

TABL 2741 BUSINESS ENTITIES

Course Outline Semester 1, 2017

Part A: Course-Specific Information
**Part B: Key Policies, Student Responsibilities
and Support**

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PART A: COURSE-SPECIFIC INFORMATION

1 STAFF CONTACT DETAILS

Lecturer-in-charge: A/Professor Anil Hargovan
 Room 2054H – Level 2 Quad (South Wing)
 Phone No: 9385 3577
 Email: a.hargovan@unsw.edu.au
 Consultation Times – By appointment

A full list of tutors will be posted on Course Website.

Communication with Staff

- Students are invited to consult with the **lecturer in charge** on any aspect of the course.
- Students may contact staff by e-mails regarding course administration matters, **using only their official university email address as per *University Email Policy***. E-mail is not an appropriate medium for learning. It is a poor substitute for personal consultation. Do not expect staff to reply to e-mails which request extensive or substantive answers. Teaching staff will use their discretion when consulted via e-mail and may instead invite students to meet in person during consultation hours to discuss complex questions, solutions to tutorial questions, past exam questions, etc.

2 COURSE DETAILS

2.1 Teaching Times and Locations

Lectures start in Week 1(to Week 12): There are 2 lecture streams: a Day lecture stream and a Night lecture stream. Students need only attend 1 lecture stream (the stream officially enrolled in).

Times and Location are:

Day Lecture Stream: Wednesday 1.00-4.00pm – CLB 6; **OR**

Night Lecture Stream: Wednesday 6.00-9.00pm – Webster Theatre A

Tutorials start in Week 2 (to Week 13). A full list of tutorials, times and tutors will be on the Course Website.

2.2 Units of Credit

The course is worth 6 units of credit.

2.3 Summary of Course

The purpose of this course is to examine the main principles of company law. Emphasis will be given to the areas dealing with the legal effects of incorporation, corporate liability, the raising and maintaining of capital; the responsibility for company management and governance (directors duties and liabilities); the commercial conduct of companies; the protection of shareholders (rights and remedies); liquidation and alternatives for companies in financial distress. Other forms of business structures or organisations will also be referred to in the context of company regulation. The comparative utility of alternative business structures will be assessed. Such utility will be examined from aspects such as personal liability, suitability

for property ownership, nature of title to assets and facility for the conduct of commercial operations.

Lecture material will be grounded in contemporary commercial and legal developments to illustrate the practical relevance of topics studied.

2.4 Course Aims and Relationship to Other Courses

Business Entities is the main company law course offered by the School of Taxation and Business Law. CPA Australia and the Institute of Chartered Accountants in Australia (ICAA) have accepted UNSW as an approved tertiary institution for purposes of membership qualifications. Bachelor of Commerce (Accounting) students will generally need to complete the following courses to satisfy profession requirements:

- TABL 1710 *Business and the Law*
- TABL 2741 *Business Entities* and
- TABL 2751 *Business Taxation* (for CPA students, it is advisable to do tax law as part of your degree; otherwise you will need to undertake a tax law course at the CPA after you graduate)

Students may choose to study Business Entities as part of a Business Law co-major or a Taxation major.

A Business Law co-major involves completing 7 courses (1 compulsory course LEGT 1710 *Business and the Law*; 3 options of Level 2 courses and 3 options of Level 3 courses). The school offers, for example, the following options that build upon the knowledge gained in this course.

Business Law

- TABL 3761 *Law of Banking and Finance*
- TABL 4721 *Special Topic in Business Law* (for example, corporate governance may be the focus of research as a special topic)

Taxation Law

- TABL 3757 *Corporate Tax Strategy*
- TABL 3755 *Taxation of Business Entities*

2.5 Student Learning Outcomes

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.

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

1. explain the practical features of various types of non-corporate and corporate business structures and the legal environment in which they operate;
2. explain and apply principles of company law;
3. analyse and evaluate legal problems;
4. apply logical argument, in written or oral form, to legal problems that arise in modern company law
5. research legal principles that apply to business structures; and
6. identify emerging trends in corporate regulation and corporate governance;

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 Part B of the course outline.

Business Undergraduate Program Learning Goals and Outcomes	
1. Knowledge: Our graduates will have in-depth disciplinary knowledge applicable in local and global contexts.	You should be able to select and apply disciplinary knowledge to business situations in a local and global environment.
2. Critical thinking and problem solving: Our graduates will be critical thinkers and effective problem solvers.	You should be able to identify and research issues in business situations, analyse the issues, and propose appropriate and well-justified solutions.
3. Communication: Our graduates will be effective professional communicators.	You should be able to: <ul style="list-style-type: none"> a. Prepare written documents that are clear and concise, using appropriate style and presentation for the intended audience, purpose and context, and b. Prepare and deliver oral presentations that are clear, focused, well-structured, and delivered in a professional manner.
4. Teamwork: Our graduates will be effective team participants.	You should be able to participate collaboratively and responsibly in teams, and reflect on your own teamwork, and on the team's processes and ability to achieve outcomes.
5. Ethical, social and environmental responsibility: Our graduates will have a sound awareness of the ethical, social, cultural and environmental implications of business practice.	You should be able to: <ul style="list-style-type: none"> a. Identify and assess ethical, environmental and/or sustainability considerations in business decision-making and practice, and b. Identify social and cultural implications of business situations.

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	Explain the practical features of various types of non-corporate and corporate business structures.	<ul style="list-style-type: none"> • Tutorial Problems • Assignment • In-tutorial Tests • Final Exam

		Explain and apply principles of company law	
2	Critical thinking and problem solving	Analyse the legal environment in which business structures operate and evaluate its use in a commercial context. Identify legal problems which arise out of the formation and use of business structures, research relevant sources, propose an outcome and identify possible challenges to any proposed outcome.	<ul style="list-style-type: none"> • Tutorial Problems • Assignment • In-tutorial Tests • Final Exam
3a	Written communication	Construct written work which is logically and professionally presented.	<ul style="list-style-type: none"> • Assignment • Final Exam
3b	Oral communication	Communicate ideas in a succinct and clear manner.	<ul style="list-style-type: none"> • Part of tutorial participation
4	Teamwork	Work collaboratively to complete a task.	Not specifically assessed.
5a.	Ethical, social and environmental responsibility	Identify and assess ethical considerations in decision – making in the management of business structures – for eg, directors, trustees and partners	<ul style="list-style-type: none"> • Tutorial Problems • In-tutorial Tests • Final Exam
5b.	Social and cultural awareness	Analyse corporate governance trends in the context of their social impact on society.	<ul style="list-style-type: none"> • Final Exam

3 LEARNING AND TEACHING ACTIVITIES

3.1 Approach to Learning and Teaching in the Course

The approach to learning and teaching in this course is premised on the fact that active student involvement in the course will facilitate understanding and deep learning of the course materials. The accompanying tutorial program to this course facilitates this outcome together with the opportunities that will arise from time to time in the lectures. Consequently, students are expected to understand rather than memorise and to apply, rather than regurgitate.

In order to obtain the potential benefit from the course and to succeed in all aspects of course assessment, students are required to follow the points below:

1. Read the prescribed materials *before* class lectures. This will make the class material easier to follow and comprehend;
2. Download the lecture handout/slides (available from *Moodle*) *before* class lectures. It is essential to bring the handout/slides to class and to supplement it with notes taken from the lecture. It is important to remember that the lecture handouts are not designed to be comprehensive and serve as a substitute for class lectures;
3. Actively participate in class: answer answers and ask your own;
4. Attend classes on time (important announcements are usually made prior to the delivery of lectures);
5. Attempt all the revision questions (in tutorial guide) for self-evaluation; and
6. Make an appointment to see the lecturer(s) during their consultation hours if further clarification regarding the course content is required.

