

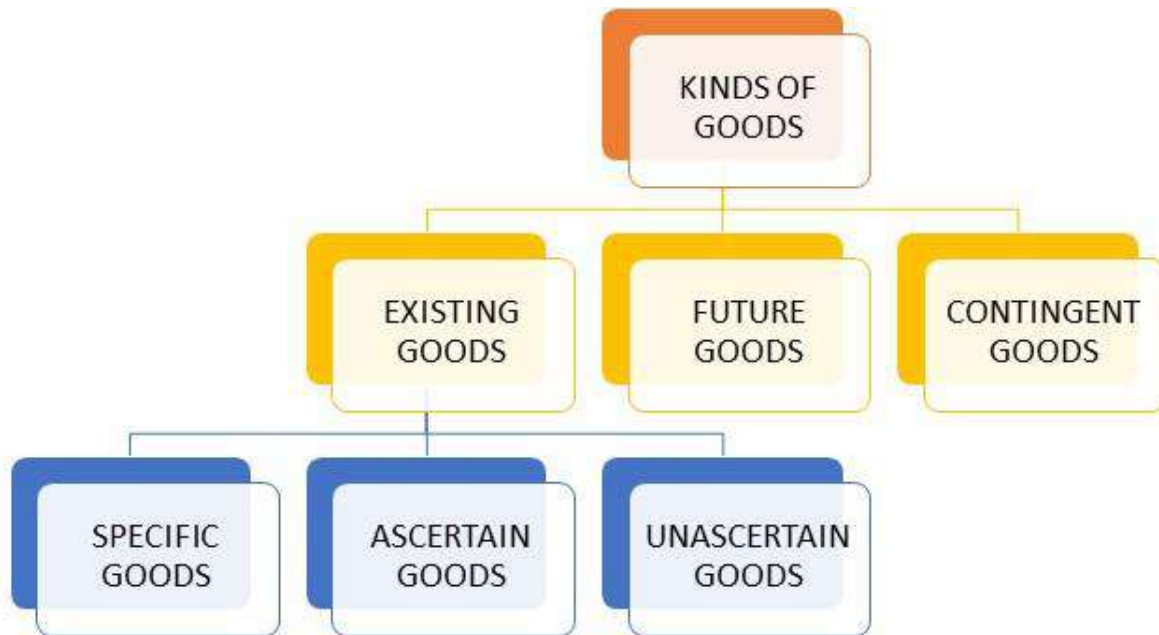
CHAPTER 2

THE SALE OF GOODS ACT, 1930



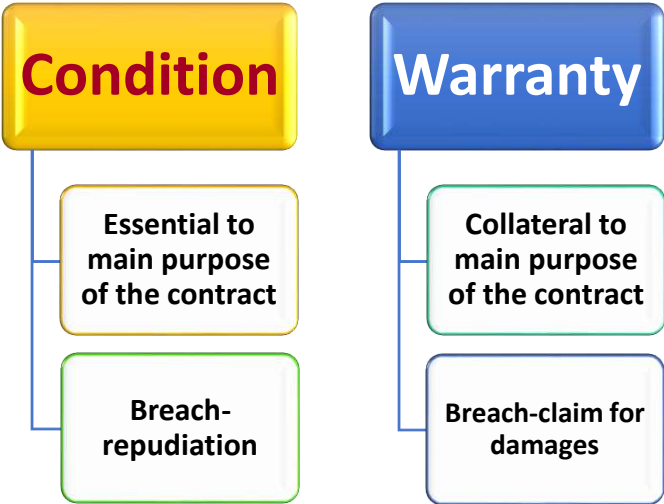
DEFINITIONS	The Sale of Goods Act, 1930 defines the terms which have been frequently used in the Act,
Buyer and Seller	<ul style="list-style-type: none"> • 'Buyer' means a person who buys or agrees to buy goods [Section 2(1)]. • 'Seller' means a person who sells or agrees to sell goods [Section 2(13)].
Goods and other related terms	<ul style="list-style-type: none"> • Means every kind of movable property • other than actionable claims and money • includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed.
SALE AND AGREEMENT TO SELL	According to section 4(1) , "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price". There may be a contract of sale between one part- owner and another. [Section 4(3)]

SALE	“Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale. [Section 4(3)] ”
Agreement to Sell	“Where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.” [Section 4(3)]
When agreement to sell becomes sale	An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.
Price	‘Price’ means the monetary consideration for sale of goods [Section 2 (10)] . By virtue of Section 9, the price in the contract of sale may be- (1) fixed by the contract, or (2) agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or (3) Determined by the course of dealings between the parties.





UNIT: 2
CONDITIONS & WARRANTIES

Stipulation with Reference to Goods

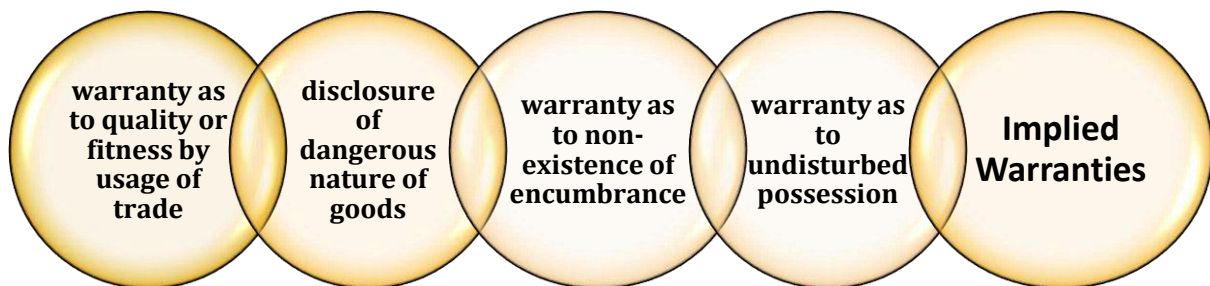


Condition	“A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated”. [Sub-section (2)]
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Warranty	“A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated”. [Sub-section (3)]
When condition to be treated as warranty (section 13)	Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated. [Sub-section (1)]
Waiver of conditions	<p>Voluntary Waiver</p> <ul style="list-style-type: none"> • Waives performance of contract • Elect to treat condition as warrant <p>Compulsory Waiver</p> <ul style="list-style-type: none"> • Non-severability of contract • Fulfilment of conditions excused by law
Express and implied conditions and warranties (section 14-17)	<p>Express conditions: are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract.</p> <p>Implied conditions: are those, which are presumed by law to be present in the contract. It</p> <div style="display: flex; align-items: center;"> <div style="text-align: center; margin-right: 10px;">  <p>IMPLIED</p> </div> <div style="border: 1px solid #ccc; padding: 5px; background-color: #fff9e6;"> <ul style="list-style-type: none"> • condition as to title • Sale by description • Sale by sample • Sale by sample as well as by description </div> </div> <div style="display: flex; align-items: center; margin-top: 10px;"> <div style="text-align: center; margin-right: 10px;">  <p>Condition</p> </div> <div style="border: 1px solid #ccc; padding: 5px; background-color: #fff9e6;"> <ul style="list-style-type: none"> • Condition as to quality or fitness • Condition as to Merchantability • Condition as to wholesomeness </div> </div> <p>should be noted that an implied condition may be negated or waived by an express agreement</p>
Caveat emptor	In case of sale of goods, the doctrine ‘Caveat Emptor’ means ‘let the buyer beware’. When sellers display their

goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling

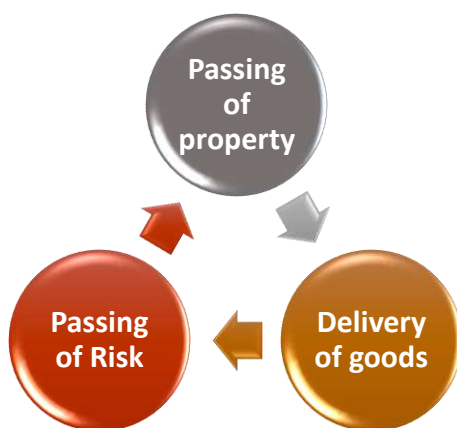
- **Fitness as to quality or use**
- **Goods purchased under patent or brand name**
- **Goods sold by description**
- **Goods of Merchantable Quality**
- **Sale by sample**
- **Goods by sample as well as description**
- **Trade Usage**
- **seller actively conceals a defect or is guilty of fraud.**



UNIT: 3

TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

A Contract of sale of goods involve transfer of ownership in three stages



PASSING OF PROPERTY	<p>Passing or transfer of property constitutes the most important element and factor to decide legal rights and liabilities of sellers and buyers.</p>	
	<p>A. Property (Specific or ascertained goods) passes when intended to pass (Section 19):</p>	<p>Stages of goods while passing of property:</p> <p>Specific goods in a deliverable state</p> <p>Specific goods to be put into a deliverable state</p> <p>Specific goods in a deliverable state when seller has to ascertain price.</p>
	<p>B. Goods must be ascertained</p>	<p>Sale of unascertained goods by description [Section 23(1)]</p> <p>Delivery to the carrier [Section 23(2)]</p>
	<p>c. Delivery to the carrier [Section 23(2)]:</p>	<p>when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;</p>

		<p>if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection</p> <p>He does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the good</p>
<p>RISK PRIMA FACIE PASSES WITH PROPERTY</p>	<p>According to section 26, 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</p>	
<p>TRANSFER OF TITLE (SECTIONS 27 – 30)</p>	<p>Sale by person not the owner (Section 27): Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.</p> <p><i>"Nemodat quod non habet"</i> which means that no one can give what he has not got.</p> <p>Exceptions: In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value.</p> <ul style="list-style-type: none"> • Sale by a Mercantile Agent • Sale by one of the joint owners (Section 28) • Sale by a person in possession under voidable contract • Sale by one who has already sold the goods but continues in possession thereof • Sale by buyer obtaining possession before the property in the goods has vested in him • Effect of Estoppel 	

	<ul style="list-style-type: none"> • Sale by an unpaid seller
<p>PERFORMANCE OF THE CONTRACT OF SALE (SECTIONS 31 – 44)</p>	<p>Definition of Delivery [section 2(2)]: Delivery means voluntary transfer of possession from one person to another.</p> <p>Duties of seller and buyer (Section 31): It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.</p> <p>Payment and delivery are concurrent conditions (Section 32): Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions,</p>
<p>RULES REGARDING DELIVERY OF GOODS (SECTION 33-41)</p>	<ul style="list-style-type: none"> • Delivery (Section 33) • Effect of part delivery • Buyer to apply for delivery • Place of delivery • Time of delivery • Goods in possession of a third party • Time for tender of delivery • Expenses for delivery • Delivery of wrong quantity • Instalment deliveries • Delivery to carrier • Deterioration during transit • Buyer's right to examine the goods
<p>AT GLANCE</p>	<p>Delivery of goods denotes the voluntary transfer of possession, which may be actual or even in some constructive form and which is again subject to various rules which help in deciding when the delivery becomes effective.</p>

UNIT: 4
UNPAID SELLER

Rights of an Unpaid

Against Goods

Against the Buyer

Property in Goods has passed to the buyer

Property in Goods has not passed to the buyer

Suit for Price

Lien

With holding Delivery

Suit for Damages

Stoppage in transit

Lien

Suit for Interest

Resale

Stoppage in transit

Resale

UNPAID SELLER

A contract comprises of reciprocal promises. In a contract of sale, if seller is under an obligation to deliver goods, buyer has to pay for it. In case buyer fails or refuses to pay, the seller, as an unpaid seller, shall have certain rights.

