Dated: November 19, 2015

**Memorandum to Students**

**Study Guide for Sales**

**Topics 8–13**

**Fall 2015**

**University of North Dakota School of Law**

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**II. TERMS**

**Topic 8: Warranties with Sales of Goods**

Reading:

* Keating, Assignment No. 8 pp. 147-164
* Hull, Ch. 4 thru B.(4), pp. 51-64

Problems:

* 8.1 (but not (e)), 8.2, 8.3 on pp. 161-163

Key code sections:

* 2-313
  + express warranties
* 2-314
  + implied warranty of merchantability; other implied warranties from usage of trade
* 2-315
  + implied warranty of fitness for a particular purpose

Additional relevant code sections:

* 1-201(b)(20)
  + definition of good faith
* 1-303
  + course of performance, course of dealing, usage of trade
* 1-304
  + general obligation of good faith
* 2-104(1)
  + definition of “merchant”

Key learning objectives:

* express warranties
  + be able to apply 2-313
  + understand how express warranties are formed
  + be able to distinguish puffery from an express warranty
* implied warranty of merchantability
  + be able to apply 2-314
  + understand what is warranted, 2-314(2)
  + understand in what contexts the warranty exists, 2-314(1)
* implied warranties from usage of trade
  + understand that other implied warranties may arise from usage of trade, 2-314(3)
* implied warranty of fitness for a particular purpose
  + understand when the warranty exists
    - when seller has reason to know of a particular purpose for the goods, and
    - the buyer is relying on seller’s skill or judgment to select or furnish goods
  + understand what is warranted
    - fitness for that purpose

**Topic 9: Notice and Privity**

Reading:

* Keating, Assignment No. 9, pp. 165-174
* Hull, Ch. 4.B.(5), pp. 64-67

Problems:

* 9.1 (but not (b)) and 9.2 (but not (d)–(f)) on pp. 174-175

Key code sections:

* 2-607(3)(a)
  + requirement of notification within a reasonable time
* 2-607(5)(a)
  + with notice, upstream seller bound to factual determinations in the litigation that upstream seller chose not to defend
* 2-318
  + third-party beneficiaries of express or implied warranties

Key learning objectives:

* understand the importance of notice in breach of warranty disputes
* understand how persons without privity to the sales contract can sue for breach of warranty

**Topic 10: Magnuson-Moss**

Reading:

* Keating, Assignment No. 10 pp. 176-191
* Hull, Ch. 4.B.(6) thru end, pp. 67-73

Problem:

* 10.1 (but not (a)–(g)) on pp. 191-192

Key code sections:

* 15 U.S.C. §2301
  + definitions of key terms
  + particularly note “consumer,” §2301(3)
* 15 U.S.C. §2302
  + requirements of written warranties
  + other rules governing contents of warranties
* 15 U.S.C. §2303
  + designation of written warranties as “full” or “limited”
* 15 U.S.C. §2304
  + minimum standards
* 15 U.S.C. §2308
  + ineffectiveness and prohibition of disclaimers of implied warranties
  + allowance of limitation of duration of implied warranties
* 15 U.S.C. §2310
  + remedies
  + in particular
    - §2310(a)
      * informal dispute resolution
    - §2310(b)
      * prohibited acts
    - §2310(c)
      * FTC and DOJ actions, federal jurisdiction
    - §2310(d)
      * recovery of costs and attorneys fees

Key learning objectives:

* recognize when Magnuson-Moss applies – to “consumer products”
* recognize that Magnuson-Moss does not require sellers to issue warranties
* understand the most important places where Magnuson-Moss gets its power
  + making written consumer warranties meaningful, by requiring
    - that “full warranties” meet minimum standards
    - that implied warranties not be disclaimed where a written warranty is issued
  + making enforcement possible through attorneys fees
* understand how the definition of consumer overcomes a lack of privity, allowing suits by parties who are not a party to the sale
* be able to apply the statute to determine whether a seller has violated Magnuson-Moss
* be able to explain what an aggrieved consumer can do under Magnuson-Moss to enforce a warranty in a given situation

