

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

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### ABSTRACT

This research paper contains a brief note of sale of goods act 1923 - sect 16, Conditions and Warranties are two significant types of contractual stipulations which basically create rights and obligations. In the current scratch of paper the researchers will elucidate about conditions, warranties and representations made under insurance contract, their difference and the consequences of breach of such conditions. The researcher will deal with the condition which comes under Sec (2) and also warranty which defined in Sec 12(3). In this research paper researcher will express when a condition descends to the level of a warranty. The researcher will also discuss the doctrine of caveat emptor.

**KEYWORDS:** Stipulation, condition section (2), warranty section 12(3), contract of sale, seller, buyer, caveat emptor, merchantability.

### INTRODUCTION

At the time of selling the goods, a seller usually makes certain statements or representations with a view to induce the intending buyer to purchase the goods. Such representations are generally about the nature and quality of the goods and about their fitness for the buyer's purpose. These representations aim at giving satisfaction to the buyer.

Some of these representations are merely opinion which does not form a part of contract of sale; on the other hand some of them become a part of contract of sale.

A representation which forms a part of the contract of sale and affects the contract is known as a 'stipulation' which may be either a condition or a warranty. Though condition and warranty represent the promise made by the seller, the Sale of Goods Act recognizes them separately as both differ in their nature.

## CONDITIONS

The term 'condition' is defined in section (2) of the Sale of Goods act as under.

“A condition is an essential stipulation essential to main purpose of the contract, the breach of which gives right to repudiate the contract and to claim damages.”

A condition is an important representation made by the seller and it is the main purpose of the contract. It is so important that its non-performance may fairly be considered by the other party as a substantial failure to perform the contract. If it proves to be false, the buyer has the right to terminate the contract and to have a refund of the price.

### TYPES OF CONDITIONS

#### EXPRESS CONDITIONS:

Express conditions are those which have been explicitly agreed upon by both the parties at the time of making the contract of sale. It is open to the both the parties to contract, to include any number of express conditions in the contract.

#### IMPLIED CONDITIONS:

It is the stipulation which has not been included in the contract of sale in express words. But the law assumes that the parties have incorporated it into their contract. Both the parties are obliged by the implied conditions unless they are excluded by the express agreement of the parties.

### TYPES OF IMPLIED CONDITIONS

Following are the implied conditions which are contained in the Sale of Goods Act:

#### Conditions as to title Sec 14(a)

Title signifies ownership. Condition as to title is a tectonic implied condition in every contract of sale. According to this condition, it is presumed that the seller has a valid title to the goods, i.e., he has the right to sell the goods. A seller would not have the right to sell when he is neither the owner nor the agent of the owner. If the title of the seller turns out to be defective, the buyer must return the goods and recover the price from the seller. The condition regarding seller's title is very necessary to protect the interest of innocent buyers.

This implied condition may be evaluated as under:

- In case of the sale, the implied condition is that the seller has the right to sell the goods, and
- In case of an agreement to sell, the implied condition is that the seller will have the right to sell the goods at the time when the ownership is to pass from the seller to the buyer.

### **Conditions as to description Sec 15**

Sporadically, the goods are sold by description. In such cases, the implied condition means the goods shall correspond with the description. The word 'correspondence with description' means that the goods purchased by the buyer must have the same which were described by the seller. If subsequently, it is discovered that the goods do not correspond with the description, the buyer can claim the refund of the price, if already paid. Sale of goods by description may include the following two situations:

- Where the buyer has not seen the goods and relies on their description given by the seller.
- Where the buyer has seen the goods but he relies on the description given by the seller.

