

Illustration by Keith Betterley

The Art Of The Buy

Be a Prudent Purchaser

by Lawrence Savell

One of the most fascinating (and frustrating to those learning it) aspects of the English language is the way the same word can have multiple meanings, depending upon the context. Take, for example, the verb “buy.” In its past tense form (such as “he bought it”), in addition to its standard commercial meaning, it can also mean that the person either fell for a scam, or, worse, that he met his maker.

Without conducting extensive linguistic research, it nevertheless is probably fair to speculate that somewhere underlying these variations is the recognition that purchases can have their pitfalls and risks, even if they are generally limited to those of the pocketbook and the ego.

This article will examine two of the major (and legal) ways that one can obtain an old car: a so-called “private treaty sale” and an auction. The goal is to increase your familiarity with some of the legal and other issues involved in them, so that you can more effectively protect yourself and avoid disappointment.

Bear in mind that the particular applicable laws and rules may well vary from jurisdiction to jurisdiction.

Let’s start with some basic definitions. A private treaty sale is a sale of property at a price agreed on by the seller and buyer. An auction is the (usually) public sale of something to the highest bidder.

There are some things that a buyer should keep in mind regardless of which method is being pursued.

A prospective purchaser should

attempt to verify (or at least obtain from the seller a written representation regarding) the ownership of a vehicle before buying it—i.e., does the seller truly have the ownership right (or the permission of the owner) necessary to sell it? Check for outstanding liens and damage declarations. This is particularly crucial with regard to transactions in those states where the law tends to favor the aggrieved original owner over a subsequent “bona fide purchaser” who buys without knowledge of the fact that the seller did not have the requisite ownership rights.

A prospective purchaser should also verify the vehicle’s authenticity. This relates to the vehicle truly being what it is described to be, in terms of origin, condition, etc. In this regard, in some states, the seller’s opinion concerning authenticity may create an express warranty if the seller is a seller (such as a dealer or auction house) which often handles such property. As the applicable statute of limitations for a lawsuit involving breach of warranty for authenticity may be short, ideally a prospective buyer should consider obtaining an appraisal (to determine dollar value) and an authentication prior to making the purchase. Unfortunately, auction houses generally do not permit independent or off-site inspections and test drives; however, you should be able to inspect the vehicle on site. At the very least, a purchaser should obtain an examination and authentication by an independent expert shortly after purchase, so that, in the event of an au-

thenticator’s conclusion that disputes the warranties made by the seller, the purchaser is not time-barred from bringing a lawsuit, if necessary, to protect his or her interests.

Generally in the auction context (and possibly also in the private sale context, depending on the terms), items are sold “as is,” meaning that the vehicle is sold with no guarantees against defects or faults. It is therefore in your best interest to inspect whatever you wish to buy to your satisfaction before you bid on it. Exhibitions are the best time to conduct a thorough inspection of the property.

Focusing on the private treaty context, this method may afford certain benefits to the buyer. It may allow the buyer greater latitude in negotiating payment terms and timing, if that is important. In some circumstances, the buyer may get a better price in a private treaty sale, as at auction the price for a particularly desirable or unique car may soar, whereas in the case of sale by private treaty it can be depressed, the prospective buyer pushing it down.

If you pursue a private treaty purchase, try to get as much information about the vehicle from the seller in writing as you can. Such representations, if not effectively disclaimed, may help support your claim if the vehicle proves later to be something short of that description.

There may be an advantage to the auction context if the auction company acts like an escrow agent. If so, it would act as a legal third party between you as the buyer and the seller

of the vehicle. Its fees may well include mediating any dispute that may arise from the sale.

During an auction, keep an eye out for so-called “shills” —bidders who are actually bidding on behalf of the seller to drive up the price. If you suspect a shill is at work, complain to the auction house.

Auction houses (and other selling businesses) typically must have a local consumer affairs license, which should be prominently displayed at the location. The absence of one should be a cause for concern. While a license is no guarantee of the business practices of the dealer or auction house, it will help the consumer affairs office assist you with any complaints you may have. Check the business’ complaint history and whether the license is current, before making your purchase. Also check the house’s record at the local office of the Better Business Bureau, and other sources.

In terms of the actual bidding, it is prudent before beginning the process of bidding to set for yourself mentally a price limit for the items that you intend to bid on. The common and so-called “winner’s curse” phenomenon is where the winning bidder questions why he or she was willing to pay more than the other bidders for a particular vehicle. This anxiety worsens if you have exceeded your own personal comfort level with your winning bid. Bids are irrevocable, and by bidding you are entering into a legally binding transaction. Thus, sensible consideration is advisable.


If something is going wrong, speak up immediately. If you have erroneously bid on the wrong item, let the auctioneer know as soon as you realize it: the vehicle will most likely be auctioned again immediately. If you wait until the end of the auction, it may well be too late.

Also bear in mind in setting your price limit the recognition that often a “buyer’s premium”—an additional amount the successful bidder has to pay—will be added to the hammer price, and that all applicable taxes will be added to the total sale price. This is the total amount

that you will pay. At lower levels, these fees may be quite small; however, they do begin to add up as the hammer price increases.

It may be possible to participate in an auction without being physically present, through the advance submission of an “absentee bid.” However, not being present probably means you will not have the opportunity to conduct the recommended pre-bidding inspection. And it is not unheard of for an auction house to mess up an absentee bid, either bidding too little or too much, or on the wrong item, etc. Note that absentee bid forms typically include language in which the house notes that it executes such bids as a courtesy and convenience to its clients, and disclaims responsibility for inadvertently failing to execute bids and/or for errors relating to the execution of bids, including computer-related errors. Although it is not a certainty that a particular disclaimer will be controlling under the circumstances, the reality is that your redress for an error committed by the house in your absence is far from a sure thing. There are some purchasers who, in light of all these concerns, avoid absentee bidding altogether.

When dealing with an auction house or other selling business, make sure you obtain and familiarize yourself with its “terms and conditions” (often contained within a printed auction catalogue, for example). Understand what limitations are being imposed upon your rights, and guide your actions and decisions accordingly.

Regardless of the method of purchase, the doctrine of “caveat emptor” should always be kept in mind. If a deal sounds too good to be true, it probably is. 

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