Condition and warranty

Condition:
Some terms of the contract of sale constitute the hard core of the contract and their non-fulfilment may seem to upset the very basis of the contract. They may be so vital to the contract that their breach may seem to be a breach of the contract as a whole. Such terms are known as conditions of the contract and their breach entitles the innocent party to repudiate the contract.

Warranty:

A term which is not of such vital importance is known as a warranty. Its breach does not lead to repudiation, but only to damages for breach.

Difference between condition and warranty

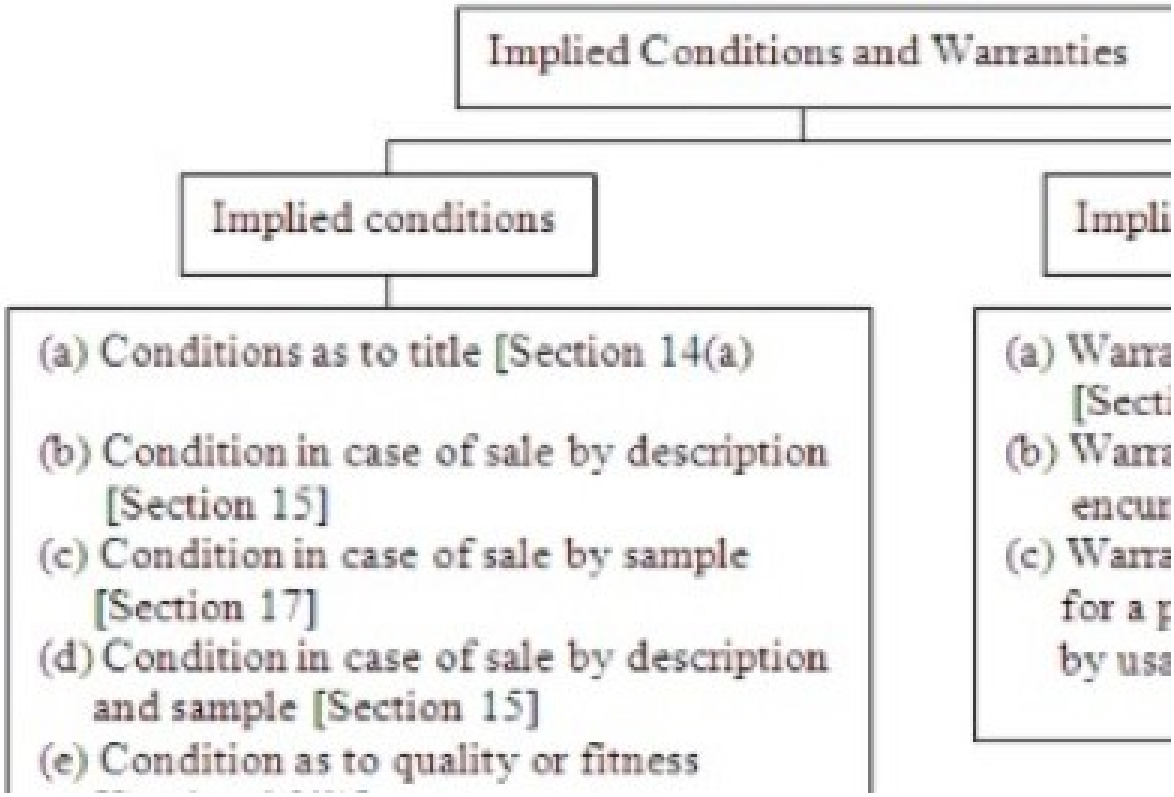
Basis	Condition	Warranty
Meaning	A requirement or event that should be performed before the completion of another action, is known as Condition.	A warranty is an assurance given by the seller to the buyer about the state of the product, that the prescribed facts are genuine.
Defined in	Section 12 (2) of Indian Sale of Goods Act, 1930.	Section 12 (3) of Indian Sale of Goods Act, 1930.
What is it?	It is directly associated with the objective of the contract.	It is a subsidiary provision related to the object of the contract.
Result of breach	Termination of contract.	Claim damages for the breach.
Violation	Violation of condition can be regarded as a violation of the warranty.	Violation of warranty does not affect the condition.
Remedy available to the aggrieved party on breach	Repudiate the contract as well as claim damages.	Claim damages only.

1. Express Conditions and Warranties:

These are expressly provided in the contract. For example, a buyer desires to buy a SONY TV Model No. 2062. Here, model no. is an express condition. In an advertisement for Khaitan fans, guarantee for 5 years is an express warranty.

2. Implied Conditions and Warranties:

These are implied by law in every contract of sale of goods unless a contrary intention appears from the terms of the contract. The various implied conditions and warranties have been shown below.



