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CHAPTER

FORMATION OF THE CONTRACT OF SALE

LONG ANSWER QUESTIONS:

Q.1 What is a contract of sale? What are the essentials of a valid contract of sale?
(MTP & RTP Nov. 2018, MTP May 2019, RTP May 2020, RTP July 2021)

Ans. According to Section 4(1) of the Sale of Goods Act, 1930, "a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price."

The following are the essentials of valid contract of sale:—

- (i) **Presence of two parties**, i.e. buyer & seller, is required.
- (ii) **Transfer of property** in goods i.e. ownership, is required in a contract of sale. Transfer of ownership must take place or must be agreed to take place from the seller to the buyer. Thus it includes both sale and agreement to sell.
- (iii) The **subject matter of a contract of sale must always be goods**. Goods mean every kind of movable property other than money and actionable claims.
- (iv) The transfer of property in goods must take place from the seller to the buyer for **a price**.
- (v) The contract of sale **may be absolute or conditional**.
- (vi) All the **essentials of a valid contract** must be present.

Q.2 What are the rules for the ascertainment of price in a contract of sale?

Ans. Section 9 of the Sale of Goods Act, 1930, provides 4 modes of ascertainment of price. The price in a contract of sale may be:—

- (a) fixed by the contract.
- (b) may be left to be fixed in an agreed manner (such as market price or fixation of price by a third party).

- (c) may be determined by the course of dealings between parties (such as manufacturing cost, market price).
- (d) a reasonable price (if price cannot be fixed in accordance with the above provisions. What is a reasonable price is a question of fact dependent on the circumstances of each particular case?

Further:—

- (a) The parties may agree to sell and buy goods on the terms that the price is to be fixed by the valuation of a third party and if such third party *fails* to make the valuation the contract becomes void.
- (b) However, if the buyer has received and appropriated the goods or any part thereof, he becomes bound to pay reasonable price.
- (c) If the third party is prevented from making the valuation by the fault of the seller or the buyer, the innocent party may maintain suit for damages against the party in fault.

Q.3 What is meant by 'goods' under the Sale of Goods Act, 1930? What are its different types? [Nov. 2018, 4 Marks, MTP Nov. 2018]

Ans. Goods means:—

Every kind of **movable property other than** actionable claims and money **and includes** - stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Section 2(7).

Actionable claim means a right to a debt or to any beneficial interest in movable property not in the possession of the claimant, which can be recovered by a suit or legal action. **Money** means the legal tender or currency of the country and it does not include old coins and foreign currency.

Even Fixed Deposit Receipts are considered as goods under Sale of Goods Act, 1930.

The following are the types of goods:—

1. **Existing goods :-** The goods which are in existence at the time of contract of sale *i.e.* are either owned or possessed by seller at the time of contract of sale are said to be existing goods. The existing goods may be further classified as follows:—

A. Specific goods

The goods which are *identified and agreed* upon at the time when the contract of sale is made, are called 'specific goods'.

B. Ascertained goods

Ascertained goods are those goods which are *identified in accordance with the agreement after the contract of sale* is made. When out of a large number or large quantity of unascertained goods, the number or quantity contracted for is identified and set aside for

such contract, such number or quantity is said to be 'ascertained goods'.

Thus ascertained goods, are identified after the making but before the performance of the contract, the process being conducted in conformity with the agreement.

C. *Unascertained goods*

The goods which are not specifically identified and agreed upon at the time when the contract of sale is made, are called 'unascertained goods'. They are defined by way of description or sample only the time of creation of contract. On appropriation the goods become ascertained. If the identity of contract goods is not established by appropriating them towards the contract, the contract remains in respect of unascertained goods.

2. **Future goods:** Those goods which are yet to be *manufactured or produced or acquired* by the seller after the making of the contract of sale, are called 'future goods'. *A contract for the sale of future goods is always an agreement to sell.* It is never actual sale because a man cannot transfer what is not in existence.
3. **Contingent goods:** As per section 6(2) of the Act, contingent goods are those goods the acquisition of which by the seller depends upon a contingency (uncertain event) which may or may not happen. It may be noted that although the contingent goods are a type of future goods but they are different from future goods in the sense that the procurement of contingent goods is dependent upon an uncertain event or uncertainty of occurrence, whereas the obtaining of future goods does not depend upon any uncertainty of occurrence.

Q.4 What is meant by delivery? What are the different modes of delivery?

[May 2018, 4 Marks, RTP May 2018, MTP Nov. 2018, MTP July 2021]

Ans. According to the provision of the Sale of Goods Act, 1930, delivery means voluntary transfer of possession from one person to another. To effect delivery of goods any act may be performed by one party in favour of the other party which has the effect of putting the goods into the possession or control of that other party. Delivery can be effected by any of the following ways:

- (i) **Actual Delivery:** It is effected when the goods are physically delivered to the buyer or his agent.
- (ii) **Constructive delivery:** It is used as a method of transferring possession when the goods are in the custody of a third person. When the seller gives such directions to a third party, who has the physical custody of the goods, which has the effect of transferring the goods into the possession of the buyer, without the actual movement or delivery of goods, it amounts to constructive delivery. It is also known as delivery by attornment (acknowledgement).

- (iii) Symbolic Delivery: When there is a delivery of a thing in token of transfer of something else, such as a key of godown or warehouse where the goods are stored or documents of title, then it amounts to symbolic delivery.

SHORT QUESTIONS:

Q.5 Differentiate between:

(a) Sale and Agreement to Sell

(b) Sale and Hire Purchase

(c) Sale and Bailment

[Dec. 2021, 6 Marks]

[MTP May 2018 & MTP May 2019]

Ans. (a)

BASIS	SALE	AGREEMENT TO SELL
1. <i>Transfer of property</i>	The title to the goods passes to the buyer immediately.	The title to the goods passes to the buyer on future date or on fulfilment of some condition.
2. <i>Nature of Contract</i>	It is an executed contract.	It is an executory contract.
3. <i>Burden of risk</i>	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
4. <i>Nature of rights</i>	It creates <i>jus in rem</i> that is the buyer as a owner gets the right to enjoy the goods against the whole world. If the seller refuses to deliver the goods the buyer may sue for recovery of goods by specific performance.	It creates <i>jus in personam</i> that is the buyer has only a personal remedy against the seller. He can sue only for damages for breach and not for recovery of goods.
5. <i>Remedies for breach</i>	If the buyer fails to pay for the goods, the seller may sue for the price (suit for price sec. 55) and also has other remedies available to an unpaid seller.	If the buyer fails to accept and pay for the goods, the seller can only sue for damages and not for price. (Damages for non-acceptance sec. 56)
6. <i>Insolvency of Buyer</i>	If the buyer becomes insolvent before paying the price, the seller shall have to deliver the goods to the Official Receiver on his demand because the ownership of the goods has passed to the buyer.	Since the seller continues to be the owner, he can refuse to deliver the goods to the Official Receiver unless he is paid the price because the seller continues to be the owner of the goods.
7. <i>Insolvency of Seller</i>	If the seller becomes insolvent while the goods are still in his possession, the buyer shall have a right	If the seller becomes insolvent, the buyer cannot claim the goods. If the buyer has paid the price he can

BASIS	SALE	AGREEMENT TO SELL
	to claim the goods from the Official Receiver because the ownership of goods has passed to the buyer.	claim ratable dividend from the estate of the insolvent seller.

(b)

	SALE	HIRE-PURCHASE
(1)	In a contract of sale, the seller transfers or agrees to transfer the property in goods to the buyer for a price.	In hire purchase there is an agreement for the hire of an asset conferring an option to purchase.
(2)	The ownership in goods passes on making the contract even if price is paid in instalments.	The ownership passes when the option to purchase is finally exercised by the intending purchaser after complying with the terms of agreement.
(3)	The purchaser becomes owner of goods	In a hire-purchase the hirer is not the owner but only a bailee of goods.
(4)	After a sale takes place the buyer cannot terminate the contract and refuse to pay the price of the goods.	In a hire-purchase the hire purchaser can terminate the contract at any time and he is not bound to pay any further instalments.
(5)	On default by the buyer the seller cannot claim back the goods.	On default of any payment by the hirer, the owner of the article has the right to terminate the agreement and to regain the possession of the article.

(c)

	SALE	BAILMENT
(1)	In a contract of sale, the seller transfers or agrees to transfer the property in goods to the buyer for a price.	In case of bailment possession of goods is transferred from the bailor to bailee for some purpose, e.g., safe custody, repair, etc.
(2)	The buyer can deal with the goods the way he likes.	The bailee can use the goods only for the intended purpose of bailment.
(3)	The buyer gets ownership of the goods.	The bailee only acquires possession.
(4)	Generally, the goods are not returnable in a contract of sale.	The goods are returnable after a specified period or when the purpose for which they were delivered is achieved.
(5)	The consideration for a sale is the price in terms of money.	The consideration for bailment may be gratuitous or non-gratuitous.

Q.6 Describe 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.

[RTP May 2018, RTP Nov. 2020]

[June 2022, 4 Marks]

Ans. Goods perishing before sale but after agreement to sell [Section 8]

- where specific goods had perished or became damaged.
- without the fault of seller or buyer.
- after the agreement to sell is made and before the risk passes to the buyer.
- the contract becomes void.

