

Radio Glencoe Podcast

It's the Law

Episode 2: Consumer Law and Contracts

ANNOUNCER

Welcome to Glencoe's *Business and Personal Law* podcast series. You're listening to *It's The Law*.

SETH

Hello, and welcome to *It's The Law*. I'm Seth Abrams. I'm sure most of you are familiar with the expression, "Buyer Beware." Unfortunately, when we purchase goods or services, we don't always get what we paid for. *Fortunately*, there are laws, regulations and different kinds of contracts that protect us as consumers – but we have to know what they are. To help us better understand our rights as consumers I'm joined today by consumer rights advocate Julia Hutchinson, who will be taking your calls and e-mails. Julia thanks for being here.

JULIA

Thank you for inviting me.

SETH

What do you think is the single most important thing for consumers to keep in mind when purchasing goods or services?

JULIA

I would say that the single most important thing to keep in mind is that we as consumers have to educate ourselves about the goods or services we are purchasing – *before* we purchase them. We need to do our homework. This means knowing as much as possible about the actual product and the manufacturer or what the service involves. It means checking out the reputation of the seller, or the store. It means doing comparison pricing. Making informed decisions about what we buy can avoid all kinds of problems down the road.

SETH

There *are* certain obligations buyers have even *after* making a purchase, correct?

JULIA

Absolutely. If the product you purchase comes with an owner's manual, you are obligated to read it and know how to operate the product properly. If you use it improperly, it's not the fault of the seller or the manufacturer – it's *your* fault. Failing to use a product as directed will also, in most cases, nullify the contract or the warranty and prevent you from recovering any losses.

SETH

We have a call from Amanda in Gainesville, Florida. Amanda, you have a question for Julia?

AMANDA

Hi Julia. I keep hearing the term "good faith" when it comes to certain business transactions and practices, but I'm confused, because it seems like one person's idea of "good faith" is different from somebody else's. Can you please clarify this for me?

JULIA

Good question, Amanda. "Good faith" implies that both parties entering into a sales contract must treat each other fairly, but, as you pointed out, people sometimes have very different ideas of what's fair and what isn't. Let me give you an example. If I own a chicken farm, and I sell 25 hens to an egg farmer down the road, that farmer is buying my hens with a reasonable expectation that they will lay eggs. He bought my hens in "good faith." If they don't lay eggs, then that farmer has every right to return the hens to me and ask for his money back.

AMANDA

But it's not your fault the chickens didn't lay eggs.

JULIA

But it *is* my fault essentially. First of all, I should be expected to know if the hens lay eggs and not sell them if they don't. But let's assume I didn't know – I'm still responsible for remedying the situation because my neighbor and I entered into a "good faith" agreement. Of all three parties, me, the hens in question, and the farmer who bought the hens, the farmer who bought the hens is the one who is completely without fault and the one who is protected by law because he bought the hens in "good faith."

SETH

Okay I want to read an e-mail now from Li in Seattle. Li writes: "I recently bought a used iPod from a kid at school. It worked for one day and then crashed. It still doesn't work. When I told him it wasn't working, and that I wanted my money back – he said I must have damaged it and he won't take it back and return my money. Am I just out 100 dollars or is there something I can do?"

JULIA

Well, because the purchase amount was less than 500 dollars, you essentially do have a sales contract. With purchases over 500 dollars, a contract must, with a few exceptions, be in writing to be enforceable. But, if a purchase is 500 dollars or less, an oral, or verbal sales contract is enforceable. If he told you the iPod worked, and it didn't, and as long as you made him aware of this in a timely manner –

LI

– I called and e-mailed him the same day.

JULIA

Well then, you *do* have a contract. Did you save all your e-mails?

LI

I did.

JULIA

Good. Because, unfortunately, you may need to go to small claims court to remedy this situation, and you'll want those e-mails as proof that you notified him that the iPod didn't work. So Li, the good news is that you do have rights here, and you are indeed, *in the right*. But the bad news is that you may have to go through some hassle to have those rights enforced.

SETH

Hope you can work it out Li. We'll be right back after a quick break. Keep listening.

ANNOUNCER

You're listening to Glencoe's *Business and Personal Law* podcast series.

SETH

Hello we're back with consumer rights advocate Julia Hutchinson, and we have a call from Dante in Riverside, California. Dante, go ahead.

DANTE

Hi. I was at an auto show on Sunday and I bought a stereo for my truck. When I tried to install it, it didn't fit. And I found another one I like better on-line that I want to buy. My uncle says I'm stuck with it because the auto show is over, but my dad says that because the guys who sold me the stereo also have a store in town, and because this is only Tuesday, something called the "cooling off rule" applies if I return it to the store right away. Who's right? And what is the "cooling off rule" anyway?

JULIA

Your father is right. The "cooling off rule" applies to any transaction made someplace other than the seller's normal place of business, like a flea market, or a fair, or in this case, an auto show. The rule, which applies to purchases of 25 dollars or more, gives you three business days to cancel the transaction. But they should have told you that when you made the purchase. So assuming the stereo is in the same condition it was in when you bought it, just take it to the store, along with your receipt, and they are, by law, required to refund your money.

SETH

I have a question about something that is slowly driving me, and millions of others I'm sure, completely crazy – telemarketers. They are relentless!

JULIA

Well the first thing you can do is to get on the National Do Not Call Registry. You can register for it online and once you're on it, most telemarketers can't call you for five years. There is also a thing called the "Telemarketers Sales Rule" which protects you from abusive people trying to sell you goods and services over the telephone. In

fact it protects you from being called at all if you have asked *not* to be called. Telemarketers are also, by law, obliged to tell you they're making a sales call, and the name of the company they represent, before they launch into their sales pitch.

SETH

Okay, we have time for one last e-mail from Sebastian in Stowe, Vermont. Sebastian writes: "I ordered some CDs online over a month ago and they still haven't arrived. I called the customer service line and they said it could take up to 60 days. Now I don't even want them anymore. Can I cancel the order?"

JULIA

Well the answer is a resounding, *maybe*. If, when placing the order, the company stated that it could take up to 60 days for them to deliver the CDs, then you agreed to that when you made the purchase – whether you were aware of it or not. If, however, there is no delivery time stated, then the FTC – the Federal Trade Commission – requires that any goods ordered via the Internet, telephone, mail or fax – be sent within 30 days from the time the order is placed. If the goods are not sent within 30 days, then the consumer has the right to cancel the order and receive a refund. My hunch though is that in Sebastian's case, the 60-day delivery was hidden in the fine print and he just wasn't aware of it. So the lesson here is *always* read the fine print!

SETH

Buyer beware! That's the theme we started with on today's show, and a great place to end. Julia Hutchinson, thank you for your time today and for all this great information.

JULIA

Pleasure to be here. But I'd like to add one last thought if I may, Seth. Consumers need to know that there are laws and rules in place to protect them, and agencies that exist to help. So if you feel you're being cheated, start by going to the company first and voicing your complaint. Very often you can find a remedy there if you go to the right person or the right department. If that doesn't work, make a formal complaint with your local Better Business Bureau, or BBB. The BBB can't force businesses to do the right thing, but at least other consumers might benefit from your bad experience in the future. Unfortunately, often the only remedy is going to court, but that's a whole other show. I can't stress this enough: do your homework first! *Before* you buy anything! An informed consumer is, more often than not, a happy and satisfied consumer.

SETH

Great advice. Thank you again Julia. And as always, thank you for listening. Remember to tune in again to *It's The Law!*

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