



BUSINESS

SCHOOL OF TAXATION AND BUSINESS LAW

Never Stand Still

Business School

**TABL 1710
BUSINESS AND THE LAW**

TUTORIAL PROGRAM

SEMESTER 2, 2016

© 2016

The University of New South Wales

Sydney 2052 Australia

The original material prepared for this guide is copyright. Apart from fair dealing for the purposes of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced by any process without written permission. Enquiries should be addressed to the Head of School, Taxation and Business Law, UNSW, Sydney

TUTORIAL PROGRAM FOR TABL 1710 BUSINESS AND THE LAW

Wk	Wk Commencing	Lecture topics	Topic information
1	25 July	Lectures begin	No tutorials Tutorials Commence in Week 2 (see below)
2	1 August TUTORIALS COMMENCE	Introduction: The Role of Law in Business	<ul style="list-style-type: none"> The Legal Framework and Legal Systems The Australian Constitution and the separation of powers The Parliament, the Executive and the Judiciary
3	8 August	Statutory Interpretation & Legal Reasoning	<ul style="list-style-type: none"> How Law is Made Statutory interpretation and Judicial decision making Legal problem solving and conducting legal research
4	15 August	Law of Contracts	<ul style="list-style-type: none"> Introduction to Contracts Requirements for a valid contract CLOSED BOOK In-Class Quiz on Lecture Topics 1 and 2 to be held in Tutorials this week
5	22 August	Law of Contracts (cont'd)	<ul style="list-style-type: none"> Terms of a contract Conditions and Warranties Exclusion clauses
6	29 August	Law of Contracts (cont'd)	<ul style="list-style-type: none"> Is the Contract Legal Rights and Liabilities of the Parties Vitiating elements, including unconscionable conduct, misrepresentation and mistake
7	5 September	Law of Contracts (cont'd)	<ul style="list-style-type: none"> Breach of contract Remedies for breach Employment Contracts
8	12 September	Property Law	<ul style="list-style-type: none"> What is property? Ownership of land Intellectual property
MAJOR ASSIGNMENT DUE MONDAY 19 September (beginning of week 9)			
9	19 September	Consumer Protection Law	<ul style="list-style-type: none"> Scope of the Australian Consumer Law (Sch 2, <i>Competition and Consumer Act 2010</i> (Cth)) Misleading or deceptive conduct Unconscionable conduct Misrepresentations under the Australian Consumer Law
MID-SEMESTER BREAK 24 September – 2 October inclusive PUBLIC HOLIDAY Monday 3 October			
10	3 October	Restrictive Trade Practices and Competition Law	<ul style="list-style-type: none"> Part IV of the Competition and Consumer Act 2010 (Cth) Authorising anti-competitive activity Enforcement procedures and remedies
11	10 October	Civil Liability and Tort Law	<ul style="list-style-type: none"> General principles Negligence and duty of care Statutory modification through the <i>Civil Liability Act 2002</i> (NSW)
12	17 October	Tort Law (cont'd): Professional Negligence and Economic Loss	<ul style="list-style-type: none"> Standard of care for professionals Recovery for pure economic loss
13	24 October	Business Structures And REVISION	<ul style="list-style-type: none"> Choosing a business entity Revision for exam

COURSE READINGS:

See Moodle under the heading: **Weekly Readings** for a list of weekly readings for each lecture topic.

TUTORIAL CONSULTATIONS

Students should note that tutors will be available for face-to-face consultations for one hour in each of the following weeks:

- Week 7 commencing 5 September
- Week 8 commencing 12 September
- Week 12 commencing 17 October
- Week 13 commencing 24 October

A one-hour consultation in the pre-exam study period ('stuvac') will also be offered.

Tutors will let their students know the time and location of their tutorial consultations in the week prior to a tutorial consultation week.

Students will also be provided with their tutor's email address so that if a student has any tutorial-related queries outside of the above weeks, they should contact their tutor with their query by email. Short and straight-forward queries will be responded to by email. A tutor may suggest a student attend at one of the above consultation times if a query requires a detailed response/explanation.

However, as far as possible, students should raise all queries with their tutor during their tutorial class.

TUTORIAL PRESENTATIONS

Students will be allocated to a group by their tutor and with their group, must prepare and present the answer to a tutorial problem. Tutors will allocate a "tutorial presentation week" to each group in the first or second tutorial. Tutorial presentations are worth a total of 5 marks.

TUTORIAL DISCUSSION FORUM

A Discussion Forum will be set up for each tutorial class. Tutors will provide students with information about how to use the Discussion Forum in the first tutorial. The use of the Discussion Forum is voluntary. However, students are encouraged to use it

and to continue to collaborate and to discuss lecture and tutorial topics with each other, online and outside of class time.

ANSWERING TUTORIAL AND EXAM PROBLEM QUESTIONS

The problem questions that you are asked to prepare answers to in tutorials are similar in format to the problems that you will be given for the assignment and in the final exam. It is therefore important that you attempt the tutorial questions so that you have sufficient practice in answering legal problems to do well in assignment and in the final exam.

The course is designed to give students skills in recognising the interaction of a range of commercial laws and how they impact on business activity. **Merely addressing a single issue in your answer is unlikely to be sufficient and will attract a poor mark.** The commercial world rarely presents problems that only raise one issue.