### **Condition as to sample Sec 17**

Where the goods are sold by sample the following implied conditions are to be fulfilled

- The goods purchased in bulk shall correspond with the sample in quality
- The buyer shall have a reasonable opportunity of comparing the bulk with the sample
- Goods shall be free from any latent defect, i.e. hidden defect which is not discoverable by reasonable examination of goods

### **Conditions as to sample as well as description Sec 15**

Sometimes, the seller performs a sample of the goods to the buyer and also gives him their description. In such cases, the implied condition is that the goods shall correspond with both, the sample as well as description. If they do not correspond either with the sample or the description, the buyer has the right to reject the goods.

**Condition as to quality or fitness of goods for the buyer's purpose**

Sec 16 states that the buyer is expected to know the purpose for which he is purchasing the goods and thus whether or not the goods will fit the buyer's purpose is for the buyer to decide and the seller cannot be held liable if the goods purchased do not serve buyers purpose. Thus there is no implied condition as to quality or fitness. The buyer must examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for the purpose for which he is buying.

Sec 16(1) However in the following situation the responsibility of the fitness as to goods falls on the seller.

- If the buyer makes his purpose clear for which he requires goods to the seller
- If the buyer buys the goods 'relying upon the seller's skill and judgement'.

**Condition as to merchantability Sec 16(2)**

The term 'merchantability' that there is no defect in the goods and they are suitable for the general purpose for which they are produced. The term 'merchantability' has not been defined on the Sale of Goods Act. However, it has been interpreted by the court, and fundamentally, it means the following two things:

- If the goods are purchased for resale, then they should be immediately re-saleable in the market under their description.  
For an instance, the cement turned into stone by water, is not merchantable
- If the goods are purchased for self-use, then they should be reasonably fit for the purpose for which they are generally used. E.g. A T.V which does not work or a pen that will not write, cannot be treated as merchantable

**Condition annexed by custom or usage of trade Sec 16(3)**

Sometimes by the very nature of the transaction the seller can know the purpose for which the buyer is purchasing the goods as it can be contemplated by usage of trade. In other words it can be stated that the seller can contemplate the buyer's from the kind of goods he is purchasing.

When a person purchase a thermometer, the seller can easily contemplate the purpose for

which such goods are purchased. In such cases where the seller can contemplate the purpose of purchase, an implied condition would arise regarding the quality and fitness of such goods for the buyer's purpose.

### **Condition as to wholesomeness**

It is applicable in cases of eatables, i.e. foodstuffs and other goods which are used for human consumption. As per this condition, the goods supplied must not only answer to the description and be merchantable but must also be wholesome, i.e. free from any defect which renders them unfit for human consumption.

### **WARRANTIES**

The term 'warranty' is defined in Sec 12(3) of the Sale of Goods Act as under.

"A warranty is a stipulation collateral to the 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 repudiate".

In some other words, a warranty is a representation by the seller. It is not a very important factor in the sale of the goods. It is only collateral to the main purpose of the contract. He can only claim damages from the seller.

### **TYPES OF WARRANTIES**

#### **EXPRESS WARRANTIES:**

It is a warranty which has been expressly agreed upon by both the parties at the time of formation of the contract of sale.

#### **IMPLIED WARRANTY:**

It is a warranty which the law implies into the contract of sale. In other words, it is the stipulation which has not been included in the contract of sale in express word, but it presumes that the parties have incorporated it into their contract.

## **TYPES OF IMPLIED WARRANTIES**

### **Warranty as to quiet possession Sec 14(b)**

It is a significant implied warranty in every contract of sale. According to this warranty, it is presumed that the buyer shall have and enjoy the quiet possession of goods. This means that when the buyer has obtained the possession of the goods, he has a right to enjoy them in any way he likes i.e. no one should interfere with the quiet enjoyment of the buyer. If the buyer's right of possession and enjoyment is disturbed by anyone having the superior title to the goods, then the buyer can recover damages from the seller through the Court of Law.

### **Warranty as to be free from encumbrance. Sec 14(c)**

According to this warranty, it is presumed that the goods shall be free from any charge or encumbrance in favour of any third person not declared or known to the buyer before or at the time when the contract is made. If the possession of the buyer is disturbed due to such charge in favour of a third party, he can claim damages from the seller.

