



UNIVERSITY OF TASMANIA

Business Law

BFA706

Semester Two, 2004

Hobart

Lecturer-in-charge

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UNIT OUTLINE

SCHOOL OF ACCOUNTING & FINANCE

CRICOS Provider Code 00586B

1. Unit Summary

Unit code	BFA706
Unit title	Business Law
Unit description	BFA706 covers a wide range of interesting legal topics and teaches students how to analyse and solve legal problems which is essential to those wishing to work in the Accounting Profession. The subject is a necessary foundation for subjects such as Corporate Law and Regulation and Australian Taxation Law. Topics include; how law develops and changes; the sources of law in Australia; how to read and understand legislation and decided cases; the nature and purpose of contract law; the essential components in a contract, how to analyse and understand the terms contained in contracts; how contracts are enforced if there is a breach of contract; circumstances in which contracts might be avoided; liability in tort law for injury or loss caused to other people or their property; and liability for false representations; agency and consumer law.
Teaching staff	Lecturer-in-charge: Simone Bingham If you would like to know more about Simone see:- http://fcms.its.utas.edu.au/commerce/acccfin/pagedetails.asp?lpersonId=1587
Campus & mode	Hobart, Semester 2
Unit weight	12.5%
Teaching pattern	Flexible (13 weeks)
Prerequisite	Not applicable
Assessment	Continuous assessment (40%) , exam (60%)
Required text*	Latimer, P. 2004, <i>Australian Business Law</i> , 23 rd ed, CCH Australia Ltd, Sydney.
Recommended reading	Fleet, W et al, 2004, Communication Skills Handbook for Accounting, Wiley, Milton. To assist students seeking a less detailed explanation of the law covered in the unit, additional to (not a substitute for) Latimer, the following additional text is also available from the University Co-op Bookshop: Sweeney, B. & O'Reilly, J. 2004, Law in Commerce, 2nd ed, LexisNexis Butterworths, Chatswood.
Faculty Guide for Students	The Guide provides useful information in connection with your study in this Unit and the Faculty and you are REQUIRED to print off a copy and keep it as a permanent reference for this and other units. It is available online at: http://www.utas.edu.au/acccfin/documents/general/FacStudGuide2002.pdf
List of Cases	A list of cases cited in lectures and necessary for the examination will be made available on WebCT at the end of the Semester. The List of Cases will help you with your preparation for the final examination and you can take it into the examination with you (see below).
Courses	C5B , C6B , C7B , C7D
Faculty web site	http://www.utas.edu.au/commerce

2. Learning Outcomes

By the end of this unit you should be able to: -

1. recognise, within the context of the Australian legal system, the various sources of law, the role of Parliament in creating law and the role of the Court in creating and applying both criminal and civil law;
2. know what is meant by a legal contract and identify its essential components and how a contract can be ended and the remedies available for breach of contract;
3. locate and identify legislation that provides consumers with protection when purchasing goods and services from both individuals and corporations;
4. recognise the role of agents and agency law in the context of business law;
5. explain the legal concept of 'negligence' and its role in providing protection to consumers;
6. access up to date legislation and case law, at both a state and federal level in order to identify what law applies to a particular set of facts or circumstances;
7. identify various business structures, such as sole traders, partnerships and companies; and
8. apply your legal knowledge to a factual situation in order to provide possible solutions to a legal issue.

3. Generic Graduate attributes

So that you are prepared for employment and for life-long learning, all graduates of the University of Tasmania need to develop a variety of generic attributes. The learning outcomes identified above will contribute to you developing a number of these attributes. For example:

- Each of the learning outcomes will ensure that you have taken the first steps in acquiring the **knowledge** that is needed to understand the business law that will be useful to you as a member of the accounting profession. Knowledge in this context includes not only understanding concepts and principles relevant to the practice of accounting, but also to knowing how to access law that will be relevant to that practice. Learning outcome 6 will especially require you to demonstrate this attribute.
- Learning outcomes 1,2,3,4 and 5 will require you to demonstrate written **communication skills**
- Learning outcomes 7 and 8, will require you to demonstrate **problem-solving skills**. In formulating solutions to the problems that you will be given, you will have to apply the law you have accessed, then think logically and use information in an effective and efficient way.

4. Details of teaching arrangements

The unit has been arranged around the following schedule:

- (a) 13 three-hour *contact sessions* with your lecturer; and
- (b) approximately 9-12 hours spent on *independent study* each week.

The time allocated for each of the learning activities gives an indication of the relative importance of contact time and private study. This is in keeping with the reflective approach to teaching and learning which emphasises independent learning through private study. An approximate allocation of your private study could be:

Reading before lecture	2 - 3 hours
Consolidating materials after lecture	3 - 4 hours
Preparing for tutorials/workshops and assignments	4 - 5 hours

Put differently, it is not enough just going to lectures and tutorials and memorising whatever is presented. You must read the relevant chapters of the prescribed texts, probably several times. Refer to the additional text listed as '*Recommended*' above if you have difficulty understanding any parts of Latimer's text or if you are completing an assignment. Ask questions of your tutor and discuss topics with fellow students when appropriate, noting the very strict rules regarding plagiarism (see below).

The *contact sessions* are made up of lectures and tutorials. In nearly all teaching weeks of the Semester there will be a **two (2) hour Lecture** and a **one (1) hour Tutorial**. The only two exceptions are week 1 when there is a lecture only and week 8, which is the independent study week where there is no lecture or tutorial.

(a) "*Lectures*"

Lectures will be used to introduce the various topics that we will cover in the unit. Section 5 of this Unit Outline gives you the weekly program of lecture topics. Powerpoint slides for the weekly lectures will be made available on WebCT (see later).

(b) "*Tutorials*"

These sessions provide you with an opportunity to discuss and ask questions about topics introduced in the previous week. They are designed to develop your skills in applying the legal knowledge you have gained from lectures and private study and being able to condense a large quantity of legal information into a manageable summary that provides the most important points without unnecessary detail. Come along to all tutorials prepared to answer questions from the lecturer and to ask questions of the students who will be presenting their Assignment 1 orally to the class (see later). Take every opportunity to interact with the presenter, other students and the tutor/lecturer. This will help you to gain confidence and understanding and develop important skills. The Tutorial Program will be discussed in detail shortly.

