

CONTENTS

<i>Foreword to First Edition</i>	vii
<i>Table of Cases</i>	xxvii
<i>Table of Primary Legislation</i>	xxxvii
<i>Table of Secondary Legislation</i>	xliii

1. The Evolution and Economics of Auction Sales

A. Auctions Ancient and Modern	1.01
Definition of Auctions	1.01
Types of Auction	1.02
History of Auctions	1.05
Major British Auction Houses	1.12
Economic Considerations in Auction Sales	1.24
B. The Impact of the Internet	1.33
Uses and Abuses	1.33
Are Internet Auctions really Auctions?	1.40
Problems on the internet	1.45
Specialist online auctions	1.58
Trading economics	1.61
Tarisio	1.64
Conclusions	1.71
Droit de Suite: Resale Rights for the Benefit of the Author of an Original Work of Art	1.76
Sales covered	1.79
Royalty rates	1.81
Liability for payment	1.82

2. Auctioneers: Restrictions on Trading

Qualifications	2.02
Licensing	2.03
Display of Names and Other Notices	2.04

Business Association	2.06
Firm name	2.10
 3. Capacity and Authority	
Introductory	3.01
Authority	3.03
Varieties of authority	3.05
Actual authority	3.07
Apparent authority	3.08
Agency of necessity	3.11
Ratification	3.13
The Authority of Auctioneers	3.14
Sale by auction	3.16
Sales in defiance of a reserve	3.19
The problem of authority	3.20
Sales expressed to be without reserve	3.27
Contractual analysis of auction sales	3.31
Conceptual analysis of contracts	3.32
The nature of the bid	3.33
The right to withdraw a lot	3.38
Consideration	3.40
Damages quantification	3.43
Implied authority	3.47
Signing the contract	3.47
Collecting payment	3.48
Describing the property: authority to warrant	3.56
Delegating authority	3.62
Binding the vendor	3.64
Binding the purchaser	3.65
Termination of authority	3.69
Natural termination	3.70
Revocation	3.72
 4. The Rights of an Auctioneer	
Rights Against the Vendor	4.01
The right to remuneration and expenses	4.02
Commission	4.03
Construction of the contract	4.04
Implied term	4.07
Express provision where sale otherwise than by the agent	4.14

The amount of the commission	4.20
Dispute as to the incorporation of a term	4.21
No contractual provision as to commission	4.24
Loss of commission	4.25
Quantum meruit	4.26
Expenses	4.30
Indemnity	4.31
Lien	4.38
Property attached	4.39
Nature of the lien	4.44
Enforcement of lien	4.46
Other rights	4.48
Rights Against the Purchaser	4.49
Action for the price of goods	4.50
Sales of land	4.62
Rights Against Third Parties	4.64
Wrongful interference with goods	4.65
Privilege from distress	4.67
Interpleader	4.70
 5. Duties and Liabilities of the Auctioneer	
Duties to the Vendor	5.01
Duties relating to performance	5.02
To act in accordance with his instructions	5.02
To act with skill and care	5.05
What is the standard of care required?	5.06
Duty to secure a binding agreement	5.09
Duty to describe the property accurately	5.12
Under-selling the vendor's goods	5.42
Duty to obtain the deposit and price	5.59
Fiduciary duties	5.66
Taking commission from both parties	5.67
Purchasing the principal's property	5.73
Obtaining a secret profit	5.76
Duty to account	5.77
The jus tertii defence	5.82
Common law	5.83
Statutory modifications	5.85
Interest	5.93
Duty to care for the goods	5.94
Liability for negligence	5.98

The requirement of reasonableness	5.104
The extent of the exclusion	5.105
The availability of insurance cover	5.106
Duties and Liabilities Owed to the Purchaser	5.112
The auctioneer as agent of the purchaser	5.113
Personal contractual liability to the purchaser	5.118
Breach of warranty of authority	5.119
Liability on the contract of sale	5.121
Liability under a particular arrangement	5.126
Other liability	5.140
Duty with regard to the goods purchased	5.141
Liability for physical injury	5.142
Liability for misrepresentations	5.143
In deceit	5.144
In negligence	5.145
On a collateral warranty	5.152
Duties relating to the deposit	5.153
Interest on the deposit	5.156
Liability for non-investment	5.157
Liability for interest earned	5.158
Loss of the deposit	5.160
Duties and Liabilities to Third Parties	5.162
Conversion and acts amounting to conversion	5.162
Sale without the authority of the true owner	5.163
Estoppel	5.169
Sale in market overt	5.170
Sale under a voidable title	5.171
Sale by a mercantile agent	5.172
Sale by seller remaining in possession	5.173
Sale by buyer in possession	5.174
Sales of motor vehicles subject to hire-purchase agreements	5.176
Refusal to deliver up to the owner	5.181
Other acts short of a sale	5.182
The notice issue	5.189
Time limits	5.200
Other duties to third parties	5.206
Negligence	5.206
Nuisance	5.209

