



BFA706 Business Law

Semester Two 2006

School of Accounting and Corporate Governance

Faculty of Business

Unit Outline

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CRICOS Provider Code: 00586B

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Unit description

This unit 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 & Regulation and Australian Tax Law.

Topics include; how law develops and changes; the sources of law in Australia; how to read and understand legislation and decided cases; business organisations; 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; agency and consumer law.

Learning outcomes

Content Objectives - on completion 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 and the Courts in creating 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. identify legislation that provides consumers with protection when purchasing goods and services from both individuals and corporations;
4. recognise the legal concept of 'negligence' and its role in providing protection to consumers;
5. identify various business structures, such as sole traders, partnerships and companies; and
6. recognise the role of agents and agency law in the context of business law;

Process Objectives – on completion of this unit, you should be able to:

7. 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;
8. locate legislation that provides consumers with protection when purchasing goods and services from both individuals and corporations;
9. apply your legal knowledge to a factual situation in order to provide possible solutions to a legal issue.

Generic graduate attributes

The University has defined a set of generic graduate attributes (GGAs) that can be expected of all graduates (see <http://www.utas.edu.au/tl/policies/index.htm>). By undertaking this unit you should make progress in attaining the following attributes:

- **Knowledge:** Learning outcomes 1 - 9 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 recognising 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 9 will especially require you to demonstrate this attribute.
- **Communication skills:** Learning outcomes 1 – 6 will require you to demonstrate written **communication skills**.
- **Problem-solving skills:** Learning outcomes 7, 8 & 9 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.

Prior knowledge & skills

Prerequisite units: BFA706 has no prerequisites.

Learning resources required

Prescribed Text

You must have ready access to the prescribed textbook:

Latimer, P. (2006). *Australian Business Law*, 25th ed, Sydney, CCH Australia Ltd.

Copies of the prescribed text are available from the University Co-op Bookshop and in the reserve section of the Morris Miller Library in Hobart. You may also be able to obtain a second hand copy from of the 24th edition.

Supplementary References

To assist students with how to present assignments and their oral presentation, the following additional text is also available from the University Co-op Bookshops:

Fleet, W., Summers, J. and Jones, B. 2006, *Communication Skills Handbook for Accounting*, (2nd ed) John Wiley & Sons Australia, Milton

You will benefit from reading as broadly as possible. Try to obtain the latest edition of the following references if you need assistance in completing assignments and/or if you are having trouble understanding components of the unit:

Barron, M., 2006. ***Fundamentals of Business Law*** (5th ed.). McGraw-Hill Irwin, North Ryde.

Carvan, J., Miles, C. & Dowler, W. 2003. A ***Guide to Business Law*** (15th ed.). Lawbook Co. Sydney.

Gibson, A. & Fraser, F., 2005. **Business Law** (2nd ed). Pearson Prentice Hall: French Forrest, NSW.

Griggs, L. et al. 2003. **Managers and the Law** (2nd ed), LBC Information Services, Sydney.

Khoury, D. & Yamouni, Y.S. 2003. **Understanding Contract Law** (6th ed.). Butterworths: Sydney.

Latimer, P. 2003. **Australian Business Law Workbook**, CCH: North Ryde, NSW.

Lipton, P. & Herzberg, A. 2003. **Understanding Company Law** (11th ed.). Law Book Company: North Ryde, NSW.

Sweeney, B. & O'Reilly, J. 2004. **Law in Commerce**. (4th ed), Butterworths: Sydney.

E- (electronic) resources 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 useful web references please forward details of these links to the Lecturer-in-Charge via WebCT or e-mail: mknevett@utas.edu.au

The most authoritative website to access current (i.e.: 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/>

Another useful site is the Australian Competition and Consumer Commission (ACCC) site at <http://www.accc.gov.au> It has some helpful 'Links' that take you to other sites such as Commonwealth and State Government sites including for example, *Tasmanian Consumer Affairs and Fair Trading*.

There are a number of publishers involved in commercial law including CCH, LexisNexis Butterworths, Thompson (t/as Lawbook Co) and Federation Press. Some of their entry points are set out below.

CCH may be accessed at: <http://www.cch.com.au/>

LexisNexis Butterworths and CCH have agreed to use a common platform for their on-line publications and web access. The information that is free is different for each company. For Lexis Nexis Butterworths see:
<http://www.lexisnexis.com.au/aus/default.asp>

Thompson Legal & Regulatory Limited trades as Lawbook Co. See:
<http://www.lawbookco.com.au/home/homeindex.asp>

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 including access to CCH and some of its services. 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 require login addresses and passwords. Check with the library for these details.

WebCT Vista

PowerPoint slides for all lectures will be made available on WebCT Vista. At the discretion of the Lecturer-in-Charge, other materials, such as past exam papers, tutorial lists, assessment results etc may also be made available on WebCT Vista.

A **List of Cases** cited in lectures will be made available on WebCT Vista at the end of the unit. It will help you particularly with your preparations for the final examination and you can take it into the examination with you *unannotated* (see below).

You are encouraged to pose questions via WebCT Vista to teaching staff rather than by email as this allows everybody in the Unit to participate in the discussion. You can forward WebCT Vista emails to your own account very simply and this information is included in WebCT Vista: Information for Students <http://www.utas.edu.au/tlo/>

Details of teaching arrangements

This unit will be taught in a 3 hour block. A lecture will commence at 1.10pm on each Wednesday commencing on the 19th July 2006 for approximately 100 minutes in the Commerce Building, Lecture Theatre 2.

