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Underline the Key
words

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3 Answers daily



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Single Stream

LUNCH

Break

3:00pm - 5:00pm

Marathon

Contract

Break

6:00pm - 7:00pm

Marathon

IPA

10:00pm - 11:00pm

Guess Paper

22nd June

8:00am - 10:00am

Booster

51 Sections



Bailment

Question 1

What is bailment? What are the essential elements of Bailment

It is derived from the french word "ballier" which means to deliver.
Parties to bailment

Bailor - Person delivering the goods

Bailee - Person to whom the goods are delivered

Essential Elements of Bailment

Contract - Contract can be express or implied

Delivery of Goods - Bailment is only for movable Goods
Delivery can be both Actual or Constructive

Purpose - Goods shall be delivered for completion of some purpose

Possession - In case of bailment the possession of the Goods

is transferred

Return of Goods - Bailee is obligated to return the goods physically to the bailor.

Question 2

Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:

(i) V parks his car at a parking lot, locks it, and keeps the keys with himself. ii) Seizure of goods by customs authorities.

Question 3

Differences between General Lien and Particular Lien.

Question 4

termination of Bailment

Answer 4

- ① On Expiry of Stipulated Period - If bailment is for a stipulated period then it expires on completion of bailment period.
- ② On fulfillment of the purpose - If a specific period is involved bailment end on completion of period.
- ③ By Notice → On inconsistent use by Bailee
→ Gratuitous can be terminated at any time
- ④ By death - Gratuitous bailment ends on death of the Bailor and bailee.
- ⑤ Destruction of the subject matter - Bailment is terminated if goods destroyed

Question 5

Rahul was a Disk Jockey at a five-star hotel. As per the contract, he is supposed to perform every weekend. (i.e. twice a week). Rahul will be paid ` 2,500 per day. However, after a month, Rahul willfully absents himself from the performance. Taking into account the provisions of the Indian Contract Act, 1872, answer the following:

(I) Does the hotel have the right to end the contract?

(II) If the hotel sends out a mail to Rahul that they are interested to continue the contract and Rahul accepts, can the hotel rescind the contract after a month on this ground subsequently?

(III) In which of the case – (termination of contract or continuance of contract) can the hotel claim damages that it had suffered as a result of this breach?

Pledge

Question 6

Srushti acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Srushti pledged the diamond with Mr. VK. Is this a valid pledge under the Indian Contract Act, 1872 ?
Whether a Pawnee has a right to retain the goods pledged.

Question 7

Radheshyam borrowed a sum of * 50,000 from a Bank on the security of gold on 1.07.2019 under an agreement which contains a clause that the bank shall have a right of particular lien on the gold pledged with it. Radheshyam thereafter took an unsecured loan of * 20,000 from the same bank on 1.08.2019 for three months. On 30.09.2019 he repaid entire secured loan of ₹ 50,000 and requested the bank to release the gold pledged with it. The bank decided to continue the lien on the gold until the unsecured loan is fully repaid by Radheshyam. Decide whether the decision of the Bank is valid within the provisions of the Indian Contract Act, 1872?

Law

In case of Pledge the Pawnor has pledged his goods in exchange on a debt which is only payable on expiry of due date. The Pawnee has the right to retain possession of such goods and exercise lien on the same for non payment on due date, but such lien is only applicable in the event of non payment of particular debt and not on any extraordinary damages.

fact

The Bank has denied Radheshyam for the return of his gold until the entire money has been duly paid including both secured and unsecured debt.

Conclusion

The Bank is at fault because general lien cannot be exercised on the property which was pledged against a particular debt. Therefore Radheshyam can recover his gold from the bank.

Question 8

Differences between Bailment and Pledge

Basis

Bailment

Pledge

Meaning

Parties

Purpose

Consideration

Right to sell the Goods

Right to use the Goods

Indemnity

Question 9

What are the rights of the indemnity holder, when sued under a contract?

