

NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1981

HIRE PURCHASE AND SALE OF GOODS

Wednesday, August 19, 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 British Virgin Islands, 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.

PART A

HIRE PURCHASE

QUESTION 1

O agrees to let and H to take a washing machine under a hire purchase agreement which conforms generally with the requirements of the legislation and which provides for payment of the purchase price by a deposit and twenty four monthly instalments. The agreement includes an 'accelerated payment clause' which provides that if the hirer defaults in the punctual payment of two or more of the instalments the owner may elect to call for 'accelerated payment', comprising the unpaid balance of the purchase price and certain fees and charges and interest thereon, on giving the hirer written notice to pay the amount outstanding within ten days. The clause also provides for interest at the rate of 1½% per month to be charged on the amount of the accelerated payment if it is not paid within the ten-day period. On expiry of the ten-day period, title to the washing machine passes to the hirer.

H paid the deposit but failed to pay any instalments, whereupon O elected to call for accelerated payment and, when H failed to pay the amount outstanding within the ten-day period, brought an action against him claiming the amount of the accelerated payment.

Advise H's attorneys, who seek your opinion, on the validity of the accelerated payment clause in the light of the relevant hire purchase legislation.

QUESTION 2

(i) Settle a clause excluding the various conditions implied in hire purchase agreements by legislation. Outline the considerations which influence the form of your clause and indicate any steps which will need to be taken in order to ensure its efficacy.

(ii) O, the owner, and H, the hirer, enter into a hire purchase agreement for the acquisition by H of a motor car. The hire purchase price of \$10,000 is payable by a deposit of \$2,800 and twenty four monthly instalments of \$300. Having paid the deposit and ten instalments, H, who has recently lost his job, defaults in payment of one instalment. When this instalment has been outstanding for six weeks, O telephones H about it but H becomes most abusive and the conversation ends when O hangs up in rage. In anger, he sends his collection agents to repossess the car from H, which they do.

Later that evening, over drinks with his lawyer friend, Grafton, O recounts how he has disciplined H. However, Grafton advises him that he has acted illegally and that he should return the car. This he does reluctantly. H then uses the car for a further period of three months without paying any instalments and O finally commences proceedings against him to recover the car and the arrears in instalments.

Advise H.

QUESTION 3

Allen, a sugar cane farmer, conducted negotiations with Bilco Ltd., a farm machinery company, for acquiring a tractor with a cane cutting machine, both new, which were displayed in Bilco's showroom. The cane cutting machine was of a detachable type and could be disconnected and operated independently of the tractor.

The quoted cash price of the tractor was \$50,000 while that of the cane cutting machine was \$25,000.

On June 10, 1978, Allen signed an 'order' for the articles after indicating that he could not pay the total amount right away and would prefer to pay by instalments. At the same time, Allen deposited the sum of \$20,000 which was the required 'down payment' on the hire purchase price of \$85,000.

The order also provided for the following:

1. Payment of the balance of \$65,000 by 13 consecutive monthly instalments of \$5,000 each by the hirer;
2. the payments to commence as from the date of delivery of the machinery;
3. upon any instalment being in arrear for seven days, the owner is entitled to repossess the machinery;
4. the owner is entitled to take any other steps that are considered necessary to secure payment;
5. the hirer may at any time during the hiring become the purchaser of the hired machinery by paying to the owners such sum or such further sum as will equal the purchase price and thereupon the hiring shall come to an end and the hired property shall become the property of the hirer; and
6. the owner will assign and make over all its right and interest in the same to the hirer.

By an endorsed condition, all conditions and warranties implied by law were negatived and the warranty upon new equipment set out in the manufacturer's instruction book was expressed to be the only warranty recognised. The warranty was to the effect that the tractor and all parts and attachments thereto are new. This condition was fully explained to Allen in an office adjoining Bilco's showroom. Allen who was quite literate, simply nodded as each clause was read by Credo, Bilco's representative.

The tractor and cane cutter were delivered to Allen's farmhouse on June 30. The tractor thus delivered was not a new machine, but was a demonstration model, freshly painted and looking new. Besides this, it was so defective that in the view of an expert it would require three months to render it fully operable. The blade of the cane cutting machine lacked a sharp cutting edge but this could be ground and sharpened within a few days at a cost of only \$100.

Allen wishes to know what are his rights, if any, against Bilco.
Advise Allen.

QUESTION 4

Richards, wishing to raise some money, approached Matthis for a loan of \$1,000 and offered as security his stereo set valued at \$1,500.

