

ශ්‍රී ලංකා විවෘත විශ්වවිද්‍යාලය

මානව ශාස්ත්‍ර හා සමාජ විද්‍යා පීඨය

නීති අධ්‍යයන දෙපාර්තමේන්තුව

නීතිවේදී උපාධි පාඨමාලාව - VI වන මට්ටම

LLU 6716/LWU 4324 වානිජ නීතිය

අවසාන පරීක්ෂණය- 2022/2023

කාලය : පැය තුන (03) යි



දිනය: 2024.03.31

වේලාව : ප.ව 1.30 -ප.ව 4.30

මුළු ප්‍රශ්න ගණන අටයි. (08)

ප්‍රශ්න පහකට (05) පමණක් පිළිතුරු සපයන්න.

අපැහැදිලි අත් අකුරු සඳහා ලකුණු අඩුකරනු ලැබේ.

1. (අ). “ගැනුම්කරු විසින් ඔහුගේ ප්‍රධාන වගකීම වන මිල ගෙවීම පැහැරහරින විට, සත්‍යවශයෙන්ම විකුණුම්කරුට ගිවිසුම සම්බන්ධයෙන් ස්වකීය ක්‍රියාමාර්ගයක් ගත හැක්කේය. එසේ නමුත් සෑමවිටම මෙම පිළියම යටතේ පසුබැසීමට විකුණුම්කරුවා දිරිමත් කෙරෙන්නේ නම්, ඔහුගේ තත්වය බොහෝ අංශයන්ගෙන් අසතුටුදායක විය හැකිය.”

C Twigg-Flesner, R Canavan and H Mac Queen on Atiyas and Adams' Sale of Goods (first published 1957, 13th ed., Pearson 2016)386.

ඉහත ප්‍රකාශය ඇසුරෙන්, මිල නොලත් විකුණුම්කරුවෙකුට ඇති ප්‍රතිකර්ම සාකච්ඡා කරන්න.

(ලකුණු 10)

(ආ) “1896 අංක 11 දරණ භාණ්ඩ විකිණීමේ අඥාපනතෙහි දක්වා ඇති, ‘භාණ්ඩ විකිණීමේ ගිවිසුමක්’ (Contract of sale of goods) සහ භාණ්ඩ විකිණීමේ ගිවිසුම් හා සමාන වෙනත් ගනුදෙනු අතර විභේදනයක් දක්වයි.”

සාකච්ඡා කරන්න.

ඔබේ පිළිතුර අදාළ නඩුකීන්දු ඇසුරෙන් පැහැදිලි කරන්න.

(ලකුණු 10)

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LLB DEGREE PROGRAMME-LEVEL 6
LLU6716 /LWU4324 COMMERCIAL LAW
FINAL EXAMINATION -2022/2023
DURATION - THREE (03) HOURS



Date: 31st March 2024

Time: 1.30 a.m.- 4.30 p.m.

Total number of questions **Eight (08)**.

Answer Five (05) questions only.

Illegible handwriting will be penalised.

01. (a). “Where the buyer defaults in his principal obligation, that is, in payment of the price, the seller has, of course, his personal action on the contract itself, but if the seller were always compelled to fall back on this remedy, his position would be in many respects unsatisfactory.”

C Twigg-Flesner, R Canavan and H MacQueen on Atiyah and Adams’ Sale of Goods (First published 1957, 13th ed., Pearson 2016) 385.

In light of the above statement, discuss the remedies available to an unpaid seller.

(10 Marks)

- (b). “The definition provided by the Sale of Goods Ordinance No. 11 of 1896 for the term of ‘Contract of sale of goods’ distinguishes between a contract of sale of goods and other transactions which closely resemble a contract of sale of goods.”

Discuss.

(10 Marks)

Your answer should be supported by the relevant case law.

02. Adhithya and Thiru are a lovely couple and happily living with their little daughter, Sasha. As they were severely affected by the ongoing economic crisis of the country, they faced a chain of problems.

Sasha’s parents brought a few fresh milk bottles due to the scarcity of milk powder in the market. After drinking the fresh milk, she started coughing and also suffered from

2. ආදිත්‍යා සහ තිසරු ඔවුන්ගේ කුඩා දියණිය වන සාෂා සමග සතුටින් ජීවත්වන ආදරණීය යුවලකි. වර්තමානයේ රටට බලපාන ලද ආර්ථික අර්බුදය නිසා ඔවුන් බලවත් ලෙස පීඩනයට පත්වූ අතර, ඒ මගින් ඔවුන්ට ගැටළු දාමයකට මුහුණ දීමට සිදුවිය.

කිරිපිටි සඳහා වෙළඳපොළේ පවත්නා හිඟකම හේතුවෙන් සාෂාගේ දෙමව්පියෝ නැවුම් කිරි බෝතල් (Fresh milk bottles) කිහිපයක් මිලට ගන්නා ලදී. එම නැවුම් කිරි පානය කිරීමෙන් අනතුරුව සාෂා පැය කිහිපයක සිට කැස්ස සහ හිසරදයෙන් පීඩනයට පත් වූවාය. ඉන් අනතුරුව ඇය තදබල උණකින් ද පීඩනයට පත් වූවාය. සිය දියණියගේ අසනීපත්වය හේතුවෙන් කම්පනයට පත්වූ තිසරු ඇයව ඔහුගේ මෝටර් රථයේ නංවාගෙන රෝහල වෙත පිටත් වූවේය. රෝහලට යන අතරතුර ඔහු විසින් ඉන්ධන පිරවුම්හලකින් පෙට්‍රල් මිලදී ගත්තේය.

දින දෙකකට පසුව තිසරු රථය පන ගැන්වීමට උත්සාහා කළද, එය කළ නොහැකි විය. මේ පිළිබඳව දෝෂය සෙවූ කාර්මිකයා විසින් එම ටැංකියේ ඇති පෙට්‍රල් තිනර් සමග මිශ්‍ර කර තිබූ බවත් එය එන්ජිම ක්‍රියා විරහිත වීමට හේතුව බවත් සොයා ගත්තේය. එහි ප්‍රතිඵලයක් ලෙස ඔහුට විශාල මිලකට නව එන්ජිමක් ප්‍රතිස්ථාපනය කිරීමට සිදු විය.

