

## **SALES OF GOODS ACT 1930- PRACTISE QUESTIONS**

- 1. Bhushan who is dealer of crackers and fireworks ordered goods worth Rs.5 Lacs from a trader of Shivakashi one month before the Diwali. The delivery which usually takes place 1 week, in this case took 4-5 weeks and the goods were delivered on the day of Diwali itself. Bhushan now intends to either return the goods or pay 20-30% less as the same goods needs to be sold at lower prices over the year. Is Bhushan entitled to do so?**

**Answer:-** According to section 55 of the Indian Contract Act, 1872, when a party to a contract promises to do certain thing at or before the specified time, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract. Further, section of the Sale of Goods Act, 1830, unless otherwise agreed, the goods remain at the seller's risk until property therein has passed to the buyer. After that event they are at the buyer's risk, whether delivery has been made or not. But if delivery has been delayed by the fault of the seller of the buyer, the goods shall be at the risk of the party in default, as regards loss which might not have arisen but for the default.

In the given case, Bhushan, dealer of crackers and fireworks, ordered goods worth Rs. 5 lacs from trader Shivakashi one month prior the Diwali, with an usual delivery time of 1 week. But it took around 4-5 weeks and delivered the goods on the day of Diwali. Thus, Mr. Bhushan intends to either return the goods or pay lesser amount to recover the loss that he may sustain by selling goods at lower prices over the year.

Here, time was the essence of the contract as Bhushan ordered goods to sale them during the peak period of demand during Diwali season. But due to the fault of Shivakashi, delivery of goods got delayed. Thus, Bhushan can return the goods or can claim reduction in price to the extent loss suffered by him.

- 2. Mohan sold goods worth Rs.200,000 to Munja on sale or return basis, as per the terms of the contract. Munja is allowed 2 weeks' time to return the goods and if he fails to return it will be deemed that he has bought the goods, but before expiry of two weeks, Munja pledged those goods with Sharvan and borrowed Rs.1,00,000 from Sharvan on the security of the goods. State rights**

**and obligations of all the parties and state as to who is the owner of the goods in these circumstances?**

**Answer-** According to 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 he 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.

In the given case, Mohan sold goods worth Rs.200,000 to Munja on sale or return basis, as per the terms of the contract. Munja is allowed 2 weeks' time to return the goods and if he fails to return it will be deemed that he has bought the goods, but before expiry of two weeks, Munja pledged those goods with Sharvan and borrowed Rs.1,00,000 from Sharvan on the security of the goods.

Here, as per the clause of above section, Munja does an act of pledging goods to third party Sharvan which is equivalent to accepting the goods. Thus, now, Munja is the owner of the goods and Mohan can recover the price of goods from Munja. Also, Sharvan can retain the goods unless the amount borrowed is repaid along with interest.

3. **Laxmi went to a shop and asked for Apple iPhone 12, the Shopkeeper told that its price is Rs.89,000. Laxmi asked the shopkeeper to show him the phone first so that she can decide to buy or not to buy . The shopkeeper shown her the phone and while he was looking into the phone and examining its functions and all person standing next to Laxmi snatched the phone from Laxmi and ran away Who should bear the loss in this case?**

**Answer-** According to section 26 of the Sale of Goods Act, 1930, 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 the buyer's risk whether delivery has been made or not. But, one of the exception to the aforesaid rule says, the duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally.

In the given case, Laxmi went to a mobile shop and asked for Apple iPhone 12, the

shopkeeper told her the price of the phone as Rs. 89,000. Laxmi asked the shopkeeper to show her the phone so that she can decide whether to buy or not. The shopkeeper showed her the phone. While she was looking into the phone and examining its function's and all, person standing next to Laxmi snatched the phone from Laxmi and ran away.

Here, as Laxmi haven't bought the phone which was snatched by the thief, risk related to the phone lies with the shopkeeper. Also, Laxmi, as a bailee, has taken proper care of the phone.

Thus, being the owner of the phone, the shopkeeper is liable to bear the loss of phone.

