

MACQUARIE
UNIVERSITY



FACULTY OF
BUSINESS AND ECONOMICS

DEPARTMENT OF BUSINESS LAW

UNIT: BUSL 379

EUROPEAN TRADE LAW

3 credit points

First Semester 2010

ABOUT THIS UNIT

Students in this unit should read this outline carefully at the start of the semester. It contains important information about the unit. If anything in it is unclear, please consult the unit coordinator. The unit is taught from a student centered learning aspect. Students will participate each week in each module of the course.

Credit Points: 3 Credit Points (BUSL379)

Unit description: Students will gain an in depth understating of the laws relevant to trade within the European Union (EU) as well as the global impact of the Union itself on world trade.

This unit introduces students to the laws of the EU. The unit has two principal aims. 1) to understand particular trading aspect of each member of the EU and why they see the Union as benefiting their country. The major treaties that have bought about the European Union and their effect on member states are analyzed. An understanding of the role of the main institutions responsible for running the EU and for drafting the laws as well as the court structure and its role. The relationship between national law making bodies and that of the EU are analyzed.

2) This part of the course focuses on internal and external trade law. The course will explore the substantive law of the internal union. Non economic laws in place to protect the environment and ensure the sustainability of resources are assessed.

TEACHING STAFF

Convener and lecturer

Patricia Blazey – W3A - Room 426
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Consultation hours Wednesday 1-3 pm

Administrative Staff

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CLASSES

The course will conducted in a series of 13 x 3 hrs long seminars beginning the first week of the semester.

REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

REQUIRED

**J. Steiner L. Woods C. Twigg-Flesner 'European Union Law' 10th Edition
Oxford University Press 2009**

L. Davies 'Understanding European Law' 3rd Edition Routledge-Cavendish 2007

There are many books in the library devoted to European Union Law however most are outdated and students are advised to only refer to the latest editions i.e. books printed over the past 2 years.

The book provides details of the EU websites that you will need to access.

UNIT WEB SITE

There is a blackboard website for this unit

http://www.buslaw.mq.edu.au/undergraduate_prgorams/units/BUSL379

EUROPEAN UNION WEBSITES

- <http://europa.eu.int>
- www.jeanmonnetprogram.ord.eu
- www2.spfo.unibo.it/spolfo/EULAW.htm
- <http://europa.eu.int/eur-lex/en/>
- The Macquarie University library's Information and Technology Training Unit (ITTU) provides a range of computing and library research skills. ITTU web page: <http://www.lib.edu.au/services/> or phone 9850-7399.

TREATIES

The treaties can be obtained from the above websites.

LEARNING OBJECTIVES AND OUTCOMES

Learning Objectives

The learning objective of this unit is to introduce students to the implications in joining the EU and to critically evaluate the benefits of such membership. Students will study in detail the various institutions that run the EU and the many laws and regulations that are responsible for the operation of EU trade.

The learning outcomes of this unit are that:-

- Discuss and critically examine the breath and limitation of the single market in European Community Law
- Compare and contrast the operation of European Community Law to the trading rules of the rest of the world
- Explain the basic characteristics of the law making bodies of the Union
- Understand and evaluate the characteristics of the legal rules of the internal market
- Assess the effectiveness of the European Union as a trading community
- Evaluate the importance of the relationship between economic and non economic interests
- Discuss the future role of the European Union

- Effectively research and present materials in written and oral from the websites of the European Union

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

MODULE 1	STRUCTURE OF THE EU	
Seminar 1	Origins of the European Community – from EEC to EU The Single European Act Treaty of European Union Treaty of Amsterdam Treaty of Nice Treaty of Lisbon Treaty establishing a Constitution for Europe	Chapter 1 and material provided in course outline
Seminar 2	Institutions of the Community Parliament Council Commission Economic and social Committee Committee of the Regions Court of Auditors Court of Justice	Chapter 2 and material provided in course outline
Seminar 3	Scope of the EC Treaty laws and law making Principle of Supremacy of EC Law	Chapter 3 Chapter 4
Seminar 4	Principle of Direct applicability and direct effects General principles of law	Chapter 5 Chapter 6
MODULE 2	EU LAW	
Seminar 5 and 6	Framework for enforcement Remedies in National Courts State Liability The preliminary rulings procedure Enforcement actions Direct actions for annulment Action for failure to act	Chapter 7 Chapter 8 Chapter 9 Chapter 10 Chapter 11 Chapter 12 Chapter 13
MODULE 3	THE INTERNAL MARKET	
Seminar 7	The common market Harmonization	Chapter 15 Chapter 16
Seminar 8	Free Movement of Capital and Payments	Chapter 17

