

SMALL CLAIMS COURT MOCK HEARING SANTIAGO v. CASTILLO

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For each OJEN Mock Hearing, there are three packages:

- » OJEN Mock Hearing **Scenario**
- » OJEN Mock Hearing **Role Preparation Package**
- » OJEN Mock Hearing **Justice Sector Volunteer Package**

Students need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers/teachers/organizers need all three packages.

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SANTIAGO V. CASTILLO

» Private sale of an automobile

For this OJEN mock hearing, there are three packages:

- » **OJEN Mock Hearing Scenario**
- » **OJEN Mock Hearing Role Preparation Package**
- » **OJEN Mock Hearing Justice Sector Volunteer Package**

Youth need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers/teachers/organizers need all three packages.



PARTICIPANTS

LIST OF PARTICIPANTS

Role	Participant Name
1. Alex Santiago (plaintiff and Enrique’s nephew)	
2. Enrique Castillo (defendant and Alex’s uncle)	
3. Salma Santiago (plaintiff witness #1 – plaintiff’s mother, defendant’s sister)	
4. Aman Bains (plaintiff witness #2 – plaintiff’s mechanic)	
5. Shawn DaSilva (defendant witness #1 – defendant’s mechanic and childhood friend)	
6. Lawyers/Paralegals (to represent the plaintiff and/or defendant – optional)*	
7. Judge (can be played by a student, a teacher or a justice sector professional)	
8. Court Clerk (assists the judge – optional)	
9. Member(s) of the Press (report on the hearing – optional)	
10. Court Artist(s) (sketch what happens at the hearing – optional)	

* Parties in a small claims court action can represent themselves or hire a lawyer or paralegal to represent them. For the purposes of the mock hearing, you may choose to include the roles of legal representatives or have the plaintiff and/or defendant self-represent.

WHAT HAPPENED?

FACT
SCENARIO

Enrique Castillo decided it was time to sell his pearl white 1982 Chevrolet Camaro. He posted an online advertisement with the car's specifications. The ad assured that the car was in immaculate condition, and that it had "new tires, brakes, pads and rotors". The ad stated that the car would be sold "e-tested and certified" for \$5000. Though there was some interest in the Camaro and a few individuals came to take it for a test drive, nobody purchased the car.

Enrique's nephew, Alex Santiago, always admired his uncle's car while growing up. The last time Enrique had come to visit, Alex noticed a "for sale" sign in the Camaro's back window. Only days away from getting his G License, Alex decided to ask his uncle about the car, and the two of them went for a test drive.

Although it was only the second car he had ever driven, Alex knew immediately that the Camaro was perfect for him. After hearing a funny noise whenever he pressed the brakes, however, Alex wasn't 100% satisfied. Enrique assured his nephew the sound was typical of most vehicles with "a bit of rust on the body" and that the car had no real mechanical issues. The two then drove to the shop of Enrique's mechanic and long-time friend, Shawn DaSilva. After a quick look under the hood, Shawn confirmed the noise was common for a car of that age, and that there wasn't much to worry about.

Upon arriving home, Enrique agreed to sell the car to Alex at a discounted price of \$4,000, in exchange for Alex obtaining the emissions test ("e-test") and safety certification at his own cost. The price of getting an e-test and safety was approximately \$150. Alex's mother, Salma Santiago, agreed to lend Alex the \$4,000 in the form of two post-dated cheques of \$2,000 each. Since Salma's account did not have the full \$4,000, one of the cheques could be cashed immediately by Enrique, and the other cheque had a 10-day hold on it. The purpose of the 10-day waiting period was to allow Salma enough time to get her next paycheque from her job as a restaurant manager, after which she would have the remaining \$2,000 in her account.

Alex and Enrique went to the Ministry of Transportation (MTO) to get the ownership switched from Enrique's to Alex's name. The two of them quickly wrote up a "bill of sale" (the written contract between the two parties) while standing in line at the MTO. In the bill of sale there was no mention that the car was being

sold “AS IS”. The two of them obtained the used vehicle information package and successfully transferred ownership of the car on an “unfit” basis (meaning Alex must still get it e-tested and certified before being able to drive it permanently). A temporary, 10-day plate was put on the car so that Alex could drive it to the mechanic to get the necessary certificates. Enrique held on to the bill of sale without providing a copy to his nephew.