At this time students will be allocated a workshop time, either 3.10pm or 4.10pm following on from the lecture. Both of these workshops will take place in the Commerce Building in Room 202C. These workshops will be of 50-minute duration.

Lectures

Lectures, consisting of topic summaries, explanations, demonstrations and a revision, will provide an overview of the theoretical and applied aspects of the course content. However, they will constitute an introduction only. In order to gain full command of the subject matter, students will have to complete all relevant readings, practise problem solving with additional exercises and participate actively in the workshops.

Workshops

These sessions will normally commence with two student presentations followed by a question and answer session. Students are expected to complete all the relevant readings before attending each workshop. Some of the workshops will be used to practice exam-style questions with the assistance of either the unit coordinator or the student presenters, and for revision quizzes to help you ascertain your understanding.

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.

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 11 of Semester 2.

The objectives of this Week are as follows:

- Give you a topic that would otherwise be covered in lectures and workshops 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 1 to 10

Occupational health and safety (OH&S)

The University is committed to providing a safe and secure teaching and learning environment. In addition to specific requirements of this unit you should refer to the University's policy at: http://www.admin.utas.edu.au/hr/ohs/pol_proc/ohs.pdf

Learning expectations and strategies

Expectations

The University is committed to high standards of professional conduct in all activities, and holds its commitment and responsibilities to its students as being of paramount importance. Likewise, it holds expectations about the responsibilities students have as they pursue their studies within the special environment the University offers.

The University's Code of Conduct for Teaching and Learning states:

Students are expected to participate actively and positively in the teaching/learning environment. They must attend classes when and as required, strive to maintain steady progress within the subject or unit framework, comply with workload expectations, and submit required work on time.

You are therefore expected to take responsibility for your own learning. To maximise the benefit that you can derive from this unit, it is crucial that you thoroughly prepare for the classes by carefully studying all the appropriate readings and formulating questions on matters with which you are experiencing difficulty. If you miss any timetabled session, it is YOUR responsibility to obtain any information that you have missed.

Learning strategies

Although you are expected to take responsibility for your own learning, you are not on your own. Teaching staff will be available to help facilitate this, and if you need additional information refer to the Learning Development website: <http://www.utas.edu.au/learndev/>

One strategy that should help you achieve excellent results is that of organizing your time so that you spend enough time attending all the classes, undertaking readings before classes, consolidating material after classes, practicing exercises, as well as preparing for classes, assessments and the exam.

It is strongly advised you work through the assigned problems and complete them for the workshops *prior* to the respective sessions in order to participate actively and confirm your understanding of the various topics.

Specific attendance/performance requirements

Unless prevented by illness or other acceptable reason, you are expected to attend all the scheduled workshops and conduct presentations for this unit. You are also required to complete the prescribed readings before each workshop. Furthermore, you are expected to

participate in the discussion. You are also expected to present answers when called upon during the workshop discussions.

In order to pass this unit you must complete and submit each item of coursework, complete the examination and achieve an overall mark of at least 50 per cent of the total available marks.

Assessment

Method of Assessment	Percentage Weighting	Due Date	Length
Assessment task 1 - Assignment 1	15	18 September 2006 at 2:00pm	1750 words
Assessment task 2 - Assignment 2 <ul style="list-style-type: none"> • Workshop Paper (10) • Workshop Presentation including the preparation of and discussion of your 5 workshop questions (15) 	25	Nominated by the Unit Coordinator and commencing from Workshop 3	1750 words (inclusive of your 5 workshop discussion questions)
Assessment task 3 - Examination	60	Examination period	
Total marks	100		

Assessment details

Assessment task 1 - Assignment 1: 15%

Task description A written assignment looking at the *Trade Practices Act (1974) (Cth)* and a commercial transaction completed or contemplated by the individual student.

Task length A maximum of 1,750 words

Links to unit's learning outcomes Points 1, 7 and 9 of the learning outcomes will be covered. This will require knowledge, problem solving and communication skills as listed in the generic graduate attributes.

Assessment criteria Marks awarded for the correctness and comprehensiveness of each sub-question in question 1. For question 2 marks will be awarded for attempts at application of the basics concepts of contract law to a real life situation and the comprehensiveness of the answers provided.

Task topic **Please provide comprehensive answers to the following questions:**

1. Within Australia and its legal system:
 - (a) How does the *Trade Practices Act (1974)(Cth)* protect consumers? **[2 marks]**

- (b) Give two terms that are implied into contracts between a company and a consumer under the *Trade Practices Act (1974)(Cth)* [2 marks]
 - (c) Give an example of a case that has been determined by the courts involving the *Trade Practices Act (1974)(Cth)* and what were the facts and decision of the case [2 marks]
2. Think of a 'commercial transaction' or 'contract' that has arisen either at work or personally that you may have been involved in recently:
- (a) Provide details of this transaction, including details of what type of service or product was involved? [3 marks]
 - (b) How were all the terms decided upon? [2 mark]
 - (c) How was the price or 'consideration' agreed upon? [2 marks]
 - (d) In your opinion did either party to the transaction have more 'power' in the decision-making and if so why? [2 marks]
 - (e)

Date due

Monday 18 September 2006 at 2.00pm

Assessment task 2 - Assignment 2: 25%

Task description

A written assignment and an oral presentation on a topic nominated by the Lecturer in Charge at the conclusion of the first Lecture/workshop.

