

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1961 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

VOLUME 4

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1961

The 1959 amendment added the present subsection III to this section.

The 1961 amendment, which amended subsection I, substituted "a civil action in the superior court" for "a bill in equity in the supreme judicial court or the superior court in term time or vacation", substituted "the action" for "suit" in the last sentence thereof and deleted "the provisions of" preceding "this chapter" in two places.

As the rest of the section was not affected by the amendments, it is not set out.

**Effective date.**—The 1957 act repealing former subdivision III became effective on its approval, October 31, 1957.

**Part of this section unconstitutional.**—While the Unfair Sales Act is constitutional insofar as it seeks to prevent unfair competition and to that extent comes within the police powers of the state, the provisions of this section with regard to

injunctive relief and subsection III of this section with regard to prima facie evidence, in civil actions, of intent to injure competitors and destroy competition are unconstitutional. The prima facie rule established by this section lifts from the shoulders of the state the burden of proving the crime, and has, in fact, the practical effect of removing the presumption of innocence and creating a presumption of guilt which the defendant must rebut or disprove in order to escape conviction. *Wiley v. Sampson-Ripley Co.*, 151 Me. 400, 120 A. (2d) 289, decided prior to the 1957 and 1959 amendments.

The proceedings for injunctive relief or for recovery of damages create a presumption of violation of the statute by merely showing the evidence of a conduct, the sale below cost, which is legal, proper and common practice. *Wiley v. Sampson-Ripley Co.*, 151 Me. 400, 120 A. (2d) 289.

## Chapter 185.

### Uniform Sales Act.

#### Formation of Contract.

##### Sec. 2. Capacity; liabilities for necessities.

Quoted in *Spaulding v. New England Furniture Co.*, 154 Me. 330, 147 A. (2d) 916.

Cited in *Uhl v. Oakdale Auto Co.*, 157 Me. 263, 170 A. (2d) 914.

##### Sec. 4. Statute of frauds.

###### IV. THE ACCEPTANCE.

Delivery of and payment for four carloads of potatoes satisfied the statute of frauds under all oral contract for sale of

ten carloads of potatoes and contract was properly treated as single and entire. *Maine Potato Growers, Inc. v. H. Sacks & Sons*, 152 Me. 204, 126 A. (2d) 919.

##### Sec. 12. Definition of express warranty.

Cited in *McNally v. Ray*, 151 Me. 277, 117 A. (2d) 342.

##### Sec. 14. Implied warranty in sale by description.

Cited in *McNally v. Ray*, 151 Me. 277, 117 A. (2d) 342.

##### Sec. 15. Implied warranties of quality.

Section ends "sealed container" rule.—The Uniform Sales Act, in establishing implied warranties under this section, ended the "sealed container" rule at common law, and the rule of *Bigelow v. Maine Central R. Co.*, 110 Me. 105, 85 A. 396, is not sound under the act. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

"Reasonably fit for such purpose" and

"merchantable quality." — "Reasonably fit for such purpose," under subsection I and "merchantable quality," under subsection II, are equivalent with respect to food for human consumption. The test is whether the food is fit to eat. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

The difference between the warranties of subsection I and subsection II lies in the factor of reliance, present in subsection

I and not in subsection II, and in the factor of description, present in subsection II, and not in subsection I. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**The test under subsection II** is not that buyer and seller treated the goods as merchantable, but whether they were so in fact. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**Frankfurts sold by description.**—Frankfurts, sealed in a plain plastic bag and advertised as “Jordan’s Hot Dogs,” were

sold by description within the meaning of subsection II. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**Benefit of warranty through chain of distribution.**—The purchaser-consumer has the benefit of a warranty of merchantability under subsection II against the retailer. In turn the retailer may reach his seller, and so through the chain of distribution to the manufacturer. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**Cited in** *McNally v Ray*, 151 Me. 277, 117 A. (2d) 342.

### Transfer of Property and Title. As Between Seller and Buyer.

#### Sec. 18. Property in specific goods passes when parties so intend.

**Cited in** *McNally v Ray*, 151 Me. 277, 117 A. (2d) 342.

#### Sec. 19. Rules for ascertaining intention.

**Cited in** *McNally v Ray*, 151 Me. 277, 117 A. (2d) 342.

### Performance of Contract.

#### Sec. 47. Right to examine goods.

**Cited in** *McNally v Ray*, 151 Me. 277, 117 A. (2d) 342.

#### Sec. 49. Acceptance does not bar action for damages.

**Cited in** *McNally v Ray*, 151 Me. 277, 117 A. (2d) 342.

### Action for Breach of Contract.

#### Sec. 69. Remedies for breach of warranty.

**Cited in** *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

### Interpretation.

#### Sec. 74. Interpretation shall give effect to purpose of uniformity.

The Uniform Sales Act codified, extended and liberalized the common law. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160. And rules inconsistent with the act are thereby abolished. — *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

## Chapter 188.

### Uniform Negotiable Instruments Act.

#### Negotiable Instruments in General. Form and Interpretation.

**Sec. 4. Determinable future time; what constitutes.**—An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable:

- I. At a fixed period after date or sight; or
- II. On or before a fixed or determinable future time specified therein; or
- III. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain; or