FACT
SCENARIO

After driving the car for 5 days, Alex finally went to “Aman Bains Auto” to get the car e-tested and certified. After checking the Camaro, the mechanic, Aman Bains, notified Alex that the car had some problems that prevented it from passing the safety and e-test, including a defective gasket and a busted headlight. In addition, the Camaro’s air-conditioning system was not working (though this didn’t affect the Camaro’s ability to pass the safety or e-test). The cost of fixing the air-conditioning alone would be \$1,500. The total cost of all of the repairs was \$2,000.

Alex felt that his uncle has made an unfair deal. Unfortunately, neither Alex nor Salma were able to get a hold of Enrique for an entire week. Fed up, Salma decided to put a “stop payment” on the second cheque given to Enrique. She gave the money to Alex instead to make the necessary repairs.

Two weeks later, Alex continued to experience problems with the Camaro. Aman Bains informed him that his ancient brakes were almost totally shot, and must be replaced. The total cost of repairing the brakes would be \$1,500. While searching online for parts, Alex found the original ad for the Camaro and realized the brakes were not as new as his uncle originally advertised.

Alex attempted to contact his uncle again, and this time reached him. He informed his uncle of the re-occurring issues with the Camaro. Alex asked for his money back, or at least for Enrique to pay for the costs of the additional repairs. Enrique was upset over only receiving half of the car payments and refused. He demanded that Salma pay him the remaining \$2,000.

After failing to come to an agreement, Alex decided to commence a Small Claims Court action against his uncle. Alex is suing for \$3500, the total costs of the repairs. In response, Enrique has filed a Defence and Defendant’s Claim with the court, in which he counter sues Alex for the remaining \$2,000 and bank fees that he incurred from depositing Salma’s stop-payment cheque. In the bill of sale



included in Enrique’s Defence, Alex noticed the words “as is” had been added in with a different coloured pen than the one used by the two of them at the MTO.

Below are copies of the documentary evidence provided by both parties. Alex, the plaintiff, has included the online ad and mechanic invoices. Enrique, the defendant, has included the bill of sale and stop payment cheques.

FACT
SCENARIO

At the settlement conference, the parties stubbornly refused to settle. Alex realized, however, that he is better off suing for the difference between the cost of the repairs and the \$2,000 cheque that went unpaid to Enrique. Enrique, on the other hand, makes a formal Offer to Settle, by proposing both parties call it even and abandon their claims. Alex refuses this Offer to Settle.

At trial, Alex will call both his mother, Salma, as well as his mechanic, Aman Bains, to give evidence. Enrique intends to call his mechanic, Shawn DaSilva, as a witness.

EXHIBIT 1 - ONLINE ADVERTISEMENT

1982 Chevrolet Camaro Z28, red Camaro interior



Date Listed	25-Apr-XX
Price	\$5,000
Address	Anytown, Ontario, Canada
For sale by	Owner
Make	Chevrolet
Model	Camaro
Trim	Z28, T-Tops, red Camaro interior
Year	1982
Kilometers	200,000
Body Type	Convertible
Transmission	Automatic
Colour	White
Drivetrain	Rear-wheel drive (RWD)
Fuel type	Gasoline

Original 1982 Chevrolet Camaro Z28, pearl white with original red “Camaro” interior, 350/V8.

Automatic transmission, power locks, power windows, Z28 rims with very good tires. Ice-cold air-conditioning and great heater. Still only 200 000KM on it. Almost perfect condition!

Car runs beautifully. Driven daily. A ton of work has been done, including new tires, brakes, brake pads, rotors, carburetor, filters, fluids, belts, spark plugs, wires, etc. **RUNS AND DRIVES REALLY GREAT!!!** ...needs a nice paint job or drive it as is!

Amazing deal at only \$4,999. Call Enrique for a test drive today at (555) 123-4567.

DOCUMENTARY EVIDENCE



EXHIBIT 2 - MECHANIC INVOICES

DOCUMENTARY EVIDENCE

INVOICE #541				
Bains Auto				
Client: Alex Santiago				
Vehicle: 1982 Chevrolet Camaro				
Date	Parts	Labour	Description	Total
May 15/XX	New Gasket	3 hours	Defective gasket	\$450.00
May 15/XX	Front headlight	10 minutes	Broken headlight	50.00
May 15/XX	New air-conditioning system	4 hours	Faulty A/C system	1,500.00
Sub-total				\$2,000.00
May 16/XX			Emissions Test	100.00
May 16/XX			Safety	50.00
Sub-total				\$150.00
Total				\$2,150.00
Status				PAID – May 16/XX

INVOICE #563				
Bains Auto				
Client: Alex Santiago				
Vehicle: 1982 Chevrolet Camaro				
Date	Parts	Labour	Description	Total
May 29/XX	New Brakes, Brake Pads, Rotors, Calipers	3 hours	Defective gasket	\$1,500.00
Sub-total				\$1,500.00
Total				\$1,500.00
Status				UNPAID



EXHIBIT 3 - BILL OF SALE

I, Enrique Castillo (the “Seller”), agree to sell my 1982 Chevrolet Camaro, VIN #ABC-D23334A55567, to Alex Santiago (the “Buyer”) for the amount of \$4,000 (four thousand dollars) to be paid in 2 (two) post-dated cheques of \$2,000 (two thousand dollars) each, this fifth day of May, 20XX.

