

## CASE STUDY

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1. Consumer Law
2. Buying a Used Car: Your Rights Under the Unfair Trade Practices Act (UTPA)
3. Court of Appeals of Oregon
4. Parrott v. Carr Chevrolet, Inc
5. Tom Huynh
6. unfair and deceptive practices, fraud, non-disclosure, material defects, “as-is” car sales, implied warranty of merchantability
7. Plaintiff bought a used car from a dealer. After taking the car home, plaintiff noticed the car had serious problems that were not discoverable at the lot. He went back to the dealer and asked for relief but was told that since he’d bought the car “as is”, the dealer was not responsible for making any repairs. Plaintiff brought suit against the dealer under Oregon’s Unfair Trade Practices Act (UTPA) for failing to disclose the defects at the time of the sale. Oregon Court of Appeals held that the dealer was liable for damages under the UTPA for failing to disclose to the plaintiff known material defects about the car.

## STUDENT HANDOUT

### Problem

Mark went to Honest Jim's Fine Automobiles to look for a used car. He came upon a 1991 silver Thunderbird that looked to be in good condition. It had some nicks on the hood, and the tires were a little worn, but other than that, there didn't appear to be anything wrong with it. Honest Jim himself came strolling over to Mark and said, "Got yer eye on that one, eh partner? She's a beau't, ain't she? Don't mind if I say so myself. We just got her a couple weeks ago and already we've had a buncha people askin' about her." Mark asked how many miles it had on it and Honest Jim said, "Oh, she's got some miles on her, but don't let that fool yeh. She still packs quite a punch. You wanna take her for a test drive partner?" Mark and Jim got in the car and drove around the block. Mark didn't notice anything wrong during this short drive. They got out of the car and Honest Jim smiled and said "So, should we go in and sign the papers son?" Mark said yes. In the office, Honest Jim had Mark sign a sales contract with an "as is" clause that disclaimed the implied warranty of merchantability. Before signing, Honest Jim said, "Now, let's make this clear—I ain't promisin' you anything special about this car, okay? What you see is what you get—capeesh?" Mark nodded and signed the papers.

Mark drove the car home, which was only six miles away, and everything seemed fine in that short trip. The next day, Mark decided to take the car out for a spin on the freeway. About fifteen minutes into the drive, Mark heard a loud grinding noise and started to smell smoke. He noticed that smoke was coming out from under the hood and that the engine was beginning to tax. He tried to downshift, but found that the clutch was stuck in fourth gear. He tried to brake, but then found that the brakes would not operate properly at a high speed unless he slammed down on them completely. Mark was eventually able to pull over to the side and hail a passing tow truck. Mark had the car towed to a mechanic, who informed Mark that the car had "serious problems" that the dealer should have known about. The mechanic pointed to the cracked dashboard and said that was a clear sign to any dealer that the odometer had been tampered with. The mechanic also said that the engine in the car was not a Thunderbird engine, but was most likely from a 1987 Hyundai Excel. The mechanic said that in his opinion, the car had probably been in a wreck and that there were definite warning signs from which a dealer could and should have known the car was not in good condition.

Mark took a cab to Honest Jim's dealership and angrily confronted Jim, demanding that Jim either make repairs, give him a new car, or give him his money back. Honest Jim pulled Mark's contract from his back pocket, held it up, and pointed to the "as is" clause. "You see here, son? That there clause means I ain't responsible for anything. You should've read the contract more closely. I never promised you a thing about that car, remember? Sorry son, but I can't help you." Is Mark out of luck?

### Discussion Points

- Have you bought a used car before? Do you know someone who bought a used car? What was their experience? What did they do when they found out the car had problems? What would you do? Should dealers be responsible for making repairs? Should the old term “buyer beware” apply to these deals?
- What is the implied warranty of merchantability and how does it work?
- What does “as is” mean?
- What is fraud? What are the elements of fraud?
- Unfair Trade Practices Act
- What does “material defect” or “material nonconformity” mean?
- How do you prove that a dealer actually knew about a car’s problems?

## FACTS

In 1993, Plaintiff carbuyer went to Defendant dealer's used car lot looking to purchase a truck. Defendant's advertisements on the lot purported to sell "Quality Checked Used Cars", implying that each car had been inspected by the defendant before being put out for sale. Plaintiff saw a 1983 Chevy Suburban that was to his liking priced at \$5995. The car had been polished, cleaned, and serviced, and the salesman who assisted the plaintiff confirmed that it had been on the lot for two weeks and had just been detailed. Plaintiff saw that the air cleaner was missing, but that the engine, batteries, radiator, tires, and upholstery all appeared new and looked like they'd been recently replaced. Plaintiff remarked that it looked like a lot of work had gone into getting the car back into shape, and the salesman nodded in the affirmative. Plaintiff also saw that the car had only 100,608 miles on the odometer, which was fairly low for a car that was 10 years old. The plaintiff decided to buy the truck. He traded in two of his cars and signed a credit agreement for the balance. He then signed the sales documents to complete the transaction. It was understood by both parties that the sale was "as is", meaning that the implied warranty of merchantability had been waived and the dealer was not responsible for repairing any defects the car might have.

