

Section 4—Consumer Issues and Education

Title of Lesson/Subject: *Buying a Car or a Lemon?*

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Time Allotment: 1 Class Period

Grade Level or Target Audience: Upper Elementary, Middle School, High School

ND Standards Competencies:

ND State Standards: Social Studies

4.3.3 Understand the role of currency in everyday life.

8.3.4 Understand the importance of management of personal finances.

12.3.2 Understand how major economic forces and institutions influence individual decisions of producers, consumers, and investors.

Key Economic Concepts: consumer protection rights, implied warranty, Lemon Law

Brief Description:

An understanding of consumer protection rights in automobile purchase and repair will help students to:

- recognize the importance of such rights
- to gain practical information about laws and rights concerning automobile purchase and repair in Washington- an event that many students will soon be experiencing!
- be smart consumers

Learner Objectives:

- **Knowledge Objectives:** As a result of this class, students will be better able to:
 1. define an implied warranty of merchantability
 2. recognize under what conditions such a warranty may be waived
 3. know when they have purchased a vehicle subject to the “Lemon Law”
 4. know some of the laws that their mechanics must observe
- **Skills Objectives:** As a result of this class, students will be better able to:
 1. purchase and maintain an automobile on fair terms
 2. apply consumer law taught to them in class to a factual scenario
 3. work in groups
- **Attitude Objectives:** Students will be better able to feel:
 1. that there are sufficient and necessary consumer protections available to them, and several different sources to turn to seek help. ie. Better Business Bureau, WA A.G.O., Dept. of Licensing
 2. that they are not at the mercy of mechanics or car salesmen; as consumers they have rights under state law.

Introduction:

Today we are going to focus on consumer protection.

- Both the federal and Washington State Attorney General offices enforce consumer protection laws enacted by Congress and the WA legislature.
- Some of the most frequent complaints at the WA AGO deal with automobile sales and repairs.
- You will all be buying cars shortly and you must arm yourselves with knowledge of your rights as a consumer!

- We will be covering three main areas today
 1. Repairs
 2. Lemon Law, and
 3. Warranties of Merchantability

Materials Needed:

WA Implied Warranty law-handout #1 (Substitute ND Law), role play narrative-handout #2. (See Appendix)

Audio/Visual Equipment Needed: None

Lesson Outline:

1. **Repairs.** When you take your car in for repairs, you have certain rights, and your mechanic has certain restrictions under state law.
 - a. **BEFORE YOU HAVE REPAIRS DONE:**
 - i. Ask family & friends for recommendations
 - ii. Check with your local Better Business Bureau
 - iii. Ask about warranties for work done
 - b. **DIAGNOSTIC CHARGES:**
 - i. You need to ask for damaged parts to be saved. Keeps them honest!
 - ii. You are entitled to written estimate on repairs over \$100.00 if you deal face-to-face
 - iii. Your permission must be given for repairs that are more than 10 percent over the authorized estimate
 - iv. Get all warranties & promises in writing
 - c. **POSSESSORY LIENS:** In most cases, the repair facility has the right to keep a vehicle until the customer pays the bill if the customer was given an authorized estimate and the amount charged is within 110 percent of the written estimate (plus tax). However, a repair facility cannot hold your car if:
 - i. The repair facility did not return a part the customer requested before work began;
 - ii. There was face-to-face contact and the repair facility did not provide a customer with a written estimate or a choice of a written estimate;
 - iii. There was no face-to-face contact and the repair facility did not obtain authorization;
 - iv. The charges were more than 110 percent of the written estimate and did not obtain authorization to exceed that estimate;
 - v. The repair facility did not post the "YOUR CUSTOMER RIGHTS" sign.
2. **Lemon Law/New Vehicles**
 - a. The Washington State Motor Vehicle "Lemon Law" is designed to help new vehicle owners who have substantial continuing problems with warranty repairs. May entitle you to an arbitration hearing (at no cost).
 - b. The law covers most classes of motor vehicles which have an original retail purchase or lease in Washington and are originally registered in the state
 - c. An owner can request arbitration under Lemon Law at any time within 30 months of the vehicle's **original** retail delivery date.
 - d. You do not have to be the original owner to request arbitration. Later owners of a vehicle may request an arbitration if: the vehicle was purchased within two years of delivery to the original retail consumer and within the first 24,000 miles of operation; the vehicle meets the other eligibility requirements; and the request for arbitration is made within 30 months of the original retail delivery date.

