

UNIT - 2: CONDITIONS & WARRANTIES

LEARNING OUTCOMES

After studying this unit, you would be able:

- ◆ To understand and identify conditions and warranties.
- ◆ To know the implied conditions and warranties.
- ◆ To understand doctrine of 'caveat emptor'.
- ◆ Stipulation as to time

UNIT OVERVIEW



Stipulation with Reference to Goods

Condition

Essential to main purpose of the contract

Breach- repudiation

Warranty

Collateral to main purpose of the contract

Breach-claim for damages

2.1 STIPULATION AS TO TIME (SECTION 11)

Stipulations as to time: 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.

Analysis:

As regard time for the payment of price, unless a different intention appears from the terms of contract, stipulation as regard this, is not deemed to be of the essence of a contract of sale. But delivery of goods must be made without delay. Whether or not such a stipulation is of the essence of a contract depends on the terms agreed upon.

Price for goods may be fixed by the contract or may be agreed to be fixed later on in a specific manner. Stipulations as to time of delivery are usually the essence of the contract.

2.2 INTRODUCTION - CONDITIONS AND WARRANTIES

At the time of selling the goods, a seller usually makes certain statements or representations with a view to induce the intending buyer to purchase the goods. Such representations are generally about the nature and quality of goods, and about their fitness for buyer's purpose.

When these statements or representations do not form a part of the contract of sale, they are not relevant and have no legal effects on the contract. But when these form part of the contract of sale and the buyer relies upon them, they are relevant and have legal effects on the contract.

A representation which forms a part of the contract of sale and affects the contract, is called a stipulation. However, every stipulation is not of equal importance.

Condition and warranty (Section 12): A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)]

“A condition is 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”. [Sub-section (2)]

“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 the goods and treat the contract as repudiated”. [Sub-section (3)]

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. [Sub-section (4)]

Example: Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests ‘Maruti’ and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. Here the term that the ‘car should be suitable for touring purposes’ is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which Ram purchases the car. Ram is therefore entitled to reject the car and have refund of the price.

Let us assume Ram buys a new Maruti car from the show room and the car is guaranteed against any manufacturing defect under normal usage for a period of one year from the date of original purchase and in the event of any manufacturing defect there is a warranty for replacement of defective part if it cannot be properly repaired. After six months Ram finds that the horn of the car is not working, here in this case he cannot terminate the contract. The manufacturer can either get it repaired or replaced it with a new horn. Ram gets a right to claim for damages, if any, suffered by him but not the right of repudiation.

Difference between conditions and warranties:

The following are important differences between conditions and warranties.

Point of differences	Condition	Warranty
Meaning	A condition is essential to the main purpose of the contract.	It is only collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

2.3 WHEN CONDITION TO BE TREATED AS WARRANTY (SECTION 13)

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. [Sub-section (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. [Sub-section (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. [Sub-section (3)]

Analysis:

Section 13 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim for damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract.

Example: A agrees to supply B 10 bags of first quality sugar @ ₹ 625 per bag but supplies only second quality sugar, the price of which is ₹ 600 per bag. There is a breach of condition and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, accept the second quality sugar and claim damages @ ₹ 25 per bag.

- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.
- (iv) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Waiver of conditions

Voluntary Waiver

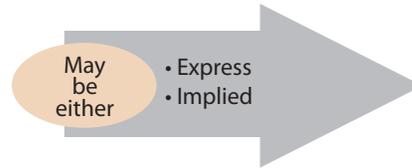
- Waives performance of contract
- Elect to treat condition as warranty

