

**Commentary for the Law Reform Commission of Saskatchewan regarding the  
Consultation Report containing Proposals for Amendments to *The Sale of Goods Act***

by

**Clayton Bangsund\***

**A. Introduction**

These comments are submitted in response to the September 2023 Consultation Report on Proposals for Amendments to *The Sale of Goods Act* [Consultation Report] prepared for the Law Reform Commission of Saskatchewan [LRCS] by Distinguished Professor Emeritus Ronald CC Cuming. For the most part, I agree that the amendments proposed in the Consultation Report will enhance *The Sale of Goods Act*<sup>1</sup> [SGA] of Saskatchewan. To name just two key examples, I welcome elimination of the strict condition-warranty dichotomy for implied statutory conditions,<sup>2</sup> and support adoption of a coherent set of provisions governing rejection of non-conforming goods and the right of retender.<sup>3</sup> I have also become persuaded that concerns about loss of interjurisdictional uniformity are outweighed by the need for coherency and certainty in contemporary sale of goods law.<sup>4</sup>

The commentary that follows focuses exclusively on my lingering points of confusion, concern or disagreement with the Consultation Report and the legislative amendments proposed therein [Proposed SGA]. In Part B.1, I raise questions or concerns and/or set out recommendations in relation to the SGA amendments proposed in the Consultation Report. In Part B.2, I outline consequential amendments to *The Factors Act*<sup>5</sup> [*Factors Act*] that will be required if the Proposed SGA is adopted. I also highlight the need for a thorough review of all associated statutes and regulations to ensure harmony throughout Saskatchewan's integrated legislative framework. This commentary must be read in conjunction with the Appendix, which furnishes a penned markup of typos, grammatical errors, redundancies, and other similar issues contained in the proposed amendments.

**B. Commentary**

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<sup>1</sup> *The Sale of Goods Act*, RSS 1978, c S-1 [SGA].

<sup>2</sup> See, for example, Roderick J Wood, "The Interface Between Sales Law and Secured Transactions Law" 2018 61 CBLJ 27.

<sup>3</sup> See, for example, See Roderick J Wood, "Codification of Commercial Law" (2016) 79 Sask L Rev 179.

<sup>4</sup> See Louise Gullifer, "What Should We Do About Financial Collateral?" (2012) 65 Current Legal Problems 377 at 378: "...the question of what the law should be comes logically before the question of harmonization." See also Clayton Bangsund, *Control v. Registration: Contemplating a Potential Paradigm Shift in the PPSA's Governance of Security Interests in Deposit Accounts* (PhD Thesis, University of Alberta Faculty of Law, 2017), online: JuliusErwin <[www.JuliusErwin.com](http://www.JuliusErwin.com)> at 272.

<sup>5</sup> *The Factors Act*, RSS 1978, c F-1 [*Factors Act*].



## 1. Proposed SGA

The following is a tentative list of questions, concerns and recommendations, all made with reference to provisions of the Proposed SGA as outlined in the Consultation Report:

1. In Proposed SGA ss. 3(5) and (6), reference is made to "an interest" in the goods. Should this instead be a reference to "title"?
2. In Proposed SGA s. 3(5), the words "other than those" should be deleted.
3. In Proposed SGA s. 20(3), there is an incorrect reference to "subsection (3)".
4. Proposed SGA s. 20(5) is redundant and should be deleted.
5. In Proposed SGA s. 22(1), the cross-reference should be to section "19", not "21".
6. In Proposed SGA s. 23(3), reference is made to "properties and liabilities". Should this instead be a reference to "obligations and liabilities"? The term "properties" does not seem to fit.
7. In Proposed SGA s. 23(5), the word "delivered" should be replaced with "returned".
8. In Proposed SGA s. 25, lawmakers should consider carving out, from registration-based protection, goods covered by a negotiable document of title.<sup>6</sup>
9. In Proposed SGA s. 29(1), the seller's residence should be the residual place of delivery if the seller does not have a separate place of business.
10. The substantive meaning of Proposed SGA s. 45(2) is unclear. In this subsection, there is also an inaccurate reference to "clause (a)", which should instead be to "subclause (1)(a)".
11. Subsection renumbering is required in respect of Proposed SGA s. 45(4).
12. Read in isolation, Proposed SGA s. 48(2) can be construed as precluding a buyer from receiving an award of consequential damages in appropriate circumstances. Proposed SGA ss. 49(2), (4) and (5) appear to overrule this interpretation, correctly in my view. Still, to create greater certainty, it may be advisable to reframe Proposed SGA s. 48(2) such that it simply points to the assessment of damages pursuant to Proposed SGA s. 49.
13. In Proposed SGA s. 50(3), the uniqueness of the goods and their intrinsic importance to the buyer should be factors for consideration by the court. A question also arises about whether a seller can obtain a court order for specific performance. Professor Bridge is of the view that the court retains "uncodified discretion" to grant such a remedy.<sup>7</sup> If Saskatchewan lawmakers agree, an express provision in the Proposed SGA should set out the relevant factors that would support such a remedy in favour of a seller.
14. Section renumbering is required in Proposed SGA ss. 52-54.

## 2. Legislative Integration

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<sup>6</sup> See Clayton Bangsund, "Pentology: Recommendations for Reform of the "Seller in Possession" Statutory Regimes of Alberta, British Columbia, Northwest Territories, Nunavut & Saskatchewan" (2022) 60 Alta L Rev 113 [*Pentology*].