මේ අතරතුර, ගැස් සිලින්ඩරයක් මිලදී ගැනීම සඳහා ආදිත්‍යා ගැස් පිරවුම්හලක බොහෝ කාලයක් ගතකළාය. එම පිරවුම්හල 'වයිට් (WHITE) ගැස් සන්නාමයෙන්' යුත් ගැස් සිලින්ඩර් විකුණනු ලබයි. දින තුනක කාලයක් පෝලිමෙහි ගත කිරීමෙන් අනතුරුව ඇයට එක් ගැස් සිලින්ඩරයක් මිලදී ගැනීමට හැකිවිය. එම ගැස් සිලින්ඩරය ගැස් උදුනට සම්බන්ධ කළවිට මහ හඩක් නංවා එය පුපුරා ගියේය. එම පුපුරා යාමේ ප්‍රතිඵලයක් ලෙස ගැස් සිලින්ඩරයට බරපතල හානි සිදුවිය. දින කිහිපයකින් අනතුරුව එම ගැස් සිලින්ඩරයේ පිටත ගල්වා ඇති තීන්ත ගැලවීගොස් තිබූ බැවින් එය 'බ්ලැක් (BLACK) සන්නාමයේ' ගැස් සිලින්ඩරයක් බව තිසරු අනාවරණය කර ගත්තේය. නිෂ්පාදනයේ පැවති ගැටළු හේතුවෙන් රජය විසින් එම ගැස් සන්නාමය ටික දිනකට පෙර කහනම් කොට තිබිණි.

මේ අතරතුර, වෛද්‍ය වාර්තා වලට අනුව වෛද්‍යවරුන් විසින් අනාවරණය කරගනු ලැබුවේ සාෂා ටයිෆොයිඩ් උණෙන් පීඩා විඳින බවත්, ඇය පානය කරන ලද කිරිවල ටයිෆොයිඩ් විශබීජ අඩංගු වී තිබී ඇති බවත්ය.

ඉහත දක්වා ඇති කල්පිත සිදුවීම පදනම්කරගෙන පහත ගැටළු වලට පිළිතුරු සපයන්න.

අ). භාණ්ඩ විකිණීමේ ගිවිසුමක ඇති කොන්දේසි (Conditions) සහ ප්‍රතිඥාහාර (Warranties) යන්නෙහි අදහස කෙටියෙන් පැහැදිලි කරන්න.

ආ). අදාළ විකුණුම්කරුවන් විසින් කඩකර ඇති කොන්දේසි හා ප්‍රතිඥාහාර මොනවාදැයි දක්වා ආදිත්‍යාට සහ තිසරුට උපදෙස් දෙන්න.

(10X2= ලකුණු 20)

3. මාස කිහිපයකට පෙර 45 හැවිරිදි යසස් සහ 38 හැවිරිදි ගයානි එකට ජීවත්වීමට පටන් ගත්හ. රක්ෂණ සමාගමක් වන "ගෝල්ඩ් ලයිෆ්" හි ජීවිත රක්ෂණ ඔප්පුවක් සඳහා අයදුම් කිරීමට ඔවුහු තීරණය කළහ. යසස්, නියුමෝනියාව සහ ඇදුම රෝගයෙන් දැඩි ලෙස පීඩා විඳිමින් සිටි බැවින් මෙයට පෙර රක්ෂණ සමාගම් හතරක් ඔවුන්ගේ ජීවිත රක්ෂණ අයදුම්පත් ප්‍රතික්ෂේප කර තිබුණි.

headaches for a few hours. Subsequently, she suffered from severe fever too. Thiru panicked over the illness of his daughter and took Sasha to the hospital in his car. While they were rushing to the hospital he pumped fuel from a petrol station.

Two days later, when Thiru tried to start the car it failed. The mechanic who searched for the fault found that the petrol in the tank was diluted with thinner and it was the cause of the engine failure. As a result, he had to replace a new engine at a heavy price.

In the meantime, Adhithya spent a long time at a gas station to buy a gas cylinder. This particular gas station usually sells gas cylinders known as “WHITE Brand” gas cylinders. After waiting for three days in the queue she managed to buy a gas cylinder. When the gas cylinder was connected to the cooker it exploded with a loud noise. As a result of the explosion, the gas cylinder was severely damaged. A few days later, Thiru found that the outer layer of the paint had peeled off exposing that it was a “BLACK Brand” gas cylinder. The government banned the “BLACK” brand a few months before the explosion due to some manufactural defects.

In the meantime, doctors in the hospital diagnosed that Sasha was suffering from typhoid fever and her medical reports established that the milk she drank contained typhoid germs.

Answer the following questions based on the above factual situation,

- a). Briefly explain the meaning of conditions and warranties in a contract of sale of goods
- b). Advise Adhithya and Thiru as to which conditions and warranties that the respective sellers have breached.

(10x2 = 20 Marks)

03. A few months ago, Yaras who is 45 years old started living together with Gayani aged 38 years. They decided to apply for a life insurance policy at “Gold Life”, an insurance firm. Since Yaras was severely suffering from pneumonia and asthma, four insurance companies had rejected their previous life insurance applications.

However, the Gold Life Insurance company which was the fifth insurer, offered a life insurance policy to them. But Yaras never disclosed to Gold Life about the illnesses and the rejection of his previous insurance applications.

After the death of Yaras, Gayani claimed the benefit of the insurance policy from the Gold Life company. In her claim application, she purposefully mentioned that Yaras died from Coronavirus. Also, to prove her claim, she managed fraudulently change the entries in the personal identification documents of Yaras.

Advise “Gold Life” insurance company as to which principles of insurance have been breached by the parties. Support your answer with decided cases.

