The policy of liberal construction of the UCC is most important in consumer transactions. The Code was drafted broadly to cover many types of transactions, but its primary focus is on commercial transactions between merchants. As a result, the specific statutory language may not always reflect the realities of consumer transactions. In many key areas, courts have construed the UCC to adjust for such realities. Section 2-316, for example, allows a seller to disclaim implied warranties by “conspicuous” language such as bold print on the face of the contract. Nonetheless, in consumer transactions, many courts rely on that section’s policy of protecting the buyer from the “surprise” of “unbargained” disclaimers to invalidate disclaimers not negotiated with or pointed out to the consumer.

Similarly, section 2-602 prohibits a buyer who seeks to return defective goods and cancel the sale from acting inconsistently with the seller’s ownership. The buyer cannot, for example, continue to use the goods. In many consumer cases, however, this statutory requirement creates hardship as the consumer cannot afford to buy substitute goods during litigation. Courts have relied on section 1-103 [formerly U.C.C. § 1-102] in many cases to allow consumer buyers who continued to use manufactured homes or cars to cancel the sale, as they acted reasonably given their financial circumstances.

Other instances in which policy prevails over literal language to benefit consumers include the invalidation of “as is” disclaimers that are not conspicuous, more flexible notice requirements for consumers than for merchants, and the tolling of the statute of limitations when a consumer buyer delays suit in reliance on seller repair efforts.

Two comments directly establish the Article 2 policy of applying more lenient standards for consumer buyers. Comment 5 to section 2-608 provides in relevant part: “Following the general policy of this Article, the requirements of the content of notification are less stringent in the case of a non-merchant buyer.” (Emphasis added.) Comment 4 to section 2-607 reiterates this policy in a slightly different context: “‘A reasonable time’ for notification from a retail consumer is to be judged by different standards so that in his case it will be extended, for the rule of requiring notification is designed to defeat commercial bad faith, not to deprive a good faith consumer of his remedy.” (Emphasis added.)

Other comments, while not focusing exclusively on consumer buyers, show an intent to protect buyers in general. Repeatedly, the comments add to the seller’s obligation or give the court the leeway to find for a consumer buyer. Among other things, the comments impose on the seller good faith duties to disclose known material defects and sell products that are not worthless; require a court to inquire about a merchant’s good faith; establish that the statutory language must be interpreted to foster Code policies and even yield to those policies; and establish that the legal contract is based on the parties’ understanding and expectations and on the factual circumstances, as well as on the formal writing. There are many other examples. The implied warranty of merchantability is, in general, to be liberally construed in favor of the buyer. The UCC prefers warranty over no warranty and remedy over no remedy.

Footnotes


390 [357] See § 8.5.9 [1], infra.

391 [358] See § 8.4.6 [2], infra.

392 [359] See § 8.5.8.7 [3], infra.

393 [360] See § 8.2.5 [4], infra.

394 [361] See § 7.6.5 [5], infra.
1.8.2.2 Application of Policy to Consumer Transactions

This particular comment is not retained in the comparable provision of revised Article 1, U.C.C. § 1-304, which the Uniform Law Commission (formerly the National Conference of Commissioners on Uniform State Laws (NCCUSL)) approved in 2001 for adoption by the states and which most states have adopted.

Other comments especially important to buyers encourage courts to extend warranties to contracts other than for sales of goods (U.C.C. § 2-313 cmt. 2; U.C.C. § 1-103 cmt. 1 [formerly U.C.C. § 1-102 cmt. 1]), to eliminate reliance and intent as elements of creating an express warranty (U.C.C. § 2-313 cmt. 3), to presume that models and samples are express warranties (U.C.C. § 2-313 cmt. 6), to establish that seller statements made after the contract is signed can be express warranties (U.C.C. § 2-313 cmt. 7), and to make clear that used goods are covered by Article 2 and U.C.C. warranties (U.C.C. § 2-314 cmts. 3, 4).

Source URL: https://library.nclc.org/cwl/01080202-0

Links
[1] https://library.nclc.org/nclc/link/CWL.05.09
[2] https://library.nclc.org/nclc/link/CWL.08.04.06
[3] https://library.nclc.org/nclc/link/CWL.05.08.07
[4] https://library.nclc.org/nclc/link/CWL.08.02.05
[5] https://library.nclc.org/nclc/link/CWL.07.06.05