

SALES OF GOODS ACT

Statistics Analysis

May 2018	$4 + 6 + 6 + 6 = 22$ Marks
November 2018	$4 + 6 + 6 = 16$ Marks
May 2019	$4 + 6 + 6 = 16$ Marks
November 19	$4 + 6 + 6 = 16$ Marks
November 2020	$4 + 6 + 6 = 16$ Marks
January 2021	$4 + 6 + 6 = 16$ Marks
July 2021	$4 + 6 + 6 = 16$ Marks
December 2021	$4 + 6 + 6 = 16$ Marks
May 2022	$4 + 6 + 6 = 16$ Marks
November 2022	$4 + 6 + 6 = 16$ Marks

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UNIT - I : FORMATION OF THE CONTRACT SALE

Question 1 :

What is meant by delivery of goods under the Sale of Goods Act, 1930? State various modes of delivery.

May - 18

Answer :

Delivery of goods [section 2(2) of the Sale of Goods Act, 1930] : Delivery means voluntary transfer of possession from one person to another. As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

Modes of delivery : Following are the modes of delivery for transfer of possession:

- (i) **Actual delivery:** When the goods are physically delivered to the buyer.
- (ii) **Constructive delivery:** When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement) e.g., where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.
- (iii) **Symbolic delivery :** When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer

Question 2 :

Differentiate between Ascertained and Unascertained Goods with example.

Nov-18

Answer :

- **Ascertained Goods** are those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the Act but has been judicially interpreted. In actual practice the term 'ascertained goods' is used in the same sense as 'specific goods.' When from a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.
- **Unascertained goods:** The goods which are not specifically identified or ascertained at the time of making of the contract are known as 'unascertained goods'. They are indicated or defined only by description or sample.

Question 3 :

Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930.

December -21

Answer :

The main points of distinction between the 'Sale' and 'Hire-Purchase' are as follows:

Sr. No.	Basis of difference	Sale	Hire-Purchase
1	Time of passing property	Property in the goods is transferred to the buyer immediately at the time of the contract	Property in goods passes to the hirer upon payment of the last installment.
2	Position of the property	The position of the buyer is that of the owner of the goods	The position of the hirer is that of a bailee till he pays the last installment.
3	Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.
4	Burden of Risk of Insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer	The owner takes no such risk, for if the hirer fails to pay an installment, the owner has right to take back the goods.
5	Transfer of title	The buyer can pass a good title to a bona fide purchaser from him	The hirer cannot pass any title even to a bona fide purchaser.
6	Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the installments.

Question 4 :

What are the consequences of destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930.

May-22, Module

Answer :

- (i) **Goods perishing before making of Contract (Section 7 of the Sale of Goods Act, 1930):** In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void, if at the time when the contract was made, the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.
- (ii) **Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930) :** Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.

Question 5 :

Sonal went to a Jewellery shop and asked the sales girl to show her diamond bangles with Ruby stones. The Jeweller told her that we have a lot of designs of diamond bangles but with red stones if she chooses for herself any special design of diamond bangle with red stones, they will replace red stones with Ruby stones. But for the Ruby stones they will charge some extra cost. Sonal selected a beautiful set of designer bangles and paid for them. She also paid the extra cost of Ruby stones. The Jeweller requested her to come back a week later for delivery of those bangles. When she came after a week to take delivery of bangles, she noticed that due to Ruby stones, the design of bangles has been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930.

- (i) *State with reasons whether Sonal can recover the amount from the Jeweller.*
- (ii) *What would be your answer if Jeweller says that he can change the design but he will charge extra cost for the same?*

May-22

Answer :

As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell and as per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

- (i) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Sonal and Jeweller and not a sale. Even though the payment was made by Sonal, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Ruby Stones, the original design is disturbed, bangles are not in original position. Hence, Sonal has right to avoid the agreement to sell and can recover the price paid.
- (ii) If Jeweller offers to bring the bangles in original position by repairing, he cannot charge extra cost from Sonal. Even though he has to bear some expenses for repair; he cannot charge it from Sonal.

