The UCC policy of cumulation of rights and remedies also applies to common law and equity principles except when specifically in conflict with the UCC. Section 1-103 [formerly U.C.C. § 1-103] provides that “Unless displaced by the particular provisions of [the Uniform Commercial Code], the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.”

This provision means that the buyer is free to raise tort claims, such as fraud, misrepresentation, and negligence, and equity considerations, such as mistake, failure of consideration, estoppel, and duress. These claims and considerations are not preempted by adoption of the UCC and can be asserted in addition to any UCC claim. Section 2-721 specifically rejects the election of remedies principle for fraud that required a buyer to elect between cancellation of the sale and recovery of damages, and allows a buyer to seek both rescission for fraud and damages for fraud or breach of warranty. However, in some jurisdictions, implied warranty claims are subsumed by the state products liability act, which creates the exclusive remedy for certain harms caused by a product.

The Magnuson-Moss Warranty Act and most state lemon laws also specify that they do not limit the rights or remedies available to consumers under other laws, thus making it clear that common law claims are preserved. The Magnuson-Moss Warranty Act likewise provides that it does not invalidate or restrict any right or remedy of any consumer under state law.

Footnotes


193 [179] See § 14.4.2 [3], infra.