

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

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COUNCIL OF LEGAL EDUCATION
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LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1986

HIRE-PURCHASE AND SALE OF GOODS

(Monday, May 26, 1986)

Instructions to Students

- a) Time: 3½ hours.
- b) This paper is in two parts and students are required to satisfy the examiners in both parts of the paper.
- c) Answer FIVE questions, TWO of which must be from Part A and TWO from Part B.
- d) In answering any question a student may reply by reference to the Law of any Commonwealth Caribbean territory, but must state at the beginning of the answer the name of the relevant territory.
- e) It is unnecessary to transcribe the questions you attempt.

P A R T A
HIRE-PURCHASE

QUESTION 1

Vivian, wishing to raise some money, approached Walters for a loan of \$5,500 and offered as collateral security, his motor cycle valued at \$8,000.

They signed a document in which Vivian acknowledged that Walters was the owner of Vivian's motor cycle which Walters let to Vivian on the payment by Vivian of \$500, on the execution of the agreement and on his further paying \$200 a month for 25 months. The agreement further gave Walters a licence to seize the motor cycle if any instalment was in arrear.

The only cash that changed hands was a cheque for \$500 from Walters to Vivian.

Vivian thereafter ran into financial difficulties and Exeter began bankruptcy proceedings. Before Exeter was appointed Receiver, however, Walters seized the motor cycle for arrears of instalments.

Exeter, on being appointed Receiver, claimed that the motor cycle formed part of Vivian's estate since the transaction between Vivian and Walters was in fact a bill of sale, which, being unregistered, was void.

Advise on these facts.

QUESTION 2

Brewster agreed to let and Daniel agreed to take a piano under a directly financed hire-purchase agreement. The hire-purchase price was \$7,700 inclusive of \$500 transportation charges. The price is payable by a deposit of \$500 and twenty-four (24) monthly instalments of \$300 each, due and payable on the last day of every month, the first payment falling due on January 31, 1986. There is a clause conferring on Daniel the right of termination at any time before repayment of the loan.

The agreement conforms in all respects with the Hire-Purchase legislation.

Advise Brewster as to his rights and/or liabilities in each of the following situations:

- (a) Where on April 10, 1986, he hears from a third party that Daniel has travelled to Mexico in order to witness the 'World Cup' games and is not expected back before December 1986. Daniel is owing the instalment that was due on March 31, 1986.
- (b) Where Daniel, having paid the deposit and six instalments, exercises his right of termination.
- (c) Where Daniel, having paid the deposit and six instalments, is in arrears of payment for one month, and Brewster hears that Daniel is on the verge of bankruptcy.

18,000
- 500

18,500

18 00
500

23 00

QUESTION 3

Eezi Credit Ltd. is in the business of supplying goods on credit terms to consumers. Mr. Denny the manager of Eezi Credit consults you with respect to the number of delinquent debtors who have been refusing to pay their instalments on goods taken on credit. He informs you that he is contemplating sending two of the company's security guards to recover possession of goods from the above delinquent debtors. He seeks your advice in the matter.

Advise Mr. Denny stating what particulars you would require from him concerning the above matter and the reasons for requiring such particulars.

QUESTION 4

Miss Appleby entered into a transaction with Credit Suppliers Ltd. for the supply of a second-hand colour television set. She signed an agreement which provided inter alia:

the price of the set is \$2,400;

the set will be turned over to the hirer with a view to its eventual purchase;

the hirer will become owner of the set when two-thirds of the price is paid;

the agreement will continue in force until the entire purchase price is paid off;

the hirer will make an initial deposit of \$400 and thereafter make monthly payments of \$100 until the purchase price is paid in full.

The hirer also signed an 'acknowledgment' that she has not made known to the owner expressly or by implication, the 'particular purpose for which the goods herein are required'.

When the set was delivered at Miss Appleby's home on Tuesday, the assistant of Credit Suppliers Ltd. switched it on and a picture appeared on the screen for viewing which appeared to be satisfactory. Miss Appleby then immediately signed a delivery receipt in which it is stated that the "hirer or person receiving on his/her behalf, acknowledges and confirms that he/she has examined the goods and they are in good order and condition and satisfactory in every respect". Miss Appleby has no technical knowledge of television sets.

After two trouble-free days of viewing, on turning on the television set, Miss Appleby discovers that the picture has disappeared from the screen although the sound is being received.

Miss Appleby makes a complaint to Mr. Brissan of Credit Suppliers Ltd. Mr. Brissan points to the absence of any 'guarantee' on the part of his company and the delivery receipt acknowledging that the set was in proper order when she received it.