3.2 Learning Activities and Teaching Strategies

The teaching strategies in this course adopts a combination of weekly lectures and tutorials (or seminars) designed to allow the delivery of a body of material and the opportunity thereafter to discuss and contextualise the material. This is done with real life examples to aid student understanding. The teaching strategies adopted aims to encourage critical thinking, deep and positive learning. The course is also designed to cater for the learning needs of a diverse range of students. It incorporates self-review questions, found in the tutorial guide, to facilitate your own assessment of your progress in understanding the course materials.

The tutorial program for this course serves several useful and practical purposes. It is designed to help consolidate, interpret and apply the lecture material. Students are taught to learn by understanding and application, not memorisation and regurgitation. Solutions to tutorial questions are not provided to ensure that students participate actively in class to confirm their understanding, learn from their mistakes and receive feedback on the correct approach to the questions. Students may see the lecturer or tutor during their consultation hours if further clarification regarding the tutorial questions is needed.

Additionally, the tutorial program and assessment is also designed to allow students to develop the skills (both verbal and written) necessary to analyse problems which may arise in practice. The guide is designed to allow each student to reach the goal of being able to apply theory, knowledge and problem solving technique to fact situations that may arise in company law. It is essential that students learn to select the important issues in such fact situations and that they be able to advance, in discussion, a carefully analysed solution aimed at resolution of the factual situation based on both relevant legislation and case law.

This course assumes you have studied TABL 1710 *Business and the Law* or the equivalent course. If you need to refresh your memory and re-familiarise yourself with the general principles of Australian law, you should read a short introductory book such as Carvan, *Understanding the Australian Legal System*, latest edition (Law Book Co), or Chisholm and Nettheim, *Understanding Law*, latest edition (Butterworths).

Reading cases is the best way to gain an understanding of:

- how common law and equity evolve (ie Judge made law, based on previous decisions)
- how the judges interpret the provisions of statutes

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) and
- attend at least 80% of your tutorials.

Assessment Details

Assessment in this course consists of 3 Components:

- **Formal written Research assignment,**
- **Tutorial Quizzes and**
- **final exam**

Assessment Task	Weighting	Length	Due Date
1. Formal Written Research Assignment	20%	1,700 words	Wednesday 26 April by 6.00pm [Week 8]
2: Tutorial Quizzes (x3; worth 10 marks each; best of 2) Note: The higher of the two set of quiz marks awarded (out of 20) will automatically be chosen and awarded	20%	Each 10 minutes duration	Quiz 1 Week Beginning 20 March [start of Week 4] Quiz 2 Week Beginning 24 April [start of Week 8] Quiz 3 Week Beginning 15 May [start of Week 11]
3. Final Exam	60%	2 hours	University Exam Period
Total	100%		

4.2 Assessment Format

The written assignment is worth 20% of the course assessment.

The topic will be released via Moodle in Week 4. This is a formal written assessment which involves individual legal research and analysis. It has a minimum word limit of 1,600 words and maximum word limit of 1,800 words.

See Style Guide posted to Moodle *for further details* on presentation.

It must be lodged at Turnitin before the due date and time: by 6.00 pm Wednesday 26 April 2017 (note: No other form of submission, for example email submission, is allowed without prior lecturer consent).

*Unauthorised late submissions will attract an immediate deduction of 20% and thereafter the same deduction per day late. **Any assignment submitted 5 or more days late will score 0.***

Tutorial Quiz

Written quizzes conducted in tutorials are worth 20% of the course assessment.

Tutorial Quiz

There will be three (3) quizzes given in tutorials during the session, based on the lecture material [tutorial questions are, indeed, based on lecture material]. Students are advised to use the information below to guide preparation for the tutorial quizzes – it indicates the lecture material (as spelt out in the course outline) that will be assessed in each quiz:

Quiz 1: Lecture Topics covered in lectures 1-3 inclusive

Quiz 2: Lecture Topics covered in lectures 4-7 inclusive

Quiz 3: Lecture Topics covered in lectures 8-10 inclusive

Each quiz will consist of short answer questions and/or multiple choice questions and will each be worth 10% of the total mark of the course. These tutorial assessments will be closed book. Further details will be announced in the lectures.

Each quiz will start no earlier than 5 minutes after the hour that the tutorial commences and students arriving late to tutorials will be given only the remaining allotted time to complete the quiz.

Students will be marked on the highest 2 scores attained out of the 3 quizzes held during the session. Students absent in the tutorial on the date of the quiz will have 0 marks recorded for that quiz. **There will be no supplementary or make up quiz should a student miss a quiz** because only the best 2 out of the 3 quiz results will be used for assessment purposes.

Final Exam

The final examination is worth 60% of the course assessment and will consist of problem questions and essay questions. It will be 2 hours long and cover the entire course material, unless advised by the lecturer to the contrary in class.

It is a closed book exam (no external materials are allowed into the exam). However, a case list (comprising of cases listed in this **Course Outline**) and extracts from the Corporations Act will be supplied in the exam room, attached to the question paper. Thus, there is no need to commit case names or section numbers to memory.

The final examination will be held in the regularly scheduled University examination period. *Further information concerning the exam and its format will be announced in lectures in the final week of the course and a summary of the key points will be posted to Moodle.*

4.3 Assignment Submission Procedure

See above.

All students must retain a spare copy of the assignment to be produced, if required, on demand.

4.4 Late Submission

See above.

If you foresee that you will have problems submitting the assignment on time you should contact the lecturer-in-charge immediately. Only the lecturer-in-charge can grant an extension for an assignment.

Do not wait until the due date to ask for an extension. No extensions will be granted on the due date itself.

If circumstances beyond your control mean that you cannot complete an assignment by the due date you should make an application for special consideration (see below at Part B, paragraph 3). These applications are reserved for illness or misadventure, not work commitments. Work commitments are not a valid reason for special consideration applications.

Extensions will not be granted lightly and may only be granted in exceptional circumstances, supported by detailed documentation.

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

The textbooks for this course are:

1. Harris J, Hargovan A and Adams M, ***Australian Corporate Law, 5th Edition (2016)*** LexisNexis/Butterworths [hereinafter referred to as HHA]
Note that there are valuable supplementary learning resources accompanying this book, such as quizzes with solutions, available online and accessible by publisher bar-code.
2. Hargovan, A ***Corporations Law – LexisNexis Case Summaries***, 1st ed (2015) LexisNexis/Butterworths

And

3. Australian Corporations Legislation, 2016, LexisNexis/Butterworths [student edition]

Note: Students are strongly advised to use the latest edition of prescribed materials to ensure accuracy. Due to a continuous process of law reform and judicial pronouncements in a rapidly changing corporate environment, it is unadvisable to use previous editions of the prescribed materials. If you do so, you undertake a large risk which may have an adverse impact on performance in the variety of assessments for this course.

Recommended reference

- Hanrahan, Ramsay, Stapledon, *Commercial Applications of Company Law*, 17th ed., 2016, Oxford University Press

General corporations law texts and/or casebooks

- Baxt, Fletcher & Fridman, *Corporations and Associations – Cases and Materials*, 10th ed., 2008, LexisNexis/Butterworths
- Ford, Austin & Ramsay, *Principles of Corporations Law*, 16th ed., 2015, LexisNexis/Butterworths
- Harris, *Corporations Law, Questions and Answers*, 4th ed, 2013, LexisNexis/Butterworths
- Lipton, Hertzberg & Welsh, *Understanding Company Law*, 18th ed., 2015, Thomson Reuters
- Redmond, *Corporations and Financial Markets Law*, 6th ed., 2013, Thomson Reuters

Professional references

- Butterworths, *Australian Corporation Law Principles and Practice* (loose-leaf volumes available online)
- CCH, *Australian Corporate News* (loose-leaf 1 Volume available online).

