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## Contracts: Between a Rock and a Hard Place—Sorchaga v. Ride Auto, LLC

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**CONTRACTS: BETWEEN A ROCK AND A HARD PLACE—  
SORCHAGA V. RIDE AUTO, LLC**

Rachel D. Zaiger<sup>†</sup>

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I. INTRODUCTION

In *Sorchaga v. Ride Auto, LLC*,<sup>1</sup> a case involving the implied warranty of merchantability, the Minnesota Supreme Court held that fraud is a “circumstance” that makes “as is” disclaimers of implied warranties ineffective.<sup>2</sup> In reaching its decision, the court relied on the

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1. *Sorchaga v. Ride Auto, LLC*, 909 N.W.2d 550 (Minn. 2018).  
2. *Id.* at 557.

dictionary definitions of “unless,” “circumstances,” “indicate,” and “otherwise” to ascertain their plain and ordinary meaning.<sup>3</sup>

This note begins with a brief discussion of the distinction between the two types of warranties for quality under the Uniform Commercial Code (U.C.C.) in contracts for the sale of goods.<sup>4</sup> Next, this note introduces the drafting history of the U.C.C.; specifically, the exclusion or modification of warranties provisions.<sup>5</sup> This note then discusses various cases interpreting “as is” disclaimers, as well as treatises intended to shed light on the “circumstances” of subsection 3(a) of section 2-316 of the U.C.C.<sup>6</sup> The facts, procedural history, and decision of *Sorchaga* follow.<sup>7</sup> Next, this Note analyzes the circumstances clause of Minnesota Statutes section 336.2-316(3)(a) in light of *Sorchaga*.<sup>8</sup> This note then provides the proper result of *Sorchaga*, had the Minnesota Supreme Court interpreted the term “circumstances” within its intended reach.<sup>9</sup> Finally, this note concludes by illustrating the inherent conflict that courts now face when interpreting the exclusion or modification of warranties provision of the U.C.C.<sup>10</sup>

The author is cognizant that the holding in *Sorchaga* lends itself to reasoning akin to other courts interpreting the validity of “as is” disclaimers. And, by virtue of that very act, the court conveys an intent to fulfill its obligation “to make uniform the law among the various jurisdictions.”<sup>11</sup> The author commends the Minnesota Supreme Court in its recognition of this important duty. Nonetheless, misconstruction of the law should not be deemed tolerable under the pretext of pursuing uniformity.<sup>12</sup>

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3. *Id.* at 555.

4. *See infra* Part II.A.

5. *See infra* Part II.B.

6. *See infra* Part II.C.

7. *See infra* Part III.

8. *See infra* Part IV.A.

9. *See infra* Part IV.B.

10. *See id.*

11. MINN. STAT. § 336.1-103(a)(3) (2018).

12. *See infra* Part V.

## II. HISTORY OF THE LAW

The U.C.C. was developed to foster uniformity in commercial transactions concerning the sale of goods.<sup>13</sup> Written only by experts in the field of commercial law,<sup>14</sup> the U.C.C. is commonly regarded as one of the most important developments to occur in American law.<sup>15</sup> However, because the U.C.C. is a model code, it does not have legal effect in a state unless the legislature enacts its provisions as statutes.<sup>16</sup> Since its initial publication in 1952,<sup>17</sup> it has been gradually adopted by various states.<sup>18</sup> “[As of 2016,] the UCC (in whole or in part) has been enacted, with some local variation, in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.”<sup>19</sup>

13. U.C.C. § 1-103(a)(3) (AM. LAW INST. & UNIF. LAW COMM’N 2017) (“[The Uniform Commercial Code] must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).

14. The provisions of the U.C.C. are a result of several different revisions put forth through a stringent approval process. This process entails experts in the field sending drafted provisions of the U.C.C. to the National Conference of Commissioners on Uniform State Laws, in partnership with the American Law Institute, for approval. The Commissioners include attorneys, state and federal judges, legislatures, and law professors throughout the United States and its territories. The provisions only get recommended for adoption to the states after a draft has undergone this process and has been endorsed. *Uniform Commercial Code (UCC)*, DUKE LAW, <https://law.duke.edu/lib/researchguides/ucc/> [<https://perma.cc/P3LX-B8CU>]; see *Frequently Asked Questions*, UNIFORM L. COMMISSION: NAT’L CONF. COMMISSIONERSON UNIFORM ST. LAWS, [www.uniformlaws.org/Narrative.aspx?title=Frequently%20Asked%20Questions](http://www.uniformlaws.org/Narrative.aspx?title=Frequently%20Asked%20Questions) [<https://perma.cc/2HTE-C645>].

15. *Uniform Commercial Code (UCC)*, DUKE L., <https://law.duke.edu/lib/researchguides/ucc/> [<https://perma.cc/YZM8-JTCK>].

16. *Id.*

17. *Primary Law Resources*, GEO. L. LIBR., <http://guides.ll.georgetown.edu/commerciallaw/primary-law> [<https://perma.cc/U3QV-DHTB>].

18. DUKE L., *supra* note 15.

19. *Id.*; see also 6 AM. JUR. 2D *Pleading & Practice Forms Annotated Article I—General Provisions* § 1:1 (2018) (listing each state’s statutory provisions related to the U.C.C.); UNIF. COMMERCIAL CODE REFS. & ANNOS., U.L.A. (West, Westlaw through 2018) (listing the states’ and territories’ statutory provisions related to the U.C.C.); D.C. CODE ANN. § 28:1-101 (West, Westlaw through Nov. 11, 2018) (statutory provisions for the District of Columbia); V.I. CODE ANN. tit. 11A, § 1-101 (West, Westlaw through 2018 Reg. Sess.) (statutory provisions for the Virgin Islands). One unique thing that sets Louisiana apart from the other states is that Louisiana has not adopted Articles 2 and 2A of the U.C.C. See LA. STAT. ANN. § 10:1-101 (West, Westlaw through the 2018 3d Extraordinary Sess.) (stating in the 2006 Louisiana Official Revision Comment “Louisiana has enacted all of the Articles of the model Uniform Commercial Code,

A. *Warranties Under the U.C.C.*

There are two distinct types of warranties of quality in contracts for the sale of goods under the U.C.C.<sup>20</sup> The first type of warranty is an express warranty, which is governed by section 2-313 of the U.C.C.<sup>21</sup> A seller creates an express warranty in one of three ways:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.<sup>22</sup>

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.<sup>23</sup>

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.<sup>24</sup>

In order to state a claim for a breach of an express warranty, some states require a plaintiff to:

allege the terms of the warranty, the failure of some warranted part, a demand upon the defendant to perform under the warranty's terms, a failure by the defendant to do so, compliance with the terms of the warranty by the plaintiff, and damages measured by the terms of the warranty.<sup>25</sup>

Other states require the plaintiff to, in addition to the items noted above, also plead "that notice of the alleged breach was provided to the seller within a reasonable time after discovering the breach."<sup>26</sup> In

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except Articles 2 (sale) and 2A (leases)."); Dian Tooley-Knoblett & David Gruning, *Where is Article 2 of the Uniform Commercial Code on Sales?*, in 24 LOUISIANA CIVIL LAW TREATISE § 1:4 (2018) ("Louisiana is the only state which has not adopted article 2. . . . Louisiana has also not adopted article 2A ('Leases') or article 6 ('Bulk Sales').").

20. See U.C.C. §§ 2-313, 2-316 (AM. LAW INST. & UNIF. LAW COMM'N 2017).

21. See *id.* § 2-313.

22. *Id.* § 2-313(1)(a).

23. *Id.* § 2-313(1)(b).

24. *Id.* § 2-313(1)(c).

25. *In re Rust-Oleum Restore Mktg.*, 155 F. Supp. 3d 772, 787 (N.D. Ill. 2016) (quoting *Disher v. Tamko Bldg. Prods, Inc.*, No. 14-cv-740-SMY-SCW, 2015 WL 4609980, at \*3 (S.D. Ill. July 31, 2015)).

26. *Id.* at 787-88 (quoting *Stearns v. Select Comfort Retail Corp.*, No. 08-2746 JF (PVT), 2009 WL 4723366, at \*6 (N.D. Cal. Dec. 4, 2009)); see also *Scott v. Honeywell Int'l Inc.*, No. 14-CV-00157-PAB-MJW, 2015 WL 1517527, at \*3 (D. Colo. Mar. 30, 2015) ("[T]he plaintiff must prove (1) the existence of a warranty, (2) breach of the

Minnesota, express warranties<sup>27</sup> have been found in a wide variety of contexts.<sup>28</sup>

The second type of warranties of quality in contracts for the sale of goods under the U.C.C. are implied warranties.<sup>29</sup> There are three different types of implied warranties under the U.C.C., (1) the implied warranty of merchantability,<sup>30</sup> (2) other implied warranties arising from a course of dealing or usage of trade,<sup>31</sup> and (3) the implied warranty of fitness for a particular purpose.<sup>32</sup>

Section 2-314(1) of the U.C.C. governs the implied warranty of merchantability.<sup>33</sup> It provides:

Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.<sup>34</sup>

Under Minnesota law, the implied warranty of merchantability<sup>35</sup> is breached when a normal buyer is unable to use a purchased product for its ordinary purpose.<sup>36</sup> A buyer must show a causal link between

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warranty, (3) the breach proximately caused the losses claims as damages, and (4) defendant received timely notice of the breach.”).

27. In Minnesota, express warranties are governed under MINN. STAT. § 336.2-313 (2018).

28. See, e.g., *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 917 (Minn. 1990) (action against seller-manufacturer of engines incorporated into skid loaders for alleged breach of warranty); *Wenner v. Gulf Oil Corp.*, 264 N.W.2d 374, 384 (Minn. 1978) (farmer sued herbicide manufacturer for damages to wheat crop and reduced yield resulting from alleged breach of warranty). *But see, e.g.*, *Podpeskar v. Makita U.S.A. Inc.*, 247 F. Supp. 3d 1001, 1009 (D. Minn. 2017) (failing to find an express warranty where the statements of a battery manufacturer “to optimize battery life’ and ‘even longer run time’—are nonspecific and more akin to statements of ‘high quality’ than a specific promise, affirmation, or description of the goods.”).

