

Application of the Doctrine of 'Caveat Emptor' in Online Business: Legal Appraisal in Bangladesh

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Abstract: The principles regarding the doctrine of Caveat Emptor have become significantly relevant in the growing situation of E-commerce. So, to protect the rights of E-consumers in online transactions the necessity of amending provisions of section 16 of the Sale of Goods Act, 1930 on Caveat Emptor Principle and Exceptions and other pertinent legislations has turned into a telling issue. The article assesses Bangladeshi laws on goods sales for their adequacy in safeguarding E-consumer rights and protection. It specifically explores E-consumer rights concerning online-modifiable product descriptions and examines legislation's role in countering deceptive marketing practices. The study focuses to emphasize the implementation of the Caveat Emptor and Caveat Venditor principle with a view to ameliorating the consumer protection mechanisms both in online and regular Sale of Contracts, more broadly, the overall interests of E-consumers in Bangladesh. Moreover, in this study it has been highlighted that the existing domestic laws widely lack the provisions on safeguarding the rights of E-consumers where online transaction have significantly expanded and gained immense popularity during the post COVID-19 period. At the same time, the legal doctrinal research method has been followed to conduct the study and find out suggestions to resolve the telling issues.

Keywords: *Caveat Emptor; E-commerce; Sale of Goods Act; E-consumers Rights.*

Introduction: The field of Information and Communications Technology (ICT) is expanding rapidly, and consumers are engaging into a variety of contracts for the supply of goods or services. In line with the development of ICT e-commerce has become crucial. This is especially applicable in the context of the online business. In the period of economic globalisation, that is, opportunity to conduct trade worldwide in online, many markets have become increasingly globalised and competitive. To keep face with this global trend of online business, Bangladesh is endeavoring to become a "Digital Bangladesh" with the rapid expansion of e-commerce. Also, internet commerce has recently undergone a spike in popularity across the globe. Thanks to the development of several online company tactics that was witnessed amazingly in Bangladesh E-commerce is becoming increasingly popular in order to reduce production and delivery times, often known as "just in time production" and "just in time delivery" [1] that is the delivery of goods just after the production of the goods. More crucially, in the post COVID time, e-commerce is not only a luxury rather it has become a part and parcel of our daily lives. In spite of this, it is true that as e-commerce expands, so does online fraud like dissimilarities between exhibited products virtually and supplied product actually, shortage of speedy and effective return policy in case of cancellation of any order, dishonesty of the buyer and seller and so on. In this manner, consumer rights are blatantly and severely abused in e-commerce. In addition, enticing e-consumers with deceptive internet marketing is another method used to deceive them, where the application of the doctrine of Caveat Emptor is contested. E-commerce combines with the internet, emails, websites, and other services to enhance worldwide market opportunities. The government and business sectors are working together to dramatically enhance Bangladesh's economic productivity in commodities and services [2]. The rapid growth of e-commerce has led to the emergence of a new category of consumers known as "e-consumers." The number of these new buyers has increased over time as internet shopping has become increasingly popular and reflective of modern lifestyles [3]. Yet, the distance and complexity of internet shopping have generated a number of new consumer protection issues and challenges. Business-to-business or business-to-consumer e-commerce poses a number of serious threats to consumer and merchant protection, including invasions of privacy, infringements of intellectual property rights, online piracy, unsolicited commercial electronic advertisements, spamming, restrictions on free speech, censorship, and other fraudulent activities [4]. In addition, Amasah et al. explain that Caveat Emptor was universally applicable since marketplaces were open and buyers had enough opportunity to inspect and evaluate items for quality and suitability for the purpose for which they were purchased [5]. Recent developments in sale of goods contracts, in which goods are packaged, sealed, and in the possession of the producer or seller, and even sent to a buyer without the buyer having the opportunity to inspect the goods in person, necessitated the protection of prospective buyers from purchasing unsuitable or defective goods. Moreover, consumers are affected by issues such as security, privacy, dispute resolution, and the sale of goods, among others [6]. As a result of the awareness that consumer protection laws are necessary for bridging the gap between merchants and consumers, consumer protection laws have begun to be established globally. The research aims to identify the issues of applying Caveat

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Emptor principle in e-commerce; to analyze the domestic laws regarding Caveat Emptor principle and e-consumer rights; to determine who is responsible for what in online transactions; to point out challenges of existing laws on interests of e-consumers; to explain prospective aspects of domestic laws to ensure rights of e-consumers. In reality, the article will focus on the application of the doctrine of 'Caveat Emptor' in the domestic laws of Bangladesh to defend the rights of e-consumers in the expansion of e-commerce in Bangladesh and the globe as a whole in order to cover the important themes of the study.

