

Conditions And Warranties

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INTRODUCTION

In a contract of sale, usually parties makes certain statements or the stipulation about the goods under sale or purchase. These stipulations in a contract of sale made with reference to the subject matter of sale. It may be either a condition or Warranty.

These stipulations forms the part of the contract of sale and a breach of which may provides a remedy to the buyers against the seller.

CONDITIONS AND WARRANTIES

The provisions relating to conditions and warranties are covered under sections 11 to 17 of the Sale of Goods Act.

Conditions and warranties

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graph TD; A[Conditions and warranties] --> B[Stipulation as to time]; A --> C[Condition and warranty]; A --> D[When Condition treated as warranty];
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*Stipulation
as to time*

*Condition
and
warranty*

*When
Condition
treated as
warranty*

Stipulation as to time

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graph TD; A["Stipulation as to time"] --> B["Delivery of goods"]; A --> C["Payment of price"];
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**Delivery
of goods**

**Payment
of price**

Condition and warranty

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graph TD; A["Condition and warranty"] --> B["Express"]; A --> C["Implied"]
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Express

Implied

Implied Conditions

***condition as to
title***

sale by sample

***condition as to
quality or fitness***

***conditions as
to wholesomeness***

***condition as
to description***

***Sale by sample
as well as
by description***

***Condition as
to
merchantability***

Implied Warranties

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graph TD; A([Implied Warranties]) --> B[Warranty as to undisturbed possession]; A --> C[warranty as to non-existence of encumbrances]; A --> D[Disclosure of Dangerous nature of goods]; A --> E[Warranty as to quality or fitness by usage of trade];
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*Warranty as to
undisturbed
possession*

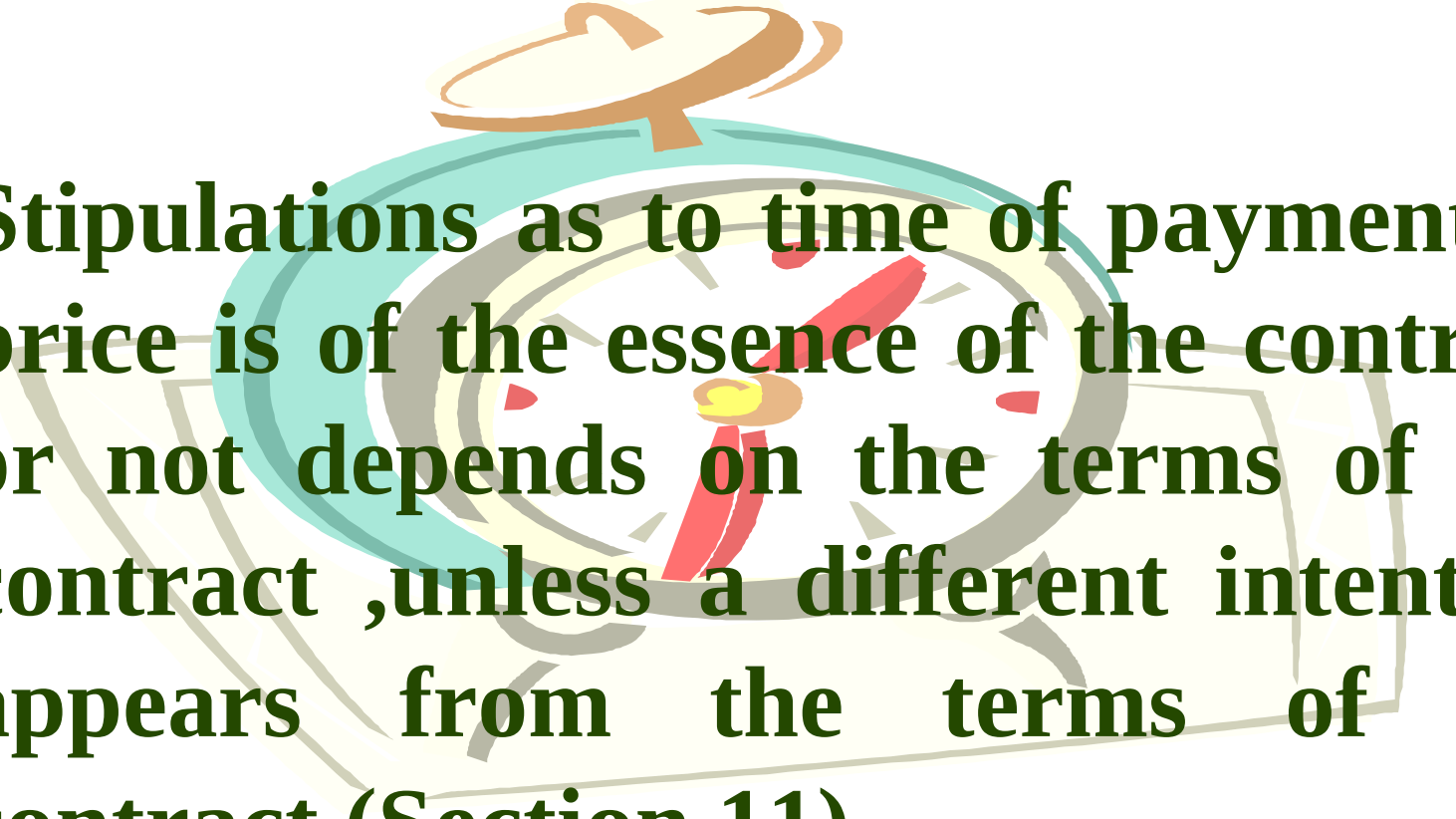
*warranty as
to non-existence
of encumbrances*

