

CONDITIONS AND WARRANTIES

A contract of sale of goods contains various terms or stipulations regarding the quality, price, mode of payment, delivery of goods, time of performance and place where the goods are to be sent. The major terms of contract are called conditions and minor terms of contract are called warranties.

Meaning and Definition of Condition

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(2)]

A condition is a stipulation which is essential to the main purpose of the contract, and the breach of which gives the aggrieved party a right to terminate the contract or to claim damages in case of acceptance of contract.

EXAMPLES

- a. C contracts to deliver 100 Royal fans to B. But C delivers Climax fans. It is a breach of condition. B can accept or reject them and claim damages.
- b. B asked M, a car dealer, to suggest him a car for touring purpose. M suggested Buggatti car. B purchased the car and found it unfit. Held, it was breach of condition. B could return the car. (Baldray vs. Marshall)

Meaning and Definition of Warranty

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 a right to reject the goods and treat the contract as repudiated. [Sec. 12(3)]

A warranty is a stipulation which is collateral to the main purpose of the contract, the breach of which gives the aggrieved party a right to claim damages only but not a right to reject goods and to terminate the contract.

EXAMPLE

C promises to deliver 10 fans to B at his office. C delivers the fans at his home. It is breach of warranty. B cannot cancel the contract. B can claim damages only.

DIFFERENCE BETWEEN CONDITION AND WARRANTY

The following are points of difference between condition and warranty:

CONDITION	WARRANTY
1. Value A condition is a stipulation essential to	A warranty is a stipulation not essential

the main purpose of the contract.

2. Basis

It forms the basis of a contract and goes to the root of a contract.

3. Breach

The breach of a condition gives the aggrieved party a right to reject the contract.

4. Treatment

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

5. Option

The aggrieved party has an option to reject the contract or to claim damages.

to the main purpose of the contract

It does not form the basis of a contract and does not go to the root of contract.

The breach of warranty does not give the aggrieved party a right to reject the contract.

A breach of warranty cannot be treated as a breach of condition

The aggrieved party has no option to reject the contract. He can only claim damages.

Change of Condition into Warranty

A breach of condition may become a breach of warranty under the following cases:

1. Option of Buyer / election of buyer

The breach of condition by the seller gives the right to the buyer to reject the goods and cancel the contract, but he is not bound to do so. The buyer may:

- Treat it as a breach of warranty, accept the goods and claim damages
- Waive off the condition

EXAMPLE

C agrees to supply first grade sugar to B but supplies second grade sugar. B can reject it. B may accept the second grade sugar and claim damages

2. Acceptance by Buyer

When the buyer has accepted the goods, he cannot reject them but can claim damages. If the buyer has accepted only part of the goods and the contract is indivisible, he will have to accept the remaining part also. But in a divisible contract, the buyer can reject the remaining goods, if he has accepted only part thereof. [Sec. 13(2)]

EXAMPLE

J contracted to sell horns to R. The horns were delivered in 19 boxes by installments. R accepted 1 box and rejected others being dented. J sued for the price for all horns. Held, that R could reject. (Jackson vs. Rotax Motor Car Co.)

Express and Implied Conditions and Warranties

The conditions and warranties which are included in the contract are

are not included in the contract but implied by law in every contract are called implied conditions and warranties.

Implied Conditions

Unless otherwise agreed, the law includes the following conditions in a contract of sale of goods:

1. Condition as to Title

of Goods / transfer of title

It is presumed that a seller has valid title to the goods. If later on the buyer comes to know that seller had no right to sell the goods, he may reject the goods and recover the price. In case of sale, the implied condition is that the seller has a right to sell the goods. In case of agreement to sell, the implied condition is that the seller will have a right to sell the goods at the time when the ownership is to pass from the seller to the buyer. [Sec. 14(a)]

EXAMPLES

R purchased a car from D. After few months, the police took away the car as it was stolen. R sued D to recover the price. Held, that R can recover the price. (Rowland vs. Dival)

2. Sale by Description

Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. The term correspondence with description means that the goods purchased by the buyer must be the same which were described by the seller. If the goods are not according to the description, the buyer can reject the goods. [Sec. 15]

EXAMPLES

- C advertised a car for sale as Corolla, 1990 model. B, after buying the car, discovered that it is of an earlier model. B can return the car.
- S contracted to supply new Singer car to A. The car supplied had run some mileage. It was held that there was a breach of condition and A could reject the car. (Andrew Bros vs. Singer & Co.)