	Customs Union	Chapter 18
Seminar 9	Free movement of goods Derogation from free movement of goods	Chapter 19 Chapter 20
Seminar 10 and 11	Rights of free movement and residence Economic rights workers establishment and services Free movement of social rights Right to receive services Free movement of people and limitations	Chapter 21 Chapter 22 Chapter 23 Chapter 24 Chapter 25
MODULE 4	COMPETITION	
Seminar 12	Competition policy Competition law in the internal market	Chapter 28 Chapter 29
MODULE 5	THE ENVIRONMENT – EMISSIONS TRADING	
Seminar 13	Environmental Law and Sustainable Development	

RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OUTCOMES

Assessment: 3 pieces of work

1. Class Participation.....	20 marks
2. Research Essay	60 marks
2. Test multiple choice	20 marks

CLASS PARTICIPATION

Students must attend a minimum of 80% of seminars in order to gain 20 marks for seminar attendance. At these seminars students will make presentations to the class on the particular area of European Law assigned to them. Students will be required to prepare power point slides. This form of assessment develops the student's ability to present material to their peers and develop communications skills.

Attendance is required for all students and a roll will be taken at each class.

- 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.
- 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.

RESEARCH ESSAY

An essay of 3000 words and worth 60 marks is **to be handed in the first day after the midterm break**. Students are invited to write on any topic that interests them following discussion with the course convener. **AN ABSTRACT WILL NEED TO BE PROVIDED AND APPROVAL RECEIVED FOR THE SELECTED AREA OF RESEARCH.**

Here are some suggestions:-

- 1 Why did the EC undergo a period of stagnation between the 1960's and 1980's ?
- 2 Current EU Integration Process – how successful was the enlargement of 2007?
- 3 Turkey as a candidate country – outline positions and give your interpretation as to whether their membership is feasible?
- 4 Why has the problem with the membership of Greece risen to the fore?
- 5 The UK's position within the EU.
- 6 Compare the EU institutions to your national system.
- 7 Explain and give reasons for the 'democratic deficit' of the EU.
- 8 Legal form of the EU – is it on the way to a federal state?
- 9 Key provisions of the Treaty of Nice.
- 10 Did the Treaty of Nice prepare the Union for enlargement?
- 11 Will the Constitution of the EU eventuate? Discuss reasons for and against
- 12 Outline the major instruments of EU secondary legislations and its influence on the Member States.
- 13 Summarize important judgments of the ECJ limiting national sovereignty and attributing powers to the Community.
- 14 The role and influence of the ECJ on Community law.
- 15 The Three Pillar Structure – explain main concepts and recent changes.
- 16 The Schengen Acquis and its influence on the common market.
- 17 The EC on its way to a common currency – outline history of the EURO.
- 18 Has the EURO succeeded?
- 19 Reasons for an EU Institution and the current ratification process.
- 20 What do you consider are the major changes to be brought about by the Treaty of Lisbon? Do you think these are a good thing?
- 21 How has the UK been affected by the membership of Eastern European States
- 22

The purpose of this task is for student to develop their essay writing skills, critical analysis skills and provide a forum for creative thinking skills

Proper footnoting in the essay is essential and students will have marks deducted for failure to properly footnote. This includes a bibliography

You must provide a statement that states the work is your own and you have not copied it from someone else's work.

You must put your work through turnitin and provide a certificate attached to your work

Research essay is to be handed to the convener on the due date.

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.**
- **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.

FINAL TEST

This tests your knowledge of the modules 4 and 5

The only exception to not taking assignments and tests at the designated time is because of documented illness or unavoidable disruption. In these circumstances you may wish to consider applying for Special Consideration. Information about unavoidable disruption and the special consideration process is available <http://www.reg.mq.edu.au/Forms/APSCon.pdf> If a Supplementary Examination is granted as a result of the Special Consideration process the examination will be scheduled after the conclusion of the official examination period. (Individual Divisions may wish to signal when the Division's Supplementaries are normally scheduled.)

You are advised that it is Macquarie University policy not to set early examinations for individuals or groups of students. All students are expected to ensure that they are available until the end of the teaching semester that is the final day of the official examination period.

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>.

Footnoting and referencing are essential skills that students need to attain at an early stage in their degrees. Failure to footnote can be considered to be plagiarism. You are required to consistently adopt a clear style guide and provide citations to the sources that you use.

