

MACQUARIE
UNIVERSITY



FACULTY OF
BUSINESS AND ECONOMICS

DEPARTMENT OF BUSINESS LAW

UNIT OUTLINE

Post graduate programme

First Semester 2010

**BUSL854: CHINA TRADE
AND INVESTMENT LAW**

MACQUARIE UNIVERSITY
FACULTY OF BUSINESS AND ECONOMICS
DEPARTMENT OF BUSINESS LAW
BUSL854 – CHINA TRADE AND INVESTMENT LAW
UNIT OUTLINE
2010

Unit conveners: Ms Patricia Blazey and Dr Kay-Wah Chan

Students in this unit should read this unit outline carefully at the start of semester. It contains important information about the unit. If anything in it is unclear, please consult one of the teaching staff in the unit.

ABOUT THIS UNIT

Credit Points: 3 Credit Points (BUS854)

Unit description:

Students will be given an overview of Chinese laws that are relevant to foreign trade and foreign investment in China and conduct a critical analysis of these laws. The global impact of these laws will also be analyzed, along with how the law impacts on Australia.

Unit rationale:

The unit has two principal aims: (1) to introduce students to the current Chinese legal system; and (2) for students to study in detail some aspects of Chinese commercial law, particularly law in relation to foreign investment and foreign trade. We do this by moving from a brief introduction to Chinese legal history and investment environment in China to an examination of a number of important areas of foreign-related Chinese commercial law. Before we do this however, it is important to understand the culture of business in China. This underpins all the learning in this subject and will be dealt with in the first lecture. The unit covers the topics as listed in the Unit Overview below. After having completed the unit, students should have an understanding of the underlying principles of the Chinese legal system and some main areas of law relating to foreign investment and trade in China. Furthermore, students will have some exposure to the rules or principles, which affect commercial transactions with China.

TEACHING STAFF

Lecturers

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CLASSES

2 day intensive. Attendance is compulsory

REQUIRED TEXT

Patricia Blazey and Kay-Wah Chan (ed), *The Chinese Commercial Legal System* (Lawbook, 2008)

UNIT WEB PAGE

The web page for this unit can be found at:
http://www.buslaw.mq.edu.au/undergraduate_programs/units/BUSL854.

LEARNING OBJECTIVES AND OUTCOMES

The **learning objective** of this unit is: (1) to introduce students to the current Chinese legal system; and (2) for students to study in detail some aspects of Chinese commercial law, particularly law in relation to foreign investment and foreign trade.

The **learning outcomes** of this unit are that:

1. Students will acquire knowledge and understanding about the characteristics and principal elements of the Covered Topics. The “Covered Topics” mean the topics listed in the Unit Overview below.
2. Students will acquire knowledge and understanding of how to search for materials in English about the characteristics and principal elements of the Covered Topics.

In addition to the discipline-based learning objectives, all academic programs at Macquarie seek to develop students’ generic skills in a range of areas. One of the aims of this unit is that students develop their skills in the following:

Communication and interpersonal skills - through:-

- participating in class discussions and class activities;

Self-awareness – through:-

- self discipline and time management skills;
- Identifying and setting targets.

Critical analysis skills – through:-

- participating in class discussions and class activities

TEACHING AND LEARNING STRATEGY

The classes will be a combination of lectures and class activities. **As assessment includes class activities, students will be expected to complete the required reading prior to class and to contribute to class activities.**

Unit Overview - Topics to be covered are:

Week	Lecture topic(s)	Readings	Class exercises
Day 1 Saturday 5 March (Blazey)	Overview of China's Economic Development Provinces Guanxi Doing Business in China Legal System Part 1 China's Foreign Trade Regime Commercial Disputes	Chapters 1 Map Mofcom Ch 3 slides Ch 5 Ch 9 Ch18	Play Presentations
	LUNCH		
	Environmental Law Water, waste, atmosphere Kyoto, deforestation and desertification	Ch 20	Presentations Film
	Intellectual Property	Ch 15	Quiz
	Contract Law	Ch 8	Quiz
Day 2 Saturday 26 March	The Constitution and Governmental System Legal System Part 2 Company Law	Ch 4 Ch 5 (pp.110-113 & 117-143) Ch 11	Presentations
	LUNCH		
	Foreign Investment Laws Employment Law	Ch 10 Ch 13	Presentations
	Takeovers / Mergers & Acquisitions (Chan) Tax Law	TBA Ch14	

RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OUTCOMES

The assessment tasks (described in details below, namely class participation and assignment) adopted in this unit will test the extent that the student achieves the learning outcomes (as stated above), i.e. the extent of his/her knowledge and understanding about (1) the characteristics and principal elements of the Covered Topics; and (2) how to search for materials in English about these characteristics and principal elements.

