



## UNSW Course Outline

# JURD7318 Commercial Law - 2024

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## General Course Information

**Course Code :** JURD7318

**Year :** 2024

**Term :** Term 3

**Teaching Period :** T3

**Is a multi-term course? :** No

**Faculty :** Faculty of Law and Justice

**Academic Unit :** School of Private and Commercial Law

**Delivery Mode :** In Person

**Delivery Format :** Standard

**Delivery Location :** Kensington

**Campus :** Sydney

**Study Level :** Postgraduate

**Units of Credit :** 6

### Useful Links

[Handbook Class Timetable](#)

## Course Details & Outcomes

### Course Description

Commercial Law is an elective which introduces students to the general principles of commercial law, and builds on their foundation courses in Contracts, Business Associations and Equity & Trusts. It does not substantially overlap with specialised commercial options such as Law of Banking, Commercial Finance, Consumer Protection Law, Economic Analysis of Law,

Insurance Law, Insolvency Law, International Trade Law, Interests in Securities, Regulation of Economic Activity, and Securities and Financial Services Regulation.

Commercial Law introduces students to the way in which general principles of common law, equity and statute law have developed to deal with the needs of commercial markets by focussing on:

- The law applicable to commercial sales of goods;
- Personal Property Law;
- Torts relating to goods;
- Bailment; and
- Agency law

The course, like the players in commercial markets, takes a problem-solving approach to subject matter, but also considers the broader policy dimensions of commercial law doctrines and practices. The problem-solving approach investigates the way traders structure transactions to take best advantage of the protection offered by existing legal doctrines, and so illuminates the creative ways in which legal models or concepts are adapted to achieve pragmatic goals.

## Main Topics

- Understanding the contract of sale and the multiple legal concepts of goods
- Contractual and statutory terms of contracts of sale
- The importance of accurate and precise description of the goods; correspondence with sample
- Fitness for purpose
- Merchantability
- Concepts of ownership: property, possession and transfer of risk
- Trespass, Detinue and Conversions
- When is possession legally recognised?
- Bailment of goods
- Challenges to ownership: *nemo dat quod non habet* and its exceptions
- Performance and breach in the sale of goods
- Contractual bases of agency law
- Ratification of agency; rights and obligations arising from conduct after formation of the contract of agency
- Agents and third parties; the doctrine of the undisclosed principal
- Mercantile Agents and problems of apparent authority

## Course Aims

The aim of the course is to give students a broad understanding of commercial law principles in context, rather than a detailed knowledge of particular rules or statutes.

# Course Learning Outcomes

Course Learning Outcomes
CLO1 : Acquire an understanding of the way in which the basic concepts they have already learned in foundational courses (in particular, in contracts and property) are applied in a commercial environment (PLO 7)
CLO2 : Acquire an understanding of several (new) key legal doctrines of importance in commercial transactions (PLO 4 & 5)
CLO3 : Develop skills in thinking laterally about legal problems so as to find alternative approaches to achieving commercial goals (PLO 1, 4, 5 & 6)
CLO4 : Appreciate the role of law in facilitating and regulating market activity in an evolving commercial environment (PLO 4& 7)
CLO5 : Learn how to give sound, practical legal advice to clients, a skill seldom developed in the core curriculum (PLO 6 & 9)

Course Learning Outcomes	Assessment Item
CLO1 : Acquire an understanding of the way in which the basic concepts they have already learned in foundational courses (in particular, in contracts and property) are applied in a commercial environment (PLO 7)	<ul style="list-style-type: none"><li>• Final exam</li><li>• In-term Take-home Examination</li><li>• Class Participation</li></ul>
CLO2 : Acquire an understanding of several (new) key legal doctrines of importance in commercial transactions (PLO 4 & 5)	<ul style="list-style-type: none"><li>• Final exam</li><li>• In-term Take-home Examination</li><li>• Class Participation</li></ul>
CLO3 : Develop skills in thinking laterally about legal problems so as to find alternative approaches to achieving commercial goals (PLO 1, 4, 5 & 6)	<ul style="list-style-type: none"><li>• Final exam</li><li>• In-term Take-home Examination</li><li>• Class Participation</li></ul>
CLO4 : Appreciate the role of law in facilitating and regulating market activity in an evolving commercial environment (PLO 4& 7)	<ul style="list-style-type: none"><li>• Final exam</li><li>• In-term Take-home Examination</li><li>• Class Participation</li></ul>
CLO5 : Learn how to give sound, practical legal advice to clients, a skill seldom developed in the core curriculum (PLO 6 & 9)	<ul style="list-style-type: none"><li>• Final exam</li><li>• In-term Take-home Examination</li><li>• Class Participation</li></ul>

