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High School Legal Curricula: Basic Contract Unit

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BASIC CONTRACT UNIT

This unit, based on California law that is similar to most other states' laws, presents briefly the law of contracts and provides additional information about buying used automobiles. The rules of law are set aside for quick reference. Examples are provided to help the student understand how each rule works. There are also questions for discussion that cannot be answered with a definite yes or no. They are designed primarily to allow the student to think about the law and how it works.

This unit should help students understand their role in making various contracts throughout their lives. It will, by no means, make them experts since that takes years of study. They will, however, realize that there are many more "contract situations" in everyday life than they originally suspected. In reading the material, questions and problems, they should try to recognize that contracts impose both rights and duties.

GENERAL CONTRACT LAW

A. WHAT IS A CONTRACT?

Is it a writing or can it be a series of verbal statements? To answer that question, you must first know the legal definition of a contract.

A CONTRACT IS A PROMISE OR SET OF PROMISES FOR WHICH THE LAW GIVES A REMEDY IF ONE OF THE PARTIES TO THE AGREEMENT BREAKS HIS PROMISE. IF THERE IS A CONTRACT, THE LAW RECOGNIZES A DUTY ON EACH PERSON MAKING A PROMISE TO FULFILL THAT WHICH HE PROMISES.

Is it a "legal promise"? Later you will see that there are promises that are not legally recognized or enforced by a court of law. Try to keep this definition in mind in reading the following problem.

PROBLEM

On January 24, Ernie got up like a flash when the newspaper landed on his doorstep. He was eighteen years old that day and was to receive \$500 from his Uncle Tim. Two years earlier, Uncle Tim had promised him this amount if Ernie did not smoke before his eighteenth birthday. He planned to use the money to buy his first car.

Ernie raced through the want ad section of the newspaper spotting an ad that read: "1957 Chevrolet, white and green, convertible. Unbelievable at \$450." The ad gave the phone number of Young's Car Lot and said to call Harry. Ernie called Harry and told him that he was answering the ad for the Chevrolet and would be right down to pay for it and pick it up. Harry replied that he would be happy to do business with Ernie.

Ernie called David, a friend, saying that if David would drive him to Young's right away, Ernie would forget the \$4.00 that David owed him. David agreed and told Ernie, "I'll be there in fifteen minutes." He never arrived, and Ernie finally had his father drive him to the car lot two hours later.

On arriving at the lot, Ernie insisted that he had bought the 1957 Chevrolet, but Harry said that it had been sold. Ernie and his father demanded that Harry produce the car, but Harry told them that he did not transact business by phone and that he never talked to Ernie on that day.

What can Ernie do?

How many possible contracts are there in the problem? Add to the original definition of a contract the following three elements necessary to have a contract:

- (1) an offer,
- (2) an acceptance,

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(3) consideration.

These terms are defined as follows:

AN OFFER IS A STATEMENT, ORAL OR WRITTEN, THAT THE PERSON MAKING THE OFFER WILL DO A CERTAIN ACT IF THE PERSON TO WHOM IT IS MADE WILL DO WHAT IS ASKED IN RETURN.

AN ACCEPTANCE OCCURS WHEN SOMEONE TO WHOM THE OFFER IS MADE AGREES TO ITS EXACT TERMS AND INDICATES HIS ACCEPTANCE TO THE PERSON WHO MADE THE OFFER.

CONSIDERATION IS SOME AGREED-UPON EXCHANGE WHICH THE LAW DEEMS SUFFICIENT TO SUPPORT CONTRACTUAL RIGHTS AND OBLIGATIONS. THE AGREED-UPON EXCHANGE MAY CONSIST OF AN ACT, A FORBEARANCE TO ACT, OR A PROMISE TO ACT.

The following examples illustrate these definitions and distinguish contracts from nonlegally binding agreements.

EXAMPLES

- (1) Bill offers to pay Charlie \$1000 if Charlie promises to paint Bill's house.

Is there an offer?

Hint: Bill has made an offer to Charlie. He promises to do an act (pay money) if Charlie promises to do an act (paint the house).