- Butterworths, *Australian Corporation Law Bulletin* (loose-leaf 1 Volume available online)

Specific topic reference texts [for selected topics only]

- Austin, Ford & Ramsay, *Company Directors-Principles of Law and Corporate Governance*, 2005, LexisNexis/Butterworths
- Murray, & Harris, *Keay's Insolvency: Personal and corporate law and practice*, 9th edition, 2016, Thomson Reuters

Online Resources: The website for this course is on Moodle at <http://moodle.telt.unsw.edu.au>

Students are encouraged to check the course website at Moodle for announcements and the following resources designed to assist students with their study of this course:

- course outline
- assessment details (format of final exam; some past exam papers)
- relevant lecture slides;
- cases and articles;
- useful links

The following websites are also useful sources:

- Australasian Legal Information Institute (<http://www.austlii.edu.au>)
- Federal (Commonwealth) Parliament (bills, legislation, committees etc <http://www.aph.gov.au>)
- Australian Securities and Investment Commission: [Asic](http://www.asic.gov.au)
- Australian Securities Exchange: www.asx.com.au
- www.comlaw.gov.au
- www.camac.gov.au

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. Changes made in the past, based on student feedback, include changes to the assessment regime by substituting the mid-session exam for a regime of continuous assessment.

7 COURSE SCHEDULE

Week	Topic	References
Week 1 27 February	Course Overview Development, Structure and Administration of Australian Company Law	HHA Chapters 1-2
Week 2 6 March	Alternative Business Structures: Part 1 [sole traders, partnerships, joint ventures]	HHA Chapters 3-4
Week 3 13 March	Alternative Business Structures: Part 2 [trusts, companies and associations]	HHA Chapters 3-4
Week 4 20 March	Legal Effects of Incorporation Separate Legal Personality and its Limits Lifting the Corporate Veil (common law and statutory) Personal Liability for Insolvent Trading	HHA Chapters 5 and 18 [para 18.3; 18.10-22]
Week 5 27 March	Internal Governance: Corporate Constitution and Replaceable Rules Corporate Liabilities: Contract	HHA Chapters 6-7
Week 6 03 April	Promoters Corporate Fundraising [Shares] and Investor Protection Debt Capital [Debentures]	HHA Chapters 8-10 and 22 [para 22.3; 22.26-37]
Week 7 10 April	Shares and Share Capital Transactions Company Meetings <i>(Friday 14 April is Good Friday public holiday)</i>	HHA Chapters 11-12
Mid-semester break: Friday 14 – Saturday 22 April inclusive		
Week 8 24 April NOTE: ASSIGNMENT DUE on 26 APRIL	Corporate Governance: Directors and Officers Duties – Part 1 <i>(Tuesday 25 April is Anzac Day public holiday)</i>	HHA Chapters 15-16
Week 9 1 May	Corporate Governance: Directors and Officers Duties – Part 2	HHA Chapter 17
Week 10 8 May	Shareholders: Rights and Remedies [Note: Weeks 8-10 deals with the commercial conduct of the company]	HHA Chapter 19
Week 11 15 May	External Administration: Part 1 [Schemes, Voluntary Administration and Receivership]	HHA Chapter 22
Week 12 22 May	External Administration: Part 2 [Liquidation/Winding Up and Deregistration]	HHA Chapter 22
Week 13 29 May	No Lectures	Last Week of Tutorials

8 LECTURE TOPIC OUTLINE

Class 1

Topic: Structure of Australian Company Law and Administration

- Introduction to course, course materials and textbooks.
- The history of company's legislation and the constitutional background to the Corporations Act.
- Corporations Act 2001 (Cth)
- Administration of the national scheme. Investigations and prosecutions. Role of the Australian Securities and Investment Commission (ASIC).
- Corporate Law Reform – continuous process
- Overview of The Corporation Law Simplification process and the Corporate Law Economic Reform Program (CLERP):
- Company Law Review Act 1998
- Corporate law Economic Reform Program Act 1999
- CLERP 9 (passed June 2004)
- Other key reforms include:
- Corporations Legislation Amendment (Simpler Regulatory System) Act 2007
- Personal Property Securities (Corporations and Other Amendments) Act 2010
- Corporations Amendment (Sons of Gwalia) Act 2010
- Business Names Registration Act 2011 (Cth)
- Corporations Legislation Amendment (Deregulatory and Other Measures) Act 2015 (Cth)
- Insolvency Law Reform Bill 2015

Text references:

- Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed, (LexisNexis/Butterworths, 2016)** – Chapters 1- 2.
- Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015) LexisNexis/Butterworths, pp 2, 4, 6, 12, 16

Internet references:

- [Asic](http://asic.gov.au)
- www.treasury.gov.au

Class 2 -3

Topic: Alternative Business Vehicles and Types of Companies

1. Alternative Business Vehicles (sole trader, partnership, joint venture, company and trusts).
2. Comparative assessment of the legal structures available for carrying on business – with reference to:
 - (i) formalities and expense
 - (ii) size
 - (iii) management
 - (iv) fundraising
 - (v) management
 - (vi) liability
 - (vii) holding property
 - (viii) taxation
 - (ix) duration of existence
3. Types of companies, the differences between public and proprietary companies and the distinction between small and large proprietary companies.

Text references:

- Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed, (LexisNexis/Butterworths, 2016)** – Chapters 4 and 3
- Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015) LexisNexis/Butterworths, p 59

Cases: *Smith v Anderson* (1880) 15 Ch D 247
Checker Taxicab v Stone [1930] NZLR 169
Long v James Morrison, 13 CLR 1
Keith Spicer v Mansell [1970] 1 WLR 333
Canny Gabriel v Volume Sales (1974) 131 CLR 321
Mercantile Credit v Garrod [1961] 3 All ER 1103
United Dominions Corp. v Brian (1985) 157 CLR 1
Re Megevand: Ex parts Delhasse (1878) 7 Ch.D. 51 1

Class 4

Topic: Separate Legal Personality and Lifting the Corporate Veil

The meaning, significance and consequences of incorporation.

Concept of corporate veil.

Lifting the corporate veil - exceptions created by statute and by the courts.

The problem of corporate groups and individual corporate personality.

Director's duty to prevent insolvent trading by the corporation [see Class 4]

Part 5.7B Divisions 3, 4 and 5, s. 588G and 588V.

Personal Liability: s. 588G,[Parent Company liability] 588V

Defences: s. 588H, 588X

Recovery of loss by the liquidator and creditors: Div. 4, s 588J-U; s 588W; s 588Y.

