

MACQUARIE  
UNIVERSITY



FACULTY OF  
BUSINESS AND ECONOMICS

**BUSL315**  
**Business Litigation and Disputes**

**Second Semester, 2011**

*Department of Accounting and Corporate Governance*

**MACQUARIE UNIVERSITY  
FACULTY OF BUSINESS AND ECONOMICS  
UNIT GUIDE**

**Year and Semester: 2011 Semester Two**

**Unit convenor: John Selby**

**Prerequisites: BUSL201 and BUSL250**

**Credit points: 3**

Students in this unit should read this unit guide carefully at the start of semester. It contains important information about the unit. If anything in it is unclear, please consult the convenor of this unit.

**ABOUT THIS UNIT**

- Legal action is an ever-present risk in commercial dealings. Traditionally this has occurred through the processes of civil litigation. However, the threat of criminal sanctions, and confronting the maze of administrative law have become everyday realities for businesses, their managers and employees. This unit investigates each of these processes in order to equip aspiring business leaders with a working knowledge of how business disputes are settled.
- This unit is a compulsory unit of study for the Commercial Law major. Students wishing to graduate with a major in Commercial Law must complete BUSL100, BUSL201 Law in Australian Society, BUSL204 Business Ethics and Risk Management, BUSL250 Business Law, BUSL301 Corporations Law, BUSL315 Business Litigation and Disputes, and at least two other 300 level Business Law units.

**TEACHING STAFF**

- Convenor : John Selby (also tutor)
- Email: [john.selby@mq.edu.au](mailto:john.selby@mq.edu.au)
- Phone: 9850 7081

**CONTACTING STAFF**

- Consultation times  
The Convenor's consultation time is on Tuesday from 1-2pm in Building E4A Room 325. Any additional consultation times will be posted on the Unit's website.

You are encouraged to seek help at a time that is convenient to you from the convenor of this unit during his regular consultation hours. In special circumstances, an appointment may be made outside regular consultation hours. The Convenor will not conduct consultations by email. You may, however, phone him during his consultation hours.

In order to gain access to staff located at levels 1, 2 and 3 of building E4A during their consultation hours please ring the staff member from the phones available in the lobby (phone numbers of relevant staff members will be provided on Blackboard and are available next to the phones).

- Other ways of contacting staff

Email is the best way to contact the convenor of this course.

Students experiencing significant difficulties with any topic in the unit must seek assistance immediately.

## CLASSES

- 1 x 2 hour lecture and 1 x 1 hour tutorial
- The timetable for classes can be found on the University web site at: <http://www.timetables.mq.edu.au/>
- Students must attend all lectures and tutorials
- Students must attend the tutorial in which they are enrolled and may not change tutorials without the prior permission of the course convenor

## PRIZES

- A Macquarie University Accounting and Corporate Governance Prize is available for the highest achieving student in this unit: [http://www.businessandeconomics.mq.edu.au/undergraduate\\_degrees/prizes\\_scholarships](http://www.businessandeconomics.mq.edu.au/undergraduate_degrees/prizes_scholarships)

## REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

- **Required Texts:** *Principles of Dispute Resolution* by David Spencer and *Principles of Civil Litigation* by David Bamford.
- These texts are available for purchase (as a discounted bundle ISBN 9780455229812) from the University Coop Bookshop
- Additional required readings will be made available through Blackboard

## TECHNOLOGY USED AND REQUIRED

- Blackboard, Microsoft Powerpoint, VLC Media Player
- Microsoft Office, Internet Browser, Email Client software

## UNIT WEB PAGE

- Course material is available on the learning management system (BlackBoard)
- Other than Blackboard, there is no web page for this unit.

## LEARNING OUTCOMES

The learning outcomes of this unit are:

1. To be able to distinguish between dispute resolution options;
2. To integrate theory into practice when resolving business disputes;
3. To develop skills to resolve business disputes using a variety of dispute resolution methodologies;
4. To be able to analyse the legal and economic aspects of a business dispute, its beginnings, process and outcome;
5. To develop an understanding of the importance of legal documents used in resolving business disputes;
6. Teamwork skills.

## GRADUATE CAPABILITIES

In addition to the discipline-based learning objectives, all academic programs at Macquarie seek to develop the capabilities the University's graduates will need to develop to address the challenges, and to be effective, engaged participants in their world.

