

THE SALE OF GOODS ACT, 1930

Question 1

Explain the provisions of law relating to unpaid seller's 'right of lien' and distinguish it from the "right of stoppage the goods in transit". (Nov. 2002)

Answer

Right of lien of an unpaid seller

The legal provisions regarding the right of lien of an unpaid seller has been stated from Sections 47 to 49 of the Sale of Goods Act, 1930 which may be enumerated as follows :

- (i) According to Section 47 the unpaid seller of the 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 :
 - (a) where the goods have been sold without any stipulation as to credit.
 - (b) where the goods have been sold on credit, but the term of credit has expired; or
 - (c) where the buyer becomes insolvent.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

- (ii) Section 48 states that where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.
- (iii) According to Section 49 the unpaid seller loses his lien on goods :
 - (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
 - (b) when the buyer or his agent lawfully obtains possession of the goods ;
 - (c) by waiver thereof

The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree to the price of the goods

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Right of lien and Right to stoppage the goods in transit; distinction:

- (i) The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
- (ii) Seller should be in possession of goods under lien while in stoppage in transit (i) Seller should have parted with the possession (ii) possession should be with the carrier and (iii) Buyer has not acquired the possession.
- (iii) Right of lien can be exercised even when the buyer is not insolvent but it is not the case with right of stoppage in transit.
- (iv) Right of stoppage in transit begins when the right of lien ends. Thus the end of the right of lien is starting point of the right of stoppage the goods in transit.

Question 2

What are the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected.
(May 2003)

Answer

Destruction of Goods-Consequences:

- (i) In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, 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 answer to their description in the contract, then the contract is void ab initio. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.
- (ii) In a similar way Section 8 provides that an agreement to sell specific goods becomes void if 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 agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.

It may, however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

Question 3

What do you understand by "Caveat-Emptor" under the sale of Goods Act, 1930? What are the exceptions to this rule?
(May 2003)

Answer

'Caveat emptor' means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame any body excepting himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale"

The rule of caveat emptor does not apply in the following cases:

1. *Fitness for buyer's purpose*: Where the buyer, expressly or by implication, makes know to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose. (Section 16(1)).
2. *Sale under a patent or trade name*: In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose (Section 16(1)).
3. *Merchantable quality*: Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. (Section 16(2)).
4. *Usage of trade*: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. (Section 16(3)).
5. *Consent by fraud*: Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

Question 4

In what ways does a "Sale" differ from "Hire-Purchase"?

(November 2003)

Answer**Distinction between 'Sale' and 'Hire Purchase'**

1. In case of hire purchase, the agreement is that the hirer regularly pays the various installments agreed between the parties. In Sale the payment may be made cash -down or through installments.

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2. The subject matter of the hire, on payment of the last installment, shall become the property of the hirer, if such installments are not paid, the article will remain the property of the hire-vendor (seller) and the hire vendor will be entitled to regain possession thereof. In Sale, the property in goods is transferred to the buyer immediately on signing the contract.
3. A hire purchase agreement is both a bailment and an option to buy. In case of Sale it is not so.
4. In case of hire purchase the hirer cannot sell the article to a third party. In Sale the purchaser can do so. This is based on the concept of ownership.

Question 5

What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? State also the implied warranties operative under the said Act.

(November 2002, November 2003)

Answer

The following are implied conditions in a contract of sale by sample in accordance with Section 17 of the Sale of Goods Act, 1930;

- (a) that the bulk shall correspond with the sample in quality;
- (b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- (c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on a reasonable examination of the sample [Section 17(2)].