The Buyer agrees to obtain the necessary emissions test and safety certifications himself.

Signed,

Enrique Castillo

*Enrique Castillo
(Seller)*

Alex Santiago

*Alex Santiago
(Buyer)*

Further, the Buyer agrees the car is sold on an “AS IS” basis, in its current condition, and that the Seller is not responsible for making any repairs.

DOCUMENTARY EVIDENCE



EXHIBIT 4 - "NOT SUFFICIENT FUNDS" CHEQUE

Salma Santiago
123 Imaginary Way
Anytown, ON 1A1 1A2

Cheque 5 of 125

Pay to the order of Enrique Santiago \$ 2000.⁰⁰
Two thousand ^{xx} / **Dollars**

Anytown Bank
187 Neighbourhood Street
Anytown, ON 1A1 2B2

000000000000030 00000000000 00000001

DOCUMENTARY EVIDENCE

RELEVANT LAW

LEGISLATION

Highway Traffic Act

Used vehicle information package – Section 11.1(1)

Every person who sells, offers for sale or transfers a used motor vehicle shall provide a valid used vehicle information package in respect of the vehicle for inspection by proposed purchasers or transferees and shall deliver the package to the purchaser or transferee at the time of sale or transfer of the vehicle.

Highway Traffic Act – Regulation 628

Permits – Section 2(1)

- 2.(1) It is a requirement for receiving a permit for a used motor vehicle or for a motor vehicle classified as salvage or rebuilt,
- a. that the applicant submit a safety standards certificate issued upon an inspection of the vehicle that was completed within the preceding 36 days;
 - b. if the application is in respect of a motor vehicle with a registered gross weight of 4,500 kilograms or less, that the Ministry is satisfied that an emissions inspection report has been issued in respect of the vehicle within the preceding 12 months;

Highway Traffic Act – Regulation 611

Safety Inspection Certificate – Lighting – Section 6(1)

- 6.(1) Prescribed lamps and reflectors shall be inspected and tested and,
- a. each circuit shall light the filaments of all lamps on that circuit when the appropriate switch is in the “ON” position, and each indicator lamp shall indicate correctly.

A note on selling a vehicle “as is”

No legislation exists that requires sellers in a private sale of a motor vehicle (i.e. from one person to another, NOT a dealership to a person) to include the words “as is” in the bill of sale. However, motor vehicle dealers are required to include specific wording to indicate the vehicle is being sold without representations that it is in worthy driving condition (see *Motor Vehicle Dealers Act Regulations* below).

Though such obligations on dealers are not binding on the parties in a private sale, they may be used to show “best practices” when selling automobiles. It is accepted practice that the parties in a private sale may negotiate whether the sale is made on an “as is” basis. Where, however, a sale is on an “as is” basis, it must be included in the contract of sale.

What is a representation?

A ‘representation’ in law is any action or conduct that can be turned into a statement of fact. For example, a seller that displays a car with an odometer reading of 100km represents to prospective buyers that the car has only been driven 100km.

Motor Vehicles Dealers Act - Regulations Contracts for sales of used motor vehicles BY A DEALER

40.(2) A registered motor vehicle dealer shall ensure that any contract that the dealer enters into to sell a used motor vehicle to a purchaser who is not another registered motor vehicle dealer includes, in a clear, comprehensible and prominent manner, the following:

- An itemized list of all repairs, if any, that, under the contract, the dealer has made to the vehicle or will make to the vehicle and the cost of any such repairs that are to be paid by the purchaser.
- If the dealer is selling the vehicle on an as is basis, the following statement must be included in the “bill of sale”: **Vehicle sold “as-is”**
- The motor vehicle sold under this contract is being sold “as-is” and is not represented as being in road worthy condition, mechanically sound or maintained at any guaranteed level of quality. The vehicle may not be fit for use as a means of transportation and may require substantial repairs at the purchaser’s expense. It may not be possible to register the vehicle to be driven in its current condition.