<sup>7</sup> See MG Bridge, *Sale of Goods* (Toronto: Butterworths, 1988) at 731: "Furthermore, the section deals only with buyers' actions against sellers and not with sellers' actions against buyers. There is uncodified discretion to entertain a specific performance claim in the latter case, though it has been observed that the limits laid down in s. [51] should be observed." [section number modified to reference the Saskatchewan SGA's current numbering]



While enacting amendments to one statute, it is easy to overlook the need for consequential amendments to other related statutes. Consider recent amendments to *The Personal Property Security Act, 1993*<sup>8</sup> [PPSA], for example. Consequential amendments were not introduced to *The Enforcement of Money Judgments Act*<sup>9</sup> [EMJA], which now makes it problematic to read EMJA s 25(5) alongside PPSA ss 31(7),(9)-(10). There are other examples of this phenomenon.<sup>10</sup>

#### a. Factors Act

Adoption of the Proposed SGA will require that consequential amendments be introduced to the *Factors Act*, a related statute with a long and complicated history. Two centuries ago, English Parliament enacted the *Factors Act 1823*,<sup>11</sup> then enacted three additional factors statutes – the *Factors Acts 1825*,<sup>12</sup> the *Factors Act 1842*,<sup>13</sup> and the *Factors Act 1877*<sup>14</sup> – before eventually repealing all four and consolidating them under the *Factors Act 1889*.<sup>15</sup> The *Sale of Goods Act 1893*<sup>16</sup> was enacted four years later as a comprehensive codification of the common law of sales. The coming into force of the new *Sale of Goods Act 1893* created a bizarre legislative redundancy in relation to the "seller in possession" and "buyer in possession" exceptions to *nemo dat* (i.e. identical provisions had become housed in both the *Factors Act 1889* and the *Sale of Goods Act 1893*). In 1909, Saskatchewan copied the legislative redundancy from England by simultaneously enacting the Imperial *Factors Act*<sup>17</sup> and *Sale of Goods Act*.<sup>18</sup> Saskatchewan has retained the redundancy ever since. In a five-part series of recently published articles, I have argued for elimination of the legislative redundancy along with various other elements of reform.<sup>19</sup>

The Consultation Report proposes substantial simplification of the *nemo dat* exceptions currently contained in SGA s. 26. These proposed amendments are sensible and address most of my concerns with the existing section.<sup>20</sup> It is important to note, however, that if the Proposed SGA is

<sup>8</sup> SS 1993, c P-6.2 [PPSA].

<sup>9</sup> SS 2010, c E-9.22 [EMJA].

<sup>10</sup> See, for example, Clayton Bangsund, *Bangsund on the Personal Property Security Act: The CCPSL Model* (Thomson Reuters, 2021) at 261, n 133.

<sup>11</sup> *Factors Act 1823* (UK), 4 Geo IV, c 83.

<sup>12</sup> *Factors Act 1825* (UK), 6 Geo IV, c 94.

<sup>13</sup> *Factors Act 1842* (UK), 5 & 6 Vict, c 39.

<sup>14</sup> *Factors Act 1877* (UK), 40 & 41 Vict, c 39.

<sup>15</sup> *Factors Act 1889* (UK), 52 & 53 Vict, c 45.

<sup>16</sup> *Sale of Goods Act 1893* (UK), 56 & 57 Vict, c 71.

<sup>17</sup> *The Factors Act*, RSS 1909, c 148, ss 9-10.

<sup>18</sup> *The Sale of Goods Act*, RSS 1909, c 147, ss 25(1)-(2).

<sup>19</sup> See Clayton Bangsund, "ABCD Remoteness Problems: *Nemo Dat* & Its Exceptions Under Subsection 26(1.2) of Saskatchewan's *The Sale of Goods Act*" (2018) 81 Sask L Rev 133 [*ABCD Remoteness Problems*]; Clayton Bangsund, "A Survey & Critique of the "Seller in Possession" Statutory Regimes of Common Law Canada: An ABC Prequel" (2019) 42 Dal L J 243 [*ABC Prequel*]; Clayton Bangsund, "Eliminating Redundancy in Legislation Governing the Sale of Goods: A Threequel" (2019) 93 SCLR 367 [*Threequel*]; Clayton Bangsund, "Uniquely Treacherous Waters: More on the "Seller in Possession" Statutory Regimes of New Brunswick, Newfoundland & Labrador, Nova Scotia and Prince Edward Island" (2020) 71 UNBLJ 30 [*Uniquely Treacherous Waters*]; Bangsund, *Pentology*, *supra* note 6.

<sup>20</sup> But see my comments above in relation to Proposed SGA s. 25.



enacted, sections 9 and 10 of the *Factors Act* must be repealed to ensure ongoing harmony between the two commercial statutes. In fact, since the Proposed SGA will exclusively apply to commercial sales, it may be wise to repeal the *Factors Act* altogether and import any of its relevant provisions into the SGA.

**b. Other Impacted Statutes**

The enactment of the Proposed SGA, or some variation thereof, may (or may not) impact other provincial statutes and regulations including, non-exhaustively, the PPSA, *The Personal Property Security Regulations*<sup>21</sup> [PPS Regulations], *The Agricultural Implements Act*<sup>22</sup> [AIA], *The Consumer Protection and Business Practices Act*<sup>23</sup> [CPBPA], *The Direct Sellers Act*<sup>24</sup> [DSA], *The Limitation of Civil Rights Act*<sup>25</sup> [LCRA], *The Commercial Liens Act*<sup>26</sup> [CLA], and the EMJA. A careful review of these associated statutes and regulations should be conducted as part of an SGA reform initiative, and any necessary consequential amendments should be introduced to these statutes as part of a comprehensive legislative reform package.

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<sup>21</sup> c P-6.2 Reg 1. [PPS Regulations].

<sup>22</sup> RSS 1978, c A-10 [AIA].

<sup>23</sup> SS 2013, c C-30.2 [CPBPA].

<sup>24</sup> RSS 1978, c D-28 [DSA].

<sup>25</sup> SS 1978, c L-16 [LCRA].

<sup>26</sup> SS 2001, c C-15.1 [CLA].





**Appendix**  
**Markup of Proposed SGA**





Law Reform  
Commission of  
Saskatchewan

Markup by  
Clayton  
Bangsund  
12.15.23

# Proposals for Amendments to *The Sale of Goods Act*

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## Consultation Report

### September 2023

**YOUR COMMENTS AND OPINIONS ARE WELCOME.**

## Appendix A: Proposed Amended Sale of Goods Act

### Sale of Goods Act with Proposed Amendments

NOTE: Provisions in nonbolded italic type are those contained in *The Sale of Goods Act SS 1978, C. S-1*. Provisions in bolded italic type are recommended changes or additions to the Act.

#### CHAPTER S-1

An Act respecting the Sale of Goods

#### Short title

This Act may be cited as *The Sale of Goods Amendment Act 202\_\_*.