Thus, the agreement to sell becomes void in the following circumstances:—

- (a) The contract of sale must be an agreement to sale and not an actual sale.
- (b) The agreement to sale must be for specific goods.
- (c) The goods must perish or become damaged after agreement to sale but before sale.
- (d) The goods get perished or damaged without any wrongful act or default on the part of the seller or the buyer.

For example, an agreement to sell a car after a certain period becomes void, if the car is destroyed or damaged in the intervening period.

CASE STUDIES:

Q.7 A sells a laptop computer to B with a stipulation that payment should be made within 3 days. B makes the payment after 7 days of the contract.

Ans. Hint : Stipulations as to the time for payment of price is not of essence; A cannot avoid the contract on the grounds of the breach of stipulation as to time of payment of price.

Q.8 A agrees to sell two of his cars to B at a price to be fixed by C. He immediately gives delivery of first car. C refuses to fix the price. A asks for the return of the car already delivered while B claims the delivery of the second car too. Decide.

Ans. Hint : The buyer B shall pay a reasonable price to A for the car already taken. As regards the second car, the contract becomes void.

Q.9 Classify the following transactions according to the types of goods they are :—

- (i) A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside.
- (ii) A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop.
- (iii) T agrees to sell to S all the oranges which will be produced in his garden this year. [RTP Nov. 2019, MTP Nov. 2020]

Ans. Hint : (i) The goods are ascertained goods, in this case, ascertained goods are those which are identified in accordance with the agreement after the contract of sale are known as ascertained goods.

(ii) The goods which are not specifically identified & agreed upon at the time when the contract of sale is made, are called unascertained goods. The packet of salt is unascertained goods in the given case.

(iii) The goods which are yet to be manufactured or produced or acquired by seller after making the contract of sale are called future goods. A contract for the sale of future goods is always an agreement to sell. In the given cases oranges are future goods.

Q. 10 Mr. A contracted to sell his swift car to Mr. B. Both missed to discuss the price of the said swift car. Later, Mr. A refused to sell his swift car to Mr. B on the ground that the agreement was void being uncertain about the price. Does Mr. B have any right against Mr. A under the Sale of Goods Act, 1930?
[June 2023, 4 Marks]

Ans. According to the provisions of the Sale of Goods Act, 1930, the price in a contract of sale may be either fixed by the contract or may be left to be fixed in a manner thereby agreed or may be determined by the course of dealings between the parties. The Act further provides that where the price is not determined by the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

In the given case, Mr. A contracted to sell his swift car to Mr. B, but both of them miss to discuss the price and Mr. A subsequently refuses to sell the car on the grounds that the agreement was void on account of uncertainty of price.

Thus applying the above stated provisions to the given case it can be concluded that contention of Mr. A is invalid. The contract is valid and enforceable and Mr. B has a right to demand the sale and delivery of the car and is bound to pay the reasonable price of the car to Mr. A.

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CHAPTER

CONDITIONS & WARRANTIES

LONG ANSWER QUESTIONS:

Q.1 Explain the condition as to merchantability and condition as to wholesomeness.

[RTP May 2018]

Ans. Implied condition as to merchantability. — [Sec. 16(2)]

Where goods are brought by description from a seller who deals in goods of that description, there is an implied condition that goods shall be of merchantable quality. Merchantable means that the goods are commercially saleable and that they are fit for the purpose for which they are generally used. Mere marketability of not adequate, they should also be free from latent defects.

Where the buyer examines the goods prior to sale, there is no implied condition as to merchantability as regards defects which such examination ought to have revealed. However, inspite of examination, if the goods have certain latent defects which no examination could reveal, the implied condition remains.

Example : X bought a colour TV from M/s Concord Electronics. The TV was defective right from the beginning and it did not work inspite of repairs by expert technicians. There is a breach of implied condition as to merchantability and the dealer will have to take back the defective TV and refund the amount.

Implied condition as to wholesomeness:

In case of food stuff and eatables, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome that is fit for human consumption. In case of breach the buyer is entitled to reject the goods claim damages.

Example : X bought milk from Y, a dairy owner. The milk was contaminated with germs of typhoid fever. X's wife, on taking the milk, became infected and died of it. Y was held liable in damages.

Q.2 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.

[MTP May 2018 & MTP May 2019,

RTP Nov. 2019, MTP July 2021]

[May 2019, 4 Marks, June 2022, 6 Marks]

Ans. Implied condition in a sale by sample. — [Sec. 17]

When goods are to be supplied according to a sample agreed upon, the following conditions are implied:

- (a) The bulk shall correspond with the sample in quality.
- (b) The buyer shall have a reasonable opportunity of comparing the goods with the sample.
- (c) The goods shall be free from any latent defect (hidden defect) rendering them unmerchantable. Latent defects are the defects which would not be apparent on reasonable examination of the sample and they can be discovered only when the goods are put to use. If the defect is easily discoverable on inspection and the buyer takes delivery after inspection, he has no remedy.

A sale is by sample where there is a term in contract, express or implied to that effect. The effect of the section is that where goods are sold by sample, there should not be any latent defect therein which renders them unmerchantable. In case of breach of any of the above conditions as to sale by sample, buyer can rescind the contract and claim damages.

Implied warranties:

In the absence of an agreement to the contrary, the following warranties are implied in every contract of sale:

1. The buyer must get quiet possession [Sec. 14(b)]

The buyer shall have and enjoy quiet possession of the goods. For *e.g.*: X has given his car on hire for a period of one month to Y. Thereafter, X sold it to Z without disclosing to him that Y was entitled to use the car on account of the hire agreement. Z claims the car from Y. Y's possession is disturbed. He can claim damages from X.

2. The goods must be free from encumbrance [Sec.14(c)]

There is an implied warranty that the goods shall be free from any charge or encumbrance in favour of a third party not declared or known to the buyer before or at the time when the contract is made. The effect of this clause is that if the buyer pays off the charge of encumbrance, he will be entitled to recover the money from the seller.

3. Warranty for quality or use by usage of trade [Sec.16(3)]

A warranty as to fitness for a particular purpose may be annexed to a contract of sale by a custom or usage of trade.

4. Disclosure of dangerous nature of goods

Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of this warranty, the seller may be liable in damages.

Q.3 Explain the doctrine of Caveat Emptor. What are the exceptions to the doctrine of 'Caveat Emptor'? [RTP May 2018, MTP Nov. 2018]

[Nov. 2018, 6 Marks]

[May 2019, 4 Marks]

[Nov. 2020, 4 Marks],

OR

"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 & state exceptions, if any. [RTP Nov. 2018]

Ans. Caveat Emptor is a Latin expression, which means, "Buyers Beware". The doctrine of caveat emptor means that, ordinarily, a buyer must buy goods after satisfying himself of their quality and fitness. If he makes a bad choice he cannot blame the seller or recover damages from him:

- ◆ Thus it is buyer's duty to examine goods thoroughly.
- ◆ The buyer should ensure at the time of purchase that the goods conform to his requirements.
- ◆ If the goods turn out to be defective, buyer cannot hold the seller responsible.

EXCEPTIONS: The doctrine of caveat emptor does not apply in the following situations:

1. Fitness as to quality or use. [Sec. 16(1)]

- ◆ where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required.
- ◆ so as to show that the buyer 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 (whether he is the manufacturer or not, *there is an implied condition that the goods shall be reasonably fit for such purpose.*)

However, this rule does not apply when the goods are sold under a **patent or a brand name**.

2. Sale of goods by description. [Sec. 16(2)]

Where there is a sale of goods by description, there is an implied condition that the goods are merchantable that is, fit for particular purpose.

3. Trade usage. [Sec. 16(3)]

An implied condition of fitness may be annexed to a contract of sale by usage of trade.

4. Where the seller is guilty of fraud

Where the seller makes a false representation and buyer relies on that representation, the doctrine of *caveat emptor* will not apply. In such a case the buyer will be entitled to the goods according to that representation.

5. Where seller actively conceals a defect

Where the seller actively conceals a defect in the goods so that the same could not be discovered on a reasonable examination, the doctrine of *caveat emptor* will not apply. Such a contract will be voidable.

6. Sale by sample

When goods are purchased by sample, the bulk must correspond with the sample and the buyer must have reasonable opportunity of inspecting the goods.

7. Sale by sample as well as description

The doctrine of *Caveat Emptor* is not applicable if the goods do not correspond to both, sample as well as description.

SHORT QUESTIONS:

Q.4 In what instances can the breach of condition be treated as breach of warranty? [MTP July 2021] [Jan. 21, 3 Marks] [Dec. 2021, 4 Marks]

Ans. According to provisions of section 13, of the Sale of Goods Act, 1930, a breach of condition may be treated as breach of warranty in the 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. Once a buyer waives a condition he cannot subsequently insist on its performance.
- (ii) Where the buyer elects to treat a breach of condition as breach of warranty. In such a case, the buyer instead of repudiating the contract, accepts the performance and has a right to sue for damages if any.
- (iii) Where the contract of sale is non-severable & the buyer has accepted the whole goods or any part thereof.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Q.5 Differentiate between condition & warranty. [Jan. 21, 3 Marks] [MTP July 2021]

Ans.

