

SALE OF GOODS ACT, 1962 (ACT 137)

ARRANGEMENT OF SECTIONS

Section

PART I—NATURE AND FORMATION OF THE CONTRACT

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

PART II — DUTIES OF THE SELLER

Fundamental Obligation of the Seller

8. Fundamental obligation of the seller.

Existence of the Goods

9. Implied condition that specific goods are in existence.

Undertakings as to Title

10. Implied undertakings as to title.

Quality and Quantity of the Goods

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

Delivery of the Goods

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

PART III — DUTIES OF THE BUYER

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

PART IV — TRANSFER OF PROPERTY AND RISK

Transfer of Property

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

Transfer of Risk

27. Transfer of risk.

Transfer of Property by a Non-owner

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

PART V — REMEDIES OF THE SELLER

Real Rights of Seller

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

Lien

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

Stoppage in Transit

38. Stoppage in transit.
39. Duration of transit.
40. How stoppage in transit is effected.
41. Position as between seller and carrier.

42. Stoppage over goods lost or damaged.
43. Effect of resale or other disposition by buyer.

Recovery of Possession from Buyer

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

Resale

45. Resale by seller.

Personal Rights of the Seller

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

PART VI—REMEDIES OF THE BUYER

Rejection of the Goods

49. When buyer has right to reject.
50. Effect of rejection.
51. No rejection after acceptance.
52. Acceptance.

Personal Rights of the Buyer

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

PART VII—C.I.F. AND F.O.B. SALES

59. Parts I to VI to be read subject to this Part.
60. Export and import licences.
61. C.I.F. contracts.
62. F.O.B. contracts.
63. Payment of price by bankers' commercial credit.
64. Meaning of proper shipping documents.

65. Duties under this Part to be construed as conditions.

PART VIII — HIRE-PURCHASE CONTRACTS

66. Formalities relating to hire-purchase contracts.

67. Provision in hire-purchase contract authorising seller to enter buyer's premises to be void.

68. Special provisions as to determination of hire-purchase contracts.

69. Restriction on seller's right to recover possession in hire-purchase contracts.

70. Powers of court in action by seller under hire-purchase contract.

71. Effect of postponement of operation of an order for specific delivery of goods.

72. Assignments contrary to contract.

73. Duty of seller to supply documents and information.

74. Regulations as to hire-purchase contracts.

75. Application of Part VIII.

PART IX — MISCELLANEOUS

76. Variation of rights, duties and liabilities.

77. Reasonable time a question of fact.

78. Application of the Act.

79. Act to bind the Republic.

80. Savings.

81. Interpretation.

82. Repeal.

83. Statutes ceasing to apply.

84. Commencement.

SCHEDULES

First Schedule—Notice to be included in Note or Memorandum of Hire-purchase Agreement.

Second Schedule—Statutes ceasing to apply.



REPUBLIC OF GHANA

**THE HUNDRED AND THIRTY-SEVENTH
ACT
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
SALE OF GOODS ACT, 1962**

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

DATE OF ASSENT: 11th July, 1962

BE IT ENACTED by the President and the National Assembly in this present Parliament assembled as follows:—

PART I—NATURE AND FORMATION OF THE CONTRACT

Section 1—Contract of Sale.

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

(2) Where, by virtue of one or more contracts, a person has agreed for value to bail goods to a bailee on such terms that the property in the goods will or may at the option of the bailee pass to the bailee then, for the purposes of this Act, that person is deemed to have agreed to transfer the property in the goods to the bailee, and the bailor shall be deemed to be the seller and the bailee shall be deemed to be the buyer.

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

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

Section 2—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) Where necessaries are delivered to a person under an agreement which is void because of that person's incapacity to contract he shall be bound to pay a reasonable price therefor.

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

Section 3—Contract of Sale, how made.

Subject to the provisions of this Act and subject to any other enactment a contract of sale of goods may be made in writing or by word of mouth or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

Section 4—Auction Sales.