29. See U.C.C. § 2-316 (AM. LAW INST. & UNIF. LAW COMM’N 2017).

30. See *id.* § 2-314(1).

31. See *id.* § 2-314(3).

32. See *id.* § 2-315.

33. See *id.* § 2-314(1).

34. *Id.*

35. See generally MINN. STAT. § 336.2-314 (2018) (governing the implied warranty of merchantability).

36. See *Daigle v. Ford Motor Co.*, 713 F. Supp. 2d 822, 826 (D. Minn. 2010) (quoting *Carey v. Chaparral Boats, Inc.*, 514 F. Supp. 2d 1152, 1156 (D. Minn. 2007) (“[The implied warranty of merchantability] is breached when the product is defective to a normal buyer making ordinary use of the product.”). *But see* Peterson

a seller's alleged breach and the ensuing harm in order to prevail on a claim of breach of the implied warranty of merchantability.<sup>37</sup> It is not, however, necessary for a buyer to show any particular defect<sup>38</sup> in order to demonstrate there was a breach of the implied warranty of merchantability.<sup>39</sup>

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v. Bendix Home Sys., Inc., 318 N.W.2d 50, 53 (Minn. 1982) (“[E]ven if the plaintiff has been harmed, a manufacturer may still be able to show no breach by showing that the buyer was somehow ‘abnormal’ or that the product was not used in an ordinary way and that, consequently, the product was not defective to an ordinary user.”). In *Sorchaga*, the complaint alleged that Ride Auto was a merchant under Minnesota’s statute governing the implied warranty of merchantability. Complaint at ¶¶ 20–21, *Sorchaga v. Ride Auto, LLC*, No. 19HA-CV-14-3536, 2014 WL 12279537 (June 11, 2014). Because “[t]he ordinary purpose of a truck is driving . . . [and because the truck at issue] had latent engine defects that requires a complete replacement, [it was argued that the truck could not be used] for its ordinary purpose.” *Id.* at ¶¶ 23–24. Therefore, *Sorchaga* argued that Ride Auto breached the implied warranty of merchantability. *Id.* at ¶ 25. The district court agreed with *Sorchaga* and rendered Ride Auto at fault for breaching the implied warranty of merchantability. See Trial Order, *Sorchaga v. Ride Auto, LLC*, No. 19HA-CV-14-3536, 2015 WL 11232597, at \*4 (Minn. Dist. Ct. Oct. 30, 2015) (“The defendant breached the implied warranty of merchantability contained in Minnesota Statutes.”).

37. *Masepohl v. Am. Tobacco Co.*, 974 F. Supp. 1245, 1253 (D. Minn. 1997) (citations omitted) (“To prevail on an implied warranty claim, a plaintiff must prove . . . a causal link between the breach and the alleged harm.”); see also *Int’l Fin. Servs., Inc. v. Franz*, 534 N.W.2d 261, 266 (Minn. 1995) (citing *Chatfield v. Sherwin-Williams Co.*, 266 N.W.2d 171, 175 (Minn. 1978)) (“[C]ircumstantial evidence may be sufficient to show [this necessary] causal relationship between the product and the injury.”).

38. See *In re Simitar Entm’t, Inc.*, 275 B.R. 331, 345 (Bankr. D. Minn. 2002) (citing MINN. STAT. § 336.2-314).

39. See, e.g., *Indus. Graphics, Inc. v. Asahi Corp.*, 485 F. Supp. 793, 800 (D. Minn. 1980) (“The failure of the [radio] units to withstand normal levels of shock and vibration rendered the units [sold by defendant to plaintiff] unmerchantable, and amounted to a breach of implied warranty of merchantability under [MINN. STAT. § 336.2-314] on the part of [the defendant].”); *Dougall v. Brown Bay Boat Works & Sales, Inc.*, 287 Minn. 290, 298, 178 N.W.2d 217, 223 (1970) (“[T]here was in fact an implied warranty of merchantability, that defendant company had an obligation to furnish plaintiff with a motor craft that was reasonably fit for the purpose for which it was sold, and that the manufacturer breached its obligation.”). But see, e.g., *Carey v. Chaparral Boats, Inc.*, 514 F. Supp. 2d 1152, 1156 (D. Minn. 2007) (failing to find a breach of the implied warranty of merchantability where “the overwhelming evidence demonstrates that the cracks in the boat’s finish are a cosmetic problem and in no way impact the boat’s ordinary use.”).

Section 2-314(3) of the U.C.C. governs other implied warranties arising from a course of dealing or usage of trade.<sup>40</sup> Finally, section 2-315 of the U.C.C. governs the implied warranty of fitness for a particular purpose.<sup>41</sup> It provides:

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.<sup>42</sup>

Unlike the "ordinary purpose" for goods that are sold, as is the case when dealing with implied warranties of merchantability, this section of the U.C.C. notes a "particular purpose" for the goods.<sup>43</sup> Fortunately, the drafters of the U.C.C. did not leave practitioners, or the courts, with the difficult task of ascertaining the intended meaning of the phrase "particular purpose."<sup>44</sup> Insight on what the drafters meant by this phrase can be found in the accompanying official comments of this section:

A "particular purpose" differs from the ordinary purpose for which the goods are used in that it envisages a specific use by the buyer which is peculiar to the nature of his business whereas the ordinary purposes for which goods are used are those envisaged in the concept of merchantability and go to uses which are customarily made of the goods in question.<sup>45</sup>

The drafters even provided the following example of a particular purpose in order to further assist with the proper application of this section, "shoes are generally used for the purpose of walking upon ordinary ground, but a seller may know that a particular pair was selected to be used for climbing mountains."<sup>46</sup>

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40. U.C.C. § 2-314(3) (AM. LAW INST. & UNIF. LAW COMM'N 2017) ("Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.").

41. *See id.* § 2-315.

42. *Id.*

43. *See id.*

44. *See id.* cmt. 2.

45. *Id.*

46. *Id.*



*B. Exclusion or Modification of Warranties Under the U.C.C.*

As seen in the direct language of all three types of implied warranties above, there is language hinting at the ability, or possibility, of disclaiming or modifying these types of warranties under section 2-316 of the U.C.C.<sup>47</sup> Section 2-316 of the U.C.C., titled “Exclusion or Modification of Warranties,” provides in relevant part:

Subject to subsection (3), to exclude or modify the *implied warranty of merchantability* or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify *any implied warranty of fitness* the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that “There are no warranties which extend beyond the description on the face hereof.”<sup>48</sup>

In what appears a drastic departure from the specific requirements under subsection (2) for excluding or modifying both the implied warranty of merchantability and the implied warranty of fitness, the following subsection 3(a) sets forth rather general standards for disclaiming “all implied warranties” by, “expressions like ‘as is,’ ‘with all faults’ or other language which in common understanding calls the buyer’s attention to the exclusion of warranties and makes plain that there is no implied warranty.”<sup>49</sup> Despite the ambiguity in the broad language of subsection 3(a), a brief glance at the drafting history of both the U.C.C. and section 2-316 provides some guidance on its interpretation.

What is now commonly known as the U.C.C. started off as the Uniform Sales Act.<sup>50</sup> The Uniform Sales Act was originally promulgated in the early 1900s,<sup>51</sup> and was influenced by the English Sales of Goods Act of 1893.<sup>52</sup> In turn, the English Sales of Goods Act of

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47. See *id.* § 2-314(1) (“Unless excluded or modified (Section 2-316)”); *id.* § 2-314(3) (“Unless excluded or modified (Section 2-316)”); *id.* § 2-315 (“unless excluded or modified under the next section”).

48. *Id.* § 2-316(2) (emphasis added).

49. *Id.* § 2-316(3)(a).

50. See *Cline v. Prowler Indus. of Md., Inc.*, 418 A.2d 968, 972 (Del. 1980) (“[T]he Uniform Sales Act, the predecessor to the *Uniform Commercial Code*, was seen as dominant in the law of contractual sales.”) (emphasis added).

51. See 4 B.E. WITKIN, *SUMMARY OF CALIFORNIA LAW* § 5(1) (11th ed. 2018).

52. Zipporah Batshaw Wiseman, *The Limits of Vision: Karl Llewellyn and the Merchant Rules*, 100 HARV. L. REV. 465, 475 (1987).

1893 was based off of nineteenth-century English sales law.<sup>53</sup> Sections 15 and 71 of the Uniform Sales Act were the original drafts of what is now section 2-316 of the U.C.C.<sup>54</sup> Section 15, “Implied Warranties of Quality,” provided:

Subject to the provisions of this act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1.) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller’s skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2.) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

(3.) If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

(4.) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5.) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(6.) An express warranty or condition does not negative a warranty or condition implied under this act unless inconsistent therewith.<sup>55</sup>

Section 71, “Variation of Implied Obligations,” of the Act read:

Where any right, duty or liability would arise under a contract to sell or a sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale.<sup>56</sup>

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53. *Id.* at 475.

54. *See* U.C.C. § 2-316, official cmt. (referring to sections 15 and 71 of the Uniform Sales Act for prior provisions).

55. UNIF. SALES ACT § 15 (1906), *reprinted in* COMM’RS ON UNIF. STATE LAWS IN NAT’L CONFERENCE, AMERICAN UNIFORM COMMERCIAL ACTS 79 (1910).

56. UNIF. SALES ACT § 71 (1906), *reprinted in* COMM’RS ON UNIF. STATE LAWS IN NAT’L CONFERENCE, AMERICAN UNIFORM COMMERCIAL ACTS 115 (1910).

Following its original drafting, the Uniform Sales Act gradually became adopted among the states.<sup>57</sup>

This act, however, was short lived.<sup>58</sup> By the 1930s, it was noticeable that the Uniform Sales Act was out of date.<sup>59</sup> Much criticism of the act stemmed from its inherent inability to “relate meaningfully to the demands and complexities of modern commercial relations.”<sup>60</sup> One critic of the act noted that it “embodied an obsolete *form* of law—consisting of rules derived from a few broad abstractions, removed from practical experience, and expected to answer all question[s].”<sup>61</sup> In response, various Federal bills based on the Uniform Sales Act were introduced to Congress in the hopes of achieving the goal of uniformity.<sup>62</sup> Despite the states’ gradual adoption of the Uniform Sales Act and the attempts to pass these various federal bills, it was apparent that no such uniformity was on the horizon.<sup>63</sup>

In 1940, a revision of the Uniform Sales Act<sup>64</sup> was drafted in order to address the criticism surrounding the act’s outdatedness.<sup>65</sup> Its main goal was “to reformulate sales law in light of [a] normative vision of both merchant practice and judicial decision[-]making.”<sup>66</sup> That year, the National Conference of Commissioners on Uniform State Laws (NCCUSL) held its annual meeting, where the President of the Conference made the following remark:

Our splendid commercial acts were prepared and adopted by this Conference many years ago. Many changes in methods of transacting business have taken place in the meanwhile . . . . Could not a great uniform commercial code be prepared, which would bring the commercial law up to

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57. See Mike Brandly, *Uniform Sales Act of 1906*, AUCTIONEER BLOG (Oct. 3, 2012), <https://mikebrandlyauctioneer.wordpress.com/2012/10/03/uniform-sales-act-of-1906/> [<https://perma.cc/DWS9-FYPQ>] (stating that the Uniform Sales Act was originally drafted by Professor Williston and was adopted by 34 states by 1947. Samuel Williston, a prominent lawyer and law professor, is widely known for his work “Williston on Contracts.”); see also WITKIN, *supra* note 51 (stating that California adopted the Uniform Sales Act in 1931).

58. See Wiseman, *supra* note 52, at 471.

59. See, e.g., *id.* (“Commercial lawyers, scholars, and merchants reached a consensus in the 1930s that the Uniform Sales Act of 1906 was obsolete.”).

60. *Id.* at 472.

61. *Id.* at 473.

62. *Id.* at 474–75.

63. *Id.* at 475.

