

Important Questions & Topics of The Sale of Goods Act, 1930

Unit 1: Formation of the Contract of Sale

Q.1 Differentiate between Ascertained and Unascertained Goods with example. [Nov 18, 4 Marks]

Answer:

Ascertained Goods

1. 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.'
2. 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.

Q.2 What is meant by delivery of goods under the Sale of Goods Act, 1930? State various modes/forms of delivery. [May 18, 4 Marks] [RTP May 18] [MTP March 19, 4 Marks] [MTP Oct 19, 4 Marks]

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.

Related Question: Avyukt purchased 100 Kgs of wheat from Bhaskar at Rs. 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.

[MTP Nov 21 - 6 Marks]

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.

In the instant case, Kishore acknowledges Avyukt that he is holding wheat on Avyukt's behalf. Before picking the wheat from warehouse by Avyukt, whole wheat was flowed in flood.

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.

Q.3 Explain the term goods and other related terms under the Sale of Goods Act, 1930. [MTP Oct 18, 4 Marks]

Answer:

"Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. [Section 2(7) of the Sales of Goods Act, 1930]

'Actionable claims' are claims, which can be enforced only by an action or suit, e.g., debt. A debt is not a movable property or goods. Even the Fixed Deposit Receipts (FDR) are considered as goods under Section 176 of the Indian Contract Act read with Section 2(7) of the Sales of Goods Act.

Q.4 What are the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected. [Back Question of Module] [RTP May 18] [RTP NOV 20]

Answer:

Destruction of Goods-Consequences: 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*. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.

In a similar way Section 8 provides that an agreement to sell specific goods becomes void if 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 agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.

It may, however, be noted that section 7 and 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

Related Practical Question: With a view to boost the sales, Hanuman Automobiles sells a motorcar to Mr. A on trial basis for a period of three days with a condition that if Mr. A is not satisfied with the performance of the car, he can return back the car. However, the car was destroyed in a fire accident at the place of Mr. A before the expiry of

Hint/ Answer:

1. The subject matter of the contract i.e. Motor Car, was destroyed before the transfer of property from the Seller to the Buyer. Thus, the risk passes only when the ownership is transferred to the Buyer.
2. So, Mr. A is not liable for the loss suffered due to the fire accident over which A has no control and M/s

three days. Decide whether Mr. A is liable for the loss suffered.

Hanuman Automobiles will have to bear the loss arising due to the fire accident.

Related Question: Akansh purchased a Television set from Jethalal, the owner of Gada Electronics on the condition that first three days he will check its 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 demands the price of Television set from Akansh. Whether Akansh is liable to pay the price under the Sale of Goods Act, 1930? If not, who will ultimately bear the loss? [RTP Nov 21]

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.

According to above provisions and fact, the property is not passes to Akansh i.e. buyer as no condition of Section 24 is satisfied. Hence, risk has not passed to 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.

Q.5 In what ways does a "Sale" differ from "Hire-Purchase"? [Back Question of Module] [Dec 21 - 6 marks]

Answer:

Basis of difference	Sale	Hire- Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of contract.	The property in goods passes to the hirer upon payment of the last installment.
Position of the party	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.
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.
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.
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.
Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the installments.

Q.6 State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930. [Back Question of Module] [RTP May 19] [RTP Nov 18] [RTP May 20] [MTP Aug 18, 4 Marks]

Answer: [RTP May 21]

Essentials of Contract of Sale

The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930.

