



Australia's
Global
University

UNSW Business School

School of Taxation and Business Law

TABL3732 INTERNATIONAL FRANCHISE LAW

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

Lecturer-in-charge: Professor Jenny Buchan
 Room 2054 QUAD Building
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 Email: jm.buchan@unsw.edu.au
 Consultation Times – by appointment

When you contact staff by email please:

- Use your university email address
- Specify the course TABL3732 as your lecturer is teaching more than one course.
- Sign off by using your name and zid

2 COURSE DETAILS

2.1 Teaching Times and Locations

Lectures run weekly from Week 1 to Week 12.

The Time and Location are:
 Thursday 3 – 6 pm
 The Place, Room G26, Ground floor, Business School

2.2 Units of Credit

The course is worth 6 units of credit.

2.3 Summary of Course

Franchising at the international level is a practical and exciting entry point to international and global commerce. Because of its economic significance and the particular legal challenges it presents, a specific body of law has developed around franchising. Many local and global franchisors now have their own in-house legal, accounting, management, marketing and property teams.

International Franchise Law builds on the concepts studied in Business and the Law (TABL 1710). A wide range of legal issues relevant to international franchising are studied, including a franchisor's motivations for going offshore, due diligence, appropriate legal structures, local laws (e.g. intellectual property) and specific franchise disclosure, relationship and dispute resolution laws. The approach of different jurisdictions to essentially the same challenges is addressed.

2.4 Course Aims and Relationship to Other Courses

The course aims to promote global thinking and build greater knowledge and understanding of international legal relationships within the context of franchising. It is offered as part of the business law stream in the BCom degree.

2.5 Student Learning Outcomes

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

- a. identify cultural issues that affect Australian franchisors expanding internationally
- b. critically evaluate a range of different international expansion models

- c. identify and research the laws relevant to franchising in international jurisdictions
- d. assess a franchise business for suitability of transport to overseas jurisdictions
- e. present a summary of research findings confidently and clearly
- f. work in a team and evaluate your contribution to it.

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
This course helps you to achieve the following learning goals for all Business undergraduate students:		On successful completion of the course, you should be able to:	This learning outcome will be assessed in the following items:
1	Knowledge	Identify key issues relevant to international franchise law in a given fact situation.	Group Project Individual essay
2	Critical thinking and problem solving	Identify needs of different franchisors and the appropriate strategies for their expansion	Group Project
3a	Written communication	Explain your recommendations to franchisor's CEO through oral and written presentations	Group Project
3b	Oral communication	Explain your response to issues arising in international franchising through oral and written presentations	Group Project Individual essay
4	Teamwork	Work in a small team to identify issues and propose solutions to problems	Group Project
5a.	Ethical, environmental and sustainability responsibility	Evaluate sustainability issues arising when introducing a franchise to a new jurisdiction.	Group Project
5b.	Social and cultural awareness	Display awareness of significance of social and cultural issues in business.	Group Project

3 LEARNING AND TEACHING ACTIVITIES

3.1 Approach to Learning and Teaching in the Course

Active participation through initiating and contributing to discussion is expected throughout the course. You will be provided with access to many sources and will be expected to source others yourself from the internet, and through the UNSW library databases.

The course will be taught in the flipped classroom.

3.2 Learning Activities and Teaching Strategies

Guest lecturer(s) will present on their areas of specialisation.

Case study: Some weeks will be based on a filmed case study that will highlight concepts in the course. It was part of the 2016 UNSW MOOC International Franchise Law: The World is Yours. Videos from the MOOC will also be used to highlight issues as we progress through the course.

Students will be set two (2) research projects to develop their research and critical analysis skills, and understanding of the law within the context of specific franchise brands.

They will report on aspects of the Group Project to the class on two (2) occasions to develop/improve presentation skills.

Research Projects:

- Group project
- Individual essay

4 ASSESSMENT

4.1 Formal Requirements

To pass this course, you must:

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

4.2 Assessment Details

	Assessment Task	Weighting	Length	Due Date
1. Group Project	Short group presentation	10%	10 minutes	Weeks 6
	Final group presentation	15%	15 minutes	Weeks 11 and 12
	Final Group CEO written report	15%	Up to 2000 words	Week 11
	Individual Reflection on group work	10%	Up to 500 words	Week 12
2. Individual Essay	Essay on discrete area of relevant law that you are curious about	50%	2500-3000 words	Week 13

4.2.1 Group Project: CEO Report on expanding franchise into an overseas jurisdiction

The lecturer will assign you to groups in class in week 3.

