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# **A SHIFT FROM CAVEAT EMPTOR TO CAVEAT VENDITOR**

AUTHORED BY - UMAR JAVED

## **ABSTRACT:**

The doctrine of caveat emptor, which puts the onus on the buyer to examine goods before purchase, has seen a steady erosion in modern commerce. As transactions grow more complex, there is a discernible shift towards caveat venditor - where sellers have an ethical and legal obligation to disclose all material facts about their products to facilitate informed buyer decisions. This evolution is reflected in statutory provisions like the Sale of Goods Act, 1930 and the Consumer Protection Act, 2019 in India, which impose liabilities on sellers for defective goods or misleading representations. Case laws too recognize the seller's duty of due diligence and full disclosure, with silence or concealment amounting to fraud. The transition signals diminishing relevance of caveat emptor in favour of greater consumer protection by mandating transparency from sellers. However, it does not absolve buyers from reasonable examination of goods. The shift balances the inherent asymmetry between buyers and sellers, promoting fairness and nurturing confidence in commercial transactions.

**KEYWORDS:** Caveat Emptor, Caveat Venditor, Contract, Sale of Goods Act

## **I. INTRODUCTION**

The term Caveat Emptor is a part of a longer statement: 'Caveat Emptor, quio ignorare non debuit quod jus emit', which means let a purchaser beware, for he ought not to be ignorant of the nature of the property which he is buying from another party. It means a buyer is bound by actual as well as constructive knowledge of any fault in the thing purchased, which is evident, or which might have been known by proper diligence.

However, the increase in the density of modern commerce has placed the buyer at a disadvantage with the rule of Caveat Emptor. There has been a decline in the concept of Caveat Emptor as the trend is moving from consumer oriented to consumer sovereignty. The first traceable decision in common law, which gave significance to the trust placed by the buyer on the seller's skill and

judgement and which marked as a blow to Caveat . In the case the buyer purchased a hot water bottle from the seller, a retail chemist. The supplied bottle burst after a few days use and injured the buyer's wife. The court held that seller was liable for the breach of implied condition because buyer had made known to the Chemist the purpose for which he was in need of the bottle<sup>1</sup>. However, this was just the beginning of what could be termed as the thinning process of the rule of Caveat Emptor.

While the doctrine of caveat emptor has historically placed the burden on buyers to examine goods before purchase, the increasing complexity of modern products and transactions necessitates a shift towards caveat venditor, where sellers have an ethical and legal obligation to disclose all material information about their goods and services to facilitate truly informed consumer decisions.

## **II. CAVEAT EMPTOR UNDER SALE OF GOODS ACT, 1930:**

The doctrine of caveat emptor has also been incorporated under Indian law through the Sale of Goods Act, 1930. Section 16<sup>2</sup> of the Act states that when a product is sold under a contract of sale, the law would not presume that the seller sold it under an implied warranty of fitness and quality. It is the consumer who has to examine the quality of the product and satisfy himself that the product is fit to meet his expectations and serve the purpose for which it is purchased. So long as the seller does not commit an fraud and does not provide any express warranty for the product's condition or fitness, the buyer will have no remedy against the seller for any defect in the product.

### **A. EXCEPTION TO THE RULE OF CAVEAT EMPTOR**

For the protection of buyer's interest from the globalization of trade and commerce some restricts were carved out which are as follows:

#### **a. Implied condition as to quality or fitness**

Sec. 16(1)<sup>3</sup> provides certain requirements, which when satisfied, is considered to be an implied condition from the side of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them.

#### **i. Buyer must expressly or impliedly makes known to the seller the purpose**

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<sup>1</sup> Ayush Verma, Doctrine of Caveat Emptor, IPleaders (Dec. 2, 2023), <https://blog.ipleaders.in/doctrine-of-caveatemptor/>.

<sup>2</sup> The Sale of Goods Act, 1930, §16

<sup>3</sup> The Sale of Goods Act, 1930, §16 (1)

of his purchase. Thus, if the case of Andrew Yule and Co The buyer had informed the seller that he needed the hessian cloth for packing purpose, he could reject the cloth if he found that the same was unsuitable for that purpose.

ii. Buyer shall be dependent on seller's skill or judgement. The goods are of a description which the seller supplies in his official course of business. In *Raghava Menon v. Kuttappan Nair*<sup>4</sup>, it was observed that "the plaintiff is a layman and he approaches a fairly reputed firm like the defendant dealing in watches and purchases a watch from them, not for any special purpose, but for the common purpose of knowing the correct time. In such a case, sec. 16(1) of Sales of Goods Act must apply, by implication, the purpose for which he purchases the watch and also relies on the seller's skill or judgement."