Question 6 :

X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930?

Module

Answer :

Payment of the price by the buyer is an important ingredient of a contract of sale. If the parties totally ignore the question of price while making the contract, it would not become an uncertain and invalid agreement. It will rather be a valid contract and the buyer shall pay a reasonable price.

In the give case, X and Y have entered into a contract for sale of car but they did not fix the price of the car. X refused to sell the car to Y on this ground.

Question 7 :

Classify the following transactions according to the types of goods they are :

- (i) *A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside.*
- (ii) *A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop.*
- (iii) *T agrees to sell to S all the apples which will be produced in his garden this year.*

Module

Answer :

- (i) A wholesaler of cotton has 100 bales in his godown. So, the goods are existing goods. He agrees to sell 50 bales and these bales were selected and set aside. On selection, the goods becomes ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.
- (ii) If A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop, it is a sale of existing but unascertained goods because it is not known which packet is to be delivered.
- (iii) T agrees to sell to S all the apples which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'

Question 8 :

A agrees to buy a new TV from a shop keeper for ₹ 30,000 payable partly in cash of ₹ 20,000 and partly in exchange of old TV set. Is it a valid Contract of Sale of Goods? Give reasons for your answer.

Module

Answer :

It is necessary under the Sales of Goods Act, 1930 that the goods should be exchanged for money. If the goods are exchanged for goods, it will not be called a sale. It will be considered as barter. However, a contract for transfer of movable property for a definite price payable partly in goods and partly in cash is held to be a contract of Sale of Goods.

In the given case, the new TV set is agreed to be sold for ₹ 30,000 and the price is payable partly in exchange of old TV set and partly in cash of ₹ 20,000. So, in this case, it is a valid contract of sale under the Sales of Goods Act, 1930.

Question 9 :

A agrees to sell to B 100 bags of sugar arriving on a ship from Australia to India within next two months. Unknown to the parties, the ship has already sunk. Does B have any right against A under the Sale of Goods Act, 1930?

Module

Answer :

- In this case, B, the buyer has no right against A the seller. Section 8 of the Sales of Goods Act, 1930 provides that where there is an agreement to sell specific goods and the goods without any fault of either party perish, damaged or lost, the agreement is thereby avoided. This provision is based on the ground of supervening impossibility of performance which makes a contract void.
- So, all the following conditions required to treat it as a void contract are fulfilled in the above case :
 - (i) There is an agreement to sell between A and B
 - (ii) It is related to specific goods
 - (iii) The goods are lost because of the sinking of ship before the property or risk passes to the buyer.
 - (iv) The loss of goods is not due to the fault of either party.

UNIT - II : CONDITIONS AND WARRANTIES

Question 1 :

What is the Doctrine of "Caveat Emptor"? What are the exceptions to the Doctrine of "Caveat Emptor"?

November -18, May-19, November -20, Module

Answer :

Caveat Emptor :

In case of sale of goods, the doctrine 'Caveat Emptor' means '**let the buyer beware**'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

Exceptions : Following are the exceptions to the doctrine of Caveat Emptor:

1. **Fitness as to quality or use :** Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1) of the Sales of Goods Act, 1930].
2. **Goods purchased under patent or brand name :** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
3. **Goods sold by description :** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so then seller is responsible.
4. **Goods of Merchantable Quality :** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].
5. **Sale by sample :** Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
6. **Goods by sample as well as description :** Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].

7. **Trade Usage :** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].
8. **Seller actively conceals a defect or is guilty of fraud :** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

Question 2 :

Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ₹ 125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase. The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.

The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.

Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful?

Explain the basic law on sale by sample under Sale of Goods Act 1930?

Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act 1930?

What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice?