Question 10

Ramesh enters into a contract with insurance agent to redeem the expenses for any loss incurred in the case Ramesh is pressing against his supplier. Ramesh lost the case and had to pay compensation of 500,000 along with legal fees of 50,000. How much of the expenses can be recovered, if any recoverable?

Guarantee & Agency

Question 11

Sarthak is employed as a cashier on a monthly salary of * 50,000 by ABC bank for a period of three years. Mohit gave surety for Sarthak's good conduct. After nine months, the financial position of the bank deteriorates. Then Sarthak agrees to accept a lower salary of * 40,000 per month from the Bank. Two months later, it was found that Sarthak had misappropriated cash from the time of his appointment. What is the liability of Mohit taking into account the provisions of the Indian Contract Act, 1872?

④ → Physical

S

Question 12

Due to urgent need of money amounting to * 3,00,000, Pawan approached Raman and asked him for the money. Raman lent the money on the guarantee of Suraj, Tarun and Usha. Pawan makes default in payment and Suraj pays full amount to Raman. Suraj, afterwards, claimed contribution from Tarun and Usha refused to contribute on the basis that there is no contract between Suraj and him. Examine referring to the provisions of the Indian Contract Act, 1872, whether Tarun can escape from his liability.

Question 13

Agent → Principal

Shyam, at the request of Govind, sells goods which were, in the possession of Govind. However, Govind had no right to dispose of such goods. Shyam did not know this and handed over the proceed of the sale to Govind. Afterwards, Manohar, who was the true owner of the goods, sued Shyam and recovered the value of the goods. In the light of the provisions of the Indian Contract Act, 1872, answer the following questions:

- (i) Is Govind liable to indemnify Shyam for his payment to Manohar?
- (ii) What will be the liability of Govind if the goods is a prohibited drug?

Imp

Question 13

Law

Where a mercantile agent is with the consent of the owner, in possession of the goods, makes any sale or pledge in the ordinary course of business, all such transactions shall be valid were made under good faith and without knowledge of the defect in the title of the principal.

Fact

Shyam acting as an agent of Grouind sells goods which are in his possession, which in fact are owned by Manohar.

Conclusion

(i) In the given situation since Shyam had no notice about the defect in Govind's title. He acted in the ordinary course of business. Therefore Govind shall be liable to indemnify the agent, Shyam

(ii) Govind shall not be responsible for any indemnification

since the invalid activities which are against public policy

are not ratified.

Law

Section 123 of Indian Contract Act 1872, where there is any variance in terms of the contract between the Principal creditor and principal debtor the surety shall be informed, any material changes without intimating the surety will discharge the surety.

Fact

Sardar has agreed to accept a lower salary after 9 months of employment due to bank running into losses and has appropriated funds on a year on year basis.

Conclusion

Mohit is liable as surety for the loss suffered by the bank due to misappropriation of cash by Sachin during the first nine months only and not for the remaining period. Since salary which is a material part in the contract was revised.

Question 14

Satya has given his residential property on rent amounting to * 25,000 per month to Tushar. Amit became the surety for payment of rent by Tushar. Subsequently, without Amit's consent, Tushar agreed to pay higher rent to Satya. After a few months of this, Tushar defaulted in paying the rent.

- (i) Explain the meaning of contract of guarantee according to the provisions of the Indian Contract Act, 1872.
- (ii) State the position of Amit in this regard.

Answer

(i) A contract of guarantee is a contract to perform the promise made or discharge the liability, of a third person in case of a default.

(ii) Law

Where there is variation in terms of the contract between principal debtor and creditor without the consent of the surety, the surety is discharged.

fact

The rent has been revised without any actual intimation given

by Satya to Amit the Surety.

Conclusion

Amit shall stand discharged as the Surety and be relieved of his liability, under section 133.

Question 15

Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for 20 lakhs in the name of a nominee and then purchased it himself for 24 lakhs. He then sold the same house to Mr. Ahuja for 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? *If so how much? Explain.*

Negotiable Instruments

Question 1

M owes money to N. Therefore, he makes a promissory note for the amount in favor of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return the half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how rights of the parties are to be adjusted.

