

Product Liability: Warranties and Strict Liability

Warranties and Product Liability

- Warranty of Title
 - Express Warranties
 - Implied Warranties
 - Merchantability
 - Fitness for a particular purpose
- Disclaimer
- Limitation or Modification

Product Liability

- Tort Based Causes of Action
 - Negligence
 - Strict Liability
- Contract Cause of Action
 - Warranty

Warranty of Title

- Title is good, transfer rightful
- Goods are not subject to security interest, other than those which buyer knew about
- Can be disclaimed-Judicial sale; foreclosure
- Buyer has cause of action against seller of goods for which seller had only “void title”

Express Warranties

- Affirmation of fact or promise
- Made by seller
- Relates to goods
- Becomes part of the basis of bargain
- Description-warranty that all goods conform to that description
- Sample or model: whole of goods conform to the sample or model

Implied Warranty of Merchantability

- Merchant seller
- Fit for ordinary purposes

Implied Warranty of Fitness

- Any seller
- Knowledge of the seller
- Reliance on the part of the buyer
- Fit for purpose, which may be different from ordinary purpose

Disclaimers I

- Does not apply to express warranties
- Merchantability
 - Use that word
 - If in writing, conspicuous
- Fitness
 - Writing
 - Conspicuous

Disclaimers II

- No warranties as to conditions that buyer knew or should have known about, when there is an inspection, or buyer refused to inspect
- AS IS
- WITH ALL FAULTS

Limitations of Remedies

- Repair
- Replace
- May be unconscionable
- Or, may fail of its essential purpose