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LAW CAPSULE

For Law Competitive Exams

CONDITIONS AND WARRANTIES



Raj Singh Niranjani*

Introduction

Section 12(2) of the Sale of Goods Act, 1930 provides that Condition is essential to the main purpose of the Contract. Section 12(3) of the Act provides that Warranty is collateral to the main purpose of the Contract. For example, stipulation regarding the colour of a saree as well as the date of the supply are essential to the main purpose of the Contract and are conditions whereas stipulation regarding the time of payment of the price and the mode of dispatch of the goods are not the main purpose of the contract but are only collateral, they are warranties. The Court has to look into the intention of the parties and surrounding circumstances.

Stipulation of the time – Section 55 of the Contract Act - time of the performance of the Contract is of essence

- Promisor's delay in performance – voidable at the option of the promisor

Time not of essence – delayed performance – claim damages only for loss occasioned to him

- Section 11- unless a different intention appears from the terms of the Contract, stipulations as to time of payment are deemed to be of the essence of a Contract of Sale
- General rule – time of payment of the price is not deemed to be of the essence of the Contract

Consequences of the breach of Condition or a Warranty

- Condition is a stipulation essential to the main purpose of the Contract; its breach by one party entitles the other to treat contract as repudiated
- Warranty is a stipulation collateral to the main purpose of the Contract. Party entitled only to claim damages.

Options to the buyer on breach of Condition by the Seller

- Treat the Contract as repudiated
- Waive the condition; or
- Treat the breach of Condition as a breach of Warranty

Breach of Condition to be treated as breach of Warranty when Contract of sale is not severable and the buyer has accepted the goods or part thereof.

Acceptance – Buyer is deemed to have accepted goods-

- When he intimated to the seller that he has accepted them; or
- When the goods have been delivered to him and he does an act in relation to them which is inconsistent with the ownership of the seller
- after a lapse of a reasonable time.

Performance may be excused

- Impossibility or otherwise fulfilment of a condition or a warranty is excused by law
- Section 56 of the Contract Act – Impossibility of performance.

Implied Conditions and Warranties

Implied Conditions and Warranties [Section 14 to Section 17] are binding unless they are inconsistent with any express condition/warranties

- Implied Condition as to Title [Section 14(a)]
 - *Rowland v. Divall*- Motor Car-Seller had no title to the car
 - *Niblett Confectioners Material Co.* – 'Nissly Brand'
- Implied Condition in Sale by description [Section 15]
 - Goods supplied shall correspond with the description