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THE PRINCIPLE OF CAVEAT EMPTOR

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ABSTRACT

The article deals with the principle of *Caveat emptor*, its history and evolution with time. It aims at highlighting the short-comings of the principle. Owing to the dynamic nature of the society, there was seen a shift in the principle from *caveat emptor* to *Caveat venditor*. The article therefore, also highlights the reasons for such shifts. It shows the short coming of the principle in many situations to provide apt justice. The failure of the legal system to provide justice in many cases due to the principle's blind faith in humanity led to the formation of certain exceptions in the application of the principle. Here such situations and exceptions are talked and explained elaborately. The article also accompanies certain case laws to clearly bring out the usage and meaning of the principle.

INTRODUCTION

In the daily lives of human interaction, communication for sale and purchase of various items must take place. The whole world functions with the support of each other and lives off what is known as a "Marketplace".

A market of every kind of good, commodity, valuable; in one word everything exists on the planet. A marketplace is just space or platform where buyers and sellers of various goods/ commodities interact and enter into transactions. Such markets exist locally in a small residential colony, in a state like Chandni Chowk, inter-state like Trade fairs or even internationally where such transactions are named imports and exports.

All such markets involve two parties, a buyer who needs a product and a seller who has such a product to offer. The interaction between the two is what makes up a transaction.

Whenever more than one person is involved in any activity be it trade, relationships etc. disagreements are bound to take place. Discrepancies between the two parties, i.e. the buyer and

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the seller need to be tackled by the law of the land, in India it is the law of contracts. In such controversies one of the parties it is needless to say one always has the upper hand. The principle of *Caveat Emptor* is one such principle of the law of contracts that gave the sellers the upper hand over the buyers in such trade transactions.

WHAT IS THE PRINCIPLE?

The maxim of "*Caveat Emptor*" is a Latin phrase, literally translating into "Let the buyer beware". This maxim is a general rule of law which puts the duty of care in buying any product on the buyer. The duty of care here is the duty to select the goods after careful assessment and responsibly enquiring about the same before purchase. Once the purchase is made the buyer is the one who assumes all responsibility/ risk associated with the product and the seller, according to the maxim, is nowhere responsible. This is so because the buyer is assumed to be acting on his own judgement and prudence. Therefore, owing to this the buyer further goes on to attain no remedy or recourse in case of any defects, whether latent or patent, found in the product so bought once the transaction is concluded.

The reason for providing no remedy in case of defect is the seller's repeated opportunities given to the buyer. Before the conclusion of the sale, the seller apparently according to the maxim provides ample time and all opportunity to the buyer to carefully inspect the product in the picture. Any such shortcomings discovered after the agreement is concluded does not bind the seller in any manner hence not providing any such liberties to the buyer.

However, as stated earlier, in such relationships of trade and in case of conflicts one party is always in a position of power. This maxim has given all such power to the seller. When all the opportunity is given to the buyer to inspect and detect if any defects are sustained in the product, it seemed fair that the seller has the right to remain silent. Thus, this principle does not mandate it to the seller to reveal any information about the defects in the product known to him. The seller has all the right to remain silent about any such faults let the buyer exercise his right of inspection fully.

But, in case the seller has a fiduciary relationship with the buyer i.e. a relationship of utter trust, he is bound to reveal such information. Even in cases where the seller knows that the buyer is mistaken as to the quality of the product in question and the seller has intentionally represented such qualities, he shall disclose if there exist any defects to such transaction. If the

seller actively conceals any such defects the buyer becomes entitled to rescind or revoke the contract and the seller becomes guilty for misrepresentation.

To explain active concealment, we take an example. For example, A goes to a vase shop. He selects a vase and starts to check it for defects. While checking for defects he asks the owner B whether the gold plating on the vase shall stay or get corroded with time? B assures A that the gold plating shall stay on the vase and shall not get corroded. A purchase the vase. Within a week of the purchase the vase gets corroded and becomes black. In such a case A has the option to revoke the contract and hold B guilty for misrepresentation.

Under the Indian Law, this doctrine of reliance on the selleris incorporated in the section 16 ofthe SALES OF GOODS ACT, 1930:

(1) "*Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.*"[2]

(2) "*Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality: Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.*"[3]

HISTORY AND EVOLUTION

Caveat Emptor as a principal can be traced back to the Roman Law in its very primitive stages. It originated in agrarian societies (communities whose economies were mainly based on farm and farm produce) were the commodities in question for the transaction were very simple. For example, wheat, milk etc. such commodities are so non-complex in nature that it did not require the seller to conceal any information relating to any defects. It also is such a primitive law; it

[2] Section 16, Sales of Goods Act, 1930, Constitution of India.
[3] *Id.*

was oblivious of the dynamic human nature. Human nature has grown to become more deceptive and shallower.