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

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

(b) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner;

(c) until such announcement is made any bidder may retract his bid and, subject to paragraph (d), the seller may withdraw the goods;

(d) where the sale is expressed to be without reserve the highest bona fide bidder shall be entitled to buy the goods at the price bid notwithstanding that the auctioneer refuses to accept his bid or to complete the sale;

(e) the seller or any one person on his behalf may bid if a right to bid is expressly reserved, but, subject to paragraph (f), not otherwise;

(f) where the sale is notified to be subject to a reserve price it shall be lawful for the seller or any person on his behalf to make one bid and no more; and such bid shall be openly declared at the auction before any other bid is received.

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

Section 5—Specific and Unascertained Goods.

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

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

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

Section 6—The Price.

(1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in 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.

Section 7—Agreement to Sell at Valuation.

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

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

PART II—DUTIES OF THE SELLER

Fundamental Obligation of the Seller

Section 8—Fundamental Obligation of the Seller.

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

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

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

Existence of the Goods

Section 9—Implied Condition that Specific Goods are in Existence.

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

Undertakings as to Title

Section 10—Implied Undertakings as to Title.

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

(2) The provisions of subsection (1) are not affected by any agreement to the contrary where the goods are of a description which are supplied by the seller in the ordinary course of his business.

Quality and Quantity of the Goods

Section 11—Sale by Description.

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

Section 12—Sale by Sample.

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

Section 13—Quality and Fitness of Goods.

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

(a) There is an implied condition that the goods are free from defects which are not declared or known to the buyer before or at the time when the contract is made:

Provided that there is no such implied condition—

(i) where the buyer has examined the goods, in respect of defects which should have been revealed by the examination;

(ii) in the case of a sale by sample, in respect of defects which could have been discovered by a reasonable examination of the sample;

(iii) where the goods are not sold by the seller in the ordinary course of his business, in respect of defects of which the seller was not, and could not reasonably have been aware.

(b) Where the goods are of a description which are supplied by the seller in the course of his business and the buyer expressly or by implication makes known the purpose for which the goods are required there is an implied condition that the goods are reasonably fit for that purpose.

(2) The condition implied by paragraph (a) of subsection (1) is not affected by any provision to the contrary in the agreement where the goods are of a description which are supplied by the seller in the ordinary course of his business and the condition implied by paragraph (b) of subsection (1) is not affected by any provision to the contrary in the agreement unless the seller proves that before the contract was made the provision was brought to the notice of the buyer and its effect made clear to him.

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

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

(5) The provisions of this section apply to all goods delivered in purported pursuance of the contract and extend to all boxes, tins, bottles or other containers in which the goods are contained.

Section 14—Quantity of Goods.

(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 he 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 not reject all the goods delivered by reason only of the excess in quantity but he may accept all the goods so delivered, paying for the extra goods at the contract rate, or he may accept the goods which should have been delivered and reject the remainder. In the latter event the buyer may recover damages from the seller representing the cost, if any, of separating the goods which should have been delivered from the remainder.

(3) Where the seller delivers to the buyer the goods he contracted to sell together with goods of a different description not included in the contract—

(a) the buyer may accept all the goods so delivered, paying a reasonable price for the extra goods; or

(b) if the goods which the seller contracted to sell and has delivered are less than the quantity specified in the contract, the buyer may reject the whole; or

(c) the buyer may accept the goods included in the contract and reject the remainder. In this event the buyer may recover damages from the seller representing the cost (if any) of separating the goods included in the contract from the remainder, and also damages (if any) in respect of the deficiency (if any) in the goods delivered.

Delivery of the Goods

Section 15—Delivery Concurrent with Payment.

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

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

Section 16—Time of Delivery.

(1) If no time is fixed for the delivery of the goods, they must be delivered within a reasonable time.

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

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

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

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

Section 17—Cost of Putting Goods into Deliverable State.

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

Section 18—Means of Delivery.

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

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

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

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

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

Provided that nothing in this subsection affects the operation of the delivery of any document of title.

Section 19—Place of Delivery.

Unless a contrary intention appears the place of delivery is the seller's place of business, if he has one, and if not, his residence:

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

Section 20—Despatch of Goods by Carrier.

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

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

PART III—DUTIES OF THE BUYER

Section 21—Fundamental Obligations of the Buyer.

