

SALE

OF

GOODS ACT

LL.B. II Sem

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**Q. 10-A. Distinguish between a condition and a warranty in detail.**

**A.** Conditions and warranties are representations made in relation to the subject-matter of the contract. Stipulation as to time of payment are not deemed to be of the essence of a contract of sale, unless a different intention appears from the terms of the contract.

**Conditions.**—These may be express or may be implied ; *Express conditions* are those which the parties make in so many words. *Implied Conditions* being such as the law incorporates into the contract unless the parties stipulate to the contrary.

**Warranties.**—A warranty, like a condition, may be express or implied and if express may be made at the time, of making the contract of sale, or afterwards but, subject to this, that if the warranty be made after the completion of the contract, it is in itself a contract, and requires either to be under seal or to be given for good consideration. If the contract itself be reduced into writing, a representation intended to amount to a warranty and made contemporaneously, cannot be given in evidence unless it be in writing.

### **Implied Conditions**

The following conditions are implied in every contract of sale, in the absence of the agreement to the contrary :

1. **Implied condition as to title.**—That the seller has right to sell the goods otherwise the seller is liable in damages to the buyer. Section 14(1) of the Sale of Goods Act provides—“In a contract of Sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller that in the case of a sale, he has a right to sell the goods and that 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.”

In *Rolland v. Divtal*, (1932) 2 KB 500, R bought a motor car from D and used it for four months. D had no title to the car, R sued to recover the total purchase money he had paid to D. *Held*, he was entitled to recover it in full notwithstanding that he had used the car for four months.

2. **Implied condition of Sale by description (Section 15, Sale of Goods Act).**—Where there is sale of goods by description, that the goods shall correspond with the description. In *Roe Moore & Co. v. Laundaur & Co.*, (1921) 2 KB 519. M sold to L 3,100 cases of Australian canned fruits, the cases to contain thirty tins, each. M delivered the total quantity, but about half the cases contained twenty four tins, and the remainder thirty tins L rejected the goods. *Held* as the goods delivered did not correspond with the description of those ordered, L could reject the whole.

3. **Implied condition as to sale by sample as well as description (Section 15, Sale of Goods Act).**—When

there is a sale by sample as well as by description shall correspond both with the sample and the description.

**4. Implied condition of Merchantile Quality.**—When the goods are bought by description, from a seller who deals in goods of that description, that they are of merchantable quality.

**5. Implied condition as quality of fitness.**—When the buyer, makes known to the seller the particular purpose for which, goods are required, that the goods are reasonably fit for such purposes :

- (i) The bulk shall correspond with the sample in quality.
- (ii) The buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- (iii) The goods shall be free from any defect rendering them unmerchantable.

### **Implied Warranties**

The following warranties are implied in every contract of sale, in the absence of any agreement to the contrary.

**(1) Implied warranty of quiet possession.**—According to Section 14(b) of the Sale of Goods Act, in a Contract of Sale, unless the circumstances of the contract are such as to show a different intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

**(2) Implied warranty against charges or encumbrances.**—According to Section 14(c) in a Contract of Sale unless the circumstances of the contract are such as to show a different intention, there is an implied warranty that the goods are free from any charge or encumbrance in favour of any third party.

**(3) Implied warranty by the usage of trade.**—According to Section 16(3) of Sale of Goods Act an implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade which would not be apparent on reasonable examination.

Apart from these conditions and warranties there is no implied condition or warranty as to the quality or fitness for any particular purpose of goods under a contract of sale. The maxim *caveat emptor*

applies. The warranties or conditions implied by the act may be excluded by the express terms of the contract.

A condition is representation that a thing is, or that a thing shall be, on the truth of which the existence of the contract may depend, and it gives a right of rescission to the injured party if it be falsified.

A warranty is an agreement 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.

It is not every representation relating to the subject-matter of the sale, which amounts either to a condition or to a warranty, Sir Mackenzie D. Chalmers, in his book on the Sale of Goods Act, points out five distinct forms of representation— viz. :—

(1) A mere expression of opinion or mere commendation by the seller of his wares, which gives no right of action to the person deceived.

(2) A warranty ;

(3) A condition ;

(4) A representation made before the formation of the contract, and which is false and fraudulent, giving the aggrieved party a right to damages, and in many cases to rescission.

(5) A representation creating an estoppel, the truth of which therefore may not to be denied by the maker.

It may, however, be difficult to determine whether a representation made by the vendor at the time of sale amounts to a special contract of warranty. This depends upon the intention of the parties to be deduced from all the relevant evidence, and the circumstance that the vendor assumes to assert a fact of which the purchaser is ignorant, though valuable as evidence, of intention, is not conclusive of question.

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract but a stipulation as to time of payment is not a condition unless a different intention appears from the terms of the contract; a stipulation may be a condition, though the parties have in the contract termed it a warranty.

Thus the distinction between a condition and a 'warranty' may be summed up as follows.—

<b>Condition</b>	<b>Warranty</b>
1. A condition is a stipulation which is essential to the main purpose of the contract.	1. A warranty is stipulation which is subsidiary or collateral to the main purpose of the contract.
2. A breach of condition entitles the aggrieved party to treat himself as discharged from further performance of the contract and he can claim damages for any loss sustained by the fact that the contract has not been performed.	2. A breach of warranty entitles the aggrieved party to claim such damages as have been sustained by the breach, but he is not entitled to treat himself as discharged.
3. A breach of condition may be treated as a breach of warranty.	3. A breach of warranty cannot be treated as a breach of a condition.