

Lemon Laws: Potentially a Sour Future for Manufacturers of Autonomous Vehicles

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Lemon laws have existed for several decades to protect consumers from permanently defected vehicles. Though they may vary state to state, lemon laws generally require manufacturers to replace or reimburse consumers for vehicles that have either undergone three to four unsuccessful repairs within two to four years or were out of use due to repairs for more than 30 days within the shorter of one year or warranty. Additionally, courts have generally required that the defect under repair is the same defect each time. In other words, repairs for a transmission, power steering, brakes, and suspension cannot be grouped together to satisfy the limit.

New technology often brings new challenges to the legal arena, and autonomous vehicles are taking center stage. Autonomous vehicles present a unique scenario regarding the applicability of lemon laws. Unlike hardware, software updates are frequent, and even major software updates can occur several times a year. Current semi-autonomous vehicles, like Tesla's, have received updates that have significantly affected vehicle functionality. When first released, Tesla vehicles were traditional, albeit all-electric, cars, but after an over-the-air update (OTA), Tesla has given certain vehicle models the ability to utilize an "autopilot" feature. The autopilot feature allows the driver to release control of the vehicle in certain conditions, and the vehicle can, among other things, switch lanes, brake, and change speeds. Consumer demand and a shifting automotive landscape indicate that autonomous vehicle technology will continue to gain traction.

It would not be surprising if the lemon laws of the future hold manufacturers of semi-autonomous and autonomous vehicles to more stringent standards.

Automotive repair has traditionally involved taking a vehicle to a mechanic for issues with "hardware." Yet, unsurprisingly, the laws have not anticipated the impact software has upon the functionality of such vehicles. Say, for example, a Tesla or other similarly-equipped vehicle with similar semi-autonomous or autonomous features, has a consistent and specific software bug that requires more than four updates to fix in over a two-year period. There is a line-drawing problem, which forces the industry and legislators to grapple with several questions. What constitutes a repair? Is the vehicle subject to replacement or reimbursement from the manufacturer? If the software bugs exist on the entire platform of vehicles, are all of the vehicles subject to recall, or is the public expected to wait for a software fix to come in an OTA update?

Recently, in late June, Tesla seemed to answer such a question. The company settled a claim with an individual over issues he had with his newly purchased Model X SUV. At the beginning of the Model X's rollout, it was plagued with several issues involving its falcon-winged doors and auto-parking software features. Given his frustration, the individual filed a lemon law claim against Tesla, after which Tesla agreed to repurchase his \$160,000 vehicle. Yet, around the same time the company settled the lemon law claims, it rolled out an OTA software update that fixed the issues. So, it might be the case that companies are not expecting consumers to wait for an OTA software update if they are willing to repurchase vehicles, even with a remedy via update in the works.

While the recently-settled Tesla claim involved luxury features, the company has been subject to investigations involving at least two fatalities in connection with its autopilot feature. These circumstances are clearly far more troubling, and they help illustrate the importance of ensuring that autonomous vehicles are performing safely.

Autonomous and semi-autonomous vehicle manufactures are taking control away from drivers, and it is currently unclear what role lemon laws should play in the presence of such circumstances. It may be necessary for legislatures to revisit existing lemon laws to include non-traditional repairs such as OTA software updates to incentivize better care on the part of manufacturers. Ultimately, it would not be surprising if the lemon laws of the future hold manufacturers of semi-autonomous and autonomous vehicles to more stringent standards.

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