TABL5512
LEGAL FOUNDATIONS FOR ACCOUNTANTS

Course Outline
Semester 2, 2015

Part A: Course-Specific Information
Part B: Key Policies, Student Responsibilities and Support
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PART A: COURSE-SPECIFIC INFORMATION

1  STAFF CONTACT DETAILS

<table>
<thead>
<tr>
<th>Lecturer-in-Charge</th>
<th>Room Number</th>
<th>Telephone</th>
<th>Fax</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill Butcher</td>
<td>Quad 2054B</td>
<td>9385-3256</td>
<td>9313-6658</td>
<td><a href="mailto:b.butcher@unsw.edu.au">b.butcher@unsw.edu.au</a></td>
</tr>
</tbody>
</table>

1.1 Communication with Staff

Bill Butcher's consultation times are 4:00 – 6:00pm on Thursdays.

When you contact staff by email please:

- Use your university email address
- Specify the subject TABL5512 as your lecturer may be teaching more than one course.
- Sign off by using your name

2  COURSE DETAILS

2.1 Teaching Times and Locations

Lectures start in Week 1:

<table>
<thead>
<tr>
<th>Lectures</th>
<th>Day</th>
<th>Time</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Lec A)</td>
<td>Thursday</td>
<td>1 - 4pm</td>
<td>Colombo B</td>
</tr>
<tr>
<td>(Lec A)</td>
<td>Thursday</td>
<td>6 - 9pm</td>
<td>CLB 2</td>
</tr>
</tbody>
</table>

The course is worth 3 units of credit.

2.2 Summary of Course

Law is a critical factor in business. In any business decision fundamental legal questions may arise about the potential liabilities of the parties, the rights that the parties have and how the business or transaction should be organised. This subject introduces the Australian legal system; discusses the legal framework of business regulation; and examines areas of law particularly relevant to accountants, including the law of contract, tort law, and the law relating to specialised commercial transactions.

2.3 Course Aims and Relationship to Other Courses

The aims of this course are to (1) develop your understanding of the structure and key principles underlying the Australian legal system, and for you to apply this knowledge to recognising and solving legal problems in specific areas relating to business; and (2)
to prepare you for the legal principles and techniques necessary for this course and for your further study in law for business, tax law and company law.

Legal Foundations for Accountants introduces students to the legal method of writing, analysis and research essential to the study of TABL5524 Legal Environment of Asian Business, TABL5551 Taxation Law and TABL5541 Corporations and Business Associations Law. The course also provides the understanding of elements of business law necessary for those courses.

Legal Foundations for Accountants is recognised by the major accounting bodies as satisfying their educational requirements regarding business law for admission to their associations.

2.4 Student Learning Outcomes

The Course Learning Outcomes are what you should be able to DO by the end of this course if you participate fully in learning activities and successfully complete the assessment items.

The Learning Outcomes in this course also help you to achieve some of the overall Program Learning Goals and Outcomes for all postgraduate students in the Business School. Program Learning Goals are what we want you to BE or HAVE by the time you successfully complete your degree (e.g. ‘be an effective team player’). You demonstrate this by achieving specific Program Learning Outcomes - what you are able to DO by the end of your degree (e.g. ‘participate collaboratively and responsibly in teams’).

For more information on the Postgraduate Program Learning Goals and Outcomes, see Part B of the course outline.

<table>
<thead>
<tr>
<th>Business Postgraduate Coursework Program Learning Goals and Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Knowledge: Our graduates will have current disciplinary or interdisciplinary knowledge applicable in local and global contexts.</td>
</tr>
<tr>
<td>You should be able to identify and apply current knowledge of disciplinary or interdisciplinary theory and professional practice to business in local and global environments.</td>
</tr>
<tr>
<td>2. Critical thinking and problem solving: Our graduates will have critical thinking and problem solving skills applicable to business and management practice or issues.</td>
</tr>
<tr>
<td>You should be able to identify, research and analyse complex issues and problems in business and/or management, and propose appropriate and well-justified solutions.</td>
</tr>
<tr>
<td>3. Communication: Our graduates will be effective communicators in professional contexts.</td>
</tr>
<tr>
<td>You should be able to:</td>
</tr>
<tr>
<td>a. Produce written documents that communicate complex disciplinary ideas and information effectively for the intended audience and purpose, and</td>
</tr>
<tr>
<td>b. Produce oral presentations that communicate complex disciplinary ideas and information effectively for the intended audience and purpose.</td>
</tr>
<tr>
<td>4. Teamwork: Our graduates will be effective team participants.</td>
</tr>
<tr>
<td>You should be able to participate collaboratively and responsibly in teams, and reflect on your own teamwork, and on the team’s processes and ability to achieve outcomes.</td>
</tr>
<tr>
<td>5. Ethical, social and environmental responsibility: Our graduates will have a sound awareness of ethical, social, cultural and environmental implications of business issues and practice.</td>
</tr>
<tr>
<td>You should be able to:</td>
</tr>
<tr>
<td>a. Identify and assess ethical, environmental and/or sustainability considerations in business decision-making and practice, and</td>
</tr>
</tbody>
</table>
b. Consider social and cultural implications of business and/or management practice.