- (2) Charlie examines Bill's house and determines that \$1000 is a reasonable amount to be paid to have the small house painted. He tells Bill that he promises to paint Bill's house for payment of \$1000.

Is there an acceptance?

Hint: Charlie has accepted Bill's offer by agreeing to paint his

house for \$1000. He has agreed to exact terms in the offer-- that Charlie paint the house and that Charlie be paid \$1000 for his work.

- (3) Bill makes a promise to pay \$1000 to Charlie if Charlie promises to paint his house.

Is there consideration?

Hint: There is consideration. Both parties have promised to do something for the other party. Charlie promised to paint the house; Bill promised to pay Charlie \$1000.

- (4) Bill promises Charlie \$1000 if Charlie will paint Bill's house.

Is there consideration?

Hint: The offer differs from the earlier one. Bill is not asking Charlie to promise to paint his house but is asking Charlie to paint the house. Charlie need not promise to do the work, although he could, but merely has to do the work to accept the offer. The mutual obligation would be Bill's promise to pay the \$1000 and Charlie's performance of the act of painting the house. Remember, consideration may consist of an act, or a promise to act. In this case, the consideration is Bill's promise to pay \$1000 if Charlie acts. There is consideration if Charlie acts.

- (5) Charlie lives next door to Bill. Between the two homes, there are two large oak trees located on Charlie's land. Bill offers to pay Charlie \$700 if Charlie promises never to cut down the trees because Bill likes the shade they provide.

Is there consideration?

Hint: Charlie has a right to cut down the trees since he owns them. But his forbearance to act, coupled with Bill's promise to pay the money, would establish the consideration necessary to create a contract.

- (6) Eric has a motorcycle that he wishes to sell. He offers it to Dave for \$300, and Dave, believing that this amount is too much for this particular motorcycle, makes a counteroffer of \$200.

Is there a contract?

Hint: Eric and Dave have not entered into a contract. Eric's offer to Dave was not accepted, but Dave made a counteroffer for the cycle. The acceptance must be a mirror of the offer,

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and in this case the counteroffer of \$200 was not the same amount as the \$300 that Eric was asking for the motorcycle. Eric could, if he wished, accept Dave's counteroffer of \$200 and, in doing so, enter into a contract for the sale of Eric's motorcycle for \$200.

- (7) Jim invites Joanne to have dinner at his home the following evening. Joanne accepts the invitation and says that she will arrive at 6 p.m. Jim makes dinner but Joanne does not show up and much of the food is wasted.

Is there a contract?

Hint: From the definitions given, it would appear that there is a contract. But there is no mutual obligation that the law will enforce. The agreement that Jim and Joanne made was a social agreement, which is different from a legal agreement. Joanne may have a moral duty to keep her appointment, but no legal duty to do so.

Should the law enforce social agreements? If not, why not?

- (8) Robyn tells Carl that if he will help her rob the city bank, he will get half the money. Carl agrees, and they rob the bank the next day. Robyn, however, does not pay him anything and instead goes to Nevada and loses all the money gambling.

Is there a contract? Is it legally enforceable?

Hint: Even though there was an offer and an acceptance, the law simply does not enforce contracts with an illegal purpose in mind. It is not difficult to recognize that an agreement between the parties to rob a bank, an obvious crime, is illegal and should not be enforced by the courts. If the object of the contract is illegal, then the contract itself is void.

- (9) Dan loves candy bars. He sees Chris has a bag of chocolate bars and says to her, "I would pay \$50 for a Hershey Bar." Chris reaches into her bag, pulls out a Hershey Bar, slaps it into Dan's hand and says, "Pay me."

Is there an enforceable contract?

Hint: The law would not force Dan to pay the \$50. Offers must be made seriously and not in fun or jest. If the person hearing

the offer knows it is a joke, he cannot accept it and thereby create a contract. In this case, Dan wanted a candy bar (that was no joke), but Chris could not reasonably have believed that Dan was serious in saying he would pay \$50 for it.

