

Consumer Law

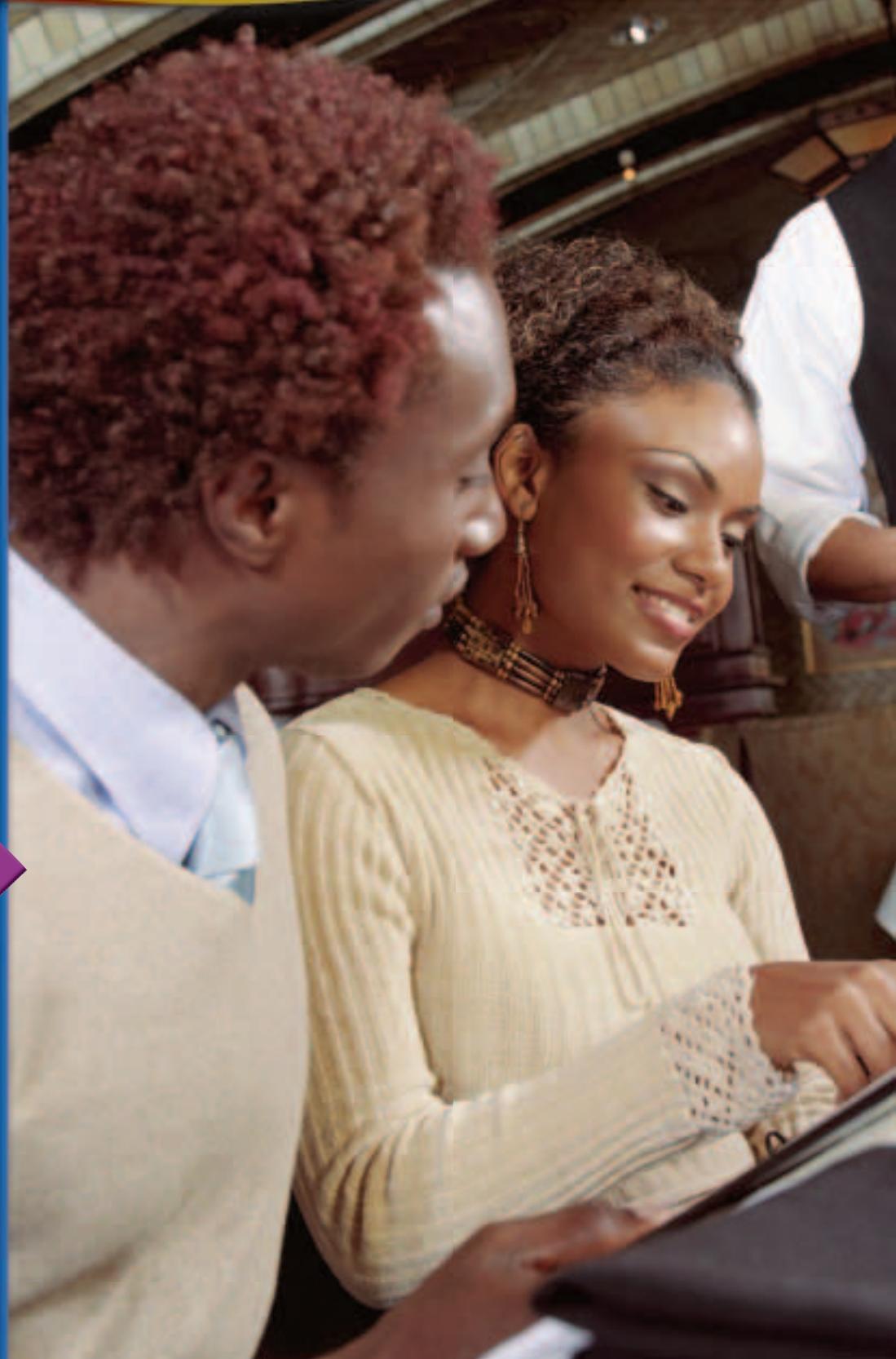
In This Unit You Will Find:

Chapter 7
Consumer Law
and Contracts

Chapter 8
Personal Property

Chapter 9
Renting or Owning
a Home

.....▶
Consumers A consumer is anyone who buys or leases goods, real estate, or services. *Who are the consumers in this photo, and what goods and services are involved?*



Thematic Project Preview

Product Safety and Recalls

As you read this unit, use this checklist to prepare for the unit project:

- ✓ List federal agencies that protect consumers.
- ✓ Differentiate among the types of federal agencies and community protection agencies.
- ✓ Find consumer action information.
- ✓ Explain how consumers can file a consumer complaint.
- ✓ Determine the average time to process a consumer complaint.

Legal Portfolio When you complete the Unit Thematic Project, create an informational flyer to add to your portfolio.



Consumer Organizations

Log on to glencoe.com to explore the types of agencies that can help you when you have a problem with consumer rights and laws. List your findings in your WebQuest folder to share with your class.



Find Unit 3 study tools such as **Graphic Organizers**, **Academic Skills Review**, and **Practice Tests** at glencoe.com.

Ask

STANDARD & POOR'S

Stocks and Bonds

Q: I keep hearing about investing in stocks and bonds. What is the difference between them?

A: When you buy stock in a company, you are buying a share of ownership in it. When you buy a bond from the government or from a company, you are lending it money. Just as any other loan, a bond usually pays a specified amount of interest over time. The amount of money you make investing in bonds is the amount you collect in interest. The amount of money you make investing in stocks, on the other hand, is based on how well the company does. The better the company does, the more the value of its stock increases and the more money you make. If a company does poorly, however, the value of its stock decreases, and you can lose money on your investment.

Language Arts/Reading Standard & Poor's is one of the world's main providers of credit ratings and financial-market indices. Go to glencoe.com and read more about investing in stocks and bonds.

Consumer Law and Contracts

BusinessWeek News

Many Not-so-Happy Returns

By Elizabeth Woyke

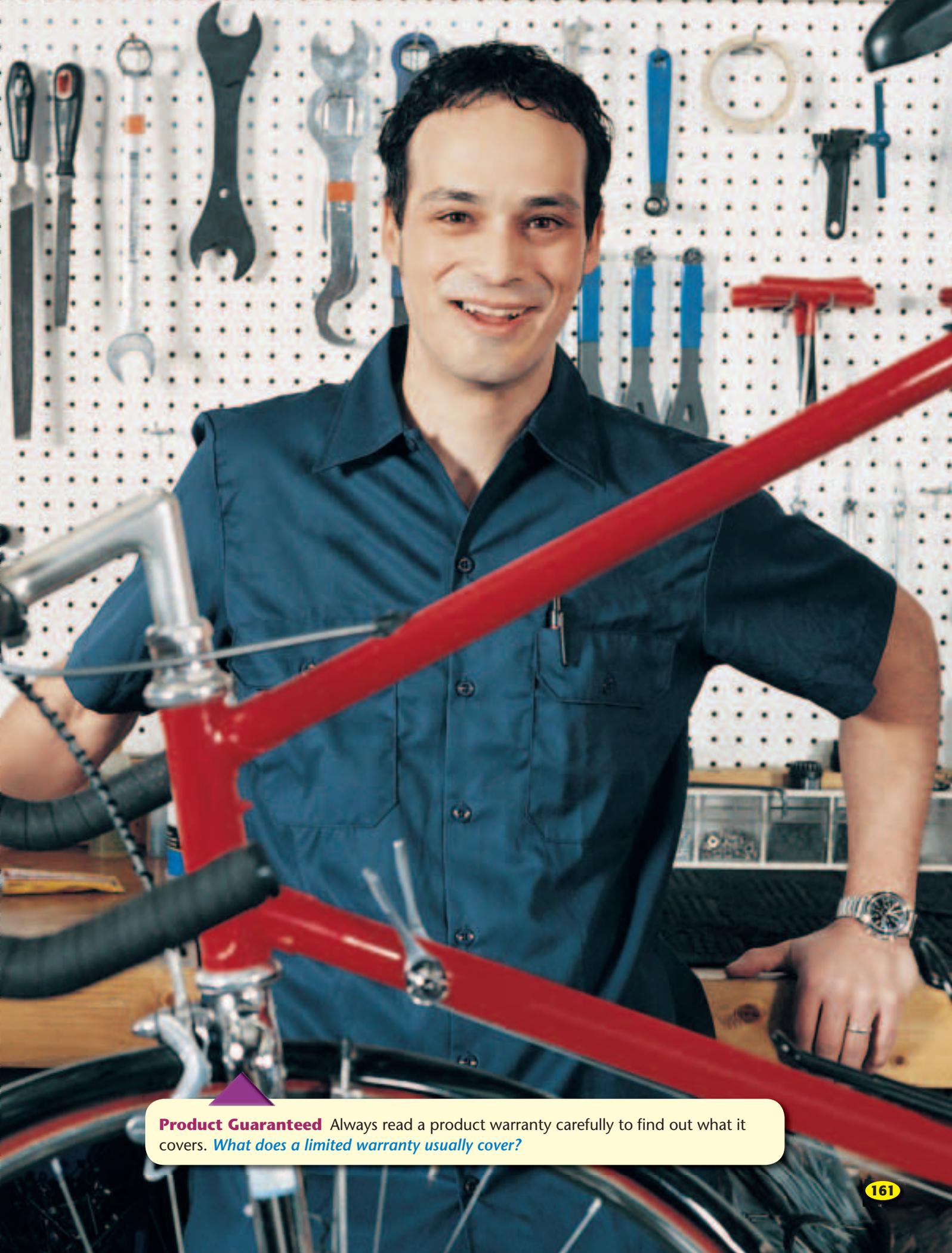
Store-return swindles used to be simple: A customer buys a cocktail dress for a big soirée and returns it the next day, rumpled with the tags intact. But today's scams are far more sophisticated—and costly. The creativity of return artists is mind-boggling. E-tailers report that crooks buy differently priced but similar-looking DVD players online, then return the cheaper version as the expensive one after switching bar codes. Processing centers don't always check returned goods closely—in fact, Mark Hilinkski of software vendor The Return Exchange has even seen bricks returned in DVD boxes for refunds. In a tactic called “shoplifting,” a thief pays maybe \$10 for an unexpired receipt covering \$500 of electronics or clothing, shoplifts the listed items, and returns them for a refund or gift card. The cards can be sold over the Net.

Flex Your Reading

Efficient critical reading involves being flexible with speed and comprehension. There are several ways of reading critically, and you need to fit a reading style to your needs and to the material.

Go to glencoe.com for Flex Your Reading activities, more information on reading strategies for this chapter, and guided practice in reading sales contracts.





Product Guaranteed Always read a product warranty carefully to find out what it covers. *What does a limited warranty usually cover?*

Sales Contracts

What You'll Learn

- ◆ Explain the Uniform Commercial Code.
- ◆ Compare and contrast service contracts and contracts for the sale of goods.
- ◆ Explain when title and risk of loss pass in a sale of goods.
- ◆ List the remedies of the buyer and seller when a sales contract is breached.

Why It's Important

The more you know about the law of sales, the more you can protect your legal rights and your money when buying or selling goods.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 7)
Study how people organize for the production, distribution, and consumption of goods and services.

Math (NCTM CS2 3)
Recognize and apply mathematics in contexts outside of mathematics.

Reading Guide



Before You Read

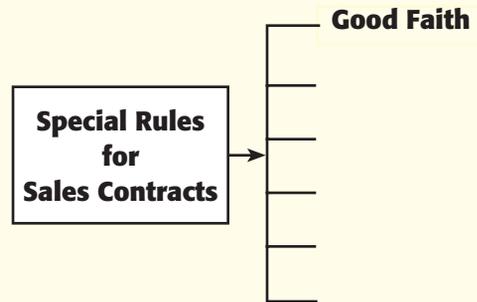
Connect Some sales contracts you make are for goods, and some are for services. What are some examples of contracts you or someone you know made recently that included both goods and services?

Focus on Ideas

Sales contracts follow a special set of rules called the Uniform Commercial Code.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- Uniform Commercial Code (UCC)
- bill of sale
- firm offer
- insurable interest
- title
- voidable title
- risk of loss



Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- uniform
- dominant
- revoke

Sales of Goods

At what point do you become the legal owner of something you purchased?

General contract law governs contracts for such things as real estate, employment, and services. A subset of contract law is sales law, which governs the sale of goods. It does not apply to sales of real property (houses and land) or services (work performed by someone else).

Sales law was established through the customs and practices of businesspeople, merchants, and mariners, and has gone through many changes. As interstate commerce (trade that crosses state lines) developed, the need arose to make **uniform** the many commercial laws in effect among the states. The result was the development of the Uniform Commercial Code, which includes the sale and lease of goods. **The Uniform Commercial Code (UCC) is a collection of laws that governs various types of business transactions.** You apply the law of sales under the UCC whenever you have a contract for the sale of goods.

Goods are all things (other than money, stocks, and bonds) that are movable. Examples are your clothing, books, cell phone, food, car, and even the gas you put in the car. A sale is a contract in which ownership of goods is transferred from the seller to the buyer for a price. Thus, every time you buy or sell goods and transfer ownership of them, a sale occurs.

Leasing Goods

The sale-of-goods rules also apply to the leasing of goods, with a few exceptions. Thus, rentals for items such as a DVD player, tuxedo, computer, or car are governed by the UCC.

Contracts for Both Goods and Services

When a contract includes both goods and services, the **dominant** element determines the law that will apply. For example, if a business buys three new computers and has them installed, the sale of the goods—the computers—is dominant and the laws of the UCC apply. However, if the business has the computers serviced and some new hardware is installed, the service is dominant, so the common law of contracts applies instead.

Special Rules for Sales Contracts

A sales contract must contain the same elements as other contracts, but the UCC has relaxed some of the strict rules of contract law. The performance obligations of both parties are similar to general contract law and set forth in the UCC. The following special rules apply to contracts for the sale of goods.

As You Read

Predict How is a sales contract different from any other kind of contract?

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and the **Academic Vocabulary** glossary in the back of this book.

 **Uniform Commercial Code**
The UCC governs contracts for the sales of goods. *Why was the UCC created?*



Methods of Dealing and Usage of Trade When you have dealt with another person before, the method you use to deal with them has special meaning. Similarly, any commonly used method of dealing in a particular area—or usage of trade—has special meaning. Unless you state otherwise, either an established method of dealing with someone or usage of trade may be used to supplement or qualify the terms of a sales contract.

Good Faith Parties to a sales contract must treat each other fairly.

Offer and Acceptance of a Sales Contract You may make a sales contract in any manner that shows the parties have reached an agreement. It may be oral (with some exceptions) or in writing. You may accept an offer by any means and in any reasonable manner. However, the party making the offer may request a particular method to be used for the acceptance. A contract comes into existence when the acceptance is sent in a reasonable manner.

Firm Offer The UCC holds merchants to a higher standard than nonmerchants. A merchant is a business or person who deals regularly in the sale of goods or who has a specialized knowledge of goods.

Case Study – Lohman v. Wagner

Critical Thinking *Should the UCC cover this transaction?*



Note key facts in the text below and look up words you do not understand. Restate difficult ideas in your own words. Go back and reread the text quickly to make sure you did not miss any important detail. Now, you are ready to formulate an opinion.

Service or Sales Contract? Prior to 1998, Charles Lohman ran a company that bred and raised young pigs. He raised the pigs from the time they were born until they reached 50 pounds. However, in 1998, Mr. Lohman decided that he only wanted to raise pigs until they were weaned from their mothers. Mr. Lohman contacted John Wagner, a buyer and seller of pigs, about selling only young pigs. Because Mr. Lohman decided to change the focus of his business, he needed to renovate his farming operation and sought financing for it. The bank required that Mr. Lohman provide a signed contract for the future sales of his pigs. Mr. Lohman called Mr. Wagner, who provided a signed copy of an unofficial contract to Mr. Lohman. The contract provided that Mr. Lohman would provide housing facilities, labor, utilities, and production supplies in producing and raising the young pigs, and that Mr. Wagner would buy the pigs for \$28 each. The bank approved Mr. Lohman's loan and he began to raise the pigs. However, due to a sharp decline in the price of pork, Mr. Wagner told Mr. Lohman he could only pay \$18 each for the pigs. Mr. Lohman was forced to end his business and sued Mr. Wagner for breach of contract. Mr. Lohman argued that it was a service contract. Mr. Wagner argued that the contract was for the sale of goods.

