

LAWS 8140/4210 – COMMERCIAL LAW – SEMESTER TWO 2022

Assessment Task #1: Construction of Commercial Contracts Task

Weighting: 10%

Due Date: 5:00pm **Monday 22 August 2022 via Wattle. Late submissions (without an extension) are permitted, although late penalties will apply.**

Word limit: 500

Estimated return date: **5 September 2022 via course WATTLE site**

Assessment Criteria

You will be assessed on your ability:

- **define, distinguish and apply the basic concepts and terminology of the law of contract;**
- **construct a proposition of contract law established by case law;**
- **apply the proper approach to contract construction and the interpretation of contractual provisions;**
- **distinguish the facts in decided cases from those in a given set of facts;**
- **recognise and appraise the interaction between contract formation and construction;**
- **formulate written arguments in response to the given set of facts;**
- **use legal citation conventions appropriately in the course of legal writing;**
- **write accurately and accessibly with correct use of grammar, punctuation and appropriate expression.**

Problem:

The materials for assessment task #1 evidence a chain of negotiations relating to a lease contract for the disposition of an interest in land, (the lease contract). The lease contract involved the lease of a parcel of land for a period of 99 years in exchange for an upfront payment of \$150 000. Only the relevant clauses of the lease contract have been included. A few years after entering the lease contract, the lessor, Morton Quinn Pty Ltd contacted the lessee, Ms Alicia Bayswater, claiming that some of the rates, taxes, assessments and outgoings payable in accordance with clause 4 of the lease

contract were in arrears and should have been paid by the lessee. The lessee, Alicia Bayswater disputes this.

By reference to case law and the principles relevant to the construction of commercial contracts, discuss whether the matters extrinsic to the written contract, and if so, which of them, are relevant to the proper construction of the clause 4 of the lease contract.

ALICIA BAYSWATER

52 Rushcutters Avenue, Bermagui, 2546 , NSW · 0431 222 321

a.bayswater@email.com · [Alicia Bayswater LinkedIn Profile](#)

Ms Clarissa Kotye
Morton Quinn Pty Ltd
12 Station Avenue,
Gundagai, NSW 2551

12 March, 2016

Dear Clarissa,

Thank you for speaking with me on the telephone yesterday.

As I mentioned, I am interested in purchasing one of the blocks of land that will be created upon the completion of the subdivision of the land on Certificate of Title Vol. 1234 Folio 127. I agree that a fair market price for the parcel of land would be \$150 000.00. Could you please advise when you expect the subdivision to be completed and whether you would be willing to enter into contracts 'off the plan' for the parcels of land created by the subdivision? If so, could you please email me through a contract reflecting our discussions?

Kind regards
Alicia

MORTON QUINN PTY LTD

Gundagai, NSW

19 March 2016

Ms Alicia Bayswater
52 Rushcutters Avenue,
Bermagui, 2546 NSW

Dear Alicia,

Thank you for your letter and interest in acquiring one of the parcels of land that will result from our proposed subdivision. We are waiting to hear from Council and expect the subdivision to begin in coming weeks. I enclose our standard agreement for the sale of land for your consideration. We would be happy to discuss any of the proposed terms with you.

Yours faithfully

Clarissa Kotye
on behalf of
Morton Quinn Pty Ltd

SALE CONTRACT – SCHEDULE

Morton Quinn Pty Ltd

1.	Place and Date of Agreement Gundagai, NSW, 20 August 2016
2.	Vendor Morton Quinn Pty Ltd
3.	Purchaser Alicia Bayswater
4.	description of land: 12.25 hectares bounded by the western and southern boundaries of CT Vol 1234b Folio 127 and marked in the attached draft subdivision plan as Lot 3 of DP 4321.
5.	Price \$150 000.00 Deposit of 10% is payable upon exchange; balance to be paid upon settlement following the issuance of the CT for the land the subject of the sale.
6.	Deposit \$15 000.00 payable upon exchange;

11.	Signature (Purchaser)
12.	Signature (Vendor)

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a.bayswater@email.com · [Alicia Bayswater LinkedIn Profile](#)

Ms Clarissa Kotye
Morton Quinn Pty Ltd
12 Station Avenue,
Gundagai, NSW 2551

25 March 2016

Dear Clarissa

Thank you for your recent correspondence and the draft Agreement to Sell in relation to the land under discussion. Please find enclosed my signed counterpart of the Agreement to Sell. Please note I have today transferred the deposit to your solicitor's trust account to be held pending notification of the commencement of the subdivision.