This unit contributes to this by developing the following graduate capabilities:

- 1 Discipline Specific Knowledge and Skills
- 2 Critical, Analytical and Integrative Thinking
- 3 Problem Solving and Research Capability
- 4 Creative and Innovative
- 5 Effective Communication
- 6 Engaged and Ethical Local and Global citizens
- 7 Capable of Professional and Personal Judgement and Initiative

## TEACHING AND LEARNING STRATEGY

- This unit consists of 13 weekly lectures (of 2 hours each) and tutorials (of 1-hour each).
- Attendance at all lectures and tutorials is compulsory. Required reading for each week's lecture and tutorial is clearly set out in the Lecture and Tutorial Schedules, and students are expected to be fully prepared (ie having done all readings in advance of classes). A number of tutorials will require participation in small group exercises.
- A week-by-week list of the topics to be covered is available as a schedule at the end of this Unit Guide.

## RESEARCH AND PRACTICE

- This unit uses research from academics within the Discipline of Business Law, including:
  - Peter Gillies (2010) 'Scope of the Arbitration Clause – Recent Developments' *Australasian Dispute Resolution Journal* 21, 33

- John Selby (2007) 'Enhancing Trust in Online Auctions: eBay's Australian Experience with Code and Law', *Computer Law Review International* 7(6), 172
- John Selby (2008) 'eBay's Paypal: Balancing Marketplace and Regulatory Regimes' *Computer Law Review International* 8(6), 168
- John Selby (2004) 'Competitive Justice: The Role of Dispute Resolution Providers Under ICANN's UDRP', *Macquarie Business Law Journal* 1, 23

and numerous primary and secondary legal materials published through AUSTLII, <<http://www.austlii.edu.au>> and other external sources.

## RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OUTCOMES

	Assessment Task 1	Assessment Task 2	Assessment Task 3	Assessment Task 4
Title/Name	In-Class Quiz	Domain Name Dispute Judgment	Tutorial Participation	In-Class Test
Description (including length or similar as applicable)	A short, formative quiz designed to test students understanding of basic course contents	Students will draft a decision to domain name dispute. Maximum word count: 2000 words	This assessment tests your level of, and ability to, participate in tutorial discussions and exercises.	90-minute written test covering entire course: combination of short-answer and essay questions.
Due date	Tutorial in Week 3 (week beginning 15 August)	6pm on 5 October 2011	Throughout semester	In-Class on Tuesday 8 November 2011
% Weighting	0% - Formative	40%	20%	40%
Grading method - marking criteria/ standards - expectations in relation to presentation - referencing requirements	Whilst this component is compulsory, it is peer-assessed. Students will submit answers to multiple choice questions.  No referencing required.	See the <b>Marking Guide</b> icon on the unit homepage for a marking guide rubric. The marking guide provides access to essential information on what is required to pass this unit, and the	This assessment component is based on students being active participants in discussions in their tutorials, including during group activities and exercises. Your tutor will award a mark based	See the <b>Marking Guide</b> icon on the unit homepage for a marking guide rubric. The marking guide provides access to essential information on what is required to pass this unit, and the

	<b>Assessment Task 1</b>	<b>Assessment Task 2</b>	<b>Assessment Task 3</b>	<b>Assessment Task 4</b>
		<p>methods by which student work is graded.</p> <p>This assessment component requires students to demonstrate their knowledge of relevant law and the ability to apply the various legal thinking and writing skills they have been taught throughout the semester.</p> <p>Students are expected to present their answers in the format of a written decision. Referencing must be in accordance with the Australian Guide to Legal Citation (3<sup>rd</sup> Edition), including both footnotes and a bibliography of all works consulted.</p>	<p>upon the quality and consistency of your participation in the practical exercises and tutorial discussions.</p>	<p>methods by which student work is graded.</p> <p>This assessment component requires students to demonstrate their knowledge of relevant law and the ability to apply the various legal thinking and writing skills they have been taught throughout the semester.</p> <p>Answers will be provided in writing. No referencing required.</p>

