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A Teaching Note on Warranties

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Abstract
This article is the fourth in a series of Teaching Notes on topics in a traditional Legal Environment of Business course. The article discusses warranties from the perspectives of both the Uniform Commercial Code and the Magnuson-Moss Warranty Act. The article describes the three major consumer warranties (the express warranty, the warranty of merchantability, and the warranty of fitness), and offers explanatory comments on each. In addition, the article discusses warranty limitations and disclaimers. The article concludes with an in-depth look at both the dispute settlement mechanism under Magnuson-Moss and the nature of damages that can be awarded in cases of a breach of warranty provisions.

Keywords: Warranty, Express Warranty, Implied Warranty of Merchantability, Warranty of Fitness, Warranty Disclaimer, Magnuson-Moss, Punitive Damages

1. Definition of a Warranty

What is a warranty? According to Kenton (2022b), "A warranty is a type of guarantee that a manufacturer or similar party makes regarding the condition of its product. It also refers to the terms and situations in which repairs or exchanges will be made if the product does not function as originally described or intended."

Warranty actions may be preferable if a plaintiff suffers pure economic damage (especially if only the product itself is defective) and suffers no personal injury (Goodman, Peacock, & Rutan, 2019). Three aspects of warranties relate back to their early tort and contract roots:

(1) Warranties can arise as a matter of law (i.e., can be *implied*) regardless of whether the parties intended to create them (Coale & Lynn, 2022);
(2) Because of its contractual nature, parties may *disclaim* warranties under certain circumstances or limit the remedies available for breach (see Clifford, 1993);
(3) The plaintiff is required to give prompt *notice of breach* of warranty (see, e.g., Holdych, 2005, p. 241) to the seller. This requirement was referred to as a "booby trap for the unwary" by Justice Traynor in the case of *Greenman v. Yuba Power Products* (1963), which led to the creation of strict liability in tort.

2. Types of Warranties

Common law recognized three separate types of sales warranties: the express warranty, the implied warranty of merchantability, and the implied warranty of fitness for a particular purpose (Casper & Wegrzyn, 2019).

Warranties were codified first into the Uniform Sales Act (1906), which was adopted by 34 of the 48 states between 1906 and 1948, and later into Article 2 of the Uniform Commercial Code or UCC (2002) (see Whiteside, 1960), which all states have now adopted! A revision of Article 2 was suggested in 1999, but never was adopted (Murray & Flechtner, 1999).

In the development of the warranty aspects of the UCC, no case could have been more important than *Henningsen v. Bloomfield Motors* (1960), in which the court gave the victim of an automobile accident a remedy against the defendant-manufacturer even though she was not in *privity of contract* with the defendant-manufacturer (Goldberg, 2017; Shaheen & Smith, 2019). The *Henningsen* court also refused to enforce the disclaimer and remedy limitation in the "standard form" ("boilerplate") contract on the grounds that the limitation would be *unconscionable* under UCC Section 2-302. Stated Professor Owen (2007, p. 966-967): "Truly modern products liability law in America arose in the early 1960s, …, beginning with *Henningsen v. Bloomfield Motors*, in 1960, which allowed a non-purchaser injured in an accident caused by a defective car to sue the manufacturer in warranty despite two rock-solid contract law defenses: the absence of privity of contract and a contractual disclaimer that barred such claims."

The warranty provisions of Article 2 of the UCC apply only to the "sale of goods." Section 2-106(1), defines a sale as "the passing of title from the seller to the buyer for a price." Goods are defined (Section 2-105) as all "things movable and tangible…." Consequently, transactions in "goods" other than sales (such as leases and bailments) were not governed by the original Article 2 warranty provisions. That coverage was specifically added in the addendum to Article 2, relating to *bailments* (see Hochstadter-Dicker & Campo, 1999). Goodman, Peacock, and Rutan (2019, p. 25) note: "The UCC covers contracts related to the sale of goods, leasing of goods, and secured transactions, but it does not cover contracts for services, real estate contracts, or employment contract. Consequently, the UCC does not provide parties with a remedy when no privity of contract exists or when there is no sale of goods."

In addition to coverage under the Article 2 warranties provisions, liability may, however, be governed by strict liability in tort or by common law warranties that still survive under state law. This Teaching Note looks at the warranty provisions under Article 2 of the UCC and the Magnuson-Moss Warranty Act. A later teaching note will be devoted to a discussion of strict liability in tort.

3. Express Warranty (Section 2-313)

Liberto (2022) defines an express warranty as: "… is an agreement by a seller to provide repairs or a replacement for a faulty product, component, or service within a specified time period after it was purchased (see Garvin, 2003). Buyers rely on these promises or guarantees and sometimes purchase items because of them."

> *"Express warranties by the seller are created as follows:*
>
> a. *Any affirmation [statement] of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.*
> b. *Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.*
> c. *Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model."*

There is no specific language required under the Code to create an express warranty:

> *"It is not necessary to the creation of an express warranty that the seller use words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purportedly to be merely the seller's opinion or commendation of the goods does not create a warranty."*

3.1. Commentary on Express Warranties

- A *sample* is actually drawn from the bulk of goods which is the subject matter of the sale; a *model* is not drawn from the bulk of goods and is offered for inspection by a seller or salesperson when the subject matter is not at hand (see Wolfson, 1997).

- The "affirmation of fact or promise" or a "description" of goods is usually made in words; however, an express warranty can also be made by pictures or other forms of communication (such as advertising on radio and TV) (see *Randy Knitwear, Inc. American Cyanamid Co.,* 1962).

- Courts will utilize use the analysis under misrepresentation and fraud for the distinctions between *fact and opinion* and *fact and commendation* (see, e.g., *Vokes v. Arthur Murray, Inc*., 1968 (statements of fact vs. statements of opinion); *Sellers v. Looper,* 1962 (statements by parties with superior knowledge). The Official Comments to Section 2-313 state: "Concerning affirmations of value or a seller's opinion or commendation under subsection (2), the basic question remains the same: What statements of the seller have in the circumstances and in objective judgment become part of the basis of the bargain? As indicated above, all of the statements of the seller do so unless good reason is shown to the contrary. The provisions of subsection (2) are included, however, since common experience discloses that some statements or predictions cannot fairly be viewed as entering into the bargain. Even as to false statements of value, however, the possibility is left open that a remedy may be provided by the law relating to fraud or misrepresentation."

- A promise or affirmation of fact must "relate to the goods." Promises unrelated to the goods do not create warranties.

- Once an affirmation of fact or promise is made, or a description given, or a sample or model is shown or demonstrated, the presumption is that such affirmation, promise, description, sample, or model is *intended* to be a basis of the bargain.

