

CONDITION AND WARRANTY

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CONDITIONS & WARRANTIES (SEC. 11-17)

- In a contract of sale, parties make certain stipulations, i.e., agree to certain terms regarding the quality of the goods, the price and the mode of its payment, the delivery of goods and its time and place
- All stipulations cannot be treated on the same footing
- Some may be intended by the parties to be of a fundamental nature, eg. Quality of the goods to be supplied, the breach of which therefore will be regarded as a breach of the contract
- Some may be intended by the parties to be binding, but of a subsidiary or inferior character, eg., time of payment, so that a breach of these terms will not put an end to the contract but will make the party committing the breach liable to damages
- The former stipulations are called 'conditions' and the latter 'warranties'

STIPULATIONS AS TO TIME

- Stipulations as to time in a contract of sale fall under the following two heads:
 1. Stipulation relating to time of delivery of goods
 2. Stipulation relating to time of payment of the price

As regards the ***time fixed for the delivery of goods***, time is usually held to be the essence of the contract'. Thus if time is fixed for delivery of the goods and the seller makes a delay, the contract is voidable at the option of the buyer. In case of late delivery, therefore, the buyer may refuse to accept the delivery and may put an end to the contract.

STIPULATIONS AS TO TIME

- As regards the *time fixed for the payment of the price*, the general rule is that 'time is not deemed to be the essence of the contract', unless a different intention appears from the terms of the contract (sec. 11). Thus even if the price is not paid as agreed, the seller cannot avoid the contract on that account. He has to deliver the goods if the buyer tenders the price within reasonable time before resale of the goods. The seller may, however, claim compensation for the loss occasioned to him by the buyer's failure to pay on the appointed day.

CONDITIONS & WARRANTIES (SEC. 11-17)

- Sec. 12(2) defines a 'condition' as, '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' (denied),
- Sec 12(3) defines a 'warranty' as, 'stipulation collateral to the main purpose of the contract, the breach of which gives rise to claim for damages but not to a right to reject the goods and treat the contract as repudiated' .

CONDITIONS & WARRANTIES (SEC. 11-17)

- The effect of a breach of a 'condition' is to give the aggrieved party a right to treat the contract repudiated, i.e., if price has been paid, the buyer can claim the refund of price plus damages for breach
- In case of breach of 'warranty', only damages can be claimed, i.e., the buyer must accept the goods and claim damages for the breach of warranty
- Whether a stipulation in a contract of sale is a 'condition' or a 'warranty' depends in each case on the construction of the contract
- A stipulation may be a condition though called a warranty in a contract [sec. 12(4)]

CONDITIONS & WARRANTIES (SEC. 11-17)

Example: 1

Kaushal asks a dealer to supply him a shirt which would not shrink after use and wash. The dealer supplies a shirt which shrinks after use and wash. Kaushal can reject the shirt or keep the shirt and claim damages. Here the stipulation to supply a shirt which would not shrink after use and wash is a condition.

Now if Kaushal buys a particular shirt which is warranted by the dealer to be one which would not shrink after use and wash and the shirt does shrink after use and wash, Kaushal's only remedy is to claim damages

CONDITIONS & WARRANTIES (SEC. 11-17)

- **Example: 2**

A man buys a particular horse which is warranted quiet to ride and drive. If the horse turns out to be vicious, the buyer's only remedy is to claim damages. But if instead of buying a particular horse, a man asks a dealer to supply him with a quiet horse and the dealer supplies him with a vicious one, the stipulation is a condition, and the buyer can return the horse and can also claim damages for breach of contract (Hartley vs Hyman)

- The illustrations are a clear proof of the fact that an exactly similar term may be a condition in one contract and a warranty in another depending upon the construction of the contract as a whole

CONDITION & WARRANTY DISTINGUISHED

1. As to value:

A condition is a stipulation which is essential to the main purpose of the contract, whereas a warranty is a stipulation which is collateral to the main purpose of the contract.

2. As to breach:

The breach of a condition gives the aggrieved party the right to repudiate the contract and also to claim damages.

3. As to treatment:

A breach of condition may be treated as a breach of warranty. But a breach of warranty cannot be treated as a breach of condition.

CONDITIONS AND WARRANTIES

- As a general rule, a person buying something, is duty bound to see whether that thing suits his propose.
- This is called the doctrine of *caveat emptor*.
- When a seller gives an express assurance regarding the product, he is bound to honour that.
- Law presumes that product should meet certain minimum standards,
- breach of which has the same effect as the breach of express assurances or stipulations.
- Such legal presumptions are called implied **conditions** and **warranties**.

• Implied Conditions

- 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. [Sec 12(12)]

• Implied Warranties

- A warranty is a stipulation collateral to the main purpose of the contract, breach of which gives rise to a claim for damages, but not a right to reject the goods and treat the contract as repudiated. [Sec 12(3)]

TYPES OF IMPLIED CONDITIONS

- a) Condition as to title
- b) Sale by description
- c) Sale by Sample
- d) Sale by description as well as sample
- e) Condition as to fitness or quality
- f) Condition as to Merchantability
- g) Conditions implied by trade usage
- h) Condition as to wholesomeness
- i) Marketability

Implied conditions and warranties:

s. 13: In a contract of sale... there is,

(a) an implied condition on the part of the seller that in the case of a sale the seller has a right to sell the goods, and that in the case of an agreement to sell the seller will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the buyer will have and enjoy quiet possession of the goods; and

(c) an implied warranty that the goods will 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 when the contract is made.

