

FOR REFERENCE ONLY

NORMAN MANLEY LAW SCHOOL

Council of Legal Education

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1983

HIRE PURCHASE AND SALE OF GOODS

Tuesday, May 17, 1983

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 A

HIRE PURCHASE

QUESTION 1 (Answer both (a) and (b))

- (a) The formal requirements for the enforceability of hire purchase contracts go beyond what is necessary to protect what is considered the "weaker party" to a vending agreement. Discuss.
- (b) Rita is the hirer in possession of a motor car pursuant to an agreement dated 1st June, 1982 and made with Sentinel Credit and Finance Limited (Sentinel) as owners. The Hire Purchase price is \$38,000 and Rita has made the following payments:

Down payment of \$10,000
Instalments totalling 8,000

After staging an elaborate wedding for her daughter in December last, Rita found herself unable to pay any instalments. In February this year, she wrote to the Finance Company indicating that she was experiencing financial difficulties and is unable to pay February's instalment as well as January's which was in arrears. She also said that she had bought a lottery ticket and if she won she would be able to pay future instalments as well as any arrears.

Sentinel's representative called on Rita "to discuss the implications of Rita's letter and to help her to sort things out for the mutual benefit of all the parties." Sentinel's representative dictated and Rita wrote and signed a letter addressed to Sentinel terminating the agreement and requesting the Company to repossess the car. The representative took the car.

Sentinel has re-sold the car for \$28,000. Rita learns of this and wants you to advise as regards her rights (if any) against Sentinel.

Advise Rita.

QUESTION 2

By an agreement dated 1st February, 1982, Alric agreed to take from Bowen a motor car which was priced at \$25,000 on terms including the following:

- (i) Initial Payment \$10,000;
- (ii) monthly instalments of \$500 payable on the first day of each month;
- (iii) on default in paying the instalments, Bowen shall have the right to enter Alric's premises and repossess the car;
- (iv) Alric is under a duty to take reasonable care of the car, to keep it in good repair and good working order;
- (v) the property in the car is to remain in Bowen until a total of \$20,000 has been paid;
- (vi) the agreement is personal to Alric and no rights under it may be transmitted.

Alric has been very punctual in paying instalments. On the 1st day of March, 1983 during the currency of the agreement the car was damaged in an accident. On the same day it was delivered to Cyrus, a mechanic, who agreed to do repairs. Cyrus knew that the car was subject to a hire purchase agreement. Cyrus completed the repairs but refused to deliver the car to Alric until he was paid. Alric, who was in arrears with his instalments, decided that the repair bill and the instalments were "too much for him." He wrote a letter to Bowen terminating the agreement.

- (a) Advise on the above facts.
- (b) Would it make any difference if the following term was in the agreement:

"Alric shall not allow any lien or incumbrance to be created on the goods the subject matter of this agreement?"

QUESTION 3

- (a) Hire Purchase legislation does not distinguish between contracts of guarantee and contracts of indemnity.

What is your opinion?

- (b) The Informal Financing Company lets a van to Higgles for a total hire purchase price of \$2,000. Higgles was given the option to terminate the agreement at any time provided he paid the amount which would bring payments already made up to half the hire purchase price.

The Company told Higgles' father, who was present, that he "will have to sign a clause so that at least the Company can have something to fall back on, just in case ..."

Higgles' father signed the following provision at the foot of the agreement:

"In consideration of your having agreed at my request to enter into this agreement with Higgles, I the undersigned guarantee the payments 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 Higgles."

Higgles terminated the agreement and returned the van, paying the amount which brought his payments to half of the hire purchase price.

When Higgles delivered the van, he was told to leave the ignition key in the van. The van was stolen from the company's premises. The company is claiming \$1,000 from Higgles' father.

Advise Higgles' father.

QUESTION 4

(a) Hire Purchase legislation has placed severe restrictions on the ability of parties to vending agreements to exclude liability for breach of certain vital terms. Discuss.

(b) Vagrant hired a car from Jalopy Hire Incorporated. After two months, Vagrant sold it to Informal Finance Company who let it on hire purchase to X. The total hire purchase price is \$1,500 and X paid an initial deposit of \$500 and agreed to pay \$50 per month. After paying four instalments X receives a letter from Jalopy Inc. claiming that the car belongs to them. X contacts the manager of Informal Finance Co. who insists that the car belongs to his company. The manager also points to a provision in the contract which states that "Informal Finance Co. does not warrant that it is the absolute owner of the vehicle or that the hirer shall have quiet possession or will be able to exercise any option that Informal purports to give."