RIGHTS OF AN UNPAID SELLER**1. Seller's lien (section 47) :**

- I. where the goods have been sold without any stipulation as to credit;
- II. where the goods have been sold on credit, but the term of credit has expired;
- III. Where the buyer becomes insolvent.

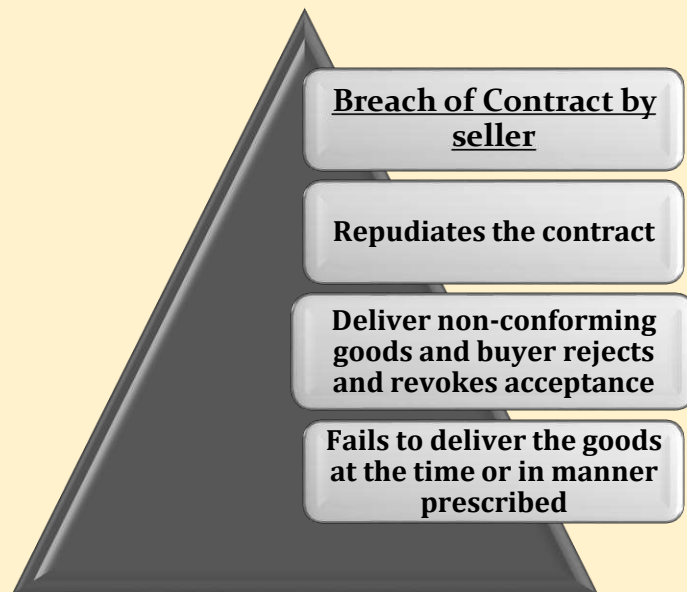
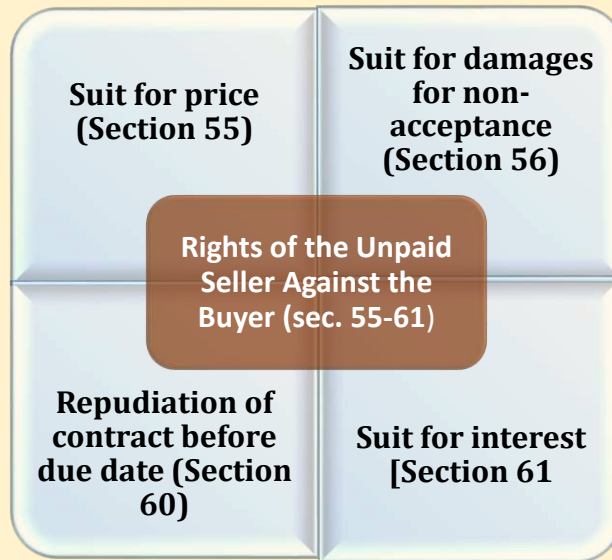
2. Right of stoppage in transit (Section 50 to 52): The right of stoppage in transit means the right of stopping the goods while they are in transit, to regain the possession and to retain them till the full price is paid.

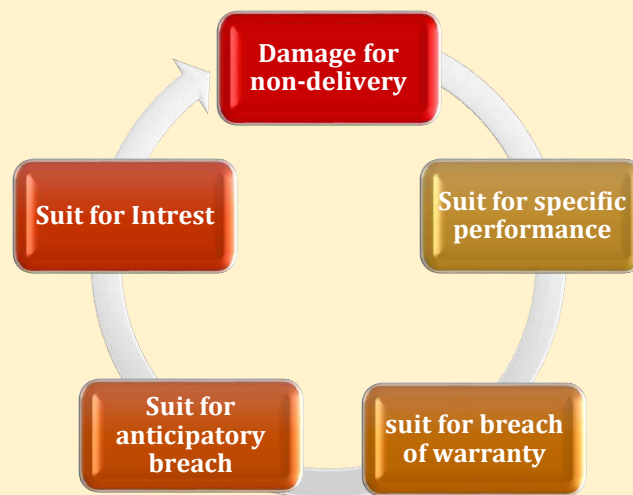
- (a) The seller must be unpaid.
- (b) He must have parted with the possession of goods.
- (c) The goods are in transit.
- (d) The buyer has become insolvent.
- (e) The right is subject to provisions of the Act. [Section 50]

3. Right of re-sale [Section 54]: The right of resale is a very valuable right given to an unpaid seller.

- (a) Where the goods are of a perishable nature
- (b) Where he gives notice to the buyer of his intention to re-sell the goods
- (c) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods
- (d) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale
- (e) Where the property in goods has not passed to the buyer

buyer





AUCTION SALE (SECTION 64)

An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. An auctioneer is an agent governed by the Law of Agency. When he sells, he is only the agent of the seller

Rules of Auction sale:

Where goods are sold in lots Completion of the contract of sale

Right to bid may be reserved Where the sale is not notified by the seller Reserved Price Pretended bidding.



Question 1

Distinguish between a 'Condition' and a 'Warranty' in a contract of sale. When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930? Explain

Answer:

Condition	Warranty
Contract becomes invalid and void if condition is not satisfied.	Contract remains valid even if warranty is not satisfied.
It is essential for the contract.	It is not essential but desirable in the contract. It is collateral (additional security) to the main contract.
Condition can be treated as warranty by the buyer.	Warranty cannot be treated as condition by the buyer.
It can be waived (ignored) by law if found impossible.	It can also be waived by law if found impossible.
In dispute, what is condition, is Decided by interpretation of the term.	In dispute, what is warranty, is Decided by interpretation of the term.

According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:

- Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition.
- Where the buyer elects to treat the breach of condition as breach of a warranty.
- Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.

- Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Question 2

List out difference between bailment and sale.

Answer:

Basis of difference	Sale	Bailment
Transfer of property	The property in goods is transferred from the seller to the buyer.	There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage etc.
Return of goods	The return of goods in contract of sale is not possible.	The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.
Consideration	The consideration is the price in terms of money.	The consideration may be gratuitous or non-gratuitous.

Question 3

Distinction between sale and an agreement to sell

Answer:

Basis of difference	Sale	Agreement to sell
Transfer of property	The property in the goods passes to the buyer immediately.	Property in the goods passes to the buyer on future date or on fulfilment of some condition.
Nature of contract	It is an executed contract. I.e. contract for which consideration has been paid.	It is an executory contract. I.e. contract for which consideration is to be paid at a future date.
Remedies for breach	The seller can sue the buyer for the price of the goods because of the passing of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.

Liability of parties	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
Burden of risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Nature of rights	Creates Jus in rem	Creates Jus in personam
Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.

Question 4**Differentiate between sale and Hire Purchase****Answer:**

Basis of difference	Sale	Hire- Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of Contract.	The property in goods passes to the hirer upon payment of the last Installment.
Position of the party	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of a Bailee till he pays the last installment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods.	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay The remaining installments.
Burden of Risk of insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the Buyer.	The owner takes no such risk, for if the hirer fails to pay an installment, the Owner has right to take back the goods.
Transfer of title	The buyer can pass a good title to a <i>bona fide purchaser</i> from him.	The hirer cannot pass any title even to a <i>bona fide purchaser</i> .
Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless

		He has paid all the installments.
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Question 5**Distinction between Right of Lien and Right of Stoppage in Transit****Answer:**

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

OR

Right of lien	Right of stoppage in transit
1. Essence: To retain possession	1. Essence: To regain possession
2. Possession: The seller should be in possession of the goods under lien.	2. Possession: (i) The seller should have parted with the possession, (ii) Possession should be with a carrier and (iii) The buyer has not acquired the possession
3. Ceasing of right of lien: The right of lien comes to an end when the possession of the goods is surrendered by the seller.	3. Ceasing of right of stoppage: Right of stoppage of the goods in transit starts when goods have left the possession of the seller and continues until the buyer or his agent acquired their possession.
4. Prerequisite: Possession must be with the seller.	4. Prerequisite: The seller must have parted with possession
5. Commencement: Starts with default of the buyer to pay.	5. Commencement: Starts. Where lien ends.

Question 6**Explain different types of delivery.****Answer:****There are three types of delivery.**

- **Actual delivery:** When the goods are physically delivered to the buyer.
- **Constructive delivery:** When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement)
- **Symbolic delivery:** When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer.

Question 7**Short note: Rights of the unpaid seller;****Answer:**

Rights of the unpaid seller: The credit sales are indispensable to any business and nonpayment of debts is an inseparable part of credit sales. The seller who has not received full payment against the goods sold by him must have certain rights and remedies to recover or reduce the loss being suffered by him.

The Sale of Goods Act has elaborate provisions regarding the rights of unpaid seller.

By virtue of Section 45, the seller of goods is unpaid seller

- I. When the whole price has not been paid or tendered
- II. When the legal instrument received by him as conditional payment has not been honored.

Question 8**Write explanatory note on: Seller's lien.****Answer:**

Seller's lien: The unpaid seller of goods who is in possession of goods is entitled to retain possession of such goods until payment or tender of the price in the following cases viz.

1. Where the goods have been sold without any stipulation as to credit.
2. Where the goods have been sold on credit but the term of credit had expired.
3. Where the buyer becomes insolvent.

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

Question 9

Write short note on:

Transfer of Property of Unascertained Goods;

Answer:

Unascertained goods or future goods are manufactured as per the description decided by the seller and the buyer. The buyer inspects the manufactured goods and selects goods of. His choice and keeps them separately. This process of selection of goods is also called ascertainment. As per **Section 18** of sale of goods act, the property or right to goods passes to the buyer only after he has ascertained the manufactured good

Question 10

Write short note: Right of resale

Answer:

Right of Resale:

If the seller has not received the payment from the buyer, he is called unpaid seller.

The unpaid seller has the right to resell those goods provided he gives proper notice to the buyer in this regard.

The buyer should be given reasonable time to pay the balance amount And if he fails to pay, unpaid seller may resell the goods and he so has right to recover the damages occurred to him by breach of contract, from the buyer.

Question 11

Briefly explain the concept of CAVEAT EMPTOR.

Answer:

Answer. The doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought. If the goods turn

out to be defective or do not serve his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible

The rule of Caveat Emptor is laid down in the Section 16, which states that, “subject to the provisions of this Act or of any other law for the time being enforce, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale”.

- if the buyer had made known to the seller the purpose of his purchase, and
- the buyer relied on the seller’s skill and judgment and
- Seller’s business to supply goods of that description (Section 16).

Question 12

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.

Answer:

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

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

Implied Warrants:

- Warranty of quiet possession [Section 14(b)]: In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way distributed in the enjoyment of the goods in consequence of the seller’s defective title to sell, he can claim damages from the seller.
- Warranty of freedom from encumbrances [Section 14(c)]: The buyer is entitled to a further warranty that the goods are not subject to any charge or encumbrance in favour third party. If his possession is in any way disturbed by reason of the existence of any charge or encumbrances on the goods in favour of any third party, he shall have a right to claim damages for breach of this warranty.