November -19, July-21, Module

Answer :

- (i) As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that :
- (a) the bulk shall correspond with the sample in quality;
- (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Geeta will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

- (ii) **Sale by Sample: (Section 17 of the Sale of Goods Act, 1930):** As per the provisions of Sub-Section (1) of section 17 of the Sale of Goods Act, 1930, a contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

As per the provisions of Sub-Section (2) of section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that :

- (a) that the bulk shall correspond with the sample in quality;
 - (b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
 - (c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.
- (iii) In the instant case, the buyer does not have any option available to him for grievance redressal.
- (iv) In case Mrs. Geeta specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.

Question 3 :

"A breach of condition can be treated as a breach of warranty". Explain this statement as per relevant provisions of the Sale of Goods Act, 1930. December -21

Answer :

Section 13 of the Sale of Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.
- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.

- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Question 4 :

- (i) *TK ordered timber of 1 inch thickness for being made into drums. The seller agreed to supply the required timber of 1 inch. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. The timber is commercially fit for the purpose for which it was ordered. TK rejects the timber. Explain with relevant provisions of the Sale of Goods Act, 1930 whether TK can reject the timber*

Module

Answer :

- (i) **Condition as to quality or fitness [Section 16(1) of the Sale of Goods Act, 1930]:**

- The condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller to select the best goods and the seller has ordinarily been dealing in those goods.
- There is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:
 - a) The buyer should have made known to the seller the particular purpose for which goods are required.
 - b) The buyer should rely on the skill and judgement of the seller.
 - c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.
- In the instant case, as the timber supplied by the seller is commercially fit for the purposes for which it was ordered, it means the implied condition on the part of the seller is fulfilled.

Hence, TK cannot reject the timber.

Alternatively, the above answer can also be provided as under:

- According to Section 15 of the Sale of Goods Act, 1930 where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.
- Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

➤ In the instant case, as the timber supplied by seller varies in thickness from 1 inch to 1.4 inches, it does not correspond with the description ordered by TK i.e. of 1 inch, TK may reject the timber.

Question 5 :

What are the differences between a 'Condition' and 'Warranty' in a contract of sale? Also explain, when shall a 'breach of condition' be treated as 'breach of warranty' under provisions of the Sale of Goods Act, 1930?

January -21

Answer :

Difference between conditions and warranties:

The following are important differences between conditions and warranties.

Point of differences	Condition	Warranty
Meaning	A condition is essential to the main purpose of the contract.	It is only collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

Breach of condition be treated as a breach of warranty

➤ Section 13 of the Sales of Goods Act, 1930, specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim for damages only.

➤ In the following cases, a contract is not avoided even on account of a breach of a condition :

- Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation.
- Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract.
- Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.
- Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Question 6 :

Mr. T was a retail trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.

(i) Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?

(ii) What is the remedy available to Mr. M?

January 21

Answer :

(i) According to Section 15 of the Sale of Goods Act, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract.

Further, as per Section 16(1) of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

In the given case, Mr. M had revealed Mr. T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr. T was unfit for the purpose for which Mr. M wanted the fan, therefore, T cannot refuse to exchange the fan.

(ii) When one party does not fulfill his obligation according to the agreed terms, the other party may treat the contract as repudiated or can insist for performance as per the original contract. Accordingly, the remedy available to Mr. M is that he can either rescind the contract or claim refund of the price paid by him or he may require Mr. T to replace it with the fan he wanted.

Question 7 :

What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? Also state the implied warranties operative under the Act ?

May 19, May-22

Answer :

(i) Sale by sample [Section 17 of the Sale of Goods Act, 1930]: In a contract of sale by sample, there is an implied condition that

(a) the bulk shall correspond with the sample in quality;

(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

- (c) the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. If the defects are latent, then the buyer can avoid the contract. This simply means that the goods shall be free from any latent defect i.e. a hidden defect.

(ii) The following are the implied warranties operative under the Act :

1. **Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. **Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
3. **Warranty as to quality or fitness by usage of trade [Section 16(3)]:** An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade. Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.
4. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

Question 8 :

X consults Y, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Y suggests 'Santro' and X accordingly buys it from Y. The car turns out to be unfit for touring purposes. What remedy X is having now under the Sale of Goods Act, 1930 ?

