## ABANDONMENT

waiver, distinguished from, 242

## **ABSOLUTE SALE OF GOODS**, 23

#### **ACCELERATION CLAUSES**, 296

#### ACCEPTANCE

acts of, inconsistent with seller's ownership, 223 breach of condition, after, effect of, 250, 322-325 buyer's duty as to, 219-220 correspondence with offer, of deemed, 33 duty of, effect of breach, 295-300 effect of, 100, 229, 245 examination of goods and, 190, 219-224 goods, of, effect on implied condition as to right to sell, 92-101 approval or sale or return, on, of, 77-79 meaning of, 229, 246 mistake as to content of, 36-37 non-acceptance, action for, 219-220, 301 liability for, 301 measure of damages in, 208, 219-220, 302 mitigation of damages in, 312 rightful, duty of buyer on, 219 offer and, 33-34 refusal of, 219-221 retention of goods, by, 227 right to sale, effect of on, 92-101, 321 under Sale of Goods Act, 225-226 under Statute of Frauds, 41, 240

## ACTION

breach of warranty, for, 324, 330 damages, for, by buyer, 359 delayed delivery, for, 328, 348 misrepresentation, for, 132, 252, 357, 364 non-acceptance, for, 219-220, 301 market price, relevance of, 307 measure of damages in, 302 mitigation of damages in, 309, 312 non-delivery, for, 301 price, for, 220, 294 what is recoverable in, 297 tort, in, 313

#### AGENCY

apparent, seller with, sale by, 110 necessity, of, 126, 288 sale, distinguished from, 11

## AGENT

commission, rights of as unpaid seller, 270 *del credere*, rights of as unpaid seller, 270 distinguished from buyer, 11 mercantile, definition of, 113 disposition by, 126 possession of, 113 relevance of good faith in sale by, 113 sale by, in ordinary course of business, 113 necessity, of, 126, 288 personally liable, rights of as unpaid seller, 270 possession of, 270 seller's lien when he holds as, 275-278 unpaid seller, rights of, as, 272

## AGREEMENT TO SELL

breach of, remedies for, 29 defined, 28 future goods, of, 48-52 sale, distinguished from, 9 unascertained goods, of, 53, 56

#### **ANTICIPATORY BREACH**, 308, 346, 349

#### APPARENT OWNER

disposition by, 110

## **APPROPRIATION**

assent, to, 81 delivery as, goods, of, to contract, 81 meaning of, 81 method of, 81

## APPROVAL

sale on, 79 transfer of property by, 79

## ASCERTAINED GOODS

frustration of contract for sale of, 56 meaning of, 53 property, transfer of, in, 61

ASCERTAINED GOODS — *continued* specific goods, distinguished from, 53 specific performance of contract for sale of, 56

**ASCERTAINMENT**, 80 price, of, 75

ASSENT appropriation of goods to contract, 81

## ASSIGNMENT

contract of sale, of, 392 effects of, 392 equities and priorities, 393 future goods, of, 48 how effected, 392 liabilities and burdens, of, 390 nature of, 391 novation, distinguished from, 392 rights and benefits, of, 388 statutory, 393 when permitted, 388

## ATTORNMENT, 195, 201

## AUCTION

fraud of buyer at, 386 sale by, 34, 384 seller, bidding by or on behalf of, at, 385 statutory provisions on, 383

## AUTHORITY

apparent, 110

## **AVAILABLE MARKET**

absence of, effect of, 310 exclusion of, test of, 309 meaning of, 303 measure of damages when no, 302 relevance of to action for non-acceptance, 303, 307, 309

## BAILEE

buyer or seller as bailee for other, 260 delivery to. *See* DELIVERY: CARRIER seller's lien when he holds as, 277

**BAILMENT** difference from sale, 12

**BANKER'S CONFIRMED CREDIT** 

nature and effects, of, 26, 232, 281

**BARGAIN AND SALE** included in term "sale," 28

## BARTER. See Exchange

BILL OF EXCHANGE

delivery of, with bill of lading, effect, 88 dishonour of, 88

## **BILL OF LADING**

disposal, reservation of, by, 88 endorsement of, as delivery, 279 lien, effect on, 279 meaning of, 87 negotiation of, 87 return of, 88 stoppage in transit, effects of on, 210, 235, 271 symbol of goods, as, 213 transfer of title by, 87

## BILLS OF EXCHANGE ACT, 237, 390

**BLOOD TRANSFUSION** 

whether sale of goods, 20

## BORROWER

protection of, 236

### BREACH

anticipatory, 308, 346, 349, 404 substantial, 369

## **BREACH OF CONDITION**

acceptance, effect of on, 229 breach of warranty, as, election to treat, 324 passing of property before, effect, 229

## **BREACH OF CONTRACT**

See ACTION: DAMAGES.

## **BREACH OF WARRANTY**

action for, 324 breach of condition, as, election to treat, 325 damages action for, right to, 324 measure of, in action for, 324 price, diminution or extinction of, from, 324

#### BULK

sample, comparison with, opportunity for, 190 correspondence with, need for, 192

#### **BULK SALES**

legislation on, 24, 44

**BULK SALES** — *continued* meaning of, 44 nature of, 44 validity of, 44

**BULK SALES ACT**, 24, 44 requirements of, 44

**BUSINESS** course of, 78 ordinary course of, 113

## **BUSINESS EFFICACY**

doctrine of, scope and effect of, 148

## BUYER

acceptance by, 219 actions against, 288, 293 actions by, 252, 325 capacity of, 277 damages, action for, by, 297 delivery to, 226, 323, 334 duties of, 219, 338, 404 election by, compulsory, as to conditions, 243 voluntary, as to conditions, 333 examination of goods by, 190, 221 fraud by, at auction, 384 insolvent, when, 270, 274 neglecting to take or refusing delivery, 274 payment and tender by, 274 possession, in, sale by, 274 disposition by, effect of, effect of, 126 who is, 270, 275 rejection of goods by, 320 remedies against seller, 319 against third parties, 373 remedies for breach of duties by, seller's, 293 return of rejected goods by, 322 right to set-off, 297, sub-sales by, effect of, 334, 345

