



# BUSL315

## Business Litigation and Disputes

S2 Day 2016

*Dept of Accounting & Corporate Governance*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Unit Convenor

John Selby

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E4A 325

Monday 4-5pm

Credit points

3

Prerequisites

BUSL201 and (BUSL250 or LAW204)

Corequisites

Co-badged status

Unit description

Legal action is an ever-present risk in commercial dealings. Traditionally this has occurred through the processes of civil litigation. However, the threat of criminal sanctions, and confronting the maze of administrative law have become everyday realities for businesses, their managers and employees. This unit investigates each of these processes in order to equip aspiring business leaders with a working knowledge of how business disputes are settled.

## 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:

Distinguish between dispute resolution options

Integrate theory into practice when resolving business disputes

Resolve business disputes by applying a variety of dispute resolution methodologies

Analyse and synthesise the legal, economic, ethical and reputation aspects of a business dispute, its beginnings, process and outcome so as to produce a coherent

Response Strategy Report

Apply collaborative teamwork skills to resolve business disputes

## General Assessment Information

As they are each slightly different for each task, see above for specific information about submission methods, late submission options, extensions, penalties, etc for each assessment task.

## Assessment Tasks

Name	Weighting	Due
<a href="#"><u>Tutorial Participation</u></a>	20%	Week 13
<a href="#"><u>Domain Name Dispute Decision</u></a>	40%	Thursday of Week 8
<a href="#"><u>Presentation and Report</u></a>	30%	Weeks 11-13
<a href="#"><u>Reflection on Group Project</u></a>	10%	Weeks 11-13

### Tutorial Participation

Due: **Week 13**

Weighting: **20%**

Active participation in the tutorial activities is expected each week. You must prepare for your tutorials in advance. Mere attendance will not gain you participation marks. You will be assessed in accordance with the Grading Policy and the marking rubric will be available on iLearn.

Failure to attend or participate in three or more tutorials during weeks 2-13 of the semester will result in a deduction from your tutorial participation mark of 2% (out of 20%) for each tutorial absence. No extensions will be granted, except in accordance with the Disruption Policy

This task is expected to take 20 hours.

On successful completion you will be able to:

- Distinguish between dispute resolution options
- Integrate theory into practice when resolving business disputes
- Resolve business disputes by applying a variety of dispute resolution methodologies
- Analyse and synthesise the legal, economic, ethical and reputation aspects of a business dispute, its beginnings, process and outcome so as to produce a coherent Response Strategy Report
- Apply collaborative teamwork skills to resolve business disputes

### Domain Name Dispute Decision

Due: **Thursday of Week 8**

Weighting: **40%**

You will be given a claim and a response to a domain name dispute for which you will have to write the decision which resolves that dispute. You will submit your answer online through Grademark on iLearn. You will be assessed in accordance with the Grading Policy.

No extensions will be granted, except in accordance with the Disruption Policy. Late tasks will be accepted up to 72 hours after the submission deadline.

There will be a deduction of 10% of the total available marks from the total awarded marks for each 24 hour period or part thereof that the submission is late. For example, 25 hours late in submission = 20% penalty. This penalty does not apply for cases in which an application is made and approved under the Disruption Policy.

This task is expected to take 60 hours.

On successful completion you will be able to:

- Integrate theory into practice when resolving business disputes
- Resolve business disputes by applying a variety of dispute resolution methodologies

## Presentation and Report

Due: **Weeks 11-13**

Weighting: **30%**

In this two-part task, you will work in groups of five as in-house counsel to research and draft a report of up to 7500 words (1500 words per group member) setting out legal advice to your company's board in response to a litigation statement of claim received by the company. As a group, you will then make a twenty-minute in-tutorial presentation of the advantages and disadvantages of alternative strategies and to advise which strategy you propose the company should take (both legal and non-legal) in response to that claim. This will include analysis of the relevant legal, economic, ethical and reputation risks and bases for your recommended strategy.

The 30% weighting for this assessment task consists of: a) 15% group mark for your report; and b) 15% individual mark based upon your performance and content in your presentation.

The written report will be submitted online through Grademark - it is due one week prior to your presentation. You will be assessed in accordance with the Grading Policy.

No extensions will be granted on the presentation. Late reports will be accepted up to 72 hours after the submission deadline.

This task is expected to take 50 hours.

There will be a deduction of 10% of the total available marks from the total awarded marks for each 24 hour period or part thereof that the report submission is late. For example, 25 hours late = 20% penalty. This penalty does not apply for cases in which a valid application under the Disruptions Policy is made and approved. Group members who miss their presentation will

receive a mark of zero, but this penalty does not apply for cases in which a valid application under the Disruptions Policy is made and approved. Students who have received such approval under the Disruption Policy will be required to give a solo presentation to the Unit Convenor.