RELEVANT
LAW

CASE LAW

CAVEAT EMPTOR AND FRAUDULENT MISREPRESENTATION

What is caveat emptor?

Caveat emptor is Latin for “let the buyer beware”. When there is a warning that notifies a buyer that the goods s/he is buying are “as is,” the purchaser assumes the risk that the product might be either defective or unsuitable to his or her needs.

Kinch v Sharbell (1999) P.E.I. Supreme Court

Kinch v Sharbell sets out the following statement of principle on the doctrine of *caveat emptor* (let the buyer beware):

“Under common law, where there is no evidence of fraud, the purchaser of a product may not complain of defects in a product that the purchaser has had an opportunity to inspect before purchase. This is referred to as the maxim, *caveat emptor*. It is expected that if the vendor has not been fraudulent in the sale of the product, it is the responsibility of the purchaser to have obtained a warranty on the item before agreeing to buy it.”

What type of defect could a product have?

Defects in products are categorized as patent or latent defects. They are described in **Halsbury’s Laws of England**:

1. **Patent defects** are those that are discoverable by ordinary inspection and vigilance on the part of the purchaser. For patent defects, the seller does not need to call attention them; the rule is *caveat emptor*. A purchaser should inspect and ask questions about the item he is proposing to buy.
2. **Latent defects** are hidden flaws, weaknesses or imperfections which a seller knows about, but the buyer cannot discover by reasonable inspection. If a seller actively tries to hide a latent defect, fraudulent misrepresentation might be found.

RELEVANT
LAW

Does a seller of a used car have a duty to tell a buyer about defects in the car? What if the seller lies about condition of the car?

Rusak v Henneken (1986) British Columbia Supreme Court

The application of *caveat emptor* to the sale of used cars is summarized in *Rusak v Henneken*.

At common law, a seller of a used car is under no duty to disclose its defects to the purchaser unless the seller is actively trying to hide them. Almost always the seller of a used car knows of its defects, or at least some of them, but he is not under any duty to disclose them to a potential buyer, unless there has been on his part active concealment. That is, he has done something to the car with the intent to prevent the defect from being discovered. The common law rule is *caveat emptor*. The underlying philosophy of the law of contract is that “a party is expected to look out for himself, and make his own bargains. If he has done so foolishly, this is his own fault and he is left to his own devices.”

Wong v Wruck (2008) Saskatchewan Provincial Court, Civil Division

Wong v Wruck sets out the legal principles applicable to the sale of used goods as follows:

“A seller of a used car is under no duty to disclose its defects unless he has actively concealed them. The seller is not bound to call attention to defects the purchaser could observe through ordinary inspection and inquiry (i.e. patent defects) - the rule is “buyer beware”.

However, fraudulent misrepresentation on the part of the seller will have an impact on the principle of *caveat emptor*. Fraud may be found when the seller has actively concealed a latent defect. However, if the latent defect is not known to the seller, there will be no remedy for the purchaser and the principle of *caveat emptor* will apply.”

What is fraudulent misrepresentation?

A fraudulent misrepresentation is a statement known to be false or made not caring whether it is true or false. Such a statement must be material to the decision of the purchaser to enter the contract and the misstatement must induce the purchaser into the contract. For example, if the seller tells the purchaser that the car’s engine is under warranty when in fact it has expired and the seller knows that, and that statement convinces the person to buy the car, the purchaser could claim that the seller fraudulently misrepresented the condition of the car.

Therefore, if a plaintiff can prove there was fraudulent misrepresentation, the principle of *caveat emptor* will not apply. Where there is no evidence of fraud, the principle of *caveat emptor* applies.

REMEDIES

A person induced to enter into a contract by a fraudulent misrepresentation is entitled to one of the following remedies:

1. Damages (i.e. money to compensate the plaintiff for losses)
2. Rescission (i.e. setting the contract aside)

What are damages?

Damages are monetary compensation awarded by a court in a civil action to an individual who has been injured through the wrongful conduct of another party.



In ***Hadley v Baxendale (1854) English Courts***, the court held that the purpose of damages for breach of contract is to put the injured party, so far as money can do so, in the same position as if his rights had not been violated.

