



LAW 478

Competition and Consumer Law

S1 Day 2015

Dept of Law

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Disclaimer

Macquarie University has taken all reasonable measures to ensure the information in this publication is accurate and up-to-date. However, the information may change or become out-dated as a result of change in University policies, procedures or rules. The University reserves the right to make changes to any information in this publication without notice. Users of this publication are advised to check the website version of this publication [or the relevant faculty or department] before acting on any information in this publication.

General Information

Unit convenor and teaching staff

Unit Convenor

Susan Carter

susan.carter@mq.edu.au

Contact via susan.carter@mq.edu.au

515 W3A

Friday 3-4p.m.

Credit points

3

Prerequisites

(6cp in LAW or LAWS units at 300 level) or (39cp including BUSL250 and BUSL301)

Corequisites

Co-badged status

Unit description

This unit explores the Competition and Consumer Act 2010 (Cth) , which contains Australia's national competition law and consumer protection law. The unit investigates both topics, by reference to different policy frameworks, including Australia's National Competition Policy and the Australian Consumer Law. Considerable time is spent reading and interpreting statutes and on the administration of schemes of government regulation.

Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

Learning Outcomes

On successful completion of this unit, you will be able to:

Describe the scope of the Competition and Consumer Act 2010 (Cth)('the Act');its provisions; how it affects daily life;the Constitutional issues influencing its design; and how an Application scheme operates to address these Constitutional issues.

Develop knowledge of and skills in statutory interpretation by working closely with the Act's provisions.

Examine the differences between the previous legislation and its current form; analyse ongoing amendments and proposed amendments, appreciate the process of legislative

change, the relationship between the courts and Parliament and the dynamic nature of the law.

Analyse the role of regulatory bodies, in particular the ACCC, in law enforcement and the policy considerations which may influence enforcement.

Critically appraise the Act, considering: whether it achieves its stated aims; the difficulties of translating policy into legislation; and the tensions between competing aims in the legislation.

Apply the Act to solve problems in competition and consumer law.

Assessment Tasks

Name	Weighting	Due
<u>Class Test</u>	20%	Week Four Tutorials/OCS
<u>Assignment</u>	40%	8/4/15 at 5 p.m.
<u>Take home</u>	40%	11/6/15 at 5 p.m.

Class Test

Due: **Week Four Tutorials/OCS**

Weighting: **20%**

The Class Test will be of 50 minutes duration and consist of one problem question about an aspect of competition law. It will be completed by students in their regular tutorial time. Students may bring a copy of the legislation and one A4 page of their own notes (front and back, at least 10 point font), but no other materials. Students should also bring their own paper to complete the task.

On successful completion you will be able to:

- Describe the scope of the Competition and Consumer Act 2010 (Cth) ('the Act'); its provisions; how it affects daily life; the Constitutional issues influencing its design; and how an Application scheme operates to address these Constitutional issues.
- Develop knowledge of and skills in statutory interpretation by working closely with the Act's provisions.
- Critically appraise the Act, considering: whether it achieves its stated aims; the difficulties of translating policy into legislation; and the tensions between competing aims in the legislation.
- Apply the Act to solve problems in competition and consumer law.

Assignment

Due: 8/4/15 at 5 p.m.

Weighting: 40%

Research Assignment

The Competition Policy Review (the Harper Review) issued a draft report in September 2014 (<http://competitionpolicyreview.gov.au/files/2014/09/Competition-policy-review-draft-report.pdf>). Among its many recommendations is a change to s46 which would remove the 'take advantage' requirement ('the proposal'). Its reasons are expressed as follows, at p209 of the Draft Report:

The important point is not whether the outcomes of those cases, on the facts before the court, were correct or incorrect from a competition policy perspective. The issue is whether the 'take advantage' limb of section 46 is sufficiently clear and predictable in interpretation and application to distinguish between anti-competitive and pro-competitive conduct.

The cases referred to by the authors of the Draft Report were:

- *Melway Publishing Pty Ltd v Robert Hicks Pty Ltd* [2001] HCA 13.
- *Boral Besser Masonry Ltd v ACCC* (2003) 215 CLR 374.
- *Rural Press Limited v ACCC* [2003] HCA 75.
- *ACCC v Cement Australia* [2013] FCA 909

You need to complete the following tasks :

1. Read one of the cases listed above and write a case note focusing on the s46 issues and the 'take advantage' discussion. Your case note should identify any problems with the take advantage criterion arising as a result of your chosen decision. It may also include any legislative response to this decision.
2. Critically discuss the proposal. In particular consider whether the take advantage criterion is being removed altogether, or reconfigured as a defence.
3. Consider one submission made in response to the proposal and assess the strength of the argument in light of the proposal.
4. Outline any changes made in the Final Report to the proposal in response to submissions received.