(c) Self-Study – Your Commitment

As stated earlier, most of your learning will be done independently and away from the lecture theatres. This is a feature of a reflective approach to learning and will be achieved through your reading and written work. Your attempts at the tutorial and assignment questions are the most important of all learning activities so you must allocate sufficient time to doing them. Answering the questions will help you to:

- develop your legal problem solving skills;
- discover where you have learning difficulties;
- keep up with the pace of lectures; and
- be prepared for the Tutorials, Assignments (2) and the Examination.

Complete the answers to the questions conscientiously so that we can both find out where your difficulties lie. Because these are learning activities, we expect you to make some mistakes but help from the academic staff should resolve many problems. Do not leave major areas of difficulty until the end of the semester. Ask your lecturer or tutor for help. Use WebCT (see later) to ask questions and get assistance.

Private study can be more effective if you work with a friend or informal study group. Your private study need not be a solitary experience, though when it comes to assignments, note the very strict rules regarding plagiarism (see below).

You are expected to *take responsibility for your own learning*. Information about the Faculty's philosophy on teaching and learning is set out in Part 2 of the Faculty's Guide for Students mentioned earlier. See:

<http://www.utas.edu.au/accfm/documents/general/FacStudGuide2002.pdf>

There is also the *University's Code of Conduct for Teaching and Learning* that is set out in the University Calendar and you should have a look at it. See:

<http://www.admin.utas.edu.au/handbooks/utashandbooks/rules/ctea.html>

(d) Self-Directed Learning Week

To help you develop your private study and research skills and get the most out of studying this Unit, a '*Self-Directed Learning Week*' has been set aside in Week 8 of Semester 1.

The objectives of this Week are as follows:

- Give you a topic that would otherwise be covered in lectures and tutorials and ask you to research and study it yourself, making use of the texts and other resources.
- Require you to revise the topics that have already been covered in lectures and tutorials in Weeks 2 -7.

Further general information about designated '*Self-Directed Learning Weeks*' can be found in Part 2.7 of the Faculty's Guide for Students (see above).

Absence from classes

If you miss any timetabled session, it is your responsibility to obtain any information that you have missed. Any important announcements made, for example, in relation to tests and the final examination, will be repeated on the unit's WebCT site.

5. Unit Schedule - BFA141 Semester 2, 2004

Week No.	Week Starts Monday	Text* Chapter	Topics
1	12/7	1-2	The Legal System and the Administration of Law: Sources of Law; Legal Procedure; The Federal System; Interpretation of Statutes; Doctrine of Precedent; Crime
2	19/7	5	The Law of Contract: Formation of the Contract; Intention to Create Legal Relations; Legal Capacity
3	26/7	5	The Law of Contract: Agreement; Offer and Acceptance
4	2/8	5	The Law of Contract: Consideration; Genuine Consent; Mistake; Misrepresentation
5	9/8	5 6	The Law of Contract: Undue Influence; Duress; Unconscionability; <i>Trade Practices Act</i> and <i>Fair Trading Act</i> provisions including misleading and deceptive conduct and unconscionability
6	16/8	5	The Law of Contract: Legality of Objects; Illegal and void contracts; Restraint of Trade
7	23/8	6	Contents of the Contract: Terms; Conditions; Warranties; Exemption Clauses
8	30/8 6/9	6	[MID SEMESTER BREAK 30 Aug – 5 Sept 2004] The End of the Contract: Discharge and Remedies. SELF-DIRECTED LEARNING WEEK. NO LECTURES. NO TUTORIALS
9	13/9	4	The Law of Torts: Negligence; Negligent Misstatement; Liability of Advisers; Accountants; Auditors
10	20/9	7	Consumer Law: <i>Trade Practices Act</i> ; <i>Fair Trading Act</i> ; <i>Sale of Goods Act</i>
11	27/9	11	Agency
12	4/10	9-10	Business Organisations – Weeks 12-13 Sole Trader; Partnership; Incorporated Company; Trust
13	11/10		Business Organisations – continued Examination Comment. SETL.

* **Note:** Chapter reference is to the prescribed text, Latimer, P. 2004, *Australian Business Law*, 23rd ed, CCH Australia Ltd Sydney.

6. Internet Websites and References (searching the net)

Some internet websites may be of use to you in your studies. However, please note that websites and their addresses are often dynamic and may be changed, updated or deleted on a regular basis often with little or no notice. Web resources are continually being developed. If you find additional web sites to those below useful, please forward details of the links to the Lecturer-in-Charge via WebCT or e-mail: Simone.Bingham@utas.edu.au.

The most authoritative website to access current (ie: consolidated) Commonwealth legislation is: <http://scaleplus.law.gov.au>

Tasmanian legislation may be accessed at: <http://www.thelaw.tas.gov.au>

Commonwealth and State legislation and some cases may also be accessed through the site provided by the Australian Legal Information Institute at:
<http://www.austlii.org/>

The National Library of Australia hosts a site named *Australian Law on the Internet* that includes, for example, an explanation of Australia's Legal System. See:
<http://www.nla.gov.au/oz/law.html>

The Morris Miller Library (MML) and Law Library in Hobart and the Launceston Library have many resources. Check the relevant library for more details. You may contact the library online at: <http://www.utas.edu.au/library/> . Some of the library services may require login addresses and passwords. Check with the library for these details.

Another useful site is the Australian Competition and Consumer Commission (ACCC) site at <http://www.accc.gov.au> It is particularly useful in relation to the *Trade Practices Act 1974* (Cth) and also has some helpful 'Links' to other sites, including Commonwealth and State Government sites such as, for example, *Tasmanian Consumer Affairs and Fair Trading*.

7. Guide to Study and the Use of WebCT

Your primary study materials include:

- Latimer, P. 2004, *Australian Business Law*, 23rd ed, CCH Australia Ltd, Sydney.
- Fleet, W., Summers, J. and Jones, B. 2004, *Communication Skills Handbook for Accounting*, John Wiley & Sons Australia, Milton.
- The recommended text and resources available through the University library system; and
- Other learning resources for the unit made available via WebCT.

What is WebCT?

WebCT (*Web Course Tools*) is a set of educational tools developed to facilitate effective study via the internet. It provides support materials for this unit as well as facilities that enable the student to interact with other students and the lecturer.