Text references:

Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapter 5

Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015)

LexisNexis/Butterworths – pp 1, 24, 28, 30, 39, 49, 50, 52, 59, 61, 66, 72

Cases:

Salomon v Salomon & Co. Ltd [1897] AC 22

Lee v Lee's Air Farming [1961] AC 12

Macaura v Northern Assurance [1925] AC 619

Andar Transport Pty Ltd v Brambles Ltd (2004) 204 ALR 387

Gilford Motor v Horne [1933] Ch 935

Creasey v Breachwood Motors Ltd 10 ACLC 3052

Re Darby [1911] 1 KB 95

Green v Bestobell Industries Ltd [1982] WAR 1

Ascot Investments Pty Ltd v Harper (1981) 148 CLR 337

Walker v Wimbourne (1976) 137 CLR 1

IEL v Blackburn (1977) 17 ALR 575

Smith, Stone & Knight Ltd v Birmingham Corporation [1939] 4 All ER 116

Dennis Wilcox Pty Ltd v FC of T (1988) 14 ACLR 156

Adams v Cape Industries plc (1990) BCLC 479

Spreag v Paeson (1990) 94 ALR 679

Briggs v James Hardie (1989) 7 ACLC 841

Pioneer Concrete Services v Yelnah (1987) 5 ACLC 467

ACN 007 528 207 Pty Ltd (In Liq) v Bird Cameron [2005] SASC 204

Commissioner of Taxation v BHP Billiton Finance Ltd [2010] FCAFC 25

Prest v Petrodel Resources Ltd [2013] UKSC 34

Insolvent Trading Cases

Hawkins v. Bank of China (1992) 10 ACLC 588

Morley v Statewide Tobacco Services Ltd (1992) 10 ACLC 1233 (Court of Appeal)

Commonwealth Bank of Australia v. Freidrich (1991) 9 ACLC 946 ("Eise's case")

Metropolitan Fire Systems Pty Ltd v Miller (1997) 23 ACSR 699

Tourprint International Pty Ltd v Bott (1999) 17 ACLC 1543

Deputy Commissioner Taxation v Clark (2003) 45 ACSR 332

Williams v Scholz [2007] QSC 266; *affirmed* [2008] QCA 94

Hall v Poolman (2007) 65 ACSR 123

McLellan (in the matter of The Stake Man Pty Ltd) v Carroll [2009] FCA 1415.

Class 5

Topic: Corporate Constitution, Replaceable Rules⁵¹ and its Effects; Contractual, Civil and Criminal Liability of Corporations

- Impact of Company Law Review Act 1998
- The process of incorporation (overview).

- The Company's Constitution (Memorandum and Articles of Association) and Replaceable Rules and its legal effect

- The legal capacity and powers of a company—the doctrine of *ultra vires*—ss 124-125 Corporation Act.
- Agency and Company Contracts. Authority of a company's officers and agents—ss 128-129
- Liability of Companies in tort and crime
- Organic Theory and its application
- Fashioning Rules of Attribution
- Vicarious Liability and its application

Text references:

- Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapters 6- 7
- Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015) LexisNexis/Butterworths – pp 18, 19, 32, 34, 36, 44, 51, 53, 54, 58, 67

Cases: *Ashbury Railway Carriage & Iron Co v Riche* (1875) LR 7 HL 653

Ding v Sylvania Waters (1999) 17 ACLC 531

Hickman v Kent [1915] 1 Ch 881

Bailey v NSW Medical Defence Union Ltd (1995) 185 CLR 399

Andrews v Queensland Racing Ltd [2009] QSC 338

Gambotto v WCP Ltd (1995) 182 CLR 432

Freeman and Lockyer v Buckhurst Park Properties Ltd [1964] 2 QB 480

Royal British Bank v Turquand (1856) 119 ER 886

Northside Developments Pty Ltd v Registrar-General (1990) 8 ACLC 611

BNZ v Fiberi Pty Ltd (1994) 12 ACLC 48

Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915] AC 705

H L Bolton Co Ltd v T J Graham & Sons Ltd [1957] 1 QB 159

Tesco Supermarkets Ltd v Nattrass [1972] AC 153

Meridian Global Funds Management Asia Ltd v Securities Commission (1995) 13 ACLC 3245

Brambles Holdings Ltd v Carey (1976) 2 ACLR 176

R v ICR Haulage Ltd [1944] KB 551

S & Y Investments (No 2) Pty Ltd v CUACA Ltd (1986) 82 FLR 130

ABC Developmental Learning Centres Pty Ltd v Wallace [2006] VSC 171

Class 6

Topic: Promoters; Corporate Fundraising; Debt Capital

- Promoters of companies. Identifying the promoters. An examination of the legal duties of promoters and of the remedies available for breach of those duties
- Pre-registration contracts and liability — s 131.

Funding the corporation, securities and corporate rescue:

- (i) Chapter 6 D of the Corporations Act. Rationale and types of disclosure documents. Legislative framework for investor protection. Liability. Defences. Role of ASIC.
- (ii) Debentures and Security Interests. Security interest in a non-circulating asset vs security interests in a circulating asset [Fixed and Floating charges under repealed law]. Registration and priority.
 - Personal Property Securities (Corporations and Other Amendments) Act 2010 – in effect from 30 January 2012;

Text references:

- Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapters 8- 10
- Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015) LexisNexis/Butterworths – pp 2, 11, 21, 32, 39,68

Cases: *Twycross v Grant* (1877) 2 CPD 469

Erlanger v New Sombrero [1878] 3 AC 1218

Gluckstein v Barnes [1900] AC 240

Tracy v Mandalay (1953) 88 CLR 215

Re Leeds and Hanley Theatres of Varieties Ltd [1902] 2 Ch 809

Kelner v Baxter (1866) LR 2 CP 174

Black v Smallwood (1966) 117 CLR 52

Bay v Illawarra Stationary Supplies (1986) 4 ACLC 429

Fraser v NRMA Holdings Ltd (1995) 13 ACLC 132

Cadence Asset Management Pty Ltd v Concept Sports Ltd [2005] FCAFC 265

ASIC v Axis International Management Pty Ltd (No 5) [2011] FCA 60

ASIC v Axis International Management Pty Ltd (No 6) [2011] FCA 811

Class 7

Topic: Shares, Share Capital Transaction and Company Meetings

(i) **Shares:**

- Equity financing v Debt financing (overview)
- The legal nature of shares
- Reasons for classes of shares
- Classes of shares (ordinary v preference shares)
- Alteration of class rights and statutory protection – s 246

(ii) **Impact of Company Law Review Act 1998:**

(a) **The new share capital rules**

- No par value shares
- Removal of share premium accounts

(b) **Impact on doctrine of capital maintenance**

(c) **Simplified Procedure for Share Transactions (Chapter 2 J of *Corporations Act*):**

- Protection of creditors and shareholders
- Reduction of capital – s 256
- Financial assistance – s 260
- Share buy backs – ss256; 257

Consequences of breach: Failure to comply with Chapter 2 J

(iii) **Meetings**

- Rules and procedure
- Notice
- Quorum
- Chairperson
- Voting
- Proxy
- Minutes
- Irregularities

Text references:

Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapters 11-12

Cases:

Trevor v Whitworth (1887) 12 App Cas 409
Gambotto v WPC Holdings (1995) 13 ACLC 342
ASIC v Adler (2002) 20 ACLC 576
Beck v Weinstock [2013] HCA 15
Weinstock v Beck [2013] HCA 14

Class 8-9

Topic: Corporate Governance: The Duties of Directors and Officers of the Corporation

Part 1:

- Meaning and content of corporate governance
- Best Practice (ASX recommendations)
- Current Issues in Corporate Governance
 - *ASIC v Macdonald [No 11]* [2009] NSWSC 287; (2009) 259 ALR 199 (James Hardie case – Original decision)
 - ***ASIC v Hellicar* [2012] HCA 17; *Shafron v ASIC* [2012] HCA 18 (James Hardie High Court case)**
 - *Gillfillan v ASIC* [2012] NSWCA 370 (James Hardie case – NSW Appeal Court Penalty decision))
 - *Australian Securities and Investment Commission v Healey* [2011] FCA 717

Part 2:

Definition of “director” in s.9 and “officer” in s. 9

The duty at **COMMON LAW**: - the **FIDUCIARY DUTY**.

