

TABL2721 BUSINESS LAW IN ACTION

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 and tutor: Professor Jenny Buchan

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Consultation Times – by appointment

When you contact staff by email please:

- Use your university email address
- Specify the course TABL2721 as your lecturer is teaching more than one course.
- Sign off by using your name

2 COURSE DETAILS

2.1 Teaching Times and Locations

Lectures run from Week 1 to Week 12:

The time and location are: Wednesday 3-5pm in Law 303

Tutorials run from Week 2 to Week 13. The times are:

Wednesday	2-3 pm	Law 303
Wednesday	5-6 pm	Law 303

2.2 Units of Credit

The course is worth 6 units of credit.

2.3 Summary of Course

Law forms the basis of all business transactions and is essential to their proper understanding. This course examines the use and legal effect of contracts. Negotiated contracts, standard form contracts and Deeds are studied. The structure and common clauses of contracts are highlighted, along with the different requirements attaching to the rights and obligations of parties to a contract-governed transaction.

2.4 Course Aims and Relationship to Other Courses

The aims of this course are to:

- Provide a basis for understanding the nature and effect of key parts of negotiated business and standard form consumer contracts
- Provide an understanding of how contracts are drafted in specific ways to meet specific needs, for example to control the dispute resolution process
- Foster an understanding of how contract intersects with other fields of substantive law such as consumer protection, tax and insolvency
- Raise awareness of the role of contract law in achieving economic ends
- Enhance students' conceptual background to the legal issues involved in business

This course is offered as part of the Business Law stream in the BCom degree. A prerequisite for this course is TABL 1710.

This is the capstone course for BCom students majoring in Business Law.

2.5 Student Learning Outcomes

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

1. Explain the significance and use of a range of contract clauses.
2. Analyse a court case, a negotiated and a standard form contract.
3. Present material confidently to the class.

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 coursework students in the UNSW 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 School undergraduate coursework 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	Demonstrate an understanding of the benefits and disadvantages of standard form contracts.	Standard form contract (4.2)
2	Critical thinking and problem solving	Analyse the purpose and utility of contract clauses, the impact of legal events on the effectiveness of contracts and the application of relevant legislation to contracts. Apply different perspectives to problems that can occur throughout the life of a contract	Written component of standard form contract assessment (4.2) Wiki comments (4.2)
3a	Written communication	Construct written work which is logical, professionally presented and which addresses specific questions	Case note wiki (4.2)

3b	Oral communication	Communicate ideas in a succinct, memorable and clear manner.	Presentation of standard form contract (4.2)
4	Teamwork	Work collaboratively to complete a task.	Not specifically assessed in this course.
5a.	Ethical, environmental and sustainability responsibility	Identify any ethical, environmental or sustainability issues raised through 'your' case (assessed in 4.3.4) Understand the consequences of agreeing to be bound by a standard form contract. Explain the benefits and disadvantages of using standard form contracts.	Case note analysis (4.2)
5b.	Social and cultural awareness	Understand the implications of social and cultural pressures on contracting parties.	Media article (4.2)

3 LEARNING AND TEACHING ACTIVITIES

3.1 Approach to Learning and Teaching in the Course

During this course, you will be required to read and analyse a full contract law case and a standard form contract. You will learn about specific contracts terms and concepts and the law applicable to them. You will need to present your work to the class. You will be given ample guidance but the extent of understanding that you develop of contract law and its role in commercial relationships will depend on your own work.

3.2 Learning Activities and Teaching Strategies

The weekly lecture runs for 2 hours every Wednesday from week 1 to 12. Lectures will often take the form of a discussion or an activity. The purpose of a lecture is to highlight key aspects of the subject, and to provide an opportunity for all students to discuss the material being studied, not to fully explain the week's topic.

Tutorials run every week from week 2 to 13. Student presentations and discussion will occur during both lecture and tutorial times.

There is a **wiki** in this course. Its purpose is to allow students to critically and constructively reflect on each other's, and their own work.

You are expected to attend all your tutorials, study the prescribed reading material and engage with sources, such as cases, legislation and information on the internet.

4 ASSESSMENT

4.1 Formal Requirements

To pass this course, you must:

- achieve a composite mark of at least 50/100; and
- make a satisfactory attempt of all assessment tasks (see below)
- attend at least 80% of the tutorials.