Implied Conditions:

A) Conditions as to Title:

There is an implied condition on the part of the seller that (i) in the case of a sale, he has a right to sell the goods, and (ii) in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

B) 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 description. The main idea is that the goods supplied must be same as were described by the seller. Sale of goods by description include many situations as under:

C) Sale by Sample:

A contract of sale is contract for sale by sample when there is a term in the contract, express or implied, to that effect. Such sale by sample is subject to the following three conditions.

a) The goods must correspond with the sample in quality.

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

c) The goods must be free from any defect which renders them unmerchantable and which would not be apparent on reasonable examination of the sample. Such defects are called latent defects and are discovered when the goods are put to use. It may be noted that the seller cannot be held liable for apparent or visible defects which could be easily discovered by an ordinary prudent person.

D) Sale by sample as well as by Description:

If the sale is by sample as well as by description, the goods must correspond with the sample as well as the description.

E) Condition as to Quality or Fitness:

There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods. This is expressed by the maxim caveat emptor (let the buyer beware).

F) Condition as a Merchantable Quality:

Where the 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. The expression 'merchantable quality' means that the quality and condition of the goods must be such that a man of ordinary prudence would accept them as the goods of that description. Goods must be free any latent or hidden defects.

G) Conditions as to Wholesomeness:

In case of eatables or provisions or foodstuffs, there is an implied condition as to wholesomeness. Condition as to wholesomeness means that the goods shall be fit for human consumption.

Implied Warranties:

A) Warranty as to Quiet Possession:

There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. The reach of this warranty gives buyer a right to claim damages from the seller.

B)Warranty of Freedom from Encumbrances:

There is an implied warranty that the goods are free from any charge or encumbrance in favour of any third person if the buyer is not aware of such charge or encumbrance. The breach of this warranty gives buyer a right to claim damages from the seller.

C) Warranty as to Quality or Fitness for Particular Purpose which may be Annexed by the Usage of Trade

D) Warranty to Disclose Dangerous Nature of Goods:

In case of goods of dangerous nature the seller must disclose or warn the buyer of the probably danger. If the seller fails to do so, the buyer may make him liable for breach of implied warran

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DOCTRINE OF CAVEAT EMPTOR

Caveat Emptor" is a Latin phrase that translates to "let the buyer beware". What exactly does this mean? Does the seller have no responsibilities? The answers lie in the Doctrine of Caveat Emptor. Let us learn more about it along with its exceptions.

The Doctrine of Caveat Emptor

The doctrine of Caveat Emptor is an integral part of the Sale of Goods Act. It translates to "let the buyer beware". This means it lays the responsibility of their choice on the buyer themselves.

It is specifically defined in Section 16 of the act "there is no implied warranty or condition as to the quality or the fitness for any particular purpose of goods supplied under such a contract of sale"

A seller makes his goods available in the open market. The buyer previews all his options and then accordingly makes his choice. Now let's assume that the product turns out to be defective or of inferior quality.

This doctrine says that the seller will not be responsible for this. The buyer himself is responsible for the choice he made.

So the doctrine attempts to make the buyer more conscious of his choices. It is the duty of the buyer to check the quality and the usefulness of the product he is purchasing. If the product turns out to be defective or does not live up to its potential the seller will not be responsible for this.

Let us see an example. A bought a horse from B. A wanted to enter the horse in a race. Turns out the horse was not capable of running a race on account of being lame. But A did not inform B of his intentions. So B will not be responsible for the defects of the horse. The Doctrine of Caveat Emptor will apply.

However, the buyer can shift the responsibility to the seller if the three following conditions are fulfilled.

- if the buyer shares with the seller his purpose for the purchase
- the buyer relies on the knowledge and/or technical expertise of the seller
- and the seller sells such goods

Exceptions to the Doctrine of Caveat Emptor

The doctrine of caveat emptor has certain specific exceptions. Let us take a brief look at these exceptions.

1] Fitness of Product for the Buyer's Purpose

When the buyer informs the seller of his purpose of buying the goods, it is implied that he is relying on the seller's judgment. It is the duty of the seller then to ensure the goods match their desired usage.

Say for example A goes to B to buy a bicycle. He informs B he wants to use the cycle for mountain trekking. If B sells him an ordinary bicycle that is incapable of fulfilling A's purpose the seller will be responsible. Another example is the case study of Priest v. Last.

2] Goods Purchased under Brand Name

When the buyer buys a product under a trade name or a branded product the seller cannot be held responsible for the usefulness or quality of the product. So there is no implied condition that the goods will be fit for the purpose the buyer intended.

3] Goods sold by Description

When the buyer buys the goods based only on the description there will be an exception. If the goods do not match the description then in such a case the seller will be responsible for the goods.

4] Goods of Merchantable Quality

Section 16 (2) deals with the exception of merchantable quality. The sections state that the seller who is selling goods by description has a duty of providing goods of merchantable quality, i.e. capable of passing the market standards.

