

CONSUMER LAW PRACTICE PRACTICAL GUIDE



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1. HOW TO USE THIS PRACTICAL GUIDE

This practical guide has been developed for your assistance in the College of Law unit Consumer Law Practice. This guide is structured in a way that aims to equip you with the problem solving skills to help you in consumer law practice, which involves:

- advising clients about consumer law matters
- advising clients on the relevant law and procedures, and
- resolving disputes about consumer matters through the court system or in alternative dispute resolution processes.

At the end of this subject, you will be able to demonstrate the competence required of an entry level lawyer in the following elements of consumer law practice:

- identifying relevant legislation and remedies available in consumer law matters
- acting in consumer claims in the relevant forum
- resolving disputes through alternative dispute resolution processes
- documenting settlements.

This subject is structured as follows:

- Conducting consumer law matters
 - Unit 1: Advising in consumer law matters
 - Unit 2: Identifying the appropriate jurisdiction
 - Unit 3: Acting in consumer claims

The types of assessment in the College of Law elective unit currently involve an oral assessment of areas including the following:

- a. oral presentation for assessment 40%;
- b. research notes (for oral presentation) for participation; and
- c. consent orders and advice submission for assessment 60%.

This practical guide is structured in a way that simulates this type of assessment. Lawskool Pty Ltd recommends that you follow this practical guide in the order as it appears, and work through the fact scenarios to each practical task in a way that

ensures you understand the steps taken along the way. The tasks in this practical guide are presented as examples of the types of tasks in Consumer Law Practice in the College of Law, culminating in the oral assessment with oral assessment tips at the end of this guide.

Throughout your studies, you may adopt an engaged learning style which enables you to actively explore ideas and issues about a topic, and connect with your peers and mentors about real life situations and how they apply to the topic. Lawskool Pty Ltd hopes that you use this practical guide as a tool in your engagement with Consumer Law Practice in the College of Law.

Sample

2. FILE NOTE OF INTERVIEW, RESEARCH AND FURTHER ADVICE

Names: Adam Johnson attendance with John Smith

Date: 20 November 2015

Time Spent: 10 units (60 minutes)

Client Details: John Smith

Name of Matter: John Smith v Graphic Computer Services Pty Ltd

Instructions from client:

1. John Smith has informed you he is a printer and the proprietor of the business known as Smith Printing, which is a registered business name.
2. Recently, he had a dispute with a company called Graphic Computer Services Pty Ltd (“Graphic”). They supplied and delivered a high volume printer. The dispute was over money, and the fact that the printer did not work for a while, but that matter was resolved.
3. Three months ago, John Smith received a call from John Edwards of Graphic, who said that despite their previous problems, he would like to do business with Smith Printing again. He said he wanted to come see John Smith about doing some development of software for the printing industry. John Smith wanted to tell him not to bother, but curiosity got the better of him, and they made an appointment.
4. Two days later, Edwards came to see Smith at his print shop, and he put a proposal to Smith that Graphic would install a print usage tracking system at a reduced price, and in return, Graphic would monitor our usage as a prototype for further development and sales. Edwards was well aware that one of Smith’s major problems to overcome was paper wastage. Smith, who used a lot of paper wanted to improve efficiency amongst his staff.

5. In response to his questions, Edwards said: “The computer system is easy to implement. The new system will integrate effortlessly with your current system. It (meaning the new system) will improve staff efficiency and client satisfaction.”
6. Edwards then spent time detailing how Smith’s business would prosper from this new system. Smith asked him, “How much will it cost?” He said, “\$200,000 plus GST, but we can arrange finance through Computer Finance if you like?”
7. They then negotiated for another 30 minutes, then struck a deal that Smith would pay \$170,000 plus GST for the system. They agreed that Graphic would arrange the finance for the whole project, and the rate would be the current overdraft rate less two percentage points.
8. A couple of days later Smith received the attached invoice from Graphic. Smith rang Edwards and said, “How’s the finance going?” He said, “Barry, this is a bit embarrassing, but Computer Finance will not lend to a sole trader. They say you are too small.” Smith replied, “Well this is very disappointing, but me and my staff are committed to the new system.”
9. When Smith finished the call with Edwards, Smith telephoned his bank and arranged an extension of his business overdraft. Needless to say, his bank’s terms were not as favourable as those promised by Edwards. However, within a couple of days, Smith had completed the formal arrangements with the bank to extend his overdraft.
10. Smith then telephoned Edwards and told him the finance was in place, and he would arrange a date and time for the installation of the new system.
11. In mid July of this year, the system was installed by two technical officers from Graphic, who came back the following day and trained Smith’s Business Manager, Margaret Rae, who doubles as Smith Printing’s IT Manager.
12. At the end of the training session, one of the officers from Graphic asked to see Smith. In Smith’s office, he was presented with an invoice and was asked for a cheque for \$187,000. Smith gave the officer the cheque for that amount, as requested.
13. For about two weeks nothing much happened with the system, as there was a period when work was quiet. Then, in August, Smith received a contract for \$200,000 to print an advertising brochure for the World Amateur Football Games. Getting work from such a large company, was quite an achievement and Smith was hoping that it would lead to more work.

14. The new system simply could not cope with this work. Despite the fact that Graphic's IT support people were at Smith's premises for a month trying to get the system to work, it was constantly crashing.
15. In the second week of September, Smith was informed by telephone that the contract for the Amateur Football Games printing was to be taken away from Smith. This was a major blow for Smith Printing.
16. At this time, Smith decided that he needed someone who was independent to look at the system, so he contacted Persher Pty Ltd, a specialist computing firm, to advise him. The Managing Director, Peter Perry, came and spent a day checking the system, and Smith was greeted with the report that the system was totally incompatible with the old system, and that he had wasted his money.
17. Smith telephoned Edwards at Graphic, and was told that he was no longer an employee. Smith has left many messages with Graphic for someone to come and see him, but to date no one has come.
18. Smith estimates that he is currently out of pocket not only for the \$187,000 for the system, but also for Persher Pty Ltd's bill, which was \$2500 including GST. The two percentage point difference on the loan has cost him \$700 so far, and is accumulating at a rate of \$300 per month.
19. Smith comes for you with instructions to try and recover his money.

Issues:

(i) Legal

1. Whether there has been a breach of the Australian Consumer Law ('ACL').
2. Whether there has been a breach of contract law.
3. Whether, due to Graphic's breaches, John Smith can recover
 - a. the original \$187,000 for the printing system;
 - b. his losses of \$200,000 from not being able to fill the order with Amateur Football Games;
 - c. the \$2,500 he spent on the report with Persher; and
 - d. any money he lost as a result of the loan with Computer Finance falling through.

(ii) Non Legal

1. There is a need to ensure John Smith's satisfaction and to achieve the best possible outcomes for him using the most appropriate dispute resolution mechanism(s) available.



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