Implied Warrants:

1. *Warranty of quiet possession [Section 14(b)]:* In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way disturbed in the enjoyment of the goods in consequence of the seller's defective title to sell, he can claim damages from the seller.
2. *Warranty of freedom from encumbrances [Section 14(c)]:* The buyer is entitled to a further warranty that the goods are not subject to any charge or encumbrance in favour of a third party. If his possession is in any way disturbed by reason of the existence of any charge or encumbrances on the goods in favour of any third party, he shall have a right to claim damages for breach of this warranty.
3. *Warranty as to quality or fitness by usage of trade [Section 16(3)]:* An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade,
4. *Warranty to disclose dangerous nature of goods:* Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer

and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

Question 6

For the purpose of making uniform for the employees, Bansi Bhaiya 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 Bansi Bhaiya whether he is entitled to have any remedy under the sale of Goods Act, 1930?

(May 2004)

Answer

Fitness of Cloth

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. 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 [*Jones v. Padgett*. 14 Q.B.D. 650].

Question 7

What do you understand by the term "unpaid seller" under the Sale of Goods Act, 1930? When can an unpaid seller exercise the right of stoppage of goods in transit? (May 2004)

Answer

Unpaid Seller

According to Section 45 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 has been received as conditional payment, and it has been dishonoured.

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Right of stoppage of goods in transit

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

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

- (a) The seller must be unpaid.
- (b) The seller must have parted with the possession of goods.
- (c) The goods must be in the course of transit.
- (d) The buyer must have become insolvent.
- (e) The right is subject to provisions of the Act.

Question 8

Point out the differences between conditions and warranties under the Sale of Goods Act, 1930.
(May 2004)

Answer

Condition and Warranty

S. No.	Basis of distinction	Condition	Warranty
1.	Nature	A condition is a stipulation which is essential to the main purpose of the contract.	A Warranty is a stipulation which is collateral to the main purpose of the contract.
2.	Rights	The aggrieved party can repudiate the contract of sale in case there is a breach of a condition	The aggrieved party can claim damages only in case of breach of a warranty.
3.	Option	A breach of condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contented with damages only	A breach of a warranty, can not be treated as a breach of a condition.

Question 9

With a view to boost the sales Hanuman Automobiles sells a motorcar to Mr. A on trial basis for a period of three days with a condition that if Mr. A is not satisfied with the performance of the car, he can return back the car. However, the car was destroyed in a fire accident at the place of Mr. A before the expiry of three days. Decide whether Mr. A is liable for the loss suffered.
(November 2004)

Answer

The problem as asked in the question is based on the provisions of the Sale of Goods Act, 1930 as contained in Section 8. Accordingly, the contract becomes void if the goods are destroyed or do not answer to the description in the agreement before the risk passes on to the buyer. In the given case that the subject matter of the contract i.e Motorcar was destroyed before the transfer of property from the seller to the buyer. Thus the risk passes only when the ownership is transferred to the buyer. Therefore, in the present case Mr. A is not liable for the loss suffered due to the fire accident over which A has no control. Thus M/s. Hanuman Automobiles will have to bear whatever loss that has taken place due to the fire accident.

Question 10

State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930. Examine whether there should be an agreement between the parties in order to constitute a sale under the said Act.
(November 2004)

Answer**Essentials of Contract of Sale**

The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930.

- (i) There must be at least two parties
- (ii) The subject matter of the contract must necessarily be goods
- (iii) A price in money (not in kind) should be paid or promised.
- (iv) A transfer of property in goods from seller to the buyer must take place.
- (v) A contract of sale must be absolute or conditional [section 4(2)].
- (vi) All other essential elements of a valid contract must be present in the contract of sale.

The Supreme Court has held in the case of “*Stare of Madras Vs. Gannon Dunkerley and Co. AIR (1858) S (500)*” that according to the law in order to constitute a sale, it is necessary that there should be an agreement between the parties for the purpose of transferring title of goods which of course presupposes capacity to contract, that it must be supported by money consideration that as a result of transaction the property in the goods must actually pass etc.

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Question 11

When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act? Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court?
(May 2005)

Answer

A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-

- (i) the goods have been sold without any stipulation as to credit;
- (ii) the goods have been sold on credit, but the term of credit has expired;
- (iii) the buyer becomes insolvent.

The unpaid seller can exercise 'his right of lien even if the property in goods has passed on to the buyer. He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer.