CONDITION	WARRANTY
Condition is a term, which is essential to the main purpose of the contract.	Warranty is only a collateral term. It is subsidiary to the main purpose of the contract.

CONDITION	WARRANTY
Breach of a condition gives the aggrieved party a right to repudiate the contract and also to claim damages.	Breach of warranty entitles the aggrieved party to claim damages only. He cannot repudiate the contract.
A breach of condition may under certain circumstances, be treated as breach of warranty	But a warranty cannot become a condition.

Q.6 Explain implied condition as to fitness or quality in a contract of sale, under the Sale of Goods Act, 1930

Ans. Implied condition as to fitness or quality. — [Sec. 16(1)]

The general rule is, there is no implied condition as to quality or fitness for the purpose of the buyer. This is based on the doctrine of "*caveat emptor*" that is, let the buyer beware. It means that while buying the goods, it is the responsibility of the buyer to check that the goods he is buying would suit his purpose or not. However, in the following situation, the responsibility as to fitness of goods falls upon the seller:

- (a) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required.
- (b) so as to show that the buyer relies on the seller's skill, or judgment, and
- (c) the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or not), *there is an implied condition that the goods shall be reasonably fit for such purpose.*

Example:—

- A contracts to make and deliver a set of false teeth to B. The false teeth do not fit in the mouth of B. B is entitled to reject the goods.
- X places order for lorries to be used for 'heavy traffic in a hilly country'. The lorries were unfit for this purpose and broke down. It was held that there was breach of condition as to fitness.

Sale under patent or trade name:

Proviso to section 16(1) lays down that 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 as to its fitness for any particular purpose. It is so because in such a case the buyer is not relying on the skill and judgment of the seller but relies on the patent name.

CASE STUDIES:

Q.7 A purchased a hot-water bottle from a retail chemist. The chemist informed him that the bottle was specially meant for holding hot water. At the time of use, the bottle burst as soon as the hot water was poured into it and injured A's wife. Comment on remedies available to A under the Sale of Goods Act, 1930.

Ans. Hint: Breach of implied condition as to fitness and quality of goods; A can claim damages.

Q.8 D bought a Colour TV from M/s. Kaka Enterprises for a sum of ₹ 40,000. The TV set was defective right from the beginning and it did not work inspite of repairs by the expert mechanics. What is the remedy available to D?

Ans. Hint : Breach of condition as to merchantability; D shall be entitled to return the T.V. and claim damages.

Q.9 Ram consults Shyam, a motor-car 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? [RTP Nov. 2018]

Ans. Hint : Breach of implied condition as to quality & fitness of goods and their unsuitability for buyers purpose. Ram is entitled to rescind the contract and claim damages if any, along with a refund of price.

Q.10 For the purpose of making uniform for the employees, Mr. Yadav brought 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 carriage lining. Advise Mr. Yadav whether he is entitled to have any remedy under the Sale of Goods Act, 1930.

Ans. Hint: Condition as to fitness & quality for buyer's purpose. This implied condition applies to a contract only when - (i) the purpose of buyer's purchase is known to the seller, (ii) when the buyer relies on seller's skill & judgment & (iii) Seller deals in the goods in his usual course of business.

In the given case since the buyer - Mr. Yadav, has not communicated to the seller - Vivek, the purpose of purchasing the cloth, therefore the implied condition as to quality & fitness of the cloth for buyer's purpose does not apply & hence Mr. Yadav is not entitled to any remedy against Vivek, under the Sale of Goods Act, 1930.

Q.11 M/s Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood; Mango wood; Teak wood; Burma-wood etc.

Mr. Das a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The

Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements.

The carpenter visited Mr. Das's house next day, and he found that the seller has supplied Mango Tree wood which would be most unsuitable for the purpose. The carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements. The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.

- (i) Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".**
- (ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required for serving his purpose?**

[May 2019, 6 Marks, MTP July 2021]

Ans. (i) The doctrine of 'Caveat Emptor' means 'Let the buyer beware'. As per this doctrine, in case of sale of goods, it is the duty of the buyer to satisfy himself before buying the goods that they will be suitable for the purpose for which they are being bought. Thus generally it is the duty of the buyer to make a proper selection of goods and if the goods turn out to be unsuitable for his purpose then he cannot hold the seller liable. The seller shall not be held responsible for the bad selection of the buyer.

However one of the exceptions to this doctrine is when implied condition as to quality or fitness for buyer's purpose/use, applies. As per this implied condition when the, buyer makes known to the seller, the purpose for which the goods are required, so as to show that he relies on seller's skill & judgment & the goods are of a description which is in the course of seller's business to supply, then it is the duty of seller to ensure that the goods supplied are reasonably fit for buyer's purpose. If the goods now turn out to be unsuitable for buyer's purpose, it shall amount to breach of condition and the buyer shall have right to repudiate the contract & claim damages.

(ii) In the given case Mr. Das purchases certain wooden logs of specific measurement from M/s Woodworth & Associates (a dealer of variety of wooden logs) after expressly communicating the purpose of his purchase. Mr. Das required wooden logs suitable for "making wooden doors & window frames". However the seller supplied Mango tree wood which turned out to be most unsuitable for the stated purpose.

Thus applying the above provisions (stated in (i) above) it is evident that the seller M/s Woodworth & Associates has committed a breach of implied condition as to quality & fitness for buyer's purpose. Mr. Das, as the buyer is entitled to reject the goods and demand the supply of the right kind of wood. Alternatively he can seek, the repudiation of contract and claim refund of money as well as damages if any.

Q.12 Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as Rs. 125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase.

The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.

The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.

Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful?

Explain the basic law on sale by sample under Sale of Goods Act, 1930?

Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act, 1930?

What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice? [Nov. 2019, 6 Marks]

Ans. According to the provisions of the Sale of Goods Act, 1930, in case if a contract for sale by sample the implied condition is that:

- (i) the bulk of the goods supplied shall correspond with the sample.
- (ii) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and
- (iii) the goods shall be free from any latent defects.

Further if the goods are sold by sample as well as description then as per the implied condition, it is the duty of the seller to ensure that the goods supplied correspond with both the sample as well as description.

However it is the duty of the buyer to nevertheless examine the goods before purchasing them. If the buyer, due to his negligence or oversight, makes a bad selection he cannot subsequently hold the seller liable (*Rule of Caveat Emptor*)

In the given case, the shopkeeper has contracted for the sale of 100 kgs of Basmati rice to Mrs. Geeta. The sale is effected by sample and Mrs. Geeta is given a reasonable opportunity to compare the sample with bulk. The sample corresponds to the entire lot. However Mrs. Geeta fails to notice that the sample itself contained mixed varieties of rice and as a consequence was aggrieved by delivery of a mixed variety of bulk which corresponded with the rice sampled by her.

Thus applying the above state provisions to the given case it can be concluded that Mrs. Geeta would not be successful in her suit against the shopkeeper, since he had duly complied his duties under the implied condition of sale by sample. Mrs. Geeta shall be responsible for her own loss on the grounds of 'Caveat Emptor', since she was negligent in identifying the defects in sample, which were visible.

If Mrs. Geeta specified her exact requirement as to the length of rice grains the sale shall be treated as sale by sample & description. In such a case the goods should correspond with both the sample & description. In the event of non-correspondence with any one, the seller shall be held liable for breach of condition which in turn would entitle Mrs. Geeta for repudiation of contract and suit for damages against the shopkeeper.

Q.13 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 & 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?

[RTP May 2020]

Ans. According to the provisions of the Sale of Goods Act, 1930 where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that goods shall be of merchantable quality. 'Merchantable quality' though not defined in the Act, means that the goods are commercially saleable and that they are fit for the purpose for which they are generally used. Thus if the goods are purchased for self-use they should be reasonably fit for the purpose for which they are being used.

The given case the Bottle of cold drink exploded in Mr. Amit's hand while he is examining the same. Merchantability here implied that the bottle must have been properly sealed.

Thus applying the above stated provisions it is evident that there is a breach of condition as to merchantability and Mr. Amit can successfully claim damages from the owner of the market.

Q.14 Mr. T was a retail trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.

(i) Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930 ?

(ii) What is the remedy available to Mr. M ? [Jan. 2021, 6 Marks]

Ans. According to the provisions of the Sale of Goods Act, 1930, where the buyer, expressly or impliedly, makes known to the seller, the particular purpose for which goods are required to be purchased, so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which the seller deals with in the course of his business, there is an implied condition that the goods shall be reasonably fit for buyer's purpose. If the goods turn out

to be unsuitable for buyer's purpose, the seller shall be liable. In other words, condition as to quality & fitness of goods for buyer's purpose shall apply, if:

- ◆ The buyer makes known to the seller the particular purpose, for which the goods are required to be purchased,
- ◆ The buyer relies on the seller's skill or judgment &
- ◆ The goods are of a description which the seller ordinarily supplies in the course of his business.

If the goods are subsequently discovered to be unsuitable for buyer's purpose, the seller shall be liable for breach of condition and the buyer shall be entitled to repudiate the contract. The buyer can reject the goods, recover the price & claim damages:

- (i) In the given case Mr. T was a retail trader of many kinds of fans and Mr. M contracts to buy an exhaust fan for kitchen. However a table fan was actually delivered to Mr. M subsequently.

