

Mock Trial Competition Case Materials Round 2 2022

Collins v Waller

The Law Society of Western Australia is grateful to Mr Aoning Li of Murdoch University and Fremantle Community Legal Centre for preparing these case materials.

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The Law Society of Western Australia

Level 4, 160 St Georges Terrace, Perth WA 6000 | **Postal:** PO Box Z5345, Perth WA 6831 or DX 173 Perth
Phone: (08) 9324 8600 | **Fax:** (08) 9324 8699 | **Email:** info@lawsocietywa.asn.au | **Website:** lawsocietywa.asn.au

PD ACTIVE

Collins v Waller – A civil matter

Introduction

Mr Marvin Collins has commenced a General Procedure Claim against Ms Jojo Waller for the sum of \$45,000.

Specifically, Mr Collins is claiming that Ms Waller has breached a loan agreement by failing to return a vehicle under the terms of a loan contract, made on 26 September 2020, and owes damages of \$45,000 as a result.

Summary of the Law

The Claimant must prove on the balance of probabilities that:

- A contract existed between the parties concerning the borrowing of the vehicle;
- The consideration under that loan contract was the transfer fees and running costs of the vehicle;
- A term of the loan contract was that the vehicle would be returned to the claimant at their election; and
- The defendant has breached that term of the contract and thereby caused the claimant to suffer loss to the amount of the claimed sum.

All of the above elements of the claim must be proved on the balance of probabilities for the claim to be successful.

For example, should it be found that the terms of the contract did not include a term that the vehicle must be returned to the claimant upon their election, then the claim must be dismissed.

Materials

The Claimant and Defendant teams will receive the following:

1. Legal Notes
2. Copy of the General Procedure Claim Form 3
3. Statement of Claimant – Marvin COLLINS (male)
4. Statement of Claimant Witness – Becky SHEEAN (female)
5. Statement of Defendant – Jojo WALLER (female)
6. Statement of Defendant Witness – Cheyne RANKIN (male)

Please note:

☀ *the above outline is also the order of appearance of each witness.*

☀ *the gender of each witness is fixed in order to avoid difficulties in references to “he/she” etc. Students playing the part of a witness are to adopt the role of male or female as indicated.*

Legal Notes

Some commentary on contract law

Contrary to popular belief, verbal agreements can constitute legally binding contracts. So to be binding, a contract does not necessarily need to be in writing.

Generally the existence of a contract requires the following elements:

- There be a clear 'offer' and 'acceptance', or a 'meeting of minds', or consensus between the parties;
- The 'core' terms of the agreement must be certain;
- There must be 'consideration' – a 'price' in the contract that the promisor asks in exchange for their promise to do or supply a thing; and
- An intention to create legal relations – essentially an intent to be legally bound.

The conduct of the parties, during the negotiations and afterwards, may be considered as evidence (both direct evidence and supporting evidence) in deciding whether or not there is a binding agreement – as well as in deciding what the terms of the binding agreement are.

Some commentary on this case specifically

The "issue" in this case is very likely to be what the terms of the contract were. It is also possible (but not necessarily) that there is an issue in whether a contract existed at all.

The evidence appears to show a significant difference between what each party says was the "agreement" made on 26 September 2020.

The court making a finding on what the terms of the contract were, and/or whether a contract even existed, is very likely to be conclusive in terms of deciding which party succeeds in the matter.

**

A final note: Any special rules arising from the practice and procedure in the General Procedure Claim jurisdiction should be ignored, and the general civil law courtroom practices and procedures should apply for the purposes of the Mock Trial Competition, in conjunction with the rules of the Competition.

PART A – Court registry copy

| | | |
|--|--|---|
| REGISTRY AT: Murdoch Magistrates Court | MAGISTRATES COURT of WESTERN AUSTRALIA (CIVIL JURISDICTION) FORM 3 - GENERAL PROCEDURE CLAIM | Case number: CIV/MUR/GCLM/123/2022 Date lodged: 4 April 2022 |
|--|--|---|

| | |
|-----------------|---|
| Claimant | Name: Marvin COLLINS |
| | Address: 19 Florence Ave, PEPPERMINT GROVE WA |
| | Postcode: 6011 |

| | |
|------------------|---|
| Defendant | Name: Jojo Chudleigh WALLER |
| | Address: UNKNOWN |
| | Postcode: |