OFFERS MUST BE MADE SERIOUSLY AND NOT IN FUN OR JEST. IF THE PERSON HEARING IT KNOWS IT IS A JOKE, HE CANNOT ACCEPT IT AND CREATE AN ENFORCIBLE CONTRACT.

- (10) Tom Parker sees a magazine ad for leather coats. Since the company is five hundred miles from his home, he must purchase the coat by mail. He mails a check for \$90 to the company asking them to send a size 40 long. Instead, he receives his check back four days later with no explanation.

Was there an offer? If there was an offer, did Tom accept it by mailing the check? Consider the following rule:

GENERALLY NEWSPAPER ADS AND OTHER FORMS OF ADVERTISEMENT TO THE GENERAL PUBLIC ARE NOT OFFERS BUT INVITATIONS TO THE PUBLIC TO COME AND MAKE OFFERS. THESE ARE CALLED PRELIMINARY NEGOTIATIONS.

Does the rule seem unfair to you? Why? Why not? What do you think are some of the reasons for such a rule? Does this rule affect Ernie's problem with the car dealer?

B. MUST CONTRACTS BE IN WRITING TO BE ENFORCIBLE IN COURT?

A myth that has surrounded the validity of contracts is that they must be in writing to be enforceable. Many people believe that an oral agreement they entered into is a contract, but since it is not in writing, it is unenforceable in court. As the above hypotheticals have indicated, the issue

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was not whether the agreed-upon bargain was in writing. However, there are several agreements that must be in writing to be enforced by the courts.

AN AGREEMENT THAT, BY ITS TERMS, IS NOT TO BE PERFORMED WITHIN A YEAR FROM THE MAKING MUST BE IN WRITING AND SIGNED BY THE PARTIES AGAINST WHOM THE ENFORCEMENT IS SOUGHT.

- (11) Tim offers to sell Don his motorcycle for \$200 when he finished college in four years. Don agrees to buy it under those circumstances.

Is the agreement enforceable in court?

Hint: There is a contract, but unless the agreement that they entered into is in writing, it cannot be enforced since, by the terms of the agreement, it cannot be performed within a year.

AN AGREEMENT FOR THE SALE OF REAL PROPERTY MUST BE IN WRITING AND SIGNED BY THE PARTY SEEKING TO ENFORCE THE CONTRACT.

- (12) After Bill has his house painted, he decides that it is too small for his growing family. He tells Charlie that he thinks he will sell it. Charlie offers to buy the house for \$25,000, and the next day Bill and his wife decide to sell it to Charlie for his offered price. Bill phones Charlie and tells him that he has accepted his offer of \$25,000.

Is this agreement enforceable in court?

Hint: Since at this point there is no writing (evidencing the agreement that Bill and Charlie have entered into) signed by the party against whom enforcement is sought, the agreement is not enforceable if one of the parties changes his mind.

AN AGREEMENT FOR THE SALE OF ANY GOODS FOR THE PRICE OF \$500 OR MORE MUST BE IN WRITING AND SIGNED BY THE PARTY AGAINST WHOM ENFORCEMENT IS SOUGHT.

- (13) Brian goes to a used car lot to buy a car and finds one that he likes. The price is \$500. He tells Ray, the salesman, that he will take it at that price. But on his way to the bank to get his money to pay for the car, he decides that at that price he would not have enough money left to buy a tank of gas. He returns to the car lot and tells Ray that he has changed his mind. Ray tells him that he [Ray] has made an offer that Brian accepted, and that since he has made a promise to deliver the car for Brian's promise to pay \$500, there is a contract.

Is this an enforceable contract?

Hint: Since there was no writing, Ray cannot enforce the agreement because the price of the car was \$500.

There are other situations in which the agreement between the parties must be in writing, but the above three rules are perhaps the most common and the easiest for students to understand. It should be reemphasized that in the vast majority of daily transactions a contract need not be in writing to be valid.

At this point, it may appear that almost every transaction that is conducted between parties is a contract of one type or another; however, the majority of transactions are not contracts.

