

Conditions and warranty

[Law](#), [Contract Law](#)



INTRODUCTION: The Sales of Goods Act 1893 provides the definition of ‘condition’ and ‘warranty’. During the period between 1893 to 1962 both ‘condition’ and ‘warranty’ was generally accepted that they were the only two types of terms which assist in ‘identifying the breaches which entitled the injured party to terminate the contract. In the turning point of 1962, a new type of term-intermediate term brought about a whole new page into the Law of Contract. Hong Kong Fir Shipping Co. Ltd vs Kawasaki Kisen Kaisha Ltd is the key case which owns the credit for this discovery.

In the case, the ship owner hired out the Hong Kong fir, ‘being in every way fitted for ordinary cargo service’. The ship was delivered on 13 February 1957, sailing from the United State to Osaka. Due to the age of the ship’s machinery, the engines were old inadequate. However, the numbers of staff were insufficient and the chief engineer was incompetent. Consequentially, twenty weeks out of twenty four months was the ship ‘off hire’ for repair. On the other hand, freight rates had fallen during that period.

The new rate was a quarter and a third cheaper than the rate fixed originally. The charterer wished to terminate the contract for the owner’s failure to hire out a seaworthy ship which they claimed to be a ‘condition’ and that the consequences of the breach was so serious that it has frustrated their purpose in entering into the charter-party. It was held seaworthiness was not a condition in their contract and that the delay caused by the repairs was not as grievous as to frustrate the charter-party’s commercial purpose.

Therefore the chartered cannot terminate the contract. 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 <https://assignbuster.com/conditions-warranty/>

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.

The provisions relating to conditions and warranties are covered under section 11 to 17 of the sales of Goods Act. Section 11 of the Sale of Goods Act 1930 provides, " Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract". In a contract of sale of goods there maybe various terms or stipulations.

Though the definition of the word " stipulation" in the act is not been given, but when refer in Halsbury's Laws of England, ' stipulation is said to include only promises and not collateral contingencies beyond the control of either party e. g. , in sales of goods " to arrive". A bare ' representation' will not amount to a stipulation. Such stipulation maybe of major terms/conditions and minor terms/warranty. Condition means a stipulation or provision; a thing on whose fulfilment another thing or act is made to depend, something agreed upon as a requisite to the doing or taking effect of something else.

Section 12(2) of Sales of Goods Act, 1930 defined conditions as " a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". On the other hand, " Warranty is an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract repudiated.

It may be, express or implied” ; According to Section 12(3) of Sales of Goods Act, 1930, “ a 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 goods and treat the contract as repudiated. ” Thus, there are obligations other than conditions which are not so vital to substance of the contract, however, those terms must be performed because their breach do not cause repudiation of the contract but may lead to sue for damage.

In case of a breach the party at fault is liable to pay compensation Section 12(1) of the act state that, “ A stipulation in a contract of may be a condition or a warranty” explaining that all terms and stipulations of the contract of sale are not of equal important and also of same consequences, however, some of terms are so vital to the contract that their failure to fulfil would cause breach of contract as a whole. Such terms are known as “ Conditions”. Further, a term which are not of so vital importance is known as “ Warranty”.

Under Section 12(4) which provides that “ whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition though called a warranty in the contract”. Therefore, every contract is to be assessed in the light of circumstances including intention of the parties and also terminology used in the construction of the contract. CONDITIONS: Section 12(2) of the act defines a condition as “ a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. Conditions is called an ‘ express condition’ when a condition is expressed clearly in writing. A condition is a stipulation essential to the main purpose of the contract. It is very vital to the existence of the contract. It is

regarded as the very basis or foundation of the contract. In case there is a breach of condition, the aggrieved party gets the right to treat the contract as void and can claim damages. Giving an illustration: A wants to purchase a horse from B, which can run at a speed of 55km/hr. B pointing out a particular horse says 'this horse will suit you. But later after purchasing the horse, A finds that the horse can run at a speed of 40km/hr. This is a breach of condition because the stipulation made by the seller forms the very basis of the contract. WARRANTY: According to Section 12(3) of the Act, "Warranty" is a stipulation collateral to the main purpose of the contract, the breach of which gives the aggrieved party a right to sue for damages only, and not to avoid the contract itself". A warranty is called an 'express warranty' when a warranty is expressed clearly in writing.