WebCT materials are available via: <http://webct.utas.edu.au:8900/>

WebCT offers a number of facilities located in 'Folders' that are named as follows:

1. *Unit Information Folder*

This folder contains various other folders and resources related to the unit and its administration. It includes some direct links to outside internet sites and resources. Some of the documents that are within the folder include the following. Further folders/documents may be added by the Lecturer-in-Charge and you will be advised:

Study information for this unit Folder

- The Unit Outline

General Study Information Folder

- Faculty Guide for Students
- Useful Links and Contact Information
- WebCT Brochure

Tutorial Information Folder

- Allocation of Assignments to students in Tutorial Groups [Assignments 1 and 2]

2. *Learning Resources Folder*

This folder is arranged according to the work that relates to the various weeks of Semester 1 listed in the Unit Schedule (see later). It includes powerpoint slides for lectures for each week and such further materials as may be provided by the Lecturer-in-Charge from time to time.

3. *Assessments Folder*

This folder contains tools relating to assessment.

4. *Communication Folder*

This folder facilitates the communication of messages updating you on important matters relating to the delivery of this unit. It includes the following tools:

- *Discussion tool* - a forum for raising questions and sharing ideas and responses with everyone taking this unit. The Lecturer-in-Charge will use it to make *Announcements* to students from time to time.
- *Mail tool* – an internal email function which allows students who are enrolled in the unit to contact each other and the lecturers (it does not allow access outside the unit)

5. *Study Tools Folder*

This folder includes a *Calendar* (each student may personalise their own calendar and supplement the details provided by the lecturer).

Using WebCT

Instructions on how to access (logon to) and use WebCT will be provided in the first lecture for students who are not already familiar. Also the University of Tasmania Flexible Education Unit (FEU) has published a pamphlet entitled "Studying Online

with WebCT” which provides instructions on how to access and use WebCT. You can obtain a copy of the pamphlet.

The WebCT service is available by using a web browser such as Netscape Navigator or Internet Explorer. The initial WebCT screen provides a login form at which you should enter your University of Tasmania e-mail account name (for example, *fbloggs*) in the space provided for the *User ID* and your University of Tasmania e-mail password as the *Password*.

Many of the files made available through WebCT will be in *Portable Document Format (PDF)*. These files can be viewed from within your web browser or separately by using a program called *Adobe Acrobat Reader*. This software is already installed on the Faculty laboratory machines, but can be downloaded free of charge from the Adobe site, should you want a copy for another machine. At the time of writing the required URL was as follows. Make sure that you have the most up to date version of the software:

<http://www.adobe.com/products/acrobat/readstep.html>

8. Assessment

a. Overview

In order to pass this unit you must complete and submit each item of assessment, complete the examination and achieve an overall mark of at least 50% of the total available marks. Details of each item of assessment are provided below.

Method of Assessment	Marks	Due Date	Length
Assignment 1/Tutorial Written Paper (10) and Oral Presentation (5)	15	As nominated by the lecturer at the conclusion of the first lecture (Week 1) and commencing from Tutorial 2 (Week 3)	2000 words
Assignment 2/Tutorial Written Paper (10) and Oral Presentation (10)	20	As nominated by the lecturer at the conclusion of the first lecture (Week 1) and commencing from Tutorial 2 (Week 3)	2000 words
Tutorial Participation (in weeks where student is not doing the oral presentation)	5		
Examination	60	Examination period	3 hours
Total marks	100		

b. Assignments 1 & 2 and the Tutorial Program

Generic Graduate Attributes assessed: Knowledge, problem-solving and communication skills.

Due Dates: The written assignments **MUST** be submitted **no later than 11.00am** on the **Tuesday before the assignment is due to be presented** orally in your nominated tutorial class [see later].

Length: 2000 words each maximum [for Part a and Part b combined]

Marks: Assignment 1 Written (10marks) + Oral (5marks) = 15 marks

Assignment 2 Written (10 marks) + Oral (10 marks) = 20 marks

The Tutorial Program and Presentation of Assignments 1 and 2

(a) General

Tutorials are held weekly commencing in Week 2 of Semester 2 (week starting July 19). Tutorials are designed to promote informed discussion of legal issues. They will follow and consider the Questions for Individual Presentation and Questions for General Discussion provided in [11. Questions for Tutorials and Assignments 1 and 2](#) (pages 17 to 26 of this Unit Outline). It cannot be too strongly emphasised that the preparation of answers to these Questions and the exploration (through class discussion) of issues which they raise will play a crucial role in developing your understanding of this unit.

(b) Assignment allocation

Following the first lecture, each student shall be allocated two of the Questions marked '*Individual Presentation – Assignment Questions*' by the lecturer for both a written and oral presentation during tutorials. This means that in two of the twelve tutorials for the semester each student will be presenting the assignment that they have prepared to the tutorial group as an ORAL presentation.

Each student nominated must write up the WHOLE assignment question and will need to make an oral presentation on both Part (a) and Part (b) of the Question. Oral presentations will commence in the SECOND tutorial class (ie: Week 2).

A list will be put onto WebCT and posted showing the names of students presenting assignments, questions nominated for presentation by them and the date and time of the tutorial class at which they are to be presented. Check this list carefully and notify the lecturer of any errors so that they can be rectified quickly.

(c) Submission of Individual Assignments

The typed assignments are to be submitted no later than 11.00am on the Tuesday before the Assignment is due to be presented via the assignment box, Level 5, Commerce Building, Hobart campus.

Assignments that are not handed in by the due date will have marks deducted at the rate of 10% per working day late unless an acceptable reason is given. An application for late submission form can be found on the unit WebCT site. Evidence such as a medical certificate must be provided to avoid the late penalty. Work commitments are not considered an acceptable reason for failing to submit an assignment on time.

The assignment submitted must be accompanied by a concise *one-page summary* of its contents. On the day of presentation each student in the tutorial class is to be provided with a copy of the summary by the student presenting [at the cost of the student presenting].

Assignments should be no more than 2000 *words in length*. You should take care not to exceed this word limit as passages in excess of 2000 words may be penalised by a deduction of marks (see later in this Outline).

The assignments should include a detailed bibliography and, where relevant, a table of cases and table of statutes, as well as any other relevant references (see later in this Outline).