- (14) Jerry asks Bill to lend him his car so that he can take Pat to a drive-in movie, and Bill agrees to lend him the car.

Is there a contract?

Hint: When Jerry borrows the car, there is no contract. Jerry has no right to compel Bill to lend him the car, and Bill has no legal right to "get" anything from Jerry for the use of the car.

- (15) Phil enters a candy store to buy a box of chocolates. He asks the sales clerk for a particular brand and hands the clerk the money for the candy.

Is this a contract?

Hint: There is no contract since the parties to the transaction

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have not intended that the transaction should be a contract. The sales clerk is not saying, "I promise to give you the candy for payment of the listed price." Phil does not have the right to compel him to sell the candy. If the clerk should refuse to sell the candy, Phil has no remedy to compel him to do so.

If in the above hypothetical the sales clerk had taken the money from Phil and had not given him the candy, the law would protect Phil and would not allow the sales clerk to be unjustly enriched because there was a sale. No right to the candy arose until the sales clerk received the money.

CONSIDER THE FOLLOWING QUESTIONS:

- (1) Is a contract a process of bargaining or is it something more?
- (2) What is the purpose of a contract?
- (3) If the law did not enforce a contract through court procedures, what would society be like?
- (4) How many of the contracts that you have made have been in writing?
- (5) Name some of the contracts that you have made that you did not realize were contracts at the time you made them.

C. CONTRACT RIGHTS OF MINORS

The legislature in each state determines who is to be considered a minor. The general statutory rule throughout the United States is that minors are all persons under 21 years of age, but several states, including California, have lowered the age to 18 years. If a person is a minor, the law considers his lack of experience and allows him to disaffirm certain contracts into which he has entered and prevents him from entering into others.

ANY CONTRACT ENTERED INTO BY A MINOR
THAT RELATES TO REAL PROPERTY IS
ABSOLUTELY VOID.

- (16) Alan, 17 years old, was given a parcel of land (real property) by his uncle. Since he would rather have the money from selling the land rather than the land itself, he visits Charlie, whom he knows is looking for a lot on which to build a house, and offers to sell him the land. Charlie knows that Alan owns the land, and they enter into a written contract for its sale since Charlie has learned that a contract for the sale of land must be in writing. Several days later, Alan changes his mind and decides that he should have kept the land. He phones Charlie and tells him that he has changed his mind and that he wants out of the agreement.

Is there a valid contract?

Hint: Since Alan is a minor, he is unable to enter into any contract for the sale of land, and therefore the agreement that he and Charlie entered into is not enforceable. If Charlie had given Alan some money for a down payment, Alan would have to return that amount, but Charlie could not compel Alan to sell the property.

ANY CONTRACT RELATING TO ANY PERSONAL
PROPERTY NOT IN THE MINOR'S IMMEDIATE
POSSESSION OR CONTROL IS VOID.

- (17) Alan enters into a contract with Bill to buy his old car for \$400. To pay for it, Alan has made arrangements for the store where he works to send his weekly earnings directly to Bill.

Is this contract enforceable?

Hint: Since Alan does not have possession of the money (personal property) that he earns until it is paid to him, he cannot enter into a contract that involves those earnings. He could not keep Bill's car without paying for it, and, for the contract to be enforceable, he would have to enter into a contract that involved money already in his possession.

Those contracts that are not void and not binding are voidable and may be disaffirmed by the minor, if he wishes, either before his

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majority or within a reasonable time afterwards. The above examples were of void contracts; the following examples are of voidable contracts.

- (18) Sam, 16 years old, buys a boat and enters into an installment contract requiring him to make monthly payments. After the summer season, he tires of having to keep it clean and of making repairs and decides that he will return it to the person from whom he purchased it.

Is the contract voidable?

Hint: Since Sam is a minor, he has the choice of being bound by the contract or of disaffirming it. If he returns the boat, he will get his money back. Because the minor has the power to say whether or not there is an enforceable contract, most people will not enter into a contract with a minor unless some adult guarantees that if the minor does not perform the contract, the guarantor will.