C. & F. SALES, 196, 212

#### C.I.F. SALES, 212

delivery to carriers, effect of, 212 nature and effects of, 212 right to reject, buyer's under, 213 seller's duty to insure, under, 211

## CANADA

Factors Act in, 1 Sale of Goods Act in, 1 statutes on sale, 1 Table of Concordance for, 3

# **CAPACITY** buy and sell, to, 31

## CARRIER

buyer's agent to receive goods, 209 delivery to, effect of, 209 lien of, 214 right of, to freight, on stoppage *in transitu*, 214 seller's duty to make contract with, 210 transfer of possession by, 210

## **CAVEAT EMPTOR, 221**

## **CHATTELS PERSONAL** goods as, 13

CHANCE sale of, 99

## CHARACTER OF GOODS

exclusion of undertakings as to, 37 express undertakings as to, 129 implied undertakings as to, 147 measure of damages in action for breach of terms as to, 234,302, 329, 343 waiver of undertakings as to, 239, 243

#### CHARGE OR OTHER SECURITY

Sale of Goods Act does not apply to, 13

## CHOSES

in action, distinguished from goods, 14

## CIRCUMSTANCES

change of, 261

## CODIFYING STATUTE

interpretation of, 7

COERCION, 313, 360

## **COLLATERAL CONTRACTS**, 139

## COLLATERAL TERMS

collateral contracts, contrasted with, 142 exclusion of undertakings, in relation to, 152

## **COLLATERAL WARRANTIES**, 374

## COMMERCIAL LETTERS OF CREDIT, 233

**COMMERCIAL VENTURE** frustration of, 265

**COMMISSION AGENT** as unpaid seller, 270

## COMMON LAW

recovery of money at, 353 remedies of buyer at, 375 remedies of seller at, 293 saving for, 1 special powers of sale, under, 126

## **COMPUTER DISCS**, 21

## **COMPUTER PROGRAMMES**, 21

## CONDITION: CONDITIONS (IN CONTRACTS OF SALE)

ambiguity of, 27 breach of, as breach of warranty, remedies in respect of, 324 concurrent, 197, 327 conditional contracts of sale, 53, 66, 71 delayed delivery, remedies in respect of, 328 description, as to, implied, 150 fitness for purpose, of goods, implied as to, 160 contents of, 170 exclusion of, 175 historical development of, 91 implied. See IMPLIED CONDITIONS. meaning of, 137 precedent or subsequent, 198 quality as to, implied, 239 right to reject for breach of, loss of, 244 Sale of Goods Act under, 357 warranty, distinguished from, 244 when to be treated as, 244

#### CONDITION PRECEDENT

condition in contracts, distinguished from, 137 meaning and effect, 26 payment or delivery as, 198

**CONDITION SUBSEQUENT** meaning and effect, 27

**CONDITIONAL SALES** meaning of, 25

**CONFIRMED CREDIT** nature of, 26, 232, 281 **CONFLICT OF LAWS** sale of goods in, 395 proprietary effects of, 398

## CONSEQUENTIAL LOSS

recovery by seller of, 304

## CONSIDERATION

failure of, effect of, 353 money as, 9, 21, 39 title as, 95

## CONSIGNMENT

sales on, 203-204

**CONSTRUCTIVE DELIVERY** instances of, 221

CONSTRUCTIVE POSSESSION, 221, 273, 282-284

**CONSUMER** definition of, 371

## CONSUMER PRODUCTS, 144, 376

CONSUMER PROTECTION statutes on, 159, 191-193, 237, 239, 247-248, 292, 325, 368, 390

#### CONSUMER SALES, 92, 191, 368

#### **CONTINGENT SALES**, 52

## CONTRACT

sale as, 6

## CONTRACT OF SALE

absolute and conditional, 23 assignment of, 25, 121, 387 distinguished from novation, bilateral, 10 breach of. See ACTION: DAMAGES capacity to make. See CAPACITY: PARTIES conditional, 53 transfer of property by, 61 conflict of laws, in, 395 consideration for. See CONSIDERATION definition of, 29 distinguished from agency, 11 barter, 12 gift, 10 hire, 12 sale of land, 15

## **CONTRACT OF SALE** — continued

secured transactions, 13 services, 16 effects of, 29 exclusive dealings, 7 executed and executor, 28 features of, 10 formation of, 33, 403 frustration of. See FRUSTRATION international, 395 interprovincial, 395 legality of, 43 omitted from Sale of Goods Act, 7 other contracts, distinguished from, 7 output, 7 passing of property by, 9 requirements, 7 rescission of. See RESCISSION scope and sources of law, 7 transfer of property and risk by. See RISK: TRANSFER OF PROPERTY unconditional, transfer of property by, 70 validity of, 57, 395, 401 variation of. See VARIATION waiver of. See WAIVER writing, need for, in, 140-145

**CONTRACTS OTHER THAN SALE** distinguished from sale, 6, 9

#### CONTRACTUAL TERMS

nature of, 134 representations, contrasted with, 134 statutory provisions as to, 138

### CONVENTION

U.N. on International Sale of Goods, 150, 199, 207, 402 contracts not within, 397 contracts within, 401 exclusion of, 396 formation of contract under, 403 general provisions of, 401 non-application of, 396 obligations of parties under, 395 risk of loss or damage under, 404 scope of, 401

## CONVERSION

action by seller for, 96, 110, 273 buyer, availability to, 366 effect of satisfied judgment in, 11

#### CONVEYANCE

included in sale, 10, 28, 92

## CORPORATIONS, 31, 192

### CORRESPONDENCE

description, with, 156 table of, for Canadian statutes, 3

## CREDIT

absence of, seller's lien in, 270 expiry of, seller's lien on, 270 letters of, 233 payment by, 233 provision for, exclusion of, on buyer's insolvency, 276, 291, 378 sale on, 233, 235

