

## Unit - 6

## Contingent and Quasi contracts.

### Contingent contract: →

"A contract to do or not to do something, if some event, collateral to such contract, does or does not happen."

### Essentials of a contingent contract

- The performance of a contingent contract would depend upon the happening or non-happening of some event or condition.
- The event referred to as collateral to the contract.
- The contingent event should not be a mere 'will' of the promisor.
- The event must be uncertain.

### \* Roles relating to enforcement

#### (a) Enforcement of contracts contingent on an event happening:

where a contract identifies happening of a future contingent event, the contract cannot be enforced until and unless the event 'happens'. If the happening

Subject \_\_\_\_\_

of the event becomes impossible, then the contingent contract is void.

(b) Enforcement of contracts contingent on an event not happening sec 33 :-

Where a contingent contract is made contingent on a non-happening of an event, it can be enforced only when its happening becomes impossible.

(c) A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or conduct as impossible of happening.

(d) Contingent on happening of specified event within the fixed time :-

Contingent to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened or if before the time fixed, such event becomes impossible.

(e) Contingent on specified event not happening within fixed time :-

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such

event does not happen within has not happened or before the time fixed has expired, if it becomes certain that such event will not happen.

### (f) Contingent on an impossible event (sec 36):

Contingent

agreements to do or not to do anything. if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Difference between a contingent contract and a wagering contract.

Basis of Difference	Contingent contract	Wagering contract
Meaning	A contingent contract is a contract to do or not to do something with reference to a collateral event happening or not happening.	A wagering agreement is a promise to give money or something with a worth with reference to an uncertain event happening or not happening.
Reciprocal promises	Contingent contract may not contain reciprocal promises. consists of reciprocal promises.	In a wagering contract the uncertain event is the core factor.
Uncertain event.	In a contingent contract the event is collateral.	

Nature of contract	Contingent contract may not be wagering in nature.	A wagering agreement is essentially contingent in nature.
Interest of contracting parties?	Contracting parties have interest in the subject matter in contingent contract.	The contracting parties have no interest in the subject matter.
Doctrine of mutuality of love and gain	Contingent contract is not based on doctrine of mutuality of love and gain.	A wagering contract is a game, losing and gaining alone matters.
Effect of contract	Contingent contract is valid.	A wagering agreement is void.

### \* Quasi contracts :-

A quasi contract is a legal obligation imposed by law to prevent unjust enrichment. This is also called a contract implied in law or a constructive contract.

#### Cases Deemed as Quasi-Contracts

Claims for payment by necessities supplied [sec. 68]	Obligation of a Person [sec. 69]	Benefit of non gratuitous act [sec. 70].	Responsibility of finder of goods [sec. 71].	Misappropriation by mistake [sec. 72].
To a minor				

(a) Claim for necessaries supplied to persons incapable of contracting (sec. 68) :-

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

(b) Payment by an interested person (sec. 69) :-

A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

(c) Obligation of person enjoying benefits of non-gratuitous act (sec. 70) :-

Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.

(d) Responsibility of finder of goods (sec. 71) :-

A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.

(e) Money paid by mistake or under coercion (sec 72)

⇒

at person to whom money has been paid  
or anything delivered by mistake or under coercion  
must repay or return it.

Reference cases ⇒

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[Shivprasad vs. Sisish chandra A.I.R. 1949 P.C. 297]

[Sales tax officer vs. Khanhaiyalal A.I.R. 1959 S.C. 835]

[Seth Ichayek vs. National Bank of India].

[Teikandas vs. Bombay municipal corporation A.I.R. 1954].

[Shyam Lal vs. State of U.P. AIR (1968) 130]

Chapter ⇒ 2.