- Unlike an action for misrepresentation or fraud, no particular reliance by a buyer is required in order to create a warranty (see Adler, 1994); likewise, no particular intention on the part of a seller is required to create the warranty. *The focus, instead, is on the words of the party in creating an express warranty.* Hodaszy (1991, pp. 510-511) noted: "If the seller made the affirmations to the buyer during the course of bargaining, then the buyer will be presumed to have relied on the affirmation with few exceptions. In such a case, the buyer does not have to show actual reliance unless the seller is able to rebut this presumption."

- Although a warranty must be "part of the basis of a bargain," Comment 7 to Section 2-313 provides that "post-sale" representations *may* be considered as part of the bargain—especially those concerning safety—where such statements would give the buyer a false sense of security or might cause the buyer not to be vigilant or not to return goods. This is a "public policy" consideration. The Official Comments state: "The precise time when words of description or affirmation are made or samples are shown is not material. The sole question is whether the language or samples or models are fairly to be regarded as part of the contract. If language is used after the closing of the deal (as when the buyer when taking delivery asks and receives an additional assurance), the warranty becomes a modification, and need not be

supported by consideration if it is otherwise reasonable and in order." Prince (2005, p. 1681, note 15) wrote: "Post-sale statements may sometimes amount to a warranty.

- Section 2-313 does not require that an express warranty be in writing; however, express warranties are subject to the parol evidence rule of Section 2-202. Thus, if there is a writing that was intended to be the final expression of agreement between the parties, the express warranty could not "contradict" the writing, but could "explain or supplement" any such writing with a "consistent additional term" (Kwestel, 2002). The Statute of Frauds (Section 2-201) may also apply if the contract was for sale of goods for $500 or more and may *require* that a warranty be in writing (see generally, Nowka, 2016).

- The express warranty is applicable to all sellers—*merchants and non-merchants alike!*
  However, the warranty is only applicable to one who makes the statement creating the warranty. Thus, a retailer is not automatically liable for a manufacturer's express warranty. If a retailer repeats the manufacturer's warranty as a part of a sales promotion, for example, the retailer now becomes liable. Shanker (1987, p. 42) writes: "Indeed, the liability goes no farther than the seller is willing to assume; that is, the express warranty liability is limited to responsibility only for those express actions and statements which the seller wishes to make about the quality of the goods in return for the price he demands."

4. Implied Warranty of Merchantability (Section 2-314)

Kenton (2022a) writes: "An implied warranty is a legal term for the assurances that a product is fit for the purpose that it is intended and that it is merchantable, i.e., conforms to an ordinary buyer's expectations. The warranty of merchantability is implied unless expressly disclaimed by name, or the sale is identified with the phrase "as is" or "with all faults." In general, an implied warranty is the assumption that a product will work as it is meant to." Professor Davis (2009, p. 788) writes: "The implied warranty of merchantability relates to the condition of the goods at the time they are delivered to the buyer…. The warranty does not extend to the future performance of the delivered goods" In *Lipinski v. Martin J. Kelly Oldsmobile, Inc.* (2001, p. 66), the court said "An implied warranty of merchantability applies to the condition of the goods at the time of sale and is breached only if the defect in the goods existed when the goods left the seller's control."

The warranty of merchantability is perhaps the most important of all of the warranty protections!

"Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section, serving for value food or drink to be consumed either on the premises or elsewhere is a sale."

"Goods to be merchantable must be at least such as:

a. *Pass without objection in the trade under the contract description; and*
b. *In the case of fungible goods, are of fair average quality within the description* (Coale & Lynn, 2022)*; and*
c. *Are fit for the ordinary purpose for which such goods are used* (*Zwicky v. Freightliner Chassis Corp.*, 2007; Block-Lieb & Janger, 2022)*; and*
d. *Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and*
e. *Are adequately contained, packaged, and labeled as the agreement may require* (Sawyer, 2019)*; and*
f. *Conform to the promises or affirmations of fact made on the container or label if any."*

In an interesting case, *Coffer v. Standard Brands, Inc.* (1976), the plaintiff was injured when he bit down on an *unshelled* nut from a bottle of otherwise *shelled*, mixed nuts. The *Coffer* court held that since the impurity complained of "was a natural incident of the goods in question," there was no breach of the implied warranty of merchantability. This case was decided on the basis of the "foreign-natural" test in order to determine if such a product was defective (see Bassett, DeVault, & Green, 2009). However, as Aughenbaugh (1994, pp. 276-277):

> "In the past several decades and continuing today in several jurisdictions, the test which imposes such an obstacle, known as the foreign-natural test, has existed as the controlling standard for determining liability whenever a consumer is injured by a substance which is not clearly foreign to the food's ingredients. Essentially, this test requires that liability be denied as a matter of law whenever the injurious substance in a food product is determined to be "natural" to the ingredients in the food. Because of its harsh effects, the foreign/natural distinction for determining liability for natural defects in food products has been abandoned by many jurisdictions in favor of a test based on the reasonable expectations of the consumer. This test would allow our hypothetical consumer to recover against the food processor if it was determined by a jury that the injurious substance, notwithstanding its naturalness to the food's ingredients, was one that he would not have ordinarily expected to find in the particular food product consumed."

4.1. Commentary on the Implied Warranty of Merchantability

- *Merchantability* is not equated with perfection, and thus is not a strict liability standard, in that sense. However, it is not normally a defense to a claim of breach of the warranty of merchantability that the seller could not have done anything to detect or prevent the defect.

- "*Fair average quality*" is a term appropriate to agricultural bulk products and means goods centering on the *middle belt* of quality, not the *least or the worst*. A fair percentage of the least (as determined by the trade usage, course of dealings, etc.) is permissible, but the goods are not of "fair average quality" if they *all* are of the least or worst quality possible (Coale & Lynn, 2022).

- "*Fitness for the ordinary purposes for which goods of the type are used*" is the fundamental concept of the warranty of merchantability. A determination of a product's *ordinary purpose* depends on the circumstances of each case.

- The goal of subsection (f) is that goods must conform to the representations found on their containers or labels. Even if a buyer failed to read the label (and hence, there could be no express warranty), a violation of the implied warranty of merchantability might still obtain.

- Comment 3 provides that "a contract for secondhand [used] goods…involves only such obligation as is appropriate to such goods." Thus, while a warranty of merchantability is possible, the extent of that warranty would probably be one for a jury. U.S. Legal (2023) notes: "Used goods are covered under implied warranties if the seller is a merchant who is in the business of selling similar products. A private individual who chooses to sell a toaster at a flea market is not expected to take responsibility for the product's performance.

  Comment 3 continues: "In most states, goods can be sold "as is." These goods do not require the seller to offer even an implied warranty. What the seller is required to do for these products is make clear to consumers that the product is being sold in less than prime condition and that the consumer assumes all responsibility for any faults and flaws" (see also Hunter, 2016).