1. The "duty of honesty" or the "duty to act bone fide in the interests of the company as a whole".
 - Concept of "interests of the company as a whole" and its problem areas: different classes of shares, nominee directors, company groups, creditors, employees.
 - Duty to exercise power for the proper purpose, especially power to issue shares.
 - Duty to avoid conflicts of interest; especially contracts with the company, personal profits, bribes and undisclosed benefits, usurping corporate opportunities, use of confidential information and competition with the company.
 - Duty to retain discretion.
2. The duty of care, skill and diligence.
3. Forgiveness (ratification, exoneration or exculpation) by the company of a director's breach of fiduciary duty.
4. Remedies available to the company in common law for breach of fiduciary duty:
 - compensation, damages, account of profit, rescission, constructive trust

Text references:

Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapter 14 (skim read), 15-17
 Hargovan, A ***Corporations Law – LexisNexis Case Summaries***, 1st ed (2015)
 LexisNexis/Butterworths – pp 16, 20, 25,35, 40, 43, 44, 47, 48, 50, 55, 56, 58, 62, 64, 69, 72, 77

Cases: *CAC v Drysdale* (1978) 141 CLR 236
DFC of T v Austin (1998) 16 ACLC 1555

Emanuel Management Pty Ltd (in liq) v Foster's Brewing Group Ltd [2003] QSC 205

Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd [2011] NSWCA 109

Re Smith & Fawcett (1942) Ch. 304

Greenhalgh v. Arderne Cinemas [1951] Ch 286

Percival v. Wright [1902] 2 Ch. 421

Coleman v. Meyers [1977] 2 NZLR 225

Brunninghausen v Glavanics [1999] NSWCA 199; (1999) 17 ACLC1 247

Mills v. Mills (1938) 60 CLR 150

Re Scottish Co-op. Wholesale Society v. Meyers [1958] 3 All ER 66

Re Broadcasting Station 2GB Pty Ltd [1964-1965] NSWLR 1648

Whitehouse v. Carlton Hotel Pty Ltd (1987) 5 ACLC 421

Parke v. Daily News Ltd [1962] Ch 927

Walker v. Wimborne (1976) 3 ACLR 529; 137 CLR 1

Kinsela v Russell Kinsela Pty Ltd (1986) 4 NSWLR 722

Spies v The Queen (2000) 201 CLR 603

- *Westpac v The Bell Group Ltd (in liq)* [2012] WASCA 157.

Howard Smith v. Ampol Petroleum (1974) AC 821

Ngurli Ltd. v. McCann (1953) 90 CLR 425

Harlowe's Nominees Pty Ltd v. Woodside (Lakes Entrance) Oil N.L. (1968) 121 CLR 483

Hospital Product Ltd v US Surgical Corp (1984) 156 CLR 41

Teck Corp. Ltd v. Miller (1972) 33 DLR 3rd 288

Aberdeen Railway Co. v. Blaikie Brothers [1843-60] All ER Rep 249; (1854) 1 Macq.461

Boardman v. Phipps (1966) 3 All ER 721

Regal Hastings Ltd. v. Gulliver [1942] 1 All ER 378

Furs Ltd. v. Tomkies (1936) 54 CLR 583

Cook v. Deeks [1916] 1 AC 554

Peso Silver Mines v. Cropper (1966) 58 DLR (2nd) 1

Green v Bestobell Industries Pty Ltd [1982] WAR 1

Queensland Mines Ltd. v. Hudson (1978) 18 ALR 1

Industrial Development Consultants Ltd. v. Cooley [1972] 2 All ER 162

ASIC v Vizard [2005] FCA 1037

Grand Enterprise Pty Ltd v Aurium Resources Ltd [2009] FCA 513

Canberra Residential Developments Pty Ltd v Brendas [2010] FCAFC 125

Streeter v Western Areas Exploration Pty Ltd (No 2) [2011] WASCA 17

Downer EDI Ltd v Gillies [2012] NSWCA 333

Class 8-9 (Continued)

Topic: The Duties of Directors and Officers of the Corporation (continued)

STATUTORY DUTIES of directors and officers of the corporation.

Part 2D.1:

Care and diligence (civil)	s. 180 (1)
Business Judgment Rule defence	s. 180 (2)
Reliance	s. 189
Delegation	s. 190
Good faith and proper purpose (civil)	s. 181
(criminal)	s. 184(1)
Improper use of position (civil)	s. 182
(criminal)	s. 184(2)
Improper use of information (civil)	s. 183
(criminal)	s. 184(3)
Interaction of s. 180 – 184 with other laws, (operation in addition to the common law)	s. 185
Disclosure of Material Interests	s. 191 - 196

Director's duty to prevent insolvent trading by the corporation [Covered in Class 4 - see Class 4 topic on lifting Corporate Veil]

Part 5.7B Divisions 3, 4 and 5, s. 588G and 588V.

- Personal Liability: s. 588G, [Parent Company Liability] 588V
- Defences: s. 588H, 588X
- Recovery of loss by the liquidator and creditors: Div. 4, s 588J-U; s 588W; s 588Y.

Related Party Transactions: Part 2E, s. 207 - 230

Civil penalty provision regime: Part 9.4B

Text references:

Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapters 15-18

Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015)

LexisNexis/Butterworths – pp 4, 6, 7, 12, 13, 26, 44, 60, 71,

Cases:

Re City Equitable Fire Insurance Co. [1925] 1 Ch. 407

Statewide Tobacco Services v. Morley (1990) 8 ACLC 827 Ormiston, J– affirmed in

Morley v Statewide Tobacco Services Ltd (1992) 10 ACLC 1233 (Court of Appeal)

Commonwealth Bank of Australia v. Freidrich (1991) 9 ACLC 946 ("Eise's case")

A.W.A. Limited v. Daniels (trading as Deloitte Haskins & Sells) (1992) 10 ACLC 933 Rogers, CJ

Daniels v. Anderson (1995) 16 ACSR 607 (NSW C of A)

South Australia v Clark (1996) 14 ACLC 1019

Sheahan v Verco [2001] SASC 91
ASIC v Vines [2005] NSWSC 738
Vines v ASIC [2007] NSWCA 75
ASIC v Rich & Ors (No2) (2003) 21 ACLC 672
ASIC Rich & Ors (2003) 21 ACLC 450

Forrest v ASIC; Fortescue Metals Group Ltd v ASIC [2012] HCA 39; *ASIC v Fortescue Metals Group Ltd* [2011] FCAFC 19
ASIC v Citrofresh International Ltd (No 3) [2010] FCA 292 [civil penalty decision];
ASIC v Citrofresh International Ltd (No 2) [2010] FCA 27 [liability decision],
ASIC v Maxwell (2006) 59 ACSR 373

ASIC v Adler (2002) 20 ACLC 576
ASIC v Adler (2002) 20 ACLC 1146
ASIC v Adler (2003) 21 ACLC 1810
Whitlam v ASIC (2003) 21 ACLC 1259
R v. Byrnes (1995) 13 ACLC 1488
Chew v. R (1992) 10 ACLC 816

- **James Hardie Litigation: ASIC v Hellicar [2012] HCA 17; Shafron v ASIC [2012] HCA 18 (High Court liability decisions);** *Gillfillan v ASIC* [2012] NSWCA 370 (civil penalty decision by Court of Appeal); *ASIC v Macdonald [No 11]* [2009] NSWSC 287; (2009) 259 ALR 199 (James Hardie case – Original decision);
- ***ASIC v Healey* [2011] FCA 717 [Centro case - liability decision]
ASIC v Healey (No 2) [2011] FCA 1003 [Centro case- penalty decision]**
- ***ASIC v Mariner Corporation Ltd* [2015] FCA 589**

Insolvent Trading Cases [see Class 4]

Class 10

Topic: Shareholders' Remedies

1. **Common law** obligations of majority shareholders to minority shareholders.