Links to learning outcomes

See pages 18 to 28 in this unit outline.

Date due

See pages 18 to 28 of this unit outline

Assessment criteria

- Workshop Paper
 - Identification of all major legal issues and rules
 - Application of the relevant legislation, cases and rulings.
 - The logic and extent of the analysis provided to answer the part (b) problem.
 - Good organisation and ease of reading, the ability to put together your answer in a coherent and logical manner the material facts identified, familiarity with the subject-matter, defences pleadable, remedies available and other aspect
- Workshop Presentation
 - The clarity of the presentation of the legal issues and rules and application
 - The success of the presentation style adopted and its success in generating discussion during the workshop
 - The appropriateness of the 5 discussion questions to generate workshop discussion and effectiveness of developing an understanding of the topic being covered

Task Topic

As students will be allocated different topics please see pages 19 to 28 for the topic of this assignment.

Assessment task 3 - Final exam: 60%

Coverage conditions

There will be a formal 3-hour closed book written examination. The purpose of the examination is to enable students to demonstrate a breadth of understanding across all of the course material at an independent level. It assesses the knowledge you have obtained through undertaking the unit, your communication skills in presenting that knowledge and your problem-solving skills in answering the questions posed. You will be given some guidance about the format of the examination during the last lecture.

Date

The final exam is conducted by the University Registrar in the formal examination period. See the **Current Students** homepage (>Examinations and Results) on the University's website.

How your final result is determined

The weighted scores for the assignments and final exam are added together to determine your final result. You must achieve an overall mark of at least 50 per cent to pass the unit. As the assignments are compulsory, you will not be permitted to pass the unit without submitting a satisfactory attempt at the assignments and the oral presentation.

Standardisation

In order to maintain the high reputation of the School of Accounting and Corporate Governance in the wider community – educationally, academically and by business - the School does not standardise student results. Rather, 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.

Submission of assignments

Assignments should be submitted in accordance with the Faculty Guide for Students issued by the Faculty of Business - which can be accessed at the School's website: <http://www.utas.edu.au/accg/studentres.htm>. Assignment coversheets must be used for all assignments and these are also available on the School's website. Assignments without a signed coversheet will not be marked. Assignments are to be submitted via the assignment box, Level 5, Commerce Building at the Hobart campus.

Requests for extensions

The Faculty Guide for Students contains details, not only about the presentation of assignments, but also about procedures to follow if you wish to request permission to submit your assignment after the due date. Extensions of time will only be granted on medical or compassionate grounds and must be made in writing to the lecturer-in-charge on the School's Application for Extension Form, which is available at: <http://www.utas.edu.au/accg/studentres.htm>. Medical certificates or other evidence, which supports the application, must be attached.

Penalties

Penalties for late submission (without prior permission) are the deduction of 10% of the graded mark for each day, or part thereof, that the assignment is late. Work commitments **are not** considered an acceptable reason for failing to submit an assignment on time.

Academic referencing

In your written work you will need to support your ideas by referring to scholarly literature, works of art and/or inventions. It is important that you understand how to correctly refer to the work of others and maintain academic integrity.

Failure to appropriately acknowledge the ideas of others constitutes academic dishonesty (plagiarism), a matter considered by the University of Tasmania as a serious offence.

The appropriate referencing style for this unit is the Harvard referencing method. For information on presentation of assignments, including referencing styles:

<http://www.utas.edu.au/library/assist/gpoa/gpoa.html>

Please read the following statement on plagiarism. Should you require clarification please see your unit coordinator or lecturer.

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, 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 or tutor 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/>

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.

For further information on this statement and general referencing guidelines, see <http://www.utas.edu.au/plagiarism/> or follow the link under 'Policy, Procedures and Feedback' on the **Current Students** homepage.

Further information and assistance

You are encouraged to contact your lecturer/tutor as early as possible if experiencing difficulties in the study of this unit. You can make an appointment with the lecturer/tutor by phone or email.

If you are having personal or life planning issues, disability or illness that may affect your course of study, you can discuss these with an appropriate staff member of the student support unit as soon as possible. Further information about the University's student support unit can be obtained at their web site: <http://www.utas.edu.au/students/>

Student Services

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 should discuss these with your lecturer and/or one of the following Student Services staff as soon as possible: Learning Skills Adviser, Student Counsellor, Careers Adviser, and/or Disability Adviser.

Student Services is located on the top floor in the Student Union/Association Building Hobart, Ground Floor of Student Centre Kerslake in Launceston or visit their website at: <http://student.admin.utas.edu.au/services/>

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

International Services website provides information on the assistance available to international students: <http://www.international.utas.edu.au>

The Learning Development website has a wide range of resources on study skills and learning strategies: <http://www.utas.edu.au/learndev/>

School Ombudsperson

If you have any concerns about this unit then in the first instance you should discuss the matter with your lecturer. However, if 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 one of the following people who also teaches in the School of Accounting and Corporate Governance:

<i>Name</i>	Mr David Moore
<i>Location</i>	Launceston Campus, Building A, A259 Hobart
<i>Telephone</i>	6324 3558
<i>Email</i>	David.Moore@utas.edu.au

Or

<i>Name</i>	Mrs Simone Bingham
<i>Location</i>	Commerce Building, Hobart Room 421,
<i>Telephone</i>	62262314
<i>Email</i>	Simone.Bingham@utas.edu.au

Unit Feedback

The University of Tasmania, on a regular basis, evaluates its teaching and learning environment through the Student Evaluation of Teaching and Learning (SETL) system. The University values feedback from students and from time to time students will be asked to complete a SETL evaluation for a unit of study. For more information on SETL go to: <http://student.admin.utas.edu.au/setl/index.html>

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 Business 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 students have equal access to lecture and course materials. The School of Accounting and Corporate Governance complies with these procedures.