If Sam had purchased the boat from a dealer, it would be very unlikely that the dealer would have entered into an agreement without some guaranty that Sam would not disaffirm the contract. Sam's father, therefore, would probably have to co-sign the contract that would make him liable if Sam refused to make his monthly payments.

MINORS CANNOT DISAFFIRM CONTRACTS FOR NECESSITIES OF LIFE, SUCH AS FOOD, CLOTHING, AND SHELTER, WHEN THOSE ITEMS ARE NOT PROVIDED BY A PARENT.

- (19) Jim is 17 years old. He works and lives alone in an apartment and spends most of his money on "good times." Because he never seems to have enough cash, he charges his grocery bills at the corner store. When this bill becomes very large, he refuses to pay it and claims that since he is a minor, he cannot be held liable for the amount of the grocery bill.

Must Jim pay the bill?

Hint: Since Jim lives by himself, separate from his parents, he is liable for his contracts and would have to pay his grocery bill because he promised to do so.

CONSIDER THE FOLLOWING QUESTIONS:

- (1) Why does the law hold minors to contracts for food, clothing and shelter?
- (2) If Jim lived in the country and were forced to buy a car in order to get to and from work, would you consider the car a necessity of life?

D. WARRANTIES AND DISCLAIMERS

This area of law applies not only to contracts but also to the sale of goods, which are barter arrangements and not contracts. Therefore, some of the examples will involve contracts, and others, the sale of goods.

When there is a sale of goods or when there is a contract involving goods, some form of warranty will guarantee the quality of the goods.

(1) EXPRESS WARRANTIES

NO FORMAL WORDS ARE NECESSARY TO CONSTITUTE AN EXPRESS WARRANTY. BUT THERE MUST BE (1) AN AFFIRMATION OF FACT RELATING TO THE GOODS, OR (2) A PROMISE RELATING TO THE GOODS, OR (3) A DESCRIPTION OF THE GOODS, OR (4) A SAMPLE OR MODEL OF THE GOODS.

Without one of these elements, there is no express warranty.

- (20) Darla purchases a set of tires that are guaranteed to last for 20,000 miles. She uses them for six months and only drives 17,000 miles when she has a blow out, probably caused by the very thin tread remaining on the tire.

What is Darla's remedy against the seller of tires?

May she demand that she be given a new tire or her money back?

Was the seller at the time of the sale merely puffing (making certain

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statements about his goods that were not intended to be warranties and should not have been understood as such)?

Hint: If the seller were puffing, Darla could claim that she should be able to hold the seller to his guaranty. Given no other facts, Darla probably could require the seller to honor his warranty and thus demand that the seller return a portion of her money since one of the tires did not last as long as the guaranty had specified.

(2) IMPLIED WARRANTIES

EVEN IF THE SELLER HAS MADE NO EXPRESS WARRANTY TO THE BUYER, THERE ARE WARRANTIES CALLED IMPLIED WARRANTIES. THEY ARE IMPOSED BY LAW IN EVERY SALE OF GOODS OR SALES CONTRACT TO ENSURE THAT THE GOODS ARE OF MERCHANTABLE QUALITY--THAT THEY ARE FIT FOR THE NORMAL PURPOSE FOR WHICH THE GOODS ARE MANUFACTURED.

The only limitations to the implied warranties are that:

- (a) the seller must be a merchant in the type of goods that he warrants (If the seller is not a merchant and does not ordinarily sell the goods in question, but does on occasion sell goods for a particular purpose, then the individual seller is subject to the implied warranty of fitness for a particular purpose;
 - (b) the merchant may disclaim any such warranty, which means that when he sells his goods, the buyer would have not remedy for breach of an implied warranty if the goods proved to be defective.
- (21) Susan buys a red coat from a large department store, and, the first time she wears it, it gets wet and the red coloring runs on her skirt.

Should there be an implied warranty with the coat that the color would not run the first time it gets wet?

Hint: Unless the seller disclaimed all warranties, the defect in the coat would be a breach of the implied warranty of merchantability. The merchant would have to replace the damaged coat and skirt.