Question 2

Bholenath drew a cheque in favour of Surendar. After having issued the cheque; Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Bholenath constitute an offence?

Question 3

What do you mean by a Negotiable Instrument? What are the features of a Negotiable Instruments?

Question 4

Sachin bought 1000 Kg rice from Saurabh for *1,50,000 on three months credit. For this purpose, Sachin issued a promissory note to Saurabh on the same date payable after 3 months. On the date of maturity, the promissory note was dishonoured. Saurabh filed suit for the recovery of the amount plus fees of advocate paid by him for defending the suit. Referring to the provisions of the Negotiable instruments Act, 1881, what amount could be recovered by Saurabh

Q4

Law

Where a Promissory note is drawn for a lawful debt and if the same is dishonoured the payee shall have the right to recover the amount of the promissory note along with any damages incurred by him on account of dishonour of the negotiable Instruments.

fact

Saurabh has sued Sachin for recovery of amount due on a promissory note as the same was dishonoured.

Conclusion

Sowrabh can rightfully recover the amount of the instrument i.e. 150,000 in addition to this all the lawful charges are also recoverable for the suit imposed by Sowrabh.

Question 3

A Negotiable Instruments means an instrument for payment which can be transferred multiple number of times, the act does not define a negotiable instrument but section 13 includes cheque, bills of exchange and promissory note as a negotiable instrument.

The features of Negotiable Instruments are as follows:-

- (i) Negotiable Instruments are freely transferable
- (ii) All Instruments should be in writing.
- (iii) Negotiable Instruments shall be signed by the maker.
- (iv) Certainty of payer, payee and amount shall be duly present in every instrument.

(v) The instrument has to be delivered for the purpose of negotiate

(vi) Instrument can be negotiated multiple times until its maturity.

(vii) The Negotiable instrument shall be drawn to pay money only.

(viii) All negotiable instruments are an unconditional undertaking.

Q2) Law

Section 138 of Negotiable Instruments Act 1881 is a penalty for dishonour of cheque in the course of payment, it states that once a cheque is drawn, if the cheque remains unpaid due to insufficiency of funds or an order is made to stop payment, it is considered to be an offence under the negotiable Instrument act.

fact

A cheque which was issued to surrender by Bholenath has been stopped for payment by order to bank.

Conclusion

Boleath is liable for the offence of stopping payment, which amounts to dishonour of the instrument can be imprisoned for upto 2 years.

Answer 1) **Law**

Negotiation of Promissory Note is valid when it is made by indorsement and delivery of the instrument. The negotiation made only by delivery is not valid.

fact

N wants M to return back the note which was given to M by him.

Conclusion

M does not become the holder of the promissory note but he can demand N to return the other half if the debt due is lawful under law.

Question 5

A purchased a watch from B. He issued a promissory note to B which was payable on demand but no specific place for payment was mentioned on it. On maturity B did not present the promissory note for payment. As the promissory note was duly presented for payment, whether A would be discharged from liability under the provisions of Negotiable Instruments 1881?

Question 6

What do you mean by an inland bill and foreign bill explain with help of an example and differentiate between inland and foreign bill?

Question 7

Priyansh purchased some goods from Sumit. He issued a cheque to Sumit for the sale price on 14th June, 2023. Sumit presented the cheque in his bank and his bank informed him on 19th June, 2023 that cheque was returned unpaid due to insufficiency of funds in the account of Priyansh. Sumit sued against Priyansh under section 138 of the Negotiable Instruments Act, 1881. State with reasons, whether this suit is maintainable?

Q7)

Law

Section 138, where a cheque is dishonoured the payee shall inform the drawer within 30 days from where intimation is received from the bank and shall allow a period of minimum 15 days for the drawer to discharge the payment, the failure to pay post 15 days shall be considered as an offence under section 138.

fact

Sumit has sued Prityansh for non payment of amount due on the cheque as the same is dishonoured due to insufficiency of funds.

Conclusion

Sumit's case against Prayansh is not valid since from the intimation by the bank on 19th June, Sumit should have informed Prayansh latest by 19th July and allot him a period 15 days to discharge the payment, since this was not done there is no liability of Prayansh against Sumit.

