

**4.22B BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY UNDER U.C.C. (Approved 06/2018)**

Every contract with a merchant for the sale of goods contains an implied warranty that the goods are fit for ordinary purposes for which the goods are used. A “merchant” is a person who deals in goods or has knowledge or skill peculiar to goods involved in the transaction. A merchant also can be one who employs others who have such knowledge or skill. As the name suggests, the implied warranty of merchantability need not be specifically mentioned in a contract, instead, it arises by operation of law.

Plaintiff claims that defendant breached the implied warranty of merchantability. To be entitled to recover, plaintiff must prove that:

1. The defendant is a merchant and is in the business of selling goods of the kind involved.
2. The goods were not “merchantable” at the time of sale.
3. The plaintiff suffered injury/loss/harm.
4. The injury/loss/harm to plaintiff was proximately caused by the defective nature of the goods.
5. Notice was given to the seller of the injury/loss/harm.

If you find that defendant did not sell [*the goods*], your verdict must be for defendant. If you find that defendant did sell [*the goods*] and was in the business of

selling goods of the kind involved, you must next decide whether [*the goods*] was/were “merchantable” at the time of the sale.

To determine whether a good is “merchantable” at the time of the sale, you must determine by a preponderance of the evidence that the goods, at a minimum, accomplish the following:

1. Pass without objection in the trade;
2. Are of fair average quality, in the case of fungible (interchangeable) goods;
3. Are fit for the ordinary purposes for which such goods are used;
4. Run [within the variations permitted by the agreement between the parties] of even kind, quality and quantity;
5. Are adequately contained, packaged, and labeled; and
6. Conform to promises or affirmations of fact on the container or label.

If you find [*the goods*] was/were “merchantable” at the time of sale, your verdict must be for defendant. If you find [*the goods*] was/were not “merchantable” at the time of sale, you must next consider whether plaintiff suffered injury/loss/harm.

If you find that plaintiff did not suffer injury/loss/harm, your verdict must be for defendant. If you find that plaintiff did suffer injury/loss/harm you must next consider whether the injury/loss/harm was proximately caused by the defective nature of the goods.

If you find that the injury/loss/harm was not proximately caused by the defective nature of the goods, your verdict must be for defendant. If you find that the injury/loss/harm was proximately caused by the defective nature of the goods, you must next consider whether there was notice to the seller of injury/loss/harm.

If you find that there was no notice to the seller of the injury within a reasonable time after plaintiff discovered or should have discovered the alleged breach of warranty, your verdict must be for defendant. If there was notice to the seller of the injury within a reasonable time after plaintiff discovered or should have discovered the alleged breach of warranty, your verdict must be for plaintiff.

***NOTE TO JUDGE***

The above charge is based on *N.J.S.A.* 12A:2-314 and 12A:2-607. Note that the above charge deals with fitness for an ordinary purpose whereas the implied warranty of fitness for particular purpose under *N.J.S.A.* 12A:2-315 deals with fitness for the particular purposes for which the goods are used. As to damages for breach of warranty under the U.C.C., *see N.J.S.A.* 12A:2-714 and 2-715; *see also* “cover” as defined by *N.J.S.A.* 12A:2-712. Note there is commentary under each of the U.C.C. statutes that the judge may wish to incorporate into the charge if it would be helpful in explaining the facts of the particular case. Where circumstances give rise to possible exclusion or modification of the warranty, *see N.J.S.A.* 12A:2-316.