- Warranty as to quality or fitness by usage of trade [Section 16(3)]. An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.
- Warranty told is close dangerous nature of goods: Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that he buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

Question 13

Comment on the following statements based on legal provisions:

Sale and Agreement to sale are same.

Answer:

No. They are not same. In sale the consideration moves with the sale at the present date while in agreement to sale the consideration will move at a future date when the sale would take place.

Question 14

When sale is complete in an Auction sale

Answer:

Auction sale is complete when the auction renounces the completion in any formal manner e.g. by falling the hammer.

Question 15

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

Answer:

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

- Where the buyer expressly or by implication, makes known to the seller

the particular purpose for which he needs the goods and depends on the skill and judgment of the seller whose business is to supply goods of that description, there is an implied condition that the goods shall be reasonably fit for that purpose;

- If the buyer purchasing an article for a particular use is suffering from an abnormality and it is made known to the seller at the time of sale, implied condition of fitness will apply.
- If the buyer purchases an article under its patent or other trade name and relies on seller's skills and judgment which he makes known to him, the implied condition that are articles are fit for a particular purpose shall apply.
- If the goods can be used for a number of purposes the buyer must tell the seller the particular purpose for which she enquired the goods otherwise implied condition of fitness of goods for a particular purpose will not apply.
- Where the goods are bought by description from a seller who deals in goods of that description whether he is the manufacturer or producer or not, there is an implied condition that the goods are of merchantable quality.
- An implied condition as to quality or fitness for a particular purpose may be annexed by the usage of trade or custom;
 - ❖ In a sale by sample there is an implied
 - ❖ The bulk shall correspond with the sample in quality;
 - ❖ The buyer shall have reasonable opportunity of comparing the bulk with the sample; and
 - ❖ The goods shall be free from any defect, rendering the mummies an table;
- In the case of eatables and provisions in addition to the implied condition of merchantability, there is an implied condition that the goods shall be wholesome.

Question 16

Stipulation as to time of payment is deemed to be essence of a contract of Sale .Comment.

Answer:

Unless the terms of the contract show a different view and intention, stipulation as to time of payment is not deemed to be of essence of a contract

of sale. Whether any other stipulation as to time of the essence of the contract or not, depends on the terms of the contract. If the time and manner of payment have been outlined in the contract, time of payment becomes essence of contract.

Question 17

An exchange of goods for goods is a sale. Comment with Rule position.

Answer:

Exchange of goods with goods is not sale, but it is called barter exchange. Sale is defined in Sale of Goods Act as transfer of property in goods for a price.

Question 18

Define.

'Future Goods' and 'Specific Goods'

Answer:

FUTURE GOODS means goods to be manufactured or produced or acquired by the seller after making the contract of sale [Section 2 (6)].

Specific goods means goods identified and agreed upon at the time a contract of sale is made [Section 2(14)].

Question 19

States the cases where the rule of caveat emptor does not apply

Answer:

Fitness for buyer's purpose: Where the buyer, expressly or by implication, makes know to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose. (Section 16 (1)).

Sale under a patent or trade name: In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose (Section 16(1)).

Merchantable quality: Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. (Section 16(2)).

Usage of trade: An implied warranty or condition as to qualify or fitness for a particular purpose maybe annexed by the usage of trade. (Section 16(3).

Consent by fraud: Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

Question 20

When property passes to the buyer under 'goods on approval 'or' on sale or return'?

Answer:

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; when he signifies his approval or acceptance to the seller.

If he does not signify his approval or acceptance to the seller but retains the goods, without giving notice of rejection then if a time has been fixed for the return of goods on the expiration such time, and if no time have been fixed on the expiration of reasonable time.

Question 21

Write short note on:

Exceptions to 'implied condition as to quality or fitness'

Answer:

Exceptions to 'implied conditions as to quality and fitness:

- If the buyer has examined goods, there shall be no implied conditions..
- If the buyer has examined goods, he should be vigilant and all defects should be noted by him during the examination. There shall be no implied conditions for such defects which can be noticed with such examination.
- If the goods bear trade name of any company, there shall be no implied conditions on the part of the seller as to quality and fitness.

Question 22

What are the essentials of a contract of Sale?

Answer:

Essentials of contract of sale:

- There must be atleast two parties-buyers and seller .Since a person cannot buys from and sells to himself

- Transfer or Agreement to transfer, the ownership of goods.
- Subject matter of goods must necessarily be goods.
- The consideration is price i.e. money. Goods received against goods are not a sale but it is called barter.

A contract of sale may be unconditional or conditional.

All other essentials of a valid contract must be present i.e. parties of contract must be competent to enter into contract; consent of parties shall be free.

Object shall be lawful and soon.

Question 23

Transfer of Title to goods takes place when it is intended. Whether it is correct?

Answer:

It should be noted that transfer of property in goods is distinct and different from delivery or possession of goods. The property may pass from the seller to buyer even without delivery of goods.

It is elementary (basic) law of contract that parties may fix the time when the property (ownership) in goods shall be deemed to have passed.

It may be at the time of delivery of goods, or it may be at the time making final payment or even at the time of making of goods.

The seller can sue for price only when the property in goods has passed to the buyer

Question 24

In case of auction sales, auctioneers have some implied obligations. State such obligations.

Answer:

Yes, obligations are:

- He has authority to sale goods.
- He warrants that he does not know any defects in the title of the principal.
- He undertakes to give possession of the goods against price paid.
- He guarantees quiet possession of goods by the purchases.

Question 25

Comment on the following based on legal provisions:

(c) Parties to a contract of sale can get the price of goods fixed by third parties.

Answer:

Agreement to sell at valuation:

Sometimes the goods to be sold are such that either the seller or the buyer is not able to determine and decide its price.

In such cases both the parties make a contract that value of goods will be determined or valued by a third party who is expert in such field.

Thus there is an agreement to sell goods on the terms that the price is to be fixed by valuation of third party.

The third party should have no interest in the contract except for fixation of price.

If that third party does not fix the price because of any reason of its own, the contract becomes void for non-fixation of price consideration.

If the buyer has taken or used any part of good so the whole goods, the buyer should pay a reasonable price, what is reasonable price will depend on facts and figures of each cash.

Question 26

Write a short note on

Goods sent on approval or “on sale or return”

Answer:

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-

- when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- He does something to the good which is equivalent to accepting the goods e.g. helped guess or sells the goods.

Question 27

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

Answer:

Destruction of Goods-Consequences:

- **As per Section 7**, A contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or becomes damaged as no longer to answer to their description in the contract. The rule is based on ground of mutual mistake or impossibility of performance, which is one of the essentials of a valid contract.

- **Section 8** provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.

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

Question 28

Consideration for sale of goods must be in term of money.

Answer:

Correct: It is one of the essential also the contract of sale, that price must be paid in terms of money.

Question 29

Define the term goods under the sale of goods act, 1930.what are the diiferent types of goods? Explain.

Answer:

Definition:

Goods form the subject-matter of a contract of sale. According to Sec.2 (7), goods', means every kind of movable property other than actionable claim and money; and includes stock and share, 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.

Classification of goods:

The goods which form the subject of a contract of sale may be either existing goods, or future goods [Sec.6 (1)], or contingent goods.

Existing goods: These are the goods which are owned or possessed by the seller at the time of sale. Only existing goods can be the subject of a sale. The existing goods may be-

Specified goods: These are goods which are identified and agreed upon at the time a contract of sale is made.

Ascertained goods: Though commonly used as similarly in meaning to specific goods, these are the goods which become ascertained subsequent to the formation of a contract of sale.

(c) **Unascertained or generic goods:** These are the goods which are not identified and agreed upon at the time of the contract of sale. They are defined only by description and May from part of a lot

2. Future goods: These are the goods which a seller does not possess at the time of the contract but which will be manufactured or produced or acquired by him after the making of the contract of sale. A contract of present sale of future goods, though expressed as an actual sale, purports to operate to sell the goods and not a sale. This is because the ownership of a thing cannot be transferred before that thing comes into existence

3. Contingent goods: Though a type of future goods, these are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

Question 30

Explain the rules as to 'delivery of goods' under the sale of goods act, 1930.

Answer:

Rules as to delivery of goods:

1. Mode of delivery: Delivery should have the effect of putting the goods in the possession of the buyer or his duly authorized agent. Delivery of goods may be

- (1) Actual,
- (2) Constructive, or
- (3) Symbolic.

✚ **Delivery and payment-concurrent conditions:** Delivery of the goods and payment of the price must be according to the terms of the Contract. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer shall be ready and willing to pay the price in exchange for possession of the goods (Sec.32).

✚ **Effect of part delivery:** A delivery of part of the goods in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole. But a delivery of the goods, with an intention of severing it from the whole, does not operate as delivery of the remainder (Sec.34).

- ✚ **Buyer to apply for delivery:** Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery (Sec. 35). Where the goods are subsequently acquired by the seller, he should intimate this to the buyer and the buyer should then apply for delivery. Unless otherwise agreed, the buyer has no cause of action against the seller as he does not apply for delivery.
- ✚ **Place of delivery:** Where the place at which delivery of the goods is to take place is specified in the contract, the goods must be delivered at that place during business hours on a working day. Where there is no specific agreement as to place, the goods sold are to be delivered at the place at which they are at the time of sale. As regards the goods agreed to be sold, they are to be delivered at the place at which they are at the time of agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced (Sec.36(1)).
- ✚ **Time of delivery:** Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time (Sec.36(2)). But where the contract uses words like “directly”, “without loss of time”. Or “forthwith”, quick and immediate delivery is contemplated. Demand or tender of delivery should be made at a reasonable hour. What is a reasonable hour is a question of fact (Sec. 36(4)).
- ✚ **Goods in possession of a third party:** When at the time of the sale the goods are with a third party, there is no delivery by the seller to the buyer until such third party acknowledges to the buyer that he holds them on his behalf. But where the goods have been sold by the issue or transfer of any document of title to goods, e.g., a railway receipt or a bill of lading, such third party’s consent is not required (Sec. 36(3)).
- ✚ **Cost of delivery:** Unless otherwise agreed, all expenses of and incidental to making of delivery are borne by the seller, but all expenses of and incidental to obtaining of delivery are borne by the buyer

Question 31

What is auction sale? What are the rules relating to auction sale.

Answer:

Meaning:

A sale by auction is a public sale where different intending buyers try to out bid each other. The goods are ultimately sold to the highest bidder. The auctioneer who sells the goods by auction is an agent of the seller. i.e., the owner. His relationship with the owner of the goods is governed by the general principles of the law relating to agency.

rules of auction sales

1. The law on auction sales is contained in Sec.64 of the Sale of Goods

Act. According to it, in the case of a sale by auction the following rules apply: 1. Goods put up for sale in lots. Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale (Sec. 64(1)).

2. Completion of sale. The sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner like “one, two, three” or “going, going, gone”, Until such announcement any bidder may retract (withdraw, revoke) his bid (Sec. 64 (2)). If before the fall of the hammer any bidder retracts his bid, the security amount may not be forfeited.