In preparing your assignment you should follow the guidelines contained in the *Faculty Guide for Students* (see earlier in this Outline). You should also follow the additional instructions relating to assignments that are later provided in this Outline.

(d) Guidelines for Oral Presentation

For the purposes of the ORAL presentations, EACH assignment presenter is allowed a *maximum of 30 minutes* inclusive of the explanations, responses to questions and/or clarifications to be provided. Both during and after the oral presentation, the individual presenter will discuss issues and /or answer questions raised by students and/or the tutor.

The purpose is to test the presenter's understanding of the material presented and other related aspects and to focus the attention of the tutorial group on some important principles.

You are encouraged to involve the tutorial class members in your presentation by quizzes, role-playing exercises and the use of appropriate visual aids. Some time will be spent in the first tutorial giving guidance as to presentations.

Do NOT just read your written paper word for word; make the main points and involve the rest of the group in the presentation (see Class Participation below). If you use overhead transparencies do not crowd a lot of information in, nor use small lettering which no one will see from the back of the tutorial room.

Marks are awarded for substance, relevant information, dealing with issue-related matters, the use of correct case law and statutory principles, ability to put together in a coherent and logical manner the material facts identified, familiarity with the subject-matter, including defences pleadable, remedies available, etc.

This exercise will be conducted in such a way as not to disadvantage students from an overseas background where English is taught and learnt as a second language.

(e) Marks awarded for the Individual Assignment

Marks will be awarded for both the ORAL and WRITTEN components of the individual assignments. The allocation of the marks between the two components as indicated above is:-

- Assignment 1 Written (10marks) + Oral (5marks) = 15 marks
- Assignment 2 Written (10 marks) + Oral (10 marks) = 20 marks

(f) Marks awarded for Class Participation in Tutorials

Generic Graduate Attributes assessed: Communication skills

The *Questions for General Discussion* and the *Assignment Questions for Individual Presentation* generally relate to lecture materials covered in the previous week and may include material from earlier lectures where relevant. It is intended that knowledge and familiarity with lecture materials previously covered will be reinforced by student presentations and discussion.

The individual students presenting assignments are required to give an oral presentation to the tutorial class providing information in answer to the assignment question. However, ALL STUDENTS are required to have knowledge of the answer to the question as it forms part of the 'Questions for Discussion' to be considered at each tutorial meeting.

Questions will be asked of students in the tutorial who are not presenting assignments. For example students may be asked to comment on statements made by the student presenting as well as to comment on discussion by the student. This procedure is designed to ensure that all students in the tutorial gain an understanding of the discussion question, not just the student presenting. A mark out of 5 has been allocated for tutorial participation. To receive a mark of 4 -5 a student is expected to make contributions to the majority of tutorial meetings.

In tutorials, where for some reason a student is not there to deliver their presentation, all students will be required to participate in discussion of that topic. Tutorial classes are an opportunity for students to be involved in skill building and in developing group dynamics.

(g) Tutorials without a nominated student presentation

In Tutorials where there has been NO allocation of students to orally present the relevant 'Question for Discussion/Presentation', ALL students in the Tutorial will be required to prepare an answer to the question and come along to the Tutorial prepared to participate in discussion of the answer/s.

c. Self-Directed Learning Week [Week 8]

Generic Graduate Attributes assessed: Knowledge.

The ‘*Self-Directed Learning Week*’ was referred to earlier in this Outline. The ‘*Self-Directed Learning Week*’ is Week 8 commencing Monday 6 September 2004 and concluding on Sunday 12 September 2004.

In Week 8 you are required to study the Topic described in the Unit Schedule as:

“The End of the Contract: Discharge and Remedies”

This topic is examined in Chapter 6 of the Textbook.

During the Self-Directed Learning Week you are ALSO required to REVISE the material previously examined in Lectures and Tutorials in Weeks 1 to 7 (inclusive).

d. Examination

Generic Graduate Attributes assessed: Knowledge, problem-solving and written communication skills.

Format

You are required to sit a THREE (3) hour closed-book examination. The purpose of the examination is to ascertain the extent to which you have developed an understanding of the principles of law with which the unit is concerned, and how those principles are applied.

A total of at least SEVEN (7) questions will be set. You will be required to answer any FOUR (4) of them. Questions may be divided into two or more parts in which case all parts must be attempted. The questions will be of a similar nature to the assignment questions.

You will be allowed to take in to the examination room an ‘*unannotated*’ copy of the **Case List** (referred to earlier in this Unit Outline) to be made available to you at the end of Semester 2. ‘*Unannotated*’ in this context means that the **Case List** is NOT to be written on but it may be underlined and highlighted.

No other materials will be allowed in the exam room for this unit.

Scheduled Date and Place of Examination

Your final examination for this unit will be held during the scheduled examination period as advised by the University. You should refer to Student Administration for confirmation of these dates. Most exams are held during working hours, usually between 9.00 a.m. and 5.00 p.m. Monday to Saturday. You will be informed of the exact day and time of this examination in the second half of the semester.

You are advised to make any necessary arrangements with employers now for time off during the examination period to sit this examination. Your participation at the scheduled time is not negotiable unless there are exceptional circumstances.

Note that you will be expected to sit the examination at your recorded study centre.

Supplementary Examination

It is not the policy of the School of Accounting and Finance to grant supplementary examinations.

9. How your final result is determined

Your final result is determined simply by adding your weighted marks for the different assessment components of the unit. To obtain a pass grade or better in the unit, the sum of these weighted marks must be 50% or more of the marks available.

To satisfactorily complete the requirements of this unit you must submit both assignments.

Note that there are no compulsory attendance requirements for this unit. Note also that results are not standardised within the School of Accounting and Finance. The School expects high standards of their students, and insists that students devote sufficient time and effort to their studies throughout the semester to achieve grades of pass or higher on merit.

10. Guidelines for the Presentation of Assignments

General Information

Detailed information on the presentation of written work is given in:

- the Faculty of Commerce *Guide for Students* (see above) and;
- Fleet, W., Summers, J. and Jones, B. 2004, *Communication Skills Handbook for Accounting*, John Wiley & Sons Australia, Milton.

If any case of conflict between these, the Faculty *Guide for Students* prevails.

