

B.Com Hons. (Part 2 Paper-4)  
Prof. (Dr.) Reyazuddin,  
Chief Co-ordinator of Commerce and  
Management,  
Nalanda Open University, Patna.

Topic:--THE SALE OF GOODS ACT

The sale of goods is the most common of all commercial contracts.

# CONTRACT OF SALE

- **Essentials of a Contract of Sale:**
  1. **It is a contract.**
  2. **Between two parties.**
  3. **To transfer or agree to transfer.**
  4. **The property in goods.**
  5. **For a price, that is, money consideration.**

# MEANING OF GOODS

- GOODS form the subject of a contract of sale. They mean every kind of **movable property** other than actionable claims & money, and include stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

# KINDS OF GOODS

- Goods may be:
- **Existing**: owned & possessed by the seller at the time of sale. They may be classified as specific or ascertained & unascertained.
- **Future**: which the seller does not possess at the time of the contract and which will be acquired, manufactured or produced by him at some future date.
- **Contingent**: the acquisition of which by the seller depends upon a contingency which may or may not happen.

# CONDITION

- It 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

- It 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 right to reject goods and treat the contract as repudiated.

# CONDITION

- BALDRY V MARSHALL (1925)
  - Plaintiff consults defendants, motor car dealers, for a car ‘suitable for touring purposes’-defendants suggested ‘Bugati’ car-plaintiff accordingly bought the car-which turns out to be unfit for touring purpose-plaintiff sought to reject car-defendants relied on a term in contract that guaranteed the car for twelve months against mechanical defects & excluded every other guarantee and warranty-held plaintiff entitled to reject car and have refund of price as suitability of the car was not a guarantee or warranty, but a condition of the contract.

# WARRANTY

- HARRISON V KNOWLES & FOSTER (1917)
  - Plaintiff bought two small ships from defendants relying upon particulars furnished by the defendants that the dead weight capacity of each ship was 460 tons. The capacity in fact was 360 tons. Plaintiff sought to reject the ships. It was held that the representation of capacity was not a condition but a warranty, for which the plaintiff could have sued in damages.



# IMPLIED CONDITIONS

- Condition as to title
- Condition in a sale by description.....
- Condition in a sale by sample... (the bulk must correspond with the sample)
- Conditions as to fitness & quality (in the following cases only; in other cases **caveat emptor** applies)
  - Buyer makes known to the seller the **particular purpose** for which he requires the goods.
  - Buyer relies on the **skill & judgment** of the seller (The seller's business is to supply such goods whether he is the manufacturer or producer or not)

# IMPLIED CONDITIONS

- Condition as to merchantability  
(**exception to the rule of caveat emptor**)
  - Where goods are bought by description from a seller who deals in goods of that description (whether he is manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.
    - Merchantability means essentially that the goods must be fit for the ordinary purpose for which such goods are used.

# IMPLIED CONDITIONS

- Condition as to merchantability
  - When applied to food products, the condition of fitness of merchantability requires that the goods should be wholesome, i.e. fit for the purpose of consumption.

# IMPLIED WARRANTIES

- Warranty as to quiet possession.
- Warranty as to non-existence of encumbrances.
- Warranty as to disclosure of dangerous nature of the goods to the innocent buyer.

# CHANGE OF CONDITION TO WARRANTY.....

- Option of the buyer.....
  - The toaster case...
- When a condition is reduced to the status of a warranty, the effect is not the condition becomes a warranty, but that the condition remains a condition, it is only the remedy which changes.

# CHANGE OF CONDITION TO WARRANTY.....

- Circumstances are such that goods cannot be returned ....
  - When the buyer has accepted the goods & intimates to the seller.
  - When goods have been delivered to the buyer & he does any act in relation to them which is inconsistent with the ownership of the seller.

# CHANGE OF CONDITION TO WARRANTY.....

- When, after the lapse of reasonable time, the buyer retains them for unreasonably long time without intimating, the seller that he has rejected them.

# EXCLUSION OF IMPLIED CONDITIONS & WARRANTIES

- By express agreement.
- By course of dealings.
- By customs & trade usage.



# CAVEAT EMPTOR....

## EXCEPTIONS

- When the seller makes a representation of fact, whether innocent or fraudulent, regarding the product....
- When the seller actively conceals a defect in the goods which could not be revealed by ordinary examination.....

# CAVEAT EMPTOR....

## EXCEPTIONS

- Where goods are supplied by description and they do not correspond with the description.
- When goods are sold by sample & the goods do not correspond with the sample.

Thank you