- (i) There must be at least two parties
- (ii) The subject matter of the contract must necessarily be goods
- (iii) A price in money (not in kind) should be paid or promised.
- (iv) A transfer of property in goods from seller to the buyer must take place.
- (v) A contract of sale must be absolute or conditional [section 4(2)].
- (vi) All other essential elements of a valid contract must be present in the contract of sale

Q.7 Explain the difference between Sale and Agreement to sell under the Sale of Goods Act, 1930.
[MTP March / Aug 2018, 4 Marks] [MTP April 19, 4 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

Basis of difference	Sale	Agreement to sell
Transfer of property	The property in the goods passes to the buyer immediately.	Property in the goods passes to the buyer on future date or on fulfilment of some condition.
Nature of contract	It is an executed contract , i.e., contract for which consideration has been paid.	It is an executory contract , i.e., contract for which consideration is to be paid at a future date.
Remedies for breach	The seller can sue the buyer for the price of the goods because of the passing of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
Liability of parties	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
Burden of risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Nature of rights	Creates Jus in rem	Creates Jus in personam
Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.

Q.8 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 19] [MTP Oct 20 - 4 Marks]

Answer:

- (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. **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 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.'**

Q.9 Archika went to a jewellery shop and asked the shopkeeper to show the gold bangles with white polish. The shopkeeper informed that he has gold bangles with lots of designs but not in white polish rather if Archika select gold bangles in his shop, he will arrange white polish on those gold bangles without any extra cost. Archika select a set of designer bangles and pay for that. The shopkeeper requested Archika to come after two days for delivery of those bangles so that white polish can be done on those bangles. When Archika comes after two days to take delivery of bangles, she noticed that due to white polishing, the design of bangles has been disturbed. Now, she wants to avoid the contract and asked the shopkeeper to give her money back but shopkeeper has denied for the same.

(a) State with reasons whether Archika can recover the amount under the Sale of Goods Act, 1930.

(b) What would be your answer if shopkeeper says that he can repair those bangles but he will charge extra cost for same? [RTP Nov 21]

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.

(a) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Archika and shopkeeper and not a sale. Even the payment was made by Archika, the property in goods can be transferred only after the fulfilment of

conditions fixed between buyer and seller. As the white polish was done but original design is disturbed due to polishing, bangles are not in original position. Hence, Archika has right to avoid the agreement to sell and can recover the price paid.

(b) On the other hand, if shopkeeper offers to bring the bangles in original position by repairing, he cannot charge extra cost from Archika. Even he has to bear some expenses for repair; he cannot charge it from Archika.

Q.10 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? [RTP Nov 21]

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. (Section 9 of the Sale of Goods Act, 1930)

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. Y can legally demand the car from X and X can recover a reasonable price of the car from Y.

Unit- 2: Conditions & Warranties

Q.1 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 Rs. 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? [Nov 19, 6 marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answers:

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.

Conclusion

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.

Q.2 M/s Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood, Mango wood, Teak wood, Burma wood etc.

Mr. Das, a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements.

The carpenter visited Mr. Das's house next day, and he found that the seller has supplied Mango Tree wood which would most unsuitable for the purpose. The carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements:

The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.

- (i) Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".
- (ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose? [May 19,6 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answers:

(i) Duty of the buyer according to the doctrine of "Caveat Emptor"

- a) In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'.
- b) When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods.
- c) 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.

Duty of the seller according to the doctrine of "Caveat Emptor":

The following exceptions to the Caveat Emptor are the duties of the seller:

1. Fitness as to quality or use
2. Goods purchased under patent or brand name
3. Goods sold by description
4. Goods of Merchantable Quality
5. Sale by sample
6. Goods by sample as well as description
7. Trade usage
8. Seller actively conceals a defect or is guilty of fraud

(ii) As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]

Related Question: For the purpose of making uniform for the employees, Mr. Yadav bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Mr. Yadav whether he is entitled to have any remedy under the sale of Goods Act, 1930? [RTP May 19] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

Fitness of Cloth: As per the provision of Section 16(1) of the Sale of Goods Act, 1930

An implied condition in a contract of sale that an article is fit for a particular purpose only arises when:

1. The purpose for which the goods are supplied is known to the seller,

2. The buyer relied on the seller's skills or judgement and
3. Seller deals in the goods in his usual course of business.

In the instant case

1. The cloth supplied is capable of being applied to a variety of purposes, the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so.
2. Therefore, the implied condition as to the fitness for the purpose does not apply. Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act, 1930.