## Learning and Teaching Technologies

Moodle - Learning Management System

# Assessments

## Assessment Structure

Assessment Item	Weight	Relevant Dates
Final exam Assessment Format: Individual	50%	Start Date: 25/11/2024 09:00 AM Due Date: 02/12/2024 04:00 PM
In-term Take-home Examination Assessment Format: Individual	25%	Start Date: 24/09/2024 08:00 PM Due Date: 03/10/2024 04:00 PM
Class Participation Assessment Format: Individual	25%	Start Date: 09/09/2024 06:00 PM Due Date: 14/11/2024 08:00 PM

## Assessment Details

### Final exam

#### Assessment Overview

This assessment requires you to complete a take-home written examination within the University examination period.

#### Course Learning Outcomes

- CLO1 : Acquire an understanding of the way in which the basic concepts they have already learned in foundational courses (in particular, in contracts and property) are applied in a commercial environment (PLO 7)
- CLO2 : Acquire an understanding of several (new) key legal doctrines of importance in commercial transactions (PLO 4 & 5)
- CLO3 : Develop skills in thinking laterally about legal problems so as to find alternative approaches to achieving commercial goals (PLO 1, 4, 5 & 6)
- CLO4 : Appreciate the role of law in facilitating and regulating market activity in an evolving commercial environment (PLO 4& 7)
- CLO5 : Learn how to give sound, practical legal advice to clients, a skill seldom developed in the core curriculum (PLO 6 & 9)

#### Detailed Assessment Description

This also will be a take-home examination over 7 days.

The entire course, including material examined in the mid-Term examination will be examinable. The examination will raise problem and policy questions, in order to examine mastery of course content.

It also simulates the giving of advice to a client. Concise, precise legal writing using plain English is expected.

The final examination is worth in aggregate 50% of the marks for the course.

It will model the sort of work expected for a first year solicitor in practice.

#### Assessment Length

3500 Words

#### Assessment information

See Moodle for Term specific assessment information.

#### Assignment submission Turnitin type

This assignment is submitted through Turnitin and students do not see Turnitin similarity reports.

#### Generative AI Permission Level

##### **Simple Editing Assistance**

In completing this assessment, you are permitted to use standard editing and referencing functions in the software you use to complete your assessment. These functions are described below. You must not use any functions that generate or paraphrase passages of text or other media, whether based on your own work or not.

If your Convenor has concerns that your submission contains passages of AI-generated text or media, you may be asked to account for your work. If you are unable to satisfactorily demonstrate your understanding of your submission you may be referred to UNSW Conduct & Integrity Office for investigation for academic misconduct and possible penalties.

For more information on Generative AI and permitted use please see [here](#).

## **In-term Take-home Examination**

#### Assessment Overview

This assessment requires you to complete a take-home written examination.

#### Course Learning Outcomes

- CLO1 : Acquire an understanding of the way in which the basic concepts they have already learned in foundational courses (in particular, in contracts and property) are applied in a commercial environment (PLO 7)
- CLO2 : Acquire an understanding of several (new) key legal doctrines of importance in commercial transactions (PLO 4 & 5)
- CLO3 : Develop skills in thinking laterally about legal problems so as to find alternative approaches to achieving commercial goals (PLO 1, 4, 5 & 6)
- CLO4 : Appreciate the role of law in facilitating and regulating market activity in an evolving

- commercial environment (PLO 4& 7)
- CLO5 : Learn how to give sound, practical legal advice to clients, a skill seldom developed in the core curriculum (PLO 6 & 9)

### Detailed Assessment Description

This will be a mid-term take-home examination over 9 days. It simulates the giving of advice to a client. Concise, precise legal writing using plain English is expected.

