Chapter I is purely introductory.

Chapter II (History of Conditions and Warranties) concludes that in the beginning, all the stipulations under contracts of sale of goods were termed as Warranties. There was no mention about conditions. During the end of Nineteenth Century, certain decisions were made in which stipulations essential to the main purpose of contract were termed as "Conditions". Others of ancillary nature were termed as warranties. Chalmers gave them statutory recognition under Sale of Goods Act, 1893.

During Eighteenth and Nineteenth centuries, the dominant feature of sale was rule of Caveat Emptor. Whenever a definite identifiable object was subject matter of sale, the right of ownership in such goods passed from the seller to the buyer at the time of making the Contract of sale. Hence, the aggrieved buyer could not reject the goods and revest the title therein to the seller.

1. This is obvious out of the definition of Warranty given by repealed Section 118 of Indian Contract Act, 1872
2. Section 62(1) of E.A.
Such goods were known as 'Specific' goods. However, when ever the subject matter of sale was future or unascertained goods, sale of such goods was known as sale of goods by 'description'. Stipulations with regard to quality and fitness under the former were termed as warranties whereas; same stipulations under the latter were termed as conditions. The breach under the former, entitled the buyer to claim only damages whereas; the same under the latter entitled him to repudiate the contract. The remedy of the buyer depended purely upon the classification of the goods. The nature of damages or graveness of breach were no criteria for claiming relief. This has resulted into injustice to the parties. With regard to the right of rejection for breaches of contract, in cases of specific goods, relief has been granted to the buyer in India vide Amendment Act of 1963. For injustice resulting to the parties out of water tight division of remedies, i.e. damages for breach of warranties and repudiation of Contract for breach of condition, no action has been taken so far.

It is said, that at first, action would lie for breach of a warranty under Tort. Later on remedies were shifted to contract. The truth lies in the fact that they are hybrid between Tort and Contract. The

3. Williston "Liability For Honest Misrepresentation" (1911) 24 Harv. L. Rev. 415 at 420
obligation created by these warranties on the seller is quasi-contractual and is implied by law.

Under Chapter III (Definition of Conditions and Warranties And Rules Relating to Acceptance of Goods) it has been discerned that the definitions of 'Conditions' and 'Warranties' are not adequate. After pointing out their defects, a new definition of these terms has been suggested which is free from the words "Collateral" or "main". The proposed definition of warranty includes all those stipulations which form the basis of bargain, whether they may amount to Condition, warranty or representation, under the existing law. The term condition confines itself to stipulations relating to payment. The remedies for breach of condition or warranty may be rescission, repudiation, specific performance or damages, according to the needs of the parties. This is a far more satisfactory remedy than that which is presently available under our Act.

While interpreting the phrase "and he does any act in relation to them which is inconsistent with the ownership of the seller," it has been suggested that regard should

4. Section 42 of S.C.A.
be had to the nature of the contract, for arriving to the conclusion whether a particular act of the buyer amounts to acceptance or not. If the goods or defects in those goods are of such a nature that they require complete testing, then the buyer should not be deemed to have accepted the goods, until such step have been taken by him. Further, the buyer may have right, under certain circumstances, to revoke his acceptance, if there are compelling reasons for that. It has also been emphasised that he should not be entitled to reject the goods simply in the name of breach of condition, if there are no or nominal damages resulting out of such breach. However, the Court may award nominal damages in recognition of breach of his right.

While construing severable contracts, it has been suggested that in Jackson v. Rotax Motor & Cycle Co., like situation, the buyer should be entitled to reject all the goods, if he finds it difficult to dispose of them, except those which he has sold out or consumed, and pay for them a reasonable price. He should also be entitled, in cases of non-conforming tender or delivery, of goods to accept or

5. (1910) 2 K.B. 937
reject them, as per his requirement and not on the basis of "accept all or reject all". The law should take into consideration the realities of life and implication of such rules should be based upon the human behaviour, practice and social needs.

Under Chapter IV (Representation - Types And Problems of Construction) in the light of discussions, it has been concluded that every misrepresentation which induces a party to enter into contract, and act to his detriment, after having relied upon those statements, gives a cause of action. The seller of goods is liable for obvious defects, if he has, by his words or conduct impressed upon the buyer that there is no such defect. With regard to latent defects, he is always liable even though an examination of such goods was carried out.

