

5. Where the property in goods has not passed to the buyer,

Q-3 Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ₹ 125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase.

The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.

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

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

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

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

Decide the ~~fact~~ 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 ?

[Sugg.-Nov'19, 6 Marks]

Ans. Provision of law:

- This question relates to the provision of sale by sample as well as Caveat Emptor under Sale of Goods Act, 1930.
- As per the provision when the buyer purchases the goods by sample then goods delivered to him must match with sample and buyer must be given an opportunity to compare with the sample.
- Doctrine of Caveat Emptor provides that buyer should be careful while selecting the

goods if later on the goods are found defective or unfit for buyer's purpose then he cannot blame seller.

Facts of the case:

- In this case Mrs. Geeta went to the local rice and wheat shop and asked for 100 kgs of Basmati Rice. She also agreed to the price of Rs. 125 and insisted to see the sample. The shopkeeper showed her the bowl of rice as a sample the sample was of Basmati rice but it was mix of long and short grains. Mrs. Geeta examined casually without noticing this fact and Rice were delivered to her. The rice delivered exactly corresponded to sample. 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. Mrs. Geeta wants to file a case of fraud.

Conclusion:

- Here in this case rice delivered was matching with sample as well as description and Mrs. Geeta was also given an opportunity to compare the goods with sample and therefore there is no default or breach from the side of seller. It was duty of Mrs. Geeta to check whether the goods are according to her purpose or not and therefore under Caveat Emptor she will be considered as liable.
- If Mrs. Geeta specified her exact requirement of length of rice then Caveat Emptor would not apply as she relied on expertise of seller and therefore she could cancel the contract.

Q-6 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? [MTP.-March'21, MTP.-May'20, Sugg.-May'19, 6 Marks]

Ans. **Provision of Law:**

This question relates to the provision of Implied Conditions under Sale of Goods Act, 1930.

➔ Under the Sale of Goods Act, 1930 the goods must be fit for the purpose for which it is purchased and if it is not suitable for the purpose then buyer can reject the same or claim damages or both.

This is known as Implied Condition as to quality or Fitness.

➔ It is also provided that for this condition to apply buyer must disclose his purpose and seller must be usually dealing into the business of the same.

Facts of Case:

- In this case Mr. Das went to M/S Woodworth and 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. and he required the wood which would be best suited for the purpose of making wooden doors and window frames.

Q-9 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?

[MTP.-Oct'19, Sugg.-Nov'18, 6 Marks]

Ans. **Provision of Law:**

- The question relates to the provision of passing of property and passing of risk under Sale of Goods Act, 1930.
- In case of unconditional contract for specific or ascertained goods in a deliverable state and it is communicated to buyer then property passes as and when the contract is made and it is a provision that the risk will always follow the ownership. The person who is an owner shall bear the risk unless there is default of some other party

Facts of Case:

- Here in this case Mr.G sold some goods to Mr.H and issued invoice but payment was pending for the same. The goods were packed and lying in the warehouse of Mr.G. The goods were inspected by H's agent were found to be proper. Mr.G told Mr.H to take away the goods to enable him to store other goods purchased by him but Mr.H did not take delivery of goods therefore Mr.G kept the goods out of warehouse in open space and due to rain some of the goods were damaged.

Conclusion:

- Here in this case the ownership of the goods was already passed to Mr.H and he was already communicated to take delivery therefore in this situation the loss will fall on Mr.H as ownership was already passed to him and he was already informed to take delivery.
- Answer will remain same if the dues were not settled as it is immaterial whether price is paid or not.

Q-12 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.