Specific Instructions

Coursework submitted must:

- Have stapled to its front an *Assignment Cover Sheet*, completed, signed and dated by you. On the *Assignment Cover Sheet*, write the Assignment Number and the relevant Tutorial Question No. (not the Week No.), as set out in point 11. *Questions for Tutorials and Assignments 1 and 2* (pages 17 –26) of this Unit Outline. Include a ‘Word Count’ and insert your exact number of words (use the ‘Tools’ – ‘Word Count’ function if using Microsoft Word: do NOT include footnotes and endnotes but include your references as listed at the end of your assignment).
- NOT exceed the specified number of words.

- **You must sign and date the following undertaking contained on the cover sheet to be attached to all BFA706 assignments:**

“I declare that all material in this assignment is my own work except where there is clear acknowledgement or reference to the work of others. I am aware that my assignment may be submitted to plagiarism detection software, and might be retained on its database. I have read the University statement on Academic Misconduct (Plagiarism) on the University website at www.utas.edu.au/plagiarism or in the Student Information Handbook.”

- Contain references throughout, cited correctly with a consistent format. The best method of referring to cases is by footnote where the full citation should appear eg *Brown v Jones* (1999) 27 ALR 61 [See below]. Each assignment should include a list of References at the end, including (as relevant):
 - Bibliography (all texts used);
 - Table of Legislation;
 - Table of Cases; and
 - Table of Web citations.

Other instructions

Assignments should be typed in 12-point Times New Roman font and be easily read by the marker. Provide generous margins, number every page in the bottom right corner (use Insert-Page Numbers in Microsoft Word) and staple the pages in the top left hand corner. Please do not use folders or plastic pockets for your assignment.

Marking Guide

Students will be marked on presentation and syntax including compliance with instructions (such as above), correct identification of the issues and law, depth of analysis, correct application of the law and appropriate referencing.

Legal Referencing (legislation, cases)

When referencing legislation, the title to the legislation and the year of enactment should be in *italics* but not the jurisdiction. Jurisdiction in this context refers to the Parliament enacting the legislation (eg Commonwealth (Cth), Tasmania (Tas), New South Wales (NSW)). The first time legislation is referred to it should be set out in full, but can be followed by an abbreviated version in brackets that is subsequently used, eg:

- *Trade Practices Act 1974* (Cth) [TPA];
- *Partnership Act 1891* (Tas) [PA (Tas)].

When referencing cases the title to the case should be in *italics* but not the year nor the rest of the citation eg:

- *Donoghue v Stevenson* [1932] AC 562
- *Burnie Port Authority v General Jones Pty Ltd* (1994) 179 CLR 520.

Cite primary sources (eg legislation sections, case citations) in preference to secondary and tertiary sources (eg text books), or both, if appropriate.

Plagiarism

Plagiarism is a form of cheating. It is taking and using someone else's thoughts, writings or inventions and representing them as your own, for example:

- using an author's words without putting them in quotation marks and citing the source;
- using an author's ideas without proper acknowledgment and citation; or
- copying another student's work.

If you have any doubts about how to refer to the work of others in your assignments, please consult your lecturer for relevant referencing guidelines, and the academic integrity resources on the web at

<http://www.utas.edu.au/tl/supporting/academicintegrity/index.html>.

The intentional copying of someone else's work as one's own is a serious offence punishable by penalties that may range from a fine or deduction/cancellation of marks and, in the most serious of cases, to exclusion from a unit, a course or the University. Details of penalties that can be imposed are available in the Ordinance of Student Discipline – Part 3 Academic Misconduct, see

<http://www.utas.edu.au/universitycouncil/legislation/ord9.pdf>

The University reserves the right to submit assignments to plagiarism detection software, and might then retain a copy of the assignment on its database for the purpose of future plagiarism checking.

In general:

- (a) Always express your own ideas in your own words. When drawing from the work of other authors, cite the source and if a quotation is used show it in inverted commas.
- (b) Do not incorporate the words used by text writers, your lecturer or other students in your answer unless you attribute those words to their author.
- (c) Never hand in an assignment which is the same as, or similar to, another student's assignment. If two or more similar assignments are received, all students concerned may forfeit marks for that assignment. One way to guard against this occurring is not to leave completed assignments in a place where they could easily be copied, either off a computer disk or by a photocopier.

11. Questions for Tutorials and Assignments 1 and 2.

Tutorial 1 (Week 2 of Semester)

(Week commencing 19 July 2004)

Every student is required to prepare and be ready to discuss short answers to each question. The tutor will ask questions of students.

Questions for General Discussion

1. What is meant by the 'rule of law'?
2. What are the primary sources of Australian law?
3. How does the Australian Constitution divide law-making powers between the Commonwealth Parliament and the State Parliaments? What happens if a law passed by the Commonwealth Parliament is inconsistent with a law passed by a State Parliament?
4. What are the five (5) main functions of the Australian Constitution?
5. What is meant by 'separation of powers'?
6. Give two (2) URLs (web addresses) at which you can display the list of sections/table of provisions of the *Trade Practices Act 1974* (Cth)?
7. Give two (2) URLs (web addresses) at which you can display the list of sections/table of provisions of the *Fair Trading Act 1990* (Tas)?
8. In Australia, enacted laws can be made by the Commonwealth Parliament and also by State Parliaments.
 - (a) How is the power to make laws on different topics divided between the Commonwealth Parliament and State Parliaments?
 - (b) If a valid law passed by the Commonwealth Parliament is inconsistent with a law passed by a State Parliament, which law prevails and why?
 - (c) Which institution has the power to decide legal disputes about whether a Commonwealth law overrides a State law? Where exactly (ie. what provision of what law) does that power come from?
9. In the context of the Australian court system, explain the doctrine of precedent.
10. Define alternative dispute resolution (ADR).

