Unit Outline*

MGMT8520

Legal Principles for Management

MBA

Trimester 2, 2011

Crawley

Associate Professor Peter Sinden

Business School

www.business.uwa.edu.au

* This Unit Outline should be read in conjunction with the Business School Unit Outline Supplement available on the Current Students web site http://www.business.uwa.edu.au/students
UNIT DESCRIPTION

Introduction
Welcome to Legal Principles for Management. This unit provides an overview of the legal regulation of business in Australia. It gives a basic introduction to the Australian legal system, the legal framework of business regulation and areas of substantive law relevant to commerce with particular reference to business contracts and torts, fair-trading (including misleading or deceptive conduct), unconscionability, and unfair practices.

Unit content
This unit seeks to impart the basic legal knowledge and related problem solving skills that are essential to success in the management of any business. It begins with a brief overview of Anglo-Australian legal history, in order to explain how our law has evolved and the respective contributions that each of the three main sources of our law, the Common Law, Equity and Statute Law, have made and continue to make to that evolutionary process.

It then moves on to consider how Australia's federal constitutional structure, which is characterised by a rather fuzzy and uncertain division of powers between the Commonwealth on the one hand, and the States and the Territories on the other, impacts on the content and enforcement of our law. In this connection the unit considers in some detail the problems that are created in Australia by the existence of nine distinct legislative, judicial and executive systems, and looks at the mechanisms that exist to minimize these problems or to resolve conflicts when they do arise.

The unit also provides a detailed analysis of the so called 'Doctrine of Precedent' and how that doctrine guides and constrains the development of judge made law. Having covered the above matters in an introductory way the unit then focuses, in much more detail, on the common law of contract and torts and on the various statutory provisions that modify those common law principles in order to promote fair trading and consumer protection. This unit therefore covers a very wide range of legal materials.

As a result we feel that we must stress that, while the lectures and readings will provide the foundational theory, you are ultimately responsible for your own learning experience. Your contribution in class, your efforts out of class and the depth and competency of your supplementary reading will be critical to the learning outcomes you achieve in this unit. A comprehensive set of supplementary reading materials will be made available to all students enrolled in this unit either in hard copy in the Business section of the Reid Library and on-line by way of the CygNET CMO system. (See further details on p. 5).

The goal of the unit
Australian Standard on Compliance Programs (AS 3806), the Federal Government's Report on Leadership and Management Skills (the Karpin Report) and the compulsory 'Law for Managers' units in most MBA courses all emphasise the need for legal literacy and conduct in a management environment. To that end this unit is designed to introduce MBA students to the main principles of commercial law, particularly the law of contract, and to empower them as business managers and entrepreneurs by giving them the skills and knowledge needed to identify the legal problems that may arise in their commercial dealings and to intelligently acquire and consume legal services and advice with a view to the advantageous resolution of these problems.
Learning outcomes

This unit is set within a commercial context. It focuses on the rights and potential liabilities of businesspersons, professionals and consumers. It is designed to achieve three primary objectives:

- to introduce students to the Australian legal system;
- to impart to students a basic knowledge of some concepts of commercial law;
- to encourage the development of analytical and communication skills.

At the completion of the unit, students should possess both the knowledge and the analytical skills necessary to enable them to identify legal issues relating to the conduct of business in Australia, the ability to apply to those issues the relevant principles of law, and reach conclusions as to the legal rights and duties of the parties involved. Students will also be able to:

1. describe the key elements of the Australian legal system;
2. display a working knowledge of some important concepts of commercial law;
3. demonstrate logical reasoning, analysis and communication skills;
4. apply this knowledge and these skills in analysing and solving a series of legal case studies and hypothetical business problems.

The unit also aims to assist in the management of legal risk by helping managers to:

- use the law proactively and competitively in the operational and strategic functions of business;
- use the law as a preventative tool to avoid costs, delays and damage to goodwill;
- communicate effectively with lawyers to resolve disputes in a cost effective fashion.

To achieve these goals our approach will be, as far as possible, to examine the law through case studies that demonstrate how that law can be applied to the resolution of the sort of practical legal problems that are commonly encountered by business people.

Prerequisites

This unit assumes that students have developed certain basic skills. It is expected that students have an adequate command of:

- English and related communication skills – students are expected to understand and follow the principles of accepted expression and style.
- Basic mathematical and statistical skills – students are expected to possess basic numerical skills.
- Library research skills. If you are not well prepared in any of the above areas you should make every effort to remedy the situation through undertaking additional reading and/or practice. Do not hesitate to ask for advice from your tutors and lecturers.

This unit also assumes that students have well developed assignment writing skills, including proper referencing techniques. When we are marking the Final Exam and the Assignment Questions we will expect students to demonstrate and apply the analytical techniques and presentation format that are explained in the CMO document entitled: “How to Answer Law Exam and Assignment Questions”. Please feel free to contact us if you have any concerns in relation to this document or to the analytical techniques and presentation format it discusses.
Educational principles and graduate attributes

On completion of this unit subject, students should have developed the following generic skills:

• The capacity for close reading and analysis of a range of legal source materials;
• The capacity for critical and independent thought and reflection;
• The capacity to solve problems, including through the collection and evaluation of information;
• The capacity to effectively plan and manage time;

In addition, on completion of the subject, students should have developed the following skills specific to the discipline of law:

• The ability to find and deal with legal source materials;
• The ability to find and apply legal principles and rules to resolve specific issues.

