

3210 IMPLIED WARRANTY: IMPROPER USE

An "implied warranty" is a warranty which arises by operation of law from the acts of the parties or circumstances of the transaction. It requires no intent or particular language or action by the seller to create it.

Any warranty of a product sold is based on the assumption that such product will be used in a manner suitable to its intended use. The seller is entitled to assume, in the absence of information to the contrary, that a use will be made of the product, for the purpose for which it is intended and in accordance with directions properly given. There is no breach of warranty if the product sold is put to a use for which the product was not intended or used not in accordance with the directions given as to its use.

COMMENT

The instruction and comment were originally published in their present form in 1971. The comment was updated in 1980. Editorial changes were made in 1994. No substantive changes were made to the instruction.

Recreatives, Inc. v. Myers, 67 Wis.2d 255, 264, 226 N.W.2d 474 (1975). In Recreatives, Inc., the court quoted with approval the following excerpt from Williston, Sales:

. . . . The whole point of an implied warranty of fitness for a particular purpose is that the product sold by the seller to the buyer will be suitable for the specific purpose which the buyer has, and any similar product which the seller may sell to the buyer which is not so suited will breach that warranty of fitness for the particular purpose. Of course abnormal or unique use may result in the prevention of the application of this implied warranty. 3 Williston, Sales (4th ed. 1974), p. 120, § 19-6. (Emphasis added.)