

**Practical Case Studies on
The Sale of Goods Act, 1930**

- Q.1. A, a businessman of England, bought 3,000 tins of condensed milk from B, a dealer in U.S.A. When the tins reached in England, it was found that 1,000 tins contained the label of 'Nissly Brand'. C, another manufacturer of milk under the name of 'Nestle Brand', claimed that this was an infringement of his trademark. A had to remove the labels, in order to get clearance from custom authorities. Moreover, A had to sell the tins at loss. A brought an action against B for the breach of condition. Can he do so?
- Q.2. For the purpose of making uniform for employees, Mr. Yadav bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Mr. Yadav whether he is entitled to have any remedy under the sale of Goods Act, 1930?
- Q.3. A purchased a hot-water bottle from a retail chemist. The chemist informed him that the bottle was specially meant for holding hot water. At the time of use, the bottle burst as soon as the hot water was poured into it and injured A's wife. Comment on remedies available to A under the Sale of Goods Act, 1930.
- Q.4. Kapil bought a tweed coat from Chandu. After wearing coat for some time, Kapil developed a termatitis (skin trouble). It was discovered that coat was fit for use of a normal man. And Kapil's skin trouble was due to his oversensitive skin. Can he file a suit against Chandu?

Hint: The court held that the implied condition as to fitness of buyer's purpose was not broken, as the coat was fit for the use of a normal man. In this case, it was Kapil's duty to disclose the fact of over sensitiveness to the seller at the time of sale.

- Q.5. Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes. Shyam suggests 'Maruti' and Ram accordingly buy it from Shyam. The car turns out to be unfit for touring purposes. What remedy Ram is having now under the Sale of Goods Act, 1930?
- Q.6. D bought a Colour TV from M/s. Kaka Enterprises for a sum of ₹ 40,000. The TV set was defective right from the beginning and it did not work inspite of repairs by the expert mechanics. What is the remedy available to D?

Hint: Breach of condition as to merchantability; D shall be entitled to return the T.V. and claim damages.

Q.7. Mr. Gill visited a café with a friend who ordered a bottle of ginger-beer for him. Mr. Gill drank part of its contents and when the remainder was of a dark glass, a snail in a state of decomposition floated out of the bottle. Mr. Gill suffered from shock and gastro-entreaties. Decide whether Mr. Gill can claim the damages and from whom?

Q.8. Karthik sold to Akshay, 3000 tins of Australian fruits which were agreed to be packed in cases each containing 30 tins. Karthik delivered the substantial portion of the fruits in cases containing 24 tins.

Hint: It was held that the method of packing was a part of the description. Therefore, Akshay was entitled to reject all the goods.

Thus, once it is proved that the sale is by description, then the goods must be correspond with the description. If they do not correspond, the buyer may reject them and the seller cannot take the defence by saying that they will serve the buyer's purpose.

Q.9. Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

Ans: The problem is based on section 50 of the Sale of Goods Act, 1930 dealing with the right of **stoppage of the goods in-transit** available to an unpaid seller. The **section states that** the right is exercisable by the seller **only if the following conditions** are fulfilled:

- (i) The seller must be unpaid,
- (ii) He must have parted with the possession of goods,
- (iii) The goods must be in-transit,
- (iv) The buyer must have become insolvent,

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in-transit.

Q.10. J the owner of a car wants to sell his car. For this purpose, he hand over the car to P, a mercantile agent for sale at a price not less than ₹ 50,000. The agent sells the car for ₹ 40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide giving reasons whether J would succeed.

Ans: The problem in this case is based on the proviso to Section 27 of Sale of Goods Act, 1930. The proviso provides the buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if:

- (1) The mercantile agent is in possession of the goods or documents of title to the goods with the consent of the owner,
- (2) The mercantile agent sells the goods while acting in the ordinary course of business of a mercantile agent,
- (3) The buyer acts in good faith and
- (4) The buyer has not at the time of the contract of sale notice that the agent has no

authority to sell.

A mercantile agent is one who in the customary course of his business, has 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 [Section 2(9)].

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. A, the buyer, therefore obtained a good title to the car as per the above proviso to section 27.

Hence, J in this case, cannot recover the car from A.

Q.11. Abhay purchased from Sanjay, a sewing machine which he had never seen. Sanjay described the machine as 'Brand New'. But on delivery, Abhay found that the machine was extremely old. Can Abhay Return the machine?