The parties to the transaction in those societies were well acquainted with the condition of the commodity as well as the reputation of the seller in relation to the veracity of his claims. Such economies were entirely based on a face to face transaction mode, where buyers had all the opportunity to inspect the goods and confront any defects on the spot to the seller. Therefore, in such markets of older agrarian societies, buyers relied upon their judgement for the purchase of any product. With time and precedent, the market place made peace with the principle of *Caveat Emptor*.

The foundation stone for the principle in common law was laid down in the case of *Chandelor v. Lopus*.[4]

In this case, A man paid £100 for what he thought was a bezoar stone. This stone was believed to have magical healing properties as it was formed in animals' intestines. The seller said it was a bezoar stone, which turned out to be false.[5] The buyer sued for the return of the £100 purchase price. The issue for the court was whether there had been indeed an actual deceit in the transaction.

The court in this case held that the buyer could not claim his money back. The buyer was required to show that either the seller had knowledge that the stone was not bezoar (thus, being liable for deceit) or that the buyer had a contractual warranty for the stone (thus, making seller liable for breach). As the buyer failed to do any, his claim was denied.

This case gave English courts the confidence to believe that it was fair to let contracting parties handle the contemplations of transactions themselves. By 17th century, the doctrine started being widely used in England for the transference in real and personal properties. It spread from English Law to Common Law to other jurisdictions.

However, as time has lapsed, the validity of this doctrine has also tarnished. The new complexities of the markets with it creating a new base in the online interface has changed the maxim completely. With evolution of mankind, law has to keep evolving. The basic feature of law is that it is dynamic. As societies grew from being just agrarian or agriculture dependant to

[4](1603) 79 Eng Rep 3; Cro Jac 4.
[5]William Hughes, A practical Treatise of the laws Relitive to the sale and Conveyance of Real Property.(Saunders and Benning, 1840) p168.

technical and complex, the nature of commodities in question also changed. Now there exist many commodities which cannot be introspected with naked eye and need a vivid experience. With such advancements in the nature of commodities, the human brain could come up with ways to deceive fellow beings. With it also emerged the service sector.

In a marketplace where various services are offered inspection before purchase is impossible. All such factors led to the shift in the doctrine from *Caveat Emptor* to *Caveat Venditor*. Therefore, a shift from buyers beware to sellers being beware of what they had to offer for sale.

EXCEPTIONS

As human nature owing to its dynamism changes and develops with passing time, the marketplace becomes a complex place. A marketplace involves trade and commerce comprising of these complex natured human beings. Such complexities led judges to face difficulties to continue with the doctrine of *Caveat Emptor*. Because the societies did not remain entirely agrarian, the doctrine could not be applied fairly to every situation. Certain limitations and exceptions had to be placed by the courts to serve justice in cases. Therefore, the law was modified and a series of many implied conditions and warranties made space in law. These exceptions were later codified in law.

The exceptions identified under the doctrine of *Caveat Emptor* under the Indian Law are as follows:

IMPLIED CONDITION AS TO FIT FOR A PARTICULAR PURPOSE

This exception is statutorily imbibed in Section 16(1) of the Sale of Goods Act, 1930. It says that when a buyer clearly mentions his purpose of purchase and the use for which the buyer needs the product to the seller, he has a duty to provide the good in accordance to such purpose. The buyer in such a situation relies upon the judgement of the seller for his purchase and thus a fiduciary relationship or a matter of trust is involved in the trade as explained earlier. There are three conditions that need to be fulfilled for the application of this exception.

1. The buyer shall make the seller known about his purpose of purchase.
2. The buyer shall rely on the seller's judgement or skill for his purchase.
3. The goods are of a description which the seller supplies in his usual course of business.

It is based on the principle that if a relationship is formed with trust and if one party acts

in reliance of other's skill, judgement or words, in such conditions the transaction in all sense shall be fit and proper for the purpose it was entered into. however, in case of a patent or trademark there exists no condition of fitness for a particular purpose. The reason for this is that in such cases the buyer does not rely on the judgement of the seller or provider. Such trademarks become brands that act as a magnet for consumers to buy their products without relying on the providers judgement. Such is the consequence of goodwill created by the names of these trademarks. But if the buyer still relies on the judgement of the seller for his purchase the condition shall stay valid.

In the case of *Shital Kumar Saini v. Satvir Singh*, the petitioner had purchased a compressor which had a warranty of one year. This said compressor showed a defect just within three months. When a replacement was asked by the buyer, the product was replaced without any further warranty. The court in this case held that such was a case of implied warranty and goods shall be fit reasonably for the purpose of which it is sold.