The following table shows how your Course Learning Outcomes relate to the overall Program Learning Goals and Outcomes, and indicates where these are assessed (they may also be developed in tutorials and other activities):

<table>
<thead>
<tr>
<th>Program Learning Goals and Outcomes</th>
<th>Course Learning Outcomes</th>
<th>Course Assessment Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>This course helps you to achieve the following learning goals for all UNSW Business School postgraduate coursework students:</td>
<td>On successful completion of the course, you should be able to:</td>
<td>This learning outcome will be assessed in the following items:</td>
</tr>
<tr>
<td>1 Knowledge</td>
<td>Understand and identify legal issues that arise in commercial situations.</td>
<td>• Assignment • Exams</td>
</tr>
<tr>
<td>2 Critical thinking and problem solving</td>
<td>Analyse legal issues in a logical and structured way (i.e. identify problems, research relevant sources, propose an outcome and identify possible challenges to the proposed outcome).</td>
<td>• Assignment • Exams</td>
</tr>
<tr>
<td>3a Written communication</td>
<td>Construct logically and professionally presented written arguments relevant to common commercial legal situations and problems.</td>
<td>• Assignment • Exams</td>
</tr>
<tr>
<td>3b Oral communication</td>
<td>Communicate ideas in a succinct and clear manner.</td>
<td>• Not specifically assessed but undertaken in class discussions.</td>
</tr>
<tr>
<td>4 Teamwork</td>
<td>Work collaboratively to complete a task.</td>
<td>• Not specifically assessed but undertaken in class discussions.</td>
</tr>
<tr>
<td>5a Ethical, environmental and sustainability responsibility</td>
<td>Identify and assess environmental and sustainability considerations in commercial law situations.</td>
<td>• Not specifically assessed but considered in lectures and class discussions.</td>
</tr>
<tr>
<td>5b Social and cultural awareness</td>
<td>Not specifically addressed in this course.</td>
<td></td>
</tr>
</tbody>
</table>

3 LEARNING AND TEACHING ACTIVITIES

3.1 Approach to Learning and Teaching in the Course

This course is conducted with the aim of promoting student-centred learning.
This aim will be achieved by requiring students to engage with the topics presented in the course through set weekly readings and, as required, independent research.

While the assessment in this course is designed to test students' knowledge of the key principles that establish the framework of common commercial transactions, an important focus of the assessment regime is to test how well students can apply legal principles and practices in a realistic commercial context.

### 3.2 Learning Activities and Teaching Strategies

This course involves three hours of teaching time per week. It runs over six weeks commencing on 4/5 March.

**Lectures** are a critical part of your learning in this course. However, you should keep in mind that they do not substitute or summarise the prescribed readings. The **readings** and **case studies** are an essential element of the course, both in terms of preparing you for the lectures and for achieving sufficient depth of knowledge. If you fail to read the material, or to complete the case studies before class, you will derive much less benefit from the lectures. The lectures are very carefully prepared to complement your own preparation, not to replace it. It is your responsibility to play an *active* part in your learning. This entails *preparation* before class, *review* of your notes after class, and *asking questions* on any aspect you are uncertain about.

Each lecture will include a seminar component dedicated to discussion of case studies. The material to be discussed in the seminar will have been dealt with in the lecture in the previous week. This enables you to have the benefit of a lecture before approaching the case studies. **All students must** prepare a written answer and be ready to discuss the case studies in class.

