The distinction between conditions and warranties in a contract for sale of goods is an area where the boundaries between the two are blurred. A stipulation may be termed as warranty but it may be interpreted as a condition. In England, the law relating to these vital terms was rather in a confused state till the Sale of Goods Act 1893 (hereinafter to be mentioned as E.A.) was passed.

The remedies relating to conditions and warranties are peculiarly unusual. The basis of such remedies lies in the annals of antiquity and there is no rationale behind them. It is said that if there is breach of condition, the remedies for such breach may be repudiation of contract and/or damages. But if there is a breach of warranty, the buyer's right is only to claim damages and not to repudiate the contract, even though there may be very pressing reasons for that. Even, in cases of breach of condition, the right to repudiate is lost where the seller has accepted the goods or part thereof, if the contract of sale is not severable.

The meaning and construction of the terms "acceptance" and "non-severable contracts" are not free from ambiguity and anomaly. Further, once the buyer has accepted the goods, there is no room for revoking his acceptance.

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DEFINITION OF THE TERMS “CONDITION” AND “WARRANTY”

The Sale of Goods Act 1930 (hereinafter mentioned as S.G.A.) defines the condition as a stipulation “essential”¹ to the main purpose of the contract and warranty as “collateral”², 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.

The presence of the word “collateral” in the definition of warranty is undesirable because of totally changed modern modes of marketing the goods. In the present day manufacturers advertise their goods for sale and sellers guarantee their product without any demand from the buyers, unlike sales in the past. Representations in these advertisements form integral part of the bargain. There is nothing “collateral” in them. Apart from this, Stoljar ³ points out that “collateral” is used and under-

1. Section 12(2) of S.G.A.
2. Section 12(3) of S.G.A.
3. See Samuel J. Stoljar, “Conditions, Warranties, and Descriptions of Quality in Sale of Goods”, 15, Mod. L. Rev. 425 at 430. He points out the following meanings of the word “Collateral”:

   (1) A warranty is treated as “collateral” in the sense that it may operate as an exception to the parol evidence rule and may therefore be given in those cases where the agreement is in writing. Delassalle v. Guildford, [1901] 2 K.B. 215.

   (2) The word “collateral” may mean ancillary, secondary or dependent, whereas, it may appear to be an independent promise.

   (3) A warranty may be “collateral” from the point of view of simple form. A asks B to sell his watch. B says “guaranty that it is in excellent condition”. This is collateral in form.

   (4) “Warranty” may be collateral in the sense that it entitles the plaintiff for its breaches only damages and does not entitle him to repudiate the contract.

   (5) A warranty may be collateral from the point of view of the pleading, that is, the buyer being sued by seller can plead for its breach by the seller. The seller is not bound to state affirmatively that he has committed any breach thereof.

   (6) Warranty may be collateral in the sense that it is one of the agreed exceptions to the general rule of caveat emptor.

(f. n. contd.)
stood in different senses which brings unusual uncertainty in its meaning.

It is said that whether a stipulation in the contract of sale of goods amounts to condition or warranty depends upon the construction of the contract. It is immaterial to mention a stipulation as condition if the same amounts to warranty or vice versa. This clause is based upon the rule laid down in a case decided in the year 1863 when the terms “conditions” and “warranties” were indiscretely used for each other. But now they are well defined.

An analysis of the above statements will reveal that the conception of condition or warranty is liable to vary with the judge for two reasons. First, the conception of main and collateral itself is liable to vary with human nature and secondly the distinction between the two is artificial and may be carried through, disregarding the intention of the parties to the contract. Therefore, it seems desirable to amend the law on the point, bringing certainty and sensible distinction in the definition and notion of conditions and warranties.

Under the present system of law, if a stipulation amounts to condition, the plaintiff is entitled to repudiate such contract even if he does not sustain any damage. But if it amounts to warranty only the breach will entitle him for claim of damages even though such damages are no consolation. Repudiation of contract and rejection of the goods may be the only appropriate

(7) A warranty is collateral in the sense that it is auxilliary to the “main purpose” of the sale.

(8) It may be collateral in the sense that it contains special agreement relating to sale of specific goods and not an integral part of the description of the goods.