## CREDIT CARD

payment by, 233, 235

#### **CUSTOM**

terms implied by, 147 usage, when effective,

#### DAMAGES

action for, when maintainable, 208, 288, 293, 324 what may be recovered in, 302 available market, relevance of, to, 307 breach of warranty, action for, 258, 297, 319 buyer, action for, by, 252, 325 delayed delivery, for, 328 evidence, action for non-acceptance, in, 343 factors affecting, 349 incidental, 297 innocent misrepresentation, for, 357 interest as, 350-353 liquidated, distinguished from penalty, 301, 349.355.388 in relation to breach of warranty, 349 market price, relevance of to, 336 exclusion of, 309 measure of, 324 action for breach of warranty of quality, in, 324 action for non-acceptance, in, 301, 312, 322, 343 in particular instances, 331 mitigation of, 308-309, 312, 350-351, 404 breach of warranty, in, 311 non-acceptance, action for, 301, 312, 322, 343 non-delivery, action for, 339, 343 measure of, in, 343 payable to sub-purchaser, relevance in action for breach of warranty of quality, 339, 348, 365.380 remoteness of, 330, 366,

DAMAGES — continued right, as of, 353 special, 297, 303, 330 sub-sales, effect of in action for breach of warranty of quality, 334, 339, 341-348

**DEBTS** goods distinguished from, 14

DECEIT. See FRAUD

**DEFECTIVE GOODS** statutory remedies for, 295, 326, 366

**DELAY** delivery, in, effect on incidence of risk, 328

**DEL CREDERE AGENT** as unpaid seller, 270

**DELIVERABLE STATE** goods in, 68-75 meaning of, 201

## DELIVERY

appropriation as, 74 buyer or bailee, to, 85 buyer's duty as to, 219 buyer's right to reject under Sale of Goods Act, 61, 71, 92 carrier, to, 208-215 effect on seller's lien, 214 effect on stoppage in transitu, 214 "constructive", 83, 122, 221, 225, 275, 282, definition of,195 delayed, action for, 328 measure of damages in, 328 documents, of, duty as to, 196, 201 duty of, 212 contents of, 212 expenses of, 215 hours for, 127, 232 instalments, in, 204-207 meaning of, 195 non-delivery, action for, 255, 262, 271, 301 measure of damages in, 302 relevance of sub-sales in, 334 obligatory, when, 197 opportunity for examination, seller's duty to provide, 222-227 part-delivery, effect of on seller's lien, 275, 284 on stoppage in transitu, 214, 270, 276, 317, 378, 398, 400 payment and, 198, 231, 274, 327

place of, 68, 199, 208, 216, 242, 259 reasonable time, within, 131 refusal of, wrongful, effect on stoppage in transitu, on stoppage in transitu, 214, 270, 276, 317, 378, 398, 400 right to withhold, 271 rules as to, 199 seller's duty as to, 199 seller's lien, effect on, 274 ship, to, effect on stoppage in transitu, on stoppage in transitu, 214, 270, 276, 317, 378, 398, 400 sub-purchaser, to, effect of on right to reject, 339, 348, 365, 380 "symbolic," 29, 196 third person in possession of goods, where, 201 time for, 232 voluntary transfer of possession as, 125, 195 wrong quality of, 201 wrong quantity, of, 201

## DEPOSIT

forfeiture of, 355 part-payment as, 355

## DESCRIPTION

correspondence of goods with, 156, 201 implied term as to, 159 sale of goods by, 150 meaning, 150 merchantable quality, implied condition as to, 177 transfer of property in, 71

## DESTRUCTION OF THING SOLD

after agreement to sell, but before risk passes, 61, 262 before sale, 262 *see also* RISK: PERISHING OF GOODS

## DETERIORATION

goods in transit, of, rules as to, 259, 308

## DETINUE

buyer, availability to, 29, 92 effect of satisfied judgment in, 11 seller, availability to, 366, 378

## DIRECT SALES

legislation on, 24

## DISPOSAL

reservation of right of, 62, 85-88

DOCUMENT OF TITLE, 196, 201, 279 meaning, 279 possession of, rights arising from, 279 seller's lien, effect of dealings with on, 284 stoppage *in transitu*, effect of dealings with on, 284 transfer of, 278

**DRUNKENNESS** person incapacitated by, sale to, 31

**DURESS**, effect of, 6, 23, 34, 294, 313, 360 effect, saving for, 23

**DUTY: DUTIES** accept, to, 219 breach of, remedies for, 295 delivery, in respect of, 212 title, in respect of, remedies of buyer, 331

## EARNEST, 42

**EMBLEMENTS** included in "goods," 14

**EMPTIO REI SPERATAE** meaning and effect, 53

**EMPTIO SPEI** meaning and effect, 53

**ENCUMBRANCES** freedom from, 101

**EQUITABLE ASSIGNMENT** property, of, 49-51, 393

**EQUITABLE DOCTRINES** application of, under Sale of Goods Act, 6 future goods, on sale of, 48-56

## **EQUITABLE REMEDIES, 319**

**EQUITY** innocent misrepresentation, remedies for, 323, 357, 362 saving of, after Sale of Goods Act, 6

## **ERROR IN SUBSTANTIALIBUS**, 36

**ESTOPPEL** conduct, by, 109

doctrine of, 109 negligence, by, 111 owner, against, where goods sold by another, 126 Sale of Goods Act, under, 109 waiver and, 240

### **EVIDENCE**

damages, action for non-acceptance, in, 310 oral, to elucidate a written contract, 38

## EX SHIP SALE, 217

#### **EXAMINATION**

acceptance and, 219, 221 effect of, 221 opportunity for, seller's duty to provide, 221 place of, 222, 226 reasonable opportunity for, what is, 221

## EXCHANGE

bills of, 237, 390 sale, distinguished from, 21

## EXCLUSION

effect of, 248 possibility of, 247 right to sell, of, 248 rights of parties, 248 terms, of, 247 waiver, distinguished from, 247

## **EXECUTED CONTRACT OF SALE, 28**

**EXECUTORY CONTRACT OF SALE**, 28, 32

## **EXEMPTION CLAUSES**, 143, 248, 349

## EXHAUSTION, 49, 81

**EXPENSES** delivery, of, 215

F.A.S. SALES, 217

F.O.B. SALES, 215

## F.O.R. SALES, 217

FACTORS ACT buyer in possession, disposition by, 120 effect of, 126

## FACTORS ACT — continued

comparative tables of, 5 dispositions under, 121 mercantile agent, disposition by, 126 saving for in Sale of Goods Act, 126 seller in possession, after sale, disposition by, 120-123 seller's lien, effect, on, 286 stoppage *in transitu*, effect of on, 280-286, 290,

