LEMON LAUNDERING: CONSUMER PROTECTION ON RESALE OF RETURNED DEFECTIVE CARS WITHOUT DISCLOSING PRIOR MECHANIC PROBLEMS

BY

MISS BENJARAT BINLOY

A THESIS SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF MASTER
OF LAWS IN BUSINESS LAWS (ENGLISH PROGRAM)
FACULTY OF LAW
THAMMASAT UNIVERSITY
ACADEMIC YEAR 2016

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has been approved as partial fulfillment of the requirements
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ABSTRACT

Presently, it is undeniable that a car is forsooth crucial for people's living, especially for people who need promptness and convenience in transportation. Purchasing the car is counted as an investment because of its high price. Therefore, it is certain that a consumer will expect best qualities in performance and safety. However, as the car is composed of numerous engines and parts under complex manufacturing and assembling process by advanced technologies, the car is thus a goods which is likely to be defective, such defective car is often called as 'Lemon car', and the consumer may not be of knowledge thereof while concluding a sale contract or obtaining the car, but the defect will mostly appear after the use for a period of time.

Nowadays, in Thailand, the rights of consumer with regard to the defective goods are protected under various statutes, for instance, the Civil and Commercial Code, the Consumer Protection Act, B.E. 2522 (1979), the Consumer Case Procedure Act, B.E. 2551 (2008) and the Product Liability Act, B.E. 2551 (2008). One of the significant protections enshrined is that the consumer has a right to rescind a sale contract if the seller fail to have the defective car repaired and return the defective car to the seller; or instead of rescission, the consumer may demand the court for a

replacement, the court is empowered to exercise a discretion to order the authorized dealer who is the seller and/or the manufacturer to replace a new car without any defect to the consumer. The defect which lead to rescission of sale contract or replacement for new car is mostly persistent problems or severe problems that are harmful to safety of a driver or impair efficiency and performance of its car, and cannot be completely repaired at several attempts. Once the defective car is returned, the manufacturer and authorized dealer have to bear all expense arising out of reparation thereof. Reselling such car will be difficult as it becomes a used car with a defect history. Nonetheless, as a serious defect is hidden inside such car, and an exterior part of a car is in a good condition and a traveled distance is few, which is different from an ordinary used car, it leads to a gap manipulated by the manufacturer and authorized dealer to resell such retuned defective car to a subsequent consumer by concealing a defect history. The aforesaid conduct is called as 'Lemon Laundering' in the United State. In the worst case, the manufacturer and authorized dealer may resell the returned defective car without repairing the defects. This may be harmful to the safety of the driver, passengers and other road users.

Thus, it is foremost to study and analyze relevant Thai laws, such as the Civil and Commercial Code, the Consumer Protection Act, B.E. 2522 (1979), the Consumer Case Procedure Act, B.E. 2551 (2008), the Product Liability Act, B.E. 2551 (2008), the Motor Vehicle Act, B.E. 2522 (1979), and the Penal Code, whether there are proper and adequate legal measures to protect the Thai consumer in case that the manufacture and/or authorized dealer resell the returned defective car by concealing background of defective issues or not. Moreover, foreign laws concerning consumer protection in such event should be studied and analyzed for adopting and prescribing proper and effective legal measures in consumer protection in Thailand.

Keywords: Defective Car, Lemon car, Lemon laundering, Liability for defect

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Miss Benjarat Binloy

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LIST OF ABBREVIATIONS

Symbols/Abbreviations	Terms
BGB	German Civil Code (The Bürgerliches Gesetzbuch)
CCC	Thai Civil and Commercial Code
DMV	Department of Motor Vehicles
MSO	Manufacturer's Statement of Origin
US	United States

CHAPTER 1
INTRODUCTION

1.1 Background and Problems

Presently, it is undeniable that a car is forsooth crucial for people's living, especially for people who need promptness and convenience in transportation. Purchasing the car is counted as an investment because of its high price. Therefore, it is certain that a consumer will expect best qualities in performance and safety. However, as the car is composed of numerous engines and parts under complex manufacturing and assembling process by advanced technologies, the car is thus a goods which is likely to be defective, such defective car is often called as 'Lemon car', and the consumer may not be of knowledge thereof while concluding a sale contract or obtaining the car, but the defect will mostly appear after the use for a period of time.[1]

Nowadays, in Thailand, the rights of consumer with regard to the defective goods are protected under various statutes, for instance, the Civil and Commercial Code (the "**CCC**"), the Consumer Protection Act, B.E. 2522 (1979) (the "**Consumer Protection Act**") , the Consumer Case Procedure Act, B. E. 2551 (2008) (the "**Consumer Case Procedure Act**") and the Product Liability Act, B.E. 2551 (2008) (the "**Product Liability Act**"). One of the significant protections enshrined is that the consumer has a right to rescind a sale contract if the seller fail to have the defective car repaired and return it to the seller[2]; or instead of rescission, the consumer may demand the court for a replacement, the court is empowered to exercise a discretion to order the manufacturer and/or the authorized dealer who is the seller to replace a new car without any defect to the consumer. [3] Moreover, the law provides that the

[1] Nontawat Nawatrakulpisut, 'Liability of Manufacturers or Distributors of Brand New Cars and Consumers Protection: Product Liability Law V.S. Lemon Law' (2010) 2 Thammasat Law Journal 276. (นนทวัชร์ นวตระกูลพิสุทธิ์, 'ความรับผิดของผู้ผลิตหรือผู้จำหน่ายรถยนต์ใหม่กับการคุ้มครองผู้บริโภค Product Liability Law V.S. Lemon Law' (2553) 2 วารสารนิติศาสตร์ ธรรมศาสตร์ หน้า 276)

[2] Thai Civil and Commercial Code, Section 215, 387 and 391

[3] Thai Consumer Case Procedure Act, B.E.2551(2008), Section 41

consumer case proceedings shall be conducted with conveniently, speedy and easily for the consumer. The Office of the Consumer Protection Board takes an important role in investigating, negotiating, supporting the consumer in pre-litigation process as well as representing the consumer in litigation.[4] In addition, presently, a mass media, especially, an online social media critically affects a reputation and a credibility of the manufacturer and authorized dealer. Therefore, many cases have been taken place, in which the manufacturer or authorized dealer willingly agree to replace for new car or rescind the sale contract on their own without having to bring any action. It thus appears that, nowadays, the consumer is provided easier means to claim replace goods and to rescind the sale contract.

The defect which lead to rescission of sale contract or replacement for new car is mostly persistent problems or severe problems that are harmful to safety of a driver or impair efficiency and performance of its car, and cannot be completely repaired at several attempts. Once the defective car is returned, the manufacturer and authorized dealer have to bear all expense arising out of reparation thereof. Reselling such car will be difficult as it becomes a used car with a defect history. Nonetheless, as a serious defect is hidden inside such car, and an exterior part of a car is in a good condition and a traveled distance is few, which is different from an ordinary used car, it leads to a gap manipulated by the manufacturer and authorized dealer to resell such retuned defective car to a subsequent consumer by concealing a defect history. The aforesaid conduct is called as 'Lemon Laundering' in the United State. In the worst case, the manufacturer and authorized dealer may resell the returned defective car without repairing the defects. This may be harmful to the safety of the driver, passengers and other road users.

For instance, A buys a new car from a car authorized dealer. After using the car for a short period, A has found that brake system becomes dysfunctional. A and the dealer, thus, settle the dispute by replacing for a new car. After that, the dealer resells such returned defective car to B as second hand car and informs that the car is in good conditions like new car, or the situation become worse if the dealer deceives that the car is new car, without notifying to B about previous mechanic problems or

[4] Thai Consume Protection Act, B.E. 2522 (1979), Section 39-41

defective issues of such car. B believes the dealer and agrees to buy the car. In this case, if B knows the defect history of the car, B may not buy the car or may buy the car at cheaper price. Besides, B has a risk to be harmed by using such car because of misunderstanding that the car he brought has no defect or believing that the car he brought is a new car without any defect. B, therefore, does not increase level of carefulness for driving or checking up his car.

The main reason causing Lemon Laundering is asymmetric information between the seller and the consumer. Namely, even the manufacturer and authorized dealer store the information in relation to the car, for instance, a history of a sale of a car, a defect, reparation, maintenance as well as a monitor of a returned defective car. However, such information is for internal use and within knowledge of only the manufacturer and authorized dealer. The consumer is unable to access to such information in order to examine the car's history before purchasing it. In addition, in case the defective car is returned to the manufacturer or authorized dealer due to replacement or rescission of sale contract while a registration process under the Vehicle Act is pending. Namely, a red vehicle registration plate is used. An evidence which can be used for an examination as to whether such car is used and was sold to a previous consumer cannot be found. Therefore, the manufacturer and authorized dealer have manipulated such gap to present disguised information; or conceal certain information in order to persuade the consumer to enter into a contract with them.

Thus, it is foremost to study and analyze relevant Thai laws, such as the CCC, the Consumer Protection Act, the Consumer Case Procedure Act**,** the Product Liability Act, B.E. 2551 (2008), the Motor Vehicle Act, B.E. 2522 (1979), and the Penal Code, whether there are proper and adequate legal measures to protect the Thai consumer in case that the authorized dealer or manufacture resell the returned defective car by concealing background of defective issues or not. Moreover, foreign laws concerning consumer protection in such event should be studied and analyzed for adopting and prescribing proper and effective legal measures in consumer protection in Thailand.

1.2 Hypothesis

The current Thai laws provides various remedial measures which can be applied to Lemon Laundering. However, it is absent in the effective preventive measure sufficient to protect Thai consumer from Lemon Laundering which may cause both pecuniary damage and jeopardy in using a returned defective car. Thus, is essential to amend relevant laws.

1.3 Objective of Study

a. To study and analyze related laws and regulations of Thailand in connection with the resale of returned defective car without disclosing prior mechanic problems or Lemon Laundering.

b. To study and analyze laws and regulations of United States and Germany dealing with the problem of resale of returned defective car without disclosing prior mechanic problems or Lemon Laundering.

c. To propose appropriate legal solutions in order to prevent Thai consumers from resale of returned defective car without disclosing prior mechanic problems or Lemon Laundering.

1.4 Scope of Study

This thesis mainly focuses on the study of the legal measures and existing legislations available in Thailand, United States and Germany regarding how to protect consumer from the practice that the manufacturer and/or authorized dealer resell a returned defective car to a consumer without disclosing prior mechanic problems or Lemon Laundering.

Additionally, although prior to this, there are two theses and one independent study with regard to liability for car's defects which have been published, including: ๖

(1) Right of the Buyer in the Sale of New Car Contract[5], (2) Legal Problems Concerning Litigation for Business Owner's Liabilities in the Defect of a New Car[6] and (3) The Entrepreneur Liability of Used Car[7], they nonetheless provide different scope of work from this thesis. Namely, the first referred thesis specifically aims to study the right of buyer in sale of a new car in accordance with the Thai Civil and Commercial Code; the second referred thesis specifically aims to study legal problems concerning litigation for business owner's liabilities in a defect of new car, in which do not provide an analysis of a legal issue pertaining to a duty of a seller after accepting return of the defective car from a previous buyer which is a main issue to be studied and analyzed in this thesis; and in the last referred independent study, even a liability of a used car seller in general has been studied by comparing Thai law with Lemon Law of New York, it however does not address an issue concerning Lemon Laundering and a protective guideline therefrom.

1.5 Definition

There are specific words in this thesis as follows:

a. "Authorized dealer" refers to a person who sells new or used cars at the retail level based upon a dealership agreement with a car manufacturer.

b. "Lemon car" refers to a defective car that is found to have numerous or severe defects which substantially impair the safety, value or use of its car. And such defects cannot be corrected after a reasonable number of attempts.

c. "Lemon Laundering" refers to the practice where a defective car is returned to the authorized dealer or manufacturer due to repurchase, replacement or rescission of sale contract, and then such defective car is resold by the authorized dealer or manufacturer to another consumer without disclosing its prior mechanic problem.

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[5] อัจฉรียา แก้วแสงอินทร์. **สิทธิของผู้ซื้อในสัญญาซื้อขายรถยนต์ใหม่**. วิทยานิพนธ์ปริญญามหาบัณฑิต. มหาวิทยาลัยธรรมศาสตร์. คณะนิติศาสตร์, 2548

[6] ชัญญา ชมพูแสง. **ปัญหากฎหมายเกี่ยวกับการฟ้องคดีให้ผู้ประกอบธุรกิจรับผิดในความชำรุดบกพร่องของรถยนต์ใหม่**.วิทยานิพนธ์ปริญญามหาบัณฑิต. มหาวิทยาลัยธุรกิจบัณฑิตย์ คณะนิติศาสตร์, 2555

[7] สุพัตธร ทรัพย์พนาพรชัย. **ความรับผิดของผู้ประกอบการรถยนต์ใช้แล้ว**. สารนิพนธ์ปริญญามหาบัณฑิต. สถาบันบัณฑิตพัฒนบริหารศาสตร์. คณะนิติศาสตร์, 2557

d. “Returned defective car” refers to a defective car that was returned to the authorized dealer or manufacturer due to repurchase, replacement or rescission of sale contract, whether as a result of the court’s decision, the Consumer Protection Board’s order, voluntary agreement or any forms of settlement of dispute resolution between the authorized dealer and/or manufacturer and the consumer.

1.6 Methodology

This method used in this thesis is based on documentary research concerning study and analysis of legislation, textbooks, publications, research, newspapers, articles, academic journals, information on the Internet, of government and private sectors, and domestic and international laws.

1.7 Expected Results

a. Understanding nature of the problems concerning resale of returned defective car without disclosing prior mechanic problems.

b. Understanding how the laws in United States and Germany deal with the problems of resale of returned defective car without disclosing prior mechanic problems.

c. Understanding the inadequacy of Thai laws in order to protect Thai consumers from resale of returned defective car without disclosing prior mechanic problems.

d. Providing appropriate suggestions in order to protect Thai consumers from resale of returned defective car without disclosing prior mechanic problems.

CHAPTER 2
INTRODUCTION TO LEMON LAUNDERING AND THE RELEVANT THAI LAWS

2.1 Introduction to Lemon Laundering

2.1.1 Lemon Car

The word "lemon" is generally used to describe an undesirable or unsatisfactory thing. In its informal use, a lemon is considered to be something that is completely useless or without value. It is something that fails to function as intended and, when bought, returns to its owner more grief than utility.[8]

The term "lemon" has been applied particularly to motor vehicles for at least one hundred years, especially in the United States (the "**US**"), to describe a defective car (often new car) that is found to have numerous or severe defects which substantially impair the safety, value or use of its car. And such defects do not occur from normal wear and tear usage and cannot be corrected after a reasonable number of attempts. For instance, the failure of braking, steering, transmission or electronic system.[9]

In order to protect the right of the consumer purchasing a car that turned out to be "lemon", a number of foreign laws require the manufacturer and/or dealer to repurchase the defective car and refund a purchase price to the consumer or to delivery a substituted car to the consumer. The consumer in Thailand is also under protections of the Civil and Commercial Code, the Consumer Protection Act B.E. 2522 (1979) and the Consumer Case Procedure Act B.E. 2551 (2008). The consumer has a right to rescind the sale contract and both parties will restore to their former conditions, namely that the consumer has to return the defective car to the dealer and the dealer has to refund a purchase price to the consumer.[10] But if the consumer is

[8] Commonwealth Consumer Affairs Advisory Council, *Consumer Rights Reforming Statutory Implied Conditions and Warranties Final Report* (2009) 91-2.

[9] ibid

[10] Thai Civil and Commercial Code, Section 215, 387 and 391

undesirable to rescind the contract, the consumer may demand the court for replacement and the court is empowered to exercise a discretion to order the dealer and/or manufacturer to replace new car without any defect to the consumer.[11] In some case, the manufacturer and/ or dealer may voluntarily agree to settle the case by repurchase or replacement before the case are taken to the court to avoid litigation costs, adverse effects to their reputation and credibility.

2.1.2 How to Manage with Lemon Car in Practice

In Thailand and foreign countries, the number of defective cars or lemon cars that were returned to the manufacturers or its authorized dealers due to repurchase and replacement each year is unclear. It is because the manufacturers or its authorized dealers often decline to provide details and neither of them are required by law to release such information. However, the Consumer for Auto Reliability and Safety, a consumer group practicing in the US, estimates that there are 25,000-60,000 defective cars returned to the manufacturers or its authorized dealers due to repurchase and replacement every year.[12] These returned defective cars are often driven in slight mileage, their exterior part are in good condition, but they often have a history of serious life-threatening safety defects, not occurring from wear and tear usage, such as brake failure, steering locks up during operation of the car, transmission suddenly fails to shift out of first or second gear, or electronic malfunction that makes the car stall in traffic.[13]

In fact, the returned defective cars are seldom destroyed regardless of how serious mechanic problems of the cars are, but the cars are brought back to market to

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[11] Thai Consumer Case Procedure Act B.E.2551 (2008), section 41

[12] Andrea Adelson, 'Consumer Advocates Seek Uniform Faulty-Car Laws' (*Nytimes. com, 2017*) <http://www.nytimes.com/1996/08/27/business/consumer-advocates-seek-uniform-faulty-car-laws.html> access 1 November 2016.; and

Christopher Jensen, 'Their Titles Laundered, The Cars Are Still Lemons' (*Nytimes.com, 2007*) <http://www.nytimes.com/2007/08/26/automobiles/26LEMON.html> accessed 1 November 2016

[13] Consumers for Auto Reliability and Safety, *Consumer Protection in the Used and Subprime Car Market* (2009).

use as demonstrator car, spare parts, or to resold to another consumer instead.[14] Practically, in case the authorized dealer is the party who accepts return of the defective car, he will have the car repaired and bring the car back to the market. While in case the manufacturer is the party who accepts return thereof, the manufacturer normally will request its authorized repair shop or its authorized dealer to correct the defects and then deliver the returned defective car to the same authorized dealer who sold the car to the previous consumer owner or to another authorized dealer or to wholesaler by disclosing the particular defects and stating that the defects have been corrected. Unfortunately, there are many cases that the defects are not corrected or the previous consumer owner complains of multiple defects, but the manufacturer states that the returned defective car is only based on one problem, and then has been repaired only that one problem.[15]

However, once the defective car is returned, the manufacturer and/ or its authorized dealer have to bear all expense arising out of reparation thereof. Resale of such car will be difficult as the car become a used car with a defect history. Nonetheless, as the serious defect is hidden inside such car, but an exterior part of a car is in a good condition and a traveled distance is few, which is different from an ordinary used car, and the car's history is within knowledge of only the manufacturer and its authorized dealer. The consumer is unable to access to such information in order to examine the car's history before purchasing it. Consequently, the manufacturers and/ or its authorized dealers may fail in acts of good faiths by concealing or misrepresenting the car's mechanic history when resell such car to a subsequent consumer, in the US, this practice known as "Lemon Laundering". It is because the returned defective car can be resold for more money if its defect history is concealed than disclosed. Even if the defects have been repaired, the car will still be resold for more money if the defect history is not disclosed.[16] In the worst case, the manufacturer and its authorized dealer may resell the car without repairing or

[14] Carolyn L Carter and others, *Automobile Fraud* (5th edn, National Consumer Law Center 2015) 18-9.

[15] ibid

[16] ibid

restoring the defects. This may be harmful to the safety of the consumers, passengers and other road users.

2.1.3 Problems of Lemon Laundering

Lemon Laundering is the practice where a defective car is returned to the authorized dealer or manufacturer due to repurchase or replacement, and then such defective car is resold by the authorized dealer or manufacturer to subsequent consumer without disclosing its prior mechanic problem.

Example cases in the US, the first case is *Jonhson v. Ford Motor Co.*,, In February 1998, plaintiffs Greg and Jo Ann Johnson bought a used 1997 Ford Taurus from a car dealer, Decker Ford (Decker), for $17,411. When Greg Johnson asked about the previous ownership, the salesman told them only that the Taurus had been traded in for a newer model. When he asked to see the Taurus's repair history, he was shown a computer printout that indicated there had been no significant repairs. The jury found Decker had acted as Ford's agent in this sales transaction. In fact, the previous drivers, the McGills, had experienced repeated and seemingly unrepairable difficulty with the car's transmission after leasing it in late 1996. After at least four trips to the dealership for the transmission problems, one transmission replacement, and an incident in which the transmission locked in low gear on the freeway, the McGills, in July 1997, requested that Ford repurchase the car as a "lemon". After Decker resold the Taurus to plaintiffs, they also experienced transmission problems with it. When, in August 1998, Greg Johnson complained that it delayed in shifting and slammed into gear, Decker replaced the transmission. In March 1999, the transmission would not shift into reverse; Decker again replaced it. At that point, in discussion with Decker's service writer, Greg Johnson asked to see and was finally shown the car's complete repair file, thus learning of the McGills' earlier problems. The Johnsons sued Ford and Decker for intentional and negligent misrepresentation and concealment, violations of the Lemon Law of California and other relevant law. The jury found in plaintiffs' favor and awarded them $17,811.60 in compensatory damages and $10 million in punitive damages. However, the Court of Appeal

modified the judgment of the trial court to award punitive damages in the total sum of $175,000.[17]

Example case in Thailand, in 2013, the first consumer bought a new Chevrolet Trailblazer car from an authorized dealer. After using for seven days, its engine sometimes stopped working while driving and gear and brake system became dysfunctional. To sharing experience, the first consumer posted the issue on a website; www.pantip.com. In eventually, the dispute of the first consumer was settled by negotiation. The authorized dealer agreed to accept return of the detective car and refund down payment to the first consumer. After that, in May, 2013, the same authorized dealer resold the returned defective car as a new car, in the amount of 1,249,000 THB, to the second consumer by concealing the defective issues and concealing the fact that the car has been sold to the first consumer. Moreover, the authorized dealer did not even repair or restore the defects of the car before reselling. After using the car for two days, the engine sometimes stopped working during driving, anti-theft and electrical system became dysfunctional. The second consumer, then, posted the issue on the same website; www.pantip.com. With the co-operation of the users from the website, it was figured out that the second consumer's car was the same car purchased by the first consumer earlier. The second consumer demanded responsibilities from the authorized dealer and manufacturer concurrently with social media continued to press the authorized dealer the manufacturer. Consequently, the authorized dealer and the manufacturer voluntarily agreed to replace a new car and pay 100,000 THB as compensation to the second consumer.[18]

The main problem which causes the consumer who is a subsequent buyer unable to access to the defect history due to the asymmetric information between the consumer and the authorized dealer or/ and manufacturers. Namely, although all in depth information of each car, such as history of purchasing, maintenance, defects, and repairs including management of returned defective car, are recorded, the

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[17] Jonhson v. Ford Motor Co., 2003 WL 22794432 (Cal. Ct. App. Nov. 25, 2003), *rev'd in part*, 113 P.3d 82 (Cal. 2005), *on remand,* 37 Cal. Rptr. 3d 283 (2005) (Ct. App. 2005)

[18] 'ระวัง!!รถใหม่ป้ายแดง ย้อมแมวขาย' *(YouTube, 2017)* <https://www.youtube.com/watch?v=Sw6OMIYWIWQ&index=1&list=PLNOtUGU9CXQ5XXfeUWVUf7Wad4iVO6xlZ> accessed 1 August 2016.

information is limited for internal use between the manufacturer and its authorized dealer. The consumer is therefore unable to access such information upon the conclusion of sale contract. Thus, the authorized dealer and manufacturer have an opportunity to take advantage by misrepresenting or concealing some information in order to persuade the consumer.

Apart from the case in Thailand as mentioned above, there are a number of cases concerning the asymmetric information between the consumer and the authorized dealer or/ and manufacturer appearing on newspapers and social media frequently. For stance, in September, 2011, a consumer bought Ford Fiesta car informed as new car. Later, the consumer had found out that the car was not new car as it seemed but once sold earlier in February, 2011. The negotiation resulted that the authorized dealer agreed to pay compensation and extend car warranty for one more year to the consumer[19]; and

In 2006, Mr. Pirin Panichtawong bought BMW demonstrator car from the authorized dealer: Performance Motors (Thailand) Co., Ltd. Upon the execution of purchase contract, he was informed that the car had been used for only 1,017 kilometers. Later, when checking the car with BMW service center that owned by another authorized dealer, he found out from the data base of such service center that the car was sold earlier in 2005 and had been used for 13,019 kilometers.[20] ; and

In 2014, Miss Disayarin Rachatawattana-anan bought Toyata Camry informed as new car from an authorized dealer in Nakhon Ratchasima. Later, she sent the car to Toyota service center, which was operated by another authorized dealer, for checking up and found out that the car was sold earlier in 2013. However, the dealer insisted

[19] 'โดนศูนย์ford หลอกขายรถมือสองและเป็นรถในโชว์รูมให้ในราคามือหนึ่ง รบกวนผู้รู้ด้วยค่ะ' *(Pantip, 2017)* <http://pantip.com/topic/31793651> accessed 1 August 2016 and

[20] 'เศรษฐีชีช้ำถูกย้อมแมว BMW หรู ทำสีใหม่-ลบเลขไมล์' *(Manager Online, 2006)* <http://www.mgronline.com/Crime/ViewNews.aspx?NewsID=9490000156796> accessed 1 August 2016.

that the car was a new car but the information inputted into data base was mistaken[21]; and

In addition, under Thai laws, the ownership of movable property is transferred upon delivery of the possession, the ownership in a car is therefore transferred by delivery the possession of the car to the buyer. [22] Registration with Department of Land Transport is not a required element or form of sale contract prescribed by law but it is for purposes of restrictions and taxation. Even though, it is undeniable that car registration certification is the only official document which the consumer can verify whether the cars is new car as informed by the seller or not. In case that the defective car is returned to the manufacturer or authorized dealer before the registration is completed, namely that the car still uses a red plate, it is impossible to verify whether the car is new car or not. This kind of circumstance creates an opportunity for the manufacturer or authorized dealer to bring the returned defective car back to the markets as new car and conceal background of defective issues to the consumer.

[21] 'โตโยต้า'แจงกรณีสาวร้องเอารถเก่ามาย้อมขายเป็นป้ายแดง' <http://www.thairath.co.th/content/413082> accessed 1 November 2016.

[22] Supreme Court's Decision No. 6080/2540

2.2 Thai Laws in Relevant

In Thailand, there are various statutes relating and involving to the practice where the returned defective car is resold by concealing history of mechanical problems or Lemon Laundering such as the Civil and Commercial Code, the Consumer Protection Act B.E. 2522 (1979), the Consumer Case Procedure Act B.E. 2551 (2008), the Consumer Product Liability Act B.E. 2551 (2008), The Motor Vehicle Act B.E. 2522 (1979) and the Penal Code. This subchapter will thoroughly study and explain those relevant statutes to provide basic information for analysis and comparative study with foreign statutes in Chapter 4.

2.2.1 The Civil and Commercial Code

2.2.1.1 Mistake

In terms of juristic act and contract under the Civil and Commercial Code (the "**CCC**"), mistake is an erroneous belief that certain facts are true. Existence of mistake must be sufficient to affect a declaration of intention for making juristic act. In another word, if the mistake does not exist, the declaration of intention for making juristic act will not be made or will be changed. Under the CCC, such mistake is categorized into two types as follows;

(1) Mistake as to essential element of juristic act

"*Section 156 A declaration of intention is void if made under a mistake as to an essential element of the juristic act.*

The mistake as to an essential element of the juristic act under paragraph one are for instance a mistake as to a character of the juristic act, a mistake as to a person to be a partner of the juristic act and a mistake as to a property being an object of the juristic act."