**No written suggested answers will be provided for the case studies.** It is vital to your learning of the material and in developing skills in applying the law to given situations that you prepare your own answers and analyse them in the light of the class discussion. The class discussion will be sufficiently structured and methodical that you should obtain a clear understanding without the need for a potentially distracting written suggested answer. If any points remain unclear, you are of course welcome to discuss them with the lecturer.

This course assumes no existing knowledge of the topics to be covered during the session.

You are strongly urged to read at least one full case during the course. Reading cases is the best way of gaining an understanding of how:

- the law operates in real situations,
- common law rules evolve (eg those dealing with the tort of negligence), and
- courts interpret statute law (eg the Income Tax Assessment Acts).
4 ASSESSMENT

4.1 Formal Requirements
In order to pass this course, you must:

- achieve a composite mark of at least 50; and
- make a satisfactory attempt at all assessment tasks (see below).

4.2 Assessment Details

<table>
<thead>
<tr>
<th>Task No.</th>
<th>Assessment Task</th>
<th>Due</th>
<th>Word Limit</th>
<th>% of Marks</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Mid Session Exam</td>
<td>20 August 6.10-7.00pm</td>
<td>N/A</td>
<td>20%</td>
</tr>
<tr>
<td>B</td>
<td>Research Assignment</td>
<td>15 October, 9.00pm</td>
<td>2000 words</td>
<td>20%</td>
</tr>
<tr>
<td>C</td>
<td>Final Exam</td>
<td>To be advised</td>
<td>N/A</td>
<td>60%</td>
</tr>
</tbody>
</table>

Total 100%

4.3 Assessment Format

Mid Session Exam – 20%

- The examination will consist of 20 short answer questions. It is a closed book exam.
- The lecture will follow the exam and will run from 7.15pm - 9.00pm.
- Attendance is compulsory. Exemptions may only be made on medical grounds or exceptional circumstances.
- All students, including those enrolled in the 1.00pm–4.00pm class, must attend the examination from 6.10pm–7.00pm on 20 August. Students who have a clash with another lecture between 6.00pm and 7.00pm on 20 August must advise the Lecturer in Charge of TABL5512 promptly, so that alternative arrangements can be made.
- On 20 August, you may choose to attend either the lecture from 1.00-4.00pm or the lecture from 7.15pm – 9.00pm.

Research Assignment – 20%

Word Limit: The word limit for the research assignment is 2,000 words. This limit will be strictly enforced. A major purpose of placing a word limit on the paper is to help you develop the skill of applying the law to a set of facts in an organised, concise and efficient manner.

- Students are solely responsible to ensure that they have attached a completed cover page. The style of cover page will be shown on the Moodle site for the course.
• Assignments will not be accepted unless you have signed the acknowledgment on the cover page.
• You must comply with the Style Guide in the Appendix below.

Final Examination – 60%

• The final exam will be two and a half hours, plus ten minutes reading time.
• The exam will cover all topics discussed in both the lectures and readings.
• The exam will be closed book.

4.4 Assignment Submission Procedure

A hard copy of the assignment must be handed in, and a copy posted on the Moodle site for the course. Hard copies of the assignment may be handed in at the lecture or be placed in the TABL5512 Assignment Collection Box outside Quadrangle Room 2059.

4.5 Late Submission

The research assignment must be submitted by the stated due date.

Any assignment submitted late will not be accepted unless prior written approval has been granted by the Lecturer in Charge.

Assignments that are submitted after the due date and time without prior written approval will have 20% deducted per day late. Please note: mark deductions will be imposed immediately after the time the assignment is due. Any assignment submitted 5 or more days late will score 0.

If you foresee that you will have problems submitting the assignment on time you should contact the Lecturer in Charge immediately. Only the Lecturer in Charge can grant an extension for an assignment.

Do not wait until the due date to ask for an extension. No extensions will be granted on the due date itself.

If circumstances beyond your control mean that you cannot complete an assignment by the due date you should make an application for special consideration (see below at Part B, paragraph 4). These applications are reserved for illness or misadventure, not work commitments. Work commitments are not a valid reason for special consideration applications.

