

Buying a car – know your rights

We have had a few people reporting to us that they bought a car privately after a bad experience with a car dealer.

Unfortunately, however, in the cases reported to us, their luck did not change when buying privately.

The stories tend to be very similar. Soon after buying the car, faults begin to emerge. At first the faults are small, but soon they began to escalate and within a few weeks the cars require service at a mechanic.

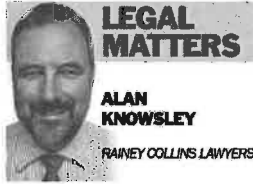
To the dismay of the car owners, the mechanics reported that each car had systemic faults, requiring extensive and costly repairs.

In one case, the car required so much work the cost exceeded what the buyer paid for the car.

Understandably, so soon after buying their cars, the new owners were loath to incur further costs.

In each case they tried speaking to the person who sold them their cars.

Without exception it was



pointed out by the seller that they had little recourse against them.

You may be surprised to learn that when a car is bought between private individuals, key consumer protection legislation such as the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and the Sale of Goods Act 1908 do not apply (unless the seller was not the legal owner of the car).

The Motor Vehicle Disputes Tribunal is also unavailable because it only hears claims involving those acts.

Instead, any remedy lies through the Contractual

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Remedies Act. That act deals with misrepresentation in contracts.

If the seller represented the car as being in a reliable and good condition, when it was actually faulty and the seller deliberately hid this, the buyer could make a claim under the Contractual Remedies Act or seek to cancel the contract.

The difficulty, however, is first proving there was a fault with the car at the time of the purchase, and second, proving that the seller was aware (or reasonably ought to have been aware) of the fault.

Even if there is a strong basis to suspect the seller deliberately hid a fault, it may not be economic to seek to recover the costs.

The forum in which you bring a

claim against the seller will depend on the cost of the repairs and the value of the car.

In most instances the Disputes Tribunal will be available to hear claims. It, however, can only hear claims for up to \$15,000 (or up to \$20,000 with the consent of both parties).

If the car is particularly valuable (or the cost of the repairs are especially high), it may mean you have to take your claim to the District Court.

Like most things in life, prevention is better than a cure.

As such, it is vital that before buying the car, you make best efforts to ensure it is roadworthy.

Before buying, ensure a qualified mechanic does a thorough examination of the car.

You should also make sure that the car has a warrant of fitness, and the registration is up to date.

Another trap people often fall into is failing to check whether the car has any security interest attached to it.

It may be the case that the seller has previously used the car as collateral to finance a loan.

If the car has been used as security, and the security has not been removed, a creditor may be able to claim the car off you at a later date.

Similarly, it is also important to ensure that as soon as you buy the car you transfer the ownership to your name. This can be done at any NZ Transport Agency outlet, such as AA, PostShop, VTNZ or VINZ, or online.

Buying a car from a private seller carries risks.

While you may be able to buy a car for less than you would from a car dealer, if issues emerge, you may be left with a hefty repair bill, with little chance of recovering the costs.

■ Column courtesy of Rainey Collins Lawyers, ph 0800 733 484. If you have a legal inquiry email aknowsley@raineycollins.co.nz or go to raineycollins.co.nz.