**Topic 11: Lease, International, and Real Estate Warranties**

Reading:

* No Keating reading (i.e., skip Assignment No. 11 in the book)
* Briefly re-review Hull, Ch. 4 regarding CISG

Problems:

* None

Key code sections:

* 2A-209
* CISG Article 35

Key learning objectives:

* understand the key aspects of lease warranties as presented in the slideshow
* understand the key aspects of international sales warranties as presented in the slideshow
* understand the key aspects of real estate warranties as presented in the slideshow

**Topic 12: Reducing or Eliminating Warranty Liability: Basics**

Reading:

* Keating, Assignment No. 12 sections A and B only, pp. 209-216
* Briefly re-review Hull, Ch. 4 as may be helpful to you

Problems:

* 12.1 and 12.4 on pp. 221-222

Key code sections:

* 1-201(b)(10)
  + definition of “conspicuous”
* 2-302
  + unconscionability
* 2-316
  + exclusion or modification of warranties
* 2-719
  + modification or limitation of remedy

Key learning objectives:

* understand the incentives in seller-buyer relationships and how that affects warranties and informal making things right
  + long-term relationships, importance of repeat business versus
  + large transactions where potential for repeat business in volume is low
* appreciate that in enforcing warranty limitations with consumers, courts often tend to be very tough on the seller (K 212)
* appreciate the tension in the UCC between pro-freedom-of-contract and anti-oppression (K 215-216)
* be able to apply 2-316 to determine the enforceability of limitations on warranties
  + 2-316(2) requirements of, for a written disclaimer:
    - mentioning “merchantability” to exclude warranty of merchantability
    - being “conspicuous” to exclude IWoM and IWoFfaPP
  + 2-316(3) allowance of “as is” or “with all faults” language that in common understanding makes it plain there are no implied warranties
    - unless circumstances indicate otherwise
* be able to apply 2-719 to determine the enforceability of limitations on warranties
  + allowability of limitation of remedy to return for price, or for repair and replacement
  + allowability of exclusion of consequential damages, unless unconscionable
    - exclusion of consequential damages for personal injury from consumer good being prima facie unconscionable

**Topic 13: Reducing or Eliminating Warranty Liability: Advanced**

Reading:

* Keating, Assignment No. 13, pp. 223-230
* Briefly re-review Hull, Ch. 4 as may be helpful to you

Problems:

* Prepare problem 13.1 on p. 230

Key code sections (already listed under Topic 11):

* 15 U.S.C. §2304
  + minimum standards
* 15 U.S.C. §2308
  + ineffectiveness and prohibition of disclaimers of implied warranties
  + allowance of limitation of duration of implied warranties
* 2-719
  + modification or limitation of remedy

Key learning objectives:

* understand that express written warranties, once made, cannot be disclaimed 15 U.S.C. §2-316(1) (K 224)
* understand that, theoretically, express oral warranties that are made cannot then be disclaimed
  + but understand that the parol evidence rule can effectively allow a written contract with a warranty disclaimer to disclaim oral warranties (K 224)
    - while this may prevent a breach of warranty action, it will not bar a fraud action
* understand that a disclaimer that is valid under the UCC may not be valid under Magnuson-Moss
* understand that for exclusive remedy provisions to be valid:
  + it is not enough to specify a certain remedy
  + it must be made clear that the specified remedy is the sole remedy, or that other remedies are excluded
  + the remedy specified must not “fail of its essential purpose,” 2-719(2)
* understand the limits Magnuson-Moss sets on limitations of remedies
  + for full warranties, an exclusion of consequential damages must be conspicuous and on the face of the warranty
  + for limited warranties, an exclusion of consequential damages must be conspicuous but need not be on the face of the warranty
  + if seller cannot remedy a warranty problem after a reasonable number of attempts, the seller must give the buyer a replacement product or a full refund