

DEPARTMENT OF BUSINESS LAW

STUDY GUIDE

BUSL851 INTERNATIONAL TRADE LAW

Semester 2 - 2010

Credit points: 4

Unit Convenor: Prof. Peter Gillies

Prerequisites/

Co requisites: Nil

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

The unit examines topics in international trade law. It considers both public and private international trade law. Public international trade law deals with the global trading regimes such as the World Trade Organisation in conjunction with the General Agreement on Tariffs and Trade (WTO-GATT), which regime governs trade between nations. Private international trade law deals with the rules governing private party transactions, such as the content of an international contract for the sale of goods, or the methods available for paying for the international delivery of goods, or the rules governing transport of these goods.

TEACHING STAFF

Convenor (internal class): Peter Gillies
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CLASSES

This unit will be taught on a weekly basis. Classes will meet on Thursdays 6pm – 9pm, in C5A401.

- The timetable for classes can be found on the University web site at:
<http://www.timetables.mq.edu.au/>

REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

Recommended textbooks:

(nb: not every textbook deals with all topics)

Moens, G & Gillies, P (1998) *International Trade : Law, Business and Ethics*, 2nd edition, Routledge-Cavendish, Oxford, 2006

(Abbrev MG)

OR

Burnett, R, and Bath, V, *Law of International Business in Australia*, Federation Press 2009 (goof coverage of international business transactions)

(Abbrev BB

OR

Mercurio, B, et al, *International Business Law* OUP 2010

(Abbrev M)

Blackboard: some materials will be uploaded to Blackboard.

Recommended References

(Later editions of some of these books may be available)

August, R, *International Business Law – Text, Cases & Readings*, 4th edn, Prentice Hall, New Jersey, 2004

Australian Law Reform Commission 1996, *Legal Risk in International Transactions: Australian Law Reform Commission*, AGPS, Canberra.

Burnett, R, and Bath, V, *The Law of International Business in Australasia*, Federation Press, Sydney, 2009

Carr, I, *Principles of International Trade Law*, Cavendish, London, 2005

Chuah, JCT, *Law of international trade*, Sweet & Maxwell, London, 1998

De Cruz, P, *Comparative Law in a Changing World*, Cavendish, 1999

Fisher, S & Fisher, D, 1998, *Export Best Practice – Commercial and Legal Aspects*, Federation Press, 1998

Folsom, RH, Gordon, MV & Spanogle, JA, *International Business Transactions – A Problem – Oriented Course Book*, 3rd edn, West Publishing, US, 1995

Hudec, RE, *Essays on The Nature of International Trade Law*, Cameron May, 1999

Islam, MR, *International Trade Law*, LBC, Sydney, 1999

- Islam, MR, *International Trade Law of the WTO*, OUP, 2006
- Klotz, JM & Barrett, JA, *International Sales Agreements – An Annotated Drafting and Negotiating Guide*, Kluwer Law International, 1998
- Malbon, J, *Exporting*, Business Law Education Centre, Melbourne, 1994
- Mercurio, B et al, *International Business Law*, OUP, Melbourne, 2010
- Mo, J, *International Commercial Law*, 4th edn, LexisNexis Australia, 2008
- Norton, J, Andenas, M & Foster, M (eds), *The Changing World of International Law in the 21st Century: A Tribute to the Late Kenneth R Simmonds*, Kluwer Law, The Hague, 1998
- Pryles, M, Davies, M & Waincymer, J, *International Trade Law – Commentary and Materials*, 2 ed, Thomson Lawbook, Sydney, 2004
- Ramberg, J, *International Commercial Transactions*, Kluwer Law International, 1997
- Sacks, P & Malbon, J (eds) 1992, *Australian Export Manual*, Longman Professional, South Melbourne.
- Sarachek, B, *International Business Law – A Guide For Executives With Case Examples*, Darwin Press, Princeton, New Jersey, 1994
- Schaffer, R, Earle, B & Augusti, F, *International Business Law And Its Environment*, 5th edn, West Publishing, St Paul, US, 2002
- Seer, G & Smolke-Day, M, *Introduction To International Business Law: Legal Transactions in a Global Economy*, Oceana Publications, New York, 1996
- The Australian Institute of Export 2000, *The Export Handbook*, 17th edn, College of International Business, Sydney.
- Zeller, B 1998, *International Commercial Law for Business*, Federation Press, Sydney, 1998

THOMSON

- Harris, *Cases and Materials on International Law*, 7ed 2008
- Qureshi and Zeigler, *International Economic Law*, 2 ed 2007 (Sweet and Maxwell)
- Schmitthoff's *Export Trade* . 11 ed (Sweet and Maxwell)
- Honnold, J, Reitz, C, *Sales Transactions Domestic and International Law*, 3 ed, 2006

MARTINUS NIJHOFF

Footer, M, *An Institutional and Normative Analysis of the World Trade Organisation*, 2005

