

MERCANTILE

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TABLE OF AMENDMENTS

The Mercantile Act 1912 No 38 was certified and commenced on 16 July 1912.

Amending Legislation	Certified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

An Act to amend the laws relating to Mercantile Matters.

BE it enacted by the Lieutenant-Governor of the Territory of Papua, with the advice and consent of the Legislative Council and adopted by the Republic:

1 Short title and commencement

This Act may be cited as the *Mercantile Act 1912* and came into effect on 16 July 1912.

2 Assignment of Personalty

A person shall have power to assign personal property now by law assignable, including chattels real, directly to himself or herself and another person by the like means he or she might assign the same to another.

3 Powers of Attorney

- (1) Whenever the person who may have executed or shall hereafter execute any power of attorney (whether such person were or be at the time within the Territory or not) shall have declared or shall declare therein that such power shall continue in force until notice of his or her death or of the revocation of such power shall have been received by the attorneys named therein, such power shall operate accordingly; and every act hereafter done, performed, or submitted to by the said attorneys within the scope of the powers and authority conferred upon them after such death or revocation as aforesaid and before notice thereof shall have been received shall be as effectual in all respects as if such death or revocation had not happened or been made.
- (2) A statutory declaration made by any such attorney that he or she has not received any notice of the revocation of such power of attorney by death or otherwise shall, if made immediately before or after executing any such conveyance or other instrument as aforesaid, or doing or performing or submitting to any such act as aforesaid, be taken to be conclusive proof of such non-revocation at the time of such execution in favour of any person who shall *bona fide* and for valuable consideration, and without notice to himself or herself of any such revocation, have accepted any such conveyance or other instrument from or dealt with such attorney in the name of his or her principal.

4 Satisfied Securities

- (1) Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty shall be entitled to have assigned to him or her or to a trustee for him or her every judgement, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty.
- (2) Such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be and upon a proper indemnity, to use the

name of the creditor in any action or other proceeding in order to obtain from the principal debtor or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty; and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him or her.

- (3) No co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor by the means aforesaid more than the just proportion to which as between those parties themselves such last-mentioned person shall be justly liable.

5 Bills of Lading

Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or indorsement shall have transferred to and vested in him or her all rights of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself or herself.

6 Not to affect right of stoppage in transitu or claims for freight

Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his or her being such consignee or indorsee or of his or her receipt of the goods by reason or in consequence of such consignment or indorsement.

7 Bill of lading in hands of consignee conclusive evidence of shipment as against master

Every bill of lading in the hands of a consignee or indorsee for valuable consideration representing goods, to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board.

8 Definitions

- (1) For the purposes of this Section and the 12 next succeeding Sections:
- (a) the expression '*Mercantile Agent*' means a mercantile agent having, in the customary course of his or her business as such agent, authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods;
 - (b) the term '*Goods*' includes wares and merchandise;
 - (c) the expression '*Document of Title*' includes a bill of lading, dock warrant, warehousekeeper's certificate, warrant, or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or

authorising or purporting to authorise, either by indorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented; and

- (d) the term '*pledge*' includes any contract pledging, or giving a lien or security on, goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.
- (2) For the purposes of this Act, a person is deemed to be in possession of goods or of the documents of title to goods, when the goods or documents are in his or her actual custody or are held by any other person subject to his or her control or for him or her or on his or her behalf.

9 Dispositions by Mercantile Agents

- (1) When a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods made by him or her when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he or she were expressly authorised by the owner of the goods to make the same:

Provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

- (2) When a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition, which would have been valid if the consent had continued, shall be valid, notwithstanding the determination of the consent: Provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined.
- (3) When a mercantile agent has obtained possession of any documents of title to goods by reason of his or her being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his or her possession of the first-mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.
- (4) For the purposes of this Act, the consent of the owner shall be presumed in the absence of evidence to the contrary.

