

Chapter- 15

Sale of goods act, 1930 Conditions and Warranties

Conditions

Meaning- A condition is a stipulation (stipulation means to demand something):-

1. Which is essential to the main purpose of the contract
2. The breach of condition gives the aggrieved party a right to terminate the contract, reject the goods and recover the price

Non fulfillment of condition upsets the contract.

Example: A (buyer) told B (car dealer) that he wants to buy a car for the purpose of touring. B suggested Maruti Car to A for the same purpose.

After buying the car A realized, that the car is not suitable for the purpose. Now, here A has the right to return the car to B and receive the refund for the same.

Explanation for above mentioned example: In this example there was a condition that the car should be suitable for touring purpose. And later on buyer realized that this condition was not fulfilled/ breached. Hence, buyer has the right to terminate the contract and can recover the amount paid by him to car dealer.

Types of Conditions

a) Express Conditions

These are conditions which are expressly incorporated/ mentioned by the parties in the contract. It can be oral or written.

b) Implied Conditions

These are such conditions which are automatically incorporated/ applicable by the law/ conduct/ behaviour in the contract.

Various implied conditions are mentioned below:

1. Condition as to title/ ownership

Seller has the right to sell the goods when seller has the title/ownership of the goods.

If seller is selling the goods which are stolen then that means seller has no right/title/ownership of the goods. Hence, buyer can cancel the contract, return the goods and can recover the price of the goods.

2. Condition as to sale by description

The implied condition is that if seller is selling the goods by giving/ stating the description to the buyer then the goods must correspond with the description.

3. Condition as to sale by sample

The implied condition is that if seller is selling the goods by giving sample to the buyer first then buyer must be supplied with goods corresponding with the sample as well for all the orders placed later on.

4. Condition as to sale by sample as well as by description

5. Condition as to quality/ fitness

As a normal rule buyer is responsible to examine the goods and see whether it's suitable for him or not. But when buyer specifically informs the seller about the purpose and relies on the skills and judgement of the seller so, in this case seller is responsible to provide quality product to the buyer.

If seller cheats with buyer then there will be a breach of implied condition as to quality/ fitness.

6. **Condition as to merchantability** (means there should be no defects in the goods supplied).
7. **Condition as to wholesomeness** (goods supplied should not be adulterated or goods should be suitable for consumption).

Warranties

Meaning- A warranty is a stipulation (stipulation means to demand something):-

1. Which is not essential to the main purpose of the contract
2. The breach of warranty gives the aggrieved party a right to claim for damages but not the right to reject the goods
3. Even if there is breach of warranty, the main contract can be completed
4. Breach of warranty can't be treated as breach of condition

Example: A (buyer) told B (shop keeper) that he wants to buy a good watch. B showed him a watch saying that it is made in Thailand. A buys the watch and later on realized that watch is made in China and not Thailand. There is breach of warranty because the stipulation made by the seller was not correct.

Explanation for above mentioned example: In this example, the main purpose was to buy a good watch by A. And there was a warranty/ assurance by the shop keeper to buyer that watch is made in Thailand and as you wanted a good watch so, you can buy the same. But, the assurance is proved to be wrong later on as the watch was made in China not Thailand. So, here buyer gets the right to claim for the damages only and can't reject the goods.

Difference between guarantee and warranty:

Guarantee	Warranty
1.Promise that a particular thing will happen for sure	1.It means an assurance given (positive declaration regarding something).
2.Option for repair/ replacement/ refund is there	2.Option for repair/ replacement is there
3.Applicable to products/ services	3.Applicable to products/ products parts only

Important Note: What can be called as condition or warranty completely depends on the nature, type or construction of the contract. A stipulation may be a condition, though can be called a warranty in the contract or vice versa.

Types of Warranties

a) Express Warranties

Warranty which is expressly incorporated/ mentioned by the parties in the contract. It can be oral or written.

b) Implied Warranties

These are such warranties which are automatically incorporated/ applicable by the law/ conduct/ behaviour in the contract.

An implied warranty is a lot like an assumption. For example, when you buy a new car from a car dealer, the implied warranty is that the car works. When you order a burger at a restaurant, it comes with the implied warranty that it is edible.

Various implied warranties are mentioned below:

1. Implied warranty of quiet (undisturbed) possession of goods

Once the goods are sold to buyer then there should be no disturbance by the seller or any third party to the buyer.

2. Implied warranty to disclose the dangerous nature of the goods

In case of selling the goods of dangerous nature to the buyer, there is an implied warranty that seller should disclose all the relevant information to the buyer. If seller fails to do the same, then seller will be liable to pay for the damages to the buyer.

Example of dangerous goods: Disinfectant, chemicals etc.

3. Implied warranty as to quality/ fitness

An implied warranty as to the quality or the fitness for a particular purpose should be made known to the buyer in advance. Example: any damage to goods which can happen should be made known to the buyer in advance, otherwise it will be considered breach of warranty.

4. Implied warranty as to free from liability/ loan charges

Any goods which are being sold by the seller to buyer should be free from loan/ liability.

Example: A took loan from bank for Rs. 1,00,000 by pledging the bike with bank. There was a loan going on and A sold the bike to C, here in this case there is an implied warranty that A can't sell the bike to C as the bike is not free from liability/ loan. So, C has the right to recover the damages from A.

Doctrine of Caveat Emptor (buyer is responsible for what he do)

Here, Caveat means beware and emptor means buyer. So, Caveat Emptor means buyer beware.

This concept says that let the buyer beware (alert to risks or dangers). Which means buyer is responsible for wrong selection made by him during buying something. Seller is not responsible or bound to disclose any defect in the goods i.e buyer is liable for his/ her acts.

Essentials of Doctrine of Caveat Emptor:

- 1. It is the duty of the buyer to thoroughly examine the goods**
- 2. Buyer can't blame anyone if goods turn out to be defective or do not serve his purpose**
- 3. Seller is under no obligation to reveal defects**
- 4. There is no implied undertaking by the seller that he shall supply the goods which will suit the buyer's purpose**

Exceptions to Doctrine of Caveat Emptor: (seller is responsible not the buyer)

Here, exceptions means buyer is not responsible for the actions taken. Only the seller will be responsible in below mentioned cases:

- 1. Buyer relies on the sellers judgement regarding the quality**

Where buyer has made known the particular purpose to the seller and relies on him for the purchase. So, in this case if any issue arises regarding the purpose then seller will be held responsible for the same.

- 2. Sale as sample**
- 3. Sale as per the description**
- 4. Sale by both sample as well as description**
- 5. Sale by fraud or misrepresentation**
- 6. Goods must be free from adulteration**

Otherwise seller will be responsible in case adulterated goods are supplied to the buyer

- 7. Goods must be of merchantable quality** (there should be no defects or goods should be fit for the purpose they are bought for)

Example: Cold drinks or chocolates- If seal of the cold drink selling in the market is opened or wrapper of the chocolate is damaged. Then these goods will not be called as goods of merchantable quality.