*Disclosure of
Dangerous
nature of goods*

*Warranty as to
quality or
fitness by
usage of trade*



STIPULATION AS TO TIME



Stipulations as to time of payment of price is of the essence of the contract or not depends on the terms of the contract ,unless a different intention appears from the terms of the contract.(Section 11).

Stipulations as to time of delivery of goods are usually the essence of the contract.

CONDITIONS

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives right to repudiate the contract and to claim damages [Section 12(2)].

Example

X wants to purchase a horse from Y, which can run at a speed of 50 Kms/hour. Y pointing at a particular horse says “This horse will suit you.” X buys the horse but later on finds that the horse can run at a speed of 30 Kms/hour. This is a breach of condition because the stipulation made by the seller forms the very basis of the contract.

WARRANTIES

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 and treat the contract as repudiated[Section12(3)].

Example

A man buys a particular horse, which is warranted to be quiet to ride and drive. The horse turns out to be Vicious, the buyer's only remedy is to claim damages. This is a breach of warranty, because the stipulation made by the seller was only a collateral one.

Whether a stipulation is a condition or warranty?

A stipulation in a contract of sale is either condition or warranty depending in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract[Section 12(4)].

Differences

Basis of difference	Condition	Warranty
Nature	A condition is essential to the main purpose of the contract.	It is only collateral to the main purpose of the contract.

Basis of difference	Condition	Warranty
Exemption from performance in case of breach of the stipulation.	Here, the aggrieved party can repudiate the contract and exempted from performance and can claim damages also.	Here, the aggrieved party cannot rescind the contract, but can claim damages only.

Basis of difference	Condition	Warranty
Treatment	A breach of contract may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

When a breach of Condition be treated as a breach of warranty?

Section 13 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim for damages only.

The following are the cases in which waiver of conditions operate:

1. Voluntary waiver: Where the seller has to fulfil certain conditions under the contract of sale and he commits a breach of conditions, the buyer may-

- (i) altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation; or**
- (ii) elects to treat the breach of the condition as one of a warranty. That is to say, he may only claim damages instead of repudiating the contract;**

2.Compulsory waiver: Here the waiver does not depend on the will of the buyer,but creates an estoppel against him by his conduct and his presumed by law.

- (i) where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.**
- (ii) where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.**

Example

P agrees with Q to deliver 100 bags of sugar on 1st of March, 2009. P failed to deliver the sugar on 1st of March, 2009 as agreed and is liable for breach of contract. But now he is prepared to deliver the sugar on 19th March 2009. Q can accept this delivery by treating the breach of condition as a breach of warranty and can claim the damages.

EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES

**Conditions and warranties may
be either –**

(a) Express

(b) Implied

EXPRESS CONDITIONS AND WARRANTIES

When any stipulation is inserted in the contract at the will of the parties, it is said to be expressed conditions and warranties.