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

Section 22—Payment Concurrent with Delivery.

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

Section 23—Time of Payment and Accepting Delivery.

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

Section 24—Buyer not Bound to Accept Delivery by Instalments.

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

PART IV—TRANSFER OF PROPERTY AND RISK

Transfer of Property

Section 25—Goods Must be Ascertained.

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

Section 26—When Property Passes.

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

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

(3) Where goods are delivered to the buyer on approval or "on sale or return" or other similar terms, then, in the absence of a contrary intention, 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.

Transfer of Risk

Section 27—Transfer of Risk

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

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

(3) Where delivery of the goods 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, damage or deterioration which might not have occurred but for the delay.

(4) Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee of the goods of the other party or any destruction or loss or deterioration of or damage to the goods which is caused by the fault of either party.

Transfer of Property by a Non-owner

Section 28—Non-Owner Cannot Generally Pass Good Title.

(1) Subject to the provisions of this Act and of any other enactment 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 than the seller had.

(2) Nothing in this section affects the operation of the doctrine of estoppel, or any power of sale which may be conferred by or under any enactment or by a contract of pledge or otherwise.

Section 29—Disposition under Voidable Title.

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

Section 30—Disposition by Mercantile Agent in Possession of Goods, Etc.

(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge or other disposition for value of the goods or documents of title made by him apparently in the ordinary course of his business as a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same, if the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the mercantile agent has not authority to make the same.

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

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first mentioned documents shall, for the purposes of this section, be deemed to be with the consent of the owner.

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

(5) The goods or documents of title thereto are not deemed to be in the possession of a mercantile agent within the meaning of this section unless they are in his possession in his capacity as mercantile agent.

(6) Nothing in this section affects the liability of a mercantile agent to the owner for any wrongful sale, pledge or other disposition of the goods or documents of title.

Section 31—Disposition by Seller in Possession.

(1) Where a person having agreed to sell goods continues or is in possession of them after the property has passed to the buyer, the delivery or transfer by the seller, of the goods or

documents of title under any contract for sale, pledge or other disposition for value 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 seller were expressly authorised by the original buyer to make the same.

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

(3) Nothing in this section—

(a) derogates from the powers of a seller in whom the property in the goods is vested; or

(b) affects the liability of the seller to the buyer for any wrongful sale, pledge or other disposition for value of the goods or documents of title.

Section 32—Disposition by Buyer in Possession.

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

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

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

(4) Nothing in this section —

(a) derogates from the powers of a buyer in whom the property in the goods is vested; or

(b) affects the liability of the buyer to the seller for any wrongful sale, pledge or other disposition for value of the goods or documents of title.

Section 33—Provisions Relating to Notice of Ownership.

(1) For the purposes of the provisions of this Part relating to dispositions of goods to persons receiving the same in good faith and without notice of defects in title, where a motor vehicle is licensed by a licensing authority under the provisions of the Road Traffic Ordinance, 1952 (No.55) every person shall be deemed to have notice of the ownership or interest (if any) of the person in whose name it is so licensed.

(2) The Minister responsible for trade may, with the concurrence of the Minister responsible for licensing authorities, make regulations by legislative instrument —

(a) prescribing the forms to be used and fees to be paid by persons wishing to inspect the records of a licensing authority;

(b) providing that a copy of an entry in the records of a licensing authority purporting to be signed and certified as a true copy by the person in charge of the licensing office shall be admissible in evidence in any legal proceedings; and

(c) generally for giving effect to this section.

PART V—REMEDIES OF THE SELLER

Real Rights of Seller

Section 34—Unpaid Seller Defined.

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

(a) when the whole of the price has not been paid or tendered;

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

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

Section 35—Unpaid Seller's Rights.

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

(a) whether or not the property therein has passed to the buyer —

(i) a lien on the goods;

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

(iii) a right of resale;

(b) where the property has not passed to the buyer but the goods have been delivered to him, a right to recover possession of the goods.

(2) Nothing in this Part derogates from the powers of an unpaid seller where the contract is for the sale of unascertained goods and no goods have been appropriated to the contract.