Allocation of marks

Allocation of marks (and a suggestion as to allocation of words) is as follows:

1. 10 marks – suggested no more than 750 words
2. 15 marks – suggested no more than 1,000 words
3. 10 marks – suggested no more than 750 words

4. 5 marks – suggested no more than 500 words.

Total word limit: no more than 3,000 words - excluding references. (Note: references are excluded, not footnotes. If footnotes contain argument they will be included in the word count. Penalties apply for exceeding the word limit.)

Further instructions:

You should provide an integrated discussion of the issues, raised, well supported by appropriate legal references. Your work should not be presented in point form and all standard conventions of grammar and spelling should be observed.

- Referencing should be in accordance with AGLC 3.
- Please use a font size no smaller than 12 point font. Headings and sub-headings may be used as appropriate to assist in the clear structure of your argument.
- All assignments are to be submitted through the Turnitin portal on the ilearn webpage.

Late Submission and extensions

Law School Policy is that late submissions will not be marked and students will receive a mark of zero - unless prior dispensation has been sought and received in accordance with the special consideration policy.

Ample time has been made available for the completion of this assignment. Accordingly, last minute illness or misadventure is unlikely to meet the requirements for special consideration. **If you are applying for special consideration, please submit your work in progress through Turnitin with a note that an application for special consideration has been lodged.**

Grading Criteria: please see this Unit Guide for grading criteria.

On successful completion you will be able to:

- Describe the scope of the Competition and Consumer Act 2010 (Cth)('the Act');its provisions; how it affects daily life;the Constitutional issues influencing its design; and how an Application scheme operates to address these Constitutional issues.
- Develop knowledge of and skills in statutory interpretation by working closely with the Act's provisions.
- Examine the differences between the previous legislation and its current form; analyse ongoing amendments and proposed amendments, appreciate the process of legislative change, the relationship between the courts and Parliament and the dynamic nature of the law.
- Analyse the role of regulatory bodies, in particular the ACCC, in law enforcement and the policy considerations which may influence enforcement.
- Critically appraise the Act, considering: whether it achieves its stated aims; the difficulties

of translating policy into legislation; and the tensions between competing aims in the legislation.

Take home

Due: **11/6/15 at 5 p.m.**

Weighting: **40%**

The take home will consist of one hypothetical problem question which may raise any issues discussed in the course.

Word length: 3000 words.

Footnotes: As this task is in lieu of a formal exam there is no need for footnotes or AGLC referencing. However all cases and legislation should be referenced in appropriate exam style (that is short name, no need for full citation), and if footnotes are included they will be counted in the word length.

Release date: the Take home will be released on the Unit web site on Monday 8th June

Students will have four days to complete this task. This is not an indication of the length or complexity of the task - if students are well prepared they should be able to complete the task in 4-5 hours. The extended time period allows students to plan the completion of this task around their other commitments. This should obviate the need for any requests for extensions - which are unlikely to be given.

On successful completion you will be able to:

- Describe the scope of the Competition and Consumer Act 2010 (Cth)('the Act');its provisions; how it affects daily life;the Constitutional issues influencing its design; and how an Application scheme operates to address these Constitutional issues.
- Develop knowledge of and skills in statutory interpretation by working closely with the Act's provisions.
- Apply the Act to solve problems in competition and consumer law.

Delivery and Resources

DELIVERY

Students are expected to attend one two hour lecture and one tutorial each week.

Lectures begin in week one, tutorials commence in week two.

Lectures are also available on iletecture, but students are reminded that if they have not either attended a lecture or completed the iletecture prior to the tutorial **they will not understand the tutorial discussion, will not benefit from it, and will not be able to participate in the discussion.**

TECHNOLOGY

Students are encouraged to check the unit webpage regularly, which can be accessed through <http://ilearn.mq.edu.au> Unit materials, including tutorial questions, are available through the unit webpage.

The assignment and the take home exam are to be submitted using the Turnitin portal on the unit webpage.

PC and internet access are required, as are basic computer and word processing skills.

