**UNIT- IV**

**SALES OF GOODS ACT**

**SECTION –A (Two mark question)**

**(APRIL 2007)**

**1. Explain sale**

**Ans :** When under a contract of sale, the property in the goods is transferred from the seller to the buyer , the contract is called a `sale’.

**2. Explain contract of sale**

**Ans :** contract of sale of goods is a contract whereby the seller transfer or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one owner and another. The contract of sale may be absolute or conditional.

**3. What is document of title of goods?**

**Ans :** A document of title of goods is one which enables its possession to deal with the goods desirable in its as if he were the owner . It is used in the country course of business as proof of the profession or control of goods.

**4. Explain the term price under sale of goods act**

**Ans** : The price in a contract of sale must be expressed in money**.**

* It may be fixed by the contract itself
* It may be left to be fixed in an agreed manner.
* It may be determined from the course of dealing between the parties.

**5. Explain the term `goods’ under the sale of goods act**

**Ans :** Goods from the subject of a contract of sale. This means every kind of movable property, other than actionable claims money, stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

**6. What is delivery of goods?**

**Ans :** Delivery means voluntary transfer of possession of goods from one person to another. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as a delivery or which has the effect of putting the goods in the possession of the buyer or his agent.

**7. What is acceptance of delivery?**

**Ans :** Receipt of goods by the buyer does not necessarily result in acceptance of goods by him under in performance of the contract of sale. Acceptance is something more than mere receipt or taking possession of the goods by the buyer.

**SECTION –B (Five mark question)**

**1. Explain the essentials of a contract of sale**

**Ans :** The following essential elements are necessary for a contract of sale

**Two parties:**

There must be two distinct parties’ i.e.; Buyer and seller to affect a contract of sale ant they must be component to contract. Buyer means a person who buys or agrees to buy goods. Seller means a person who sells or agrees to sell goods.

**Goods:**

There must be some goods the property in which is or is to be transferred from the seller to the buyer. The goods which from the subject matter of the contract of sale must be movable. Transfer of immovable property is not regulated by the sale of goods act.

**Price:**

The consideration for the contract of sale called the price must be money. When goods are exchanged for goods, it is not a sale but barter.

**Transfer of general property:**

There must be a transfer of general property as distinguished from special property in goods from the seller to the buyer.

**Essential elements of a valid contract:**

All the essential elements of a valid contract must be presented in the contract of sale.

**2. Distinguished between sale and hire purchase agreement.**

**Ans :**

|  |  |
| --- | --- |
| **Sale** | **Hire purchase agreement** |
| 1. Ownership is transferred from the seller to the buyer as soon as the contract is entered into.  2. The position of the buyer is that of the owner.  3. The buyer cannot terminate the contract and as such is bound to pay the price of the goods.  4. If the payment is made by the buyer in instalments, the amount payable by the buyer to the seller is reduced for the payment made by the buyer is towards the price of the goods. | Ownership is transferred from the seller to the hire purchaser only when a certain agreed number of instalments are paid.  The position of the hire purchase is that of the bailee.  The hire purchaser has an option to terminate the contract at any stage , and cannot be forced to pay the further instalments.  The instalments paid by the hire purchaser are regarded as hire charges and not as payment towards the price of the goods till option to purchase the goods is exercised. |

**3. How to classify the goods under sale of goods act.**

**Ans :** The goods which from the subject matter of a contract of sale may be either existing goods or future goods or contingent goods.

**a) Existing goods:**

These are the goods which are owned or possessed by the seller at the time of sale . Only existing goods can be subject of a sale. The existing goods may be

* **Ascertained goods:** These are the goods which become ascertained subsequent to the formation of a contract of sale.
* **Specific goods:** These are goods which are identified and agreed upon at the time a contract of sale is made.
* **Unascertained goods:** These are the goods which are not identified and agreed upon at the time of the contract of sale.

