



Judges in the Classroom

Unfair or Deceptive Sales Practices

Source:

Adapted by Margaret Fisher from *Street Law: A Course in Practical Law* (8th ed.), Chapter 26. Staff at the Washington State Administrative Office of the Courts (AOC) updated the lesson in 2012. For more information, contact AOC Court Services, 1206 Quince Street SE, PO Box 41170, Olympia, WA 98504-1170. For an electronic copy of this lesson, or to view other lesson plans, visit Educational Resources on the Washington Courts Web site at: www.courts.wa.gov/education/.

Objectives:

1. Students will analyze hypothetical situations to evaluate whether a practice is fair or unfair.
2. Students will support their opinions with reasoning.
3. Students will compare their opinions with the state of the law in Washington.
4. Students will list sources in their community to find help for a consumer problem.

Grade Level:

Grades 8-12

Time:

One class period (approximately 50 minutes)

Materials:

One copy of Handout 1 (Fair or Unfair? Opinion Poll) for each student

Note: This lesson does not require that students have any prior knowledge about consumer law. The lesson is appropriate to introduce a unit about unfair or deceptive sales practices, as the opinion poll asks students for their opinions about what is fair and unfair. After expressing their opinions, they should be told what the state of the law is.

At the end of the lesson, judges should focus on resources in their particular community to assist consumers. If there is time, the judge could address the Small Claims Court in your community. Either before or after the lesson, teachers should address how a consumer would go about making a complaint, as described in pp. 330-331 of *Street Law* (8th ed.).

Procedures:

1. **Begin the class by introducing yourself** and telling a little bit about what you do, if this is your first class. Then tell students that today they will learn about unfair or deceptive sales practices.

2. **Write "unfair" and "deceptive" on the board** and ask for definitions.

Unfair: dishonest, unethical, or unscrupulous
 Deceptive: misleading or false

Ask if anyone has any examples of sales practices they think are unfair or deceptive.

3. **After taking a few examples, tell students** they will now look at some hypothetical situations. Explain that hypotheticals are not necessarily actual cases; although, some of these are based on real cases. Tell students they will decide whether they think the seller's action was fair or unfair/deceptive.

4. **Pass out Handout 1.** Divide students into groups of three to five students or have them work with one other student. Ask them to read the hypotheticals and decide whether they think the merchant's actions were **fair** or **unfair/deceptive**.

Emphasize they are to decide what they personally think. There is no "right" or "wrong" answer; the exercise is to get their opinions. Tell them they will be expected to give reasons why an action is fair or unfair. Also tell students if they think they need more information before deciding, they should write out what additional information they need. Ask students if they understand the assignment. Tell them they have 15 minutes.

5. **While students are working,** walk around the room and monitor the groups. If students are working in groups of three to five, tell them they do not have to come to a consensus about whether an action is fair or unfair, but encourage discussion among group members.

6. **Debrief student opinions.** Ask students to provide their opinions and reasons. Record their responses on the board, using a chart. **For example:**

| Unfair/ Deceptive | Fair | Reasons |
|----------------------|------|---|
| 5 | 17 | <ul style="list-style-type: none"> • 10 days is not long enough • Knew rules when joined club |
| 12 | 10 | <ul style="list-style-type: none"> • Initial investment required to recruit • Steps are clear |

After each hypothetical and after students have given opinions and reasoning, tell them what the law is. Keep in mind that students are being asked to decide what they think is fair and unfair. While their opinions may not be in agreement with what the law has determined is legal or illegal, this does not make their opinion "wrong" or "right."

Be sure to give each group a chance to respond. Allow 20-25 minutes for this debriefing.

Information for Handout 1

1. **Hypothetical:** Jane joins a club that requires she buy five new ringtones for her cell phone during the year. She will receive an email notice every month about that month's ringtone. She must reply to the email within 10 days, stating she does not want to buy the ringtone offered or it will be automatically uploaded and billed to her. Jane failed to reply to the email notices and has received 12 ringtones; the club claims she must pay for all 12 ringtones.

Response: This is a "negative option" or "negative response" plan, and it is legal, as long as the seller follows specific rules that require disclosing all terms of the plan. The plans also must allow purchasers at least 10 days to turn down a selection. Consumers may cancel their membership at any time, but would be obligated to pay for selections they did not decline within the 10-day period. Jane is obligated to pay for at least five new ringtones, since she did not respond to any of the notices.

