



## UNSW Course Outline

# LAWS8023 Commercial Contracts: Problems of Performance, Breach and Termination - 2024

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## General Course Information

Course Code : LAWS8023

Year : 2024

Term : Term 3

Teaching Period : T3A

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

The course examines systematically and in-depth (to an extent not feasible in basic

undergraduate Contract law courses) major principles of Australian law governing the performance, breach and termination of many commercial and conveyancing transactions. It is primarily concerned with complex applications of general contract law principles rather than the more specific rights that are sometimes conferred by statutes dealing with "consumer" contracts. As well as investigating many practical problems in applying the law, the course makes a sustained attempt to assist students to discern frequently unrecognised interrelations between legal principles, and thus to acquire a better integrated view of an area of law which (despite its practical importance) is widely regarded as amorphous and highly challenging. The course addresses a range of difficult practical, legal and evidentiary questions that have been raised in recent appellate judgements but often remain incompletely answered.

## Main Topics

- Contingent conditions precedent to performance
- Promissory and concurrent conditions
- Discharge by performance
- Nature of breach
- Entitlement to terminate for breach and repudiation
- Entire and severable contracts
- Affirmation following serious breach
- Nature and consequences of termination for serious breach.

**This is an advanced legal course primarily aimed at students with legal backgrounds/experience in contract law.**

## Course Aims

The prime objective of this course is to assist students to develop an in-depth understanding of the major principles of an area of contract law that is of immense importance in commercial activity: i.e. the law of performance, breach and discharge of contractual obligations.

A second objective is to assist students to develop further their capacities for disciplined analysis of facts and for legal reasoning according to the methods of the common law. Since the course subject matter requires examination of many complex judicial decisions, the course constantly gives students practice in the common law technique: determining to what extent precedent binds; differentiating ratio from obiter; adopting appropriate analogies; distinguishing between apparently similar factual situations; identifying the disguised leeways of choice in judicial decision; and developing new law (when required) incrementally.

A third objective is to stimulate students to examine the law of contract in a social and historical

context. This will often involve comparing the economic and social conditions in which the principles were developed with present conditions; noting the interests protected in both theory and practice; observing any changes in the social function performed by the law of contract over time. Students should thus develop wider perspectives on existing legal doctrines.

## Course Learning Outcomes

Course Learning Outcomes
CLO1 : Demonstrate effective oral communication and collaboration through class discussion of complex legal, theoretical and/or professionally relevant subject matter in a scholarly and insightful manner (PLOs 1a, 3a & 3b)
CLO2 : Show a practical, client-centred approach to creative problem solving by advising on options for Commercial Contracts and evaluating possible client choices (PLOs 1a, 2a & 3a)
CLO3 : Examine and engage in advanced critical analysis of the essential elements of commercial law and the formation of contracts through an extended research essay (PLOs 1a, 1b, 2a, 2b, 3a & 4)
CLO4 : Demonstrate advanced written communication skills by articulating complex legal concepts, theory and analysis using effective research methodologies by completing research essay (PLOs 1a, 1b, 2a, 2b & 3a)

Course Learning Outcomes	Assessment Item
CLO1 : Demonstrate effective oral communication and collaboration through class discussion of complex legal, theoretical and/or professionally relevant subject matter in a scholarly and insightful manner (PLOs 1a, 3a & 3b)	• Class Participation
CLO2 : Show a practical, client-centred approach to creative problem solving by advising on options for Commercial Contracts and evaluating possible client choices (PLOs 1a, 2a & 3a)	• Exam (take-home)
CLO3 : Examine and engage in advanced critical analysis of the essential elements of commercial law and the formation of contracts through an extended research essay (PLOs 1a, 1b, 2a, 2b, 3a & 4)	• Research Essay
CLO4 : Demonstrate advanced written communication skills by articulating complex legal concepts, theory and analysis using effective research methodologies by completing research essay (PLOs 1a, 1b, 2a, 2b & 3a)	• Research Essay • Exam (take-home)

## Learning and Teaching Technologies

Moodle - Learning Management System

# Assessments

## Assessment Structure

Assessment Item	Weight	Relevant Dates
Class Participation Assessment Format: Individual	20%	Start Date: Begins from first scheduled class Due Date: Ends on last scheduled class
Research Essay Assessment Format: Individual	40%	
Exam (take-home) Assessment Format: Individual	40%	

## Assessment Details

### Class Participation

#### Assessment Overview

Feedback includes formative feedback, peer feedback in class, online and the use of rubric.

#### Course Learning Outcomes

- CLO1 : Demonstrate effective oral communication and collaboration through class discussion of complex legal, theoretical and/or professionally relevant subject matter in a scholarly and insightful manner (PLOs 1a, 3a & 3b)

#### Detailed Assessment Description

Further details will be provided in class and through Moodle

#### Assignment submission Turnitin type

Not Applicable

#### 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](#).

# Research Essay

## Assessment Overview

Feedback includes formative feedback, peer feedback in class, online and the use of rubric.

## Course Learning Outcomes

- CLO3 : Examine and engage in advanced critical analysis of the essential elements of commercial law and the formation of contracts through an extended research essay (PLOs 1a, 1b, 2a, 2b, 3a & 4)
- CLO4 : Demonstrate advanced written communication skills by articulating complex legal concepts, theory and analysis using effective research methodologies by completing research essay (PLOs 1a, 1b, 2a, 2b & 3a)

## Detailed Assessment Description

Further details will be provided in class and through Moodle.

## Assessment Length

3000 words maximum.

## Assignment submission Turnitin type

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

## Generative AI Permission Level

### No Assistance

This assessment is designed for you to complete without the use of any generative AI. You are not permitted to use any generative AI tools, software or service to search for or generate information or answers.

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

## **Exam (take-home)**

## Assessment Overview

Feedback includes formative feedback, peer feedback in class, online and the use of rubric.

## Course Learning Outcomes

- CLO2 : Show a practical, client-centred approach to creative problem solving by advising on options for Commercial Contracts and evaluating possible client choices (PLOs 1a, 2a & 3a)
- CLO4 : Demonstrate advanced written communication skills by articulating complex legal concepts, theory and analysis using effective research methodologies by completing research essay (PLOs 1a, 1b, 2a, 2b & 3a)

### Detailed Assessment Description

Further information will be provided in class and through Moodle.

### Assessment Length

2000-2500 words maximum

### Assignment submission Turnitin type

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

### Generative AI Permission Level

#### No Assistance

This assessment is designed for you to complete without the use of any generative AI. You are not permitted to use any generative AI tools, software or service to search for or generate information or answers.

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

### Attendance Requirements

Attendance at all scheduled classes is **mandatory**. A failure to attend will adversely impact class participation marks and impact your understanding of course content.

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

This is an intensive course. Attendance is both mandatory and critical to success. It is also mandatory that students undertake the assigned reading ahead of class and are prepared to discuss in class. Students may be called on to discuss case materials.

# Course Resources

## Prescribed Resources

Further information will be provided through Moodle. Students should review Moodle regularly for updates on the course.

## Recommended Resources

Further information will be provided through Moodle. Students should review Moodle regularly for updates on the course.

# Staff Details

Position	Name	Email	Location	Phone	Availability	Equitable Learning Services Contact	Primary Contact
Lecturer	Ray Steinwald				By e-mail and face to face by appointment.	Yes	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.