#### INTERPRETATION

2(1) In this Act:

- (a) *"action" includes counterclaim and set-off;*
- (b) *"buyer" means a person who buys or agrees to buy goods;*
- (c) ***"commercially reasonable" means, with respect to a requirement of this Act and the obligations of parties to a contract of sale, the standard of conduct a reasonable person would meet in the circumstances taking into account the standard in the relevant business or industry; and may include, but shall not be limited to, reasonable standards of performance provided in the contract; that are not manifestly unreasonable.***
- (d) ***"conforming goods" means goods that, subject to minor deviations generally accepted in the market, conform to the requirements of the contract, including the warranties implied by this Act if any;***
- (e) *"contract of sale" includes an agreement to sell as well as the sale;*
- (f) *"delivery" means voluntary transfer of possession from one person to another;*
- (g) *"document of title to goods" has the same meaning as it has in The Factors Act;*
- (h) ***"express warranty" means:***
  - (i) ***a term of the contract; and***
  - (ii) ***a statement, in any form made by a person before or at the time of the contract, including a promise or a representation of fact or opinion, whether or not made fraudulently, negligently or with contractual intention, that relates to the subject matter of the contract, except where the person to whom the statement was made did not rely, or it***

**was unreasonable for that person to rely, on the statement when deciding to enter into the contract;**

(i) "fault" means a wrongful act or default;

(j) "future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale;

(k) "goods" means **movable** property other than things in action, **a security as defined in section 2(1)(ff) of The Securities Transfer Act** or money and includes:

(i) unborn young of animals; and

**(ii) growing crops, timber, fixtures, minerals, hydrocarbons and other substances to be extracted from land and other things attached to or forming part of the land that are agreed to be severed even though the subject matter forms part of the real property at the time of contracting;**

(l) "good faith" means **honesty in the performance of a contract of sale or compliance with the requirements of this Act;**

(m) "insolvent" has the same meaning as in section 2 of the Bankruptcy and Insolvency Act (Canada);

(n) "sale" includes a bargain and sale as well as a sale and delivery;

(o) "seller" means a person who sells or agrees to sell goods;

(p) "specific goods" means **already existing goods that are to be tendered or delivered under a contract of sale;**

**(2) The rights of a buyer of goods described in clause 2(1)(k)(ii) are subject to rights of third parties in the goods as land under The Land Titles Act 2000, The Enforcement of Money Judgments Act and other the law relating to interests in land.**

**(3) All rights, duties or obligations that arise pursuant to a contract of sale, this Act or any other applicable law are to be exercised or discharged in good faith and in a commercially reasonable manner.**

**(4) The obligations of good faith and commercial reasonableness may not be waived by agreement.**

**(5) 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.**

## PART I

### CONTRACT OF SALE

Contract of Sale Defined

**3(1) This Act applies to contracts of sale where both parties to the contract are engaged in commercial business activity and does not apply to:**

**(a) to a contract to which The Consumer Protection and Business Practices Act, applies, except as provided in that Act;**

**(b) any agreement to sell intended to operate only as a secured transaction; or**

**(c) aspects of a contract of sale that are governed by The Personal Property Security Act, 1993.**

**(2) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the ~~title~~ goods to the buyer for a money consideration called the price and includes:**

**(a) a contract for the supply of goods to be made, created, or produced by the seller, whether or not to the buyer's order;**

**(b) a contract for the supply of goods that involves the provision of services associated with the goods;**

**(c) a contract in which the seller retains a security interest in the goods;**

**(d) a contract under which the seller agrees to transfer only such interest as the seller, or another person has;**

**(e) a contract for the transfer of a specified undivided share in an identified bulk of fungible goods; and**

**(f) a contract including the sale, agreement for sale or grant of a licence to software as part of the sale or agreement for sale of goods where giving the buyer of the goods access to or use of the software is ordinarily a substantial purpose of transactions in goods of the type sold.**

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

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

**(5) Where under a contract of sale **an interest** in the goods is transferred from the seller to the buyer the contract is called a sale;**

**(6) Where the transfer of **the interest** in the goods is to take place at a future time or is subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.**

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

Capacity to buy and sell

**4(1) Subject to subsection (2), 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 sold and delivered to an infant or minor or to a person who is by reason of mental incapacity or drunkenness is incompetent to **contract**, **the buyer** must pay a reasonable price therefor.

(3) "Necessaries" in this section means goods suitable to the condition in life of the infant or minor or other person and to **that person's** actual requirements at the time of the sale and delivery.

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#### CONTRACT FORMATION

No writing requirement

**5(1) Subject to the provisions of any other Act and the agreement of the parties or usage of the trade in which the parties are engaged, a contract of sale need not be concluded in or evidenced by writing and may be proved by any means.**

**(2) A provision in a written contract designed to invoke a rule of law or equity respecting evidence does not preclude a court from determining what constitutes a term of the contract.**

Offer and Acceptance

**6(1) A reply to an offer that purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counteroffer.**

**(2) A reply to an offer that purports to be an acceptance but contains additional or different terms that do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, rejects the additional or different terms and notifies the offeree of the rejection.**

**(3) If the offeror does not object as provided in subsection (2), the terms of the contract are the terms of the offer with the modifications contained in the acceptance.**

**(4) Additional or different terms relating to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes materially alter the offer.**

**(5) Subsections (1), (3) do not apply where the offeror indicates to the offeree an intention not to be bound unless by terms ~~other than those~~ set out in the offer.**

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#### SUBJECT-MATTER OF CONTRACT

Existing or future goods

**7(1) The goods that form the subject of a contract of sale may be either existing goods or 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 <sup>under</sup> 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 perishing before agreement of sale

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

Goods perishing before sale

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

## THE PRICE

Ascertainment of price

*10(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 subsection (1) the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each case.*

Agreement to sell at valuation

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

*(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 **treat the contract as avoided or may fix a reasonable price**.*

## WARRANTIES

Modification, limitation, or exclusion of warranties

*12(1) A warranty implied by this Act, the effect of a statement that amounts to an express warranty, or the remedies for breach of a warranty may be modified, limited, or excluded by the parties by terms in the contract, a course of dealing between the parties, usage of trade or conduct that in common understanding make it clear to the buyer that the seller assumes no responsibility for the quality or fitness of the goods.*

*(2) Words or conduct relevant to the creation of an express warranty and contractual terms or conduct tending to negate or limit a warranty are to be construed as consistent with one another except when this is not reasonable, in which case the negation or limitation has no effect.*