Question 6

Inland Bill is a bill drawn in India and is either payable in India or drawn on a person resident in India.

Example:

A bill is drawn in Mumbai on a resident of Spain but payable in India is a Inland instrument.

Foreign Bill is a bill which is not an inland bill.

In other words foreign bill is a bill drawn outside India or, a bill drawn in India on a person who is resident of a country outside India and it is payable outside India.

Example: A Bill drawn in Mexico is a foreign bill.

Basis

Meaning

Inland

An instrument drawn in India on a person resident in India or payable in India.

Foreign

An instrument drawn outside India is a foreign instrument.

Drawn in

Drawn in India

Drawn outside India

Resident
& Payable
In

Resident in India
or
Payable in India

Resident Outside India
and
Payable Outside
India

Inland



India → Resident

Payable - In Russia

Draw

Cheque
in
India



Vimal

Inland



Resident - Greece

Payable - India

draw
in
India



Vimal


Payable in India
OR
Resident of India

+

draw in India

FB

draw
Bill
London




James

FB

Popplein London +
Resident → Russia

draw
in
India



James

Question 5

Law

A promissory note or any negotiable instrument which is payable on demand shall be duly presented on the due date for payment at the place where it is payable, if the instrument is not presented on due date the maker of the instrument is discharged from the liability.

fact

B did not present the promissory note on the due date for payment as a place for presentment was not stated in the contract.

Conclusion

Since Mr. B did not present the instrument on maturity at the place where it was drawn Mr. A is now discharged from the liability to pay on the instrument.

Question 8

Differentiate between Promissory Note and Bills of Exchange. State can a promissory note be made available to the bearer.

Question 9

What is an inchoate Instrument? [Short Note - 4 marks]

Question 10 (I) (Very Imp) ✓

RNL Ltd. issued a post-dated cheque of ₹ 5.50 Lakh to Mr. YR Gupta on account of full and final settlement of its liability for shares purchased of a renowned company. Company draws the cheque on 21.9.2023 and mentioned the cheque to be paid on 26.9.2023.

Further, Company instructed the bank, on which cheque was drawn to stop the payment of cheque, if at the time of presentation Bank account has insufficient funds to make payment. Mr. YR Gupta presented the cheque to bank for payment on 30.11.2023. On 30.11.2023 bank account maintained by company was having only ₹ 4.90 lakh. Bank denied for payment.

The cheque was dishonored for non-payment. In the above case, who will be responsible for dishonor of cheque and payment of ₹ 5.50 lakh due to Mr. YR Gupta? 1

Conclusion

Since the cheque is dishonoured YR Gupta can claim entire ₹ 5.50 lakhs from RNL Ltd, who shall be responsible to discharge the payment within 15 days from when the fact of dishonour was communicated to them.

Question 9

It means an instrument which is incomplete in some respect. The drawer/maker/acceptor/indorser of a negotiable instrument may sign and deliver the instrument to some other person, and the other person can add words to the instrument and claim payment on the same upto the specified limits, stated on the instrument if any. This is based on the principle of estoppel.

Question 8

Section 4 defines a promissory note as an instrument in writing, and signed by the maker, which is an unconditional order to pay money and money only to the order of a certain person or to the bearer of the instrument.

Section 5 defines a bill of exchange as a instrument in writing, made by drawer accepted by the drawee as an unconditional undertaking to pay money and money only to a certain person or on his order or to the bearer of the instrument

Basis	BOE	PN
Definition		
Nature of Instrument	It is an Order to Pay	Promise to Pay
Parties Involved	<p>It has 3 parties</p> <ul style="list-style-type: none"> • Drawer • Drawee • Payee 	<p>It has 2 Parties</p> <ul style="list-style-type: none"> • Maker • Payee
Acceptance	It needs the BOE to be accepted by drawee.	It does not require any acceptance
Payable to Bearer	BOE can be made payable to bearer on maturity of the instrument.	A promissory cannot be paid to the bearer

The Reserve Bank of India prohibits issue of bearer promissory note as only Reserve Bank of India can issue promissory note which is bearer in nature i.e. currency.