See PART C for information

| | | | |
|---|---|---------------|---|
| CLAIMANT'S ADDRESS FOR SERVICE | | | |
| <i>Tick [✓] appropriate box and insert address details below:</i> | | | |
| <input checked="" type="checkbox"/> | Residential or principal place of business address: | | |
| <input type="checkbox"/> | Registered Office address: | | |
| <input type="checkbox"/> | Lawyer – principal place of business address | | |
| | | | |
| METHOD OF SERVICE | | | |
| <i>Tick [✓] appropriate box</i> <input type="checkbox"/> Claimant <input checked="" type="checkbox"/> Bailiff | | | |
| CONTACT DETAILS | | | |
| Telephone: | | Claimant ref: | |
| E-mail: | | Fax: | |

| | |
|---|--|
| Amount of claim: | \$45,000.00 |
| Court filing fee: | \$411.00 |
| Service fee: | \$96.00 |
| Travelling fee: | \$ |
| Lawyer's letter of demand: <i>(claim exceeding \$10,000)</i> | \$ |
| Lawyer's costs: <i>(claim exceeding \$10,000)</i> | \$ |
| Total claimed: | \$45,507.00 |
| Re-issue / / | \$ |
| Total claimed: | \$ |
| Extra fees: | \$ |

| | |
|--|-------|
| Signature: claimant or lawyer | M. C. |
|--|-------|

Court Seal

| |
|---|
| See Part C for information |
| DESCRIPTION OF CLAIM: is as follows (or attached) |
| Cause of action – breach of contract The Claimant and Defendant entered into a loan contract on 26 September 2020 in which the Defendant would borrow the Claimant's vehicle in exchange for the payment of ongoing running costs of the vehicle. Relevantly, the terms of the loan contract included a term that the vehicle shall be returned at a time elected by the Claimant. The Claimant communicated such an election on or around 20 March 2022. The Defendant has breached the contract in not returning the vehicle. The Claimant seeks damages equal to the value of the vehicle minus the cost of the Defendant's improvements to the said vehicle. Plus allowable costs. |

Statement of Marvin COLLINS, the Claimant, dated 27 May 2022

1. My name is Marvin Collins and I am 42 years old. I am a self-funded retiree, but I used to work in investment banking. I live at 19 Florence Ave, Peppermint Grove in the State of Western Australia.
2. Ms Waller was a friend of mine, until recently. We first met in 2020, on some social media platform or the other – I can't remember exactly when it was or on which platform.
3. We immediately hit it off and soon became drinking buddies of sorts – we spent a lot of our early friendship time at bars, pubs, and functions I recall. It was at one of these functions – a charity ball on 26 September 2020 – where Ms Waller asked me if she could use my spare car for a while.
4. I remember thinking that it was a bit forward of her, but she talked me around by saying that she would be happy to pay for all the costs involved in transferring the car and running it, and that she would give it back to me whenever I needed it back.
5. I agreed to this, because it was just my spare car I didn't use much, and it actually did benefit me as it freed up room in my garage, and I wouldn't have to spend money on insurance and registration fees for a car I didn't use very much.
6. This spare car was a 2011 model Nissan Leaf, one of the first electric vehicles available in Australia. It was probably only worth \$10,000 or so at that time, because the battery on it was quite old. But I had a strong sentimental attachment to it, so I always intended to keep it long term.
7. The next day at my house, we did the transfer paperwork and I gave Ms Waller the keys, while keeping the second set of keys for myself. She drove off and that I was the last time I saw her in person. She obviously got what she wanted from me.
8. Our friendship from then on consisted mostly of me messaging her only to be either 'ghosted' or told that she was "too busy" to hang out or chat much. I figured out later that it was because she had a new boyfriend, which I guess would take up a person's time.
9. Around March this year, the share market crashed and some of my other investments also started doing very poorly, which meant I needed to raise some cash. I decided to get my car back and sell it, especially because Ms Waller had effectively ghosted our friendship for more than a year at that point.
10. I messaged Ms Waller seeking the return of my car, citing the relevant term of our verbal contract. I was shocked when she replied by saying she had sold my car for \$55,000 only a month before. I called her and we had a pretty heated argument over the phone. She explained she had replaced the battery for \$10,000 and with the rise in second-hand car prices recently, couldn't resist selling.
11. I told her she had breached our agreement and if the car was gone, then she at least owed me the value of the car minus the cost of the new battery, so \$45,000. She then hung up on me. I immediately called up my lawyers and commenced these legal proceedings against her.