RELEVANT
LAW



SMALL CLAIMS COURT MOCK HEARING TIME CHART

ORDER	ACTION	TIME LIMIT
1	Plaintiff and defendant take their seats and judge enters	1 min
2	Clerk calls court to order	2 min
3	Plaintiff and defendant stand and introduce themselves	1 min
PLAINTIFF'S CASE		
4	Plaintiff's opening statement	3 min
5	Plaintiff takes the stand (direct examination by plaintiff's lawyer or paralegal, if applicable)*	4 min
6	Defendant's cross-examination of the plaintiff	4 min
7	Plaintiff's direct examination of plaintiff witness #1	4 min
8	Defendant's cross-examination of plaintiff witness #1	4 min
DEFENDANT'S CASE		
9	Defendant's open statement	3 min
10	Defendant takes the stand (direct examination by defendant's lawyer or paralegal, if applicable)*	4 min
11	Plaintiff's cross-examination of defendant	4 min
12	Defendant's direct examination of defendant witness #1	4 min
13	Plaintiff's cross-examination of defendant witness #1	4 min
CLOSING STATEMENTS		
14	Plaintiff's closing statement	4 min
15	Defendant's closing statement	4 min
DECISION		
16	Judge leaves. Court is adjourned by clerk to await the judge's return	5 min
17	Judge returns and clerk calls court back to order. Judge explains the decision and discusses next steps if applicable.	5 min
TOTAL		60 min

TIME CHART

* If the roles of paralegals or lawyers are being included, the direct and cross examinations will be completed by the lawyer or paralegal, rather than the plaintiff and defendant. Steps 7-8 and 12-13 can be repeated to accommodate multiple witnesses.

ALEX SANTIAGO, PLAINTIFF

Your background:

- Your name is Alex Santiago.
- You are 21 and currently attend university studying “Law and Society”.
- You have one younger brother and live with him and your mother.
- You recently obtained a job as a dishwasher at Moe’s Diner, where your mother works.

Other information for your role:

- Growing up you always admired your uncle Enrique, especially due to his “cool car”.
- You obtained your G2 license almost a year ago and were looking to buy a car. The look of the car was more important to you than how it actually drove.
- You were very impressed when you test drove the car. The entire trip lasted almost an hour, and you had an opportunity to fully check the vehicle’s condition. Your uncle would not stop talking about how the Camaro was his “baby” and was in “100% tip top shape”. You had only ever driven your mother’s car, a Toyota Camry. You felt the Camaro had much more power than your mother’s Camry.
- When you applied the brakes, you began hearing “screeching noises”. You asked your uncle why this was happening and he became very defensive. His response was: “Take it right now to my mechanic and I’ll prove to you there is nothing wrong with it”. At the mechanics shop, Mr. DaSilva never even drove the car or listened to the brakes before telling you that “there was

How can I prepare to be a good witness during the hearing?

- » Learn your facts by heart.
- » You will be sworn in during the hearing and need to spell your character’s full name.
- » Stick to the script. Don’t make up facts because this is unfair to the other students.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If you are asked a question about something that isn’t in your package, you can say you don’t know the answer.
- » Speak with the legal representatives for your side (where relevant) ahead of time, and get into character when you take the stand.



ALEX SANTIAGO, PLAINTIFF

nothing to worry about". Mr. Dasilva and your uncle were very friendly, and more time was spent talking about the Blue Jays than about the Camaro.

- At the MTO, you were so excited about getting the car that you forgot to ask your uncle for a copy of the bill of sale. It was your first time buying a car, so you didn't know what exactly was expected. Your uncle was guiding you through the process. You distinctly remember that the words "as is" were not in the contract.
- In the 5 days you had the car before getting the e-test and safety, you took it on races with your friends and would easily "smoke" them.
- You were very upset when Aman Bains told you the problems with the car. In hindsight, you agree you should've had your own mechanic check the car rather than relying on Shawn DaSilva, your uncle's friend.
- You tried calling your uncle numerous times but never tried going to his house. Even with all the Camaro's problems, you still wanted to keep it. Though you knew the air-conditioning had nothing to do with the safety, you felt your uncle should still pay for it as he tricked you into thinking the car had no issues.
- For two weeks after you got the repairs done, the Camaro's brakes continued to screech. You still took it out for long drives as well as to school and work.
- After learning the brakes were not new like your uncle had told you, you got even more upset. Finding the online ad where your uncle seemed to be lying about the car's condition was the last straw. You felt that he should pay for everything.

BACKGROUND
INFORMATION
FOR WITNESSES

Questions you should think about when preparing:

What is your version of the events leading up to the hearing?



ALEX SANTIAGO, PLAINTIFF

What facts in the scenario can be used to convince the judge that your uncle lied about the Camaro's condition and tricked you into buying it?

Do you trust the assessment made by Shawn DaSilva?

How do you feel about what is happening to you?

What do you want to achieve out of this hearing?

