

- Lord Blackburn - If you contract to sell peas, you cannot oblige a party to take beans. If the description of the article tendered is different in any respect, it is not the article bargained for, and the other party is not bound to take it.
  - Description is the essence of Contract
    - *Re Moors and Co. Ltd* and *Launderers and Co.* - Packing may constitute part of the description
  - Implied condition in sale by Sample as well as Description
    - It is not sufficient that the bulk of the goods correspond with the sample if the goods do not correspond with the description.
    - *Walli v. Pratt* - English Sainfoi provided when Giant Sainfoi demanded - held breach of Contract
    - *Nicole v. Godts*- Refined rape oil- adulterated with hemp oil - entitled to reject the same.
- Two implied conditions being exception to the Rule of Caveat Emptor (Buyer beware)

**Caveat Emptor**

Section 16-provides for *Caveat Emptor* which means 'Buyer must be careful while purchasing goods'

**Exceptions to the Rule of Caveat Emptor**

- Exception 1 - Implies Condition as to **quality or fitness** [Section 16(1)]
  - Buyer relies on the seller's skill and judgment
  - Description of goods - seller's business to supply

**Case Law on Exception 1**

- *Raghva Menon v. Kuttapan Nair* - Watch
- *Priest v. Last* - Hot water bottle
- *Chaproniere v. Mason* - Stone in the bun
- *Grant v. Australian Knitting Mills Ltd.*- Undergarments - Chemicals - dermatitis
- No implied condition when the sale under patent or trade name [Proviso to Section 16(1)]
- *Baldry v. Marshall* - Bugatti Car

- Exception 2 - Implied Condition of **merchantable quality**

- Merchantable Quality - reasonable man acting reasonably - principle of prudent man

**Case Law on Exception 2**

- *Grant v. Australian Knitting Mills Ltd.*- Undergarment - Chemicals - dermatitis
- *Wilson v. Cockerell and Co. Ltd* - Coalite - explosive substance - explosion
- Condition negated when goods examined by the buyer [Proviso to Section 16(2)]
  - Defects
    - Latent - Examination ought to reveal
    - Patent

- Implied conditions in sale by sample [Section 17]

- Due to imperfection of language - difficult or impossible to express in words
- Three implied conditions in sale by sample
  - Bulk shall correspond with the sample in quality
  - The buyer shall have a reasonable opportunity of comparing the bulk with the sample
  - Goods shall be free from any defect, rendering them un-merchantable
- *Godley v. Perry* - Catapults case

**Implied Warranties**

- Implied warranty of quite possession [Section 14(b)]
- Implied warranty against encumbrances [Section 14(c)]

**Exclusion of Implied Terms and Conditions**

- Express agreement
- By course of dealing between the parties
- By usage

*Word v. Hobbs* - The pigs were "sold with all faults"

**English Law**

- Supply of Goods (Implied Terms.) Act, 1973
- Unfair Contract Terms Act, 1977

**Conclusion**

The Law Commission in its 8<sup>th</sup> Report on Sale of Goods Act and 13<sup>th</sup> Report on Contract Act has recommended to amend Contract Act to protect consumers against unfair terms in the Contract.

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