Stoll, P, Schorkopf, F *WTO – World Economic Order, World Trade Law*, 2005

Wolfrum, R, ed, *WTO-Trade Remedies* 2008

Wolfrum, R (ed), *WTO – Trade in Goods*, 2009

Wolfrum, R (ed), *WTO – Trade in Services*, 2009

Busche, J (ed), *WTO – Trade-related Aspects of Intellectual Property Rights*, 2008

Head, J, *The Future of the Global Economic Organisations*, 2005

HART PUBLISHING

Joerges, C and Petersmann, E, *Constitutionalism, Multilevel Trade Governance and Social Regulation*, 2006

Lester, S, *World Trade Law – Text, Cases and Commentary* 2008

Picker, C (ed), *International Economic Law*, 2008

CAMBRIDGE UP

Van den Bossche, *The Law and Policy of the World Trade Organisation , Text, Cases and Materials*, 2 ed, 2008

Jackson, J *Sovereignty, the WTO and Changing Fundamentals of International Law*, 2006

EDWARD ELGER PUBLISHING

Bentley, P (ed), *Anti-dumping and Countervailing Action*, 2007

Kelly, T, *The Impact of the WTO – The environment, Public Health and Sovereignty*, 2007

ROUTLEDGE-CAVENDISH

Fountoulakis, C (ed), *International Sales Law*, 2006

Carr, I, *International Trade Law*, 3 ed, 2005

Zeller, B, *CISG and the Unification of International Trade Law*, 2006

Relevant Websites

American Society for International Law – guide to internet resources

www.asil.org/resource

APEC – materials

www.apec.org.au

ASIL guide to Electronic Resources for International Law

<http://www.asil.org/resource/pill.html>

Australia – Australian material

www.dfat.gov.au

Australian Law Reform Commission 1996 *Legal Risk in International Transactions*

<http://www.austlii.edu.au/au/other/alrc/publications/reports/80/ALRC80.html>

Update to Guide to International Trade Law Resources on the Internet

<http://www.1lrx.com/features/trade2.htm>

EU – material

www.europa.eu.net

Eye on International Business Law

<http://www.laweye.de/>

Georgetown University's Institute of International Economic Law – on WTO

www.law.georgetown.edu/iieil/

GlobalEdge (Michigan State University) – trade links

<http://globaledge.msu.edu>

New York University – WTO/GATT links

www.law.nyu.edu/library/wto_gatt.html

OECD – materials

<http://www.oecd.org>

Pace University – International Trade Law and the CISG

<http://cisg.law.pace.edu>

International Trade Forum, Click on “Trade Law for Business”

<http://www.tradeforum.org>

International trade strategies – commentaries

www.tradestrategies.com.au

Juris International (Includes text of conventions, more than 160 model contracts, WTO Agreements etc)

<http://www.jurisint.org>

Lex Mercatoria – conventions, rules, links

www.lexmercatoria.org

NAFTA – materials

www.nafta-sec.alena.org

Transnational Law Database – bibliography, *lex mercatoria*
www.tldb.de

TMC Asser Institute – extensive coverage of international law topics
www.asser.nl

UNCITRAL – UNICITRAL materials
www.uncitral.org

UNIDROIT – private international law topics
www.unidroit.org

University of Chicago – links to topics
www.lib.uchicago.edu/-llou/forintl.html

University of Kent – links
<http://library.kent.ac.uk/library/lawlinks/>

University of Western Australia – links
www.law.ecel.uwa.edu.au/intlaw/international_trade_law.htm

US Trade Rep – US trade policy, cases
www.ustr.gov/index.html

World Trade Law – international trade law links
www.worldtradelaw.net NB SUBSCRIPTION SERVICE AVAILABLE THROUGH LIBRARY LAW DATABASES

Worldlii – WTO material
www.worldlii.org

[World Trade Organisation – WTO materials](http://www.wto.org)
www.wto.org

The online law databases available through the university homepage are very useful. These include:

Case Base facilitates searches for Australian legal materials, and provides links to these. (If a case is not available through one of the commercial reports try the parallel BC..... link.)

Hein Online is for searching journal articles.

LexisNexis AU is for searching local primary (cases, legislation) and secondary (articles) materials.

LexisNexis affords a facility for searching for primary and secondary materials from a number of jurisdictions. Although it focuses on US materials it is also a good source for materials from other jurisdictions.

Westlaw international also provides a trans jurisdictional search facility for primary and secondary materials.

Some tips for using these databases – click the Natural Language option; key in fewer rather than more words, so as to provide a wider net for searches (for example, take one distinctive word in the title of a case, if the full title does not get a hit); use AND or & in order to narrow a search (for example, waiver & arbitration will ensure that documents retrieved contain both words).

Worldtradelaw.net –World Trade Organisation dispute resolution materials.

UNIT WEB PAGE

- http://www.buslaw.mq.edu.au/postgraduate_programs/PG_units/BUSL851

Materials will be uploaded to Blackboard.

