

## **Conveyancing Law LWA329 2020**

### **Take-Home Exam Assignment**

#### **Exam Rules**

**Due Date:** All exams must be submitted by 17:00 on Thursday 18 June 2020 through Learnline

**Queries:** All students will be permitted to raise any questions or concerns or to seek clarification of the exam by emailing the lecturer before 17:00 Sunday 31 May 2020 and all queries (that can be answered) will be answered on the Monday by way of announcement to all students.

**Questions:** Students must answer all of the questions in the exam, within the word count provided (noting that no word count is allocated for Part 2).

**Referencing:** References and citations are required in your answers, but a bibliography is not. (NB: this is different to comment I made during tutorials. On reflection, I have decided a bibliography is not necessary).

#### **The Exam is in 2 parts:**

1. Long Answer Questions (between 250 and 1000 words each) for 75 marks total
2. Short Answer Questions (no word limit) for 25 marks total

Good luck, and don't panic.

## Part 1

### Long Answer Questions

#### Question 1

**25 marks, 500 to 1,000 words**

B has found a property she would like to buy in Darwin City. She made an offer to the seller, S, who accepted the offer. The Real Estate Agent prepared a contract, in duplicate. Both signed the duplicate contracts and dated them that day. The Contract included the following:

1. Purchase Price: \$500,000
2. Deposit: \$100,000
3. B named you, her lawyer, as her conveyancer
4. the Contract is subject to finance as follows: *In an amount sufficient to Complete from any Registered Deposit-taking Institution in Australia.*

The contract is the NT Standard Form Contract.

Later that day, B came to you with the signed and dated contract and asks the following questions of you:

1. When does she have to pay the deposit and, can she pay it by cheque, post dated to next week (when she expects funds from her overseas bank account to clear into her local account)?
2. Is the Deposit amount fair? She thinks her bank will require a 20% deposit but she thinks the amount is too high. And, she wants to know what will happen to her deposit if her bank, Bendigo Bank, doesn't agree to give her a loan. Is there anything she can do to protect herself from losing the deposit
3. The Real Estate Agent said to her that the "cooling off provisions" in the contract does not apply to her because she named you in the contract as her conveyancer. B asks if this is correct, and why/why not?
4. B had some concerns about the condition of the house on the land. She has not received any disclosure documents about the property from the seller and wonders when she should expect to receive them from the seller. She does not want to proceed with the sale until her engineer can inspect the building and ensure it is structurally sound and 'built to code'.

(You know that B is from Victoria. You will need to explain to her how vendor disclosure and due diligence works in the Territory).

## Question 2

**10 marks, 250 – 500 words**

You acted for Ford Prefect when he purchased a property in Fannie Bay from the previous owner, Arthur Dent.

Settlement took place 2 months ago, but Ford moved in just 1 week ago (after getting back from a holding in Tokyo, Japan). Ford calls you seeking your advice and instructs you that five trees have been removed from the property, as well as a bird-bath that stood (somewhat tackily) in the middle of the five trees is also gone. The trees and bird bath were neither listed as chattels included or as fixtures excluded in the contract.

Ford has done some investigating and found that the trees were Golden Palms, costing \$2,000 to replace, and guesses that the bird bath was worth \$500. Ford is annoyed at Arthur and wants to get \$2,500 back from him.

Advise Ford OR draft a letter to Arthur's lawyers, Vogon Law, on Ford's behalf.

## Question 3

**15 marks, 250 to 500 words**

You have been engaged to act for the buyer, B, of a residential property from the seller, S.

The contract is the NT Standard Form Contract compliant and includes the following details:

1. The Contract is dated 5 May 2020, you were named as the conveyancer and attended to exchange with S's solicitor. A deposit of 5% of the purchase price was paid.
2. Despite your advice, the contract is not subject to any inspections.
3. The Contract is subject to Finance, and B has 10 Business Days to obtain Finance. Your client has made application for finance to his bank but (as at Friday 8 May 2020) has not received either confirmation or rejection of finance.
4. The Contract is not subject to the condition of 'Prior Sale'.
5. The Date for Completion is 2 June 2020.