10 Effect of pledges of documents of title

A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

11 Pledge for antecedent debt

When 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 shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

12 Rights acquired by exchange of goods or documents

The consideration necessary for the validity of a sale, pledge, or other disposition of goods, in pursuance of this Act, may be either a payment in cash,

or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, or any other valuable consideration; but when goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

13 Agreements through clerks

For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on his or her behalf shall be deemed to be an agreement with the agent.

14 Provisions as to consignors and consignees

- (1) When the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.
- (2) Nothing in this Section shall limit or affect the validity of any sale, pledge, or disposition by a mercantile agent.

15 Dispositions by Sellers and Buyers of Goods

When a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him or her, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

16 Disposition by buyer obtaining possession

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

17 Effect of transfer of documents on vendor's lien or right of stoppage in transitu

When a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a

person who takes the document in good faith and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*.

18 Supplemental

For the purposes of this Act, the transfer of a document may be by endorsement, or, if the document is by custom or by its express terms transferable by delivery or makes the goods deliverable to the bearer, then by delivery.

19 Saving for rights of true owner

- (1) Nothing in this Act shall authorise an agent to exceed or depart from his or her authority as between himself or herself and his or her principal, or exempt him or her from any liability, civil or criminal, for so doing.
- (2) Nothing in this Act shall prevent the owner of goods from recovering the goods from an agent or his or her trustee in bankruptcy at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if by him or her required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his or her hands as the produce of the sale of the goods after deducting the amount of his or her lien.
- (3) Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same or any part of that price, subject to any right of set-off on the part of the buyer against the agent.

20 Saving of common law power of agent

The provisions of the 10 last preceding Sections shall be construed in enlargement and not in derogation of the powers exercisable by an agent independently of this Act.

21 Gaming Securities

All notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever given, granted, drawn, or entered into or executed by any person, where the whole or any part of the consideration of such conveyances or securities shall be for any money or other valuable thing whatsoever won by gaming or playing at cards, dice, tables, tennis, bowls; or other game or games whatsoever, or by betting on the sides or hands of such as do game at any of the games aforesaid, or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting as aforesaid, or lent or advanced at the time and place of such play, to any person or persons so play or bet, that shall be deemed and taken to have been made, drawn, accepted, given, or executed for an illegal consideration to all intents and purposes whatsoever, any statute, law, or usage to the contrary thereof in any wise notwithstanding:

Provided always that nothing herein contained shall prejudice or affect any note, bill, or mortgage which, would have been good and valid if this Act had not been passed.

22 Fraudulent assurances of lands or goods to deceive creditors shall be void

Because that divers people inherit of divers lands and tenements, borrowing divers goods in money or in merchandise of divers people to give their tenements and chattels to their friends by collusion thereof to have the profits at their will, and do live a great time with an high countenance of another man's goods and profits of the said lands, tenements, and chattels, till the said creditors shall be bound to take a small parcel of their debt and release the remnant, now therefore be it enacted that, if it be found that such gifts be so made by collusion, that the said creditors shall have execution of the said tenements and chattels as if no such gift had been made.

23 All deeds of gift of goods to defraud creditors shall be void

That where often times deeds of gift of goods and chattels have been made to the intent to defraud their creditors of their duties, and that the person or persons that maketh the said deed of gift occupieth and liveth with the said goods and chattels, their creditors being unpaid, be it enacted that all deeds of gift of goods and chattels made or to be made of trust to the use of that person or persons that made the same deed of gift be void and of none effect.

