ZARELLA, J., with whom PALMER, J., joins, concurring in part and dissenting in part. I dissent from part IV of the majority opinion, and part II to the extent that it incorporates the analysis in part IV, because I disagree with the majority's conclusion that the defendants did not properly preserve the issue of whether the cigarette rule[1] remains the appropriate test for unfairness under the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. I believe that this issue has been adequately preserved and would take this opportunity to modify our existing unfairness jurisprudence, thereby resolving a jurisprudential mistake that this court has recognized for almost ten years and that has infected our CUTPA cases for three decades. With respect to part III of the majority opinion, I disagree that the language contained in the bills of sale was inadequate to disclaim the warranty of title under the Uniform Commercial Code (UCC). I address these concerns in turn and join the majority opinion in all other respects.

I

As an initial matter, I disagree with the majority's conclusion that the defendants'[2] instructional claim was not "distinctly raised at the trial"; Practice Book § 60-5; and, therefore, is not reviewable. This issue turns on whether the defendants' requested jury instruction was sufficient to preserve the defendants' claim on appeal, namely, that the standard applied by Connecticut courts to determine whether an act or practice is unfair under CUTPA is inconsistent with the standard applied by the Federal Trade Commission (commission) under the Federal Trade Commission Act (act), 15 U.S.C. § 41 et seq. (2006), and, consequently, inconsistent with the legislative mandate that Connecticut courts be guided by such interpretations. See General Statutes § 42-110b (b). At trial, the defendants requested the court to charge the jury that "[w]hether the defendants caused substantial unjustified injury to consumers, competitors or other business persons, is *the most important* of the three criteria [used to determine whether an act or practice is unfair]. Proof of an unjustified injury to consumers, competitors, or other business people *is a necessary predicate for recovery under* [*CUTPA*]." (Emphasis added.) The trial court declined to do so, instead instructing the jury that a plaintiff can establish a CUTPA violation if he proves "at least one of the . . . three criteria" under the cigarette rule. Unlike the majority, I would conclude that the instruction proposed by the defendants adequately preserved their claim that substantial injury to consumers is the touchstone of the commission's current unfairness analysis. I therefore would reach the question of whether we

should reconsider our unfairness jurisprudence and would conclude that the time has come to bring it into alignment with the approach taken by the commission and the federal courts.

By way of background, CUTPA, in prohibiting unfair trade practices, provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." General Statutes § 42-110b (a). Our legislature, in enacting CUTPA, did not attempt to define unfairness. Rather, as the statute provides, "[i]t is the intent of the legislature that in construing subsection (a) of [§ 42-110b], the [C]ommissioner [of Consumer Protection] and the courts of this state *shall be guided by interpretations given by the Federal Trade Commission and the federal courts to* [*15 U.S.C. § 45 (a) (1)*], as from time to time amended." (Emphasis added.) General Statutes § 42-110b (b). Accordingly, I begin by briefly surveying the commission's and the federal courts' constructions of "unfairness" under the act.

In 1964, more than two decades after Congress amended the act to expressly empower the commission to prevent "unfair or deceptive acts or practices in commerce"; Act of March 21, 1938, c. 49, § 3, 52 Stat. 111, 112, codified as amended at 15 U.S.C. § 45 (a) (1940); the commission, pursuant to its rule-making authority, attempted to clarify its unfairness enforcement authority in the context of unfair or deceptive advertising and labeling of cigarettes. Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8324 (July 2, 1964) (Cigarette Rule). After cautioning that "[n]o enumeration of examples can define the outer limits of the [c]ommission's authority to proscribe unfair acts or practices," the commission relied on its enforcement experience in distilling three factors "that determine whether a particular act or practice should be forbidden" on the ground of unfairness. Id., 8355. These factors, which the United States Supreme Court subsequently recited in *Federal Trade Commission* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 92 S. Ct. 898, 31 L. Ed. 2d 170 (1972), included: "(1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers (or competitors or other businessmen)." (Internal quotation marks omitted.) Id., 244–45 n.5, quoting Cigarette Rule, supra, 29 Fed. Reg. 8355.[3]

