

Unit-2 Conditions and Warranties

* Stipulation as to Time [Sec. 11]

- Time for the payment of price unless stipulated is not deemed to be the essence of a contract of sale.
- But delivery of goods must be made without delay.

* Conditions and Warranties

- 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.
- A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not right to reject the goods and treat contract as repudiated.

* When Condition to be treated as Warranty [Sec. 13]

- Buyer loses right to repudiate and can only claim damages.
 - (i) Voluntary waiver by Buyer.
 - (ii) Claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as Warranty.
 - (iii) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.
- Where the contract is non-severable and the buyer has accepted either the whole goods or any part.

* Implied Conditions :-

(i) Condition as to title [Sec. 14(a)]

- Seller has the right to sell the goods at the time when the property is to pass.
- If seller's title turns out to be defective, the buyer must return the goods to the true owner and recover the price from seller.

(ii) Sale by Description [Sec. 15]

- In case of Sale by Description → Goods shall correspond with the description. Buyer can reject goods if not per description.

(iii) Sale by Sample [Sec. 17]

- Bulk shall correspond with sample's quality.
- Buyer shall have reasonable opportunity to compare sample and Bulk.
- Buyer shall be free from any defect rendering them unmerchantable, which would not be apparent reasonable examination of sample.

(iv) Sale by Sample as well as Description [Sec. 15]

- Bulk of good supplied shall correspond with both sample and description.
- If goods correspond with sample but not with description or vice versa ⇒ Then Buyer can repudiated contract.

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

→ The goods supplied shall be reasonably ^{fit} for the purpose for which the buyer wants them.

• following conditions are to be fulfilled :-

(i) Buyer should have made known to the seller the particular purpose for goods are required

(ii) Buyer should rely on the skills and judgement of seller.

(iii) Goods must be of a description dealt in by the seller

(vi) Condition as to Merchantability [Sec. 16(2)]

→ Requirement for condition to apply :-

• Seller should be a dealer in goods of that description

• Goods should be bought by description

→ Provided that, if buyer has examined the goods → There shall be no implied conditions as regards defects which such examination ought to have revealed.

(vii) Condition as to wholesomeness

→ In case of eatables and provisions (in addition to implied conditions as to merchantability) → Goods shall be wholesome.

* Implied Warranties :-

(i) Warranty as to undisturbed possession [Sec. 14(b)]

- Buyer shall have and enjoyed quiet possession of the goods.
- If buyer got possession → and later on disturbed in his possession → he can sue the seller for breach of warranty.

(ii) Warranty as to non existence of encumbrances [Sec. 14(c)]

- Goods shall be free from any charge in favour of any third party not declared or known to buyer before or at time of contract.

(iii) Warranty as to quality or fitness by usage of trade [Sec. 16(3)]

- Quality or fitness for a particular purpose may be annexed or attached by the usage of trade.

(iv) Disclosure of dangerous nature of goods

- Where the goods are dangerous in nature and buyer is ignorant of the danger.
- Seller must warn the buyer of probable danger.
- If there is breach of warranty, seller may be liable for damages.

* Caveat Emptor

- It means 'let the buyer beware'
- When seller displays good in open market, it is for the buyers to make proper selection or choice of goods.
- If the goods turns out to be defective, he cannot the seller liable.
- Seller is not bound to disclose the defects in the goods which he is selling.
- It is the duty of the buyer to satisfy himself before buying the goods.
- If the goods turns out to be defective or do not serve his purpose of if it depends on his own skill or judgement → the buyer cannot hold the seller responsible

* Exceptions of Caveat Emptor :-

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