



“Caveat Emptor”

by John D. Whitaker

I think one of the best examples of the legal doctrine of Caveat Emptor would be the old cowboy that came to see me after his wife filed for divorce. He was perplexed as to why his wife would be angry about his disappearing for a few days. He told me “Gee Mr. Whitaker, I just don’t understand what she is so hot about. She knew this horse bucked when she bought him!” Caveat Emptor is Latin for “Let the buyer beware.” Under old English law the buyer of goods could not sue the seller for defects in the property purchased absent some type of fraud. It was up to the buyer to make his own inquiry as to the fitness of the property he was purchasing. The application of this rigid rule has been relaxed in recent years and now the doctrine of “Warranty” can apply to help protect buyers of goods. However, this doctrine is not absolute and it can be waived.

Warranty is a legal doctrine which makes a seller guarantee that the goods he is selling will perform as represented. A warranty may be expressly included in a contract or implied as a matter of law. You have all seen language related to warranty if you have ever purchased something from a store. Usually the store will have you sign something at the time of purchase. I bought a television from a local store a couple of months ago. I told the sales agent I would like this one particular model of TV. He then prepared a document listing the particulars of the TV and at the bottom of the document there was a place for my signature. This was a preprinted purchase agreement drafted by his company. What he failed to mention was that on the back of the sales order there were a number of terms of the sale that he neither told me about nor that were mentioned as we negotiated the deal. Things like if the TV did not work I had only 7 days to return it. It also said that if the TV didn’t work I could not get my money back, just another TV, but again only if I brought it back with the box within the 7 day period. This document also



said that there were no express or implied warranties by the store, and that I was aware of and agreed to this term. That was untrue, but I did sign the document. I didn’t use the TV for a month, and when I did plug it in it did not work. When I notified the store they said tuff luck, as the 7 day period had passed. There was still a manufacturer warranty and so I had to deal directly with the television manufacturer to get the set fixed, but it just reminded me that it is important to read the flip side of any document you sign as part of any commercial transaction.

When you buy something make sure you look at both sides of any document you are signing. You must understand that you are signing a contract when you sign a document like this. Also understand that you are agreeing to whatever is written on the contract because the law will assume that you read the document before you signed it. If there is something on the document you did not agree to, you need to bring it up to the sales person before you sign the contract. I have seen all kinds of horrible things in sales contracts that buyers had no idea were part of the deal when they were signing the sales order. It may provide that you cannot sue the seller if the goods are defective. It may say that if you decide to sue the seller, you must do so in a far away state court rather than Wyoming. It may provide that the entire agreement between you and the seller is contained in the written sales agreement and nothing the salesperson says is binding on the company. It may expressly waive all implied warranties including the warranty of fitness for a particular purpose or warranty of merchantability. You don’t want to be reading the actual terms of your agreement for the first time when you discover that there is a problem with the junk (or old cowboy) you just bought.

Luckily for my old Cowboy client his wife had a change of heart and let him back in the house. I guess she figured that suing him for breach of warranty was a waste of time. She was right about that. Let the bride beware!

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at jdwtl@mac.com or by calling his office at 307 265-6204. Past Legal Brief columns can be found at Wyoinjury.com