Lohman v. Wagner, 862 A.2d 1042 (Md. Ct. App. 2004)



Go to glencoe.com for more case study practice.

Although most rules under the UCC apply to both merchants and nonmerchants alike, some rules apply only to merchants. One such rule involves a firm offer.

A **firm offer** is a merchant's written promise to hold an offer open for the sale or lease of goods. No consideration is necessary when a merchant promises in writing to hold an offer open for the sale or lease of goods. A merchant cannot **revoke** a firm offer during the time stated in the offer or for a reasonable time if none is stated. However, no offer can stand for longer than three months.

Different or Additional Terms An acceptance may add different or additional terms. These terms are treated as proposals for additions to the contract if both parties are not merchants. If both parties are merchants, the changes become part of the contract unless they are major or the offeror objects. No consideration is necessary to modify—or change—a contract for the sale of goods. Modifications may be oral, unless the original agreement states that it must be modified in writing.

Statute of Limitations The statute of limitations for sales contracts is four years. However, the individual parties can reduce the time period to a minimum of one year, but may not extend it to longer than four years. The time limit begins to accrue when a breach occurs, regardless of whether the parties are aware the breach has occurred.

Form of Sales Contracts

If the price for goods is less than \$500, an oral sales contract is enforceable. If the price is \$500 or more, a sales contract must be in writing to be enforceable. This rule does not apply when:

- A written confirmation of an oral contract between two merchants is sent within a reasonable time, and no objection is made within ten days.
- The contract involves specially manufactured goods that cannot be resold easily.
- The buyer receives and accepts the goods or pays for them.
- The parties admit in court that they entered into an oral contract.

Title and Risk of Loss

When does right of ownership pass from seller to buyer?

The right of ownership to goods is known as **title**. People who own goods have title to them. A **bill of sale** is formal evidence of ownership. A bill of sale, however, only proves that you once had title, not that you still own the goods.

Insurable Interest

Insurable interest is a legal interest in the protection of property from injury, loss, or destruction. The buyer obtains an insurable interest when specific goods are identified as



Reading Check

Compare and Contrast

What is the longest an offer can stand on a sales contract?



Nonconforming: *adj* Not meeting standards. From Latin *non* = not + *com* = together + *forma* = form: not in form with.

Statute: *n* Legal regulation. From Latin *status* = position, state.

Vocabulary Builder The root word *forma* means to form, shape, or structure. On a sheet of paper, list as many words as you can think of in five minutes that have *form* in it. Compare your list with the rest of the class and discuss the slight differences in meaning of some of the words. For example *reform* means to restructure and *deform* means to spoil the structure of.

Look It Up! Check definitions in *Black's Law Dictionary* or an online glossary. For direct links, go to glencoe.com to find more vocabulary resources.

those in the contract. A seller retains insurable interest in goods when the seller retains title to the goods or has a security interest in the goods.

Voidable Title

Anyone who obtains property as a result of another's fraud, mistake, undue influence, or duress holds only voidable title to the goods. **Voidable title means title that may be voided (cancelled) if the injured party chooses to do so.** Voidable title is also received when goods are bought from or sold to a minor or a person who is mentally impaired. Anyone with voidable title to goods is able to transfer valid (good) title to others.

Passage of Title and Risk of Loss

Sometimes it is necessary to determine who has title to goods—the seller or the buyer. It is also necessary at times to determine who bears the risk of loss of goods. **Risk of loss is the responsibility for loss or damage to goods.** Title passes to the buyer when the seller does what is required under the contract to deliver the goods. No one can have title to goods that do not exist, such as crops that are not yet grown or items that are not yet made.

Shipment Contracts

A shipment contract is one in which the seller gives goods to a carrier for delivery to a buyer. A carrier is a transportation company. Both title and risk of loss pass to the buyer when the goods are given to the carrier.

Remedies for Breach of Sales Contract

What can you do if you receive damaged goods?

A breach of contract occurs when one party to a contract fails to perform the duties required by the contract. When this happens, there are things you can do as the buyer or the seller.

Seller's Remedies

Sometimes buyers refuse to accept goods that they ordered. They may also refuse to pay for them. When this happens, the seller may:

- Cancel the contract.
- Withhold delivery of goods.
- Stop delivery of any goods held by a carrier.
- Resell any goods that have been rightfully withheld, and bring a claim against the buyer for the difference between the agreed price and the resale price.
- If the goods cannot be resold, bring a claim against the buyer for the difference between the agreed price and the market price.
- Bring a claim against the buyer for the price of any goods that the buyer accepted.

Buyer's Remedies

Sometimes sellers fail to deliver goods after agreeing to do so. They may also send incorrect, damaged, or defective goods. In these cases the buyer may:

- Cancel the contract.
- Bring a claim against the seller for the return of money that was paid.
- Bring a claim against the seller for the difference between the agreed price and the market price.
- Refuse to accept the goods if something is wrong with them. The buyer must notify the seller about this and give the seller time to correct the problem.
- Buy similar goods from someone else and bring a claim against the seller for the difference between the agreed price and the cost of the purchase.
- Give notice to the seller that the goods have been accepted, but that there is something wrong with them. If no adjustment is made, the buyer may bring a claim against the seller for breach of contract or warranty.
- Revoke the acceptance and return the goods if a serious defect was undetectable, or if the buyer was led to believe that the seller would fix the defect.



After You Read

Summarize Name the special rules that apply to sales contracts under the UCC.

SECTION 7.1 ASSESSMENT

Self Check

1. To what kinds of transactions does the law of sales apply?
2. When must sales contracts be in writing? What are the exceptions?
3. When do title and risk of loss pass from the seller to the buyer in a delivery contract?

Academic Connection

Mathematics Jonathan Asbil wants to purchase a used Ford Mustang, which is advertised for \$9,800. It has a CD player/radio,

air conditioning, power windows and locks, and manual transmission. It has a total of 84,000 miles driven on it. The used car guide indicates that the average value of the car is \$7,375–\$9,725 with a \$125 subtraction for no automatic transmission. What average retail price should Jonathan keep in mind when he makes an offer for the car?

CONCEPT **Number and Operations:** To calculate the average retail value, you would first find the mid-range value. Find the difference between the high and

low value and divide by two, then add to the low value. Then, subtract the \$125 from the price for not having an automatic transmission.



For more math practice, go to the Math Appendix.

Critical Thinking Goods or Services?

Darlene bought a pair of jeans from a clothing store. The jeans did not fit perfectly, so the store agreed to alter them for her. How can you determine whether to apply the law of sales?



Go to glencoe.com to check your answers.

What You'll Learn

- ◆ Distinguish different types of consumer fraud.
- ◆ Describe laws and agencies that protect consumers.
- ◆ Identify various types of warranties.
- ◆ Describe how warranties may be excluded or modified.
- ◆ Determine where to get consumer protection assistance.

Why It's Important

Knowing about warranties and consumer protection laws will help you if you ever buy a faulty product.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 2)
Study the ways human beings view themselves in and over time.

English Language Arts (NCTE 12) Use spoken, written, and visual language to accomplish your own purposes.

Reading Guide



Before You Read

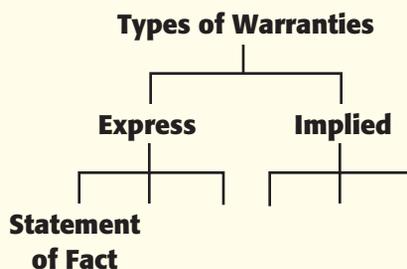
Connect What is the last thing you bought that has a warranty? How long is it for and what does it cover?

Focus on Ideas

A warranty is your personal guarantee that if a product does not work the way it should, you can get your money back or have it repaired or replaced.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- warranty
- express warranty
- full warranty
- limited warranty
- implied warranty
- warranty of merchantability
- warranty of fitness for a particular purpose



Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- disclose
- option
- exclude

Consumer Protection Laws

What is bait and switch?

Consumer protection laws apply to transactions between consumers and businesses. A consumer is someone who buys or leases goods, real estate, or services for personal, family, or household purposes. When you buy a new car from a car dealer, consumer protection laws can help you. When you buy a car from another consumer, however, you do not have the same protection. Nor do consumer protection laws protect you if you buy a product to use in your business.

The Federal Trade Commission (FTC) is the governmental agency that promotes free trade and fair competition. The Bureau of Consumer Protection safeguards consumers against unfair and deceptive practices.

Federal Consumer Protection Law

Both the federal and state governments have laws to protect the well-being of consumers in the marketplace.

Consumer Product Safety Act The federal Consumer Product Safety Act protects you from unreasonable risk of injury while using consumer products sold in interstate commerce. Manufacturers and sellers who place items on the market must test the quality and reliability (fitness) of all products before shipping. They must prove that the product has been tested and is safe.

Consumer Leasing Act The Consumer Leasing Act requires lease agreements to include certain terms of the lease, including the required number of lease payments and their dollar amounts. Leases must also include any penalties for not paying on time and whether there is a lump-sum payment due at the end of the lease.

State and Local Laws

The federal government has no control over intrastate commerce—the manufacturing and selling of goods within a state. For this reason many states have enacted their own product liability laws and have their own Department of Consumer Affairs.

Unfair and Deceptive Practices

An unfair and deceptive practice is an act that misleads consumers. Most states have enacted either the Uniform Deceptive Trade Practices Act or their own similar laws. In Texas, for example, the Texas Deceptive Trade Practices Act (DTPA) was enacted to protect consumers against false, misleading, and deceptive business and insurance practices, and breach of warranty.

Fraudulent Misrepresentation A fraudulent misrepresentation is any statement that deceives a buyer. A fraudulent misrepresentation occurs when a seller misstates or fails to **disclose** the facts about something that is important to the consumer. For example, it would be unlawful for a used car dealer to fail to inform a consumer that a car was damaged in a flood.



As You Read

Connect What experiences have you had with faulty products or false advertising?

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and the **Academic Vocabulary** glossary in the back of this book.

Reading Check

Analyze How is a negative option negative?



Telemarketers It is illegal for telemarketers to call you without your permission. *Where should you report telemarketers who persist in calling you?*

Bait and Switch Advertising In bait and switch advertising, a store advertises bargains that do not really exist to lure customers in hopes that they will buy something more expensive. This practice is illegal because the advertiser is trying to sell a different product than the one advertised.

FTC Trade Regulation Rules

The FTC has established trade regulation rules for interstate commerce to correct wrongdoing in the marketplace.

Negative Option Rule When you subscribe to a magazine, book club, CD club, or other plan that sends products regularly, the negative **option** rule applies. The business sends you a description of its current selection. If you do not want the selection, you must tell the seller not to send it. If you do not respond, the seller sends you the selection automatically. Under the negative option rule, sellers must legally tell you how many selections you must buy, if any, how to notify the seller when you do not want the selection, and when you can get credit for the return of a selection. They must also tell you how often you will receive announcements and forms, and how and when you can cancel your membership.

The Cooling-off Rule The cooling-off rule gives you three business days to cancel a transaction made away from a seller's regular place of business, such as a hotel, a restaurant, a fair, or your home. The rule applies to purchases of \$25 or more. The seller must inform you of your right to cancel at the time the sale takes place. The seller must also give you a cancellation form and a copy of your contract or receipt. If you cancel, within 10 days the seller must cancel and return any papers you signed, refund your money, tell you whether any product left with you will be picked up, and return any trade-in. The cooling-off rule does not apply to contracts for real estate, insurance, securities, or emergency home repairs.

Telemarketing Sales Rule The Telemarketing Sales Rule protects you from abusive people who try to sell you products by phone. The Do Not Call Registry helps to reduce the number of unwanted calls you receive. Under the Telemarketing Sales Rule, it is illegal for telemarketers to call you if you have asked not to be called. Calling times are restricted to the hours between 8 a.m. and 9 p.m. Before beginning their sales pitch, telemarketers must inform you that they are making a sales call and identify the company that they represent. Telemarketers must tell you the total cost of the products or services offered and any restrictions that apply. It is also illegal for telemarketers to make false statements about their goods or services.

Shopping by Mail, Phone, Fax, or Internet The FTC has established rules to protect you when ordering goods by mail, telephone, fax, and the Internet. Sellers must ship goods within the time they promise in their catalogs or advertisements. If no time is stated, sellers must ship goods within 30 days after receiving an order. You have the right to cancel orders and get your money



Online Sales

You run a small bookstore that is expanding its Internet business. You know that Yolanda Price is due to release her new book next month, and everyone will want to buy it. You decide to advertise the book cheaper than your local rivals. On the Web site, you state that if people pre-order the book from your company, you will deliver the book “as soon as possible after it is published,” even though you know that your supplier will deliver the book to you one week after it delivers the book to the bigger bookstores.

Critical Thinking: *Should you change your claim on the Web site?*

back if time limits are not met. Sellers must notify you of any delay in shipment and give you a postcard or other free means of responding to the delay. When buyers are notified of a delay in a shipment of goods, they may either cancel the order and get their money back or agree to a new shipping date.

Warranties

What can you do if you buy something and it breaks down a month later?

A **warranty** is a guarantee, usually by a seller to a buyer, that a product will perform as promised. Warranty law gives consumers a great deal of protection. This protection is an important benefit in sales contracts.

Express Warranties

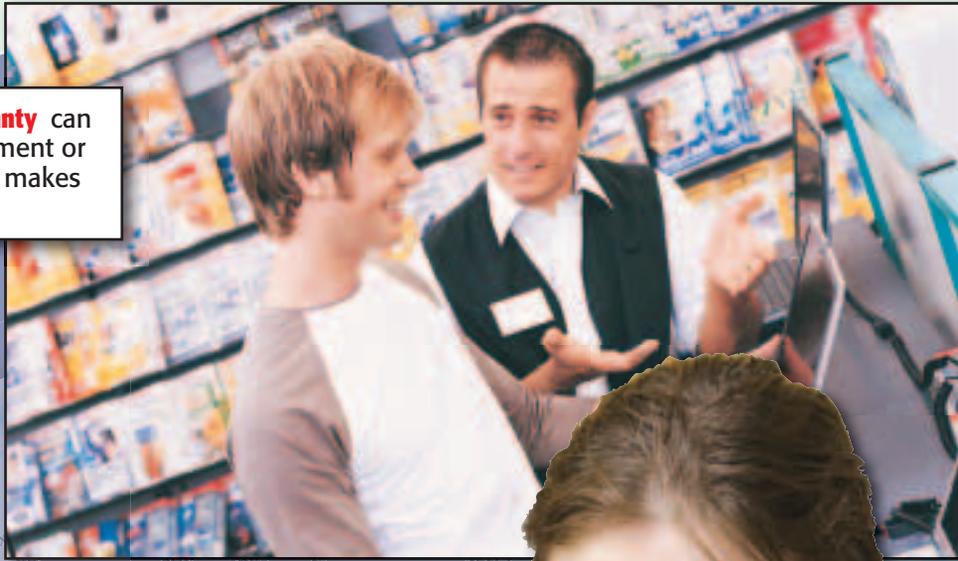
An **express warranty** is an oral or a written statement, promise, or other representation about the quality of a product. There are three ways an express warranty can be made: by a statement of fact or a promise by the seller; by a description of the goods; or by the use of a sample or model (see **Figure 7.1** on page 172).

Statement of Fact or Promise An express warranty is created when a private party or a merchant sells goods and makes a statement of fact or a promise about the goods to the buyer. The use of formal words, such as *warranty* or *guarantee*, is not necessary. Express warranties are often found in sales brochures, circulars, and advertisements.

