IMPLIED WARRANTIES IN THE SALE OF DISEASED LIVESTOCK IN IOWA; A RETURN TO CAVEAT EMPTOR?

The subject of implied warranties in the sale of diseased livestock is "one of the most controversial and rapidly growing topics in the field of agricultural law today."[1] Due to the extensiveness of potential damages from the sale of diseased animals, both buyers and sellers desire protection from the laws. As a result of the conflicting interests between buyers and sellers, the laws as to their respective liability have undergone numerous changes.

Before the Uniform Commercial Code (U.C.C.) was accepted by most states, it was common for buyers of diseased livestock to be squarely confronted with the doctrine of *caveat emptor*. As such, no theory of implied warranty was available as a means of remedy to the buyers. Buyers were often confronted with inequitable burdens and losses. As the U.C.C. became widely accepted, however, the tides shifted and the courts began applying more equitable principles to the buyers, allowing recoveries under implied warranty theories where the buyers relied on statements or representations made by the sellers as to the fitness or merchantability of the diseased animal. Until recently, states generally have extended the remedy of implied warranties to the sale of diseased livestock. But it seems that the pendulum may be swinging back again. In 1980, the Iowa Legislature enacted chapter 554A which, in effect, states that all implied warranties arising under the U.C.C. will *not* be applied to the sale of livestock if certain information is disclosed to the buyer.[2] Similar statutes have also been recently enacted in several other jurisdictions.[3]

This Note will analyze the purpose of chapter 554A to determine its workability and fairness, and to detail what remedies are left for the buyers. The focus of the analysis will be from the buyer's point of view, in an effort to determine: Is chapter 554A a return to *caveat emptor*?

I. A Historical Look at the Law of Livestock Buyer/Seller Liabilities

A. *Caveat Emptor*

The antiquated concept of *caveat emptor* brings to mind countless horror stories of unprotected buyers faced with inequitable burdens and losses. The unyielding doctrine received the support of courts for several years, as

1. 2 N. Harl, Agricultural Law § 9.04[4] (1981).
2. *See* Iowa Code ch. 554A (1981) (reprinted in note 8 *infra*).
3. *See* note 55 *infra*.

attested by reviewing many cases which have long since been overturned.[4] An example of a 1917 Iowa case in which the doctrine of *caveat emptor* was applied is *Rynas v. Keck*.[5] In *Rynas*, a buyer of pigs sought to recover for damages under a theory of implied warranty when he discovered that the pigs he purchased were diseased and unfit for consumption. The court stated the law as being: "If goods which are the subject of sale are in existence and may be inspected by the buyer, and there is no fraud on part of the seller, the maxim caveat emptor applies, even though the defects are latent, and not discoverable upon examination."[6] Therefore, the buyer who may be faced with the loss of his entire stock of animals due to the purchase of a few diseased animals, may have to absorb the entire loss. The *Rynas* case is a typical example of the burdens placed on buyers by the doctrine of *caveat emptor* and the often inequitable results.

B. *U.C.C.*

Acknowledging the inequities and emphasizing a desire to balance the burdens between buyers and sellers, most states adopted the Uniform Commercial Code or similar laws.[7] The effect of the U.C.C. was to place more burdens on sellers by recognizing more causes of action for the buyers.

The Iowa U.C.C. sections which are applicable to implied warranties are sections 554.2314 (Implied warranty: merchantability-usage of trade)[8] and

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4. *See, e.g.*, Burnett v. Hensley, 118 Iowa 575, 92 N.W. 678 (1902); Barton v. Dowis, 315 Mo. 226, 285 S.W. 988 (1926); Hadley v. Clinton County Importing Co., 13 Ohio St. 502, 82 Am. Dec. 454 (1862).

5. 179 Iowa 422, 161 N.W. 486 (1917).

6. *Id.* at 427, 161 N.W. at 488.

7. Louisiana is the only state which has not adopted the U.C.C.

8. IOWA CODE § 554.2314 (1981):

Implied warranty: merchantability-usage of trade.

1. Unless excluded or modified (section 554.2316), 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.

2. Goods to be merchantable must be at least such as

a. pass without objection in the trade under the contract description; and

b. in the case of fungible goods, are of fair average quality within the description; and

c. are fit for the ordinary purposes for which such goods are used; and

d. run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

e. are adequately contained, packaged, and labeled as the agreement may require; and

f. conform to the promises of affirmations or fact made on the container or label if any.