64. This revision was titled the “Uniform Sales Act of 1940.”

65. Wiseman, *supra* note 52, at 490.

66. *Id.* at 491–92.

date, and which could become the uniform law of our fifty-three jurisdictions, by the passage of only fifty-three acts, instead of many times that number? It is estimated that a substantial sum would be required to prepare such a code, of a quality which would do credit to the Conference and be acceptable to our legislatures. . . . Such a project would seem to bear a close kinship to the American Law Institute's restatement of the decisional law.<sup>67</sup>

This speech sparked fast action. Between 1943 to 1944, the NCCUSL approved the text of the Uniform Revised Sales Act.<sup>68</sup> Despite this approval, its promulgation was further delayed because the official comments accompanying each section were not yet ready.<sup>69</sup> In 1952, after years of revisions, the Uniform Commercial Code was finally published.<sup>70</sup> The original section 2-316 was entirely devoid of the phrase “unless the circumstances indicate otherwise.”<sup>71</sup> Rather, the original section read:

- (1) If the agreement creates an express warranty, words disclaiming it are inoperative.
- (2) Exclusion or modification of the implied warranty of merchantability or of fitness for a particular purpose must be in specific language and if the inclusion of such language creates an ambiguity in the contract as a whole it shall be resolved against the seller; except that
  - (a) all implied warranties are excluded by expressions like “as is”, “as they stand”, “with all faults” or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and
  - (b) when the buyer has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with

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67. History of the Commercial Code Project, *History of the Uniform Commercial Code Project Including Agreements Between ALI and NCCUSL (Including PEB Agreement)* 1, 1 (quoting *Proceedings of the Fiftieth Annual Meeting of the National Conference of Commissioners on Uniform State Laws*, 50 HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS OF THE ANNUAL CONFERENCE MEETING 58 (1940)).

68. *Id.* at 6.

69. *Id.*

70. *Primary Law Resources*, *supra* note 17.

71. Compare U.C.C. § 2-316 (AM. LAW INST. & NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 1952) with *id.* § 2-316(3) (AM. LAW INST. & UNIF. LAW COMM'N 2017).

regard to defects which an examination ought in the circumstances to have revealed to him; and  
(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(3) Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (Sections 2-9718 and 2-719).<sup>72</sup>

Shortly after its promulgation, the New York Law Revision Commission conducted a rigorous examination of the U.C.C. and published a report on February 29, 1956.<sup>73</sup> The report stated the following concern regarding subsection 2(a): “It was suggested that paragraph (a) of subsection (2) could be read as meaning that the quoted phrases are terms of art<sup>74</sup> that necessarily exclude all implied warranties without regard to actual understanding in the trade.”<sup>75</sup> Following the report, the Editorial Board of the NCCUSL sought to address the concerns of the New York Law Revision Commission by recommending certain revisions to the U.C.C.<sup>76</sup> The suggested revision of section 2-316 drastically changed the original section 2-316. Of importance here, section 2-316(3)(a) was revised to read<sup>77</sup>:

(3) *Notwithstanding subsection (2)*

(a) *unless the circumstances indicate otherwise*, all implied warranties are excluded by expressions like “as is”, [“as they stand”,] “with all faults” or other language which in common understanding calls the buyer’s attention to the exclusion of warranties and makes plain that there is no implied warranty; and,  
(b) when the buyer *before entering into the contract* has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is

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72. *Id.*

73. See Herbert F. Goodrich, *Foreword* to 1956 RECOMMENDATIONS OF THE EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE, at iv (AM. LAW INST. & UNIF. LAW COMM’N 1957).

74. *Term of Art*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“A word or phrase having a specific, precise meaning in a given specialty, apart from its general meaning in ordinary contexts.”).

75. LAW REVISION COMM’N, REPORT RELATING TO THE UNIFORM COMMERCIAL CODE, LEG. DOC. 170-65, 2d Sess., at 77 (N.Y. 1956) <https://babel.hathitrust.org/cgi/pt?id=mdp.35112204304242;view=1up;seq=389> [<https://perma.cc/2GE2-UWNP>].

76. See Goodrich, *supra* note 73, at iv.

77. Deletions of the text are in [brackets]. Additions to the text are in *italics*.

no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and  
(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.<sup>78</sup>

Despite various other revisions and suggested revisions<sup>79</sup> to the U.C.C. since then, the “unless the circumstances indicate otherwise” clause remained a part of section 2-316.<sup>80</sup>

C. *[Mis]Understanding the Circumstances*

The “unless the circumstances indicate otherwise” clause of subsection 3(a) of the U.C.C. has spawned considerable litigation for several decades. The following cases showcase both a historical and geographical view of how courts from 1975 to 2018, in differing jurisdictions, interpreted subsection 3(a) of the U.C.C. To start, in *Turner v. International Harvester Co.*, the plaintiff’s decedent purchased a tractor-truck manufactured by the defendant.<sup>81</sup> Two years and four days after purchase, the cab fell onto the plaintiff’s

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78. 1956 RECOMMENDATIONS OF THE EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE 39–40 (AM. LAW INST. & UNIF. LAW COMM’N 1957).

79. For example, the “Permanent Editorial Board for the Uniform Commercial Code . . . appointed a Study Group” in early 1988 to determine whether Article 2 should be revised. Mark E. Roszkowski, *Revised Article 2 of the Uniform Commercial Code—Section-by-Section Analysis*, 54 SMU L. REV. 927, 927 (2001). On March 1, 1990, a significant revision was recommended. *Id.* In July 1999, a draft of the revised Article 2 was submitted for approval. *Id.* This draft, however, faced vehement industry opposition, which ultimately resulted in the resignation of the reporters. *Id.* A new drafting committee subsequently took over and created a July 2000 draft for consideration, which was also withdrawn from consideration and was never approved. *Id.* at 927–28. The proposed amendment to section 2-316(3)(a) would have slightly altered the language but left the term “circumstances” untouched. *See* U.C.C. § 2-316(3)(a) (AM. LAW INST. & UNIF. LAW COMM’N, Proposed Amendments to Articles 2 and 2A Sales and Leases Proposed Final Draft Apr. 18, 2003). One explanation for this could simply be a naive assumption that the courts have developed an informed understanding of what the term “circumstances” means. Nonetheless, as this Case Note shows, an informed understanding of the term “circumstances” has yet to be attained. *See infra* Part IV.A.

80. *See, e.g.*, U.C.C. § 2-316(3)(a) (AM. LAW INST. & UNIF. LAW COMM’N 2009); U.C.C. § 2-316(3)(a) (AM. LAW INST. & UNIF. LAW COMM’N 2004); U.C.C. § 2-316(3)(a) (AM. LAW INST. & UNIF. LAW COMM’N 1999).

81. *Turner v. Int’l Harvester Co.*, 336 A.2d 62, 65 (N.J. Super. Ct. Law Div. 1975).

decendent while he was working on the engine.<sup>82</sup> The plaintiff's decendent later died from the resulting injury.<sup>83</sup> The plaintiff subsequently filed suit, in part, on a breach of warranty theory.<sup>84</sup> The purchase agreement for the tractor-truck contained an "as is" disclaimer.<sup>85</sup> On the defendant's motion for summary judgment, the court considered the effect of the "as is" disclaimer.<sup>86</sup> After citing New Jersey's version of the U.C.C. covering the exclusion or modification of warranties,<sup>87</sup> the court ultimately determined that the "[c]ircumstances here did not indicate other than the normal statutory exclusion of warranties . . . . It therefore appears that [the] plaintiff's claim for breach of warranty must be dismissed, because the sale was for used goods explicitly noted 'as is.'"<sup>88</sup>

In *Knipp v. Weinbaum*, the court analyzed the validity of an "as is" disclaimer in the context of a motorcycle sale.<sup>89</sup> There, the plaintiff purchased a used motorcycle from the defendant's cycle shop.<sup>90</sup> The bill of sale contained the following clause: "CYCLE SOLD AS IS ONE CUSTOM TRIKE HONDA THREE WHEELER."<sup>91</sup> Shortly after purchasing the motorcycle after losing control of the motorcycle while on a major highway, the plaintiff suffered severe injuries.<sup>92</sup> Subsequently, the plaintiff filed suit alleging breach of implied warranties, among other claims.<sup>93</sup>

After the trial court granted summary judgment for the defendant, the plaintiff appealed.<sup>94</sup> On appeal, the plaintiff argued that there was a misunderstanding between the parties regarding the intended meaning of the "as is" clause contained in the bill of sale.<sup>95</sup>

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82. *Id.* at 66.

83. *Id.*

84. *Id.*

85. *Id.* ("USED TRACTOR SOLD AS IS One (1) used 1967 IHC model C04000D Serial G226064.' The price was \$14,000 plus sales tax.").

86. *Id.*

87. *See id.* ("[U]nless the circumstances indicate otherwise, all implied warranties are excluded by expressions like 'as is,' 'with all faults' or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty.") (emphasis added).

88. *Id.* at 66–67.

89. *Knipp v. Weinbaum*, 351 So. 2d 1081, 1083 (Fla. Dist. Ct. App. 1977).

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 1084.

The appellate court stated that, “[i]t is the clause ‘unless the circumstances indicate otherwise’ which precludes a finding that automatic absolution can be achieved in the sale of used consumer goods merely by the inclusion in a bill of sale by the magic words ‘as is.’”<sup>96</sup> Nevertheless, the court acknowledged that the U.C.C. allows a seller to disclaim warranties when the buyer “reasonably understands” that the seller is disclaiming warranties, and the disclaimer is a part of the basis of the bargain.<sup>97</sup> Applying that standard to the case at bar, the court found conflicting statements on the record regarding the parties’ respective intended meaning of what the “as is” applied to.<sup>98</sup> For example, deposition testimony revealed that the seller may have only intended the “as is” to apply to “minor defects which would have rendered the trike incapable of passing the inspection required in order to get a motor vehicle sticker.”<sup>99</sup> Because of this genuine dispute of material fact, the court rendered the district court’s finding of summary judgment improper.<sup>100</sup>

In *Alpert v. Thomas*, the court examined the validity of an “as is” clause in the context of the sale of an Arabian stallion.<sup>101</sup> There, the defendant was the owner of a horse farm and a full-time breeder.<sup>102</sup> The plaintiffs bred and sold Arabian horses for profit.<sup>103</sup> After various talks and visits, the defendant purchased an Arabian stallion from the plaintiffs for breeding.<sup>104</sup>

The purchase and sales agreement contained an “as is” clause,<sup>105</sup> which was intended to only apply to the stallion’s general physical health.<sup>106</sup> After the stallion was delivered to the defendant, the horse continued to have difficulties breeding.<sup>107</sup> The defendant later brought the stallion to a doctor and was told that the stallion’s

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96. *Id.*

97. *Id.* at 1084–85.

98. *Id.* at 1085.

99. *Id.*

100. *Id.*

101. *Alpert v. Thomas*, 643 F. Supp. 1406, 1409 (D. Vt. 1986).

102. *Id.*

103. *Id.*

104. *Id.* at 1410.

105. *Id.* The “as is” clause in the purchase and sales agreement stated “[DEFENDANT] accepts STALLION as is and subject to any and all faults or defects which may exist at the present or may appear at a later date.” *Id.* at 1410 n.2.

106. *Id.* at 1410.

107. *Id.* at 1411.



