

A seller and a purchaser signed a contract for the sale of a 60-year-old house. The contract required a warranty deed to be given at closing. The contract was silent regarding the condition of the house, and the purchaser did not ask. The purchaser received a warranty deed with all covenants of title at the closing and promptly recorded the deed. Approximately one month after the closing, the furnace in the house stopped working, the basement flooded, and the roof leaked so badly that the second floor could not be occupied. The seller, when told of the house's condition, was genuinely surprised.

There is no applicable statute.

The purchaser has sued the seller for damages. Will the purchaser likely be successful?

- A. No, because of the doctrine of merger.
- B. No, because the seller gave no warranty regarding the condition of the house.
- C. Yes, based on the covenants of title contained in the deed the purchaser received.
- D. Yes, because with a conveyance of residential real property, a warranty of fitness is implied.

## Explanation:

### Seller's duty to disclose

<b>Common law (minority) rule</b>	<b>Caveat emptor</b>	No duty to disclose property defects unless otherwise provided
<b>Modern (majority) rule</b>	<b>Commercial property</b>	
	<b>Residential property</b>	Must disclose known material defects that buyer could not reasonably discover
		Exception: "as is" clause or specific disclaimers without seller's fraud

The majority of jurisdictions have enacted statutes that require sellers of residential property to disclose any *known* material defects that cannot be reasonably discovered by the buyer. But since there is no applicable statute in this jurisdiction, the common-law rule of **caveat emptor** controls. This rule (meaning "let the buyer beware") provides that sellers have **no duty to disclose property defects to the buyer** unless otherwise agreed.

Here, the seller gave no warranties and the contract was silent as to the condition of the house, so the seller had no duty to disclose these defects to the buyer. Furthermore, the seller did not know about the defects in the house because she was "genuinely surprised" when she was told of the house's condition. So even if this jurisdiction had enacted a statute that followed the majority rule, the seller would not have breached any duty to disclose.

**(Choice A)** Under the doctrine of merger, all obligations as to *title* contained within the land-sale contract merge into the deed once it is delivered to and accepted by the buyer. This doctrine does not relate to issues having to do with the *physical condition* of the property.

**(Choice C)** The *covenants* in a warranty deed relate to the title of the property, not its physical condition.

**(Choice D)** A warranty of fitness or suitability\* is implied in almost all jurisdictions in a contract for the sale of a *newly* constructed residence, so it does not apply to the sale of this 60-year-old house.

\*This is also referred to as the implied warranty of quality, workmanlike construction, and habitability.

### Educational objective:

The common-law doctrine of caveat emptor provides that a seller has no duty to disclose property defects to the buyer unless otherwise agreed.

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