



CHAPTER - 3

THE SALE OF GOODS Act, 1930

Unit - 2

CONDITIONS AND WARRANTIES

Condition and Warranty [Section-12]

Section 12(1) → A Stipulation in Contract of Sale with reference to Goods which are subject thereof

may be a Condition
(OR)
Warranty.

What is Condition Section 12(2)

Condition is stipulation
↳ essential to
Main Purpose of the Contract
↓
the breach of which gives rise
to a "Right to treat Contract
as Repudiated"

What is Warranty Section 12(3)

Warranty is stipulation
↳ Collateral to Main Purpose
of the Contract
↓
the breach of which gives rise
to claim for damages but not a
Right to Reject the Goods and
treat the Contract as Repudiated

A Stipulation May
be Condition
↓
though Called
Warranty in the
Contract.



Whether Condition or Warranty

Where stipulation is Condition
or Warranty it depends in
each case on Construction
of Contract



Example for Condition

Stephie wants to purchase a Car from Chotu, which can have Mileage of 20 km/litre. Chotu pointing at a Car and says "This will suit you". After buying the Car Mileage of Car was Top 15 km/litre. This Amount to Breach of Condition because

↳ the Seller Made the Stipulation which forms the essence of the Contract

Example for Warranty.

Ram buys a New Maruti Car, the Car is guaranteed against any Manufacturing defect under Normal Usage for one year. There was warranty to replace defective part. Ram finds the horn is not working.

↳ Ram Cannot terminate the Contract, but can get horn replaced. Also Ram gets right to Claim for damages but not right of Repudiation.

Difference between Condition and Warranty

Point of differences	Condition	Warranty
Meaning	A condition is a stipulation essential to the main purpose of the contract.	A warranty is a stipulation collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

When Condition to be treated as Warranty [Section - 12]

(i) . When the buyer altogether waives the performance of the Condition. A party may for his own benefit, waive a stipulation.

- It should be Voluntary waiver by buyer.

(ii) . Where the buyer elects to treat
↳ breach of Condition as breach of warranty

- Buyer may claim only damages, instead of repudiating the Contract.

- Buyer has not waived the Condition but decided to treat it as a warranty.

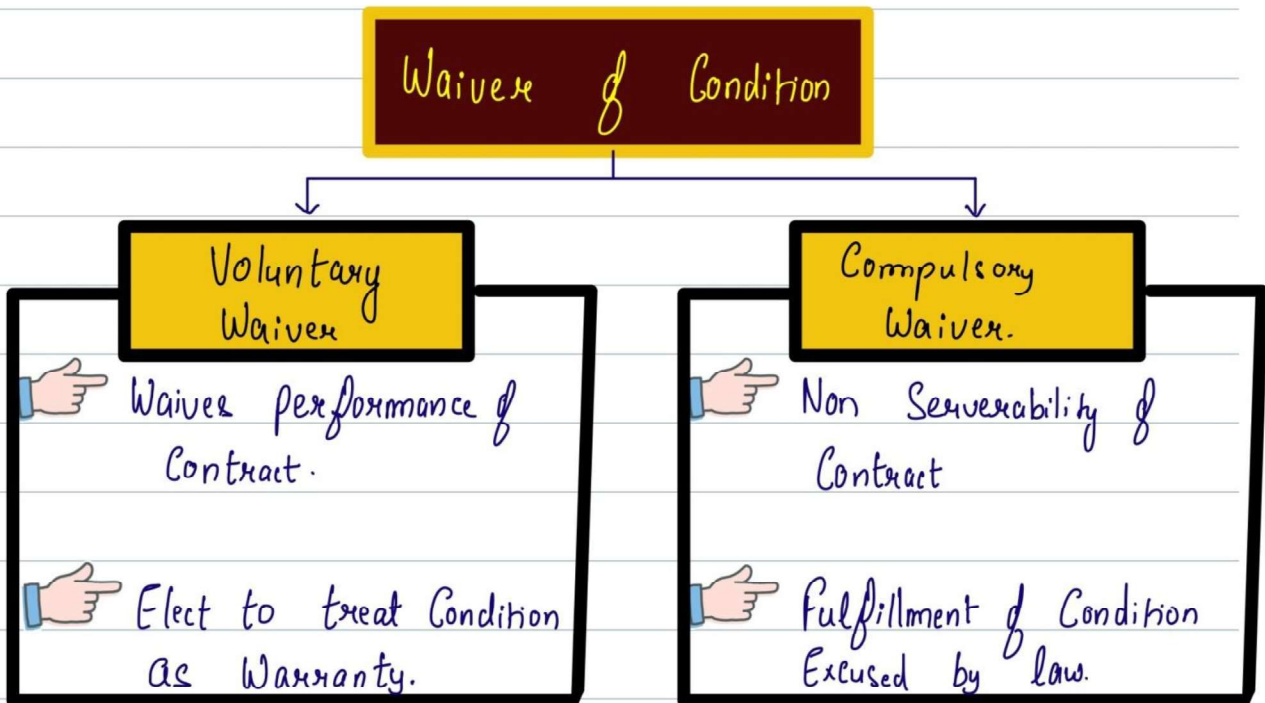
Example → A agrees to supply B, 10 bags of first quality sugar @ Rs 625 per bag. B supplied second quality sugar @ Rs 500 per bag. This is breach of Condition but buyer treated it as breach of warranty and accepted second quality goods and claim compensation at Rs 25 per kg.