4.2 Assessment Details

Assessment Task	Weight	Length	Due
Media article (4.2.1)	10%	6 minutes oral LG5b Awareness of social and cultural implications of business (5%)	Week 2
Case note (4.2.2)	40%	Task A - oral presentation Task B - case note Task C – Wiki comments Task D – Wiki reflection LG2 Critical thinking and problem-solving (10%) LG3a Written communication (5%) LG3b Oral communication (10%)	Case allocated in week 2. Present Task A in class in weeks 3-8
Class participation (4.2.3)	10%	In class drafting dog contracts and overall participation throughout course	Week 11
Standard form contract (4.2.4)	40%	Oral presentation, 6 minutes Written LG2 Critical thinking and problem-solving (10%) LG 5a.	Allocated in week 6 Due weeks 12 and 13
Total	100%		

4.2.1 Media Article – 10%

This assessment is designed to reinforce your awareness of the wide range of business situations that involve contracts and, thus, contract law. It requires you to demonstrate that you have considered the social and / or cultural pressures that impact contracting parties. This assessment will address Program Learning Goal 5b.

For this assignment, you must work individually and present in class in week 2. You must hand a copy of your article with your name and student # on it to the lecturer at the time you present.

- i. Identify an issue concerning a contract that has been reported **in the media*** since 1 January 2017. For example, the issue might be about:
 - a. a contract being signed
 - b. a dispute under a contract
 - c. an alleged or actual breach of contract or a related issue
 - d. a variation or renewal of contract
 - e. any other matter involving a contract.

Deliver, in the week 2 lecture or tutorial, a 6-minute presentation of:

- ii. brief summary of your article
- iii. the contract law issue(s) your article raises
- iv. the type of contract that is being discussed (ie: negotiated, standard-form, Deed)
- v. one key lesson you would take from the issues raised and would include in a client advice where similar issues occurred in your clients' business.
 - a. Your key lesson is worth 5% of the course marks and must demonstrate your awareness of any social and/ or cultural implications surrounding the contract.

You may use **one** overhead slide or whatever other props you choose.

Examples of a suitable article are: <http://www.smh.com.au/entertainment/art-and-design/big-blue-sparked-by-doubt-over-whiteley-paintings-20120217-1tei7.html> and <http://www.stuff.co.nz/national/politics/66273394/Government-re-thinks-on-zero-hour-contracts>

NOTE: **‘in the media’** means in the *published* media. It may be print media or on-line media.

‘in the media’ does not mean a News Release from a company’s or a regulator’s website. A News Release is likely to present only one perspective whereas a published media article is more likely to have been written by a journalist and to include a range of perspectives. Bring the media clipping about the issue to class in week 3.

If the media is not in the English language you must submit a copy of the original and a translation (your personal translation is sufficient but make sure it makes sense!).

NOTE: Students who enrolled in the course after the week 1 lecture will present in week 3.

Marking system:

The lecturer will award marks out of a possible total of 10 for the presentation.

- 5 marks for clarity of presentation, relevance, accuracy and keeping to time.
- 5 marks for the relevance and insight you bring to your key lesson including social and cultural matters - see PLG 5a..
- The assessment will be marked out of 8 (not 10) if you use a news release as your media source.

Examples of where to find published media article:

- Factiva (accessible through UNSW electronic library)
- Sydney Morning Herald
- Australian Financial Review
- New Zealand Herald
- Straits Times
- Any media website (eg Al Jazeera, ABC News)

4.2.2 Case Note – 40 marks

This assessment is designed to help you understand how the law of contract is applied to facts, and to provide a basis on which you can build your skills of critiquing your colleagues’ and your own, work constructively. By exposing your work to a range of different individuals you will see what different personal perspectives people (including Judges) bring to any problem.

This assessment addresses Program Learning Goals 2, 3a and 3b.

You must perform the Tasks A and B below on your case. Tasks A below will be presented in class. Task B is to be completed on the course wiki. This is accessible via Moodle. Instructions on using a wiki will be on Moodle.

Task A: Case note presentation -10 marks

In Week 2, you will be allocated one **Australian** contract law case during the lecture. This will be the case you work on.

You must:

- 1) Present the following in class in the week your topic is covered in the lecture
 - a) Briefly explain what area(s) of contract law the case is about
 - b) Set out the facts in your case in 3 ways (time, space, relationship).

