



**Distinguish between condition and warranty.
Discuss the implied conditions and warranties
in a contract of sale of goods?**



A contract contains some stipulations or terms. Some stipulations may be essential to the contract while some may be collateral or incidental to the contract. A stipulation essential to the contract is called a '**condition**'. That which is collateral or incidental to the contract is called a '**warranty**'. Section 12 of the Sale of Goods Act defines condition' and 'warranty as follows:

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. **[Section 12(2)]**

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. **[Section 12(3)]**

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

The distinction between Condition and Warranty

Condition	Warranty
It is essential to the main purpose of the contract.	It is the only collateral or subsidiary to the main purpose of the contract.
Its breach gives the aggrieved party a right to terminate the contract and also claim damages.	Its breach gives the aggrieved party the right to claim damages only.
Breach of condition may be treated as a breach of warranty.	Breach of warranty cannot be treated as a breach of condition.

Remedies are available to the buyer.

In case of breach of condition:

- repudiate the contract and reject the goods altogether, and – claim damages for breach of contract or just treat the breach of condition as a breach of warranty.
- In case of breach of warranty, claim damages only.

Conditions and warranties in a contract of Sale of Goods

Conditions and warranties in a contract of sale of goods may be either expressed or implied. Expressed conditions and warranties are those which are expressly provided in a contract of sale, whereas implied conditions and warranties are those which the law implies in a contract.

Implied conditions

In a contract of sale, if the circumstances of the contract do not show a different intention or the parties do not provide contrary to them, the following are treated as implied conditions:

1. Condition as to title.

In a contract of sale of goods, it is always an implied condition that the seller has a right to sell the goods in the case of a sale, and in the case of an agreement to sell, he will have such right when the property in goods is to pass to the buyer in future. **[Section 14]**

2. Condition as to description.

In the case of the sale by description, the goods should correspond with the description given. The goods must be saleable in the market by that description. **[Section 15]**

3. Condition as to quality or fitness of goods for a particular purpose.

The goods shall be reasonably fit for the required purpose, provided: – the buyer makes known to the seller the particular purpose for which the goods are required, – the buyer relies on the seller's skill or judgement, and – the goods are dealt in by the seller, whether he is the manufacturer or not. **[Section 16]** However, in certain cases the purpose, for which the goods are required, can be known from the acts or the conduct of the parties as well or even from the nature of the articles being purchased. So the goods must be fit for the purpose for which they are meant i.e., a hot water bottle should be fit for the purpose retaining hot boiling water in it. **[Section 16]**

4. Condition as to merchantability.

If the goods are bought or sold by description and the seller is one who deals in goods of that description, then there is another implied condition also and that is, that the goods are of merchantable quality. This means that the goods should be reasonably saleable. Thus, to be merchantable a watch should be able to keep time, a pen should be able to write, a radio-set should be able to play and so on. **[Section 16]**

5. Condition as to wholesomeness.

Where there is a contract of sale of the foodstuffs or provisions, there is an implied condition of their being wholesome also in addition to that of their merchantability. Thus, where a person bought one cake containing stone in it and he got one of his teeth broken, it was held that he could recover damages from the seller.

6. Sale by sample.

Where there is a contract of sale of goods by sample, there is an implied condition to this effect also that:

- the goods shall correspond to it,
- the goods should be free from any defect that makes them unmerchantable. But the defects should be such as cannot be discovered on reasonable examination of the sample. **[Section 17]**

7. Sale by sample as well as description.

Where there is a sale by sample as well as description both, then there is this implied condition also that the goods supplied, shall correspond with both. **[Section 15]**

Implied warranties:

1. Quiet possession.

According to this, the buyer has got a right to enjoy quiet possession of the goods after their purchase, otherwise he will be entitled to recover damages from the seller.

2. Freedom from encumbrances.

Goods should not be subject to any prior charge or mortgage in favour of some third party.

3. Warranty to disclose the dangerous nature of goods.

When the goods sold are of a dangerous nature or require a particular care in using or handling the goods and the buyer is ignorant about such risk, then it becomes the duty of the seller that he should warn the buyer about the danger. If the seller fails to warn the buyer, then the seller shall be liable for damages to the buyer.

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