

Sales Of Goods Act, 1930.

Writing paper

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Unit 1 & 2 IMPORTANT QUE :-

Unit-1 Formation of the contract of sale

Unit-2 Conditions and warranties

Unit-3 Transfer of ownership and delivery of goods

Unit-4 Unpaid seller

Unit :-1. Formation of the contract of sale :-

About the unit :- (basics)

Who ? → Buyer & seller

What ? → Transfer of goods

How ? → Delivery

For ? → Price

When ? → Sale vs. Agreement to sell.

Section :- 4 Contract of Sale :-

A contract where - (AS)

The seller transfers or agrees to transfer ownership of goods to the buyer

For a price.

It can even occur b/w part-owners.

Que :-1 State briefly the essential element of a contract of sale under the SOGA, 1930.

Answer :- Contract of sale :- AS per section 4 of SOGA, 1930
A seller transfers or agrees to transfer the ownership to buyer for price.

Essential Elements of Contract of Sale are as:-

- (a) There should be two parties Buyer
Seller
- (b) Subject matter should be goods only.
- (c) Price (Not completely in kind) partly cash & partly kind.
- (d) Transfer of property (ownership) (General prop.)
- (e) Contract can be absolute or conditional as well.
- (f) All other essential elements of a valid contract must be present.

Que:-2. A agrees to sell to B 100 bags of Sugar arriving on a ship from Australia to India within next two months. Unknown to the parties, the ship has already sunk. Does B have any right against A under the SOGA, 1930?

→ In case of Agreement to sell specific goods and such goods are destroyed or lost, without any fault of either parties the agreement is thereby avoided and void due to supervening impossibility.

But there are several conditions to be fulfilled

- (1) Agreement to sell
- (2) Specific goods
- (3) Lost / damaged / perished
- (4) Fault of no-one.

Que:-3 What are the consequences of the destruction of specified goods, before making of contract and after the agreement to sell under the SORA, 1930.

Answer:- Goods perishing before making of contract
Section 7:-

→ In accordance with the provision of SORA, 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 their description in the contract, then the contract is void-ab-initio.

Goods perishing before sale but after agreement to sell Section 8:-

→ Where there is an agreement to sell specific goods and subsequently the goods wholly or in part 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 voided or becomes void.

Que: 4. Ascertainment of Price 9 & 10

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 SORA, 1930?

Answer:- Price for a contract of sale (Section-9) may be fixed at the time of contract or may be fixed at a later stage in a manner decided/agreed by both the parties.

Both the parties if not decided the price later on as well then it will be at reasonable price. Even though the price was not determined the contract will be still valid and enforceable.

In the instant case Mr. Nikhil have right against Mr. Arun.

Que: 5. Classification of goods [IMPORTANT]

Existing goods → Owned and possessed by the seller.

Future goods → yet to be manufactured.

Contingent goods → Subject to the occurrence or non-occurrence.

- Specific goods → identified and agreed upon at the time.
- Ascertained goods → identified out of a larger set.
- Unascertained goods → not specifically identified or agreed upon at the time.

Appropriation of goods is

- It involves selection of goods with the intention of using them in performance of contract.
- with the mutual consent of seller + Buyer.

Essentials of Appropriation →

(1) There should be a contract of sale of unascertained goods.

(2) Goods should match with the quality of description.

(3) Deliverable State.

(4) Anyone can appropriate goods b/w B & S.
if Buyer appropriates = Assent of (S)
if Seller " = Assent of (B)

(5) Assent can be given before / after appropriation.

(6) It can be Expressed and implied.

Que :- 6 Delivery it's meaning and forms :-

Answer :- Delivery :- Means voluntary transfer of possession from one person to another.

It can be done or received by any authorised person on behalf of seller & buyer.

There are 3 types of Delivery :-

- (i) Actual delivery :- When the goods are physically transfer or delivered to the buyer. it's when goods reach physically to the buyer or any 3rd person authorized by buyer.
- (ii) Constructive delivery :- When transfer takes place without the change of custody or actual possession but it is just an acknowledgement from the person ~~holding~~ holding the goods. that he holds the goods on behalf the buyer.
- (3) Symbolic delivery :- When there is a delivery of goods through token of a transfer of something else. If the goods are in transit then such delivery may be made by holding Over document of title.

Examples :- Railway Receipts
Bills of lading.

Que :- 7.

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 W.H. 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 SGA, 1930.

Answer :-

When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery.

