

127

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination- Oct- Nov, 2023

Semester-UG III (Compulsory)
Subject: Commercial Transactions

Time: Three Hours

Marks- 100

Instructions:

1. Answer any FIVE questions.
2. All questions carry equal marks.
3. Bare Acts are not allowed.
4. Try to answer the questions citing the relevant provisions and case laws.

Q.1)

“In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is the protection of commercial transactions. The person who takes in good faith and for value without notice should get a good title. The first principle held away for a long time but it has been modified by the common law and statute so as to meet the needs of our time.” (Denning L.J.). Discuss in the light of the above mentioned statement elaborating on statutory provisions.

P left his car with a mercantile agent and authorized him only to receive offers and not to sell. The agent obtained possession of the registration books from P without his consent and then promptly sold the car to D. Whether D acquired good title to the car?

Marks 20

Q.2)

- a. “An agreement to sell is a contract pure and simple whereas a sale is a contract plus a conveyance.” Examine the above statement and discuss the difference between sale and agreement to sell.
- b. Can the following be the subject matter of sale under the Sale of Goods Act, 1930:
 - i. X constructed a house on B’s plot in consideration of Rs. 5 lakhs by using his own building materials;
 - ii. A contract for supply of air-conditioner providing for fixing up the air conditioner in the premises as well;
 - iii. A contract to paint a portrait.

Marks 10+10



120
Q.3)

The plaintiffs and the defendants were merchants in the City of London. The plaintiffs brought this action for breaches of condition or warranty on a sale to them by the defendants on August 1, 2012, of 1000 cases of condensed milk. The contract of sale was dated August 18, 2011. It was signed by the defendants, and was in the following form: "We confirm having sold to you this day the following goods, viz: About 3000 cases of sweetened full cream condensed 2011 season's milk, quality equal to federal standard; cases containing 48 14 oz. nett tins; shipment during the months of August and/or September, 2012, from New York at 42s. per case cost, insurance, and freight London; net cash against documents; 10 per cent examination for pierced and/or blown tins."

On the same day a bought note was signed by the plaintiffs, "We confirm having bought of you this day the following goods"—the document continued in the same words as the sold note. The plaintiffs in their statement of claim alleged that the contract was a verbal contract subsequently confirmed by the defendants in a letter dated August 18; and the defendants in their defence alleged that it was a term of the oral contract mentioned in the statement of claim that the tins of condensed milk should be of one or more of the following brands—namely, "Freedom," "Tuscan," or "Nissly"; and that at the time of entering into the contract the plaintiffs knew that the milk was coming from the United States and would be of those three brands or some or one of them, and expected that it would be of the "Nissly" brand.

The defendants delivered 2000 cases of the "Freedom" brand. These cases were accepted and paid for by the plaintiffs, and no question arose concerning them. The remaining 1000 cases arrived on board a vessel named the Independence. The shipping documents did not disclose the brand of these goods. When the documents were tendered the plaintiffs accepted them and paid for them on September 29, 2011. The 1000 cases contained tins of the "Nissly" brand and no others.

On November 6 the plaintiffs received the following letter from the defendants: "It has just come to our knowledge that Messrs. Nestlé"—Nestlé and Anglo-Swiss Condensed Milk Co., Ltd.—"have raised an objection in a case where a man in Manchester sold 'Nissly' brand milk, the objection being that 'Nissly' was a colourable imitation of their trade mark. Whether they are right or wrong we are not prepared to say, neither would we care to fight an undertaking like Messrs. Nestlé We are merely giving you this information, and would ask you in your own interest not to offer the milk for sale for the moment" On November 13, 2011, the Nestlé & Anglo-Swiss Co. wrote to the defendants complaining that they had imported and disposed of a large quantity of condensed milk bearing a label with the words "Nissly Brand," which was an infringement of their trade mark rights, and threatening proceedings unless a satisfactory offer of amends were made.

On November 28 the defendants signed an undertaking not to sell, advertise, or offer for sale nor to dispose of any condensed milk under the title of "Nissly" or any other name so as to represent or lead to the belief that it was the milk manufactured by the Nestlé & Anglo-Swiss Co.

