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# DOCTRINE OF CAVEAT EMPTOR IN THE AGE OF ONLINE MARKETPLACE

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## ABSTRACT

*The traditional common-law principle of caveat emptor, the idea that buyers should be cautious when making purchases, relies on the buyer's personal ability to inspect the item being purchased. This has currently become impractical due to the growth of the practice of online shopping. This paper discusses the rapidly changing legal environment for online sellers and buyers. It focuses on the rapid rise of global online marketplaces, which have changed the seller's responsibility towards the buyer.*

*Additionally, this paper discusses the Consumer Protection Act, 2019, and the E-Commerce Rules, 2020, and how they redefine due diligence, especially in terms of third-party delivery services and algorithmic ranking systems. By reviewing relevant court cases and case studies, including the landmark case of Amazon Seller Services v. Amway India, this study identifies a growing duty of care obligation of intermediaries that extends beyond classic contractual obligations.*

# CHAPTER I: INTRODUCTION

## 1.1 BACKGROUND: THE HISTORICAL TRANSITION FROM THE BAZAAR TO THE BROWSER

The doctrine of caveat emptor, which typically means "let the buyer beware", has long served as a foundational principle of contract and sale of goods[1] law. The doctrine historically assumed physical inspection as the primary safeguard for purchases made by the buyer. In early common law, courts have consistently stated that the responsibility of ensuring that you are doing due diligence was placed upon the buyer, except for the limited circumstances where fraud or misrepresentation existed.

However, the digital landscape of commerce has changed drastically from the way traditional commerce used to function.[2] This has profoundly changed how buyers and sellers provide information to one another when commerce is associated with.

Thus, the reason for the caveat emptor or 'buyer beware' concept, namely, the buyer's ability to inspect the product, is not applicable in the same way as it once was. Rather, in the current era, buyers are forced to rely on the accuracy and completeness of all disclosures in view of the product that digital retailers provide.[3] Therefore, if courts continue to hold consumers primarily responsible for acting on the premise of caveat emptor without some type of change or enhancement to the precept, consumers would be unduly burdened by contemporary standards of the existing commercial practice.

## 1.2 RESEARCH OBJECTIVES

The following are the research objectives of this paper:

- This paper will examine the legal shift from the traditional caveat emptor standard to modern approaches that evaluate whether an online buyer relied on the seller's expertise.

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[1] The Sale of Goods Act, 1930, § 16, No. 3, Acts of Parliament, 1930 (India)

[2] Org. for Econ. Coop. & Dev. [OECD], Consumer Protection in E-commerce: OECD Recommendation, OECD/LEGAL/0422 (Mar. 24, 2016).

[3] Christoph Busch, *Self-Regulation and Regulatory Intermediation in the Platform Economy*, in *The Oxford Handbook of Online Intermediary Liability* (Giancarlo Frosio ed., 2020).

- Identifying whether, under either a "Marketplace Model" or an "Inventory Model," an intermediary (such as an online platform) should be held liable for defective goods sold by another seller.
- Whether the existing e-commerce rules effectively protect consumers against uninspected goods and misleading online marketing.

## 1.3 RESEARCH QUESTIONS

1. How has the shift from "physical inspection" to "digital representation" necessitated a statutory re-interpretation of "implied conditions as to quality" under Section 16 of The Sale of Goods Act?
2. At what point does an online marketplace transition from a "neutral intermediary" to a "seller" for the purposes of liability when third-party transactions fail?
3. Does the presence of user-generated reviews discharge a seller's liability under *caveat emptor*, or does review manipulation constitute a new form of information asymmetry?

## 1.4 RESEARCH METHODOLOGY

This paper adopts doctrinal and analytical legal research methods to evaluate how the traditional rule of *caveat emptor* is changing in the digital marketplace. To trace this shift, the study examines statutory provisions, judicial precedents, academic literature, and comparative legal frameworks.

The primary sources of analysis consist of core Indian legislation, specifically the Sale of Goods Act, 1930; the Consumer Protection Act, 2019; the Consumer Protection (E-Commerce) Rules, 2020; and relevant intermediary liability frameworks.

Beyond formal law, the research examines the practical digital environment. It evaluates how algorithmic sorting, deceptive dark patterns, and virtual product displays disrupt consumer autonomy, showing why traditional legal definitions of "buyer due diligence" must evolve to fit the modern marketplace.

