



BFA141 Commercial Transactions

Semester Two 2007

School of Accounting and Corporate Governance

Faculty of Business

Unit Outline

Simone Bingham

Contact details

Unit Coordinator, Hobart Lecturer and Tutor

Simone Bingham BEc/LLB, GradCertLegalPrac, BCom(hons) Tas
Email: Simone.Bingham@utas.edu.au
Location: Hobart Campus, Commerce Building, Room 421
Telephone: 6226 2314 Facsimile: 6226 7845

Hobart Tutors

Tom Baxter BEc-LLB, GradCertLegPrac, LLM (ANU)
Location: Hobart Campus, Commerce Building, Room 423
Email: Tom.Baxter@utas.edu.au
Telephone: 6226 2803 Facsimile: 6226 7845

Lynette Beckett LLB(Hons), GradCertLegalPrac.
Email: Lynette.Beckett@hob.com.au
Telephone: 6234 7622 (w) Facsimile: 6226 7845

Monique Blackman BSc-LLB GradCertLegalPrac.
Email: mknevelt@utas.edu.au
Telephone: 6225 1936 (h) Facsimile: 6226 7845

Barry Hicks BA (Syd), LLB (Syd).
Email: Barry.Hicks@utas.edu.au
Location: Hobart Campus, Commerce Building, Room 424
Telephone: 6226 2802 Facsimile: 6226 7845

Susie Winter BA-LLB, GradCertLegalPrac
Email: susiew@netspace.net.au
Telephone: 0400 249386 (message bank)
Facsimile: 6226 7845

Launceston and Burnie Lecturer and Tutor

John Streeter LLB
Email: John.Streeter@utas.edu.au
Telephone: 6362 2944 (h) Facsimile: 6226 3711

Staff will advise their consultation hours. If you wish to view further information regarding permanent staff members in the School of Accounting & Corporate Governance see:

<http://fcms.its.utas.edu.au/business/accg/people.asp>

Contents

1. UNIT DESCRIPTION.....	2
2. LEARNING OUTCOMES	2
3. GENERIC GRADUATE ATTRIBUTES	2
4. LEARNING RESOURCES REQUIRED	3
5. DETAILS OF TEACHING ARRANGEMENTS.....	5
6. LEARNING EXPECTATIONS AND STRATEGIES	7
7. SPECIFIC ATTENDANCE/PERFORMANCE REQUIREMENTS	8
8. ASSESSMENT DETAILS	9
9. LEARNING OUTCOMES/GENERIC GRADUATE ATTRIBUTES MATRIX.....	13
10. HOW YOUR FINAL RESULT IS DETERMINED	13
11. REQUIREMENTS FOR ASSIGNMENTS	13
12. SUBMISSION OF ASSIGNMENTS	14
13. PENALTIES	15
14. PLAGIARISM.....	15
15. FURTHER INFORMATION AND ASSISTANCE	17
16. UNIT SCHEDULE - BFA141 SEMESTER 2, 2007	19
17. APPENDIX TO UNIT OUTLINE	20

1. Unit Description

(a) Unit Description

There are many units taught in the Business Degree program that require you to have some knowledge of the law and the legal system generally. Various types of commercial transactions are considered in the majority of units and each of them by definition must have some legal foundation. BFA141 Commercial Transactions provides the legal background, knowledge and skills that are necessary for successful study of later units.

(b) Campus & Mode

BFA141 is delivered face-to-face on-campus in Hobart, Launceston, and Burnie and Shanghai during Semester 2.

2. Learning Outcomes

At the conclusion of the Unit, you should be able to:

1. Explain basic legal contractual concepts, through the application of relevant legislation, cases, rules and principles of contract law (links to the knowledge and communication skills graduate attribute).
2. Apply contract law to specific situations (links to the knowledge and problem solving skills graduate attribute).
3. Apply negligence law to specific situations (links to the knowledge and problem solving skills graduate attribute)
4. Apply agency law to specific situations (links to the knowledge and problem solving skills graduate attribute)
5. Access up to date legislation, now and in the future (links to the knowledge and communication skills graduate attribute).
6. Communicate your level of understanding clearly and concisely (links to the communication skills graduate attribute).

3. Generic Graduate Attributes

The University has defined a set of generic graduate attributes 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: explain basic contract law concepts through research and the application of contract law information.
- Communication skills: write and speak coherently on contract law issues.
- Problem-solving skills: interpret scenarios, identify relevant contract law issues and use contract law knowledge to justify your answers.

These generic graduate attributes are integrated in each and every assessment task in the unit.

4. Learning Resources Required

(a) Prescribed Texts

You must have ready access to the prescribed textbook that is available from the University Co-op Bookshops.

- Latimer, P. 2007, *Australian Business Law*, 26th ed, CCH Australia Ltd, Sydney.

This text is supported by an interactive self-paced learning CD “*Australian Law Courseware*.” This is not a prescribed learning resource, but can be purchased from the University Co-op Bookshops.

(b) Recommended Texts

Fleet, W., Summers, J. and Jones, B. 2006, *Communication Skills Handbook for Accounting*, 2nd ed, John Wiley & Sons, Brisbane, may assist you in both written and oral assignments.

(c) Other Learning Resources

PowerPoint slides for weekly lectures will be made available on WebCT Vista (discussed later in this Unit Outline). At the discretion of the Unit Coordinator, other materials may also be made available on WebCT Vista.