Note: all 3 ways of demonstrating the facts may not all apply to all cases.

- i) Time line of events (see Enright handout p 530-31 – on MOODLE)
- ii) Diagram showing space dimension of events (see Enright p 533)
- iii) Relationship between parties (see Enright handout p 534)

Task B: Case note further analysis - 15 marks

Post your Case Note on the wiki by 2pm on Wednesday of Week 7 (6 September). You will need to create a wiki page within the class wiki. If you have any difficulty doing this please contact Maree Magafas of Tax & Business Law on: m.magafas@unsw.edu.au

- 1) Summarise the dispute history and the legal Issue(s) between the parties. (2 marks)
- 2) Identify two (2) **implications** of the case you have investigated and provide reasons for your choices. An 'implication' may be any commercial consideration including, for example how the dispute could have been resolved in another way, implication of any relevant type for one party or the other, or implication for the law or how one party to the dispute might respond (eg by changing its contract wording). (4 marks)
- 3) Imagine you are one or other of the parties in the case. Specify which party you are. With the benefit of hindsight, identify one thing you could have done differently while negotiating the contract which led to the court action. Explain the difference this could have made to the conduct of or the outcome of the case. (4 marks)
- 4) Identify any ethical, environmental or sustainability issues raised by 'your' case. If you do not think there are any please explain your conclusion. (5 marks)

Task B must be posted on the wiki by every student.

NOTE: You must also submit a copy of your Case Note (items 1-4 of Task B), fully referenced, through Turnitin.

Task C: Wiki Comments on Case Analysis – 10 marks

The purpose of this assessment is to help you see the law in context, to encourage you to think deeply about cases, their implications and context.

NOTE: 5 of the marks for your wiki comments and reflection will be allocated for your understanding of ethical, environmental and/or sustainability responsibility as demonstrated in your case or the cases you comment on.

After posting your own Case Note on the wiki you are to read the Case Notes by at least two (2) other students.

By Monday week 9, (18 September) you are to make one comment on each of two (2) other students' Case Notes (2 comments in total)

Remember to only make comments using the 'comments' section of the wiki page. If you do not do this we will not know who made the comment and you will not receive any marks for it. You must not repeat someone else's comment.

Please respect the work of the Case Note's author and of any previous commentators who have posted. Any disrespectful remarks will earn zero (0) marks.

The comments should be:

- something interesting you have discovered about the facts of the case or

- political, legislative or economic history or subsequent events in relation to the case which provide context to the decision
- subsequent case(s) that have applied the ratio or obiter of the case, or have distinguished it, and the reasons for application or distinguishing.

Maximum 250 words per comment

Task D: Wiki Reflection – 5 marks

The rationale/purpose for this assessment is that by reading the input of your colleagues you will gain a deeper appreciation of the possible impacts of 'your' case, and the context in which the dispute arose.

By Monday week 10 (2 October) go back into your own Case Note on the wiki. Revisit your original comments in the light of any new comments.

Add to your own comments by either confirming you are happy with what you have written by defending your original suggestions or revisit them and post a modified response after reading your classmates' comments.

4.2.3 Class Participation – 10 marks

In week 11 you will work at drafting a contract. The contract will be either for:

- the sale or purchase of a puppy from a breeder, or
- the care of the puppy once it comes home, or
- another dog related topic.

This in-class exercise will require you to put into practise the knowledge you have acquired about the clauses in contracts.

Class participation will also be evaluated against your constructive contributions to the class throughout the course.

4.2.4 Standard Form Contract – 40 marks

Individual 5-minute oral presentation in lecture and tutorials in weeks 12 and 13

The purpose of this assessment is that through analysis of standard form contract clauses you will gain an understanding of how they are drafted, the order in which the clauses typically arise within a contract, issues that are consigned to writing in a standard form contract and, by implication, those that are not. By analysing the contracts against the requirements of the Competition and Consumer Act 2010 (Cth) (Australian Consumer Law) you will learn how statutes can modify contracts.

Your critical thinking skills and problem solving skills will be called on to answer the questions in both the written and oral components.

You will also gain an appreciation of what happens to the rights under the contract if one of the parties becomes insolvent.

You will gain practice in oral and written communication.

This assessment addresses Program Learning Goal 2.

The Oral aspect of this assessment addressed Program Learning Goal 5a.