Statement of Becky SHEEAN, witness for the Claimant, dated 27 May 2022

1. My name is Becky Sheean and I am 25 years old. I work as an analyst for a commercial bank.
2. Jojo and I know each other from university. We studied finance together at Murdoch Uni. We used to be very close friends throughout the 4 years of our degree. Unfortunately, our lives went in different directions once we finished our degrees in 2020.
3. I got a graduate job in merchant bank, while Jojo decided to instead try and get into modelling and being an “influencer” on social media, or something like that. I didn’t really think that Jojo was making good life choices with this new career path, but as a friend I was willing to loan her some money she asked for in order to pay for some of her start-up costs.
4. I remember this was around April 2020 and Jojo said she needed \$12,000 and would pay me back once she started making money from sponsors and modelling gigs. Long story short, I loaned her the money but she didn’t pay me back until January this year. It was pretty much the reason why our friendship broke up.
5. She regularly kept me updated on her finances during that period, in order to explain and justify why she hadn’t paid me back. Essentially, she was strapped for cash the whole time. She was on the Covid-related Centrelink payments for low-income earners.
6. I felt bad for her because she had just booked her first well-paying modelling job in September 2020 when she crashed her car and wrote it off. She didn’t have car insurance because she had stopped paying it earlier in the year. I told her that if she needed to, she should probably use her gig money to prioritise buying a replacement car instead of paying me back, and that I would understand since having a car is a bit of a necessity.
7. I was pretty surprised when the next time I saw her, around October 2020, she was driving a 2011 Nissan Leaf. I knew what it was because one of the managers at work drives one daily, and told me how rare and valuable they were.
8. I asked her how she could afford that car, and she told me that she had gotten it for free from some guy, and that she’d been getting quite a lot of free things from various men that had been chasing her. She told me this like it was a good thing, because apparently it would mean she could sooner pay me back if enough of these guys came through. I told her that I didn’t approve of her behaviour and that I didn’t want to be friends anymore.
9. The next I heard anything from Jojo was on 27 January this year, when I received the sum of \$12,846 in my bank account from her, with the message “sorry” as the bank transfer message. It was the amount that she had owed me, including interest. I didn’t reply because I was still angry about what happened between us and I still am to this day.
10. I met Mr Marvin Collins for the first time on 24 April 2022 when my manager called me into her office to meet him. I knew him as one of the significant shareholders and owners of the commercial bank I worked at – he was my manager’s boss’s boss, if that makes sense.
11. I was surprised when he asked me if I knew “Ms Jojo Waller”, and then told me a bit about how he knew her. He asked me if I was willing to give evidence in his court claim against Jojo. Perth is a small world sometimes.