(d) Internet Websites and References (searching the net)

Some internet websites may be of use to you in your studies. If you find additional useful websites to those below, please forward details of the links to the Unit Coordinator via e-mail: Simone.Bingham@utas.edu.au

The most authoritative website to access consolidated (i.e. current) Commonwealth legislation is: <http://www.comlaw.gov.au> If you have difficulty using ComLaw, you can also try its predecessor website <http://scaleplus.law.gov.au> but this is no longer kept up to date.

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 following site provided by the Australasian 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/>

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*.

(e) WebCT Vista

WebCT (Web Course Tools) Vista hereafter referred to as 'Vista', will be used by the Lecturer in connection with the delivery of this unit. The 'Vista' Internet service may be accessed on computers in computing laboratories at the University or, on your computer at home or at work. You do not require the Tas Access service to connect to Vista.

Access to Vista

The Vista service is available using a web browser (such as Netscape Navigator or Internet Explorer). The site for the service is: <http://vista.utas.edu.au> Clicking 'University of Tasmania' takes you to the "Login" form at <http://vista.utas.edu.au/webct/entryPage.dowebct> where you should enter your email POP account "Username" (for example, bsmith) and your "Password". This 'Login' screen also provides access to the [Learning Online](http://www.utas.edu.au/coursesonline/) site at <http://www.utas.edu.au/coursesonline/> This site includes helpful information such [Computer Requirements!](#) (including software and hardware requirements) and access to 'Vista compatible software'. There are also links to [Vista Support - Self Help Sheets](#) and IT support. Vista is available from any Internet connection and is restricted only by your User Name and password.

Vista facilities

Vista offers a number of facilities the Lecturer may use. These include the following:

"Unit Information" – files will be placed here by the Lecturer including the Unit Outline, Faculty Guide for Students and Past Examination Papers.

"Learning Resources" – files will be placed in this area by the Lecturer that contain lecture materials, slides and other materials for lectures, and assignments.

"Communication" – this area includes 'Discussion' and 'Mail'. In the 'Discussion' area, facilities are provided for on-line 'Discussion' which students can use. Students can also use the 'Mail' area to forward emails to the lecturer-in-charge, although using the emails addresses provided inside the cover of this unit outline may provide a quicker response. The lecturer-in-charge will use the "Communication" facility to make announcements to students.

[“WebCT Help/Support”](#) – links to information and assistance about the use of Vista and other facilities.

(f) PDF files

Many of the files made available through Vista (e.g.: in the *‘Learning Resources’* area) 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 machines in the Faculty Computing Laboratory, but can be downloaded free of charge from the Adobe site should you want a copy for another machine. At Time of writing the required URL was:

<http://www.adobe.com/prodindex/acrobat/readstep2.html>

(g) Getting IT assistance, including with Vista

The **Service Desk** provides support for students on IT, Library and online learning matters:

In person: Morris Miller Library on the Sandy Bay Campus and the Launceston Campus Library. Hours of operation are 8.30am to 5.00pm, Monday to Friday.

Online: <http://www.utas.edu.au/service/utas/service/utas/index.html>

Phone: **6226 1818**
1300 304903 (Local call charge from within Tas, except mobiles)

5. Details of Teaching Arrangements

(a) General

In nearly all teaching weeks of the Semester there will be a **two (2) hour Lecture** and a **one (1) hour Tutorial**. The only three (3) exceptions are that in:

- Week 1 there is only a lecture – you **must** attend this lecture as tutorial times will be allocated for Hobart and Launceston students then advised on WebCT;
- *Self-Directed Learning Week* (see later, Week 8) there is no lecture or tutorial;
- *Week 13* – there is a lecture only.

The topics to be covered week-by-week are as shown in the Unit Schedule later in this Outline. 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).

(b) Lectures

A weekly 2-hour lecture will be used to introduce the various topics that we will cover in the unit. The Unit Schedule later in this Unit Outline gives you the weekly program of lecture topics.

Powerpoint slides for the weekly lectures will be made available on WebCT Vista. Do not expect to learn all you need to know by just attending lectures. It is what you do before and after the lectures and tutorials that really consolidates your knowledge. NOTE that there is NO lecture in the '*Self-Directed Learning Week*' (discussed later in this Unit Outline).

(c) Tutorials

Tutorials 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 tutor and to ask questions of the students who will be presenting their tutorial assignment orally to the class (see later). Take every opportunity to interact with the presenter, other students and the tutor. This will help you to gain understanding and develop important skills. The Tutorial Program will be discussed in detail shortly. NOTE that there is NO tutorial in the '*Self-Directed Learning Week*' (see later) and no tutorial in Week 13.

Hobart and Launceston Students

Students will nominate preferred tutorial Times in the first lecture. Tutorials will then be allocated and tutorial lists posted on WebCT by the start of Week 2 of Semester indicating tutorial Times and locations.

Burnie Students

Students will be informed of the tutorial Time in Week 1 of class.

(d) 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 tutorials and the examination.

Complete the answers to the questions conscientiously so that you can find out where your difficulties lie. Because these are learning activities, we

expect you to make some mistakes but help from teaching staff should resolve many problems. Ask your tutor for help. Do not leave major areas of difficulty until the end of the semester.