- The definition of merchant under Section 2-104 is a narrow one and the warranty of merchantability is applicable only to a person who, in a professional status, sells the particular kind of goods giving rise to

the warranty (*Siemen v. Alden,* 1975). *A person making an isolated sale of goods is not a merchant* (see Hillinger, 1983).

- There is a split of decisions regarding whether or not a farmer is or is not a merchant with respect to Section 2-104 and thus Section 2-314 as a matter of law. This determination is left to a case-by-case basis.

Interestingly, Rapson (1965, p. 700) made an interesting connection between the warranty of merchantability and strict liability in tort, stating that "It appears, then, that the criterion for establishing that an article is 'defective' for purposes of strict liability in tort is synonymous with the fitness criterion of merchantability set forth in section 2-314 (2)(c)." Shanker (1979, p. 556) added: "Almost every commentator who has seriously studied the problem has concluded that there is no difference; that strict tort liability requires the seller to deliver the same quality of goods as that required under the merchantability warranty."

5. Implied Warranty of Fitness for a Particular Purpose (Section 2-315) (see Brain, 2020)

> *"Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purposes."*

Ellis (2018) stated: "In the context of business-to-business sales in the manufacturing supply chain, a manufacturer may ask, what is the particular purpose for which its goods must be fit? The answer is highly situational. In some cases, the answer may be relatively simple. Similar to the scuba diving example above, a buyer may identify generally the use to which it intends to put the goods. For example, a buyer may ask a seller to supply a widget for use in a particular application."

5.1. Some Commentary on the Warranty of Fitness:

There are two requirements for this warranty:

- The seller must have "reason to know" of the use for which the goods are purchased. Johnson (2021) notes: "Generally, this implied warranty means that the buyer has approached the seller with the need for a product that performs a certain function, and by providing a product in response to the need, the seller is implying that the product is fit for that specific use."

- The buyer must rely on the seller's expertise in supplying the proper product (*Lewis v. Mobil Oil,* 1971). This is a question of fact to be determined by looking at the circumstances of the transaction and the specific requests or words used by the parties.

In addition,

- The warranty of fitness applies to merchants and non-merchants alike. However, it only applies to a person who created the warranty and not to all suppliers within the marketing chain.

- The *specificity* with which the buyer ordered the goods is also a factor in determining whether the buyer relied on the seller's expertise (see *Tears v. Boston Sci. Corp.*, 2018, pp. 513-514). A buyer's claim may be weakened if the buyer has control over the detailed specifications for the goods. Likewise, if the buyer has examined the goods, he or she is less likely to have relied on the seller's judgment in furnishing the goods.

6. Persons to be Protected: The "New Privity" Under Section 2-318 (see Sullivan & Thrash, 2012)

Monserud (2000, pp. 128-129) states: "The extension of warranties to third parties under Article 2 is governed by section 2-318's Alternatives, A through C, which are progressively more expansive in coverage of persons and allowable claims. Whenever any legislature adopts an alternative from official section 2-318, it makes a partial codification of third party beneficiary law. Despite the simplicity of the text offered for each alternative, the case law under these alternatives is not uniform from state to state. This non-uniformity, as well as policy concerns, has generated a rich secondary literature bearing upon the meaning of section 2-318's alternatives."

The Code provides three alternatives relating to "persons to be protected":

> *Alternative A: A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such a person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.*
>
> *Alternative B: …extends to any natural person who may be reasonably expected to use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.*
>
> *Alternative C: ... extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by the breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.*

Stallworth (1993, pp. 1230-1232) provides insightful commentary on issues relating to liability to third parties:

> "Alternative A is the most conservative version of section 2-318 because it limits the class of potential plaintiffs in four ways. First, the statutory language limits the class of potential plaintiffs to "natural persons." That means that Alternative A is no help to partnerships and corporations because they are not considered "natural persons." Second, the statutory language limits the class of potential plaintiffs to the buyer's houseguests, household, and family members. Thus, Alternative A is generally no help to the buyer's employees. Third, Alternative A is no help to plaintiffs who have sustained only property damage or economic loss because the statutory language requires personal injury. Fourth, Alternative A does not grant standing to sue remote sellers because the statutory language limits the class of potential defendants to direct sellers; however, the Official Comment to section 2-318 states that Alter native A "is . . . not intended to enlarge or restrict the developing case law on whether the seller's warranties, given to his buyer who resells, extend to other persons in the distributive chain." That language has been interpreted to mean that Alternative A leaves problems of vertical privity to be resolved by the courts. Many courts have partially or wholly abolished the vertical privity requirement."

Relating to Alternate B, Stallworth (1993, pp. 1232-1233) notes:

> "Alternative B provides that "any natural person who may reasonably be expected to use, consume or be affected by the goods and who is injured in person by breach of the warranty" may institute a breach-of warranty action against the seller. Alternative B is more generous than Alternative A because it expands the class of potential plaintiffs and also the class of potential defendants. For example, Alternative B potentially encompasses nonpurchasers who are not in the buyer's family or household, such as the buyer's employees and invitees. Indeed, it is conceivable that even bystanders might have standing to sue for breach of warranty under Alternative B. In addition, Alternative B implicitly abolishes the requirement of vertical privity because the seller's warranty is not limited to "his buyer." Thus, Alternative B expands the class

> of potential defendants to include remote sellers. But Alternative B does not help nonprivity plaintiffs who have sustained only property damage or economic losses. The statutory language requires personal injury. Similarly, Alternative B is no help to partnerships and corporations because the statute is limited to "natural persons.""

As to Alternate C, Stallworth (1963, p. 1222) continues:

> "Alternative C eliminates the lack-of-privity defense the most. It provides, in pertinent, part that: "A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty." Like Alternative A, Alternative C grants standing to the buyer's houseguests and to the buyer's family members and household. Alternative C is even more generous, however, because it expands the class of plaintiffs to potentially include other nonpurchasers like the buyer's employees and invitees, and bystanders."
>
> "Like Alternative B, Alternative C eliminates the vertical privity requirement. However, Alternative C is more generous than Alternative B because it does not require personal injury. The statutory language simply refers to "injury." Thus, plaintiffs sustaining only property damage or economic loss may have standing to sue."
>
> "Unlike Alternatives A and B, Alternative C is not limited to "natural persons." The statutory language refers to "any person," which is defined under the Code to include corporations, partnerships, and other types of organizations. Hence, Alternative C permits both corporations and partnerships to sue for breach of warranty" (see also Fallick, 2005).

6.1. Commentary on the Extension of Horizontal Privity (Sullivan & Thrash, 2012)

- The last sentence of each alternative forbids the exclusion of liability to the persons to whom the warranties are made under each section.