In 1980, in response to a congressional inquiry and amid growing concerns about the breadth of the com-

mission's enforcement authority; see M. Denger, "The Unfairness Standard and FTC Rulemaking: The Controversy Over the Scope of the Commission's Authority," 49 Antitrust L.J. 53, 60 (1980); the commission issued a policy statement on unfairness and attempted to better "[delineate] the [c]ommission's views [on] the boundaries of its consumer unfairness jurisdiction . . . ." Letter from Federal Trade Commission to Senators Wendell H. Ford and John C. Danforth (December 17, 1980) (1980 unfairness statement), available at http://www.ftc.gov/bcp/policystmt/ad-unfair.htm (last visited October 25, 2013). In the 1980 unfairness statement, the commission first noted that "[t]he present understanding of the unfairness standard is the result of an evolutionary process." Id. After reciting the cigarette rule criteria and the "apparent approval" of those criteria in *Sperry & Hutchinson Co.*; id.; the commission next explained that, since the decision in *Sperry & Hutchinson Co.*, "the [c]ommission has continued to refine the standard of unfairness in its cases and rules, and it has now reached a more detailed sense of both the definition and the limits of these criteria." Id.

Most notably, in the 1980 unfairness statement, the commission emphasized that "[u]njustified consumer injury is the primary focus of the . . . [a]ct, and the most important of the three [cigarette rule] criteria. By itself it can be sufficient to warrant a finding of unfairness. The [c]ommission's ability to rely on an independent criterion of consumer injury is consistent with the intent of the [federal] statute, which was to '[make] the consumer who may be injured by an unfair trade practice of equal concern before the law with the merchant injured by the unfair methods of a dishonest competitor.' " Id. The commission further clarified that "a finding of unfairness . . . must satisfy three tests" to be considered "legally 'unfair' . . . ." Id. "It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided." Id.

The commission then considered the next cigarette rule factor, namely, "whether the conduct violates public policy as it has been established by statute, common law, industry practice, or otherwise. This criterion may be applied in two different ways. It may be used to test the validity and strength of the evidence of consumer injury, or, less often, it may be cited for a dispositive legislative or judicial determination that such injury is present." Id. Finally, with respect to the remaining cigarette rule factor, which addressed "immoral, unethical, oppressive, or unscrupulous" conduct, the commission announced that the test had proven to be "largely duplicative" in view of the fact that "[c]onduct that is truly unethical or unscrupulous will almost always injure consumers or violate public policy . . . . The [c]omission has therefore never relied on [this cigarette

rule factor] as an independent basis for a finding of unfairness, and it will act in the future only on the basis of the [other] two [factors]." Id.

Despite this apparent repudiation of the cigarette rule, courts and commentators have not uniformly described the 1980 unfairness statement as a wholesale break from pre-1980 policy, with some instead describing this as an evolution of the commission's unfairness enforcement authority. For instance, in 1984, this court acknowledged the commission's 1980 unfairness statement, characterizing it as an *elaboration* on—rather than an *abrogation* of—the cigarette rule. See *McLaughlin Ford, Inc.* v. *Ford Motor Co.*, 192 Conn. 558, 568 n.12, 473 A.2d 1185 (1984). Specifically, this court observed that "[t]he criteria announced in the cigarette rule have been the subject of several scholarly articles . . . [and that] the commission was called [on] to *elaborate* on these three criteria." (Citations omitted; emphasis added.) Id. The District of Columbia Circuit Court of Appeals similarly explained that the 1980 unfairness statement "was basically a *refinement* of an earlier three-part standard of unfairness [that] it had set out in 1964," i.e., the cigarette rule. (Emphasis added.) *American Financial Services Assn.* v. *Federal Trade Commission*, 767 F.2d 957, 971 (D.C. Cir. 1985), cert. denied, 475 U.S. 1011, 106 S. Ct. 1185, 89 L. Ed. 2d 301 (1986). Commentators tended to be less sanguine about the continued vitality of the cigarette rule factors after the 1980 unfairness statement, viewing the commission's policy in the wake of the 1980 unfairness statement as an abandonment, rather than a refinement, of the commission's pre-1980 approach to unfairness. See, e.g., M. Greenfield, "Unfairness Under Section 5 of the FTC Act and Its Impact on State Law," 46 Wayne L. Rev. 1869, 1875–77 (2000); P. Sobel, "Unfair Acts or Practices Under CUTPA—The Case for Abandoning the Obsolete Cigarette Rule and Following Modern FTC Unfairness Policy," 77 Conn. B.J. 105, 107, 115 (2003).

In 1994, Congress effectively codified the limitations on the commission's authority as set forth in the 1980 unfairness statement. Title 15 of the United States Code, § 45 (n), was amended to provide that "[t]he Commission shall have no authority under this section or section 18 [of this public law] to declare unlawful an act or practice on the grounds that such act or practice is unfair *unless the act or practice causes or is likely to cause substantial injury to consumers* which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. *Such public policy considerations may not serve as a primary basis for such determination.*" (Emphasis added.) Federal Trade Commission Act Amendments of 1994, Pub. L. No. 103-312, § 9, 108

Stat. 1691, 1695, codified as amended at 15 U.S.C. § 45 (n) (1994).

Despite these changes at the federal level and our statutory directive to "be guided" thereby; General Statutes § 42-110b (b); our case law construing the commission's interpretations of unfairness—which has not been a model of clarity—has not kept pace with the commission and the Congress. In fact, when this court first applied the cigarette rule in 1983, it already was obsolete at the federal level in the wake of the 1980 unfairness statement. See *Conaway* v. *Prestia*, 191 Conn. 484, 492–93, 464 A.2d 847 (1983) (applying cigarette rule to find CUTPA violation on basis of public policy violation), quoting *Federal Trade Commission* v. *Sperry & Hutchinson Co.*, supra, 405 U.S. 244–45 n.5. As I noted previously, however, this court did acknowledge the commission's evolving stance on unfairness and described the 1980 unfairness statement as an "elabora[tion]" on the cigarette rule. *McLaughlin Ford, Inc.* v. *Ford Motor Co.*, supra, 192 Conn. 568 n.12. In addition, in cases such as *A-G Foods, Inc.* v. *Pepperidge Farm, Inc.*, 216 Conn. 200, 579 A.2d 69 (1990), we explained that, "in 1980 the commission reviewed [the cigarette rule] factors and concluded that [u]njustified consumer injury is the primary focus of the . . . [a]ct, and the most important of the three . . . criteria. . . . [T]he [c]ommission explained that regulation is permissible *only if a practice causes* [*unjustified*] *injury that is substantial* . . . ." (Citation omitted; emphasis added; internal quotation marks omitted.) Id., 215–16. Thus, even after acknowledging and discussing the commission's 1980 policy changes, this court still considered all of the prongs of the cigarette rule as independent justifications for a finding of unfairness, even though the commission had determined in 1980 that the consumer injury prong was necessary to support a finding of unfairness, a requirement that was codified in subsequent revisions to the act itself. See Federal Trade Commission Act Amendments of 1994, supra, 108 Stat. 1695.