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

(e) 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*' without lectures or tutorials has been set aside in Week 8 of Semester 2. 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 previous lectures and tutorials.
- Enable you to revise for forthcoming assessment tasks (i.e. the multiple-choice test and the examination).

Further information about the '*Self-Directed Learning Week*' can be found in Part 2.7 of the Faculty's **Guide for Students** at <http://www.utas.edu.au/accg/studentres.htm>

6. Learning Expectations and Strategies

(a) Expectations

Business students are faced with the challenge of developing technical skills as well as developing their independent learning skills as required by the business community and by the associated professional bodies. The process of "learning to learn" is nurtured by the University of Tasmania through learning activities that empower and enable students to undertake their own learning. The University's aim is to change students from being passive recipients to active participants.

The enabling process occurs as a result of developing generic learning skills, problem-solving and communication skills, and by fostering appropriate learning attitudes, such as a willingness to initiate action, accept alternative points of view and to understand personal limitations.

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 weekly 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.

Further information about the Faculty of Business's philosophy on teaching and learning is set out in the **Faculty's Guide for Students** which is available on BFA141's WebCT Vista site and at the Accounting and Corporate Governance School's website: <http://www.utas.edu.au/accg/studentres.htm>

The University's Code of Conduct for Teaching and Learning is set out in the University Calendar at: <http://www.admin.utas.edu.au/handbooks/utashandbooks/rules/ctea.html> and 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.

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.

(b) Strategies

Although you are expected to take responsibility for your own learning, you are not on your own. If you need additional information refer to the Teaching & Learning website: <http://www.utas.edu.au/learndev/>

One strategy that should help you achieve excellent results is that of organising your Time so that you spend between 10 to 12 hours a week studying this unit, such as:

<i>Activity</i>	<i>Per week</i>
<i>Class contact – lectures and tutorials</i>	<i>3 hours</i>
<i>Reading before class</i>	<i>2 hours</i>
<i>Consolidating material after class and practicing exercises</i>	<i>3 hours</i>
<i>Preparing for class, assessments and the exam</i>	<i>4 hours</i>

It is strongly advised you work through the assigned problems *prior to* your tutorial in order to participate actively and confirm your understanding of the various topics.

7. Specific Attendance/Performance Requirements

You are expected to attend lectures and tutorials. You must achieve an overall mark of at least 50 per cent AND have completed and submitted each item of assessment to pass the unit.

8. Assessment Details

(a) Assessment Schedule

Assessment Task	Due Date	Length	Percentage Weighting
Written Assignment 1	As nominated by your Tutor in Tutorial 1 and commencing from Tutorial 2	1500 words	10
Oral Presentation	As above	15-20 mins	10
Written Assignment 2	3pm, Thursday, 9 August 2007	1500 words	10
In Class Test	Lecture of Week 10 starting 24 Sept 2007	50 mins	10
End of Semester Examination	During exam period	3 hours + reading Time	60
			100

(b) Details of Assignment Tasks

Tutorial Program, Written Assignment 1 and Oral Presentation

Due Date: The written assignment **MUST** be submitted **no later than 3.00pm** on the **Monday before the assignment is due to be presented** orally in your nominated tutorial class (see later), i.e. 11:00am on the Monday date specified for your Question in the *Appendix* to this Unit Outline.

Length: 1500 words maximum [for Part (a) and Part (b) combined].

Marks: Written (10 marks) + Oral Presentation (10 marks) = Total 20 marks.

Links to Unit's Learning Outcomes: 1, 2, 3, 4, 5 & 6.

Task Description:

Tutorials are held weekly commencing in Week 2 of Semester 2 (week starting 23 July) and ending in Week 12. Tutorials are designed to promote informed discussion of legal issues. 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.

Topic: In the first tutorial you will be allocated one of the questions marked '*Individual Presentation – Assignment Question*' in the *Appendix* to

the Unit Outline. You must write up the WHOLE assignment question you are nominated (i.e. BOTH parts (a) and (b)).

Submission of Written Assignments:

A typed assignment covering the whole of your allocated question, i.e. Part (a) AND Part (b), is to be submitted by EACH student.

Follow the specific instructions relating to *Requirements for Assignments* and *Submission of Assignments* that are provided later in this Outline.

Individual Oral Presentations:

When you are allocated your '*Individual Presentation – Assignment Question*' in the first tutorial, your tutor will give you part of the Question, EITHER Part (a) OR Part (b), to present as your ORAL presentation in the corresponding tutorial.

Depending on the number of students in a tutorial it may be necessary to allocate more than two students to present some questions. Oral presentations commence in Tutorial 2 (i.e. Week 3) and end in Week 12.

Guidelines for Oral Presentation:

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 the explanations, responses to questions and/or clarifications to be provided.

Both during and after the oral presentation, the tutor will ask questions of the individual presenter. 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, the use of appropriate visual aids, etc.

Do NOT just read your written paper; make the main points and involve the rest of the group in the presentation (see Class Participation below).

The tutorial assessment form that will be used to mark your Written Assignment 1 and oral presentation will be placed on WebCT Vista so you can see in advance the criteria upon which you will be assessed.

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.

Class Participation in Tutorials:

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 to answer 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.

Tutorials Without a Nominated Student Presentation:

In Tutorials where there are no students orally presenting the relevant 'Question for Discussion/Presentation', ALL students in the Tutorial are required to prepare an answer to the question and come along to the Tutorial prepared to participate in discussion of the answer/s.

