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# UNIT 17 CONDITIONS AND WARRANTIES

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## 17.0 OBJECTIVES

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After studying this unit you should be able to :

- ◆ describe the meaning of the terms 'Condition' and 'Warranty' in relation to sale **and** purchase of goods.
- ◆ distinguish between a 'Condition' and a 'Warranty'
- ◆ list the conditions and warranties implied under the Sale of Goods Act.
- ◆ discuss as to when a condition may be treated as a warranty
- ◆ explain the fundamental principle of sale of goods, viz., Doctrine of Caveat Emptor.

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## 17.1 INTRODUCTION

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We are all consumers in **one** way or another. We may purchase goods for our own consumptions or for producing other goods. Many a times, we are attracted by certain claims made by the sellers in respect of their goods. Sometimes, it may be only because of such claims about the quality, usefulness or suitability of these goods that we decline to buy a brand of goods as against other competing brands.

At other times, we may decide to buy a particular brand because it carries certain assurances as to its fitness, etc. Such claims are called conditions and warranties. Such assurances or representations may either be a condition or a warranty.' In this **Unit** we shall study the meaning of conditions and warranty, the distinction between them and their effect on the contract of sale.

Besides, as a measure of consumer protection, Sale of Goods Act, **1930**, assumes every contract of sale of goods (unless agreed to between the parties) to be subject to certain stipulation. These stipulations are **called** as implied conditions and warranties. In this unit, we shall also study these 'implied conditions and warranties.'

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## 17.2 MEANING AND DEFINITION OF CONDITION AND WARRANTY

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Many a **times** a seller of goods makes certain **claims** about the goods he offers for sale. These claims may relate to the quality, use, suitability, utility, etc., **of** those

subject-matter of the contract. These assurances may be a mere expression of opinion of the seller and may not form part of the contract. But, sometimes they may form part of the contract and the buyer buys the goods on the faith of such assurances. In such a case they have legal effect on the contract. An assurance or representation which forms part of the contract of sale is termed as 'stipulation'. All such stipulations cannot be treated at the same footing. Some may be intended to be of a fundamental nature whereas others may be subsidiary or merely an expression of an opinion. Depending upon whether a representation is fundamental or subsidiary, it ranks as a 'condition' and 'warranty'. If a stipulation forms the very basis of the contract, it is a 'condition'. On the other hand, if the stipulation is collateral to the main purpose of the contract, i.e., is of a lesser importance, then it is known as a 'warranty'.

### 17.2.1 Definition of Condition

The term 'Condition' is defined under Section 12(2) of the Sale of Goods Act, 1930. According to this Section, 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.*

Thus, a condition is that stipulation which goes to the root of the contract and thus forms the basis of the contract. It is essential to the main purpose of the contract. It is that obligation the non-fulfilment of which may fairly be considered as a substantial failure to perform the contract at all. Therefore, if a condition is not fulfilled, the buyer has a right to put an end to the contract and also recover damages for the breach of contract.

The aforesaid description of condition is well illustrated by the case of *Baldry v. Marshall*. In this case 'B' consulted 'M', a motor car dealer, for a car suitable for touring purposes. M suggested a 'Bugatti' car and B accordingly bought it. The car turned out to be unfit for the touring purpose. It was held that the term that 'car should be suitable for touring purposes was a condition of the contract. It was so vital that its non-fulfilment defeated the very purpose for which B bought the car. He was, therefore, entitled to reject the car and have refund of the price.

### 17.2.2 Definition of Warranty

According to Section 12(3) of the Sale of Goods Act, 1930, 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 to a right to reject the goods and treat the contract as repudiated.* In other words, warranty is a stipulation which is not essential to the main purpose of the contract i.e., it is of a subsidiary or collateral nature. If there is a breach of warranty, the buyer cannot repudiate the contract, but he can only claim damages from the seller. In the case discussed above if the buyer had asked for a good car and while selling the car the dealer said that it could run for 15 kms per litre of petrol. But it was discovered that it could run only 12 kms per litre of petrol. Here, the statement made by the seller would amount to a warranty and the buyer could not terminate the contract and he was entitled to claim damages only.

