



**DEPARTMENT OF ACCOUNTING AND
CORPORATE GOVERNANCE**

STUDY GUIDE

BUSL833 BUSINESS PROPERTY LAW

Semester 1, 2011

Credit points: 4 cps

Unit convener: ANTHONY GERARDIS

Students in this unit should read this study guide 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

This unit reviews the law relating to property including real property and personal property. A particular focus of the course is the manner in which the law enables the protection, pursuance and composition or settlement of rights relating or incidental to property interests. In this context the law of tort, and particularly the means by which the law deals with insolvency, will be considered.

TEACHING STAFF

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CLASSES AND STUDY TIMES

Internal Students

Business Property Law is offered on a weekly basis during first semester. The classes held will be conducted in seminar style. **Classes will begin on Thursday 24 February 2011 in X5B 039.**

Classes will run from 9am to 12pm throughout the semester.

Students must check the Blackboard site for this unit on the Business Law site on the Faculty of Business and Economics website for changes to class times and rooms, after the commencement of Semester 1 on February 21, 2011.

TEXTS

The unit deals with a range of topics covered in most general business law texts.

Students should discuss the choice of text with the convenor before any purchase.

The text that has been prescribed in this unit previously is:

Peter Gillies, *Business Law*, Federation Press 12th Edition

In addition *Helmore COMMERCIAL LAW AND PERSONAL PROPERTY in New South Wales* by J.W. Carter, Patricia Lane, Gregory J. Tolhurst and Elisabeth M. Peden is also recommended reading.

Other similar texts are also suitable and matters concerning texts will be discussed in the first class.

For that part of the unit concerning corporate insolvency company law texts will be most useful. For example:

Lipton & Herzberg, *Understanding Company Law*, Lawbook Co (*Chapters on Insolvency only*).

For more in-depth reading on the topic of insolvency and bankruptcy, for those so inclined:

Tomasic and Whitford, *Australian Insolvency and Bankruptcy Law*, Butterworths

Examples for further reference:

Balkin and Davis, *Law of Torts*, Butterworths

Bevan, *Insolvent Trading*, Federation Press

Blakeney and McKeough, *Intellectual Property: Commentary and Materials*, Lawbook Co

Bugden, *Strata Title Management Practice in NSW*, CCH

Burton, *Australian Financial Transactions Law*, Butterworths

Butt, *Butterworths Statutes - Property Law NSW*, Butterworths

Butt, *Land Law*, Lawbook Co

Certoma, *The Law of Succession in NSW*, Lawbook Co

Chalmers, *Introduction to Trusts*, Lawbook Co

Carter, *Commercial Law & Personal Property in NSW*, Lawbook Co

Fleming, *The Law of Torts*, Lawbook Co

Ford and Austin, *Principles of Corporations Law*, Butterworths

Gardiner, *Outline of the Law of Torts*, Butterworths

Golvan, *An Introduction to Intellectual Property Law*, Federation Press

Insolvency Law Journal, Lawbook Co

Kelly, *Insurance Legislation Manual*, 3rd edn, Butterworths

Kelly and Ball, *Principles of Insurance Law in Australia and New Zealand*, Butterworths

Latimer, *Australian Business Law*, CCH

Mason Priddle & Fletcher, *Cases on Commercial Law*, Lawbook Co.

McKeough and Stewart, *Intellectual Property Law in Australia*, Butterworths

Neave et al, *Sackville and Neave Property Law - Cases and Materials*, Butterworths

Pentony et al, *Commercial Transactions - Cases & Materials*, Butterworths

Quilter, *The Company Law Notes*, Thomson Lawbook

Tarr et al, *Australian Insurance Law*, Lawbook Co

Teh and Dwyer, *Introduction to Property Law*, Butterworths

Townley and Pratt, *A Practical Guide to Insolvency*, Butterworths

Turner, *Australian Commercial Law*, Lawbook Co

Vermeesch and Lingren, *Business Law*, Butterworths

There are various other texts periodically published which students may wish to refer to.