Written Assignment 2

Due Date: 3pm, Thursday, 9 August 2007.

Length: 1500 words.

Marks: 10 marks.

Links to Unit's Learning Outcomes: 1, 5 & 6.

Task Description:

A written assignment and its assessment criteria will be posted on WebCT Vista and a hard copy distributed in your lecture for you to complete in accordance with its instructions. Also see the *Requirements for Assignments* and *Submission of Assignments* later in this Outline.

In Class Test

Due Date: Administered in the lecture the week commencing **24 September 2007.**

Length: 50 minutes.

Marks: 10 marks.

Links to Unit's Learning Outcomes: 1, 2 & 3.

Task Description:

A multiple choice (i.e. choose one answer from a number of choices) test will be administered during the lecture the week commencing **24 September 2007**.

The test will assess your knowledge of topics covered previous to its administration. It will also provide useful preparation in advance of the final examination. Further details will be advised via WebCT Vista.

Examination

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, see: <http://www.utas.edu.au/keydates/2006dates.html>

Most exams are held during working hours, usually between 9.00 a.m. and 5.00 p.m., Monday to Saturday. The University will release the Semester 2 examination Timetable, giving information including the exact dates and Times of your examinations on Friday 28 September 2007.

Marks: 60 marks.

Links to Unit's Learning Outcomes: 1, 2, 3, 4, 5 & 6.

Task Description:

You must sit a THREE (3) hour + 15 min reading Time 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, capacity to apply those principles and the ability to communicate this in writing.

You will be required to answer any FOUR (4) of the questions on the examination paper. Questions may be divided into two or more parts in which case all parts must be attempted.

Copies of 'Past Examination Papers' will be placed in the "*Unit Information*" area of Vista. You should refer to past papers when studying for the Final Examination in this unit. In the course of carrying out your revision and study, it is a useful exercise to select questions from past papers and prepare model answers for them.

Further information regarding the examination will be provided to you at the end of Semester.

9. Learning Outcomes/Generic Graduate Attributes Matrix

Assessment task 1	Assignment 1 (Written)					
Assessment task 2	Assignment (Oral Presentation)					
Assessment task 3	Assignment 2 (Written)					
Assessment task 4	In Class Test					
Assessment task 5	Final Examination					
Learning Outcomes:						
	Learning outcome 1	√	√	√	√	√
	Learning outcome 2	√	√		√	√
	Learning outcome 3	√	√		√	√
	Learning outcome 4	√			√	√
	Learning outcome 5	√		√	√	√
	Learning outcome 6	√		√	√	√
UTas Generic Graduate Attribute						
	Knowledge	√	√	√	√	√
	Communication skills	√		√	√	√
	Problem-solving skills	√		√	√	√
	Global perspective					
	Social responsibility					

Matrix adapted from Unit Outline, Faculty of Business, University of the Sunshine Coast 2003

10. How Your Final Result is Determined

Your final result is determined by adding your total weighted assignment marks for the different assessment components of the unit. To obtain a pass or better in the unit, you must submit all coursework and obtain 50% or more of the total marks available.

11. Requirements for Assignments

In preparing and submitting your assignments you should follow the guidelines contained in the **Guide for Students** issued by the Faculty of Business <http://www.utas.edu.au/accg/studentres.htm> and the following specific instructions

Assignments must be typed in 11-point Times New Roman font and be easily read. Number every page in the bottom right corner.

Written assignments must be no more than *1500 words in length*. Do NOT exceed the specified number of words as doing so will result in being penalised by a deduction of marks (see later in this Outline). If using Microsoft Word use the 'Tools' – 'Word Count' function: do NOT include footnotes or endnotes or your References listed at the end of your assignment).

Marks will also be deducted for late assignments (see later in this Outline).

At the start of any problem question where you are asked to advise (eg. tutorial questions, part (b)), include a disclaimer making clear that you are not a lawyer.

Legal Referencing

Include references throughout, cited correctly with a consistent format, including the page and if applicable, paragraph ¶ number wherever you have used a text. The best method of legal referencing is by inserting footnotes where, for cases, the full citation should appear eg. *Brown v Jones* (1999) 27 ALR 61 [See below]. Each assignment should contain a full list of References at the end, including (as relevant):

- Bibliography (all texts used);
- Table of Legislation;
- Table of Cases; and
- Table of Web Citations.

Cite primary sources (eg. legislation sections, case citations) in preference to secondary and tertiary sources (eg. 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)). Legislation should be set out in full when first cited, but can be followed by an abbreviated version in brackets for subsequent use, 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.

Assessment Criteria

Assignments will be marked on presentation and syntax, compliance with instructions (such as above) and substance including: coherence and logical structure; correct identification of the relevant issues and law; correct application and use of case law, statutory principles and other relevant information; depth of analysis and comprehensive referencing.

12. Submission of Assignments

Assignments are required to be submitted as detailed in the Faculty's **Guide for Students**. For example, you must staple to the front of your Assignment the *Assignment Cover Sheet*, completed, signed and dated by you. These are available at the BFA141 WebCT Vista site or <http://www.utas.edu.au/accg/studentres.htm>. Assignments without a *signed* cover sheet *will not be marked*.

On the *Assignment Cover Sheet*, at 'Assignment Title' write the Assignment Number and, for Assignment 1, the relevant Tutorial Question No. (not the Week No.), as set out in the Appendix to this Outline.