IMPLIED CONDITIONS AND WARRANTIES

The implied conditions and warranties, are those which are presumed by law to be present in the contract though they have not been put into it in expressed words.

IMPLIED CONDITIONS

- **Implied conditions are dealt with in Sections 14 to 17 of the Sale of Goods Act, 1930.**

Unless otherwise agreed, the law incorporates into a contract of sale of goods the following implied conditions:

CONDITION AS TO TITLE

In every contract of sale, the first implied condition on the part of the seller is that-

- (a) in case of a sale, he has a right to sell the goods, and**
- (b) 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.**

Buyer is entitled to reject the goods and to recover the price, if the title turns out to be defective [Section 14(a)].

Example

A purchased a tractor from B who had no title to it. A used the tractor for 2 months. After that, the true owner spotted the tractor and demanded it from A. Held that A was bound to hand over the tractor to its true owner and that A could sue B, the seller without title, for the recovery of the purchase price.

CONDITION AS TO DESCRIPTION

Where there is a contract of sale of goods by description, there is an implied condition that the goods correspond with the description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods(Section 15).

Example

A ship was contracted to be sold as “copper-fastened vessel” but actually it was only partly copper-fastened. Held that goods did not correspond to description and hence could be returned or if buyer took the goods, he could claim damages for breach.

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;**
- (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and**

(c) the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample (Section 17)

Example

A company sold certain shoes made of special sole by sample for the French Army. The shoes were found to contain paper not discoverable by ordinary inspection. held ,the buyer was entitled to the refund of the price plus damages.

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 must correspond both with the sample and the description.

In case the goods correspond with the sample but do not tally with description or vice versa, the buyer can repudiate the contract (Section 15).

Example

A agreed with B to sell certain oil described as refined rape seed oil, warranted only equal to sample. The goods tendered were equal to sample, but contained a mixture of hemp oil. B can reject the goods.

CONDITION AS TO QUALITY OR FITNESS

Ordinarily, there is no implied condition as to the quality or fitness of the goods sold for any particular purpose. However, the condition as to the reasonable fitness of goods for a particular purpose may be implied on the part of the seller for which the buyer wants them.

Following are the conditions to be satisfied:

- if the buyer had made known to the seller the purpose of his purchase, and**
- the buyer relied on the seller's skill and judgement, and**
- seller's business to supply goods of that description (Section 16).**

Example

A purchased a hot water bottle from a chemist. The bottle burst and injured his wife. Held, breach of condition as to fitness was committed and thus chemist was liable for refund of price and the damages.

CONDITION AS TO MERCHANTABILITY

- **This condition is implied only where the sale is by description and the goods should be of ‘mercantable quality’ i.e. the goods must be such as are reasonably saleable under the description by which they are known in the market [Section 16(2)].**

Example

A purchases a certain quantity of black yarn from B, a dealer in yarn, and finds it damaged by white ants, the condition as to merchantability has been broken and A is entitled to reject it as unmerchantable.

CONDITIONS AS TO WHOLESOMENESS

In the 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.

Example

A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

IMPLIED WARRANTIES

A condition may reach to the level of a warranty in cases where buyer is content with his right of damages or cannot reject the goods. The examination of Section 14 and 16 of the Sale of Goods Act, 1930 disclosed the following implied warranties:

Warranty as to undisturbed possession

An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, 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 the warranty.

Example

‘X’ purchased a second hand typewriter from ‘Y.’X’ thereafter spent some money on its repair and used it for months. Unknown to the parties the typewriter was stolen one and X was compelled to return to its true owner. X was held entitled to recover from the sellers for the breach of this warranty damages not only the price but also the cost of repair.

warranty as to non-existence of encumbrances

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

Example

A, pledges his car with C for a loan of Rs.15,000 and promises him to give its possession the next day.A,then sells the car immediately to B , who purchased it on goodfaith,without knowing the fact.B ,may either ask A to clear the loan or himself may pay the money and then,file a suit against A for recovery of the money with interest.

Disclosure of dangerous nature of goods

There is an implied warranty on the part of the seller in case of the goods ,inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is breach of this warranty, the seller will be liable in damages.

