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## Unpacking the Confusion Surrounding Conditions and Warranties in the Contemporary Era

Yuvraj Grover<sup>a</sup>

<sup>a</sup>National Law University Jodhpur, India

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*In the realm of e-commerce, there has been a rapid and unprecedented growth in the flow of goods and services through the process of buying and selling. With increasing reliance on online platforms, it has become imperative to safeguard transparency, fairness, and consumer confidence through effective and well-structured regulatory mechanisms. One of the foundational legal frameworks in this regard is the Sale of Goods Act 1930, which governs contracts where ownership of goods is transferred from the seller to the buyer for a price. The Act not only regulates the transfer of property in goods but also emphasises the importance of certain stipulations, namely conditions and warranties that define the rights and obligations of both parties. These stipulations, often deduced from the construction of the contract rather than by mere legal implication, play a crucial role in determining the remedies available in case of a breach. This article aims to unpack and clarify the often-confused concepts of conditions and warranties.*

**Keywords:** sale, goods, conditions, warranties, innominate terms.

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### INTRODUCTION

In the contemporary era of quick-commerce & impulse-driven shopping, the “contract of sale purchase agreements” have simultaneously witnessed fast-paced development and compliance

with regulatory mechanisms governing domestic & international relations.<sup>1</sup> However, it must be understood that in a such a growing market, transparency, fairness, and consumer confidence remain paramount, and especially in the case of defective goods where a buyer or purchaser is only left with only two questions first, “What is the precise legal basis of their liability?” and second, “What rights does the he/she have against them?”<sup>2</sup> Although these questions might appear quite simple, the answers to them depend on the multiplicity of factors such as classification of terms under the contract, essence of contract, and importantly, the intention of parties to perform their obligations under the contract, which is also mandated under Section 37 of the Indian Contract Act<sup>3,4</sup> Recognising such an issue, this article explores the concept of “Conditions and Warranties” recognised as a separate head under Chapter II of the Sale of Goods Act 1930. The article would first delve into the origin of the concept, with a specific focus placed on the article written by Francis M. Burdick.<sup>5</sup> Secondly, it would place its focus on the Indian framework, specifically dealing with the legislative & judicial interpretation under Sections 12, 13, and Section 17 of the Act of 1937. Lastly, it would delve into the comparative analysis of the contemporary domestic framework and international standards.

## ORIGIN OF THE CONCEPT

The confusion surrounding the origin of such concept dates back to the colonial period itself, which can deciphered from the Chapter on Conditions in Benjamin on Sales wherein the editor in the beginning of the learned note state that “many incidents of the conditions are generally considered as implied warranties and further goes on to say “such an inference would be appropriate for the American reader rather a English one”<sup>6</sup> and that might be due to the nuances surrounded by various factors like size & purpose of the transaction, intention of either party, and more importantly, the expectation of the purchaser to get the same quality of goods.

<sup>1</sup> Samuel J Stoljar, ‘Conditions, Warranties and Descriptions of Quality in Sale of Goods’ (1952) 15(2) The Modern Law Review 439 <<https://www.jstor.org/stable/1090928>> accessed 03 June 2025

<sup>2</sup> Sankalp Jain, ‘Contracts of Sale: Terms, Conditions and Warranties with Special Reference to Sale of Goods Act, 1930’ (2015) SSRN <<https://ssrn.com/abstract=2776977>> accessed 03 June 2025

<sup>3</sup> Indian Contract Act 1872, s 37

<sup>4</sup> Sale of Goods Act 1930, s 4

<sup>5</sup> Francis M. Burdick, ‘Conditions and Warranties in the Sale of Goods’ (1901) 1(2) Columbia Law Review <<https://doi.org/10.2307/1110035>> accessed 03 June 2025

<sup>6</sup> A. G. Guest et al., *Benjamin's Sale of Goods* (7th edn, Sweet & Maxwell 1906) 594