## 1.5 SCOPE AND LIMITATIONS

This study explores how the traditional rule of caveat emptor applies to India's digital marketplace. The legal boundary of this research is strictly confined to Indian commercial and consumer laws, focusing primarily on the Sale of Goods Act, 1930, the Consumer Protection Act, 2019, and the Consumer Protection (E-Commerce) Rules, 2020. Specifically, this paper focuses on:

- **Digital Listings:** The legal consequences of buying goods based purely on text descriptions and images.
- **Platform Responsibility:** How e-commerce sites are shifting from passive hosts into active market players.
- **Consumer Trust Tools:** The legal weight given to user reviews and algorithmic product rankings.
- **Interface Design:** How manipulative user interfaces (dark patterns) distort free consumer choice.

### Limitation

To keep the legal argument sharp, this paper does not delve into the technical backend of AI systems, data privacy laws, antitrust issues, or cross-border e-commerce taxation. Finally, this is a purely doctrinal and theoretical legal study. It focuses on analysing statutes and case law, meaning it does not include empirical data, consumer surveys, or statistical research

## CHAPTER II: THE JURISPRUDENTIAL EROSION OF *CAVEAT EMPTOR*

### 2.1 THE NORMATIVE SHIFT: FROM INDIVIDUALISM TO SOCIAL RESPONSIBILITY

The typical caveat emptor doctrine is rooted in Victorian individualism and is based on the premise that the government should not interfere with the private transactions of two rational parties. In early common law, such as in the case of *Chandelor v. Lopus*[4], the threshold of liability was established at the "opportunity to inspect", which means that once a buyer has had an opportunity to inspect, the standard of the product was the buyer's liability and the law took no further responsibility for these results.[5]

The 20th century has seen a general normative shift towards caveat venditor (let the seller beware). This shift was not a simple change in rules, but rather a movement in terms of the "commercial morality" of the courts. The judiciary has begun to acknowledge that in a very complicated economy, buyers are quite often the weaker of two parties. This judicial transition mirrors the broader duty-of-care expansion as recognised in the case of *Donoghue v. Stevenson*[6], where the law acknowledged that modern commercial relationships increasingly create a space where the consumer's dependency lies beyond the basic anticipated inspection.[7]

The shift to caveat venditor has resulted in the establishment of the "Reliance Theory", which states that if a buyer has relied upon the seller's expertise, then the seller has taken on a fiduciary-type responsibility to ensure that the goods are appropriate for its intended use[8]. In the case of a browser-based marketplace, there is no longer an option for reliance; it is a structural requirement.

### 2.2 STATUTORY DECONSTRUCTION: THE DILEMMA OF SECTION 16

While Section 16 of the Sale of Goods Act recognises the validity of the principle of caveat emptor, somewhere or the other the statutory exceptions to this principle under the same section effectively nullify its application.[9] In light of this exception, the clause on the

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[4] *Chandelor v Lopus* (1603) 79 ER 3.
[5] Walton H Hamilton, *'The Ancient Maxim Caveat Emptor'* (1931) 40(8) Yale Law Journal 1133.
[6] *Donoghue v Stevenson* [1932] AC 562.
[7] *Grant v Australian Knitting Mills Ltd* [1936] AC 85.
[8] PS Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford University Press 1979).
[9] Sir Dinshaw Fardunji Mulla, *Pollock & Mulla: The Sale of Goods Act* (10th edn, LexisNexis 2020).

requirement of merchantable quantity in section 16(2) has an option to provide a basis to examine cyber transactions as a new form of commerce. The gradual judicial expansion of the ambit of "implied conditions" in cases such as *Priest v. Last*[10] and *Jones v. Bright*[11] demonstrates that courts have historically imposed liability on situations where the buyer has reasonably relied upon seller expertise despite limited inspection opportunities.

Where merchantability was determined based on visual and physical examinations in the traditional market, in the case of an online transactional exchange, the determination of merchantability requires careful consideration of the description of the goods provided by the seller, which serves as the sole basis of consideration to the buyer.[12]

This creates a strange legal trap for online sellers. The more detailed information they provide to comply with listing rules, the higher their risk of liability if the actual product doesn't perfectly match every detail of that description. Therefore, the same tools that enhance a seller's ability to sell goods online through detailed descriptions and high-quality images, respectively, deprive him of the benefit of the protection of the principle of caveat emptor[13].

