Chapter 22: Product Liability: Warranties and Strict Liability

Warranties

TYPES OF WARRANTIES
Definition of Warranty an obligation of the seller to the buyer (or lessor to lessee) concerning title, quality, characteristics, or condition of goods
Warranty of Title the obligation of a seller to convey the right of ownership without any lien (in a lease the warranty protects the lessee’s right to possess and use the goods)
Express Warranty an affirmation of fact or promise about the goods or a description, including a sample of the goods, which becomes part of the basis of the bargain
Implied Warranty a contractual obligation, arising out of certain circumstances of the sale or lease, imposed by operation of law and not found in the language of the sales or lease contract
- Merchantability warranty by a merchant seller that the goods are reasonably fit for the ordinary purpose for which they are manufactured or sold; pass without objection in the trade under the contract description; and are of fair, average quality
- Fitness for Particular Purpose warranty by any seller that goods are reasonably fit for a particular purpose if, at the time of contracting, the seller had reason to know the buyer’s particular purpose and that the buyer was relying on the seller’s skill and judgment to furnish suitable goods

OBSTACLES TO WARRANTY ACTION
Disclaimer of Warranties a negation of a warranty
- Express Warranty usually not possible to disclaim
- Warranty of Title may be excluded or modified by specific language or by certain circumstances, including judicial sale or a sale by a sheriff, executor, or foreclosing lienor
- Implied Warranty of Merchantability the disclaimer must mention “merchantability” and, in the case of a writing, must be conspicuous (in a lease the disclaimer must be in writing and conspicuous)
- Implied Warranty of Fitness for a Particular Purpose the disclaimer must be in writing and conspicuous
- Other Disclaimers of Implied Warranties the implied warranties of merchantability and fitness for a particular purpose may also be disclaimed (1) by expressions like “as is,” “with all faults,” or other similar language; (2) by course of dealing, course of performance, or usage of trade; or (3) as to defects an examination ought to have revealed where the buyer has examined the goods or where the buyer has refused to examine the goods
- Federal Legislation Relating to Warranties of Consumer Goods the Magnuson-Moss Warranty Act protects purchasers of consumer goods by providing that warranty information be clear and useful and that a seller who makes a written warranty cannot disclaim any implied warranty

Limitation or Modification of Warranties permitted as long as it is not unconscionable
Privity of Contract a contractual relationship between parties that was necessary at common law to maintain a lawsuit
- Horizontal Privity doctrine determining who benefits from a warranty and who therefore may bring a cause of action; the Code provides three alternatives
- Vertical Privity doctrine determining who in the chain of distribution is liable for a breach of warranty; the Code has not adopted a position on this
Notice of Breach if the buyer fails to notify the seller of any breach within a reasonable time, she is barred from any remedy against the seller
Plaintiff’s Conduct
- Contributory Negligence is not a defense
- Voluntary Assumption of the Risk is a defense

Strict Liability in Tort

REQUIREMENTS OF STRICT LIABILITY IN TORT
General Rule imposes tort liability on merchant sellers for both personal injuries and property damage for selling a product in a defective condition unreasonably dangerous to the user or consumer
Defective Condition
• **Manufacturing Defect** by failing to meet its own manufacturing specifications, the product is not properly made
• **Design Defect** the product, though made as designed, is dangerous because the design is inadequate
• **Failure to Warn** failure to provide adequate warning of possible danger or to provide appropriate directions for use of a product

**Unreasonably Dangerous** contains a danger beyond that which would be contemplated by the ordinary consumer

**OBSTACLES TO RECOVERY**

**Contractual Defenses** defenses such as privity, disclaimers, and notice generally do not apply to tort liability

**Plaintiff’s Conduct**
• **Contributory Negligence** not a defense in the majority of states
• **Comparative Negligence** most states have applied the rule of comparative negligence to strict liability in tort
• **Voluntary Assumption of the Risk** express assumption of risk is a defense to an action based upon strict liability; some states apply implied assumption of risk to strict liability cases
• **Misuse or Abuse of the Product** is a defense

**Subsequent Alteration** liability exists only if the product reaches the user or consumer without substantial change in the condition in which it is sold

**Statute of Repose** limits the time period for which a manufacturer is liable for injury caused by its product

**Limitations on Damages** many states have limited the punitive damages that a plaintiff can collect in a product liability lawsuit

**RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY**

**General Rule** One engaged in the business of selling products who sells a defective product is subject to liability for harm to persons or property caused by the defect

**Defective Conditions**
• **Manufacturing Defect** a seller is held to strict liability when the product departs from its intended design
• **Design Defect** a product is defective when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design
• **Failure to Warn** a product is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings