# Session 1 – EXERCISES

*You* ***don’t*** *need to have any knowledge of any substantive law or do any extra reading in the area to complete these exercises – they are about engaging your intuitions. You* ***don’t*** *need to prepare answers in advance of the class although you could jot down some points that come to mind if you would find that useful.*

# Exercise One

**Part A: ‘Walter the Bolter’**

**Mary** is a property developer keen to see a tired looking parcel of her land developed. Mary has struck a deal with **Walter** to build a new department store on the land which Walter will then lease from Mary for 6 years. Walter is a pretty slick operator and very ‘gung-ho’ and he makes clear to Mary repeatedly that he wants the department store built as quickly as possible because ‘the time is right’. He also has very particular specifications for the building he wants.

Both parties’ lawyers have been busy drawing up the contract which, once ‘exchanged’ (ie both parties sign), will ‘seal the deal’. Although exchange hasn’t yet occurred, the terms are pretty much agreed. Mary’s lawyer asks Walter’s lawyer if a minor last-minute change to the contract terms was acceptable from their perspective. Walter’s lawyer says it looks fine to him but he would check with Walter and get back to Mary’s lawyer within 24 hours if it was not acceptable.

Neither Mary nor her lawyer hear anything from Walter’s side over the next few days. As Mary is getting nervous about being able to get all the building works done in accordance with the stringent timetable that Walter wants, she goes ahead and signs the contract. Her lawyer sends it over to Walter’s lawyer so Walter can sign it too and exchange would be complete. Mary’s lawyer doesn’t get anything back from Walter’s lawyer but meanwhile Mary gets cracking on the building works. To start with, she has the existing old building on the land demolished. Then she gets a range of contractors to start work on building the new store.

Astonishingly, 10 weeks into it, Mary hears from Walter who now says that ‘the deal is off’ and he will walk away. Mary is devastated – she is stuck with a half-finished building, no money to finish it, no potential lessee and a bunch of angry contractors whose arrangements she’ll need to terminate. Walter says that he’s free to ‘pull the plug’ because, as Mary well knew, the deal was never formally concluded by way of exchange of the contract and he’s found something more suitable for his plans elsewhere.

**Imagine you are Mary and answer the following:**

1. Do you think you are ‘in the right’ legally?
2. Do you think you are ‘in the right’ morally?
3. You want to try to force Walter to honour the deal and you’re prepared to go to court to do it. What arguments would you make to persuade the court that Walter should have to go through with the deal?

**Imagine you are Walter and answer the following:**

1. Do you think you are ‘in the right’ legally?
2. Do you think you are ‘in the right’ morally?
3. Mary wants to go to court to try to force you to honour the deal. What arguments would you make to persuade the court that you should be free to walk away?

**Part B: ‘Vince the Vanisher’**

**Valdemar** is a bank manager for one of Australia’s big 4 ‘top’ banks. One of Valdemar’s customers is a charismatic land developer and builder by the name of **Vince**. Vince controlled a number of companies and was very successful (at least it appeared that way). Just a few months ago, Valdemar attended a lavish Christmas party which Vince held at an exclusive estate. More than 2000 people attended, including Vince’s elderly parents who clearly adored their ‘high achieving’ son. Valdemar was really fond of Vince and Vince was an important customer because he attracted some other high-profile customers to the bank and was also engaged in building houses in a joint venture with a subsidiary company of the bank. This joint venture had been one of Valdemar’s initiatives and he was keen to see it succeed.

However, despite opulent appearances, Vince was proving unable to keep within his overdraft limit. Vince applied to Valdemar a few times to have the overdraft extended. Initially Valdemar granted these requests on condition that Vince reduce the overdraft debt substantially within certain timeframes. Vince failed to do this and the debts grew to more than a few hundred thousand dollars. Cheques had to be dishonoured. After a few months, it became clear that Vince could not pay his debts as they fell due and his operations were insolvent.

Valdemar’s tolerant attitude had to give way to a senior manager of the bank who intervened and froze the overdraft account and refused to honour any cheques drawn on it. Shortly afterwards, Vince informed the senior manager that his parents were prepared to give security over an office building they owned to the bank if the bank would allow him to continue to operate with an increased overdraft limit. The bank was happy to accept this arrangement as it was a way to keep Vince’s business but shore up the bank’s position at the same time. The senior manager agreed that the bank would take a mortgage over Vince’s parents’ property and allow Vince to operate the overdraft account which had been frozen, this time with a substantially increased overdraft limit. However, a condition of this arrangement was that the overdraft debt had to be reduced dramatically within a few stages over just a few weeks. Vince was ok with this. The senior manager told Valdemar to implement the decision.