LEARNING OBJECTIVES AND OUTCOMES

This unit aims to develop an appreciation of the nature and role of international trade law, an understanding of its legal framework, and the instruments and institutions that underpin its operations. It aims to develop an understanding of the interpretation of the international instruments and the domestic laws that adopt these, and of the interrelationship between international and domestic law.

The generic skills sought to be developed by the unit include critical analysis skills, problem-solving skills, and creative thinking skills, focused on the law and its institutions.

TEACHING AND LEARNING STRATEGY

SCHEDULE OF TOPICS

The class time will be spent reviewing and discussing the materials identified for reading, in light of unit objectives. Classes will take the form of interactive seminars.

SCHEDULE OF TOPICS

1 INTRODUCTION

Concept of international law (including international trade law). Is international law really state law? Adoption of international rules models into state law. Scope of international trade law. Distinction between soft and hard rules regimes. UNIDROIT Principles of International Commercial Contracts, and the *lex mercatoria*.

MG Chap 2, M Chap 1

2 & 3 THE WORLD TRADE ORGANISATION

Examines World Trade Organisation (WTO) and the General Agreement on Tariffs and Trade (GATT), a regime known collectively as WTO-GATT.

MG Chap 7,

4 INTERNATIONAL COMMERCIAL CONTRACTS; INCOTERMS

4.1 International Commercial Contracts

UN Convention on Contracts for the International Sale of Goods (“CISG”, also known as the Vienna Convention).

MG Chap 1, BB Chap 2, M Chaps 2, 3

4.2 Incoterms 2000 – Interpretation of Trade Terms

Reviews the current edition of the International Chamber of Commerce’s Incoterms – the International Rules for the Interpretation of Trade Terms.

MG Chap 3, BB Chap 1

5 INTERNATIONAL CARRIAGE OF GOODS BY SEA

Reviews the regimes (such as The Hague Rules and the Hamburg Rules) governing the international transport of goods by sea.

MG Chap 4, BB Chap 2, M Chap 3

6 INTERNATIONAL CARRIAGE OF GOODS BY AIR AND LAND

Reviews the international transportation of goods by air (Warsaw Convention, Guadalajara Convention, Montreal Convention), rail and road.

MG Chap 5, BB Chap 1,

7 FINANCING EXPORTS – LETTERS OF CREDIT

Reviews the financing of exports, focusing on letters of credit and UCP600 (current version of the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits).

MG Chap 6, BB Chap 3, M Chap 4

8 ANTI-DUMPING AND COUNTERVAILING MEASURES REGIMES

Examines the anti-dumping regime (pivoting on Art VI of GATT, in conjunction with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade) and the parallel subsidies and countervailing measures regime (Agreement on Subsidies and Countervailing Measures).

MG Chap 8, BB Chap 4, M

9 INTERNATIONAL COMMERCIAL ARBITRATION

Overviews arbitration as a means for resolving international commercial disputes.

MG Chap 10, M Chap 13

10 TRADE IN INTELLECTUAL PROPERTY

Examines the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights 1994).

MG Chap 9, M Chap 8,

RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OUTCOMES

ASSESSMENT

The assessment is based on three tasks:

- (1) Class participation (5% of overall assessment)
- (2) An essay of 3000 words (45% of overall assessment) on a substantive legal issue, as follows:

“What considerations prompted the formulation of the Rotterdam Rules governing the carriage of goods by sea? What changes do these rules make as compared to the Hamburg Rules and the Hague-Visby Rules?” (For an overview of the new rules, see www.rotterdamrules.com/en/)

Students may seek approval for an alternative topic.

The essay is due on Monday 4 October, by 5pm.

- (3) A final examination in the general examination period (50% of overall assessment). This examination will be open book. Any materials other than Macquarie University library books may be taken into the examination room.

Essays may be submitted to the lecturer or deposited in the collection box located in the south eastern lobby of W3A.

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.

UNIVERSITY POLICY ON DETERMINATION OF OVERALL GRADING

The class participation mark will be based on quality rather than frequency of contribution.

Essay grading will be based on the quality of literature search, organisation, expression, synthesis and analysis and originality. More generally essays should reflect the generic skills sought to be enhanced by the unit, that is, critical analysis skills, problem-solving skills, and creative thinking skills

Essays can have in-text or footnote citation. State page numbers for sources. Include a bibliography. Employ headings as appropriate. Number headings dependent upon their rank, as in (eg) 1, 2, 2.1, 2.2, 3 etc, as appropriate.

GRADING POLICY The University requires all faculties 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 a number of students are to be failed in any unit.

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>.

LIBRARY SUPPORT FOR POSTGRADUATE STUDENTS IN LAW

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).

Library 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. 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 LL 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 as 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.

DEPARTMENT OF BUSINESS LAW

ESSAY COVER SHEET

(Please attach cover sheet to every assignment)

Surname:		Student Number:	
Given Name:			
Tutor's Name		Tutorial Time	
Date Due:		Unit Number:	
Essay Title:			
<p>"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"</p> <p>Signed</p>			
Marker's Comment			