Related Question: 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 Sales of Goods Act, 1930 whether TK can reject the timber. [Dec 21 - 3 Marks]

Answer:

Quality or Fitness Sec. 16(1): Generally, there is no implied condition as to quality or fitness of Goods for any particular purpose except if -

- (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 other words, seller's business is to sell Goods of such description.

If all the above conditions are satisfied, there is an implied condition that the goods shall be "reasonably fit" for the purpose.

In the instant case, 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.

Conclusion

As TK has specifically mentioned that he required timber of 1-inch thickness for being made into drums. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]

Therefore, TK can reject the timber, avoid the contract and claim a refund.

Related Question: 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? [Jan 21 - 6 Marks] [RTP May 21]

Answer:

Sale by description [Section 15]: Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans." 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.

It is a condition which goes to the root of the contract and the breach of it entitles the buyer to reject the goods whether the buyer is able to inspect them or not.

In the instant case

As Mr. M has specifically mentioned that he required exhaust fan for kitchen. Mr. M is entitled to get the money back or the right kind of fan as required serving his purpose. It is the duty of the seller to deliver such goods as described by the buyer.

Conclusion

(i) Therefore, Mr. T cannot refuse to exchange the goods as Mr. M specifically mentioned that he required exhaust fan for kitchen, not a table fan. But Mr. T delivered table fan. It is the duty of the seller to deliver such goods as described by the buyer.

(ii) Mr. M is entitled to get the money back or the right kind of fan as required serving his purpose.

Related Question: Mr. P was running a shop selling good quality washing machines. Mr. Q came to his shop and asked for a 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, when the machine was delivered at Mr. Q's house, it was found that it was a wrong machine and also unfit for washing woollen clothes. He immediately informed Mr. P about the delivery of the wrong machine. Mr. P refused to exchange the same, saying that the contract was complete after the delivery of the washing machine and payment of price. With reference to the provisions of the Sale of Goods Act, 1930, discuss whether Mr. P is right in refusing to exchange the washing machine? [MTP Oct 21 - 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 the 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. Q has informed 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.

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

Related Question: Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. What remedy does Ram have now under the Sale of Goods Act, 1930? [RTP Nov 18]

Answer:

Condition and warranty (Section 12)

[Sub-section (1)]

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 (2)]

"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 (3)]

"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated".

[Sub-section (4)]

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

Conclusion

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 Ram purchases the car. Ram is therefore entitled to reject the car and have refund of the price.

Q.3 Discuss the various types of implied warranties as per the Sales of Goods Act, 1930?

[May 19, 4 Marks] [RTP May 20] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

Implied Warranties: It is a warranty which the law implies into the contract of sale. In other words, it is the stipulation which has not been included in the contract of sale in express words. But the law presumes that the parties have incorporated it into their contract. It will be interesting to know that implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties.

Sections 14 and 16 of the Sale of Goods Act, 1930 discloses the following implied warranties:

- 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.

Q.4 What is the Doctrine of "Caveat Emptor"? What are the exceptions to the Doctrine of "Caveat Emptor"? [Nov 18, 6 Marks] [MTP Aug 18, 6 Marks] [RTP May 18] [Back Question of module] [Dec 20 - 4 Marks] [MTP Oct 21 - 4 Marks]

Related Question: "There is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale." Discuss the significance and State exceptions, if any. [RTP Nov 18] [Back Question of module]

Answer: Same Answer for Question No.4 as well as for Related question

1. The statement given in the question is the fundamental principle of law of sale of goods, sometime expressed by the maxim 'Caveat Emptor' meaning thereby 'Let the buyer beware'.
2. In other words, it is no part of the seller's duty in a contract of sale of goods to give the buyer an article suitable for a particular purpose, or of particular quality, unless the quality or fitness is made an express term of the contract.
3. The person who buys goods must keep his eyes open, his mind active and should be cautious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgement in the absence of any misrepresentation or guarantee by the seller.

