

Business Law
Lecture-12

The Sale of Goods Act, 1930

- d) **Usage of trade:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. (Section 16(3)).
- e) **Consent by fraud:** Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? State also the implied warranties operative under the said Act

Provision:

1. The following are implied conditions in a contract of sale by sample in accordance with Section 17 of the Sale of Goods Act, 1930
 - a) that the bulk shall correspond with the sample in quality
 - b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
 - c) that the goods shall be free from any defect, rendering them merchantable, which would not be apparent on a reasonable examination of the sample [Section 17(2)].
2. Implied Warranties under The Sale of Goods Act, 1930 are as follows:
 - a) **Warranty of quiet possession [Section 14(b)]:** In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way disturbed in the enjoyment of the goods in consequence of the seller's defective title to sell, he can claim damages from the seller.
 - b) **Warranty of freedom from encumbrances [Section 14(c)]:** The buyer is entitled to a further warranty that the goods are not subject to any charge or encumbrance in favour of a third party. If his possession is in any way disturbed by reason of the existence of any charge or encumbrances on the goods in favour of any third party, he shall have a right to claim damages for breach of this warranty.
 - c) **Warranty as to quality or fitness by usage of trade [Section 16(3)].** An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.
 - d) **Warranty to disclose dangerous nature of goods:** Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

Distinguish between a 'Condition' and a 'Warranty' in a contract of sale. When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930? Explain.

Provision:

1. Difference between Condition and Warranty

- a) A condition is a stipulation essential to the main purpose of the contract whereas a warranty is a stipulation collateral to the main purpose of the contract.
- b) Breach of condition gives rise to a right to treat the contract as repudiated whereas in case of breach of warranty, the aggrieved party can claim damage only.
- c) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.