2. **Hypothetical:** Ralph gets a flyer about an opportunity meeting to make a lot of money. He goes to the meeting and discovers that he must make an initial financial investment, which buys him the right to recruit others into the program. When he joins, he will get money for each person he recruits to join. The new recruits must invest in the business.

Response: This is an illegal pyramid scheme. Pyramid schemes are multi-level business ventures that violate the Washington Chain Distributor Scheme Act. These schemes differ from legitimate ladder-type business operations in that participants make money from bringing in other participants, rather than from selling a product. A typical pyramid meets these three requirements: 1) participants are required to make an investment (sometimes called a "membership fee") to get into the program, (2) they make additional money (or anything of value) for each new participant they get to join, and (3) all new recruits must make an investment in order to recruit others to work under them.

3. **Hypothetical:** Terry and Ann see an ad for "freight-damaged dining room tables on sale for \$300." They go to the store where Al explains that the damaged tables have been sold. However, they do have dining room tables for \$600 in stock.

Response: This is probably an illegal "bait and switch" sales tactic. Bait and switch is a deceptive advertising practice. If a seller advertises a low price on an item to bring customers into a store, but then downgrades the product or doesn't have it available

and steers the customer to a more expensive product, it is a classic "bait and switch" maneuver. If the ad had said that there were only a limited number of damaged tables available, or if the store had reasonable quantity to meet the demand, it would probably be okay.

4. **Hypothetical:** When Terry and Ann arrive at the store to buy this freight-damaged table, Al shows them the table for \$300. He also suggests that a much nicer one is available for \$600.

Response: This may be an illegal bait and switch sales tactic. The test is whether the seller had a "bona fide intent to sell" the damaged table.

5. **Hypothetical:** Cheatham's Sales offers a free one-carat emerald to anyone who comes to their one-hour presentation on condominiums. Marvin goes to the presentation and is subjected to high pressure sales tactics to buy a condominium. He resists and leaves with a low quality one-carat emerald worth \$2.00.

Response: This is probably legal, since Marvin technically got what was advertised.

6. **Hypothetical:** Eighteen-year old Demesha wants to be a model. She discovers on the internet that the ABC Model Photography Company is hosting a photo shoot at the local mall. Demesha contacts the 800 number and discovers that she must have professional photos to be discovered by top modeling agencies. She pays \$1,000 for "comp cards" (sheet of several different photos on the same page) but never gets any modeling work.

Response: This is a model photography scam. Top modeling agencies do not want to have professional photos, as they can hide the real person. These scams are based on this untrue belief that to be discovered, top modeling agencies must see professional photos.

7. **Hypothetical:** Gabe teaches chess for \$45 per hour. He gets customer by advertising on Craig's List. One woman who lives in another city contacts Gabe and says that her 16-year-old son is coming to Gabe's town from France for a month, and she would like to keep him busy by purchasing chess lessons for the entire month. Gabe agrees and then receives a cashier's check in the mail for \$3,000, much more than the total cost of the lessons. The mother emails that she has overpaid and would like Gabe to return the difference.

Response: This is a deceptive practice as the cashier's check is a fraud. The scam is to get the person who receives the fraudulent cashier's check to return the overpaid balance from the cashier's check to the scammer.

8. **Hypothetical:** Shelly receives a postcard offering her a "thrilling, heart-shaped 14-carat gold-flash medallion containing 10,000 dazzling diamonds and one matching 14-carat gold-flash 18-inch necklace" from Henri Hamilton of J.E.N. Jewels of New York. The cost is just \$3.00. She calls the 900 number on the postcard and is told all of the advertised necklaces are gone. Later, her phone bill includes a charge of \$6.95 for the 900 number call.

Response: This is illegal, under Washington's Commercial Telephone Solicitation Act and the state Consumer Protection Act, as well as illegal under the federal Telephone Disclosure and Dispute Resolution Act of 1994. The seller is surely misrepresenting the quality and availability of the necklaces in order to make money on the 900 number calls. The federal law requires that companies that sell products and services over "900" telephone numbers to disclose their prices more completely and give consumers greater opportunity to dispute their bills. The law requires a preliminary message on all "900" services that discloses the identity of the company, the nature of the service being offered, and the exact cost. Services that run games, lotteries or sweepstakes have to disclose the odds of winning. This hypothetical is based on a real ad sent to consumers in Washington.