Module

Answer :

- Condition and warranty (Section 12): A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)]
- "A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". [Sub-section (2)]
- In the instant case, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which X purchases the car.
- X is therefore entitled to reject the car and have refund of the price.

Question 9 :

A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke buyer's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930?

Module

Answer :

This is a case related to implied condition as to wholesomeness which provides that the eatables and provisions must be wholesome that is they must be fit for human consumption. In this case, the piece of bread contained a stone which broke buyer's tooth while eating, thereby considered unfit for consumption. Hence, the buyer can treat it as breach of implied condition as to wholesomeness and can also claim damages from the seller.

Question 10 :

Mrs. G bought a tweed coat from P. When she used the coat she got rashes on her skin as her skin was abnormally sensitive. But she did not make this fact known to the seller i.e. P. Mrs. G filled a case against the seller to recover damages. Can she recover damages under the Sale of Goods Act, 1930?

Module

Answer :

- According to Section 16(1) of Sales of Goods Act, 1930, normally in a contract of sale there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied. The general rule is that of "Caveat Emptor" that is "let the buyer beware". But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller's skill and judgement and that this is the business of the seller to sell such goods in the ordinary course of his business, the buyer can make the seller responsible.
- In the given case, Mrs. G purchased the tweed coat without informing the seller i.e. P about the sensitive nature of her skin. Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin. Mrs. G cannot treat it as a breach of implied condition as to fitness and quality and has no right to recover damages from the seller.

Question 11 :

Certain goods were sold by sample by A to B, who in turn sold the same goods by sample to C and C by sample sold the goods to D. The goods were not according to the sample. Therefore, D who found the deviation of the goods from the sample rejected the goods and gave a notice to C. C sued B and B sued A. Advise B and C under the Sale of Goods Act, 1930.

Module

Answer :

In the instant case, D who noticed the deviation of goods from the sample can reject the goods and treat it as a breach of implied condition as to sample which provides that when the goods are sold by sample the goods must correspond to the sample in quality and the buyer should be given reasonable time and opportunity of comparing the bulk with the sample. Whereas C can recover only damages from B and B can recover damages from A. For C and B it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sales of Goods Act, 1930. Hence, they cannot reject the goods, but claim the damages.

Question 12 :

Q asked P, the seller for washing machine which is suitable for washing woollen clothes. Mr. P showed him a particular machine which Mr. Q liked and paid for it. Later on, machine delivered and was found unfit for washing woollen clothes. He immediately informed Mr. P about the delivery of wrong machine. Mr. P refused to exchange the same, saying that the contract was complete after the delivery of washing machine and payment of price. With reference to the provisions of Sale of Goods Act, 1930 discuss whether Mr. P is right in refusing to exchange the washing machine?

Module

Answer :

According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample as well as by description, the implied condition is that the goods must correspond to both sample as well as description. Further under Sale of Goods Act, 1930 when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose. Mr. Q has informed to Mr. P that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. P was unfit for the purpose for which Mr. Q wanted the machine. Therefore, Mr. Q can either repudiate the contract or claim the refund of the price paid by him.

UNIT - III : TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

Question 1 :

What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods

May-18, November-19

Answer :

Appropriation of goods: Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials regarding appropriation of unascertained goods are :

- (a) There is a contract for the sale of unascertained or future goods.
- (b) The goods should conform to the description and quality stated in the contract.
- (c) The goods must be in a deliverable state.
- (d) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- (e) The appropriation must be made by :
 - (i) the seller with the assent of the buyer; or
 - (ii) the buyer with the assent of the seller.
- (f) The assent may be express or implied.
- (g) The assent may be given either before or after appropriation.

Question 2 :

"A non-owner can convey better title to the bonafide purchaser of goods for value." Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of the Sales of Goods Act, 1930 ?

May-19, November-20

OR

"Nemo Dat Quod Non Habet" – "None can give or transfer goods what he does not himself own." Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930.

