

Additional Exercises

Exercise 31-1¹

Revised Car Purchase Agreement

Revise your draft of the Car Purchase Agreement (Exercise 5-1) based on the material that you have covered so far this semester. In addition, include appropriate provisions to reflect the following changes to the transaction's terms:

1. The Buyer has decided that it may want to do a bit of due diligence and not rely solely on the Seller's representations and warranties. The Seller has agreed that the Buyer has the right not to close if a mechanic of the Buyer's choice determines that the car is not in the condition represented. The Buyer has agreed to pay for the inspection.

You may create whatever facts you want to draft these business terms. Think about how the inspection would actually take place. What would be the sequence of events? For example, how does the car get to the mechanic? How will the parties know what the mechanic concluded? Draft these provisions from the Buyer's perspective, but in a manner that would be reasonably acceptable to the other side.

In deciding how to draft the provisions about the inspection, also think about the contract's organization. Would it be more helpful to the reader to separate the provisions by contract concept or to put all the related provisions together or do some combination?

2. The Seller is insisting on a 10% down payment to be paid concurrently with the execution and delivery of the parties' agreement. She also wants an additional 10% down payment after completion of the mechanic's inspection.
3. The car's Vehicle Identification Number is 23456.
4. The Buyer has been looking for a job as an associate at a law firm and has received an offer from Hie Power & Stress LLP. He wants to be able to call off the closing if he does not receive the promised \$5,000 sign-on bonus. To induce the Seller to accept this proposal, the Buyer agreed that if the Buyer did not close because he did not receive his sign-on bonus, the Seller could keep the first down payment. The Seller would also like some assurance in the contract that the Buyer has received an offer from Hie Power.

¹ This exercise is based on an exercise that Alan Shaw created.

5. The Seller has agreed to deliver the car, the keys, and any manuals to the Buyer's home on the Closing Date.
6. The Seller has told the Buyer that the car is still under the manufacturer's warranty and that she has its documentation. The Buyer was delighted to learn this but wants to know what the warranty provides. He is not a trusting fellow and is unwilling to rely on the Seller's assessment of the quality of the manufacturer's warranty. If the warranty is not reasonably acceptable, he does not want to purchase the car. Without stating the details of the warranty, provide the Buyer with the comfort he has asked for.
7. If either party makes a misrepresentation or breaches a warranty or covenant, the contract should terminate.
8. When working through the endgame provisions, *follow the cash* and provide for all appropriate contingencies as to the down payments—both if the transaction closes and if it does not close. You must separately analyze how the contract will deal with each down payment in each situation. If the facts do not state which party is entitled to one or both of the down payments under a particular circumstance, think through what makes sense from the Buyer's business perspective and draft accordingly. Write a memo no longer than one page explaining which down payments went to which party and why.
9. The closing will take place at 1:00 p.m. at the office of the Buyer's lawyers: Workhard & Succeed LLP. Its address is 278 Appletree Lane, Glencoe, Illinois.

Assume that the contract has not yet been executed. Each of these provisions, therefore, is part of the original contract and does not amend an existing agreement. In addition, as in Exercise 5-1, assume that no statutes apply to this transaction.