

Consumer Law: Problem Set 3

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Problem 9.1

Mass. Statute

- Mirrors FTC Act (§ 2(a))
- Incorporates FTC & federal court interpretations (§ 2(b) & (c))
- Private civil action (§ 9)

Unfair

- FTC Act (§ 45(n))
 - causes substantial injury
 - not reasonably avoidable by consumers
 - not outweighed by countervailing benefits
- Focus: Impact on ability to make informed choice

Deceptive

- FTC Policy Interpretation
 - representation, practice, or omission likely to mislead consumers
 - consumer interpretation is reasonable under circumstances
 - deception is material, i.e. likely to affect consumer decisions or behavior
- No balancing test (cf. unfair)

Problem 10.1

Warranties

- Uniform Commercial Code
 - Express Warranty (UCC § 2-313)
 - affirmation of fact or promise related to the goods
 - “fine as far as I know”?
 - Implied Warranties
 - Merchantability (UCC § 2-314)
 - Seller is merchant in goods of that kind
 - re-seller of used goods?
 - Implied representations include fitness for ordinary purpose
 - Fitness for Particular Purpose (UCC § 2-315)
 - Seller has reason to know
 - buyer’s particular purpose, and
 - buyer’s reliance on seller’s skill or judgment
 - Implied representation that goods are fit for buyer’s purpose
 - Exclusion or Modification (UCC § 2-316)
 - Effect of buyer’s examination

- Magnuson-Moss
 - If written warranty
 - Required disclosure of terms (§ 2302)
 - Revocation of implied warranties not allowed (§ 2308)

Remedies

- UCC
 - Revocation of acceptance (§ 2-608)
 - buyer must notify seller within reasonable time after discovery
 - Suit for damages (§ 2-714)
 - difference in value between non-conforming and conforming goods
 - incidental and consequential damages
 - cost of charger?
- Magnuson-Moss
 - Civil action (§ 2310(d))
 - State or federal court
 - Minimum amounts in controversy for federal court
 - Damages or equitable relief