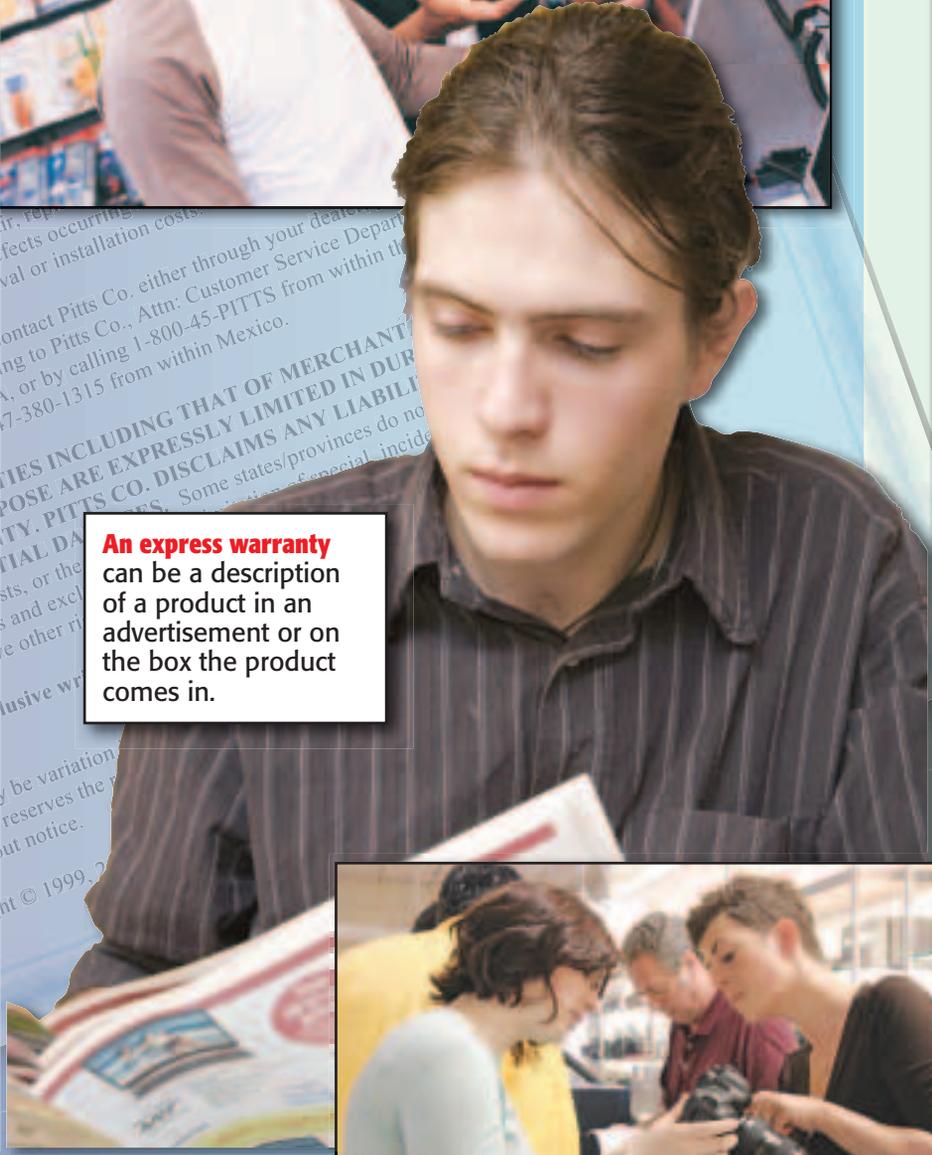
To be useful, a warranty must be stated in precise and understandable terms. Statements such as “This product is guaranteed” are not enough to give you protection. You need to know exactly what the seller will do for you in the event that a problem arises.

Figure 7.1 Express Warranties

An express warranty can be an oral statement or promise a seller makes to a buyer.



An express warranty can be a description of a product in an advertisement or on the box the product comes in.



An express warranty can be in the form of an actual sample of the product.



 Express warranties are oral or written guarantees about how a product will perform.

Is it necessary to include the word warranty or guarantee in a warranty?

Description or Sample of the Goods Any description or sample of the goods that is part of a transaction also creates an express warranty, such as in an advertisement or even the box the item comes in. The seller warrants that the goods will be the same as the description or sample.

Advertising Express Warranties Advertisements stating that a product is warranted must tell you how to get a copy of the warranty before you buy the product. Advertisers who warrant products for a lifetime must fully explain the terms of their promises.

Magnuson-Moss Warranty Act Under the Magnuson-Moss Warranty Act, a written warranty on goods in interstate commerce costing more than \$10 must disclose whether it is full or limited. A **full warranty** is an assurance that a defective product will be repaired or replaced without charge within a reasonable time. A **limited warranty** is any written warranty that does not meet the requirements of a full warranty. Some limited warranties will cover parts, but not labor. Others cover a product only as long as it is owned by the original buyer.

Implied Warranties

An **implied warranty** is a guarantee of quality imposed by law. It comes automatically rather than verbally or in writing. There are three types of implied warranties: warranty of merchantability, warranty of fitness for a particular purpose, and usage of trade.

Merchantability A **warranty of merchantability** is an implied warranty that goods are fit for the ordinary purpose for which the goods are sold. Unless excluded, this warranty is given whenever a merchant sells goods. Retailers, wholesalers, and manufacturers imply this warranty in every sale. To be merchantable, goods must pass without objection in the trade under the contract description. They must be fit for the ordinary purposes for which the goods are used. They must also be adequately contained, packaged, and labeled, and conform to any promises or statements made on the container or label. Items that courts have held to be non-merchantable include a boat motor that produced excessive amounts of black smoke, applesauce that was inedible because of poor taste and smell, and food containing pieces of glass.

Fitness for a Particular Purpose A **warranty of fitness for a particular purpose** is an implied warranty that goods will be fit for a specific use. It comes about when the seller knows the purpose for which the goods are needed, such as a truck to haul heavy equipment. The seller warrants by implication that the goods will be fit for the purpose for which they are to be used. This warranty exists whether the seller is a merchant or a private party.



Better Business Bureau

In purchasing goods or services, warranties are important to insure your investment. Log on to glencoe.com to begin your WebQuest project. Visit the Better Business Bureau mediation program to see what services are available to consumers in your state. Then review the types of recourse you have available under your state's law.

List your findings in your WebQuest folder to share with your class.





Global Law

Contracts and Warranties in South Korea

The South Korean legal system is very similar to the civil code systems found in Europe. However, after World War II, in 1948, South Korea adopted a constitution that was similar to the United States Constitution, although the civil code is still the primary source of law. Contract and warranty law stems from the South Korean Civil Code. There are some unique features in South Korean law.

There is no consideration for a contract. The concept of consideration is not present in South Korean contracting. Rather, there are 14 different types of contracts laid out in the Civil Code and the requirements for each type.

There is no Statute of Frauds. There is no law requiring specific contracts to be in writing, such as contracts for the sale of land. However, there is a definite preference in the courts for contracts to be done in writing.

In the case of breach, South Korea has a deposit clause. Any money that has been deposited in

contemplation of a contract can be considered liquidated damages. That is, if a party puts down money to buy a house and then decides not to buy the house, that party can breach the contract by giving up the money. Alternatively, if the seller decides not to sell and breaches the contract, then that party must only pay twice the amount of the deposit.

There are specific warranty statutes. As in the U.S., sellers are liable for express warranties. The Korean Civil Code, again, is explicit on what qualifies as a warranty. However, a seller's liability depends upon whether the seller is aware of the defect. There are only limited situations where a seller is liable for unknown defects.

Across Cultures: Trials in South Korea

One major difference between U.S. and South Korean trials is that there is no jury in South Korea. Rather, a court comprised of one or three judges hears the case and makes a decision.

Critical Thinking: *Should manufacturers only be liable for known defects, as in South Korea, or should there be strict liability, as in the U.S.?*

Warranty of Title

In all sales, the seller warrants that the title being given to the buyer is good and that the transfer is lawful. This is called the warranty of title. It is a guarantee that the goods have no liens, or claims by others. If you buy stolen goods, the real owner has the right to the return of the goods. You may recover your loss from the seller, who breached the warranty of title.

Exclusion of Warranties

To **exclude** the warranty of merchantability, the word *merchantability* must be mentioned specifically. If the exclusion is in writing, the word must be written prominently. The warranty of title may not be excluded.

In some states, implied warranties can also be excluded or modified by the words *as is* and *with all faults*. Having buyers examine goods before the sale is another way to exclude or modify warranties. Under federal law, implied warranties cannot be excluded when an express warranty is given to a consumer.

Responsibilities of Consumers

Warranties are designed to protect you as a consumer. As a consumer, however, you also have certain responsibilities. You have a responsibility to use a product safely and as it is intended to be used. If a product comes with information, such as a warranty, you have a responsibility to read that information. To succeed in a claim for breach of warranty, you have a duty to notify the seller within a reasonable time after you discover the defect. Failure to do so will prevent you from recovering damages.

Consumer Protection Assistance

Where can you go if you feel you have been cheated by a business?

Many state and local governments have offices of consumer affairs to educate consumers and help protect them against fraud. The federal Consumer Product Safety Commission establishes safety standards for consumer products. It has the power to recall unsafe products and to impose fines on violators. The local business community also polices itself to protect consumers from questionable practices.

If a consumer feels wronged, the consumer should first try to contact the business involved. If that does not work, then the consumer can contact the Better Business Bureau (BBB). The BBB is a private agency that hears consumer complaints at the local and state levels. The BBB's mission is to promote highly ethical relationships between businesses and the public through voluntary self-regulation, consumer and business education, and service excellence. The BBB, however, does not have the power to enforce laws or recommend one business over another.



After You Read

Summarize Name the different types of warranties.

SECTION 7.2 ASSESSMENT

Self Check

1. What is the cooling-off rule?
2. What are the three ways an express warranty can be made?
3. What is the warranty of title?

Academic Connection

Social Studies In 1962, President John F. Kennedy presented to the American

public what he called the Consumer Bill of Rights. The bill said that every person has four basic consumer rights. Over the years, three more rights were added. Look up these rights in the library or on the Internet and list them in your notebook.

English Language Arts

Write a letter to your state's attorney general to find out what rights you have in your state when you

purchase a defective car. Make sure to use proper business letter format.

Critical Thinking

Bait and Switch Bait and switch is an old gimmick unethical businesses use to lure people into a store and then get them to spend more money than they intended. Why do you think they call it bait and switch?



Go to glencoe.com to check your answers.

Chapter 7 Review and Assessment

Summary

Section 7.1 Sales Contracts

- ◆ The sale of goods is governed by sales law under the Uniform Commercial Code (UCC). The sale of services and real property is governed by general contract law.
- ◆ When a contract includes both goods and services, the dominant element of the contract determines whether it is a contract for goods or a contract for services.
- ◆ Title to goods is passed from a seller to a buyer when the seller does what is required under the contract to deliver the goods. The risk of loss is born by the party responsible for loss or damage to goods.
- ◆ Most contracts for the sale of goods of \$500 or more must be in writing to be enforceable.
- ◆ There are several remedies both buyers and sellers may seek if a sales contract is breached.

Section 7.2 Consumer Protection

- ◆ The Federal Trade Commission (FTC) was created to promote free and fair trade competition. The Bureau of Consumer Protection safeguards consumers against unfair and deceptive practices. The Consumer Product Safety Act protects consumers from unsafe goods.
- ◆ An express warranty is an oral or written statement about the quality, ability, or performance of a product. An implied warranty is a guarantee of quality imposed by law.
- ◆ A full warranty promises to fix or replace a defective product at no extra charge within a reasonable time. A limited warranty covers only specific costs, such as parts but not labor.
- ◆ Consumer protection can be obtained from state and local consumer protection agencies, such as the Consumer Product Safety Commission and the Better Business Bureau.

Vocabulary Builder

1 On a sheet of paper, use each of these terms in a sentence.

Key Terms

- | | | |
|---------------------------------|----------------------|--|
| • Uniform Commercial Code (UCC) | • insurable interest | • full warranty |
| • firm offer | • voidable title | • limited warranty |
| • title | • risk of loss | • implied warranty |
| • bill of sale | • warranty | • warranty of merchantability |
| | • express warranty | • warranty of fitness for a particular purpose |

Academic Vocabulary

- | | | |
|------------|------------|-----------|
| • uniform | • revoke | • option |
| • dominant | • disclose | • exclude |



Go to glencoe.com to play a game and improve your legal vocabulary.

Key Points Review

Answer the following questions. Refer to the chapter for additional reinforcement.

- 2 How are contracts for the sale of goods different from contracts for services or real property?
- 3 What are a seller's remedies when a buyer breaches a sales contract?
- 4 What are a buyer's remedies when a seller breaches a sales contract?
- 5 When do title and risk of loss pass from the seller to the buyer in a sale of goods?
- 6 What types of transactions do consumer protection laws cover and not cover?
- 7 What are the three types of implied warranties?
- 8 What are ways that implied warranties can be excluded or modified?
- 9 What organizations, businesses, and government agencies can consumers go to for assistance?

Standardized Test Practice

- 10 Read the following excerpt from a product warranty and complete questions 1 and 2.

The company will provide parts to replace defective parts without charge for one year from the date of the original retail purchase. Certain parts are excluded from this warranty. The company will provide the labor without charge for a period of one year from the date of the original retail purchase.

This warranty only covers failures due to defects in material or workmanship which occur during normal use. It does not cover damage which occurs in shipment, or failure or damage which results from accident, misuse, abuse, mishandling, misapplication, alteration, faulty installation, improper maintenance, commercial use such as for hotel or office use, or damage which results from fire, flood, or other natural disaster.

1. What does the warranty cover for the first year?

- A parts only
- B labor only
- C labor and all parts
- D labor and certain parts

2. Which type of damage is covered by the warranty?

- A damage due to a natural disaster
- B faulty installation
- C defects in workmanship
- D damage that occurs in shipment

**Test-Taking Strategies**

Skip difficult questions until all other questions are answered. Keep a record of the unanswered items to return to, if time permits, on a scrap piece of paper.



Apply and Debate

Read the following scenarios. Get together with other students in pairs or groups of three and take a position on each scenario. Debate your position in class with students taking the opposite position or prepare a written argument justifying your position.

11 Firm Offer

Nathan's Burgers has bought its hamburger buns from a local bakery for a set price for the past five years based on an oral agreement. Recently, Nathan picked up his order and discovered that the cost for hamburger buns had increased ten percent.

You Debate *Is the bakery required to notify Nathan prior to the price increase?*

12 Bulk Transfer

Mattie places an order with a moving company to deliver new fall fashions to her clothing shop in stages. The next day, she discovers that all of the merchandise has been delivered in bulk with a bill to be paid in full in ten days.

You Debate *Is Mattie required to accept the merchandise and pay the bill in full?*

13 Express Warranty

You buy the floor model of a DVD player at half price. The sales clerk tells you it can be returned for a full refund if it is faulty. At home you discover it is missing the cables and remote, so you return to the store for a refund. Above the service desk is a sign stating, "All floor models are sold as is and cannot be returned."

You Debate *Are you entitled to a refund?*

14 Full Warranty

Maria buys a set of tools at a trade show from a dealer who owns a store in the same town. When Maria uses the tools for the first time, one of them breaks. She goes to the merchant's local store for a refund. The merchant tells Maria she is not entitled to a refund since the sale was made at the trade show and not the store.

You Debate *Does the Magnuson-Moss Warranty Act apply to this situation?*

15 Bait and Switch?

You find an ad for a great deal on a computer at a local store. When you get to the store, the clerk tells you they are out of stock and shows you another computer that is more expensive.

You Debate *Is this a case of bait and switch?*



**Case Study Practice –****Princess Cruises, Inc. v. General Electric Co.**

16 Which Type of Contract Applies? Princess Cruises (Princess) owns and operates the SS Sky Princess. In December of 1994, Princess requested that General Electric (GE) perform routine servicing and repair on the ship and provide any parts necessary.

