

**LAWS OF FIJI**

**CHAPTER 230**

Revised Ed. 1985]

**SALE OF GOODS**

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**TO RE-ENACT AND AMEND THE LAW RELATING TO THE SALE OF GOODS AND SERVICES,  
LAYBY SALES, UNSOLICITED GOODS AND MISREPRESENTATION**

[1 January 1980]

**PART I-PRELIMINARY**

*Short title*

1. This Act may be cited as the Sale of Goods Act.

*Interpretation*

2.-(1) In this Act, unless the context otherwise requires-

"action" includes counter-claim and set-off;

"business" includes a profession and the activities of a government department, local authority or statutory undertaking;

"buyer" means a person who buys or agrees to buy goods;

"contract of sale" includes an agreement to sell as well as a sale;

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"delivery" means the voluntary transfer of possession from 1 person to another;

"document of title to goods" includes any bill of lading, dock warrant, warehouse-keeper's certificate and warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise either by endorsement or by delivery the possession of the document to transfer or receive the goods thereby represented;

"fault" means wrongful act or default;

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

"goods" includes all chattels personal which are the subject of trade or commerce and component parts of any such chattels. 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 land which are agreed to be severed before sale or under the contract of sale or things annexed to the land which in contemplation of law do not become part of the land;

"plaintiff" includes a defendant counter-claiming;

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

"quality of goods" includes their state or condition;

"quantity" includes weight, length, width, height, area, volume, capacity and number;

"sale" includes a bargain and sale as well as sale and delivery;

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

"service" or "services" includes (without limiting the generality of that expression) the rights or benefits that are to be supplied under a contract for-

(a) the performance of work (including work of a professional nature but not including work under a contract of service), whether with or without the supply of goods;

(b) the provision of, or of the use or enjoyment of facilities for accommodation, amusement, entertainment, recreation or instruction; or

(c) the conferring of rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy, or similar exaction;

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

"supply", when used as a verb, includes-

(a) in relation to goods - the supply by way of sale, exchange, lease, hire or hire purchase; and

(b) in relation to services - provide, render, grant or confer and when used as a noun has a corresponding meaning, and

"supplied" and "supplier" shall have corresponding meanings;

"trade" includes any transaction for the transferring or rendering of money or money's worth in consideration of money or money's worth;

"unsolicited" means, in relation to goods sent or services rendered to any person, that they are sent or rendered without any prior request made by him or on his behalf;

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

(2) Goods (of any kind) are of merchantable quality if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect, having regard to any description applied to them, the price and all other relevant circumstances.

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

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

(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 II-SALE OF GOODS**

### *Division 1-Contract of Sale*

#### *Sale and agreement to sell*

3.-(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 1 part owner and another.

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

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

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

#### *Capacity to buy and sell-sale of necessaries to persons incompetent to contract*

4. Capacity to buy and sell is regulated by the general law concerning capacity contract and to transfer and acquire property:

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

"Necessaries", in this section, means goods suitable to the condition in life of such infant or minor or other person and to his actual requirements at the time of the sale and delivery.

#### *Contract of sale, how made*

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

Provided that nothing in this section shall affect the law relating to corporations.

#### *Sale and agreement to sell goods on credit in course of retail trade to be accompanied by invoice*

6.-(1) A sale of goods on creditor an agreement to sell goods on credit in the course of trade shall not be enforceable by action at the suit of the seller, unless-

(a) at the time of the sale or agreement to sell, an invoice or docket, serially numbered, be made in writing in duplicate, both original and duplicate containing-

- (i) the serial number;
- (ii) the date of the transaction;
- (iii) the name of the buyer;
- (iv) the nature and, except in the case of goods exempted from this provision by order of the Minister, the quantity of the goods, in the English language and in figures; and
- (v) the price in English words or figures; and

(b) at the time of delivery of the goods, the original or duplicate of the invoice or docket be delivered to the buyer or to some person to whom the goods may properly be delivered on his behalf:

Provided that the provisions of this section shall not apply to an agreement to sell, over a period of time, goods of nature such as are commonly delivered at regular intervals, such as newspapers, bread or milk, or to any sale in pursuance of such agreement, where a written order signed by the buyer or his agent in that behalf is given to the seller at the time of the agreement to sell.

