St. Mary's Law Journal

Volume 9 | Number 2 Article 7

6-1-2022

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IMPLIED WARRANTIES OF QUALITY ON USED MOTOR VEHICLES IN TEXAS

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The purchase and sale of a used car[1] is an everyday event in Texas and throughout the United States.[2] Because of the large volume of used car sales and the inherent nature of secondhand motor vehicles, disputes often arise between buyers and sellers concerning the condition of the vehicle sold.[3] The scope of these disputes varies from relatively small amounts to the entire value of the purchase-sale agreement.[4] Settlement of such disputes usually depends upon the existence of a warranty or a disclaimer of dealer liability on the vehicle absent a claim of fraud or deceptive trade practice.

Express warranties may arise by affirmation, description, or sample as part of the basis of the bargain.[6] In the sale of a new car or truck, the manufacturer's express warranty is passed on to the consumer through the automobile dealer.[7] Express warranties in used car sales agreements, how-

1. The Texas Certificate of Title Act defines a "used car" as one that "has been the subject of a first sale . . . ." TEX. REV. CIV. STAT. ANN. art. 6687-1, § 10 (1977). The statute states further that once a car has been sold to the public it becomes "used." *Id.* § 7. The fact that an item is not of the current model year, however, does not make it used. Mathis Equip. Co. v. Rosson, 386 S.W.2d 854, 859 (Tex. Civ. App.—Corpus Christi 1964, writ ref'd n.r.e.) (decided prior to adoption of Uniform Commercial Code).

2. Census Bureau statistics indicate annual nationwide sales of over $3.5 billion for 1967 in the category for retail motor vehicle dealers with a payroll. 1 U.S. BUREAU OF THE CENSUS, CENSUS OF RETAIL TRADE 4-8 (1972). Other statistics indicate expenditures of over $20 billion for used cars in 1973. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 1974, Table 936, at 561 (95th ed. 1974).

3. *See, e.g.*, Overland Bond & Inv. Corp. v. Howard, 292 N.E.2d 168, 171 (Ill. App. Ct. 1972); Rose v. Epley Motor Sales, 215 S.E.2d 573, 574 (N.C. 1975); Bouchet v. Oregon Motor Car Co., 152 P. 888, 889 (Ore. 1915). Even if the sale involves a new car, the relations between the buyer and seller are not always amicable. In Adams v. Peter Tramontin Motor Sales, Inc., 126 A.2d 358, 364 (N.J. Super. Ct. App. Div. 1956), the buyer described her new car as a "nonvegetative member of the citrus family."

4. *See* Rose v. Epley Motor Sales, 215 S.E.2d 573, 574 (N.C. 1975) (entire purchase price); Tracy v. Vinton Motors, Inc., 296 A.2d 269, 270 (Vt. 1972) ($400 paint job).

5. *See, e.g.*, Moore v. Switzer, 239 P. 874, 875 (Colo. 1925) (existence of warranty in question); Chamberlain v. Bob Matick Chevrolet, Inc., 239 A.2d 42, 44 (Conn. Cir. Ct. 1967) (no warranty on car sold "as is"); Griswold v. Tucker, 216 S.W.2d 276, 278 (Tex. Civ. App.—Fort Worth 1948, no writ) (existence of warranty dependent on whether transaction was sale or exchange). *See generally* Moye, *Exclusion and Modification of Warranty Under the UCC—How to Succeed in Business Without Being Liable for Not Really Trying*, 46 DEN. L.J. 579 (1969).

6. Fargo Mach. & Tool Co. v. Kearney & Trecker Corp., 428 F. Supp. 364, 370-71 (E.D. Mich. 1977) (by description on industrial machine); U.C.C. § 2-313(1); *see* Eddington v. Dick, 386 N.Y.S.2d 180, 181-82 (Teneva City Ct. N.Y. 1976) (by affirmation on used refrigerator).

7. *See, e.g.*, Voth v. Chrysler Motor Corp., 545 P.2d 371, 375-76 (Kan. 1976); Curtis v.

ever, are either quite limited or nonexistent.[8] Used car buyers are normally relegated to claims under implied warranties arising by operation of law rather than by any express warranty from the seller.[9]

The buyer's expectations of a reasonable level of performance after the purchase of a used vehicle must be balanced against the seller's right to be free from unreasonable claims. The used car buyer's expectations are obviously different than those involved in the sale of a new car. A used car, of necessity, does not carry the same warranty as a new car since it has worn parts, is subject to breakdown, and requires periodic mechanical repair to keep it running.[10] The warranties which do exist to protect the buyer evolved from the common law and are presently codified in the Uniform Commercial Code.[11] They are examined below as pertinent to the sale of a used vehicle.

IMPLIED WARRANTY DEVELOPMENT

Common Law Origins

At one time, the parties to a sales contract expressly agreed on the seller's responsibility for quality of goods sold, and there was no reason to allow implied conditions to regulate a term so significant as quality.[12] In 1815 Lord Ellenborough suggested that some implied guaranty of quality existed since "[t]he purchaser cannot be supposed to buy goods to lay them on a dunghill."[13] The buyer's protection under an implied warranty was limited nevertheless to instances where he had not been given the opportunity to inspect the goods.[14] Although courts employed various de-

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Fordham Chrysler Plymouth, Inc., 364 N.Y.S.2d 767, 769 (Civ. Ct. N.Y. 1975); Bill McDavid Oldsmobile, Inc. v. Mulcahy, 533 S.W.2d 160, 162-64 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ). On the other hand, new car sales agreements generally disclaim all implied warranties. *See id.* at 164 (excluded all implied warranties except merchantability).

8. For example, a random poll of 12 San Antonio used car dealers showed that most small businesses give no warranties at all while larger franchised dealers offer a limited warranty. The limited warranties are usually good for 50% of parts and repairs within 30 days or 1,000 miles and 15% of such costs thereafter for two years. Additionally liability is generally limited to repairs which are performed by the dealer who sold the car.

9. *See* Elliott v. Lachance, 256 A.2d 153, 155 (N.H. 1969) (UCC decision); Jones v. Just, L.R. 3 Q.B. 197, 200 (1868) (common law decision); 2 A. SQUILLANTE & J. FONSECA, WILLISTON ON SALES § 16-1, at 414 (4th ed. 1974).