This tension has become particularly apparent in our recent decisions addressing unfairness under CUTPA. Indeed, for the better part of a decade, we have questioned whether we should continue to employ this outdated articulation of the commission's unfairness criteria when the legislature has directed that we are to be guided by the commission and the federal courts. Nevertheless, we repeatedly have declined to reconsider the rule in prior cases because no party had raised or briefed the issue. For instance, in *Glazer* v. *Dress Barn, Inc.*, 274 Conn. 33, 873 A.2d 929 (2005) (*Katz, J.*), this court observed that, "[a]lthough we consistently have followed the cigarette rule in CUTPA cases, we . . . note that, when interpreting 'unfairness' under CUTPA, our decisions are to be guided by the interpretations of the [act] by the . . . [c]ommission and the

federal courts. . . . Review of those authorities indicates that a serious question exists as to whether the cigarette rule remains the guiding rule utilized under federal law. . . . Because . . . neither party has raised or briefed this issue, and both have briefed the issue applying the cigarette rule, we decline to address the issue of the viability of the cigarette rule until it squarely has been presented to us." (Citations omitted.) Id., 82 n.34; see also *Naples* v. *Keystone Building & Development Corp.*, 295 Conn. 214, 239, 990 A.2d 326 (2010) (*Zarella*, *J.*, concurring) (expressing concern that state courts interpreting CUTPA have essentially ignored commission's more recent policy statements and decisions but that it "would not be . . . appropriate . . . to take on . . . a review of . . . [this court's] precedent [at that time]"); *Votto* v. *American Car Rental*, *Inc.*, 273 Conn. 478, 484 n.3, 871 A.2d 981 (2005) (*Vertefeuille*, *J.*) ("We note that we recently have recognized that a question exists as to whether the cigarette rule remains the guiding rule utilized by the . . . [c]ommission. . . . [H]owever, neither party has raised or briefed this issue or asked us to reconsider our law in this area, and, accordingly, we will wait to consider this question until it has been presented to us for determination." [Citation omitted.]); *American Car Rental*, *Inc.* v. *Commissioner of Consumer Protection*, 273 Conn. 296, 305 n.6, 869 A.2d 1198 (2005) (*Borden*, *J.*) (same). Thus, despite expressing doubts about the appropriateness of continuing to employ an outdated version of the standard in light of § 42-110b (b), this court has continued to adhere to the pre-1980 articulation of the standard.

With this background in mind, I turn to the defendants' instructional claim. At trial, the defendants requested the court to charge the jury that "[w]hether the defendants caused substantial unjustified injury to consumers, competitors or other business persons, is *the most important* of the three [cigarette rule] criteria. Proof of an unjustified consumer injury to consumers, competitors, or other business people *is a necessary predicate for recovery under* [*CUTPA*]."[4] (Emphasis added.) The named plaintiff, Frederick C. Ulbrich (plaintiff), maintains that this request was inadequate to permit the defendants to challenge the continued validity of the cigarette rule because "at trial, the defendant[s] requested that the jury be charged on the cigarette rule, without ever suggesting that that standard was not controlling." The majority agrees with the plaintiff, reasoning that the defendants "did not contend that the . . . [c]ommission . . . has *replaced* the cigarette rule with the substantial injury to consumers test or that the trial court should expressly *reject* the cigarette rule . . . ." (Emphasis in original; internal quotation marks omitted.)

In my view, the majority's conclusion, like the plaintiff's argument, misses the larger context of the commis-

sion's evolving jurisdiction in this arena and our own tortured jurisprudence regarding unfairness and the cigarette rule. Specifically, it fails to recognize that the commission's 1980 unfairness statement, which provided that "[u]njustified consumer injury is the primary focus of the . . . [a]ct, and the most important of the three [cigarette rule] criteria"; 1980 Unfairness Statement, supra; *expressly* articulated the standard that the defendants requested in their proposed jury instruction but couched the policy's language such that certain courts, including this one, conceived of it as a modification, rather than a rejection, of the cigarette rule. See, e.g., *American Financial Services Assn.* v. *Federal Trade Commission*, supra, 767 F.2d 971; *McLaughlin Ford, Inc.* v. *Ford Motor Co.*, supra, 192 Conn. 568 n.12; see also D. Rice, "Consumer Unfairness at the FTC: Misadventures in Law and Economics," 52 Geo. Wash. L. Rev. 1, 19 (1983) (describing cigarette rule as "the ostensible lodestar of the [c]ommission's 1980 [unfairness] [s]tatement").[5] When considered in light of this background, the inaccuracy of the plaintiff's contention that the defendants merely "requested that the jury be charged on the cigarette rule" becomes apparent.