Termination of lien: An unpaid seller loses his right of lien thereon-

- (i) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (ii) When the buyer or his agent lawfully obtains possession of the goods;

Question 12

".....there is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale...."Discuss the significance and State exceptions, if any.
s (May 2005)

Answer

The statement given in the question is the fundamental principle of law of sale of goods, sometime expressed by the maxim 'Caveat Emptor' meaning thereby 'Let the buyer be aware'. In other words, it is no part of the seller's duty in a contract of sale of goods to give the buyer an article suitable for a particular purpose, or of particular quality, unless the quality or fitness is made an express terms of the contract. The person who buys goods must keep his eyes open, his mind active and should be cautious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgement in the absence of any misrepresentation or guarantee by the seller.

There are, however, certain exceptions to the rule which are stated as under:

- (i) Where the buyer expressly or by implication, makes known to the seller the particular purpose for which he needs the goods and depends on the skill and judgement of the seller whose business is to supply goods of that description, there is an implied condition that the goods shall be reasonably fit for that purpose;

- (ii) If the buyer purchasing an article for a particular use is suffering from an abnormality and it is made known to the seller at the time of sale, implied condition of fitness will apply.
- (iii) If the buyer purchases an article under its patent or other trade name and relies on seller's skills and judgement which he makes known to him, the implied condition that are articles are fit for a particular purpose shall apply.
- (iv) If the goods can be used for a number of purposes the buyer must tell the seller the particular purpose for which he required the goods otherwise implied condition of fitness of goods for a particular purpose will not apply.
- (v) Where the goods are bought by description from a seller who deals in goods of that description whether he is the manufacturer or producer or not, there is an implied condition that the goods are of merchantable quality.
- (vi) An implied condition as to quality or fitness for a particular purpose may be annexed by the usage of trade or custom;

In a sale by sample there is an implied condition that

- (a) The bulk shall correspond with the sample in quality;
 - (b) The buyer shall have reasonable opportunity of comparing the bulk with the sample; and
 - (c) The goods shall be free from any defect, rendering them unmerchantable;
- (viii) In the case of eatables and provisions in addition to the implied condition of merchantability, there is an implied condition that the goods shall be wholesome.

Question 13

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. (November 2005)

Answer

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.

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- (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 gent, 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. A similar decision, in analogous circumstances, was taken in *Folkes v. King*.

Question 14

"Nemo Dat Quod Non Habet" – "None can give or transfer goods what he does not himself own."

Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930. (November 2005)

Answer

Exceptions to the Rule Nemo dat Quod Non Habet: The term means, "none can give or transfer goods what he does not himself own". Exceptions to the rule and the cases in which the Rule does not apply under the provisions of the Sale of Goods Act, 1930 are enumerated below:

- (1) **Effect of Estoppel (Section 27):** Where the owner is stopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.
- (2) **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods or document of title to goods would pass a good title to the buyer in the following circumstances, namely;
 - (a) if he was in possession of the goods or documents with the consent of the owner;
 - (b) if the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
 - (c) if the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell.(Proviso to Section 27).
- (3) **Sale by one of the joint owners:** If one of the several joint owners of goods has the sole possession of them with the permission of the others the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell. [Section 28].
- (4) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by seller who had obtained possession of the goods

under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).

- (5) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other deposition of the goods or documents of title by the seller in possession are equally valid. [Section 30(1)].
- (6) **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them. [Section 30(2)].
- (7) **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54(3)].
- (8) **Sale under the provisions of other Acts:**
 - (i) Sale by an official Receiver or liquidator of the company will give the purchaser a valid title.
 - (ii) Purchase of goods from a finder of goods will get a valid title under circumstances.
 - (iii) Sale by a pawnee under default of pawnor will give valid title to the purchaser.

Question 15

Suraj sold his car to Sohan for Rs. 75,000. After inspection and satisfaction, Sohan paid Rs. 25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on Sohan refuses to give the remaining amount on the ground that the car was not in a good condition. Advise Suraj as to what remedy is available to him against Sohan.