Statutes - following statutes (as amended) may usefully be referred to:

Conveyancing Act 1919 (NSW)

Copyright Act 1968 (Cth)

Corporations Act 2001

Designs Act 1906 (Cth)

Insurance Contracts Act 1984 (Cth)

Patents Act 1990 (Cth)

Real Property Act 1900 (NSW)

Trademarks Act 1994 (Cth)

Trade Practices Act 1974 (Cth)

Trustee Act, 1925 (NSW)

Statutes are at <http://www.austlii.edu.au>

UNIT WEB PAGE

Study guides and information regarding the unit will be available from the Blackboard site on the Business Law site on the Faculty of Business and Economics website.

LEARNING OBJECTIVES

Unit Objectives

- To introduce and familiarise students with law relating to property of all kinds in this jurisdiction;
- To develop or enhance an appreciation by business managers and related professions of the legal context in which they operate;
- To create an enlightened awareness by individual professionals of the legal basis for, and scope of, their roles;
- Generally, to contribute to the legal literacy of these professions;
- To build a sound knowledge and understanding of the relevant legal principles surrounding the legal notion of property;
- To develop skills necessary to apply appropriate legal principles, supported by authorities to problems and fact patterns that are likely to be encountered in the commercial world
- To demonstrate academic proficiency in research, analysis and presentation of the assessment task.

The programs in which the unit is a component, do not aim to develop professional legal skills associated with legal practice

Subject to this, the unit aims at developing and consolidating knowledge of the law and the fundamental principles, doctrines and distinctive reasoning processes associated with the law.

For example, the common law as a precedent based system will be employed in this unit as authority for many of the principles and laws being considered. The roles of the common law and legislation, and those of the courts and commercial necessity will also be vital to this unit. A priority will be developing through practical application and review of the material the basic skills required for reading and understanding the texts of the law, primary (cases and statutes) and secondary (commentaries on the law, such as books and articles).

At all times the practical value of this unit to its participants is to be considered the measure of its worth. Speaking generally it is difficult to comprehend a commercial arrangement, or business transaction of any consequence that is not fundamentally predicated on the law of property. Professionals from almost every field must, and are generally expected to comprehend the legal notion of property.

The unit will involve completion of a research project, embodied in an essay, which will further develop skills of legal interpretation, analysis and synthesis, and an understanding of the interrelationship between the development of the law and its application in the sphere of the commercial world.

GENERIC SKILLS

As reflected immediately above, the unit aims at developing skills required for interpreting the materials of the law, and their analysis and synthesis. In essence, the unit develops verbal reasoning skills in the context of the law discipline. Students should develop the ability to apply appropriate legal principles and authorities to the solution of problems and questions.

TEACHING AND LEARNING STRATEGY

The unit consists of seminar-based classes. Students are encouraged to attend class and to prepare for class. The techniques of legal reasoning, legal knowledge, and a capacity to apply the principles of law to hypothetical fact situations (or “cases”) will be developed through explanation, discussion and essay writing.

Students are encouraged to raise real life cases from their professional experience, relevant to the subject matter of the unit. Likewise, they are welcome to propose research project topics which are relevant to their work. (For example, a student employed in the insurance industry might choose to research an aspect of insurance law.)

Attendance at lectures is vital to acquiring the skills and knowledge this unit is focused on developing.

NOTE:

- PowerPoint presentations and the lecturer's notes are not available for distribution to students under any circumstances.
- Participants in this unit are expected to write and rely on their own notes taken during lectures and their own research for assessments.
- Taking useful notes in an academic forum is a critical part of the learning process; under no circumstances will the lecture notes or PowerPoint presentations be 'provided' to students.