Thus, I am persuaded that it is inappropriate and unnecessarily formalistic to decline to review the defendants' claim simply because they phrased their proposed jury instruction as a modification, rather than a wholesale abrogation, of the cigarette rule, particularly in light of our own inconsistent pronouncements on this issue. In my view, such a request in this context easily satisfies the dictates of Practice Book § 60-5 that the claim be "distinctly raised at the trial," and I find it perplexing that, after nearly one decade of this court's expression of concerns with the cigarette rule in light of the evolving federal approach to unfairness, the majority declines the opportunity to reconsider the rule for hyper-technical reasons when it has finally been squarely addressed by the parties. I therefore would conclude that the defendants, in requesting that the jury be charged in accordance with the 1980 unfairness statement, properly had preserved their claim that the trial court's refusal to provide such an instruction was inconsistent with federal interpretations of the act and, by extension, our statutory scheme.[6] Accordingly, I would take this opportunity to clarify the applicable standard and finally bring our construction of § 42-110b into alignment with the approach that the commission and the federal courts have taken.[7]

II

Finally, I disagree with the majority to the extent it concludes that the language in the bills of sale in the present case "was inadequate to disclaim the implied warranty of title as a matter of law . . . ." I acknowledge, and the majority notes, that other states have interpreted the disclaimer provisions of § 2-312 of the

UCC in a manner favorable to the majority's analysis. Nevertheless, I strongly believe that we should not rely on the judicial gloss of other state courts in cases such as *Jones* v. *Linebaugh*, 34 Mich. App. 305, 308–309, 191 N.W.2d 142 (1971), and *Sunseri* v. *RKO-Stanley Warner Theatres, Inc.*, 248 Pa. Super. 111, 115, 374 A.2d 1342 (1977), which required something more than "quitclaim type language" to constitute a valid disclaimer under their statutes,[8] because the language of General Statutes § 42a-2-312 is clear and unambiguous.

"It is well established that, [w]hen construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Anatra* v. *Zoning Board of Appeals*, 307 Conn. 728, 739, 59 A.3d 772 (2013).

Section 42a-2-312 (2) provides: "A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell *only such right or title as he or a third person may have*." (Emphasis added.) Not only is such language unambiguous, but the language employed in the secured party bills of sale in the present case, i.e., that the defendant TD Banknorth, N.A., purported to sell "*all of the* [*s*]*ecured* [*p*]*arty's right, title and interest, as such* [*s*]*ecured* [*p*]*arty has or may have* in and to the personal property"; (emphasis added); tracks the language of § 42a-2-312 (2).[9] Accordingly, I do not believe that it is necessary or appropriate for this court to go beyond the plain language of the statute and rely on the case law of other jurisdictions simply because those jurisdictions, without the benefit of § 1-2z, effectively have engrafted additional requirements onto their codifications of the UCC. I therefore would conclude that the bills of sale, which use language consistent with that of § 42a-2-312, adequately disclaimed the warranty of title under that statute.[10]

For the foregoing reasons, I respectfully dissent from parts III and IV of the majority opinion, and part II of the majority opinion to the extent that it incorporates the analysis in part IV.

[1] See Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8324, 8355 (July 2, 1964).

[2] I refer to the defendants TD Banknorth, N.A., and Tranzon Auction Properties collectively as the defendants throughout this opinion.