Shortly after the purchase, Plaintiff discovered that the car was missing all of its DEQ equipment and that it would be impossible to bring the truck up to DEQ standards. Through research, he found out the car had a 1981 engine—two years older than the make of the truck, that the car had previously been in a wreck and had a title brand, and that it had been stolen and stripped of its original parts at some time. He also noticed that the vehicle identification numbers had been scratched off and that there were white lines between the odometer numbers—indicating that the odometer had likely been tampered with.

After learning about the missing DEQ equipment, plaintiff complained to the dealer and demanded that they fix the problem. Defendant refused on the grounds that the plaintiff purchased the car "as is" and that any repairs were the plaintiff's responsibility.

Plaintiff filed suit under the Unlawful Trade Practices Act (UTPA), ORS 646.608, alleging that the dealer had violated the UTPA by failing to disclose known material defects about the car. At trial, plaintiff produced evidence that convinced the jury that the defendant was indeed aware of the car's many serious problems when they sold it but chose not to disclose

them to the plaintiff. Jury awarded the plaintiff \$11,496 in compensatory damages and \$1 million in punitive damages (which was later remitted on appeal).

### ISSUE

What relief does a plaintiff have under the UTPA if he buys a car “as is” and later finds that there are serious problems with the car?

### RULE OF LAW

Oregon Revised Statute (ORS) 646.608(1)(t) states that with regard to the tender or delivery of any goods or services, it is an unlawful practice for a seller to fail to disclose to a buyer any known material defect or material nonconformity. The Oregon Court of Appeals said that this statute places a duty on sellers to inform buyers of any material defects that the seller is aware of before making a sale. So if a seller is aware that a product has material defects, he must disclose this to the buyer or be liable for damages under the UTPA.

### REASONING

The court held that under the UTPA, sellers have an affirmative duty to inform buyers of any known material defects or nonconformities a product may have when selling to buyers. With regard to car sales, sellers must disclose to prospective buyers any significant problems a car may have, such as faulty breaks, inoperative seatbelts, faulty steering, a defective transmission, oil leaks, or any other problems that would go to the essence of the bargain. In this case, missing DEQ equipment, an old engine, and a rolled-back odometer were clearly “material” defects that the defendant should have disclosed to the plaintiff when selling the car. The defendant argued that since the plaintiff had bought the car under an “as is” agreement, they were not responsible for any repairs since “as is” agreements waive the implied warranty of merchantability. The court said that the UTPA and “as is” disclaimers could be reconciled; that although “as is” disclaimers do indeed waive the implied warranty of merchantability, such disclaimers not relieve sellers of their duty under the UTPA to disclose material defects. Thus, the court said that the UTPA applies irrespective of any “as is” agreements, and even if a seller is not responsible for repairs under the implied warranty of merchantability, he is still responsible under the UTPA to inform the buyer of any known material defects a product has.

The defendant argued next that they were not liable under the UTPA since they did not have actual knowledge of any material defects the truck had, and they made no affirmative misrepresentations about the truck's quality. However, the plaintiff was able to successfully rebut this argument by presenting industry experts who testified that there were definite "red flags" about the car such that someone in the business of selling cars had to have known about the car's problems. The court agreed with the jury's findings, saying that someone in the defendant's position had to have known from even a cursory inspection that the car lacked DEQ equipment, had been in an accident, and that the odometer had likely been rolled back. Essentially, the court did not believe the defendant's claims of ignorance, noting that the car had been in their possession for more than two weeks and that they had ample opportunity to inspect and discover the car's problems in the course of getting it ready to be put out for sale. Additionally, the court said that a UTPA claim was different from fraud. With fraud, it is necessary that the defendant make misrepresentations of fact or false statements about a product; with the UTPA, simply keeping silent about a product's known material defects is enough for a violation.

#### CONCLUSION

When selling a car, dealers must disclose any known material defects about the car to the buyer or be in violation of the UTPA. Even if the buyer buys the car under an "as is" arrangement, he may still seek damages under the UTPA if he can show the dealer knew about the car's problems but did not inform the buyer about them.