



FACULTY OF  
BUSINESS AND ECONOMICS

**DEPARTMENT OF BUSINESS LAW**

**STUDY GUIDE**

Second Semester, 2010

**CAPSTONE UNIT**

**UNIT: BUSL315 – BUSINESS LITIGATION**

**MACQUARIE UNIVERSITY**  
**DEPARTMENT OF BUSINESS LAW**  
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**BUSL315 – BUSINESS LITIGATION**  
**UNIT OUTLINE**

**Second Semester 2010**

***Credit Points:*** 3  
***Unit Convenor:*** Julie Zetler  
***Lecturer:*** Julie Zetler  
***Prerequisites:*** BUSL201 AND BUSL250

**1. ABOUT THIS UNIT**

This unit examines features of administrative law, criminal/civil law, dispute resolution and litigation and its impact on business practices. The unit is designed to introduce new material as well as build upon existing legal knowledge and skills obtained in foundation business law subjects. Students will also develop further research and practical skills using primary and secondary legal source materials.

The course will provide overviews of the following areas of business disputes:-

- The types of business disputes (litigation, ADR)
- Civil disputes
- Criminal disputes
- Litigation (torts, contracts)
- The trial process
- Corporate governance
- White collar crime
- Administrative Law (natural justice, procedural fairness, ultra vires and merit issues)
- Available remedies (Common Law, Statutory and Equity)

**2. TEACHING STAFF & ADMINISTRATIVE STAFF**

- **Convenor and lecturer: Julie Zetler**, W3A Room 434, Phone - 9850 7994,  
Email – [julie.zetler@law.mq.edu.au](mailto:julie.zetler@law.mq.edu.au)
- **Departmental Administrator: Alma Urbiztondo**, W3A Room 438, Phone – 9850 8452,  
Email – [alma.urbiztondo@law.mq.edu.au](mailto:alma.urbiztondo@law.mq.edu.au)

**3. TEXTS AND RECOMMENDED READINGS**

**Required Text:**

There is no set text for this subject.

**USEFUL REFERENCES**

## ADMINISTRATIVE LAW

- ◆ M Aronson, B Dyer, *Judicial Review of Administrative Action* (2<sup>nd</sup> Ed, 2000), Lawbook Co.
- ◆ R Creyke, J McMillan, *Control of Government Action*, (2005), LexisNexis.
- ◆ A Ardagh, *Administrative Law* (5<sup>th</sup> Ed, 2004), Lawbook Co.
- ◆ R Douglas, *Administrative Law* (2<sup>nd</sup> Ed, 2004), Butterworths.
- ◆ A D Lang, *Horsley's Meetings* (5<sup>th</sup> Ed 2006), Butterworths.

## ALTERNATIVE DISPUTE RESOLUTION

N Alexander, J Howieson, *Negotiation, Strategy, Style, Skills* (2<sup>nd</sup> Ed 2010) LexisNexis  
T Sourdin, *Alternative Dispute Resolution* (2002) Lawbook Co.

## CRIMINAL LAW

- ◆ Brown, Farrier, Neal, Weisbrot, *Criminal Laws* (4<sup>th</sup> Ed 2008), Federation Press.
- ◆ H Croall, *Understanding White Collar Crime* (2008), Open University Press, UK.
- ◆ L Waller, C R Williams, *Criminal Law – Text and Cases* (10<sup>th</sup> Ed 2004), LexisNexis Co
- ◆ M Eburn, R Hayes, *Criminal Law and Procedure in NSW* (2<sup>nd</sup> Ed 2006), LexisNexis Co