- Alternative A is the *Henningsen principle* (Goldberg, 2017) and is by far the most popular of the alternatives (*Henningsen v. Bloomfield Motors*, 1960), where the court stated:

> *"Accordingly, we hold that under modern marketing conditions, when a manufacturer puts a new automobile in the stream of trade and promotes its purchase to the public, an implied warranty that it is reasonably suitable for use as such accompanies it into the hands of the ultimate purchaser… We are convinced that the cause of justice in this area of law can be served only by recognizing that she (Mrs. Henningsen) is such a person who, in the reasonable contemplation of the parties to the warranty, might be expected to become a user of the automobile. Accordingly, her lack of privity does not stand in the way of prosecution of the injury suit against the defendant Chrysler."*

- Alternatives B and C have been applied to bystanders, although extending protections to bystanders is most often accomplished in strict liability in tort cases (Hunter, Shannon, & Amoroso, 2016).

- Alternative C has been held to cover monetary damages sustained by a corporation.

- It should also be recognized that some states are still quite strict relating to some aspects of vertical privity regarding warranties. An express warranty, for example, is based upon the express words or statements made by a particular seller. The same is true of the warranty of fitness. Some states, however, have abolished the requirement of vertical privity altogether in actions for breach of warranties (*Salvador v. Atlantic Steel Boiler Co.*, 1978) and may hold all parties in the vertical marketing chain liable for a breach of warranty offered by a seller.

Fallick (2005, p. 742) provides this interesting summary:

> "Although the purpose of section 2-318 was "to make uniform the law among the various jurisdictions," the states have only achieved uniformity in deciding issues of vertical privity by allowing purchasers to sue any party involved in the chain of selling a product. Consequently, there remains a divergence among Alternative A jurisdictions resolving issues of horizontal privity. Jurisdictions are split in deciding whether third-party beneficiary standing should extend beyond the buyer's family, household, or houseguests. This inconsistency is substantially attributed to the ambiguous language of Official Code Comment 3 to section 2-318. The commentary states that Alternative A gives beneficiary status to "the family, household and guests of the purchaser," but directly follows this phrase by stating the section is "neutral" beyond the category of third-party beneficiaries contemplated by the drafters and does not intend "to enlarge or restrict the developing case law" in regards to extending warranty protection to "other persons in the distributive chain." However, the Code's failure to provide a definition of the term "distributive chain" has left the term open for judicial interpretation."

7. Limitations on Liability: Disclaimers, Damage Limitations, Time Limitations and Notice

Ausness (1998, p. 202) notes that: "A disclaimer is a provision in a sales contract that prevents a warranty from arising; a warranty limitation, on the other hand, restricts the remedies available to the injured party if a breach occurs. Both of these devices are commonly used by sellers to shift product-related risks from themselves to the purchasers of their products."

Section 2-316: *"Exclusion or Modification of Warranties*

1. *Words or conduct relevant to the creation of an express warranty or words or conduct tending to negate or limit a warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence, negation or limitation is inoperative to the extent that such construction is unreasonable.*

2. *Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it, the language must mention merchantability and in the case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness, the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description of the face hereof."*

3. *Notwithstanding subjection (2),*

    a. *Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and*
    b. *When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods, there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and*
    c. *An implied warranty can also be excluded or modified by course of dealings or course of performance or usage of trade.*

4. *Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation [repair, replacement, return of the article] of damages and on contractual modification of remedy."*

7.1. Commentary on Limitations of Warranties:

- The term "*conspicuous*" is defined in Section 1-201(10) (Kistler, 1992):

"A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court."

- There is a split of authority as to whether "as is" disclaimers must likewise be conspicuous; for example, should the words "as is" be found in "all caps" (Arbel & Toler, 2020).

- A "fire sale" or an "unclaimed freight" sale might serve as an example where a warranty might be excluded because of *trade usage*. Commenting on trade usage in the context of the Uniform Commercial Code, Professor Bernstein (2018, p. 119) states: "These laws are built on three core assumptions. First, they assume that unwritten, trade usages exist. Second, they assume that in the event of a dispute the existence and content of these usages can be proven to a court with reasonable accuracy at a cost the parties consider reasonable from an ex-ante perspective. And, third, they assume that merchants want courts to look to usages in interpreting contractual language and filling contractual gaps."

- A *post-sale disclaimer* is difficult to uphold because it is a heavy burden to prove that a buyer would actually agree to be bound by a post-sale modification! Why would a buyer agree to any post-sale modification that would limit his/her chances of recovery? Phillips (1994, p. 160) states that "if the writing contains express warranties… and also contains a blanket disclaimer of the express warranties, the disclaimer is invalid."

- It is very difficult to orally disclaim an express warranty once it has been offered. Such an "oral disclaimer" would almost always be subject to the parol evidence rule (see *Northern States Power Co. v. ITT Meyer Industries, Div. of ITT Grinnell Corp*., 1985) or would not be informed generally as a matter of public policy.

8. Contractual Modification or Limitation of Remedy (Section 2-719)

"1. Subject to the provisions of subsection 2 and 3 of this section and of the proceeding section on liquidation and limitation of damages,

a. The agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

b. Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

2. Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.

3. Consequential damages [for lost profits or personal injury] may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods [goods purchased for "personal, family, or household use"] is

prima facie unconscionable but limitation of damages where the loss is commercial [for producer goods or for injury to property] is not.”

8.1. Commentary on Contractual Limitations

- In a case where a consumer good causes personal injury, a limitation to “repair only” would “fail the essential purpose” of the Act and would not be enforced (*Soo Line R.R. Co. v. Fruehauf Corp.,* 1977).

- Warranties can be limited in terms of time provided that the period is deemed reasonable. Think about the range of “time limitations” in automobile warranties.

- Subsection 2-607 (23) (a) provides that the buyer must “within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy.” This is usually no more than 3 months (see *Castro v. Stanley Works*, 1989). In *Castro* (1989, p. 164), the court noted: "[i]t is sufficient that the 20-month delay in notification prevented Stanley Works from investigating fully the circumstances of the accident and ascertaining facts which later could not be determined. . . ." Comment 4 provides: The time of notification is to be determined by applying commercial standards to a merchant buyer. "A reasonable time" for notification from a retail consumer is to be judged by different standards so that in his case it will be extended, for the rule of requiring notification is designed to defeat commercial bad faith, not to deprive a good faith consumer of his remedy.”

- The “notice requirement” is not the same as the Statute of Limitations requirement (seer Garvin, 2003). Under Section 2-725, the Statute of Limitations for the sale of goods may never be reduced to a period less than one year and may extend to a period of four years. In general, the Statute of Limitations for filing a suit for a breach of warranty begins from the date of the breach of warranty, regardless of the aggrieved party’s lack of knowledge of the breach. The contractual warranty period begins when the tender of delivery is made.

- Notwithstanding the above, a few courts have marked the statute of limitations *from the date of discovery of an injury or from the date when the injury should have been discovered* in a breach of warranty case involving personal injury as a matter of “public policy” (see Grant, 1995; Fabert, 1997). Individual state law should be consulted as to this issue. Williams (1983, p. 69) writes: “… the impact of the statute of limitations on breach-of-warranty claims should be determined by an analysis of the competing interests of the buyer and seller in each case as well as the public policies supporting those interests.”