ASSESSMENT

The assessment is based on three tasks:

(1) Class participation (10% of overall assessment)

(2) An essay of 2500 words (45% of overall assessment) on one of the following topic:

“How important, and how effective are laws protecting intellectual property? “

“Do the monopolies created by the law result in a tension between the interests of owners of IP and the consumer? “

Due Date: Monday 11 April 2011, by 5pm

(3) An analytical essay of 2500 words (45% of overall assessment) **focusing on one area of study from the topics we have covered in this course**. A topic or topics will be advised in class and on Blackboard, and students may suggest their topic (subject to approval). This essay is worth 45% of the overall assessment. **The essay is due on Monday 13 June 2010, at 5pm.**

ALTERNATIVELY, other than the Class Participation component, assessment can be wholly based on the writing of a SINGLE essay of 4500 -5000 words, on EITHER OF THE SUGGESTED TOPICS ABOVE, or a topic suggested by the student and approved by the lecturer. This option will suit students who have some background in the law or an analogous discipline. **This essay is worth 90% of the overall assessment.**

Due Date: Monday 13 June 2011, by 5pm

ESSAY PRESENTATION

The essay is a formal assessment and as such a high standard of presentation, regard to citations, referencing and thorough research is expected.

CHECK LIST

- Use the ESSAY COVER SHEET included in this Study Guide and be certain to properly include all details thereupon, **including the WORD COUNT.**
- Statement on Essay Cover Sheet acknowledging University Policy on plagiarism MUST be signed.** If this is NOT signed the essay will not be marked until it IS signed.
- The word limit will be strictly enforced.
- Essays are to be typed,
- Double spaced,
- In Times Roman Font 12
- On A4 paper
- With a 40mm left hand margin, 20mm right hand margin,
- Numbered pages and
- Alignment is to be 'Justify'.
- Essays should be submitted stapled on the top left corner.
- Pages are to be printed on ONE side only; do not print double-sided.
- Please do not submit essays inserted in plastic sleeves, binders or anything else.
- Referencing should employ footnotes, not endnotes,
- Bibliography divided into appropriate headings; Texts, Journal Articles, Cases, Legislation, Websites etc.
- For guidance with referencing please approach the course convenor for advice.
- ONLY the *Australian Guide to Legal Citation 3rd Edition* is to be used for referencing.**

***“The Australian Guide to Legal Citation”*, is available on the internet and must be used for referencing.
No other school of referencing is permitted.**

Marks will necessarily be deducted for work that is not of a professional standard of presentation or that does not comply with the requirements outlined herein. If work is below minimum expectations marks will be deducted or it may be returned to students for amendment before marking commences.

Essays will be graded as soon as possible with comments. There will be no regrading of essays and the mark will be final.

Late submission: Essays that are submitted late, without an extension, will lose 2 marks per day.

Essays submitted more than 4 days late will lose 10 marks, plus 4 marks for each additional day they are late.

Essays submitted more than 10 days after the due date will not be marked.

Any essays on an independent topic, different to the topic(s) proposed by the convenor, that are not first submitted to the convenor and approved by the convenor, will not be marked.

Any evidence of plagiarism will necessarily result in a grade of 0 and an F.

SUBMISSION:

- 1. A hard copy of assignments is required to be deposited in the collection box located in W3A 341.**
- 2. A 'soft copy' in WORD 97– 2003 format MUST be e-mailed to the Convener at agerardi@bigpond.net.au and you are to request a 'read receipt' when sending.**

GRADES

Macquarie University uses the following grades in coursework units of study:

HD - High Distinction

D - Distinction

CR - Credit

P - Pass

F - Fail

Grade descriptors and other information concerning grading are contained in the Macquarie University Grading Policy which is available at:

<http://www.mq.edu.au/policy/docs/grading/policy.html>

GRADING APPEALS AND FINAL EXAMINATION SCRIPT VIEWING

If, at the conclusion of the unit, you have performed below expectations, and are considering lodging an appeal of grade and/or viewing your final exam script please refer to the following website which provides information about these processes and the cut off dates in the first instance. Please read the instructions provided concerning what constitutes a valid grounds for appeal before appealing your grade.

http://www.businessandeconomics.mq.edu.au/for/new_and_current_students/undergraduate/admin_central/grade_appeals.

SPECIAL CONSIDERATION

The University is committed to equity and fairness in all aspects of its learning and teaching. In stating this commitment, the University recognises that there may be

circumstances where a student is prevented by unavoidable disruption from performing in accordance with their ability. A special consideration policy exists to support students who experience serious and unavoidable disruption such that they do not reach their usual demonstrated performance level. The policy is available at: http://www.mq.edu.au/policy/docs/special_consideration/procedure.html

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>.