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## 17.3 DISTINCTION BETWEEN CONDITION AND WARRANTY

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From the aforesaid discussion, you must have noted that the difference between the two terms viz., 'Condition' and 'Warranty' is not that of a degree and not that of kind. The crux of the decision shall lie on the fact as to whether a stipulation forms the basis of the contract or is only a collateral promise. Thus, where the buyer wouldn't have purchased those goods but for that stipulation, it shall be construed as a condition. On the other hand, if the buyer would have so purchased and the stipulation is only designed to provide an assurance as to the quality or suitability of the goods, it shall be a warranty. The distinction between the two stipulations is to be measured from the point of view that if the stipulation is such that its breach would make the rights of the aggrieved party nugatory, then such a stipulation is condition

and where the stipulation is only **auxillary**, it is a warranty. One may, therefore, say that whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract as a whole. The court is not to be guided by the terminology used by the parties to the contract, but is to be guided by the intention of the parties which can be gathered from the terms of the contract and circumstances. Section 12 (4) endorses this view and provides that *a stipulation may be a condition, though called a warranty in the contract.*

The above mentioned point may be clarified with the help of the following example:

'A', who desires to purchase a horse, goes to a horse dealer and asks the horse dealer to give him a quiet and non-vicious horse. The horse which the dealer supplies him turns out to be a hostile horse and on the very first ride throws him down resulting in broken limbs. In this case, the statement made by the buyer that he wants a quiet horse was a condition essential to the main purpose of the contract. Therefore, A can reject the horse and get back the price. The buyer can also claim damage for the injuries suffered by him.

But, if 'A', himself selects a particular horse and then seeks the seller's assurance as to its being quiet and non-vicious, the stipulation shall be a 'warranty' and the only remedy of the buyer shall be a claim for damages, he **cannot** return the horse and claim the price.

On the basis of the above discussion, the points of distinction between the two can be summarised as follows :

Condition	Warranty
1 A condition is a stipulation (in a contract) which is essential to the main purpose of the contract.	1 A warranty is a stipulation which is only collateral to the main purpose of the contract.
2 A breach of condition gives the aggrieved party a right to sue for damages as well as the right to terminate the contract.	2 A breach of warranty gives only the right to claim damages. The contract cannot be terminated.
3 In the event of the breach of a condition, the aggrieved party may choose to treat the breach of condition as a breach of warranty. A buyer may for instance, like to retain the goods and claim only damages.	3 A breach of warranty cannot be treated as a breach of condition.

## 17.4 KINDS OF CONDITIONS AND WARRANTIES

Condition and warranties may either be express or implied.

### 17.4.1 Express Condition and Warranties

They are said to be express when the terms of the contract expressly provide for them. Thus, where a buyer desires to buy 'While Maruti Car', the colour of the car becomes an express condition. If the two contracting parties desire they may put the contents of any specific statement or promise which has taken place between them at par as the description of the thing contracted for. This then shall be treated as express condition. The parties are at liberty to impose any condition or warranty by an express agreement in a contract of sale.

Similarly, you must have noticed companies advertising their products carrying guarantee for a certain period, for instance, 'Orient Fans — Guaranteed for Two Years'. 'Binatone TVs — Three Years Guarantee on Picture Tube'. All these are example of express warranties.

### 17.4.2 Implied Conditions

Conditions and Warranties are said to be implied when the law infers their existence as **implicit** in the contract even without their actually having been put in the contract. Hence, unless otherwise is agreed upon between the parties, every contract of sale of goods shall be subject to these implied conditions and warranties. But the parties do have the right to exclude any of the implied conditions or warranties by specifically

and expressly providing otherwise. The implied conditions and warranties are enforced because the law deems that in the circumstance of the contract the parties desired to add these stipulations to their contract but did not put them expressly. These implied conditions and warranties are contained in Sections 14 to 17 of the Act and are as follows :

- 1 **Conditions as to title (ownership):** Sale involves transfer of ownership and possession. Therefore, Section 14 (a) provides that in a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller that he has a right to sell the goods, and that in the case of an agreement to sell, he will have a right to sell the goods at the time when the property (ownership) is to pass.