(iii) Where the Contract is Non-Severable and the buyer has Accepted either the { Whole Goods (or) any part thereof.

Meaning of Acceptance?? Acceptance Means Acceptance as envisaged up 72 § Indian Contract Act.

(iv) Where the fulfillment of any Condition (or) warranty is excused by law { by Reason of Impossibility (or) otherwise.



Express and Implied Condition and Warranties [Section 14 to 17]

👉 Condition and Warranty May be either Express
(OR)
Implied

When Condition/Warranty is Express??

When terms Contract Expressly Stated them.

When Condition/Warranty is Express??

When terms Contract Not being Expressly Provided for

Implied Condition
are incorporated by Law
in Contract of Sale.

Express Condition are those which

Agreed between the parties
at the time of Contract
and
Are Expressly provided in
the Contract

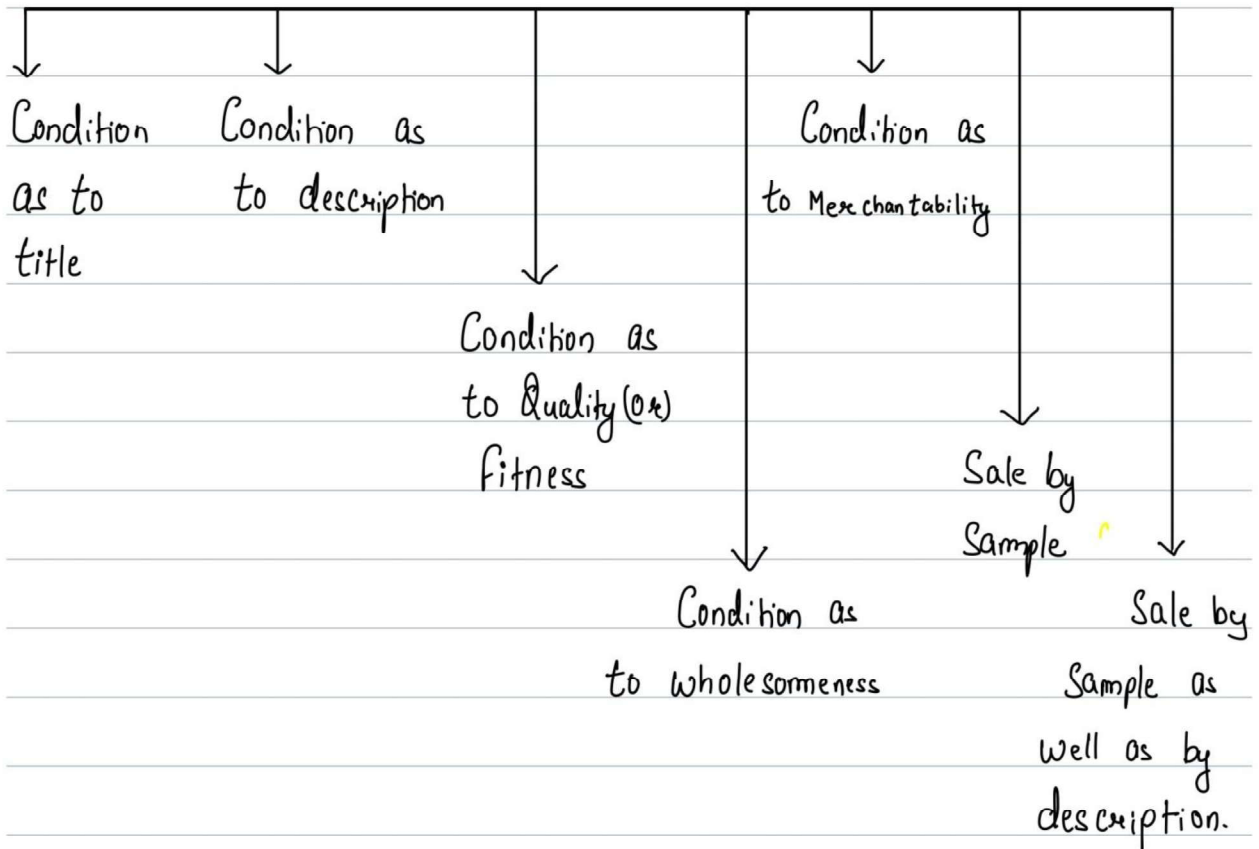
Implied Conditions are those
which are presumed by law
to be present in Contract.

