

CHANAKYA 2.0

For CA Foundation

Lecture- 01

Business Laws

The Sale of Goods Act, 1930 – Revision Notes

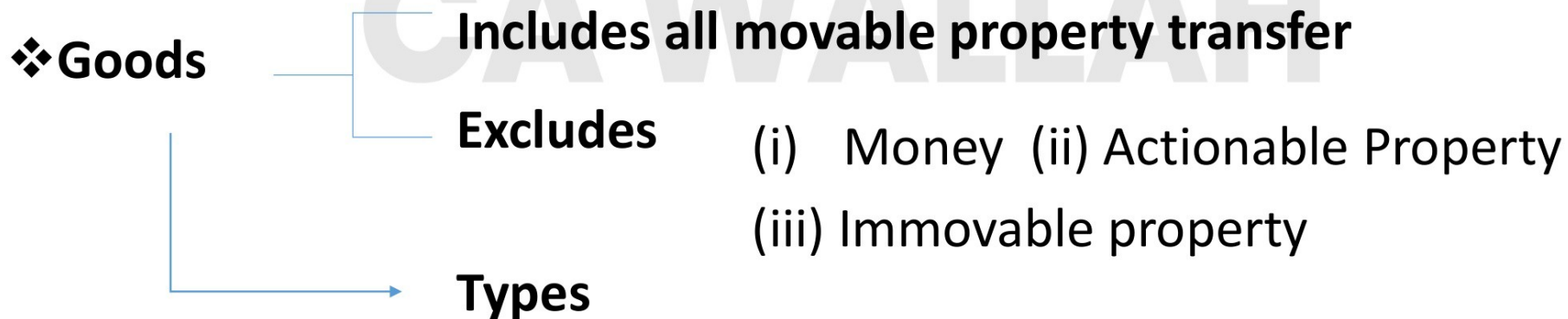
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Sales of Goods Act, 1930

❖ Essential Elements of Contract of Sale (sec 4)

- 2 Party → Seller & Buyer
- Transfer of ownership
- Subject matter of contract → Goods
- Price consideration
- Essential elements of contract



QUESTION

State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930.

(RTP MAY 2019)

(RTP MAY 2020)

(RTP MAY 2021)

Distinguish between Sale ATS (Agreement to sale)

Shortcut → Seller ने goods का contract करने के बाद भी breach किया , means , risk लिया, buyer ko rights दीया

Basis	Sale	ATS
(i) Meaning	Contract in which property in goods trf to buyer against price	Contract in which ownership trf. in future date on on fulfillment of condition
(ii) Seller insolvent	<ul style="list-style-type: none">• Receiver can only recover price• Cannot claim goods	<ul style="list-style-type: none">• Goods will be claimed back but not price
(iii) Types of goods	<ul style="list-style-type: none">• Specific• Ascertained	<ul style="list-style-type: none">• All goods

Basis	Sale	ATS
(iv) Type of contract	Executed	Executory
(v) Remedy for breach to seller	<ul style="list-style-type: none"> • Sue for Price • Can lien , stoppage in transit , resale 	Can only claim damages
(vi) Risk of loss	Trf. to buyer	Seller
(vii) Buyer Insolvent	Receiver have control of goods	No control of goods
(viii) Rights created	Rights in rem	Right in Personam

Question

16. Shubhangi went to a Jewellery shop and asked the salesgirl to show her diamond necklace with Sapphire stones. The Jeweller told her that we have a lot of designs of diamond necklace but with blue stones. If she chooses for herself any special design of diamond necklace with blue stones, they will replace blue stones with Sapphire stones. But for the Sapphire stones they will charge some extra cost. Shubhangi selected a beautiful designer necklace and paid for it. She also paid the extra cost of Sapphire stones. The Jeweller requested her to come back a week later for delivery of that necklace. When she came after a week to take delivery of necklace, she noticed that due to Sapphire stones, the design of necklace had 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 Shubhangi 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?

[RTP Dec 2023]

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 Shubhangi and Jeweller and not a sale. Even though the payment was made by Shubhangi, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Sapphire Stones, the original design is disturbed, necklace is not in original position. Hence, Shubhangi has right to avoid the agreement to sell and can recover the price paid.

(ii) If Jeweller offers to bring the necklace in original position by repairing, he cannot charge extra cost from Shubhangi. Even though he has to bear some expenses for repair; he cannot charge it from Shubhangi.

Types

Existing →

Existence

3 types

i. Specific Goods

Identified and agreed at the time of contract

ii. Unascertained goods

- Not specified at the time of contract
- Sold by description
- ATS

iii. Ascertained goods →

Those unascertained goods that are identified (specified) at the time of contract.