(9) A warranty may be collateral in the sense that it is less important whereas condition is more important.

4. Section 12(4) of S.G.A.
remedy. But this is not available to the buyer, if the stipulation is treated as a warranty only.

**COMPARATIVE POSITION**

In the United States of America, there is no superficial distinction between conditions and warranties. Williston, the framer of the Uniform Sales Act, 7 used the term "warranty" not only to cover both "conditions" and "warranties" as used under the Indian and the English Acts, but also to cover representations which induced making of such contracts. The breach of such a warranty is remediable by rescission, rejection or damages. 8

Section 2-313 of the U.C.C. reads,

"Express Warranties by Affirmation, Promise, Description and Sample."

I. Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain, creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

As per section 2-313(2), use of formal words such as "warranty" or "guarantee" is not essential to create express

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7. The provisions of the Uniform Commercial Code (hereafter mentioned as U.C.C.) is borrowed from the Act.

warranty. But mere commendation by the seller of the goods does not create warranty.

Though the definition in the Code is long, comprehensive and descriptive, it is profoundly simple, clear and definite.

"Condition" has been defined in the U.C.C. as follows:

1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

2) Where payment is due and demanded on the delivery to the buyer of goods or document of title, his right as against the seller to retain or dispose of them is conditional upon making the payment due.

It may be observed that the U.C.C. confines the role of condition for a very limited purpose. It is a fact or event which limited the buyer's right to demand delivery of goods and their disposal and that of the seller to demand payment and withhold delivery of the goods. It is true that the buyer's promise to payment of goods is conditional to the seller's compliance with the terms of warranty and in this respect conditions and warranties have overlapping effect, yet no one can deny that the area of their operation is well demarcated.

Acceptance and Revocation of Contracts

It has been very well established that selling of goods by the buyer, or mortgaging them with another amounts to acceptance, even though the buyer had not examined them and later on it was revealed that the goods did not conform to the contract description. How could the buyer be deemed to have accepted the goods, when he is supplied with goods of wholly different kind, e.g., a horse instead of a tractor? The Court

9. Section 2-507 of the U.C.C.
gave a right decision in *Suisee Atlantique v. N. V. Rottardsche*,\(^{12}\) when it held that the buyer was not precluded from rejecting the goods when the goods corresponding to the description were not delivered.\(^{13}\)

The phrase, “and he does any act which is inconsistent with the ownership of the seller”, is confusing and creates difficulties in interpretation. The act of ownership will not amount to acceptance unless the buyer had reasonable opportunity for inspection, i.e., if the acts of ownership had been exercised before the time and place for inspection has reached. However, if the goods were inspected, or the time and place for inspection had passed but the defects in the goods being latent, could not be detected on inspection the particular act of ownership could not be deemed to be acceptance.\(^{14}\) In *Agha Mirza Nazar Ali Khoyee & Co. v. Gordon Woodroffe & Co. Ltd.*,\(^{15}\) when the leather was put to work, quite a large number was found to be completely worthless. But the buyer could not reject the goods as he was deemed to have accepted them. The Court took this view since “... after the skin had been delivered to them, they put them into work, an act inconsistent with the ownership of the seller.”\(^{16}\) Here the defects were latent\(^{17}\) and could not be discovered without putting the skins to work. The sellers had expressly stipulated with regard to the suitability thereof. Under such circumstances, the act of the buyer with regard to their putting them on work should not be treated as an act inconsistent with the ownership of the seller. It is an inherent right of the buyer to test and examine the goods in whatever manner they could be tested. But if after that he retains them for an unreasonable time without intimating the seller for their rejection, he should be deemed to have accepted the goods.\(^{18}\)

\(^{12}\) [1967] 1 A.C. 361.

\(^{13}\) *Per* Lord Reid at p. 404.


\(^{15}\) A.I.R. 1937 Mad. 40.

\(^{16}\) *Id.*, p. 44.

\(^{17}\) *Ibid.*

Not otherwise. A comparison of the observation of Ameer Ali, J. in the Calcutta case, with the findings in this case, will show that the decision in this case is unreasonable. The act of the buyer should not have been treated as an act of ownership under the circumstances of this case.