**(3) For the purpose of subsection (2), the following presumptions apply:**

**(a) exact or technical specifications supersede an inconsistent sample or model or general language of description;**

**(b) a sample from an existing bulk supersedes inconsistent general language of description;**

**(c) express warranties supersede inconsistent implied warranties.**

**(4) A seller is deemed to make any statement of a manufacturer, distributor or other person relating to the goods that by word or conduct the seller has adopted.**

**(5) A seller is deemed to make any statement relating to the subject matter of the contract and made by the manufacturer, distributor or other person on the container or label of goods or a brochure, pamphlet or other writing associated with the goods, except when, it is apparent that the seller did not adopt the statement or that the buyer did not rely on the statement.**

Warranties as to Title

**14(1) In a contract of sale unless the circumstances of the contract are such as to show a different intention there is:**

**(a) an implied warranty on the part of the seller that in the case of a sale it has a right to sell the goods and that in the case of an agreement to sell it will have a right to sell the goods at the time when the title is to pass;**

**(b) an implied warranty that the goods shall be free from any charge or encumbrance in favour of a third party not disclosed or known to the buyer before or at the time when the contract is made; and**

**(c) an implied warranty that the buyer will be entitled to quiet possession of the goods except insofar as it may be disturbed by a person entitled to the benefit of a lien, security interest, encumbrance or industrial or intellectual property right that is disclosed or known to the buyer <sup>at</sup> and the time the contract is made.**

**(2) Where the parties intend that the seller will transfer only such title as the seller or another person may have, there is an implied warranty by the seller:**

**(a) that all defects in title and all security interests, liens, and encumbrances or industrial or intellectual property rights known to the seller and not known to the buyer were disclosed to the buyer before the contract was made; and**

**(b) that the seller, the other person, and any person claiming through or under the seller or the other person, otherwise than under a security interest, lien, encumbrance or industrial or intellectual property right disclosed or known to the buyer before the contract was made, will not disturb the buyer's quiet possession of the goods.**

**(3) Where the seller retains a security interest in the goods, the seller's implied warranty of title takes effect when the goods are delivered to the buyer.**

*Contractual Obligations of the Seller*

**15 The seller must deliver conforming goods as required by the contract and this Act.**

**16(1) In this section and section 17, "merchantable quality" means:**

**(a) that the goods, whether new or used, are:**

**(i) ~~are~~ as fit for at least one of the purposes for which goods described in the contract are commonly bought or used; and**

**(ii) ~~are~~ of such quality and in such condition that they will be accepted without objection and without price abatement in the market under the contract description by buyers fully acquainted with the goods;**

**(b) without limiting the generality of clause (a), that the goods;**

**(i) in the case of fungible goods, are of fair or average quality within the description;**

**(ii) within the variations permitted by the agreement, are of the same kind, quality and quantity within each unit and among all units involved;**

**(iii) are adequately contained, packaged, and labeled as the nature of the goods or the agreement require; and**

**(iv) will remain fit, perform satisfactorily, and continue to be of such quality and in such condition for any length of time warranted by the seller or, for a time that is reasonable having regard to all the circumstances; and**

**(c) in the case of a new goods, unless the circumstances indicate otherwise, that spare parts and repair facilities, if relevant, will be available for a period of time warranted by the seller or, in the absence of a seller's warranty, for a time that is reasonable having regard to all the circumstances.**

**(2) Where the seller is a person who deals in goods of the kind supplied under a contract, there is an implied warranty that the goods are of merchantable quality.**

**(3) The implied warranty of merchantable quality does not apply:**

**(a) to defects specifically drawn to the buyer's attention ~~or~~ <sup>that</sup> are otherwise known to the buyer before the contract was made; or**

**(b) if the buyer examines the goods before the contract was made, to any defect that the examination by the buyer should have revealed.**

**(4) Where the buyer, expressly or impliedly, makes known to the seller a particular purpose or purposes for which the buyer is acquiring the goods and the seller deals in goods of that kind, there is an implied warranty that:**

*(a) the goods supplied under the contract are reasonably fit for that purpose or those purposes, whether or not the purpose or purposes are those for which goods of that kind are commonly supplied; and*

*(b) the goods will so remain for a period of time warranted by the seller or, in the absence of a seller's warranty, for a time that is reasonable having regard to all the circumstances.*

*(5) The implied warranty mentioned in subsection (4) does not apply where the circumstances show that the buyer does not rely, or that it is unreasonable for the buyer to rely, on the seller to supply goods reasonably fit for the buyer's communicated purpose or purposes.*

*(6) Subsections (1) through (5) apply, with necessary modifications, to goods supplied under a contract of work and materials.*

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

*(8) Unless words or conduct indicate otherwise, the implied warranties of this section are excluded by contractual terms such as "as is", "with all faults" or other language which in common understanding indicating the parties' intention to exclude the application of the warranties.*

*(9) The implied warranties of this section are not excluded by a general clause in the contract purporting to exclude all express or implied warranties.*

#### Sale by Sample

*17(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 **warranty that** the bulk shall correspond with the sample in quality;*

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

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

*(d) there is an implied warranty that the **quantity, quality and description and packaging of the bulk comply with the requirements of the contract.***

## PART II

### Effects of the Contract

#### TRANSFER OF TITLE AS BETWEEN SELLER AND BUYER

*18(1) Except as otherwise provided in this Act, the provisions of this Act relating to the rights, obligations and remedies of the seller, buyer and any third party apply without regard to the person who has title to the goods.*



**(2) Subject to subsections (3), title to conforming goods passes from the seller to the buyer at the time and in the manner agreed upon by the parties.**

**(3) Unless the context indicates otherwise, reservation by the seller of the title in goods is a security interest to which The Personal Property Security Interest applies.**

Presumptions for Appropriation of the Goods

**19(1) Unless the parties otherwise agree, conforming goods are appropriated to the contract when:**

**(a) at the time when and the place at which the seller completes the seller's performance with reference to the physical delivery of the goods, even though a document of title is to be delivered at a different time or place;**

**(b) where delivery is to be made without moving the ~~good~~ goods:**

**(i) where the seller is required to deliver a document of title, at the time when and the place at which the document is delivered;**

**(ii) when the goods are held by a bailee other than the seller and the seller is not required to deliver a document of title, when the bailee acknowledges to the buyer the buyer's right to possession of the goods;**

**(c) in the case of a contract for the sale of a crop, when the crop becomes a growing crop;**

**(d) in the case of a contract for the sale of unborn young of an animal to be born within 12 months after contracting, when the young are conceived;**