BACKGROUND
INFORMATION
FOR WITNESSES

SALMA SANTIAGO, PLAINTIFF'S MOTHER

Your background:

- Your name is Salma Santiago.
- You are 42 years old.
- You have been working as a manager at "Moe's Diner" for the past 17 years.
- You are a widow living with your two children, Alex (21 years old) and his younger brother, Diego (15 years old).
- Enrique Castillo, the defendant, is your brother.

Other information for your role:

- You were very familiar with the Camaro as you had driven it, and been driven in it, on numerous occasions. The car was Enrique's first car and he always kept it in tip-top condition.
- Other than typical sibling disputes when you were kids, your relationship with Enrique has been great. At first, you were hesitant to allow Alex to purchase the car from Enrique, but after assurances from your brother and his childhood friend, Shawn DaSilva, that everything would go smoothly, you decided to lend Alex the money. The loan was just that, a loan, and Alex agreed to pay you the money once he had earned it from his job as a dishwasher at Moe's Diner.
- You are paid on a bi-weekly basis (every 2 weeks). There was only \$2,500 in your account at the time that Alex and Enrique agreed on the sale of the Camaro on May 5, 20XX. Your next paycheque was coming in the next 5 days. Thus, you gave Enrique a post-dated cheque that he could cash in 10 days, when your account would have enough funds.
- After learning of the Camaro's numerous problems, you were quite upset. You attempted to get in contact with Enrique but were unable

How can I prepare to be a good witness during the hearing?

- » Learn your facts by heart.
- » You will be sworn in during the hearing and need to spell your character's full name.
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- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If you are asked a question about something that isn't in your package, you can say you don't know the answer.
- » Speak with the legal representatives for your side (where relevant) ahead of time, and get into character when you take the stand.



SALMA SANTIAGO, PLAINTIFF’S MOTHER

to reach him by phone. You never tried to go to Enrique’s condominium due to your busy schedule. Upset at your brother’s irresponsible attitude, you gave Alex the funds to repair the car and told him not to worry about trying to contact Enrique.

- Although you are concerned that Alex’s claim will have a negative effect on your relationship with Enrique, you do feel Enrique should fix the problem he started. You hope that all of you can continue to be a family after all of this is over.

Questions you should think about when preparing:

What is your relationship to the parties?

What can you say about the character of either of the parties?

What do you intend to be the end result of the hearing? How will it affect your relationship with your son and brother?

Why did you put a “stop-payment” on the cheque? Were you aware of the consequences to your brother of stopping the cheque?

How did your brother and his friend Shawn assure you that everything was fine?

Remember: you should discuss all of this with the plaintiff. He will want to know your thoughts before planning which questions to ask you at the hearing.

BACKGROUND
INFORMATION
FOR WITNESSES

AMAN BAINS, PLAINTIFF'S MECHANIC

Your background:

- Your name is Aman Bains.
- You are 29 years old.
- You have been a mechanic for the past 7 years. You have owned your own shop for 3 years.
- You operate a mechanic shop close to Alex Santiago's home.

Other information for your role:

- You previously met Alex Santiago and spoke to him about his love for Camaros. He seemed to have an above average knowledge of cars.
- When Alex brought the car into the shop the first time, you immediately heard the screeching noise the brakes were making. When you took it for a test drive, the brakes seemed to be working okay, so you decided not to check them so thoroughly.
- You are licensed to conduct emission tests and provide safety certificates from the Ontario government. You noticed a defective gasket that made the Camaro's emission levels above the allowable limit as set out in the regulations. The broken front headlight prevented the car from obtaining the safety certificate.
- You informed Alex that the air-conditioning system was faulty. You did note to him that fixing it was not required in order to pass the emissions test.
- The second time Alex brought in the car, you did a more thorough inspection of the brakes and noticed the brake pads were fully worn out. This damaged the rotors and caliper as well. The job

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AMAN BAINS, PLAINTIFF’S MECHANIC

would be expensive as Camaro parts are not cheap, and the labour involved was quite heavy. You advised Alex to try to look for parts online.

- You have yet to fix the brakes or receive payment. You have only given an estimate for the costs of repairing the brakes, using all new parts.

Questions you should think about when preparing:

What type of condition was the car in overall?

Do you think the car was a good buy?

How well did you know Alex before he came to you?

Based on your familiarity with Alex, did you think he was the type of person that would fail to notice obvious deficiencies with a vehicle?

Why did you refrain from a more thorough check of the vehicle the first time Alex came with the Camaro?

