this section.

*Affecting Provisions (non-textual) — 24/1995, ss. 1(2) (commencement), 82.
See provision affecting par. 66.*

Liability of seller under guarantee. [s. 17: 16/1980]

70. (1) Where the seller of goods delivers a guarantee to the buyer, irrespective of when or how it is delivered, the seller shall be liable to the buyer for the observance of the terms of the guarantee as if he were the guarantor, unless he expressly indicates the contrary to the buyer at the time of delivery.

(2) Where, however, the seller, being a retailer, gives the buyer his own written undertaking that he will service, repair or otherwise deal with the goods following purchase, it shall be presumed, unless the contrary is proved, that he has not made himself liable to the buyer under the guarantee so delivered.

(3) Sections 16, 18 and 19 of this Act [paragraphs 69, 71 and 72] shall apply to any such undertaking as they apply to a guarantee.

(4) The liability of a seller to a buyer under this section is without prejudice to the rights conferred on the buyer under section 19 [paragraph 72].

*Affecting Provisions (non-textual) — 24/1995, ss. 1(2) (commencement), 82.
See provision affecting par. 66.*

Exclusion of buyer's rights under guarantee. [s. 18: 16/1980]

71. (1) Rights under a guarantee shall not in any way exclude or limit the rights of the buyer at common law or pursuant to statute and every provision in a guarantee which imposes obligations on the buyer which are additional to his obligations under the contract shall be void.

(2) A provision in a guarantee which purports to make the guarantor or any person acting on his behalf the sole authority to decide whether goods are defective or whether the buyer is otherwise entitled to present a claim shall be void.

*Affecting Provisions (non-textual) — 24/1995, ss. 1(2) (commencement), 82.
See provision affecting par. 66.*

Right of action under guarantee. [s. 19: 16/1980]

72. (1) The buyer of goods may maintain an action against a manufacturer or other supplier who fails to observe any of the terms of the guarantee as if that manufacturer or supplier had sold the goods to the buyer and had committed a breach of warranty, and the court may order the manufacturer or supplier to take such action as may be necessary to observe the terms of the guarantee, or to pay damages to the buyer. In this subsection, “buyer” includes all persons who acquire title to the goods within the duration of the guarantee and, where goods are imported, “manufacturer” includes the importer.
- (2) In any case in which a guarantor is liable to an owner in damages, the court may at its discretion and on such terms as the court may deem just afford the guarantor the opportunity of performing these obligations under the guarantee to the satisfaction of the court within a time to be limited by the court.

*Affecting Provisions (non-textual) — 24/1995, ss. 1(2) (commencement), 82.
See provision affecting par. 66.*

Note: The interpretation sections (ss. 2 and 3) of the Act of 1980 are set out below.

Interpretation generally. [s. 2: 16/1980]

2. (1) In this Act —

“Act of 1893” means the Sale of Goods Act 1893;

“business” includes profession and the activities of any State authority or local authority;

“consumer-hire agreement” has the meaning assigned to it by section 2(1) of the Consumer Credit Act 1995;

“deals as consumer” shall be construed in accordance with section 3;

“fair and reasonable” shall be construed in accordance with subsection (3);

“hire-purchase agreement” has the meaning assigned to it by section 2(1) of the Consumer Credit Act 1995;

“the Minister” means the Minister for Industry, Commerce and Tourism;

“service” does not include meteorological or aviation services provided by the Minister for Transport or anything done under a contract of service;

“State authority” means a Minister of the Government, the Commissioners of Public Works in Ireland and the Irish Land Commission.

(2) A reference in this Act to the supply of a service includes reference to the rendering or provision of a service or facility and to an offer to supply.

(3) Where, under section 13 [paragraph 66], 31, 40 or 46 of this Act or under section 55 of the Act of 1893 (inserted by section 22 of this Act), a question arises as to whether a term, agreement or provision is fair and reasonable regard shall be had to the criteria set out in the Schedule in deciding it.

Affecting Provisions (textual) — 24/1995, ss. 1(2) (commencement), 152.

SCHEDULE

FAIR AND REASONABLE TERMS

1. In determining for the purposes of section 13 [paragraph 66], 31, 40 or 46 of this Act or section 55 of the Act of 1893 (inserted by section 22 of this Act) if a term is fair and reasonable the test is that it shall be a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in contemplation of the parties when the contract was made.