(2) In this section-

"docket" includes a packing note, delivery note or other printed form customarily used for recording the particulars of a sale;

"sale or agreement to sell in the course of trade" means a sale or an agreement to sell to a person by or on behalf of a person who carries on the business of selling goods.

#### *Division 2-Subject Matter of Contract*

##### *Existing or future goods*

7.-(1) The goods which 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, 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.

##### *Sale of perished goods*

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 perished after agreement to sell*

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 hereby avoided.

#### *Division 3-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 the foregoing provisions, the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

### *Agreement to sell at valuation*

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 and such third party cannot or does not make such valuation, the agreement is avoided:

Provided that, if the goods or any part thereof have been delivered to and appropriated by the buyer, he must pay a reasonable price therefor.

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

### *Division 4-Conditions and Warranties*

#### *Stipulations as to time*

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

(2) In a contract of sale, "month" means, prima facie, calendar month.

When conditions to be treated as warranty

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

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

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

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

#### *Implied Undertakings as to sale, etc.*

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

(a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods, and, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass; and

(b) an implied warranty that the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made and that the buyer will enjoy quiet possession of the goods, except so far as it may be, disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.

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

(a) an implied warranty that all charges or encumbrances known to the seller and not known to the buyer have been disclosed to the buyer before the contract is made; and

(b) an implied warranty that neither-

(i) the seller; nor

(ii) in a case where the parties to the contract intend that the seller should transfer only such title as a third person may have, that person; nor

(iii) anyone claiming through or under the seller or that third person otherwise than under a charge or encumbrance disclosed or known to the buyer before the contract is made, will disturb the buyer's quiet possession of the goods.

#### *Conditions implied by description*

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

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

#### *Implied undertakings as to quality or fitness*

16.-(1) Subject to the provisions of this or any other section of this or any other Act, there is no implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.

(2) Where the seller sells goods in the course of a business there is an implied condition that the goods supplied under the contract are of merchantable quality, except that there is no such condition-

(a) as regards defects specifically drawn to the buyer's attention before the contract is made; or

(b) if the buyer examines the goods before the contract is made, as regards defects which that examination ought to reveal.

(3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the seller's skill or judgment.

(4) An implied condition or warranty as to quality or fitness for a particular purpose may be annexed to a contract of sale by usage.

(5) The foregoing provisions of this section apply to a sale by a person who, in the course of a business, is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.

(6) In the application of subsection (3) to an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, any reference to the seller shall include a reference to the person by whom any antecedent negotiations are conducted.

#### *Division 5-Sale by Sample*

##### *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, there is-

(a) an implied condition that the bulk shall correspond with the sample in quality;

(b) an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) an implied condition that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

#### *Division 6-Effects of the Contract*

##### *Property in unascertained goods*

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

##### *Property in specific or ascertained goods passes when intended to pass*

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

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

##### *Rules for ascertaining intention as to time when property passes*

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

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

Rule IV - When goods are delivered to the buyer on approval or on "sale or return" or other similar terms, the property therein passes to the buyer-

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time or, if no time has been fixed, on the expiration of a reasonable time.

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

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

*Reservation by seller of right of disposal*

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

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

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to

return the bill of lading if he does not honour the bill of exchange, and, if he wrongfully retains the bill of lading, the property in the goods does not pass to him.

*Risk prima facie passes with property*

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

Provided that-

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

(b) nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.

*Sale by person not the owner*

23-(1) Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is, by his conduct, precluded from denying the seller's authority to sell:

Provided that nothing in this Act shall affect-

(a) the provisions of any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

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

*Sales under voidable title*

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

*Revesting of property in stolen goods on conviction of offender*

25.-(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 whether by sale or otherwise.

(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 such goods shall not revert in the person who was the owner of the goods or his personal representative by reason only of the conviction of the offender.

*Re-sale by seller or his agent in possession after sale*

26.-(1) Where a person having sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods

or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(3) In this section, the term "mercantile agent" means a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods.

#### *Effect of writs of execution*

27.-(1) A writ of *fiery facias* or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed, and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ, to endorse upon the back thereof the hour, day, month and year when he received the same:

Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration. unless such person had, at the time when he acquired his title, notice that such writ or any other writ, by virtue of which the goods of the execution debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff.

(2) In this section, the term "sheriff" includes any officer charged with the enforcement of a writ of execution.