It may be noted that once the court decides that a thing is deemed to have been accepted, there is no room for revocation of acceptance and rejection of goods under our present system. Revocation of acceptance is not possible even though the acceptance might have been induced by the seller with an assurance that there is nothing wrong with the goods or if there is any defect that shall be cured. There is no specific provision under our law to revoke acceptance of goods in those cases where they infringe the trade mark — a proprietor right of a third person. Also, the buyer, after having accepted the goods, cannot reject the whole or part of them even though the non-conformity of any unit may substantially impair the commercial value of them.

In the U.C.C., there are specific provisions by which revocation of acceptance is possible, Section 2-607(3) says:

“Where a tender has been accepted (a) the buyer must within a reasonable time, after he discovers or should have discovered any breach, notify the seller of breach or be barred from any remedy and (b) if the claim is one for infringement or the like.... and the buyer sued as a result of such a breach, he must so notify the seller, within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation”.

20. In Wallis, Son & Wells v. Pratt & Haynes, [1911] A.C. 394 at 395 Lord Loreburn said that if a thing of different description has been accepted in the belief that it is according to the contract, then the buyer cannot return it after having accepted it. But he may treat the breach of condition as if it were a breach of warranty.
Section 2-608 deals with revocation of acceptance in whole or in part. It reads:

"(1) The buyer must revoke his acceptance of a lot of commercial unit whose non-conformity, substantially impairs its value to him, if he has accepted it:—

(a) on the reasonable assumption that its non-conformity would be cured and it has not been reasonably cured; or

(b) without discovery of such non-conformity, if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances”.

The revocation of acceptance must be made within a reasonable time after the buyer discovers or should have discovered the defect and before any substantial change occurs in the condition of goods.21

SEVERABLE CONTRACT

Section 13(3) of S.G.A. says that where a contract of sale is not severable, and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty. Section 38(2)21a of S.G.A. explains that instalment contracts can be treated as severable or non-severable, as per the facts and circumstances of the case. Where there is an agreement for delivery by instalment but the price is made payable on complete delivery the

21. U.C.C., Section 2-608(2).

21a. “Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments or the buyer neglects or refuses to make delivery of or pay for one or more instalments, it is a question in each case depending on whether the breach of contract is repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.”
contract is treated as non-severable; though liable to be performed separately. Section 38(2) gives no clear guideline as to how an instalment contract may be treated as severable or non-severable. The criteria laid down is that if the terms of the contract provide separate payment against delivery, they are to be treated as severable in so far as different instalments are concerned. According to a noted writer, "To suggest that there is something distinctive and unique about instalment contracts involving separate payment for each delivery is a most unfortunate piece of legislative drafting."24

In *Jackson v. Rotax Motor and Cycle Co.*,25 the buyer, after having received unmerchantable goods wanted to reject the entire consignment received at various dates except one case which he had already sold out. The Court of Appeal held that he was liable to pay for four instalments received together, as it constituted a separate indivisible contract. The fact that goods have been received in a certain quantity at one time should cause no difficulty for the parties so long as their prices can be ascertained. Hence the better course for the Court was to allow the buyer to reject the whole lot except one which was already sold out by the buyer.

In a case where the seller sends components of a heavy machine at different dates to the buyer, can it be said that the contract is severable merely because a specific sum is to be paid by the buyer against each instalment? If the seller does not send one instalment comprising certain components of the machine, should the buyer still pay for other instalments? The simple and a natural way of interpretation would be to treat such contract as non-severable even though on its face, it appears to be an instalment contract. The word "Severable" should be given a natural meaning. If out of 100 units of certain goods, 4 are accepted by the buyer and the rest are rejected,

though all are delivered to him at one time, he should be entitled to reject all but 4.

**Acceptance of Part of the Goods Delivered**

So far as this aspect is concerned before the Amendment Act of 1963, the buyer had no right to reject the goods, in which the property had passed to the buyer. At present, he has no right of rejection where he is deemed to have “accepted” the goods even though without inspecting or testing them. Ameer Ali, J. in a Calcutta case was of the view that if the goods have been sold out by the buyers without inspecting them, the buyer is deemed to have accepted the goods and he cannot reject any part of it, even though the sub-buyers have rejected it. He must retain the whole lot whether wanted or unwanted. Is this not adding insult to injury?