A warranty is a stipulation subsidiary to the main purpose of the contract. It is not so vital to the existence of the contract as a condition. It is not regarded as the very basis of foundation of the contract. If there is a breach of warranty, the aggrieved party cannot treat the contract as void. He can only claim damages. As per Halsbury's Laws of England, "A contract may contain conditions and warranties. A condition is a stipulation which is fundamental to the contract, whereas a warranty is a provision which is subsidiary or collateral to the main purpose of the contract.

The question whether a particular stipulation is a condition or warranty depends upon the intention of the parties to be ascertained in the case of a written contract from the documents and in the case of an oral contract from the surrounding circumstances. Giving an illustration: 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.

DIFFERENCES BETWEEN CONDITIONS AND WARRANTIES; Basis of Differences: 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. →As to Breach-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. 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. Root of the Contract-A condition goes direct to the root of the contract. A warranty does not go direct to the root of the contract. As of Effect-Condition is one something agreed upon as a requisite to the doing or taking effect of something else, a thing on whose fulfilment another thing or act is made to depend; a stipulation or provision; mode or state of being, state in which a thing exists. Warranty is a guarantee or security that goods are of the quality stated.

It is a promise or covenant by deed by the bargainer, for himself and his heirs, to warrant or secure the bargainee and his heirs, against all men for the enjoying of the thing granted. WHEN CONDITION IS CONSIDERED AS WARRANTY: In Maruti Udyog Ltd. vs Susheel Kumar Galigotra case, the complainant had a defect in the manufacturing of the car purchased by him

and requested for a replacement. In this case, we see that the terms clearly referred to replacement of defective part and not the replacement of car.

The High Court order for a replacement of car but the Supreme Court held that the order of the High Court was not proper and entitled the complainant to get replacement of defective part at the cost of appellant. In addition to this, the Supreme Court awarded Rs. 50, 000/- for the inconvenience caused to the purchaser. As per Section 13 of the Sale of Goods Act, Condition is as warranty treated under the following circumstances; Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated. In this section it mentions that, either party may "voluntarily waive a stipulation" which is for the benefit of the party. Although, the benefit of parties may be waived by mutual consent. In other case, where a horse was sold with a warranty of soundness, held that the mere fact of the buyer getting a veterinary doctor's certificate as to the soundness of the horse, will not amount to waiver of the warranty.

Once, the buyer waives the condition he cannot afterwards compel the performance and on this ground cannot also repudiate the contract. 1. Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

This section is subject to two conditions. In the first place this is possible only when the contract is not severable. Secondly, there is nothing in the contract which expressly or impliedly provides the contrary. If these two conditions are satisfied the buyer may elect to treat the breach of condition as a breach of warranty. 2. Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

Thus, when condition is being reduced to the level of warranty, the right to reject the goods has been lost by the buyer, that he shall have to be content to the remedy of damages for the breach of condition. When a condition in the contract of sale has not been fulfilled (i. e. fails to perform the condition) by the seller, then it is the right of the buyer to waive the condition as a breach of warranty. The consent depends upon the buyer and not of the seller.

In Wallis vs Pratt case one of the clauses of a contract of a sale by sample of a seed called " Common English Saifoin", as per a condition sellers gave the warranty express or implied, as to growth description or any other matters. Instead of delivering " Common English Saifoin", the sellers delivered another seed called " giant saifoin" but it could be discovered only after sowing. The said seeds were sold by the buyer to a third party who after sowing discovered that the seeds were in fact " giant saifoin" whose market value was much lower. Since the seeds had already been sold to the third party. They were thus accepted, it was held that the buyer had to pay damages to the said third party. In an action brought against the seller, it was held by the House of Lords that the sellers were bound to pay damages. Delivering

the judgment it was held that a buyer may treat a breach of condition as a breach of warranty. In this case Fletcher Mouton LJ said that, " it will be seen, therefore, that a condition and a warranty are alike obligations under a contract, a breach of which entitles the other contracting party to damages.

However, in the cases of breach of condition, he has the option of another and a higher remedy, namely, that of treating the contract as repudiated. But as i have said, he must act promptly if he desires to avail himself of this higher remedy in Section 11, sub-section 1(c), two cases are given in which he will be deemed as matter of law to have elected to content himself with his right to damages. The two cases named are the case where the buyer has accepted the goods or part thereof and the case where the contract is for specific goods, the property in which it has passed to the buyer.