I look forward to receiving your signed counterpart and to learning of the commencement of the subdivision.

Kind regards
Alicia

MORTON QUINN PTY LTD

Gundagai, NSW

28 May 2016

Ms Alicia Bayswater
52 Rushcutters Avenue,
Bermagui, 2546 NSW

Dear Alicia

Thank you for your patience in this matter. As I advised on the phone to you yesterday, due to recent changes in planning regulations in our local government area, we are no longer permitted to subdivide the land. As we further discussed yesterday, one way of dealing with this situation would be to enter into a lease of the parcel of land in question for a term of 99 years, exclude the usual landlord's right of re-entry and for you to pay the full amount of the lease up front. This would, to all intents and purposes, amount to a 'sale' in that you would receive property rights in the parcel of land described in the Agreement to Sell that we exchanged, albeit not an outright fee simple interest. However, we could amend the lease contract so that it was, in effect a sales contract. With your agreement, we will go ahead and send a draft lease agreement adjusted to reflect this.

Yours faithfully

Clarissa Kotye
on behalf of
Morton Quinn Pty Ltd

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a.bayswater@email.com · [Alicia Bayswater LinkedIn Profile](#)

Ms Clarissa Kotye
Morton Quinn Pty Ltd
12 Station Avenue,
Gundagai, NSW 2551

31 May 2016

Dear Clarissa

Thank you for your suggestion regarding using the lease agreement in this novel way. I agree to this approach and look forward to receiving the draft contract from you.

Kind regards,

Alicia

MORTON QUINN PTY LTD

Gundagai, NSW

3 June 2016

Ms Alicia Bayswater
52 Rushcutters Avenue,
Bermagui, 2546 NSW

Dear Alicia

Thank you for returning the lease contract signed by you. We have today executed the contract.

Please find enclosed a copy of the executed contract. We look forward to receipt of the balance of the price as soon as possible.

Yours faithfully

Clarissa Kotye
on behalf of
Morton Quinn Pty Ltd

EXTRACT OF FINAL AND EXECUTED TERMS OF LEASE CONTRACT

Morton Quinn Pty Ltd

LEASE CONTRACT

1. THE term of the tenancy hereby created shall be from the *Third* Day of *June 2016* ~~to theday of~~
2. ~~THAT rent for the said term shall be at the clearrental the first or the said payments to be made on theday ofnext. And the said Lessee covenants with the Lessor as follows—~~
3. THAT the Lessee will pay the rent hereinbefore reserved on the days and in manner hereinbefore appointed for payment hereof. And in the event of the said term being determined by re-entry under the proviso hereinafter contained will pay to the Lessor a proportionate part of the said rent for the fraction of the current year up to the day of such re-entry.
4. AND also will pay all rates taxes assessments and outgoings whatsoever ~~excepting land tax~~ which during the said term shall be payable by the ~~Landlord or~~ tenant in respect of the said premises (~~but a proportionate part to be adjusted between Landlord and Tenant if the case so requires~~).
5. ~~AND also will at all times during the said term will and substantially repair maintain scour cleanse and keep in good repair and condition the said premises hereby demised and all fence walls gates hedges ditches drains water courses holes and other improvements of or belonging to the said demised premises fair wear and damage by fire only excepted.~~
6. AND also will at *his* own cost and expense during the said term destroy and use *his* best endeavours to keep the said land free from rabbits and other vermin thistles and other noxious weeds and will comply with the *Vermin and Noxious Weeds Act 1958* and any statutory amendments or re-enactments thereof for the time being respectively and without any notice or notices or order or orders to be served or made thereunder respectively.
7. AND also will not cut down fell ring-bark damage or destroy any timber or trees now or hereafter during the said term growing or standing on the said land except for fencing and domestic purposes.
8. ~~AND also will permit and power is hereby given to the Lessor or its agent with or without workmen or others twice or oftener in every year to enter into and upon the said demised premises or any part thereof to examine the condition thereof and the Lessee agrees to forthwith repair according to notice.~~

9. ~~AND also will not assign transfer sublet or otherwise part with possession of the said premises or any part thereof without on each occasion first obtaining the consent in writing of the Lessor.~~

10. AND also will at the expiration ~~or sooner determination~~ of the said term quit and deliver up possession of the said premises in good repair and generally in such state and condition as shall be consistent with the due performance and observation of the foregoing covenants.