It has been observed that if an innocent misrepresentation was made, the misrepresentee, even after having sustained damages, was not entitled to sue the seller, if that particular term was held not to form the basis of the contract. This mischief has been very much undone by the enactment of Misrepresentation Act, 1967 which says that an innocent misrepresentation will always constitute as a term of contract, if the misrepresentee has,
after having relied upon such representation, acted to his detriment and sustained damages. This covers a case like Hopkins v. Tanquerey. Apart from it, the enactment further provides that the representor shall be liable to the representee if his statement is not based on reasonable grounds and beliefs. The decision in Hadley Byrne v. Heilers and Partners enlarges the area of duty of care of negligent misrepresentation where "special relationship" exists between the parties. The rule in Derry v. Seek stands substantially modified by the above enactment.

After the passing of Directors Liability Act (1890) and the Misrepresentation Act (1967), the directors will always be liable in Derry v. Peek like situation as their statement was not based on reasonable grounds or belief. It is hoped that the courts and legislature in India, in the light of modern developments, will take necessary action in this direction.

Under Chapter V, (Implications of Privity Rule, Law of Consideration and Exemption Clauses) it has been observed that our law relating to consumer's protection is

6. (1854) 15 C.B. 130, 100 R.R. 271
7. (1964) A.C. 465
8. (1889) 14 A.C. 337
inadequate to meet the needs of time. As a result thereof, any person sustaining injury due to defective manufacture of goods may not be able to claim relief directly from the manufacturer, due to prevalence of pernicious privity rule. He may succeed in suing the seller only if he happens to be a consumer, as defined by Molony Committee. Certain suggestions have been made which if accepted will lessen the mischief of this rule in general.

With regard to the liability of the seller of goods, he is merely an escape-goat and is rendered accountable for the misdeeds of the manufacturer, only because there is contractual relationship between him and the buyer. The modern modes of advertising, packing, labeling, displaying in showcases, issuing the guarantee cards etc. indicate towards the liability of the manufacturer, for his faulty products. Further, multiplicity of legal actions by the parties, increases the cost on such actions enormously and is very much time-consuming. This indirectly pushes up the price of the goods, resulting into loss to the buyer. Holding the manufacturer directly liable for the defects in the goods will discourage him in
neglect of his duties and to a sound business policy. Besides these, new scientific inventions may create hazards which may not be possible for the seller to prevent, control or foresee. He may also not be financially capable of bearing the consequences of selling such defective products. Hence it has been suggested that the manufacturer and not the seller should be held liable for any defects in the goods sold to the buyer. However, the seller should be liable for his sole inducing devices. If the manufacturer is residing in a foreign country, the importer of the product should be liable. This will obviate the problems arising out of lack of jurisdiction of the courts to proceed against such manufacturer.

The liability of the seller of defective products has been extended in U.S.A. to the manufacturer, under the Restatement of Tort which disregards the contractual relationship between the consumer of the product and the original seller, namely, the manufacturer. Thus, the party aggrieved, can proceed against the erring manufacturer without claiming any contractual relationship.
The other problem posed by the manufacturers and sellers of goods is that, they being in better bargaining position, seek to exempt their liability by standard exemption clauses in the contract of sale relating to goods. This puts the consumer in a very precarious position. He, being poor, weak and disorganised, suffers in silence. In England, the Amendment Act, 1973 has relieved him to a great extent, from the clutches of big whales, by declaring the exemption clauses as null and void, in so far as consumer sales are concerned. For non-consumer sale, certain criteria has been laid down by which the Court may declare such clauses as unenforceable on the ground of unconscionability. The provisions relating to Section 402 A of Restatement of Tort are so devised that no one can exempt himself from liability to the buyer for supplying defective goods. The industrial revolution has just begun in India. We are lagging for behind the Britorians and Americans. Therefore, it will be injudicious to apply the rules of those countries blindly. Hence an industry wise survey may be carried out, in order to ascertain the financial capacity of a particular group of business, to bear the burden of liabilities arising out of non-enforcement of exemption clauses in non-consumer sales, only if it is in business interest. But in consumer sales, no such concession should be allowed. Public interest should be paramount to every interest.
In Chapter VI, (Implied Undertaking of Title, Quiet Possession And Freedom from Encumbrance) it has been observed that the opening words of Section 14 of S.C.A. "Unless the circumstances ....... intention" have been interpreted to cover the cases like Moreley v. 9 Attenborough and Ram Sarup v. Dalpat Rai. In both the cases, the buyer had lost his bargain and was deprived of his consideration money. This was all due to the reason that English Law, under its peculiar conditions, inherent in its very system, fully adopted the rule of Caveat Emptor. However, the rule of Market Overt, to a great extent mitigated the effect of the aforesaid rule in England because the former conferred a good title to the buyer if the latter did not protect him for a defective one. This rule of Market Overt does not exist in India which makes the condition of the buyer much more vulnerable in this country than in England. Now no civilized person will accept that one should thrive at the expense of another, whatever may be its legal justifications. Therefore, it has been suggested that it will be

