

# School of Taxation and Business Law

## **TABL3791 INTERNATIONAL BUSINESS LAW**

## **TABL5562 BUSINESS LAW IN A GLOBAL ECONOMY**

### **Course Outline Semester 2, 2017**

### **Course-Specific Information**

The Business School expects that you are familiar with the contents of this course outline. You must also be familiar with the Course Outlines Policies webpage which contains key information on:

- Program Learning Goals and Outcomes
- Academic Integrity and Plagiarism
- Student Responsibilities and Conduct
- Special Consideration
- Student Support and Resources

This webpage can be found on the Business School website:  
<https://www.business.unsw.edu.au/degrees-courses/course-outlines/policies>

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## COURSE-SPECIFIC INFORMATION

### 1 STAFF CONTACT DETAILS

Lecturers	Room Number	Telephone	Email
Bill Butcher (Lecturer-in-charge)	Quad 2054B	9385-3256	<a href="mailto:b.butcher@unsw.edu.au">b.butcher@unsw.edu.au</a>
Peter Blanchard	To be advised.		

#### Communication with Staff

Bill Butcher's consultation times are 1:00 – 2:30pm on Thursdays.

Peter Blanchard is available for consultation by appointment.

When you contact staff by email please:

- Use your university email address
- Specify the course TABL3791/5562 as your lecturer may be teaching more than one course.
- Sign off by using your name and your zid

### 2 COURSE DETAILS

#### 2.1 Teaching Times and Locations

Mondays 3.00pm – 6.00pm: TETB G17

#### 2.2 Units of Credit

The course is worth 6 units of credit.

#### 2.3 Summary of Course

Law is a critical factor in commerce. In any business decision fundamental legal questions may arise about the potential liabilities of the parties, the rights that the parties have and how the business or transaction should be organised. In the context of international business, domestic law often applies but so do specifically international legal principles. This subject introduces the background to international business law, discusses the legal framework of international business regulation; and examines areas of law particularly relevant to the conduct of international business, including the law of contract, finance, competition law, alternative business structures, the protection of intellectual property, and international dispute resolution.

## 2.4 Course Aims and Relationship to Other Courses

The aims of this course are to develop your understanding of the structure and key elements of the law governing international business and for you to apply this knowledge to recognising and addressing legal problems in the area. It will also give you some practical tools to prevent legal problems arising and to deal with those that do.

## 2.5 Student Learning Outcomes

By the end of this course, you should be able to:

1. Identify legal issues that arise in international business situations.
2. Analyse legal issues relating to international business in a logical and structured way (i.e. identify problems, research relevant sources, propose an outcome and identify possible challenges to the proposed outcome).
3. Construct written arguments relevant to legal problems that commonly arise in international business.
4. Accurately diagnose legal issues that can arise in international business and source and apply the relevant law.
5. Operate both independently and collaboratively to understand and solve legal problems in international business.

The Course Learning Outcomes are what you should be able to DO by the end of this course if you participate fully in learning activities and successfully complete the assessment items.

The Learning Outcomes in this course also help you to achieve some of the overall Program Learning Goals and Outcomes for all undergraduate students in the Business School. Program Learning Goals are what we want you to BE or HAVE by the time you successfully complete your degree (e.g. 'be an effective team player'). You demonstrate this by achieving specific Program Learning Outcomes - what you are able to DO by the end of your degree (e.g. 'participate collaboratively and responsibly in teams').

For more information on the Undergraduate Program Learning Goals and Outcomes, see: <https://www.business.unsw.edu.au/degrees-courses/course-outlines/policies>

The following table shows how your Course Learning Outcomes relate to the overall Program Learning Goals and Outcomes, and indicates where these are assessed (they may also be developed in tutorials and other activities):

Program Learning Goals and Outcomes		Course Learning Outcomes	Course Assessment Item
<i>This course helps you to achieve the following learning goals for all Business undergraduate students:</i>		<i>On successful completion of the course, you should be able to:</i>	<i>This learning outcome will be assessed in the following items:</i>
1	Knowledge	Identify legal issues that arise in international commercial situations	<ul style="list-style-type: none"><li>• Tutorial Problems</li><li>• Briefing papers</li><li>• Research proposal</li><li>• Research paper</li></ul>