Future

- Does not exist at time of contract or does not possess with seller

▪ ATS

Contingent

- Type of future goods where acquisition depends upon uncertainty

▪ ATS

❖ **Effect of destruction of contract (Only applicable to specific or ascertained goods)**

- After ATS, before sale [Sec. 8] → Contract becomes void
- Before contract [Sec. 7] → void-ab-initio.

Question

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

[RTP Dec 2023]

QUESTION

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 salt out of the lot of one hundred packets lying in his shop.**
- iii. T agrees to sell to S all the oranges which will be produced in his garden this year.**

(RTP NOV 2019) [MTP NOV 2020] (RTP May 2022)

ANSWER

- i. 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 salt out of the lot of one hundred packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered.**
- iii. T agrees to sell to S all the oranges which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'**

❖ Price

Money consideration for sale of goods

Can be partly money, partly goods as well.

Can be decided by (TQ)

- (i) Mutual Agreement
- (ii) Manner provided by contract
- (iii) By usage or trade or customs
- (iv) Reasonable price – if no price fixed
- (v) Fixation by 3rd party

P.Q

If 3rd party decides to fix price and fails to decide, contract becomes void. However meantime if goods are delivered buyer has to pay reasonable price.

Question

5. Mr. A contracted to sell his swift car to Mr. B. Both missed to discuss the price of the said swift car. Later, Mr. A refused to sell his swift car to Mr. B on the ground that the agreement was void being uncertain about the price. Does Mr. B have any right against Mr. A under the Sale of Goods Act, 1930?

[June 2023 (4 Marks)]

Answer

As per the provisions of Section 2(10) of the Sale of Goods Act, 1930, price is the consideration for sale of goods and therefore is a requirement to make a contract of sale. Section 2(10) is to be read with Section 9 of the Sale of Goods Act, 1930.

According to Section 9 of the Sale of Goods Act, 1930, the price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

Even though both the parties missed to discuss the price of the car while making the contract, it will be a valid contract, rather than being uncertain and void; the buyer shall pay a reasonable price in this situation.

In the given case, Mr. A and Mr. B have entered into a contract for sale of a motor car, but they did not fix the price of the same. Mr. A refused to sell the car to Mr. B on this ground. Mr. B can legally demand the car from Mr. A and Mr. A can recover a reasonable price of the car from Mr. B.

Distinguish between Sale & Hire Purchase

Shortcut → Set PARROT to W.I for H.P

Basis	Sale	H.P
P → Possession	Trf not compulsory	Compulsory Trf.
A → Act	SOGA	H.P Act, 1972
R → Right to re-possess	X	✓ (if defaults payment)
R → Re-Sale	Buyer can re-sale	Hirer cannot
O → Ownership Trf.	✓	No, only when last install paid
T → Terminate contract	Buyer cannot	Either partly can
W → Writing	Not required	Required
I → Installments	Price	Hire – Charges Price

Condition

❖ **Stipulation essential to main purpose of contract** , , the breach of which gives rise to a right to treat the contract as repudiated”

❖ **Following are implied conditions (TQ/ PQ)**

- i. **Title** → **Seller has right to sell**
- ii. **Description** → **Goods must correspond to description**
- iii. **Sample** → **Goods must correspond to sample**
- iv. **Sample and description** → **Goods must correspond to both sample and description**



P.Q. Alert

- i. If car asked for touring purpose & car given unfit this is breach of condition.**
- ii. Milk purchased contained typhoid germs and wife died – breach of wholesomeness condition → contract avoided, damages claimed**
- iii. X bought reaping machine but found it is old → breach of conditions as to description.**

Question

7. Certain goods were sold by sample by J to K, who in turn sold the same goods by sample to L and L by sample sold the same goods to M. M found that the goods were not according to the sample and rejected the goods and gave a notice to L. L sued K and K sued J. Can M reject the goods? Also advise K and L as per the provisions of the Sale of Goods Act, 1930.

[June 2023 (4 Marks)]

Answer

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 this case, M received the goods by sample from L but since the goods were not according to the sample, M can reject the goods and can sue L.

With regard to K and L, L can recover damages from K and K can recover damages from J. But, for both K and L, 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 Sale of Goods Act, 1930.

Question

18. Mrs. Kanchan 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. Kanchan insisted that she would like to see the sample of what would 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.

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

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

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

[RTP Dec 2023]

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. Kanchan 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) In the instant case, Mrs. Kanchan does not have any option available to her for grievance redressal.

(iii) In case Mrs. Kanchan 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.

