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An introduction to Car Dealer Fraud and Lemon Law: Controlling Law, Available Remedies, Assignee Liability, Victim Profiles, Common Dealer Scams, and Negotiation Strategies

Presentation Goals:

- Practical Advice: preparation, financing, service contracts, insurances, accessories, repairs/maintenance
- Recognizing Valid Cases: see common scams, and when in doubt, assume the case is valid
- Basic Law for Newcomers to Car Dealer Fraud and Lemon Law

What is Car Dealer Fraud?

- Unfair Business Practices in the Sale, Lease, Financing, and/or Repossession of New or Used Automobiles used primarily for Personal, Family, or Household Purposes
- Not only dealers. Not only fraud.

What is Lemon Law?

- “Lemon Law” is the nickname for Warranty Enforcement Statutes for Warranties of Goods (i.e. automobiles) Bought or Leased Primarily for Personal, Family, or Household Purposes.
- California’s Song-Beverly Consumer Warranty Act provides remedies for a manufacturer’s failure to conform a vehicle to warranty within a reasonable number of attempts.

Client Profiles (v. Victim Profiles?)

- Numbers game for the dealer and manufacturer
- Low to Middle Income
- Spanish Speakers (other foreign languages?)
- unaccompanied women
- Young adults
- Military personnel

Dealer Profiles

- New Car Dealers

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- Tend to be better coached and better represented.
- Have insurance policies that pay for their defense.
- Used Car Dealers
 - Reimbursement is more difficult.
 - Tend to close up shop, especially in the most egregious cases.
 - Often reopen at a new location, with a new license, and same staff.
- Sales Staff: Very high turnover

Most Commonly Applicable Statutes:

- Car Dealer Fraud
 - Consumer Legal Remedies Act (CC §§1750 et. seq),
 - Unfair Competition Law (B&PC §17200),
 - Rees-Levering Motor Vehicle Sales and Finance Act (CC §2983.5) or Vehicle Leasing Act (CC §2986.10)
 - Others
 - Fraud,
 - CC §1632 (foreign language contracts)
 - VC §§11700 et. seq. (dealer obligations)
 - Buyers Guide
 - Truth In Lending Act,
 - Failure of Consideration
 - Rescission: Duress (including unlawful confinement), Undue Influence
 - Repossessions: B&PC §§7500 et. seq.
- Lemon Law
 - Song-Beverly Consumer Warranty Act (CC §§1790—1795)
 - Numerous causes of action for “Consumer Goods” (not just cars):
 - §1793.2 (replace or repurchase provisions),
 - §1793.22 (presumption and arbitration)
 - Implied Warranties
 - Service Contracts
 - Magnuson-Moss Consumer Warranty Act

Fee Shifting

- Statutes
 - CLRA: a) prevailing plaintiff, or b) prevailing defendant if action brought in bad faith.
 - UCL: contract, statute, or equity.

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- Rees-Levering: prevailing party
- Song-Beverly: prevailing buyer
- Contract plus CC §1717

Finance Companies

- Assignment v. Personal Loan
- Assignee Liability (§2983.5)
- FTC Holder Rule (16 CFR §433)
- Dealer Bond

Common Scams/Strategies

- Car Dealer Fraud:
 - Failure to pay off prior liens, trade-ins, or transfer title
 - Spot Delivery/Yo-yo Financing (play off of pride and ego)
 - AS-IS as defense to Fraud/Deceptive Practices
 - Undisclosed damages
 - Packing: insurances, service contract, maintenance contract, theft prevention devices, alarm warranties
- Lemon Law:
 - Unable to duplicate
 - “Normal operation”
 - Failure to document
 - Maintenance failure or improper

Consumer Negotiation Strategies

- Research on car, including trade-in vehicle
- Pre-approval for financing
- Shop online for service contracts, GAP Insurance, theft deterrent systems, warranty on alarm, etching, paint protection
- Beware of accessories offered by the dealer, especially wheels
- Used vehicles: mechanic inspection, Contract Cancellation Option
- Set purchase price before discussing monthly payments
- Downey and South Gate are hotbeds of dealer fraud.