

MEMORANDUM

To: Civil Law and Procedure Students
From: Prof. Kerin E. Coughlin
Date: March 27, 2019
Re: Summons and Complaint Assignment

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 the appropriate forms in the back of your CPLR and the C&W text (which are similar) or that you find online or elsewhere. You are responsible for ensuring that the documents you submit are appropriate for this particular matter, and that they conform to all applicable rules. "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 January 13, 2018, Mr. Proprietor delivered to Ms. Camille Consumer, of 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 \$230 each; and (6) a coffee table, at \$3500. Ms. Consumer purchased the items on credit extended by Mr. Proprietor, and in the transaction she agreed to pay the prices listed above to Mr. Proprietor in full by November 30, 2018.

Ms. Consumer accepted the goods after they were sold and delivered to her on January 13, but by November 30, 2018, she had not paid any money for them. Mr. Proprietor made several written and oral demands to Ms. Consumer to pay the money, but Ms. Consumer has not paid.

ASSIGNMENTS

For **Wednesday, April 3**, please answer the following questions in complete sentences, on paper, typed and double-spaced, due in class:

1. Review C&W ch. 12 (Summons) and ch. 14 (Pleadings) pp. 115-118 and 120E. In addition, locate

and read CPLR §§ 3016, 3020 and 3021. Then answer:

- A. Which subsection of CPLR § 3016 applies to Mr. Proprietor's case? Why? What does it require or permit?
 - B. According to CPLR § 3020, what is a verification? (You may quote, just be sure to use quotation marks appropriately and cite the specific subsection.) Who must verify the complaint in Mr. Proprietor's case? By what type of document/statement?
2. Review the Appendix in the back of your CPLR or C&W that contains sample "Civil Practice Forms" (they are similar). Identify the forms you think you should follow in this case, by numbers/letters and titles (e.g., "Form 1, Summons Served With Complaint"). Briefly state why you have chosen each one.
 - *Hints!* (1) You should find three different types of you want to follow: a summons, a complaint, and one more that I'll leave it to you to figure out. (2) Pay attention to the underlined terms in the "Facts" section of this memo! They'll help you figure out which forms to use. (3) All the forms you need to follow are within the first fifteen in each Appendix. (4) Don't stop looking for forms when you reach the first ones that sound appropriate—keep looking until you find the documents that best fit our specific situation.
 3. In what New York court(s) should Mr. Proprietor's case be commenced? Explain why. Include the particular branch (county).
 4. What is a "blue back" (or "litigation back"), as that term is used in New York civil litigation? (It is not defined in the reading assigned above. You will need to look elsewhere. Cite your source(s)!)

By **Wednesday, April 17**, submit a draft summons and verified complaint (no blue back) that meets all requirements in the grading rubric below, as though it were your final submission (proofread, etc.). It will be returned to you with suggestions Monday, April 29.

By **Monday, May 6**, submit the final summons and verified complaint, with the blue back, in class. The submission will be graded according to the rubric below.

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Grading Rubric: Law 1103 Summons and Complaint Assignment

Score: _____ / 12

	Good	Passable	Poor
Summons: Includes all necessary information; shows careful proofreading (correct grammar, spelling, etc.); follows proper format.	3	2	1
Complaint: 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.	3	2	1
Verification: Includes all necessary information; shows careful proofreading (correct grammar, spelling, etc.); follows proper format.	3	2	1
Blue back: Includes all necessary information; shows careful proofreading (correct grammar, spelling, etc.); follows proper format.	3	2	1