

HEAD OFFICE

4 Carnavon Street
Private Mail Bag
GPO, Suva
Phone - General Office: 3300792, 3310183
Chief Executive Officer: 3305864
Fax: 3300115 | Email: complaints@consumersfiji.org

LAUTOKA/West

Suite 4 Popular Building
Vidilo Street
PO Box 5396, Lautoka
Phone: 6664987 | Fax: 6652846
Email: consumerlwk@connect.com.fj

LABASA/North

Level 1, Lot 41 Raza Properties Ltd
Nasekula Road
PO Box 64, Labasa
Phone: 8812559 | Fax: 8812559
Email: colbs@connect.com.fj

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Feature Article

“As is where is basis”

Often consumers come across advertisements on items being sold under ‘as is where is’ basis. But have you ever wondered what ‘as is where is’ means? Does this give a red signal when you come across an item being sold under this term?

Well, consumers who have purchased products under ‘as is where is’, should be well aware that buying without much thought process can result in a loss. Especially, if you have bought electronics, mobile products, furniture and second hand vehicles - remember, these items do not come cheap.

The reality is that sometimes consumers unknowingly end up buying unworkable items under this arrangement, wasting their money.

‘As is where is’ in simple terms mean that the seller is selling, and the buyer is buying an item in **whatever condition it presently exists**, and that the **buyer is accepting the item "with all faults"**, whether or not immediately apparent. The "where-is" part means it is the buyer's responsibility to get the item from the location where it is at the time of sale to the location where the buyer wants it to be.

As-is-where-is is pretty much “*getting what you see*”. It may or may not work. It may or may not have hidden defects. Under “as is where is”, sellers should make the buyer aware of any possible defects in the item, while on the other hand the buyer should take the time to examine the item or obtain expert advice before deciding to buy.

Any item sold under “as is where basis is” misleads consumers about their statutory or other rights, just like terms such as ‘Sold as Seen’ or ‘No Refund’.

To protect consumers, the Fiji Commerce Commission in formulating the Self-Regulating Guidelines for the sale of second hand motor vehicle, **makes it the sole responsibility of the trader to disclose the relevant information** as per the second hand motor vehicle checklist to the customer who is purchasing a vehicle under “*as is where is basis*”, such as:

- Any defects in the vehicle whether mechanical or structural in writing
- The vehicle’s previous accident or insurance write of history
- Any discrepancies in the mileage or service history of the vehicle
- Vehicle owner history record for all pre-registered vehicles in Fiji

- Whether and if the motor vehicle is certified by LTA for roadworthiness ('fitness test')
- Reserved price/ sale price
- The purpose for which the vehicle was used in the past, for instance, business, family or any other
- Any other important records known to the trader to be available with LTA or police or insurance company about the vehicle.

All the relevant information disclosed during the sale of a motor vehicle on "as is where is" must **be documented and signed by the trader and consumer and the original must be given to the consumer.**

The Consumer Council of Fiji has come across such cases where consumers spent thousands of dollars for vehicles purchased under 'as is where is' basis with the hope that the vehicles are in a running condition.

Case Study

Owning a vehicle is a proud moment for many but for Samuel, it turned out to be a disaster. Samuel purchased a second hand vehicle on 'as is where is' basis for \$26,300. The vehicle transfer took place on the same day of purchase.

An excited Samuel bought the vehicle without asking important questions regarding the vehicle.

The next day, he decided to take the vehicle to LTA for 'passing' and was informed that the vehicle failed the first test. The LTA vehicle test result sheets indicated that there was a Chassis breakdown on the steering wheel mounting pivot and that the Chassis number area had been tampered with.

Samuel then lodged his complaint with the Council. Little could be done as Samuel was aware that the vehicle was being sold under 'as is where is'.

The trader, however, in this case did not act responsibly as he failed to disclose necessary information regarding the state of the vehicle. Now with the Self-Regulating Guideline for the sale of second hand motor vehicle in place, consumers like Samuel will get redress from such traders.