



## MLL327 Property, *Trimester 1, 2022*

### Assessment task 1: Property Assignment, Individual Assignment

DUE DATE AND TIME:	Due by 8.00pm AEST 29 April 2022
PERCENTAGE OF FINAL GRADE:	40%
WORD LIMIT:	2500 WORDS (10% TOLERANCE)

## ASSIGNMENT INSTRUCTIONS AND IMPORTANT INFORMATION

### ABOUT THE ASSESSMENT

The purpose of this assignment is to assess your knowledge of property law and your skills in drafting an advice to a client and to critically interpret court decisions. Research assignments help you to develop advocacy and written communication skills which will be useful in practice. More generally, however, the skills associated with this task will help to develop the research, writing and analytical skills necessary for a wide range of legal tasks, whether within a legal practice or in business, political or academic environments. The end of trimester exam will contain problems similar to this one. This part will give you practice and feedback which will help your performance in the end of the trimester exam.

This assignment is worth 40% of your final grade and is compulsory. Your final grade for the unit comprises the sum of all the marks received for each of the assessment items.

The word limit for this assignment is 2500 words with a 10% tolerance. The word limit will be strictly enforced and words in excess of this limit (after taking into account a 10% tolerance) will not be marked.

Any material used in this assignment that is not your original work must be acknowledged as such and appropriately referenced. You can find information about plagiarism and other study support resources at the following website: <http://www.deakin.edu.au/students/study-support>

The assignment should be written with sub-headings encouraged to provide structure. Footnotes and a bibliography must be included.

- *citation* footnotes are *not included* in the word limit; however, if it appears that you are using footnotes for part of your substantive argument or explanation these footnotes will be counted.

- the *bibliography* (AGLC 4th edn, rule 1.13) is *not included* in the word limit.
- any preliminary heading (eg “Research Assignment”) will *not* be counted in the word limit; however, sub-headings used in the body of the answer will be counted in the word limit.

You are expected to adhere to the 4<sup>th</sup> edition of the *Australian Guide to Legal Citation (AGLC)*. A link to the online version of the current edition of the AGLC is available in the “Assessments” folder on CloudDeakin.

There are no specific format requirements (eg, font-style, font-size, spacing, margins). However, please present your work professionally using a standard font style and size.

## ASSIGNMENT QUESTIONS

### **Question 1 is a problem- and research-based question**

Rodger Bain is an estate agent. Whilst presenting an offer of sale to a client on 1 May 2004 in Baker Street, Oakley, (Melbourne), Bain saw that the adjacent property, 14 Baker Street (the ‘property’), was looking very unkept and untidy. Upon asking about it, the client told Bain that the three-bedroom property was owned by someone called Merkel or Arkell. The property was last occupied by a tenant, Angela Roberts, prior to her death in April 2002. After the death of Angela, the property remained vacant.

Upon closer inspection of the property a week later Bain found the house was open and the rear door was removed. Bain instructed his solicitor to investigate the ownership status of the property as Bain was keen to get a mandate to sell the property. The solicitor ascertained that Heinrich Merkel, the registered proprietor, died in 2001 without a will and no representative has since been appointed in respect of the deceased estate. Heinrich Merkel was an Austrian subject and attempts to identify potential heirs in Austria proved fruitless. During July 2004 Bain fitted the rear door of the property, changed the locks, installed a new fence at the front of the property and spent more than \$50,000 renovating and repairing the house before renting it out to tenants from the 1<sup>st</sup> of August 2004. One of Bain’s ‘contacts’ at the local council provided information about the outstanding rates and taxes on the property. The ‘contact’ recorded Rodger Bain as the ‘person liable to pay council and water rates on the property.’ Such formal recording required the consent of the owner of the land. Bain paid the outstanding rates and taxes and continued to pay rates and taxes.

On 5 June 2018 Bain leased the property to Johnny Winter for two years. Winter bought a window air condition system (‘air-conditioner’) (see picture below) on hire-purchase from Icy World. In terms of the hire-purchase agreement a final payment for the air conditioner is to be made on 30 November 2020. Winter did not obtain permission from Bain to install the air-conditioner to the property, as was required by the lease. In terms of the lease ‘all accessories and add-ons’ to the property had to be approved by the landlord. The air-conditioner was installed by, Mackey, a technician from Techno-Wiz Installations Ltd, at the request of Winter.