2	Critical thinking and problem solving	Analyse legal issues in a logical and structured way, including by identifying problems, researching relevant sources, proposing an outcome and identifying possible challenges to the proposed outcome	<ul style="list-style-type: none"> <li>• Tutorial Problems</li> <li>• Briefing papers</li> <li>• Research proposal</li> <li>• Research paper</li> </ul>
3a	Written communication	Construct written work which is logically and professionally presented.	<ul style="list-style-type: none"> <li>• Tutorial Problems</li> <li>• Briefing papers</li> <li>• Research proposal</li> <li>• Research paper</li> </ul>
3b	Oral communication	Communicate ideas in a succinct and clear manner.	<ul style="list-style-type: none"> <li>• Class presentations on a current issue in international business law but not specifically assessed</li> </ul>
4	Teamwork	Work collaboratively to complete a task.	<ul style="list-style-type: none"> <li>• Part of in-class activities but not specifically assessed</li> </ul>
5a.	Ethical, environmental and sustainability responsibility	Identify and assess ethical, environmental and sustainability considerations in legal problems.	<ul style="list-style-type: none"> <li>• Not specifically assessed in this course</li> </ul>
5b.	Social and cultural awareness	Identify and assess social and cultural considerations in legal problems.	<ul style="list-style-type: none"> <li>• Not specifically assessed in this course</li> </ul>

### 3 LEARNING AND TEACHING ACTIVITIES

#### 3.1 Approach to Learning and Teaching in the Course

This course is conducted with the aim of promoting student-centred learning.

This aim will be achieved by requiring students to engage with the topics presented in the course through set weekly readings and, as required, independent research.

While the assessment in this course is designed to test students' knowledge of the key principles that establish the framework of common international business transactions, an important focus of the assessment regime is to test how well students can apply legal principles and practices in a realistic commercial context.

#### 3.2 Learning Activities and Teaching Strategies

This course involves three hours of teaching time per week

**Lectures** are a critical part of your learning in this course. However, you should keep in mind that they do not substitute or summarise the prescribed readings. The **readings** and **case studies** are an essential element of the course, both in terms of preparing you for the classes

and for achieving sufficient depth of knowledge. If you fail to read the material, or to complete the case studies before class, you will derive much less benefit from the classes. The classes are very carefully prepared to complement your own preparation, not to replace it. It is your responsibility to play an *active* part in your learning. This entails *preparation* before class, *review* of your notes after class, and *asking questions* on any aspect you are uncertain about.

Each class will include a tutorial component dedicated to discussion of case studies. The material to be discussed in the seminar will have been dealt with in the lecture in the previous week. This enables you to have the benefit of a lecture before approaching the case studies. **All students must** prepare a written answer and be ready to discuss the case studies in class.

**No written suggested answers will be provided for the case studies.** It is vital to your learning of the material and in developing skills in applying the law to given situations that you prepare your own answers and analyse them in the light of the class discussion. The class discussion will be sufficiently structured and methodical that you should obtain a clear understanding without the need for a potentially distracting written suggested answer. If any points remain unclear, you are of course welcome to discuss them with the lecturer.

This course assumes no existing knowledge of the topics to be covered during the session.

## 4 ASSESSMENT

### 4.1 Formal Requirements

In order to pass this course, you must:

- achieve a composite mark of at least 50; and
- make a satisfactory attempt at all assessment tasks (see below).

### 4.2 Assessment Details

Task No.	Assessment Task	Due	Word Limit	% of Marks
<b>A</b>	1 <sup>st</sup> Briefing Paper	21 August	Strictly 2 pages	5%
<b>B</b>	Research Proposal	22 September	1,500 words	20%
<b>C</b>	Participation	Continuous	N/A	10%
<b>D</b>	2 <sup>nd</sup> Briefing Paper	20 October	Strictly 2 pages	5%
<b>E</b>	Research Paper	10 November	4,000 words	60
<b>Total</b>				<b>100%</b>

### 4.3 Assessment Format

#### Briefing papers - 5%

Two Briefing papers are required to be submitted. Each Briefing paper is to be no more than 2 pages long, typed using 12 pt Arial font with margins of 2.54 cm on the left and right sides of the paper. The top and bottom margins are to be 2.54 cm. End notes may be on a third page but are to include references only. A minimum of 5 and a maximum of 10 sources is permitted. The topics for the Briefing Papers are included in this Course outline.

#### Research Proposal – 20%

A Research Proposal, not exceeding 1,500 words in length is required (excluding the bibliography). This Research Proposal should form part of your Research Paper.

Your research proposal should identify the question you will be attempting, the methodology you propose to use to answer the question, the proposed structure you will adopt and a brief literature review including the sources you will be accessing.

The bibliography should include a minimum of 10 sources and why you chose that source. The list of sources must include primary sources (statutes, cases, treaties), secondary sources (books, journal articles, newspaper accounts), and blogs.