Remember: you should discuss all of this with the plaintiff. He will want to know your thoughts before planning which questions to ask you at the hearing.

BACKGROUND
INFORMATION
FOR WITNESSES

ENRIQUE CASTILLO, DEFENDANT

Your background:

- You are Alex's uncle and Salma's brother. You consider yourself close to your sister.
- You are 45 years old, unmarried and have no children.
- You currently reside in a condominium in downtown Anytown.
- You work as an investment banker and routinely go on long business trips.

Other information for your role:

- You were absolutely in love with your Camaro. The 30 odd years you owned it were the best years of your life, and you kept the car in great condition. You only decided to sell it due to high gas prices, and because you mostly use public transportation to get around.
- You were surprised at the lack of response you received from the online advertisement. Even after paying \$14 to have the ad featured for 7 days, only 3 people came to check out the Camaro. None of the people that came mentioned anything wrong with the car, even after test driving it. You are unsure why they were not interested.
- When Alex inquired about the Camaro, you were hesitant to sell it to him, or even to let him drive it. The car was very important to you and you were worried he would damage or ruin it. After he continued to beg you, you decided to let him take it for a test drive. You told him to drive to your friend Shawn's garage, as you hadn't seen Shawn in a while and wanted to catch up on old times. Alex seemed thrilled with the car and did

How can I prepare to be a good witness during the hearing?

- » Learn your facts by heart.
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- » Stick to the script. Don't make up facts because this is unfair to the other students.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If you are asked a question about something that isn't in your package, you can say you don't know the answer.
- » Speak with the legal representatives for your side (where relevant) ahead of time, and get into character when you take the stand.

ENRIQUE CASTILLO, DEFENDANT

not need any convincing. While at Shawn's garage, Shawn commented from time to time about how he loved the Camaro, and was always jealous of you for it.

- Salma, your sister, asked you to sell the Camaro to Alex. Since you love your sister, you agreed, and even offered to give her more time to get the money by taking half the amount through a post-dated cheque.
- At the MTO, Alex had no idea what was expected to transfer the ownership of a car. You drafted the bill of sale while in line, with Alex's consent. When it came time to write out that the car was being sold "as is" your pen ran out of ink. You had to switch pens and the new pen was a different colour. After transferring the ownership, you kept the only copy of the bill of sale as you were afraid Alex would lose it.
- After selling the Camaro, you went into a deep depression and felt the urge to buy a new car. You purchased a brand new Dodge Challenger using the \$2,000 you obtained from Salma as part of your down payment. Before you could even drive it, however, you were called on a business trip and flew out immediately to New York for two weeks.
- Upon arriving back, you were shocked to find that your sister had put a stop payment on the second cheque. The bank charged you a \$60 fee for the stop payment, plus another \$60 since you didn't have enough in your account when the bank automatically withdraws your monthly mortgage payment.
- You are very upset with Salma and Alex. You did not want to take the Camaro back as you already have a brand new Challenger now, and Alex may have damaged the Camaro through his reckless driving by now. In any event, you want to teach Alex a lesson for trying to go back on his word. You are seeking the full \$2,000 that they owe you plus the bank fees from the post-dated cheque coming back NSF.

Questions you should think about when preparing:

What is your version of the events leading up to the hearing?

ENRIQUE CASTILLO, DEFENDANT

What facts in your scenario can be used to convince the judge that Alex has damaged the car through his irresponsible driving?

Do you think Salma should have been able to put a stop payment on the cheque?

Do you trust the assessment made by Alex's mechanic, Aman Bains?

How do you feel about what is happening to you?

What do you want to achieve out of this hearing?

BACKGROUND
INFORMATION
FOR WITNESSES

SHAWN DASILVA, DEFENDANT'S MECHANIC

Your background:

- Your name is Shawn DaSilva.
- You are 45 years old.
- You have been a mechanic for the past 23 years. You have owned your own shop for 15 years.
- You have been friends with Enrique, the defendant, since elementary school. You consider him to be your best friend.

Other information for your role:

- You and Enrique have been friends for as long as you can remember. The two of you commonly do favours for one another. You have done work on his Camaro almost exclusively and usually charge him cost price for your services.
- You have always been jealous of Enrique's Camaro growing up, as it seemed to always get him places in life. The Camaro was almost always in perfect condition and freshly washed whenever Enrique would bring it by.
- On the day in question, Alex and Enrique came over with the Camaro. Enrique would routinely come by just to talk. You remember talking about how the Camaro has always been a wonderful and reliable car for Enrique. You don't remember the two saying anything about Enrique selling the car to Alex. Alex did not ask you any questions in particular about the Camaro.
- The last job that you did for Enrique was a repair of the Camaro's heater about 4 months ago, during the winter. At the time, you told Enrique that his air conditioning may be in need of replacement quite soon. Enrique told you he would worry about it when the summer came along.