The Department of Business Law uses the footnoting style outlined in the Australian Guide to Legal Citation (AGLC). An electronic PDF copy of the AGLC can be obtained from the University of Melbourne website <http://mulr.law.unimelb.edu.au/aglc.asp>

Apart from supporting an argument with relevant materials, footnotes allow a reader to follow an argument without being distracted with in text references. The general idea of footnoting is to allow a text to be written clearly with supporting materials cited in a concise and non-intrusive manner.

1. Types of References

When you research materials you may need to locate primary and secondary sources. Primary sources include things like cases, statutes and original documents. Secondary sources include textbooks, journals and news services.

1.1 Primary Materials

Cases

Cases are decisions that come from superior courts. Apart from decisions in Australia, there are important decisions that may be referred to from England, America and Canada.

When citing a case, provide the case name (in italics), the year the case was decided, the volume number of the report series where the case was reported, the name of the report series and the paragraph number where the cases begins. (See below for examples). Only one citation is necessary in situations where a case is reported in more than one report.

Example:

Minister for Immigration and Ethnic Affairs v Teoh (1995) 183 CLR 273.

Where the case name appears in the text, the citation can be placed in the footnotes without the case name

Example:

‘In the case of *Minister for Immigration and Ethnic Affairs v Teoh*¹² the court was of the opinion.....’

12 (1995) 183 CLR 273.

A specific judgment should state the pinpoint reference (paragraph number) where a statement was made and the name of the judge(s) that made the statement should appear after the citation in (parentheses).

Example:

United Mexican States v Cabal (2001) 183 ALR 645, 656 (Gleeson CJ, McHugh and Gummow JJ).

Legislation

Statutes (or Acts) that have been passed by the Commonwealth or State Parliament take superiority over cases.

When citing an Act or delegated legislation, the citation should have the name of the instrument (i.e. Act or delegated legislation title), the year it was passed, the jurisdiction in which it was passed and the specific section to which reference is being made.

Example:

Crimes Act 1900 (NSW), s 931A (1)(b)(iii).

Finding Legislation Online

Commonwealth legislation can be found online at:

www.scaleplus.law.gov.au; or www.lawsearch.gov.au

NSW legislation can be found online at:

www.legislation.nsw.gov.au

Commonwealth, NSW and other legislation can be found online at: www.austlii.edu.au

1.2 Secondary Materials

Journals

Academic and professional journals contain articles on specific topics which may be relevant to your research or an assignment. Most journals can be found electronically. Some of the older journals will be in hardcopy and catalogued in the library.

When citing an article, the name of the author should appear first followed by the title of the article, the volume number of the journal, the name of the journal, the page number where the article commences in the journal and finally a pinpoint reference to the exact page you are referring to (if applicable).

Example:

Robert Stokes, 'Councillors' Conflicts of Interest in Development Assessment: Lessons from Warringah' (2003) 9 *Local Government Law Journal* 165, 167.

Textbooks

Textbooks are a credible source of information though they are not always up to date.

When citing a textbook (or any book) you include the full name of the author, the title of the book in *italics*, the edition number and year of publication and a pinpoint page reference if required. If there is more than one author you should include the names of all the authors (with the last two names separated by 'and'). If there is more than one editor, the first editor is to be cited followed by 'et al'.

Example:

Authors

Peter Gilles, *Business Law* (9th ed, 1988).

Editors

Patricia Blazey-Ayoub et al, *Concise Evidence* (1996).

Newspapers

Newspapers generally provide useful up to date information and perspectives on a particular topic.

When citing newspapers you should include full name of the author, the title of the article, the name of the newspaper, the place of publication in (parentheses), the full date and a pinpoint reference.

Example:

Julliette Overland, 'Citi case shows need for reform', *The Australian* (Sydney), 7 April 2006, 23.

Internet Websites

Websites are a very popular point of research however as everyone has the ability to put an article on the internet; care should be taken to ensure that the information comes from a credible source. Usually government websites are reliable however they can often be out of date and so caution is needed when citing such information.

Information from the internet should be cited by including the full name of the author, the name of the document in *Italics*, the year of publication, the name of the website, the URL of website (that is, its internet address) and the date of retrieval.

Example:

Shlomo Ben Ami, *How We Got It Wrong* (2002) Ha' Aretz Daily
<<http://www.haaretz.com/articles/2002/05/14/1084289890950.html>> at 31 May 2002.

2. References (bibliography)

References must be included, using the following headings as a guide:-

- A. Books
- B. Articles
- C. Websites
- D. Cases
- E. Legislation
- F. Newspapers and Other Sources e.g. interviews, television reports

It is not enough to merely provide footnotes. Full references must also be provided.