TEACHING AND LEARNING RESPONSIBILITIES

Teaching and learning strategies

We will do our best to present this unit in a way that is logical, well organised and clear. But we can only shoulder part of the responsibility when it comes to achieving the learning outcomes. As stated earlier, your contribution and efforts in and out of class, and the depth and competency of your supplementary reading will be critical to the learning outcomes you achieve in this unit.

Teaching and learning evaluation

You may be asked to complete two evaluations during this unit. The Student Perception of Teaching (SPOT) and the Students’ Unit Reflective Feedback (SURF). The SPOT is optional and is an evaluation of the lecturer and the unit. The SURF is completed online and is a university wide survey and deals only with the unit. You will receive an email from the SURF office inviting you to complete the SURF when it is activated. We encourage you to complete the forms as your feedback is extremely important and can be used to make changes to the unit or lecturing style when appropriate.

The unit will consist of 12 three-hour seminars. The seminars will be held weekly and will involve a mix of formal lecturing, group work and the consideration of a series of discussion questions. The purpose of spending class time on the discussion questions is to enable students to revise and contextualise the legal rules they have been learning. The Seminar Program is attached. You will see that it contains a Reading Guide. It will be assumed that students have read at least the stipulated passages from the textbook before the seminar concerned. Further references may be given in seminars. All the materials referred to in the Reading Guide are available on-line and can be accessed by going to the “Find Course Materials for Your Unit” button on CygNet CMO On-Line at: http://www.library.uwa.edu.au/index.html.

It is intended that these materials, largely reported cases and journal articles, will be read for the appropriate seminar. References in the Seminar Program and Reading Guide marked with an asterisk are considered to be particularly important. A further reference list is provided for those who wish to explore particular subjects in greater detail, and for use in preparation of assignments.
Attendance

Participation in class, whether it be listening to a lecture or getting involved in other activities, is an important part of the learning process, therefore it is important that you attend classes. More formally, the University regulations state that ‘to complete a course or unit students shall attend prescribed classes, lectures, seminars and tutorials’. Where a student, due to exceptional circumstances, is unable to attend a scheduled class, they are required to obtain prior approval of the unit coordinator to be absent from that class. Any student absent from class without having had such absence approved by the unit coordinator may be referred to the faculty for advice and may be required to withdraw from the unit.

CONTACT DETAILS

We strongly advise students to regularly access their student email accounts. Important information regarding the unit is often communicated by email and will not be automatically forwarded to private email addresses.

<table>
<thead>
<tr>
<th>Unit coordinator/lecturer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name: Associate Professor Peter Sinden</td>
</tr>
<tr>
<td>Email: <a href="mailto:psinden@law.uwa.edu.au">psinden@law.uwa.edu.au</a></td>
</tr>
<tr>
<td>Phone: Peter; 6488-7059;</td>
</tr>
<tr>
<td>Consultation hours: Wednesdays, 12.00pm - 2.00pm</td>
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<tr>
<td>Lecture times: Fridays, 6.00pm – 9.00pm</td>
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<td>Lecture venue: BUSN:142</td>
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**Lecturer Details**

Associate Professor Peter Sinden BA. LL.B. (Hons) Qld; LLM Lond; ASM.

Peter is the Unit Co-ordinator for this unit. His research interests are in Competition Law and Intellectual Property. Within the UWA Law School he teaches the Industrial and Intellectual Property Law unit in the Master of Laws degree as well as undergraduate courses in Company Law and Marketing Law. He is a consultant to several Perth law firms and has been the consultant author of two reports by a Committee of the Legislative Assembly of the Parliament of Western Australia. Peter was admitted as a Barrister of the Supreme Court of Queensland in 1977 and as a Barrister and Solicitor of the Supreme Court of Western Australia and Barrister of the High Court of Australia in 1988.
TEXTBOOK(S) AND RESOURCES

Required Text


The *First Principles of Business Law CD-Rom* by Michael Lambiris is published by CCH Ltd. It provides a fresh approach to teaching and learning Business Law. The CD-Rom contains 17 interactive tutorials covering all of the topics which will be considered in this unit. It also contains a revision tutorial. The tutorials present information through carefully sequenced examples and questions with immediate feedback provided. Students learn at their own time, place and speed. Students from a variety of language backgrounds find the materials concise, clear and manageable. These innovative computer-based tutorials, together with the companion Source Book, have proven popular and effective with Business Law students across Australia. The materials cover the sources of Australian law (legislation and case-law); the essential principles of contract law (including related topics in trade practices law); agency law; tort law; and business organisations. There is also a revision tutorial designed to help students with legal problem-solving. The materials can be used flexibly and selectively. Although their focus was originally on NSW and Victoria they have recently been updated to embrace all Australian jurisdictions.