- It should also be noted that several states have adopted “statutes of repose” of ten or twenty years as an absolute time period after which the seller/manufacturer may not be held liable, but their application is highly speculative in light of the discussion above (see Bain, 2014). As Dworkin (1982, p. 36) wrote:

  “The recognition and protection of a repose interest is not new. It has long been conceded that some time limitation on the ability to bring suit is necessary if practicality as well as justice are to be served. Defendants at some point should be able to institute financial plans with certainty, free from the threat of stale claims; plaintiffs, if truly aggrieved, should pursue remedies within a reasonable period of time; and defendants and courts should not have to deal with cases in which the passage of time seriously hampers the search for truth. For the traditional statute of limitations, the legislature balances the interests of the parties in light of these considerations, and determines that at some point the right to be free from stale claims must prevail over the right to prosecute them. This determination is usually made to cover a wide class of actions, such as torts, or to encompass similarly situated parties.”

As a summary of the practical implications of filing a lawsuit on the basis of a breach of warranty by employees or other parties in cases concerning *producer goods*, Hunter, Shannon, and Amoroso (2018, p. 145) note: “In practical terms, a plaintiff must first determine if a warranty provision is applicable (especially relevant in a horizontal extension of warranty provisions to employees or customers of the buyer of producer goods) and then determine if a disclaimer is valid. If a warranty provision extends to an employee or to another party, it would be difficult to prove that a disclaimer should apply to that party without express agreement of that party” (see also Clifford, 1997; Fallick, 2005).

9. An Additional Protection: The Magnuson-Moss Warranty Act (1975)

On January 4, 1975, President Gerald Ford signed into law the Magnuson-Moss Warranty Act, which became effective July 4, 1975. The Act is designed to "improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products. . . ." Magnuson-Moss applies to consumer products, which are defined as "any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed)." Professor Marks (2020, p. 537) writes:

> “The Magnuson-Moss Warranty Act was enacted to address concerns that sellers' warranties were becoming too confusing for the average consumer. In response to fears that what "the bold print giveth and the fine print taketh away," the Act addresses these concerns in two ways: by setting out minimum informational standards associated with warranties; and by providing substantive limitations on certain disclaimers when a warranty is given. Importantly, the Act permits consumers to bring suit in state or federal court and provides that a prevailing plaintiff can recover attorneys' fees. As with many federal acts, the Magnuson-Moss Warranty Act provides broad rules but leaves specific guidance to the Federal Trade Commission, which can be found in the C.F.R (Code of Federal Regulations.”

9.1. Definitional Considerations

Several important definitions can be found in the Act:

- “A "consumer" is a buyer of consumer goods for personal use. A buyer of consumer products for resale is not a consumer.
- A "supplier" is any person engaged in the business of making a consumer product directly or indirectly available to consumers.
- A "warrantor" is any supplier or other person who gives or offers a written warranty or who has some obligation under an implied warranty.
- A "consumer product” is generally any tangible personal property for sale and that is normally used for *personal, family, or household* purposes. It is important to note that the determination whether a good is a consumer product requires a factual finding, on a case-by-case basis (*Najran Co. for General Contracting and Trading v. Fleetwood Enterprises, Inc.*, 1986).
- A "written warranty," also called an express warranty, is ‘any written promise made in connection with the sale of a consumer product by a supplier to a consumer that relates to the material and/or workmanship and that affirms that the product is defect-free or will meet a certain standard of performance over a specified time.”
- An "implied warranty” is defined in state law. The Act provides limitations on disclaimers and provides a remedy for their violation.
- A "full warranty" is one that meets the federal minimum standards for a warranty. Such warranties must be "conspicuously designated" as full warranties. If each of the following five statements is true about a warranty's terms and conditions, it is a "full" warranty:
    - There is no limit on the duration of implied warranties.

    - Warranty service is provided to anyone who owns the product during the warranty period; that is, the coverage is not limited to first purchasers.[5]
    - Warranty service is provided free of charge, including such costs as returning the product or removing and reinstalling the product when necessary.
    - There is provided, at the consumer's choice, either a replacement or a full refund if, after a reasonable number of tries, the warrantor is unable to repair the product.
    - It is not required of consumers to perform any duty as a precondition for receiving service, except notifying that service is needed, unless it can be demonstrated that the duty is reasonable.
- In contrast, a "limited warranty" is one that does not meet the federal minimums. Such warranties must be "conspicuously designated" as limited warranties.
- A "multiple warranty" is part full and part limited.
- A "service contract" is different from a warranty because service contracts do not affirm the quality or workmanship of a consumer product. A service contract is a written instrument in which a supplier agrees to perform, over a fixed period or for a specified duration, services relating to the maintenance or repair, or both, of a consumer product. Agreements that meet the statutory definition of service contracts, but are sold and regulated under state law as contracts of insurance, do not come under the Act's provisions.
- Disclaimer or Limitation of Implied Warranties when a service contract is sold:

  Sellers of consumer products who make service contracts on their products are prohibited under the act from disclaiming or limiting implied warranties (see Clifford, 1993). Sellers who extend written warranties on consumer products cannot disclaim implied warranties, regardless of whether they make service contracts on their products. However, sellers of consumer products that merely sell service contracts as agents of service contract companies and do not themselves extend written warranties can disclaim implied warranties on the products they sell."

Under Section 103 of the Magnuson-Moss. if a seller sells a consumer good that carries a price of more than $15 under a written warranty, the warranty must be stated in *readily understandable language* as determined by standards set forth by the Federal Trade Commission. However, there is no requirement that a warranty be offered or that any particular product be warranted for any specific length of time.

Magnuson-Moss only requires that when there *is* a written warranty, the warrantor must *disclose* the details of the warranty obligation prior to the sale of the product. This will permit the consumer to compare the various warranty protections offered by a variety of sellers, enabling the buyer to seek the desired level of protection at a specific price point. To further protect the consumer from deception, the Act requires that any written warranty must be labeled as either a "full" or a "limited" warranty.

Only warranties that meet the standards of the Act may be labeled as "full." One of the most important provisions of the Act prohibits a seller who offers a warranty from disclaiming or modifying any implied warranty whenever any written warranty is given or service contract entered into (Clifford, 1993). An implied warranty may, however, be limited in duration if the limitation is reasonable, not unconscionable, and set forth in "clear and unmistakable language" prominently displayed on the face of the warranty.

A consumer who is damaged by the breach of a warranty, or noncompliance with any of the provisions of the Act, may bring suit in either state or federal court. Access to a federal court, however, may be severely limited by the Act's provision that no claim may be brought in federal court if: (a) The amount in controversy of any individual claim is less than $25,000; (b) the amount in controversy is less than the sum or value of $50,000 computed on the basis of all claims in the suit; or (c) a class action is brought, and the number of named plaintiffs is less than 100.