- (a) Advise Miss Appleby of her rights and remedies.
- (b) What would your advice be if the circumstances were as follows:

Having signed the delivery receipt and taken delivery and without having used the set, Miss Appleby sold the set to John on Wednesday. When John turned on the set for the first time on Thursday to view his favourite programme, he discovered that there was no picture on the screen, although the sound was being received.

P A R T B
SALE OF GOODS

QUESTION 5

At a time when cement was in short supply, Jonathan, a building contractor, agreed to purchase 300 bags of cement from the cement factory of Ecks at \$15 per bag. On June 12, 1985, he paid the purchase price of \$4,500 in advance of delivery, which was to be made on June 15.

It was agreed that the cement would be delivered to the dock site where Jonathan was carrying out building works.

On June 15, only 200 bags were delivered to the site. Mr. Ecks excused the short delivery and explained that this was due to a strike by workmen at his factory who went on strike against the instructions of the certified union of which they were members. He promised that he would deliver the remaining 100 bags on the 18th, but Jonathan refused the whole amount. He alleges that the lack of the cement will cost him \$5,000 a day which he would have to pay to workmen who would thereby be rendered idle and if he had accepted the 200 bags the loss to him would be \$2,000 a day.

- (a) Advise Ecks.
- (b) What would your advice be if the circumstances were as follows:

Ecks' factory is located near the city and Jonathan's work is on a dock site 30 miles from the city. The 300 bags were located on a truck bound for the dock 'site'. The truck ran off the road and overturned when it struck boulders on the carriageway. These boulders which were placed there by person or persons unknown were concealed in paper bags. The cement is scattered over a wide area of swamp and cannot be recovered.

QUESTION 6

By standing order dated July 15, 1985, Morley and Sons, importers of hospital equipment, agreed to supply certain hospital equipment to the Central Hospital (the Hospital) whenever thereafter an order was placed pursuant to the agreement. Delivery would be made as soon as convenient after receipt of any order. In view of the fluctuations in the value of the local currency, no firm price was quoted. However, a schedule was appended to the written agreement and formed part of it. This contained a table showing the current conversion of local dollars into United States dollars and a shipping scale in the event of future changes in currency rates.

The agreement also contained a term that the unit of payment would be the U.S. dollar but that payment would be made in local currency at the request of the suppliers and any exchange control permission that may be required would be secured by the purchaser.

On August 15, 1985, Morley and Sons informed the Hospital that equipment which they had ordered on August 5, was ready and forwarded a list of the equipment with prices in U.S. dollars listed against the items. Morley advised the Hospital to collect the equipment and pay for them in local dollars.

The Hospital received the letter on August 17, but up to August 25, they had not taken delivery. On August 20, when the Hospital's truck driver called for the equipment, it was discovered that the following items had been stolen sometime between August 15 when they were last seen by Morley's staff and August 25 when they were discovered to be missing:

6 beds, 6 folding screens, 1 ward sister's table,
2 cots.

Shawn Vactor

All that was left of the equipment were two (2) medicine cabinets and a 'drip' apparatus.

The Hospital is refusing to take and pay for the consignment or any part of it.

- (a) Advise Morley and Sons.
- (b) What would your advice be if Morley and Sons had satisfactorily concluded one previous transaction involving equipment similar in nature but a different number of items, and on the same basis?

QUESTION 7

Kitcheners have been in business manufacturing and selling metal drums since 1970. Eators are well known restaurant proprietors. In May, 1985, Eators through their manageress, Mrs. Dinah, ordered from Kitcheners one dozen metal drums of a certain specification to be used for storing foodstuff. This method of storage is usual in this line of business. When placing the order, Mrs. Dinah informed Mr. Kitchener, the senior partner of Kitcheners that since their food material had to be stored for long periods, she needed covers for the drums. These should be of a transparent material so the contents could be inspected without having to lift off the covers. The covers should also be resistant to moisture and heat. They should be fitted with wooden frames which would be secured to the drums with metal screws.

Kitcheners said they would have to call in sub-contractors to prepare and fit the covers for which they will be responsible and the entire job would cost Eators \$4,500 of which \$3,600 was for the drums and \$900 for supplying and fitting the covers.

Mrs. Dinah's recollection of the conversation concerning the covers is that she said to Mr. Kitchener: "I think 'laminex' will suit my needs. My friends Gourmez have used it and have expressed satisfaction with it". To this, Mr. Kitchener replied: "I like 'perspex' myself but I also like to give customers that which they desire". To this Mrs. Dinah in turn replied: "Well all right then, go ahead and get me something suited to my needs".