So if the goods are not of marketable quality then the buyer will not be the one who is responsible. It will be the seller's responsibility. However if the buyer has had a reasonable chance to examine the product, then this exception will not apply.

5] Sale by Sample

If the buyer buys his goods after examining a sample then the rule of Doctrine of Caveat Emptor will not apply. If the rest of the goods do not resemble the sample, the buyer cannot be held responsible. In this case, the seller will be the one responsible.

For example, A places an order for 50 toy cars with B. He checks one sample where the car is red. The rest of the cars turn out orange. Here the doctrine will not apply and B will be responsible.

6] Sale by Description and Sample

If the sale is done via a sample as well as a description of the product, the buyer will not be responsible if the goods do not resemble the sample and/or the description. Then the responsibility will fall squarely on the seller.

7] Usage of Trade

There is an implied condition or warranty about the quality or the fitness of goods/products. But if a seller deviated from this then the rules of caveat emptor cease to apply. For example, A bought goods from B in an auction of the contents of a ship. But B did not inform A the contents were sea damaged, and so the rules of the doctrine will not apply here.

8] Fraud or Misrepresentation by the Seller

This is another important exception. If the seller obtains the consent of the buyer by fraud then caveat emptor will not apply. Also if the seller conceals any material defects of the goods which are later discovered on closer examination then again the buyer will not be responsible. In both cases, the seller will be the guilty party

Unpaid seller and his rights

introduction

An unpaid seller is one to whom the whole of the price has not been paid or a bill of exchange or such other negotiable instrument given to him has been dishonoured.

Unpaid Seller: Definition

The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act-

a) When the whole of the price has not been paid or tendered;
b) When a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

Seller includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for the price

Rights of an Unpaid Seller

An Unpaid seller has two-fold rights, viz:

a) Rights of unpaid seller against the goods; and b) Rights of unpaid seller against the buyer personally.

Rights of Unpaid Seller against the Goods

Notwithstanding that the property in the goods may have passed to the buyer, an unpaid seller can exercise the following rights against the goods:

a) Right of lien on the goods for the price while he is in possession of them;
b) Right of stoppage of goods in transit after he has parted with the possession of them and the buyer has become insolvent;
c) Right of re-sale. Even if the property in the goods has not passed to the buyer, the unpaid seller has right of withholding delivery of the goods and this right would be similar to and co-extensive with the right of lien or stoppage in transit where the property has passed to the buyer.

a) Right of Lien(Ss. 47-49) Lien is the right to retain possession of goods and refuse to deliver them to the buyer until the price due in respect of them is paid or tendered. By way of exercise of this right the seller can refuse to deliver the goods to the buyer until the payment of the price even though the ownership in the goods has already passed to the buyer. By amere exercise of this right, the contract of sale is not rescinded.5According to section 47, this right can be exercised in the following situations:

- Where the goods have been sold without any stipulation as to credit, i.e.., the sale of the goods has been on cash basis. According to section 32, if there is no agreement to the contrary, the payment of the price and the delivery of the goods are concurrent conditions. It means that if the goods have not been sold on credit, the seller expects that the buyer shall pay the price against the goods. The seller can refuse to deliver them to the buyer, or in other words, he can exercise the right of lien over the goods, if the buyer is not ready and willing to pay the price in exchange for the goods. The position in this regard has been thus stated by Bayley B:6 “the general rule of law is, where there is a sale of goods, and nothing is specified as to delivery or payment, although

everything may have been done so as to divest the property out of the vendor, and as to throw upon the vendee all risk attendant upon the goods, still there results to the vendor out of the original contract a right to retain the goods until payment of the price."

- Where the goods have been sold on credit, but the term of credit has expired. In such a case, the seller can exercise the right of lien on the expiry of the period of credit. Even though originally the seller had agreed to sell them on credit but now since the price has become payable because of the expiry of the period of credit, the seller can refuse to part with the goods until he is paid for them. For example, on 1st January, A sells a horse to B, the buyer having a right to take the delivery at any time he likes and the price is payable on 1st March. If the buyer has not taken the delivery of the horse by 1st March and he demands the delivery after this date, the seller can refuse to part with the horse until the buyer pays for them.

