

BUSINESS LAW

UNIT 4: The Sale of Goods Act, 1930

TOPIC- CONDITIONS AND WARRANTIES

Monika Arya, Associate Professor, Bharati College , Delhi
University

CONDITIONS AND WARRANTIES

A contract of sale of goods contains various terms or stipulations regarding the quality of the goods, price, mode of payment, delivery of goods, time and place of delivery etc. Some of these may be major terms which go to the very root of the contract and their breach may frustrate the very purpose of the contract while others may be minor terms which are not so vital and their breach may cause some damage to other party but which may be compensated for. These major terms are called **CONDITIONS** and the minor ones are called **WARRANTIES**.

CONDITIONS (SEC.12(2))	WARRANTIES (SEC.12(3))
A condition is a stipulation which is essential to the main purpose of the contract.	A warranty is a stipulation which is collateral to the main purpose of the contract.
The breach of condition gives aggrieved party the right to repudiate the contract and also claim damages	The breach of warranty gives aggrieved party a right to claim damages only
A breach of condition may be treated as a breach of warranty	A breach of warranty can't be treated as a breach of condition.
Eg. A goes to a shop and asks the seller to show him some pure silver utensils. Seller shows him few items. A selects and buys some spoons, some plates and some glasses . Later it is found that those items are not of silver but are of silver lookalike alloy . There is breach of condition , A can repudiate the contract, return those items and get back the price.	Eg.A purchases a shirt and when he opens its packing, he finds that its two buttons are broken. This is breach of warranty. For this, he cannot return the shirt can only claim damages . The sellers is bound to compensate him for the buttons and the charges for tucking on the buttons.

When Breach of condition to be treated as breach of warranty

Where a breach of condition is treated as a breach of warranty, the buyer loses his right to rescind the contract and has to be content with a claim for damages only.

- Voluntary waiver by buyer- Here the buyer elects to waive the condition and treat it as a breach of warranty, accept the goods and sue the sellers for damages for breach of warranty.
- Acceptance of goods by buyer-A buyer is deemed to have accepted the goods if
 - ✓ if he intimates to the seller that he has accepted the goods or
 - ✓ he does any act on the goods which is inconsistent with the ownership of seller eg. consumes, uses, pledges, resells, puts his marks on them etc. or
 - ✓ even after lapse of reasonable time, he retains the goods

Express And Implied Conditions And Warranties – Conditions and warranties are said to be express when at the will of the parties, they have been inserted in the contract. They are said to be implied when the law presumes their existence in the contract automatically though they have not been put into express words.

IMPLIED CONDITIONS-

- **Condition as to title**-In every contract of sale, the first implied condition is that the seller has a right to sell the goods (either because he is the owner or the agent of the owner). So , if the sellers title turns out to be defective, the buyer is entitled to reject the goods and recover the price. Here , the buyer cannot retain the goods by electing to treat the **breach of this condition as breach of warranty**. He must return the goods to the true owner. However, he can recover the price from the seller because of total failure of consideration.

ROWLAND VS DIVALL CASE-R purchased a car from D and used the same for several months. D had no title to the car and therefore, R was compelled to return the car to the true owner. R sued D to recover back the price which he had already paid. Held, R was entitled to recover the whole of the price paid by him despite the fact that he had used the car for some months.

- **Condition in a sale by description** – Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. If seller delivers goods which do not match the description, buyer can reject or return those goods. The description of goods could be in terms of qualities, characteristics, brand, trademark, type of packing, grade etc.eg. Dhampur sugar, basmati rice, tulsi flavoured tea leaves etc,

Andrews Bros. vs Singer & co.- There was a contract for supply of 'new singer cars' and one of the cars supplied having already run considerable mileage was not new. There was a breach of condition on part of the seller as that car was not as per the description and the buyer was entitled to reject the car.

IMPLIED CONDITIONS-

- **Condition in a sale by sample**-Whenever goods are to be supplied according to the sample agreed upon, the implied conditions are-

- ✓ that the bulk shall correspond with the sample in quality,
- ✓ that the buyer shall have a reasonable opportunity of comparing the bulk with the sample,
- ✓ that the goods shall be free from any latent defect i.e. defect which is not discoverable on plain examination of the sample

Drummond & Sons vs Van Ingen Case- Some woolen coat fabric was sold by sample. The fabric when supplied corresponded to the sample but it was found that owing to a latent defect in the cloth, coats made out of it would not stand ordinary wear and were therefore unsaleable. The same defect existed in the sample also but could not be detected on reasonable examination. Held, the buyer was entitled to reject the cloth.

- **Condition in a sale by sample as well as description**- When goods are sold by sample as well as by description, there is an implied condition that the bulk of the goods supplied shall correspond both with sample and description. If they correspond with only sample and not description or vice versa, the buyer is entitled to reject the goods.

Nichol vs. Godts Case- G bought from N certain oil described as foreign refined rapeseed oil on the basis of sample shown to him. The oil supplied, though corresponded with the sample, but was a mixture oil consisting of hemp oil and rapeseed oil. Held, that since the oil supplied matched the sample but was not in accordance with the description, the buyer was entitled to reject the same.