#### *Division 8-Performance of the Contract*

##### *Duties of seller and buyer*

28. 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 prima facie concurrent conditions*

29. 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*

30.-(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract express or implied between the parties. Apart from any such contract express or implied, the place of delivery is the seller's place of business if he has one, and if not, his residence:

Provided that, if the contract be for the sale of specific goods which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

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

(3) Where the goods, at the time of sale, are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation or the issue or transfer of any document of title to goods.

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

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

#### *Delivery of wrong quantity or description*

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

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

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

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

#### *Delivery by instalments*

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

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

#### *Delivery to carrier as buyer's agent*

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

#### *Seller's duty as to contract with carrier*

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

#### *Insurance on sea transit*

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

#### *Risk where goods are delivered elsewhere than at place of sale*

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

#### *Buyer's right of examining the goods*

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

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

#### *Acceptance*

36. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them or, subject to the provisions of section 35, 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.

#### *Buyer is not bound to return rejected goods*

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

#### *Liability of buyer for neglecting or refusing delivery of goods*

38. 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 request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods:

Provided that nothing in this section shall affect the rights of the seller, where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

## *Division 9-Rights of Unpaid Seller Against the Goods*

### *Unpaid seller defined*

39.-(1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act-

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

(2) In relation to the provisions of section 39 to 48, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed or a consignor or agent who has himself paid or is directly responsible for the price.

### *Rights of unpaid seller*

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

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

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

## *Division 10-Unpaid Seller's Lien*

### *Seller's Lien*

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

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

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

### *Lien after part delivery*

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

#### *Termination of Lien*

43.-(1) The unpaid seller of goods loses his lien or right of retention thereon-

- (a) when he delivers the goods to a carrier or other bailee or custodian for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver thereof.

(2) The unpaid seller of goods having a lien or right of retention thereon does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

#### *Division 11 - Stoppage in Transitu*

##### *Right of stoppage in transitu*

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

##### *Duration of transit*

45.-(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land, air or water or other bailee or custodian for the purpose of transmission to the buyer until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee or custodian.

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

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

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

(5) When 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.

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

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

*Mode of stopping in transitu*

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

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

*Division 12-Re-sale by Buyer or Seller*

*Effect of sub-sale or pledge by buyer*

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

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

*Effect on sale of exercise of lien or stoppage in transitu*

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

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

*Re-sale of perishable goods or on notice*

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

*Re-sale under right expressly reserved by contract*

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

*Division 13-Actions for Breach of the Contract*

*Subdivision A-Remedies of the Seller*

*Action for price*

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

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract.

*Action for non-acceptance*

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

*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.

(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.

*Subdivision B-Remedies of the Buyer*

*Action for non-delivery*

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

*Measure of damages*

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

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

*Right to specific performance*

52. In any action for breach of contract to deliver specific or ascertained goods, the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree, direct that the contract shall be performed specifically without giving the defendant the option of retaining the goods on payment of damages. The

judgment or decree may be unconditional or upon such terms and conditions as to damages, payment of the price and otherwise as to the court may seem just, and the application by the plaintiff may be made at any time before judgement or decree.

#### *Remedy for breach of warranty*

53.-(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 such breach of warranty, entitled to reject the goods, but he may-

- (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
- (b) maintain an action against the seller for damages for the breach of warranty.

#### *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.

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

(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.

#### *Interest and damages*

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

#### *Division 14-Exclusion of Implied Terms*

##### *Exclusion of implied terms and conditions*

55.-(1) Where any right, duty or liability would arise under a contract of sale of goods by implication of law, it may be negatived 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, but the foregoing provision shall have effect subject to the following provisions of this section.

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

(3) In the case of a contract of sale of goods, any term of that or any other contract exempting from all or any of the provisions of section 14 shall be void.

(4) In the case of a contract of sale of goods, any term of that or any other contract exempting from all or any of the provisions of section 15, 16 or 17 shall be void in the case of a consumer sale and shall, in any other case, not be enforceable, to the extent that it is shown that it would not be fair or reasonable to allow reliance on the term.