There are, however, certain exceptions to the rule which are stated as under:

- i. **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.

- ii. **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.
- iii. **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description. If it is not so then seller is responsible.
- iv. **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.
- v. **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.
- vi. **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.
- vii. **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.
- viii. **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.

Q.5 What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? State also the implied warranties operative under the said Act. [MTP March 18, 6 Marks]
[RTP Nov 19] [April 19, 6 Marks]

Answer:

The following are implied conditions in a contract of sale by sample in accordance with Section 17 of the Sale of Goods Act, 1930;

- (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 a reasonable examination of the sample.

Regarding Implied Warranties: It is covered in Question no.3

Q.6 Explain the "condition as to Merchantability" and "condition as to wholesomeness" under the Sale of Goods Act, 1930. [RTP May 18] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Related Question: Mr. Amit was shopping in a self-service Super market. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition. Decide under the Sale of Goods Act, 1930, whether Mr. Amit would succeed in his claim? [RTP May 20]

Answer: Combined answer for both Question

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

Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

The expression "merchantable quality", though not defined, but it means goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.

Conclusion

Though the term 'merchantable quality' is not defined in the Act, it means that in the present case, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for the purpose for which it is being used.

In the instant case, on an examination of the bottle of cold drink, it exploded and injured the buyer. Applying the provision of Section 16(2), Mr. Amit would succeed in claim for damages from the owner of the shop.

Condition as to wholesomeness: - This point is only for Question No.6 and not for Related Question

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.

Example: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

Q.7 Distinguish between a 'Condition' and a 'Warranty' in a contract of sale. When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930? Explain. [RTP May 19] [RTP NOV 20] [Back Question of Module] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8 [RTP May 21] [Dec 21]

Answer: Difference between Condition and Warranty

Basis	Condition	Warranty
1. Meaning	A condition is a stipulation essential to the main purpose of the contract	Whereas a warranty is a stipulation collateral to the main purpose of the contract
2. Effect	Breach of condition gives rise to a right to treat the contract as repudiated	Whereas in case of breach of warranty, the aggrieved party can claim damage only
3. Interchangeability	Breach of condition may be treated as breach of warranty	Whereas a breach of warranty cannot be treated as breach of condition

According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:

- (i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition,
- (ii) Where the buyer elects to treat the breach of condition as breach of a warranty.
- (iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
- (iv) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Q.8 Mr. Das, a general store owner went to purchase 200 kg. of Basmati Rice of specific length from a whole seller. He saw the samples of rice and agreed to buy the one for which the price was quoted as ₹50 per kg. While examining the sample Mr. Das failed to notice that the rice a mix of long and short grain of rice.

The whole seller supplied the required quantity exactly the same as shown in the sample. However, when Mr. Das sold the rice to one of his regular customers she complained that the rice contained two different qualities of rice and returned the rice.

With reference to the provisions of The Sales of Goods Act, 1930, discuss the options open to Mr. Das for-grievance redressal. What would be your answer in case Mr. Das specified his exact requirement as to the length of rice? [July 21- 6 Marks]

Answer:

Sale by sample - Section 17 (2) of 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.

Implied conditions as to quality or fitness - Section 16 of Sale of Goods Act, 1930

An implied condition in a contract of sale that an article is fit for a particular purpose only arises when:

1. The purpose for which the goods are supplied is known to the seller,
2. The buyer relied on the seller's skills or judgement and
3. Seller deals in the goods in his usual course of business.

Conclusion

In the light of above provision and facts of the case:

1. Mr. Das will not be having any grievance redressal as he 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.
2. If Mr. Das specified his exact requirement as to the length of rice, in that case there would be implied condition as to quality and fitness of rice and Mr. Das may reject the rice, repudiate the contract & can also claim damages.

