

Reprint  
as at 14 July 2017



## Contract and Commercial Law Act 2017

Public Act 2017 No 5  
Date of assent 1 March 2017  
Commencement see section 2

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Justice and the Ministry of Business, Innovation, and Employment.**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Contract and Commercial Law Act 2017.

**2 Commencement**

This Act comes into force immediately after the expiry of the 6-month period that starts on the date of Royal assent.

**Part 1**

**Preliminary provisions**

**3 Purpose**

The purpose of this Act is to re-enact, in an up-to-date and accessible form, certain legislation relating to—

- (a) contracts; and
- (b) the sale of goods; and
- (c) electronic transactions; and
- (d) the carriage of goods; and
- (e) various other commercial matters, including mercantile agents and bills of lading.

**4 Revision Act**

- (1) This is a revision Act for the purposes of section 35 of the Legislation Act 2012 (which provides that revision Acts are not intended to change the effect of the law, except as expressly provided).
- (2) Schedule 2 expressly provides for the minor amendments that have been made under section 31(2)(i) of the Legislation Act 2012.
- (3) The Acts or parts of Acts revised by this Act are specified in section 345.
- (4) Schedule 3 sets out where the corresponding provisions of each revised Act can be found in this Act on its commencement. The purpose of the schedule is to assist readers. It must not be interpreted as a definitive or ongoing guide to how the provisions correspond.

## 5 Overview of this Act

### *Preliminary matters*

- (1) Part 1 provides for preliminary matters.

### *Contracts*

- (2) Part 2 relates to contracts, including matters relating to—
- (a) contractual privity (provisions that permit a person who is not a party to a deed or contract to enforce a promise made in it for the benefit of that person) (*see* subpart 1):
  - (b) contractual mistakes (*see* subpart 2):
  - (c) contractual remedies (in particular, provisions relating to damages for misrepresentation and to cancellation) (*see* subpart 3):
  - (d) frustrated contracts (*see* subpart 4):
  - (e) illegal contracts (*see* subpart 5):
  - (f) contracts entered into by minors (persons under the age of 18 years) (*see* subpart 6):
  - (g) certain stipulations in contracts not being of the essence of contracts (*see* subpart 7).

### *Sale of goods*

- (3) Part 3 relates to the sale of goods, including matters relating to—
- (a) the formation of a contract of sale (*see* sections 120 to 130):
  - (b) conditions and warranties (for example, implied conditions or warranties as to quality or fitness for a particular purpose) (*see* sections 131 to 142):
  - (c) when ownership of the goods is transferred (*see* subpart 2):
  - (d) the duties of the seller and the buyer and the delivery of the goods (*see* subpart 3):
  - (e) the rights of an unpaid seller (*see* subpart 4):
  - (f) remedies for a breach of a contract, including a remedy for a breach of warranty (*see* subpart 5):
  - (g) supplementary matters, including an exclusion where the Consumer Guarantees Act 1993 applies (*see* subpart 6):
  - (h) giving effect to the United Nations Convention on Contracts for the International Sale of Goods (*see* subpart 7).

### *Electronic transactions*

- (4) Part 4 relates to electronic transactions, including matters relating to—
- (a) improving certainty in relation to electronic information and electronic communications (*see* subpart 2):



- (b) how legal requirements apply to electronic transactions (for example, requirements to give information in writing and to provide access to information) (*see* subpart 3).

*Other commercial matters*

- (5) Part 5 relates to various other commercial matters, including matters relating to—
  - (a) the liability of carriers for the loss of or damage to goods carried within New Zealand (*see* subpart 1):
  - (b) mercantile agents (*see* subpart 2):
  - (c) bills of lading and other shipping documents (*see* subpart 3):
  - (d) a power for a shipowner to enter and land goods, and liens for freight (*see* subpart 4):
  - (e) the enforcement of a lien for work done (*see* subpart 5).

*Miscellaneous provisions*

- (6) Part 6 relates to repeals, consequential amendments, and miscellaneous provisions.
- (7) This section is only a guide to the general scheme and effect of this Act.

**6 Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

**7 Status of examples**

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

**8 Act binds the Crown**

- (1) This Act binds the Crown.
- (2) However, the following do not bind the Crown:
  - (a) subpart 2 of Part 5 (mercantile agents):
  - (b) subpart 4 of Part 5 (power for shipowner to enter and land goods, and lien for freight).

Compare: 1944 No 20 s 4(2); 1950 No 54 s 5(2), Schedule 1; 1969 No 41 s 3; 1970 No 129 s 4; 1977 No 54 s 3; 1979 No 11 s 3; 1979 No 43 s 4; 1982 No 132 s 3; 1994 No 60 s 3; 2002 No 35 s 7

## Part 2

### Contracts legislation

#### 9 Interpretation

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

**court**—

- (a) means, in relation to any matter, the court, tribunal, or arbitral tribunal by or before which the matter falls to be determined; but
- (b) in subpart 6, has the meaning set out in section 85

**disposition** means—

- (a) a conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity:
  - (b) the creation of a trust:
  - (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, or other right, estate, or interest in or over any property, whether at law or in equity:
  - (d) the release, discharge, surrender, forfeiture, or abandonment, at law or in equity, of any debt, contract, or thing in action, or of any right, power, estate, or interest in or over any property:
  - (e) the exercise of a general power of appointment in favour of any person other than the donee of the power:
  - (f) a transaction that a person enters into with intent to diminish, directly or indirectly, the value of the person's own estate and to increase the value of the estate of any other person.
- (2) For the purpose of paragraph (d) of the definition of disposition, a debt, contract, or thing in action, or a right, power, estate, or interest in or over any property, must be treated as having been released or surrendered when it has become irrecoverable or unenforceable through the lapse of time.

Compare: 1944 No 20 s 2; 1970 No 129 ss 2, 6(2); 1977 No 54 ss 2, 8(3); 1979 No 11 s 2; 1982 No 132 s 2

#### Subpart 1—Contractual privity

#### 10 Purpose

The purpose of this subpart is to permit a person who is not a party to a deed or contract to enforce a promise made in it for the benefit of that person.

Compare: 1982 No 132 Long Title

#### 11 Interpretation

In this subpart, unless the context otherwise requires,—

**beneficiary**, in relation to a promise to which section 12 applies, means the person described in section 12(1)

**benefit** includes—

- (a) any advantage; and
- (b) any immunity; and
- (c) any limitation or other qualification of—
  - (i) an obligation to which a person (other than a party to the deed or contract) is or may be subject; or
  - (ii) a right to which a person (other than a party to the deed or contract) is or may be entitled; and
- (d) any extension or other improvement of a right or rights to which a person (other than a party to the deed or contract) is or may be entitled

**contract** includes a contract—

- (a) made by deed or in writing, orally, or partly in writing and partly orally;  
or
- (b) implied by law

**promisee**, in relation to a promise to which section 12 applies, means a person who is both—

- (a) a party to the deed or contract; and
- (b) a person to whom the promise is made or given

**promisor**, in relation to a promise to which section 12 applies, means a person who is both—

- (a) a party to the deed or contract; and
- (b) a person by whom the promise is made or given.

Compare: 1982 No 132 s 2

## **12 Deed or contract for benefit of person who is not party to deed or contract**

- (1) This section applies to a promise contained in a deed or contract that confers, or purports to confer, a benefit on a person, designated by name, description, or reference to a class, who is not a party to the deed or contract.
- (2) The promisor is under an obligation, enforceable by the beneficiary, to perform the promise.
- (3) This section applies whether or not the person referred to in subsection (1) is in existence when the deed or contract is made.

Compare: 1982 No 132 s 4

**13 Section 12 does not apply if no intention to create obligation enforceable by beneficiary**

Section 12 does not apply to a promise that, on the proper construction of the deed or contract, is not intended to create, in respect of the benefit, an obligation enforceable by the beneficiary.

Compare: 1982 No 132 s 4

**14 Variation or discharge of promise may require beneficiary's consent**

- (1) A promise to which section 12 applies and the obligation imposed by that section may not be varied or discharged without the consent of a beneficiary if—
- (a) the position of the beneficiary has been materially altered by the reliance of the beneficiary or any other person on the promise; or
  - (b) the beneficiary has obtained against the promisor judgment on the promise; or
  - (c) the beneficiary has obtained against the promisor the award of an arbitral tribunal on a submission that relates to the promise.
- (2) Subsection (1)(a) applies whether or not the beneficiary or other person has knowledge of the precise terms of the promise.
- (3) For the purposes of subsection (1)(b) and (c),—
- (a) an award of an arbitral tribunal or a judgment must be treated as having been obtained when it is pronounced even if—
    - (i) some act, matter, or thing needs to be done to record or perfect it; or
    - (ii) on application to a court or on appeal, it is varied;
  - (b) if an award of an arbitral tribunal or a judgment is set aside on application to a court or on appeal, the award or judgment must be treated as having never been obtained.
- (4) This section is subject to sections 15 and 16.

Compare: 1982 No 132 s 5

**15 Variation or discharge by agreement or in accordance with express provision**

Nothing in this subpart prevents a promise to which section 12 applies or an obligation imposed by that section from being varied or discharged at any time—

- (a) by agreement between the parties to the deed or contract and the beneficiary; or
- (b) by any party or parties to the deed or contract if—
  - (i) the deed or contract contained, when the promise was made, an express provision to that effect; and

- (ii) the provision is known to the beneficiary (whether or not the beneficiary has knowledge of the precise terms of the provision); and
- (iii) the beneficiary had not materially altered the beneficiary's position in reliance on the promise before the provision became known to the beneficiary; and
- (iv) the variation or discharge is in accordance with the provision.

Compare: 1982 No 132 s 6

## **16 Court may authorise variation or discharge**

- (1) This section applies if—
  - (a) the variation or discharge of a promise or an obligation is prevented by section 14(1)(a); or
  - (b) it is uncertain whether the variation or discharge of a promise or an obligation is prevented by section 14(1)(a).
- (2) A court may, on application by the promisor or promisee and if it is just and practicable to do so, make an order authorising the variation or discharge of the promise or obligation or both.
- (3) The order may be made on the terms and conditions that the court thinks fit.
- (4) Subsection (5) applies if a court—
  - (a) makes an order under this section; and
  - (b) is satisfied that the beneficiary has been injuriously affected by the reliance of the beneficiary or any other person on the promise or obligation.
- (5) The court must make it a condition of the order that the promisor pay to the beneficiary, by way of compensation, the sum that the court thinks just.

Compare: 1982 No 132 s 7

## **17 Enforcement by beneficiary**

- (1) The obligation imposed on a promisor by section 12 may be enforced by the beneficiary as if the beneficiary were a party to the deed or contract.
- (2) Relief in respect of the promise may not be refused on the ground—
  - (a) that the beneficiary is not a party to the deed or contract in which the promise is contained; or
  - (b) that, as against the promisor, the beneficiary is a volunteer.
- (3) In subsection (2), **relief** includes damages, specific performance, or an injunction.

Compare: 1982 No 132 s 8

**18 Availability of defences**

- (1) This section applies only if, in a proceeding brought in a court, a claim is made in reliance on this subpart by a beneficiary against a promisor.
- (2) The promisor has available, by way of defence, counterclaim, set-off, or otherwise, any matter that would have been available to the promisor—
  - (a) if the beneficiary had been a party to the deed or contract in which the promise is contained; or
  - (b) if—
    - (i) the beneficiary were the promisee; and
    - (ii) the promise to which the proceeding relates had been made for the benefit of the promisee; and
    - (iii) the proceeding had been brought by the promisee.
- (3) However, a set-off or counterclaim against the promisee is available under subsection (2) against the beneficiary only if the subject matter of the set-off or counterclaim arises out of, or in connection with, the deed or contract in which the promise is contained.
- (4) In a counterclaim brought under subsection (2) or (3) against a beneficiary,—
  - (a) the beneficiary is not liable on the counterclaim, unless the beneficiary elects, with full knowledge of the counterclaim, to proceed with the beneficiary's claim against the promisor; and
  - (b) if the beneficiary so elects to proceed, the beneficiary's liability on the counterclaim may not exceed the value of the benefit conferred on the beneficiary by the promise.
- (5) Subsections (2) and (3) are subject to subsection (4).

Compare: 1982 No 132 s 9

**19 This subpart does not apply to promises, contracts, or deeds governed by foreign law**

This subpart does not apply to any promise, contract, or deed, or any part of a promise, contract, or deed, that is governed by a law other than New Zealand law.

Compare: 1982 No 132 s 13A

**20 Savings**

Nothing in this subpart limits or affects—

- (a) any right or remedy that exists or is available apart from this subpart; or
- (b) subpart 2 of Part 2 of the Property Law Act 2007 or any other enactment that requires any contract to be in writing or to be evidenced by writing; or
- (c) the law of agency; or

(d) the law of trusts.

Compare: 1982 No 132 s 14(1)

## Subpart 2—Contractual mistakes

### 21 Purpose of this subpart

- (1) The purpose of this subpart is to mitigate the arbitrary effects of mistakes on contracts by giving courts appropriate powers to grant relief in the circumstances mentioned in section 24.
- (2) These powers—
  - (a) are in addition to, and not in substitution for, existing powers to grant relief in respect of matters other than mistakes; and
  - (b) must not be exercised in a way that prejudices the general security of contractual relationships.

Compare: 1977 No 54 s 4

### 22 This subpart to be code

- (1) This subpart has effect in place of the rules of the common law and of equity governing the circumstances in which relief may be granted, on the grounds of mistake, to—
  - (a) a party to a contract; or
  - (b) a person claiming through or under a party to a contract.
- (2) Subsection (1) applies except as otherwise expressly provided in this subpart.
- (3) Nothing in this subpart affects—
  - (a) the doctrine of *non est factum* (it is not my deed):
  - (b) the law relating to the rectification of contracts:
  - (c) the law relating to undue influence, fraud, breach of fiduciary duty, or misrepresentation, whether fraudulent or innocent:
  - (d) subpart 4 (frustrated contracts):
  - (e) subpart 5 (illegal contracts):
  - (f) sections 74A and 74B of the Property Law Act 2007 (recovery of payments made under mistake).
- (4) Nothing in this subpart deprives a court of the power to exercise its discretion to withhold a decree of specific performance in any case.

Compare: 1977 No 54 s 5

### 23 Interpretation

- (1) In this subpart, unless the context otherwise requires, **mistake** means a mistake, whether of law or of fact.

- (2) For the purposes of this subpart, a mistake in the interpretation of a document is a mistake of law.
- (3) Subsection (2)—
  - (a) does not limit the meaning of the term mistake of law; but
  - (b) is subject to section 25.
- (4) There is a contract for the purposes of this subpart where a contract would have come into existence but for circumstances of the kind described in section 24(1)(a).

Compare: 1977 No 54 s 2

## **24 Relief may be granted if mistake by one party is known to another party or is common or mutual**

- (1) A court may grant relief under section 28 to a party to a contract if,—
  - (a) in entering into the contract,—
    - (i) the party was influenced in the party's decision to enter into the contract by a mistake that was material to that party, and the existence of the mistake was known to the other party or to 1 or more of the other parties to the contract; or
    - (ii) all the parties to the contract were influenced in their respective decisions to enter into the contract by the same mistake; or
    - (iii) the party and at least 1 other party were each influenced in their respective decisions to enter into the contract by a different mistake about the same matter of fact or of law; and
  - (b) the mistake or mistakes resulted, at the time of the contract,—
    - (i) in a substantially unequal exchange of values; or
    - (ii) in a benefit being conferred, or an obligation being imposed or included, that was, in all the circumstances, a benefit or an obligation substantially disproportionate to the consideration for the benefit or obligation; and
  - (c) in a case where the contract expressly or by implication provides for the risk of mistakes, the party seeking relief (or the party through or under whom relief is sought) is not obliged by a term of the contract to assume the risk that that party's belief about the matter in question might be mistaken.
- (2) The relief may be granted in the course of any proceeding or on application made for the purpose.
- (3) For the purposes of subsection (1)(a)(i) and (iii), the other party or other parties must not be a party or parties who have substantially the same interest under the contract as the party seeking relief.

Compare: 1977 No 54 s 6(1)



**25 Mistake does not include mistake in interpretation of contract**

- (1) For the purposes of relief under section 28 in respect of a contract, a mistake, in relation to that contract, does not include a mistake in its interpretation.
- (2) This section applies whether or not an application for relief is made.

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**Example**

A person (**A**) signs an offer under which A states that A personally guarantees that the debts of a company will be paid. The offer is accepted and a contract is formed.

A mistakenly thinks that the offer does not affect A's personal liability.

A has made a mistake in the interpretation of the contract.

The mistake cannot form the basis of an application for relief under section 28.

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Compare: 1977 No 54 s 6(2)(a)

**26 Decision to enter into contract not influenced by mistake if party aware of it**

- (1) For the purposes of relief under section 28 in respect of a contract, the decision of a party to the contract to enter into it is not made under the influence of a mistake if, before the party enters into it and at a time when the party can elect not to enter into it, the party becomes aware of the mistake but elects to enter into the contract despite the mistake.
- (2) This section applies whether or not an application for relief is made.

Compare: 1977 No 54 s 6(2)(b)

**27 Mistake caused by party seeking relief**

The extent to which the party seeking relief (or the party through or under whom relief is sought) caused the mistake is one of the considerations that must be taken into account by the court in deciding whether to grant relief under section 28.

Compare: 1977 No 54 s 7(2)

**28 Nature of relief**

- (1) If, under sections 24 to 26, the court has power to grant relief, the court may make any order that it thinks just.
- (2) In particular, but without limiting subsection (1), the court may do 1 or more of the following things:
  - (a) declare the contract to be valid and subsisting in whole or in part or for any particular purpose:
  - (b) cancel the contract:
  - (c) grant relief by way of variation of the contract:
  - (d) grant relief by way of restitution or compensation.

- (3) The court may, by an order made under this section,—
- (a) vest the whole or any part of any relevant property in a party; or
  - (b) direct a party to transfer or assign the whole or any part of any relevant property to any other party; or
  - (c) direct a party to deliver the whole or any part of the possession of any relevant property to any other party.

- (4) In subsection (3),—

**party** means a party to the proceeding

**relevant property** means real or personal property that was the subject of the contract or was the whole or part of the consideration for the contract.

- (5) An order may be made on the terms and conditions that the court thinks fit.

Compare: 1977 No 54 s 7(3), (5), (6)

### 29 Court may grant relief to person claiming through or under party

If, under sections 24 to 26, the court has power to grant relief to a party to a contract, it may grant relief not only to that party but also to any person claiming through or under that party.

Compare: 1977 No 54 s 7(1)

### 30 Persons who may apply

An application for relief under section 28 may be made by—

- (a) any person to whom the court may grant that relief; or
- (b) any other person if it is material for the person to know whether relief under section 28 will be granted.

Compare: 1977 No 54 s 7(4)

### 31 Rights of third persons not affected

- (1) Nothing in an order made under this subpart invalidates a disposition of property referred to in subsection (2) if the person to whom the disposition was made—

- (a) was not a party to the mistaken contract; and
- (b) had not, at the time of the disposition, notice that the property was the subject of, or the whole or part of the consideration for, a mistaken contract; and
- (c) otherwise acted in good faith.

- (2) The dispositions are—

- (a) a disposition of property by a party to a mistaken contract for valuable consideration:
- (b) a disposition of property made by or through a person who became entitled to the property under a disposition to which paragraph (a) applies.

- (3) Nothing in an order made under this subpart affects subpart 5 of Part 2 of the Property Law Act 2007 (which relates to the assignment of things in action).
- (4) In this section, **mistaken contract** means a contract entered into in the circumstances described in section 24(1)(a).
- (5) *See* section 9 (which defines disposition).  
Compare: 1977 No 54 s 8

### **32 This subpart does not apply to contracts governed by foreign law**

This subpart does not apply to any contract, or any part of any contract, that is governed by a law other than New Zealand law.

Compare: 1977 No 54 s 11A

## Subpart 3—Contractual remedies

### **33 Meaning of cancel**

In this subpart, unless the context otherwise requires, **cancel**, in relation to a contract, means cancel in accordance with sections 36 to 40.

Compare: 1979 No 11 s 2

### **34 Remedy provided in contract**

If a contract expressly provides for a remedy for misrepresentation, repudiation, or breach of contract, or makes express provision for any of the other matters to which sections 35 to 49 relate, those sections have effect subject to that provision.

Compare: 1979 No 11 s 5

## *Damages for misrepresentation*

### **35 Damages for misrepresentation**

- (1) If a party to a contract (**A**) has been induced to enter into the contract by a misrepresentation, whether innocent or fraudulent, made to A by or on behalf of another party to that contract (**B**),—
  - (a) A is entitled to damages from B in the same manner and to the same extent as if the representation were a term of the contract that has been breached; and
  - (b) A is not, in the case of a fraudulent misrepresentation, or of an innocent misrepresentation made negligently, entitled to damages from B for deceit or negligence in respect of the misrepresentation.
- (2) Subsection (1) applies to contracts for the sale of goods—
  - (a) despite sections 197 and 201(2); but
  - (b) subject to section 34.

Compare: 1979 No 11 s 6

*Cancellation***36 Party may cancel contract if another party repudiates it**

- (1) A party to a contract may cancel the contract if, by words or conduct, another party (**B**) repudiates the contract by making it clear that B does not intend to—
- (a) perform B's obligations under the contract; or
  - (b) complete the performance of B's obligations under the contract.
- (2) This section is subject to the rest of this subpart.

Compare: 1979 No 11 s 7(2)

**37 Party may cancel contract if induced to enter into it by misrepresentation or if term is or will be breached**

- (1) A party to a contract may cancel it if—
- (a) the party has been induced to enter into it by a misrepresentation, whether innocent or fraudulent, made by or on behalf of another party to the contract; or
  - (b) a term in the contract is breached by another party to the contract; or
  - (c) it is clear that a term in the contract will be breached by another party to the contract.
- (2) If subsection (1)(a), (b), or (c) applies, a party may exercise the right to cancel the contract if, and only if,—
- (a) the parties have expressly or impliedly agreed that the truth of the representation or, as the case may require, the performance of the term is essential to the cancelling party; or
  - (b) the effect of the misrepresentation or breach of the contract is, or, in the case of an anticipated breach, will be,—
    - (i) substantially to reduce the benefit of the contract to the cancelling party; or
    - (ii) substantially to increase the burden of the cancelling party under the contract; or
    - (iii) in relation to the cancelling party, to make the benefit or burden of the contract substantially different from that represented or contracted for.
- (3) Subsection (1) is subject to the rest of this subpart, but does not limit section 36.

Compare: 1979 No 11 s 7(3), (4)

**38 No cancellation if contract is affirmed**

A party is not entitled to cancel the contract if, with full knowledge of the repudiation, misrepresentation, or breach, the party has affirmed the contract.

Compare: 1979 No 11 s 7(5)

**39 Parties with substantially same interest**

- (1) A party who has substantially the same interest under the contract as the party whose act constitutes the repudiation, misrepresentation, or breach may cancel the contract only with the leave of the court.
- (2) The court may, on application made for the purpose, grant leave under subsection (1) if it is satisfied that it is just to do so.
- (3) The leave may be granted on the terms and conditions that the court thinks fit.

Compare: 1979 No 11 s 7(6), (7)

**40 Sections 36 to 39 have effect in place of rules of common law and of equity**

- (1) Sections 36 to 39 have effect in place of the rules of the common law and of equity governing the circumstances in which a party to a contract may rescind it, or treat it as discharged, for misrepresentation, repudiation, or breach.
- (2) This section applies except as otherwise expressly provided in this subpart.

Compare: 1979 No 11 s 7(1)

**41 When cancellation may take effect**

- (1) The cancellation of a contract by a party does not take effect—
  - (a) before the time at which the cancellation is made known to the other party; or
  - (b) before the time at which the party cancelling the contract shows, by some clear means that is reasonable in the circumstances, an intention to cancel the contract, if—
    - (i) it is not reasonably practicable for the cancelling party to communicate with the other party; or
    - (ii) the other party cannot reasonably expect to receive notice of the cancellation because of that other party's conduct in relation to the contract.
- (2) The cancellation may be made known by words or by conduct showing an intention to cancel, or both. It is not necessary to use any particular form of words, so long as the intention to cancel is made known.

Compare: 1979 No 11 s 8(1), (2)

**42 Effect of cancellation**

- (1) When a contract is cancelled, the following provisions apply:

- (a) to the extent that the contract remains unperformed at the time of the cancellation, no party is obliged or entitled to perform it further:
  - (b) to the extent that the contract has been performed at the time of the cancellation, no party is, by reason only of the cancellation, divested of any property transferred or money paid under the contract.
- (2) This section is subject to the rest of this subpart.
  - (3) Nothing in this section affects the right of a party to recover damages for a misrepresentation or the repudiation or breach of the contract by another party.

Compare: 1979 No 11 s 8(3), (4)

### *Power of court to grant relief*

#### **43 Power of court to grant relief**

- (1) When a contract is cancelled by any party, the court may, if it is just and practicable to do so, make an order or orders granting relief under this section.
- (2) The relief may be granted in the course of any proceeding or on application made for the purpose.
- (3) An order under this section may—
  - (a) direct a party to pay to any other party the sum that the court thinks just (subject to section 35):
  - (b) direct a party to do or refrain from doing, in relation to any other party, any act or thing that the court thinks just:
  - (c) vest the whole or any part of any relevant property in a party:
  - (d) direct a party to transfer or assign the whole or any part of any relevant property to any other party:
  - (e) direct a party to deliver the whole or any part of the possession of any relevant property to any other party.

- (4) In subsection (3),—

**party** means a party to the proceeding

**relevant property** means real or personal property that was the subject of the contract or was the whole or part of the consideration for the contract.

Compare: 1979 No 11 s 9(1), (2)

#### **44 Order for relief may be subject to terms and conditions**

- (1) An order under section 43 may be made on the terms and conditions that the court thinks fit.
- (2) However, a term or condition must not have the effect of preventing a claim for damages by any party.

Compare: 1979 No 11 s 9(3)

**45 Matters court must have regard to**

In considering whether to make an order under section 43, and in considering the terms of any order, the court must have regard to—

- (a) the terms of the contract; and
- (b) the extent to which any party to the contract was or would have been able to perform it in whole or in part; and
- (c) any expenditure incurred by a party in, or for the purpose of, performing the contract; and
- (d) the value, in the court's opinion, of any work or services performed by a party in, or for the purpose of, performing the contract; and
- (e) any benefit or advantage obtained by a party because of anything done by another party in, or for the purpose of, performing the contract; and
- (f) any other matters that the court thinks proper.

Compare: 1979 No 11 s 9(4)

**46 Protection of purchaser of property in good faith and for valuable consideration**

No order may be made under section 43(3)(c) to (e) that would have the effect of depriving a person, not being a party to the contract, of the possession of, or any estate or interest in, any property acquired by the person in good faith and for valuable consideration.

Compare: 1979 No 11 s 9(5)

**47 Party who has altered position**

- (1) No order may be made under section 43 in respect of any property if any party to the contract has so altered the party's position in relation to the property that, having regard to all relevant circumstances, it would, in the opinion of the court, be inequitable to any party to make the order.
- (2) This section applies whether the party altered the party's position before or after the cancellation of the contract.

Compare: 1979 No 11 s 9(6)

**48 Persons who may apply**

An application for relief under section 43 may be made by—

- (a) a party to the contract; or
- (b) a person claiming through or under a party to the contract; or
- (c) any other person if it is material for the person to know whether relief under section 43 will be granted.

Compare: 1979 No 11 s 9(7)

**49 Recovery of damages**

- (1) A party to a contract is not prevented by the cancellation of the contract, or by the granting of relief under section 43, from recovering damages for a misrepresentation or the repudiation or breach of the contract by another party to the contract.
- (2) However, the value of any relief granted under section 43 must be taken into account in assessing those damages.
- (3) Subsection (1) is subject to sections 34, 35, and 50 to 53.
- (4) Any sum ordered to be paid by a party to the contract to any other party to the contract under section 43(3) may be set off against any damages payable by the party to that other party.

Compare: 1979 No 11 s 10

*Provisions purporting to prevent court inquiry***50 Statement, promise, or undertaking during negotiations**

- (1) This section applies if a contract, or any other document, contains a provision purporting to prevent a court from inquiring into or determining the question of—
  - (a) whether a statement, promise, or undertaking was made or given, either in words or by conduct, in connection with or in the course of negotiations leading to the making of the contract; or
  - (b) whether, if it was so made or given, it constituted a representation or a term of the contract; or
  - (c) whether, if it was a representation, it was relied on.
- (2) The court is not, in any proceeding in relation to the contract, prevented by the provision from inquiring into and determining any question referred to in subsection (1) unless the court considers that it is fair and reasonable that the provision should be conclusive between the parties, having regard to the matters specified in subsection (3).
- (3) The matters are all the circumstances of the case, including—
  - (a) the subject matter and value of the transaction; and
  - (b) the respective bargaining strengths of the parties; and
  - (c) whether any party was represented or advised by a lawyer at the time of the negotiations or at any other relevant time.

Compare: 1979 No 11 s 4(1)

**51 Authority for making or giving statement, promise, or undertaking**

- (1) This section applies if a contract, or any other document, contains a provision purporting to prevent a court from inquiring into or determining the question of whether, in respect of any statement, promise, or undertaking made or given by



any person, that person had the actual or ostensible authority of a party to make or give it.

- (2) The court is not, in any proceeding in relation to the contract, prevented by the provision from inquiring into and determining the question.

Compare: 1979 No 11 s 4(2)

## **52 Contracts for sale of goods**

Despite sections 197 and 201(2), sections 50 and 51 apply to contracts for the sale of goods.

Compare: 1979 No 11 s 4(3)

## **53 Proceeding before Disputes Tribunal**

In any proceeding properly before the Disputes Tribunal, sections 50 to 52 do not limit the powers of the Tribunal under section 18(7) of the Disputes Tribunal Act 1988.

Compare: 1979 No 11 s 4(4)

### *Assignees*

## **54 Remedies enforceable by or against assignee**

- (1) If a contract, or the benefit or burden of a contract, is assigned, the remedies of damages and cancellation are enforceable by or against the assignee (except to the extent that it is otherwise provided in the assigned contract).
- (2) This section is subject to sections 55 to 57.