By considering section 156 of the CCC, a juristic act is void when there is mistake in essential element. The essential element means necessary things of such juristic act. In another word, if there is no essential element, the juristic act will not exist. For instance, type of juristic act, identity of party of juristic act, object of juristic

act, and terms and conditions contained in juristic act. In addition, the mistake must be sufficient to cause the juristic act to be void. This means that the juristic act is made in regard to the mistake. If there is not any mistake, the juristic acts will not be made. [23]

(2) Mistake as to quality of person or property

"*Section 157 A declaration of intention is voidable if made under a mistake as to a quality of person or property.*

Mistake under paragraph one must be a mistake as to the quality which is considered as essential in the ordinary dealings, and without which such juristic act would have not been made."

By considering section 157 of the CCC, it is necessary to consider from intention of parties, case by case, whether quality of person or property is essential in juristic act. Moreover, the mistake as to quality of person or property must be sufficient to cause the juristic act to be voidable. Namely that if there is not any mistake, the juristic acts will not be made or will be changed.[24]

For instance, A offers to buy a car from B for purpose of transportation but the fact is that the car cannot be used for transportation. In this scenario, mistake as to quality of the car occurs and its occurrence affects the declaration of intention made by A. Thus, the offer made by A is voidable pursuant to Section 157 of the CCC. On the other hand, if the fact is changed that the car can be used for transportation, A offers to buy the car from B for purpose of transportation and understands that the car can be used for car racing. But the car, in fact, cannot be used for car racing because its power of engine is not enough. In this scenario, even the mistake as to quality of the car occurs, but the quality to use it as car racing does not considered as essential in

[23] Akarawit Sumawong. and Phairot Wayuphap., *Explanation of Thai Civil and Commercial Code: Juristic Act and Contract* (9th edn, Thai Bar Association 2014) 115-123.
(อัครวิทย์ สุมาวงศ์, คำอธิบายประมวลแพ่งและพาณิชย์ว่าด้วยนิติกรรม สัญญา (พิมพ์ครั้งที่ 9, เนติบัณฑิตสภา 2557) หน้า 115-123)

[24] ibid

the ordinary dealings. Therefore, this mistake is not sufficient to cause the offer to purchase made by A to be voidable.

2.2.1.2 Fraud

Fraud is act taken by a party or third person to induce the other party to enter into contract by deliberately false or misleading statement (it can be said that the mistake is occurred due to the fraud and leading the other party to declare intention of making juristic act). In another word, the existence of the fraud leads to production of juristic act. If the fraud does not exist, the juristic acts will not be made or the juristic acts' terms and conditions will be different. Under the CCC, fraud is categorized into two types as follows;

(1) Fraud

"*Section 159 A declaration of intention produced by fraud is voidable.*

An act under paragraph one is voidable on account of fraud only when it is such that without which such juristic act would not have been made.

When a party has made a declaration of intention owing to a fraud committed by a third person, the act is voidable only if the other party knew or ought to have known of the fraud."

According to section 159 of the CCC, the fraud must be sufficient to invalidate the juristic act. The other party must be induced to declare the intention of making juristic act. If the fraud does not exist, the declaration will not be made.[25] In general, there are many forms of fraud such as false, deceit, and deceptive gesture. The fraud can be taken by the party or third person. Fraud by silence can only be occurred in

[25] Sanunkorn Sotthibandhu, *Explanation of Juristic Act - Contract* (18th edn, Winyuchon 2014) 135. (ศนันกรณ์ โสตถิพันธุ์, *คำอธิบายนิติกรรม-สัญญา* (พิมพ์ครั้งที่ 18 แก้ไขเพิ่มเติม, วิญญูชน, 2557), หน้า 135)

bilateral juristic act where one of the parties is obligated to inform any facts to the other party, according to the law or customary practice, but omits to do so.[26]

(2) Incidental Fraud

"*Section 161 If the fraud is only incidental that is to say it has merely induced a party to accept more onerous terms than would otherwise have done, such party can only claim compensation for damage resulting from such fraud.*"

By considering section 161 of the CCC, the incidental fraud is insufficient to compel the juristic act because the deception is not influential upon the declaration of intention of making juristic act. In another word, the juristic act will be made, even if the incidental fraud is not occurred. Therefore, the declaration is completed according to the law. However, the induced party is accepted more disadvantageous terms than he would have accepted. The induced party is entitled to claim for compensation from the inducing person.[27]

For example, A offers to buy a car from B at 200,000 THB after considering its current condition of the car. A further asks B whether there was any accident with the car. B lies by saying "NO" but the car, in fact, faced an accident on road before. A believes B so he agrees to buy the car at 200,000 THB. If A knew the fact of the accident, A would have bought the car at 150,000 THB. In conclusion, the lie is taken into account of incidental fraud which does not affect the intention to buy the car but lie is inducing A to buy the car in higher price; and

Supreme Court's Decision No. 4045/2534 which was ruled therein that the defendant boasted about the quality of the car sold to the plaintiff that the car was manufactured in 1979, the car was sold and repainted only once, and the color of the car was never changed. Moreover, the defendant guaranteed that within the first year, the plaintiff would not have to repair the car. The plaintiff believed the boastful

[26] Thai Civil and Commercial Code, Section 162:
"In bilateral juristic acts, the intentional silence of one of the parties in respect to a fact or quality of which the other party is ignorant, is deemed to be a fraud if it is proved that, without it, the act would not have been made."

[27] *Sotthibandhu* (n25) 135

information provided by the defendant, so the plaintiff agreed to buy the car from the defendant. Later, the fact appeared that the car was manufactured in 1977, repainted three times with different colors each time of repainting. Plus, the plaintiff encountered with many defective issues after using for just 3 months. The sale contract was made by incidental fraud leading to mistake as to quality of the car. However, the brand of the car was the brand which the defendant wished for. The deception by the defendant was not sufficient to affect the intention to buy the car. In another word, the plaintiff still would have buy without the deception. The boastful information only made the plaintiff to accept more disadvantageous terms. Hence, the sale contract was not void because of the boastful information, but the plaintiff had a right to claim for compensation for the disadvantageous terms from the defendant.

2.2.1.3 Non-Performance

Pursuant to the legal principles regarding the obligation and the contract under the CCC, when an obligation under a contract arises, a debtor is obliged to perform his obligation to a creditor as follows:

(1) A debtor shall perform his obligation precisely according to the subject of obligation, in which includes an action, an omission or a transfer of certain property or aggregately multiple types[28];

(2) A debtor shall perform his obligation in the manner which it is to be affected.[29] Namely, a debtor shall make a performance which is to be affected as agreed with a creditor. For instance, A enters into a sale contract of his own car with B, where A shall transfer an ownership of his own car to B, A can neither transfer an

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[28] Thai Civil and Commercial Code, Section 194:
"By virtue of an obligation the creditor is entitled to claim performance from the debtor. The performance may consist in a forbearance."

[29] Thai Civil and Commercial Code, Section 208 paragraph 1:
"The performance must be actually tendered to the creditor in the manner which it is to be effected."

ownership of another car nor pay a compensation to B, except where the nature of the obligation does not permit so[30]; and

(3) A debtor shall perform his obligation according to a true intent of a contract which is required to be interpreted in some occasion. In such case, an interpretation of a true intent must take the good faith and ordinary usage into account.[31] For instance, in case of a sale contract, apart from an obligation to transfer an ownership of goods to a buyer, a seller nevertheless has an obligation to deliver goods without defect. Should the seller delivers defective goods to the buyer, it is equivalent to a performance erring a true intent of a contract[32] and the buyer has the rights as follows:

1. The buyer has a right to refuse to accept the defective goods pursuant to Section 320 of the CCC.[33]

2. The buyer has a right to request the seller to have defective goods repaired. If the seller fail to do so, the buyer may have defective goods repaired at the seller's expenses pursuant to section 213 of the CCC.

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[30] Thai Civil and Commercial Code, Section 213 paragraph 1-2:

"If a debtor fails to perform his obligation, the creditor may make a demand to the Court for compulsory performance, except where the nature of the obligation does not permit it.

When the nature of an obligation does not permit of compulsory performance, if the subject of the obligation is the doing of an act, the creditor may apply to the court to have it done by a third person at the debtor's expense; but if the subject of the obligation is doing of a juristic act, a judgment may be substituted for a declaration of intention by the debtor."

[31] Thai Civil and Commercial Code, Section 368:

"Contracts shall be interpreted according to the requirements of good faith, ordinary usage being taken into consideration."

[32] Supreme Court's Decision No. 2830/ 2522 was ruled therein that the seller delivering defective goods to the buyer was equal to non-performance. The buyer therefore was entitled to rescind the contract and claim for damages. The seller was obligated to restore the buyer to his former condition. The seller refused to accept return of the goods and the price of such goods was unknown. Court ordered the seller to refund payment of the buyer and damages at full price.

[33] Thai Civil and Commercial Code, Section 320:

"The creditor cannot be compelled to receive part performance or any other performance than that which due to him."

3. The buyer is entitled to compensation pursuant to section 215 of the CCC. [34] According to section 222 of the CCC[35], the damages which the buyer is legally able to claim from the seller includes two types as follows:

3.1 Ordinary damages: which is the damages directly resulted from a non-performance which is foreseeable by ordinary person. For instance, in case the seller does not deliver goods to the buyer, resulting in a burden of higher price goods which the buyer has to bear from buying goods from other. In such case, the buyer is entitled to claim a difference of a higher price and expenses; or in case a lessee does not return a leased property to a lessor upon completion of a lease period, where a lessor is entitled to claim a compensation equivalent to a rental fee[36]; and

3.2 Special damages: which is the damages not ordinarily resulted from a non-performance, which is unforeseeable by ordinary person. Henceforth, generally, a debtor is not held liable for such damages, except in case a debtor foresee or ought to have foreseen a special circumstance incurring such damages, where a creditor is entitled to claim such damages. For instance, in case a buyer orders goods from a buyer for sale in foreign countries, and a seller delivers defective goods to a buyer which causes him unable to sell such goods. In such case, not only a price of goods, a seller is also subject to make a compensation of other expenses, for example, transport fee, insurance fee, tax, packaging fee and warehouse rental fee. This is because such expenses are special damages which a seller ought to have foreseen.[37]

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[34] Thai Civil and Commercial Code, Section 215:
"When the debtor does not perform the obligation in accordance with the true intent and purpose of the same, the creditor may claim compensation for any damages caused thereby."

[35] Thai Civil and Commercial Code, Section 222:
"The claim of damages is for compensation for all such damage as usually arises from non-performance.
The creditor may demand compensation even for such damage as has arisen from special circumstances, if the party concerned foresaw or ought to have foreseen such circumstances."

[36] Sophon Rattanakorn, *Explanation of Obligation* (11th edn, Nitibannagarn 2013) 183-4.
(โสภณ รัตนากร, *คำอธิบายกฎหมายลักษณะหนี้* (พิมพ์ครั้งที่ 11, นิติบรรณการ, 2556) หน้า183-184.)

[37] ibid 184-6

4. Since the sale contract qualifies as a reciprocal contract, the buyer, therefore, have a right to refuse to make a payment pursuant to section 369 of the CCC.[38]

5. The buyer has a right to rescind the sale contract according to principles of contract contained in section 386-389 of the CCC. In this case, both parties shall be bound to restore the other parties to former conditions, namely that the buyer must return the defective goods to the seller and the seller must refund the buyers' payment as well. And the buyer also has a right to claim for damages pursuant to section 391 of the CCC.[39]

2.2.1.4 Liability for Defect in Sale Contract

(1) Definition of Defect

By considering section 472 of the CCC[40], this section widely defines that the defect which the seller shall be liable for is the defect which impairs the value or fitness for purposes of ordinary usage or purposes of contract.

Impairing value: The word "value" means market value that buyer will normally gain if he resells such goods.[41] For instance, A agrees to buy a diamond ring

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[38] Thai Civil and Commercial Code, Section 369:

"A party to a reciprocal contract may refuse to perform his obligation until the other party performs or tender performance of his obligation. But this does not apply, if the other party's obligation is not yet due."

[39] Thai Civil and Commercial Code, Section 391:

"If one party has exercised his right of rescission, each party is bound to restore the other to his former condition; but the rights of third persons cannot be impaired.

To money which is to be repaid in the case of the foregoing paragraph interest is to be paid from the time when it was received.

For services rendered and for allowing the use of a thing the restitution shall be made by paying the value, or, if in the contract a counter-payment in money is stipulated for, this shall be paid. The exercise of the right of rescission does not affect a claim for damages."

[40] Thai Civil and Commercial Code, Section 472:

"In case of any defect in the property sold which impairs either its value or its fitness for ordinary purposes, or for the purposes of the contract, the seller is liable.

The foregoing provision applies whether the seller knew or did not know of the existence of the defect."

from B at price of 150,000 THB. A has found some visible defect after the delivery of the diamond ring. The defect causes a decline in value of the diamond ring for 50,000 THB. In this case, it is taken into account that the defect causes impairing value of the diamond ring.[42]

Impairing the fitness for ordinary purposes: For instance, after two days following the delivery of the car sold between A and B, the gear system becomes dysfunctional causing inability in the use of the car. In this case, it is taken into account that the defect causes impairing purpose of ordinary use[43].

Impairing the fitness for purpose of contract: The purpose must be an element of contract either expressly or implicitly. To determine whether the purpose is an element of contract, the interpretation shall be made in requirement of good faith in accordance with section 368 of the CCC[44]. The ordinary usage still shall be brought into consideration.

To illustrate; Supreme Court's Decision No. 1614/ 2522 which was ruled therein that the plaintiff agreed to sell a computer which was functional in seven systems to the defendant, but in fact the computer had its function in only one system (the fact had not arisen that the dispute computer was dysfunctional). The defendant, hence, had a right to rescind the sale contract. Furthermore, Supreme Court's Decision No. 5581/2533 which was ruled therein that the plaintiff agreed to buy cans from the defendant in order to contain fishes with tomato sauce. Upon the trial, the fact had been arisen that the defect occurred in the process of manufacturing by the

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[41] Kittisak Prokati, *Liability for Defect in Contract of Sale* (Faculty of Laws Thammasat University 1989) 25.(กิตติศักดิ์ ปรกติ, ความรับผิดเพื่อชำรุดบกพร่องในสัญญาซื้อขาย, งานวิจัยเสริมหลักสูตร (กรุงเทพมหานคร : โครงการตำราและเอกสารประกอบการสอน คณะนิติศาสตร์มหาวิทยาลัยธรรมศาสตร์, 2532) หน้า 25)

[42] Sanunkorn Sotthibandhu, *Explanation of Sale Exchange Give* (7th edn, Winyuchon 2016) 201.(ศนันกรณ์ โสตถิพันธุ์, *คำอธิบายซื้อขาย แลกเปลี่ยน ให้* (พิมพ์ครั้งที่ 7 แก้ไขเพิ่มเติม, วิญญูชน 2559), หน้า 201)

[43] ibid 202.

[44] Prokati (n41) 27.

defendant. The defect impaired the purpose of the plaintiff in contract. Hence, the defendant shall be liable for compensation in pursuance with section 472 of the CCC.

(2) The Time of Defect Occurrence

Section 472 of the CCC does not prescribe the exact time of the occurrence of defect, however, both Thai and foreign scholars have the same legal opinion that defect must exist either prior to or upon the conclusion of sale contract[45] even if the defect is discovered after the delivery of the goods. However, there is some Supreme Court's decisions referring to defect occurred during the delivery of the goods[46].

(3) Liability of Seller

The law determines that the seller shall be liable for defect in goods sold regardless whether the seller know or should have known of the defect or whether the defect is occurred by faults of seller[47]. It is not acceptable to raise the unawareness of the defect in order to avoid such liabilities as the seller is in better circumstances to be aware of such defects. This liability is categorized as "Objective Responsibility" or "Liability without Fault" which is the exemption of the principle rule of "No Liability without Fault". [48]

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[45] Praphon Sataman and Phaijit Punyaphan, *Explanation of Thai Civil and Commercial Code: Sale* (10th edn, Nitibannakarn 1993) 99. (ประพนธ์ ศาตะมาน และ ไพจิตร ปุญญพันธุ์, *คำอธิบายประมวลแพ่งและพาณิชย์ลักษณะซื้อขาย* (พิมพ์ครั้งที่ 10, นิติบรรณการ 2536) หน้า 99)

[46] Please see Supreme Court Decision No. 459/2514, No. 508/2545 and No. 1223/2545. However, Prof. Sanunkorn Sotthibandhu has a different legal opinion that if defects are occurred by faults of sellers after the execution of purchase contracts where the ownership is transferred to buyers but prior to the delivery of goods, the sellers shall be liable for breach of contract because the sellers fail to deliver goods in its fitness which is prescribed by law. The buyers, thus, have a right to call for termination of contracts or compensation. This case is not under the principle of statute of limitations for defective goods but it is under the principle of statute of limitations for breach of contract. In contrast, if the defects are occurred without faults of the sellers, the buyers shall absorb the damage or losses since the ownership is transferred to the buyers, pursuant to section 370 of the CCC.

[47] *Sotthibandhu* (n42) 201.

[48] Ibid 205.

(4) Right of Buyer

Section 472 of the CCC does not prescribe the detail of the seller's liabilities for defect. Nevertheless, the obligations of the seller in sale contract are not limited to transfer ownership and delivery of goods but also delivery of goods in its fitness. Thus, should the seller deliver defective goods, the seller deems to fail in performance. The liabilities of the seller shall be under the principles of contract and obligation as detailed below[49]:

1. The buyer has a right to refuse to accept the defective goods pursuant to section 320 of the CCC.

2. The buyer has a right to refuse to make a payment pursuant to section 369 of the CCC. In addition, in case that the defects are discovered after the delivery of the goods, the buyer is entitled to withhold the price or part of it still unpaid, unless the seller places proper security, pursuant to section 488 of the CCC[50].

3. For purpose of fairness, the buyer has a right to demand a price reduction due to the defects in order to proportionate the price and its condition[51].

4. The buyer has a right to request the seller to have the defective goods repaired. In case that the seller fails to do so, the buyer may have the defective goods repaired at the seller's expenses or may rescind the sale contract, according to section 387 of the CCC[52].

5. The buyer has a right to call for replacing of new goods. However, there are 2 different legal opinions as follows:

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[49] Ibid 205-6.

[50] Thai Civil and Commercial Code, Section 488:
"If the buyer has discovered defects in the property sold, he is entitled to withhold the price or part of it still unpaid, unless the seller gives proper security"

[51] *Sotthibandhu* (n42) 206.

[52] Thai Civil and Commercial Code, Section 387:
"If one party does not perform the obligation, the other party may fix a reasonable period and notify him to perform within that period. If he does not perform within that period, the other party may rescind the contract."

5.1 The buyer does not have a right to call for replace of new goods because the goods has become specific property in accordance with principles of obligations[53].

5.2 The buyer has a right to call for replace of new goods in some cases where fairness and reasonable causes are brought into consideration. Where the defects do not cause any harm to well-being or mental health of the buyer, the buyer does not have a right to call for replace of new goods. In contrast, where the defects may cause any harm to well-being or mental health of the buyer, the buyer have a right to call for replace of new goods. Furthermore, if not causing any harm to well-being or mental health but the defects are irreparable or it is not to be repaired or the expenses for repair are too high, the buyer has a right to call for replace of new goods[54].

6. The buyer is entitled to compensation, pursuant to section 222 and section 472 of the CCC.

7. The buyers have a right to rescind the sale contract according to principles of contract contained in section 386 - 389 of the CCC. In this case, both parties shall be bound to restore the other parties to former conditions, according to section 391 of the CCC. If it is impossible to restore to former conditions, it is required to pay compensation.

For example, Supreme Court's Decision No.903/2519 which was ruled therein that the plaintiff bought the goods in dispute from the defendant in order to resell in the United State. The fact arose that the defects were caused by faults of the defendant in the process of manufacturing and the defects caused the losses to the plaintiff.

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[53] *Sotthibandhu* (n42) 206.

[54] Rumpai Wongsuchat, 'The Defect in the Property Sold' (LL.M. thesis, Thammasat University 2007) 30-1. (รำไพ วงศ์สุชาต, 'ความชำรุดบกพร่องในทรัพย์ที่ซื้อขาย' (วิทยานิพนธ์ปริญญามหาบัณฑิต คณะนิติศาสตร์, มหาวิทยาลัยธรรมศาสตร์ 2550) หน้า 30-31) and;

Archareya Keawsangin, 'Right of the buyer in the sale of new car contract' (LL.M. Independent Study, Thammasat University 2005) 32-9. (อัจฉรียา แก้วแสงอินทร์, 'สิทธิของผู้ซื้อในสัญญาซื้อขายรถยนต์ใหม่' (สารนิพนธ์ปริญญามหาบัณฑิต คณะนิติศาสตร์, มหาวิทยาลัยธรรมศาสตร์ 2548) หน้า 32-39)

Thus, the defendant shall be liable for such defects and the plaintiff had a right to terminate the contract and claim for compensation for such losses in pursuance with section 215, 387, 391 and 471 of the CCC; and

Supreme Court's Decision No. 2830/ 2522 which was ruled therein that delivering defective goods is deemed as seller's failure in performance, the buyer had a right to terminate the contract and claim for compensation; and

Supreme Court's Decision No. 1614/ 2522 which was ruled therein that the computer in dispute was not functional in seven systems due to the contract but only in one system. The buyer was entitled to rescind the sale contract. The court, hence, ordered the buyer to return the computer and pay rental instead of its purchase price.

(5) Exemptions of Liability of Seller

Exemptions by law: Section 473 of the CCC has endorsed the exemption of liabilities of the seller according to the rule of "Buyer Beware" or "Caveat Emptor"[55] as follows:

1. The buyer knew of the defect at the time of sale, or would have known of it if he had exercised such care as might be expected from a person of ordinary prudence or,
2. The defect was apparent at the time of the delivery, and the buyer accepts the property without reservation or,
3. The property was sold by public auction.

Exemptions by contract: The parties are able to agree to exempt liabilities of the sellers under Section 483 of the CCC. However, such agreement does not exempt the buyer from repayment of price, unless the buyer expresses in contracts to waive the repayment of price, according to Section 484 of the CCC. Further, all exemptions shall not be made in violation of good faith, public policy and good moral, for example, the exemptions of liabilities for defective goods are made where the seller is aware of the defects but concealing, according to Section 485 of the CCC. Furthermore, in the case that buyer is a consumer and the seller is a businessman, it is

[55] *Sotthibandhu* (n42) 207.

necessary to consider Section 6 of the Unfair Contract Terms Act, B.E. 2540 (1997)[56] along with all relevant provisions in order to conclude whether exemptions or limitations of liabilities of the seller stipulated in contracts are applicable.

(6) Prescription

In pursuance with section 474 of the CCC, the buyer shall take lawsuit against the seller for defect within one year following the discovery of such defects.

2.2.2 The Consumer Protection Act B.E. 2522 (1979)

The Consumer Protection Act, B.E. 2522 (1979) (the "**Consumer Protection Act**") aims to protect the rights of consumer[57] by mandating businessmen[58] to perform some duties in order to preserve justice for the consumers[59] under supervision of Officer of the Consumer Protection Board. Section 4 of the Consumer Protection Act, has endorsed the rights for the consumer in protection as follows;

1. The right to receive correct and sufficient information and description as to the quality of goods or services.
2. The right to enjoy freedom in the choice of goods or services.
3. The right to expect safety in the use of goods or services.
4. The right to receive a fair contract.

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[56] Thai Unfair Contract Terms Act B.E. 2540 (1997), Section 6:
"A contract between the consumer and the business, trading or professional operator involving payment of debts by delivery of property to the consumer shall not contain the terms excluding or restricting the liability of the business, trading or professional operator for a defect or disturbance of right, except where the consumer knew of the defect or the cause of such disturbance of right, at the time of making the contract. In such a case, the terms excluding or restricting the liability shall only be enforceable to the extent that they are fair and reasonable according such circumstances."

[57] Thai Consumer Protection Act B.E. 2522 (1979), Section 3:
"Consumer" means a person who buys or obtains services from a business man or a person who has been offered or invited by a businessman to purchase goods or obtain services and includes a person who duly uses good or a person who duly obtains services from a businessman even he/she is not a person who pays the remuneration.

[58] Thai Consumer Protection Act B.E. 2522 (1979), Section 3:
"Business man" means a seller, manufacturer or importer of goods sale, or purchaser of goods for re-sale, person who renders services, and includes a person who operates the advertising business.

[59] Remark to Consumer Protection Act B.E. 2522 (1979)

5. The right to have the injury considered and compensated.

There are legal measures prescribed, under the Consumer Protection Act, in order to have the aforesaid rights protected effectively, for instance, consumer protection on advertising, labeling, contract, harmful goods, and harmful services. Besides, the law has empowered the Consumer Protection Board, associations, or foundations having its objectives in consumer protection to take legal actions and proceedings on behalf of consumer.

2.2.2.1 Consumer Protection against Labeling

Under the Consumer Protection Act, the consumer has the right to receive correct and sufficient information and description as to the quality of products or services, or the right to know. In order to provide sufficient information of product to the consumer, Section 30 of the Consumer Protection Act empowers the Committee on Labels to declare a certain product to be a label-controlled product by publishing in the Government Gazette.[60]

According to the Notification of the Committee on Labels NO.35 B.E. 2556 (2013), the Committee on Labels declares 'Used car'[61] as a label-controlled product

[60] Thai Consumer Protection Act B.E. 2522 (1979), Section 30:

"Products which are manufactured for sale by the factories under the law on factories and products which are ordered or imported into the Kingdom for sale shall be a label-controlled product.

The provisions of Paragraph one shall not apply to the products prescribed by the Committee on Labels by publishing in the Government Gazette.

In the case where it appears that products which may be harmful to health or cause physical or mental harm because of the use or the nature of such products or the products regularly used by the public and the requirement of labels on such products will be beneficial to the consumers so that they may be aware of the material facts concerning such products, the Committee on Labels shall have the power to declare such products to be a label-controlled products by publishing in the Government Gazette."

[61] Notification of the Committee on Labels NO.35 B.E. 2556 (2013), Article 3:

"Used car" means a private car for passengers not more than seven, a private car for passengers exceeding seven but not more than twelve and a private pick-up truck with vehicle weight of not more than one thousand and six hundred kilograms which is not used in transport for reward under the law on land transport, and was registered pursuant to the Vehicle Act, B.E. 2522 (1979) including a taxi, a tractor, a vehicle for use in agricultural

and the label of used car shall consist of the description defined in Article 4 of the notification, which reads as follows:

> "*Article 4: The label of used car under Article 3 shall be contained truthful statements and have no other statements which may include misunderstanding as to the material facts concerning such used cars, and made in Thai language or if the label made in foreign language, the Thai translation shall be attached thereto. And it shall contain the following statements:*
>
> *(1) name, category or type of product, in the case of imported product, name of the manufacturing country shall be specified;*
>
> (2) *name and place of seller*
>
> *(3) size or weight*
>
> *(4) car maintenance book (if any)*
>
> *(5) model year*
>
> *(6) price (net Baht)*
>
> *(7) date of registration*
>
> *(8) registration number*
>
> *(9) vehicle identification number*
>
> *(10) engine number*
>
> *(11) brand of car*
>
> *(12) brand of engine*
>
> *(13) color*
>
> *(14) type of fuel*
>
> *(15) the number of previous owner, first name and last name of previous owner*
>
> *(16) encumbrances on car at the date of sale*
>
> *(17) information as to car accident such as collision or flood (if any)*
>
> *(18) in case that car was flooded, flood level shall be specified*

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works which was registered pursuant to the Vehicle Act, B.E. 2522 (1979) which had been used and the businessman possess for sale.