You will be required to analyse one (1) standard form contract for this assessment.

The contract: You must source one standard form contract for an App. Eg Litterati <https://www.litterati.org/terms.php>.

These contracts are often called 'Terms of Service' and can be found as a link at the bottom of the icon's website.

Each student must select a different App icon. We will agree on your chosen Apps in tutorials in week 6. You must have your choice approved by the lecturer in charge.

Written (Q 1 to 4) - 30 marks

1. Assume the contract is covered by Australian law (even if it is not) and identify:
 - a. Two (2) clauses that favour one party, who the clause favours and why it does so.
 - b. The rights the consumer would have under the contracts if the supplier became insolvent. NOTE to answer 1 b you will have to explore insolvency or bankruptcy law. This may require you to look on the Australian Securities and Investments Commission website www.asic.gov.au or at the relevant provisions of the *Corporations Act 2001* (Cth) or the *Personal Property Securities Act* (Cth) or the *Bankruptcy Act* (Cth) and/ or an insolvency law textbook
2. Is it a “standard form consumer contract” to which the *Competition and Consumer Act 2010* (Cth) (‘CCA’) Australian Consumer Law (‘ACL’) applies? Why/ why not?
3. Does the contract contain any ‘unfair terms’ as defined in the CCA? Identify them and state why you believe they are unfair.
4. Explain two (2) benefits and two (2) disadvantages of using standard form contracts.

Oral (Q 5 and 6) - 10 marks

5. Six (6) minute presentation in class of the clauses in the contracts that govern:
 - a. storage of data
 - b. resolution of disputes
 - c. governing law.In your view is each of these solutions satisfactory? Give reasons.
6. What ethical, environmental or sustainability considerations should someone who intended using the service in your contract be aware of?

Marking for written component. Your submitted material must be tidy, accurate, correctly referenced and must demonstrate that you have thought hard about the contract you are analysing. Attach a copy of the contract – or the live link - to your assignment. To score well here you will need to demonstrate your capacity for critical thinking.

Marking for oral component. To score well in the oral part of this assessment you will be required to present correct information, clearly and memorably, and to keep to time.

4.3 Assessment Format

Name and student number: You MUST put the name (as enrolled) and student number of all student authors of the work in the header/footer on every page of every piece of work that you submit.

Please submit all assessments in docx or .rtf format so that the lecturer can mark using track changes if she wishes.

Word limit: The word limits for all assessments EXCLUDE

- Name of the case
- Excerpts from the judgment or the contract you are examining
- Footnotes

Style guide: Use 12-point font, double sided printing where printed, 1.5 spaced lines.

Footnotes: legal style guide must be followed AGLC3 – see final entry Quick Reference section. There are hard copies of this publication in the UNSW Law Library
<http://mulr.law.unimelb.edu.au/index.cfm?objectid=EC680959-CA26-5FED-64377B996D86A395>

4.4 Assignment Submission Procedure

All written work (except the wiki comments and wiki reflection) must:

- be submitted via Turnitin and, where stated, also in hard copy.
- be accompanied by a completed Cover Sheet (see Moodle). The signed cover sheet can be handed to the lecturer in hard copy if you cannot attach it to the electronic version of your assignment.

4.5 Late Submission and Penalties

Assignments submitted after the day and time specified will not be accepted without penalty, unless prior written approval has been granted by the lecturer. Assignments that are submitted late without prior approval will have 10% of the available marks deducted per day late and no mark for presentation will be awarded.

If circumstances beyond your control mean that you cannot complete the assessment by the due date or give your presentation on the due date, you should make an application for special consideration (see section 3 of Part B of this Course Outline). These applications are reserved for illness or misadventure, not work commitments. Work commitments are not a valid reason for special consideration applications.

If you foresee that you will have problems submitting an assignment on time you should contact your lecturer by email, explaining the circumstances in full immediately. Do not wait until the due date to ask for an extension. No extensions will be granted on the due date.

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:

S Christensen and W Duncan, *The Construction and Performance of Commercial Contracts*, (Federation Press, 2014)

Additional resources:

The following websites are also useful sources (search terms include 'standard form', 'unfair contract terms', External administration, insolvency):

<http://www.accc.gov.au>

<http://www.asic.gov.au/asic/asic.nsf>

Electronic Databases:

The UNSW library subscribes to several electronic databases. The UNSW library database can be accessed at: <http://info.library.unsw.edu.au/web/services/services.html>

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 end of semester myExperience responses. Feedback from previous students indicated dissatisfaction with the lack of rigour in student led presentations of the relevance of specific contract terms. Because of this feedback the lecturer has abandoned the weekly student-led presentation of specific aspects of a contract and will instead, present the material in lecture + lecturer-led discussion format.