His Lordship elucidates his aforesaid contention by telling that if a person asks for a cake, he cannot eat half and reject half. Further he says “what about the case of a dozen biscuits... Does it make any difference if you ask for 12 plain biscuits and they give you 12 anised biscuits.” His contention is that even though the customer is supplied with different types of biscuits than what was ordered, he must either accept all or reject all.

It is a matter of common experience that a person likes one thing more than another. In this case, if a different type of biscuit, other than what was ordered has been supplied, it is also biscuit. The buyer may like to accept it in part and reject the rest. In this way, both are benefitted. The buyer gets something to eat and the seller is able to sell. If the seller does not have the goods ordered but despatches a substitute in the hope that the buyer may accept, then on receipt, he may accept a

26. Section 13(2).
29. Id. at p. 884.
part of it but reject another part of the goods delivered for the reason that there is no good market for the substitute and he may not be sure of selling them. Now if he were faced with the problem “accept whole or reject whole”, he cannot accept half of the substitute so delivered to him. Suppose these are life saving vital drugs, his customer may be deprived of medicine so essential for his life, the buyer may be deprived of his profit on the sale of medicine and the seller may be faced with a bill of return freight plus loss of profit on their sale. There are hundreds of examples where if a person is offered with a different thing than what is required by him, he may like to keep, some out of it and reject the rest and pay for them on the basis of its price per unit. If he were to see whether the contract is severable or unseverable, he will not be able to do so. If the seller is at fault, the buyer should have liberty to take the goods delivered to him as per his requirement.

In *Hardy & Co. v. Hillernrs & Fowler*,30 Greer J. observed that there could not be acceptance of a part and rejection of the balance. This could be done only when a portion of it is in accordance with the contract and another is not. But if the same objection applies to the whole, there could not be acceptance of part and rejection of the rest. However Ameer Ali, J. differs with the above view where goods can be separated or are in fact separated.31 But his further observation that “I think even then the buyer loses his right to reject, if he accepts part under an individual contract” is questionable. For this contention he approves the statement of Farewell, J. in *Jackson v. Rotax Motor & Cycle Co.*32

The House of Lords had an opportunity in *J. Rosenthal & Sons v. Esmail*33 to discuss the right of the buyer to reject part of the goods in a situation where all of them do not conform to the contract description and the contract is non-severable. The House of Lords opined that whether the contract is

31. Supra, n. 28 at p. 885.
32. [1910] 2 K.B. 937.
severable or not depends upon the mode of performance of the contract and not merely upon the construction of the agreement. Prof. Atiyah says that the provision of section 30(3)\textsuperscript{34} of E.A. apply to a situation where the seller delivers correct total quantity of the goods of contract description and further goods for conforming to the contract description. According to him the wordings of the sub-section “where the seller delivers to the buyer the goods he contracted to sell”, clearly indicate a situation where the seller has delivered whole of the contract goods. He further says that accepting half and rejecting half looks like beating hot and cold together.\textsuperscript{35} Section 30(3) of E.A. reads:

“Where the seller delivers to the buyer, the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or reject the whole.”

From the text of the sub-section, it is clear that its provisions are broadly framed and cannot be confined to one type of situation mentioned by the learned author. The opening words of the sub-section merely refers to supply of goods to the buyer according to the contract description not in conformity with them. The total quantity of the goods conforming to the contract and non-contract descriptions may be in conformity with the total quantity of goods contracted for or may accord with a situation, as pointed out by the learned author. It may be pointed that there may be rare occasions where seller sends goods of a different description over and above the goods of contract description. But it may happen frequently that he may send goods of contract description mixed with goods of non-contract description in order to meet his contractual obligations. This will be borne out of the fact that there is no authority on the point where goods of non-contract description were sent mixed with goods of contract description over and above the quantity contracted. However, the provision is broad enough to cover that situation also.

\textsuperscript{34} Corresponding with section 37(3) of S.G.A.

