

TopYug Educations**CA FOUNDATION – BUSINESS LAWS****SUGGESTED ANS for TEST 5 – THE SALE OF GOODS ACT, 1930****Answer any 5 questions. Each question carries 4 marks each. Duration – 50 Mins**

1. For the purpose of making uniform for the employees, Banshi Bhaiya bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Banshi Bhaiya whether he is entitled to have any remedy under the sale of Goods Act, 1930?

Answer:

As per the provision of Section 16(1) of the Sale of Goods Act, 1930, an implied condition in a contract of sale that an article is fit for a particular purpose only arises when the purpose for which the goods are supplied is known to the seller, the buyer relied on the seller's skill or judgement and seller deals in the goods in his usual course of business.

In the given case, Banshi bhaiya bought dark blue coloured cloth from Vivek for the purpose of making uniform for the employees, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit.

Question involved is whether Banshi bhaiya is entitled to have any remedy or not.

Applying the above provision in the given case, the cloth supplied is capable of being applied to a variety of purposes, the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so. Therefore, the implied condition as to the fitness for the purpose does not apply.

Hence, the buyer Banshi bhaiya will not succeed in getting any remedy from the seller under the Sale of Goods Act.

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

Answer:

As per the provisions of Sec 8 of the Sale of Goods Act 1930, the contract becomes void if the goods are destroyed or do not answer to the description in the agreement before the risk passes on to the buyer.

In the given case, subject matter of the contract i.e Motorcar was destroyed before the transfer of property from the seller to the buyer.

Question involved is whether Mr.A is liable for the loss suffered.

Applying the above provisions in the present case, Mr. A is not liable for the loss suffered due to the fire accident over which A has no control and we understand that the risk passes only when the ownership is transferred to the buyer.

Thus, M/s. Hanuman Automobiles will have to bear whatever loss that has taken place due to the fire accident.

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

Answer:

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

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

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

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

Answer:

A lien is a right to retain possession of goods until the payment of the price.

It is available to the unpaid seller of the goods who is in possession of them where:

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

The unpaid seller can exercise his right of lien even if the property in goods has passed on to the buyer.

He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer.

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

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

Unpaid Seller loses his right of lien by reason only that he has obtained a decree for the price of goods from the court.

5. J, the owner of a Fiat car wants to sell his car. For this purpose he hand over the car to P, a mercantile agent for sale at a price not less than Rs.50,000. The agent sells the car for Rs.40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide giving reasons whether J would succeed.

Answer:

As per Sec 27 of The Sale of Goods Act 1930, a mercantile agent is one who in the

customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods.

The buyer of goods form a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:

- (1) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
- (2) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
- (3) The buyer should act in good faith.
- (4) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. The agent sells the car for Rs.40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car.

Question involved is whether J would succeed.

Applying the above provision in the given case, A, the buyer obtained a good title to the car as he has purchased the car in good faith.

Hence J in this case, cannot recover the car from A.

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

Answer:

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

The said Section lays down that

- (i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods.
- (ii) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract.

In the given case, Suraj sold his car to Sohan who took it after inspection and satisfaction. Suraj received part payment but did not receive the remaining amount as Sohan mentioned that the car was not in a good condition.

Question involved is about the remedy available with Suraj against Sohan.

Applying the above provisions in the given case, we can **conclude** that Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this Suraj is also entitled to:-

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