

Chapter 3- The Sale Of Goods Act, 1930

Unit-2: Conditions & Warranties

Stipulation as to Time (Section 11)

As regard to time for the payment of price, unless a different intention appears from the terms of contract, stipulation as regard this, is not deemed to be of the essence of a contract of sale. But delivery of goods must be made without delay. Whether or not such a stipulation is of the essence of a contract depends on the terms agreed upon.

Price for goods may be fixed by the contract or may be agreed to be fixed later on in a specific manner. Stipulation as to time of delivery are usually the essence of the contract.

Introduction - Conditions & Warranties

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 goods, and about their fitness for buyer's purpose.

When these statements or representations do not form a part of the contract of sale, they are not relevant and have no legal effects on the contract.

But when these form part of the contract of sale and the buyer relies upon them, they are relevant and have legal effects on the contract of sale.

A representation which forms a part of the contract of sale and affects the contract, is called a stipulation. However, every stipulation is not of equal importance. Some of these may be very vital while others may be of somewhat lesser significance. The more significant stipulations contained in a contract of sale of goods have been called as "Conditions", while the less significant stipulation have been given the name "Warranties".

Condition and warranty (Section 12): *A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)]*

"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". [Sub-section (2)]



Example: P wants to purchase a car from Q, which can have a mileage of 20 km/litre. Q pointing at a particular vehicle says "This car will suit you." Later P buys the car but finds out later on that this car only has a top mileage of 15 km/litre. This amounts to a breach of condition because the seller made the stipulation which forms the essence of the contract. In this case, the mileage was a stipulation that was essential to the main purpose of the contract and hence its breach is a breach of condition.

"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". [Sub-section (3)]. 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 the contract. [Sub-section (4)]

Example: Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. Here, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which Ram purchases the car. Ram is therefore entitled to reject the car and have refund of the price.

Let us assume, Ram buys a new Maruti car from the show room and the car is guaranteed against any manufacturing defect under normal usage for a period of one year from the date of original purchase and in the event of any manufacturing defect there is a warranty for replacement of defective part if it cannot be properly repaired. After six months, Ram finds that the horn of the car is not working, here in this case he cannot terminate the contract. The manufacturer can either get it repaired or replaced it with a new horn. Ram gets a right to claim for damages, if any, suffered by him but not the right of repudiation.

Difference between conditions and warranties:

The following are important differences between conditions and warranties:



Point of differences	Condition	Warranty
<i>Meaning</i>	<i>A condition is a stipulation essential to the main purpose of the contract.</i>	<i>A warranty is a stipulation collateral to the main purpose of the contract.</i>
<i>Right in case of breach</i>	<i>The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.</i>	<i>The aggrieved party can claim only damages in case of breach of warranty.</i>
<i>Conversion of stipulations</i>	<i>A breach of condition may be treated as a breach of warranty.</i>	<i>A breach of warranty cannot be treated as a breach of condition.</i>

When Condition is to be Treated as Warranty (Section 13)

Section 13 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

(i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.

(ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

Example: *A agrees to supply B 10 bags of first quality sugar @₹625 per bag but supplies only second quality sugar, the price of which is 600 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, hence he may accept the second quality sugar and claim damages @₹25 per bag.*

(iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. For Eg. If basmati rice and lower quality rice mixed together, the contract becomes non severable.

(iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.



Waiver of conditions

Voluntary Waiver

- Waives performance of contract
- Elect to treat condition as warranty

Compulsory Waiver

- Non-severability of contract
- Fulfilment of conditions excused by law

Express & Implied Conditions & Warranties
(Section 14-17)

Condition and Warranty

Express or Implied (May be either)

'Conditions' and 'Warranties' may be either express or implied. They are "express" when the terms of the contract expressly state them. They are implied when, not being expressly provided for. Implied conditions are incorporated by law in the contract of sale.

Express conditions	}	<ul style="list-style-type: none"> • are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract.
Implied conditions		<ul style="list-style-type: none"> • on the other hand, are those, which are presumed by law to be present in the contract. It should be noted that an implied condition may be negated or waived by an express agreement.

Following conditions are implied in a contract of sale of goods unless the circumstances of the contract show a different intention.

<p>(i) Condition as to title [Section 14(a)]</p>	<p>In every contract of sale, unless there is an agreement to the contrary, the first implied condition on the part of the seller is that:</p> <p>(a) in case of a sale, he has a right to sell the goods, and</p> <p>(b) in the case of an agreement to sell, he will have right to sell the goods at the time when the property is to pass.</p> <p><i>In simple words, the condition implied is that the seller has the right to sell the goods (means he should be the real owner) at the time when the property is to pass. If the seller's title/ownership turns out to be</i></p>
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defective, the buyer must return the goods to the true owner and recover the price from the seller.