Assessment: 3 pieces of work

1. Class Participation	20 marks
2. In class test	30 marks
2. Research Assignment	50 marks

Class Participation:

- Attendance is required for all students and a roll will be taken
- Students are expected to do the required readings (if any), prepare for and actively participate in class activities.
- Class activities are designed to test students' understanding about (1) the characteristics and principal elements of the Covered Topics; and (2) how to search for materials in English about such characteristics and principal elements.
- Students will be required to undertake presentations

Criteria upon which class participation is to be assessed are: frequency of participation, attitude towards participation, and quality of participation.

- ***Excellent performance (8.5 marks or above out of 10 marks)***: detailed explanations on minimum requirements provided in the Blackboard site of the unit.
- ***Very good performance (7.5 – 8.4 marks out of 10 marks)***: detailed explanations on minimum requirements provided in the Blackboard site of the unit.
- ***Good performance (6.5 – 7.4 marks out of 10 marks)***: detailed explanations on minimum requirements provided in the Blackboard site of the unit.
- ***Satisfactory performance (5.0 – 6.4 marks out of 10 marks)***: detailed explanations on minimum requirements provided in the Blackboard site of the unit.
- ***Poor performance (0 – 4.9 marks out of 10 marks)***: failing to achieve the minimum requirements for satisfactory performance (see detailed explanations provided in the Blackboard site of the unit.).

The above are not definitive statements about marking and are not to be used as a basis for disputing the marks of Class Participation.

FINAL ASSIGNMENT:

Students will be required to undertake a take home assignment. Students can choose an area of research that is of interest to them providing an abstract is provided to the lecturer prior to writing and given approval.

It is to be returned to the boxes situated on the ground floor of W3A at a date to be determined.

- **Late submissions:**
No late submissions will be accepted.
- **Cover Sheet:**
 - The **Cover Sheet** (in the form as provided in the unit's Blackboard site) must be **completed, signed and stapled** to the top left-hand corner of the Assignment. It is students' responsibility to print and attach it to the front of the Assignment. **Assignment without coversheet will not be marked and will be returned to the student with a zero mark. The assignment must be put through turn it on and a certificate supplied.**

- **Format:**
 - Handwritten Assignments will **not** be accepted. All Assignments must be **typed**, in A4-sized white papers, in the following **format**:
 - ✧ **Font size:** 12 point
 - ✧ **Font:** Times New Roman
 - ✧ **Spacing:** One-and-a-half-line spacing
 - ✧ **Margins:** not less than 2.6 cm.
 - Failure to comply with any of the required format described above is subject to a **penalty of 4 marks**.
- **Referencing:**
- All assignments must have referencing by **footnotes** (NOT endnotes or in-text referencing)
- **Referencing Format:**
 - The required convention for providing references (i.e. footnotes) and bibliography is **the Australian Guide to Legal Citation**, which is available online (for viewing) at: <http://mulr.law.unimelb.edu.au/index.cfm?objectid=EC680959-CA26-5FED-64377B996D86A395>. More details about the Referencing Format can be found in the Blackboard site for this unit.

PLAGIARISM

The University defines plagiarism in its rules: "Plagiarism involves using the work of another person and presenting it as one's own." Plagiarism is a serious breach of the University's rules and carries significant penalties. You must read the University's practices and procedures on plagiarism. These can be found in the *Handbook of Undergraduate Studies* or on the web at: <http://www.student.mq.edu.au/plagiarism/>

The policies and procedures explain what plagiarism is, how to avoid it, the procedures that will be taken in cases of suspected plagiarism, and the penalties if you are found guilty. Penalties may include a deduction of marks, failure in the unit, and/or referral to the University Discipline Committee.

DETERMINATION OF OVERALL GRADE

The overall grade for the unit will be determined with regard to the student's performance in each of the assessment tasks described above (namely Class Participation and Assignment).

STUDENT SUPPORT SERVICES

Macquarie University provides a range of Academic Student Support Services. Details of these services can be accessed at <http://www.student.mq.edu.au>.

ASSESSMENT CRITERIA FOR FINAL TAKE HOME ASSIGNMENT

The final assignment will be marked according to the criteria for assessment described below. They are not definitive statements about marking and are not to be used as a basis for disputing the final marks.