	<b>Assessment Task 1</b>	<b>Assessment Task 2</b>	<b>Assessment Task 3</b>	<b>Assessment Task 4</b>
Submission method	Handed in during Tutorial in Week 3	Hard copy handed in to BESS by 6pm on 5 October 2011 (with cover sheet).	Throughout the semester	In-class on Tuesday 8 November 2011
Feedback ( <i>type, method, date</i> )	Feedback will be provided in the tutorial shortly after the quiz is complete.	Students will receive their grades and comments by the end of Week 11.	Immediate oral feedback will be available from the tutor	Students will receive their grade and comments at the conclusion of the unit.
Estimated student workload (hours)	2 hours	25 hours	Attendance at tutorials throughout semester is mandatory. Students should spend at least one hour preparing for each tutorial	25 hours
Learning outcomes assessed				
1		To be able to distinguish between dispute resolution options	To be able to distinguish between dispute resolution options	To be able to distinguish between dispute resolution options
2	To integrate theory into practice when resolving business disputes	To integrate theory into practice when resolving business disputes	To integrate theory into practice when resolving business disputes	To integrate theory into practice when resolving business disputes
3		To develop skills to resolve business disputes using a variety of dispute resolution methodologies	To develop skills to resolve business disputes using a variety of dispute resolution methodologies	To develop skills to resolve business disputes using a variety of dispute resolution methodologies

	<b>Assessment Task 1</b>	<b>Assessment Task 2</b>	<b>Assessment Task 3</b>	<b>Assessment Task 4</b>
4	To be able to analyse the legal and economic aspects of a business dispute, its beginnings, process and outcome	To be able to analyse the legal and economic aspects of a business dispute, its beginnings, process and outcome	To be able to analyse the legal and economic aspects of a business dispute, its beginnings, process and outcome	To be able to analyse the legal and economic aspects of a business dispute, its beginnings, process and outcome
5				To develop an understanding of the importance of legal documents used in resolving business disputes
Graduate capabilities assessed				
1	Discipline Specific Knowledge and Skills	Discipline Specific Knowledge and Skills	Discipline Specific Knowledge and Skills	Discipline Specific Knowledge and Skills
2		Critical, Analytical and Integrative Thinking	Critical, Analytical and Integrative Thinking	Critical, Analytical and Integrative Thinking
3		Problem Solving and Research Capability	Problem Solving and Research Capability	Problem Solving and Research Capability
4		Creative and Innovative	Creative and Innovative	Creative and Innovative
5		Effective Communication	Effective Communication	Effective Communication
6		Engaged and Ethical Local and Global citizens	Engaged and Ethical Local and Global citizens	Engaged and Ethical Local and Global citizens
7		Capable of Professional and Personal Judgement and Initiative	Capable of Professional and Personal Judgement and Initiative	Capable of Professional and Personal Judgement and Initiative



- Extension requests: Extensions will only be granted for serious medical issues or misadventure (supported by relevant evidence) of which the course convenor has received and acknowledged notification through email **prior** to the due date of the assessment task.
- Late submissions: A cumulative 10% penalty will apply for submissions received each seven-day period after the due date of an assessment task.
- Attendance: Attendance at Lectures and tutorials is compulsory. Students must attend at least ten of the thirteen tutorials to be eligible to receive a tutorial participation mark.
- Examinations: There is no final examination for this unit during the formal exam period. There is an in-class test during the lecture in Week 13.

## ACADEMIC HONESTY

The nature of scholarly endeavour, dependent as it is on the work of others, binds all members of the University community to abide by the principles of academic honesty. Its fundamental principle is that all staff and students act with integrity in the creation, development, application and use of ideas and information. This means that:

- all academic work claimed as original is the work of the author making the claim
- all academic collaborations are acknowledged
- academic work is not falsified in any way
- when the ideas of others are used, these ideas are acknowledged appropriately.

Further information on the academic honesty can be found in the Macquarie University Academic Honesty Policy at [http://www.mq.edu.au/policy/docs/academic\\_honesty/policy.html](http://www.mq.edu.au/policy/docs/academic_honesty/policy.html)

## 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>

All final grades in the Department of Accounting and Corporate Governance are determined by a grading committee and are not the sole responsibility of the Unit Coordinator.

Students will be awarded one of these grades plus a Standardised Numerical Grade (SNG). The SNG is not necessarily a summation of the individual assessment components.