[Individual Unit Convenors may wish to add Unit/ Faculty specific support eg BESS, Room, PAL, E4B Consultation Room.]

IT CONDITIONS OF USE

Access to all student computing facilities within the Faculty of Business and Economics is restricted to authorised coursework for approved units. Student ID cards must be displayed in the locations provided at all times.

Students are expected to act responsibly when utilizing University IT facilities. The following regulations apply to the use of computing facilities and online services:

- Accessing inappropriate web sites or downloading inappropriate material is not permitted. Material that is not related to coursework for approved unit is deemed inappropriate.
- Downloading copyright material without permission from the copyright owner is illegal, and strictly prohibited. Students detected undertaking such activities will face disciplinary action, which may result in criminal proceedings.

Non-compliance with these conditions may result in disciplinary action without further notice.

Students must use their Macquarie University email addresses to communicate with staff as it is University policy that the University issued email account is used for official University communication.

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 policies and procedures on plagiarism. These can be found in the *Handbook of Postgraduate Studies* or on the web at: <http://www.student.mq.edu.au/plagiarism/>

Aside from **necessarily failing the Unit** the matter may be referred to the University Discipline Committee.

If you take and use the work of another person without clearly stating or acknowledging your source, you are falsely claiming that material as your own work and committing an act of *PLAGIARISM*.

This is a very serious violation of good practice and an offence for which you will be penalised. If you do any of the following in an assignment, or in any piece of work which is to be assessed, ***without clearly acknowledging your source(s) for each quotation or piece of borrowed material*** you are **guilty of PLAGIARISM**

YOU WILL BE GUILTY OF PLAGIARISM

- (a) Copy out part(s) of any document, including computer and web-based material;
- (b) Use or extract someone else's concepts or experimental results or conclusions, even if you put them in your own words;
- (c) Copy out or take ideas or summarise from the work of another student, even if you put the borrowed material in your own words;
- (d) Submit substantially the same final version of any material as a fellow student. On occasions, you may be encouraged to prepare your work with someone else, but the final form of the assignment you hand in must be your own independent endeavour.

There is nothing wrong in using the work of others as a basis for your own work, nor is it evidence of inadequacy on your part, ***provided you do not attempt to pass off someone else's work as your own.***

"The Australian Guide to Legal Citation 3rd Ed.", available on the internet, must be used for referencing. No other school of referencing is permitted.

To restate: Any evidence of plagiarism will necessarily result in a grade of 0 and an F. If this is in any way unclear please approach the course convenor for clarification.

LIBRARY SUPPORT SERVICES

Macquarie University Library offers a wide range of services and resources to postgraduate students. Go to the Library website <http://www.lib.mq.edu.au>. For a complete list of services and resources and for enrolling in Library orientation programs for Law see your Postgraduate Programs Administrator, spilking@efs.mq.edu.au (phone 9850 1056).

Services include information on borrowing periods, services to distance students, links to IT Help (the Library's IT support service), and links to training information and training course notes.

Services offered by your liaison librarian include:

- Providing further information on the library services.
- Providing individual and group library resource sessions for postgraduate students.
- Advising on new database trials being held in the Library.
- Advising on appropriate contacts for specific services, such as requesting items not held at the Library from the Document Supply Service.
- Preparation of resource guides in print and on the web.
- Reference advice (face-to-face, phone and email)

Further information about these services is available from the **Postgraduates** link, listed under **Additional Services** on the Library homepage.

UNIVERSITY POLICY ON GRADING

The University requires all Divisions to adhere to a policy relating to the distribution of grades across high distinction, distinction, credit and pass grades. This means a student's raw mark for a unit (i.e., the total of their marks for each assessment item) may not be the same as that which they receive on their transcript. This is because the total raw mark may be scaled up or down so that the grades of all students in each unit sit within the distribution bands set down by the University. The policy does not require that any number of students are to be failed in any unit.

