Warranties

A warranty is a promise or guarantee made by a seller about the quality or performance of goods for sale. A warranty may also contain a statement of what the seller will do to remedy the problem if the product does not perform as promised. If the seller does not live up to the promises made in the warranty, the contract has been breached.

Warranties give consumers very important rights. You should always be aware of the warranties that exist when you make a purchase. However, not all warranties are the same, so it is worthwhile to compare warranties when shopping. When you look at a warranty, consider the duration (how long does it last?), the scope (what parts or problems are covered or excluded?), and the remedy (what do you get under the warranty and what must you do to get the remedy?). You should also check your own state's warranty laws. They may give you other rights that are not in the warranty.

Express Warranties

An express warranty is a statement—written, oral, or by demonstration—concerning the quality or performance of goods offered for sale that becomes a part of the
bargain between the parties. For example, if a salesperson tells you, “This TV will not need any repairs for five years,” the salesperson has created an express warranty. Similarly, an express warranty is created if you purchase a vacuum cleaner from an appliance store after seeing a demonstration of the vacuum picking up small particles from a deep-pile rug. Because oral warranties and warranties by demonstration are difficult to prove, it is always best to get a written warranty.

Express warranties are created by statements of fact. Not everything a seller says is a warranty. If the seller’s statement is merely an opinion or an obvious exaggeration, it is considered puffing, or sales talk, and cannot be relied on. For example, a used-car dealer advertising “Fantastic Used Cars” is engaged in puffing. No warranty is created, and no customer should rely on such a statement.

What happens if your TV quits working or your watch won’t keep time? The first thing to do is check the warranty. One TV may be guaranteed for 90 days, while another may be covered for a full year. Your warranty may provide a remedy when things go wrong. You may be able to return the item for a refund, exchange it for a replacement, or have it repaired.

Sellers do not have to give written warranties. However, if they do, the Magnuson-Moss Warranty Act requires that the written warranties (1) disclose all the essential terms and conditions in a single document, (2) be stated in simple and easy-to-read language, and (3) be made available to the consumer before a sale. Written warranties must also tell you exactly what is included and what is not included. For example, the warranty must explain what repairs are covered and who will make them. The act does not apply to products that cost $15 or less.

Under the Magnuson-Moss Warranty Act, warranties are labeled as either full or limited. Under a full warranty:

- A defective product will be fixed or replaced at no cost, including removal and reinstallation, if necessary.
- The consumer will not have to do anything unreasonable (such as shipping a piano to a factory) to get the warranty service.
- The product will be fixed within a reasonable time after the consumer complains.
- If the product cannot be fixed after a reasonable number of attempts, the consumer can get a refund or a replacement.
- The warranty applies to anyone who owns the product during the warranty period (not just the first purchaser).

Any protection less than this is called a limited warranty. Such a warranty usually covers some defects or problems but not others. For example, the limited warranty on a video recorder might cover the cost of new parts but not the labor involved in installing the new parts. Or it might cover only certain parts. To learn what is covered, read the entire warranty carefully.
Your Excellent Digital Camera Warranty

Excellent Digital Cameras fully guarantees this entire product to owner against defects in materials or workmanship for one year from purchase date.

Defective product may be brought or mailed, freight pre-paid, to purchase place, authorized service center, or Service Department, Excellent Digital Cameras, Inc., 3rd & Maple Streets, Arlington, PA 15616, for free repair or replacement at our option.

Warranty does not include cost of inconvenience, damage due to product failure, transportation damages, misuse, abuse, accident, or commercial use.

For information, write Consumer Claims Manager at previously listed Arlington address. Send owner's name, address, name of store or service center involved, model, serial number, purchase date, and description of problem.

This warranty gives specific legal rights. You may have other rights that vary from state to state.

This warranty becomes effective upon purchase. Mailing the enclosed registration card is one way of providing purchase date but is not required for warranty coverage.

Problem 24.1

Read and evaluate the one-year limited warranty for the digital camera above and answer the following questions.

a. Who is making the warranty? Who will make any repairs—dealer, service center, manufacturer, or independent repairer?

b. How long is the warranty in effect? Does the buyer have to do anything to make the warranty effective?

c. What is covered—the entire product or only certain parts? What is promised—repair, replacement, labor, postage? Is this a full or a limited warranty? Why?

Implied Warranties

Many consumers believe they have no protection if a new product without an express warranty does not work. In many cases, however, consumers are protected—even though they may not realize it—by an implied warranty. An implied warranty is an unwritten promise, created by law, that a product will do what it is supposed to do. In other words, the law requires products to meet certain minimum standards of quality and performance, even if no express promise is made. Implied warranties apply only to products sold by bona fide, or authentic, dealers of that product. They do not apply to goods sold by casual sellers. For example, if a friend sells you her bike, no implied warranties are involved. The three types of implied warranties are (1) warranty of merchantability, (2) warranty of fitness for a particular purpose, and (3) warranty of title.
A warranty of merchantability is an unwritten promise that the item sold is of at least average quality for that type of item. For example, a radio must play, a saw must cut, and a freezer must keep food frozen. This warranty is always implied unless the seller expressly disclaims it. Be especially wary of goods marked with disclaimers such as “as is” or “final sale.” Using a disclaimer, a seller can legally avoid responsibility for the quality of the product.