“breeding capability was questionable.”<sup>108</sup> Upon a second examination, the defendant was informed that the stallion’s breeding capability was “extremely suspect.”<sup>109</sup> Shortly thereafter, the plaintiffs brought suit to recover the remaining purchase price on the stallion that the defendant failed to pay.<sup>110</sup>

At trial, the plaintiffs argued that the “as is” clause in the purchase and sales agreement effectively disclaimed the implied warranty that the stallion was merchantable as a breeder, despite the stallion’s infertility.<sup>111</sup> Ultimately, the court found the “as is” clause failed to disclaim the implied warranty of merchantability under section 2–316(3).<sup>112</sup> The court applied the phrase “unless the circumstances indicate otherwise” of subsection (3)(a) and determined that “[i]n this case, the circumstances indicate otherwise.”<sup>113</sup> The court justified its holding given the parties’ negotiations and both parties’ respective intent that the stallion would have the capability of being bred consistent with the custom of the Arabian horse trade.<sup>114</sup>

In *Maritime Manufacturers, Inc. v. Hi-Skipper Marina*, the appellees purchased three boats from the appellant with the intent of reselling the boats to the public.<sup>115</sup> The purchase agreement between the parties contained a “where is as is” clause in capital letters.<sup>116</sup> All three boats exhibited problems in the following years and the appellees discontinued making payments as a result.<sup>117</sup> The appellant filed suit shortly thereafter to recover the balance due.<sup>118</sup>

The trial court found that the “where is as is” clause was an effective disclaimer of implied warranties.<sup>119</sup> On appeal, the Ohio Supreme Court was tasked with determining whether the “where is as is” clause was in fact an effective disclaimer of implied warranties,

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108. *Id.*

109. *Id.* at 1412.

110. *Id.* at 1406.

111. *Id.* at 1417.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Mar. Mfrs., Inc. v. Hi-Skipper Marina*, 483 N.E.2d 144, 144 (Ohio 1985).

116. *Id.* at 145; *see also id.* at 144–45 (noting a distinction between the three purchased boats—a larger boat which was not yet resold and two smaller boats that were resold to end customers).

117. *Id.*

118. *Id.*

119. *Id.*

thereby precluding any claim by appellees for any breach thereof.<sup>120</sup> The court cited section 1302.29(C)(1) of the Ohio Commercial Code,<sup>121</sup> which governs the exclusion or modification of warranties, before professing that “[o]ne example of circumstances which ‘indicate[s] otherwise’ would be when the parties understand the term to mean something *other* than a warranty waiver.”<sup>122</sup> Although the court found conflicting testimony as to the intended meaning of the term “where is as is,”<sup>123</sup> the court ultimately decided that the “where is as is” clause precluded a claim based on implied warranties, in part because there was no indication that the parties understood the clause as anything other than warranty waiver.<sup>124</sup>

In *Nick Mikalacki Construction Co. v. M.J.L. Truck Sales, Inc.*,<sup>125</sup> the Ohio Court of Appeals was faced with an “as is” clause in the context of a used vehicle sale. In that case, a used dump truck was advertised as having a “rebuilt” engine.<sup>126</sup> After a prospective purchaser took the vehicle on various test drives, the individual signed a contract with an “as is” disclaimer to purchase it.<sup>127</sup> The buyer experienced engine

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120. *Id.* (“This appeal presents two issues for [the court’s] determination: (1) whether the ‘where is as is’ clause contained in the purchase contract for the forty-seven-foot boat effectively precludes any claim by Hi-Skipper for breach of implied warranty of merchantability; and (2) whether Hi-Skipper is similarly precluded from recovering for breach of implied warranty with regard to the two smaller boats by virtue of its not being the ultimate consumer.”).

121. *Id.* at 145 (“R.C. 1302.29(C)(1) . . . states, in pertinent part: ‘[U]nless the circumstances indicate otherwise all implied warranties are excluded by expressions like ‘as is,’ ‘with all faults,’ or other language which in common understanding calls the buyer’s attention to the exclusion of warranties and makes plain that there is no implied warranty.’”).

122. *Id.*

123. This opinion, and prior opinions, do not elaborate on *what* the conflicting intended meanings were. Instead, this case and its case history merely state that there was confusion. *See, e.g., id.* (“There was conflicting testimony in this case as to what the term ‘where is as is’ was intended to mean . . . .”); *Mar. Mfrs., Inc. v. Hi-Skipper Marina*, No. 8-131, 1984 WL 6305, at \*2 (Ohio Ct. App. Mar. 30, 1984) (“The trial court received testimony from both parties concerning the effect of the ‘as is’ clause. The testimony, at best, indicated there was confusion between the parties as to the scope of the exclusion which could not result in the finding of a common understanding.”).

124. *Mar. Mfrs., Inc.*, 483 N.E.2d at 145–46.

125. *Nick Mikalacki Constr. Co. v. M.J.L. Truck Sales, Inc.*, 515 N.E.2d 24, 24 (Ohio Ct. App. 1986).

126. *Id.*

127. *Id.* at 25 (explaining that the contract included an integration/merger clause and the following language: “I hereby make this purchase and accept this Used Truck

troubles shortly thereafter and brought suit against the seller for breach of implied warranty, express warranty, and breach of contract.<sup>128</sup> In rendering its opinion, the court relied heavily on Anderson’s treatise.<sup>129</sup> The court assessed the three specific instances listed in the treatise (explained in further detail below) that address whether there was a valid disclaimer of implied warranties.<sup>130</sup> Determining that the case before it did not contain any of those three instances, the court rendered the “as is” clause<sup>131</sup> an effective disclaimer of the implied warranty of merchantability.<sup>132</sup>

In *Murray v. D & J Motor Co.*,<sup>133</sup> the plaintiff purchased a used vehicle from the defendant and experienced vehicle problems shortly thereafter. After taking the vehicle to a couple of mechanics, the plaintiff discovered the engine was on the verge of total failure.<sup>134</sup> Here, in addition to advising the plaintiff that the implied warranties were disclaimed, the purchase agreement for the vehicle contained an “as is” and “with all faults” disclaimer.<sup>135</sup> Moreover, during the trial, the plaintiff attested that, to her knowledge, there was no vehicle

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knowingly without any warranty whatsoever, expressed or implied by our Co. or its agents.”).

128. *Id.*

129. *Id.* at 26 (citing 3 ANDERSON, UNIFORM COMMERCIAL CODE § 2-316:72 (3d ed. 1983)).

130. *Id.* (explaining that these three instances are “when the goods (1) are new rather than used goods, (2) the contract declares the buyer accepts the goods ‘in good condition’ (3) and for many years it was both the custom of the trade and the prior course of dealings between the parties for the seller to repair any mechanical defect.”).

131. *Id.* at 25 (reasoning that the “as is” clause at issue provided: “Sold ‘As Is’ ‘I hereby make this purchase and accept this Used Truck knowingly without any warranty whatsoever, expressed or implied by our Co. or its agents.’”).

132. *Id.* at 26. While the Minnesota Supreme Court mentioned *Mikalacki* in a footnote in *Sorchaga*, the court dismissed the *Mikalacki* decision because “it did not involve fraud” and therefore was “inapposite.” See *Sorchaga v. Ride Auto, LLC*, 909 N.W.2d 550, 556 n.4 (Minn. 2018). This sparse justification leaves much to be desired considering whether or not *Mikalacki* involved fraud was inconsequential to what the drafters of the U.C.C. intended the term “circumstances” to mean. Further, the dismissal appears to be an obvious departure from the court’s jurisprudence concerning the U.C.C. See *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002) (stating that courts interpret uniform laws, such as the U.C.C., in light of the interpretations of other states who have adopted them).

133. 958 P.2d 823, 826 (Okla. Civ. App. 1998).

134. *Id.*

135. *Id.* at 827.

warranty.<sup>136</sup> The trial court determined there was no warranty, and the plaintiff appealed.<sup>137</sup> On appeal, the court held that:

[A]mong the circumstances that could render a purported “as is” or “with all faults” disclaimer unreasonable and ineffective are fraudulent representations or misrepresentations concerning the condition, value, quality, characteristics or fitness of the goods sold that are relied upon by the Buyer to the Buyer’s detriment. Therefore, if the disclaimer of the implied warranties of . . . merchantability are tainted with, or by, such misrepresentations or false representations, that then is a “circumstance” that will preclude an effective disclaimer.<sup>138</sup>

Ultimately, the court sided with the plaintiff in this matter.<sup>139</sup>

In the most recent of these cases discerning the “circumstances” clause, *Sorchaga v. Ride Auto, LLC*, the Minnesota Supreme Court concluded that fraud was a “circumstance” that rendered “as is” disclaimers ineffective.<sup>140</sup> This case will be discussed further in Part III.<sup>141</sup>

It is indisputable that all these cases present different, reasonable interpretations of section 2-316 of the U.C.C. Yet, all of these cases also provide different rationales to justify each court’s respective decision. This inconsistency has given rise to confusion over how the term “circumstances” is to be treated. In response to this apparent effect of section 2-316, treatises were drafted in an attempt to help practitioners understand this section of the U.C.C. For instance, in 1983, one could argue that Anderson’s treatise was written—at least in part—with the aim of providing courts with clarity<sup>142</sup> on the types of “circumstances” that courts could render “as is” disclaimers

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136. *Id.*

137. *Id.*

138. *Id.* at 830.

139. *See id.* at 831 (citing *P.E.A.C.E. Corp. v. Oklahoma Nat. Gas Co.*, 568 P.2d 1273, 1276 (Okla. 1977)) (“Fraud, if practiced by a seller, cannot be avoided on the ground that seller has disclaimed the very matter out of which the fraud arises.”).

140. *Sorchaga v. Ride Auto, LLC*, 909 N.W.2d 550, 557 (Minn. 2018).

141. *See infra*, Part III.

142. *See generally* Meg Kribble, *Secondary Sources: ALRs, Encyclopedias, Law Reviews, Restatements, & Treatises*, HARV. L. SCH. LIBR. (last updated Feb. 4, 2019), <https://guides.library.harvard.edu/c.php?g=309942&p=2070277> [<https://perma.cc/YS5N-GHC5>] (stating that treatises have a variety of functions, some of which “serve as practitioners’ tools” and “address realistic legal problems” that practicing lawyers may face).

ineffective in a manner that is consistent with the drafters intended meaning of the term.<sup>143</sup>

It provides that the principal inquiry is whether or not there are circumstances that would put the buyer on notice that he or she is surrendering a warranty.<sup>144</sup> When conducting such an evaluation, courts are instructed to look for the presence of the three specific instances when inconsistent circumstances indicate that an “as is” disclaimer is not intended to waive warranties.<sup>145</sup> Those circumstances include:

when the goods (1) are new rather than used goods, (2) the contract declares the buyer accepts the goods “in good condition,” (3) and for many years it was both the custom of the trade and the prior course of dealings between the parties for the seller to repair any mechanical defect.<sup>146</sup>

The 2014 update to Anderson’s treatise addressed section 2-316 of the U.C.C.<sup>147</sup> It provided that “[a]mong the circumstances that could render a purported ‘as is’ . . . disclaimer . . . ineffective are fraudulent representations . . . concerning the condition, value, quality, characteristics or fitness of the goods sold that are relied upon by the buyer to the buyer’s detriment.”<sup>148</sup> Treatises, such as these, are normally useful tools for courts because when the statutory language is unclear, a court may consider extrinsic aids, such as treatises, to assist interpreting the statute.<sup>149</sup> By doing so, courts can gain insight on the drafter’s intent.

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143. Nick Mikalacki Constr. Co. v. M.J.L. Truck Sales, Inc., 515 N.E.2d 24, 26 (citing RONALD A. ANDERSON, LAWRENCE’S ANDERSON ON THE UNIFORM COMMERCIAL CODE 371 (Bancroft-Whitney, 3d ed. 1983)).

144. *Id.*

145. *Id.*

146. *Id.*

147. See Sorchaga v. Ride Auto, LLC, 909 N.W.2d 550, 556 (Minn. 2018) (quoting DAVID FRISCH, LAWRENCE’S ANDERSON ON THE UNIFORM COMMERCIAL CODE § 2-316:155 (3d ed. 2014)).