3. Right of seller to bid. A right to bid may be reserved expressly by or on behalf of the seller. Where such right is expressly reserved (but not otherwise), the seller or anyone person on his behalf may bid at the auction (Sec. 64 (3)). Secret employment of even one puffer (a person employed to bid at an auction to incite other and raise prices) is fraudulent unless a right to bid is expressly reserved, and even in that case, the employment of the second is fraudulent.

4. Sale not notified subject to a right to bid. Where a sale is nor 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, or (ii) for the auctioneer knowingly to take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer (Sec. 64(4)).

5. Reserve price. The sale may be notified to be subject to a reserve or upset price (Sec. 64(5)). It is a price below which the auctioneer will not sell. Where the sale is subject to a reserve price, every bid is accepted conditionally on the reserve price being reached (McManus v. Fortes cue, (1907) 2 K.B.1). But where the sale is without reserve, the goods will be sold to the highest bidder whether the sum bid is equal to the real value or not.

6. Use of pretended bidding. If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer (Sec. 64(6))

7. Knock out or agreement not to bid against each other. Where a group of persons form a combination to prevent competition between themselves at an auction and arrange that only one of them will bid and that they will dispose of anything so obtained privately among themselves, such a combination is called a ‘knock out’ and is not illegal (Jyoti v. Jhowmull, 36 cal.164). But if the intention of the parties to knock out is to defraud a third party, the ‘knock out’ is illegal.

Question 32

Mr. Bose settled the price after selecting two chairs. He arranges to take delivery of chairs next day and agrees to pay next month. Said chairs were destroyed by fire before delivery. Seller demanded the price. Mr. Bose refused: State legal position.

Answer:

Mr. Bose should pay the price. When the goods were specified by Bose and price was also settled, the contract was complete and the title of chairs was passed to Bose from the seller. Those chairs were kept as reserved for Bose and the seller was simply keeping the custody of the chairs on behalf of Bose. The seller is entitled to demand and receive the price of chairs.

Question 33

When is a seller of goods deemed to be an unpaid seller?

Answer:

A seller of goods is deemed to be an unpaid seller when

- 1) The whole of the price has not been paid or tendered;
- 2) A bill of exchange or other negotiable instrument has been received as a condition payment, and the condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.

Question 34

“Nemo Dat Quod Non Habet” – “None can give or transfer goods what he does not himself own.” Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930.

Answer:

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

Sale by a Mercantile Agent: A sale made by a mercantile agent of the goods or document of title to goods would pass a good title to the buyer in the following circumstances, namely;

If he was in possession of the goods or documents with the consent of the owner;

- (1) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and

(2) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell. (Proviso to Section 27).

Sale by one of the joint owners: If one of the several joint owners of goods has the sole possession of them with the permission of the others the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell. (Section 28)

Sale by a person in possession under voidable contract: A buyer would acquire a good title to the goods sold to him by seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud; misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).

Sale by one who has already sold the goods but continues in possession thereof: If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid.

[Section 30 (1)]

Sale by buyer obtaining possession before the property in the goods has vested in him: Where a buyer with the consent of seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them. [Section 30 (2)]

Sale by an unpaid seller: Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54(3)].

Sale under the provisions of other Acts:

- Sale by an official Receiver or liquidator of the company will give the purchaser a valid title.
- Purchase of goods from a finder of goods will get a valid title under circumstances.
- Sale by a Pawnee under default of pawns nor will give valid title to the purchaser.

Question 35**When does the transit come to an end?****Answer:****The right of stop page in transits lost when transit comes to an end.****Transit comes to an ending the following cases:**

- When the buyer or other bailee obtains delivery.
- Buyer obtains delivery before the arrival of goods at destination.
- Where the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods as soon as the goods are loaded on the ship, unless the seller has reserved the right of disposal of the goods.
- If the carrier wrongfully refuses to deliver the goods to the buyer.
- Where goods are delivered to the carrier hired by the buyer, the transit comes to amend.
- Where the part delivery of the goods has been made to the buyer, there the transit will come to amend for the remaining goods which are yet in the course of transmission.

Question 36**What do you understand by the term “unpaid seller” under the Sale of Goods Act, 1930? When can an unpaid seller exercise the right of stoppage of goods in transit?****Answer:**

Unpaid Seller

According to Section 45 of the Sale of Goods Act, 1930 the seller of goods is deemed to be an ‘Unpaid Seller’ when-

- The whole of the price has not been paid or tendered.
- A bill of exchange or other negotiable instrument as been received as conditional payment, and it has been dishonored.

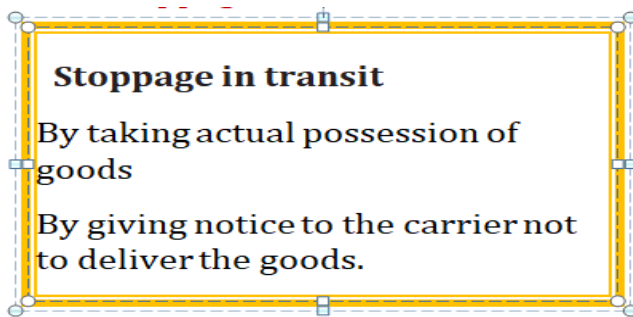
Right of stoppage of goods in transit

When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer.

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

- a) The seller must be unpaid.
- b) The seller must have parted with the possession of goods.
- c) The goods must be in the course of transit.

Question 37**How stoppage in transit is affected**

Answer:

Where the 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.

Question38

What is the purpose of the Sale of Goods Act?

Answer:

The Sale of Goods Act 1979 is an Act of the United Kingdom which regulates contracts in which goods are sold and bought. The Sale of Goods Act performs several functions. Buyer is a person that who wants to buy something from seller and seller is a person that sells out something that a buyer wants.

Question 39

What is the sale and supply of goods act?

Answer:

The Sale and Supply of Goods Act 1994, which has amended the Sale of Goods Act 1979, governs both consumer and commercial contracts. The Act governs the sale of the following goods: specific goods -goods that are identified and agreed to be purchased by the buyer.

Question 40

What are the rights of a consumer?

Answer:**Some of the Rights**

- The right to safety. ...
- The right to be informed. ...
- The right to choose. ...
- The right to be heard. ...
- The right to satisfaction of basic needs. ...
- The right to redress. ...

- The right to consumer education. ...
- The right to a healthy environment.

Question 41

What is sale under Sale of Goods Act?

Answer:

'Goods' is defined as per Section 2 (7) of the 'Act' as. "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."

Question 42

Briefly explain

- Is share a movable property?
- Is car a movable property?
- Is cash a movable property?

Answer:

- I. Since **shares** are considered "**movable property**", it is not mandatory to execute a gift deed while gifting. A gift is a transfer of **movable** or immovable **property** from one to another without consideration. **Shares** owned by a person can be gifted to another person (relative or otherwise) by following a certain procedure.
- II. The term **movable property** is commonly used to refer to tangible **assets** that are **movable**. ... **Immovable property**, in the sense used, commonly refers to real estate (such as your house, factory, manufacturing plant, etc.) while **movable property** refers to **movable assets** (such as your computer, jewellery, vehicles, etc.).
- III. Under the Act, gift can be given in the form of **cash, immovable property** (land/building) and **movable property** (such as securities, jewellery, painting, sculpture, work of art). Any of these, if received from a close relative, is not taxable.

Question 43

What is considered movable property?

Answer:

Personal property is generally considered **property** that is **movable**, as opposed to real **property** or real estate. ... In civil law systems, **personal property** is often called **movable property** or movables – any **property** that can be moved from one location to another.

Question 44**State some of examples of actionable claim?****Answer:****Example of Actionable Claim**

- The benefit of a contract giving an option to purchase the land.
- Claim for arrears of rent.
- Claim for rent to fall due in future.
- An option to repurchase the properties sold.
- Earnest money becoming repayable.
- Dividend due on shares.
- Amount due under a policy of life insurance.
- Fixed deposit receipts.

Question 45**List rights of unpaid seller against the buyer. Explain suit for price and suit for damage for non-acceptance.****Answer:****The right in personam are as follows:**

1. Suit for price (Section 55)
2. Suit for damages for non-acceptance (Section 56)
3. Repudiation of contract before due date (Section 60)
4. Suit for interest [Section 61(2)(a)]

- I. **Suit for price (Section 55):** (a) when a property in goods has passed to the buyer and the buyer wrongfully refuses to pay for the goods; the seller may sue him for the price of the goods [Section 55(1)]. (b) When property in the goods has not passed to the buyer and the goods have not been appropriated to the contract, if the price is payable on a certain day irrespective of delivery, the seller may sue the buyer on his wrongful refusal to pay for the price [Section 55 (2)].
- II. **Suit for damages for non-acceptance (Section 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. Where there is no default of the seller and the buyer wrongfully refuses to take delivery of the goods within

reasonable time, the seller is entitled to recover from the buyer (i) any loss caused by the buyer's refusal to take delivery; and (ii) any reasonable charge for the care and custody of the goods.

Question 46

Write a brief essay on "auction sales".

Answer:

An auction sale is a method of selling merchandise by inviting bids to the world at large, and property in merchandise is sold to the highest bidder. An auctioneer is an agent governed by the Law of Agency. When he sells, he is only the agent of the seller. The auctioneer may, however, sell his own property as the principal and need not disclose the fact he is so selling. Different provisions of law on auction sale are dealt under Section 64 of the Sale of Goods Act.

Where goods are put up for sale in lots, each lot is prima facie deemed to be subject matter of a separate contract of sale [Section 64(1)].

The sale is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid [Section 64 (2)]. Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction [Section 64(3)].

Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any person representing him. Any sale contravening this rule may be treated as fraudulent by the buyer [Section 64(4)]. The sale may be notified to be subject to a reserved or upset price [Section 64(5)].

Question 47

Define the term „ “. List the rules regarding valid delivery of goods. Also explain any of two.

Answer:

According to Section 2(2), 'delivery' means voluntary transfer of possession from one person to another. Rules for valid delivery of goods

1. Place of delivery
2. Time of delivery
3. Goods in possession of a third person:
4. Expenses of delivery
5. Modes of delivery

6. Constructive delivery

7. Symbolic delivery

Place of delivery: In case the contract does not provide, goods sold are to be delivered at the place at which they are at the time of sale. This is applicable to specific goods. In case of unascertained goods, goods are to be delivered at the place at which they are produced.

Time of delivery: As per the contract, if not stipulated, within reasonable time. The demand for delivery must be made within reasonable hours. What is reasonable is a matter of fact.

Question 48

Discuss buyer's rights regarding acceptance of delivery of goods"

Answer:

Acceptance (Section 42): Acceptance is deemed to take place when the buyer (a) intimates to the seller that he had accepted the goods; or (b) does any act to the goods, which is inconsistent with the ownership of the seller; or (c) retains the goods after the lapse of a reasonable time, without intimating the seller that he has rejected them.

Buyer is not bound to return rejected goods (Section 43): The seller cannot compel the buyer to return the rejected goods. But the seller is entitled to a notice of the rejection.

Liability of buyer for neglecting or refusing delivery of goods (Section 44): When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not take delivery within a reasonable time, he is liable to the seller for any loss occasioned by the neglect or refusal to take delivery, and also reasonable charge for the care and custody of the goods.

Question 49

Discuss rights of unpaid seller against goods.