A warranty of fitness for a particular purpose exists when a consumer tells a seller before buying an item that it is needed for a specific purpose or will be used in a certain way. A salesperson who sells an item with this knowledge makes an implied promise that the item will fulfill the stated purpose. For example, suppose you tell a salesperson you want a waterproof watch and the salesperson recommends a watch, which you then buy. An implied warranty of fitness has been created. If you go swimming and water leaks into the watch, the warranty has been breached.

A warranty of title is a seller’s promise that he or she owns the item being offered for sale. Sellers must own the goods in order to transfer title or ownership to the buyer. If a person sells stolen goods, the warranty of title has been broken.

Consumers who are harmed by products may be able to sue for damages because the manufacturer or seller has breached the warranty. Consumers may also be able to recover damages based either on the negligence of the manufacturer or seller or on a legal theory called strict liability. The topic of harm caused by dangerous products is explained more fully in Chapter 21.

You should remember that if you fully examine goods—or have the opportunity to do so—before making a purchase, the implied warranty may not apply to those defects you should have discovered.

Car dealers often advertise "certified used cars" to show that they have been inspected and approved by a mechanic. What warranty protection is typically available when you purchase a used car?
during the inspection. Therefore, carefully inspect any goods you buy for defects. Be especially careful with used cars. It is wise to have a mechanic you trust examine the car before you purchase it.

**Problem 24.2**

Is a warranty created in any of the following situations? If so, what type of warranty? Has the warranty been broken?

- **a.** Juan sells Terri his used car. As Terri drives home, the car breaks down. The cost of fixing the car is greater than the sale price.
- **b.** Deidre buys a dress after telling the sales clerk that she plans to wash it in a washing machine. The clerk replies, “That’s fine. This material is washable.” Deidre washes the dress in her washing machine and the dress shrinks.
- **c.** A salesperson tells Neva, “This is the finest digital camera on the market. It will last for years.” Eight months later, the button that advances the photos stops working.
- **d.** Scott steals a diamond ring from a jewelry store and sells it to Maria after telling her his mother gave it to him.
- **f.** Ned buys a new sofa from a furniture store. One of the legs falls off two weeks after delivery.

Be sure to carefully read all instructions that come with a product. If you fail to use the product properly, or if you use it for an improper purpose, you may invalidate the warranty.

**Disclaimers**

A disclaimer is an attempt to limit the seller’s responsibilities should anything go wrong with a product. The clause quoted in The Case of the Guitar That Quit (page 286) is a disclaimer. It is an attempt by the store to avoid responsibility for anything that goes wrong with the guitar. The quoted clause makes it clear that an express warranty is not being offered. But does the clause disclaim the implied warranty?

Sellers can usually disclaim the implied warranty of merchantability by using such expressions as “with all faults” or “as is.” Unless these or other easily understood words are used, the seller must actually use the word *merchandability* in disclaiming the implied warranty of merchantability. In addition, to be effective, the disclaimer must be written and placed so as to be easily seen by the consumer. Because the sales receipt for the guitar did not say “as is,” “with all faults,” or
The Guitar That Quit

Shari wants to buy a new guitar. She shops around to compare prices at a few different music stores. City Music offers the best price at $300, so Shari buys the guitar there. On the sales receipt is a clause that reads: “This constitutes the exclusive statement of the terms of agreement between the parties. Seller makes no warranties either express or implied with respect to this product.” The third time Shari plays the guitar, the neck breaks.

Problem 24.3

a. What should Shari do? What should the store do?

b. Assume there is a large sign by the cash register that reads: All Guitars Sold “AS IS.” How would you react to such a sign?

“merchantability,” it is probably not effective as a disclaimer of the implied warranty of merchantability. Shari should be protected if she returns the guitar.

Under the Magnuson-Moss Warranty Act, sellers offering a written warranty may not disclaim or modify any implied warranty during the effective period of the written warranty. No matter how broad the written warranty is, the customer will always receive the basic protection of the implied warranty of merchantability. A warranty of merchantability is a promise that the product does what it is intened to do.

Sellers sometimes use disclaimers to limit the consumer’s remedy. For example, a contract may read, “It is expressly understood and agreed that the buyer’s only remedy shall be repair or replacement of defective parts. The seller is not liable in damages for injury to persons or property.” Suppose the warranty limits the remedy to “repair or replacement of defective parts” and this remedy is not sufficient. That is, after repeated attempts at repair, the product still does not work. In such cases, the buyer can usually seek other remedies, for example, getting a refund. However, courts will usually require that the buyer give the seller a reasonable opportunity to repair the product.