## 2.3 THE DIGITAL DIVIDE IN TERMS OF INFORMATION AND THE ELIMINATION OF "PATENT DEFECTS"

The distinction between "latent" (hidden) and "patent" (obvious) defects is critical to the concept of caveat emptor's survival. Historically, sellers have only been able to rely on the doctrine to protect them from "patent defects." The digital marketplace, however, has created mechanisms such that all defects are effectively "latent." Because contract formation occurs the moment a buyer clicks "Buy Now," a massive timeline gap opens up: the contract is legally finalized, yet the physical product is only delivered days later. This structural separation completely denies the buyer any opportunity for a pre-purchase "reasonable inspection," turning even the most obvious physical flaws into hidden risks.[14]

In addition, the widening gap of "Information Asymmetry" in the use of AI-based platforms to curate the products presented to the consumer significantly impacts the buyers' interest in

[10] *Priest v Last* [1903] 2 KB 148.
[11] *Jones v Bright* (1829) 5 Bing 533, 130 ER 1167.
[12] Sale of Goods Act 1930, s 15.
[13] *Beale v Taylor* [1967] 1 WLR 1193.
[14] Brian Craig, *Online Business and E-Commerce Law* (Pearson 2013).

purchasing a product.[15] Accordingly, the law cannot impose a "caveat emptor" standard on sellers when the sellers control the entire visual and informational environment associated with a particular sale.[16]

Finally, the digital market is not just an assault on the principle of caveat emptor; rather, it messes with the primary context in which the rule operates. With algorithms determining what a purchaser views and a "buy now" button sealing the deal days before delivery, there is no difference whatsoever between visible and invisible flaws under the law. By design, it is impossible to give purchasers the chance to examine the goods in the digital ecosystem, resulting in a permanent judicial shift away from Victorian individualism towards strict liability for the seller.

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[15] George A Akerlof, 'The Market for "Lemons": Quality Uncertainty and the Market Mechanism' (1970) 84(3) Quarterly Journal of Economics 488.

[16] *Christian Louboutin SAS v Nakul Bajaj* (2018) 253 DLT 728.

## CHAPTER III: THE DIGITAL FACADE: REDEFINING "REASONABLE DILIGENCE"

### 3.1. THE ONTOLOGICAL SHIFT: FROM TANGIBLE INSPECTION TO SYMBOLIC REPRESENTATION

The "opportunity to inspect" is the core component of the caveat emptor doctrine[17]. In traditional buyer/seller commerce, both parties were physically present in the same geographical location at the time of the transaction. On the other hand, in e-commerce transactions, there is a separation of contract formation from physical closeness.

In a browser-mediated market, the physical res is substituted with its digital equivalent known as the "symbolic representation" consisting of words, static images or even three-dimensional representations. It should be noted that the digital portrayal of goods cannot be equated to the goods themselves[18]; instead, it is merely a call to action or an invitation to negotiate. This means that since there is no physical closeness, the traditional distinction between "patent" and "latent" defects is practically useless.[19]

In the event that the defect cannot be captured digitally or it is actively concealed using digital manipulation, a patent defect will become latent to the buyer. Indeed, the reasonable person in the digital space will effectively be blindfolded by the way the website is structured. Where physical due diligence is impossible due to the medium, there has to be a shift in the legal requirement[20], as the concept of caveat emptor is nullified here.

### 3.2 CHOICE ARCHITECTURE: THE SYSTEMATIC SABOTAGE OF BUYER WARYNESS

The evaluation of the applicability of the caveat emptor principle in the digital age has necessitated an analysis of the behavioural psychology behind the digital ecosystem. The traditional doctrine relies on the legal fiction of a rational consumer making informed choices. In today's digital marketplaces, dark patterns undermine the assumption and force the consumer into taking hasty and impulsive decisions[21]. Further, artificial scarcity timers (e.g.,

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[17] *Ward v Hobbs* (1878) 4 App Cas 13 (HL).
[18] *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256.
[19] *Grant v Australian Knitting Mills Ltd* [1936] AC 85.
[20] Sale of Goods Act 1930, s 15; *Beale v Taylor* [1967] 1 WLR 1193.
[21] Gray, Colin & Kou, Yubo & Battles, Bryan & Hoggatt, Joseph & Toombs, Austin. (2018). *The Dark (Patterns) Side of UX Design*. 10.1145/3173574.3174108.

"Deal expires in 2:00") and "Confirm-shaming" tactics are only marketing tools, they are in fact "Choice Architecture" that causes consumers to make impulse purchases.[22]

The abuse of choice by using behavioural techniques has attracted regulatory attention, as seen through the Digital Services Act under the EU, recognising that manipulation of choice architecture undermines the validity of consent provided by the consumer[23].

