

# Contracts

Business



When it is said that a term which is a condition “ goes to the root of the contract” it merely means that the aggrieved party attached so much importance to the term that, if he had known that there would be a breach of it, he would not have entered into the contract.

For example, there is an (implied) condition under s. 14 (2) of the Sale of Goods Act that the seller has “ a right to sell” (i. e. he is the owner of) the goods. If the goods are stolen goods, and the buyer had been aware of this fact, he would not have entered into the contract. This is a minor term, or a term of minor stipulation.

It is a collateral or peripheral term of a contract and is not a part of the central theme. In case of a breach of a warranty this does not entitle the aggrieved party to treat the contract as at an end, but entitles him only to sue for damages. Warranty of quiet possession of goods entitles the innocent party to sue for damages but the contract remains enforceable. *Beffini vs. Gye and Kampala General Agency vs. Modys (EA) Ltd.*

This is a rather lofty or vague phraseology, but a more useful approach is to divert to the examples of warranties implied or given in s. 14 of the Sale of Goods Act. Breach of a fundamental term may lead to claim of damages (just like a warranty) or where the breach is serious termination of the contract as a condition. Intermediate terms *Banque Brussels Lambert SA vs. Australian National Industries Ltd (1989) 21 NSWLR 502*, Supreme Ct NSW *Spedley Ltd* wanted to borrow some money from a Belgian bank, but the bank stipulated that there was a need for additional assurance that the loan would be paid within the stipulated period of time.

The company agreed to float some of their shares they had in a holding company and the bank would therefore give them a 30 days buffer period to repay the loan. However, the holding company went ahead and sold off the shares owned by Spedley Ltd hence the company was not in a position to repay the loan. The holding company ANI said that it was not in any position liable to pay the bank in place of Spedley Ltd. The main question in this case is whether there are any legal obligations in promissory statement or letters. The legal assumption there is that during commercial transactions legal relations are intended. The legal provision by the law dictates that the bank was itself at liberty to review the terms of this transaction going by the fact that modern law has a challenge of giving effect to such transactions.

In addition, different countries have different promissory or representational laws which determine whether a warranty is dependent. Case: Chappelton vs. Benny. The plaintiff hired a chair from the defendant, paid for it and obtained a receipt which he kept without reading its content. The content, which included a statement ceasing the defendant from liability in case of accident and injuries due to the use of its chairs, turned out to be a very crucial piece of evidence in the case. The plaintiff sat on the chair and it collapsed hence he sued for injuries sustained.

Held: the exemption clause which would otherwise have released the defendant from liability had been hidden from the plaintiff attention at the time of entering the contract. The plaintiff was compensated. Intermediate clauses are effective where there is fairness in application. This is illustrated in the Case of Karsale vs. Walls.

Legality of signature is also vital in effecting all fundamental terms of a contract. Remedies Many states in modern law have legislative laws that aim at providing remedies on contractual terms so as to prevent a breach of contract. One such remedy is monetary damages for a breach of contract or a condition of contract. Penalties such as monetary penalties are applied on the flouting of warranty rules and regulations. Compensatory damages are hence applicable to the aggrieved parties where they are compensated a certain amount which varies depending on the extent of damage and losses to compensate for the loss.

Another remedy is requesting performance of contract. This occurs in a case where money cannot fix loss or damages. This implies that the innocent party is at liberty to seek actual performance of the original contract. This aims at preventing those who flaunt contract rules from engaging in intentional loss or damage going by the fact that the more intentional is the behavior, chances are better that the larger be the punitive measures with respect to the damages. In contrast, if the damages or loss were unintentional, consequential and compensatory damages are less.

Conclusion In modern day world, commercial laws are there to govern commercial and business transactions. This is with an overall aim of preventing not only business and commercial malpractices but also trying to create some order in business transactions. When two parties come into a written agreement, they are bound by the law to abide to the stipulated laws of the agreement as well as the conditions of the agreement. Failure to do so is subject for punitive measures as provided by the contract and consumer law. The many cases being handled by most judicial systems globally are a <https://assignbuster.com/contracts-essay-samples-2/>

clear indication of just how sensitive issues dealing with contracts and common agreement are. As seen above, there are some situations whereby the legal framework cannot be able to define what a contract, an intermediate term and a condition are in the course of the ruling.

However, the overall jurisdiction of the contract laws is to intervene in settling arising disputes.