Compare: 1979 No 11 s 11(1)

## **55 Damages may not exceed value of performance of assigned contract**

- (1) The assignee is not liable in damages, whether by way of set-off, counterclaim, or otherwise, for a sum exceeding the value of the performance of the assigned contract to which the assignee is entitled because of the assignment.
- (2) This section applies except to the extent that it is otherwise agreed by the assignee or provided in the assigned contract.

Compare: 1979 No 11 s 11(2)

## **56 Assignee indemnified by assignor**

- (1) The assignee is entitled to be indemnified by the assignor against any loss suffered by the assignee and arising out of—
- (a) any term of the assigned contract that was not disclosed to the assignee before or at the time of the assignment; or
  - (b) any misrepresentation that was not so disclosed.

- (2) This section applies unless it is otherwise agreed between the assignor and the assignee.

Compare: 1979 No 11 s 11(3)

### **57 Other provisions relating to assignees**

- (1) Sections 54 to 56 are subject to,—
- (a) in the case of a mortgage of land, subpart 8 of Part 3 of the Property Law Act 2007:
  - (b) in the case of a contract for the supply of goods or services to a consumer, section 46 of the Consumer Guarantees Act 1993.
- (2) Nothing in sections 54 to 56 affects the law relating to negotiable instruments.

Compare: 1979 No 11 s 11(4), (5)

### *Miscellaneous provisions*

### **58 This subpart does not apply to contracts governed by foreign law**

This subpart does not apply to any contract, or any part of any contract, that is governed by a law other than New Zealand law.

Compare: 1979 No 11 s 14A

### **59 Savings**

- (1) Nothing in this subpart affects—
- (a) the law relating to specific performance or injunction:
  - (b) the law relating to mistake, duress, or undue influence:
  - (c) the doctrine of *non est factum* (it is not my deed):
  - (d) subpart 4 (frustrated contracts):
  - (e) Part 3 (sale of goods):
  - (f) sections 253 to 260 of the Property Law Act 2007 (which relate to relief against the cancellation of leases for a breach of a covenant or condition):
  - (g) the Consumer Guarantees Act 1993:
  - (h) any other enactment to the extent that it prescribes or governs terms of contracts or remedies available in respect of contracts, or governs the enforcement of contracts.
- (2) Subsection (1) applies except as provided in sections 35(2) and 52.

Compare: 1979 No 11 s 15

### **Subpart 4—Frustrated contracts**

### **60 Application**

- (1) Sections 61 to 66 apply if—

- (a) a contract governed by New Zealand law has become impossible to perform or has been otherwise frustrated; and
  - (b) the parties to the contract have for that reason been discharged from the further performance of the contract.
- (2) Subsection (1) and sections 61 to 66 are subject to sections 67 to 69.
- (3) In this subpart, **time of discharge** means the time at which the parties to the contract were discharged as referred to in subsection (1).

Compare: 1944 No 20 s 3(1), (2)

### *Money paid or payable*

#### **61 Money paid may be recovered and money payable ceases to be payable**

- (1) All money paid to a party (**A**) under the contract before the time of discharge is recoverable from A as money received by A for the use of the party who paid it.
- (2) All money payable to a party under the contract before the time of discharge ceases to be payable.

Compare: 1944 No 20 s 3(2)

#### **62 Court may allow party who has incurred expenses to retain or recover money**

- (1) This section applies if the party to whom the money was paid or payable under the contract incurred expenses before the time of discharge in, or for the purpose of, performing the contract.
- (2) The court may, if it considers it just to do so having regard to all the circumstances, allow the party to retain or recover the whole or any part of the money that was paid or payable.
- (3) However, the amount to be retained or recovered must not exceed the expenses that were incurred.

Compare: 1944 No 20 s 3(2)

### *Other valuable benefits*

#### **63 Sum may be recovered if party has obtained valuable benefit**

- (1) This section applies if—
  - (a) a party to the contract (**A**) has obtained a valuable benefit before the time of discharge; and
  - (b) the benefit was obtained because of anything done by another party to the contract (**B**) in, or for the purpose of, performing the contract.
- (2) B may recover from A the sum (if any) that the court considers just.
- (3) For the purposes of subsection (2), the court must have regard to all the circumstances and, in particular,—

- (a) the amount of any expenses incurred before the time of discharge by A in, or for the purpose of, performing the contract, including any money paid or payable by A to any other party under the contract and retained or recoverable by that party under section 62; and
  - (b) the effect, in relation to the benefit, of the circumstances that gave rise to the frustration of the contract.
- (4) The sum that is recoverable must not exceed the value of the benefit to A.
- (5) In this section and section 64, a **benefit** does not include a payment of money to which section 61 applies.

Compare: 1944 No 20 s 3(3)

#### **64 Benefit may be treated as being obtained**

- (1) For the purposes of section 63, the court may, if in all the circumstances the court considers it just to do so, treat a benefit conferred on a person (C) as a benefit obtained by a person (A) if A has assumed obligations under the contract in consideration of the benefit being conferred on C by any other party to the contract.
- (2) Subsection (1) applies whether or not C is a party to the contract.

Compare: 1944 No 20 s 3(6)

### *Expenses*

#### **65 Estimates of expenses**

- (1) For the purposes of sections 61 to 64, in estimating the amount of expenses incurred by a party to the contract, the court may include the amount that appears to be reasonable for—
- (a) overhead expenses; and
  - (b) any work or services performed by that party.
- (2) Subsection (1) does not limit sections 61 to 64.

Compare: 1944 No 20 s 3(4)

### *Insurance*

#### **66 Money payable under contract of insurance**

- (1) This section applies when a court considers whether an amount ought to be recovered or retained under sections 61 to 64 by a party to the contract.
- (2) The court must not take into account any money that has become payable to the party under a contract of insurance if the money is payable because of the circumstances that gave rise to the frustration of the contract.

- (3) Subsection (2) does not apply if there was an obligation to insure that was imposed by an express term of the frustrated contract or by or under any enactment.

Compare: 1944 No 20 s 3(5)

*Other provisions relating to application*

**67 Court must give effect to provision in contract**

- (1) This section applies if a contract to which this subpart applies contains a provision that, on the true construction of the contract, is—
- (a) intended to have effect in the event of circumstances arising that operate, or would but for the provision operate, to frustrate the contract; or
  - (b) intended to have effect whether those circumstances arise or not.
- (2) The court must—
- (a) give effect to the provision; and
  - (b) give effect to sections 60 to 66 only to the extent (if any) that appears to the court to be consistent with the provision.

Compare: 1944 No 20 s 4(3)

**68 Court must treat performed part of contract that can be properly severed as separate contract**

- (1) This section applies if—
- (a) the court considers that a part of a contract to which this subpart applies can properly be severed from the remainder of the contract; and
  - (b) that part of the contract was—
    - (i) wholly performed before the time of discharge; or
    - (ii) wholly performed before the time of discharge except for the payment, in respect of that part of the contract, of money that is or can be ascertained under the contract.
- (2) The court must treat—
- (a) the part of the contract described in subsection (1) as if it—
    - (i) were a separate contract; and
    - (ii) had not been frustrated; and
  - (b) sections 60 to 66 as applying only to the remainder of the contract.

Compare: 1944 No 20 s 4(4)

**69 This subpart does not apply in certain circumstances**

This subpart does not apply to—

- (a) a contract for the carriage of goods by sea or a charter party (except a time charter party or a charter party by way of demise); or

- (b) a contract of insurance, except as provided by section 66; or
- (c) a contract to which section 128 applies, or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated because the goods have perished.

Compare: 1944 No 20 s 4(5)

### Subpart 5—Illegal contracts

#### 70 Interpretation

In this subpart, unless the context otherwise requires,—

**enactment—**

- (a) means any provision of any Act, regulations, rules, bylaws, Order in Council, or Proclamation; and
- (b) includes any provision of any notice, consent, approval, or direction that is given by any person under a power conferred by any Act or regulations

**property—**

- (a) means land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situated in New Zealand or elsewhere; and
- (b) includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incidental to property.

Compare: 1970 No 129 s 2

#### 71 Illegal contract defined

(1) In this subpart, **illegal contract—**

- (a) means a contract governed by New Zealand law that is illegal at law or in equity, whether the illegality arises from the creation or the performance of the contract; and
- (b) includes a contract that contains an illegal provision, whether that provision is severable or not.

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**Examples**

A contract under which the parties agree to the commission of a serious crime.

A contract under which one party agrees to pay money to a witness to a crime in return for the witness withholding information from the police and the courts.

A contract to use improper influence to affect the award of a public honour.

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(2) This section is subject to section 72.

Compare: 1970 No 129 s 3

## 72 Breach of enactment

A contract lawfully entered into does not become illegal or unenforceable by any party because its performance is in breach of an enactment, unless the enactment expressly so provides or its object clearly so requires.

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### Example

Certain traffic regulations require a car to have a current warrant of fitness when it is sold.

A person sells a car without a warrant of fitness in breach of the regulations.

The object of the regulations relates to promoting safety rather than protecting consumers.

The contract is not an illegal contract. Upholding the contract does not frustrate the object of the regulations.

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Compare: 1970 No 129 s 5

*Illegal contracts have no effect*

## 73 Illegal contracts have no effect

- (1) Every illegal contract is of no effect.
- (2) No person is entitled to any property under a disposition made by or under an illegal contract.
- (3) This section and section 74 apply—
  - (a) despite any rule of law or equity to the contrary; but
  - (b) subject to the provisions of this subpart and of any other enactment.

Compare: 1970 No 129 s 6(1)

## 74 Protection of persons who acquire property in good faith and without notice

- (1) Nothing in section 73 invalidates a disposition of property referred to in subsection (2) if the person to whom the disposition was made—
  - (a) was not a party to the illegal contract; and
  - (b) had not, at the time of the disposition, notice that the property was the subject of, or the whole or any part of the consideration for, an illegal contract; and
  - (c) otherwise acted in good faith.
- (2) The dispositions are—
  - (a) a disposition of property by a party to an illegal contract for valuable consideration:
  - (b) a disposition of property made by or through a person who became entitled to the property under a disposition to which paragraph (a) applies.

- (3) *See* section 9 (which defines disposition).

Compare: 1970 No 129 s 6(1)

*Court may grant relief*

**75 Who may be granted relief**

Relief under section 76 may be granted to—

- (a) a party to an illegal contract; or
- (b) a party to a contract who is disqualified from enforcing it because of the commission of an illegal act in the course of its performance; or
- (c) a person claiming through or under a party referred to in paragraph (a) or (b).

Compare: 1970 No 129 s 7(1)

**76 Court may grant relief**

- (1) The court may grant to a person referred to in section 75 any relief that the court thinks just, including (without limitation)—
  - (a) restitution; or
  - (b) compensation; or
  - (c) variation of the contract; or
  - (d) validation of the contract in whole or in part or for any particular purpose.
- (2) The relief may be granted in the course of any proceeding or on application made for the purpose.
- (3) Subsection (1) and section 75 apply—
  - (a) despite sections 73 and 74; but
  - (b) subject to the express provisions of any other enactment.
- (4) The court may, by an order made under this section,—
  - (a) vest the whole or any part of any relevant property in a party; or
  - (b) direct a party to transfer or assign the whole or any part of any relevant property to any other party; or
  - (c) direct a party to deliver the whole or any part of the possession of any relevant property to any other party.
- (5) In subsection (4),—
  - party** means a party to the proceeding
  - relevant property** means real or personal property that was the subject of the contract or was the whole or part of the consideration for the contract.

Compare: 1970 No 129 s 7(1), (5)



**77 Order may be subject to terms and conditions**

An order under section 76 may be made on the terms and conditions that the court thinks fit.

Compare: 1970 No 129 s 7(6)

**78 Matters court must have regard to**

In considering whether to grant relief under section 76, and the nature and extent of any relief to be granted, the court must have regard to—

- (a) the conduct of the parties; and
- (b) in the case of a breach of an enactment, the object of the enactment and the gravity of the penalty expressly provided for any breach of the enactment; and
- (c) any other matters that the court thinks proper.

Compare: 1970 No 129 s 7(3)

**79 Court must not grant relief if not in public interest**

The court must not grant relief under section 76 if it considers that to do so would not be in the public interest.

Compare: 1970 No 129 s 7(3)

**80 Person acting with knowledge of facts or law giving rise to illegality**

- (1) The court may make an order under section 76 even if the person granted relief entered into the contract, or committed an unlawful act or unlawfully omitted to do an act, with knowledge of the facts or law giving rise to the illegality.
- (2) However, the court must take that knowledge into account in exercising its discretion under section 76.

Compare: 1970 No 129 s 7(4)

**81 Persons who may apply**

An application for relief under section 76 may be made by—

- (a) any person to whom the court may grant relief under that section; or
- (b) any other person if it is material for the person to know whether relief will be granted under that section.

Compare: 1970 No 129 s 7(2)

**82 Restriction on granting relief otherwise than in accordance with this subpart**

- (1) No court may, in respect of an illegal contract, grant relief to a person otherwise than in accordance with this subpart.
- (2) This section is subject to the express provisions of any other enactment.

Compare: 1970 No 129 s 7(7)

*Restraints of trade***83 Restraints of trade**

- (1) The court may, if a provision of a contract constitutes an unreasonable restraint of trade,—
- (a) delete the provision and give effect to the contract as amended; or
  - (b) modify the provision so that, at the time the contract was entered into, the provision as modified would have been reasonable, and give effect to the contract as modified; or
  - (c) decline to enforce the contract if the deletion or modification of the provision would so alter the bargain between the parties that it would be unreasonable to allow the contract to stand.
- (2) The court may modify a provision even if the modification cannot be effected by deleting words from the provision.

Compare: 1970 No 129 s 8

**84 Law relating to restraint of trade and to ouster of jurisdiction not affected**

- (1) Nothing in this subpart affects the law relating to contracts, or provisions of contracts,—
- (a) that are in restraint of trade; or
  - (b) that purport to oust the jurisdiction of any court, whether or not that court is a court within the meaning of this subpart.
- (2) This section applies except as provided in section 83.

Compare: 1970 No 129 s 11(1)

**Subpart 6—Minors' contracts****85 Interpretation**

In this subpart, unless the context otherwise requires,—

**court** means the High Court, or the District Court if it has jurisdiction under section 113, or the Disputes Tribunal if it has jurisdiction under section 114

**minor** means a person who is under the age of 18 years, and a person is of **full age** if he or she has reached the age of 18 years

**property**—

- (a) means land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situated in New Zealand or elsewhere; and
- (b) includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incidental to property.

Compare: 1969 No 41 s 2

*Contractual capacity of minors*

**86 Contracts unenforceable against minors but otherwise have effect**

- (1) Every contract entered into by a minor is unenforceable against the minor but otherwise has effect as if the minor were of full age.
- (2) Subsection (1) does not apply to a contract to which section 92(1) applies.
- (3) This section is subject to sections 87 to 91.

Compare: 1969 No 41 s 6(1)

**87 Court may inquire into fairness and reasonableness of contract**

- (1) The court may, in the course of any proceeding or on application made for the purpose, inquire into the fairness and reasonableness of a contract to which section 86 applies at the time the contract was entered into.
- (2) Sections 88 and 89 do not impose a duty on the court to exercise a power under those sections.

Compare: 1969 No 41 s 6(2)

**88 Court orders where contract was fair and reasonable**

The court may, if it finds under section 87 that the contract was fair and reasonable at the time the contract was entered into,—

- (a) enforce the contract against the minor:
- (b) declare that the contract is binding on the minor, whether in whole or in part:
- (c) make an order allowing the other parties to the contract, on the conditions that the court thinks just, to cancel the contract:
- (d) make an order for compensation or restitution of property under section 95 that it thinks just.

Compare: 1969 No 41 s 6(2)(a)

**89 Court orders where contract was not fair and reasonable**

The court may, if it finds under section 87 that the contract was not fair and reasonable at the time the contract was entered into,—

- (a) cancel the contract:
- (b) make an order allowing the minor, on the conditions that the court thinks just, to cancel the contract:
- (c) make an order for compensation or restitution of property under section 95 that it thinks just.

Compare: 1969 No 41 s 6(2)(b)

**90 Matters court must have regard to**

In exercising its discretion under sections 87 to 89, the court must have regard to—

- (a) the circumstances surrounding the making of the contract;
- (b) the subject matter and nature of the contract;
- (c) in the case of a contract relating to property, the nature and the value of the property;
- (d) the age and the means (if any) of the minor;
- (e) all other relevant circumstances.

Compare: 1969 No 41 s 6(3)

**91 Further provisions relating to application of sections 86 to 90**

- (1) Nothing in sections 86 to 90 applies to—
  - (a) a contract approved by the District Court under section 98; or
  - (b) the compromise or settlement of any claim for money or damages made by or on behalf of a minor (whether alone or in conjunction with any other person).
- (2) Nothing in sections 86 to 90 limits or affects section 20 of the Trustee Act 1956.

Compare: 1969 No 41 s 6(4), (5)

*Special rules for contracts of service and life insurance contracts***92 Contracts of service and life insurance contracts have effect as if minor were of full age**

- (1) The following contracts have effect as if the minor were of full age:
  - (a) a contract of service entered into by a minor;
  - (b) a contract entered into under section 66B of the Life Insurance Act 1908 by a minor who has reached the age of 16 years.
- (2) This section is subject to sections 93 and 94.

Compare: 1969 No 41 s 5(1)

**93 Court may make orders about unconscionable, harsh, or oppressive contract of service or life insurance contract**

- (1) This section applies if the court is satisfied in respect of a contract to which section 92 applies that, at the time the contract was entered into,—
  - (a) the consideration for a minor's promise or act was so inadequate as to be unconscionable; or
  - (b) any provision of the contract that imposes an obligation on a party to the contract who was a minor was harsh or oppressive.

- (2) The court—
- (a) may, in the course of any proceeding or on application made for the purpose, cancel the contract, decline to enforce the contract against the minor, or declare that the contract is unenforceable against the minor, whether in whole or in part; and
  - (b) in any case may make an order for compensation or restitution of property under section 95 that it thinks just.
- (3) For the purposes of this section, the court may receive evidence of commercial practice in contracts of the same kind.
- Compare: 1969 No 41 s 5(2), (3)

**94 Sections 92 and 93 do not apply in certain circumstances**

- (1) Nothing in section 92 or 93 applies to—
- (a) a contract approved by the District Court under section 98; or
  - (b) the compromise or settlement of any claim for money or damages made by or on behalf of a minor (whether alone or in conjunction with any other person).
- (2) Nothing in section 93 applies to any agreement entered into under section 4A of the Maori Housing Amendment Act 1938.
- Compare: 1969 No 41 s 5(4), (5)

*Compensation or restitution*

**95 Compensation or restitution**

- (1) The court may grant relief by way of compensation or restitution of property that the court thinks just if it—
- (a) may exercise a power under sections 87 to 89 (whether or not it exercises any power under those sections); or
  - (b) exercises a power under section 93.
- (2) The relief may be granted to—
- (a) a party to the contract; or
  - (b) a guarantor or indemnifier under a contract of guarantee or indemnity that relates to a contract to which section 86(1) or 92(1) applies; or
  - (c) a person claiming through or under or on behalf of a person referred to in paragraph (a) or (b).
- (3) The court may, by an order made under this section,—
- (a) vest the whole or any part of any relevant property in a party; or
  - (b) direct a party to transfer or assign the whole or any part of any relevant property to any other party; or

- (c) direct a party to deliver the whole or any part of the possession of any relevant property to any other party.
- (4) In subsection (3),—
- party** means a party to the proceeding
- relevant property** means real or personal property that was the subject of the contract or was the whole or part of the consideration for the contract.
- Compare: 1969 No 41 s 7

*Other provisions relating to applications and orders*

**96 Applications under sections 87 to 89 or section 93**

An application under sections 87 to 89 or section 93 may be made by—

- (a) any person to whom the court may grant relief under section 95; or
- (b) any other person if it is material for the person to know whether the court will exercise the powers granted to it by sections 87 to 89 or section 93.

Compare: 1969 No 41 s 8(1)

**97 Terms and conditions of orders**

An order under any of sections 87 to 89, 93, and 95 may be made on the terms and conditions that the court thinks fit.

Compare: 1969 No 41 s 8(2)

*Entering into contract with District Court's approval*

**98 Minor may enter into contract with approval of District Court**

Every contract entered into by a minor has effect as if the minor were of full age if, before the contract is entered into by the minor, it is approved under this section by the District Court.

Compare: 1969 No 41 s 9(1)

**99 Persons who may apply**

An application for approval under section 98 may be made—

- (a) by the minor or any other person who will be a party to the proposed contract; or
- (b) by a guardian of the minor.

Compare: 1969 No 41 s 9(2)

**100 Referral of application**

- (1) The court may refer an application under section 99—
- (a) to a guardian of the minor; or

- (b) if the court considers it necessary for the purposes of the application, to—
  - (i) a lawyer nominated by the court; or
  - (ii) Public Trust; or
  - (iii) the Māori Trustee; or
  - (iv) any other person.
- (2) The court may make any order that it thinks fit for the payment of the reasonable costs and expenses of any person to whom the application is referred.
- (3) A person to whom an application is referred may—
  - (a) file a report in the District Court that—
    - (i) sets out the results of the person’s consideration and examination of the application; and
    - (ii) makes the recommendations that the person thinks proper; and
  - (b) appear and be heard at the hearing of the application.
- (4) A person to whom an application is referred is not required to consider or examine the application until the person’s reasonable costs and expenses have been paid or secured to the person’s satisfaction.

Compare: 1969 No 41 s 9(3), (4)

### **101 Contracts relating to property held on trust**

The District Court must not approve a contract under section 98 if—

- (a) the contract relates to property held on trust; and
- (b) the court considers that it would be more appropriate for an application to be made under section 64 or 64A of the Trustee Act 1956 (which relate to authorising dealings with trust property and variations of trust).

Compare: 1969 No 41 s 9(5)

### *Guarantees and indemnities*

### **102 Guarantees and indemnities**

- (1) Every contract of guarantee or indemnity by which a person (other than a minor) undertakes to accept liability if a minor fails to carry out his or her obligations under a contract is enforceable against that person (the **surety**) to the extent that it would be enforceable if the minor had been at all material times a person of full age.
- (2) The liability is not affected by—
  - (a) any other provision of this subpart; or
  - (b) any order made under this subpart.

- (3) However, the liability of the minor to the surety and the surety's right of subrogation against the minor may be affected by the other provisions of this subpart or by an order made under any of sections 87 to 89, 93, and 95.

Compare: 1969 No 41 s 10

### *Compromise or settlement of claims by minors*

#### **103 Application**

Sections 104 and 105 apply if any money or damages are claimed by or on behalf of a minor (whether alone or in conjunction with any other person).

Compare: 1969 No 41 s 12(1)

#### **104 Claim that is not subject of proceeding**

- (1) An agreement for the compromise or settlement of a claim is binding on the minor if—
- (a) the agreement was entered into by the minor, or on the minor's behalf by a person who in the opinion of a specified court is a fit and proper person to do so; and
  - (b) the claim is not the subject of a proceeding before any court in New Zealand; and
  - (c) the agreement or a release of the claim is in writing and is approved by a specified court.
- (2) In this section, **specified court** means—
- (a) a court (other than the Disputes Tribunal) in which a proceeding could be taken to enforce the claim; or
  - (b) in the case of a claim that could not be the subject of a proceeding in New Zealand, a court in which a proceeding could be taken to enforce a similar claim in New Zealand.

Compare: 1969 No 41 s 12(1)(a), (7)

#### **105 Claim that has become subject of proceeding**

- (1) If the claim has not been compromised or settled in accordance with section 104, and has become the subject of a proceeding before a court in New Zealand, no settlement, compromise, or payment and no acceptance of money paid into court is valid (to the extent that it relates to the minor's claim) without the approval of the court.
- (2) Subsection (1) applies whenever the settlement, compromise, payment, or acceptance is entered into or made.

Compare: 1969 No 41 s 12(1)(b)



### 106 Who may apply for approval

An application for the approval of the court under section 104 or 105 may be made—

- (a) by or on behalf of the minor; or
- (b) by any other party to the agreement or proceeding.

Compare: 1969 No 41 s 12(2)

### 107 Court may refuse or grant approval

The court may—

- (a) refuse an application for its approval under section 104 or 105; or
- (b) grant its approval—
  - (i) unconditionally; or
  - (ii) on or subject to the conditions and directions that it thinks fit, whether as to the terms of the agreement or of the compromise or settlement, or as to the amount, payment, securing, application, or protection of the money paid or to be paid, or otherwise.

Compare: 1969 No 41 s 12(3)

#### *Court directed trust for minor*

### 108 Money or damages to be held on trust

- (1) In this section, **money or damages** means—
  - (a) any money or damages awarded to a minor in any cause or matter; or
  - (b) any money to which a minor is entitled under an agreement, a compromise, or a settlement approved under section 104 or 105.
- (2) If the court directs that the whole or any part of any money or damages must be held on trust for the minor under this section by Public Trust or any other person,—
  - (a) the amount must be invested and held by the trustee on trust—
    - (i) to make a payment (if any) to the minor out of the income and capital of the amount that the court may specify; and
    - (ii) to apply the income and capital of the amount, or so much of the income and capital that the trustee from time to time thinks fit, for or towards the maintenance or education (including past maintenance or education) or the advancement or benefit of the minor:
  - (b) the minor has no power, either by himself or herself or in conjunction with any other person or persons, to terminate the trusts on which the amount is held or to modify or extinguish those trusts:
  - (c) the interest of the minor in the income and capital of the amount may not, while it remains in the hands of the trustee,—

- (i) be alienated; or
  - (ii) pass by bankruptcy; or
  - (iii) be liable to be seized, sold, attached, or taken in execution by process of law.
- (3) Subsection (2)(a) to (c)—
- (a) applies except to the extent that the court directs any immediate payment from the money or damages or orders otherwise; and
  - (b) is subject to any directions or conditions given or imposed by the court.
- (4) This section does not limit section 107.
- Compare: 1969 No 41 s 12(4)

**109 Payment on minor reaching 18 years or marrying or entering into civil union or de facto relationship**

- (1) The balance of an amount that is held on trust for a minor's benefit under section 108 and of the income from that amount remaining in the hands of the trustee must be paid to the minor on the minor—
- (a) reaching the age of 18 years; or
  - (b) marrying or entering into a civil union or a de facto relationship before reaching the age of 18 years.
- (2) Subsection (1) applies except to the extent that the court may have ordered, before the payment is made, that the whole or any part of the amount must continue to be held on trust under section 108.
- (3) Despite subsection (1), if the trustee has made an application, or received notice that an application has been made, to the court for an order referred to in subsection (2), the trustee must not make any payment under subsection (1) until the application has been disposed of.

Compare: 1969 No 41 s 12(5)

*Other matters relating to sections 103 to 109*

**110 Sections 103 to 109 do not limit or affect certain other provisions**

Nothing in sections 103 to 109 limits or affects—

- (a) the Deaths by Accidents Compensation Act 1952; or
- (b) section 98 of the District Court Act 2016; or
- (c) the Accident Compensation Act 2001; or
- (d) section 149(3A) of the Employment Relations Act 2000.

Compare: 1969 No 41 s 12(8)

**111 Variation of certain orders**

- (1) The court may vary any order made by it—

- (a) under sections 103 to 109; or
  - (b) in respect of a minor under Part 9A of the Protection of Personal and Property Rights Act 1988.
- (2) Subsection (1) applies—
- (a) whether or not the order has already been varied under this section or section 13 of the Minors' Contracts Act 1969:
  - (b) to the extent that the order relates to the payment, investment, or application of money held on trust or to the income from that money.

Compare: 1969 No 41 s 13(1)

### **112 Order may be made on court's own motion or on application**

An order under section 111 may be made by the court on its own motion or on an application made by—

- (a) the minor; or
- (b) the trustee; or
- (c) any other person who provides proof of circumstances that, in the opinion of the court, make it proper that he or she should make the application.

Compare: 1969 No 41 s 13(2)

## *Jurisdiction*

### **113 Jurisdiction of District Court**

- (1) The District Court has jurisdiction to exercise any of the powers conferred by sections 86 to 95 if—
- (a) the occasion for the exercise of the power arises in the course of any civil proceeding (other than an application made for the purposes of sections 87 to 89 or section 93) properly before the court; or
  - (b) the value of the consideration for the promise or act of any minor under the contract is not more than \$350,000; or
  - (c) the parties consent, in accordance with section 81 of the District Court Act 2016, that the District Court has jurisdiction to hear and determine the application.
- (2) For the purposes of sections 86 to 89 of the District Court Act 2016, an application made to the District Court under sections 87 to 89 or section 93 of this Act must be treated as a proceeding.

Compare: 1969 No 41 s 14

### **114 Jurisdiction of Disputes Tribunal**

- (1) The Disputes Tribunal established under the Disputes Tribunal Act 1988 has jurisdiction to exercise the powers conferred by sections 86 to 95 if—

- (a) the occasion for the exercise of the power arises in the course of any proceeding properly before the Tribunal; and
  - (b) the total amount for which an order of the Tribunal is sought does not exceed \$15,000.
- (2) An order of the Disputes Tribunal under section 95 may not—
- (a) require a person to pay an amount exceeding \$15,000;
  - (b) declare that a person is not liable to any other person for an amount exceeding \$15,000;
  - (c) vest any property that exceeds \$15,000 in value in any person;
  - (d) direct the transfer, assignment, or delivery of possession of any property that exceeds \$15,000 in value.
- (3) An order of the Disputes Tribunal that exceeds a restriction in subsection (2) is entirely of no effect.
- (4) Despite subsections (1)(b) and (2), if, in respect of a proceeding properly before the Disputes Tribunal, the jurisdiction of the Tribunal has been extended under an agreement made under section 13 of the Disputes Tribunal Act 1988, subsections (1) and (2) must be read as if every reference in those subsections to \$15,000 were a reference to \$20,000.

Compare: 1969 No 41 s 14A

*Subpart to be code*

**115 This subpart to be code**

- (1) This subpart has effect in place of the rules of the common law and of equity relating to—
- (a) the contractual capacity of minors; and
  - (b) the effect, validity, avoidance, repudiation, and ratification of contracts entered into by minors; and
  - (c) any contract of guarantee or indemnity in respect of contracts entered into by minors.
- (2) Nothing in this subpart limits or affects any provision of any other enactment under which a contract is made binding on a minor, and nothing in sections 86 to 94 applies to the contract.
- (3) Nothing in this subpart limits or affects the rule of law under which a minor is not liable in tort for procuring a contract by fraudulent representations as to his or her own age or any other matter.
- (4) However, the court must take a representation referred to in subsection (3) into account in deciding whether to exercise any of its powers under sections 87 to 89 or section 93 or 95.