Below 'Campus', write 'Word Count' and insert your exact number of words (use the 'Tools' – 'Word Count' function if using Microsoft Word: do NOT include footnotes or endnotes or your References as listed at the end of your assignment).

Please do NOT put your assignment in a folder or plastic pocket.

Hobart - assignments must be submitted via the School of Accounting and Corporate Governance assignment box, Level 5, Commerce Building, Hobart campus.

Launceston – assignments must be submitted via the assignment box in the Faculty of Business area, Launceston campus.

Cradle Coast – assignments must be submitted via the Cradle Coast Burnie office.

13. Penalties

Over-length Work

If you submit over-length work you will be asked to resubmit the work within 48 hours. There will be an automatic 10% penalty of available marks and 10% for each day that you are late in resubmitting.

Late Submission of Continuous Coursework

Consistent with the Faculty's policy on late submission, extensions of Time will only be granted on medical or compassionate grounds. They will not be granted because of work or other commitments. Requests for extension must be made to your lecturer in writing on the School's Application for Extension Form available at <http://www.utas.edu.au/accg/studentres.htm> Medical certificates or other evidence, which supports the application, must be attached. Coursework that is not handed in by the agreed completion date will incur a penalty of 10% of the available marks for each day, or part day, the assignment is late.

Review of results and appeals

You may request a formal remark of your original submission (in accordance with Rule of Academic Assessment 2, Clause 22.1). Under the Rule of Academic Assessment 2, clause 23, you may also request a review of your final result in a unit. For further information see: <http://acserv.admin.utas.edu.au/rules/Rule2.doc>

14. 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.

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.

To guard against plagiarism in connection with the submission of the assignments in this unit, students are required to swear a DECLARATION that forms part of the cover sheet that is required to be attached to assignments. By signing the declaration students undertake to follow the rules set down in the Ordinances forbidding plagiarism and accept that should this offence be proved they have had sufficient warning of the consequences of such a course of behaviour.

The wording of the declaration is as follows:

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. I will keep a copy of this assignment until the end of the semester.

SIGNED: _____
DATE: _____

In general:

- (a) Always express your own ideas in your own words. When drawing from the work of other authors,

- (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 by citing the source and, if a quotation is used, show it in “inverted commas”.
- (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 be penalised for plagiarism. Never leave assignments in any place where they could be copied, either by computer or a photocopier.

15. Further Information and Assistance

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 are advised to raise these with your lecturer or tutor in the first instance. There is a range of University-wide support services available to you including Teaching & Learning, Student Services, and International Services. Please refer to the <http://www.utas.edu.au/students/> and <http://services.admin.utas.edu.au/>

Library Services

If you require assistance accessing the Library see <http://www.utas.edu.au/library/>

School Ombudspersons

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 the following person who also teaches in the School of Accounting and Corporate Governance:

Ms. Belinda Williams

Location: Launceston Campus, Building A, A257

Telephone: 6226 3661

E-mail: Belinda.Williams@utas.edu.au |

Discussions with the ombudsperson will be kept in the strictest confidence. If you wish to pursue the matter further, they will provide advice as to how this can be done. The University also has formal policies, which can be accessed at: http://www.admin.utas.edu.au/ac_serv/complaints_info.html

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

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 & Corporate Governance complies with these procedures.

16. Unit Schedule - BFA141 Semester 2, 2007

Week No.	Week Starts Monday	Text* Chapter	Lecture Topics	Tutorial
1	16/7	1-2	Introduction & the Legal System and the Administration of Law: <ul style="list-style-type: none"> Sources of Law; The Federal System; Legal Procedure; Interpretation of Statutes; Doctrine of Precedent; Crime 	
2	23/7	5	The Law of Contract: <ul style="list-style-type: none"> Formation of the Contract Intention to Create Legal Relations; Legal Capacity 	1
3	30/7	5	The Law of Contract: <ul style="list-style-type: none"> Agreement; Offer and Acceptance 	2
4	6/8	5	The Law of Contract: <ul style="list-style-type: none"> Consideration; Genuine Consent - Mistake; Misrepresentation <p>Written Assignment 2 due 3pm, Thursday, 9 August 2007</p>	3
5	13/8	5	The Law of Contract: <ul style="list-style-type: none"> Genuine Consent - Undue Influence; Duress; Unconscionability; <i>Trade Practices Act</i> and <i>Fair Trading Act</i> provisions including misleading and deceptive conduct and unconscionability 	4
6	20/8	5	The Law of Contract: <ul style="list-style-type: none"> Legality of Objects; Illegal and void contracts; Restraint of Trade 	5
7	27/8	6	The Law of Contract: <ul style="list-style-type: none"> Contents of the Contract - Terms; Conditions; Warranties; Exclusion Clauses 	6
	3/9		[MID SEMESTER BREAK 3 – 10 Sept 2007]	
8	10/9	6	The Law of Contract: The End of the Contract - Discharge and Remedies. Self Directed Study Week – No BFA141 lectures or tutorials	
9	17/9	3	The Law of Torts: Negligence; Negligent Misstatement; Liability of Advisers; Accountants and Auditors	7
10	24/9	7	Consumer Law Multiple Choice Test – undertaken in this lecture	8
11	1/10	11	The Law of Agency	9
12	8/10	9-10	Business Organisations	10
13	15/10		Problem solving techniques, SETLs and Exam Comment	

* **Note:** Chapter reference is to the prescribed text, LaTimer, P. 2007, *Australian Business Law*, 26th ed, CCH Australia Ltd Sydney.