Computer or printer failure is not an acceptable special circumstance for an extension of time. Students are expected to make back-up copies of their assignments and have contingency plans for any potential printing problems.
Quality Assurance

The Business School is actively monitoring student learning and quality of the student experience in all its programs. A random selection of completed assessment tasks may be used for quality assurance, such as to determine the extent to which program learning goals are being achieved. The information is required for accreditation purposes, and aggregated findings will be used to inform changes aimed at improving the quality of Business School programs. All material used for such processes will be treated as confidential and will not be related to course grades.

5 COURSE RESOURCES

Prescribed text:
- Latimer, Australian Business Law, 34th ed, 2015 (CCH)

Additional texts:
There are a number of other texts that you may find useful. Most of these texts are available in the Law Library.
- Carvan, Understanding the Australian Legal System (Thomson)
- Enright C., Legal Technique (The Federation Press)
- Gibson and Fraser, Business Law, Pearson
- James, Business Law, (Wiley)
- Khoury & Yamouni, Understanding Contract Law, (Lexis Nexis)
- Pentony, Graw, Parker, Whitford, Understanding Business Law, (Lexis Nexis)
- Richards, Ludlow, Gibson, Tort Law in Principle, (Thomson Reuters)
- Terry and Giugni, Business and the Law, (Cengage Learning)
- Vai Io Lo, Commercial Law in Australia
- Wang, The International Student Guide to Business Law, (Thomson)

Reference materials
All students should have access to a good legal dictionary. Students should also be aware of appropriate study techniques and legal referencing protocols. The following books are recommended for these purposes. Many of them are available from the UNSW Law School library.
- Crosling & Murphy, How to Study Business Law, (Lexis Nexis).
- Krever, Mastering Law Studies and Law Exam Techniques, (Butterworths).
- Stuhmcke, Legal Referencing, (Butterworths)

General Web references:
- Austlii (general legal database including cases and legislation) www.austlii.edu.au
- ScalePlus (the Cth Attorney-General’s website including Commonwealth legislation and links to State and Territory legislation) http://scaleplus.law.gov.au
- Lawlex (a private company’s website offering consolidated lists of current legislation and links to ScalePlus) www.lawlex.com.au
- NSW Attorney-General’s website www.lawlink.nsw.gov.au
The Australian Competition and Consumer Commission (provides links to some Codes of Conduct) [www.accc.gov.au](http://www.accc.gov.au)

The website for this course is on Moodle at: [http://moodle.telt.unsw.edu.au](http://moodle.telt.unsw.edu.au)

6 COURSE EVALUATION AND DEVELOPMENT

Each year feedback is sought from students and tutors about the courses offered in the School and continual improvements are made based on this feedback. In this course we will seek your feedback through UNSW's Course and Teaching Evaluation and Improvement (CATEI) process and students are also most welcome to provide feedback at any time during the session.
## 7 COURSE SCHEDULE

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Outline of Lecture Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lecture 1</td>
<td>Introduction to Law and Legal Systems</td>
<td>What is law?</td>
</tr>
<tr>
<td>30 July</td>
<td>Role of Law in Business</td>
<td>The legal system.</td>
</tr>
<tr>
<td></td>
<td>The Australian Legal System</td>
<td>Structure and hierarchy of the court system.</td>
</tr>
<tr>
<td></td>
<td>The Court System</td>
<td>The sources of law: Parliament and the courts.</td>
</tr>
<tr>
<td></td>
<td>Legal Reasoning</td>
<td>The operation of precedent and common law reasoning.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lecture 2</td>
<td>The Constitution</td>
<td>An introduction to the basic concepts of constitutional law in Australia at both the Federal</td>
</tr>
<tr>
<td>6 August</td>
<td></td>
<td>and State levels of government:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>* source of legislative power,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>* functions of the 3 branches of government</td>
</tr>
<tr>
<td></td>
<td></td>
<td>* (legislature, executive and judiciary) and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>* Concept of &quot;separation of powers&quot;.</td>
</tr>
<tr>
<td></td>
<td>Interpretaion of Statutes</td>
<td>Conflict between State and Federal laws</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The rules and principles of statutory interpretation.</td>
</tr>
<tr>
<td>Lecture 3</td>
<td>Contracts 1</td>
<td>The nature of contract law.</td>
</tr>
<tr>
<td>13 August</td>
<td></td>
<td>The essential elements of a contract.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Privity of contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Agency</td>
</tr>
<tr>
<td>Lecture 4</td>
<td>Contracts 2</td>
<td>What can make the contract unenforceable?</td>
</tr>
<tr>
<td>20 August</td>
<td></td>
<td>Exemption clauses and other terms of the contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Statutory modifications to contract law</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ending the contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Remedies for breach of contract</td>
</tr>
<tr>
<td>Lecture 5</td>
<td>The Law of Torts 1</td>
<td>Introduction to the interests protected by tort law – negligence, passing off, defamation, injurious falsehood, deceit</td>
</tr>
<tr>
<td>27 August</td>
<td></td>
<td>The tort of negligence will be examined in greater depth, with particular emphasis on liability for negligence where the loss suffered by the plaintiff is what is known as 'pure economic loss'.</td>
</tr>
<tr>
<td>Lecture 6</td>
<td>The Law of Torts 2</td>
<td></td>
</tr>
</tbody>
</table>
CLASS SCHEDULE