Compare: 1969 No 41 s 15(1), (3), (4)

*Agreements relating to trusts*

**116 Effect of this subpart on trust**

- (1) Nothing in this subpart entitles—
  - (a) a trustee to pay money or deliver property to a minor otherwise than in accordance with the terms of the trust;
  - (b) a minor to enter into an agreement by which a trust is extinguished or the terms of a trust are varied.
- (2) Nothing in subsection (1) prevents any contract approved under section 98 or 117 from having effect according to its tenor.

Compare: 1969 No 41 s 16(1)

**117 Agreement to extinguish or vary trust may be approved**

- (1) Every agreement entered into by a minor who is or has been married, in a civil union, or in a de facto relationship and under which a trust is extinguished or the terms of a trust are varied has effect as if the minor were of full age if, before the agreement is entered into by the minor, it is approved by the District Court.
- (2) An application to the District Court under this section may be made by—
  - (a) the minor; or
  - (b) any other person who will be a party to the proposed agreement; or
  - (c) the trustee or trustees of the trust.
- (3) Sections 100 and 101 apply to applications under this section (with any necessary modifications).

Compare: 1969 No 41 s 16(2)–(4)

**Subpart 7—Stipulations not of essence of contracts**

**118 Stipulations not of essence of contracts**

- (1) Stipulations in contracts as to time or otherwise that would not, before the relevant date, have been deemed to be or to have become the essence of such contracts in a court of equity must receive in all courts the same construction and effect as they would have received in equity before that date.
- (2) In subsection (1), **relevant date** means 13 September 1882 (the date on which the Law Amendment Act 1882 came into force).

Compare: 1979 No 11 s 4A; 1908 No 89 s 90

## Part 3

### Sale of goods

#### 119 Interpretation

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

**agreement to sell** has the meaning set out in section 123

**buyer** means a person who buys or agrees to buy goods

**contract of sale** includes an agreement to sell as well as a sale (*see* section 123)

**deliverable state** has the meaning set out in subsection (4)

**delivery** means voluntary transfer of possession from one person to another

**document of title to goods** includes—

- (a) a bill of lading, a dock warrant, a warehouse keeper's certificate, and a warrant or an order for the delivery of goods; and
- (b) any other document that—
  - (i) is used in the ordinary course of business as proof of the possession or control of goods; or
  - (ii) authorises or purports to authorise, either by endorsement or by delivery, the person who possesses the document to transfer or receive the goods represented by the document

**fault** means a wrongful act or default

**future goods** has the meaning set out in section 126(1)(b)

**good faith** has the meaning set out in subsection (2)

**goods**—

- (a) includes—
  - (i) all kinds of movable personal property, including animals; and
  - (ii) emblements, growing crops, and things attached to, or forming part of, the land that are agreed to be severed before sale or under the contract of sale; and
  - (iii) computer software; but
- (b) does not include money or things in action

**insolvent** has the meaning set out in subsection (3)

**mercantile agent** has the same meaning as in section 296

**perfected security interest** means a security interest (within the meaning of section 17 of the Personal Property Securities Act 1999) that has been perfected under that Act

**plaintiff** includes a counterclaiming defendant

**price** has the meaning set out in section 120

**property** means the general property in goods, and not merely a special property

**quality of goods** includes the state or condition of the goods

**right to claim** includes a right to claim by way of counterclaim or set-off

**sale** includes a bargain and sale, as well as a sale and delivery (*see* section 123)

**seller** means a person who sells or agrees to sell goods

**specific goods** means goods identified and agreed on at the time a contract of sale is made

**unpaid seller** has the meaning set out in section 173

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

**writ of execution** means a writ of sale, warrant to seize property, or other writ or warrant of execution under which goods may be seized or taken to satisfy a process issued out of any court.

- (2) A thing must be treated as having been done in **good faith** within the meaning of this Part when it is in fact done honestly, whether or not it is done negligently.
- (3) A person must be treated as being **insolvent** within the meaning of this Part if the person has ceased to pay the person's debts in the ordinary course of business, or cannot pay the person's debts as they become due, whether or not the person has committed an act of bankruptcy.
- (4) Goods are in a **deliverable state** within the meaning of this Part if—
  - (a) the goods are in a particular state; and
  - (b) the buyer is bound under the contract to take delivery of the goods when they are in that state.
- (5) *See also* section 199, which relates to references to a reasonable price and a reasonable time.

Compare: 1908 No 168 ss 2, 27(3)

## Subpart 1—Formation of contract

*Contract of sale***120 Contract of sale of goods**

A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration (the **price**).

Compare: 1908 No 168 s 3(1)

**121 Contracts of sale may be between one part-owner and another**

A contract of sale may be between one part-owner and another.

Compare: 1908 No 168 s 3(2)

**122 Contracts of sale may be absolute or conditional**

A contract of sale may be absolute or conditional.

Compare: 1908 No 168 s 3(3)

**123 Sale and agreement to sell**

- (1) A contract of sale is a **sale** if, under the contract, the property in the goods is transferred from the seller to the buyer.
- (2) A contract of sale is an **agreement to sell** if the transfer of the property in the goods is to take place at a future time or subject to a condition or conditions to be fulfilled at a future time.
- (3) An agreement to sell becomes a sale when the time for the transfer of the property to take place elapses or the condition or conditions of the transfer of the property are fulfilled.

Compare: 1908 No 168 s 3(4), (5)

**124 Capacity to buy and sell**

- (1) Capacity to buy and sell goods is regulated by the general law concerning capacity—
  - (a) to contract; and
  - (b) to transfer and acquire property.
- (2) However, if necessaries are sold and delivered to a person who because of mental incapacity or intoxication is incompetent to contract, he or she must pay a reasonable price for the goods.
- (3) In this section, **necessaries** means goods suitable for the person's—
  - (a) condition in life; and
  - (b) actual requirements at the time of the sale and delivery.

Compare: 1908 No 168 s 4



*Contractual formalities*

**125 How contract of sale is made**

- (1) A contract of sale may be—
  - (a) made in writing (either with or without seal); or
  - (b) made orally; or
  - (c) made partly in writing and partly orally; or
  - (d) implied from the conduct of the parties.
- (2) This section is subject to the provisions of this Act and of any other Act.
- (3) Nothing in this section affects the law relating to corporations.

Compare: 1908 No 168 s 5

*Subject matter of contract*

**126 Existing or future goods**

- (1) The goods that form the subject of a contract of sale may be—
  - (a) existing goods that are owned or possessed by the seller; or
  - (b) goods that are to be manufactured or acquired by the seller after the contract of sale is made (**future goods**).
- (2) There may be a contract of sale where the acquisition of the goods by the seller depends on a contingency that may or may not happen.
- (3) A contract of sale operates as an agreement to sell if, by the contract, the seller purports to effect a present sale of future goods.

Compare: 1908 No 168 s 7

**127 Contract void if goods have perished at time when contract is made**

A contract of sale for specific goods is void if the goods, without the seller's knowledge, have perished at the time when the contract is made.

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**Example**

A person (**A**) sells 100 tonnes of table potatoes to another person (**B**).

Without A's knowledge, the potatoes, at the date of the contract, had become unfit for human consumption because of second growth.

The contract between A and B is void.

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Compare: 1908 No 168 s 8

**128 Contract void if goods perish before sale but after agreement to sell**

- (1) This section applies if there is an agreement to sell specific goods and, subsequently, the goods, without any fault on the part of the seller or the buyer, perish before the risk passes to the buyer.
- (2) The agreement becomes void when the goods perish.

- (3) *See* section 69 (which provides that subpart 4 of Part 2 (frustrated contracts) does not apply to a contract to which subsection (1) applies).

Compare: 1908 No 168 s 9; 1944 No 20 s 4(5)(c)

### *Price*

#### **129 Fixing contract price**

- (1) The price in a contract of sale may be—
- fixed by the contract; or
  - left to be fixed in a manner agreed in the contract; or
  - determined by the course of dealing between the parties.
- (2) The buyer must pay a reasonable price if the price is not determined in accordance with subsection (1).

Compare: 1908 No 168 s 10(1), (2)

#### **130 Agreement to sell at valuation**

- (1) An agreement to sell goods is void if—
- the agreement is on the terms that the price is to be fixed by the valuation of a third party; and
  - the third party cannot or does not make the valuation.
- (2) However, if the goods or any part of the goods have been delivered to and appropriated by the buyer, the buyer must pay a reasonable price for the goods or that part of the goods.
- (3) If the third party is prevented from making the valuation by the fault of the seller or the buyer, the party not at fault has a right to claim damages against the party who is at fault.

Compare: 1908 No 168 s 11

### *Conditions and warranties*

#### **131 Stipulations about time**

- (1) Stipulations as to the time of payment are not of the essence of a contract of sale, unless a different intention appears from the terms of the contract.
- (2) Whether any other stipulation as to time is of the essence of the contract depends on the terms of the contract.
- (3) In a contract of sale, **month** means, on the face of it, calendar month.

Compare: 1908 No 168 s 12

#### **132 Conditions and warranties**

- (1) A breach of a condition in a contract of sale may give rise to a right to treat the contract as repudiated.

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

Compare: 1908 No 168 s 13(2)

### **133 Breach of condition to be fulfilled by seller**

- (1) If a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of the condition as a breach of warranty, and not as a ground for treating the contract as repudiated.
- (2) If a contract of sale is not severable, and the buyer has accepted the goods or part of the goods, the breach of a condition to be fulfilled by the seller can be treated only as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

Compare: 1908 No 168 s 13(1), (3)

### **134 Impossibility or other excuse**

Sections 132 and 133 do not affect a situation where the fulfilment of a condition or warranty is excused by law because of impossibility or otherwise.

Compare: 1908 No 168 s 13(4)

### **135 Implied condition and warranties as to title and quiet possession**

- (1) In a contract of sale there is—
  - (a) an implied condition on the part of the seller that,—
    - (i) in the case of a sale, the seller has a right to sell the goods; and
    - (ii) in the case of an agreement to sell, the seller will have a right to sell the goods at the time when the property is to pass:
  - (b) an implied warranty that the buyer will have and enjoy quiet possession of the goods:
  - (c) an implied warranty that the goods are free from any charge or encumbrance in favour of any third party that is not declared or known to the buyer before or at the time when the contract is made.
- (2) The implied condition and warranties in subsection (1) apply unless the circumstances of the contract show a different intention.

Compare: 1908 No 168 s 14

**136 Sale by description**

- (1) In a contract for the sale of goods by description, there is an implied condition that the goods will correspond to the description.
- (2) If the sale of goods is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds to the sample if the goods do not also correspond to the description.
- (3) *See* section 142 (which relates to contracts of sale by sample).

Compare: 1908 No 168 s 15

**137 Implied conditions or warranties as to quality or fitness**

- (1) There is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale except as set out in sections 138 to 141.
- (2) This section and sections 138 to 141 are subject to the rest of this Part and any other Act.

Compare: 1908 No 168 s 16

**138 Implied condition that goods are reasonably fit for purpose**

- (1) This section applies if—
  - (a) the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgement; and
  - (b) the goods are of a description that it is in the course of the seller's business to supply (whether or not the seller is the manufacturer).
- (2) There is an implied condition in the contract of sale that the goods are reasonably fit for the purpose referred to in subsection (1)(a).
- (3) However, in the case of a contract of sale for a specified article under its patent or other trade name, there is no implied condition that the article is fit for any particular purpose.

Compare: 1908 No 168 s 16(a)

**139 Implied condition that goods are of merchantable quality**

- (1) There is an implied condition in a contract of sale that the goods are of merchantable quality if the goods are bought by description from a seller who deals in goods of that description (whether or not the seller is the manufacturer).
- (2) However, if the buyer has examined the goods, there is no implied condition with respect to defects that the examination ought to have revealed.

Compare: 1908 No 168 s 16(b)

**140 Implied warranty or condition by usage of trade**

An implied warranty or condition as to quality or fitness for a particular purpose may be treated as being included in a contract of sale by the usage of trade.

Compare: 1908 No 168 s 16(c)

**141 Express warranty or condition**

An express warranty or condition in a contract of sale does not negate a warranty or condition implied by this Part unless it is inconsistent with the implied warranty or condition.

Compare: 1908 No 168 s 16(d)

*Sale by sample*

**142 Sale by sample**

- (1) There is an implied condition in a contract of sale by sample—
  - (a) that the bulk corresponds to the sample in quality; and
  - (b) that the buyer will have a reasonable opportunity to compare the bulk to the sample; and
  - (c) that the goods are free from any defect that makes them unmerchantable and that would not be apparent on reasonable examination of the sample.
- (2) A contract of sale is a **contract of sale by sample** if there is a term in the contract, express or implied, to that effect.

Compare: 1908 No 168 s 17

Subpart 2—Effects of contract

*Transfer of property between seller and buyer*

**143 Goods must be ascertained**

Under 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.

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**Example**

A person (**A**) agrees to buy 1 000 gold coins from Gold Suppliers Limited.

Gold Suppliers Limited stores its gold in bulk without allocating it to individual buyers.

While the gold is stored as part of an undifferentiated bulk, ownership of the gold coins does not pass to A.

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Compare: 1908 No 168 s 18

**144 Property passes when intended to pass**

- (1) Under a contract for the sale of specific or ascertained goods, the property in the goods is transferred to the buyer at the time that the parties to the contract intend it to be transferred.
- (2) For the purpose of ascertaining the intention of the parties, regard must be had to—
  - (a) the terms of the contract; and
  - (b) the conduct of the parties; and
  - (c) the circumstances of the case.

Compare: 1908 No 168 s 19

**145 Ascertaining parties' intention**

Unless a different intention appears, the rules in section 146 are the 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.

Compare: 1908 No 168 s 20

**146 Rules for ascertaining parties' intention***Rule 1*

- (1) Under 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.
- (2) For the purposes of subsection (1), it is immaterial whether the time of payment or the time of delivery, or both, is postponed.

*Rule 2*

- (3) If 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 the goods into a deliverable state, the property in the goods does not pass to the buyer until—
  - (a) the thing is done; and
  - (b) the buyer has notice that the thing is done.

*Rule 3*

- (4) If 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 in the goods does not pass to the buyer until—
  - (a) the act or thing is done; and
  - (b) the buyer has notice that the act or thing is done.

*Rule 4*

- (5) If goods are delivered to the buyer on approval, or on sale or return or other similar terms, the property in the goods passes to the buyer—

- (a) when the buyer indicates the buyer's approval or acceptance to the seller, or does any other act adopting the transaction; or
- (b) if the buyer does not indicate the buyer's approval or acceptance to the seller, but retains the goods without giving notice of rejection,—
  - (i) when the time (if any) that is fixed for the return of the goods expires; or
  - (ii) when a reasonable time expires (if no time has been fixed for the return of the goods).

*Rule 5*

- (6) Subsection (7) applies if there is a contract of sale for unascertained or future goods by description.
- (7) The property in the goods passes to the buyer when goods of that description that are 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.
- (8) For the purposes of subsection (7),—
  - (a) the assent may be expressed or implied and may be given either before or after the appropriation is made;
  - (b) the seller must be treated as having unconditionally appropriated the goods to the contract if,—
    - (i) in performing the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer; and
    - (ii) the seller does not reserve the right of disposal.

Compare: 1908 No 168 s 20

**147 Reservation of right of disposal**

- (1) If there is a contract of sale for specific goods or if 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.
- (2) If the seller reserves the right of disposal as referred to in subsection (1), the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled (despite the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer).
- (3) The seller must be treated as having reserved the right of disposal (unless the contrary is proved) if the goods are shipped, and, by the bill of lading, the goods are deliverable to the order of the seller or the seller's agent.

- (4) If the seller 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,—
- (a) the buyer must return the bill of lading if the buyer does not honour the bill of exchange; and
  - (b) the property in the goods does not pass to the buyer if the buyer wrongfully retains the bill of lading.

Compare: 1908 No 168 s 21

#### **148 Risk passes with property unless otherwise agreed**

- (1) Unless otherwise agreed,—
- (a) goods remain at the seller's risk until the property in the goods is transferred to the buyer; but
  - (b) when the property in the goods is transferred to the buyer, the goods are at the buyer's risk (whether or not delivery has been made).
- (2) However, if delivery has been delayed through the fault of either the buyer or the seller, the goods are at the risk of the party at fault with respect to any loss that might not have occurred but for the fault.
- (3) This section does not affect the duties or liabilities of either the seller or the buyer as a bailee of the goods of the other party.

Compare: 1908 No 168 s 22

### *Transfer of title*

#### **149 Sale by person who is not owner**

- (1) This section applies if goods are sold by a person who—
- (a) is not the owner of the goods; and
  - (b) does not sell the goods under the authority or with the consent of the owner.
- (2) The buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by the owner's conduct precluded from denying the seller's authority to sell.
- (3) Subsection (2) is subject to the rest of this Part.
- (4) Subparts 1 to 6 do not affect—
- (a) subparts 2 to 4 of Part 5 or any other enactment enabling the apparent owner of goods to dispose of the goods as if that person were the true owner of the goods:



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

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**Examples**

A pawnbroker acting under section 63 of the Secondhand Dealers and Pawnbrokers Act 2004.

A sale of goods seized under a warrant under section 172 of the District Court Act 2016.

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- (c) the provisions of the Personal Property Securities Act 1999 that enable a purchaser of goods to acquire good title to the goods.

Compare: 1908 No 168 s 23

**150 Market overt**

The law relating to market overt does not apply in New Zealand.

Compare: 1908 No 168 s 24

**151 Sale under voidable title**

- (1) This section applies if—
- (a) a seller of goods has a voidable title to the goods; but
  - (b) the seller's title has not become void at the time of the sale.
- (2) The buyer acquires a good title to the goods if the buyer buys the goods in good faith and without notice of the seller's defect of title.

Compare: 1908 No 168 s 25

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

- (1) The property in stolen goods reverts in the person who was the owner of the goods (or that person's personal representative) if the offender is convicted, despite any intermediate dealing with the goods.
- (2) Despite any other enactment, the property in goods obtained by fraud or other wrongful means that does not amount to theft does not revert in the person who was the owner of the goods (or that person's personal representative) by reason only of the conviction of the offender.

Compare: 1908 No 168 s 26

**153 Seller in possession after sale**

- (1) This section applies if—
- (a) a person (A) has sold goods to another person (B); and
  - (b) A continues or is in possession of the goods or of the documents of title to the goods; and
  - (c) A, or a mercantile agent acting for A, delivers or transfers the goods or documents of title under any sale, pledge, or other disposition, or under

any agreement for sale, pledge, or other disposition, to another person (C); and

- (d) C receives the goods or documents in good faith and without notice of the previous sale to B.
- (2) The delivery or transfer to C has the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the delivery or transfer.
- (3) Subsection (2) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a perfected security interest, in possession of the goods or documents of title to the goods.

Compare: 1908 No 168 s 27(1), (1A)

#### **154 Buyer in possession after sale**

- (1) This section applies if—
  - (a) a person (A) has bought or agreed to buy goods; and
  - (b) A obtains, with the consent of the seller (B), possession of the goods or the documents of title to the goods; and
  - (c) A, or a mercantile agent acting for A, delivers or transfers the goods or documents of title under any sale, pledge, or other disposition, or under any agreement for sale, pledge, or other disposition, to another person (C); and
  - (d) C receives the goods or documents in good faith and without notice of any lien or other right of B in respect of the goods.
- (2) The delivery or transfer to C has 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) *See* subpart 2 of Part 5 (which relates to sales, pledges, or other dispositions by mercantile agents).
- (4) Subsection (2) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a perfected security interest, in possession of the goods or documents of title to the goods.

Compare: 1908 No 168 s 27(2), (2A)

#### **155 Effect of writs of execution**

- (1) A writ of execution against goods binds the property in the goods of the execution debtor from the time when the writ is delivered to the sheriff to be executed.

- (2) To record the time when a writ of execution is delivered, the sheriff must, without fee, on receiving the writ, endorse on the back of the writ the hour, day, month, and year when he or she received it.
- (3) However, no writ of execution prejudices the title to goods acquired by a person in good faith and for valuable consideration, unless, when the person acquired the person's title, the person had notice that the writ (or any other writ under 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.
- (4) In this section, **sheriff** includes any officer charged with the enforcement of a writ of execution.

Compare: 1908 No 168 s 28

### Subpart 3—Performance of contract

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

The seller must deliver the goods, and the buyer must accept and pay for the goods, in accordance with the terms of the contract of sale.

Compare: 1908 No 168 s 29

#### **157 Payment and delivery are concurrent conditions**

- (1) Delivery of the goods and payment of the price are concurrent conditions that apply as follows:
  - (a) the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price; and
  - (b) the buyer must be ready and willing to pay the price in exchange for possession of the goods.
- (2) This section applies unless otherwise agreed.

Compare: 1908 No 168 s 30

#### *Rules about delivery*

#### **158 Determining whether buyer to take possession of goods or seller to send goods**

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.

Compare: 1908 No 168 s 31(1)

#### **159 Place of delivery**

- (1) Apart from a contract referred to in section 158, the place of delivery is—
  - (a) the seller's place of business (if the seller has one); or
  - (b) the seller's residence (if the seller has no place of business).

- (2) However, if the contract is for the sale of specific goods that, to the knowledge of the parties when the contract is made, are in some other place, that place is the place of delivery rather than the place that applies under subsection (1).

Compare: 1908 No 168 s 31(2)

### **160 Goods must be sent within reasonable time if no time is fixed**

If, under the contract of sale, the seller must send the goods to the buyer but no time for sending them is fixed, the seller must send them within a reasonable time.

Compare: 1908 No 168 s 31(3)

### **161 Goods in possession of third person**

- (1) If the goods at the time of sale are in the possession of a third person (A), there is no delivery by the seller to the buyer unless and until A acknowledges to the buyer that A holds the goods on the buyer's behalf.
- (2) However, sections 158 to 163 do not affect the operation of the issue or transfer of any document of title to goods.

Compare: 1908 No 168 s 31(4)

### **162 Demand or tender of delivery must be at reasonable hour**

- (1) Demand or tender of delivery may be treated as having no effect unless made at a reasonable hour.
- (2) The question of what is a reasonable hour is a question of fact.

Compare: 1908 No 168 s 31(5)

### **163 Seller must bear expenses of putting goods into deliverable state**

- (1) The seller must bear the expenses of, and incidental to, putting the goods into a deliverable state.
- (2) This section applies unless otherwise agreed.

Compare: 1908 No 168 s 31(6)

### **164 Delivery of wrong quantity or of mixed goods**

- (1) The buyer may reject the goods if the seller delivers to the buyer a quantity of goods that is less than the seller contracted to sell, but if the buyer accepts those goods, the buyer must pay for the goods at the contract rate.

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#### **Example**

A person (A) agrees to deliver to another person (B) 3 000 lambs that have been shorn and docked.

A delivers 3 000 lambs to B. However, 160 lambs have not been shorn and 150 have not been docked.

B may reject the whole of the goods.

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- (2) If the seller delivers to the buyer a quantity of goods larger than the seller contracted to sell, the buyer may—
- (a) accept the goods included in the contract and reject the rest; or
  - (b) reject the whole of the goods; or
  - (c) accept the whole of the goods (in which case the buyer must pay for the goods at the contract rate).

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**Example**

A person (**A**) agrees to deliver to another person (**B**) 10 barrels of wine at \$1,000 per barrel.

A delivers 15 barrels to B.

B may—

- accept 10 barrels and reject 5; or
- reject all of the barrels; or
- accept all 15 barrels and pay \$15,000.

- 
- (3) If the seller delivers to the buyer the goods that the seller contracted to sell mixed with goods of a different description not included in the contract, the buyer may—
- (a) accept the goods that are in accordance with the contract and reject the rest; or
  - (b) reject the whole of the goods.
- (4) This section is subject to any usage of trade, special agreement, or course of dealing between the parties.

Compare: 1908 No 168 s 32

**165 Buyer not bound to accept delivery by instalments**

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

Compare: 1908 No 168 s 33(1)

**166 Instalment deliveries: breach of contract**

- (1) This section applies if—
- (a) there is a contract for the sale of goods to be delivered by stated instalments, which are to be paid for separately; and
  - (b) either or both of the following occur:
    - (i) the seller makes defective deliveries in respect of 1 or more instalments;
    - (ii) the buyer neglects or refuses to take delivery of, or pay for, 1 or more instalments.

- (2) Whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach that gives rise to a claim for compensation but not to a right to treat the whole contract as repudiated depends on the terms of the contract and the circumstances of the case.

Compare: 1908 No 168 s 33(2)

### **167 Delivery to carrier**

- (1) If, under a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer must, unless the contrary is proved, be treated as being a delivery of the goods to the buyer.
- (2) The seller must, unless otherwise authorised by the buyer, make a contract with the carrier on behalf of the buyer that is reasonable, having regard to the nature of the goods and the other circumstances of the case.
- (3) The buyer has, against the seller, a right to claim damages, or may decline to treat the delivery to the carrier as a delivery to the buyer, if—
- (a) the seller does not comply with subsection (2); and
  - (b) the goods are lost or damaged in the course of transit.
- (4) Unless otherwise agreed, if goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure goods, the seller must give enough notice to the buyer to enable the buyer to insure the goods during the sea transit.
- (5) The goods must be treated as at the seller's risk during the sea transit if the seller does not comply with subsection (4).

Compare: 1908 No 168 s 34

### **168 Risk where goods are delivered at place other than place where goods are sold**

- (1) This section applies if a seller of goods agrees to deliver the goods at the seller's own risk at a place other than the place where the goods are when they are sold.
- (2) Unless otherwise agreed, the buyer must take any risk of deterioration in the goods that is necessarily incidental to the course of transit.

Compare: 1908 No 168 s 35

### **169 Buyer's right to examine goods**

- (1) If goods are delivered to the buyer without the buyer previously examining them, the buyer is not treated as having accepted them unless and until the buyer has had a reasonable opportunity to examine them for the purpose of ascertaining whether they conform with the contract.
- (2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, the seller must, on request, give the buyer a reasonable opportunity to

examine the goods for the purpose of ascertaining whether the goods conform with the contract.

Compare: 1908 No 168 s 36

### **170 Acceptance of goods**

- (1) The buyer must be treated as having accepted the goods when—
  - (a) the buyer indicates to the seller that the buyer has accepted the goods; or
  - (b) the goods have been delivered to the buyer and the buyer does any act in relation to the goods that is inconsistent with the ownership of the seller; or
  - (c) after a reasonable time has elapsed, the buyer retains the goods without indicating to the seller that the buyer has rejected the goods.
- (2) Subsection (1)(b) does not apply if section 169 provides otherwise.

Compare: 1908 No 168 s 37

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

- (1) This section applies if—
  - (a) the buyer refuses to accept goods that have been delivered; and
  - (b) the buyer has a right to refuse to accept the goods.
- (2) Unless otherwise agreed, the buyer is not bound to return the goods to the seller, and it is sufficient if the buyer indicates to the seller that the buyer refuses to accept the goods.

Compare: 1908 No 168 s 38

### **172 Liability of buyer for neglecting or refusing to take delivery of goods**

- (1) This section applies if—
  - (a) the seller is ready and willing to deliver the goods; and
  - (b) the seller requests that the buyer take delivery of the goods; and
  - (c) the buyer does not, within a reasonable time after the request, take delivery of the goods.
- (2) The buyer is liable to the seller for—
  - (a) any loss caused by the buyer's neglect or refusal to take delivery of the goods; and
  - (b) a reasonable charge for the care and custody of the goods.
- (3) However, nothing in this section affects the rights of the seller if the buyer's neglect or refusal to take delivery of the goods amounts to a repudiation of the contract.

Compare: 1908 No 168 s 39

## Subpart 4—Rights of unpaid seller against goods

### 173 Unpaid seller defined

- (1) A seller of goods must be treated as being an **unpaid seller**, within the meaning of this Part,—
  - (a) if the whole of the price has not been paid or tendered:
  - (b) if a bill of exchange or other negotiable instrument has been received as a conditional payment but the condition on which it was received has not been fulfilled because of the dishonour of the instrument or otherwise.
- (2) In this subpart, **seller** includes a person who is in the position of a seller (for example, an agent of the seller to whom the bill of lading has been endorsed or a consignor or an agent who has paid or is directly responsible for the price).

Compare: 1908 No 168 s 40

### 174 Unpaid seller's rights

- (1) An unpaid seller of goods has, by implication of law,—
  - (a) a lien on the goods, or right to retain the goods for the price, while the seller is in possession of the goods:
  - (b) if the buyer is insolvent, a right to stop the goods in transit after the seller has parted with the possession of the goods:
  - (c) a right of resale, as limited by this Part.
- (2) Subsection (1) applies even though the property in the goods may have passed to the buyer.
- (3) Subsection (1) is subject to the rest of this Part and to the provisions of any Act.
- (4) If the property in goods has not passed to the buyer, the unpaid seller has, in addition to the seller's other remedies, a right of withholding delivery similar to, and co-extensive with, the seller's rights of lien and to stop the goods in transit where the property has passed to the buyer.

Compare: 1908 No 168 s 41

### *Unpaid seller's lien*

### 175 Unpaid seller's lien

- (1) An unpaid seller of goods who is in possession of them may retain possession of them until payment or tender of the price if—
  - (a) the goods have been sold without any stipulation as to credit:
  - (b) the goods have been sold on credit, but the term of credit has expired:
  - (c) the buyer becomes insolvent.
- (2) Subsection (1) is subject to the rest of this Part.



- (3) The seller may exercise the seller's right of lien even if the seller is in possession of the goods as agent or bailee for the buyer.

Compare: 1908 No 168 s 42

### **176 Part delivery**

An unpaid seller of goods who has made part delivery of the goods may exercise the seller's right of lien or retention on the remainder of the goods, unless the part delivery has been made under circumstances that show an agreement to waive the lien or right of retention.