Example: A purchased a tractor from B who had no title to it. After 2 months, the true owner spotted the tractor and demanded it from A. Held that A was bound to hand over the tractor to its true owner and that A could sue B, the seller without title, for the recovery of the purchase price.

Example: If A sells to B tins of condensed milk labelled 'C.D.F. brand', and this is proved to be an infringement of N Company's trade mark, it will be a breach of implied condition that A had the right to sell. B in such a case will be entitled to reject the goods or take off the labels, and claim damages for the reduced value. If the seller has no title and the buyer has to make over the goods to the true owner, he will be entitled to refund of the price.

(ii) Sale by description
[Section 15]

Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans." The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

It is a condition which goes to the root of the contract and the breach of it entitles the buyer to reject the goods whether the buyer is able to inspect them or not.

Example: A at Kolkata sells to B twelve bags of "waste silk" on its way from Murshidabad to Kolkata. There is an implied condition that the silk shall be such as is known in the market as "Waste Silk". If it not, B is entitled to reject the goods.



Example: A ship was contracted to be sold as “copper-fastened vessel” but actually it was only partly copper-fastened. Held that goods did not correspond to description and hence could be returned or if buyer took the goods, he could claim damages for breach.

The Act, however, does not define ‘description’.

- (i) where the class or kind to which the goods belong has been specified, e.g., ‘Egyptian cotton’, “java sugar”, etc., defining the category of good
- (ii) where the goods have been described by certain characteristics essential to their identification, e.g., jute bales of specified shipment, steel of specific dimension, etc.

It may be noted that the description in these cases assumes that form of a statement or representation as regards the identity of particular goods by reference to the place of origin or mode of packing, etc. Whether or not such a statement or representation is essential to the identity of the goods is a question of fact depending, in each case, on the construction of the contract.

(iii) Sale by sample
[Section 17]

In a contract of sale by sample, there is an implied condition that:

- (a) the bulk shall correspond with the sample in quality;
- (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample,

Example: In a case of sale by sample of two parcels of wheat, the seller allowed the buyer an inspection of the smaller parcel but not of the larger parcel. In this case, it was held that the buyer was entitled to refuse to take the parcels of wheat.

- (c) the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. If defects are latent, then the buyer can avoid the contract. This simply means that the goods shall be free from any latent defect i.e. a hidden defect.



	<p><i>Example: A company sold certain shoes made of special sole by sample for the French Army. The shoes were found to contain paper not discoverable by ordinary inspection. Held, the buyer was entitled to the refund of the price plus damages.</i></p>
<p>(iv) Sale by sample as well as by description [Section 15]</p>	<p>Where the goods are sold by sample as well as by description the implied condition is that the bulk of the goods supplied shall correspond both with the sample and the description. In case the goods correspond with the sample but do not tally with description or vice versa or both, the buyer can repudiate the contract.</p> <p><i>Example: A agreed with B to sell certain oil described as refined sunflower oil, warranted only equal to sample. The goods tendered were equal to sample but contained a mixture of hemp oil along with sunflower oil. Hence, B can reject the goods because the goods were as per sample but do not correspond to the description.</i></p>
<p>(v) Condition as to quality or fitness [Section 16(1)]</p>	<p>Ordinarily, there is no implied condition as to the quality or fitness of the goods sold for any particular purpose.</p> <p>However, the condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller to select the best goods and the seller have ordinarily been dealing in those goods. This implied condition will not apply if the goods have been sold under a trademark or a patent name.</p> <p>There is implied condition of the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, <u>provided the following conditions are fulfilled:</u></p> <p>(a) The buyer should have made known to the seller the particular purpose for which goods are required.</p> <p>(b) The buyer should rely on the skill and judgement of the seller.</p> <p>(c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.</p> <p>In some cases, the purpose may be ascertained from the conduct of the parties or from the nature of the goods sold. Where the goods can be</p>



used for only one purpose, the buyer need not tell the seller the purpose for which he requires the goods.

Example: 'A' bought a set of false teeth from 'B', a dentist. But the set was not fit for 'A's mouth. 'A' rejected the set of teeth and claimed the refund of price. It was held that 'A' was entitled to do so as the only purpose for which he wanted the set of teeth was not fulfilled.

Example: 'A' went to 'B's shop and asked for a 'Merrit' sewing machine. 'B' gave 'A' the same and 'A' paid the price. 'A' relied on the trade name of the machine rather than on the skill and judgement of the seller 'B'. In this case, there is no implied condition as to fitness of the machine for buyer's particular purpose.