Example

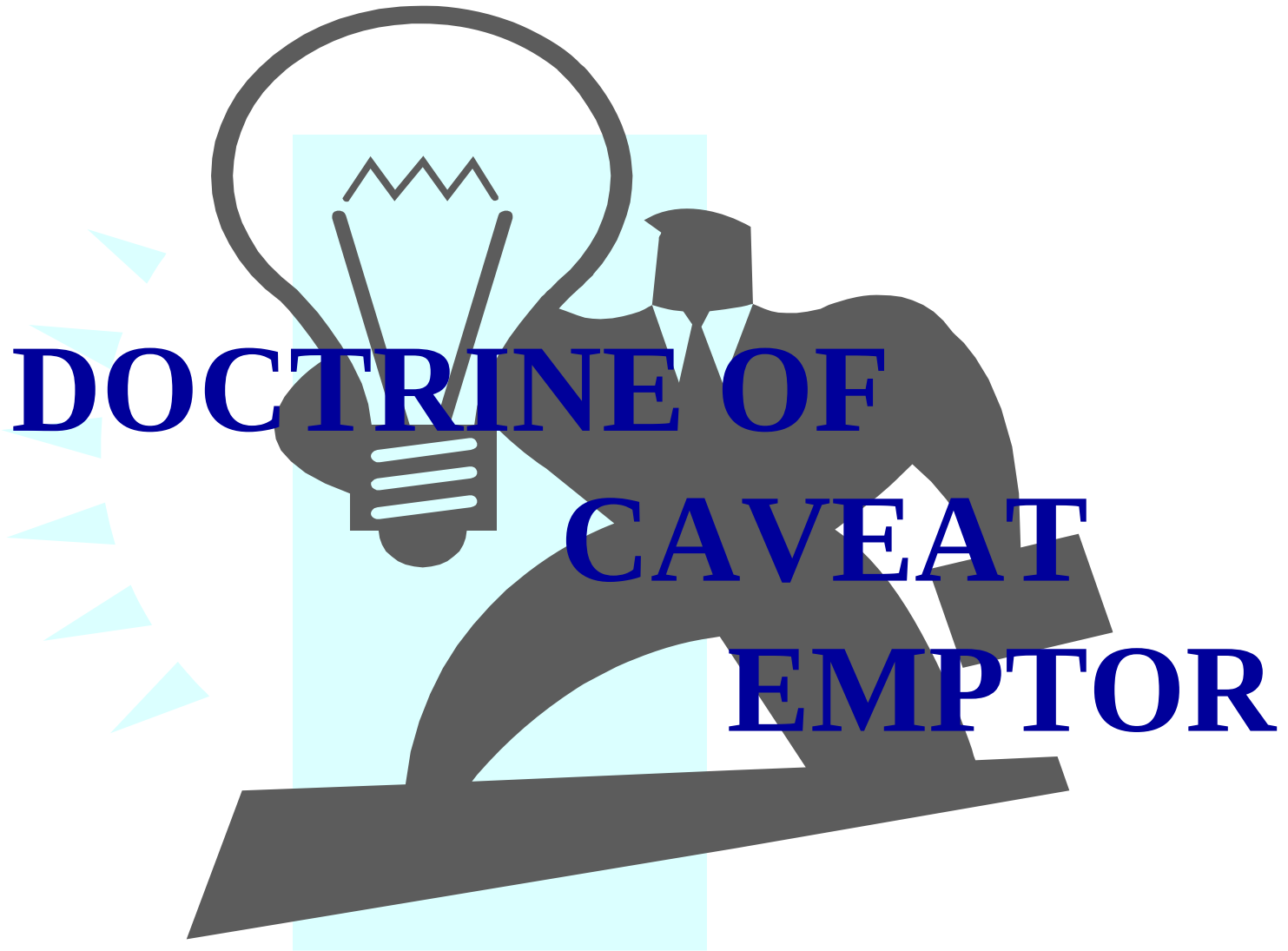
C purchases a tin of disinfectant powder from A. A knows that the lid of the tin is defective and if opened Without care it may be dangerous, but tells nothing to C .As C opens the tin causes injury. A is liable in damages to C as he should be warned C of the probable danger.

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 by the usage of trade.

Example

A Drugs was sold by an auction and according to the usage of trade. It was to disclose in advance any sea-damage, otherwise it will be taken as a breach of warranty if no such disclosure has been made and the goods found to be defective.