Compare: 1908 No 168 s 43

### **177 When unpaid seller loses lien**

- (1) An unpaid seller of goods loses the seller's lien or right of retention on the goods—
- (a) when the seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods:
  - (b) when the buyer or the buyer's agent lawfully obtains possession of the goods:
  - (c) by waiver of the lien or right of retention.
- (2) The unpaid seller of goods who has a lien or right of retention on the goods does not lose that lien or right just because the seller has obtained judgment for the price of the goods.

Compare: 1908 No 168 s 44

### *Stopping goods in transit*

### **178 Right to stop goods in transit**

- (1) When a buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right to stop them in transit.
- (2) The right in subsection (1) means that the seller may resume possession of the goods while they are in transit and may retain them until payment or tender of the price.
- (3) This section is subject to the rest of this Part.

Compare: 1908 No 168 s 45

### **179 Duration of transit**

- (1) Goods must be treated as being in transit from the time when the goods are delivered to a carrier by air, land, or water (or to any other bailee for the purpose of transmission to the buyer) until the buyer, or the buyer's agent in that behalf, takes delivery of the goods from the carrier or other bailee.

- (2) The transit is at an end if the buyer, or the buyer's agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination.
- (3) The transit is at an end if, after the arrival of the goods at the appointed destination, the carrier or other bailee (A)—
  - (a) acknowledges to the buyer or the buyer's agent that A holds the goods on the buyer's or agent's behalf; and
  - (b) continues in possession of the goods as bailee for the buyer or the buyer's agent.
- (4) For the purposes of subsection (3), it is immaterial that the buyer may have indicated a further destination for the goods.
- (5) The transit must be treated as ended if the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or the buyer's agent in that behalf.
- (6) The transit is not treated as ended if the goods are rejected by the buyer and the carrier or other bailee continues in possession of the goods (even if the seller has refused to receive the goods back).

Compare: 1908 No 168 s 46(1)–(4), (6)

### **180 Goods delivered to ship chartered by buyer**

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

Compare: 1908 No 168 s 46(5)

### **181 Part delivery**

If part delivery of the goods has been made to the buyer, or the buyer's agent in that behalf, the remainder of the goods may be stopped in transit, unless the part delivery has been made under circumstances that show an agreement to give up possession of all of the goods.

Compare: 1908 No 168 s 46(7)

### **182 How right is exercised**

An unpaid seller of goods may exercise the seller's right to stop the goods in transit by—

- (a) taking actual possession of the goods; or
- (b) giving notice of the seller's claim to the carrier or other bailee who has possession of the goods.

Compare: 1908 No 168 s 47(1)

### **183 Notice of seller's claim**

- (1) The notice under section 182(b) may be given to—
  - (a) the person in actual possession of the goods (A); or

- (b) A's principal.
- (2) To be effective, a notice given to A's principal must be given at a time and under circumstances that enable the principal, by exercising reasonable diligence, to communicate it to A in time to prevent a delivery to the buyer.
- Compare: 1908 No 168 s 47(1)

**184 Redelivery of goods**

- (1) When notice under section 182(b) is given by the seller to the carrier, or other bailee in possession of the goods, the carrier or other bailee must redeliver the goods to, or according to the directions of, the seller.
- (2) The expenses of the redelivery must be met by the seller.
- Compare: 1908 No 168 s 47(2)

*Resale by buyer or seller*

**185 Effect of subsale or pledge by buyer**

- (1) An unpaid seller's right of lien, retention, or stopping goods in transit is not affected by any sale or other disposition of the goods that the buyer may have made (unless the seller has assented to the sale or disposition).
- (2) This section is subject to the rest of this Part.
- Compare: 1908 No 168 s 48

**186 Transfer of document of title to person in good faith and for valuable consideration**

- (1) This section applies if—
- (a) a document of title to goods has been lawfully transferred to a person (A) as buyer or owner of the goods; and
- (b) A transfers the document of title to a person (B) who takes the document in good faith and for valuable consideration.
- (2) Despite section 185,—
- (a) if the transfer referred to in subsection (1)(b) was by sale, the unpaid seller's right of lien, retention, or stopping the goods in transit is defeated; and
- (b) if the transfer referred to in subsection (1)(b) was by pledge or other disposition for value, the unpaid seller's right of lien, retention, or stopping the goods in transit may be exercised only subject to B's rights.

Compare: 1908 No 168 s 48

**187 Sale not generally rescinded by lien or stopping goods in transit**

- (1) A contract of sale is not rescinded merely by the exercise by an unpaid seller of the seller's right of lien, retention, or stopping the goods in transit.

- (2) This section is subject to sections 188 to 190.

Compare: 1908 No 168 s 49(1)

### **188 Buyer's title on resale**

If an unpaid seller of goods who has exercised the seller's right of lien, retention, or stopping the goods in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer.

Compare: 1908 No 168 s 49(2)

### **189 Resale in case of perishable goods or notice of intention to resell**

- (1) This section applies if—
- (a) goods are of a perishable nature or an unpaid seller gives notice to the buyer of the seller's intention to resell the goods; and
  - (b) the buyer does not pay or tender the price within a reasonable time.
- (2) The unpaid seller may—
- (a) resell the goods; and
  - (b) recover damages from the original buyer for any loss caused by the original buyer's breach of contract.

Compare: 1908 No 168 s 49(3)

### **190 Express power of sale**

- (1) This section applies if a seller—
- (a) expressly reserves a right of resale in case the buyer should default; and
  - (b) on the buyer defaulting, resells the goods.
- (2) The original contract of sale is rescinded (but this does not limit any right to claim damages that the seller may have).

Compare: 1908 No 168 s 49(4)

## Subpart 5—Remedies for breach of contract

### *Remedies of seller*

### **191 Claim for price**

- (1) A seller has, against the buyer, a right to claim the price of the goods if,—
- (a) under the contract of sale, the property in the goods has passed to the buyer; and
  - (b) the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract.
- (2) If, under the contract of sale, the price is payable on a certain day irrespective of delivery, and the buyer wrongfully neglects or refuses to pay the price, the seller has, against the buyer, a right to claim for the price.

- (3) Subsection (2) applies even if the property in the goods has not passed and the goods have not been appropriated to the contract.

Compare: 1908 No 168 s 50

### **192 Damages for non-acceptance**

- (1) A seller has, against the buyer, a right to claim damages for non-acceptance of goods if the buyer wrongfully neglects or refuses to accept and pay for the goods.
- (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) If there is an available market for the goods, the usual measure of damages is (unless the circumstances otherwise require) the difference between the contract price and the market or current price—
- (a) at the time or times when the goods ought to have been accepted; or
  - (b) if no time was fixed for acceptance of the goods, at the time of the refusal to accept them.

Compare: 1908 No 168 s 51

### *Remedies of buyer*

### **193 Damages for non-delivery**

- (1) The buyer has, against the seller, a right to claim damages for non-delivery if the seller wrongfully neglects or refuses to deliver the goods to the buyer.
- (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) If there is an available market for the goods, the usual measure of damages is (unless the circumstances otherwise require) the difference between the contract price and the market or current price—
- (a) at the time or times when the goods ought to have been delivered; or
  - (b) if no time was fixed for delivery of the goods, at the time of the refusal to deliver them.

Compare: 1908 No 168 s 52

### **194 Specific performance**

- (1) The plaintiff in a proceeding for breach of contract to deliver specific or ascertained goods may, at any time before judgment, make an application for a direction under this section.
- (2) The court may, if it thinks fit, grant the application by directing that the contract be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.
- (3) The judgment may be—

- (a) unconditional; or
- (b) on the terms and conditions as to damages, payment of the price, and otherwise that the court thinks just.

Compare: 1908 No 168 s 53

### **195 Remedy for breach of warranty**

- (1) This section applies if—
  - (a) there is a breach of warranty by the seller; or
  - (b) the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty.
- (2) The buyer is not, by reason only of the breach of warranty, entitled to reject the goods.
- (3) However, the buyer—
  - (a) may rely on the breach of warranty to obtain against the seller a reduction in, or the satisfaction of, the price; or
  - (b) has, against the seller, a right to claim damages for the breach of warranty.
- (4) 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.
- (5) The loss for a breach of warranty of quality is (unless the circumstances otherwise require) usually the difference between the value of the goods at the time of delivery to the buyer and the value the goods would have had if the goods had complied with the warranty.
- (6) The fact that the buyer has relied on the breach of warranty to obtain a reduction in, or the satisfaction of, the price does not prevent the buyer from claiming damages for the same breach of warranty if the buyer has suffered further damage.

Compare: 1908 No 168 s 54

### **196 Interest and special damages**

Subparts 1 to 6 do not affect the right of a buyer or a seller to recover—

- (a) interest or special damages in any case where by law interest or special damages may be recoverable; or
- (b) money paid where the consideration for the payment of the money has failed.

Compare: 1908 No 168 s 55

## Subpart 6—Supplementary matters

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

If any right, duty, or liability would arise under a contract of sale by implication of law, it may be negated or varied by—

- (a) express agreement; or
- (b) the course of dealing between the parties; or
- (c) usage, if the usage is such as to bind both parties to the contract.

Compare: 1908 No 168 s 56

### **198 Exclusion where Consumer Guarantees Act 1993 applies**

Nothing in any of sections 129, 132 to 142, 171, and 195 applies to any supply of goods to which the Consumer Guarantees Act 1993 applies.

Compare: 1908 No 168 s 56A

### **199 Reasonable price and reasonable time are questions of fact**

- (1) Where subparts 1 to 5 refer to a reasonable price, the question of what is a reasonable price is a question of fact.
- (2) Where subparts 1 to 5 refer to a reasonable time, the question of what is a reasonable time is a question of fact.

Compare: 1908 No 168 ss 10(3), 57

### **200 Rights and duties enforceable by proceeding**

Any right, duty, or liability declared by subparts 1 to 5 may be enforced by a proceeding unless those subparts provide otherwise.

Compare: 1908 No 168 s 58

### **201 Savings**

- (1) The rules in bankruptcy relating to contracts of sale continue to apply despite anything in subparts 1 to 5 or this subpart.
- (2) The rules of the common law, except to the extent that those rules are inconsistent with the express provisions of subparts 1 to 5 or this subpart, continue to apply to contracts for the sale of goods.
- (3) The provisions of subparts 1 to 5 and this subpart that relate to contracts of sale do not apply to a transaction in the form of a contract of sale that is intended to operate by way of mortgage, pledge, charge, or other security.
- (4) Subparts 1 to 5 and this subpart do not affect the enactments in force that relate to the sale of goods.

Compare: 1908 No 168 s 60

## Subpart 7—United Nations Convention on Contracts for the International Sale of Goods

### 202 Purpose

The purpose of this subpart is to give effect to the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

Compare: 1994 No 60 Long Title

### 203 Interpretation

In this subpart, **Convention** means the United Nations Convention on Contracts for the International Sale of Goods done at Vienna on 11 April 1980, a copy of the English text of which is set out in Schedule 4.

Compare: 1994 No 60 s 2

### 204 Convention to have force of law

The provisions of the Convention have the force of law in New Zealand.

Compare: 1994 No 60 s 4

### 205 Convention to be code

The provisions of the Convention, in relation to contracts to which the Convention applies, have effect in place of any other law of New Zealand that relates to contracts of sale of goods to the extent—

- (a) that the law is concerned with any matter that is governed by the Convention; and
- (b) that the application of the law is not expressly permitted by the Convention.

Compare: 1994 No 60 s 5

### 206 Certificates about Contracting States

- (1) A certificate signed by the Secretary of Foreign Affairs and Trade, or by a Deputy Secretary of Foreign Affairs and Trade, in relation to the matters referred to in subsection (2) is conclusive evidence for all purposes of the matters stated in the certificate.
- (2) The matters are—
  - (a) whether or not, in respect of any specified day or period, a State is a Contracting State; and
  - (b) whether or not, in respect of any specified day or period, a declaration made under the Convention is effective in respect of a State and, if so, the contents of the declaration.

Compare: 1994 No 60 s 6



## Part 4 Electronic transactions

### Subpart 1—Preliminary provisions

#### 207 Purpose

The purpose of this Part is to facilitate the use of electronic technology by—

- (a) reducing uncertainty regarding—
  - (i) the legal effect of information that is in electronic form or that is communicated by electronic means; and
  - (ii) the time and place of dispatch and receipt of electronic communications; and
- (b) providing that certain paper-based legal requirements may be met by using electronic technology that is functionally equivalent to those legal requirements.

Compare: 2002 No 35 s 3

#### 208 Overview

In this Part,—

- (a) matters concerning the legal effect of information that is in electronic form or that is communicated by electronic means are set out in section 211;
- (b) default rules about the time and place of dispatch and receipt of electronic communications are set out in sections 212 to 217;
- (c) key provisions concerning the use of electronic technology to meet certain legal requirements are set out in sections 218 to 221;
- (d) provisions that specify certain legal requirements that may be met by using electronic technology, and how they may be met, are set out in sections 222 to 236.

Compare: 2002 No 35 s 4

#### 209 Interpretation

In this Part, unless the context otherwise requires,—

**data storage device** means any article or device (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device

**electronic** includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic

**electronic communication** means a communication by electronic means

**electronic signature**, in relation to information in electronic form, means a method used to identify a person and to indicate that person's approval of that information

**information** includes information (whether in its original form or otherwise) that is in the form of a document, a signature, a seal, data, text, images, sound, or speech

**information system** has the meaning set out in section 213(2)

**legal requirement** has the meaning set out in section 219(2)

**transaction** includes—

- (a) a transaction of a non-commercial nature:
- (b) a single communication:
- (c) the outcome of multiple related communications.

Compare: 2002 No 35 s 5

## 210 Further provision relating to interpretation

In interpreting this Part, reference may be made to—

- (a) the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law on 16 December 1996:
- (b) any document that relates to the Model Law that originates from the United Nations Commission on International Trade Law, or its working group for the preparation of the Model Law.

Compare: 2002 No 35 s 6

## Subpart 2—Improving certainty in relation to electronic information and electronic communications

### *Validity*

## 211 Validity of information

To avoid doubt, information is not denied legal effect solely because it—

- (a) is in electronic form or is in an electronic communication:
- (b) is referred to in an electronic communication that is intended to give rise to that legal effect.

Compare: 2002 No 35 s 8

### *Default rules about dispatch and receipt of electronic communications*

## 212 When default rules in sections 213 to 216 apply

Sections 213 to 216 apply to an electronic communication except to the extent that—

- (a) the parties to the communication otherwise agree:

(b) an enactment provides otherwise.

Compare: 2002 No 35 s 9

### **213 Time of dispatch**

(1) An electronic communication is taken to be dispatched at the time the electronic communication first enters an information system outside the control of the originator.

(2) For the purposes of this section and section 214, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.

Compare: 2002 No 35 s 10

### **214 Time of receipt**

An electronic communication is taken to be received,—

(a) in the case of an addressee who has designated an information system for the purpose of receiving electronic communications, at the time the electronic communication enters that information system; or

(b) in any other case, at the time the electronic communication comes to the attention of the addressee.

Compare: 2002 No 35 s 11

### **215 Place of dispatch**

An electronic communication is taken to be dispatched from—

(a) the originator's place of business; or

(b) if the originator has more than 1 place of business,—

(i) the place of business that has the closest relationship with the underlying transaction; or

(ii) if there is no place of business to which subparagraph (i) applies, the originator's principal place of business; or

(c) in the case of an originator who does not have a place of business, the originator's ordinary place of residence.

Compare: 2002 No 35 s 12

### **216 Place of receipt**

An electronic communication is taken to be received at—

(a) the addressee's place of business; or

(b) if the addressee has more than 1 place of business,—

(i) the place of business that has the closest relationship with the underlying transaction; or

(ii) if there is no place of business to which subparagraph (i) applies, the addressee's principal place of business; or

- (c) in the case of an addressee who does not have a place of business, the addressee's ordinary place of residence.

Compare: 2002 No 35 s 13

### **217 Time of communication of acceptance of offer**

- (1) For the purpose of the formation of a contract, an acceptance by electronic communication of an offer is taken to be communicated to the offeror at the time determined by section 214 to be the time of receipt for that electronic communication.
- (2) Subsection (1) does not apply if—
  - (a) the parties to the contract otherwise agree; or
  - (b) an enactment provides otherwise.

Compare: 2002 No 35 s 13A

## **Subpart 3—Application of legal requirements to electronic transactions**

### *Preliminary provisions*

### **218 When subpart applies**

- (1) This subpart applies to every enactment that is part of the law of New Zealand and that is passed either before or after the commencement of this Act.
- (2) However, this subpart does not apply to—
  - (a) an enactment that requires information to be recorded, given, produced, or retained, a signature to be given, or a signature or seal to be witnessed—
    - (i) in accordance with particular electronic technology requirements; or
    - (ii) on a particular kind of data storage device; or
    - (iii) by means of a particular kind of electronic communication:
  - (b) the enactments specified in Part 1 of Schedule 5:
  - (c) the provisions of enactments specified in Part 2 of Schedule 5:
  - (d) the provisions of enactments that are described in Part 3 of Schedule 5:
  - (e) the provisions of enactments that are described in Part 4 of Schedule 5 except to the extent that rules of a court, or guidelines issued with the authority of a court, tribunal, or any other body, specified in that Part of Schedule 5 provide for the use of electronic technology in accordance with this subpart.

Compare: 2002 No 35 s 14(1), (2)

**219 When legal requirement can be met by electronic means**

- (1) A legal requirement can be met by electronic means if the applicable provisions in sections 222 to 236, and any applicable regulations made under section 239(1), are complied with.
- (2) For the purposes of this subpart, **legal requirement**—
  - (a) means a requirement in an enactment to which this subpart applies; and
  - (b) includes a provision in an enactment to which this subpart applies that provides consequences that depend on whether or not the provision is complied with.

Compare: 2002 No 35 s 15

**220 Consent to use of electronic technology**

- (1) Nothing in this subpart requires a person to use, provide, or accept information in an electronic form without that person's consent.
- (2) For the purposes of this subpart,—
  - (a) a person may consent to use, provide, or accept information in an electronic form subject to conditions regarding the form of the information or the means by which the information is produced, sent, received, processed, stored, or displayed:
  - (b) consent may be inferred from a person's conduct.
- (3) Subsections (1) and (2)(a) are for the avoidance of doubt.

Compare: 2002 No 35 s 16

**221 When integrity of information maintained**

For the purposes of this subpart, the integrity of information is maintained only if the information has remained complete and unaltered, except for the addition of any endorsement, or any immaterial change, that arises in the normal course of communication, storage, or display.

Compare: 2002 No 35 s 17

*Legal requirement: writing*

**222 Legal requirement that information be in writing**

A legal requirement that information be in writing is met by information that is in electronic form if the information is readily accessible so as to be usable for subsequent reference.

Compare: 2002 No 35 s 18

**223 Legal requirement to record information in writing**

A legal requirement that information be recorded in writing is met by recording the information in electronic form if the information is readily accessible so as to be usable for subsequent reference.

Compare: 2002 No 35 s 19

**224 Legal requirement to give information in writing**

- (1) A legal requirement to give information in writing is met by giving the information in electronic form, whether by means of an electronic communication or otherwise, if—
  - (a) the information is readily accessible so as to be usable for subsequent reference; and
  - (b) the person to whom the information is required to be given consents to the information being given in electronic form and by means of an electronic communication, if applicable.
- (2) If subsection (1) applies, a legal requirement to provide multiple copies of the information to the same person at the same time is met by providing a single electronic version of the information.
- (3) Subsection (1) applies to a legal requirement to give information even if that information is required to be given in a specified manner, for example, by filing, sending, serving, delivering, lodging, or posting that information.
- (4) A legal requirement to give information includes, for example,—
  - (a) making an application:
  - (b) making or lodging a claim:
  - (c) giving, sending, or serving a notification:
  - (d) lodging a return:
  - (e) making a request:
  - (f) making a declaration:
  - (g) lodging or issuing a certificate:
  - (h) making, varying, or cancelling an election:
  - (i) lodging an objection:
  - (j) giving a statement of reasons.

Compare: 2002 No 35 s 20

**225 Legal requirements relating to layout and format of certain information and writing materials**

- (1) In order to meet a legal requirement to which any of sections 222 to 224 apply by electronic means, it is not necessary to comply with a paper-based format requirement.

- (2) In this section and section 239(1)(b)(ii), **paper-based format requirement** means a legal requirement of the following kind that applies to information in paper or any other non-electronic form:
- (a) a legal requirement relating to the format or layout of information;
  - (b) a legal requirement relating to the materials to be used for writing information;
  - (c) any similar legal requirement.

Compare: 2002 No 35 s 21

*Legal requirement: signatures*

**226 Legal requirement for signature**

- (1) A legal requirement for a signature other than a witness's signature is met by means of an electronic signature if the electronic signature—
- (a) adequately identifies the signatory and adequately indicates the signatory's approval of the information to which the signature relates; and
  - (b) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required.
- (2) However, a legal requirement for a signature that relates to information legally required to be given to a person is met by means of an electronic signature only if that person consents to receiving the electronic signature.

Compare: 2002 No 35 s 22

**227 Legal requirement that signature or seal be witnessed**

- (1) A legal requirement for a signature or a seal to be witnessed is met by means of a witness's electronic signature if,—
- (a) in the case of the witnessing of a signature, the signature to be witnessed is an electronic signature that complies with section 226; and
  - (b) in the case of the witnessing of a signature or a seal, the electronic signature of the witness—
    - (i) adequately identifies the witness and adequately indicates that the signature or seal has been witnessed; and
    - (ii) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the witness's signature is required.
- (2) However, a legal requirement for a signature or seal to be witnessed, if that signature or seal relates to information legally required to be given to a person, is met by means of a witness's electronic signature only if that person consents to receiving the witness's electronic signature.

Compare: 2002 No 35 s 23

**228 Presumption about reliability of electronic signatures**

- (1) For the purposes of sections 226 and 227, it is presumed that an electronic signature is as reliable as is appropriate if—
  - (a) the means of creating the electronic signature is linked to the signatory and to no other person; and
  - (b) the means of creating the electronic signature was under the control of the signatory and of no other person; and
  - (c) any alteration to the electronic signature made after the time of signing is detectable; and
  - (d) where the purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.
- (2) Subsection (1) does not prevent any person from proving on other grounds or by other means that an electronic signature—
  - (a) is as reliable as is appropriate; or
  - (b) is not as reliable as is appropriate.

Compare: 2002 No 35 s 24

*Legal requirement: retention***229 Legal requirement to retain document or information that is in paper or other non-electronic form**

- (1) A legal requirement to retain information that is in paper or any other non-electronic form is met by retaining an electronic form of the information if—
  - (a) the electronic form provides a reliable means of assuring that the integrity of the information is maintained; and
  - (b) the information is readily accessible so as to be usable for subsequent reference.
- (2) Subsection (1) applies to information that is a public record within the meaning of the Public Records Act 2005 only if the Chief Archivist has approved the retention of that information in electronic form.
- (3) To avoid doubt, if information is retained in electronic form in accordance with subsection (1), the paper or other non-electronic form of that information need not be retained.

Compare: 2002 No 35 s 25

**230 Legal requirement to retain information that is in electronic form**

- (1) A legal requirement to retain information that is in electronic form is met by retaining the information—
  - (a) in paper or any other non-electronic form if the form provides a reliable means of assuring that the integrity of the information is maintained; or



- (b) in electronic form if—
  - (i) the electronic form provides a reliable means of assuring that the integrity of the information is maintained; and
  - (ii) the information is readily accessible so as to be usable for subsequent reference.
- (2) This section is subject to section 231.  
Compare: 2002 No 35 s 26

### **231 Extra conditions for electronic communications**

In addition to the conditions specified in section 230, if a person is required to retain information that is contained in an electronic communication,—

- (a) the person must also retain such information obtained by that person as enables the identification of—
  - (i) the origin of the electronic communication; and
  - (ii) the destination of the electronic communication; and
  - (iii) the time when the electronic communication was sent and the time when it was received; and
- (b) the information referred to in paragraph (a) must be readily accessible so as to be usable for subsequent reference.

Compare: 2002 No 35 s 27

*Legal requirement: provision and production of, and access to, information*

### **232 Legal requirement to provide or produce information that is in paper or other non-electronic form**

A legal requirement to provide or produce information that is in paper or any other non-electronic form is met by providing or producing the information in electronic form, whether by means of an electronic communication or otherwise, if—

- (a) the form and means of the provision or production of the information reliably assures that the integrity of the information is maintained, given the purpose for which, and the circumstances in which, the information is required to be provided or produced; and
- (b) the information is readily accessible so as to be usable for subsequent reference; and
- (c) the person to whom the information is required to be provided or produced consents to the information being provided or produced in an electronic form and, if applicable, by means of an electronic communication.

Compare: 2002 No 35 s 28

**233 Legal requirement to provide or produce information that is in electronic form**

A legal requirement to provide or produce information that is in electronic form is met by providing or producing the information—

- (a) in paper or any other non-electronic form, but, if the maintenance of the integrity of the information cannot be assured, the person who must provide or produce the information must—
  - (i) notify that fact to every person to whom the information is required to be provided or produced; and
  - (ii) if requested to do so, provide or produce the information in electronic form in accordance with paragraph (b); or
- (b) in electronic form, whether by means of an electronic communication or otherwise, if—
  - (i) the form and means of the provision or production of the information reliably assure that the integrity of the information is maintained, given the purpose for which, and the circumstances in which, the information is required to be provided or produced; and
  - (ii) the information is readily accessible so as to be usable for subsequent reference; and
  - (iii) the person to whom the information is required to be provided or produced consents to the provision or production of the information in an electronic form and, if applicable, by means of an electronic communication.

Compare: 2002 No 35 s 29

**234 Legal requirement to provide access to information that is in paper or other non-electronic form**

A legal requirement to provide access to information that is in paper or any other non-electronic form is met by providing access to the information in electronic form if—

- (a) the form and means of access to the information reliably assure that the integrity of the information is maintained, given the purpose for which, and the circumstances in which, access to the information is required to be provided; and
- (b) the person to whom access is required to be provided consents to accessing the information in that electronic form.

Compare: 2002 No 35 s 30

**235 Legal requirement to provide access to information that is in electronic form**

A legal requirement to provide access to information that is in electronic form is met by providing access to the information—

- (a) in paper or any other non-electronic form, but, if the maintenance of the integrity of the information cannot be assured, the person who must provide access to the information must—
  - (i) notify that fact to every person to whom access is required to be provided; and
  - (ii) if requested to do so, provide access to the information in electronic form in accordance with paragraph (b); or
- (b) in electronic form, whether by means of an electronic communication or otherwise, if—
  - (i) the form and means of access to the information reliably assure that the integrity of the information is maintained, given the purpose for which, and the circumstances in which, access to the information is required to be provided; and
  - (ii) the person to whom access is required to be provided consents to accessing the information in that electronic form.

Compare: 2002 No 35 s 31

*Legal requirement: originals*

**236 Originals**

A legal requirement to compare a document with an original document may be met by comparing that document with an electronic form of the original document if the electronic form reliably assures that the integrity of the document is maintained.

Compare: 2002 No 35 s 32

*Miscellaneous*

**237 Legal requirement relating to content of information**

This subpart does not affect any legal requirement to the extent that the requirement relates to the content of information.

Compare: 2002 No 35 s 33

**238 Copyright**

The copyright in a work is not infringed by either of the following acts if they are carried out for the purposes of meeting a legal requirement by electronic means:

- (a) the generation of an electronic form of a document:

(b) the production of information by means of an electronic communication.

Compare: 2002 No 35 s 34

### **239 Regulations and Order in Council to amend Schedule 5**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing any conditions that must be complied with in order to meet a legal requirement by electronic means:
  - (b) without limiting paragraph (a), prescribing 1 or more requirements that—
    - (i) must be complied with in order to meet, by electronic means, a legal requirement to which any of sections 222 to 224 apply; and
    - (ii) apply instead of a paper-based format requirement:
  - (c) if an enactment sets out a form that must be used for the purposes of meeting a legal requirement, prescribing an electronic form that may be substituted for the form set out in the enactment:
  - (d) if an enactment provides for the time at which a legal requirement to provide information is to be treated as being satisfied where that information is provided by post or by any other non-electronic means, providing for the time at which the legal requirement is to be treated as being satisfied by an electronic communication.
- (2) The Governor-General may, by Order in Council, amend Schedule 5 or repeal Schedule 5 and substitute a new schedule.
- (3) The explanatory note of an Order in Council made under subsection (2) that makes an addition to Schedule 5 must indicate that—
- (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
  - (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
  - (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Compare: 2002 No 35 ss 14(3), 14A, 36

### **240 Authority to prescribe electronic forms and requirements for using electronic forms**

- (1) A person who is authorised to prescribe a form under an enactment is authorised—
- (a) to prescribe an electronic form for the purposes of that enactment; and
  - (b) to prescribe requirements in connection with the use of that electronic form, including requirements for its electronic signature.

- (2) Nothing in subsection (1) authorises a person to require the use of an electronic form under any enactment.

Compare: 2002 No 35 s 37

## **Part 5**

### **Other commercial matters**

#### Subpart 1—Carriage of goods

##### *Overview*

#### **241 Overview**

- (1) This subpart provides for the liability of carriers for the loss of or damage to goods carried within New Zealand as follows:
- (a) sections 242 to 247 determine that the subpart governs liability in relation to the domestic carriage of goods (other than postal services and other specified exceptions), contain definitions, and determine when contracting out is permitted:
  - (b) sections 248 to 260 set the core principles for that liability by—
    - (i) dividing contracts of carriage of goods into 4 kinds of contract for liability purposes (with the default position being that carriers have limited liability up to a statutory cap):
    - (ii) determining when a carrier is responsible for goods for liability purposes:
    - (iii) setting statutory caps and exclusions from liability:
  - (c) sections 261 to 273 set out additional rules for the liability of carriers, including—
    - (i) providing for the liability of actual carriers to contracting carriers and how that liability is apportioned between actual carriers (*see* sections 261 to 265):
    - (ii) implying into every contract of carriage a statutory warranty by contracting parties as to the condition of the goods, including that the goods are fit to be carried and stored in accordance with the contract (*see* section 273):
  - (d) sections 274 to 281 set notice requirements, and a 12-month limitation period, for bringing proceedings against carriers:
  - (e) sections 282 to 292 provide for the rights of carriers to sue to recover amounts of freight payable and exercise liens over goods:
  - (f) sections 293 to 295 contain miscellaneous provisions.
- (2) This section is only a guide to the general scheme and effect of this subpart.

