

KNOW YOUR RIGHTS WHEN YOU PURCHASE A DEFECTIVE VEHICLE



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Q. I saw a car on the internet and purchased it privately last week. I have noticed a couple of problems in it already. I want to return the car and get my money back but the guy I bought it off won't agree. What are my rights?

In determining your rights, you must determine whether the car is so defective as to render it a danger to the driver, the passengers and the public. If it is not, then you must prove that the car is so defective that the person selling must have or ought to have known that the defects were present at the time of the sale.

Section 13 of The Sale of Goods and Supply of Services Act, 1980 states that “in every contract for the sale of a motor vehicle (except a contract in which the buyer is a person whose business it is to deal in motor vehicles) there is an implied condition that at the time of delivery of the vehicle under the contract it is free from any defect which would render it a danger to the public, including persons travelling in the vehicle.” In order to determine whether your newly purchased car is so defective as to render it a danger to the public, you should hire a motor assessor to inspect the car and prepare a report which will be used in court if necessary. If the motor assessor can confirm that the car is so defective as to render it a danger, you must now prove that these defects were present at the time of the purchase and this may be difficult to do if there has been a long gap between the date of purchase and the date the defects were first noticed. That is why it is important to act the moment you realise that there may be a problem with your car. If you are a mechanic or someone who deals with cars on a daily basis, you may not be able to rely on Section 13 of the Act as it will be assumed that having been given the opportunity to inspect the car prior to purchase, that you should have spotted such defects.

In my experience, clients who purchased their cars off a reputable car salesperson have had the defects in their vehicles fixed by the garage without having to resort to court. However, private sales are an entirely different story. Usually, the person who has sold you the car has the money well spent on a new car by the time you have noticed a problem.

In one of my more recent cases, my clients' motor assessor was of the opinion that the car was defective and in fact listed almost twenty problems with the car. However, he was not of the opinion that it was so defective as to render it a danger to the public. Therefore, I was unable to rely on Section 13 of the Act. However, I argued that the contract was void as it was a misrepresentation under Section 45 of the Act in that the car was not fit for the



purposes in which it was sold. My client could not drive the vehicle as it would overheat and break down. It was going to cost more than half of what he paid for the vehicle to have the defects remedied. The Judge agreed that the sale of the car did result in a misrepresentation in that the vehicle was so defective that the defendant, (being the person who sold the car) ought to have known that the defects were in the car when she was selling. The defendant was claiming that she was not aware the car was defective at the time of sale. Our case was strengthened by the fact that the defendant owned the car for over two years before she sold it and that my client contacted the defendant within twenty four hours of the purchase to inform her of the issues. However, every case is different.

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