Proviso to Sec. 16 (1) provides that when the sale is for specified goods under the patent or trademark of such goods, the concept of implied condition as to the fitness does not exist. The proviso deals with the cases where the buyer relies on the trade name of the product and not on the skill of the seller.

b. Implied condition of Merchantable quality

Section 16 (2) provides for this. Though the term 'merchantable' quality has not been defined in the Act, but, the term 'merchantable' means the goods must be capable of passing in the market in the name or description by which they are sold. Where-

- i. The goods are brought by description.
- ii. From a seller who deals in the goods of that description.
- iii. There is an implied condition that the goods shall be of merchantable quality.

In *Grants v. Australian Knitting Mills*<sup>5</sup> the underwear contained certain chemicals which could cause skin disease to a person wearing them next to skin, it was held that because of such a defect, the underwear were not of merchantable quality.

Proviso to Sec. 16(2)- According to this, where the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed. So, the proviso divides the defect into two kinds, patent and latent. The defects which be found on examination by a person of ordinary prudence with exercise of due care and attention are called 'patent defect' and the defects which are hidden are called 'latent defects'.

<sup>4</sup> *Raghava Menon v. Kuttappan Nair*, Proprietor, AIR 1962 KER 318.

<sup>5</sup> *Grants v. Australian Knitting Mills* [1935] UKPC 62

Implied condition is negated on examination if the defects, the implied condition of merchantability continues in spite of the examination of the goods.

c. Usage of trade

Section 16 (3) gives a statutory force to the condition implied by the usage of a particular trade. It says that when a seller is aware of the usage of trade. It says that when a seller is aware of the usage of trade i.e. purpose for which goods will be used, then there is an implied condition that seller must warrant the quality or fitness of the goods.

d. Express terms

Under Section 16 (4), the parties in a contract of sale can agree to any express conditions or warranties as to the liabilities for the defect in the goods. But such warranty or condition implied by law unless such express terms are inconsistent with the implied conditions.

i. Fraud or misrepresentation If the seller in a contract, obtains the consent of a buyer by fraud or misrepresentation, then, the seller will be held liable.

ii. Sale by description and sample In this case, the responsibility will be on the seller if the goods do not resemble such sample and/or description

## **B. CASES RELATED TO CAVEAT EMPTOR**

In *M/s Emami Ltd. v. Nikhil Jain*<sup>6</sup>, a consumer court has imposed a penalty of 15 lakh rupees on Emami Ltd. For misrepresenting to the public about its fairness cream for men. The company's advertisements claim the cream makes skin fairer. The district consumer disputes redressal forum (central), Delhi, held that Emami had adopted unfair trade practices by claiming through its advertisements that its product 'Fair and Handsome cream' would give men fairer skin in three weeks.

In *Benjamin Careathers v. Red Bull North America, Inc.*<sup>7</sup>, court ordered that Red Bull will pay \$10 customers disappointed, the drink didn't actually give them 'wings'. The lawsuit accusing it of false advertising its energy drinks as providing functional benefits above and beyond what might be obtained from 'a sample cup of a coffee or a caffeine pill'. In *Wallis v. Russell*<sup>8</sup>, the court while explaining the scope of the doctrine said that Caveat Emptor only implies that a buyer must take care. It does not mean that a buyer shall take a chance. The doctrine applies where a buyer

<sup>6</sup> *M/S Emami Ltd. vs Nikhil Jain*, AIR 2017 Del 479.

<sup>7</sup> *Benjamin Careathers v. Red Bull North America, Inc.*, 2015 U.S. Dist. LEXIS 97533.

<sup>8</sup> *Wallis v. Russell*, (1902) 2 IR 585.

exercises his own judgement and voluntarily chooses the product he needs to buy

### **III. EVOLUTION OF CAVEAT EMPTORRECENT TRENDS**

#### **A. NECESSITY OF AWARENESS OF TERMS OF CONTRACT**

Emerging cases expressed a view that it is not necessary for the buyer to express in clear terms the use of product or service in the contract as it is evident from the nature of contract or in the course of negotiations the reason behind the purchase. With its origin being traced in the need for disclosure of information for the purposes of facilitating the reason for purchase of the buyer, little by little this rule has gained importance and the obligations of the seller have been given more importance along with various statutes and case laws limiting the rule of Caveat Emptor to reasonable examination. For example, milk containing typhoid germs or beer contaminated with arsenic do not come under reasonable examination. With the above obligation of the seller to make proper disclosure, the question arises what would be the position of a seller if he himself is not aware of the defect in goods. This situation is explained in *Harlingdon and Leinster v. Christopher Hull Fine Art Ltd.*<sup>9</sup>, the claimant purchased a painting from the defendant. The painting was described in the auction catalogue as being of a German impressionist artist Gabrielle Munter. The sellers were not experts on German paintings while the buyers specialized in German paintings. The buyers sent their experts to study the painting before approving to purchase. Subsequent to the sale the buyers discovered that the painting was a fake and was worth less than half the amount paid. They filed a case based on Sale of Goods Act, 1979, Section 13, that the painting was not as described. But it was held that by sending their experts to inspect the painting, the sale was no longer by description. Section 13 of Sale of Goods Act applies only to goods sold by description and therefore the buyers had no protection. Later this proposition was opposed by Justice Smith saying that it is the duty of the seller to be aware of the conditions of the goods being sold and making the buyer aware about the same.

