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The Sale Of Goods Act 1930

Express and Implied Conditions

The contract of sale is often very linear in its clauses but a good contract is diverse in expression. The Express Conditions and the Implied Conditions may help one to formulate a diverse and clear contract. Let us learn more about this topic.

Implied Conditions

Conditions and Warranties may be either express or implied. The implied conditions and warranties are those which are presumed by law to be present in the contract though they have not been put into it in expressed words. Implied conditions are dealt with in Sections 14 to 17 of the Sale of Goods Act, 1930. Unless otherwise agreed, the law incorporates into a contract of a sale of goods the following implied conditions:

Condition As To Title

In every contract of sale, the first implied condition on the part of the seller is that:

in case of a sale, he has a right to sell the goods,

and in the case of an agreement to sell, he will have the right to sell the goods at the time when the property is to pass. Buyer is entitled to reject the goods and to recover the price if the title turns out to be defective. [Section 14(a)].

Let us try to understand this with the help of an example. Let us say that person A bought a tractor from another person B. The person B had no title to the tractor. Person A then goes on to use the tractor for three months. Three months later, the legal owner of the tractor spots it and demands it back from A. In this, the law holds that A is bound within the law to hand over the tractor to the real owner of the tractor. A has the right to sue B, for the recovery of the purchase price.

Express and Implied Conditions

Condition As To Description

If there is a contract of sale of goods by description, a default implied condition is that these goods must correspond with this description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods. [Section (15)]

Let us consider an example. Suppose a ship was contracted to be sold as "copper-fastened vessel" but actually it was only partly copper-fastened. This means that the goods did not correspond to the

description and hence they can be returned or if the buyer took the goods, he could claim damages for breach.

Sale By Sample

In a contract of sale by sample, there is an implied condition that:

the bulk shall correspond with the sample in the quality;

the buyer shall have or shall be given a reasonable opportunity/chance of comparing the bulk with the sample, and

the goods shall be free from any defect that may render them unmerchantable, which would not be apparent on a reasonable examination of the sample. [Section (17)]

For example, a company sells certain belts made up of a special material by sample for the Indian Army. The belts are found to be made up of plastic of cheaper quality, not discoverable by ordinary inspection. In this case, the buyer is entitled to the refund of the price plus damages.

Sale By Sample As Well As By Description

Where the goods are sold by a sample as well as by description the implied condition is that the bulk of the goods supplied must correspond both with the sample and the description. In case the goods correspond with the sample but do not tally with the description or vice versa, the buyer can repudiate the contract. [Section 15]

For example, A agrees to sell a certain oil described as refined rapeseed oil to B, warranted only equal to sample. The goods that A tenders are found to be equal to the sample but containing a mixture of hemp oil. In such a case B can reject the goods.

Condition As To Quality Or Fitness

Generally, there is no implied condition as to the quality or fitness of the goods that are sold for a particular purpose. However, the condition as to the reasonable fitness of goods for a particular purpose may be implied on the part of the seller for which the buyer wants them. Following are the conditions to be satisfied:

If the buyer had made known to the seller the purpose of his purchase

and the buyer relied on the seller's skill and judgment, and

seller's business to supply goods of that description. [Section 16]

For example, A purchases a hot water bottle from a chemist. The bottle burst and injured A's wife. A breach of condition as to the fitness was thus committed. Hence A is liable for a refund of the price and also the damages

Condition As To Merchantability

This is implied only where the sale is by description and the goods should be of 'merchantable quality' i.e. the goods must be such as are reasonably saleable under the description by which they are known in the market. [Section 16(2)]

For example, A purchases a certain quantity of black yarn from B who is a dealer in yarn. A finds the black yarn to be damaged by the white ants. Thus the condition as to merchantability has been broken and A is entitled to reject it as unmerchantable.

Conditions As To Wholesomeness

In the case of eatables and provisions, there is another implied condition that the goods shall be wholesome, in addition to the implied condition as to merchantability.

For example, A supplies B with milk. The milk contains bacteria and B's wife consumes the milk and is diagnosed with a disease. She later succumbs to the disease. Hence, there was a breach of condition as to the fitness of the supplies and A was liable to pay damages to B in this case.

Implied Warranties

Warranty As To Undisturbed Possession

Well once you buy the goods, they shouldn't be taken away from you. This warranty means that the buyer should have and enjoy quiet possession of the goods after having gotten the possession of the goods. If he is disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.

For example, A buys a laptop from B. After the purchase, A spends some money on its repair and uses it for some time. Unknown to the parties, it turns out that the laptop was stolen and was taken from A and delivered to its rightful owner. B shall be held responsible for a breach and A is entitled to damages of not only the price but also the cost of repairs.

Warranty As To Non-Existence Of Encumbrances

This is an implied warranty which maintains that the goods are free from any encumbrance or charge from any third party who has not been introduced or known to the buyer at or before the time of the contract of sale is entered into.

For example, a person A pledges his computer to another person B against a loan of Rs. 30,000. "A" also promises B that A will produce the laptop and give it to B the next day. Later that day, A goes on to sell the laptop to C who is unaware of the course of dealings between A and B. In this case, C can

ask A to clear the loan immediately or clear the loan by himself or herself and then proceed to file a suit against A for the recovery of the money spent including the interest

Disclosure Of Dangerous Nature Of Goods

In case the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant or unaware of the danger, an implied warranty on the part of the seller emerges. The seller must warn the buyer duly about the dangerous nature of the goods if any. In case of a breach of this warranty, the seller will be liable in damages.

For example, a person X purchases a bottle of disinfectant from a person Y. Y knows that the cap of the bottle is defective or cheap and if opened by a novice without care, it may spill and result in partial burning or other damages of the person. When X opens the bottle, he is injured. In this case, X is liable in damages to Y as Y should have been duly warned of the probable danger.

Warranty As To Quality Or Fitness By Usage Of Trade

An implied warranty as to the quality or the fitness for a particular purpose may be annexed by the usage of the trade. For example, consider the following example:

A drug was sold through an auction and according to the usage of trade. It was to disclose in advance any sea-damage, otherwise, it will be taken as a breach of warranty if no such disclosure has been made and the goods found to be defective.