

WARRANTIES OF TITLE

- **Good Title:** Except where disclaimed, sellers warrant that they have **good and valid title** to the goods being sold and that they may **rightfully** transfer title to the buyer.

- **Quiet Possession:** A lessor transfers the rights to possess and use the goods during the lease term, not title to the goods, therefore lessors warrant only that no one has a superior right to possess or use the goods during the lease term.

- **No Liens:** Except where disclaimed, sellers warrant that the goods they are selling are free of any **liens** – that is, any encumbrance on the goods to satisfy a debt or protect a claim for payment of a debt (*e.g.*, a ***security interest*** on personal property or a ***mortgage*** on real property).

- **No Infringements:** Except where disclaimed, merchant sellers and merchant lessors warrant that the goods delivered are free from any infringement claims by a third party.

- **Disclaimer:** Any of the foregoing warranties can be disclaimed by **specific language** in a sales contract.
 - To disclaim them in a lease contract, the language must be **specific, written, and conspicuous**.

EXPRESS WARRANTIES

- **Express Warranty:** A seller's or lessor's oral or written promise, ancillary to an underlying sales or lease agreement, regarding the goods' quality, description, or performance.

- Under the UCC, express warranties arise when a seller indicates to the buyer that the goods
 - (1) conform to any **affirmation** or **promise of fact** about the goods made by the seller/lessor to the buyer/lessee,
 - (2) conform to any **factual description** of the goods made, *e.g.*, on a label, packaging, or in a brochure, or
 - (3) conform to any **sample** or **model** of the goods shown to the buyer/lessee prior to purchase/lease.

- The affirmation, promise, description, sample, or model must:
 - become part of the *basis of the bargain* between the seller/lessor and the buyer/lessee; and
 - constitute more than a mere **statement of opinion** or **value** (unless the speaker is an expert on whose opinion or valuation the buyer could reasonably rely) or *puffery* (*i.e.*, "sales talk").

IMPLIED WARRANTIES

- **Implied Warranty:** A warranty imposed by implication or inference from the nature of the transaction or the relative bargaining positions or circumstances of the parties.

- **Merchantability:** A warranty, arising in every sale or lease of goods by a *merchant*, that the goods being sold are, *inter alia*:
 - (1) **reasonably fit** for the **general purpose** for which they are being sold,
 - (2) properly **packaged and labeled**, and
 - (3) of **proper quality**.

- **Fitness for a Particular Purpose:** A warranty, imposed on any seller/lessor who knows that the buyer/lessee is **relying on the seller's/lessor's skill and judgment** to select suitable goods, that the goods being sold or leased are fit for the **particular purpose for which the buyer/lessee wishes to use the goods**.

- The parties' prior **course of dealing** or **custom and usage** in a particular industry or locale may also give rise to an implied warranty.

“LEMON” LAWS

- **Lemon Law:** A statute providing that
 - (1) if an automobile **under warranty**
 - (2) possesses a **defect** that significantly alters the vehicle’s value or use, and
 - (3) the seller **fails to remedy** the defect within a specified number of opportunities,
 - (4) the buyer is entitled to
 - (a) a **new car**,
 - (b) **replacement** of defective parts, or
 - (c) return of all **consideration** paid toward the purchase price of the defective car.

- Most automakers use their own **arbitration** panels to handle “lemon” complaints. The panels’ decisions are binding on the automaker, but generally not binding on the buyer.

MAGNUSON-MOSS WARRANTIES

- The **Magnuson-Moss Warranty Act (MMWA)** modifies UCC warranty rules with respect to **consumer** transactions. It does not require any seller to give a warranty for goods sold to a consumer; however, if the seller chooses to give an **express** warranty, and if the value of the goods sold is **more than \$25** the warranty must be labeled as “full” or “limited.”
- **Full warranties** (1) require **free repair or replacement** of any defective part; and, (2) if the product cannot be repaired within a **reasonable time**, the consumer must have the choice of either a **refund or replacement**.
 - However, the warrantor need not perform warranty services if the product was **damaged** or **unreasonably used** by the consumer.
 - A full warranty generally has **no time limit**.
- A **limited warranty** is any warranty that does not meet all of the requisites for a full warranty. If an express warranty is a limited warranty, that fact must be **conspicuously designated**.
- The MMWA does not give rise to any **implied warranties**.

OVERLAPPING WARRANTIES

- If two or more warranties are made in a particular transaction, they are generally **cumulative**, not **exclusive**. However, if the terms of the warranties are inconsistent with one another, then
 - an **express warranty** displaces an inconsistent **implied warranty**, but not an implied warranty of fitness for a particular purpose;
 - a **sample** takes precedence over an inconsistent **general description**; and
 - **technical specifications** displace an inconsistent **sample** or **general description**.

WARRANTY DISCLAIMERS

- **Express Warranty:** Any oral or written express warranty may be disclaimed by a
 - (1) **clear and conspicuous** written disclaimer,
 - (2) which is **called to the buyer's attention**,
 - (3) **at the time the contract is formed**.

- **Implied Warranty of Fitness:** To disclaim an implied warranty of fitness for a particular purpose, the disclaimer must be (1) **written** and (2) **conspicuous**.

- **Implied Warranty of Merchantability:** The disclaimer need not be written; however, (1) it must specifically use the term **merchantability**, and, (2) if written, it must be **conspicuous**.

- **Waiver by Inspection or Failing to Inspect:** If the buyer/lessee **examines** the goods **as fully as desired** before entering into the sales or lease contract, or if the buyer/lessee **refuses to examine** the goods at the seller's/lessor's request, there is **no implied warranty** with respect to defects that a reasonable examination did reveal or would reveal.

- The doctrine of ***unconscionability*** may limit a seller's ability to disclaim, or have a buyer waive, a warranty.