(19) distance traveled by car or working hours of car

In case that the businessman sell a used car without having label displayed or having labels incorrectly displayed and knows or ought to have known that the non-display of label is against the law, the businessman shall be liable to imprisonment not exceeding six months or fine not exceeding 100,000 Baht, or to both pursuant to Section 52 of the Consumer Protection Act.

2.2.2.2 Consumer Protection on Contract

Generally, the contract used by the businessman in engaging a business in relation to the sale of goods and the supply of services to the consumer is an adhesion contract which causes the consumer unable to negotiate a modification of clauses therein. The businessman therefore tends to provide clauses unfairly exploiting the consumer. By the aforementioned reason, Section 35 *bis*[62] of the Consumer Protection Act empowers the Committee on Contract to prescribe business involving the sale of goods and the supply of services required by law to be made in writing or customarily made in writing as the contract-controlled business.

In light of an automobile industry, a price of car is indeed high that some consumer does not have sufficient fund to conclude a sale contract with a dealer and promptly pay a sum amount of a price. Such consumer is thus in need to raise a loan from the financial institute to purchase a car and subsequently pay off a price of such

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[62] Thai Consumer Protection Act B.E. 2522 (1979), Section 35 *bis*:

"In any business in connection with the sale of any goods or the provision of services if contract of sale or such contract of service required by law or the custom to be made in writing, the committee on Contract shall have the power to provide such business to be a controlled business with respect to contract.

A contract between a businessman and the consumers in the controlled business with respect to contract shall be of the following descriptions: (1) stipulating the necessary contract terms which if not stipulated in the contract the consumers would be unreasonable disadvantageous; (2) does not stipulating the unfair contract terms to the consumers.

Provided that, subject to the rules, conditions and details prescribed by the Committee on Contract, and to the benefit of the consumers as a whole, the Committee on Contract may permit a businessman to prepare a contract in accordance with the form prescribed by the Committee on Contract.

The prescription under paragraph one and two shall be in accordance with the rules and procedure prescribed by the Royal Decree."

purchase. Practically, when the financial institute grants the consumer a credit line, a price of a car will be directly paid to a dealer by the financial institution. A dealer will subsequently transfer an ownership of such car to the financial institution, meanwhile a hire-purchase contract is concluded between the financial institution and the consumer, not the facility agreement, of which the consumer will be legally able to use such car. However, the consumer will be subject to pay off a principal and interests in installments to the financial institution within an agreed period. Upon completion of such payment, an ownership of such car will be transferred to the consumer.

Presently, concluding a hire-purchase contract of a car with the financial institution is prevalently preferred. Nonetheless, as the consumer has an inferior negotiation power in comparison with the financial institution, the financial institution provides a hire-purchase contract in form of the adhesion contract resulting in an inability of the consumer to modify such contract or terms therein. Therefore, the consumer is more likely to be exploited and to reluctantly accept unfair contractual clauses. The Committee on Contract hence has prescribed the hire-purchase of car and motorcycle business as the contract-controlled business under the Notification of Committee on Contract, B.E. 2555 (2012) (the "**Notification**"), in which provides that the businessman may use his own hire-purchase contract but shall insert particular clauses with essences and conditions prescribed thereunder. One of essential conditions is that the business shall provide the details with regard to the hire-purchased car, for instance, name of vehicle, version, engine number, vehicle identification number, condition of a car as to whether it is a new car or a used car, traveled distance and encumbrance of a car in a hire-purchase contract. Should the businessman fails to deliver a contract having terms or terms with correct form in accordance with the Notification, the businessman shall be held liable to imprisonment for a term not exceeding one year or fine not exceeding 100,000 Baht, or both pursuant to Section 57 of the Consumer Protection Act.

2.2.2.3 Other Types of Consumer Protection

Under the Consumer Protection Act, there are concepts of product testing and product recall to prevent the consumer from any goods which may be harmful contained in Section 36, which reads as follows:

> "*Section 36: In case that there is a reasonable cause to suspect that any goods may be harmful to well-being and/or mental health of the consumers, the Consumer Protection Board may order the businessman to have the suspected goods tested or verified. Should the businessman fail or delay without justification in doing so, the Consumer Protection Board may arrange test or verification at the businessman's expense. In case of necessity and urgency which the Board has reason to believe that any goods may be harmful to the consumers, the Board shall have power to prohibit the sale of such goods for the time being until the test or verification is completed.*
>
> *If the test or verification results that the goods may be harmful to the consumers and the harm which may be caused by the goods cannot be prevented by means of requirement of label in accordance with the laws, the Consumer Protection Board shall have following powers;*
>
> *(1) Prohibit the sale of such goods.*
>
> *(2) Order the businessman to restore or recall the goods.*
>
> *(3) Order the businessman to repair reform or modify such goods or replace or compensate to the consumers.*
>
> *(4) Order the importer to return such goods to original places.*
>
> *(5) Order the businessman to destroy such goods.*
>
> *(6) Order the businessman to publicize the information regarding to the harm of such goods to the consumer or the information regarding to the aforesaid measures performed under prescription of the Board.*

For example case: Chevrolet Cruz car model manufactured in 2011-2012. Summary of complaint regarding to detects is that the complaint of detects was filed

to the Consumer Protection Board by 25 buyers claiming that detective parts of the said car model were causing damage. To illustrate, faulty accelerator - stuck accelerator and unintended acceleration, faulty auto-gear – hard vibration while shifting and locked gear. Therefore, the consumers requested the Consumer Protection Board to exercise the power prescribed in Section 36 of the Consumer Protection Act[63].

In this case, the Consumer Protection Board arranged the test and verification with 12 cars (Chevrolet Cruz model manufactured in 2011-2012) . The test and verification was held at Kaeng Krachan Circuit in October, 2013 at Chevrolet Sales (Thailand) Co., Ltd.'s expenses[64]. The test and verification resulted faulty parts from the 12 cars[65]. Hence, the Consumer Protection Board ordered the company to repurchase the cars from the consumers by setting maximum depreciation rate 40% of the car price. But the Consumer Protection Board did not prohibit the company to sell the said car model[66]. Some of the buyers agreed with the measure prescribed by the Consumer Protection Board, some disagreed and were to take lawsuit and proceeding against the company through the court[67].

2.2.3 The Consumer Case Procedure Act B.E. 2551 (2008)

Apart from protection under the Consumer Protection Act which mandates businessmen to perform duties and imposes liabilities upon the violation such

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[63] 'ผู้บริโภคสุดทน! "เชฟโรเลต" ปัญหาเพียบเสี่ยงอุบัติเหตุ ร้อง สคบ.จัดการด่วน' (*Manager.co.th*, 2016) <http://www.manager.co.th/QOL/VIEWNEWS.ASPX?NEWSID=9560000101480> accessed 22 October 2016.

[64] มูลนิธิเพื่อผู้บริโภค (มพบ.), 'สคบ.เริ่มการทดสอบความปลอดภัยของเชฟโรเลต ครูซ ที่มีการร้องเรียน' (*Consumerthai.org*, 2013) <http://www.consumerthai.org/index.php/news/ffc-news/2308-2013-10-14-07-56-42.html> accessed 22 October 2016.

[65] มูลนิธิเพื่อผู้บริโภค (มพบ.), 'สคบ. แถลงผลการทดสอบรถยนต์เชฟโรเลต พบปัญหาทุกคัน' (*Consumerthai.org*, 2014) <http://www.consumerthai.org/index.php/news/ffc-news/2313-2014-01-15-00-00-06.html> accessed 22 October 2016.

[66] 'ผู้บริโภค 7 ราย ฟ้อง บ.เชฟโรเล็ตเซลล์' (*YouTube*, 2014) <https://youtu.be/htLf9sVRWiU?list=PLNOtUGU9CXQ5XXfeUWVUf7Wad4iVO6xlZ> accessed 22 October 2016.

[67] 'ศาลแพ่งพิพากษาผู้ใช้รถเชฟโรเลตครูซ6รายรับเงินดาวน์-ค่างวดรถคืนเต็มจำนวน' (*www.newsplus.co.th*, 2014) <http://www.newsplus.co.th/80931> accessed 22 October 2016.

provisions, the consumer is under protection of the Consumer Case Procedure Act, B.E. 2551 (2008) (the "**Consumer Case Procedure Act**") which prescribes court proceeding in respect of dispute between consumer and businessman which qualifies as a consumer case.[68] This law is designed to benefit consumer by simplifying and expediting the legal process for consumer to seek redress when he/she is injured or sustained damage. The consumer is permitted to file a lawsuit orally or in writing[69] and is waived court fees.[70]

Besides, the court is given considerable discretion under this law to conduct the proceedings and to ensure that consumer receives fair treatment. For instance, under Section 29 of this Act, in case the fact concerning the manufacture, assembly, design, or component of the goods, services, or any undertaking need to be proved and is only known to the businessman, the court is empowered to exercise a discretion to impose the burden of proof on the businessman.[71] And under Section 41 of this

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[68] Thai Consumer Case Procedure Act B.E.2551 (2008), Section 3:

"Consumer Case" means (1) a case between a consumer or a person having the power to file a lawsuit on the consumer's behalf under section 19 or as per other law and an entrepreneur having a dispute in relation to a legal right or obligation related to consumption of goods or service; (2) a civil case under the law relating to liability for damage arising from unsafe goods; (3) a civil case relating to case under (1) or (2); (4) a civil case which a registration prescribing to apply the procedure under this Act;

[69] Thai Consumer Case Procedure Act B.E. 2551 (2008), Section 20 paragraph 1:

"In regards to taking legal action in a consumer case, the plaintiff may do so orally or in writing. In the case where the plaintiff wishes to take legal action orally, a Case Official shall provide a recording of details of the plaint, and let the plaintiff to signify it"

[70] Thai Consumer Case Procedure Act B.E. 2551 (2008), Section 18 paragraph 1:

"Subject to the law on liability for damage arising from unsafe goods, the submission of case, as well as any proceedings in a consumer case undertaken by a Consumer or person having the power to file a lawsuit on the Consumer's behalf shall be exempted from all fees, excluding liability for fee in the final class"

[71] Thai Consumer Case Procedure Act B.E. 2551 (2008), Section 29:

"Any point in dispute needs to be proved as to fact relating to the manufacture, assembly, design, or component of the goods, services, or any undertaking which the court is of an opinion that such fact is known to the party who is the Businessman only, the burden of proof in such point in the dispute shall fall on the party who is the Businessman."

Act, in case of defect of goods, should the court have reasons to believe that the defect occurs at the time of delivery of the goods and cannot be repaired or even if repaired, the goods may be harmful to the consumer using such goods, the court is empowered to exercise a discretion to render a judgment ordering the businessman to replace the goods instead of repairing. In case the defendant is neither manufacturer nor importer, the court is of the power to summon the manufacturer or importer into the case and order such persons to be jointly liable for the obligation with the businessman.[72]

2.2.4 The Product Liability Act B.E. 2551 (2008)

The Product Liability Act B.E. 2551 (2008) (the "**Product Liability Act**") is intended to protect the consumer from unsafe products and attempts to achieve its objective by applying strict liability to business operators, simplifying the procedure and reducing the consumer's burdens of prove.[73]

The Product Liability Act defines "Product" as any kind of movable properties that has been manufactured or imported for sale, including agricultural products and

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[72] Thai Consumer Case Procedure Act B.E.2551 (2008), Section 41:

"In a case which a consumer or person having the power to file a lawsuit on the Consumer's behalf is a plaintiff take an action against the Businessman to be liable for the defect of goods, if the Court believes that such defect exists at the time of delivery of such goods and is unable to be restored to normal condition, or even if it is restored, if it is used, it may cause harm to body, health, or sanitary of the consumer using such goods, the Court shall have the power to adjudicate that the Businessman replace the goods instead of restoring or repairing such defect goods, provided that it shall take into account the nature of goods which may be replaced, behavior of the Businessman, as well as good faith of the Consumer; also, if it appears that the Consumer has an interest from using the goods, or cause the damage to such goods, the Court shall order the Consumer to pay the goods or damages as the case may be to such Businessman as it thinks fit.

In regards to the legal action under paragraph one, if the defendant is not the manufacturer or the importer of such goods, the Court shall summon such manufacturer or importer into the case under section 57 (3) of the Civil Procedure Code, and shall have the power to adjudicate that such person jointly be liable for the obligation the Businessman under paragraph one owe to the Consumer as well.**"**

[73] Douglas Mancill and Mongkol Vutthithanakul, 'Thailand's Product Liability Act' (*Amchamthailand.com*, 2008) <https://www.amchamthailand.com/asp/view_doc.asp?DocCID=2142> accessed 8 June 2017.

electricity except the products specified in the ministerial regulations.[74] "Unsafe product" is defined as any product that actually causes or may cause damage due to (a) its manufacturing defect, (b) its design defect or (c) lack of clear warning, instruction or other information about usage, maintenance or preservation of the product.[75]

When an unsafe product causes damage or injury, the Product Liability Act provides for joint and several liabilities for "Business operators", a term that covers (a) manufacturers and outsourcers; (b) importers; (c) a seller who cannot identify the manufacturer, outsourcer or importer of the unsafe good; and (d) any party who uses the trade name, trademark or places a statement on the product that causes the public to understand that it was the manufacturer, outsourcer or importer of the unsafe product. Regardless of whether the damage or injury was caused intentionally or negligently by the business operators, all the business operators will be jointly liable for the damages sustained by the injured person, with few exceptions.[76] Furthermore, the injured person does not need to prove which business operators caused the damage or injury, but merely prove that he was damaged or injured by the business operators' product and he had used and maintained such product properly.[77]

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[74] Thai Product Liability Act B.E.2551 (2008), Section 4:
"Products" means any kind of movable properties manufactured or imported for sale including agricultural products and electricity except the products specified in the Ministerial Regulations.

[75] Thai Product Liability Act Act B.E.2551 (2008), Section 4:
"Unsafe products" mean products which cause or may cause damages either by its manufacture defect; or its design defect; or by having no instruction, preservation, warning message, or relevant information about the product; or having incorrect or unclear information with regard to its nature including its usual usage and preservation.

[76] Thai Consumer Case Procedure Act B.E.2551 (2008), Section 5:
"Every business operators shall be jointly liable to the injured person for the damages caused by the unsafe products which have been sold to the consumers no matter whether the damages are intentionally or negligently caused by the business operators."

[77] Thai Product Liability Act B.E. 2551 (2008), Section 6:
"In order to have business operators' liability according to Section 5, the injured person or his/her representative as specified in Section 10 has to prove that he/she suffers from damages caused by the business operators' products and the usage or preservation of such products is by its nature. It is, however, unnecessary to prove which business operator causes such damage."

The Product Liability Act facilitates the injured person as to filing a lawsuit against the business operators, namely that the injured person may file a complaint with the Consumer Protection Board or a foundation or association authorized by the Consumer Protection Board to accept such complaint. And such bodies are entitled to filing a lawsuit to any court having jurisdiction on behalf of the injured person. Court fees are waived, but fees ordered by the court in the final case are still payable.[78]

In cases where the court determines that the injured person was damaged or injured by an unsafe product, the court is not restricted to awarding damages set out in the CCC, but the court is entitled to consider other forms of compensation as follows:[79]

(a) The court may award damages for mental suffering to the injured person

(b) If the unsafe product caused the death, the court may award damages for the mental suffering to certain relatives and heirs of the injured person.

(c) The court may impose punitive damages on the business operator if the business operator was aware or should have been aware that the products were unsafe, but failed to discover due to gross negligence, or failed to take proper action to

[78] Thai Product Liability Act B.E. 2551 (2008), Section 10:

"The Consumer Protection Board, Associations and Foundations certified by the mentioned Board under the Consumer Protection Law are entitled to file a law-suit for damages on behalf of the injured person. The procedure for prosecution in this case will be governed by such law mutantis mutandis. The fee for the law-suit and its procedure as in the first paragraph will be waived excluding the fee as decided by the Court."

[79] Thai Product Liability Act B.E. 2551 (2008), Section 11:

"In addition to the compensation for tort as prescribed in the Civil and Commercial Code, the Court may award a compensation for damages according to the following rules:

(1) Compensation for mental damages resulting from the injured persons' bodily, or health or hygiene damages and in case of death of the injured persons, their husband, wife, parents or inheritor shall be entitled to receive the compensation for mental damages.

(2) If it is found that a business operator has manufactured, imported or sold a product being aware that such product is unsafe, or not being aware because of gross negligence or does not proceed with any appropriate action to prevent such damages after becoming aware, the Court may instruct the business operator to pay more compensation as punitive compensation as the Court sees fit but no more than double of the actual amount regarding to other circumstances for instance, severity of damages the injured person suffered, an entrepreneur's knowledge of the product unsafety, the duration a producer conceals unsafety of the products, the action an entrepreneur takes after being aware of the unsafety of his product, an advantage gained by a producer, financial status of a business operator, alleviation for the damages an entrepreneur has done, and also including damages where the injured person has been partly involved."

prevent damage after knowing that the products were unsafe. Punitive damages can be imposed not exceeding double actual damages.

Moreover, the prescription for product liability claims is limited within three years after the date that the injured person knows the damage and the person bound to make compensation or ten years after the day of the sale of such product. In case where damages occurred to life, body, health, or hygiene, resulting from an accumulation of the substance within the injured person's body or the case where time is taken before the symptom becomes apparent, the injured person may exercise the right within three years from the date that he/she is aware of such damage and of the identity of the person bound to be liable but not exceeding ten years from the date the injured person is aware of the damage.[80]

2.2.5 The Vehicle Act B.E. 2522 (1979)

2.2.5.1 Registration of Vehicle

(1) Registration Process

When a buyer purchases a new car from a car dealer, a buyer as an owner of a car shall have duties to comply with the Vehicle Act, B.E. 2522 (1979) (the "**Vehicle Act**") , in which section 6 and section 7 provide that, firstly, a vehicle shall be registered and examined in order to be used.[81] In violation thereof, a person shall be held liable to fine not exceeding ten thousand Baht.[82]

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[80] Chusert Supasitthumrong, 'Product Liability Act: Is Your Business a Potentially Liable Party?' (*Tilleke.com*, 2014) <http://www.tilleke.com/resources/product-liability-act-your-business-potentially-liable-party> accessed 12 June 2017.

[81] Thai Vehicle Act B.E. 2522 (1979), Section 6:

"No person shall use a vehicle as follows: (1) an unregistered vehicle (2) a vehicle which is revoked registration. (3) a vehicle pending full amount of annual tax payment (4) a vehicle which is restrained registration"

Thai Vehicle Act B.E. 2522 (1979), Section 7:

"A vehicle applied for registration must: (1) be a vehicle containing full components and accessories prescribed in the Ministerial Regulation, and (2) have been examined the vehicle condition by the Registrar or the vehicle condition examination centre licensed under the law on land transport at the time of registration application."

[82] Thai Vehicle Act B.E. 2522 (1979), Section 59:

In registering a vehicle, the owner must present following documents:[83]

1) A premise of acquisition a vehicle: for instance, a purchase contract or a receipt;
2) A premise identifying a car owner: for instance, an identification card or an affidavit;
3) A certificate certifying submission of inventory receipt and sale of a dealer; and
4) An inventory of sale of a dealer.

Upon completion of an examination of relevant documents and a vehicle condition, a registrar shall issue a vehicle registration plate and a vehicle registration certificate to an owner. In a vehicle registration certificate, there are following information:

1) Registration information such as date of registration, registration number and province of registration

2) Vehicle information such as model, year, category of vehicle, color, type of fuel, vehicle identification number, engine number, brand, specification, volume or capacity of engine, weight, the number of seat

3) Vehicle owner's information

4) Vehicle possessor's information (in case an owner and possessor are different persons)

5) Tax payment information

In addition thereto, a vehicle registration certificate provides a blank space for a registrar to record further change of data.

Generally, the vehicle registration process can be completed within one day. However, should the car owner be unable to present all or correct required documents; or in case the car owner aspires to choose a specific vehicle license number, a

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"Any person who violates section 6(1) shall be liable to a fine not exceeding ten thousand Baht."

[83] Regulation of Department of Land Transport regarding Registration and Taxation under Law of Vehicle B.E.2531 (1988), Article 11(1)

registration process may be delayed. While the process thereof has not been completed, a seller may facilitate a buyer by furnishing him a red vehicle registration plate in order for using a vehicle.[84]

However, ownership of movable property is transferred upon delivery of the possession. Hence, the ownership of the vehicle is transferred by delivery the possession of such vehicle.[85] Registration with Department of Land Transport is not a required element or form of sale contract prescribed by law, but it is for purposes of restriction and taxation. Even though, in fact it is undeniable that vehicle registration certificate is the only official document which consumer can verify whether the car is new or used car.

(2) Vehicle with a Red Vehicle Registration Plate

Although the law provides that prior to using a vehicle, it must be duly registered. Nonetheless, there appears one significant exception thereof under Section 27 of the Vehicle Act[86] providing that, should a person who has a vehicle for sale or for repair wishes to drive by himself, he shall obtain a license from a registrar. Upon granting such license, a registrar shall issue a special sign or familiarly called as a 'red vehicle registration plate' along with a vehicle manual to a licensee.

The law permits usage of a red vehicle registration plate only in case a vehicle for sale or for repair. The term 'for sale' means a circumstance where a truck is lack; or in some location, transportation is inconvenient, a manufacturer may need to drive an unregistered vehicle to deliver it to an authorized dealer; or in case a buyer cannot

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[84] Katesaraporn Kongdej, 'ใช้แป้งแดงผิดกฎหมายหรือไม่' (Legal Affairs Bureau) <http://elaw.dlt.go.th/ElawUpload/FileELaw/13.pdf> accessed 12 June 2016.

[85] Supreme Court's Decision No. 6080/2540

[86] Thai Vehicle Act B.E. 2522 (1979), Section 27:

"If any person who has a vehicle for sale or for repair wishes to drive by oneself or has other person drive it for such purpose, he or she must be licensed by the Registrar and shall be permitted to drive between sunrise and sunset, unless it is necessary and having been permitted by the Registrar.

The application for and grant of license under paragraph one shall be in accordance with the rule, procedure and condition prescribed in the Ministerial Regulation.

In issuing the license, the Registrar shall also issue a special sign and vehicle manual.

The special sign and vehicle manual shall be in the form prescribed in the Ministerial Regulation and shall be interchangeable, not for a specific vehicle only."

obtain a vehicle himself, an authorized may need to drive an unregistered vehicle to deliver it to a buyer. As for the term 'for repair', it means in case an authorized dealer drives an unregistered vehicle for a reparation at other place. However, as of now, most of vehicles to be repaired are duly registered, thus there is no red vehicle registration plate is issued for reparation. Until now, a person permitted in accordance with Section 27 of the Vehicle Act is only a dealer, it appears no vehicle repairing business operation whom is granted such license. A person licensed is permitted to drive an unregistered vehicle during sunrise to sunset. A red vehicle registration plate is interchangeable, not for a specific vehicle. A driver shall comply with section 28[87] of the Vehicle Act in recording name of vehicle, chassis number, engine number, driving purpose, date, month and year of driving and returning time and name and surname of a driver in a vehicle manual. [88]

Nonetheless, nowadays, numerous dealers use a red vehicle registration plate not in accordance with the true purpose of the law. Namely, when a dealer has successfully sold a vehicle to a buyer, but a buyer has not yet completed a vehicle registration, for instance, required documents are not corrected; or a buyer awaits an auction for an auspicious number, a dealer would facilitate a buyer by furnishing him a red vehicle registration plate in order for using a vehicle until a completion of a registration process. It is therefore a reason why some vehicles attach a red vehicle registration plate for months, or in some case, for years.[89]

2.2.5.2 Transfer of Registered Car

A transferor and a transferee are subject to inform a registrar within 15 days as from the date of transfer.[90] In violation thereof, a person shall be held liable to fine not

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[87] Thai Vehicle Act B.E. 2522 (1979), Section 28:

"In driving the vehicle under section 27, the driver shall record the following items: (1) name of vehicle, chassis number, and engine number; (2) driving purpose; (3) date, month and year of driving and returning time; (4) name and surname of driver."

[88] *Kongdej*(n84)

[89] *Kongdej*(n84)

[90] Thai Vehicle Act B.E. 2522 (1979), Section 17 paragraph 1:

"In transferring the vehicle already registered, the transferor and transferee shall inform the Registrar within fifteen days from the date of transfer."

exceeding two thousand Baht.[91] When an official examines a vehicle registration certification and premises of a transferor and a transferee, for instance, identification cards or affidavits, and premises of acquisition of a vehicle, for instance, a purchase contract, a hire-purchase contract, a receipt and a will, he will subsequently record transfer of a vehicle in a vehicle registration certification.[92]

2.2.5.3 Inspection of Vehicle Condition

Pursuant to the Vehicle Act, it provides that a vehicle owner shall have his vehicle condition inspected at the Office of Land Transport or a vehicle condition inspection station licensed by the Office of Land Transport in following circumstances:

1) A new registered vehicle;

2) A vehicle modified in a different condition from registered, for instance, color change, engine change, vehicle appearance change or fuel change;

3) A vehicle which have a problem with a chassis number or an engine number, for instance, a number vanishes or becomes defective, appears a strain of modification, scraping, erasing or vanishing that a precision cannot be inspected;

4) A vehicle returned from a theft;

5) A vehicle whose owner used to submit a temporary discard or a permanent discard, and subsequently demands to use such vehicle;

6) A vehicle which its life expectancy exceeds 7 years, whose condition must be inspected prior to an annual tax payment; and

7) A vehicle without a tax payment more than a year.

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[91] Thai Vehicle Act B.E. 2522 (1979), Section 60:

"Any person who violates or fails to comply with section 17 paragraph one shall be liable to a fine not exceeding two thousand Baht."

[92] Regulation of Department of Land Transport regarding Registration and Taxation under Law of Vehicle B.E.2531 (1988), Article 34

Should a vehicle passes such inspection, a registrar or a vehicle condition inspection station shall issue a certificate of a vehicle condition inspection to a vehicle owner. However, should a vehicle is unable to pass such inspection, a registrar or a vehicle condition inspection station shall inform an owner of defects in order for reparation and a future inspection. Nevertheless, if a vehicle owner neglects to have his vehicle inspected, he shall be held criminally liable according to the law.

