

Ask a Lawyer

By Steven Leskin

Q~ *What are my rights if I buy a used car from a dealer?*

A~ In any business relationship or commercial transaction, your rights and obligations are contained in the contract. A contract is a mutual exchange of benefits and obligations. That mutual exchange is called "consideration." A contract can be written or oral. A contractual agreement can include any provision on which the parties agree which is not contrary to law.

A contract for the sale of a used car will contain terms which identify a particular car, the payment terms, delivery details and warranty. If the car is going to be paid for over time, then likely there will be a separate payment plan. The payment plan will provide that the car is collateral in the event of a payment default, how the seller/lender can foreclose on the car (meaning re-possess the vehicle), and what other remedies the seller has. These other remedies may include recovering costs and attorney fees if there is money left owing on the contract and the seller goes to court to recover them.

The warranty section is likely the most important term in a used car transaction. Most of us are familiar with the term "AS IS." This means that the dealer has no obligation to you after the car leaves the lot. An AS IS term means that the buyer takes responsibility for how the car runs after purchase. Used car dealers, by order of the Federal Trade Commission, are required to display the "Buyer's Guide" prominently. The Buyer's Guide will explain the warranties which accompany the used car.

The advantage to the buyer of an "AS IS" clause is that vehicle should cost less. The risk is that the vehicle does not run well and that the buyer has no recourse.

Finally, Oregon does not have a lemon law which applies to used cars. The lemon law only applies to new cars.

Absent material and provable misrepresentations, the buyer's recourse in the event a used car does not perform as promised is limited.

Q~ *What is a tort?*

A~ In our country, there are two types of laws: laws that derive from statutes and laws that arise directly from the courts. Of course, courts rule on the constitutionality of statutes and the interpretation of laws passed by the legislature. Those cases involve a federal, state or municipal law. The court of appeals rulings on those statutes are public and form a running body of law called precedents. Cases involving similar facts under the same statute will be decided by the rulings in prior cases.

As a general matter, the laws passed by the state involve the state's relationships with its citizens and what they can and cannot do. The laws created by the court, generally, involve citizen's relationships with one another.

Hence, criminal cases are always created by statute. A criminal case will be called "The People of Oregon vs. Jaba The Hut." There are other statutes which are not criminal, e.g. insurance regulations or the Corporations Code, and these form the vast bulk of law. For two individuals to sue one another under one of these laws, the right to sue must be expressly given by the statute.

Tort laws are a different matter. Tort laws consist of people suing people to recover monetary damages. For example, assault cases, negligence cases, and defamation cases are types of cases created by the courts and for which there is no statutory parallel. In other words, the basis of suing someone for their negligence in running his or her car into the rear end of your car is called "negligence" and negligence as a legal theory is part of law made by the courts, and not the legislature. This is usually called the common law.

Again, as a general matter, case law is made at the state court level. So, while you could under certain circum-

stances, sue in federal court for a tort, you would be using a state court law. The federal court cases deal with the interpretation and constitutionality of federal statutes.

Lastly, contract law is primarily court made law. However, there are uniform statutes between the states to regulate and promote commerce. For example, the Uniform Commercial Code codifies years of various states contract laws to create a uniform contract law to promote and simply the sale of goods between the states.

Q~ *What is "prosecutorial misconduct"?*

A~ Prosecutorial misconduct is ethical misconduct by an attorney for the state or federal government not adhering to the laws and ethical rules. Over the last several years, there have been numerous cases of the courts dismissing cases because of official misconduct. For example, Senator Ted Steven's case in Alaska was dismissed because prosecutors did not turn over all of the government's evidence to Senator Steven's attorneys. Prosecutors are particularly required to turn over any exculpatory evidence, meaning evidence which could lead to a finding of "not guilty."

Several years ago, I represented a young man from Fiji in a deportation case. He was given a green card based on his marriage to a US citizen. They eventually divorced, and the Immigration and Naturalization Service revoked his green card claiming that he did not marry his wife in good faith.

The INS attorney interviewed the ex-wife and requested that she sign an affidavit. The attorney prepared the affidavit, and sent it to the wife. The affidavit stated that it was a sham marriage. The wife refused to sign it. The marriage was real, whether or not she was getting a divorce.

The INS attorney presented the affidavit to the court. The court questioned why the affidavit was not signed. The attorney lied. The INS attorney stated it was an accurate reflection of her conversation with the ex-wife. Later, after the hearing, the ex-wife wrote the judge directly and explained that she had refused to sign the affidavit: whatever her present feelings were for the ex-husband, her marriage had not been a sham.

Despite the unsigned affidavit and the letter from the ex-wife, the judge found for INS and deported the husband. It was clear that the judge believed the unsigned affidavit because he disbelieved the husband when his testimony contradicted the affidavit. A real marriage was found to be sham based on a false affidavit.

This level of misconduct seldom happens. And, when it does, it is sickening to see. I hope never to see it again.

Steven Leskin is an attorney in North Portland. He has been in practice since 1992. You can submit a question to him through www.ModestMeansLawOffice.com or through the Vernonia's Voice website.

Mark your calendar now!
The Vernonia chapter of P.E.O. will hold a big rummage sale at the **Grange Friday, April 25 and Saturday, April 26.** Antiques, collectables, housewares and more. Look for details in next month's Voice

Trying the Stafford Way

Celebrate the Stafford Centennial by doing some creative writing in a free workshop led by Oregon Poet Laureate, Paulann Petersen at the Forest Grove Library on Saturday, April 12, 2014, from 10:30 AM to 3:00 PM.

The most encouraging of teachers, William Stafford urged us to use writing as a vehicle for exploration and inquiry. During this workshop—in that spirit of welcoming what might find its way onto a page—we'll use some Stafford poems as springboards for generating our own poems or short prose pieces. Our goal will be to have

each of us end our hours together with an outpouring of new work.

Each participant should bring a notebook or journal, preferably a large one (not diary size), because Paulann is hoping that people will write copiously, and that's not easy with a small journal or notebook.

Please bring a sack lunch.

For writers of all levels of experience. Beginners are welcome.

Registration required. Register at the library Reference Desk or call (503) 992-3337.

Columbia Humane Society Featured Pet



Apple's happy ending started when a shelter in California contacted us about her. The shelter felt that she was a very special girl that just needed a second chance and they knew that if she was given the opportunity she could have a great forever after. Apple is about 2 years old and seems to get along well with other dogs. She can be a little shy around new people when first meeting them, but give her a few minutes and she warms right up. She is very sweet and will make someone a great companion. She weighs in right at 50 lbs. If you have any questions about her please don't hesitate to call or email us.

Web: www.columbiahumane.org
2084 Oregon Street
St. Helens, OR 97051

Phone: 503-397-4353
Email: animalwelfare@columbiahumane.org

Thinking about life insurance isn't an easy thing to do... But it must be done.

While your loved ones may have a difficult time coping, the money you leave behind may help them out with many expenses.

Expenses like:

- Final expenses
- Mortgage payments
- Car payments
- Children's education

Please call me to discuss our variety of life insurance products. I can help you choose the policy that best fits your needs and could help relieve your loved ones financial concerns.



James Vaughn
Licensed Insurance Agent
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