\textsuperscript{35} Supra, n. 11 at p. 298.
Rejecting non-conforming goods and accepting goods conforming with contract description is a paramount right of the buyer. However, if the goods do not correspond with the contract description at all, then it is further the right of the buyer to accept, part as per his requirement, and reject the rest. The seller should not be allowed to take advantage of his own fault. The above observation is in accordance with section 2-601 of U.C.C. which says that "if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may (a) reject the whole, or (b) accept the whole or (c) accept any commercial unit or units and reject the rest.

RIGHT TO REJECT THE GOODS

There are three situations in which the buyer's right to reject may be lost (a) assumption of ownership such as sub-sale, shipment etc., (b) delay in giving notice of rejection and (c) retention of goods. 3

In National Traders v. Hindustan Soap Work, 37 the Madras High Court observed that the passing of property in the goods is not the test of applicability of the right of rejection. If the goods do not conform to the description, there is no performance of the contract at all. In case, the goods turn unmerchantable, then the seller has not given the goods bargained for. In both the cases, the default goes to the root of the transaction which affords an opportunity to the buyer to reject the goods in case what was tendered was of unmerchantable quality or was not according to the description. It is open to the buyer to accept the goods and sue as for breach of warranty. 38

The right of rejection, though a very potent weapon, has been suitably hedged under U.C.C. with a proper safeguard, in order to avoid economic waste which appears to be the basic policy of that Code. 39 Section 2-601 of U.C.C. gives power of

38. Section 59.
rejection to the buyers by authorising him to either accept or reject the goods in any manner he likes if the seller delivers non-conforming goods. This ought to be done by giving a second chance to the seller to supply the goods of a correct description. This is known as a right to "cure" a defective tender a right unknown to English or Indian systems of law. However, this could be done, if there is a time specified under the original contract. Apart from it, the buyer is entitled to get a substitute, if the goods are not available.

The Code entitles the buyer to reject if the goods or the tender of delivery fail in any respect to conform to the contract, but limitations on the right of rejection have been placed in various ways. Apart from "cure" under instalment contract, an instalment can only be rejected if the non-conformity substantially impairs the value of the instalment, if the goods contracted for are commercially impracticable of delivery, a substitute thereof, if available, must be tendered and accepted. The right of the buyer to reject is further curtailed by providing that failure to make effective rejection constitutes acceptance. Revocation of acceptance is permitted under certain specific circumstances.

A reform in the law relating to right of rejection of the buyer, coupled with right to deliver substitute and "cure" the defect in delivery will really be valuable additions and will ensure avoidance of economic loss.

CONCLUSION

It has been noticed that the definitions of Conditions and Warranties are not adequate. After pointing out their defects, new definitions of these terms are suggested which are free from the words "collateral" or "main". The proposed definition of warranty include all those stipulations which form the very basis of the bargain whether they may amount to condition, warranty

40. U.C.C., Section 1-612(2).
41. U.C.C., Section 2-614(1).
42. See U.C.C., Section 2-607 & 2-608.
or mere representation under the existing law. The term Condition confines itself to stipulations relating to payment. The remedies for breach of condition may be rescission, repudiation, specific performance or damages according to the facts and circumstances of the case. This is a far more satisfactory remedy than that which is presently available under our Act.

While interpreting the phrase “and he does any act in relation to them, which is inconsistent with the ownership of the seller”, it is suggested that regard should be had to the nature of the contract, for arriving to the conclusion whether a particular act of the buyer amounts to acceptance or not. If the goods or defects thereof are of such a nature that they require complete testing, then the buyer should not be deemed to have accepted the goods, until such steps have been taken by him. Further the buyer may have right, under certain circumstances to revoke his acceptance, if there are compelling reasons for that. The buyer should not be entitled to reject the goods for breach of a condition, if there is no substantial damage resulting from such breach.

While construing severable contracts, it is suggested that the buyer should be entitled to reject all the goods, if he finds it difficult to dispose of them, except those which he has sold out or consumed. He should also be entitled, in cases of non-conforming tender or delivery of goods to accept or reject them, as per his requirement and not on the basis of “accept all or reject all”. The law should take into consideration the realities of business and implications of such rules should be based on the human behaviour, practice and social needs.