How to answer exam and tutorial questions: THE 'FIVE STEP' PLAN

WHAT YOU NEED:

- **KEY FACTS**
- **RELEVANT ISSUES**
- **KEY LEGAL PRINCIPLES**
- **APPLICATION OF THE LAW TO THE FACTS**
- **TENTATIVE CONCLUSION**

WHAT TO DO:

1) Identify KEY FACTS of the problem

Unlike judges, when you answer a problem or case study you do not need to, and should not, summarise the facts of a problem or write out the question again in your answer. What you should do is identify the key facts in your own mind.

2) Identify **RELEVANT ISSUE** of the problem

From the key facts, you should then be able to identify the relevant **issues** in the problem you are considering.

3) Identify **KEY LEGAL PRINCIPLES**

Once you have worked out the issues, ask:

(a) does a statutory provision apply to this situation and, if so, does it provide a specific answer to the problem?

AND

(b) are there any cases which have dealt with a similar fact situation/legal issue to the one you are considering? You should provide the name/section of any relevant legislation and the names of any relevant cases in your answer.

Note similarities to (follow) or differences from (distinguish) prior cases.

When reading a problem it is a good idea to jot down the names of cases that you have studied, where the **facts/legal issues were similar**, if not identical to the ones in the problem you are considering. Often the facts of a problem may be similar to but a little different to those in a decided case.

Think about whether any factual differences matter. Whether or not any differences matter will depend on the scope of the legal principle that the relevant case stands for. It is important to note any factual differences from previous cases and to state whether or not you consider that the differences matter to your problem.

4) **APPLY THE LAW TO THE FACTS**

This is the **key aspect of answering a legal problem question**.

This important step comes after you have identified the key facts and the key legal principles from relevant statutes/case law and noted their interpretation,

and before you draw a conclusion. This step involves saying what the legal principles you have identified mean to the facts of your problem and what the effect of these legal principles will be on the rights and obligations of the parties in your problem. This is the **key part of the process of reasoning** that leads to a conclusion both in a legal problem question and in an actual court case.

5) Reach a TENTATIVE CONCLUSION based on the application of the statutory provisions and/or case law principles to the facts

In your answers you will generally need to reach a definite conclusion. More important than the conclusion you reach however, is the process of reasoning that led you to that conclusion.

The fact that a subsequent court can overrule the decision of a previous court demonstrates that there is **no absolutely correct** answer to legal problem questions.

You will receive more marks for your process of reasoning than you will for getting what is considered at the time to be the ‘correct’ answer.

Remember: in your discussion/answer, you must **include references** to relevant statutory provisions (legislation name and, where possible, section numbers) and case names.

WHAT NOT TO DO:

When answering questions, either for a tutorial or for the assignment or in an exam, DO NOT:

- restate the facts of a question;
- copy your notes, the text etc without explaining their relevance;
- make emotional statements;
- provide non-legal material (instead make sure you include the “relevant” law);
- address issues that are not raised in the question asked;
- provide a conclusion which is not supported by legal argument;
- forget to provide references where required (in other words, do not plagiarize)

FINALLY, ALWAYS REVIEW YOUR ANSWERS!

Once you have written your answer, you should review it carefully in order to avoid being penalised.

Appropriate expression, tone and formatting are important to legal writing. Use plain English and not slang or text language. Prior to printing out your assignment for the last time, read it carefully, and then read it out aloud to ensure it flows and makes sense. A proper review includes careful checking of the:

- spelling, grammar & formatting;
- argument flow (including structure and coherency);
- bibliography; and
- footnotes.

NOTE: THERE ARE NO TUTORIALS IN WEEK 1

Tutorial 1 (Week 2 of 1 August)

Introduction: The Role of Law in Business (Lecture 1)

Key learning outcomes from Lecture 1:

- The legal effect of English settlement in 1788
- How laws are classified
- The different meanings of the terms “common law” and “civil law”
- What happens if there is a conflict between common law and statute law
- What is a ‘federal’ system of government and how this operates in Australia
- The doctrine of “separation of powers” and division of power under the Commonwealth Constitution

Tutorial Questions

1. Australia was originally governed from London. Can the British Parliament still pass laws that apply to Australia?
2. Briefly explain the distinction between “enacted” and “unenacted” law.
3. What does the term “common law” mean?
4. If there is a conflict between common law and statute law which law prevails?
5. Explain the doctrine of separation of powers.
6. What are the key steps involved in making a law?

Self-Management Exercise

Students should take time this week to check out the **“Self-management and Improving Your Approach to Learning”** section on **Moodle**.

In particular, students might find it useful to reflect on the following two questions:

1. What are your top 3 goals for this semester, including one for TABL1710, and how will you go about achieving them?
2. How will you manage your time this semester? As you think about this question, you should map out your assessments across all your courses this semester and note:
 - what is due and when;
 - what other activities are you engaged in at UNSW and outside UNSW;

- how will you achieve a healthy work/study/life balance?
3. You may wish to draw up a plan to organise your study schedule for the semester. The Assessment and Time-Management resources on the Self-management section of Moodle might be helpful to you.