- e. Your vehicle may qualify as a "lemon" if it has one or more substantial defects that have been subject to a "reasonable number of attempts" to diagnose or repair the problem(s) under the manufacturer's warranty. A "reasonable number of attempts" has occurred when: (possible overhead/handout)
- i. Diagnosis or repair of the same **"serious safety defect"** has been attempted two or more times, and the defect continues to exist. **At least one attempt must occur during the "warranty period"**
 1. A **"serious safety defect"** is a life-threatening malfunction that impairs the driver's ability to control or operate the vehicle, or creates a risk of fire or explosion; **OR**
 - ii. Diagnosis or repair of the same **"nonconformity"** has been attempted four or more times, and the defect continues to exist. **At least one attempt must occur during the "warranty period"**
 1. A **"nonconformity"** is a defect that "substantially impairs" the use, value or safety of the motor vehicle so as to make the vehicle unreliable, unsafe or diminished in resale value for comparable vehicles; **OR**
 - iii. A vehicle has been **out-of-service** for diagnosis or repair of one or more nonconformities or serious safety defects (whether or not repaired) for a cumulative total of 30 calendar days, with **at least 15 of those days occurring during the "warranty period."**
 - iv. Note: The law does not cover problems caused by owner abuse or negligence, or any unauthorized modifications or alterations made to the vehicle.
 - v. The following are examples of **how to determine whether a diagnosis or repair attempt occurred during the warranty period.**
 1. If the manufacturer provides the minimum warranty of **one year or 12,000 miles** (whichever occurs first), an eligible defect must have been:
 - a. diagnosed or repaired **at least once** under the manufacturer's warranty within 12 months and 12,000 miles; **OR**
 - b. out-of -service for a total of 30 or more cumulative calendar days due to diagnosis or repair of one or more defects that are covered by the manufacturer's warranty; **at least 15 calendar days** must have occurred during the manufacturer's warranty coverage of 12 months and 12,000 miles.
 - c. If the manufacturer provided a **longer warranty** (e.g. five years or 50,000 miles) an eligible defect must have been:
 - d. diagnosed or repaired **at least once** under the manufacturer's warranty and within two years and 24,000 miles; **OR**
 - e. out-of -service for a total of 30 or more cumulative calendar days due to diagnosis or repair of one or more defects that are covered by the manufacturer's warranty; **at least 15 calendar days** must have occurred within two years and 24,000 miles

3. Car Buying Information

- a. After a deal is agreed upon and the contract signed, if you are contacted by the dealer saying they now need a larger down payment or higher monthly payments, you are not required to accept these new terms.
- b. By law, the dealer has 3 working days from the time of purchase/lease (excluding weekends and holidays) to find financing and finalize the sale according to the terms of the contract. When the dealer fails to locate the financing specified in the contract in that time period, there is no binding contract and the dealer must offer to return your contract

documents, down payment and trade-in vehicle *before* attempting to negotiate a new agreement with you.

- c. If you have taken possession of the car, you must promptly return it when notified that the transaction cannot be completed within the 3 working days period.
- d. Once you sign a contract you are bound by that contract! You do not have a three-day right of cancellation on vehicle purchases or lease contracts!
- e. If your new or used car is covered by a manufacturer's warranty and you have a problem which falls under the warranty, the authorized service department in the dealership is obligated to perform repairs required by the warranty. (A dealer may not refuse warranty service in order to avoid liability under Washington's "Lemon Law".)
- f. **“Curbstoners”** Be aware that unlicensed dealers known as "curbstoners" also advertise in the classifieds (anyone who sells five or more vehicles in a 12 month period must obtain a dealer's license - RCW 46.70.021).Curbstoners do not comply with state or federal laws and you have less protection in your dealings with them
- g. In the case of legitimate private (non-dealer) sales, you should put the purchase and sale agreement in writing. It should include a description of the vehicle, the price, a statement that the seller has clear title to the vehicle and all other representations and promises.

