



# LAWS823

## Commercial Law

S2 External 2017

*Dept of Law*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Unit Convenor

Shayne Davenport

[shayne.davenport@mq.edu.au](mailto:shayne.davenport@mq.edu.au)

Contact via [shayne.davenport@mq.edu.au](mailto:shayne.davenport@mq.edu.au)

By appointment

Credit points

4

Prerequisites

(16cp LAW or LAWS units at 600 level or above including LAWS803) or admission to MIntTrdeComLaw

Corequisites

Co-badged status

Unit description

The unit begins with an examination of the historical and theoretical framework of commercial law. The competing claims of predictability and certainty with principles such as good faith, fairness and reasonableness are analysed. A critical approach to the existing law of contract concentrating on methods of interpretation in the commercial context completes this part of the unit. Students then undertake a detailed study of the law of common commercial relationships and transactions such as principal and agent, commercial sale of goods, negotiable instruments, insurance and bankruptcy.

## 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:

Demonstrate a sophisticated understanding of the historical and theoretical development of commercial law and articulate a view of whether commercial law should be treated differently to other areas of law.

Communicate a considered opinion about the role that commercial law plays in commercial relationships and also the importance of factors other than the law in forming

and maintaining these relationships

Articulate and critique aspects of Australian contract law's approach to the governance of commercial transactions and compare international and soft law alternatives

Demonstrate practitioner level understanding of the law relating to the major commercial transactions

Solve complex problems in the area of commercial law demonstrating practitioner level ability to identify issues

Demonstrate advanced skills in the communication of legal and commercial information through class presentations and participation

## General Assessment Information

### NOTE CLOSELY

In the absence of a successful application for special consideration due to a disruption to studies, any assessment task submitted after its published deadline will not be graded and will receive a mark of zero. Applications for a Disruption to Studies are made electronically via [ask.mq.edu.au](http://ask.mq.edu.au) and should be accompanied by supporting documentation. Students should refer to the Disruption to Studies policy for complete details of the policy and a description of the supporting documentation required.

Word limits will be strictly applied and work above the word limit will not be marked.

All assessments in the unit are to be submitted electronically. Plagiarism detection software is used in this unit.

### Moderation

Detailed marking rubrics will be made available on iLearn and on the final take home exam. Markers in this unit undertake a process of 'blind marking' to establish a common marking standard and all Fail papers are double marked.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Research essay</u>	40%	No	Wednesday 13 September, 5pm
<u>Tutorial participation</u>	20%	No	weeks 3 - 13
<u>Final take home examination</u>	40%	No	Tuesday 14 November, 10pm

### Research essay

Due: **Wednesday 13 September, 5pm**

Weighting: **40%**

The essay question will require students to investigate the theoretical underpinnings of Australian contract law in its application to commercial transactions. Some background to the topic will be provided in first 3 lectures. Word limit 2000 words. AGLC 3 referencing required. Further information will be available on ilearn and on the essay question itself.

On successful completion you will be able to:

- Demonstrate a sophisticated understanding of the historical and theoretical development of commercial law and articulate a view of whether commercial law should be treated differently to other areas of law.
- Communicate a considered opinion about the role that commercial law plays in commercial relationships and also the importance of factors other than the law in forming and maintaining these relationships
- Articulate and critique aspects of Australian contract law's approach to the governance of commercial transactions and compare international and soft law alternatives
- Demonstrate advanced skills in the communication of legal and commercial information through class presentations and participation

## Tutorial participation

Due: **weeks 3 - 13**

Weighting: **20%**

Participation marks will be awarded as follows:

- 10% for an individual presentation on one of the tutorial questions. Allocation of topics will be made in tutorials in week 2 for internal students and by announcement on the unit webpage for external students
- 10% for individual participation (weeks 1 - 13) and at the external on campus session (external students)

On successful completion you will be able to:

- Communicate a considered opinion about the role that commercial law plays in commercial relationships and also the importance of factors other than the law in forming and maintaining these relationships
- Articulate and critique aspects of Australian contract law's approach to the governance of commercial transactions and compare international and soft law alternatives
- Demonstrate practitioner level understanding of the law relating to the major commercial transactions