Module

Answer :

Exceptions to the Rule Nemo dat Quod Non Habet: The term means, "none can give or transfer goods what he does not himself own". Exceptions to the rule and the cases in which the Rule does not apply under the provisions of the Sale of Goods Act, 1930 are enumerated below :

In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value:

- (1) **Sale by a Mercantile Agent** : A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;
 - (a) If he was in possession of the goods or documents with the consent of the owner;
 - (b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
 - (c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27 of the Sale of Goods Act, 1930).
- (2) **Sale by one of the joint owners (Section 28)**: If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.
- (3) **Sale by a person in possession under voidable contract**: A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).
- (4) **Sale by one who has already sold the goods but continues in possession thereof**: If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. [Section 30(1)]
- (5) **Sale by buyer obtaining possession before the property in the goods has vested in him**: Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [Section 30(2)].
- (6) **Effect of Estoppel**: Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.

(7) **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54 (3)].

(8) **Sale under the provisions of other Acts :**

- (i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
- (ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]
- (iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

Question 3 :

Ms. R owns a Two Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week, Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the Two Wheeler from Mr. A. Will she succeed?

- (i) *Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R?*
- (ii) *Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?*

November -20, Module

Answer :

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.

- (i) In the instant case, Ms. K, who had taken delivery of the two wheeler on Sale or Return basis pledged the two wheeler to Mr. A, has attracted the third condition that she has done something to the good which is equivalent to accepting the goods e.g. she pledges or sells the goods. Therefore, the property therein (Two wheeler) passes to Mr. A. Now in this situation, Ms. R cannot claim back her two wheeler from Mr. A, but she can claim the price of the two wheeler from Ms. K only.
- (ii) It may be noted that where the goods have been delivered by a person on "sale or return" on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., price is paid for.

Hence, in this case, it is held that at the time of pledge, the ownership was not transferred to Ms. K. Thus, the pledge was not valid and Ms. R could recover the two wheeler from Mr. A.

Question 4 :

"Risk Prima Facie passes with property." Elaborate in the context of the Sales of Goods Act, 1930.

July-21

Answer :

Risk prima facie passes with property (Section 26 of the Sales of Goods Act, 1930)

- According to Section 26, unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.
- It is provided that, where delivery has been delayed because of the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.
- Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as bailee of the goods of the other party.

Question 5 :

J the owner of a Fiat 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.

Module

Answer :

- The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, 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)]. 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 the following conditions are satisfied:
- (1) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
 - (2) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
 - (3) The buyer should act in good faith.
 - (4) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.
- 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. Hence, J in this case, cannot recover the car from A.

Question 6 :

Mr. S agreed to purchase 100 bales of cotton from V, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent ?

Module

Answer :

Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not. Further Section 18 read with Section 23 of the Act provide that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied.

Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. S has the right to select the goods out of the bulk and he has sent his men for same purpose.

Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly.

(i) **Where the bales have been selected with the consent of the buyer's representatives:**

In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. S. As regards 40 bales, the loss would be borne by Mr. V, since the goods have not been identified and appropriated.

(ii) **Where the bales have not been selected with the consent of buyer's representatives :**

In this case, the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. V completely.

Question 7 :

A, B and C were joint owner of a truck and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of Sales of Goods Act 1930, whether the sale between B and X is valid or not ?

Answer :

Module

➤ According to Section 28 of the Sales of Goods Act, sale by one of the several joint owners is valid if the following conditions are satisfied :

- (i) One of the several joint owners has the sole possession of them.
- (ii) Possession of the goods is by the permission of the co-owners.
- (iii) The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller has no authority to sell.

➤ In the above case, A, B and C were the joint owners of the truck and the possession of the truck was with B. Now B sold the said truck to X. X without knowing this fact purchased the truck from B.

➤ The sale between B and X is perfectly valid because Section 28 of the Sales of Goods Act provides that in case one of the several joint owners has the possession of the goods by the permission of the co-owners and if the buyer buys them in good faith without the knowledge of the fact that seller has no authority to sell, it will give rise to a valid contract of sale.