4. Used Vehicle Warranties

- a. **Dealer's Warranty** - A dealer may provide you with a limited warranty which would pay a portion of the repair costs for *covered* components during the warranty period (typically 90 days or less). Be sure you understand the coverage and exclusions. You should insist that the dealer put all promises and representations as to quality and warranty in writing.
- b. **Implied Warranty of Merchantability- (*Hand out HANDOUT #1*)** Every vehicle sold in Washington by a dealer has an "implied" warranty that the vehicle will be fit for ordinary driving purposes. That means the vehicle must be free of major defects, reasonably safe, and of the average quality of similar vehicles available for sale in that price range. The duration and extent of coverage is conditioned on the age, mileage and price of the vehicle as well as the nature and timing of the problem. Most used vehicles are offered by dealers "as is." If you knowingly accept such an offer, you give up your implied warranty of merchantability. *Nothing in any law requires you to sign a waiver of your implied warranty rights under any circumstances.*
 - i. a “Buyer’s Guide” sticker in the window marked “as-is” will not alone waive the implied warranty of merchantability. You **may** negotiate an agreement with the dealer to waive the implied warranty **only if:** (an overhead and/or of this information will help facilitate discussion and role play)
 - 1. there is explicit discussion of warranty terms;
 - 2. you are accurately informed of the consequences of purchasing the vehicle "as is" (i.e. the waiver lists the particular qualities and characteristics of the vehicle that will not be covered);
 - 3. you do not purchase an extended service contract; and finally,
 - 4. you knowingly and voluntarily assume all risk for costs of repairs due to defects in the vehicle. **"As Is"** - The consequences of waiving the Implied Warranty If you waive the implied warranty and the vehicle breaks down, you will be responsible for all repairs! If the vehicle breaks down one minute or one mile from the dealership, you will still be responsible for all repairs! Buying a vehicle "as is" means you are assuming all responsibility for the repair and maintenance of the vehicle! As an informed buyer, you should consider whether negotiating away your implied warranty rights is really in your best interests. Buying a car "as is," you will not have any

warranty and little if any recourse against the dealer if the vehicle turns out to have substantial problems.

5. Role play:

- a. Have 3 volunteers read and conduct role-play scenario
- b. **Question:** Did Leo legally waive the implied warranty of merchantability?

(Handout role-plays narrative-HANDOUT #2. Have class divide into groups and discuss if I.W. of M. was waived.)

- c. **Question:** Where did proper waiver fail?
 - i. take responses and questions
- d. **Question:** What should Leo do?
 - i. File a complaint with AGO and Better Business Bureau
 - ii. If that fails to solve the problem, Leo may file a lawsuit to enforce the implied warranty. This can be done without a lawyer in small claims court if amount less than \$2,500. Other wise it will be necessary to file in Superior court which usually requires an attorney

Resources: Adapted from:

<http://www.law.washington.edu/streetlaw/lessons/consumer%20law%20Purchases%20and%20Repair.pdf>

Activities: See Appendix

Application/Assignment: See Lesson Outline

Evaluation Plan: Evaluation will be based upon observation and facilitation of student responses, participation, and arguments in the role play/hypo exercise.

Appendix:

HANDOUT #1

Implied Warranty of Merchantability- Every vehicle sold in Washington by a dealer has an "implied" warranty that the vehicle will be fit for ordinary driving purposes. That means the vehicle must be free of major defects, reasonably safe, and of the average quality of similar vehicles available for sale in that price range.

The duration and extent of coverage is conditioned on the age, mileage and price of the vehicle as well as the nature and timing of the problem. Most used vehicles are offered by dealers "as is."

If you knowingly accept such an offer, you give up your implied warranty of merchantability. *Nothing in any law requires you to sign a waiver of your implied warranty rights under any circumstances.*

-a "Buyer's Guide" sticker in the window marked as-is will not alone waive I.W. of M.

You **may** negotiate an agreement with the dealer to waive the implied warranty **only if:**

- (1) there is explicit discussion of warranty terms;
- (2) you are accurately informed of the consequences of purchasing the vehicle "as is" (i.e. the waiver lists the particular qualities and characteristics of the vehicle that will not be covered);
- (3) you do not purchase an extended service contract; and finally,
- (4) you knowingly and voluntarily assume all risk for costs of repairs due to defects in the vehicle.

"As Is"

If you waive the implied warranty and the vehicle breaks down, you will be responsible for all repairs! If the vehicle breaks down one minute or one mile from the dealership, you will still be responsible for all repairs! Buying a vehicle "as is" means you are assuming all responsibility for the repair and maintenance of the vehicle! As an informed buyer, you should consider whether negotiating away your implied warranty rights is really in your best interests. Buying a car "as is," you will not have any warranty and little if any recourse against the dealer if the vehicle turns out to have substantial problems.