9. (1843-1860) All E. Rep, 1045
10. (1921) ILR 43 All. 60
very reasonable on the part of the seller, or execution-creditor to return the consideration money to the buyer, if he is compelled to return the goods to the true owner, provided he purchases them in good faith and without notice of any defect in the title of execution-debtor or the seller. The other alternative and the better suggestion is that the bonafide purchaser, for value should not be compelled to return the subject matter of purchase by any party whatsoever. They should have recourse of law against the seller and execution-creditor, because the true owner should be careful, while loaning out, pledging or delivering the goods to a third person, like the seller and execution-debtor. By doing so, he has brought about a situation in which a fraud has been perpetuated on the buyer. It is therefore proper that either he bears the loss or asks the seller or execution-debtor to be liable for such sale.

With regard to exclusion of liability of the seller for transfer of goods with defective title or no title to the buyer, it has been noted that the very purpose of sale is to transfer ownership in the good. If one does not have the very thing which he purports to transfer, he should not be allowed to take benefit
of his own wrongs. The theory of fundamental breach should operate in his case.

So far as the cases of purchases of chances are concerned, they are the cases of contingent contract, as given in Chapter III of Indian Contract Act 1872. The Supply of Goods (Implied Terms) Act 1973 has introduced certain changes in the existing law which does not exclude the possibility of contracting out the liability by the seller to the buyer for want of title in the subject matter of sale except under consumer sale.

In so far as exclusion of liability by the seller for breaches of warranties of Quiet possession and Freedom from Encumbrances is concerned, the newly amended Section 12 of E.A prohibits exclusion of liability by seller known to him but not known to the buyer. However, the amending section is not clear about the breaches of warranty of Quiet possession, committed by title paramount for which further amendment has been suggested.

So far as sale of limited interest in goods is concerned, it should be treated as sale of goods. Under modern trade conditions, it is very desirable to do so in order to enforce the remedies provided by Sale of Goods
Act. The supply of goods (Implied Terms) Act 1973 has fully treated such transactions as sale of goods. It will be appreciated if such transactions are accorded statutory recognition as sale of goods in India.

With regard to seller or hirer acquiring title subsequent to his sale, it is suggested that the bonafide buyer may acquire the same through feeding back. With regard to infringement of trade mark of any person it is the dire necessity of the day that the buyer's interest should be protected through necessary changes in the S.C.A.

Under Chapter VII, (Sale of GoodsBy Description and Sample) it has been observed that the controversy with regard to classification of goods into 'specific' and goods sold by 'description' has been persistent throughout. It has also become doubtful whether the selection of articles by the buyer in self-service stores amounts to sale of goods by description. Specific goods could be hurled upon the seller, even though they were unmerchantable. Further, it has been argued that the descriptive words relating to their quality, country of
origin, time of shipment, fitness for particular purpose did not form part of contract description as they related to the quality or merchantability of goods. It has been suggested that conformity with contract description can not be treated in isolation with merchantable quality. For ascertaining description, the components and the constituents of the article should be taken into consideration to avoid inconsistencies between description and merchantable quality.

If the definition of merchantable quality suggested in Chapter VIII is referred, it will be seen that one of the clauses referred therein states that in order to treat the goods as merchantable, they must conform to the contract description. Thus merchantability is closely linked with description. Therefore, the provision relating to description of goods under Section 15 of S.C.A. should be deleted to eliminate much ado about nothing.

The remedy of the buyer for breach of Warranty, it is suggested, may be right of rejection, damages or grant of specific performance, as the case may be. Further, the seller should be given opportunity to supply goods conforming with description, if there is time to do so, without causing any inconvenience to the buyer.
So far as written contracts relating to sale by sample are concerned, it has been observed that at times, parol evidence rule has been instrumental in causing undue inconvenience and loss to the buyer and has eluded all hopes in fulfilment of his contractual expectations. Hence, it will be in accord with the tune of time that in appropriate cases, the rule is not allowed to operate, whatever may be its dogmatic values.

In Chapter VIII, (Rule of Caveat Emptor And Its Exceptions) the rule of Caveat Emptor has been discussed and it has been seen that there is no general duty on the part of the seller to disclose the defects in the goods. Hence, in _Ward v. Hobbs_ like situation, the buyer gets no relief, even though he may sustain even more damages than the price of goods actually paid. In contrast to this, the rule of Muslim Law of sale enjoins a duty on the vendor to disclose the defects of the goods sold. Non compliance is prohibited (haram) and entitles the buyer to repudiate the contract and thus it encourages honesty. Hence the rule of Muslim Law may be adopted.