Unit schedule

Venue: Lectures: Commerce Building Lecture Theatre 2
Workshop: Room 202C

Week No.	Date	Topics for Lecture	Reading Lecture Latimer for -
1	19/7	<p>Lecture 1 (a) General Introduction and Welcome (b) The Legal System and the Administration of Law: Sources of Law; Legal Procedure; The Federal System; Interpretation of Statutes; Doctrine of Precedent.</p> <p>Workshop 1 - Group Tutorial Exercise</p>	Chapters 1
2	26/7	<p>Lecture 2 - The Law of Contract: (a) Formation of the Contract; (b) Intention to Create Legal Relations; (c) Legal Capacity; (d) Consideration</p> <p>Workshop 2 – General Discussion on the material covered in Lecture 1</p>	Chapter 5 5-010 to 5-040 5-050 to 5-090 5-510 to 5-570 5-400 to 5-500
3	2/8	<p>Lecture 3 - The Law of Contract: Agreement; Offer and Acceptance</p> <p>Workshop 3 –first student presentations commence</p> <ul style="list-style-type: none"> ➤ Part 1- On the material covered in Lecture 2 (b) & (c) ➤ Part 2 – On the material covered in Lecture 2 (d) 	Chapter 5 5-130 to 5-390
4	9/8	<p>Lecture 4 - The Law of Contract: Genuine Consent; (a) Mistake; (b) Misrepresentation; (c) Undue Influence; (d) Duress; (e) Unconscionability; (f) <i>Trade Practices Act</i> and <i>Fair Trading Act</i> provisions including misleading and deceptive conduct and unconscionability</p> <p>Workshop 4 – On the material covered in Lecture 3</p>	Chapter 5 5-620 to 5-691 5-700 to 5-705 5-710 5-720 5-730 to 5-760
5	16/8	<p>Lecture 5 - The Law of Contract Legality of Objects; Illegal and void contracts; Restraint of Trade</p> <p>Workshop 5 – On the material covered in Lecture 4</p>	Chapter 5 5-820 to 5-887
6	23/8	<p>Lecture 6 -The Law of Contract: Contents of the Contract: Terms; Conditions; Warranties; Exemption Clauses</p> <p>Workshop 6 – On the material covered in Lecture 5</p>	Chapter 6 6-010 to 6-240

7	30/8	Lecture 7 -The Law of Contract: The End of the Contract: Discharge and Remedies. Workshop 7 – On the material covered in Lecture 6	Chapter 6 6-280 to 6-510
8	6/9	Second Semester Mid-semester Break (no workshops or lectures)	
9	13/9	Lecture 8 –Agency Workshop 8 – On the material covered in Lecture 7	Chapter 11
10	20/9	Lecture 9 -Consumer Law: (a) Trade Practices Act; Fair Trading Act; Sale of Goods Act (b) Consumer Credit Law Workshop 9 – On the material covered in Lecture 8 Assignment 1 due 18th September 2pm	Chapter 7 Chapter 14
11	27/9	The Law of Torts: Negligence; Negligent Misstatement; Liability of Advisers; Accountants; Auditors Self Directed Learning Week – no lectures or workshop	Chapter 3
12	4/10	Lecture 10- Property Law Workshop 10 – On the material covered by students in the self directed learning week	Chapter 4
13	11/10	Lecture 11 - Business Organisations: (a) Sole Trader; (b) Partnership; (c) Incorporated Company; and (d) Trust Workshop 11 – On the material covered in Lecture 10	Chapter 9
14	18/10	(a) Problem Solving Workshop – to commence at the conclusion of the lecture (b) Examination Comment. SETL.	
Examination period – See the Current Students <i>homepage</i> (>Examinations and Results) on the University’s website			

Annexure to Assignment 2 & the Workshop Program

General

Workshops are designed to promote informed discussion of legal issues. They will follow and consider the Questions provided in this Section of the 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.

Workshop Times

Workshops will be held on Wednesdays after the lecture, at either 3.10pm or 4.10 depending on which workshop group you have been allocated to.

Individual ORAL Presentations

At the conclusion of the first lecture, *ONE* of the Questions marked '*Individual Presentation – Assignment Question*' will be nominated by the tutor for ORAL presentation in a workshop. Each student nominated must write up the *WHOLE* assignment question, but will only need to make an oral presentation for *EITHER* Part (a) OR Part (b) of the Question. When questions are allocated, each student will be nominated to present *EITHER* Part (a) or Part (b) of the Question. Individual presentations and question allocation will be decided by the Lecturer at the first tutorial. It may be necessary to allocate more than two students to some questions.

Oral presentations will commence in the *THIRD* workshop (i.e.: 2nd August 2006).

A list will be put onto WebCT- Vista showing the names of students presenting assignments, questions nominated for presentation by them and the relevant part for oral presentation [i.e.: Part (a) or Part (b)] and the date and time of the workshop at which they are to be presented. Check this list carefully and notify the lecturer-in-charge of any errors so that they can be rectified quickly.

Submission of Individual Assignments

One typed assignment covering the whole question and five questions to be discussed at the workshop is to be submitted by EACH student.