NB: You will find it necessary to occasionally supplement your Source Book & CD-Rom readings with readings from other recommended textbooks/reference books as well as with readings from casebooks, law reports and materials placed in the reserve collection at the Reid library or in the library’s course materials on-line (“CMO”) system.

Recommended Texts

## UNIT SCHEDULE

<table>
<thead>
<tr>
<th>Week #</th>
<th>Week Commencing</th>
<th>Topic</th>
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<tbody>
<tr>
<td>1</td>
<td>Monday 16 May 2011</td>
<td>Introduction to the Australian Legal System</td>
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<tr>
<td>2</td>
<td>Monday 23 May 2011</td>
<td>The Evolution of the Tort of Negligence: An Example of the Common Law at Work</td>
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<td>3</td>
<td>Monday 30 May 2011</td>
<td>Liability in Tort for Negligent Misstatement and Acts or Omissions Causing Pure Economic Loss</td>
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<td>4</td>
<td>Monday 6 June 2011</td>
<td>Formation of the Contract: Offer &amp; Acceptance, Consideration &amp; Intention to Create Legal Relations</td>
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<td>5</td>
<td>Monday 13 June 2011</td>
<td>Construction of the Contract: Express and Implied Contractual Terms, Exclusion Clauses and Other Special Terms</td>
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<td>6</td>
<td>Monday 20 June 2011</td>
<td>Formal Requirements for Contracts; Contractual Capacity; Privity &amp; Assignment</td>
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<td>7</td>
<td>Monday 27 June 2011</td>
<td>Factors that Vitate Contracts: Mistake, Misrepresentation, Duress and Undue Influence</td>
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<td>8</td>
<td>Monday 4 July 2011</td>
<td>Discharge of the Contract</td>
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<td>9</td>
<td>Monday 11 July 2011</td>
<td>Remedies for Breach of Contract</td>
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<td>- Misleading, Deceptive; and Unconscionable Conduct under Statute (TPA/FTA/ASIC etc)</td>
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<td>12</td>
<td>MONDAY 1 AUGUST</td>
<td>Selected Business Relationships:</td>
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<td>- Agency</td>
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<td>- The Fiduciary Relationship and Duties</td>
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<td>- Corporations</td>
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<td>- Joint Venture</td>
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<td>- Trust</td>
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**NB:** Take Home Final Exam Paper Handed Out in Seminar 11: Answers due by 4pm on Friday 12 August 2011
ASSESSMENT MECHANISM

The purpose of assessment

There are a number of reasons for having assessable tasks as part of an academic program. The assessable tasks are designed to encourage you to explore and understand the subject more fully. The fact that we grade your work provides you an indication of how much you have achieved. Providing feedback on your work also serves as part of the learning process.

Assessment mechanism summary

<table>
<thead>
<tr>
<th>Item</th>
<th>Weight</th>
<th>Due Date</th>
<th>Submission</th>
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<tbody>
<tr>
<td>Seminar Papers and Presentations (5 x 10%)</td>
<td>50%</td>
<td>Various</td>
<td>E-Mail <a href="mailto:psinden@law.uwa.edu.au">psinden@law.uwa.edu.au</a> &amp; Uniprint</td>
</tr>
<tr>
<td>Take Home Final Exam</td>
<td>50%</td>
<td>Friday 12 August 2011</td>
<td>E-Mail <a href="mailto:psinden@law.uwa.edu.au">psinden@law.uwa.edu.au</a> &amp; Uniprint</td>
</tr>
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</table>

NB: Supplementary assessment is not available in this unit.

Note 1: Results may be subject to scaling and standardisation under faculty policy and are not necessarily the sum of the component parts.

Note 2: Your assessed work may also be used for quality assurance purposes, such as to assess the level of achievement of learning outcomes as required for accreditation and audit purposes. The findings may be used to inform changes aimed at improving the quality of Business School programs. All material used for such processes will be treated as confidential, and the outcome will not affect your grade for the unit.

LECTURE PROGRAM

Week One: (PART ONE)

TOPIC A. AN INTRODUCTION TO THE AUSTRALIAN LEGAL SYSTEM

Lecture 1: Unit Discussion, Handouts and Preliminaries.

