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CH. 2: SALES OF GOODS ACT, 1930

Q1 Avyukt purchased 100 Kgs of wheat from Bhaskar at ` 30 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Avyukt wants his price on the contention that no delivery has been done by seller. Whether Avyukt is right with his views under the Sale of Goods Act, 1930.

Answer -

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

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

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

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

Q2) 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?

Answer

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

According to Section 9 of the Sale of Goods Act, 1930, the price in a contract of sale may be fixed by the contract or may be left to be fixed in 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.

Q3) Simran went to a Jewellery shop and asked the salesgirl to show her diamond bangles with Ruby stones. The Jeweller told her that we have a lot of designs of diamond bangles but with red stones if she chooses for herself any special design of diamond bangle with red stones, they will replace red stones with Ruby stones. But for the Ruby stones they will charge some extra cost. Simran selected a beautiful set of designer bangles and paid for them. She also paid the extra cost of Ruby stones. The Jeweller requested her to come back a week later for delivery of those bangles. When she came after a week to take delivery of bangles, she noticed that due to Ruby stones, the design of bangles has been completely disturbed. Now, she wants to terminate the contract and thus, asked the Jeweller to give her money back, but he refused for the same. Answer the following questions as per the Sale of Goods Act, 1930.

1. State with reasons whether Simran can recover the amount from the Jeweller.
2. What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same?

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.

1. On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Simran and Jeweller and not a sale. Even though the payment was made by Simran, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Ruby Stones, the original design is disturbed, bangles are not in original position. Hence, Simran has right to avoid the agreement to sell and can recover the price paid.
2. If Jeweller offers to bring the bangles in original position by repairing, he cannot charge extra cost from Simran. Even though he has to bear some expenses for repair; he cannot charge it from Simran.

Q4) 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.

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. Difference between Condition and Warranty

- a) 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.
- b) 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.
- c) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

2. 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:

- VIMP
- Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition.
 - Where the buyer elects to treat the breach of condition as breach of a warranty.
 - Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
 - Where the fulfilment of any condition or warranty is excused by law due to impossibility or otherwise.

Q5) Ram consults Shyam, a motorcar 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?

Answer: -

Provision: [The Sale of Goods Act, 1930]

- A stipulation in a contract of sale with reference to goods, which are the subject thereof, may be a condition or a warranty.
- 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.
- 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.
- 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.

Facts of Case:

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.

Conclusion:

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

Q6) 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?

Answer: -

Provision: [The Sale of Goods Act, 1930]

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

In this case, 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.

Conclusion:

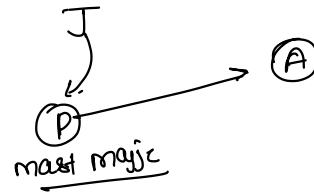
Therefore, the implied condition as to the fitness for the purpose does not apply. Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act, 1930.

Q7) 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 Rs 50, 000. The

agent sells the car for Rs 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.

Answer: -

Provision: [The Sale of Goods Act, 1930]

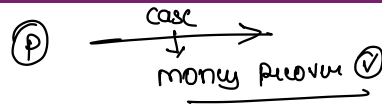


1. The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].
2. 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.

Facts of Case:

In the given case J was the owner of Fiat Car, which he wants to sell for this he appointed P and mercantile agent putting one condition that price should not be less than Rs.50,000. However, P sells the car for Rs. 40,000 to A who buys the car in good faith without having any knowledge of fraud. P misappropriated the money received from sell of that car.

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.

Q8) 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.

- State with reason whether Prakash can avoid the contract under the Sale of Goods Act, 1930?
- Will your answer be different if Prakash does not taste the sweets?

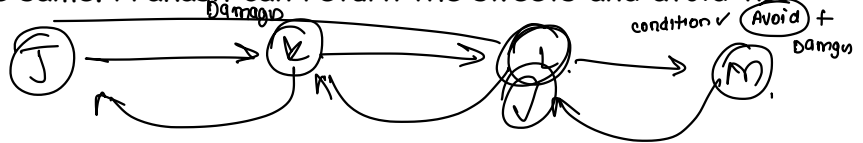
Answer

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.

- 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.
- 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.



Q9) Certain goods were sold by sample by J to K, who in turn sold the same goods by sample to L and L by sample sold the same goods to M. M found that the goods were not according to the sample and rejected the goods and gave a notice to L. L sued K and K sued J. Can M reject the goods? Also advise K and L as per the provisions of the Sale of Goods Act, 1930.