Additionally, such a view is further analysed by another article wherein the author places focus on the American view and highlights that such a view considers “representations as statements of fact and warranties are promises about a state of an asset or condition.” While the English view considers “representations as legally factual statements that are used to induce a party to enter into a contract,” which permits the aggrieved party to void the contract or rescind the payment if a representation appears to be untrue.<sup>7</sup>

Further, to the explore in depth the evolution of English View, the article written by Francis M. Burdick assumes importance for this section, as it make a more prudent distinction between both the concepts wherein the author focusing on Section 62 of Sale of Goods Act, 1893 notes that though Condition is not specifically defined in the statute, but it is frequently contrasted with warranty as denoting every stipulation in a contract of sale which is also evident from the statute that declares “a stipulation may be a condition though called a warranty in a contract.”<sup>8</sup> Subsequently, it also highlights the following view under the statute, which justifies the confusion arising between the two concepts: “The statute applies the term implied condition to most of those engagements of the seller which judges and writers had been accustomed to call implied warranties.”

Moreover, under Section III of the article, the author puts focus on the earliest case of *Bradford v Manly*, wherein he makes the following observation regarding the distinction between the two concepts, which assumes importance for the rest of the article: “When a man contracts to sell goods by sample, he engages to deliver goods which are generically and specifically like the sample. This engagement is not collateral to the sale contract, but is one of its essential terms. If the seller fails to perform it, he fails to perform the contract, and the buyer has the right to reject the tendered goods and treat the contract as repudiated. In the nomenclature of the Sale of Goods Act, such an engagement is a condition, not a warranty.”

Lastly, the author cited the case of *Bryant v Isburgh*, where the defendant claimed the plaintiff refused to take back a horse of unsound mind, despite having expressly warranted its soundness. The trial judge’s ruling in favour of the plaintiff highlighted that “if there was a warranty through

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<sup>7</sup> Michael C Labriola et al., ‘You Promised What?! Warranties and Disclosure in the UK and the US’ (*Wilson Sonsini*, 23 September 2024) <<https://www.wsgr.com/en/insights/you-promised-what-warranties-and-disclosure-in-the-uk-and-the-us.html>> accessed 03 June 2025

<sup>8</sup> Burdick (n 5)

express terms and a breach, then it should be determined how much less the horse was worth because of the unsoundness, and deduct the sum from the contract price”. However, the Supreme Court overruled it and, at the same time, extended the right to rescission under express and implied warranties. The author here makes the following crucial observation, which would shape the distinction between the two concepts for the rest of the article: “By using a word with a double meaning and failing to notice its duplicity, the following case appears to have fallen victim to the fallacy of equivocation.”

Thus, for now, it can be concluded that the jurisprudence surrounding both concepts is not in apprehending the legal distinction between a condition and warranty but in applying the distinction to the construction of a particular contract, which, at times, as observed in the following cases, might fail to give due regard to the condition of a seller.

### **INDIAN FRAMEWORK UNDER THE SALES OF GOODS ACT 1930**

The Sales of Goods Act was enacted in 1930 to define and amend the laws relating to the sale of goods.<sup>9</sup> Chapter II of the Act deals with Conditions and Warranties, wherein, specifically under Section 12(2), a condition is defined as “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.”<sup>10</sup> While Section 12(3) defines warranty as “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,”<sup>11</sup> Placing it similar to the observation of the trial judge in the case of *Bryant v Isburgh*.