Australian Constitutional Framework: The Separation of Powers;
Australian Constitutional Framework: The Division of Powers between the Commonwealth, the States and the Territories

Lecture 3: Australian Judicial System: Federal, State and Territory Court Systems and Hierarchies; Role of the High Court of Australia, The Concept of Jurisdiction, Case Citations and Terminology
NO TUTORIAL THIS WEEK

Textbook: Latimer [1-010]-[1-210]; [1-410]-[1-420]; [1-450]-[1-490]; [2-010]-[2-050]; [3-200]-[3-210]
CD –Rom: Tutorials 1,2 & 3
Statute: The Constitution of the Commonwealth of Australia, Sections 51, 52, 90, 92, 99, 100, 107, 109, 114-118, 122; and Chapter III on Judiciary, in particular Sections 73, 75, 76, 77 (the more important sections of the Commonwealth Constitution are underscored) (CMO and Statute Package)
Reference: Vermeesch and Lindgren Chapter 1 (note that much of this is background information and that paragraphs [1.5]-[1.22] are not examinable); Chapter 2; [15.20]-[15.25]; Glossary; (Chapter 31 is optional background information on jurisprudence) Brown and Hacket Chapters 1 and 2; [610]-[611]
Gillies Chapters 1, 2, 4 and 6
Case/Art.: Hayne, "Australian Law in the Twentieth Century" (June 2000) 74 ALJ 373 (thoughts on the evolution of Australian law during the 20th Century) (CMO)

Week One: (PART TWO)

Lecture 4: Judge Made Law & The Doctrine of Precedent
Lecture 5: Statute Law & the Rules for Interpreting Statutes; Conflict Between Laws: Judge Made Law -v- State & Federal Statutes
Lecture 6: An Overview of Legal Method, Legal Reasoning & Argument (IRAC)

NO TUTORIAL THIS WEEK

Textbook: Latimer [1-030]-[1-444]; [1-490]-[1-550]; [2-050]-[2-200]; [3-010]-[3-310]; [3-430]-[3-460]; [3-740]
CD –Rom: Tutorials 1, 2 & 3
Statutes: Acts Interpretation Act 1901 (Cth) (see Sec. 15AA and 15AB) (CMO and Statute Package)
Interpretation Act 1984 (WA) (see Part II, Sec. 18 and 19) (CMO and Statute Package)
Reference: Vermeesch and Lindgren Chapter 3; [2.51]-[2.54]; [17.1]-[17.41]; [17.51]-[17.64]; [15.1]-[15.11]; [15.20]-[15.25]
Brown and Hacket Chapters 3, 4 and 5; [601]-[604]
Gillies Chapter 3; Chapter 1 (vi-vii), Chapter 2(i),(iii); Chapter 28
Goode Chapter 2 (pages 49-68)
Case/Art.: Starke: "Current Topics: Techniques in Distinguishing Precedents"; and Powell: "Answering Examination Questions in Law" (CMO)
TOPIC B. THE LAW OF TORTS

Week Two

Lecture 7: Torts: An Overview of the Law of Torts

Lecture 8: Torts: Mrs Doghue’s Journey and the Gradual Evolution of the Tort of Negligence: A Case Study of the Common Law in Action

Lecture 9: The Tort of Negligence – Element 1: Determining the Existence of a Duty of Care

TUTORIAL NO. 1

Textbook: Latimer [4-010]-[4-050]; [4-090] (inadequate coverage)

CD –Rom: Tutorials 11 & 12

Brown and Hacket Chapter 8
Fleming Chapters 1-5; 15; 16; 19; 21; 25; 28; 30(2)
Gillies Chapter 5 (Except for Section II)

Case/Art.: Derry v Peek in Mason, Priddle and Fletcher ("Mason Casebook") Page 120
(CMO, cursor to 1st case in document)

Fightvision Pty Ltd v Tszyu (1998) (unreported, NSW SC) (interference with contractual relations - subjective test of knowledge - see facts plus pages 39-43 for summary of current Australian law; also headnotes and selected paragraphs of appeal case at [1999] NSWCA 323 - see in particular paragraphs [159]-[171])
(CMO)

Flack v Chairperson, National Crime Authority (1997) 150 ALR 153 (possessory title to property giving "immediate right to possession" and standing to sue in conversion)(CMO)

Penfolds Wines v Elliott (1946) 74 CLR 204 (Conversion, Detinue, Trespass to Goods; see pages 204-220; 222-231) (CMO)


Week Three

Lecture 10: Duty of Care (cont’d): Special Problems Posed by Cases of Negligent Advice or Negligent Conduct Causing ‘Purely Economic Loss’

Lecture 11: Negligence: Element 2: Standard of Care & Breach of Duty
Negligence: Element 3: Issues of Causation and Remoteness of Damage

Lecture 12: Statutory Modifications of Negligence Liability: The Civil Liability Acts

TUTORIAL NO. 2

Textbook: Latimer [4-060]-[4-290]

CD –Rom: Tutorials 13, 14 & 15
Brown and Hacket  Chapter 8 (same as last week)  
Fleming Chapters 6-13  
Gillies  Chapter 5 (Sections II AND XII only)  

Case/Art.:  
Bryan v Maloney (1995) 128 ALR 163 (Proximity in cases of physical act causing economic loss)  
Esanda Finance Corporation Ltd v Peat Marwick Hungerfords (1997) 23 ACSR 71 (High Court) (auditor’s liability - policy considerations) (CMO)  
Fangrove Pty Ltd v Tod Group Holdings Pty Ltd [1999] 2 Qd R 236 (CA) (courts hesitating to extend liability for solely economic loss any further) (CMO - see in particular judgments of: de Jersey, CJ, para. [14]; Chesterman J, paras. [22]-[33]; and, McPherson JA, para. [20])  
L. Shaddock v Parramatta City Council (1981) 55 ALJR 713 (Negligent Misstatement) (CMO)  
San Sebastian v Minister (1986) 68 ALR 161 (in particular, pages 168-170) or Australian Torts Reports [80-060] (in particular pages 68,112-68,114) (Negligent Misstatement) (CMO)  