The concept of the rule in *Foss v Harbottle* and its exceptions, now abolished (s. 236(3)), save for right to enforce personal actions.

Concept of fraud on the minority involving:

- Expropriation of the company's property
- Ratification (forgiving or exoneration or exculpation) by the company of a director's breach of fiduciary duty
- Expropriation of a shareholder's property

2. **Statutory rights** of shareholders of the corporation.

Derivative Action (Proceedings on behalf of a company): Part 2F.1A, Sections. 236 - 242

Oppression – Chapter 2F, Part 2F.1, Sections 232 - 235

- History and background of statutory relief for oppressive conduct
- Who may apply: s. 234
- Concepts and judicial consideration of meaning in s. 232 of: "oppression", "unfair prejudice", "unfair discrimination" and "contrary to the interests of the members as a whole".
- Remedies available: s. 233

Statutory Injunction for breach of Corporations Act - Section 1324

Inspection of company records – Part 2F.3, Section 247A

Winding Up of company in the event of:

- directors acting in own interests or unfairly or unjustly - Section 461(e)
- oppressive conduct of affairs of the company - Section 461(f)
- oppressive act or omission by or on behalf of company - Section 461(g)
- it being just and equitable - Section 461(k)

Text references:

Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapter 19

Hargovan, A **Corporations Law – LexisNexis Case Summaries**, 1st ed (2015) LexisNexis/Butterworths – pp 17, 22, 31, 25, 36, 50, 67, 73, 78

Cases:

ACCR v CBA [2015] FCA 785

Foss v. Harbottle (1843) 2 Hare 461; Ch 12 LJ 319

Residues Treatment & Trading Co. Ltd v. Southern Resources Ltd (1988) 6 ACLC 1160

Peters' American Delicacy Co. Ltd v. Heath (1939) 61 CLR 457 (H.Ct.)

Gambotto v. WPC Ltd (1995) 16 ACSR 1; 13 ACLC 342

Cook v. Deeks [1916] 1 AC 554 (P.C.)

Ngurli Ltd. v. McCann (1953) 90 CLR 425

Re Scottish Co-op. Wholesale Society v. Meyers [1959] AC 324
Re HR Harmer [1958] 3 All ER 689
Re Bright Pine Mills Pty Ltd [1969] VR 1002
Sanford v Sanford Courier Services Pty Ltd (1987) 5 ACLC 394
Re H W Thomas (1984) 2 ACLC 610
Shamsallah Holdings Pty Ltd v CBD Refrigeration & Aircon Services Pty Ltd [2001] WASC 8
Wayde v. New South Wales Rugby League Ltd (1985) 3 ACLC 799; (1984) 9 ACLR 349; (1985) 61 ALR 225 (H. Ct.)
Morgan v 45 Flers Avenue Pty Ltd (1987) 5 ACLC 222

Swansson v Pratt [2002] NSWSC 583
Campbells v Backoffice [2008] NSWCA 95
Chahwan v Euphoric Pty Ltd [2008] NSWCA 52

BHP Ltd v Bell Resources Ltd (1984) 2 ACLC 157
Mesenberg v Cord Industrial Recruiters Pty Ltd (1996) ACLC 519
Airpeak Pty Ltd v Jetstream Ltd (1997) 15 ACLC 715

Ebrahimi v Westbourne Galleries Ltd [1973] AC 360
Re Yenidje Tobacco Co Ltd [1916] 2 Ch 426
Re Tivoli Freeholds Ltd [1972] VR 455
ASIC v Storm Financial Ltd [2009] FCA 269

Class 11-12

Topic: The External Administration of a Company –

Chapter 5 *Corporations Act*

Part A: Alternatives to the immediate winding up of a company

1. Amalgamations and reconstructions

- Procedure and notices (s. 411 and 412)
- Powers of court to facilitate (s. 413)
- Mopping up (s. 414)

2. Voluntary Administration

- Procedure: commencement of administration, conduct of administration, administrator's duties and powers, creditor's rights and obligations
- Effect of administration: protection of company's property during administration and exceptions
- Termination of administration at creditor's meeting by selection of deed of company arrangement [DOCA], winding up or release from administration; effect of deed of company arrangement

3. Receivership (Overview: see Class 6)

Part B: Winding up or liquidation of companies

1. Voluntary winding up

- **Members** voluntary winding up (Part 5.5 Divisions 1 & 2) Procedure and test of solvency
- **Creditors** voluntary winding up (Part 5.5 Divisions 1 & 3) Procedure

2. Compulsory winding up

- **On grounds other than insolvency** (s. 461-464), especially the just and equitable ground (s. 461(k)); standing to apply for winding up (s. 462)
- **On grounds of insolvency** (Part 5.4) Application for winding up (s. 459P) and power to wind up (s. 459A -459B). Test of insolvency (s. 95A) and presumptions of insolvency (s459C). Procedure for statutory demand (s. 459E and F). Procedure to determine disputed debts in statutory demands (s. 459 G – N)
- **Liquidators duties and powers**

3. Effect of external administration on:

Company; Directors; Shareholders; Creditors and Employees

4. Corporations Amendment (Sons of Gwalia) Act 2010 – reversed the effect of the High Court's decision in *Sons of Gwalia v Margaretic* (2007) HCA 1 in which it was found that s 563A of the Corporations Act did not subordinate certain compensation claims by aggrieved shareholders below the claims of other creditors.

Text references: Prescribed: **Harris, Hargovan and Adams: Australian Corporate Law, 5th ed (LexisNexis/Butterworths, 2016)** – Chapter 22

Hargovan, A ***Corporations Law – LexisNexis Case Summaries***, 1st ed (2015) LexisNexis/Butterworths – pp 3, 16, 29, 70

- **Cases**

- *Re Ansett Australia Ltd and Mentha (No 3)* [2002] FCA 2
- *David Grant & Co Pty Ltd v Westpac* (1995) 13 ACLC 1,572
- *Aussie Vic Plant Hire Pty Ltd v Esanda Finance Corp Ltd* [2008] HCA 9
- *ASIC v Storm Financial Ltd* [2009] FCA 269
- *Lehman Brothers Holdings Inc v City of Swan* [2010] 240 CLR 509
- *Westpac v The Bell Group Ltd (in liq)* [2012] WASCA 157.

PART B: KEY POLICIES, STUDENT RESPONSIBILITIES AND SUPPORT

9 PROGRAM LEARNING GOALS AND OUTCOMES

The Business School Program Learning Goals reflect what we want all students to BE or HAVE by the time they successfully complete their degree, regardless of their individual majors or specialisations. For example, we want all our graduates to HAVE a high level of business knowledge, and a sound awareness of ethical, social, cultural and environmental implications of business. As well, we want all our graduates to BE effective problem-solvers, communicators and team participants. These are our overall learning goals for you and are sought after by employers.

You can demonstrate your achievement of these goals by the specific outcomes you achieve by the end of your degree (e.g. be able to analyse and research business problems and propose well-justified solutions). Each course contributes to your development of two or more program learning goals/outcomes by providing opportunities for you to practise these skills and to be assessed and receive feedback.