Minimum requirements for a High Distinction

- Excellent understanding of the legal principles and their assumptions, limitations and relevance
- Grasp of all key concepts
- Discussion of the principles that show insight and innovation
- Excellent use of authorities and references.
- Excellent footnoting
- Clear and logical statements
- Conclusion - excellent and interesting
- Thought provoking arguments
- Very well structured
- Clear and smooth flow of arguments
- No irrelevant material

Minimum requirements for a Distinction

- Excellent understanding of the legal principles
- Good analysis
- Grasping of most of the key concepts
- Thorough understanding of assumptions, limitations and relevance
- Clear explanation and examples to support ideas
- Thorough use of authorities to support arguments
- Accurate use of footnoting i.e. conformity to footnoting guide
- Opinion well supported
- Well structured
- No irrelevant material

Minimum requirements for a Credit

- Good quality in the contents:
- Good discussion of principles and good application to the question
- Some valid observations opinions and conclusions supporting arguments
- Good use of explanation and examples
- Use of relevant authorities
- Good referencing to support authorities

Minimum requirements for a Pass

- Understanding of most of the relevant legal principles
- Satisfactory coverage of the important and relevant points
- Showing satisfactory knowledge and understanding of the relevant laws and/or legal issues (as the case may be) and (if applicable) the broader context within which such laws operate;
- satisfactory analysis and discussions
- good referencing to support authorities
- reasoned arguments
- Satisfactory referencing (footnoting and bibliography):

Fail

- Shallow grasp of material
- Poor explanation of legal principles
- Lack of relevance
- Poor referencing to support authorities
- Unclear statements
- Incorrect explanations or examples

Map of Chinese Provinces



DATABASES

The Databases listed below are currently subscribed by the Macquarie University Library and can be accessed from the Library homepage: <http://www.lib.mq.edu.au/>.

- **Isinolaw** - access to laws and regulations of the PRC and legal news (but you have to access the site from computers in the University).
- **Factiva** - access to newspapers and magazines sources such as *Asian Affairs*, *Far Eastern Economic Review*, *China Business Review*, *China Daily*, *Xinhua News Agency*, *Business China*, *China Business Weekly*, etc.
- **LexisNexis** - access to the full text of a number of American and international law journals, such as *Columbia Journal of Asian Law*, *Pacific Rim Law & Policy Journal*, *Asian-Pacific Law & Policy Journal*, etc.

- **Hein Online** - access to the full text of a number of American and international law journals, such as *Columbia Journal of Asian Law*, *Pacific Rim Law & Policy Journal*, *Asian-Pacific Law & Policy Journal*, *East Asia Law Review (Chinese Law & Policy Review)*, *Chinese Journal of International Law*, etc.
- **Westlaw International** - a searchable legal research database providing full text access to a number of sources that may have China-related materials, such as *Chinese Journal of International Law*, *China Daily*, *Journal of Chinese and Comparative Law*, *China Law & Practice*, etc.
- **Business Source Premier** (via EBSCOhost) - access to the full text of a number of journals and magazines such as *China Business Review*, *China Economic Review*, *Business China*, etc.
- **Expanded Academic ASAP** - can search for articles in a number of journals or magazines that may relate to China such as *China Quarterly*, *China Economic Review*, *Business Asia*, *Journal of Contemporary Asia*, etc.
- **Academic Search Premier** - can search for articles in a number of journals that may relate to China such as the *China Journal*, *Journal of Contemporary China*, *Chinese Law and Government*, *Chinese Journal of International Law*, *Critical Asian studies*, *East Asia: An International Quarterly* (formerly *Journal of Northeast Asian Studies*), *Journal of East Asian studies*, etc.
- **Asia-Studies Full-Text** - it has full-text reports covering many Asian countries including China on business, government, economic, and social issues. It has journals (such as *Harvard Asia Pacific Review* and *Stanford Journal of East Asian Affairs*) and reports/studies/publications from/by organizations (such as the American Chamber of Commerce in the PRC, the East-West Center, the Asian Development Bank, etc).
- **IngentaConnect** - a searchable database of citations from journals; if the journal is subscribed by the Macquarie University Library, there will be an Article Linker that will take you to the full text in the database source(s) subscribed by the Library.
- **Project Muse** - access to articles in a number of journals that may have materials related to China such as *China: An International Journal*, *Brookings Trade Forum*, the *Washington Quarterly* (only from 2000 to 2008), etc.
- **ScienceDirect** - access to articles in a number of journals that may have materials related to China such as *China Population, Resources and Environment*, *International Review of Law and Economics*, *International Journal of the Sociology of Law, Policy and Society*, etc.
- **Current Contents Connect** - a searchable database of citations from journals; if the journal is subscribed by the Macquarie University Library, there will be an Article Linker that will take you to the full text in the database source(s) subscribed by the Library.
- **Informaworld** - searchable full text access to the Taylor & Francis Group journals such as the *Journal of Contemporary China*.
- **Wiley InterScience** - searchable database with access to full text of a number of journals.
- **Informit** - a searchable database that provides citations, abstracts and/or full-text of articles from journals such as the *China Journal*, *Australian Journal of Asian Law*, *Lawasia Journal*, *Commercial Law Quarterly*, *Macquarie Journal of Business Law*, etc.

