

# Business Law

## Text & Exercises *6th Ed.*

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## Chapter 21: Warranties and Product Liability

# Learning Outcomes

- LO1** • State when express warranties arise in a sales or lease contract.
- LO2** • Identify the implied warranties that arise in a sales or lease contract.

# Learning Outcomes

- LO3** • Discuss negligence as the basis of product liability.
- LO4** • List the requirements of strict product liability.

# Warranties of Title

- **Good Title: valid and rightful.**
- **No Liens: encumbrance on a property to satisfy or protect a claim for payment of a debt.**
- **No Infringements: patents, trademarks, copyright.**
- **Disclaimer of Title Warranty: only be specific language**

# **Express Warranty**

- **Seller (or lessor) makes a written or oral promise, ancillary to an underlying sales or lease agreement, in which the promisor assures the quality, description, or performance potential of the goods.**



# When Do Express Warranties Arise?

- **When seller (or lessor) indicates:**
  1. That the goods conform to any affirmation or promise of fact that the seller or lessor makes to the buyer or lessee about the goods.
  2. That the goods conform to any description.
  3. That the goods conform to any sample or model.

# **Express Warranties: “Basis of the Bargain”**

- **The seller or lessor does not need to use words such as “warrant” or “guarantee.”**
- **The UCC only requires that the affirmation, promise, description, or sample must become part of the “basis of the bargain.”**
- **Statements of Opinion: value or worth of good, or “puffery” do not constitute warranties (unless EXPERT opinion).**

# Implied Warranties

- **Warranty the law implies based on either the situation of the parties, or the nature of the transaction.**



# Implied Warranties

- **Types of Implied Warranties:**
  - Implied Warranty of Merchantability.
  - Implied Warranty of Fitness for a Particular Purpose.
  - Course of Performance.
  - Usage of Trade.

# **Implied Warranty of Merchantability**

- **A presumed promise by a merchant seller or lessor of goods that the goods are “reasonably fit for the general purpose for which they are sold” or leased, are properly packaged and labeled, and are of proper quality.**

# **Implied Warranty of Fitness for a Particular Purpose**

- **Arises when any seller or lessor (merchant or nonmerchant):**
  - Knows the particular purpose for which a buyer or lessee will use the goods, and
  - Knows that the buyer or lessee is relying on the seller's skill and judgment to select suitable goods.

# Other Implied Warranties

- **UCC recognizes implied warranties can arise from course of dealing, performance, usage, or trade.**
- **In the absence of specific language to the contrary, courts will infer an “industry wide” implied warranties in a contract.**

# **Third Party Beneficiaries of Warranties**

- **Privity must exist between a plaintiff and a defendant to bring an action based on a contract, generally.**
- **The UCC provides for three alternatives.**
- **The law in each state depends on which alternative that state adopted.**

# Warranty Disclaimers

- **The manner in which a warranty can be qualified depends on the warranty.**
  - Express: unambiguous language.
  - Implied Warranties: “as is”, “with all faults.”
  - Buyer (or Lessee) Refusal to Inspect: no implied warranty as to defects that a reasonable exam would reveal.

# **Magnuson-Moss Warranty Act**

- **The Magnuson-Moss Warranty Act of 1975 was designed to prevent deception in warranties by making them easier to understand.**
- **Under the act, no seller or lessor is required to give an express written warranty for consumer goods.**

# Magnuson-Moss Warranty Act

- **The warrantor must use “readily understood language.”**
- **Full v limited.**
- **A full warranty requires free repair or replacement of any defective part.**
- **Refund or replacement.**
- **Full warranty typically has no time limit.**



# Product Liability

- **The legal liability of manufacturers and sellers to buyers, users, and sometimes bystanders for injuries or damages suffered because of defects in goods purchased.**

# Negligence

- **The failure to exercise the standard of care that a reasonable person would have exercised under similar circumstances.**
- **Because a failure to exercise reasonable care is negligence, a manufacturer must exercise “due care” to make a product safe.**



# Negligence and Product Liability

- **Manufacturer must exercise “due care” when:**
  - Designing the product,
  - Selecting the materials,
  - Using the appropriate production process,
  - Assembling and testing the product, and
  - Placing adequate warnings on the label informing the user of dangers of which an ordinary person might not be aware.

# Misrepresentation

- **Fraud can be basis of product liability when intentional misrepresentation is made to a user or consumer, and injury results from that misrepresentation.**
  - Examples: intentional mislabeling of packaged cosmetics, or the intentional concealment of a product's defects.

# Strict Liability

- **Liability without fault, regardless of intentions or exercise of reasonable care.**
- **To hold a manufacturer or seller strictly liable, the following requirements must be met:**
  1. The product must be in a defective condition when the defendant sells it.



# Strict Liability

2. The defendant normally must be engaged in the business of selling that product.
3. The product must be unreasonably dangerous to the user or consumer because of its defective condition (in most states).
4. The plaintiff must incur physical harm to self or property by use or consumption of the product.



# Strict Liability

5. The defective condition must be the proximate cause of the harm.
6. The goods must not have been substantially changed from the time the product was sold to the time the injury was sustained.

# **'Unreasonably Dangerous' Products**

- **A product is unreasonably dangerous when:**
  - It is dangerous beyond the expectation of the ordinary consumer, or
  - A less dangerous alternative is economically feasible but the manufacturer fails to use it.



# Product Defects: Three Types

1. Manufacturing Defects: product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product.



# Product Defects: Three Types

2. **Design Defects:** foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design, and the omission of that design renders the product unsafe.



# Product Defects: Three Types

3. Warning Defects: foreseeable risk of harm could have been reduced or avoided by the provision reasonable instructions or warnings, and their omission renders the product unsafe.



# Suppliers of Component Parts

- **Under the rule of strict liability in tort, the basis of liability includes suppliers of component parts.**

# Defenses to Product Liability

- **Assumption of Risk:** plaintiff voluntarily engaged in the risk while realizing the danger, appreciated the risk created by defect in the product, and undertaking the risk was unreasonable.
- **Product Misuse:** product used for unintended purpose.
- **Comparative Negligence.** →

# **Defense: Comparative Negligence**

- **A theory under which the liability for injuries resulting from negligent acts is shared by all persons who were guilty of negligence (including the injured party), on the basis of each person's proportionate carelessness.**