DOCTRINE OF CAVEAT EMPTOR

Mercantile Law: Conditions and
Warranties

Sale of Goods Act 1930

In case of sale of goods, the doctrine ‘Caveat Emptor’ means ‘let the buyer beware’. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable.

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. If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgement, the buyer cannot hold the seller responsible.

The rule of Caveat Emptor is laid down in the Section 16, which states that, “subject to the provisions of this Act or of any other law for the time being in force, 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”.

Example

A sold pigs to B. These pigs, being infected, caused typhoid to other healthy pigs of the buyer, it was held that the seller was not bound to disclose that the pigs were unhealthy. The rule of the law being “Caveat Emptor”.

Example

A purchases a horse from B. A needed the horse for riding but he did not mention this fact to B. The horse is not suitable for riding but is suitable only for being driven in the carriage. Caveat emptor rule applies here and so A can neither reject the horse nor can claim compensation from B.

Exceptions

The doctrine of Caveat Emptor is, however, subject to the following exceptions-

1. 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 and 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 [Section 16 (1)].

Example

An order was placed for some trucks to be used for heavy traffic in a hilly country. The trucks supplied by the seller were unfit for this purpose and broke down. There is a breach of condition as to fitness.

2. In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].

Example

In the sale of a refrigerator, the name of the article itself implies that the seller warrants that the machine is fit for the particular purpose.

**3. Where the goods are sold by description there is an implied condition that the goods shall correspond with the description.
[Section 15].**

Example

Where there was a contract for the supply of ‘new singer cars’ and one of the cars supplied having already run a considerable mileage was not new, there was a breach of condition on the part of the seller and the buyer was held entitled to reject the car.

4. 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[Section 16(2)].

Example

A bought a black velvet cloth from C and found it to be damaged by white ants. Held, the condition as to merchantability was broken.

5. Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].

Example

Two parcels of wheat were sold by sample. The buyer went to examine the bulk a week after. One parcel was shown to him but the seller refused to show the other parcel which was not there in the warehouse. Held, the buyer was entitled to rescind the contract.

6. Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description [Section 15].

Example

There was a contract of sale by sample of seeds described as ‘common English Sainfoin’. The seed which were supplied and the sample shown were different and of inferior variety ‘gaint sainfoin’ .It was held that there was a breach of condition. The buyer was entitled to recover damages.

7. An implied 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.

8. Where 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 discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

Auction Sale



AUCTION SALE

An auction sale is a public sale where the goods are sold to the highest bidder. An auctioneer invites bids from prospective purchasers and sell the goods to the highest bidder.

Under section 64 of the Sale of Goods Act, 1930 the following rules relating to an auction sale are laid down:

1. Where goods are sold in lots:

Where goods are put for sale in lot, each lot is prima facie deemed to be subject matter of a separate contract of sale.

2. Completion of the contract of sale:

The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.

3. Right to bid may be reserved:

Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

4. Where the sale is not notified by the seller:

Where the sale is not notified to be subject to the right of the seller to bid, it shall not be lawful for the seller:

- to bid himself, or**
- to employ any person to bid at such sale, or**
- for the auctioneer knowingly to take any bid from the seller, or**
- any person representing him.**

Any sale contravening this rule may be treated as fraudulent by the buyer.

5. Reserved price:

The sale may be notified to be subject to a reserve or upset price.

6. Pretended bidding:

If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

SUMMARY

While entering into a contract of sale, certain stipulations are put by both the parties i.e. the buyer and the seller such as time for payment of price, time for delivery, quality of goods, transfer of title, etc.

These stipulations with reference to goods may be ‘conditions’ or ‘warranties’ depending upon the construction of the contract.

A stipulation essential to the main purpose of the contract is a ‘condition’ whereas collateral stipulations are called warranties. Breach of a ‘condition’ and that of a ‘warranty’ have different consequences.

Every contract of sales have certain conditions and warranties implied by law. Besides, the parties may provide for ‘conditions’ and ‘warranties’ by an express agreement.

Regarding implied condition or warranty as to the quality of fitness for any particular purpose of goods supplied, the rule is ‘let the buyer beware’ i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.

An ‘Auction Sale’ is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. An auctioneer is an agent governed by the Law of Agency. When he sells, he is only the agent of the seller. He may, however, sell his own property as the principal and need not disclose the fact that he is so selling.