Mr. Kitchener's position, according to your instructions, is "I tried for 'perspex' but it was not available so I went ahead and bought 'laminex', which is more or less as good as 'perspex'".

According to Mrs. Dinah, Kitcheners explained that only laminex was available and this could be obtained from Larry's the manufacturers, who were also the only suppliers.

The relevant portion of Larry's catalogue describes 'laminex' which was the trade name of their product, and also held out a 'guarantee' as follows: "Resistant to room temperatures of up to 90 degrees Celsius or 194 degrees Fahrenheit; impervious to moisture and water; will withstand direct heat of up to 100 degrees Celsius or 212 degrees Fahrenheit. When exposed to temperatures slightly above this maximum, the laminex would only soften and not collapse or disintegrate."

" No other guarantee or warranty is hereby given or to be implied."

After only one month of using the drums fitted with the laminex covers supplied by Kitcheners which he purchased from Larry's, moisture, which it is not sought to deny, penetrated the covers by natural means and collected on the underside of the covers. This has caused the flour in four (4) drums to become contaminated by a fungus growth and is declared unfit for eating. It is discovered that the flour which would be worth \$400 if unspoiled, could be sold to a farmer for unspecified purposes for \$200. In addition, certain sweetmeats contained in another four (4) drums have become spoiled and rendered useless by room temperatures of 100 degrees Fahrenheit occurring on two unusually hot days. The lids of yet another four (4) drums have become soft and the drums are considered to be no longer suitable as they have lost their protective purpose.

The cause of the problem has been attributed by experts to the faulty manufacture of the laminex. This is not denied by Larry's who in reply to Mrs. Dinah's complaints say that as the order by Mr. Kitchener for the covers was a "rush job", the material had not been exposed to the usually thorough and searching tests applied to it before leaving their factory. They, however, inform her that their responsibility was to Mr. Kitchener and not to her.

Mrs. Dinah's estimated loss is as follows:

Loss of flour	-	\$200.00
Loss of sweetmeats	-	\$200.00
Cost of replacing 12 covers	-	\$960.00
Expert's fee	-	\$240.00
Estimated loss of customers (per day)	-	\$400.00

No firm date can be given for putting matters right and Dinah's have been closed to the public for six (6) working days now.

Advise Mrs. Dinah as to her rights and remedies.

QUESTION 8

Duval's stationers entered into a contract with Elcock suppliers for the purchase of a Wyndyatt air conditioning unit which was to be installed by the suppliers who were also responsible for getting the unit to Duval's office where the installation would take place.

Duval was shown the unit on April 12, 1985, at Elcock's store and after a demonstration of its workings by the sales manager, Dicky Elcock, he was assured that it was in proper working order and would be installed by Elcock's men on the 14th. Duval knew nothing about air-conditioning units, but being impressed with the temperature change effected by the particular unit demonstrated, and the feeling of comfort which it gave, he expressed satisfaction with the unit and asked that it be installed. 13

It was agreed that Duval would pay for the unit after it was satisfactorily installed. On the 14th, Elcock's rang to say that there would be a delay of two days in the delivery and installation of the unit. The delay was excused by Duval and the unit was eventually installed on April 16. Duval, upon receipt of the invoice, handed over a certified cheque to Elcock's.

The invoice read as follows:

Cost of air conditioning unit	-	\$2,800
Cost of installing	-	\$ 200
		<u>\$3,000</u>

Guarantee: A guarantee of 3 months is given by the suppliers. If within 3 months of installation any defect appears, or develops within the system or there is any malfunctioning of the unit or any repairs or replacement is found to be necessary, the unit will be restored to proper working order at the expense of the suppliers.

On July 15, the unit was found to be malfunctioning and Duval's office which he had renovated and enclosed for accommodating the unit was so hot that Duval's staff were unable to work with any degree of comfort. The fault was reported to Elcock's on that same morning and they said they would be able to replace the unit on July 20.

Meanwhile on the 18th, Duval saw in the press and the Gazette, a notice by Franco informing all concerned that his company had obtained an injunction restraining Elcock from further trading or dealing in Wyndyatt air-conditioning units because their manufacture infringed Franco's patent. Duval's were unaware of this fact at the time they entered into the above contract with Elcock.

Up to July 25, Elcock had done nothing about Duval's unit and in the meantime 240 man hours had been lost at Duval's, and this is estimated to cost \$4,800. In addition, new orders for stationery are being held up and Duval's are losing revenue at about \$500 a day.

Advise Duval's as to their rights and remedies in this matter.