- Solve complex problems in the area of commercial law demonstrating practitioner level ability to identify issues
- Demonstrate advanced skills in the communication of legal and commercial information through class presentations and participation

## Final take home examination

Due: **Tuesday 14 November, 10pm**

Weighting: **40%**

The final assessment will consist of one or more hypothetical problem questions and will be based on the material in lecture weeks 4 - 12. The question will be available at 2pm on Tuesday 14 November, 2017 and will be due at 10pm on the same day. Word limit 2000 words **including** footnotes. AGLC citation is not required for this assessment. Further information will be provided prior to the examination

On successful completion you will be able to:

- Demonstrate practitioner level understanding of the law relating to the major commercial transactions
- Solve complex problems in the area of commercial law demonstrating practitioner level ability to identify issues
- Demonstrate advanced skills in the communication of legal and commercial information through class presentations and participation

## Delivery and Resources

### Delivery and Resources

Lectures are pre-recorded and loaded onto the ilearn page each week. Lectures will be available in weeks 1 - 12. . The schedule of topics to be covered in the lectures, and notes on required and extended readings, will be available in detail on iLearn. A list of covered topics is provided below in the Unit Schedule.

Weekly one hour tutorials begin in **Week 2 and finish in Week 13**.

Students require access to a computer and a secure and reliable internet provider.

Online units can be accessed at: <http://ilearn.mq.edu.au/>.

The required text is Samantha Traves, *Commercial Law*, 4th ed, 2016 LexisNexis. The text will be used from Week 4. Additional material is to be found on the unit ilearn webpage.

The on campus session for external students will be held on Saturday 16 September and Sunday 17 September, 2017 from 9.30am to 4.30pm. Please check room location closer to the time of session at [timetables.mq.edu.au](http://timetables.mq.edu.au). Attendance is **compulsory** in order that students may complete tutorial presentations and participation. In the absence of a successful application for special consideration **and** completion of required additional work, students who do not attend the

compulsory on campus session will receive a mark of 0 / 20 for participation.

## Unit Schedule

TOPIC	DATE: week beginning	ISSUES
1	31/7	Introduction to the Unit  The history and essential foundations of commercial law  The Australian perspective
2	7/8	Commercial law in theory and practice
3	14/8	Commercial law in theory and practice (cont)  The law of contract: Current issues for commercial law
4	21/8	Bailment  Agency
5	28/8	Review of personal property; accession, specification and intermixture  Sale of goods  Jurisdiction  The contract for sale of goods; delivery
6	4/9	Sale of Goods (cont)  Express and implied terms
7	11/9	Sale of Goods (cont)  Transfer of property and title in goods
		<b>MID SEMESTER BREAK</b>
8	2/10	International sale of goods; The Contract for International Sale of Goods (CISG); UNIDROIT; INCOTERMS

9	9/10	Security interests over personal property
10	16/10	Guarantees and introduction to banking law
11	23/10	Insurance
12	30/10	Bankruptcy
13	6/11	<b>NO LECTURE THIS WEEK</b>

## 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)

Assessment Policy [http://mq.edu.au/policy/docs/assessment/policy\\_2016.html](http://mq.edu.au/policy/docs/assessment/policy_2016.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 (in effect until Dec 4th, 2017): [http://www.mq.edu.au/policy/docs/disruption\\_studies/policy.html](http://www.mq.edu.au/policy/docs/disruption_studies/policy.html)

Special Consideration Policy (in effect from Dec 4th, 2017): <https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policies/special-consideration>

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://stu>

[dents.mq.edu.au/support/](https://dents.mq.edu.au/support/)

## Learning Skills

Learning Skills ([mq.edu.au/learningskills](https://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](https://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

### PG - Capable of Professional and Personal Judgment and Initiative

Our postgraduates will demonstrate a high standard of discernment and common sense in their professional and personal judgment. They will have the ability to make informed choices and decisions that reflect both the nature of their professional work and their personal perspectives.