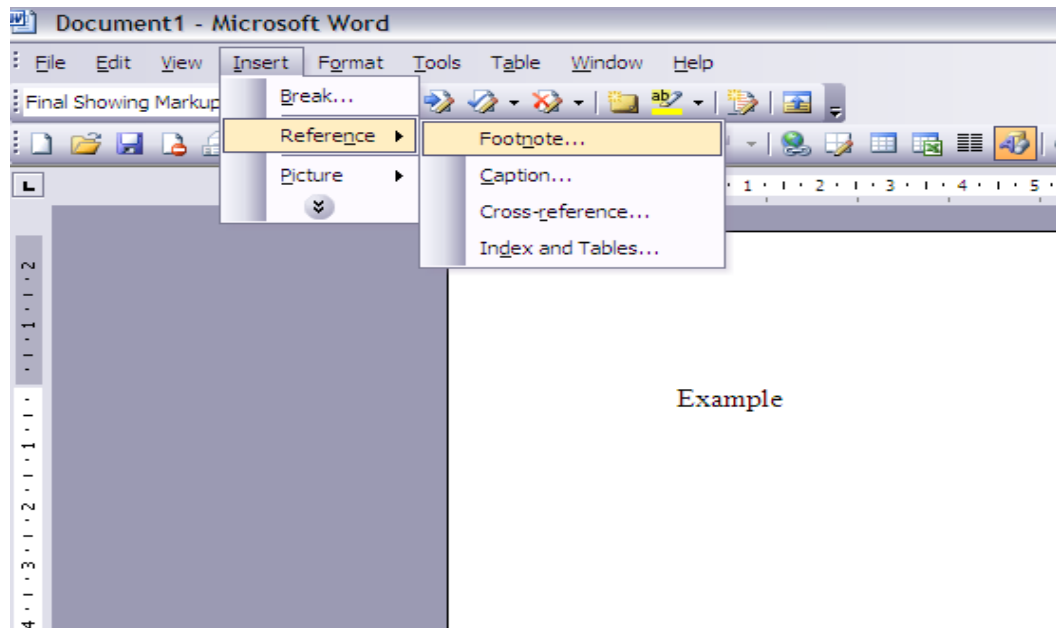
3 Inserting footnotes using Microsoft Word ®

When inserting a footnote for primary materials, the footnote should be inserted immediately after the reference to the material in the text. When referring to an author's work or an idea from a book or journal, the footnote can be inserted at end of the sentence where the reference is made.

Most word processing suites have 'footnote' functions. Acknowledging that the most common word processor is Microsoft Word, this section will only provide instructions on inserting footnotes using Microsoft Word.

Steps

1. Position the cursor in the exact place where you desire the footnote to be inserted (i.e. the little superscript number which corresponds with the citation at the bottom of the page)
2. Select 'Insert' from the menu at the top of the screen
3. From the dropdown menu beneath 'Insert' select 'Reference'
4. From the menu which opens besides 'Reference' select 'Footnote...'
5. From the pop-up window which appears, press the button 'Insert'



Example

4. Tips

4.1 Citing the Australian Constitution

The Australian Constitution may be cited as the *Australian Constitution*, the *Commonwealth Constitution*, or simply the *Constitution* if there is no ambiguity to which constitution is being cited.

Example

Australian Constitution s 51 (xiii)

4.2 Subsequent Citations and Using 'Ibid'

Ibid should be used to cite a source (other than legislation) if it appears in the footnote immediately preceding the current footnote, and it is the only source cited in the previous footnote. If you require a pinpoint reference, you may include this directly after 'Ibid'.

Example

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- 12 Dr Niloufer Selvadurai, 'Regulating for the Future - Accommodating the Effects of Convergence' (2005) 13 *Trade Practices Law Journal* 20, 27.
 13 Ibid, 31.

4.3 Chapters in a book

When citing the work of a single author in an edited book, the footnote should follow the following style:

Authors Name, 'Chapter Title' in Editors Name (ed), *Title* (Year) starting page, pinpoint reference.

Example

P Blazey H Ashiabor '**Fiscal Instruments and the Management of the Transition to Sustainable Mobility in Australia**' Critical Issues in Environmental Taxation; International and Comparative Perspectives Vol 111 Richmond Law and Tax Richmond UK March 2005

4.4 Use of Headings

The use of headings in all assessment tasks including the final exam is useful in introducing new areas or sub areas.

If anything remains uncertain in regards to using and citing sources, you should consult the AUSTRALIAN GUIDE TO LEGAL CITATION (the web address is provided above).