The aforesaid provision, you should note, is based upon a simple logic that only an owner has the right to effect a valid sale of goods, since **only** he (subject, however, to **certain** exceptions which you will study later under 'Sale by Non-owners') can confer ownership. The rule of law is *Nemo dat quod non-habet*, i.e., one cannot give what one does not have'. In every contract of sale there is an implied condition that the seller has a valid title to the goods. This condition is very essential to protect the interest of innocent buyers.

The following example will clarify the point further :

A purchased a car from B who had no title to it. A used the car for several months. After that, C, the true owner, spotted the car and demanded it from A. Held, that A was bound to hand over the car to its true owner. A's remedy is to sue B, the seller without title, for the recovery of the price and damages even though several months had passed (*Rowland v. Divall*).

However, this condition like other implied conditions, may be negated by an express term. Thus, where a thief goes to a '*Chor Bazar*' to sell the stolen goods to the knowledge of the buyer thereof, the buyer may not get the refund of sale price if those goods are to be restored to its real owner. Similarly, when the custom authorities, sell any confiscated items they are absolved from any responsibility with respect to the owner's title. It should further be noted that the seller should have the right to sell the goods. The term 'right to sell' is wider than 'right to pass ownership'. Thus, a seller has no right to sell, if he infringes the trade mark of another person.

Therefore if the seller sells the goods in contravention of trade mark laws, it is regarded as a breach of implied condition as to title. In such a case the buyer will have a right to terminate the contract of sale. In *Niblett Ltd. v. Confectioner's Materials Co.* certain tins of condensed milk bearing the label "Nissly Brand" were sold by A to B. In order to save themselves from any liability under the trade mark laws, B had to remove the labels and sold the naked tins at loss. A was held liable for breach of implied conditions that they had a right to sell.

- 2 **Sale by description:** Sometimes, the goods are sold by description. In such a case, Section 15 lays down that *where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with description.* The term 'correspond with description' means that the goods supplied must be same as were described by the seller. If it is found that the goods supplied do not correspond with the description, the buyer has a right to reject the goods and claim damages. The term 'sale of goods by description' is wide and shall include many situations.
  - i) It will include a case where the buyer has never seen the goods and buys them only on the basis of the description given by the seller. For example, in a sale of a reaping machine, the seller described it to be only one year old and used only to cut 50 to 60 acres. On delivery, the buyer found that the machine was extremely old. The buyer was entitled to reject the machine as it did not correspond with the description given by the seller (*Varley v. Whipp*). Similarly, where a person orders for a '*Philips Juicer-made in Japan*' it will not be a sufficient compliance if a '*Philips Juicer-made in Hongkong*' is supplied to him.

- ii) Even where the buyer has seen the goods, it may be treated a sale by description, if he purchases those goods not on what he has seen but what was stated to him. Thus, where a person orders 100 bags of a particular variety of 'Punjab Wheat' and the wheat supplied to him is found to be 'Gujarat Wheat', condition as to description shall be deemed to have been violated **inspite** of the fact that buyer was shown the wheat to be delivered. Similarly, in an auction sale, a set of linen napkins and table cloths were described as "dating from seventeenth century". The buyer, who was a dealer in antiques, purchased the same after seeing it, but later found it to be an "eighteenth century set". It was held that they having relied on the description, the buyer had a right to return the same for not conforming to the description. (*Nicholson and Venn. v. Smith Marriott*).
- iii) The methods of packing may also form part of the description, For example, where a seller agrees to deliver 5,000 tins of canned fruit to be packed in cases each containing 50 tins, the buyer shall have a right to reject the goods if the cases contain 'more' or 'less' than 50 tins.