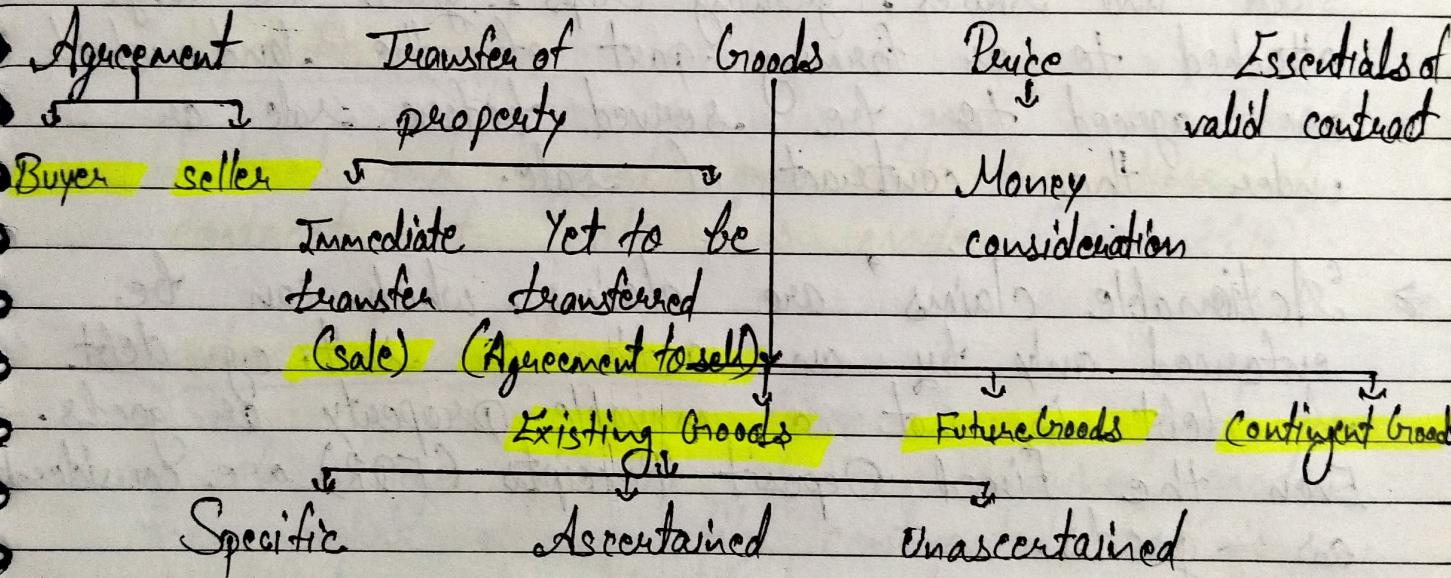
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## The Sale of Goods Act, 1930

Unit - I :-

### Formation of the contract of sale:

#### Contract of sale



### ⇒ Scope of the Act :-

The provision of the act are applicable to the contracts related to the sale of goods which means movable properties. The act is not applicable for the sale of immovable properties like land, shop or house etc.

⇒ Buyer :-

Buyer means a person who buys or agrees to buy goods.

Subject \_\_\_\_\_

⇒ Seller: →

Seller means a person who sells or agrees to sell goods.

\* (B) Goods and other related items:

Goods [sec. 2(7)]

"Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.

→ "Actionable claims" are claims, which can be enforced only by an action on suit. e.g. debt. A debt is not a movable property or goods. Even the Fixed Deposit Receipts (FDR) are considered as goods.

→ "Goods" include both tangible goods and intangible goods like goodwill, copyrights, patents, brand trademarks etc.

Goods

Actionable  
claims  
other than

Stock & shares  
Growing crops  
Also includes  
Grass, and

Means every kind of movable property

Money in circulation

Things attached to or forming part of land which agreed to be served.

## \* Classification of Goods :-

### i) Existing Goods :-

Existing Goods are such goods are in existence at the time of the contract of sale; those owned or possessed or acquired by the seller at the time of contract to sale.

### a) Specific Goods :-

Specific goods means goods identified and agreed upon at the time of contract of sale is made. [sec 2(14)].

### b) Ascertained Goods :-

When from a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.

### c) Unascertained Goods :-

Unascertained goods are the goods which are not specifically identified or ascertained at the time of making contract. They are indicated or defined only by description or example.