Question 11

A drew a cheque of 20,000 payable to B and delivered it to him. B endorsed the cheque in favour of 'R' but kept the same in the table drawer. 'R' filed the suit for recovery of cheque. Whether R can recover cheque under the provisions of NI Act 1881?

Question 12

Mr. X draws a cheque in favour of Mr. R for payment of his outstanding dues of 5,00,000 on 26/07/2022 with date of 1/08/2022. At the time of issuing cheque, he was

having sufficient balance in his account, but on 29/07/2022 he made payment for his taxes, now his bank account is left with only ₹ 4,50,000. So, Mr. X requested Mr. R not to present the cheque for payment, but he did not accept his request. So, Mr. X instructed the bank to stop payment of cheque issued for dated 01/08/2022 in favour of Mr. R.

Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Mr. X constitute an offence?

Question 11

Law

Negotiation of an order Instrument is only valid if a valid indorsement is made and the delivery of the instrument is made to the indorsee.

fact

R has filed a suit for recovery of the debt due to him from

B.

Conclusion.

R cannot validly recover the cheque amount from B since the endorsement is made but delivery of the instrument was not made to him.

Indian Regulatory Framework

- Q1 ✓ What is law? What are the sources of law?
- Q2 ✓ How is the Indian Legal System structured? → a) what are different types of law?
- Q3 ✓ Write a short note on Ministry of finance?
- Q4 ✓ What is considered as the oldest law of Land?
- Q5 ✓ Discuss the composition of Reserve Bank of India?
- Q6 ✓ What is the role of the home ministry.

Q6) Ministry of home Affairs also known as Ghar Mantralaya is a ministry of the government of India. It is headed by the Union Minister of home Affairs

Departments of home Ministry

- ① Department of Jammu Kashmir and Ladakh affairs.
- ② Department of Home
- ③ Department of Internal Security
- ④ Department of Border Mangement
- ⑤ Department of States
- ⑥ Department of Official language

Q5) Reserve Bank of India is the Central Bank of the country established in the year 1935 under the RBI Act of 1934.

It is under the management of the Ministry of finance.

RBI has three Divisions

- ① **Bhartiya Reserve Bank Note Mudran** - it is concerned with issue of currency and engages in minting and printing of currency it has two branches located in Nashik and Dewas
- ② **National Payments Corporation of India** - it is one of the specialised division of RBI which deals with settlement of payments across India.

② Deposit Insurance and Credit Guarantee Corporation established under

Reserve Bank of India as one of the specialised division

engaged in providing insurance of deposits and guaranteeing of

credit facilities to all Indian banks.

Question 4

The oldest law can be traced back to the period of before Christ

① Code of Hammurabi is known as the oldest law which was written on bulky stones, from the period of 1792 to 1758 BC, in Babylon.

② In 450 BC a set of laws were engraved on bronze tablet is

Rome it was the most comprehensive law ever made in the

history of mankind and is popularly known as the Twelve tables

Question 3

The Ministry of Finance (Vitta Mahakalaya) is a ministry within the government of India

It deals with the following matters

- Capital markets
- Center and State finance
- Union Budget

CCU airport is LIT

- financial legislation
- financial Institution
- taxation

It covers the following services

R A C E

- Indian Revenue Service
- Audit and Accounts Service
- Indian Civil Accounts Services

Indian Economic Services

Departments under Ministry of Finance

Department of Revenue

Department of Expenditure

Department of Financial Services

Department of Investment and Public Asset Management

Department of Public Enterprises

Department of Economic Affairs

Question 2

The Indian legal system comprises of four judiciary bodies :

- ① **Supreme Court** - The Supreme court was established on 26 Jan 1950. The Chief Justice of India is the highest authority in the supreme court. The principal bench of Judges has increased from 7 to 34 members. A person can file a WRIT petition under article 32 directly to supreme court.
- ② **High Court** - It is the highest authority at state level. There is usually one High Court in each state, at present there are 25 High Court in the country. Article 226 permits writ petition where fundamental right is compromised.
- ③ **District Court** - They are set up to deal with civil matters only in cases involving dispute amount upto 20000, and Criminal matters shall be presided by the high court.