(20 Marks)

කෙසේවෙතත්, පස්වන වරට අයදුම් කර ගෝල්ඩ් ලයිෆ් ජීවිත රක්ෂණ සමාගම ඔවුන්ට ජීවිත රක්ෂණ ඔප්පුවක් ලබාදුන්නේය. නමුත් පෙර සමාගම් විසින් ඔවුන්ගේ අයදුම්පත් ප්‍රතික්ෂේප කළ බව හෝ ඔහුට පවතින රෝගාබාධයන් පිළිබඳව ගෝල්ඩ් ලයිෆ් රක්ෂණ සමාගමට අනාවරණය නොකළේය.

යසස්ගේ මරණයෙන් අනතුරුව ගයානි එම ජීවිත රක්ෂණයේ ප්‍රතිලාභ ලබා ගැනීමට අයදුම් කළාය. ඇයගේ අයදුම්පතෙහි යසස්ගේ මරණය සිදුවූයේ කොරෝනා වෛරසයෙන් බව ඇය වේතනාන්විතව සඳහන් කළාය. තවද, ඇයගේ ප්‍රතිලාභය ලබාගැනීම සනාථ කිරීම සඳහා යසස්ගේ පෞද්ගලික අනන්‍යතා ලේඛණ වෙනස්කිරීමටද ඇයට හැකිවිය.

රක්ෂණ නීතියට අදාළ වන මූලධර්ම අදාළ පාර්ශවය විසින් කඩකැ ඇත්දැයි ගෝල්ඩ් ලයිෆ් රක්ෂණ සමාගමට උපදෙස් ලබා දෙන්න. විනිශ්චිත නඩුකීන්දු ඇසුරෙන් ඔබගේ පිළිතුර පහදන්න.

(ලකුණු 20)

4. ජයදේව ලියනගේ යනු සාර්ථක ව්‍යාපාරිකයෙකි. ඔහුගේ දියණිය වන අයේශාගේ උපන්දිනයට ත්‍යාගයක් වශයෙන් රේඛණය නොකරන ලද හිස් චෙක් පත්‍රයක් අත්සන්කර ඇයට ලබා දුන්නේය. රුපියල් 2,000,000/= දක්වා වූ ඕනෑම මුදල් ප්‍රමාණයක් සඳහන් කර එය සම්පූර්ණ කරන ලෙස උපදෙස් දුන්නේය. අදාළ දිනය සහ මුදල් ප්‍රමාණය එම චෙක් පත්‍රයේ සඳහන් කිරීමට පෙර එය අස්ථානගත විය.

පහත අවස්ථා පිළිබඳව සාකච්ඡා කරන්න.

අ). එම හිස් චෙක් පත්‍රය ඉන්දු සොයාගත් අතර මුදල් ප්‍රමාණය යන්නට රුපියල් 1,000,000 ක් දක්වා “ගෙවන්නා”(Payee) ලෙස දක්වා තිබුණිත් තීරයට අත්පිට මුදල් (Cash) යනුවෙන් සඳහන් කළාය. තවදුරටත් ඇය එහි දිනයද සඳහන් කළාය පසුව එම චෙක්පත්‍රය ලියනගේ ගේ බැංකුවට ඉදිරිපත් කළාය. කවුන්ටරයෙන් ඇයට රුපියල් 1,000,000 ක මුදල ගෙවන ලදී.

(ලකුණු 12)

ආ). අදාළ චෙක්පත්‍රය ආදායකයාගේ ගිණුමට පමණයි (Account Payee only) යනුවෙන් රේඛණය කර තිබුනේනම් සහ බැංකුව අදාළ මුදල කවුන්ටරය මගින් ඉන්දුට ලබා දුනහොත් ඔබගේ පිළිතුර වෙනස්වන්නේ කෙසේද?

(ලකුණු 8)

(12+08= ලකුණු 20)

5. (අ). “චෙක්පත් හොඳ ගනුදෙනු කළහැකි සාධනපත්‍රයක්(Negotiable instrument) ලෙස සලකන නමුදු ස්ථාවර තැන්පතු සහතික (Fixed deposit certificates) එසේ නොවේ.” ගනුදෙනු කළහැකි සාධන පත්‍රයන්හි ලක්ෂණ හඳුනාගනිමින් ඉහත ප්‍රකාශය පහදන්න.

(ලකුණු 08)

(ආ). කමල් විසින් ධනපාලගේ වාසියට සඳහා රුපියල් 10,000 ක් ලෙස සඳහන් කරමින් චෙක් පත්‍රයක් ලියුවේය. එම චෙක්පතේ මුහුණතෙහි බැංකුවේ නම සහ, ගනුදෙනු කළ නොහැක යනුවෙන් සඳහන් කරන ලදී. කෙසේවෙතත් චෙක්පත්‍රයෙහි අත්සන පැහැදිලිව දක්වා නොමැති අතර මුද්‍ර මුදල රුපියල් දස දහසක් පමණි යනුවෙන් වචනයෙන් දක්වා රු 100,000 ක් ලෙස ඉලක්කමෙන් දක්වා තිබිණි. කමල්ගේ ගිණුමේ ඇත්තේ රුපියල් 6000 ක් පමණි.

- i. අදාළ ගනුදෙනුවේදී ධනපාල නමැත්තා යථාකාලයේ ධාරකයෙකු වන්නේ ද, යන්න සාකච්ඡා කරන්න.

04. Jayadeva Liyanage is a successful businessman. He signed an uncrossed blank cheque and gave it to his daughter, Ayesha on her birthday as a birthday present. He advised Ayesha that she could complete the cheque and fill in any amount up to Rs.2,000,000/=. Before she filled the date and the amount, Ayesha lost the cheque.

Discuss the following situations.

- a) Indu found the blank cheque and filled the blank cheque with an amount for payment of Rs. 1,000,000/= and wrote "cash" in the space for "Payee". She also dated the cheque. Indu then presented the cheque to Liyanage's bank who paid her Rs. 1,000,000/= cash over the counter.