Lien

Section 36—Seller's Lien.

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

(a) the seller has not agreed to deliver the goods before payment of the price;

(b) the goods have been sold on credit but the term of credit has expired; or

(c) the buyer has become insolvent.

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

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

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

Section 37—Termination of lien.

(1) An unpaid seller of goods loses his lien thereon—

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(b) when the buyer obtains the possession of the goods with the consent of the seller; or

(c) by waiver thereof.

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

Stoppage in Transit

Section 38— Stoppage in Transit.

(1) Subject to the provisions of this Act, when the buyer of goods becomes insolvent an unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, 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.

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

Section 39—Duration of Transit.

(1) Goods are in course of transit from the time when they are delivered to a carrier or other bailee until the buyer takes delivery of them from the carrier or bailee.

(2) If the buyer obtains delivery of the goods before their arrival at the appointed destination the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer that he holds the goods on his behalf and continues in possession of them as bailee for the buyer, then subject to subsection (4), the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

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

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

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

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

Section 40—How Stoppage in Transit is Effected.

An unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, 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.

Section 41—Position as between Seller and Carrier.

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

(2) Where notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, the seller is bound to give instructions within a reasonable time to the carrier or other bailee with respect to the redelivery of the goods to the seller or his order, and the carrier is bound to deliver the goods according to those instructions. The expenses of such redelivery as well as of the original carriage must, as between the seller and the carrier, be borne by the seller.

Section 42—Stoppage Over Goods Lost or Damaged, Etc.

Where an unpaid seller exercises his right of stoppage in transit over goods which are lost or damaged, or which deteriorate, in transit, then, as between the seller and the buyer, the proceeds of any policy of insurance respecting the goods shall be payable —

(a) to the seller if the insurance was effected by him and he exercises his right of stoppage in transit before the loss, damage or deterioration occurs;

(b) to the buyer, in any other case.

Section 43—Effect of Resale or Other Disposition by Buyer.

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

(a) if the seller assents to a resale or other disposition by the buyer he loses his right of lien or stoppage in transit;

(b) if the buyer resells the goods or documents of title thereto in such circumstances that the resale is effective to pass a title, under section 32 of this Act or otherwise, the seller loses his right of lien or stoppage in transit;

(c) if the buyer disposes of the goods or the documents of title thereto otherwise than by way of sale, in such circumstances that the disposition is effective under section 32 of this Act or otherwise, the seller may exercise his right of lien or stoppage in transit subject to the rights of any person claiming by or under such disposition as aforesaid.

Recovery of Possession from Buyer

Section 44—Seller's Right to Recover Possession after Delivery.

Subject to the provisions of this Act, and subject to any contrary intention an unpaid seller may recover possession of the goods from the buyer after they have been delivered to him if —

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

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

Resale

Section 45—Resale by Seller.

An unpaid seller who is in possession of the goods is entitled as against the buyer to resell them in any of the following cases —

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

Personal Rights of the Seller

Section 46—Action for Price.

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

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

(3) Where, under a contract of sale of goods, the seller delivers part only of the goods and the buyer accepts or is bound to accept that part, the seller may maintain an action against the buyer

for a proportionate part of the price without prejudice to any counterclaim by the buyer for damages in accordance with section 53 of this Act. This subsection does not apply to any contract to which Part I of the Contracts Act, 1960 (Act 25) applies.

(4) Nothing in this section prevents a seller from maintaining an action for damages in addition to an action for the price where the circumstances warrant.

Section 47—Damages for Non-acceptance.

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

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

(a) if each instalment is to be separately paid for subsection (1) shall apply to each instalment separately:

Provided that where the buyer has by his words or conduct shown an intention to repudiate the contract the seller may, if he accepts the repudiation, maintain an action for damages for non-acceptance in respect of all the goods;

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

Section 48—Assessment of Damages.

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

(2) 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—

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

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

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

PART VI—REMEDIES OF THE BUYER

Rejection of the goods

Section 49—When Buyer has Right to Reject.