Compulsory Waiver

- Non-severability of contract
- Fulfilment of conditions excused by law

2.4 EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES (SECTION 14-17)

Condition and Warranty

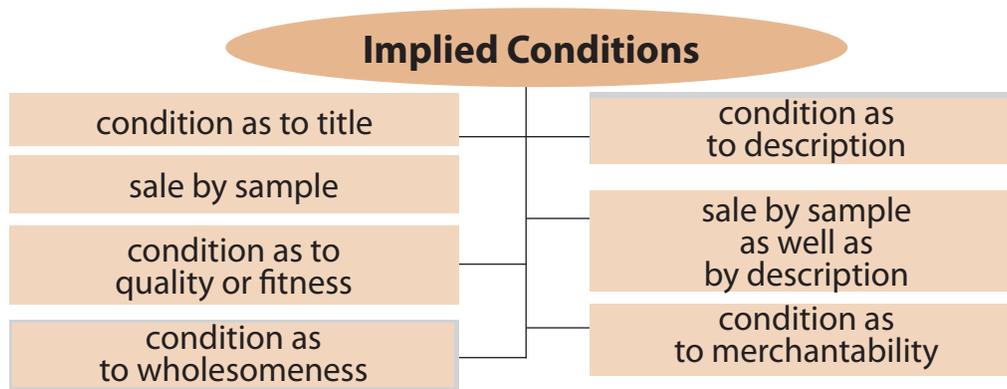


'Conditions' and 'Warranties' may be either **express or implied**. They are "express" when the terms of the contract expressly state them. They are implied when, not being expressly provided for.

Express conditions are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract.

The **implied conditions**, on the other hand, are those, which are presumed by law to be present in the contract. It should be noted that an implied condition may be negated or waived by an express agreement.

Implied Conditions: Following conditions are implied in a contract of sale of goods unless the circumstances of the contract show a different intention.



- (i) **Condition as to title [Section 14(a)].** In every contract of sale, unless there is an agreement to the contrary, the first implied condition on the part of the seller is that
- in case of a sale, he has a right to sell the goods, and
 - 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.

In simple words, the condition implied is that the seller has the right to sell the goods at the time when the property is to pass. If the seller's title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

Example 1: A purchased a tractor from B who had no title to it. After 2 months, the true owner spotted the tractor and demanded it from A. Held that A was bound to hand over the tractor to its true owner and that A could sue B, the seller without title, for the recovery of the purchase price.

Example 2: If A sells to B tins of condensed milk labelled 'C.D.F. brand', and this is proved to be an infringement of N Company's trade mark, it will be a breach of implied condition that A had the right to

sell. B in such a case will be entitled to reject the goods or take off the labels, and claim damages for the reduced value. If the seller has no title and the buyer has to make over the goods to the true owner, he will be entitled to refund of the price.

- (ii) **Sale by description [Section 15]:** Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that “if you contract to sell peas, you cannot compel the buyer to take beans.” The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

It is a condition which goes to the root of the contract and the breach of it entitles the buyer to reject the goods whether the buyer is able to inspect them or not.

Example 1: A at Kolkata sells to B twelve bags of “waste silk” on its way from Murshidabad to Kolkatta. There is an implied condition that the silk shall be such as is known in the market as “Waste Silk”. If it not, B is entitled to reject the goods.

Example 2: A ship was contracted to be sold as “copper-fastened vessel” but actually it was only partly copper-fastened. Held that goods did not correspond to description and hence could be returned or if buyer took the goods, he could claim damages for breach.

The Act, however, does not define ‘description’. A sale has been deemed to be by the description

- (i) where the class or kind to which the goods belong has been specified, e.g., ‘Egyptian cotton’, “java sugar”, “Shffield crockery”, etc., and
- (ii) where the goods have been described by certain characteristics essential to their identification, e.g., jute bales of specified shipment, steel of specific dimension, etc.

It may be noted that the description in these cases assumes that form of a statement or representation as regards the identity of particular goods by reference to the place of origin or mode of packing, etc. Whether or not such a statement or representation is essential to the identity of the goods is a question of fact depending, in each case, on the construction of the contract.

- (iii) **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,

Example: In a case of sale by sample of two parcels of wheat, the seller allowed the buyer an inspection of the smaller parcel but not of the larger parcel. In this case it was held that the buyer was entitled to refuse to take any latent of the parcels of wheat.