IMPLIED CONDITIONS-

- **Condition as to fitness**-There is an implied condition on part of the seller that the goods supplied by him shall be fit for the purpose for which buyer wants them if
 - ✓ Buyer has expressly or impliedly told the particular purpose for which he needs goods
 - ✓ Buyer relies on seller's skill and judgement
 - ✓ The seller, in ordinary course of business, deals in goods of that description

Re Andrew Yule & Co. Case- A buyer ordered for the hessian cloth, which is generally used for packing purposes, without specifying the purpose for which he wanted to use the same. The cloth was supplied accordingly. On receiving the cloth the buyer found that it was not suitable for packing food products as it had an unusual smell. Held, the buyer had no right to reject the cloth as it was suitable for packing purposes alright. The buyer should have disclosed the particular purpose to the dealer in order to make him liable for the breach of implied condition as to fitness.

However, this condition as to fitness will not apply if

- ✓ buyer is suffering from any abnormality which is not told to seller at the time of sale
- ✓ if the goods are purchased because of their brand, patent or trade name

- **Condition as to merchantability** – There is an implied condition on part of the seller that the goods provided by him would be of merchantable quality(i.e. ordinarily acceptable and saleable in that condition) if the following conditions are satisfied-

- ✓ there is sale of goods by description
- ✓ the seller is a dealer in goods of that description
- ✓ the buyer must not have opportunity to examine the goods or that there is some latent defect in the goods

Grant vs Australian Knitting Mills Lmt. Case-Where the undergarments supplied contained certain chemical which could cause skin disease to the person wearing it, it was held that because of such a defect the undergarments were not of merchantable quality and the buyer was entitled to reject them

IMPLIED CONDITIONS-

- **Condition as to wholesomeness**-There is an implied condition on part of the seller that in a contract for sale of eatables and provisions, the goods must not only be merchantable and as per description but must also be wholesome i.e. free from any defect which renders them unfit for human consumption.

Frost vs Aylesbury Dairy Co. Lmt. Case-F bought milk from A, a dairy owner. The milk was contaminated with germs of typhoid fever. F's wife, on taking the milk, got infected and died. A, was held liable and had to pay damages to F, for breach of condition as to wholesomeness.

IMPLIED WARRANTIES

- **Warranty of quiet possession**- In every contract of sale there is an implied warranty on part of the seller that the buyer shall have and enjoy quiet possession of goods. If the buyer's quiet possession is in any way disturbed by a person having title superior than that of the seller, the buyer can claim damages from the seller. This warranty is an extension of the implied condition as to title.

Mason vs Burningham Case- M purchased a second hand typewriter from B. M thereafter spent some money on its repair and used it for some months. Unknown to the parties the typewriter was a stolen one and M was compelled to return it to its true owner. M was entitled to recover damages from the seller for the breach of this warranty reflecting not just the price but also the cost of repair.

IMPLIED WARRANTIES

- **Warranty of freedom from encumbrances-** There is another implied warranty on part of the seller that the goods shall be free from any charge/encumbrance in favour of any third party unknown to the buyer before or at the time of contract. If later it is found that goods are subject to a charge and buyer has to discharge the same, there is breach of this warranty and buyer is entitled to claim damages.

EXAMPLE- A pledges his watch with B. After a week, A obtains the possession of the watch from B on some pretext and sells it to C. B comes to know about the sale and approaches C and tells him about the pledge affair. C had to make payment of the pledge amount to B. Here, there is breach of warranty and C is entitled to recover the amount from A.

- **Warranty of disclosing the dangerous nature of goods to the ignorant buyer.** The third warranty on the part of the seller is that in case he sells goods of dangerous nature, he will warn the buyer of the probable danger otherwise if any injury occurs to the buyer on using it, buyer can claim compensation from seller.

EXAMPLE- C purchases a tin of disinfectant powder from A. A knows that the lid of the tin is to be opened with extreme attention and if it is opened without special care it may be dangerous, but tells nothing to C. C opens the tin in the normal way whereupon the disinfectant powder flies into her eyes and causes injury. A is liable in damages to C as he should have warned C of the probable danger.

DOCTRINE OF CAVEAT EMPTOR

The maxim of caveat emptor means “ let the buyer beware” i.e. it is the duty of the buyer to be careful while purchasing goods he requires and in the absence of any inquiry from the buyer, the seller is not bound to disclose every defect in the goods he is aware of. The buyer must examine the goods carefully and if the goods he buys turn out to be defective or do not serve his purpose, he must curse himself for his bad choice and cannot hold the seller liable.

Example-A purchases a horse from B. A needed the horse for riding but he did not mention this fact to B. The horse is not suitable for riding but is suitable only for being driven in the carriage. Caveat emptor being the rule, A can neither reject the horse nor can claim any compensation from B

EXCEPTIONS – The situations where the Doctrine of Caveat Emptor does not apply i.e. buyer is not at fault

- Where seller makes a mis-representation and buyer relies on it. Doctrine of caveat emptor doesn't apply here. The contract is voidable at the option of buyer
- Where seller commits a fraud/actively conceals a defect which buyer cannot detect. Caveat Emptor doesn't apply. So buyer can rescind contract + claim damages for fraud.
- Where goods are purchased by description and they don't correspond with description.
- Where goods are bought by sample and they don't correspond with the sample or buyer is not given opportunity to examine goods or there is any latent defect in goods.
- Where goods are bought by sample as well as description and they don't correspond with both.
- Where goods are purchased by description from seller who deals in such class of goods and they not of merchantable quality .
- Where the buyer tells the seller the purpose of buying the goods, relies on seller's skill and judgement but the goods supplied are not fit for the specified purpose. Here caveat emptor does not apply and seller is liable .