17. APPENDIX to Unit Outline

Questions for Tutorials and Assignment 1

Tutorial 1 (Week 2 of Semester, the week commencing 23 July 2007)

In this Tutorial, firstly, students will be allocated for presentation and submission of the Assignment 1 Questions to be presented in tutorials. Questions are listed below and marked “*Individual Presentation Assignment Topic*”. In the remaining tutorial Time the “*Questions for General Discussion*” will be discussed by students.

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

- (a) What is meant by “the rule of law”?
- (b) What are the primary sources of Australian law?
- (c) What do you think is meant by the term “commercial transaction”?
- (d) Can you think of three commercial transactions that entered into during the last year?

Tutorial 2 (Week 3 of Semester, the week commencing 30 July 2007)

Individual Presentation - Assignment Question

- a In Australia there is a presumption that in a commercial setting, parties that enter into contractual relations with each other have the legal capacity to do so. However there are a number of groups of people within society that may lack this legal capacity. Discuss. In your answer outline who has the obligation of establishing this lack of capacity.
- b Niral has been given 3 pairs of boxing gloves by his brother Rohinton (a very famous Indian boxer). Rohinton suggests to Niral that he sell them as they may be worth a lot of money.

Niral telephones his friend rich friend Aiden and offers to sell him a pair of the boxing gloves. Aiden comes and views the gloves and offers to pay \$5000 for one of the pairs of gloves. Niral notices that Aiden seems a little unwell and when he asks if he is alright. Aiden says that he is fine

but his balance is a little affected as he suffers from a psychiatric condition and that he takes some drugs to control it. Aiden hands over the money and Niral gives him the boxing gloves.

The next day Aiden's 17 year old twin sons Flex and Fabio call to see Niral. Each expresses an interest in purchasing a pairs of the gloves. Flex says he is a boxing apprentice and that he needs the gloves for work. Fabio works as a delivery boy in a marketing firm but says he would like them as they would look good hanging on his bedroom wall. Niral sells them each a pair of gloves for \$5000.

The following day Aiden and his sons Flex and Fabio return stating that they do not want the boxing gloves and that there is no legal contract between Niral and any of them as they all lack legal capacity.

Niral seeks your advice as to this as he would like to enforce the contracts.

Required:

Advise Niral on the following:-

- i is there a valid contract between Niral and Aiden, discuss?
- ii is there a valid contract between Niral and Flex, discuss?
- iii is there a valid contract between Niral and Fabio , discuss?

In your answers refer to relevant legal principles and cases. Do not refer to legislation.

Tutorial 3 (Week 4 of Semester, the week commencing 6 August 2007)

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. 2007, *Australian Business Law*, 25th ed, ¶15-130.

Required:

- i Explain four (4) legal rules as to offer and cite relevant cases for the rules.
- ii Explain nine (9) legal rules as to acceptance and cite relevant cases for the rules.

- iii Explain 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 Mary would like to sell her '1994 Steinway 1098 Upright' piano. On the 5 June she places a notice in the local shop window that reads:-
"For Sale - 1994 Steinway 1098 Upright Piano. A piano with enchanting tone and beautiful sound, lovely touch, excellent condition. If interested contact Mary – phone 65 341234 or mobile 0412 123578 price \$9500."

On the 10 June Bob reads this notice and sends Mary an SMS to her mobile reading:-

"Would like to buy Steinway Piano – will pay \$9500. My name is Bob Smith please call on 0431 145 678"

Mary however does not get Bob's message until the 17 June as her mobile phone battery is flat. On the 11 June Mary places an advertisement in the local paper as follows:-

"For Sale 1994 Steinway 1098 Upright Piano, excellent condition. \$8500, telephone Mary 65 341234".

Bob reads the paper on the 11 June 2007 and calls Mary and arranges to inspect the piano. Bob comes to Mary's house and says he is interested in the piano but he would like to discuss the purchase with his wife first. Mary tells Bob that he can have the piano for \$8200 provided he accepts by the 18 June and pays for and collects the piano by the 20 June.

Bob decides he will accept the offer and on the 16 June he posts a letter to Mary agreeing to pay \$8200 for the piano and further agreeing that he will collect the piano on the 19 June.

On the 17 June Mary charges up her phone and receives Bob's SMS that he sent on the 10 June. Mary phones Bob and says the piano is his but that he must pay \$9500 as that is what he initially agreed to pay. Bob believes that he only has to pay \$8200 and that there already is a valid contract between himself and Mary.

Required:

Advise both parties on the following issues:-

- i was the SMS from Bob an offer that Mary could accept on the 17 June?
Discuss this with reference to the rules as to offer;

- ii was the offer by Mary to Bob offering to sell the piano for \$8200 an offer capable of being accepted by Bob? Discuss this with reference to the rules as to offer;
- iii was there an effective acceptance of any of the 'so called' offers? Which of the rules as to acceptance assist here; and
- iv is there a valid contract between the parties?

In all parts do not refer to legislation.

Tutorial 4 (Week 5 of Semester, the week commencing 13 August 2007)

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 Define promissory estoppel, citing a case authority.

