

## **THE PRINCIPLE CAVEAT EMPTOR**

Latin for "Let the buyer beware." The idea that buyers take responsibility for the condition of the items they purchase and should examine them before purchase. This is especially true for items that are not covered under a strict warranty.

Let the buyer beware: the principle that the seller of a product cannot be held responsible for its quality unless it is guaranteed in a warranty.

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## **CAVEAT EMPTOR**

A warning that notifies a buyer that the goods he or she is buying are "as is," or subject to all defects.

When a sale is subject to this warning the purchaser assumes the risk that the product might be either defective or unsuitable to his or her needs.

This rule is not designed to shield sellers who engage in Fraud or bad faith dealing by making false or misleading representations about the quality or condition of a particular product. It merely summarizes the concept that a purchaser must examine, judge, and test a product considered for purchase himself or herself.

The modern trend in laws protecting consumers, however, has minimized the importance of this rule. Although the buyer is still required to make a reasonable inspection of goods upon purchase, increased responsibilities have been placed upon the seller, and the doctrine of caveat venditor (Latin for "let the seller beware") has become more prevalent. Generally, there is a legal presumption that a seller makes certain warranties unless the buyer and the seller agree

otherwise. One such Warranty is the Implied Warranty of merchantability. If a person buys soap, for example, there is an implied warranty that it will clean; if a person buys skis, there is an implied warranty that they will be safe to use on the slopes.

A seller who is in the business of regularly selling a particular type of goods has still greater responsibilities in dealing with an average customer. A person purchasing antiques from an antique dealer, or jewelry from a jeweler, is justified in his or her reliance on the expertise of the seller.

If both the buyer and the seller are negotiating from equal bargaining positions, however, the doctrine of caveat emptor would apply.

Cross-references

Consumer Protection; Sales Law.

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Caveat emptor (kah-vee-ott emptor) Latin for "let the buyer beware." The basic premise that the buyer buys at his/her own risk and therefore should examine and test a product himself/herself for

obvious defects and imperfections. Caveat emptor still applies even if the purchase is "as is" or when a defect is obvious upon reasonable inspection before purchase. Since implied warranties (assumed quality of goods) and consumer protections have come upon the legal landscape, the seller is held to a higher standard of disclosure than "buyer beware" and has responsibility for defects which could not be noted by casual inspection.

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## **CAVEAT EMPTOR**

Under the doctrine of caveat emptor, the buyer could not recover from the seller for defects on the property that rendered the property unfit for ordinary purposes. The only exception was if the seller actively concealed latent defects. The modern trend in the US, however, is one of the Implied Warranty of Fitness that applies only to the sale of new residential housing by a builder-seller and the rule of Caveat Emptor applies to all other sale situations (i.e. homeowner to buyer). [See **Stambovsky v. Ackley, 572 N.Y.S.2d 672 (N.Y. App. 1991)**] Many other jurisdictions have provisions similar to this.

Before statutory law, the buyer had no warranty of the quality of goods. In many jurisdictions, the law now requires that goods must be of "merchantable quality". However, this implied warranty can be difficult to enforce, and may not apply to all products. Hence, buyers are still advised to be cautious.

In addition to the quality of the merchandise, this phrase also applies to the return policy. In most jurisdictions, there is no legal requirement for the vendor to provide a refund or exchange. In many cases, the vendor will not provide a refund but will provide a credit. In the case of software, movies and other copyrighted material many

vendors will only do a direct exchange for another copy of the exact same title. Most stores require proof of purchase and impose time limits on exchanges or refunds. However, some larger chain stores will do exchanges or refunds at any time with or without proof of purchase- although they usually require a form of picture ID and place quantity or dollar limitations on such returns.

**Laidlaw v. Organ**, a decision written in 1817 by Chief Justice John Marshall, is believed by scholars to have been the first U.S. Supreme Court case which laid down the rule of *caveat emptor* in U.S. law.<sup>[2]</sup>

In the UK, consumer law has moved away from the caveat emptor model, with laws passed that have enhanced consumer rights and allow greater leeway to return goods that do not meet legal standards of acceptance.<sup>[3]</sup> Many companies operating in the UK will allow customers to return goods within a specified period for a full refund, even if there is no problem with the product.

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## **CAVEAT EMPTOR**

***Caveat emptor*** is Latin for "Let the buyer beware". Generally caveat emptor is the property law doctrine that controls the sale of real property after the date of closing.

### ***Explanation***

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This phrase has given rise to many informal variations, such as *caveat reader* (properly expressed in Latin as *caveat lector*).

Caveat emptor has also been used by software documentors to entitle their collection of software functioning oddities or stumbling blocks in usage.



In the late 1960s, Gary Null was the editor of one of the nation's first consumer health activist publications, called *Caveat Emptor*, which was in print for over ten years.

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## **CAVEAT VENDITOR**

Caveat venditor is Latin for "*let the seller beware*". It is a counter to caveat emptor, and suggests that sellers too can be deceived in a market transaction. This forces the seller to take responsibility for the product, and discourages sellers from selling products of unreasonable quality.

In the landmark case of **MacPherson v. Buick Motor Co. (1916)**, New York Court Appeals Judge Benjamin N. Cardozo established that privity of duty is no longer required in regards to a lawsuit for product liability against the seller. This case is predominantly regarded as the origin of *caveat venditor* as it pertains to modern tort law in US.

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