Lecture 1

Introduction to Law and Legal Systems, the Role of Law in Business

<table>
<thead>
<tr>
<th>Introduction to Law and Legal Systems</th>
<th>What is law?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role of Law in Business</td>
<td>The legal system.</td>
</tr>
<tr>
<td>The Australian Legal System</td>
<td>Structure and hierarchy of the court system.</td>
</tr>
<tr>
<td>The Court System</td>
<td>The sources of law: Parliament and the courts.</td>
</tr>
<tr>
<td>Legal Reasoning</td>
<td>The operation of precedent and common law reasoning</td>
</tr>
</tbody>
</table>

Introduction

Every country has a legal system. Most are a reflection of the society they regulate. When doing business in or with a particular country, it is essential to understand the laws of that country that are relevant to your business. All reasonably developed legal systems have very similar rules to regulate business activity. The words and the specific methods of achieving results (for example making contracts enforceable) will differ in detail but the broad objectives and outcomes will often be the same. This lecture is an introduction to the legal system of Australia and will compare the Australian system with that used in other countries.

Readings

Text: *Australian Business Law* ("ABL")
- Paras 1.010 – 1.015
- Paras 1.030 – 1.160
- Paras 1.170 – 1.180
- Paras 1.350 – 1.420
- Paras 1.441 – 1.444
- Paras 2.010, 2.020, 2.040 – 2.190

Websites

- [www.austlii.edu.au](http://www.austlii.edu.au)
Lecture 2

The Australian Legal System and the Constitution

<table>
<thead>
<tr>
<th>The Australian Constitution</th>
<th>An introduction to the basic concepts of constitutional law in Australia at both the Federal and State levels of government:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• source of legislative power,</td>
</tr>
<tr>
<td></td>
<td>• functions of the 3 branches of government (legislature, executive and judiciary) and</td>
</tr>
<tr>
<td></td>
<td>• the “separation of powers”.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Interpretation of Statutes</th>
<th>Conflict between State and Federal laws</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The rules and principles of statutory interpretation.</td>
</tr>
</tbody>
</table>

Introduction

Where does the authority of the government and the courts come from? Who is in control? How do we know whether something comes under Federal law or under State law? If there is both a Federal law and a State law about the same subject, which law prevails? An understanding of the Federal Constitution will go a long way towards answering these questions. An understanding of the function of the Federal Constitution is essential background for business people in Australia.

Acts of Parliament (“statutes”) are a vital source of law. These, of course, are recorded in words, but words can have a range of different meanings. This can lead to uncertainty in the interpretation and application of statutes. To help decipher the meaning of the law and how it is likely to be applied by a judge, we turn to precedent, common law reasoning and rules of statutory interpretation. These are the ‘code’ which enables us to make reasonably accurate predictions about how the law will interpret a given set of facts.

Readings (ABL Paras)
- 1.450
- 1.460 – 1.475
- 1.490 – 1.550

Legislation
- *The Commonwealth of Australia Constitution Act (UK)* 1900
- *Acts Interpretation Act 1901* (Cth)

Case
- *Commonwealth v Tasmania (Franklin Dam case)* (1983) 158 CLR 1

Lecture 3
Introduction

Buying a coffee involves forming a contract, as do enrolling for university, taking a taxi or negotiating and signing a tenancy agreement for an apartment. Contracts range in scope from the simple and inexpensive to complex arrangements between corporations. All are governed by the same legal principles.