Program Learning Goals for undergraduate and postgraduate students cover the same key areas (application of business knowledge, critical thinking, communication and teamwork, ethical, social and environmental responsibility), which are key goals for all Business students and essential for success in a globalised world. However, the specific outcomes reflect different expectations for these levels of study.

We strongly advise you to choose a range of courses which assist your development of these skills, e.g., courses assessing written and oral communication skills, and to keep a record of your achievements against the Program Learning Goals as part of your portfolio.

Business Undergraduate Program Learning Goals and Outcomes

1. Knowledge: Our graduates will have in-depth disciplinary knowledge applicable in local and global contexts.

You should be able to select and apply disciplinary knowledge to business situations in a local and global environment.

2. Critical thinking and problem solving: Our graduates will be critical thinkers and effective problem solvers.

You should be able to identify and research issues in business situations, analyse the issues, and propose appropriate and well-justified solutions.

3. Communication: Our graduates will be effective professional communicators.

You should be able to:

- a. Prepare written documents that are clear and concise, using appropriate style and presentation for the intended audience, purpose and context, and
- b. Prepare and deliver oral presentations that are clear, focused, well-structured, and delivered in a professional manner.

4. Teamwork: Our graduates will be effective team participants.

You should be able to participate collaboratively and responsibly in teams, and reflect on your own teamwork, and on the team's processes and ability to achieve outcomes.

5. Ethical, social and environmental responsibility: Our graduates will have a sound awareness of the ethical, social, cultural and environmental implications of business practice.

You will be able to:

- a. Identify and assess ethical, environmental and/or sustainability considerations in business decision-making and practice, and
- b. Identify social and cultural implications of business situations.

10 ACADEMIC HONESTY AND PLAGIARISM

The University regards plagiarism as a form of academic misconduct, and has very strict rules regarding plagiarism. For UNSW policies, penalties, and information to help you avoid plagiarism see: <https://student.unsw.edu.au/plagiarism> as well as the guidelines in the online ELISE tutorials for all new UNSW students: <http://subjectguides.library.unsw.edu.au/elise>

To see if you understand plagiarism, do this short quiz:

<https://student.unsw.edu.au/plagiarism-quiz>

In presenting written work for assessment in this course you must use an appropriate and consistent style for referencing and citation. TABL2741 uses the Australian Guide to Legal Citation (Melbourne University Law Review Association & Melbourne Journal of International Law, 3rd ed, 2010). This is free to download and is the citation style guide used by the majority of Australian legal journals. Available from <http://mulr.law.unimelb.edu.au/go/aglc>. (Print copies can be purchased from UNSW Bookshop.)

11 STUDENT RESPONSIBILITIES AND CONDUCT

Students are expected to be familiar with and adhere to university policies in relation to class attendance and general conduct and behaviour, including maintaining a safe, respectful environment; and to understand their obligations in relation to workload, assessment and keeping informed.

Information and policies on these topics can be found in UNSW Current Students 'Managing your Program' webpages: <https://student.unsw.edu.au/program>.

11.1 Workload

It is expected that you will spend at least **nine to ten hours** per week studying this course. This time should be made up of reading, research, working on exercises and problems, online activities and attending classes. In periods where you need to complete assignments or prepare for examinations, the workload may be greater. Over-commitment has been a cause of failure for many students. You should take the required workload into account when planning how to balance study with employment and other activities.

We strongly encourage you to connect with your **Moodle course websites** in the **first week of semester**. Local and international research indicates that students who engage early and often with their course website are more likely to pass their course.

Information on expected workload: <https://student.unsw.edu.au/uoc>

11.2 Attendance

Your regular and punctual attendance at lectures and seminars or in online learning activities is expected in this course. University regulations indicate that if students attend less than 80% of scheduled classes they may be refused final assessment. For more information, see: <https://student.unsw.edu.au/attendance>

11.3 General Conduct and Behaviour

You are expected to conduct yourself with consideration and respect for the needs of your fellow students and teaching staff. Conduct which unduly disrupts or interferes with a class, such as ringing or talking on mobile phones, is not acceptable and students may be asked to leave the class. More information on student conduct is available at: <https://student.unsw.edu.au/conduct>

11.4 Health and Safety

UNSW Policy requires each person to work safely and responsibly, in order to avoid personal injury and to protect the safety of others. For more information, see <http://safety.unsw.edu.au/>.

11.5 Keeping Informed

You should take note of all announcements made in lectures, tutorials or on the course web site. From time to time, the University will send important announcements to your university e-mail address without providing you with a paper copy. You will be deemed to have received this information. It is also your responsibility to keep the University informed of all changes to your contact details.

12 SPECIAL CONSIDERATION

You must submit all assignments and attend all examinations scheduled for your course. You should seek assistance early if you suffer illness or misadventure which affects your course progress.

General Information on Special Consideration for undergraduate and postgraduate courses:

1. All applications for special consideration must be **lodged online through myUNSW within 3 working days of the assessment** (Log into myUNSW and go to My Student Profile tab > My Student Services > Online Services > Special Consideration). You will then need to submit the originals or certified copies of your completed Professional Authority form (pdf - download here) and other supporting documentation to Student Central. For more information, please study carefully in advance the instructions and conditions at: <https://student.unsw.edu.au/special-consideration>.
2. Please note that documentation may be checked for authenticity and the submission of false documentation will be treated as academic misconduct. The School may ask to see the original or certified copy.
3. Applications will **not** be accepted by teaching staff. The lecturer-in-charge will be automatically notified when you lodge an online application for special consideration.
4. Decisions and recommendations are only made by lecturers-in-charge (or by the Faculty Panel in the case of final exam special considerations), **not** by tutors.

5. Applying for special consideration **does not** automatically mean that you will be granted a supplementary exam or other concession.
6. Special consideration requests **do not allow** lecturers-in-charge to award students additional marks.

Business School Protocol on requests for Special Consideration for Final Exams:

The lecturer-in-charge will need to be satisfied on each of the following before supporting a request for special consideration:

1. Does the medical certificate contain all relevant information? For a medical certificate to be accepted, the degree of illness, and impact on the student, must be stated by the medical practitioner (severe, moderate, mild). A certificate without this will not be valid.
2. Has the student performed satisfactorily in the other assessment items? Satisfactory performance would require at least satisfactory attempt at all assessment tasks and meeting the obligation to have attended 80% of tutorials.
3. Does the student have a history of previous applications for special consideration? A history of previous applications may preclude a student from being granted special consideration.

Special Consideration and the Final Exam in undergraduate and postgraduate courses:

Applications for special consideration in relation to the final exam are considered by a Business School Faculty panel to which lecturers-in-charge provide their recommendations for each request. If the Faculty panel grants a special consideration request, this will entitle the student to sit a supplementary examination. No other form of consideration will be granted. The following procedures will apply:

1. Supplementary exams will be scheduled centrally and will be held approximately two weeks after the formal examination period. The dates for Business School supplementary exams for Semester 1, 2017 are:

Tuesday 11 July 2017	Exams for the School of Accounting, Marketing
Wednesday 12 July 2017	Exams for the School of Banking and Finance, Management, Risk and Actuarial Studies
Thursday 13 July 2017	Exams for the School of Economics, Taxation and Business Law, Information Systems

If a student lodges a special consideration for the final exam, they are stating they will be available on the above dates. **Supplementary exams will not be held at any other time.**

2. Where a student is granted a supplementary examination as a result of a request for special consideration, the student's original exam (if completed) will be ignored and only the mark achieved in the supplementary examination will count towards the final grade. Absence from a supplementary exam without prior notification does not entitle

the student to have the original exam paper marked, and may result in a zero mark for the final exam.

