



Judges in the Classroom

Buying a Used Car

Source:

Adapted by Margaret Fisher, Institute for Citizen Education in the Law, Seattle, WA, from *Street Law: A Course in Practical Law* (8th ed.). 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 define "implied warranty of merchantability."
2. Students will analyze a hypothetical fact situation and apply the law to the facts.
3. Students will read and analyze documents.

Grade Level:

Grades 10-12

Time:

One class period (approximately 50 minutes)

Materials:

Three copies of Handout 1 (Used Car Simulation) for the three students in the role-play
One copy of Handout 2 (Implied Warranties on Used Cars) for each student
One copy of Handout 3 (Disclaimer of Warranty Agreement and Implied Warranty Negotiation Statement) for each student

Procedures:

1. **Begin the class by introducing yourself** and telling a little bit about what you do, if this is your first class. Then, ask students whether they or their parents have ever bought a used car. Then ask what does the typical purchaser consider when choosing a used car? List these on the board as students mention them. (Answers could include driving and hauling needs, price, condition, mileage, size, fuel economy, safety, color, image, and whether the car has a warranty.) Spend no more than five minutes on this.

Note: This lesson assumes the teacher has taught students basic information about express and implied warranties, pp. 272-277 of *Street Law* (8th ed.). The judge will focus on warranty law in Washington State that impacts the purchaser of a used car.

2. **Tell students** that the fifth most frequent consumer complaint at our State Attorney General's office is automobile sales. Tell them many of these problems could have been avoided if the buyers had been informed of their rights before buying.
3. **Ask for three volunteers** to do a scripted role-play (also called a simulation). Give each of the three participants a copy of Handout 1; give them time to quickly read over their parts. Then ask them to come to the front of the room and enact the scenario. Tell the rest of the class to pay close attention, because in a few minutes they will be lawyers and they will advise Tanisha, the buyer, about what she should do. The simulation should take about five minutes.
4. **After the simulation**, ask the class to give the players a hand. Then, pass out Handouts 2 and 3 to the class. Tell the students they will now be lawyers. Tanisha is coming in to their law office for advice about her rights in this situation.
5. **Tell students that before they can advise Tanisha**, they need to review the information in Handout 2 about the implied warranty of merchantability. Give students five minutes to read Handout 2. Then, check for understanding by asking questions such as:

When is there an implied warranty on the sale of a used car?

What does the implied warranty mean?

What do we mean when we say a consumer may "waive" the implied warranty?

What two things must happen before the implied warranty is legally waived?

6. **Write "implied warranty of merchantability"** on the board. Ask if anyone knows what this means. **(An unwritten promise that the merchant-seller gives to the buyer that the item sold is of at least average quality for that type of item.)** Give some examples: an iPod will accept and play downloaded music; a pair of skis won't break with normal use.
7. **Divide the class into groups of three to five students.** Tell each group to now look at Handout 3, which shows the forms that Tanisha signed. Remind them to consider what was said and done at the car lot. Ask them to decide the following:
 - (a) Did Tanisha legally waive the implied warranty of merchantability? Why or why not?
 - (b) What should she do now? Can she get any sort of recovery from Dave or Sell-A-Car?

Give the groups about 15 minutes to work. Tell them they will report back to the whole class at the end of their group work time. Ask if they understand the assignment.

8. **Ask each group to report back** what they decided and why. Spend 10-15 minutes hearing from all groups. After all groups have reported, ask students what Tanisha should have done or should do next time she goes shopping for a car. List suggestions on the board. Possible responses include:

She should have evaluated her personal needs for driving and hauling, done research about what kind of car to buy before shopping, and then comparison-shopped, comparing the price of the Toyota at Sell-A-Car with similar cars at other dealerships. She also should have had the car checked by a mechanic. During this check, she should make sure that the car has passed or will be able to pass the emissions test. If it cannot, she will be responsible for paying the costs of getting it in compliance with emission requirements. Additionally, she should have negotiated on the price.

She should have explored the car's history. The law requires that the dealer give the prospective buyer the contact information of the previous owner if the previous owner was the government agency or business. She could also have looked into the vehicle's history by looking on www.carfax.com. She should also check whether the National Traffic Safety Administration had ever recalled this vehicle by calling 1-800-424-9393 or by searching www.nhtsa.dot.gov.

Most importantly, Tanisha should have read all the documents she signed closely, and asked Dave to clarify what they meant. Tanisha also could have refused to sign the disclaimer and negotiation statement.

Tanisha also could have checked with the Better Business Bureau (BBB) to see whether the dealer was a reputable business. She also should have called the Attorney General's office to see if Sell-A-Car had ever been sued. She could also have called the Washington Department of Licensing to find out whether complaints had been filed against Sell-A-Car.