It is evident that Mr. M, the buyer, had specifically communicated the purpose of his purchase to Mr. T, who was a trader of fans in his ordinary business & the buyer relied on seller's skill & judgment. Thus applying the above provisions it can be concluded that, Mr. M, the buyer is entitled to reject the goods and Mr. T cannot deny the same.

- (ii) Mr. M is entitled to reject the goods and demand the delivery of contracted goods, in the first instance. Further he is also entitled to, alternatively, repudiate the contract, recover the price and claim damages, if any. Thus Mr. M can sue for rescission of the contract, seek restitution of price and also sue for damages.

Q.15 Mrs. G bought 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. G filed a case against the seller to recover damages. Can she recover damages under the Sale of Goods Act, 1930? [RTP May 2021]

Ans. According to the provisions of the Sale of Goods Act, 1930, the general rule is that of 'caveat emptor' that is 'let the buyer beware'. However when the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on seller's skill & judgment and that seller deals in such goods in the ordinary course of business, then the buyer can hold seller liable if goods turn out to be unfit for buyer's purpose. Thus in the event of breach of condition as to fitness for buyer's purpose, the buyer shall be entitled to repudiate the contract and claim damages. However in case the goods turn out to be unsuitable for buyer's purpose because of some unique circumstances of the buyer, then the seller shall not be liable for the loss sustained by the buyer. In the given case Mrs. G, purchased the tweed coat without informing the seller, Mr. P, about the sensitive nature of her skin.

Thus applying the above stated provisions it is evident that since Mrs. G had not informed the seller, Mr. P about her unique circumstances of sensitive skin, she cannot hold the seller liable for breach of condition as to quality and fitness for buyer's purpose.

Q.16 Mr. Das, a general store owner went to purchase 200 kg. of Basmati Rice of specific length from a whole seller. He saw the samples of rice and agreed to buy the one for which the price was quoted as ₹ 150 per kg. While examining the sample Mr. Das failed to notice that the rice contained a mix of long and short grain of rice. The whole seller supplied the required quantity exactly the same as shown in the sample. However, when Mr. Das sold the rice to one of his regular customers she complained that the rice contained two different qualities of rice and returned the rice. With reference to the provisions of the Sale of Goods Act, 1930, discuss the options open to Mr. Das for grievance redressal. What would be your answer in case Mr. Das specified his exact requirement as to length of rice ?
[July 2021, 6 Marks]

Ans. According to the provisions of section 17 of the Sale of Goods Act, 1930, in case of a contract of sale by sample there is an implied condition that: —

- ◆ the bulk of the goods supplied shall correspond with the sample in quality.
- ◆ the buyer shall have the reasonable opportunity of comparing the bulk with the sample, and
- ◆ that the goods shall be free from any latent/hidden defect rendering them unmerchantable.

In the given case Mr. Das contracted for purchase of 200 kg of basmati rice by sample. However at the time of formation of contract he failed to examine the sample properly and did not notice that the rice contained a mix of long and short grain. Later the wholesaler supplied the contracted quantity which corresponded to the quality as shown in the sample. However when Mr. Das further sold the goods to his customer, she returned the same, complaining that rice contained 2 different qualities.

Thus applying the above stated provisions it is evident that the wholesaler has complied with all the requirements of requirements implied condition in case of sale by sample. The goods supplied correspond with the sample in quality and Mr. Das, the buyer, had been provided the reasonable opportunity of comparing the bulk with sample and the goods were also free from any latent defects. The fact that Mr. Das failed to examine the sample properly and failed to take notice of the different qualities of rice in it shall not result in breach of implied condition and therefore he cannot hold the seller liable for his loss. Thus Mr. Das has no remedy in the given case.

If Mr. Das specified the exact requirement as to the length of the rice, then the sale would amount to sale by description and in such a case the implied condition is that the goods supplied must correspond exactly to the description provided by the buyer at the time of the formation of contract of sale. Now if

the rice supplied does not correspond to the description as to the exact length of grain specified at the time of formation of contract, then it shall amount to breach of condition as to description and Mr. Das shall be entitled to repudiate the contract and claim damages.

Q.17 TK ordered timber of 1 inch thickness for being made into drums. The seller agreed to supply the required timber of 1 inch. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. The timber is commercially fit for the purpose for which it was ordered. TK rejects the timber. Explain with relevant provisions of the Sale of Goods Act, 1930 whether TK can reject, the timber.[Dec. 2021, 3 Marks]

Ans. According to the provisions of the Sale of Goods Act, 1930, condition as to description is one of the implied conditions in a contract of sale. When goods are bought by description from a seller, the implied condition is that goods supplied shall correspond to the description. In case the goods do not correspond to the description, the buyer shall have the right to reject the goods, repudiate the contract & claim damages, if any. Further where goods of mixed quality are delivered, the buyer can reject the entire lot of goods.

In the given case, the TK ordered for timber of 1 inch thickness, but the seller supplied timber varying in thickness from 1 inch to 1.4 inches.

Thus applying the above stated provision, it is evident that TK can reject the timber supplied on account of breach of condition as to description as the goods supplied do not correspond to the description given by him at the time of formation of contract of sale.

Q.18 Sonal went to a Jewellery shop and asked the sales girl 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. Sonal 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 manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930:

- (i) State with reasons whether Sonal can recover the amount from the Jeweller.
- (ii) What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same?

[June 2022, 6 Marks]

Ans. (i) According to the provisions of the Sale of Goods Act, 1930, as a general rule it is the responsibility of the buyer to check the suitability for purpose & fitness of the goods being bought by him. However, in the following situation the responsibility as to fitness for buyer's purpose falls upon the seller:

- ◆ where the buyer, expressly or by implication makes known to the seller, the particular purpose for which the goods are required,
- ◆ so as to show that he relies on seller's skill & judgment, and
- ◆ the goods are of a description which is in the course of seller's business to supply (whether he is the manufacturer or not). Thus on the fulfilment of the above conditions, the implied condition that the goods shall be reasonably fit for such purpose shall apply and seller shall be held liable.

Therefore by applying the above stated provisions to the given case it is evident that since, Sonal had informed the purpose and requirement in respect of the bangles to the jeweller, who dealt in the said goods in the ordinary course of business and she relied on seller's skill & judgment in respect of the same, it is the responsibility of the seller to ensure that the goods turn out to be suitable for Sonal's use. Since the goods turn out to be unsuitable, there is breach of condition as to quality and fitness and Sonal can repudiate the contract and file a suit for recovery of price as well as damages.

(ii) In the given case if the jeweller offers to change the design so as to make it suitable for buyer's (Sonal) use, then also he cannot charge extra cost for the same, since the breach of condition as to quality and fitness entitles the buyer to claim damages. Thus if he offers to rework to change the design, Sonal has the discretion to accept or reject such offer and treat such a breach of condition as a breach of warranty but the jeweller cannot charge any extra cost for the same.

Q.19 Mr. K visited M/s. Makrana Marbles for the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J to visit his house prior to supply so that he can clearly ascertain the correct mix and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different. Mr. J ignored the above suggestion.

Mr. J. supplied 146 blocks of marble as per the size for the rooms and 16 boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Marble and tiles were successfully laid except on second floor due to different sizes of the marble. The tiles fitted in the parking space also got damaged due to the weight of the vehicle came for unloading cement bags. Mr. K asked Mr. J for the replacement of marble and tiles to which Mr. J refused, taking the plea that the marble were as per the measurement and it was unsafe to fit tiles at the parking area as it cannot take heavy load. Discuss in the light of provisions of Sale of Goods Act, 1930:

- (i) Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K and Mr. J.**

(ii) Whether the replacement of damaged tiles be imposed on M/s. Makrana Marbles? Explain. [Dec. 2022, 6 Marks]

Ans.: According to the provisions of the Sale of Goods Act, 1930, the doctrine of 'Caveat Emptor' means 'Let the buyer beware'. As per this doctrine, in case of sale of goods, generally, it is the duty of the buyer to satisfy himself before buying the goods that they will be suitable for the purpose for which they are being bought. Thus generally, it is the duty of the buyer to make a proper selection and if the goods turn out to be unsuitable for his purpose then he cannot hold the seller liable for the bad selection.

However one of the exceptions to this doctrine is when, implied condition as to quality and fitness for buyer's purpose/use, applies. As per this implied condition when the buyer makes known to the seller, the purpose for which the goods are required so as to show that he relies on the seller's skill and judgment and the goods are of a description which is in the course of seller's business to supply, then it is the duty of seller to ensure that the goods supplied are reasonably fit for buyer's purpose. If the goods turn out to be unfit for buyer's purpose it shall amount to breach of condition and the buyer shall have the right to repudiate the contract and claim damages. Conversely, if the buyer does not use the goods supplied by the seller as directed by him, then the seller cannot be held liable if the goods turn out to be unfit for buyer's purpose.

(i) In the given instance, Mr. K asked the seller of marbles and tiles – Mr. J to visit his house prior to supply of so ascertain the correct mix and measurement of marbles and tiles. Mr. J visited only the first floor but despite the request of the buyer, Mr. K, he ignored to visit the second floor, where the construction was different. Later the marble turns out to be unfit for laying out on the second floor because of difference in measurements.