This graduate capability is supported by:

### Learning outcomes

- Demonstrate a sophisticated understanding of the historical and theoretical development of commercial law and articulate a view of whether commercial law should be treated differently to other areas of law.
- Communicate a considered opinion about the role that commercial law plays in commercial relationships and also the importance of factors other than the law in forming and maintaining these relationships



## Assessment task

- Research essay

## PG - Discipline Knowledge and Skills

Our postgraduates will be able to demonstrate a significantly enhanced depth and breadth of knowledge, scholarly understanding, and specific subject content knowledge in their chosen fields.

This graduate capability is supported by:

## Learning outcomes

- Demonstrate a sophisticated understanding of the historical and theoretical development of commercial law and articulate a view of whether commercial law should be treated differently to other areas of law.
- Communicate a considered opinion about the role that commercial law plays in commercial relationships and also the importance of factors other than the law in forming and maintaining these relationships
- Demonstrate practitioner level understanding of the law relating to the major commercial transactions
- Solve complex problems in the area of commercial law demonstrating practitioner level ability to identify issues
- Demonstrate advanced skills in the communication of legal and commercial information through class presentations and participation

## Assessment tasks

- Research essay
- Tutorial participation
- Final take home examination

## PG - Critical, Analytical and Integrative Thinking

Our postgraduates will be capable of utilising and reflecting on prior knowledge and experience, of applying higher level critical thinking skills, and of integrating and synthesising learning and knowledge from a range of sources and environments. A characteristic of this form of thinking is the generation of new, professionally oriented knowledge through personal or group-based critique of practice and theory.

This graduate capability is supported by:

## Learning outcomes

- Articulate and critique aspects of Australian contract law's approach to the governance of

commercial transactions and compare international and soft law alternatives

- Demonstrate practitioner level understanding of the law relating to the major commercial transactions
- Solve complex problems in the area of commercial law demonstrating practitioner level ability to identify issues
- Demonstrate advanced skills in the communication of legal and commercial information through class presentations and participation

## **Assessment tasks**

- Research essay
- Final take home examination

## **PG - Research and Problem Solving Capability**

Our postgraduates will be capable of systematic enquiry; able to use research skills to create new knowledge that can be applied to real world issues, or contribute to a field of study or practice to enhance society. They will be capable of creative questioning, problem finding and problem solving.

This graduate capability is supported by:

## **Learning outcomes**

- Articulate and critique aspects of Australian contract law's approach to the governance of commercial transactions and compare international and soft law alternatives
- Demonstrate practitioner level understanding of the law relating to the major commercial transactions
- Solve complex problems in the area of commercial law demonstrating practitioner level ability to identify issues

## **Assessment tasks**

- Tutorial participation
- Final take home examination

## **PG - Effective Communication**

Our postgraduates will be able to communicate effectively and convey their views to different social, cultural, and professional audiences. They will be able to use a variety of technologically supported media to communicate with empathy using a range of written, spoken or visual formats.

This graduate capability is supported by:

## Learning outcomes

- Demonstrate a sophisticated understanding of the historical and theoretical development of commercial law and articulate a view of whether commercial law should be treated differently to other areas of law.
- Communicate a considered opinion about the role that commercial law plays in commercial relationships and also the importance of factors other than the law in forming and maintaining these relationships
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## Assessment tasks

- Research essay
- Tutorial participation
- Final take home examination

## PG - Engaged and Responsible, Active and Ethical Citizens

Our postgraduates will be ethically aware and capable of confident transformative action in relation to their professional responsibilities and the wider community. They will have a sense of connectedness with others and country and have a sense of mutual obligation. They will be able to appreciate the impact of their professional roles for social justice and inclusion related to national and global issues

This graduate capability is supported by:

## Learning outcomes

- Demonstrate a sophisticated understanding of the historical and theoretical development of commercial law and articulate a view of whether commercial law should be treated differently to other areas of law.
- Communicate a considered opinion about the role that commercial law plays in commercial relationships and also the importance of factors other than the law in forming and maintaining these relationships
- Articulate and critique aspects of Australian contract law's approach to the governance of

commercial transactions and compare international and soft law alternatives

## **Assessment task**

- Research essay