In light of these statutory requirements, it is more likely that most suits under Magnuson-Moss will be brought in a state court. If the consumer prevails, he or she will be awarded costs and attorneys' fees (Schaefer, 1986). Nothing

in the Act invalidates any right or remedy available under state law, and suits may proceed relating to claims based on the warranty protections of both the Uniform Commercial Code and the Magnuson-Moss Act.

The Magnuson-Moss Act has been the subject of a great deal of criticism (Walters, 2022). For example, Professors Stevenson and Munter (2015) write:

> "After comparing both the current state of consumer warranties and the levels of administrative and judicial enforcement, it is clear that the Magnuson-Moss Warranty Act is not fully satisfying its intended aims. After nearly forty years, it is appropriate to make some minor modifications in statute and rule to take into account the changed manufacturing, retail, and technological landscape. Through a combination of strengthened enforcement, clearer warranty disclosures, and education, this landmark legislation can better meet the needs of the twenty-first century consumer."

9.2. Dispute Settlement Under Magnuson-Moss

4WheelDriveGuide.com (2023) provides the following information on dispute settlement under the Magnuson-Moss Warranty Act:

"The Act allows warranties to include a provision that requires customers to try to resolve warranty disputes by means of the informal dispute resolution mechanism before going to court. If you include such a requirement in your warranty, your dispute resolution mechanism must meet the requirements stated in the FTC's Rule on Informal Dispute Settlement Procedures (the Dispute Resolution Rule). Briefly, the Rule requires that a mechanism must:

• Be adequately funded and staffed to resolve all disputes quickly;
• Be available free of charge to consumers;
• Be able to settle disputes independently, without influence from the parties involved;
• Follow written procedures;
• Inform both parties when it receives notice of a dispute;
• Gather, investigate, and organize all information necessary to decide each dispute fairly and quickly;
• Provide each party an opportunity to present its side, to submit supporting materials, and to rebut points made by the other party; (the mechanism may allow oral presentations, but only if both parties agree);
• Inform both parties of the decision and the reasons supporting it within 40 days of receiving notice of a dispute;
• Issue decisions that are not binding; either party must be free to take the dispute to court if dissatisfied with the decision (however, companies may, and often do, agree to be bound by the decision);
• Keep complete records on all disputes; and
• Be audited annually for compliance with the Rule. It is clear from these standards that informal dispute resolution mechanisms under the Dispute Resolution Rule are not "informal" in the sense of being unstructured. Rather, they are informal because they do not involve the technical rules of evidence, procedure, and precedents that a court of law must use."

10. Buyers' Remedies for Breach of Warranty Under the UCC

Professor Ausness (198, p. 190) lays out the various types of damages that may be recovered under the Code for breach of warranty. "The basic measure of damages is the difference between the value of the goods as accepted and their value as warranted. However, the Code also permits a buyer to recover incidental and consequential damages. Incidental damages include such things as the cost of transporting or storing nonconforming or defective goods. Consequential damages include physical injuries and property damage caused by defective products."

- U.C.C. 2-714(2): *"The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have*

had if they had been as warranted, unless special circumstances show proximate damages of a different amount."

- U.C.C. 2-715(1). *"Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach."*
- U.C.C. 2-715(2). *"Consequential damages resulting from the seller's breach include (a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and (b) injury to person or property proximately resulting from any breach of warranty."*

10.1 Are Punitive Damages Appropriate in Warranty Actions?

Wong (2022) notes that: "Punitive damages, also known as exemplary damages, are damages that are awarded in personal injury lawsuits in addition to compensatory damages. They can be awarded by courts and juries… punitive damages are awarded to punish egregious or serious misconduct on the part of the defendant. For example, punitive damages can be awarded in certain cases when an individual commits actions which are particularly egregious." Such conduct may include:

- Wanton conduct;
- Intentionally negligent conduct;
- Fraudulent conduct; and
- Other conduct.

McMichael and Viscusi (2019, p. 176) state:

> "Punitive damages occupy a unique place in the United States legal system. Unlike compensatory damages, punitive damages do not exist to compensate injured parties. While they are not equivalent to full criminal sanctions, punitive damages, as their name suggests, exist to punish reprehensible conduct. They also have a general deterrence role by serving to deter others from engaging in similar conduct in the future. They accomplish these twin goals by forcing defendants to internalize costs associated with their actions above and beyond the amount required to compensate victims. The Supreme Court has explicitly limited punitive damages to these goals."

Encarnacion (2022, p. 1030) explains "that punitive damages are appropriate when a wrongdoer has acted 'maliciously, wantonly, or with a recklessness that betokens an improper motive or vindictiveness' ... or has engaged in 'outrageous or oppressive intentional misconduct' or with 'reckless or wanton disregard of safety or right"' (see also Hunter, Shannon, & Amoroso, 2017).

An award of punitive damages is meant to serve a number of divergent purposes:

- Punishment
- Specific or individual deterrence
- General deterrence.

As a general rule, however, punitive damages are not awarded in warranty cases (see Owen, 1977, p. 1976), but may awarded in cases alleging liability under a tort theory alleging intentional conduct, including strict liability in tort (see *Boyd v. Homes of Legend, Inc.*, 1999); *Talavera v. Metabolife Int'l,* 2004; Hunter, Shannon, & Amoroso, 2017; *Carroll v. BMW of N. Am.*, LLC, 2019).

11. Observations

Endemic problems with warranties, centering around notice requirements, the availability of warranty disclaimers and limitations, as well as the absence of the remedy of punitive damages to address the most egregious types of conduct, have called into question the continued efficacy of warranties as a major source of consumer protection. Many critics point to the development of strict liability in tort as the preferred method to assure the highest level of protections when products prove to be defective. Tan (2011) notes: "The legal doctrine [of strict liability in tort] had its genesis in *Greenman v. Yuba Power Products Inc.* (1963). Mr. Greenman was injured when he used a power tool that was given to him as a gift. He sued the manufacturer, although there was no direct contract of warranty between him and the manufacturer as he did not make the purchase himself. The California Supreme Court went beyond the law of contracts to find the manufacturer liable, and in the process introduced the notion of strict liability, which goes beyond simple negligence, centering instead on whether a product is defective." It is important to note that Justice Trainor had also rejected the warranty theory as a basis of liability.

References

Adler, R.S. (1994). The last best argument for eliminating reliance from express warranties: "Real-world" consumers don't read warranties. South Carolina Law Review, 45: 429-475.

Arbel Y.A. & Toler, A. (2020). All-caps. Journal of Empirical Legal Studies, 17: 862-896.