It is worth 25% of the marks for the course.

It will cover classes 1 – 5.

### Assessment Length

2500 Words

### Assessment information

See Moodle for Term specific assessment information

### Assignment submission Turnitin type

This assignment is submitted through Turnitin and students do not see Turnitin similarity reports.

### Generative AI Permission Level

#### **Simple Editing Assistance**

In completing this assessment, you are permitted to use standard editing and referencing functions in the software you use to complete your assessment. These functions are described below. You must not use any functions that generate or paraphrase passages of text or other media, whether based on your own work or not.

If your Convenor has concerns that your submission contains passages of AI-generated text or media, you may be asked to account for your work. If you are unable to satisfactorily demonstrate your understanding of your submission you may be referred to UNSW Conduct & Integrity Office for investigation for academic misconduct and possible penalties.

For more information on Generative AI and permitted use please see [here](#).

### **Class Participation**

### Assessment Overview

This assessment requires you to prepare for and actively engage in class-based and online activities.

## Course Learning Outcomes

- CLO1 : Acquire an understanding of the way in which the basic concepts they have already learned in foundational courses (in particular, in contracts and property) are applied in a commercial environment (PLO 7)
- CLO2 : Acquire an understanding of several (new) key legal doctrines of importance in commercial transactions (PLO 4 & 5)
- CLO3 : Develop skills in thinking laterally about legal problems so as to find alternative approaches to achieving commercial goals (PLO 1, 4, 5 & 6)
- CLO4 : Appreciate the role of law in facilitating and regulating market activity in an evolving commercial environment (PLO 4& 7)
- CLO5 : Learn how to give sound, practical legal advice to clients, a skill seldom developed in the core curriculum (PLO 6 & 9)

## Detailed Assessment Description

With minor exceptions as noted below, all classes will operate according to variations of the Socratic Method.

Students are expected to:

- read set and some recommended sources,
- engage critically with source materials,
- develop knowledge of law and policy,
- bring their own questions to classes, and
- participate in class discussions constructively.

All classes except the first class will be conducted by the Socratic Method. Every student must prepare for and attend every class, and be prepared to contribute to class discussion. A/Prof. Knoll will ask students questions based on the required reading, and will answer (and expect) intelligent questions about the required reading. Debate on relevant legal, factual and policy issues is expected.

Class participation is worth 25% of the marks for the course.

## Assignment submission Turnitin type

Not Applicable

## Generative AI Permission Level

Not Applicable

Generative AI is not considered to be of assistance to you in completing this assessment. If you do use generative AI in completing this assessment, you should attribute its use.

For more information on Generative AI and permitted use please see [here](#).

# General Assessment Information

For further information on generative AI use in the Faculty of Law & Justice, please review the section titled 'Academic Honesty and Plagiarism' under the 'Other Useful Information' tab.