Key learning outcomes from Lecture 2:

- How is a law made in the Parliament
- The court system in Australia and what is an appellate court
- Ways of resolving disputes outside of the court system (ie alternate dispute resolution)
- What the doctrine of precedent is
- How courts interpret laws or statutes
- How to solve legal problems
- An introduction to legal research

Next Week: CLOSED BOOK In-Class Quiz

Next week's In-Class Quiz is based on lecture topics 1 and 2. The aim of the Quiz is to assess students on the materials covered those lectures. The Quiz will comprise of 5 multiple questions, each worth 1 mark (total: 5 marks) and will take 10 minutes at the beginning of class.

THIS IS A CLOSED BOOK EXERCISE. Students will NOT be allowed to refer to any materials. Students will also NOT be allowed to discuss their answers with their peers. All students must prepare before coming to class by revising lecture and tutorial materials. Appropriate arrangements must be made with your tutor if you are not able to attend the class, otherwise you will lose 10 marks.

Tutorial Questions

Problem 1: Statutory interpretation

You are trying to work out if 'scissors' are a 'weapon' with the meaning of the *Weapons Act 1990* (Qld). That Act states:

'Weapon' means:

- (a) a firearm; or
- (b) another thing prescribed under regulation.'

Scissors are not a firearm. You check the regulations and find that scissors are not listed.

However, the principles and object section deals with ensuring public and individual safety through restricting possession of weapons and requiring safe and secure storage of weapons to prevent their misuse.

How can you be sure that scissors will not be considered as a 'weapon' within the meaning of the legislation?

Problem 2: Parts of a case and how to read a case

FISCHER v STUART (1979) 25 ALR 336

SUPREME COURT OF THE NORTHERN TERRITORY

Forster CJ

25, 26 June 1979, 25 July 1979

Darwin

Animals — Liability for — Ferae naturae — Dingo — Canis familiaris dingo — Whether ferae naturae or mansuetae naturae — Onus of proof — Damages for personal injury

The plaintiff was attacked and injured by a young dingo bitch kept by the defendant. The animal had escaped from the collar and chain securing it and had attacked the plaintiff on open land near the defendant's premises, which were unfenced.

The dingo, *canis familiaris dingo*, is a sub-species of the species dog, *canis familiaris*.

Held: (i) The onus of proving that wild animals of a particular class are not dangerous to man rests upon the party asserting that they are not.

(ii) The evidence established that dingo is an animal *ferae naturae*.

(iii) The plaintiff would be awarded \$5000 general damages and \$110.24 special damages.

Action: This was an action for damages for personal injury suffered by the plaintiff when she was attacked by a dingo kept by the defendant. The facts and nature of the proceedings appear sufficiently from the judgment of Forster CJ.

J B Waters, for the plaintiff.

J Harrison, for the defendant.

Forster CJ.

The plaintiff, then a child aged four years, was attacked and to some extent savaged by a young dingo bitch, towards which the defendant acted in all respects as an owner. The dog had escaped from the chain and collar which secured it under the defendant's unfenced house and the attack took place on some open land referred to as an easement near to the defendant's house where the plaintiff was playing. The dingo had come into the possession of the defendant when it was four to six weeks old, its mother

having been killed and the puppy having been found in the bush. The dingo was kept by the plaintiff in and about an ordinary suburban house in Sanderson, a suburb of Darwin, which house, as I have said, was unfenced. The house where the plaintiff lived was nearby....

The plaintiff sues by her mother as next friend for damages in respect of the injuries suffered by her in the attack by the dingo and the other consequences of the attack. The claim is put upon a number of alternate bases. First, on the basis of simple negligence. Secondly, on the basis that a dingo is an animal *ferae naturae* and is also a dangerous animal to the bringing on to land of which absolute liability attaches and thirdly, pursuant to s 29 of the *Registration of Dogs Ordinance*. In view of the conclusion to which I have come on the second basis it is unnecessary to decide the questions of simple negligence and the provisions of the *Registration of Dogs Ordinance*, but it is my view that the claim based on negligence is not made out, and also that s 29 of the *Registration of Dogs Ordinance* has no application in the present circumstances as it does not create a liability, but simply provides that if a dog does damage in circumstances that attract liability to its owner then damages may be recovered in certain ways.

Is the dingo an animal *ferae naturae* which should be regarded as inherently dangerous to man? Dr Begg, the biologist, Mr Williams, the head ranger at the Yarrawonga Wild Life Park, Mr Stephens, the Wild Life Control Officer and Mr Lindner, a well-known Northern Territory wild life ranger, and indeed the defendant herself, are unanimous that the dingo is a wild animal. Mrs Padgham-Purich regards the dingo as simply another breed of dog requiring no more special treatment than some other breeds of dog require and she does not agree without considerable qualification that the dingo is a wild animal. The dingo is a sub-species of the species dog, *canis familiaris* — *canis familiaris* dingo and the evidence satisfies me that it is capable of a degree of domestication. I note that the Oxford English Dictionary defines “dingo” as “the wild or semi-domesticated dog of Australia”.

The test to be used for classifying animals for the purposes of defining the liability of the person who owns or keeps or harbours them, is whether the animal is of a class which constitutes a special danger to mankind...

What is the evidence with respect to the dingo? It is plainly regarded as being dangerous to stock. There are dog-proof fences and a bounty paid on scalps of dingoes. The evidence as to danger to man is not unanimous...

