

MACQUARIE UNIVERSITY



FACULTY OF BUSINESS AND ECONOMICS

DEPARTMENT OF BUSINESS LAW

UNIT OUTLINE

2010

**BUSL 863 – CORPORATE AND MARKET LAW AND
REGULATION**

Convenor: Dr. Niloufer Selvadurai

MACQUARIE UNIVERSITY
DEPARTMENT OF BUSINESS LAW
UNIT OUTLINE

Year and Semester: 2010, Semester 2
Unit Name: Corporate and Market Law and Regulation
Unit Code: BUSL 863
Credit Points: 4
Unit Convenor: Dr. Niloufer Selvadurai

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.

1. ABOUT THIS UNIT

The unit examines the corporation and its regulation, internally and in respect of its role in markets, especially financial markets. Topics dealt with include the internal governance of corporations, mergers and acquisitions, and public fundraising. Additionally, the unit considers the application of restrictive trade practices law and consumer protection law. Of special interest is the application of such law to financial intermediaries. The roles of ASIC, ASX and ACCC will be examined.

2. TEACHING STAFF

Dr. Niloufer Selvadurai
Convenor and Lecturer
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Dr. Malcolm Query
Lecturer

Ms Lara Hardy
Administrative Director
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3. CLASSES AND STUDY TIMES

Please note the date, time and venue of the two weekend intensive sessions to be held on campus:

• Sunday 8 August 2010, 10am-5pm, Macquarie University:
Mr. Malcolm Query (Units 1-5)

• Sunday 5 September 2010, 10am-5pm, Macquarie University:
Dr. Niloufer Selvadurai (Units 6-12)

PLEASE NOTE THAT ATTENDANCE AT BOTH THE INTENSIVE SESSIONS IS COMPULSORY AND THAT THERE WILL BE MARKS FOR ATTENDANCE. PLEASE SEE 9. BELOW FOR FURTHER DETAILS.

From time to time, e-mails may be sent to students. Hence please ensure that the University has your current contact details including your current e-mail address.

4. REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

CORPORATE REGULATION

Prescribed Text:

Hanrahan, Ramsay & Stapleton, *Commercial Applications of Company Law*, 2008, CCH (“Hanrahan”).

Statute:

Corporations Act available at www.austlii.edu.au/legis/cth/consol

The Act is extremely long and it is recommended that a commercially published version be purchased:

Australian Corporations and Securities Legislation, Vol 1, CCH 2008

Additional recommended reference materials:

Woodward, Bird & Sievers, *Corporations Law in Principle*, 7th edition, Thomson

Lipton & Herzberg, *Understanding Company Law*, Law Book Co.

Ford, Ramsay & Austin, *Principles of Corporations Law*, Butterworths.

Redmond, *Companies & Securities Law*, Law Book Co.

Online materials:

www.asic.gov.au

www.austlii.edu.au

www.asx.com.au

www.takeovers.gov.au

www.cclsr.law.unimelb.edu.au

www.asa.asn.au

www.lipton-herzberg.com.au

MARKET REGULATION

Prescribed Text:

Gillies, *Marketing Law*, 2008, Federation Press (“Gillies”); or

Miller, *Annotated Trade Practices Act*, 2008, Thomson (“Miller”).

Statute:

Trade Practices Act 1974 (Cth) available at www.austlii.edu.au/legis/cth/consol

Additional recommended reference materials:

Corones & Clarke, *Competition Law in Australia*, 2004, Law Book Co.

Steinwall, *Trade Practices Act, 2008*, Lexisnexis.

5. THE BUSL 863 WEB PAGE

The **lecture slides for the weekend intensives**, this Unit Outline and other information on this unit can be found at the Blackboard website for BUSL 863. Please go to the Macquarie home page and click on “On-line Units” (top right hand corner). Then enter your user name and password to access the BUSL 863 site.

Please ensure that you regularly access this web-site for important and updated unit information.

It is a good idea to look at the lecture slides found at the web site before attending the weekend intensive. The lecture slides provide more detail than is available in this Unit Outline. Additions to the Unit Outline are also provided at the web site.

6. LEARNING OBJECTIVES

The objectives of this unit are to:

1. Provide an understanding of the fundamental legal principles relating to the regulation of corporations, especially financial intermediaries;
2. Provide an overview of the institutions that administer such laws;
3. Develop knowledge of specific legislation and cases relating to restrictive trade practices and consumer protection law; and
4. Refine skills of legal analysis through the detailed consideration and application of relevant legislation and case law to hypothetical factual situations.