Subject \_\_\_\_\_

### iii) Future Goods :-

Future Goods means goods to be manufactured or produced or acquired by the seller after making the contract of sale. [section 2(c)]

### iii) Contingent Goods :-

The acquisition of which by the seller depends upon an uncertain contingency (certain event) are called 'contingent goods'. [section 6(2)]. Agreement to sale and not a sale.

(C.)

### Delivery :-

Delivery means voluntary transfer of possession from one person to another person [sec 2(2)]. As a general rule, delivery of goods may be made by doing anything which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

### i) Actual delivery :-

When the goods are physically delivered to the buyer. Actual delivery takes place when the seller transfers the physical possession of the goods to the buyer or to a third person authorised to hold goods on behalf of the buyer.

### ii) Constructive delivery :-

When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement).

### iii) Symbolic delivery :-

When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery order or the key of a warehouse containing the goods is handed over to buyer.

Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them. [Sec. 2(3)]

(3) "Document of title to Goods" includes bill of lading, dock - warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or is for authorizing or purporting to authorize, either by endorsement

Subject \_\_\_\_\_

or by delivery the possessor of the document to transfer or receive goods thereby represented [sec. 2(4)]

(E) Mercantile Agent [sec. 2(9)] :-

It means an agent who in the customary course of business has as such authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of the goods.

(F) Property [Section 2(11)] :-

'Property' here means ownership or general property. In every contract of sale, the ownership of goods must be transferred by the seller to the buyer, or there should be an agreement by the seller to transfer the ownership to the buyer.

Ex :- Bailment, Pledge, alien etc.

(G) Insolvent [sec. 2(8)] :-

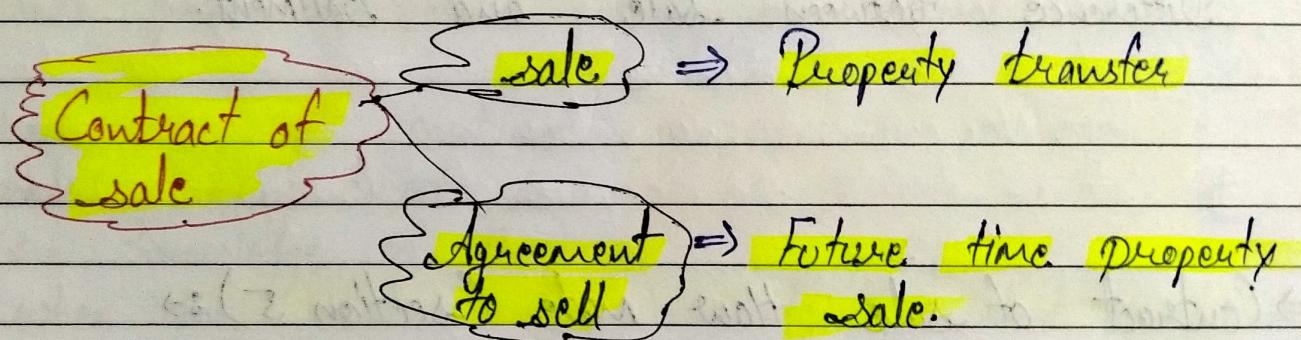
A person is said to be insolvent when he ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.

(H) Price [sec. 2(10)] :- Price means the money consideration for a sale of goods. It is the value of goods expressed in monetary terms. It is the essential requirement to make a contract of sale of goods.

(1) Quality of goods includes their state or condition [sec. 2(12)]

Sale and Agreement to sell (sec 4).

Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, it is called an agreement to sell. [sec. 4(3)].



Sale : Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale.

Agreement to sell:

Where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, it is called an agreement to sell.

## When agreement to sell becomes sale:

An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which property in the goods is to be transferred.



Distinction between sale and an agreement to sell

Distinction between sale and Hire-Purchase.

Difference between sale and Bailment.