On successful completion you will be able to:

- Distinguish between dispute resolution options
- Integrate theory into practice when resolving business disputes
- Resolve business disputes by applying a variety of dispute resolution methodologies
- Analyse and synthesise the legal, economic, ethical and reputation aspects of a business dispute, its beginnings, process and outcome so as to produce a coherent Response Strategy Report
- Apply collaborative teamwork skills to resolve business disputes

## Reflection on Group Project

Due: **Weeks 11-13**

Weighting: **10%**

Reflect on the skills required to complete a task as a group in the legal profession.

Think about how your group worked as a team to complete your group project, and the teamwork skills needed in the legal profession.

Answer the following questions:

- What did you contribute to this project?
- What did the other members of the group contribute?
- What is your assessment of how the group functioned as a team?
- What three teamwork strategies will you adopt to assist you to successfully complete group tasks in the legal profession?

Submit your answer individually in Grademark on iLearn - it is due by 5pm on the day after your presentation. You will be assessed in accordance with the Grading Policy.

Late reports will be accepted up to 72 hours after the submission deadline.

There will be a deduction of 10% of the total available marks from the total awarded marks for each 24 hour period or part thereof that the report submission is late. For example, 25 hours late = 20% penalty. This penalty does not apply for cases in which a valid application under the Disruption Policy is made and approved.

This task is expected to take 20 hours.

On successful completion you will be able to:

- Resolve business disputes by applying a variety of dispute resolution methodologies

- Apply collaborative teamwork skills to resolve business disputes

## **Delivery and Resources**

### **Classes:**

1 x 2-hour online video lecture and 1 x 1-hour in-person tutorial per week

The timetable for classes can be found on the University website at: <http://timetables.mq.edu.au>

Students must attend all tutorials

Students must attend the tutorial in which they are enrolled and may not change tutorials without the prior permission of the course convenor

### **Prizes:**

A Macquarie University Accounting and Corporate Governance Prize is available for the highest achieving student in this unit: [http://www.businessandconomics.mq.edu.au/undergraduate\\_degrees/prizes\\_scholarships](http://www.businessandconomics.mq.edu.au/undergraduate_degrees/prizes_scholarships)

### **Required and Recommended Texts and/or Materials:**

Required Texts: Principles of Dispute Resolution by David Spencer (2nd edition) and Principles of Civil Litigation (2nd edition) by David Bamford and Mark Rankin

These texts are available for purchase as a discounted bundle from the University Coop Bookshop

Additional required readings will be made available through iLearn

### **Technology Used and Required**

Access to a Personal Computer with Broadband Internet Access

iLearn, Microsoft Powerpoint, VLC Media Player

Microsoft Office, Internet Browser, Email Client Software.

### **Unit Web Page:**

Course material is available on the learning management system (iLearn)

Other than iLearn, there is no web page for this unit

### **Teaching and Learning Strategy:**

This unit consists of 13 weekly online video lectures and 12 tutorials (no tutorial in week 1). Many

tutorials will require active participation in small group exercises.

### Inherent Requirements to complete the unit successfully?

Both individual work (on your domain name decision and the Reflection Exercise) and group work (for your practical exercises in tutorials and for your group report and presentation) are required to successfully complete this Unit. Students will need to be capable of: a) viewing and listening to video lectures, b) making an oral presentation; and c) completing written tasks.

## Unit Schedule

Week	Lecture Topic Schedule	Readings
1	Introduction & Societal Context of Business Disputes	Spencer Ch1 Bamford Ch1
2	Causes and Types of Business Disputes; Economics of Business Disputes	See Prescribed Readings on iLearn
3	Negotiation	Spencer Chapter 2
4	Mediation	Spencer Chapter 3
5	Arbitration	Spencer Chapter 4
6	Domain Name Dispute Resolution	See Prescribed Readings on iLearn
7	Civil Litigation Pt1: Jurisdiction and Parties, Practicalities	Bamford Ch2&3
<b>Break</b>		
8	Civil Litigation Pt2: How Courts Manage Cases, Procedural Decisions and Defining the Issues	Bamford Ch 4&5
9	Civil Litigation Pt3: Before Trial	Bamford Ch 6&7
10	Civil Litigation Pt4: Gathering Evidence, Expert Testimony and Court-Ordered ADR (Possible Guest Lecture)	Bamford Ch 8&9
11	Civil Litigation Pt5: Settlement, Compromises and Costs	Bamford Ch 10&11
12	Civil Litigation Pt6: Appeals and Enforcement of Judgments	Bamford Ch 12&13
13	Course Review	Covers all weeks