- **Cambridge Journals Online** - searchable full text access to the journals published by the Cambridge University Press such as the *China Quarterly*, *Modern Asian Studies*, *the International Journal of Asian Studies*, etc.
- **Wilson index to legal periodicals** - a searchable database that provides citations and abstracts of articles from American and international legal periodicals.

WEBSITES

Laws and legal materials:

- **Isinolaw** – see above under “Database”
- **Invest in China** (a website operated by the MOFCOM, it has many commerce/investment related laws and other legal materials): <http://www.fdi.gov.cn/index.htm>
- The website of the **National People’s Congress** also has a webpage with database of laws and regulations: http://www.npc.gov.cn/englishnpc/Law/Integrated_index.html
- The website of the **Hong Kong Trade Development Council** also has some regulations in full-text: <http://www.hktdc.com/info/mi/s/eht/en/Economic---Business-Trends/Regulations-.htm?mode=p&s=92>
- **LawInfoChina** – a website operated by the Beijing University Centre for Legal Information; it has access to laws and other legislations, legal news, cases, White Papers, articles etc. but access to some materials requires subscription: <http://www.lawinfochina.com/>

Stats on China <http://www.stats.gov.cn/english/statisticaldata/yearlydata/>

Governmental ministries/authorities/websites:

- **National People’s Congress:** <http://www.npc.gov.cn/englishnpc/news/>
- **The Central People’s Government:** <http://english.gov.cn/index.htm>
- **Legislative Affairs Office of the State Council:** <http://www.chinalaw.gov.cn/article/english/>
- **Ministry of Commerce (MOFCOM):** <http://english.mofcom.gov.cn/>
- **National Bureau of Statistics of China:** <http://www.stats.gov.cn/english/index.htm>
- **National Development and Reform Commission (NDRC):** <http://en.ndrc.gov.cn/>
- **Ministry of Justice:** http://www.legalinfo.gov.cn/english/node_7590.htm
- **Ministry of Public Security:** <http://www.mps.gov.cn/English/index.htm>
- **State Administration for Industry and Commerce:** <http://www.saic.gov.cn/english/index.html>
- **State Administration of Taxation:** <http://202.108.90.130/n6669073/index.html>

- **State Administration of Foreign Exchange:** http://www.safe.gov.cn/model_safe_en/index.jsp?id=6
- **China Banking Regulatory Commission:** <http://www.cbrc.gov.cn/english/index.htm>
- **China Customs:** <http://english.customs.gov.cn/publish/portal191/>
- **The Supreme People's Court:** <http://en.chinacourt.org/>
- **China Internet Information Center:** <http://www.china.org.cn> (it has news, information, and searchable texts of governmental papers)
- **China Central Television:** <http://english.cctv.com/01/index.shtml> (with news in text and in video)

Online newspapers/magazines/news channels:

- **China Daily:** China's official English newspapers: <http://www.chinadaily.com.cn/>
- **Xinhua (China View):** China's official news agency: <http://www.chinaview.cn/china/index.htm>
- **China Today:** <http://www.chinatoday.com.cn/ctenglish/index.htm>
- **People's Daily:** Newspapers of the Chinese Communist Party: <http://english.people.com.cn/>
- **Beijing Review:** <http://www.bjreview.com.cn/>
- **Asianweek:** <http://www.asianweek.com/>
- **Far Eastern Economic Review:** a magazine with essays/articles on political issues, international relations, economics etc. in relation to the Far East (<http://www.feer.com/home>)
- **The Wall Street Journal (Asia):** digital edition available at: <http://www.wsj-asia.com/digital-edition>
- **The New York Times (Asia Pacific):** <http://www.nytimes.com/pages/world/asia/index.html>
- **The New York Times (China Topics):** <http://topics.nytimes.com/top/news/international/countriesandterritories/china/index.html>
- **CNN (China Topics):** <http://topics.edition.cnn.com/topics/china>
- **BBC (Asia-Pacific):** <http://news.bbc.co.uk/2/hi/asia-pacific/default.stm>

Online journals:

- **Asia-Pacific Law & Policy Journal:** <http://www.hawaii.edu/aplpj/>
- **Asian Journal of Comparative Law:** <http://www.bepress.com/asjcl/>
- **East Asia Law Review:** <http://www.pennealr.com/>
- **Asia Policy:** <http://asiapolicy.nbr.org/current.html>
- **Asian Development Review:** <http://www.adb.org/documents/periodicals/adr/default.asp>
- **Asian Perspective:** <http://www.asianperspective.org/index.html>
- **Asian Social Science:** <http://ccsenet.org/journal/index.php/ass/>

- *Journal of Politics and Law*: <http://ccsenet.org/journal/index.php/jpl/index>
- *Journal of Sustainable Development*: <http://ccsenet.org/journal/index.php/jsd/index>