10. Richardson v. French, 253 So. 2d 602, 606 (La. Ct. of App. 1971); *see* Testo v. Russ Dunmire Oldsmobile, Inc., 554 P.2d 349, 354 (Wash. Ct. App. 1976).

11. *Compare* Jones v. Just, L.R. 3 Q.B. 197, 200 (1868), *with* U.C.C. §§ 2-314 to 315.

12. Parkinson v. Lee, 102 Eng. Rep. 389, 392 (K.B. 1802); Stuart v. Wilkins, 99 Eng. Rep. 15, 16-17 (K.B. 1778). The editor's footnote in the report of the *Stuart* case indicates that the only implied condition at that time was that the seller not know of any latent defects such that his express warranty would work a fraud on the buyer. *Id.* at 16 n.1.

13. Gardiner v. Gray, 171 Eng. Rep. 46, 47 (Nisi Prius 1815).

14. *See* Holley v. Central Auto Parts, 347 S.W.2d 341, 343 (Tex. Civ. App.—Austin 1961, writ ref'd n.r.e.) (seller not liable for unknown latent defects in tire rim where buyer in-

scriptive terms, generally two types of implied warranties arose under those circumstances: (1) *merchantability* or average quality suited for the general purpose; and (2) *fitness for the particular purpose* when the seller knew of the specific use the buyer would make of the goods, and the buyer thereafter relied upon the seller's skill or judgment in furnishing such goods.[15]

These implied warranties were generally inapplicable, however, where the buyer knew that the goods were secondhand.[16] Caveat emptor governed sales of used articles, especially ones which depreciated as quickly as an automobile.[17] The implied warranty of fitness for a particular purpose was held applicable in some cases where certain prerequisites were met:[18] The buyer must have made known to the seller his intended use of the vehicle and have shown that he relied upon the seller's skill or judgment to provide such a vehicle.[19]

Statutory Applications

These implied common law warranties of quality were codified in the Uniform Sales Act[20] (USA) and subsequently in the Uniform Commercial

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spected); Buffalo Pitts Co. v. Alderdice, 177 S.W. 1044, 1047 (Tex. Civ. App.—Dallas 1915, writ ref'd) (seller liable for defects where buyer had no chance to inspect before delivery of a feeder).

15. 2 A. SQUILLANTE & J. FONSECA, WILLISTON ON SALES §§ 15-19 to 20 at 387-89 (4th ed. 1974); *see* State v. Shain, 179 S.W.2d 19, 20-21 (Mo. 1944) (refers to particular purpose warranty as "warranty of suitability"); Liang v. Fidgeon, 128 Eng. Rep. 974 (Nisi Prius 1815) (implied warranty requires "good and merchantable" materials).

16. Holley v. Central Auto Parts, 347 S.W.2d 341, 343 (Tex. Civ. App.—Austin 1961, writ ref'd n.r.e.); Aeronautical Corp. of America v. Gossett, 117 S.W.2d 893, 897 (Tex. Civ. App.—Dallas 1938, no writ).

17. *See* Kilborn v. Henderson, 65 So. 2d 533, 536 (Ala. Ct. App. 1953); Lamb v. Otto, 197 P. 147, 148 (Cal. Dist. Ct. App. 1921); Annot., 22 A.L.R.3d 1387, 1393 (1968).

18. Lindberg v. Coutches, 334 P.2d 701, 704 (Cal. App. Dep't Super. Ct. 1959) (used airplane); Bochet v. Oregon Motor Car Co., 152 P. 888, 890 (Ore. 1915), *distinguished in* Durbin v. Denham, 210 P. 165, 166 (Ore. 1922); T.W. Little Co. v. Fynboh, 207 P. 1064, 1065 (Wash. 1922); *see* Annot., 22 A.L.R.3d 1387, 1394 (1968); Annot., 151 A.L.R. 446, 454-55 (1944).

19. *See* Bouchet v. Oregon Motor Car Co., 152 P. 888, 890 (Ore. 1915). In discussing implied warranties, the court stated: "It appears that this car was sold as fit for a special purpose known to the defendant company." *Id.* at 890.

20. UNIFORM SALES ACT § 15(1), (2). Those subsections provided:

> (1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.
>
> (2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

Id. § 15(1), (2). The Uniform Sales Act was never adopted in Texas.

Code[21] (UCC). The USA attached an implied warranty of fitness for a particular purpose when the seller knew of the buyer's intended purpose and the buyer relied on the seller's judgment in selecting the goods.[22] This warranty did not apply where the contract specified goods by a trade name since this indicated that the buyer was relying upon the quality of the brand name rather than the judgment of the seller.[23]

Section 15(1) of the USA provided further clarification of a seller's liability for quality by indicating that one might be liable merely for passing the goods in the stream of commerce as a retailer or dealer.[24] It also could be inferred from the language of that section that the status of the goods as used did not bar the application of the fitness warranty since no distinction was made between new and used goods. Consequently, many cases decided under the USA extended the fitness warranty to used goods by adopting a literal interpretation of section 15(1).[25] Any implied warranty of fitness for a particular purpose that attached to used goods was, of course, premised upon the buyer's reliance on the seller's skill in selecting the goods.[26]

The USA did not define "merchantable" as does the UCC.[27] At common law and under the USA, a seller was expected to furnish goods of fair, average quality when a purchaser bought such goods by description.[28] Additionally, the implied warranty was inapplicable under both the common law and the USA where the buyer had examined the goods and a readily

21. U.C.C. §§ 2-314 to 315.

22. UNIFORM SALES ACT § 15(1). The USA was first adopted by New Jersey, Connecticut, and Arizona in 1907. J. HONNOLD, THE LAW OF SALES AND SALES FINANCING 3 (2d ed. 1962). *See* Craig v. Williams, 97 F. Supp. 725, 727 (D.N.J. 1951) (no warranty under a trade name purchase).

23. Matteson v. Lagace, 89 A. 713, 713-14 (R.I. 1914); UNIFORM SALES ACT § 15(4). *But see* Green Mountain Mushroon Co. v. Brown, 95 A.2d 679, 683 (Vt. 1953) (warranty in buyer's reliance on seller's skill despite trade name purchase); Odell v. Frueh, 304 P.2d 45, 50 (Cal. Dist. Ct. App. 1956).

24. UNIFORM SALES ACT § 15(1) ("whether he be the grower or manufacturer or not"); *see* The St. S. Angelo Toso, 271 F. 245, 248-49 (3d Cir. 1921); Griffin v. Metal Prod. Co., 107 A. 713, 714 (Pa. 1919).

