



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

SALE OF GOODS ACT

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to November 1, 2003. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office

Tel: (902) 368-4292

Email: legislation@gov.pe.ca



SALE OF GOODS ACT

Table of Contents

Section	Page
1. Definitions.....	5
2. In good faith, defined	5
PART I — FORMATION OF THE CONTRACT	6
3. Contract of sale, defined	6
4. Capacity to buy and sell	6
5. Formalities of the contract, mode of contracting	6
6. Contract of \$30 or more, only binding when	7
7. Subject matter of contract	7
8. Sale of specific goods and goods perish.....	7
9. Before risk passes, goods perish	7
10. Price, fixed or left to be fixed.....	7
11. Determination of price by third party.....	8
12. Terms not deemed to be of the essence	8
13. Buyers rights <i>re</i> condition to be fulfilled by seller.....	8
14. Implied conditions in contracts	9
15. Sale of goods by description or by sample, implied condition.....	9
16. Implied conditions or warranties <i>re</i> quality or fitness.....	9
17. Sale by sample, contract for	9
PART II — EFFECT OF THE CONTRACT	10
18. Unascertained goods, sale of property passes, when.....	10
19. Sale of specific or ascertained goods, property passes, when	10
20. Intention of parties <i>re</i> time property passes, ascertaining	10
21. Conditional sales, what are & when property passes	11
22. Goods remain at seller's risk.....	11
23. Purchase from person without title or authority	11
24. Application of section	12
25. Voidable title in seller, buyer takes clear title, when	12
26. Goods stolen, title revests, when.....	12
PART III — PERFORMANCE OF THE CONTRACT	12
27. Delivery and payment	12
28. Delivery of goods and payment: concurrent conditions.....	12
29. Place of delivery	12
30. Less than contract quantity delivered, where	13
31. Delivery by instalment	13
32. Delivery to carrier deemed delivery to buyer.....	14
33. Delivery to place other than place of sale, liability for deterioration	14
34. Examination of goods before acceptance	14
35. Buyer deemed to accept goods, when	14

36.	Buyer refuses goods, no duty to return	14
37.	Buyer refuses to take delivery, liability	15
PART IV		15
38.	Unpaid seller defined.....	15
39.	Rights of seller after delivery	15
40.	Rights of seller before delivery	15
41.	Unpaid seller, retention of possession	15
42.	Lien on undelivered portion of goods.....	16
43.	Seller loses lien, when	16
44.	Buyer becomes insolvent, remedies of seller	16
45.	Goods in course of transit, defined	16
46.	Right to stoppage in transit, how to exercise	17
47.	Sale of goods by buyer, affect on seller's rights.....	17
48.	Contract not rescinded by exercise of seller's rights	17
PART V — ACTIONS FOR BREACH OF THE CONTRACT		18
REMEDIES OF THE SELLER		18
49.	Action for the price of the goods	18
50.	Action for non-acceptance.....	18
51.	Action for non-delivery	18
52.	Judgment for specific performance	19
53.	Breach of warranty, breach of conditions treated as breach of warranty, remedies	19
54.	Rights of buyer not affected by Act.....	19
PART VI — SUPPLEMENTARY		20
55.	Negating rights, duties, liabilities	20
56.	Reasonable time, question of fact.....	20
57.	Rights, duties, liabilities, enforcement	20
58.	Sale by auction	20
59.	Common law, continued application of.....	20



SALE OF GOODS ACT

CHAPTER S-1

1. Definitions

In this Act

- (a) “**action**” includes counter-claim and set-off;
- (b) “**buyer**” means a person who buys or agrees to buy goods;
- (c) “**contract of sale**” includes an agreement to sell as well as a sale;
- (d) “**delivery**” means voluntary transfer of possession from one person to another;
- (e) “**document of title**” has the same meaning as it has in the *Factors Act R.S.P.E.I.* 1988, Cap. F-1;
- (f) “**fault**” means wrongful act or default;
- (g) “**future goods**” means goods to be manufactured or acquired by the seller after the making of the contract of sale;
- (h) “**goods**” includes all chattels personal, other than things in action and money and the term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;
- (i) “**pledge**” includes any contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability;
- (j) “**property**” means the general property in goods and not merely a special property;
- (k) “**quality of goods**” includes their state or condition;
- (l) “**sale**” includes a bargain and sale as well as a sale and delivery;
- (m) “**seller**” means a person who sells or agrees to sell goods;
- (n) “**specific goods**” means goods identified and agreed upon at the time a contract of sale is made;
- (o) “**warranty**” means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated. *R.S.P.E.I. 1974, Cap. S-1, s.1.*

2. In good faith, defined

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

Insolvent, defined

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

Deliverable state, defined

- (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.