## LITIGATION

- ◆ Colbran, Reinhardt, Spender, Jackson, Douglas, *Civil Procedure* (3<sup>rd</sup> Ed 2005) NexisLexis
- ◆ D Bamford, *Principles of Civil Litigation* (2010), Lawbook Co
- ◆ N Behan, *How to Run Your Own Court Case* (2008), Redfern Legal Centre Publishing
- ◆ Hunter, Cameron, Henning, *Litigation 1 & 2* (7<sup>th</sup> Ed, 2005) LexisNexis
- ◆ P Waight and B Williams, *Evidence: Commentary and Materials* (6<sup>th</sup> Ed, Lawbook Co., 2002).
- ◆ Ian Freckelton, Hugh Selby, *Expert Evidence* (2<sup>nd</sup> Ed 2002), Thomson LawBook Co
- ◆ Kumar, Odgers, Peden, *Uniform Evidence Law* (2<sup>nd</sup> Ed 2007), Thomson LawBook Co
- ◆ J Curthoys, C N Kendall, *Advocacy: An Introduction* (2006), LexisNexis Co
- ◆ NSW Young Lawyers, *Civil Litigation* (2<sup>nd</sup> Ed, 2006).

## USEFUL INTERNET SITES:

Case Law and Legislation: [www.austlii.edu.au](http://www.austlii.edu.au)  
Australian Law Outline: [www.law.gov.au](http://www.law.gov.au)  
NSW Legislation: [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

## 4. LEARNING OBJECTIVES AND OUTCOMES

At the end of this unit students should be able to:-

- Appreciate the different approaches available in Australia and overseas to legal business disputes
- Distinguish between dispute resolution options
- To personally observe and experience the legal /dispute process in action
- Make the connection between the theory and practice of disputes in business
- To develop skills to solve legal problems likely to arise in both work and private sector
- Analyse the legal aspect of a case, its beginnings, process and outcome
- Develop legal report writing skills
- Develop an understanding of the importance of different forms of documentation including legal documentation
- Work as a team, as well as gaining confidence to work alone on a project.

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
- Critical analysis

- Problem-solving

## 5. GENERIC SKILLS

This subject is designed to be primarily hands on for students. What this entails is that students are expected to develop their knowledge base as well as their procedural skills within the community. They will be required to follow through with their appointed work and organise an event from its inception to completion (for example, decide to follow a criminal or civil trial from beginning to end with a report back to the class, engage in report writing, etc). This organisational requirement will assist students in the workplace as it encourages such things as initiative, the follow through of task and personal confidence building.

The types of skills developed include:-

- Critical thinking
- Analysing issues
- Creative thinking
- Initiative in seeking information
- Problem solving
- Communication skills
- Writing and reading legal documents
- Able to give oral presentation
- Self management – including time management
- Managing information
- Decision making
- Cultural understanding – this includes – court room protocol, dress requirements, behavioural expectations, etc

## 6. TEACHING AND LEARNING STRATEGIES

Students are expected to participate in the unit by attending lectures, participating in tutorials and complying with the assessment criteria (visiting court, etc). Students are required to complete relevant readings and prepare answers and presentations when required. Students are expected to work as both a team member and independently.

Students should attend consultation if something is not understood. **Consultation** will be available on Wednesday 11-12md or by appointment. Contact details are included in this outline.

## 7. CLASSES AND STUDY TIMES

- This unit will consist of 13 x 2 hour lecturer followed by a tutorial, independent research on a research project, a court visitation exercise and a class test. ***Attendance at all lectures and tutorial classes is compulsory and students are expected to be fully prepared.***
- Lectures will commence on Tuesday 3<sup>rd</sup> August 2010 until Tuesday, 9<sup>th</sup> November 2010.
- The timetable for classes can be found on the University web site at: <http://www.timetables.mq.edu.au/>

## 8 UNIT WEB PAGE

The website for this unit is available on Blackboard, which can be accessed at: <http://learn.mq.edu.au> . Consult the web page frequently. You will find important information posted there.

This subject does not readily lend itself to iLecture , there is no plan to have iLecture this semester.

## 9. LECTURE AND TUTORIAL TIMETABLE 2010

A detailed lecture and tutorial guide is available on Blackboard

### Week 1 Commencing Monday 2 August

**Lecture 1** Introduction to Business Litigation – Types of legal disputes

**Tutorial 1** Discuss assessment requirements. Form study groups and draft contract

### Week 2 Commencing Monday 9 August

**Lecture 2** Litigation – Civil (Torts, Contract)

**Tutorial 2** Finalise contract details with groups. Discuss topics and questions for mid-semester assignment. Tutorial reading and problem question to be handed out in class