- v . Merchantability →**
- Goods
 - No manuf. Defect .
 - If buyer inspected then no implied condition
 - Latent defect → cannot find with inspection then condition remains

vi . Wholesomeness → Eatable should be fit for consumption

- Breach of condition →**
- Contract voidable
 - Damages can be claimed

Question

21. Priyansh orders an iron window to an Iron Merchant for his new house. Iron merchant sends his technician to take the size of windows. The technician comes at the site and takes size of area where window to be fitted. Afterwards, Iron merchant on discussion with his technician intimates Priyansh that cost of the window will be ₹ 5,000 and he will take ₹ 1,000 as advance. Priyansh gives ₹ 1,000 as advance and rest after fitting of window. After three days when technician try to fit the window made by him at the site of Priyansh, it was noticed that the size of window was not proper. Priyansh requests the Iron merchant either to remove the defect or return his advance. Iron merchant replies that the window was specifically made for his site and the defect cannot be removed nor can it be of other use. So, he will not refund the advance money rather Priyansh should give him the balance of ₹ 4,000. State with reason under the provisions of the Sale of Goods Act, 1930, whether Priyansh can take his advance back?

[RTP June 2023]

Answer

By virtue of provisions of Section 16 of the Sale of Goods Act, 1930, there is an implied condition that the goods should be in merchantable position at the time of transfer of property. Sometimes, the purpose for which the goods are required may be ascertained from the facts and conduct of the parties to the sale, or from the nature of description of the article purchased. In such a case, the buyer need not tell the seller the purpose for which he buys the goods.

On the basis of above provisions and facts given in the question, it is clear that as window size was not proper, window was not in merchantable condition. Hence, the implied condition as to merchantability was not fulfilled and Priyansh has the right to avoid the contract and recover his advance money back.

Question

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

[RTP Nov 2022]

Answer

Condition as to wholesomeness: In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Hence, C could recover damages in light of the violation of said condition as regards to the consumption of goods i.e. the bun from the baker which is not of merchantable quality.

Question

25. A contract with B to buy 50 chairs of a certain quality. B delivers 25 chairs of the type agreed upon and 25 chairs of some other type. Under the circumstances, what are the rights of A against B under the Sale of Goods Act, 1930?

[RTP Nov 2022]

Answer

Delivery of different description:

As per Section 37(3) of the Sale of Goods Act, 1930 where the seller delivers to the buyer the goods, he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or may reject the whole.

Hence, A may accept 25 chairs of the type agreed upon and may reject the other 25 chairs of some other type not agreed upon or may reject all 50 chairs.

Question

26. Ankit needs a black pen for his exams. He went to a nearby stationery shop and told the seller for a black pen. Seller gives him a pen saying that it is a black pen but it was clearly mentioned on the packet of pen that "Blue Ink Pen". Ankit ignore that and takes the pen. After reaching his house, Ankit finds that the pen is actually a blue pen. Now Ankit wants to return the pen with the words that the seller has violated the implied conditions of sale by description. Whether Ankit can do what he wants as per the Sale of Goods Act, 1930.

[RTP Nov 2022]

Answer

According to Section 16(2) of the Sale of Goods Act, 1930, 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 correspond with that quality. But where the buyer could find the defect of the goods by ordinary examination, this rule shall not apply. The rule of Caveat Emptor is not applicable.

In the instant case, Ankit orders a black pen to a stationery shop. Seller gives him a pen saying that it is a black pen. But on the pack of pen, it was clearly mentioned that it is Blue Ink Pen. Ankit ignores the instruction mention on the pack and bought it. On reaching at his house, he finds that actually the pen is blue ink pen. Now he wants to return the pen.

On the basis of above provisions and facts, it is clear that undoubtedly is case of sale by description but Ankit can find the defect using his ordinary diligence as instructions of blue ink pen was clearly mentioned on the pack of pen. Hence, the rule of Caveat Emptor will be applicable here and Ankit cannot return the pen.

Question

36. Mr. X, a retailer is running a shop dealing in toys for children. Once, he purchased from a wholesaler number of toy cars in a sale by sample. A boy came to the retailers shop to buy few toys. The retailer sold one of those toy cars to a boy. When the boy tried to play with it, it broke into pieces because of a manufacturing defect therein and the boy was injured. Mr. X, the retailer was held bound to pay compensation to the boy because the child got injured due to the defective toy in his shop. Due to this incident, the retailer in his turn sued the wholesaler to claim indemnity from him.

With reference to the provisions of Sale of Goods Act, 1930 discuss if the retailer can claim compensation from wholesaler?