#### **B. INDIAN TEST FOR MERCHANTABLE QUALITY**

The Law Commission of India has come up with its own test for merchantable quality after considering the above cases. Merchantable quality means the goods tendered in performance of the contract shall be of such type and quality and in such condition that, having regard to the circumstances, as well as the value and description under which the goods are sold, a purchaser with full information of the quality and characteristics of the goods, including knowledge of any flaw, would accept the goods in performance of the agreement. In simple words it means that the

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<sup>9</sup> *Harlingdon and Leinster v. Christopher Hull Fine Art Ltd.*, 1991.

buyer having full information including the defects in the goods would be acting reasonably to buy the same. So, it is the seller's duty to make the buyer aware of all the defects in the goods being sold and all information relating to the usage of the goods<sup>10</sup>.

### **C. CONCEPT AND APPLICATION OF DUE DILIGENCE**

Another aspect which comes into the picture while dealing with the concept of caveat emptoris due diligence and the role it plays in formation of contracts. Most commercial agreements contain representations and warranties. Representations provide the underlying past and present facts about the business and compliance record of the target company on the basis of which the other party enters into the transaction and warranty is a written guarantee, issued to the purchaser of an article by its manufacturer, promising to repair or replace it if necessary within a specified period of time. The findings in a due diligence can impact the valuation and/or structure of a contract, give rise to specific indemnities and assist in determining the conditions on the basis of which the contract would be effectuated. Another function of a due diligence is established through Section 12 of The Indian Contract Act, 1872<sup>11</sup> i.e. to ensure that there is consensus ad idem between the parties about the obligations thereby ensuring that free consent is not vitiated. A due diligence cannot be seen as a substitute for representations and warranties since the due diligence report provides the purchaser with the basic facts to enable him to make an informed choice about the transaction, while the representations and warranties act as an assurance that these facts are true.

### **D. DISCLOSURE OF RELEVANT INFORMATION**

English law has traditionally taken the view that it is not the duty of the parties to a proposed contract to give information to each other except in exceptional circumstances where the law or relationship between the parties (which could be fiduciary) requires such disclosure. Each party must make up their own mind and exercise their own judgment in deciding whether to contract or not, and it is not the duty of either party to put before the other facts in his knowledge which may influence the other in deciding whether to enter into the contract or not.

The English law position is reflected in the Indian Contract Act, 1872, the explanation to Section 17 of the Act, which deals with fraud, provides that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or

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<sup>10</sup> Law Commission of India, Quality Control and Inspection of Consumer Goods.  
<http://lawcommissionofindia.nic.in/101-169/report105.pdf>

<sup>11</sup> Indian Contract Act, 1872 § 12

unless his silence is, in itself, equivalent to speech.

The principle that there is no duty to disclose in every contract appears to rest on the view that each party must obtain necessary information for themselves and cannot expect it to be, supplied by the other, even when the other is aware of their ignorance and could easily put the other right.<sup>12</sup> However, there are special duties of disclosure in particular classes of contracts viz. in contracts between an insurer and insured, where one party stands in a fiduciary relationship with the other. In such types of contracts one is not only to speak and state truly whatever is stated, but also divulge with candour and completeness, facts regarding which there is no obligation to disclose at all in transactions which do not fall within the recognized class. It was held that the concealment of the true nature and effect of an arbitration agreement by a person standing in a fiduciary position to another, and obtaining consent of the latter, amounted to fraud. The duty of a person to speak is fact specific and arises only when the silence can be construed as misleading. Interestingly, Illustration (a) to Section 17 of the Indian Contract Act provides that if A sells, by auction, to B, a horse which A knows to be unsound and A says nothing about the horse's unsoundness, A has not committed fraud. Illustration (c) provides that if B says to A, If you do not deny it, I shall assume that the horse is sound and A says nothing, A's silence is equivalent to speech and fraud has been perpetrated<sup>13</sup>.

Further, the exception to Section 19 of the Contract Act, which deals with voidability of agreements, provides that if consent was caused by misrepresentation or by silence, fraudulent within the meaning of Section 17 of the Contract Act, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. Ordinary diligence has been defined by Pollock and Mulla as: "... such diligence as a prudent man would consider appropriate to the matter, having regard to the importance of the transaction in itself and of the representation in question as affecting its results."<sup>14</sup>

A possibility of discovering the truth by inquiries involving trouble or expense out of proportion to the value of the whole subject-matter would not, it is conceived, be means of discovering the truth with ordinary diligence. Whether ordinary diligence has been exercised by the purchaser is also fact specific. In *LIC v. Manjula Mohanlal Joshi*<sup>15</sup>, even though the contract involved was a contract of insurance, the Odisha High Court held that the contract, which was entered into by the

<sup>12</sup> Rajesh Kapoor, Avtar Singh's Law of Contract & Specific Relief (13th ed. 2020).