She could have purchased a warranty, so that the implied warranty could not be waived. However, she should be very careful to read what the purchased warranty included.

- 9. In summarizing, be sure to include** the information in the Attorney General's summary (Handout 2). Make sure students understand that when a buyer purchases an extended service warranty contract, the implied warranty cannot be waived.

Handout 1

Used Car Simulation

Narrator: Tanisha is shopping for a used car. She has saved \$3,500 for the car. She sees an ad in the paper, "BEST DEALS IN TOWN. COME ON DOWN TO THE LOAN ARRANGER AT SELL-A-CAR. WE'LL BEAT ANY PRICE." Thinking that this sounds pretty good, Tanisha takes a bus down to Sell-A-Car, where she is welcomed by Dave, a salesman.

Dave: Hey, how ya doin'? Come on in. What can I do for you today?

Tanisha: I saw your ad in the paper and I'm looking for a good, reliable car to drive to work.

Dave: Well, you've come to the right place. We've got the best deals in town. Let me show you this new Firebird we just got in, only 15,000 miles on it.

Tanisha: I'm looking for a small car, one that gets good mileage. I kind of like that green hatchback Toyota over there. How much is it?

Dave: Hey, that's a great car, a 1996 model. It'll last you for years. The sticker price on it is \$3,295. I could probably knock off a few dollars--how 'bout I give it to you for \$3,200?

Tanisha: What about that sign on the windshield that says "AS IS - NO WARRANTY"? What does that mean?

Dave: That's something the government requires us to do. Nothing for you to worry about. Listen, this is a great car, it's got low mileage, great color. It fits you perfectly!

Tanisha: Oh, okay. I do like the color. And you say it has low mileage? Is it in good condition? Like, does it run okay?

Dave: Look at this face. Would I sell you a lemon? This is the car for you. Come on into my office, and we can fix you right up. You'll be driving it to work tomorrow.

Narrator: In the office, Dave presents Tanisha with a stack of papers.

Dave: Now, just sign these papers.

Tanisha: What are these two forms here? I don't have time to read all this stuff! What's important here? What does this mean--implied warranty negotiation statement? Disclaimer? What's that? I thought it said on the windshield "no warranty"?

Dave: That's right. Now, don't worry your pretty little head about these forms. We just need for you to sign each one and the car will be yours.

Narrator: Tanisha signs all of the forms and drives the car off the lot. A week later, while driving the car to work, it makes some funny noises. When she takes it in to a mechanic, she's told it needs a new transmission immediately, which will cost \$1,800. She goes back to Dave and complains.

Tanisha: Look, you told me this was a good car. I can't even drive it! It needs \$1,800 worth of work!

Dave: Sorry, but once you drove that car off the lot, it became your problem.

Tanisha: My mechanic told me I might have some kind of warranty, like an implied warranty of merchantability.

Dave: Sorry, but you waived that right. Take a look at those papers you signed here in my office, honey.

Tanisha: Hey, something's not right here. I'm going to talk to the Attorney General's office or a lawyer about this.

Narrator: THE END--but not the end of Tanisha's dealings with Dave!

Handout 2

Implied Warranties on Used Cars*

Under state law RCW 62A.2-314, every used car sold by a dealer in Washington for a customer's personal use has an "implied warranty of merchantability." This means that the dealer promises the used car will be fit for ordinary driving purposes, reasonably safe, without major defects, and of the average quality of similar cars available for sale in the same price range. A car can only be sold without the implied warranty if the customer knowingly agreed to waive the warranty and was provided with a statement of the particular characteristics or parts of the car that aren't covered.

Absent the required disclosures and your customer's explicit consent, an "as is" sticker in the window of a car or a signed waiver is not sufficient to waive the implied warranty. The implied warranty can't be waived under any circumstance if a written warranty is offered with the car or the customer purchases an extended service warranty from the dealer within 90 days of buying a used car.

Whatever the status of warranty, dealers shouldn't sell cars that, due to defective or missing safety equipment, aren't legal to drive on public roads. Here are some general guidelines for dealers selling used cars under state law:

- Washington consumers have a right to trust that any purchased vehicle will be reasonably safe, efficient and comfortable.
- If a customer has major problems with the vehicle, then the dealer may be obligated to meet the customer's request for repairs or repayment of the purchase price.
- Courts have ruled that the implied warranty is legally waived only if both of the following conditions are met:
 1. The consumer explicitly negotiates and agrees to the fact that the car does not have an implied warranty, and
 2. The dealer gives the consumer a statement of the particular characteristics or parts of the car which are not being warranted.

A general discussion of vehicle size, style, model, color, power, extra equipment and price is not a specific discussion or explicit negotiation of a waiver of the implied warranty of merchantability.