**(e) when in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other bailee, whether named by the buyer or not, for the purpose of delivery of the goods to the buyer and does not reserve the right of disposal; and**

**(f) in a case other than referred to in clauses (a)-(e), when the goods are marked, set aside, separated from a bulk of fungible goods or otherwise designated by the seller as goods to which the contract refers.**

Passage of title

**20(1) Subject to subsections (2), title to conforming goods passes from the seller to the buyer at the time and in the manner agreed upon by the parties.**

**(2) A buyer who has paid all or substantially all of the contract price acquires an equitable interest in goods falling within the description of the goods in the contract immediately on the seller acquiring goods or a right to goods of that description.**

(3) Except as otherwise provided and subject to subsection (3), where there is no agreement between the parties with respect to the time at which the title to goods passes to the buyer, or the circumstances do not indicate otherwise, even though the agreement provides for a security interest in favour of the seller, title to conforming goods passes to the buyer:

(a) under a contract for the sale of specific goods in a deliverable state as provided in the contract, when the contract is made; and

(b) in other cases when the goods are ~~appropriated~~ <sup>unconditionally</sup> appropriated to the contract.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, revests title to the goods in the seller.

~~(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, revests title to the goods in the seller.~~

redundant

Sale on Approval or Return

21(1), in this section:

(a) "sale on approval" means a contract in which the goods are delivered primarily for use and in which the person who received the goods has the right to return them even though they conform to the contract; and

(b) "sale or return" means a contract in which the goods are delivered for resale and in which the person who received the goods has the right to return them if they are unsold.

(2) When goods are delivered to the buyer on approval or other similar terms title and risk of loss passes to the buyer when the goods are delivered, but revests when the buyer elects to return the goods.

(3) A buyer referred to in subsection (2) is deemed to have elected to keep the goods if the buyer retains the possession of them without giving notice of rejection at or before the time fixed for their return or, if no time has been fixed, on the expiration of a reasonable time.

(4) For the purposes of subsection (3), use of the goods consistent with the purpose of trial is not an election to keep them.

(5) When goods are delivered to a person under a contract providing for sale or return:

(a) title passes to the person in possession when the person does any act indicating the person's intention to retain the goods rather than sell them; and

(b) goods are at the buyer's risk until they are returned to the seller and the buyer is responsible for their return.

Reservation of a right of disposal

22(1) In this section and section 21, a right of disposal means:

(a) procurement by the seller of a negotiable bill document of title or delivery instrument to the seller's order or to the order of a financing agency; or

(b) any other measure through which the seller reserves control over delivery of goods by a person who is to deliver the goods;



(2) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract the seller may reserve the right of disposal of the goods until certain conditions are fulfilled and in such case notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer the **title to** the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(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 the **buyer does not** <sup>honour</sup> the bill of exchange and if the **buyer** wrongfully retains the bill of lading **the title to** the goods does not pass from **the seller to him**. <sup>the buyer,</sup>

(4) Subject to 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 conduct is precluded from denying the seller's authority to sell.

(5) Nothing in this Act affects:

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

(b) the validity of any contract or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Risk and insurable interest

**23(1) Except as otherwise provided in the contract of sale, this section and section 27(1), unless otherwise agreed, risk relating to goods passes to the buyer to the extent of any deficiency in the seller's insurance coverage:**

(a) when the seller tenders delivery in accordance with the contract;

(b) when the seller gives written notice to the buyer that the goods are placed at the disposal of the buyer in accordance with the contract;

(c) where the buyer is bound to take possession or control of the goods at a place other than a place of business of the seller, when the buyer is aware of the fact that the goods are placed at the buyer's disposal at that place;

(d) on the buyer's receipt of a negotiable document of title covering the goods;

(e) on written acknowledgement by a bailee to the buyer of the buyer's right to possession of the goods; or

(f) after the buyer's receipt of a non-negotiable document of title or other written direction to a bailee or carrier to deliver the goods to the buyer, but the risk of loss remains on the seller:

(i) until the buyer has had a reasonable time to present a non-negotiable document of title or direction; or

(ii) when the bailee fails to <sup>honour</sup> the document of title or to obey the direction.

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

(3) Nothing in this section affects the properties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.

← obligations?

(4) Where a tender or delivery of goods fails to conform to the contract, the risk of loss arising before acceptance by the buyer or cure by the seller remains with the seller to the extent of any deficiency in the buyer's insurance coverage.

(5) Where the buyer of goods appropriated to the contract unjustifiably repudiates the contract, the risk of loss to goods in the buyer's possession is on the buyer to the extent of any deficiency in the seller's insurance coverage until the goods are ~~delivered~~ to the seller.

← returned

(6) Whether or not title has passed to the buyer, and even though the buyer has a right to return or reject them, the buyer has an insurable interest in goods:

(a) when the goods are at the buyer's risk as provided in this or any other Act;

(b) at any time and in any manner expressly agreed upon by the parties;

(c) in the absence of agreement:

(i) in the case of a contract for the sale of specific goods, when the contract is made;

(ii) in other cases, when the goods are appropriated to the contract;

(iii) in the case of a contract for the sale of a crop, when the crop is planted or becomes a growing crop;

(iv) in the case of a contract for the sale of unborn young to be born within 12 months after contracting, when the young are conceived.

(7) The seller has an insurable interest in goods so long as the seller has title, the risk of loss or a security interest in the goods.

#### Sale under voidable title

24 A sale of goods by a seller, who at the date of the sale had possession of the goods under a contract that is void at common law or voidable because of fraud by the seller, is effective to transfer title to the goods to a buyer who receives possession of the goods in good faith, for value and without notice of the defect in or lack of title of the seller.

25(1) A reference in this section to the Personal Property Registry is a reference to the registry referred to in section 42 of The Personal Property Security Act, 1993 and a reference to registration is to be read as registration in compliance with the requirements 1993 of The Personal Property Regulations relating to serial numbered goods and non-serial numbered goods, as the case may be.