FAILURE OF CONSIDERATION effect of, 322-323, 353-354

FARM MACHINERY statutes on, 191

**FINANCING OF SALES** statutory provisions, 236-237

FITNESS OF GOODS See Quality of Goods: Goods

## FOREIGN CURRENCY, 298

**FORFEITURE** deposit, of, 236, 355

## FRAUD

auction sales, in, 384 effect of, 6, 313 remedies for, 365

## FRAUDULENT MISREPRESENTATION

meaning and effect of, 132 remedies for, 375, 379 writing, need to be in writing, 379

## **FREEDOM FROM ENCUMBRANCES**, 101

**FRUCTUS** industriales, 14 naturales, 14

## FRUSTRATED CONTRACTS ACT, 266,

## FRUSTRATION

change of circumstances as, 265 destruction of goods as, 262 doctrine of, scope of, when applicable, 255 general effect of, 266 impossibility of performance as, 264 legislation, effect of, 266 risk, compared with, 255 Sale of Goods Act, under, 255 supervening, illegality as, 262 venture, of the, 265

## FUTURE GOODS

## FUTURE SPECIFIC GOODS, 55

## **GENERIC GOODS**, 84, 80-83

## GIFT

sale, distinguished from, 10, 33

## GOOD FAITH

defined, 117-128, 214, 286 onus of proving, 117, 307 relevance to disposition by mercantile agent, 113 relevance to sale by seller or buyer in possession, 113 relevance to sale under voidable title, 118

## GOODS

acceptance of, 229 ascertained. See ASCERTAINED GOODS categories of, 47, 56 character and quality of, 129, 233, 250, 334 exclusion of undertakings as to, 37, 150 express undertakings as to, 129 implied undertakings as to, 147 waiver of undertakings as to, 239 choses in action, distinguished from, 316 defective, 64, 118, 160, 390 defined, 54 deliverable state, in, 201 delivery of, 205, 212, 272, 296 destruction of, effect of, 61, 262 examination of, 156, 178, 216, 299 existing, 48, 52, 55 fitness for purpose of, 160 future, 48, 296 generic. See GENERIC GOODS land, things growing on, distinguished from, 176, 263 merchantable quality of, 160, 179-187 money, distinguished from, 9 non-existent, 58 payment for, 281, 298 perished, 57-60, 262 perishing after sale, 56-60 before sale, 14 potentially existent, 51 purchase of, 163

GOODS — continued purpose of, knowledge of, 164 retention of, effect on stoppage *in transitu*, 214, 270 retention of, as acceptance, 224 right to sell, 287, 321 services, distinguished from, 20-21 specific. *See* SPECIFIC GOODS statutory definition of, 9 stolen, 108 supplied under contract of sale, meaning of, 159 unascertained. *See* UNASCERTAINED GOODS work and materials, distinguished from, 18, 20

#### GRAIN

effect of sales of, 178

**GROWING CROPS OR TREES** sale of, 14, 184, 189, 339

HOURS FOR DELIVERY reasonable, must be, 200

**IDENTITY** mistake as to, 34, 119, 353

**ILLEGALITY** effect of, 262 party, innocent, remedies for, 116, 304, 320 supervening, 262

#### IMPLIED CONDITIONS

course of dealing, from, 147, 202, 232, 270 custom, from, 147, 158 description, as to, 150 exclusion of, 150 quality and fitness, as to, 153, 158 right to sell, as to, 287, 321, 354 acceptance of goods, effect of, 358 express exclusion of, 99 implied exclusion of, 99 scope of, 97 sample, as to, 150, 159, 185, 188 title, as to, 213 trade usage, from, 322, 335

## IMPLIED TERMS

consumer sales, in, 92, 191, 247, 370 custom or tacit agreement, from, 147, 242, 257 description, as to, 17 farm machinery, sales of, in, 67, 191 fitness, as to, 153 contents of, 159 exclusion of, 152 merchantable quality, as to, 159, 177 contents of, 159 exclusion of, 175 Sale of Goods Act, under, 179 sample, sale by, in, 185 statute, by, 172 title, as to, 213

## IMPLIED WARRANTY

freedom from encumbrances, as to, 101 quiet possession, as to, 101, 325

## **IMPORTANCE OF TIME, 131**

## IMPOSSIBILITY. See FRUSTRATION

## **INDEMNITY**, 314, 340

**INDUSTRIAL GROWING CROPS** included in "goods," 14

INEQUALITY OF BARGAINING POWER, 355, 360, 371

## INFANT

capacity to buy and sell, 31 effect of contract with, 31, 33 liability for necessaries of, 31

**INJUNCTION**, 51, 181, 363

## INNOCENT MISREPRESENTATION

meaning and effect, 23, 133, 253 remedies for, 357 seller, action by, for, 250

## INSOLVENCY

seller's lien on buyer's, 272 stoppage *in transitu* on buyer's, 270 what constitutes, 270

## **INSTALMENTS**

buyer not usually bound to accept, 71, 152, 204 contract for delivery by, 275 delivery by, under Sale of Goods Act, 204, 275 part-payment, 275 price payable by, 296

## INSURANCE

sea transit, in cases of, 211, seller's duty as to, 211-212

**INTENTION** parties, of, principles for ascertaining, 65 property, to transfer, 28, 36, 38, 62

**INTERNATIONAL SALES** outside Convention, 397 within Convention, 401

## **INTERPROVINCIAL SALES**, 395

**INTEREST** price on, liability to pay, 404

## INVALID CONTRACTS, 89, 314

## JURA IN PERSONAM, 28

## JURA IN REM, 28

**JUS DISPONENDI**, 86 meaning of, 86 reservation of, 86

**LAND** excluded from "goods," 10, 14-18 sale of things growing on, 14

**LEASEHOLDS** goods, distinguished from, 14

**LEGALITY**, contract of sale, of, 43

#### LETTERS OF CREDIT, 197, 233

**LEX ACTUS** Proper law of contract, as, 399

LEX SITUS Proper law of contract, as, 399

LIEN carrier, of. *See* CARRIER seller, of. *See* UNPAID SELLER'S LIEN

LIQUIDATED DAMAGES non-delivery, in action for, 349

penalty, distinguished from, 301, 349, 355, 388 warranty, in relation to breach of, 349