(4) **Metro politan Court** - Metropolitan Court are established in metro cities where population exceeds 10 lakhs and the chief metropolitan magistrate presides over this court

Question 1

Law is a set of obligations and duties imposed by the government for the purpose of securing justice and welfare. India's legal framework is vast containing laws related social, political, economical and cultural aspects.

The sources of law include:

- Constitution
- The Statutes or laws made by parliament and state Assemblies
- Judicial Decisions

Sales of Goods Act

- Q1) What do you mean by delivery & types of delivery? State the rules regarding delivery?
- Q2) What is appropriation of goods under the Sale of Goods Act 1930? State the essentials regarding appropriation of unascertained goods?
- Q3) Rights of Unpaid Seller against the buyer ✓ (4) ✓
- Q4) Differentiate between Ascertained and Unascertained goods with example?
- Q5) What is Caveat Emptor? State its exceptions?
- Q6) The rights of ownership? (Section 26) ✓
- Q7) Rights of Unpaid Seller in relation to goods? ✓ 3
- Q8) Sale by sample, the impact of such sample sale.
- Q9) Explain any 6 circumstances in detail in which non-owner can convey better title to Bona fide Purchaser of goods?
- Q10) Sale on Return basis under section 24?
- Q11) What are the rules to regulate Auction Sale.
- Q12) Condition vs Warranty? Conditions under which condition can be treated as warranty?
- Q13) Auction Sale Short Notes?
- Q14) Destruction of Goods Before & After Contract of Sale?
- Q15) The implication of 4(1), 4(2), 4(3), 4(4).

Answer 1

Section 2(2) Delivery refers to voluntary transfer of possession from the seller to the buyer or authorized agent of the buyer.

Types of delivery

Actual delivery - when the goods are physically delivered to the buyer actual delivery takes place where the seller transfers the physical possession of the goods.

Constructive delivery - when it is effected without any change in the custody or actual possession of the goods this is also known as delivery by attornment.

Symbolic delivery - where the delivery of a thing in token of a transfer of some document of title instead of physical possession of goods it is referred as symbolic delivery.

The rules regarding delivery

- ① Buyer is to apply for delivery of goods, the seller is not bound to deliver the goods.
- ② The seller is bound to send the goods to the buyer within the time fixed in the contract, where no time specified within reasonable time.
- ③ The demand of delivery by the buyer should be during business hours.
- ④ Expenses for delivery are borne by the buyer, seller bears the expenses to get the goods in deliverable state.

⑤ where the goods are delivered at a distant place the liability for deterioration during transit will fall on the buyer, unless otherwise provided.

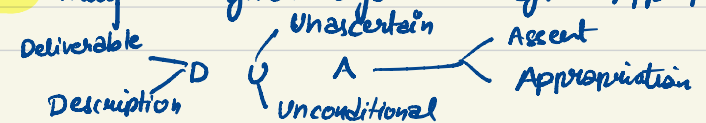
⑥ Buyer has the right to examine the goods on delivery, the seller is under the obligation to allow reasonable time to the buyer.

Answer 2

Section 23 lays down conditions for transfer of ownership of an ascertain goods which requires appropriation of goods with the intention of using them in execution of the contract with assent of the buyer and seller.

The essentials are :-

- (a) There is a contract for sale of **unascertain** goods or future goods
- (b) The goods must be in **deliverable** state
- (c) The goods shall conform to the **description** and quality stated in the contract.
- (d) The goods must be **unconditionally** appropriated to the contract
- (e) The **appropriation** must be made by:
 - (i) the seller with the assent of the buyer.
 - (ii) the buyer with the assent of the seller.
- (f) The **assent** may be express or implied.
- (g) The **assent** may be given before or after Appropriation



Answer 3 Unpaid Seller is a person who has not received valuable consideration for his goods. The rights of the unpaid seller against the buyer are as follows:-

interest in case of delayed payment in absence of such agreement the court can award interest.