(2) A person who is in possession of goods as a seller or a buyer has the power to:



*(a) transfer all rights of the person consenting to that person's possession to a person who enters into a contract to buy or lease the goods and who receives the goods in good faith, for value and without notice of the title of the consenting person;*

*(b) grant a security interest in the goods to a person who, at the time of the security agreement, is without notice of the title of the consenting person.*

*(3) Subsection (2) does not apply:*

*(a) where a registration has been effected in the Personal Property Registry prior to the transfer of the goods referred to in clause (2)(a) recording the interest of the person consenting to the transferor's possession;*

*(b) a security interest referred to in clause (2)(b), when a registration has been effected in the personal property registry prior to the perfection of the security interest recording the interest of the person consenting to the transferor's possession; or*

*(c) to a transaction between a transferor and transferee to which The Personal Property Security Act applies.*

*(4) Subsection (3)(a) does not apply to a sale or lease of goods made in the ordinary course of business of the person in possession.*

Acquisition of title to grain

*26(1) Where grain is sold and delivered at an elevator licensed under the Canada Grain Act, to the manager or operator thereof as defined in the said Act, or to a track buyer licensed under the said Act, the buyer acquires a good title to the grain so bought and delivered, provided he buys it in good faith and without actual notice of any defect or want of title on the part of the seller in the grain.*

*(2) Where the manager or operator or any track buyer or other party licensed under the Canada Grain Act advances money on the security of grain delivered pursuant to subsection (1), the party advancing the money shall have a charge or lien on the grain to the extent of the advance made and any charges that may accrue for storage or interest in priority to any other claim, provided that the advance is made in good faith and without actual notice of any adverse claim or lien or of any defect or want of title on the part of the party receiving the advance on the grain so delivered.*

### PART III

#### Performance of the Contract

#### DUTIES OF SELLER AND BUYER

*27(1) Sections 23, 28 and 29 apply subject to change or modification by a term in the contract or related contract that makes applicable one of the Incoterms promulgated by the International Chamber of Commerce or an equivalent term.*

(2) 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 concurrent conditions

**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

**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 on the contract express or implied between the parties and apart from a contract express or implied the place of delivery is the seller's place of business. → If no place of business by seller's

(2) If the contract is for the sale of specific goods that to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery. Buyer's residence.

(3) 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.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved, unless the parties agree otherwise, tender requires:

(a) that the seller delivers to the buyer a copy of a written direction to the bailee to deliver conforming the goods to the buyer along with an acknowledgement by the bailee of the buyer's right to possession of the goods;

(b) that the seller delivers to the buyer a non-negotiable document of title covering the goods under which the buyer is entitled to take possession of the goods; or

(c) that the seller tenders to the buyer a negotiable document of title covering the goods;

(5) A refusal by the bailee to honour a document or to obey the direction defeats the tender and the risk reverts in the seller.

(6) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour in the circumstances.

(7) Unless otherwise agreed the expenses of ~~and incidental to~~ putting the goods into a deliverable state must be borne by the seller. through

Delivery of wrong quantity

**30(1)** Except as provided in section 31, where the seller delivers to the buyer a quantity of goods less than the quantity the seller contracted to sell, subject to subsections 35(7)-(10), the buyer may accept or reject the goods delivered, but must pay for accepted goods at the contract rate.



(2) Where the seller delivers to the buyer a quantity of goods larger than **the seller** contracted to sell, the buyer may accept the goods included in the contract and reject the rest, and if the buyer accepts the whole of the goods delivered, the **buyer** must pay for them at the contract rate.

(3) Where the seller delivers to the buyer goods **the seller** 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 may reject the whole.

(4) This section is subject to usage of trade, or course of dealing between the parties.

#### Instalment deliveries

**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 instalments to be separately accepted, the buyer may treat the contract as repudiated if:

(a) the seller makes a defective delivery in respect of one or more instalments and the breach of contract is not cured as provided in subsections 35(7) ~~(10)~~; or

(b) the buyer would suffer unreasonable prejudice or commercial disruption because of the interdependence of the defective delivery made with future deliveries, even if the defective delivery were cured.

(3) A buyer who accepts goods delivered must pay for them at the contract rate.

#### Delivery to carrier

**32(1)** Where in pursuance of a contract of sale the seller is authorized 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 a delivery of the goods to the buyer.

(2) Unless otherwise authorized by the buyer the seller must make such contract with the carrier on behalf of the buyer as is reasonable having regard to the nature of the goods and the other circumstances of the case and if the seller omits to do so and the goods are lost or damaged in course of transit the buyer may decline to treat the delivery to the carrier as a delivery **under the contract**.

#### Buyer's right of examination

**33(1)** Where goods are delivered to the buyer that the buyer had not previously examined, the buyer is not deemed to have accepted them unless and until the buyer has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

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

#### Buyer's deemed acceptance

**34** Subject to subsections 35(9) and (10), the buyer is deemed to have accepted the goods when:

*(a) after having a reasonable opportunity to examine the goods, the buyer indicates to the seller that the buyer has accepted them; or*

*(b) after the lapse of a reasonable time, the buyer retains the goods without indicating to the seller that the buyer has rejected them.*

Buyer's rights on improper delivery

**35(1) For the purposes of this section, "cure" includes:**

*(a) tender or delivery of any missing part or quantity of conforming goods;*

*(b) tender or delivery of other conforming goods or documents or, in the case of a sale of goods other than specific goods, goods that differ in no material respect from those goods; or*

*(c) the remedying of any other non-conformity in performance.*

**(2) Subject to section 31, if the goods or the tender of delivery are non-conforming, the buyer may:**

*(a) reject the whole;*

*(b) accept the whole;*

*(c) accept those commercial units of the goods that are conforming and reject the remainder, or*

*(d) propose a reduction of the price of the goods.*

**(3) The buyer shall notify the seller of the buyer's rejection of the goods or proposal for a reduction in the price as soon as practicable after discovering the non-conformity.**

**(4) Subject to subsections (7) <sup>through</sup> (10), on rightful rejection, the buyer has a lien on rejected goods in the buyer's possession or control for any payments made on their price and any reasonable costs incurred in their transportation, care and custody, and may sell the goods in a commercially reasonable manner.**

**(5) A person who buys in good faith takes the goods free of any rights in the goods of the seller, even though the buyer fails to comply with one or more of the requirements of this section.**

**(6) The buyer shall pay at the contract rate or at the rate agreed between the parties for any accepted goods.**

**(7) Where a buyer rejects a non-conforming tender, whether before or after the time for performance has expired, the seller has a reasonable time to cure the non-conformity, if:**

*(a) the non-conformity can be cured expeditiously and without prejudice or commercial disruption to the buyer;*