TOPIC C. THE LAW OF CONTRACT  

Week Four  

Lecture 13: Formation of Contract: Contractual Intent and Offer & Acceptance  
Lecture 14: Formation/Modification: Consideration; Promissory Estoppel  
Lecture 15: Construction (Content and Interpretation) of Contracts – Introduction  

TUTORIAL NO. 3  

Textbook: Latimer  [5-010]-[5-020]; [5-050]-[5-500]; [6-150] (note Latimer misleading on outcome of Legione case)  
Reference: Vermeesch and Lindgren  Chapter 4; [5.1]-[5.37]  
Brown and Hacket  [1501]-[1506]; [1510]  
Gillies Chapters 7-10  
Carter & Harland  Chapters 2-4  
CD-Rom: Tutorial 5 (Parts 1-4 only)  
Case/Art.:  
Harpur v Ariadne Australia Ltd (1996) (Q CA) (heads of agreements signed but also "subject to contract" clause (case note in CMO)  
Legione v Hateley (1983) 46 ALR 1 (CMO - read headnotes and pages 22-25 - also see V&L [5.28] - note Latimer 5-485 misleading on outcome of High Court decision in editions prior to 1998)
Week Five

Lecture 16: Construction (Content and Interpretation) of Contracts: Express Terms and Pre-Contractual Statements; the so called ‘Parol Evidence Rule’

Lecture 17: Implied Terms in Contracts Relative Terms: Conditions, Warranties and ‘Innominate’ Terms

Lecture 18: Construction of Contracts: Special Terms (i) Conditions Precedent and Conditions Subsequent; (ii) Exclusion Clauses and Onerous and Unusual Clauses Introduction to Contractual Capacity

TUTORIAL NO. 4

Textbook: Latimer [5-030 - only sections on "parol evidence rule"]; [6-010]-[6-250]; [5-700]; [5-780]-[5-790]


CD-Rom: Tutorial 6 (Parts 1 - 7 only)

Case/Art.: Ankar v National Westminster Finance (1987) 61 ALJR 245 (see page 247 and last paragraph on page 249) and case note from 61 ALJ 364 (condition vs warranty) (CMO)

Carter, J., “Existence of the Right to Terminate for a Breach of a Contractual Term” (1988) Seminar Paper (condition vs warranty and innominate terms) (CMO - see section (a) pages 3 to middle of page 5; middle of page 7 to end of (a) on page 8; first two paragraphs of section (d) on pages 11-12; section (e) on page 18; section (g) on pages 21-22)

Cavanagh, SW., “The Ultimate Exclusion Clause” (1985) 59 ALJ 67 noting Life Savers Case (analyses privity of contract / exclusion clause cases) (CMO)

Codelfa Construction v State Rail Authority (1982) 41 ALR 367 (implied terms - business efficacy; see summary of facts pages 409-415 and then pages 367-378; 391-2; 415-421) (CMO)

Con-Stan Industries v Norwich Winterthur Insurance (1986) 64 ALR 481 (implied terms - trade usage) (CMO)
Cook v Australian Guarantee Corp. (1986) 4 SR (WA) 230 (oral contract - express and implied terms; condition vs warranty and intermediate terms) (CMO)

Interfoto Picture Library v Stiletto Visual Programmes [1988] 1 All ER 348 (onerous terms, small print) (CMO)

Liaweena (NSW) Pty Ltd v McWilliams Wines Pty Limited (1991) ASC 56-038 (incorporation of exclusion clause) (CMO)

Life Savers (Australasia) Ltd v Frigimobile Pty Ltd (1983) ASC 55-251 (NSW) (CMO)

Mouritz v Hegedus (1999) (unreported, WA FC SC) (exclusion clause - contra proferentem - fundamental breach) (CMO)

Nissho Iwai Australia Ltd v Malaysian International Shipping Corporation, Berhad (1989) 86 ALR 375 (construction of exclusion clause) (CMO)


Seddon, N., "Can Contract Trump Estoppel" (2003) 77 ALJ 126 (discusses "entire agreement" type clauses and how fraud, estoppel, or rectification claims can get around such clauses) (CMO)

Sinclair v Preston [1970] WAR 186 (misrepresentation; formation of contract) (CMO)

Snarski & Snarski v Barbarich [1969] WAR 46 (fraudulent misrepresentation and its effect on an exclusion clause) (CMO)

Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd [2004] HCA 52, 211 ALR 342 (CMO)