(1) Subject to the provisions of this Act the buyer is entitled to reject the goods and to refuse to pay, or as the case may be, to recover, the price where —

(a) the seller is guilty of a breach of a fundamental obligation; or

(b) the seller is guilty of a breach, not being of a trivial nature, of a condition of the contract, whether the breach is in respect of all of the goods or, subject to subsection (2), of part only; or

(c) the buyer has entered into the contract as a result of fraudulent or innocent misrepresentation on the part of the seller.

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

(a) if each instalment is to be separately paid for, subsection (1) shall apply to each instalment separately:

Provided that where there are persistent and grave breaches by the seller in respect of two or more instalments the buyer may treat the whole contract as repudiated.

Provided further that nothing in this paragraph shall affect the buyer's rights under paragraph (c) of subsection (1);

(b) in any other case, such a breach as is referred to in subsection (1) in respect of one or more instalments shall be treated for the purpose of that subsection as though it were a breach in respect of the whole contract.

Section 50—Effect of Rejection.

(1) Where goods are delivered to the buyer and he rejects 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 rejects them.

(2) After the buyer has intimated to the seller that he rejects the goods the seller is entitled to have the goods placed at his disposal:

Provided that where the buyer has paid the price or any part thereof he may retain the possession of the goods until the seller repays or tenders the amounts he has received from the buyer.

Section 51—No Rejection after Acceptance.

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

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

Section 52—Acceptance.

The buyer is deemed to have accepted the goods when—

(a) he intimates to the seller that he accepts them; or

(b) he does not, within a reasonable time after delivery of the goods, inform the seller that he rejects them; or

(c) he wrongfully refuses or neglects to place the goods at the disposal of the seller after notifying the seller that he rejects them.

Personal Rights of the Buyer

Section 53—Damages for Non-Delivery.

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, in accordance with the terms of the contract, or where the buyer rejects the goods delivered by the seller having the right so to do, the buyer may maintain an action against the seller for damages for non-delivery.

Section 54—Assessment of Damages for Non-Delivery.

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

(2) 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 market or current price and the contract price —

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

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

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

Section 55—Damages for Breach of Condition or Warranty.

Where the seller is guilty of a breach of his fundamental obligation or of a condition or warranty of the contract the buyer may maintain an action against the seller for damages for the breach complained of or may set up a claim to such damages in diminution or extinction of the price.

Section 56—Assessment of Damages Under Sec. 55.

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

Section 57—No Forfeiture of Sums Paid by Buyer.

(1) Where under a contract of sale the buyer has paid a part or all of the price to the seller and the seller refuses or neglects to deliver the goods to the buyer, having the right so to do, or, after delivering the goods, recovers the possession thereof having the right so to do, the buyer is entitled (without prejudice to any other rights, but subject to any counterclaim for damages by the seller) to recover from the seller the amounts which he has paid.

(2) This section applies whether the amounts paid by the buyer were expressed to be by way of part payment or deposit or otherwise, and notwithstanding any agreement to the contrary.

(3) Nothing in this section affects any case where the seller's refusal or neglect to deliver the goods, or his recovery of the possession thereof is wrongful.

Section 58—Specific Performance.

In any action for breach of contract to deliver specific or ascertained goods the Court may, if it thinks fit, by its judgment direct that the contract should be specifically performed without giving the seller the option of retaining the goods on payment of damages. The judgment may be unconditional or upon such terms as to damages, costs and otherwise as the Court may think fit.

PART VII—C.I.F. AND F.O.B. SALES

Section 59—Parts I to VI to be Read Subject to This Part.

(1) The provisions of Parts I to VI of this Act shall, in relation to c.i.f. and f.o.b. contracts, be subject to the provisions of this Part.

(2) The provisions of this Part shall apply, with any necessary modifications to contracts analogous to c.i.f. or f.o.b. contracts respectively, and in particular to c. and f. contracts, f.o.r. contracts and f.a.s. contracts.

(3) In this Part —

"c.i.f." means cost, insurance, freight;

"f.o.b." means free on board;

"c. and f." means cost and freight;

"f.o.r." means free on rail;

"f.a.s." means free alongside.

Section 60—Export and Import Licences.