The word limit of 1,500 words will be strictly enforced. **Note: there will be no 10 per cent allowance for additional words.** Please remember that your research proposal is not the final essay nor are you attempting to write volume 1 of *War and Peace*!

#### Participation – 10%

The structure of this course provides for course participants to work together in small teams in a way that replicates the way in which individuals will participate in the business workforce. At the commencement of the course you will be placed into teams which will then proceed to agree on the product your team will be exporting, the country from which your team will export and the country into which you will export your team's product. These facts, together with others, will form the basis of on-going input throughout the semester. You will be expected to work within your teams to participate in class discussions and deliberations.

#### Research Paper – 60%

A major Research paper of no more than 4,000 words (including footnotes) is required. No bibliography is required with the paper. Topics for this paper will be made available in week 3. There will be topics on each segment of the course. You will be required to choose one topic and use that topic for both your Research Paper and your Research Proposal. N.B.: The limit of 4,000 words is a strict limit. There will be no free extra 10%. Penalties will apply for excessive words and late submission in accordance with the School of Taxation and Business Law's policies.

In text referencing e.g. Harvard, is not acceptable. Referencing is to be via footnotes. Endnotes are not permitted. You must choose one footnote style and apply it consistently throughout your paper.

Your essay is an analytical paper on one of the issues, controversies or cases that will be provided to you in week 3. In your essay provide the basic and critical facts, the arguments of the primary participants or positions, and any ongoing issues. And then, most importantly, your essay should include a critique/analysis of the different positions and the impact these decisions will have on the business. Further information will be provided in class.

#### 4.4 Assignment Submission Procedure

All written assessments are required to be submitted by 3 pm on the due date.

A hard copy of the assignment must be handed in, and a copy posted on the Moodle site for the course. Hard copies of the assignment may be handed in at the lecture or be placed in the TABL3791/5562 Assignment Collection Box – location to be advised in lectures.

##### **Quality Assurance**

The Business School is actively monitoring student learning and quality of the student experience in all its programs. A random selection of completed assessment tasks may be used for quality assurance, such as to determine the extent to which program learning goals are being achieved. The information is required for accreditation purposes, and aggregated findings will 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.

## 5 COURSE RESOURCES

### **Prescribed text:**

John Mo, International Commercial Law, 6th ed., LexisNexis, Sydney, 2015.

### **Additional texts:**

In addition to the prescribed text, the following text books are useful source materials which provide a good introduction to certain areas dealt with in the course:

#### General

- Poh-Ling Tan (ed.) Asian Legal Systems, Butterworths,
- G Hill, International Business: Competing in the Global Marketplace, McGraw-Hill Inc.

#### International Business Law

- Moens G & Gillies P, International Trade and Business Law, Policy and Ethics Routledge-Cavendish Publishing, Sydney,
- Mercurio, Trakman, Kolsky Lewis, Zeller, International Business Law, Oxford University Press, Melbourne.
- Schaffer, Agusti, Earle, International Business Law and its Environment, Cengage Learning, Mason, Ohio.
- Chuah, Law of International Trade, Sweet & Maxwell, London.
- C M Schmitthoff, Schmitthoff's Export Trade: The Law and Practice of International Trade, Sweet & Maxwell, London.
- S Fisher & D Fisher, Export Best Practice: Commercial and Legal Aspects, The Federation Press.

#### Public International Law

- I A Shearer, Starke's International Law, Butterworths.
- H Reicher, Public International Law: Cases and Materials, Law Book Company.

#### Private International Law



- D J Harris, Cases and Materials in International Law, Sweet & Maxwell.
- P E Nygh, Conflict of Laws in Australia, Butterworths.

**Electronic Databases:**

The UNSW library subscribes to several electronic databases. The UNSW library database can be accessed at: <https://www.library.unsw.edu.au/study/information-resources/databases>

The website for this course is on Moodle at: <https://moodle.telt.unsw.edu.au/login/index.php>

## **6 COURSE EVALUATION AND DEVELOPMENT**

Each year feedback is sought from students and other stakeholders about the courses offered in the School and continual improvements are made based on this feedback. UNSW's myExperience survey is one of the ways in which student evaluative feedback is gathered. In this course we will seek your feedback through your myExperience responses and students are also most welcome to provide feedback at any time during the session. Feedback from previous students indicated a desire for greater use of practical examples. As a result of this feedback, increased focus has been placed on discussion of real world scenarios.