25. *See, e.g.*, Standard Brands Inc. v. Consolidated Badger Coop., 89 F. Supp. 5, 9-10 (E.D. Wis. 1950) (cheese manufacturing plant); Drumar Mining Co. v. Morris Ravine Mining Co., 92 P.2d 424, 427 (Cal. Dist. Ct. App. 1939) (secondhand gold-washing machine); Moss v. Yount, 177 S.W.2d 372, 375 (Ky. 1944) (used tractor); *see* UNIFORM SALES ACT § 15(1) ("the goods shall be reasonably fit for such purpose").

26. *See* Moss v. Yount, 177 S.W.2d 372, 375 (Ky. 1944).

27. The UCC defines "merchantable" in part as follows: "(2) Goods to be merchantable must be at least such as (a) pass without objection in the trade under the contract description; and . . . (c) are fit for the ordinary purposes for which such goods are used . . . ." U.C.C. § 2-314(2)(a), 314(2)(c).

28. *See* Murchie v. Covnell, 29 N.E. 207, 207 (Mass. 1891) (common law decision requiring contract for ice to furnish "merchantable" ice); UNIFORM SALES ACT § 15(2) (goods must be merchantable).

discoverable defect was not revealed.[29] Like the warranty of fitness for a particular purpose, the warranty of merchantability applied to used goods, including used vehicles, under the USA.[30] The warranty was limited, however, and did not apply as though the vehicles were new.[31]

During the period in which the USA was in force,[32] courts in states which had not adopted it also held that an implied warranty of quality applied to secondhand goods, specifically motor vehicles.[33] Although one author has enumerated Texas cases involving used goods that apparently follow this trend,[34] a close examination of those cases reveals that they were concerned with express rather than implied warranties.[35]

Changes in these two implied warranties, which occurred in the transition from the USA or common law to the UCC, are mostly of form rather than of substance. The UCC divides the two warranties into separate sections,[36] whereas the two were combined under section 15 of the USA. There are, however, several significant changes.

The scope of the transactions covered by the warranty of merchantabil-

29. The USA provided that "[i]f the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed." UNIFORM SALES ACT § 15(3). *See* Oil City Iron Works v. Belmont, 7 S.W.2d 772, 773 (Ark. 1928).

30. Regula v. Gerber, 70 N.E.2d 662, 665 (Ohio C.P. 1946) (USA provisions imply warranty for general purpose—transportation).

31. *See id.* at 665.

32. The USA was promulgated in 1906 and was still in use in the 1960's. *See* J. HONNOLD, THE LAW OF SALES AND SALES FINANCING 3 (2d ed. 1962).

33. *See* International Harvester Co. v. Porter, 169 S.W. 993, 994 (Ky. 1914) (vehicle must be fit for a particular purpose of buyer); Donachricha v. D'Antoni, 270 So. 2d 149, 152 (La. Ct. of App. 1972) (vehicle must be fit for intended use under redhibitory statute); Bouchet v. Oregon Motor Car Co., 152 P. 888, 890 (Ore. 1915) (vehicle must be reasonably suitable for the purpose sold). Although Kentucky and Oregon eventually adopted the USA, it was not in effect in those states at the time of the decisions cited. *See* 1 S. WILLISTON, THE LAW GOVERNING SALES OF GOODS § 1, at 2 & n.3 (rev. ed. 1948).

34. Comment, *Implied Warranties of Quality in Texas Sales*, 32 TEXAS L. REV. 557, 572-73 (1954). The author discussed three cases specifically: Refinery Equip., Inc. v. Wickett Ref. Co., 158 F.2d 710, 712 (5th Cir. 1947); Griswold v. Tucker, 216 S.W.2d 276, 280 (Tex. Civ. App.—Forth Worth 1949, no writ); Buffalo Pitts Co. v. Alderdice, 177 S.W. 1044, 1047 (Tex. Civ. App.—Dallas 1915, writ ref'd).

35. For example, the trial court in Refinery Equip., Inc. v. Wickett Ref. Co., 158 F.2d 710, 712 (5th Cir. 1947), had found that an implied warranty of fitness for the particular purpose applied to secondhand goods as a matter of law. Purporting to apply Texas law, the district court said the warranty was implied since the seller was a dealer in such used goods and had made advertisements concerning quality. *Id.* at 711-12. The advertisements were distinguished as being an express warranty. *Id.* at 712.

36. U.C.C. §§ 2-314 to 315. Section 2-314(1) of the UCC provides that "a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind." *Id.* § 2-314(1). Section 2-315 provides that "[w]here the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under [section 2-316] an implied warranty that the goods shall be fit for such purpose." *Id.* § 2-315.

ity has been expanded beyond the USA requirement that goods be "bought by description" or specifically designated in the sales contract.[37] The term "merchantable," undefined in the USA, is clarified in the UCC by several definitions.[38] The "patent or other trade name" exception of the USA was eliminated to rectify situations in which a buyer designated an item by patent or brand name but still relies on the seller's skill.[39] Other areas of warranty disputes under the common law and the USA are dealt with in related sections of the UCC.[40] The one remaining change significant to this topic is comment 3 to section 2-314. The Code neither provides for nor disclaims any implied warranty of merchantability for used goods, but comment 3 indicates that the warranty applies to a limited extent by stating that "[a] contract for the sale of second-hand goods, however, involves only such obligation as is appropriate to such goods for that is their contract description."[41] This passage suggests that the warranty of merchantability still exists as it did under the USA. The language "only such obligation as is appropriate" indicates that there exists *some* obligation on the part of the seller of secondhand goods, including used automobiles, although this obligation may be limited to the "operative essentials" of the product.[42] Furthermore, the implied warranty of fitness for the particular purpose has been held to apply to the sale of used vehicles under the UCC where the purchaser made known his intended use.[43] While comment 3 to UCC sections 2-314 and other Official Comments to the UCC are not the law, they are invaluable aids to interpretation of the Code. When followed, the Official Comments promote the underlying purposes and policies of the Code, including simplification, clarification, moderni-

37. *Compare* U.C.C. § 2-314, Comment 3 *with* UNIFORM SALES ACT § 15(2). *See also* Ruud, *The Vendor's Responsibility for Quality in the Automated Retail Sale,* 9 U. KAN. L. REV. 139 (1960).

