

# LAWS3018/JURD7318

## COMMERCIAL LAW

### MID-TERM TAKE-HOME EXAMINATION

#### Term 3 2024

#### Rules

1. Available **4pm Friday 11<sup>th</sup> October 2024** on Moodle.
2. Submission time and date: no later than **4pm Wednesday 23<sup>rd</sup> October 2024**.
3. The student's answer is to be submitted through Turnitin (on Moodle).
4. Students should also keep a copy of their answer printed no later than **4pm** on the due date.
5. This take-home exam has a maximum word limit of 2500 words in total (not including footnotes – only statute and case citations should be footnoted). The word limit is intended to encourage students to clarify their thoughts and express them succinctly.
6. In fairness to all students, penalties will be imposed for work exceeding the word limit according to the following schedule.
  - 0-10% excess = no penalty
  - 10%- 30% excess = 15% penalty
  - more than 30% excess = 30% penalty.
7. Take-home exams submitted after **4pm Wednesday 23<sup>rd</sup> October 2024** will suffer a deduction in line with the [Assessment Procedure and Student Information document \(section 2.02 Late Work\)](#).

Extensions on a no penalty basis can be granted only if (i) students are affected by illness/misadventure, (ii) they have lodged a special consideration request via the [Special Considerations Portal](#) and (iii) the lecturer forms the view that the illness or misadventure excuses the delay in submission.
8. Please use a **size 12 type face, and one-and-a-half-spacing, with at least 2.5cm margins** to allow for marker's comments.
9. The University's academic honesty and plagiarism rules apply.
10. Students are reminded in addition to using the work of others, allowing other students to use your written work or showing your written work to another student doing the exam amounts to collusion in assessment.
11. Collusion in assessment is academic misconduct. Any work submitted for assessment must be written by each student individually, and must not be shared, whether in draft or completed form, with any other student.
12. While it is understood that it is often beneficial for students to study together and to discuss their work, students who share, distribute, or show their written work to any other student while enrolled in the course for which the work is to be submitted will be deemed to be colluding in their work, and thus guilty of academic misconduct.

13. Students may discuss the question, but not their answer, only with other students in the class.
14. It is prohibited to use any software or service to search for or generate answers or even parts of answers. If its use is detected, it will be regarded as serious academic misconduct and subject to the standard penalties, which may include failure, suspension and exclusion.
15. Students must disclose on their cover sheet with whom they have discussed the examination questions.
16. The assessment for this mid-term examination is 25% of the entire assessment for the course Commercial Law. The marks within that 25% portion of assessment applicable to this examination are set out against each question below. These marks are an indicator of required depth in your answer.

*When answering the questions you may have to make assumptions – you are free to do that, please document those assumptions in your footnotes.*

## Scenario 1

Lady Ella Windsor (Ella) is a high wealth individual and the CEO of Oz Electric Car Batteries Pty Ltd (**Oz Car**).

**OzCar** in the last two years has started to produce and market an electric car battery based on solid state technology known as the **Oz1000**. The battery permits the car to travel 1000km's non-stop without a recharge. This is further than Tesla or BYD electric cars can travel and is a major advance on existing technology.

Many car companies including Mercedes, Audi, Hyundai and Suzuki (Australia) have all rushed to buy the **Oz1000** and market the inclusion of the **Oz1000** in their electric cars as giving them unprecedented 1000km range before recharge.

Each **Oz1000** battery sells to car manufacturers for \$25,000 AUD.

**OzCar** needs a particular heavy rare earth mineral called Europium to make the **Oz1000** work. Europium has to be refined in a particular way to generate a purity of 99.99%. If the purity is lower than 99.99% the **Oz1000** can travel only 500kms instead of 1000kms.

The CEO of **OzCar**, Ella calls three rare earth refiners which produce Europium. She tells them she needs *1 tonne of Europium urgently to make one **Oz1000** battery for sale to Suzuki (Australia) (Suzuki) which will sell its first electric car in Australia.* In particular, Ella says she *requires a Europium grade of purity sufficient for the **Oz1000** battery which travels 1000kms.*

Ella does not tell any of the three companies the specific level of purity required is 99.99%. In fact, within the industry there are two different purity levels and the lower level of 85% purity is frequently sold for electric car batteries.

Ella buys the Europium from the cheapest bidder Rinehart Metals Pty Ltd (Rinehart) in Western Australia.

Suzuki sells the first car. Unfortunately, the car stops at 500km and the purchaser is furious with Suzuki for selling a car that fails to meet the 1000km range stated in the marketing material for the **Oz1000**.

Suzuki sues **OzCar** and Ella wants to cross claim against Rinehart.

Advise Ella on the following questions:

### Question 1 (Worth 8 of 25 marks)

What legal arguments might OzCar make to successfully defend the claim brought against it by Suzuki? In particular assume the claims brought by Suzuki are based **only** on alleged breaches of the implied conditions as to quality and fitness under the *Sale of Goods Act 1923 (NSW)*.

### Question 2 (Worth 7 of 25 marks)

What legal arguments might OzCar make to successfully cross claim against Rhinehart? In particular assume the cross claim brought by OzCar is on the ***fitness for purpose*** only of the Europium sold by Rhinehart to OzCar under the *Sale of Goods Act 1923 (NSW)*.

## Scenario 2

Ella is also an enthusiastic rare car collector and wants to buy a 1956 Porsche Boxster a very rare car. Ella travels to Sydney and deals with Mario the dealer at Sydney Fine Cars an expert in Porsche motor cars.

Ella orders from Mario a 1956 Porsche Boxster in red colour. Ella never sees the car as Mario has to order it from Germany and she relies on the description.

Ella is delighted with her purchase and before the car is delivered presells the car to Mrs Bottomley (Mrs B) for a handsome profit.

When the 1956 Porsche is finally delivered to Ella it is not red in colour but yellow!

Ella tries to deliver the car to Mrs B but she refuses to accept it in yellow colour.

Meanwhile, Ella receives a letter from Porsche Germany that the 1956 Yellow Porsche is not permitted to be sold in Australia. It is a German Heritage Item protected by the national laws of Germany and the letter states that Mario had no approval to sell the car.

### Question 3 (Worth 10 of 25 marks)

What legal arguments can Ella make to bring a claim against Mario under the *Sale of Goods Act 1923 (NSW)* and what are the chances of success?

In particular, assume the car is sold by description and focus on issues of identity, title and quiet possession under the *Sale of Goods Act 1923 (NSW)*.

***EXAM ENDS***