From a jurisprudence perspective, when a company uses behavioural science to undermine the capacity of the buyer to be cautious, they must not use any defences of failing to inspect the product as a means to absolve themselves of liability.[24]

### 3.3. THE "DILIGENCE PARADOX": THE USE OF SOCIAL PROOF AS A SUBSTITUTE FOR DUE DILIGENCE

In the absence of a way to physically examine an item, courts and consumers have resorted to "consumer-generated reviews" as a replacement for due diligence. This has created a new and dangerous "Diligence Paradox." In a general legal aspect, a review is considered to be a "hearsay" and is therefore not admissible as evidence in a court of law.[25]

Although consumer reviews increasingly function as substitutes for physical inspection in online marketplaces, such reviews possess uncertain evidentiary reliability due to anonymity, review manipulation, and the absence of legally enforceable guarantees.[26] In addition, there is little or no warranty associated with a review, and reviews have a major possibility of being subjected to "review farming" or other forms of automated manipulation.[27]

The acceptance of "checking a star rating" as a way to perform due diligence creates a new form of asymmetry in terms of the information available to a buyer. Thus, "social proof" cannot substitute for actual due diligence, and the reliance on filtered experiences of anonymous third parties does not create the same level of duty to believe as would an opportunity for inspection pursuant to the buyer's duty to act with care.[28]

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[22] Richard H Thaler and Cass R Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Yale University Press 2008).
[23] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services (Digital Services Act) [2022] OJ L277/1. (Specifically Art. 25 regarding dark patterns).
[24] Ryan Calo, 'Digital Market Manipulation' (2014) 82(4) *George Washington Law Review* 995.
[25] Indian Evidence Act 1872, s 60.
[26] *Amazon Seller Services Pvt Ltd v Amway India Enterprises Pvt Ltd* (2020) 267 DLT 228.
[27] Consumer Protection (E-Commerce) Rules 2020, Rule 4(11).
[28] *Christian Louboutin SAS v Nakul Bajaj* (2018) 253 DLT 728.

## CHAPTER IV: THE LIABILITY FRONTIER: DECONSTRUCTING THE INTERMEDIARY ATTRIBUTE

### 4.1. BEYOND SAFE HARBOUR: THE MYTH OF THE NEUTRAL CONDUIT

Online marketplaces have been able to escape the consequences of caveat emptor for many years by using "Safe Harbour" provisions[29] and calling themselves "just a conduit" to the third-party seller. This subchapter questions that argument of neutrality. When a marketplace controls all elements of the transaction, such as the search algorithm, the processing of payment, and the issuance of "Trusted Store" badges, it should not be able to take a stance as a neutral intermediary. As recognised in *Christian Louboutin SAS v. Nakul Bajaj*[30] intermediary immunity weakens once a platform actively participates in listing optimisation, branding, or consumer assurance; consequently, modern marketplaces cannot always claim neutrality.[31]

Another important concept in this regard is that of the Doctrine of Apparent Authority[32]. If Amazon brands the package and delivers it, a reasonable consumer would consider Amazon, not the hidden third-party seller, the seller. Therefore, legal enforcement must catch up to the reality that these platforms are "Constructive Sellers" and cannot forgo the duty of care that they have effectively invited.[33]

### 4.2 THE MARKETPLACE VS. INVENTORY MODEL: A FALSE DICHOTOMY?

Current case laws in emerging economies are predominantly based on the distinction between a "Marketplace Model", where the marketplace is simply a host to the transaction, versus an "Inventory Model"[34] where the marketplace actually owns the item being sold. However, from a consumer's perspective, this distinction is functionally irrelevant since the information asymmetry is the same no matter which type of model the marketplace uses to fulfil their obligations to the parties involved in the transaction.

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[29] Information Technology Act 2000, s 79.
[30] *Christian Louboutin SAS v Nakul Bajaj* (2018) 253 DLT 728.
[31] *Kashish Jain v UrbanClap Technologies Pvt Ltd* (2020) 267 DLT 124
[32] *Restatement (Third) of Agency* (2006) § 2.03; see also *Loonam v Amazon.com, Inc* (2020) 191 AD 3d 501 (NY App Div)
[33] *Grant v Australian Knitting Mills Ltd* [1936] AC 85
[34] Consumer Protection (E-Commerce) Rules 2020, Rule 3(1)(f) and 3(1)(g).

The interaction between marketplace control and legal immunity remains a highly contested area of e-commerce law. Comparative decisions, such as the US case *Oberdorf v. Amazon.com Inc.*[35], suggest that when platforms exercise more than nominal control over listings, logistics, and consumer trust mechanisms, they assume responsibilities other than those of a traditional seller, thereby losing their immunity under caveat emptor. However, the Indian judiciary has taken a more conservative approach. In *Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd.*[36], the Division Bench of the Delhi High Court clarified that providing logistical support, payment processing, and warehousing does not automatically strip a platform of its safe-harbour protections as a passive intermediary.