38. U.C.C. § 2-314(2)(a) to 314(2)(f). The examples given in the Code are not intended to exhaust the definition of "mechantable." *Id.* § 2-314, Comment 6.

39. *Compare* UNIFORM SALES ACT § 15(4), *with* U.C.C. § 2-315. The fact that a buyer designates an item by trade name is only one factor to consider in determining the buyer's reliance upon the seller's skill in order to invoke the implied warranty of fitness for the particular purpose. *Id.* § 2-315, Comment 5.

40. *See* U.C.C. §§ 2-313, 2-316 to 2-318 (express warranties, disclaimers, conflicting warranties, and privity of contract). The Texas section on third party beneficiaries and contract privity is nonstandard. TEX. BUS. & COMM. CODE ANN. § 2.318 (Tex. UCC 1968); *see* Ruud, *The Texas Legislative History of the Uniform Commercial Code,* 44 TEXAS L. REV. 597, 601-02 (1966).

41. U.C.C. § 2-314, Comment 3.

42. *See* Overland Bond & Inv. Corp. v. Howard, 292 N.E.2d 168, 171-73 (Ill. App. Ct. 1972); Regan Purchase & Sales Corp. v. Primavera, 328 N.Y.S.2d 490, 492 (Civ. Ct. N.Y. 1972) (used restaurant equipment); Testo v. Russ Dunmire Oldsmobile, Inc., 554 P.2d 349, 353-54 (Wash. Ct. App. 1976) (implied warranty limited to operative essentials of used automobile).

43. Enix v. Diamond T. Sales & Serv. Co., 188 So. 2d 48, 52-53 (Fla. Dist. Ct. App. 1966) (dictum); Overland Bond & Inv. Corp. v. Howard, 292 N.E.2d 168, 173 (Ill. App. Ct. 1972).

zation, and unification of the law governing commercial transactions.[44]

In Texas, the implied warranties of quality have not been uniformly applied.[45] This has been attributed to the direct change from common law applications of implied warranties to those under the UCC.[46]

UCC Applications To Used Vehicles

American courts have been hesitant to apply the statutory implied warranties of quality to sales of secondhand goods and have until recently adhered to decisions applying caveat emptor to such transactions. In a case decided under the USA, for example, the Colorado Supreme Court refused to apply any warranty of quality to the sale of a used automobile.[47] In that case the court also found an effective disclaimer clause and relied on pre-USA cases for authority.[48]

Similarly, in 1971 a Georgia court cited pre-Code authority and declared in dictum that no implied warranty as to the condition, fitness, or quality of an item applies to sales of secondhand goods, absent special circumstances.[49] The following year, however, another Georgia court found UCC section 2-314 applicable to the sale of a used airplane.[50] Also in 1972, an Illinois court held section 2-314 applicable to sales of used goods,[51] stating that "such a contract obligation *may* create a warranty of merchantability

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44. U.C.C. § 1-102(2)(a), 102(2)(c); *see* Merrill, *Uniformly Correct Construction of Uniform Laws*, 49 A.B.A.J. 545, 547 (1963) (advocating consultation of Uniform State Law Commissioners as amici curiae); Schnader, *Why the Commercial Code Should be "Uniform"*, 20 WASH. & LEE L. REV. 237, 237-38 (1963).

45. *Cf.* Hovenden v. Tenbush, 529 S.W.2d 302, 305 (Tex. Civ. App.—San Antonio 1975, no writ) (dictum) (applicability of UCC warranties to used goods undecided), *noted in* 8 ST. MARY'S L.J. 196 (1976). *Compare* Chaq Oil Co. v. Gardner Mach. Corp., 500 S.W.2d 877, 878 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ) (no UCC merchantability warranty for used tractor), *with* Buffalo Pitts Co. v. Alderdice, 177 S.W. 1044, 1047 (Tex. Civ. App.—Dallas 1915, writ ref'd) ("implied" warranty of fitness applicable to used threshing machine).

46. Chaq Oil Co. v. Gardner Mach. Corp., 500 S.W.2d 877, 878 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ) (supplementing the UCC with pre-Code law); Comment, *UCC Implied Warranty of Merchantability and Used Goods*, 26 BAYLOR L. REV. 630, 640 (1974). A more uniform result might be reached if the UCC warranties were considered to totally supplant common law warranties. *See* Alaska Airlines, Inc. v. Lockheed Aircraft Corp., 430 F. Supp. 134, 138 (D. Alaska 1977).

47. Yanish v. Fernandez, 397 P.2d 881, 882 (Colo. 1965); *see* Comment, *Are There Implied Warranties on Used Cars in California?*, 9 U.S.F.L. REV. 539, 545-56 (1975).

48. Yanish v. Fernandez, 397 P.2d 881, 882 (Colo. 1965) (relying on earlier Colorado common law decisions); *see* 42 U. COLO. L. REV. 473, 474-77 (1971).

49. General Motors Corp. v. Halco Instruments, Inc., 185 S.E.2d 619, 622 (Ga. Ct. App. 1971) (decided on lack of privity and valid disclaimer).

50. Georgia Timberlands, Inc. v. Southern Airways Co., 188 S.E.2d 108, 109 (Ga. Ct. App. 1972).

51. Overland Bond & Inv. Corp. v. Howard, 292 N.E.2d 168, 175 (Ill. App. Ct. 1972).

in the sale of a used automobile."[52] It also ruled that section 2-315 would apply "[e]ven if Section 2-314 were held inapplicable to used car sales."[53]

The trend of decisions has now been reversed and courts are applying the UCC implied warranties of quality to sales of used goods.[54] Some of these decisions have found implied warranties of merchantability without specifically holding UCC sections 2-314 and 2-315 applicable to the sale of used goods.[55] Of the fourteen states that have rendered recent decisions concerning the applicability of the implied warranty of merchantability to used goods, twelve have declared that the warranty of merchantability does apply to used goods.[56] One jurisdiction denied its application and another refused to decide the issue.[57]

TEXAS UCC IMPLIED WARRANTIES AND USED VEHICLES

Before the UCC became effective in Texas in 1966, Texas courts consistently held that there was no implied warranty of quality for goods purchased with the knowledge that they were used.[58] While there are few

52. *Id.* at 171 (emphasis added).

53. *Id.* at 173. There is a special Illinois law on sales of used cars. *See id.* at 171 n *.