## 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](http://mq.edu.au/policy/docs/academic_honesty/policy.html)

**New Assessment Policy in effect from Session 2 2016** [http://mq.edu.au/policy/docs/assessment/policy\\_2016.html](http://mq.edu.au/policy/docs/assessment/policy_2016.html). For more information visit [http://students.mq.edu.au/events/2016/07/19/new\\_assessment\\_policy\\_in\\_place\\_from\\_session\\_2/](http://students.mq.edu.au/events/2016/07/19/new_assessment_policy_in_place_from_session_2/)

Assessment Policy prior to Session 2 2016 <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy prior to Session 2 2016 <http://mq.edu.au/policy/docs/grading/policy.html>

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

Complaint Management Procedure for Students and Members of the Public [http://www.mq.edu.au/policy/docs/complaint\\_management/procedure.html](http://www.mq.edu.au/policy/docs/complaint_management/procedure.html)

Disruption to Studies Policy [http://www.mq.edu.au/policy/docs/disruption\\_studies/policy.html](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/](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](http://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](http://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](http://ask.mq.edu.au)

## IT Help

For help with University computer systems and technology, visit [http://www.mq.edu.au/about\\_us/offices\\_and\\_units/information\\_technology/help/](http://www.mq.edu.au/about_us/offices_and_units/information_technology/help/).

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

## Graduate Capabilities

### 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

- Distinguish between dispute resolution options
- Integrate theory into practice when resolving business disputes
- Resolve business disputes by applying a variety of dispute resolution methodologies
- Analyse and synthesise the legal, economic, ethical and reputation aspects of a business dispute, its beginnings, process and outcome so as to produce a coherent Response Strategy Report
- Apply collaborative teamwork skills to resolve business disputes

### Assessment tasks

- Tutorial Participation
- Domain Name Dispute Decision
- Presentation and Report
- Reflection on Group Project

## 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**

- Distinguish between dispute resolution options
- Integrate theory into practice when resolving business disputes
- Resolve business disputes by applying a variety of dispute resolution methodologies
- Analyse and synthesise the legal, economic, ethical and reputation aspects of a business dispute, its beginnings, process and outcome so as to produce a coherent Response Strategy Report
- Apply collaborative teamwork skills to resolve business disputes

## **Assessment tasks**

- Tutorial Participation
- Domain Name Dispute Decision
- Presentation and Report
- Reflection on Group Project

## **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**

- Distinguish between dispute resolution options
- Integrate theory into practice when resolving business disputes
- Resolve business disputes by applying a variety of dispute resolution methodologies
- Analyse and synthesise the legal, economic, ethical and reputation aspects of a business dispute, its beginnings, process and outcome so as to produce a coherent Response Strategy Report
- Apply collaborative teamwork skills to resolve business disputes

## **Assessment tasks**

- Tutorial Participation

- Domain Name Dispute Decision
- Presentation and Report
- Reflection on Group Project

## 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 outcomes

- Distinguish between dispute resolution options
- Integrate theory into practice when resolving business disputes
- Resolve business disputes by applying a variety of dispute resolution methodologies
- Analyse and synthesise the legal, economic, ethical and reputation aspects of a business dispute, its beginnings, process and outcome so as to produce a coherent Response Strategy Report
- Apply collaborative teamwork skills to resolve business disputes

### Assessment tasks

- Tutorial Participation
- Domain Name Dispute Decision
- Presentation and Report
- Reflection on Group Project

## Changes from Previous Offering

There is a new edition of the Spencer "Principles of Dispute Resolution" prescribed for the unit.

## Research and Practice, Global & Sustainability

This unit uses research from academic researching at Macquarie University, including:

- John Selby, 'Enhancing Trust in Online Auctions: eBay's Australian Experience with Code and Law' (2007) 7(6) Computer Law Review International 172
- John Selby 'eBay's PayPal: Balancing Marketplace and Regulatory Regimes' (2008) 8(6) Computer Law Review International 168
- John Selby 'Competitive Justice: The Role of Dispute Resolution Providers under ICANN's UDRP' (2004) 1 Macquarie Business Law Journal 23

- Peter Gillies, 'Scope of Arbitration Clauses - Recent Developments' (2010) 21 Australasian Dispute Resolution Journal 33

and numerous primary and secondary legal materials published through AUSTLII <<http://www.austlii.edu.au>> and other external sources.

One of the prescribed textbooks is authored by Professor David Spencer, an expert on alternative dispute resolution, who worked at Macquarie University for many years.

The unit also builds upon the convenor's practical experience working as a lawyer resolving domain name disputes and as an arbitration coach, including presentations he has made to the United Nations Internet Governance Forum on the tension between dispute resolution processes within Internet Governance Institutions and International Trade Law Institutions. The convenor is undertaking an international collaborative research project to further explore those issues.