(1) In a c.i.f. contract, unless a contrary intention appears—

(a) it is the duty of the seller to obtain any necessary export licence;

(b) it is the duty of the buyer to obtain any necessary import licence.

(2) In a f.o.b. contract, unless a contrary intention appears—

(a) where the buyer is resident in the country from which shipment is to be made, it is the duty of the buyer to obtain any necessary export licence;

(b) in any other case, it is the duty of the seller to obtain any necessary export licence;

(c) it is the duty of the buyer to obtain any necessary import licence.

(3) Where a party is under a duty, whether under this section or otherwise, to obtain any necessary export or import licence, it is a question depending on all the circumstances of the case whether the duty is discharged where the party has used his best endeavours to obtain a licence, but nevertheless has not obtained one, or whether he is still bound to deliver or, as the case may be, to accept delivery of the goods.

(4) In a c.i.f. or f.o.b. contract the party who is required to obtain any necessary export licence is, unless a contrary intention appears, bound to pay any export taxes or dues in the nature of

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

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

Section 61—C.I.F. Contracts.

In a c.i.f. contract, unless a contrary intention appears —

(a) the seller is bound at his own expense, to ship the goods during the agreed period, if any, to the port agreed upon or to acquire goods afloat which have been so shipped;

(b) the seller is bound, at his own expense, to effect on the goods an insurance of the type normal for goods and a voyage of the kind in question;

(c) the seller is bound to transfer to the buyer proper shipping documents in accordance with the terms of the contract;

(d) the buyer is bound to take up proper shipping documents and, on doing so, to pay the price in accordance with the terms of the contract;

(e) the goods are deemed to be delivered to the buyer, and the property therein accordingly passes to the buyer, on the transfer to him of the bills of lading;

(f) the risk in the goods passes to the buyer when they are shipped or acquired afloat.

Section 62—F.O.B. Contracts.

In a f.o.b. contract, unless a contrary intention appears —

(a) the buyer is entitled and bound to nominate a ship to the seller calling during the agreed period, if any, at the agreed, or where the buyer has an option, one of the agreed, ports, and ready and willing to carry the goods;

(b) the seller is bound, at his own expense, to have the goods loaded on the ship nominated by the buyer;

(c) the seller is bound to give such notice to the buyer as required by section 20(2) of this Act except where the buyer already has the necessary information;

(d) the seller is not bound to effect any insurance on the goods;

(e) the seller is bound to transmit to the buyer bills of lading by which the goods are deliverable to the buyer or his order or to transfer to the buyer bills of lading by which the goods are deliverable to the seller or his order;

(f) where by the bills of lading, the goods are deliverable to, or to the order of the seller, the property passes to the buyer when the bills of lading are transferred to him, and where by the bills of lading the goods are deliverable to, or to the order of the buyer, the property passes to the buyer when the goods are shipped;

(g) the risk in the goods passes to the buyer when they are shipped.

Section 63—Payment of Price by Bankers' Commercial Credit.

Where, in a c.i.f. or f.o.b. contract the price is to be paid by means of a letter of credit opened at a bank to be nominated by the seller, then in the absence of a contrary intention—

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

Section 64—Meaning of Proper Shipping Documents.

For the purposes of this Part "proper shipping documents" means—

- (a) the seller's invoices for the goods;
- (b) bills of lading which acknowledge that the goods have been shipped and which contain no reservation as to the apparent good order and condition of the goods or the packing; and
- (c) in a c.i.f. contract and in any other contract where the seller is bound to effect insurance on the goods, policies of insurance, or, where permitted by commercial custom, certificates of insurance.

Section 65—Duties Under This Part to be Construed as Conditions.

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

PART VIII—HIRE-PURCHASE CONTRACTS

Section 66—Formalities Relating to Hire-Purchase Contracts.

(1) Before any hire-purchase contract is entered into in respect of any goods, the seller shall state in writing to the prospective buyer (otherwise than in the note or memorandum referred to in subsection (3)), a price at which the goods may be purchased by him for cash (in this Part referred to as the "cash price"), and shall also state the cash price to the purchaser orally.