Thus applying the above stated provisions it is evident that Mr. K, the buyer, relied on seller, Mr. J's skill and judgment in making his purchase. The implied condition of quality & fitness for buyer's purpose applies in this case and Mr. J's failure of duty to ensure that the marble supplied was suitable for the second floor of Mr. K's house amount to breach. Hence Mr. K is entitled to reject the marble supplied and seek replacement and/or claim damages, if any.

(ii) In the given case, Mr. K had called upon Mr. J to ascertain the correct mix of marbles and tiles for his new home. Mr. J, the seller was under a duty to ensure that the tiles supplied and being fixed in the parking area were fit for the purpose (place) for which they were being used. By merely giving a word of caution that the tiles could only bear reasonable weight, he cannot be deemed to be absolved of his duty to ensure their suitability.

Thus Mr. K will be entitled to even recover the cost of replacement of tiles provided the tiles were not fixed at Mr. K's insistence in the parking space despite the warning by Mr. J. However if the tiles were used in the parking space at Mr. K's discretion, despite Mr. J's word of caution, then Mr. K will not be entitled to recover the cost of damages in respect of the tiles.

Q. 20 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. [June 2023, 4 Marks]

Ans. According to the provisions of the Sale of Goods Act, 1930, in case of a contract for sale by sample, the implied condition is that: —

- ◆ the bulk of goods supplied correspond with the sample,
- ◆ that the buyer shall be given a reasonable opportunity to compare the bulk with the sample, and
- ◆ that the goods shall be free from any latent defects.

In the event of breach of this implied condition the buyer shall have the right to reject the goods, repudiate the contract and claim damages, if any.

Further the Act provides that if the contract of sale is non-severable and buyer has accepted whole or any part of the goods, then the breach of condition will be treated as breach of warranty. In such a case the buyer cannot repudiate the contract, he can only claim damages.

In the given case goods were sold by sample to J who further sold it K, followed by sale to L. Thereafter L sold the goods by sample to M who discovers that the goods were not according to the sample and rejects the goods and gave notice to L.

Thus applying the above stated provisions it can be concluded that, on the grounds of breach of implied condition as to sample, M can reject the goods and repudiate the contract with L and also claim damages, if any.

However L can sue K and K can sue J only in respect of damages as further sale of these goods without discovery of the variance between the goods and the sample amounts to acceptance, which is the instance when breach of condition shall be treated as breach of warranty.

3

CHAPTER

TRANSFER OF OWNERSHIP

LONG ANSWER QUESTIONS:

Q.1 What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods.

[May 2018, 6 Marks], [Nov. 2019, 4 Marks], [Dec. 2022, 4 Marks]

Ans. Under Section 23(1), in a contract for the sale of unascertained or future goods by description, *the property in the goods passes to the buyer when the goods of that description are 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 goods are ascertained by appropriation. Until appropriation there is merely an agreement to sell. Appropriation means selection of goods with the mutual consent of the parties.

The following are the essentials of appropriation:

- (a) The goods should conform to the description and quality stated in the contract.
- (b) The goods must be in a deliverable state.
- (c) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to buyer or his agent or the carrier.
- (d) The appropriation must be:
 - by seller with the assent of buyer, or.
 - by buyer with the assent of seller.
- (e) The assent may be expressed or implied.
- (f) The assent may be given either before or after appropriation.

Q.2 'Nemo Dat Quad Non Habet' - None can give to the other what he has not got. Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930.

[May 2019, 6 Marks] [Nov. 2020, 6 Marks] [RTP May 2020]

Ans. Transfer of property is an essential condition to the contract of sale. For sale to be effective passage of property must take place from the seller to the buyer. If the seller's title is defective, the buyer's title will also be defective. A person can only transfer what he has. No one can transfer a better title to the goods than he himself possesses. This principle is expressed by the Latin phrase, "*Nemo dat quad non habet*", which means "none can give who does not himself possess".

Exceptions - In each of the following cases, a person who is not an owner, can give to the transferee a valid title to the goods:

1. Transfer of title by estoppel [Sec. 27]

When the true owner of the goods by his conduct or words or by any act or omission leads the buyer to believe that the seller is the owner of the goods or has the authority to sell them, he cannot afterwards deny the seller's authority to sell. The buyer in such a case gets a better title than that of the seller.

2. Sale by a mercantile agent [Proviso to Sec. 27]

Sale of goods by a mercantile agent gives a good title to the purchaser even in cases where the agent acts beyond his authority, provided the following conditions are satisfied:—

- (i) The agent is in possession of the goods or of a document of title to the goods.
- (ii) Such possession is with the consent of the owner.
- (iii) The agent sells the goods in the ordinary course of business.
- (iv) The purchaser acts in **good faith** and has **no notice** that the agent had no authority to sell.

3. Sale by one of several joint owners [Sec. 28]

This section enables a co-owner to sell not only his own share but also of his other co-owners. 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 provided the buyer acts in **good faith** and **without notice** that the seller had no authority to sell.

4. Sale of goods obtained under a voidable agreement [Sec. 29]

When the seller of goods has obtained possession thereof under a voidable agreement but the agreement has not been rescinded at the time of sale, the buyer obtains a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

It is to be noted that the above section applies when the goods have been obtained under a voidable agreement, not when the goods have been obtained under a void or illegal agreement. If the original agreement is of no legal effect (*void ab initio*) the title to the goods remains with the true owner and cannot be passed on to anybody else.

5. Sale by the seller in possession of goods after sale [Sec. 30(1)]

Under this exception, a second sale by the seller remaining in possession of the goods will give a good title to the buyer acting in **good faith and without notice**. Three conditions should be fulfilled under this exception:

- (a) The seller must continue in possession of the goods or of the documents of title to the goods as seller. Possession as a hirer or bailee of the goods from the buyer after delivery of the goods to him will not do.
- (b) The goods must have been delivered or transferred to the buyer or the documents of title must have been transferred to him.
- (c) Good faith and absence of notice of the previous sale on the part of the second buyer.

6. Sale by buyer in possession of goods over which the seller has some rights [Sec. 30(2)]

This exception deals with the case of a sale by the buyer of goods in which the property has not yet passed to him. When goods are sold subject to some lien or right of the seller (for example for unpaid price) the buyer may pledge, or otherwise dispose of the goods to a third party and give him a good title, provided the following conditions for sell, are satisfied:

- (i) The first buyer is in possession of the goods or of the documents of title to the goods with the consent of the seller.
- (ii) Transfer is by the buyer or by a mercantile agent acting for him.
- (iii) The person receiving the same acts in good faith and without notice of any lien or other right of the original seller.

7. Sale by an unpaid seller [Sec. 54]

An unpaid seller of goods can, under certain circumstances, re-sell the goods. The purchaser of such goods gets a valid title of the goods.

8. Sale under the Contract Act/other laws

- (a) A pawnee may sell the goods of pawner if the latter makes a default of his dues. The purchaser under such a sale gets a good title.
- (b) A finder of goods can sell the goods under certain circumstances. The purchaser gets a good title.
- (c) Sale by an Official Receiver or Liquidator of the company will give the purchaser a valid title.

SHORT QUESTIONS:**Q.3 When does the property in goods pass to the buyer in case of Sale on approval basis?**

Ans. Transfer of property in sale by approval.

When goods are delivered on approval (Sec. 24): When goods are delivered to the buyer on approval or 'on sale or return,' or on other similar terms, the property therein passes to the buyer :

- (i) When he signifies his approval or acceptance to the seller, or
- (ii) When the buyer does any other act adopting the transaction, *e.g.*, pledges the goods or resells them.
- (iii) When the buyer retains the goods, without giving notice of rejection, beyond the time fixed for the return of goods, or if no time has been fixed, beyond a reasonable time. In short, the property passes either by acceptance or by failure to return the goods within specified or reasonable time.

Q.4 What are the rules with respect to passage of property in case of specific or ascertained goods under the Sale of Goods Act, 1930?

Ans. Where there is a contract for the sale of *specific or ascertained goods* the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred [Sec. 19(1)]. For the purpose of ascertaining the intention of the parties regard shall be had to:—

- the terms of the contract,
- the conduct of the parties, and
- the circumstances of the case. [Sec. 19(2)]

It is only when the intention of the parties cannot be judged from their contract or conduct or other circumstances that the rules laid down in Sections 20 to 24 apply. [Sec. 19(3)]. These rules are as follows:

(a) *Specific goods in a deliverable state:* [Section 20]

- ◆ in case of an unconditional contract for the sale of specific goods in a deliverable state,
- ◆ the property in the goods passes to the buyer on making the contract, and
- ◆ it is immaterial whether the time of payment of the price or the time of delivery of the goods or both is postponed.

(b) *Specific goods to be put in deliverable state:* [Section 21]

- ◆ where there is a contract for the sale of specific goods and
- ◆ the seller is bound to do something to the goods for the purpose of putting them into a deliverable state,

- ◆ the property in the goods does not pass until such thing is done and the buyer has the notice thereof.