## 7 COURSE SCHEDULE

Week 1	24 July	Introduction and Overview
Week 2	31 July	The Legal Framework for International Business
Week 3	7 August	International Sale of Goods I
Week 4	14 August	International Sale of Goods II
Week 5	21 August	International Sale of Goods III
Week 6	28 August	International Trade Finance I
Week 7	4 September	International Trade Finance II
Week 8	11 September	Border Controls
Week 9	18 September	International Trade Agreements including the World Trade Organization
	23 September – 2 October	Mid-Semester break
Week 10	3 October	NO CLASSES
Week 11	9 October	International Investment
Week 12	16 October	International Dispute Resolution
Week 13	23 October	Contemporary Issues in International Business Law

## 8 APPENDIX - STYLE GUIDE AND WRITTEN SUBMISSION GUIDELINES

### General

1. A written cover sheet must be attached to the Research Assignment. The form of cover sheet is on the last page of this Course Outline.
2. The Research Assignment has a maximum word limit of 2000 words. A word count must be recorded on the cover sheet. Written answers must be kept to the prescribed word limit. **A word limit does not include footnotes or bibliography.** If material submitted exceeds the prescribed limit the marker may require you to revise and edit the work to the prescribed requirements, and/or stop marking at the word limit.
3. You **MUST** also keep a hard copy all of your written papers.
4. A margin of at least 2.5 cm should be left along the left hand side of each page.
5. Written answer papers must be either clearly written or typed. Typing should be **double spaced**, no smaller than **12 point** font and on **one side of the page** only.
6. The preferred binding of the written answer is a single staple in the top left hand corner. No other binding is required. Written answers presented in any other form of binding may be removed from that binding to facilitate marking. In such circumstances the additional binding will not be returned to you.
7. Computer or printer failure is not an acceptable special circumstance for an extension of time. You are expected to make back-up copies of your written answer and have contingency plans for any potential printing problems.

### Footnotes, Quoting and Copying

1. Footnotes allow the reader to quickly and easily find the exact place in the source material to which the footnote refers.
2. In the course of the written answer you will need to cite relevant authorities. These may be a case precedent, the views of an author, a piece of legislation or an article. The source of the proposition or idea that is used must be acknowledged. For example, you do not quote the opening page of a website if your quotation comes from another page. You must quote the exact, complete, location of the page on the web where you found the material.
3. All sources must be acknowledged by a footnote at the foot of the page where:
  - a) the source is being directly quoted;
  - b) an argument or proposition in that source is being paraphrased;
  - c) the source is being used as authority to support a student's proposition or argument;

Footnotes that represent digressions from the main argument should be kept to a minimum.

### Bibliography

For the Research Assignment, all texts, articles and other sources you use in the preparation of your work should be listed in a bibliography at the end of the written answer.

### Wikipedia

Students should take extreme care when using Wikipedia. Wikipedia is prepared by unknown authors and is often wrong. While Wikipedia may, on occasion, be useful as a starting point when approaching a completely unfamiliar topic, it is unacceptable as a source for University assignments. If a decision is made to consult Wikipedia, students must research further and check and cite the source used by Wikipedia in their assignment rather than Wikipedia itself. Students who use Wikipedia as a source for written assessment tasks without researching further and checking the sources used will have marks deducted.

### Referencing Books

1. Books should be cited as per the following example:  
Paul Latimer *Australian Business Law* (CCH Australia, 35<sup>th</sup> ed, 2016 [insert page number])
2. If the text is discussing a case then the reference should be:  
*Esanda Finance Corporation Ltd v Peat Marwick Hungerfords* (1997) 188 CLR 241 as cited in Paul Latimer *Australian Business Law* (CCH Australia, 30<sup>th</sup> ed, 2011 [insert page number])

### Cases

1. Cases should be cited as per the following example:  
*Esanda Finance Corporation Ltd v Peat Marwick Hungerfords* (1997) 188 CLR 241
2. If citing a particular judge you should reference it as  
*Esanda Finance Corporation Ltd v Peat Marwick Hungerfords* (1997) 188 CLR 241, [insert page number], [if applicable, insert judge name in brackets]

### Legislation

Acts should be cited as follows:

1. *Competition and Consumer Act 2010* (Cth) [insert section number]
2. *Civil Liability Act 2002* (NSW) [insert section number]

### Websites

1. If you want to reference discussion from a database like CCH or Butterworths Online it should be cited as per the following example:

CCH Australian *Trade Practices Law Reporter* at [insert paragraph number]

2. If the commentary talks about a case then the reference should be cited as follows:

*Esanda Finance Corporation Ltd v Peat Marwick Hungerfords* (1997) 188 CLR 241 as cited in CCH *Torts Law Reporter* at [insert paragraph number]

### MIRAT Method For Legal Problems

You should use the MIRAT method when answering legal problems for this course.

