WARRANTIES OF TITLE

- **Good Title:** Except where disclaimed, sellers warrant that they have *good and valid title* to the goods being sold and that they have the power to *rightfully* transfer title to the buyer.

- **No Liens:** Except where disclaimed, sellers warrant that the goods they are selling are free of any *liens* -- that is, any encumbrance on the goods or other property to satisfy a debt or protect a claim for payment of a debt (e.g., a *security interest* on personal property).

- **No Infringements:** Except where disclaimed, a seller warrants that the goods delivered are free from any copyright, trademark, or patent claims by a third party.

- **Disclaimer of Title Warranty(-ies):** In an ordinary sales transaction, any of the foregoing warranties can be disclaimed *only* by *specific language* in the sales contract.
EXPRESS WARRANTIES

- **Express Warranty:** A seller’s or lessor’s oral or written promise, ancillary to an underlying sales or lease agreement, as to the quality, description, or performance of the goods being sold or leased.

- Under the U.C.C., express warranties arise when a seller/lessor indicates to the buyer/lessee that the goods:
  
  (1) conform to any **affirmation** or **promise of fact** made by the seller/lessor to the buyer/lessee about the goods;

  (2) conform to any **factual description** of the goods; and/or

  (3) conform to any **sample** or **model** of the goods shown to the buyer/lessee prior to purchase.

- In order to give rise to an express warranty, the affirmation, promise, description, sample, or model must:
  
  - become part of the **basis of the bargain** between the seller/lessor and the buyer/lessee; and

  - constitute more than a mere **statement of opinion**.

IMPLIED WARRANTIES
- **Implied Warranty:** A warranty that the law derives by implication or inference from the nature of the transaction or the relative bargaining positions or circumstances of the parties.

- **Implied Warranty of Merchantability:** A warranty, automatically arising in every sale or lease of goods made by a merchant who deals in goods of the kind, that the particular goods being sold or leased are:

  1. *reasonably fit* for the *general purpose* for which they are being sold or leased,

  2. properly *packaged* and *labeled*, and

  3. of *proper quality*.

- **Implied Warranty of Fitness for a Particular Purpose:** A warranty that the goods being sold or leased are fit for the *particular purpose for which the buyer/lessee wishes to use the goods*, which is imposed on any seller who knows that the buyer/lessee is *relying on the seller/lessor’s skill and judgment* to select suitable goods.
DISCLAIMERS OF WARRANTIES

- **Waiver of Express Warranty:** Any oral or written express warranty may be disclaimed by (i) a **clear and conspicuous** written disclaimer, (ii) that is **called to the buyer/lessor’s attention**, (iii) **at the time the contract is formed**.

- **Waiver of Implied Warranty of Fitness:** To disclaim an implied warranty of fitness for a particular purpose, the disclaimer must be (i) **in writing**, and (ii) **conspicuous**.

- **Waiver of Implied Warranty of Merchantability:** The disclaimer **does not** have to be in writing; however, (i) it must specifically use the term “**merchantability**,” and, (ii) if it is in writing, it must be **conspicuous**.

- **Waiver by Inspection or Failure to Inspect:** If the buyer/lessor **actually examines** the goods **as fully as desired** before entering into the sales or lease contract, or if the buyer/lessee **refuses to examine** the goods at the seller/lessor’s request, **there is no implied warranty with respect to defects that a reasonable examination did reveal or would reveal**.
The Magnusson-Moss Warranty Act modifies U.C.C. warranty rules with respect to consumer transactions. The Act does not require any seller to give a warranty for goods sold to a consumer; however, if the seller chooses to give an express warranty, and if the value of the goods sold is more than $10 the warranty must be labeled as “full” or “limited.”

A full warranty (i) requires free repair or replacement of any defective part; and, (ii) if the product cannot be repaired within a reasonable time, the consumer must have the choice of either a refund or replacement.

However, the warrantor need not perform warranty services if the product was damaged or unreasonably used by the consumer.

A full warranty generally has no time limit.

A limited warranty is any warranty, which does not meet all of the requisites for a full warranty. If an express warranty is a limited warranty, that fact must be conspicuously designated.
PRODUCT LIABILITY: NEGLIGENCE

- **Product Liability:** A manufacturer’s, seller’s, or lessor’s liability to consumers, users, and by-standers for physical harm or property damage that is caused by the goods.

- **Negligence:** A manufacturer is liable for its failure to exercise due care to any person who sustained an injury proximately caused by the manufacturer’s negligence with regard to any of the following:
  - design of the product,
  - selection of materials (including any component products purchased from another seller that are incorporated into a finished product),
  - use of appropriate production processes,
  - assembly and testing of the product, and
  - placement of adequate warnings on the product which inform the user of dangers of which an ordinary person might not be aware.
STRICT PRODUCT LIABILITY: OVERVIEW

- **Strict Liability:** A manufacturer, seller, or lessor of goods will be strictly liable, regardless of intent or the exercise of reasonable care, for any personal injury or property damage to consumers, users, and by-standers caused by the goods it manufactures, sells, or leases as long as:

  1. the product is **defective when the defendant sells it** (either to an end-user or to another seller for ultimate resale);

  2. the defendant is **normally engaged in the business of selling** or otherwise distributing the product in question;

  3. the product is **unreasonably dangerous** to the user or consumer because of its defective condition;

  4. the plaintiff suffers **physical harm to self or property** as a result of using or consuming the product;

  5. which is **proximately caused** by the defective condition of the product; and

  6. the good **must not have been substantially changed** between the time it was sold or otherwise distributed by the defendant and the time the injury occurred.
STRICT LIABILITY: PRODUCT DEFECTS

- **Unreasonably Dangerous Product:** A product so defective as to threaten a consumer’s health and safety either because (i) the product is dangerous **beyond the expectation** of the ordinary consumer or (ii) the manufacturer failed to produce an economically feasible, **less dangerous alternative**. Claims that a product is unreasonably dangerous generally fall into one of three categories:

  1. **Manufacturing Flaw:** The manufacturer fails to exercise due care in the manufacture, assembly, and/or testing of the product;

  2. **Design Defect:** The product, even if manufactured perfectly, is unreasonably dangerous as designed -- often because an economically feasible, less dangerous alternative was available to the manufacturer; and

  3. **Inadequate Warning:** The product, even if designed and manufactured perfectly, lacks adequate warnings and/or instructions for the consumer or other end user.
**STRICT LIABILITY: DEFENSES**

- **Assumption of Risk:** The defendant must show that (i) the plaintiff *knew and appreciated* the risk created by the alleged product defect, and (ii) the plaintiff *voluntarily assumed* the risk, even though it was unreasonable to do so.

- **Product Misuse:** The defendant must show that (i) the plaintiff was using the product in some way for which it was not designed, and (ii) the plaintiff’s misuse was *not reasonably foreseeable* to the defendant, such that the defendant would be required to safeguard against it.

- **Commonly-Known Danger:** The defendant must show that the plaintiff’s injury resulted from a danger so commonly known *by the general public* that the defendant had no duty to warn plaintiff.

- **Knowledgeable User:** If a particular danger is or should be commonly known *by particular users* of the product, the manufacturer need not warn those particular users.