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Difference

⇒ Contract of sale How made (Section 5) :-

A contract of sale may be made in any of the following modes:-

- i) Contract of sale is made by an offer to buy or sell goods for a price and acceptance of such offer.
- ii) There may be immediate delivery of the goods.
- iii) There may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date:-

- iv) There may be immediate delivery of the goods and an immediate payment of price.
- v) It may be agreed that the delivery or payment or both are to be made in instalments
- vi) It may be agreed that the delivery or payment or both are to be made at some future date.

⇒ Subject matter of contract of sale :-

Goods perishing before making of contract (sec. 7) :-

Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description contract.

Goods perishing before sale but after agreement to sell (sec. 8) :-

Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.

## Possession of future goods:-

If the future goods are specific the destruction of such goods will amount to supervening impossibility and the contract shall become void.

## ⇒ Ascertainment of Price (sec. 9 & 10) :-

### Analysis :-

The price in the contract of sale may be (sec. 9) :-

- 1) fixed by the contract
- 2) agreed to be fixed in a manner provided by the contract, e.g. by a valuer.
- 3) determined by the course of dealings between the parties.

## Agreement to sell at valuation (sec. 10) :-

1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of third party and such third party cannot or does not make such valuation, the agreement is thereby avoided; if the goods or any part thereof have been delivered to, and appropriated by, the buyer he shall pay reasonable price therefore.

2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in default.

Unit - 2:

## Conditions & warranties

**Introduction - conditions and warranties**

**Condition and warranty (sec 12):**

"A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty." [sub-section (1)]

"A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated." [sub-section (2)].

→ When condition to be treated as warranty (sec 3) :

Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the conditions as a breach of warranty and not as a good ground for treating the contract as repudiated [sub-section (3)].

Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as

a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied to that effect. [sub-sec (2)].

### Analysis:

Section 13 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

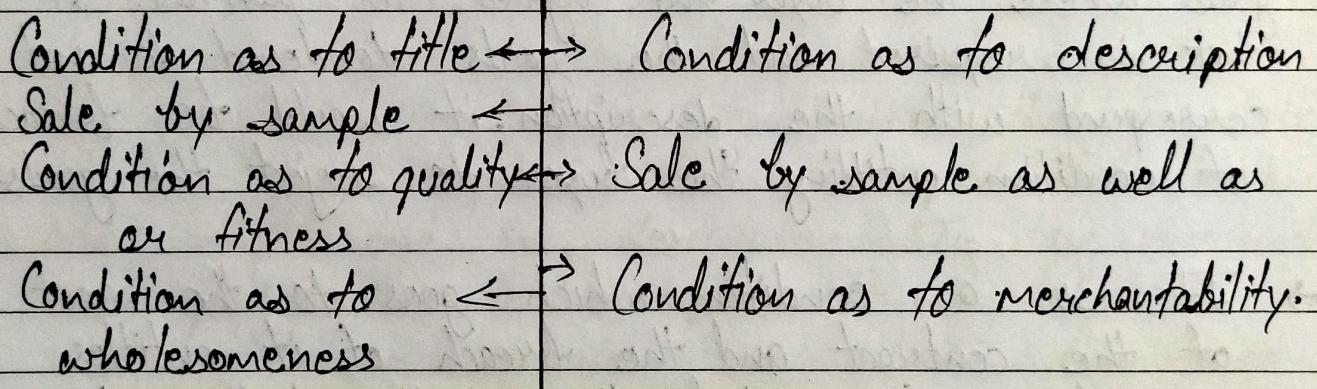
- i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. that is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

⇒ Express and implied conditions and warranties.  
(sec 14-17)

Conditions and Warranties may be either  
1) Express  
2) Implied

- Express conditions are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract.
- Implied conditions, on the other hand, are those, which are presumed by law to be present in the contract. It should be noted that an implied condition may be negated or waived by an express agreement.

