

Condition & Warranties

Condition

- It is a stipulation which is essential to the main purpose of the contract.

Section 12(2)

- The breach of which gives the aggrieved party right to either :-

(a) treat the contract as rescinded.

(b) has a right to recover full price.

Warranty

- It is the stipulation which is collateral to the main purpose of the contract.

Section 12(3)

- The breach of which gives the aggrieved party right not to treat the contract as rescinded but the right to claim damages only.

Condition

- a stipulation essential to the main purpose of the contract.

- The aggrieved party can repudiate the contract or claim the damages or both.

- a breach of condition may be treated as a breach of warranty.

Warranty

- a stipulation collateral to the main purpose of the contract.

- The aggrieved party can claim the damages only.

- a breach of warranty cannot be treated as breach of condition.

* When condition is to be treated as warranty (section 13) (NEEW)

- When the buyer elects to treat this breach of condition as warranty. Then he may claim damages only instead of repudiating the contract.
- When the contract is non- severable & buyer has accepted either the whole or part thereof.
- Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.
- Where the buyer altogether waives the performance of the condition. It should be voluntary waiver by buyer.

* Express & Implied Conditions & Warranties

- **Express Conditions** - are those, which are agreed upon b/w the parties at the time of contract & are expressly provided in the contract.
- **Implied Conditions** - are those which are presumed by law to be present in the contract

Implied Conditions

- | | | |
|----------------------------------|---|---------------------------------------|
| • Condition as to title | • Sale by description | • Condition as to merchantability. |
| • Sale by Sample | • Sale by sample as well as description | • Condition as to quality or fitness. |
| • Condition as to wholesomeness. | | |

(1) **Condition as to title** - In every contract, the first implied condition is that :-

Section 14(a)

- in case of sale, he has a right to sell the goods.
- in case of an agreement to sell, he will have the right to sell the goods.

If the seller's title is turns out to be defective, buyer must return the goods to true owner & recovers the full price from the seller.

(2) **Sale by description** - There is an implied condition that the goods shall correspond with description.
(Section 15)
The buyer is not bound to accept & pay for the goods which are not in accordance with the description of goods.

(3) **Sale by Sample** - There is an implied condition that:-
(Section 17)

- Bulk shall correspond with the sample in quality.
- Buyer shall have a reasonable opportunity of comparing the bulk with sample.
- Goods shall be free from any defect rendering them unmerchantable.

(4) **Sale by Sample as well as by description** (Section 15)
There is an implied condition that bulk of the goods shall correspond with both sample & description. If they do not tally with description or sample both, the buyer can repudiate the contract.

(5) **Condition as to quality or fitness**
Section 16(1)
- There is no implied condition as to quality or fitness of goods sold for any particular purpose.
- This will not apply if the goods have been sold under a trademark or patent name.
- There is implied condition of the part of the seller that the goods supplied shall be reasonably fit for the purpose for which buyer wants them.

provided the following conditions are fulfilled:-

- Buyer should have made known to the seller the particular purpose for which goods are required.
- The buyer should rely on the skill & judgement of the seller.
- The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

(6) **Condition as to merchantability** - where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality.

The two conditions to apply:-

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

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

(7) **Condition as to wholesomeness** - In case of eatables & 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 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.

- warranty as to undisturbed possession.
- warranty as to non-existence of encumbrances.
- " " " quality or fitness by usage of trade
- disclosure of dangerous nature of goods.

(1) **warranty as to undisturbed possession** - An implied warranty that the buyer shall have & enjoy quiet possession of the goods. If the buyer's possession got disturbed, he is entitled to sue the seller for the breach of warranty.

(2) **warranty as to non-existence of encumbrances** - 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 or at the time the contract is entered into.

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

(4) **Disclosure of dangerous nature of goods** - Where the goods are dangerous in nature & the buyer is ignorant of the danger, the seller must warn the buyer of the probable damages. If there is a breach of warranty, the seller may be liable for damages.

Caveat Emptor

- It means 'let the buyer beware'.
- It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.
- There is no implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.

Following conditions must fulfilled:-

- Buyer have made known to the seller the purpose of his purchase.
- Buyer relied on seller's skill & judgement.
- Seller's business to supply goods of that description.

* Exceptions to the doctrine of Caveat Emptor

- **Goods purchased under patent or brand name** - where the goods are purchased under brand name or trademark, there is no implied condition that the goods shall be fit for any particular purpose. Here the buyer is relying on particular brand name.
[Section 16(1)]
- **Goods by description** - There is an implied condition that the goods shall correspond with description, if not so, then seller is responsible.
(Section 15)
- **Sale by sample** - where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample.
(Section 17)
- **Goods by sample as** where the goods are bought by sample as

well as description
(Section 15)

well as description, the rule of caveat emptor is not applicable as the goods do not correspond with both sample & description.

• **Trade usage** - An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by usage of trade & if the seller deviates from that, this rule of caveat emptor does not apply.
[Section 16(3)]

• **Seller actively conceals a defect or is guilty of fraud** - When the seller sells the goods by making some misrepresentation or fraud or he actively conceals some defect in the goods & buyer relies on it, then the rule of caveat emptor does not apply. In such a case buyer has a right to avoid the contract & claim damages.

• **Goods of merchantable quality** [Section 16(2)] - When the goods are bought by description from the seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. The rule of caveat emptor is not applicable is not applicable for latent defects.

• **Fitness as to quality or use** [Section 16(1)] - where the buyer makes known to the seller the particular purpose for which the goods

are required & buyer relies on seller's skill & judgement, it is the duty of the seller to supply such goods as are reasonable fit for that purpose.