148. See *id.*

149. See, e.g., Maguire v. State, 47 Md. 485, 497 (1878); State v. Hayward, 83 Mo. 299, 307 (1884). See also Figgins v. Wilcox, 879 N.W.2d 653, 657 (Minn. 2016) (interpreting an ambiguous statute and using various dictionaries and 2 STEPHEN’S COMMENTARIES ON THE LAWS OF ENGLAND 5 (L. Crispin Warmington ed., 21st ed. 1950) to arrive at a resolution).

D. *Minnesota's Version of the U.C.C.*

Minnesota adopted the U.C.C. in 1965<sup>150</sup> and it is codified in chapter 336 of the Minnesota Statutes.<sup>151</sup> The Minnesota Legislature adopted section 2-316 of the U.C.C. without change<sup>152</sup> and housed it in section 336.2-316 of the Minnesota Statutes.<sup>153</sup> When adopting the U.C.C., the Minnesota Legislature also adopted its primary purpose without change.<sup>154</sup> That being, “to make *uniform* the law among the various jurisdictions.”<sup>155</sup>

The “Exclusion or Modification of Warranties” provision of Minnesota’s U.C.C. addresses the ability of sellers to modify or exclude the warranty of merchantability that is implied in all sales contracts.<sup>156</sup> Essentially, this provision allows any exclusion or modification of the implied warranty of merchantability so long as a disclaimer appears in conspicuous writing:<sup>157</sup> “[U]nless the *circumstances* indicate otherwise, all implied warranties are excluded by expressions like ‘as is,’ ‘with all faults’ or other language which in common understanding calls the buyer’s attention to the exclusion of warranties and makes plain that there is no implied warranty.”<sup>158</sup> The current version of section 336.2-316 of the Minnesota Statutes does not define the unadorned term “circumstances,” nor is there any useful guidance provided for in its comments.<sup>159</sup>

Prior to *Sorchaga*, Minnesota courts had not had the opportunity to construe the term “circumstances” in section 336.2-316(3)(a) of the Minnesota Statutes.<sup>160</sup> Nevertheless, Minnesota courts have

150. See *Bradley v. First Nat’l Bank of Walker, N.A.*, 711 N.W.2d 121, 126 (Minn. Ct. App. 2006) (declaring that Minnesota adopted the Uniform Commercial Code in 1965).

151. MINN. STAT. § 336.1-101(a) (2018).

152. Compare MINN. STAT. § 336.2-316 (2018), with U.C.C. § 2-316 (AM. LAW INST. & UNIF. LAW COMM’N 2017).

153. See MINN. STAT. § 336.2-316 (2018).

154. Compare MINN. STAT. § 336.2-316 (2018), with U.C.C. § 2-316 (AM. LAW INST. & UNIF. LAW COMM’N 2017).

155. Compare U.C.C. § 1-103 (AM. LAW INST. & UNIF. LAW COMM’N 2017) (emphasis added), with MINN. STAT. § 336.1-103 (2018).

156. See MINN. STAT. § 336.2-316 (2018).

157. *Id.* at subdiv. (2).

158. *Id.* at subdiv. (3)(a) (emphasis added).

159. See generally MINN. STAT. § 336.2-316 (2018) (noting that comments following the statute lack direction for the term “circumstances”).

160. See *Sorchaga v. Ride Auto, LLC*, 893 N.W.2d 360, 373 (Minn. Ct. App. 2017), *aff’d*, 909 N.W.2d 550 (Minn. 2018) (“Whether a merchant’s fraudulent

developed a procedure to employ when interpreting a statute in such a manner that effectuates the intention of the legislature.<sup>161</sup> When interpreting a statute, the court first determines whether the language of the statute is free and clear from ambiguity.<sup>162</sup> When the language is unambiguous, the court's role is to apply the statute according to its plain language.<sup>163</sup> A statute will be rendered ambiguous only "if the language is susceptible to more than one reasonable interpretation."<sup>164</sup> This procedure was the main justification for how *Sorchaga* was ultimately decided.<sup>165</sup>

### III. THE *SORCHAGA* DECISION

#### A. *Facts and Procedural History*

Ride Auto, a used car merchant, purchased a pickup truck from a salvage yard knowing that it was a fixer-upper.<sup>166</sup> After the truck underwent cosmetic and mechanical repairs, Ride Auto offered it for sale.<sup>167</sup> Esmeralda Sorchaga ("Sorchaga") visited Ride Auto and took the pickup truck for a short test drive after expressing an interest in purchasing it.<sup>168</sup> During the test drive, the check-engine light was on.<sup>169</sup> When Sorchaga asked the salesman about the light, the salesman told her that it was due to a faulty oxygen sensor, the problem could easily be fixed, and the light would have no effect on

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misrepresentation about the condition of goods to a consumer [is a circumstance that] precludes the merchant from disclaiming the implied warranty of merchantability is an issue of first impression . . . .")

161. See MINN. STAT. § 645.16 (2018) ("The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.").

162. See *id.*; *Gilbertson v. Williams Dingmann, LLC*, 894 N.W.2d 148, 151 (Minn. 2017).

163. *State Farm Mut. Auto. Ins. Co. v. Lennartson*, 872 N.W.2d 524, 534 n.6 (Minn. 2015); see also *State v. Nelson*, 842 N.W.2d 433, 436 (Minn. 2014) ("[I]f a statute is susceptible to only one reasonable interpretation, 'then [the court] must apply that statute's plain meaning.'" (quoting *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010))).

164. *State v. Carufel*, 783 N.W.2d 539, 542 (Minn. 2010); see also *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999); *Tuma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986).

165. See *Sorchaga v. Ride Auto, LLC*, 909 N.W.2d 550, 555 (Minn. 2018).

166. *Id.* at 552.

167. *Id.*

168. *Id.*

169. *Id.*

the truck's longevity.<sup>170</sup> The salesman also told Sorchaga that the truck could be driven with the check-engine light on and that, if purchased, Sorchaga would be able to return to Ride Auto to have the truck fixed.<sup>171</sup> Sorchaga also noticed smoke coming from the truck's tailpipe, but was assured that the smoke was merely a result of the truck warming up due to its diesel engine.<sup>172</sup>

After returning from the test drive, Sorchaga asked to hook the truck up to a scanner to uncover the real reason that the check-engine light was on.<sup>173</sup> Although the mechanic was unable to comply with this request, the salesman again assured Sorchaga that the check-engine light was on because of a faulty oxygen sensor.<sup>174</sup> In pursuit of furthering the sale, the salesman told Sorchaga that she would receive a third-party warranty, the ASC Vehicle Protection Plan, at no cost.<sup>175</sup> This type of plan, allegedly, would cover all needed repairs free of charge, and would allow Sorchaga to have the truck inspected anywhere.<sup>176</sup>

Despite Sorchaga's concerns about the check-engine light and smoke, she agreed to purchase the truck for \$12,950.68 and signed a purchase agreement as part of the process.<sup>177</sup> The purchase agreement contained an "as is" clause disclaiming all warranties.<sup>178</sup> Sorchaga experienced problems with the truck shortly after purchase.<sup>179</sup> She returned to Ride Auto for assistance but Ride Auto

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170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* at 553.

176. *Id.*

177. *Id.*

178. *See id.* at 553–54 (explaining that the phrase "as is" was prominently displayed three times throughout the *purchase agreement* and was also included in the buyer's guide that Sorchaga signed when completing the sale); *Sorchaga v. Ride Auto, LLC*, 893 N.W.2d 360, 365–66 (Minn. Ct. App. 2017) (stating the "as is" clause in the purchase agreement provided: "Dealer's disclaimer of warranty and pollution system. 'AS IS, NO WARRANTY.' You will pay all costs for any repairs. The Seller assumes no responsibility for any repairs regardless of any oral statements about the above name[d] vehicle. . . . As between retail seller and buyer the above name[d] vehicle is to be sold 'AS IS' and the entire risk as to the quality and performance of the above name[d] vehicle is with the buyer. The Seller expressly disclaims all warranties either expressed or implied. The buyer acknowledges being informed of this statement prior to the sale.").

179. *Sorchaga*, 909 N.W.2d at 553.



was unwilling to offer any aid.<sup>180</sup> Sorchaga then called ASC regarding the Vehicle Protection Plan, but was informed that the warranty in the ASC Agreement did not apply because the truck was a salvage vehicle.<sup>181</sup> Finally, Sorchaga took the truck to a dealer, who recommended a full engine replacement.<sup>182</sup>

After receiving this recommendation, Sorchaga sued Ride Auto and Western Surety Company (“Western”), its surety bond holder, in part alleging breach of the implied warranty of merchantability.<sup>183</sup> The district court denied Ride Auto and Western’s motion for summary judgment and the case advanced to trial.<sup>184</sup> Finding that Ride Auto’s owner knew of the truck’s serious engine damage and failed to correct the salesman’s false statements concerning the check-engine light, the district court ordered judgment for Sorchaga on all counts.<sup>185</sup> As a result, Sorchaga received \$14,366.03 in damages and \$21,949.35 in attorneys’ fees and litigation expenses.<sup>186</sup> Ride Auto and Western appealed.<sup>187</sup> Notwithstanding the “as is” language, the Minnesota Court of Appeals construed Minnesota Statutes section 336.2-316(3)(a) to include fraud as a “circumstance” preventing the exclusion of the implied warranty of merchantability.<sup>188</sup> Accordingly, the district court’s decision was affirmed.<sup>189</sup>

#### *B. The Minnesota Supreme Court’s Decision*

Ride Auto and Western petitioned the Minnesota Supreme Court to review the court of appeals’ decision and the Minnesota Supreme Court affirmed the lower court’s decision.<sup>190</sup> First, the Minnesota Supreme Court noted that because both the purchase documents and buyer’s guide contained “as is” disclaimers, the question was whether Ride Auto’s fraud was a “circumstance” that would render an “as is” clause ineffective.<sup>191</sup> Second, the court stated that the dispute was one

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180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.* at 554.

187. *Id.*

188. Sorchaga v. Ride Auto, LLC, 893 N.W.2d 360, 380 (Minn. Ct. App. 2017).

189. *Id.*

190. Sorchaga, 909 N.W.2d at 558.

191. *Id.* at 554.

of statutory interpretation because both parties disagreed on the meaning of “unless the circumstances indicate otherwise” in Minnesota Statutes section 336.2-316(3)(a).<sup>192</sup> Because the statute does not define the “circumstances” that were intended to render an “as is” clause ineffective, the court turned to the dictionary to ascertain the plain and ordinary meaning of the words used in the statute.<sup>193</sup>

Using Webster’s Third New International Dictionary, the court proceeded to define “unless,” “circumstances,” “indicate,” and “otherwise.”<sup>194</sup> The court noted that “unless,”<sup>195</sup> “indicate,”<sup>196</sup> and “otherwise”<sup>197</sup> all have narrow meanings, whereas “circumstances” is “broadly defined.”<sup>198</sup> According to the court, the term “circumstance” means “a specific part, phase, or attribute of the surroundings or background of an event, fact, or thing or of the prevailing conditions in which it exists or takes place.”<sup>199</sup> Because of this broad definition, the court determined that the term “circumstances,” as used in the statute, “could then apply to a number of different conditions or facts connected with or surrounding the transaction at issue.”<sup>200</sup>

Third, based upon those definitions, the court determined that the statute was unambiguous as applied to the facts of the case.<sup>201</sup> In finding this, the court referred back to the district court’s finding of

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192. *Id.* at 554–55.