The final grade and SNG that are awarded reflect the corresponding grade descriptor in the Grading Policy.

In addition, there is a requirement to pass the final examination to be awarded a final grade of a Pass or a higher grade.

#### **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.businessandconomics.mq.edu.au/new\\_and\\_current\\_students/undergraduate\\_current\\_students/how\\_do\\_i/grade\\_appeals](http://www.businessandconomics.mq.edu.au/new_and_current_students/undergraduate_current_students/how_do_i/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/policy.html](http://www.mq.edu.au/policy/docs/special_consideration/policy.html)

#### **STUDENT SUPPORT SERVICES**

Macquarie University provides a range of Academic Support Services. Details of these and other services for students can be accessed at <http://www.student.mq.edu.au>.

Faculty Support is available through BESS.

## **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 utilising 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 units 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.

<i>Week beginning</i>	<i>Lecture Topic Schedule</i>	<i>Readings</i>
1 - August 1	Introduction & Societal Context of Business Disputes	Spencer Chapter 1 Bamford Chapter 1
2 - August 8	Causes and Types of Business Disputes Economics of Business Disputes	See Prescribed Readings on Blackboard
3 - August 15	Negotiation	Spencer Chapter 2
4 - August 22	Mediation	Spencer Chapter 3
5 - August 29	Arbitration	Spencer Chapter 4
6 - September 5	Domain Name Dispute Resolution	See Prescribed Readings on Blackboard
7 - September 12	Civil Litigation Pt 1: Jurisdiction and Parties, Practicalities	Bamford Chapters 2 & 3
	<b>Mid Semester Break</b>	
8 - October 4	Civil Litigation Pt 2: Case Management & Procedures, Defining Issues in Dispute	Bamford Chapters 4 & 5
9 - October 10	Civil Litigation Pt 3: Before Trial	Bamford Chapters 6 & 7
10 - October 17	Civil Litigation Pt 4: Gathering Evidence, Expert Testimony and Court-ordered ADR	Bamford Chapters 8 & 9
11 - October 24	Civil Litigation Pt 5: Settlement, Compromises and Costs	Bamford Chapters 10 & 11
12 - October 31	Civil Litigation Pt 6: Appeals and Enforcement of Judgments	Bamford Chapters 12 & 13
13 - November 7	<b>In-Class Test</b>	<b>Covers all weeks</b>

<i>Week beginning</i>	<i>Tutorial Topic Schedule</i>	<i>Readings:</i>	<i>Task:</i>
1 - August 1	Introduction	Spencer Ch 1 Bamford Ch 1	In-Class Discussion of Societal Context of Business Disputes
2 - August 8	Causes and Types of Business Disputes Economics of Business Disputes	See Prescribed Readings on Blackboard	In-Class Discussion
3 - August 15	Negotiation	Spencer Ch 2	Negotiation Exercise (See Blackboard) + <b>Quiz</b>
4 - August 22	Mediation	Spencer Ch 3	Mediation Exercise (See Blackboard)
5 - August 29	Arbitration	Spencer Ch 4	In-Class Discussion (See Blackboard)
6 - September 5	Domain Name Dispute Resolution	See Prescribed Readings on Blackboard	In-Class Discussion (See Blackboard) <b>Domain Name Dispute Assessment Released</b>
7 - September 12	Civil Litigation Pt 1: Jurisdiction and Parties	Bamford Ch 2&3	Statement of Claim Exercise (See Blackboard)
19-30 September	<b>Mid semester break</b>	-	<b>No Classes</b>
8 - October 4	Civil Litigation Pt 2:	Bamford Ch 4&5	Expert Witness Exercise <b>Domain Name Dispute Assessment Due This Wk</b>

9 - October 10	Civil Litigation Pt 3:	Bamford Ch 6&7	In-Class Discussion (See Blackboard)
10 - October 17	Civil Litigation Pt 4:	Bamford Ch 8 &9	Preliminary Discovery Exercise (See Blackboard)
11 - October 24	Civil Litigation Pt 5:	Bamford Ch 10 & 11	In-Class Discussion (See Blackboard)
12 - October 31	Civil Litigation Pt 6:	Skim entire course	Test Preparation
13 - November 7	Post-Test Reflection	N/A	In-Class Discussion