2. Regard is to be had in particular to any of the following which appear to be relevant:

- (a) the strength of the bargaining positions of the parties relative to each other, taking into account (among other things) alternative means by which the customer's requirements could have been met;
- (b) whether the customer received an inducement to agree to the term, or in accepting it had an opportunity of entering into a similar contract with other persons, but without having to accept a similar term;
- (c) whether the customer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);
- (d) where the term excludes or restricts any relevant liability if some condition is not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable;
- (e) whether any goods involved were manufactured, processed or adapted to the special order of the customer.

3. In this Schedule—

“contract” includes “agreement”,

“term” includes “agreement” and “provision”.

Dealing as consumer. [s. 3: 16/1980]

3. (1) In the Act of 1893 and this Act, a party to a contract is said to deal as consumer in relation to another party if—

- (a) he neither makes the contract in the course of a business nor holds himself out as doing so, and
 - (b) the other party does make the contract in the course of a business, and
 - (c) the goods or services supplied under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption.
- (2) On—
- (a) a sale by competitive tender, or
 - (b) a sale by auction—
 - (i) of goods of a type, or
 - (ii) by or on behalf of a person of a class defined by the Minister by order,

the buyer is not in any circumstances to be regarded as dealing as consumer.

(3) Subject to this, it is for those claiming that a party does not deal as consumer to show that he does not.

Note: The penalty and prosecution sections (ss. 6 and 7) of the Act of 1980 are set out below.

Penalties. [s. 6: 16/1980]

- 6.—(1) A person guilty of an offence under this Act shall be liable—
- (a) on summary conviction, to a fine not exceeding £500 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both the fine and the imprisonment, or
 - (b) on conviction on indictment, to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding 2 years or to both the fine and the imprisonment.

(2) Where an offence under this Act which is committed by a body corporate or an unincorporated body of persons is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person (or any person acting on his behalf) being a director, manager, secretary, member of the committee of management or other controlling authority of any such body or being any other similar officer of any such body, that person or the person so acting as the case may be shall also be guilty of that offence.

Prosecution of offences. [s. 7: 16/1980]

7.—(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Minister or by the Director of Consumer Affairs.

(2) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted within 18 months from the date of the offence.

CHAPTER 3

Trading Stamps Act 1980 (No. 23 of 1980)

[s. 8: 23/1980]

Application of Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980.

73. (1) For the purposes of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980, the publication by a company which is the promoter of a trading stamp scheme of a catalogue shall be regarded as an offer, and the tender within the prescribed period of validity of the appropriate number of stamps shall be regarded as an acceptance, in the same way as if the offer and the acceptance were for a monetary consideration.
- (2) The provisions of the Sale of Goods Act 1893 and of the Sale of Goods and Supply of Services Act 1980 shall apply in every case where the promoter of a trading stamp scheme offers goods or services in exchange for trading stamps.
- (3) Where a person other than a promoter of a trading stamp scheme offers goods or services in exchange for trading stamps, the provisions of the Sale of Goods Act 1893 and of the Sale of Goods and Supply of Services Act 1980 shall apply in the same way as if that exchange were for a monetary consideration.

Note: "Trading stamp" (as defined in s.1 of 23/1980) means any stamp, coupon voucher, token or similar device which is, or is intended to be, delivered to any person upon, or in connection with, the purchase of goods (other than a newspaper or periodical of which the stamp forms part or in which it is contained) or the provision of services and is, or is intended to be, redeemable by that or some other person, but excludes a stamp, coupon, voucher, token or similar device which is redeemable only from the seller of the goods, or his supplier, or the person who provides the services.

"Trading stamp scheme" (as defined in s.1 of 23/1980) means any arrangements for making trading stamps available for use in shops or elsewhere, including arrangements for their redemption.

International Carriage of Goods by Road Act 1990 (No. 13 of 1990)

[s. 3(3): 13/1990]

Application of certain enactments in relation to CMR.

74. (3) The Carriers Act 1830, section 7 of the Railway and Canal Traffic Act 1854, the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980, shall not apply in relation to contracts for the carriage of goods if the carriage is carriage in relation to which CMR applies.

Note: "CMR" (as defined in s.1 of 13/1990) means the Convention on the Contract for the International Carriage of Goods by Road done at Geneva on the 19th day of May, 1956 as amended by the Protocol done at Geneva on the 5th day of July, 1978.