3 Sale by sample: Sale by sample means that the seller has shown a **sample** of the goods to the buyer and has agreed to supply the goods according to the sample. It cannot be assumed that in all cases, where sample is shown, the sale shall be a sale by sample. In cases where there is no term to that effect, it is assumed that the sample is not shown as a warranty, but only to enable the buyer to form a reasonable judgement about the goods to be bought. The goods supplied may marginally differ. They may be inferior or superior to the sample shown,

In case of a contract of sale by sample, law assumes the sale to be subject to the following three implied **conditions**:

- i) The goods must correspond in quality with the sample, **i.e.**, the buyer shall have a right to reject goods inferior or superior to the sample.
- ii) The buyer shall have a reasonable opportunity of comparing the goods with the sample. **Thus**, the seller will have to take the goods back, if they are not found to be according to the sample. In fact, depending upon the nature and volume of the goods involved, opportunity to compare the goods with the sample shall be available to the buyer. For example, in a **sale** of 100 bags of wheat, the buyer is given an opportunity to examine the contents of three bags only. The buyer can terminate the contract.
- iii) The goods shall be free from any defects rendering them unmerchantable, which would not be apparent on reasonable examination of the sample, **i.e.**, latent defects. Such defects are discovered when the goods are put to use. However, seller **will** not be liable for apparent or visible defects which could be easily discovered by an ordinary prudent person. For example, A sold to B certain quantity of worsted coating equal to sample. The coating was equal to sample but had a latent defect as a result of which the cloth was found to be unfit for making coats. It was held that the buyer could reject the goods. The reason for this was that though the sample also contained the defect was not apparent on an examination of sample (*Drummond & Sons v. Van Ingen*).

4 Sale **by sample** as well as **by** description: If the sale is by sample as well as by description, Section 15 requires that the goods must not only correspond with the sample but should also correspond with the description. The following **examples** explain the point :

- i) *In Wallis v. Pratt* Case the agreement was for the sale of 'English Sainfoin Seeds', exhibited by sample and described as common English Sainfoin. However seller did not give any warranty regarding the growth description or any other matter. The seeds supplied did correspond to the sample but both the sample and the seeds supplied were found to be 'Gaint Sainfoin', in altogether different variety. **Held**, there was a breach of condition as to description and therefore the buyer may recover damages from the seller.
- ii) 'Foreign refined rape-seed oil' was sold which was warranted to be equal to sample. The oil which was supplied by the seller **was** according to the

sample. The sample was actually not 'foreign rape-seed oil' but contained a mixture of rape oil and hemp oil. Held, the buyer could reject the oil (*Nichol v. Godts*).

- 5 **Condition as to quality or fitness:** The general rule in respect of the sale of goods is that a buyer is supposed to satisfy himself about the quality as well as the suitability of the goods. Thus, later on, if the goods turn out to be **unsuitable** or unfit for the purpose he purchased them for, he shall not be entitled to return or exchange them or seek compensation. There are, however, certain exceptions to this rule. It is in these exceptional circumstances that implied condition as to fitness applies.

Where the buyer, expressly or by **implication**, makes **known** to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgement, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not) there is an implied condition that the goods shall be reasonably fit for such purpose [Section 16(1)]. Thus, to avail of the condition as to fitness, all the three conditions must be satisfied, viz.,

- i) the exact purpose for which the goods are being bought must have been disclosed (expressly or impliedly) by the buyer to the seller,
- ii) the buyer must have relied upon the seller's skill or judgement with respect to the fitness of the goods for any particular purpose, and
- iii) the seller's business must be to sell such goods (the condition cannot be invoked against a casual seller).

Thus, in *Priest v. Last*, a draper went to a chemist shop and asked him to give a hot water bottle. He told him the purpose also for which it was required. The Chemist gave the hot water bottle but told him only to use hot water because the bottle would not stand the boiling water. While the bottle was being used, it burst and injured her. **Held**, breach of condition as to fitness was committed and the Chemist was liable for refund of price as well as damages because the bottle was unfit for being used as a hot water bottle.

When the goods can be used only for one particular purpose, the buyer need not tell the seller the purpose which the goods are being bought. Thus, a refrigerator that failed to make ice would be rejected on grounds of breach of this condition (*Evens v. Stelle Benjamin*). A set of false teeth bought from a dentist may be rejected if they do not fit the buyer's mouth (*Dr. Baretto v. T.R. Price*).