You are also required to prepare a one page summary of the part that you are presenting to the class and have enough copies of it to give to each student.

If you have been allocated part (a) to for your oral presentation then your 5 questions must relate to part (a). If you have been allocated part (b) you 5 questions must relate to part (b). The typed assignment is to be submitted no later than the start of the workshop in which the Assignment is due to be presented.

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). An assignment cover sheet for each tutorial assignment must be attached and signed.

Guidelines for Oral Presentations

For the purposes of the ORAL presentation, EACH assignment presenter (of Part (a) or Part (b) as the case may be) is allowed a *maximum of 20 minutes* inclusive of: -

- Explanations,
- delivery of your 5 workshop questions – these can be delivered in any format you wish, for example by use of a quiz, role play and/or by the use of appropriate visual aids.
- responses from other students to workshop questions and/or
- clarifications to be provided.

Both during and after the oral presentation, the individual presenter will discuss issues and /or answer any other questions raised by students and/or the lecturer.

The purpose is to test the presenter's understanding of the material presented and other related aspects and to focus the attention of the workshop group on some important principles. If there are three (3) students in a workshop rather than two (2), the lecturer will make necessary changes to the time allocation for presentation by the three students concerned and advise them accordingly.

If you use an overhead (OHP) do not crowd a lot of information in it nor use small lettering which no one will see from the back of the tutorial room. Try not to read your paper (that is part (a) or (b)) word for word; make the main points and involve the rest of the group in the presentation (see Class Participation below). NOTE: if students choose to use Overheads they must do so at their own cost. Overhead transparencies will not be provided by the School and must be supplied at the cost of the student.

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.

Questions for Workshops and Assignment 2

1. Workshop 1 (Wednesday 19 July 2006)

Group exercise

You will be required to participate in a class exercise aimed at looking at the Australian legal system with each student participating by answering questions and introducing themselves to the group as directed by the lecturer.

2. Workshop 2 (Wednesday 26 July 2006)

Owen, Annie, Peter and Gwen have all lived in Tasmania since early 2001, when they arrived as international students to complete a Bachelor of Commerce, majoring in accounting. They are now all permanent residents of Australia. All secured full time work at the beginning of 2004 as trainee accountants. All are working for the accounting firm "Account-U-Tas", a very successful Tasmanian accounting firm based in Hobart. Each has successfully completed their two-year probation period. During their time with the firm the four have gained considerable experience and exposure to the firm's business expansion program.

The following questions will be discussed by all students. Every student is required to prepare and be ready to discuss short answers to each question.

Facts for workshop 2 exercise

1. Owen and Gwen have both been told that their employment with Account-U-Tas will end on the 30 March 2006. They are both therefore looking for work elsewhere. Gwen has obtained an interview for a temporary position with the Justice Department of the Tasmanian State Government. To prepare for her interview she has been asked to provide answers to the following questions:-
 - (a) Where does law in Australia come from?
 - (b) Who makes law?
 - (c) How does law change over time?
 - (d) What is the difference between criminal law' and 'civil law'?

Required:

Assist Gwen by preparing answers to these questions and by discussing them during this workshop.

2. Prior to coming to Australia Owen had completed a degree in Fine Arts in America. He is a talented potter and would like to sell some of his pots to friends and workmates.

Required:

Assist Owen by advising him of the six (6) basic requirements that are needed to form a valid contract. Think of some day to day examples of a valid contract or commercial transaction. The tutor will go through some scenarios with you, and you will assist where required, and the class will discuss with each scenario whether or not there is a valid and legally enforceable contract between the parties involved, why or why not?.

3. Workshop 3 (Wednesday 2 August 2006)

Individual Presentation - Assignment Question – This assignment addresses learning outcomes 2 and 8.

Part 1

- (a) i “A contract may not be valid if one or both parties lack the legal capacity to contract. Although there is a presumption of full capacity, care should be taken in dealings with certain persons because of the invalidating effects of the lack of capacity to contract.” Latimer, (2006) *Australian Business Law*, 25th Edition

Required:

Discuss the above and explain the circumstances in which a contract signed by certain persons is voidable. Illustrate your answer with relevant case law and statutory provisions.

- ii Outline and illustrate with case law where relevant the common law rules and presumptions that are made in relation to the intention to be bound to a contract in regard to social, family, domestic and commercial agreements.
- (b) Owen (from the previous workshop questions) decides to pursue his dream of setting a small business selling his pottery but needs funds to set it up. He applies to the Bank of Tasmania for a loan of \$50, 000. The Bank of Tasmania requires a security for repayment so Owen asks his friend Peter, who has a good job as an accountant, if he will sign a guarantee of repayment document.

Bill, the bank manager speaks to Peter to determine if he is prepared to sign this guarantee document. Peter tells Bill that he does want Owen to be able to borrow the funds to allow him to set up his own business and that he will ‘consider the request for a guarantee and discuss it with his friend Annie at the earliest opportunity to do so within the next two weeks. Bill, the bank manager rings Peter the next day saying he needs an answer. Peter sends Bill a letter saying that he:

‘believes he will be able to sign the guarantee document but can not do so without first talking to his friend Annie who is on a weeks holiday.’

Without waiting for the formal guarantee document to be signed by Peter, Bill approves the loan to Owen and the \$50, 000 is provided to Owen. When Annie returns from her holiday she advises Peter not to sign the guarantee document.