[3] In 1978, the commission attempted to refine these criteria in rules directed at unfairness in franchising and business opportunity ventures. Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 43 Fed. Reg. 59,614 (December 21, 1978) (Franchising and Business Opportunity Ventures Rule). After reciting the factors that the commission considered under the cigarette rule and noting the United States Supreme Court's "apparent approval" of those criteria in *Sperry & Hutchinson Co.*; id., 59,635; the commission concluded that "[a]ll three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three." Id. At the federal level, this refinement was short-lived, as the commission's 1980 unfairness statement effectively did away with this modification. See Letter from Federal Trade Commission to Senators Wendell H. Ford and John C. Danforth (December 17, 1980), available at http://www.ftc.gov/bcp/policystmt/adunfair.htm (last visited October 25, 2013). Surprisingly, the language from this abandoned policy continues to be recited in our CUTPA jurisprudence after it was quoted with approval in a 1992 opinion; *Cheshire Mortgage Service, Inc.* v. *Montes*, 223 Conn. 80, 106, 612 A.2d 1130 (1992), quoting Franchising and Business Opportunity Ventures Rule, supra, 43 Fed. Reg. 59,635; which failed to note the subsequent policy change embodied in the 1980 unfairness statement. See, e.g., *Harris* v. *Bradley Memorial Hospital & Health Center, Inc.*, 296 Conn. 315, 350–51, 994 A.2d 153 (2010); *Ventres* v. *Goodspeed Airport, LLC*, 275 Conn. 105, 155, 881 A.2d 937 (2005), cert. denied, 547 U.S. 1111, 126 S. Ct. 1913, 164 L. Ed. 2d 664 (2006); see also P. Sobel, "Unfair Acts or Practices Under CUTPA—The Case for Abandoning the Obsolete Cigarette Rule and Following Modern FTC Unfairness Policy," 77 Conn. B.J. 105, 132 (2003) ("[u]nfortunately, *Cheshire Mortgage* [*Service, Inc.*] misstates the authority on which it relies and does not recognize that the 1980 [unfairness statement] gutted the [1978] violation of [l]ess [t]han [a]ll [t]hree principle, as well as the [c]igarette [r]ule"). This language also informed the jury instruction in the present case, which the trial court gave in lieu of the defendants' requested instruction.

[4] As I noted previously, the trial court declined to provide this instruction and instead instructed the jury that "[a]ll three of [the cigarette rule] criteria do not need to be satisfied to support a CUTPA violation. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three."

[5] Although such an interpretation appears indefensible in light of the 1994 amendments to the act; see Federal Trade Commission Act Amendments of 1994, supra, 108 Stat. 1695; we nevertheless have not addressed these amendments, as our interpretation of unfairness has relied principally on pre-1980 commission policy.

[6] Even if it is assumed that this issue was insufficiently preserved, I do not believe the majority's concerns about applying a futility exception in this case would be applicable. Specifically, the majority explains that recognizing a futility exception to the preservation requirement would be unwise in the present case because (1) the opposing party would not be on notice of the other party's intention to pursue this argument on appeal and therefore would be prejudiced, and (2) this could lead to an "ambuscade" of the trial court. In this case, however, neither of these potential problems is present because the instruction that the defendants requested adequately addressed both of these concerns; both the plaintiff and the trial court were thus made aware of the defendants' desire to focus the inquiry on the substantial injury to consumers factor, the practical effect of which appears to be indistinguishable from an express request to overrule or modify the cigarette rule.

[7] To the extent the majority rejects this claim because the trial court's failure to give the requested instruction on the proper legal standard was "harmless"; footnote 43 of the majority opinion; it assumes too much. The majority reaches this conclusion without conducting a harmless error analysis. Moreover, there is no way of anticipating the effect of a change in the legal standard on the evidence admitted to prove a CUTPA violation or on the jury's evaluation of the evidence. For example, because there are three prongs to the cigarette rule, a CUTPA violation under existing Connecticut law may be found under any one of the prongs. Under the commission's interpretation, however, the prong concerning immoral, unethical, oppressive or unscrupulous conduct cannot provide an independent basis for the finding of a violation. See 1980 Unfairness Statement, supra. This means that, if the jury determined that the defendants were liable solely under that

prong, which the commission has deemed inadequate, by itself, to support liability; see id.; the trial court's erroneous instruction that liability could be found under any of the prongs was not harmless error. In other words, the fact that the jury awarded $462,000 in damages does not mean that it did not determine liability on the basis of a finding of immoral, unethical, oppressive or unscrupulous conduct. Accordingly, I do not agree with the majority that the trial court's refusal to give an instruction on the substantial injury to consumer test was harmless.