### The installed window air-conditioner



During August 2019 Anna Smith, the only child of the late Mr Merkel, who lived in Timboon, became aware she may be entitled to the property when she was contacted by an estate agent about the possible sale of the property. Mr Merkel and Anna were not on speaking terms for many years. Anna's solicitor established that the property is still registered in the Register in the name of the late Mr Merkel. Anna Smith was pleasantly surprised that her father did not sell the property and disinherit her as he always threatened to do. During September 2019 Anna inspected the property, had Winter evicted and changed the locks to the doors. Winter did not have the time to remove the air-conditioner and stopped paying rent and instalments to Bain and Icy World, respectively. Anna instructed the newly appointed representative of the deceased estate to sell the property. Bain cancelled the lease because of the default of Winter. Icy World sued Winter for payment of the instalments and indicated that the company would remove the air-conditioner. Winter, however, claimed that in 'terms of the laws of Victoria he is entitled to remove the air-conditioner.' Anna refused that any person may enter the property to remove the air conditioner. Anna also refused to return any calls from Bain who indicated in an email to Anna that Anna 'was trespassing on the property and legal steps will be taken to protect his interest in the property, including an application under section 60(1) of the Transfer of Land Act 1958.'

You are acting as Anna Smith’s solicitor. Provide your client with **legal advice**<sup>1</sup> about the following legal issues:

**Question 1.1**

The ownership of the (Oakley) property and claims of ownership to the property (10).

**Question 1.2**

The ownership of the air-conditioner. Also indicate and explain whether other (enforceable) rights may exist in respect of the air-conditioner and whether the air conditioner can be removed by such right holder(s) (10).

**Question 1.3**

Explain the nature of the legal relationship between Smith and Winter and indicate a remedy available to Winter in terms of such a relationship (5).

**Question 2 is a (separate) research-based question**

Write an academic essay<sup>2</sup> about the legal requirements of “property” in Australian Property Law (10)

**A mark is allocated for your overall presentation and communication in the assignment** (5)

**Total marks** [40]

## LEARNING OUTCOME

This task allows you to demonstrate achievement towards the unit learning outcomes. The ULOs are aligned with specific graduate learning outcomes – that is, the skills and knowledge graduates are expected to have upon completion of their studies – and this assessment task is an important tool in determining achievement of those outcomes. If you do not demonstrate achievement of the unit learning outcomes, you will not be successful in this unit.

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<sup>1</sup> Guidance: The advice could simply read as follows: Dear Mrs Smith  
I wish to advice you about the following legal issues that were raised during our consultations, namely:

- 1.1 Ownership of the (Oakley) property and claims of ownership to the property
  - 1.2 Ownership of the air-conditioner and other rights to the air-conditioner
  - 1.3 Your legal relationship with Winter, and
- Conclusion.

<sup>2</sup> Guidance: Without being prescriptive your academic essay should contain an introduction, a discussion and critical analysis of the requirements and a conclusion based upon your discussion and analysis.

It is good practice to familiarise yourself with the ULOs and GLOs as they provide guidance on the knowledge, understanding and skills you are expected to demonstrate upon completion of the unit. In this way they can be used to guide your study.

Unit Learning Outcome (ULO)	Graduate Learning Outcome (GLO)
<b>ULO 1:</b> Explain and identify different kind of rights in property	GLO1: Discipline-specific knowledge and capabilities
<b>ULO 2:</b> Explain how such rights are created, exercised, and extinguished.	GLO1: Discipline-specific knowledge and capabilities
<b>ULO 3:</b> Exercise critical thinking and judgement to evaluate and synthesise knowledge relevant to this discipline area.	GLO4: Critical thinking
<b>ULO 4:</b> Develop the skills to research, edit and write a collaborative research assignment analysing an area relevant to discipline knowledge.	GLO2: Communication GLO3: Digital literacy

## SUBMISSION

This assignment is due by 8:00pm on 29 April 2022 (AEST).

You are to submit your assignment in the individual Assignment Dropbox in the Property MLL327 CloudDeakin unit site on or before the due date. When uploading your assignment, name your document using the following syntax: **<your surname your first name\_ your Deakin student ID number\_[unitcode].doc (or “.docx”)**. For example, 'Jones\_Barry\_123456789\_ABC123.doc'.

You must keep a backup copy of every assignment you submit, until the marked assignment has been returned to you. In the unlikely event that one of your assignments is misplaced, you will need to submit your backup copy.