(c) Specific goods to be Weighed or Measured: [Section 22]

- ◆ in a contract for the sale of specific goods in a deliverable state,
- ◆ where the seller is bound to weigh, measure, test or do some other act or thing,
- ◆ with reference to the goods for the purpose of ascertaining the price,
- ◆ the property does not pass until such act or thing is done and the buyer has the notice of the same.

Q.5 What is the effect of part delivery of goods made under the contract of sale?

Ans. The quantity of goods to be delivered is specified in the contract. If the parties have not agreed otherwise, the seller must deliver all the goods in a single delivery. However, where part of the goods have been delivered, and rest of the goods are yet to be delivered, there may be two possibilities:

- (a) Where the part delivery is made in progress of the whole delivery, then it is treated as a delivery of the whole. And the ownership of the whole quantity is transferred to the buyer.
- (b) Where the part delivery is made with the intention of separating it from the whole, then it is not treated as delivery of the whole. (since each part of delivery is intended to be treated as separate delivery) In such a case the ownership of the whole quantity is not passed to the buyer.

Q.6 What is the effect of wrong delivery by the seller to the buyer under the provisions of the Sale of Goods Act, 1930?

Ans. Delivery of wrong quantity [Sec. 37]

Subject to any usage of trade, special agreement or course of dealing between parties, the following rules shall apply when delivery of wrong quantity is made—

- (a) *Short delivery:* If the seller delivers to the buyer a quantity *less* than he contracted to sell, the buyer may:
 - (i) reject the goods, or
 - (ii) accept the goods if he accepts, he shall pay for the accepted quantity at the rates contracted for.
- (b) *Excess delivery:* If the seller delivers to the buyer a quantity *larger* than he contracted to sell, the buyer may:
 - (i) reject the whole,
 - (ii) accept the whole, or
 - (iii) accept the quantity he ordered and reject the rest.
- (c) *Delivery of goods mixed with other goods:* If the seller delivers to the buyer goods ordered mixed with goods of a different description, the buyer may:

- (i) reject the whole, or
- (ii) accept the agreed goods and reject the remaining goods.

Q.7 “Risk *Prima Facie* passes with property.” Elaborate in the context of the Sale of Goods Act, 1930. [July 2021, 4 Marks]

Ans. According to the provisions of section 26 of the Sale of Goods Act, 1930, unless otherwise agreed, the goods are at seller's risk until the property therein (*i.e.* ownership right) is transferred to the buyer. However when the property in goods or ownership is transferred to the buyer, then the goods are at buyer's risk irrespective of delivery of goods. Thus the risk *prima facie* passes with property.

It is further provided that where delivery has been delayed because of the fault of either the buyer or seller, then the goods are considered to be at the risk of the defaulting party, in respect of the loss which might not have occurred but for such default.

Thus it is evident that in ordinary circumstances the risk is borne by the buyer only when the ownership (property) passes on to him unless the parties by making a contract to the contrary stipulate that the risk in goods will pass on at some time before or after the passage of property.

CASE STUDIES: hiljr2005@gmail.com 02-04-2024

Q.8 J, the owner of a fiat car wants to sell his car. For this purpose he hands 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 without notice of any fraud. P misappropriated the money also. J sues A for the recovery of the car. Decide with reasons whether J would succeed?

[RTP May 2018]

Ans. Hint: Sale by mercantile agent is valid and binding on the principal provided the agent is in possession of the goods or documents of title with the consent of the owner, the agent sells the goods while acting in the ordinary course of business of agency, the buyer should have acted in good faith & the buyer should not have notice that at the time of sale, the agent had no authority to sell.

In the given case P the agent was in possession of the goods with the consent of J. The car was sold by P in the ordinary course of business of agency and the car was bought by A in good faith without notice that agent was not authorised to sell it for ₹ 40,000. Thus sale is valid and A acquires a good title to the car & J will not succeed in recovering the car from A. J can only proceed against his agent lawfully.

Q.9 Mr. Samuel agreed to purchase 100 bales of cotton from Mr. Varun, out of his large sand 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?

[MTP May 2018 & MTP May 2019]

Ans. Hint: According to the provisions of Section 26 of the Sale of Goods Act, 1930, unless contract to the contrary is made, the goods remain at the seller's risk until the property therein is transferred to the buyer. Further the act also states that in case of sale unascertained goods, the property in goods shall pass on to the buyer only when they are ascertained and appropriated unconditionally to the contract either by the buyer with the consent of the seller or by the seller with the consent of the buyer.

In the given case appropriation with respect to 60 bales of cotton has been done. Therefore property in the said 60 bales of cotton stands passed to Mr. Samuel, the buyer. Thus the loss with respect to the said 60 bales shall be borne by Mr. Samuel.

In respect of the remaining bales, the loss shall be borne by Mr. Varun since the property in respect of the same has not been passed to the buyer Mr. Samuel.

Q.10 A offered to sell to B a certain machine for ₹ 50,000. B refused to buy it unless certain work was done on it to put it into a running condition. A agreed to do the same but while the machine was being repaired, it was destroyed without the fault of any person. Can A recover the price from B?

Ans. Hint: In case of specific goods the property in goods shall pass on the formation of contract only if the goods are:

- (i) Specific
- (ii) Goods are in a deliverable state *i.e.* the seller has done, all that he is required to do, to put the goods in such a state that the buyer shall be bound to take the delivery of the same.
- (iii) The contract of sale is unconditional.

If the seller is bound to do something in respect of the goods to put them into a deliverable state and he has yet not done the same, then the property in goods shall pass on to the buyer in the future, when the seller does what he is required to do and brings the same to the knowledge of the buyer.

In the given case the seller A was required to conduct repairs in respect of the machine before B buys the same. Thus the passage of property intends to take place when the repairs are conducted by A and B has the knowledge of the same. Since the machine is destroyed before repairs could be completed, the passage of property has not taken place. The risk of loss vests with A and therefore he cannot recover the price from B.

Q.11 A delivered some jewellery to B on sale or return basis. B pledged the jewellery with C. A want to claim back the goods from C. Advice.

Ans. Hint: Rules for passage of property in case of Sale on approval basis; the ownership has been transferred to B as he has adopted the contract by pledging it with C. A cannot claim the goods back from C.

Q.12 Referring to the provisions of the Sale of Goods Act, 1930, state the circumstances under which 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.

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 claims back the motor car from Mr. Ganesh. Will she succeed? Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to Ms. Preeti.

[RTP & MTP Nov. 2018]

Ans. Transfer of property in sale by approval (Sec. 24):—

When goods are delivered to the buyer on approval or ‘on sale or return,’ or on other similar terms, the property therein passes to the buyer:

- (i) When he signifies his approval or acceptance to the seller, or
- (ii) When the buyer does any other act adopting the transaction, *e.g.*, pledges the goods or resells them.
- (iii) When the buyer retains the goods, without giving notice of rejection, beyond the time fixed for the return of goods, or if no time has been fixed, beyond a reasonable time. In short, the property passes either by acceptance or by failure to return the goods within specified or reasonable time.

In the given case Ms. Preeti has handed over the car to Mr. Joshi on sale or return basis and afterwards Mr. Joshi pledges the car with Mr. Ganesh.

Applying the above stated provisions it can be concluded that pledging of the car by Mr. Joshi amounts to adoption of the transaction. Thus property in car passes on to Mr. Joshi on pledge and Ms. Preeti cannot claim back the car. She is only entitled to claim the price of the motor car since the property therein has passed to Mr. Joshi.

Q.13 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, analyse 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 ? [Nov. 2018, 6 Marks]

Ans. 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:

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the defaulting party as regards any loss which might not have occurred but for such fault:

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as bailee of the goods to the other party.

In the given case ownership of goods stands transferred to Mr. H, on the date of examination & approval of goods by his agent. However since delivery was not taken, Mr. G, the seller continued to hold the goods as the bailee and was found in such capacity to take reasonable care of the goods.

Thus applying the above provisions, it can be concluded that though the risk in goods passed to Mr. H with the ownership but Mr. G. continued to be liable to take reasonable care of the goods in the position of the bailee. Since he failed to fulfil his duty as a bailee which resulted in loss to Mr. H, Mr. G. shall be held liable for the consequent damage.

The answer would remain the same even if price is not paid since ownership is transferred & Mr. G continues to hold goods as a bailee.

Q.14 Goods are delivered by A to B on 'sale or return' basis. They are further delivered by B to C and then by C to D on similar terms. The goods are stolen while in the custody of D. Who is to bear the loss of goods and why?

Ans. In case of goods sent on 'sale or return' basis the property in goods passes to the buyer the moment the buyer accepts the goods. Such acceptance can be in any of the following ways:

- ◆ By express approval;
- ◆ By retaining goods beyond the reasonable time period; or
- ◆ By doing any of such acts which are inconsistent with the rights of the seller.

In the given case by virtue of delivery of goods by B to C the property in goods stands transferred to B. The further delivery of goods by C to D on the same terms of 'sale or approval' basis results in further passage of title of goods to C.

Thus loss shall be borne by B, as between A & B, since property in goods stands transferred to B and with it the risk in goods.

Q.15 Ms. R owns a Two Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the Two Wheeler from Mr. A. Will she succeed ?

- (i) Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R ?
- (ii) Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid ?