4. **Sushant got an order for 2,000 liters of oil from Sonu. Rate was agreed to be Rs.100 per liter. As per their usage of trade Sonu was supposed to transfer the money through NEFT only after that he will get delivery of goods. Even after 5 days of contract, Sonu did not transfer the money. Sushant sold the goods after giving notice of his intention to re-sell to the buyer. After waiting for one more week, Sushant finally sold the oil which was earlier sold to Sonu, to someone in the market @Rs.95 per liter (which is market rate of oil on that day). Can Sushant recover the loss of Rs. 5 per liter from Sonu.**

**Answer-** According to section 54 of the Sale of Goods Act, 1930, the right of resale is a very valuable right given to an unpaid seller. In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer. The unpaid seller can exercise the right to re-sell the goods, provided, he gives notice to the buyer of his intension to sale the goods. If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods. Further, on resale of the goods, the seller is also entitled to recover the difference between the contract price and resale price, from the original buyer as damages and can retain the profit if the resale price is higher than the contract price.

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incurred a loss of Rs. 5 per liter.

Here, Sushant sold the oil at lower price than the contracted price after giving a reasonable notice to Sonu as no response to the notice was received from him. Thus, Sushant can recover the loss of Rs. 5 per liter of oil sold which is accrued to him due to the failure of Sonu to fulfill the contract.

- 5. Ramesh bought certain goods from Tushar. Goods are presently lying in the godown owned by Mr. Gaurav. Ramesh has agreed to pay the price only after he makes further sale of those goods (goods are still in the godown. Tushar has given right to Mr. Gaurav (bailee) to deliver the goods as per the order of Ramesh). Ramesh sold those goods to third parties and gave delivery orders to his customers asking Gaurav, the godown owner, to deliver the goods to these customers. Meanwhile Tushar asked Ramesh to pay for the goods but he is not answering to Tushar's phone calls. Tushar has now asked Gaurav to not to deliver the goods till the time Ramesh makes payment for the goods. Can Tushar exercise right of Lien in these circumstances?**

**Answer-** According to the provisions of section 47 of the Sale of Goods Act, 1930, subject to the provisions of this Act, 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:-

- 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.
- c) where the buyer becomes insolvent.

Further, section 49 states that, the unpaid seller of goods loses his lien thereon,

- 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.

In the given case, Ramesh bought goods from Tushar which are lying in the godown owned by Mr. Gaurav. Ramesh has agreed to pay the price only after he makes further sale of those goods (goods are still in the godown). Ramesh sold those goods to third parties and gave delivery orders to his customers asking Gaurav, the godown owner, to deliver the goods to these customers. But, when Mr. Tushar asked Ramesh to pay for the goods, he did not attend his phone calls. That is why Tushar asked Gaurav to not to deliver the goods till the time Ramesh makes payment for the goods.

Here, Tushar lost his right of lien over the goods which are sold to Ramesh as he had given right to Mr. Gaurav (bailee) to deliver the goods as per the order of Ramesh, though Tushar was unpaid for the goods by Ramesh. Hence, Tushar can

file suit for recovery of money but cannot exercise the right of lien over the goods sold to Mr. Ramesh.

6. **Raja who is a dealer of electronic goods, sold certain goods worth Rs. 5 lakh to Rancho on one weeks credit. Before the expiry of one week, there comes a fact to the knowledge of Raja that Rancho has not paid any of his liabilities which felt due for payment in last 2 months. In such circumstances can Rancho be called as insolvent within the meaning of provisions of Sales of goods act and if yes on what ground (assume that he has not yet adjudicated as insolvent by court).**

**Answer:-** According to the provisions of the Sale of Goods Act, 1930, a person is said to be insolvent who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not. In other words, the act does not defines the insolvent person as a one who has been adjudicated as insolvent by the court.

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Here, Rancho will be called as insolvent in terms of the Sale of Goods Act, 1930, as he has failed to pay his liabilities which are due. Thus, Raja can exercise his right of lien provided he is in possession of those goods.