Question 8 :

X agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men with the sacks and 150 tons of wheat were put into the sacks. Then there was a sudden fire and the entire stock was gutted. Who will bear the loss and why?

Answer :

Module

➤ According to Section 21 of the Sales of Goods Act, 1930, if the goods are not in a deliverable state and the contract is for the sale of specific goods, the property does not pass to the buyer unless :-

(i) The seller has done his act of putting the goods in a deliverable state and

(ii) The buyer has knowledge of it.

➤ Sometimes the seller is required to do certain acts so as to put the goods in deliverable state like packing, filling in containers etc. No property in goods passes unless such act is done and buyer knows about it.

➤ In the given case, X has agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men (agent) to put the wheat in the sacks. Out of 300 tones only 150 tons were put into the sacks. There was a sudden fire and the entire stock was gutted. In this case, according to the provisions of law, 150 tons sale has taken place. So, buyer X will be responsible to bear the loss. The loss of rest of the wheat will be that of the seller Y.

➤ The wheat which was put in the sacks fulfils both the conditions that are :

(1) The wheat is put in a deliverable state in the sacks.

(2) The buyer is presumed to have knowledge of it because the men who put the wheat in the sacks are that of the buyer.

Question 9 :

The buyer took delivery of 20 tables from the seller on sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer sought to return tables to the seller. Was the buyer entitled to return the tables to the seller under the provisions of the Sale of Goods Act, 1930 ?

Module

Answer :

➤ According to Section 24 of the Sales of Goods Act, 1930, in case of delivery of goods on approval basis, the property in goods passes from seller to the buyer :-

(i) When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.

(ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is fixed after the lapse of reasonable time.

➤ In the given case, seller has delivered 20 tables to the buyer on sale or return basis. Buyer received the tables without examining them. Out of these 20 tables, he sold 5 tables to his customer. It implies that he has accepted 5 tables out of 20.

➤ When the buyer received the complaint of some defect in the tables, he wanted to return all the tables to the seller. According to the provisions of law he is entitled to return only 15 tables to the seller and not those 5 tables which he has already sold to his customer. These tables are already accepted by him so the buyer becomes liable under the doctrine of "Caveat Emptor".

Questions 10 :

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.

Module

Answer :

- 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 and pledged the motor car to Mr. Ganesh, 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.

Questions 11 :

X agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men with the sacks and 150 tons of wheat were put into the sacks. Then there was a sudden fire and the entire stock was gutted. Who will bear the loss and why?

Module

Answer :

- According to Section 21 of the Sales of Goods Act, 1930, if the goods are not in a deliverable state and the contract is for the sale of specific goods, the property does not pass to the buyer unless:-
 - (i) The seller has done his act of putting the goods in a deliverable state and
 - (ii) The buyer has knowledge of it.

- Sometimes the seller is required to do certain acts so as to put the goods in deliverable state like packing, filling in containers etc. No property in goods passes unless such act is done and buyer knows about it.
- In the given case, X has agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men (agent) to put the wheat in the sacks. Out of 300 tones only 150 tons were put into the sacks. There was a sudden fire and the entire stock was gutted.
- In this case, according to the provisions of law, for 150 tons of wheat, sale has taken place. So, buyer X will be responsible to bear the loss. The loss of rest of the wheat will be that of the seller Y.
- The wheat which was put in the sacks fulfils both the conditions that are:-
 - (1) The wheat is put in a deliverable state in the sacks.
 - (2) The buyer is presumed to have knowledge of it because the men who put the wheat in the sacks are that of the buyer.

Questions 12 :

A delivered a horse to B on sale and return basis. The agreement provided that B should try the horse for 8 days and return, if he did not like the horse. On the third day the horse died without the fault of B. A file a suit against B for the recovery of price. Can he recover the price?