**b) Future goods:**

These are the goods which a seller does not possess at the time of the contract but which will be manufactured or produced or acquired by him after the making of the contract of sale.

**c) Contingent goods:**

These are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

**4. Explain a) Bill of lading b) Dock warrant c) Wharfinger`s certificate d)**

**Railway receipt e) Delivery order.**

**Ans :** I. Bill of lading : It is a document which acknowledges receipt of goods on board of a ship and is signed by the captain of the ship or his duly authorized representative.

**II. Dock warrant:** It is a document issued by a dock owner , giving details of the goods and certifying that the goods are held to the order of the persons named in it or endorsee. It authorizes the person holding it to receive possession of the goods.

**III. Wharfinger`s certificate and warehouse keeper`s certificate:** It is a document issued by a warehouse keeper or a wharfinger starting that the goods specified in the document are in his warehouse or his wharf.

**IV. Railway receipt:** It is a document issued by the railway, acknowledging receipt of goods. It is to be presented by the holder or consignee at the destination to take delivery in the document.

**V . Delivery order:** It is a document containing an order by the owner of the goods to the holder of the goods on his behalf, asking him to delivery them to the person named in the document.

**5. Write short notes on caveat Emptor.**

**Ans :** Caveat Emptor means `let the buyer beware’ i.e., in a contract of sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore when a person buys some goods, he must examine them thoroughly. If the goods turnout to be defective or do not suit his purpose or if he depends upon his own skill or judgement and makes a bad selection, he cannot blame anybody excepting himself.

**Exceptions:**

The doctrine of caveat emptor has certain important exceptions. The case law on these exceptions are

* **Fitness for buyer`s purpose :**

When the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller`s skill or judgement and the goods are of a description which it is in the course of the seller`s business to supply, the seller must supply the goods which shall be fit for the buyer`s purpose.

* **Sale under a patent pr trade name :**

In case of a contract for sale of a special article under its patent or other trademark, there is no implied condition that the goods shall be reasonably fit for any particular purpose.

* **Merchantable quality :**

When goods are brought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality.

* **Usage of trade :**

An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

* **Consent by fraud :**

When the consent of the buyer in a contract of sale, is obtained by the seller by fraud or when the seller knowingly conceals a defect which could not be discovered on a reasonable examination.

**6. Distinguish between condition and warranty**

**Ans :**

|  |  |  |
| --- | --- | --- |
| **Particulars** | **Condition** | **Warranty** |
| 1. Difference as to value  2. Difference as to breach  3. Difference as to treatment | A condition is a stipulation which is essential to the main purpose of the contract  If there is any breach of a condition the aggrieved party can repudiate the contract of sale  AS breach of a condition may be treated as a breach of a warranty | A warranty is a stipulation which is collateral to the main purpose of the contract  In case of breach warranty, the aggrieved party can claim damages only.  A breach of warranty cannot be treated as a breach of a condition. |

**Section-c (Ten mark question)**

**1. Distinguish between sale and agreement to sell.**

**Ans :**

|  |  |  |
| --- | --- | --- |
| **Particulars** | **Sale** | **Agreement to sell** |
| 1. Transfer of property  2. Type of contract  3. Type of goods  4. Risk of loss  5. Consequences of breach  6.right to resell  7. General and particular property  8. Insolvency of buyer  9. Insolvent of seller | The property in the goods passes from seller to buyer immediately.  A sale is an executed contract  A sale can only be in case of existing and specific goods only.  If the buyer fails to pay the price of the goods, the seller can sue for the price  If the buyer fails to pay the price of the goods, the seller can sue for the price  The seller cannot resell the goods  It gives right to the buyer to enjoy the goods as against the world at large including the seller.  If the buyer becomes insolvent before he pays for the goods, the seller in the absence of lien over the goods must receiver or assignee.  If the seller becomes insolvent, the buyer beings the owner, is entitled to recover the goods from the official receiver or assignee. | The transfer of property in the goods is to take place at a future time or subject to certain condition to be fulfilled  An agreement to sell is an executor contract  An agreement to sell in mostly in case of future and contingent goods.  If there is a breach of contract by the buyer, the seller can sue for damages and not for the price.  If there is a breach of contract by the buyer, the seller can sue for damages and not for the price.  In case of re-sale, the buyer who takes the goods for consideration and without notice for the prior agreement, gets a good title. In that case, the original buyer can only sue for damages  It gives right to the buyer against the seller to sue for damages  If the buyer becomes insolvent and he has not yet paid the price, the seller is not bound to part with the goods until he is paid for.  If the buyer, who has paid the prices, finds that the seller has becomes insolvent ,he can only claim a rateable dividend and not the goods |