Possession, when deemed

- (4) A person is deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf. *R.S.P.E.I. 1974, Cap. S-1, s.2.*

PART I — FORMATION OF THE CONTRACT

3. Contract of sale, defined

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

Absolute or conditional sale

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

Agreement to sell, defined

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

Agreement to sell becomes a sale, when

- (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. *R.S.P.E.I. 1974, Cap. S-1, s.3.*

4. 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: but where necessaries are sold and delivered to an infant or minor or to a person who by reason of mental incapacity or drunkenness is incompetent to contract he must pay a reasonable price therefor.

Necessaries, defined

- (2) “Necessaries” in this section means goods suitable to the condition in life of the infant or minor or other person and to his actual requirements at the time of the sale and delivery. *R.S.P.E.I. 1974, Cap. S-1, s.4.*

5. Formalities of the contract, mode of contracting

- (1) Subject to this Act and any statute in that behalf, a contract of sale may be made in writing, either with or without seal, or by word of mouth or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Corporation excepted

- (2) Nothing in this section affects the law relating to corporations. *R.S.P.E.I. 1974, Cap. S-1, s.5.*

6. Contract of \$30 or more, only binding when

- (1) A contract for the sale of goods of the value of \$30 or upwards is not enforceable by action unless the buyer accepts part of the goods so sold and actually receives them or gives something in earnest to bind the contract or in part payment or unless some note or memorandum in writing of the contract is made and signed by the party to be charged or his agent in that behalf.

Future delivery, goods not made etc., application of section

- (2) This section applies to every contract referred to in subsection (1), notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of the contract be actually made, procured or provided or fit or ready for delivery or some act may be requisite for the making or completing thereof or rendering them fit for delivery.

Acceptance of goods

- (3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale, whether there is an acceptance in performance of the contract or not. *R.S.P.E.I. 1974, Cap. S-1, s.6.*

7. Subject matter of contract

- (1) The goods which form the subject of a contract of sale may be either existing goods owned or possessed by the seller or goods to be manufactured or acquired by the seller after the making of the contract of sale (in this Act called “future goods”).

Contract dependent upon contingency

- (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.

Sale of future goods, operates as agreement

- (3) Where by a contract of sale the seller purports to effect a present sale of future goods the contract operates as an agreement to sell the goods. *R.S.P.E.I. 1974, Cap. S-1, s.7.*

8. Sale of specific goods and goods perish

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. *R.S.P.E.I. 1974, Cap. S-1, s.8.*

9. Before risk passes, goods perish

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. *R.S.P.E.I. 1974, Cap. S-1, s.9.*

10. Price, fixed or left to be fixed

- (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.

Reasonable price, where price left

- (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 particular case. *R.S.P.E.I. 1974, Cap. S-1, s.10.*

11. Determination of price by third party

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

Action for damages against party in fault

- (2) Where a 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. *R.S.P.E.I. 1974, Cap. S-1, s.11.*

12. Terms not deemed to be of the essence

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

Month, defined

- (2) In a contract of sale “month” means calendar month. *R.S.P.E.I. 1974, Cap. S-1, s.12.*

13. Buyers rights re condition to be fulfilled by seller

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

Conditions, breach of which gives rise to repudiation or damages

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

Warranties as conditions

- (3) A stipulation may be a condition though called a warranty in the contract.