(12 Marks)

- b) Would your answer be different, if the cheque was crossed "Account Payee Only" and the bank still paid the proceeds of the cheque over the counter to Indu?

(8 Marks)

(12+08= 20 Marks)

05. (a). "Cheques are considered as good negotiable instruments but fixed deposit certificates are not."

Explain the above statement with reference to the characteristics of a Negotiable Instrument.

(08 Marks)

- (b). Kamal wrote a cheque for Rs.10,000/- in favour of Danapala. The name of the banker and the words, "not negotiable" were written on the face of the cheque. However, the signature on the cheque is not clear and the amount in figures states Rs.100,000/- while in the words it says "ten thousand rupees only". Kamal's account has Rs. 6,000 only.

- (i) Discuss whether Danapala is a holder in due course.

(06 Marks)

- (ii) Explain the legal effect of crossing a cheque with reference to the above scenario.

(06 Marks)

(08+06+ 06= 20 Marks)

(ලකුණු 06)

- ii. ඉහත සිදුවීම ඇසුරෙන් වෙක්පත්‍රයක් රේඛණය කිරීමේ නෛතික ප්‍රතිච්ඡාදය.

(ලකුණු 06)

(08+06+06=ලකුණු 20)

6. පහත සඳහන් ඕනෑම එකක් (01) පිළිබඳව සාකච්ඡා කරන්න. ඔබගේ පිළිතුරට අදාළ ව්‍යවස්ථාපිත ප්‍රතිපාදන සහ විනිශ්චිත නඩුනිත්දු ඇතුළත් විය යුතුය.

- i. කුලීපිට ගැනුම් ගිවිසුමකදී 'අයිතිකරුගේ' යුතුකම් හා වගකීම් පැහැදිලි කරන්න.
ii. 1982 අංක 29 දරණ පාරිභෝගික ණය පනත යටත යටතේ හාණ්ඩ ආපසු ලබාගැනීමට පවරණ ලද නඩුකරයකදී අධිකරණයට ඇති බලතල පහදන්න.

(ලකුණු 20)

7. "හාණ්ඩ භාර දීම" යන පදය නිර්වචනය කර ශ්‍රී ලංකාවේ හාණ්ඩ විකිණීමේ ආඥාපනතෙහි දක්වා ඇති හාණ්ඩ භාරදීමට අදාළ රීති තත්වය පිළිබඳ නඩු ඇසුරෙන් සාකච්ඡා කරන්න.

(ලකුණු 20)

8. ජයති ගාල්ලේ අවන්හලක් පවත්වාගෙන යයි. "හුනියම්" නමැති සමාජ මධ්‍ය ක්‍රියාකරුවෙකු ඔහුගේ කෙටි වීඩියෝව සැකසීම සඳහා එම අවන්හලට පැමිණියේය. එම අවන්හලෙහි මුළුතැන්ගෙහි කාර්යමණ්ඩලය සමග මිත්‍රශීලී කතාබහක යෙදෙන අතරතුර භාවිතයෙන් පසු ඉතිරි ආහාර ඊළඟ දිනයේ පාවිච්චිය සඳහා ශීතකරණයේ තැන්පත් කළ ඇති බව සොයා ගත්තේය. තවද, අවන්හලෙහි මුරකරුවකු සමග සාකච්ඡා කළ විට ඔහු අනාවරණය කරගනු ලැබුවේ අවන්හල විසින් මිලදීගත් බොහෝ ඵලවළු සහ පළතුරු වර්ග මිනිස් භාවිතයට නුසුදුසු බවයි. තවදුරටත් ආරක්ෂක නිලධාරියා අනාවරණය කරනු ලැබුවේ මෑතකදී දේශීය පාරිභෝගිකයන් විසින් මෙම අවන්හලෙන් ආහාර අනුභව කිරීමෙන් පසුව වමනය සහ පාවනය වැනි රෝගවලින් පෙළෙමින් සිටි බවට සාමාන්‍ය අධිකාරීවරයාට පැමිණිලි කර තිබූ බවයි. මෙම ප්‍රදේශයේ සෞඛ්‍ය භාර නිලධාරියා මෙකී තොරතුරු පිළිබඳව හුනියම් දැනුම්දෙනු ලැබූ අතර ඔහු එය ප්‍රතික්ෂේප කරමින් කියා සිටියේ මෙම අවන් හලෙන් ඔහු දෛනිකව ඇහාර ලබාගන්නා බවයි.

හුනියම්ට උපදෙස් දෙන්න.

(ලකුණු 20)

සියළුම හිමිකම් ඇවිරිණි

06. Discuss any one (01) of the following. Your answer should include the relevant statutory provisions and case law.

- a) Discuss the rights and obligations of an “owner” in a hire-purchase agreement.
- b) Explain the powers of the court in actions to recover goods under the Consumer Credit Act, No. 29 of 1982.

(20 Marks)

07. Define the term “Delivery” and discuss the rules relating to delivery provided in the Sales of Goods Ordinance of Sri Lanka with the relevant case law.

(20 Marks)

08. Janani runs a restaurant in Galle. A YouTuber called “Hooniyam” came to the restaurant to film his short video vlog regarding the restaurant. While “Hooniyam” was having a friendly chat with the kitchen staff, he found that the leftovers of the food had been put in the freezer to be used for the next day.

Also, when he engaged in a chat with a security guard, he disclosed that most of the vegetables and fruits that the restaurant had purchased were not suitable for human consumption.

Moreover, the security guard revealed that some local customers have recently complained to the General Manager about the incidents of vomiting and diarrhoea after consuming the food from this restaurant.

“Hooniyam” informed about these details to the health officer of the area but he denied it by saying that he regularly takes meals in this restaurant.

Advise “Hooniyam”.

