

# Legal Torque

## Buyers and Sellers Beware

One of the most common questions we are asked by owner drivers or transport operators is in relation to the purchase of second hand trucks. All too often we hear of someone purchasing a second hand vehicle that they believe will see them through to the end of their owner driver contract, only to discover soon after purchase that the vehicle is in need of serious and expensive repairs.

In some cases the purchaser may have been led to believe that the vehicle was in good condition by the statements or representations made about the vehicle by the person selling it. In

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other cases the seller may have simply neglected to advise the purchaser of mechanical or hidden defects of which the seller was aware.

We are often asked what the options are in these types of situation. When does the law allow a purchaser to take legal action against someone who has sold them a vehicle that is in an unacceptable state?

### Misrepresentation

Here we look at one of the legal remedies that may be available to a purchaser in such a situation - misrepresentation.

A seller must be very careful about what statements they make about the state, quality or condition of a vehicle. A seller can be held liable for statements made during the course of negotiating the sale of a vehicle if those statements turn out to be false.

In order to be able to hold the seller liable for the statements made during negotiations a purchaser must establish the following:

- There must be a misrepresentation. This means that there must be some statement or representation made about the vehicle that is false;
- The misrepresentation must be made by or on behalf of the seller to the purchaser (note

that the seller can be liable for a statement made by someone selling the vehicle on their behalf);

- The misrepresentation must encourage or persuade the purchaser to buy the vehicle;
- The person making the statement must intend the other person to rely on the misrepresentation.

Accordingly, if a seller makes a statement to a potential purchaser that the vehicle is in a certain condition or of a certain quality and that statement encourages the purchaser to buy the vehicle, then the purchaser can take legal action against the seller if that statement turns out to have been false.

It is important to note here that it does not matter whether the statement by the seller was made innocently, that is, with no intent to mislead the purchaser, or whether the statement was made fraudulently, that is, with the intention of misleading the purchaser. In either case, the purchaser can take legal action against the seller for misrepresentation.

Certain statements regarding the condition or quality of a vehicle will almost certainly be actionable if they turn out to be false. For example, a statement that the vehicle is a 440 hp vehicle will be actionable if it turns out that the vehicle is only 340 hp.

Sometimes however a seller may say something about a vehicle which is not so much a statement of fact about the vehicle, but is more like an expression of his or her opinion about the vehicle or the statement may be an off-the-cuff comment more akin to “sales talk”. In those situations, where a person selling goods speaks about them in vague and non-specific terms, it may be more difficult to say that there has been a misrepresentation about the vehicle.

Another situation which can lead to problems is where the seller, instead of making a statement regarding the vehicle, fails to inform the purchaser of a defect in the vehicle of which the seller is aware.

### Let the Buyer Beware

The general rule is that there is no obligation on a seller to disclose to a potential purchaser facts about the vehicle which the seller knows may be relevant to the decision whether or not to purchase the vehicle. There is no general duty to disclose information about the vehicle. This is commonly referred to as the principle of “caveat emptor” or “buyer beware”.If

however a seller chooses to say something about the vehicle being sold, then he or she must ensure that it is a full and frank statement and not a half-truth. A seller cannot make a statement which while in itself may be true, withholds information which may make what is said false.

Further, in some situations the seller may be held liable for misrepresenting the vehicle if the seller remains silent in the face of a specific question from the purchaser. It could be a misrepresentation if in all the circumstances the seller by remaining silent allowed the purchaser to believe that a certain state of affairs existed when that was not the case.

### How much is your claim ?

Assuming that you are able to establish a misrepresentation by the seller, the next question is what are you entitled to recover from the seller for that misrepresentation.

If the purchaser has been induced to purchase the vehicle as a result of a representation by the seller that the vehicle was of a particular condition or quality and that statement turns out to be false, then the purchaser is entitled to recover the difference in value between what the purchaser thought they were purchasing and what they actually purchased.

For example, in the situation where the seller has represented that the vehicle is a 440 hp vehicle, the purchaser is entitled to recover the difference in value between the cost of a 440 hp vehicle as represented and the value of a 340 hp vehicle which was what the purchaser actually bought. It is also possible to recover consequential losses, that is, other losses or expenses that have been incurred as a direct result of the misrepresentation.

While a purchaser who has established a misrepresentation will always be entitled to recover damages for that misrepresentation, in some cases a purchaser can choose to cancel the agreement altogether and seek to return the vehicle to the seller and get their money back. The purchaser will only be entitled to do so where either:

- It was agreed (expressly or impliedly) between the seller and the purchaser that the truth of the representation was essential to the purchaser; or
- The effect of the misrepresentation is to make the benefit or burden of the agreement substantially different from that represented or contracted for.

Essentially this means that if the statement made by the seller is in relation to an important matter or if it has been agreed between the parties that the truth of the statement is of particular importance to the purchaser,

then the purchaser may be able to cancel the agreement and return the vehicle. So for example if the representation made by the seller is that the vehicle is a 470 hp vehicle and the vehicle is in fact only 460 hp then that is probably not going to give rise to a right to cancel the agreement because the difference between purchasing a 470 hp vehicle and a 460 hp vehicle may not make the bargain of such a different nature as to justify cancellation.

If however the purchaser says that it is imperative that the vehicle be 470 hp and that it cannot be less than that, then that may give the purchaser the right to cancel the agreement when the purchaser discovers the vehicle is only 460 hp.

There are a number of other remedies available against a seller when it is discovered that the vehicle is not what was bargained for. We have covered just one legal remedy which may be available.

If you have any questions regarding this article, or any general queries which you would like to discuss, please do not hesitate to contact us.

## Torque news in brief

### Road User Charges Defence

A man recently successfully defended a charge of being the owner of a vehicle whose gross weight was more than the maximum gross weight specified in the distance licence on the ground that the vehicle didn't have a current distance licence at the time it was stopped. The vehicle had exceeded the weight on the distance licence that was on the vehicle at the time, but that licence was not current.

The Court held that in order to be convicted of an offence of exceeding the gross weight on distance licence, the distance licence on the vehicle must be a current licence. The charge should have been failing to carry a current distance licence.

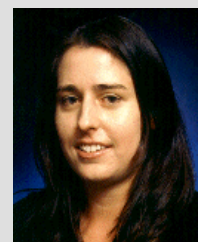
### New Vehicle Emissions Rule

The government has recently proposed a new rule which contains exhaust emission standards for vehicles.

Under the new rule, a motor vehicle would only be able to be registered in New Zealand if it complies with or is deemed to comply with certain emissions standards.

The proposed new rule is due to come into force on 1 May 2002. The deadline for submissions on the new rule is 30 November 2001. A copy of the rule can be viewed on the LTSA's website [www.ltsa.govt.nz](http://www.ltsa.govt.nz).

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