- b Frederick is a successful wine maker, who worked in South Australia from 1990 until July 2006. In July 2006 Vern, whom Frederick had met at the Winemaker's Federation annual conference in 2005, contacts Frederick. Vern wants Frederick to relocate to Tasmania to become head winemaker at a vineyard being established by Vern. Frederick is interested and over the next week terms such as: wage, relocation date, (being 20 August 2006), accommodation and relocation expenses are agreed upon.

Vern has his lawyer draw up an agreement. Frederick employs a lawyer in Hobart to act for him, who looks over this agreement. Frederick's solicitor proposes a number of small changes to the agreement prepared by Vern's lawyer. Vern's solicitors send a facsimile back to Frederick's lawyer on 1 August 2006, stating:

"I believe that approval for the amendments your client, Frederick, requires will be forthcoming. I will let you know tomorrow if any of the amendments are not agreed to."

Some days later Frederick's lawyer, having heard nothing about the amendments, submits, by way of exchange, documents executed by Frederick for signature by Vern. Vern's lawyer does not acknowledge receipt of the documents.

Believing that the contract is proceeding, Frederick gives notice to his employers in South Australia, gives notice to his landlord and sells all his furniture and effects that he will not be able to bring to Tasmania in his car. On 20 August 2006 Frederick arrives in Tasmania. Upon arriving, Frederick is advised by Vern's solicitor that Vern has employed another chief wine maker and that there is no job for him. He explains that there is no binding agreement as there had been no exchange of documents.

Required:

Advise Frederick on the basis of the legal principles and cases relevant to promissory or equitable estoppel. Do not refer to legislation.

Tutorial 5 (Week 6 of Semester, commencing 20 August 2007)

Individual Presentation - Assignment Question

- a
 - i Discuss how mistake, misrepresentation and unconscionability can affect genuine consent such that a contract can be set aside? Illustrate your answer by reference to both common law cases and the *Trade Practices Act 1974*(Cth) and any other relevant statutes.
 - ii. Explain the effect of section 51AA of the *Trade Practices Act 1974* (Cth) (the TPA). Illustrate your answer with relevant case law.
 - iii. 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.
- b Winnie, who is 24 years old, wishes to buy an expensive motor vehicle but he cannot afford it without securing a loan from the ABC Bank. Winnie also knows that the bank will not lend him the money without getting his parents to guarantee the loan.

He asks his parents if they will guarantee the loan of \$75,000 but they both turn him down. They believe he will default on the loan as soon as it is granted and that they can not afford to repay a \$75,000 bank loan.

Winnie approaches his elderly grandparents Max and Melva who speak little English and who cannot read or write English. Winnie informs his grandparents that he would like them to help him to borrow money so that he can pay off a student loan so that he can return again to University.

Winnie's grandparents feel that Winnie ought to be supported in his study so when the ABC Bank asks them to sign the guarantee for the sum of \$75,000 they readily agree and sign the guarantee documents that ABC Bank gives them. ABC Bank does not explain to Max and

Melva the reason why Winnie needs the money and assumes Winnie has already discussed this with his grandparents

After ten weeks Winnie begins to default on the loan and the ABC Bank are considering taking action against Winnie's grandparents to claim the balance outstanding on the loan.

Required:

- i. Advise the ABC Bank of its chances of successfully enforcing the alleged guarantee against Winnie's grandparents, Max and Melva.
- ii. What defences may be available to Max and Melva to any action that the ABC Bank may take against them?

Illustrate your answers to both subparts with relevant case law and legislation.

Tutorial 6 (Week 7, week commencing 27 August 2007)

Individual Presentation - Assignment Question

- a What types of contracts are illegal or void at common law? Discuss.
- b Sidney worked for Wellington Accountants, a large Tasmanian accounting firm from 2000 to early 2006. Having satisfied his probationary year Sidney signed a new employment contract in 2001 with the firm that contained the following clause:-

'Upon termination of the employee's (Sidney's) employment with Wellington Accountants the employee covenants with Wellington Accountants 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 January 2006 Sidney left Wellington Accountants to travel with his wife and children with the intention of returning to his home country of China to work as an accountant. In March 2007 however Sidney and his wife decided once again to move to Tasmania and Sidney joined 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 Sidney received a letter from the managing partner of Wellington Accountants, Nick, reminding him of his contract with them that contained the clause as set out above. Nick's letter stated that unless Sidney stopped working as an accountant that

Wellington Accountants would take action against him in court for breach of restraint of trade.

Required:

Advise Sidney whether you believe that the restraint of trade clause in the contract he signed in 2001 would be upheld by a court should Wellington Accountants take legal action against him.

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

Tutorial 7 (Week 9, week commencing 17 September 2007)

Individual Presentation - Assignment Question

- a Explain 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 Marty decides that he wants to join a gymnasium so he can lose a bit of weight. He decides that he will join *Barclays Gymnasium and Health Club Pty Ltd* (Barclays Gym) as it is located in the same building as his work. He has to walk past the front of this gym each day to get to his office where he has been working for the past 12 months.

Marty decides to take up an offer that Barclays Gym is running which provides three (3) initial sessions for \$45.00. Marty goes to Barclays Gym one lunch Time and informs the receptionist that he is new. He pays her the \$45.00.