*Application and effect of subpart***242 This subpart applies to carriage of goods by carrier under contract**

- (1) This subpart applies to every carriage of goods performed or to be performed by a carrier under a contract.
- (2) Subsection (1) applies—
  - (a) whether the carriage is by land, water, or air (or by more than 1 of those modes); and
  - (b) whether or not the carriage is incidental to the carriage of passengers.
- (3) This section is subject to section 243.

Compare: 1979 No 43 s 5(1), (2)

**243 This subpart does not apply to international carriage, to postal services, or in certain other cases**

- (1) This subpart does not apply to—
  - (a) international carriage:
  - (b) the carriage of letters by a postal operator, whether by the postal operator's agents or otherwise:
  - (c) the carriage of goods by the New Zealand Defence Force or the Ministry of Defence, except for the purpose of providing a public service in New Zealand or elsewhere for payment:
  - (d) any carriage by air that is performed as part of an air transport service for the carriage of passengers and is operated by any club that is affiliated with the Royal New Zealand Aero Club Incorporated (the **club**) if—
    - (i) the carriage is performed in an aircraft owned or hired by the club; and
    - (ii) all persons carried on the aircraft, whether as crew or passengers, are members of the club with full rights of membership.
- (2) If an aircraft or a ship is engaged in both international carriage and other carriage of goods at the same time, subsection (1)(a) does not prevent this subpart applying to the carriage that is not international carriage.
- (3) If a passenger (**A**) is carried for the purpose of carrying out a function not related to A's membership of the club (and not because A is a member of the club), subsection (1)(d) does not prevent this subpart from applying to the carriage by air that is performed as part of the air transport service for the carriage of A.
- (4) In this section,—

**letter** has the same meaning as in section 2(1) of the Postal Services Act 1998

**payment** does not include payment by or on behalf of the military authorities of any State other than New Zealand

**postal operator** has the same meaning as in section 2(1) of the Postal Services Act 1998.

Compare: 1979 No 43 ss 4(2), 5(3)–(4B)

#### 244 Other remedies affected

Despite any rule of law to the contrary, a carrier is not liable in its capacity as a carrier, whether in tort or otherwise, and whether personally or vicariously, for the loss of or damage to any goods carried by the carrier except—

- (a) in accordance with the terms of the contract of carriage and the provisions of this subpart; or
- (b) where the carrier intentionally causes the loss or damage.

Compare: 1979 No 43 s 6

#### 245 Contracting out permitted for some matters

If the parties to a contract of carriage expressly provide for any matter to which any of the following sections apply, those sections have effect subject to the express terms:

- (a) if the contract is for carriage at owner's risk or for carriage on declared terms, sections 257 and 258 (which relate to when the responsibility of the contracting carrier for goods begins and ends):
- (b) sections 261 to 265 (which relate to the liability of the actual carrier to the contracting carrier):
- (c) if the contract of carriage is between a contracting carrier and an actual carrier or between actual carriers, section 273 (which provides a statutory warranty as to the condition of goods):
- (d) sections 274 to 281 (which relate to the notice, limitation, and other matters relating to proceedings against carriers):
- (e) sections 282 to 292 (which relate to the rights of carriers, including the right to sue for freight and dispose of certain goods carried).

Compare: 1979 No 43 ss 7, 8(14), 17(3)

### *Interpretation*

#### 246 Interpretation

In this subpart, unless the context otherwise requires,—

**actual carrier**,—

- (a) in relation to the carriage of any goods, means every carrier who, at any material time, is or was in possession of the following for the purpose of performing the carriage, any stage of the carriage, or any incidental service:
  - (i) the goods; or

- (ii) any container, package, pallet, item of baggage, or any other thing in or on which the goods are or were believed by the carrier to be; and
- (b) includes the contracting carrier if that person performs any part of the carriage

**carriage** includes any incidental service

**carrier**—

- (a) means a person who, in the ordinary course of the person's business, carries or procures to be carried goods that are owned by any other person (whether or not the carriage is incidental to the carriage of passengers); and
- (b) except in sections 283 to 289, includes a person who, in the ordinary course of the person's business, performs or procures to be performed any incidental service in respect of any of those goods

**checked baggage** means baggage, personal effects, or other articles, checked or registered with the carrier, put in any place at the carrier's direction, or in any other way handed over to and accepted by the carrier (whether or not a receipt is issued) as baggage intended to be carried incidental to a contract for carriage of a passenger

**contract of carriage** means a contract for the carriage of goods

**contracting carrier**, in relation to a contract of carriage, means the carrier who, whether as a principal or as the agent of any other carrier, enters or has entered into the contract with the contracting party

**contracting party**, in relation to a contract of carriage, means the consignor or (as the case may require) the consignee of the goods who enters or has entered into the contract with the contracting carrier

**court** means any court of competent jurisdiction

**goods**—

- (a) means goods, baggage, and chattels of any description; and
- (b) includes—
  - (i) animals and plants; and
  - (ii) money, documents, and all other things of value

**hand baggage** means baggage, personal effects, or other articles, but excludes checked baggage

**incidental service**, in relation to any goods, means a service performed, or to be performed, to facilitate the carriage of the goods under a contract of carriage (for example, services performed by consolidators, packers, stevedores, and warehouse workers)

**international carriage**,—



- (a) in relation to the carriage of goods by air, means carriage in which, according to the contract of carriage and whether or not there is a break in the carriage or a transshipment,—
  - (i) the place of departure is in the territory of one country and the place of destination is in the territory of another country; or
  - (ii) the place of departure and the place of destination are both within the territory of a single country but there is an agreed stopping place within the territory of another country:
- (b) in relation to the carriage of goods by sea, means carriage from any port in New Zealand to any port outside New Zealand, or to any port in New Zealand from any port outside New Zealand, commencing when the goods are loaded onto a ship and ending when they are discharged from a ship

**loss**, in relation to any goods, includes the non-delivery or destruction of the goods

**passenger** means a person carried under a contract of carriage of that person

**ship** means any vessel used for the carriage of goods by sea.

Compare: 1979 No 43 s 2

#### **247 Meaning of unit of goods**

- (1) In this subpart, unless the context otherwise requires, **unit of goods or unit**,—
  - (a) in relation to bulk cargo, means the customary freight unit; that is, the unit of bulk, weight, or measurement on which the freight for that type of cargo is customarily computed or adjusted (subject to subsection (2)):
  - (b) in relation to goods contained in a container,—
    - (i) means the container load of goods; and
    - (ii) includes the container if the container is provided by the contracting party:
  - (c) in relation to goods loaded on a pallet,—
    - (i) means the pallet load of goods; and
    - (ii) includes the pallet if the pallet is provided by the contracting party:
  - (d) in relation to goods contained in a package that is not contained in a larger package or in a container, nor loaded on a pallet, means the package of goods:
  - (e) in relation to goods that are unitised for the purposes of carriage in any manner not referred to in any of paragraphs (a) to (d) or in subsection (2), means that unit of goods:
  - (f) in relation to goods (other than baggage) not referred to in any of paragraphs (a) to (e) or in subsection (2), means each item of the goods:

- (g) in relation to baggage, means each item of baggage.
- (2) For the purposes of subsection (1)(a), if the freight payable under a contract of carriage is computed or adjusted on a specified unit of bulk, weight, or measurement, references in this subpart to a unit of goods or unit must be treated, for the purposes of the carriage of goods under that contract, as references to that specified unit.
- (3) *See also* section 259(4) (which provides for which unit of goods must be counted for the purposes of determining the limit of a carrier's liability).  
Compare: 1979 No 43 s 3(1)

*Kinds of contract of carriage and effect on liability of parties*

**248 Liability depends on kind of contract of carriage**

- (1) For the purposes of this subpart, each contract of carriage is one of the following kinds, as determined by section 249:
- (a) a contract for carriage **at owner's risk**;
  - (b) a contract for carriage **at declared value risk**;
  - (c) a contract for carriage **on declared terms**;
  - (d) a contract for carriage **at limited carrier's risk**.
- (2) The liability of a carrier for loss or damage to goods under a contract of carriage is determined by the kind of contract as follows:
- (a) under a contract for carriage at owner's risk, the carrier is not liable for the loss of or damage to any goods, except where the loss or damage is intentionally caused by the carrier;
  - (b) under a contract for carriage at declared value risk, the carrier is liable for the loss of or damage to any goods up to an amount specified in the contract and otherwise in accordance with sections 256 to 260;
  - (c) under a contract for carriage on declared terms, the carrier is liable for the loss of or damage to any goods in accordance with the specific terms of the contract;
  - (d) under a contract for carriage at limited carrier's risk, the carrier is liable for the loss of or damage to any goods in accordance with sections 256 to 260.
- (3) *See*, in particular, section 259 (which caps the liability of carriers under contracts for carriage at a limited carrier's risk and at declared value risk).  
Compare: 1979 No 43 s 8(1)

**249 Particular kind of contract of carriage is matter for agreement subject to meeting requirements for that kind**

- (1) A contract of carriage is a particular kind of contract referred to in section 248 if—

- (a) it uses the term for that kind of contract referred to in section 248(1); and
  - (b) it meets the requirements that apply to that kind of contract under sections 250 to 253.
- (2) The kind of contract of carriage to be entered into in a particular case is a matter of agreement between the parties.
- (3) However,—
- (a) a contract of carriage that does not purport to be of a particular kind is a contract for carriage at limited carrier’s risk:
  - (b) a contract of carriage that purports to be of a particular kind but does not meet the requirements that apply to that kind under sections 250 to 253 is instead a contract for carriage at limited carrier’s risk.

Compare: 1979 No 43 s 8(2)–(4)

### **250 Requirements for contract for carriage at owner’s risk**

- (1) A contract can be a contract for carriage at owner’s risk only if—
- (a) either—
    - (i) the contract is in writing, is expressed to be at owner’s risk, and is signed by the parties or their agents; or
    - (ii) before, or at the time when, the goods are accepted for carriage, the contracting party or the party’s agent signs the following statement:  
“These goods are to be carried at owner’s risk. This means that the carrier will pay no compensation if the goods are lost or damaged, unless the carrier intentionally loses or damages them.”; and
  - (b) the requirement in section 253 is met.
- (2) For the purposes of subsection (1)(a)(ii), the statement may be included in the consignment note or in any other document relating to the carriage, but in that case the statement must be prominent and must be separately signed by the contracting party or the party’s agent.

Compare: 1979 No 43 s 8(5), (9)

### **251 Requirements for contract for carriage at declared value risk**

A contract can be a contract for carriage at declared value risk only if—

- (a) the contract is in writing; and
- (b) the requirement in section 253 is met.

Compare: 1979 No 43 s 8(6), (9)

### **252 Requirements for contract for carriage on declared terms**

- (1) A contract can be a contract for carriage on declared terms only if the contract—

- (a) is freely negotiated between the parties; and
  - (b) is in writing; and
  - (c) is signed by the parties or their agents.
- (2) If, in any proceeding, the question of whether a contract of carriage was or was not freely negotiated is in issue, the court in determining that question must have regard to the following matters:
- (a) the respective bargaining strengths of the parties;
  - (b) the course of dealing between the parties in respect of the particular transaction in question, and any other transactions between them;
  - (c) the value of the transaction;
  - (d) any extraordinary features of the goods to be carried or the route over which the goods are to be carried;
  - (e) any other matters that the court considers may properly be taken into account.
- (3) Either party may bring evidence relating to any matter referred to in subsection (2).

Compare: 1979 No 43 s 8(7), (8)

**253 Difference between amounts charged must be fair and reasonable for contract at owner's risk or declared value risk**

- (1) This section applies to a contract for carriage at owner's risk or at declared value risk.
- (2) The difference in amount between the freight charged by the contracting carrier under the contract and the amount that the carrier would have charged for the same carriage at limited carrier's risk must be fair and reasonable.
- (3) For the purposes of determining when the difference is fair and reasonable,—
- (a) regard must be had to the difference in the risk actually undertaken by the carrier and the risk that the carrier would have undertaken if the carriage had been at limited carrier's risk; and
  - (b) a rate of freight prescribed by or under any enactment for any mode of carriage pursuant to any kind of contract of carriage must be treated as being a fair and reasonable rate to charge for the carriage.

Compare: 1979 No 43 s 8(9), (10)

**254 Contract between contracting carrier and actual carrier or between actual carriers**

- (1) A contract of carriage between a contracting carrier and an actual carrier, or between actual carriers, may be of any kind, regardless of the kind of contract that subsists between the contracting carrier and the contracting party.

- (2) Sections 250 to 252 do not apply in respect of any contract between a contracting carrier and an actual carrier or between actual carriers.

Compare: 1979 No 43 s 8(11)

*Liability of contracting carriers*

**255 Application of sections 256 to 258**

- (1) Sections 256 to 258 apply to contracts for carriage at limited carrier's risk and to contracts for carriage at declared value risk.
- (2) In relation to contracts for carriage at owner's risk or to contracts for carriage on declared terms,—
- (a) section 256 does not apply; and
- (b) sections 257 and 258 apply subject to any express terms in the contract (*see* section 245).

Compare: 1979 No 43 s 8(12), (13), (14)

**256 Liability of contracting carrier**

- (1) A contracting carrier is liable to the contracting party for the loss of or damage to any goods that occurs while the carrier is responsible for the goods under sections 257 and 258 (whether or not the loss or damage is caused wholly or partly by the contracting carrier or by any actual carrier).
- (2) This section is subject to sections 259 and 260 (which limit the liability of carriers) and the rest of this subpart.

Compare: 1979 No 43 s 9(1)

**257 When responsibility for goods begins**

- (1) The responsibility of the contracting carrier for goods begins when the goods are accepted for carriage in accordance with the contract.
- (2) However, the responsibility of a contracting carrier who contracts for the carriage of goods from a destination outside New Zealand to a destination in New Zealand begins when the international carriage of those goods ends.

Compare: 1979 No 43 s 9(2), (7)

**258 When responsibility for goods ends**

- (1) The responsibility of the contracting carrier for goods ends as follows:
- (a) if the goods are to be delivered to the consignee,—
- (i) when the goods are tendered to the consignee in accordance with the contract; or
- (ii) if any due freight has not been paid at or before the time the goods are to be tendered to the consignee in accordance with the contract, when the relevant carrier is capable of so tendering the

- goods and has given notice to that effect to a person liable to pay the unpaid amount of due freight (*but see* subsection (3)(c)); or
- (iii) if the relevant carrier does not know the whereabouts of the consignee when the carrier is capable of tendering the goods to the consignee in accordance with the contract, when the relevant carrier has taken reasonable steps to find the consignee and give notice to that effect to the consignee:
- (b) if the goods are to be collected by the consignee,—
    - (i) when the goods are collected by the consignee; or
    - (ii) on the expiry of the fifth day after the date on which the relevant carrier notifies the consignee that the goods are available for collection (*but see* subsection (3)(d)); or
    - (iii) if the relevant carrier does not know the whereabouts of the consignee when the carrier is capable of tendering the goods to the consignee in accordance with the contract, when the relevant carrier has taken reasonable steps to find the consignee and give notice that the goods are available for collection to the consignee.
- (2) However, the responsibility of a contracting carrier who contracts for the carriage of goods to a destination outside New Zealand ends when the international carriage of those goods begins.
- (3) In this section,—
- (a) **due freight** means the whole or any amount of freight that is due and payable to or on behalf of the contracting carrier at any time before, or at the time at which, the goods are to be tendered to the consignee under the contract:
  - (b) **relevant carrier** means the contracting carrier or the last actual carrier (as the case may require):
  - (c) notice is not effective for the purposes of subsection (1)(a)(ii) until it is received by a person liable to pay the due freight:
  - (d) a day must be excluded for the purposes of subsection (1)(b)(ii) if it is a day on which the carrier's premises are not open for the collection of goods.

Compare: 1979 No 43 s 9(3)–(6)

*Limits on carrier liability for contracts of carriage at limited carrier's risk or declared value risk*

**259 Carrier's liability limited to \$2,000 for each unit of goods or to declared value**

- (1) This section applies to contracts for carriage at limited carrier's risk and to contracts for carriage at declared value risk, but not to contracts for carriage at owner's risk or contracts for carriage on declared terms.
- (2) For the purposes of this subpart, the following are limited in amount in each case to the sum of \$2,000 for each unit of goods lost or damaged or, in the case of a contract at declared value risk, the amount specified in the contract:
  - (a) the liability of the contracting carrier to the contracting party;
  - (b) the separate liability of any actual carrier to the contracting carrier;
  - (c) the joint liability of any actual carriers (where there is more than 1) to the contracting carrier;
  - (d) the joint and several liability of every successive carrier under a contract of successive carriage to which section 270 applies.
- (3) The limitation of amount specified in subsection (2) does not apply to—
  - (a) any liability for the loss of or damage to any goods that is intentionally caused by the carrier; or
  - (b) any liability arising out of the terms of the contract for damages other than for the loss of or damage to the goods; or
  - (c) any liability arising out of the terms of the contract for damages that is consequential on the loss of or damage to the goods.
- (4) The reference to **each unit of goods** in subsection (2) is to each unit of goods as accepted for carriage by the actual carrier or (if the carriage is undertaken by more than 1 carrier) the first actual carrier (whether or not the unit that is accepted is subsequently packed, repacked, or unpacked, or otherwise aggregated with or segregated from any other goods, at any stage of the carriage).

Compare: 1979 No 43 ss 3(2), 8(12), (13), 15

**260 Carrier not liable in certain circumstances**

- (1) This section applies to contracts for carriage at limited carrier's risk and to contracts for carriage at declared value risk, but not to contracts for carriage at owner's risk or contracts for carriage on declared terms.
- (2) A carrier is not liable for the loss of or damage to goods that occurs while the carrier is responsible for the goods under a contract of carriage to the extent that the carrier proves that the loss or damage resulted directly and without fault on the carrier's part from—

- (a) inherent vice; or

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**Example**

Fish fillets are packed and carried in a ship. Bacteria in the fish fillets are activated by the temperature of the places through which the ship has to pass and the fish fillets are damaged. The bacteria in the fish fillets are an “inherent vice” in the goods. If the carrier can show that the carrier is without fault and that the damage to the fish fillets directly resulted from the bacteria, the carrier is not liable for the damage to the fish fillets.

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- (b) any breach of either of the terms implied in the contract by section 273; or
- (c) seizure under legal process; or
- (d) saving or attempting to save life or property in peril.
- (3) This section applies despite any of the other provisions of this subpart.  
Compare: 1979 No 43 ss 8(12), (13), 14

*Liability of actual carrier to contracting carrier*

**261 Application of provisions on liability of actual carrier to contracting carrier**

- (1) Sections 262 to 265 apply if a contract of carriage is to be or is performed wholly or partly by 1 or more actual carriers other than the contracting carrier (whether or not the contracting carrier performs part of the carriage).
- (2) However, those sections are subject to the rest of this subpart (including section 245, which permits contracting out for some matters).  
Compare: 1979 No 43 s 10(1)

**262 Liability where 1 actual carrier is involved**

- (1) If 1 actual carrier is involved, that carrier is liable to the contracting carrier for the loss of or damage to any goods that occurs while the actual carrier is separately responsible for the goods.
- (2) Subsection (1) applies to the actual carrier—
- (a) subject to the terms of its contract with the contracting carrier:
- (b) whether or not the loss or damage is caused wholly or partly by the actual carrier.

Compare: 1979 No 43 s 10(2)

**263 Liability where more than 1 actual carrier is involved**

- (1) If more than 1 actual carrier is involved,—
- (a) the actual carriers are jointly liable to the contracting carrier for the loss of or damage to any goods that occurs while the actual carriers are jointly responsible for the goods:



- (b) each actual carrier is separately liable to the contracting carrier for the loss of or damage to any goods that occurs while the actual carrier is separately responsible for the goods.
- (2) Subsection (1)(a) applies to the actual carriers—
  - (a) subject to the terms of their respective contracts with the contracting carrier:
  - (b) whether or not the loss or damage is caused wholly or partly by the actual carriers or any of them.
- (3) Subsection (1)(b) applies to an actual carrier—
  - (a) subject to the terms of its contract with the contracting carrier:
  - (b) whether or not the loss or damage is caused wholly or partly by the actual carrier.
- (4) An actual carrier is not liable under subsection (1)(a) if the actual carrier proves that the loss or damage did not occur while the actual carrier was separately responsible for the goods.

Compare: 1979 No 43 s 10(3), (4)

**264 When actual carriers are jointly responsible or separately responsible for goods**

- (1) For the purposes of section 263(1)(a), the actual carriers are jointly responsible for the goods from the time when the goods (or the container, package, pallet, item of baggage, or any other thing in or on which the goods are believed to be) are accepted for carriage until the time when the contracting carrier's responsibility ends under section 258(1).
- (2) For the purposes of sections 262 and 263, each actual carrier is separately responsible for the goods from the time when the goods (or the container, package, pallet, item of baggage, or any other thing in or on which the goods are believed to be) are accepted by the actual carrier for carriage until the time—
  - (a) when they are tendered by the actual carrier to the next actual carrier in accordance with the contract of carriage; or
  - (b) in the case of the last actual carrier, when the contracting carrier's responsibility ends under section 258(1).

Compare: 1979 No 43 s 10(5), (6)

**265 Provisions relating to joint liability of actual carriers**

- (1) For the purposes of section 263(1)(a), the actual carriers are liable in proportion to the amount of freight or other consideration that is payable to each of the actual carriers for the carriage performed by the actual carrier.
- (2) For the purposes of this section,—
  - (a) if the contracting carrier performs any part of the carriage, the amount of freight or other consideration payable to the contracting carrier is the dif-

ference between the total amount payable under the contract of carriage and the aggregate amount payable to the actual carriers:

- (b) if any actual carrier (**A**) performs any part of the carriage under a contract with any other actual carrier (**B**) (and not under a contract with the contracting carrier), the amount of freight or other consideration payable to B is the difference between the amount actually payable to B and the amount payable by B to A.

Compare: 1979 No 43 s 10(7)–(9)

*Other provisions relating to liability of carriers*

**266 Rights of contracting party where contracting carrier insolvent or cannot be found**

- (1) This section applies if—
  - (a) the contracting carrier is liable to the contracting party for the loss of or damage to any goods; and
  - (b) the contracting carrier is insolvent or cannot with reasonable diligence be found.
- (2) Despite sections 261 to 265, the contracting party has the same rights (if any) against the actual carrier as the contracting carrier has under section 263(1)(b).
- (3) If the contracting party brings any proceeding against an actual carrier in respect of any of those rights,—
  - (a) the actual carrier has the same rights (if any) against the contracting party (including the right of set-off) as the actual carrier would have had under the contract if the proceeding had been brought against the actual carrier by the contracting carrier;
  - (b) if judgment in the proceeding is awarded against the actual carrier, the judgment is an absolute bar to the bringing by the contracting carrier, or by any person claiming through the contracting carrier, of any proceeding to enforce the same right.
- (4) This section applies despite anything in the Companies Act 1993, the Insolvency Act 2006, or any other enactment.

Compare: 1979 No 43 s 11(1), (3), (4)

**267 Liquidator or assignee in bankruptcy holds money on trust**

- (1) If the liquidator or assignee in bankruptcy of an insolvent contracting carrier brings a proceeding against an actual carrier in respect of a right referred to in section 266(2), the relevant amount must be held by the liquidator or assignee on the following trusts:
  - (a) for or towards the payment of the whole of the sum payable by the contracting carrier to the contracting party in respect of the loss of or damage to the goods:

- (b) subject to that payment, as an asset in liquidation or bankruptcy.
- (2) In this section, the **relevant amount** is the sum recovered from the actual carrier, less all costs and expenses reasonably incurred by the liquidator or assignee in bringing and prosecuting the proceeding and not recovered by the liquidator or assignee from the actual carrier.
- (3) This section applies despite anything in the Companies Act 1993, the Insolvency Act 2006, or any other enactment.

Compare: 1979 No 43 s 11(2), (4)

### *Liability of carriers for baggage*

#### **268 Special rules relating to liability of carrier in respect of baggage**

- (1) A carrier is not liable in its capacity as a carrier with respect to baggage that is left in the carrier's custody—
  - (a) pending the carrier's acceptance of it for carriage; or
  - (b) pending its collection from the carrier after the completion of the carriage.
- (2) This subpart applies to the carriage of hand baggage and checked baggage, with all necessary modifications, as if that carriage were or were to be performed under a contract of carriage of goods.
- (3) However, nothing in any of sections 248 to 267, 270, and 271 applies to the carriage of hand baggage other than—
  - (a) sections 257(2) and 258(2), which relate to the international carriage of goods; and
  - (b) sections 259 and 260, which limit carriers' liability.

Compare: 1979 No 43 s 12(1)–(3)

#### **269 Other rules relating to hand baggage**

- (1) A carrier is liable for the loss of or damage to any hand baggage that occurs while the passenger is on board the mode of transport or in the course of any of the operations of embarking or disembarking, if the loss or damage is caused wholly or partly by the negligence or wilful default of the carrier.
- (2) If, in respect of the loss of or damage to any hand baggage, the carrier proves that the loss or damage was contributed to by the negligence or wilful default of the passenger, the court may, under the Contributory Negligence Act 1947, relieve the carrier from any part of the carrier's liability.
- (3) Subsection (2) does not limit section 260.

Compare: 1979 No 43 s 12(4), (5)

*Liability under contracts of successive carriage***270 Contracts of successive carriage by air**

- (1) Nothing in sections 248 to 269 (other than sections 259 and 260, which limit carriers' liability) applies to a contract of successive carriage.
- (2) The successive carriers under a contract of successive carriage are jointly and severally liable to the contracting party for the loss of or damage to any goods that occurs while the carriers are jointly responsible for the goods.
- (3) Subsection (2) applies whether or not the loss or damage is caused wholly or partly by the carriers or by any of them.
- (4) However, a successive carrier is not liable under subsection (2) if the successive carrier proves that the loss or damage did not occur while the successive carrier was separately responsible for the goods.
- (5) Subsections (2) to (4) are subject to the rest of this subpart.
- (6) In this section and section 271,—

**contract of successive carriage** means a contract or contracts for the carriage of any goods exclusively by air, where the carriage—

- (a) is or is to be performed by 2 or more carriers in successive stages; and
- (b) is regarded by the parties as a single operation

**successive carrier** means a carrier referred to in the definition of contract of successive carriage.

Compare: 1979 No 43 s 13(1)–(4)

**271 When successive carriers are jointly responsible or separately responsible for goods**

- (1) For the purposes of section 270, successive carriers are jointly responsible for the goods from the time when the goods are accepted by the first successive carrier for carriage in accordance with the contract until the time when, if the contract were not a contract of successive carriage, the contracting carrier's responsibility would have ended under section 258(1).
- (2) Each successive carrier is separately responsible for the goods from the time when the goods are tendered to the successive carrier in accordance with the contract until the time—
  - (a) when they are tendered by the successive carrier to the next successive carrier in accordance with the contract of carriage; or
  - (b) in the case of the last successive carrier, when, if the contract were not a contract of successive carriage and the successive carrier were the contracting carrier, the carrier's responsibility would have ended under section 258(1).

Compare: 1979 No 43 s 13(5), (6)

*Liability of employees*

**272 Liability of carrier's employee**

- (1) Every employee of a carrier who, in the course of the employee's employment, intentionally causes the loss of or damage to any goods being carried by the carrier is liable to the owner of the goods for that loss or damage.
- (2) An employee of a carrier is not liable in his or her capacity as an employee, whether under this subpart or otherwise, to the owner of any goods being carried by the carrier for the loss of or damage to any of those goods.
- (3) Subsection (2) is subject to subsection (1).

Compare: 1979 No 43 s 16

*Warranty by contracting parties*

**273 Contracting party to warrant condition of goods and compliance with enactments**

- (1) In every contract of carriage of goods there is implied on the part of the contracting party a term—
  - (a) that, except as disclosed under subsection (2), the goods are fit to be carried and stored in accordance with the contract in the condition, and packed in the manner, in which the goods are tendered for carriage:
  - (b) that, except as disclosed under subsection (2), the provisions of every other enactment (if any) that the contracting party is required to comply with and that relate to the consignment for carriage of the goods have been complied with.
- (2) If, before the goods are accepted for carriage, the contracting party notifies the contracting carrier or the first actual carrier of any material particular that would otherwise constitute a breach of either of the terms specified in subsection (1), the carrier may—
  - (a) refuse to carry the goods; or
  - (b) undertake to carry the goods subject to the reasonable terms and conditions that the carrier may require, having regard to the circumstances of the case.
- (3) This section applies, with all necessary modifications, to contracts of carriage between contracting carriers and actual carriers, and between actual carriers, subject to any express term in the contract (*see* section 245).

Compare: 1979 No 43 s 17

*Proceedings against carriers***274 Notice of claim against contracting carrier must be given within 30 days**

- (1) No proceeding may be brought against a contracting carrier for damage to or partial loss of goods that occurs while the contracting carrier is responsible for the goods under this subpart unless written notice is given in accordance with this section.
- (2) The notice must—
  - (a) give reasonable particulars of the alleged damage or partial loss; and
  - (b) be given within 30 days after the date on which, in accordance with section 258, the carrier's responsibility for the goods ends; and
  - (c) be given to the contracting carrier or (if the contract was not performed entirely by the contracting carrier) to—
    - (i) the actual carrier or, as the case may require, the last actual carrier; and
    - (ii) the contracting carrier, unless (where notice of the claim is to be given by the consignee) the consignee does not know the identity of the contracting carrier.
- (3) This section is subject to section 245 (which permits contracting out for some matters) and sections 276 and 277.

Compare: 1979 No 43 s 18(1), (4)

**275 Notice of claim against actual carrier must be given within 10 days**

- (1) No proceeding may be brought by a contracting carrier against an actual carrier for damage to or partial loss of goods that occurs while the actual carrier is responsible for the goods under this subpart unless the contracting carrier, within 10 days after receiving notice of a claim under section 274, notifies the actual carrier of that claim.
- (2) This section is subject to section 245 (which permits contracting out for some matters) and sections 276 and 277.

Compare: 1979 No 43 s 18(2)

**276 No notice required if carrier is or ought to be aware of damage or loss or in case of fraud**

A notice is not required to be given to a carrier under section 274 or 275—

- (a) if it appears from all the circumstances of the case that the carrier is or ought to be aware of the damage or partial loss; or
- (b) in the case of fraud by the carrier.