- (21) Susan is walking in the rain the next day with her second new coat. Although it was not a raincoat, the salesman had said that it was waterproof. This coat's color does not run, but, after walking a few blocks, Susan is soaking wet. The coat obviously was not waterproof.

Was there a breach of the manufacturer's implied warranty of merchantability?

Hint: Since the coat was not a raincoat, there would be no breach of the implied warranty of merchantability because the manufacturer did not intend that the coat be waterproof. But, the salesman had stated that it was waterproof. He had made an express warranty, and when the coat in fact proved not to be waterproof, there was a breach of that express warranty and the seller would have to replace the coat.

THE LAW WILL GIVE EFFECT TO THE WARRANTIES IF THE GOODS PURCHASED ARE USED ONLY FOR THE PURPOSE FOR WHICH THEY WERE SOLD, i.e., THEY MUST BE USED IN THE MANNER FOR WHICH THEY WERE DESIGNED.

- (22) Shawn, a four-year-old boy, continually bounces and jumps on his parents' new box springs. After only two months, they break down and are no longer suitable for use as a bed.

Was there a breach of the implied warranty of merchantability?

Hint: Since the box springs are not intended to be used as a trampoline, there is no breach of the implied warranty and the seller need not replace or repair the bed.

- (23) Susan buys a watch from a door-to-door salesman, and on the back of the watch is engraved the word "waterproof." Not only did her coat fail to keep her dry, but her watch stopped because of the rain.

Was there a breach of an express warranty?

Hint: Since there is an inscription "waterproof" on the watch, there is an express warranty made by the manufacturer that the watch is waterproof. If Susan can find the salesman who sold her the watch, she can get her money back or have the watch replaced. If she cannot find the salesman, then Susan can get the manufacturer of the watch to repair or replace it.

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In an earlier hypothetical, we mentioned that some statements are construed as puffing. Puffing occurs when the seller makes statements to the buyer to induce him to buy his goods, but statements that the seller knows are not factually true. They are not warranties, since a reasonable man would know that the seller is merely touting his goods.

For example:

"This car is the best in the world."

"The goods are first class and you will never find any better."

Why do you think the law allows puffing?

Because warranties may impose serious obligations on a seller that he does not wish to assume, the law allows him to disclaim any warranty by including statements in the contract, or sale, known as disclaimer clauses. The absence of any express warranty statement will operate to disclaim any express warranty that the buyer may have believed existed. Generally, to exclude or modify the implied warranty of merchantability, the language in the disclaimer must include the word "merchantability," but if the disclaiming statement contains language that calls the buyer's attention to the exclusion of warranties, then the word "merchantability" need not be used. Unlike the implied warranty of merchantability, implied warranties of fitness for a particular purpose may be excluded by general language, but only if it is in writing and conspicuous.

Disclaimer clauses are often used in the sale of used or old goods since the seller does not wish to be held to any warranty for goods that he knows very little or nothing about. The seller of secondhand goods may

include language such as "with all faults" or "as is" to indicate that he is not warranting the merchandise that he is selling. Such disclaimers are sufficient to call the buyer's attention to the disclaimer of warranties.

E. AUTOMOBILE PURCHASE REQUIREMENTS

Should a used car dealer be allowed to sell a car with bald tires? What if he sells a car with no brakes? What is meant by the statement that a car is a "menace to the highway"? Are you really at the mercy of the used car dealer once you drive the car off his lot after buying it?

Since the early days of car sales, there has been the need to protect the buyers. Fortunately, certain laws now give the buyer some protection. Consider these rules in connection with that policy:

A DEALER MAY NOT SELL A USED MOTOR VEHICLE UNLESS IT IS EQUIPPED WITH PROPERLY WORKING BRAKES AND LIGHTS.

A DEALER MAY NOT SELL A USED MOTOR VEHICLE THAT IS A "MENACE TO THE HIGHWAY." HE ALSO MUST REASONABLY INSPECT IT BEFORE SELLING IT, AND IF HE FINDS DEFECTS, HE MUST EITHER REPAIR THEM OR WARN THE BUYER ABOUT THEM.