## LOST VOLUME, 310

## MANUFACTURER

liability to buyer of, 380-382 warranties by, 380

## MARKET

available, meaning, 303 lack of, effect on measure of damages, 309 overt, sale in, 400 price, rule for measure of damages, 182, 208, 215, 302

## MARKET OVERT

defined, 127 sale in, 400

## MARKET PRICE

ascertainment of, time for, 308 exclusion of, 309 measure of damages, as, 309 non-delivery, relevance of, in action for, 305 relevant date of, in action for non-delivery, 308 test, 309 warranty of quality, relevance of, in action for breach of, 314

MEASURE OF DAMAGES. See DAMAGES

MEASURING

contracts involving, 75

## MENTAL INCOMPETENCY

person suffering from, sale to, 31

## MERCANTILE AGENT

definition of, 109, 113 disposition by, 115 relevance of good faith to, 113 possession of, 120 sale by, in ordinary course of business, 113

## MERCHANTABLE QUALITY

implied condition as to, 159
content of, 170
exclusion of, 175
meaning of, 177
sale by sample, implied condition of, in, 159, 185
when goods should be of, 159, 177

## MISREPRESENTATION

action for, 357, 364 effect of, 132, 252, 357, 364 exclusion of undertakings, in relation to, 357 fraudulent, 132, 252, 364, 374

## **MISREPRESENTATION** — continued

innocent, 23, 120, 132, 223, 252 effect of, 315 mistake, as cause of, 132 negligent, 134, 316, 337, 365, 380 remedies for, 124, 133 *see also* FRAUD; FRAUDULENT MISREPRESENTATION; INNOCENT MISREPRESENTATION; NEGLIGENT MISREPRESENTATION

## MISTAKE,

contents of contract, as to, 37 effect of, 132 identity of party, 34 kinds of transaction, as to, 37

## MITIGATION OF DAMAGES

duty as to, 309, 312, 351

## MIXED GOODS

delivery of, effect of, 203, 321 meaning of, 203

## MONEY

consideration, as. *See* PRICE whether goods, 21 recovery of, at common law, 353

**MORTGAGE** sale, distinguished from, 13

## NECESSARIES

definition of, 31 infant, supplied to, 31

## NEGLIGENCE

action for, 340, 363-367 estoppel by, 111 extent of liability for, 342, 365 irrelevance of to liability under implied condition as to fitness for purpose, 356

## NEGLIGENT MISREPRESENTATION

effect of, 134, 316, 337, 365, 380

# **NEGOTIABLE INSTRUMENT** goods, distinguished from, 14

payment by, 233

## NEMO DAT QUOD NON HABET, 107

## NON-ACCEPTANCE

available model, relevance of, in action for, 219-220 damages for, measure of damages for, 208, 219-220 mitigation of damages for, 312 when action maintainable, 294, 324

## NON-DELIVERY

action for, 339, 343 measure of damages for, 302, 343

## **NON-EXISTENT GOODS**, 58

## NOTICE

actual or constructive, 117 assignment, of, 116-117 buyer, to, 201, 211 deliverable state, of, 201, 216 onus of proving, 117-118 what is, under Factors Act, 116-118

## NOVATION

assignment, distinguished from, 25, 387, 392

## NUNAVUT

law in, 1, 3, 5

#### OFFER

acceptance of, 219 bid at auction as, 358 correspondence with acceptance and, 358 mistake as to contracts of, 358

## **OWNERSHIP**

absolute, 91 acceptance, connection with, 97 apparent, seller with, 109 seller, of, acts inconsistent with, 223 transfer of, 10, 91

## PART OWNER

sale by one to another, 9

## **PART PAYMENT**, 275, 355

#### PARTIES

agreement between, as to risk, 362, 373 capacity of, 381, 397 drunkards, 31 infant, 31 mental incompetency, 31

PASSING OF PROPERTY

See TRANSFER OF PROPERTY

## PAYMENT

agent, to, 86 buyer's duty as to, 36 breach of duty of, remedy for, 295, 299, 385 commercial letter of credit, by, 197, 233 credit, on, 233, 235 credit card, by, 233, 235 delivery and, 66, 207 financing of, 236 instalments, in, 236, 245 methods of, 233 non-payment, action for, 294 what is recoverable in, 297 part-payment, effect of, 42, 236, 317, 354, performance of obligation as to, 295, 299, 385 place of, 232 statutory provisions as to, 271 time of, 290 see also PRICE

## PENALTY

liquidated damages, distinguished from, 301, 349, 355, 388

## PERFORMANCE

bond, 197, 234 impossibility of, 52, 208, 255, 265 specific, 294, 316, 319, 351 vicarious, 392,

## PERISH

scope of, 59

#### PERISHABLE GOODS

re-sale of, on buyer's default, 57

## PERISHING OF GOODS

effect of, 57

PERSONAL PROPERTY SECURITY ACT, 86, 103, 118, 291

## PLACE

delivery, of, 42, 68, 199, 208 examination, for, 190, 216, 219-224 payment, of, 232, 235

## PLEDGE

buyer in possession, by, under Factors Act, 120, 123 mercantile agent, by, 120, 126 seller in possession, by, under Factors Act, 120. 121

## POSSESSION

buyer in, sale or pledge by, 120 effect of, 126 who is, 270, 275 buyer or his agent, of, affecting seller's lien, 209.276 buyer's right to, 315, 327, 369 constructive, 123, 221, 273 contracts passing, 29, 322 lien, importance of, in, 272 meaning of, 12, 13, 42 mercantile agent, by, 113 property, distinguished from, 12, 13, 42 quiet, 325, 333 relevance in tort actions, 317 resumption of, right to, by stoppage in transitu, 317 right to retain, 273 seller in, sale or pledge by, 78, 226, 279 symbolic, 273 transfer of, by delivery to carrier, 276, 328, 373 voluntary transfer of, 125, 195