Acceptance by buyers of part of goods, only breach of warranty possible

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

Fulfilment of contract excused by law

- (5) Nothing in this section affects the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise. *R.S.P.E.I. 1974, Cap. S-1, s.13.*

14. Implied conditions in contracts

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

- (a) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;
- (b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;
- (c) an implied warranty that the goods shall be free from any charge or incumbrance in favor of any third party not declared or known to the buyer before or at the time when the contract is made. *R.S.P.E.I. 1974, Cap. S-1, s.14.*

15. Sale of goods by description or by sample, implied condition

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale is by sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample, if the goods do not also correspond with the description. *R.S.P.E.I. 1974, Cap. S-1, s.15.*

16. Implied conditions or warranties re quality or fitness

Subject to this Act and any statute in that behalf, 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) where a buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply, whether he is the manufacturer or not, there is an implied condition that the goods are reasonably fit for that purpose; but in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;
- (b) where goods are bought by description from a seller who deals in goods of that description, whether he be the manufacturer or not, there is an implied condition that the goods are of merchantable quality; but if the buyer has examined the goods there is no implied condition as regards defects which an examination ought to have revealed;
- (c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- (d) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith. *R.S.P.E.I. 1974, Cap. S-1, s.16.*

17. Sale by sample, contract for

- (1) A contract of sale is a contract for sale by sample, where there is a term in the contract, expressed or implied, to that effect.

Implied conditions

- (2) In the case of a contract for sale by sample
 - (a) there is an implied condition that the bulk shall correspond with the sample in quality;

- (b) there is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- (c) there is an implied condition that the goods are free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. *R.S.P.E.I. 1974, Cap. S-1, s.17.*

PART II — EFFECT OF THE CONTRACT

18. Unascertained goods, sale of property passes, when

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. *R.S.P.E.I. 1974, Cap. S-1, s.18.*

19. Sale of specific or ascertained goods, property passes, when

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

Intention of the parties, ascertaining

- (2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. *R.S.P.E.I. 1974, Cap. S-1, s.19.*

20. Intention of parties *re* time property passes, ascertaining

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

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

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

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

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

- (a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction,
- (b) if he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of that time, and, if no time has been fixed, on the expiration of a reasonable time; what is a reasonable time is a question of fact;

Rule 5: (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer

with the assent of the seller, the property in the goods thereupon passes to the buyer; the assent may be expressed or implied and may be given either before or after the appropriation is made;

Rule 5: (2) Where 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 transmission to the buyer and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. *R.S.P.E.I. 1974, Cap. S-1, s.20.*

21. Conditional sales, what are & when property passes

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

Right of disposal preserved

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

Bills of exchange taken by buyer, use of

- (3) When the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him. *R.S.P.E.I. 1974, Cap. S-1, s.21.*

22. Goods remain at seller's risk

- (1) Unless otherwise agreed, the goods referred to in section 21 remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk, whether delivery has been made or not.

Delivery delayed, risk of party delaying

- (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 which might not have occurred but for the fault.

Application to bailees

- (3) Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee of the goods of the other party. *R.S.P.E.I. 1974, Cap. S-1, s.22.*

23. Purchase from person without title or authority

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 his conduct precluded from denying the seller's authority to sell. *R.S.P.E.I. 1974, Cap. S-1, s.23.*

24. Application of section

Nothing in this Act affects

- (a) the *Factors Act*, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof; or
- (b) the validity of any contract of sale under any special common law or statutory power of sale, or under the order of a court of competent jurisdiction. *R.S.P.E.I. 1974, Cap. S-1, s.24.*

25. Voidable title in seller, buyer takes clear title, when

When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of sale, the buyer acquires a good title to the goods if he buys them in good faith and without notice of the seller's defect of title. *R.S.P.E.I. 1974, Cap. S-1, s.25.*

26. Goods stolen, title reverts, when

- (1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen reverts in the person who was the owner of the goods or his personal representative, notwithstanding any intermediate dealing with them.

Goods obtained by fraud, reversion, when

- (2) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in the goods does not revert in the person who was the owner of the goods or his personal representative by reason only of the conviction of the offender. *R.S.P.E.I. 1974, Cap. S-1, s.26.*

PART III — PERFORMANCE OF THE CONTRACT

27. Delivery and payment

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. *R.S.P.E.I. 1974, Cap. S-1, s.27.*

28. Delivery of goods and payment: concurrent conditions

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions: that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods. *R.S.P.E.I. 1974, Cap. S-1, s.28.*

29. Place of delivery

- (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer, is a question depending in each case on the contract, expressed or implied, between the parties; apart from any contract, expressed or implied, the place of delivery is the seller's place of business, if he has one, and if not, his residence; but if the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

Time for delivery

- (2) Where, under the contract of sale, the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

Goods in possession of third party

- (3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by the seller to the buyer unless and until the third person acknowledges to the buyer that he holds the goods on his behalf; but nothing in this section affects the operation of the issue or transfer of any document of title to goods.