HANDOUT #2

Narrator: Leo is looking to buy a used car with his hard earned savings from his summer job at Burger World. Last night on T.V., he saw a commercial for Crazy Nate's Used Cars. The commercial claimed that Crazy Nate had, "The highest quality used cars, at the lowest prices, with financing available to all". Leo thought that this sounded like a good deal so today he rode his bicycle down to Crazy Nate's. After looking around the car lot for a minute, he is approached by Crazy Nate himself.

Crazy Nate: Hey there! I'm Crazy Nate; my prices are insane! Which car would you like to drive off of my lot today?

Leo: Hi. I saw your commercial last night and I'm looking for a reliable car that can get me to school and back during the week, and also to Burger World on the weekends.

Crazy Nate: Well, well, you are at the right place at the right time my friend! Have we got some deals for you! Why, check out this 79' Pacer! Only 267,000 miles on that engine; all for the low low, price of \$ 2,999.

Leo: Uh, I am more interested in a newer car. I would really like it to last until I get through college. Do you have any small size pickups? Like a Toyota maybe?

Crazy Nate: Well, you are in luck partner; here is a pretty little blue Toyota pickup. Blue is the in color for cars this season you know! She's a 1990 model and for you my friend, she's a steal at \$6,999.

Leo: What about this sign on the window here? It says "AS IS – NO WARRANTY". What does that mean?

Crazy Nate: Oh, that's just a little something the state requires us to do from time to time. It's no big deal. Listen, this truck will not sit here much longer at this price. These babies fly out of here like they had wings. This truck is yours! I wouldn't pass this opportunity up!

Leo: Well, it is pretty cool. What about the mileage?

Crazy Nate: This vehicle has pretty low miles for a 90' model. Especially considering that it is probably all freeway mileage anyway. You can't really count freeway miles the same way you count other miles you know.

Leo: Well, it looks like it's in good shape. I do like the color and I'd bet some sweet window tint would make it look pretty sharp. I'm just not sure though; I've never bought a car before. Are you sure it runs O.K.?

Crazy Nate: Son, look at me. I may be called Crazy Nate, but that is only because every other dealer in town would call me crazy to sell such a fine automobile for such a rock bottom price. I may be crazy, but do I look like I'd sell you a lemon? C'mon into my office and we'll get you driving this baby home with your bike in the back.

Narrator: Crazy Nate and Leo enter the dealership office. Crazy Nate presents Leo with a whole stack of paperwork.

Crazy Nate: Now, just sign these papers here son.

Leo: O.K. What are all of these forms? What does all this stuff mean? What is this “Verification of Implied Warranty Negotiation” sheet? What is a disclaimer? I thought it said on the window that there was no warranty!

Crazy Nate: That’s correct. No warranty. Now don’t you get yourself all worked up over all these formalities. All you need to do is sign all of those papers and you’ll be taking your date out tonight in style.

Leo: All right. I would like to show it to my friends before it gets dark. Here you go.

Narrator: Leo signs all the forms and drives his pickup off the lot. Only five days later though, Leo noticed some strange engine noises and black smoke coming from the tailpipe of his truck. Leo takes the truck to a mechanic and discovers that the engine requires a complete overhaul. The mechanic tells Leo that the truck was likely bought at a nearby wholesale auction where auto traders attempt to sell junk cars to each other on a daily basis. When a dealer gets stuck with one of them and can’t resell it at the auction, he tries to pawn it off on some poor retail customer. Leo takes the car back to Crazy Nate and complains.

Leo: Hey Crazy Nate. You said my pickup was great when I bought it. Now I can’t even drive it! It is going to cost me another three thousand dollars to get a new engine put in.

Crazy Nate: Sorry amigo, but once you drove it off my lot, it became your problem.

Leo: My mechanic told me that I might have some kind of warranty -like an implied warranty of merchantability or something.

Crazy Nate: Well, you had such a thing, but you see these papers right here that you signed? You waived your implied warranty. Here’s your signature right here.

Leo: I don’t know about this. I’m going to do some research and I’ll be back. This just doesn’t seem right. I’ll be back.

Narrator: The end.