GE noted rust on the rotor and removed it. However, good metal was also removed, which caused the rotor to become unbalanced. Even though GE attempted to correct the imbalance, the imbalance caused damage to the ship. Princess sued GE for damages. The case went to trial and the court instructed the jury on applying UCC protections, since repair parts were included in the contract. The jury awarded Princess \$4,577,743 in damages. GE appealed the case, arguing that the trial court erroneously instructed the jury on principles from the UCC, since the contract was primarily for providing a service rather than for the sale of goods.

Source: Princess Cruises, Inc. v. General Electric Co., 143 F.3d 828 (4th Cir. 1998)

Practice Did the judge correctly use UCC principles, since the contract included the sale of repair parts?

17 Ethics Application

Keep the Customer Satisfied You sell sprinkler systems to farmers. Your old customers have never signed a contract with you because most of your sprinkler systems sell for \$400, and the UCC only requires written contracts for sales above \$500. Your newest sprinkler system sells for \$525. Some of your old customers want the new system, but want to keep the arrangement informal and not sign a contract.

- ◆ What can you do to keep your old customers happy?

18 Internet Application

Research Consumer Information Christina wanted to purchase a used vehicle for under \$6,000. Before deciding which make and model she should buy, she researched information on recalls, average maintenance costs, and reliability.



Go to glencoe.com to access the Web site sponsored by the Consumer Protection Agency Safety Commission and research various makes and models of vehicles to see what types of recall information you can find on them. Then look at the form for filing a consumer product incident report.



Reading Connection

Outside Reading Go to glencoe.com for reading suggestions about consumer protection.

Personal Property

BusinessWeek News

Nasty Thorns in the BlackBerry Patch

By Roger O. Crockett

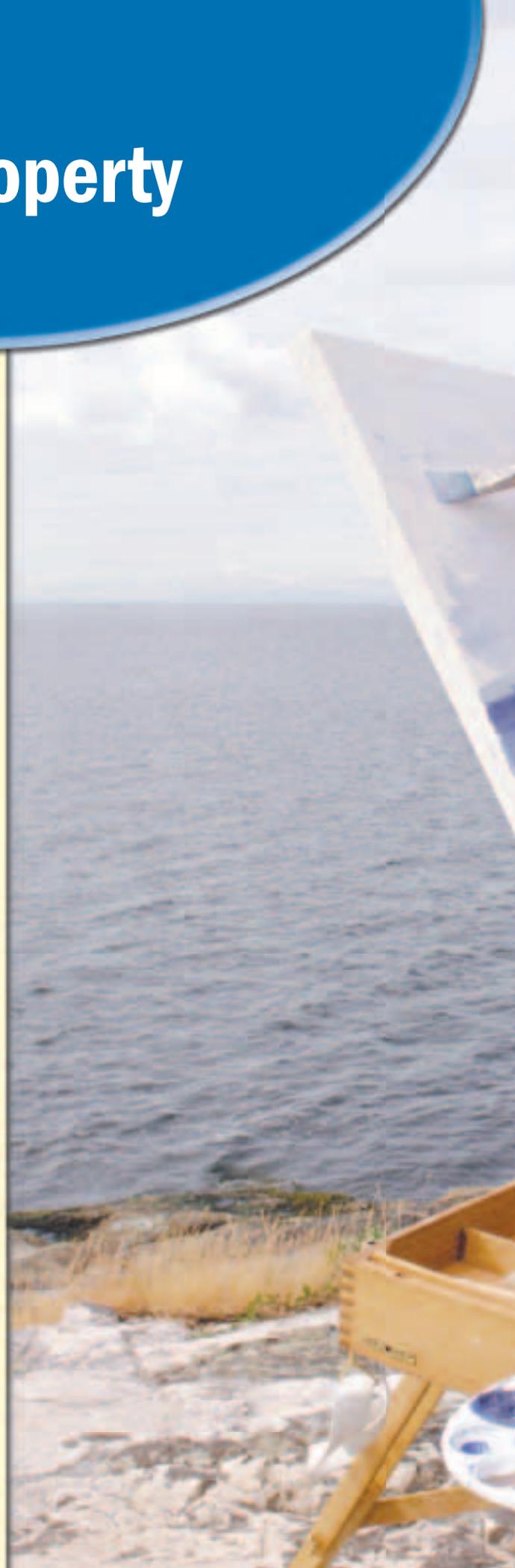
Things are looking dicey for Research in Motion Ltd., maker of the cultish BlackBerry e-mail device. On Nov. 9, U.S. District Court Judge James Spencer made it clear he was growing increasingly impatient with the protracted battle between RIM and tiny tech investor NTP Inc., which alleges that RIM's wireless e-mail technology infringes on several of its patents. He also said he was "very unlikely" to accede to RIM's request that he postpone the case to give the U.S. Patent & Trademark office a chance to weigh in: "I've spent enough of my life and time on NTP and RIM."

With Spencer pushing to wrap things up, a settlement seems increasingly likely. And it could be a great deal higher than the \$450 million RIM and NTP agreed to before talks collapsed in June. Some analysts say RIM could end up cutting a check for \$1 billion.

Flex Your Reading

Efficient critical reading involves being flexible with speed and comprehension. There are several ways of reading critically, and you need to fit a reading style to your needs and to the material.

Go to glencoe.com for Flex Your Reading activities, more information on reading strategies for this chapter, and guided practice in reading about types of property.





Intellectual Property Patents, trademarks, and copyrights protect one's creative ideas from being stolen. *What are some examples of intellectual property?*

Types of Property

What You'll Learn

- ◆ Distinguish between real property, personal property, and fixtures.
- ◆ Describe the different types of co-ownership of personal property.
- ◆ Explain the concept of intellectual property.
- ◆ Give examples of intellectual property.
- ◆ Define the laws of patents, copyrights, and trademarks.

Why It's Important

Knowing the law about personal property will help you protect your possessions.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 8)
Study relationships among science, technology, and society.

English Language Arts (NCTE 6) Apply knowledge of language structure, language conventions, media techniques, figurative language, and genre to create, critique, and discuss print and non-print texts.

Reading Guide



Before You Read

Connect Intellectual property can be anything you created, discovered, or designed. Name some things you have done that could be considered intellectual property.

Focus on Ideas

There are different ways to protect the ownership rights to different types of intellectual property.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.

	Patent	Copyright	Trademark
	<u>music player</u>	<u>novel</u>	<u>slogan</u>
Examples	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

Intellectual Property Protection



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- personal property
- intellectual property
- patent
- copyright
- trademark



Academic Vocabulary

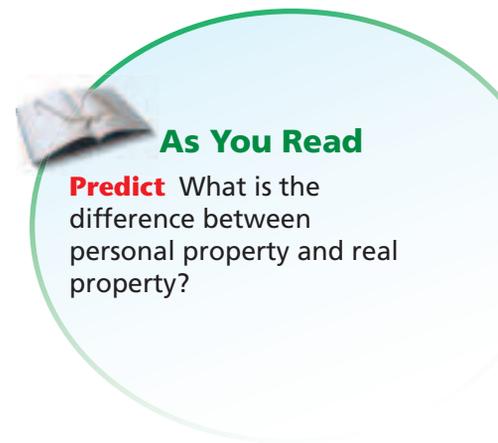
You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- tangible
- exclusive
- downloading

Personal Property

Can you keep something you find on the street?

Personal property is everything, other than real property, that can be owned. Real property is land and anything connected to it, including buildings, the earth below, and the air above. Items of property permanently attached to real property, such as built-in stoves and kitchen cabinets, are called fixtures and are considered real property. **Tangible** personal property is property that has substance and can be touched, such as CD players, vehicles, and food. Intangible personal property, is property that has no substance and cannot be touched, such as patents, copyrights, and trademarks. If someone owes you money, the right to receive the money is intangible personal property. It is necessary to distinguish between real and personal property because the law that applies to each may be different.



As You Read

Predict What is the difference between personal property and real property?

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and the **Academic Vocabulary** glossary in the back of this book.



Global Law

Inheritance Rights in Property for Women in Kenya

Women in the United States are granted the same rights in property as their male counterparts. However, that is not the case in the country of Kenya. Although the Kenyan Constitution outlaws discrimination on the basis of sex, there are numerous exemptions that provide for a system that seemingly discriminates against women.

The Kenyan Constitution permits discrimination in matters pertaining to adoption, marriage, divorce, burial, distribution of property upon death, or other matters of personal law.

One such act that discriminates against women is The Law of Succession Act of 1981, which affects the distribution of property after someone dies. The law states:

- 1** Both male and female inherit equally if there is no surviving spouse.
- 2** However, if a spouse survives, the spouse inherits all the movable property in the house but can only live in the house and does not own it. If the spouse chooses to sell the house, court permission must be granted. Further, if the

surviving spouse is a woman and she remarries, she loses all interest in the property when she remarries. If the surviving spouse is a man, he can remarry and his interest does not terminate.

- 3** If someone dies and does not have either a spouse or children, the estate passes first to the deceased's father and then, if the father is dead, to the mother.
- 4** Finally, the Act was amended in 1990 to exempt Muslim families from the provisions. Muslims in Kenya are subject only to Islamic laws, which provide that a son generally inherits double the share of a daughter. Also, if there are children and a wife, the wife only gets one-eighth of the estate.

Across Cultures: Source of Law in Kenya

Although Kenya has a constitution and statutory law, customary law (primarily unwritten) from each of the different regions is also valid law in those regions. The authorities must consider customary law to the extent it does not conflict with the constitution.

Critical Thinking: *Should different ethnic groups be able to follow their own laws, even though they are members of a larger country?*

Most property is acquired by:

- purchase
- gift
- inheritance

Co-ownership of Personal Property

When two or more people own personal property as tenants in common, each owner's share passes to his or her heirs upon death. If, instead, they own it as joint tenants, each owner's share passes to the surviving joint tenants upon death. Nine states recognize community property. This is property (except a gift or inheritance) that is acquired by the personal efforts of either spouse during marriage. It belongs to both spouses equally.

Lost, Misplaced, and Abandoned Property

If you find a watch, you have a legal duty to try to find the true owner. If you cannot find the owner, you may be able to keep the watch after following local requirements. Local laws may require you to advertise for the true owner or to deposit the article at the police station while the owner is being sought.

If property is found on the counter of a store, at a table in a restaurant, or on a chair in a washroom, it is considered misplaced rather than lost. The owner may recall where it was left and return for it. If you find an article in such a place, you should leave it with the proprietor. Abandoned property is property that has been discarded by the owner without the intent to reclaim it. With exceptions, anyone who finds abandoned property may keep it.



Venetian Casino Resort, LLC v. VenetianGold.com

380 F.Supp.2d 737 (E.D. Va. 2005)

The Venetian Casino Resort is a prominent Las Vegas casino known for its elaborate Venetian-style architecture. The Resort has trademarked numerous names, including, “Venetian,” “The Venetian,” and “The Venetian Resort Hotel Casino.” After those names were trademarked, Vincent Coyle launched an international gambling Web site using the name VenetianGold.com. He also registered Web site names such as VenetianGoldCasino.com, VenetianCasinoVegas.com, and VeniceGoldCasino.com, all of which took users to the gambling Web site. The Venetian Casino Resort then sued VenetianGold.com under the Anti-Cybersquatting Consumer Protection Act.

Ruling and Resolution

The U.S. District Court in Virginia held that the Venetian Casino Resort in Las Vegas was a distinct trademark and that VenetianGold.com had tried to profit from using similar names on its Web sites. Therefore, Mr. Coyle's company must cease using Web site names that were similar and include the term “Venetian,” along with similar-themed words.

Critical Thinking If users realize that the Web site is not actually the Las Vegas resort, then should Mr. Coyle be able to use similar names?

Stolen Personal Property

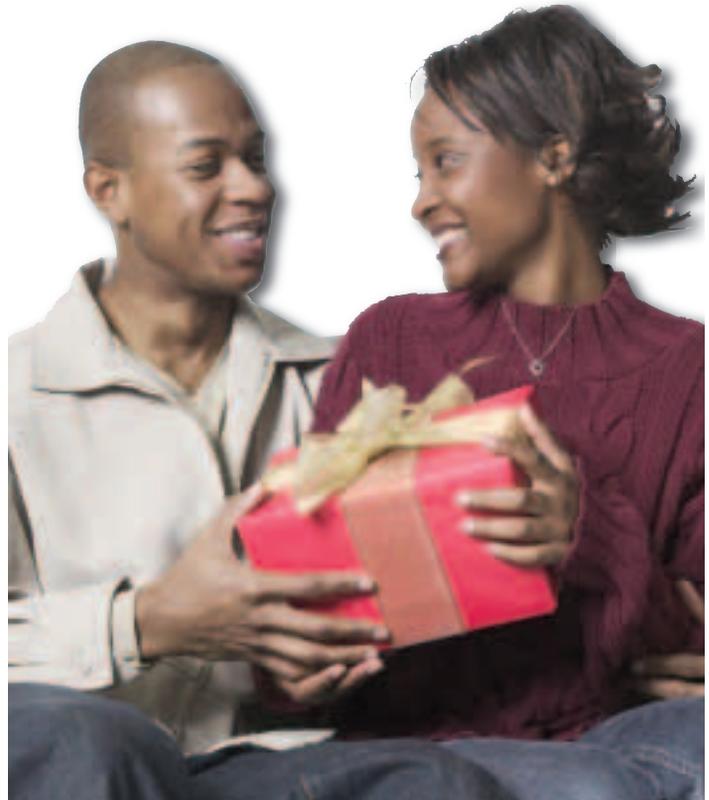
A person has no title to goods that are stolen and cannot give good title to anyone else. An innocent purchaser who acquires a stolen item in good faith is obliged to return it to the owner. Title to stolen goods never leaves the owner, who can always regain possession.

Gifts of Personal Property

A gift of personal property is completed when three requirements are met:

- The donor (gift-giver) must intend to make the gift.
- The gift must be delivered.
- The donee (gift-receiver) must accept the gift.

Once all three requirements are met, the gift cannot be taken back by the original owner.



Intellectual Property

Can you patent a peanut butter and jelly sandwich?

Intellectual property is an original work fixed in a tangible medium of expression. Examples of intellectual property include inventions, works of art, software, and logos (see **Figure 8.1** on page 186). Intellectual property law has become even more important with the increase of computers and technology. Due to high research and development costs, technology companies want to ensure that their products are protected from other companies. Patents, copyrights, and trademarks assure that the rightful owners of intellectual property will have **exclusive** rights to their creations.

Patents

A **patent** is a grant giving an inventor the exclusive right to make, use, or sell an invention for a period set by Congress. The period is generally 20 years. To be patented, a device must be useful and consist of a new principle or idea. It also must not be obvious to people with ordinary skill in the field. For example, in 1999, the Smucker's Company obtained a patent on Uncrustables—frozen, crustless peanut butter and jelly pockets. Later, the company sought to expand its patent, arguing that the sealed edge was one of a kind. In 2005, the court held against the expansion, saying that the crimped edges on Uncrustables are similar to ravioli or pie crust. The patent office said it would reexamine the original patent given to Smucker's.

 **Gifts** Like a contract, offer and acceptance are required for a gift to be complete. *How does a gift differ most from a contract?*



Reading Check

Explain Can you keep something you bought that you later find out was stolen?

Figure 8.1 Intellectual Property Rights

Jack Dabaghian/Reuters/CORBIS



 The Apple Computer Corporation owns numerous patent, copyright, and trademark rights. *What types of intellectual property protection are used to cover the different items in the figure?*

Copyrights

A **copyright** is a right granted to an author, composer, photographer, or artist to exclusively publish and sell an artistic or literary work. Copyrighted works are protected for the life of the author plus 70 years. In addition to printed items, computer software, graphic arts, architectural designs, motion pictures, and sound recording may be copyrighted. **Downloading** someone else's music from the Internet without paying a fee violates copyright law.