Reasonable hour for delivery

- (4) Demand or tender of delivery may be treated as ineffectual, unless made at a reasonable hour; what is a reasonable hour is a question of fact.

Expenses to put goods into deliverable state

- (5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. *R.S.P.E.I. 1974, Cap. S-1, s.29.*

30. Less than contract quantity delivered, where

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

Larger than contract quantity delivered, where

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

Contract goods mixed with others

- (3) Where the seller delivers to the buyer the goods he contracted to sell, mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or he may reject the whole.

Usages of trade apply

- (4) This section is subject to any usage of trade, special agreement or course of dealing between the parties. *R.S.P.E.I. 1974, Cap. S-1, s.30.*

31. Delivery by instalment

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

Instalments defective, determination of status of contract

- (2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated. *R.S.P.E.I. 1974, Cap. S-1, s.31.*

32. Delivery to carrier deemed delivery to buyer

- (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 deemed to be a delivery of the goods to the buyer.

Seller's liability and duty re arrangement with carrier

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

Insuring goods sent by sea

- (3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit and if the seller fails to do so the goods are deemed to be at his risk during such sea transit. *R.S.P.E.I. 1974, Cap. S-1, s.32.*

33. Delivery to place other than place of sale, liability for deterioration

Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit. *R.S.P.E.I. 1974, Cap. S-1, s.33.*

34. Examination of goods before acceptance

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

Idem

- (2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract. *R.S.P.E.I. 1974, Cap. S-1, s.34.*

35. Buyer deemed to accept goods, when

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. *R.S.P.E.I. 1974, Cap. S-1, s.35.*

36. Buyer refuses goods, no duty to return

Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them. *R.S.P.E.I. 1974, Cap. S-1, s.36.*

37. Buyer refuses to take delivery, liability

When the seller is ready and willing to deliver the goods and requests the buyer to take delivery and the buyer does not within a reasonable time after the request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods; but nothing in this section affects the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract. *R.S.P.E.I. 1974, Cap. S-1, s.37.*

PART IV**38. Unpaid seller defined**

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

Seller defined

- (2) In this Part, “**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. *R.S.P.E.I. 1974, Cap. S-1, s.38.*

39. Rights of seller after delivery

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

- (a) a lien on the goods or right to retain them for the price while he is in possession of them;
- (b) in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;
- (c) a right of resale as limited by this Act. *R.S.P.E.I. 1974, Cap. S-1, s.39.*

40. Rights of seller before delivery

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right to withhold delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer. *R.S.P.E.I. 1974, Cap. S-1, s.40.*

41. Unpaid seller, retention of possession

- (1) Subject to this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:
- (a) where the goods have been sold without any stipulation as to credit;
 - (b) where the goods have been sold on credit, but the term of credit has expired;
 - (c) where the buyer becomes insolvent.

Exercise of right of lien

- (2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. *R.S.P.E.I. 1974, Cap. S-1, s.41.*

42. Lien on undelivered portion of goods

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder, unless the part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention. *R.S.P.E.I. 1974, Cap. S-1, s.42.*

43. Seller loses lien, when

- (1) The unpaid seller of the goods loses his lien or right of retention 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 or his agent lawfully obtains possession of the goods;
 - (c) by waiver thereof.

Judgment obtained for price of goods, status of lien

- (2) The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment for the price of the goods. *R.S.P.E.I. 1974, Cap. S-1, s.43.*

44. Buyer becomes insolvent, remedies of seller

Subject to this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in 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. *R.S.P.E.I. 1974, Cap. S-1, s.44.*

45. Goods in course of transit, defined

- (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 his agent in that behalf takes delivery of them from the carrier or other bailee.

Buyer obtains delivery, transit ends

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

Bailee acknowledges to buyer goods held, transit ends

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

Buyer rejects goods, seller refuses to receive goods

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

Delivery by buyer to ship

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

Carrier or bailee wrongfully refuses to deliver

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

Part delivery of goods, stoppage of goods in transit

- (7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in 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. *R.S.P.E.I. 1974, Cap. S-1, s.45.*

46. Right to stoppage in transit, how to exercise

- (1) The 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; the 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.