From week 3 you will work in groups to conduct due diligence on an Australian franchisor contemplating expanding internationally. Please pay careful instructions to all components of this task.

Group Project Tasks

- Select a current Australian franchise to expand overseas.
 - You must select a franchisor that has not yet expanded overseas.
- Select a country for the franchise to expand into.
 - Each group must select one overseas jurisdiction (this can be a single state/province such as California/ Ontario) or a country.
- Each group must select a different franchisor and a different target jurisdiction
- Report to the CEO of the franchisor on establishing in the jurisdiction.
- In your report recommend an entry strategy, explain why this strategy is recommended over other strategies, or provide reasons why you would not recommend the move to the target jurisdiction.

You should address the following:

- Identify the legal considerations that apply to your chosen franchise in Australia (domestically) AND in the target jurisdiction.
- Compare the legal meaning of 'franchise'/'franchising' in both jurisdictions.
- Identify any impediments and competitors
- Identify any specific sustainability issues in the target jurisdiction that need to be considered
- Ease of doing business in the target jurisdiction.
- Demonstrate your awareness of the significance of social and cultural issues relevant to transitioning from Australia to your chosen jurisdiction.
- Legal issues should include:
 - a. Does the country have specific franchise laws designed to restrict franchisors or protect franchisees? What would your franchisor need to do to comply with them?
 - b. Intellectual Property (IP) protection – key considerations are how the franchisor can protect its IP in the target country and how do the local courts enforce IP rights.
 - c. Competition laws – franchise agreements often include exclusive territorial rights, controls and restraints which could fall foul of local competition laws;
 - d. Identify one key trademark of your chosen franchisor and describe how it is protected in Australian law and how it would be protected in the target country.
 - e. Tax. Franchisors often receive royalty payments and sometimes the franchisee is required to deduct local taxes before paying the franchisor. Is there a double tax treaty between the franchisor's country and the target country? If so how would it impact on the flow of money between the target and the host country? Any other tax-related matters that need to be considered.
 - f. Dispute resolution
 - g. The applicability of foreign laws. Some countries have laws that will apply to the arrangement regardless of what is in the contract. These may cover a very broad range of issues including how to execute the agreement, terms that will be implied into the contract and terms that will not be enforceable in the country.
 - h. Anything else that is of specific relevance to your franchisor

Ground rules

- By the end of week 3 each group must have selected their Australian franchisor and target jurisdiction

- All students are expected to participate fully in the class presentations in week six (6) by asking questions, and making suggestions once each presentation has been made.

Short Group Presentation (10 marks – all students in Group receive same mark)

Week three:

- Formation of groups of 5 - 6 students.
- Groups will be formed by drawing names out of a hat.
- Brainstorming in groups to select franchise and jurisdiction
- Start identifying unique and generic features of the franchise system that will be the subject of your due diligence.

Week six

- In-class presentations about the cultural (in its broadest sense) environment that your franchisor should address in their CEO Report. See resources and links on Moodle.

Individual Reflection on Group Project (10 marks)

- This is an individual reflection on the process, personal growth you have experienced, any frustrations and anything else that you found to be valuable or not valuable from working in your group.
- You might choose to comment on anything relevant, including, for example:
 - Your level of participation in your Group Project
 - Evidence of a reflective approach to the challenges identified for your franchisor
 - Evidence of reflection on the process of teamwork throughout the Group Project
 - Awareness of the ethical implications of alternative choices available at different points in the Group Project exercise

Final group presentation (15 marks)

Task	Present highlights of your Group Project including your recommendation to the class
The rationale/purpose for the assessment	Submit a Report of no longer than 6 pages for the CEO.
Assessment deliverables	Present your work to your colleagues Gain confidence in presentation skills Oral presentation for 12 minutes, in class in weeks 11 (after guest lecturer) and 12
Format, structure, style, presentation guidelines	Maximum 4 power points (but powerpoints are NOT mandatory)
Marking criteria	Marks for presentation will be awarded for accuracy, clarity, the relevance of any supporting material, and the extent to which the class was drawn into a discussion/ debate. All students must participate actively in the presentation

Marking for Group Project written SEO Report (15 marks)

- Marks will be awarded for scope, accuracy, clarity and the thoughtfulness of your advice to your chosen franchisor
- Marks will be deducted for important omission(s), poor grammar, spelling, clerical sloppiness and lateness.

