

Warranties

Commercial transactions class Lecture 3.02

Introduction

Setting

- A warranty is a seller's promise to a consumer concerning an important aspect of the goods.
- The term warranty applies to both **goods** and **title**
- When the seller makes a promise regarding the goods or a representation of fact about the goods, this is known as an express warranty
- If the seller has not made a specific promise or representation about the product, the buyer may still be protected by a UCC-imposed implied warranty

Objective

- In this lecture, we study the role of the **warranty** in commercial transactions. At the end of this lecture, you should be able to answer the following questions:
 1. What are express warranties?
 2. What is the implied warranty of title?
 3. What is the implied warranty of merchantability?
 4. What is the implied warranty of particular purpose?
 5. Do warranties apply to third parties?
 6. Can warranties be disclaimed?

Express warranties

The UCC governs the formation of express warranties

- Sellers often make verbal or written representations about the products they are selling.
- When the seller makes a promise regarding the goods or a representation of fact about the goods, this is known as an express warranty.

Express warranties arise when a seller indicates that the goods

- conform to any affirmation or promise of fact about the goods, or
- conform to any factual description of the goods made, or
- conform to any sample or model of the goods

Formal words are not necessary to the formation of an express warranty

- A reasonable buyer need only regard a representation as part of the basis of the bargain
- Under UCC 2-313, if the products do not possess the qualities described, the buyer may sue for breach of warranty.

Puffing can present a problem

- A seller's statement of opinion (puffing) is not an express warranty
- Puffery is a nonfactual statement commonly used in advertising with such claims as, "This car gets great gas mileage."
- Case discussion: *Pizza Hut, Inc. v. Papa John's International, Inc.*, 227 F.3d 489 (5th Cir. 2000)

Because of vagueness, subjective statements may not constitute express warranties

- Courts must distinguish between **puffing** and **warranty**
- The line between puffery and fraudulent misrepresentation is also unclear

Implied Warranties

Implied Warranty of Title and Noninfringement

- Every seller (merchant and nonmerchant) must guarantee to the buyer that the title to the goods are
 1. free and clear of any claims by others
 2. not subject to any security interest or lien, and
 3. free from infringement

Sellers warrant several things in the sale of goods

- Sellers warrant that they have good title to the goods they sell
- Sellers warrant that the goods are free of any liens
- Sellers warrant that goods will be delivered without encumbrances

Title warranties can be **disclaimed or modified** by specific language

- Any of the foregoing warranties can be disclaimed by specific language in a sales contract.

A lease contains a **warranty of quiet possession**

- The warranty of quiet possession means that the lessor has title to the goods while they are in the lessee's possession
- The lessee has a superior right to possess or use the goods during the lease term
- To disclaim warranties in a lease contract, the language must be specific, written, and conspicuous.

The implied warranty of **merchantability**

- The implied warranty of merchantability arises in a sale of goods by a merchant
- Under UCC Section 2-314, the implied warranty of merchantability applies to every sale of a product from a merchant seller to a buyer
- It requires the seller to warrant that the product is fit for its ordinary use.

The law defines goods that are merchantable

- The goods must at least:
 - be of average, fair, or medium-grade quality;
 - pass without objection in the trade or market for goods of the same description;
 - be adequately packaged and labeled as provided by the agreement;

- conform to promises or affirmations of fact made on the container or label
- Case discussion: *Birdsong v. Apple, Inc.*, 590 F.3d 955 (9th Cir. 2009)

There are other implied warranties

- The implied warranty of **fitness for a particular purpose** is a special form of warranty
- An implied warranty arises when a seller (merchant or nonmerchant) promises that the product is fit for a particular purpose.

For this warranty to exist, the buyer must prove that

- the seller knew of the buyer's desire to use the product in a specified way (not necessarily in its ordinary way) and
- the buyer relied on the seller's advice and recommendation.
- Goods can meet the test of merchantability but not be fit for a particular purpose

Sometimes warranties can protect third parties

The law has evolved to protect consumers

- The law has evolved to protect consumers and largely eliminate the privity of contract requirement.
- Under the privity of contract requirement, someone could only sue the party it contracted with

Extension of sellers' warranties

- Sellers' warranties may extend to the buyer's household members and guests
- Sellers' warranties may extend to any reasonable and foreseeable user
- Sellers' warranties may extend to anyone injured by the good

Liability under a warranty can be limited

It is difficult to disclaim a warranty

- The UCC allows a seller to avoid the risks associated with warranties and disclaim both implied and express warranties
- Courts view warranty disclaimers with **disfavor**
- There are federal and state statutes that make certain disclaimers unenforceable
- Although sellers may limit the remedies a buyer may seek in certain circumstances, it may not limit damages resulting from personal injury due to a defective product.

Nevertheless, implied warranty disclaimers are still possible

- The disclaimer must be **brought to the customer's attention at the time the contract is formed**
- Disclaimers must be conspicuous – capital letters, bold print, larger than rest of text
- Sellers may not disclaim express warranties.

Implied warranties can be disclaimed simply

- Courts have held that phrases such as "with all faults" or "as is" are sufficient to disclaim the implied warranties of fitness for a particular purpose and noninfringement

Sellers may limit the remedies a buyer may seek in certain circumstances

- It may not limit damages resulting from personal injury due to a defective product
- A merchantability disclaimer must mention merchantability
- It may be possible to disclaim an implied warranty of fitness for a particular purpose

Other factors may limit liability under a warranty

- A buyer's examination may limit the applicability of an implied warranty
- The parties can reduce the statute of limitations for a suit on warranty

Magnuson-Moss Warranty Act statutory warranty

The Magnuson-Moss Act regulates warranties given by a seller or lessor to a consumer

- A consumer is defined as one who purchases or leases a good with the intent of using it for personal reasons rather than for resale or use in a business
- A full warranty label must provide repair or replacement of products costing in excess of \$10 and include the term of duration
- A limited warranty is a warranty that covers less than a full warranty would

Magnuson-Moss Act provisions

- Although the Magnuson-Moss Act does not mandate that sellers provide warranties to consumers, if the seller or lessor does offer a written express warranty, the transaction is subject to the provisions of the statute
- Although the Magnuson-Moss Act does not create new implied warranties, it does give consumers the ability to bring cases in federal court for breach of warranties implied by state statutes
- Under the Magnuson-Moss Act written express warranties must be written conspicuously and in plain and clear language and may not disclaim implied warranties

Conclusion

What did we learn today?

- Warranties protect title to goods
- There are express, implied, and statutory warranties
- Liability under a warranty can be limited