7. GENERIC SKILLS

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:

1. Communication skills;
2. Critical analysis skills;
3. Problem-solving skills; and
4. Creative thinking skills.

8. TEACHING AND LEARNING STRATEGY

The unit will be taught by form of lectures, followed by group discussion times. Students are expected to have completed the required reading prior to attending class, and be willing to participate in discussions on the topics and issues addressed in the lectures.

9. ASSESSMENT

ASSESSMENT IS COMPRISED OF:

- (1) Attendance and contribution to Corporate Law and Regulation Intensive = 5%.
- (2) Attendance and contribution to Market Law and Regulation Intensive = 5%.
- (3) An essay of 5,000 (to a maximum of 7,000) words = 90% *or*
Two essays of 2,500 (to a maximum of 3,500) words = 45% each.

A list of research questions for the essay will be handed out at each of the two weekend intensive sessions and will also be available at the BUSL 863 Blackboard web site (see 5. above).

Alternatively, you may choose your topic, subject to the approval of the Unit Convenor. Please e-mail topic to Dr. Niloufer Selvadurai (niloufer.selvadurai@law.mq.edu.au) and obtain approval prior to commencing research.

SUBMISSION OF ESSAY(S):

Place a hard copy in the Postgraduate Box outside room 341 in W3A; or

Mail a hard copy to Dr. Selvadurai, Department of Business Law, Macquarie University, NSW 2109.

DUE DATE

One essay option - 9 November 2010.

Two essay option - 11 October (essay one) and 9 November 2010 (essay two).

10. RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OBJECTIVES

The assessment will measure the extent to which the student has gained an understanding of the fundamental legal principles relating to the regulation of corporations, especially financial intermediaries. Additionally, the assessment will assess the student's analytical skills and ability to apply specific statute and case law to factual situations.

11. 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 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.

12. 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 that on occasion a student's raw mark for a unit (ie, 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.

13. SCHEDULE OF TOPICS

CORPORATE REGULATION (UNITS 1-5)

The Corporate Regulation class will, because of time limitations, focus on certain aspects of market regulation (listed below). However this does not preclude you from researching other areas of law for the purpose of your essay.

UNIT 1 – INTRODUCING CORPORATIONS LAW

Hanrahan, Chapters 1-4.

The nature and role of a company

Overall regulatory regime

UNIT 2 – COMPANY MANAGEMENT AND GOVERNANCE

Hanrahan, Chapters 5-16.

The roles of members and directors and relations between them

UNIT 3 – CORPORATE FINANCE AND FUNDRAISING

Hanrahan, Chapters 17-19.

Disclosure to investors and prospectuses

Corporations Act, Chapter 6D

Fraser v NRMA Holdings Ltd (1995) 13 ACLC 132

Share capital

Corporations Act, Chapter 2J

Maintenance of capital

Trevor v Whitworth [1886-90] All ER 46

ANZ Executors & Trustees Co Ltd v Quintex Australian Ltd (1990) 8 ACLC 980

Re Fowler Vacola Manufacturing Co Ltd [1996] VR 97

Preference Shares

Corporations Act, s 254A, Chapter 2H

Variation of class rights

Corporations Act, s 246B

Debentures and loan capital

Capital reduction

Corporations Act, s 256B and s 257A

Membership

Corporations Act, s 231, s 1072G and s 1072F

Dividends

Discretion to pay dividends

Burland v Earle [1902] AC 83

Sanford v Sanford Courier Service Pty Ltd (1986) 5 ACLC 394

“Profit”

Re Spanish Prospecting Co Ltd [1908-10] All Er 573

QBE Insurance Group Ltd v ASC (1992) 10 ACLC 1490

Lee v Neuchatel Asphalt Co (1889) 41 Ch D 1

UNIT 4 – FINANCIAL SERVICES, MARKET MISCONDUCT AND TAKEOVERS

Hanrahan, Chapters 20-21.