With great respect to Mrs Padgham-Purich, I find that although dingoes are capable of being tamed and can be in many respects attractive, intelligent dogs to own, they must always be treated with extreme care and suspicion and are prone for no apparent reason to attack the humans with whom they are associated.

If, as I have said, the onus is upon the defendant to satisfy me on the balance of probabilities that the dingo, which is plainly a wild animal, is not dangerous to man, she has failed to discharge that onus. On the contrary I am satisfied that the dingo is by its nature notwithstanding Mrs Padgham-Purich's skill and experience, inherently dangerous to man.

This finding really concludes the question of liability in favour of the plaintiff:...

The dingo was secured by a chain and collar, the latter of which proved to be inadequate. In view of the absolute liability which I have found to exist the plaintiff is entitled to succeed ... taking everything into account, the appropriate sum for general damages is \$5000. Special damages have been agreed at \$110.24 and there will be judgment for the plaintiff in the sum of \$5110.24 with costs to be taxed. I will hear counsel as to the form of an order for the payment of the judgment moneys.

Solicitors for the plaintiff: Waters, James & O'Neil.

Solicitor for the defendant: David Winter.

Please answer the following questions in relation to the case:

1. What is the full case citation?
2. What are the names of the plaintiff/defendant?
3. In which court was this case decided and and what was the name of the judge?
4. What is the case about – give a brief summary of facts.
5. What are the legal issues raised in this case?
6. What happened in this case: what is the decision/reasons for the decision?

Self-Management Exercise

1. Check out the Self-Management section on Moodle.
2. This week, reflect on what you think are the most important principles of time management? What are you using to manage your time? (eg: hard-copy diary, Google calendars, or something else, and if so, what?)
3. How do you think you will manage your time in the coming week to prepare for any assessments? For example, think about how you plan to prepare for next week's In-Class Quiz? How much time will you set aside for this assessment and when will you prepare for it?

Tutorial 3 (Week 4 of 15 August)

In-Class Quiz This Week
(Closed Book)

Introduction to Law of Contracts (Lecture 3)

Key learning outcomes from Lecture 3:

- Role of contract law in business
- Formation of contracts
- Concept of a binding contract
- Need for offer and acceptance; consideration.

CLOSED BOOK IN-CLASS QUIZ

This week, the closed book in-class quiz will be held in all tutorial classes. This multiple choice assessment will be worth 5 marks and will take 10 minutes at the beginning of class. Students must liaise with their individual tutors if they miss the class/exercise

Tutorial Problem Questions

Problem 1

A writes to B to sell his stamp collection to B. B, who has stopped saving stamps, gives A's letter to another collector C, and C writes a letter of acceptance to A. **Is there now a contract between A and C?**

Problem 2

Offeror wrote to offeree offering to buy offeree's car for \$1,999 adding: *"If I hear no more about it, I consider the car mine at that price."* Offeree did not reply to this letter although it appeared from later dealings that offeree had decided to accept. **Is there a contract?**

Problem 3

Brunhilda loses Fifi, her rare and often threatened French poodle. The poodle is found hunting rats in a sewer by a council worker and is returned with a pair of tongs. Brunhilda, who has no sense of smell, is overjoyed, and promises to pay the council worker \$50 for the return of the dog. **Can the council worker enforce the promise?**

Problem 4

On 1 March, Adele offered to sell Abdul her weekend cottage in the Blue Mountains for \$320,000. Adele said that she would require the use of the house until at least 1 June but she was sure that they could come to a mutually suitable arrangement about the date of handing over possession.

On 7 March Abdul rang Adele to say he would be delighted to buy the house on those terms except that he considered \$320,000 to be rather high. He would consider the matter further but if Adele would accept \$300,000 without further negotiation, then they had a deal.

On 9 March Adele informed Abdul that she had decided to withdraw the cottage from the market.

On 10 March Abdul heard from several sources that an oil tycoon from Kuwait was interested in buying the house for \$400,000.

On 11 March Abdul phoned Adele to ask if the house is still available at \$320,000. Adele told Abdul that she would now not accept anything less than \$400,000 for the house. Abdul said he was happy to go ahead with the deal but would need to borrow money for the purchase. Adele agrees with the arrangement, subject to Abdul sorting out his finances.

Two weeks later, Abdul's application to EzyMoney Bank for a loan for the purchase price is rejected and Abdul is not able to proceed with the purchase.

You are asked to advise Adele and Abdul as to their contractual rights, if any.

NOTE: In your answers, please include references to any cases you have studied in lectures.

Key learning outcomes from Lecture 4:

- Is there 'intention' to enter into a contract
- Terms of the contract
- Whether a contract is in existence
- Principles of construction and determining the scope of the contract: representations vs terms; incorporation of terms; implied terms; collateral contracts; uncertain terms; exclusion clauses

How to answer a legal problem question

Overview of FIVE STEP PLAN by tutor (see pp 5-8 of Tutorial Program)

Tutorial Problem Question

Richard was in the third year of an arts degree, and was finding his social life limited by his very limited financial means. He complained of this to his parents one weekend, hoping that they would give him an allowance. He continued on that theme for the whole weekend, until his father, Bill, eventually grew sick of it. Bill said that his brother Fred owed him a favour, because Bill had once helped him out with the milking for a month while Fred was in hospital. He said that Fred might be able to employ Richard on the farm. He said, finally, that if Fred couldn't help he would give him some money himself.