IMPLIED CONDITION AS TO MERCHANTABILITY

This exceptional condition is contained in Section 16(2) of the Sales and Goods Act, 1930. Merchantability in its essence explains that the goods should be capable of being passed in the market in the name or the description by which they are sold. This speaks that if a dealer is not a manufacturer of a good, he/she has a duty to deliver such a good of merchantable quality. "*Goods of any kind which are the subject of a contract for a consumer sale are not of "MERCHANTABLE QUALITY" if they are not as fit for the purpose or purposes for which goods of that kind are commonly bought as is reasonable to expect having regard to their price, to any description applied to them by the seller and to all other circumstances.*"[6]

There are again 2 conditions that need to be satisfied in order for goods to be of merchantable quality.

1. The goods shall not just seem to be of good quality but shall also be able to render its proper usage. They shall not be said of merchantable quality if they seem all right but harbour any defect that makes them unfit for the purpose of purchase.
2. The goods shall offer a reasonable level of fitness for the consumer. The good shall hence, have a sort of safety mechanism that shall protect its consumer in case of

[6] Section 64, Sale of Goods Act, 1923.

accidents or generally. For example, if A buys a hot water bag, the bag shall provide heat to A. In case the bag bursts while usage, the seller is held liable.

This is based on the principle that if goods are not merchantable then it deceives the buyer who purchased such good. It is because in such cases, the buyer does not get the good he contracted for. This holds the seller liable for default as such discrepancy hits the whole basis of the transaction. It entitles the buyer to reject such goods. However, the conditions of merchantability do not apply in situations where the buyer has inspected the goods and such inspection ought to have revealed any defect. But the seller shall be liable for both patent and latent defects in case there is no examination by the buyer of the goods.

The seller assumes a responsibility to provide the buyer a reasonable opportunity to inspect and examine the goods. But in case the buyer does not utilise such opportunity given to him or used it superficially, there shall be no liability of the seller for any defects found in the goods.

IMPLIED CONDITION AS TO CORRESPONDENCE WITH DESCRIPTION

The Sale of Goods Act, 1930 talks about this exception in section 15. It states that in a sale by description, the goods shall confirm with the description and such undertaking shall be absolute.

this is based on the principle that the performance of a contract of transaction fails if the goods in question do not confirm with the description that they project. Such non-confirmation becomes a breach of the contract in its essence. Supply of an article in any conditions other than the one promised is to be considered as a defective supply. In case of a sale by sample as well as by description, it will not suffice that the sample confers with the description; the bulk of such goods shall also be in confirmation with the description.

IMPLIED CONDITIONS IN RELATION TO SALE BY SAMPLE

Section 17(2) of the Sale of Goods Act, 1930 talks about this principle of sale by sample. It states that the sample provided should confer with the bulk and the assumption that goods after a sample shall correspond with the bulk shall not be considered as a defence. The buyer shall have a reasonable opportunity of inspecting the bulk of goods that are being purchased and if such a right is denied to him by the seller, he shall be entitled to revoke the

contract.

Such examination of goods can be done before the delivery of the goods is offered under Section 17(2) or at the time of offer of delivery under section 41 of the same Act of 1930. the goods shall be free of any defects unidentifiable on examination that make them unmerchantable.

If such sample confirms with the bulk and contains the same patent defect, then the buyer is not protected under such exceptions. This is because the buyer in such case procured what he bargained for; however, this shall not be the outcome for latent defects.

CONDITION IMPLIED BY CUSTOM

Section 16(3) of the Sales of Goods Act, 1930 deals with this principle. It is based on the principle laid down in *Jones v. Bowden*. [7] It stated that an implied condition or warranty maybe established in proving usage. As written in Section 16(3) "*An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade*."

This means that if there is any probable danger associated with the usage of a good, it is the duty of the seller to disclose the dangerous nature of such goods to the buyer. If the seller fails to disclose such information, he shall face liability. For example, A bought a tin of disinfectant from B. Such a tin needed to be opened with due care and caution. B failed to inform A of this. A's wife casually opened the tin and the disinfectant splashed in her eyes and skin causing damage. In such a case B shall be held liable.

However, the usage of goods in such cases shall be reasonable and it shall be conducted for a considerable period of time to establish usage. For example, there are many methods to make bombs out of soaps. But the seller of the soap shall not be held liable if the buyer uses it for such unreasonable purpose.

Such implied warranty can be either positive or negative. For example, in case of the disinfectant tin a due care was needed thus, positive warranty. But in cases of electronic items products shall be kept away from water hence, negative warranty.

IMPLIED CONDITION AS TO TITLE

It is covered under section 14 of the Sale of Goods Act, 1930.