Carrier or bailee to re-deliver upon notice

- (2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods he must *re-deliver* the goods to or according to the directions of the seller; the expenses of the *re-delivery* must be borne by the seller. *R.S.P.E.I. 1974, Cap. S-1, s.46.*

47. Sale of goods by buyer, affect on seller's rights

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

Seller's right to lien or retention defeated, where

- (2) Where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if the last mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage in transit is defeated, and if the last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transit can only be exercised subject to the rights of the transferee. *R.S.P.E.I. 1974, Cap. S-1, s.47.*

48. Contract not rescinded by exercise of seller's rights

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

Unpaid seller sells goods, good title

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

Resale of goods by seller, recovery of deficiency

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

Contract rescinded, where

- (4) Where the seller expressly reserves a right of resale in case the buyer should make default and on the buyer making default resells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages. *R.S.P.E.I. 1974, Cap. S-1, s.48.*

PART V — ACTIONS FOR BREACH OF THE CONTRACT

REMEDIES OF THE SELLER

49. Action for the price of the goods

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

Action for price where property not passed

- (2) Where, under a contract of sale, the price is payable on a day certain, irrespective of delivery, and the buyer wrongfully neglects or refuses to pay the price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract. *R.S.P.E.I. 1974, Cap. S-1, s.49.*

50. Action for non-acceptance

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

Measure of damages

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

Available market, measure of damages

- (3) Where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept. *R.S.P.E.I. 1974, Cap. S-1, s.50.*

51. Action for non-delivery

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

Measure of damages

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

Available market, measure of damages

- (3) Where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed for delivery, then at the time of the refusal to deliver. *R.S.P.E.I. 1974, Cap. S-1, s.51.*

52. Judgment for specific performance

In any action for breach of contract to deliver specific or ascertained goods, the court may, on the application of the plaintiff, give judgment directing that the contract shall be performed specifically without giving the defendant the option of retaining the goods on payment of damages; the judgment may be unconditional or upon terms and conditions as to damages, payment of the price and otherwise, and the application by the plaintiff may be made at any time before judgment. *R.S.P.E.I. 1974, Cap. S-1, s.52.*

53. Breach of warranty, breach of conditions treated as breach of warranty, remedies

- (1) Where there is a breach of warranty by the seller or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of the breach of warranty entitled to reject the goods; but he may
- (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (b) maintain an action against the seller for damages for the breach of warranty.

Measure of damages

- (2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting in the ordinary course of events from the breach of warranty.

Breach of warranty of quality, value of loss

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

Additional damages

- (4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage. *R.S.P.E.I. 1974, Cap. S-1, s.53.*

54. Rights of buyer not affected by Act

Nothing in this Act affects the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. *R.S.P.E.I. 1974, Cap. S-1, s.54.*

PART VI — SUPPLEMENTARY

55. Negating rights, duties, liabilities

Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties or by usage, if the usage is such as to bind both parties to the contract. *R.S.P.E.I. 1974, Cap. S-1, s.55.*

56. Reasonable time, 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. *R.S.P.E.I. 1974, Cap. S-1, s.56.*

57. Rights, duties, liabilities, enforcement

Where any right, duty or liability is declared by this Act, it may unless otherwise by this Act provided, be enforced by action. *R.S.P.E.I. 1974, Cap. S-1, s.57.*

58. Sale by auction

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 completed when the auctioneer announces its completion by the fall of the hammer or in any other customary manner but until the announcement is made any bidder may retract his bid;
- (c) where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it is not lawful for the seller to bid himself or to employ any person to bid at the sale or for the auctioneer knowingly to take any bid from the seller or any such person; any sale contravening this clause may be treated as fraudulent by the buyer;
- (d) a sale by auction may be notified to be subject to a reserved or upset price and a right to bid may also be reserved expressly by or on behalf of the seller;
- (e) where a right to bid is expressly reserved, but not otherwise, the seller or any other person on his behalf may bid at the auction. *R.S.P.E.I. 1974, Cap. S-1, s.58.*

59. Common law, continued application of

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

Act does not affect personal property security

- (2) Nothing in this Act affects any enactment relating to personal property security or any enactment relating to the sale of goods.

Application to provisions intended to create security

- (3) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale to the extent that the transaction is intended to operate as an agreement that creates or provides for an interest in goods to secure payment or performance of an obligation. *R.S.P.E.I. 1974, Cap. S-1, s.59; 1997,c.33, Schedule.*