Methodology: This study's methodology is based on doctrinal or pure legal research, and as such, it is a content-analysis-based study designed to examine the Caveat Emptor doctrine and e-commerce consumer contracts for the sale of commodities. The doctrinal legal research methodology requires, among other things, a careful study and comparison of multiple texts in order to discover ambiguity, disclose conflicts between laws and principles, identify disparities, and apply legal analysis. The analysis consists of law book principles and legislation deduced from judicial decisions. It also includes the analysis of materials from both primary and secondary sources in law to obtain information on the sale of merchantable quality goods in face-to-face and electronic contracts based on textbooks, journal articles, and other relevant online sources. The article examines the domestic laws of Bangladesh governing e-commerce and the application of the caveat emptor principle, focusing on the rights and responsibilities of parties engaged in e-commerce consumer contracts for the sale of goods. The legal problem of e-commerce consumer contract privacy is investigated by analysing all applicable laws controlling e-commerce consumer contracts for the sale of commodities. According to Salter and Mason, law, as a distinct and autonomous discipline, has its own legal analysis [7]. This article's doctrinal explanation and commentary provide authoritative claims regarding the meaning and scope of substantive legal tests and requirements applicable to the topics under consideration. Chatterjee states that content analysis was utilised to review and analyse the rules governing e-commerce consumer contracts for the sale of commodities [8]. Studying the qualitative element of e-commerce consumer contracts for the sale of goods was accomplished through content analysis by determining the characteristics of the applicable legislation. This work is descriptive, explanatory, analytic, and critical. In addition, an explanatory technique was used to define e-commerce consumer contracts for the sale of products, and the significance of contract privacy in identifying the rights and responsibilities of the parties involved in e-commerce consumer contracts for the sale of goods was investigated. The study also employs a critical analysis approach to form judgments and create opinions regarding the shortcomings and drawbacks of the rules governing rational e-commerce consumer contracts for the sale of products. To establish a result that achieves the objective of implementing the caveat emptor principle and preserving the rights of e-consumers in e-commerce during contracts for the sale of products, analytical and critical methods were also employed.

Background of the Growth of Online Business: The late-twentieth-century advances led in the emergence of e-commerce, which changed the sphere of trade and business [9]. According to Mieczkowska et al., the Internet has quickly emerged as a vital instrument for information dissemination. The way businesses communicate, share information with business partners, and buy and sell has all altered as a result [10]. Information and communication technology enable firms to complete their commercial activity as quickly as feasible [11]. This is due to the fact that, in a free market, the internet store's influence is far higher than the breadth of transactions made with physical stores [12]. Safdar et al. narrates e-Commerce has become an important part of our modern culture. This electronic medium has a strong influence on consumers. People can now obtain what they need without even leaving their offices or homes [13].

Both business-to-business (B2B) and business-to-consumer (B2C) modes of online buying provided everyone with the opportunity to expand their market share [14]. The numerous studies and surveys conducted by numerous sources, have demonstrated that the growth of e-commerce through the Internet's medium is a genuine global phenomenon rather than merely a temporary fad [15]. Resnick et al. describes that Internet marketplaces have had to develop a replacement for conventional seller reputations [16]. Wright and Blackburn investigate that it's interesting to note that under COVID-19 conditions; studies from throughout the world have seen some shifts in customer behavior. These findings suggested that people had started buying online at stores with their own websites, or making purchases from the comfort of their homes. These studies also discovered that 80% of consumers thought their society had changed as a result of COVID-19 due to the link between this pandemic and the areas where they lived [17].