[Nov. 2020, 6 Marks]

Ans. (i) According to the provisions of section 24 of the Sale of Goods Act, 1930, when the goods are delivered to a buyer "on approval" or "sale or return" basis, the property therein passes to the buyer :

- ◆ When he signifies his approval or acceptance to the seller;
- ◆ When the buyer does any other act adopting the transaction, such as further sells or pledges them; or
- ◆ When the buyer retains the goods without giving notice of rejection, beyond the time fixed for the return of the goods or if no time has been fixed, beyond a reasonable time. In short, the property passes either by acceptance or by failure to return the goods within specified or reasonable time.

In the given case, Ms. R has delivered the motorcycle to Ms. K on sale or return basis, which she further pledges with Mr. A as a security for a loan.

Thus applying the above stated provisions it is evident that by further pledging the motorcycle Ms. K has adopted the transaction and has thereby approved the same. With this act of pledging the motorcycle, the property in the motorcycle passes on to Ms. K and as a consequence Ms. R is entitled to receive the price. She can claim the price of the motorcycle from Ms. K and can also sue for the same, but cannot recover the motorcycle since the ownership has passed on to Ms. K.

(ii) According to the provisions of the Sale of Goods Act, 1930, when the contract of sale expressly provides that the goods will remain the property of the seller until the price has been paid by the buyer, then the property shall pass on to the buyer only on the payment of price by him.

Thus if in this case the contract stipulates that, the motorcycle would remain the property of the seller, Ms. R until the payment of price by Ms. K, then property in the motorcycle will not pass even on pledging the same with Mr. A. Thus Ms. R shall be entitled to claim back the possession of motorcycle from Mr. A, since the ownership still vests with her (Ms. R).

UNPAID SELLER

LONG ANSWER QUESTIONS:

Q.1 What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930? [May 2018, 6 Marks] [Nov. 2019, 6 Marks]

Ans. Rights of unpaid seller against goods : The following are the rights of an unpaid seller against the goods:—

- (1) **Rights of Lien** : An unpaid seller has a right to retain the possession of the goods sold, till the price payable in respect of the same is received by him.

The right of lien can be exercised by the unpaid seller where the goods have not been sold on credit or where the goods have been sold on credit, but the term of credit has expired or when the buyer becomes insolvent. The right of lien can be exercised by the unpaid seller only for the recovery of price [and not any other charges], provided the goods are in possession of the seller. Thus if the seller loses possession of goods then right of lien shall be lost.

- (2) **Right of stoppage in Transit** : The right of stoppage in transit can be exercised by the unpaid seller provided the following conditions are satisfied.

- ◆ the buyer has become insolvent &
- ◆ the goods are in transit.

The right can be exercised only for the recovery of price. Under this right the unpaid seller is entitled to stop goods in transit, after he has parted with the possession of the goods but before the goods come under the possession of the buyer/buyer's agent. This right can be exercised in respect of goods in transit & in the event of buyer's insolvency only. The right comes to an end with termination of transit. The goods are deemed to be in course of transit from the time they are delivered to a carrier or other bailee in an independent capacity for the purpose of transmission to the buyer, until the buyer or his agent takes delivery of them from such carrier or other bailee.

- (3) **Right of resale** : The unpaid seller can effect a resale of goods where—
- (i) the goods are of perishable nature, or
 - (ii) he gives notice to the buyer of his intention to re-sell the goods and the buyer does not pay or tender the price within reasonable time.

Q.2 What are the rights of the buyer against the seller in case of breach of contract by him, under the provisions of the Sale of Goods Act, 1930?
[RTP May 2020]

OR

Describe in brief the rights of the buyer against the seller in case of breach of contract of sale.
[June 2023, 6 Marks]

Ans. A buyer has the following rights against the seller for breach of contract under the Sale of Goods Act.

1. Suit for non-delivery (Sec. 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. This remedy would be available even if the property has passed to the buyer.

2. Specific performance (Sec. 58)

Where property has passed to the buyer, he also can exercise another right, *viz.*, a right to sue for specific performance and its limits are regulated by the Specific Relief Act. In such cases the court may in its discretion grant a decree ordering the seller to deliver those specific or ascertained goods which formed the subject-matter of the contract. It should be noted that the remedy is discretionary and will only be granted if the damages are not an adequate remedy or the goods are unique, *e.g.*, rare book, a picture or a rare piece of jewellery.

3. Breach of Warranty (Sec. 59)

Where there is a breach of warranty by the seller (*i.e.* defects in the goods delivered) or where the buyer elects or is compelled to treat any breach of condition on the part of the seller as a breach of warranty, the buyer has the following remedies:

- (a) He may claim a deduction from the price.
- (b) He may refuse to pay the price altogether, if the loss equals the price.
- (c) If the loss exceeds the price, he may not only refuse to pay the price, but also claim the excess or
- (d) He may sue the seller for damages for the breach of warranty in addition to the right to claim diminution or extinction of the price.

4. Suit for Anticipatory breach (Sec. 60)

The buyer has the right to sue the seller for damages for anticipatory breach of contract. Section 60 lays down that where the seller repudiates the contract before the date of delivery, the buyer 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.

5. Suit for interest and recovery of the price [Sec. 61]

If the buyer has already paid the price and the seller fails to deliver the goods, the buyer is entitled to file a suit for the refund of the price. In such a suit, the buyer may also claim interest or special damages from the defaulting seller. In the absence of any other contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of price from the date on which the payment was made.

Q.3 Explain 'Right of lien' as the right of the unpaid seller against the goods in case of breach by the buyer, under the Sale of Goods Act, 1930.

Ans. The 'unpaid seller' has a lien on the goods for the price while he is in possession, until the payment or tender of the price. A lien is a right to retain possession of goods until payment of the price. He is entitled to lien in the following three cases, namely:-

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

Rules:

1. The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.
2. If the goods have been sold on credit, the seller cannot refuse to part with possession unless the term of credit has expired.
3. Lien can be exercised for non-payment of the price, not for any other charges.
4. *Effect of part delivery* (Sec. 48): When an unpaid seller has made a part delivery of the goods he can exercise lien on the balance of the goods not delivered unless the part delivery was made under such circumstances as to show an intention to waive the lien.
5. The seller can abandon or waive the lien if he so desires.
6. *Termination of lien* (Sec. 49): If possession is lost, lien is lost. The unpaid seller of goods loses his lien thereon in the following cases:
 - (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; and
 - (c) where the seller has waived the right of lien. The unpaid seller does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Q.4 What are the rights of unpaid seller against the buyer personally, under the Sale of Goods Act, 1930? [July 2021, 6 Marks]

Ans. 1. Suit for the Price [Sec. 55]

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.

Where the property in goods *has not passed* to the buyer, the seller as a rule cannot file a suit for the price and his remedy is to claim damages.

According to section 55(2), 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 although the property in the goods has not passed and the goods have not been appropriated to the contract.

2. Suit for damages for non-acceptance [Sec. 56]

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

3. Suit for damages for repudiation of the contract [Sec. 60]

Where the buyer repudiates the contract before the date of delivery, the seller 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.

4. Claim for interest and special damages [Sec. 61]

The seller may recover interest or special damages in any case where by law interest or special damages may be recoverable.

Q.5 Explain the rules with respect to Auction Sale. [Jan. 2021, 4 Marks]

OR

Referring to the provisions of the Sale of Goods Act, 1930 state the rules provided to regulate the "Sale by Auction." [RTP Nov. 2018]

Ans.

Rules of Auction Sale (Sec. 64)	Following rules have been laid down to regulate the sales by auction:
1. Sale of goods in lots	Where goods are put up for sale in lots, each lot is <i>prima facie</i> deemed to be the subject of a separate contract of sale.
2. Completion of Sale	An auction sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and until then the bidder has the right to revoke or retract his bid.

3. Seller's Right to Bid	Unless the auction is notified to be subject to a right to bid on behalf of the seller, it is not lawful - (i) for the seller to bid himself or to employ any person to bid at such sale on his behalf and (ii) for the auctioneer to, knowingly take any bid from the seller or any such person. Any contravention of this rule renders the sale as fraudulent.
4. Pretended bidding	If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer. However, the seller may expressly reserve the right to bid at the auction and in such case, the seller or any one person on his behalf may bid at the auction.
5. Reserve Price	The seller may notify that the auction will be subject to a reserve or upset price, that is, the price below which the auctioneer will not sell.

SHORT QUESTIONS:

Q.6 What is meant by right of stoppage in transit? How can it be effected by the seller? [RTP May 2018, MTP May 2019, MTP July 2021]

Ans. When the buyer of goods becomes insolvent, and the goods are in course of transit to the buyer, the seller can resume possession of the goods from the carrier. This is known as the right of stoppage in transit. 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.

The right of stoppage means the right to stop further transit of the goods to resume possession and to retain the same till the price is paid.

The two modes of stoppage in transit are—

- (a) By taking actual possession of the goods or
- (b) By giving notice to the carrier not to deliver the goods to the buyer or his agent.

When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

Q.7 Under the provisions of the Sale of Goods Act, 1930, when are the goods considered to be in transit? When does the transit come to an end?

Ans. The goods are deemed to be in course of transit from the time they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent takes delivery of them.