Any work you submit may be checked by electronic or other means for the purposes of detecting collusion and/or plagiarism.

It is possible to submit more than one document to the Dropbox; consequently, if you submit early and then decide you wish to replace your assignment with a modified version, you may do so. The last assignment submitted prior to the due date will be the one that is assessed.

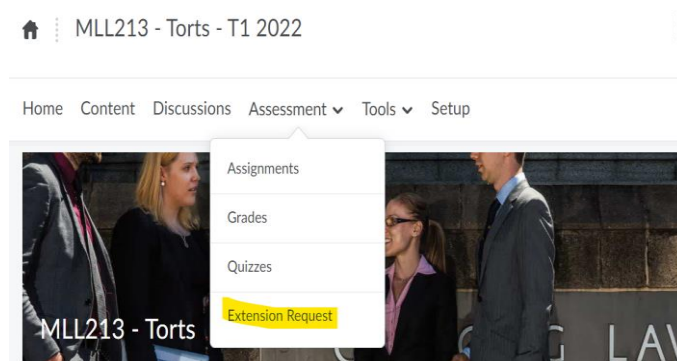
When you submit an assignment through your CloudDeakin unit site, you will receive an email to your Deakin email address confirming that it has been submitted. You should check that

you can see your assignment in the Submissions view of the Assignment Dropbox folder after upload, and check for, and keep, the email receipt for the submission.

## EXTENSIONS

To request an extension of up to two weeks from your unit chair **before the due date/time for the assessment has passed** you must apply for an extension **via the online Assignment Extension Tool in your unit site via 'Assessment' in the top navbar**.

Your request will be forwarded to your Unit Chair for consideration.



**If you are requesting an extension after the due date/time has passed, or if you are seeking longer than 2 weeks you must apply for [Special Consideration](#) via Student Connect within 3 University working days of the due date, ensuring that you attach relevant documentary evidence.**

## LATE SUBMISSION

The following marking penalties will apply if you submit an assessment task after the due date without an approved extension: 5% will be deducted from available marks for each day up to five days, and work that is submitted more than five days after the due date will not be marked and will receive 0% for the task.

“Day” means working day for paper submissions and calendar day for electronic submissions. The Unit Chair may refuse to accept a late submission where it is unreasonable or impracticable to assess the task after the due date.

Calculation of the late penalty is as follows: *this is based on the assignment being due on a Thursday at 8:00pm*

- 1 day late: submitted after Thursday 11:59pm and before Friday 11:59pm– 5% penalty.
- 2 days late: submitted after Friday 11:59pm and before Saturday 11:59pm – 10% penalty.
- 3 days late: submitted after Saturday 11:59pm and before Sunday 11:59pm – 15% penalty.

- 4 days late: submitted after Sunday 11:59pm and before Monday 11:59pm – 20% penalty.
- 5 days late: submitted after Monday 11:59pm and before Tuesday 11:59pm – 25% penalty.

Dropbox closes the Tuesday after 11:59pm AEST time.

## MARKING AND FEEDBACK

The marking rubric for this task is available in the MLL327 CloudDeakin unit site - in the Assessment folder (under Assessment Resources).

It is always a useful exercise to familiarise yourself with the criteria before completing any assessment task. Criteria act as a boundary around the task and help identify what assessors are looking for specifically in your submission. The criteria are drawn from the unit's learning outcomes ensuring they align with appropriate graduate attribute/s.

Identifying the standard, you aim to achieve is also a useful strategy for success and to that end, familiarising yourself with the descriptor for that standard is highly recommended.

Students who submit their work by the due date will receive their marks and feedback on CloudDeakin 15 working days after the submission date.

## SUPPORT

The Division of Student Life (see link below) provides all students with editing assistance. Students who wish to take advantage of this service must be organised and plan ahead and contact the Division of Student Life to schedule a booking, well in advance of the due date of this assignment. <http://www.deakin.edu.au/about-deakin/administrative-divisions/student-life>

## ACADEMIC MISCONDUCT

For information about academic misconduct, special consideration, extensions, and assessment feedback, please refer to the document ***Your rights and responsibilities as a student*** in this Unit in the first folder next to the Unit Guide in the Resources area of the CloudDeakin unit site.

PJ Badenhorst  
Unit Chair, Property MLL327