

## Used Car Battles

### A talk with Steve Lehto

#### I. Overview

- A. Today, consumers are buying used cars through dealers, rental car companies, auctions, private sellers, online, and many other ways. More buyers are also buying cars sight unseen.
- B. Consumers have less legal protection buying used cars than they do buying new, which makes all the more important that they do ample research about the car and common pitfalls prior to purchase.

#### II. Purchasing a used car

- A. “As is”
  - 1. Typically, used cars are bought “as is”: buyer purchases the car with all faults, and repair costs are borne by the purchaser. Seller is free from liability post-purchase.
  - 2. Who is the seller:
    - a. Private seller: purchases from private sellers are typically “as is.” Less legal protection when transaction is between individuals.
    - b. Dealers
      - i. FTC requires Buyers Guide to be displayed.
      - ii. Buyers Guide stipulates whether the car is being sold “as is,” the percentage of repairs costs borne by the dealer (if any), the vehicle history report, among other information.<sup>1</sup>
- B. Certified pre-owned (CPOs)
  - 1. CPOs are typically late-model cars with lower mileage. CPOs are “certified” by the manufacturer or other certifying body, like a dealer.
  - 2. Depending on the entity that does the certifying, CPOs can vary widely on extended warranty, extended service contract, inspections conducted, etc.
  - 3. CPOs are generally sold for a premium.
- C. Dealership extended warranty
  - 1. With some used car purchases, dealer may provide an extended warranty or service contract.
  - 2. Typically must be purchased before manufacturer’s warranty expires.
- D. Third party protections
  - 1. Independent third parties (not the dealership nor the manufacturer) may provide or may sell additional protections.

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<sup>1</sup> FTC Dealer’s Guide to the Used Car Rule: <https://www.ftc.gov/tips-advice/business-center/guidance/dealers-guide-used-car-rule>

2. E.g. Car purchases made on eBay come with their Vehicle Purchase Protection (VPP).<sup>2</sup> Under certain limited circumstances, VPP protects against losses associated with fraud, up to a max amount of purchase price (not exceeding \$100,000).

### III. Legal protections

- A. In most states, lemon laws apply only to new cars. A few states (CT, MA, MN, NJ, NM, and NY) have enacted used car lemon laws that provide warranty based on age or mileage and require the dealer to repair or replace. A few other states have some form of statutory protections that set minimum standards for used car sales.
- B. UCC Article 2 implied warranty
  1. Implied warranty of merchantability that the goods sold are “fit for the ordinary purposes for which such goods are used.”<sup>3</sup>
  2. Applies when the seller is a merchant (e.g. dealer). Implied warranty can easily be disclaimed by clearly and conspicuously indicating that the purchase is “as is,” “with all faults,” etc. In only a few states, including AL, CT, MA, and WA, implied warranty cannot be disclaimed with “as is.”
- C. Magnuson-Moss Warranty Act<sup>4</sup> (aka federal lemon law)
  1. Protects buyers of consumer products that come with express warranties.
  2. Requires warrantors to state their warranties in plain, readily understandable language. Warranties must comply with FTC requirements. Warrantors may not charge the consumer for any repairs completed under warranty.
  3. Requires service contracts to express their terms and conditions in plain language.

### IV. Other common Issues

- A. Fraud
  1. “Curbstoning”: when a dealer poses as an individual private seller.
    - a. A dealer may pose as a private seller because private sellers are subject to fewer requirements.
    - b. A dealer is anyone who sells more than a certain number of cars (typically 5); a dealer must obtain a license.
  2. Title skipping: buying and selling a car without registering the title after purchase.

<sup>2</sup> eBay Vehicle Purchase Protection: <http://pages.motors.ebay.com/buy/purchase-protection/>

<sup>3</sup> UCC 2-314: <https://www.law.cornell.edu/ucc/2/2-314>

<sup>4</sup> 15 USC § 2301 *et seq.*: <http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-chapter50&edition=prelim>

3. Rolling back the odometer: disconnecting, resetting, altering, or replacing the odometer without proper notice.
  - a. The car appears to have lower mileage than it actually does.
  - b. Mileage is recorded on the title; often, odometer fraud and title fraud goes hand in hand.
- B. Sales puffery
  1. A seller can use whatever language to “puff” up the product so long as it’s not misleading. The law does not prohibit sales puffery.
  2. Puffery is not considered creating an express warranty.
- C. Important for buyers to check that the purchase agreement includes all negotiated terms in the written document. Regardless of what the seller verbally agrees, if the term isn’t memorialized in the agreement, the buyer will have an uphill battle to have it enforced.