(20 Marks)

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இலங்கை திறந்த பல்கலைக்கழகம்

மானுடவியல் மற்றும் சமூகவிஞ்ஞானங்கள் பீடம்

சட்டக்கற்கைகள் திணைக்களம்

சட்டமாணி பட்டப்படிப்பு நிகழ்ச்சித் திட்டம் -2022/2023

மட்டம் - 06 LLU6716/LLU4324- வர்த்தக சட்டம்

இறுதிப் பரீட்சை 2022 / 2023

காலம் : மூன்று (03) மணித்தியாலங்கள்

திகதி : 31 மார்ச் 2024

நேரம்: பி.ப.01.30 - பி.ப.04.30

மொத்த வினாக்களின் எண்ணிக்கை -- 08

ஐந்து (05) வினாக்களுக்கு மட்டும் விடை தருக.

தெளிவற்ற கையெழுத்துக்களுக்கு புள்ளிகள் குறைக்கப்படும்.

- 1) “அ) “வாங்குனர் ஒருவர் விலையை செலுத்தவதற்கான தனது முதன்மைக் கடப்பாட்டில் இருந்து தவறுகின்ற போது, நிச்சயமாக விற்பனையாளருக்குரிய தனிப்பட்ட வழக்கு நடவடிக்கை ஒப்பந்தத்தின் கீழேயே இருக்கும், எனினும் எப்போதும் விற்பனையாளர் இந்த நிவாரணத்தின் கீழ் தங்கியிருக்க வேண்டிய கட்டாய சூழ்நிலை ஏற்படுகின்ற போது பல வழிகளில் அவருடைய நிலைமை திருப்பதிகரமற்றதாக அமையும்.”

C Twigg – Flesner, R Canavan and H Macqueen on Atiyah and Adams' Sale of Goods (First published 1957, 13th ed., Pearson 2016) 385

மேலே தரப்பட்ட கூற்றின் பின்னணியில், கட்டணம் செலுத்தப்படாத விற்பனையாளருக்கு (Unpaid Seller) இருக்கக்கூடிய நிவாரணங்களை ஆராய்க.

(10 புள்ளிகள்)

ஆ) இல.11 1896 ஆம் ஆண்டு பொருட்கள் விற்பனைக் கட்டளைச்சட்டத்தின் கீழ் “பொருட்கள் விற்பனைக்கான ஒப்பந்தம்” என்பதற்கு அளிக்கப்பட்டுள்ள வரைவிலக்கணம் பொருட்கள் விற்பனை ஒப்பந்தம் ஒன்றிற்கும், பொருட்கள் விற்பனை ஒப்பந்தத்துடன் மிக நெருக்கமாக ஒத்துப் போகக்கூடிய ஏனைய பரிவர்த்தனைகளுக்கிடையில் வேறுபாட்டை குறிப்பிடுகிறது.

ஆராய்க. உமது விடை பொருத்தமான தீர்ப்புச்சட்டத்துடன் ஆதாரப்படுத்தப்பட வேண்டும்.

(10 புள்ளிகள்)

- 2) ஆதித்தியா மற்றும் திரு ஆகிய இருவரும் தமது மகளான சாஷாவுடன் சந்தோசமாக வாழ்ந்து வரும் ஒரு தம்பதியினராவர். நாட்டின் தற்போதைய பொருளாதார நெருக்கடியினால் அவர்கள் மோசமாக பாதிக்கப்பட்டதுடன் தொடர்ச்சியான பிரச்சினைகளுக்கு முகங்கொடுத்தனர்.

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LLB DEGREE PROGRAMME-LEVEL 6
LLU6716 /LWU4324 COMMERCIAL LAW
FINAL EXAMINATION -2022/2023
DURATION - THREE (03) HOURS



Date: 31st March 2024

Time: 1.30 a.m.- 4.30 p.m.

Total number of questions **Eight (08)**.

Answer **Five (05)** questions only.

Illegible handwriting will be penalised.

01. (a). "Where the buyer defaults in his principal obligation, that is, in payment of the price, the seller has, of course, his personal action on the contract itself, but if the seller were always compelled to fall back on this remedy, his position would be in many respects unsatisfactory."

C Twigg-Flesner, R Canavan and H MacQueen on Atiyah and Adams' Sale of Goods (First published 1957, 13th ed., Pearson 2016) 385.

In light of the above statement, discuss the remedies available to an unpaid seller.

(10 Marks)

- (b). "The definition provided by the Sale of Goods Ordinance No. 11 of 1896 for the term of 'Contract of sale of goods' distinguishes between a contract of sale of goods and other transactions which closely resemble a contract of sale of goods."

Discuss.

(10 Marks)

Your answer should be supported by the relevant case law.

02. Adhithya and Thiru are a lovely couple and happily living with their little daughter, Sasha. As they were severely affected by the ongoing economic crisis of the country, they faced a chain of problems.

Sasha's parents brought a few fresh milk bottles due to the scarcity of milk powder in the market. After drinking the fresh milk, she started coughing and also suffered from

சாஷாவினுடைய பெற்றோர் சந்தையில் பால்மா பக்கற்றுகளின் தட்டுப்பாடு காரணமாக சில தூய பால் போத்தல்களை கொள்வனவு செய்தனர். சாஷா தூய பாலை அருந்திய பின்பு அவளிற்கு இருமல் ஏற்பட்டதுடன் குறிப்பிட்ட சில மணித்தியாலங்களிற்கு தலைவலியும் நீடித்தது. அதனைத் தொடர்ந்து கடுமையான காய்ச்சலும் ஏற்பட்டது. திரு தனது மகளினுடைய சுகயீனம் காரணமாக குழப்பமடைந்ததுடன் தனது காரில் மகள் சாஷாவை வைத்தியசாலைக்கு எடுத்துக்கொண்டான். அவன் அவசரமாக வைத்தியசாலைக்கு செல்லும் போது தனது காரிற்கு பெற்றோல் நிலையத்தில் பெற்றோல் நிரப்பினான்.