### Week 3 Commencing Monday 16 August

**\*\*Hand in completed contracts\*\***

**Lecture 3** Options to Litigation – Introduction to Alternative Dispute Resolution

**Tutorial 3** Group contract/ assignment half page proposal due to be handed in. Students will form a discussion group (of no more than 3 people) in order to discuss readings and problems from week 2. New readings will be given out for week 4. Negotiation, mediation, conciliation and arbitration group exercise will be handed out to groups

**Week 4 Commencing Monday 23 August**

**\*\*MARKED CONTRACTS RETURNED TO STUDENTS\*\***

**Lecture 4**            Litigation Process – Criminal Law

**Tutorial 4**            Week 4 readings discussion. Practical application of negotiation, mediation, arbitration and conciliation by class members

**Week 5 Commencing Monday 30 August**

**Lecture 5**                            Introduction to the Trial Process and Evidence-Guest Lecturer

**Tutorial 5**                            Class presentations – Negotiation, Conciliation, Arbitration and Mediation

**Week 6 Commencing Monday 6 September**

**Lecture 6**                            White Collar Crime

**Tutorial 6**                            Introduction and discussion on business ethics. Problem solving Scenario

**Week 7 Commencing Monday 13 September**

**Lecture 7**                            Defences to Criminal Law

**Tutorial 7**                            Problem solving scenario. Finalising Court visitation, work sheet

**MID SEMESTER BREAK 20 September – 1 October COURT VISITATIONS**

**Week 8 Commencing Tuesday 5 October (Monday 4 October Public Holiday)**

**\*\*HAND IN MID SEMESTER ASSIGNMENT IN LECTURE\*\***

**Lecture 8 Introduction to Administrative Law (AAT, Tribunals)**

**Tutorial 8 Court visitation class presentations**

**Week 9 Commencing Monday 11 October**

**Lecture 9 Administrative Law Cont: Remedies (Natural Justice, Procedural Fairness, ultra vires)**

**Tutorial 9 Court visitation class presentations**

**Week 10 Commencing Monday 18 October**

**Lecture 10 Professional Liability (professional disciplinary committees, Professional standards, good character)**

**Tutorial 10 Court visitation presentations**

**Week 11 Commencing Monday 25 October**

**Lecture 11 Mental Health and Disability Issues in law**

**Tutorial 11 Court visitation class presentations**

**Week 12 Commencing Monday 1 November**

**Lecture 12 Revision**

**Tutorial 12 Court visitation class presentations**

## Week 13 Commencing Monday 8 November

### Lecture 13

### CLASS TEST

\*\*The lecture topic areas may be subject to variation depending on availability of guest lecturers\*\*

#### 10. RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OUTCOMES

This subject represents the capstone for Business Law and will integrate and expand the previous learning and skills that has taken place in core and elective Business Law subjects. The students are required to develop their knowledge and apply this to real life business/legal situations. They will achieve this by applying real life scenarios to their understanding of practice. This is encouraged in several ways:

1. Students will be required to work as a team member and will need to negotiate the terms (contract – 5%) of their commitment directly with other team members
2. Students will be required to take on individual responsibility and think through different work place scenarios (class and group presentations)
3. Students will be required to attend a litigation proceedings and will be required to feed this information back to the class as a presentation
4. Students will gain knowledge and experience dealing with report writing and conducting meetings (this includes note taking skills)
5. Students will gain invaluable generic skills that will assist them in the workplace (Class Presentations – report writing, interviewing, organisational skills, legal research, law of meetings, etc)

#### 11. ASSESSMENT

Assessment in this unit consists of 4 components: one class test, one essay, group contract and participation mark. In order to pass, students must pass overall. The apportionment of marks is as follows:

1	<b>Court Visitation Assignment and Presentation</b> <i>See details below</i>	<b>25%</b>
2	<b>Group Proposal Contract</b>	<b>5%</b>
3	<b>Tutorial Participation Mark</b>	<b>10%</b>
4	<b>Mid Semester Assignment</b> <i>See details below</i>	<b>20%</b>
5	<b>Class Test (90 minutes duration)</b> <i>See details below.</i>	<b>40%</b>

