

Unit - 2

Conditions & Warranties

* Stipulation as to time:

■ Stipulation as to the time of payment are not deemed to be the essence from the terms of the contract of sale, unless terms of contract state otherwise.

■ Delivery of goods must be made without delay.

■ Stipulations as to time of delivery are usually the essence of the contract.

* Condition:

• 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.

* Warranty:

• A Warranty is a stipulation

• Co-lateral to the main purpose of the contract.

- The breach of which gives rise to a claim for damages.

- But not to a right to reject the goods and treat the contract as repudiated.

* Condition:

A consults S, a car dealer for suggesting car suitable for towing purposes.

* Warranty:

A buys the car, later experiences manufacturing defects in certain parts.

* Difference between Condition and Warranty:

i) Main purpose of buying A Collateral

ii) Repudiate or claim damages Claim damages only

* Conversions of stipulations: Breach of condition may be treated as breach of warranty and not vice versa.

- Option of the buyer

- Circumstances are such that goods cannot be returned

- Acceptance of only part of goods - if divisible, buyer can reject the remaining goods otherwise need to accept remaining part.

■ Fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

* Express and Implied Conditions:

★ Express Conditions are those, 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 present in contract.

* Implied Conditions:

=> Condition as to title:

A purchased tractor from B who had no title. Later true owner claimed it back.

=> Condition as to description:

A sells to B 12 bags of waste silk... It should be such as known in market.

=> Sale by sample:

Seller allows the buyer to inspect wheat as sample.

=> Sale by sample as well as description:
Sold sunflower oil by sample
but also had mixture of hemp oil.

=> Condition as to quality or fitness:
A bought set of false teeth
but the set was not fit for A's mouth.

=> Condition as to merchantability:
A bought a black velvet
cloth but found it to be damaged by
white ants.

=> Condition as to wholesomeness:
A supplied F with milk
which was contaminated.

* Implied Warranties:

i) Warranty as to undisturbed possession.

ii) Warranty as to non-existence of encumbrances.

iii) Disclosure of dangerous nature of goods.

iv) Warranty as to quality or fitness by usage
or trade.

=> Undisturbed possession:
A purchased a second hand typewriter which happened to be stolen.

=> Non existence of encumbrances:
S sells a car which was given as security by Y against a loan.

=> Disclosure of dangerous nature:
A tin of disinfectant powder to be opened with care.

=> Usage of trade:
Shares purchased from broker expected to be free from bad deliveries.

* Doctrine of Caveat Emptor:

=> It means: Let the buyer beware

Conditions:

1. If the buyer had made known the purpose of purchase.

2. The buyer relied on the seller's skill and judgement.

3. Seller's business to supply goods of that business.

* Duties of the Buyer:

□ It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purposes for which they have been bought.

□ If they turn out to be defective or do not serve his purpose or depends on his own skill or judgement, the buyer cannot hold the seller liable.

□ Seller not bound to disclose the defects in the goods.

* Woods Vs. Hobbs (1878)

- B bought the pigs by auction.
- Very soon they fell sick and died.
- There is no implied condition or warranty as to the quality or fitness for any particular purpose.
- B's duty to find out the healthiness.
- B could not recover damages.

Exceptions (Duty of the seller)

- i) Fitness as to the quality or use
- ii) Goods purchased under patent or brand
- iii) Goods sold by description
- iv) Goods of merchantable quality
- v) Sale by sample
- vi) Goods by sample as well as description
- vii) Trade usage
- viii) Seller actively conceals a defect or is guilty of fraud.