4.2.2 Individual Essay (50 marks)

During this course, you will be exposed to many different aspects of international franchise law. You are required to write an essay on a topic of your choice that relates to international franchise law.

Topics for International Franchise Law assignments 2017.

- Word limit 3,000 words excluding footnotes. There is no plus 10% allowed.
- You must footnote using the Australian Guide for Legal Citation
- NOTE: If you are identifying the law of a foreign jurisdiction it must NOT be the same jurisdiction as the one you have used in your Group Project.

Write an essay on one of the following.

1. Is it better to regulate franchising or to leave it to the general laws of a country to control the conduct of the parties? Answer by reference to specific examples from at least three (3) jurisdictions.
2. Are franchisees employees of the franchisor? Discuss with reference to the current tide of North American (Canadian and US) debate about the role of franchisors and the extent to which they may be employers of their franchisees or their franchisees' staff.
3. Competition law: franchise agreements often include exclusive territorial rights, controls and restraints which could fall foul of local competition laws and should be checked for compliance. Identify the potential competition law problems inherent in franchising and describe how they have been overcome in one (1) specific jurisdiction outside Australia. Do you consider this to be satisfactory, or not?
4. Consumer protection: Compare the consumer protection mechanisms for franchisees in two (2) jurisdictions. By reference to cases, and/ or other sources, evaluate the extent to which the penalties deter exploitation of franchisees by franchisors in those jurisdictions.
5. Dispute resolution: Australia mandates mediation but sometimes arbitration or litigation might be a better way to resolve franchise disputes. Compare and contrast two dispute resolution methods using specific cross border franchise disputes as examples.
6. Compare and contrast the contents of the franchise-specific laws of three (3) jurisdictions. In doing this you should provide examples of where the provisions have been tested in court. Explain whether you believe each jurisdiction adequately addresses the needs of its franchise sector.

4.3 Assessment Format

12 point font for each assessment

1.5 spaced

Please follow the Australian Guide to Legal Citation, NOT Harvard referencing.

4.4 Assignment Submission Procedure

All written work is to be submitted via Turnitin unless otherwise specified.

- Include your **student number(s)** and **name(s)** in the footer of every page.
- Submit in .rtf or .docx format, NOT as a pdf.
- Assignments will be marked online

Where work is done by more than one author (Group Project)

- Only one should submit the work.

- All authors must sign an assessment cover sheet (on Moodle) and hand it to the Lecturer the week the assessment is due.

Remember to each keep a copy of all work submitted for assessment.

4.5 Late Submission and Penalties

Late submission only acceptable in rare circumstances, and with prior email consent of lecturer in charge.

If no prior arrangement has been agreed, late submissions will be deducted 10% of the available marks for each 24 hours late.

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

There is no specific textbook for this course.

Recommended References:

- Abell, Mark, *The Law and Regulation of Franchising in the EU* (Edward Elgar, 2013) – in Jenny Buchan's office
- Abell, Mark (ed) *The Franchise Law Review* (2nd edition, 2015) – in Jenny Buchan's office
<http://thelawreviews.co.uk/titles/910/the-franchise-law-review/>
- Australian Bureau of Statistics
<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/8167.0Main%20Features32011-12?opendocument&tabname=Summary&prodno=8167.0&issue=2011-12&num=&view=>
- Austlii (legislation database with links to other jurisdictions) <http://www.austlii.edu.au/>
- Buchan, Jenny, *Franchisees as Consumers: Benchmarks, Perspectives and Consequences* (Springer, 2013) (e-book in UNSW library)
- Campbell, Dennis (General ed.) *International Franchising* (Juris, 2nd ed, 2012, with updates) – in Jenny Buchan's office
- Grimaldi, C., Méresse, S. and Zakharova-Renard, O., *Droit de la franchise* (LexisNexis, 2011) – in Jenny Buchan's office
- Hero, Marco (ed) *International Franchising: A Practitioner's Guide* (International Bar Association 2010) (in UNSW library)
- IP Australia <http://www.ipaustralia.gov.au/>
- *Journal of Marketing Channels*, Volume 21, Issue 3, 2014 (Special issue on international franchising) includes articles on law, ownership structures, Saudi Arabia, Vietnam. (in UNSW electronic library)
- Meiklejohn, A.M. (ed), *Franchising: Cases, Materials & Problems*, American Bar Association, 2013.
- Spencer, Elizabeth Crawford *The Regulation of Franchising in the New Global Economy* (Edward Elgar, 2010) (ebook in UNSW library)
- Stanworth, John and Hoy, Frank *Franchising: an international perspective* (Routledge, 2003) (in UNSW library)