[MTP.-April'19, Sugg.-May'18, 6 Marks]

Ans. **Provision of Law:**

- This question relates to rights of Unpaid seller under Sale of Goods Act, 1930
- A seller will be treated as an unpaid seller if in case of cash sales he has not received the cash or in case cheque or negotiable instrument has been received as conditional payment and condition has not been fulfilled by the reason of dishonor or otherwise.
- Unpaid seller have two types of Rights: 1) Right against goods 2) Right against buyer
- Until the goods are delivered to buyer, buyer can have right against goods but once the goods will be delivered to buyer the right of unpaid seller against goods will cease and unpaid seller will have rights only against buyer.
- In case the seller has delivered the goods on credit and buyer have not paid the price unpaid seller will have a right to sue for price which is known as Right to sue and he can also claim the interest on such price till the Price is paid which is also known as

Facts of the Case:

- In this case 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.

Conclusion:

- As per the provision position of Mr. D is Unpaid Seller. And he has a right to sue for price as well as interest against Mr. E. He will not have any right against goods as the goods are already delivered.

Q-16 Mr. S agreed to purchase 100 bales of cotton from V, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent?

xAns.

Provision:

As per Section 21 of Sale of Goods Act 1930, when there a contract for Sale of specific goods which are not in a deliverable state, property in goods passes to buyer when;

- (1) seller puts the goods in deliverable state and
- (2) buyer comes to know about deliverable state of goods.

As per Section 26, Risk follows ownership. It means, the risk of loss of goods is borne by the party who has ownership of goods.

Fact of the Case:

In the given question, there was a contract for sale of 100 bales of cotton to be packed and delivered to buyer. However, seller could pack only 60 bales in presence of buyer's agent so its ownership has been passed to buyer, but remaining goods were still not packed so its ownership is not passed to buyer.

Conclusion:

Considering above provisions and explanations, it may be concluded that loss of 60 bales of cotton which were packed will be borne by Mr. Samuel (Buyer) and loss of remaining 20 bales of cotton which were not packed will be borne by Mr. Varun (seller).

of cotton which were not p

Q-17 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]

Ans. Provision of law:

- This question relates to provision of breach of condition under Sale of Goods Act, 1930.
- Under Sale of Goods Act, 1930 goods must be of the merchantable quality if not then buyer can cancel the contract and claim damages. Merchantable quality is not defined in act but if a person of ordinary prudence can consider this as merchantable then it will not be a breach of contract.

Facts of Case:

- In this case 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.

Conclusion:

- Here in this case if Mr. Amit had purchased the bottle and it was exploded in his hand then he could have claimed for breach of condition. But if he was examining it without purchasing then he could not claim any damages for breach of condition.

Q-20 J the owner of a car wants to sell his car. For this purpose, he hand over the car to P, a mercantile agent for sale at a price not less than ₹ 50,000. The agent sells the car for ₹ 40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide given reasons whether J would succeed.

[RTP.-Nov'19]

Ans. **Provision:**

As per Proviso to Section 27 of Sale of goods Act 1930, A Sale made by Mercantile agent to buyer will pass good title to buyer in following circumstances;

- (1) agent was in possession of goods with consent of owner,
- (2) the sale was made by agent acting in ordinary course of business and
- (3) buyer bought goods in good faith, without having any notice about no authority of seller to sell goods.

Fact of the Case:

In the given question, Y agent of X, sold car to Z (below Rs.500000, instead of instruction by X non to sell below Rs.500000) who bought the goods in good faith, the sale is treated as valid.

Conclusion:

Considering above provisions, X cannot recover Car from Z as Z has got good title over goods because he Purchased from an agent and that too without knowledge of restriction on Agent's authority.

Q-21 What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods

Q-25(i) 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 Ram is having now under the Sale of Goods Act, 1930 ?

(ii) Referring to the provisions of the Sale of Goods Act, 1930, state the rules provided to regulate the "Sale by Auction."

[Sugg.-Jan'21, RTP.-Nov'18 '4 Marks]

Ans. Provision:

As per Section 16(1) of Sale of Goods Act 1930, ordinarily there is no implied condition as to Quality or fitness for buyer's purpose. However, the condition as to reasonable fitness of goods for particular purpose may be implied if it is made known to seller.