Tutorial 2 (Week 3 of Semester)

(Week commencing 26 July 2004)

Individual Presentation - Assignment Question

- (a)
 - i List the six (6) requirements for a simple contract to be valid and enforceable.
 - ii List and discuss the three (3) main classes of person who, today, may lack the legal capacity to contract. For each of these three (3) classes of person, explain the circumstances in which a contract signed by such a person is voidable. Illustrate your answer with relevant case law and statutory provisions.
 - iii Explain the effect of sections 124 and 125 of the *Corporations Act 2001* (Cth).
- (b) Littliluns Pty Ltd, a wholly owned subsidiary of Medium Ltd, applied to the Bank of Tasmania for a \$10 million loan. As security for repayment, the Bank sought from Medium Ltd a guarantee of repayment of the loan by Littliluns

Pty Ltd. Medium Ltd said that its board of directors would need to consider the request for a guarantee and the earliest opportunity to do so would be at the next board meeting in two weeks time. In the meantime, the Managing Director of Medium Ltd delivered a letter to the Bank of Tasmania stating that the board of Medium Ltd would ‘favourably consider the request for a guarantee’ at its next meeting. The board meeting was unfortunately postponed for one month, due to the fact that the Chairman of the Board became ill.

Without waiting for the formal board approval of Medium Ltd to the guarantee, the Bank of Tasmania went ahead and approved the loan to Littliluns Pty Ltd and advanced the \$10 million.

At the subsequent meeting of the board of directors of Medium Ltd, it was decided not to agree to the proposed guarantee of the loan by the Bank of Tasmania to Littliluns Pty Ltd. The company secretary gave formal notice of the board decision to the Bank of Tasmania.

Within six months of the loan, Littliluns Pty Ltd starts to default on loan repayments. The Bank of Tasmania terminates the loan and commences legal proceedings against Littliluns Pty Ltd. It also alleges that Medium Ltd guaranteed the loan with the letter that the managing director provided to the Bank.

Required:

Advise the Bank of Tasmania of its chances of successfully enforcing the alleged guarantee against Medium Ltd.

Tutorial 3 (Week 4 of Semester)
(Week commencing 2 August 2004)

Individual Presentation - Assignment Question

- (a) “The rules of offer and acceptance help determine whether a contract exists – whether an *offer* was made by one party (the offeror) which was *accepted* by the other party (the offeree)”: Latimer, P. 2004, *Australian Business Law*, 23rd ed, p.256.

Required:

- i List the four (4) legal rules as to offer and cite relevant cases for the rules.
 - ii List the nine (9) legal rules as to acceptance and cite relevant cases for the rules.
 - iii List the four (4) ways in which an offer can be terminated before it is accepted.
 - iv Explain how the legal rule that acceptance must be communicated applies to acceptance by: (i) email; (ii) fax; and (iii) mail/post. Cite relevant cases.
- (b) On 26 August, Alpha Pty Ltd (Alpha) sent a quotation to Heavy Diggers Ltd (Heavy Diggers) offering to sell Heavy Diggers a machine for \$150,000, to be delivered in two (2) months. Alpha’s quotation was stated to be subject to

certain terms and conditions, which “prevail over any terms, and conditions in the buyer’s order”. Conditions in the quotation included a price variation clause providing for the machine to be charged at the price in force on the date of delivery (not the date of contract). The quotation also included a condition that the buyer could not cancel for late delivery.

Heavy Diggers placed an order for the machine on 29th August. Its order was stated to be subject to certain terms and conditions, which were materially different from those in Alpha’s quotation. In particular, Heavy Diggers’ order gave it the right to cancel for late delivery and did not provide for price variation. At the bottom of Heavy Diggers’ order there was a tear-off acknowledgment of order which stated: -

“We accept your order on the terms and conditions stated thereon”.

On 31st August July Alpha completed and signed this acknowledgment of order and returned it to Heavy Diggers with a letter stating that Heavy Diggers’ order was being accepted on the terms and conditions contained in Alpha’s quotation of 26th August.

Required:

Is there an enforceable contract between the parties? If so, what are its terms? Illustrate your answer with relevant case law. Do NOT refer to legislation.

Tutorial 4 (Week 5 of Semester)
(Week commencing 9 August 2004)

Individual Presentation - Assignment Question

- (a)
 - i Define consideration, citing a case authority.
 - ii What form of contract does not require consideration? List three (3) examples of a form of contract that does not require consideration.
 - iii List the five (5) common law rules, which set out the operation of the doctrine of consideration. Cite relevant cases for the rules.
 - iv Does performance of a public duty provide good consideration? Explain and illustrate your answer with relevant cases.
 - v Does performance of a duty already imposed by contract provide good consideration? Explain and illustrate your answer with relevant cases.

- (b) Jerzy, a Polish migrant who cannot read English, wishes to give a block of land he owns in Tasmania to his favourite daughter. Jerzy is persuaded by Alan to sign a document. Alan suggests to Jerzy that he might seek legal advice before signing. Jerzy ignores Alan’s suggestion and does not seek legal advice.

Jerzy believes that he is signing a receipt for \$50 which Alan owed to him and, which Alan has paid to him. In fact, the document is an option to purchase the block of land in three (3) months time from Jerzy for \$30,000.

Alan assigns the option to Innocent Holdings Pty Ltd, which has no knowledge of the dealings between Jerzy and Alan. Innocent Holdings Pty Ltd exercises the option to purchase the block of land within the three (3) month period. Pierre refuses to sell the land to Innocent Holdings Pty Ltd.

Required:

Advise Jerzy. Illustrate your answer with relevant case law. Do NOT refer to legislation.

Tutorial 5 (Week 6 of Semester)
(Week commencing 16 August 2004)

Individual Presentation - Assignment Question

- (a) i Explain the effect of section 51AA of the *Trade Practices Act 1974* (Cth) (the TPA). Illustrate your answer with relevant case law.
- ii List five (5) matters to which a court may have regard in deciding whether a corporation has engaged in conduct that is unconscionable contrary to subsection 51AB(1) of the TPA.
- iii Are these five (5) matters the only matters to which a court may have regard in deciding whether a corporation has engaged in conduct that is unconscionable contrary to subsection 51AB(1) of the TPA? Give reasons for your answer.
- iv What is the difference between section 51AB of the TPA and section 15 of the *Fair Trading Act 1990* (Tas)? What is the reason for this difference? Explain.
- (b) Magda, a rising 20-year-old Tasmanian songwriter, is persuaded to enter into a contract with Exploitations Music Agencies Pty Ltd by Derek, the Tasmanian director of Exploitations Music Agencies Pty Ltd. The contract gives copyright to Exploitations Music Agencies Pty Ltd in respect of all Magda's song compositions at the date of signing the contract and exclusive rights to them for the five (5) year period of the contract. Under the terms of the contract, Exploitations Music Agencies Pty Ltd is under no legal obligation to publish any of Magda's songs and, even if songs are published by the company, the contract limits any royalty payments to Magda to \$100,000 over the five (5) year period of the contract.