All assignments must be footnoted and have a comprehensive Bibliography. Students should use the legal citation method outlined below in all their written work. ***Assignments must also have a cover sheet (see at the end of the study guide). These have been perforated for your use. Assignments without coversheets will not be marked and returned to the student with a zero mark.***

#### 12. ASSESSMENT DETAILS



## 1 Court Visitation Assignment and Class Presentation 25%

Students are required to work in groups of no more than three members, and visit one of the courts or tribunals listed below for an appropriate period of time (for example, if it is a one off case it may only go for a short time, if it is a criminal case it may go for a number of days). It is expected that if it is a short case you will need to observe and report on more than one case. If it is a long case, one case will be adequate. The group will then be expected to report back to the class (formal verbal presentation) about their court visitation. This report must include the following details:

1. An introduction to the court or tribunal and its jurisdiction;
2. An explanation of the case being heard, including:
  - (a) names of the parties (privacy issues must be considered by students)
  - (b) names of judge and counsel (where applicable)
  - (c) factual background to the case
  - (d) details of any statutes relevant to the case; and
3. An outline of your group's general observations of the court or tribunal process.

The group must submit **a written report of no more than 3 A4** pages at the seminar in which the verbal report is delivered. Presentations will be delivered in class from weeks 8 to 11 inclusive.

**NB – No two groups can report on the same case. Please negotiate with the other groups and attend different venues if possible**

<b>NSW Courts and Tribunals</b>	<b>Federal Courts and Tribunals</b>
Administrative Decisions Tribunal Children's Court Clinic Compensation Court Coroners Court District Court Drug Court Dust Diseases Tribunal Industrial Relations Commission Land and Environment Court Local Court Residential Tribunal Supreme Court Victims' Compensation Tribunal	High Court of Australia Family Court of Australia Federal Court of Australia Administrative Appeals Tribunal Australian Industrial Relations Commission Human Rights and Equal Opportunity Commission Industrial Relations Court of Australia National Native Title Tribunal Refugee Review Tribunal

## Ethical Consideration

Please note that even though the case that you hear in the court are on public record, we do expect students to appreciate the sensitive nature of criminal and civil proceedings for the individuals involved and attempt to report back to the class in a sensitive and confidential manner.

## 2 Group Proposal/Contract 5%

Students will be required to negotiate with your group members (no more than 3 students per group) and draw-up a contract of commitment for tutorial and court visitation exercises. This exercise does not require more than one page to complete. Each group member must consent to the contents and sign off. A copy of this contract will be handed in to the lecturer on 17<sup>th</sup> August during tutorial class. Make sure each member of your group also retain a copy of this agreement.

### **3 Tutorial Participation 10%**

This mark is not given for mere attendance at tutorials. Students will be assessed on the quality of their participation, their individual presentations and the extent to which their contributions progress the learning of the class, where appropriate, their ability to work together in small groups and their completion of the group contract terms and conditions. The final mark awarded to students will take into account the students' group members evaluation of their commitment and work.

### **3 Mid Term Assignment - 20%**

Each student will pick a topic area and write a paper on that particular area (see list below). Specific questions and marking criteria will be discussed at the first tutorial session. The final paper will be 1,000 words in length with appropriate referencing. A word count must be included at the end of the paper.

The main aim of this assessment is to help students develop their practical and analytical generic skills in the application of law and business.

#### **SUGGESTED TOPIC AREAS:**

- 1. Documentation**
- 2. Evidence**
- 3. Law of Meetings**
- 4. Communication**
- 5. Report/legal writing**
- 6. Legal research**
- 7. Teams**
- 8. Organisational skills**
- 9. Professional responsibility**
- 10. Business ethics**
- 11. Confidentiality/privacy**
- 12. Privilege (legal)**
- 13. Technology in the workplace**
- 14. Interview techniques**
- 15. Mental Health issues**
- 16. Disabilities**
- 17. Diversity in the workplace**
- 18. Gender Issues in the workplace**
- 19. Juveniles**
- 20. Family law**
- 21. Coroner Court**
- 22. Running a court case**

The above topic areas constitute very broad suggestions and the possible topic areas are not limited to this list. Students will need to narrow down their topic area and put a half page proposal forward before they commence work. If an individual is keen to explore other related areas of interest they must firstly negotiate this with the lecturer.