24 Fraudulent deeds made to avoid the debts of others shall be void, and the penalties of the parties to such fraudulent assurances

For the avoiding and abolishing of feigned, covinous, and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions as well of land and tenements as of goods and chattels, which feoffments, gifts, grants, alienations, conveyances, bonds suits judgments, and executions have been and are devised and contrived of malice, fraud, covin, collusion or guile to the end, purpose, and intent to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining, and chevisance between man and man, without the which no commonwealth or civil society can be maintained or continued: Be it therefore declared and enacted that all and every feoffment, gift, grant alienation, bargain, and conveyance of lands, tenements, hereditaments, goods, and chattels, or of any of them, or of any lease, rent, common, or other profit or charge out of the same lands, tenements, hereditaments, goods, and chattles, or any of them, by writing or otherwise, and all and every bond, suit, judgment, and execution at any time had and made, or at any time hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his or her or their heirs, successors, executors, administrators, and assigns, and every of them whose actions, suits, debts, accounts, damages, penalties, or forfeitures by such guileful, covinous, or fraudulent devices and practices as is aforesaid are, shall,

or might be in any wise disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate, and of none effect, any pretence, colour, feigned consideration expressing of use or any other matter or thing to the contrary notwithstanding.

25 **The forfeiture of the parties to fraudulent deeds**

All and every parties to such feigned, covinous, or fraudulent feoffment, gift, grant alienation, bargain, conveyance, bonds, suits, judgments, executions, and other things before expressed, and being privy and knowing of the same or any of them, which at any time shall wittingly and willingly put in use, avow, maintain, justify, or defend the same or any of them as true, simple, and done, had, or made *bona fide* and upon good consideration, or shall alien or assign any the lands, tenements, goods, leases, or other things before mentioned to him or her or them conveyed as is aforesaid or any part thereof, shall incur the penalty and forfeiture of 1 year's value of the said lands, tenements, and hereditaments, leases, rents, commons, or other profits of or out of the same, and the whole value of the said goods and chattels and also so much money as are or shall be contained in any such covinous and feigned bond, the one moiety whereof to be to the King, and the other moiety to the party aggrieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges, and other things aforesaid to be recovered in the Central Court by action or information.

26 **Estates made upon good consideration and bona fide**

The two last preceding Sections or anything therein contained shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods, or chattels had, made, conveyed, or assured, or hereafter to be had, made, conveyed, or assured, which estate or interest is or shall be upon good consideration and *bona fide* lawfully conveyed or assured to any person not having, at the time of such conveyance or assurance to them made, any manner of notice or knowledge of such covin, fraud, or collusion as is aforesaid, anything before mentioned to the contrary hereof notwithstanding.

27 **Preamble**

Forasmuch as not only the King's Most Excellent Majesty but also divers of His or Her Majesty's subjects, after conveyances obtained or to be obtained, and purchases made or to be made, of lands, tenements, leases, estates, and hereditaments for money or other good consideration, may have, incur, and receive great loss and prejudice by reason of fraudulent and covinous conveyances, estates, gifts, grants, charges, and limitations of uses heretofore made or hereafter to be made of, in, or out of lands, tenements, or hereditaments so purchased or to be purchased, which said gifts, grants, charges, estates, uses, and conveyances were or hereafter shall be meant and intended by the parties that so make the same to be fraudulent and covinous of purpose and intent to deceive such as have purchased or shall purchase the same, or else by the secret intent of the parties to the same be to their own proper use and at their free disposition coloured nevertheless by a feigned countenance and show of words and sentences, as though the same were made *bona fide* for good causes and upon just and lawful considerations: Now for remedy of which inconveniences and for the avoiding of such fraudulent, feigned, and covinous