7. **A customer went into a shop and asked for pure cotton clothes for his 2 year old kid the shopkeeper showed him 3-4 different dresses and his chooses one of the dress. Later on, it turns out to be not of the size of 2-year kid but suitable for 1 year kid only. The customer wants to get his money back and the dress returned back. Can he return it?**

**Answer:-** As a general rule, it is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them. This is known as rule of caveat emptor which means "Let the buyer beware".

According to section 16 of the Sale of Goods Act, 1930, subject to the provisions of this Act or 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, but where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

In the given case, A customer went into a shop and asked for pure cotton clothes for his 2 year's old kid the shopkeeper showed him 3-4 different dresses and he chooses one of the dress. Later on, it turns out to be not of the size of 2-year kid but suitable for 1 year kid only. Thus, customer wants to return the clothes.

Here, the rule of caveat emptor will not apply in this case, as the customer has told his purpose and description for buying the clothes and also he relied on the shopkeeper to provide the suitable clothes for 2 year old kid. But, the shopkeeper supplied different clothes. Thus, the buyer can avoid the contract.

- 8. A-one traders is a timber merchant had received order from Indian railway for supply of timber to be used as railway sleepers. A-one traders supplies the timber as per order but later on it was discovered that the timber was unsuitable for the purpose of railway sleepers. Can the goods be rejected, and contract avoided?**

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According to section 16 of the Sale of Goods Act, 1930, subject to the provisions of this Act or 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, but where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

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Indian railway for supply of timber to be used as railway sleepers. A-one traders supplies the timber as per order but later on it was discovered that the timber was unsuitable for the purpose of railway sleepers.

Here, the rule of caveat emptor would not apply as the Indian railways have communicated the purpose for which the timber is purchased to A-one traders and relied on them for supplying the same quality of goods which means there was an implied condition as to supply of same quality timber. But, A-one traders supplied different timber and thus, there is breach of implied condition as to quality of timber and Indian railways can reject the goods and can avoid the contract.

9. **Lalman sold his second hand car to Dharamdas saying that the car is in good condition, later on it was found that the car was not in a working condition. Lalman offered to pay all the expenses for repairing of the car and asked Dharamdas to get the car repaired to which Dharamdas also agreed. After repairing the car again showed some faults and Dharamdas has now requested Lalman to get back the car and give back his money. Can Dharamdas legally avoid the contract?**

**Answer:-** According to the provisions of section 13 of the Sale of Goods Act, 1930, where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

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Here, working of the car was an essential condition for purchasing the car, but since it was not in a working condition, there is breach of condition on the basis of which Dharamdas had a right to avoid the contract. But, Dharamdas agreed with Lalman to get the car repaired and expenses of repairing car would be paid by Lalman, which means Dharamdas has agreed to treat breach of condition as breach of warranty, and thus, waived his right to repudiate the contract and rather accepted to claim damages. Hence, Dharamdas cannot legally avoid the contract.

- 10. Raghu and Rokda jointly owns a particular asset which was bought by them 5 years before. Raghu was in possession of the asset for last few months. Raghu sold the asset without asking Rokda. Now Rokda is objecting to the sale. Will the buyer get title to the goods?**

**Answer-** According to section 27 of the Sale of Goods Act, 1930, subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. But there are certain exceptions to this rule where a non-owner can convey better title to the bona fide purchaser of goods for value. Further section 28 provides the exception as sale by one of the joint owners of the goods. If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

In the given case, Raghu and Rokda jointly owns a particular asset which was bought by them 5 years before. Raghu was in possession of the asset for last few months. Raghu sold the asset without asking Rokda. Now Rokda is objecting to the sale.

Here, being an exception to rule as mentioned aforesaid, Raghu has the authority to sale the asset held jointly with Rokda deeming that he was in possession of the asset with the consent of Rokda and buyer has bought the asset in good faith. Therefore, buyer will be conveyed a better title of asset by Raghu and Rokda can't raise any objection on the same.