*(b) after being notified of the buyer's rejection, the seller immediately notifies the buyer of the seller's intention to cure, the type of cure and the date on which it will be provided; and*

*(c) the seller has the capacity to provide the type of cure offered by the seller as indicated in the notice referred to in (b).*

**(8) When the buyer agrees with or without consideration that the seller has additional time to cure a non-conforming tender, the buyer may not treat the contract as repudiated unless the seller fails cure the non-conformity before the expiry of the agreed period.**

**(9) The buyer does not accept goods by reason only that:**

**(a) the buyer has not rejected them in the reasonable belief, induced by the seller, that they are conforming or that their non-conformity will be cured as provided in subsections (7), or**

**(b) the acceptance occurred without discovery of the non-conformity if it was induced by the difficulty of discovery.**

**(10) The buyer may revoke an acceptance of a non-conforming tender if:**

**(a) it was made on the reasonable assumption that the non-conformity would be cured but this has not occurred, or**

**(b) the parties fail to agree on a reduction in the price.**

Buyer not bound to return rejected goods

**36(1) Where goods are delivered to the buyer and the buyer rightfully rejects them, the buyer is not bound to return them to the seller.**

**(2) After rightful rejection by the buyer, goods that are in the buyer's possession:**

**(a) are at the seller's risk to the extent of deficiency in the buyer's insurance; and**

**(b) shall be held by the buyer with reasonable care at the seller's disposition for a time sufficient to permit the seller to retake possession of them.**

**(3) If the seller gives no instructions for redelivery of rejected goods within a reasonable time after notification of rejection, the buyer may:**

**(a) arrange for redelivery of the goods to the seller and recover from the seller the redelivery costs; or**

**(b) resell them for the seller's account and recover reimbursement for storage and costs of selling the goods.**

**(4) A buyer referred to in subsections (2) and (3) is entitled to reasonable expenses of care and custody of the goods in the buyer's possession.**

#### RIGHTS OF UNPAID SELLER AGAINST THE GOODS

Unpaid seller defined

**38(1) The seller of the goods is deemed to be an "unpaid seller" within the meaning of this Act:**

**(a) when the contract price has not been paid or tendered as required by the contract and:**

**(i) the goods have been sold without any stipulation as to credit or the goods have been sold on credit, but the term of credit has expired; or**



**(ii) the buyer becomes insolvent;**

(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.

*italics*

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

Unpaid seller's rights

**39(1) Subject to the provisions of this Act or any other Act, an unpaid seller has until the price of the goods is paid or tendered a right to retain possession of undelivered goods, and a right to stop goods in transit as hereinafter provided even though the seller has parted with the possession of them.**

**(2) As against the buyer, an unpaid seller may stop delivery until:**

**(a) receipt of the goods by the buyer; or**

**(b) negotiation to the buyer of any negotiable document of title covering the goods.**

**40 Where an unpaid seller has made part delivery of the goods, whether under an indivisible contract or under an instalment contract, the seller may withhold delivery of the remainder until payment of all amounts that are due, unless the part delivery has been made under circumstances that show an agreement by the seller to waive the right to withhold delivery.**

Right of stoppage - Duration of transit

**41(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water or other bailee for the purpose of transmission to the buyer until the buyer or the buyer's agent in that behalf takes delivery of them from the carrier or other bailee.**

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

(3) If after the arrival of the goods at the appointed destination the carrier or other bailee acknowledges to the buyer or the buyer's agent that the carrier or bailee holds the goods as bailee for the buyer or the buyer's agent the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

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

(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 or the buyer's agent the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or **the buyer's agent**, 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 give up possession of the whole of the goods.

How stoppage effected

**42(1)** The unpaid seller may exercise **the** right of stoppage in transit either by taking actual possession of the goods or by giving notice **of stoppage** to the carrier or other bailee in ~~whose~~ possession <sup>of</sup> the goods are.

(2) A notice pursuant to subsection (1) may be given either to the person in actual possession of the goods or to **that person's principal** and in the latter case the notice must be given at such time and under such circumstances that the principal by the exercise of reasonable diligence may communicate it to that **person's** servant or agent in time to prevent a delivery to the buyer.

(3) Subject to subsection (4), when notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, **the carrier or other bailee** must redeliver the goods to or according to the direction of the seller, and the expenses of redelivery must be borne by the seller.

(4) If a negotiable document of title has been issued for goods, the carrier or bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(5) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Effect of sub-sale or pledge by buyer

**43(1)** Subject to this Act, the unpaid seller's right of retention or stoppage in transit is not affected by any sale, or other disposition of the goods that the buyer may have made **or a security interest in the goods granted by the buyer**, unless the seller has assented thereto.

(2) Where a negotiable document of title to goods has been lawfully transferred to a person as buyer or owner of the goods and that person transfers the document to a person who takes the document in good faith and for valuable consideration then if the last mentioned transfer was by way of sale **or pursuant to a security agreement**, the unpaid seller's right of retention or stoppage in transit can only be exercised subject to the rights of the transferee.

**44** A contract of sale is not rescinded by the mere exercise by an unpaid seller of a right of retention or stoppage in transit.

PART V  
Actions for Breach of the Contract  
ADDITIONAL REMEDIES OF THE SELLER

Right to treat the contract as repudiated



45(1) The seller may treat the contract as repudiated by the buyer when:

(a) the buyer fails to make payment, take delivery of the goods or perform any other commercially significant obligation on the date or within the time provided in the contract or a specified reasonable period of time after the date for payment provided in the contract set by the seller;

(b) the buyer wrongfully rejects the seller's tender or delivery of conforming goods as required by the contract; or

(c) the buyer's actions otherwise amount to repudiation of the contract by the buyer.

(2) A seller is bound by any express or implied undertaking to allow the buyer to make payment other than as provided in ~~clause (a).~~ *subclause (1)(a).*

(3) For the purpose of subclause (1)(a):

(a) a failure to pay includes a failure to take steps or comply with formalities that are required under the contract and any relevant law to enable payment to be made or to ensure that it will be made; and

(b) a failure to take delivery includes a failure to perform any acts that are required of the buyer under the terms of the contract to enable the seller to make delivery.

*4*  
(3) A seller who is entitled to treat the contract as repudiated may recover damages as provided in sections 47.