[MTP Nov 2022(6 Marks)]

Answer

Condition as to merchantability (Section 16(2) of the Sale of Goods Act, 1930):

When goods are sold by description and the seller trades in similar goods, then the goods should be merchantable i.e. the goods should be fit to use or wholesome or for to consume. However, the condition as to merchantability shall consider the following points-

- (i) Right to examine the goods by the buyer. The buyer should be given chance to examine the good.
- (ii) The buyer should reject the goods, if there is any defect found in the good. But if the defect could not be revealed even after the reasonable examination and the buyer purchases such goods, then the seller is held liable. Such defects which cannot be revealed by examination are called latent defects. The seller is liable to pay to the buyer for such latent defects in the goods. [Section 17]

In the instant case, the retailer can claim indemnity from the wholesaler because it was found that the retailer had examined the sample before purchasing the goods and a reasonable examination on his part could not reveal this latent defect. Under these circumstances, the wholesaler was bound to indemnify the retailer for the loss suffered by the latter.

Question

38. Mr. Dheeraj was running a shop selling good quality washing machines. Mr. Vishal came to his shop and asked for washing machine which is suitable for washing woollen clothes. Mr. Dheeraj showed him a particular machine which Mr. Vishal liked and paid for it. Later on, when the machine was delivered at Mr. Vishal's house, it was found that it was wrong machine and also unfit for washing woollen clothes. He immediately informed Mr. Dheeraj about the delivery of wrong machine. Mr. Dheeraj 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. Dheeraj is right in refusing to exchange the washing machine?

[MTP Apr 2023(6 Marks)]

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. In case, the goods do not correspond to sample or description, the buyer has the right to repudiate the contract.

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.

In the given case, Mr. Vishal has informed to Mr. Dheeraj that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. Dheeraj was unfit for the purpose for which Mr. Vishal wanted the machine.

Based on the above provision and facts of case, there is breach of implied condition as to sample as well as description, therefore Mr. Vishal can either repudiate the contract or claim the refund of the price paid by him or he may require Mr. Dheeraj to replace the washing machine with desired one.

Warranty

- ❖ Stipulation collateral to main purpose of contract
- ❖ Breach → contract valid, can only claim damages
- ❖ Implied warranty
 - i. Undisturbed Possession → Possession not to be disturbed.
 - ii. Free from encumbrance → Free from any charge
 - iii. Dangerous nature → Disclosed .
 - iv. Usage of trade

Question

12. 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? [RTP Dec 2023][May 2022 (6 Marks)]

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.

Breach of conditions treated as breach of warranty : [Sec. 13] [TQ] [b]

- i. Buyer altogether waives performance.(stipulation)**
- ii. Buyer claiming only damages, instead of returning goods**
- iii. Indivisible(inseverable) goods → buyer accepts whole or part thereof**
- iv. If excused by law**

Caveat Emptor (TQ/ PQ)

- No implied condition as to quality or fitness
- Buyer should be aware.
- If he makes bad choice he is responsible
- Cannot return goods or claim damages

P.Q

- i. Uniform material purchased without disclosing purpose – if cloth unfit → cannot avoid contract.
- ii. Lady purchased synthetic pearl thinking of natural pearl

Question

10. Mr. K visited M/s Makrana Marbles for the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J to visit his house prior to supply so that he can clearly ascertain the correct mix and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different, Mr. J ignored the above suggestion.

Mr. J. supplied 146 blocks of marble as per the size for the rooms and 16 boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Marble and Tiles were successfully laid except on second floor due to different sizes of the marble. The tiles fitted in the parking space also got damaged due to the weight of the vehicle came for unloading cement bags. Mr. K asked Mr. J for the replacement of marble and tiles to which Mr. J refused, taking the plea that the marble were as per the measurement and it was unsafe to fit tiles at the parking area as it cannot take heavy load. Discuss in the light of provisions of Sale of Goods Act 1930:

- (i) Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K. and Mr. J.
- (ii) Whether the replacement of damaged tiles be imposed on M/s Makrana Marbles? Explain.

[Nov. 2022 (6 Marks)]

Answer

(i) Yes, Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e. Mr. K.

Duty of Mr. K (the buyer) is that he has to examine the marbles and tiles carefully and should follow the caution given by Mr. J i.e. the seller that tiles can bear only a reasonable weight before laying them in the parking space of his house.

Duty of Mr. J (the seller) is that the goods supplied (i.e. tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them.

According to the doctrine of Caveat Emptor, it is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.

In this case Mr. K has accepted the marbles without examination. Hence, there is no implied condition as regards to defects in marbles. Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e., Mr. K.

Exception to caveat Emptor (Can avoid contract)

1. Basic Exception

Buyer told seller purpose + **Relied on sellers skill** + **Good within seller's ordinary course of business**

- i. **Fraud / active concealment**
- ii. **Customs / usage of trade**
- iii. **Other implied conditions like sample, description etc.**

P.Q Alert

i. Lady's skin allergic → did not disclose the fact → got

QUESTION

Write any four exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930.

