

At the time when the goods are sold, the seller often praises his goods and in this process narrates the features of his goods out of which some may be true while others may be false and wrong. The seller will be liable for wrong facts given if the fact stated is Stipulation. The stipulation is a fact stated by the seller about his goods which is of such a nature that about such fact the buyer cannot make his own opinion in the circumstances in which the contract of sale of goods is entered into. The other facts are mere representations and seller is not liable even when they are wrong.

Hence we shall now talk about Stipulation only. Stipulation can be of the following two types:

1. Condition

2. Warranty

**CONDITION:** Condition is a stipulation which is essential for the accomplishment of main purpose of the contract of sale of goods and the breach of which gives right to the buyer to reject the goods. For example: The buyer informed the seller that he wanted only M.P. wheat and none else. It is a Condition and therefore if the wheat given is not M.P. wheat the buyer can refuse to accept the goods.

**WARRANTY:** Warranty is a stipulation which is collateral for the accomplishment of the main purpose of the contract of sale of goods and the breach of which gives right to the buyer to claim damages. The buyer cannot refuse to accept the goods. For example: The buyer informed the seller that he wanted good wheat and the seller gave him wheat saying it is M.P. wheat which is considered of best quality. Later if the wheat supplied is not M.P. wheat, the buyer will have to keep the wheat but he can claim damages which will be equal to the difference between the price of wheat supplied and the price of M.P. Wheat.

Difference between condition and warranty:

1. Condition is essential for the accomplishment of the main purpose of the contract while warranty is only collateral for the accomplishment of the main purpose of the contract of sale of goods.

2. Breach of condition entitles the buyer to reject the goods while breach of warranty entitles the buyer to claim damages. The buyer cannot refuse to accept the goods.

3. Breach of condition can be treated as a breach of warranty in the following cases:

a) Voluntary Waiver: if the buyer wants to keep the goods in spite of the fact that there is a breach of condition, the buyer can do so and in such situation the buyer will simply claim damages for the breach.

B) Compulsory Waiver: If the buyer has already consumed the goods or has changed the form of goods then he cannot return the goods back to the seller and therefore the buyer will simply claim damages for the breach.

The breach of warranty can never be treated as breach of condition.

Types of Condition: Condition can be of two types:

1. Express Condition: The condition which is expressly settled between the buyer and seller while negotiating the terms is called Express Condition.
2. Implied Condition: It is a condition which is applicable to every contract of sale of goods by law. Such condition need not be expressly fixed and even without that it will form part of the contract and shall be applicable to the contract of sale of goods.

Implied Conditions:

1. Condition regarding ownership of the goods: Every seller is the owner of the goods and has the authority to sell the goods. If later on the buyer finds that the seller was not the owner of the goods then it will be taken as breach of implied condition of ownership of the goods. The buyer will reject the contract of sale of goods and will claim back the price if it is already paid.
2. Condition regarding Sale by description: When the goods are sold by description, it is essential that the goods correspond and match with the description. If the goods do not match with the description the buyer can refuse to accept the goods. This condition is relevant where the buyer has not seen the goods and has agreed to purchase the goods on the basis of description made by the seller.
3. Condition regarding Sale by Sample: Where the goods are sold by sample it is essential that the following conditions are fulfilled:
  - A) All the goods correspond and match with the sample.
  - B) The buyer is given reasonable opportunity to match the goods with the sample.
  - C) The goods do not have any such defect which is latent and because of which the goods are not merchantable. Latent defects are such defects which are not visible on a reasonable and ordinary inspection of the goods. Such goods which have latent defects and because of which the goods cannot be used for the purpose for which they are ordinarily used are non merchantable.

IF any of the above three conditions are not met, it will be breach of implied condition of Sale by sample and the buyer has a right to reject the goods.

4. Condition regarding Sale by Sample and Description both: When the goods are sold by sample as well as description it is essential that the goods correspond to both of them. If the goods match with the sample but do not match with the description or V.Versa, the buyer can refuse to accept the goods.