As a general rule, it is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them. This is known as rule of caveat emptor which means "Let the buyer beware".

(vi) Condition as to Merchantability [Section 16(2)]

Where 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.

There are two requirements for this condition to apply:

(a) Goods should be bought by description.

(b) 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.

The expression **"merchantable quality"**, though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.



	<p>Example: If a person orders motor horns from a manufacturer of horns, and the horns supplied are scratched and damaged owing to bad packing, he is entitled to reject them as unmerchantable.</p> <p>Example: A bought a black velvet cloth from C and found it to be damaged by white ants. Held, the condition as to merchantability was broken.</p>
<p>(vii) Condition as to wholesomeness</p>	<p>In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.</p> <p>Example: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.</p>

Implied Warranties: 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 words. But the law presumes that the parties have incorporated it into their contract. It will be interesting to know that implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties.

These may also be excluded by the course of dealings between the parties or by usage of trade (Section 62).

The examination of Sections 14 and 16 of the Sale of Goods Act, 1930 discloses the following implied warranties:

<p>1. Warranty as to undisturbed possession [Section 14(b)]</p>	<p>An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.</p> <p>Example: X buys a laptop from Y. After the purchase, X spends some money on its repair and uses it for some time. Unknown to the parties, it turns out that the laptop was stolen and was taken from X and delivered to its rightful owner. Y shall be held responsible for a breach and X is entitled to damages of not only the price but also the cost of repairs.</p>
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<p>2. Warranty as to non-existence of encumbrances [Section 14(c)]</p>	<p>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 before or at the time the contract is entered into.</p> <p><i>Example: A pledges his car with C for a loan of ₹15,0000 and promises him to give its possession the next day. A, then sells the car immediately to B, who purchased it on good faith, without knowing the fact. B, may either ask A to clear the loan or himself may pay the money and then, file a suit against A for recovery of the money with interest.</i></p>
<p>3. Warranty as to quality or fitness by usage of trade [Section 16(3)]</p>	<p>An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.</p> <p>Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.</p>
<p>4. Disclosure of dangerous nature of goods</p>	<p>Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger.</p> <p>If there is a breach of warranty, the seller may be liable in damages.</p>

Caveat Emptor

In case of sale of goods, the doctrine '**Caveat Emptor**' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable.

The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

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. If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible.

The rule of Caveat Emptor is laid down in the Section 16, which states that, "subject to the provisions of this Act or 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”.

Following are the conditions to be satisfied:

if the buyer had made known to the seller the purpose of his purchase, and

the buyer relied on the seller’s skill and judgement, and

seller’s business to supply goods of that description (Section 16)

Example: A sold pigs to B. 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. The rule of the law being “Caveat Emptor”.

Example: A purchases a horse from B. A needed the horse for riding but he did not mention this fact to B. The horse is not suitable for riding but is suitable only for being driven in the carriage. Caveat emptor rule applies here and so A can neither reject the horse nor can claim compensation from B.

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

1. Fitness as to quality or use:

Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller’s skill or judgment and the goods are of a description which is in the course of seller’s business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1)].

Example: An order was placed for some trucks to be used for heavy traffic in a hilly country. The trucks supplied by the seller were unfit for this purpose and broke down. There is a breach of condition as to fitness.

In Priest vs. Last, P, a draper, purchased a hot water bottle from a retail chemist, P asked the chemist if it would stand boiling water. The Chemist told him that the bottle was meant to hold hot water. The bottle burst when hot water was poured into it and injured his



	<p>wife. It was held that the chemist shall be liable to pay damages to P, as he knew that the bottle was purchased for the purpose of being used as a hot water bottle.</p> <p>Where the article can be used for only one particular purpose, the buyer need not tell the seller the purpose for which he required the goods. But where the article can be used for a number of purposes, the buyer should tell the seller the purpose for which he requires the goods, if he wants to make the seller responsible.</p> <p>In <u>Bombay Burma Trading Corporation Ltd. vs. Aga Muhammad</u>, timber was purchased for the express purpose of using it as railways sleepers and when it was found to be unfit for the purpose, the Court held that the contract could be avoided.</p>
2. Goods purchased under patent or brand name:	In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)]. Here, the buyer is relying on the particular brand name.
3. Goods sold by description:	Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so, then seller is responsible.
4. Goods of Merchantable Quality:	Where the 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 rule of Caveat Emptor is not applicable for latent defects. But where the buyer has examined the goods, this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].
5. 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].
6. Goods by sample as well as description:	Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].



7. Trade Usage:

An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].

***Example:** In readymade garment business, there is an implied condition by usage of trade that the garments shall be reasonably fit on the buyer.*

8. Seller actively conceals a defect or is guilty of fraud:

Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