I see no reason to suppose that the Act intends that these should be the only modes in which a buyer can effectively bar himself from taking advantage of the choice of remedies given in the case of a breach of a condition, but that is a point which it is not necessary to discuss in the present case. In the same case, Lord Loreburn L. C. , observed: " If a man agrees to sell something of a particular description he cannot require the buyer to take something which is of a different description and a sale of goods by description implies a condition that the goods shall correspond to it.

But, if a thing of a different description is accepted in the belief that it is according to the contract, then the buyer cannot return it after having accepted it; but he may treat the breach of the condition as if it was a breach of warranty or that what was a condition in reality had come to be degraded or converted into a warranty. It does not become degraded into a

warranty ab-initio, but the injured party may treat as if it had become so, and he becomes entitled to the remedies which attach to a breach of warranty.

EXPRESS & IMPLIED CONDITIONS AND WARRANTIES: Conditions and warranties may be either- a) Express or b) Implied. When any stipulation is inserted in the contract at the will of the parties, it is said to be expressed 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. Express conditions and warranties are those which are entered in clear words in the contract. They are expressly provided in the contract of sale.

Implied conditions and warranties are those which the law incorporates into the contract unless the parties agree to the contrary. They may, however, be cancelled or varied by an express agreement or by the course of the dealings between the parties or by usage and custom of trade. Implied conditions are dealt within Section 14 to 17 of the Sale of Goods Act, 1930, it is binding in every contract of sale unless they are inconsistent with any express conditions and warranties agreed to by the parties. Regarding implied undertaking as to title, etc.. section 14 of the Act provides, “ In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is; a)An implied condition on the part of the seller that, in the case of sale, he has a right to sell the goods and that, in the case of any agreement to sell, he will have a right to sell the goods at the time when the property is to pass; b)An implied warranty that the buyer shall have and enjoy quiet possession of the goods; c)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 when the contract is made. 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. 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. The Buyer is entitled to reject the goods and to recover the price, if the title turns out to be defective as per Section 14(a) of the Act. Implied Condition: In the absence of any contract to the contrary, the following conditions are implied in every contract of sale of goods: Condition as to title: as per section 14(a) of the Sale of Goods Act, in a contract of sale, 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. This condition is called a 'Condition as to title'. If the seller has no right to sell the goods and the buyer has to return them to the owner, the buyer can recover the price from the seller, because the consideration has failed. In Dickenson Vs Naul case it was observed that if the buyer having bought the goods from a seller took the delivery of the same but was compelled to pay the price to the true owner, he was not bound to pay the price to his seller, who sold the goods without having a right to sell the same.

If the title turns to be defective, the seller shall be held responsible. The buyer is entitled to repudiate the contract and to claim the price to be returned to him. Regarding sale by description: Section 15 of the Act provides, " Where there is a contract for the sale of goods by description,

there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. ” . To apply this section it is necessary that- 1)There should be a sale by description and 2)The goods should correspond with the description.

Though the word “ description” has not been defined in the Act, we can simply understand that description means a particular kind or variety of goods. A sale by description contained variety of situations. Lord Wright, said in *Grant Vs Australian Knitting Mills* ; “ It may also be pointed out that there is a sale by description even though the buyer is buying something displayed before him on the counter: a thing is sold by description, though it is specific, so long as it is sold not merely as the specific thing, but as thing corresponding to a description. ” A sale by description also includes the statement which is necessary to establish the identity of goods. In relation to section 16 of the Act, regarding Condition as to Quality or Fitness.

This section is based on the principle that is the duty of the buyer to satisfy himself that the goods to be bargained are fit to his purpose rather it is saleable, or if, the buyer purchases the goods for specific purpose it is his duty to ensure before the purchase that the goods in sale are suitable for the particular purpose, including the quality or fitness for the particular purpose. To fit within Section 16(1) of the Act, the following conditions are 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 Giving an illustration: 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 'merchantable 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(3) of the Act which provides that "An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade". It is very clear that in commercial transactions in respect of particular trade usage and custom there would be an implied warranty or condition as to quality or fitness.

Thus, custom and usage is admissible to annex incidents to written contracts, in matters with respect to which they are silent. In such matters the parties make reference to their known usages. In Jones Vs Bowden, where it was usual in the sale by auction of drugs, if they were sea-damaged, to express that in the seller's catalogue. The seller in this case exhibited samples of the quality, but did not disclose that they were sea-damaged. It was held that this was equivalent to saying that they were not sea-damaged. Thus, this exception is contained in the illustrated case, but, custom and usage which affect the parties, should not be unreasonable.