Takeovers

Rational for takeover regulation – s 602

Prohibition on takeovers – s 606

Exceptions to takeover prohibition – s 611

Bidder’s statement and target statement – ss 636-638

Market misconduct

Insider trading

Elements – s 1043A

When is information generally available? – s 1042C

When is information material? – s 1042D

- Exceptions and defences – Chinese walls: s 1043F

- Knowledge of own activities: s 1043H

- Underwriters: s 1043C

- Legal obligations: s 1043D

- Other party to transaction aware of information: s 1043M

R v Rivkin [2003] NSWSC 447; [2004] NSWCCA 7

Market manipulation

Section 1041A

False trading

Section 1041B

Misleading or deceptive conduct

Section 1041H

UNIT 5 – INSOVENCY

Hanrahan, Chapters 25-26.

Insolvency

Radisson Maine Property (Australia) Pty Ltd [2004] NSWSC 949

Corporations Act, s 95A, s 459C

Receivership

Corporations Act, s 1323 or by a creditor

Voluntary administration

Appointment – Corporations Act, s 436C, S 436B, s 436A

Re Ansett Australia Ltd and Menthe (No 3) [2002] FCA 2

Osborne Computer Corp Pty Ltd v Airroad Distributors Pty Ltd (1995) 37 NSWLR 382

Sons of Gwalia Ltd (administrators appointed) v Margaretic [2005] FCA 1305

Australasian Memory Pty Ltd v Brien (2000) 200 CLR 270

Liquidation

Unfair preferences: Corporations Act, s 588FA

Uncommercial transactions: Corporations Act, s 588FB

Insolvent transactions: Corporations Act, s 588FC

Related party transactions: Corporations Act, s 588FE(4)

Transactions to defeat creditors: Corporations Act, s 588FE(5)

Unreasonable director-related transactions: Corporations Act, s 588FDA

Defence to voidable transactions: Corporations Act, s 588FG

Directors liability for insolvent trading: Corporations Act, s 588G, 588H, 588J, 588K, 588M, 588R

Illustrative Cases

Morley v Statewide Tobacco Services Pty Ltd [1993] 8 ACSR 305

Metropolitan Fire Systems Pty Ltd v Miller (1997) 23 ACSR 699

Hawkins v bank of China (1992) 10 ACLC 588

Powell and Duncan v Fryer (2000) 18 ACLC 480

Byron v Southern Star Group Pty Ltd (1997) 15 ACLC 191

ASIC v Plymin [No 1] (2003) FLR 124; 46 ACSR 126

MARKET REGULATION (UNITS 6-12)

The Marketing Regulation class will, because of time limitations, focus on certain aspects of market regulation (listed below). However this does not preclude you from researching other areas of law for the purpose of your essay.

UNIT 6 – INTRODUCING RESTRICTIVE TRADE PRACTICES LAW

Gillies, Chapter 9.

Objects of Act

Section 1

The Application of the Trade Practices Act

Application to “corporations” in trade or commerce

Application to “persons” (non-corporate enterprises)

Concepts of Competition and Market

Re Queensland Co-Operative Milling Association Ltd (1976) 25 FLR 169

Administration of the Act

Role of ACCC, ACT and Federal Court

UNIT 7 – CONTRACTS, ARRANGEMENTS OR UNDERSTANDINGS THAT RESTRICT DEALINGS OR AFFECT COMPETITION

Gillies, Chapter 9.

Section 45 (1)

Section 45 (2)

Exclusionary Provisions

ACCC v Rural Press Ltd

ACCC v Pauls Ltd

ACCC v AMA Western Australia Ltd

ACCC v Tyco Australia Pty Ltd

The Effect on Competition

Radio 2UE Sydney Pty Ltd v Stereo FM Pty Ltd (1982) 62 FLR 437

Rural Press Ltd v ACC (2002) 18 FCR 236

Other Illustrative Cases

Pont Data Australia Pty Ltd v ASX Operations Pty Ltd (1990) 21 FCR 385

ACC v Tyco Australia Pty Ltd (2000) ATPR 41-740

TPC v Tubemakers of Australia Ltd (No 2) (1983) 76 FLR 455

TPC v Email Ltd (1980) 43 FLR 383

UNIT 8 – CONTRACTS, ARRANGEMENTS OR UNDERSTANDINGS IN RELATION TO PRICE

Gillies, Chapter 9.

Section 45A

Radio 2UE Sydney Pty Ltd v Stereo FM Pty Ltd (1983) 5 TPR 348.