Aughenbaugh, L.A. (1994). The demise of the foreign-natural test in North Carolina. Campbell Law Review, 16: 275-302.

Ausness, R.C. (1998). Replacing strict liability with a contract-based products liability regime. Temple Law Review, 71: 171-215.

Bain, A. (2014). Determining the preemptive effect of federal law on state statutes of repose. University of Baltimore Law Review, 43: 119-197.

Bassett, M, DeVault, H., & Green, B. (2009). Meeting the challenges of foodborne illness liability claims. Food Safety Magazine (April 1, 2009), https://www.food-safety.com/articles/4555-meeting-the-challenges-of-foodborne-illness-liability-claims

Bernstein, L. (2018). The myth of trade usages: A talk. Barry Law Review, 23: 119-127.

Block-Lieb, S. & Janger, E.J. (2022). Fit for its ordinary purpose: Implied warranties and common law duties for consumer finance contracts. Houston Law Review, 59: 551-620.

Boyd v. Homes of Legend, Inc. (1999). 188 F.3d 1294. United States Court of Appeals for the Eleventh Circuit.

Brain, R.D. (2020). The unnecessary implied warranty of fitness for a particular purpose. Chapman Law Review, 23: 163-204.

Carroll v. BMW of N. Am. (2019). 2019 U.S. Dist. LEXIS 151994. U.S. District Court for the Southern District of Indiana, Indianapolis Division.

Casper, R.H. & Wegrzyn, K.E. (2019). Commercial and consumer warranties: A primer. Manufacturing Industry Advisor (Blog) (March 20, 2019),
https://www.foley.com/en/insights/publications/2019/03/commercial-and-consumer-warranties-a-primer

Castro v. Stanley Works. 1989). 864 F.2d 961. United States Court of Appeals for the First Circuit.

Clifford, D.F. (1993). Non-UCC statutory provisions affecting warranty disclaimers and remedies in sales of goods. North Carolina Law Review, 71: 1011-1109.

Clifford, D.F. (1997). Express warranty liability of remote sellers: One purchase, two relationships. Washington University Law Quarterly, 75: 413-468.

Coale, D.S. & Lynn, M.P. (2022). Implied warranties v. express specifications under the Uniform Commercial Code. Oklahoma Law Review, 74: 127-145.

Coffer v. Standard Brands, Inc. (1976). 226 S.E.2d 534. Court of Appeals of North Carolina.

Davis, T. (2009). UCC breach of warranty and contract claims: Clarifying the distinction. Baylor Law Review, 61: 783-817.

Dworkin, T.M. (1982). Product liability of the 1980s: "Repose is not the destiny" of manufacturers. North Carolina Law Review. 61: 33-66.

Ellis, N.J. (2018). Fit for what purpose? Understanding the warranty of fitness for particular purpose. Manufacturing Industry Advisor (Blog) (May 2, 2018), https://www.foley.com/en/insights/publications/2018/05/fit-for-what-purpose--understanding-the-warranty-o

Encarnacion, E. (2022). Resilience, retribution, and punitive damages. Texas Law Review, 100(6): 1025-1078.

Fabert, S.R. (1997). Statutes of limitations, statutes of repose and continuing duties under the Kansas Products Liability Act. Washburn Law Journal, 36: 367-418.
Fallick, L. (2005). Are employees "a" o.k.? An analysis of jurisdictions extending or denying warranty coverage to purchaser's employees under Uniform Commercial Code section 2-318, alternative A. Nova Law Review, 29: 721-745.
4WheelDriveGuide.com (2022). Understanding the Magnuson-Moss Warranty Act, www.4wheeldriveguide.com/wp-content/uploads/2022/06/Manguson-Moss-Warranty-Act.pdf
Friedman, M.S. (1998). Year 2000 crisis and the Uniform Commercial Code: The statute as a sword and shield. Computer Law: 1-ff.
Garvin, L.T. (2003). Uncertainty and error in the law of sales: The article two statute of limitations. Boston University Law Review, 83: 345-399.
Goldberg, V.P. (2017). The MacPherson-Henningsen puzzle. Columbia Law and Economics Working Paper No 570, https://papers.ssrn.com/so13//papers.cfm?abstract_id=3022224
Goodman, J.L., Peacock, D.R., & Rutan, K.J. (2019). A guide to understanding the economic loss doctrine. Drake Law Review, 67(1): 1-58.
Grant, A.J. (1995). When does the clock start ticking?: Applying the statute of limitations in asbestos property damage actions. Cornell Law Review, 80: 695-746.
Greenman v. Yuba Power Products, Inc. (1963). 377 P.2d 897. Supreme Court of California.
Henningsen v. Bloomfield Motors Inc. (1960). 161 A.2d 69. Supreme Court of New Jersey.
Hillinger, I.M. (1983). The merchant of section 2-314: Who needs him? Hastings Law Journal, 34: 747-808.
Hochstadter-Dicker, E.C. & Campo, J.P. (1999). FF&E and the true lease question: Article 2A and accompanying amendments to UCC section 1-201(37). American Bankruptcy Institute Law Review, 7: 517-554.
Hodaszy, S.Z. (1991). Express warranties under the Uniform Commercial Code: Is there a reliance requirement? New York University Law Revue, 66: 468-511.
Holdych, T.J. (2005). A seller's responsibilities to remote purchasers for breach of warranty in the sales of goods under Washington law. Seattle University Law Review, 28: 239-299.
Hunter, R.J. (2016). A statutory override of an "as is" sale: A historical appraisal and analysis of the UCC, Magnuson-Moss, and state lemon laws. University of Massachusetts Law Review, 11: 44-62.
Hunter, R.J., Shannon, J.H., & Amoroso, H.J. (2016). Compensation for bystander injuries in strict product liability: Why it is important to afford bystanders with more protection than users of products. Advances in Social Sciences Research Journal, 1(10): 1-11.
Hunter, R.J., Shannon, J.H., & Amoroso, H.J. (2017). A reprise of compensatory and general damages with a focus on punitive damages in product liability cases. International Journal of Business Management and Commerce, 2(1): 24-37.
Hunter, R.J., Shannon, J.H. & Amoroso, H.J. (2018). Products Liability (Second ed.). South Orange, N.J. Seton Hall University (ISBN 9781731150684).
Johnson, J. (2021). What is an implied warranty of fitness for a particular purpose? FreeAdvice.com (July 16, 2021), www.freeadvice.com/legal/what-is-an-implied-warranty-of-fitness-for-a-particular-purpose/
Kenton, W. (2022a). What is an implied warranty? Definition, how it works, and types. Investopedia (July 10, 2022), https://www.investopedia.com/terms/i/implied-warranty.asp
Kenton, W. (2022b). Warranty definition, types, example, and how it works. Investopedia (November 24, 2022), https://www.investopedia.com/terms/w/warranty.asp
Kistler, B.F., Jr. (1992). U.C.C. article two warranty disclaimers and the conspicuous requirement of section 2-316. Mercer Law Review, 43(3): 943-958.
Kwestel, S. (2002). Express warranty as contractual- The need for a clear approach. Mercer Law Review, 53: 557-580.
Lewis v. Mobil Oil Corp. (1971). 438 F.2d 500. United States Court of Appeals for the 8th Circuit.
Liberto, D. (2022). Express warranty. Investopedia (March 8, 2022), https://www.investopedia.com/terms/e/express-warranty.asp#
Lipinski v. Martin J. Kelly Oldsmobile, Inc. (2001). 325 Ill. App. 3d 1139. Appellate Court of Illinois, First District, Sixth Division.
Magnuson-Moss Warranty Act (1975). P.L. 93-637.
Marks, C.P. (2020). There oughta be a law: What corporate social responsibility can teach us about consumer contract formation. Loyola Consumer Law Review, 32: 498-539.
McMichael, B.J. & Viscusi, W.K. (2019). Taming blockbuster punitive damage awards. University of Illinois Law Review, 2019: 171-221.
Monserud, G.L. (2000). Blending the law of sales with the common law of third party beneficiaries. Duquesne Law Review, 39: 111-215.
Murray, J.E., Jr. & Fletchter, H.M. (1999). The summer, 1999 draft of revised article 2 of the Uniform Commercial Code: What hath NCCUSL rejected? Journal of Law and Commerce, 19: 1-124.