There are rules that govern every phase of a contract’s life - negotiating, drafting, signing, performing and ending contracts. They are found in the common law and statutes.

This week we will look at the elements of a legally binding contract: agreement, intention to be legally bound, consideration, genuine consent, legal capacity and legality/morality.

Readings (ABL Paras)
  o 5.010 – 5.390
Lecture 4

Contract Law 2 – Unenforceable Contracts, Ending the Contract, Remedies for Breach of Contract

<table>
<thead>
<tr>
<th>Contracts 2</th>
<th>What can make the contract unenforceable?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Exemption clauses</td>
</tr>
<tr>
<td></td>
<td>Ending the contract</td>
</tr>
<tr>
<td></td>
<td>Remedies for breach of contract</td>
</tr>
</tbody>
</table>

Introduction

Some contracts seem legitimate but once we know more about them we suspect it would be unfair if they were binding on one of the parties. We will find out what can be done about contracts that seem ‘wrong’.

Our rights and obligations under a contract do not last for an indefinite time. One of the necessities of business is certainty. Whether a contract is still ‘on foot’ or whether it has ended is an important certainty for businesses.

It is also important to know what remedies are available if a contract is breached. This can be an important consideration right up front at the negotiating stage.

Readings (ABL Paras)

- 5.400 – 5.485
- 6.180 – 6.250
- 6.380 – 6.480
Introduction to Torts

| Torts 1 | Introduction to the interests protected by tort law – negligence, passing off, defamation, injurious falsehood, deceit. |

Introduction

The law of torts, like the law of contract, is in the category of private law. That is, individuals or businesses suing each other without the government’s involvement. It is based on common law and the rules are found in previous cases using the doctrine of precedent. An awareness of some areas of tort law is vitally important to business: for instance the torts of negligence, defamation, passing off and inducing breach of contract. It is important to understand that the categories of tort are not closed – new torts and new applications of existing torts will emerge in the future.

Readings (ABL Paras)

- 4.010 – 4.220
Lecture 6

**Torts 2 – Pure Economic Loss**

| Torts 2 | The tort of negligence will be examined in greater depth, with particular emphasis on liability for negligence where the loss suffered by the plaintiff is what is known as ‘pure economic loss’. |

**Introduction**

“Pure economic loss” is financial loss which has not resulted from personal injury to the plaintiff or damage to the plaintiff’s property. Examples are financial losses caused by bad investment advice, or the need to pay for alternative transportation of oil when a pipeline has been damaged. For policy reasons, courts have made it difficult to obtain redress for such losses. We will examine those policy reasons and the circumstances in which such losses can be recovered.

**Legislation**

- *Civil Liability Act 2002 (NSW)*

**Readings (ABL Paras)**

- 4.230 – 4.295
WEEKLY SEMINAR PROBLEMS

Seminar discussion in Lecture 3: Statutory Interpretation

Assume the following facts:

A public outcry has erupted as a result of a publication in “Truth” magazine that senior bank officials have been abusing their positions by arranging and approving substantial loans to themselves without following proper banking procedures.

Parliament has reacted by enacting the following law:

“No bank shall grant a loan in excess of $100,000 to any director, manager or other employee of the bank.

This provision does not apply to clerical staff of the bank.”

The Bank of Sydney seeks your advice as to whether it may continue to grant loans of over $100,000 to its cleaning staff.

Advise the Bank, by reference to relevant “rules” and syntactical presumptions of statutory interpretation. Include in your answer consideration of the availability to the courts of extrinsic materials.
Seminar discussion in Lecture 4: Contracts 1

Sue, an art dealer and teacher, owned a famous painting called “Evening Glow” by the renowned Tibetan artist Xiao Zhou. On 1 May Sue placed an advertisement in the Paddington Gazette that “Evening Glow” was for sale for $200,000.

On 2 May Louis, a wealthy industrialist, telephoned Sue and the following exchange took place:

Louis: I'll buy “Evening Glow” for $200,000 as you offered in the Gazette.
Sue: I have decided I now want $250,000.
Louis: Let me think about it.
Sue: All right. I'll give you one week to decide. If I don’t hear from you by 9 May I will assume you agree to buy the painting for $250,000.
Louis: O.K.

