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SECOND YEAR EXAMINATIONS, 1982HIRE PURCHASE AND SALE OF GOODS

Monday, May 17, 1982

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.

PART AHIRE PURCHASEQUESTION 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.

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 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 Greenidge parts with possession of the furniture before payment of the instalments is complete;
 - (c) where Greenidge fails to take good care of the furniture,
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QUESTION 3

Randolph took a vacuum cleaner from Sampson on the usual hire-purchase terms, the hire purchase price being \$800. He paid \$80 down and agreed to pay the balance by 12 monthly instalments of \$60 each until it was paid off, at which time he could exercise the option to purchase. Various clauses of the agreement provided for immediate termination by the owner as follows:

Clause 5. If for any reason except for the purpose of repair the hirer parts with possession of the chattel, subject matter of the hiring, without permission of the owner;

Clause 5. If hirer's rights are assigned;

Clause 7. If hirer fails to take proper care of the chattel.

The agreement also made the exercise of the option to purchase dependent upon "the due observance by the hirer of the terms of the agreement".

After Randolph had paid off \$600 and \$200 was still owing, the machine's motor failed to start. In an effort to repair it, Sampson removed a metal seal which was located at the back on which was imprinted the words, "Do not remove". On learning that Randolph's efforts at repair were unsuccessful, Terrence, a neighbour, without Randolph's permission removed the vacuum cleaner to his own home to have a try. Neither Randolph nor Terrence has mechanical knowledge but by a system of trial and error both have on occasion successfully repaired household gadgets.

On learning what had happened, Sampson went to Terrence's house to demand the return of the vacuum cleaner, but Terrence refused to hand it over saying, "Man, the thing ain't yours, Randolph hire it from you, ain't it?"

Having failed to repair the machine, Terrence took it to a shop and was told that it would cost \$35 to repair it. It would have cost \$20 had Randolph not misplaced two screws while attempting to repair it. Terrence pays for the repairs and successfully persuades Randolph to let him have the use of the vacuum cleaner for two weeks, at the end of which time he would return it to Randolph.

Randolph is one instalment in arrear and Sampson wishes to pursue all rights that are available to him in this matter.

Advise Sampson.

What would have been the position if Randolph and Terrence agreed that Terrence would keep the vacuum cleaner and pay off the balance and Sampson refused to accept any money from Terrence?

QUESTION 4

(i) D hires a car from Hertz Rent-a-Car Co. Ltd. on a six-month lease. During the currency of the lease, he purports to sell the car to A Co., a finance company, which then lets it on hire purchase to C for a total hire purchase price of \$6,000, payable by a deposit of \$1,000 and twenty monthly instalments of \$250. D, in the meantime, has taken off for Morocco.

C, having paid the down payment and one instalment, failed to pay any further instalments and A Co. re-possessed it after having complied with the requirements of the legislation in this regard. Thereafter, A. Co. became aware of Hertz's interest in the car and returned it to them voluntarily. In frustration, A Co. then commenced proceedings against C to enforce a clause in his agreement with them whereby on his default he became liable to pay such sum as would bring his payments up to three-quarters of the total hire purchase price.

Advise C.

(ii) H enters into an agreement with O for the acquisition by H of a motor car. The agreement stipulated that the purchase price of \$20,000 should be payable by a deposit of \$2,000 and 24 monthly instalments of \$750. The agreement provides as well that on payment by H of the total sum of \$12,000 the property in the car shall pass to him without prejudice, however, to O's other rights under the agreement. After making the downpayment and paying 15 instalments H purports to sell the car to X and then notifies O that he is exercising his statutory right of termination. X now becomes aware of the prior agreement when O's agents seize the car from him. H, in the meantime has disappeared.

Advise X and O. Would it make a difference to your answer if, at the time he purports to sell the car, H has made the downpayment but paid only 10 instalments?