5. Condition regarding merchantability: This condition makes the seller liable for the fact that the goods are merchantable. The goods are considered Not Merchantable if they have some hidden defect and because of that defect, the goods are not fit for the purpose for which they are ordinarily used. It means that the goods do not answer to the Description by which they are generally sold.

6. Condition regarding Quality or Fitness: Ordinarily in a contract of Sale of goods the seller is in no way liable that the goods are suitable for the purpose of the buyer. It is because of the fact that in a contract of sale of goods the Doctrine of CAVEAT EMPTOR is applicable which means 'Let the

buyer beware'. But the seller will be liable that the goods are suitable for the purpose of the buyer if all the following three conditions are satisfied:

- a. The buyer informs the seller about the purpose for which the buyer requires the goods.
- b. The buyer relies on the skill and judgement of the seller while making the purchase.
- c. The buyer in the ordinary course of his business deals in those type of goods.

If all the above said three conditions are met then the seller becomes liable that the goods are suitable for the purpose of the buyer. If the goods later are found to be not fit for that purpose, the buyer has a right to refuse to accept the goods. However, where the goods are sold under a Patent or a Trademark OR where the buyer is suffering from some abnormality which was not made known to the seller, the seller will not be liable.

7. Condition regarding Wholesomeness: This implied condition is applicable to Eatables and provisions and those goods which are meant for personal usage like skin cream and body lotion etc. As per this implied condition the seller is liable if the goods are not fit for human consumption and use. If it is so, the buyer has a right not to accept the goods.

#### IMPLIED WARRANTIES:

1. Implied warranty of quiet and peaceful possession: The seller is liable to ensure that the buyer will have peaceful and undisturbed right over the goods after the purchase. If later on this warranty is not true, the buyer has a right to claim damages from the seller.

2. Implied warranty of goods free from charge and encumbrances: The seller is liable that the goods are free from all kinds of encumbrance and charges. If later any charge is detected the seller is liable to clear that charge.

3. Implied warranty to disclose the dangerous nature of the goods: The seller must disclose the dangerous nature of the goods to the buyer and should warn the buyer about this. If the seller fails to inform the buyer and the buyer suffers damage, the buyer can claim the losses from the seller.

#### DOCTRINE OF CAVEAT EMPTOR:

This doctrine means: "LET THE BUYER BEWARE".

In simple words it implies that buyer will have to himself ensure that the goods he is buying are suitable and fit for his purpose. The seller is in no way liable if the buyer finds after the purchase that the goods are not suitable for the purpose for which he has bought the goods. This general rule is applicable specifically in the following situations:

a. Where the buyer has examined the goods before making the purchase and the goods have no latent defects. If the goods have some defects which can be found by reasonable and ordinary inspection, they are called patent defects. In case of patent defects the seller will not be liable in any manner.

b. Where the goods are sold under a patent or trademark.

- c. Where the seller does not deal in those type of goods in the ordinary course of his business.
- d. Where the goods can be used for several purposes and the buyer has not disclosed his purpose to the seller.
- e. Where the buyer is suffering from abnormality and the same is not disclosed to the seller at the time of purchase.

However following are the exceptions to the rule of CAVEAT EMPTOR

- 1.The seller shall be liable that the goods are suitable for the purpose of the buyer if the buyer has disclosed the purpose to the seller or the goods can be used only for one purpose and the buyer has relied on the skill and judgement of the seller while making purchase and the seller in the ordinary course of his business deals in those kind of goods.
- 2.The seller shall be liable if he has committed fraud by concealing the defects so that on ordinary inspection the buyer was unable to find the defects in the goods.
3. The seller shall be liable in cases where goods are sold by sample, description or by both as per the implied conditions discussed above.
4. The seller shall be liable where the goods are Non merchantable because of the latent defects.
5. The seller shall be liable where the goods are eatables etc. And they are not wholesome.

-----.