The use of an "As Is" sticker does not get around the Implied Warranty of Merchantability rules.

A signed, pre-printed form may not be evidence of explicit negotiation.

A clause waiving the warranty in a preprinted sales agreement is not evidence of explicit negotiation.

The burden is on the dealer to prove evidence of an effective disclaimer or waiver of a warranty.

If a customer buys an extended service warranty contract within 90 days of buying the used car, the implied warranty of merchantability cannot be waived under any circumstances – even if previously negotiated.

Used cars also have another implied warranty under state law RCW 62A.2-315, called Warranty of Fitness for a Particular Purpose. This provides that when the seller knows the vehicle is going to be used for a particular purpose, such as racing or towing a trailer, and the buyer is relying on the seller's expertise to provide a suitable vehicle, a warranty is created that the item will actually be fit for that purpose.

Washington State Attorney General's Office Information Sheet, 2012

<https://www.atg.wa.gov/implied-warranty>

Handout 3

DISCLAIMER OF WARRANTY AGREEMENT

THIS AGREEMENT IS ENTERED INTO BETWEEN SELLER AND PURCHASER COVERING THE HEREIN DESCRIBED VEHICLE.

Year	Make	Model	Body Style
Serial No.		License No.	Mileage

THIS MOTOR VEHICLE IS SOLD BY THE SELLER AND PURCHASED BY THE PURCHASER "AS IS", "WITH ALL FAULTS," WITHOUT ANY WARRANTY, EITHER EXPRESSED OR IMPLIED. THERE ARE NO WARRANTIES, WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. THE PURCHASER WILL BEAR THE ENTIRE EXPENSE OF REPAIRING OR CORRECTING ANY DEFECTS THAT PRESENTLY EXIST OR THAT MAY OCCUR IN THIS VEHICLE. _____ Initial.

THE SELLER DOES NOT IN ANY WAY WARRANT THE FITNESS OF THE MOTOR VEHICLE FOR ANY PARTICULAR USE OR THE MERCHANTABILITY OF THE MOTOR VEHICLE PURCHASED UNDER THIS CONTRACT. Whether the motor vehicle is purchased for commercial or for personal family or household use purchaser, having Inspected the motor vehicle as fully as desired by purchaser, understands and agrees that The Seller makes no warranty whatsoever, expressed or implied, respecting the quality, characteristics, performance or condition of the motor vehicle, or any of its component parts, including but not limited to, the engine and its internal and external parts, the clutch assembly and related parts, the automatic or standard transmission and related parts, the drive line, the rear axle and related parts, the steering assembly and related parts, the electrical system, the front and rear suspension and related parts, the tires and wheels, the braking system, the radiator and cooling system or the heating and air conditioning systems; nor does The Seller make any warranty whatsoever, expressed or implied, concerning the length of time or mileage which the purchased motor vehicle will operate or travel after the date of the contract or purchase. _____ initial.

Purchaser further agrees that the seller shall have no liability for consequential damages in the event of injury to any persons or property, or any liability for loss of use, loss of time, loss of profits or income, or any other incidental expenses arising from malfunction or defect or unfitness or deficiency of this vehicle. _____ initial.

Agreed to this _____ day of _____, 20_____

Seller: _____ Receipt of a copy of this agreement is hereby acknowledged.

By: _____ Purchaser: _____

Title: _____

IMPLIED WARRANTY NEGOTIATION STATEMENT

Under the law, a vehicle is sold with an implied warranty as to the merchantability and fitness of that vehicle.

Unless specified in the comments section below, my signature below acknowledges, understands and agrees that the Seller makes no warranty whatsoever, expressed or implied, respecting the quality, characteristics, performance or condition of the motor vehicle, or any of its component parts, including but not limited to, the engine and its internal and external parts, the clutch assembly and related parts, the automatic or standard transmission and related parts, the drive line, the rear axle and related parts, the steering assembly and related parts, the electrical system, the front and rear suspension and related parts, the tires and wheels, the braking system, the radiator and cooling system, or the heating and air conditioning systems; the fuel system; the exhaust system; the frame and body; and any and all inoperable accessories.

With my signature at the bottom of this document, I further acknowledge that I will pay for any and all costs of repair on the vehicle, upon my taking possession of said vehicle.

VEHICLE DESCRIPTION: _____
Year Make Model Vin#

IMPLIED WARRANTY IS PROVIDED FOR THE FOLLOWING ITEMS ONLY:

Agreed to this _____ day of _____, 20____

Customer Name _____ Customer Signature _____

Dealership _____ By _____

Questions to consider:

1. Did Tanisha legally waive the implied warranty of merchantability?
Why or why not?

2. What should she do now? Can she get any sort of recovery from Dave or Sell-A-Car?