Sue had a bad feeling that Louis would not agree to pay $250,000, so on 4 May she sent a fax to Ian, one of her regular clients, offering to sell “Evening Glow” to him for $250,000. On 5 May she sent Ian a second fax offering to give him a year’s free art lessons if he would buy “Evening Glow” for $250,000.

Ian received Sue's fax of 4 May immediately but did not receive her fax of 5 May until 11 May. On 6 May Ian sent a fax to Sue: “I agree to buy “Evening Glow” for $250,000 provided that price includes the frame.” Sue received that fax on 8 May. Ian desperately wanted the painting and was worried when he did not receive an immediate response from Sue to his fax of 6 May. On 7 May he sent her a further fax: “I agree to buy “Evening Glow” for $250,000, even if I can't have the frame.” Sue never received that fax.

Ian and Louis were good friends. On 10 May Ian told Louis that he had bought “Evening Glow” from Sue. Louis immediately phoned Sue and told her that she had no right to revoke the offer before 9 May and that, in any event, “Evening Glow” became his (Louis's) on 9 May. In fact, Louis said, “Evening Glow” became his on 2 May for a price of $200,000.

On 12 May Ian told Sue that he expected to receive the painting for $250,000, plus the year’s free art lessons.

Sue asks for your help. Advise her on her contractual situation with both Louis and Ian.
Seminar discussion in Lecture 5: Contracts 2

Consider BOTH parts (a) and (b)

a) Carol has an agreement to give regular investment advice to Paul in return for an annual payment of $5,000.

After one of their regular meetings Paul asked Carol for advice on personal insurance, even though such advice was not included in their agreement. Nothing was said at that time about payment. Carol carried out some research and gave her insurance advice to Paul at their next meeting.

After the meeting Paul said: “You have been so kind about this insurance that I will give you an extra $1,000 at the end of the year. I would also like you to act as my daughter’s investment adviser until the end of the year in return for $3,000. If you are as kind to her as you have been to me, I will pay you an extra $800 for that as well.”

Carol agreed to these terms and continued to give investment advice to Paul and his daughter until the end of the year. She also gave Paul’s daughter a lot of helpful advice about other matters.

At the end of the year Paul paid Carol the agreed $8,000 but refused to pay the additional $1,000 for the insurance advice or the extra $800 in respect of his daughter.

What contractual rights does Carol have to the additional amounts of $1,000 and $800?

AND

b) Fred agreed to deliver a quantity of timber to George for $10,000. Fred’s suppliers unexpectedly increased their prices to him because of increases in their labour costs so Fred told George he would have to pay $12,000 for the timber. George agreed to pay the extra $2,000. When the timber was delivered George paid only $10,000 and refused to pay any more.

Is Fred entitled to the extra $2,000?
Seminar discussion in Week 6: Torts

Fred has $200,000 in the bank but, as it is only earning 2% interest per annum, he decides to invest it in the stockmarket.

When Fred calls his stockbroker, Laura, she tells him on the telephone that he should buy shares in Lucre Ltd, an internet company. She also mentions that she has just got back to the office after a long lunch where she drank lots of very excellent and very expensive wine purchased through her profits on trading in internet stocks similar to Lucre Ltd.

Fred was already considering buying $80,000 worth of Lucre Ltd shares but after talking to Laura, he decides to spend the entire $200,000 on Lucre Ltd shares.

Unfortunately, Laura has not checked the reports that have been placed on her desk while she was out to lunch. One of those reports argues strongly that Lucre Ltd would be a very foolish investment.

The next day Lucre Ltd announces that they have never made any money and never will make any money. Lucre Ltd shares become worthless and Fred loses his entire investment.

Fred calls his lawyer.

Advise Laura as to her potential liability to Fred in the tort of negligence.
PART B: KEY POLICIES, STUDENT RESPONSIBILITIES AND SUPPORT

8 PROGRAM LEARNING GOALS AND OUTCOMES

The Business School Program Learning Goals reflect what we want all students to BE or HAVE by the time they successfully complete their degree, regardless of their individual majors or specialisations. For example, we want all our graduates to HAVE a high level of business knowledge, and a sound awareness of ethical, social, cultural and environmental implications of business. As well, we want all our graduates to BE effective problem-solvers, communicators and team participants. These are our overall learning goals for you and are sought after by employers.