It should be Noted that an
Implied Condition May be
waived by an Express Agreement.



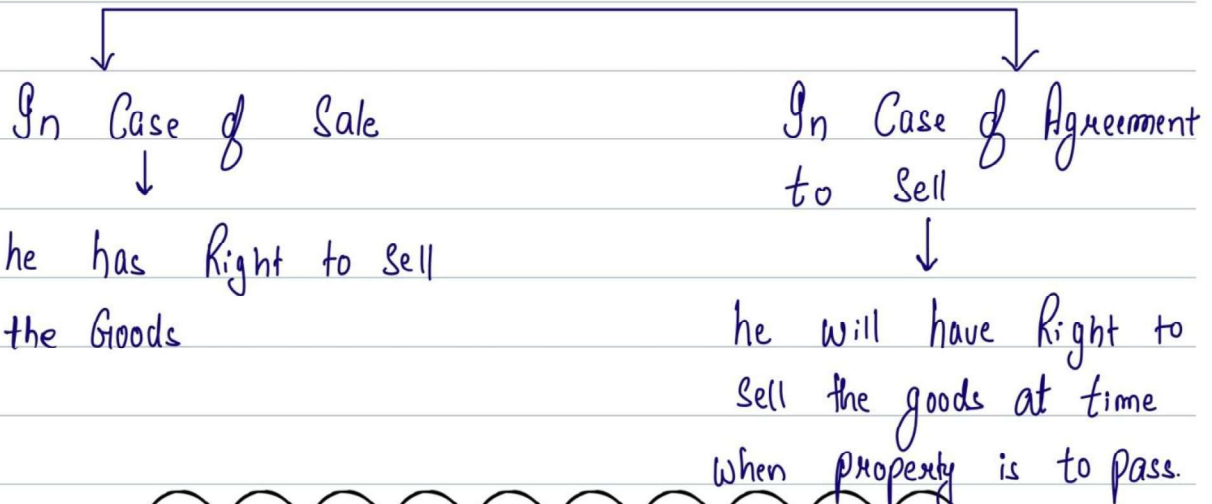
Implied Conditions

Following Conditions are Implied in Contract of Sale of Goods unless the Circumstances of the Contract show a different Intention :-



Condition as to title [Section 14(a)]

 In Every Contract of Sale, unless there is an Agreement to Contrary, the first Implied Condition on part of Seller is that:-



Final Conclusion

Condition Implied is that Seller has right to sell the Goods at time when property is to pass. If Seller title are defective the buyer Must Return the Goods and Recover Price.

Example → If A sells to B tins of Condensed Milk of "Cow" brand and it is proved an Infringement of "Amul" Company's Trademark. It will be breach of Implied Condition that "A" had Right to Sell.

Condition as to description / Sale by description

[Section - 15]

👉 When there is Contract of Sale of Goods by description, there is Implied Condition that
↳ the Goods shall correspond with Description.

The Rule is based on principle that ↴

"If you Contract to sell Peas, you Cannot Compell 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.

• If the description was essential for Identifying the Goods and buyer Agreed to purchase

+
Goods does not correspond with description

} the buyer is entitled to Reject the Goods.

Condition as to Quality/Fitness [Section - 16(C)]

DON'T
FORGET

Ordinarily there is no
Implied Condition as to Quality/
Fitness of goods sold for
any Particular Case

There is Implied Condition of the Seller that the goods supplied shall be Reasonably fit for the purpose, provided following Condition are satisfied:-

Condition - 1

The Buyer should have Made known to Seller the particular purpose for which the Goods are Required.

Condition - 2

Buyer should Rely on $\left[\begin{array}{l} \text{Skill \& } \\ \text{Judgement} \end{array} \right]$ of Seller.

Condition - 3

→ The Goods Must be of a description dealt in by the Seller
↳ Whether he be Manufacturer or not.

