

INDIAN SALE OF GOODS ACT, 1930

CONTRACT OF SALE OF GOODS

A contract of goods is a contract whereby the seller transfers or agrees to transfer the property to goods to the buyer for a price. There may be a contract of sale between one part-owner and another [Sec. 4(1)]. A contract of sale may be absolute or conditional [Sec 4(2)].

SALE

Sale and when under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a 'sale'.

AGREEMENT TO SELL

But where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an 'agreement to sell' [Sec. 4(3)].

ESSENTIAL ELEMENTS OF A CONTRACT OF SALE

Two parties: There must be 2 distinct parties i.e. a buyer and a seller, to affect a contract of sale and they must be competent to contract

Goods: There must be some goods the property in which is or is to be transferred from the seller to the buyer. The goods which form the subject-matter of the contract of sale must be movable. Transfer of immovable property is not regulated by the Sale of Goods Act.

Price: Price is an essential ingredient for all transactions of sale and in the absence of the price or the consideration, the transfer is not regarded as a sale. The transfer by way of sale must be in exchange for a price.

Transfer of general property: There must be a transfer of general property as distinguishes from special property in goods from the seller to the buyer.

Essential elements of a valid contract: All essential elements of a valid contract must be present in the contract of sale.

CONDITION AND WARRANTY

CONDITION

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

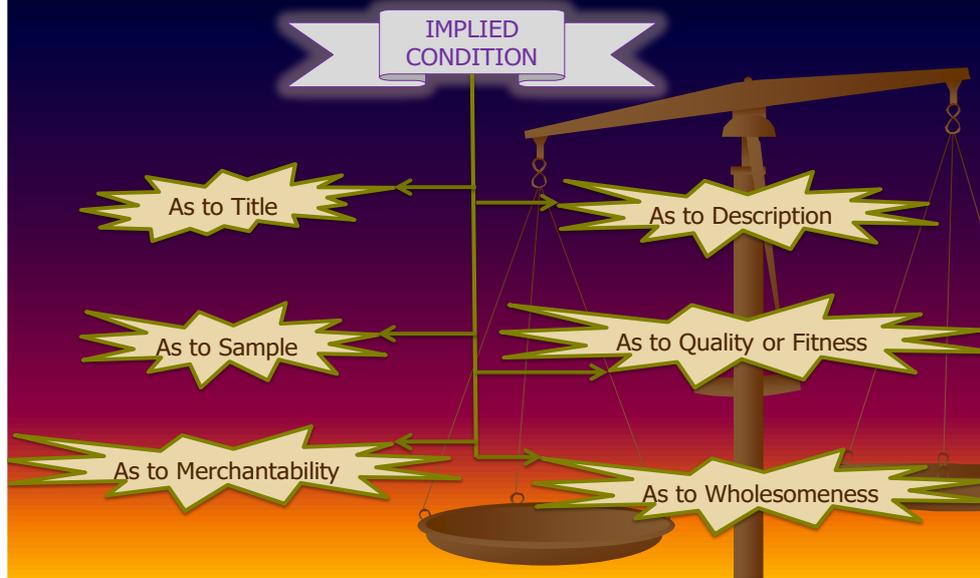
WARRANTY

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.

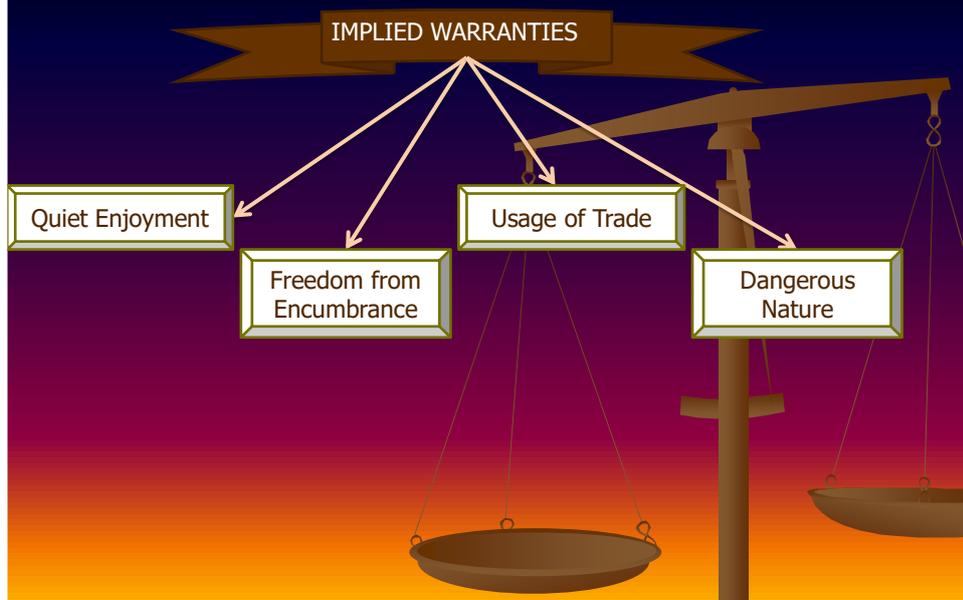
Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