Module

Answer :

A delivered the horse to B on sale or return basis. It was decided between them that B will try the horse for 8 days and in case he does not like it, he will return the horse to the owner A. But on the third day the horse died without any fault of B. The time given by the seller A to the buyer B has not expired yet. Therefore, the ownership of the horse still belongs to the seller A. B will be considered as the owner of the horse only when B does not return the horse to A within stipulated time of 8 days.

The suit filed by A for the recovery of price from B is invalid and he cannot recover the price from B. [Section 24].

Had the horse died after the expiry of given time i.e. 8 days, then B would have been held liable (if the horse was still with him) but not before that time period.

UNIT - IV : UNPAID SELLER

Question 1 :

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.

May-18, July-21, Module

Answer :

Position of Mr. D: 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. So, Mr. D is an unpaid seller as according to 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 and the seller had an immediate right of action for the price.

Rights of Mr. D : As the goods have parted away from Mr. D, 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:

- (i) **Suit for price (Section 55) :** In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.
- (ii) **Suit for damages for non-acceptance (Section 56) :** Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.
- (iii) **Suit for interest [Section 61] :** If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

Question 2 :

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 ?

November -18

Answer :

1. According to 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 within a reasonable time after such request take delivery of the goods, 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.

The property in the goods or beneficial right in the goods passes to the buyer at appoint of time depending upon ascertainment, appropriation and delivery of goods. Risk of loss of goods prima facie follows the passing of property in goods. Goods remain at the seller's risk unless the property there in 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.

2. 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].

Question 3 :

What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930 ?

November-19, Module

Answer :

- Rights of an unpaid seller against the goods: As per the provisions of Section 46 of the Sale of Goods Act, 1930, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-
- (a) **a lien on the goods** for the price while he is in possession of them;
 - (b) in case of the insolvency of the **buyer, a right of stopping the goods in transit** after he has parted with the possession of them;
 - (c) **a right of re-sale** as limited by this Act. [Sub-section (1)]

➤ Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer. [Sub-section (2)]

➤ These rights can be exercised by the unpaid seller in the following circumstances :

(i) Right of lien (Section 47):

According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-

- (a) where the goods have been sold without any stipulation as to credit;
- (b) where the goods have been sold on credit, but the term of credit has expired;
- (c) where the buyer becomes insolvent.

(ii) Right of stoppage in transit (Section 50) :

When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until paid or tendered price of the goods.

(iii) Right to re-sell the goods (Section 54):

The unpaid seller can exercise the right to re-sell the goods under the following conditions :

1. Where the goods are of a perishable nature
2. Where he gives notice to the buyer of his intention to re-sell the goods
3. Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods
4. A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale
5. Where the property in goods has not passed to the buyer

Question 4 :

AB sold 500 bags of wheat to CD. Each bag contains 50 Kilograms of wheat. AB sent 450 bags by road transport and CD himself took remaining 50 bags. Before CD receives delivery of 450 bags sent by road transport, he becomes bankrupt. AB being still unpaid, stops the bags in transit. The official receiver, on CD's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

December -21, Module

Answer :

Right of stoppage in transit (Section 50 of the Sale of Goods Act, 1930):

- Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit and may retain them until paid or tendered price of the goods.
- When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.
- In the instant case, CD, the buyer becomes insolvent, and 450 bags are in transit. AB, the seller, can stop the goods in transit by giving a notice of it to CD. The official receiver, on CD's insolvency cannot claim the bags.

Question 5 :

What are the rules which regulate the Sale by Auction under the Sale of Goods Act, 1930 ?

January -21

Answer :

Rules of Auction sale : Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:

- (i) **Where goods are sold in lots :** Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
- (ii) **Completion of the contract of sale :** The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
- (iii) **Right to bid may be reserved :** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
- (iv) **Where the sale is not notified by the seller :** Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
- (v) **Reserved price :** The reserved price is the lowest price at which a seller is willing to sell an item. The auction sale may be notified to be subject to a reserve or upset price; and
- (vi) **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Question 6 :

When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act? Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court?

