

13.15: Warranties

Learning Objectives

- Define “warranty”
- Explain express warranties
- Explain implied warranties
- Explain the warranties provided by the Uniform Commercial Code

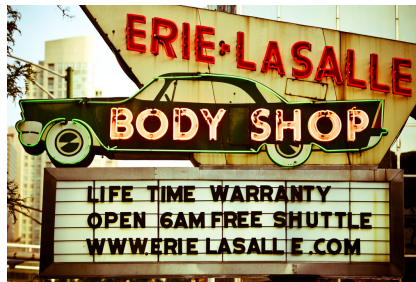
A **warranty** is a promise that goods sold will meet stated standards of performance. A contractual obligation (and associated legal liability) is created when a manufacturer or seller provides a warranty and a buyer relies on the warranty in making his or her purchase decision. A warranty can be either in writing or oral. Another category is when the law imposes a warranty, requiring the manufacturer to meet certain standards of merchantability or fitness. We’ll drill down into each of these scenarios below.

Practice Question

<https://assessments.lumenlearning.co...essments/14343>

Types of Warranties

Express Warranties



An express warranty is created based on a seller’s words or actions (i.e., something that has been expressly stated). According to Uniform Commercial Code 2-313, a seller can create an express warranty in three ways:

1. with an affirmation of fact or promise
2. with a description of the goods
3. with a sample or model

In all three cases, the code requires that the seller’s words or actions “become part of the basis of the bargain.” In Business Law and the Legal Environment, the authors explain the “basis of the bargain” clause as follows: “To prove an express warranty, a buyer must demonstrate that the two parties included the statements or acts in their bargain.” Courts generally interpret “basis of bargain” in one of two ways, either requiring a buyer to demonstrate that he or she relied on the seller’s promises in making a purchase decision or assuming that a seller who makes a claim or promise—in advertising, for example—should be held liable for breach of warranty unless he or she can prove otherwise.

Note that it’s not necessary for a seller to use a term such as “warrant” or “guarantee” to create an express warranty. However, if a seller is simply expressing his or her opinion of the goods, there is no promise or warranty.

Implied Warranties

Implied warranties are those created by the Uniform Commercial Code rather than a particular manufacturer or seller. There are two categories of implied warranty: warranty of merchantability and warranty of fitness.

Unless excluded or modified (if allowed, addressed below), a sales contract includes an implied warranty of “merchantability,” defined as “fit for the ordinary purpose for which such goods are used.” Unlike express warranties, this warranty does not need to be in writing or otherwise communicated to the buyer—it is an obligation imposed by the code. An implied warranty of merchantability does not apply to all sales. For it to apply, the seller must be “a merchant with respect to goods of that kind.” That is, the seller must be a person who regularly deals in such goods or, due to his or her occupation or use of an agent, broker or other

intermediary to whom knowledge or skill may be attributed, may be considered an expert or someone with “knowledge or skill peculiar to the practices or goods involved in the transaction.”

An implied warranty of fitness is created when a seller, at the time of contracting, has reason to know about a 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. Indeed, the full title of the relevant code (UCC 2-315) is “Implied Warranty: Fitness for Particular Purpose.” In brief, unless excluded or modified, the seller’s knowledge of the particular use of the goods creates an implied warranty that the goods shall be fit for that purpose. As above and detailed below, a seller can exclude or modify a warranty of fitness as allowed by law.

? Practice Question

<https://assessments.lumenlearning.co...essments/14344>

<https://assessments.lumenlearning.co...essments/14345>

<https://assessments.lumenlearning.co...essments/14346>

The following video explains one’s legal rights under implied warranties. Pay close attention to the examples of “implied warranty” by state law and “implied warranty of fitness.”



You can view the [transcript for “Legal Rights Under Implied Warranties”](#) (opens in new window) or the [text alternative for “Legal Rights Under Implied Warranties”](#) (opens in new window).

? Try It

Within limits, the Uniform Commercial Code (UCC) allows sellers to disclaim or negate both express and implied warranties on goods they sell. A seller can disclaim an oral express warranty—for example, statements made by a salesperson—by including language in the contract that specifically states that the written contract represents the full extent of the warranty and that any statements made by company representatives are disclaimed and are not part of the contract. Written express warranties generally cannot be disclaimed. In particular, if warranty language is included in a sales contract, it cannot be disclaimed.

Note that the UCC does not allow a seller to take contradictory positions in a document. For example, a sales contract can’t include a description that creates a warranty in one section and disclaim warranties in another section. If the description and disclaimer are in two separate documents—a brochure and sales contract, for example—the disclaimer will be ruled void if a buyer would be “unfairly surprised.” That is, if a buyer read and relied on information in a brochure in making his or her purchase, the seller’s attempt to disclaim the written warranty would most likely fail.

A seller can generally disclaim an implied warranty by stating that a good has no warranty or that it is being sold “as is.” However, there are conditions and exceptions. In order to disclaim an implied warranty of merchantability, a seller must specifically use the word merchantability in the disclaimer and the disclaimer must be conspicuous. For example, the disclaimer could be in bold or red type or the contract could require the buyer to initial the disclaimer section. To disclaim or modify an implied warranty of fitness, the exclusion must be in writing and conspicuous. According to Cornell Law School,

“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 on the face hereof.’”^[1]

Note that some states prohibit disclaimers of warranties on consumer goods. According to Consumer Reports, eleven states and the District of Columbia prohibit consumer products from being sold ‘as is.’”^[2] In some cases, selling a good as a factory second is a way to circumvent that restriction.

1. "§ 2-316. Exclusion or Modification of Warranties." Legal Information Institute. Accessed June 12, 2019.

<https://www.law.cornell.edu/ucc/2/2-316>. ↩

2. "What You Need to Know about Warranty Laws." Consumer Reports. May 2013. Accessed June 12, 2019.

<https://www.consumerreports.org/cro/magazine/2013/05/the-word-on-warranty-protection/index.htm>. ↩

Contributors and Attributions

CC licensed content, Original

- Warranties. **Authored by:** Nina Burokas. **Provided by:** Lumen Learning. **License:** *CC BY: Attribution*

CC licensed content, Shared previously

- Life Time Warranty, Plate 2. **Authored by:** Thomas Hawk. **Located at:** <https://www.flickr.com/photos/thomashawk/4714301405/>. **License:** *CC BY-NC: Attribution-NonCommercial*

All rights reserved content

- Legal Rights Under Implied Warranties. **Provided by:** lawinfo. **Located at:** <https://youtu.be/DFOD8VgvePg>. **License:** *All Rights Reserved*. **License Terms:** Standard YouTube license

13.15: Warranties is shared under a [not declared](#) license and was authored, remixed, and/or curated by LibreTexts.