**2. Elucidate the rights and duties of buyer.**

**Ans :** The followings are the rights of the buyer.

**Rights of the buyer:**

**1. Rights to deliver as per contract:**

The rights of the buyer are to have delivery of the goods as per contract.

**2. Rights to reject the goods:**

If the seller sends to the buyer a large or smaller quantity of goods that be ordered, the buyer may reject the whole or accept the whole or accept the quantity he ordered and reject the rest.

**3. Rights to notice of insurance:**

Unless otherwise agreed, when goods are sent by the seller to the buyer by a sea route, the buyer has a right to be informed by the seller so that he may get the goods insured.

**4. Rights to examine:**

The buyer has a right to examine the goods which he has not previously examined before he accepts them. The seller is bound to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

**5. Rights to repudiate:**

Unless otherwise agreed, the buyer of goods has rights not to accept delivery there by instalments.

**6. Rights against the seller for breach of contract:**

**a) Suit for damages**: When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

**b) Suit for price:** If the buyer has paid the price and the goods are not delivered he can recover the amount paid.

**c) Suit for breach of warranty:** When there is a breach by the seller or when the buyer elects or is compelled to treat of conditions on the part of the seller as a breach of warranty.

**d) Suit for specific performance:** The buyer may sue the seller for specific performance of the contract to sell.

**e) Repudiation of contract before due date :** When the seller repudiate the contract before the date of delivery , the buyer may either to treat the contract as subsisting or wait till the due date.

**f) Suit of interest:** The buyer has a right to claim interest also. The court may award the interest at such rate it thinks fit.

**Duties of the buyer:**

* Duty to accept the goods and pay for them in exchange for possession. It is the duty of the buyer to accept the goods and pay for them.
* Duty to apply for delivery:
* Duty to demand delivery at a reasonable hour.
* Duty to accept instalment delivery at a reasonable hour and pay for it.
* Duty to take risk of deterioration in the course of transit.
* Duty to intimate the seller when he rejects the goods.
* Duty to take delivery within a reasonable time after the tender of delivery
* Duty to pay price.
* Duty to pay damages for non-acceptance.

When the buyer wrongfully neglects or refuses to accept and pay for the goods, he will have to compensate the seller, in a suit by him, for damages for non-acceptance.

**3. Explain the rules regarding delivery of goods**

**Ans :** Sales of goods act provide some, rules as to delivery of goods.

**a) Mode of delivery:**

Delivery should have the effects of putting the goods in the possession of the buyer or his authorised agent. Delivery of goods may be actual, constructive or symbolic

**b) Delivery and payment- concurrent conditions:**

Delivery of the goods and payment of the price must be according to the terms of the contract.

**c) Effects of part delivery:**

A delivery of part of the goods in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.

**d) Buyer to apply for delivery:**

Apart from any express contact, the seller of goods is not bound to deliver them until the buyer applies for delivery.

**e) Place of delivery:**

When the place at which delivery of the goods is to take place is specified in the contracts, the goods must be delivered at that place during business hours on a working day.

**f) Time of delivery:**

When under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them in fixed, the seller is bound to send them within a reasonable time

**g) Goods tin possession of a third party:**

When at the time of sale the goods are within the third party, there is no delivery by the seller to the buyer until such third party acknowledges to the buyer that he holds them on this behalf.