Compare: 1979 No 43 s 18(1)–(3)

**277 Non-notified proceeding may be brought with carrier's consent or leave of court**

- (1) A carrier may consent to a proceeding being brought against the carrier even if a notice of the claim was not properly given.
- (2) If the carrier does not consent, an application may be made to the court, after notice to the carrier, for leave to bring the proceeding.
- (3) The application must be made before the expiry of the period set by section 278 or 279.
- (4) On application being made to it, the court may, if it thinks it just to do so, grant leave to bring the proceeding against the carrier if the court considers that—
  - (a) the failure to give notice was caused by mistake of fact or by mistake of any matter of law (other than the provisions of sections 274 to 276 or this section) or by any other reasonable cause; and
  - (b) the intended defendant was not materially prejudiced in that person's defence or otherwise by the failure to give proper notice.
- (5) Leave may be granted on the terms and conditions that the court thinks fit.

Compare: 1979 No 43 s 18(5)–(7)

**278 Limitation on proceedings against carriers for loss of goods**

- (1) No proceeding may be brought against a carrier for the loss of any goods that occurs while the carrier is responsible for the goods under this subpart after the expiry of a period of 12 months from the date on which the carriage should have been completed in accordance with the contract (the **relevant date** for the purposes of section 280).
- (2) Subsection (1) does not apply in the case of fraud by the carrier.
- (3) This section is subject to sections 279 and 280.

Compare: 1979 No 43 s 19(1)

**279 Limitation on proceedings against carriers for damage to or partial loss of goods**

- (1) No proceeding may be brought against a carrier for damage to or partial loss of any goods that occurs while the carrier is responsible for the goods under this subpart after the expiry of a period of 12 months from—
  - (a) the date on which notice is served on the carrier under section 274 or 275; or
  - (b) if, under section 276(a), no notice is served, the date on which the contracting carrier's responsibility for the goods ends under section 258.
- (2) The date referred to in subsection (1)(a) or (b) is the **relevant date** for the purposes of section 280.
- (3) Subsection (1) does not apply in the case of fraud by the carrier.

- (4) This section is subject to section 280.

Compare: 1979 No 43 s 19(2)

**280 Proceeding may be brought after limitation period with carrier's consent or leave of court**

- (1) A carrier may consent to a proceeding being brought against the carrier even if the period specified in section 278 or 279 has expired.
- (2) If the carrier does not consent, an application may be made to the court, after notice to the carrier, for leave to bring the proceeding.
- (3) The application must be made within 6 years after the relevant date referred to in section 278 or 279.
- (4) On an application being made to it, the court may, if it thinks it just to do so, grant leave to bring the proceeding against the carrier if it considers that—
- (a) the delay in bringing the proceeding was caused by mistake of fact or by mistake of any matter of law (other than the provisions of section 278 or 279 or this section) or by any other reasonable cause; and
- (b) the intended defendant was not materially prejudiced in that person's defence or otherwise by the delay.
- (5) Leave may be granted on the terms and conditions that the court thinks fit.

Compare: 1979 No 43 s 19(3)–(5)

**281 Proceeding by consignee if not contracting party**

- (1) A proceeding against a contracting carrier in respect of the loss of or damage to any goods that occurs while the carrier is responsible for the goods in accordance with section 256 may, if the property in the goods has passed to the consignee and the consignee is not the contracting party, be brought by the consignee.
- (2) Subsection (1) applies despite anything in this subpart or any rule of law to the contrary.
- (3) If the consignee brings a proceeding in accordance with subsection (1),—
- (a) the consignee must be treated as the contracting party and may sue and recover under the contract accordingly;
- (b) the contracting carrier may raise the same defences and make the same counterclaims as the contracting carrier would have been entitled to raise or make if the proceeding had been brought against the contracting carrier by the contracting party.
- (4) In this section, **property** has the same meaning as in section 119.

Compare: 1979 No 43 s 20



*Rights of carriers*

**282 Contracting out permitted on rights of carriers**

Sections 283 to 292 have effect subject to section 245 (which permits contracting out for some matters).

Compare: 1979 No 43 s 7

**283 Right to sue for freight**

- (1) The right to sue for the recovery of freight payable under a contract of carriage arises,—
  - (a) in the case of a contracting carrier, when the contracting carrier ceases to be responsible for the goods in accordance with section 258;
  - (b) in the case of an actual carrier, when the actual carrier ceases to be separately responsible for the goods in accordance with section 264(2).
- (2) Nothing in subsection (1) limits or affects the right of a carrier to refuse to accept any goods for carriage unless the freight is prepaid.

Compare: 1979 No 43 s 21

**284 Proceeding for recovery of freight**

- (1) A proceeding for the recovery of freight may be brought against the consignee if—
  - (a) the property in the goods has passed to the consignee; and
  - (b) the consignee is not the contracting party.
- (2) Subsection (1) applies despite anything in this subpart or any rule of law to the contrary.
- (3) If the proceeding is brought against the consignee,—
  - (a) the consignee must be treated as the contracting party and is liable for the payment of freight under the contract accordingly;
  - (b) the consignee may raise the same defences and make the same counter-claims as the contracting party would have been entitled to raise or make if the proceeding had been brought against the contracting party.

Compare: 1979 No 43 s 22

**285 Carrier's lien**

- (1) The carrier is entitled to an active and particular lien over the goods from the time when, under section 283(1), a carrier's right to sue for the recovery of freight arises.
- (2) The lien may be exercised in accordance with sections 286 to 288.
- (3) Nothing in this section or in sections 286 to 288 limits or affects the right to have and enforce a general lien over any goods to which a carrier may be en-

titled by virtue of any provision expressed or implied in the contract of carriage.

- (4) In this section and sections 286 to 288,—

**owner**, in relation to any goods, means the person whom, under any contract of carriage or under section 284, the carrier may sue for recovery of freight due in respect of the carriage of those goods

**recoverable expenses** means all expenses and charges that the carrier, under section 288(2)(b), may recover from the owner of any goods in respect of which the carrier is exercising or has exercised a lien under this section or any of sections 286 to 288.

Compare: 1979 No 43 s 23(1), (2), (8)

### **286 Notice of carrier's claim**

- (1) Every carrier claiming a lien over any goods under section 285(1) must give notice of the carrier's claim to the owner of the goods.
- (2) The notice must—
- (a) specify the amount and particulars of the carrier's claim; and
  - (b) require the owner to pay or secure to the carrier the amount of the freight claimed and all recoverable expenses.

Compare: 1979 No 43 s 23(3)

### **287 Carrier may store goods**

- (1) Pending settlement of the claim referred to in section 286, the carrier—
- (a) may remove the goods to any suitable premises for storage; and
  - (b) must notify the owner of the goods of the address of the premises; and
  - (c) must take all reasonable steps to preserve the goods.
- (2) The premises must be reasonably convenient to enable the owner of the goods, or any other person entitled to the goods, to collect the goods on payment of all freight owing and recoverable expenses so far incurred.

Compare: 1979 No 43 s 23(4)

### **288 Sale of goods by public auction**

- (1) The carrier may sell the goods by public auction if, within 2 months after the date on which the carrier gives notice under section 286, payment in full of all freight owing and recoverable expenses so far incurred has not been tendered to the carrier.
- (2) From the proceeds of sale of the goods by public auction, the carrier may deduct—
- (a) the amount of freight owing to the carrier in respect of the carriage of the goods; and

- (b) all expenses reasonably incurred by the carrier in removing, preserving, and storing the goods pending settlement of the carrier's claim, and in arranging and conducting the sale of the goods.
  - (3) The carrier must pay the balance of the proceeds (if any) to the owner of the goods.
  - (4) If the amount of the proceeds is less than the amount of freight owing to the carrier and all recoverable expenses, the deficiency is a debt due to the carrier by the owner of the goods.
- Compare: 1979 No 43 s 23(5)–(7)

### **289 Storage and disposal of unclaimed or rejected goods**

- (1) This section applies if, under a contract of carriage,—
  - (a) any goods are to be collected by the consignee and the goods are not collected by the consignee promptly after the responsibility of the contracting carrier for the goods ends under section 258; or
  - (b) any goods are to be delivered to the consignee and the consignee—
    - (i) cannot be found; or
    - (ii) refuses to accept the goods (otherwise than because of any default by the carrier).
- (2) The carrier may remove the goods, at the consignee's expense, to suitable premises for storage.
- (3) The carrier is entitled to an active and particular lien over the goods held by the carrier under this section.
- (4) The lien may be exercised in the same manner and to the same extent as if it were a lien to which section 285 applies, and that section and sections 286 to 288, to the extent that they are applicable and with all necessary modifications, apply accordingly.
- (5) Despite subsections (1) to (4), the carrier must, before selling any goods to which this section applies, offer to carry the goods to, or to the order of, the consignor, and all costs must be met by the consignor.

Compare: 1979 No 43 s 24

### **290 Disposal of perishable goods**

- (1) This section applies if, at any time while any perishable goods are subject to a contract of carriage (including any time while the goods are held under sections 285 to 289), the goods appear to be deteriorating and likely to become offensive.
- (2) The carrier may—
  - (a) sell the goods to the best advantage; or
  - (b) if sale is not reasonably practicable, destroy or otherwise dispose of the goods.

- (3) Subsection (2) applies despite any of the other provisions of this subpart.
- (4) If the goods are sold, the carrier—
  - (a) may deduct from the proceeds of sale—
    - (i) the amount of freight or other consideration owing to the carrier in respect of the carriage of the goods; and
    - (ii) all expenses reasonably incurred by the carrier in holding the goods and in arranging and conducting the sale; and
  - (b) must pay the balance (if any) to the consignee.
- (5) If the goods are destroyed or otherwise disposed of, the expenses reasonably incurred by the carrier are recoverable by the carrier as a debt due from the contracting party.

Compare: 1979 No 43 s 25

#### **291 Disposal of dangerous goods**

- (1) This section applies if, at any time while any goods are subject to a contract of carriage (including any time while the goods are held under sections 285 to 289), the carrier believes on reasonable grounds that—
  - (a) the goods are in, or are about to enter, a dangerous state; and
  - (b) it is necessary to promptly destroy or otherwise dispose of the goods in order to avoid the threat of harm to any persons or property.
- (2) The carrier may promptly destroy or otherwise dispose of the goods.
- (3) Subsection (2) applies despite any of the other provisions of this subpart.
- (4) The reasonable expenses incurred by the carrier in destroying or otherwise disposing of the goods are recoverable by the carrier as a debt due from the contracting party.

Compare: 1979 No 43 s 26

#### **292 Liability of carrier extinguished in respect of sale or disposal of goods**

- (1) This section applies if any goods are sold, destroyed, or otherwise disposed of in accordance with any of sections 285 to 291.
- (2) Neither the contracting carrier nor any actual carrier is liable (whether under this subpart or otherwise) in respect of the sale, the destruction, or any other disposition of the goods.
- (3) However, the sale, the destruction, or any other disposition does not affect any liability for any loss or damage that had already occurred in respect of the goods before their sale, destruction, or other disposition.
- (4) This section applies despite any of the other provisions of this subpart.

Compare: 1979 No 43 s 27

*Miscellaneous provisions*

**293 Common carrier of goods abolished**

- (1) A carrier is not under any duty or obligation to accept or carry goods that are offered to the carrier for carriage.
- (2) Subsection (1) applies despite any rule of law, but subject to the provisions of any enactment and of any contract entered into by the carrier.
- (3) Every reference in any other enactment to the liability of common carriers as such must be treated as a reference to the liability of carriers under this subpart.

Compare: 1979 No 43 s 28

**294 Proceedings against New Zealand agents of overseas carriers**

A proceeding arising out of a contract of carriage may be brought in accordance with the provisions of this subpart against a New Zealand agent, whether acting under general or special authority, of an overseas contracting carrier if—

- (a) the contract is or is to be performed wholly or partly in New Zealand; and
- (b) the agent plays some part in relation to the contract.

Compare: 1979 No 43 s 29

**295 Certain other Acts not affected**

- (1) Nothing in this subpart limits or affects any of the provisions of the Hazardous Substances and New Organisms Act 1996, the Radiation Safety Act 2016, or any other enactment relating to goods of a particular nature or class.
- (2) In any case where any of the provisions of this subpart are inconsistent with any of the provisions of any other enactment referred to in subsection (1), the provisions of that other enactment prevail.

Compare: 1979 No 43 s 30

**Subpart 2—Mercantile agents**

**296 Interpretation**

- (1) In this subpart, unless the context otherwise requires,—  
**document of title** includes—
  - (a) a bill of lading, a dock warrant, a warehouse keeper's certificate, and a warrant or an order for the delivery of goods; and
  - (b) any other document—
    - (i) that is used in the ordinary course of business as proof of the possession or control of goods; or

- (ii) that authorises or purports to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive the goods represented by the document

**goods** includes all kinds of movable personal property, including animals

**mercantile agent** means an agent who has, in the ordinary course of the agent's business as an agent, authority to—

- (a) sell goods; or
- (b) consign goods for the purpose of sale; or
- (c) buy goods; or
- (d) raise money on the security of goods

**pledge** includes any contract pledging or giving a lien or security on goods, whether in consideration of—

- (a) an original advance; or
- (b) any further or continuing advance; or
- (c) any monetary liability.

- (2) A person (**A**) must be treated as being in possession of goods, or of the documents of title to goods, if the goods or documents—
  - (a) are in A's actual custody; or
  - (b) are held by any other person subject to A's control or for A or on A's behalf.

Compare: 1908 No 117 s 2

*Sales, pledges, and other dispositions by mercantile agents*

**297 Sale, pledge, or other disposition by agent in possession with owner's consent is valid**

- (1) This section applies if a mercantile agent (**A**) is, with the consent of the owner of goods (**B**), in possession of the goods or of the documents of title to the goods.
- (2) A sale, a pledge, or any other disposition of the goods made by A, when acting in the ordinary course of business as a mercantile agent, is as valid as if A were expressly authorised by B to make the sale, pledge, or other disposition.
- (3) However, subsection (2) applies only if the person who takes the goods under the disposition—
  - (a) acts in good faith; and
  - (b) does not, at the time of the disposition, have notice that A has no authority to make the disposition.
- (4) Subsection (2) is subject to the rest of this subpart.

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**Example**

A person (**A**) runs a fairly substantial business of selling second-hand televisions, computers, and other electrical equipment as an agent on behalf of the owners of those goods.

Another person (**B**) gives B's television to A for the purposes of repair (rather than sale).

A, when acting in the ordinary course of his business, sells B's television to a consumer (**C**). C buys the television honestly and does not know that A has not been given authority to sell it.

C obtains good title to the television.

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Compare: 1908 No 117 s 3(1)

**298 Buyer, etc, has notice of lack of authority if goods subject to perfected security interest**

- (1) This section applies if—
  - (a) a mercantile agent is, with the consent of the owner of goods, in possession of the goods or of documents of title to the goods; and
  - (b) those goods are subject to a perfected security interest under the Personal Property Securities Act 1999.
- (2) A person who takes the goods under a disposition made by the mercantile agent must be treated as having notice that the agent has no authority to make the disposition.
- (3) Subsection (2) does not apply if it is proved that the authority did exist.

Compare: 1908 No 117 s 3(1A)

**299 Effect of withdrawal or expiry of owner's consent**

- (1) This section applies if a mercantile agent has, with the consent of the owner of goods, been in possession of the goods or of the documents of title to the goods.
- (2) A sale, a pledge, or any other disposition that would have been valid if the consent of the owner had continued is valid despite the withdrawal or expiry of the consent.
- (3) However, subsection (2) applies only if the person who takes the goods under the disposition does not, at the time of the disposition, have notice that the consent has been withdrawn or has expired.

Compare: 1908 No 117 s 3(2)

**300 Provisions relating to consent**

For the purposes of this subpart,—

- (a) possession of the documents of title to goods by a mercantile agent (**A**) must be treated as being with the consent of the owner if A obtains possession of those documents by reason of A being or having been, with

the consent of the owner, in possession of the goods or of any other documents of title to the goods; and

- (b) the consent of the owner is presumed in the absence of evidence to the contrary.

Compare: 1908 No 117 s 3(3), (4)

### **301 Effect of pledges of documents of title**

A pledge of the documents of title to goods must be treated as being a pledge of the goods.

Compare: 1908 No 117 s 4

### **302 Pledge of goods as security for existing debt or liability**

If a mercantile agent pledges goods as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee acquires no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

Compare: 1908 No 117 s 5

### **303 Rights acquired by exchange of goods or documents**

- (1) The consideration necessary for the validity of a sale, a pledge, or any other disposition of goods for the purposes of this subpart may be—
  - (a) a payment in cash; or
  - (b) the delivery or transfer of—
    - (i) other goods; or
    - (ii) a document of title to other goods; or
    - (iii) a negotiable security; or
  - (c) any other valuable consideration.
- (2) However, if a mercantile agent pledges goods in consideration of the delivery or transfer of other goods, or of a document of title to other goods, or of a negotiable security, the pledgee acquires no right to or interest in the pledged goods in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

Compare: 1908 No 117 s 6

### **304 Agreements through employees or other authorised persons**

For the purposes of this subpart, an agreement made with a mercantile agent through an employee or any other person authorised in the ordinary course of business to make contracts of sale or pledge on the mercantile agent's behalf must be treated as being an agreement with the mercantile agent.

Compare: 1908 No 117 s 7



**305 Consignee's lien**

- (1) This section applies if—
  - (a) an owner of goods has—
    - (i) given possession of the goods to another person (A) for the purpose of consignment or sale; or
    - (ii) shipped the goods in the name of another person (A); and
  - (b) the consignee of the goods has not had notice that A is not the owner of the goods.
- (2) The consignee, in respect of advances made to or for the use of A, has the same lien on the goods as if A were the owner of the goods.
- (3) The consignee may transfer the lien to another person.
- (4) Nothing in this section limits or affects the validity of any sale, pledge, or other disposition by a mercantile agent.

Compare: 1908 No 117 s 8

**306 Effect of transfer of document of title to goods on vendor's lien and right of stopping goods in transit**

- (1) This section applies if—
  - (a) a document of title to goods has been lawfully transferred to a person (A) as a buyer or an owner of the goods; and
  - (b) A transfers the document to a person who takes the document in good faith and for valuable consideration.
- (2) The transfer referred to in subsection (1)(b) has the same effect for defeating a vendor's lien or right of stopping goods in transit as the transfer of a bill of lading has for defeating the right of stopping goods in transit.
- (3) This section is subject to section 186.

Compare: 1908 No 117 s 9

*Miscellaneous provisions*

**307 Mode of transferring documents**

For the purposes of this subpart, the transfer of a document may be by—

- (a) endorsement; or
- (b) delivery, if the document—
  - (i) is by custom or by its express terms transferable by delivery; or
  - (ii) makes the goods deliverable to the bearer.

Compare: 1908 No 117 s 10

**308 Saving of rights of true owner**

- (1) This subpart does not—

- (a) authorise a mercantile agent to exceed or depart from the agent's authority as between the agent and the agent's principal; or
  - (b) exempt the agent from any liability, civil or criminal, for exceeding or departing from that authority.
- (2) This subpart does not prevent the owner of goods from recovering the goods from a mercantile agent or a specified person at any time before the sale or pledge of the goods.
- (3) In subsection (2), **specified person** means,—
- (a) in the case of a mercantile agent that is bankrupt, the Official Assignee (within the meaning of the Insolvency Act 2006); or
  - (b) in the case of a mercantile agent in liquidation, the liquidator.
- (4) This subpart does not prevent the owner of goods pledged by a mercantile agent—
- (a) from having the right to redeem the goods at any time before the sale of the goods, on—
    - (i) satisfying the claim for which the goods were pledged; and
    - (ii) paying to the mercantile agent, if required by the agent, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title to the goods (or any of those goods or documents) by way of lien as against the owner; or
  - (b) from recovering from any person with whom the goods have been pledged any balance of money remaining in the person's hands as the proceeds of the sale of the goods after deducting the amount of the person's lien.
- (5) This subpart does not prevent the owner of goods sold by a mercantile agent from recovering from the buyer the price agreed to be paid for the goods, or any part of that price, subject to any right of set-off on the part of the buyer against the agent.

Compare: 1908 No 117 s 11

### **309 Common law powers of mercantile agent**

This subpart does not limit the powers that are exercisable by a mercantile agent independently of this subpart.

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#### **Examples**

Powers that are exercisable by a mercantile agent independently of this subpart include powers exercisable under the common law doctrines of ostensible authority and agency by estoppel.

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Compare: 1908 No 117 s 12

## Subpart 3—Bills of lading, sea waybills, and ship's delivery orders

### *Application*

#### **310 Application of this subpart**

- (1) This subpart applies to the following documents:
  - (a) bills of lading:
  - (b) sea waybills:
  - (c) ship's delivery orders.
- (2) To avoid doubt about the application of this subpart to navigable lakes and inland navigable waters of New Zealand, this subpart extends and applies to all parts of New Zealand to the extent that this subpart is applicable.

Compare: 1908 No 117 ss 1(4), 13A(1)

#### **311 This subpart applies without prejudice to application of Hague Rules**

This subpart has effect without prejudice to the application, in relation to any case, of section 209 of the Maritime Transport Act 1994 (which relates to the Hague Rules having the force of law in relation to the carriage of goods by sea).

Compare: 1908 No 117 s 13(7)

### *Interpretation*

#### **312 Interpretation**

- (1) In this subpart and subparts 2 and 4, unless the context otherwise requires,—  
**bill of lading**—
  - (a) does not include a document that is incapable of transfer either by endorsement or, as a bearer bill, by delivery without endorsement; but
  - (b) subject to paragraph (a), includes a received for shipment bill of lading**sea waybill** means a document (other than a bill of lading) that—
  - (a) is a receipt for goods that contains or evidences a contract for the carriage of goods by sea; and
  - (b) identifies the person to whom the carrier will deliver the goods in accordance with that contract (*see* subsection (3)(b))**ship's delivery order** means a document (other than a bill of lading or a sea waybill) that contains an undertaking that—
  - (a) is given under or for the purposes of a contract for the carriage by sea of the goods to which the document relates, or of goods that include those goods; and

- (b) is an undertaking given by the carrier to a person who is identified in the document to deliver the goods to which the document relates to that person.
- (2) In this subpart, unless the context otherwise requires,—
- contract of carriage** means,—
- (a) in relation to a bill of lading or sea waybill, the contract contained in or evidenced by the bill or waybill; and
- (b) in relation to a ship's delivery order, the contract under which or for the purposes of which the undertaking contained in the order is given
- goods** includes all kinds of movable personal property, including animals
- holder**, in relation to a bill of lading, means any of the following persons:
- (a) a person who possesses the bill and who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates:
- (b) a person who possesses the bill as a result of the completion (by delivery of the bill) of an endorsement of the bill or, in the case of a bearer bill, as a result of any other transfer of the bill:
- (c) a person who possesses the bill as a result of a transaction under which the person would have become a holder under paragraph (a) or (b) had the transaction not been effected at a time when possession of the bill no longer gave a right (as against the carrier) to possession of the goods to which the bill relates
- information technology** includes any computer or other technology by means of which information or other matter may be recorded in electronic form or communicated by means of an electronic communication (where **electronic** and **electronic communication** have the same meanings as in section 209)
- network** has the same meaning as in section 5 of the Telecommunications Act 2001
- received for shipment bill of lading** has the meaning set out in section 324.
- (3) For the purposes of this subpart,—
- (a) a person must be regarded as having become the lawful holder of a bill of lading if the person has become the holder of the bill in good faith:
- (b) references to a person being identified in a document include references to that person being identified by a description that allows for the identity of the person to be varied, in accordance with the terms of the document, after its issue.

Compare: 1908 No 117 ss 13(1)–(3), 13A(2)–(4)

**313 Goods that cease to exist or cannot be identified**

- (1) Nothing in this subpart prevents this subpart from applying where the goods to which a document relates—
  - (a) cease to exist after the document is issued; or
  - (b) cannot be identified (whether because the goods are mixed with other goods or for any other reason).
- (2) References in this subpart to the goods to which a document relates must be interpreted in accordance with subsection (1).
- (3) This section does not limit section 315.

Compare: 1908 No 117 s 13(4)

*Rights under shipping documents*

**314 Holder of bill of lading or person to whom delivery is to be made has rights under contract of carriage**

- (1) All rights to bring a proceeding under a contract of carriage are transferred to and vest in a person (A) as if A had been a party to the contract if A becomes—
  - (a) the lawful holder of a bill of lading; or
  - (b) the person who (without being an original party to the contract of carriage) is the person to whom the carrier will deliver the goods to which a sea waybill relates in accordance with that contract; or
  - (c) the person to whom the goods to which a ship's delivery order relates will be delivered in accordance with the undertaking contained in the order.
- (2) This section is subject to sections 315 to 318.

Compare: 1908 No 117 s 13B(1)

**315 Rights where possession of bill of lading no longer gives right to possession of goods**

- (1) This section applies if a person (A) becomes the lawful holder of a bill of lading at a time when possession of the bill no longer gives a right (as against the carrier) to possession of the goods to which the bill relates.
- (2) No rights are transferred to A under section 314 unless A becomes the holder of the bill—
  - (a) because of a transaction effected under a relevant arrangement; or
  - (b) as a result of another person (B) rejecting to A goods or documents that were delivered to B under a relevant arrangement.
- (3) In this section, **relevant arrangement** means a contractual or other arrangement that was made before the right to possession of the goods ceased to attach to the possession of the bill of lading.

Compare: 1908 No 117 s 13B(2)

**316 Rights in relation to ship's delivery order**

- (1) This section applies to the rights vested in a person under section 314 in relation to a ship's delivery order.
- (2) The rights are vested subject to the terms of the ship's delivery order.
- (3) If the goods to which the ship's delivery order relates are only a part of the goods to which the contract of carriage relates, the rights that are vested are confined to rights in respect of the goods to which the order relates.

Compare: 1908 No 117 s 13B(3)

**317 Rights may be exercised for benefit of person who suffers loss or damage**

- (1) This section applies if, in relation to a document to which this subpart applies,—
  - (a) a person (**B**) with an interest or a right in, or in relation to, goods to which the document relates suffers loss or damage because of a breach of the contract of carriage; but
  - (b) section 314 applies in relation to the document so that rights to bring a proceeding for the breach are vested in another person (**A**).
- (2) A may exercise the rights referred to in subsection (1)(b) for the benefit of B to the same extent as the rights could have been exercised if they had been vested in B.

Compare: 1908 No 117 s 13B(4)

**318 Transfer extinguishes certain rights**

- (1) If rights are transferred under section 314 in relation to a document, the transfer extinguishes any entitlement that a person has to those rights that derives,—
  - (a) in the case of a bill of lading, from the person having been an original party to the contract of carriage; or
  - (b) in the case of any document to which this subpart applies, from the previous operation of that section in relation to the document.
- (2) However, section 314 does not limit any rights a person has—
  - (a) that derive from the person having been an original party to the contract contained in, or evidenced by, a sea waybill:
  - (b) in relation to a ship's delivery order, that derive otherwise than from the previous operation of that section in relation to the order.

Compare: 1908 No 117 s 13B(5)

*Liabilities under shipping documents***319 Person in whom rights are vested becomes subject to liabilities**

- (1) This section applies if a person (**A**), in whom rights are vested under section 314 in relation to a document,—

- (a) takes or demands delivery from the carrier of any of the goods to which the document relates; or
  - (b) makes a claim under the contract of carriage against the carrier concerning any of those goods; or
  - (c) is a person who, at a time before those rights were vested in that person, took or demanded delivery from the carrier of any of those goods.
- (2) A becomes subject to the same liabilities under the contract of carriage as if A had been a party to the contract.
- (3) This section, to the extent that it imposes liabilities under a contract on a person, does not limit the liabilities under the contract of any person as an original party to the contract.

Compare: 1908 No 117 s 13C(1), (3)

**320 Liabilities exclude liabilities in respect of goods to which ship's delivery order does not relate**

If the goods to which a ship's delivery order relates are only a part of the goods to which the contract of carriage relates, the liabilities that a person is subject to under section 319 in relation to that order exclude liabilities in respect of any goods to which the order does not relate.

Compare: 1908 No 117 s 13C(2)

**321 Right of stopping goods in transit, or claims for freight, not affected**

- (1) This subpart does not limit or affect—
- (a) any right of stopping goods in transit; or
  - (b) any right to claim freight against the original shipper or owner; or
  - (c) any liability that the consignee or endorsee has because—
    - (i) that person is the consignee or endorsee; or
    - (ii) that person has received the goods as a result of the consignment or endorsement.
- (2) This section is subject to section 306.

Compare: 1908 No 117 s 14

**322 Bill of lading in hands of shipper, consignee, or endorsee is conclusive evidence as against master or other signer of bill**

- (1) Every bill of lading in the hands of the shipper or of a consignee or an endorsee for valuable consideration, representing goods to have been shipped on board a vessel, is conclusive evidence of the shipment as against the master or other person who signs the bill of lading.
- (2) Subsection (1) applies even though the goods or some part of the goods may not have been shipped.

- (3) However, subsection (1) does not apply if the holder of the bill of lading has had actual notice at the time of receiving the bill of lading that the goods were not in fact loaded on board.
- (4) The master or other person who signs a bill of lading may excuse himself or herself from liability for a misrepresentation that goods have been shipped on board a vessel by showing that the misrepresentation was caused—
  - (a) without any default on his or her part; and
  - (b) wholly by the fraud of the shipper or of the holder of the bill of lading (or a person under whom the holder claims).

Compare: 1908 No 117 ss 15, 16

### **323 Regulations relating to network or other information technology**

- (1) The Governor-General may, by Order in Council, make regulations for the application of this subpart to cases where a network or other information technology is used for effecting transactions corresponding to—
  - (a) the issue, the endorsement, the delivery, or any other transfer of a document to which this subpart applies; or
  - (b) doing anything else in relation to a document to which this subpart applies.
- (2) The regulations may—
  - (a) make the modifications of the provisions of this subpart that are appropriate in connection with the application of this subpart to any case mentioned in subsection (1); and
  - (b) contain supplemental, incidental, consequential, and transitional provisions.