Week Six

Lecture 19: Parties to a Contract: Contractual Capacity

Lecture 20: Privity of Contract and Assignment

Lecture 21: Form Requirements and the Doctrine of Part Performance

TUTORIAL NO. 5

Textbook: Gould (LNL) Chapter 8; Chapter 9, to page 154
Latimer [5-510]-[5-520]; [5-540]-[5-570]; [5-030]-[5-040]
Self-Study: [6-260]-[6-270]; [5-500]; [13-340] (inadequate on assignment of contractual rights and obligations)

Statute: Property Law Act 1969 (WA) "PLA": Part II, secs. 9, 11; Part III, sec. 20; Part IV, secs. 33, 34, 36 (CMO and in Statute Package)

Reference: Vermeesch and Lindgren [8.1]-[8.11]; [8.20]-[8.26]; [17.60]-[17.63]; Introduction to Chapter 9; [9.1]-[9.11]; [9.19]-[9.22]
Self-Study: Chapter 6; [13.33]-[13.38]
Brown and Hacket [1511]-[1514]
Carter & Harland Chapters 8-9 and 5
Gillies Chapters 21-23
Greig and Davis Chapter 13 (capacity)
Week Seven

Lecture 22: Introduction to Vitiating Factors: Void, Voidable or Unenforceable?

Lecture 23: Vitiating Factors (cont’d): Misrepresentation & Mistake

Lecture 24: Vitiating Factors (cont’d): Duress; Undue Influence; Unconscionability; Illegality

TUTORIAL NO. 6

Textbook: Latimer [5-610]-[5-730] (skip [5-705(1)-(3)]); [5-820]-[5-885]

Reference: Vermeesch and Lindgren [8.1]; [10.1]-[10.28]; [14.15]-[14.21]; [14.31]; [11.1]-[11.18]; Chapter 12 (with emphasis on [12.22]-[12.37], but skip [12.38])
Brown and Hacket [1515]-[1518]
Carter & Harland Chapters 11-17
Gillies Chapters 14-17

CD-Rom: Tutorial 9 (Parts 1- 6 & 8 only)

Case/Art.: Codelfa Construction v State Rail Authority (1982) 41 ALR 367 (see pages 409-415 for facts and then page 381 for "mistake") (CMO)

Commercial Bank of Australia v Amadio (1983) 57 ALJR 358 (unconscionability) (CMO)

Cooper, R., "Between a Rock and a Hard Place: Illegitimate Pressure in Commercial Negotiations" 71 ALJ 686 (September 1997) (economic duress) (CMO)

CTN Cash and Carry Ltd v Gallagher [1994] 4 All ER 714 (economic duress) (CMO)

Credit Lyonnais Bank Nederland NV v Burch [1997] 1 All ER 144 (CA) (undue influence) (CMO)

Esso Petroleum v Mardon [1976] 1 QB 801 (pre-contractual statement, tortious and contractual causes of action discussed and contrasted) (CMO)

Koh v Chan (1997) (unreported, WA SC)- see pages 72-86 concerning "the partnership deed..." (non est factum and unconscionability) (CMO)

Norwich and Peterborough Building Society v Steed (No 2) [1993] 1 All ER 330 (CA) (non est factum) (CMO)
Papas v Bianca Investments Pty Ltd [2002] SASC 190 (mistaken identity - unilateral mistake - void or voidable) (CMO)

Shogun Finance Ltd v Hudson [2004] 1 All ER 215 (mistaken identity - unilateral mistake) (CMO)

Sinclair v Preston [1970] WAR 186 (misrepresentation; formation of contract) (CMO)

Sindone, "The Doctrine of Economic Duress" (Parts 1 and 2) (1996) 14 Australian Bar Review 34, 114 (CMO, for advanced students)

Snarski & Snarski v Barbarich [1969] WAR 46 (fraudulent misrepresentation and its effect on an exclusion clause) (CMO)

Taylor v Johnson (1983) 57 ALJR 197 (unilateral mistake / intentional misrepresentation) (CMO)

Mason Casebook Pages 108-137; 142-183 (BLR)

**Week Eight**

**Lecture 25:** Discharge of Contracts: Actual or Attempted Performance

**Lecture 26:** Discharge of Contracts: Mutual Agreement; Operation of Law.
Discharge of Contracts: Repudiatory and Anticipatory Breach.

**Lecture 27:** Discharge of Contracts: Frustration of Contract
Introduction to Damages and Remedies for Breach of Contract

**TUTORIAL NO. 7**

**Textbook:** Gould (LNL) Chapter 11, pages 193 to end;
Chapter 12, to page 212
Latimer [6-280]-[6-350]; [6-380]-[6-390]

Brown and Hacket [1519]
Carter & Harland Chapters 18-20
Gillies Chapters 18-19
Goode Pages 125-9

**CD-Rom:** Tutorial 7 (Parts 1-5 only)
Tutorial 8 (Part 4 only)

**Case/Art.:**
Carter, J., "Existence of the Right to Terminate ..." (1988) (See citation in Sixth Week)
Codelfa Construction v State Rail Authority (1982) 41 ALR 367 (frustration - see pages 409-415 for facts and then pages 378-387)(CMO)