[8] In addition to relying on cases from the relatively few jurisdictions that have considered this issue, the majority likewise relies on a treatise, and quotes with approval the opinion of that treatise's authors that, despite older case law to the contrary, they "prefer the approach taken in [*Jones* v. *Linebaugh*, supra, 34 Mich. App. 305] over the older view, which apparently was influenced by real property law." 1 J. White et al., Uniform Commercial Code (6th Ed. 2012) § 10:44, p. 949. These authors provide no justification for this preference, however, and I am not persuaded that we should adopt a different approach simply because the older view has its origins in real property law. If anything, such an influence, which enables courts to consistently give the same words the same effect in both areas of the law, would seem to support such an approach rather than to detract from it.

[9] It is worth noting that this language hardly can be considered a disclaimer at all. Instead, similar to the language used in a quitclaim deed, it serves to describe—and limit—the title that is being transferred. Although it operates in a different realm, I believe that § 42a-2-312 (2) is intended to carry out the same purpose as General Statutes § 47-36f, the quitclaim statute, does with respect to real estate. Section 47-36f provides in relevant part: "A deed entitled 'Quitclaim Deed', when duly executed, has the force and effect of a conveyance to the releasee of all the releasor's *right*, *title and interest in and to the property described therein* except as otherwise limited therein, but without any covenants of title. . . ." (Emphasis added.) As this court often has noted, "[i]t is well settled that a quitclaim deed . . . conveys to the grantee [only] whatever interest the grantor has in the property." *Socha* v. *Bordeau*, 277 Conn. 579, 588 n.7, 893 A.2d 422 (2006); see also *Ely* v. *Stannard*, 44 Conn. 528, 533 (1877) ("[a quitclaim], or release deed, is one of the regular modes of conveying property known to the law, and it is almost the only mode in practice, where a party sells property and does not wish to warrant the title").

In the present case, the bills of sale provide that the defendant T.D. Banknorth, N.A., "hereby sells and transfers . . . all of [its] *right*, *title and interest*, *as* [*it*] *has or may have in and to the personal property* . . . ." (Emphasis added.) Considering the construction that this court gives to identical language in a quitclaim deed in the real estate context, I fail to discern a basis for treating such language differently in the present case.

[10] The majority also asserts that "the interest in uniform application of the provisions of the UCC militates in favor of adopting the same interpretation of the disclaimer provision that other jurisdictions have adopted. The value of the UCC as a uniform code would be greatly diminished if the meaning of its provisions varied from state to state." (Emphasis omitted.) Footnote 38 of the majority opinion. I disagree. The fact that several jurisdictions have construed the UCC disclaimer provisions in a similar manner does not justify blind adherence to their view. The majority improperly elevates uniformity in the application of the UCC provisions across jurisdictions at the expense of uniformity in the application of Connecticut's well established quitclaim law. As a consequence of the majority's decision, Connecticut will now apply two different meanings to the conveyance language in real versus personal property transactions, despite the use of exactly the same language. This makes no sense. Moreover, adopting other jurisdictions' interpretations of the UCC disclaimer provisions will not necessarily produce uniform results because the provisions must be construed in light of the disputed disclaimers, which will very likely differ in their wording. Finally, because only a handful of jurisdictions have addressed this issue, the uniformity to which the majority refers is based on limited authority. Accordingly, I find the majority's arguments unpersuasive because the law is relatively undeveloped at this time, and there is no widely accepted national trend that counsels in favor of ignoring Connecticut's quitclaim law and following the law of other jurisdictions regarding disclaimers of title to personal property.