Statement of Jojo WALLER, the Defendant, dated 8 June 2022

1. My name is Jojo Waller and I am 25 years old. I work as a content creator, and live at an address known to the court in metropolitan Perth, Western Australia.
2. I've known Marvin Collins since mid 2020 or so, when the first Covid related lockdowns were happening in Perth. I remember this because that's the one and only time I used a dating app and Marvin was one of the guys I matched and met up with from that period.
3. We went on a few dates after that, but I wasn't really 'feeling it' and eventually told him that we should just 'be friends'. I mean, he was a bit too old for me really. I remember this was at some sort of charity ball he invited me to, and I didn't want to get to the end of evening while giving him the wrong idea.
4. He initially said he was also happy to be just friends. We had a great rest of the night at the ball, knowing that it was probably the last time we would be out together. Right at the end of the night, out of nowhere, Marvin asked if I wanted to have his spare car, since he knew that I had recently written off mine.
5. I was a bit sceptical of his offer, especially because he had drunk a lot that night. But he insisted, and explained that it actually helped him in a few ways because he never drove it, and it was just taking up space in his garage while costing him money each year in insurance and registration costs.
6. I was very careful to clarify the terms of this arrangement with Marvin. He said it was only worth "a few thousand bucks" and that if I paid for the costs of the transfer paperwork, that would be the "contract price" of our deal. I knew he was pretty well off so I didn't feel bad accepting his offer of a car at such a bargain price.
7. The next day, we executed the car transfer paperwork and I took the Nissan Leaf from his place. For some reason Marvin wanted to keep the spare set of car keys, but I didn't object to that. It cost me \$800 for the transfer fees, and then another \$2,300 to pay for registration and insurance for a year. These fees were more than I realised before, so I was pissed off at Marvin for not properly disclosing that as part of our deal.
8. Unfortunately from then on, Marvin would still message me fairly regularly, often using the excuse of asking me how his car was going before trying to ask me about recommencing a romantic relationship again. I would often politely remind him that we had agreed to be friends, but sometimes I just couldn't be bothered replying.
9. In January this year, I took the car in to be serviced. It turns out the car was eligible for a new improved battery pack, which would increase the range and value of the car dramatically. I was broke, and it cost \$10,000 – but I was able to simultaneously get the new battery and then sell the car to someone for \$55,000. I really needed the money for some debts of mine, so I sold the car and bought an electric pushbike instead.
10. On 20 March this year, Marvin called me out of the blue and told me he wanted his car back. I told him that I had sold the car, mostly because he hadn't properly disclosed to me how ridiculously expensive the running fees were for it. We got into an argument on the phone for a bit. Weirdly, he mentioned that he knew I had a boyfriend – which made me think it must have been jealousy thing. So I hung up on him and blocked his number.
11. I received the court documents for this court claim not long after.

Statement of Cheyne RANKIN, witness for the Defendant, dated 11 June 2022

1. My name is Cheyne Rankin and I am 39 years old. I work as a specialist surgeon and am a Fellow of the Royal Australasian College of Surgeons. I usually reside at 75 Ocean Parade, Cottesloe when I am in Perth.
2. I have been romantically involved with Ms Jojo Waller since December 2021. We met at a speed dating event the month before, and really hit it off. It was a bit of a funny story, because we both admitted to each other that we both lied a little about our ages going into the event.
3. Apart from that small white lie, my experience with Ms Waller is that she is extremely trustworthy and holds herself with the utmost integrity. Early on in our relationship, she admitted that she had been struggling financially and wanted to be upfront with me about that in case I thought she was financially motivated in dating me.
4. Part of that conversation involved her showing me a spreadsheet on her phone that listed the full details of who she owed money to, how much she owed, and their contact details for payment.
5. I remember seeing the name “Becky Sheean” on that spreadsheet, with the sum of “\$12,000 plus interest” next to her name. At that time, I didn’t know who she was.
6. I also remember seeing an entry in the spreadsheet of “Marvin Collins (ex)”, with the sum of “A few thousand, minus \$3,100”. I asked Jojo about that entry in particular because I was confused what it meant.
7. Ms Waller told me that “Marvin Collins” was an ex-friend of hers, who was nice enough to give her the current car she was driving. Although it was intended as a gift, she said she wanted to pay him back when she could one day, although minus the running costs she had incurred so far with the vehicle.
8. Ms Waller continued to explain that he was a former friend because he had unfortunately developed feelings for her that she didn’t reciprocate, so their friendship got a bit awkward after that.
9. In January 2022, Ms Waller sold her car, that Nissan Leaf. While she loved the car and didn’t want to give it up, she had gotten an offer to sell it for \$55,000 which she told me would be enough to clear all her debts. The only catch was that she would need to borrow a further \$10,000 from me in order to replace the battery as part of the car sale conditions.
10. Ms Waller doesn’t know this, but on 19 March this year, I actually sent a text message to Mr Collins introducing myself as Ms Waller’s boyfriend, and explaining that I was writing on her behalf in order to find out how much the car was worth that he gave to her. That was so that either myself or Ms Waller would then pay him the amount. I didn’t mention the \$3,100 since I intended to just pay that “gap” myself to avoid any awkwardness with Mr Collins.
11. I never got a reply to my text from Mr Collins, although I was in the room for the phone call he made to Ms Waller the next day. I was too embarrassed to tell Jojo I sent that text because she seemed really flustered and mad after the phone call.