2.2.6 The Penal Code

2.2.6.1 Offence of Cheating and Fraud

The Penal Code prescribes the offence of cheating and fraud in section 341, which reads as follows:

> *"Section 341: Whoever, dishonestly deceives a person with the assertion of a falsehood or the concealment of the facts which should be revealed, and, by such deception, obtains a property from the person so deceived or a third person, or causes the person so deceived or a third person to execute, revoke or destroy a document of right, is said to commit the offence of cheating and fraud, and shall be punished with imprisonment not exceeding three years or fined not exceeding six thousand Baht, or both."*

Deceiving a person under aforementioned provision may be perpetrated in two following manners:

(1) An assertion of a falsehood: which can be carried out in verbal, via document or other means. In the term of 'falsehood', it means a fault message contrary to the facts which a perpetrator is of such knowledge. In the other hand, should a message is true, even a perpetrator believes that such message is fault, it does not constitute deceiving by asserting a falsehood. For instance, A believes that an antique portrait is new, which he subsequently sells it to B whom is told by A that such portrait is antique. The portrait is therefore sold with higher price than a new one, which in fact, a true price of the antique portrait is equivalent to the price that A

sells to B. Such case is not deceiving by asserting a falsehood. A therefore is not criminally liable for the offence of cheating and fraud.[93]

A statement of past or present incidences is apparently tended to be considered a falsehood. However, a statement of a future incidence cannot be certainly determined as to whether it is true or fault. Giving a promise to conduct certain action in a future may be a statement of a fault message; or may merely be just a breach of promise which constitutes civil liability. Thus, intent of a perpetrator is to be significantly taken into account.[94] For instance, Supreme Court's Decision No. 1124/2529 which was ruled therein that the defendant bought a cow from the injured person for resale, by deceiving the injured person that once a cow is sold, a price and a commission fee are to be paid to the injured person despite the fact that the defendant had no intent to buy and pay a price of a cow. An action of the defendant therefore was an assertion of a falsehood to deceive the injured person, constituting the offence of cheating and fraud; or Supreme Court's Decision No. 707/2516 which was ruled therein that the defendant took a loan from the injured person asserting that such loan is to be paid for police's allowance and he would return benefits to the injured person. In such case, it was just a loan for money by giving a promise that such loan would be paid for the defendant's future business, without an assertion of a falsehood or a concealment of the facts by that moment. Even the defendant did not use such loan in paying for police's allowance, it was deemed only a breach of promise, not the offence of cheating and fraud.

In addition thereto, expressing opinion, for example, a seller remarks that his goods are of high quality which is inconsistent with the facts. Such circumstance is just an expression of opinion, not representation of the facts. Nonetheless, should a seller additionally asserts that his goods are highly qualified as they are made of

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[93] Kiatkajon Watjanasawat, *Criminal Law (Specific Offence) Book III* (2nd edn, Krung Siam Publishing 2012) 255-59. (เกียรติขจร วัจนะสวัสดิ์, *กฎหมายอาญาภาคความผิด เล่ม 3*, (พิมพ์ครั้งที่ 2, กรุงสยาม พับลิชชิ่ง 2555) หน้า 255-59.)

[94] ibid 260-67.

materials produced by specific company or specific country which is contrary to the facts, it is an assertion of a falsehood.[95]

(2) A concealment of the facts: which means an omission to disclose the facts which a person has a duty to do so. The referred duty may be a duty under the law, a duty under a contract, a duty resulted from his previous conduct or a duty incurred from a good faith and mutual reliance, but not including a moral obligation, for instance, when a seller is of knowledge that his goods are defective, a seller is obliged to inform a buyer thereof, should he conceals such facts and sells with a price equivalent to a regular one, he is to be held criminally liable for the offence of cheating and fraud.[96]

A criminal offence of the said provision is completed at a delivery of a property and a perpetrator is in possession thereof; or a document of right is revoked or destroyed. However, so far as a perpetrator is not in possession of a property, or a document of right has not yet been revoked or destroyed, such action is only an attempt of the offence of cheating and fraud.[97]

Should a deception is conducted, even a person whom is deceived is not aware of such deception, a perpetrator shall be criminally liable for an attempt of the offence of cheating and fraud.[98]

Should there is a deception, but a person whom is deceived does not believe so, even a perpetrator can take a property or a document of right has been revoked or destroyed, such action is only an attempt to cheat. For example, A sells fake goods to B by deceiving that the goods are genuine. Then, B has C inspect its genuineness. C recklessly assures that the goods are genuine which causes B to believe and buy such goods. In this case, B makes a payment of a price of goods as a result from an

[95] ibid 275.
[96] ibid 283.
[97] ibid 309.
[98] ibid 311.

assurance of C, not from a deception of A. Therefore, A shall be held criminally liable for an attempt of the offence of cheating and fraud.[99]

However, if a person whom is deceived delivers a property to a perpetrator regardless of a deception, namely, even in case of absence of such deception, a person would still deliver a property to a perpetrator. An action in such circumstance is not the offence of cheating and fraud. For instance, a beggar fakes being blinded, if A donates money to a beggar without regarding as to whether he is really blinded, a beggar shall not be held criminally liable for the offence of cheating and fraud; or in case A agrees to purchase a car from B without regarding as to whether a car is new or old, even B falsifies that an old car is new. B shall not be held criminally liable for the offence of cheating and fraud. This is because A initially intends to buy a car regardless of B's deception.[100]

2.2.6.2. Offence of Selling Goods by Fraudulent and Deceitful Means

The offence of selling goods by fraudulent and deceitful means is prescribed in Section 271 of the Penal Code, which reads as follows:

> *"Section 271: Whoever, selling the goods be any fraudulent and deceitful means in order to deceive the buyer as to the origin source, nature, quality or such goods quantity, if such act does not constitute cheating and fraud, shall be imprisoned not exceeding three year or fined not exceeding six thousand Baht, or both."*

The term 'selling' pursuant to the abovementioned provision means a contractual action, but necessarily not a transfer of an ownership, namely, just a meeting of an offer and an acceptance is adequate. For instance, a seller offers the goods, when a buyer declares his intent to buy such goods, a contract is made deemed 'selling' without having to determine as to whether such goods are the specific goods; and without having to consider a transfer of an ownership or receipt of a payment of a price. Moreover, as the criminal law inflicts penalties upon a perpetrator, it shall be

[99] ibid 312-13.
[100] ibid

strictly interpreted. Therefore, a scope of the term 'selling' can be extended to cover neither an exchange nor a pledge. Nonetheless, should a case involves a sale, including a sale with right to redemption and an auction, such case shall fall under such provision.[101]

Additionally, the term 'selling' pursuant to this provision shall mean only a moveable property under the Civil and Commercial Code, not including an immovable property and service.[102]

A deceitful mean under this provision means an act carried out in any manner. Therefore, boasting, expressing opinion or giving a promise relating to future situation, with an intent to make misunderstanding shall fall under the term 'deceitful mean' under this provision (which is different from a deception under Section 341 of the Penal Code limiting only to an assertion of a falsehood or a concealment of the facts which should be revealed). In such case, a buyer must be deceived in certain specified contents as follows:

1) Place of manufacturing: for example, country of manufacturing, location of manufacturing, location, factory or a person who manufactures;

2) Condition: for example, genuine gold or fake gold;

3) Quality: for example, old product, new product, capability, utility or property; and

4) Quantity: for example, amount, weight or length.

However, if a seller has already conducted a deception, but a buyer does not believe so, such action is only an attempt to sell goods by fraudulent and deceitful means.[103]

To constitute a criminal offence under this provision, an action shall not fall under the criminal offence of cheating and fraud under Section 341 of the Penal Code

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[101] Jitti Tingsapat, 'Selling Goods by Fraudulent and Deceitful Means' (1968) 25 Bhotbundit. 40-5.

[102] ibid

[103] Kiatkajon Watjanasawat, *Criminal Law (Specific Offence) Book II* (7th edn, Krung Siam Publishing 2014) 367-71. (เกียรติขจร วัจนะสวัสดิ์, *กฎหมายอาญาภาคความผิด เล่ม 2* (พิมพ์ครั้งที่ 7, กรุงสยาม พับลิชชิ่ง 2557) หน้า 367-71.)

and an attempt thereof. Thus, an action of cheating and fraud shall not constitute the criminal offence of selling goods by fraudulent and deceitful means.[104]

Examples can be given as follows:

Supreme Court's Decision No. 299/ 2547 which was ruled therein that the defendant engaged an oil selling business and placed a post displaying the plaintiff's trademark without any clarification that the defendant was not a distributor of the plaintiff, elucidating that the defendant had intent to sell his good by using the plaintiff's trademark to deceiving others that his goods were the plaintiff's. It was therefore the criminal offence of selling goods by deceiving a place of manufacturing. Selling an oil to A and B who were the buying decoys and were aware that an oil was not the defendant's was hence an attempt selling goods by fraudulent and deceitful means under Section 271 in conjunction with Section 80 of the Penal Code; and

Supreme Court's Decision No. 3351/ 2542 which was ruled therein that the defendant delivered deteriorated egg powder to the plaintiff by deceiving in manner of assertion of falsehood that such egg powder is powdered milk as ordered thereby, in order to receive a payment of the plaintiff's money. It was thus an action dishonestly conducted. However, since the plaintiff had not yet made a payment of a price to the defendant, such action was hence an attempt of cheating and fraud, not the criminal offence of selling goods by fraudulent and deceitful means under Section 271 of the Penal Code. Therefore, it was not necessary to consider as to whether the defendant's action is selling of goods by deceiving a buyer in a place of manufacturing, condition and quality of goods.

[104] ibid

CHAPTER 3
THE CONSUMER PROTECTION ON LEMON LAUNDERING IN FOREIGN COUNTRIES

3.1 United States

In the United States (the "**US**"), there are statutes relating and involving to the practice where the returned defective car is resold by concealing history of mechanical problems or Lemon Laundering as follows:

3.1.1 Lemon Law

As the Lemon Law of each state of the US provides the essential principles in common, only minor details are different, therefore, the presentation of legal measures to protect the consumer from Lemon Laundering in this subchapter will not provide details of the provisions of each state, but will present legal principles derived from Lemon Law of every state instead.

3.1.1.1 Form of Law

Lemon Law is usually enacted as a part of a general law, for instance, Lemon Law of California which is stipulated in Civil Code or Lemon Law of New York provided in General Business Law.

3.1.1.2 Scope of Law

All states of the US have enacted the law, which is called 'Lemon Law', for providing legal remedies to a consumer who buys a car that fails to comply with standard of quality and performance. Although the exact criterial varies from state to state, Lemon Law generally requires a manufacturer to replace or repurchase the car having a significant defect that impairs the use, value or safety of its car and cannot be repaired within reasonable amount of time. Lemon law considers the nature problem of the car, the number of days that the car is unavailable for using due to the same mechanical issue, and the number of repair attempts made. If the defect of the car cannot be repaired within the total number of days described in the state's Lemon

Law, the defective car qualifies as a lemon car and the manufacturer must, at the buyer's option, either replace with a comparable car or repurchase such car from the buyer.

Lemon Law of each state is only applied to the car bought and registered in such state. Each state may limit the application of Lemon Law to certain vehicles, such as new car, used car or leased car. Lemon Law shall not affect the protection stipulated under other laws. Namely, apart from a protection enshrined under Lemon Law, protections under other relevant laws, for instances, the Magnuson-Moss Warranty Act, the Unfair and Deceptive Trade Practices Act or Uniform Commercial Code, are still effective in this regard. Therefore, an exercise of a right under Lemon Law shall not prejudice a right to bring an action under other laws, should certain criteria due to the laws are met.

3.1.1.3 Status of Law

The Lemon Law is provisions related to public policy. Any agreement entered into by the consumer for the purchase of the car that waives, limits, or disclaims the rights set forth in the lemon law is void.[105]

3.1.1.4 Legal Measures Dealing with Lemon Laundering

The Lemon Law of all states, except Delaware, Kentucky, Missouri, Tennessee and Wyoming[106], have specific provisions dealing with the problem of Lemon Laundering by imposing certain duties to the manufacturer and its authorized dealer. Although the provisions in regard to Lemon Laundering differ from state to state, there are common restrictions on resale of the returned defective car as follows:[107]

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[105] *Nawatrakulpisut* (n1)

[106] Please see Appendix A

[107] *Carter and others* (n14) 193.

(1) Disclosure of history of the returned defective car in writing

Prior to resale, almost every state of the US requires the manufacturer and/or dealer to clearly and conspicuously disclose to subsequent buyer the fact that the car was returned to the manufacturer due to repurchase or replacement under any state's Lemon Law. The disclosure may be made in writing in a sale contract or a separate document, or affixed to the returned defective car itself. The Lemon Laundering provisions may differ as to whether there must be an additional disclosure concerning the nature of the mechanic problems and the repairs performed to correct the problems, or whether the disclosure must be made to the consumer only the first resale or every subsequent resale.[108]

In practice, the manufacturer may allege that he has not violated the Lemon Laundering provisions because the car technically was never a lemon car. For example, the manufacturer may claim that he repurchased the car as a goodwill not pursuant to the state's Lemon Law, and he may claim the fact that the repurchase occurred before any order was issued in a Lemon Law dispute. The manufacturer may even characterize a transaction as not a repurchase if a dealer swaps the car for a later model car and requires the consumer to pay extra price. Another way to conceal that the car is a lemon car is to give the first buyer a monetary bonus for trading in the car on a new replacement car.[109] In order resolve this issue, several states prescribe Lemon Laundering provisions to apply to any repurchase or replacement by the manufacturer, whether as the result of a court judgment, a determination of an informal dispute settlement mechanism, or a settlement agreed by a consumer regardless of whether it is in the context of a court, or otherwise. However, some states still limit scope of replacement or repurchase based upon a final adjudication under the state's Lemon Law, not covering goodwill or voluntary replacement or repurchase.[110]

[108] ibid 193

[109] ibid 194

[110] ibid 194

For example, in Ohio, prior to resale of the returned defective car, the manufacturer is obligated to disclose to the car's information to a consumer who is a subsequent buyer by providing for a written statement on a separate piece of paper, in ten-point type, all capital letters, in substantially the following form: "WARNING: THIS VEHICLE PREVIOUSLY WAS SOLD AS NEW. IT WAS RETURNED TO THE MANUFACTURER OR ITS AGENT IN EXCHANGE FOR A REPLACEMENT VEHICLE OR REFUND AS A RESULT OF THE FOLLOWING DEFECT(S) OR CONDITION(S) ……". And the manufacturer has to obtain the consumer's signature on this paper[111]; or

In New York, the manufacturer or dealer are obligated to execute and deliver to the buyer an instrument in writing in a form setting forth the following information in ten point, all capital type: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY AND THE DEFECT OR CONDITION WAS NOT FIXED WITHIN A REASONABLE TIME AS PROVIDED BY NEW YORK LAW.".[112]

(2) Inscribing the car's certificate of title with a warning

In the US, the certificate of title for a car is a legal form establishing a person as a legal owner of the car. The certificate of title is generally issued by the state's Department of Motor Vehicles (the "**DMV**") and normally specifies following information:

1. Name of the jurisdiction; and
2. Identifying information of the car such as its vehicle identification number (VIN), model, body type and year of manufacture; and
3. License plate number; and
4. Technical information about the vehicle to define its taxation regime, e.g., its gross vehicle weight, motive power, and purchase price when the vehicle is new; and

[111] Ohio Rev. Code Ann. § l345.76

[112] NY Veh & Traf L § 417-A (2015)

5. The owner's name and address, the lienholder's name and address, a line for the lienholder's release; and

6. Odometer information at the time the title is issued, and any brands (such as salvage, rebuilt, duplicate title, lease, unknown odometer mileage, lemon buyback, prior taxi), Title brands are often indicated by initials or other codes that vary by state; and
7. Several assignment blocks which each contain specified language with black space for the transferor to fill out in the future when the current owner assign the title to another party[113]

Generally, a new car is issued a manufacturer's statement of origin (the "**MSO**") at the time of production. Any transfer of the new car from the manufacturer to an importer or a dealer, or from one dealer to another dealer, will be accompanied by transfer of the MSO. No certificate of title is issued. When the first purchaser buys the car for use, not for resale, the purchaser must apply for the certificate of title in the state where the purchaser resides. The purchaser has to submit the MSO to the state's DMV as evidence of the exact description of the car to be titled. Further, whenever someone purchases a used car for use either from another individual or from a car dealer, the old owner as transferor will assigned the existing certificate of title to the new owner, and the new owner as transferee will sign such certificate of title and summit it to the state's DMV to exchange for a new certificate of title in the new owner's name.[114]

However, in most states, those obtaining possession of the used car with intention to resell it do not have to obtain a new certificate of title in their own name useless requiring by state's law, for instance, when all the assignment lines are filled up on the old certificate of title, when a dealer transfers an out-of-state certificate of title or when a manufacturer/dealer repossess a car that was repurchased or replaced pursuant to the state's Lemon Law. Therefore, car dealers, wholesalers, and others

[113] 'Vehicle Title' *(En.wikipedia.org*, 2017) <https://en.wikipedia.org/wiki/Vehicle_title> accessed 4 June 2017.

[114] *Carter and others* (n14) 75.

taking ownership with the intention to resell a car typically do not apply for a new certificate of title but take ownership under the old certificate of title, which will be endorsed over to them by their seller using an assignment block on the old certificate of title or on a separate reassignment depending on each state. [115]

In case the manufacturer accepts the return of defective car from the first consumer owner, he will also obtain the existing certificate of title of such car. In order to protect a subsequent buyer from Lemon Laundering, a number of states of the US require the manufacturer to notifies the state's DMV or relevant authorities of the detail of the car, the reason that the car was returned, and to summit the existing certificate of title to the state's DMV or relevant authorities. The existing certificate of title shall be stamped or inscribed with a warning by using such terms as 'Manufacturer Buyback', 'Lemon Law buyback', or 'Did not conform to its warranty'. Or some states may require the manufacturer to summit the existing certificate of title to the state's DMV or relevant authorities and the new certificate of title with the warning will be issued.[116]

(3) Providing a subsequent purchaser for warranty

The state's Lemon Law mostly requires the manufacturer to provide a subsequent purchaser for a twelve-month, one-year or l2,000-mile warranty. In some states the warranty covers only to the non-conformities or defects leading to the repurchase or replacement, while some states the warranty must cover the whole car. Further, some states not only require the manufacturer for providing a warranty, but also impose duty to repair the defects before resale on the manufacturer.[117]

(4) Resale Prohibition

In Idaho, New Hampshire, Ohio, Oklahoma and Pennsylvania, the defective car which is returned to manufacturer pursuant to its own state's Lemon Law or another state's Lemon Law is prohibited to resell if the car has a serious safety defect such as

[115] ibid 76
[116] ibid 76
[117] ibid 194

a complete failure of the braking or steering system of the car, likely to cause death or serious bodily injury if the car was driven.[118]

Table 3.1: **The detail of legal measures dealing with Lemon Laundering in each states of the US**.

Jurisdiction	Disclosure of car's history in writing	Inscribing the car's certificate of title with a warning	Providing a consumer for warranty	Resale Prohibition
Alabama	✓	✓		
Alaska	✓			
Arizona	✓			
Arkansas	✓		✓	
California	✓	✓	✓	
Colorado	✓		✓	
Connecticut	✓	✓		
District of Columbia	✓			
Florida	✓	✓	✓	
Georgia	✓		✓	
Hawaii	✓		✓	
Idaho	✓		✓	✓
Illinois	✓		✓	
Indiana	✓	✓	✓	
Iowa	✓	✓		
Kansas	✓			
Louisiana	✓	✓		
Maine	✓	✓		

[118] Idaho Code Ann. § 48-905(2), N.H. Rev. Stat. Ann. § 357-D:12, Ohio Rev. Code Ann. § l345.76(B), Okla. Stat. tit. 15, §§ 901(H), 901.1 and 73 Pa. Stat. Ann. §§ 1961-1964

Jurisdiction	Disclosure of car's history in writing	Inscribing the car's certificate of title with a warning	Providing a consumer for warranty	Resale Prohibition
Maryland	✓			
Massachusetts	✓			
Michigan	✓			
Minnesota	✓		✓	✓
Montana	✓			
Nebraska		✓		
Nevada	✓	✓		
New Hampshire				✓
New Jersey	✓			
New Mexico	✓			
New York	✓	✓		
North Carolina	✓			
North Dakota	✓		✓	
Ohio	✓	✓	✓	✓
Oklahoma	✓		✓	✓
Oregon	✓	✓		
Pennsylvania	✓	✓	✓	✓
Rhode Island	✓			
South Carolina	✓		✓	
South Dakota	✓		✓	
Texas	✓		✓	
Utah	✓			
Vermont	✓		✓	✓
Virginia	✓			
Washington	✓	✓	✓	

Jurisdiction	Disclosure of car's history in writing	Inscribing the car's certificate of title with a warning	Providing a consumer for warranty	Resale Prohibition
West Virginia	✓			
Wisconsin	✓			

3.1.1.5 Sanction

In case the manufacturer or dealer violates the duties as discussed earlier, the consumer is entitled to claim the actual damages, attorney fees and relevant expenses. The manufacturer and/or dealer may be fined in amount stipulated under the state's Lemon Law. Moreover, in several states, a violation of such duties shall constitute the offence under the state's Deceptive and Unfair Trade Practices Act as well, which empowers the court to hold a seller or a manufacturer liable for consequential damages, damages for mental suffering and punitive damages.

Furthermore, nearly every state of the US requires a car dealer to obtain a license for operating their business. Many dealer licensing statutes detail standards of conduct for dealer. These standards serve as grounds to revoke or suspend a license or to impose some other sanction. A number of states specifically provide that a dealer's failure to provide the car's certificate of title to the consumer for examining a car's data recorded in, and sign therein prior to a purchase of car can be grounds for revoking or suspending a dealer's license.[119]

3.2 Germany

In German laws, it does not provide specific law to protect a consumer from Lemon Laundering. Hence, the general law with respect to the liability for defect in sale contract under the German Civil Code (the Bürgerliches Gesetzbuch or the "**BGB**") shall be applied to the case concerning Lemon Laundering. The sale contract is regulated in Section 433-473 of the BGB. These provisions are general rules which apply irrespective of the person entering into the contract and represent the core of the German sale law. However, there are special rules for sale of consumer goods in

[119] *Carter and others* (n14) 196-7.

Section 474-479 of the BGB as a result of implementation of Directive 1999/44/EC.[120]

3.2.1 General Rules of Sale Contract

3.2.1.1 Obligations of Seller and Buyer

The central provision for sale contract under German law is Section 433 of the BGB.[121] Under this provision, the seller is obligated to deliver the object of sale and transfer ownership thereof to the buyer. The object of sale as delivered must free from defects concerning quality (physical defect) and legal title (legal defect). While the buyer is obligated to pay the seller the purchase price and to accept delivery of the object sold. Further, there are ancillary duties arise either from statute (for example Section 448 of the BGB, the duty to bear the costs of delivery) or from an interpretation of the contract itself, in particular in the light of the principle of good faith under Section 242 of the BGB.[122]

3.2.1.2 Defective Goods

Under the principle of obligation of the BGB, there are the breaches for non-performance or bad performance, for instance, delay, impossibility, positive breach, which arise the remedies are available, i.e. compensation, rescission of the contract and reimbursement of expenses. However, the rules of sale contract additionally provide for a specific type of bad performance: a fault of the object of sale, which may be a defect concerning quality or the legal title. Here special rules on remedies apply. Conditions for claiming such remedies are that there is:

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[120] Basil Markesinis, Hannes Unberath and Angus Johnston, *The German Law of Contract* (2nd edn, Hart Publishing 2006) 147.

[121] German Civil Code, Section 433:

"(1) By a purchase agreement, the seller of a thing is obliged to deliver the thing to the buyer and to procure ownership of the thing for the buyer. The seller must procure the thing for the buyer free from material and legal defects.

(2) The buyer is obliged to pay the seller the agreed purchase price and to accept delivery of the thing purchased."

[122] Nigel G. Foster and Satish Sule, *German Legal System & Laws* (3rd edn, Oxford University Press 2002) 425.

(1) a valid contract of sale,

(2) a reason for claiming remedies (e.g. a fault),

(3) no exclusion of the remedy by the law, and

(4) no obstacle as to the enforcement of the remedy claim by specific limitation periods

The reason for claiming a specific remedy for fault is the seller's liability. It falls into two categories: liability for legal defects concerning warranties of title and defects in the quality of the goods. However, the consequences for both types of fault are mostly the same.[123]

Section 434 of the BGB[124] provides that the object of sale must free from physical defects only if it is of the quality as stipulated in the contract at the time of passing the risk (the time of delivery) This provision is based upon the performance theory, namely that the parties free to define the requirement as to the quality of goods that they think suitable and the seller only performs in conformity with the contract.[125] In the absence of such contractual stipulations, the object of sale free from defects if:

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[123] Ibid 426.

[124] German Civil Code, Section 434:

"(1) The thing is free from material defects if, upon the passing of the risk, the thing has the agreed quality. To the extent that the quality has not been agreed, the thing is free of material defects

1. if it is suitable for the use intended under the contract,

2. if it is suitable for the customary use and its quality is usual in things of the same kind and the buyer may expect this quality in view of the type of the thing.

Quality under sentence 2 no. 2 above includes characteristics which the buyer can expect from the public statements on specific characteristics of the thing that are made by the seller, the producer (section 4 (1) and (2) of the Product Liability Act) or his assistant, including without limitation in advertising or in identification, unless the seller was not aware of the statement and also had no duty to be aware of it, or at the time when the contract was entered into it had been corrected in a manner of equal value, or it did not influence the decision to purchase the thing.

(2) It is also a material defect if the agreed assembly by the seller or persons whom he used to perform his obligation has been carried out improperly. In addition, there is a material defect in a thing intended for assembly if the assembly instructions are defective, unless the thing has been assembled without any error.

(3) Supply by the seller of a different thing or of a lesser amount of the thing is equivalent to a material defect."

[125] Peter Rott, 'German Sales Law Two Years After the Implementation of Directive 1999/44/EC' (2014) 5 German Law Journal.

(a) The object of sale has the quality impliedly intended according to the specific purpose of the contract; or

(b) The object of sale has the usual quality that the buyer could reasonably expect under circumstance of an object of the type sold. The characteristics of object of sale announced in public statements or advertisements by the seller, manufacturer or its agent count as factors in this regard. They can trigger reasonable expectations on the part of the buyer unless the seller did not actually know and had not duty to know of the statements.[126]

Furthermore, this provision establishes liability of the seller for the defective assembly of the object or for faulty instructions. For instance, the assembly has been carried out by the seller or his agent improperly, the assembly instructions are incorrect (unless the thing is assembled correctly) or the assembly instructions are improper translation.[127]

Finally, the object of sale is considered as defective if the seller has delivered different object or too small quantity of the specified object. This is a harmonization between the regime for nonconformity for delivery of an aliud, and for the delivery for the wrong quantity.[128]

Under section 435 of the BGB[129], the object of sale frees from legal defects if third parties cannot claim any right against the buyer in relation to the object of sale or only those legal rights taken over in the sale contract. It is equivalent to a legal defect if a right which does not exist is registered in the Land Register.

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[126] Mathias Reimann and Joachim Zekoll, *Introduction to German Law* (2nd edn, Kluwer Law International 2017) 198-99.

[127] *Markesinis, Unberath and Johnston* (n120) 500.

[128] ibid

[129] German Civil Code, Section 435:

"The thing is free of legal defects if third parties, in relation to the thing, can assert either no rights, or only the rights taken over in the purchase agreement, against the buyer. It is equivalent to a legal defect if a right that does not exist is registered in the Land Register."

3.2.1.3 Remedies

The remedies for a beach of Section 434 are described in Section 437 of the BGB[130], which provides for a variety of remedies for the buyer as follows:

(1) Second Performance

Before claiming for rescission of the sale contract, reduction of the purchase price or damages, the buyer has to try to obtain proper performance by setting a new period limit for the seller, then the setting of a period of time for second performance would futile, unless the second performance cannot be effected, or the seller can rightfully reject it The right to claim for other types of remedies thus does not depend on second performance.[131]

According to Section 439 of BGB[132], the buyer is entitled to choose between a repair or a delivery of substitute goods without any defect.[133] All expenses arisen from

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[130] German Civil Code, Section 437:
"If the thing is defective, the buyer may, provided the requirements of the following provisions are met and unless otherwise specified, 1. under section 439, demand cure, 2. revoke the agreement under sections 440, 323 and 326 (5) or reduce the purchase price under section 441, and 3. under sections 440, 280, 281, 283 and 311a, demand damages, or under section 284, demand reimbursement of futile expenditure."