### **Warranty to disclose the dangerous nature of the goods**

Where the goods to be sold in a contract are of dangerous nature and can cause loss to the buyer when in possession or in use by him, and the seller is aware of it and he knows that the buyer does not, then, it would be the seller's duty to warn the buyer about this. If the buyer is not informed and he suffers loss, the seller shall be liable for compensations.

## **DOCTRINE OF CAVEAT EMPTOR**

The term Caveat emptor is a combination of two Latin words. Caveat means caution or warning or beware and Emptor means the buyer, the purchaser.

Caveat emptor means: let the buyer be aware.

Generally it is not the seller's duty to take initiative to disclose the defects in the goods or make inquiries about the buyer's need. When the seller displays their goods in open market, the buyer must make a proper selection of the goods and he should be careful to see that the goods purchased will serve his purpose,

Section 16, If the buyer later on finds that the goods do not serve the purpose, or if the goods turn out to be defective buyer cannot hold the seller be liable.

### **EXCEPTIONS TO THE DOCTRINE OF THE CAVEAT EMPTOR**

The doctrine of Caveat Emptor is however, subject to the following exceptions

#### **Fitness for buyer's purpose**

When the buyer makes the seller aware of the purpose for which the goods are needed and relies upon the seller's skill or judgment, there is an implied condition that the goods shall be reasonably fit for such purposes

#### **Merchantable quality**

Where there is a contract of sale of goods by description and the seller is a dealer in such goods, and then such goods should be of merchantable nature and should not contain any latent defect.

#### **Usage of trade**

The implied conditions or warranties as to quality or fitness for a particular purpose may be attached by the custom or usage of trade. A custom may provide that a particular defect will amount to unfitness and the buyer can reject the goods.

#### **Consent by fraud or concealment**

When the consent of the buyer in a contract of sale, is obtained by the seller by fraud or when the seller knowingly conceals the defect, which could not be discovered on a reasonable examination (i.e., there is some latent defect), the doctrine of caveat emptor does not apply.

#### **Sale by sample**

When the goods are bought by sample, rule of Caveat Emptor does not apply if the bulk does not correspond with the sample and the buyer must have reasonable opportunity for inspecting the goods.

## **WHEN A BRECH OF CONDITION IS TO BE TREATED IS TO BE TREATED AS A BREACH OF WARRANTY**

Under certain circumstances, the legal effect of a condition may totally disappear or may get reduced to the effect of a warranty. As the result the buyer's right to reject the goods shall be lost but his right to recover damages may continue. A condition may reduce to a warranty in the following circumstances:

The warranties are also a kind of condition, i.e., condition precedent. Though, not all conditions are warranty. Condition may be precedent or subsequent to the issuance of the insurance policy, however, warranties are condition precedent.. This connection is immaterial in condition;

### **Voluntary waiver of condition**

Where a contract of sale is subject to any condition to be fulfilled by the seller, and the seller commits a breach, the buyer has the option to waive the condition or elect to treat the breach of the condition as a breach of warranty. If the buyer once decides to waive the condition, he cannot afterwards insist on its fulfillment.

### **Acceptance of a part of the goods**

Where a contract of sale is indivisible and the buyer has accepted the goods or a part thereof, or where the fulfillment of ant condition is excused by law by reason of impossibility or otherwise.

### **CONCLUSION**

Warranties and conditions come under the sales of goods act. However, after reading throughout about warranty and condition, it can be said that however, in relation to warranty condition there must be a necessary connection between these two factors. It can be concluded after this study that a condition can be precedent or subsequent, and those conditions that are precedent could be covered under the warranty conditions. Warranty, on one hand, affects the liability of the insurer to cover the loss occurs and representation are used to calculate the amount of risk for deciding the premium of the policy. There are few occasions wherein the representations can become warranty.



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