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SUBJECT- LAW

Test Code – CFN 9333

BRANCH - () (Date :)

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ANSWER 1

(A)

(i) Duty of the buyer according to the doctrine of “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.

Duty of the seller according to the doctrine of “Caveat Emptor”: The following exceptions to the Caveat Emptor are the duties of the seller:

1. Fitness as to quality or use
2. Goods purchased under patent or brand name
3. Goods sold by description
4. Goods of Merchantable Quality
5. Sale by sample
6. Goods by sample as well as description
7. Trade usage
8. Seller actively conceals a defect or is guilty of fraud

(ii) As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]

(6 Marks)

(B)

As per section 7 of Sale of Goods Act, 1930, where there is a contract for the sale of specific goods, the agreement is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description contract. In the given question, Mr Pruthvi Raj Chavan of Bangalore entered into contract for selling 10000 kgs of grapes in his garden in Kolar with Mr Menezes of Goa, a fruit merchant. The grapes were destroyed before the date of the agreement though Mr. Pruthvi Raj Chavan was not aware of the same.

Since the goods no longer answered the description of fruits, the agreement is void.

(4 Marks)

ANSWER 2

(A)

- (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 to the seller that he has rejected them (Section 42).

Ordinarily, a seller cannot compel the buyer to return the rejected goods; but the seller is entitled to a notice of the rejection. Where 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 (Section 43 and 44).

(4 Marks)

(B)

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

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

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.
- (d) The buyer must have become insolvent.
- (e) The right is subject to provisions of the Act.

(6 Marks)

ANSWER 3

(A)

As per section 16 of Sale of Goods Act, 1930, where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

In the given question, Mr A sold a tin of cleaning acid to Mrs B. Mr. A knew that it was likely to be dangerous to Mrs. B if she does not exercise caution and special care while opening the lid. Mrs. B opened the tin in the normal course and her face was defaced by sprinkles of acid. For all dangerous goods, the seller is bound to inform the buyers all the dangers inherent and the precautions to be taken.

Therefore, Mr. A is liable for the damages.

(4 Marks)

(B)

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

- (a) When 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 the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- (c) he does something to the good which is equivalent to accepting the good e.g. he pledges or sells the good.

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

Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis and pledged the motor car to Mr. Ganesh, 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 Mr. Joshi. Now in this situation, Mr. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only.

(6 Marks)

ANSWER 4

(A)

- (i) A condition is a stipulation essential to the main purpose of the contract whereas a warranty is a stipulation collateral to the main purpose of the contract.
- (ii) Breach of condition gives rise to a right to treat the contract as repudiated whereas in case of breach of warranty, the aggrieved party can claim damage only.
- (iii) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

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 :

- (i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition,
- (ii) Where the buyer elects to treat the breach of condition as breach of a warranty.

- (iii) Where the contract of sale is non – severable and the buyer has accepted the whole goods or any part thereof.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

(6 Marks)

(B)

Under Section 26 of the Sale of Goods Act, unless otherwise agreed, the goods remain at the seller's risk until property therein has passed to the buyer. After that event they are at the buyer's risk, whether delivery has been made or not.

In the given question, A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. Since, the ownership was not transferred, the loss will be borne by seller.

But, if the antique gets damaged after the hammer was struck on table, the loss will be borne by buyer.

(4 Marks)