(5) In determining, for the purposes of subsection (4), whether or not reliance on any such term would be fair or reasonable, regard shall be had to all the circumstances of the case and, in particular, to the following matters:-

(a) the strength of the bargaining positions of the seller and buyer, relative to each other, taking into account, among other things, the availability of suitable alternative products and source of supply;

(b) whether the buyer received an inducement to agree to the term or in accepting it had an opportunity of buying the goods or suitable alternatives without it from any source of supply;

(c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);

(d) where the term exempts from all or any of the provisions of section 15, 16, or 17 if some condition is not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable;

(e) whether the goods were manufactured, processed, or adapted to the special order of the buyer.

(6) Subsection (5) shall not prevent the court from holding, in accordance with any rule of law, that a term which purports to exclude or restrict any of the provisions of section 15, 16 or 17 is not a term of the contract.

(7) In this section, "consumer sale" means a sale of goods (other than a sale by auction or by competitive tender) by a seller in the course of a business where the goods-

(a) are of a type ordinarily bought for private use or consumption: and

(b) are sold to a person who does not buy or hold himself out as buying them in the course of a business.

(8) The onus of proving that a sale falls to be treated, for the purposes of this section, as not being a consumer sale shall lie on the party so contending.

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

(10) It is hereby declared that any reference in this section to a term of a contract includes a reference to a term which, although not contained in a contract, is incorporated in the contract by another term of the contract.

#### *Conflict of laws*

56. Where the proper law of a contract for the sale of goods would, apart from a term that it should be the law of some other country or a term to the like effect, be the law of Fiji, or where any such contract contains a term which purports to substitute, or has the effect of substituting, provisions of the law of some other country for all or any of the provisions of sections 14 to 17 and 55, those sections shall, notwithstanding that term, apply to the contract.

*Reasonable time*

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

*Rights, etc., enforceable by action*

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

*Auction sales*

59. In the case of 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, 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 shall not be lawful for the seller to bid himself or to employ any person to bid at such sale or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer;

(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.

Where a right to bid is expressly reserved, but not otherwise, the seller or any 1 person on his behalf may bid at the auction.

*Savings*

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

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

(3) Nothing in this Act shall affect the enactments relating to bills of sale or any other enactment relating to the sale of goods.

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

**PART III-SUPPLY OF GOODS AND SERVICES**

*Implied term in relation to supply of goods*

61. In a contract for the supply, in the course of business, of goods, not being a contract of sale, the provisions of section 14, 15, 16, 17 and 55 shall apply, *mutatis mutandis*, in relation to the goods supplied.

*Implied terms in relation, to supply of services*

62.-(1) In every contract for the supply, in the course of a business, of services, there is an implied warranty on the part of the supplier that the services will be rendered with due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.

(2) Where services are supplied in the course of a business and the person to whom the services are supplied, expressly or by implication, makes known to the supplier any particular purpose for which the services are required or the result that he desires the services to achieve, there is an implied warranty on the part of the supplier that the services supplied and any materials supplied in connection with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result.

**PART IV-LAYBY SALES**

*Interpretation*

63. In this Part, unless the context otherwise requires-

"buyer" means a person who buys or agrees to buy goods by a layby sale, and, if the rights of that person are assigned or are transferred by operation of law, include the person for the time being entitled to those rights;

"cancel", in relation to a layby sale, means cancel, rescind, or terminate by any means whatsoever, except by performance, and "cancellation" has a corresponding meaning;

"purchase price" means the total sum of money required to be paid by the buyer under a layby sale, plus the value of any other consideration provided or required to be provided by the buyer to purchase the goods to which the sale relates;

"seller" means a person who sells or agrees to sell goods by a layby sale, and, if the rights of that person are assigned or are transferred by operation of law, includes the person for the time being entitled to those rights.

*"Layby sale" defined*

64.-(1) For the purpose of this Act, a layby sale is a contract of sale of goods by retail under terms, express or implied, which provide that-

(a) the goods are not to be delivered to the buyer until the purchase price or a specified part or proportion thereon is paid, whether or not any charge is expressed to be payable for storage or delivery of the goods; and

(b) the whole or part of the purchase price-

(i) is to be paid by instalments (whether the number of instalments or the amounts of all or any of them is fixed by the contract or left at the option of the buyer) payable over a fixed or ascertainable period; or

(ii) is to be paid at the expiration of a fixed or ascertainable period with the option, express or implied, for the buyer to make payments in respect of the purchase price during that period, but a contract of sale of goods to be delivered by instalments, where the whole of the purchase price of each instalment is payable at the time that instalment is delivered, is not a layby sale.