இரண்டு நாட்களின் பின்பு திரு தனது காரை செலுத்த முற்பட்ட போது அவனால் செலுத்த முடியவில்லை. காரில் உள்ள குறைபாட்டை பரிசோதித்த வாகன திருத்துனர் பெற்றோல் தாங்கியில் பெற்றோலுடன் தின்னரும் (Thinner) கலக்கப்பட்டுள்ளது எனவும், இயந்திர கோளாறிற்கு அதுவே காரணமெனவும் கண்டுபிடித்தார். இதனால் அதிக விலையில் ஒரு புதிய இயந்திரத்தை அவன் காருக்கு பொருத்தினான்.

இதே வேளை, ஆதித்தியா சமையல் எரிவாயு உருளை ஒன்றை கொள்வனவு செய்ய எரிவாயு நிலையத்தில் நீண்ட நேரத்தை செலவழித்தாள். இந்த எரிபொருள் நிலையம் “WHITE” என அறியப்பட்ட சமையல் எரிவாயு உருளைகளை வழமையாக விற்பனை செய்து வருகிறது. மூன்று நாட்கள் வரிசையில் நின்று சமையல் எரிவாயு உருளை ஒன்றை அவள் பெற்றுக்கொண்டாள். உருளையை அடுப்புடன் பொருத்திய போது அது பெரிய சத்தத்துடன் வெடித்தது இதன் காரணமாக எரிவாயு உருளை மோசமாக சேதமடைந்தது. ஒரு சில நாட்களின் பின்பு உருளையினுடைய வெளிப்புற வர்ணப்பூச்சு உரிந்ததுடன் “BLACK” என்ற பெயர் திருவிற்கு புலப்பட்டது. சில உற்பத்திக் குறைபாடுகள் காரணமாக எரிவாயு உருளை வெடிப்பதற்கு முன்பு ஒரு சில மாதங்களுக்கு முன்பு அரசாங்கம், “BLACK” என்ற வியாபாரப் பெயர் கொண்ட எரிவாயு உருளைகளை தடை செய்திருந்தது.

இதே வேளை வைத்தியசாலையில் சாஷாவை பரிசோதித்த வைத்தியர்கள் அவள் தைபொயிட் காய்ச்சலினால் அவதியுறுவதாகவும் அவளது மருத்துவ அறிக்கையில் அவள் அருந்திய பாலில் தைபொயிட் கிருமிகள் இருந்ததாகவும் குறிப்பிட்டனர்.

மேலே குறிப்பிட்ட நிகழ்வு சம்பவங்களை அடிப்படையாகக் கொண்டு கீழே தரப்பட்ட வினாக்களிற்கு விடையளிக்குக.

- பொருட்கள் விற்பனை ஒப்பந்தம் ஒன்றில் உள்ள நிபந்தனைகள், மற்றும் நியதிகளின் பொருளைச் சுருக்கமாக விளக்குக.
- விற்பனையாளர்களால் எந்தெந்த நிபந்தனைகள், மற்றும் நியதிகள் மீறப்பட்டுள்ளன என்பது தொடர்பில் ஆதித்தியா மற்றும் திரு ஆகியோரிற்கு அறிவுரை வழங்குக.

(10x02 = 20 புள்ளிகள்)

headaches for a few hours. Subsequently, she suffered from severe fever too. Thiru panicked over the illness of his daughter and took Sasha to the hospital in his car. While they were rushing to the hospital he pumped fuel from a petrol station.

Two days later, when Thiru tried to start the car it failed. The mechanic who searched for the fault found that the petrol in the tank was diluted with thinner and it was the cause of the engine failure. As a result, he had to replace a new engine at a heavy price.

In the meantime, Adhithya spent a long time at a gas station to buy a gas cylinder. This particular gas station usually sells gas cylinders known as “WHITE Brand” gas cylinders. After waiting for three days in the queue she managed to buy a gas cylinder. When the gas cylinder was connected to the cooker it exploded with a loud noise. As a result of the explosion, the gas cylinder was severely damaged. A few days later, Thiru found that the outer layer of the paint had peeled off exposing that it was a “BLACK Brand” gas cylinder. The government banned the “BLACK” brand a few months before the explosion due to some manufactural defects.

In the meantime, doctors in the hospital diagnosed that Sasha was suffering from typhoid fever and her medical reports established that the milk she drank contained typhoid germs.

Answer the following questions based on the above factual situation,

- a). Briefly explain the meaning of conditions and warranties in a contract of sale of goods
- b). Advise Adhithya and Thiru as to which conditions and warranties that the respective sellers have breached.

(10x2 = 20 Marks)

03. A few months ago, Yasas who is 45 years old started living together with Gayani aged 38 years. They decided to apply for a life insurance policy at “Gold Life”, an insurance firm. Since Yasas was severely suffering from pneumonia and asthma, four insurance companies had rejected their previous life insurance applications.

However, the Gold Life Insurance company which was the fifth insurer, offered a life insurance policy to them. But Yasas never disclosed to Gold Life about the illnesses and the rejection of his previous insurance applications.

After the death of Yasas, Gayani claimed the benefit of the insurance policy from the Gold Life company. In her claim application, she purposefully mentioned that Yasas died from Coronavirus. Also, to prove her claim, she managed fraudulently change the entries in the personal identification documents of Yasas.

Advise “Gold Life” insurance company as to which principles of insurance have been breached by the parties. Support your answer with decided cases.

(20 Marks)

3) சில மாதங்களுக்கு முன்பு 45 வயதான யஸஸ் என்பவன் 38 வயதான கயனி என்பவளுடன் சேர்ந்து வாழத் தொடங்கினான். அவர்கள் இருவரும் “Gold Life” என்ற காப்புறுதிக் கம்பனியில் ஆயுட் காப்புறுதிக் கொள்கை ஒன்றிற்கு விண்ணப்பிக்க தீர்மானித்தனர். யஸஸ் நியுமோனியா மற்றும் ஆஸ்துமா நோயினால் கடுமையாக பாதிக்கப்பட்டு இருப்பதால் அவர்களுடைய முன்னைய ஆயுட்காப்புறுதி விண்ணப்பங்களை நான்கு காப்புறுதிக் கம்பனிகள் நிராகரித்திருந்தன.