54. *See, e.g.,* Georgia Timberlands, Inc. v. Southern Airways Co., 188 S.E.2d 108, 109 (Ga. Ct. App. 1972); Regan Purchase & Sales Corp. v. Primavera, 328 N.Y.S.2d 490, 492-93 (Civ. Ct. N.Y. 1972); Testo v. Russ Dunmire Oldsmobile, Inc., 554 P.2d 349, 354 (Wash. Ct. App. 1976).

55. *See* McHugh v. Carlton, 369 F. Supp. 1271, 1276-77 (D.S.C. 1974) (UCC warranty sections applicable to "recapped" tire); Realmuto v. Straub Motors, Inc., 322 A.2d 440, 443 (N.J. 1974) (UCC warranty sections applicable in defective product cases); Baker v. City of Seattle, 484 P.2d 405, 407 (Wash. 1971) (en banc) (by implication, sections applicable to lease of used golf cart).

56. *See* Chamberlain v. Bob Matick Chevrolet, Inc., 239 A.2d 42, 46 (Conn. Cir. Ct. 1967) (by implication); Brown v. Hall, 221 So. 2d 454, 457 (Fla. Dist. Ct. App. 1969); Georgia Timberlands, Inc. v. Southern Airways Co., 188 S.E.2d 108, 109 (Ga. Ct. App. 1972); Overland Bond & Inv. Corp. v. Howard, 292 N.E.2d 168, 171-72 (Ill. App. Ct. 1972); Johnson v. Fore River Motors, Inc., 4 UCC REP. SERV. 696, 699 (Mass. App.) (by implication), *aff'd,* 199 N.E.2d 555 (1964); Williams v. College Dodge, Inc., 11 UCC REP. SERV. 958, 961 (Mich. Dist. Ct. Dec. 15, 1972); Stickney v. Fairfield's Motors, Inc., 9 UCC REP. SERV. 236, 238 (N.H. Super. Ct. Oct. 30, 1970) (by implication); Regan Purchase & Sales Corp. v. Primavera, 328 N.Y.S.2d 490, 492-93 (Civ. Ct. N.Y. 1972); Rose v. Epley Motor Sales, 215 S.E.2d 573, 577 (N.C. 1975); Basta v. Riviello, 2 UCC REP. SERV. 718, 720-21 (Pa. C.P. Jan. 15, 1965); Tracy v. Vinton Motors, Inc., 296 A.2d 269, 272 (Vt. 1972); Testo v. Russ Dunmire Oldsmobile, Inc., 554 P.2d 349, 353-54 (Wash. Ct. App. 1976). Another court applied the UCC implied warranties of quality to a used vehicle, but that judgment was vacated because a valid disclaimer was found by the state's supreme court. Smith v. Sharpensteen, 13 UCC REP. SERV. 609, 611-12 (Okla. Ct. App. Nov. 13, 1973), *vacated,* 521 P.2d 394, 396 (Okla. 1974).

57. Trax, Inc. v. Tidmore, 331 So. 2d 275, 277 (Ala. 1976) (refusing to rule on prospective applicability of § 2-314 to used goods); Chaq Oil Co. v. Gardner Mach. Corp., 500 S.W.2d 877, 878 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ) (denying applicability of § 2-314 to used goods in Texas).

58. *See* Holley v. Central Auto Parts, 347 S.W.2d 341, 343 (Tex. Civ. App.—Austin 1961, writ ref'd n.r.e.); Norvell-Wilder Supply Co. v. Richardson, 300 S.W.2d 773, 775-76 (Tex. Civ.

Texas cases dealing with used motor vehicle warranties, there is no reason to treat vehicles differently from other goods.[59]

In *Chaq Oil Co. v. Gardner Machinery Corp.*[60] a Texas court applied pre-Code law to the sale of a used vehicle and denied applicability of section 2-314 to used goods altogether.[61] The Houston Court of Civil Appeals for the Fourteenth District held that although the UCC implied warranty of fitness for a particular purpose may apply to used goods in Texas, the implied warranty of merchantability does not.[62]

Merchantability

Plaintiff Chaq had purchased a used "crawler-tractor" from the defendant, knowing that the vehicle was used, after Chaq's managing partner had examined it in operation. After the purchase, the machine malfunctioned, extensive repairs were required, and Chaq brought an action for the purchase price plus the cost of repairs. The judgment for the defendant was affirmed.[63] The *Chaq* court's interpretation of the UCC warranty of merchantability is, however, clearly contrary to the weight of authority in other jurisdictions.[64]

The applicability of section 2-314 to used goods is also supported by the interpretation of comment 3 and the Code's definition of goods. The text of the statute neither confirms nor denies applicability to used goods. Section 2-314 refers only to "goods," a term defined as "all things . . .

App.—El Paso 1957, writ ref'd n.r.e.); Aeronautical Corp. of America v. Gossett, 117 S.W.2d 893, 897 (Tex. Civ. App.—Dallas 1938, no writ); Central Power & Light Co. v. Friedrich, 70 S.W.2d 1012, 1013 (Tex. Civ. App.—San Antonio 1934, writ dism'd); American Soda Fountain Co. v. Palace Drug Store, 245 S.W. 1032, 1033 (Tex. Civ. App.—Austin 1922, no writ); Joy v. National Exch. Bank, 74 S.W. 325 (Tex. Civ. App. 1903, no writ).

59. In previous Texas decisions no distinction has been made between used vehicles and other types of used goods. A 1938 case concerning a used motor vehicle cited an earlier decision which had dealt with used soda fountain equipment. The cases were decided on the same general principles and declared that no implied warranty of quality applied. *Compare* Aeronautical Corp. of America v. Gossett, 117 S.W.2d 893, 897 (Tex. Civ. App.—Dallas 1938, no writ) (used airplane), *with* American Soda Fountain Co. v. Palace Drug Store, 245 S.W. 1032, 1033 (Tex. Civ. App.—Austin 1922, no writ) (used fountain equipment). Regan Purchase & Sales Corp. v. Primavera, 328 N.Y.S.2d 490 (Civ. Ct. N.Y. 1972) indicates that now there may be *more* justification for applying the UCC quality warranties to used motor vehicles for public policy reasons. *Id.* at 492.

60. 500 S.W.2d 877 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ).

61. *See id.* at 878.

62. *Id.* at 878.