[131] *Markesinis, Unberath and Johnston* (n120) 507.

[132] German Civil Code, Section 439:
"(1) As cure the buyer may, at his choice, demand that the defect is remedied or a thing free of defects is supplied.
(2) The seller must bear all expenses required for the purpose of cure, in particular transport, workmen's travel, work and materials costs.
(3) Without prejudice to section 275 (2) and (3), the seller may refuse to provide the kind of cure chosen by the buyer, if this cure is possible only at disproportionate expense. In this connection, account must be taken in particular, without limitation, of the value of the thing when free of defects, the importance of the defect and the question as to whether recourse could be had to the alternative kind of cure without substantial detriment to the buyer. The claim of the buyer is restricted in this case to the alternative kind of cure; the right of the seller to refuse the alternative kind of cure too, subject to the requirements of sentence 1 above, is unaffected.
(4) If the seller supplies a thing free of defects for the purpose of cure, he may demand the return of the defective thing in accordance with sections 346 to 348."

[133] Before reformation of the BGB concerning the contract law in 2002, an interesting as to the relationship between the right to demand the delivery of substitute goods and the content of the obligation of the seller was arisen. It is clear where the obligation of the seller consists of making delivery of generic goods, the seller may create conformity with the contract by delivering other goods of the promised kind. However, if a specific thing has been sold it seems questionable that second performance can consist in the delivery of another thing. The other thing is not owed under the contract and therefore its delivery cannot create conformity with the contract. If the subject-matter of the

the second performance, in particular transportation, labor and material costs must be borne to the seller. When the seller delivers another goods to the buyer, the seller can claim return of the defective goods which he first delivered.

However, there are two kinds of limits that exclude the right to demand second performance. Firstly, in case that it is impossible to have the defect repaired and it is impossible to deliver substitute goods, the seller is automatically released from his obligation to cure the defect. Secondly, in case that the repair or replacement is possible but merely at disproportionate expense, the seller may refuse one method of second performance if the other method is considerably more cost effective and does not entail any significant detriment to the buyer. This right to reject the demand for second performance also arises if both alternatives methods are unreasonably expensive or if only one method is possible but too costly.[134] What exactly disproportionate is an important issue. It was proposed to allow rejection completely once the costs make up for 150% of the total value of the goods. A recent judgment clarified that the costs for repair or replacement must be compared not to the purchase price but to the objective value of the goods. Thus, the fact that the goods were sold at a reduced price, for example, during a promotional period, does not impact on the assessment of whether replacement or repair are disproportionate. It is also clear that the repair is not disproportionate merely because the seller does not have his own repair facilities.[135]

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contract is a specific thing which, according to the intention of the parties, is interchangeable with another thing then there seems to be no valid reason for restricting second performance to effecting repair. Others seem to prefer the view that in such a case one should characterize the sale as one of generic goods in the first place. It is clear from published sources that in the reform the legislator sought to reduce the significance of the distinction.

[134] *Markesinis, Unberath and Johnston* (n120) 506-7.

[135] *Rott* (n125)

(2) Rescission of the Sale Contract

According to Section 440 of the BGB[136], the buyer is entitled to rescind the sale contract after the period of time limit for second performance pass without success. Where the buyer chooses a rescission, the general rules on rescission of contracts contained in Section 323 and Section 346-349 of the BGB shall apply. There are three important issues as follows: Firstly, in the case of non-conforming performance the right to rescission depends on whether the breach was not minor. Secondly, the purpose of the right to rescind is to be relieved from the obligation to perform and, if the contract already has been performed, to be put the claimant into a position to claim back the performance. Thirdly, the effects of rescission are set out in Section 346-348 of the BGB. The restitution of the performance is owed under Section 346 of the BGB, and that a duty to compensate for the value of the performance arises where restitution cannot be made. In sale of goods cases, the privilege of the 'innocent part' acquires special importance. The starting point is as always that if the delivered defective thing perished in the hands of the buyer, the right to rescind is not excluded. This provision provides for an obligation to monetary compensation instead. This obligation however is excluded if the buyer was not answerable for the impossibility; the standard applied is that of the care the buyer applies in his own affairs.[137]

[136] German Civil Code, Section 440:

"Except in the cases set out in section 281 (2) and section 323 (2), it is also not necessary to specify a period of time if the seller has refused to carry out both kinds of cure under section 439 (3) or if the kind of cure that the buyer is entitled to receive has failed or cannot reasonably be expected of him. A repair is deemed to have failed after the second unsuccessful attempt, unless in particular the nature of the thing or of the defect or the other circumstances leads to a different conclusion."

[137] *Markesinis, Unberath and Johnston* (n120) 508-9.

(3) Price Reduction

According to Section 441 of the BGB[138], instead of rescission of the sale contract, the buyer may demand for purchase price reduction if he intends to keep the defective thing or if the breach is not sufficiently serious to justify termination. If the buyer has not yet paid, he is released from the obligation to pay to the extent that the price has been reduced. If he has already paid, he is entitled to restitution of the sum exceeding the price owed. In addition, this provision specifics how to calculate the reduction of price: the purchase price is to be reduced in the ratio in which (at the time of the conclusion of the contract) the value of the thing in a condition free from the defect would have stood in relation to its real value. The reduced price is calculated by multiplying the actual value of the thing by the agreed price and dividing it by the value that the thing would have had, had it not been defective.[139]

To give an example: if A buys a car that would be worth €15000 from B for the price of €10000 and because of a defect it is actually worth €12000, the price may be reduced by €2000 to a new price of €8000. If A had bought the car at a price of €16000, he would have been able to reduce the price by €3200. Where the price corresponds to the value without the defect, the amount less that the car is worth may be subtracted directly. In the example, if the price was €15000 then the reduction would amount to €3000.[140]

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[138] German Civil Code, Section 441:

(1) Instead of revoking the agreement, the buyer may, by declaration to the seller, reduce the purchase price. The ground for exclusion under section 323 (5) sentence 2 does not apply.

(2) If more than one person comprises either the buyer or the seller, price reduction may be declared only by all or to all of them.

(3) In the case of a price reduction, the purchase price is to be reduced in the proportion in which the value of the thing free of defects would, at the time when the contract was entered into, have had to the actual value. To the extent necessary, the price reduction is to be established by appraisal.

(4) If the buyer has paid more than the reduced purchase price, the excess amount is to be reimbursed by the seller. Section 346 (1) and section 347 (1) apply with the necessary modifications.

[139] *Markesinis, Unberath and Johnston* (n120) 510.

[140] ibid

(4) Damages

Section 437 of the BGB allows for damages with reference to Section 440, 280, 281, 283 and 311a of the BGB. This means that where a demanded second performance is impossible, the general rules on impossibility apply. As delivery of too small quantity of the ordered goods qualifies as a defect as well, where the delivery of the missing amount is impossible this could be either a case of impossibility or bad performance. The question will have to be decided by the courts. In cases of delay, Section 437 refers to Section 280 and thus also to the general rules on delay. Just as provided for by the general rules on delay and impossibility the pre-condition of setting of a period of time limit for second performance before claiming damages can be dispensable in certain cases.

In cases not dealing with impossibility or delay but rather a genuine defect in the quality of the goods, the buyer may claim for the damage caused. This includes the reduced value of the goods, the costs of removing the defect, as well as direct losses, e. g. where the goods could have been sold to a third person with profits. Compensation for indirectly caused damages is available under Section 440, 280 as well. These include such damages as physical injuries caused by the defective object and costs of medical treatment.[141]

3.2.1.4 Exclusion of Rights of Buyer

The buyer's rights due to a defect are excluded by law where the buyer knew of the defect at the time when the contract is entered into in accordance with Section 442 of the BGB[142] and in cases of public auctions in accordance with Section 445 of

[141] *Foster and Sule* (n122) 427-8.

[142] German Civil Code, Section 442:

"(1) The rights of the buyer due to a defect are excluded if he has knowledge of the defect at the time when the contract is entered into. If the buyer has no knowledge of a defect due to gross negligence, the buyer may assert rights in relation to this defect only if the seller fraudulently concealed the defect or gave a guarantee of the quality of the thing.

(2) A right registered in the Land Register must be removed by the seller even if the buyer is aware of it."

the BGB[143]. The buyer's rights depend on whether the buyer can be presumed unconditionally to have accepted the thing. The principle of 'Caveat Emptor' or 'the Buyer Beware' is reflected in Section 442, but it is subject to many exceptions (for instance, it does not apply to rights that figure in the land register). The buyer's rights are excluded if the buyer knew of the defect and did not reserve his rights on acceptance. The same applies if he was grossly negligent in failing to detect the defect, in case that the seller did not undertake a guarantee in respect of the conformity and did not willfully conceal the defect. Although, the buyer is not generally required to examine the goods but the German courts have recognized a number of exceptions. More is expected of a buyer who has expert knowledge, the value of the transaction may also play a certain role.[144]

Additionally, the buyer's rights or the seller's liabilities can be excluded on the basis of contractual terms as long as they are not contrary to the general provisions of the BGB, for instance, malicious concealment of a fault under Section 444 or the rule concerning consumer protection under Section 475.[145]

3.2.1.5 Limitation Periods

Section 438 of the BGB provides for periods of thirty, five or two years, depending on the nature of the claim.[146] For new goods, the two years period applies.

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[143] German Civil Code, Section 445:

"If a thing is sold in exercise of a security right at a public auction in which it is described as a pledge, the buyer only has rights in respect of a defect if the seller fraudulently concealed the defect or gave a guarantee of the quality of the thing."

[144] *Markesinis, Unberath and Johnston* (n120) 501.

[145] *Foster and Sule* (n122) 427-8.

[146] German Civil Code, Section 438:

"(1) The claims cited in section 437 nos. 1 and 3 become statute-barred

1. in thirty years, if the defect consists a) a real right of a third party on the basis of which return of the purchased thing may be demanded, or b) some other right registered in the Land Register,

2. in five years a) in relation to a building, and b) in relation to a thing that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building, and

3. otherwise in two years.

(2) In the case of a plot of land the limitation period commences upon the delivery of possession, in other cases upon delivery of the thing.

For used goods, the two years period also applies in principle, but the contracting parties can agree to shorten the period not less than one year according to Section 475(2) of the BGB.

3.2.2 Special Rules for Sale of Consumer Goods

The consumer protection rules are introduced in Section 474-479 of the BGB. These provisions are applicable only to a sale of consumer goods[147] between the consumer[148] as a buyer and the entrepreneur [149] as a seller and only apply to sale of moveable goods, both new and used goods. If the purchased goods serves both commercial/professional and private purposes of the buyer, the decision of whether

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(3) Notwithstanding subsection (1) nos. 2 and 3 and subsection (2), claims become statute-barred in the standard limitation period if the seller fraudulently concealed the defect. In the case of subsection (1) no. 2, however, claims are not statute-barred before the end of the period there specified.

(4) The right of revocation referred to in section 437 is subject to section 218. Notwithstanding the fact that a revocation is ineffective under section 218 (1), the buyer may refuse to pay the purchase price to the extent he would be so entitled on the basis of revocation. If he makes use of this right, the seller may revoke the agreement.

(5) Section 218 and subsection (4) sentence 2 above apply with the necessary modifications to the right to reduce the price set out in section 437."

[147] German Civil Code, Section 474:

"(1) Sales of consumer goods are contracts by which a consumer buys a movable thing from a trader. A contract will likewise constitute a sale of consumer goods where its subject matter comprises, in addition to the sale of a movable thing, the provision of a service by the trader.

(2) The following rules of this subtitle have concomitant application for the sale of consumer goods. This does not apply to second-hand things that are sold at a publicly accessible auction which the consumer may attend in person.

(3) Where no period of time has been determined for the respective performance to be rendered pursuant to section 433 and none can be inferred from the circumstances given, the obligee may only demand the rendering of such performance, in derogation from section 271 (1), without undue delay. In this case, the trader must deliver the thing at the latest thirty days after the contract has been concluded. The parties to the contract may affect the respective performance immediately.

(4) Section 447 (1) applies subject to the proviso that the risk of accidental destruction and accidental deterioration shall devolve to the buyer only if the buyer has instructed the forwarder, carrier or other person or body tasked with carrying out the shipment and the trader has not named this person or body to the buyer previously.

(5) Section 439 (4) applies to the purchase contracts regulated by this subtitle subject to the proviso that benefits are not to be surrendered or substituted by their value. Sections 445 and 447 (2) do not apply."

[148] German Civil Code, Section 13:

"A consumer means every natural person who enters into a legal transaction for purposes that predominantly are outside his trade, business or profession."

[149] German Civil Code, Section 14(1):

"An entrepreneur means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession."

the transaction is to be classified as a consumer sale contract may depend on which purpose constitutes the preponderant part. The burden of proof lies with the buyer who claims protection under the special rules.[150]

As the special rules aim at a better protection of the consumer where contracts of sale are concerned, these rules thus considerably restrict the parties' freedom of contract in contrast to the general rules of sale contract. The special rules prohibit a derogation of the performance and remedy provisions in Section 433-435, 437 and 439-443 of the BGB which largely can be waived or modified under the general rules. According to Section 475 of the BGB[151], the derogation is invalid if they are to the disadvantage of the consumer, and if they are agreed upon before the consumer notified the entrepreneur about the product defect. Conversely, derogations are effective if they are advantageous for the consumer or were stipulated after the consumer put the entrepreneur on notice about the defect.[152]

The special rules reverse the burden of proof concerning the existence of defect in favor of the consumer. Namely that under general rules of sale contract, the onus is on the buyer to prove that the defect existed at the time of delivery. While, under Section 476 of the BGB[153], any defect which becomes apparent within six months of delivery of consumer goods is presumed to have existed at the time of

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[150] *Reimann and Zekoll* (n126) 198-9.

[151] German Civil Code, Section 475:

"(1) If an agreement is entered into before a defect is notified to the entrepreneur and deviates, to the disadvantage of the consumer, from sections 433 to 435, 437, 439 to 443 and from the provisions of this subtitle, the entrepreneur may not invoke it. The provisions referred to in sentence 1 apply even if circumvented by other constructions.

(2) The limitation of the claims cited in section 437 may not be alleviated by an agreement reached before a defect is notified to an entrepreneur if the agreement means that there is a limitation period of less than two years from the statutory beginning of limitation or, in the case of second-hand things, of less than one year.

(3) Notwithstanding sections 307 to 309, subsections (1) and (2) above do not apply to the exclusion or restriction of the claim to damages."

[152] *Reimann and Zekoll* (n126) 198-9.

[153] German Civil Code, Section 476:

"If, within six months after the date of the passing of the risk, a material defect manifests itself, it is presumed that the thing was already defective when risk passed, unless this presumption is incompatible with the nature of the thing or of the defect."

delivery unless this presumption is incompatible with the nature of the goods or the nature of the defect. The onus is thus on the seller to prove the contrary.

Furthermore, Section 478 of the BGB[154] also introduce remarkable remedies for the entrepreneur (retailer) against his seller. The retailer may seek redress if he, in his relation to the buyer, had to accept the return of defective goods, suffered a reduction of the purchase price or incurred expenses in repair or replacement. Provide the goods were already defective at the time the risk passed to the retailer and certain additional requirements are met, the retailer may return the defective goods to his supplier or demand compensation.[155]

[154] German Civil Code, Section 478:

"(1) If an entrepreneur has been obliged to take back a newly manufactured thing sold by him because it is defective, or if the consumer has reduced the purchase price, it is not necessary for the entrepreneur to fix the period of time which would otherwise be necessary in order to enforce the rights set out in section 437 with regard to the defect asserted by the consumer against the entrepreneur who sold the thing to him (supplier).

(2) Where a newly manufactured thing is sold, the entrepreneur may demand of his supplier reimbursement of the expenses which the entrepreneur had to bear in relation to the consumer under section 439 (2), if the defect asserted by the consumer already existed upon the passing of the risk to the entrepreneur.

(3) In the case of subsections (1) and (2) above, section 476 applies, subject to the proviso that the period begins when the risk passes to the consumer.

(4) The supplier may not rely on an agreement made before the defect was notified to the supplier which, to the disadvantage of the entrepreneur, deviates from sections 433 to 435, 437, 439 to 443 or from subsections (1) and (3) above or from section 479, if the obligee with the right of recourse is not given another form of compensation of equal value. Sentence 1, notwithstanding section 307, does not apply to an exclusion or restriction of the claim to damages. The provisions referred to in sentence 1 apply even if circumvented by other constructions.

(5) Subsections (1) to (4) above apply with the necessary modifications to claims of the supplier and of the other buyers in the supply chain against their sellers if the obligors are entrepreneurs.

(6) Section 377 of the Commercial Code is unaffected."

[155] *Reimann and Zekoll* (n126) 198-9.

CHAPTER 4
COMPARATIVE ANALYSIS

4.1 Analysis Thai Laws

Under Thai laws, the specific law which protects the consumer from Lemon Laundering is absent. Thus, in such case, the general laws are to be applied comprising of various relevant statutes, for instance, the CCC, the Consumer Protection Act, the Consumer Case Procedure Act, the Product Liability Act, the Vehicle Act and the Penal Code.

4.1.1 In case the seller is of knowledge that his car is a defective car which was returned from a previous consumer. But, he resells it by concealing such defect history or misrepresenting that the car is without any defect or has never been used prior. In such case, certain issues arise as follows:

(1) As the seller has an obligation under a sale contract to inform the consumer of detail of the car which includes a history of reparation and a condition of car as to whether it is a new car or a used car. A seller's concealment or misrepresentation of information inconsistent with the fact shall constitute fraud under Section 159 of the CCC. This is because, should a consumer knows thoroughly correct information, he would not buy such car. Therefore, the sale contract is voidable and the consumer is entitled to avoid it which will invalidate such contract *ab initio*; and the parties shall restore to their former condition prior to a conclusion thereof under Section 176 of the CCC, whereby the seller shall refund the consumer the purchase price of the car and the consumer shall return the car to the seller.

Furthermore, in such case, the seller shall be held criminally liable for the offence of cheating and fraud under Section 341 of the Penal Code as well. And since this constitutes the criminal offence of cheating and fraud, it shall not constitute the offence of selling goods by fraudulent and deceitful means under Section 271 of the Penal Code.

(2) In case the concealment of the facts or misrepresentation of the seller does not affect a decision of the consumer to buy the car, namely, even the consumer is of knowledge that the car is defective or used car, he would still willingly buy such car, but, feasibly, with a lower price. In such case, the seller's action constitutes only an incidental fraud under Section 161 of the CCC, not causing the sale contract voidable. However, the consumer is entitled to claim compensation, for instance, a difference of a price claimed from the seller.

However, in this case, the seller shall be criminally liable for an attempt of the offence of cheating and fraud.

4.1.2 In case the seller is not of knowledge that his car is a defective car which was returned from a previous consumer; or a used car, not resulted from the seller's negligence. For instance, the previous consumer purchased a defective car from the Dealer A. Subsequently, the court ruled a decision that the manufacturer replaces a new car without any defect to the previous consumer. When such defective car was returned to the manufacturer, it was delivered to the Dealer B afterward without informing him the defect history of such car. Together with the fact that the Dealer B could not examine the car's history from any source which causes the Dealer B to believe in good faith that such car is new and without any defect; or in case the consumer concludes a hire-purchase contract with the financial institute which is not aware of a history of a car's defect, in such cases the seller and the consumer are under mistakes as to quality of the car causing the sale contract voidable under Section 157 of the CCC. Therefore, the consumer is entitled to avoid the contract which will invalidate such contract *ab initio*; and the parties shall restore to their former condition prior to a conclusion thereof under Section 176 of the CCC, whereby the seller shall refund the consumer the purchase price of the car and the consumer shall return the car to the seller.

4.1.3 In case the consumer did not avoid the voidable sale contract in accordance with Clause 4.1.1-4.1.2 as mentioned above and subsequently the defect becomes apparent, the consumer has the following rights:

(1) The consumer has a right to refuse to accept the defective car pursuant to section 320 of the CCC.

(2) The consumer has a right to demand the seller to have defective goods repaired. If the seller fails to do so, the consumer may have defective goods repaired at the seller's expenses pursuant to section 213 of the CCC.

(3) The consumer is entitled to compensation pursuant to section 215 and 222 of the CCC.

(4) Since the sale contract qualifies as a reciprocal contract, the consumer is entitled to refuse to make a payment pursuant to section 369 of the CCC. If the defects are discovered after the delivery of the car, the consumer is entitled to withhold the purchase price or part of it still unpaid, unless the seller places proper security, pursuant to section 488 of the CCC.

(5) The consumer has a right to rescind the sale contract according to the principles of contract contained in Section 386-389 of the CCC. In this case, both parties shall be bound to restore the other parties to former conditions, namely that the consumer must return the defective car to the seller and the seller must refund the consumer's payment pursuant to Section 391 of the CCC.

(6) Instead of rescission of the sale contract, the consumer may demand for replacement and the court is empowered to exercise a discretion to render a judgment ordering the seller to replace a new car without any defect to a consumer pursuant to Section 41 of the Consumer Case Procedure Act.

(7) In case that the returned defective car causes damage or injury to the consumer. The consumer is entitled to claim actual damages, mental suffering damages and punitive damages from the dealer and manufacturer under the Product Liability Act.

(8) Prior to file a lawsuit to the court, the consumer can demand the Consumer Protection Board to test or verification the defective car which may be harmful to well-being and/or mental health of the consumer. If the test or verification

results that the car may be harmful to the consumer, the Consumer Protection Board has a power to prohibit the sale of such car, recall, repair such car or replace or compensate to the consumers, according to Section 36 of the Consumer Protection Act.

Although the consumer in Thailand is under protections enshrined in various statutes as mentioned above, from a thorough consideration, most of such protections are considered as remedial measures. Namely, it must firstly constitute Lemon Laundering, the consumer then can bring an action against the seller to hold him liable. However, even in present, the consumer case proceedings are conducted with conveniently, speedy and easily for the consumer. It cannot be denied that, in litigation, not only wasting a consumer's time spent, numerous consumers are also not used to such legal proceedings and lacked of cognizance pertaining to their own entitlements. Therefore, a consumer is afeard to initiate such implementation to protect his own right.

4.1.4 Although a used car is prescribed as a label-controlled product under the Notification of the Committee on Labels No. 35, B. E. 2556 (2013) , such notification however does not set forth any duty for the businessman to provide information with regard to the car's defect or to indicate that the car was returned to the manufacturer or dealer due to its defect in the label. In light of a hire-purchase of car which is a contracted controlled business pursuant to the Notification of the Committee on Contract, B.E. 2555 (2012), in which the businessman is not obliged to provide any of the referred information in the contract as well.

Furthermore, according to the Vehicle Act directly promulgated in order to safeguard a car usage, it also provides that neither a business man shall inform the Office of Land Transport, nor that he shall have a returned defective car inspected to ensure a safety before being reused. Therefore, a record of a history of a car's defect in the database of the Office of Land Transport and a vehicle registration certificate is not kept. As a result, such information is only in knowledge of a manufacturer which increases a risk that he may present fault information; or conceal certain information to have a consumer conclude a contract with them.

4.2 Analysis US Laws

In the US, the law specifically dealing with the protection of the consumer's right in connection with defect of car has been enacted, which is called 'Lemon Law'. Lemon Law of each state provides the significant principles in common. It however may differ in minor details. Lemon Law of every state, excepting Delaware, Kentucky, Missouri, Tennessee and Wyoming, have provisions stipulating duties and liabilities of the manufacturer and dealer in case concerning Lemon Laundering. Before reselling the defective car which was returned from a previous consumer, the manufacturer and/or dealer have obligations as follows:

(1) Disclose the fact that the car was once retuned to the manufacturer due to its defects and the details of its defect in writing to the consumer who is a subsequent buyer. Such disclosure may be provided in a sale contract or a separate document, or be attached with a part of a car;

(2) Notify the state's Department of Motor Vehicles (the "**DMV**") or relevant authorities of the detail of the car and the reason that the car was returned in order to record such information in the authority's database. And summiting the existing certificate of title of the car to the state's DMV or relevant authorities in order to be inscribed or stamped with warning;

(3) Provide the consumer who is a subsequent buyer for warranty at least 12 months, 1 year or 12,000 miles; and

(4) Prohibit to resell in case that the returned defective car has a serious defect which is likely to cause death or serious bodily injury if such car is driven.

As Lemon Law is the law regarding the public policy, therefore, the parties to a contract cannot agree otherwise to waive or disclaim a protection enshrined in such law.

From a delicate consideration, the obligations in item (1) and (2) above are prescribed so that the consumer is able to receive precise and sufficient information

before deciding to buy the car, which is a fundamental right of the consumer. Prescription of a duty to notify the DMV or relevant authorities and inscribing or stamping the car's certificate of title with warning would store a car's history systematically and accessible in the certificate of title of such car permanently, regardless of a transfer of an ownership. In case the manufacturer and dealer neglect to inform the car's history, the consumer can still examine via a registration or from relevant authorities.

Furthermore, the obligations in item (3) and (4) above are prescribed by a reason of safety in driving. Although the law of some state of the US does not clearly stipulate that the manufacturer or dealer has a duty to have a car repaired prior to resale, prescription of the manufacturer's duty to provide the consumer who is a subsequent buyer a warranty implicitly obligates the manufacturer to proceed with reparation and having a car's condition inspected prior to resale thereof.

In case the manufacturer or dealer violate the obligations set forth in item (1)-(4) as mentioned earlier, the manufacturer or dealer shall be liable for actual damages, attorney fees relevant expenses and shall be fined in amount stipulated under each state's Lemon Law. Furthermore, in several states, the violation of such obligations shall constitute the offence under the state's Deceptive and Unfair Trade Practices Act as well, which empowers the court to hold the manufacturer or dealer liable for consequential damages, damages for mental suffering and punitive damages. Moreover, in some states, if the dealer intentionally or negligently prevents a consumer from examining the car's information recorded in the certificate of title, and sign therein prior to a purchase of car, a ground for a suspension or a revocation of the dealer's license may arise.

4.3 Analysis German Laws

In German laws, it does not provide specific law to protect a consumer from Lemon Laundering. Hence, the general law with respect to liability for defect under the German Civil Code (the Bürgerliches Gesetzbuch or the "**BGB**") shall be applied to a case concerning Lemon Laundering. Nonetheless, principles of law in Germany provide various differences from Thai laws as follows:

4.3.1 Under the BGB, the seller's obligation is based upon the performance theory, namely that the parties free to define the requirement as to the quality of goods that they think suitable and the seller only performs in conformity with the contract. And if the consumer he has knowledge of the defect at the time when the contract is entered into, the seller's obligation as to the defect is excluded. It implies that the law encourages the seller to disclose information and quality of purchased goods in sale contract in order to limit the seller's obligation.

4.3.2 In case the Lemon Laundering occurs, according to Section 437 of the BGB, the consumer as a buyer is entitled to demand the second performance from the businessman as a seller by choosing between a repair or a delivery of substitute car. If the businessman fails to do as the consumer's demand, the consumer has the right to choose between a recession of sale contract or a reduction of purchase price. And the consumer is entitled to claim damages.

Under Section 476 of the BGB, if the car's defect becomes apparent within six months after the date of delivery of goods, it is presumed that the car was already defective at the date of a delivery, causing the burden of proof upon the businessman's side.

Furthermore, the consumer's rights cannot be waived or modified to the disadvantage of the consumer before the consumer notify the businessman the car's defect.

