

MACQUARIE
UNIVERSITY



FACULTY OF
BUSINESS AND ECONOMICS

DEPARTMENT OF BUSINESS LAW

STUDY GUIDE

BUSL832 BUSINESS TRANSACTION LAW

Semester 2, 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.

1. ABOUT THIS UNIT

Unit description

The unit introduces and examines the principles of the law of contract. It is designed to enable the student to gain a working and practical knowledge of this area of law, and to develop legal skills in this field. Skills that are appropriate and arguably essential to the application of the law of contract to commercial matters as well as strictly legal matters. The unit will draw considerably on the fundamental principles of contract law supported by case law and theory.

TEACHING STAFF

Convener and Lecturer: Anthony Gerardis
Email: agerardi@bigpond.net.au

Postgraduate Administrator: Lara Hardy lara.hardy@mq.edu.au 9850 8678

CLASSES AND STUDY TIMES

Internal

Business Transactions Law is offered on a weekly basis in second semester on **Tuesdays- in C4A 312, 3 – 6pm**

Classes will commence Tuesday 3 August 2010

The class time will be spent in lecture and reviewing and discussing the materials identified for reading, in light of unit objectives.

Attendance at lectures is an assessable part of the unit; lectures will feature extensive PowerPoint presentations, animated discussion and are vital to achieving learning objectives.

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 2 August 2010.

REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

Prescribed texts

P Gillies, N Selvadurai, *Law of Contract*, (Federation Press, 2009) (Ph. 9552 2200)
(referred to in Schedule of Topics as PG/NS)

Optional texts:

- Daniel Khoury and Yvonne Yamouni, *Understanding Contract Law*. 8th Ed.(LexisNexis Butterworths Australia, 2010)
- P Gillies, *Business Law*, 12th edition (Federation Press, 2004) (Ph. 9552 2200)
(referred to in Schedule of Topics as PG)
- Carter & Harland, *Contract Law in Australia* (Lexis Nexus)
- It would be very helpful to have a copy of the *Trade Practices Act, 1974* (Cth)
(annotated versions are published by the Law Book Co. and Lexis Nexus, and CCH. The Act is also available at www.austlii.edu).

Recommended texts

Business Law in general -

Chappenden & Carter, *Commercial Law & Personal Property* (Law Book Co)

Latimer, *Australian Business Law* (CCH)

Pentony et al, *Commercial Transactions Cases and Materials* (Lexis Nexus)

Turner, *Australian Commercial Law* (Law Book Co)

Vermeesch & Lindgren, *Business Law of Australia* (Lexis Nexus)

Contracts -

Allen & Hiscock, *Law of Contract in Australia* (CCH)

Carter & Harland, *Contract Law in Australia* (Lexis Nexus)

Carter, *Breach of Contract* (Law Book Co)

Graw, *An Introduction to the Law of Contract* (Law Book Co)

Greig & Davis, *The Law of Contract - with Supplement* (Law Book Co)

Hall, *Unconscionable Contracts and Economic Duress* (CCH)

Stark, Seddon & Ellinghaus, *Cheshire and Fifoot's Law of Contract – Australian Ed*
(Lexis Nexus)

Sweeney & O'Reilly, *Law of Commerce* (Lexis Nexus)

Consumer and Trade Practices Law -

Beerworth, *Product Liability* (Federation Press)

Cavanagh & Barnes, *Consumer Credit Law in Australia* (Lexis Nexus)

Collinge & Clarke, *The Law of Marketing in Australia & NZ* (Lexis Nexus)

Corones & Clarke, *Consumer Protection and Product Liability Law – commentary and materials* (Law Book)

Corones, *Competition Law & Policy in Australia* (Law Book Co)

Duggan et al, *Regulated Credit* (Law Book Co)

Everett & Ranson, *The Fair Trading Acts* (Longman Professional)

Goldring et al, *Consumer Protection Law in Australia* (Lexis Nexus)

Healey, *Australian Trade Practices Law* (CCH)

Healey & Terry, *Misleading or Deceptive Conduct* (CCH)
Hurley, *Restrictive Trade Practices* (Law Book Co)
Miller, *Annotated Trade Practices Act* (Law Book Co)

There are further texts periodically published which students may wish to locate and use.