(4 Marks) MTP June, 2022

[Nov 2020]

Transfer of ownership

Specific Goods



1. In deliverable state (Sec. 20)
at the time of contract
2. Not in deliverable state (Sec. 21)
When put to deliverable state (+) notice to buyer
3. In deliverable state, but price not ascertained (Sec. 22)
When price ascertained (+)
Notice to buyer

Goods on approval or return basis

↓ (Sec. 24)

- i. On approval
- ii. On expiry of time
- iii. On adoption of contract

Unascertained goods



(Sec. 23)



- i. When ascertained (identified set a part) &
 - ii. Appropriated (ready as per mutual consent)
- ↓
- i. Confirm with description and quality
 - ii. Put to deliverable state
 - iii. Unconditionally appropriated
 - iv. Notice to both buyer
 - v. Assent of parties
 - vi. Prepared /ready as agreed



P.Q. Alert

- i. Out of 100 goods ordered → if buyer or agent could pack only 60 and fire occur destroying all 100 goods, ownership trf. for 60 goods and risk of 60 goods lies with buyer**
- ii. If goods given on sale or return basis, pledged by buyer, ownership trf. To buyer and seller cannot recover goods from subsequent buyer.**

Question

27. Akansh purchased a Television set from Jethalal, the owner of Gada Electronics on the condition that first three days he will check it's quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Jethalal demand the price of Television set from Akansh. Whether Akansh is liable to pay the price under the Sale of Goods Act, 1930? Who will ultimately bear the loss?

[RTP Nov 2022]

Answer

According to Section 24 of the Sale of Goods Act, 1930, "When the goods are delivered to the buyer on approval or on sale or return or other similar terms the property passes to the buyer:

- (i) when he signifies his approval or acceptance to the seller,
- (ii) when he does any other act adopting the transaction, and
- (iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time".

Further, as per Section 8, 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.

Akansh purchases a Television set from Jethalal, the owner of Gada Electronics on sale or approval for three days. Before Akansh could take any decision, the Television set spoiled due to earth quake.

According to above provisions and fact, the property has not passed to Akansh i.e. buyer as no condition of Section 24 is satisfied. Hence, risk is not passes to the buyer and the agreement is thereby avoided. Akansh is not liable to pay the price. The loss finally should be borne by Seller, Mr. Jethalal.

Question

8. Discuss the essential elements regarding the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930. [RTP Dec 2023][Nov. 2022 (4 Marks)]

CA WALLAH

Reservation of Right of Disposal (Sec. 25)



Conditional Appropriation



**Delivery, but has retained ownership till fulfillment of certain conditions
(usually payment)**



Circumstances (examples)

**1) Document of title made in
name of seller or his agent**



**Own trf when conditions is
fulfilled**

Or

**2) Document of title in buyer's
name but sent along with bill
of exch. (BOE)**



**Own trf when BOE is accepted
& delivered**

Risk

Normally risk passes with ownership exception

- i. Delayed delivery → risk of faulty party
- ii. Some condition is applied as to when to transfer risk

Nemo Dat Quad Non- Habet



Only owner can pass valid title to buyer



Exceptions (Shortcut → AU – EFGHIJ)



Conditions

- i. Sale by **A**gent →
 - i. In possession with consent of owner
 - ii. Acting in ordinary course of business
 - iii. Buyer acted in good faith and has no notice that agent has no authority to sell.
- ii. **U** → Unpaid Seller →
 - i. If price not paid by buyer
- iii. **E** → Estoppel →
 - Made believe by true owner that seller is owner where in fact, he was'nt

iv. **F**inder of **G**oods → When conditions fulfilled

v. **H** → Holding under → Before contract made void
voidable contract

vi. **I** → Insolvent → When sold by official assignee or receiver

vii. **J** → Joint owner →

One of joint owner
+
Goods in his possession with consent of other
owners
+
Sold without other's consent
+
Buyer acted in good faith

Question

29. A went to B's shop and selected some jewellery. He falsely represented himself to be a man of credit and thereby persuaded B to take the payment by cheque. He further requested him to hand over the particular type of ring immediately. On the due date, when the seller, B presented the cheque for payment, the cheque was found to be dishonoured. Before B could avoid the contract on the ground of fraud by A, he had sold the ring to C. C had taken the ring in good faith and without any notice of the fact that the goods with A were under a voidable contract. Discuss if such a sale made by non-owner is valid or not as per the provisions of Sale of Goods Act, 1930?