Q.9 Prashant reaches a sweet shop and ask for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies 'Sir, my all sweets are fresh and of good quality.' Prashant agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. Seller gives him one piece to taste. Prashant, on finding the quality is good, ask the seller to pack. On reaching the house, Prashant finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now, Prashant wants to avoid the contract and return the 'Burfi' to seller.

(a) State with reason whether Prashant can avoid the contract under the Sale of Goods Act, 1930?

(b) Will your answer be different if Prashant does not taste the sweet? [RTP Nov 21]

Answer:

According to Section 17 of the Sale of Goods Act, 1930, in the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality and the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

According to Section 15, 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. If the goods do not correspond with implied condition, the buyer can avoid the contract and reject the goods purchased.

(a) In the instant case, the sale of sweet is sale by sample and the quality of bulk does not correspond with quality of sample. Hence, Prashant can return the sweet and avoid the contract.

(b) In the other case, the sale of sweet is the case of sale by description and the quality of goods does not correspond with description made by seller. Hence, answer will be same. Prashant can return the sweet and avoid the contract.

Unit- 3: Transfer of Ownership and Delivery of Goods

Q.1 Referring to the provisions of the Sale of Goods Act, 1930, state the circumstances under which when goods are delivered to the buyer "on approval" or "on sale or return" or other similar terms, the property therein passes to the buyer.

M/s 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. [MTP Aug 18, 6 Marks] [RTP Nov 18]

Answer:

Goods sent on Approval or on Sale or Return basis [Sec. 24]: In case of Sale on "Sale or Return" basis, property in the goods passes to the buyer if -

- (a) **Approval:** Buyer signifies his approval or acceptance to the Seller, or
- (b) **Retention of Goods:** Buyer retains the Goods without giving notice of rejection within the agreed time frame or if no time frame has been agreed, within a reasonable time.
- (c) **Adopting the transaction:** Buyer does any act adopting the transaction i.e. any act exercising domination over the goods showing an unequivocal intention to buy, e.g. if he pledges the goods with a third party.

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.

Conclusion:

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.

Related Question: 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? [Dec-20, 6 Marks] [RTP May 21]

Answer:

Goods sent on Approval or on Sale or Return basis [Sec. 24]: Same as above

Sale for cash only or Return: 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., cash is paid for.

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

Since, Mr. K, who had taken delivery of the Two-Wheeler on Sale or Return basis and pledged the motor car to Mr. A, 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.

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Therefore, the property therein (Two-Wheeler) passes to Mr. K. Now in this situation, Mr. K cannot claim back her Motor Car from Mr. A, but he can claim the price of the motor car only.

2. On the other hand if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid, no property will pass to Mr. A. Thus, the pledge was not valid and R could recover the vehicle from Mr. A

Q.2 Mr. Samuel agreed to purchase 100 bales of cotton from Mr. Varun, 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? [MTP Oct 18, 6 Marks] [MTP March 18, 6 Marks] [RTP May 20] [MTP March 19, 6 Marks]

Answer

1. 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.
2. Further Section 18 read with Section 23 of the Act provides 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
 - i. Ascertained

- ii. **Appropriation:** For property to pass u/s 23, the following conditions must be satisfied -
- (a) Goods of the description mentioned in the contract must be **produced or obtained**.
 - (b) They must be in a **deliverable state**
 - (c) They must be **unconditionally appropriated** to the contract. **Unconditional appropriation** is where, in pursuance of the contract, Seller - (i) delivers the Goods to Buyer or to a carrier or other bailee for their transmission to Buyer and (ii) does not reserve the right of disposal. [Sec. 23(2)]
 - (d) The assent of the parties may be given expressly or impliedly and can be given either before or after the appropriation.
 - (e) **Example:** A having a quantity of sugar in bulk, more than sufficient to fill 20 bags, contracts to sell to B 20 bags of it. After the contract A fills 20 bags with the sugar, gives notice to B that the bags are ready and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B property in the sugar passes to B.
3. Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same purpose.

Conclusion

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. Samuel. As regards 40 bales, the loss would be borne by Mr. Varun, 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. Varun completely.