On December 12 the plaintiffs wrote to the defendants to say that the 1000 cases with the "Nissly" brand were unsalable and asking them to take these cases back and let them have other cases of a saleable brand in exchange. On the same day the defendants replied that this was impossible. The plaintiffs then made repeated applications for a licence to export the 1000 cases.

On March 11, 2011, they received the following letter from the Board of Trade: "Before your application for an export licence can be considered it will be necessary for you either to satisfy this department that the proposed export is not a breach of the injunction obtained by the Nestlé and Anglo-Swiss Condensed Milk Co. or to produce the written consent of the Nestlé and Anglo-Swiss Condensed Milk Co. to the proposed export." On May 21 the goods were being detained at Tilbury Docks by the Commissioners of Customs and Excise.

The plaintiffs applied to the Commissioners for a release of the goods. On May 26 the Commissioners wrote to say that the goods were detained because they bore labels with marks which were regarded as an infringement of the registered trade mark "Nestlé's" of the Nestlé and Anglo-Swiss Condensed Milk Co., but that the Commissioners would be prepared to deal favourably with the application for release of the milk on destruction of the infringing labels provided a statement were obtained from Messrs. Nestlé that they would then waive their objection to the Page2 importation of the goods. The plaintiffs thereupon destroyed the labels, and after procuring the assent of Messrs. Nestlé obtained the goods from the Customs House and sold them unlabelled for the best price they could get.

The plaintiffs claimed damages for breach of warranties

- (a) that the milk was of merchantable quality;
- (b) that the defendants had a right to sell it;
- (c) that the plaintiffs should have and enjoy quiet possession of it.

They also alleged that it was an implied condition or warranty of the contract that any milk delivered there under should not by its mark, label, or name be an infringement of any trade mark or name of any brand of condensed milk already being dealt with on the market, or a colourable imitation of any such brand. They insisted that the mark or name "Nissly" on the 1000 cases resembled the mark or name on the tins of condensed milk sold by the Nestlé and Anglo-Swiss Condensed Milk Co., and that any sale or dealing with the 1000 cases was an infringement of that company's rights.

Argue and decide on behalf of the plaintiff citing relevant laws and cases at the relevant court.

Marks 20

Q.4)

- (a) "A holder in due course is a title free from equities." Comment.
- (b) A holder of promissory note made a family arrangement that after his death only his daughter would be entitled to get the amount due under the promissory note. But no endorsement was made on the promissory note. After the holder's death, daughter filed a suit for recovery on the promissory note. Is this suit maintainable?
- (c) A gave a cheque of Rs.5,000/- to his son on his birthday. Is he a holder in due course? Give reasons.
- (d) A by fraud, induces B to make a promissory note in his i.e. A' s favour. A negotiates that promissory note to C who takes it as a holder in due course. Subsequently C negotiated the same promissory note to D, who takes it with full knowledge that the title of A was defective. Can D sue on the promissory note? Discuss and decide.

Marks 5+5+5+5

Q.5)

Raj Singh was referred to as 'complainant' and the accused were relatives as the marriage of the son of the complainant and daughter of the brother of the accused was solemnized. The complainant's case was that in the second week of April 2015 accused along with his brother approached him and requested a sum of Rs 12 lakhs and 8 lakhs respectively as they were in dire need of money. It was assured to the complainant that they would return the money within 12 months along with interest @ 2% per month. It was stated that, the accused and his brother paid the interest only on two occasions and thereafter neither paid the interest nor principal amount despite repeated requests. Thereafter, in the discharge of their liability accused's brother gave a cheque amounting to Rs 8 lakhs as part payment and accused Yashpal Singh also gave a cheque amounting to Rs 12 lakhs.

Both the above cheques were dishonoured with the remarks 'Insufficient Funds'. The complainant had informed about the dishonouring of the cheque by the accused and his brother, however, the accused and his brother refused to return the amount and threatened the complainant with dire consequences.

Later, since the accused failed to make payment despite the notice, therefore liability to be tried and punished for an offence under Section 138 NI Act.

Argue and decide the case citing relevant provisions and case laws.

Marks 20

Q.6)

Write Short notes on any two of the followings:

- (a) Charter party contract
- (b) Discharge of the negotiable instrument and discharge of the parties to the instrument
- (c) Reservation of the right of disposal under sale transactions
- (d) Multi modal transportation of goods

Marks 10+10