

## MEMORANDUM

**To:** Civil Law and Procedure Students  
**From:** Prof. Kerin E. Coughlin  
**Date:** November 6, 2020  
**Re:** Summons and Complaint Assignment

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This memorandum addresses the Summons and Complaint assignment each student is required to complete in this course (5% of course grade).

### SCENARIO

You are a paralegal at the firm of Dewey, Cheatem & Howe, LLP, 300 Jay Street, Suite 622, Brooklyn, New York 11201, (718) 260-5124. Your firm represents Pedro Proprietor, owner of Pedro's Home Furnishings. Donatella Dewey, Esq. is the attorney assigned to Mr. Proprietor's case. Ms. Dewey has asked you to prepare a summons and verified complaint to commence an action on behalf of Mr. Proprietor in a New York State court, based on the facts below which Ms. Dewey obtained during her interview of Mr. Proprietor.

In preparing the documents, you are welcome and encouraged to follow appropriate forms from C&W Appendix B text posted on Blackboard, or that you find online or elsewhere. However, you are responsible for ensuring that the documents you submit are appropriate for this assignment, and that they conform to all applicable rules and requirements. "That's what the form said" is not an excuse.

### FACTS

Mr. Proprietor owns Pedro's Home Furnishings, 35 Flatbush Avenue Extension, Brooklyn, New York 11201. He lives above the store. On June 13, 2019, Mr. Proprietor delivered to Ms. Camille Consumer, who resides at 67-118 Clyde Street, Forest Hills, New York 11375 (in Queens), the following items: (1) computer system and software, valued at \$7,000; (2) a desk, valued at \$4400; (3) two chairs, at \$1000 each; (4) two end tables, at \$600 each; (5) two lamps, at \$200 each; and (6) a coffee table, at \$1500. Ms. Consumer purchased the items on credit extended by Mr. Proprietor, and in the transaction she agreed to pay the total of the prices listed above to Mr. Proprietor in full by September 30, 2020. Ms. Consumer accepted the goods after they were sold and delivered to her on June 13, 2019, but by October 30, 2020, she still had not paid Mr. Proprietor any money for them. Mr. Proprietor made several written and oral demands to Ms. Consumer to pay the money, but she has not paid.

### ASSIGNMENTS

By **1pm on Friday, November 13**, send me an email with all of the information identified below. Answers to questions (items 1, 2 and 3) should be in complete, grammatically-correct sentences, right in the body of the email OR in a word processing or PDF attachment (not a link!). They may include the exact words you find in C&W or the CPLR, as long as you place them on quotation marks and cite the pages or CPLR section(s) where you found them. The draft summons (item 4) should be an attached word processing document (not PDF, preferably).

1. Review C&W ch. 14 (Pleadings), especially pp. 115-118 and 120E. In addition, locate and read CPLR §§ 3016, 3020 and 3021. (*Hint: For four-digit sections like these, you'll find them in the Article that is numbered with the first two digits of the section number! So these will be in Article 30. You'll find three-digit sections in the Article numbered with the first digit of the section number—so you'll find § 503, referenced below, in Article 5.*) Then answer the following questions, in complete sentences as explained above. (\*\**Hint!* The underlined terms will help you figure out the answers to the questions!)
- A.
    - i. Which subsection of CPLR § 3016 (that is, subsection (a), or (b), or (c), etc.) applies to Mr. Proprietor's case regarding his sale and delivery of goods to Ms. Consumer?
    - ii. What does that subsection require or permit Mr. Proprietor to do? Is Mr. Proprietor required, or

- just permitted, to do it? Explain your answer.
- iii. What does that subsection thereupon require or permit Ms. Consumer to do? Is Ms. Consumer required, or just permitted, to do it? Explain your answer.

B. According to CPLR § 3020(a) and C&W ch. 14 p. 120E, what is a "verification" of a pleading? What type of document is it similar to? What is a party doing when she/he verifies a complaint?

2. In what New York trial court(s), such as Supreme, Family, Civil, or Surrogate's, should Mr. Proprietor's case be commenced? Explain why. (*Hint: You may want to review C&W chs. 2 & 3 and/or our notes on the NYS Court systems to answer this question!*) For an extra challenge, find and read CPLR § 503 and try to determine the particular branch (the county, such as Kings, Queens, etc.) to commence this case that involves a consumer credit transaction. (*Hint: Read § 503 all the way to the end!*)
3. Review C&W Appendix B, "Civil Practice Forms," posted on Blackboard. Identify three forms you think you should follow in this case: (a) one summons, (b) one complaint, and (c) one more, that I'll leave it to you to figure out! (*Hint: You answered questions about it above!*) Identify the forms by letters and titles—for example, "Form A, Summons Served With Complaint" (*though that is not one you should select!*) Briefly state why you have chosen each one. (*\*\*Hints!* (1) The underlined terms in the "Facts" section of this memo will help you figure out which forms to use! (2) Once you find a form that seems appropriate, don't stop looking! There are several versions of each form (summons, complaint, etc.)—keep looking until you are confident you found the form that best fits this specific situation. (3) You won't have to look for long—all of the "best" forms for this case appear before p. B-20 of the Appendix!
4. Following the summons form you selected, and using the information in your answers to the questions above, prepare a first draft summons for Mr. Proprietor's case. Attach it as a word processing document to your email. I may share it anonymously with the class!
5. **With this assignment, or in an email you send to me sooner**, please identify three (3) half-hour time slots, in order of preference, between Monday and Wednesday, November 23-25, when you are available to meet with me to review your draft summons and verified complaint. **\*\*NOTE:** Wednesday, November 25, follows a Friday schedule! Our Intro class will not meet, so you may request slots between 11:30am-12:45pm. Our Civ Pro class also will not meet, so you may also request slots between 2:30-5pm. First requested, first scheduled! Send your requests soon.

By **10am on Friday, November 20**, email to me, as attachment(s), word-processing versions of your draft summons and verified complaint (not PDFs or links, please). They should meet all requirements in the grading rubric below. I may share them with the class! (anonymously) We will discuss them when we meet individually.

By the end of **Friday, December 4**, email to me, as word-processing or PDF attachments, your final summons and verified complaint. That submission will be graded according to the rubric below.

**Grading Rubric: Law 1103 Summons and Complaint Assignment**

Score: \_\_\_\_\_ / 24

	Good	Passable	Poor
<b>Summons:</b> Includes all necessary information; shows careful proofreading (correct grammar, spelling, etc.); follows proper format.	6	4	1
<b>Complaint:</b> Includes all necessary information; excludes unnecessary information; sufficiently particular per CPLR 3016; plain and concise statements; consecutively numbered paragraphs, each with only one allegation; cause(s) of action separately stated and numbered; carefully proofread (correct grammar, spelling, etc.); proper format.	6	4	1
<b>Verification:</b> Includes all necessary information; shows careful proofreading (correct grammar, spelling, etc.); follows proper format.	6	4	1
<b>Overall:</b> Demonstrates understanding of legal concepts, attention to detail, and academic effort that are appropriate for a student in this college-level course.	6	4	1