Magda signs the contract without reading it and without seeking independent legal advice. This happens after Derek threatens to spread rumours around Tasmania that Magda has been involved in dealing in the drug "Ecstasy" in bars and night clubs (which is not true). Derek tells Magda, 'The police will be down on you like a ton of bricks'. Derek also says that Magda's musical career will be destroyed.

One (1) year later, after Magda has had two (2) songs published and sold by Exploitation Music Agencies Pty Ltd and they have been featured on radio Triple J, Magda decides to accept a new five (5) year contract with Global

Records Inc of San Francisco for \$500,000 plus annual royalties of 20%. Exploitation Music Agencies Pty Ltd now threatens Magda with legal action for breach of contract if she signs a contract with Global Records Inc.

Required:

Advise Magda. Illustrate your answer with relevant case law and legislation.

Tutorial 6 (Week 7)
(Week commencing 23 August 2004)

Individual Presentation - Assignment Question

- (a) What types of contracts are illegal or void at common law? Discuss.
- (b) In June 2004, Murges, a professional footballer, signed a contract with the Mount Stuart Football Club (MSFC), under which Murges agreed to play for that club for five (5) years. In July 2008 he seeks to transfer to North Hobart Football Club (NHFC). The terms of Murges's contract with MSFC provide that Murges must not play for another Tasmanian football club for at least two (2) years after the term of his contract with MSFC expires.

Murges's lawyer tries to persuade the MSFC board of directors to let Murges transfer to NHFC. However the MSFC board refuses to consent to Murges transferring to NHFC unless NHFC pays MSFC a transfer fee of \$500,000, a fee that the MSFC Board knows the NHFC will not pay.

Required:

Advise Murges and his lawyer on the basis of the law of restraint of trade as to the validity of the transfer restriction in his contract with MSFC and the level of fee the MSFC board demands. Illustrate your answer with relevant cases.

MID SEMESTER BREAK & SELF-DIRECTED LEARNING WEEK
MON 30 AUGUST – FRI 10 SEPTEMBER 2004

Tutorial 7 (Week 9)
(Week commencing 13 September 2004)

Individual Presentation - Assignment Question

- (a) State ten (10) propositions governing the operation of an exclusion clause (also called an exemption clause) in a contract. Illustrate each proposition with relevant case law or relevant provisions of the *Trade Practices Act 1974* (Cth).
- (b) Konrad and his family live in Launceston. Every Sunday, Konrad and his family take a ferry cruise on the Tamar River in Launceston. Each time Konrad

arrives at the ferry he is given a ticket on paying his fare. On the reverse side of the ticket is written:

“All passengers use this ferry at their own risk.”

Konrad never reads these words on the ticket. On previous cruises, Konrad has read a notice inside the ferry that has identical wording to the ticket.

One Sunday, due to negligent navigation by its captain, the ferry collides with an underwater obstruction marked by a warning buoy. The ferry sinks slowly. Konrad and all the other passengers are rescued. However, Konrad’s watch, worth \$2000, is damaged by water and cannot be repaired.

Required

A company owns and operates the ferry and employs the captain. Can Konrad succeed in legal action against the company for the damage to his watch?

Illustrate your answer with relevant case law and statutory provisions.

Tutorial 8 (Week 10)

(Week commencing 20 September 2004)

Individual Presentation - Assignment Question

- (a) Detail the law relating to negligent misstatement and trace its development since *Hedley Byrne v. Heller* [1964] AC 465 with reference to decided cases. In your answer include consideration of the legal principles that will apply to a claim for economic loss arising as a result of a negligent misstatement.
- (b) Edwina has always dreamed of owning her own hairdressing business, “*Edwina’s Cut above the Rest Salon*”. She sees an opportunity to purchase, “*Max’s Hairdressing*” business from its owner, Max, for a price to be negotiated. Edwina retains her accountant, Adrian, to advise her with regard to the purchase. Edwina introduces Adrian to Max. Edwina asks Max to give Adrian any information Adrian requests.

Max gives Adrian access to all the Max’s financial statements and accounting records. Max tells Adrian that he has slipped behind with his account keeping and that the financial statements and accounting records may not be complete or accurate. Max says that he has not employed an accountant and that he has not had the financial statements and accounting records audited. Max tells Adrian that he would be happy to provide any further information Adrian may require.

Adrian examines the financial statements and accounting records given to him by Max. Adrian does not speak further with Max. Adrian then prepares a report for Edwina in which Adrian recommends that purchase of the salon for \$100,000 would be a profitable investment. At the end of his report, Adrian inserts a disclaimer as follows:

'This report is based upon information supplied by the owner of the business. This report is for your use and no responsibility is accepted to any third party for the whole or part of the report'.

Edwina has \$60,000 savings. Relying on Adrian's report, she agrees to purchase the business from Max for \$100,000, subject to Edwina obtaining a loan of \$40,000.

Edwina gives the Bank of Tasmania a complete copy of Adrian's report. The Bank of Tasmania relies on Adrian's report to loan Edwina \$40,000 to purchase the business. Edwina completes the purchase of the salon from Max for \$100,000. Max uses the \$100,000 to buy a hot air balloon. He starts a balloon flight across the Pacific Ocean but is hit by a storm. Max and his balloon are lost at sea.

Subsequently, Edwina finds that the salon has been significantly overpriced as the salon's takings are insufficient to cover its operating expenses. The salon fails and must be closed down, leaving Edwina with nothing of value. Edwina loses her \$60,000 savings and cannot repay the \$40,000 loan to the Bank of Tasmania.

Edwina takes Adrian's report to an expert accountant who examines Adrian's report. The expert accountant tells Edwina that Adrian's report contains errors and Adrian's recommendation that she purchase the salon for \$100,000 was not justified.

The Bank of Tasmania cannot recover any money from Edwina. Both Edwina and the Bank wish to take legal action against Adrian. Adrian denies any liability.