Contrary to this precedent, a distinction between a passive host and an active participant is necessary in the current commerce proceedings. An intermediary should logically lose its neutral status when it systematically engages in activities that dictate the transactional environment. These activities include algorithmically curating listings, controlling fulfilment networks, issuing platform guarantees that simulate seller credibility, manipulating visibility through proprietary search rankings, and influencing consumer choices through interface design. Once an e-commerce platform crosses these operational thresholds, it ceases to function as a mere passive conduit and acts instead as a constructive seller[37], making its continued reliance on *caveat emptor* legally indefensible.

[35] *Oberdorf v Amazon.com Inc* 930 F 3d 136 (3d Cir 2019).
[36] *Amazon Seller Services Pvt Ltd v Amway India Enterprises Pvt Ltd* (2020) 267 DLT 228.
[37] *Bolger v. Amazon.com, LLC, 53 Cal. App. 5th 431 (2020)*

## CHAPTER V: CRITICAL ANALYSIS AND CONCLUSION

### 5.1. THE FUNCTIONAL DECLINE OF CAVEAT EMPTOR IN DIGITAL COMMERCE

Originally, caveat emptor (or buyer beware) was based on a buyer's ability to inspect items before purchasing them. E-commerce has greatly reduced that original reliance by allowing consumers not to see or inspect a product physically but only to see an image, description and review of what the item would look like in a digital marketplace via seller, intermediary or algorithmic ranking systems.[38] Because of this, the burden of establishing the level of transactional risk that remains with buyers can no longer be solely on the buyer.[39]

Through examining the development of this doctrine, it is clear that the shift from being able to inspect a product physically to looking at a digitally represented version of it (i.e., symbolically) has resulted in a re-definition of what constitutes reasonable diligence; the differences between patent and latent defects have now become almost impossible to separate when buyers have very limited options for inspecting a good prior to its delivery.[40] The growing dependence on third-party ratings and reviews and the effects that algorithmic rankings produce further add to the informational asymmetry between buyers and sellers and diminish the viability of the buyer-beware principles of caveat emptor.[41]

Therefore, while caveat emptor is still formally recognised through Section 16 of the Sale of Goods Act, as it applies to the online marketplace, there are now many contemporary sources that restrict caveat emptor’s practical application, including the rise of consumer protections and disclosure obligations, and intermediary accountability.

### 5.2 CONCLUSION

Digital marketplaces are changing the way buyers and sellers interact, shifting more of the responsibility for ensuring transparency and reliability of products to intermediaries who control transactions. However, such a conflict is evident in Indian jurisprudence. While the

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[38] Brian Craig, *Online Business and E-Commerce Law* (Pearson 2013). (Supports the shift from physical to informational reliance).
[39] PS Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford University Press 1979).
[40] *Grant v Australian Knitting Mills Ltd* [1936] AC 85.
[41] George A Akerlof, 'The Market for "Lemons": Quality Uncertainty and the Market Mechanism' (1970) 84(3) Quarterly Journal of Economics 488.

single-judge bench judgment of *Christian Louboutin SAS v. Nakul Bajaj*[42] acknowledged the reality of the loss of neutrality due to pervasive platform control, the appellate judgments of the Division Bench in *Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd*.[43] have carefully sustained the safe harbours for marketplaces performing value-added logistical functions.

This paper argues that the erosion of caveat emptor in online commerce does not hinder marketplace innovation. On the contrary, it calls for the development of an appropriate regulatory regime capable of managing the informational asymmetry and manipulation inherent in the digital bazaar space.[44] As the role of the platform evolves in determining the products that will be made available, influencing the conduct of the consumers and managing the transactional infrastructure, so do its corresponding legal obligations.[45]

Ultimately, the law of commercial responsibility needs to reconcile the jurisprudential gap between the "bazaars" of the past and the "browsers" of the present.[46] Liability should necessarily follow system control. As the platform manages the transactional environment through algorithmic control, representation and consumer interaction, it cannot be said that it remains merely a passive intermediary.

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[42] *Christian Louboutin SAS v Nakul Bajaj* (2018) 253 DLT 728.
[43] *Amazon Seller Services Pvt Ltd v Amway India Enterprises Pvt Ltd* (2020) 267 DLT 228.
[44] Ryan Calo, *'Digital Market Manipulation*' (2014) 82(4) George Washington Law Review 995.
[45] Vasundhara Majithia, *'The Changing Landscape of Intermediary Liability for E-Commerce Platforms: Emergence of a New Regime*' (2021) 4(1) International Journal of Law Management & Humanities 1546.
[46] *Bolger v Amazon.com, LLC* (2020) 53 Cal App 5th 431 (Cal Ct App).