

The following is a sample answer to the 'case note practice' on page 56. Lecturers are free to distribute this to students.

## High Court case

### Citation

Koompahtoo Local Aboriginal Land Council v Sanpine Pty Limited [2007] HCA 61

### Court

High Court of Australia

Full Court: Gleeson CJ, Gummow, Kirby, Heydon and Crennan JJ.

### Procedural History

Supreme Court of NSW – first instance, Campbell J

High Court of Australia – present matter

### Facts

Koompahtoo entered a joint venture with Sanpine for the development of Koompahtoo's land. Liabilities were incurred against the land in preparing proposals for development, but development consent could not be achieved. An administrator was appointed to Koompahtoo and terminated the agreement.

### Issue

Was the agreement validly terminated?

### Analysis/Decision

Yes, because Sanpine's failure to adhere to its accounting obligations, to keep proper records and books, was sufficiently serious to give Koompahtoo the right to terminate the contract, either because it was an essential term, or even if it were non-essential, the breach was sufficiently serious as to justify termination.

### Ratio

The right of repudiation for breach of contract may arise even if the breach is not of an 'essential term' of the contract, where there has been a sufficiently serious breach of a non-essential term as to justify termination.

### Obiter

There may be times when it is impossible to say when the contract is entered into whether breach of a particular term will entitle the other party to terminate, but still breaches of the term may be serious enough to have that consequence.

### Order

The appeal was allowed with costs. The orders of the Court of Appeal made on 2 November 2006 were set aside.

Note: this sample answer should not be treated as the only one correct answer. It is an inherent feature of the common law that two people reading the same case may consider that it stands for different things – which is why arguing precedents becomes so interesting.