(May 2006)

Answer

As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that

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

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- (ii) 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. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].

This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this Suraj is also entitled to:-

- (1) Interest on the remaining amount
- (2) Interest during the pendency of the suit.
- (3) Costs of the proceedings.

Question 16

Point out the differences between the transactions of "Sale" and "hire-purchase" in the light of the provisions of the Sale of Goods Act, 1930.
(May 2006)

Answer

Following are the differences between sale and hire purchase:

Sale	Hire Purchase Agreement
1. Ownership is transferred from the seller to the buyer as soon as the contract is entered into.	1. Ownership is transferred from the seller to the hire-purchaser only when a certain agreed number of installments are paid.
2. The position of the buyer is that of the owner	2. The position of the hire-purchaser is that of the bailee.
3. The buyer cannot terminate the contract and as such is bound to pay the price of the goods.	3. The hire-purchaser has an option to terminate the contract at any stage, and cannot be forced to pay the further installments.
4. If the payment is made by the buyer in installments, the amount payable by the buyer to the seller is reduced, for the payment made by the buyer is towards the price of the goods.	4. The installments paid by the hire-purchaser are regarded as hire charges and not as payment towards the price of the goods till option to purchase the goods is exercised.
5. The Sale agreements are governed by the Sales of Goods Act, 1930.	5. The hire-purchase agreements are governed by the Hire-Purchase Act, 1972.

Question 17

A contracts to sell B, by showing sample, certain quantity of rape-seed oil described as 'foreign refined rape-seed-oil'. The oil when delivered matches with the sample, but is not foreign refined rape-seed oil. Referring to the provisions of Sale of Goods Act, 1930 advise the remedy, if any, available to B. (November 2006)

Answer

B has a remedy to repudiate the contract. According to section 15 of the Sale of Goods Act, 1930, when the goods are sold by sample as well as by description, there shall be an implied condition that the goods shall correspond to the sample as well as description. In this case, A supplied refined rape oil which did correspond with the sample but was not correspond to the description of foreign refined rape-oil. Hence the B has the right to repudiate the contract.

Question 18

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. (November 2006)

Answer

Difference between Condition and Warranty

- (i) 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.
- (ii) 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.
- (iii) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

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:

- (i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition,
- (ii) Where the buyer elects to treat the breach of condition as breach of a warranty.
- (iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
- (iv) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Question 19

A, an agent of a buyer, had obtained goods from the Railway organization and loaded the goods on his truck. In the meantime, the Railway organization received a notice from B, a seller, for stopping goods in transit as the buyer had become insolvent. Referring to the

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provisions of the Sale of Goods Act, 1930 decide whether the Railway organization can stop the goods in transit, as instructed by the seller ?
(May 2007)

Answer

The right of stoppage of goods in transit can be exercised only so long as the goods are in the course of transit. In the given case the transit was at an end as soon as the agent of the buyer obtained goods from the Railway Organisation. Therefore Railway Organisation cannot act as instructed by the seller, who has lost the right of stoppage of the goods in transit as provided in Section 30 of the Sale of Goods Act, 1930.

Question 20

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?
(May 2007)

Answer

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. Further Section 18 read with Section 23 of the Act provide 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. Such assent may be express or implied. Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. S has the right to select the good out of the bulk and he has sent his men for same purpose.

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

Where the bales have been selected with the consent of the buyer's representatives:

- (i) 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. S. As regards 40 bales, the loss would be borne by Mr. V, since the goods have not been identified and appropriated.

- (ii) 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. V completely.

