

The logo for K&L GATES, featuring the text "K&L GATES" in white, uppercase letters on an orange rectangular background. This logo is positioned in the upper left corner of the slide, partially overlapping a large blue background image that features a bokeh effect of light spots.

K&L GATES

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

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TYPES OF LAW

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

MARITIME LAW VS. STATE LAW

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

BOAT SALE CONTRACT

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

SELLER'S WARRANTIES-- MERCHANTABILITY

- *Implied warranty*
 - no writing required
- “Fair average quality”
 - Not a warranty of perfection
- Seller must be *merchant* in goods of that kind
 - but use of *broker* can create merchant status

SELLER'S WARRANTIES--FITNESS FOR PARTICULAR PURPOSE

- Also *implied* warranty
- Applies to specific purpose (not just general quality)
 - “I need a boat that accommodates eight people”
 - “I need a boat that’s good offshore”
- Requirements:
 - Seller must have reason to know buyer’s intended purpose;
 - Buyer must rely on seller’s skill and judgment

EXPRESS WARRANTIES

- Affirmation of fact by seller
 - “This boat will do 35 knots.”
- Description of goods (spec sheet)
- Samples or models
- Must be “part of the basis of the bargain”
- No need to mention “guarantee” or “warranty”
- Seller’s opinion (“puffing”) does not count

DISCLAIMER OF WARRANTIES

- Dealer usually wants to disclaim warranties
- Disclaimer must be in *contract of sale*
- Merchantability; disclaimer must
 - Mention “merchantability”; and

- **BE CONSPICUOUS**

- Make no other written warranties
- “As is” disclaims all warranties

MANUFACTURER'S WARRANTY LIABILITY

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

COMMUNICATING MANUFACTURER'S WARRANTY DISCLAIMERS

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

CONTRACT TAKEAWAY

- Sale contract should
 - Disclaim all warranties on behalf of seller, specifically mentioning merchantability;
 - Refer to manufacturer's limited warranty as only warranty on the boat

ACCEPTANCE AND REJECTION

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

WHAT IS “REJECTION?”

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

REVOCACTION OF ACCEPTANCE

- Can still occur despite valid acceptance
- Non-conformity must “*substantially impair*” value of boat to buyer (not just any non-conformity)
- Types of non-conformities:
 - *Known* as of acceptance, but Buyer reasonably assumed it would be fixed (“we’ll take care of that...”);
 - *Unknown* as of acceptance, and difficult to discover (hull leaks in rough seas);
 - *Unknown* as of acceptance, and Seller said it wasn’t there (“this hull contains no plywood....”).

NOTICE OF REVOCATION

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

BUYER'S REMEDIES FOR REJECTION/REVOCAION

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

BREACH OF WARRANTY

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

REMEDIES FOR BREACH

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

TYPICAL WARRANTY LIMITATIONS

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



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