

UNIT-2 SOGA



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Stipulation As to time

* Stipulation as to time of payment are not deemed to be of the essence of the contract or not depends on the terms of the contract.

■ As regard to time for 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 the goods must be without delay.

■ Price of goods may be fixed by the contract or may be agreed to be fixed later on in a specific manner.



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.
- When these statements or representations do not form a part of the contract of sale, they are not relevant & have no legal effects on the contract. But when these form part of the contract of sale & the buyer relies upon them, they are relevant & have legal effects on the contract of sale.
- [A representation which forms a part of the contract of sale & affects the contract, is called stipulation]. However, every stipulation is not of equal importance. The more significant stipulations contained in a contract of sale of goods have been called as "conditions", while the less significant stipulations have been given the name "warranties".

- * "A condition is a stipulation essential to the main purpose of contract, the breach of which gives rise to a right to treat the contract as repudiated."
- "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 & treat the contract as repudiated."
- 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 warranty in a contract.

CONDITION V/S WARRANTY

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

When is condition treated as warranty

- Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty & not as a ground for treating the contract as repudiated.
- Where a contract of sale is not severable & 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 & not as a ground for rejecting the goods & treating the contract as repudiated.
Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.
- The buyer loses his right to rescind the contract & can claim damages only.



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

1] Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be voluntary.

2] Where the buyer elects to treat the breach of the conditions, as one of a warranty. He may claim only damages instead of repudiating the contract. The buyer has not waived the condition but decided to treat it as a warranty.



3] Where the contract is non-severable & the buyer has accepted either the whole goods or any part thereof.

4] Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Voluntary Waiver

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

Compulsory Waiver

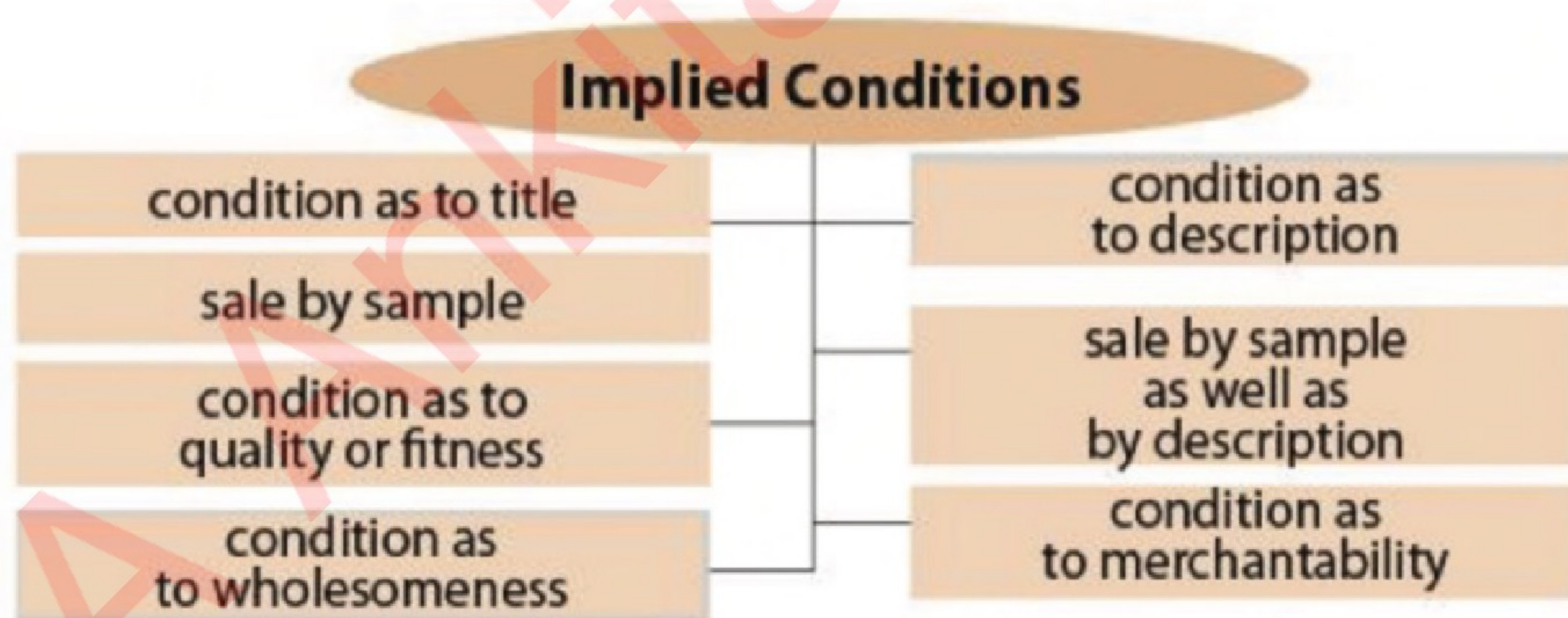
- Non-severability of contract
- Fulfilment of conditions excused by law