3. Unless excluded or modified (section 554.2316) other implied warranties may arise from course of dealing or usage of trade.

554.2315 (Implied warranty-fitness for particular purpose).[9] Although the language in sections 554.2314 and 554.2315 refers to implied warranties in the sale of "goods," the Iowa Supreme Court has held that the word "goods" should be construed broadly to include cattle.[10] The court also distinguished the conflicting older cases which had applied *caveat emptor* principles (including *Rynas*) from cases which are now governed by the U.C.C.[11] The court's acknowledgement of livestock as "goods" protected by implied warranties has been re-emphasized and expanded by numerous cases in the last several years.[12]

The sale of livestock is not limited, however, to dealings between one buyer and one seller. A method of selling which is often used in the sale of livestock is a public auction sale. The implied warranty protection of the U.C.C. has also been extended to the sale of livestock at public auctions, subject, however, to general laws of auction/auctioneer liability. It is a well established rule in Iowa that where an auctioneer acts in the capacity of an agent and sells livestock for a disclosed owner, the auctioneer incurs no personal liability to the buyer, but where the auctioneer sells the livestock without disclosing the owner, the auctioneer is personally liable to the buyer.[13] It is also a general rule that "a sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner."[14] As a result of the rules of auctioneer liability, buyers have often found their implied warranty remedies to lie against the auctioneer or auction company, rather than the previous owner of the livestock.[15]

C. *Remedies Available*

Given the shift by the legislatures and courts to offer greater protection to buyers, there appear to be four civil remedies available to buyers of diseased livestock:

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9. IOWA CODE § 554.2315 (1981):
Implied warranty-fitness for particular purpose. 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.

10. *See* Reed v. Bunger, 255 Iowa 322, 333, 122 N.W.2d 290, 297 (1963).

11. *Id.*

12. *See, e.g.*, Vorthman v. Keith E. Myers Enter., 296 N.W.2d 772 (Iowa 1980); Holm v. Hansen, 248 N.W.2d 503 (Iowa 1976); W & W Livestock Enter. v. Dennler, 179 N.W.2d 484 (Iowa 1970).

13. *See* Barrett v. Rumeliote, 256 Iowa 1, 6, 126 N.W.2d 322, 325 (1964).

14. *See* Goltz v. Humbolt Livestock Auction, Inc., 255 Iowa 1384, 1389, 125 N.W.2d 773, 775 (1964).

15. *See, e.g.*, Barrett v. Rumeliote, 256 Iowa 1, 126 N.W.2d 322 (1964); Goltz v. Humbolt Livestock Auction, Inc., 255 Iowa 1384, 125 N.W.2d 773 (1964); Doden v. Housh, 251 Iowa 1271, 105 N.W.2d 78 (1960).

1. Negligence;[16]
2. Fraud or deceit;[17]
3. Express warranty;[18] and
4. Implied warranty.[19]

In addition, states have the power to enact laws regulating the transportation, inspection and sale of animals. As a result, a seller may also be held criminally liable for a violation of a state statute.[20]

D. *Defenses*

Certain defenses are recognized in an action for implied warranty. Good faith and lack of negligence on the part of the seller are *not* allowed as defenses.[21] Two defenses which are recognized, however, are waiver of warranty, and latent and patent defects.[22]

A waiver is generally a negation of either all warranties or only certain warranties. Usually waivers are set forth in the contract for sale. The defense of waiver is strongly limited by Iowa Code section 554.2316 (1-4).[23] Additionally, courts are reluctant to enforce waivers, particularly when the results to the buyer are severe. Even where the requirements of section 554.2316 have been met, Iowa courts have consistently refused to rule that a waiver is a defense to an implied warranty action as a matter of law, but instead have submitted the question to the jury.[24] Another general rule is that a seller is liable for latent defects.[25] In most jurisdictions a seller is not liable for patent defects (defects known or obvious to the buyer). The Iowa Code, for example, provides that:

> 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 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

