

Jy.CHAPTER - 2CONDITIONS AND WARRANTIESAUCTION SALE (SECTION 64) (4M-6M)

An 'Auction Sale' is a mode of selling property by inviting bids publicly & the property is sold to the highest bidder. An auctioneer is an agent governed by the law of Agency. When he sells, he is only the agent of the seller.

Legal Rules of Auction Sale: Section 64 of the SOGA, 1930 provides following rules to regulate the sale by auction.

1. Where goods are sold in lots - Where goods are put up for sale in lots, each lot is deemed to be subject of a separate contract of sale.
2. Completion of the contract of sale - The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
3. Right to bid may be reserved - Right to bid may be reserved expressly by or on behalf of the seller & when such a right is expressly reserved, the seller or any one person on his behalf may bid at the auction.

4. Where the bid is not reserved by the seller - Where the bid is not reserved on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
5. Reserved price - The sale may be notified to be subject to a reserve or secret price; and
6. Pretended bidding - If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

CONDITIONS AND WARRANTIES

BASIS	CONDITIONS	WARRANTIES
Meaning	A condition is a stipulation essential to the main purpose of the contract.	A warranty is a stipulation ^{secondary} 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.
One in another	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

Eg.

1. P wants to purchase a car from Q, which can have a mileage of 20km/litre. Q pointing at a particular vehicle says "This car will suit you".

Later P buys the car but finds out later on that this car only has a top mileage of 15km/l. This amounts to a breach of condition because the seller made the stipulation which forms the essence of the contract.

2.

- Ram consults Bhyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Bhyam suggests 'Maanti' & Ram accordingly buys it from Bhyam. The car turns out to be unfit for touring purposes. Here the term that the car should be suitable for touring purpose is a condⁿ of the contract. Ram is therefore entitled to reject the car & have refund of the price.

Ram buys a new Maanti car from the show room & the car is guaranteed against any manufacturing defect under normal usage for a period of 1 yr. from the date of original purchase & in the event of any manuf. defect there is a warranty of replacement of defective part if it cannot be properly repaired. After 6M, Ram finds that the horn of 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.

Conditions and warranties may be either

- Express conditions and warranties are those which are agreed upon between the parties at the time of contract and are expressly provided in the contract.
- Implied conditions and warranties on the other hand are those which are presumed by law to be present in the contract.

V. Imp. Conditions / Duty of Seller

Condition as to title [Section 14(a)]

In every contract of sale, 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 implied condition 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.

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

2. Sale by short 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.

Eg. 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 & hence could be returned or if buyer took the good, he could claim damages for breach.

3. Sale by Sample [Section 17]

In a contract of sale by sample, there is an implied condition that

- the bulk shall correspond with the sample in quality
- the buyer shall have a reasonable opportunity of comparing the bulk with the sample,
- the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. This simply means that the goods shall be free from any latent defect i.e. a hidden defect.

Eg. 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 the parcels of wheat.

e.g.

A comp. 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.

4.

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 & the description.

5.

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.

There is implied condition of the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

- (i) The buyer should have made known to the seller the particular purpose for which goods are required.
- (ii) The buyer should rely on the skill & judgement of the seller.
- (iii) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

This implied condition will not apply if the goods have been sold under a trademark or a patent name.

- Eg. 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 & claimed the refund of price. It was held that 'A' was entitled to do so.
- Eg. 'A' went to 'B's' shop & asked for a 'Mewati' 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 & judgment of the seller 'B'. In this case, there is no implied condition as to fitness of the machine for buyer's particular purpose.
- Eg. P. purchased a hot water bottle from a retail chemist. Asked the chemist if it would stand boiled water. The Chemist told him that the bottle was meant to hold hot water. The bottle burst when hot water was poured into it & 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.
6. Condition as to wholesomeness
 In the case of eatables, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.
- Eg. A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk & was infected & died. Held, there was a breach of condition as to wholesomeness & A was liable to pay damages.

Eg. A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke buyer's tooth while eating. Hence, the buyer can treat it as breach of implied condition as to wholesomeness & can also claim damages from the seller.

7. Condition as to Merchantability [Section 16(2)].

Merchantable quality means that the goods must be saleable in the market goods of that description. The seller is under an obligation to inform the buyer of any defect in the goods sold at the time of contract, except, in a case where the defect is obviously known to the buyer.

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

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

CAVEAT EMPTOR / Duty of Buyer

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

Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat emptor are the duties of the seller:

1. Fitness as to quality or use
2. Goods sold by description
3. Goods of Merchantable Quality
4. Sale by sample
5. Goods by sample as well as description
6. Trade usage / reasonable fit for purpose
7. Goods purchase under patent or brand name.
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 & claim damages.

IMPLIED WARRANTIES

1. Warranty as to non-existence of encumbrances
 2. Warranty as to undistributed possession
 3. Warranty as to quality or fitness by usage of trade
 4. Warranty as to Disclosure of dangerous nature of goods.
 5. Warranty as to non-existence of encumbrances :
- 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.

Eg. A pledges his car with C for a loan of Rs 15000. A 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 & then file a suit against A for recovery of the money with interest.

2. Warranty as to undistributed possession :
- An implied warranty is 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 dispossessed in his possession, he is entitled to sue the seller for the breach of the warranty.