Under the fair use doctrine, copyrighted material may be reproduced without permission in certain cases. Copying is allowed for literary criticism, news reporting, teaching, school reports, and other research. The amount and use of the material must be reasonable and not harmful to the copyright owner.

Trademarks

A **trademark** is a distinctive mark, symbol, or slogan used by a business to identify and distinguish its goods from products sold by others. It may consist of a word, name, symbol, or other device. Owners of trademarks have the exclusive right to use the particular word, name, or symbol that they have adopted as their trademark. A trademark continues for ten years and may be renewed for additional ten-year periods. The ® symbol indicates that a trademark is legally registered.



After You Read

Summarize What are the three most common ways property is acquired?

SECTION 8.1 ASSESSMENT

Self Check

1. Give two examples of tangible personal property and one example of intangible personal property.
2. What are the three requirements of a completed gift?
3. When is copying allowed without permission?

Academic Connection

Social Studies Copyright law goes back to the invention of the printing press. The first copyright law enacted in the U.S. is

the Copyright Act of 1790. Since then, there have been major and minor revisions to the act in 1831, 1865, 1870, 1909, 1912, and 1976. Go to the library or on the Internet to look up the Copyright Act and why it was changed each time. Create a time line describing the changes.

English Language Arts

Suppose you lost or misplaced a valuable item of personal property. Write an ad to be posted in a newspaper and around your neighborhood describing the item and offering a reward for its return.

Be sure to use proper sentence structure and check your work for grammatical, punctuation, and spelling errors.

Critical Thinking

Give and Take When you admire your friend's portable CD player, your friend replies, "I've got another one just like it that you can have. I'll give it to you at school tomorrow." Two days later, you learn that your friend gave the player to someone else. Was the player a gift to you?

➔ Go to glencoe.com to check your answers.

What You'll Learn

- ◆ Define bailment.
- ◆ Explain the different types of bailments.
- ◆ Discuss the standard of care bailees must use.
- ◆ Define a hotel keeper's liability.
- ◆ Identify a common carrier's liability for loss or damaged goods.

Why It's Important

Knowing the law of bailment will help you understand your rights when you let someone hold your property for you.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 3)
Study people, places, and environments.

Math (NCTM NOS 2a)
Judge the effects of such operations as multiplication, division, and computing powers and roots on the magnitudes of quantities.

Reading Guide



Before You Read

Connect A bailment is created whenever you let someone else keep something you own temporarily. Name some times when you had to do this in public.

Focus on Ideas

Different types of bailments require different standards of care.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.

Bailments	Standard of Care
Special	_____
_____	_____
_____	_____



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- bailment
- special bailment
- gratuitous bailment
- mutual benefit bailment
- carrier
- common carrier



Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- standard
- benefit
- register

Bailments

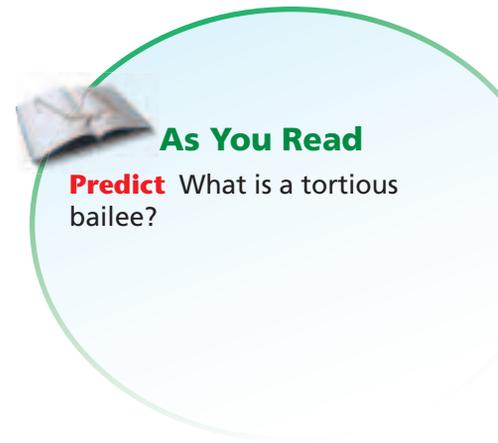
Is leaving your laptop at a repair shop considered a bailment?

You may have rented movies at a video store, left your car at a shop to be repaired, or dropped clothes off at the cleaners. These were all bailments. A **bailment is the transfer of possession and control of personal property to another with the intent that the same property will be returned later.** The person who transfers the property is the bailor. The person to whom the property is transferred is the bailee.

In a bailment, there is no intent to pass title to property. The bailee has an obligation to return the same property to the bailor. The bailee also has a responsibility to exercise a certain **standard** of care of the property. The standard of care depends on who receives the most **benefit** from the bailment. There are three types of bailments, each with a different standard of care.

Types of Bailments

A **special bailment is a bailment for the sole benefit of the bailee.** If you borrow a friend's laptop, with nothing offered in return, you alone benefit from bailment. This type of



As You Read

Predict What is a tortious bailee?

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and the **Academic Vocabulary** glossary in the back of this book.



Case Study – Rich v. RAM Products, Inc.



Critical Thinking *Should Mr. Rich get his money back? Why or why not?*



Your Reading

Note key facts in the text below and look up words you do not understand. Restate difficult ideas in your own words. Go back and reread the text quickly to make sure you did not miss any important detail. Now, you are ready to formulate an opinion.

Reasonable Standard of Care? For 15 years, Philip Rich owned a tile business. He decided to change the focus of his company and manufacture pottery. In January of 1994, Mr. Rich purchased three pieces of pottery-making equipment for \$30,000 from a pottery in Roseville, Ohio, that had been manufactured by RAM Products (RAM). Mr. Rich arranged to have the equipment transported from the pottery in Roseville to an enclosed, weatherproof storage building, where the equipment was stored on pallets.

In 1998, Mr. Rich decided to sell the three pieces of equipment and contacted RAM about selling the product for him. Mr. Rich was to transport the equipment to RAM's factory to be inspected and refurbished, if necessary. RAM would then try to sell the equipment. If RAM could not resell the equipment, it was to return the equipment to Mr. Rich.

RAM was unable to sell the equipment, so Mr. Rich traveled to RAM's factory to pick up the equipment. When he arrived at the factory, he discovered that the equipment had been stored in an open shed and that rain, snow, and other elements had ruined the equipment. Mr. Rich sued for the value of the equipment.

Rich v. RAM Products, Inc., 2005 WL 1491465 (Ohio Ct. App. 2005)



Go to glencoe.com for more case study practice.

bailment requires great care. That means you, as the bailee, are liable for any kind of damage to the laptop while it is in your possession.

A **gratuitous bailment** is a bailment for the sole benefit of the bailor. This type of bailment might occur if a friend asks you to hold something, like a watch, while he or she goes swimming. Since your friend, as the bailor, receives the sole benefit of the bailment, you are required to use only slight care and can only be held liable for gross negligence. If the watch is scratched or stolen, you are not liable.

A **mutual benefit bailment** is a bailment in which both the bailor and the bailee receive benefits. This type of bailment might occur if you leave your car at a garage to be repaired. You, as the bailor, will have your car repaired, and the mechanic, as the bailee, will receive payment for the service. This type of bailment requires reasonable care, or the amount of care a reasonable person would use.

Sale-on-Consignment and Sale-on-Approval A consignment is a type of mutual benefit bailment. The consignor entrusts goods to the consignee for the purpose of selling them. If the goods are sold, the consignee, known as a factor, will forward the proceeds, minus a fee, to the consignor. If the goods are not sold, they are returned to the consignor. When goods are sold on approval, they remain the property of the seller until the buyer approves them.

Tortious Bailees Bailees have the right to use another person's property only for the purpose for which the bailment was created. Use for another purpose or for a longer time than agreed upon is a wrongful act.

A tortious bailee is someone who holds property wrongfully. This includes someone who keeps someone else's lost property or knowingly possesses stolen property. One who refuses to return property at the termination of a bailment is also a tortious bailee. Tortious bailees are responsible for all damage to property in their possession.

Burden of Proof Sometimes items are damaged, lost, or stolen when they are in the possession of a bailee. The bailor is not in a position to know what caused the loss. If a bailor brings suit for damages, courts shift the burden of proof to the one who is in the best position to know what happened—the bailee. As a result, the burden is on the bailee to prove a lack of negligence.

Special Bailments

What can you do if an airline loses your luggage?

Certain types of bailees have special obligations in addition to the duties imposed on all bailees. These include hotel keepers and common carriers.



Consignment: *n* Giving goods to a dealer to sell for the owner. From Latin *com* = with + *sign* = mark or seal + *ment* = act of: to transfer authority to.

Lien: *n* A charge upon real or personal property for the satisfaction of some debt or duty. From Latin *ligare*: to bind.

Vocabulary Builder The root word *sign* means mark, seal, or symbol. Name words that contain *sign* and explain their meaning.

Look It Up! Check definitions in *Black's Law Dictionary* or an online glossary. For direct links, go to glencoe.com to find more vocabulary resources.

Hotel Keepers

A hotel keeper is the operator of a hotel, motel, or inn that regularly offers rooms to the public for a price. If rooms are available, a hotel keeper must accept all people who are not dangerous to the health, welfare, or safety of others and who are able to pay for their lodging. Moreover, the Civil Rights Act makes it a crime for hotel keepers to refuse a room to anyone on the grounds of race, creed, color, gender, or national origin.

Hotels and motels must provide a minimum standard of comfort, safety, and sanitation. Minimum standards include heat and ventilation, clean beds, and reasonably quiet surroundings. Guests are guaranteed the right of privacy.

With exceptions, hotel keepers are held by law to be insurers of their guests' property. In the event of loss, the hotel keeper may be held liable, regardless of the amount of care exercised.

Hotel keepers are not liable as insurers in the following cases:

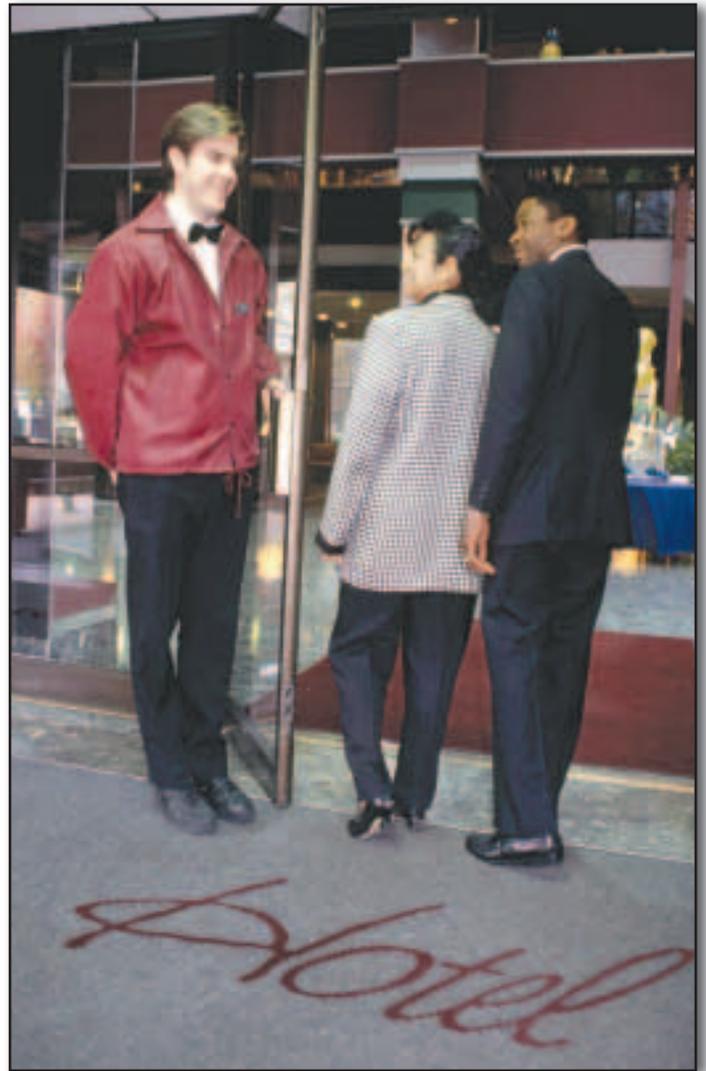
- losses caused by a guest's own negligence
- losses to the guest's property due to acts of God (events such as earthquakes, floods, or cyclones) or due to acts of the public enemy (such as terrorists or wartime enemies)
- loss of property because of accidental fire in which no negligence may be attributed to the hotel keeper

Hotel Keeper's Lien and Credit Card Blocking Hotel keepers have a lien on their guests' property. If a guest cannot pay, the hotel keeper may hold the guest's property as security for payment at some later time.

Credit card blocking is a method used by hotels to secure payment for a room. Under this system, guests are asked for a credit card number when they **register**. The hotel contacts the card company with the estimated cost of the bill. If the card company approves the transaction, the guest's available line of credit is reduced by the estimated amount. This procedure is known as a block. The final actual charge for the room will replace the block within a day or two after the guest checks out.

Common Carriers

A **carrier** is a business that transports persons, goods, or both. A **common carrier** is a carrier that is compensated for providing transportation to the general public.



 **Hotel Keepers** Hotel keepers cannot turn away anyone who is not a danger to others if a room is available. *What can hotel keepers do to ensure guests pay their bills?*

Reading Check

Analyze Why is the burden of proof on the bailee rather than the bailor when property is damaged, lost, or stolen?



Common Carriers Federal regulations require the screening of airline passengers and property. *What happens to passengers who do not consent to being screened?*



As with hotels, common carriers cannot turn away people who ask for their services.

Common Carriers of Goods Common carriers are liable for damages to all goods they ship, regardless of whether they are negligent. However, carriers are not liable when damages occur as a result of acts of God, the public enemy, public authorities, the shipper, and the **inherent** nature of the goods.

With these exceptions, common carriers must accept all goods offered to them for shipment. However, common carriers:

- are not required to accept goods they are not equipped to carry
- may refuse goods that are inherently dangerous
- may refuse goods that they do not haul
- may refuse goods that are improperly packaged
- may refuse goods that are not delivered at the proper place and time

Common carriers will not be excused from liability for losses because of strikes, mob violence, fire, and similar causes. Labor unions are required to give notice of impending strikes weeks in advance of the strike dates to allow carriers to reject shipments that might be damaged by delays during a strike.

Carriers have a lien on all goods shipped for the amount of the shipping charges due. Should the shipper and the party receiving the goods fail to pay the charges, the carrier may sell the goods at public sale.

Common Carriers of Passengers Carriers are responsible for protecting passengers. They are not responsible, however, if injuries are unforeseeable or unpreventable. Federal regulations require the screening of airline passengers and property. Passengers who do not consent to the screening must be refused transportation.

Bumped Airline Passengers When an airline flight is overbooked, the airline is responsible for accommodating passengers. The airline must ask for volunteers to give up their seats for seats on the next available flight. If there are not enough volunteers, other passengers may be denied a seat. Passengers who are bumped may be entitled to compensation plus the money back for their tickets.

Baggage Carriers are obligated to accept a reasonable amount of passengers' baggage. Luggage kept at one's seat does not count toward the weight limits permitted each passenger. You may ship excess baggage by paying additional fees. Dangerous weapons, explosives, destructive items, and those that are a potential threat are not allowed.

Federal rules place limits on the liability of airlines for lost luggage. Within the U.S., the maximum liability is \$2,500 per passenger. Excess valuation may be declared on certain types of articles. Some carriers assume no liability for fragile, valuable, or perishable articles.



After You Read

Summarize What are the different standards of care required by bailees for the different types of bailments?

SECTION 8.2 ASSESSMENT

Self Check

1. What is the difference between a bailor and a bailee?
2. What is credit card blocking?
3. What do federal regulations require when passengers do not consent to a screening?

Academic Connection

Mathematics Duo Corporation manufactures home security monitors. It needs to rent storage space to warehouse its

monitors. Each monitor is packaged in a carton measuring 2 feet long, 1.5 feet wide, and 2 feet high. How many cubic feet of space does Duo Corporation need to store 800 monitors?

CONCEPT **Number and Operations: Using Fractions, Decimals, and Rounding** To solve this problem you will need to find the volume per item first. This is done by doing the following: $\text{length} \times \text{width} \times \text{height} = \text{volume per item}$. Next you will need to find

the storage space, which is calculated by $\text{volume per item} \times \text{number of items}$.



For more math practice, go to the Math Appendix.