UNIT 9 – MONOPOLISATION

Gillies, Chapter 11.

Section 46

“Market”

Section 4E definition

Re Queensland Co-Operative Milling Association Ltd (1976) 25 FLR 169

“Market Power”

Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd (1989) 167 CLR 177

Melway Publishing Pty Ltd v Robert Hicks Pty Ltd (2001) 205 CLR 1

“Substantial Market Power”

Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd (1989) 167 CLR

Universal Music Australia Pty Ltd v ACCC [2003] FCAFC 193

Taking Advantage of Market Power for a Proscribed Purpose

Eastern Express Pty Ltd v General Newspapers Pty Ltd

Carter Holt Harvey Building Products Pty Ltd v Commerce Commission

Taprobane Tours WA Pty Ltd v Singapore Airlines

Predatory Pricing

Boral Besser Masonary Ltd v ACCC

ACCC v Boral Ltd

Trade Practices Legislation Amendment Act (No 1) 2007

Other Illustrative Cases

Pont Data Australia Pty Ltd v ASX Operations Pty Ltd (1990) 21 FCR 385

Natwest Australia Bank Ltd v Boral Gerrard Strapping Systems Pty Ltd (1992)
111 ALR 631

John S Hayes & Associates Pty Ltd v Kimberley-Clark Australia Pty Ltd (1994)
ATPR 41-318

UNIT 10 – EXCLUSIVE DEALING

Gillies, Chapter 10.

Section 47

Restraints Concerning Supply

O'Brien Glass Industries Ltd v Cool & Sons Pty Ltd (1983) 48 ALR 625

Restraints Concerning Acquisition

ACCC v Australian Safeway Stores Ltd (2001) 119 FCR 1

Third Line Forcing

KAM Nominees Pty Ltd v Aust Guarante Corporation Ltd (1994) 51 FCR 338

Castlemaine Tooheys Ltd v Williams and Hodgson Transport Pty Ltd (1986)
68 ALR 376

ACCC v IMB Group (in liq)

Restraints Concerning Leases and Licences

Nature of Conditions

Relevance of effect on competition

Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd

ACCC v Baxter Healthcare Pty Ltd

Universal Australia Pty Ltd v ACCC

Other Illustrative Cases

Monroe Topple & Associates Pty Ltd v The Institute of Chartered Accountants in Australia (2002) FCR 110

ACCC v IMB Group Pty Ltd (in liq) [2002] FCA 402

TPC v Tepeda Pty Ltd (1994) ATPR 41-319

UNIT 11 – RESALE PRICE MAINTENANCE

Gillies, Chapter 9.

Section 96

Section 48

Trade Practices Commission v Stihl Chain Saws Pty Ltd (1978) 3 TPR 306

BP Australia v Trade Practices Commission (1986) 66 ALR 148

Illustrative Cases

Peter Williamson Pty Ltd v Capitol Motors Ltd (1982) 61 FLR 257

TPC v Malleys Ltd (1979) 25 ALR 250

UNIT 12 – CONSUMER PROTECTION LAW

Gillies, Chapter 4.

Overview

“Misleading or Deceptive Conduct”

Parkdale Custom Built Furniture Pty Ltd v Paxu Pty Ltd (1982) 149 CLR 191

Taco Co of Australia v Taco Bell Pty Ltd (1982) 42 ALR 177.

Relevance of Silence

Commonwealth Bank of Australia v Mehta (1991) 23 NSWLR 84

Fraser v NRMA Holdings Pty Ltd (1994) 52 FCR 1

Illustrative Cases in Banking and Financial Services:

Travel Compensation Fund v Fry (2003) ATPR 46-227

Sweetman V Bradfield Management Services Pty Ltd (1994) ATPR 41-290

Adour Holdings Pty Ltd (in liq) v Commonwealth Bank of Australia (1991)
ATPR 41-147

Warnock v ANZ Banking Group (1989) ATPR 40-928

Chiarabaglio v Wespac Banking Corporation (1989) ATPR 40-971

ASSIGNMENT COVER SHEET

BUSL 863

Please attach cover sheet to every assignment

Unit Details

Convenor's Name.....

Date Due

Student Details

Surname

Given Names

Student Number

Assignment Details

Title

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“I certify that I am aware of the University’s policy on plagiarism and that this assignment meets those requirements and has not been previously submitted for assessment in any other course of study”

Signed