7. **Tell students that in Washington**, the state Legislature has enacted many laws to protect consumers. The most important one is the Consumer Protection Act, which provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

Explain that the Washington State Attorney General is primarily responsible for the enforcement of our consumer protection laws, but in some situations, consumers can bring actions to enforce the consumer protection laws. Tell students that they can get answers to their questions about consumer issues from the Attorney General's Consumer Protection Division, 800-551-4636. The number for the hearing impaired is (800) 276-9883. Complaints may be filed on-line at www.atg.wa.gov/FileAComplaint.aspx. The Consumer Protection Act gives the Attorney General's office the authority to bring lawsuits on behalf of consumers against businesses, and to ask the court for injunctions and restitution (repayment of money lost because of the unfair practice) of money to injured consumers.

The Division operates regional Consumer Resource Centers (CRCs) throughout Washington State. The mission of the CRCs is to educate students, adults and businesses in consumer law and practices; assist in resolving consumer complaints; and spot trends of unfair practices by businesses.

The Consumer Protection Division also offers free brochures on topics of interest to consumers, including auto repair, landlord/tenant, wireless services, and warranties. These can be downloaded from the Attorney General's website, www.atg.wa.gov/Brochures/default.aspx.

8. **Finally, ask students what they would do** if they had a consumer problem. What resources are there in the community to help consumers? List student responses on the board or a docu-camera.

Suggest to students that the first step should usually be to try to work out the problem directly with the merchant involved.

The Washington State Bar Association, 1325 4th Avenue, Suite 600 Seattle, WA 98101-2539, 206-727-8200, publishes pamphlets about legal topics of interest to the consumer. These may be downloaded from the Bar's website at www.wsba.org/News-

[and-Events/Publications-Newsletters-Brochures/Consumer-Information-Pamphlets#list](#). Consumer titles include: Signing Documents, Landlord Tenant, Alternatives to Court, and Consulting an Attorney.

There are many private groups in Washington State that publish information designed to assist consumers. The aims of the BBB are to protect the consumer, to encourage honesty in business, and to inform the public so the consumer can buy intelligently. The Better Business Bureau (BBB) accepts complaints on line and posts reliability reports on businesses at www.bbb.org. The BBB offers free mediation and arbitration to consumers.

If you are unsuccessful in resolving a dispute with a company yourself, at your request, the BBB will contact the company on your behalf. If the complaint cannot be resolved by the BBB's attempt to mediate the dispute, the matter may be submitted to BBB arbitration, provided the company has agreed in advance to participate in the arbitration process. Arbitration is a legal proceeding in which the parties agree to let a third party decide who is at fault. Once the parties sign an agreement to arbitrate, the arbitrator's decision can be enforced by a court.

Many counties now have dispute resolution centers that offer mediation services to the community. For example, in King County, the Dispute Resolution Center, Good Shepherd Center, 4649 Sunnyside Ave. North, Suite 520, Seattle, WA 98103, (206) 443-9603, at www.kcdrc.org handles a variety of civil disputes, including landlord/tenant, merchant/consumer, and neighborhood problems. Their services are free except for mobile home park mediation and domestic relations mediation. A sliding scale is used for domestic relations mediation. The Pierce County Dispute Resolution Center is located at 917 Pacific Avenue, Suite 206, Tacoma, WA 98402, (253) 572-3657, and at www.pccdr.org.

There are also private mediation services, including the Judicial Arbitration and Mediation Service (JAMS), throughout Washington State. These are organizations that provide trained mediators who work with disputing parties to assist them to reach a mutually agreeable solution. JAMS uses only former judges as mediators. Both parties must agree to mediate, and the result will usually depend on the good faith and desire of both parties to reach a solution. The mediation service charges a fee for its services. Mediation services may be found in the Yellow Pages, under "Mediation services."

9. The teacher could follow this lesson with the Burt role-play, Problem 27.6, p. 333 of the *Street Law* (8th edition) book.

Handout 1

Fair or Unfair? Opinion Poll

Decide whether you think the merchant's actions are fair (F) or unfair/deceptive (U). If you think you need more information, write down what information you need to make your decision. Be prepared to give reasons for your decisions.

- _____1. Jane joins a club that requires she buy five new ringtones for her cell phone during the year. She will receive an email notice every month about that month's ringtone. She must reply to the email within 10 days, stating she does not want to buy the ringtone offered or it will be automatically uploaded and billed to her. Jane failed to reply to the email notices and has received 12 ringtones; the club claims she must pay for all 12 ringtones.
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- _____3. Terry and Ann see an ad for "freight damaged dining room tables on sale for \$300." They go to the store where Al explains that the damaged tables have been sold. However, they do have dining room tables for \$600 in stock.
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