### Implied Conditions



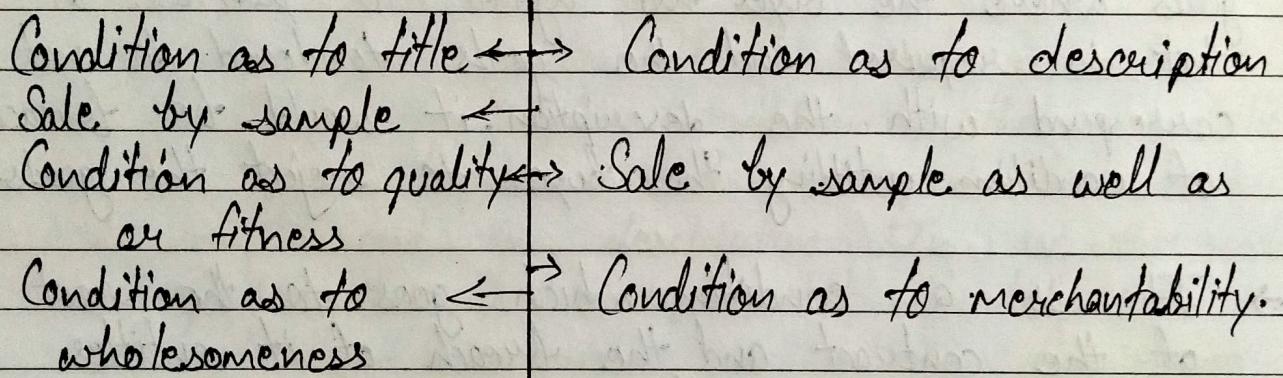
#### i) Condition as to title [sec 14(a)]:→

In every contract of sale, unless there is an agreement to the contrary, the first implied condition on the part of the seller is that

- a) in case of a sale, he has a right to sell the goods.
- b) in the case of an agreement to sell, he will have right to sell the goods at the time when the property is to pass.

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### Implied Conditions



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### iii) Sale by description [sec. 15]:→

Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans." The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

→ Whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

→ It is a condition which goes to the root of the contract and the breach of it entitles the buyer to reject the goods whether the buyer is able to inspect them or not.

### iv) Sale by sample [sec. 17]:→

In a contract of sale by sample, there is an implied condition that

- the bulk shall correspond with the sample in quality;
- the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

c) the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. If the defects are latent, then the buyer can avoid the contract. This simply means that the goods shall be free from any latent defect i.e. a hidden defect.

iv) Sale by sample as well as by description (sec. 15):

Where the goods are sold by sample as well as by description the implied condition is that the bulk of the goods supplied shall correspond both with the sample and the description. In case the goods correspond with the sample but not tally with description or vice versa or both, the buyer can repudiate the contract.

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v) Condition as to quality or fitness [sec. 16(1)]:

There is no implied conditions as to the quality or fitness of the goods sold for any particular purpose. The buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgement of the seller to select the best goods and the seller has ordinarily been dealing in those goods.

### v) Conditions as to Merchantability [Section 16(2)] :-

Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

→ There are two requirements for this condition to apply:

- (a) Goods should be bought by description
- (b) The seller should be a dealer in goods of that description.

→ If the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

### vii) Conditions as to wholesomeness :-

In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

## \* Implied Warranties :-

It is a warranty which the law implies into the contract of sale. In other words, it is the stipulation which has not been included in the contract of sale in express words. But the law presumes that the parties have incorporated it into their contract. It will be interesting to know that implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties.

### Implied Warranties

- 1. Warranty as to undisturbed possession
- 2. Warranty as to non-existence of encumbrances
- 3. Warranty as to quality or fitness of dangerous nature of goods.
- 4. Disclosure by usage of trade.

#### 1. Warranty as to undisturbed possession [Sec. 14(6)]:

An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.

## 2. Warranty as to non-existence of encumbrances [section 14(c)]

An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.

## 3. Warranty as to quality or fitness by usage of trade [section 16(3)] :-

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

Regarding implied conditions an warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware', i.e., the seller is under no duty to reveal flattering truths about the goods sold, but this rule has certain exceptions.

## 4. Disclosure of dangerous nature of goods :-

Where 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 warranty, the seller may be liable in damages.