Bill contacted Fred and said: "Fred, you know that favour you owe me? Now I need something in return. I have a boy here anxious to earn some money. Will you employ him?"

Fred happened, at that time, to need some labour, so he agreed to employ Richard on weekends and semester breaks.

Bill then continued: "And Fred I need something else. I'm going to be hauling some rubbish away over the next few weeks and I need your truck. When can I pick it up?"

Fred replied that the truck would be available from Tuesday 4 July 2010.

However, when Bill went to pick up the truck Fred refused to give it to him, saying that he needed it. Bill was furious, and since he had already paid a fair bit of money over to contractors, relying on the fact that he would have the truck, he was out of pocket as well. He threatened to sue Fred, saying that they had a contract.

Richard started working on the farm, milking every weekend and doing general fencing, hay carting and pasture maintenance work during the semester breaks. However, after three

months of work he still had not been paid. He asked Fred for the money and Fred said that, since they were family, he didn't owe him anything.

Richard now wants his father to pay him, saying that he had promised to do so if Fred couldn't help.

Discuss by reference to the common law of contract whether:

1. Bill is contractually entitled to the use of the truck
2. Richard is contractually entitled to be paid by Fred
3. Richard is contractually entitled to be paid by Bill

Self-Management Exercise

1. Check out the Self-Management section on Moodle.
2. Take some time to think about how you did in the In-Class Quiz in week 4. Ask yourself the following questions:
 - Did you do as well as you had hoped? (If not, what do you think were the possible reasons?)
 - What steps do you plan to take today/this week/before Week 13, to help improve your performance in future assessments in this course?

Key learning outcomes from Lecture 5:

- Vitiating elements: mistake; misrepresentation; illegality; inequality between the parties

How to approach the Major Assignment: Overview by tutor

NOTE: ONLINE SUBMISSION ONLY VIA TURNITIN (see Moodle). You can review your plagiarism score, amend and resubmit as required but the FINAL VERSION of your assignment is due **Monday 19 September by 5pm**.

Tutorial Problem Questions

Problem 1

Howard stopped his car at the barrier entrance to a car park and an automatic ticket machine pushed out a ticket. There was a large notice attached to the barrier which read:

*'HALT! Parking at Owner's Risk.
Take Ticket from Machine.
Pay when Leaving.'*

Howard put the ticket in his pocket without looking at it and the barrier went up automatically. Howard drove into the car park and parked his car. When he returned to go home, he found it flattened beneath a large concrete pipe which had fallen from a crane owned by the parking station proprietors working on an adjacent building.

The parking ticket had the following notice printed on it:

'CONDITIONS OF PARKING

It is a condition of the issue of this ticket that vehicles are parked on these premises at the owner's risk and responsibility. The proprietors of this car park accept no responsibility for loss or damage to vehicles in the parking area whether caused by negligence or in any manner whatsoever.'

Discuss the enforceability of the notice in relation to the common law of contract.

Problem 2

Globalised Developers Ltd purchased an old timber yard from Woodpac Industries at Pymont for the purpose of constructing a 25-storey high rise residential development. After settlement, a team of civil engineers carried out tests on the land, and found that it is incapable of supporting more than a 3-storey building. The cost of making the land suitable

to support the development is \$7 million. The contract of sale does not address this issue, but Globalised Developers allege that Woodpac is obliged under implied terms of the contract, to pay for the additional cost.

Discuss whether Woodpac could have any such obligation.

Key learning outcomes from Lecture 6:

- Termination of the contract
- Remedies available for contractual breaches
- Issues relating to employment contracts

Tutorial Problem Questions

Problem 1

Caterer Pty Ltd, which had just taken over a small catering business, contracted with Repairer Pty Ltd to repair and overhaul, for a charge of \$1,500, three large commercial ovens belonging to Caterer. Caterer pointed out to Repairer Pty Ltd that the ovens were required by the following Friday because Caterer had contracted to cater over the weekend at four separate functions for a fee of \$1,000 per function. If successful, these contracts would ensure the future of Caterer. The contract with Repairer Pty Ltd provided that \$1,000 would automatically become payable to Caterer if the ovens were not repaired and returned to Caterer on time.

Repairer Pty Ltd completed the repair work on all three ovens before the due date, and two of the ovens were in fact delivered to Caterer on the Thursday evening. The third oven, however, was damaged in transit, due to the recklessness (involving breaches of the road traffic laws) of independent carriers engaged by Repairer. As a result, the third oven was rendered unfit for use. Further repairs could not be carried out on the damaged oven in time for its delivery by the Friday because of strike action that day by workers at the Repairer workshop. As a result, Caterer was able to fulfil only two-thirds of its catering contracts, and this led to the cancellation of other contracts worth about \$5,000.

1. Is Repairer Pty Ltd liable for the financial loss of Caterer?

2. If so, what remedies are appropriate?

Problem 2:

Horizon Property Ltd agreed to lease three floors of office space in its multi-storey office block to Microsystems Computers Ltd.