Section 55 - Suit for Price - where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully refuses to pay for the goods, the seller may sue him for price of goods.

Answer 4

Basis

Ascertained Goods

Unascertained Goods

Meaning

The goods identified and agreed by the buyer after physical verification

Goods are sold only by description on quality of such goods.

Section 56 - Suit for Non Acceptance - where the buyer wrongfully neglects or refuses to accept and pay for the goods the seller may sue him for damages for non acceptance.

Time of Joinder

After agreement to Sale

Explained by description only

Section 60 - Repudiation of contract before due date - where the buyer repudiates the contract before the date of delivery, the seller shall treat the contract as rescinded and sue for damages. This is called anticipatory breach.

Nature of Contract of Sale

Sale Contract

Agreement to Sale

Example

60 Bales selected by buyer with assent of seller

100 Bales of Cotton at Seller's warehouse

Section 61 - Suit for interest - where there is a specific agreement between the buyer and the seller as to payment of

Type of Contract

Executed.

Executory

Answer 5

Caveat Emptor stated under section 16 of the Sales of Goods Act is derived from a Latin term which means "let the buyer beware".

The buyer shall be solely responsible for the choice of goods made by him, if the goods turn out to be defective or does not serve its purpose the seller cannot be blamed for poor selection.

The exceptions to the doctrine of Caveat Emptor are as follows:-

- ① ¹⁶⁽¹⁾ Fitness as to quality or use: Where the buyer makes known to the seller the particular purpose of his purchase the seller becomes liable to supply goods as per requirement.
- ② ¹⁵ Goods sold by description - where goods are sold by description the rule of caveat emptor does not apply.
- ③ ¹⁷ Goods sold by sample - where the goods are brought by sample the bulk of the goods shall comply with the sample.
- ④ ¹⁶⁽³⁾ Trade Usage - An implied condition or warranty attached to contract due to regular trade between the parties is to be complied by both the parties.
- ⑤ ¹⁵ Goods sold by sample as well as description - where the goods are sold by sample as well as description the implied condition requires compliance of both caveat emptor does not apply.

⑥ Seller Actively conceals defects in goods - where the seller actively conceals defects in goods with an intention to commit a fraud against the buyer the doctrine of Caveat emptor does not apply.

Answer 6 Risk is **prima facie** transferred with ownership unless otherwise agreed in contract, where the ownership has been transferred buyer, the goods are at the risk of the buyer whether delivery made or not.

- Provided that where the delay in delivery results in damage to the goods the party in default shall be responsible.

- Provided further that nothing in this section shall effect the rights and duties of the bailee in respect of goods of the other party.

Answer 8

In a contract of sale by sample there is an implied condition as per section 17

(a) the bulk of the goods shall correspond to sample

(b) the buyer shall have reasonable opportunity to compare the bulk with the sample.

(c) the goods shall be free from any defects which make them unmerchantable and are not identifiable on the goods unless they are put to use i.e. latent defect

Answer 7

Unpaid seller is a person who has not received valuable consideration for his goods. The rights of the unpaid seller in relation to goods are as follows:

Right of lien (section 47)

Where the ownership in goods is transferred to the buyer the seller has the right to retain possession of such goods if:

- (a) where the goods have been sold without any stipulation to credit
- (b) where the goods have been sold on credit, but credit period expires
- (c) where the buyer becomes insolvent

Right of Stoppage of transit (section 50)

Where the seller has parted with the possession, the right to stoppage in transit arises only when:

- (a) Goods are in Transit T
- (b) Price is unpaid
- (c) Buyer is insolvent I
- (d) Seller has parted with Possession P

Right of Resale (section 54)

The right of resale is valuable right given to an unpaid seller, where the seller can transfer the goods to another buyer after giving a notice of resale to the owner.