Express & Implied conditions & warranties

■ 'conditions & 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 are those, which are agreed upon between the parties at the time of contract & are expressly provided in the contract.

■ Implied conditions may be negated or waived by an express agreement.



1] Condition as to title: 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 in case of a sale, he has right to sell the goods.

- 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.
- If the seller's title turns out to be defective, the buyer must return the goods to the true owner & recover the price from the seller.

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 buyer is not bound to accept & pay for the goods which are not according to the description.

- Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description. If that is required & the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

The Act however does not define 'description'

■ Where the class or kind to which the goods belong has been specified. e.g., 'Egyptian cotton'; java sugar etc.

■ Where the goods have been described by certain characteristics essential to their identification eg. jute bales of specified shipment, steel of specific dimension etc. 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.

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

- 1] The bulk shall correspond with the sample
- 2] Buyer shall have reasonable opportunity of comparing the bulk with the sample.

4] Sale by sample as well as description: Where the goods are sold by sample as well as description the implied condition is that the bulk shall correspond both with sample & description. If not, then the buyer has the right to repudiate the contract.

5] Condition as to quality or fitness:

There is no implied condition as to quality or fitness of the goods sold for any particular purpose.

- However, the condition as to 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 & relied upon the skill & judgement of the seller to select the best goods.



This implied condition will not apply if the goods have been sold under trademark or patent name.



It is the duty of the buyer to examine the goods. He buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them.



6] Condition as to Merchantability: 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.

7] Condition as to wholesomeness: In this case eatables & provisions in addition to the implied condition as to merchantability there is another implied condition that the goods shall be wholesome.





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.

Examination of Section 14 & 16 discloses following implied warranties.

1] Warranty as to undisturbed possession.
An implied warranty that the buyer shall have & enjoy quiet possession of the goods. 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 warranty.

2] Warranty as to non-existence of encumbrances.

An implied warranty that the goods shall be free from any charge in favour of any third party not declared or known to the buyer before or at the time of the contract is entered into.

3] Warranty as to quality or fitness by usage of trade.

An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.

4] Disclosure of dangerous nature of goods.

Where the goods are dangerous in nature & the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