11. (1878) 4 A.C. 13
While discussing clause (1) of Section 16, it has been observed that the buyer, in order to claim relief, must disclose the purpose in such a manner as to show that he relies upon the skill and judgment of the seller. There is divergence of opinion upon the manner of disclosure. The better and preponderent view is that mere disclosure by the buyer to the seller is sufficient to place reliance upon his skill and judgment.

In cases of partial reliance, it should be exclusive in the specific area left to the skill and judgment of the seller. It may not be exclusive but substantial reliance is a must.

The requirement, that to hold the seller liable for defects in the goods, he should be dealer in those goods, has been interpreted as meaning that he should have been selling those particular goods in the course of his business. It has been suggested that in order to afford greater protection to the buyer, selling the goods by way of trade was sufficient to hold him (seller) liable.

Under the proviso to Section 16(1), the buyer still relies upon the skill and judgment of the seller, inspite of his purchasing them under its trade name if he acts to do so upon the advice or recommendation of the seller, or depends upon his skill and judgment. Therefore the abolition of the proviso has been suggested.

While discussing Section 16(2), it has been observed that an important term like merchantable quality has no statutory definition and it has been subject to varying and inconsistent interpretations. Sometimes it has been held that where the goods are used for different purposes, they are merchantable if fit for any of those purposes, even though not fit for the very purpose contemplated by the buyer. In certain other cases merchantability was decided on price factor. If the goods could be sold for a price, which they could ordinarily fetch, they were still merchantable, even though they proved to be fatal to a potential class of consumers. In such cases, it has been suggested that the notice of hazard is a must.

failing which the vendor should be liable for the breach of merchantable quality. In B.S. Brown v. Craika Ltd., the price test laid down in Henry Kendalls' case was disregarded on the ground that the latter involved latent defect in the goods, though it could not be ruled out that the cloth was unmerchantable as a dress fabric due to some latent defect, as in Henry's case or James Drummond v. Van Ingen & Sons.

Due to uncertainties of interpretation, the supply of Goods (Implied Terms) Act, 1973 has provided a definition of merchantable quality. But it is very vague and there is evidence of the fact that this term may not be interpreted differently than what has been decided earlier. Therefore, keeping in view the inherent difficulties of interpretation, a new definition of the same, based partly on U.C.C., has been suggested. This definition is comprehensive and takes into consideration the description, price, packing, labelling, conformity with the affirmations or promises made by the seller and passing without objection (legal) in the trade or business. In case of fungible goods, they should be of fair average quality etc.

16. id.
17. (1887) 12 A.C. 293
With regard to duration of merchantability, generally goods should be merchantable at the time of passing of property from the seller to the buyer. Perishable goods should remain merchantable for a reasonable period from the time of their arrival at their destination. Under C.I.F. and F.O.B. contract, the same rule applies. However, the rule with regard to non perishable goods is that they should be merchantable at the time of their appropriation to the contract and not at their destination. It has been suggested that the goods should be merchantable at their destination.

Merchantability does not mean that the goods should be salable in a foreign country according to legislation of that country, unless in contemplation of the parties. However, they must be salable in the country where the contract is formed and performed, in accordance with the local legislation of that place. Intrinsic fitness is not sufficient. While discussing the case of Joseph Mayor v. Phani Bhushan, it has been suggested that it should be decided with due consideration to the local legislation. Necessary amendments,
with regard to treating the provisions of merchantability and fitness together, have been suggested in the light of certain other English cases.

While discussing the proviso to Section 16(2), it has been observed that if the buyer avails an opportunity to inspect the goods but does not utilise it properly, he has no cause of complaint with regard to defect which such examination ought to reveal. A different view has been taken in another case. The latter view has been approved, and certain suggestions have been made which if incorporated will entitle the buyer to enforce his claim against the seller, if any defect is detected subsequently.

As regards Conditions and Warranties implied by usage of trade, it has been suggested that in presence of an express legal provision, custom should not prevail. Further such custom should not be against public policy and injurious to health. In Cointet v. Mahem like situation, custom should be disregarded.

18. Thornett & Fehr v. Beers & Sons (1919) 1 K.B. 486
20. (1913) 2 K.B. 220
Section 16 (4) lays down a uniform simple rule "express provision excludes implication".