
741.31 WARRANTIES IN SALES OF GOODS - ISSUE OF EXISTENCE OF
IMPLIED WARRANTY CREATED BY COURSE OF DEALING OR USAGE OF
TRADE.

The (*state number*) issue reads:

"Did the defendant by [course of dealing] [usage of trade] impliedly
warrant to the plaintiff that the (*name good*) was (*state nature of
contended warranty*)?"¹

On this issue the burden of proof is on the plaintiff. This means
that the plaintiff must prove, by the greater weight of the evidence, that
when the defendant sold the (*name good*) to the plaintiff, the defendant
by [course of dealing] [usage of trade] impliedly warranted to the plaintiff
that the (*name good*) was (*state nature of contended warranty*).

A warranty that (*state nature of contended warranty*) may become
part of the parties' contract of sale through a [course of dealing] [usage
of trade].

[A course of dealing is a sequence of previous conduct between the
parties to a particular transaction which is fairly to be regarded as
establishing a common basis of understanding between them for
interpreting their expression and other conduct. Whether such course of
dealing existed between the plaintiff and the defendant and, if so,
whether it fairly created an understanding that the defendant warranted
that (*state nature of contended warranty*) is for you to determine from
the evidence.]²

[A usage of trade is any practice or method of dealing having such
regularity of observation in a place, vocation or trade as to justify an
expectation that it will be observed with respect to the transaction in

question. Whether such usage of trade existed between the plaintiff and the defendant and, if so, whether it justified an expectation that the defendant warranted that (*state nature of contended warranty*) is for you to determine from the evidence.]³

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant by [course of dealing] [usage of trade] impliedly warranted to the plaintiff that the (*name good*) was (*state nature of contended warranty*), then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

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 defendant.

1. N.C. Gen. Stat. § 25-2-314(3) (1995). The Official Comment to N.C. Gen. Stat. § 25-2-314(3) states that usage of trade and course of dealing can create warranties and, when they do, the resulting warranties are considered implied rather than express. As a consequence, any such implied warranty is subject to exclusion or modification under N.C. Gen. Stat. § 25-2-316. See N.C.P.I.-Civil 741.32. An example of this type of warranty is given in the Official Comment: "A typical instance would be the obligation to provide pedigree papers to evidence conformity of the animal to the contract in the case of a pedigreed dog or a blooded bull." *Id.*

2. N.C. Gen. Stat. § 25-1-303(b).

3. N.C. Gen. Stat. § 25-1-303(c).