Answer

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

- ✓ 1. the bulk shall correspond with the sample in quality;
- ✓ 2. the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

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

With regard to K and L, L can recover damages from K and K can recover damages from J. But, for both K and L, it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sale of Goods Act, 1930. Damages ✓

Q10) 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?

Answer: -

Provision: [The Sale of Goods Act, 1930]

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 ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.
3. Such assent may be express or implied. 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. (100) (60)

Facts of Case:

1. Mr. Samuel agreed to purchase 100 bales from Mr. Varun and sent his men to take delivery of the same. Mr. Varun were able to pack only 60 bales.
2. Later on, there was accidental fire in Varun's place, due to which all the stock including those 60 bales to be delivered to Mr. Samuel was destroyed.

Answer:

Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly.

- a) 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.

(seller)

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.

Q11) 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, analyze 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?

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. 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.
2. 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
3. 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.

Facts of case:

In given question Mr. G sold some goods to Mr. H but payment of the same was not received that day. Goods were packed & lying in godown of Mr. G. agent of Mr. H inspected the goods and later on payment was made in cash. Just after receiving cash, Mr. G asked Mr. H to take away goods so he can store his other goods at such place but Mr. H did not take delivery. Mr. G kept the goods out of the godown in an open place and due to rain some of the goods were damaged.

Conclusion:

1. 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.
2. 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 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].

Q12) 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?

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:"

- when he signifies his approval or acceptance to the seller,
- when he does any other act adopting the transaction, and
- 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.

Q13) Rachit arranges an auction to sell an antique wall clock. Deepa, being one of the bidders, gives the highest bid. For announcing the completion of sale, the auctioneer falls the hammer on table but suddenly hammer breaks and damages the watch. Deepa wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930?

Answer

By virtue of provisions of 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, Deepa gives the highest bid in the auction for the sale of an antique wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer breaks and damages the clock.

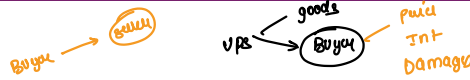
On the basis of the above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table. Hence, in the given problem, sale is not completed. Deepa will not be liable for loss and can avoid the contract.

Q14) What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930?

Ans

Provision: [The Sale of Goods Act, 1930]

1. As per the provisions of Section 46 of the Sale of Goods Act, 1930, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-
 - a) a lien on the goods for the price while he is in possession of them;



- b) in case of the **insolvency of the buyer**, a right of **stopping the goods** in transit after he has parted with the possession of them;
 - c) a **right of re-sale as** limited by this Act. [Sub-section (1)]
2. Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer. [Sub-section (2)]
3. These rights can be exercised by the unpaid seller in the following circumstances:
- a) 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: -
 - i. where the goods **have been sold** without any stipulation as to credit;
 - ii. where the goods have been sold on credit, but the term of credit has expired;
 - iii. where the **buyer becomes insolvent**.
 - b) 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 possession of the goods as long as they are in transit, and may retain them until paid or tendered price of the goods. Right to re-sell the goods (Section 54):

- c) The unpaid seller can exercise the **right to re-sell** the goods under the following conditions:
 - i. Where the goods are of **a perishable nature**
 - ii. Where **he** gives notice to the buyer of his intention to re-sell the goods
 - iii. Where an unpaid seller who has exercised his right of lien or stoppage in transit **resells the goods**

- iv. A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale
- v. Where the property in goods has not passed to the buyer

Q15) What are the rights of buyer against the seller, if the seller commits a breach of contract under the Sale of Goods Act, 1930?

Answer: -

Provision: [The Sale of Goods Act, 1930]

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 a 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):
 - a) 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 - set up against the seller the breach of warranty in diminution or extinction of the price; or
 - b) sue the seller for damages for breach of warranty.
1. **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.
2. **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 whereby 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.

DATE	TIME	TOPIC
12th Jan	7:00 PM	Negotiable Instrument Act Marathon
12th Jan	9:00 PM	Most Expected Questions of NIA
13th Jan	7:30 AM	Most Expected Questions of LLP
13th Jan	12:00 PM	Most Expected Questions of Companies Act
13th Jan	6:00 PM	Most Expected Questions of Partnership Act
13th Jan	9:00 PM	Most Expected Questions of IRF
15th Jan	12:00 PM	Most Expected Questions of ICA
15th Jan	6:00 PM	Most Expected Questions of SOGA
16th Jan	7:30 AM	Warmup session

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