When does transit end?

- (a) *Delivery before destination*: If the buyer or his agent obtains delivery of the goods *before their arrival* at the appointed destination, the transit is at an end. [Sec. 51(2)]
- (b) *Attornment by carrier to buyer*: If after the arrival of the goods at the appointed destination, the carrier expressly or by implication enters into a new agreement to hold the goods for the buyer (for purpose of custody), the original transit comes to an end. [Sec. 51(3)]
- (c) *Goods rejected by buyer*: If the goods are rejected by the buyer and they continue to be in possession of the carrier or other bailee, then the transit continues even if the seller has refused to receive them back. [Sec. 51(4)]
- (d) *Delivery on ship chartered by buyer*: When the goods are delivered to a carrier who is acting as agent of the buyer, e.g. when goods are delivered to a ship chartered by the buyer, the transit comes to an end as soon as the goods are loaded on board the ship. [Sec. 51(5)]
- (e) *Wrongful refusal by carrier to deliver*: If the carrier wrongfully refuses to deliver the goods to the buyer, the transit is at an end. [Sec. 51(6)]
- (f) *Part delivery*: Where the part delivery of the goods has been made to the buyer the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

Q.8 Differentiate between Right of lien and stoppage in transit.

Ans.

BASIS	RIGHT OF LIEN	RIGHT OF STOPPAGE IN TRANSIT
1. Objective	To retain the possession of goods.	To regain the possession of goods handed over by the seller to a carrier for the purpose of transmission to buyer.
2. Buyers' Status	This right can be exercised when the buyer has not paid the price, irrespective of the fact whether or not he is insolvent.	This right can be exercised only in the event of buyer's insolvency.
3. Possession of Goods	To exercise this right, the goods should be in the actual/constructive possession of the seller.	This right can be exercised when the seller has parted with the possession of goods. The goods should be in the custody of the carrier/bailee and the goods should not have been delivered to the buyer or his agent.
4. End Point	The termination of Right of lien is the starting point of Right of Stoppage in transit.	Right of Stoppage in transit begins when the right of lien ends.
5. Person acting	Right of lien is generally exercised by the seller himself.	Right of Stoppage in transit is generally exercised by the seller through the carrier/bailee in possession of goods.

Q.9 State the circumstances in which the unpaid seller has the right of resale. [Dec. 2022, 6 Marks]

Ans. The unpaid seller who has retained possession of the goods in exercise of his right of lien or who has resumed possession from the carrier upon insolvency of the buyer, can resell the goods:

- (a) If the goods are of a perishable nature, without any notice to the buyer, and
- (b) In other cases after notice to the buyer, calling upon him to pay or tender the price within reasonable time, and upon failure of the buyer to do so.

If the money realised upon such resale is not sufficient to compensate the seller, he can sue the buyer for the balance. But if he receives more than what is due to him, he can retain the excess. A resale does not absolve the buyer from his liabilities to compensate the seller for damages he may have suffered.

CASE STUDIES:

Q.10 Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position & rights of Mr. D as per the Sale of Goods Act, 1930.

[May 2018, 6 Marks] [MTP May 2019]

Ans. Hint : An unpaid seller is one who has not yet received the whole of the price under the contract of sale.

When such a seller has transferred the possession of goods to the buyer, then he cannot exercise his rights against the goods, he can only exercise his rights against the buyer which are as follows:—

- (i) Suit for price : The seller can sue the buyer for the price.
- (ii) Suit for damages for non-acceptance : The seller can sue for damages resulting from buyers refusal to accept & pay for goods.
- (iii) Suit for interest : The unpaid seller has a right to sue the buyer for interest on account of delay in payment of price.

Thus in the given case Mr. D, the unpaid seller is entitled to all the above remedies against Mr. E.

Q.11 Ashu of Bombay enters into an agreement with Jay of New Delhi to supply five motor-cycles to be delivered to the latter at New Delhi. Ashu sends these motorcycles through Messers Deep Transport Ltd., a leading transporter. The motor cycle reach New Delhi on time but Jyoti delays to take delivery. M/s Deep Transporter informs Jyoti that the motor cycles are lying at their godown at Jyoti's risk. Before taking the delivery of these motor-cycles, Jay becomes insolvent. Ashu wants to exercise his right of stoppage of goods in transit, under the Sale of Goods Act. Advise.

Ans. Hint: Right of stoppage in transit can be exercised by an unpaid seller for the recovery of price on the fulfilment of the following conditions:

1. the buyer must have become insolvent
2. the goods must be in transit
3. and the right must be exercised for the recovery of price.

Further goods are said to be in transit when they are out of the possession of the seller but not yet into buyer's possession of the buyer. However if the carrier acknowledges to the buyer then the transit is deemed to have come to an end.

In the given the case the transporter M/s Deep acknowledges to the buyer Jay that the goods are at Jay's risk. This results in termination of transit and hence the right to stoppage in transit cannot be exercised even if Jay subsequently becomes insolvent and has not taken delivery of the goods.

Thus Ashu, the unpaid seller cannot exercise stoppage in transit.

Q.12 Suraj sold his car to Sohan for ₹ 75,000. After inspection and satisfaction, Sohan paid ₹ 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. [RTP Nov. 2019, RTP Nov. 2020]

Ans. Hint: Right of the unpaid seller to sue for the price. Where under a contract of sale, the property in goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay the price, the seller may sue the buyer for the price. Further the seller may also sue the buyer for interest on the unpaid amount, along with the cost of the proceedings. Thus Suraj can exercise the above stated remedies and sue for price along with interest on the outstanding amount as well as cost of filing the suit.

Q.13 A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller for stopping the goods in transit as the buyer has become insolvent. Referring to the provisions of Sale of Goods Act, 1930, decide whether the Railway authorities can stop the goods in transit as instructed by the seller? [MTP Nov. 2020]

Ans. According to the provisions of the Sale of Goods Act, 1930, an unpaid seller can exercise the right to stoppage of goods in transit for the recovery of price of goods, only if the buyer has become insolvent and the goods are in transit. Further goods are considered to be in transit only when goods are out of the possession of the seller and have not yet come to be in the possession of buyer or his agent. Thus goods are in transit when they are held by the carrier in his own name. However transit comes to an end when the buyer's agent takes the

delivery of goods and with it the seller's right to exercise stoppage in transit also comes to an end.

In the given case, the goods were put into a course of transit by seller B, by delivery to Railways, the carrier. 'A', the agent of the buyer receives the delivery of goods and subsequently Railways receive notice for stoppage in transit from B on account of buyer's insolvency.

Applying the above stated provisions it is evident that with the delivery of goods by the Railway authorities (carrier) to 'A' buyer's agent, the transit comes to an end and consequently, with it the right to stoppage in transit also terminates.

Q.14 AB sold 500 bags of wheat to CD. Each bag contains 50 Kilograms of wheat. AB sent 450 bags by road transport and CD himself took remaining 50 bags. Before CD receives delivery of 450 bags sent by road transport, he becomes bankrupt. AB being still unpaid, stops the bags in transit. The official receiver, on CD's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

[Dec. 2021, 3 Marks]

Ans. According to the provision of the Sale of Goods Act, 1930, an unpaid seller can exercise his right of stoppage in transit against the goods, provided, the buyer has become insolvent and the goods are in transit. Goods are considered to be in transit when they are out of the possession of the seller, delivered to a carrier or bailee for transmission to the buyer and not yet in buyer's possession. Further as per the provisions of the Act, where part delivery of goods has been made to the buyer in progression of the whole, then transit will be deemed to be terminated even for the remaining goods which are yet in the course of transmission. However, where the part delivery of goods has been made to the buyer/his agent only in that behalf, then the remainder goods may be stopped in transit.

In the given case AB sold 500 bags of wheat to CD. AB sent 450 bags by road transport & delivers remaining 50 to CD. Thereafter CD becomes insolvent before receiving the delivery of 450 bags.

Thus applying the above stated provisions, it can be concluded that, part delivery of goods to CD has resulted in termination of transit for the remaining goods and therefore AB cannot rightly exercise right of stoppage in transit provided the part delivery of 50 bags was not made only in that behalf with an intention to separate it from the rest. Therefore the official assignee of CD can claim the 450 bags of wheat from AB since passage of property has taken place, provided the part delivery of 50 bags was not made with the intention of severing it from the rest of 450 bags.

Q. 15 An auction sale of the certain goods was held on 7 March, 2023 by the fall of hammer in favour of the highest bidder X. The payment of auction prior was made on 8 March, 2023 followed by the delivery of goods on

10 March, 2023. Based upon on the provisions of the Sale of Goods Act, 1930, decide when the auction sale is complete. [June 2023, 2 Marks]

Ans. According to the provisions of section 64 of the Sale of Goods Act, 1930, an auction sale is completed when the auctioneer announces its completion by the fall of the hammer or in any other customary manner. Thus a contract comes into existence and the obligations of the buyer and the seller are created on the fall of the hammer in case of an auction sale.

In the given case, the goods were sold to the highest bidder, X, by fall of the hammer on 7th March 2023.

Thus applying the above stated provisions it can be concluded that, the auction sale was completed on 7th March even though the payment and delivery took place subsequently.

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