Within six weeks of the loan, Owen starts to default on loan repayments as his small business idea fails. The Bank of Tasmania terminates the loan and commences legal proceedings against Peter, alleging he has guaranteed Owen’s loan by providing the letter to the Bank.

Required:

Advise Peter of the Bank of Tasmania’s chances of successfully enforcing the alleged guarantee against him.

Part 2

- (a) i Define consideration.
- ii What rules have been developed by the common law with regard to consideration?
- iii Is consideration necessary in all contracts? Why?
- iv What is the significance of the decision in *Walton’s Stores v. Maher* (1988) 164 CLR 387? Discuss.

- (b) For the factual situations set out below please consider:
1. whether there is actual consideration; and
 2. which of the rules set out for the operation of the doctrine of consideration is relevant.
- Annie is set to achieve her CPA qualifications at the end of 2007. She is lacking the motivation to study for her final exams and in August 2007 her boss Sheldon promises to pay her \$2500 for each subject that she completes where she obtains a mark of 75% or better. Annie then decides to study hard and manages to obtain marks of 75% or more in all 4 units that she completes in 2007. Sheldon is now refusing to pay Annie the \$10000 that Annie says is owing to her.
 - Wayne is employed by Gwen to tidy her garden. The agreed fee is \$30 per hour. Wayne does 6 hours work. When Gwen sees the work that Wayne has done she is so impressed and says "You have done such a fantastic job I want to give you an extra \$100 for your trouble." The next day Wayne sends his account for \$280. Gwen sends a cheque only for \$180. Wayne now believes he is owed the extra \$100.
 - Owen has lost his dog and posts a notice on a number of telegraph poles that he will pay \$500 to anyone returning his dog to him. Gary, Owen's neighbour finds the dog locked in his shed and returns it to Owen, unaware of the \$500 reward notice. Later in that same day Gary sees one of the notices and goes around to Owen's to claim the \$500. Owen says he owes Gary nothing.
 - Samantha dislikes the new Honda motor vehicle that her husband bought her for her birthday. She tells Tim this and says he can have it for \$1000. The car is worth \$50 000. Tim says yes and pays Samantha \$1000. Samantha signs the transfer papers and Tim takes them and drives the car away. When Samantha's husband arrives home he telephones Tim demanding the return of the car.

4. Workshop 4 (Wednesday 9 August 2006)

Individual Presentation - Assignment Question – This assignment addresses learning outcomes 2 and 8.

- (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, (2006) Australian Business Law, 25th ed.*

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) Owen makes 20 clay urns and knows that a number of galleries in Tasmania would be willing to purchase them from him. On 10 July 2006 Owen writes to Launceston Unique Boutique Pty Ltd:

To the Manager of Launceston Unique Boutique

Further to my visit to your gallery last Monday I confirm that I have for sale 20 of my hand made urns. I confirm that the selling price is \$100 per urn, that is \$2000.

If you wish to purchase these from me please contact me by return post within the next 14 days and you can have them at this price provided you can collect them from my home at 5 Smith Street, Sandy Bay no later than 30 July 2006.

Yours faithfully

Owen Day

Launceston Unique Boutique Pty Ltd receives the letter on 12 July 2006 and the owner posts a letter back to Owen on Friday 23 July 2006 accepting all his terms. By 26 July 2006, having heard nothing from Launceston Unique Boutique Pty Ltd Owen telephones a Hobart gallery and sells all the urns to them for \$2000.

On 27 July Owen sends an email to Launceston Unique Boutique Pty Ltd confirming that he has sold the urns, as he has not heard from them. On 28 July 2006 Owen receives in the post the letter that Launceston Unique Boutique sent on 23 July 2006 accepting his offer. Again Owen emails Launceston Unique Boutique to confirm that he has sold the urns. Unfortunately both emails that Owen sent to Launceston Unique Boutique are not received by them as their computer system is down for repair. The owner of Launceston Unique Boutique arrives in Hobart with his delivery truck on the 30 July 2006 to collect the urns and complete the deal.

Required:

Advise Owen whether he has an enforceable contract with Launceston Unique Boutique Pty Ltd. In your answer refer to relevant legal principles, decided cases and where appropriate relevant legislation.

5. Workshop 5 (Wednesday 16 August 2006)

Individual Presentation - Assignment Question – This assignment addresses learning outcomes 2, 3 and 8.

- (a) Both the common law and some legislation allow some contracts to be declared either void or voidable should one party be able to establish that their consent was not genuine. To do this they need to establish that there was: -
1. A mistake;
 2. A misrepresentation;
 3. Duress; or
 4. Unconscionability or unconscionable conduct?

Please outline what these terms mean and what is required before a party can claim that the contract is unenforceable as a result of an absence of genuine consent. Where applicable please refer to both express provisions in the *Trade Practices Act 1974 (Cth)* and relevant case law.

- (b) Owen's urns, vases, plates and cups are now selling very well in a number of galleries in Hobart. Hobart Design Pty Ltd, a fast growing export company are selling many of his pieces and approach Owen with a view to being his sole retailer of all his merchandise. Their managing director Trent Trublin presents Owen with a written contact which has a term of 5 years.

The contract gives the copyright, patents and exclusive right to buy any or all of Owens pottery from Owen. It also stipulates that Hobart Design Pty Ltd is able to buy any or all of the pottery from Owen and that it has the right to sell the pottery exclusively throughout Australia. It goes on to state that it is not required to buy any certain amount of pottery from Owen and that Owen is not allowed to sell his pottery to any other business or person within Australia for the length of the contract.

