

**MERCANTILE LAW ACT**

**CHAPTER 82:02**

**Act**

**5 of 1844**

Amended by

15 of 1881

6 of 1882

18 of 1939

**Current Authorised Pages**

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**Note on Subsidiary Legislation**

This Chapter contains no subsidiary legislation.

**CHAPTER 82:02**

**MERCANTILE LAW ACT**

ARRANGEMENT OF SECTIONS

**SECTION**

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## CHAPTER 82:02

## MERCANTILE LAW ACT

**An Act relating to Mercantile Law.**

1950 Ed.  
Ch. 31 No. 4.  
5 of 1844.

Commencement.

[26TH JANUARY 1845]

Short title.

**1.** This Act may be cited as the Mercantile Law Act.

Contract or  
promise not  
binding  
unless founded  
on sufficient  
consideration.

**2.** No contract, agreement, or promise made or entered into by any person by words spoken, or by any writing not being a specialty, shall be of any force or effect in law or shall bind any party thereto, unless the contract, agreement, or promise is founded upon some valuable thing or consideration sufficient, according to the principles of the law of England, to support the same against the party sought to be charged therewith.

Not to extend  
to specialties.

**3.** Nothing contained herein shall extend to alter or affect the law with respect to any contract, agreement, promise or obligation contained in any specialty.

Promises and  
agreements by  
parol.

**4.** No action shall be brought whereby to charge any heir, executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any agreement which is not to be performed within the space of one year from the making thereof, unless the agreement upon which the action is brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto lawfully authorised by him.

Consideration  
for guarantee  
need not appear  
in writing.

**5.** No special promise made by any person to answer for the debt, default or miscarriage of another person, being in writing, and signed by the party to be charged therewith or some other person by him lawfully authorised, shall be deemed invalid to

support an action, suit or other proceeding to charge the person by whom the promise has been made, by reason only that the consideration for the promise does not appear in writing, or by necessary inference from a written document.

**6.** In any action for the recovery of any debt or damages grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of any law or Act establishing any prescription or limitation of action affecting the contract, or for giving relief to insolvent persons, or making cession of their property for the benefit of their creditors, or to deprive any party of the benefit of any such law or Act, unless the acknowledgment or promise is made or contained in or by some writing, to be signed by the party chargeable thereby; and where there are two or more joint contractors, or heirs, or executors or administrators of any contractor, no such joint contractor, heir, executor or administrator shall lose the benefit of such law or Act, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them. However, nothing contained herein shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever. Further, in actions to be commenced against two or more such joint contractors, or heirs, or executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by any such law or Act, as to one or more of such joint contractors, or heirs, or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment or promise or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

Acknowledgment  
of debts.

**7.** An acknowledgment or promise made or contained by or in a writing signed by an agent of the party chargeable thereby, duly authorised to make the acknowledgment or promise, shall have the same force and effect in all cases as if the writing had been signed by such party himself.

Acknowledgments  
by agents.

Indorsements of payments.

**8.** No indorsement or memorandum of any payment written or made upon any promissory note, bill of exchange or other writing, by or on the behalf of the party to whom the payment is made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of this Act, or of any other such law or Act as is mentioned above.

Simple contract debts alleged by way of set-off.

**9.** This Act shall be deemed and taken to apply to the case of any debt on simple contract, alleged by way of set-off on the part of any defendant.

Representations of character.

**10.** No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money or goods, unless the representation or assurance is made in writing, signed by the party to be charged therewith.

A surety who discharges the liability to be entitled to assignment of all securities held by the creditor.

**11.** Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, pays the debt or performs the duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty or other security which is held by the creditor in respect of the debt or duty, whether the judgment, specialty or other security is or is not deemed at law to have been satisfied by the payment of the debt or performance of the duty, and 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 at law or in equity, 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 has so paid the debt or performed the duty, and the payment or performance so made by the surety shall not be pleadable in bar of any such action or other proceeding by him. 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 mentioned above, more than the just

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proportion to which, as between those parties themselves, the last-mentioned person shall be justly liable.

**12.** Whenever there are two or more co-contractors or co-debtors, whether bound or liable jointly only or jointly and severally, or executors or administrators of any contractor or debtor, no such co-contractor or co-debtor, executor or administrator shall lose the benefit of any law relating to the limitation of actions, so as to be chargeable in respect or by reason only of payment of any principal, interest or other money, by any other or others of such co-contractors or co-debtors, executors or administrators. Co-contractors.