Q.3 J the owner of a Fiat car wants to sell his car. For this purpose, he hands 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 given reasons whether J would succeed. [RTP May 18] [RTP Nov 19] [RTP Nov 20]

Answer:

1. The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27.
2. 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)].
3. 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:
 - a) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
 - b) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
 - c) The buyer should act in good faith.
 - d) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

Conclusion

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.

Related Question: Mr. Shekhar wants to sell his car. For this purpose, he appoints Mr. Nadan, a minor as his agent. Mr. Shekhar instructs Mr. Nadan that car should not be sold at price less than Rs. 1,00,000. Mr. Nadan ignores the instruction of Mr. Shekhar and sells the car to Mr. Masoom for Rs. 80,000. Explain the legal position of contract under the Indian Contract Act, 1872 whether:

- (i) Mr. Shekhar can recover the loss of Rs. 20,000 from Mr. Nadan?
- (ii) Mr. Shekhar can recover his car from Mr. Masoom? [MTP Nov 21- 4 Marks]

Answer:

According to the provisions of Section 11 of the Indian Contract Act, 1872, a minor is disqualified from contracting. A contract with minor is void-ab-initio but minor can act as an agent. But he will not be liable to his principal for his acts.

In the instant case, Mr. Shekhar appoints Mr. Nadan, a minor as his agent to sale his car. Mr. Shekhar clearly instructed to Mr. Nadan that the minimum sale price of the car should be Rs. 1,00,000 yet Mr. Nadan sold the car to Mr. Masoom for Rs. 80,000.

(i) Considering the facts, although the contract between Mr. Shekhar and Mr. Nadan is valid, Mr. Nadan will not be liable to his principal for his acts. Hence, Mr. Shekhar cannot recover the loss of Rs. 20,000.

(ii) Further, Mr. Masoom purchased the car from agent of Mr. Shekhar, he got good title. Hence, Mr. Shekhar cannot recover his car from Mr. Masoom.

Q.4 "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. [May 19, 6 Marks] [RTP May 20] [MTP Oct 20 - 6 Marks] [Back Question of Module] [Dec 20, 6 Marks] [RTP Nov 21] [MTP Oct 21 - 6 Marks] [MTP Nov 21 - 4 Marks]

Answer:

1. **Exceptions to the Rule "Nemo dat Quod Non Habet":** The term means, "no one can give or transfer goods what he does not himself own".
2. **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:**
 - (i) **Effect of Estoppel (Section 27):** Where the owner is stopped 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.
 - (ii) **Sale by a Mercantile Agent:** Same as sub point (a), (b), (c) & (d) of point 3 of answer 3 above.
 - (iii) **Sale by one of the joint owners:** If one of the several joint owners of goods has the sole possession of them with the permission of the others, the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell. (Section 28)
 - (iv) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by 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).

- (v) **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 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)]
- (vi) **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of 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 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)]
- (vii) **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)]
- (viii) **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.
 - (iii) Sale by a pawnee under default of pawnor will give valid title to the purchaser.

Q.5 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? [Nov 18, 6 Marks] [MTP Oct 19, 6 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

According to section 44 of the Sales of Goods Act, 1930, 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.

If the price of the goods would not have settled in cash and some amount would have been pending

In that case 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].

Q.6 What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods. [May 18, 6 Marks] [Nov 19, 4 Marks]

Answer:

Sale of unascertained goods and Appropriation (Section 23 of the Sale of Goods Act, 1930):

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 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 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.

Q.7 What are the rules related to Acceptance of Delivery of Goods? [RTP May 19]

Answer:

Rules related to acceptance of delivery: Acceptance is deemed to take place when the buyer-

- (a) intimates to the seller that he had accepted the goods; or
- (b) does any act to the goods, which is inconsistent with the ownership of the seller; or
- (c) retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them (Section 42).