The notice ensures that the seller is protected against any loss arising due to subsequent sale and retains any benefit

therefore

Provided that where the terms of the contract stated the fact of resale, no notice shall be required prior to resale

Answer 9

Transfer of title by non owners as defined under section 27, contains exceptional cases under which a non-owner can transfer a better title to a bonafide purchaser

- C ① Sale by Mercantile Agent - A sale by a mercantile agent is valid by transfer of document of title to goods if following conditions are met:

- (a) If he was in possession of the goods
- (b) If the sale was in the ordinary course of business
- (c) If the buyer has acted in Good faith

- ② Sale by one of the Joint owners - If one of the several joint owners who is in sole possession of the property in goods can transfer a valid title to the bonafide purchaser, with permission of the co-owner.

- ③ Sale by a person in possession under a Voidable Contract - A buyer would acquire a valid title to the goods bought by him from the seller who had obtained goods under a voidable contract and such contract is in existence at the time of sale, which is made in Good faith.

④ 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 against the true owner.

⑤ Sale by an Unpaid Seller - Where an unpaid seller who has 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.

⑥ Sale by buyer obtaining possession before the property in goods has been transferred to him - Where a buyer with the consent of the seller obtains possession of the goods he may resale, pledge, mortgage such goods and transferee shall get a valid title to such goods other than in case of hire-purchase.

Answer 10

When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein is transferred to the buyer provided that—

(a) where he signifies his approval or does any other act adopting the transaction. or

(b) If he does not signify his approval within time stated in the contract or at the expiry of reasonable time. or,

(c) he does something to the goods equivalent of accepting the goods e.g. pledge.

Answer 11 & 12

Section 64, deals with the provisions of auction sale, it is an arrangement where a group of bidders engage in a transaction to buy a commodity at the highest price in order. The auctioneer is an agent and is governed by Law of Agency, the legal rules related to auction sale are given below:-

① where the goods are sold in lot unless otherwise stated each lot has a separate contract.

② The auction is complete on the fall of the hammer or any other customary manner, and before this the bidder may retract his bid.

③ The right to bid at the auction may be reserved by the seller by himself or by any person on his behalf.

④ where the seller is bidding at the auction such fact shall be expressively intimated to the auctioneer, any bidding in contravention of this is fraudulent in nature.

⑤ The sale may be subject to a minimum which is reserved price or upset price.

⑥ The seller may engage a person for pretended bidding this makes the auction voidable.

Answer 12

Basis	Condition	Warranty	repudiation of contract.
Meaning	A condition is a stipulation essential to the main purpose of the contract	A warranty is a stipulation collateral to the main purpose of the contract.	
Right in case of breach	Aggrieved party can cancel the contract and claim price & damages	Cannot repudiate the contract can only claim damages.	
Conversion	Condition can be treated as warranty	breach of warranty cannot be treated as condition	

Cases under which breach of condition is treated as warranty (Section 13)

- (1) where the buyer altogether waives performance of condition, voluntarily for his own benefit.
- (2) where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise
- (3) where the contract is non-revocable and the buyer has accepted either the whole goods or any part thereof, as stated under section 72 of contract act
- (4) where the buyer elects to treat breach of condition as one of warranty i.e. he is accepting damages in place

Answer 14

Section 7

where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge and default of seller or the buyer have perished prior to transfer of ownership in goods.

Section 8

where there is an agreement to sell specific goods and subsequent to which without the fault of buyer or seller the goods are so damaged, unable to meet its description, the agreement is void due to loss of subject matter.

Answer 15

- 4(1) - A contract of sale of goods is a contract where by the seller transfers or agrees to transfer the property in goods at a price.
- 4(2) - A contract of sale may be absolute or conditional
- 4(3) - where the ownership is transferred immediately it is a sale contract whereas if the ownership is delayed to a future date or subject to completion of a condition it is an agreement to sale.
- 4(4) - An Agreement to Sale becomes a sale contract with the lapse of time.

Q16 What are the rules for the fixation of prices by third party in a Sale Contracts?

Q17 Rights of a buyer against the seller in case of default?