DAILY TEST: 5 **TEST SERIES: JAN 2025**

FOUNDATION COURSE

PAPER – 2: BUSINESS LAW

*Attempt **all** the questions.*
Wherever necessary, suitable assumptions should be made and disclosed by way of note forming part of the answer.
Working Notes should form part of the answer.

Time Allowed: 35 Minutes **Maximum Marks: 20**

Question 1:
"A breach of condition can be treated as a breach of warranty". Explain this statement as per relevant provisions of the Sale of Goods Act, 1930. ***(4 marks)***

Answer:
Section 13 of the Sale of Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

(i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary aiver by buyer.

(ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

(iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part hereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 872.

(iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Question 2:
Mr. Shankar sold 1000 Kgs wheat to Mr. Ganesh on credit of 3 months. Wheat was to be delivered after 10 days of contract. After 5 days of contract, a friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the information of friend, Mr. Shankar applied the right to lien and withheld the delivery. With referring to the provisions of the Sale of Goods Act, 1930:

i. State, whether Mr. Shankar was right in his decision?
ii. What would be your answer if Mr. Ganesh became insolvent within five days of contract? ***(6 marks)***

Answer:

According to Section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

(i) The whole of the price has not been paid or tendered.
(ii) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

Further, Section 47 provides about an unpaid seller's right of lien. Accordingly, an unpaid seller can retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered. This right can be exercised by him in the following cases only:

(a) where goods have been sold without any stipulation of credit; (i.e., on cash sale)
(b) where goods have been sold on credit, but the term of credit has expired; or
(c) where the buyer becomes insolvent.

In the instant case, Mr. Ganesh purchased 1000 Kg wheat from Mr. Shankar on 3 month's credit which was to be delivered after 10 days of contract. But, after 5 days of contract, one friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the belief of friend, Mr. Shankar applied the right to lien and withheld the delivery.

(i) On the basis of above provisions and facts, it can be said that even Mr. Ganesh was an unpaid seller until the term of credit i.e. has expired, Mr. Shankar had to perform his promise of supplying 1000 Kg of wheat.

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

Question 3:

Kapil entered in a contract with Rahul to purchase 1000 litres of mustard oil at the price which should be fixed by Akhilesh. Rahul already delivered 600 litres out of 1000 litres to Kapil but when remaining 400 litres was ready to deliver, Akhilesh denied fixing the price of mustard oil. Rahul asked Kapil to return the oil already delivered and avoid the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil. Advise in the light of the Sale of Goods Act, 1930. ***(6 marks)***

Answer:

Provisions of the Act:

By virtue of Section 9 of the Sale of Goods Act, 1930, the price in the contract of sale may be **fixed by the contract**, or **agreed to be fixed in a manner provided by the contract**, e.g., by a valuer, or **determined by the course of dealings** between the parties.

Further, section 10 provides for the determination of price by a third party in the following manner:

(a) Where there is an **agreement to sell goods** on the terms that price has to be fixed by the third party and he **either does not or cannot make such valuation**, the agreement will be **void**.

(b) In case the third party is **prevented by the default of either party** from fixing the price, the **party at fault will be liable to the damages** to the other party who is not at fault.

(c) However, a buyer who has received and appropriated the goods must **pay a reasonable price** for them in any eventuality.

Facts of the case:

In the instant case, Kapil contracted Rahul to purchase 1000 litres of mustard oil at the price fixed by Akhilesh. After, Rahul delivered 600 litres Akhilesh denied fixing the price of mustard oil. Rahul demanded back the oil already delivered and cancel the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil.

Analysis & conclusion:

On the basis of above provisions and facts, **Kapil is liable to pay a reasonable price of 600 litres while for remaining 400 litres, contract may be avoided.**

Question 4:

State the various essential elements involved in the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930. ***(4 marks)***

Answer:

Sale of unascertained goods and Appropriation (Section 23 of the Sale of Goods Act, 1930):

Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

(a) There is a contract for the sale of unascertained or future goods.

(b) The goods should conform to the description and quality stated in the contract

(c) The goods must be in a deliverable state.

(d) The goods must be unconditionally appropriated to the contract either by delivery to

(e) the buyer or his agent or the carrier.

(f) The appropriation must be made by:
   - the seller with the assent of the buyer; or
   - the buyer with the assent of the seller.

(g) The assent may be express or implied.

(h) The assent may be given either before or after appropriation.