

Western Australia

## **Mercantile Law Amendment Act 1856 (Imp)**

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## **Mercantile Law Amendment Act 1856 (Imp)**

**An Act to amend the Laws of England and Ireland affecting Trade and Commerce.**<sup>3</sup>

### **Preamble**

Whereas inconvenience is felt by persons engaged in trade by reason of the laws of England and Ireland being in some particulars different from those of Scotland in matters of common occurrence in the course of such trade, and with a view to remedy such inconvenience it is expedient to amend the laws of England and Ireland as hereinafter is mentioned:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

[1-2. Deleted in WA by 59 Vict. No. 41 s. 58.]<sup>4</sup>

### **3. Consideration or guarantee need not appear by writing**

No special promise to be made by any person after the passing of this Act 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 thereunto lawfully authorised, shall be deemed invalid to support an action, suit, or other proceeding to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document.

[4. Deleted in WA by 59 Vict. No. 23 s. 4.]<sup>5</sup>

**s. 5**

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

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 to a trustee for him, every judgment, 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, 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 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:

Provided always, that 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.

**6. Acceptance of a bill inland or foreign to be in writing on it, and signed by the acceptor or his agent <sup>6</sup>**

No acceptance of any bill of exchange, whether inland or foreign, made after the thirty-first day of December one thousand eight hundred and fifty-six, shall be sufficient to bind or charge any person, unless the same be in writing on such bill, or, if there be more than one part of such bill, on one of the said parts, and signed by the acceptor or some person duly authorised by him.

**7. What are to be deemed ‘inland bills’<sup>6</sup>**

Every bill of exchange or promissory note drawn or made in any part of the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Aldernay, and Sark, and the island adjacent to any of them, being part of the dominions of Her Majesty, and made payable in or drawn upon any person resident in any part of the said United Kingdom or islands, shall be deemed to be an inland bill; but nothing herein contained shall be deemed to be an inland bill; but nothing herein contained shall alter or affect the stamp duty, if any, which, but for this enactment, would be payable in respect of any such bill or note.

**8. With reference to the repairs of ships, every port within the United Kingdom, etc., a home port**

In relation to the rights and remedies of persons having claims for repairs done to, or supplies furnished to or for, ships, every port within the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them, being part of the dominions of Her Majesty, shall be deemed a home port.

*[9-15. Deleted by No. 35 of 1935 s. 2.]<sup>7</sup>*

**16. Short title**

In citing this Act it shall be sufficient to use the expression ‘The Mercantile Law Amendment Act, 1856.’

**17. Extent of Act**

Nothing in this Act shall extend to Scotland.

### Notes

<sup>1</sup> This is a compilation of the *Mercantile Law Amendment Act 1856 (Imp)*. The following table contains information about that Act and any previous reprints.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Mercantile Law Amendment Act 1856 (Imp)</i> <sup>2</sup>	1856 (19 and 20 Vict. c. 97)	29 Jul 1856	15 Jul 1867 (adopted by <i>Imperial Acts Adopting Ordinance 1867</i> )
<i>The Sale of Goods Act 1895</i> s. 58	1895 (59 Vict. No. 41)	2 Oct 1895	1 Oct 1895 (see s. 2)
<i>The Partnership Act 1895</i> s. 4	1895 (59 Vict. No. 23)	12 Oct 1895	1 Jan 1896 (see s. 61)
<i>Limitation Act 1935</i> s. 5	35 of 1935	7 Jan 1936	14 Apr 1936

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<sup>2</sup> Adopted in WA by *Imperial Acts Adopting Ordinance 1867*. (31 Vict. No. 8) [Assent 15 July 1867]

<sup>3</sup> For information about this Imperial Act see *Halsbury's Statutes of England*, Second Edition, Vol 4 p 660.

<sup>4</sup> I.e. repealed in so far as they were part of the law of WA by the *Sale of Goods Act 1895* (59 Vict. No. 41) s 58 [Assent 12 October 1895; Commencement 1 January 1896].

<sup>5</sup> I.e. repealed in so far as it was part of the law of WA by the *Partnership Act 1895* (59 Vict. No. 23) s 5 [Assent 2 October 1895; Commencement 1 October 1895].

<sup>6</sup> This section is affected by the *Bills of Exchange Act 1909* (Cwlth).

<sup>7</sup> I.e. repealed in so far as they were part of the law of WA by the *Limitation Act 1935* s 5 [Assent 7 January 1936; Commencement 14 April 1936].