BASIS FOR COMPARISON	CONDITION	WARRANTY
Meaning	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	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.
Defined in	Section 12 (2) of Indian Sale of Goods Act, 1930.	Section 12 (3) of Indian Sale of Goods Act, 1930.
What is it?	It is directly associated with the objective of the contract.	It is a subsidiary provision related to the object of the contract.
Result of breach	Termination of contract.	Claim damages for the breach.
Violation	Violation of condition can be regarded as a violation of the warranty.	Violation of warranty does not affect the condition.
Remedy available to the aggrieved party on breach	Repudiate the contract as well as claim damages.	Claim damages only.

IMPLIED CONDITION (Secs. 14 to 17)



IMPLIED WARRANTIES



RIGHTS OF UNPAID SELLER

1. Right of Lien

He can exercise right of lien, he has to fulfil the following conditions.

- a) He must be unpaid seller
- b) There should be no credit terms in the Contract of Sale.
- c) After completion of credit period, right of lien can be exercised.
- d) The unpaid seller should have obtained those goods lawfully.
- e) Amount must be due on those goods only against which right of lien is decided.

2. Right of stoppage in transit

Unpaid Seller has right to stop the goods in the transit itself. To exercise this right the following conditions are to be fulfilled.

- a) He must be unpaid seller.
- b) Buyer must be insolvent.
- c) There should be no credit terms in the Contract of Sale. After expiry of Credit period, this right can be exercised.
- d) Amount must be due on those goods only against which this right is desired.

3. Right to re-sale

The unpaid seller can re-sell the goods for non-payment of price by buyer. He can exercise this right when the goods are of perishable nature while doing so it is beneficiary to the seller to give a notice to buyer with regard to resale.

4. Right to sue for price

It is fundamental right of buyer to file a suit for recovery of unpaid price. In the case of sale. Suit will be made for price balance, but not for compensation.

5. Right to sue to interest

If the buyer makes unreasonable delay for making payment, the seller has right to claim interest also.

6. Right to sue for compensation

When an agreement to sell is breached, the seller can sue only for compensation for the breach of Contract.

RIGHTS OF BUYER

1. He has the right to have delivery of the goods as per the contract.
2. If the seller does not send, as per the contract, the right quantity of goods to the buyer, the buyer can reject the goods.
3. The buyer has a right not to accept delivery of the goods by installments by the seller.
4. If the goods are sent by sea route by the seller, the buyer has a right to be informed by the seller so that he may get the goods insured.
5. The buyer has a right to examine the goods which he has not seen earlier before giving his acceptance for the same.
6. If the seller wrongfully refuses to deliver the goods to the buyer as per the contract, the buyer may sue the seller for damages for non delivery. The amount of damages will be the difference between the contract price and the market price of the goods.
7. If the buyer has already paid the price and the seller has not delivered the goods as per the contract, the buyer can recover the amount paid.

8. If the contract is for the sale of specific or ascertained goods, the buyer may sue the seller for the specific performance of the contract in case of breach of contract by the latter.
9. The buyer may sue the seller for damages for the breach of any implied warranty as per the provisions of this Act.
10. If the seller rejects the contract before the date of delivery, the buyer may either treat the contract as still existing or wait till the date of delivery or he may treat the contract as cancelled and sue the seller for damages for the breach. The second case is known as the anticipatory breach of contract.
11. If, in view of the breach of contract by the seller, the price has to be refunded to the buyer, the buyer has a right to claim interest on the amount.

DUTIES OF THE BUYER IN A CONTRACT OF SALE

The following are the duties of a buyer in a contract of sale

1. It is the duty of the buyer to accept the goods and pay for them in accordance with the terms of the contract.
2. It is the duty of the buyer to apply for delivery.
3. It is the duty of the buyer to demand delivery of the goods within a reasonable time.
4. If the contract specifically provides for the delivery of the goods by the seller by instalments, the buyer shall accept such a delivery.
5. If the buyer refuses to accept the goods, it is his duty to inform the seller about it.
6. If the seller delivers the goods as per the contract, it becomes the duty of the buyer to take delivery of the same within a reasonable time. He remains liable to the seller for any loss arising on account of his refusal to take delivery.
7. If the ownership rights have already been passed on to the buyer by the seller, the former has the duty to pay the price as per the terms of the contract.
9. If the buyer wrongfully refuses to accept and pay for the goods, he will have to compensate the seller for damages for non-acceptance.