

# REPRESENTATION V/s WARRANTY DISTINCTION FOR CLARITY



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# REPRESENTATION

# WARRANTY

When two parties decide to engage with each other for either exchange of any services, business relations, availing insurance or for any other purpose, it is crucial for them to formulate and sign a comprehensive and mutually acceptable contract/agreement between them. Agreements generally contain essential clauses and one of the important clauses is the representation and warranty clause. Well defined agreements have a broad reference to “Representations and Warranties” in the same breath and the common language would read: “XYZ represents and warrants to ABC that.....” While, these two words are clubbed together in a sentence or used interchangeably, they do not have the exact same meaning.

## 1. Meaning



Representation is a declaration by one party to the other related to the facts. In contracts, representation is very crucial because the other party enters into the contract relying upon such representation.

## 1. Meaning



Warranty is a promise given by a party about specific quality of goods/products/services or warranty of certain other circumstances which are relevant in the contract. For example, a warranty may be given for merchantability of a product. A warranty is generally a futuristic promise about the subject matter of the contract.

## 2. Legal Provisions



Representation is not defined under Indian laws however, The Indian Contract Act, 1872 (“Contract Act”) defines misrepresentation under section 18 to mean and includes—  
 (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

## 2. Legal Provisions



Warranty is explained under section 12 and 13 of The Sale of goods Act 1930 (“Sale of goods Act”)  
 (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.  
 (2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

## Legal Provisions



(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;

## Legal Provisions



(3) A warranty is a stipulation collateral 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.

# REPRESENTATION

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(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

# WARRANTY

## Legal Provisions



(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. Section 13 is descriptive of when a condition is treated as a warranty.

**EXAMPLE:** Let us understand this simply through an example on the transaction for supply by a company for a catering agreement. A is a company and is supplying food related products and services to B.

## 3. Example



“A represents that A has FSSAI License.”  
This is a fact as has occurred in the past and is valid till date. This could become a misrepresentation if the license was not renewed but the Company believed it was renewed. However, if the license was not renewed and the Company was aware that it was not renewed then it could be a case of fraud.

## 3. Example



“A warrants that the materials supplied by A will remain fresh for 24 hours from the time of delivery to the other party.”  
This is a futuristic promise and therefore can be considered as a Warranty.

## 4. Remedy for breach



In case a contract is entered into relying on a representation which is not true, then the contract is voidable. Section 19[2] of the Contract Act provides of a contract being voidable in case consent to an agreement is due to coercion, fraud or misrepresentation at the option of the party whose consent was so caused. The impact of the contract being voidable is that the party claiming it to be voidable is relieved of all its obligations under the agreement and is also supposed to be restored to its original position.

## 4. Remedy for breach



Section 59[3] of the Sale of Goods Act specifically deals with remedy for breach of warranty. It states that in case seller breaches the warranty under the agreement, buyer has two remedies. Either buyer can claim a proportionate reduction in the price of goods or damages for breach of warranty. Under the above illustration, if the products do not remain fresh though so warranted, then A is entitled for all damages arising due to the same.

[2] 19. Voidability of agreements without free consent—When consent to an agreement is caused by coercion,<sup>1</sup> fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

[3] 59. Remedy for breach of warranty.—(1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may— (a) set up against the seller the breach of warranty in diminution or extinction of the price; or (b) sue the seller for damages for breach of warranty. (2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

However, before claiming a contract to be voidable one must remember that if a party had the means of discovering the truth with ordinary diligence, the agreement cannot be considered as merely voidable. Again, whether a party had a means of discovering the truth will be decided on case to case basis.



under the contract, representation and warranty clause is of utmost importance and in most of the cases that is the base of the agreement between the parties. Consequences of breach of representation and warranties can be severe considering the below judgements given by different courts in India.

**1. M/S Banerjee & Banerjee (“plaintiff”) vs National Insurance Co. Ltd (“Defendant”) on 8 July, 2013, Calcutta High Court threw light upon the consequences of misrepresentation and how warranty can be dependent upon the representation provided in the agreement[4]**

Under this case the plaintiff filed a writ petition against the National Insurance Co. claiming insurance amount for goods stolen from the construction site of Rs. 12,13,761/-at Farakka Super Thermal Power Station. The Plaintiff was hired as a sub-contractor by M/S Hindustan Steel Works Construction Ltd. and was allotted a yard for completing the assigned work. As per the counsel of the Plaintiff:

- a)Plaintiff took all the precautionary measures to secure and protect the materials stored inside;
- b)Despite the precautionary measures undertaken by the Plaintiff, materials and equipment were stolen.

The insurance company successfully counter argued stating that:

- a)Plaintiff never disclosed material relevant facts while taking out Burglary Policy.
- b)Plaintiff had hidden the fact about an unrest in that premises and also misrepresented about the protection around the premises as when surveyors and investigators investigated it found out that the area of construction site was only protected by barbed wire fencing;

C) policy was taken by the Plaintiff when danger of the situation became imminent.

Therefore, due to misrepresentation of the facts, the entire contract was voidable and the question of breach of warranty did not arise as the policy was deemed to be repudiated. While delivering the judgement in the current issue, Calcutta High Court threw some light on difference between Representations and warranties and when remedies are available to the claimant. This Court referred to the Burglary Policy;

To note, the burglary policy signed between the Plaintiff and Insurance company had clauses with respect warranty: "Clause 47 of the warranty makes it clear that **the duty of the plaintiff to take all ordinary precautions to safeguards the property insured under the policy would involve employment of security guards and then continuation.** Moreover, Clause 2(b) of the conditions of insurance clearly stipulates if **there be any other material change in the risk issue under this policy or any change in the facts stated in the proposal unless the company agreed to continue insurance policy in force, the policy would cease to exist. ....** Where a policy is stated to cover subject matter of a particular description, and the subject matter has never met that description, the risk simply fails to attach, and the policy is void."

**The Court held that, it was a clear case of deliberate misrepresentation of facts so as to cover the damages under warranty from the Defendant. The lack of evidence of missing statements of fact makes it thorough that the Defendant was not liable. The Court dismissed the case with no costs.**

It can be seen from the above case laws that drafting of a representation and warranty clause demands high level caution. When a contract asserts the truth of certain facts or the fulfilment of specific warranties at present or in future, any violation of these representations or warranties can result in unfavourable or severe consequences and embroil the parties in long legal battles.



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