



Topic 11: Lease, International, and Real Estate Warranties

Eric E. Johnson

ericejohnson.com



Konomark
Most rights sharable

Lease Warranties

Lease Warranties

- UCC 2A on leases basically the same UCC 2 on sales
- Except for finance leases
- With a finance lease:
 - The lessor gives no implied warranties of fitness or merchantability, but
 - any warranties from the supplier to the finance lessor run directly, by operation of law (UCC §2A-209(1)) to the finance lessee

Lease Warranties

- **What's a finance lease?**
 - (see Hull, ch. 10.C., pp. 206-207)
- It's a true lease
- where the lessor acquires the goods in connection with the lease, and
- where the lessor does not select the goods.

Lease Warranties

- **What's a true lease?**
 - (covered in Topic 2)
- The lessor will get the goods back when they still have meaningful economic life.

Lease Warranties

- Why would a lessee do a finance lease?
 - They don't have the cash to pay for the goods out right.
- Why would a lessor do a finance lease?
 - Because they are in the financing business.

Lease Warranties

- Why would a lessor do a finance lease?
 - Because they are in the financing business.

Lease Warranties

- Why would people structure a deal as a finance lease instead of as a secured loan?
 - Because a finance lease might have tax and accounting advantages.

same slide as
at the start

Lease Warranties

- UCC 2A on leases basically the same UCC 2 on sales
- Except for finance leases
- With a finance lease:
 - The lessor gives no implied warranties of fitness or merchantability, but
 - any warranties from the supplier to the finance lessor run directly, by operation of law (UCC §2A-209(1)) to the finance lessee

International Warranties

International Warranties

- CISG Article 35 is essentially the same as the UCC in terms of providing for express warranties, implied warranties of fitness for a particular purpose, and implied warranties of merchantability ...
- Except:
- There are no privity-jumping provisions.
 - Where the UCC frequently allows warranty suits by persons not parties to the contract of sale, the CISG does not.
 - (Theme: The CISG is not very consumer-friendly.)
- CISG implied warranties are easier to disclaim, because the CISG lacks formality requirements. (Disclaiming warranties covered in Topics 12 & 13.)

Real Estate Warranties

Real Estate Warranties

- For new homes (residential), most states have an implied warranty of habitability in favor of the purchaser against the builder for hidden defects.
 - Whether this warranty benefits a new owner after resale differs by jurisdiction.
- For non-new homes, the buyer usually has no warranties against the seller.
 - That's what the inspection process is all about.
- For commercial real estate, there are generally no implied warranties.