

Memorandum to Students

Study Guide for Sales Topics 8-13

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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