Action for price *the*

46(1) Where ~~he~~ *the* buyer wrongfully neglects or refuses to pay for goods that have been appropriated to the contract, the seller may maintain an action for the price of the goods.

(2) A seller does not lose rights under sections ~~39-44~~ *38 through 44* by reason only of bringing an action for the price.

(3) Subject to subsections (4) *and* (5), unless the seller has treated the contract as repudiated, the seller who sues for the price shall hold for the buyer any goods in the seller's control that have been appropriated to the contract and shall make the goods available to the buyer in accordance with the contract when the judgment for the price has been discharged by payment.

(4) A seller who has obtained a judgment for the price may resell the goods if the judgment is not discharged by payment within a reasonable period of time after it has been entered.

(5) The net proceeds of a resale referred to in subsection (4), shall be credited to the judgment and upon discharge of the judgment by payment, the buyer is entitled to any goods not resold.

(6) A purchaser who buys in good faith at a sale referred to in subsection (4) takes the goods free of any rights of the buyer, even though the seller fails to comply with a requirement of this Act when effecting the sale to the purchaser.

**(7) Nothing in this Part limits the damages recoverable by the seller when the amount recovered by the seller in a lawful sale of the goods is inadequate to put the seller in as good a position as performance by the buyer would have done.**

**(8) The seller may set-off damages against any surplus from the sale.**

**(9) Nothing in this section shall prejudice the right of the seller to recover interest on the price from the date ~~from the date~~ on which the price was payable.**

Damages for non-acceptance

**47(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods the seller may maintain an action for damages for non-acceptance.**

**(2) The measure of damages is the estimated loss that the buyer should have foreseen at the time of the contract as likely to result from the breach of contract.**

**(3) A seller who has treated the contract as repudiated as provided in subsection 45(1) may recover as damages the difference between the contract price and the price that could have been obtained by a disposition within or at a reasonable time and place after the seller learned of the breach less any expenses saved in consequence of the breach.**

**(4) A claim for damages under this ~~Part~~ <sup>section</sup> may include a claim for incidental or consequential damages.**

**(5) Nothing in this section limits the damages recoverable by the seller when the measure of damages as provided in subsections (2) or (3) would be inadequate to put the seller in as good a position as performance by the buyer would have done.**

#### BUYER'S REMEDIES

Repudiation and damages for non-delivery

**48(1) In addition to any other remedy of a buyer provided in this Act, where the seller neglects to deliver conforming goods to the buyer, the buyer may:**

- (a) subject to subsections 35(7-10), treat the contract as repudiated in total or, in the case of instalment delivery, as provided in subsection 31(2), and bring an action against the seller for return of any part of the purchase price paid to the seller;**
- (b) maintain an action against the seller for damages.**

**(2) A buyer who has accepted goods may recover as damages for any non-conformity of tender for the loss resulting in the ordinary course of events from the seller's breach.**

Damages for breach of contract



**49(1) Where the seller is in breach of the contract, the buyer may maintain an action in damages in an amount that the seller should have foreseen at the time of the contract as likely to result from the breach of contract.**

**(2) Where there is a breach of contract by the seller and the buyer has accepted the goods, the buyer may set up against the seller the breach in diminution or extinction of the price and maintain an action for damages.**

**(3) Where the seller fails to tender or deliver conforming goods and buyer rightfully treats the contract as repudiated by the seller, the buyer may recover as damages for the difference between the contract price and the price of equivalent conforming goods obtainable in the market at the date the seller was required under the contract to tender or delivery goods less any expenses saved in consequence of the breach.**

**(4) Nothing in this section limits the damages recoverable by the buyer when the measure of damages would be inadequate to put the buyer in as good a position as performance by the seller would have done.**

**(5) A claim for damages may include a claim for incidental or consequential damages.**

*under this section*

Specific performance

**50(1) In an action for breach of contract to deliver specific goods or goods appropriated to the contract, the court may on the application of the plaintiff by its judgment direct that the contract shall be performed specifically without giving the defendant the option of retaining the goods on payment of damages.**

**(2) A judgment pursuant to subsection (1) may be unconditional or upon such terms and conditions as to damages, payment of the price and otherwise as to the court seems just and the application by the plaintiff may be made at any time before judgment.**

**(3) In an application for an order of specific performance of the contract of sale, the court shall take into consideration:**

- (a) whether an award of damages would be sufficient to meet the buyer's reasonable expectations when entering into the contract and the buyer's substantial and legitimate interests under the contract;**
- (b) whether the buyer has paid any portion of the price of the goods;**
- (c) whether or not the contract was for the sale of specific goods;**
- (d) the ability of the buyer to obtain goods of the same kind and quality without significant delay, difficulty or costs;**
- (e) whether the assessment of damages would be difficult, expensive or time-consuming;**
- (f) whether the goods are of the kind for which there is a volatile market;**
- (g) whether a judgment for damages against the seller would be difficult to enforce because of:
  - (i) the insolvency or impending insolvency of the seller;**
  - (ii) the absence of exigible assets of the seller in Saskatchewan;****
- (h) the conduct of the seller.**

SUPPLEMENTAL PROVISIONS  
PART VI

Damages for breach of collateral contract

**51 (1) Nothing in this Act impairs any remedy of a buyer or seller for breach of any obligation or promise collateral or ancillary to the contract of sale.**

**(2) Except as otherwise provided in this Act, the remedies for breach of a warranty relating to the goods that does not constitute a term of the contract are the same as the remedies for breach of a contract of sale.**

**(3) The remedies available for fraudulent misrepresentation inducing the formation of a contract include a right to recover damages as provided in this Act for breach of warranty and, the aggrieved party does not have to elect between rescission of the contract and damages for breach of warranty.**

Rights enforceable by action

**52** **51** Where a right, duty or liability is declared by this Act it may unless otherwise provided by this Act to be enforced by action.

Auction sales

**53** **52** In the case of a sale by auction:

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

(b) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made a bidder may retract a bid;

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

(d) A sale by auction may be notified to be subject to a reserve or upset price and the 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 the seller's behalf may bid at the auction.

Existing laws preserved subject to Act

**54** **53(1) The principles of the common law and equity except to the extent that they are inconsistent with this Act, supplement this Act and continue to apply.**

**(2) Nothing in this Act affects the enactments relating to bills of sale or any enactment relating to the sale of goods that is not expressly repealed by this Act.**