The custom should not be inconsistent with the express terms of the contract. Thus, while dealing with the implied conditions under section 16(2) and Section 16(3) of the Act, the quality or fitness of goods for a particular purpose is determined by the usage of trade and annexed to the contract of

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sale. Section 16(4) of the Act provides that, " An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith". It is at the option of the parties to include any express warranties or conditions during contract of sale, however, such warranties or conditions should not be contrary to any warranties or conditions implied by the Act.

The express terms of contract would not be inconsistent with the implied conditions. Thus, the goods passed by inspection of East India Company, did not exclude merchantableness. Condition as to Wholesomeness: The Sale of goods Act has provided no separate section with respect to the matter of 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. In other words, the goods must be free from any defect which make them unfit for human consumption. In *Frost Vs Aylesbury Dairy & Co. Ltd.*, case milk was supplied by a milk dealer and A went to him and bought milk for family use.

The milk dealer assured that the milk was free from the germs of disease. But the milk contained germs of typhoid and buyer's wife died. The milk as not being fit for use, the milk dealer was held liable for damages. Sale by sample (Section 17): 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. 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 don't tally with the description or vice versa, the buyer can repudiate the contract. Giving an illustration: 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. 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[Section 14(b)]: 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. In *Mason Vs Birmingham*, A purchased a second hand typewriter from B.

B spent money to repair it to bring it in order. As the typewriter was a stolen one. A was compelled to return the same to its true owner. It was held that B had made a breach of warranty implied in a contract of sale of goods that the buyer should have and enjoy quiet possession of the goods. A was

entitled to recover the sum given to B and also the repair charges from B.

Warranty of freedom from Encumbrances[section 14(c)]: 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. In *Niblett Vs Confectioner's Materials Co.* on a sale of 3000 tins of preserved milk labelled 'Nissly brand', the customs authorities destroyed the labels on the ground of an infringement of a trade mark and handed the tins without labels. It was held that the buyer could either reject the goods or claim damages on the basis of the reduced sale value.

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.

In *Clarke Vs Army and Navy Co-operative Society*, 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 warn C of the probable danger.

Warranty as to quality or fitness by usage of trade: As per section 16(3) of the Act, an implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade. In *Jones Vs Bowden* a warranty against sea water damage was recognized on the score of trade usage.

Giving an illustrations: A drug 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. **EXCLUSION OF IMPLIED CONDITIONS AND WARRANTIES:** In accordance to section 16(4) of the Act, “ An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith. ” That means that when the parties expressly agree to such stipulation and the same are inconsistent with the implied conditions and warranties, the express conditions or warranties will prevail and the implied ones, mentioned in Sections 14 to 17 would be negative. An express warranty is generally obtained for extra protection of the buyer and not to limit the liability of the seller.

In *Baldry Vs Marshall*, it was observed that in the case of the sale of a car and where the condition was that it must be reasonably fit as a touring car to such stipulation may added the condition as to its fitness for a particular purpose or as to its merchantable quality. An action may be founded in such cases on the covenant without need to rely on the implied warranty or condition. **CONCLUSION:** Condition and Warranties forms a significant part in the Sale of goods Act 1930, which mainly dealt from section 11 to section 17 of the Act. Every contract of sale contains a number of representations or terms or stipulations or statements regarding nature, price and quality of goods. The sale of Goods Act deals with two types of stipulations relating to contract of sale namely stipulations as to (Section 11) and stipulations as to goods (section 12-17).

A condition is a major term which is vital to the main purpose of the contract, whereas, warranty is a less important term that it does not go to the root of

the contract. Both conditions and warranties has express and implied conditions/warranties. BIBLIOGRAPHY 1. Agrawal, R. K. Legal Dictionary, Pioneer Printers, Agra, 21st Revised & Enlarged Edition, 2010 2. Dr. Kapoor, S. K. Contract II, Central Law Agency, 13th Edition 2012 3. Dr. Tripathi, S. C. The Sale of Goods Act, Act No. III of 1930, Central Law Publications, Second Edition 2010 4. Myneni S. R. , Contract II(Special Contract), Asia Law House, 1st Edition 2010-2011 5. Conditions and Warranty “ <http://www.lawteacher.net/contract-law/essays/sales-condition-warranty.php>”