Hobart Design Pty Ltd therefore is under no legal obligation to buy any of Owen's pottery.

Owen signs the contract without reading it and without seeking independent legal advice. This happens after Trent Trublin threatens to spread rumours around Hobart that Owen has been involved in dealing in the drug "Ecstasy" in local bars and clubs (which is not true). Trent Trublin tells Owen, '*The police will be down on you like a ton of bricks*'. He also says that Owen's career as an artist will be destroyed.

One year later, Owen has sold \$8,000 worth of pottery to Hobart Design Pty Ltd and his artwork has been featured in 5 nationwide exhibitions, selling out to huge acclaim and featured in a number of home improvement magazines.

Hobart Design Pty Ltd now advise Owen that the market is flooded with his pottery and that they want to rest his art work and that they will not be buying any of his pottery for the next 6 months and sales of it after that will have to be very limited. At this time Owen is approached by Australian Pottery House Inc who offer him a 5-year contract on considerably better terms than the current contract he is under.

Owen decides to accept this five-year contract with Australian Pottery House Inc of Sydney for \$500,000 plus a percentage of retail sales bonus of 15%.

Hobart Design Pty Ltd now threatens Owen with legal action for breach of contract if he signs a contract with Australian Pottery House Inc.

Required:

Advise Owen. Is he free to sign the new contract? Illustrate your answer with relevant case law and statute law.

6. Workshop 6 (Wednesday 23 August 2006)

Individual Presentation - Assignment Question – This assignment addresses learning outcomes 2 and 9.

- (a) What types of contracts are illegal or void at common law? Discuss.
- (b) Peter worked for Account-U-Tas, a large Tasmanian accounting firm from 2004 to 2014. In 2009 he signed a new employment contract with the firm that contained the following clause:-

'Upon termination of the employee's (Peter's) employment with Account-U-Tas the employee covenants with Account-U-Tas that he shall not engage in, either directly or indirectly, the trade or business of accounting, auditing or any other related professional activities for a period of 15 years anywhere in Tasmania.'

In 2014 Peter leaves Account-U-Tas to travel with his wife and children with the intention of returning to his home country of China to work as an accountant. In 2016 however Peter and his wife decide once again to move to Tasmania and Peter joins a small accounting practice operating in Smithton a small town on the west coast of Tasmania.

After working for this firm for only 2 weeks Peter receives a letter from the managing partner of Account-U-Tas, Sheldon, reminding him of his contract with them that contained the clause as set out above. Sheldon's letter states that unless Peter stops working as an accountant that Account-U-Tas will take action against him in court for breach of the restraint of trade clause.

Required:

Advise Peter whether you believe that the restraint of trade clause in the contract he signed in 2009 would be upheld by a court should Account-U-Tas take legal action against him. In your answer refer to relevant legal principles, decided cases and where appropriate relevant legislation.

7. Workshop 7 (Wednesday 30 August 2006)

Individual Presentation - Assignment Question – This assignment addresses learning outcomes 2,3,5 and 8.

- (a) On what basis will the courts enforce an exemption clause in a contract? Refer to relevant case law in your answer as well as the *Trade Practices Act 1974* (Cth).
- (b) Sheldon wishes to reward Annie for all her hard work so he invites her and her husband Mark on an overnight trip to Launceston. They all book into the Launceston Country Hotel. Mark, a jeweller by trade has with him a brief case of expensive jewels that he has taken up to Launceston to deliver to his Launceston shop, but this cannot be done until tomorrow. They all check into the hotel and Mark asks if he can leave his suitcase in the hotel safe. (Mark has stayed at the hotel once before and on that occasion left some valuables in the hotel safe). Mark explains to the clerk that the briefcase contains \$150,000 worth of uncut diamonds that he is going to deliver the next day.

The clerk at reception says that this is ok as they have a safe in the manager's office. Mark hands over the briefcase and the clerk duly locks the case in the safe. Mark fails to notice a sign at reception that is positioned behind a large bunch of flowers on the desk that reads:-

While all care will be taken with valuables left in the care of the Hotel safe, the Hotel takes no responsibility for any damage or loss to customers belongings"

Mark Annie and Sheldon then go out for dinner to a restaurant in Launceston.

That night the hotel manager comes into his office after the office Christmas party after having consumed a large amount of alcohol, having not been informed by the clerk that the briefcase was in the safe. He opens the safe up to collect a 1974 bottle of French Champagne he was keeping for a rainy day. When he leaves later that night he leaves both the safe and the manager's office unlocked. The next morning staff arrives and find that the safe has been burgled and Mark's briefcase has been stolen along with all the other contents of the safe.

Required:

Advise Mark if he is able to recover the value of the stolen diamonds from the hotel or is the hotel covered by its exclusion clause? Please illustrate your answer with case law and relevant legislation.

8. Workshop 8 (Wednesday 13 September 2006)

Individual Presentation - Assignment Question – This assignment addresses learning outcomes 2 and 9.

- (a) Describe and discuss the different ways in which a contract may be discharged or ended. In your answer refer to relevant legal principles, decided cases and where appropriate relevant legislation.
- (c) Mark decides that his backyard garden needs landscaping so he contacts Landscape Capers Pty Ltd. The managing director of the company, Lee meets with Mark on 10 July 2005. A plan for Mark's back yard is drawn up and Lee sends it to Mark together with a printed contract.

Three of the terms in the contract are: -

'The works shall be commenced within one calendar month of the date of this contract and completed within three calendar months of commencement.'