[RTP May 2022]

Answer

Section 27 of Sale of Goods Act, 1930 states that no man can sell the goods and give a good title unless he is the owner of the goods. However, there are certain exceptions to this rule of transfer of title of goods.

One of the exceptions is sale by person in possession under a voidable contract (Section 29 of Sale of Goods Act, 1930)

1. If a person has possession of goods under a voidable contract.
2. The contract has not been rescinded or avoided so far
3. The person having possession sells it to a buyer
4. The buyer acts in good faith
5. The buyer has no knowledge that the seller has no right to sell.

Then, such a sale by a person who has possession of goods under a voidable contract shall amount to a valid sale and the buyer gets the better title.

Based on the provisions, Mr. A is in possession of the ring under a voidable contract as per provisions of Indian Contract Act, 1872. Also, B has not rescinded or avoided the contract, Mr. A is in possession of the ring and he sells it new buyer Mr. C who acts in good faith and has no knowledge that A is not the real owner. Since all the conditions of Section 29 of Sale of Goods Act, 1930 are fulfilled, therefore sale of ring made by Mr. A to Mr. C is a valid sale.

Question

37. Explain any six circumstances in detail in which a non-owner can convey better title to the bona fide purchaser of goods for value under the Sale of Goods Act, 1930.

[MTP Apr 2023(6 Marks)]

CA WALLAH

Answer

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).

Mercantile Agent means an agent having in the customary course of business as such agent has authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].

- (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 from 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. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid [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)].

However, a person in possession of goods under a 'hire-purchase' agreement which gives him only an option to buy is not covered within the section unless it amounts to a sale.

- (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

34. “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.

[MTP Nov 2022(4 Marks)]

Question

22. Ayushman is the owner of a residential property situated at Indraprastha Marg, New Delhi. He wants to sell this property and for this purpose he appoints Ravi, a mercantile agent with a condition that Ravi will not sell the house at a price not less than ₹ 5 crores. Ravi sells the house for ₹ 4 crores to Mudit, who buys in good faith. Ravi misappropriated the money received from Mudit. Ayushman files a suit against Mudit to recover his property. Decide with reasons, can Ayushman do so under the Sale of Goods Act, 1930?

[RTP June 2023]

CA WALLAH

Answer

As per the Proviso to Section 27 of the Sale of Goods Act, 1930, a sale made by a mercantile agent of the 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.**

On the basis of above, it can be said that Ravi, the mercantile agent, sells property to Mudit who bought in good faith. Mudit obtained a good title of that residential property. Hence, Ayushman cannot recover his property from Mudit. Rather, Ayushman can recover his loss from Ravi.

P.Q. Alert

- i. If agent sells car less than decided price to buyer, who buys in good faith, ownership is transfer and agent personally liable for deficit.
- ii. If goods sold by one of the joint owner without taking consent from other joint owner ownership trf to buyer if he takes in good faith.

Delivery

➤ Meaning →

➤ Types →

Voluntary transfer of possession

- i. Actual → Physically hand over goods
- ii. Symbolic → Delivering something (document, key) which carries real possession
- iii. Constructive → delivery by acknowledgement without actual change in visible custody

Question

3. X, a furniture dealer, delivered furniture to Y under an agreement of sale, whereby Y had to pay the price of the furniture in three instalments. As per the terms of the agreement, the furniture will become the property of Y on payment of the last instalment. Before Y had paid the last instalment, he sold the furniture to Z, who purchased it in good faith. X brought a suit against Z for the recovery of the furniture on the ground that Z had no title to it. Decide the case on the basis of the provisions as per the Sale of Goods Act, 1930.

[Dec 2023(4 Marks)]

Answer

As per section 30(2) of the Sale of Goods Act, 1930, 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.

In the instant case, furniture was delivered to Y under an agreement that price was to be paid in three instalments; the furniture to become property of Y on payment of third instalment. Y sold the furniture to Z before the third instalment was paid. Here, Z acquired a good title to the furniture, since he purchased the furniture in good faith.

Hence, X will not succeed in his suit for the recovery of the furniture as Z acquired a good title of the furniture.

Question

35.Explain the term “Delivery and its forms” under the Sale of Goods Act, 1930.

[MTP Nov 2022(6 Marks)]

CA WALLAH

Answer

Delivery - its forms: Delivery means voluntary transfer of possession from one person to another [Section 2(2) of the Sale of Goods Act, 1930]. 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.

Forms of delivery: Following are the kinds of delivery for transfer of possession:

(i) **Actual delivery:** When the goods are physically delivered to the buyer. Actual delivery takes place when the seller transfers the physical possession of the goods to the buyer or to a third person authorised to hold goods on behalf of the buyer. This is the most common method of delivery.

(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).