The globe was required to adopt the e-commerce platform in the context of the online retailers due to the changes that have occurred since the corona virus (COVID-19) spread over the world [18]. Puttaiah et al. indicates that the studies mentioned above also made the assumption that the impact of COVID-19 on consumer behavior related to online buying will persist in the future [19]. E-commerce has grown to be a crucial aspect in determining whether a firm will survive or succeed in the future. Ecommerce is the foundation for a brand-new manner of conducting business and getting an edge over competitors in the customer-age [20]. In today's economy of borderless trade, clients face several challenges when entering into consumer contracts for the sale of goods in online [6]. In the language of Baron, a variety of incentive issues were present while trading among distant, anonymous, and one-time traders. Additionally, it gave room for fraud and other illicit conduct [21]. This is because electronic visuals can occasionally differ from physical appearances when individuals buy products based on electronic photographs. Consumers make online purchase selections based on the little information that is directly available to them, as well

as knowledge drawn exclusively from signals [22]. As because electronic transactions cannot be witnessed or touched, before entering into any transaction, the buyer must follow the caveat emptor principle and be fully informed [23].

As with traditional businesses, the main negatives of advertising in e-commerce are deceptive and inaccurate advertisements that lead the consumers to be deprived of their rights to apply the doctrine [24]. Malaysia generally conforms to the British "Caveat Emptor" (buyer beware) maxim. This suggests that parties are free to transact business under terms acceptable to both. The parties are deemed competent and able to protect their respective interests [25].

Since consumers and corporate actors in online transactions do not physically interact, trust systems become crucial components of every online transaction and are extremely susceptible to fraud [26]. Consumers will continue to rely on internet purchasing even after the epidemic since it has become the new norm in consumer transactions. This is advantageous since people may buy products from around the globe [27]. This remarkable development has given rise to a number of new issues and challenges in terms of the legal protection of consumers, including payment security, data privacy, e-contract validity and enforceability, inadequate information disclosure, product quality, and rights enforcement [3]. The protection of consumers from hazards to their health and safety, according to Rizzi, includes urging governments to adopt or encourage the adoption of appropriate measures such as legal systems, safety regulations, national or international standards, voluntary standards, and the maintenance of safety records to ensure that products are safe for intended or normally feasible use [28].

Caveat Emptor Principle under the Sale of Goods Act, 1930: Under the Sale of Goods Act, the Caveat Emptor principle stipulates that the purchaser is responsible for assessing the risks involved in a transaction. This does not, however, exonerate the vendor of all obligations. When making an online purchase, the buyer is protected by implicit warranties of fitness and quality as well as by the caveat emptor. Therefore, this caveat emptor rule will not be applied when the buyer first makes the seller aware of the specific goal, either explicitly or implicitly, and then the buyer truly depends on the seller's expertise and judgment. When purchasing items in transactions, the caveat emptor doctrine places limitations on the buyer. As a result, the buyer is required to assume all business transaction risks, excluding implied conditions and warranties. It is the customer's responsibility to use caution when purchasing items that fulfill his needs, and absent a buyer's question, the seller is not compelled to disclose any defects in the goods of which he is aware [29]. This concept parallels the English doctrine of Caveat Emptor. The Caveat Emptor business theory asserts that in the absence of a warranty, the consumer takes all risk. According to the notion, the buyer could not receive a refund from the seller for defects in the property that deemed it unfit for normal usage. So, customers should exercise extra caution when purchasing a product without a guarantee.

As per section 16 of the Sale of Goods Act of 1930, "no implicit warranty or condition as to the quality or appropriateness for any specific use of goods given under such a contract of sale" is defined. Section 16 (1), (2), and (3) of the Act provides the following exceptions to this principle: if the vendor misrepresents and the customer relies on it; if the vendor makes a fraudulent representation and the customer relies on it. When products are purchased by sample and description, but the bulk does not match either sample or description; when the customer informs the seller of the reason he wants the items and relies on the seller's abilities and judgment, but the items delivered are unsuitable for the intended use; when the vendor deviates from an implicit condition or warranty of quality and fitness attached by trade use. In addition, the Contract Act of 1872 provides compensation for loss or damage caused by breach of contract. The Act also assures remedies when a party to a contract commits fraud or deception.