4.4 Comparative Analysis

From a comparative study on consumer protection with regard to Lemon Laundering of Thailand, United State and Germany, certain noteworthy issues derived from therefrom are as follows:

4.4.1 The laws of US provide the protection regarding Lemon Laundering in deferent characteristic form those of Germany and Thailand. Namely, the US provides specific law dealing with Lemon Laundering in form of the preventive measures, while Thailand and Germany do not provide specific law, therefore, the general law

which is remedial measure is to be applied in order for the protection upon a consumer.

4.4.2 The preventive measures under the US laws carries certain noteworthy considerations as follows:

(1) Prescribing the obligation of the manufacturer and dealer to inform a subsequent buyer of a car's history in writing would mitigate asymmetric information between the seller and the consumer which mainly constitutes Lemon Laundering. This also help the consumer obtain precise and sufficient information before deciding to buy a car.

(2) Prescribing the obligation of the manufacturer to notify the Department of Motor Vehicles or relevant authorities of the car's history in order to proceed with recording such information in the authority's database and inscribing or stamping the car's certificate of title with warning would store the car's history systematically in certificate of title of such car permanently regardless of a transfer of ownership. Even in case of an absence of such information, the consumer is still able to examine a registration via relevant government authorities.

(3) Prescribing the obligation of the manufacturer to provide a subsequent buyer for warranty is based on a reason of safety. Despite, in some states of the US, an explicit provision stipulating that the seller is obliged to repair the car prior to a resale is absent, prescribing that the seller shall provide a warranty is implicitly tantamount to a seller's obligation to repair and investigate a car's performance prior to a resale.

(4) Strictly prohibiting a resale of the returned defective car in case it is seriously defective which is likely to cause death or serious bodily injury if such car is driven is based on a reason regarding a safety as well.

(5) In violation of obligations as discussed in Item (1) to Item (4) above, the manufacturer and dealer are not liable for actual damages, but they may be liable for consequential damages, damages for mental suffering and punitive damages. In some states, this constitutes a ground for a suspension or a revocation of license to

operate a business which is the most severe punishment to prevent the dealer from violating his duties.

In comparing with Thai laws, presently, it is lacked of preventive measures as discussed previously in Item (1) to Item (3) above. Although Thai Laws provides a legal measure concerning product testing under Section 36 of Consumer Protection Act empowering the Consumer Protection Committee to test or prove the goods which is likely to harm a consumer; and to issue an order prohibiting a sale or disposing such goods, the author is of opinion that it is not adequate to protect a consumer from Lemon Laundering. Moreover, although the used car is prescribed as a label-controlled product under the Notification of the Committee on Labels No. 35, B.E. 2556 (2013), such notification does not set forth any duty for the businessman to provide information with regard to the car's defect or to indicate that the car was returned to the manufacturer or dealer due to its defect in the label. In light of the hire-purchase of car which is a contracted controlled business pursuant to the Notification of the Committee on Contract, B.E. 2555 (2012), in which the businessman is not obliged to provide any of the referred information in the hire-purchase contract as well. Furthermore, the Vehicle Act also provides that neither the businessman shall inform the Office of Land Transport, nor that he shall have the returned defective car inspected to ensure a safety before being reused or resold. Therefore, a record of a history of a car's defect in the database of the Office of Land Transport and a vehicle registration certificate is not kept. As a result, such information is only in knowledge of the manufacturer and dealer which increases the risk that they may present fault information; or conceal certain information to have the consumer conclude a contract with him.

Therefore, it is necessary to amend the relevant Thai laws. In such case, should the preventive measures of the US laws, for instances, a disclosure of a car's defect history in writing prior to a resale, providing a warranty and inscribing a car's certificate of title with warning, be adjusted in an amendment as appropriate to context and structure of Thai laws, it would be indeed beneficial for the consumer and prevent an occurrence of Lemon Laundering.

4.4.3 The remedial measures under Thai laws and German laws carries certain noteworthy considerations as follows:

Even consumers in Thailand and Germany are under the protection from legal principles on liability for defect in sale contract which is the remedial measure (Should Lemon Laundering occurs, the consumer shall have the right to being an action against the seller to claim a compensation according to the law, of which the Court's decision shall bind only parties), the BGB however sets forth clearer and more beneficial provisions for a consumer than Thai CCC as follows:

(1) The term 'Defect': Under Thai laws, Section 472 of the CCC does not define the term 'defect'. Unlike German laws, Section 434 of the BGB providing means to determine as to whether or not the goods is defective as follows:

- Primarily, the terms with respect to a quality of the goods under a sale contract shall be taken into a consideration;
- Should the terms with respect to a quality of the goods in a sale contract is absent, an intent to use the goods under a sale contract shall be subsequently considered; and
- Eventually, a consideration on a usual quality of such goods, which is mainly based on information given by the seller or manufacturer, either from a public statement or an advertisement.

Furthermore, German laws also expands the scope of the term 'defect' to cover an installation of the goods and a manual thereof as well. Namely, regardless of the goods' defect, should the seller fails to install the goods or in case a buyer installs himself but a manual provides wrong information resulting in malfunction of the goods, it is deemed defective. And the scope of the term 'defect' covers a delivery of the goods in amount less that agreed.

(2) The Rights of Buyer: Under Thai laws, Section 472 of the CCC merely prescribes that the seller shall be liable for the goods' defect, but it does not provide any detail as to how the seller is liable thereof. Thus, the legal principle

regarding the contract and obligation shall be applied, which causes problem in an interpretation as to whether or not the buyer is entitled, especially, to a replacement of the goods. Whatsoever, even Section 41 of the Consumer Case Procedure Act provides a provision concerning a replacement of the goods, it is subject to the Court's discretion, not the right of the consumer. Unlike German laws, Section 437 to Section 441 of the BGB which explicitly provides the rights of a buyer as follows:

- The right to demand the seller for reparation or replacement of the defective goods;
- The right to rescind a sale contract, return the defective goods to the seller and claim for a paid purchase price;
- The right to reduce a purchase price, in case the buyer does not wish to rescind a contact; and
- The right to claim for damages and other expenses.

(3) Burden of proof: Under German laws, Section 476 of the BGB provides a presumption regarding the existence of defect in favor of the consumer as a buyer. Namely that any defect become apparent within six months after the date of a delivery, it is presumed that the goods was already defective at the date of a delivery, causing the burden of proof upon the businessman's side. Unlike Thai laws, Section 29 of the Consumer Case Procedure Act is subject to the Court's discretion to determine the burden of proof upon a businessman's side, in case the Court is of opinion that information to be examined is in knowledge thereof.

4.4.4 In conclusion, the consumer protection on Lemon Laundering in both forms of preventive and remedial measures is indeed significant; it cannot be lacked of any of the said measures. However, the author is of opinion that, nowadays, Thailand is still silent in providing effective preventive and sufficient measure to endure the protection of the consumer from Lemon Laundering. Therefore, the relevant Thai laws should be amended in order for additional protection from Lemon Laundering, by adopting preventive measures under the US laws, for instances, a disclosure of the car's defect history in writing prior to resale, providing a warranty and inscribing the car's certificate of title with warning, and adjusting them in an

amendment as appropriate to context and structure of Thai laws. Furthermore, in light of the remedial measures, although Thai laws provides the remedial measures which can be applied to Lemon Laundering, it is still inferior than German laws, the author hence is of opinion that if the provisions concerning liability for defect in sale contract under the CCC is amended by adding the definition of defect, the rights of buyer, and the presumption in respect to the burden of proof in favor of the consumer in accordance with the BGB of German laws, it would be indeed beneficial for the consumer.

CHAPTER 5
CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

In order to protect the consumer from the Lemon Laundering or the practice that the defective car which has been returned to authorized dealer or manufacturer is resold to another consumer by concealing or misrepresenting of the car's history, the US provides the protection in deferent characteristic form those of Germany and Thailand. Namely, the US provides specific law dealing with Lemon Laundering in form of the preventive measures, while Thailand and Germany do not provide specific law, therefore, the general law which is remedial measure is to be applied in order for the protection upon a consumer.

Prior to resale of the returned defective car, the US laws prescribes the obligations on the manufacturer and/ or dealer to inform a consumer who is a subsequent buyer of a car's history in writing, to notify the Department of Motor Vehicles or relevant authorities of the car's history in order to proceed with recording such information in the authority's database and inscribing or stamping the car's certificate of title with a warning, to provide a consumer for a warranty at least 12 months or 12,000 miles, and in case the returned defective car has a serious defect which is likely to cause death or serious bodily injury if such car is driven, in some state, such car is prohibited to resell. These legal measures not only mitigate asymmetric information between the seller and the consumer which mainly constitutes Lemon Laundering and cause the consumer receive precise and sufficient information, but also concern the safety in driving. Unlike Thai laws, it is presently lacked of preventive measures as the US laws. Although Thai Laws provides a legal measure concerning product testing under Section 36 of the Consumer Protection Act empowering the Consumer Protection Board to test or prove the goods which is likely to harm a consumer; and to issue an order prohibiting a sale or disposing such goods, the author is of opinion that it is not adequate to protect the consumer from Lemon Laundering. Moreover, the relevant laws such as the Notification of the Committee on Labels No. 35, B.E. 2556 (2013) on Determining a Used Car as a Label-Controlled

Goods, the Notification of the Committee on Contract, B. E. 2555 (2012) on Determining the Hire-Purchase of Car and Motorcycle Business as the Contract-Controlled Business and the Vehicle Act do not prescribe any obligation on the manufacturer or dealer in this regard.

While the consumers in Thailand and Germany are under the protection from legal principles on liability for defect in sale contract which is the remedial measure, namely that in case the Lemon Laundering occurs, the consumer shall have the right to being an action against the seller to claim a compensation according to the law, of which the Court's decision shall bind only parties. However, the BGB sets forth the provisions regarding to the definition of defect, the rights of buyer, and the presumption in respect to the burden of proof in favor of the consumer clearer and more beneficial for the consumer than Thai CCC.

In conclusion, the consumer protection on Lemon Laundering in both forms of preventive and remedial measures is indeed significant; it cannot be lacked of any of the said measures. However, the author is of opinion that, nowadays, Thailand is still silent in providing effective preventive and sufficient measure to endure the protection of the consumer from Lemon Laundering. Therefore, an amendment of relevant laws should be impelled in order for additional protection from Lemon Laundering, by adopting preventive measures under the US laws, for instances, a disclosure of the car's defect history in writing prior to resale, providing a warranty and inscribing the car's certificate of title with warning, and adjusting them in an amendment as appropriate to context and structure of Thai laws. Furthermore, in light of the remedial measures, although Thai laws provides the remedial measures which can be applied to Lemon Laundering, it is still inferior than German laws, the author hence is of opinion that if the provisions concerning liability for defect in sale contract under the CCC is amended by adding the definition of defect, the rights of buyer, and the presumption in respect to the burden of proof in favor of the consumer in accordance with the BGB of German laws, it would be indeed beneficial for the consumer.

5.2 Recommendations

After thoroughly studying legal measures concerning Lemon Laundering under Thai laws and foreign laws, there are proposals as follows:

5.2.1 The preventive measures

(1) An obligation of the manufacturer or dealer who accept return of a defective car from the previous consumer, whether as a result of the Court's decision, the Consumer Protection Board's order, his own willingness or otherwise, to disclose the car's history in writing to the consumer who is a subsequent buyer should be enacted by adding new Clause 4 (20) of the Notification of the Committee on Labels No. 35, B.E. 2556 (2013) on Determining a Used Car as a Label-Controlled Goods which contains the following detail:

> *"Clause 4 (20) in case of a defective car has been returned to a manufacturer or a seller, either by virtue of the Court's decision, the Consumer Protection Board's order, by a willingness of parties to a contract or by any reason whatsoever, it shall be informed as a defective car returned to a manufacturer or a seller by reason of a defect. Details regarding such defect shall be informed as well."*

(2) An obligation of the manufacturer or dealer who accept return of the defective car from the previous consumer, whether as a result of the Court's decision, the Consumer Protection Committee's order, his own willingness or otherwise, to have the car inspected at the Office of Land Transport prior to reuse should be enacted. The fact that the car has been returned to the manufacturer or dealer due to its defect and the detail of the car's defect should be record in the car's registration certificate and the Office of Land Transport's database. Furthermore, in case of resale, the manufacturer or dealer should be obligated to provide a subsequent buyer for a warranty not less than twenty thousand kilometers or one year, whichever occurs first. It should amend the Vehicle Act B.E. 2522 (1979) as follows:

(2.1) Adding new Section 14 *Bis* of the Vehicle Act which contains the following detail:

"Section 14 Bis If a vehicle that has been registered or pending for a registration carries a defect causing it to be returned to a manufacturer or a seller, either by virtue of the Court's decision, the Consumer Protection Board's order, by a willingness of parties to a contract or by any reason whatsoever, the manufacturer or the seller shall notify a registrar within seven days as from the date the manufacturer or the seller is in possession of such vehicle. Such vehicle shall not be used, except a manufacturer or a seller has such vehicle inspected. In case a manufacturer or a seller wishes to sell such vehicle, he shall provide a subsequent buyer for a performance warranty not less than twenty thousand kilometers or one year, depending on which shall expire firstly.

In case the registrar is of opinion that the vehicle referred in Paragraph One is likely to cause jeopardy during a use, he shall order the manufacturer or the seller to repair and has such vehicle inspected. Section 12 Paragraph Two, Paragraph Three and Paragraph Four shall be applied mutatis mutandis. However, if the registrar is of opinion that the vehicle is safe for a use, he shall record in a registration and the vehicle registration certificate that it is a used car returned to a manufacturer or a seller by reason of a defect."

(2.2) Amending Section 60 of the Vehicle Act as follows:

"Section 60 a person who violates or does not comply with Section 6 (2) (3) (4) or (5), Section 6/1 Paragraph Two and Paragraph Three, Section 11, Section 12 Paragraph One, Section 13 Paragraph One, Section 14, Section 14 Bis, Section

> *16 Paragraph One, Section 17 Paragraph One and Paragraph Two, Section 18 Paragraph One, Section 20 Paragraph One, Section 21, Section 22 Paragraph One, Section 27 Paragraph One, Section 56 or Section 57 shall be fined not exceeding two thousand Baht.*

(3) In case the manufacturer or dealer accept return of a defective car from the previous consumer as a result of the Court's decision or the Consumer Protection Board's order, it should be enacted that an official from the Court and the Consumer Protection Committee shall notify the Office of Land Transport of details of such car in order for the Office of Land Transport to enforce a law upon those does not have the returned defective car inspected as discussed in Item (2) above; and the consumer to examine the car's information via the Office of Land Transport's database.

5.2.2 The remedial measures

The author is of the opinion that the provisions concerning liability for defect in sale contract under the CCC should be amended as follows:

(1) Adding the definition of 'defect' by providing means to determine as to whether or not the goods is defective as follows:

- Primarily, the terms with respect to a quality of the goods under a sale contract shall be taken into a consideration;
- Should the terms with respect to a quality of the goods in a sale contract is absent, an intent to use the goods under a sale contract shall be subsequently considered; and
- Eventually, a consideration on a usual quality of such goods, which is mainly based on information given by the seller or manufacturer, either from a public statement or an advertisement.

- Furthermore, the term ‘defect’ should cover an installation of the goods and a manual thereof as well as a delivery of the goods in amount less that agreed.

(2) Adding the right of buyer to demand the seller for reparation.

(3) Adding the right of buyer to demand the seller for replacement if the defect is unable to be repaired to normal condition, or even if it is repaired, it may cause harm to body, health, or sanitary of the consumer using such goods.

(4) Adding the presumption regarding the existence of defect in favor of the buyer. Namely that any defect appears within six months after the date of a delivery, it is presumed that the goods was already defective at the date of a delivery, causing the burden of proof upon the seller’s side to prove the contrary.

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Other materials

รายงานของคณะกรรมาธิการปฏิรูปการคุ้มครองผู้บริโภค สภาปฏิรูปแห่งชาติ วาระปฏิรูปที่ 31 : การปฏิรูประบบการคุ้มครองผู้บริโภค เรื่อง “ความรับผิดต่อความชำรุดบกพร่องของสินค้าและร่างพระราชบัญญัติความรับผิดต่อความชำรุดบกพร่อง ของสินค้า พ.ศ. .... ”

APPENDICES

APPENDIX A
THE US LEMON LAUNDERING STATUTES

Alabama

Ala. Code § 8-20A-3:

(a) A consumer sustaining damages as a proximate consequence of the failure by a manufacturer to perform its obligations imposed under this chapter may bring a civil action against the manufacturer to enforce the provisions of this chapter. Prior to the commencement of any such proceeding a consumer must give notice of a nonconforming condition by certified United States mail to the manufacturer and demand correction or repair of the nonconforming condition. If at the time such notice of a nonconforming condition is given to the manufacturer, a presumption has arisen that reasonable attempts to correct a nonconforming condition have been allowed, the manufacturer shall be given a final opportunity to cure the nonconforming condition. The manufacturer shall within seven calendar days of receiving the written notice of nonconforming condition notify the consumer of a reasonably accessible repair facility. After delivery of the new vehicle to the authorized repair facility by the consumer, the manufacturer shall attempt to correct the nonconforming condition and conform the vehicle to the express warranty within a period not to exceed 14 calendar days. If a manufacturer has established an informal dispute settlement procedure which is in compliance with federal rules and regulations, a consumer must first exhaust any remedy afforded to the consumer under the informal dispute procedure of the manufacturer before a cause of action may be instituted under the provisions of this chapter.

(b) It shall be an affirmative defense to any claim against the manufacturer under this chapter that: (i) an alleged nonconforming condition does not significantly impair the use, market value, or safety of the motor vehicle; or (ii) a nonconforming condition is a result of abuse, neglect, or any modification or alteration of a motor vehicle by a consumer that is not authorized by the manufacturer.

(c) If it is determined that the manufacturer has breached its obligations imposed under this chapter, then the consumer shall be entitled to recover, in addition to the remedy provided under Section 8-20A-2 above, an additional award for reasonable attorneys fees.

Ala. Code § 8-20A-4:

If a motor vehicle has been returned to the manufacturer under the provisions of this chapter or a similar statute of another state, whether as the result of a legal action or as the result of an informal dispute settlement proceeding, it may not be resold in this state unless:

(1) The manufacturer discloses in writing to the subsequent purchaser the fact that the motor vehicle was returned under the provisions of this chapter and the nature of the nonconformity to the vehicle warranty.

(2) The manufacturer returns the title of the motor vehicle to the Alabama Department of Revenue advising of the return of the motor vehicle under provisions of this chapter with an application for title in the name of the manufacturer. The Department of Revenue shall brand the title issued to the manufacturer and all subsequent titles to the motor vehicle with the following statement: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY.

Ala. Code § 8-20A-5:

Nothing in this chapter imposes any liability upon a motor vehicle dealer or authorized dealer or creates a cause of action by a consumer against a motor vehicle dealer or authorized dealer. A motor vehicle dealer or authorized dealer may not be made a party defendant in any action involving or relating to this chapter. The manufacturer shall not charge back or require reimbursement by a motor vehicle dealer or authorized dealer for any costs, including, but not limited to, any refunds or vehicle replacements, incurred by the manufacturer arising out of this chapter.

Alaska

Alaska Stat. § 45.45.335:

A motor vehicle returned under §45.45.305 may not be resold by the manufacturer or distributor in the state unless full disclosure of the reason for the return is made to the prospective buyer before the resale is concluded.

Alaska Stat. §45.45.340:

The law does not provide any new rights of actions but does not limit any other rights available.

Arizona

Ariz. Rev. Stat. Ann. § 44-1266:

a. A manufacturer who has been ordered by judgment or decree to replace or repurchase or who has replaced or repurchased a motor vehicle pursuant to this article or the repair or replace laws of another state shall, before offering the motor vehicle for resale, attach to the motor vehicle written notification indicating the motor vehicle has been replaced or repurchased. A consumer has a cause of action against any person who removes the written notification from the motor vehicle, except as provided in subsection B of this section.

b. A motor vehicle dealer, broker, wholesale motor vehicle dealer or wholesale motor vehicle auction dealer as defined in section 28-4301 who offers for sale a motor vehicle that has been replaced or repurchased pursuant to this article or the repair or replace laws of another state shall provide the purchaser with the manufacturer's written notification indicating that the motor vehicle has been replaced or repurchased before completion of the sale.

c. It shall constitute an affirmative defense in an action brought pursuant to subsection A of this section against a motor vehicle dealer or an agent of a motor vehicle dealer that the notification described in subsection A of this section was removed by someone other than the dealer or agent without the knowledge of the dealer or agent.

Arkansas

Ark. Code Ann. § 4-90-412:

(a) If a motor vehicle has been replaced or repurchased by a manufacturer as the result of a court judgment, an arbitration award, or any voluntary agreement entered into between a manufacturer or a manufacturer through its authorized dealer and a consumer that occurs after a consumer has notified the manufacturer of the consumer's desire to utilize the informal dispute settlement proceeding pursuant to this subchapter or a similar law of another state, the motor vehicle may not be resold in Arkansas unless:

(1) The manufacturer provides the same express warranty the manufacturer provided to the original purchaser, except that the term of the warranty need only last for twelve thousand (12,000) miles or twelve (12) months after the date of resale, whichever occurs first; and

(2) The manufacturer provides a written disclosure, signed by the consumer, indicating that the vehicle was returned to the manufacturer because of a nonconformity not cured within a reasonable time as provided by Arkansas law.

(b) The written disclosure required by this section applies to the first resale to a retail customer of the vehicle in Arkansas by the manufacturer or its authorized dealer.

California

Cal. Civ. Code § 1793.23:

(a) The Legislature finds and declares all of the following:

(1) That the expansion of state warranty laws covering new and used cars has given important and valuable protection to consumers.

(2) That, in states without this valuable warranty protection, used and irrepairable motor vehicles are being resold in the marketplace without notice to the subsequent purchaser.

(3) That other states have addressed this problem by requiring notices on the title of these vehicles or other notice procedures to warn consumers that the motor vehicles were repurchased by a dealer or manufacturer because the vehicle could not be repaired in a reasonable length of time or a reasonable number of repair attempts or the dealer or manufacturer was not willing to repair the vehicle.

(4) That these notices serve the interests of consumers who have a right to information relevant to their buying decisions.

(5) That the disappearance of these notices upon the transfer of title from another state to this state encourages the transport of "lemons" to this state for sale to the drivers of this state.

(b) This section and Section 1793.24 shall be known, and may be cited as, the Automotive Consumer Notification Act.

(c) Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle registered in this state, any other state, or a federally administered district shall, prior to any sale, lease, or transfer of the vehicle in this state, or prior to exporting the vehicle to another state for sale, lease, or transfer if the vehicle was registered in this state and reacquired pursuant to paragraph (2) of subdivision (d) of Section 1793.2, cause the vehicle to be retitled in the name of the manufacturer, request the Department of Motor Vehicles to inscribe the ownership certificate with the notation "Lemon Law Buyback," and affix a decal to the vehicle in accordance with Section 11713.12 of the Vehicle Code if the manufacturer knew or should have known that the vehicle is required by law to be replaced, accepted for restitution due to the failure of the manufacturer to conform the vehicle to applicable warranties pursuant to paragraph (2) of subdivision (d) of Section 1793.2, or accepted for restitution by the manufacturer due to the failure of the manufacturer to conform the vehicle to warranties required by any other applicable law of the state, any other state, or federal law.

(d) Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle in response to a request by the buyer or lessee that the vehicle be either replaced or accepted for restitution because the vehicle did not conform to express warranties shall, prior to the sale, lease, or other transfer of the vehicle, execute and deliver to the subsequent transferee a notice and obtain the transferee's written acknowledgment of a notice, as prescribed by Section 1793.24.

(e) Any person, including any dealer, who acquires a motor vehicle for resale and knows or should have known that the vehicle was reacquired by the vehicle's manufacturer in response to a request by the last retail owner or lessee of the vehicle that it be replaced or accepted for restitution because the vehicle did not conform to express warranties shall, prior to the sale, lease, or other transfer, execute and deliver to the subsequent transferee a notice and obtain the transferee's written acknowledgment of a notice, as prescribed by Section 1793.24.

(f) Any person, including any manufacturer or dealer, who sells, leases, or transfers ownership of a motor vehicle when the vehicle's ownership certificate is inscribed with the notation "Lemon Law Buyback" shall, prior to the sale, lease, or ownership transfer of the vehicle, provide the transferee with a disclosure statement signed by the transferee that states:

"THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION 'LEMON LAW BUYBACK'."

(g) The disclosure requirements in subdivisions (d), (e), and (f) are cumulative with all other consumer notice requirements and do not relieve any person, including any dealer or manufacturer, from complying with any other applicable law, including any requirement of subdivision (f) of Section 1793.22.

(h) For purposes of this section, "dealer" means any person engaged in the business of selling, offering for sale, or negotiating the retail sale of, a used motor vehicle or selling motor vehicles as a broker or agent for another, including the officers, agents, and employees of the person and any combination or association of dealers.

Cal. Civ. Code § 1793.24:

(a) The notice required in subdivisions (d) and (e) of Section 1793.23 shall be prepared by the manufacturer of the reacquired vehicle and shall disclose all of the following:

(1) Year, make, model, and vehicle identification number of the vehicle.

(2) Whether the title to the vehicle has been inscribed with the notation "Lemon Law Buyback."

(3) The nature of each nonconformity reported by the original buyer or lessee of the vehicle.

(4) Repairs, if any, made to the vehicle in an attempt to correct each nonconformity reported by the original buyer or lessee.

(b) The notice shall be on a form 8 ½ x 11 inches in size and printed in no smaller than 10-point black type on a white background.

The form shall only contain the following information prior to it being filled out by the manufacturer:

WARRANTY BUYBACK NOTICE

(Check One)

☐ This vehicle was repurchased by the vehicle's manufacturer after the last retail owner or lessee requested its repurchase due to the problem(s) listed below.

☐ THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION "LEMON LAW BUYBACK."

Under California law, the manufacturer must warrant to you, for a one year period, that the vehicle is free of the problem(s) listed below.

V.I.N……..	Year	Make	Model
Problem(s) Reported by Original Owner ……... ……... ……...	Repairs Made, if any, to Correct Reported Problem(s) ……... ……... ……...		
Signature of Manufacturer _____ Date _____			
Signature of Dealer(s) _____ Date _____			
Signature of Retail Buyer or Lessee _____ Date _____			

(c) The manufacturer shall provide an executed copy of the notice to the manufacturer's transferee. Each transferee, including a dealer, to whom the motor vehicle is transferred prior to its sale to a retail buyer or lessee shall be provided an executed copy of the notice by the previous transferor.

Cal. Veh. Code § 11713.12:

(a) The decal required by subdivision (c) of Section 1793.23 of the Civil Code to be affixed by a manufacturer to a motor vehicle, shall be affixed to the left front doorframe of the vehicle, or, if the vehicle does not have a left front doorframe, it shall be affixed in a location designated by the department. The decal shall specify that title to the motor vehicle has been inscribed with the notation "Lemon Law Buyback" and shall be affixed to the vehicle in a manner prescribed by the department.

(b) No person shall knowingly remove or alter any decal affixed to a vehicle pursuant to subdivision (a), whether or not licensed under this code.

Colorado

Colo. Rev. Stat. § 6-1-708(l)(b):

(1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(a) …

(b) Fails to disclose in writing, prior to sale, to the purchaser that a motor vehicle is a salvage vehicle, as defined in section 42-6-102 (17), C.R.S., or that a vehicle was repurchased by or returned to the manufacturer from a previous owner for inability to conform the motor vehicle to the manufacturer's warranty in accordance with article 10 of title 42, C.R.S., or with any other state or federal motor vehicle warranty law or knowingly fails to disclose in writing, prior to sale, to the purchaser that a motor vehicle has sustained material damage at any one time from any one incident.

