

NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 1981

HIRE PURCHASE AND SALE OF GOODS

*Wednesday, May 20, 1981*

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 Jamaica, Bahamas, Belize or B.V.I., 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.

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PART A

HIRE PURCHASE

QUESTION 1

O agrees to let and H agrees to take a water heater under a hire purchase agreement. The hire purchase price is \$2,000 inclusive of \$200 installation charges. The price is payable by a deposit of \$200 and eighteen monthly instalments of \$100 each. The agreement conforms in all respects to the Hire Purchase legislation.

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

- i) where he hears from a third party that H is about to migrate to Miami;
- ii) where H, having paid the deposit and twelve instalments, is in arrears of payment of instalments for two months;
- iii) where H, having paid the deposit and five instalments, exercises his right of termination;

- iv) where H, having paid the deposit and five instalments is in arrears of payment for six weeks and O hears that H is on the verge of bankruptcy.

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QUESTION 2

(i) On May 25, 1979, Mitchell entered into a hire purchase agreement with Velocity Motors Ltd. in respect of a motor car. After Mitchell had paid some 75% of the hire purchase price, he fell into arrears of payment for some two months. Boysie, an employee of Velocity Motors Ltd., decided to try to make a good impression on his employers by enforcing the agreement against Mitchell. Pursuant to this decision, Boysie lay in wait outside Mitchell's place of work and, while Mitchell was at work, he seized the car and gleefully returned with it to Velocity's office. To his dismay, the Managing Director was most upset, denounced Boysie as a reckless adventurer and ordered him to return the car to Mitchell forthwith. Boysie did not do so immediately, but three days later, he left the car in the street outside Mitchell's home. During those three days, Mitchell paid \$100 towards the hire of a car to take him to and from work. He then resumed use of the returned car and, after he had used it for three months without paying any further instalments, Velocity's lawyers write him a formal letter demanding the arrears of instalments.

Advise Mitchell.

(ii) Haynes, a furniture dealer, entered into a hire purchase agreement with Greenidge in respect of some household furniture priced at \$3,000. There were the usual terms as to the payment by instalments, the care of the goods, a restriction against assignment and a clause giving Haynes the right to terminate and repossess on breach. After some 75% of the hire purchase price had been paid, Greenidge fell into arrears of payment and Haynes brought an action for recovery of possession. After examining Greenidge's means, the court made an order for specific delivery postponed upon terms that Greenidge pay up the arrears and the balance of the purchase price in accordance with the terms of the original agreement.

Advise Haynes as to his rights in each of the following situations:

- (a) where Greenidge again falls into arrears of payment;
- (b) where Greeridge parts with possession of the furniture before payment of the instalments is complete;
- (c) where Greenidge fails to take good care of the furniture.

QUESTION 3

Miss Headley, the owner of a factory manufacturing soft drinks, placed a bulk order for cloth for the making of uniforms for her staff. The order was placed with a local firm of cloth manufacturers after Miss Headley had inspected a sample of the goods which appeared to conform with her requirements. She had also been assured by Certina, a salesman who, though not employed by the cloth manufacturers, often sold goods for them on a commission basis, that the cloth was perfect uniform material. As a result of all this, Miss Headley entered into a hire purchase agreement with the manufacturers in the sum of \$3,000 for the purchase of the cloth, payable by a deposit of \$1,500 and three monthly instalments of \$500 each. The agreement contained a clause to the effect that the hirer agreed that she had not made known to the manufacturer the purpose for which the cloth was required, that she had examined the cloth and found it in all respects to be satisfactory and that the agreement excluded any condition or warranty express or implied that the goods were of merchantable quality or fit for any particular purpose. On the day on which she signed the agreement, Miss Headley was in a hurry to return to her factory and so signed the agreement without reading it herself or anyone having read it to her.

After a few uniforms had been made up, the cloth was discovered to be shoddy, the colours running after they had been washed once. Thereafter, the factory workers refused to wear the uniforms and Miss Headley was left with the bulk of the material on her hands, having now completed payment of the instalments.

Advise Miss Headley.

Would it make any difference to your answer if there was still outstanding some 30% of the hire purchase price?

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QUESTION 4

(i) O lets a car to H under a hire purchase agreement for a total hire purchase price of \$9,000 and H was given the option to terminate the agreement at any time provided he paid the amount by which payments already made fell short of two-thirds of the hire purchase price.

F, H's father, signed the following undertaking which appeared at the foot of the agreement:

"In consideration of your having agreed at my request to enter into this agreement with H, I the undersigned guarantee the payment by him of the agreed instalments and the observance of the terms of the agreement and I will indemnify you against any loss or damage which you may sustain as a result of the act, default or negligence of H."

Having used the car for some time, H exercised his option to terminate and returned the car, paying in all two-thirds of the hire purchase price as agreed.

On a resale of the car, O obtained \$2,000 for the car and claimed against F for \$1,000 being the shortfall under the agreement.

Advise F and H.