Additionally, under Sec. 12(3), the court in the case *Digipulse India* highlighted that “in case of breach only remedy would be to set up against the seller, is the breach of warranty in diminution or extinction of the price, or to sue the seller for damages for breach of warranty.”<sup>12</sup> While the case of *Indochem Electronic* further clarified its scope and state that “though it give no right accrues to a purchaser to reject the goods on breach of stipulation of warranty, the same would

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<sup>9</sup> Sale of Goods Act 1930

<sup>10</sup> Sale of Goods Act 1930, s 12(2)

<sup>11</sup> Sale of Goods Act 1930, s 12(3)

<sup>12</sup> *JK Corpn Ltd v Digipulse India* (2002) SCC OnLine Del 924

not mean that the extent of damages cannot be equivalent to the price of the goods” that lend focus towards Section 12(4).<sup>13</sup>

Further, Sec. 12(4) assumes importance as it states that “Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract” which first, make clear that it would upon discretion of the court to construe a stipulation fitting into either labels which is also evident from the ruling of Income Tax Appellate Tribunal in the case of Marchon Textile Ind wherein the tribunal noted that “discretion would depend on consideration of factors like the right to treat the contract as repudiated and other which may vary case to case.”<sup>14</sup> Secondly, the section places The Indian Act equivalent to the English view, which differentiates between both these concepts from the construction of the contract rather than a legal distinction.

Moreover, Section 13 deals with cases “when condition is to be treated as warranty”, where under Section 13(1), “If a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated”.<sup>15</sup> While in Section 13(2), “where a contract of sale is not severable and the buyer has accepted the goods or part, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect”<sup>16</sup> with both the sections subject to Section 13(3).<sup>17</sup>

Also, in the case of Solartex India, wherein the court noted firstly, the section confines the compelled treatment of a breach of a condition as a breach of a warranty to only cases where the contract is not severable and the buyer has accepted the goods or part thereof.<sup>18</sup> Secondly, when the court was faced with the question of “whether after the delivery of the goods by the seller and what is more, even after acceptance of the goods by the buyer, whether the provisions of Section

<sup>13</sup> *Indochem Electronic v Addl Collector of Customs* (2006) 3 SCC 721

<sup>14</sup> *Marchon Textile Ind (P) Ltd v Inspecting Asstt Commissioner of Income-tax (ITAT [Del])* (1993) 199 ITR (AT) 61

<sup>15</sup> Sale of Goods Act 1930, s 13(1)

<sup>16</sup> Sale of Goods Act 1930, s 13(2)

<sup>17</sup> Sale of Goods Act 1930, s 13(3)

<sup>18</sup> *Rajratan Babulal Agarwal v Solartex India (P) Ltd* (2023) 1 SCC 115

59 can be invoked by the buyer?” it highlighted the following view: “Acceptance of goods at any rate within the meaning of Section 13(2), if it does not constitute passing of property, would not also deprive the buyer of the right under Section 59 of the Act. As long as a condition is violated, be it implied or express, and it is not waived, then, present other elements of Section 13(2), Section 59 applies.”

Lastly, the focus must be placed on Section 17(2), which stipulates, “In the case of a contract for sale by sample, there is an implied condition in the following conditions:

- (a) If the bulk corresponds with the sample in quality.
- (b) If the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- (c) if the goods are free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample”.<sup>19</sup>

However, it must be noted that there may be terms in a contract which will answer neither category, which leaves room for “innominate terms”<sup>20</sup>, which is also evident from the case of *Cehave NV v Bremer Handelsgesellschaft*<sup>21</sup>, which involved a contract for shipping “in good condition” some tons of citrus pellets. Subsequently, a part of the cargo was damaged by overheating, and the buyer rejected the consignment because it had not been shipped “in good condition”. The Court of Appeal, while observing a breach, was not in any category, still entitled the buyer to damages and held: “The term shipped in good condition was not a condition strictly so called; nor was it a warranty strictly so called. It was one of those intermediate stipulations which gives no right to reject unless the breach goes to the root of the contract.”

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<sup>19</sup> Sale of Goods Act 1930, s 17(2)

<sup>20</sup> Nicholas Rafferty, ‘Recent Developments in the Law of Contract’ (1978) 24(2) McGill Law Journal 236, 262 <<https://canlii.ca/t/7kr8x>> accessed 03 June 2025

<sup>21</sup> *Cehave NV v Bremer Handelsgesellschaft* [1976] QB 441