The Supplementary Exam Protocol for Business School students is available at:
<http://www.business.unsw.edu.au/suppexamprotocol>

13 STUDENT RESOURCES AND SUPPORT

The University and the Business School provide a wide range of support services for students, including:

- **Business School Education Development Unit (EDU)**
<https://www.business.unsw.edu.au/students/resources/learning-support>
 The EDU offers academic writing, study skills and maths support specifically for Business students. Services include workshops, online resources, and individual consultations. EDU Office: Level 1, Room 1033, Quadrangle Building. Phone: 9385 7577 or 9385 4508; Email: edu@unsw.edu.au.
- **Business Student Centre**
<https://www.business.unsw.edu.au/students/resources/student-centre>
 Provides advice and direction on all aspects of admission, enrolment and graduation. Office: Level 1, Room 1028 in the Quadrangle Building; Phone: 9385 3189.
- **Moodle eLearning Support**
 For online help using Moodle, go to: <https://student.unsw.edu.au/moodle-support>. For technical support, email: itservicecentre@unsw.edu.au; Phone: 9385 1333.
- **UNSW Learning Centre**
www.lc.unsw.edu.au
 Provides academic skills support services, including workshops and resources, for all UNSW students. See website for details.
- **Library services and facilities for students**
<https://www.library.unsw.edu.au/study/services-for-students>
- **IT Service Centre:**
<https://www.it.unsw.edu.au/students/index.html>
 Provides technical support to troubleshoot problems with logging into websites, downloading documents, etc. Office: UNSW Library Annexe (Ground floor). Phone: 9385 1333.
- **UNSW Counselling and Psychological Services**
<https://student.unsw.edu.au/wellbeing>
 Provides support and services if you need help with your personal life, getting your academic life back on track or just want to know how to stay safe, including free, confidential counselling. Office: Level 2, East Wing, Quadrangle Building; Phone: 9385 5418; Email: counselling@unsw.edu.au
- **Disability Support Services**
<https://student.unsw.edu.au/disability>
 Provides assistance to students who are trying to manage the demands of university as well as a health condition, learning disability or have personal circumstances that are having an impact on their studies. Office: Ground Floor, John Goodsell Building; Phone: 9385 4734; Email: disabilities@unsw.edu.au

14 WRITTEN SUBMISSION GUIDELINES

14.1 General

You **MUST** keep a hard copy your Major Assignment.

A margin of at least 2.5 cm should be left along the left hand side of each page.

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.

Computer failure is not an acceptable special circumstance for an extension of time. You are expected to make back-up copies of your written answer.

14.2 Length

The Major Assignment has a maximum word limit of 1,800 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.

There is no 10% margin for extra words in this course. 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, and/or
- penalise you for exceeding the word limit by deducting 2 marks. Be aware that this is the most likely result.

14.3 Footnotes, quoting and copying

Footnotes allow the reader to quickly and easily find the exact place in the source material to which the footnote refers. This is known as a pinpoint reference.

In the course of the written answer you will need to cite relevant authorities. These may be a case, the views of an author, a section of legislation, a regulation 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. You must also state the date you accessed the site.

All sources must be acknowledged by a footnote at the foot of the page where:

- the source is being directly quoted;
- an argument or proposition in that source is being paraphrased;
- 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.

14.4 Citations

For TABL 2741 assignments, students should use footnote citations. For examples of how to use footnote citations, see below.

Citation of Articles¹/Cases²/ Books³

See examples below of footnote citations.

14.5 Plagiarism

Plagiarism is a serious academic offence and it is important to understand what it means. The following is an extract from the Student Guide that you should read very carefully.

Plagiarism and failure to acknowledge sources

Plagiarism involves using another person's work and presenting it as yours. Acts of plagiarism include copying parts of a document or audiovisual, or computer-based material without acknowledging and providing the source for each quotation or piece of borrowed material.

Similarly, using or extracting another person's concepts or conclusions, summarising another person's work or, where, there is collaborative preparatory work, submitting substantially the same final version of any material as another student constitutes plagiarism. This includes copying another student's work or using their work as the basis for your written answer. It does not matter whether you have their consent or not.

Encouraging or assisting another person to commit plagiarism is a form of collusion and may attract the same penalties.

Academic misconduct can occur where you fail to acknowledge adequately the use you have made of ideas or material from other sources. It is essential that you correctly attribute your source wherever you draw on and use someone else's ideas or information, whether by summarising or direct quotation. You must do this in such a way that is clear to anyone reading what you have written (or submitted) which of the ideas, arguments and views are yours and which are those of the writers or researchers you have consulted.

It is your responsibility to make sure you acknowledge within your writing where you have "sourced" the information, ideas and facts etc.

The basic principles are that you should not attempt to pass off the work of another person as your own. It should be possible for a reader to check the information and ideas that you have used by going to the original source material. Acknowledgment should be sufficiently accurate to enable the source to be located speedily.

The following are some examples of breaches of these principles:

- *Quotation (ie using the exact same words from the source material) without the use of the quotation mark (".....")*

¹ Hargovan and Harris, "The Relevance of Control in Establishing an Implied Agency Relationship between a Company and its Owners" (2005) 23 *Company and Securities Law Journal* 461 at 463.

² *Pioneer Concrete Services Ltd v Yelnah Pty Ltd* (1987) 5 NSWLR 254 at 256 (hereinafter *Pioneer* case).

³ Ford, Austin and Ramsay, *Ford's Principles of Corporations Law*, 16th ed, 2015, LexisNexis/Butterworths at 129.

It is plagiarism to quote another's work without using quotation marks, even if one then uses a footnote to refer to the identity of the quoted source. The fact that the material is quoted must be acknowledged in your work. This includes quotations obtained from a web page.

➤ *Significant paraphrasing*

Paraphrasing is using sentences in which the wording is very similar to the original source wording. This applies even if the source is acknowledged by a footnote. The source of all paraphrasing must be acknowledged by a footnote.

➤ *Unacknowledged use of information or ideas*

The unacknowledged use of information or ideas, unless such information or ideas are commonplace, is plagiarism. In particular, citing sources (e.g. texts, cases), that you have not read, without acknowledging the 'secondary' source from which knowledge of them has been obtained, is plagiarism. For example, you have read a paragraph from a company law textbook, at the end of the paragraph, there is a footnote which refers to 3 cases. You, having not read any of those 3 cases, refer to them in a footnote in your paper without acknowledging that they come from the footnote in the contract textbook.

These principles apply to both text and footnotes of sources. They also apply to sources such as teaching materials, and to any work by any student (including the student submitting the work), which has been or will be otherwise submitted for assessment. Using the principles mentioned above about proper acknowledgment, you should also proceed on the general assumption that any work to be submitted for assessment should in fact be your own work. It ought not be the result of collaboration with others unless your lecturer gives clear indication that, for that written answer, joint work or collaborative work is acceptable.

14.6 Bibliography

A bibliography is required for assignments in this course – in addition to the Pinpoint references to all texts, articles and other sources you use in the preparation of your work should be identified in footnotes at the end of the page(s) they appear in.

NOTE: Excluded from word count

14.7 Executive summary or abstract

Depends on type of question (whether problem type or essay type). Not required for Problem Questions. Required for Essay Questions.

NOTE: Excluded from word count.

14.8 Wikipedia

(Note: Wikipedia is not to be used as it is an unreliable source of information. Statutes and cases need not be separately listed in a bibliography.)

Students should take extreme care when using Wikipedia. Wikipedia is prepared by unknown authors and is often wrong. Whilst 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.