(ii) O agrees to let and H to take a car on hire purchase. During the currency of the agreement H enters into another agreement with B Co., auto dealers, whereby he sells the car to them and B Co., in its turn resells the car to A. Neither A nor B Co. is aware of any hire purchase agreement affecting the car. A now receives a letter from O's lawyer informing him of the agreement and claiming the return of the car. A refuses and his neighbour, a law lecturer, advises him that he is right to do so because he is a 'bona fide purchaser for value without notice'. Distrustful of academics, he consults you.

Advise him.

PART B

SALE OF GOODS

QUESTION 5

A agreed to buy and B, a used car dealer, to sell a Volvo 245 motor car for a price of \$15,000. The registration book describes the vehicle as a 1975 model and, when questioned by A on the point, B tells him that he believes the book is accurate because this is what the person from whom he purchased the vehicle had told him as well.

A, as B knows, is a hire-car operator and he intends to use the Volvo for carrying tourists about on the coast. He had originally planned to get a Peugeot 504, but B advised him that the Volvo would be a better bet as its ride was quieter and smoother and it would in any case be more popular with tourists because of its classier looks. The meter shows a mileage of 40,000 which B again says he believes to be correct.

A duly takes delivery of the Volvo and heads for Ocho Rios where he has relocated the headquarters of his operations. For the first week things looked good: the American tourists are impressed by the Volvo's clean European lines and A quickly develops a tale about how he had had it custom built and imported from Sweden. In that week the car does some 1,200 miles, ferrying passengers up and down the coast, eastwards as far as Port Antonio and westwards to Montego Bay.

In the following week, disaster strikes: the car refuses to start as A and a contingent of tourists are about to leave the Dunn's River Falls for their hotel in Runaway Bay and A has to hire a car at a cost of \$100 to carry them there. When the Volvo is taken to a garage it is discovered that the engine is in fact that of a 1969 car, that it must already have done at least 90,000 miles and is now in need of substantial reconditioning, the cost of which will exceed \$5,000.

Advise A.

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QUESTION 6

(i) What are the major rules of law and/or construction that impinge most directly on the way in which courts interpret and apply exemption clauses in contracts?

(ii) Your client, Woolcraft Ltd., operates a chain of department stores which stock for sale a wide range of manufactured products. Woolcraft operates as a retailer only and purchases all of its stock from manufacturers of various well known consumer durables. For some time the principal officers of Woolcraft have been concerned about the extent of the inconvenience caused when defective goods are returned by its customers. Although the company is usually able to recover from the manufacturers eventually, the administrative bother involved is considerable. The officers consult you with a view to designing a clause for insertion in the standard form of contract between Woolcraft and its customers that will exempt the company from any liability whatever for defective goods. They think that this position is quite justified since Woolcraft does not itself manufacture the goods and ought not therefore to be responsible for defects.

(a) Draft a clause that will as far as possible fulfil Woolcraft's instructions, explaining wherever appropriate or necessary, your choice of particular words or phrases.

(b) Are there any considerations which might, in your view, affect the ultimate efficacy of the clause?

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QUESTION 7

A wanted to trade in his Vauxhall car for a new Toyota so he went to Z Co. Ltd., Motor dealers, and entered into an agreement for the purchase of a new Toyota costing \$20,000 and set off against the price an amount of \$3,000 on a trade-in of the Vauxhall. A paid off the balance of \$17,000 on the purchase price of the Toyota, but while it was being prepared for delivery to him Z Co. Ltd. allowed A to keep the Vauxhall.

X in the meantime comes along and not being aware of A's transaction with Z Co. Ltd. offers A \$4,500 for the Vauxhall which A accepts. X paid A the money and took delivery of the car.

A then went to Z Co. Ltd. and offered the sales manager of the company \$3,000 in cash instead of the Vauxhall. The sales manager refuses to accept the cash and demanded the return of the Vauxhall stating that he would not deliver the Toyota until the Vauxhall is delivered to the company.

Z Co. Ltd., it turns out, had already sold A's Vauxhall to Y for \$5,000.

Advise as to the positions of A, X, Y and Z Co. Ltd.

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QUESTION 8

(i) A agrees to sell to B fifty tons of galvanised steel sheets "assorted equally over 6, 7, 8, 9 and 10 feet long" and B pays the entire purchase price in advance. When the sheets arrive, it is discovered that the whole of the fifty tons consists of 6 foot lengths.

Advise B.

(ii) A in Trinidad and Tobago agrees to sell to B in Jamaica fifty new Ford Cortina motor cars assembled at Ford's Port-of-Spain factory. The terms are the usual c.i.f. and the cars are duly shipped on the S.S. Producer on February 19, 1981.

Advise B in each of the following situations:

- (a) where immediately before the documents, which are in order, are presented to him by A's agent in Kingston, he hears a CANA news flash that the S.S. Producer has run aground off the Grenadines and appears in danger of sinking;
- (b) where, having accepted the documents on February 21 the S.S. Producer arrives in Kingston on February 25 when it is discovered that almost a half of the cars are not in fact new, their milometers showing anywhere between 10,000 - 15,000 miles;
- (c) where the cars upon arrival in Kingston are in conformity with the contract except that six of them have been virtually destroyed by the movement of a huge barrel which had apparently been left to roll around in the section of the hold in which the cars were stored.