

N.C.P.I.-Civil. 741.28

WARRANTIES IN SALES OF GOODS - ISSUE OF SELLER'S DEFENSE OF
BUYER'S ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF DEFECTS - IMPLIED
WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

GENERAL CIVIL VOLUME

MAY 1999

741.28 WARRANTIES IN SALES OF GOODS - ISSUE OF SELLER'S DEFENSE
OF BUYER'S ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF DEFECTS -
IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

The (*state number*) issue reads:

"[Did the plaintiff know] [Should the plaintiff have known] of the defects in the (*name good*) before entering into the contract of purchase with the defendant?"¹

You will answer this issue only if you have answered the (*state number*) issue "Yes" in favor of the plaintiff.

On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, that, before entering into the contract of purchase with the defendant, the plaintiff

[examined the [(*name good*)] [sample or model of the (*name good*)] as fully as the plaintiff desired and the defect(s) in the (*name good*) complained of [became known to *him*] [should, under the circumstances, have been discovered by *him*]]

[refused to examine the (*name good*) and the defect(s) in the (*name good*) complained of became known to *him*].

Finally, as to this (*state number*) issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that the plaintiff [knew] [should have known] of the defect(s) in the (*name good*) before entering into the contract of purchase with the defendant, then it would be your duty to answer this issue "Yes" in favor of the defendant.

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If, on the other hand, you fail to so find, then it would be your duty
to answer this issue "No" in favor of the plaintiff.

1. N.C. Gen. Stat. § 25-2-316(3)(b) (1995).