They signed a legal document in which Richards acknowledged that Matthis was the owner of Richards's stereo, which Matthis let to Richards on the payment by Richards of \$1,000 on the execution of the agreement and on his further paying \$50 a month for 20 months. The agreement further gave Matthis the right to seize the stereo if any instalment was in arrear.

The only cash that changed hands was a cheque for \$1,000 from Matthis to Richards.

Richards, thereafter ran into financial difficulties and Gomes began bankruptcy proceedings. Before Gomes was appointed receiver, however, Matthis seized the stereo set for arrears of instalments.

Gomes on being appointed receiver claimed that the set formed part of Richards's assets, since the transaction between Richards and Matthis was in fact a bill of sale and, being unregistered, was void.

Advise on these issues.

PART B

SALE OF GOODS

QUESTION 5

AB who carries on a grocery retail business ordered on February 1, 1980 a barrel of salt beef from XY Co. Ltd. wholesalers of such items at the price of \$500. AB is a regular customer of XY Co. Ltd. Three days afterwards, AB dropped in at the business place of XY Co. Ltd. and upon inquiry he was shown the barrel of salt beef which had been set aside for him. AB noticed that the salt beef did not have the usual pink colour but was yellowish and had a slight odour. He thereupon bargained the price down from \$500 to \$300.

AB obtained delivery on the following day. On February 11, 1980 in the course of a routine inspection the public health inspector condemned the salt beef and it was dumped.

AB is of the view that the goods were delivered in a defective condition and seeks to claim from XY Co. Ltd. the return of the purchase price, loss of profits and the cost of dumping. He consults you regarding the transaction.

Advise AB.

QUESTION 6

(a) A on March 15, 1980 goes to R.S. Ltd. which operates a jewellery store and takes on approval one pair of large gold earrings valued at \$1,900, it being understood that she should signify her acceptance or rejection within three days.

On the evening of March 17, 1980 A is out at the cinema and during her absence thieves enter her house and steal a quantity of items including the gold earrings which had been left lying on her dressing table. The police are called in on the said evening and it is discovered that the thieves had gained entry into the house through a window at the back of the premises which had been forced open.

On March 30, 1980 by which time R.S. Ltd. has not heard from A, the company's attorneys send a letter claiming the price of the earrings. A then informs R.S. Ltd. of her misfortune but does not pay for the goods.

R.S. Ltd. then sues A for the price of the earrings and costs.

Advise A.

(b) A, in June 1979 ordered from B, leather-craft manufacturers, 50 horse saddles at a price of \$200 each, suitable for the annual Boxing Day races; delivery of the goods to be effected by October 15, 1979. A paid the full purchase price on July 31, 1979. The saddles were delivered on November 12, 1979 and on examination they were found to be hard and twisted causing discomfort to both the horses and riders. A rejected the goods and so informed B by telegram but thereupon placed the saddles in his storeroom. B made other arrangements and sold the saddles to C and at the same time issued a cheque to A for \$10,000. When C turned up at A's premises for the saddles, A, who had by then discovered that the cheque could not be cashed, refused delivery to C. C sues A in conversion.

Advise A.

QUESTION 7

A goes to a motor car dealer and offers for sale his Ford Cortina motor car. He assures the dealer that he is the outright owner of the car. On the basis of this assurance, the dealer purchases the car from him and resells it the following day to B for \$6,000. After B has driven the car for some six months, he is contacted by a finance company which claims ownership of the car under a hire purchase agreement with A, who has now disappeared. B's response is that he knows nothing about all of that and he refuses to return the car, the value of which has now fallen to \$4,000.

- (i) Advise B as to his rights and/or liabilities with regard to the finance company and the dealer.
- (ii) Would it make any difference to your answer in (i) above if, two days before the finance company contacts B, the company had received a cheque from the bank, "acting on behalf of A", settling in full the balance of the hire purchase price in the agreement with A?
- (iii) Would it make any difference to your answer in (i) above if the dealer, before buying from A, had made enquiries of Credit Consultants Ltd., a central hire purchase registry and had been assured that the particular vehicle was not the subject of any hire purchase agreement? Assume that the finance company above is a subscriber to the registry.

QUESTION 8

- (i) Describe and outline how three (3) of the principal methods of payment in import/export sales operate.
- (ii) A quantity of unascertained goods was sold to buyers f.o.b. Kingston. No effective ship was named by the buyers but there was no question of negligence on their part. The goods were left on the wharf where, due to the fault of neither party, they were stolen. The sellers thereupon sued for the price.

Advise the buyers.
- (iii) What are the rights of a buyer under a c.i.f. contract where (a) the shipping documents when presented to him are not in order and (b) the documents having been accepted, the goods upon arrival turn out to be defective?