Compare: 1908 No 117 s 13(5), (6)

#### *Special provisions about received for shipment bills of lading*

### **324 Special provisions about received for shipment bills of lading**

- (1) In this section, **received for shipment bill of lading** means a shipping document issued in accordance with this section that—
  - (a) is signed by a person purporting to be authorised to sign the document; and
  - (b) acknowledges that the goods to which the document relates have been received for shipment.
- (2) A received for shipment bill of lading—
  - (a) may not be issued until the goods are in the possession of the owner of the ship or of some person duly authorised on the owner's behalf;
  - (b) may be issued only for a named ship in which space has been actually reserved:



- (c) may not be issued earlier than 21 days before the time when the ship is expected to be in port in readiness to load.
- (3) The issue of a received for shipment bill of lading is, until the contrary is proved, sufficient evidence that subsection (2) has been complied with.
- (4) Every received for shipment bill of lading must contain a provision that, in the event of the goods being unavoidably shut out from the named ship, the shipowner (A) must forward the goods—
- (a) by A's next available ship, or, at A's option, by a ship of some other owner, or by a ship sailing within a specified number of days; but
- (b) otherwise on the same terms and conditions, with all necessary modifications, as if the goods were actually shipped by the named ship.
- (5) Every received for shipment bill of lading must for all purposes be treated as a valid bill of lading with the same effect and capable of negotiation in all respects and with the same consequences as if it were a bill of lading acknowledging that the goods to which it relates had been actually shipped on board.

Compare: 1922 No 25 s 3

#### Subpart 4—Power for shipowner to enter and land goods, and lien for freight

### 325 Interpretation

- (1) In this subpart, unless the context otherwise requires,—
- entry** means the entry required by the Customs and Excise Act 1996 to be made for the landing or discharge of goods from an importing ship
- goods** includes all kinds of movable personal property, including animals
- owner of goods** includes every person who is entitled, either as the owner or the agent for the owner, to the possession of the goods (subject, in the case of a lien, to the lien)
- report** means the inward report required by the Customs and Excise Act 1996 to be made in respect of an importing ship
- shipowner** includes the master of the ship and every other person authorised to act as agent for the owner or entitled to receive the freight, demurrage, or other charges payable in respect of the ship
- warehouse** includes any warehouse, building, or premises in which goods may be lawfully placed when landed from ships
- warehouse owner** means the occupier of a warehouse
- wharf** includes any wharf, quay, dock, or premises in or on which any goods may be lawfully placed when landed from ships
- wharf owner** means the occupier of a wharf.

- (2) To avoid doubt about the application of this subpart to navigable lakes and inland navigable waters of New Zealand, this subpart extends and applies to all parts of New Zealand to the extent that this subpart is applicable.

Compare: 1908 No 117 ss 1(4), 21

### **326 Shipowner may enter and land goods in default of entry and landing by owner of goods**

- (1) This section applies if the owner of goods that are imported from overseas into New Zealand fails, by the relevant time,—
- (a) to make entry of the goods; or
  - (b) having made entry of the goods, to land the goods or take delivery of the goods.
- (2) The shipowner may, at any time after the relevant time, make entry of and land or unload the goods in the manner and subject to the conditions specified in sections 327 to 330.
- (3) In this section, **relevant time** means—
- (a) the time expressed for the delivery of the goods in the charter party, bill of lading, or agreement; or
  - (b) if no time for the delivery of the goods is expressed in the charter party, bill of lading, or agreement, the time that is at the expiry of 72 hours after the report of the ship (excluding a Sunday or a holiday).

Compare: 1908 No 117 s 22

### **327 Place for landing goods**

- (1) The shipowner, in landing goods in accordance with this subpart, must—
- (a) place the goods on the wharf or in the warehouse named in the charter party, bill of lading, or agreement as the wharf or warehouse where the goods are to be placed if the goods can be conveniently received at that place; or
  - (b) if paragraph (a) does not apply, place the goods on a wharf or in a warehouse where goods of a similar kind are usually placed.
- (2) Subsection (1)(b) is subject to the requirements imposed by or under the Customs and Excise Act 1996.

Compare: 1908 No 117 s 22(c), (d)

### **328 Owner who is ready and offers to land or take delivery of goods**

If, at any time before the goods are landed or unloaded, the owner of the goods is ready and offers to land or take delivery of the goods,—

- (a) the owner must be allowed to do so; and

- (b) the owner's entry of the goods must be preferred to any entry made by the shipowner.

Compare: 1908 No 117 s 22(e)

**329 Landing of goods at wharf where ship is discharged for purpose of sorting goods**

- (1) This section applies if—
  - (a) goods are, for the purpose of conveniently sorting the goods, landed at the wharf where the ship is discharged; and
  - (b) the owner of the goods at the time of the landing has made entry and is ready and offers to take delivery of the goods and to convey the goods to another wharf or warehouse.
- (2) The goods must—
  - (a) be sorted at landing; and
  - (b) if demanded, be delivered to the owner within 24 hours after being sorted.
- (3) The shipowner must bear the expense of and consequent on the landing and sorting of the goods.

Compare: 1908 No 117 s 22(f)

**330 Requirement for notice in certain circumstances**

- (1) This section applies if,—
  - (a) at any time before the goods are landed or unloaded, the owner of the goods has made entry for the landing and warehousing of the goods at a particular wharf or warehouse other than the one at which the ship is discharging, and has offered and been ready to take delivery of the goods; and
  - (b) the shipowner—
    - (i) has failed to make that delivery; and
    - (ii) failed at the time of the offer to give the owner of the goods correct information of the time at which the goods could be delivered.
- (2) The shipowner must, before landing or unloading the goods under the power given under section 326, give to the owner of the goods, or to the wharf owner or warehouse owner, 24 hours' notice in writing of the shipowner's readiness to deliver the goods.
- (3) If the shipowner lands or unloads the goods without giving the notice required under subsection (2), the shipowner does so at the shipowner's risk and expense.
- (4) In subsection (2),—

**warehouse owner** means the occupier of the warehouse referred to in subsection (1)(a)

**wharf owner** means the occupier of the wharf referred to in subsection (1)(a).

Compare: 1908 No 117 s 22(g)

### **331 Continuation of lien for freight if shipowner gives notice**

- (1) This section applies if, at any time when any goods are landed from a ship and placed in the custody of a wharf owner or warehouse owner, the shipowner gives to the wharf owner or the warehouse owner notice in writing that the goods are to remain subject to a lien for freight or other charges that are payable to the shipowner to an amount specified in the notice.
- (2) The goods, while in the custody of the wharf owner or warehouse owner, continue to be subject to the same lien (if any) for the charges that the goods were subject to before the goods were landed.
- (3) The wharf owner or the warehouse owner who receives the goods must retain them until the lien is discharged under section 332 or 333.
- (4) The wharf owner or the warehouse owner must, if he, she, or it fails to comply with subsection (3), compensate the shipowner for any loss suffered by the shipowner that is caused by the failure.

Compare: 1908 No 117 s 23(1), (2)

### **332 Discharge of lien on production of receipt and delivery of copy of receipt or release**

A lien referred to in section 331 is discharged when—

- (a) a receipt for the amount claimed as due is produced to the wharf owner or the warehouse owner; and
- (b) a copy of the receipt or of a release of freight from the shipowner is delivered to the wharf owner or the warehouse owner.

Compare: 1908 No 117 s 23(3)

### **333 Discharge of lien on deposit with warehouse owner**

- (1) The owner of the goods may deposit with the wharf owner or the warehouse owner a sum of money equal to the sum that is specified in the notice given by the shipowner under section 331.
- (2) The lien referred to in section 331 is discharged on the deposit of the money.
- (3) Subsection (2) does not limit any other remedy that the shipowner may have for the recovery of the freight.

Compare: 1908 No 117 s 24

**334 Right of wharf owner or warehouse owner, if no notice is given, to pay deposit to shipowner**

- (1) A wharf owner or a warehouse owner (**A**) with whom a deposit is made under section 333 may, at the expiry of 15 days after the deposit is made, pay the deposited sum to the shipowner if the owner who made the deposit (**B**) does not within that 15-day period give to A a written notice to retain it.
- (2) The notice from B must state—
  - (a) the sum (if any) that B admits is payable to the shipowner; or
  - (b) that B does not admit any sum is payable to the shipowner.
- (3) A is discharged from all liability in respect of the deposit by making the payment in accordance with this section.

Compare: 1908 No 117 s 25

**335 Course to be taken if notice to retain is given**

- (1) This section applies if—
  - (a) a deposit is made with the wharf owner or the warehouse owner (**A**) under section 333; and
  - (b) the person who makes the deposit (**B**) gives to A a notice as referred to in section 334 within 15 days after making the deposit.
- (2) A must—
  - (a) immediately inform the shipowner of the notice; and
  - (b) pay or tender to the shipowner out of the deposited sum the sum admitted by the notice to be payable (if any); and
  - (c) retain the balance or, if B does not admit that a sum is payable, retain the whole of the deposited sum for 30 days from the date of the notice.
- (3) A must, at the expiry of the 30-day period referred to in subsection (2)(c), pay the balance or the whole of the deposited sum referred to in that paragraph to the owner of the goods.
- (4) However, subsection (3) does not apply if, before the expiry of the 30-day period referred to in subsection (2)(c),—
  - (a) legal or arbitral proceedings are commenced by the shipowner against the owner of the goods to recover the balance or sum referred to in subsection (2)(c) or otherwise for the settlement of any disputes between them concerning the freight or other charges; and
  - (b) written notice of those proceedings is served on A.
- (5) A is discharged from all liability in respect of the balance or sum by making the payment in accordance with subsection (3) (subject to subsection (4)).

Compare: 1908 No 117 s 26

**336 Wharf owner or warehouse owner may sell goods by public auction after 90 days**

- (1) If a lien referred to in section 331 is not discharged and a deposit is not made under section 333, the wharf owner or the warehouse owner (**A**) may, and if required by the shipowner must, at a relevant time, sell by public auction—
  - (a) the goods; or
  - (b) the amount of the goods that is necessary to satisfy the charges referred to in section 338(1)(c) and (d).
- (2) The goods may be sold under this section either for home consumption or export.
- (3) In this section, **relevant time** means—
  - (a) any time after the expiry of 90 days from the time when the goods are placed in A's custody; or
  - (b) if the goods are of a perishable nature, an earlier time that is fixed by—
    - (i) Lloyd's agent (being the person appointed under section 210 of the Insurance (Prudential Supervision) Act 2010); or
    - (ii) any surveyor appointed by A.

Compare: 1908 No 117 s 27

**337 Notices of sale to be given**

- (1) A wharf owner or a warehouse owner (**A**) must, before making a sale under section 336, notify the sale by advertisement in 1 newspaper circulating in the area in which the wharf or warehouse is situated.
- (2) A copy of the notice of sale must, before a sale is made under section 336, be prominently displayed on or in the wharf or warehouse.
- (3) A must notify the owner of the goods of the sale by letter sent by post if the address of the owner—
  - (a) has been stated on the manifest of the cargo or on any of the documents in A's possession; or
  - (b) is otherwise known to A.
- (4) However,—
  - (a) the title of a good faith purchaser of the goods is not invalidated because A fails to send a notice under subsection (3); and
  - (b) the good faith purchaser of the goods is not required to inquire whether that notice has been sent.

Compare: 1908 No 117 s 28

**338 How money arising from sale is to be applied**

- (1) A wharf owner or a warehouse owner must apply the money received from a sale of goods under section 336 in the following order:

- (a) if the goods are sold for home consumption, in payment of any customs or excise duties owing in respect of the goods:
  - (b) in payment of the expenses of the sale:
  - (c) in the absence of an agreement between the wharf owner or the warehouse owner and the shipowner concerning the priority of their respective charges, in payment of the rent, rates, and other charges due to the wharf owner or the warehouse owner in respect of the goods:
  - (d) in payment of the amount claimed by the shipowner as due for freight or other charges in respect of the goods:
  - (e) the surplus (if any) must be paid to the owner of the goods.
- (2) Despite subsection (1)(c) and (d), in the case of an agreement between the wharf owner or the warehouse owner and the shipowner that concerns the priority of their respective charges, those charges have priority according to the terms of the agreement.

Compare: 1908 No 117 s 29

### **339 Wharf owner's or warehouse owner's rent and expenses**

If goods are placed in the custody of a wharf owner or a warehouse owner (A) under this subpart, A—

- (a) is entitled to rent in respect of the goods; and
- (b) has, at the expense of the owner of the goods, the power to do, from time to time, all reasonable acts that in A's judgement are necessary for the proper custody and preservation of the goods; and
- (c) has a lien on the goods for the rent and expenses referred to in paragraphs (a) and (b).

Compare: 1908 No 117 s 30

### **340 Wharf owner's or warehouse owner's protection**

- (1) This subpart does not require a wharf owner or a warehouse owner (A) to take charge of any goods that A would not be liable to take charge of if this subpart were not in force.
- (2) A is not required to see to the validity of a lien claimed by a shipowner under this subpart.

Compare: 1908 No 117 s 31

## Subpart 5—Lien for work done

### **341 Power of sale under lien for work done**

- (1) This section applies if—
  - (a) a person (A) has done work on goods in A's possession and, as a result, A is entitled at law to a lien on the goods for any amount; and

- (b) the amount remains unpaid for 2 months or more after it should have been paid.
  - (2) A may sell the goods by auction.
  - (3) The remedy in this section is in addition to all other remedies provided by law.
  - (4) In this subpart, **goods** includes all kinds of movable personal property, including animals.
- Compare: 1987 No 188 s 3(1)

### **342 Notice of sale to be given**

- (1) The person entitled to the lien (A) must give at least 1 week's notice of the sale—
    - (a) to the owner of the goods in accordance with section 343 if the owner's address is known to A; and
    - (b) by advertisement in a newspaper that—
      - (i) is published in the area in which the work was done; or
      - (ii) circulates in that area (if there is no newspaper published in that area).
  - (2) The notice must—
    - (a) state A's name; and
    - (b) state the amount of the debt; and
    - (c) provide a description of the goods; and
    - (d) state the time and place of sale; and
    - (e) state the name of the auctioneer.
  - (3) The advertisement does not need to specify the name of the owner.
- Compare: 1987 No 188 s 3(2)

### **343 How notice of sale is given to owner of goods**

- (1) The notice of sale required by section 342(1)(a) may be given by—
  - (a) delivering it to the owner; or
  - (b) leaving it at the owner's usual or last known place of residence or business or at any address specified by the owner for that purpose; or
  - (c) posting it in a letter addressed to the owner at a place of residence or business, or an address, referred to in paragraph (b).
- (2) If the notice is sent to the owner by registered post,—
  - (a) it must be treated as having been delivered to that person when it would have been delivered in the ordinary course of post; and



- (b) in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted.

Compare: 1987 No 188 s 3(4), (5)

#### **344 How money arising from sale is to be applied**

- (1) The proceeds of a sale of goods under this subpart must be applied in the following order:
  - (a) in payment of the expenses of the advertising and sale:
  - (b) in payment of the amount due under the lien:
  - (c) in payment of the surplus (if any) under subsection (2).
- (2) The surplus (if any) must, as soon as practicable after the completion of the sale, be paid to the Registrar of the office of the District Court nearest to the place of sale (to be held by the Registrar for the benefit of the person entitled to it).

Compare: 1987 No 188 s 3(3)

### **Part 6**

#### **Repeal of revised Acts, consequential amendments, and miscellaneous provisions**

##### **345 Repeal of revised Acts**

- (1) The following Acts are repealed:
  - (a) Carriage of Goods Act 1979 (1979 No 43):
  - (b) Contracts (Privity) Act 1982 (1982 No 132):
  - (c) Contractual Mistakes Act 1977 (1977 No 54):
  - (d) Contractual Remedies Act 1979 (1979 No 11):
  - (e) Electronic Transactions Act 2002 (2002 No 35):
  - (f) Frustrated Contracts Act 1944 (1944 No 20):
  - (g) Illegal Contracts Act 1970 (1970 No 129):
  - (h) Minors' Contracts Act 1969 (1969 No 41):
  - (i) Sale of Goods Act 1908 (1908 No 168):
  - (j) Sale of Goods (United Nations Convention) Act 1994 (1994 No 60):
  - (k) Wages Protection and Contractors' Liens Act Repeal Act 1987 (1987 No 188).
- (2) Section 1(4) and (5) and Parts 1, 2, and 4 of the Mercantile Law Act 1908 (1908 No 117) and the Mercantile Law Amendment Act 1922 (1922 No 25) are repealed.

**346 Revocation**

The Electronic Transactions Regulations 2003 (SR 2003/288) are revoked.

**347 Amendments to other enactments**

The enactments specified in Schedule 6 are amended in the manner indicated in that schedule.

## Schedule 1 Transitional, savings, and related provisions

s 6

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**Part 1****Provisions relating to this Act as enacted***Provisions relating to contracts privity***1 Application of subpart relating to contracts privity**

Subpart 1 of Part 2 applies to any promise, contract, or deed made on or after 1 April 1983.

Compare: 1982 No 132 s 15

**2 Section 7 of Property Law Act 1952 continues to apply to deed made before 1 April 1983**

Section 7 of the Property Law Act 1952 continues to apply, despite its repeal by section 13 of the Contracts (Privity) Act 1982, in respect of any deed made before 1 April 1983.

Compare: 1982 No 132 s 14(3)

*Provisions relating to contractual mistakes***3 Application of subpart relating to contractual mistakes**

Subpart 2 of Part 2 applies to any contract made on or after 21 November 1977.

Compare: 1977 No 54 s 12

*Provisions relating to contractual remedies***4 Application of subpart relating to contractual remedies**

Subpart 3 of Part 2 applies to any contract made on or after 1 April 1980.

Compare: 1979 No 11 s 16

*Provisions relating to frustrated contracts***5 Application of subpart relating to frustrated contracts**

Subpart 4 of Part 2 applies to any contract regardless of whether it is made before or after the commencement of this Act.

Compare: 1944 No 20 s 4(1)

*Provisions relating to illegal contracts*

**6 Application of subpart relating to illegal contracts**

- (1) Subpart 5 of Part 2 applies to any contract regardless of whether it is made before or after the commencement of this Act.
- (2) However, nothing in section 73 or 74 applies to any contract made before 1 December 1970.

Compare: 1970 No 129 s 10

*Provisions relating to minors' contracts*

**7 Application of subpart relating to minors' contracts**

Subpart 6 of Part 2 applies to any contract made, compromise or settlement agreed to, or discharge or receipt given on or after 1 January 1970.

Compare: 1969 No 41 s 15(2)

**8 Money held on trust**

Money that, immediately before the commencement of this Act, is held on trust under section 12(4) of the Minors' Contracts Act 1969 must be treated as if it were money held on trust under section 108.

**9 Variation of orders referred to in section 13 of Minors' Contracts Act 1969**

- (1) Despite its repeal, section 13 of the Minors' Contracts Act 1969 continues to apply to any order referred to in that section as if this Act had not been enacted.
- (2) However, a court may vary an order made by it under section 12 of the Minors' Contracts Act 1969 under section 111 as if it were an order made under sections 103 to 109.

*Provisions relating to sale of goods*

**10 Application of sale of goods provisions**

Part 3 applies to any contract of sale of goods regardless of whether it is made before or after the commencement of this Act.

*Provisions relating to carriage of goods*

**11 Application of carriage of goods provisions**

Subpart 1 of Part 5 applies to any carriage of goods performed or to be performed by a carrier under a contract regardless of whether the contract is made before or after the commencement of this Act.

*Provisions relating to subparts 2 to 5 of Part 5***12 Application of subpart relating to mercantile agents**

Subpart 2 of Part 5 applies to any sale, pledge, or other disposition regardless of whether it is made before or after the commencement of this Act.

**13 Application of subpart relating to bills of lading, sea waybills, and ship's delivery orders**

Subpart 3 of Part 5 applies to any bill of lading, sea waybill, or ship's delivery order (as defined in that subpart) regardless of whether it is issued or given before or after the commencement of this Act.

**14 Application of subpart relating to delivery of goods and lien for freight**

Subpart 4 of Part 5 applies in relation to goods that are, or are to be, entered or landed on or after the commencement of this Act.

**15 References include references to former provision**

For the purposes of section 318, a reference to the previous operation of section 314 includes a reference to the previous operation of section 13B(1) of the Mercantile Law Act 1908.

**16 Application of subpart relating to lien for work done**

- (1) Subpart 5 of Part 5 applies to any lien of a kind referred to in section 341 that came into effect on or after 1 July 1988.
- (2) Despite its repeal, section 2(3) of the Wages Protection and Contractors' Liens Act Repeal Act 1987 continues to apply in respect of every matter to which that subsection applied immediately before the repeal of that Act as if this Act had not been enacted.

Compare: 1987 No 188 s 2(3)

*Other transitional provisions***17 Changes in legal effect do not apply to existing contracts or other arrangements**

The changes to the effect of the law in relation to the matters identified in Schedule 2 do not apply to the following (and, accordingly, the effect of the law as expressed in the enactments repealed by this Act continues to apply in relation to those matters):

- (a) any promise, contract, or deed made before the commencement of this Act:
- (b) any compromise or settlement agreed to, or discharge or receipt given, before the commencement of this Act:

- (c) any carriage of goods performed or to be performed by a carrier under a contract made before the commencement of this Act:
- (d) any sale, pledge, or other disposition made before the commencement of this Act:
- (e) any bill of lading, sea waybill, ship's delivery order, warrant, or certificate issued or given before the commencement of this Act:
- (f) any lien of a kind referred to in section 341 that came into effect before the commencement of this Act.

**18 Effect of repeal of revised Acts**

Nothing in this schedule limits sections 17 to 22 of the Interpretation Act 1999 (for example, the repeal of an Act by this Act does not affect the validity, invalidity, effect, or consequences of anything done or suffered, the previous operation of the repealed Act, or the bringing or completion of proceedings that relate to an existing right, interest, title, immunity, or duty).

**19 References to repealed enactment**

- (1) A reference in a document to an Act referred to in section 345, or to a provision of such an Act that is repealed by this Act, must, unless the context otherwise requires, be treated as a reference to this Act or to a provision of this Act that, with or without modification, replaces, or that corresponds to, the repealed provision.
- (2) In this clause, **document**—
  - (a) means any instrument, register, record, notice, or other document that is made, given, passed, or executed before the commencement of this Act; but
  - (b) does not include an enactment.

## Schedule 2

### Minor amendments to clarify Parliament's intent or reconcile inconsistencies

s 4(2)

Provision of this Act	Provision of revised Act	Nature of intended change
Section 9(2)	Section 6(2)(d) of the Illegal Contracts Act 1970; section 8(3) of the Contractual Mistakes Act 1977	The provision relating to when matters are treated as having been released or surrendered for the purposes of paragraph (d) of the definition of disposition is extended to cover a contract, power, or thing in action.
Section 16(1)(b)	Section 7(1)(b) of the Contracts (Privity) Act 1982	The provision relating to uncertainty about whether a variation or discharge is prevented is extended to cover an obligation (as well as a promise).
Sections 25 and 26	Section 6(2) of the Contractual Mistakes Act 1977	The provisions are clarified as applying for the purposes of relief (regardless of whether the relief is granted in the course of any proceeding or on an application made for the purpose).
Sections 28(3), 76(4), and 95(3)	Section 7(5) of the Contractual Mistakes Act 1977; section 7(5) of the Illegal Contracts Act 1970; section 7(2) of the Minors' Contracts Act 1969	The provisions relating to court orders concerning property are clarified to provide for orders to relate to the whole or any part of the property and for directions to deliver possession of the property to any other party to the proceeding.
Section 124(2)	Section 4(1) of the Sale of Goods Act 1908	The provision about the sale of necessaries to a person who is incompetent to contract is amended to refer to a person who is incompetent to contract by reason of intoxication (rather than drunkenness).
Section 179	Section 46(1) of the Sale of Goods Act 1908	The provision about the duration of transit is extended to refer to carriers by air (as well as carriers by land or water).
Section 195(3)(a)	Section 54(1)(a) of the Sale of Goods Act 1908	The provision about a remedy for a breach of warranty is clarified to allow the buyer to rely on the breach to obtain a reduction in, or the satisfaction of, the price.
Section 218(2)(e)	Section 14(2)(e) of the Electronic Transactions Act 2002	The provision about guidelines issued by a court or tribunal is extended to refer to other bodies specified in Part 4 of Schedule 5.



<b>Provision of this Act</b>	<b>Provision of revised Act</b>	<b>Nature of intended change</b>
Section 290	Section 25(2) of the Carriage of Goods Act 1979	The provision is amended to refer to expenses reasonably incurred in arranging and conducting sale, and to paying the balance to the owner of the goods, to be consistent with other references to the ability to deduct expenses.
Sections 296, 312, 325, and 341	Sections 2, 13, and 21 of the Mercantile Law Act 1908 and section 3 of the Wages Protection and Contractors' Liens Act Repeal Act 1987	A consistent definition of goods is included.
Section 308(2) and (3)	Section 11(b) of the Mercantile Law Act 1908	The provision about the owner's rights is amended to refer to the Official Assignee or a liquidator (rather than a trustee in bankruptcy).
Section 312	Section 13(1) of the Mercantile Law Act 1908	The definition of information technology is aligned with concepts in the Electronic Transactions Act 2002.
Section 321	Section 14 of the Mercantile Law Act 1908	The provision about rights not being affected is expressly made subject to section 306 (the equivalent of section 9 of the Mercantile Law Act 1908).
Section 325(1)	Section 21 of the Mercantile Law Act 1908	The definitions of entry and report have been amended for consistency with the Customs and Excise Act 1996.
Section 327(2)	Section 22(d) of the Mercantile Law Act 1908	The provision about where dutiable goods may be landed is amended to refer to requirements imposed by or under the Customs and Excise Act 1996.
Section 336(3)	Section 27 of the Mercantile Law Act 1908	The provision about a wharf owner or warehouse owner selling goods by public auction is amended to clarify that the sale may be at any time after the expiry of 90 days (rather than at the expiry of 90 days).

### Schedule 3 Comparative table

s 4(4)

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**Schedule 4**  
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The States Parties to this Convention,

*Bearing in mind* the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

*Considering* that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,  
*Being of the opinion* that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

*Have agreed* as follows:

## **Part I**

### **Sphere of application and general provisions**

#### Chapter I—Sphere of application

##### *Article 1*

- (1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:
  - (a) when the States are Contracting States; or
  - (b) when the rules of private international law lead to the application of the law of a Contracting State.
- (2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.
- (3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

##### *Article 2*

This Convention does not apply to sales:

- (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- (b) by auction;
- (c) on execution or otherwise by authority of law;
- (d) of stocks, shares, investment securities, negotiable instruments or money;
- (e) of ships, vessels, hovercraft or aircraft;
- (f) of electricity.



### *Article 3*

- (1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.
- (2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

### *Article 4*

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

- (a) the validity of the contract or of any of its provisions or of any usage;
- (b) the effect which the contract may have on the property in the goods sold.

### *Article 5*

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

### *Article 6*

The parties may exclude the application of this Convention or, subject to Article 12, derogate from or vary the effect of any of its provisions.

## Chapter II—General provisions

### *Article 7*

- (1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.
- (2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

### *Article 8*

- (1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.
- (2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

- (3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

#### *Article 9*

- (1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.
- (2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

#### *Article 10*

For the purposes of this Convention:

- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;
- (b) if a party does not have a place of business, reference is to be made to his habitual residence.

#### *Article 11*

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirements as to form. It may be proved by any means, including witnesses.

#### *Article 12*

Any provision of Article 11, Article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under Article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

#### *Article 13*

For the purposes of this Convention “writing” includes telegram and telex.

## **Part II**

### **Formation of the contract**

#### *Article 14*

- (1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.
- (2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

#### *Article 15*

- (1) An offer becomes effective when it reaches the offeree.
- (2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

#### *Article 16*

- (1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.
- (2) However, an offer cannot be revoked:
  - (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or
  - (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

#### *Article 17*

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

#### *Article 18*

- (1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.
- (2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

- (3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

#### *Article 19*

- (1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.
- (2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.
- (3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

#### *Article 20*

- (1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.
- (2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

#### *Article 21*

- (1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.
- (2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an ac-

ceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

***Article 22***

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

***Article 23***

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

***Article 24***

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention “reaches” the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

**Part III**

**Sale of goods**

**Chapter I—General provisions**

***Article 25***

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

***Article 26***

A declaration of avoidance of the contract is effective only if made by notice to the other party.

***Article 27***

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

### *Article 28*

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

### *Article 29*

- (1) A contract may be modified or terminated by the mere agreement of the parties.
- (2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

## Chapter II—Obligations of the seller

### *Article 30*

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

#### *Section I: Delivery of the goods and handing over of documents*

### *Article 31*

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

- (a) if the contract of sale involves carriage of the goods—in handing the goods over to the first carrier for transmission to the buyer;
- (b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place—in placing the goods at the buyer's disposal at that place;
- (c) in other cases—in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

### *Article 32*

- (1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.
- (2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transpor-

tation appropriate in the circumstances and according to the usual terms for such transportation.

- (3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

### *Article 33*

The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or
- (c) in any other case, within a reasonable time after the conclusion of the contract.

### *Article 34*

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

## *Section II: Conformity of the goods and third party claims*

### *Article 35*

- (1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.
- (2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:
  - (a) are fit for the purposes for which goods of the same description would ordinarily be used;
  - (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;
  - (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
  - (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

- (3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

#### *Article 36*

- (1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.
- (2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

#### *Article 37*

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

#### *Article 38*

- (1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.
- (2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.
- (3) If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

#### *Article 39*

- (1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.
- (2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the



buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

#### ***Article 40***

The seller is not entitled to rely on the provisions of Articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

#### ***Article 41***

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by Article 42.

#### ***Article 42***

- (1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:
  - (a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or
  - (b) in any other case, under the law of the State where the buyer has his place of business.
- (2) The obligation of the seller under the preceding paragraph does not extend to cases where:
  - (a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or
  - (b) the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

#### ***Article 43***

- (1) The buyer loses the right to rely on the provisions of Article 41 or Article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.
- (2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

### ***Article 44***

Notwithstanding the provisions of paragraph (1) of Article 39 and paragraph (1) of Article 43, the buyer may reduce the price in accordance with Article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

### ***Section III: Remedies for breach of contract by the seller***

### ***Article 45***

- (1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:
  - (a) exercise the rights provided in Articles 46 to 52;
  - (b) claim damages as provided in Articles 74 to 77.
- (2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.
- (3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

### ***Article 46***

- (1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.
- (2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under Article 39 or within a reasonable time thereafter.
- (3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under Article 39 or within a reasonable time thereafter.