The problem may arise where the goods are capable of being put to multiple uses. In such a case, to avail the relief under the aforesaid condition, the buyer must show that he had explained to the seller the exact purpose for which the goods were purchased. *For example, in Re : Andrew Yule & Co.*, hessian cloth, which is generally used for packing purposes, was supplied to buyer in accordance with his order. The buyer found it unfit for his purpose of packing foodstuffs because this cloth has a peculiar smell, although it was good as a packing cloth. **Held**, the buyer cannot reject it because he had not disclosed to the seller, the particular purpose for which he required the cloth. The buyer need not disclose the exact purpose for which he is buying the goods when the goods are fit only for a specific purpose or where the nature of the goods itself by implication tells the purpose for which they are being bought. In those conditions the purpose is deemed to have been **impliedly** told. For example, if the buyer demands a cold drink from the seller, it is implied that the buyer needs it for consumption and subsequently, if it is found to contain BVO or some other unhealthy contents, it is a breach of implied condition as to fitness and makes the seller liable to pay damages.

**However**, condition as to fitness shall not be applicable in the following cases :

- i) *Where the buyer fails to disclose to the seller any abnormal circumstances.* In *Griffith v. Peter Conway Ltd.*, a woman with abnormally sensitive skin asked for a warm tweed coat and was supplied a 'Harris Tweed Coat'. She got rashes on

wearing the coat. Her claim for return of price and damages was struck down because there was nothing in the Harris tweed which would have affected the skin of a normal person and she had failed to inform the seller about her abnormally sensitive skin.

- ii) When the buyer buys the goods by a patent or other trade name. Thus, where a person goes to a chemist and purchases 'Bournvita' as a health drink, he cannot claim any compensation if he finds no improvement in his health in spite of its prolonged use.

6 **Condition as to merchantable quality:** Section 16(2) of the Act provides that where the goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. The expression 'merchantable quality' in simple words means that the quality of the goods shall be such that they are capable of being used as the goods of that description and should be free from any latent or hidden defects. If the goods are purchased for resale, then they should be resaleable in the market under the description by which they are ordinarily known in the market. There should be no defect in the goods which renders them unfit for sale. For example, if sugar becomes syrup (Sharbat) it is no longer merchantable. The term 'merchantability' also means that the goods must be properly packed. For example, A purchased wine from B. While opening its cork in the normal manner, the bottle broke off and injured A's hand. It was held that the bottle was not of merchantable quality and A could recover damages from B.

### Examples

- a) A person purchases a 3 metre suit length to make it into a three-piece suit and gives it to the tailor for stitching. The tailor after stitching coat and waist-coat finds that the balance of the cloth is sufficient to make only half-pants instead of full pants—the cloth having a texture defect, i.e., it is not uniform throughout its width. The buyer shall have a right to claim compensation.
- b) 'A' purchases Black Yarn from 'B' and finds it to be damaged by white ants, the condition as to merchantability shall be said to have been breached.
- c) A sold a plastic catapult to B. While B's son was using it in the usual manner, the catapult broke due to the fact that the material used in its manufacture was unsuitable. As a result, the boy was blinded in one eye. It was held that A, the seller was liable as the catapult was not of merchantable quality (*Godley v. Perry*).

It should be noted here that when the buyer buys the goods after examining them, the implied condition as to merchantability shall not be applicable as regards those defects which the buyer by an ordinary examination could have discovered. For example, A purchased glue from B, which was packed in barrels. A was given every facility to examine the goods, but the buyer A did not bother to examine the contents. Here A cannot reject the goods by saying that they are not merchantable. Had he taken the trouble of examining the goods, he would have easily discovered the defect (*Thornett v. Beers*).

- 7 **Condition as to wholesomeness:** In case of items which are supposed to be physically consumed, e.g. provisions or foodstuffs, condition as to merchantability assumes another form, viz., condition as to wholesomeness. Condition as to wholesomeness means that the goods shall be fit for human consumption, that is, they shall not be stale or contaminated. In *Frost v. Aylesbury Dairy Co. Ltd.* F bought milk from A's dairy. The milk contained typhoid germs. F's wife consumed the milk, became infected and died. A was held liable for damages because the milk was not fit for human consumption. Thus, an action shall lie if a 'house fly' is found in a bottle of cold drink or a 'lizard' in a bottle or pack of milk and the consumer, therefore, suffers thereby.