<sup>13</sup> Indian Contract Act, 1872, § 17

<sup>14</sup> Pollock & Mulla, The Indian Contract Act, 1872 (16th ed. 2021).

<sup>15</sup> *LIC v. Manjula Mohanlal Joshi*, AIR 1975 ORI 1-1.

assured by concealing the fact that she had hydrocele, could not be avoided by the insurer due to the provisions of the exception to Section 19 since the insurer had its own medical officer examine the assured and submit a confidential report. In *John Minas Apcar v. Louis Caird Malchus*<sup>16</sup>, the facts involved the respondent sought to avoid a contract of purchase of a part of a property which the appellant had falsely claimed to be valued at a greater rate than it actually was. Further, the appellant caused his friend to write letters to the solicitors of the appellant quoting high prices, which the property was actually not worth, merely to give it a fictitiously high value. Upholding the decision of the trial court granting rescission in favor of the respondent, the Court, observed that there was deliberate fraud and of such a nature as a person with ordinary diligence could not be expected to discover.

#### **IV. TRANSFORMATION TO CAVEAT VENDITOR:**

The doctrine of caveat emptor has lost its relevance in the modern technological age. In today's age, there is stiff and neck-to-neck competition between large corporations to satisfy consumers. One of the mechanisms employed by these corporations to please the consumers is to sell the products with express conditions and warranties. Thus, the contract of sale itself states that the consumers would be entitled to a replacement or refund if the product turns out to be defective. Thus, the exceptions carved out under Section 16 of Sale of Goods Act, 1930 have lost their relevance, rather become completely obsolete. The doctrine of caveat emptor has also lost its relevance due to the enactment of the Consumer Protection Act, 2019.

The Consumer Protection Act clearly embraces the doctrine of caveat venditor. Section 84 of the Consumer Protection imposes a liability on the manufacturer for any defect in the manufacturing of the product or for any deviation from the prescribed manufacturing standards. Moreover, if the product fails to meet the standards laid down by the express warranty or the product does not contain proper instructions relating to its usage, then the manufacturer would be held liable for any loss or injury suffered by the buyer. Section 86 of the Act provides that even sellers who have not manufactured the product can be held liable for a defective product in the following cases. If he (the seller) had substantial control over the product design, testing, packaging or labelling of the product. ii. The harm was caused to the buyer due to the modification or alteration made to the product by the seller. iii. The seller provided an express warranty, but the product does not conform to the express warranty<sup>17</sup>.

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<sup>16</sup> *John Minas Apcar v. Louis Caird Malchus*, AIR 1939 CAL 473.

<sup>17</sup> Consumer Protection Act, 2019, § 86

Thus, the various provisions of the Consumer Protection Act, by imposing the liability on the seller or the manufacturer for the defective product, have adopted the doctrine of caveat venditor. This also signals the declining In Smt. Rekha Sahu vs The Uco Bank,<sup>18</sup> the petitioner had purchased a plot through an auction. However, later he found that there were certain encumbrances (electricity dues) attached to the plot and filed a suit before the Court seeking a direction to the respondent auctioneers to free the property from the encumbrances. The petitioner pleaded that as per the sale certificate, the property was supposed to be free from all encumbrances. The auctioneers relied on the doctrine of caveat emptor and pleaded that the petitioner should have made a proper enquiry before purchasing the plot. However, the Allahabad High Court held that the Indian jurisprudence has witnessed a shift from the doctrine of caveat emptor to the doctrine of caveat venditor.

Thus, the auctioneers were liable to pay the electricity dues.

## V. CONCLUSION:

The trajectory of consumer protection laws and judicial precedents has demonstrated a clear movement away from the traditional caveat emptor doctrine towards the more buyer-friendly caveat venditor approach. This shift acknowledges the inherent imbalance of information and bargaining power that often exists between buyers and sellers, particularly in complex transactions involving goods or services with intricate specifications or potential defects.

While the doctrine of caveat emptor is still applicable in certain situations, such as when buyers intentionally disregard reasonable efforts by sellers to disclose relevant information, the overarching trend is towards placing greater responsibility on sellers to ensure transparency and accuracy in their representations. This evolution reflects the changing dynamics of consumer markets, where buyer protection and fostering trust in commercial transactions have become paramount considerations

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<sup>18</sup> Smt.Rekha Sahu v. The Uco Bank, 2013 (7) ADJ 642.

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