193. *Id.* at 555. Consulting a dictionary is consistent with the court’s jurisprudence when ascertaining the meaning of a statute’s words. *See* *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 140–41 (Minn. 2017) (“In determining the plain and ordinary meaning of undefined words or phrases in a statute, we may consult the dictionary definitions of those words and apply them in the context of the statute.”); *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016) (“To determine the plain meaning of a word, we often consider dictionary definitions.”); *Troyer v. Vertlu Mgmt. Co.*, 806 N.W.2d 17, 25 (Minn. 2011) (“When considering the plain and ordinary meaning of words or phrases, we have consulted dictionary definitions.”).

194. *Sorchaga*, 909 N.W.2d at 555.

195. *Id.* (quoting *Unless*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2503 (3d ed. 1971)) (“except on condition that”).

196. *Id.* (quoting *Indicate*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1150 (3d ed. 1971)) (“to show or make known” and “to point out or point to”).

197. *Id.* (quoting *Otherwise*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1598 (3d ed. 1971)) (“in other respects” and “in a different way or manner”).

198. *Id.*

199. *Id.* (quoting *Circumstance*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 410 (3d ed. 1971)).

200. *Id.*

201. *Id.*

fraudulent statements by Ride Auto with respect to the “‘condition, value,’ and ‘fitness’ of the truck.”<sup>202</sup> Fraudulent statements concerning such attributes could certainly fit into the definition of “circumstance,” as “a specific part . . . or attribute of the surroundings or background” of the transaction.<sup>203</sup> As a result, the court concluded that “the fraud here is a ‘circumstance [that] indicate[s] otherwise’ under Minn. Stat. § 336.2–316(3)(a).”<sup>204</sup> To justify this holding, the court noted that if it were to find differently, “the very essence of the parties’ bargain would be negated”<sup>205</sup> and would be inconsistent with other provisions of the U.C.C.<sup>206</sup>

#### IV. ANALYSIS<sup>207</sup>

##### A. *Sorchaga Reads “Circumstances” Inconsistently With its Intended Reach*

Contrary to the Minnesota Supreme Court’s contention,<sup>208</sup> the term “circumstances” is ambiguous and does not justify the court’s disregard of the legislative intent, the aims of Minnesota Statutes section 336.2-316 at the time of enactment, or the consequences of a particular construction.<sup>209</sup> At the court of appeals, Ride Auto argued that the term “circumstances” is limited to only a few “circumstances” that would render an “as is” disclaimer ineffective, and cited caselaw in its support.<sup>210</sup> Sorchaga argued that “circumstances” include

202. *Id.*

203. *Id.* at 555–56 (quoting *Circumstance*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 410 (3d ed. 1971)).

204. *Id.* at 556.

205. *Id.*

206. *Id.* See also MINN. STAT. § 336.1-103(b) (2018) (“Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including . . . fraud, misrepresentation, . . . and other validating or invalidating cause supplement its provisions.”).

207. This case note will focus only on the issue of implied warranty of merchantability.

208. *Sorchaga*, 909 N.W.2d at 555 (“[T]he statute as applied to the facts of this case is not ambiguous.”).

209. See MINN. STAT. § 645.16 (providing a non-exhaustive list of matters that may be considered to ascertain the intention of the legislature “[w]hen the words of a law are not explicit”).

210. *Sorchaga v. Ride Auto, LLC*, 893 N.W.2d 360, 374 (Minn. Ct. App. 2017) (citing *Nick Mikalacki Constr. Co. v. M.J.L. Truck Sales, Inc.*, 515 N.E.2d 24, 26 (Ohio Ct. App. 1986)).

fraudulent representations concerning “the condition, value, quality, characteristics or fitness” of a good sold, and again, cited caselaw in its support.<sup>211</sup> In light of these reasonable, albeit conflicting interpretations, the court of appeals correctly noted that Minnesota Statutes section “336.2-316(3)(a) is ambiguous.”<sup>212</sup>

Presumably, the court in *Sorchaga* was aware of several facts regarding section 336.2-316(3)(a). First, the Minnesota Legislature did not draft section 336.2-316(3)(a). The Minnesota Legislature merely adopted it from section 2-316 of the U.C.C.<sup>213</sup> and housed it in chapter 336 of the Minnesota Statutes.<sup>214</sup> Second, the drafters of the U.C.C. essentially drafted section 336.2-316(3)(a) of the Minnesota Statutes since the Minnesota Legislature adopted U.C.C. section 2-316 without change. Third, in order to ascertain the intended meaning of the term “circumstances,” it was not the intent of the Minnesota Legislature that the Minnesota Supreme Court was charged with discerning.<sup>215</sup> Rather, it was the intent of the drafters of the U.C.C. that was controlling.<sup>216</sup>

Yet, the Minnesota Supreme Court did not focus on the *actual* drafter’s intent when it looked to the drafter’s intent to understand the intended meaning of the term “circumstances.” Instead the Minnesota Supreme Court focused on the Minnesota Legislature’s intent, as evidenced by the following: “The statute does not define the ‘circumstances’ that the *Legislature* intended would make ‘as is’

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211. *Sorchaga*, 893 N.W.2d at 374 (quoting *Murray v. D & J Motor Co.*, P.2d 823, 830 (Okla. Civ. App. 1998)).

212. *Id.* But see *Sorchaga*, 909 N.W.2d at 555 (“[T]he statute as applied to the facts of this case is not ambiguous.”).

213. Compare Act of May 26, 1965, ch. 811, 1965 Minn. Laws 1314–15 (codified as amended at MINN. STAT. § 336.2-316 (2018)), with U.C.C. § 2-316 (AM. LAW INST. & UNIF. LAW COMM’N 1962).

214. MINN. STAT. § 336.2-316; see *Sorchaga*, 893 N.W.2d at 373.

215. The Minnesota Supreme Court in *Layne-Minnesota Co. v. Regents of the Univ. of Minnesota*, 266 Minn. 284, 290–91 n.13, 123 N.W.2d 371, 376 n.13 (1963), while interpreting provisions of the Uniform Arbitration Act, stated that “[t]he intention of the drafters of a uniform act becomes the legislative intent upon enactment.” Minnesota courts have applied this notion to interpretations of other uniform acts. See, e.g., *Shields v. Goldestky (In re Butler)*, 552 N.W.2d 226, 231 (Minn. 1996) (Uniform Fraudulent Transfer Act), *Lenz v. Depositors Ins. Co.*, 561 N.W.2d 559, 563 (Minn. Ct. App. 1997) (Uniform Motor Vehicle Repairs Act), and *Breezy Point Holiday Harbor Lodge—Beechside Apartment Owners’ Ass’n v. B.P. Partnership*, 531 N.W.2d 917, 920 (Minn. Ct. App. 1995) (Uniform Condominium Act).

216. See *Shields*, 552 N.W.2d at 231.

disclaimers ineffective.”<sup>217</sup> By focusing on the Minnesota Legislature’s intent, the court failed to uncover the *actual* drafter’s intent of the term “circumstances” because the Minnesota Supreme Court turned to the adopter (Minnesota Legislature), when the court should have turned to the drafter (drafters of the U.C.C.).

As noted in Part II.B above, the “unless the circumstances indicate otherwise” clause was not a part of the original draft of section 2-316 of the U.C.C.<sup>218</sup> That clause was only added to address the concerns of the original section 2-316 of the U.C.C.<sup>219</sup> In the confusion surrounding the meaning of the “circumstances” lies a misperception of the New York Law Revision Commission’s (“NYLRC”) critique of the envisioned concerns to be redressed by the re-drafting of the original version of the U.C.C. In order to understand the intended meaning of the “circumstances,” it is therefore imperative to understand the NYLRC’s critique.<sup>220</sup>

The critique can, in essence, be split into two distinct categories of concerns. The first concern is that the quoted phrases, within what is now subsection 3(a) of section 2-316, could be understood as terms of art that categorically exclude implied warranties. This concern is relatively straightforward and easy to understand. Indeed, what is apparent in cases interpreting “as is” disclaimers is that courts are aware that such disclaimers are not intended to have an automatic disclaiming effect and are still subject to review.<sup>221</sup>

The language providing “without regard to actual understanding in the trade” encompasses the second concern of the critique. As seen in the direct language, the NYLRC expressed a desire to protect individual buyers who may have a lack of understanding in the trade in which the buyers are purchasing select goods. By combining the understanding of the first and the second concerns, the re-draft of the original U.C.C. could have been re-written in a clearer way to convey the concerns that were meant to be redressed, and subsequently,

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217. *Sorchaga*, 909 N.W.2d at 555 (emphasis added).

218. *See supra* Part II.B.

219. *See supra* Part II.B.

220. *See* LAW REVISION COMM’N, *supra* note 75, at 377 (“It was suggested that paragraph (a) of subsection (2) could be read as meaning that the quoted phrases are terms of art that necessarily exclude all implied warranties without regard to actual understanding in the trade.”).

221. *See* *Alpert v. Thomas*, 643 F. Supp. 1406, 1416–17 (D. Vt. 1986); *Knipp v. Weinbaum*, 351 So.2d 1081, 1084–85 (Fla. Dist. Ct. App. 1977); *Turner v. Int’l Harvester Co.*, 336 A.2d 62, 65 (N.J. 1975).

avoiding the “circumstances” altogether. A potential re-draft could have been:

Unless an individual buyer is unknowledgeable about the particular trade in which the buyer is purchasing the good(s), all implied warranties are excluded by expressions like ‘as is,’ ‘as they stand,’ ‘with all faults,’ or other language which in common understanding calls the buyer’s attention to the exclusion of warranties and makes plain that there is no implied warranty.

A prime example of this would be a first-time vehicle buyer who, because of a lack of understanding about purchasing vehicles, does not think it is necessary to take the car on a test drive before purchasing it. Instead, the buyer merely sees a car and purchases it. If the purchase agreement contained an “as is,” or similar disclaimer, it would serve as an ineffective disclaimer of implied warranties by virtue of the buyer’s lack of actual understanding in the trade. Had the first-time vehicle buyer had an actual understanding in the trade, the buyer would ordinarily have taken the vehicle on a test drive (at a minimum) in order to see how the vehicle runs, among other potentially latent characteristics that may not be immediately apparent to an individual upon a mere viewing of the vehicle.

In the 1944 case, *Danley v. Murphy*, an Alabama court was presented with a prime scenario envisioned by the NYLRC that should have rendered the disclaimer of implied warranties ineffective.<sup>222</sup> In *Danley v. Murphy*, a vehicle buyer filed suit against the sellers of the vehicle for fraudulent representations which persuaded her to purchase a “defective automobile.”<sup>223</sup> There, the buyer purchased a convertible from the sellers to use as a safe mode of transportation for when she was away at college.<sup>224</sup> The buyer herself never negotiated the purchase of the automobile; rather, the buyer’s father participated in all the negotiations “on his daughter’s behalf.”<sup>225</sup> During the negotiations, the buyer’s father was informed that the vehicle sustained a “lick” and had been “smacked” on the front end.<sup>226</sup>

Based solely on the information relayed to the buyer by her father, the buyer decided to purchase the automobile.<sup>227</sup> The buyer

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222. See *Danley v. Murphy*, 658 So.2d 483, 485 (Ala. Civ. App. 1994).