Consumer rights have grown in importance as a means of defending the interests of all customers. Previously, the "Caveat Emptor" concept tended to free the seller from accountability.

However, another rival globally recognized idea known as "Caveat Venditor" has arisen over the decades, which means "Let the Seller Beware" [30], as it is difficult for the customer to inspect the items every time before purchasing. If the vendor modifies the interior materials, the product will no longer be the same, and the consumer will be deceived and abused into not receiving the promised good. So the concept of Caveat Venditor is extremely obvious in the sense that the seller must always be aware and bear responsibility. Having said that, many Acts are indicating about the application of "Doctrine of Caveat Emptor" in business purpose. But in reality, while dealing in online business, when the goods is in the absolute possession of the seller and the buyer has to confirm the contract before examining the goods physically, we have to rethink over the doctrine to be applied in online business. Though "Caveat Emptor" principle is an established principle in the field of business but while thinking of legal framework for online business, we have to consider the fact of applicability of this doctrine so that consumer's rights can be upheld.

Consumer Rights in E-commerce: Online shopping is already rather widespread in Bangladesh, and its popularity is expanding daily. The size of Bangladesh's e-commerce business is anticipated to reach roughly \$3 billion by 2023, which is a very optimistic estimate [31]. Consumer protection legislation promotes consumer choice, guards against exploitation, codifies substantive norms, and establishes processes for resolving disputes when things go wrong [32].

In Bangladesh, online shopping was launched in the late 1990s. E-commerce made purposeful improvement from 2000 to 2008. There were a few websites, but there was no online transaction system, which is the prerequisite for online commerce. The real change occurred in 2009, when the Bangladesh Bank permitted internet payments. Thus, the E-commerce industry was formally established. It is noteworthy that 2013 marked a turning point in the history of e-commerce in Bangladesh. Supported by the ICT Business Promotion Council, the Bangladesh Association of Software and Information Services (BASIS) and Bangladesh Bank together observed "E-Commerce Week" for the first time in the country [33]. The ability to meet basic requirements is the most significant consumer right from the perspective of the developing world, and it should be included in the UN Guidelines for Consumer Protection, per a recommendation made at the IOCU 1985 Bangkok Conference [34]. The remaining consumer rights, which are now recognized on a global scale, are the rights to safety, information, complaint, representation, right to fair pricing and choice, right to compensation, right to consumer education, and right to a healthy environment. The specific constitutional clause in Article 18 of the Constitution that allowed for consumer protection laws in Bangladesh is as follows: 'The state must prioritize raising the standard of nutrition and enhancing public health, and it must take specific action to stop people from consuming alcohol, other intoxicating beverages, and drugs that are harmful to their health unless they are doing so for medical reasons or other legal requirements.' In addition, it can be derived from Article 15 of the Constitution, which states that the state must provide for basic requirements, that the state must also provide education, including consumer education. In this aspect, what is concerning is that many consumers experience fraud when making purchases online; news of such ecommerce fraud has frequently reached the headlines in recent years, particularly since the COVID-19 epidemic [35]. The digital commerce sector in Bangladesh is expanding, with growth estimates ranging from 70 to 80 percent during the epidemic, and with over 2,500 sites offering things online targeting Bangladesh, not including traditional establishments with an online facility. In addition, there are some other Acts that address consumer rights, such as the Pure Food Ordinance of 1959, whose objective is to ensure that only pure products are produced, distributed, and sold. It controls the production and distribution of some basic items used on a daily basis, including ghee, oil, and flour. Additionally, it forbids anyone who has infectious diseases like leprosy and tuberculosis, as well as any other illnesses that the government may occasionally notify people about, from helping to prepare, sell, or distribute food.