63. *Id.* at 879. The result in *Chaq* is probably correct, however, because of the defects in the plaintiff's pleadings concerning damages and the fact that § 2-315 was inapplicable because plaintiff's managing partner should have discovered the defects during his inspection of the tractor.

64. *Compare id.* at 878, *with* Rose v. Epley Motor Sales, 215 S.E.2d 573, 577 (N.C. 1975), *and* Tracy v. Vinton Motors, Inc., 296 A.2d 269, 272 (Vt. 1972).

which are movable at the time of identification to the contract for sale."[65] No distinction is made as to new or used goods, and there is no indication that used goods should be excluded.

Comment 3 to section 2-314 specifies that the sale of secondhand goods "involves only such obligation *as is appropriate to such goods for that is their contract description.*"[66] The Texas court read this passage to mean that a warranty of merchantability is implied only if deemed appropriate to all used goods according to the established statutory and case law within the particular jurisdiction.[67] Under this construction, since earlier Texas cases imposed no implied warranty of merchantability for used goods, it was denied in *Chaq*. Other courts have interpreted this passage to mean that the only obligation (warranty) involved is one appropriate to the specific used goods bargained for, and that this is determined by the relative quality of such an item to the same item when new.[68] This result seems more plausible. The buyer of a used car may not expect as much from the vehicle as the buyer of a new car, but he may expect some degree of quality from the "operative essentials" of the vehicle.[69] One who buys a new car might reasonably expect that all interior lights work, that the hood closes flush to the front fenders, and that the seats be unsoiled. On the other hand, a used car buyer may not expect such amenities, but he may properly expect that the car can be safely driven on public streets.[70]

Even if *Chaq*'s interpretation of comment 3 was correct, the Code should be supplemented with pre-Code, USA decisions rather than Texas pre-Code common law decisions. Article 2 of the UCC was derived not only from the text of the USA but also from the interpretations of cases decided under the USA.[71] Three states that never enacted the USA but that have enacted the UCC have applied the warranty of merchantability to the sale of a used automobile.[72] Although at common law these courts refused to

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65. TEX. BUS. & COMM. CODE ANN. § 2.105(a) (Tex. UCC 1968).

66. U.C.C. § 2-314, Comment 3 (emphasis added).

67. *See* Chaq Oil Co. v. Gardner Mach. Corp., 500 S.W.2d 877, 878 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ). Since Texas never recognized an implied warranty of merchantability on used goods at common law, the court considered application of § 2-314 inappropriate. *Id.* at 878.

68. Overland Bond & Inv. Corp. v. Howard, 292 N.E.2d 168, 171-72 (Ill. App. Ct. 1972); *see* Chamberlain v. Bob Matick Chevrolet, Inc., 239 A.2d 42, 47 (Conn. Cir. Ct. 1967).

69. *See* Testo v. Russ Dunmire Oldsmobile, Inc., 554 P.2d 349, 354 (Wash. Ct. App. 1976).

70. *See* Karczewski v. Ford Motor Co., 382 F. Supp. 1346, 1351 (N.D. Ind. 1974); Overland Bond & Inv. Corp. v. Howard, 292 N.E.2d 168, 172-73 (Ill. App. Ct. 1972).

71. "Under the U.C.C. there is a continuation of the implied warranties of merchantability and fitness for the purpose, and sections 2-314 (relating to merchantability) and 2-315 (relating to fitness for the purpose) carry forward much of the law as it developed under the common law and [the] U.S.A." 1 W. HAWKLAND, A TRANSACTIONAL GUIDE TO THE UNIFORM COMMERCIAL CODE § 1.190203, at 63 (1964).

72. Brown v. Hall, 221 So. 2d 454, 457-58 (Fla. Dist. Ct. App. 1969); Georgia Timber-

apply the warranty of merchantability to used goods,[73] they now apply UCC section 2-314 to the sale of used goods.[74] Rather than extend common law doctrines, Texas courts should follow this logical application of UCC provisions.

Fitness for Particular Purpose

The implied warranty of fitness for a particular purpose, UCC section 2-315, also has been found to apply to the sale of used vehicles.[75] Most Texas courts, however, have either expressed uncertainty as to the applicability of this warranty[76] or have avoided deciding the case on this issue.[77] In *Hovenden v. Tenbush*,[78] for example, the court denied the existence of the fitness warranty in the sale of used goods at common law and decided the case on a strict liability in tort theory.[79] Although the court recognized that no warranties were implied in the sale of used goods at common law, it did not decide whether the implied warranty of fitness would apply to such sales under the UCC.[80] It can be argued that the warranty of fitness should apply whether the goods are new or used. If a seller selects goods to fit a particular purpose for a buyer, the buyer has no ground for complaint that the goods were used if they fulfill the requirements he specified.[81] Conversely, since a seller may furnish either new or used goods to fit a purpose, he should warrant that the goods fit the particular purpose

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lands, Inc. v. Southern Airways Co., 188 S.E.2d 108, 109 (Ga. Ct. App. 1972); Rose v. Epley Motor Sales, 215 S.E.2d 573, 577 (N.C. 1975).

73. These jurisdictions had held either that no warranty of quality could be applied to used goods or at least that none would apply where the buyer had a chance to inspect. *See* McDonald v. Sanders, 137 So. 122, 125 (Fla. 1931); General Motors Corp. v. Halco Instruments, Inc., 185 S.E.2d 619, 622 (Ga. Ct. App. 1971) (holding unclear, referring to pre-Code law); Driver v. Snow, 95 S.E.2d 519, 521 (N.C. 1956).

74. See note 72 *supra* and accompanying text.

75. Green v. Northeast Motor Co., 166 A.2d 923, 924 (D.C. 1961) (dictum); Brown v. Hall, 221 So. 2d 454, 458 (Fla. Dist. Ct. App. 1969); Overland Bond & Inv. Corp. v. Howard, 292 N.E.2d 168, 173 (Ill. App. Ct. 1972).

76. *See* Chaq Oil Co. v. Gardner Mach. Corp., 500 S.W.2d 877, 878 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ) ("some controversy over whether the warranty of fitness applies"); American Soda Fountain Co. v. Palace Drug Store, 245 S.W. 1032, 1033 (Tex. Civ. App.—Austin 1922, no writ) (some exceptions to the rule of no warranty).

77. Central Power & Light Co. v. Freidrich, 70 S.W.2d 1012, 1013 (Tex. Civ. App.—San Antonio 1934, writ dism'd) (theory of no implied warranty might benefit appellant).

