



---

**SCHOOL OF LAW**

<b>COURSE NAME:</b>	<b>Contracts 2</b>
<b>COURSE NO:</b>	<b>LA 202</b>
<b>TIME ALLOWED:</b>	<b>Three (3) hours</b>
<b>READING TIME:</b>	<b>Ten (10) minutes</b>
<b>NUMBER OF PAGES:</b>	<b>Four (4) excluding this page</b>
<b>NUMBER OF QUESTIONS ON PAPER:</b>	<b>Six (6)</b>
<b>NUMBER OF QUESTIONS TO BE ANSWERED:</b>	<b>Five (5) only</b>
<b>MARK ALLOCATED FOR EACH QUESTION:</b>	<b>10 marks</b>
<b>TOTAL MARKS:</b>	<b>50</b>

---

**MATERIALS PERMITTED IN EXAMINATION ROOM:**

None

**SPECIAL INSTRUCTIONS**

1. Read the questions and instructions carefully
2. All answers should be clearly written

---

**Please do not turn over any page until you are told to do so.**

### Question 1

Joanne, her husband Eric and their ten year old daughter Miranda wanted to go on a three day holiday to Fatuna. Joanne booked the holiday with "Rocky Island Tours" Port Vila. The total cost of the holiday was 200,000 vatu. Before booking, Joanne and Eric were given a brochure about the guest house they would be staying in. It also promised transport from the airport. The accommodation was described as including "air conditioned rooms, a swimming pool, free breakfast and entertainment each night of your stay". The family was very excited.

When they arrived at the airport there was no transport and they had to walk for 30 minutes to the guest house. Although the rooms were nice and comfortable, the air conditioning was not working and the swimming pool was a mud hole at the back of the guest house. The entertainment turned out to be the husband of the manager and all he did was tell a few jokes – the same ones each night. Breakfast was also a disappointment – a piece of toast and a cup of coffee. After two days Eric complained to the manager. She offered to pay for them to move to another guest house which was of a higher standard; however it was further away and did not have a view of the "moon rock" which was the one thing they had come to see. In the end the three decided to stay where they were.

Joanne is now seeking to recover damages of 100,000 vt for herself, Eric and Miranda for the bitter disappointment concerning the holiday. She seeks your advice as to whether she can recover damages in these circumstances. The contract she had signed included a damages clause to the effect that 'the parties agree that damages for any breach of this contract are set at 10,000vt for each day of the breach'.

### Question 2

George is a Fijian who lives in Port Vila. He is an experienced con-man. He is always involved in schemes to make money. One day he notices an article in the Fiji Times to the effect that a very rich businessman called Sushil Shama Chand had recently relocated part of his business to Vanuatu. Shortly after reading this article George dresses up in his smartest Fijian outfit, hires a flash car and visits a local car dealer in Vila. He asks to speak with the manager whose name is John. George introduces himself as Sushil Shama Chand, the businessman from Fiji who has recently relocated part of his business to Port Vila. George indicates to John that he wishes to purchase two new Toyota Hi Lux vehicles. He indicates that he will be paying for them by cheque.

John, who was only recently appointed to the job from New Zealand is impressed with George but there is a company policy that before a cheque is to be accepted there must be a 'credit-worthiness' and 'identity' check done.

John is a little embarrassed by having to ask these things of George but nevertheless explains the company policy to him. George says that it is not a problem and “of course I understand”. George then shows John a photocopy of the article in the Fiji Times. The article included a photo of Sushil Shama Chand. John compares the photo in the paper with George and concludes that they are the same person (although a close inspection of the photocopy would show that they were not the same people).

John then asks George if he could contact George’s bank for a ‘credit check’. George agrees. He tells him that the bank is the ANZ Port Vila branch and writes down a telephone number to call and his account number. In fact the telephone number given was not that of the bank but of a friend of George’s who was also part of his deception. John rings the number and is told: “Hello, accounts manager”. John thinks he is talking to the ANZ accounts manager but in fact is talking to George’s friend. He gives the person on the phone the account details given by George and the person replies “Oh yes that is the account of Mr. Sushil Shama Chand. He has recently opened an account here. There is no problem at all with his credit worthiness. He has substantial funds in his account”. On hearing this John allows George to pay for the two vehicles by cheque.

After sorting out all the paperwork and leaving the store George immediately sells the two vehicles to a pre-arranged innocent buyer for 75% of their value. George insists that he is paid in cash for this sale.

The following day John reads in the Port Vila Daily Post that a man pretending to be Mr. Sushil Shama Chand has been visiting various businesses in Port Vila seeking to buy goods on credit or by cheque... John looks up the number of the ANZ bank in the phone book and talks to the real manager who advises him that they have no customer by the name of Sushil Shama Chand.

John now comes to you seeking your advice as to whether he can sue (a) George – if in fact that is his real name or (b) the person in Vila who purchased the two vehicles from George.

### **Question 3**

What is meant by “substantial performance”? Does this mean that a party substantially performing his or her obligations can recover the full price promised by the other for performance of those obligations? What are some of the factors that determine whether the performance has been “substantial”?

In your answer refer to the relevant case authorities.

#### **Question 4**

##### **White J.**

The plaintiff's in this case run a market garden business in a South Pacific country. This country has been experiencing some economic difficulties and in recent months their currency had been subject to significant fluctuations. The plaintiff's entered into a contract with the defendants who were the only available building company with sufficient expertise to build three climate-controlled hot-houses for the propagation of exotic flowers, which the plaintiff's were going to sell on the international market. Indeed the plaintiff's had already committed themselves to certain supply contracts in Australia and New Zealand.

The agreed terms of the contract with the defendants included a contract price of US\$90,000. Three installments of US\$30,000 were to be made, after completion of each of the hot-houses. After the first hot-house had been completed and the first installment made, the United States government commenced military action against the Republic of Mytobia (another country in the South Pacific region) which it feared was a training ground for an international terrorist group. As a result of this military action the US dollar was devalued by 15 percent on the currency exchange markets. The defendants threatened not to complete the contract unless the amount of the devaluation was added to their contract price. The plaintiff's protested about this but in view of their lucrative contracts with Australia and New Zealand they agreed to make the additional payments.

The remaining two hot-houses were completed without further incident. Four months after completion the plaintiff's sought the return of the extra 15% paid. So much for the facts. I turn now to the law. ....

Complete the judgment of White J.

#### **Question 5**

##### **Black J.**

The plaintiff, who was a bookseller, worked in Suva and was shortly to retire. He placed an advertisement offering to take a partner into the business who would not object to purchasing the plaintiff's suburban residence. The defendant replied to the advertisement and was told by the plaintiff that the business brought in about FJ\$100,000 per year. The plaintiff showed the defendant summaries for three years, indicating a business of just under FJ\$60,000 a year and stated that the rest of the income was made up of business not included in the summaries but detailed in a bundle of papers that he showed to the defendant. The defendant did look quickly at these papers but did not examine them. A close examination of the papers would have shown that there was less than FJ\$5,000 in additional business.

The defendant signed an agreement to purchase the plaintiff's house for FJ\$200,000 and paid a deposit of FJ\$20,000. Subsequently, the defendant discovered the true facts about the business and refused to complete the house contract. The plaintiff now brings this action against the defendant for specific performance. ...

Complete the judgment of Black J.

### **Question 6**

Explain, by reference to the case, the two limbs of the remoteness test as outlined in *Hadley v Baxendale* [1854] 9 Exch 341