

CONDITIONS

Module _IV Chapter 2

*S. 12(2):

“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”.

Stipulation – requirement

Breach – break

Repudiated – cancelled

E.g - 'A' buys from 'B' a hair oil advertised as pure coconut oil. The oil turns out to be mixed with herbs. 'A' can return the oil if unused and claim refund of price.

*Implied Conditions:

They are conditions which are presumed to be incorporated in every contract of sale, unless specifically excluded.

There are eight implied conditions



Condition as to title

Condition as to description

Condition as to sample

Condition as to sample and description

**Condition as to quality or fitness for buyers
purpose**

Condition as to merchantable quality

Condition as to wholesomeness

Condition as to trade usage

* *Condition as to title:*

There is an implied condition on the part of the seller that in case of sale, he has right to sell the goods at the time when property is to pass. If the condition is not satisfied, the buyer can cancel the contract

- * 'R' bought a car from 'D' After a few months, the car was taken away by the police as it was a stolen one. 'R' was forced to return the car to the true owner. It was held that 'R' could recover the price paid.

Rowland v. Divall (1923)

** Condition as to description:*

Sometimes the goods are sold by description, in such cases the goods sold must correspond with the description. If it is not so, the buyer may reject the goods.

Sale by description includes-

Where the buyer has never seen the goods and buys them only on the basis of description given by the seller.

‘A’ buys a reaping machine described by the seller as ‘though old, it is as good as new’. Buyer buys it without seeing. ‘A’ relied on the description given. It turned out to be old and rusted. It was held that the buyer could reject the machine.

*** Sale by sample:**

Sometimes contracts are entered into on the basis of sample given. In such cases the following conditions must be satisfied:

- a.** The quality of the bulk of goods supplied shall be similar to the quality of the sample.
- b.** The buyer is given reasonable time to compare the bulk with the sample.
- c.** The goods delivered shall be free from any defect.

** Condition as to sample and description:*

If the sale is by sample as well as by description, of the goods by the seller then the goods supplied must correspond to both sample and description. If it is not so the buyer can reject the goods.

- * 'A' shows a sample of tea and says 'Darjeeling Tea'. In which case , it must correspond to the sample as also by description.

*** *Condition as to quality or fitness for buyer's purpose:***

As a rule there is no implied condition as to the quality or fitness by any particular purpose of goods supplied under a contract of sale. The doctrine of Caveat Emptor applies.

However there are some exceptions to the rule.

- * E.g. 'P' buys a hot water bottle from 'L' a chemist, 'P' buys the bottle on the recommendation of 'L'. After a few days, while using the bottle, it burst and injured P's wife. It was held that 'P' can claim damages.
Priest v. Last (1903)**

** Condition as to merchantable quality.*

Merchantable means -

- a.** If one buys it for self use, they should be reasonably fit for the purpose for which they are generally used
- b.** If they are bought for resale, it should be commercially saleable.

** E.g. 'P' sold a catapult to a boy of 6 years. While the boy was using it, the catapult broke and blinded the boy in one eye. It was held that the catapult was not of a merchantable quality.*
Godley v. Perry (1960)

**Condition as to wholesomeness:*

It is applicable to eatables. As per this condition, goods must be fit for human consumption.

1. 'F' bought milk from 'A' The milk was contaminated with typhoid germs. 'F' wife consumed the milk, got infected and died. It was held that 'A' was liable. *Frost v. Ayalsbury Dairy Co. Ltd. (1905).*

2. 'C' bought a bun from 'M' The bun contained a stone which broke C's tooth. It was held that 'C' could recover the damages.

Champromier v. Mason (1905)

**Condition implied by trade usage:*

It is the extension of condition as to quality or fitness for a particular purpose.

E.G printing the manufacturing and expiry date on the medicines.

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