எனினும், ஐந்தாவது நிறுவனமான “Gold Life” காப்புறுதிக் கம்பனி அவர்களுக்கு ஆயுட் காப்புறுதிக் கொள்கை ஒன்றை வழங்கியது. ஆனால் யஸஸ் தன்னுடைய நோய்களைப் பற்றியோ முன்னைய காப்புறுதி விண்ணப்பங்களின் நிராகரிப்புகளை பற்றியோ Gold life கம்பனிக்கு ஒருபோதும் வெளிப்படுத்தவில்லை.

யஸஸ் உடைய இறப்பின் பின்பு கயனி Gold Life நிறுவனத்திடமிருந்து காப்புறுதி கொள்கை நலனை கோரினாள். அவளுடைய விண்ணப்பத்தில் அவள் வேண்டுமென்றே யஸஸ் கொரோனா வைரஸ் காரணமாக இறந்தான் என குறிப்பிட்டாள். அவளுடைய கோரிக்கையை நிரூபிப்பதற்கு யஸசினுடைய தனிப்பட்ட அடையாள ஆவணங்களில் உள்ள தகவல்களை மோசடியாக மாற்றினாள்.

திறத்தவர்களினால் மீறப்பட்டுள்ள காப்புறுதி எண்ணக்கருக்களைப் பற்றி Gold Life காப்புறுதி கம்பனிக்கு அறிவுறுத்திக. தீர்க்கப்பட்ட வழக்குகளுடன் உமது விடையை ஆதாரப்படுத்துக.

(20 புள்ளிகள்)

4) ஜயதேவ லியனகே ஒரு வெற்றிகரமான வர்த்தகர் ஆவார். அவர் குறுக்கு கோட்டப்படாத வெற்றுக் காசோலையில் கையொப்பமிட்டு அவருடைய மகளான அயேஷாவினுடைய பிறந்தநாளன்று பிறந்தநாள் பரிசாக வழங்கினார். அவர் தனது மகளிடம் காசோலையை பூர்த்தி செய்யுமானும் ரூபா 2,000,000/= தொகை வரையான எந்த தொகையையும் காசோலையில் குறிப்பிடலாம் எனவும் அறிவுறுத்தினார். அவள் திகதியையும் தொகையையும் பூர்த்தி செய்ய முன்பு காசோலையை தொலைத்து விட்டாள்.

பின்வரும் சூழ்நிலைகளை ஆராய்க.

அ) இந்து வெற்றுக்காசோலையை கண்டெடுத்தவுடன் காசோலையில் ரூபா 1,000,000/= தொகையை குறிப்பிட்டதுடன் “செலுத்துபவர்” என்ற இடத்தில் “பணம்” என எழுதினார். அவன் காசோலையில் திகதியையும் குறிப்பிட்டான். அதன் பின்பு இந்து காசோலையை லியனகேவின் வங்கியில் சமர்ப்பித்தான். வங்கி அவனுக்கு ரூபா 1,000,000/= பணத்தை வங்கி கருமபீடத்தில் (Counter) செலுத்தியது.

(12 புள்ளிகள்)

04. Jayadeva Liyanage is a successful businessman. He signed an uncrossed blank cheque and gave it to his daughter, Ayesha on her birthday as a birthday present. He advised Ayesha that she could complete the cheque and fill in any amount up to Rs.2,000,000/=. Before she filled the date and the amount, Ayesha lost the cheque.

Discuss the following situations.

- a) Indu found the blank cheque and filled the blank cheque with an amount for payment of Rs. 1,000,000/= and wrote “cash” in the space for “Payee”. She also dated the cheque. Indu then presented the cheque to Liyanage’s bank who paid her Rs. 1,000,000/= cash over the counter.

(12 Marks)

- b) Would your answer be different, if the cheque was crossed “Account Payee Only” and the bank still paid the proceeds of the cheque over the counter to Indu?

(8 Marks)

(12+08= 20 Marks)

05. (a). “Cheques are considered as good negotiable instruments but fixed deposit certificates are not.”

Explain the above statement with reference to the characteristics of a Negotiable Instrument.

(08 Marks)

- (b). Kamal wrote a cheque for Rs.10,000/- in favour of Danapala. The name of the banker and the words, “not negotiable” were written on the face of the cheque. However, the signature on the cheque is not clear and the amount in figures states Rs.100,000/- while in the words it says “ten thousand rupees only”. Kamal’s account has Rs. 6,000 only.

- (i) Discuss whether Danapala is a holder in due course.

(06 Marks)

- (ii) Explain the legal effect of crossing a cheque with reference to the above scenario.

(06 Marks)

(08+06+ 06= 20 Marks)

ஆ) குறிப்பிட்ட காசோலையில் “கணக்கு வைத்திருப்பவருக்கு மாத்திரம்” என குறுக்குக்கோடிப்பட்டு இருக்கும் போது வங்கி காசோலையின் வருவாய்களை வங்கி கருமபீடத்தில் (Counter) இந்துவிற்கு செலுத்தியிருப்பின் உமது விடை எவ்வாறு வேறுபடும்.

(08 புள்ளிகள்)

(12+08 =20 புள்ளிகள்)

5) அ) “காசோலைகள் ஒரு சிறந்த கைமாற்றத்தகு சாதனமாக கருத்தில் எடுக்கப்படும் ஆயின் நிலையான வைப்புச் சான்றிதழ்கள் அவ்வாறு அல்ல”.

கைமாற்றத்தகு சாதனம் ஒன்றின் பண்புகளோடு தொடர்புறுத்தி மேற்குறிப்பிட்ட கூற்றை விளக்குக.