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SHAWN DASILVA, DEFENDANT'S MECHANIC

- The last time Enrique got an e-test was 18 months before the events in question.
- You remember Enrique having you replace the brakes on the Camaro regularly, but not more than any person would on any normal car. You can't exactly recall the last time you repaired the brakes for Enrique.

Questions you should think about when preparing:

How well do you know the defendant? How do you find his character?

Remember: you should discuss all of this with the defendant. He will want to know your thoughts before planning which questions to ask you at the hearing.

What was the Camaro's condition overall?

Do you think the sale of the Camaro was a "good buy"?

Did the plaintiff ask you any question about the Camaro? If he was buying the car, do you think that he should have?



JUDGE

If the role of the judge is not being played by a justice sector volunteer, the following chart will help you to organize and render your decision. Additional information on preparing for the role of the judge is available in the Role Preparation Package.

JUDGING CHART

ISSUE	SUMMARY/FINDING
The law applicable to the case involved the common law principle of <i>caveat emptor</i> and misrepresentation.	
How much does the plaintiff, Alex, believe he is owed for repairs? What proof does he have of these repairs?	<i>The plaintiff alleges that. . .</i>
What did the plaintiff’s mechanic say?	<i>The plaintiff’s mechanic witness said that. . .</i>



JUDGING
CHART

ISSUE	SUMMARY/FINDING
How much does the defendant, Enrique, believe he is required to pay for the repairs? (if any amount at all)	<i>The defendant alleges that...</i>
How much does the defendant, Enrique, believe he is owed for the sale of his Camaro?	
How much has been paid towards the car so far?	
What proof does Enrique have of the sale and amount owing?	



ISSUE	SUMMARY/FINDING
Has the plaintiff, Alex, demonstrated that his uncle made a fraudulent misrepresentation about the mechanical condition of the car?	<i>I find that there has been fraudulent misrepresentation/no fraudulent misrepresentation. . .</i>
If so, the principle of <i>caveat emptor</i> (buyer beware) WILL NOT apply.	<i>I find that caveat emptor does not apply and the defendant is responsible for. . .</i>
If not, the principle of <i>caveat emptor</i> (buyer beware) WILL apply.	<i>I find that caveat emptor applies. When caveat emptor applies, the buyer cannot complain of defects in a product that he had an opportunity to inspect before purchase thus, Alex should have. . .and the uncle is not liable.</i>
Do you think the uncle actively tried to conceal the defect in the vehicle?	<i>If latent defects are actively hidden by the seller, or if a seller acts in a calculated way to intentionally mislead a purchaser, caveat emptor will not apply and Alex. . .</i>
Do you believe the uncle had any knowledge of the car problems before selling the car to Alex?	
Who do you believe? Why?	<i>I prefer the evidence of the plaintiff/defendant because. . .</i>

JUDGING
CHART



ISSUE	SUMMARY/FINDING
<p>Did the plaintiff, Alex, have a reasonable opportunity to make an inspection and inquiry into the car before purchasing?</p> <p>Could the car problems have been easily spotted by a qualified mechanic?</p> <p>Did Alex make reasonable inquiries and take the time to properly inform himself about the condition of the vehicle?</p>	
<p>What does the defendant's mechanic have to say about Alex's pre-purchase inspection?</p> <p>What does the defendant's mechanic have to say about the mechanical condition of the vehicle?</p>	<p><i>The defendant's witness stated that. . .</i></p>
<p>Does the plaintiff owe the defendant the remainder of the money for the vehicle purchase?</p> <p>What did the plaintiff's witness, Salma, say about the car sale?</p> <p>What did the plaintiff's witness, Salma, say about the stop-payment on the second cheque?</p>	<p><i>The plaintiff's witness stated that. . .</i></p>

JUDGING
CHART



ISSUE	SUMMARY/FINDING
<p>What will you order...</p> <p>... about the amount of money owed by the defendant for the repairs? (if any)</p> <p>... about what amount of money owed by the plaintiff for the sale of the car?</p> <p>... about who pays for the bank fees from the post-dated cheque?</p> <p>... about the final amount owed, taking into account all of the above?</p> <p>... about the timeline for repayment? (if applicable)</p>	<p><i>It is ordered that...</i></p>

JUDGING CHART