78. 529 S.W.2d 302 (Tex. Civ. App.—San Antonio 1975, no writ).

79. *Id.* at 305, 310.

80. *Id.* at 305.

81. Donovan v. Aeolian Co., 200 N.E. 815, 816 (N.Y. 1936). A warranty that goods are new is sometimes implied by trade usage. Fox v. Boldt, 179 N.W. 1 (Wis. 1920); UNIFORM SALES ACT § 15(5); *see* TEX. BUS. & COMM. CODE ANN. § 17.46(b)(6) (Supp. 1976-1977). However, in Donovan v. Aeolian Co., 200 N.E. 815, 816 (N.Y. 1936), the seller's silence had induced the buyer to believe that the goods were new and the seller fraudulently sold used goods.

whether they are new or used.

The fitness warranty did not apply in *Chaq*.[82] Since the plaintiff's managing partner had seen the tractor operate and was familiar with such equipment, the court inferred that the plaintiff had not relied upon the seller's judgment and instead selected the particular vehicle himself.[83] Moreover, the court indicated that there exists *no* implied warranty where the plaintiff's examination prior to the sale should reasonably have revealed any defects to him.[84] The arguments by the court in *Chaq*, in addition to the previous Texas cases concerning sales of used goods, demonstrate that the courts have been and remain undecided whether or not to apply the fitness warranty.[85]

USED AUTOMOBILES

Most of the decisions concerning UCC section 2-314 and used goods have dealt with used motor vehicles.[86] The sale of used cars is probably the most significant category of secondhand goods sales, followed by used industrial and commercial equipment.[87] The large number of used car sales emphasizes the need for clarification of the rights of the buyer and the seller under the UCC implied warranties. If a used car runs, the fact that frequent repairs are necessary does not necessarily establish a breach of implied warranties.[88] A used car dealer should not be considered an insurer of the used car he sells,[89] nor should he be required to inspect for latent defects.[90]

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82. Chaq Oil Co. v. Gardner Mach. Corp., 500 S.W.2d 877, 879 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ).

83. *See id.* at 878, 879; U.C.C. § 2-315 & Comment 1.

84. Chaq Oil Co. v. Gardner Mach. Corp., 500 S.W.2d 877, 878-79 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ); *see* TEX. BUS. & COMM. CODE ANN. § 2.316(c)(2) (Tex. UCC 1968).

85. *See* Refinery Equip., Inc. v. Wickett Ref. Co., 158 F.2d 710, 712 (5th Cir. 1947); Chaq Oil Co. v. Gardner Mach. Corp., 500 S.W.2d 877, 878 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ); American Soda Fountain Co. v. Palace Drug Store, 245 S.W. 1032, 1033 (Tex. Civ. App.—Austin 1922, no writ).

86. *See, e.g.*, Chamberlain v. Bob Matick Chevrolet, Inc., 239 A.2d 42, 46 (Conn. Cir. Ct. 1967); Rose v. Epley Motor Sales, 215 S.E.2d 573, 577 (N.C. 1975); Tracy v. Vinton Motors, Inc., 296 A.2d 269, 272 (Vt. 1972).

87. See note 2 *supra* and accompanying text. For equipment cases, *see* Hovenden v. Tenbush, 529 S.W.2d 302, 304 (Tex. Civ. App.—San Antonio 1975, no writ) (commercial bricks), *noted* in 8 ST. MARY'S L.J. 196 (1976); Central Power & Light Co. v. Friedrich, 70 S.W.2d 1012, 1013 (Tex. Civ. App.—San Antonio 1934, writ dism'd) (industrial equipment); Buffalo Pitts Co. v. Alderdice, 177 S.W. 1044, 1047 (Tex. Civ. App.—Dallas 1915, writ ref'd) (commercial threshing machine).

88. *See* Johnson v. Fore River Motors, Inc., 4 U.C.C. REP. SERV. 696, 698-99 (Mass. App.) *aff'd*, 199 N.E.2d 555 (1964) (used car required periodic repair for "shimmy" and minor problems).

89. Egan Chevrolet Co. v. Bruner, 102 F.2d 373, 375-76 (8th Cir. 1939); Benton v. Sloss, 240 P.2d 575, 578 (Cal. 1952) (en banc); Chamberlain v. Bob Matick Chevrolet, Inc., 239 A.2d 42, 47 (Conn. Cir. Ct. 1967); Curby v. Mastenbrook, 286 N.W. 123, 126 (Mich. 1939).

90. Nelson v. Healey, 99 P.2d 795, 799 (Kan. 1940); Curby v. Mastenbrook, 286 N.W.

Likewise, the seller should not be required to disassemble the vehicle and examine each part.[91] Where the buyer has used or examined the vehicle, any implied warranty is limited.[92] Warranties for used vehicles are limited by the age and condition of the car sold.[93] On the other hand, implied warranties may be relied upon in those instances in which the used vehicle lacks the "operative essentials" expected of an automobile of that make and model.[94]

Several distinctions should be made between the typical consumer's purchase of a secondhand automobile and the type of purchase made in the *Chaq* case. While most used car sales are not arm's length transactions,[95] the plaintiff in *Chaq* was generally acquainted with the vehicle in question.[96] Moreover, defective pleadings for inappropriate damages were fatal to the plaintiff's case in *Chaq*.[97] Since the measure of damages for breach of warranty is clearly set out in the Code,[98] actions for repairs or rescission may be pled easily in an appropriate case.

Another distinction between the *Chaq* situation and most used car purchases is that many dealers in used automobiles give written warranties on the cars and trucks they sell.[99] Application of the warranty of merchantability, section 2-314, to the sales of used cars will, as a practical matter, normally affect only those sales made without an express warranty. Many aggrieved buyers will encounter problems with the vehicle soon after sale and therefore will rely on the express rather than any implied warranties.[100]

123, 126 (Mich. 1939).

91. Egan Chevrolet Co. v. Bruner, 102 F.2d 373, 375-76 (8th Cir. 1939); Benton v. Sloss, 240 P.2d 575, 578 (Cal. 1952) (en banc); Chamberlain v. Bob Matick Chevrolet, Inc., 239 A.2d 42, 47-48 (Conn. Cir. Ct. 1967).