Question 21

Aman contracted to erect machinery on Sapan's premises on the condition that the price shall be paid on completion of work. During the progress of work the premises and machinery were destroyed by an accidental fire. Referring to the provisions of the Sale of Goods Act, 1930, decide whether the parties are bound to perform their promises and can Aman recover the price of the work actually done? (November 2007)

Answer

Section 8 of the Sale of Goods Act, 1930 states that where there is an agreement to sell specific goods and subsequently the goods without the fault of seller or buyer perish before the risk passes to the buyer, the agreement becomes void. In the given case the premises and machinery get destroyed because of accidental fire before the risk passes to the buyer and therefore both parties were excused from further performance. Aman having contracted for an entire work for a specific price to be paid on completion of work, could not recover any price for the work actually done.

NOTE: The question is on the specific point ie. risk passes on to the buyer with ownership and more specifically based on the Sale of Goods Act, 1930. Yet, the question might be answered in accordance with Section 56 of the Indian Contract, 1872 which states that an agreement to do an impossible act in itself is void. A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Question 22

Under which circumstances can an unpaid seller exercise his right of lien? Distinguish between right of lien and right of stoppage of goods in transit, under the Sale of Goods Act, 1930. (November 2007)

Answer

Section 47 of the Sale of Goods Act, 1930 lays down cases in which an unpaid seller is entitled to lien. They are as follows:

- (i) Where goods have been sold without any stipulation as to credit.
- (ii) Where goods have been sold on credit but the term of credit expired, or
- (iii) Where the buyer becomes insolvent.

Distinction between right of lien and right of stoppage of goods in transit.:

- (1) The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
- (2) Seller should be in possession of goods under lien while in stoppage in transit (i) Seller should have parted with the possession (ii) possession should be with a carrier and (iii) buyer has not acquired the possession.

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- (3) Right of lien can be exercised even when the buyer is not insolvent but it is not the case with right of stoppage in transit.
- (4) Right of stoppage in transit begins when the right of lien ends. Thus the end of the right of lien is the starting point of the right of stoppage in transit.

Question 23

A, B and C were joint owners of a truck and possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of the Sale of Goods Act, 1930, whether the sale between B and X is valid or not ?
(May 2008)

Answer

Sale by joint owner

This problem is based on Section 28 of the Sale of Goods Act, 1930 which lays down an exception to the general rule that a person cannot transfer a better title than that he himself possesses. A person who is one of joint owners may transfer a better title than he possesses. Section 28 provides that – “if one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell”.

The given problem fulfills all such requirements. A, B and C are joint owners of a truck. B had sole possession of it. In such a case if X has purchased the truck from B in good faith without notice at the time of sale that B had no authority to sell, then X acquires good title and becomes full owner although B was not the full owner.

Question 24

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?

(May 2008)

Answer

Essentials of Sale

The problem as given in the question is based on Section 16(2) of the Sale of Goods Act, 1930, which states that where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. Though the term ‘merchantable quality’ is not defined in the Act, it means that in the present case, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for the purpose for which it is being used. In the instant case, on an examination of the bottle of cold drink, it exploded and injured the buyer. Applying the

provision of Section 16(2), Mr. Amit would succeed in claim for damages from the owner of the shop.

Question 25

Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (November 2008)

Answer

Right of stoppage of goods in transit

The problem is based on section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

- (i) The seller must be unpaid
- (ii) He must have parted with the possession of goods
- (iii) The goods must be in transit
- (iv) The buyer must have become insolvent
- (v) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.

Question 26

B buys goods from A on payment but leaves the goods in the possession of A. A then pledges the goods to C who has no notice of the sale to B. State whether the pledge is valid and whether C can enforce it. Decide with reference to the provisions of the Sale of Goods Act, 1930. (November 2008)

Answer

Pledge by a seller in possession after sale

The problem is based on the provisions of Section 30 (1) of the Sale of Goods Act, 1930 which provides an exception to the general rule that no one can give a better title than he himself possesses. As per the provisions of the section, if a person has sold goods but continues to be in possession of them or of the documents of title to them, he may pledge them to a third person and if such person obtains them in good faith without notice of the previous sale, he would have good title to them. Accordingly, C, the pledgee who obtains the goods in good faith from A without notice of the previous sale, gets a good title. Thus the pledge is valid.