16. *See* 2 N. HARL, AGRICULTURAL LAW § 9.04[1] (1981).
17. *See id.* § 9.04[2].
18. *See id.* § 9.04[4].
19. *See id.*
20. IOWA CODE §§ 163.21, 163A.10, 164.31, 165.33, 166.39, 166A.14, 166C.8 (1981).
21. Barrett v. Rumeliote, 256 Iowa at 5, 126 N.W.2d at 325; Reed v. Bunger, 255 Iowa at 334, 122 N.W.2d at 298.
22. 2 N. HARL, AGRICULTURAL LAW § 7.04[6] (1981).
23. IOWA CODE § 554.2316 (1981).
24. *See* Vorthman v. Keith E. Meyers Enter., 296 N.W.2d 722 (Iowa 1980); Goltz v. Humbolt Livestock Auction, Inc., 255 Iowa 1384, 125 N.W.2d 773 (1964); Select Pork, Inc. v. Babcock Swine, Inc., 640 F.2d 147 (8th Cir. 1981).
25. *See, e.g.*, Breitenkamp v. Community Coop. Ass'n, 253 Iowa 839, 114 N.W.2d 323 (1962).

dealing or course or performance of usage or trade.[26]

The wording of this section is taken directly from the U.C.C. section, therefore, many other states have virtually identical provisions in their statutes. Statutes of this nature which tend to exclude or modify the provisions of the implied warranty liability generally follow the implied warranty sections and are usually captioned "Exclusions or modification of warranties."

With this brief history of the liabilities borne by both the buyers and sellers and the recognition of the prevailing view in Iowa and other jurisdictions of applying the implied warranty remedies against sellers of diseased livestock in mind, it is curious that the adoption of Iowa Code chapter 554A has, again, changed the law, and has taken away remedies to the buyers which were once valid in Iowa, and which still are valid in many other states.

II. Legislative Purpose of Chapter 554A

In order to understand why the Iowa Legislature enacted chapter 554A, it is helpful to understand what prompted their consideration of such a seemingly drastic change in livestock buyers' remedies.

As previously stated, livestock was not included as a "good" within the meaning of the Iowa U.C.C. implied warranty sections until the case of *Reed v. Bunger*[27] in 1963. At first, not many actions were brought by livestock buyers who had purchased diseased animals because most livestock buyers simply *expect* some sickness to be involved, due to the very nature of the "good" they are purchasing.[28] But since the courts' recognition of cattle as a "good," many more buyers started exercising their remedies of implied warranty. As such, the full impact of extending implied warranties to livestock was not felt immediately. As the effects became more noticeable to the seller, however, dissension began.

Sellers argued forcefully that the implied warranties afforded by the U.C.C. should not extend to the sale of livestock. Their argument was that implied warranties were meant to protect only buyers who purchased goods from manufacturers, in other words, goods which were in the manufacturers' *exclusive control.* Livestock, they argued, were "not a piece of inanimate equipment"[29] capable of being within the exclusive control of the seller.

To demonstrate the sellers' argument, a brief scenario may be helpful: Many "feeder" livestock animals which are sold at public auction are brought in from out of state. These animals are often quite young. Immedi-

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26. Iowa Code § 554.2315 (1981).

27. 255 Iowa 322, 122 N.W.2d 290 (1963).

28. Interview with Bruce Berven, Executive Vice President of Iowa Cattlemen's Ass'n, in Des Moines (Nov. 6, 1981).

29. Interview with Mark Truesdell, Lobbyist for ch. 554A and Attorney, in Des Moines (Nov. 6, 1981).

ately before being sold, these young animals have been weaned from their mother, administered a series of vaccinations, dipped for parasites, shipped hundreds of miles by train or truck and have been exposed to countless other animals from other states. If they are not sold by the first auction company, they may be moved to another auction company for another sale and so the scenario continues.[30]

Given this scenario, sellers argued that the livestock was not in their exclusive control at all times prior to the sale, as were inanimate goods produced by manufacturers, therefore an extension of the implied warranties to cover livestock was not only unreasonable, but highly inequitable.[31] This discussion between the buyers and sellers continued for approximately ten years, each faction desiring to protect its own interests. Consequently, the Committee on Agriculture of the Iowa Legislature was prompted to visit with various buyers and sellers in the state to determine what might be a more satisfactory approach.[32] From visiting with several associations[33] the Committee on Agriculture determined that the primary interest of the buyers was to know the origin of the livestock.[34] If they knew prior to the sale that the cattle were from a local farm which was reputed to sell only quality livestock, they would be able to buy accordingly. If the cattle was from out of state, however, possibly having been exposed to countless other animals, the buyers could purchase the livestock at a lower price and take immediate action to alleviate any problems with potential sickness or disease. The Committee on Agriculture concluded that buyers would rather have knowledge of the previous owners so that they could make an informed decision, than the remedy of a cause of action for implied warranty, which might take years to litigate.[35]

