



**RELOCATING RESPONSIBILITY: EVOLVING FROM CAVEAT
EMPTOR TO CAVEAT VENDITOR VIS-À-VIS THE INDIAN
SALE OF GOODS ACT** By – ARYAN TULSYAN

ABSTRACT:

In the modern consumerist world, the consumer is ‘King’¹. In this world, a legal obligation upon the buyers to exercise excessive caution to protect themselves from being defrauded by sellers would be far from beneficial for the flourishing of trade and commerce. This doctrine, caveat emptor, seeks the buyer to beware of the purchases they make. With the advent of such modernization and industrialization, there was a call for the formulation of a legal principle which would protect the buyers without imposing unreasonable responsibility upon them. This lacuna was filled by caveat venditor, which transferred the responsibility to the sellers to beware. In a common law country like India, it would be impossible to ‘replace’ one principle with another.

¹Robert L Birmingham, *The consumer as king: The economics of precarious sovereignty*, 20 CASE W. RES. L. REV. 354, (1968).

Therefore, there is a need for coexistence and balance between the two theories. In this paper, I analyze the prominence of the theories under the Indian Law, and would there be a possibility for the mutual existence of both the principles.

The Indian Sale of Goods Act, 1930.

In any kind of business, the sale and purchase of goods is the most common and recurring form of transaction. These contracts of sale and purchase, in India, are governed by the Indian Sale of Goods Act (“the Act”), 1930². Therefore, in order to analyze the concepts of Caveat Emptor and Caveat Venditor with respect to the Sale of Goods Act, we first need to understand what terms like ‘buyer’, ‘seller’, and ‘goods’ mean, in the context of the Act.

²The Sale of Goods Act, 1930, No. 3, Acts of Parliament, 1930 (India).

This analysis is important as the Latin terms ‘emptor’ and ‘venditor’ literally translate to ‘buyer’ and ‘seller’ respectively, and an analysis of these caveat concepts would be incomplete without first understanding what the suffixes actually imply.

As per section 2(1) of the Act³, a ‘buyer’ refers to anyone who has either purchased a commodity, or has agreed to purchase a commodity, and is now contractually obligated to purchase the said commodity⁴. As per section 2(13) of the Act⁵, a ‘seller’ refers to someone who has sold, or has agreed to sell a particular commodity. Lastly, under section 2(7) of the Act⁶, a ‘good’ refers to any movable property in merchandise or in possession⁷. Therefore, in the study of ‘buyer’ beware and ‘seller’ beware, the meaning of the terms provided in the Act would be considered, and not the colloquial and informal usages.

Understanding Caveat Emptor

“Caveat emptor, quia ignorare non debuit quod jus alienum emit”

³Supra note 2, at section 2(1).

⁴FREDERICK POLLOCK & DINSHAH MULLA, THE SALE OF GOODS ACT, 1930, 2 (10thed. Akshay Sapre 2017).

⁵Supra note 2, at section 2(13).

⁶Supra note 2, at section 2(7).

⁷Tata Consultancy Services v State of Andhra Pradesh, (2005) 1 SCC 308 (India).

The above Latin phrase translates to “Let a purchaser beware, for he ought not to be ignorant of the nature of the property which he is buying from another party.”

This is the literal implication of the doctrine of caveat emptor within the Act⁸. This doctrine provides a sort of immunity to the sellers of a commodity, and protects them from legal liability even in the cases where they are aware of the defects in the commodity, and they choose to remain silent about it, unless specifically asked about by the purchaser of the commodity.

The maxim of caveat emptor evolved under section 16 of the Sale of Goods Act based on the underlying principle that it is the buyers of a commodity who have the responsibility to satisfy themselves of the quality of goods, and to ensure that the commodity fits the purpose they intended it to⁹. Although section 16 does not explicitly mention caveat emptor, the doctrine is expressed through the exceptions provided by it in the Act. The imposition of this responsibility on the buyer, and not the seller, lies at the crux of caveat emptor.

⁸Supra note 2, at section 16.

⁹Jones v Just, LR 3 QB 19, (1868).

In *Pawittar Singh Walia v Union Territory, Chandigarh*¹⁰, it was reaffirmed that if the buyers do not inquire or inspect the commodity, the seller has no obligation to disclose faults or defects, and the buyer's negligence and ignorance would attract the doctrine of caveat emptor.

Understanding Caveat Venditor

The Latin maxim of Caveat Venditor translates to 'Let the seller beware'.