There are a number of signs at Barclays Gym (including one on the glass front door of the gym, one above the counter and two signs in the change rooms) all written in large red large letters that read:

“Users of this gym must not use any of the equipment before they are given complete instructions on the safe use of all machines by a staff member. If you fail to do this and are injured then Barclays Gym is not liable. “

The receptionist asks Marty if he has been given any instructions on the correct use of the equipment. Before Marty has a chance to answer she is distracted by the telephone and Marty waits 5 minutes while the receptionist finishes her telephone conversation. Marty answers the receptionist by saying “No”. The receptionist, forgetting what question she had asked him then waves him through and Marty enters and

proceeds to use the equipment. Some 15 minutes into Marty's first session he strains his back because he was using one of the machines incorrectly.

The strain is so bad that Marty is bed-ridden and because he is only a casual worker at the office this means he does not get any income during this period.

Marty seeks your advice as to whether he can sue Barclays Gym for the wages that he has missed out on or whether the sign above the door excludes them of liability.

Required:

Advise both parties. Is the exclusion clause going to be effective to prevent Barclays Gym from any liability for Marty's injuries? Illustrate your answer with relevant case law and statutory provisions.

Tutorial 8 (Week 10, the week commencing 24 September 2007)

Individual Presentation - Assignment Question

- (a) Detail the law relating to negligent misstatement and trace its development since 1964 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) Stewart 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 - Albert and structural engineer - Axel. Albert and Axel, who work for the same building consultancy and land valuation firm provide a joint report confirming that the building next door is worth approximately \$300 000. This report further confirms that the building would be suitable for Stewart's purposes and the work required to knock down the wall and extend the gallery would be no more than \$75 000.

At the end of their report, Albert and Axel 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 Stewart approaches the Bank of Tasmania and gives them a copy of Albert and Axel's report.

The Bank of Tasmania relies on the report and loans Stewart \$300,000, Stewart has savings of his own of \$75,000.

Stewart purchases the building next door for \$300 000 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 Stewart is ordered to pull it down.

Stewart incurs \$20 000 of cost to complete the demolition and the block of land is valued at only \$50 000.

Required:

- i To what extent can Stewart recover compensation from Albert and Axel and/or the firm for which they work?
- ii To what extent can the Bank of Tasmania recover compensation from Albert and Axel and/or the firm for which they work?

Illustrate your answer with relevant case law.

Tutorial 9 (Week 11, the week commencing 1 October 2007)

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 In 2005 Sacha purchased a small farming property in Richmond, Tasmania and 30 Alpacas. Not being experienced in feeding and caring for alpacas Sacha decides to purchase all the alpaca food from *Tassie Food Supplies Pty Ltd*, a local livestock food merchant. This company mixes together a number of types of grain, fibres and other alpaca food requirements and delivers the food to Sacha's property farm weekly.

Tassie Food Supplies Pty Ltd has recently employed a new employee and he is asked to mix the food for Sacha's animals. He is not used to the mixing procedures and by accident mixes into the food a large quantity of the detergent that is normally used for washing out machinery at the end of the week. The food is delivered to Sacha on Time and Sacha feeds it to her alpacas in the normal way.

That night a number of the alpaca's are violently ill. The veterinarian is called and the problem with the food is discovered. Twenty five of the alpaca's die as a result of consuming the detergent in the food mix.

Required:

- i. Advise Sacha if she can claim a breach of either or both of the implied terms of '*fitness for purpose*' or '*merchantable quality*' as provided for in either the *Sale of Goods Act 1896* (Tasmania) and/ or the *Trade Practices Act 1974* (Cth). Illustrate your answer with relevant legal principles, cases and relevant statutory provisions.
- ii. Advise Sacha as to what possible remedies are available to her under either the *Sale of Goods Act 1896* (Tasmania) and the *Trade Practices Act 1974* (Cth).

Tutorial 10 (Week 12, the week commencing 8 October 2006)

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 Shin owns a large property in Bagdad, Tasmania. He charges horse owners \$75 per week to care for their horses. For this amount Shin feeds the horses and gives them fresh water each day. At night Shin locks all the horses in his large barn.

One morning Shin notices that one horse is off its food and is sweating and is unsteady on its feet. Shin attempts to call the horse's owner, Barato. Shin rings the contact number left by Barato. The telephone is answered by Barato's cleaner who explains that Barato has gone to Spain for 3 weeks and is uncontactable for that period.

Shin starts to tell the cleaner about the horse's condition but she hangs up and Shin can not get through again.

Shin decides to keep an eye on the horse and the next morning the horse is a lot worse, it is sweating and has an elevated pulse rate and its breathing is very rapid. Shin fears that the horse may be suffering from a disease known as colic and he again tries to telephone Barato. No one answers the phone. Shin rings the veterinarian who attends and confirms

that the horse is suffering from a twisted intestine requiring emergency surgery.

The veterinarian seeks Shin's permission and Shin agrees, knowing that without this surgery the horse will die. The horse is transported by horse float to the veterinarian's surgery. The surgery is a complete success and the horse is back with Shin 3 weeks later. One day after this Barato returns to collect his horse. Barato is very pleased that the horse is alive but refuses to pay the extensive veterinarian's bill and transportation costs saying as Shin authorised the surgery, Shin is liable for its payment.

Required:

Advise Shin if he is liable for this bill or is there something Shin can argue to avoid this liability?

Illustrate your answer by reference to relevant legal principles, cases and, where appropriate, statutory provisions.