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## CAVEAT EMPTOR AND CAVEAT VENDITOR

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Caveat Venditor is a Latin term which means let the seller beware. This principle promotes consumer welfare by making the seller, manufacturer, and service providers accountable for the quality of goods sold or services offered. However, up to the 20th century, the English courts followed the principle of caveat emptor. This principle means let the buyer beware. This principle is part of a longer statement i.e., [Caveat emptor, quia ignorare non debuit quod jus alienum emit](#) meaning 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 is a rule that warns the purchaser to take care and examine the property before he buys it.

This principle was unfavourable to the buyer as the buyer cannot blame or hold the seller liable in the case of any defect or deficiency found in the goods after it has been purchased by him. The seller can be made liable only if he lies about the item sold thereby committing fraud. Also, there was no implied warranty as to the quality of the goods sold and so the buyer could not make any claims against the seller. An implied warranty is a legal term for the assurance that a product is fit for the purpose intended and conforms to the buyer's expectation. The duty was on the buyer to carefully examine whether the goods are in good condition as he/she did not have any remedy against defective goods purchased.

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### SHIFT FROM CAVEAT EMPTOR TO CAVEAT VENDITOR

The principle of caveat emptor can be traced back to the case *Chandelor v. Lopus*.<sup>i</sup> In this case, a man bought a £100 bezoar stone that was supposed to have healing properties. He later realized that the stone did not work as it was supposed to and sued the seller, asking for his money back. The courts ruled that the buyer had no right to get his money back stating that bare affirmation without any warranty is no cause of action.

In *Parkinson v. Lee*,<sup>ii</sup> the judges agreed that the rule of caveat emptor applied to sales of all kinds of commodities and that without an express warranty by the seller or fraud, the buyer must stand to his losses.

The general rule at the time regarding the quality of the article sold was caveat emptor and there was no warranty of quality unless it was expressly demanded or given.

In *John v. Bright*,<sup>iii</sup> the courts finally accepted a non-written warranty about the quality of the goods. In this case, copper was sold for building a ship, and the manufacturer had undertaken that the copper would be fit for the plaintiff's ship. However, the copper only lasted a few months as there was a defect caused by the introduction of too much oxygen in the course of its manufacture. The court held that the copper was unfit for the plaintiff's ship and therefore the manufacturer was liable for the unfitness.

In *Ward v. Hobbs*,<sup>iv</sup> certain pigs were sold "with all faults" by auction. The pigs were suffering from typhoid fever and all of them but one died. They also infected a few of the buyer's pigs. Though the seller knew that the pigs had typhoid, he was not made liable since he had made no misrepresentation. Mere silence does not normally amount to misrepresentation. This rule is another application of the caveat emptor principle, and the prudent buyer should safeguard himself by asking questions.

The importance of the rule of caveat emptor started diminishing in the 20th century. The Courts started to make the seller liable for the sale of defective as well as unfit goods. Earlier the buyer did not have any defence against a seller who has despite being aware of a defect in the goods sold did not inform the buyer and the buyer could not detect the defect by reasonable examination. The shift from caveat emptor to caveat venditor was required to provide adequate protection to the buyer who buys the good in good faith placing reliance on the skill and judgment of the seller as seen in the case of *Priest v. Last*.<sup>v</sup> In this case, the buyer purchased a hot water bottle relying on the seller's skill and judgment. After a few days, while using the bottle the buyer's wife got injured as the bottle burst out, it was found that the bottle was not fit to be used as a hot water bottle. It was observed that if a buyer purchases an object relying on the seller's skill and judgment then the

buyer will be allowed to reject the same on the occurrence of any defect.

Only the sellers could assure the contents and the quality of the goods, hence it was pertinent to place liability on the sellers for defective as well as unfit goods to protect the interest of the buyers.

In *Frost v Aylesbury Dairy Co Ltd.*,<sup>vi</sup> Aylesbury a milk dealer supplied Frost with milk that Frost and his family consumed. The milk contained typhoid germs which infected Frost's wife who died as a result. The milk was unfit for human consumption. Therefore the buyer is entitled to damages.

In *Jackson v. Rolex motor and cycle co. ltd.*,<sup>vii</sup> a manufacturer supplied 600 horns under a contract. The horns were found to be defective because of faulty manufacture. It was held that the buyer was entitled to reject the whole consignment.

In *Henry Kendall and sons v. William Lillico and others*,<sup>viii</sup> the sellers sold some groundnuts to the buyers. The purpose was to resell it in smaller quantities for compounding as food for cattle and poultry. The nuts contained a toxic substance and were unfit for the purpose for which it was intended. The buyer sold it to third parties who fed the nuts to pheasants who died. The House of Lords held that the seller was liable.

In England, consumer law has gradually moved away from the caveat emptor rule to caveat venditor. Laws such as the Sale of Goods Act, 1979 and the Consumer rights Act, 2015 have been passed to enhance consumer rights and allow greater leeway to return goods that do not meet legal standards of acceptance.

Thus, the rule of Caveat emptor was overridden by the Doctrine of Caveat Venditor.

## **CAVEAT VENDITOR IN INDIA**

The Consumer Protection Act, 1986 was enacted to save the consumers from exploitation. It makes the sellers accountable for the wrongs committed by them. It has been replaced by the Consumer

Protection Act, 2019. This act widened the scope of caveat venditor as it included provisions regarding e-commerce, multi-level marketing, and teleshopping.

In the case of *Rekha Sahu v UCO Bank and others*<sup>ix</sup>, it was held that the principle of caveat emptor was significantly followed earlier by the courts of the common law countries, i.e., the buyer was required to exercise care before purchasing the goods or services from the seller. However, in contemporary times, there has been a shift from the principle of caveat emptor to caveat venditor, i.e., the seller must also exercise significant caution before selling the products to the buyer. Therefore, currently, there is an increased reliance on the principle of seller beware by the judiciary to settle the disputed matters.

### CONCLUSION

The principle of caveat emptor was strictly followed by the English Courts until the 20th century. Caveat emptor placed the duty on the buyer to be cautious by making sure the goods purchased were not defective and were fit for the purpose it was purchased for. Failure of which, there were no remedies available to the buyer. This principle was largely unfavourable to the buyer. However, with the advent industrial revolution, which resulted in consumerism, it was pertinent to protect the interests of the buyers. The English Courts gradually started to acknowledge the rights of the buyers. This gave way to the acceptance of the principle of caveat venditor which means seller beware. Thus, the sellers were made liable for defective as well as unfit goods sold. Just like English Courts, the Indian Courts also followed the principle of caveat emptor. The enactment of the Consumer Protection Act protects the interests of the consumers and it can be said that caveat venditor is the principle followed by the Courts presently.

## REFERENCES

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- Walton H. Hamilton, *The Ancient Maxim Caveat Emptor*, 40 Yale L.J. 1133 (1931)

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<sup>i</sup> (1603) 79 ER 3  
<sup>ii</sup> (1802) 2 East 314  
<sup>iii</sup> (1829) 5 Bing. 533  
<sup>iv</sup> (1878) 4 A.C. 13  
<sup>v</sup> [1903] 2K.B.148  
<sup>vi</sup> [1905] 1 K.B. 608  
<sup>vii</sup> [1910] 2KB 937  
<sup>viii</sup> [1969] 2 AC 31  
<sup>ix</sup> 2013 (101) ALR 291



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