# **ASSESSMENT 2**

## **General Instructions**

The second assessment is worth 30% of your total mark.

The maximum word length is **1500 words** excluding footnotes.

Students must clearly number each of their answers. Students must also use headings throughout their work to sign-post the legal issues that are contained in their answers. For example, *Exceptions to Indefeasibility – In Personam Exception.*

## **The Task/Activity**

|  |
| --- |
| *Task Description:* This assessment primarily contains content based on Weeks 2 - 5 of the course. Week 7 material on the interaction between leasing principles and the Torrens System of registration under the ***Land Title Act* 1994 (Qld)** (exceptions to indefeasibility) is also relevant.  You must answer all the questions.  *Scaffolding of Skills:* This assessment will help you develop skills for the take home paper. It also builds upon the work done in assessment 1. |

# **Question One**

Mr and Mrs Windsor owned a cattle station in Central Queensland. The property had been in Mr Windsor’s family for five generations but the Windsors had hit hard times with the bushfires. They lost most of their stock and produce. The Windsors decided to sell their beloved farm property to Mr Spencer. The sale was subject to Mr Spencer granting the Windsors a lease of the property for seven (7) years. The contract of sale also provided that after the seven (7) year lease period the Windsors had a right to repurchase the property.

Soon after this, Spencer sold the property to Mr and Mrs Miller. They were willing to pay a high price for the property. It was an offer that Spencer felt he could not refuse. Spencer told the Millers about the Windsors’ agreement. The Millers said to Spencer “*we will honour the agreement with the Windsors*.” Spencer also ensured that there was a term in the contract of sale to the Millers about the agreement with the Windsors. The term read as follows:

The purchaser of the said land acknowledges the existence of an agreement between the vendor and Mr and Mrs Windsor who at the time of writing reside on the land.

The Millers however, after being registered on title refused to honour the agreement with the Windsors. The Windsors are now facing an eviction notice issued to them by the Millers.

**1 (a) The Windsors now seek your legal advice regarding their rights, including their right to compensation (if any) under the *Land Title Act Qld* (1994). In your answer you must refer to case law and/or relevant legislation studied in the subject.   
(10 marks)**

Maria, Josephine and Louise own a holiday house as tenants in common on the Sunshine Coast which they inherited from their parents. Maria and Josephine live in Sydney they hardly ever use the house. Louise lives in Brisbane and goes up there quite often. Maria and Josephine have been in lockdown now for some time in Sydney and they want to sell the house so they can afford to move out of Sydney as they have no idea how long the lockdown will go for. Louise has also done quite a few renovations to the house. They want to know the following:

**1 (b) Can Maria and Josephine sell the house ? If so what difficulties do they face?   
(c) Can they force Louise to pay them rent for the usage of the house?**

**(d) Do they have to pay Louise any money for the renovations she had done on the house?   
  
In your answer you must refer to case law and/or relevant legislation studied in the subject.**

**(5 marks)**

# **Question Two**

Fraud can be a slippery concept in the Torrens system. In the absence of clear dishonesty, it is hard to prove. Legislators should design an express definition of fraud so that it can cover a wider set of circumstances. **Discuss. In your answer you must refer to the *Land Title Act 1994* (Qld) and relevant case law. (15 marks)**

*Tip: Remember you do not have to agree with the statements expressed above. You are being assessed on your ability to critique statements. However, you must always support your opinions with legislation and case law and well-regarded academic commentary. Students are welcome to search more widely on the various academic law databases through the library and other sources such as google scholar. \*Reference to materials that are not academic in nature (for example law firm commentaries) will impact students’ grades.*