The Control of Essential Commodities Act of 1956: On September 19, 1956, this law was passed by the Provincial Assembly of East Pakistan. It authorises the government to periodically declare some items to be needs, allowing it to regulate their production, distribution, preservation, usage, commerce, etc. In order to achieve this goal, the Act established the License and Permit system for specified goods in order to preserve their set pricing, maintain accurate records of the sale of essential commodities, and prohibit stockpiling of such goods.

The Bangladesh Drug Control Ordinance of 1982: The Ordinance authorises the government to regulate the manufacture, importation, sale, and distribution of medications. The Breast-Milk Substitute (Regulation of Marketing) Ordinance, 1984 provides that, any image of a baby or any other image or appeal that would persuade someone to purchase the substitute is expressly prohibited. Besides, the words "there is no substitute for breastfeeding" must now appear on the package of any substitution, according to the Ordinance. The penalty for violating this clause is two years' imprisonment or fine of taka 5,000 or both. Moreover, The Sale of Goods Act, 1930 states that the contract pertaining to the sale of products is governed by the provisions of the Act. Through this law, some issues with the internet commerce system can be lessened. This law allows the customer to reject a product if the vendor delivers any products in a lesser quantity than what he agreed to sell [sec.-37(1)]. The buyer may file a claim for damages for non-delivery even if the vendor unlawfully neglects or refuses to provide any merchandise [section 57]. If the seller breaches any warranty, the buyer may reject the goods or submit a claim for damages. However, if the seller breaches any condition, the buyer may reduce the price of the goods. Section-59 of the Act makes it possible to safeguard the rights of an online vendor. The vendor may bring a lawsuit to recover the amount and any associated damages if a customer refuses to accept delivery of the products and fails to pay the incorrect price [Sections 56 and 57]. The provisions of the Contract Act of 1872 are also relevant for contracts between the buyer and seller as an integral component of the online purchasing system. These online contracts will be governed by the regular terms and conditions of a contract, but with additional complications.

The Penal Code of 1860, one of the nation's oldest statutes, has provisions protecting the buyer's rights that can be invoked in circumstances of online buying anomalies. Buyers can seek redress for infractions of weights and measures under this law. This act can be used to enforce penalties for tainted food, beverages, medications, and cosmetics. Any seller who adulterates a food or drink item in order to sell it, or who sells, offers, or exposes any product that has been rendered or has become noxious or unfit for human consumption, or who adulterates a drug or medical preparation in order to sell it, will be punished with the death penalty, life in prison, or 14 years of solitary confinement. The Bangladesh Standard and Testing Institution Ordinance, 1985 enacted that an institution for standardisation, testing, metrology, quality control, grading, and marketing of goods may be established in accordance with the BSTI Ordinance. The Bangladesh Standard and Testing Institution Act, 1986 was enacted to deal with the matters related to or incidental to the creation of standards of weights and measures based on the metric system and units of measurement.

The Trade Mark Act, 2009: Sections 71-78 aim to stop some unfair business practices involving trademarks that have a propensity to mislead consumers. These sections provide for remedies for misrepresenting trademarks, selling and utilizing fraudulent trade names, and fabricating and falsely applying for trademarks. The Consumer Protection Act (CRPA), 2009

safeguards consumer rights and prohibits conduct that could be damaging to their interests. The Act largely covers the obligations of "economic operators" and product safety. It mandates that governmental agencies punish economic players who violate consumer rights and interests. The CRPA, 2009 additionally specifies extensive protocols that inspection agencies must follow to ensure the quality and safety of products (goods and services). Information and Communication Technology Act (ICT), 2006 was enacted to serve as the legal framework for online transactions in Bangladesh and to create a sophisticated e-government network that fosters the growth of e-commerce. The ICT Act also recognizes digital signatures and online contracts and offers dispute resolution procedures. The 2013 amendment to the Act added provisions for penalties such as jail time and/or fines for online offences. Adoption of the Act has had a significant influence on Bangladeshi firms and users of mobile and electronic commerce. The Digital Security Act of 2018 includes provisions for the establishment of a digital security agency and penalties for computer-related fraud and forgery. All the above-mentioned Acts talk about the rights of consumers. But all these Acts mostly covers the offline business. As the nature of the contract in online business is virtual, so The Contract Act, 1872 does not cover the contracts, as in Bangladesh, prior to making a transaction when buying online, the buyer and seller enter into an agreement. However, the agreement is just of a virtual kind. This online manner of contract formation is specifically nowhere present in the Contract Act, 1872. And all other Acts are also lacking the motion of online business and seem to be ineffective to deal with the issue. Though the Acts are in some extent leave a way to remedy for e-consumers but never can be thought as a complete or effective option for the solutions to the problems of the online business in Bangladesh. Whereas Japan, China, Indonesia, Malaysia and many other neighboring countries have already enacted necessary regulations considering the importance of e-commerce in upcoming days [46]. And they already started to grasp the fruits of their intelligent initiative in time where Bangladesh is still far behind in this regard.