(2) Where, by virtue of 2 or more agreements, none of which by itself constitutes a layby sale, there is a transaction which is, in substance or effect, a layby sale, the agreements shall be treated, for the purposes of this Act, as a layby sale made at the time when the last of those agreements was made.

*Risk not to pass until goods delivered*

65. Notwithstanding the provisions of section 22, goods that are the subject of a layby sale remain at the seller's risk until the property therein is transferred to the buyer and the goods are delivered to him:

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

*Buyer to be entitled to a statement of his present position*

66.-(1) The seller shall, within 7 days after he has received a request in writing from the buyer and the buyer has tendered to the seller the sum of 25 cents for expenses, give to the buyer a statement in writing signed by the seller or his agent showing-

(a) the purchase price; and

(b) the total amount of the money paid and the value of any other consideration provided by the buyer in respect of the layby sale; and

(c) the amount which the seller estimates to be the retail value of the goods at the time of the notice or of the cancellation of the layby sale, whichever is the sooner, indicating whether or not such value is the same as at the date of sale; and

(d) the amount which the seller estimates is sufficient to recoup him for selling costs in respect of the layby sale, and

(e) the balance estimated to be due to the seller or the buyer, as the case may be; and

(f) if there is a balance due to the seller, particulars of the time and manner within which that balance is required to be paid.

(2) The seller need not comply with a request under subsection (1) if-

(a) the layby sale has been completed by performance; or

(b) he has given the buyer a statement complying with that subsection within the 30 days immediately preceding the receipt of the request; or

(c) the layby sale has been cancelled by the buyer and more than 30 days have elapsed since the date of cancellation.

(3) Where the seller cancels a layby sale, he shall, upon request, give to the buyer, free of charge, a statement complying with subsection (1) within 7 days after the date of cancellation.

(4) Every seller who makes default in complying with subsection (1) or subsection (3) commits an offence and is liable, on conviction, to a fine not exceeding \$20.

*Right of buyer to cancel layby sale*

67.-(1) The buyer may, at any time before the purchase price has been paid, cancel the layby sale by giving to the seller oral or written notice of his desire to cancel the sale.

(2) Where a layby sale is cancelled under subsection (1), the date of cancellation shall be the date on which the notice is given.

(3) Nothing in this section shall prejudice any right of the buyer to cancel a layby sale otherwise than by virtue of this section.

(4) The right of cancellation conferred on the buyer by subsection (1) may be exercised notwithstanding the winding up or bankruptcy of the seller or the appointment of any person to act as the receiver or manager of the property of the seller.

*Rights of seller and buyer on cancellation of layby sale*

68.-(1) Where a layby sale is cancelled by the buyer under section 67 or, is cancelled by the seller, the following provisions shall apply:-

(a) if the total amount of money paid plus the value of any other consideration provided by the buyer in respect of layby sale, together with the retail value of the goods at the time when the layby sale is cancelled, exceeds the purchase price and an amount sufficient to recoup the seller for his selling costs in respect of the layby sale, the buyer shall be entitled, subject to subsection (2), to recover the excess from the seller as a debt due and payable by him to the buyer;

(b) if the purchase price and an amount sufficient to recoup the seller for his selling costs in respect of the layby sale exceeds the total amount of money paid plus the value of any other consideration provided by the buyer in respect of the layby sale, together with the retail value of the goods at the time when the sale is cancelled, the seller shall be entitled, subject to subsection (3), to recover the excess from the buyer as a debt due and payable by him to the seller, but shall not be entitled to recover any additional sum, whether as penalty or compensation or otherwise in consequence of the cancellation of the layby sale.

(2) Where a layby sale is cancelled by the buyer, other than by reason of a breach by the seller, which entitles the buyer to cancel the sale, the buyer shall not in any case be entitled to a refund exceeding the total amount of money paid plus the value of any other consideration provided by him.

(3) Where a layby sale is cancelled by the seller, other than by reason of a breach by the buyer which entitles the seller to cancel the sale, the buyer shall be entitled to a refund not less than the total amount of money paid plus the value of any other consideration provided by him.

(4) Where the buyer under a layby sale has paid an initial deposit but has made no other payments at the time when the sale is cancelled, the amount that the seller shall be entitled to recover under paragraph (b) of subsection (1) shall not exceed the amount of the deposit.