Maritime National Fish v Ocean Trawlers (1935) AC 524 (frustration) (CMO)

Scanlan’s New Neon v Tooheys (1942) 67 CLR 169 (frustration) (in Mason Casebook, page 137 (CMO, cursor through to 2nd case in document)

Smilie Pty Ltd v Bruce [1998] (unreported, NSW CA) (anticipatory breach, notice to complete, time of the essence) (CMO)
Vitol SA v Norelf (the Santa Clara) [1996] 3 All ER 193 (HL) reversing first appellate court [1995] 3 All ER 971 (CA) reversing trial court [1994] 4 All ER 109 (acceptance of anticipatory conduct as a breach) (CMO)

Mason Casebook Pages 137-142; 194-195 (BLR)

| Lecture 28: | Breach of Contract- Damages: Type and Measure of Damages; Special Categories of Injury or Loss |
| Lecture 29: | Breach of Contract- Damages: Limiting Factors; Penalty Clauses |
| Lecture 30: | Breach of Contract: Other Remedies |

**TUTORIAL NO. 8**

**Textbook:** Latimer [6-380]; [6-400]-[6-510]

**Statute:** Property Law Act 1969 (WA) Part XIII, secs. 124, 125 (CMO and Statute Package)

Brown and Hacket [1520]-[1521]
Carter and Harland Chapters 21-24
Gillies Chapters 20 and 25
Goode Pages 114-125

**CD-Rom:** Tutorial 8 (Parts 1-3 only)
Tutorial 8 (Parts 5-6 only)

**Case/Art.:** Andrew Shelton & Co Pty Ltd v Alpha Healthcare Ltd [2002] VSC 248 (see paragraphs [95]-[117] for good summary of law and definitions on Law of Restitution, "free acceptance", "incontrovertible benefit" and "unjust enrichment") (CMO)


Dunlop Pneumatic Tyre Co Ld v New Garage and Motor Co Ltd [1915] AC 79 (penalty clause) (In Mason Casebook, page 185; or CMO, cursor through to 4th case in document)

Esso Petroleum v Mardon [1976] 1 QB 801 (mitigation of damages) (CMO)

Hadley v Baxendale [1843-60] All ER Rep 461 (measure of contractual damages) (in Mason Casebook, page 187; CMO, cursor through to 5th case in document)

Interfoto Picture Library v Stiletto Visual Programmes [1988] 1 All ER 348 (penalty clause, though majority of court does not decide on that basis) (CMO)

Giles, J., "New Limitations on Equitable Intervention Against Vendors" (2005) 79 ALJ 122 (CMO)
Mason Casebook Pages 176-191; 195-8 (BLR)
TOPIC D. IMPORTANT STATUTORY MODIFICATIONS TO THE COMMON LAW OF CONTRACT AND THE TORT OF NEGLIGENCE

Lecture 32: Statutorily Implied Terms in Consumer Contracts for the Sale of Goods and the Supply of Services (SGA/FTA/TPA)

Lecture 33: Statutory Restrictions on Exclusion or Limitation of Liability & Additional Statutory Remedies for Breach of Contract under the TPA/FTA

TUTORIAL NO 9

Textbook: Latimer [7-010]-[7-015]; [5-030] (second half only); [7-035]-[7-090]; [7-120]; [7-140]-[7-170]; [8-765]

CD-ROM: Tutorial 6 (Parts 6.7 – 6.9) & Tutorial 8 (Parts 6.1 – 6.3)


Reference: Vermeesch and Lindgren [1.40]; [9.11]-[9.18]; Introduction to Chapter 22; [22.1]-[22.13]; [22.17]-[22.18]; [22.20]-[22.26]; [22.28]-[22.29]; [22.69]-[22.79]; [22.83]

Sutton Pages 38-45, 51-61; 87-98; 129-229

Brown and Hacket [1601]-[1604]

Carter and Harland [636]-[640]; [643]

Gillies Chapter 24(I-V)

Gooe Chapters 5 and 9; Pages 165-172

Greig and Cunningham [2.001]-[2.029]; [2.152]-[2.212]

Case/Art.: Ashington Piggeries Ltd v Christopher Hill Ltd (found in some texts with names reversed) [1972] AC 441 (terms implied by statute) (CMO) (pages 441-2; 488-495; 498-500; bottom 508-509)

Arbuthnott v Fagan and Feltrim Underwriting Agencies Ltd (1995) 8 ANZ Insurance Cases [61-238], (House of Lords) (contract versus tort) (CMO - Headnotes and Page 75,680, from "the argument of the managing agent", to top of page 75,694) (for advanced students)

Beale v Taylor [1967] 3 All ER 253 ("sale by description" - partial reliance on description sufficient) (CMO)

Craig v Troy [1997] 16 WAR 96 (WA SC FC) (contract versus tort - concurrent liability - availability of defence of contributory negligence) (CMO- headnotes and pages 149-162)

Hayne, "Australian Law in the Twentieth Century" (June 2000) 74 ALJ 373 (thoughts on the evolution of Australian law during the 20th Century) (CMO)

