The UCC covers sales of goods by private parties as well as by merchants. The definition of seller in section 2-103(1)(d) is “a person who sells or contracts to sell goods.” This contrasts with the definition of merchant in section 2-104(1). Thus, a sale by an individual of a used car, furniture, or an appliance through a classified ad or garage sale is covered by the Code. A dealer may be a “seller” for UCC purposes, and thus responsible for warranties, if its salesperson is operating with its apparent authority, even if the salesperson is actually making a private sale. On the other hand, one court has held that a co-promoter of a product who did not manufacture, design, or sell it was not a “seller.”

Some UCC provisions apply only when the seller is a merchant, however. The prime example is section 2-314, the implied warranty of merchantability, which is applicable only when the seller is a “merchant with respect to goods of the kind” involved in the transaction. By contrast, a non-merchant may create an implied warranty of fitness for a particular purpose.

The Magnuson-Moss Warranty Act applies most of its provisions to “warrantors,” defined as any person who gives a written warranty or who is obligated under an implied warranty. A warrantor may be a direct seller or a manufacturer, or even a third party who is not involved in the sale or manufacture of the product. The Act incorporates state law definitions of implied warranties, however, including the requirement that the implied warranty of merchantability is created only when the seller is a merchant.

Some UDAP statutes limit their scope to practices in the course of the seller’s trade, business or occupation. Others have a public interest requirement that may operate to exclude isolated sales by non-merchants. On the other hand, many UDAP statutes do not explicitly limit their scope in any of these ways. Tort theories apply equally to merchants and non-merchants.

Footnotes

150 [138] U.C.C. § 2-104(1) states:

“Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

See also § 4.2.2.2 [1], infra.


154 [142] See § 4.2.2.3 [2], infra.

155 [143] See § 4.3.2.2 [3], infra.


**Source:** National Consumer Law Center, Consumer Warranty Law [5th ed.], updated at www.nclc.org/library

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