## Grading Basis

Standard

# Course Schedule

Teaching Week/Module	Activity Type	Content
Week 1 : 9 September - 15 September	Seminar	Understanding the contract of sale and the multiple legal concepts of goods
	Seminar	Contractual and statutory terms of contracts of sale
Week 2 : 16 September - 22 September	Seminar	The importance of accurate and precise description of the goods; correspondence with sample
	Seminar	Fitness for purpose
Week 3 : 23 September - 29 September	Seminar	Merchantability
	Seminar	Fragmentation of property and commercial torts. When is possession legally recognised?
Week 4 : 30 September - 6 October	Seminar	Property, possession and transfer of risk
	Seminar	Property, possession and transfer of risk (Cont.)
Week 5 : 7 October - 13 October	Seminar	Bailment of Goods
	Seminar	Challenges to ownership: nemo dat quod habet and its exceptions
Week 6 : 14 October - 20 October	Other	Reading week - no classes
Week 7 : 21 October - 27 October	Seminar	Challenges to ownership: nemo dat quod habet and its exceptions (Cont.)
	Seminar	Performance and breach in the sale of goods
Week 8 : 28 October - 3 November	Seminar	Performance and breach in the sale of goods (Cont.)
	Seminar	Contractual bases of agency law; Communications of agents; Ratification of agency
Week 9 : 4 November - 10 November	Seminar	Contractual bases of agency law; Communications of agents; Ratification of agency (Cont.)
	Seminar	Agents and third parties; the doctrine of the undisclosed principal
Week 10 : 11 November - 17 November	Seminar	Mercantile Agents and problems of apparent authority
	Seminar	Mercantile Agents and problems of apparent authority (Cont.) Revision

# Attendance Requirements

Please see information about attendance requirements in **Law & Justice Assessment Procedure and Student Information** located in the Other Useful Information tab in the Academic Information field.

Please be advised there will be no classes on public holidays. If your class falls on a public holiday, alternative arrangements will be made by the course convenor to make up the missed class.

# General Schedule Information

See UNSW Timetable for scheduled classes

## Course Resources

### Prescribed Resources

Pearson et al, Commercial Law: Commentary and Materials (4<sup>th</sup> ed 2019)

Foster, Torts Cases & Commentary and Commentary Supplement (2<sup>nd</sup> ed 2019)

### Recommended Resources

See Commercial Law moodle site for required and recommended resources for classes.

## Staff Details

Position	Name	Email	Location	Phone	Availability	Equitable Learning Services Contact	Primary Contact
Tutor	Ram Pandey				By Appointment	No	Yes

## Other Useful Information

### Academic Information

Upon your enrolment at UNSW, you share responsibility with us for maintaining a safe, harmonious and tolerant University environment.

You are required to:

- Comply with the University's conditions of enrolment.
- Act responsibly, ethically, safely and with integrity.
- Observe standards of equity and respect in dealing with every member of the UNSW community.
- Engage in lawful behaviour.
- Use and care for University resources in a responsible and appropriate manner.
- Maintain the University's reputation and good standing.

For more information, visit the [UNSW Student Code of Conduct Website](#).

### UNSW Law & Justice Assessment Policy

It is essential that all students undertaking this course read and abide by the [UNSW Law & Justice Assessment Policy & Student Information](#). This document includes information on Class Attendance, Late Work, Word Limits, Marking, Special Consideration, Workload, and Academic Misconduct & Plagiarism. More information can also be found at [Assessment & Exam Information](#).

Information regarding Course Outlines are subject to change and students are advised to check updates. If there is a discrepancy between the information posted here and the handbook or the UNSW Law & Justice website, please contact [Student Services via The Nucleus Hub](#) for advice. UNSW Law & Justice reserves the right to discontinue or vary such courses or staff allocations at any time. If your course is not here, please visit [Handbook](#) for information.

## Academic Honesty and Plagiarism

As a student at UNSW you are expected to display [academic integrity](#) in your work and interactions. Where a student breaches the [UNSW Student Code](#) with respect to academic integrity, the University may take disciplinary action under the Student Misconduct Procedure. To assure academic integrity, you may be required to demonstrate reasoning, research and the process of constructing work submitted for assessment.

To assist you in understanding what academic integrity means, and how to ensure that you do comply with the UNSW Student Code, it is strongly recommended that you complete the [Working with Academic Integrity](#) module before submitting your first assessment task. It is a free, online self-paced Moodle module that should take about one hour to complete.