**h) Cost of delivery:**

All expenses which are incidental to making of delivery are borne by the seller, but all expense of and incidental to obtaining or deliver are borne by the buyer.

**I) Delivery of wrong quantity**

The delivery of wrong quantity of goods contracted for should be strictly accordingly of the terms of contract.

* Delivery of goods less than contracted to sell
* Delivery of goods in excess of the quantity contracted for.
* Delivery of goods contracted for mixed with other goods.

**k) Delivery to a carrier or wave house:**

In pursuance of a contract of sale, goods are delivered to a carrier for the purpose of transmission to the buyer or to a wave house for safe custody; delivery of goods to them is primary which is deemed to be a delivery of the goods to the buyer.

**UNIT – V**

**CONDITIONS AND WARRANTY**

**Section – A (Ten mark questions)**

**1. Explain condition.**

**ANS:** A condition is a stipulation which is essential to the main purpose of the contracts. Its goes to the root of the contract. Its non-fulfilment upsets the basis of a contract.

**2. What is warranty?**

**ANS:** A warranty is a stipulation which is collateral to the main purpose of the contract. A stipulation may be a condition though called warranty in the contracts.

**3. Explain ‘sale by description’.**

**ANS:** Sale by description means when there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description.

**4. What is an auction sale?**

**ANS:** A sale by auction is a public sale where different intending buyers try to outbid each other. The goods are ultimately sold to the highest bidder. The auctioneer who sells the goods by auction is an agent of the seller.

**5. Who is an unpaid seller?**

**ANS:** A 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 a conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument.

**6. Explain implied warranty?**

**ANS:** In a contract of sale, unless there is a contrary intention, there is an implied warranty that

* The buyer shall have and enjoy quiet possession of the goods
* The goods are free from any change or encumbrance in favour of any third party.

**SECTION – B (Five mark question)**

**1. Explain about implied condition.**

**ANS:** Implied condition is the one which is implied by law unless the parties stipulate to contract.

a) **Condition as to title:** In a contract of sale there is an implied condition on the part of seller that

I. In the case of a sale, he has a right to sell the goods and

II. In the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass.

**b)** **Sale by description:** When there is a contract for the sale of goods by. Description, there is an implied condition that the goods shall correspond with the description. If the sale is by samples as well as by description, the goods shall correspond both with the sample and the description.

**c)** **Condition as to quality or fitness:** The condition as to quality or fitness is implied where

I. The goods sold as such as the seller deals in the ordinary course of his business.

II. The buyers relies on the seller’s skill or judgement as to the fitness of the goods for any particular purpose and

III. The buyers expressly or impliedly makes known to the seller that he wants the goods for that particular purpose.

**d) Condition as merchantability:** When goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality.

**e) Condition implied by custom:** An implied condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

**f) Sale by sample:** In the case of a contract for a sale by sample there is an implied condition

I. That the bulk shall correspond with the sample in quality

II. That the buyer shall have a reasonable opportunity of comparing the bulk with the sample and

III. That the goods shall be free from any defect, rendering them un merchantable.

g) **Condition as to wholesome:** In case of eatables and provisions, there is an implied condition that the goods shall be wholesome and fit for human consumption.

**2. Explain the implied warranties in a contract of sale?**

**Ans: Warranty:**

A warranty is a stipulation which is collateral to the main purpose of the contract.

**Implied warranty:**

In a contract of sale, the implied warranty is also follows

**1. Warranty of quiet possession:**

In a contract of sale unless there is a contrary intension, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

**2. Warranty of freedom from encumbrances:**

In addition to the above warranty, the buyer is entitled to a future warranty that the goods are not subject to any charge or right in favor of a third party.

**3. Warranty is to quality or fitness by usage of trade:**

An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.

**4. Warranty to disclose dangerous nature of goods:**

When a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger.