### 17.4.3 Implied Warranties

There are only two implied warranties under the Act and both of them are in fact necessary corollaries to the 'implied condition as to title'. These are:

- 1 Warranty as to quiet possession: In every contract of sale, unless contrary intention appears from the circumstances of the contract, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. Thus, if the right of enjoyment or possession of the buyer is disturbed by the seller or any other person, the buyer shall be entitled to sue the seller for damages. Breach of this warranty shall arise where the title of the seller is not exclusive and he has not been conferred a clear right to effect the sale or where his title is defective.

This implied warranty can be understood by referring to the case of *Niblett Ltd. v. Confectioner's Materials Co. Ltd.* which you have already read in this unit. In that case the seller were held responsible for two things. Firstly that they had committed a breach of implied condition as to their title and secondly, for committing breach of implied warranty that the buyers would have quiet possession of the goods sold.

- 2 Warranty of freedom from encumbrances: Under this warranty, the buyer is entitled to assume that the goods are free from any charge or encumbrance in favour of any third person, not declared to or known to him before or at the time when the contract is made. Thus, this clause will not be applicable where the buyer has been informed of the encumbrances or has notice of the same. Further, it was held in *Collinge. v. Heywood* case that the claim under this warranty shall be available only when the buyer discharges the amount of encumbrance. If the possession of the buyer is disturbed due to such charge in favour of a third person, he can claim damages from the seller. For example, A sells certain goods to B. A had already taken a loan of Rs 500 from X on the security of those goods- B was not aware about this charge on the goods. B had to pay Rs 500 to X in order to enjoy the goods. Now B can claim this amount from A.

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

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Section 13 provides for certain circumstances where a condition may be reduced to the status of a warranty. Consequently, the buyer loses his right to reject the goods. His only remedy in such case shall be to claim damages. This shall happen in the following cases:

- 1 Waiver by buyer: Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may: (i) waive the condition; or (ii) elect to treat the breach of condition as a breach of warranty. You know that the conditions, express or implied, are for the benefit of the buyer. He has, therefore, the option to waive the breach of a condition and accept the performance short of it. In that case, he remains liable for the price but may only recover damages if there is any breach. Once the buyer exercises his option, he cannot later on compel the seller for its fulfilment.
- 2 Compulsory treatment of breach of condition as breach of warranty: When the contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty. As per Section 42 of the Act, a buyer is deemed to have accepted the goods:
  - i) When he intimates to the seller that he has accepted them, or
  - ii) When the goods have been delivered to him and (a) he does any act in relation to them which is inconsistent with ownership of the seller (say, pledges the same), or (b) when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them,

But if the contract is severable, and the buyer has accepted part of the goods, he can still exercise his right to reject the remaining goods.

## 17.6 DOCTRINE OF CAVEAT EMPTOR

'Caveat Emptor' is a fundamental principle of the law relating to sale of goods. It means 'Caution Buyer', i.e., Let the buyer beware'. In other words, it is no part of the seller's duty to point out defects of the goods he offers for sale. The buyer must examine the goods and find out their suitability for the purpose he buys them for.

### Examples

- a) A person buys a readymade shirt for his son, he will not have a right to return or exchange the same if the shirt doesn't exactly fit his son, i.e., too tight or loose.
- b) Pigs were sold 'subject to all faults', and these pigs, being infected, caused typhoid to other healthy pigs of the buyer. It was held that the seller was not bound to disclose that the pigs were unhealthy. (*Goddard Hobbs*)