The auction companies as well had an interest in the discussion.[36] The liabilities of implied warranties seriously threatened the sale barn industry given the status of the law regarding auctioneer/auction company liability. The disclosures desired by the buyers would create a burden upon the auction companies and the efficient operation of a sale since a sale operates on the rapid succession of livestock passing in front of several buyers. Auction-

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30. *Id.*

31. Interview with Bruce Berven, Executive Vice President of Iowa Cattlemen's Ass'n in Des Moines (Nov. 6, 1981).

32. Interview with Larry Birch, Drafter of ch. 554A and Attorney, in Des Moines, (Oct. 15, 1981).

33. Associations contacted include: Iowa Cattlemen's Ass'n, Ames, Iowa; Iowa Pork Producer's Ass'n, Des Moines, Iowa; Iowa Farm Bureau, Des Moines, Iowa; Iowa Dep't of Agriculture, Des Moines, Iowa; Iowa Veterinarian Medical Soc'y, Des Moines, Iowa; and Iowa Livestock Mkt. Ass'n, Colfax, Iowa.

34. Interview with Mark Truesdell, Lobbyist for ch. 554A and Attorney, in Des Moines (Nov. 6, 1981).

35. *Id.*

36. *Id.*

eers argued that it would lessen the high pitch and excitement of the sale if the auctioneer had to make disclosures with each group of livestock passing through. Since many auction companies include a clause in the bill of sale as to the animals' prior health imspection, the auction companies argued that this disclosure was sufficient.

As a result of the three different interest groups each voicing concerns and after extensive polling of opinions and suggestions, Larry Birch, for the Committee on Agriculture, drafted House File No. 2546, which was passed after three long years of debate in the general assembly. The bill became known as "Chapter 554A—Livestock Warranty Exemption."[37]

III. Chapter 554A—Its Language and Meaning

The thrust of chapter 554A[38] is that the Iowa implied warranty provisions contained in sections 554.2314 and 554.2315 will not include "cattle,

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37. Iowa Code ch. 554A (1981).

38. Iowa Code ch. 554A (1981):

554A.1 Livestock sales-when exempt from implied warranty. Notwithstanding section 554.2316, subsection 2, all implied warranties arising under sections 554.2314 and 554.2315 are excluded from a sale of cattle, hogs, sheep and horses if the following information is disclosed to the prospective buyer or the buyer's agent in advance of the sale, and if confirmed in writing at or before the time of acceptance of the livestock when confirmation is requested by the buyer or the buyer's agent:

a. That the animals to be sold have been inspected in accordance with existing federal and state animal health regulations and found apparently free from any infectious, contagious, or communicable disease.

b. One of the following, as applicable:

(1) Except when the livestock have been confined with livestock from another source or assembled within the meaning of subparagraph 2 of this paragraph, the name and address of the present owner, and whether or not that owner has owned all of the livestock for at least thirty days.

(2) If the livestock have been confined with livestock from another source or assembled from two or more sources within the previous thirty days, the livestock shall be represented as being "assembled livestock". As used in this subparagraph, "confined with livestock from another source" means the placement of livestock in a livestock auction market, yard, or other unitary facility in which livestock from another source are confined, but does not include livestock confined at the facility where the sale takes place if such confinement is for less than forty-eight hours prior to the day of the sale; provided that livestock which are not sold after being confined with livestock from another source at a facility and offered for sale shall be deemed "assembled livestock" for the thirty-day period following the day when offered for sale.

If the livestock are represented as being "assembled livestock", the name and address of the present owner shall be disclosed.

In the case of an auction sale, the disclosure required by this subsection shall be made verbally immediately before the sale by the owner, an agent for the owner, or the person who is conducting the auction of the lot of livestock in question. Warranties shall be implied to the person who is conducting the auction only if the disclosure contains representations which he or she knew or had reason to know were untrue.

hogs, sheep and horses"[39] if certain disclosures are made to the buyer before the sale. The language of the statute does not, therefore, exclude warranty protection when the disclosures are made after the sale, or in the bill of sale. Furthermore, those disclosures must be confirmed in writing "at or before the time of acceptance of the livestock"[40] if the buyer requests confirmation.