Vince then called on his parents asking them to guarantee the overdraft account and provide the security. He told them that the guarantee would be for about $50,000 and it would last for about 6 months. This was a misrepresentation. In fact, the bank had never discussed any limit to the mortgage security – either in amount or time. It was intended to cover the full amount of Vince’s debts and was unlimited in time. There had been nothing said in discussions with the bank on which Vince could have reasonably formed the view that there would be any such limits. Therefore, what Vince told his parents was either an intentional lie or a reckless one. Neither Valdemar, nor anyone else at the bank, was aware of what Vince had misrepresented to his parents.

Valdemar then arranged to visit Vince’s parents at their home so they could sign the mortgage documents. Valdemar sat down with them at their kitchen table and had a small amount of chit chat - the discussion did not go for long because Vince’s parents have a limited command of English, having emigrated from Italy. In any event, Valdemar had understood that Vince had explained to his parents (in Italian) the nature of the documents and their effect so Valdemar doesn’t bother trying to explain the details again. Vince’s father did remark to Valdemar that the mortgage was only for 6 months, and Valdemar then spent some time pointing out as clearly as he could that the mortgage was in fact unlimited in time. Vince’s parents then signed all the relevant parts of the document and Valdemar went on his way.

Inevitably, Vince was unable to meet the overdraft terms and the state of affairs continued to deteriorate. Vince was soon declared bankrupt and his companies went into liquidation. The bank sent a demand to Vince’s parents to pay his debts and when that was not met, the bank served on Vince’s parents a notice that it would exercise the power of sale under the mortgage.

Vince’s parents are in total shock when they learn that the mortgage was not limited to $50,000. They insist that if they had known the true nature of the document, they would never have agreed to sign it. Nonetheless, the fact remains that they had signed all the relevant mortgage documents agreeing to the full mortgage terms. Vince, of course, is nowhere to be seen. Despite feeling sorry for Vince’s parents. Valdemar wants to press on with the process of enforcing the mortgage against them on behalf of the bank. In fact, if he doesn’t, his job at the bank could be on the line.

**Imagine you are Valdemar and answer the following:**

1. Do you think you are ‘in the right’ legally?
2. Do you think you are ‘in the right’ morally?
3. Vince’s parents resist the mortgage enforcement proceedings in court. What arguments would you make to persuade the court that you should be able to enforce the mortgage against them?

**Imagine you are Vince’s parents and answer the following:**

1. Do you think you are ‘in the right’ legally?
2. Do you think you are ‘in the right’ morally?
3. You want to resist the mortgage enforcement proceedings in court. What arguments would you make to persuade the court that the bank shouldn’t be able to enforce the mortgage against you and sell your property?

# Exercise Two

Consider the scenarios that in the left-hand column of the table below. Each of these relates to a legal problem. See if you can ‘classify’ each scenario according one (or more) of the classifications of law discussed in the reading for Session1. You might also mention a ‘sub-classification’ if relevant (for example: you might give a main classification of ‘public law’ and a sub-classification of ‘constitutional law’).

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| **Scenario** | **Classification** | **Sub-classification** |
| Your neighbour’s fish pond is leaking and the overflow of water is spreading into your backyard causing one of your retaining walls to collapse |  |  |
| Centrelink has refused your application for JobSeeker Payment on the basis that you fail the eligibility requirements due to your assets |  |  |
| The Commonwealth government passes legislation banning political satires being broadcast on free-to-air television |  |  |
| Your supervisor at works asks you to help him pull in a large trolley of drinks for an upcoming retirement celebration. While your supervisor tries to prop open a door, he lets go of his end of the trolley and it rolls back onto you and crushes your legs. |  |  |
| You make an agreement with a dealer in Bali to buy and import traditional Balinese furniture into Australia. The dealer breaches the agreement and refuses to remedy the breach. |  |  |
| You want to build an ice-skating rink on the outskirts of Fyshwick (a suburb of Canberra) but the ACT Land Development Agency refuses to approve your development application. |  |  |
| You run a small business and become aware that a disgruntled ex-employee (whom you sacked some months ago) has hacked into your computer system and accessed confidential data. |  |  |
| During the last years of his life, you care for an elderly friend who is estranged from her own family. She promises you that you can live in her house after she dies for as long you like, and when you leave (or die) the house will pass to a charitable institution. Once she passes away, you discover that she never amended her will to reflect the promise she made to you. The charitable institution seeks possession of the house so they can use it for homeless people. |  |  |
| Your spouse has cheated on you and you’ve decided to leave and move to the UK where your brother (whose family you are close to) now resides |  |  |
| You and your partner wish to adopt a child from an overseas nation |  |  |