

HONG KONG

Contracts of sale are governed in Hong Kong by the Sale of Goods Ordinance, No. 7 of 1896, as amended up to 1964. Section 3 of this Ordinance states as follows:

3. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one party owner and another.

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

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

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. 1/

With regard to conditions and warranties, Section 12 (1) of the Ordinance provides that unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale, and whether any other stipulation as to time is of the essence of the contract or not will depend on the terms of the contract.

1/
2 Laws of Hong Kong ch. 26 (rev. ed. 1964), p. 4.

Regarding non-possessory interests in goods sold,
Section 21 of the Ordinance has this to say:

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

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

(3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him. 2/

Concerning the payment of the price, Section 30 allows for credit sales since it stipulates that delivery of the goods and payment of the price are concurrent conditions, unless otherwise agreed.

Part IV of the Ordinance deals with the rights of the unpaid seller against the goods. Section 40 defines an

2/
Ibid., p. 9.

unpaid seller, stating as below:

40. (1) The seller of goods is deemed to be an unpaid seller within the meaning of this Ordinance--

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

(2) In this Part, "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price. ^{3/}

The actual rights of the unpaid seller are described in Section 41, which provides that notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law (a) a lien on the goods or right to retain them for the price while he is in possession of them; (b) in the case of the buyer's insolvency, a right of stopping the goods in transitu after he has parted with the possession of the goods; (c) a right of resale as limited by the Ordinance.

^{3/}
Ibid., p. 14.

With regard to the lien held by an unpaid seller,
Section 43 states:

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

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

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

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

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

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

ri (2) The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment for the price of the goods. 4/

Part V of the Ordinance has to do with actions for breach of the contract. Under the heading of "remedies of seller," Sections 51 and 52 provide for action for price and action for damages for non-acceptance. Section 51 states:

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

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. ^{5/}

Section 62 provides in addition that the rules of the common law, save in so far as they are inconsistent with the express provisions of the Ordinance, shall continue to apply to contracts for the sale of goods.

The Bills of Sale Ordinance, No. 12 of 1886, as amended up to 1950, also contains provisions on security rights on personal chattels. A bill of sale is defined to include licenses to take possession of personal chattels as security for any debt, also agreement by which a right in equity to any personal chattels, or to any charge or security thereon,

^{5/}
Ibid., pp. 17-18.

is conferred. However, an instrument charging or creating any security on or declaring trusts of imported goods given or executed at any time prior to their being deposited in a warehouse, factory or store, or prior to their being re-shipped for export, or delivered to a purchaser not being the person giving or executing the instrument, is not deemed a bill of sale. The Bills of Sale Ordinance is, however, held to apply to every bill of sale whereby the holder of grantee has power, either with or without notice and either immediately or at any future time, to seize or to take possession of any personal chattels within Hong Kong comprised in or made subject to such bill of sale. Trade machinery, according to Section 4 (1) of this Ordinance, is deemed to be personal chattels, and any mode of disposition of trade machinery by the owner is deemed a bill of sale within the meaning of this Ordinance.

Every bill of sale has to be duly attested and registered within seven clear days after its execution. If executed outside Hong Kong, they must be executed within seven clear days after the time at which they would arrive in Hong Kong if posted immediately after the execution, and each

bill of sale must set forth the consideration for which it was given.

Section 9 of this Ordinance prescribes the mode of registering and attesting bills of sale. Briefly, the bill has to be attested by one or more credible witnesses. It must then be presented to the Registrar, together with schedules or inventories annexed or referred to, and attestations, also an affidavit as to the time of its having been made or given and of its execution and attestation. Registration of a bill of sale must be renewed once at least every five years.

Section 14 of the Ordinance provides for limitations on causes of seizure. Under this section, personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:

- (a) If the grantor makes default in payment of the sum of sums of money thereby secured at the time therein provided for payment or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security; or
- (b) if the grantor becomes a bankrupt or suffers the said goods or any of them to be distrained for rent, rates, or taxes; or
- (c) if the grantor fraudulently either removes or suffers the said goods or any of them to be removed from the premises; or

- (d) if the grantor does not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes; or
- (e) if execution has been levied against the goods of the grantor under any judgment at law. 6/

There is also a proviso that the grantor may, within five days from the seizure or taking possession of any chattels on account of any of the causes listed above, apply to the court or judge, who may, if satisfied that, by payment of money or otherwise, the stated cause of seizure no longer exists, restrain the grantee from removing or selling the chattels. He may also make such other order as may seem just.

The Bills of Sale (Fees) Regulations states that the fees to be taken by the Registrar under the Ordinance are HD\$4.00 for filing a bill of sale and accompanying affidavit, and HK\$8.00 for filing an affidavit of re-registration of a bill of sale or any other such document.

With regard to promissory notes, the Bills of Exchange Ordinance, No. 9 of 1885, as amended up to 1960, defines them as below:

89. (1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer. 7/

6/ 2 Laws of Hong Kong ch. 20 (rev. ed. 1964), p. 7.

7/ 2Laws of Hong Kong ch. 19 (rev. ed. 1964), p. 35.

Section 95 stipulates that subject to the provisions in the portion of the Ordinance relating to promissory notes, and with certain exceptions, the provisions regarding bills of exchange apply, with the necessary modifications, to promissory notes also. The exceptions are the provisions relating to presentment for acceptance, acceptance, acceptance *suprà* protest, and bills in a set. The provisions regarding the form of bills of exchange thus are applicable to promissory notes. These are Sections 6 through 16 of the Ordinance.

Section 6 of the Bills of Exchange Ordinance states that the drawee must be named or otherwise indicated with reasonable certainty. It may be addressed to two or more drawees, but not to two drawees in the alternative or to two or more drawees in succession. Section 7 provides that where a bill is not payable to bearer, the payee must be named or otherwise indicated with reasonable certainty. Section 8 clarifies what bills are negotiable. Section 9 defines a sum certain within the meaning of the Ordinance. Section 10 defines a bill payable on demand, while Section 11 does the same for a bill payable at future time. Section 12 provides for the omission of the date in a bill payable after date, and Section 13 deals with the ante-dating and post-dating of bills.

Section 14 provides for the computation of time of payment where a bill is not payable on demand. Section 15 provides that the name of a person may be inserted in a bill as a referee in case of need. Section 16 deals with what optional stipulations may also be put in by the drawer or indorser.

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