The two primary disclosures required by chapter 554A are (1) that the livestock have been inspected prior to the sale and have been found "apparently" free from disease; and (2) that the previous owner or the supplier of the livestock be identified.[41]

The language in 554A.1(a) comes almost directly from federal and state health inspection forms.[42] As previously mentioned, many states have promulgated regulations regarding animal health and transportation.[43] Even an inspection according to those regulations, however, cannot absolutely guarantee immunity from disease. It is a well known fact among veterinarians and other health inspectors that some diseases are almost impossible to detect, particularly in animals which do not demonstrate the characteristics of the disease, but nevertheless, may be carriers of the disease.[44] Thus, the language of chapter 554A explicitly provides that the animals are "apparently" free from disease. This language acts as a precaution to buyers, yet offers protection to both veterinarians (or other health inspectors) and sellers.

Additionally, the language of chapter 554A.1(b) serves to distinguish "home-grown" or local animals from "tourist" or "order" livestock.[45] The distinction is a very important one to buyers, and often reflects a wide variance in prices offered. Consequently paragraph (b)(1) refers to local livestock, in that the owner must have owned the livestock "for at least thirty days."[46] This provision excludes livestock which may have been purchased by the auction company prior to the sale, or cattle which have been shipped to Iowa and "beefed-up" during the interim. Obviously, buyers would rather purchase livestock which fall within the meaning of paragraph (b)(1). Consequently, animals in this category bring higher prices. Conversely, paragrpah

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39. IOWA CODE § 554A.1 (1981).

40. *Id.*

41. *See* IOWA CODE § 554A.1 (1981).

42. Interview with Mark Truesdell, Lobbyist for ch. 554A and Attorney, in Des Moines (Nov. 6, 1981).

43. *See, e.g.*, IOWA CODE §§ 163 (Infectious And Contagious Diseases Among Animals), 163A (Brucellosis Control in Swine), 164 (Eradication of Bovine Brucellosis), 165 (Eradication of Bovine Tuberculosis), 166 (Hog-Cholera Virus and Serum), 166A (Scabies Control In Sheep), 166B (Eradication of Hog Cholera), 166C (Aujeszky's Disease), 167 (Use and Disposal of Dead Animals).

44. Interview with Dr. Deidre Farr, Veterinarian, in Des Moines (Nov. 2, 1981).

45. Interview with Bruce Berven, Executive Vice President of Iowa Cattlemen's Ass'n, in Des Moines (Nov. 6, 1981); Interview with Mark Truesdell, Lobbyist for ch. 554A and Attorney, in Des Moines (Nov. 6, 1981).

46. IOWA CODE § 554A.1 (1981).

(b)(2) refers to "tourist" animals, meaning animals which have been shipped in from another state. An animal which falls within this paragraph must be disclosed by the seller as "assembled livestock." The term "assembled livestock" includes animals which have been exposed or placed with other animals within the last thirty days.[47] This provision does not include, however, animals which, under paragraph (b)(1) may have been confined at the auction company for less than forty-eight hours.[48] This paragraph contains the key disclosure which was desired by the buyers. It lets the buyers know the identity of the supplier of the livestock (whether from a local farm or some other state or area), so that buyers can make an informed decision prior to the sale.

The final section of chapter 554A deals exclusively with the impact of this statute on auction companies. It requires that the disclosure mandated by paragraphs (a) and (b) be made *orally* before the sale. Since the sale is considered final at the "fall of the hammer,"[49] this precludes a mere inclusion of the disclosures in the bill of sale. Any disclosure made after the sale will not be sufficient to satisfy the statute and, accordingly, will not exempt the buyer from an implied warranty remedy. This section also provides that the auctioneer will not be held liable for misrepresentation or fraud if he makes disclosures with are false unless he knew or had reason to know that the disclosures were false. This would seem to apply whether the auction company purchased the livestock before the sale and was selling the livestock as a seller, or as an agent for another seller.