## Generative AI

Using generative AI to conduct research or to organise your argument is not prohibited but is not encouraged. We note that the output from generative AI tools is often incorrect and almost always more superficial than is required to achieve a passing grade. Moreover, any substantive errors in the assessment, such as inappropriate references or incorrect statements, will be regarded negatively by the marker, just as they would if not generated by AI. You should limit your use of AI to simple editorial assistance, such as standard editing and referencing functions in word processing software in the creation of your submission. You must not use any functions that generate or paraphrase passages of text, whether based on your own work or not. If your marker or Turnitin identify the wrongful use of generative AI in the text of your assessment submission, including the use of paraphrasing software, your assessment may be referred to the

Student Integrity team for investigation. Please go to the link for further information about [referencing and acknowledging the use of artificial intelligence tools](#).

### Prohibition on use of translation apps

With limited exceptions for language study, the course of study and assessment in Australian universities must be in English (Higher Education Standard Framework (Threshold Standards) 2021 1.5 6(c)).

In Law & Justice many classes have assessable class participation. This must be in English. **Use of a translation device to assist with contributions to class discussion is not allowed.** Marks for class participation may be reduced where use of translation devices is detected. Similar prohibitions apply to use of any other generative text app that is not specifically permitted by the class teacher. However, use of translation software to assist a student to understand material outside of class, or to assist with preparation for assessment is generally permitted.

Further considerations apply to LLB and JD students. International lawyers who seek to be admitted in NSW must satisfy an English proficiency test. That test is expressed as equivalent to IELTS scores of 7.0 -8.0 across the tests. It is assumed that UNSW graduates are at or above those levels of English proficiency. Use of translation apps can impede the attainment of that level of proficiency. Students should avoid behaviours that put them at risk of breach of legal requirements which can have significant consequences, including potential consequences for your admission as a lawyer.

### Submission of Assessment Tasks

Before submitting assessment items all students must read and abide by the [UNSW Law & Justice Assessment Policy & Student Information](#).

### Special consideration

Special consideration is primarily intended to provide you with an extra opportunity to demonstrate the level of performance of which you are capable. To apply, and for further information, see Special Consideration on the UNSW [Current Students](#) page.

### Feedback

UNSW Law & Justice appreciates the need for students to have feedback on their progress prior

to the last date for withdrawal without failure. All courses will therefore provide feedback to students prior to this date, as well as throughout the course. However, students should note that feedback does not take the form only of formal grades and written comments on written assessments. Rather, formative feedback, which helps students to self-assess, to identify misunderstandings, and to identify areas requiring further work, will occur during class and possibly online. For example, where a teacher asks the class a question, all students should think about how they might answer. Even though not all students will necessarily be able to respond orally, everyone can reflect on their tentative answer in light of the teacher's response and subsequent class discussion. If you are struggling to understand what is being asked in class, or if your tentative answers prove incorrect and subsequent discussion does not clear things up, then you should continue to ask questions (of yourself, your peers or your teacher). Similarly, you can get a sense of your ability in a course through peer feedback during group work, your teacher's responses to your in-class contributions, and your own response to in-class problems and examples (whether or not you are called on to relay your answer to the class) and also your online activities and responses by others to those activities. Students enrolled in this course may check their Moodle course page for details on the specific feedback used in this course.

## Faculty-specific Information

### Additional support for students

- Student support: <https://www.student.unsw.edu.au/support>
- Academic Skills and Support: <https://student.unsw.edu.au/academic-skills>
- Student Wellbeing, Health and Safety: <https://student.unsw.edu.au/wellbeing>
- Equitable Learning Services: <https://student.unsw.edu.au/els>
- UNSW IT Service Centre: <https://www.myit.unsw.edu.au>

### Course improvement

Student feedback is very important to continual course improvement. This is demonstrated within the Faculty of Law & Justice by the implementation of the UNSW online student survey myExperience, which allows students to evaluate their learning experiences in an anonymous way. myExperience survey reports are produced from each survey. They are released to staff after all student assessment results are finalised and released to students. Course convenors will use the feedback to make ongoing improvements to the course. Students enrolled in this course may check their Moodle course page for details on the actions taken in response to evaluation feedback in Student Survey.

## School Contact Information

Please contact [Nucleus Student Hub](#) for all enquiries. The Nucleus acts as a central communications hub for UNSW and will distribute your enquiry to the best person to respond.