Ordinarily, a seller cannot compel the buyer to return the rejected goods; but the seller is entitled to a notice of the rejection. Where the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not take delivery within a reasonable time, he is liable to the seller for any loss occasioned by the neglect or refusal to take delivery, and also reasonable charge for the care and custody of the goods (Sections 43 and 44).

Q.8 "Risk Prima facie passes with the property" Elaborate in the Context to the Sale of Goods Act, 1930. [July 21 - 4 marks]

Answer:

1. Seller's risk: Unless otherwise agreed upon, goods remain only at the Seller's risk until the property therein is transferred to the Buyer. Hence, risk is borne by the Buyer, only when the property in the Goods passes over to him.

2. Risk passes with property: When the property in Goods is transferred to Buyer, goods are at the Buyer's risk, irrespective of whether delivery has been made or not. [Sec. 26]

3. Exceptions: The following are the exceptions to the general rule that risk passes with property

(a) Delayed delivery: Where delivery of Goods has been delayed through the fault of either Buyer or Seller, goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

(b) Agreement between parties: The parties may by special agreement stipulate that 'risk' will pass sometime after or before passing of property.

(c) Usage of Trade: In some cases trade customs may put the ownership and risk separately in two parties.

4. Bailee's Duties: Nothing contained in Sec. 26 shall affect the duties or liabilities of either the Seller or Buyer as a bailee of Goods of the other party.

Unit- 4: Unpaid Seller

Q.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, 6 Marks] [MTP April 19, 6 marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

Position of Mr. D: Mr. D sold some goods to Mr. E for Rs 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.

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.

Related Question: Suraj sold his car to Sohan for Rs.75,000. After inspection and satisfaction, Sohan paid Rs.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. [RTP Nov 20]

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.

Q.2 What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930? [Nov 19, 6 Marks]

Answer

Rights of an unpaid seller against the goods: As per the provisions of Section 46 of the Sale of Goods Act, 1930, Rights of an Unpaid Seller against the goods are as follows:

When Property in Goods has passed to the Buyer -	When property in Goods has NOT passed to the Buyer -
<ul style="list-style-type: none"> • Right of Lien on the Goods in his possession, • Right of stoppage of Goods in transit if the Buyer becomes insolvent, • Right of Resale. 	In addition to those 3 remedies, the right of withholding delivery.

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 (regain) 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

Related Question: 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? [MTP Nov 21 - 6 Marks]

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.

Q.3 Explain the provisions of law relating to unpaid seller's 'right of lien' and distinguish it from the "right of stoppage the goods in transit". [MTP Oct 18, 6 marks] [RTP Nov 18]

Answer: Point (i) as it is as given In Answer No.1 above.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

According to Section 49 the unpaid seller loses his lien on goods:

- (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.

Note: The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree to the price of the goods.

Right of lien and Right to stoppage the goods in transit; distinction:

Basis of Difference	Right of Lien	Right of Stoppage in Transit
1. Essence	To retain possession	To regain possession
2. Essentials	Seller should be in possession of goods	(i) Seller should have parted with the possession (ii) possession should be with a carrier and (iii) Buyer has not acquired the possession.
3. Buyer Insolvency	Right of lien can be exercised even when the buyer is not insolvent	But it is not the case with right of stoppage in transit.
4. Begins/Ends	Right of stoppage in transit begins when the right of lien ends. Thus, the end of the right of lien is the starting point of the right of stoppage the goods in transit.	

Q.4 Describe the term "unpaid seller" under the Sale of Goods Act, 1930? When can an unpaid seller exercise the right of stoppage of goods in transit? [RTP May 18] [MTP March 19, 6 marks] [MTP Oct 19, 6 Marks]

CSA

Answer:

Unpaid Seller

According to Section 45 of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

- (a) the whole of the price has not been paid or tendered.
- (b) a bill of exchange or other negotiable instrument has been received as conditional payment, and it has been dishonoured.

Right of stoppage of goods in transit

When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer.

