

or not), there is an implied warranty that the goods shall be of merchantable quality.

(3) If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

(4) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(6) An express warranty or condition does not negative a warranty or condition implied under this sub-title, unless inconsistent therewith.

The important change made by this section in the law as it existed prior thereto was to put seller who is not grower or manufacturer, in position formerly held by such grower or manufacturer only, in reference to implied warranty mentioned. This section is in effect a qualification of doctrine of *caveat emptor*. Authorities reviewed. Parol evidence admissible; ambiguity. Contract divisible. *Luria Bros. & Co. v. Klaff*, 139 Md. 593.

A sale of corn held to be a sale by description, and hence an implied warranty arose under paragraphs (1) and (2) of this section. The vendor knew that corn was to be used for seed purposes; no samples furnished. *Prayers. Robinson v. Barteldes Co.*, 139 Md. 494.

Sub-sec. (4) of this section applied to a sale of muriate of potash. No evidence of custom or usage in trade is admissible which conflicts with a statute. *Fertilizer Co. v. Trona Corp.*, 142 Md. 249.

See notes to sec. 35.

An. Code, sec. 37. 1910, ch. 346, sec. 34 (p. 277).

37. In the case of a contract to sell or a sale by sample:

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 68 (3).

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

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An. Code, sec. 38. 1910, ch. 346, sec. 35 (p. 277).

38. Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer, unless and until the goods are ascertained, but property in an individual share of ascertained goods may be transferred as provided in section 27.

See notes to sec. 41.

An. Code, sec. 39. 1910, ch. 346, sec. 36 (p. 277).

39. (1) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.