Answer:

Rights of lien (Section 47): The right of lien can be exercised by him in the following cases only:

- Where the goods have been sold without any stipulation of credit.
- Where goods have been sold on credit but the terms of credit have expired
- Where the buyer becomes insolvent.

Rights of stoppage in transit (Section 50): The right of stoppage in transit is exercised only when the following conditions are fulfilled:

- The seller must be unpaid.

- He must have parted with the possession of goods.
- The goods are in transit.
- The buyer has become insolvent.
- The right is subject to the provisions-of the Act.

Right of re-sale (Section 54): The unpaid seller can exercise the right to re-sell the goods under the following conditions:

- When the goods are of a perishable nature. In such a case, the buyer need not be informed of the intention of re-sale.
- When he gives notice to the buyer of his intention to re-sell the goods and the buyer does not, within a reasonable time, pay or tender the price.

Question 50

What is the meaning of actionable claim?

Answer:

As per Section 3 of the Transfer of Property Act, 1882

Actionable Claim is a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in possession either actual or constructive, of the claimant, which the civil courts recognize as affording grounds of relief whether such debt or beneficial interest be existent, accruing or conditional or contingent.

Question 51

What is meant by concurrent condition?

Answer:

The seller shall be ready and willing to give possession of the goods to the buyer in exchange for price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Question 52

What are the options available to buyer if larger quantity is delivered?

Answer:

- Accept the contracted goods and reject the balance
- Accept the whole bulk
- Reject the whole lot

Question 53

Mention two options available to buyer if mixed quantity is delivered?

Answer:

- Accept the contracted goods and reject the balance
- Reject the whole lot

Question 54

Under what circumstances acceptance is deemed to take place.

Answer:

Intimated the seller that he had accepted the goods,
Retains the goods after the lapse of a reasonable time, without intimating the seller that he has rejected them

Question 55

Mention any two warranties in an auction sale.

Answer:

- Auctioneer warranties that he has authority to sell.
- He guarantees the quiet possession of the goods by the purchaser.

Question 56

What is meant by “lien“?

Answer:

Lien means a right which a creditor has to retain possession of goods until payment of the price.

Question 57

What is meant by „ auction sale“?

Answer:

An auction sale is a method of selling merchandise by inviting bids to the world at large, and property in merchandise is sold to the highest bidder.

Question 58

Define „knockout agreements“.

Answer:

Buyers join their hands to eliminate competition among themselves at an auction sale. They agree that they will not raise the bid against each other. Among the buyers, only one will bid at the auction.

Question 59

State the rules of auction under section 64 of Sales of Goods Act.

Answer:

- Goods put up for sale in lot
- Completion of sales
- Right of seller to bid
- Reserve price
- Use of pretended bidding

Question 60

When is the seller bound to deliver the goods?

Answer:

Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Question 61

Who bears expenses to put goods into a deliverable state?

Answer:

The seller bears expenses to put goods into a deliverable state.

Question 62

How delivery of goods to the carrier is treated?

Answer:

Delivery to the buyer: Delivery to carrier (Sec.39) where the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether aimed by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a for safe custody, is prima facie.

Question 63

Give the alternative name for the rights against the buyer personally.

Answer:

Right in personam: An personam right is a personal right attached to a specific person, such as contract rights, a tort award against a defendant, or a license. In rem rights are property rights enforceable against the entire world (such as property rights) whereas an in personam judgment binds only the litigants.

Question 64

What is the Nemo dat quod non Habet rule?

Answer:

Nemo dat quod non habet, literally meaning "no one gives what they don't have" is a legal rule, sometimes called the Nemo dat rule that states that the

purchase of a possession from someone who has no ownership right to it also denies the purchaser any ownership title.

Question 65

What do you mean by symbolic possession?

Answer:

Possession of the Property: Under the act, at the time of the auction, the bank has either symbolic possession or physical possession of the property. In layman terms, symbolic possession means a bank or financial institution does not have the key of the property.

Question 66

Does sale agreement need to be registered?

Answer:

As per the Indian Registration Act, 1908, any agreement for transfer of any interest in an immovable property of value more than one rupee, is required to be registered. The ownership of the property still remains with the seller.

Question 67

State cases where a non-owner can convey better title to the bonafide buyer of goods for value.

Answer:

Sale by one of the joint owner: 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 of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

Question 68

What are the exceptions to the Nemo dat rule?

Answer:

Nemo dat quod non habet, literally meaning “no one gives what he doesn't have” is a legal rule, sometimes called the Nemo dat rule, which states that the purchase of a possession from someone who has no ownership right to it also denies the purchaser any ownership title.

Question 69

Right of lien can be exercise only for price'. The statement is true or false

Answer:

The statement is true. Subsection (2) specifies that the unpaid seller can exercise his right of lien notwithstanding that he is in possession of the goods acting as an agent or bailee for the buyer. Hence, 'Right of lien can be exercise only for price'

Question 70

What is sale by non owner?

Answer:

Sale by Non-Owner In Business Law. A sale by non-owner in business law occurs when goods are sold by a person who is not the owner without the owner's permission. Only the person, who owns the title to a piece of property, whether that is personal property or real estate, can **transfer** the title to someone else.

Question 70

Can one person take out a mortgage on a jointly owned property?

Answer:

If you share property ownership with someone else -- spouse, business partner, relative -- it's unlikely he can take out a mortgage or a home equity loan without your consent. It's not, however, completely impossible. A lot depends on the terms of your ownership agreement, and the type of ownership that you share.

Question 71

Can one party sell a jointly owned home?

Answer:

Property Sale Rights. ... However, an owner in a tenancy in common or a joint tenancy can't sell the ownership interests of the other owners holding title in the property. Also, you can't simply force the other owners in your property to sell it entirely without first filing a partition lawsuit.

Question 72

State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930. Examine

Answer:

Whether there should be an agreement between the parties in order to constitute a sale under the said Act.

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

1. There must be at least two parties
2. The subject matter of the contract must necessarily be goods
3. A price in money (not in kind) should be paid or promised.
4. A transfer of property in goods from seller to the buyer must take place.
5. A contract of sale must be absolute or conditional [section 4(2)].

All other essential elements of a valid contract must be present in the contract of sale

Question 73

What do you understand by “Caveat- Emptor” under the Sale of Goods Act, 1930? What are the Exceptions to this rule?

Answer:

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

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

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

(i) ***Fitness for buyer’s purpose:*** Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller’s skill or judgment and the goods are of a description which is in the course of the seller’s business to supply, the seller must supply the goods which shall be fit for the buyer’s purpose. [Section 16 (1)].

(ii) ***Sale under a patent or trade name:*** In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose [Section 16 (1)].

(iii) ***Merchantable quality:*** Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such

examination ought to have revealed. [Section 16(2)].

(iv) **Usage of trade:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. [Section 16(3)].

(v) **Consent by fraud:** Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

Question 74

What is the Right of Resale (Section 54)

Answer:

The right of resale is an important right for an unpaid seller. If he does not have this right, then the right of lien and stoppage won't make sense. An unpaid seller can exercise his right of resale under the following conditions:

- 1. Goods are perishable in nature:** In such cases, the seller does not have to inform the buyer of his intention of resale.
- 2. Seller gives a notice to the buyer of his intention of resale:** The buyer needs to pay the price of the goods and ask for delivery within the time mentioned in the notice. If he fails to do so, then the seller can resell the goods. He can also recover the difference between the contract price and resale price if the latter is lower. However, if the resale price is higher, then the seller keeps the profits.
- 3. Unpaid seller resells the goods post exercising his right of lien or stoppage:** The subsequent buyer acquires a good title to the goods even if the seller has not given a notice of resale to the original buyer.
- 4. Resale where the right of resale is reserved in the contract of sale:** If the contract of sale specifies that the seller can resell the goods if the buyer defaults, then the seller reserves his right of sale. He can claim damages from the original buyer even if he does not give a notice of resale to him.
- 5. Property in the goods has not passed to the buyer:** The unpaid seller can exercise his right of withholding delivery of goods. This is similar to the right of lien and is called quasi-lien.

Question 75

Define delivery and forms of delivery?

Answer:

Delivery of Goods in the Sale of Goods Act is defined as a **voluntary transfer of possession from one person to another**. Thus, to effect a valid delivery, goods from one person to another must be transferred willingly and not by means of fraud, theft, or force, etc. Mere possession of goods does not amount to delivery of goods.

Modes of Delivery of goods

Delivery of goods may be made in any of the following three ways:

1. **Actual Delivery:** Also known as **physical delivery**, actual delivery takes place when the goods are physically handed over by the seller or his/her authorized agent to the buyer or his/her agent authorized to take possession of the goods.
2. **Symbolic Delivery:** Where the goods are bulky and heavy and it is not possible to physically hand them over to the buyer, delivery thereof may be made by indicating or giving a symbol. Here the goods itself are not delivered, but the means of obtaining possession of goods is delivered.
3. **Constructive Delivery:** In this case neither physical nor symbolic delivery is made. In constructive delivery the individual possessing the products recognizes that he holds the merchandise for the benefit of, and at the disposal of the purchaser. Constructive delivery is also called attornment. Constructive delivery may be affected in the following three ways.
 - Where the seller, after having sold the goods, agrees to hold them as bailee for the buyer
 - Where the buyer, who is already in possession of the goods as bailee of the seller, holds them as his own, after the sale, and
 - Where a third party, for example, a carrier/transporter, who holds the goods, as bailee for the seller, agrees and acknowledges holding them for the buyer.

Question 76

Right of goods in transit?

Answer:

Subject to the provisions of sale of goods Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

Question 77**How Stoppage is affected and what are the Effect of Stoppage****Answer:**

There are two ways of stopping the transit of goods:

1. The seller takes actual possession of the goods
2. If the goods are in the possession of a carrier or other bailee, then the seller gives a notice of stoppage to him. On receiving the notice, the carrier or bailee must re-deliver the goods to the seller. The seller bears the expenses of the re-delivery.

Effect of stoppage is:

Even if the unpaid seller exercises his right of stoppage in transit, the contract stays valid. The buyer can ask for delivery of the goods after making the payment.

CASE STUDY**Question 78**

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.

M/s Shweta owned a motor car which she handed over to Mr. JOSHI on sale or return basis. After a week, Mr. Jeen pledged the motor car to Mr. Goli. Ms. Shweta now claims back the motor car from Mr. Goli. Will she succeed” Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to M s. Shweta

Answer:

As per the provisions of section 24 of the sale of Goods Act, 1930, when goods are delivered to the buyer on approval on ‘on sale or return’ or other similar terms, the property therein passes to the buyer-

When the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;

If he does not signify his approval or acceptance to the seller but retains the goods without giving notice or rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or

He does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question.

Since Mr. Jeen, who had taken delivery of the Motor Car on sale or Return basis and pledged the Motor car to Mr. Goli, he has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Motor Car) passes to the Mr. Jeen. Now in this situation, Ms. PREETI cannot claim back her Motor Car from Mr. Goli, but she can claim the price of the Motor Card from Mr. Jeen only.