(2) Subsection (1) shall be deemed to have been sufficiently complied with if the seller states the cash price to the buyer orally, and—

- (a) if the buyer has inspected the goods or like goods and at the time of his inspection tickets or labels were attached to or displayed with the goods clearly stating the cash price, either of the goods as a whole or of all the different articles or sets of articles comprised therein; or
- (b) if the buyer has selected the goods by reference to a catalogue, price list, or advertisement, which clearly stated the cash price either of the goods as a whole or of all the different articles or sets of articles comprised therein.

(3) A seller shall not be entitled to enforce a hire-purchase contract or any contract of guarantee relating thereto or any right to recover the goods from the buyer, and no security given by the buyer in respect of money payable under the hire-purchase contract or given by the guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable

against the buyer or guarantor by any holder thereof, unless the requirement specified in subsection (1) has been complied with, and —

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

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

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

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

(4) If the Court is satisfied in any action that a failure to comply with the requirement specified in subsection (1) or any requirement specified in paragraph (b), (c) or (d) of subsection (3) has not prejudiced the buyer and that it would be just and equitable to dispense with the requirement, the Court may, subject to any conditions that it thinks fit to impose, dispense with that requirement for the purposes of the action.

Section 67—Provision in Hire-Purchase Contract Authorising Seller to Enter Buyer's Premises to be Void.

Any provision in a hire-purchase contract whereby the seller or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of the goods, or is relieved from liability for any such entry, is void.

Section 68—Special Provisions as to Determination of Hire-Purchase Contracts.

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

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

(3) where a hire-purchase contract has been determined under this section, the buyer shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure.

(4) Nothing in this section affects—

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

(b) any contract of hire-purchase which is the subject of an order of the court under section 70 of this Act.

Section 69—Restriction of Seller's Right to Recover Possession in Hire-Purchase Contracts.

(1) Where goods have been delivered to a buyer under a contract of hire-purchase, and at least fifty per cent, or such other minimum percentage as may be prescribed, of the hire-purchase price has been paid or tendered by or on behalf of the buyer, the seller may not enforce any right to recover possession of the goods from the buyer otherwise than by action.

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

(a) the buyer shall be released from all liability under the contract and shall be entitled to recover from the seller all sums paid by the buyer under or in respect of the contract; and

(b) any guarantor shall be entitled to recover from the seller all sums paid by him under or in respect of the contract of guarantee.

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

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

Section 70—Powers of Court in Action by Seller under Hire-Purchase Contract.

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

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

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

(a) order the buyer to deliver a part or all of the goods to the seller without giving him the option of retaining the goods on payment of damages;

(b) order the buyer to pay the unpaid part of the hire-purchase price at such times and in such amounts and subject to such conditions as the Court thinks fit;

(c) make an order under paragraph (a) but subject to the condition that the seller refunds to the buyer such part of the sums paid by him as the Court thinks fit;

(d) make an order under paragraph (a) but postpone its operation on condition that the buyer pays the unpaid balance of the hire-purchase price at such times and in such amounts and subject to such other conditions, as the Court thinks fit; or

(e) allocate the sums which have been paid or a part thereof to a part of the goods and make an order transferring the seller's title in respect thereof to the buyer, or

(f) make orders under two or more of paragraphs (a) to (e), and may make such further incidental orders as may be just.

Section 71—Effect of Postponement of Operation of an Order for Specific Delivery of Goods.

(1) While the operation of an order for the specific delivery of goods to the owner is postponed under section 70 of this Act the buyer shall be deemed to hold the goods under and on the terms of the hire-purchase agreement:

Provided that no further sum shall be or become payable by the hirer or a guarantor on account of the unpaid balance of the hire-purchase price except in accordance with the terms of the order.

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

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

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

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

Section 72—Assignments Contrary to Contract.

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

(1) the buyer shall on the written request of the seller, inform him where the goods are at the time when the information is given or, if it is sent by post, at the time of posting, and if the buyer fails without reasonable cause to give the information within fourteen days of receiving the request, he shall be liable on conviction to a fine not exceeding ten pounds;

(2) if the buyer, before the property has passed to him, resells, pledges or otherwise disposes of the goods for value to a third party in such circumstances that section 32 of this Act gives rights in the goods to the third party, he shall be guilty of a misdemeanour.