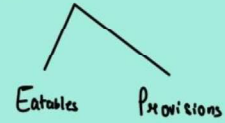
Example → "A" bought a set of false set of teeth from "B" [a dentist], but the set was not fit for "A" Mouth. A rejected the set of teeth and claimed refund of Price. A was entitled to same



Condition as to Wholesomeness

👉 In Case of Eatables and Provisions, in addition to the Implied Condition as to Merchantability
→ there is another Implied Condition that Goods shall be wholesome.

Applicable in case of

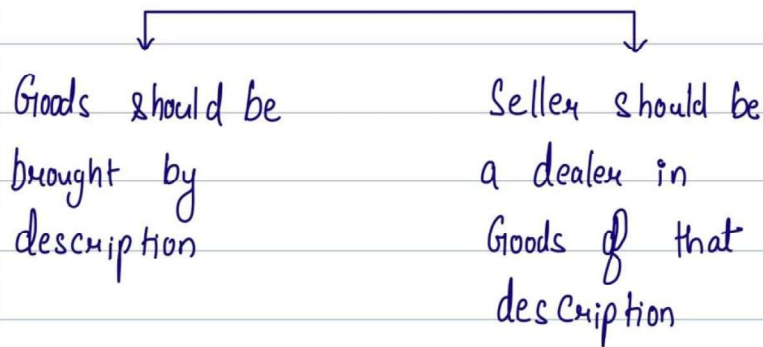


Example → Arvind Supplied Milk to Fatima. The Milk Contained typhoid Germs. Fatima daughter Consumed the Milk and died. Held there was a breach of Condition as to fitness and Arvind was liable to pay damages

Condition as to Merchantability [Section -16(2)]

👉 When the Goods are brought 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 Goods shall be of Merchantable Quality.

There are two Requirements for this Condition to apply



DON'T FORGET

Provided that if the buyer has examined the Goods, there shall be no Implied Condition when such examination ought to have Revealed.

What is Merchantable Quality

The expression Merchantable quality is not defined, however it refers to

Goods of such a quality and Goods are in such Condition } a Man of Ordinary Prudence would accept them as Goods by description.

Example → If a person order Motor horns from a Manufacture of horns, and the horns supplied are damaged
↓
Reject
he is Entitled to them as Unmerchantable.



Sale by Sample [Section 17]



In a Contract of Sale by Sample, there are 3 Implied Conditions.

Condition - 1 The Bulk shall correspond with sample in Quality.

Condition - 2 The Buyer shall have reasonable opportunity of comparing Bulk with sample.

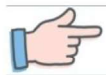
Condition - 3 The Goods shall be free from any defect rendering them Un-Merchandise which would not be Apparent on Reasonable examination of sample.

• This Condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of Goods.

• If the defects are latent [hidden defect], then the buyer can avoid the contract.

Example → A Company sold certain shoes made of special sole by sample for the French Army. The shoes were found contain paper not discoverable by ordinary inspection. It was held that buyer was entitled to the refund of price plus damages.

Sale by sample as well as by description [Section - 15]



When the Goods are sold by sample as well as by description

→ the implied condition is that, the bulk of Goods shall correspond both with Sample and
Description

In case Goods correspond with sample but do not tally with description (or) vice versa (or) both

→ the buyer can repudiate the contract.

Implied Warranties

☞ Implied warranty is warranty which law implies into the Contract of sale.

☞ It is the stipulation [Condition] which has not been included in Contract of Sale in express words
↳ but law presumes that the parties have Incorporated it into their Contract.

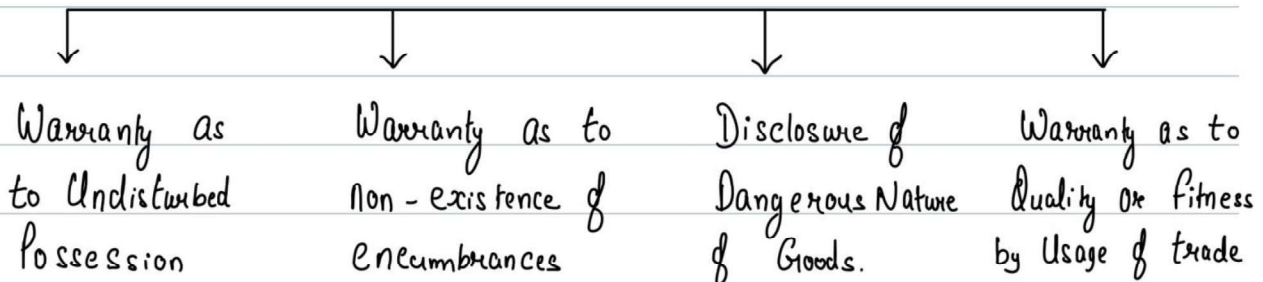
note to self:

DON'T FORGET


Implied Warranties are Considered into every Contract of Sale

↳ Unless they are expressly excluded by express agreement of parties.