Question 79

- **Harish bought a second-hand refrigerator from Manoj for Rs450.**
- **An agreement made between them that refrigerator should be put in order at Rs320.**
- **Harish took delivery.**
- **Harish found it is not working properly and gave two parts for repair to Manoj.**
- **The full Bill for repair has not been paid.**
- **Manoj claimed Lien on two parts and refuse to return until balance is paid**

QUESTIONS

- **Is Manoj right what he did?**
- **Is the Lien justified?**

Answer:

Manoj has no right of lien.

His refusal to return until payment is made is not justified.

The contract had been fully performed.

Once the refrigerator is handed over, the Lien had ended.

The contract can't revive.

Question 80

Bathroom city washed its hands off the problem

Simon Bell, of King's Lynn, Norfolk, has been battling with Bathroom City, Birmingham, over a cracked bathroom unit for six months after buying a shower tray, cabinet and basin in March. The delivery did not turn up for a month, despite a promise that it would arrive within days. Mr. Bell, left, who is a former heating and plumbing engineer, says: "When the delivery was made I inspected the goods and could see nothing wrong. But because the delivery was so late I missed my opportunity to fit it immediately."

It wasn't until a couple of days later that he noticed a "hairline crack" on the basin when he took it out of the box. He sent a photograph of the

damage to Bathroom City, which said that there was nothing it could do because he had not reported it within two days of delivery. The company also claimed that it did not look like a manufacturing fault but damage caused when fitting the taps. However, Consumer Direct says that it is the duty of Bathroom City to prove that it was not responsible; if it cannot, then the company owes Mr. Bell a replacement or repair. Mr. Bell says: "Bathroom City has refused to budge and my e-mails and letters have been ignored. I have fitted many bathroom suites over the years and have never broken anything. What's more, I know that it is impossible to inflict this type of damage with modern taps."

After being contacted by Times Money, Bathroom City offered to replace the basin as a goodwill gesture, but maintains that it has "clear proof" that it did not damage the basin because "Mr. Bell clearly states that when it was delivered he checked the goods over and found no initial fault".

Identify the elements of sale of goods.

Answer:

The elements of sale of goods present in this case study are as follows:

Two parties: there are 2 parties present here that is the buyer (Simon Bell) and the seller, (Bathroom City, Birmingham)

Goods: the goods which should be transferred from the seller to the buyer are a shower tray, cabinet and basin. These goods which form the subject-matter of the contract of sale are movable.

Price: Though nothing about price or money is mentioned, it is obvious that a certain amount of cash is paid, (naturally speaking) because the goods mentioned are not gifts and are brought from the bathroom city by Mr. Simon Bell

Transfer of general property: the goods show the nature of general property.

Essential elements of a valid contract: the essential elements if a contract are as follows:

Two parties: As mentioned before, there are two parties mentioned in the given case study that is the buyer (Simon Bell) and the seller, (Bathroom City, Birmingham)

Offer/Acceptance: there is an agreement seen in the case study i.e. the goods offered by the company, The Bathroom city are accepted by the customer, Mr. Simon Bell.

Legal Obligation: the legal formalities of the contract are not clearly mentioned but since there is a promise being mentioned that the goods would arrive within days, it is assumable that the required statutory formalities are complied with all obligation.

Question 81

A hirer, who obtains possession of a car from its owner under a hire purchase agreement, sells the car to a buyer who buys in good faith and without notice of the right of the owner. The buyer gets good title to the car.

Answer:

According to the Sale of Goods Act, It is implied condition of sale that only owner can sell the goods. It is expressed in the Latin phrase as ' Nemo dat quod qui non habet.' Which means that" none can give who does not himself possess." A hirer is not the owner of the goods and does not possess title of the goods. Since sale involves transfer of ownership and a hirer, being a non-owner, cannot transfer ownership in the given case, buyer shall not get a good title.

Question 82

Abhishek contracts to sell Bhusan, by showing sample, certain quantity of tea described as 'Best quality Darjeeling tea. The tea when delivered matches with the sample, but it is not Darjeeling tea. Referring to the provisions of Sale of Goods Act, 1930 advise the remedy, if any, available to Bhusan.

Answer:

Sale by sample is described in Sec. 17 of the Sale of Goods Act, 1930.

A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. In the case of a contract for sale by sample there is an implied condition-

1. That the bulk shall correspond with the sample in quality.
2. That they shall have a reasonable opportunity of comparing the bulk with the sample.
3. That the goods shall be free from any defect, rendering them unmerchantable which would not be apparent on reasonable examination of the goods.
4. In a contract for sale of brand by sample, Bhusan is entitled to return the tea and claim refund of money as there is breach of condition

Question 83

Mr. A agreed to purchase 100 bales of cotton from 'B' from his large stock. 'A' sent his men to take delivery of cotton. On completion of packing of only 70 bales, there was accidental fire and entire stock

including packed 70 bales were destroyed. There was no Insurance cover. Who will bear the loss?

Answer:

Since 70 bales were ascertained and appropriated, property in those 70 bales were transferred to A. Hence A is liable for 70 bales only and B is liable for remaining stock.

Question 84

Mr. Sham orders Mr. Ram to deliver certain goods at Mumbai. While the goods are lying at Mumbai Aly. Station, Station Master informs Mr. Sham that the goods are held at station at Mr. Sham's risk, but Mr. Sham became insolvent. Has Mr. Ram any right as an unpaid seller?

Answer:

1. The goods have reached its destination and are in the possession of station master who is supposed to deliver goods to Mr. Sham.
2. The station master is bailee of Mr. Sham the buyer and not of Mr. Ram the seller.
3. An unpaid seller can stop the goods in transit in the event of buyer's insolvency.
4. This right has been lost by the seller as the goods are no longer in transit.

Question 85

State the rights and liabilities of 'A':

An Auctioneer advertised in a newspaper that a sale of office furniture will be held at Kolkata on 29.11.2009. 'A' came from New Delhi to buy the furniture but the auction was cancelled. Whether 'A' can file a suit against the auctioneer for his loss of time and cost

Answer:

A cannot file a suit against the Auctioneer for his loss of time and cost because the Advertisement was merely a declaration of intention to hold Auction. Advertisement is not an offer but it is an invitation to offer. Moreover there was no agreement between A and the party.

Question 86

Mrs. Kamini purchased a tin of standard quality kerosene oil from a dealer of repute. When part of the kerosene was put to use in a stove for cooking, an explosion occurred causing damage. Mrs. Kamini claims damages from the dealer who refuses to pay damages. Offer your views based on provisions of sale of Goods Act.

Answer:

Section 16 of the sale of goods act states that goods sold should be capable of being used for the purpose for which it has been sold. Kerosene oil should be capable of being used as fuel which was not so in the present case. Kamini shall be entitled to receive back the price as well as compensation for the loss.

Question 87

Raman instructed Soman, a transporter, to send a consignment of apples to Mumbai. After covering half a distance, Soman found that the apples will perish before reaching Mumbai. Hence, he sold the same at a half the market price. Raman sued against Soman. Will he succeed?

Answer:

Agent's Authority in an emergency: As per Section 189 of the Sale of Goods Act, 1930.

- An agent has the authority in an emergency to do all such acts as a man of ordinary prudence (means carefulness, wisdom) would do for protecting his principal from losses which the principal would have done under similar circumstances.
- A typical case is where the agent handling perishable goods like 'apples' can decide the time, date and place of sale, not necessary as per instructions of the principal, with the intention of protecting the principal from losses.
- Here the agent acts in an emergency and acts as a man of ordinary prudence.
- In the given case, Soman had acted in an emergency situation and Raman will not succeed against him.

Question 88

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

Answer:

Section 50, of Sale of Goods Act, states that, subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as

they are in course of transit and retain them until payment of tender of the price.

Hence the major rules applicable would be:

- The seller must be unpaid
- He must have parted with the possession of goods
- The goods must be in transit
- The-buyer must have become insolvent

Question 89

Mr. Z bought a refrigerator from a dealer's shop. But he did not mention the required purpose i.e., whether it is fit to make ice. After using the same, Mr. Z came to know that the refrigerator was unfit for the purpose. State giving reasons as per the provisions of The Sale of Goods Act, 1930, is the dealer liable to refund the price?

Answer:

As per the Rule of Implied Condition, [Sec. 16 (1)]: There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods. This is expressed by the maxim caveat emptor (let the buyer beware). But there is exception to this rule of Condition as to Quality or Fitness: There is an implied Condition that the good shall be reasonably fit for a particular purpose described if the three conditions are satisfied:

- ❖ The particular purpose for which goods are required must have been disclosed (expressly or impliedly) by the buyer to the seller.
- ❖ The buyer must have relied upon the seller's skill or judgment.
- ❖ The seller's business must be to sell such goods

Question 90

Ashim Sells 1600 kgs. Of wheat out of large quantity lying in his godown forwarded to Bablu. Out of these, Bablu sells 600 kgs. To Chandan (wheat yet to be ascertained). Then Chandan the delivery order signed, by Bablu to Ashim who confirmed that wheat would be dispatched in due course. Bablu then becomes insolvent. Ashim refused to deliver to Chandan. Advice Chandan based on rules.

Answer:

Ashim cannot refuse to deliver 600 kgs. Of wheat to Chandan. Sec. 53 of the Sale of Goods Act, 1930 provides that seller (i.e. Ashim) loses his right of lien, if he has assented to the sale to a subsequent buyer. By giving assent to Chandan, Ashim has lost his right of lien.

Question 91

Mr. 'A' purchased a Refrigerator from Mr. 'B' on "hire purchase agreement" expiring on 31.12.15. Mr. 'A' sold on 0 .05.1_3 t a Refrigerator to 'C' who purchased against adequate consideration. A has right to give good title to Mr. C.

Answer:

Under Hire Purchase Agreement, the ownership passes to buyer only on payment of last installment. The hirer under hire purchase system, has no title to the refrigerator Mr. A. cannot give a good title to Mr. C. This is because Mr. C. does not get a better title than Mr. Ahad.

Question 92

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

Answer:

Section 50 of the Sale of Goods Act, states that, subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in course of transit and retain them until payment of tender of the price.

Hence the major rules applicable would be:

- The seller must be unpaid
- He must have parted with the possession of goods
- The goods must be in transit
- The buyer must have become insolvent

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

Question 93

Mahendra made a hire-purchase agreement with Narendra for a car of which Narendra was described as the owner. Mahendra paid four of the twelve monthly installments and then learnt that Jitendra

claimed to be the owner of the car. He nevertheless paid the balance of installment and exercised his option to purchase. Jitendra then demanded the car and Mahendra gave it up to him. Mahendra then sued Narendra to recover the full price and Narendra counter claimed for a reasonable sum as hiring charges for the car during the period it was with Mahendra. Decide.

Answer:

The “Nemodat quod non habet” rule protects the true owner (Jitendra) and the buyer (Mahendra) who was aware of Narendra defective rights after paying the fourth installments would not get any right or title out of his ineffective hire purchase agreement with Narendra.

- Because Narendra was neither owner nor an authorized person to put the car on hire purchase and for the same reason, he is not entitled to receive any money under the agreement.
- However, Mahendra may be asked by Jitendra to pay a reasonable rent for the use of the car and Mahendra can recover the amount paid by him to Narendra.

Question 94

A delivered some diamonds to B on sale or return basis. B delivered the diamonds to C and C to D on similar terms. The diamonds were stolen while in the custody of D. Who shall suffer the loss?