Connecticut

Conn. Gen. Stat. § 42-179(g):

(1) No motor vehicle which is returned to any person pursuant to any provision of this chapter or in settlement of any dispute related to any complaint made under the provisions of this chapter and which requires replacement or refund shall be resold, transferred or leased in the state without clear and conspicuous written disclosure of the fact that such motor vehicle was so returned prior to resale or lease. Such disclosure shall be affixed to the motor vehicle and shall be included in any contract for sale or lease. The Commissioner of Motor Vehicles shall, by regulations adopted in accordance with the provisions of chapter 54, prescribe the form and content of any such disclosure statement and establish provisions by which the commissioner may remove such written disclosure after such time as the commissioner may determine that such motor vehicle is no longer defective.

(2) If a manufacturer accepts the return of a motor vehicle or compensates any person who accepts the return of a motor vehicle pursuant to subdivision (1) of this subsection such manufacturer shall stamp the words "MANUFACTURER BUYBACK" clearly and conspicuously on the face of the original title in letters at least one-quarter inch high and, within ten days of receipt of the title, shall submit a copy of the stamped title to the Department of Motor Vehicles. The Department of Motor Vehicles shall maintain a listing of such buyback vehicles and in the case of any request for a title for a buyback vehicle, shall cause the words "MANUFACTURER BUYBACK" to appear clearly and conspicuously on the face of the new title in letters which are at least one-quarter inch high. Any person who applies for a title shall disclose to the department the fact that such vehicle was returned as set forth in this subsection.

(3) If a manufacturer accepts the return of a motor vehicle from a consumer due to a nonconformity or defect, in exchange for a refund or a replacement vehicle, whether as a result of an administrative or judicial determination, an arbitration proceeding or a voluntary settlement, the manufacturer shall notify the Department of Motor Vehicles and shall provide the department with all relevant information, including the year, make, model, vehicle identification number and prior title number of the vehicle. The Commissioner of Motor Vehicles shall adopt regulations in accordance with chapter 54 specifying the format and time period in which such information shall be provided and the nature of any additional information which the commissioner may require.

(4) The provisions of this subsection shall apply to motor vehicles originally returned in another state from a consumer due to a nonconformity or defect in exchange for a

refund or replacement vehicle and which a lessor or transferor with actual knowledge subsequently sells, transfers or leases in this state.

Conn. Gen. Stat. § 42-179(i):

(i) Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

District of Columbia

D.C. Code § 50-502(g):

(1) If a motor vehicle is returned to a manufacturer, its agent, or authorized dealer pursuant to this section, the manufacturer, its agent, or authorized dealer shall notify the Department of Public Works that the motor vehicle was returned.

(2) The Department of Public Works shall note the fact that the motor vehicle was returned pursuant to this chapter on any certificate of title issued for the motor vehicle.

(3) A motor vehicle dealer shall state the fact that the motor vehicle was returned pursuant to this chapter in any sales contract for the motor vehicle prior to the signing of the contract by a prospective purchaser.

Florida

Fla. Stat. § 681.111:

A violation by a manufacturer of this chapter is an unfair or deceptive trade practice as defined in part II of chapter 501.

Full disclosure required. Title must be stamped: "Manufacturer's Buyback." Manufacturer must warrant defect for one year or first 12,000 miles. There is a private right of action allowed. Damages may include pecuniary loss, costs, attorney fees, and equitable relief. A violation of the statute is considered an unfair or deceptive trade practice.

Fla. Stat. § 681.112:

(1) A consumer may file an action to recover damages caused by a violation of this chapter. The court shall award a consumer who prevails in such action the amount of any pecuniary loss, litigation costs, reasonable attorney's fees, and appropriate equitable relief.

(2) An action brought under this chapter must be commenced within 1 year after the expiration of the Lemon Law rights period, or, if a consumer resorts to an informal dispute-settlement procedure or submits a dispute to the department or board, within 1 year after the final action of the procedure, department, or board.

(3) This chapter does not prohibit a consumer from pursuing other rights or remedies under any other law.

Fla. Stat. § 681.114(2):

(1) A manufacturer who accepts the return of a motor vehicle by reason of a settlement, determination, or decision pursuant to this chapter shall notify the department and report the vehicle identification number of that motor vehicle within 10 days after such acceptance, transfer, or disposal of the vehicle, whichever occurs later.

(2) A person shall not knowingly lease, sell at wholesale or retail, or transfer a title to a motor vehicle returned by reason of a settlement, determination, or decision pursuant to this chapter or similar statute of another state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee, lessee, or buyer, and the manufacturer warrants to correct such nonconformity for a term of 1 year or 12,000 miles, whichever occurs first. The department shall prescribe by rule the form, content, and procedure pertaining to such disclosure statement.

(3) As used in this section, the term "settlement" means an agreement entered into between a manufacturer and consumer that occurs after a dispute is submitted to a procedure or program or is approved for arbitration before the board.

Fla. Stat. § 319.14(1)(a):

A person may not knowingly offer for sale, sell, or exchange any vehicle that has been licensed, registered, or used as a taxicab, police vehicle, or short-term-lease vehicle, or a vehicle that has been repurchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681, until the department has stamped in a conspicuous place on the certificate of title of the vehicle, or its duplicate, words stating the nature of the previous use of the vehicle or the title has been stamped "Manufacturer's Buy Back" to reflect that the vehicle is a nonconforming vehicle. If the certificate of title or duplicate was not so stamped upon initial issuance thereof or if, subsequent to initial issuance of the title, the use of the vehicle is changed to a use requiring the notation provided for in this section, the owner or lienholder of the vehicle shall surrender the certificate of title or duplicate to the department prior to offering the vehicle for sale, and the department shall stamp the certificate or duplicate as required herein. When a vehicle has been repurchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681, the title shall be stamped "Manufacturer's Buy Back" to reflect that the vehicle is a nonconforming vehicle.

Georgia

Ga. Code Ann.§ 10-1-790:

(a) No manufacturer, its authorized agent, new motor vehicle dealer, or other transferor shall knowingly resell, either at wholesale or retail, lease, transfer a title, or otherwise transfer a reacquired vehicle, including a vehicle reacquired under a similar statute of any other state, unless the vehicle is being sold for scrap and the manufacturer has notified the Attorney General of the proposed sale or:

(5) The fact of the reacquisition and nature of any alleged nonconformity are clearly and conspicuously disclosed in writing to the prospective transferee, lessee, or buyer; and

(6) The manufacturer warrants to correct such nonconformity for a term of one year or 12,000 miles, whichever occurs first.

A knowing violation of this subsection shall constitute an unfair or deceptive act or practice in the conduct of consumer transactions under Part 2 of Article 15 of Chapter 1 of Title 10 and will subject the violator to an action by a consumer under Code Section 10-1-399.

(b) The manufacturer shall have 30 days to notify the Attorney General that a vehicle has been reacquired in this state under the provisions of this article. The notice shall be legible and include, at a minimum, the vehicle year, make, model, and identification number; the date and mileage at the time the vehicle was reacquired; the nature of the alleged

nonconformity; the reason for reacquisition; and the name and address of the original consumer. When the manufacturer resells, leases, transfers, or otherwise disposes of a reacquired vehicle, the manufacturer shall, within 30 days of the resale, lease, transfer, or disposition, notify the Attorney General of the vehicle year, make, model, and identification number; the date of the sale, lease, transfer, or disposition of the vehicle; and the name and address of the buyer, lessee, or transferee.

(c) If a manufacturer resells, leases, transfers, or otherwise disposes of a motor vehicle in this state that it reacquired under a similar statute of any other state, the manufacturer shall, within 30 days of the resale, lease, transfer, or disposition, notify the Attorney General of the transaction. The contents of the notice shall comply with the requirements of subsection (b) of this Code section.

(d) Manufacturers shall use forms approved by the Attorney General. The forms shall contain the information required under this Code section and any other information the Attorney General deems necessary for implementation of this Code section.

Hawaii

Haw. Rev. Stat. §§ 481I-3(1), 481I-3(l):

(k) No vehicle transferred to a dealer or manufacturer by a buyer or a lessee under this chapter or by judgment, settlement, or arbitration award in this State or in another state may be sold, leased, or auctioned by any person unless:

(1) The nature of the defect experienced by the original buyer or lessee is clearly and conspicuously disclosed on a separate document that must be signed by the manufacturer and the purchaser and must be in ten-point, capitalized type, in substantially the following form:

" IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE A DEFECT(S) COVERED BY THE MANUFACTURER'S EXPRESS WARRANTY WAS NOT REPAIRED WITHIN A REASONABLE TIME AS PROVIDED BY LAW.";

(2) The defect is corrected; and

(3) The manufacturer warrants to the new buyer or lessee, in writing, that if the defect reappears within one year or 12,000 miles after the date of resale, whichever occurs first, it will be corrected at no expense to the consumer.

(l) A violation of subsection (k) shall constitute prima facie evidence of an unfair or deceptive act or practice under chapter 480.

Idaho

Idaho Code Ann. § 48-905:

(1) If a motor vehicle has been returned under the provisions of section 48-903, Idaho Code, or a similar statute of another state, whether as the result of a legal action or as the result of an informal dispute settlement proceeding, it may not be resold or re-leased in this state unless:

(a) The manufacturer provides the same express warranty it provided to the original purchaser, except that the term of the warranty need only last for

twelve thousand (12,000) miles or twelve (12) months after the date of resale, whichever is earlier; and

(b) The manufacturer provides the consumer with a written statement on a separate piece of paper, in 10-point all capital type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY IDAHO LAW."

The provisions of this chapter apply to the resold or re-leased motor vehicle for full term of the warranty required under this section. If a manufacturer has a program similar to the requirements of this subsection and that program provides, at a minimum, substantially the same protections for subsequent consumers, then the manufacturer shall be considered to be in compliance with this subsection.

(2) Notwithstanding the provisions of subsection (1) of this section, if a new motor vehicle has been returned under the provisions of section 48-903, Idaho Code, or a similar statute of another state because of a nonconformity resulting in a complete failure of the braking or steering system of the motor vehicle likely to cause death or serious bodily injury if the vehicle was driven and the failure has not been repaired by the manufacturer, its agent or its authorized dealer, the motor vehicle may not be resold in this state.

Illinois

625 Ill. Comp. Stat. §§ 5/5-104.2, 5/5-104.3:

Every manufacturer shall be prohibited from reselling any motor vehicle ordered, determined, adjudicated as having nonconformities under New Vehicle Protection Act that manufacturer repurchased unless manufacturer corrects nonconformity and issue disclosure statement prior to sale. No person shall sell vehicle for which rebuilt title has been issue unless accompanied by Disclosure of Rebuilt Status forms, signed and delivered to Buyer.

Indiana

Ind. Code § 24-5-13.5-10:

A buyback motor vehicle may not be resold in Indiana unless the following conditions have been met:

(1) The manufacturer provides the same express warranty the manufacturer provided to the original purchaser, except that the term of the warranty need only last for twelve thousand (12,000) miles or twelve (12) months after the date of resale.

(2) The following disclosure language must be conspicuously contained in a contract for the sale or lease of a buyback vehicle to a consumer or contained in a form affixed to the contract:

"IMPORTANT: This vehicle was previously sold as new. It was subsequently returned to the manufacturer or authorized dealer in exchange for a replacement vehicle or a refund because it did not conform to the manufacturer's express warranty and the nonconformity was not cured within a reasonable time as provided by Indiana law.".

The manufacturer provides the dealer a separate document with a written statement identifying the vehicle conditions that formed the basis for the previous owner's or lessee's dissatisfaction and the steps taken to deal with that dissatisfaction in 10-point all capital type.

Ind. Code § 24-5-13.5-11:

Before reselling a buyback motor vehicle in Indiana, a dealer must provide to the buyer the express warranty required by section 10(1) of this chapter and the written statement of disclosure required by section 10(3) of this chapter and obtain the buyer's acknowledgment of this disclosure at the time of sale or lease as evidenced by the buyer's signature on the statement of disclosure.

Ind. Code § 24-5-13.5-12:

A manufacturer who accepts return of a motor vehicle that is considered a buyback vehicle under this chapter shall do the following:

(1) Before transferring ownership of the buyback vehicle, stamp the words "Manufacturer Buyback--Disclosure on File" on the face of the original certificate of title.

(2) Not more than thirty-one (31) days after receipt of the certificate of title, apply to the bureau for a certificate of title in the name of the manufacturer and provide to the bureau a copy of the disclosure document required by section 10(3) of this chapter.

Ind. Code § 24-5-13.5-13:

(a) A person who fails to comply with section 10, 11, or 12 of this chapter is liable for the following:

(1) Actual damages or the value of the consideration, at the election of the buyer.

(2) The costs of an action to recover damages and reasonable attorney's fees.

(3) Not more than three (3) times the value of the actual damages or the consideration as exemplary damages.

(4) Other equitable relief, including restitution, as is considered proper in addition to damages and costs.

(b) Actual damages under this section include the following:

(1) The difference between the actual market value of the vehicle at the time of purchase and the contract price of the vehicle.

(2) Towing, repair, and storage expenses.

(3) Rental of substitute transportation.

(4) Food and lodging expenses.

(5) Lost wages.

(6) Finance charges.

(7) Sales or use tax or other governmental fees.

(8) Lease charges.

(9) Other incidental and consequential damages.

(c) Lack of privity is not a bar to an action under this section.

(d) This subsection does not apply to consent orders or stipulated judgments in which there is no admission of liability by the defendant. A permanent injunction, final judgment, or final order of the court obtained by the attorney general under section 14 of this chapter is prima facie evidence in an action brought under this section that the defendant has violated section 10, 11, or 12 of this chapter.

(e) An action to enforce liability under this section may be brought within two (2) years from the date of discovery by the buyer.

Ind. Code § 24-5-13.5-14:

A manufacturer or dealer who fails to comply with section 10, 11, or 12 of this chapter, as applicable to the manufacturer or dealer, commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and is subject to the remedies and penalties set forth in IC 24-5-0.5.

Iowa

Iowa Code § 322G.11:

This chapter, except for the requirements of section 322G.12, does not impose any liability on a franchised motor vehicle dealer or create a cause of action by a consumer against a dealer. A dealer shall not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including but not limited to any refunds or vehicle replacements, incurred by the manufacturer pursuant to this chapter, in the absence of a finding by a court that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions. A manufacturer who is found by a court to have improperly charged back a dealer because of a violation of this section is liable to the injured dealer for full reimbursement plus reasonable costs and any attorney's fees.

Iowa Code § 322G.12:

Subsequent to December 31, 1991, a manufacturer who accepts the return of a motor vehicle pursuant to a settlement, determination, or decision under this chapter shall notify the state department of transportation and report the vehicle identification number of that motor vehicle within ten days after the acceptance. The state department of transportation shall note the fact that the motor vehicle was returned pursuant to this chapter on the title for the motor vehicle. A person shall not knowingly lease; or sell, either at wholesale or retail; or transfer a title to a motor vehicle returned by reason of a settlement, determination, or decision pursuant to this chapter or a similar statute of any other state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee, lessee, or buyer. The attorney general shall prescribe by rule the form, content, and procedure pertaining to such a disclosure statement, recognizing the need of manufacturers to implement a uniform disclosure form. The manufacturer shall make a reasonable effort to ensure that such disclosure is made to the first subsequent retail buyer or lessee. For purposes of this subsection, *"settlement"* includes an agreement entered into between the manufacturer and the consumer that occurs after the dispute has been submitted to a state-operated dispute resolution program or to a manufacturer-established program certified in this or any other state, but does not include agreements reached in informal proceedings prior to the first written or oral presentation to the state- operated or state-certified dispute resolution program by either party. *"Settlement"* also includes an agreement entered into between a manufacturer

and a consumer that occurs after the dispute has been submitted to a dispute resolution program that is not state-operated or state-certified.

Kansas

Kan. Stat. Ann. § 50-659:

(a) A vehicle dealer, as defined in K.S.A. 8-2401, and amendments thereto, shall not knowingly or intentionally fail to disclose in writing to the consumer of a motor vehicle the following:

(1) The fact that a motor vehicle was used as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto;

(2) the fact that a motor vehicle was used as a leased or rented motor vehicle; or

(3) the fact that a motor vehicle was a factory buyback motor vehicle or returned to a vehicle dealer under the provisions of K.S.A. 50-645, and amendments thereto.

Failure of the vehicle dealer to disclose in writing the information in paragraphs (1) , (2) and (3) shall create a rebuttable presumption of intent not to disclose such information.

(b) For the purposes of this section:

(1) "Motor vehicle" means a motor vehicle which is registered for a gross weight of 12,000 pounds or less, or a farm truck registered for a gross weight of 16,000 pounds or less;

(2) " consumer" means the first individual to take title to a motor vehicle, for purposes other than resale, after such vehicle was:

(A) Used as a leased or rented motor vehicle;

(B) a driver training motor vehicle;

(C) repurchased or reacquired by the manufacturer or distributor as a factory buyback motor vehicle; or

(D) returned to a vehicle dealer under the provisions of K.S.A. 50-645, and amendments thereto;

(3) " leased or rented motor vehicle" does not include a motor vehicle which is leased, loaned or rented by a vehicle dealer to a customer of such dealer while the customer's motor vehicle is being serviced or repaired by such dealer;

(4) " factory buyback motor vehicle" means a motor vehicle repurchased or reacquired by the manufacturer or distributor due to an order or judgment by a court of law or formal, informal or mandatory arbitration procedure, and placed for sale through any dealer, auction or agent.

(c) Any violation of this section is a deceptive act or practice under the Kansas consumer protection act.

(d) This section shall be a part of and supplemental to the Kansas consumer protection act.

Louisiana

La. Rev. Stat. Ann. § 51:1945.1:

A. (1) Upon the sale or transfer of title by a manufacturer, its agent, or any dealer of any second-hand motor vehicle, previously returned to a manufacturer for nonconformity to its warranty pursuant to the requirements of this Chapter, the manufacturer shall execute and deliver to the buyer an instrument in writing in a form prescribed by the commissioner setting forth the following information in ten point, all capital type: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY AND THE DEFECT OR CONDITION WAS NOT FIXED WITHIN THE TIME PROVIDED BY LOUISIANA LAW."

(2) Such notice that a vehicle was returned to the manufacturer because it did not conform to its warranty shall also be conspicuously printed on the motor vehicle's certificate of title.

B. The failure of a dealer to deliver to the buyer the instrument required by this Section shall constitute a violation of this Chapter and shall be punishable by a fine of not less than five hundred dollars nor more than one thousand dollars for each violation.

Maine

Me. Rev.Stat. tit. 10, §§ 1161 to 1169, 1475(4); Me. Rev. Stat. tit. 29-A, § 670

No motor vehicle returned to manufacturer under lemon law may be resold without clear and conspicuous written disclosure to any subsequent purchaser whether purchaser is consumer or dealer. Me. Rev.tit.10, § 1163(7). A Violation of any provision is considered an unfair and deceptive practice. May recover attorney fees in an action. Title must be branded "Lemon Law Buyback". Me. Rev. Stat. tit. 29-A. 6701 k addition, Me. Rev. Stat. tit. 10. § 1174(F) requires disclosure if vehicle had previously been returned to manufacturer pursuant to lemon law arbitration decision or lemon law settlement agreement in another state, if known to the dealer.

Maryland

Md. Code Ann., Com. Law § 14-1502 (West):

If motor vehicle returned to manufacturer under lemon law due to judgment, decree, arbitration award, settlement agreement, or voluntary agreement is transferred to dealer, the manufacturer shall disclose reason for return to dealer. If vehicle is resold, seller shall send signed manufacturer's disclosure form signed by consumer to administrator. Statute of limitations is three years for any action under the chapter and may recover attorney

Massachusetts

Mass. Gen. Laws ch. 90, § 7 $N^{1/2}$(5):

No motor vehicle return shall be resold without clear and conspicuous written disclosure of return prior to resale. Failure to comply with this section is an unfair and deceptive act under Massachusetts Consumer Protection Act. No liability created by this section on dealer nor does it create a cause of action by consumer against dealer.

Michigan

Mich. Comp. Laws § 257.4c:

"Buy back vehicle" means a motor vehicle reacquired by a manufacturer as the result of an arbitration proceeding, pursuant to a customer satisfaction policy adopted by the manufacturer, or under 1986 PA 87, MCL 257.1401 to 257.1410, or a similar law of another state.

Mich. Comp. Laws § 257.235(5):

This section does not prohibit a dealer from selling a buy back vehicle while the certificate of title is in the possession of a manufacturer that obtained the certificate of title under the manufacturer's buy back vehicle program. The manufacturer shall mail the certificate of title to the dealer within 5 business days after the manufacturer's receipt of a signed statement from the purchaser of the vehicle acknowledging he or she was informed by the dealer that the manufacturer acquired title to the vehicle as the result of an arbitration proceeding, under a customer satisfaction policy adopted by the manufacturer, or under 1986 PA 87, MCL 257.1401 to 257.1410, or a similar law of another state.

Minnesota

Minn. Stat. § 325F.665(5):

(a) If a motor vehicle has been returned under the provisions of subdivision 3 or a similar statute of another state, whether as the result of a legal action or as the result of an informal dispute settlement proceeding, it may not be resold or re-leased in this state unless:

(1) the manufacturer provides the same express warranty it provided to the original purchaser, except that the term of the warranty need only last for 12,000 miles or 12 months after the date of resale, whichever is earlier; and

(2) the manufacturer provides the consumer with a written statement on a separate piece of paper, in 10-point all capital type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY MINNESOTA LAW."

The provisions of this section apply to the resold or re-leased motor vehicle for full term of the warranty required under this subdivision.

(b) Notwithstanding the provisions of paragraph (a), if a new motor vehicle has been returned under the provisions of subdivision 3 or a similar statute of another state because of a nonconformity resulting in a complete failure of the braking or steering system of the motor vehicle likely to cause death or serious bodily injury if the vehicle was driven, the motor vehicle may not be resold in this state.

Minn. Stat. § 325F.665(9):

Any consumer injured by a violation of this section may bring a civil action to enforce this section and recover costs and disbursements, including reasonable attorney's fees incurred in the civil action. In addition to the remedies provided herein, the attorney general may bring an action pursuant to section 8.31 against any manufacturer for violation of this section.

Montana

Mont. Code Ann. § 61-4-525:

A motor vehicle that is returned to the manufacturer and that requires replacement or refund may not be sold in the state without a clear and conspicuous written disclosure of the fact that the motor vehicle was returned. The department may prescribe by rule the form and content of the disclosure statement and a procedure by which the disclosure may be removed upon a determination that the motor vehicle is no longer defective. Violation of this section is considered an unfair and deceptive practice.

Nebraska

Neb. Rev. Stat. § 60-174:

Whenever a title is issued in this state for a vehicle that is designated a salvage, previously salvaged, or manufacturer buyback, the following title brands shall be required: Salvage, previously salvaged, or manufacturer buyback. A certificate branded salvage, previously salvaged, or manufacturer buyback shall be administered in the same manner and for the same fee or fees as provided for a certificate of title in sections 60-154 to 60-160. When a salvage branded certificate of title is surrendered for a certificate of title branded previously salvaged, the application for a certificate of title shall be accompanied by a statement of inspection as provided in section 60-146.

Nevada

Nev. Rev. Stat. §§ 597.682 to 597.688

Manufacturer who reacquires or assists lienholder in acquiring vehicle under state lemon law must cause it to be retitled in manufacturer's name, ask that certificate be branded "lemon law buyback." and place decal on vehicle. Manufacturer and any person who acquires such a vehicle for resale must make written disclosure to transferee. Manufacturer who acquires or assists lienholder in acquiring vehicle in response to express warranty claim by buyer must also provide disclosure to subsequent transferee. Confidentiality clauses in buyback agreements prohibited Any person damaged by violation may sue for actual damages, punitive damages, costs, and attorney fees.

New Hampshire

N.H. Rev. Stat. Ann. § 357-D:12:

I. For purposes of this section "a serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

II. Any manufacturer or its agent or authorized dealer is prohibited from reselling in New Hampshire any vehicle determined or adjudicated by the board as having a serious safety defect. Failure to comply is an unfair or deceptive act or practice.

New Jersey

N.J. Stat. Ann. § 56:12-35:

a. If a motor vehicle is returned to the manufacturer, or, in the case of an authorized emergency vehicle, to the manufacturer, co-manufacturer, or post-manufacturing modifier, under the provisions of this act or a similar statute of another state or as the result of a legal action or an informal dispute settlement procedure, it shall not be resold or released in New Jersey unless:

(1) The manufacturer, co-manufacturer, or post-manufacturing modifier provides to the dealer, distributor, or lessor, and the dealer, distributor or lessor provides to the consumer, the following written statement on a separate piece of paper, in 10-point bold-face type: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER OR OTHER RESPONSIBLE PARTY BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S OR OTHER PARTY'S WARRANTY FOR THE VEHICLE AND THE NONCONFORMITY WAS NOT CORRECTED WITHIN A REASONABLE TIME AS PROVIDED BY LAW;"

(2) The dealer, distributor, or lessor obtains from the consumer a signed receipt certifying, in a conspicuous and understandable manner, that the written statement required under this subsection has been provided. The director shall prescribe the form of the receipt. The dealer, distributor, or lessor may fulfill his obligation to obtain a signed receipt under this paragraph by making such a notation, in a conspicuous and understandable manner, on the vehicle buyer order form accompanying the sale or lease of that vehicle; and

(3) The dealer, distributor, or lessor, in accordance with the provisions of section 1 of P.L.1993, c.21 (C.39:10-9.3), notifies the Chief Administrator of the Motor Vehicle Commission of the sale or transfer of ownership of the motor vehicle.

b. Nothing in this section shall be construed as imposing an obligation on a dealer, distributor, or lessor to determine whether a manufacturer, co-manufacturer, or post-manufacturing modifier is in compliance with the terms of this section, nor shall it be construed as imposing liability on a dealer, distributor, or lessor for the failure of a manufacturer, co-manufacturer, or post-manufacturing modifier to comply with the terms of this section.

c. Failure to comply with the provisions of this section constitutes an unlawful practice pursuant to section 2 of P.L.1960, c.39 (C.56:8-2).

N.J. Stat. Ann. § 39: 10-9.3:

a. In every sale or transfer of a motor vehicle returned to the manufacturer under the provisions of P.L.1988, c.123 (C.56:12-29 et seq.), a similar statute of another state, or as the result of a legal action or an informal dispute settlement procedure, the certificate of ownership shall indicate, in a conspicuous and understandable manner, that the motor vehicle was returned to the manufacturer because it did not conform to the manufacturer's warranty and the nonconformity was not corrected within a reasonable time as provided by law. The notice required under the provisions of this subsection shall continue to appear on each certificate of ownership issued as a result of any subsequent sale or transfer of that motor vehicle.

b. Any person who transfers or attempts to transfer a motor vehicle in violation of this section shall be subject to a fine of not more than $7,500.

c. The Director of the Division of Motor Vehicles in the Department of Law and Public Safety, in accordance with the provisions of the " Administrative Procedure Act" P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this section.

New Mexico

N.M. Slat. Ann. § 57-16A-7:

No motor vehicle which has not been properly repaired pursuant to the provisions of Subsection B of Section 3 [57-16A-3 NMSA 1978] of the Motor Vehicle Quality Assurance Act, or pursuant to a similar law of another state, may be resold in New Mexico unless the manufacturer provides full written disclosure of the reason for the return to any prospective buyer.