'The agreed price for the work is \$25,000, inclusive of all allowances for material.'

'The work to be undertaken includes the erection of a new water feature, with a marble bird centrepiece as selected by the owner from Bay Garden supplies (to the value of \$1,500), such piece to be selected by the owner within two calendar months of commencement of the work.'

Mark reads, signs and dates the contract 15 July 2005 and delivers it back to the offices of the Company on this date. Work on his garden commences on schedule on 1 August 2005.

On 1 September 2005 Mark with Annie leave Tasmania for a holiday without selecting a bird centrepiece for the water feature. Lee is unable to contact Mark so he attempts to purchase a bird centrepiece on 30 September but is told they have all sold out and the manufacturer is not making more. Lee then completes the water feature without the centrepiece.

The company completes the remainder of the work by 15 October and sends an invoice to Mark who receives it on his return to Tasmania. Mark refuses to pay for any of the work as he states *'The job has not been finished'*. Lee insists on full payment of the \$25,000 insisting that his company has carried out all that was required.

Required:

Advise both parties of any remedies that they may have in the circumstances. In your answer refer to relevant legal principles, decided cases and where appropriate relevant legislation.

9. Workshop 9 (Wednesday 20 September 2006)

Individual Presentation - Assignment Question Individual Presentation - This assignment addresses learning outcomes 4 and 8.

- (a) Outline the duties of an agent, both to the principal and the third party.

- (b) After many attempts at setting up a business Owen has finally set up his own successful small art gallery and café in Burnie. To supplement this, he works as an agent for a number of large mainland artists, designers and sculptors including Sydney Sculptors Pty Ltd a company based in Sydney that produces sculpture from precious metal. Jill has seen a number of the display pieces in Owen's gallery and wants to commission a sculpture as a present for her husband's 40th birthday.

Jill contacts Owen and a design is agreed and forwarded to Sydney Sculptors Pty Ltd. A price of \$15,000 is agreed, with Owen's commission agreed as being 10% of this price. Jill needs the piece completed by 10 March 2006, the day before her husband's birthday. As it is only October 2005 Owen is confident that the piece will be ready by this date so he agrees to Jill's inclusion into the standard contract of a penalty clause providing a price reduction of 5% of the price for every week of delay. Jill and Owen then both sign the contract with this clause included. Sydney Sculptors Pty Ltd were not consulted about the inclusion of this clause and have never agreed in the past to the inclusion of a penalty clause.

Due to an unforeseen rush on Sydney Sculptors Pty Ltd, the sculpture ordered by Jill does not arrive until 31 March, some three weeks late.

Required:

Advise Sydney Sculptors Pty Ltd: -

- i. if it is legally bound to supply the sculpture for the reduced price, as negotiated by Owen; and
- ii. whether they are still obligated to pay Owen his commission.

In your answer refer to relevant legal principles, decided cases and where appropriate relevant legislation.

10. Workshop 10 (Wednesday 4th October 2006)

Individual Presentation - Assignment Question – This assignment addresses learning outcomes 5 and 8.

- (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) Owen is interested in purchasing the building next door to his art gallery in Burnie with a view to extending his art gallery by knocking down the joining wall. To determine if this would be possible he engages the services of both an architect and property valuer - Tim and structural engineer - Tom. Tim and Tom, who work for the same building consultancy and land valuation firm provide a joint report confirming that the building next door is worth approximately \$100 000. This report further confirms that the building would be suitable for Owen's purposes and the work required to knock down the wall and extend the gallery would be no more than \$50 000.

At the end of their report, Tim and Tom insert a disclaimer as follows:

'This report is based upon information supplied by the Burnie Council and from on site inspections made by the report writers. This report is for your use and no responsibility is accepted to any third party for the whole or part of the report.'

To secure these funds Owen approaches the Bank of Tasmania and gives them a copy of Tim and Tom's report.

The Bank of Tasmania relies on the report and loans Owen \$125,000, Owen has savings of his own of \$25,000.

Owen purchases the building next door for \$100 000 and commences the necessary work. One week into the work it becomes apparent that the building next door is in fact not structurally sound and when a council inspector comes to view the building work the building is condemned, and Owen is ordered to pull it down. Owen incurs \$10 000 of cost to complete the demolition and the block of land is valued at only \$20 000.

Required:

- i To what extent can Owen recover compensation from Tim and Tom and/or the firm for which they work?
- ii To what extent can the Bank of Tasmania recover compensation from Tim and Tom and/or the firm for which they work?

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

11. Workshop 11 (Wednesday 11 October 2006)

Individual Presentation - Assignment Question – This assignment addresses learning outcomes 9.

- (a) Detail the law relating to intellectual property.
- (b) As we all know by now Owen is an artist. He engages a photographer to take photos of his work with a view to advertising it in a national home improvement magazine. Owen is not happy with the photos taken so refuses to pay for the work undertaken by the photographer, Kevin. A number of weeks later Owen sets up a web site to sell his pottery on line and scans in the photos taken by Kevin. Kevin notices Owen's web cite and tells Owen that unless he either pay him \$3000 (which was the agreed fee for the work done initially) or stop using the photos by the end of the week Kevin will take action against Owen. Owen refuses to pay, saying he only scanned the photos that he had in his possession and in any event they are photos of his own work and therefore Kevin has no right to take any action.

Required

Inform both Kevin and Owen in relation to whom, if either of them has copyright or any other rights over these photos and if there are such rights how can they be protected?