

SOGIA

1° Destruction of goods before & after contract of sale.

⇒ Sec-7 :- Where the contract of sale of specific goods the contract is void if the goods without the fault & knowledge of the seller or the buyer have perished prior to transfer of ownership in goods.

Sec-8 :- Where there is agreement to sell of specific goods & subsequent which without the fault of buyer & the seller the goods are so damaged, unable to meet its description the agreement is void, due to loss of subject matter.

2° Cases under which breach of condition treated as breach of warranty.

i) Where the buyer all together waives performance of condition, Voluntary for his own benefit.

ii) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

iii) Where the contract is non-severable & the buyer has accepted either the whole goods or any part thereof, as stated under Sec-72 of contract Act.

3. What are the Rules to regulate Auction sale?

→ Sec-64, Deals with the provision of auction sale is an arrangement, where a group of bidder engage in a transaction to buy a commodity at the highest price in order. The Auctioneer is the agent & is governed by law of agency. The legal Rules related to auction sale are given below:-

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

b. The auction is complete of the hammer or any other customary hammer & before this the bidder may retract his bid.

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

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

e. The sale may be subject to a minimum price or upset price.

4. Sale or Return basis under Section-24.

→ when the goods are delivered to the buyer on approval or on Return basis, the property there in transfer to the buyer provided that:-

i) where signifies his approval or does any other act adopting the transaction.

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

iii) He does something to the goods Equivalent of accepting the goods.

Eg. pledge.

5. Explain 6 circumstances in detail in which non-owner transfer his title.

→ Transfer of title by non-owner is defined under Sec-27, contain exceptional cases under which a non owner can transfer a better title to a bonafide purchaser.

1. Sale by Merchantile agent :-

A sale by a merchantile agent is valid by transfer of document of title to goods if following condition are met:-

a) If he was in possession of goods

b) If sale was happened in ordinary course of business.

c) If the buyer has acted in good faith

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

③ Sale by a person in a possession under voidable contract:-

A buyer would acquire a valid title to the goods bought by him from the seller who had obtained goods under voidable contract & such contract is in existence at the time of sale, which is in good faith

4. Effect of Estoppel :-

When the owner is Estopped by the contract from denying the Seller is authority to sell, the transferee will get 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, reverse the goods, the buyer acquire the 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 Seller obtain possession of goods, he may Resale, Pledge, Mortgage Sale goods & transferee shall get a valid title to such good other than in case of hire purchase.

7. Right of unpaid Seller in relation of goods.

→ unpaid seller is a person who has not receive valuable consideration for his goods.

The right of unpaid seller in relation to the goods are follow.

→ Right of Lien (Sec-47) when the ownership in goods transferred to the buyer, the Seller has the right to retain such possession.

of such goods. It :-

- i) where the goods have been sold on credit without any stipulation to credit.
- ii) where the goods have been sold on credit; but credit period Expire.
- iii) where the buyer become insolvent.

→ Right to Stoppage In transit (Sec-50)
Where the Seller has parted with the possession of goods, the right to stoppage in transit arises only when;

- a) Goods are in transit
- b) price is unpaid
- c) Buyer is insolvent
- d) Seller has parted with possession.

→ Right to Resale: (Sec-54)

The right to resale is a 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 ensure that the seller is protected against any loss arising due to subsequent sale & retain any benefit therefrom.

Provided that where the term of contract is stated, the fact of resale, no notice shall be required prior to sale.

7. Sale by sample. The impact of such sale by sample?

→ In a contract of sale by sample there is an implied condition as per sec-17:-

- a) The bulk good shall correspond with sample.
- b) The buyer shall have reasonable opportunity to compare the bulk with sample.
- c) The good shall be free from any type of defect which makes them un-merchantable & are not identifiable on the goods unless they are put to use.
i.e. latent defect.

Q. Right of ownership. (Sec-26)

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

→ provided that, where the delay in delivery result in damage to the goods the party in default shall be responsible.

→ provided further that nothing in this section shall effect the right & duties of the buyer in respect goods of the other party.

Q. What is Caveat Emptor? state its exceptions.

→ Caveat Emptor stated that under Sec-16 of SGA, it is derived from a latin term which means the "let the buyer beware". The buyer shall be responsible for choice of goods made by him. if the goods turn out to be defective or does not serve purpose the seller can't be blame for poor selection.

Exceptions:-

1) fitness as to quality or use:- where the buyer makes known to the seller the particular purpose of his purchase the seller become liable to supply goods as per requirement.

2) Goods sold by description:- where goods are sold by description the rule of caveat Emptor doesn't apply.

3. Goods Sold by Sample :- When the goods are brought by Sample the bulk of the goods shall comply with sample.

4) Trade Usage :- An implied condition or warranty attached to contract due to regular trade, but the party is to be complied by both the party.

→ Seller Actively conceal defect in goods where the seller actively conceal defect in the goods with an intention to commit a fraud against the buyer the doctrine of Caveat Emptor does not apply.

Q → Right of unpaid seller against buyer.
unpaid seller is a person, who has not received valuable consideration for his goods. The right of the unpaid seller against the buyer are :-

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

Sec-56 Suit for Non-acceptance :- where the buyer wrongfully refuses, neglects or refuses to accept & pay for the goods the seller may sue him for damages for Non-acceptance.

Sec-60 Repudiation of contract before due date :- where the buyer repudiate the contract before date of delivery the seller shall treat the contract as rescind & sue for damages this is called Anticipator Breach.

Sec. 61:- Suit for interest: - Where there is a specific agreement between buyer & seller as to payment of interest, in case of delayed payment in the absence of such agreement the court can award interest.

Q What are the essentials regarding appropriation of unascertain goods?

- a) There is a contract for sale of unascertain good or future goods
- b) The goods must be in deliverable state.
- c) The goods shall conform to description & quality stated in the contract.
- d) The goods must be conditionally appropriated to the contract.

e) Appropriation must be made by: -

- i) Seller with assent of Buyer
- ii) Buyer with assent of seller

Q₂ $\left\{ \begin{array}{l} \text{Description} \\ \text{U - unascertain} \end{array} \right.$

A₂ $\left\{ \begin{array}{l} \text{Assent} \\ \text{Approval} \end{array} \right.$

f) The assent may be Express or Implied.

g) The assent may be given before or after appropriation.

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