Section 73—Duty of Seller to Supply Documents and Information.

(1) At any time before the final payment has been made under a hire-purchase contract, the seller shall, within seven days after he has received a request in writing from the buyer and the buyer has tendered to him the sum of one shilling for expenses, supply to the buyer a copy of any memorandum or note of the agreement, together with a statement signed by the seller or his agent showing—

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

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

(a) the seller shall not be entitled to enforce the agreement against the buyer or to enforce any contract of guarantee relating to the contract, and the seller shall not be entitled to enforce any right to recover the goods from the buyer, and

(b) no security given by the buyer, in respect of money payable under the contract or given by a guarantor in respect of money payable under such a contract of guarantee shall be enforceable against the buyer or the guarantor by any holder thereof,

and, if the default continues for a period of one month, the defaulter shall be guilty of an offence under this section and shall be liable on conviction thereof to a fine not exceeding ten pounds.

Section 74—Regulations as to Hire-Purchase Contracts.

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

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

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

(g) the inclusion in any such advertisement or announcement of a statement of the price at which the goods will be sold for cash.

(3) Regulations under this section may also provide that a person who sells goods to which the regulations apply shall not be entitled to enforce any agreement for such sale or any right to recover the goods unless specified provisions of the regulations are complied with.

(4) Regulations under this section may also prescribe whether for goods generally or for any class or description of goods, a minimum percentage for the purposes of sections 69 and 70 of this Act in lieu of fifty per cent.

Section 75—Application of Part VIII.

(1) Subject to subsection (2), this Part applies to every contract.

(2) The application of this Part, or of any provision thereof, may, in the case of a contract in which the cash price of the goods exceeds £G1,000, be excluded by agreement between the parties.

PART IX—MISCELLANEOUS

Section 76—Variation of Rights, Duties and Liabilities.

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

Section 77—Reasonable Time a Question of Fact.

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

Section 78—Application of the Act.

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

Section 79—Act to Bind the Republic.

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

Section 80—Savings.

The rules of the common law and of customary law, save in so far as they are inconsistent with the provisions of this Act, shall continue to apply to contracts for the sale of goods.

Section 81—Interpretation.

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

"action" includes counterclaim and set-off;

"agreement to sell" has the same meaning as "sale";

"ascertained goods" means goods identified and agreed upon after a contract of sale is made;

"buyer" shall be construed in accordance with section 1;

"contract of sale of goods" has the meaning assigned to it in section 1;

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

"document of title" means any bill of lading, dock warrant, warehousekeeper's certificate and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorise, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented;

"goods" means movable property of every description, and includes growing crops or plants and other things attached to or forming part of the land which are agreed to be severed before sale by or under the contract of sale;

"hire-purchase contract" means a contract of sale of goods in which the price is to be paid in five or more instalments;

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

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

"plaintiff" includes defendant in relation to a counterclaim;

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

"quality of goods" includes their state or condition;

"sale" means a contract of sale of goods;

"seller" shall be construed in accordance with section 1;

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

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

(3) 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.

Section 82—Repeal.

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

(2) Section 17 of the Auction Sales Ordinance (Cap. 196) shall not apply to the sale of goods.

Section 83—Statutes Ceasing to Apply.

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

Section 84—Commencement.

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

FIRST SCHEDULE

Section 66.

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

Right of Buyer to Terminate Agreement

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

Restriction of Owner's Right to Recover Goods

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

SECOND SCHEDULE

STATUTES CEASING TO APPLY

Session and Chapter	Subject Matter	Extent of Cesser
1 Jac. 1, c. 21 (1603)	Brokers	The whole Act.
4 Geo. 4, c. 83 (1823)	Factors	The whole Act
6 Geo. 4, c. 94 (1825)	Factors	The whole Act.
5 and 6 Vict., c. 39 (1842)	Mercantile Agents	The whole Act.

19 and 20 Vict.,c. 97 (1856) Mercantile Law (Amendment) Sections 1 and 2.