**2. State the remedies available to the seller.**

**Ans:** The sale of goods act gives the following remedies to a seller and a buyer for breach of a contract of sale

* Seller‘s of suits
* Suit for price
* Suit for damages for non – acceptances of the goods
* Suit for damages for repudiation of contract by the buyer before dur date
* Suit for interest
* Buyer‘s suits
* Suit for damages for non – delivery of the goods
* Suit for specific performances
* Suit for breach of warranty
* Suit for damages for repudiation of contract by the seller before due date
* Suit for interest.

**3. What are differences between rights of lien and right of stoppage in transit?**

**Ans : Right of lien :**

1. Right of lien can be exercised even when the buyer is able to pay.

2. Right of lien can be exercised on goods which are in actual or constructive possession of the seller.

3. Right of lien comes to an end when the possession of the goods is surrendered by the seller.

4. Right of lien is to retain possession.

**Rights of stoppage in transit:**

1. The unpaid seller to stop the goods in transit arises only when the buyer‘s is insolvent

2. Rights of stoppage in transit can be exercised when the goods are in the possession of a middleman.

3. Rights of stoppages in transit commences when the goods have left the possession of the seller.

4. Rights of stoppage in transit are to regain or resume possession.

**Section – C (Ten Marks Question)**

**1. State the rights of an unpaid seller.**

**Ans :** A seller of goods is deemed to be an unpaid seller when

1. The whole of the price has not been paid or tendered
2. A bill of exchange or other negotiable instrument has been received as a conditional payment and the condition on what it was received has not been fulfilled by reason of the dishonour instrument or otherwise.

The following are the rights of an unpaid seller they are:

1. Right of an unpaid seller against the goods.

2. Right of an unpaid seller against the goods.

Where the property in the goods has passed to the buyer an unpaid seller has the following right against the goods.

**Right of lien:**

A lien is a right possession of goods until payment of the price. It is available to the unpaid seller of the goods who is in possession of them were

* The goods have been sold without any stipulation as to credit
* The goods have been sold on credit, but the term of credit has expired
* The buyer becomes insolvent.

The seller of the goods loses his lien on the goods when

* He delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer.
* The buyer or his agent lawfully obtains possession of the goods as buyer.
* He waives his right of lien on the goods. He may do this either expressly or impliedly.

**Right of stoppage in transit:**

The right of stoppage in transit after the unpaid seller has parted with the possession of the goods. He has the further right of resuming possession of the goods as long as they are in the course of transit and retaining possession until payment or tender of the price. It is available to the unpaid seller.

1. When the buyer becomes insolvent.

2. When the goods are in transit.

**Right of resale:**

The unpaid seller can resell the goods

* When the goods are of a perishable nature or
* When he gives notice to the buyer of his intension to result the goods and the buyer does not within a reasonable tine to pay or tender the price.

**Right of withholding delivery:**

When the property in goods has not passed to the buyer ,an unpaid seller has, in addition to his other remedies has a right of withholding delivery similar to and contract-extensive with his right on lien and stoppage in transit when the property

has passed to buyer.

**Right of an unpaid seller against the buyer personally:**

These are the right which an unpaid seller may enforce the buyer personally.

These rights of the seller against the buyer are called right in person as against the right in rem and are in addition to his right the goods.

* **Suit for price:** When under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglect or refuse to pay for the goods according to the term of the contract the seller may sue him for the price of the goods.
* **Damage for non acceptance:** When the buyer wrongfully neglect or refuses to pay for the goods the seller may sue him for the damage for non acceptance
* **Repudiation of contract before due date:** When the buyer in a contract of sale repudiates the contract before the date of delivery, the seller may either treat the contract as subsisting and wait till the date of delivery or he may treat the contract as rescinded and sue for damage for the breach.
* **Suit for interest:** The seller can recover interest on price for date on which the payment became due if there is a special agreement to that effect.

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