REQUIRED READING

Texts

- Corones, SG *The Australian Consumer Law* 2nd edition (Thomson Reuters 2013)
- Corones, SG *Competition Law in Australia* 6th edition (Thomson Reuters, 2014)

Legislation

- You will need access to the *Competition and Consumer Act 2010* (Cth). The versions on line are always up to date, but not as helpful as the printed, annotated legislation. Two versions of the annotated legislation are available - one by Miller and one by Steinwall. Both are excellent, and it will be advantageous if you obtain a copy of the annotated legislation of your choice. Second hand copies are available, but as the legislation changes frequently, any annotated legislation older than 2012 will be of little use.

RECOMMENDED READING

- Bruce, Alex *Australian Competition Law* 2nd edition Lexis Nexis
- Bruce, Alex *Consumer Protection Law in Australia* 2nd edition Lexis Nexis
- Corones SG, Clarke PH, *Australian Consumer Law*, Law Book Co 2011

Useful websites

- Australian Competition and Consumer Commission www.accc.gov.au
- Australian Federal government consumer site www.consumer.gov.au
- Australian Productivity Commission www.pc.gov.au
- Consumers Federation www.consumersfederation.com
- European Union consumer materials www.europa.eu.int/comm/consumers/
- Home Page of Recalled Items www.recalls.gov.au
- Ministerial Council on Consumer Affairs www.consumer.gov.au
- New Zealand Consumer Affairs www.consumeraffairs.govt.nz/productsafety/

- Office of Fair Trading New South Wales www.fairtrading.nsw.gov.au
- Standards Australia www.standards.org.au

GRADING CRITERIA

GRADING CRITERIA FOR INDIVIDUAL ASSESSMENTS

1. ASSESSMENT CRITERIA FOR ASSIGNMENT

FAIL (49% AND BELOW)

- does not answer question;
- few if any identifiable arguments;
- inappropriate and/or irrelevant content;
- plagiarism, use of other students' work, 'recycling' own work from other units;
- difficult to read and/or understand through poor grammar, spelling, expression or structure.

PASS (50% - 64%)

- attempts to answer question, but does not answer the entire question, or follow through with reasoned argument;
- does not demonstrate engagement with the issues;
- descriptive summary of material relevant to question;
- superficial use of material and tendency to paraphrase and/or quote heavily;
- minimal analysis and evaluation;
- adequate expression.

CREDIT (65%-74%)

- mostly answers the question;
- contains no significant errors and covers relevant issues fairly well;
- articulates own argument including critical evaluation of the issues;
- good use of material relevant to question;
- has clear structure and clear expression

DISTINCTION (75%-84%)

- completely answers the question;
- articulates own argument including critical evaluation of the issues;
- excellent use of material relevant to question;
- excellent expression and free from errors

HIGH DISTINCTION (85% and above)

- satisfies all the criteria for a Distinction; and
- contains striking originality in analysis;
- innovative use of material relevant to the question;
- exceptionally well written and exceptionally well-structured.

2. ASSESSMENT CRITERIA FOR PROBLEM QUESTIONS

FAIL (49% AND BELOW)

- fails to identify and discuss relevant issues of law raised by facts;
- contains incorrect statements of law;
- does not provide relevant authorities for propositions of law;
- inappropriate and/or irrelevant content;
- plagiarism, use of other students' work, 'recycling' own work from other units;
- difficult to read and/or understand through poor grammar, expression or structure
- fails to comply with formatting instructions.

PASS (50% - 64%)

- correctly identifies and discusses a limited number of issues of law raised by the facts
- contains no significant errors of law;
- provides correct authorities for propositions of law;
- attempts to apply relevant law to the given facts;
- adequate expression.

CREDIT (65%-74%)

- correctly identifies and discusses most of the issues of law raised by the facts;
- contains no errors of law;
- provides correct authorities for propositions of law;
- successfully applies relevant law to the given facts;
- identifies differences between facts in the question and fact patterns in cases, and attempts to discuss relevance of this to the solution;
- identifies discrepancies/inconsistencies within the law, and attempts to resolve these where they are relevant to the given facts;
- attempts to explain which outcome is more likely where there is more than 1 possible solution to the problem;
- has clear structure and clear expression

DISTINCTION (75%-84%)

- correctly identifies and discusses all of the issues of law raised by the facts;
- contains no errors of law
- provides correct authorities for propositions of law;
- successfully applies relevant law to the given facts;
- identifies differences between facts in the question and fact patterns in cases, and successfully discusses the relevance of this to the solution;
- identifies discrepancies/inconsistencies within the law, and successfully resolves these where they are relevant to the given facts;
- successfully explains which outcome is more likely where there is more than 1 possible solution to the problem;
- has very clear structure and clear expression

HIGH DISTINCTION (85% and above)

- satisfies all the criteria for a Distinction;
- is exceptionally well written and exceptionally well-structured.
- demonstrates superior and original analytical skills.