- (c) the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. But if the defects are latent, then the buyer can avoid the contract.

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.

- (iv) **Sale by sample as well as by description [Section 15]:** Where the goods are sold by sample as well as by description the implied condition is that the bulk of the goods supplied shall correspond both with the sample and the description. In case the goods correspond with the sample but do not tally with description or vice versa or both, the buyer can repudiate the contract.

Example: A agreed with B to sell certain oil described as refined sunflower 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.

- (v) **Condition as to quality or fitness [Section 16(1)]:** Ordinarily, there is no implied condition as to the quality or fitness of the goods sold for any particular purpose.

However, the condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller to select the best goods and the seller has ordinarily been dealing in those goods. Even this implied condition will not apply if the goods have been sold under a trademark or a patent name.

Example 1: 'A' bought a set of false teeth from 'B', a dentist. But the set was not fit for 'A's mouth. 'A' rejected the set of teeth and claimed the refund of price. It was held that 'A' was entitled to do so as the only purpose for which he wanted the set of teeth was not fulfilled.

Example 2: 'A' went to 'B's shop and asked for a 'Merrit' sewing machine. 'B' gave 'A' the same and 'A' paid the price. 'A' relied on the trade name of the machine rather than on the skill and judgement of the seller 'B'. In this case, there is no implied condition as to fitness of the machine for buyer's particular purpose.

As a general rule, it is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them. This is known as rule of caveat emptor which means "Let the buyer beware".

- (vi) **Condition as to Merchantability [Section 16(2)]:** Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.

Example 1: If a person orders motor horns from a manufacturer of horns, and the horns supplied are scratched and damaged owing to bad packing, he is entitled to reject them as unmerchantable.

Example 2: A bought a black velvet cloth from C and found it to be damaged by white ants. Held, the condition as to merchantability was broken.

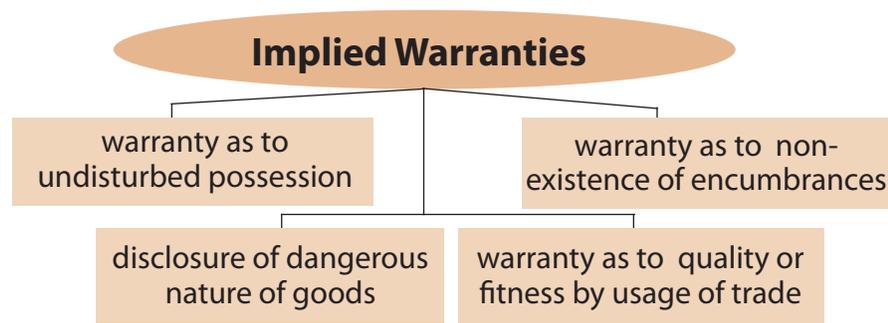
- (vii) **Condition as to wholesomeness:** In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Example: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

Implied Warranties: It is a warranty which the law implies into the contract of sale. In other words, it is the stipulation which has not been included in the contract of sale in express words. But the law presumes that the parties have incorporated it into their contract. It will be interesting to know that implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties.



These may also be excluded by the course of dealings between the parties or by usage of trade (Section 62).



The examination of Sections 14 and 16 of the Sale of Goods Act, 1930 discloses the following implied warranties:

- 1. 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.
- 2. Warranty as to non-existence of 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.

Example: A pledges his car with C for a loan of `15,000 and promises him to give its possession the next day. A, then sells the car immediately to B, who purchased it on good faith, 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.

- 3. 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 or attached by the usage of trade.

Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.

- 4. Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

2.5 CAVEAT EMPTOR

In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought. If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible.

The rule of Caveat Emptor is laid down in the Section 16, which states that, "subject to the provisions of this Act or of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

Following are the conditions 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 (Section 16).

Example 1: A sold pigs to B. These pigs being infected, caused typhoid to other healthy pigs of the buyer. It was held that the seller was not bound to disclose that the pigs were unhealthy. The rule of the law being "Caveat Emptor".