Fact of the Case:

In the given question, Ram bought Maruti car to be fit for touring purpose, on suggestion of Shyam, a motor car dealer. However car to be not fit for touring purpose.

Conclusion:

Considering above provisions and explanation, it may be concluded that Ram may reject Car by cancelling contract and claim price back from Shyam.

(ii) **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.

Section 61 of the Sale of Goods Act, 1930 state the circumstances under

Q-26 (i) 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.

Ms. Preeti owned a motor car which she handed over to Mr. Joshi on sale or return basis. After a week, Mr. Joshi pledged the motor car to Mr. Ganesh. Ms. Preeti now claims back the motor car from Mr. Ganesh. Will she succeed? Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to Ms. Preeti. [RTP-Nov'18]

Ans.(i) As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

- (a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- (c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question. Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis and pledged the motor car to Mr. Ganesh, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Motor car) passes to Mr. Joshi. Now in this situation, Ms. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only.

Q-30 J the owner of a Fiat car wants to sell his car. For this purpose he hand over the car to P, a mercantile agent for sale at a price not less than ₹ 50, 000. The agent sells the car for ₹ 40, 000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide given reasons whether J would succeed.

[RTP-May'18]

Ans. The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:

- (1) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
- (2) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
- (3) The buyer should act in good faith.
- (4) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. A, the buyer, therefore obtained a good title to the car. Hence, J in this case, cannot recover the car from A.

cannot recover the car from him.

Q-31 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

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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 ?

Ans.(i) According to section 44 of the Sales of Goods Act, 1932, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods. **(6 Marks)**

The property in the goods or beneficial right in the goods passes to the buyer at appointment 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 therein 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.

(ii) If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:

(a) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]

(b) Where under a contract of sale the price is payable on a certain day 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-32 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.-April'21, MTP.-March'19, 6 Marks]

Ans. Provision:

As per Section 21 of Sale of Goods Act 1930, when there a contract for Sale of specific goods which are not in a deliverable state, property in goods passes to buyer when;

- (1) seller puts the goods in deliverable state and
- (2) buyer comes to know about deliverable state of goods.

As per Section 26, Risk follows ownership. It means, the risk of loss of goods is borne by the party who

has ownership of goods.

Fact of the Case:

In the given question, there was a contract for sale of 100 bales of cotton to be packed and delivered to buyer. However, seller could pack only 60 bales in presence of buyer's agent so its ownership has been passed to buyer, but remaining goods were still not packed so its ownership is not passed to buyer.

Conclusion:

Considering above provisions and explanations, it may be concluded that loss of 60 bales of cotton which were packed will be borne by Mr.Samuel (Buyer) and loss of remaining 20 bales of cotton which were not packed will be borne by Mr.Varun (seller).

Under the Sale of Goods Act 1930.

Q-34 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?

[Sugg.-Jan'21, 6 Marks]

Ans.(i) According to Section 15 of the Sale of Goods Act, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract. Further, as per Section 16(I) of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

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

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

Q-35 What are the implied conditions:

Q-57 Shubhangi went to a Jewellery shop and asked the salesgirl to show her diamond necklace with Sapphire stones. The Jeweller told her that we have a lot of designs of diamond necklace but with blue stones. If she chooses for herself any special design of diamond necklace with blue stones, they will replace blue stones with Sapphire stones. But for the Sapphire stones they will charge some extra cost. Shubhangi selected a beautiful designer necklace and paid for it. She also paid the extra cost of Sapphire stones. The Jeweller requested her to come back a week later for delivery of that necklace. When she came after a week to take

delivery of necklace, she noticed that due to Sapphire stones, the design of necklace had been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same.

Answer the following questions as per the Sale of Goods Act, 1930.