SCHEDULE OF TOPICS

PRECIS OF AREAS

Note that the following areas indicate the general scope of the unit. They are not necessarily of equal weight in the overall structure and certain areas will provide a focus for discussion. Also these areas are representative of the course content and not a 'timetable', or calendar. Some areas will require more than one lecture to comprehend.

AREA 1 The Law – Overview of the legal system

AREA 2 Personal property

AREA 3 Real property

AREA 4 Intellectual property

AREA 5 Torts

AREA 6 Introduction to Negotiable Interests and Aspects of Cheque Law

AREA 7 Insurance Law

AREA 8 Bailment

AREA 9 Security Interests in Goods

AREA 10 Equity, Trusts

AREA 11 Insolvency (personal and corporate)

AREA 12 Succession

Students may wish to consider the following:

Personal Property

- Introduction to notions of property
- Personal Property v Real property
- Insurance Law
- Bailment
- Carriage of Goods
- Forms and Functions of Security Interests in Goods
- Introduction to Negotiable Interests and Aspects of Cheque Law
- Equity
- Bankruptcy and Insolvency

Real Property

- Old System Title
- Qualified Title
- Limited Title
- Torrens Title
- Strata Title
- Fixtures
- Waste
- Trespass to land
- Mortgages
- Leases
- Co-ownership
- Easements
- Covenants

Intellectual property

- copyright
- designs
- patents
- trade marks
- general law remedies (passing off; confidential information)

Tort Law

Tort law is (like contracts) a traditional area of common law. It imposes liability in damages upon defendants who commit one or another of the torts (a tort is a “civil wrong”). It is, in an approximate way, the civil law counterpart of the criminal law.).

The major focus will be on the tort of negligence (including vicarious liability) which is the most important tort in practice. However, it is also necessary to refer to other torts which protect property interests – trespass against land, nuisance, torts covering chattels.

Consider the Following:

- Distinguish liability in tort from liability in contract and crime.
- What losses are remediable?
- What are the remedies available in tort?
- What defences are available?

Negotiable Interests and Aspects of Cheque Law

- What is a ‘bank’?
- What is the nature of the relationship between a bank and its customer?

Insurance Law

- - basic concepts
- - duty of utmost good faith
- - misrepresentation
- - indemnity
- - subrogation
- - standard classes of insurance

Bailment

- concept of bailment
- classifying bailments
- the bailee’s duties
- bailor’s duties
- special types of bailee

Security Interests in Goods

- An interest created to secure a loan
- Consequences for the borrower and the lender
- Mortgage
- Floating charge
- Pledge

Equity, Trusts

- Trusts
- origin, concept
- classifying trusts
- creation of a trust

- position of the trustee
- position of the beneficiary
- termination of the trust

Insolvency (personal and corporate)

- history, concept, rationale of bankruptcy regime
- administration of the regime
- initiation of bankruptcy
 - - acts of bankruptcy
- effects of sequestration order
- administration of bankrupt's estate
- property available
- inclusionary, exclusionary rules
- order of payment of debts
- discharge
- arrangements with creditors without sequestration

Corporate Insolvency

- Arrangements and reconstructions
- Receivership
- Voluntary administration
- Liquidation (including insolvent trading)

Succession

- Consequences on a person's property upon death
- A right to bequest?
- A right to inherit?

It is anticipated that all students will have read the chapters for the topics we are covering, or equivalent material from other sources and be familiar with many of the cases *before* the lectures.

Lectures are animated and very informal, every lecture will feature extensive and comprehensive PowerPoint presentations, and discussion is encouraged.

One of the objectives of this unit is to develop research, essay writing and referencing skills to a level appropriate to post graduate studies in law. It is anticipated that this skills will serve students undertaking further studies in their chosen fields of endeavour.

ESSAY COVER SHEET

Family Name:		Unit Code:	BUSL833
Given Names:		Date Due:	
Student ID:		Tutor's Name:	Anthony Gerardis
Essay Title:	WORD COUNT:		

"I certify that I am aware of the University's policy on plagiarism (as stated in www.student.mq.edu.au/plagiarism/) and that this assignment meets those requirements and has not been previously submitted for assessment in any other course of study"

Signed

MARKER'S COMMENTS