- Where the buyer becomes insolvent. Even though the seller had sold the goods on credit and the period of credit has not yet expired but the buyer has become insolvent the seller‟s right of lien can be exercised. For example, the goods are sold on 1st January and the period of credit extends upto 1st March, if the buyer becomes insolvent on 15th January and he had not yet taken the delivery of the goods, the seller may exercise his right of lien if the buyer demands delivery at any time after 15th January although originally he had agreed to deliver the goods to the buyer on credit. By the insolvency of the buyer during the period of credit, the right of lien which may have been suspended earlier for the period of credit is revived and the credit granted earlier comes to an end

Termination of lien The unpaid seller‟s right of lien may be lost in any of the following ways:

1. By payment of price: The right of lien comes to an end when the seller ceases to be an unpaid seller, i.e., when the buyer pays or tenders the price to the seller. It has been noted under section 47 (1) that the unpaid seller is entitled to exercise his right of lien until payment or tender of the price in respect of certain goods, the payment or tender of the price, therefore, terminates the seller‟s right to retain the goods. Merely obtaining the decree does not mean the payment of the price and, therefore, section 49 (2) states that an unpaid seller, having a lien on the goods, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

2. By delivery to the carrier: Since the right of lien is a right to retain the possession so long as the seller continues in possession, the right would obviously come to an end when the seller loses the possession. The seller loses the possession when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods. If the seller has reserved the right of disposal, i.e., a right of not delivering the goods to thebuyer until he fulfils the required condition, generally that condition being the payment of the price, the seller can exercise his right of lien.

3. By the buyer obtaining possession of the goods: When the buyer or his agent lawfully obtains the possession of the goods the right of lien comes to an end. If the buyer at the time of the contract of sale is already in possession of the goods, although as a bailee for the seller, the seller cannot exercise the right of lien in respect of those goods. If the buyer once obtains the possession, the right of lien comes to an end, and such a right cannot be exercised even if the seller again gets back the possession of those goods. Thus, where a refrigerator after being sold was delivered to the buyer and since it was not functioning properly, the buyer delivered two of its parts to the seller for repairs, it was held that the seller could not exercise his lien over those parts

4. By waiver: Unpaid seller‟s right of lien is also lost by waiver thereof. According to section 46 (1) (a), an unpaid seller gets his right of lien by implication of law. A party to a contract may waive his rights, expressly or impliedly, according to section 62. Section 49 (1) (c) expressly provides that the right of lien comes to an end by waiver thereof. Such a waiver may be presumed when the seller allows a period of credit to the buyer, or delivers a part of the goods to the buyer or his agent under the circumstances which show that he does not want to exercise his right of lien or, when the seller assents to a sub-sale which the buyer may have made.

5. By Disposition of the goods by the buyer: According to section 53, the unpaid seller‟s right of lien or stoppage in transit is not affected by any sale or other disposition of the goods by the buyer. This general rule is subject to the following two exceptions: When the seller himself assents to a sub-sale or other disposition of the goods by the buyer; When the buyer having lawfully obtained possession of document of title to the goods transfers the same to a transferee in good faith and for consideration and he transfer is by way of „sale‟.

In the above stated two exceptional cases, the unpaid seller‟s right of lien comes to an end.

2. Right of stoppage in transit

It is a right of stopping the goods while in transit after the unpaid seller has lost possession of the goods. This right enables the seller to regain possession. Such a right is available to the unpaid seller when the buyer becomes insolvent and when the goods are in transit. Goods are deemed to be in course of transit if they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent takes delivery of them.

Differences between right of lien and right of stoppage in transit

Right of Lien	Right of Stoppage in Transit
1. The unpaid seller can exercise this right only if he keeps possession of the goods.	1. The unpaid seller can exercise this right if he has lost possession of the goods.
2. This right can be exercised when the buyer is able to pay but does not pay.	2. This right is exercised only when the buyer is insolvent.
3. This right comes to an end the moment possession of the goods is lost by the unpaid seller.	3. This right commences only when the seller has lost possession of the goods.
4. It is a right to retain possession.	4. It is a right to regain possession.

3. Right of Re-Sale

The unpaid seller can re-sell the goods if the goods are of a perishable nature. He can also make a resale of the goods if he has given notice to the buyer of his intention to re-sell and the buyer has not within a reasonable time paid the price. If on resale, the seller incurs loss, he can claim the same from the buyer as damages for breach of contract. If there is a profit on resale, he is not bound to hand it over to the buyer.

If the property in the goods has not passed to the buyer, the unpaid seller has, in addition to all other remedies, the right to withhold delivery.

Rights of an unpaid seller against the buyer personally

These rights of the unpaid seller against the buyer are called 'rights in personam'. These are as follows:

1. If the property in the goods has passed to the buyer and the buyer wrongfully refuses to pay for the goods, the seller may sue him for the price.

2. Even if the property in the goods has not passed to the buyer, the unpaid seller may sue the buyer for the price if he wrongfully refuses to pay.

3. If the buyer wrongfully refuses to accept and pay for the goods, the seller may sue him for non-acceptance.

4. If the buyer abandons the contract before the date of delivery, the seller may treat the contract as existing and wait till the date of delivery or he may treat the contract as cancelled and sue the buyer for damages for the breach.

5. If there is a specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If there is no such agreement, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.