223. *Id.* at 485.

224. *Id.*

225. *Id.*

226. *Id.* at 486.

227. *Id.* at 485.

experienced engine troubles a month after purchasing the vehicle and filed suit shortly thereafter.<sup>228</sup> After the jury returned a verdict for the buyer, the sellers appealed.<sup>229</sup> On appeal, the sellers argued that the “as is” clause in the purchase agreement precluded the buyer from asserting a fraud-based cause of action, among other things.<sup>230</sup> However, the court disagreed, stating “the buyer is not precluded from asserting a fraud claim in the present case.”<sup>231</sup>

Although the buyer in *Danley* did not make any assertions as to the validity or invalidity of the disclaimer of implied warranties, the buyer was of the type that the NYLRC aimed to protect. Not only did the buyer exhibit a lack of knowledge in the particular trade by having her father negotiate on her behalf, the buyer also failed to even physically examine the vehicle.<sup>232</sup> Rather, the buyer made the decision to purchase the vehicle based upon secondhand knowledge that her father relayed to her.<sup>233</sup> It is in this type of instance that the NYLRC intended for—that the “as is” clause be an ineffective disclaimer of implied warranties. Judging from a public policy standpoint, this makes sense. Unknowledgeable vehicle buyers like the one in *Danley* should not be held to the same standard as those buyers who have purchased multiple vehicles, or those buyers who have worked in the car industry.

*B. The “As Is” Disclaimer in Sorchaga Was an Effective Disclaimer of Warranties*

The buyers in *Sorchaga*, however, were unlike *Danley* because the buyers in *Sorchaga* had the requisite knowledge in the trade to render the “as is” clause an effective disclaimer of implied warranties. Unlike *Danley*, the buyers in *Sorchaga* were knowledgeable enough to physically examine the vehicle prior to purchasing it.<sup>234</sup> The buyers in *Sorchaga* were driven to look for vehicles at Ride Auto because of their

228. *Id.*

229. *Id.*

230. *Id.* at 486.

231. *Id.*

232. *See id.* at 486.

233. *See id.* (“The buyer testified that she decided to purchase the automobile based upon the information that her father passed along to her . . .”) (emphasis added).

234. *See* Trial Order, *Sorchaga v. Ride Auto, LLC*, No. 19HA-CV-14-3536, 2015 WL 11232597, at \*1 (Minn. Dist. Ct. Oct. 30, 2015), amended by 2016 WL 4039968 (Minn. Dist. Ct. Mar. 02, 2016) (“[T]he plaintiff and her husband visited Ride Auto to look at vehicles.”).

“knowledge that Ride Auto carried an inventory of large trucks.”<sup>235</sup> Likewise, the buyers were knowledgeable enough to request a test drive prior to purchasing the vehicle.<sup>236</sup> Finally, the buyers were experienced enough to ask the seller to place the truck on a scanner in order to determine the cause of the check engine light being on which, the buyers noticed during the test drive.<sup>237</sup>

In sum, the buyers in *Sorchaga* knew enough about purchasing vehicles to physically look at the vehicle, take the vehicle on a test drive, and inquire about concerning signs of the vehicle prior to purchasing it. This knowledge is enough to render the “as is” clause an effective disclaimer of implied warranties according to the NYLRC’s critique of the original draft of section 2-316 of the U.C.C.

As a result of this, the court in *Sorchaga* inescapably reads Minnesota Statutes sections 336.2-316(3)(a) beyond its intended reach. The correct holding should have been to render the “as is” clause in the purchase agreement as an effective disclaimer of the implied warranty of merchantability. Not only is this reasoning consistent with the drafters’ intent, but such a reading would not have precluded the buyers in *Sorchaga* from recovering under a fraud cause of action. To succeed on a fraud cause of action, a plaintiff must prove:

(1) a false representation [by the defendant] of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made without knowing whether it was true or false; (3) with the intention to induce [the other party] to act in reliance thereon; (4) that the representation caused [the other party] to act in reliance thereon; and (5) that [the other party] suffered pecuniary damages as a result of the reliance.<sup>238</sup>

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235. *Id.*

236. *See id.* at \*2 (“The plaintiff and her husband returned to Ride Auto on May 21, 2014 with down payment money and requested a test drive of the white, 2008 Ford F350 pick-up truck with approximately 218,893 miles on it.”).

237. The buyers were informed that Ride Auto did not have a certified mechanic that could inspect the check engine light, but the buyers were told that they could bring the vehicle anywhere to have the check engine light checked due to the ASC Warranty on the vehicle. *Id.*

238. *Sorchaga v. Ride Auto, LLC*, 893 N.W.2d 360, 369 (Minn. Ct. App. 2017) (quoting *Valspar Refinish, Inc. v. Gaylord’s, Inc.*, 764 N.W.2d 359, 368 (Minn. 2009)).



The court of appeals correctly affirmed the district court's finding of fraud,<sup>239</sup> and while the defendants requested a reversal of the finding, the Minnesota Supreme Court declined to address it.<sup>240</sup> The first two elements of fraud were satisfied because Sorchaga and her husband testified that the Ride Auto salesman told them the check-engine light was illuminated due to a faulty oxygen sensor, despite Ride Auto's knowledge that the truck was not drivable when Ride Auto purchased it.<sup>241</sup> The third element of fraud was satisfied because the fraudulent statement was made in the context of selling the truck.<sup>242</sup> The fourth element of fraud was satisfied because Sorchaga testified that, if she had known of the engine damage, she would not have bought the vehicle.<sup>243</sup> Finally, the fifth element of fraud was satisfied because Sorchaga purchased the vehicle under the inducement of fraudulent statements and expended costs to have the vehicle inspected.<sup>244</sup>

While Sorchaga would have still received \$14,366.03 in damages under a fraud claim,<sup>245</sup> Sorchaga would not have received \$21,949.35 in attorneys' fees and litigation expenses.<sup>246</sup> This is so, because a reading of the term "circumstances," consistent with its intended reach, would render Sorchaga unable to recover under the Magnuson-Moss Warranty Act for a breach of an implied warranty.<sup>247</sup>

239. See *id.* at 369–73 (applying the elements of fraud to the case at bar and finding sufficient evidence to support the district court's finding of fraud).

240. *Sorchaga v. Ride Auto, LLC*, 909 N.W.2d 550, 554 n.2 (Minn. 2018).

241. *Sorchaga*, 893 N.W.2d at 370–71.

242. *Id.* at 371.

243. *Id.*

244. *Id.*

245. *Id.* at 364.

246. *Id.*

247. See 15 U.S.C. § 2310(d)(2) (2012) (“[A prevailing party] may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys’ fees based on actual time expended) . . .”); Trial Order, *Sorchaga v. Ride Auto, LLC*, No. 19HA-CV-14-3536, 2015 WL 11232597, at \*4 (Minn. Dist. Ct. Oct. 30, 2015) (“A breach of the implied warranty of merchantability under Minnesota law results in a violation of the *Magnuson-Moss Warranty Act* under 15 U.S.C. § 2310(d).”); *Businessperson’s Guide to Federal Warranty Law*, FED.

TRADE COMM’N (2006), <https://permanent.access.gpo.gov/LPS103861/LPS103861.PDF> [<https://perma.cc/BCA6-BNMH>]. The Magnuson-Moss Warranty Act was passed by Congress in 1975. In passing the Act, Congress was focused on four main intentions: (1) improving consumers’ access to warranty information; (2) allowing consumers to comparatively shop for warranties; (3) encouraging warranty

Nevertheless, this disparity in recovery is not a concern that the Minnesota Supreme Court is charged with. While some may find this a harsh result, the U.C.C. was promulgated to be fair to both buyers and sellers.<sup>248</sup>

Minnesota adopted the primary purpose of the U.C.C.<sup>249</sup> “to make uniform the law among the various jurisdictions.”<sup>250</sup> This was the Minnesota Supreme Court’s charge, and the district court itself acknowledged that this important duty is entrusted to the courts.<sup>251</sup> This goal of harmonizing the law among the states is important, if not quintessential, to the U.C.C. because it gets at the very heart of it. Commercial transactions commonly extend beyond one state to the next. While the transaction in *Sorchaga* only involved one state, *Sorchaga* sets a dangerous precedent for those transactions crossing state lines. *Sorchaga* now leaves courts in other jurisdictions grappling with the difficult choice of either applying the language of the U.C.C. consistent with its intended meaning while failing to maintain uniformity or face a second unpleasant alternative of

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competition; and (4) promoting timely and complete performance of warranty obligations. *Id.* Functions of this Act include encouraging companies to resort to alternative dispute resolution procedures for settling disputes, as well as enabling easier access for consumers to resolve warranty disputes in court. *Id.* This latter function also provides for the recovery of “reasonable attorneys’ fees.” *Id.*

248. See Susan K. Fuller, *If You Sell Things, You Need To Know About the Uniform Commercial Code*, LAW OFFICE OF SUSAN K. FULLER, PLLC (Oct. 17, 2011), <http://fullerpllc.com/2011/10/17/if-you-sell-and-buy-things-you-need-to-know-about-the-uniform-commercial-code/> [https://perma.cc/LA62-7NUX] (“The UCC protects buyers and sellers alike. To buyers, it provides assurances (warranties) to buyers about the quality of the goods—and a right to sue if the goods don’t meet the right standards. To sellers, it provides a right to sue if the buyer breaches the contract, and provides a lien process to protect interest in collateral.”).

249. Trial Order, *Sorchaga*, 2015 WL 11232597, at \*4.

250. U.C.C. § 1-103(a)(3) (AM. LAW INST. & UNIF. LAW COMM’N 2017).

251. See Trial Order, *Sorchaga*, 2015 WL 11232597, at \*4 (“[MINN. STAT. § 336.2] must be liberally construed and applied to promote its underlying purposes and policies one of which is to make uniform the law among the various jurisdictions.”).

following a case<sup>252</sup> that is a steep departure from its intended reach in the pursuit of uniformity.<sup>253</sup>

#### V. CONCLUSION

The court in *Sorchaga* fell into the same trap as many courts before it. Blindsided by the court's duty to maintain uniformity, the court in *Sorchaga* failed to look into the drafting history of section 2-316 of the U.C.C. Had the Minnesota Supreme Court gone that extra mile, the court would have uncovered the true meaning of the "circumstances" clause and would have reached an alternative result in *Sorchaga*. Until such a time where the courts refer back to the drafting history of section 2-316 and track its language, or a subsequent revision of section 2-316 is made and adopted by the states, it appears evident that courts will continue to interpret the term "circumstances" in a way that is both varied and unsupported by reason consistent with the drafter's intent.