In the instant case, Kishore acknowledges Avyukt that he is holding wheat on Avyukt's behalf. Before picking the wheat from WH by Avyukt, whole wheat was flowed in flood. Hence, Avyukt is not right. He cannot claim the full price back.

Que: 8. Sale vs. Agreement to sell:-

Basis	Sale	A2S.
Def.	Property in goods is <u>transferred immediate</u> .	ownership of good is transferred <u>at a future date</u> .
Timing of Transfer	<u>Immediate</u> transfer of ownership.	Transfer intended in the future or after <u>fulfilling condⁿ</u> .
Nature of Cont.	A <u>sale</u> occurs when ownership is transferred under the contract.	it is a <u>promise</u> to transfer ownership later.
Key Distinction	involves an <u>immediate</u> transfer of O. ship	O. ship is set to transfer at a later time or on cond ⁿ .
Conversion of Sale	<u>Not applicable</u> .	Becomes a sale when time <u>elapses</u> or <u>conditions</u> are <u>fulfilled</u> .
Depends on	<u>immediate</u> transfer of O. ship	future transfer of ownership.

Que: 9 State the difference b/w Sale and Agreement.
Diff. b/w Sale and Hire purchase.
→ [Prefer module]

Unit : 2. Conditions And Warranties :-

Basics :

Condition

→ Essential to main purpose of the contract

→ Breach - repudiation

→ A breach of condition may be treated as a breach of warranty.

Warranty

→ collateral to main purpose of the contract

Breach - claim for damages

A breach of warranty cannot be treated as a breach of condition.

Que:-2 A breach of condition be treated as a breach of warranty. Explain this statement as per relevant provisions of the SOGA 1930.

→ Section 13 of SOGA specifies cases where a breach of condition be treated as a breach of warranty.

In the following cases, a contract is not voided even on account of a breach of condition.

(1) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation.

(2) Treating condition as warranty.

(3) Non-Severable contract

(4) Excused by law.

Que: 3 Express & Implied condition ~~or warranty~~

Express

which are agreed upon between the parties at the time of contract and are expressly provided in the contract.

Implied

Incorporated OR presumed law to be present in the contract.

Implied condition may be negated or waived by an express agreement.

Implied conditions :-

1. Condition as to Title
2. Sale by Description
3. Sale by Sample
4. Sale by sample and description
5. Condition as to quality and fitness
6. Condition as to merchantability
7. Condition as to wholesomeness

Que: 4 Certain goods were sold by sample by A to B, who in turn sold the same goods by sample to C and C by sample sold the goods to D. The goods were not according to the sample. Therefore, D who found the deviation of the goods from the sample rejected.

Important

the goods and gave a notice to C. C Sued B and B Sued A. Advise B and C under the SOGA 1930.

Answer: In the instant case, D who noticed the deviation of goods from the sample can reject the goods and treat it as a breach of implied condition as to sample which provides that when the goods are sold by sample the goods must correspond to the sample in quality and the buyer should be given reasonable time and opportunity of comparing the bulk with the sample. C can recover only damages from B and B can recover damages from A.

Ques:-5. Ankit needs a black pen for his exams. He went to a nearby stationery shop and told the seller for a black pen. Seller gives him a pen saying that it is a black pen but it was clearly mentioned on the pocket of pen that "Blue ink pen". Ankit ignore that and takes the pen. After reaching his house, Ankit finds that the pen is actually a blue pen. Now Ankit wants to return the pen with the words that the seller has violated the implied conditions of sale by description. Whether Ankit can do what he wants as per the SOGA, 1930.

Answer: According to Section 16(2) of the SOA, where the goods are brought by description from a Seller who deals in goods of that description there is an implied condition that the goods shall be correspond with that quality.

→ In the instant case, Ankit orders a black pen to a stationery shop. Seller gives him a pen saying that it is a black pen. But on the pack of pen, it was clearly mentioned that it is blue ink pen. Ankit ignores the instruction.

Hence, the rule of Caveat Emptor will be applicable here and Ankit can not return the pen.

Que:-6. Mrs. A brought a tweed coat from P. When she used the coat, she got rashes on her skin as her skin was abnormally sensitive. But she did not make this fact known to the seller i.e. P. Mrs. A filed a case against the seller to recover damages. Can she recover damages under SOA 1930.

Answer: The general rule is that of "Caveat Emptor" that is "let the buyer beware".

→ In the instant case, Mrs. A purchased the tweed coat without informing the seller i.e. P. about the sensitive nature of