#### 4 **CLASS TEST** - 45%

There will be a class test conducted in the normal lecture time and room at the class on ***Tuesday, 9th November 2010***. Examination conditions apply, including the need for making proper Special Consideration requests where applicable. Your attention is drawn to the note about Special Consideration in the 2010 University Calendar. This is a closed book test and format details will be given to students in class.

#### 13. ASSESSMENT CRITERIA

Please note that a full explanation of assessment requirement and marking criteria will be put up on Blackboard at the beginning of semester.

#### 14. FINAL GRADES

The final grade will be determined after consideration of performance in all aspects of the course. Students must attempt all assessment tasks for performance to be satisfactory.

The University's special consideration policy can be found at [http://www.mq.edu.au/policy/docs/special\\_consideration/procedure.html](http://www.mq.edu.au/policy/docs/special_consideration/procedure.html)

Extensions are only granted by the unit convenor before the assessment task is due. If the student is not in class on their selected presentation date, marks will not be allocated

#### 15. PLAGIARISM

##### **A Definition of Plagiarism**

Macquarie University defines plagiarism as 'using the work of another person and presenting it as one's own' by not correctly referencing the source of information. For more information, view the University's plagiarism policy at: [www.student.mq.edu.au/plagiarism/](http://www.student.mq.edu.au/plagiarism/)

In very simple terms, plagiarism can include:

- Copying words directly from the original source, without acknowledging the original source in writing;
- Paraphrasing work from another source, without indicating the source in writing;
- Copying any part of the research of another student; and
- Submitting an assignment that was prepared, in whole or in part, by another person.

Plagiarism can be a very serious academic offence. If you are found to have committed plagiarism, you will be subject to penalties ranging from counselling and a warning; to the deduction of all the

marks for the assignment: to failure in the unit, and reference to the University Disciplinary Committee.

## 16. DETERMINATION OF OVERALL GRADING

You will be given a numerical mark (or a grade signifying a range of numerical marks) for each of your assessment tasks. Your final grade will be determined having regard to your results in each of the assessment tasks subject to any requirements, procedures or practices (including scaling) relevant to the unit

Grade categories (HD,D,C,P,PC and F) are explained in the Handbook of Undergraduate Studies. Knowledge of how the law operates, the ability to analyse the relevant issues and class room participation are key determinates of your performance in this subject.

To investigate the nature of legal disputes including the litigation process, and its application in a business context

## 17. RIGHTS AND RESPONSIBILITIES OF STUDENTS

Students have the responsibility to:

- Be aware that the major objective of assessment is to aid learning rather than the achievement of grades
- Be informed of the rules and requirements for progression in the degree program, ensuring that they are fully aware of the advice implications of discontinuation or withdrawal from a unit of study
- Be aware of, and abide by, the assessment policies including academic honesty and the consequences for acts of dishonesty that include cheating, collusion, plagiarism and fraud
- Be aware of the means for seeking assistance in the department, faculty and institution
- Behave ethically and responsibly in their conduct of assessment tasks and avoid any action that would unfairly disadvantage or advantage another student
- Use assessment to engage in critical self evaluation in terms of their progress towards the espoused learning expectations
- Submit work on time, ensuring that it is their own except when shared ownership is part of the task
- Notify staff as soon as possible if difficulties arise in terms of substantial absences and submit an application for Special Consideration with the appropriate documentation
- Be aware of mechanisms for appeal

## 18. STUDENT SUPPORT SERVICES

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

**COVER SHEET**

*Please attach cover sheet to every written component of the assignment*

**UNIT NUMBER: BUSL315 - BUSINESS LITIGATION**

**Family Name** .....

**Lecturer's Name:** .....

**Given Name** .....

**Seminar Time/Day:** .....

**Student Number** .....

**Date Due:** \_\_\_\_\_ to be submitted in the Seminar class you are registered.

**CLASS SKILLS PRESENTATION/ COURT VISITATION ASSIGNMENT :**

.....  
 .....

**“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 and it is my own work.”**

**Signed** .....