Module

Answer :

- A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-
 - (i) the goods have been sold without any stipulation as to credit;
 - (ii) the goods have been sold on credit, but the term of credit has expired;
 - (iii) the buyer becomes insolvent.
- The unpaid seller can exercise his right of lien even if the property in goods has passed on to the buyer. He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer.

Termination of lien :

An unpaid seller loses his right of lien thereon-

- (i) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (ii) When the buyer or his agent lawfully obtains possession of the goods;

Yes, he can exercise his right of lien even after he has obtained a decree for the price of goods from the court.

Question 7 :

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.

Module

Answer :

As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that

- (i) 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 [Section 55(1)].

- (ii) 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. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].

This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this, Suraj is also entitled to :-

- (1) Interest on the remaining amount
- (2) Interest during the pendency of the suit.
- (3) Costs of the proceedings.

Question 8 :

J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R on the basis of the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930 ?

Module

Answer :

- The right of lien and stoppage in transit are meant to protect the seller. These will not be affected even when the buyer has made a transaction of his own goods which were with the seller under lien. But under two exceptional cases these rights of the seller are affected:-
1. When the buyer has made the transaction with the consent of the seller
 2. When the buyer has made the transaction on the basis of documents of title such as bill of lading, railway receipt or a delivery order etc.
- In the given case, J has sold the machine to K and K gave a cheque for the payment. But the cheque was dishonoured that means J, the seller is an unpaid seller. So, he is entitled to exercise the right of lien, but according to section 53(1) his right of lien is defeated because he has given the document of title to the buyer and the buyer has made a transaction of sale on the basis of this document. So, R who has purchased the machine from K can demand the delivery of the machine.

Question 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. Can Ram exercise right of stopping the goods in transit?

Module

Answer :

➤ **Right of stoppage of goods in transit :** 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
- (v) The right is subject to the provisions of the Act.

➤ 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. He may recover the price of other 100 bales sent by lorry by using his rights against the buyer.

Question 10 :

A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller for stopping the goods in transit as the buyer has become insolvent. Referring to the provisions of Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller?

Module

Answer :

- The right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. Thereafter the seller regains the possession of the goods.
- This right can be exercised by an unpaid seller when he has lost his right of lien over the goods because the goods are delivered to a carrier for the purpose of taking the goods to the buyer. This right is available to the unpaid seller only when the buyer has become insolvent. The conditions necessary for exercising this right are:-
1. The buyer has not paid the total price to the seller
 2. The seller has delivered the goods to a carrier thereby losing his right of lien
 3. The buyer has become insolvent
 4. The goods have not reached the buyer, they are in the course of transit. (Section 50, 51 and 52)
- In the given case A, who is an agent of the buyer, had obtained the goods from the railway authorities and loaded the goods on his truck. After this the railway authorities received a notice from the seller B to stop the goods as the buyer had become insolvent.

- According to the Sale of Goods Act, 1930, the railway authorities cannot stop the goods because the goods are not in transit. A who has loaded the goods on his truck is the agent of the buyer. That means railway authorities have given the possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes the possession of the goods.

Question 11 :

J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R on the basis of the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930 ?

Module

Answer :

- The right of lien and stoppage in transit are meant to protect the seller. These will not be affected even when the buyer has made a transaction of his own goods which were with the seller under lien. But under two exceptional cases these rights of the seller are affected:-
- (i) When the buyer has made the transaction with the consent of the seller
 - (ii) When the buyer has made the transaction on the basis of documents of title such as bill of lading, railway receipt or a delivery order etc.
- In the given case, J has sold the machine to K and K gave a cheque for the payment. But the cheque was dishonoured that means J, the seller is an unpaid seller. So, he is entitled to exercise the right of lien, but according to section 53(1) his right of lien is defeated because he has given the document of title to the buyer and the buyer has made a transaction of sale on the basis of this document. So, R who has purchased the machine from K can demand the delivery of the machine.



**"The beautiful thing about learning is
that no one can take it away from you."**