## POTENTIAL PROPERTY

## POWERS OF SALE, 126

## PRICE

action for, 208 what is recoverable in, 299 ascertainment of, 75 assignment of, 75, 387 breach of duty to pay, remedy for, 295 buyer's right to set-off against, 297 foreign currency, when in, 231, 298 freedom to determine, 75, 231, 387 money, must be expressed in, 113, 231 neglect to pay, action for, 295, 301 open, 39 payment of, buyer's duty as to, 10 instalments, in, 65, 81 methods of, 233 place of, 232, 235 reservation of property until, 65 seller's lien, effect of on, 272 statutory provisions as to, 272, 276, 280 time for, 23, 231, 274, 295 when due, 231, 299 performance of obligation as to, 232, 236, reasonable, 304 recovery of, by buyer, 331 refused to pay, action for, 234, 295

## **PRICE** — continued

resale, on, agreement fixing, 225 reservation of property by seller until payment of, 65 subsequently to be settled, 75, 299 third party, fixed by, 78, 80, 91 valuation, fixed by third party, 26, 39

## PRINCIPAL AND AGENT

saving for law of, 6, 31

PRIVITY, 368, 377, 381

#### PROPER LAW

contract, of, 397-400 *lex actus*, as, 399 *lex situs*, as, 399

## PROPERTY

compulsory transfer of, 243, 361 conflict of laws, passing of in, 395 definition of, 9 deliverable state, 66, 68-75, 81, 201, 262 future goods, in, 48, 55 general, 91 intention of parties as to, 131, 138-140 invalid contracts and, 89, 314 meaning of, 9 passing of, effect on right to reject, 322, 356, 359, 373, 400 possession, right to, distinguished from, 10, 48, 66 potential, 51 price, consideration for, as, 95 relevance to tort actions, 317 risk, connection with, 210, 255 prima facie goes with, transferred with, 306, 334, 343 statutory exceptions, 260 sale, as essence of, 91 specific goods, in, 244-246, 262-264 statutory definition of, 9 title, contrasted with, 9-10 transfer of, obligation as to, 10-14, 61 acceptance of goods, effect on, 63 express exclusion of, 99 implied exclusion of, 98 see also TRANSFER OF PROPERTY unascertained goods, in, 155, 229, 245, 263

## **PROTECTION OF BORROWERS**, 236

PURCHASE MONEY SECURITY INTEREST, 291-292

## PURPOSE

PURCHASER

innocent, 108-119, 279, 291

goods, fitness for, 160 merchantable quality, in relation to, 177 particular, goods required for, seller's knowledge that, 131, 166, 345

## QUALITY

implied conditions as to, 72, warranty of, breach of, action for, 70 measure of damages in, 302 sub-sales, effect of, on, 334, 339 wrong, delivery of, 201

## QUALITY OF GOODS

exclusion of undertakings as to, 150 express undertakings as to, 129 fitness for purpose, implied condition as to, 160 contents of, 170 exclusion of, 175 implied undertakings as to, 147 meaning of, 17 merchantable, 159, 177 sample, in sale by, 150 statutory provisions as to, 256 waiver of undertakings as to, 239

#### QUANTITY

wrong, delivery of, 201

## QUASI-CONTRACT OF SALE

sale, distinguished from, 314

## QUIET POSSESSION

implied warranty as to, 101

## "REAL" REMEDIES

nature of, 124, 269 outside Sale of Goods Act, 124 scope of, 124, 270 under Sale of Goods Act, 124, 269 when they arise, 124, 269-270

## REASONABLE

price, 31, 39, 304 time, 76-80, 125, 175, 186

## RECTIFICATION, 96, 362

#### **REJECT: REJECTION**

approval or sale or return, on, 76

## **REJECT: REJECTION** — continued

buyer, by, 77 condition, for breach of, 324 effect of, 320 goods, of, 320 right of, terminating with passing of property, 321 loss of, 322 stoppage *in transitu*, effect of, on, 378 waiver, effect of on, 322 wrongful, effect of, 327

## **RELIANCE BY BUYER**

seller's skill or judgment, on, 160, 166-168, 194

## REMEDIES

buyer, of, 319 character and quality of goods, in respect of, 129 common law and equitable, 319, 353-367 delayed delivery, in respect of, 328, 348 misrepresentation, for, 132, 252, 357, 364 non-acceptance, action for, 219-220 measure of damages in, 208, 219-220 non-delivery, in respect of, 25, 53, 195, 200 personal, for breach of contract, 293 price, action for, 208 "real," 269 lien, 270 nature, 272 personal remedies, distinguished from, 293 resale, 270-271 scope, 269, 303 seller, of, 269 stoppage in transitu, 270-271 statutory, 368 under Sale of Goods Act, 320

#### **REMOTENESS OF DAMAGE, 330, 366,**

general principles of, 330 in particular instances, 366

**REPLEVIN** claim for, 63, 92, 317, 352, 366

## REPRESENTATIONS

construction of, 65 contractual terms and collateral contracts, contrasted with, 139 estoppel by, 111, 132 nature of, statutory provisions, as to, 132

## REPUDIATION

waiver on abandonment, distinguished from, 241 wrongful, effect of on seller as remedies, 243 when constituting, 243

## RESALE

common law, at, 288 delayed delivery, relevance of to action for, 328, 348 effects of, 288 exercise of right of, 280 mitigation of damages, as, 309, 351 non-delivery, relevance of to action for, 319 right of, distinguished from power, 286 remedy of unpaid seller, as, 286 Sale of Goods Act, under, 291 unpaid seller, by, 280 warranty of quality, relevance in action for breach of, 332-339, 349

## RESCISSION

agreement of parties, by, 356 availability of, 356 buyer, by, for misrepresentation, 356 equitable remedy of, 356