Constructive delivery takes place when a person in possession of the goods belonging to the seller acknowledges to the buyer that he holds the goods on buyer's behalf.

(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. Where actual delivery is not possible, there may be delivery of the means of getting possession of the goods.

Rules for Delivery T/Q (A)

- i. **Concurrent Condition →** Normally delivery and price is concurrent condition.
- ii. **Part Delivery →** If part delivery is in progress of whole delivery, it is equal to full delivery and buyer cannot reject goods.
- iii. **Delivery by Installment →** buyer can reject goods.
- iv. **Apply →** Buyer should apply for delivery
- v. **Time →**
 - Fixed → deliver within fixed time
 - Not Fixed → deliver within reasonable time

**vi. Expense → To bring in deliverable state → Seller
Delivery → Buyer**

Vi. Place of delivery

(a) Contract of Sale → Where goods are kept at the time of contract

(b) ATS then sale → Where goods are kept at the time of ATS.

(c) Future Goods → Where goods manuf. Processed , produced, acquired

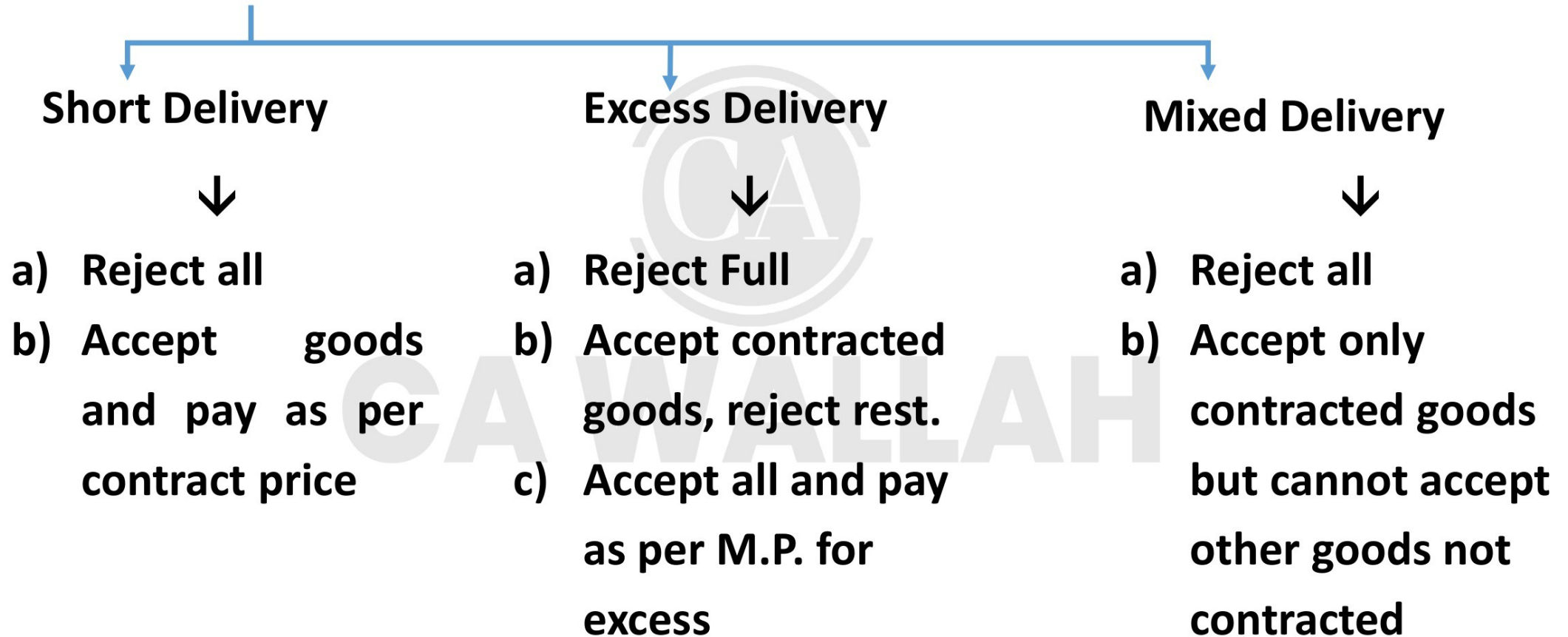
(viii) Delivery at distant place → Cost borne by buyer

(ix) Delivery to carrier → Normally delivery to buyer

(x) After delivery

→ Buyer should have reasonable time for inspection

(xi) Delivery of wrong Quantity



Question

20. Avyukt purchased 100 Kgs of wheat from Bhaskar at ₹30 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Avyukt wants his price on the contention that no delivery has been done by seller. Whether Avyukt is right with his views under the Sale of Goods Act, 1930.