### Exceptions

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

- 1 Where the seller makes a **misrepresentation** and the buyer relies on that representation, the rule of 'Caveat Emptor' will not only apply and the contract entered between the parties would be a contract voidable at the option of the buyer.
- 2 Where the seller actively conceals a defect in the goods, so that on a reasonable examination the **same** could not be discovered, or where the seller makes a false representation amounting to fraud, and the buyer, relying upon the false representation, enters into a **contract** with the buyer, in both these circumstances the resulting contract would be a voidable contract. The buyer's **remedy** in that is that he can put the contract to an end and **can** also claim damages from the seller for fraud.
- 3 Where the buyer makes known to the seller the purpose for which he is buying the goods, so as to show that the buyer relies on the seller's skill or judgement and the seller happens to be a person whose business is to sell goods of that description, then there is an implied condition that the goods shall be reasonably fit for such purpose. The rule of 'Caveat Emptor' will not apply in such cases.
- 4 In case of sale by description where the goods are bought **from** a seller who deals in such goods there is an implied condition as to their being of a merchantable quality, i.e., **they** should be capable of being used as such goods. For example, a cricket bat should be fit enough to play cricket with a '**cricket** ball'. If the goods are not found to be of merchantable quality, the seller cannot take the defence of the doctrine of Caveat Emptor. But, if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed, i.e., in such cases the rule of Caveat Emptor will be applicable.
- 5 An implied warranty or condition as to quality or fitness for a particular purpose may be annexed (attached) by the usage of trade Section 16(3). This exception may be explained by the facts of *Jones v. Bowden*'s case as **follows**:

It was usual in the sale of drugs by auction **that** if the goods were sea damaged, it should be declared.

This usage in effect created an **implied** condition that when the drug were sold without such declaration, they were free from **sea** damage. In this case the seller exhibited the sample without **disclosing that the** drugs were sea damaged, The rule of Caveat Emptor would, therefore, not apply here.

- 6 Where the goods are sold by description and the goods supplied by the seller do not correspond to the description, this doctrine would not apply.
- 7 If the goods are sold by sample and the bulk of the goods supplied do not correspond with the sample, this doctrine would not apply. In addition to it, when the goods are delivered and the buyer is not provided an opportunity to compare the goods with the sample or where there is any latent defect in the goods, the doctrine will not apply.

- 8 In a sale by sample as well as by description, if the bulk of the goods supplied does not correspond to the sample as well as with description, this doctrine will not apply.

**Check Your Progress A**

- 1 Define 'Condition' in a contract of sale.

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 .....  
 .....

- 2 What is a 'Warranty' in a contract of sale?

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 .....  
 .....

- 3 What is a sale by sample?

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 .....  
 .....

- 4 When can a breach of condition be treated as a breach of warranty?

.....  
 .....  
 .....

- 5 Fill in the blanks

- i) A **condition** is a stipulation ..... to the main purpose of the contract of sale of goods.
- ii) A **warranty** is a stipulation ..... to the main purpose of the contract of sale of goods.
- iii) A contract of sale involves transfer of .....
- iv) An implied condition **as** to quality or fitness for a particular purpose may be annexed by the ..... of trade
- v) In a contract of sale of eatables, there is an implied condition that the goods shall be ..... and ..... for human consumption.

- 6 State whether the following statements are True or False

- i) Breach of condition gives rise to a claim for return of price as well as damages.
- ii) Breach of warranty entitles the buyer to only claim return of price.
- iii) A breach of condition can be treated as a breach of **warranty**.
- iv) 'Sale' and a 'Contract of Sale' are interchangeable expressions.
- v) In **case** of sale by sample the bulk must correspond to sample as **well** as be merchantable.
- vi) When the goods are sold by trade **mark**, there is no implied condition as to their fitness.

- 7 **Fill** in the blanks.

- ii) To avail **relief** under condition as to **fitness**, the condition to be satisfied are:

- a) .....
- b) .....
- c) .....

- 8 Deepak purchased a Colour TV from M/s Paul Brothers for a sum of Rs 12,000. The TV set was defective from the beginning and it did not work in spite of repairs by the expert mechanics. Deepak wants to return the TV set to M/s Paul Bros, and claim refund. Advise.

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## 17.7 LET US SUM UP

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The **seller** sometimes makes certain claims, statements or representation about the goods which he intends to sell. These representations are called 'stipulations'. A stipulation in a contract of sale with reference to the goods which are the subject thereof may be a condition or a warranty.

A condition, is a stipulation essential to the main purpose of the contract. The breach of a condition gives the buyer the right to repudiate the contract and claim damages.

A warranty, is a stipulation collateral to the main purpose of the contract. The breach of warranty gives the buyer the right to claim damages only. He does not have a right to put an end to the contract. A breach of condition may be treated as a breach of warranty by the aggrieved party whereas a breach of warranty cannot be treated as a breach of condition.