Following are Implied Warranties




Warranty as to Undisturbed Possession [Section 14(b)]

 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.

Example → Stephanie buys Laptop from Arvind. After purchase Stephanie spends some money on repair. It was unknown to parties that Laptop was stolen and was taken by Stephanie and delivered to its rightful owner. Arvind shall be held responsible for breach and Stephanie was entitled to damages of not only price and also cost of repairs.

Warranty as to Non-Existence of Encumbrances [Section 14(c)]

 An Implied Warranty that the Goods shall be free from any

[Charge or]	} in favour of any third party

 Not declared or known to
buyers →
before or at the time the Contract is Entered into.

Example → A pledges his Car with C for a loan of ₹ 15000 and promises him to give possession on next day. A then sells Car to B, who purchased it on good faith.

Now B May

either ask A to clear the loan

or himself may pay the Money and then file a suit against A, for recovery of the Money with Interest.

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 Condition/Warranty as to [Quality (or)
fitness] for any particular purpose of Goods supplied, the Rule is

↓
"Let the buyers be Aware"



Disclosure of Dangerous Nature of Goods

👉 When the Goods are dangerous in Nature and the buyer is ignorant of the danger } the Seller Must warn the buyer of the probable danger

note to self:

If there is breach of warranty, Seller May be liable for damages.

Caveat Emptor

General Introduction

👉 In Case of Sale of Goods, the doctrine Caveat Emptor Means "Let the Buyer be Aware".

When Sellers display their Goods in open Market, it is for the buyers to Make a proper Selection or Choice.

The Seller is not Responsible for

- Bad Selection of Buyer
- Disclosing the defects in goods which he is selling.



Rule of Caveat Emptor [Section 16]



It states that

"Subject to Provisions of this Act or for any other law time being in force

} there is no Implied Warranty (or) Condition as to Quality (or) Fitness for any particular purpose of Goods supplied under a Contract of Sale."

Following are Condition to be satisfied	
Condition - 1	If buyer had Made known to Seller the purpose of his purchase
Condition - 2	The buyer Relied on the Seller's Skill and Judgement.
Condition - 3	Seller's business to Supply Goods of that description.

Example → "A" purchase horse from "B". A needed horse for riding but did not mention this fact to B. The horse is not suitable for riding but for Carriage. Caveat Emptor Rule applies here
↓
So A can neither Reject the horse nor can claim Compensation.

Exceptions to Caveat Emptor

1 Fitness as to Quality (or) Use



Where the buyer makes known to seller the particular purpose for which the goods are required



Show that he relies on the seller's skill (or) judgment



the goods are of description which is in the course of seller's business to supply



it is duty of the seller to supply such goods as are reasonably fit for that purpose

Example → An order was placed for some trucks to be used for heavy traffic in a hilly country. The truck supplied by seller were unfit for this purpose and broke down. This is breach of condition as to fitness.



Priest v/s Last



P, a drapper purchased a hot water bottle from retail chemist, P asked the chemist if it would stand boiling water. The chemist told him that the bottle was meant to hold hot water. The bottle burst when hot water was poured into it and injured his wife

It was held that chemist is liable to pay damages to P, as he knew that bottle was purchased for the purpose of being used as hot water bottle.



Bombay Burma Trading Corporation Ltd v/s Aga Muhammad

Timber was purchased for express purpose of using it as railway sleepers and when it was found to be unfit for the purpose the court held that contract can be avoided

2. Goods Purchased under Patent (or) Brand Name



In case where the goods are purchased under its

→ Patent Name } there is no implied condition that the goods
 → Brand Name } shall be fit for any particular purpose

3. Goods Sold by description

☞ Where the Goods sold by description, there is Implied Condition that the Goods shall correspond with description.

If it is not so then seller is responsible.

4. Goods of Merchant Quality

☞ Where the Goods are bought by description from a seller who deals in Goods of that description

→ there is Implied Condition that the Goods shall be of Merchantable Quality.

[The Rule of Caveat Emptor is not applicable]

But where the buyer has examined the Goods this Rule shall apply if the defects were such

↳ which ought to have been revealed by Ordinary Examination.

5. Sale by Sample.

☞ Where the Goods are bought by sample, the Rule of Caveat Emptor does not apply if

→ the bulk does not correspond with the sample.