During negotiations, Microsystems wanted 25 free car-parking spaces in the building's underground carpark to be included in the lease, but Horizon agreed to include only 10 car spaces.

When the written lease was received by the directors of Microsystems for execution, the 25 car spaces had been included in the written lease.

Soon after Microsystems signed the lease, the error was discovered by Horizon, who demanded that Microsystems immediately surrender the existing lease and enter a new lease showing the correct number of car spaces. Microsystems has refused and is allowing its staff to occupy the additional car spaces.

1. Advise Horizon Property Ltd what rights, if any, they have.

2. Would your answer be any different if the issue of parking spaces had not been discussed during the negotiations?

Self-Management Exercise

1. Check out the Self-Management section on Moodle.
2. Discuss with 1 or 2 people next to you, how you plan to approach the Major Assignment. For example, you might consider:
 - How much time you will spend on this assessment task (as compared with other assessments you are working on for other courses)?
 - How much time you will devote to researching the issues in this assessment?
 - How long you will spend writing (i.e. include time you plan to spend planning/structuring/drafting your answer) and finalising your answer?

You are encouraged to use the resources on Moodle to help you approach this assessment task.

**Tutorial 7
(Week 8 of 12 September)**

(1-hour Tutor Consultation Week)

**Property Law
(Lecture 7)**

Key learning outcomes from Lecture 7:

- The difference between a joint tenancy and a tenancy in common
- The meaning of Real Property/Personal Property/Intellectual Property/a Chose in Action
- How real property under Torrens Title is transferred
- The difference between a mortgage and a charge
- The different types of intellectual property
- The preconditions necessary for a work to be protected by copyright
- How a company can protect its confidential information

REMINDER: MAJOR ASSIGNMENT IS DUE ON MONDAY 19 September by 5pm

This Assignment is to be **submitted online only** – via Turnitin (see Moodle)

Tutorial Question

Jack and Jill, a middle aged married couple, are registered as co-owners of their freestanding family home in Kensington. The property is held under Torrens Title and they are registered as joint tenants. They have paid off the loan they had taken out from the Eastpac Bank to purchase the property, which is now worth over one million dollars.

The marriage is going through a difficult time, and Jack recently became friends with a single woman living in the USA through an online dating service. He has decided to travel to the US by himself to meet his new friend and start a new life, taking as much money as possible with him. Having very little cash in the bank, Jack successfully applied to Eastpac bank for a new loan of \$500,000, with a mortgage over his house as security. The bank manager told Jack he and Jill would need to attend his office to sign a mortgage agreement, but Jack made up a story that Jill was unable to come to the bank to sign personally due to illness. As a long term reliable customer, the manager allowed Jack to take the documents home for his wife Jill to sign. Without telling Jill about the loan, Jack forged his wife's signature on the mortgage document. The bank accepted the signed mortgage not knowing Jill's signature was forged, and registered it at the Land Titles Office.

Taking the \$500,000 with him, Jack disappeared to the USA, never to return, and made no repayments of the loan. When the loan defaulted, the bank followed the usual procedure and exercised its power of sale over the property to recover the outstanding loan. It sold the property at auction to Mr. Chan, who became registered owner of the land.

Jill has had to vacate the property, but knew nothing about the loan to Jack. She claims the mortgage to the Eastpac bank is void because her signature was forged. She claims she still legally owns the house and should not have to suffer due to Jack's dishonesty.

Mr. Chan says he is entitled remain owner as he legally bought the property at the auction, and knew nothing about the forged mortgage.

Advise Jill and Mr Chan as to their legal position under the Torrens Title system.

**Tutorial 8
(Week 9 of 19 September)**

**MAJOR ASSIGNMENT
DUE BY 5PM ON 19 SEPTEMBER
ONLINE SUBMISSION
VIA TURNITIN**

**Consumer Law
(Lecture 8)**

Key learning outcomes from Lecture 8:

- The Australian Consumer Law (found at Sch 2, *Competition and Consumer Act 2010* (Cth))
- Misleading or deceptive conduct under s 18 of the Australian Consumer Law
- False representations under s 29 of the Australian Consumer Law
- Unconscionable conduct under ss 20, 21 and 22 of the Australian Consumer Law
- Defences and remedies available under the Australian Consumer Law

For this tutorial students are asked to refer to the ACCC's ONLINE TERTIARY EDUCATION

MODULES AT: <http://www.ccaeducationprograms.org/?page=tertiarystudents>

(Also see link on Moodle)

Tutorial Questions

Short answer questions

1. What is misleading or deceptive conduct and what section of the Australian Consumer Law deals with this type of conduct? (See Module 6 and Module 7 under ACCC Online Tutorials on TABL 1710 Moodle.)
2. To whom does this law apply? To whom does this law not apply? (See Module 6 and Module 7 under ACCC Online Tutorials on TABL 1710 Moodle.)
3. Identify four principles that may be considered when determining if conduct is misleading or deceptive? (See Module 7 under ACCC Online Tutorials on TABL 1710 Moodle.)
4. Give two examples of advertisements that were held to be misleading or deceptive. (See Module 7 or Module 11 under ACCC Online Tutorials on TABL 1710 Moodle.)
5. In addition to the general prohibition of misleading or deceptive conduct, the Australian Consumer Law prohibits a large number of specific false or misleading representations. Please provide three examples of conduct that might constitute a false or misleading representation. (See Module 8 under ACCC Online Tutorials on TABL 1710 Moodle.)
6. What are the consequences of engaging in misleading or deceptive conduct or in making a false or misleading representation? (See Module 7, Module 8 and Module 11 under ACCC Online Tutorials on TABL 1710 Moodle.)

