While implied warranties provide consumers with what they expect in a transaction—a merchantable product which also, if the consumer relied on the seller, meets the consumer’s particular purpose in buying the product—the UCC allows the seller to disclaim those warranties. The seller can sell the goods “as is,” placing the full burden of any warranty breach on the consumer. Because of their superior bargaining position, merchants disclaim their warranty liability as much as possible, and warranty disclaimers are a major impediment to the enforcement of consumer warranty rights.

Chapter 5 [1], infra, examines ways to defeat such disclaimers of implied warranties. Federal law prohibits such disclaimers when the seller provides a written warranty or enters into a service contract with the consumer. A number of state laws restrict such disclaimers, even when no written warranty or service contract is provided. Disclaimers must also be properly disclosed to the consumer and the consumer must actually receive the disclaimer before entering into the contract. Chapter 5 [1], infra, also examines a number of other limitations on such disclaimers.

While consumers can successfully challenge such disclaimers in far more cases than most consumers realize, there will still be situations in which implied warranties are validly disclaimed. In those cases, alternative legal theories can give the consumer a remedy for the product defect despite the disclaimer. These include state deceptive practices or “UDAP” claims, common law fraud claims, and tort claims based on strict liability or negligence.

Footnotes

448 [415] See §§ 5.1.1 [2], 5.1.2 [3], infra.

449 [416] See § 5.3 [4], infra.

450 [417] See § 5.4.1 [5], infra.

451 [418] See §§ 5.8 [6], 5.9 [7], infra.

452 [419] See § 11.1.1 [8], infra.

453 [420] See § 11.4.1 [9], infra.

454 [421] See § 12.1 [10], infra.