On the Friday, 8 May, just before you head to the boardroom for 'knock offs', you receive an email from S's solicitor stating that her client will not be able to complete until the 10<sup>th</sup> of June because her client will be on holiday in Havana, Cuba, and wants to remove some important documents from the safe in the house before Completion.

You call your client who instructs you that he wants to terminate the contract and get his deposit back.

How do you advise your client?

#### **Question 4**

**25 marks, 500 to 1,000 words**

You act for the buyer, B, of a property in the Darwin CBD from the seller, S. The Contract was subject to Finance and your client undertaking building and conditions reports. You engaged an engineer on behalf of your client. Your client was satisfied with the building and condition report and you notified S's solicitor accordingly. Your client was also successful in obtaining finance. You did not notify S's solicitor of this fact.

3 days after the due date for finance, S's solicitor contacts you to say that S is rescinding the contract because B did not confirm finance by the due date and that S has entered into a contract to sell the property to another buyer.

Your client wants to continue with the purchase. Explain to your client:

- a. what action can/should be taken to prevent S from selling the property to the other buyer;
- b what action can be taken and must be taken to enforce the contract against S;
- c. what B must satisfy a Court of in order for it to enforce the contract against S; and
- d. what arguments S might raise to stop such an order.

## Part 2

### Short Answer Questions

#### Question 1

##### 5 marks

1. What is a fixture? Explain citing case laws and test(s) applied by the Courts to distinguish chattels from fixtures.
2. When does a fixture form part of the Subject Matter of a Sale of land?
3. When does a chattel form part of the Subject Matter of a Sale of land?

#### Question 2

##### 5 marks

1. In your words, what is the Principal in Flight v Booth. And, as part of your answer, of latent and patent defects in title and quality, which one/s allow/s for a right of termination?
2. State whether each of the following is a breach in title or quality:
  - a. Incorrect description of title
  - b. A car port that is not built to code, nor recorded on the building records of a property
  - c. Undisclosed right of access over a driveway granted by a road-front property to a subdivided property to its rear.
  - d. A lease of 5 years that is not registered and is not disclosed to the buyer in the contract of sale
  - e. Undisclosed termite damaged floor boards, which are obscured from view by a chest of draws.

#### Question 3

##### 5 marks

##### Time

1. Is time of the essence in regards to the date for completion;
  - a. under the NT Standard Form Contract;
  - b. under general law principals;
  - c. under equitable principals?
2. If the seller wants to terminate the contract because the buyer failed to complete on the date for completion, what process must the seller undertake to ensure that it terminates correctly? (*make references to all applicable clauses of the Contract in your answer*)

#### **Question 4**

##### **5 marks**

1. What provision/s of which Territory Act/s give effect to the Statute of Frauds in respect of conveyances of land in the Territory?
2. Which section/s of which Act/s require the use of the NT Standard Form Contract for conveyances in the Territory and under what circumstances must it be used?
3. A enters into a contract with B to buy land from B outside of Pine Creek for \$100,000. The contract is unconditional regarding all things including finance. B agrees to allow A to settle in 1 year from the date of the contract provided that A pays \$50,000 as a deposit. At the time for completion, A cannot pay the remainder of the purchase price and B terminates the contract and keeps all of the deposit.

Does A have any rights to recover his deposit under Territory law, and if so, to what extent?

#### **Question 5**

##### **5 marks**

1. Explain, in your own words, what each of the following are:
  - a. rescission
  - b. termination
  - c. repudiation

Your answers should include what rights (if any) parties might have following on from each of these events.

2. In a conveyance using the NT Standard Form Contract, no chattels or tenancies are specified in the Schedule as being included in the Property. Which of the following can a purchaser expect to receive, or be left on the property, at Completion:
  - a. the benefit of an unregistered lease
  - b. the miele dishwasher in the kitchen
  - c. the John Deere ride on lawn mower in the shed
  - d. the car port (which is not registered on the building records to the property)
  - e. the potted plants (in small moveable pots, placed on the windowsills around the house,

where no chattels are specified in the contract.