conveyances, gifts, grants, charges, uses, and estates, and for the maintenance of upright and just dealing in the purchasing of lands, tenements, and hereditaments, be it enacted that all and every conveyance, grant, charge, lease, estate, encumbrance, and limitation of use or uses of, in, or out of any lands, tenements, or other hereditaments whatsoever had or made any time heretofore, or at any time hereafter to be had or made, for the intent and of purpose to defraud and deceive such person as has purchased or shall afterwards purchase in fee-simple, fee-tail for life, lives, or years the same lands, tenements, and hereditaments or any part or parcel thereof so formerly conveyed, granted, leased, charged, encumbered, or limited in use, or to defraud and deceive such as have or shall purchase any rent, profit, or commodity in or out of the same or any part thereof, shall be deemed and taken only as against that person, his or her heirs, successors, executors, administrators, and assigns, and against all and every other person lawfully having or claiming by, from, or under them or any of them, which have purchased or shall hereafter so purchase for money or other good consideration the same lands, tenements, or hereditaments or any part or parcel thereof, or any rent, profit, or commodity in or out of the same, to be utterly void, frustrate, and of none effect, any pretence, colour, feigned consideration, or expressing of any use or uses to the contrary notwithstanding.

28 The penalties of the parties to fraudulent conveyances who do avow the same

All and every parties to such feigned, covinous, and fraudulent gifts, grants, leases, charges, or conveyances before expressed, or being privy and knowing of the same or any of them, which shall wittingly and willingly put in use, avow, maintain, justify, or defend the same or any of them as true, simple, and done, had, or made *bona fide* or upon good consideration, to the disturbance or hindrance of the said purchaser, or purchasers, lessees, or grantees, or of or to the disturbance or hindrance of their heirs, successors, executors, administrators, or assigns, or such as have or shall lawfully claim anything by, from, or under them or any of them, shall incur the penalty and forfeiture of 1 year's value of the said lands, tenements, and hereditaments so purchased or charged, the one moiety whereof to be to the King, and the other moiety to the party grieved by such feigned and fraudulent gift, grant, lease, conveyance, encumbrance, or limitation of use, to be recovered in the Central Court by action or information,

29 Conveyances made upon good consideration and bona fide

The two last preceding Sections or anything therein contained shall not extend or be construed to impeach, defeat, make void, or frustrate any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest, or limitation of use or uses of, in, to, or out of any lands, tenements, or hereditaments heretofore at any time had or made, or hereafter to be had or made, upon or for good consideration and *bona fide* or any voluntary conveyance or other disposition as aforesaid had or made before or after the commencement of this Act, if in fact made *bona fide* and without any fraudulent intent to any person, anything before mentioned to the contrary hereof notwithstanding.

30 Lands first conveyed with condition of revocation or alteration and after sold for money or other good consideration

If any person having heretofore made or who shall hereafter make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance

of, in, or out of any lands, tenements, or hereditaments, with any clause, provision, article, or condition of revocation, determination, or alteration at his or her will, or pleasure of such conveyance, assurance, grants, limitations of uses, or estates of, in, or out of the said lands, tenements, or hereditaments, or of, in, or out of any part or parcel of them contained or mentioned in any writing, deed, or indenture of such assurance, conveyance, grant, or gift, and after such conveyance, grant, gift, demise, charge, limitation of uses, or assurance so made or had, shall or do bargain, sell, demise, grant, convey, or charge the same lands, tenements, or hereditaments or any part or parcel thereof to any person for money or other good consideration paid or given (the said first conveyance, assurance, gift, grant, demise, charge, or limitation not by him or her or them revoked, made void, or altered according to the power and authority reserved or expressed unto him or her in and by the said secret conveyance, assurance, gift, or grant), then the said former conveyance, assurance, gift, demise, and grant as touching the said lands, tenements, and hereditaments so after bargained, sold, conveyed, demised, or charged against the said bargainee, vendee, lessee, grantee, and his or her heirs, successors, executors, administrators, and assigns, and against all and every person and persons which have, shall, or may lawfully claim anything by, from, or under them or any of them, shall be deemed taken and adjudged to be void, frustrate, and of none effect by virtue and force of this present Act.

31 Mortgages lawfully made

Provided nevertheless that no lawful mortgage made or to be made *bona fide* and without fraud or covin upon good consideration shall be impeached or impaired by force of this Act, but shall stand in the like force and effect as the same should have done if this Act had never been had or made, anything in this Act to the contrary in any wise notwithstanding.