Problem question

Randy inherited a collection of early Australian paintings from his rich uncle Archibald. Randy supports himself by his winnings from poker machines and other forms of gambling. When he is short of cash he usually sells off a painting from his inheritance. In the past two years he has sold 10 works of art. Bettina is keen to purchase one of the paintings in Randy's collection, but wants to have it authenticated first as a genuine work of the famous Australian artist, Norman Lindsay. Randy agrees to have this done. The expert who examines the painting is not prepared to acknowledge that it is the actual work of Norman Lindsay, but is confident that it is most likely the work of one of the Lindsays from the same artistic family. He communicates this conclusion to Randy. Before she decides to make the purchase Bettina rings up Randy on the telephone and enquires, "Are you sure that it is actually the work of Norman Lindsay?" Randy replies, "The expert is confident it is a genuine Lindsay."

Bettina purchases the painting and sometime later it is authoritatively established that it is not a genuine work by the famous Australian artist Norman Lindsay, but that of his lesser-known cousin, Larry Lindsay, who imitates Norman Lindsay's style.

Identify whether Bettina is able to obtain any remedy for misleading or deceptive conduct.

**NOTE: UNSW MID-SEMESTER BREAK
FROM 24 SEPTEMBER TO 2 OCTOBER INCLUSIVE**

Key learning outcomes from Lecture 9:

- What are the key provisions of Part IV of the *Competition and Consumer Act 2010* (Cth)
- What anti-competitive conduct can be authorised
- The enforcement powers of the ACCC
- What remedies and defences are available under the *Competition and Consumer Act 2010* (Cth)

Tutorial Questions

1. A manufacturer refuses to supply a retailer for two reasons:
 - a. The retailer insists on buying from other manufacturers; and
 - b. The retailer is located in an unfashionable part of a shopping centre and has poor retail facilities.

Do either of these refusals to supply breach the provisions of Part IV of the *Competition and Consumer Act 2010* (Cth) ('the Act')?

2. A retailer has 45% of the retail biscuit market. Can the retailer acquire a competitor that has another 15% of the cake market?
3. A publisher distributes a textbook to book retailers on condition that the retail price is no less than \$35. Is this resale price maintenance? Why?
4. Amed says he will only sell his 4WD Audi to Tom if Tom obtains all his finance for his purchase from The Money Lenders. What section of Part IV of the Act does this breach, if any?
5. Matt and Steven run competing travel agencies in Adelaide. At a recent industry function, they discussed how difficult it is to operate on the low margins that exist in the travel industry. Matt and Steven agree to stop offering free travel insurance to customers who spend more than \$3,000 on flights and accommodation. Have Matt and Steven committed an offence under the Act?
6. The owners of two competing restaurants, each of which can seat 50 customers, decide to close down their restaurants and, in partnership, open a new restaurant they believe will be more profitable. The proposed restaurant will only be able to accommodate 75 customers. Have the restaurateurs breached the law against output restrictions?

7. What three questions will the courts consider to determine if there has been a misuse of market power?
8. Explain what is meant by 'authorisation' and when might an authorisation be approved by the ACCC? How does an 'authorisation' differ from a 'notification'?

Key learning outcomes from Lecture 10:

- Some of the different types of torts and some areas of business where tort law may be relevant
- How the law of contract and the law of torts interact
- What is the “duty of care” and to whom is it owed?
- What is the test for causation?
- Some of the defences to torts
- Relevant statutory provisions of the *Civil Liability Act 2002* (NSW)

Tutorial Problem Question

Highlift Pty Ltd (Highlift) owns an industrial crane. Highlift employs two crane operators, Adam and Osman, who each work 4-hour shifts.

In May 2013, the owner/builder of a new apartment block hires Highlift’s crane and operators for two weeks to lift building materials to the upper floors of their building. At the end of the first shift on the 10 May, Adam notifies the manager of Highlift that the crane is not performing properly and that it needs to be looked at. The manager contacts the company who does repairs and maintenance work on the crane, EFL Engineering, and asks for an engineer to be sent out immediately. EFL says that no one is available for two hours. The manager of Highlift decides to allow Osman to begin his shift before the engineer arrives to do his inspection since to stop work will delay construction.

Osman is halfway through hoisting his first load of bricks when a cable in the crane snaps and part of the heavy load drops to the ground. One of the bricks hits, Matthew, one of the construction workers on site. Matthew suffers serious head injuries. Medical report shows that Matthew’s head injuries would have been less severe if he was wearing the compulsory safety helmet. Safety helmets were provided to all construction workers.

Osman is deeply traumatised by these events and cannot bring himself to drive a crane again. After a period of six months without employment, during which he receives psychiatric treatment, Osman takes lower paid work as a general construction worker.

A subsequent inspection of the crane finds that the fault in the cable would have been discovered if an engineer had inspected the crane after Adam’s shift had ended. To replace this cable would have taken six hours.

