



# LAWS823

## Commercial Law

S2 External 2018

*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)

Wednesday 2 - 3pm

Tutor

Liza Rybak

[liza.rybak@mq.edu.au](mailto:liza.rybak@mq.edu.au)

Contact via Email

TBA

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

### Macquarie Law School Assessment Policy

#### *Late Submission Penalty*

Unless a Special Consideration request has been submitted and approved, (a) a penalty for lateness will apply – two (2) marks out of 100 will be deducted per day for assignments submitted after the due date – and (b) no assignment will be accepted more than seven (7) days (incl. weekends) after the original submission deadline. No late submissions will be accepted for timed assessments – e.g. quizzes, online tests and the final take home examination.

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 guidelines will be made available on iLearn. The convenors moderate all assessments. All Fail research essays and take-home exams are double marked.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Research essay</u>	40%	No	Wednesday 12 September, 5pm

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

## Research essay

Due: **Wednesday 12 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 and the development of oral communication skills are an essential part of this unit. 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)

**DO NOT ENROL INTO THIS UNIT IF YOU CANNOT ATTEND TUTORIALS OR THE ON CAMPUS SESSION**

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 13 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 13 November, 2018 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 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**. Required readings will be

notified on iLearn.

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 Shayne Davenport and David Parker, Business and Law in Australia, 2nd ed, 2015, Thomson Reuters. Additional materials are to be found on the iLearn webpage.

The on campus session for external students will be held on Saturday 15 and Sunday 16 September 2018 from 9.00am to 4.00pm 4 Western Road Room 335. 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.

Please double check room location closer to the time of session at [timetables.mq.edu.au](http://timetables.mq.edu.au)

## Unit Schedule

TOPIC	DATE: week beginning	ISSUES
1	30/7	Introduction to the Unit  The history and essential foundations of commercial law  The Australian perspective
2	6/8	Commercial law in theory and practice
3	13/8	Commercial law in theory and practice (cont)  The law of contract: Current issues for commercial law
4	20/8	Bailment  Agency
5	27/8	Revision of personal property; accession, specification and intermixture  Sale of goods  The contract for sale of goods

6	3/9	Sale of Goods (cont) Reservation of title Transfer by Non Owner
7	10/9	Sale of Goods (cont) Express and implied terms of the contract
		<b>MID SEMESTER BREAK</b>
8	1/10	International sale of goods; The Contract for International Sale of Goods (CISG); UNIDROIT; INCOTERMS
9	8/10	Security interests over personal property
10	15/10	Bills of Exchange; Guarantees and introduction to banking law
11	22/10	Insurance
12	29/10	Bankruptcy
13	5/11	<b>NO LECTURE THIS WEEK</b>

## Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central>). Students should be aware of the following policies in particular with regard to Learning and Teaching:

- [Academic Appeals Policy](#)
- [Academic Integrity Policy](#)
- [Academic Progression Policy](#)
- [Assessment Policy](#)
- [Fitness to Practice Procedure](#)
- [Grade Appeal Policy](#)
- [Complaint Management Procedure for Students and Members of the Public](#)
- [Special Consideration Policy](#) (**Note:** *The Special Consideration Policy is effective from 4 December 2017 and replaces the Disruption to Studies Policy.*)

Undergraduate students seeking more policy resources can visit the [Student Policy Gateway](https://students.mq.edu.au/support/study/student-policy-gateway) (<https://students.mq.edu.au/support/study/student-policy-gateway>). It is your one-stop-shop for the key policies you need to know about throughout your undergraduate student journey.

If you would like to see all the policies relevant to Learning and Teaching visit [Policy Central](http://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<http://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/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/study/getting-started/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

### 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