Findings of the Study:

- a) Current laws do not address the most recent problems regarding E-consumers rights. Besides, online shoppers' obligations and consumers' rights are not sufficiently met,
- b) Consumer rights are being abused as a result of systemic corruption in law enforcement machinery, lengthy formal legal processes in courts, malpractices by dishonest dealers, media, and so on.
- c) Lack of enough national policy, specific e-commerce development strategies, financial stability, expensive and sluggish internet, delivery methods, operational infrastructure, cooperation, and a manpower deficit,
- d) Lack of speedy and effective return policy in case of cancellation of any order if payment is made in advance which is the biggest barrier to the consumer rights.
- e) Not having quick delivery system as transport management is not strong enough,
- f) Despite having reliance on e-commerce by most of the people of the world, there are substantial part of customers are dissatisfied with the online services,
- g) Lack of greater safety mechanisms in online transactions for both the buyer and the vendor,
- h) Fraudulent tendency of the sellers showing inconsistency between advertised products and reality in online marketing,
- i) Reluctance to integrate banking services in the e-commerce industry, absence of any incentive package for e-commerce sector development.
- j) Due to the complexity of interconnected legislation and actions by numerous parties, consumer protection in consumer contracts for the sale of goods in e-commerce is modest and limited.

Suggestions of the study:

- a) The government must adopt stringent regulations for opening an internet store. No one should be permitted to conduct business without a valid business license; this should be ensured through the use of the Caveat Emptor and Caveat Vendor principles in the contracts of Sale of Goods, especially in e-commerce.
- b) The legislation governing internet commerce must specify the delivery timeframe for products and services.
- c) In order to preserve E-consumer Rights, the product or service must be completely and clearly described, including its features, terms for product returns and exchanges, delivery timetables, etc.
- d) Customers must be notified beforehand if the e-commerce platform employs any particular software or cookies.
- e) Government should provide consumers more power by establishing alternate channels through which they can be compensated for not receiving what was promised.
- f) Companies should strengthen their return policies because many don't have any safeguards in place in the event that a product is harmed or falls short of the claimed level of quality.
- g) For the expansion of ecommerce services, the government must concentrate on regions outside of the capital of Dhaka.
- h) Security and trust are also crucial in order to establish a welcoming atmosphere for online enterprises and the stakeholders should be well informed about the dispute resolution process.

Conclusion: A secure and pleasant business environment is essential for the success of online commerce. Expanding number of digital transactions need greater safety for both the buyer and the vendor. With the rise in online transactions, challenges in the online market sector increasingly become a worry. The only way to guarantee this is to educate the customer on his or her rights

in relation to the issue. In addition, for a successful business climate, it is essential that the government vigorously enforce the Competition Act, prohibiting giant firms from driving out small businesses with lower prices. Approximately at the same time, Bangladesh is anticipated to transition from a least developed to a middle-income country. However, solid historical evidence demonstrates that when consumers' discretionary income is greater, they spend more on apparel, food, and commodities. Hence, ensuring mutual trust can be one of the best options for e-commerce. But in the present time, it is not practical to depend on emotional and ethical principles rather than legal norms and regulations. In other way, these regulations must ensure the both way safety, seller and buyer, in online business. In essence, the perfect reflection of doctrine of Caveat Emptor and Caveat Vendoritor has become a significant concern for ensuring rights and interests of E-consumers in online transactions.

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