Required:

- i To what extent can Edwina recover compensation from Adrian?
- ii To what extent can the Bank of Tasmania recover compensation from Adrian?

Illustrate your answer with relevant case law. Do NOT refer to legislation.

Tutorial 9 (Week 11)

(Week commencing 27 September 2004)

Individual Presentation - Assignment Question

- (a) Explain what is meant by the terms "fitness for purpose" and "merchantable quality" as those terms are used in the *Trade Practices Act 1974* (Cth) and the *Sale of Goods Act 1896* (Tas). Are there any important differences between these two Acts in respect of the application of these terms to consumer contracts? Discuss.

(b) Dudley purchases a 1986 Alfa Romeo - Alfa 75 from Honest Adrian Autos Pty Ltd. The vehicle's odometer reads 100,000 kilometres. Dudley is given a document headed "*Used Car Warranty*" which states:

1. *Subject to the exclusions below which affect the normal operation of the vehicle, should any mechanical defect in the vehicle develop during a period of 90 days commencing on 31 January 2004 or up to the time the vehicle has been driven 3000 kilometres, whichever occurs first, Honest Adrian Autos will supply parts necessary to rectify the defect free of charge.*
2. *Batteries, generators and other electrical equipment are included as parts but only for the first 14 days of this warranty.*
3. *Tyres and tubes are not included in this warranty.*
4. *This warranty is in lieu of all other warranties express or implied and all other obligations or liabilities on our part, and Honest Adrian Autos neither assumes, nor authorises any other person to assume for them, any liability in connection with this vehicle except the obligation created by this Warranty.*
5. *This warranty shall not apply if the vehicle is repaired or altered without the permission of Honest Adrian Autos or if the vehicle has been subjected to abuse, negligence or accident or has been driven in any reliability or speed trial or test.*

Underneath there was a space for signature by the purchaser. Dudley signs in this space and the document is then dated 31 January 2004.

After a month the rear axle breaks and is repaired by Honest Adrian Autos under the warranty. On 21 May 2004, after the vehicle has travelled 4,000 kilometres since its purchase, the engine seizes up and Honest Adrian Autos offers to repair it but at a cost of \$1,500 to Dudley.

Dudley claims that the warranty is not binding and he should receive back his original payment for the car.

Required:

Advise Dudley and Honest Adrian Autos.

Tutorial 10 (Week 12)

(Week commencing 4 October 2004)

Individual Presentation - Assignment Question

- (a)
 - i Outline the six (6) main duties an agent owes to their principal. Illustrate your answer with relevant case law. Do NOT refer to legislation.
 - ii Consider the seven (7) main situations where an agent, whilst purporting to act for the principal, may be personally liable to a third party.
- (b) David is the Hobart commission agent for Computers R Us Pty Ltd (Computers R Us), a Sydney based company selling computer equipment. He has been in

the computer industry for ten (10) years and has been Computers R Us' Hobart agent for two (2) years.

Computers R Us seeks to sell computer equipment to a Tasmanian School. During negotiations with the School, David, receives express instructions from Computers R Us that under no circumstances may a penalty clause for late delivery be inserted into the contract by the School.

The School tells David that it will not buy the computer equipment unless the contract contains a penalty clause for 5% of the contract price per month for delay beyond the agreed delivery date. David signs a contract for Computers R Us to sell computer equipment to the school for \$1 million, including the penalty clause demanded by the School.

The computer equipment is delivered three months after the due date of delivery. The School deducts the penalty amount from the contract price.

Required:

- i Advise Computers R Us as to its rights (if any) against David.
- ii Advise David as to a claim for agent's commission against Computers R Us.
- iii Advise the School as to its rights against both Computers R Us and David.

Illustrate your answers with relevant case law. Do NOT refer to legislation.

Tutorial 11 (Week 13)

(Week commencing 11 October, 2004)

Individual Presentation - Assignment Question

- (a) What four (4) elements need to be established when ascertaining the existence of a partnership? What rules are provided by the *Partnership Act 1891* (Tas) to assist in the determination of the existence of a partnership?
- (b) Hugo and Ashby operate a supermarket business in partnership. They decide to expand their business and to purchase another supermarket. They approach Hugo's father Mitchell to ask him for a loan.

Mitchell is prepared to make a loan but he is also interested in operating the business with Hugo and Ashby. However, he is concerned as to his personal liability to creditors of the business.

Hugo explains to Mitchell that he can become a limited partner pursuant to the *Limited Partnership Act 1908* (Tas) but Ashby says that they should sell the business to a proprietary company to be formed by the three of them and they can each become shareholders and directors with limited liability. There is also the possibility that the company could be a trustee and they and their families could each become beneficiaries of a trust operated by the company.

Required:

Advise Mitchell as to what is required to establish:

- (i) a proprietary company;
- (ii) a limited partnership; and
- (iii) a trust.

For each of the alternative business structures, can Mitchell be protected against personal liability to creditors of the business?

12. Further information and assistance

(a) General

If you are experiencing difficulties with your studies or assignments, have personal or life planning issues, disability or illness which may affect your course of study, you are advised to raise these with your lecturer in the first instance.

If you have an issue about which you do not feel comfortable approaching your lecturer, or if you do have a discussion with the lecturer and are dissatisfied with the outcome, then you may contact the *School Ombudsperson* who also teaches in the School of Accounting and Finance:

Belinda Williams
Room: A257, Launceston Campus
Telephone: 63 243661
E-mail: Belinda.Williams@utas.edu.au

There are a range of University-wide support services available to you including Student Services, International Services and Learning Development. Please refer to the *Current Students* homepage at: <http://www.utas.edu.au/students/>

Should you require assistance in accessing the Library visit their website for more information at <http://www.utas.edu.au/library/>

(b) Students with Disabilities – University and Faculty Equity Plans

Goal 1 of the University of Tasmania Equity Plan provides for: “An inclusive teaching and learning environment that values diversity, supports the pursuit of academic excellence and produces high quality education and employment results for all students and staff”. The Faculty of Commerce Equity Plan facilitates the University Plan at an operational level and has developed an ‘Action Plan’. The Action Plan for Goal 1 lays down procedures to ensure that all students, including those with disabilities, have equal access to lecture and course materials. The School of Accounting & Finance complies with these procedures.