

## CONDITIONS & WARRANTIES

**STIPULATION:** 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. A representations which forms a part of the contract of sale and affects the contract, is called a stipulation.

**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*”.

**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*”.

### DIFFERENCE BETWEEN CONDITIONS AND WARRANTIES:

POINT OF DIFFERENCES	CONDITION	WARRANTY
MEANING	A condition is <i>essential to the main purpose</i> of the contract.	It is <i>only collateral to the main purpose</i> of the contract.
RIGHT IN CASE OF BREACH	The aggrieved party can <i>repudiate the contract or claim damages</i> or both in the case of breach of condition	The aggrieved party <i>can claim only damages</i> in case of breach of warranty.
CONVERSION OF STIPULATIONS	A breach of condition <i>may be</i> treated as a breach of warranty.	A breach of warranty <i>cannot</i> be treated as a breach of condition.

### WHEN CONDITION TO BE TREATED AS WARRANTY

*As a result buyer loses his right to rescind the contract and claim for damages only.*

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

- ♣ *When the buyer altogether waives the performance of the condition.*
- ♣ *Where the buyer elects to treat the breach of the conditions, as one of a warranty.*
- ♣ *Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.*
- ♣ *Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.*

### EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES

**EXPRESS CONDITIONS** are those, which are agreed upon between the parties at the time of contract and are expressly provided in contract.

**IMPLIED CONDITIONS** are those, which are presumed by law to be present in the contract.

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

- ♣ **CONDITION AS TO TITLE:** The condition implied is that the *seller has the right to sell the goods* at the time when the property is to pass. If the seller’s title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.
- ♣ **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*.
- ♣ **SALE BY SAMPLE:** In a contract of sale by sample, there is an implied condition that
  - a) The *bulk shall correspond with the sample in quality*;

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b) The buyer shall have a **reasonable opportunity of comparing the bulk with the sample**.

- ♣ **SALE BY SAMPLE AS WELL AS BY DESCRIPTION**: 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**.
- ♣ **CONDITION AS TO QUALITY OR FITNESS**: Ordinarily, **there is no implied conditions as to the quality or fitness of the goods sold for any particular purpose**.
- ♣ **CONDITION AS TO MERCHANTABILITY**: Where goods are brought 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**.
- ♣ **CONDITION AS TO WHOLESOMENESS**: In 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**.

### IMPLIED WARRANTY

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 in into their contract.

The following implied warranties:

- ♥ **WARRANTY AS TO UNDISTURBED POSSESSION**: That the buyer shall have and enjoy quiet possession of the goods.
- ♥ **WARRANTY AS TO NON-EXISTANCE OF ENCUMBRANCES**: Goods shall be free from any charge or encumbrances in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
- ♥ **WARRANTY AS TO QUALITY OR FITNESS BY USAGE OF TRADE**: Seller is under no duty to reveal unflattering truths about the goods sold.
- ♥ **DISCLOSURE OF DANGEROUS NATURE OF GOODS**:

### CAVEAT EMPTOR

means '**let the buyer beware**'. 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.

### EXCEPTIONS:

- ◆ **FITNESS AS TO QUALITY OR USE**: When 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 judgement and the goods are of description** which is in the course of seller's business to apply.
- ◆ **GOODS PURCHASED UNDER PATENT OR BRAND NAME**.
- ◆ **GOODS SOLD BY DISCRIPTION**
- ◆ **GOODS OF MERCHANTABILITY**
- ◆ **SALE BY SAMPLE**
- ◆ **GOODS BY SAMPLE AS WELL AS DESCRIPTION**
- ◆ **TRADE USAGE**: An **implies 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.
- ◆ **SELLER ACTIVELY CONCEALS A DEFECT OR IS GUILTY OF FRAUD**: **When 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 allowed discovered by the buyer on a reasonable examination, then the rule of caveat emptor will not apply.