It was adapted to protect the interests of the buyers, and impose some responsibility upon the sellers for the products they sell. The Indian Sale of Goods Act does not envisage any specific provision to lay down the doctrine of Caveat Venditor, due to which sellers often misuse the doctrine of Caveat Emptor to their benefit. However, since an argument can be made on the exploitation of consumer rights by the use of caveat emptor, the Indian legislature introduced the Consumer Protection Act, 2019¹¹, and under *Chapter VI: Product Liability*, the doctrine of caveat venditor drew legal precedent. The onus of defects and deficiencies in commodities was now transferred from the

buyer to the seller¹². Caveat Venditor can be seen as a direct response to the unfavorable consequences of caveat emptor. The incorporation of this doctrine was important to strengthen the tenets of justice and fair opportunity¹³, in order to place the buyer and seller at a level playing field.

The relevance and importance of the shift from Caveat Emptor to Caveat Venditor

In the middle eras, where the market volume of the total commodities was relatively low, and the commodities exchanged were fairly homogeneous in nature, one could make reasonable arguments for the applicability of caveat emptor. However, in the modern world, where differentiated commodities are a necessity in markets, it is close to impossible for a buyer to examine the latent defects in the commodities they are purchasing. Furthermore, at a time where the marketplace had a physical existence, buyers would have an opportunity to examine the goods they wished to purchase, and caveat emptor could be justified.

¹⁰Pawittar Singh Walia v Union Territory, Chandigarh, (2012) Civil Writ Petition No. 22898 of 2012 (India).

¹¹The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

¹²Rekha Sahu v UCO Bank and Ors., (2013) 101 ALR 291 (India).

¹³JOHN RAWLS, A THEORY OF JUSTICE 84-85 (6th ed. 2013).

However, in the modern world where a majority of transactions are facilitated through the internet at a virtual marketplace, caveat emptor would fail to protect buyers from the deceptive practices adopted by sellers, and in order to safeguard buyer rights, caveat venditor comes to play. Therefore, economic development has had a huge role in the shift of the applicability from caveat emptor to caveat venditor on the sale of goods.

Caveat emptor allows the sellers to enrich themselves at the cost of the buyers by placing an absolute responsibility of exercising caution, thereby relieving themselves of any accountability.

One of the major reasons for the decline of caveat emptor was the criticism of *Ward v Hobbs*¹⁴ where the buyer of pigs was not remedied when the seller intentionally sold him pigs who were infected by typhoid. The court opined that mere silence doesn't amount to misrepresentation, which led to a call for a mechanism which would impose the responsibility upon the seller. As per *Poysha Power Generation v The Registrar, Debts Recovery Tribunal*¹⁵,

¹⁴ *Ward v Hobbs*, 4 AC 13, (1878).

¹⁵ *Poysha Power Generation v The Registrar, Debts Recovery Tribunal*, (2017) Writ Petition (MD) No. 852 of 2018 (India).

the courts have recognized that the principle of caveat emptor is now outdated, and have acknowledged the need to apply the doctrine of caveat venditor. The Court held that buyers in the modern world can rely on advertisements and other forms of promotions, and they need not be *extraordinarily* cautious when they are purchasing goods.

Under section 16 of the Act¹⁶, the onus to prove that they are entitled to an implied warranty lies upon the buyers¹⁷. Even in cases where the buyer has more subject area expertise than the seller, caveat emptor still imposes the liability upon the buyer to exercise the expertise they have acquired¹⁸. For example, if the buyer is an art collector, the doctrine of caveat emptor would impose an unreasonable responsibility upon the buyer to examine if the painting sold to him is a duplicate or not. This unreasonable responsibility on the buyers yearns for the application of caveat venditor.

The shift from caveat emptor to caveat venditor was initiated with *Priest v Last*¹⁹, where the buyer bought a hot water bottle, relying on the judgement of the seller.

¹⁶ *Supra* note 8.

¹⁷ *Joseph Mayr vs PhaniBhusan Ghose*, AIR 1939 Cal 210, (India).

¹⁸ *Harlingdon and Leinster Enterprises v Christopher Hull Fine Art*, 1 QB 564, (1991).

¹⁹ *Priest v. Last*, 2 KB 148, (1903).

It was held in this case that the buyer has a right to reject goods which are defective if he relies on the skill of the seller, giving birth to the principle of caveat venditor under common law. Caveat venditor implied the mitigation of caveat emptor.