(5) Where a layby sale of specific goods is cancelled within 1 month after the date of the sale or where any layby sale (not being a sale of specific goods) is cancelled at any time, the retail value of the goods at the time of cancellation shall, for the purposes of this Act, unless the contrary is proved, be deemed to be the retail value of the goods at the time when the layby sale was made; and any loss of value of such goods, whether due to deterioration of the goods or otherwise, shall be disregarded.

*Completion on winding up, bankruptcy, or receivership of seller*

69.-(1) If, on the winding up or bankruptcy of the seller or on the appointment of any person to act as the receiver or manager of the property of any seller that is a company, the assets of the seller include the goods, or goods of the kind, which the seller has agreed to sell to the buyer, whether those goods have been appropriated to the sale or not, the buyer shall be entitled, on payment of the balance (if any) of the purchase price in the manner and at the times prescribed by the contract, to complete the, purchase and obtain the property in, and delivery, of the goods.

(2) If there are not enough goods to satisfy all buyers, priority shall be governed by the date of the sale, so that goods shall be available to earlier buyers in preference to later buyers. Where 2 or more buyers agreed to purchase on the same day, priority between them shall be determined by lot.

(3) No buyer shall be entitled to exercise the right conferred by subsection (1) if-

(a) in breach of his agreement with the seller, he has made no payment to the seller on account of the purchase price during the 3 months immediately preceding the filing of the petition on which the seller is adjudged bankrupt, the commencement of the winding up, or the appointment; or

(b) he is an officer or employee of the seller or the spouse of such an officer or employee.

(4) If any buyer makes any payment on account of the purchase price after the commencement of the bankruptcy or winding up or the appointment, he shall be entitled to have that payment refunded in full, unless the purchase is completed in accordance with subsection (1).

*Preference on winding up, bankruptcy or receivership of seller*

70.-(1) If, on the winding up or bankruptcy of any seller or on the appointment of any person to act as the receiver or manager of the property of any seller that is a company, there are no goods or not enough goods to enable the layby sale to be completed, or if any buyer is or becomes entitled under section 68 to recover any sum of money, then the buyer shall be a creditor in the liquidation, bankruptcy, or receivership to the extent of the payments that he has made to the seller on account of the purchase price of the goods or to the extent of the sum that he is entitled to recover, as the case may require, with priority, subject to subsection (2), over all other unsecured creditors and over creditors secured by a floating charge.

(2) The rights conferred by subsection (1) shall not be available to any buyer of the kind described in paragraph (a) or paragraph (b) of subsection (3) of section 69.

*Service of notices*

71.-(1) Any written notice or other document required or authorised by this Part to be given to any person shall be sufficiently given if it is delivered to that person, or if it is left at his usual or last known place of abode or business or at an address specified for the purposes of the layby sale, or if it is posted in a letter addressed to him by name at that place of abode or business or address.

(2) If the person is absent from Fiji, the notice or other document may be given to his agent in Fiji. If the person is deceased, it may be given to his personal representatives.

(3) If the person is not known, or is absent from Fiji and has no known agent in Fiji, or is deceased and has no personal representatives, the notice or other document shall be given in such manner as may be directed by an order of a magistrate's court.

(4) If any such notice or other document is sent to any person by registered letter, it shall be deemed to have been delivered to him on the fourth day after the day on which it was posted and, in proving the delivery, it shall be sufficient to prove that the letter was properly addressed and posted.

(5) Notwithstanding anything in the foregoing provisions of this section, a magistrate's court may, in any case, make an order directing the manner in which any notice or other document is to be served or given, or dispensing with the service or giving thereof.

(6) This section does not apply to notices or other documents served in any proceedings in any court.

#### *Buyer's rights protected*

72.-(1) The provisions of this Part shall have effect in favour of the buyer, notwithstanding any provision to the contrary in any agreement relating to any layby sale.

(2) Nothing in this Act shall prevent any layby sale from having effect according to its tenor in so far as the terms of that sale are more favourable to the buyer than the terms that the buyer would enjoy by virtue of the provisions of this Act.

(3) Section 55 shall be read subject to the provisions of this section.

