

## Business Law

### Lecture-19

#### The Sale of Goods Act, 1930

1. Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not.
2. Further Section 18 read with Section 23 of the Act provides that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.
3. Such assent may be express or implied. Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same purpose.

#### Facts of Case:

1. Mr. Samuel agreed to purchase 100 bales from Mr. Varun and sent his men to take delivery of the same. Mr. Varun were able to pack only 60 bales.
2. Later on, there was accidental fire in Varun's place, due to which all the stock including those 60 bales to be delivered to Mr. Samuel was destroyed.

#### Answer:

Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly.

- a) Where the bales have been selected with the consent of the buyer's representatives: In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. Samuel. As regards 40 bales, the loss would be borne by Mr. Varun, since the goods have not been identified and appropriated.
- b) Where the bales have not been selected with the consent of buyer's representatives. In this case the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. Varun completely.

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

##### Provision: [The Sale of Goods Act, 1930]

1. Appropriation of goods: 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.
2. The essentials regarding appropriation of unascertained goods are:
  - a) There is a contract for the sale of unascertained or future goods.
  - b) The goods should conform to the description and quality stated in the contract.
  - c) The goods must be in a deliverable state.
  - d) The goods must be unconditionally (as distinguished from an intention to appropriate) 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