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252. See, e.g., MINN. STAT. § 645.22 (2018) ("Laws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them."); see also *In re Pillowtex*, 349 F.3d 711, 718 n.8 (3d Cir. 2003) ("Because N.Y. U.C.C. § 1-201(37) is based on the Uniform Commercial Code, decisions from other jurisdictions interpreting this same uniform statute are instructive."); *Mazzuocola v. Thunderbird Prod. Corp.*, No. 90-CV-0405 (ARR), 1995 WL 311397, at \*4 (E.D.N.Y. May 16, 1995) (looking at how Federal courts and other state courts have interpreted a particular provision of the U.C.C. in order to interpret New York's U.C.C. statute); *In re Grubbs Constr. Co.*, 319 B.R. 698, 712 (Bankr. M.D. Fla. 2005) ("Since the UCC has been adopted by all 50 states, and given the uniformity purpose of the UCC, decisions from other states are relevant.") (citation omitted); *In re QDS Components, Inc.*, 292 B.R. 313, 321 n.3 (Bankr. S.D. Ohio 2002) ("Because the UCC is a uniform law, decisions from other state and federal courts interpreting [a state's UCC statute] also may be considered."); *In re PSINet, Inc.*, 271 B.R. 1, 43 n.86 (Bankr. S.D.N.Y. 2001) ("Although it is California's version of the UCC that applies, the Court is not limited to a discussion of cases decided under California law."); *Sorchaga v. Ride Auto, LLC*, 893 N.W.2d 360, 374 (Minn. Ct. App. 2017) ("Because the UCC is a uniform law, we interpret it in light of the interpretations of other states that have adopted it.").

253. See Table 1.

<b>TABLE 1</b>	
<b>State</b>	<b>U.C.C. 1-103 Equivalent</b>
Alabama	ALA. CODE § 7-1-103(a)(3) (West, Westlaw through Act 2018-579) (“This title must be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Alaska	ALASKA STAT. § 45.01.113(a)(3) (West, Westlaw through 2nd Reg. Sess. of the 30th Leg. (2018)) (“The code shall be liberally construed and applied to promote the code’s underlying purposes and policies, which are to . . . make uniform the law among the various jurisdictions.”).
Arizona	ARIZ. REV. STAT. ANN. § 47-1103(A)(3) (Westlaw through 1st Spec. and 2nd Reg. Sess. of the 53rd Leg. (2018)) (“This title must be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Arkansas	ARK. CODE ANN. § 4-1-103(1)(c) (West, Westlaw through 2018 Fiscal Sess. and the 2nd Extraordinary Sess. of the 91st Ark. Gen. Assemb.) (“This subtitle shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
California	CAL. COM. CODE § 1103(a)(3) (West, Westlaw through Ch. 1016 of 2018 Reg. Sess.) (“This code shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Colorado	COLO. REV. STAT. ANN. § 4-1-103(a)(3) (West, Westlaw through 2nd Reg. Sess. of the 71st Gen. Assemb. (2018)) (“This title shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Connecticut	CONN. GEN. STAT. ANN. § 42a-1-103(a)(3) (West, Westlaw through 2018 Feb. Reg. Sess. of the Conn. Gen. Assemb.) (“This title shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various

<b>TABLE 1</b>	
	jurisdictions.”).
Delaware	DEL. CODE ANN. tit. 6, § 1-103(a)(3) (West, Westlaw through 81 Laws 2018, ch.s 200-453) (“The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Florida	FLA. STAT. ANN. § 671.102 (West, Westlaw through 2018 2nd Reg. Sess. of the 25th Leg.) (This code shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.).
Georgia	GA. CODE ANN. § 11-1-103(a)(3) (West, Westlaw through 2018 Legis. Sess.) (“This title shall be liberally construed and applied to promote its underlying purposes and policies which are . . . [t]o make uniform the law among the various jurisdictions.”).
Hawaii	HAW. REV. STAT. ANN. § 490:1-103(a)(3) (West, Westlaw through 2018 2nd Spec. Sess.) (“This chapter shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Idaho	IDAHO CODE ANN. § 28-1-103(a)(3) (West, Westlaw through 2018 2nd Reg. Sess. of the 64th Idaho Leg.) (“The uniform commercial code shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Illinois	810 Ill. COMP. STAT. ANN. 5/1-103(a)(3) (West, Westlaw through P.A. 100-1165, of the 2018 Reg. Sess.) (“The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Indiana	IND. CODE ANN. § 26-1-1-102(2) (West, Westlaw through 2018 2nd Reg. Sess. and 1st Spec. Sess. of the 120th Gen. Assemb.) (“Underlying purposes and policies of IC 26-1 are . . . to make uniform the law among the various jurisdictions.”).

<b>TABLE 1</b>	
Iowa	IOWA CODE ANN. § 554.1103(1)(c) (West, Westlaw through 2018 Reg. Sess.) (“This chapter must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Kansas	KAN. STAT. ANN. § 84-1-103(a)(3) (West, Westlaw through 2018 Reg. Sess. of the Kan. Leg.) (“The uniform commercial code must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Kentucky	KY. REV. STAT. ANN. § 355.1-103 (West, Westlaw through the end of the 2018 Reg. Sess.) (“The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Louisiana	LA. STAT. ANN. § 10:1-103(a)(3) (Westlaw through 2018 3rd Extraordinary Sess.) (“This Title shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . to promote uniformity of the law among the various jurisdictions.”).
Maine	ME. REV. STAT. ANN. tit. 11, § 1-1103(1)(c) (Westlaw through 2017 2nd Reg. Sess. and 2nd Spec. Sess. of the 128th Leg.) (“The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Maryland	MD. CODE ANN., COM. LAW § 1-103(b)(3) (West, Westlaw through 2018 Reg. Sess. of the Gen. Assemb.) (“The underlying purposes and policies of the Maryland Uniform Commercial Code are . . . [t]o make uniform the law among the various jurisdictions.”).
Massachusetts	MASS. GEN. LAWS ANN. ch. 106, § 1-103 (West, Westlaw through Ch. 349, except Ch. 337, of the 2018 2nd Annual Sess.) (“This chapter shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Michigan	MICH. COMP. LAWS ANN. § 440.1103(1)(c) (West, Westlaw

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	through P.A.2018, No. 399, also 403-417, 421, 423, 426, 428, 430, 449, 456, 472, 477, 480, 481, 486-488, 491-503, 509-512, 515-517, 523, 529, 550, 569, 602, 608, 616, 619, 620, 634-636, and 640 of the 2018 Reg. Sess., 99th Mich. Leg.) (“This act must be liberally construed and applied to promote the following underlying purposes and policies . . . [t]o make uniform the law among the various jurisdictions.”).
Minnesota	MINN. STAT. § 336.1-103 (2018) (“The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Mississippi	MISS. CODE ANN. § 75-1-103 (West, Westlaw through 2018 Reg. Sess. and 1st Extraordinary Sess.s) (“The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Missouri	MO. ANN. STAT. § 400.1-103(a)(3) (West, Westlaw through 2018 2nd Reg. Sess. and 1st Extraordinary Sess. of the 99th Gen. Assemb.) (“This chapter shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Montana	MONT. CODE ANN. § 30-1-102 (West, Westlaw through chs. effective, Oct. 1, 2017 sess.) (“This code must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Nebraska	NEB. REV. STAT. ANN. § 1-103(a)(3) (West, Westlaw through 2nd Reg. Sess. of the 105th Leg. (2018)) (“The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Nevada	NEV. REV. STAT. ANN. § 104.1103 (West, Westlaw through 79th Reg. Sess. (2017) of the Nev. Leg.) (“The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various

<b>TABLE 1</b>	
	jurisdictions.”).
New Hampshire	N.H. REV. STAT. ANN. § 382-A:1-103(a) (Westlaw through Ch. 379 of the 2018 Reg. Sess., and C.A.C.R. 15 and 16) (“This chapter shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
New Jersey	N.J. STAT. ANN. § 12A:1-103 (West, Westlaw through 2018 Leg. Sess., ch. 142 & J.R. No. 12) (“The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
New Mexico	N.M. STAT. ANN. § 55-1-103(a)(3) (West, Westlaw through 2nd Reg. Sess. of the 53rd Leg. (2018)) (“The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
New York	N.Y. U.C.C. Law § 1-103 (McKinney, Westlaw through 2018 Leg. Sess., chs. 1–461) (“This act must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
North Carolina	N.C. GEN. STAT. ANN. § 25-1-103 (West, Westlaw through the end of the 2018 Reg. Sess., and S.L. 2018-140 of the Extra Sess.s of the Gen. Assemb.) (“This Chapter shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
North Dakota	N.D. CENT. CODE ANN. § 41-01-03 (West, Westlaw through 2017 Reg. Sess. of the 65th Leg. Assemb.) (“This title must be liberally construed and applied to promote the title’s underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Ohio	OHIO REV. CODE ANN. § 1301.103 (West, Westlaw through File 115, 117, 119, 122, 126, 128, 132, 135, 138, 139, 143, 144, 146, 151, 152 and 154 of the 132nd Gen. Assemb. (2017-2018)) (“Chapters 1301., 1302., 1303., 1304., 1305., 1307., 1308., 1309., and 1310. of the Revised Code must be liberally construed and applied to promote their underlying



<b>TABLE 1</b>	
	purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Oklahoma	OKLA. STAT. ANN. tit. 12A, § 1-103 (West, Westlaw through 2nd Reg. Sess. of the 56th Leg. (2018)) (“The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Oregon	OR. REV. STAT. ANN. § 71.1030 (West, Westlaw through 2018 Reg. Sess. and 2018 Sp. Sess. of the 79th Leg. Assemb.) (“The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Pennsylvania	13 PA. STAT. AND CONS. STAT. ANN. § 1103 (West, Westlaw through 2018 Reg. Sess. Act 164) (“This title must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Rhode Island	6A R.I. GEN. LAWS ANN. § 6A-1-103 (West, Westlaw through Ch. 353 of the Jan. 2018 sess.) (“Title 6A must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
South Carolina	S.C. CODE ANN. § 36-1-103 (Westlaw through 2018 Act No. 292) (“This title must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
South Dakota	S.D. CODIFIED LAWS § 57A-1-103 (Westlaw through 2018 Reg. & Sp. Sess.s and Sup. Ct. Rule 18-15) (“This title shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Tennessee	TENN. CODE ANN. § 47-1-103 (West, Westlaw through 2018 2nd Reg. Sess. of the 110th Tenn. Gen. Assemb.) (“Chapters 1-9 of this title must be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).

<b>TABLE 1</b>	
Texas	TEX. BUS. & COM. CODE ANN. § 1.103(a)(3) (West, Westlaw through 2017 Reg. and 1st Called Sess.s of the 85th Leg.) (“This title must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Utah	UTAH CODE ANN. § 70A-1a-103 (West, Westlaw through 2018 2nd Sp. Sess.) (“This title must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Vermont	VT. STAT. ANN. tit. 9A, § 1-103 (West, Westlaw through 2017-2018 Vt. Gen. Assemb. (2018) and through all acts of the 1st Sp. Sess. of the Adjourned Sess. of the 2017-2018 Vt. Gen. Assemb.) (“This title must be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Virginia	VA. CODE ANN. § 8.1A-103 (West, Westlaw through 2018 Reg. Sess. & End of the 2018 Sp. Sess. I.) (“The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . to make uniform the law among the various jurisdictions.”).
Washington	WASH. REV. CODE ANN. § 62A.1-103 (West, Westlaw through 2018 Reg. Sess.) (“This title must be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
West Virginia	W. VA. CODE ANN. § 46-1-103 (West, Westlaw through 2018 1st Extraordinary Sess.) (“This chapter must be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Wisconsin	WIS. STAT. ANN. § 401.103 (West, Westlaw through 2017 Act 370) (“Chapters 401 to 411 must be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).
Wyoming	WYO. STAT. ANN. § 34.1-1-103 (West, Westlaw through 2018

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	Budget Sess. of the Wyo. Leg.) (“This act shall be liberally construed and applied to promote its underlying purposes and policies, which are . . . [t]o make uniform the law among the various jurisdictions.”).

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