**Format**

• You do not need to provide a cover sheet.

• Use IRAC (taught in the seminars).

• Use font size 12 point and line spacing of 1.5.

• Use Calibri font.

• Use margin of at least 2 cm on all sides.

• You must ensure that your writing, punctuation, spelling and grammar are of a satisfactory standard.

* References do not count towards word limit

**Scenario 2**

Akiko is Nicole’s older sister (35 years old). Akiko developed and runs a very profitable online betting business (fairbets.com.au) which she owns 100% of the shares in. Although the business is doing very well, Akiko is no longer interested in being part of an industry which she thinks is generally detrimental to society. She decides to sell all her shares in the business and enters into a contract with Surfers Highway Pty Ltd (SH) for transfer of the shares ($2.8 million) to SH with an initial upfront payment of $2m with the remaining $800,000 (the deferred payment) to be paid in monthly instalments with dates specified in the contract. The share sale and purchase contract (SSP) provided the following:

• (Restraints) The seller will not compete with the purchaser of the business in relation to the business of online gambling anywhere in Australia or New Zealand for 10 years.

• (Seller Warranties) The seller warrants that upon the date of completion (handover of control) any updated list of liabilities and the updated debtor list will be provided to the purchaser with relevant adjustment to the deferred payment amount.

The sale and purchase agreement also provided that in the event there was a late payment of the deferred payment by more than seven days that the Restraints and the Seller Warranties would be void and the Deferred Payment became immediately due and payable in full. On the 1st June 2021 Akiko handed control of ‘fairbets’ over to SH (the initial up-front payment was made in full). The second instalment of the deferred payment was to be made on the 1st August 2021, however SH did not transfer any of the monies to Akiko’s account until the 10th August 2021. Akiko wants to now rely on the late payment clause and sue for the remaining $750,000 due under the contract. SH wish to argue that the Restraints and Seller Warranties are not void because Akiko failed to deliver the updated list of liabilities and updated debtor list on the date of completion, and that Akiko must still fulfil her obligations under the contract as the late payment clause amounted to a penalty.

**Advise SH about the legal character of the terms in the contract and if SH can successfully show that the clause is a penalty.**

Please cite case law in your advice.

Suggested word count: 600-700 words (12 marks)

Note: *Research is required for this scenario. The unit materials WILL NOT be sufficient to score a high grade in response to this scenario.*