Caveat emptor came into existence as an absolute principle, without any scope for reasonable examination²⁰, but as there was a recognition of the rights of the buyers and with the debate on the implementation of caveat venditor, caveat emptor incorporated the concept of 'reasonable examination', where the courts have held that if the defects of the goods cannot be reasonably examined, the buyers would be exempted from this responsibility²¹.

The Law Commission of India, in its One Hundred and Fifth Report, in furtherance of caveat venditor, have determined what 'merchantable quality' of goods would entail. In the report, it was determined that since buyers are expected to have full information about goods and are expected to act reasonably, the sellers must have the duty to make the buyers aware of the defects in the goods, and disclose full

information relating to the goods²². Furthermore, in the Report of the Raghavan Committee, 2000, it was noted that 'it is no longer the era of caveat emptor'. Indian courts are ratifying the application of caveat venditor and recognizing the perils associated with caveat emptor through cases like *Mandava Krishna Chaitanya v UCO Bank, Asset Management*²³. Therefore, it is distinctly understandable that the Indian legal system is moving towards caveat venditor, leaving caveat emptor behind.

The relevance of Caveat Emptor in spite the rise of Caveat Venditor

Although caveat emptor as a doctrine is not short of flaws, a fundamental argument to be made towards its importance is that it inculcates a sense of awareness and responsibility upon buyers, driving them to make cognizant purchases. Furthermore, under section 16 of the Act, caveat emptor not only provides for the buyer to examine the goods before purchasing them, but also imposes a duty upon the seller to provide the buyer with sufficient means to examine the goods, thereby holding both the buyer and seller under a responsibility.

²⁰Walton H. Hamilton, *The Ancient Maxim Caveat Emptor*, 40 YALE L.J., 1133, 1150 (1931).

²¹Alex M Johnson, *An Economic Analysis of the Duty to Disclosure Information: Lessons Learned from the Caveat Emptor Doctrine*, 45 San Diego L. Rev., 79, 102 (2008).

²²Sowmya Christina & Prakash Munishamappa, *Caveat Emptor To Caveat Venditor In The Process*, 51RJMSH 428, 432 (2014).

²³*Mandava Krishna Chaitanya v UCO Bank, Asset Management*, (2013) 101 ALR 291, (India).

Caveat venditor on the other hand has relieved the buyers from the exercise of utmost caution, and the doctrine can be used as an intervention into caveat emptor. It is preferred that caveat emptor be kept under vigilance, rather than its complete eradication. Caveat emptor has been the rule under common law, and enshrined within the Indian Sale of Goods Act²⁴, and a complete shift to caveat venditor might cause discrepancies and perplexity in the understanding of the law on the sale of goods. Therefore, rather than replacing caveat emptor with caveat venditor, the coexistence of both such doctrines together would be more instrumental in facilitating trade. The Courts have recognized the perils of the *complete shift* from caveat emptor to caveat venditor²⁵, and have refused to apply caveat venditor where a multi-purpose good is involved, and the buyer does not intimate the specific purpose use of the good²⁶. Another argument to be made on the limitations of caveat venditor is that the seller might be restricted to disclose complete information about a product when the sellers themselves aren't aware of the latent defects in the goods.

²⁴*Supra* note 8.

²⁵ *Ashington Piggeries v Christopher Hill*, AC 441, (1972).

²⁶ *Hamilton v Papakura District Council*, 295 NR 163, (2002).

Therefore, since caveat emptor as a principle would not be feasible in large or virtual markets, a blend of both doctrines could be considered, where not only is the blanket immunity exercised by sellers is restricted by caveat venditor, accountability is imposed upon the buyers using caveat emptor.

Conclusion

A modern-day seller cannot simply claim that they are unaware of the defects in the goods they're selling. Although there are several other arguments that discredit the imposition of caveat venditor and hail caveat emptor as the applicable principle, this simply is not feasible. The crux of the issue is that a buyer always rightfully relies on the judgement of the seller, and the seller has a legal duty to abide by, the responsibility for which cannot be transferred to the buyer. Therefore, in light of the arguments discussed above, the natural and case-to-case application of the principles of caveat emptor and caveat venditor could be the way forward. It is upon the Indian judiciary to decide the extent to which a buyer or seller can be held responsible. As eternal vigilance is a price one has to pay to exist in a fair

market²⁷, let the buyers *and* sellers beware!

²⁷Charles T. LeViness, *Caveat Emptor Versus Caveat Venditor*, 7 Md. L. Rev. 177, 200 (1943).