92. *See* Lamb v. Otto, 197 P. 147, 148 (Cal. Dist. Ct. App. 1921); Aeronautical Corp. of America v. Gossett, 117 S.W.2d 893, 897 (Tex. Civ. App.—Dallas 1938, no writ) (used airplane); *cf.* Buffalo Pitts Co. v. Alderdice, 177 S.W. 1044, 1047 (Tex. Civ. App.—Dallas 1915, writ ref'd) (warranty found to exist where no inspection by buyer).

93. Chamberlain v. Bob Matick Chevrolet, Inc., 239 A.2d 42, 47 (Conn. Cir. Ct. 1967); Tracy v. Vinton Motors, Inc., 296 A.2d 269, 272 (Vt. 1972) (aesthetics must yield to age and use); Testo v. Russ Dunmire Oldsmobile, Inc., 554 P.2d 349, 354 (Wash. Ct. App. 1976). The UCC states that "[a] contract for the sale of second-hand goods, however, involves only such obligation as is appropriate to such goods for that is their contract description." U.C.C. § 2-314, Comment 3.

94. Rose v. Epley Motor Sales, 215 S.E.2d 573, 577 (N.C. 1975); Testo v. Russ Dunmire Oldsmobile, Inc., 554 P.2d 349, 354 (Wash. Ct. App. 1976).

95. *See* Wat Henry Pontiac Co. v. Bradley, 210 P.2d 348, 352 (Okla. 1949).

96. Chaq Oil Co. v. Gardner Mach. Corp., 500 S.W.2d 877, 879 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ).

97. *Id.* at 879.

98. U.C.C. § 2-714(2) & Comment 3 (measure of damages is difference between value of goods accepted and value if as warranted); *see id.* §§ 2-711 to -721; Testo v. Russ Dunmire Oldsmobile, Inc., 554 P.2d 349, 355-56 (Wash. Ct. App. 1976) (discussing the buyer's three remedies: rejection, acceptance, and revocation of acceptance).

99. See note 7 *supra* and accompanying text.

100. *See, e.g.*, Georgia Timberlands, Inc. v. Southern Airways Co., 188 S.E.2d 108, 109

Additionally, application of section 2-314 will promote public policy by requiring dealers to make a conspicuous disclaimer mentioning "merchantability" in order to avoid liability.[101] With such an obvious exclusion of liability by the seller, the buyer will be more likely to make an inspection of the vehicle and weigh the probable cost of repairs against the purchase price.

Any reasonable provision imposing liability upon a used car merchant may also serve to promote public safety standards,[102] as well as pollution control laws.[103] New York used car dealers, for example, are required by law to certify a certain level of mechanical safety and service.[104] Effective application of section 2-314 could have an effect similar to that of the New York statute since the seller potentially would be liable for unsafe vehicles.

Furthermore, application of the UCC implied warranties of quality may prevent or settle many disputes over used car sales.[105] If such warranties are not enforced in the sale of used goods, plaintiff buyers may be compelled to resort to other means of recovery such as a claim of fraud[106] or claims under the Texas Deceptive Trade Practices—Consumer Protection Act.[107] Actions for fraud and deceptive practices present many of the same difficulties as express warranty disputes,[108] however, and the Consumer Protection Act explicitly defers disputes regarding implied warranties to sections 2.314 through 2.318 of the Texas Business and Commerce Code.[109]

(Ga. Ct. App. 1972) (airplane fuel line fire a few days after purchase); Rose v. Epley Motor Sales, 215 S.E.2d 573, 577 (N.C. 1975) (trouble three hours after sale); Testo v. Russ Dunmire Oldsmobile, Inc., 554 P.2d 349, 352 (Wash. Ct. App. 1976) (starter malfunction and overheating three hours after delivery).

101. *See* TEX. BUS. & COMM. CODE ANN. §§ 1.201(10), 2.316(b) (Tex. UCC 1968); Testo v. Russ Dunmire Oldsmobile, Inc., 554 P.2d 349, 355 (Wash. Ct. App. 1976).

102. *See* TEX. REV. CIV. STAT. ANN. art. 6696, art. 6701d, §§ 140-143 (1977).

103. *See generally id.* art 4477-5b, § 4 (1976) (penalty for pollution).

104. N.Y. VEH. & TRAF. LAW § 417 (McKinney 1970). The dealer must issue a certificate that the vehicle complies with certain standards and will render satisfactory service at the time of delivery. *Id.; see* Dato v. Vatland, 231 N.Y.S.2d 895, 897 (Dist. Ct. 1962) (implied warranty exists according to statutory requirements).

105. The UCC express warranty section should also be closely examined in light of Official Comment 8 to that section. There is always a fact question as to whether a seller's words were an affirmation of quality or merely opinion. *See* U.C.C. § 2-313(2) & Comment 8.

106. *See* TEX. BUS. & COMM. CODE ANN. § 2.721 (Tex. UCC 1968).

107. *Id.* §§ 17.46(b)(6), (7), (16), (19), .50(b)(1) (Supp. 1976-1977) (recovery of treble damages for violation).

108. *See* Dushane v. Benedict, 120 U.S. 630, 648 (1887) (fraud); Hovenden v. Tenbush, 529 S.W.2d 302, 305 (Tex. Civ. App.—San Antonio 1975, no writ) (no express warranty found). As with express warranty claims, the Consumer Protection Act normally requires proof of some conduct of the seller. *See* TEX. BUS. & COMM. CODE ANN. § 17.46(b) (Supp. 1976-1977).

109. *See* TEX. BUS. & COMM. CODE ANN. § 17.46(b)(19) (Supp. 1976-1977).

CONCLUSION

Given the high volume of used motor vehicle sales in Texas, judicial application of the UCC implied warranties of quality is necessary to fairly and effectively govern the sales of used vehicles and other used goods. Settlement under the Code is more direct and therefore is preferable to other methods of recovery. The statutory constructions of other courts and considerations of public policy compel application of these warranties. Moreover, the underlying purpose of creating uniformity among the laws of the states would be furthered by interpreting the UCC warranties as applicable to used automobiles.

Future Texas decisions should look beyond the interpretation in *Chaq*, abandon common law precedents of caveat emptor for used goods, and apply the UCC warranties of quality. Texas should follow the recent interpretations of other jurisdictions and apply the UCC implied warranties of quality to the sale of used vehicles. Any other result would thwart the legislative efforts to bring the law of sales in Texas in line with other areas of consumer protection and would jeopardize consumer rights.