Again, the statute requires primarily two disclosures, whether at an auction sale or in a private sale: (1) the identity of the past owner (or whether the animals were "assembled livestock" or "local" livestock); and (2) whether the animals have been inspected and found "apparently" free from disease. The disclosures must not only be made prior to the sale *orally* but they must also be confirmed in writing at or before the time of acceptance, if requested by the buyer.

IV. Equitable Considerations of Chapter 554A

It should be considered whether Iowa statute 554A has reached an equitable balance between the buyers and sellers. It must be borne in mind that the sellers' desire was to alleviate the tremendous burden of liability imposed by the implied warranty remedies as applied to the sale of livestock and the buyers' desire was to know the origin of the livestock prior to the sale.[50]

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47. *Id.*
48. *Id.*
49. *See* note 14 *supra.*
50. *See* notes 31, 34 *supra.*

It appears that this statute satisfies both these desires.[51] The seller has the security that no breach of implied warranty can be found if the seller has complied with the terms of the statute and made the required disclosures. While the law prior to the adoption of chapter 554A would have found liability against the seller if the buyer purchased an animal which, unbeknownst to the seller or buyer, was diseased,[52] the law now would not find such liability. Before the enactment of chapter 554A, a buyer needed only to prove the following elements in order to bring an action for breach of implied warranty:

> *[i]—Of Merchantability . . .*
> (1)there was a defect in the product (within meaning of the U.C.C.) when it left the control of the manufacturer/[seller]; and
> (2)there was a causal relationship between the defect and the injury sustained.
> *[ii]—Of Fitness . . .*
> (1)the seller was apprised of or had reason to know of the product's intended use;
> (2)the purchaser relied upon the skill and know-how of the seller in the selection of the product; and
> (3)the injury was caused by the failure of the product to be fit for the particular purpose.[53]

With the enactment of chapter 554A, however, proof that the seller made the necessary disclosures is a complete defense to an action for breach of implied warranty.

Buyers, on the other hand, should receive the desired disclosures. If they do not, they are not precluded from a cause of action for breach of implied warranty. A serious problem, however, may arise when the buyer purchases livestock which are "apparently" free from disease and whose previous owner was disclosed, but nonetheless the animals are diseased. As long as the disclosures required by chapter 554A are made, the buyer has no implied warranty remedies.[54] Unless it can be proven that the veterinarian or inspector was negligent in the health inspection, that the seller acted fraudulently, or that the seller breached express warranties, the buyer may have to absorb a tremendous loss.[55]

Obviously, the potential damages could be staggering. The purchase of one animal which is a "carrier" of an infectious or communicable disease could destroy the buyer's entire herd. Not only could the entire herd of ani-

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51. *But see* Note, *The Iowa Livestock Warranty Exemption: Illusory Protection for the Buyer*, 67 IOWA L. REV. 133 (1981) (asserting that chapter 554A is an unequitable statute causing damage to livestock buyers).

52. *See* note 21 *supra*.

53. 2 N. HARL, AGRICULTURAL LAW § 7.04 (1981).

54. *See* IOWA CODE ch. 554A (1981).

55. *Id.*

mals be killed, or diseased and thereby be unfit for their breeding or feeding purposes, but many other damages could arise. For example, recovery of damages in breach of implied warranty actions has been allowed for the animals themselves, for the expenses of treatment—efforts to save the animals, for the expense of protecting the healthy animals, for the disease communicated to human beings, for the costs of destroying the animal, for disposing of the carcass or disinfecting the contaminated premises, for the loss of profits or injury to the business, and for other special or consequential damages.[56] Viewed in this light, the statute seems to expose the buyers to the risk of a tremendous loss with no remedy.

Moreover, the buyer may find that he could have an implied warranty remedy in another state, but not in Iowa. A slim majority of the states still allow recovery under the U.C.C. implied warranty sections in the sale of diseased livestock.[57] It seems somewhat inequitable that the buyer could recover millions of dollars in damages from a seller when he made the purchase in another state, whereas in Iowa he must absorb the entire loss.

Another question is why are only horses, sheep, cattle, and hogs covered under chapter 554A. A poultry seller may also desire the protection from breach of implied warranty actions. Or what about foxes, mules and dogs?[58] It seems that the rationale behind limiting the implied warranty coverage should also apply to other animals. Perhaps the answer lies in the likelihood of disease in certain animals and the severity of damages involved. Or perhaps the answer is simply that the line must be drawn somewhere. At any rate, this is a question which, if it arises, must be addressed by the courts and the legislature.