Q.12. Referring to the provisions of the Sale of Goods Act, 1930, state the circumstances under which when goods are delivered to the buyer "on approval" or "on sale or return" or other similar terms, the property therein passes to the buyer.

Ms. Preeti owned a motor car which she handed over to Mr. Joshi on sale or return basis. After a week, Mr. Joshi pledged the motor car to Mr. Ganesh. Ms. Preeti now claims back the motor car from Mr. Ganesh. Will she succeed? Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to Ms. Preeti.

Ans: As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

- (a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- (c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question.

Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis has pledged the motor car to Mr. Ganesh, and thus has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Motor car) passes to Mr. Joshi. Now in this situation, Ms. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only.

Q.13. Suraj sold his car to Sohan for ₹ 75,000. After inspection and satisfaction, Sohan paid ₹ 25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on Sohan refuses to give the remaining amount on the ground that the car was

not in a good condition. Advise Suraj as to what remedy is available to him against Sohan.

Ans: As per section 55 of the Sale of Goods Act, 1930 whereby an unpaid seller has a right to institute a suit for price against the buyer personally. This section states that:

- (1) Where under a contract of sale, the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods.
- (2) Where under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract.

Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this Suraj is also entitled to:

- Interest on the remaining amount
- Interest during the pendency of the suit.
- Costs of the proceedings.

Q.14. Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930. [CA May 2018]

Ans: Position of Mr. D: Mr. D is an unpaid seller as per section 45(1) of the Sale of Goods Act, 1930. The seller of goods is deemed to be an ‘Unpaid Seller’ when the whole of the price has not been paid or tendered.

Rights of Mr. D: As the buyer has taken the possession of the goods, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:

- a. **Suit for price (Sec. 55):** In the question given, the price is payable after 15 days and Mr. E refuses to pay such price. So, Mr. D may sue Mr. E for the price of the goods sold.
- b. **Suit for damages for non-acceptance (Sec. 56):** Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to pay for the goods. As regards the amount of damages, section 73 of the Indian Contract Act, 1872 applies.
- c. **Suit for interest (Sec. 61):** If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods, Mr. D may charge interest on the price from the date on which payment becomes due till such day as he may notify to Mr. E.

Q.15. ‘B’ selects certain furniture in a shop. The price is settled. He arranges to take delivery of the furniture the next day through his servant and agrees to pay for the furniture on the first of the next month. The furniture was destroyed by fire the same evening. Is ‘B’ liable to pay the price? Give reasons.

Hint: Yes, ‘B’ is liable to pay the price, the contract being an unconditional contract for the sale of specific goods in a deliverable state. The property i.e. the ownership in such case passes immediately on conclusion of the contract. The postponement of payment of price or time for delivery of goods does not withhold the passing of property in the goods. (Sec.20).

Q.16. Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.

Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different, if the dues were not settled in cash and are still pending? [CA Nov 2018]

Ans:

(i) As per section 44 of the Sales of Goods Act, 1932, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not take delivery of the goods within a reasonable time, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

Risk of loss *prima facie* follows the passing of property in goods. Goods remain at the seller's risk unless the property therein is transferred to the buyer, but after transfer of property therein to the buyer the goods are at the buyer's risk whether delivery has been made or not.

In the given case, since Mr. G has already intimated Mr. H that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods **damaged should be borne by Mr. H.**

(ii) If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an **unpaid seller** and he can enforce the following **rights against the goods as well as against the buyer personally:**

(a) Where under a contract of sale the **property in the goods has passed** to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may **sue him for the price** of the goods. [Section 55(1) of the Sales of Goods Act, 1930]

(b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may **sue him for the price although the property in the goods has not passed** and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].

Hence, Mr. G will succeed against Mr. H for recovery of the remaining amount. Apart from this Mr. G is also entitled to:

- Interest on the remaining amount
- Interest during the pendency of the suit.
- Costs of the proceedings.

Q.17. R sells and consigns certain goods to P for cash and sends the Railway Receipt to him. R being still the unpaid seller, P becomes insolvent and while the goods are in transit, P assigns

the Railway Receipt to N, who does not know that P is insolvent. R, being an unpaid seller, wants to exercise his right of stoppage in transit. Advise:

- (i) Whether R can do so?
- (ii) Would your answer be different if N was aware of P's insolvency, before the assignment of the Railway Receipt in favour of N?