

Express conditions and warranties law commercial essay

Law



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A condition is a term (oral or written) which goes directly 'to the root of the contract', or is so essential to its very nature that if it is broken the innocent party can treat the contract as discharged. That party will not therefore be bound to do anything further under that contract. So according to the above definition it is clear that a condition is very essential for the performance of a contract. The breach of a condition will be regarded as the breach of the whole contract.

WARRANTY:-

A warranty is a term of the contract which is collateral or subsidiary to the main purpose of the contract. It is therefore not so vital as to affect a discharge of the contract. A breach of warranty only entitles the innocent party to an action for damages; he cannot treat the contract as discharged. The above definition shows that for the implementation of a contract a warranty is not essential. For the breach of warranty only damages can be claimed.

Condition and Warranties may be either-

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:

IMPLIED CONDITIONS

As to title to goods: There is an implied condition that the seller has a right to sell in case of sale and that in the case of agreement to sell, he will have the right to sell the goods at the time when the property is to pass. Rowland Vs Divall: A purchased a car from B for a certain price and used it for some period. Subsequently, it was found that the car was stolen by B and

therefore, A had returned back the car to the true owner. It was held that A could recover the full price paid to B. Sale by description: The implied condition is that the goods delivered must correspond with the

description

Example: Where a machine was described as almost new and used very little but when delivered, was found to be an old and repaired one, it was held that the buyer was entitled to reject the machine. Sale by

sample: The implied condition as -That the goods delivered shall correspond with the sample That the buyer shall have a reasonable opportunity of comparing the bulk with the sample and That the goods shall be free from

any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. Drummond & Sons Vs Van Ingen &

Co.: Where worsted coating was supplied corresponding with the sample but not suitable for stitching due to a latent defect, it was held that the buyer

was entitled to reject the goods. Sale by sample as well as description: In the case of sale of goods by sample as well as description, the goods delivered

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must correspond with both sample as well as description. As to quality or fitness: The general rule is "Caveat Emptor", i. e. let the buyer beware. So, the seller need not disclose the faults in the goods he sells nor need he guarantee that the goods are fit for the purposes of the buyer. So, the buyer takes them as they come. But in the following cases, there is an implied condition as to quality or fitness of goods for any particular purpose. Where the buyer makes known the purpose to the seller, who is ordinarily dealing with sale of goods of that description and the buyer relies on the judgement of the seller. Where the seller does not disclose the faults in his goods and such faults cannot be detected on reasonable examination. Where the seller makes a statement and the buyer relies upon it. *Baldry V's Marshall*: A purchased a motor car from B for using it as a tourist car. B, the seller knew the purpose. The car turned out to be unfit for the purpose. Held, A the buyer could repudiate the contract. But there is not implied condition as to fitness or quality of goods when they are sold under the patent or trade name. *E. W. Evans V's Stella Benjamin*: Where a refrigerator was sold, it was held that the name of the article itself implies that it is fit for a particular purpose. As to Merchantability: In case of sale of good by description, there is an implied condition that the goods shall correspond with the description and also that they shall be of merchantable quality. *Brant Vs Australian Knitting Mills Ltd.*: The buyer was supplied wollen underpants by the manufacturers. The buyer wore them for sometime and contracted a skin disease. Held, that the buyer was entitled to damages. Exception: If the buyer has examined the goods, there is not implied condition as to quality of goods as regards defects which such examination must have revealed. As to wholesomeness: In the case of

sale of vision, there is an implied condition that they are fit for immediate use, A, purchased a bun from B and injured his teeth by biting a stone in the bun. B was held liable. Implied Warranties- A condition may reach the level of warranty in case 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:

IMPLIED WARRANTIES

Warranty of Quiet Possession: There is 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 a months. Unknown to the parties the typewriter has stolen one and X was compelled to return to its 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

against Encumbrances: There is an implied warranty that the goods shall be free from encumbrance or charges in favour of any third party not declared or known to the buyer before or at the time of contract is entered into.

Example- A, pledges his car with C for a loan of Rs. 15, 000 and promises him to give his 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 party of the seller in

case of the goods, inherently dangerous to the buyer and the buyer is ignorant of the danger, the probable danger. If there is breach of this warranty, the seller will be liable in damages. Example- C purchases the tin of disinfectant powder from A. A knows that the tin is defective and if open 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 for the quality of the good can be stopped in some circumstances by the usage of trade. Example- A drugs were sold by an auction and according to the usage of trade. It was to disclose in advance any sea-damages, otherwise it will be taken as a breach of warranty if no such disclosure has been made and the goods found to be defective.

Following are the points of distinction between the Condition and warranty:

1. Essential vs. Collateral:

Condition is a stipulation essential to the main purpose of the contract but, warranty is a stipulation which is not essential of the contract but, it is collateral to the main purpose of the contract.

2. Repudiate the contract:

The breach of condition gives rise to repudiate the contract but, the breach of warranty does not give rise to repudiate the contract.

3. Right in case of breach:

The breach of condition not only gives a right to treat the contract void but also gives a right to claim damages but, the breach of warranty gives right to claim damages only.

4. Treatment:

In certain circumstances the breach of condition can be unilaterally treated as breach of warranty by the affected party but, the breach of warranty cannot in any circumstances be treated as breach of condition unilaterally by the affected party. WHEN A BREACH OF A CONDITION BE TREATED AS A BREACH OF A WARRANTY Section 13 specifies cases where a breach of a condition be treated as a breach of a 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 condition operate: Voluntary waiver: Where the seller has to fulfill certain conditions under the contract of sale and he commits a breach of conditions, the buyer may- Altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation: or 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: Compulsory waiver: Here the waive does not depend on the will of the buyer, but creates an estoppel against him by his conduct and his presumed by law Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise