

the total purchase money he had paid to Divall. The Court held that Rowland was entitled to recover in full, notwithstanding that he had used the car for four months.

- Implied conditions relating to sale by description - section 14:

- Where there is a sale of goods by description, the **goods sold must correspond with the description**. Where there is a sale of goods by showing a sample as well as by description, the **goods sold must correspond both with the sample and the description**. Goods are sold by description when they are described in the contract and the buyer contracts in reliance of that description.

Moore & Co. vs. Landaner & Co (1912) 2 KB 519 – Moore sold Landaner 3,100 cases of Australian canned fruits and the cases were to contain 30 tins each. Moore delivered the total quantity, but about half the cases contained 24 tins and the remainder 30 tins. Landaner rejected the goods. There was no difference in market value between goods packed as 24 tins and goods packed as 30 tins to the case. The Court upheld the buyer's right to reject the whole consignment because the goods delivered did not correspond with the description of those ordered.

Arco Ltd. vs. Ronaasen & Son [1933] – This involved a contract to buy wooden sticks of a specified thickness of ½ inch. About 80% of those supplied were more than ½ inch. It was held that the buyer could reject the goods as the goods supplied did not correspond with the goods specified or described in the contract.

- Implied conditions as to quality or fitness – section 15:

- General rule relating to quality or fitness of a good is that every buyer must satisfy himself as to the quality or fitness of the goods he is buying. If he decides to buy a good he must inspect the goods and be satisfied that he is buying goods of good quality. This is known as the “caveat emptor rule” which states that “the buyer must be aware.” Accordingly, the buyer must take care and see that he is buying the good he wants.
- Exceptions to the above general rule are found as implied conditions as follows:
 - (a) Section 15(1) – When the buyer, expressly or by implication, makes known to the seller the particular **purpose** for which the goods are required, so as to show that the buyer relies on the seller's skill and judgment, and the goods are of a description which it is in the course of the seller's business to supply, then the goods sold **must be reasonably fit for that purpose**. The purpose for which the goods are required need not, however, be expressly made known to the seller if it can be readily gathered from a description of the goods.

Frost vs. Aylesbury Dairy [1905] – a milk dealer supplied milk containing germs of typhoid fever which was consumed by the buyer's family. Wife was infected with typhoid and died. It was held that the purpose for which the milk was bought was sufficiently made known to the milk dealer by its description. Milk was not reasonably fit for human consumption.

Grant vs. Australian Mills [1936] – woolen underwear purchased from a retailer contained an excess of Sulphite. The user of the underwear contracted a skin ailment after he wore them. It was held that he was entitled to damages because there was a breach of an implied condition that the garments were reasonably fit for use.

- (b) Section 15(2) – when goods are bought by description from a seller who deals in goods of that description (whether he be a manufacturer or not), the goods must be of a **merchantable quality**. However, if the buyer has examined the goods, there will be no implied condition as regards defects which such examination ought to have revealed.

The goods are not of merchantable quality where:

- (i) the goods have defects unfitting them for their ordinary use; or
- (ii) the condition of the goods is such that no one, with knowledge of their true condition, would have bought them.

Wren vs. Holt [1703] – A customer ordered beer from a restaurant. Beer given to him had been contaminated with Arsenic and the customer fell ill. It was held that the beer supplied was “not fit for purpose” and “not merchantable.”

- Sale of goods by sample and related implied conditions - section 16:

- A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.
- Implied conditions in such a situation:
 - (a) The bulk sold must **correspond in quality** with the sample shown to the buyer.
 - (b) The seller must give a **reasonable opportunity for the buyer to compare** the bulk with the sample.
 - (c) The goods sold must be of **merchantable quality**. Goods must be free from defect which would not be apparent on reasonable examination of the sample.
- *Drummond vs. Van Ingen [1887]* – A sample of cloth was approved by the buyer. The seller knew that the buyer was intending to re-sell the cloth to several tailors as material for tailoring work. The bulk was duly delivered but were unmerchantable for tailoring purposes. The bulk was of the same quality as the sample. However, it was held that the defects in this situation could not have been discovered by inspection of the sample and the buyer was not liable to pay for the bulk.

(10) IMPLIED WARRANTIES

Implied warranties as to the title of the goods:

- Section 13(b) - The buyer must have and enjoy quiet possession of the goods. The seller is liable in damages if the buyer is disturbed in the enjoyment of the goods in consequence of the seller's defective title to sell.
- Section 13(c) - The goods are 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.

(11) WHEN DOES THE PROPERTY TRANSFER FROM THE SELLER TO THE BUYER

- A contract for the sale of unascertained goods – no property transfers to the buyer until the goods are **ascertained**. (Section 17)
- A contract for the sale of specific or ascertained goods – property transfers to the buyer at such time as the parties to the contract **intend** it to be transferred. [Section 18(1)]

(12) WHEN DO PARTIES “INTEND” THE GOODS TO PASS?

- Intention must be ascertained by the **terms** of the contract, the **conduct** of the parties and the **circumstances** of the case. [Section 18(2)]
- **Rules for ascertaining intention (Section 19):**
 - (I) Where there is an **unconditional contract** for the sale of **specific goods**, in a **deliverable state**, the property in the goods passes to the buyer **when the contract is made**, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.
 - “deliverable state” is the state in which the buyer would be bound to take delivery of the goods under the contract.
 - “specific goods” means goods identified and agreed upon at the time a contract of sale is made
 - *Philip Head and Sons vs. Showfront [1970]* – This involved a contract by sellers to lay carpet for the buyers. The carpet was stolen before it was laid. It was held that the carpet was

not unconditionally appropriated to the contract in a deliverable state and therefore, the buyers were not liable for the price.

- (II) Where there is a contract for the sale of **specific goods**, and the seller is bound to do something to the goods for the purpose of **putting them into a deliverable state**, the property does not pass **until such thing be done** and the **buyer has notice** thereof.
- (III) Where there is a contract for the sale of **specific goods** in a **deliverable state**, but the **seller is bound to weigh, measure, test, or do some other act or thing** with reference to the goods **for the purpose of ascertaining the price**, the property does not pass **until such act or thing be done** and the **buyer has notice** of it.
- (IV) When goods are **delivered** to the buyer **on approval**, or other similar terms, the property therein passes to the buyer:
 - (a) when he **signifies his approval or acceptance** to the seller, or does any other act adopting the transaction;
 - (b) if he does not signify his approval or acceptance to the seller, but **retains the goods without giving notice of rejection**, then, if a time has been fixed for the return of the goods, **on the expiration of such time**, and, if no time has been fixed, **on the expiration of a reasonable time**.
- (V) 1. Where there is a contract for the sale of **unascertained or future goods by description**, and goods of that description and in a **deliverable state** are **unconditionally appropriated to the contract**, either by the seller with the **consent** of the buyer or by the buyer with the consent of the seller, the property in the goods thereupon passes to the buyer. Such consent may be express or implied, and may be given either before or after the appropriation is made.
(Unconditional appropriation of goods to a contract means that the goods have been set apart from the bulk of unascertained goods and they would be used for that particular contract without modification.)
2. Where in pursuance of the contract, the seller **delivers the goods** to the buyer or to a carrier for the purpose of transmission to the buyer, and **does not reserve the right of disposal**, he is deemed to have **unconditionally appropriated** the goods to the contract.
 - **Pignator vs. Gilroy [1919]** – This involved a sale of unascertained bags of rice. The buyer paid the price and asked for delivery. Two different places of delivery have been stated by the seller for collection. The buyer collected from one place and not from the other place. The goods that were not collected was stolen. It was held that the property in the goods passed and the buyer is at risk.

(13) WHAT IS RESERVATION OF “RIGHT TO DISPOSAL”? (Section 20)

- Where there is a contract for the sale of **specific goods**, or where goods are **subsequently appropriated to the contract**, the **seller may**, by the terms of the contract or appropriation, **reserve the right of disposal** of the goods until certain conditions are fulfilled. In such a case, notwithstanding the delivery of the goods to the buyer, or to a carrier for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(14) TRANSFER OF TITLE / PASSING OF RISK (Section 21)

- Unless otherwise agreed, goods remain at the seller's risk until the property has passed to the buyer, after which, they are at the buyer's risk, whether delivery has been made or not.
- However, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.