3. Warranty as to quality or fitness by usage of trade : There is both implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied. Same as condition
4. Disclosure of dangerous nature of goods : Where the goods are dangerous in nature & 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.

~~PP~~ Breach of condition be treated as a breach of warranty : 4M Section 13 of the SOGA, 1930, 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 & can claim for damages only.

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

10. 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.

Eg: A agrees to supply B 10 bags of first quality sugar @ Rs 625 per bag but supplies only second quality sugar, the price of which is Rs 600 per bag. There is a breach of condition & 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 the buyer has to claim damages @ Rs 25/bag

- : 2. Where the contract is non-savable & the buyer has accepted either the whole goods or any part thereof.
3. Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.
4. Where the buyer waives the performance of the condition. A party may for his own benefit, waive a condition.

QUESTIONS

1. What are the rules which regulate the sale by Auction under the SOGA 1930? (4M)
2. What are the differences b/w a 'Condition' & 'Warranty' in a contract of sale? Also explain, when shall a 'breach of condition' be treated as 'breach of warranty'? & provisions of the SOGA, 1930? (6M)
3. Discuss the various types of implied warranties as per the SOGA, 1930? (4M)
4. What is the Doctrine of "Caveat Emptor"? What are the exceptions to the Doctrine of "Caveat Emptor"? (6M)
5. Write any four exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930. (4M)

6. Mr T was a retail trader of fans of various kinds. Mr M came to his shop & asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr M approved of a particular brand & paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr F about the delivery of the wrong fan. Mr T refused to exchange the same, saying that the contract was complete after the delivery of the fan & payment of price.
- Discuss whether Mr T. is right in refusing to exchange as per provisions of Sale of Good Act, 1930?
 - What is the remedy available to Mr M (6M)

Ans. According to section 15 of the GOSA, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample & the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract. Further, as per section 16 (1) of SOGA, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required & he relies on the judgement or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

- In the given case, Mr M had revealed Mr T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr T was unfit for the purpose for which Mr M wanted the fan, therefore, T cannot refuse to exchange the fan.

M.

When one party does not fulfill his obligation according to the agreed terms, the other party may treat the contract as repudiated or can insist for performance as per the original contract. Accordingly, the remedy available to Mr M is that he can either rescind the contract or claim refund of the price paid by him or he may require Mr T to replace it with the fan he wanted.

7.

X consults Y, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. X suggests 'Bantua' & X accordingly buys it from Y. The car turns out to be unfit for touring purposes. What remedy X is having now under the SOGA ¹⁹³⁰ 1990?

Ans

"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".

In the given case, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so noticed, that its non-fulfilment defeats the very purpose for which X purchases the car.

X is therefore entitled to reject the car & have refund of the price.

8. Mrs G bought a tweed coat from P. When she used the coat she got rashes on her skin as her skin was abnormally sensitive. But she did not make this fact known to the seller i.e. P. Mrs G filed a case against the seller to recover damages. Can she recover damages under the SOGA, 1930?

Ans. According to sect 16(1) of SOGA, 1930, normally in a contract of sale there is no implied condⁿ or warranty as to quality or fitness for any particular purpose of goods supplied. The general rule is that of "Caveat Emptor" that is "let the buyer beware". But where the buyer expressly or implicitly makes known to the seller the particular purpose for which the goods are required & also relies on the seller's skill & judgement & that this is the business of the seller to sell such goods in the ordinary course of his business, the buyer can make the seller responsible.

In the given case, Mrs G purchased the tweed coat without informing the seller i.e. P about the sensitive nature of her skin. Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin.

9. Mrs Geeta went to the local rice & wheat wholesale shop & asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same Rs 125/kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase.

The shopkeeper showed her a bowl of rice as sample. The sample corresponded to the entire lot. The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix long & short grain.

The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.

Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good & cheap quality rice. Will she be successful?

Explain the basic on law on sale by sample under SOGA 1930

- Decide the ^{facts} of the case & options open to the buyer for grievance redressal as per the provisions of SOGA 1930? ("problem" → sol")
- What would be your answer in case Mrs Geeta specified her exact requirement as to length of rice? (6M)

Ans. • Sale by sample (Sect. 17)

In the instant case, the buyer (Mrs Geeta) does not have any option for grievance redressal.

In case Mrs Geeta specified her exact requirement as to length of rice, then there is an implied cond' that the goods shall correspond with the description. If it is not so, the seller will be held liable.

10.

M/S Woodworth & Associates, a firm dealing with the wholesale & retail buying & selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood, Mango wood, Teak wood, Burma wood etc.

Mrs. Das, a customer came to the shop & asked for wooden logs measuring 4 inches broad & 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors & window frames. The shop owner agreed & arranged the wooden pieces cut into as per the buyers requirements.

The carpenter visited Mr. Das's house next day, & he found that the seller has supplied Mango tree wood which would most unsuitable for the purpose. The carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements.

The shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr. Das & hence could not be resold.

(i)

Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor"

(ii)

Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose? (6M)

Ans.

(i) Caveat Emptor. + 8 Exceptions without explanation

(ii) As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors & window frames but the seller supplied Mango trees wood which is most unsuitable for purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving this purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Sect. 16(1), of the SOGA, 1930]

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If it is not so, the seller will be held liable.