### **PART V-UNSOLICITED GOODS AND SERVICES**

#### *Unsolicited goods*

73.-(1) In the circumstances specified in subsection (2), a person who, after 1 January 1980, receives unsolicited goods may, as between himself and the sender, use, deal with or dispose of them as if they were an unconditional gift to him, and any right of the sender to the goods shall be extinguished.

(2) The circumstances referred to in subsection (1) are that the goods were sent to the recipient with a view to his acquiring them, that the recipient has no reasonable cause to believe that they were sent with a view to their being acquired for the purposes of a trade or business and has neither agreed to acquire nor agreed to return them, and either-

(a) that, during the period of 6 months beginning with the day on which the recipient received the goods, the sender did not take possession of them and the recipient did not unreasonably refuse to permit the sender to do so; or

(b) that, not less than 30 days before the expiration of the period aforesaid, the recipient gave notice to the sender in accordance with subsection (3) and that, during the period of 30 days beginning with the day on which the notice was given, the sender did not take possession of the goods and the recipient did not unreasonably refuse to permit the sender to do so.

(3) A notice in pursuance of subsection (2) shall be in writing and shall-

(a) state the recipient's name and address and, if possession of the goods in question may not be taken by the sender at that address, the address at which it may be so taken;

(b) contain a statement, however expressed, that the goods are unsolicited, and may be sent by post.

(4) In this section-

"acquire" includes hire;

"send" includes deliver, and "sender" shall be construed accordingly;

"sender", in relation to any goods, includes any person on whose behalf or with whose consent the goods are sent and any other person claiming through or under the sender or any such person.

#### *Unsolicited services*

74.-(1) The Minister may, by regulation, prescribe a service to be a service to which this section shall apply.

(2) A person is not liable to make any payment and is entitled to recover a payment made by him in full or part satisfaction of a charge or fee under a contract or agreement for the supply of a prescribed service, unless there has been signed by that person, or a person authorised by him in that behalf, a note complying with this section and that first-mentioned person has been supplied with a copy of the note as signed by him or on his behalf.

(3) In order to comply with this section, a note referred to in subsection (2) shall, in relation to a contract or agreement for the supply of a prescribed service, specify-

(a) the particulars of the service supplied or proposed to be supplied; and

(b) the amount of the charge or fee or the basis on which the charge or fee is to be calculated.

### **PART VI-MISREPRESENTATION**

#### *Removal of certain bars to rescission for innocent misrepresentation*

75. Where a person has entered into a contract after a misrepresentation has been made to him, and-

(a) the misrepresentation has become a term of the contract, or

(b) the contract has been performed,

or both, then, if otherwise he would be entitled to rescind the contract without alleging fraud, he shall be so entitled, subject to the provisions of this Act, notwithstanding the matters mentioned in paragraphs (a) and (b).

#### *Damages for misrepresentation*

76.-(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made

fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that facts represented were true.

(2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed in any proceedings arising out of the contract, that the contract ought to be or has been rescinded, the court or arbitrator may declare the contract subsisting and award damages in lieu of rescission, if of the opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.

(3) Damages may be awarded against a person under subsection (2), whether or not he is liable to damages under subsection (1), but, where he is so liable, any award under the said subsection (2) shall be taken into account in assessing his liability under the said subsection (1).

*Avoidance of certain provisions excluding liability for misrepresentation*

77. If any agreement (whether made before or after 1 January 1980) contains a provision which would exclude or restrict-

(a) any liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made; or

(b) any remedy available to another party to the contract by reason of such a misrepresentation,

that provision shall be of no effect, except to the extent (if any) that, in any proceedings arising out of the contract, the court or arbitrator may allow reliance on it as being fair and reasonable in the circumstances of the case.

*Representations*

78. Any statement or representation made in relation to goods and services by an employee or a person acting on behalf of a supplier shall be deemed to be a statement or representation made by the supplier.

**PART VII-SUPPLEMENTAL**

*Regulations*

79. The Minister may make regulations for any of the following purposes:-

(a) prescribing or approving standard forms of agreements or contracts for the supply of prescribed goods or services;

(b) securing that agreements, contracts, forms, notices, invoices, dockets and other documents supplied pursuant to this Act are easily legible and comprehensible;

(c) prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act.

*Repeal*

80. The Sale of Goods Act\* is hereby repealed.

*Controlled by Ministry of Economic Development, Planning and Tourism*

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\* Chapter 206, 1967 Edition (Ordinance No. 35 of 1932).

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