Consider whether Matthew and Osman may have any rights to claim compensation against Highlift under the laws of negligence in NSW. Please consider and apply any relevant statutory provisions of the *Civil Liability Act 2002* (NSW) and any relevant decisions you have studied in lectures.

**Tutorial 11
(Week 12 of 17 October)**

(1-hour Tutor Consultation Week)

**Tort Law: Professional Negligence and
Pure Economic Loss
(Lecture 11)**

Key learning outcomes from Lecture 11:

- The essential elements of negligent misstatement
- How the test for negligent misstatement relates to the test for negligence resulting in personal injury
- Why courts are reluctant to make awards for pure economic loss
- How the *Civil Liability Act 2002* (NSW) applies to professional negligence
- What an accounting firm can do to reduce the risk of liability for negligence

Tutorial Problem Question

Linda is employed by Wong and Wright, a large accounting firm which specialises in auditing. Linda is a recent accounting graduate and in her first year of employment. She is supervised by Stanley Wong who is a senior partner in the firm. Stanley instructs Linda that all audits and letters prepared by Linda are to be approved and signed by him.

Stanley goes on an overseas holiday. He leaves it to Sue Wright, another senior partner, to supervise Linda while Stanley is away and informs Linda that she must submit all her work to Sue for approval.

Urbanite Developments Ltd (Urbanite) is a public company which builds large home unit complexes in the outer areas of Sydney. Kevin Urban, the managing director of the company, asks Wong and Wright to audit the company's accounts for the 2010-2011 financial year. Linda is working on this audit under the supervision of Sue, in Stanley's absence. Linda learns that the company is about to start a development in the lower Blue Mountains but fails to find out that the company has incurred a large unsecured debt to finance the project. She provides a report to Sue that the accounts of the company are in order and Sue, being too busy to look after her own work as well as Stanley's, certifies that Urbanite is profitable.

Kevin Urban arranges and publishes a prospectus advising of the proposed Blue Mountains development and inviting investors to take up shares in Urbanite. He includes the audited report of Wong and Wright in the prospectus.

Linda sends a letter to her friend, Evan, suggesting that Evan buy shares in Urbanite. She encloses the prospectus with the letter. Linda knows that Evan has recently received \$300,000, a large payment for a workers' compensation claim, and will need the proceeds to live on for the next five years until he recovers from his injury. The letter is on Wong and Wright letterhead and signed by Linda on behalf of Sue Wright. Linda does not refer the letter to Sue as she believes it to be a personal matter. Evan was already considering investing the \$300,000 in Urbanite and after receiving the letter, he went ahead with that

investment.

Gabby, while sitting in her dentist's waiting room, reads the prospectus amongst the magazines and other reading material, and decides to invest \$500,000 in Urbanite shares. She has recently sold her house and would prefer to invest the money in shares rather than buy another house. One of the reasons for choosing Urbanite shares is that the auditor's report, included in the prospectus, is by Wong and Wright, an auditing firm which Gabby believes to have a sound reputation.

The local council does not approve the development in the Blue Mountains and Urbanite is unable to repay the large unsecured loan it had taken out in order to finance the project. The company is wound up with no money to pay its investors. Both Evan and Gabby lose their investments.

Advise Evan and Gabby about any claims they may have against Wong and Wright in tort, with reference to both the common law and the *Civil Liability Act 2002* (NSW).

Self- Management Exercise

1. Check out the Self-management section on Moodle, particularly in relation to **Exam Anxiety**.
2. Take no more than 5 minutes to discuss with the one or two people next to you, HOW you plan to prepare for the final examination in this course. In particular, you should discuss:
 - what strategies you will use to draw up, and keep to, a study plan;
 - what topics you need to focus on;
 - how much time you will allocate to each topic, and what aspects of each topic you might focus on;
 - if you would like to form a study group or if you prefer to study alone.

During your discussion, consider what other assessments and exams you have and how you will manage your study for this course together with your other study and assessment commitments.

**Tutorial 12
(Week 13 of 24 October)**

(1-hour Tutor Consultation Week)

**Business structures & revision
(Lecture 12)**

DON'T MISS IT!

Tutorial “Short Answer” Questions

1. What are the main advantages of a company compared to a sole trader and a partnership.
2. Juliet and Elroy want to go into business together. Neither of them has any experience in business, so they want to keep the administration as simple and as confidential as possible. They are confident they will be successful and will eventually need much more capital for expansion. Briefly advise them as to the most suitable business entity for their situation.
3. What is the main advantage of operating a business as a trust?
4. Identify one significant difference between a proprietary company and a public company.

NOTE: PART OF THIS CLASS WILL BE SPENT ON REVISION FOR THE FINAL EXAM

Self-Management Exercise

1. Check out the Self-Management section on Moodle.
2. Reflect on how you have done in the Major Assessment for this course.
 - Did you do as well as you had hoped? If not, what do you think the reasons were for this?
 - What would you do differently to help ensure that you improve your mark for the next assessment (ie: the final exam?). For example, how might you prepare differently and how might you organise your study time differently?
 - What are you going to do today/this week/over the study period, to ensure that you achieve the top 3 goals you set for yourself at the start of the semester? Have those goals stayed the same or have they changed since the first tutorial?