(08 புள்ளிகள்)

ஆ) கமல் ரூபா 10,000/- பெறுமதியுடைய காசோலை ஒன்றை தனபால சார்பாக வரைந்தான். காசோலையின் முகப்பக்கத்தில் வங்கியியாருடைய பெயரும் “கைமாற்றத்தகாதது” என்ற சொற்களும் எழுதப்பட்டிருந்தன. எனினும் காசோலையில் இடப்பட்டிருந்த கையொப்பம் தெளிவற்றதாக இருந்ததுடன் தொகை இலக்கங்களில் என குறிப்பிட்ட இடத்தில் ரூபா 100,000/= எனவும் சொற்களில் என்ற இடத்தில் “ பத்தாயிரம் ரூபா மாத்திரம்” எனவும் எழுதப்பட்டிருந்தது. கமலுடைய கணக்கில் ரூபா 6,000/= மாத்திரமே இருந்தது.

i. தனபால முறைப்படி உரிமையில் வைத்திருப்பவரா (Holder in due Course) என ஆராய்க.

(06 புள்ளிகள்)

ii. மேலே தரப்பட்டுள்ள சம்பவத்துடன் தொடர்புறுத்தி குறுக்குக்கோடிப்படும் காசோலை ஒன்றின் சட்ட விளைவை விளக்குக.

(08+06+06= 20 புள்ளிகள்)

6) கீழே தரப்பட்டுள்ளவற்றில் இருந்து ஏதேனும் ஒன்றை (01) ஆராய்க. உமது விடை இயைபான நியதிச்சட்ட ஏற்பாடுகள் மற்றும் தீர்ப்புச்சட்டத்தை உள்ளடக்க வேண்டும்.

i. தவணைமுறை ஒப்பந்தம் (hire - purchase) ஒன்றில் “சொந்தக்காரர்” ஒருவருக்கு இருக்கக்கூடிய உரிமைகளையும் கடப்பாடுகளையும் ஆராய்க.

ii. 29ஆம் இலக்க 1982 ஆம் ஆண்டின் நுகர்வோர் கடன் சட்டத்தின் கீழ் பொருட்களை மீள்பெறுவதற்கான நடவடிக்கைகளில் நீதிமன்றத்திற்கு இருக்கக்கூடிய அதிகாரங்களை விளக்குக.

(10 x02 =20 புள்ளிகள்)

7) “ஒப்படைப்பு” (Delivery) என்ற சொற்பதத்திற்கு வரைவிலக்கணம் வழங்கி பொருத்தமான தீர்ப்புச்சட்டத்துடன் இலங்கையின் பொருட்கள் விற்பனைக் கட்டளைச் சட்டத்தின் கீழ் ஒப்படைப்பு தொடர்பாக இருக்கக்கூடிய விதிகளை ஆராய்க.

(20 புள்ளிகள்)

06. Discuss any **one (01)** of the following. Your answer should include the relevant statutory provisions and case law.

- a) Discuss the rights and obligations of an “owner” in a hire-purchase agreement.
- b) Explain the powers of the court in actions to recover goods under the Consumer Credit Act, No. 29 of 1982.

(20 Marks)

07. Define the term “Delivery” and discuss the rules relating to delivery provided in the Sales of Goods Ordinance of Sri Lanka with the relevant case law.

(20 Marks)

08. Janani runs a restaurant in Galle. A YouTuber called “Hooniyam” came to the restaurant to film his short video vlog regarding the restaurant. While “Hooniyam” was having a friendly chat with the kitchen staff, he found that the leftovers of the food had been put in the freezer to be used for the next day.

Also, when he engaged in a chat with a security guard, he disclosed that most of the vegetables and fruits that the restaurant had purchased were not suitable for human consumption.

Moreover, the security guard revealed that some local customers have recently complained to the General Manager about the incidents of vomiting and diarrhoea after consuming the food from this restaurant.

“Hooniyam” informed about these details to the health officer of the area but he denied it by saying that he regularly takes meals in this restaurant.

Advise “Hooniyam”.

(20 Marks)

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8) ஜனனி என்பவள் காலியில் உணவு விடுதி ஒன்றை நடாத்தி வருகின்றாள். You Tube ஐச் சேர்ந்த “கூணியம்” என்பவர் குறிப்பிட்ட உணவு விடுதிக்கு, அவ்விடுதி தொடர்பான குறும் காணொளி ஒன்றை பதிவு செய்ய சமூகமளித்தார். கூணியம் சமையலறையில் பணிபுரிவோரிடம் நட்புடன் அளவலாவிக்கொண்டிருக்கும் போது அடுத்த நாள் பாவிப்பதற்காக எஞ்சிய உணவுகளை உறைபதனியில் (Freezer) வைப்பதைக் கண்டார்.

மேலும் பாதுகாப்பு அலுவலருடன் உரையாடிக் கொண்டிருக்கும் போது, பாதுகாப்பு அலுவலர் உணவு விடுதிக்காக கொள்வனவு செய்யப்படும் பெரும்பாலான காய்கறிகள் மற்றும் பழங்கள் என்பன மனித பாவனைக்கு பொருத்தமற்றவையாகும் என வெளிப்படுத்தினார். இதற்கு மேலதிகமாக, உள்ளூர் வாசிகள் சிலர் குறிப்பிட்ட உணவு விடுதியில் உணவு அருந்தியதன் காரணமாக ஏற்பட்ட வாந்தி மற்றும் வயிற்றோட்டம் தொடர்பான சம்பவங்கள் பற்றி அண்மையில் பொது முகாமையாளருக்கு முறைப்பாடு செய்ததாகவும் பாதுகாப்பு அலுவலர் தெரிவித்தார்.

இவ்விபரங்களை குறிப்பிட்டு பிரதேசத்தில் இருந்த சுகாதார அலுவலருக்கு கூணியம் அறிவித்தார். எனினும் சுகாதார அலுவலர் தாம் குறிப்பிட்ட உணவு விடுதியில் கிரமமாக உணவு உண்பதாக குறிப்பிட்டு இவ்விடயங்களை மறுத்தார்.

கூணியம் என்பவருக்கு அறிவுறுத்துக.

(20 புள்ளிகள்)

-முழுப்பதிப்புரிமையடையது -