

Conditions & Warranties Unit-3

A) Stipulations as to time of payment and time of delivery

1) Meaning

A representative which forms a part of the contract of sale and affects the contract is called stipulation.

2) Stipulations as to the time of the payment are not deemed to be the essence of the contract of sale unless terms of contract state otherwise.

3) Stipulations as to time of delivery are usually the essence of contract of sale.

- Delivery of good must be made without delay.

B) Conditions and warranties with reference to the goods

1) Meaning

a) Condition - is a stipulation

- essential to the main purpose of contract.

- the breach of which gives rise to a right to treat the contract as repudiated.

(ii) Warranty - it's a stipulation
↳ collateral to the main purpose
of contract
+ the breach of which give rise
to a claim for damages
+ but not to a right to reject
the goods and treat the
contract as repudiated

2) Classes of condition

Voluntary warranty

- + leaves performance of contract
- + elect to treat condition as warranty

Compulsory warranty

- + Non-revocability of contract
- + Fulfilment of condition enforced by law.

3) Modes of Condition and warranties

Condition and warranty may be
Express or implied

1) Meaning

(i) Express condition - Agreed upon b/w the parties at the time of contract and
+ are expressly provided in the contract.

(ii) Implied condition - which are presumed by law to be present in the contract

an implied condition may be negated or waived by an express agreement.

1) Implied conditions - Types

- Condition as to title
- Sale by sample
- Condition as to fitness, quality or fitness
- Condition as to wholesomeness
- Condition as to description
- Sale by sample as well as description
- Condition as to merchantability

2) Condition as to title

In every contract of sale the first implied condition on the part of seller

Implied Sale

→ Right to sell the goods

because of agreement to sell

→ right to sell the goods at the time when the property is to pass

* If due seller turns out to be defective, the buyer must return the goods to the true owner and recover the price from seller.

4) Sale by description

- there is an implied condition that
- the goods shall correspond with the description.
- If you contract to sell peas

you can't compel to the buyer to take back

5) Sale by sample

- bulk shall correspond with the sample of quantity.
- buyer shall have a ~~reasonable~~ reasonable opportunity of comparing the bulk with sample.
- goods shall be free latent defect i.e. hidden defect.

6) Sale by description sample as well as description.

- bulk of goods shall supplied shall correspond both with the sample and the description.
- In the case the goods corresponds ~~are~~ with the sample but don't tally with description or vice versa or both, buyer can repudiate the contract.

7) Condition as to quality or fitness

The goods supplied to the buyer shall be reasonably fit for the purpose buyer wants them.

There are some conditions -

- (a) The buyer should have made known to the seller the particular purpose for which goods are required.

- (10) The buyer should rely on the skill and judgment of the seller.
- (11) The goods must be description dealt in by the seller whether he manufactures or not.

Warranty as to merchantability

- Goods should be bought by description.
- The seller should be a dealer goods of that description.
- Exception - If the buyer has examined the goods, there shall be no implied condition as regard defect which such examination ought to have revealed.

Warranty as to wholesomeness

- In case of eatables and provisions.
- The addition to the implied condition as to merchantability.
- There is another implied condition that the goods shall be wholesome.

(ii) Implied warranty-type

- Warranty as to undisturbed possession
- Warranty as to non-existence of encumbrance
- Warranty as to quality or fitness by usage of trade
- Disclosure of dangerous nature of goods

11) Warranty as to undisturbed possession

- > buyer shall have and enjoy quiet possession of the goods.
- > If the buyer having got the possession of the goods, is later on disturbed in his possession.
- > He is entitled to sue the seller for the breach of contract. the warranty.
- > Ex - A purchased a second hand typewriter and happened to be stolen.

12) Warranty as non-existence of encumbrances

- > The goods shall be free from any charge or ~~etc~~ encumbrances.
- > In favour of any third party not declared or known to the buyer.
- > Before at the time the contract is entered into.
- > B sells a car which was given as security by Y against a loan.

13) Warranty as to quality or fitness by usage of trade

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

Ex: Shares purchased from broker
expected to be free from bad deliveries.

14) Disclosure of dangerous nature of Goods

- The goods are dangerous in nature and the buyer is ignorant of the danger.
- The seller must warn the buyer of the probable danger.
- If there is a breach of contract warranty, the seller may be liable in damage.
- Ex: Lid. of disinfectant powder to be opened with care.

D) Caveat Emptor

1) Meaning of doctrine

- Let the buyer beware.
- General Rule - It is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them.

2) Required conditions when doctrine is not attached

- Buyer had ^{known} made to the seller

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the purpose of his purchase, and
→ buyer relied on the seller's skill and
judgement and
→ seller's business to supply goods of
that description.

3) Exception of caveat Emptor

- Fitness to as to quality or use
- Goods purchased under patent and brand name
- Goods sold by description
- Goods sold by of Merchantable Quality
- Sale by sample
- Goods sold by sample as well as description
- Trade usage
- Seller actively conceals a defect or is guilty of fraud