Advise X who is still in possession of the car.

P A R T B

SALE OF GOODS

QUESTION 5

Ames, a footballer, broke his leg during a game. Dr. Bedser, a surgeon in private practice, operated upon the leg. After a short period of hospitalisation, Ames was pronounced fit and allowed to go home with a steel pin fixed permanently in the leg forming a bridge between shortened bones.

Dr. Bedser's bill charged for operating and also the cost of a stainless steel pin which had to be procured from Evans, the only local firm supplying surgical equipment. The bill was promptly paid.

A week after his discharge Ames complained of pains and swelling of the leg and his temperature rose. Dr. Bedser being away, Dr. Compton, a surgeon was called in, and on operating found that Ames' condition was caused by corrosion of the steel pin. Later tests disclosed that the surgical pin was an ordinary steel pin and not 'stainless steel'. Enquiries made of Evans indicated that the firm had described the pin in the invoice as non-corrosive; that this brand had been used in surgery for the past five years without any complaint having been received.

Dr. Compton's bill for the operation and treatment was \$2,500 and the bill for hospital expenses for two weeks was \$3,000.

Advise Ames.

QUESTION 6

(a) Explain the difference between a condition and a warranty.

(b) Norman, a furniture manufacturer in Kingston produced a liquid product which he called "Norman's Refined Varnish". In the furniture trade 'varnish' is known as a product with the power of penetrating the wood and acting as a preservative and insect repellent, as well as giving a glossy finish when applied.

Norman claimed none of these qualities for his product and indeed it possessed none of these qualities. Nevertheless it looked like varnish, smelled as such and had the same consistency and did, moreover, give a glossy finish.

Norman sold 150 litres in tins of 1 litre each at \$8 a litre to Musa, a shopkeeper, who informed him that his customers were impressed by the sheen on furniture which they had seen treated with Norman's product. Varnish is sold on the market at \$10 a litre.

After displaying the 1 litre tins on the shelves of his shop, Musa is threatened with legal action by the makers of competing brands of varnish if he does not either withdraw the product or remove the word 'varnish' from the labels.

The competitors are saying that by misdescribing his product as varnish, Norman is adversely affecting sales of their product and by selling his product at a cheaper price he is undercutting the sellers of real varnish.

Advise Norman.

QUESTION 7

Miss G who is an Informal Commercial Importer, decided to capitalise on the "bun scene" over the Easter. The price of buns was so high that Miss G decided to sell her buns which she called "Miss G's Speshals" at \$10 each-almost one-half the prevailing price. According to Miss G she "didn't even have hands to sell the buns... them sell like hot bread". But Miss G's happiness did not last. She learnt that:

- (i) Mass P broke his false teeth when he bit a chunk of the bun which contained a pebble. When Mass P reported the matter to Miss G she said "it is all your fault biting bun with false teeth, all decent people slice bun, nobody biting bun these days". She also said that if Mass P had sliced the bun the knife would not have been damaged and he would have found the pebble.
- (ii) Miss Maudie and her two children took ill after eating some of Miss G's Speshals. It was discovered that the flour that Miss G used had been contaminated and condemned as unfit for human consumption. Miss G had bought the flour from Ferdie, the driver of the truck that was to have taken the flour to be dumped. Miss G is of the view that Maudie and her children have "weak stomachs" and they should therefore have told her and she would have sent them to buy store bun instead of selling them her bun.

Advise Miss G who still has more of the flour.

QUESTION 8

(a) The Sale of Goods Act does not overlook the fact that there are times when a seller of goods is well advised not to deliver, or having delivered, to repossess the goods which have been sold. Discuss.

(b) Jarrett purchased 150 bags of cement from Bigman, payment to be made two days before delivery. Jarrett paid the price by giving Bigman his personal cheque for the amount. On the day Jarrett tendered the cheque, he asked Bigman to let him have the cement at the same time. Bigman said, "No man, stick to the agreement, you going to get the cement but let me see what this cheque you give me make out of."

Jarrett told Bigman that he had some men sitting down at his work site because of lack of cement and he still has to pay them. Bigman let Jarrett have 10 bags.

Bigman presented the cheque to Jarrett's bank on the same day. The cheque was dishonoured. Bigman made some enquiries and discovered that at least two other persons had had dishonoured cheques drawn by Jarrett.

Jarrett is insisting that he is entitled to delivery of "his cement".

Advise Bigman.