7 COURSE SCHEDULE

	Lecture + Tutorial	Students' in class activity	Resources
Week 1: 26 July	Role of Contract in Contemporary Commercial Dealings General Principles of Contract Construction		References Christensen and Duncan, Chapters 1 and 2 Paul Kordic, Rockwell Oliver: Drafting key clauses in commercial contracts
Week 2: 2 August	Present media articles re contracts Allocate cases for Case Note How to read a case		See 4.2.1 above
Week 3: 9 August	Clauses Allocating Commercial Risk Guest lecturer – Dr Jennifer Gant , Nottingham law School, Nottingham Trent University.	Media articles presentation for students joining course in week 2	Topics <ul style="list-style-type: none"> • Entire Agreement Clauses • Exclusion Clauses • Force majeure Clauses • Termination Clauses • Effect of insolvency on contracts and employees References Christensen and Duncan, Chapters 5, 7, 8. Insolvency see <i>Corporations Act 2001</i> (Cth), insolvency textbooks + the internet.
Week 4: 16 August	Clauses relating to performance		Topics <ul style="list-style-type: none"> • Confidentiality clauses • Contingent conditions • Passing of risk clauses • Time provisions References Christensen and Duncan, Chapters 10, 11, 12
Week 5: 23 August	Clauses and events introducing new parties		Topics <ul style="list-style-type: none"> • Assignment clause • Ipso facto clause • Nomination • Restraint of trade

			References Christensen and Duncan, 14, 15, 16
Week 6: 30 August	Clauses creating liabilities in third parties Guarantees Indemnities	Agree Apps contracts for standard form contract assessment	Topics <ul style="list-style-type: none"> • Guarantees <ul style="list-style-type: none"> - Letter of comfort - Performance bond - Factors affecting validity of guarantee - Discharge of guarantee - Interpretation of guarantees - Variation of principal obligation • Indemnities <ul style="list-style-type: none"> - Purpose of indemnities - Legal issues affecting operation of clause - Construction and interpretation of indemnities
			References Christensen and Duncan, Chapters 17, 18 Amanda Tully 'Risk of company guarantees' 51(8) <i>Law Society Journal</i> 2013, 34.
Week 7: 6 September	Common phrases and boilerplate provisions in contracts		Topics <ul style="list-style-type: none"> • Best endeavours and Reasonable endeavours • Force majeure • Good faith • Governing law and jurisdiction clauses • Time is of the essence, and "punctuality" • Without prejudice
			References Christensen and Duncan Chapters 20
Week 8: 13 September	Clauses and factors affecting dispute resolution and enforceability		Topics <ul style="list-style-type: none"> • Dispute resolution • <i>Limitation Act 1969 (NSW)</i> • Tax
			References Christensen and Duncan, Chapter 19 Robert Richards <i>Tax advice and negligence</i> 51(8) LSJ 2013 pp 40-41
Week 9:	Remedies for breach of contract		Topics <ul style="list-style-type: none"> • Damages

20 September			<ul style="list-style-type: none"> - Agreed damages - Anticipatory breach - Assessment - Liquidated - Mitigation - Proportionate liability - Quantum meruit - Reliance loss - Remoteness • Specific Performance • Equitable remedies <ul style="list-style-type: none"> - Restitution - Unjust enrichment
			References Christensen and Duncan pp 14, 169, 173-4, 194, 476, 486-7, Christensen and Duncan, Chapter 4 (liquidated damages)
Mid-semester break: 22 September –2 October inclusive			
Week 10: 4 October	Standard form contracts		
Week 11: 11 October	Deeds	Draft dog contracts	Topics <ul style="list-style-type: none"> • Deed of Settlement • Deed of Assignment Power of Attorney References Robert Richards Tax advice and negligence 51(8) LSJ 2013 pp 40-41
Week 12: 18 October	Present standard form App contracts		
Week 13: 25 Oct	Present standard form App contracts		NOTE: tutorials only in week 13 in TABL 2721, no lecture.