PART B

SALE OF GOODS

QUESTION 5

On 1st September Dale agreed to purchase Handel's yacht, the Golden Hind, which was resting on trestles in Handel's yard. Dale had never sailed a yacht before and informed Handel during the negotiations that he would welcome any tips which Handel would give him concerning sailing generally and especially the handling of the Golden Hind.

Handel assured Dale that the yacht was a pleasure to sail and was entirely sea worthy; that only recently he had personally supervised her repair and overhaul. He said that when put to sea, providing Dale allowed sufficient time, say five to six hours for the planking to swell to form a watertight hull, 'she would sail like a cradle of the deep'.

On 6th September, a written agreement was entered into for the purchase of the yacht for \$50,000. On 9th September when the transaction was completed by Handel's receiving confirmation of Dale's cheque, Handel, at the request of Dale despatched the yacht by a lorry and trailer owned by Massiah, whose services Handel secured, but the \$50 charge for transport was paid by Dale.

On 13th September the yacht was put into the water and Handel's advice followed, but it leaked and could not be sailed. Dale then discovered that there was extensive dry rot in the hull and that some caulking had fallen out of place just below the water line due to careless handling by Massiah's loaders. The cost of repairs would be the substantial sum of \$15,000 - \$13,000 for repairing the dry rot and \$2,000 for fresh caulking.

On 14th September Dale wrote Handel a letter complaining about the condition of the yacht and demanding that Handel take back the yacht and refund the purchase price. Handel refused.

Advise Dale as follows:

- (i) what are his rights;
 - (ii) what remedies are available to him;
 - (iii) what steps to take in pursuit of these.
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QUESTION 6

(i) A inspected a car owned by X, found it in good order and agreed to buy it. The parties executed a written contract which contained a term that "no condition or warranty that the vehicle is road worthy or as to its condition or fitness for any purpose is given by the owner or implied therein". Delivery was to have taken place the next day and a contraption which bore some small resemblance to the car in question was in fact deposited at A's gate. But it was a mere shell; the cylinder head was broken, all the valves were burnt, two pistons were broken and it was incapable of self-propulsion.

A refuses to accept the car or to pay the price. When sued for the price he pleads the state of the car; the seller in reply relies on the exemption clause.

Advise A.

What if the clause had only excluded "warranty" and had not mentioned "condition"?

(ii) A approaches B, an auto dealer, with a VW car which he wishes to trade-in for a new vehicle. He tells B that the vehicle is "a 1970 model with 70,000 miles on the clock". B allows him \$2,000 for the VW trade-in. Some months later, it turns out that the speedometer had in fact been repeatedly reversed, that the vehicle was in fact a 1965 model which had done approximately 150,000 miles. In such circumstances B would have offered \$750 for the VW.

Advise B.

Would it make a difference if A was himself an auto-dealer?

QUESTION 7

(i) What are the remedies of an unpaid seller under a contract for sale of goods?

(ii) A in Trinidad and Tobago agrees to sell to B in Jamaica fifty new Fort 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, 1982.

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.

QUESTION 8

(a) On 1st May Brijlal agreed to buy from Cedenó 60 tons of 'creole rice' at \$1,000 per ton, delivery to be on 1st December.

On 1st June when the market price of creole rice was \$1,010 per ton, Cedenó informed Brijlal that he would not supply the rice. Brijlal being uncertain what to do waited until 1st December before taking any steps in the matter.

The market price of 'creole rice' on 1st December is \$1,100 per ton. On 2nd December, not having received any rice from Cedenó, Brijlal gave instructions to his attorneys who filed an action for breach of contract against Cedenó.

The attorneys consult you concerning their client's legal position. Advise them.

(b) Dee was a customer in the 'Meojor' Self-service Grocery Ltd. She placed her selection on the cashier's counter. While lifting a carton of six bottles of Ju-C beverages from the trolley to the counter, one of the bottles exploded and she was injured by the flying glass. There is no obvious reason for the bottle exploding.

Discuss the legal implications of this situation and advise Dee who wishes to sue the grocery.
