

Para 201- You & the Law

Chapter 10 -Cars

Monday-10/26/09

I. Buying a New Car

- A. Ads for cars governed by state statutes so vary from state to state
 - usually include: price, dealer, factory-installed options, warranty terms, sales info
- B. Bair & Switch Ads: report to consumer protection division of state attorney general
 - if details omitted, may constitute a deceptive act

II. New Car Contract

- A. per Statute of Frauds, must be in writing (UCC adopted in every state except La.)
- B. Should include: car description; VIN (vehicle identification number); price terms; cancellation provision; financing terms
 - signed by dealer & buyer: cross out blank spaces and initial any changes to pre-printed K
- C. Can possibly get out of K if breach of warranty, inability to get financing: generally bound by contract (i.e. no evidence of oral K's)
- D. Financing: through banks, credit unions, dealers
 - (1) compare loan terms & APR's-see creditor's info required on p. 5
 - (2) TILA (Truth in Lending Act) protects consumers; creditors who violate may have to pay excess amount consumer paid, atty's fees, court costs, and fines
- E. Title: passes when previous owner endorses certificate of title to new owner; creditors usually hold title until loan paid off
 - buyer could lose title if car repossessed

III. Repossession

- A. creditor has security interest in vehicle
- B. creditor may repossess vehicle if no breach of peace
- C. debtor has right to redeem collateral (buy back car)--rarely takes place
- D. creditor can :
 - (1) resell the car and if insufficient to pay debt, original buyer liable for difference
 - (2) keep car to satisfy debt fully (strict foreclosure)

IV. Used Cars

- A. Through private seller or dealer: some experts believe private sellers give better deals but no warranties in that kind of sale
- B. If paying more than \$500, should have written K
- C. Bill of Sale -state may require to register car: seller should sign and date
 - (1) date of sale
 - (2) year, make, model
 - (3) VIN

- (4) odometer reading
- (5) amount & form of payment
- (6) buyer's name, address, phone number

D. Special rules-used car dealers: FTC has issued

--dealer= those who sell 6 or more used cars in 12 month period

- (1) forbids dealers from misrepresenting mechanical condition or warranty terms
- (2) must post "Buyer's Guide" on side of window:
 - (a) whether there is warranty and if so, specific coverage
 - (b) implied warranties or sold "AS IS"
 - (c) statement advising buyer to get inspection by independent mechanic
 - (d) statement that buyer should get all promises in writing
 - (e) major problems that may occur with car

(3) sellers must provide mileage disclosure and statement certifying accuracy of odometer reading

(4) can find car histories through Internet searches if you have VIN

V. Lemon Laws

A. Entitle buyer to replacement car or refund if new car is so defective that it's beyond repair

B. Lemon= car that continues to have a defect that substantially restricts its use, safety, or value even after reasonable efforts to repair it

--could be 4 repair attempts on same/related problem within 6 months to one year

--could mean car is out of commission for more than 30 consecutive days

C. To make Lemon Laws work, buyer must:

- (1) notify manufacturer and dealer
- (2) keep copy of every repair or service receipt
- (3) may have to go through arbitration where results binding only on manufacturer (so buyer can still sue)
- (4) go to court

D. In some states, Lemon Laws govern used car sales too: may be in connection with inspection sticker requirements

VI. Additional consumer protection laws for car buyers:

A. federal Anti-Tampering Odometer Law: prohibits falsifying odometer readings

B. federal Used Car Law: requires dealers to post "Buyer's Guide" on used cars

C. federal Automobile Information Disclosure Act: requires manufacturers & importers of new cars to affix "Monroney label": base price, options installed, suggested retail, fuel economy etc.

D. state acts prohibiting unfair & deceptive acts & practices:

- (1) see definitions on pp. 12 & 13
- (2) written demand for relief before suit

- (3) statute of limitations: 3 to 4 years
- (4) many states allow double or triple damages plus attorney's fees
- (5) most common violations:
 - (a) hiding dangerous defects
 - (b) not revealing dealer advertised lower price
 - (c) failing to state service not readily available
 - (d) odometer tampering
 - (e) failure to disclose dealer charged excessive preparation costs
 - (f) withholding facts regarding car's previous use

VII. Warranties-UCC

- A. Warranty= guarantee of product's quality & performance
- B. Express warranty: any description or promise on which buyer relies to make purchase
 - (1) oral
 - (2) written
 - (3) through ads
- C. Implied warranty of merchantability : if seller is a dealer, car is of a quality that would pass without objection in the trade and is fit for ordinary purposes
 - can be disclaimed by selling car "AS IS"
- D. Implied warranty of fitness for particular purpose: arises if buyer needed vehicle for particular purpose (towing) and seller recommends specific vehicle

VIII. Remedies for breach of warranty

- A. If buyer has not already accepted car, reject it
- B. If car accepted, continue to make payments but revoke acceptance by notifying seller of defect
- C. Magnuson-Moss Warranty Act: buyer has right to see warranty before purchase and to sue for breach of warranties
- D. See p. 17 for difference between full warranty and limited warranty

IX. Recalls: identifies defective autos and notifies owners how to get them fixed

- A. Defect can be: in performance, construction, components, materials
- B. Many recalls result from consumer complaints but NHTSA (Nat'l Highway Traffic Safety Admin) may initiate after complaints, engineering analysis, hearings, etc.
- C. About 60 % of vehicles targeted by recalls receive repairs
- D. Manufacturers must remedy defect for free (unless first buyer bought car more than 8 years ago); replace vehicle; or refund purchase price

X. Car Leasing or Renting

- A. Prerequisites: valid driver's license, clean driving record
- B. Closed-end leases (walk-away leases): car's value when you return it doesn't matter unless there is excessive wear
- C. Open-end leases: car must be at stated value at lease end or you pay difference

- D. With some leases, you must pay up-front cost, security deposit, excessive mileage costs
- E. Purchase option: most common in open-end leases; seller must state purchase price in initial lease K

XI. Inspections: instituted in many states and could include: lights, brakes, windshield wipers, tires, windows, body, seat belts, emission levels, etc.

XII. Repairs/Mechanics

- A. NIASE/Nat'l Inst of Automotive Service Excellence: certifies mechanics who have taken tests
- B. Repair contract:- see p. 22 for items to include
 - in some states, if you don't sign repair order, you aren't liable to pay for services
- C. State unfair/deceptive practices act may apply to repairs: price estimates, price lists, detailed invoices
- D. If mechanic makes unauthorized repairs, report to state atty general, Chamber of Commerce, BBB
- E. Mechanic's lien: shop may not release your car if you fail to pay repair bills: may be able to sell vehicle