## **RESERVE PRICE**

auctions with or without, 383

### **RES EXTINCTA**, 58

## **RES PERIT DOMINO**, 256

## **RESTITUTIO IN INTEGRUM**, 314-316, 357

### **RETENTION OF GOODS**

acceptance by, 227 ownership, acts inconsistent with, as, 223

#### RETURN

sale or, 227

#### **RIGHT TO SELL**

implied condition as to, 92 acceptance of goods, effect on, 97 express exclusion of, 99 implied exclusion of, 98 scope of, 97

## RISK

accidental loss of goods before passing of, 256 agreement, effect of on, 255, 257

RISK — continued bailee, where seller or buyer, 257 c.i.f. sale, passing of, in, 257-258 common law as to, 255 delay by seller, on, 260 determination of, 266 frustration, compared with, 267 goods shipped f.o.b., of , 257-260 meaning, 256 *prima facie* passes with property, 306 sea transit, in cases of, 211 statutory provisions as to, 256 transferred with property, 256 statutory exceptions, 260 United Nations Convention, under, 395

#### **RULES OF COMMON LAW**

meaning of in context of sale of goods, 1, 353

#### SALE

absolute contracts of, 23 agreement to sell and, 26, 28-30 approval, on, 76 auction. See AUCTION SALE bulk, 44 buyer in possession, by, 120 effect of. 126 Canadian Statutes on, 136, 267 chance of, 53, 99, 310 comparative table of statutes on, 3-4 conditional contracts of, 53, 66, 71 consignment, on, 83, 110, 203 contingency, on, 52-53, 148, 261, 263 contract, as, 116 contract of, 204-206, 231-236, 255 description, by, meaning, 1-2 merchantable quality, implied condition as to, in, 177 direct, 2, 24, distinguished from agency, 7, 11, 109-116 agreement to sell, 9, 28, 47, 233, 262, 324 bailment, 12, 91 exchange, 21, 40 gift, 10, 33 market overt, in, 127, 400 mercantile agent, by, 113 origins of law of, 1, 31 powers of, common law and statutory, 126 proprietary effect of, 29, 62, 398 quasi-contracts of, 314 return, or, 73, 76, 114, 125 sample, by, meaning, 150, 185, 188-190, 250 scope and sources of, 1, 31 seller in possession, by, 108, 120-122 seller without title, by, 116 transfer of property, as, 10, 12, 61

unconditional, 66 voidable title, under, 118

## SALE OF GOODS

absolute contract of, 23 assignment of contract of, 14, 25, 49 Canadian statutes on, 136, 138, 267 comparative table of statutes on, 3-4 conditional contract of, 53, 66, 71 contingent, 52, 55 contract of, 159, 324, 353, 356 distinguished from other contracts, 9 features of, 10 financing of, 13, 236 grain, of, 13, 88, 128 international, 395 interprovincial, 395 mercantile agent, by, 113 non-owner, by, 1, 107, 113 on consignment, 83, 110, 203 powers of, 126 proprietary effects of, 29, 62, 398 scope and sources of law of, 1, 31 sugar beet, of, 1, 128 U.N. Convention on International, 207, 402 without title, 107

#### SALE OF GOODS ACT

buyer's remedies under, 101, 246, 316 code of law, as, 7 contracts omitted from, 7, 149 exclusion of provisions, 30, 99, 150 sales without title under, 107 special statutory or common law powers of sale, saving for, 126 terms implied under, 148, 159, 247 unpaid seller, real remedies of, under, 269

## SALE ON APPROVAL. See SALE

## SALE ON CONSIGNMENT, 203-204

## SALE OR RETURN. See SALE

## SAMPLE

comparison of bulk with, 190 correspondence of goods with, 150, 188, 381 merchantability of bulk in sale by, 321 sale by, 150, 185, 188 application of Sale of Goods Act, 188 implied conditions in, 189

## SECURITY AGREEMENT, 291

## SECURITY INTEREST

defined, 236, 291, perfection of, 292 personal property in, legislation on, 291, 390

## SELLER

agent or bailee, lien of, as, 125, 277 breach of contract by, 286, 293 breach of warranty by, 324, 339 contract of carriage, duty of to make, 142, 211, 404 deliver, duty to, 208 insure goods, duty of, to, 258 lien of, 272-278 meaning of, 7, 9 mitigation of damages by, 309, 312 notify buyer in f.o.b. contract, duty of, to, 196, 212, 296 payment of, 293, 296 personal remedies of, 293 possession, in, sale by, 108, 113 purchases by at auctions, 385 "real" remedies of, 269 remedies of against third parties, 381, 388, 400 right of disposal of, 86, 276 right to sell, implied condition as to, 10, 354 acceptance of goods, effect on, 77, 229, 245 express exclusion of, 99 implied exclusion of, 98 scope of, 97 stoppage in transitu, by, 214, 270, 400 third party, liability to, of, 97, 373 unpaid, rights of against goods, 269 voidable title, with, disposition by, 118

## SELLER'S LIEN

See UNPAID SELLER'S LIEN

## SERVICES

goods, distinguished from, 16, 20-21

**SET-OFF** buyer's right to, 219, 297

## SEVERABLE CONTRACT

instalment deliveries, 323 lots at an auction, 267

## SHARES

goods, distinguished from, 11, 14, 36

**SHIPPING DOCUMENTS**, 211-214, 226, 234

## SPECIFIC GOODS

ascertained goods, distinguished from, 52, 53, 150, 244 defined, 53 destruction of, 262 discussed, 53 frustration of contract for sale of, 262 future, 55 passing of property in, 296, 359 perishing before sale complete, 23, 56, 57, 262 specific performance of contract for sale of, 316, 319, 351, 371 unascertained goods distinguished from, 53, 56

## SPECIFIC PERFORMANCE

non-delivery, in cases of, 351 remedy of, 351 specific or ascertained goods, on sale of, 316, 319, 351, 371

## STATUTE OF FRAUDS

effect in Canada, 240, 379, 401 misrepresentations, in respect of, 379 requirements of, 401

## STATUTES

application of other, 6, 191, 270 Canadian, 136, 267 powers of sale under, 126 unfair trade practices, on, 370 warranty by manufacturer under, 132

