



Lemon Laws and Aviation

By Paul V. Herbers

We are all familiar with lemon laws for automobiles – If you are unlucky enough to get a lemon there are laws to help you get your money back from the seller. But what about aviation products? What if you are one of the unlucky few who buys a lemon of an airplane, an engine, or some other component? Do you have a way to get your money back?

The answer is that there are no aviation-specific lemon laws with any general application to these situations. Your purchase agreement will control, and it will dictate your rights. For this reason, it is important that you be aware of the contract provisions when you buy any aviation-related products, whether they are new products from the manufacturer or a dealer, or even if they are used products.

Your rights are set out in the Warranty provisions of the purchase agreement. And these warranty rights are usually very limited. You may have heard of warranties of airworthiness, warranties of merchantability, or warranties for a particular purpose. The purchase agreement often has a disclaimer so that none of these warranties apply.

Frequently, if there is some defect in any part of an aircraft, an engine or other component, your only remedy may be repair or replacement of that defective item. Even a serious defect that impairs airworthiness often will not justify a return of the product with a full refund.

There are some exceptions to this general rule. For instance, if the manufacturer or seller is unable to correct the defect after reasonable effort, or perhaps after several efforts, then you may be entitled to return the product for a refund. In some states, consumer protection laws may provide some benefits as well, but this is uncommon, and those laws typically only benefit individual purchasers, not companies. Some states will allow recovery if the seller committed fraud in the sale, but not all.

These rules can cause unpleasant surprises if there is a casualty loss. Take for example a defective component in your landing gear that collapses and results in serious airframe and engine damage. Your insurance may pay for the repairs, but your aircraft will have a loss of market value which could be a significant percentage of the full value, even after the repairs. This is called diminution of value. That part of a loss (along with your deductible) is often uninsured, and you will feel that loss on the day you sell your airplane.

You may be prevented from recovering that loss from the seller. The purchase agreement will typically disclaim product liability or negligent damage, and it will leave you with only the warranty for “repair or replacement” of the defective part. That is not much comfort.

There is one way to avoid this, although it only arises in instances of serious or total losses. That is the rule that, if a warranty “fails of its essential purpose,” then the limitations will not apply. For example, there is a reported case of an individual who bought a new pickup truck. The truck spontaneously caught fire due to a defective solenoid and was destroyed.

The manufacturer offered to replace only the solenoid, and the court said, “Not so fast!” That warranty was essentially worthless in that situation, and the court ignored the limitation. The purchaser got a new truck.

That story had a happy ending for the purchaser, although it took a lawsuit to get that result. But understand that this was a rare case, and much more frequently, the “repair or replace” warranty will be the only remedy the purchaser can hope to recover. So be sure to understand your warranty rights before you sign the purchase agreement.