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

- (a) The seller must be unpaid.
- (b) The seller must have parted with the possession of goods.
- (c) The goods must be in the course of transit.
- (d) The buyer must have become insolvent.
- (e) The right is subject to provisions of the Act.

Related Question: Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. [RTP May 19] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

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.

Same point as (a) to (e) above

Conclusion

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.

Related Question: AB sold 500 bags of wheat to CD. Each bag contains 50 Kilogramme of wheat AB sent 450 bags by road transport, and CD himself took the 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. [Dec 21 - 3 Marks]

Answer:

Provision same as given in above answer

Conclusion

Applying the provisions to the given case, AB being still unpaid, can stop the 450 bags of wheat sent by road transport as these goods are still in transit.

Related Question: 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? [MTP Oct 20 -6 Marks]

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 Sales 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.

Q.5 Referring to the provisions of the Sale of Goods Act, 1930, state the rules provided to regulate the "Sale by Auction." [RTP Nov 18] [Jan 21- 4 Marks]

Answer:

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

- (a) **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.
- (b) **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.
- (c) **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.
- (d) **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.
- (e) **Reserved price:** The sale may be notified to be subject to a reserve or upset price; and
- (f) **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Related Question: Rachit arranges an auction to sale an antic wall clock. Megha, being one of the bidders, gives highest bid. For announcing the completion of sale, the auctioneer fall the hammer on table but suddenly hammer brakes and damages the watch. Megha wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930? [RTP Nov 21]

Answer:

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

In the instant case, Megha gives the highest bid in the auction for the sale of antic wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock.

On the basis of above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table. Hence, in the given problem, sale is not completed. Megha will not be liable for loss and can avoid the contract.

Q.6 Suraj sold his car to Sohan for Rs. 75,000. After inspection and satisfaction, Sohan paid Rs. 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. Advice Suraj as to what remedy is available to him against Sohan. [RTP Nov 19]

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)].

Conclusion

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.

Q.7 What are the rights of buyer against the seller, if the seller commits a breach of contract under the Sale of Goods Act, 1930? [RTP May 20] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

If the seller commits a breach of contract, the buyer gets the following rights against the seller:

1. **Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
2. **Suit for specific performance (Section 58):** Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.
3. **Suit for breach of warranty (section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may -
 - (i) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (ii) sue the seller for damages for breach of warranty.
4. **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
5. **Suit for interest:** Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.

Q.8 Discuss the rights of an unpaid seller against the buyer under The Sales of Goods Act, 1930. [July 21- 6 Marks]

Answer:

An Unpaid Seller has the following rights against the Buyer -

1. Suit for price [Sec. 55(1)]:

(a) Where under a contract of sale the property in Goods has passed to Buyer, and Buyer wrongfully neglects or refuses to pay the price, the Seller can sue the Buyer for the price of goods.

(b) When under the contract of sale, price is payable on a certain day irrespective of delivery and Buyer wrongfully neglects or refuses to pay the price, Seller may sue him for the price. Unpaid Seller has this right even though property has not passed to the Buyer and Goods have not been appropriated to the contract.

2. Damages for non-acceptance [Sec. 56]: Where the Buyer wrongfully neglects or refuses to accept and pay for goods, the Seller may sue him for damages for non-acceptance.

3. Repudiation of contract before due date [Sec. 60]: Where the Buyer repudiates a contract before the date of delivery, the Seller may (i) treat the contract as subsisting and wait till the date of delivery or (ii) treat the contract as rescinded and sue the Buyer for damages for the breach on his part.

4. Interest by way of damages and special damages [Sec. 61]:

(a) When under a contract of sale, the Seller tenders goods to the buyer who wrongfully refuses or neglects to accept and pay the price, the Seller has a further right to claim interest on the amount of price.

(b) Unpaid Seller can claim interest only when he can recover the price, i.e., if the Seller's remedy is to claim damages, then he cannot claim interest.

(c) The interest may be calculated from the date of tender of Goods or from the date on which the price was payable.

(d) The rate of interest to be awarded is at the discretion of the Court.