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

[RTP Dec. '23]

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

(i) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Shubhangi and Jeweller and not a sale. Even though the payment was made by Shubhangi, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Sapphire Stones, the original design is disturbed, necklace is not in original position. Hence, Shubhangi has right to avoid the agreement to sell and can recover the price paid.

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

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

Q-59 Mrs. Kanchan went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ₹ 125 per kg to which she agreed. Mrs. Kanchan insisted that she would like to see the sample of what would be provided to her by the shopkeeper before she agreed upon such purchase.

The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.

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

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

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

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

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

[RTP Dec. '23]

Ans.

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

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

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

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

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

(iii) In case Mrs. Kanchan specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.

Q-60 Ravi sold 500 bags of wheat to Tushar. Each bag contains 50 Kilograms of wheat. Ravi sent 450 bags by road transport and Tushar himself took remaining 50 bags. Before Tushar receives delivery of 450 bags sent by road transport, he becomes bankrupt. Ravi being still unpaid, stops the bags in transit. The official receiver, on Tushar's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

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

[RTP Dec. '23]

subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit and may retain them until paid or tendered price of the goods. When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.

In the instant case, Tushar, the buyer becomes insolvent, and 450 bags are in transit. Ravi, the seller, can stop the goods in transit by giving a notice of it to Tushar. The official receiver, on Tushar's insolvency cannot claim the bags.

Q-61 Prakash reaches a sweet shop and asks for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies "Sir, my all sweets are fresh and of good quality." Prakash agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. The seller gives him one piece to taste. Prakash, on finding the quality is good, ask the seller to pack. On reaching the house, Prakash finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now Prakash wants to avoid the contract and return the 'Burfi' to the seller.

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

[RTP June '24]

(b) Will your answer be different if Prakash does not taste the sweets?

Ans. By virtue of provisions of 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, Prakash can return the sweets 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. Prakash can return the sweets and avoid the contract.

Q-62 Akansh purchased a Television set from Arvind, the owner of Gada Electronics on the condition that first three days he 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.

Arvind demands the price of a Television set from Akansh. Whether Akansh is liable to pay the price under the Sale of Goods Act, 1930?

Who will ultimately bear the loss?

[RTP June '24]

Ans. 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 the above provisions and fact, the property is not passed 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. Arvind.

Q-63 Mr. Arun contracted to sell his swift car to Mr. Nikhil. Both missed to discuss the price of the said swift car. Later, Mr. Arun refused to sell his swift car to Mr. Nikhil on the ground that the agreement was void, being uncertain about the price. Does Mr. Nikhil have any right against Mr. Arun under the Sale of Goods Act, 1930? [RTP June '24]

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

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

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

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

Q-64 Mr. Shankar sold 1000 Kgs wheat to Mr. Ganesh on credit of 3 months.

Wheat was to be delivered after 10 days of contract. After 5 days of contract, a friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the information of friend, Mr. Shankar applied the right to lien and withheld the delivery. With referring to the provisions of the Sale of Goods Act, 1930:

- (i) State, whether Mr. Shankar was right in his decision? [RTP June '24]

- (ii) What would be your answer if Mr. Ganesh became insolvent within five days of contract?

Ans. According to Section 45(1) 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 was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

Further, Section 47 provides about an unpaid seller's right of lien.

Accordingly, an unpaid seller can retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered. This right can be exercised by him in the following cases only:

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

In the instant case, Mr. Ganesh purchased 1000 Kg wheat from Mr. Shankar on 3 month's credit which was to be delivered after 10 days of contract. But, after 5 days of contract, one friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the belief of friend, Mr. Shankar applied the right to lien and withheld the delivery.

- (i) On the basis of above provisions and facts, it can be said that even Mr. Ganesh was an unpaid seller until the term of credit i.e. has expired, Mr. Shankar had to perform his promise of supplying 1000 Kg of wheat.
- (ii) In case Mr. Ganesh became insolvent before the delivery of wheat, Mr. Shankar had the right to apply the lien and he could withhold the delivery.