M (material facts)

I (issues)

R (legal rules)

A (apply legal rules to the facts) –

T (state a tentative conclusion)

Materially relevant facts – these will include:

- relevant people/ places/ events
- Time line / chronology of events.

Do not simply re-state the question, it is a waste of words and does not show you understand the case. Do not write anything under this heading in your final paper; just use it for your draft.

Identify the Issues (legal) – it is clearest if you follow each legal issue through to tentative conclusion stage before starting analysing the next legal issue. This helps ensure you do not miss anything, eg

- It is a problem about a contract – (and further break down issues)
- Tort – (and further break down by reference to relevant torts)

Rules (legal) -

- Eg: Breach of contract – what has to exist for this action to be available to the plaintiff?
- The rules will be found in:-
  - Precedent – past authoritative cases
  - statutes

Apply the law to the facts -

- It is only by doing this competently that you move from a moderate paper to a truly good paper.
  - Include in this part of the answer any relevant cases that need to be distinguished.

Reach a Tentative conclusion -

- This is the best conclusion you can reach with the facts as you know them. In the High Court a final conclusion would be arrived at. In court, both plaintiff and defendant's cases would be fully argued.

Meticulous clerical review. After printing out your answers for the last time reread them and make sure they are clerically correct. Some things to watch:

- Spelling and grammatical errors
- Incomplete or incorrect bibliographical and case citations
- If you edit to achieve the word limit by wholesale cutting then you must check that the answer still flows logically and still makes sense.
- Footnotes at the foot of the wrong page, following removal of a sentence without re-paginating.
- If your English is not strong, the EDU can provide assistance.
- Use formal language, not spoken English written down.
- Do not use Latin expressions that you do not understand. Do not use slang.

**in other words .....**

When answering exam and seminar questions your aim should be to READ THE QUESTION CAREFULLY and be sure you understand what is asked. Then:

- identify the relevant facts, i.e., what are the parties disagreeing about?
- identify the relevant law (case law or legislation) to resolving the problem;
- identify the relevant legal principles and briefly state the law (noting any case law or legislative authority where applicable);
- apply the law to the facts; and
- come to a conclusion, paying particular attention at this point to what was actually asked in the question.

For instance where you have identified that a particular contract law question involves an issue about whether a contract has in fact been formed, your answer might look like this:

"A contract is not formed until an offer has been accepted: *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256."

[This is the statement of law.]

“Because X never in fact accepted Y’s offer (indeed he flatly rejected it, stating ‘no sale’), there is no contract between X and Y.”

[This is the application of the law to the facts.]

It is your application of the law to the facts that demonstrates to the marker that you understand the legal problem. Therefore be mindful of the need to apply the law to the facts when preparing for classes.

There is no need to write lengthy or verbose answers to legal problems. Your exam answers should be no longer than the answers to your seminar questions. Remember that your aim should simply be to ensure that the marker is aware that you understand the relevant legal framework and have developed a solution to the problem based on that framework.

When answering a question, either for a seminar or in an exam, do not:

- make emotional or subjective statements;
- provide non-legal answers (so make sure you include “relevant” law);
- “pad” out a question (if you find you have written significantly less words than the question warrants, based on either the set word limit or the exam time allocated to this question, you may be missing important issues);
- begin with a conclusion in your opening paragraph and then spend the rest of your answer trying to justify it, or state a contrary conclusion in your final paragraph;
- try to make your conclusion on every issue conform with what you think is the likely outcome of a problem question (problem questions contain a number of issues, some of which will favour the losing party);
- restate the facts of a question;
- be subjective (always be objective);
- have a conclusion which is not supported by legal argument (in other words, check what you wrote);
- copy your notes, the text etc without explaining their relevance;
- forget to give references where applicable (don’t plagiarise, so state where the work came from if it is not your own)."

Based on pp vii and viii, Gibson, Rigby, Tamsitt “Commercial Law in Principle” Law Book Co.



UNSW Business School

School of Taxation and Business Law

**TABL3791/TABL5562 – INTERNATIONAL BUSINESS LAW**

**RESEARCH ASSIGNMENT COVERSHEET**

1. Please staple this coversheet to the front of your submitted work.
2. Fill in all the details in the following box:

**First Name:** \_\_\_\_\_ **Family Name:** \_\_\_\_\_  
Must be your officially enrolled name, not a nickname

**Student Number:** \_\_\_\_\_

**Word Count** (for submitted work): \_\_\_\_\_

**Acknowledgement:**

I confirm that this is my own work and not the work of others:

\_\_\_\_\_  
**Student Signature:**

**Marker's Use Only**

**Grade:** \_\_\_\_\_

**Marker's Feedback:**

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