Najran Co. for General Contracting and Trading v. Fleetwood Enterprises, Inc. (1986). 659 F. Supp. 1081. U.S. District Court for the Southern District of Georgia.
Northern States Power Co. v. ITT Meyer Industries, Div. of ITT Grinnell Corp. (1985). 777 F.2d 405. United States Court of Appeals for the Eighth Circuit.
Nowka, R.H. (2016). Oral express warranties: How to convince a court to uphold the warranty. Drake Law Review, 64: 837-882.
Owen, G.G. (1976). Punitive damages in products liability litigation. Michigan Law Review, 74(7): 1257-1371.
Owen, D.G. (2007). The evolution of products liability law. Review of Litigation, 26: 955-983.
Phillips, D.E. (1994). When software fails: Emerging standards of vendor liability under the Uniform Commercial Code. Business Law, 50: 151-181.
Prince. J.D. (2005). Other recent developments in Minnesota law: Defective products and product warranty claims in Minnesota. William Mitchell Law Review, 31: 1677-1778.
Randy Knitwear, Inc. v. American Cyanamid Co. (1962). 11 N.Y. 2d 5. Court of Appeals of New York.
Rapson, D.J. (1965). Products liability under parallel doctrines: Contrasts between the Uniform Commercial Code and strict liability in tort. Rutgers Law Review, 19: 692-ff.
Salvador v. Atlantic Steel Boiler Co. (1978). 389 A.2d 1148. Superior Court of Pennsylvania.
Sawyer, T.L. (2019). Fitbit: Was it ready for the marketplace? Journal of Physical Education, Recreation & Dance, 90(8): 57-59.
Schaefer, D.T. (1986). Attorney's fees for consumer warranty actions—An expanding role for the U.C.C.? Indiana Law Journal, 61: 495-519.
Sellers v. Looper (1972). 503 P.2d 692. Supreme Court of Oregon.
Shaheen, R.M. & Smith, W.S. (2019). Product responsibility and customer care: Customer health and safety; marketing and labeling; and customer privacy. American Bar Association (September 19, 2019),
https://www.americanbar.org/groups/business_law/publications/blt/2019/10/customer-care/
Shanker, M.G. (1979). A reexamining of Prosser's product liability crossword game. Case Western Law Review, 29: 550-576.
Shanker, M.G. (1987). The seller's obligation under U.C.C. 2-313 to tell the truth. Case Western Reserve Law Review, 38(1): 40-42.
Siemen v. Alden (1975). 34 Ill. App. 3d 961. Appellate Court of Illinois, Second District, Second Division.
Soo Line Railroad v. Fruehauf Corp. (1977). 547 F.2d 1365. United States Court of Appeals for the Eighth Circuit.
Stallworth, W.L. (1993). An analysis of warranty claims instituted by non-privity plaintiffs in jurisdictions that have adopted Uniform Commercial Code section 2-318. Pepperdine Law Review, 20: 1215-1294.
Stevenson, J.W. & Munter, A. (2015). Then and now: Reviving the promise of the Magnuson-Moss Warranty Act. University of Kansas Law Review, 63: 227-275.
Sullivan, G.E. & Thrash, B. (2012). Purchasers lacking privity overcoming "the rule" for express warranty claims: Expanding judicial application of common law theories and liberal interpretation of U.C.C. section 2-318. Drexel Law Review, 5: 49-100.
Talavera v. Metabolife Int'l. (2004). 20004 U.S. Dist. LEXIS 194430. U.S. District Court for the Northern District of Illinois, Eastern District.
Tan, S.Y. (2011). Perspective- Products liability. Elsevier Global Medical News, https://www.mdedge.com/authors/sy-tan-md-jd
Tears v. Boston Sci. Corp. (2018). 344 F. Supp. 3d 500. U.S. District Court for the Southern District of New York.
Uniform Commercial Code (2002). Article 2, https://www.law.cornell.edu/ucc (accessed March 16, 2023).
Uniform Sales Act of 1906 (1906), http://source.gosupra.com/docs/statute/221 (accessed March 16, 2023).
US Legal (2023). Used and "as is" goods. USLegal.com, https://consumerprotection.uslegal,com/warranties/types-of-warranties/used-and-qas-is-goods/ (accessed March 13, 2023).
Vokes v. Arthur Murray, Inc. (1968). 212 So. 2d 906. District Court of Florida, Second District.
Walters, K. (2022). Reassessing the mythology of Magnuson-Moss: A call to revive section 18 rulemaking at the FTC. Harvard Law and Policy Review, 16: 519-579.
Whiteside, F.W., Jr. (1960). Uniform Commercial Code-Major changes in sales law. Kentucky Law Journal, 49(2): Article 1, https://ukowledge.uky.edu/klj/vol49/iss2/1
Williams, C. (1983). The statute of limitations, prospective warranties, and problems of interpretation in article two of the UCC. George Washington Law Review, 52: 67-112.
Wolfson, J.R. (1997). Express warranties and published information content under article 2B: Does the shoe fit? John Marshall Journal of Computer and Information Law, 16: 337-392.
Wong, B. (2022). What are punitive damages? Definition & examples. Forbes Advisor (October 7, 2022), https://www.forbes.com/advisor/legal/personal-injury/punitive-damages/
Zwicky v. Freightliner Custom Chassis Corp. (2007). 373 Ill. App. 3d 135. Appellate Court of Illinois, Second District.