

## Critical Case Note – *Foundations of Law 70102*

**Due Tuesday 19 April 2022 by 5.00pm**

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Length: 2000 words (excluding footnotes). There is a 10% leeway.

Weighting: 40%.

### Submission instructions:

1. Your critical case note is to be typed and submitted online through the Turnitin portal on Canvas by 5.00pm Tuesday 19 April 2022 (earlier is fine).
2. You must not submit your critical case note by hardcopy, email or fax. These will not be accepted.
3. Please note that you can make multiple submissions to Turnitin before the due date. This enables you to use Turnitin as a tool to check that you are not plagiarising any material. In order to take advantage of using Turnitin this way, you need to make submissions well before the due date so that it can generate an originality report in time for you to be able to consider that report and make any necessary changes (eg putting words in quotation marks). If you make submissions very close to the due date you may be unable to take advantage of Turnitin as it slows down and may not be able to generate an originality/similarity report in time for you to make the necessary changes before the due date.
4. **Late assignments**, excluding assignments submitted with approved formal extensions from the Coordinator, will be **penalised by 5% of the marks** for the assessment task **per day** (including weekends) that the assignment is late. The time indicated on your Turnitin submission will be taken as the time and date your assignment was submitted. Note that any submission made after the due date and time (even if made on the same day) will attract the late penalty.
5. **Formal extensions must be applied for BEFORE the due date/time**. Because this assessment task is due just after the Easter break, in these exceptional circumstances, if you need to seek an extension you must lodge your application before **9am Tuesday 19 April 2022** (the normal rule for extensions is two business days before the due date). Note that this date for extension applications only applies to the case note being submitted in this subject. If you are seeking a short term extension (ie no more than one week) you must complete the [UTS:Law Request for Extension form](#). If you are seeking a longer extension (more than one week) then you must apply for [Special Consideration](#). Please note that a 'request' does not mean that you have been granted an extension – it is only when the subject coordinator has formally advised you whether or not this has been granted that you will know whether you have an extension.
6. **Word limits**. Word limits must be strictly adhered to. The word limit for this assessment is 2000 words (excluding footnotes) with a 10% leeway (ie a maximum of 2200 words). Note that if you exceed this limit the marker will stop reading and only assess that part of the paper within the word limit.
7. Referencing (citations and footnotes) must follow the *Australian Guide to Legal Citation* (MULR Assoc, 4<sup>th</sup> ed, 2018). [This is available free online, or you can purchase a copy from MULR.](#)

## Task:

You are to read the case *Australian Competition and Consumer Commission v Birubi Art Pty Ltd (in liq)* (CAN 118 654 366) (No 3) (2019) 374 ALR 776

The task is divided into two parts (Part A and Part B). You must complete both parts.

Part A is worth 20 marks and Part B is worth 20 marks.

## PART A (worth 20 marks)

You need to **locate and read the most authoritative version of the case** cited above.

You need to **write a case note in response to the following headings**:

- a) **Introduction**: This should include identification of the case name and citation, court and judge/s and some sentences (one or two) reflecting on the topic of the case, its significance etc.
- b) **Material Facts**: What are the circumstances that gave rise to the dispute? Think about the facts that are relevant to the legal reasoning. You only need to provide enough factual information to explain how the legal issues arose; you do not need to present facts of no relevance to the legal issues. Identify the parties clearly and be consistent with how you refer to them throughout the assignment.
- c) **Procedural history**: Provide an overview of the procedural history of the matter (if any).
- d) **Legal issues**: What is the legal issue(s) (or legal questions) that the court has to answer?
- e) **Legal Reasoning**: What did the judge/s decide and what were their reasons for that decision?  
*This is the most important section of the case note. You need to be able to explain each judges reasoning, including pointing to what precedents, legislation or other sources were key in supporting that reasoning.*
- f) **Orders**: What is the outcome of the case? What orders were made?

### Tips:

*Reading a case is difficult at first and you may need to read this a number of times before it is clear to you. Taking notes and marking the decision for the various elements (listed above) will assist you in writing your assignment.*

*We do appreciate that you are in your first year of studying law and that some legal concepts may be a challenge for you at this stage in your studies.*

*Remember that a case note is not a mere 'summary' of the case but a drawing out of the key legal elements outlined above.*

## PART B (worth 20 marks)

Critically evaluate the case by situating it in its social and legal context drawing on critical theory concerned with the law and Aboriginal and Torres Strait Islander peoples in Australia, and critical race theory more broadly.

This part can be given the sub-heading '**Part B - Critical Analysis.**'

Note that the required readings across the modules on the history of the Anglo-Australian legal system in Australia, Constitutional Law, recognition of Indigenous peoples, and critical legal theories will be useful to you to undertake this analysis – you are, however, expected to conduct some further research.

There is no fixed way in which to undertake this critical analysis and there are multiple different ways in which you might approach this part of the assessment task. For example, it is possible to focus on part of the judgment, a single issue in the decision, or you might draw on historical considerations of this area of law, or the implications of this area of law for future cases, and so on. Different students will indeed provide very different responses but still do well. You must ensure, however, that your analysis is connected to the case itself AND draws on critical theories/scholarship, particularly those that address Aboriginal and Torres Strait Islander people and their relationship to the Anglo-Australian legal system, or critical race theory more broadly.

You might like to think of this section as a 'mini essay'.

## Marking Criteria

IMPORTANT: The notations made in the grid below provide you with feedback on how you went in that section of the assignment and do not translate into a particular grade range for that component or for the task overall.

|  | <i>Poor</i> | <i>Satisfactory</i> | <i>Good</i> | <i>Very Good</i> | <i>Outstanding</i> |
|--|-------------|---------------------|-------------|------------------|--------------------|
| <b>PART A – case note</b>  |             |                     |             |                  |                    |
| • Introduction   |             |                     |             |                  |                    |
| • Material facts   |             |                     |             |                  |                    |
| • Procedural history   |             |                     |             |                  |                    |
| • Legal issues   |             |                     |             |                  |                    |
| • Decision and reasons for decision  |             |                     |             |                  |                    |
| • Orders   |             |                     |             |                  |                    |
| <b>PART B – Critical analysis</b>  |             |                     |             |                  |                    |
| • Supports analysis of the case with critical theories/scholarship that draws on race and Indigenous analysis of law/legal system                                |             |                     |             |                  |                    |
| • Argument/ analysis is logical and succinct   |             |                     |             |                  |                    |
| <b>Criteria that applies to Part A &amp; Part B</b>  |             |                     |             |                  |                    |
| Style and Written Expression   |             |                     |             |                  |                    |
| Consistent and correct use of the <i>Australian Guide to Legal Citation</i> (MULR Assoc, 4 <sup>th</sup> ed, 2018) ('AGLC4'). This includes avoiding plagiarism. |             |                     |             |                  |                    |