[7] **148 La. 253, 86 So. 785 (1921) (Louisiana).**

This is based on the maxim of "*Nemo datquod non habet*". This maxim speaks that no one can give you what they do not own.

It is an implied condition that in case of a sale, the seller only has the right to sell and in case of an agreement shall have the right to sell only those commodities which he himself owns. In case if he doesn't have or doesn't acquire that right shall be a total failure of consideration and the buyer shall have the right to express his revocation.

For example, A offers to B a watch owned by C. In this case, A does not have any ownership rights on the watch as it belongs to C. Hence, if B purchases such watch from A, A can be held liable and forced to returned B's money.

Finally, an express warranty or condition does not negate the implied warranty or condition unless it is inconsistent with the express provision.

CASE LAWS

A) The case of *Frost v Aylesbury Diary Co.*[8]

FACTS: The plaintiff purchased milk from the defendant. Such milk was purchased for the family's use. After consuming the milk that the defendant had sold, the wife of the plaintiff died. On inspection it is revealed that the milk so purchased by the plaintiff contained the germs of typhoid. Therefore, getting infected by typhoid, the plaintiff's wife died.

JUDGEMENT: The court held that the plaintiff was entitled to compensation and recover damages. This was so because in this case, the purpose for which the milk was being bought was implicitly revealed to the seller, i.e. consumption. Since the milk was unfit for human consumption, the seller was held liable.

B) The case of *Griffith's v Peter Conway Ltd.* [9]

FACTS: The plaintiff purchased a harristweed coat from the defendant. After the usage of such a coat the plaintiff caught a skin dermatitis. After the investigation it was revealed that the plaintiff had an abnormally sensitive skin which caused her to catch dermatitis on the usage of the coat. No normal person's skin would have reacted in the same manner.

JUDGEMENT: The court held that the plaintiff in this case was not entitled to any relief or compensation. It was not any normal circumstance through which the plaintiff had suffered loss. The product was fit for use and provided up to the quality mark by the seller. Any unique skin disease shall either be disclosed to the seller or taken caution of by the buyer. Therefore, in such a case, the seller was not liable.

C) The case of *Gedding v Marsh*

[8]1905 1 KB 608.
[9]1939 1 All ER 685.

FACTS: The plaintiff bought some bottles of mineral water from the defendant. These bottles were not a subject of the transaction and hence, had to be returned to the defendant after the consumption of the water. While consuming the contents of the bottle, one of the bottles which was defective burst in the hands of the plaintiff injuring her severely. A case was filed in courts.

JUDGEMENT: The court negated the defence's claim that it was not liable because the bottles were not a subject matter to the transaction. It said that since the bottle and the contents were complimentary to each other and not substitutes both had to be fit for consumption. And since the bottle was a defective one, there was a breach. Therefore, the seller was made liable.

D) The case of *Grant v Australian knitting Mills Ltd.*[10]

FACTS: Two underwear were sold by the defendant to the plaintiff. The plaintiff was a retailer dealing in garments. After using the underwear, the plaintiff contacted dermatitis. On inspection it was found that the material used for making the underwear had certain chemicals that could induce dermatitis.

JUDGEMENT: The court in this case again emphasised on the implied revelation of the purpose of use. When the plaintiff had bought the underwear from the defendant, it was implied that he shall use it sometime. When the material is found to contain harmful chemicals, it automatically becomes unfit for use. This negates the concept of merchantable quality. Therefore, the seller was held liable for breach.

CONCLUSION

As time changed, the human nature changed. The market place started to become a complex platform. The interaction of two beings always leads to some kind of miscommunication or altercation since no two individuals can agree all the time. A trade transaction also leads to some of such altercation.

In earlier societies since the culture of an agrarian society prevailed, the nature of goods and commodities in question for transaction was simple. As humans evolved, their societies evolved and the market expanded further to many new avenues.

The doctrine of *Caveat Emptor* started with primitive Roman Law. It was almost like a customary law that followed in through tradition. But such a doctrine faced complexities when it could not provide fair justice to every person. Courts and judges started facing dilemma in the usage of this doctrine in many cases. Therefore, there came up the concept of exceptions in the usage of the doctrine.

With gradual shift in human nature, and due to the dynamic nature of law, the doctrine of

[10] 1936 AC 85.

Caveat Emptor saw a change and became the doctrine of *Caveat Venditor*. Such a doctrine now forced the sellers to be cautious of what they offered to the consumer and the conditions of their products. Such a shift emerged due to increasing awareness in the consumer and the emergence of Consumer Protection Act.

The Consumer Protection Act has seen many changes recently through amendment as human keeps developing. It has come a long way and there still is a longer way to go.