Statutes://www.austlii.edu.au

UNIT WEB PAGE

Study Guides and information on this unit can be found at the Blackboard site on the Business Law site on the Faculty of Business and Economics website

LEARNING OBJECTIVES

Unit Objectives

- To introduce and familiarise students with the law of contract;
- To develop or enhance an appreciation by business managers and related professions of the legal context in which they operate;
- To create an enlightened awareness by individual professionals of the legal basis for, and scope of, their roles;
- Generally, to contribute to the legal literacy of these professions;
- To build a sound knowledge and understanding of the relevant legal principles surrounding the law of contract; and
- To develop skills necessary to apply appropriate legal principles, supported by authorities to problems and fact patterns that are likely to be encountered in the commercial world
- To demonstrate academic proficiency in research, analysis and presentation of the assessment task.

The programs in which the unit is a component, do not aim to develop professional legal skills associated with legal practice

Subject to this, the unit aims at developing and consolidating knowledge of the nature of law the essential principles of the law of contract, the language of the law and the fundamental principles, doctrines and distinctive reasoning processes associated with the law.

For example, the common law as a precedent based system will be employed in this unit as authority for the principles and laws being considered. The roles of the common law and legislation, and those of the courts and commercial necessity will

also be vital to this unit. A priority will be developing through practical application and review of the material the basic skills required for reading and understanding the texts of the law, primary (cases and statutes) and secondary (commentaries on the law, such as books and articles).

The unit will develop the skills required for analysing the key facts of a legal dispute, the identification of the law that needs to be applied to resolve this dispute, and for the application of this law to the established facts to secure this resolution.

At all times the practical value of this unit to its participants is to be considered the measure of its worth. Speaking generally it is difficult to comprehend a commercial arrangement, or business transaction of any consequence that is not fundamentally predicated on the law of contract. Professionals from almost every field must, and are generally expected to comprehend the concepts of this area of law. Students of this unit are expected to have gained a sound understanding of the law of contract that will inform their professional endeavours with knowledge and understanding of the relevant legal principles.

The unit will involve completion of a research project, embodied in an essay, which will further develop skills of legal interpretation, analysis and synthesis, and an understanding of the interrelationship between the development of the law and its application in the sphere of the commercial world.

GENERIC SKILLS

As reflected immediately above, the unit aims at developing skills required for interpreting the materials of the law, and their analysis and synthesis. In essence, the unit develops verbal reasoning skills in the context of the law discipline. Students should develop the ability to apply appropriate legal principles and authorities to the solution of problems and questions.

TEACHING AND LEARNING STRATEGY

The unit consists of seminar-based classes (both in intensive and weekly modes). Students are encouraged to attend class and to prepare for class. The techniques of legal reasoning, legal knowledge, and a capacity to apply the principles of law to hypothetical fact situations (or “cases”) will be developed through explanation, discussion and essay writing.

Students are encouraged to raise real life cases from their professional experience, relevant to the subject matter of the unit. Likewise, they are welcome to propose research project topics which are relevant to their work. (For example, a student employed in the insurance industry might choose to research an aspect of insurance contracts law.)

Attendance at lectures is vital to acquiring the skills and knowledge this unit is focused on developing.

NOTE:

- **PowerPoint presentations and the lecturer's notes are not available for distribution to students under any circumstances.**
- **Participants in this unit are expected to write and rely on their own notes taken during lectures and their own research for assessments. Lecture outlines are found in this study guide.**

ASSESSMENT

Assessment consists:

- **Class participation/attendance (10%);**
- **Essay of between 4500 and 5500 words, which would count for 90% of their assessment.**

Class Participation: This component will be based on both attendance and merit. Students that actively participate in topic discussion and contribute to the momentum of the unit will gain merit. Students are expected to attend lectures and this will be taken into account.

Essay topics:

“Promissory Estoppel represents a series of legal doctrines that serve both as a shield and a sword, guarding against the unconscionable.” Discuss

“Lack of legal capacity is a legitimate means to avoid accountability under an otherwise binding contract.” Discuss

Discuss the processes of identification and construction of the terms of a contract, using cases to support your discussion where appropriate.

“Exclusion clauses are often used by one or more parties to a contract to exclude or limit their liability under the agreement.” Discuss

- The essay is a formal assessment 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.**
- **Statement on Essay Cover Sheet acknowledging University Policy on plagiarism MUST be signed**
- **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 or that does not comply with the requirements outlined herein. 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.

Any evidence of plagiarism will necessarily result in a grade of 0 and an F.

