

PURCHASING A SECOND HAND CAR

Buying a second hand car is a transaction which most of us will carry out one if not more times during our lives. It is also usually quite a substantial transaction, and as such is one which should be made with a good deal of consideration.

When you buy a car, either new or second hand, you are doing so as a consumer, which means that the multitude of consumer legislation applies to the transaction. However, this is only the case if you are buying from a dealer or trader. If you buy a car from a private individual as opposed to a dealer or trader the consumer legislation does not apply, and the principle caveat emptor, or “let the buyer beware” applies. What this means essentially is that you are buying the car as it is with no warranties or guarantees, and if there are any defects discovered after the sale in most cases you will not have any recourse to the seller.

Often the main reason you may decide to go down the private sale route is that the price might be less than that you would pay for a similar vehicle in a dealership. You should be extra vigilant when you choose this option. If possible bring a knowledgeable person with you who will know what to look out for when inspecting the car. You should ask about the history of the car, such as whether it has previously been involved in any accidents, how long it has been in the ownership of the seller, etc. A private seller is under no obligation to give you all of the information in his knowledge regarding the car, so if you don't ask the right questions you won't necessarily get all the information which you will need to make an informed decision on whether or not to complete the purchase. It is very important to remember that consumer legislation does not offer any protection to the purchaser in a private sale. However, should the seller be found to have given false information in relation to the condition of the vehicle this may form the basis for a case of breach of contract should you find yourself in the unfortunate position of having bought a defective vehicle. For this reason you should ask as many questions as possible. Keep a note of the questions and particularly the answers received.

To put this into context, let us say that Jane, a private individual, sees a car advertised for sale in a newspaper and the seller is David, another private individual. Jane buys the car and shortly afterwards it breaks down. She takes it to her mechanic who advises her that there was a minor defect which had needed repairing, but as it wasn't attended to it has now caused major damage to the car which will be very expensive to repair. Assuming that David wasn't aware of the minor defect at the time of the sale, Jane cannot go back to David to seek compensation.

In an alternative scenario let us say that David had the car serviced shortly before the sale, and that he knows from the mechanic who serviced the car that there is a

defect which will need fixing shortly, otherwise the defect will cause serious problems with the car which would be very expensive to repair. David, being a private seller, while he cannot lie and say that the car is in perfect condition, is under no obligation to tell Jane about the defect. However, if Jane asks David about the service history of the car and whether there is anything in particular that he knows about its present condition, and David at this stage deliberately chooses not to tell Jane about the problem, he may be making a misrepresentation about the car's condition and in this scenario could be liable to Jane for breach of contract.

There are a number of companies that can check the history of a car for you for a fee and you can search online for a suitable provider. This check may uncover details which the seller is trying to hide such as whether or not the vehicle has been involved in an accident, the true mileage of the vehicle and whether there is any outstanding finance on the vehicle.

The situation is completely different where a car is purchased from a car dealer. The Sale of Goods and Supply of Services Act, 1980 states that an individual is a consumer where:

he or she is not acting in the course of a business, and
the other party is acting in the course of a business, and
the goods are of a type ordinarily supplied for private use.

This means that if you purchase a car from a car dealer for your own private use you do so as a consumer and with the protection that the consumer legislation provides.

There are a number of laws which apply to all consumer transactions and some which apply specifically to the purchase of a vehicle. In particular, section 13 of the Sale of Goods and Supply of Services Act, 1980 provides that in every case where a private individual buys a motor vehicle there is an implied condition in that sale that the vehicle is "free from any defect which would render it a danger to the public including persons travelling in the vehicle". The seller may contract out of this implied condition but only in specific circumstances and where the buyer agrees to buy the vehicle without that condition applying.

Section 10 of the 1980 Act is also applicable to the sale of vehicles by a car dealer to a consumer as well as being applicable to the sale of goods in general. This section provides that in every sale of goods there is an implied condition that the goods are of "merchantable quality" and are "fit for their purpose". In the case of the sale of a vehicle, the implied condition means that the car must be fit to be driven and must be in roadworthy condition. Again, there are certain circumstances where the seller may contract out of this implied condition, specifically if:

- a. any defects are specifically drawn to the buyer's attention before the sale is concluded, or
- b. the buyer examines the goods and any defects should have been revealed by that examination.

This means that if the salesman tells you that the car has a certain defect but you decide nevertheless to go ahead with the purchase, you will not have any recourse to the seller if the car gives you trouble subsequently and the reason is the defect

which the seller told you about. The second exclusion of the implied condition at b. would not normally cause much difficulty in relation to the purchase of a car from a car dealer, because unless the purchaser has a good knowledge of cars the dealer is considered an expert and as such would be expected to have discovered any defects on his or her own examination of the vehicle prior to selling it.

A further protection afforded by the 1980 Act is that under section 22, any attempt by a seller who is acting in the course of a business to exclude the implied condition that the goods are of merchantable quality is void where the buyer is a consumer.

EU legislation can also offer protection to a consumer in respect of the purchase of a vehicle. The EU Unfair Commercial Practices Directive (Directive 2005/28/EC of 11 May 2005) deals with unfair business-to-consumer commercial practices (it does not apply to dealings between businesses) and applies to any contract or term in a contract which has not been individually negotiated. The Directive provides that a range of unfair, misleading and aggressive trading practices are banned if they are likely to cause appreciable impairment of your ability to make an informed choice in relation to the product concerned and cause you to make a decision about a transaction you would not otherwise make.

An example of this is if you as a consumer are handed a form or contract and are asked to sign it as it is, without any opportunity or choice as to whether or not all of the terms are to be included. In other words, it is required that you sign the form as is and complete the purchase, or the purchase cannot proceed. If this is the case, and if any of the terms included are regarded as being unfair then that term will not be legally binding on the consumer. Under the Directive, a term of a contract will be regarded as unfair if it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer.

The Consumer Protection Act, 2007 provided for implementation of the above Directive in Ireland and also established the National Consumer Agency with a view to promoting and protecting the interests of consumers. Under the Competition and Consumer Protection Act 2014 the National Consumer Agency and the existing Competition authority were replaced by the Competition and Consumer Protection Commission ('CCPC'). The CCPC has the dual mandate of promoting competition and enhancing consumer welfare. The CCPC can enforce a wide range of consumer protection legislation and has a variety of enforcement tools to tackle illegal practices by traders. The CCPC also enforces Irish and European competition law in Ireland. The CCPC can conduct investigations and can take civil or criminal enforcement action if they find evidence of breaches of competition or consumer law.

In summary, when you as a consumer buy a second hand car from a car dealer you do so with the protection of consumer legislation. When dealing with a private seller you should proceed with caution to ensure that you don't get left with an unreliable or unroadworthy vehicle and are unable to take any action against the seller.

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*March 2009 (Revised November 2018) Wolfe & Co. LLP Solicitors
Market Street, Skibbereen, Co. Cork - web: www.wolfe.ie
Tel: 028-21177, fax: 028-21676, e-mail: info@wolfe.ie*