[RTP June 2023]

CA WALLAH

Answer

As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery,

- (i) Actual delivery,**
- (ii) Constructive delivery and**
- (iii) Symbolic delivery.**

When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer that he is holding the goods on buyer's behalf.

On the basis of above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Avyukt is not right. He cannot claim the price back.

Unpaid Seller

- i. Whole price not paid or tendered; or**
- ii. Buyer becomes insolvent ; or**
- iii. No stipulation to credit → immediately if price not paid, or**
- iv. Credit sale → After expiry of term**
- v. BOE / NI issued → When they are dishonoured**

Unpaid seller → Right against goods [T/Q]

	A] Lien	B] Stoppage in transit	C] Resale
Meaning	Right to retain possession	Right to regain possession	Resale goods where buyer fail to pay price after reasonable time
Condition	Seller unpaid	<ul style="list-style-type: none"> i. Seller unpaid ii. Goods in transit iii. With independent carrier iv. Buyer becomes insolvent 	<ul style="list-style-type: none"> i. Unpaid seller ii. Not paid till fixed time or reasonable time

Unpaid seller → Right against goods [T/Q]

	A] Lien	B] Stoppage in transit	C] Resale
Other Imp pts.	<ul style="list-style-type: none"> i. Even non-owner can lien ii. Only for price of goods and no other charges iii. Indivisible in nature i.e. can lien whole goods even if part paid iv. If possession lost, lien lost 	This right ends if transit ends	<ul style="list-style-type: none"> i. Where notice given if required. Surplus → seller Deficit → recover from original buyer Notice not given where req. Surplus → recover from original buyer Deficit → seller

Question

9. What are the rights of unpaid seller in context to re-sale the goods under Sale of Goods Act, 1930?

[Nov. 2022 (6 Marks)]

CA WALLAH

Question

2. Can an unpaid seller who has possession of goods exercise the Right of lien? If yes, mention such circumstances. When does he lose his right of line as per the provisions of the Sale of Goods Act, 1930?

[RTP Nov 2022]

[Dec 2023(6 Marks)]

Answer

Seller's lien (Section 47 of the Sale of Goods Act, 1930): 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.

According to sub-section (2), the seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

As per the provisions of Section 48, where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien (Section 49): According to sub-section (1), the unpaid seller of goods loses his lien thereon-

- (a) 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;
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver thereof.

The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods. [Sub-section (2)]

Question

23. A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired and goods were still in the possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuses to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930?

[RTP June 2023]

Answer

Lien is the right of a person to retain possession of the goods belonging to another until claim of the person in possession is satisfied. The unpaid seller has also right of lien over the goods for the price of the goods sold.

Section 47(1) of the Sale of Goods Act, 1930 provides that the unpaid seller who is in the possession of the goods is entitled to exercise right of lien in the following cases:-

1. Where the goods have been sold without any stipulation as to credit
2. Where the goods have been sold on credit but the term of credit has expired
3. Where the buyer has become insolvent even though the period of credit has not yet expired.

In the given case, A has agreed to sell certain goods to B on a credit of 10 days. The period of 10 days has expired. B has neither paid the price of goods nor taken the possession of the goods. That means the goods are still physically in the possession of A, the seller. In the meantime, B, the buyer has become insolvent. In this case, A is entitled to exercise the right of lien on the goods because the buyer has become insolvent and the term of credit has expired without any payment of price by the buyer.

Auction Sale [Sec. 64] [T/Q]

i. Meaning

Special mode of sale where many buyers try to outbid each other to secure contract

ii. Rules :

(a) Completion of Sale

→ To higher bidder by fall of manner / customary method

(b) Reserve / Upset Price

→ Below which goods not sold even to highest bidder

(c) Seller's right to bid

→ Normally cannot bid

→ If pre-intimates, he can bid, but either himself or only 1 agent

→ More than 1 agent, fraud contract voidable

**d) Puffering /
Pretended bidding**

Seller appoints person to increase bid

**e) Knockout
agreement**

- Agreement between buyer not to bid against each other
- Valid

f) Damping

- Illegal way to prevent from bidding by
 - a) Pointing defects
 - b) Use illegal means
- Punishable

Question

6. An auction sale of the certain goods was held on 7th March, 2023 by the fall of hammer in favour of the highest bidder X. The payment of auction price was made on 8th March, 2023 followed by the delivery of goods on 10th March, 2023. Based upon on the provisions of the Sale of Goods Act, 1930, decide when the auction sale is complete.

[June 2023 (2 Marks)]

Answer

According to Section 64 of the Sale of Goods Act, 1930, the sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner.

In the given question, the auction sale is complete on 7th March, 2023.