3. Sale by Sample

where is taking place, the buyer is allowed

In case of contract of sale by sample, the goods must be supplied according to the sample agreed. A contract of sale by sample is subject to the following conditions: [Sec. 17]

- The goods must correspond with the sample in quality.
- The buyer must have reasonable opportunity to compare goods with sample.
- The goods must be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

a reasonable time for inspection of goods. where only a part goods

is equal to the sample and a part of goods

EXAMPLE

There was sale by sample of two parcels of wheat. The seller showed the bulk of one parcel but not the other. It was held that the buyer could cancel the contract. (Lorymer vs. Smith)

4. Sale by Sample and Description

When the goods are sold by sample as well as by description, there is an implied condition that the bulk of the goods must correspond with the sample and the description. If the goods supplied correspond only with the sample and not with the description or vice versa, the buyer can reject the goods. [Sec. 15]

EXAMPLE

N agreed to sell foreign refined grape oil to G. The oil supplied corresponded with a sample but was mixed with hemp oil. Held, that the oil was not in accordance with the description so buyer could reject. (Nichol vs. Godts)

5. Condition of Fitness or Quality

Where the buyer informs to the seller about the particular purpose for which the goods are required, there is an implied condition that the goods shall be reasonably fit for such purpose. The buyer must satisfy himself about the quality as well as suitability of the goods. This condition applies if the following requirements are satisfied: [Sec. 16(1)]

- a. The buyer must inform the seller about the purpose of goods.
- b. The buyer must rely on the seller's skill or judgment.
- c. The seller's business must be to sell goods of that type.

EXAMPLE

A enters into an agreement with B to buy 100 oil filters to be used for Suzuki cars. The oil filters were unfit. A can reject them.

6. Condition of Merchantability

There is an implied condition that the goods shall be of merchantable quality when goods are bought by description from seller who deals in goods of that description. The term merchantable means that there is no defect in the goods which make them unfit for sale. [Sec. 16(2)]

EXAMPLES

a. C buys a pen from B that does not write. It is a breach of condition as it is not merchantable. C can reject it.

b. M bought a bottle of wine from F. When M tried to open the bottle, a piece of it broke off and injured him. Held that the bottle was not of merchantable quality. (Morelli vs. Fitch & Gibbons)

7. Condition by Custom

An implied condition as to quality or fitness for a particular purpose may

Particular goods are required if the discloser of purpose of goods but should be made known to buyer realised on

to the sample and reject the other.

Good sold with ~~qualities~~ description must correspond with description of Goods

Maximo CAVEAT EMPTOR => Buyer n

except => 7 exceptions

condition that the goods are reasonably fit for the purpose for which required

if there is an implied condition that the goods are merchantable

the existence of warranty or condition is supposed to exist in the fulfilment of the following condition:

by implied means make particular purpose known to seller the purpose may

be annexed by the usage of trade. In some cases, the purpose for which the goods are required may be ascertained from the acts and conduct of the parties to the sale, or from the nature of description of the article purchased. [Sec. 16(3)]

EXAMPLE

X sold goods by auction to Y. In a sale by auction, there was a custom to declare any fault in the goods. Goods were sold without declaration. Goods were found damaged. Held, Y could reject the goods.

8. Condition of Wholesomeness

Wholesomeness means beneficial for health. This condition applies only in contract of sale of eatables and necessities. In such cases, the goods supplied must be wholesome. It means that the goods must be fit for consumption.

EXAMPLES

- F bought milk from A, a dairy owner. The milk contained germs of typhoid fever. On drinking the milk, F's wife developed typhoid fever and died. A was held liable in damages. (Frost vs. Aylesbury Dairy Co. Ltd.)
- C bought a bun containing a stone which broke C's tooth. Held, C could recover damages. (Cheproniere vs. Mason)

Implied Warranties

Unless otherwise agreed, the law includes the following warranties into a contract of sale of goods:

1. Quiet Possession

It is an implied warranty that the buyer shall have the possession and enjoyment of the goods sold to him without disturbance from the seller or any other person. If the buyer is disturbed in the enjoyment of the goods due to the seller's defective title, he can claim damages from the seller. [Sec. 14(b)]

EXAMPLE

M purchased a second hand typewriter from B. M spent money on its repair and used it for some months. The typewriter was found to be stolen and M had to return it to its true owner. Held, M could recover damages and price. (Mason vs. Birmingham)

2. Freedom from Encumbrances

It is implied warranty on the part of seller that the goods shall be free from encumbrance in favour of any third party. The warranty will not apply where such encumbrances are declared to the buyer when the contract is made. If the possession of the buyer is disturbed due to such charge in favour of third party, he can claim damages. [Sec. 14(c)]

EXAMPLE

A pledges his car with B and promises to give its possession the next

day. A sells his car to X. B tells X about the pledge affair. X pays the amount of pledge to B. X can recover compensation from A.

3. Usage of Trade

An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade. [Sec. 16(3)]

EXAMPLE

Shahalam market offers to pay damages on the fading of colour of cloth. Every seller of cloth of that market is bound by this warranty.

4. Disclosure of Dangerous Goods

The implied warranty on part of the seller is that if goods are of dangerous nature, he must warn the buyer about the probable danger. If the seller fails to do so, the buyer is entitled to claim compensation for the injury or loss.

EXAMPLE

C purchased a tin of disinfectant powder from A. A knew that if tin is not opened with special care, it could be dangerous but told nothing to C. C opened the tin in the normal way and as a result the powder flew into his eyes and caused injury. A was held liable (Clarke vs. Army & Navy Coop. Ltd.)