V. Effects of Chapter 554A

The best test of whether chapter 554A is having any substantial effect in the livestock industry would be to examine cases decided since its adoption. To date, however, the Iowa Supreme Court has not construed the statute.

Since the statute has been enacted, it seems that more disclosures have been made to the buyers. While most auction companies still do not make

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56. For an excellent discussion of damages recoverable in breach of implied warranty actions for the sale of diseased livestock, *see* Annot. 87 A.L.R.2d 1317 (1963). *See also* Annot. 51 A.L.R. 498 (1927); Annot. 35 A.L.R.2d 1273 (1954).

57. Interview with Dennis Casey, Associate Manager of Livestock Marketing Ass'n, in Kansas City (Nov. 10, 1981).

The following 21 states have enacted legislation which excludes or modifies the implied warranty remedies as applied to the purchase and sale of livstock, any state not listed below still allows the U.C.C. implied warranty coverage in the purchase and sale of livestock: Alabama, Arkansas, Florida, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Michigan, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Wyoming. (Legislation is pending in Virginia). *Id.*

58. *See* Annot. 53 A.L.R. 2d 892 (1957) (recovery allowed for foxes, mules and dogs).

all the required disclosures[59] under chapter 554A, it appears that some auction companies are starting to make the disclosures.[60] In fact, a few auction companies have started to tape record the sale and the auctioneer's remarks,[61] in an effort to protect themselves and as proof of the disclosures. Such practices may become more popular as the statute comes to the attention of more buyers, sellers and auction companies. It has been suggested that, in order to further protect themselves from an action for breach of implied warranty, the sellers should include a paragraph in the contract of sale which states that the required disclosures have been made, and to ask the buyer to initial the paragraph.[62]

VI. Other Approaches

Until recently, almost all states included livestock in their U.C.C. implied warranty sections. Even today, a slim majority of the states still hold that the buyers of livestock will be afforded a remedy under the U.C.C. implied warranty sections. But in the last few years, several states have adopted modifications to their U.C.C. provisions which limit the implied warranty protection as applied to livestock. Undoubtedly, these changes are due to an outcry by the sellers who felt the burden imposed on them was too great, given the very nature of the livestock, as opposed to inanimate pieces of equipment. To date, however, no state has enacted a statute which even remotely resembles Iowa's statute.

In Texas, for example, fairly recent case law demonstrates that implied warranties were extended to livestock. In *Calloway v. Manion*,[63] the Fifth Circuit Court of Appeals held that a horse dealer was subject to the implied warranties of the code. Similarly, in *Rawls v. Holt*,[64] the court of civil appeals held that an implied warranty could be found in connection with the sale of livestock. A 1979 amendment to the Texas Code, however, states that "[t]he implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young."[65]

Nebraska has recently enacted a similar exclusion. Under the U.C.C. section of the Nebraska Code which is captioned "Exclusion or modification of warranties," it states: "(d) with respect to the sale of cattle, hogs, and

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59. Interview with Bruce Berven, Executive Vice President of Iowa Cattlemen's Ass'n, in Des Moines (Nov. 6, 1981); Interview with Harold Foster, cattle buyer, in Lamoni (Oct. 23, 1981).

60. Interview with Bruce Berven, Executive Vice Prsident of Iowa Cattlemen's Ass'n, in Des Moines (Nov. 6, 1981).

61. Interview with Mark Truesdell, Lobbyist for ch. 554A and Attorney, in Des Moines (Nov. 6, 1981).

62. *Id.*

63. 572 F.2d 1033 (5th Cir. 1978).

64. 193 S.W.2d 536 (Tex. Civ. App. 1946).

65. Tex. Bus. & Com. Code Ann. § 2.316(f) (Supp. 1982).

sheep, there shall be no implied warranty that the cattle, hogs, and sheep are free from disease."[66] It is interesting to note that the Nebraska exclusion does not include horses, as do the Texas and Iowa laws.

