



DEPARTMENT OF BUSINESS LAW

STUDY GUIDE

BUSL833 BUSINESS PROPERTY LAW

Semester 1, 2010

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

Convenor: Anthony Gerardis

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CLASSES AND STUDY TIMES

Internal Students

Business Property Law is offered on an ongoing basis during first semester. The classes held will be conducted in seminar style. **Classes will begin on Thursday 25 February 2010 in X5B 039.**

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

External Students

This unit is available to external students.

There will be an intensive weekend class held on:

Sunday 14 March 2010, E5A 119 10am-5pm, taught by Anthony Gerardis.

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 22, 2010.

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.

ASSESSMENT

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:

- 1. “How important, and how effective are laws protecting intellectual property? “**
- 2. “Do the monopolies created by the law result in a tension between the interests of owners of IP and the consumer? “**

The essay is due on Monday 12 April, at 5pm.

(3) An analytical essay of 2500 words 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 14 June 2010, at 5pm.**

ALTERNATIVELY, other than the Class Participation component, assessment can be wholly based on the writing of an essay of 5000 words, on 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 option will be discussed at the first class. This essay is worth 90% of the overall assessment. **The essay is due on Monday 14 June 2010, at 5pm.**

Essays may be submitted to the lecturer or deposited in the collection box located in W3A 341.

Essay topics will be suggested in class.

These essays are formal assessments and as such a high standard of presentation, regard to citations, referencing and research is expected. Use the Title Page included in this Study Guide and be certain to properly include all details thereupon, including the WORD COUNT. 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. Please do not submit essays inserted in plastic sleeves, binders or anything else.

Referencing should employ footnotes, not endnotes, with a bibliography divided into appropriate headings; Texts, Journal Articles, Cases, Legislation, Websites etc. For guidance with referencing please approach the course convenor for advice. **The Australian Guide to Legal Citation, available on the internet, 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. If work is below minimum expectations it will 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.

Unless prior arrangements are made with the convenor, **a hard copy** of assignments is required to be handed **to the lecturer or deposited in the collection box located in W3A 341.**

External students to post directly to Postgraduate Programs Administrator, spilking@efs.mq.edu.au (phone 9850 1056).

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/>. Penalties may include a deduction of marks, failure in the unit, and/or referral 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 IF YOU:

- Copy out part(s) of any document, including computer and web-based material;
- Use or extract someone else’s concepts or experimental results or conclusions, even if you put them in your own words;
- Copy out or take ideas or summarise from the work of another student, even if you put the borrowed material in your own words;
- 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, available on the internet, must be used for referencing. No other school of referencing is permitted.

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.

Postgraduate students are eligible for a number of additional services. Information about these is available from the **Postgraduates** link, listed under **Additional Services** on the Library homepage. These include the **Liaison Librarians (LL)**. The LLs are the first point of contact for Postgraduate students. There is an LL appointed to each Faculty of the University. **Contact Judith Baranyai 9850 7262, or Belinda Law 9850 7528.**

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 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?

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