LATE SUBMISSION

Law School Policy is late submissions will not be marked and will be given zero, unless prior dispensation has been sought and received, in accordance with the special consideration policy.

EXTENSIONS

Extensions are only available in extraordinary circumstances in accordance with the Disruption to Studies Policy: http://www.mq.edu.au/policy/docs/disruption_studies/policy.html

Unit Schedule

Week/ Lecture Date	Lecture Content	Assessment
Week 1 27th February	Introduction to the Unit, Statutory Interpretation, History of Competition and Consumer regulation and the design of the <i>Competition and Consumer Act 2010(Cth)</i>	Regular lecture attendance is a continuing unit requirement

Week 2 6th March	Introduction to competition regulation	Regular lecture attendance is a continuing unit requirement
Week 3 13th March	Collusion and Cartel Regulation	Regular lecture attendance is a continuing unit requirement
Week 4 20th March	Cartel Regulation continued; Misuse of Market Power	Regular lecture attendance is a continuing unit requirement Tutorial Test 20%
Week 5 27th March	Exclusive Dealing and RPM	Regular lecture attendance is a continuing unit requirement
Week 6 3rd April GOOD FRIDAY	Mergers and Acquisitions; Authorisation, Remedies and Enforcement NO LECTURE TODAY. TUTES THIS WEEK WILL BE I-TUTES - DETAILS TO BE PROVIDED	Regular lecture attendance is a continuing unit requirement
	ASSIGNMENT DUE - 8TH APRIL AT 5 PM	
Week 7 24th April	Introduction to Consumer Protection Regulation; Consumer Protection – warranties and guarantees	Regular lecture attendance is a continuing unit requirement
Week 8 1st May	Misleading and deceptive conduct	Regular lecture attendance is a continuing unit requirement
Week 9 8th May	Manufacturers' Liability	Regular lecture attendance is a continuing unit requirement
Week 10 15th May	Unconscionable conduct	Regular lecture attendance is a continuing unit requirement
Week 11 22nd May	Unfair Contract Terms	Regular lecture attendance is a continuing unit requirement
Week 12 29th May	Remedies and enforcement	Regular lecture attendance is a continuing unit requirement

Week 13	No lecture this week but	Revision as required	<i>Take Home Exam</i>
5th June	tutorials		<i>Available Monday 8th June</i>
	continue		<i>Due Thursday 11th June</i>

Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](#). Students should be aware of the following policies in particular with regard to Learning and Teaching:

Academic Honesty Policy http://mq.edu.au/policy/docs/academic_honesty/policy.html

Assessment Policy <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy <http://mq.edu.au/policy/docs/grading/policy.html>

Grade Appeal Policy <http://mq.edu.au/policy/docs/gradeappeal/policy.html>

Grievance Management Policy http://mq.edu.au/policy/docs/grievance_management/policy.html

Disruption to Studies Policy http://www.mq.edu.au/policy/docs/disruption_studies/policy.html *The Disruption to Studies Policy is effective from March 3 2014 and replaces the Special Consideration Policy.*

In addition, a number of other policies can be found in the [Learning and Teaching Category](#) of Policy Central.

Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: https://students.mq.edu.au/support/student_conduct/

Results

Results shown in *iLearn*, or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit ask.mq.edu.au.

Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

Learning Skills

Learning Skills (mq.edu.au/learningskills) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

Student Enquiries

For all student enquiries, visit Student Connect at ask.mq.edu.au

IT Help

For help with University computer systems and technology, visit <http://informatics.mq.edu.au/help/>.

When using the University's IT, you must adhere to the [Acceptable Use Policy](#). The policy applies to all who connect to the MQ network including students.

Graduate Capabilities

Creative and Innovative

Our graduates will also be capable of creative thinking and of creating knowledge. They will be imaginative and open to experience and capable of innovation at work and in the community. We want them to be engaged in applying their critical, creative thinking.

This graduate capability is supported by:

Learning outcome

- Apply the Act to solve problems in competition and consumer law.

Capable of Professional and Personal Judgement and Initiative

We want our graduates to have emotional intelligence and sound interpersonal skills and to demonstrate discernment and common sense in their professional and personal judgement. They will exercise initiative as needed. They will be capable of risk assessment, and be able to handle ambiguity and complexity, enabling them to be adaptable in diverse and changing environments.