Example 2: A purchases a horse from B. A needed the horse for riding but he did not mention this fact to B. The horse is not suitable for riding but is suitable only for being driven in the carriage. Caveat emptor rule applies here and so A can neither reject the horse nor can claim compensation from B.

Exceptions: The doctrine of Caveat Emptor is, however, subject to the following exceptions;

1. **Fitness as to quality or use:** Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1)].

Example: An order was placed for some trucks to be used for heavy traffic in a hilly country. The trucks supplied by the seller were unfit for this purpose and broke down. There is a breach of condition as to fitness.

In **Priest vs. Last,**

P, a draper, purchased a hot water bottle from a retail chemist, P asked the chemist if it would stand boiling water. The Chemist told him that the bottle was meant to hold hot water. The bottle burst when water was poured into it and injured his wife. It was held that the chemist shall be liable to pay damages to P, as he knew that the bottle was purchased for the purpose of being used as a hot water bottle.

Where the article can be used for only one particular purpose, the buyer need not tell the seller the purpose for which he required the goods. But where the article can be used for a number of purposes, the buyer should tell the seller the purpose for which he requires the goods, if he wants to make the seller responsible.

In **Bombay Burma Trading Corporation Ltd. vs. Aga Muhammad,** timber was purchased for the express

purpose of using it as railways sleepers and when it was found to be unfit for the purpose, the Court held that the contract could be avoided.

2. **Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
3. **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so then seller is responsible.
4. **Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].
5. **Sale by sample:** Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
6. **Goods by sample as well as description:** Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].
7. **Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].

Example: In readymade garment business, there is an implied condition by usage of trade that the garments shall be reasonably fit on the buyer.

8. **Seller actively conceals a defect or is guilty of fraud:** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.



SUMMARY

While entering into a contract of sale, certain stipulations are put by both the parties i.e. the buyer and the seller. These stipulations with reference to goods may be 'conditions' or 'warranties' depending upon the construction of the contract. A stipulation essential to the main purpose of the contract is a 'condition' whereas collateral stipulations are called warranties. Breach of a 'condition' gives right to repudiate the contract and to claim damages whereas Breach of a 'Warranty' gives right to claim damages only. Every contract of sales have certain conditions and warranties implied by law. Besides, the parties may provide for 'conditions' and 'warranties' by an express agreement.

Regarding implied condition or warranty as to the quality of fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.

 ... TEST YOUR KNOWLEDGE**Multiple Choice Questions**

1. A stipulation which is essential to the main purpose of the contract is called-
(a) Warranty (b) Guarantee (c) Condition (d) Indemnity
2. Breach of condition gives the aggrieved party-
(a) Right to sue for damages (b) Right to repudiate the contract
(c) Both (a) and (b) (d) None of these
3. Condition may be treated as a warranty when there is –
(a) Waiver of condition by the buyer
(b) Buyer elects to treat breach of condition as a breach of warranty
(c) Acceptance of goods by the buyer in case of non-severable of contract of sale
(d) All the above
4. The doctrine of Caveat Emptor does not apply, when
(a) the goods are bought by sample.
(b) the goods are bought by sample as well as description.
(c) The exact purpose is known to the seller and is a regular dealer
(d) all of the above
5. Which of the following is not an implied condition in a contract of sale?
(a) condition as to title. (b) condition as to description
(c) condition as to free from encumbrance. (d) condition as to sample.
6. The conditions and warranties may be in the form of
(a) express. (b) implied. (c) either (a) or (b). (d) none of the above.
7. Which one of the following is not an implied warranty
(a) warranty as to undisturbed possession.
(b) warranty as to existence of encumbrance.
(c) disclosure of dangerous nature of goods.
(d) warranty as to quality or fitness by usage of trade.
8. In case of goods sold by sample, the goods should correspond with the sample other wise
(a) buyer can reject the goods. (b) buyer cannot reject the goods.
(c) contract is automatically terminated. (d) seller is liable to punishment.
9. M, a shopkeeper, sold a Television set to N, who purchased it in good faith. The set had some manufacturing defect and it did not work after a few days in spite of repairs. In this case, the television was not merchantable as it was not fit for ordinary purpose

- (a) the buyer has no right to reject the television.
 (b) the buyer has the right to reject the television and to have refund of the price.
 (c) both of the above.
 (d) none of the above [(a) & (b)]
10. Where the buyer is deprived to goods by their true owner, then the buyer
- (a) may recover the price for breach of the condition as to title.
 (b) can not recover the price for breach of the condition as to title.
 (c) either (a) or (b)
 (d) none of the above.

Answers to MCQs

1.	(c)	2.	(c)	3.	(d)	4.	(d)	5.	(c)
6.	(c)	7.	(d)	8.	(a)	9.	(b)	10.	(a)

Theoretical Questions

Question 1:

What do you understand by "Caveat-Emptor" under the Sale of Goods Act, 1930? What are the exceptions to this rule?

Question 2:

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

Question 3:

"There is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale." Discuss the significance and State exceptions, if any.

Question 4:

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.

Answer to Theoretical Questions

1: Caveat emptor' means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame any body excepting himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale"

The rule of caveat emptor does not apply in the following cases:

- (i) *Fitness for buyer's purpose*: Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose. (Section 16(1)).
- (ii) *Sale under a patent or trade name*: In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose (Section 16(1)).
- (iii) *Merchantable quality*: Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. (Section 16(2)).
- (iv) *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)).
- (v) *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.

2: 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 unmerchantable, which would not be apparent on a reasonable examination of the sample [Section 17(2)].

Implied Warrants:

1. *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.
2. *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.
3. *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.
4. *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.

3: The statement given in the question is the fundamental principle of law of sale of goods, sometime expressed by the maximum 'Caveat Emptor' meaning thereby 'Let the buyer be aware'. In other words, it is no part of the seller's duty in a contract of sale of goods to give the buyer an article suitable for a particular purpose, or of particular quality, unless the quality or fitness is made an express terms of the contract. The person who buys goods must keep his eyes open, his mind active and should be cautious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgement in the absence of any misrepresentation or guarantee by the seller.

There are, however, certain exceptions to the rule which are stated as under:

- (i) Where the buyer expressly or by implication, makes known to the seller the particular purpose for which he needs the goods and depends on the skill and judgement of the seller whose business is to supply goods of that description, there is an implied condition that the goods shall be reasonably fit for that purpose;
- (ii) If the buyer purchasing an article for a particular use is suffering from an abnormality and it is made known to the seller at the time of sale, implied condition of fitness will apply.
- (iii) If the buyer purchases an article under its patent or other trade name and relies on seller's skills and judgement which he makes known to him, the implied condition that are articles are fit for a particular purpose shall apply.
- (iv) If the goods can be used for a number of purposes the buyer must tell the seller the particular purpose for which he required the goods otherwise implied condition of fitness of goods for a particular purpose will not apply.
- (v) Where the goods are bought by description from a seller who deals in goods of that description whether he is the manufacturer or producer or not, there is an implied condition that the goods are of merchantable quality.
- (vi) An implied condition as to quality or fitness for a particular purpose may be annexed by the usage of trade or custom;

In a sale by sample there is an implied condition that

- (a) The bulk shall correspond with the sample in quality;
- (b) The buyer shall have reasonable opportunity of comparing the bulk with the sample; and
- (c) The goods shall be free from any defect, rendering them unmerchantable;

(viii) In the case of eatables and provisions in addition to the implied condition of merchantability, there is an implied condition that the goods shall be wholesome.

4: Difference between Condition and Warranty

- (i) 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.
- (ii) 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.
- (iii) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:

- (i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition.
- (ii) Where the buyer elects to treat the breach of condition as breach of a warranty.
- (iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
- (iv) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