Sale by description:

s. 14: Where ... contract for the sale of goods by description, there is an implied condition that the goods will correspond with the description...

Implied conditions as to quality or fitness

s. 15(1): Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required ... there is an implied condition that the goods will be reasonably fit for such purpose

...but in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.

s. 15(2): Where goods are bought by description ... there is an implied condition that the goods will be of merchantable quality...

...but if the buyer has examined the goods, there is no implied condition as regards defects that such examination ought to have revealed.

Sale by sample

16. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

Implied conditions:

16. (2) In the case of a contract for sale by sample, there is an implied condition,

- (a) that the bulk will correspond with the sample in quality;
- (b) that the buyer will have a reasonable opportunity of comparing the bulk with the sample; and
- (c) that the goods will be free from any defect rendering them unmerchantable that would not be apparent on reasonable examination of the sample.

- *Implied conditions under a sale by sample (Section 15)*

- In a sale by sample:
 - (a) there is an implied condition that the bulk shall correspond with the sample in quality;
 - (b) there is another implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
 - (c) it is further an implied condition of merchantability, as regards latent or hidden defects in the goods which would not be apparent on reasonable examination of the sample.
- "Worsted coating" quality equal to sample was sold to tailors, the cloth was found to have a defect in the fixture rendering 'the same unfit for stitching into coats. The seller was held liable even though the same defect existed in the sample, which was examined.

IMPLIED WARRANTIES

- (i) *Warranty as to quiet possession*
- (ii) *Warranty as to freedom from encumbrances*
- (iii) *Warranty to disclose dangerous nature of goods*
- (iv) *Warranties implied by the custom or usage of trade*

WHEN CONDITION SINKS TO THE LEVEL OF WARRANTY

- (a) A condition will become a warranty where the buyer waives the condition, or
- (b) A condition will sink to the level of a warranty where the buyer treats the breach of condition as a breach of warranty; or
- (c) Where the contract is indivisible and the buyer has accepted the goods or part thereof. the breach of condition can only be treated as breach of warranty: The buyer can only claim damages and cannot reject the goods or treat the contract as repudiated.

WHEN BREACH OF CONDITION IS TO BE TREATED AS BREACH OF WARRANTY

- Section 13 deals with cases where a breach of condition is to be treated as a breach of warranty, as a consequence of which the buyer loses his right to rescind the contract and has to be content with a claim for damages only.
- These cases are as follows:
 1. Voluntary waiver by buyer:
 - Although on a breach of condition by the seller, the buyer has a right to treat the contract as repudiated and reject the goods, but he is not bound to do so
 - He may instead elect to waive the condition, i.e., to treat the breach of condition as a breach of warranty and accept the goods and sue the seller for damages for breach of warranty

WHEN BREACH OF CONDITION IS TO BE TREATED AS BREACH OF WARRANTY

- **Illustration:**

A agrees to supply B 10 bags of first quality sugar @ Rs. 1625 per bag but supplies only second quality sugar, the price of which is Rs. 1500 per bag. There is a breach of condition and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, accept the second quality sugar and claim damages @ Rs. 125 per bag.

EXPRESS & IMPLIED CONDITIONS & WARRANTIES

Express condition or warranty:

These may be of any kind that the parties may choose to agree upon, eg, it may be agreed that delivery of goods shall be made or taken on or before a certain date. Similarly, in a contract of sale of a car, express warranty as to its soundness may be incorporated

Implied conditions and warranties:

They are deemed to be incorporated by law in every contract of sale of goods unless the terms of the contract show a contrary intention

IMPLIED CONDITIONS

- i. Condition as to title (sec. 14)
- ii. Sale by description (sec. 15)
- iii. Condition as to quality or fitness for buyer's purpose [sec. 16(1)]
- iv. Condition as to merchantable quality [sec. 16(2)]
- v. Condition as to wholesomeness
- vi. Implied condition in the case of sale by sample (sec. 17)
- vii. Implied condition in the case of sale by sample as well as description (sec. 15)

TRANSFER OF OWNERSHIP

- A contract of sale is performed in two inter-related stages
- 1-Transfer of possession of goods
- 2-Transfer of ownership of goods

Followings reason-

A-Risk of Losses-

B-Only owner can sue-if third party destroyed or damaged

C-Insolvency of buyer & Seller-when seller or buyer become insolvent then liquidator can take over property

D-Suit for price-only seller can sue.

TIME WHEN PROPERTY PASSES

- 1-in case of unascertained goods
- 2-in case of ascertain goods
- 3-In case of goods sent on approval basis

DOCTRINE OF CAVEAT EMPTOR

- The term *caveat emptor* is a Latin word which means "let the buyer beware"
- This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires.
- If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose.

- Section 6 provides that "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".
- In simple words, it is not the seller's duty to give to the buyer the goods which are fit for a suitable purpose of the buyer.
- If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose.

- Exceptions to the doctrine of *Caveat Emptor*:

- Where the seller makes a false representation and the buyer relies on it.
- When the seller actively conceals a defect in the goods which is not visible on a reasonable examination of the same.
- When the buyer, relying upon the skill and judgement of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.
- Where goods are bought by description from a seller who deals in goods of that description.