- Wang, Zhiqiong , *The impact of China's regulatory regime on foreign franchisors' entry and expansion strategies* Thesis (PhD) - University of New South Wales, 2009
- Woods, W K (editor) *Fundamentals of International Franchising*, 2nd ed ABA Forum on Franchising (2013) – in Jenny Buchan's office

There are also several journals available via the UNSW library that cover aspects of international franchising. Additional reading lists and links to international cases are on the course website.

Franchise law is evolving quickly and material in older publications will need to be checked for currency. You will also find other material such as that published by IBISWorld, World Bank and law firms offering international franchising expertise very helpful.

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

The School of Taxation & Business Law's quality enhancement process involves regular review of its courses and study materials by content and educational specialists, combined with feedback from students. Towards the end of the semester, you will be asked to complete an online myExperience survey via Moodle to evaluate the effectiveness of your lecturer and the course content. Your input into this quality enhancement process through the completion of these surveys is extremely valuable in assisting us in meeting the needs of our students and in providing an effective and enriching learning experience. The results of all surveys are carefully considered and do lead to action to enhance the course quality, content and delivery.

Feedback from previous students indicated they enjoyed the videos we prepared for the MOOC, and the guest lecturers. Because of this feedback, we will continue with both. We have arranged 2 guest lecturers so far.

7 COURSE SCHEDULE

Week	Topic	References	Other
Week 1 27 July	What is business format franchising? The importance and dimensions of culture Different international expansion models and their features	Hero pages 11 – 26 and 163 – 174	Video 1.12 Video 1.9 Video 3.8 Expansion strategies
Week 2 3 August	Due diligence on the brand, countries and the people involved in the relationship (franchisor, master franchisee, area developer, franchisee)		Video 2.2 Video 2.6
Week 3 10 August	Franchise Agreements, Master Franchise Agreements, Operations Manuals	Domestic Franchise Agreement	Video 2.4 Video 3.6 - Franchise structures

	Territories	International Master and Area Developer agreements Operations Manual(s)	<i>Allocate into Groups for group Project</i>
Week 4 17 August	Intellectual Property Issues Guest: Peter Buberis	See cases on MOODLE Ipaustralia.gov.au and other national IP websites	Video 1.14 Building and protecting the brand Video 4.4 Intellectual property Video 4.6 Protection of intellectual property
Week 5 24 August Rob Nicholls	Competition law	See cases on MOODLE	Videos 4.
Week 6 31 August	Countries with specific franchise laws. Cooling off and waiting periods across different jurisdictions	See legislation and other resources on MOODLE	<i>Interim Group Presentations</i>
Week 7 7 September	Franchise law in countries without specific laws Other laws affecting international franchising (eg: real property laws)		Video 4.8 Personal and real property
Week 8 14 September	Other laws affecting international franchising (tax, privacy/data security laws). When are franchisees employees, or specifically not employees?	See MOODLE for links	Video
Week 9 21 September	Disputes What they are about? How can they be prevented? How they can be resolved?		Video 5.4 What causes franchise disputes? Video 5.6 How are disputes resolved? Video 5.8 Factors in dispute resolution
Mid-semester break: 22 September – Sunday 2 October inclusive			
Week 10 5 October	Changing the mix Future of franchising Social franchising	See readings on MOODLE	
Week 11 12 October	View from the USA. Guest: Rupert Barkoff (TBC)		Video 6.4 - Exit strategies <i>Present case studies</i>
Week 12 19 October			<i>Present case studies</i>