## STATUTORY LIABILITY

seller of, 94, 150

## STOLEN GOODS

revesting of property in owner of, on conviction of thief, 108

## STOPPAGE IN TRANSITU

exercise and effects of, 214, 271, 280 origins of, 280 remedy of unpaid seller, as, 280 resale after, 286 right of, 286 transit, duration of, 280 unaffected by delivery to carrier, 281 when available, exercisable, 281 lost, 284

STORAGE COSTS, 220, 301, 304

## SUB-SALE

delayed delivery, relevance of to action for, 328, 348 mitigation of damages, by seller, as, 346 non-delivery, relevance of to action for, 301, 339, 343 stoppage *in transitu*, effect of on, 378 unpaid seller's lien, effect of on, 272, 275, 284 warranty of quality, effect of in relation to action for breach of, 324, 339, 348, 365, 380

## SUBSTANTIAL BREACH, 369

SUGAR BEET

effect of sales of, 1, 128

## **SUPERVENING ILLEGALITY** frustration by, 262

## TERMS

certainty of, 39 collateral, 142, 152 collateral, contrasted with collateral contracts, 142 construction of, 37 contractual, contrasted with representations, 91, 134 description, as to, implied, 147 fitness of goods for purpose, as to, implied, 160 fundamental, 26, 101 implication of, 177, 188 implied by custom or tacit agreement, 147, 257 implied by statute, 191, 250 implied under Sale of Goods Act, 147 merchantable quality, as to, implied, 159, 177 contents of, 178 exclusion of, 187 oral, 141, 149 quality and fitness, as to, implied, 158 sale by sample, implied in, 188 settlement of, 37

## TESTING

contracts involving, 235

## THIRD PARTIES

liability of to buyer, 373 position of, 373 remedies of, 374, 377 rights of, common law, at, 380 statute, under, 380 seller, remedies of, against, 378

## TIME

delivery, for, 66, 186, 198 essence, of, 328 payment, for, 66 reasonable, 76, 175

## TITLE

condition, as, 1, 9-10 consideration, as, 95 implied condition as to, 95 nature of obligation as to, 95 property, distinguished from, 9-10 relevance to tort action, 313, 316, 317, 330 remedies for breach of duties as to, 293 sale by seller without, 107 scope of obligation as to, 107 seller, of, 128 transfer of. See TRANSFER OF TITLE voidable, sale under, 108

## TORT

actions by buyer in, 316, 317, 330, 364 action by seller in, 299, 313, 317

## TORTIOUS LIABILITY

seller, of, 365-366 third parties, of, 373

## TRADE-IN, 63, 117

## TRADING STAMPS

whether goods, 14, 22

## TRANSFER OF PROPERTY BETWEEN SELLER AND BUYER

compulsory, 243 conditional contract of sale, in, 53, 71 consequences of, 279, 296 effects of, 354, 395 future goods, of, 48 in goods, by or to infant, 31 right of disposal, reservation of, as affects, 65 sale, on, 79, 125 on approval or return, 73, 76, 125 specific goods, of, 62 time of, presumed, 62 unconditional contract of sale, in, 66

#### **TRANSFER OF RISK**

*prima facie* passes with property, 306 *see also* RISK.

## TRANSFER OF TITLE

general rules as to, 87

**TRANSIT** See Stoppage in Transitu

**TRESPASS** action by buyer for, 373 action by seller for, 273, 317

## UNASCERTAINED GOODS

ascertained goods, distinguished from, 53, 56 generally, 67 genus, as a, meaning of, 54-56 passing of property in, 56, 63, 67 seller's lien, and, 274, 275 specific goods, distinguished from, 52-56 unidentified part of a specified whole, 54

## **UNCONSCIONABLE TRANSACTIONS** legislation on, 40

meaning of, 40, 360

**UNCONSCIONABILITY**, 23, 34, 40, 371

UNDUE INFLUENCE, 23, 237, 313, 360

**UNFAIR TRADE PRACTICES**, 370, 377, 382,

## UNITED NATIONS

Convention for the international sale of goods, 395

## UNPAID SELLER

apart from Sale of Goods Act, 88 defined, 232, 269 legal powers of, 269 lien of, 209 non-acceptance, action for, by, 187 personal remedies of, 269 price, action for, by, 232 "real" remedies of, 269 resale, right of, 215, 224 rights against goods, 209 stoppage *in transitu*, right of, 210 under Sale of Goods Act, 88 where agent or bailee, 209, 220, 257

## **UNPAID SELLER'S LIEN**

arising, when, 209 effects of, 210, 269 lost, how, 210 nature of, 269 provisions of Sale of Goods Act as to, 88 resale after, 215, 244 seller agent or bailee, where, 209, 220, 257

## **UNSOLICITED GOODS**, 33

**VALUATION** agreement to sell goods at, 26, 39

VALUER liability of, 39-40

VARIATION agreement of parties, by, 156, 240 contract of sale, of, 241 waiver, contrasted with, 24

## VICARIOUS PERFORMANCE, 392

## VIENNA CONVENTION, 395

## **VOIDABLE TITLE**

sale under, 118

#### WAIVER

common law, at, 239 effect of, 243 estoppel, contrasted with, 240 exclusion, distinguished from, 247 express, effect of on right to reject, 246 repudiation and abandonment distinguished from, 241 rights of parties as to, 246, 247 right to reject, of, 246 acceptance of goods as, 244, 245 Sale of Goods Act, as affected by, 243 variation, contrasted with, 240

## WAREHOUSE

goods in, delivery of, 82, 114, 122, 196

## WARRANTY

breach of, action for, 219 character and quality of goods, breach of, action for, 129 condition, distinguished from, 244 historical development, 243 implied, quiet possession, as to, 101, 325 freedom from encumbrances, as to, 101 manufacturer, of, under statute, 139 meaning of, 243 Sale of Goods Act, under, 243 statutory provisions, as to, 243, 247

## WEIGHING

contracts involving, 75-76

WITHOUT RESERVE auction sale, in, 384-386

**WORK AND MATERIALS** sale distinguished from contract for, 18

WRITING

contract in, 24, 38, 41, 392, 401, need for, 24 substitutes for, 38, 41