Answer:

In this case, B has adopted the transaction by delivering the diamonds to C and thus is liable to pay the price to A. Similarly C has adopted the transaction by further delivery to D and thus is liable to pay the price to B. As between C and D, the transaction was still of sale or return which was not adopted by D, either expressly or impliedly, and thus the ownership had not passed to D at the time of loss. Therefore, C shall suffer the loss of diamonds.

Question 95

X buys synthetic pearls for a high price thinking that they are natural pearls. The seller though understood X's intention, kept silent. Examine the remedies X has against the seller as per the Sale of Goods Act, 1930.

Answer:

X has no remedy against the seller as the doctrine of Caveat Emptor will apply:

"Cave a temptor" means 'Let the buyer', i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody excepting himself. The rule is enunciated in the opening words of Section 16 of the Sale of Goods Act, 1930 which runs thus, "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

Question 96

- **L was shopping in a self-service supermarket. He picked up a bottle of soft drinks from a shelf.**
- **While he was examining it, the bottle exploded in his hand and injured him.**
- **He sued the Aerated Drinks Co., which has bottled the drink, to recover damages for breach of condition arising from the sale of food.**

Answer:

- ❖ L would not succeed.
- ❖ A warranty or condition does not arise unless there is a sale.
- ❖ No sale occurs when a customer in a self-service super market takes an article from a shelf since he may decide not to buy and pay for it and return it to the shelf.
- ❖ As there was no sale, there was no implied condition

Question 97

- **Aluminum Industries v. R Aluminum Ltd.**
- **The plaintiff was a company which sold aluminum foil to the defendant, R Company.**
- **The plaintiff had elaborate standard conditions of sale which provided, inter alia, that the property would not pass to the buyer until they had paid all that was owing to the seller and till then the buyer would keep the article manufactured with the foil as "fiduciary owner" of the seller.**

- The buyer, if necessary was to store the articles in such a way that it could be clearly recognized as the property of the seller till the time of payment.
- The buyer eventually became insolvent owing to the seller over Rs.10, 20,000

Answer:

1. The Court of Appeal held that the property had not passed to the buyer and he resold the goods *only* as the agent of the original seller.
2. Hence the latter were
3. Entitled to the retail price in preference to the other creditors of the insolvent buyer.

Question 98

- 'A' ordered a certain ' of new red chilies from 'B'
- Goods were dispatched from Calcutta to cuddalore
- 'A' paid for goods on presentation of shipping documents
- Goods were cleared at cuddalore port by Ns agents
- Goods were sent on rail to Alandur
- On inspection the goods were found to be deteriorated 'A' rejected the goods but retained them as security for price already paid

Answer:

- ❖ Contract was for the delivery of new chilies
- ❖ Buyer can reject the goods as it is a breach of contract
- ❖ The buyer cannot retain the goods

Question 99

- 'A', a jeweler was entrusted with a diamond by 'p'
- He was asked to obtain offers for it
- 'A' was asked to sell to the offer or only after approval of ' P'
- 'A' sold the diamond to 'S' without approval of 'P'
- 'A' absconded with the money
- 'P's used to recover the diamond

Answer:

- ❖ 'P' cannot recover the diamond from ' S'
- ❖ Sale was made by 'A' as a mercantile agent in the ordinary course of business

Question 100

- **A firm of confectioners' materials agreed to sell condensed milk in tins to a bakery.**
- **The milk should be of certain standard.**
- **The bakery received the shipping documents and paid the price.**
- **The goods which arrived are of a different trade mark of another manufacturer.**
- **The tins were detained by customer authority**

QUESTIONS

- **Is the seller responsible?**
- **Can the buyer get back the price?**
- **What is the right of buyer?**

Answer:

- ❖ The seller is responsible.
- ❖ The seller has broken the implied condition relating to title to the goods.
- ❖ The seller has no right to sell other different milk tins.
- ❖ The buyer could claim and get back the price.
- ❖ The buyer has also the right to sue for damages.

PAST EXAMINATION QUESTIONS:

MAY- 2018

Question1

**What is meant by delivery of goods under the Sale of Goods Act, 1930?
State various modes of delivery.**

Answer:

Delivery means voluntary transfer of possession from one person to another. It may be made by doing anything, which has the effect of putting the goods, in the possession of the buyer, or any person authorized on his behalf.

Various modes of delivery are as follows:

- (i) **Actual delivery:** Physical delivery of goods to buyer.
- (ii) **Constructive delivery:** When it is affected without change in the custody or actual possession.
- (iii) **Symbolic delivery:** Where there is a delivery of a thing in token of a transfer of something else.

Question2

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

Answer:

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

The essentials regarding appropriation of unascertained goods are as follows:

- a) There is a contract for the sale of unascertained goods 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) Goods must be unconditionally appropriated.
- e) The appropriation must be made by:
 - i. The seller with the assent of the buyer, or
 - ii. The buyer with the assent of the seller.
- f) The assent may be express or implied.
- g) The assent may be given either before or after the appropriation.

Question3

Mr. D sold some goods to Mr. E for Rs. 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 and rights of Mr. D as per The Sale of Goods Act, 1930.

Answer:

When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such a request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

Thus, in the given case, Mr. D can recover damages from Mr. E and can repudiate the contract as well.

NOV - 2018

Question1

What is the Doctrine of "Caveat Emptor"? What are the exceptions to the Doctrine of "Caveat Emptor"?

Answer:

In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

Question2

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?

Answer:

According to the facts of this case it stands pretty much clear to the judgment of an independent observer that the property in the goods sold by Mr. G had already passed to Mr. H after the payment of dues and the examination of goods by the agent of Mr. H. Hence it can be easily concluded that the liability for damage suffered by the goods would fall on the buyer i.e. Mr. H and not Mr. G since the transfer of title of the goods had already taken place before the

damage occurred.

NOV-2019

Question1

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

Answer:

The property in unascertained goods or future goods does not pass until the goods are ascertained.

Such goods are defined only by description and not as goods identified and agreed upon when the contract is made.

The following rules are applicable for ascertaining the intention of the parties in regard to passing of property in respect of such goods.

The property in such goods passes to the buyer when the goods in a deliverable state are unconditionally appropriated to the contract.

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 contract.
- (c) The goods must be in a deliverable state.
- (d) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- (e) The appropriation must be made by:
 - (i) the seller with the assent of the buyer, or
 - (ii) the buyer with the assent of the seller
- (f) The assent may be express or implied.
- (g) The assent may be given either before or after appropriation.

Question2

What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930?

Answer:

Rights of an unpaid seller against the goods under Sale of Goods Act,

1930 are:

- (a) **A lien or right of retention:** An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e. keep the goods in his possession and refuse to deliver them to the buyer until the fulfillment or tender of the price. This right depends upon physical possession i.e. it is a possessory lien. Lien is lost as soon as the seller parts with the goods.
- (b) **The Right of Stoppage in transit:** The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming the possession of them and retaining possession until payment of the price.
- (c) **Right of re-sale:** The unpaid seller may re-sell:
- (i) Where the goods are perishable.
 - (ii) Where such right is expressly resumed.
 - (iii) Where seller tenders notice to buyer of his intention to re-sell and buyer still does not tender price within a reasonable time.
- (d) **Right to withhold delivery:** If the property in the goods has passed, the unpaid seller has right as described above. If however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

DEC - 2020**Question 1**

Write any four exceptions to the doctrine of Caveat Emptor as per the sale of Goods Act, 1930.

Answer:

The doctrine of Caveat Emptor is, however, subject to the following exceptions:

- **Fitness as to quality or use:** Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1)].
- **Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied

condition that the goods shall be fit for any particular purpose [Section 16(1)].

- Goods sold by description: Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so then seller is responsible.
- Goods of Merchantable Quality: Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].
- Sale by sample: Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
- Goods by sample as well as description: Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].
- Trade Usage: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].
- Seller actively conceals a defect or is guilty of fraud: Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

Question 2

(a) Explain any six circumstances in detail in which non-owner can convey better title to Bona fide purchaser of goods for value as per the Sale of Goods Act, 1930.

Answer:

(a) In the following cases, a non-owner can convey better title to the bona fide

purchaser of goods for value.

(1) **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

(a) If he was in possession of the goods or documents with the consent of the owner;

(b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and

(c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (**Proviso to Section 27**). **Mercantile Agent** means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].

(2) **Sale by one of the joint owners (Section 28):** If one of several joint owners of goods has the sole possession of them by permission of the coowners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

(3) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (**Section 29**).

(4) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid [**Section 30(1)**].

(5) **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of the seller obtains

possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them **[Section 30(2)]**. However, a person in possession of goods under a 'hire-purchase' agreement which gives him only an option to buy is not covered within the section unless it amounts to a sale.

(6) **Effect of Estoppel:** Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.

(7) **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer **[Section 54 (3)]**.

(8) **Sale under the provisions of other Acts:**

- I. Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
- II. Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]
- III. A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872].

Question 4

(a) 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 succeeds?

Answer:

(a) As per the provisions of Section 24 of the Sales of Goods Act, 1930, when goods are delivered to the buyer "on sale or return" or other similar terms, the property therein

passes to the buyer-

(a) When the buyer signifies his approval or acceptance to the seller or does any

other act adopting the transaction;

(b) If he does not signify his approval or acceptance to the seller but retains the

goods without giving notice of rejection then if a time has been fixed for the return of goods, on expiration of such time and if no time has been fixed, on expiration of reasonable time; of

(c) He does something to the goods which is equivalent to accepting the goods e.g.

he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question as follows:-

(i) Examine with reference to the provisions of the Sale of goods Act, 1930, what recourse is available to Ms. R?

(i) Since Ms. R has given the delivery of motor cycle to Ms. K on sale or return basis and she pledged the vehicle to Mr. A to obtain the loan, has attracted the third condition that she does something to goods which is equivalent to accepting the goods. Therefore, the property therein passes to Ms. K. Now in this situation Ms. R can't claim back the vehicle from Mr. A but she can claim the price of the vehicle from Ms. K.

(ii) Would your answer be different if it has been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?

(ii) If it has been expressly provided that the vehicle would remain the property of Ms. R until price has been paid then in that case property will not pass to Ms. K until cash is paid. So Ms. R can claim back the vehicle from Mr. A in this situation.

JAN - 2021

Question 1

What are the rules which regulate the sale by Auction under the Sale of Goods Act, 1930?

Answer:**Auction sale:**

1. Auction sales means a public sale where interested buyers are assembled at one place and offer the price at which they are ready to buy the goods.
2. The offer of the price is known as 'bid' and the person making the bid is known as 'bidder'.
3. The owner of goods may himself sell the goods or appoint a person to sell on his behalf. The person so appointed is known as 'Auctioneer'
4. The relationship between owner and auctioneer is that of principal and agent

Rules Regarding 'Auction Sale (Sec. 64)

1. Where goods are sold in lots: where goods are put for sale in lots is prima facie deemed to be subject of a separate contract of sale
2. **Completion of Sale:**
 - a) Sale is complete when the auctioneer announce its completion by the fall of hammer or in any other customary manner
 - b) Any bidder may revoke his bid until such announce is made by the auctioneer
3. **Seller's Right to bid:**
 - a) A right to bid may be reserved expressly by or on behalf of the seller
 - b) If it is expressly reserved then the seller or any other person on his behalf may bid at the auction
 - c) If it is not reserved then the seller or any other person on his behalf can't bid in the auctioneer accepts any bid from such person then it is treated as fraud and the transaction is voidable at the buyer.
4. Reserve Price or Upset Price: Reserve price upset price is the minimum price for making bids in an action sale. The sale may be notified to be subject to a reserve or upset price
5. Presented Bidding: If the seller makes use of presented to raise the price then the sale is voidable at the option of the buyer.