In a contract of sale, condition and warranties may be express or implied. The express conditions and warranties are those which are agreed upon between the contracting parties at the **time** of contract. Implied condition and warranties are those which are implied by law, unless otherwise agreed upon by the parties. Implied conditions are (1) condition as to title, (2) sale by description (3) sale by sample, it includes that the **bulk** should correspond with the sample, goods should be free from any defect rendering them **unmerchantable**, the buyer should have the opportunity to compare the bulk with the sample (4) sale by sample as well as description (5) condition as to quality or fitness (6) condition as to merchantable quality (7) condition as to wholesomeness. Implied warranties are (1) warranty as to quiet possession, and (2) warranty of freedom from encumbrances.

Caveat Emptor means let the buyer beware. However this doctrine does not apply: (1) where the seller makes a misrepresentation, or fraud (2) where the seller conceals a defect in the goods, which cannot be found out on reasonable examination, (3) in case of sale by description (4) when there is usage of trade (5) In case of implied conditions and warranties.

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## 17.8 KEY WORDS

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**Caveat Emptor:** Let the buyer beware

**Encumbrance:** A charge over **goods**

**Wholesomeness:** Worthy of **human** consumption

**Title:** Ownership

**Stipulation:** Representation or claims about **goods**

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## 17.9 ANSWERS TO CHECK YOUR PROGRESS

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- 5 i) essential, ii) collateral, iii) ownership, iv) usage, v) wholesome, fit
- 6 i) True, ii) False, iii) True, iv) False, v) True, vi) True
- 7 i) that the goods are capable of being used as the goods of that description.  
 ii) a) the exact purpose must have been disclosed  
 b) the **seller** must be a dealer in such **goods**  
 c) the buyer **must** have relied upon the seller's skill or judgement.

- 8 There is a breach of implied condition as to merchantability (i.e., the goods should be capable of being used as the goods of that description). A TV set, therefore, must function as a TV set. The dealer shall have to either replace the set or refund the price.

## 17.10 TERMINAL QUESTIONS/EXERCISES

- 1 Define and distinguish 'condition' and 'warranty'.
- 2 What is the doctrine of 'Caveat Emptor'? What are the exceptions to this doctrine?
- 3 Discuss the provisions of Sale of Goods Act relating to the implied conditions in a contract of 'Sale by sample'.
- 4 In case of 'Sale by sample as well as by description', the goods must not only correspond to the sample but also to the description. Comment.
- 5 Under what circumstances does a 'Condition' descend to the level of a 'Warranty'?
- 6 State the two implied warranties in a contract of sale of goods.
- 7 Where a buyer has examined the goods, the condition as to merchantability extends only to the latent defects. Comment.
- 8 Answer the following problems giving suitable reasons:
  - i) A Railway company purchased timber for railway sleepers, the timber was unfit for the purpose. Advise the railway company.
  - ii) A contracts to sell B a saree which B believes to be a pure silk saree. A does not tell anything to B. Can B terminate the contract?
  - iii) X sold a Campa Cola bottle to Y. While opening the bottle it bursts and injures Y. Can Y claim damages from X?
  - iv) Certain goods were sold by sample by A to B, who in turn sold them by sample to C. The goods were not according to sample. Therefore, C rejected the goods and gave notice to B. B sued A. Advise B.
  - v) A contracts to sell to B timber of  $\frac{1}{2}$ " thickness. The timber actually supplied varied in thickness from  $\frac{1}{2}$ " to  $\frac{5}{8}$ " and was fit for the purpose. Can B reject the timber?
  - vi) A desi ghee dealer while selling ghee described it as pure ghee. The ghee was adulterated. What is the remedy to the buyer?

### Hints

- i) Railway company can reject the timber, there is a breach of implied condition as to quality and fitness.
- ii) No. The rule of Caveat Emptor will apply.
- iii) Yes. The bottle was not merchantable.
- iv) B is liable to C, and B cannot take action against A because B has accepted the goods. B can claim damages only from A.
- v) Yes. The goods must correspond to the description.
- vi) There is a breach of implied condition. The buyer can reject the goods.

Note: These questions will help you to understand the unit better. Try to write answers for them. But do not submit your answers to the University. These are for your practice only.