SUBMISSION:

- **A hard copy of assignments is required to be handed to the lecturer or deposited in the collection box located in W3A 341.**
- **A ‘soft copy’ in WORD 97– 2003 format MUST be e-mailed to the Convener at agerardi@bigpond.net.au and you are to request a ‘read receipt’ when sending.**

Due Date: Monday 22 November 2010, by 5pm

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 Postgraduate Studies* or on the web at: <http://www.student.mq.edu.au/plagiarism/>

Aside from **necessarily failing the Unit** the matter may be referred 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

- (a) Copy out part(s) of any document, including computer and web-based material;
- (b) Use or extract someone else’s concepts or experimental results or conclusions, even if you put them in your own words;
- (c) Copy out or take ideas or summarise from the work of another student, even if you put the borrowed material in your own words;
- (d) 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.

To restate: Any evidence of plagiarism will necessarily result in a grade of 0 and an F.

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>.

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 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 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)

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 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 any number of students are to be failed in any unit.

SCHEDULE OF TOPICS

TOPIC 1

- **An overview of the legal system (PG Chaps 1-4)**
- Revising the nature of the law, the legal system, and the federal compact.

TOPIC 2

- **Introduction to the law of contract** (PG/NS Chapter 1.)
- **Formation of a contract** (PG/NS Chapter 1.)
- Agreement (offer & acceptance) (PG/NS Chapter 2.)
- Consideration (PG/NS Chapter 3.)
- Intention to create legal relations (PG/NS Chapter 4.)
- Requirement of writing (PG/NS Chapter 18.)

TOPIC 3

- **Terms**
- Identification (PG/NS Chapter 5.)
- Construction (PG/NS Chapter 6.)
- Exclusion clauses (PG/NS Chapter 7.)

TOPIC 4

- **Parties**
- Capacity (PG/NS Chapter 16.)
- Privilege (PG/NS Chapter 17.)

TOPIC 5

- **Matters related to ‘assent’**
- Misrepresentation (PG/NS Chapter 9.)
- Mistake (PG/NS Chapter 8.)
- Duress (PG/NS Chapter 10.)
- Undue influence (PG/NS Chapter 10.)
- Unconscionability (PG/NS Chapter 10.)

TOPIC 6

- **Illegality** (PG/NS Chapter 11.)

TOPIC 7

- **Discharge of contract**
- Performance (PG/NS Chapter 12.)
- Agreement (PG/NS Chapter 12.)
- Breach (PG/NS Chapter 13.)
- Frustration (PG/NS Chapter 12.)

TOPIC 8

- **Remedies** (PG/NS Chapter 14.)
- Common law (PG/NS Chapter 15.)
- Equity (PG/NS Chapter 14.)
- Statute (PG/NS Chapter 14.)

TOPIC 9

- **Equity and Trusts**
- Review of the origins of Equity
- Trusts; formation and operation

FORMATION OF A CONTRACT

- Agreement
- Consideration
- Intention to create legal relations
- Requirement of writing

It is assumed that students will have a working familiarity with the fundamentals of the legal system. This will in most cases have been acquired by previous study of the law at some level, or by pre-course reading. HOWEVER the first lecture will be an introduction to the Australian Legal system, and overview of its history and operation from its origins in England to the basics of interpreting a statute.

In addition the first session will afford an opportunity to discuss the Unit itself, its requirements and most importantly its learning objectives. We will also discuss essay writing techniques and referencing, and this will be ongoing throughout the unit to help you produce your best work.

Contract law is primarily based on the common law, and as such is 'case based'. Many cases will be referred to in lectures. It is suggested that you pay particular attention to the cases that are cited in the readings.

We will commence with an introduction to the law of contract and then move to detailed discussion of the requirements for the formation of an enforceable contract in the Australian jurisdictions.

At the outset concepts of Agreement, Offer, Acceptance, Consideration, Intention and the Requirement of Writing will be closely examined and discussed. This is the launching point for any serious study of the law of contract, and we will commence our studies here.

Following lectures will follow the Schedule of Topics closely, and we will visit new areas of contract law each week.

It is anticipated that all students will have read the chapters for the topics we are covering, or equivalent material from other sources and be familiar with many of the cases *before* the lectures.

Lectures are animated and very informal, every lecture will feature extensive and comprehensive PowerPoint presentations, and discussion is encouraged.

ESSAY COVER SHEET

Family Name:		Unit Code:	BUSL832
Given Names:		Date Due:	
Student ID:		Lecturer'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