Buyer who commences action to enforce provision of lemon law, may recover reasonable attorney fees. See also N.M. Code R. § 12.2.4.28 (Weil) (UDAP violation for dealer or manufacturer to sell vehicle knowing that it has been returned under New Mexico or other state's lemon law without conspicuously disclosing this fact and the nature of the defects if known).

New York

NY Gen Bus L § 198-A(c)(2) (2012):

"A manufacturer which accepts return of the motor vehicle because the motor vehicle does not conform to its warranty shall notify the commissioner of the department of motor vehicles that the motor vehicle was returned to the manufacturer for nonconformity to its warranty and shall disclose, in accordance with the provisions of section four hundred seventeen-a of the vehicle and traffic law prior to resale either at wholesale or retail, that it was previously returned to the manufacturer for nonconformity to its warranty..."

NY Veh & Traf L § 417-A (2015):

1. Certificate of prior nonconformity by manufacturer or dealer. Upon the sale or transfer of title by a manufacturer, its agent or any dealer of any second-hand motor vehicle, previously returned to a manufacturer or dealer for nonconformity to its warranty or after final determination, adjudication or settlement pursuant to section one hundred ninety-eight-a or one hundred ninety-eight-b of the general business law, the manufacturer or dealer shall execute and deliver to the buyer an instrument in writing in a form prescribed by the commissioner setting forth the following information in ten point, all capital type: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY AND THE DEFECT OR CONDITION WAS NOT FIXED WITHIN A REASONABLE TIME AS PROVIDED BY NEW YORK LAW." Such notice that a vehicle was returned to the manufacturer or dealer because it did not conform to its warranty shall also be conspicuously printed on the motor vehicle's certificate of title.

2. Violation. The failure of a dealer to deliver to the buyer the instrument required by this section or the delivery of an instrument containing false or misleading information shall constitute a violation of this section.

3. Private Remedy. A consumer injured by a violation of this section may bring an action to recover damages. Judgment may be entered for three times the actual damages suffered by a consumer or one hundred dollars, whichever is greater. A court also may award reasonable attorneys' fees to a prevailing plaintiff buyer.

North Carolina

N.C. Gen. Stat. § 20-351.3(d):

If a manufacturer, its agent, or its authorized dealer resells a motor vehicle that was returned pursuant to this Article or any other State's applicable law, regardless of whether there was any judicial determination that the motor vehicle had any defect or that it failed to conform to all express warranties, the manufacturer, its agent, or its authorized dealer shall disclose to the subsequent purchaser prior to the sale:

(1) That the motor vehicle was returned pursuant to this Article or pursuant to the applicable law of any other State; and

(2) The defect or condition or series of defects or conditions which substantially impaired the value of the motor vehicle to the consumer.

Any subsequent purchaser who purchases the motor vehicle for resale with notice of the return, shall make the required disclosures to any person to whom he resells the motor vehicle.

North Dakota

N.D. Cent. Code § 51-07-22:

1. A person may not sell or lease in this state a passenger motor vehicle that was returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22, unless the manufacturer provides:

a. The same express warranty it provided to the original purchaser, except the term of the warranty must be for at least twelve thousand miles or twelve months after the date of resale, whichever is earlier; and

b. The purchaser a statement on a separate document that must be signed by the manufacturer and the purchaser and must be in ten-point, capitalized type, in substantially the following form: " IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE DEFECTS COVERED BY THE MANUFACTURER'S EXPRESSED WARRANTY WERE NOT REPAIRED WITHIN A REASONABLE TIME AS PROVIDED BY NORTH DAKOTA LAW".

2. A person may not ship or deliver for resale or lease in another state a passenger motor vehicle returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22 unless full disclosure of the reasons for return is made to any prospective buyer. 3. Violation of this section is a class B misdemeanor.

Ohio

Ohio Rev. Code Ann. § l345.71(G):

“Buyback” means a motor vehicle that has been replaced or repurchased by a manufacturer as the result of a court judgment, a determination of an informal dispute

settlement mechanism, or a settlement agreed to by a consumer regardless of whether it is in the context of a court, an informal dispute settlement mechanism, or otherwise, in this or any other state, in which the consumer has asserted that the motor vehicle does not conform to the warranty, has presented documentation to establish that a nonconformity exists pursuant to section 1345.72 or 1345.73 of the Revised Code, and has requested replacement or repurchase of the vehicle.

Ohio Rev. Code Ann. § l345.76:

(A) A buyback may not be resold or leased in this state unless each of the following applies:

(1) The manufacturer provides the same express warranty that was provided to the original consumer, except that the term of the warranty shall be the greater of either of the following:

(a) Twelve thousand miles or twelve months after the date of resale, whichever is earlier;

(b) The remaining term of any manufacturer's original warranty.

(2) The manufacturer provides to the consumer, either directly or through its agent or its authorized dealer, and prior to obtaining the signature of the consumer on any document, a written statement on a separate piece of paper, in ten-point type, all capital letters, in substantially the following form:

WARNING: THIS VEHICLE PREVIOUSLY WAS SOLD AS NEW. IT WAS RETURNED TO THE MANUFACTURER OR ITS AGENT IN EXCHANGE FOR A REPLACEMENT VEHICLE OR REFUND AS A RESULT OF THE FOLLOWING DEFECT(S) OR CONDITION(S):

1. .....

2. .....

3. .....

4. .....

5. .....

.....

DATE BUYER’S SIGNATURE

The manufacturer shall list each defect or condition on a separate line of the written statement provided to the consumer.

(B) Notwithstanding the provisions of division (A) of this section, if a new motor vehicle has been returned under the provisions of section 1345.72 of the Revised Code or a similar law of another state because of a nonconformity likely to cause death or serious bodily injury if the vehicle is driven, the motor vehicle may not be sold, leased, or operated in this state.

(C) A manufacturer that takes possession of a buyback shall obtain the certificate of title for the buyback from the consumer, lienholder, or the lessor. The manufacturer and any subsequent transferee, within thirty days and prior to transferring title to the buyback, shall deliver the certificate of title to the clerk of the court of common pleas and shall make application for a certificate of title for the buyback. The clerk shall issue a buyback certificate

of title for the vehicle on a form, prescribed by the registrar of motor vehicles, that bears or is stamped on its face with the words "BUYBACK: This vehicle was returned to the manufacturer because it may not have conformed to its warranty." in black boldface letters in an appropriate location as determined by the registrar. The buyback certificate of title shall be assigned upon transfer of the buyback, for use as evidence of ownership of the buyback and is transferable to any person. Every subsequent certificate of title, memorandum certificate of title, or duplicate copy of a certificate of title or memorandum certificate of title issued for the buyback also shall bear or be stamped on its face with the words "BUYBACK: This vehicle was returned to the manufacturer because it may not have conformed to its warranty." in black boldface letters in the appropriate location.

The clerk of the court of common pleas shall charge a fee of five dollars for each buyback certificate of title, duplicate copy of a buyback certificate of title, memorandum buyback certificate of title, and notation of any lien on a buyback certificate of title. The clerk shall retain two dollars and twenty-five cents of the fee charged for each buyback certificate of title, four dollars and seventy-five cents of the fee charged for each duplicate copy of a buyback certificate of title, all of the fees charged for each memorandum buyback certificate of title, and four dollars and twenty-five cents of the fee charged for each notation of a lien.

The remaining two dollars and seventy-five cents charged for the buyback certificate of title, the remaining twenty-five cents charged for the duplicate copy of a buyback certificate of title, and the remaining seventy-five cents charged for the notation of any lien on a buyback certificate of title shall be paid to the registrar in accordance with division (A) of section 4505.09 of the Revised Code, who shall deposit it as required by division (B) of that section.

(D) No manufacturer that applies for a certificate of title for a buyback shall fail to clearly and unequivocally inform the clerk of the court of common pleas to whom application for a buyback certificate of title for the motor vehicle is submitted that the motor vehicle for which application for a buyback certificate of title is being made is a buyback and that the manufacturer, its agent, or its authorized dealer is applying for a buyback certificate of title for the motor vehicle and not a certificate of title.

Ohio Rev. Code Ann. § 4505.181(B):

If a retail purchaser purchases a used motor vehicle, used manufactured home, or used mobile home for which the dealer, pursuant to and in accordance with division (A) of this section, does not have a certificate of title issued in the name of the dealer at the time of the sale, the retail purchaser has an unconditional right to demand the dealer rescind the transaction if one of the following applies:

(5) The dealer fails, on or before the fortieth day following the date of the sale, to obtain a title in the name of the retail purchaser.

(6) The title for the vehicle indicates that it is a rebuilt salvage vehicle, and the fact that it is a rebuilt salvage vehicle was not disclosed to the retail purchaser in writing prior to the execution of the purchase agreement.

(7) The title for the vehicle indicates that the dealer has made an inaccurate odometer disclosure to the retail purchaser.

(8) The title for the vehicle indicates that it is a "buyback" vehicle as defined in section 1345.71 of the Revised Code, and the fact that it is a "buyback" vehicle was not disclosed to the retail purchaser in the written purchase agreement.

(9) The motor vehicle is a used manufactured home or used mobile home, as defined by section 4781.01 of the Revised Code, that has been repossessed under

Chapter 1309. or 1317. of the Revised Code, but a certificate of title for the repossessed home has not yet been transferred by the repossessing party to the dealer on the date the retail purchaser purchases the used manufactured home or used mobile home from the dealer, and the dealer fails to obtain a certificate of title on or before the fortieth day after the dealer obtains the certificate of title for the home from the repossessing party or the date on which an occupancy permit for the home is delivered to the purchaser by the appropriate legal authority, whichever occurs later.

Oklahoma

Okla. Stat. tit. 15, § 901(H):

Vehicles returned pursuant to state lemon law may not be resold unless manufacturer, through licensed dealer, provides consumer with written disclosure of reasons vehicle was repurchased. Manufacturer must also provide warranty for 12,000 miles or twelve months after resale, whichever comes earlier. Returned vehicle may not be resold if it was returned pursuant to Oklahoma or another state's lemon law because of complete failure of braking or steering system likely to cause death or serious bodily injury if vehicle is driven.

Oregon

Or. Rev. Stat. § 646A.325:

(1) The manufacturer of a motor vehicle who repurchases the vehicle for any reason shall inform any vehicle dealer to whom the manufacturer subsequently delivers the vehicle for resale that the vehicle has been repurchased by the manufacturer. If the reason for the repurchase was failure or inability to conform the vehicle to express warranties under the provisions of ORS 646A.400 to 646A.418 or any similar law of another jurisdiction, the manufacturer shall also inform the dealer of that fact.

(2) A dealer who has been given information required by subsection (1) of this section shall give the information, in writing, to any prospective buyer of the vehicle.

(3) An owner of a motor vehicle who has been given information as required by subsection (1) or (2) of this section shall give the information, in writing, to any prospective buyer of the vehicle.

(4) As used in this section and ORS 646A.327 (Attorney fees for action under ORS 646A.325), "motor vehicle" has the meaning given in ORS 646A.400.

Or. Rev. Stat. §646A.405:

(1) A manufacturer that takes an action with respect to a motor vehicle under ORS 646A.404 (Consumer's remedies) (1)(a) or (b) shall request the Department of Transportation to:

(a) Title the motor vehicle in the manufacturer's name; and

(b) Inscribe on the certificate of title for the motor vehicle and in the department's records concerning the motor vehicle the notation "Lemon Law Buyback."

(2) A person that acquires a motor vehicle in order to sell, lease or otherwise transfer the motor vehicle and that knows or should have known that the manufacturer took an action with respect to the motor vehicle under ORS 646A.404 (Consumer's remedies) (1)(a) or (b) or

that the certificate of title for the motor vehicle is inscribed with the notation specified in subsection (1) of this section, before selling, leasing or otherwise transferring the motor vehicle shall:

(a) Provide the buyer, lessee or transferee with a notice that states:

> This vehicle was repurchased by its manufacturer in accordance with Oregon's consumer warranty law because of a defect in the vehicle. The title to this vehicle has been permanently inscribed with the notation "Lemon Law Buyback."

the signature of the buyer, lessee or transferee on the notice in a space provided for that purpose under a statement in which the buyer, lessee or transferee acknowledges receiving and understanding the notice.

(3) Failure to comply with the requirements of subsection (1) or (2) of this section is an unlawful practice under ORS 646.608 (Additional unlawful business, trade practices) and a person that fails to comply with the requirements is subject to the causes of action and remedies provided in ORS 646.632 (Enjoining unlawful trade practices) and 646.638 (Civil action by private party).

(4) The Director of Transportation may adopt rules to prescribe the form and content of the notice required under this section and to require the disclosure of other information the director deems necessary to inform a buyer, lessee or transferee of the condition of a motor vehicle that is subject to the provisions of this section or information that is otherwise material to a sale, lease or transfer of the motor vehicle.

Pennsylvania

73 Pa. Stat. Ann. § 1960:

(a) Vehicles may not be resold. If a motor vehicle has been returned under the provisions of this act or a similar statute of another state, it may not be resold in this State unless:

1. The manufacturer provides the same express warranty it provided to the original purchaser, except that the term of the warranty need only last for 12,000 miles or 12 months after the date of resale, whichever is earlier.
2. The manufacturer provides the consumer with a written statement on a separate piece of paper, in ten point all capital type, in substantially the following form:

   "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NON-CONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY PENNSYLVANIA LAW."

The provisions of this section apply to the resold motor vehicle for the full term of the warranty required under this subsection.

(b) Returned vehicles not to be resold. Notwithstanding the provisions of subsection (a), if a new motor vehicle has been returned under the provisions of this act or a similar statute of another state because of a nonconformity resulting in a complete failure of the

braking or steering system of the motor vehicle likely to cause death or serious bodily injury if the vehicle was driven, the motor vehicle may not be resold in this Commonwealth.

73 Pa. Stat. Ann. § 1961:

A violation of this act shall also be a violation of the act of December 17, 1968 (P.L. 1224, No. 387), known as the Unfair Trade Practices and Consumer Protection Law.

73 Pa. Stat. Ann. § 1962:

Nothing in this act shall limit the purchaser from pursuing any other rights or remedies under any other law, contract or warranty.

73 Pa. Stat. Ann. § 1963: The provisions of this act shall not be waived.

Rhode Island

R.I Gen. Laws. § 31-5.2.9:

No motor vehicle that is returned to the manufacturer under the provisions of this chapter shall be resold or re-leased in the state without clear and conspicuous written disclosure to the prospective purchaser or lessee prior to resale of the fact that it was so returned due to a nonconformity. The attorney general shall prescribe the exact form and content of the disclosure statement.

R.I Gen. Laws. § 31-5.2.13:

A manufacturer's failure to comply with any of the provisions of this chapter shall constitute a deceptive trade practice under the terms of chapter 13.1 of title 6. All of the public and private remedies provided for in chapter 13.1 of title 6 shall be available to enforce the provisions of this chapter.

South Carolina

S.C. Code Ann. § 56-28-100:

Any vehicle required to be repurchased by a manufacturer under this chapter or any other provision of law relating to motor vehicle warranties may not be resold, reassigned, or retransferred, either at wholesale or retail in this State, unless:

(1) The manufacturer notifies the Administrator of the Department of Consumer Affairs within thirty calendar days, in writing, of the vehicle identification number of that motor vehicle, the reason that the vehicle was repurchased, and provides a statement that all necessary repairs and adjustments have been made and that the vehicle meets acceptable operating standards.

(2) The manufacturer provides a written warranty to the subsequent retail purchaser of the vehicle covering the vehicle for twelve months or twelve thousand miles. The warranty must expressly include any component related to the manufacturer's decision to repurchase the vehicle.

(3) The manufacturer shall disclose to any dealer or other wholesale purchaser of the fact that the vehicle was required to be repurchased under this chapter or another provision of law relating to motor vehicle warranties.

South Dakota

S.D. Codified Laws § 32-6D-9:

If a motor vehicle has been returned to the manufacturer under the provisions of this chapter or a similar statute of another state, whether as the result of a legal action or as the result of an informal dispute settlement proceeding, it may not be resold in this state unless:

(1) The manufacturer discloses in writing to the subsequent purchaser the fact that the motor vehicle was returned under the provisions of this chapter and the nature of the nonconformity to the vehicle warranty; and

(2) The manufacturer returns the title of the motor vehicle to the Department of Revenue advising of the return of the motor vehicle under provisions of this chapter with an application for title in the name of the manufacturer. The department shall brand the title issued to the manufacturer and all subsequent titles to the motor vehicle with the following statement: "This vehicle was returned to the manufacturer because it did not conform to its warranty."

S.D. Codified Laws § 32-6D-10:

Nothing in this chapter imposes any liability upon a motor vehicle dealer or authorized dealer or creates a cause of action by a consumer against a motor vehicle dealer or authorized dealer. No manufacturer may charge back or require reimbursement by a motor vehicle dealer or authorized dealer for any costs, including any refunds or vehicle replacements, incurred by the manufacturer arising out of this chapter.

Texas

Tex. Occ. Code Ann. § 2301.610 (West):

(c) A manufacturer, distributor, or converter that has been ordered to repurchase or replace a vehicle shall, through its franchised dealer, issue a disclosure statement stating that the vehicle was repurchased or replaced by the manufacturer, distributor, or converter under this subchapter. The statement must accompany the vehicle through the first retail purchase following the issuance of the statement and must include the toll-free telephone number described by Subsection (d) that will enable the purchaser to obtain information about the condition or defect that was the basis of the order for repurchase or replacement.

(d) The manufacturer, distributor, or converter must restore the cause of the repurchase or replacement to factory specifications and issue a new 12-month, 12,000-mile warranty on the vehicle.

(e) The board shall adopt rules for the enforcement of this section.

(f) The department shall maintain a toll-free telephone number to provide information to a person who requests information about a condition or defect that was the basis for repurchase or replacement by an order issued under this chapter. The department shall maintain an effective method of providing information to a person who makes a request.

Tex. Admin. Code § 8.210(4): requiring lemon disclosure label to be affixed to vehicle.

Utah

Utah Code Ann. §§ 41-3406 to 41-3-414, 4l-1a-522 (West):

Manufacturer or dealer may not offer for sale or lease buyback vehicle or nonconforming vehicle without prior written disclosure in clear and conspicuous manner Owner who is not manufacturer or dealer who has been given this information must disclose it. Disclosure statement provided by statute. May recover for violation, actual damages or value of consideration, costs, reasonable attorney fees, three times the value of damages or consideration. Actual damages include towing, repair, lost wages. Lack of privity not bar to action. Branding of title required. Violation is also a UDAP violation.

Vermont

Vt. Stat. Ann. tit. 9, § 4181:

(a) Any manufacturer or its agent or any dealer registered in this State who attempts to resell a motor vehicle after a final determination, adjudication, or settlement resulting in the vehicle being returned pursuant to the provisions of this chapter or under similar laws of any other state, shall apprise prospective buyers in Vermont of such return by means of a clearly visible window sticker. Manufacturers, agents, and dealers are prohibited from reselling in Vermont any vehicle determined or adjudicated as having a serious safety defect. Notice that a vehicle has been returned pursuant to such law shall also be conspicuously printed on the motor vehicle certificate of title.

(b) Affirmative defense. A person who demonstrates both of the following shall not be subject to liability or a penalty for a violation of this section:

(2) the person acquired a motor vehicle without actual knowledge that it was returned pursuant to the provisions of this chapter or under similar laws of another state; and

(3) at the time of acquisition, the title of the motor vehicle did not bear notice of such return.

Virginia

Va. Code Ann. §§ 59.1-207.15, 59.1-207.16 and 18.2-11:

If a motor vehicle is returned to manufacturer or distributor under this chapter or by judgment, decree or arbitration award and it is then transferred by manufacturer or distributor to dealer, transferor must disclose information to dealer. If returned vehicle is resold. manufacturer prior to sale must disclose in writing in clear and conspicuous manner on separate paper to dealer that motor vehicle returned, nature of defect. and condition of motor vehicle when transferred to dealer. Dealer who receives such notice must disclose contents to any prospective buyer prior to sale and transfer disclosure to next purchaser. Dealer responsibility ceases upon sale to first purchaser not for resale. Violation is a class three misdemeanor resulting in a fine of no more than $500. May recover attorney fees, expert witness fees, and costs in a private action. State also covers returned vehicles that are leased.

Washington

Wash. Rev. Code § 19.118.061:

(1) A manufacturer is prohibited from reselling any motor vehicle determined or adjudicated as having a serious safety defect unless the serious safety defect has been corrected and the manufacturer warrants upon the first subsequent resale that the defect has been corrected.

(2) Before any sale or transfer of a motor vehicle that has been replaced or repurchased by the manufacturer after a determination, adjudication, or settlement of a claim under this chapter, the manufacturer must:

(a) Notify the attorney general upon receipt of the motor vehicle;

(b) Submit a title application to the department of licensing in this state for title to the motor vehicle in the name of the manufacturer within sixty days; and

(c) Notify the attorney general and the department of licensing if the nonconformity in the motor vehicle is corrected.

(3) Before the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle previously returned after a final determination, adjudication, or settlement under this chapter or under a similar statute of any other state, the manufacturer, its agent, or a motor vehicle dealer, as defined in * RCW **46.70.011**(4), who has actual knowledge of said final determination, adjudication, or settlement must:

(a) Obtain from the attorney general and attach to the motor vehicle a resale window display disclosure notice. Only the retail purchaser may remove the resale window display disclosure notice after execution of the resale disclosure form required under this subsection; and

(b) Obtain from the attorney general, execute, and deliver to the buyer before sale or other transfer of title a resale disclosure form setting forth information identifying the nonconformity and a title brand.

(4) (a) When a manufacturer reacquires a vehicle under this chapter, the department of licensing must issue a new title with a title brand indicating the motor vehicle was returned under this chapter and information that the nonconformity has not been corrected.

(b) Upon receipt of the manufacturer's notification under subsection (2) of this section that the nonconformity has been corrected and the manufacturer's application for title in the name of the manufacturer under this section, the department of licensing must issue a new title with a title brand indicating the motor vehicle was returned under this chapter and information that the nonconformity has been corrected. Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle, as provided under this section, the manufacturer shall warrant upon the resale that the nonconformity has been corrected.

(c) When the department of licensing receives a title application that complies with the department's requirements and procedures for a motor vehicle previously titled in another state and that has a title brand or other documentation indicating the motor vehicle was reacquired by a manufacturer under a similar law, the department of licensing must issue a new title with a title brand indicating the motor vehicle was returned under a similar law of another state.

(5) After a manufacturer's receipt of a motor vehicle under this chapter and prior to a motor vehicle's first subsequent retail transfer by resale or lease, any intervening transferor

of a motor vehicle subject to the requirements of this section who has received the resale disclosure form and resale window display disclosure notice provided by the attorney general under this section must deliver the resale disclosure form and resale window display disclosure notice with the motor vehicle to the next transferor, purchaser, or lessee to ensure proper and timely notice and disclosure. Any intervening transferor who fails to comply with this subsection must, at the option of the subsequent transferor or first subsequent retail purchaser or lessee:

(a) Indemnify any subsequent transferor or first subsequent retail purchaser for all damages caused by such violation; or

(b) repurchase the motor vehicle at the full purchase price including all fees, taxes, and costs incurred for goods and services which were included in the subsequent transaction.

Violation by dealer of any responsibility is a per se Violation of unfair and deceptive acts statute.

West Virginia

W. Va. Code § 46A-6A-7:

If a new motor vehicle has been returned under section three of this article or a similar statute of another state, it may not be resold in this state unless the manufacturer corrects the nonconformity and provides the consumer with a written statement on a separate piece of paper in ten point all capital type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY WEST VIRGINIA LAW.": Provided, that no manufacturer shall require by agreement or otherwise, either directly or indirectly, that any of its authorized dealers in this state accept such a motor vehicle for resale.

W. Va. Code § 46A-6A-9:

Nothing in this article shall be construed to limit any right or remedy which is otherwise available to a consumer or authorized dealer of a manufacturer under any other law.

Wisconsin

Wis. Stat. § 218.0171(2)(d):

No motor vehicle returned by a consumer or motor vehicle lessor in this state under par. (b) or sub. (6m), or by a consumer or motor vehicle lessor in another state under a similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee. Cause of action for violation of section, recover two times amount of any pecuniary loss, costs, reasonable attorney fees, and equitable relief if found appropriate.

Wis. Stat. § 342.10:

(1) Each certificate of title issued by the department shall contain:

(c) The name and address of the owner.

(d) The names of any secured parties in the order of priority as shown on the application or, if the application is based on another certificate of title, as shown on such certificate.

(bm) Notwithstanding s. 342. 02 (2) , if the applicant is named in a statewide support lien docket provided under s.49.854 (2) (b), a notation stating "Per section 49.854 (2) of the Wisconsin Statutes, the state of Wisconsin has a lien on this vehicle for unpaid support."

(e) The title number assigned to the vehicle.

(f) A description of the vehicle, including make and identification number, except that if the vehicle was last registered in another jurisdiction the make and model contained in the certificate shall be the make and model contained in the last certificate of title issued by the other jurisdiction.

(dm) The mileage disclosure statement required under s. 342. 155, and any notations or qualifying statements explaining the odometer reading specified by the department by rule.

(g) Any other data which the department deems pertinent and desirable.

(2) (a) The certificate of title shall contain spaces for all of the following:

1. Assignment and warranty of title by the owner.

2. The mileage disclosure statement required by s.342.155.

3. Reassignment and warranty of title by a dealer or wholesaler.

4. Any information required by the department when a motor vehicle is sold at a motor vehicle auction or motor vehicle salvage pool.

(b) The certificate of title may contain spaces for application for a certificate of title by a transferee and for the naming of a secured party and the assignment or release of a security interest.

(3) Before issuing a new or duplicate certificate of title for a motor vehicle, the department shall permanently record any of the following information, if applicable, on such certificate:

(b) That the vehicle was previously licensed and used as a taxicab or for public transportation.

(c) That the vehicle was previously licensed and used as a police vehicle by a law enforcement agency.

(d) That the vehicle was not manufactured in compliance with all federal emission and safety standards applicable at the time of manufacture, whether or not the vehicle was subsequently modified to meet such standards, and that the vehicle is "non-USA standard".

(e) That the vehicle was a flood damaged vehicle.

(f) That the vehicle was a manufacturers buyback vehicle.

(g) That the vehicle was previously a salvage vehicle.

(h) That the vehicle was transferred to an insurer upon payment of an insurance claim. This paragraph does not apply to salvage vehicles.

(i) That the vehicle was a hail-damaged vehicle. This paragraph does not apply to a hail-damaged vehicle that was repaired with any replacement part, as defined in s.632.38 (1) (e).

(5) A certificate of title issued by the department is prima facie evidence of the facts appearing on it.

(6) A certificate of title may be issued by the department in an automated format.

Wis. Stat. § 342.l5(l)(bm):

No person may transfer a motor vehicle without disclosing in writing to the transferee whether any of the information specified in s. 342. 10 (3) is applicable to the vehicle. No transferor shall knowingly give a false statement to a transferee in making the disclosure. The department shall prescribe the manner in which the written disclosure shall be made and retained.

BIOGRAPHY

Name	Miss Benjarat Binloy
Date of Birth	December 3, 1989
Educational Attainment	2012: Bachelor of Laws, Thammasat University
Work Position	Lawyer, Banking Law Division Siam Commercial Bank
Publications	Lemon Laundering: Consumer Protection on Resale of Returned Defective Cars Without Disclosing Prior Mechanic Problems, Thammasat University, 2016
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