

**3222 EXPRESS WARRANTY: NO DUTY OF INSPECTION**

If you find that there existed an express warranty by the seller, then there is no duty of inspection on the buyer. Even though the buyer may be negligent in failing to discover a defect in the goods purchased, he or she may, nevertheless, rely on the representations and on the warranty of the seller.

**COMMENT**

The instruction and comment were originally published in their present form in 1967. The comment was updated in 1980. Editorial changes were made in 1994 to address gender references in the instruction. No substantive changes were made to the instruction.

Jones v. Pittsburgh Plate Glass Co., 246 Wis. 462, 17 N.W.2d 562 (1944).

Under the UCC, a seller of goods may limit his or her contractual liabilities by: (1) disclaiming or limiting his or her warranties pursuant to Wis. Stat. § 402.316, or (2) limiting the buyer's remedies for a breach of warranty, pursuant to Wis. Stat. § 402.719.

Where an express warranty conflicts with a preceding disclaimer of all warranties, the language of the express warranty must control. Murray v. Holiday Rambler, Inc., 83 Wis.2d 406, 417, 265 N.W.2d 513 (1978).

The seller cannot substitute "repair" for an express warranty of "replacement" except where a buyer knowingly accepts a "repair" instead of a "replacement" and thereby waives the express warranty provision of the agreement. Ross v. Faber, 2 Wis.2d 296, 86 N.W.2d 409 (1957). See also Murray v. Holiday Rambler, Inc., *supra* at 420.