Critical Thinking

Living Bailments The agricultural class at your school raises small animals, such as hamsters and rabbits. Every weekend several students take the animals home to feed them. Is this a bailment? If so, what kind?



Go to glencoe.com to check your answers.

Chapter 8 Review and Assessment

Summary

Section 8.1 Types of Property

- ◆ Personal property is everything, other than real property, that can be owned.
- ◆ Real property is land and anything connected to it, including buildings.
- ◆ Most property is acquired by purchase, as a gift, or by inheritance.
- ◆ Forms of co-ownership of personal property include tenants in common, joint tenants, and community property.
- ◆ A gift of personal property is completed when the donor intends to give the gift, it is delivered, and the donee accepts the gift.
- ◆ Intellectual property is an original work fixed in a tangible medium of expression, such as an invention, a work of art, or a logo.
- ◆ Intellectual property is protected by patents, copyrights, and trademarks.

Section 8.2 Bailments

- ◆ A bailment is the transfer of possession and control of personal property to another with the intent that the property will be returned later.
- ◆ The main types of bailments are: special bailment for the sole benefit of the bailee; gratuitous bailment for the sole benefit of the bailor; and mutual benefit bailment in which both the bailor and the bailee receive benefits.
- ◆ Hotel keepers are held by law to be insurers of their guests' property. In the event of loss, a hotel keeper may be held liable, regardless of the amount of care exercised.
- ◆ Common carriers are liable for damages to all goods they ship, regardless of whether they are negligent.
- ◆ Common carriers are responsible for protecting passengers.

Vocabulary Builder

1 On a sheet of paper, use each of these terms in a sentence.

Key Terms

- personal property
- intellectual property
- patent
- copyright
- trademark
- bailment
- special bailment
- gratuitous bailment
- mutual benefit bailment
- carrier
- common carrier

Academic Vocabulary

- tangible
- exclusive
- downloading
- standard
- benefit
- register



Go to glencoe.com to play a game and improve your legal vocabulary.

Key Points Review

Answer the following questions. Refer to the chapter for additional reinforcement.

- 2 What is the difference between personal property, real property, and fixtures?
- 3 What are some of the types of personal property?
- 4 What are some methods of acquiring ownership of personal property?
- 5 What are the different forms of co-ownership of personal property?
- 6 What is intellectual property and what are some types of intellectual property?
- 7 How is a bailment created?
- 8 What are the principal types of bailments?
- 9 What are some of the responsibilities of common carriers?

Standardized Test Practice

- 10 Read the following information about the use of bailment law to transfer technology and then answer questions 1 and 2.

In the 1980s, biotechnology companies solved the problem of transferring tangible material through use of the ancient legal tool of bailment, where possession, but not title, of tangible personal property is transferred for a limited purpose and duration. Then universities started utilizing bailment to transfer new technology as well. Bailment is a useful technology transfer tool in two particular situations. One case arises out of the explosive growth of biotechnology over the last two decades, and the other case is a mechanism to accomplish technology transfer through the use of tangible research products generally. In many instances over the past two decades, the traditional patent system has not been able to provide practical or cost-effective protection for a biotechnology invention, if any protection was available.

1. How did biotechnology companies solve the problem of material transfer?

- A Stopped new technology transfer
- B Transferred for limited purpose or duration
- C Required formal licensing
- D Utilized bailment laws

2. What have traditional patent systems not been able to provide?

- A Laws that have evolved in patents
- B National laboratories run by universities
- C Practical or cost-effective protection
- D Tangible research products

**Test-Taking Strategies**

If you find yourself taking too long to answer a question, skip it and go back to it later.



Apply and Debate

Read the following scenarios. Get together with other students in pairs or groups of three and take a position on each scenario. Debate your position in class with students taking the opposite position or prepare a written argument justifying your position.

11 Trademarks

Jana is a junior in high school. She designed a Web site to promote her small business and purchased a domain name and logo, but did not trademark them.

You Debate *Is Jana's business protected from another company using her domain name and logo?*

12 Copyrights

The Myers High School literary club wants to sell a book of students' poems for \$12. It will include quotes from famous authors and a credit line for each quote.

You Debate *Can the literary club legally use copyrighted material without the owner's permission or paying a royalty fee?*

13 Nonprofit

The Ellis High School Business Club plans to sell buttons featuring players' photos. To create the photos, the club members used video clips from previous games without asking the players' permission. The Business Club is a nonprofit club and the video clips were created by the school to use for promoting school sports.

You Debate *Is the club in violation of intellectual property laws since it did not create or own the video clips and did not receive permission?*

14 Bailment

Joycelyn's friend agreed to keep Jocelyn's iPod in her purse since it was beginning to rain. When she gave the iPod back to Joycelyn, they discovered a pen had leaked ink all over the iPod and damaged it. Joycelyn said her friend did not take proper care of the iPod and should replace it.

You Debate *Was there a bailment between Joycelyn and her friend and, if so, is the friend liable for the damages?*

15 Mutual-Benefit Bailments

Jonathan rented a key-locker for \$3.00 at a waterpark. When he went back to the locker, he found it open and his things were missing.

You Debate *Was there a mutual-benefit bailment present? If so, what did the water park owe Jonathan?*





Case Study Practice – Vigil v. Walt Disney Co.



16 Who Owns the Trademark? In 1992, the Walt Disney Company (Disney) released the movie *The Mighty Ducks*, the story of a fictional hockey team. Disney later acquired the rights to a real hockey team, naming it the Mighty Ducks. The logo for both consists of a hockey mask shaped like a duck's bill and crossed hockey sticks.

Mark Vigil argued that he created the logo Disney used and that he owned the intellectual property rights to it. Disney introduced evidence to the court that it had applied to register the logo as a trademark with the U.S. Patent and Trademark Office (PTO) on June 7, 1993. The logo was officially registered on April 26, 1994.

Mr. Vigil argued that Disney did not enter its logo until September 18, 1993, and that he had filed disclosure documents with the PTO on June 8, 1993. Disclosure documents are not applications for a trademark or patent, but rather give notice to the PTO that a specific design or invention may later be trademarked or patented.

Source: Vigil v. Walt Disney Co., 1995 WL 621832 (N.D. Cal. 1995)

Practice Does Mr. Vigil have a right to the Mighty Ducks logo?

17 Ethics Application

Duty of Care? Fernando asked Nikki to store his computer at her house while he was away for the summer. Fernando never made any comments about whether Nikki could use it. Nikki used the computer every day to do her schoolwork. She was very careful with the computer, but eventually the keyboard stopped working properly.

- ◆ Should Nikki have to replace the keyboard?

18 Internet Application

Copyright Protection Matthew has created a new Web site that allows users to search the Internet quickly and easily. Before Matthew uploads his site, he wants to get it copyrighted to protect his idea.



Go to glencoe.com to access the Web site sponsored by the U.S. Copyright Office. Write a brief summary of what rights Matthew has under Circular 66—Copyright Registration of Online Works.



Reading Connection

Outside Reading Go to glencoe.com for a list of reading suggestions about intellectual property rights.

Renting or Owning a Home

BusinessWeek News

Piggy Bank—Or House of Cards?

By Peter Coy

Multitalented Joaquin L. Thompson of Mableton, Ga., is a baker, a nurse for an insurance company, and now, a successful real estate investor. On Aug. 3, he made \$14,500 by flipping a house he owned for only 53 days. A small Atlanta bank financed his entire purchase price. All Thompson put up was \$1,200 in earnest money that went into escrow. Not bad: In less than two months, Thompson walked away with a 1,100 percent gain on the money he started with.

More and more homebuyers are discovering that in a bull market, acquiring assets with other people's money is the path to riches. The danger is that if prices begin to fall, people who have stretched to buy houses with 100% financing will be under water on their mortgages and at risk of default if they have to sell. "I always tell people, look at the worst scenario," says James R. Gillespie, chief executive of Coldwell Banker Real Estate Corp. But many buyers ignore the warning.

Flex Your Reading

Efficient critical reading involves being flexible with speed and comprehension. There are several ways of reading critically, and you need to fit a reading style to your needs and to the material.

Go to glencoe.com for Flex Your Reading activities, more information on reading strategies for this chapter, and guided practice in reading about home ownership.





Renting an Apartment Tenants and landlords have different responsibilities. *Who is responsible for making repairs to an apartment?*

What You'll Learn

- ◆ List the different kinds of rental relationships.
- ◆ Explain the rights and obligations of landlords and tenants.
- ◆ Identify the conditions in which an eviction can occur.
- ◆ Determine liability for landlords and tenants.

Why It's Important

You need to know your rights and responsibilities as a tenant if you rent or lease property.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 3)

Study people, places, and environments.

English Language Arts (NCTE 12)

Use spoken, written, and visual language to accomplish your own purposes.

Reading Guide



Before You Read

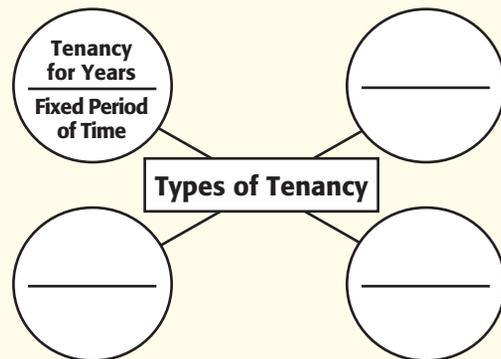
Connect You may want to rent your own apartment some day. What would your responsibilities as a tenant be?

Focus on Ideas

Rental agreements are contracts about real property that create rights and responsibilities.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- lease
- lessee
- lessor
- tenancy
- sublease
- fixtures
- eviction



Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- vacate
- assign
- provision

The Landlord-Tenant Relationship

How do you become a landlord or tenant?

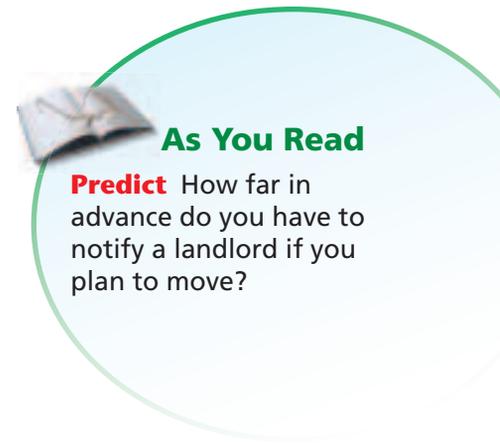
If you rent real property, such as an apartment or house, you are a tenant. If you own real property and rent it to someone else, you are a landlord. A **lease is the contract between a tenant and a landlord. In a lease, the lessee is the tenant, and the lessor is the landlord.**

Types of Tenancies

Tenants own an interest in the real estate they lease called a leasehold estate or **tenancy**. The types of tenancies are tenancy for years, periodic tenancy, tenancy at will, and tenancy at sufferance.

Tenancy for Years A tenancy for years is the right to occupy property for a definite or fixed period of time. It may be for one week, six months, one year, five years, 99 years, or any other period of time, as long as the time period is definite. A tenancy for 100 years or more has the effect of transferring absolute ownership to the tenant. Some states require every tenancy for years to be in writing. Others require it to be in writing only if it exceeds a year.

Periodic Tenancy A periodic tenancy is a tenancy that continues for successive, fixed periods of time. A periodic tenancy may be from year to year, month to month, or week to week.



 **Discrimination** Landlords cannot legally refuse to rent to anyone because of their race, color, or national origin. *What laws require landlords to refrain from discrimination?*





Covenant: *n* A binding written agreement between parties to perform or refrain from performing an action. From Latin *convenire* = to come together, to agree: an agreement.

Sufferance: *n* Sanction or permission implied or given by failure to prohibit. From Latin *sufferre* = to suffer: suffering or tolerance.

Vocabulary Builder *Convenire* is a Latin term that means to meet or to agree. List three words that use this Latin root and define them.

Look It Up! Check definitions in *Black's Law Dictionary* or an online glossary. For direct links, go to glencoe.com to find more vocabulary resources.

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and the **Academic Vocabulary** glossary in the back of this book.

Either party may terminate this tenancy by giving advance notice to the other party. If such notice is not given, the tenancy continues for the same period of time. State laws establish the required notice.

Tenancy at Will A tenancy at will is an interest in real property that continues for an indefinite period of time. No writing is necessary to create this tenancy. It ends when the landlord or tenant gives the notice required by law. In most states, the required notice is 30 days.

Tenancy at Sufferance A tenancy at sufferance occurs when a tenant does not leave the premises when the tenancy expires. Tenants at sufferance, also called holdover tenants, are wrongdoers. They no longer have legal rights in the property. They are not entitled to notice to **vacate** and must pay rent for the illegal occupancy.

The Lease Agreement

A written agreement between a lessor and a lessee is called a lease. The lease creates the landlord-tenant relationship. It provides the tenant with exclusive possession and control of the real property of the landlord. The general rules of contract law apply to this form of agreement.

Terms in a Lease The terms of a lease, known as covenants, set forth the rights and duties of the landlord and the tenant. Tenants' basic rights are possession and continued occupancy, free from intrusion or annoyance. Landlords' basic rights are rent and possession of the property in good condition at the term's end.

Security Deposit In addition to the first month's rent, landlords often require a security deposit and the last month's rent at the beginning of a tenancy. The security deposit often equals one month's rent. Some states limit the amount of a security deposit and require interest to be paid on it.

Assignment and Subletting An assignment of a lease occurs when you transfer the remaining period of time in a lease to someone else. A **sublease is the transfer of part of the term of a lease, but not the remainder of it, to someone else**. If a landlord does not want a tenant to **assign** or sublet the property, a covenant in the lease must say that. Otherwise, a tenant may either assign or sublet the property to someone else. Nevertheless, the original tenant is responsible to the landlord for the rent.

Option to Renew Many leases contain a **provision** allowing renters the option to renew the lease for one or more additional periods. This provision gives renters the right to a new lease, under the same terms, for an additional period. To exercise an option, a lessee must notify the lessor on or before the date set forth in the lease.

Responsibilities of Landlord and Tenant

What are your duties as a tenant or as a landlord of a rental property?

Both landlords and tenants have legal obligations when property is rented.

The Landlord's Duties and Obligations

Landlords have specific responsibilities imposed by law, in addition to those found in a lease. These duties include refraining from discrimination in renting property, maintaining the premises, and providing peaceful possession.

Refrain from Discrimination The federal Civil Rights Act and various state laws place special emphasis on human rights. It is against the law to refuse to rent property to any person because of race, religion, color, national origin, gender, age, ancestry, or marital status.

Maintain the Premises Rental property offered for dwelling purposes must be fit for human habitation. This means that it must be relatively clean, properly heated, furnished with utilities, and safe. In some states, if the landlord does not maintain the premises, you can pay rent to the court instead of the landlord until problems are resolved. In other states, after notifying the landlord, you can correct problems at your own expense and deduct the amount you spent from the rent.

Transfer Peaceful Possession Tenants are entitled to the exclusive peaceful possession and quiet enjoyment of the premises. Quiet enjoyment is the right to use and enjoy property without interference.



Reading Check

State What can you do if your landlord fails to maintain the premises properly?



Trade Fixtures

You own a jewelry business that is looking at leasing a new storefront on Main Street. The current occupier of the property, Ace Company, runs a pawn shop. When Ace originally moved into the property, there were no enclosed glass cases on the premises, so Ace purchased a number of glass cases to house its products. You know that Ace can remove the cases, but you also know that it will be expensive to install new cases, if Ace takes them. You are pretty sure that Ace believes the trade fixtures must remain after it vacates the property.

Critical Thinking: Should you tell Ace that it can legally remove the cases?

 **Fixtures** Fixtures become part of the property and belong to the landlord, even when installed by the tenant. *What are some examples of fixtures?*



The Tenant's Duties and Obligations

Tenants have the duties of paying rent, abiding by the terms of the lease, avoiding waste, and returning fixtures.