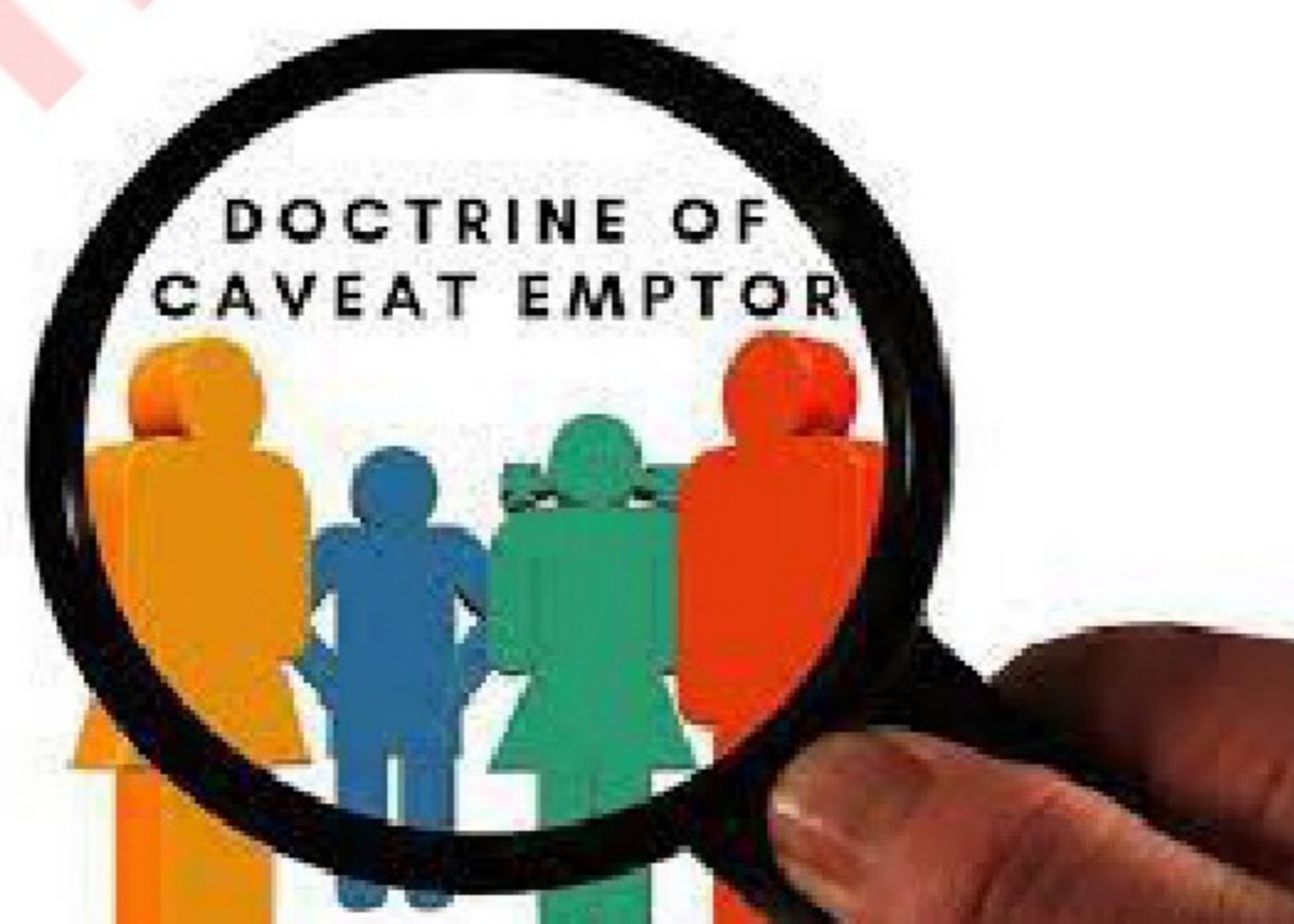


Caveat Emptor

- The doctrine 'Caveat Emptor' means let the buyer beware.
- The seller is in no way responsible for the bad selection of the buyer.
- It is the duty of 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 depends on his own skill or judgment, the buyer cannot hold the seller responsible.

THE RULE OF CAVEAT EMPTOR STATES THAT

"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 **exceptions** of caveat Emptor.

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 judgement & 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.

Priest v/s Last



Bombay Burma Trading corporation
v/s
Aga Muhammad.

In case the goods are purchased under brand or patent name, there is no implied condition that the goods shall be fit for any particular purpose



2] Goods sold by description: Where the goods are sold by description there is an implied condition that the goods shall correspond with the description. If it is not so then seller is responsible.

3] Goods of Merchantable Quality.

4] Sale by sample: This rule of Caveat Emptor does not apply if the bulk does not correspond with the sample.

5] Goods by sample as well as description. Here as well the rule of Caveat Emptor is not applicable.

6] Trade Usage: If the seller deviates from the usage of trade this rule of Caveat Emptor is not applicable.

7] Seller actively conceals a defect or is guilty of fraud: Where the seller sells the goods by making fraud or conceals some defect & buyer relies on it, then the rule of Caveat Emptor is not applicable. In such case buyer can avoid the contract & claim the damages.

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