11. ~~AND also will use the said land and premises as a farm in a proper and husband-like manner and subject to all usual terms covenants and agreements contained in a lease of a farm in addition to those specially contained herein.~~

12. AND also will not commit any nuisance on the said land nor do nor suffer to be done anything that might prejudice any insurance of the said premises or any part thereof or render necessary the payment of any additional premium beyond the ordinary rate.

13. ~~AND also will cultivate.....of the said land during the currency of this Agreement.~~

14. Notwithstanding anything contained herein or any act of Parliament Federal or State Regulation or By-law whether as a result of any breach or default of the Lessee or otherwise that the Lessor shall not have the power of earlier determination of this Lease or have any power of right of re-entry whatsoever thereby allowing the Lessee quiet and peaceful enjoyment of the land and improvements as aforesaid for the full term of this Lease, regardless of whether or not the Lessee is in breach or default herein.

15. The Lessee shall have the right to assign, transfer, sub-let or grant licences in respect of the premises without obtaining the consent of the Lessor.

16. The Lessee shall without obtaining the consent of the Lessor have the right to repair, rebuild or replace any dwellings, out-houses or other improvements or build further dwellings and out-houses upon the land whether for personal, commercial purposes or otherwise.

~~PROVIDED ALWAYS and these presents are upon the express condition that in case the said rent hereby reserved or any part thereof shall at any time be in arrear for fourteen days after becoming due through no legal or formal demand shall have been made for payment thereof or in case of the breach or non observance of any of the covenants by the Lessee herein contained or if the Lessee shall become insolvent or liquidate his estate by arrangement or execute any deed or arrangement within the meaning of the *Bankruptcy Act 1924-66* it shall be lawful for the Lessor or.....agent or any person authorized byin his behalf thereupon at any time thereafter notwithstanding the waiver or non exercise of any previous default or right of re-entry to distrain for such rent or proportionate part thereof as aforesaid and to~~

~~re-enter upon the said premises or any part thereof with a view to determine this lease and thereupon the lease and the term hereby granted shall cease and determine accordingly but without releasing the Lessee from any liability in respect of the breach or non-observance of any covenants on the Lessee's part herein contained.~~

PROVIDED LASTLY and it is hereby agreed and declared that in the event of any rates agreed to be paid by the Lessee as aforesaid being unpaid at any time or times when due to the Shire or Borough or otherwise it shall be lawful for the Lessor to make payment thereof and to distrain sue for or recover as if same rent in arrears under the *Landlord and Tenant Acts*.

32. LAW

The laws of the State of New South Wales, Australia shall govern this Agreement.

MORTON QUINN PTY LTD

Gundagai, NSW

11 June 2021

Ms Alicia Bayswater
52 Rushcutters Avenue,
Bermagui, 2546 NSW

Dear Alicia

It has come to our attention that you have not been paying the rates and land tax payable pursuant to cl 4 of the lease agreement. These payments are payable by you as the owner of the property. You should have been making these payments since our agreement entered into force in 2016. We are currently having these arrears calculated and will contact you again to recover the amounts outstanding.

Yours faithfully

Clarissa Kotye
on behalf of
Morton Quinn Pty Ltd

ALICIA BAYSWATER

52 Rushcutters Avenue, Bermagui, 2546 , NSW · 0431 222 321

a.bayswater@email.com · [Alicia Bayswater LinkedIn Profile](#)

Ms Clarissa Kotye
Morton Quinn Pty Ltd
12 Station Avenue,
Gundagai, NSW 2551

15 June 2021

Dear Clarissa,

My legal advice is that I am not liable to make these payments as they are payments accruing to the landlord not the tenant. I have made all payments due and stipulated under cl,. 4 of our agreement and dispute all liability in relation to the payments to which you refer in your letter of 11 June 2021.

Kind regards
Alicia

MORTON QUINN PTY LTD

Gundagai, NSW

17 June 2021

Ms Alicia Bayswater
52 Rushcutters Avenue,
Bermagui, 2546 NSW

Dear Alicia

We refer to previous correspondence regarding the disputed payments due under cl 4 of our agreement. Please find enclosed a notice requiring the appointment of an arbitrator under clause 31 of that contract. We appoint Ms Elspeth QC. Would you please forward details of your appointee. The appointees can then consult with one another concerning the appointment of the third arbitrator.

Yours faithfully

Clarissa Kotye
on behalf of
Morton Quinn Pty Ltd