Abide by the Terms of the Lease As a tenant, you have the duty to pay rent to the landlord when it is due. You must also observe the valid restrictions contained in the lease. Failure to abide by the restrictions gives the landlord the right to seek eviction.

Avoid Waste Tenants have a duty to avoid waste; that is, damaging or destroying the property. Waste is damage to premises that significantly decreases a property's value. You must return the premises to the landlord in as good a condition as when you moved in, except for reasonable wear and tear.

Return Fixtures The tenant must turn over to the landlord all fixtures in the premises at the end of the tenancy. **Fixtures are items of personal property attached in such a way that they become real property.** They include built-in stoves, kitchen cabinets, and ceiling light fixtures. Unless otherwise agreed, fixtures are part of the real property and belong to the landlord, even when installed by the tenant.

In determining whether an item is a fixture, courts consider the following questions:

- Has there been a temporary or permanent installation of the personal property?
- Can the fixture be removed without damaging the building?
- What was the intent of the parties at the time the attachment was made?

Trade fixtures are fixtures attached to business property that are needed to carry on the business. For example, if you leased a storefront for a small mending business, you might install sewing

machines, shelves, and special lights. When you leave, you could take these items with you. Contrary to the general rule, trade fixtures remain the property of the tenant.

Eviction

Can a landlord force you to move out of your apartment?

An **eviction** occurs when a landlord deprives a tenant of the possession of the premises. You can be evicted for not paying rent, staying after the lease expires, damaging the premises, and violating provisions in the lease.

It is illegal in every state for landlords to use force to evict tenants. Landlords must first obtain a court order. The court appoints an officer to carry out the eviction.

A constructive eviction occurs when a landlord breaches a duty under a lease. This may occur if the landlord deprives you of heat, electricity, or some other service called for by the lease. When a constructive eviction occurs, you may consider the lease terminated, leave the premises, and stop paying rent.

Tort Liability

When someone is injured on rented or leased property, both the landlord and the tenant may be liable. Whoever is in control of the area where the injury occurs determines liability. Landlords can be held liable for injuries caused by defects in common areas, such as hallways or stairways. Tenants can be held liable for injuries caused by defects in private areas within the leased property.



After You Read

Summarize What are the most basic rights of landlords and tenants?

SECTION 9.1 ASSESSMENT

Self Check

1. What is a lease?
2. What is the difference between a tenancy for years and a tenancy at will?
3. How must an eviction be carried out?

Academic Connection

Social Studies Most laws that affect the tenant-landlord relationship are

governed by state and federal statutes. Go on the Internet, visit the local library, or get a copy of a rental agreement to find out what the rights of renters are in your area. In class, discuss what you think are the most important things renters should know.

English Language Arts Put yourself in the place of a landlord. You own an apartment building with

units you want to rent. Write up a list of basic conditions you expect your tenants to meet.

Critical Thinking

Injury Liability You rent an apartment in a building that has a swimming pool. You have a group of friends over for a swimming party. One of them slips on the wet pavement next to the pool and is injured. Who is liable for the injury? Why?



Go to glencoe.com to check your answers.

What You'll Learn

- ◆ Explain the ways real property can be co-owned.
- ◆ Describe how title to real property can be transferred.
- ◆ Explain the function of warranty and quitclaim deeds.
- ◆ Define and compare liens, licenses, and easements.

Why It's Important

You need to know your rights and responsibilities as a homeowner when you buy real property.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 6)
Study how people create and change structures of power, authority, and governance.

Math (NCTM MS 2)
Understand meanings of operations and how they relate to one another.

Reading Guide



Before You Read

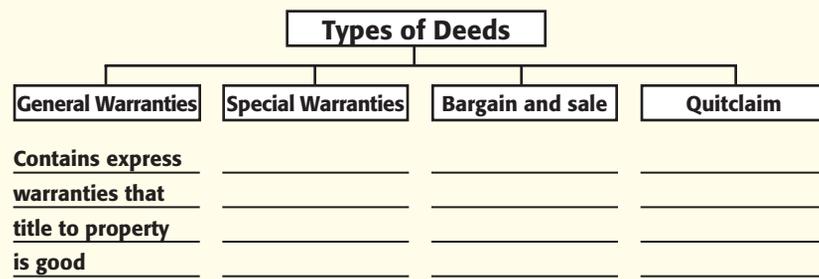
Connect You might want to buy your own home some day. What are the advantages and disadvantages of owning a home?

Focus on Ideas

Ownership of a home or other real property is shown through legal documents called title and deed.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- real property
- estate
- deed
- eminent domain
- lien
- license
- easement



Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- permission
- spouse
- consent

The Nature of Real Property

What do you really own when you own real property?

Real property is the ground and everything permanently attached to it. It includes buildings, fences, and trees on the surface; and soil, rocks, and minerals under the surface. Landowners own the airspace as high as they can effectively use. Some courts have applied the same rule to how deep one owns property underground. The federal government owns the navigable airspace, where air traffic occurs.

Estate is the interest or right that a person has in real property. A leasehold estate consists of one of the tenancies discussed in the previous section and is evidenced by a lease. A freehold estate is an estate in which the holder owns the land for life or forever. Anyone having a freehold estate may transfer the interest to another by sale, gift, will, or by dying without a will. There are two types of freehold estates. A fee simple estate is an estate in which the owner owns the property outright with the exclusive right to use it or dispose of it freely. Most real property is owned this way. A life estate is an estate in which the owner owns real property for the length of the owner's life or for the life of another.

Taking Ownership

How can you show or prove that you own a piece of property?

Ownership of property comes about by deed, inheritance, or law. Title can be taken in your name alone or with someone else as a co-owner.

Co-ownership

The principal forms of co-ownership are tenancy in common, joint tenancy, community property, tenancy by the entirety, and tenancy in partnership. All co-owners, or co-tenants, own an undivided interest in the entire property.

Tenancy in common is a type of co-ownership with each owner's share going to his or her heirs upon death. An owner may deed away his or her interest without **permission** of the other owners.

Joint tenancy is a type of co-ownership with each owner's share going to the surviving co-owners upon death. An owner may deed away ownership interest without permission of the other owners.

Community property is property acquired by the efforts of either **spouse** during marriage. By law, it belongs to both spouses equally. A gift or an inheritance does not become part of community property. Only nine states recognize community property.

Tenancy by the entirety is property held by a husband and wife, who have an equal right to the property. Each spouse owns the entire property, which neither can transfer without the other's **consent**. When one spouse dies, the survivor owns the property outright.



As You Read

Predict If you cannot repay someone to whom you owe a lot of money, can that person take your home away from you?

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and the **Academic Vocabulary** glossary in the back of this book.

Ownership of real property by partners is called a tenancy in partnership. Partners have the right to use the property only for partnership purposes. When a partner dies, the heirs inherit an interest in the partnership but not the specific real property.

Transfer of Ownership

Most real property is transferred by a written deed. A deed is not the same as a lease. A **deed is a written instrument that transfers title of ownership of property.** A lease transfers only possession of property. The person transferring ownership is the grantor. The person given ownership is the grantee. Title is transferred when the deed is signed and delivered. There are four main types of deeds.

A general warranty deed contains express warranties that title to the property is good. The warranties are the personal promises of the grantor that if title is discovered to be faulty, the grantor will make up for any loss suffered by the grantee. This is the most desirable form of deed because it gives the grantee the most protection.

A special warranty deed contains express warranties that no defect arose in the title during the time that the grantor owned the property. Unlike a general warranty deed, no warranties are made as to defects arising before the grantor owned the property.

A bargain and sale deed transfers title to property without giving warranties. A bargain and sale deed requires consideration to be valid. As a result, it cannot be used to make a gift of real property.



Global Law

Property Ownership in Cuba

Cuba became an independent sovereign nation in 1898. Since then property ownership rights in that country have changed.

Agricultural Reform

In 1959, Fidel Castro became the nation's leader and undertook property reform. One of the first reforms limited land ownership to about 165 acres per person or corporation. The Cuban government recognized 66 acres as the bare minimum amount of land a person needed to live on, so every rural person was guaranteed that amount, for free. This meant that 229,000 people became landowners.

Urban Reform

In Cuba's cities, property ownership was also reformed. The government took control of all rental property and set up a payment plan so that the inhabitants would eventually own their homes. Following further reforms, by 2004, 90% of all Cuban adults held title to their homes.

Across Cultures: Trade Embargo

The United States has had an embargo, which is a ban on trade, against Cuba since 1962. It is illegal to buy Cuban products in the U.S., and travel between the U.S. and Cuba is restricted.

Critical Thinking: *Are there benefits to a system of property ownership such as Cuba's?*



Case Study – Kelo v. City of New London, CT



Critical Thinking Can a government use eminent domain to give property to private interests?



Flex Your Reading

Note key facts in the text below and look up words you do not understand. Restate difficult ideas in your own words. Go back and reread the text quickly to make sure you did not miss any important detail. Now, you are ready to formulate an opinion.

In the Interests of the Public? In 2000, the city of New London, Connecticut, approved a plan to revive the city’s economy. In contrast to the rest of the state, New London was economically depressed. The city of New London had the New London Development Corporation (NLDC) devise a plan for economic development.

The NLDC chose an area of the city known as Fort Trumbull for the revival. The land comprised 115 acres of privately owned land as well as 32 acres of public land.

The city of New London was able to purchase most of the privately owned land. However, a few owners declined to sell their land. The city then exercised its power of eminent domain, claiming that the land was needed to create jobs, bring in tax money, and help build downtown New London.

The Plaintiffs argued that, since the city was going to turn the land over to private developers, the eminent domain action was a “taking,” contrary to the Fifth Amendment of the United States Constitution, and was not for a “public use.”

Kelo v. City of New London, Connecticut, 545 U.S. ___, 125 S.Ct. 2655 (2005)



Go to glencoe.com for more case study practice.

A quitclaim deed transfers whatever interest the grantor has in the property, but it does not warrant that the grantor has any interest. It merely releases the grantor’s rights to the property.

Limitations on Property Use

There are limitations on property use you should know about when you become a homeowner. These limits may affect how you build on your land, and how you can use your property. (See **Figure 9.1** on page 210.)

Communities have zoning laws that limit the way property may be used in specified areas. One area, for example, might be zoned for single-family houses only, another for multifamily dwellings, and another for business, industry, or farming. Zoning laws might also regulate how tall or how large a building may be.

Eminent domain is the right of the government to take private land for a public purpose. Usually, governments take private land for such things as public buildings, highways, and schools. In 2005, the Supreme Court held that the government could take private property to promote private economic development.



Reading Check

Infer Why would communities want to create different zones for different types of property use?

Figure 9.1 Limitations on Property Use



Zoning laws restrict how property can be used in specified areas. For example, an area might be zoned for single-family houses or for business properties only.



Eminent domain is the right of the government to take land from a private owner to use for the public good. The private owner, however, must be paid a fair amount for the property.

Adverse possession occurs when someone has had open possession of a property for so long, usually over 20 years, that they have a right to claim ownership of it.



 Homeowners face some limitations on how they can use their property. *Under eminent domain, can the government take private property to use for private development? Why or why not?*

Ownership of real property can be lost by adverse possession. This occurs when someone who does not own a property occupies it for a period set by state law—often 20 years. The possession must be open, not secretive, with a claim that is done rightfully.

Property use can also be limited by liens, licenses, or easements. To finance the cost of buying a house or other real property, the buyer will usually take out a mortgage. A mortgage is a type of loan in which the borrower pledges the property to the lender in the form of a lien. **A lien is a legal claim against another person's property as security for a debt or loan to ensure it will be repaid.** The lien is released when the debt is repaid. If the debt is not repaid, the lender has the right to take the property (or foreclose on it) and sell it to collect the amount owed.

Property that is foreclosed may have more than one lien on it. In that case, the lienholder with a perfected lien has priority over one with an unperfected lien. A lien is perfected when the lienholder files an official statement with a government office or actually possesses the property. If none of the lienholders has a perfected lien, whoever filed the first lien has priority. If all of the lienholders have a perfected lien, whoever files to collect first has priority.

A license is a temporary, revocable right to the limited use of another's land. The right to use the land can be taken away at any time by the owner of the land.

An easement is an irrevocable right to the limited use of another's land. It might be a right to cross someone else's property at a particular place, such as a driveway, or the right to use it for a particular purpose, such as extending wires or laying pipes. Once established, an easement cannot be terminated without the consent of the owner of the right.



After You Read

Summarize What are the different types of limitations on the use of property?

SECTION 9.2 ASSESSMENT

Self Check

1. What is an estate?
2. What is the major difference between co-owning property as tenants in common and as joint tenants?
3. What is a lien?

Academic Connection

Mathematics Samantha and Fernando are buying a new home for \$175,000.

A 15% down payment is required. What is the amount of the mortgage loan needed to finance the purchase?

CONCEPT **Number and Operations:** To find the down payment, multiply the cost of the house by the percent of the down payment. To find the mortgage loan amount, subtract the down payment from the selling price.



For more math practice, go to the Math Appendix.

Critical Thinking

Lending Criteria If you were planning to borrow money to buy a home, why would your employment history be important to a lender?

Go to glencoe.com to check your answers.

Chapter 9 Review and Assessment

Summary

Section 9.1 Rental Agreements

- ◆ The tenant is the lessee; the landlord is the lessor.
- ◆ The types of tenancies are tenancy for years, periodic tenancy, tenancy at will, and tenancy at sufferance.
- ◆ Landlords must avoid discrimination, transfer peaceful possession, and maintain the premises. Tenants must pay rent on time, observe lease restrictions, avoid waste, and return fixtures.
- ◆ A landlord can evict a tenant for not paying rent, damaging the premises, or violating provisions in the lease. A constructive eviction occurs when a landlord breaches a duty under a lease.
- ◆ Landlords are liable for injuries that occur in common areas. Tenants can be held liable for injuries that occur in private areas.

Section 9.2 Buying a Home

- ◆ The two major types of estates are leasehold estates and freehold estates. The two types of freehold estates are fee simple estates and life estates.
- ◆ The principal forms of co-ownership are tenancy in common, joint tenancy, community property, tenancy by the entirety, and tenancy in partnership.
- ◆ Property may be transferred by sale, gift, will, or by dying without a will.
- ◆ The four main types of deeds are general warranty deed, special warranty deed, bargain and sale deed, and quitclaim deed.
- ◆ Property use can be limited by liens, licenses, or easements.

Vocabulary Builder

1 On a sheet of paper, use each of these terms in a sentence.

Key Terms

- | | | |
|------------|-----------------|------------------|
| • lease | • fixtures | • eminent domain |
| • lessee | • eviction | • lien |
| • lessor | • real property | • license |
| • tenancy | • estate | • easement |
| • sublease | • deed | |

Academic Vocabulary

- | | | |
|----------|--------------|-----------|
| • vacate | • provision | • spouse |
| • assign | • permission | • consent |



Go to glencoe.com to play a game and improve your legal vocabulary.

Key Points Review

Answer the following questions. Refer to the chapter for additional reinforcement.

- 2 What is the difference between a lease and a deed?
- 3 What are the different types of tenancy for rental property?
- 4 What are the rights and responsibilities of landlords and tenants toward each other?
- 5 What are the rights of landlords regarding eviction?
- 6 What is the difference between a fee simple estate and a life estate?
- 7 What are the different forms of co-ownership of real property?
- 8 What are the different ways real property can be transferred, or deeded?
- 9 What are the differences between a lien, a license, and an easement?



Standardized Test Practice

- 10 Read the following information about the Department of Housing and Urban Development and complete questions 1 and 2.

The Department of Housing and Urban Development (HUD) enforces the Fair Housing Act and the other federal laws that prohibit discrimination and the intimidation of people in their homes, apartment buildings, and condominium developments—and nearly all housing transactions, including the rental and sale of housing and the provision of mortgage loans.

Equal access to rental-housing and home-ownership opportunities is the cornerstone of this nation's federal housing policy. Landlords who refuse to rent or sell homes to people based on race, color, national origin, religion, sex, familial status, or disability are violating federal law, and HUD will vigorously pursue them.

