

Unit :- 3

Transfer of ownership and Delivery of goods :-

Section :- 26 The general rule is that

"Risk Prima facie Passes with the property
Risk follows ownership."

Q.1. "Risk Prima facie passes with property." Elaborate in the context of the Sale of Goods Act, 1930.

Ans: AS per Section 26 of The Sale of Goods Act, 1930 :-

The statement is absolutely correct. Risk passes with the property in the goods.

Risk remains with the seller until the property passes / transferred to buyer.

But, once the property passes to the buyer risk will be of Buyer's.

This will be subject to the agreement b/w the parties. They may agree to contrary and risk may transfer before or after the property passes as per the agreement.

But, if the delivery is delayed then the risk of loss will be on the party which is at default.

Que:-2.

Mr. Samuel agreed to purchase 100 bales of Cotton from Mr. Vurun 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 provision of SOGA, 1930 Explain as to who will bear the loss and to what extent?

Answer:-

Appropriation → unascertained ~~unidentified~~ goods → packed → Ascertained.

As per Section 126 of The SOGA, 1930 "Risk passes with the property in the goods."

If we read the above provision with Sec. 18 and 23 of The SOGA, 1930 then the goods were unascertained and they were appropriated and packed & kept separately.

The property of 60 bales out of 100 bales were transferred to the buyer but 40 bales were not appropriated and hence, the property was with the seller.

Applying the above provisions of The SOGA, 1930, Mr. Vurun will be liable for the loss of 40 bales but for the 60 bales loss will be on the buyer's i.e. Samuel's responsibility.

Q.3. Sent of Approval } → [Important]
OR }
On Sale OR Return } Cash only OR Return

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 claim back the motor car from Mr. Ganesh. Will she succeed? Referring to the provision of the SORA 1930, decide and examine what recourse is available to Ms. Preeti.

Q.4. As per Section 24 of The SORA 1930 :-

When goods are delivered to the buyer "on sale or return" basis then in such situation the property passes in the following way:-

- (1) When the buyer approves or accepts.
- (2) If the buyer does not approve then at the expiry of contract period.
- (3) Property passes at reasonable time.
- (4) If buyer does something which is equivalent to acceptance of the goods.

Referring to the provision above, when Mr. Joshi pledged the goods to Mr. Ganesh he has done something which shows acceptance from his end.

Hence, Property has been passed to Mr. Joshi.

→ Now, Ms. Preeti cannot claim the car back from Mr. Anand as he receives a good title but she can claim money from Mr. Joshi only.

Que: 4. Transfer of Title By Non-Owners [Important]

J is the owner of a Fiat car wants to sell this car. For the 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 giving reasons whether J would succeed.

Answer:- As per Sec. 27 of The SGA 1930 "Nemo dat quod non habet" [No one can give what they do not have].

→ But in few cases exception is available:-

One of the exceptions as per provision is Sale by mercantile agent, if follows the following conditions:-

- (a) Agent has the possession the goods or not.
- (b) Sell ordinary course of Biz.
- (c) Good Faith = Buyer.
- (d) Buyer $\neq$ Knowledge = Agent does not have authority.

Conclusion:-

A the buyer obtained a good title to the car. Hence, in this case cannot recover the car from A.

Que:-5. A contract with B to buy 50 chairs of a certain quality. B delivered 25 chairs of the type agreed upon and 25 chairs of the some other type. Under the circumstances, what are the rights of A against B under the SORA 1930?

Answer:- Delivery of diff. description :- As per section 37 of the SORA, 1930 where the seller delivers to the buyer the goods, he contracted to sell mixed with goods of a diff. description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or may reject the whole.

Hence, A may accept 25 chairs of the type agreed upon and may reject the other 25 chairs of some other type not agreed upon or may reject all 50 chairs.

Unit 4: Unpaid Seller

A contract comprises of reciprocal promises.

Seller is under an obligation to deliver goods.

Buyer has to pay for it.

In case buyer fails/refuse to pay, the seller as an unpaid seller shall have certain rights.

Que:- What do you understand by the term "unpaid seller" under the SORA 1930? When can an unpaid seller exercise the right of stoppage of goods in transit.

Answer:- As per Section 45 of The SORA 1930, an unpaid seller is a seller when:-

(1) He does not receive the whole price of the goods or

(2) He receives BOE/cheque or any other NT but it gets dishonoured.

Right of Stoppage goods in transit:- 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

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return the goods back, or not to deliver the goods to the buyer.

Conditions:-

- (1) Seller must be unpaid
- (2) Seller must have parted with the possession of goods.
- (3) Goods must be in the course of transit
- (4) Buyer must have become insolvent.
- (5) The right is subject to provisions of the Act.

Que:-2 Mr. Shankar sold 1000 kgs wheat to Mr. Cranesh 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. Cranesh 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 SOMA, 1930

1. State, whether Mr. Shankar was right in his decision?

2. What would be your answer if Mr. Cranesh became insolvent within five days of contract?

Answer:- As per 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. The right can be exercised by him in the following cases only:

(1) Where goods have been sold without any stipulation of credit.

(2) Where goods have been sold on credit, but the term of credit has expired or,

(3) Where the buyer becomes insolvent.

→ (1) On the basis of above provision and facts, it can be said that even Mr. Craneshe 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.

(2) In case Mr. Craneshe became insolvent before the delivery of wheat, Mr. Shankar had the right to apply the lien and he could withhold the delivery.

Que:-3 Ranchit arranges an auction to sale an antique wall clock. Megha, being one of the bidders, gives highest bid. For announcing the completion of sale, the auctioneer falls the hammer on table but suddenly hammer breaks and damages the watch. Megha wants to avoid the contract. Can she do so under the provision of S.O.A. 1930?

→ By virtue of provisions of Section 64 :-

In case of an 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 antique wall clock arranged by Ruchit. While announcing the completion of sale by fall of hammer on the table, hammer breaks and damages the clock.

The sale by auction can't 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.