

The logo for K&L GATES, featuring the text "K&L GATES" in white, uppercase letters on an orange rectangular background. The background of the slide is a blue bokeh pattern with light blue and white circular highlights.

K&L GATES

Julius H. Hines

**Maritime/Non-Maritime Law on Boat Sales,
Warranties & Disclaimer Requirements**

K&L Gates LLP, Charleston SC



TYPES OF LAW

- State Common Law
- State statutory law
- Federal common law (maritime law)
- Federal statutory law

MARITIME LAW VS. STATE LAW

- Maritime law governs maritime contracts
 - Dockage, salvage, crew wages, boat fuel
 - Not sale of vessel!
- Sales of vessels governed by state law
 - UCC Article 2 “sale of goods”
 - Warranties also governed by state law
- Federal Magnuson Moss act also applies
- Vessel repairs
 - Maritime law unless per warranty

BOAT SALE CONTRACT

- Buyer
- Seller (often dealer)
- Manufacturer (?)

SELLER'S WARRANTIES

- Non-merchant—no warranty
- Merchant seller:
 - *Merchantability*--automatic
 - Fitness for a particular purpose
 - E.g. “I need a boat that accommodates eight people”
 - Seller must have reason to know of intended purpose
- Use of broker can create merchant status

DISCLAIMER OF WARRANTIES

- Dealer usually wants to disclaim warranties
- Disclaimer must be in *contract of sale*
- Merchantability; disclaimer must
 - Mention merchantability; and
 - **Be conspicuous**
- Make no other written warranties

MANUFACTURER

- Privity of Contract issue
- Privity required:
 - North Carolina
 - Florida
- Privity not required
 - South Carolina and many other states
 - Manufacturer liable as seller
- **Governing law important**

COMMUNICATING MANUFACTURER'S WARRANTY DISCLAIMERS

- Dealer should be sure to disclose manufacturer's warranty pre-contract
- Magnuson-Moss Act regulations
 - Manufacturer may provide “copy of the written warranty with every warranted consumer product”
 - Can't disclaim implied warranties (merchantability)
 - But can take advantage of other limitations and disclaimers

CONTRACT TAKEAWAY

- Sale contract should
 - Disclaim all warranties on behalf of seller (dealer or broker's customer)
 - Incorporate manufacturer's limited warranty

ACCEPTANCE AND REJECTION

- Rejection—goods rejected based on a non-conformity
 - Must be done in reasonable time
 - Seller has “right to cure” (within delivery time)
 - Right to cure also in MMA
- Acceptance—goods accepted as conforming or *despite* nonconformity
 - Buyer gets reasonable opportunity to inspect
 - Some amount of “test use” typically allowed for boats

WHAT IS “REJECTION?”

- “I hereby reject this boat”
- I don’t want the boat
- I’m not happy with the boat...

REVOCACTION OF ACCEPTANCE

- Can still occur despite valid acceptance
- Non-conformity must “*substantially impair*” value of boat to buyer (not just any non-conformity)
- Types of non-conformities:
 - *Known* as of acceptance, but Buyer reasonably assumed it would be fixed (“we’ll take care of that...”);
 - *Unknown* as of acceptance, and difficult to discover;
 - *Unknown* as of acceptance, and Seller said it wasn’t there.

NOTICE OF REVOCATION

- No formal notice; “money back” request will do
- Must be made within *reasonable time* after buyer knows grounds for revocation
- Must be made before *substantial change* in condition of boat
- Right to cure?
 - None in UCC but some courts have added
 - Required for MMA lawsuit (attorney’s fees)

BUYER'S REMEDIES FOR REJECTION/REVOCAION

- Purchase money back!
 - But only from seller (i.e. dealer)
- Difference in cost of replacement boat
- “Benefit of Bargain”
 - $(\text{MktV promised}) - (\text{MktV delivered})$
 - MktV promised is *usually* sale price—but not every time!

BREACH OF WARRANTY

- Applies to *accepted* goods
- Important *notice* requirement;
 - Strict view: claim of breach
 - Lenient view: any complaint will do
- Notice to who?
 - *Dealer* if manufacturer says so
 - Otherwise best to notify seller and manufacturer
 - Component manufacturers?

REMEDIES FOR BREACH

- UCC remedy:
 - $(\text{MktV as warranted}) - (\text{MktV as accepted}) = \text{damages}$
- “Exclusive” remedy “repair or replacement”
 - *Optional* unless exclusive
 - May not “fail of its own purpose”
 - No unlimited “tinkering”
 - Unsuccessful tinkering may give Buyer right to revoke acceptance
- Buyers often seek revocation of acceptance *and* damages for breach

TYPICAL WARRANTY LIMITATIONS

- Duration (e.g. one year)
 - Per MMA, only allowed in a “limited” warranty
- Consequential Damages Exclusion
 - Allowed by UCC and MMA
 - Covers things like loss of use, storage and other out of pocket expenses
- Component parts (separately warranted)

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