1. Landlords can refuse to rent or sell homes based on:

- A race, color, or national origin
- B familial status, disability, or education
- C work history, religion, or familial status
- D none of the above

2. The above passage can best be summarized as:

- A rights under the Department of Housing and Urban Development
- B how to rent or purchase a home in the United States
- C landlords can't refuse to rent or sell their properties
- D housing discrimination is only illegal if you get caught



Test-Taking Strategies

Do not cram the night before a test. Plan to get a full eight hours of sleep.



Apply and Debate

Read the following scenarios. Get together with other students in pairs or groups of three and take a position on each scenario. Debate your position in class with students taking the opposite position or prepare a written argument justifying your position.

11 Air-Space Ownership

Jacques purchased a house 15 years ago in a large development. A local airport is proposing an alternative flight path directly over his house. Jacques is petitioning the rezoning court for an injunction to prevent the change.

You Debate *Can property owners restrict the use of air-space above their property?*

12 Discrimination

The Butlers are in their thirties with two young girls. They apply for an apartment. Two weeks later, they have heard nothing, but continue to see it advertised. The Butlers discover that most of the residents are over 50, with no children.

You Debate *If the Butlers met all requirements for rental, could their application be rejected on an unwritten rule of no children or pets?*

13 Lease Agreement

Sally rents a condo. Her lease does not expire for six months. A two-month notice is required for any change to the terms of the lease. The owners inform Sally that she must vacate the condo in two months, before her lease is up.

You Debate *Does the two month clause regarding changes of “terms” in the lease allow the condo owner to force Sally to vacate before her current lease is up?*

14 Apartment Complex Liability

Chen and Emilo share a third-floor apartment. Chen notices one of the stair treads is loose and reports this to the management office. Later, Emilo falls on the stairs and breaks his leg.

You Debate *Who is responsible for Emilo’s medical bills and lost wages? Could punitive damages be awarded?*

15 Rental Rates

Paolo signed a lease two months ago for \$700 a month. Now the apartment complex rents the same-size apartment for \$350–\$600 a month.

You Debate *Can an apartment complex charge such a varying amount under the clause of rental specials or could this be a way to discriminate?*





Case Study Practice – Reeves v. Rodgers



16 What Is a Tenant at Sufferance? Roy and Mary Reeves, along with their daughter, Sandra Jean Rodgers, bought a number of residential properties in Oregon and Arizona over a period of fifteen years. In 1994, Mr. and Mrs. Reeves bought a home in Hillsboro, Oregon. Although Ms. Rodgers had helped to buy other properties, she did not contribute any money to buy the Hillsboro home.

In the fall of 2001, Ms. Rodgers moved into the Hillsboro home. The Reeves alleged that Ms. Rodgers had an oral agreement with them that she would pay \$895.00 per month in rent to help cover the expenses of the property. After moving in, however, Ms. Rodgers failed to make monthly rent payments. Mr. and Mrs. Reeves then sued Ms. Rodgers, alleging that Ms. Rodgers was a tenant at sufferance of the property and that upon giving notice, the Reeves could evict Ms. Rodgers.

Ms. Rodgers alleged that there was no rental agreement between the parties. She claimed that she had some ownership in the property because she had transferred some of her ownership rights to her parents from the other houses that they owned together.

Source: Reeves v. Rodgers, 129 P.3d 721 (Ore. Ct. App. 2006)

Practice Can Mr. and Mrs. Reeves evict their daughter, Ms. Rodgers?

17 Ethics Application

Cat and Mouse Raul lives in an apartment building with a lease that forbids owning pets. The apartment building had a mouse problem until a stray cat showed up and scared the mice away. To keep the cat around so the mice will not come back, Raul started feeding the cat.

- ◆ Does Raul have an ethical obligation to report the cat to the landlord as a pet?

18 Internet Application

Subleasing an Apartment Monique and Josh have an opportunity to work in France for six months. However, the lease on their apartment does not expire for nine months. To be able to afford going, they need to sublease their apartment.



Go to glencoe.com to research your state's statutes on subleasing and prepare a general sublease agreement that Monique and Josh could use. Compare your agreement with classmates for similarities and differences.



Reading Connection

Outside Reading Go to glencoe.com for a list of reading suggestions about real property rights.

Dino Tsibouris

Attorney, Mallory & Tsibouris Co., LPA



What do you do at work?

“I am responsible for negotiating software licenses and data processing agreements when a company hires another company to host Web sites, perform data processing services, or perform electronic payments.

I also help companies comply with all of the laws and regulations that require personal and financial information to be held and processed privately and securely.

We represent banks, insurance companies, and government agencies as they offer new services over the Internet.”

What skills are most important to you?

“My writing skills. A lawyer must be able to draft documents and agreements in a concise and understandable style. I try to draft my agreements in a manner that allows the reader to understand the terms of a transaction using a minimum of legal jargon if possible. Clearly written agreements are more enforceable in court. I also have to be able to communicate clearly with my clients. Communication isn’t just about talking to the client or opposing party; it’s about listening carefully.”

What kind of training do you recommend?

“I majored in business administration, with an emphasis in finance. I represent a number of financial institutions, so my undergraduate training has helped me better understand how to create solutions for their business-specific needs. Developing a work-related network through social contacts is important. If you have the opportunity to obtain a clerkship or internship in your desired area of practice before graduation, you can gain practical experience and professional relationships—as well as a possible job.”

What is your key to success?

“I have to stay current on changing legal trends and new laws that may affect my clients. I also participate in presentations through the bar associations and professional organizations.”

Résumé Builder

Academic Skills

- Strong writing skills
- Good communication skills (attentive listener)

Education and Training

A bachelor’s degree of business administration, finance, accounting, or other areas specific to the attorney’s specific industry. The following high school and collegiate courses will help develop the necessary background knowledge:

- Business, contracts, and consumer law
- Business law courses
- Communication courses
- E-commerce
- English Language Arts (composition and rhetoric in particular)
- Mathematics for business
- U.S. government

Critical Thinking

List the benefits of social contacts, clerkships, and internships.



Go to glencoe.com to find legal careers resources.

UNIT 3

The Writing Connection

Persuasive Writing Practice

Who Pays? Four college friends, all 20, rent a three-bedroom apartment on the top floor of a small building. Everyone has her own bedroom except Amie and Caitlin, who share a bedroom; hence they each pay about \$260 less than Claire and Jasmine. One night water started leaking from the light fixture in Amie and Caitlin's bedroom. Soon the leak turned into a gush, pouring water into their bedroom. Within minutes the ceiling fell in their bedroom and practically everything in the room was soaked and covered in wet drywall. Firemen shut off the water and investigated the leak. The landlord arrived and said to the girls, "Wow, I hope one of you has renter's insurance." For one month after the incident, Amie and Caitlin lived in a hotel since their portion of the apartment was uninhabitable.

Assignments

Research Research what a renter's rights are in such a situation. Also research who pays for the damages if the tenants do not have renter's insurance but are still considered dependents under their parents' homeowners' insurance policy.

Write Consider the situation above and write a persuasive essay about what a fair solution could be.

Writing Tips Before you start writing your essay, read through the following writing tips:

- ✓ Organize logical arguments to support your position and support them with evidence.
- ✓ Use different types of evidence: firsthand observation, informed opinions (double-check your sources), facts, or statistics.
- ✓ Make sure the evidence you use is up-to-date, unbiased, and verifiable.
- ✓ Avoid generalizations and oversimplification.

Essay Test Strategies Beyond describing the issue and stating of your opinion, be sure to convince others of your viewpoint. Review your outline to detect flaws in logic.



Go to glencoe.com to find more writing resources.

Product Safety and Recalls

For this project, you will use what you have learned about the types of federal agencies that offer support, guidance, and help to consumers regarding product safety and recalls. You can work on this project alone or with a partner.

Here is a checklist of the skills that you will need to complete this project. Your teacher will consider these skills when evaluating your work.

Evaluation Rubric	
Academic Skills	
1. Online and library research	1. 10 points
2. Reading for information	2. 10 points
3. Note-taking	3. 5 points
4. Estimation and computation of facts/figures you discover	4. 10 points
5. English composition to summarize findings	5. 15 points
Legal Skills	
6. Research of governmental consumer protection agencies	6. 15 points
7. Ability to translate code enforcement in a method to explain concept	7. 15 points
8. Analysis of essential statistical information	8. 15 points
9. Use of technology	9. 5 points
	Total 100 Points



For more resources and for grading rubrics, go to glencoe.com.

Step 1: Preparation

- 1 Create a vocabulary reference guide of terminology consumers will need to know in understanding procedures used for recalls.
- 2 Use all you have learned in this unit, at the library, or on the Internet as tools.
- 3 Complete this project in a format acceptable for a portfolio addition.

Step 2: Procedure

- 1 **Review** the text in this unit and make a list of consumer protection agencies that are sponsored by the government. Go to glencoe.com to find an appropriate contract form.
- 2 **List** all the terms a consumer might see in understanding their rights and that you will include in your informational flyer. What information is important to include in your flyer? How will you organize your research to present a concise product? Where can consumers go for additional guidance and help?
- 3 **Write** an outline based on your knowledge and research to use in creating your informational flyer. Use the Internet to download frequently asked questions for the area you will be covering. Make enough copies of your outline, so your classmates can review and annotate the information you plan on presenting for completeness and understanding.
- 4 **Describe** a real-life scenario that a consumer could resolve by using the information you have created, and present your flyer to the class.

Step 3: Create an Analysis Report

As a class, compare the informational flyers presented. List the governmental agencies available to consumers and explain their span of control. Look at the outlines your classmates have created and answer the following questions:

- 1 How many and what types of agencies were presented?
- 2 Did all of the outlines presented include all the necessary elements to give guidance to a consumer in search of help?
- 3 If not, how does the absence of the element(s) affect the ability for a consumer to solve his or her problem/situation?
- 4 How was your outline similar to and different from the other outlines presented?



Community Connection

Find recall statistics for a product that you used in your project. How would researching product recalls help your purchase decisions? Does a manufacturer recall when problems occur? Prepare a brief report on how to request a product recall. Go to glencoe.com to find resources.



Competitive Event Prep

Understanding Consumer Law

Situation Assume the role of a high school business law student. Your friend is ready to buy first car. The salesperson recommends buying an extended warranty that would take effect after the manufacturer's warranty expires. Your friend is unclear about what warranties do and do not offer. Your friend also has a specific budget for this purchase. Your friend asks you for advice about the extended warranty.

Activity Explain the pros and cons of warranties. Make a recommendation about purchasing an extended warranty.



For more Competitive Event preparation, performance tips, and evaluation rubrics, go to glencoe.com.



Hyundai Motor America, Inc. v. Goodin

Indiana Supreme Court 822 N.E.2d 947 (2005)

Read Critically As you read this case, ask yourself the following questions:

1. Was Ms. Goodin’s car still under warranty when she sued?
2. Why could Ms. Goodin not sue the dealer she bought the car from?
3. Why did the Indiana Court of Appeals overturn the jury verdict?
4. What are the current privity requirements in Indiana?

Assignment When you are done, write a short summary of the situation. Include the court’s decision and a couple of sentences about why or how the court reached its decision.

Facts Automobile Purchase On November 18, 2000, Sandra Goodin test drove a Hyundai Sonata at AutoChoice Hyundai in Evansville, Indiana. The car only had 19 miles on the odometer, but when Ms. Goodin drove the car and applied the brakes, she experienced a “shimmy, shake, pulsating type feel.” The dealer told Ms. Goodin that it was caused by flat spots on the tires due to extended inactivity and offered to have the tires rotated and inspected. After that, Ms. Goodin purchased the vehicle for \$22,710.00.

Automobile Warranty The vehicle that Ms. Goodin purchased came with 3 limited warranties from Hyundai Motor America: 1 year/12,000 miles on “wear items”; 5 years/60,000 miles “bumper to bumper”; and 10 years/100,000 miles on the powertrain. The brakes were covered under the 5 years/60,000 mile warranty; however, only if the repair work, or replacement, was done by an authorized Hyundai dealer. Further, separate

from Hyundai’s warranty papers, the dealer, AutoChoice, included wording on its own sale papers that stated:

All warranties, if any, by a manufacturer or supplier other than dealer are theirs, not dealer’s and only such manufacturer or other supplier shall be liable for performance under such warranties, unless dealer furnishes buyer with a separate written warranty made by dealer on its own behalf. Dealer hereby disclaims all warranties, express or implied, including any implied warranties of merchantability or fitness for a particular purpose, on all goods and services sold by dealer.

Jury Verdict In the year following Ms. Goodin’s purchase, she took the car to a Hyundai dealer at least seven times to have the brakes looked at. During those visits, numerous repairs were done, but the brakes continued to sound and act improperly. Ms. Goodin said that she experienced problems with her brakes about 70 percent of the time.

Ms. Goodin had driven the car for two years and put 77,600 miles on it. Ms. Goodin was still frustrated by the brakes and decided to sue Hyundai and request a refund for breach of an express warranty, or breach of an implied warranty of merchantability. After a jury trial, the jury returned a verdict for Hyundai on the claim for breach of express warranty, but for Ms. Goodin on the breach of an implied warranty of merchantability. Hyundai appealed.

Opinion Indiana Court of Appeals Proceedings Hyundai appealed the verdict of the jury on the grounds that Ms. Goodin lacked vertical privity with Hyundai and could not bring a claim for breach of an implied warranty against them. Hyundai argued that Ms. Goodin could sue the dealer that she purchased the vehicle from, AutoChoice, but could not sue the actual car manufacturer. The Indiana Court of Appeals agreed with Hyundai and reversed the jury verdict for Ms. Goodin. Ms. Goodin then appealed to the Indiana Supreme Court.

Federal Warranty Law Ms. Goodin's original case was brought under the Federal Magnuson-Moss Warranty Act. Although it is a federal law, the act looks to state law to determine the source of any express or implied warranty. The Indiana Court of Appeals held that Indiana case law required vertical privity between Ms. Goodin and Hyundai, that is, there must be a contract between Hyundai and Ms. Goodin. In this case, there was a contract between Ms. Goodin and AutoChoice, but not between Ms. Goodin and Hyundai.

Origin of Privity Privity of contract is a concept American courts adopted from England. It limits the tort relief for breach of warranties by requiring parties to have some sort of contractual relationship. Ms. Goodin argued that traditional vertical privity was not required between herself and Hyundai because Hyundai provided an express warranty under the Magnuson-Moss Warranty Act, and as such, an implied warranty can also exist without any requisite vertical privity.

Further, Ms. Goodin argued that AutoChoice's disclaimer did not allow her to sue them, and she could only sue Hyundai.

Privity in Indiana The state of privity requirements evolved over the years in most states. Originally, privity requirements were quite stringent, but as consumer protection issues have become more developed, courts have lessened the privity requirements. In Indiana, the state legislature passed a Product Liability Act in 1999 that no longer required vertical privity in order to assert a product's liability claim against a manufacturer.

Before the passage of the act, the Uniform Commercial Code allowed breach of warranty claims to be initiated by family members or guests of persons who actually purchased the product. They do not have to have privity with the manufacturer. However, neither of these provisions applied directly to Ms. Goodin's situation.

Holding The Court's Decision The Court held that vertical privity was no longer required in breaches of implied warranties of merchantability in the state of Indiana. Consumer expectations are such that when they buy a car and are told it is under warranty by the manufacturer, consumers believe they can obtain recourse from the manufacturer, not the dealer.

TRIAL PREP

The National High School Mock Trial Association organizes competitions at the local, regional, and national levels where teams of high school or college students prepare and argue fictional legal cases before practicing attorneys and judges. Mock Trial team members are each assigned a role as either an attorney or witness. Each team must develop a courtroom strategy, legal arguments, and presentation style.



Go to [glencoe.com](https://www.glencoe.com) to find guided activities about case strategy and presentation.