### ***Article 47***

- (1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.
- (2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

### ***Article 48***

- (1) Subject to Article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without

unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

- (2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.
- (3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.
- (4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

#### *Article 49*

- (1) The buyer may declare the contract avoided:
  - (a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
  - (b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of Article 47 or declares that he will not deliver within the period so fixed.
- (2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:
  - (a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;
  - (b) in respect of any breach other than late delivery, within a reasonable time:
    - (i) after he knew or ought to have known of the breach;
    - (ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of Article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or
    - (iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of Article 48, or after the buyer has declared that he will not accept performance.

### ***Article 50***

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with Article 37 or Article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

### ***Article 51***

- (1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, Articles 46 to 50 apply in respect of the part which is missing or which does not conform.
- (2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

### ***Article 52***

- (1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.
- (2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

## Chapter III—Obligations of the buyer

### ***Article 53***

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

#### *Section I: Payment of the price*

### ***Article 54***

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

### ***Article 55***

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price gener-

ally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

#### ***Article 56***

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

#### ***Article 57***

- (1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:
  - (a) at the seller's place of business; or
  - (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.
- (2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

#### ***Article 58***

- (1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.
- (2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.
- (3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

#### ***Article 59***

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

### *Section II: Taking delivery*

#### ***Article 60***

The buyer's obligation to take delivery consists:

- (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) in taking over the goods.

*Section III: Remedies for breach of contract by the buyer***Article 61**

- (1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:
  - (a) exercise the rights provided in Articles 62 to 65;
  - (b) claim damages as provided in Articles 74 to 77.
- (2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.
- (3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

**Article 62**

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

**Article 63**

- (1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.
- (2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

**Article 64**

- (1) The seller may declare the contract avoided:
  - (a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract;  
or
  - (b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of Article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.
- (2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:
  - (a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or
  - (b) in respect of any breach other than late performance by the buyer, within a reasonable time:
    - (i) after the seller knew or ought to have known of the breach; or

- (ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of Article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

#### *Article 65*

- (1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.
- (2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

### Chapter IV—Passing of risk

#### *Article 66*

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

#### *Article 67*

- (1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.
- (2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

#### *Article 68*

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that

the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

### *Article 69*

- (1) In cases not within Articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.
- (2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.
- (3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

### *Article 70*

If the seller has committed a fundamental breach of contract, Articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

## Chapter V—Provisions common to the obligations of the seller and of the buyer

### *Section I: Anticipatory breach and instalment contracts*

### *Article 71*

- (1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:
  - (a) a serious deficiency in his ability to perform or in his creditworthiness;  
or
  - (b) his conduct in preparing to perform or in performing the contract.
- (2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.
- (3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.



### *Article 72*

- (1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.
- (2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.
- (3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

### *Article 73*

- (1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.
- (2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.
- (3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

## *Section II: Damages*

### *Article 74*

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

### *Article 75*

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under Article 74.

### *Article 76*

- (1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under Article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under Article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.
- (2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

### *Article 77*

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

### *Section III: Interest*

#### *Article 78*

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under Article 74.

### *Section IV: Exemptions*

#### *Article 79*

- (1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.
- (2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:
  - (a) he is exempt under the preceding paragraph; and
  - (b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.
- (3) The exemption provided by this article has effect for the period during which the impediment exists.

- (4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.
- (5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

### *Article 80*

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

### *Section V: Effects of avoidance*

### *Article 81*

- (1) Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.
- (2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

### *Article 82*

- (1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.
- (2) The preceding paragraph does not apply:
  - (a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;
  - (b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in Article 38; or
  - (c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

**Article 83**

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with Article 82 retains all other remedies under the contract and this Convention.

**Article 84**

- (1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.
- (2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:
  - (a) if he must make restitution of the goods or part of them; or
  - (b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

**Section VI: Preservation of the goods****Article 85**

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

**Article 86**

- (1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.
- (2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

### *Article 87*

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

### *Article 88*

- (1) A party who is bound to preserve the goods in accordance with Article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.
- (2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with Article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.
- (3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

## **Part IV**

### **Final provisions**

### *Article 89*

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

### *Article 90*

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

### *Article 91*

- (1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.
- (2) This Convention is subject to ratification, acceptance or approval by the signatory States.
- (3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

- (4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

#### *Article 92*

- (1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.
- (2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of Article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

#### *Article 93*

- (1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.
- (2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.
- (3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.
- (4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

#### *Article 94*

- (1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.
- (2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.
- (3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from

the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

#### ***Article 95***

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1)(b) of Article 1 of this Convention.

#### ***Article 96***

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with Article 12 that any provision of Article 11, Article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

#### ***Article 97***

- (1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.
- (2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.
- (3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under Article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.
- (4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.
- (5) A withdrawal of a declaration made under Article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

#### ***Article 98***

No reservations are permitted except those expressly authorized in this Convention.

*Article 99*

- (1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under Article 92.
- (2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.
- (3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.
- (4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under Article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.
- (5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under Article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.
- (6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.



***Article 100***

- (1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of Article 1.
- (2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of Article 1.

***Article 101***

- (1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.
- (2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

**Schedule 5**  
**Enactments and provisions excluded from subpart 3 of Part 4**

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**Part 1**  
**Enactments**

**Citizens Initiated Referenda Act 1993 (1993 No 101)**  
**Citizens Initiated Referenda Regulations 1995 (SR 1995/227)**  
**Electoral Act 1993 (1993 No 87)**  
**Electoral Regulations 1996 (SR 1996/93)**  
**Electronic Courts and Tribunals Act 2016 (2016 No 52)**  
**Fish and Game Council Elections Regulations 1990 (SR 1990/361)**  
**Local Electoral Act 2001 (2001 No 35)**

**Part 2**  
**Provisions**

**Citizenship Act 1977 (1977 No 61)**  
Section 19(1)

**Citizenship Regulations 2002 (SR 2002/73)**  
Regulation 10

**Civil Aviation Act 1990 (1990 No 98)**  
Section 11(2) and (6)(b)

**Corrections Regulations 2005 (SR 2005/53)**  
Regulation 133

**Credit Contracts and Consumer Finance Act 2003 (2003 No 52)**  
Section 83O

**Disabled Persons Community Welfare Act 1975 (1975 No 122)**  
Section 25F(4)

**Fisheries Act 1996 (1996 No 88)**  
Part 8

**Medicines Regulations 1984 (SR 1984/143)**

Regulations 41 and 42

**Misuse of Drugs Amendment Act 1978 (1978 No 65)**

Section 13C

**Passports Act 1992 (1992 No 92)**

Section 12

**Part 3**

**Descriptions of provisions of enactments**

Provisions of enactments that relate to the following:

- (a) notices that are required to be given to the public:
- (b) information that is required to be given in writing either in person or by registered post:
- (c) notices that are required to be attached to any thing or left or displayed in any place:
- (d) affidavits, statutory declarations, or other documents given on oath or affirmation:
- (e) powers of attorney or enduring powers of attorney:
- (f) wills, codicils, or other testamentary instruments:
- (g) negotiable instruments:
- (h) bills of lading:
- (i) requirements to produce or serve a warrant or other document that authorises—
  - (i) entry on premises; or
  - (ii) the search of any person, place, or thing; or
  - (iii) the seizure of any thing:
- (j) information required in respect of any goods or services by a consumer information standard or a product safety standard or a services safety standard prescribed under the Fair Trading Act 1986.

**Part 4**

**Provisions of enactments relating to certain courts, tribunals, and other bodies**

Provisions of enactments relating to the practice or procedure of any of the following:

- (a) the Supreme Court:
- (b) the Court of Appeal or the High Court continued by the Senior Courts Act 2016:

- (c) the District Court reconstituted under section 7 of the District Court Act 2016:
- (d) the Family Court established under the Family Court Act 1980:
- (e) the Youth Court established under the Oranga Tamariki Act 1989:
- (f) the Disputes Tribunal established under the Disputes Tribunal Act 1988:
- (g) the Maori Appellate Court and the Maori Land Court continued under Te Ture Whenua Maori Act 1993:
- (h) the Court Martial Appeal Court constituted under the Court Martial Appeals Act 1953:
- (i) the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007:
- (j) the Summary Appeal Court of New Zealand established under the Armed Forces Discipline Act 1971:
- (k) the Customs Appeal Authority established under the Customs and Excise Act 1996:
- (l) the Catch History Review Committee established under the Fisheries Act 1996:
- (m) Land Valuation Tribunals established under the Land Valuation Proceedings Act 1948:
- (n) Motor Vehicle Disputes Tribunals established under the Motor Vehicle Sales Act 2003:
- (o) the Refugee Status Appeals Authority, the Removal Review Authority, and the Residence Review Board continued by, and the Immigration and Protection Tribunal established under, the Immigration Act 2009:
- (p) the Social Security Appeal Authority and the benefits review committees established under the Social Security Act 1964, and the medical board appointed under section 10B of that Act:
- (q) the Student Allowance Appeal Authority established under the Education Act 1989:
- (r) the Tenancy Tribunal constituted under the Residential Tenancies Act 1986:
- (s) the Environment Court continued by the Resource Management Act 1991:
- (t) the Waitangi Tribunal established under the Treaty of Waitangi Act 1975:
- (u) Review Tribunals established under the Mental Health (Compulsory Assessment and Treatment) Act 1992:
- (v) the Plumbers, Gasfitters, and Drainlayers Board continued by the Plumbers, Gasfitters, and Drainlayers Act 2006.

Schedule 5 Part 4 paragraph (e): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

## Schedule 6 Consequential amendments

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### Part 1 Amendments to Acts

#### **Armed Forces Discipline Act 1971 (1971 No 53)**

In section 87A(1), replace “subsection (1) of section 26 of the Sale of Goods Act 1908” with “section 152(1) of the Contract and Commercial Law Act 2017”.

In section 87A(3)(a) and (4), replace “section 26(1) of the Sale of Goods Act 1908” with “section 152(1) of the Contract and Commercial Law Act 2017”.

In section 150(r), replace “section 26(1) of the Sale of Goods Act 1908” with “section 152(1) of the Contract and Commercial Law Act 2017”.

#### **Births, Deaths, Marriages, and Relationships Registration Act 1995 (1995 No 16)**

In section 89A(3), replace “section 5 of the Electronic Transactions Act 2002” with “section 209 of the Contract and Commercial Law Act 2017”.

#### **Building Act 2004 (2004 No 72)**

In section 362P(4), replace “Sections 8(3) and (4) and 9 of the Contractual Remedies Act 1979” with “Sections 42 to 48 of the Contract and Commercial Law Act 2017”.

#### **Climate Change Response Act 2002 (2002 No 40)**

In section 147(2)(b)(iii), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

In section 148(2)(b)(ii)(B), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

#### **Commerce Act 1986 (1986 No 5)**

In section 89(5), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

#### **Companies Act 1993 (1993 No 105)**

In section 40, replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 182(5), replace “Notwithstanding the Contracts (Privity) Act 1982” with “Despite subpart 1 of Part 2 of the Contract and Commercial Law Act 2017”.

#### **Construction Contracts Act 2002 (2002 No 46)**

In section 24A(4)(a), replace “the Contractual Remedies Act 1979” with “subpart 3 of Part 2 of the Contract and Commercial Law Act 2017”.

**Construction Contracts Act 2002 (2002 No 46)—continued**

In section 24A(4)(b), replace “that Act” with “that subpart”.

**Consumer Guarantees Act 1993 (1993 No 91)**

In section 20(3), replace “section 37 of the Sale of Goods Act 1908” with “section 170 of the Contract and Commercial Law Act 2017”.

In section 43(3), replace “Section 56 of the Sale of Goods Act 1908” with “Section 197 of the Contract and Commercial Law Act 2017”.

**Credit Contracts and Consumer Finance Act 2003 (2003 No 52)**

In section 95(4), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 135(1A), replace “Section 56 of the Sale of Goods Act 1908” with “Section 197 of the Contract and Commercial Law Act 2017”.

**Criminal Procedure Act 2011 (2011 No 81)**

In section 352(1) and (2), replace “section 26(1) of the Sale of Goods Act 1908” with “section 152(1) of the Contract and Commercial Law Act 2017”.

**Crown Proceedings Act 1950 (1950 No 54)**

In Schedule 1, repeal the items relating to the Mercantile Law Act 1908 and the Sale of Goods Act 1908.

**Deaths by Accidents Compensation Act 1952 (1952 No 35)**

In section 17, replace “section 12 of the Minors’ Contracts Act 1969” with “sections 103 to 110 of the Contract and Commercial Law Act 2017”.

In section 21, replace “section 12 of the Minors’ Contracts Act 1969” with “sections 103 to 110 of the Contract and Commercial Law Act 2017”.

In section 21, replace “either of those sections” with “that Part or those sections”.

**Defence Act 1990 (1990 No 28)**

In section 36(7), replace “the Minors’ Contracts Act 1969” with “subpart 6 of Part 2 of the Contract and Commercial Law Act 2017”.

**Disputes Tribunal Act 1988 (1988 No 110)**

In section 27(4), replace “section 12 of the Minors’ Contracts Act 1969” with “sections 103 to 110 of the Contract and Commercial Law Act 2017”.

Replace Part 1 of Schedule 1 with:

**Part 1****Enactments under which Disputes Tribunal may exercise powers**

Subparts 1, 2, 3, 4, and 5 of Part 2 of the Contract and Commercial Law Act 2017

**Disputes Tribunal Act 1988 (1988 No 110)**—*continued*

In Schedule 1, Part 2, delete “Minors’ Contracts Act 1969”.

In Schedule 1, Part 2, insert in its appropriate alphabetical order “Subpart 6 of Part 2 of the Contract and Commercial Law Act 2017”.

**Electoral Act 1993 (1993 No 87)**

In section 213(4), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

**Electricity Industry Act 2010 (2010 No 116)**

In the heading to section 93, replace “Contracts Act 1970” with “contracts”.

**Electronic Identity Verification Act 2012 (2012 No 123)**

In section 19(6), replace “sections 6 and 22(1)(a) of the Electronic Transactions Act 2002” with “sections 210 and 226(1)(a) of the Contract and Commercial Law Act 2017”.

**Employment Relations Act 2000 (2000 No 24)**

In section 69ZG(2)(b) and (3)(b), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 142V(1)(b), replace “section 7 of the Illegal Contracts Act 1970” with “sections 75 to 82 of the Contract and Commercial Law Act 2017”.

In section 149(3)(ab), replace “section 7 of the Contractual Remedies Act 1979” with “sections 36 to 40 of the Contract and Commercial Law Act 2017”.

Replace section 162(a) to (g) with:

- (a) Part 2 of the Contract and Commercial Law Act 2017;
- (b) the Fair Trading Act 1986.

**Fair Trading Act 1986 (1986 No 121)**

In section 5D(5)(b), replace “the Contractual Remedies Act 1979” with “subpart 3 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 36E(2), replace “section 22 of the Sale of Goods Act 1908” with “section 148 of the Contract and Commercial Law Act 2017”.

In section 43(6)(a), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 50(3), replace “the Sale of Goods Act 1908 or the Contractual Remedies Act 1979” with “subpart 3 of Part 2 or Part 3 of the Contract and Commercial Law Act 2017”.

**Financial Markets Conduct Act 2013 (2013 No 69)**

In section 16(3), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 (which relates to illegal contracts)”.

**Gambling Act 2003 (2003 No 51)**

In section 14(1), replace “the Illegal Contracts Act 1970, and that Act” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017, and that subpart”.

In section 116(4), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

**Health and Disability Commissioner Act 1994 (1994 No 88)**

In section 57(6)(a), replace “section 12 of the Minors’ Contracts Act 1969” with “sections 103 to 110 of the Contract and Commercial Law Act 2017”.

**Health and Safety at Work Act 2015 (2015 No 70)**

In section 28(b), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 29(1)(b), replace “section 7 of the Illegal Contracts Act 1970” with “sections 75 to 82 of the Contract and Commercial Law Act 2017”.

**Hineuru Claims Settlement Act 2016 (2016 No 33)**

In Schedule 4, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Holidays Act 2003 (2003 No 129)**

In section 6(3)(b), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

**Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016 (2016 No 2)**

In section 13(b), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

**Housing Restructuring and Tenancy Matters Act 1992 (1992 No 76)**

In section 103(5), replace “Part 2 of the Electronic Transactions Act 2002” with “subpart 2 of Part 4 of the Contract and Commercial Law Act 2017”.

In section 106(5), replace “Part 2 of the Electronic Transactions Act 2002” with “subpart 2 of Part 4 of the Contract and Commercial Law Act 2017”.

In section 147(6), replace “Part 2 of the Electronic Transactions Act 2002” with “subpart 2 of Part 4 of the Contract and Commercial Law Act 2017”.

In section 155(3), replace “Part 2 of the Electronic Transactions Act 2002” with “subpart 2 of Part 4 of the Contract and Commercial Law Act 2017”.



**Housing Restructuring and Tenancy Matters Act 1992 (1992 No 76)**—*continued*

In section 192(1)(a)(iv) and (b)(iv), replace “Part 2 of the Electronic Transactions Act 2002” with “subpart 2 of Part 4 of the Contract and Commercial Law Act 2017”.

**Human Rights Act 1993 (1993 No 82)**

In section 92I(3)(g), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 92N(4)(a), replace “section 12 of the Minors’ Contracts Act 1969” with “sections 103 to 110 of the Contract and Commercial Law Act 2017”.

In section 153(2), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

**Immigration Act 2009 (2009 No 51)**

In section 365A(3)(a), replace “sections 16 and 20(1)(b) of the Electronic Transactions Act 2002” with “sections 220 and 224(1)(b) of the Contract and Commercial Law Act 2017”.

**Income Tax Act 2007 (2007 No 97)**

In section EE 3(1)(c), replace “the Sale of Goods Act 1908” with “Part 3, subparts 1 to 6 of the Contract and Commercial Law Act 2017”.

**KiwiSaver Act 2006 (2006 No 40)**

In section 35(2)(b), (3)(b), (4)(a), and (5)(b), replace “the Minors’ Contracts Act 1969” with “subpart 6 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 218(6), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

In section 219(1), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

**Land Transport Management Act 2003 (2003 No 118)**

In section 52(3A)(b), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

**Legislation Act 2012 (2012 No 119)**

In Schedule 2, repeal the item relating to the Electronic Transactions Act 2002.

In Schedule 2, insert in its appropriate alphabetical order:

Contract and Commercial Law Act 2017

239(2)—restriction: only if the order makes an addition to Schedule 5

**Life Insurance Act 1908 (1908 No 105)**

In section 66A, replace “section 9 of the Minors’ Contracts Act 1969” with “sections 98 to 101 of the Contract and Commercial Law Act 2017”.

**Life Insurance Act 1908 (1908 No 105)**—*continued*

In section 66B(2)(a), replace “section 6 of the Minors’ Contracts Act 1969” with “sections 86 to 91 of the Contract and Commercial Law Act 2017”.

In section 66B(2)(b), replace “section 5(2) of the Minors’ Contracts Act 1969” with “section 93 of the Contract and Commercial Law Act 2017”.

In section 66C(4), replace “section 5(2) of the Minors’ Contracts Act 1969” with “section 93 of the Contract and Commercial Law Act 2017”.

In section 66D(3), replace “section 9 of the Minors’ Contracts Act 1969” with “sections 98 to 101 of the Contract and Commercial Law Act 2017”.

In section 67(2), replace “section 9 of the Minors’ Contracts Act 1969” with “sections 98 to 101 of the Contract and Commercial Law Act 2017”.

**Limitation Act 2010 (2010 No 110)**

In section 4, definition of **Disputes Tribunal**, replace paragraph (b)(ii) with:

- (ii) sections 43 to 48 of the Contract and Commercial Law Act 2017

Replace section 30(4)(a) with:

- (a) section 152(1) of the Contract and Commercial Law Act 2017 (which ensures that, if goods have been stolen and the offender is convicted, the property in the goods that were stolen reverts in the person who was the owner of the goods, or that person’s personal representative); or

Replace the cross-heading above section 37 with:

*Claims under contract enactment*

Replace section 37(1) with:

- (1) This section applies to a claim for relief (other than any form of monetary relief or declaratory relief) under Part 2 of the Contract and Commercial Law Act 2017.

**Maori Fisheries Act 2004 (2004 No 78)**

In section 73(3), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 170(3), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 175(3), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

**Maori Reserved Land Amendment Act 1997 (1997 No 101)**

In sections 7(2), 8(4), and 9(3), replace “section 3 of the Illegal Contracts Act 1970” with “section 71 of the Contract and Commercial Law Act 2017”.

**Maritime Transport Act 1994 (1994 No 104)**

In section 86(4)(b), replace “the Carriage of Goods Act 1979” with “subpart 1 of Part 5 of the Contract and Commercial Law Act 2017”.

In section 97(7), replace “the Carriage of Goods Act 1979” with “subpart 1 of Part 5 of the Contract and Commercial Law Act 2017”.

In section 198(6), definition of **goods**, replace “section 2 of the Carriage of Goods Act 1979” with “section 246 of the Contract and Commercial Law Act 2017”.

**Motor Vehicle Sales Act 2003 (2003 No 12)**

Replace section 89(1)(a) with:

- (a) inquire into and determine any application or claim, as the case may be, under any of the following if that application or claim is in respect of the sale of any motor vehicle:
  - (i) the Fair Trading Act 1986;
  - (ii) the Consumer Guarantees Act 1993;
  - (iii) subpart 3 of Part 2 or Part 3 of the Contract and Commercial Law Act 2017; and

Repeal section 89(1)(b)(i).

Replace section 89(1)(b)(iv) with:

- (iv) in the case of proceedings under subpart 3 of Part 2 or Part 3 of the Contract and Commercial Law Act 2017, sections 43 to 48 or section 194 of that Act.

**New Zealand Railways Corporation Act 1981 (1981 No 119)**

In section 18(1) and (4), replace “the Carriage of Goods Act 1979” with “subpart 1 of Part 5 of the Contract and Commercial Law Act 2017”.

In section 18(1), replace “that Act” with “that subpart”.

In section 18(7), replace “section 8 of the Carriage of Goods Act 1979” with “section 248 of the Contract and Commercial Law Act 2017”.

In section 111(1)(k), replace “the Carriage of Goods Act 1979” with “subpart 1 of Part 5 of the Contract and Commercial Law Act 2017”.

**Ngāi Takoto Claims Settlement Act 2015 (2015 No 78)**

In Schedule 5, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Ngāruahine Claims Settlement Act 2016 (2016 No 93)**

In Schedule 4, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Ngāti Hauā Claims Settlement Act 2014 (2014 No 75)**

In Schedule 5, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Ngāti Koroki Kahukura Claims Settlement Act 2014 (2014 No 74)**

In Schedule 4, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Ngāti Kuri Claims Settlement Act 2015 (2015 No 76)**

In Schedule 5, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Overseas Investment Act 2005 (2005 No 82)**

In section 29(1)(a), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 29(2)(a), replace “section 9 of the Contractual Remedies Act 1979” with “sections 43 to 48 of the Contract and Commercial Law Act 2017”.

**Personal Property Securities Act 1999 (1999 No 126)**

In section 53(2), replace “section 3 of the Mercantile Law Act 1908 and section 27 of the Sale of Goods Act 1908 where this section applies and either or both” with “sections 153, 154, and 297 to 300 of the Contract and Commercial Law Act 2017 where this section applies and any”.

**Privacy Act 1993 (1993 No 28)**

In section 88(3)(a), replace “section 12 of the Minors’ Contracts Act 1969” with “sections 103 to 110 of the Contract and Commercial Law Act 2017”.

**Property Law Act 2007 (2007 No 91)**

In section 4, definition of **instrument**, paragraph (a)(ii), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

Replace section 267(5)(a)(ii) with:

- (ii) provided for in subpart 3 of Part 2 of the Contract and Commercial Law Act 2017; and

**Rangitāne o Manawatu Claims Settlement Act 2016 (2016 No 100)**

In Schedule 4, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Real Estate Agents Act 2008 (2008 No 66)**

In section 126(4), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

**Residential Tenancies Act 1986 (1986 No 120)**

In section 14(4) and (5), replace “the Minors’ Contracts Act 1969” with “subpart 6 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 94(5), replace “section 12 of the Minors’ Contracts Act 1969” with “sections 103 to 110 of the Contract and Commercial Law Act 2017”.

**Retirement Villages Act 2003 (2003 No 112)**

In section 84(3), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

**Road User Charges Act 2012 (2012 No 1)**

In Schedule 2, clauses 1(3)(c) and 2(3)(b), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

**Smoke-free Environments Act 1990 (1990 No 108)**

In section 28A(4), replace “the Illegal Contracts Act 1970” with “subpart 5 of Part 2 of the Contract and Commercial Law Act 2017”.

**Student Loan Scheme Act 2011 (2011 No 62)**

In section 205, replace “the Minors’ Contracts Act 1969” with “subpart 6 of Part 2 of the Contract and Commercial Law Act 2017”.

In section 211(1)(d), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

In section 211(4), replace “sections 16 and 20 of the Electronic Transactions Act 2002” with “sections 220 and 224 of the Contract and Commercial Law Act 2017”.

In section 212(1)(b), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

In section 212(4), replace “sections 16 and 20 of the Electronic Transactions Act 2002” with “sections 220 and 224 of the Contract and Commercial Law Act 2017”.

**Taranaki Iwi Claims Settlement Act 2016 (2016 No 95)**

In Schedule 3, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Tax Administration Act 1994 (1994 No 166)**

In section 13B(1), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

**Tax Administration Act 1994 (1994 No 166)—*continued***

In section 13B(3)(b), replace “section 24 of the Electronic Transactions Act 2002” with “section 228 of the Contract and Commercial Law Act 2017”.

In section 14(3), replace “sections 16 and 20 of the Electronic Transactions Act 2002” with “sections 220 and 224 of the Contract and Commercial Law Act 2017”.

In section 14B(2)(c), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

In section 14C(2)(a), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

In section 14F(3)(a), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

In section 14F(7), replace “Section 11 of the Electronic Transactions Act 2002” with “Section 214 of the Contract and Commercial Law Act 2017”.

In section 23(1)(a)(ii), replace “section 25 of the Electronic Transactions Act 2002” with “section 229 of the Contract and Commercial Law Act 2017”.

In section 36(3)(a)(ii), replace “section 25 of the Electronic Transactions Act 2002” with “section 229 of the Contract and Commercial Law Act 2017”.

**Te Atiawa Claims Settlement Act 2016 (2016 No 94)**

In Schedule 4, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Te Aupouri Claims Settlement Act 2015 (2015 No 77)**

In Schedule 5, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Te Kawerau ā Maki Claims Settlement Act 2015 (2015 No 75)**

In Schedule 4, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Te Rarawa Claims Settlement Act 2015 (2015 No 79)**

In Schedule 6, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Te Ture Whenua Maori Act 1993 (1993 No 4)**

Replace section 24A with:

**Te Ture Whenua Maori Act 1993 (1993 No 4)—continued**

**24A Powers of court relating to contracts privity and contractual remedies**

- (1) The court may exercise any power conferred on the High Court—
  - (a) by subpart 1 of Part 2 of the Contract and Commercial Law Act 2017; or
  - (b) by any of the provisions of sections 39, 43 to 48, and 50 to 52 of that Act.
- (2) However, a power conferred on the court by subsection (1) may be exercised only if the occasion for the exercise of that power arises in the course of proceedings (other than an application made for the purposes of section 16(2), 39, or any of sections 43 to 48 of the Contract and Commercial Law Act 2017) properly before the court under section 18(1)(d) of this Act.

**Tūhoe Claims Settlement Act 2014 (2014 No 50)**

In Schedule 3, clause 2, replace “section 22(1)(a) and (b) of the Electronic Transactions Act 2002” with “section 226(1)(a) and (b) of the Contract and Commercial Law Act 2017”.

**Part 2**

**Amendments to legislative instruments**

**Armed Forces Discipline Rules of Procedure 2008 (SR 2008/237)**

In rule 152(1) and (2), replace “section 26(1) of the Sale of Goods Act 1908” with “section 152(1) of the Contract and Commercial Law Act 2017”.

In rule 153, replace “section 26(1) of the Sale of Goods Act 1908” with “section 152(1) of the Contract and Commercial Law Act 2017” in each place.

**Crown Minerals (Minerals Other than Petroleum) Regulations 2007 (SR 2007/399)**

In regulation 6(3), replace “section 22 of the Electronic Transactions Act 2002” with “section 226 of the Contract and Commercial Law Act 2017”.

**Crown Minerals (Petroleum) Regulations 2007 (SR 2007/138)**

In regulation 6(3), replace “section 22 of the Electronic Transactions Act 2002” with “section 226 of the Contract and Commercial Law Act 2017”.

**Education (School Risk Management Scheme) Regulations 2003 (SR 2003/39)**

In the Schedule, clause 21, replace “section 4 of the Contracts (Privity) Act 1982” with “section 12 of the Contract and Commercial Law Act 2017”.

**Patents Regulations 2014 (LI 2014/275)**

In regulation 17, replace “section 18 of the Electronic Transactions Act 2002” with “section 222 of the Contract and Commercial Law Act 2017”.

**Patents Regulations 2014 (LI 2014/275)**—*continued*

In regulation 22(2), replace “section 22 of the Electronic Transactions Act 2002” with “section 226 of the Contract and Commercial Law Act 2017”.

**Sports Fish Licences, Fees, and Forms Notice 2016 (LI 2016/202)**

In clause 17(1)(f), replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.

**Trade Marks Regulations 2003 (SR 2003/187)**

In regulation 6(2), replace “section 22 of the Electronic Transactions Act 2002” with “section 226 of the Contract and Commercial Law Act 2017”.

In regulation 7, replace “section 18 of the Electronic Transactions Act 2002” with “section 222 of the Contract and Commercial Law Act 2017”.

**Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009 (SR 2009/144)**

In regulation 40, replace “the Electronic Transactions Act 2002” with “Part 4 of the Contract and Commercial Law Act 2017”.



## Reprints notes

### **1** *General*

This is a reprint of the Contract and Commercial Law Act 2017 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2** *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3** *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4** *Amendments incorporated in this reprint*

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149