NO ONE MAY OPERATE OR SELL A MOTOR VEHICLE ON THE HIGHWAY IF ITS TIRES HAVE LESS THAN ONE-EIGHTH INCH TREAD REMAINING.

(24) When Ernie buys the Chevrolet from a used car lot, he signs a contract that disclaims all express or implied warranties. Three days after buying the car, the brakes fail and the car collides with another car. Both Ernie and the other driver are injured.

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Do you think the disclaimer clause affects the dealer's obligation?

What reasons would you give for making the seller reimburse Ernie for the cost of the car and pay for the injuries to Ernie and the other driver?

Do you believe a private party should be held to the same obligation? Why or why not?

Do you think there should be more rules to protect used car buyers?

Are you surprised by the fact that anyone who violates any of the three rules would also face criminal charges?

Now that you have completed the material on contracts, you should be able to resolve the following problems. When looking at the problems, remember that more than one rule may apply.

PROBLEM

Skip recently bought a used car from Harry, a used car dealer in San Francisco. The car was several years old so that Harry told Skip that he could not guarantee anything. He made out a contract with an express disclaimer clause, disclaiming all express or implied warranties. Skip paid \$400 for the car and drove it for eight days when the brakes failed. Skip took the car to California Brake Shop where he was told that a complete brake job would be required. He also was told that it was a miracle that he had not had an accident since the mechanic found that the brake system had bad leaks. The cost of the repair job was \$120 and the new brakes were guaranteed for 20,000 miles.

Three months later, the brakes began to leak. Skip took the car to another mechanic who explained that the brake lines had not been replaced with the last job. Skip decided to take the car back to California Brake Shop. They refused to do anything under the warranty and told Skip, "We guarantee the brake linings but not the brake lines."

Can you identify the contracts, warranties and disclaimers involved?

If you were a judge, would you require the brake company to repair the brake lines? What law or laws would you rely upon for your answer?

Suppose Skip also decided that he wanted Harry to pay for the \$120 brake job. Would you rule in favor of Harry or Skip? Explain your answer.

If Skip turned eighteen the day the brakes went out, what would you recommend that he do about the contract for the car?

What do you think about the argument: "We only guarantee the brake linings, not the brake lines"?

PROBLEM

Frank buys a car from Harry that has a guaranty stating: "Seller agrees to repair or replace any of the moving parts that fail under normal use and care during a one-year period from the date of this sale." Harry does not know that Frank is a very poor driver and has ruined two cars within the past eighteen months.

Within three weeks after he buys the car, Frank receives two citations for driving too fast and one for an unsafe start. He is fond of accelerating rapidly from stop signs, even though he knows it is very hard on the clutch and transmission. Within a month, both clutch and transmission are badly worn and need repairs. Frank takes the car back to Harry's for repair under the warranty.

Harry refuses to repair it under the warranty because he knows how the car got into that condition. Frank insists that Harry should do the repairs for free, and, when Harry refuses to do it, Frank files a suit in court.

Assume you are the judge hearing the case and must interpret the warranty in favor of either Harry or Frank. What would your decision be on the following:

Did Harry limit repairs from the warranty that were caused by poor driving?

How does Frank's conduct affect the warranty?

Should Harry have known or expected that Frank would drive the car the way he did? Should he have made the warranty with this knowledge?

PROBLEM

Karen, a minor, wants to buy a new hair dryer. After she decides which one she wants, the salesman tells her that with the particular model she chose, there are not express warranties--that if something goes wrong with it, the store would not repair it.

After she has used it for a few weeks, it fails to work and Karen returns it to the store. She tells the salesman that she wants another model or her money back. He refuses since he had told her at the time of the sale that there were no express warranties.

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Do you think that Karen should argue that, although there were no express warranties, nevertheless, with the sale of the hair dryer, there were implied warranties that the dryer would work and, therefore, she should get another model or her money back?

Was there a contract and does it matter whether or not there was a contract?

Does it matter that Karen is a minor?