This graduate capability is supported by:

Assessment task

- Take home

Commitment to Continuous Learning

Our graduates will have enquiring minds and a literate curiosity which will lead them to pursue knowledge for its own sake. They will continue to pursue learning in their careers and as they participate in the world. They will be capable of reflecting on their experiences and relationships with others and the environment, learning from them, and growing - personally, professionally and socially.

This graduate capability is supported by:

Learning outcome

- Examine the differences between the previous legislation and its current form; analyse ongoing amendments and proposed amendments, appreciate the process of legislative change, the relationship between the courts and Parliament and the dynamic nature of the law.

Assessment task

- Assignment

Discipline Specific Knowledge and Skills

Our graduates will take with them the intellectual development, depth and breadth of knowledge, scholarly understanding, and specific subject content in their chosen fields to make them competent and confident in their subject or profession. They will be able to demonstrate, where relevant, professional technical competence and meet professional standards. They will be able to articulate the structure of knowledge of their discipline, be able to adapt discipline-specific knowledge to novel situations, and be able to contribute from their discipline to inter-disciplinary solutions to problems.

This graduate capability is supported by:

Learning outcomes

- Describe the scope of the Competition and Consumer Act 2010 (Cth)('the Act');its provisions; how it affects daily life;the Constitutional issues influencing its design; and how an Application scheme operates to address these Constitutional issues.
- Develop knowledge of and skills in statutory interpretation by working closely with the Act's provisions.
- Analyse the role of regulatory bodies, in particular the ACCC, in law enforcement and the policy considerations which may influence enforcement.

Critical, Analytical and Integrative Thinking

We want our graduates to be capable of reasoning, questioning and analysing, and to integrate and synthesise learning and knowledge from a range of sources and environments; to be able to critique constraints, assumptions and limitations; to be able to think independently and systemically in relation to scholarly activity, in the workplace, and in the world. We want them to have a level of scientific and information technology literacy.

This graduate capability is supported by:

Learning outcomes

- Examine the differences between the previous legislation and its current form; analyse

ongoing amendments and proposed amendments, appreciate the process of legislative change, the relationship between the courts and Parliament and the dynamic nature of the law.

- Analyse the role of regulatory bodies, in particular the ACCC, in law enforcement and the policy considerations which may influence enforcement.
- Critically appraise the Act, considering: whether it achieves its stated aims; the difficulties of translating policy into legislation; and the tensions between competing aims in the legislation.

Assessment tasks

- Class Test
- Assignment
- Take home

Problem Solving and Research Capability

Our graduates should be capable of researching; of analysing, and interpreting and assessing data and information in various forms; of drawing connections across fields of knowledge; and they should be able to relate their knowledge to complex situations at work or in the world, in order to diagnose and solve problems. We want them to have the confidence to take the initiative in doing so, within an awareness of their own limitations.

This graduate capability is supported by:

Learning outcomes

- Critically appraise the Act, considering: whether it achieves its stated aims; the difficulties of translating policy into legislation; and the tensions between competing aims in the legislation.
- Apply the Act to solve problems in competition and consumer law.

Assessment tasks

- Class Test
- Assignment
- Take home

Effective Communication

We want to develop in our students the ability to communicate and convey their views in forms effective with different audiences. We want our graduates to take with them the capability to read, listen, question, gather and evaluate information resources in a variety of formats, assess, write clearly, speak effectively, and to use visual communication and communication technologies as appropriate.

This graduate capability is supported by:

Learning outcome

- Apply the Act to solve problems in competition and consumer law.

Assessment tasks

- Assignment
- Take home

Engaged and Ethical Local and Global citizens

As local citizens our graduates will be aware of indigenous perspectives and of the nation's historical context. They will be engaged with the challenges of contemporary society and with knowledge and ideas. We want our graduates to have respect for diversity, to be open-minded, sensitive to others and inclusive, and to be open to other cultures and perspectives: they should have a level of cultural literacy. Our graduates should be aware of disadvantage and social justice, and be willing to participate to help create a wiser and better society.

This graduate capability is supported by:

Assessment task

- Assignment

Changes from Previous Offering

Since the last offering of the unit the following changes have been made:

- New texts have been prescribed
- The Assessment weighting has changed to reduce the weighting of the final exam and increase the weighting and the research focus of the assignment

Changes since First Published

Date	Description
30/12/2014	The Unit Schedule has been updated to provide greater clarity about assignment submission dates