MULTIPLE CHOICE QUESTIONS

A stipulation which is essential to the main purpose of the contract is called-

a.warranty

b.guarantee

c.condition

d.indemnity

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Breach of condition gives the aggrieved party-

a. right to sue for damages

b. right to repudiate the contract

c. both (a) and (b)

d. none of these

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A stipulation which is collateral to the main purpose of the contract-

a. warranty

b. condition

c. contingency

d. guarantee

**A stipulation which is collateral
to the main purpose of the
contract-**

a. warranty

b. condition

c. contingency

d. guarantee

- Condition may be treated as a warranty when there is –**
- a. waiver of condition by the buyer**
 - b. buyer elects to treat breach of condition as a breach of warranty**
 - c. acceptance of goods by the buyer in case of non-severable of contract of sale**
 - d. all the above**

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- a. waiver of condition by the buyer**
- b. buyer elects to treat breach of condition as a breach of warranty**
- c. acceptance of goods by the buyer in case of non-severable of contract of sale**
- d. all the above**

The doctrine of Caveat Emptor does not apply, when

- a.the goods are bought by sample.**
- b.the goods are bought by sample as well as description.**
- c.The exact purpose is known to the seller and is a regular dealer**
- d.all of the above**

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a.the goods are bought by sample.

b.the goods are bought by sample as well as description.

c.The exact purpose is known to the seller and is a regular dealer

d.all of the above

Doctrine of caveat emptor means-

- a.let the buyer beware**
- b.let the seller be beware**
- c.let the creditor beware**
- d.none of the above**

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means-**

a.let the buyer beware

b.let the seller be beware

c.let the creditor beware

d.none of the above

A buys a readymade shirt for his son which he finds to be not exactly fit to his son as it was too loose. The remedy available to A –

a. A will have no right to return or exchange

b. A have a right to return or exchange

c. A has a right to repudiate the contract

d. none of these

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d. none of these

A asks for a citrus juicer made in Holland.B supplies him with a citrus juicer made in hongkong.There is breach of Implied condition subjecting to-

a. condition as to title

b.condition as to quality or fitness

c.sale by description

d.condition as to wholesomeness

A asks for a citrus juicer made in Holland. B supplies him with a citrus juicer made in Hong Kong. There is breach of Implied condition subjecting to-

- a. condition as to title**
- b. condition as to quality or fitness**
- c. sale by description**
- d. condition as to wholesomeness**

A sold a bottle of acid to K without warning knowing fully that if the bottle was not opened with care, it will likely to cause injury. K was injured while opening the acid bottle. Which of the following statement(s) is/are correct?

- a. A is not liable to K under the Doctrine of caveat emptor.**
- b. A is liable for the damages.**
- c. A has no duty to disclose the facts to K.**
- d. The buyer has the responsibility to enquire about all the things before purchasing the goods.**

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b. A is liable for the damages.

c. A has no duty to disclose the facts to K.

d. The buyer has the responsibility to enquire about all the things before purchasing the goods.

Where a condition is changed to warranty, there the buyer-

a. loses the right to reject goods

b. retains right to claim damages only

c. both (a) and (b)

d. neither (a) and (b)

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- a. loses the right to reject goods**
- b. retains right to claim damages only**
- c. both (a) and (b)**
- d. neither (a) and (b)**

Which of the following is not an implied condition in a contract of sale?

a. Condition as to title

b. Condition as to description

c. Condition as to free from encumbrance

d. Condition as to sample

Which of the following is not an implied condition in a contract of sale?

a. Condition as to title

b. Condition as to description

c. Condition as to free from encumbrance

d. Condition as to sample

Where the buyer is deprived of goods by their true owner, then the buyer-

a. may recover the price for breach of the condition as to title

b. cannot recover the price for breach of the condition as to title

c. either (a) or (b)

d. none of the above

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a. may recover the price for breach of the condition as to title

b. cannot recover the price for breach of the condition as to title

c. either (a) or (b)

d. none of the above

Where in an auction sale, the seller appoints more than one bidder, the sale is-

a. void

b. illegal

c. conditional

d. voidable

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b. illegal

c. conditional

d. voidable

An auction sale is complete on the

a.delivery of goods

b.payment of price

c.fall of hammer

d.none of the above

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THE END

Conditions and Warranties