The Missouri Legislature modified its application of implied warranties in 1980 in chapter 277 of its code, entitled "Missouri Livestock Marketing Law" and states that:

> Warranties of merchantability or fitness to be in writing
> If a contract for the sale of livestock does not contain a written statement as to a warranty of merchantability or fitness for a particular purpose, the seller is not liable for damages resulting from the lack of merchantability or fitness for a particular purpose of the livestock sold under the terms of that contract.[67]

This small sampling of the other states' approaches suggests that the Iowa Legislature did not rescind the buyers' remedies nearly as far as they could have, or as far as other states have. While other states have, without a doubt, returned to the principles of *caveat emptor* in the sale of livestock, Iowa has not taken such a drastic step. Though the buyers in Iowa have given up their implied warranty remedies in some instances,[68] their remedies under implied warranty theories are by no means exhausted. In fact, the Iowa statute, when viewed in light of the severity of the Texas, Nebraska and Missouri exclusions, seems a model of equity. Other states which may be presently debating similar changes in the law may look to chapter 554A as a more equitable balance between buyers' and sellers' interests.

VII. Remaining Remedies to Buyers in Iowa

This section analyzes what remedies a buyer has regarding the purchase of diseased animals in Iowa. Other than criminal remedies, it seems that a buyer may predicate a civil action upon any of the following four grounds.

A. *Negligence*

If the buyer can demonstrate that the seller reasonably knew or should have known that the livestock was diseased, or otherwise unmerchantable, the seller may be liable for damages on the grounds of negligence. Of course, the buyer must also show that the "failure to inform the purchaser resulted in an unreasonable risk of harm."[69] The buyer may also have a negligence cause of action against the veterinarian or state/federal inspector. Such an action would apply the same reasonableness standards.

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66. Neb. Rev. Stat. § 2.316(d) (1980).
67. Mo. Ann. Stat. § 277.141 (Supp. 1982).
68. *See* note 52 *supra*.
69. 2 N. Harl, Agricultural Law § 7.04 (1981).

B. *Fraud or Deceit*

If the seller makes a material misrepresentation of the animal's fitness or merchantability, he may be found liable on the grounds of fraud or deceit. Elements which must be proven for this cause of action are: (1) that the seller knew that the representation was untrue; (2) that the seller knew that the buyer would act upon the representation; (3) that the buyer, in fact, did rely upon the representation; and (4) the buyer suffered damage as a result of reliance on the representation.[70]

C. *Express Warranty*

The laws concerning actions based upon express warranty theories are still governed by the U.C.C. sections of the Iowa Code. Chapter 554A deals only with implied warranties. To recover for a breach of express warranty, the buyer must prove: (1) that certain representations were made by the seller; (2) that the buyer relied on those representations; and (3) that the damage or loss to the buyer was caused by the failure of the animal to conform to the seller's representations.[71]

D. *Implied Warranty*

As previously indicated, buyers of cattle, sheep, hogs and horses may still bring an action for breach of implied warranty when the sellers have failed to satisfy the requirements of chapter 554A.[72] That situation could arise in a number of ways: The seller makes no disclosures; the seller makes only one of the required disclosures; the disclosures are not made prior to the sale; the disclosures are not confirmed in writing, as requested by the buyer; the auctioner, owner, or agent for the owner does not orally make the disclosures; or any other deviation from the language of the statute.

VIII. Conclusion

An examination of the laws concerning buyer and seller liabilities in the sale of diseased livestock demonstrates why the issue of implied warranties in this area is one of the most controversial and changing areas in agricultural law today. It seems that the law has fluctuated drastically in both directions. Under the doctrine of *caveat emptor* buyers were exposed to tremendous burdens and losses, while under the U.C.C. implied warranty theories, the sellers often bore the brunt of the liability.

While a slim majority of states still allow recovery under theories of implied warranties for the sale of livestock, it appears that there may be a very strong trend toward modifying or excluding the protection previously

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70. *Id.* at 9-15.
71. *Id.* § 7.04.
72. *See* text accompanying note 39 *supra.*

afforded by the Uniform Commercial Code.[73] In light of the compelling interests involved and the extreme positions recently taken by other states in an effort to change the law, Iowa's statute seems to achieve an equitable balance between the interests of buyers and sellers of livestock.[74] While its long term effects are not yet ascertainable, it seems that most buyers and sellers feel that Iowa's statute reaches the long needed truce.

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73. *See* note 55 *supra*.

74. Interview with Bruce Berven, Executive Vice President of Iowa Cattlemen's Ass'n, in Des Moines (Nov. 6, 1981).