6. Conditions of Sale Affecting Buyers and Bidders	
Introduction	6.01
The Contractual Framework	6.03
Incorporation into the Contract of Conditions	6.05
Vulnerability of Conditions of Sale	6.10
Conditions relating to the title to, compliance with description of, and quality of, the goods sold	6.12
Misrepresentations	6.21
Implementation of the EC Directive on Unfair Terms and Consumer Contracts (93/13/EEC) by the Unfair Terms in Consumer Contracts Regulations 1999	6.22
 Common Problems Concerning Buyers, Dealt with by Conditions of Sale	6.39
The seller's title	6.40
Non-compliance with description	6.43
Deliberate forgeries or counterfeits	6.55
Unsatisfactory goods	6.65
 The Buyer's Premium	6.66
Payment by the buyer	6.69
Collection of purchases and passing of the property	6.70
Buyer's responsibilities for lots purchased	6.71
 Conditions Governing the Conduct of the Auction	6.72
Are bidders other than the buyer bound?	6.72
Definition of buyer	6.76
Disputed bids	6.80
Minimum increment	6.86
Admission to premises	6.87
Refusal to accept bids etc	6.88
'Phantom' and unhinged bidders	6.89
Bidding practices	6.92
Scope of the right to bid	6.93
Common law	6.97
Equity	6.101
Statute	6.105
Misuse of the right to bid	6.123
Inventing bids	6.126
The criminal offence	6.128
Controlling the right to bid	6.139
Pretending that an item has been sold	6.147

General Comment on Conditions of Sale	6.149
Law reform	6.152
Sales by auction	6.155
7. Export Licensing	
Outline of the System	7.01
Criminal Sanctions	7.03
The Controls	7.04
EC control	7.04
UK control	7.06
Embargoed destination	7.09
Open General Export Licence (OGEL)	7.10
Open Individual Export Licences (OIEL)	7.12
Individual export licences	7.14
Cases referred to the Reviewing Committee	7.18
The Committee's decision	7.19
Comments	7.21
The legal infrastructure	7.25
 Cultural Property	 7.28
8. Criminal Practices at Auctions and their Consequences	
Mock Auctions	8.01
Auction Rings	8.12
Auctions (Bidding Agreements) Acts 1927 and 1969	8.18
Explanatory notes on these provisions	8.20
Interpretation of these statutory provisions	8.21
Possible reform	8.23
Setting sales aside	8.26
 Other Dishonest Practices at Auctions	 8.32
False Trade Descriptions	8.35
Possible defences	8.39
Mistake, accident, etc	8.45
False Estimates	8.59
Prohibition on Sales	8.61
Wild birds, animals and endangered species	8.62
Tainted cultural objects	8.72
Firearms and other offensive weapons	8.77
Firearms	8.77

Antiques	8.81
Honest belief irrelevant	8.82
What is an antique?	8.84
Other offensive weapons	8.90
Other offences	8.92
Selling unsafe goods	8.93
The general safety requirement under the 1987 Act	8.99
Safety regulations	8.101
General Product Safety Regulations 2005	8.106
Money laundering	8.111
9. Sales of Land by Auction or Tender	
Auctions	9.01
Practice and procedure	9.01
Home information packs	9.07
General statutory requirements	9.12
The Law of Property (Miscellaneous Provisions) Act 1989	9.12
Sale of Land by Auction Act 1867	9.16
Conditions of sale as to the conduct of land auctions	9.18
Problems Regarding Misrepresentation and Misdescriptions	9.25
Misrepresentations prior to the sale	9.25
Exclusion clauses and disclaimers	9.34
Oral attempts to modify written terms	9.44
Damping the sale	9.46
Written statements attempting to disclaim misrepresentations and misdescriptions	9.50
Sale of residential investment property by public auction	9.59
Tenders	9.64
Practice and procedure	9.64
The content of tender documents	9.67
10. Vehicle Auctions and Specialized Auctions of Other Property	
Vehicle Auctions	10.01
Conditions of sale	10.02
Some special features of motor auctions	10.06
Selling unroadworthy cars	10.09
Criminal liability	10.09
Civil liability	10.13
Trade descriptions	10.24

Miscellaneous Auctions of Other Commodities	10.32
Introduction	10.32
Plant and machinery	10.33
Sales of reversions and future property interests	10.42
Livestock sales	10.46
Statutory controls	10.48
Conduct of the sale	10.51
Diseased etc animals	10.52
Dangerous animals	10.53
Sales of animals sold for slaughter	10.54
Milking of cows	10.57
Meat and Livestock Commission schemes	10.58
Sales outside the ring	10.61
11. Sales by Vendors in Special Positions	
Introduction	11.01
Trustees and Other Fiduciaries	11.02
Mortgagees	11.06
Pawnbrokers	11.10
Note on the above section	11.12
Sales Under Writs of Execution	11.13
Sales of Land by Order of the Court	11.17
Sales Under Distress for Rent	11.20
Sales Under Other Miscellaneous Powers	11.23
Property in the Possession of the Police	11.24
Problems of Title	11.27
12. Value Added Tax	
History	12.01
Goods sold outside the 'special scheme'	12.02
Seventh Directive	12.06
Implementation	12.13
Special position of auctioneers	12.15
Appendix 1: Conditions of Sale	377
Christie's Consignment Agreement	377

Conditions of Sale at Christie's	384
Conditions of Sale at Sotheby's	389
Appendix 2: Statutory and Other Material: Selected Extracts	405
Sale of goods	405
Criminal law	422
Land	432
Supplies of a service	436
Appendix 3: Rules of Procedure: Selected Extracts	437
Appendix 4: Title in Cases of Theft of Goods in the UK	445
Index	447