Question 2

(a) what are the differences between a 'Condition and' Warranty' in a contract of sale? Also explain, when shall a 'breach of condition' be treated as 'breach of warranty' under provisions of the sale of goods Act, 1930?

Answer:

POINT OF DIFFERENCES	CONDITION	WARRANTY
Meaning	A condition is essential to the main purpose of the contract.	It is only collateral to the main purpose of the contract
Right in case of breach	In case of breach of condition, aggrieved party can repudiate the contract of claim damages or both	In case of breach of warranty, aggrieved party can only claim damages.
Conversion of stipulations	In some cases breach of condition may be treated as breach of warranty.	A breach of warranty cannot be treated as a breach of condition .

(a) 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. 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?**

Answer:

PROVISION: According to the provisions of sale of goods act, 1930. "Where the goods are bought by description from a seller, there is an implied contain that the goods must match with description. If the goods do not match with the description, then the buyer is entitled to reject the goods

can claim damages.

CONCLUSION: by applying above provisions to the given case, we can conclude that,

CASE A: MR. T cannot refuse to exchange the goods.

CASE B: MR. M is entitled

(b) Explain Doctrine of 'Indoor Management' under the companies Act, 2013.

Also state the circumstances where the outsider cannot claim relief on the ground of 'Indoor Management'.

Answer:

DOCTRINE OF INDOOR MANAGEMENT:

- 1) As per this doctrine, a person dealing with the company not presumed to have the knowledge of internal proceeding of the company. The details of internal procedure are not open to public inspection.
- 2) Thus, every person dealing with the company is entitled to assume that everything has been done regularly so far as the internal proceedings of the company are concerned.
- 3) Thus every person dealing with the company is entitled to assume that everything has been done according to the provisions and procedures laid down in MOA and AOA.

This doctrine seeks to protect the outsiders against the company

FOLLOWING ARE THE EXECEPTIONS TO THIS RULE:

- 1) Actual or constructive knowledge of irregularity: The protection under the Doctrine of indoor management cannot be claimed by a person who has the knowledge of irregularity of constructive notice of irregularity.
- 2) Suspicion of Irregularity Negligence: Where the circumstances are of a suspicious nature which invites further inquiry and the person has failed to enquire into it, he shall not be entitled to protection under this rule similarly, where the transaction is of an unusual nature, the outsider must make detailed inquires.
- 3) Forgery: The protection under this doctrine shall not be available where the outsiders have relied upon a forged document, because nothing can validate forgery. A company is not liable for forgeries committed by its officer.

[NOTE: But a company may be held liable for fraudulent acts of its officers under their ostensible authority on its behalf.]

July - 2021

Question 1

“Risk Prima Facie passes with property”. Elaborate in the context of the sales of goods Act, 1930.

Answer:

Risk Prima Facie Passes with Property (Section 26):

- I. Risk means the liability to bear the loss, if goods are lost or damaged
- II. In general risk follow ownership.
In other word if goods are lost or damaged, then the burden of loss shall be borne by the owner of
The goods.
- III. It is immaterial whether the payment of price and the delivery of goods have been made or not.
- IV. However, this rule is subject to following exception.
 - ❖ In case of lost of damage of goods due to delay in delivery then the person who is responsible for such delay has to bear the loss.
 - ❖ When a party (either seller or buyer) holds the goods as bailee then the has to bear the risk in case of lost of damage of goods
 - ❖ When risk is separated either by an agreement or by a trade custom to that effect then the person holding the risk has to bear the loss in case of lost or damage of goods.In all the above cases It is immaterial, whether the property in goods is passed to the buyer or not.

Question 2

Mr. Das a general store owner wants 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 Rs. 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 provision the sales of goods Act, 1930 discuss the option open to Mr. Das for-grievance redressal. What would be your answer increase Mr. Das specified his exact requirement as to length of rice?

Answer:

PROVISION: According to the provisions of sales of Goods Act, 1930

- I. In a contract of sale of goods by sample, there is an implied condition that
- Seller must provide a reasonable opportunity to the buyer for inspecting the bulk
 - The bulk must correspond with sample in term of quality
 - The goods must be free from latent defects which renders them un-merchantable

If any of the above condition is not – satisfied then the buyer entitled to reject the goods.

- I. If goods are bought under description, then the goods must correspond with the description otherwise, buyer can reject the goods.

Conclusion:

- I. In this case, Mrs. Das does not have any option for grievance redressal as per the provision of the sale of goods Act 1930.
- II. In this case, Mrs. Das specified her exact requirements as to length of the rice, therefore she can reject the rice as they are not in accordance with the description made by her.

Question 3

Discuss the right of an unpaid seller against the buyer under the sales of goods Act, 1930

Answer:

RIGHT OF UNPAID SELLER AGAINST BUYER:

I. Suit for price (Sec. 55):

- a. If the buyer wrongfully neglects or refuse to pay the agreed price, then the seller may sue buyer for the price.
- b. This may happen in any of the following cases:
 - When the property in goods has passed to the buyer and buyer failed to pay the price.

- When price is payable on certain day irrespective of delivery of goods and buyer failed to pay the price.
In this case, seller may sue buyer for the recovery of price, even though the property in goods has not passed and the goods have not been appropriated to the contract.

II. Suit for damages for non- acceptance (Sec. 56): When the buyer wrongfully neglects or refuses to accept and pay for the goods, then the seller may sue him for damages for non-acceptance.

III. Repudiation of contract before due date (Sec. 60): Where the buyer repudiates the contract before the date of delivery, seller may treat the contract as rescinded and sue damages for the breach. This is known as a rule of anticipatory breach of contract.

IV. Suit for interest (Sec.61):

- When the buyer wrongfully neglects or refuses to accept and pay for the goods, then the seller may sue him for interest on the amount of price.
- However, this right can be exercised by the seller, only when he files for the recovery of price (i.e., when buyer filed a suit for damage, then he cannot claim interest on price)
- The interest will be calculated.
 - ❖ On price payable
 - ❖ At the rate mentioned in the agreement.
 - ❖ From the date of the tender of the goods or from the date on which price is payable.
- In the absence of agreement between the parties the rate of interest will be by the court.

Dec- 2021

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.

Answer:

- (a) 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 waiver 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 thereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise

Question 2

Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930

Answer:

The main points of distinction between the 'Sale' and 'Hire-Purchase' are as follows:

Sr. No.	Basis of difference	Sale	Hire-Purchase
1	Time of passing property	Property in the goods is transferred to the buyer immediately at the time of the contract	Property in goods passes to the hirer upon payment of the last installment.
2	Position of the property	The position of the buyer is that of the owner of the goods	The position of the hirer is that of a bailee till he pays the last installment.
3	Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.
4	Burden of Risk of Insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer	The owner takes no such risk, for if the hirer fails to pay an installment, the owner has right to take back the goods.

5	Transfer of title	The buyer can pass a good title to a bona fide purchaser from him	The hirer cannot pass any title even to a bona fide purchaser.
6	Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the installments.

Question 3

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.

Answer:

Condition as to quality or fitness [Section 16(1) of the Sale of Goods Act, 1930]:

The condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller to select the best goods and the seller has ordinarily been dealing in those goods.

There is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

- (a) The buyer should have made known to the seller the particular purpose for which goods are required.
- (b) The buyer should rely on the skill and judgement of the seller.
- (c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

In the instant case, as the timber supplied by the seller is commercially fit for the purposes for which it was ordered, it means the implied condition on the part of the seller is fulfilled.

Hence, TK cannot reject the timber.

Alternatively, the above answer can also be provided as under:

According to Section 15 of the Sale of Goods Act, 1930 where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods. Thus, it has to be determined whether the buyer has undertaken to purchase

the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

In the instant case, as the timber supplied by seller varies in thickness from 1 inch to 1.4 inches, it does not correspond with the description ordered by TK i.e. of 1 inch, TK may reject the timber.

Question 4

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.

Answer:

Right of stoppage in transit (Section 50 of the Sale of Goods Act, 1930):

Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit and may retain them until paid or tendered price of the goods. When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.

In the instant case, CD, the buyer becomes insolvent, and 450 bags are in transit. AB, the seller, can stop the goods in transit by giving a notice of it to CD. The official receiver, on CD's insolvency cannot claim the bags.

June 2022

Question 1

What are the consequences of destruction of specified goods, before making of contract and' after the agreement to sell under the Sale of Goods Act, 1930. 4 Mark

Answer:

Effects of Destruction of Goods - Already Contracted

There are various kinds of goods and the parties have various options to agree about the delivery of the goods.

Destruction before making of contract - Where in a contract for sale of specific goods, at the time of making the contract, the goods, without knowledge of the seller, have perished or become so damaged as no longer to answer to their description in the contract, the contract shall become null and void. This is based on the rule of impossibility of performance. Since the subject matter of the contract, which is one of its essential ingredients, itself is destroyed, the contract cannot be carried out.

'Perishing of goods' includes not only complete destruction of the goods when the seller has been irretrievably deprived by the goods or when the goods have been stolen or have in some other way been lost and are untraceable, but also when the goods become unmerchantable i.e. when the goods have lost their commercial value.

Destruction After the Agreement to Sell but before Sale - Where in an agreement to sell specific goods, if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer answer to their description in the agreement, the agreement shall become void, provided the goods are perished before the ownership and risk passes to the buyer. This rule is based on the ground of impossibility of performance.

Question 2

What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? Also state the implied warranties operative under the Act?

Answer:

Condition as to Title [Section 14(a)]

Section 14(a) of the Sale of Goods Act 1930 explains the implied condition as to title as 'in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass'.

This means that the seller has the right to sell a good only if he is the true owner and holds the title of the goods or is an agent of the title holder. When a good is sold the implied condition for the good is its title, i.e. the ownership of the good. If the seller does not own the title of the said good himself and sells it to the buyer, it is a breach of condition. In such a situation the buyer can return the goods to the seller and claim his money

back or refuse to accept the good before delivery or whenever he learns about the false title of the seller.

Question 3

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 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. 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

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**

Answer:

The doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought. If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible

The rule of Caveat Emptor is laid down in the Section 16, which states that, "subject to the provisions of this Act or of any other law for the time being enforce, there is no implied warranty or condition as to the quality or fitness

for any particular purpose of goods supplied under a contract of sale”.

- if the buyer had made known to the seller the purpose of his purchase, and
- the buyer relied on the seller’s skill and judgment and
- Seller’s business to supply goods of that description (Section16).

Conclusion

Sonal cannot recover the amount from the jeweller due to caveat emptor , the buyer relied on the seller’s skill and judgment and if Jeweller says that he can change the design, but he will charge extra cost for the same so sonal can do that.