

Protecting consumers from lemon cars and vague laws

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A NEW "lemon law" kicked in this month. This is an amendment to the Consumer Protection (Fair Trading) Act and the Hire Purchase Act that gives consumers more protection against defective products, colloquially known as "lemons".

A separate lemon law for cars could have been introduced as a separate piece of legislation, given the prominence of vehicle ownership here. Instead, the current scheme seeks to capture everything - from everyday household items to the Ferrari F12 - under a single law.

The inevitable downside is that the operative clauses are vague, as it would be impossible to draw up guidelines relevant or fair to the diverse products it covers. Under this new regime, one now needs to look at four laws - the Consumer Protection (Fair Trading) Act, Hire Purchase Act, Road Traffic Act and Sale of Goods Act - to understand the workings of the lemon law as it applies to the car industry. This is no easy task for a law meant to be consumer friendly.

Laws protecting consumers from sellers of shoddy goods have been around for more than 40 years elsewhere. Consumers have always had recourse under the Sale of Goods Act to take action against a seller for selling an unsatisfactory car. In fact, the new lemon law makes reference to the same provisions under this Act.

The changes are in the new specific remedies available - repair, replace, refund or reduction (in price) - and the onus of proof. If the defect appears within six months of the buyer taking delivery of the vehicle, it is presumed that the defect existed at the time of delivery. Otherwise, the onus shifts to the buyer to show that the defect so existed.

The other significant change is the law making the hire purchase company - and not the dealer who sold the car - liable to the consumer should a defect arise, as the company is deemed the owner. If no financing is taken, then the dealer remains liable.

Because of the "six months" highlighted above, specific legislation could have provided "six months or 10,000km, whichever comes first", as in some other jurisdictions.

Onerous burden on owners

WHILE this new legislation is to protect consumers, it must not overreach and impose an onerous burden on owners. A consumer who drives 20,000km in the first three months surely should not be given the same level of protection as one who has driven only 5,000km.

Under the Road Traffic Act, the authorities allow the transfer of the certificate of entitlement from a defective car to a new replacement if the defect is reported within the first year or 20,000km driven - implicitly recognising mileage as an important consideration. But this does not appear in the Consumer Protection (Fair Trading) Act, which deals with the onus of proof within the first six months.

Spell out reasonableness

ANOTHER provision in the lemon law allows the consumer to require the owner to repair or replace the goods. The owner must do this within a "reasonable time" and without causing "significant inconvenience" to the consumer.

This part could have been more specific. Both the consumer and the owner would want to know their rights and obligations under this new law.

What some countries have done is to make this part prescriptive, by stating that the owner is entitled to a set number of attempts over time to rectify a particular fault. If the issue is one of safety, then the owner works within a tighter framework. This provides clarity to both the consumer and the owner.

The current legislation leaves the question open-ended. Unfortunately, a court would need to decide what is "reasonable" and what constitutes "significant inconvenience". This, again, is odd for legislation meant to give consumers a quick remedy.

One fault too many?

THE new law also does not seem to differentiate between a particular fault and the car as a whole. What if the consumer complains of faulty steering one week, a faulty clutch the next, and a faulty gearbox after that? Assuming all the faults are rectified, can the consumer complain that the car is a lemon and demand a refund? The owner would no doubt argue that the faults have been rectified without causing undue inconvenience, but one can argue that the consumer's faith in the car has been shaken.

In March 2010, The New Paper reported that the owner of a brand new Peugeot faced 23 faults with the vehicle over 24 months. The car was under warranty, and even though he could have taken it back to the workshop to have it repaired without cost, he was so shaken that he just left it in his carpark, preferring to take the bus or train.

In New Zealand, the concept of "accumulation of small defects" has been recognised. Whether such an approach is contemplated here remains to be seen.

If repair or replacement is unavailable or inappropriate, then the consumer can ask for a reduction in price and keep the car, or rescind the agreement and ask for a refund.

These last two remedies will admittedly be the hardest to resolve as it would be difficult for the opposing parties to agree on the reduced amount or the compensation without going to court.

A simpler solution would perhaps have been to use 10 years and mileage of 240,000km as the average lifespan of a car in Singapore. Use this as a denominator to calculate the depreciation based on the purchase price, unless a party can show why this is not reasonable under the circumstances. It may not apply to all vehicles but it at least provides some certainty. All parties can use that as a starting point to negotiate a settlement and avoid costly litigation.

Buyer exposed to additional risks

THE new law is also silent on what happens between the time the consumer makes the claim and when the matter is finally decided in court.

As this can typically take up to a year, would the consumer be entitled to terminate the hire purchase agreement and/or hold back the monthly instalment payments until the matter is decided by the court? This would be another area of concern to most hirers.

This was not a problem previously as the hire purchase company was not obligated to do repairs. Now the consumer would be making payments to and making claims against the same party. A properly worded hire purchase agreement could demand that the consumer continue to pay the monthly instalments despite his grievances. But if those gripes go to the heart of the subject matter, would it be fair for the consumer to continue paying the instalments?

As this law protects the consumer against the business owner, and not vice versa, finance firms have now put in place indemnity agreements seeking recourse from dealers in the event of a claim, thus increasing business costs.

A used-car dealer will typically "buy in" a car from a consumer who is looking to upgrade. The car is then resold to another consumer. Now that the dealer would have to indemnify the hire purchase company should this traded-in car turn out to be a lemon, consumers should not be surprised if dealers seek an indemnity from them as well when they attempt to sell their car in the first place.

So the lemon law, which seeks to protect the consumer, may ironically expose the same consumer to risks that were never envisaged.

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