Mason Casebook Pages 264-281 (BLR)
Week Eleven

Lecture 34: Manufacturer’s Liability: TPA Part V Division 2A

Lecture 36: Manufacturer’s Liability (cont’d): TPA Part VA

Lecture 36: Manufacturer’s Liability & the Civil Liability Act Reforms

**TUTORIAL NO. 10**

**Textbook:** Latimer [7-010]-[7-015]; [5-030] (second half only); [7-035]-[7-090]; [7-120];[7-140]-[7-170]; [8-765]; Latimer [7-020]-[7-030]; [7-170]

**CD-ROM:** Tutorial 12 (Part 7.5 only)

**Statutes:** Trade Practices Act 1974 (Cth) "TPA" (CMO and Statute Package)

Jurisdiction/Remedy Sections:  68, 68A, 75, 75A

Constitution of the Commonwealth of Australia Sections 51, 52, 109, 122 (heads of power for TPA jurisdiction) (CMO and Statute Package)

**Reference:** Vermeesch and Lindgren [22.14]; [22.31]-[22.67]; [19.58]-[19.59]

Gillies Chapter 24 (VI-IX)

Goode Chapters 6-8; 10-13 and pages 391-414

Greig and Cunningham Chapter 2

Sutton Parts III, IV, V and Part I(v)

**Case/Art.:** Bernstein v Pamson Motors (Golders Green) Ltd [1987] 2 All ER 220 (Sale of Goods Act - acceptance) (CMO)


Heap v Motorists Advisory Agency Limited [1922] 1 KB 577 (nemo dat) (CMO)

Kapnoullas & Clarke, "Countdown to Zero: the Duration of Statutory Rights for Unfit and Unmerchantable Goods" (1999) 14 Journal of Contract Law 154 (no requirement for "durability" - right to reject - reform of law in UK and New Zealand) (for advanced students) (CMO)

Papas v Bianca Investments Pty Ltd [2002] SASC 190 (mistaken identity - void or voidable - nemo dat) (CMO)

Mason Casebook Pages 284-291 (BLR)
Week Twelve

**TOPIC E.** OVERVIEW OF THE STATUTORY PROHIBITIONS OF MISLEADING, DECEPTIVE CONDUCT & UNCONSCIONABLE CONDUCT

**Lecture 37:** Misleading & Deceptive Conduct Law

**Lecture 38:** Unconscionable Conduct at Common Law & Under Statute

**Lecture 39:** Final Examination Information and Discussion of Take-Home Assignment

**TUTORIAL NO. 11**

**Statues**
- ss 51AA-AC, s 52, s 53 Trade Practices Act;
- ss 10, 11 & 12 Fair Trading Act (WA)

**Topics**
- Jurisdiction issues
- Meaning of "misleading or deceptive" conduct
- Meaning of "unconscionable" conduct
- Remedies for Contravention

**Textbook:** Latimer: Chapter 22

**CD-ROM**
- Tutorial 9 (Parts 4 & 7)
- Carter: Chapter 11

**Cases/Art:**
Assessment components

Assessment item # 1 – Seminar Papers and Presentations (5 x 10%)

In our first Seminar the class will be divided into two roughly equal ‘presentation groups’ and from Week 3 onwards we will commence each of our Seminars with a 45 minute ‘tutorial’ in which one or other of those two presentation groups will be required to distribute a formal written solution to a ‘tutorial question’ that I will have e-mailed to all class members seven days earlier and also to orally present that solution to and defend that solution from critical analysis by the rest of the class. Each group will be required to give five presentations and each group will receive a collective mark for each of their presentations and for the effectiveness of their critique of the five solutions offered by the other group in their presentations.

Please note that, in addition to the hard copies of each tutorial class paper which your group prepares, a soft copy must also be submitted, by no later than 12 noon on the day on which the presentation in question is to occur. The soft copy must be e-mailed to me at: psinden@law.uwa.edu.au and copy to Uniprint at www.uniprint.uwa.edu.au by 12pm on the date of submission. Further details about how all this will work will be discussed and agreed with all students in the Week 1 Seminar.

Assessment item # 2 – Take Home Final Exam

(Maximum word length for answers: 2 x 3,000 words)

The Final Exam paper will contain two compulsory questions and will be handed out at the conclusion of Seminar 11. You must submit your answer papers by 4pm on Friday 13 August 2010. Your answer papers must be submitted electronically to me at: psinden@law.uwa.edu.au and copy to Uniprint at www.uniprint.uwa.edu.au by 4pm Friday 12 August.

Student Guild

Phone: (+61 8) 6488 2295
Facsimile: (+61 8) 6488 1041
E-mail: enquiries@guild.uwa.edu.au
Website: http://www.guild.uwa.edu.au

Charter of Student Rights and Responsibilities


Appeals against academic assessment

The University provides the opportunity for students to lodge an appeal against assessment results and/or progress status (refer http://www.secretariat.uwa.edu.au/home/policies/appeals).