You can demonstrate your achievement of these goals by the specific outcomes you achieve by the end of your degree (e.g. be able to analyse and research business problems and propose well-justified solutions). Each course contributes to your development of two or more program learning goals/outcomes by providing opportunities for you to practise these skills and to be assessed and receive feedback.

Program Learning Goals for undergraduate and postgraduate students cover the same key areas (application of business knowledge, critical thinking, communication and teamwork, ethical, social and environmental responsibility), which are key goals for all Business students and essential for success in a globalised world. However, the specific outcomes reflect different expectations for these levels of study.

We strongly advise you to choose a range of courses which assist your development of these skills, e.g., courses assessing written and oral communication skills, and to keep a record of your achievements against the Program Learning Goals as part of your portfolio.

### Business Postgraduate Coursework Program Learning Goals and Outcomes

<table>
<thead>
<tr>
<th>1. Knowledge: Our graduates will have current disciplinary or interdisciplinary knowledge applicable in local and global contexts.</th>
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<tbody>
<tr>
<td>You should be able to identify and apply current knowledge of disciplinary or interdisciplinary theory and professional practice to business in local and global environments.</td>
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<th>2. Critical thinking and problem solving: Our graduates will have critical thinking and problem solving skills applicable to business and management practice or issues.</th>
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<tr>
<td>You should be able to identify, research and analyse complex issues and problems in business and/or management, and propose appropriate and well-justified solutions.</td>
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<th>3. Communication: Our graduates will be effective communicators in professional contexts.</th>
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<tr>
<td>You should be able to:</td>
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<tr>
<td>a. Produce written documents that communicate complex disciplinary ideas and information effectively for the intended audience and purpose, and</td>
</tr>
<tr>
<td>b. Produce oral presentations that communicate complex disciplinary ideas and information effectively for the intended audience and purpose.</td>
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<th>4. Teamwork: Our graduates will be effective team participants.</th>
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<td>You should be able to participate collaboratively and responsibly in teams, and reflect on your own teamwork, and on the team's processes and ability to achieve outcomes.</td>
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<tr>
<th>5. Ethical, social and environmental responsibility: Our graduates will have a sound awareness of ethical, social, cultural and environmental implications of business issues and practice.</th>
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<tbody>
<tr>
<td>You should be able to:</td>
</tr>
<tr>
<td>a. Identify and assess ethical, environmental and/or sustainability considerations in business decision-making and practice, and</td>
</tr>
<tr>
<td>b. Consider social and cultural implications of business and/or management practice.</td>
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9 ACADEMIC HONESTY AND PLAGIARISM

The University regards plagiarism as a form of academic misconduct, and has very strict rules regarding plagiarism. For UNSW policies, penalties, and information to help you avoid plagiarism see: https://student.unsw.edu.au/plagiarism as well as the guidelines in the online ELISE tutorials for all new UNSW students: http://subjectguides.library.unsw.edu.au/elise

To see if you understand plagiarism, do this short quiz: https://student.unsw.edu.au/plagiarism-quiz

10 STUDENT RESPONSIBILITIES AND CONDUCT

Students are expected to be familiar with and adhere to university policies in relation to class attendance and general conduct and behaviour, including maintaining a safe, respectful environment; and to understand their obligations in relation to workload, assessment and keeping informed.

Information and policies on these topics can be found in UNSW Current Students ‘Managing your Program’ webpages: https://student.unsw.edu.au/program.

10.1 Workload

It is expected that you will spend at least nine to ten hours per week studying this course. This time should be made up of reading, research, working on exercises and problems, online activities and attending classes. In periods where you need to complete assignments or prepare for examinations, the workload may be greater. Over-commitment has been a cause of failure for many students. You should take the required workload into account when planning how to balance study with employment and other activities.

We strongly encourage you to connect with your Moodle course websites in the first week of semester. Local and international research indicates that students who engage early and often with their course website are more likely to pass their course.

Information on expected workload: https://student.unsw.edu.au/uoc

10.2 Attendance

Your regular and punctual attendance at lectures and seminars is expected in this course. University regulations indicate that if students attend less than 80% of scheduled classes they may be refused final assessment. For more information, see: https://student.unsw.edu.au/attendance

10.3 General Conduct and Behaviour

You are expected to conduct yourself with consideration and respect for the needs of your fellow students and teaching staff. Conduct which unduly disrupts or interferes with a class, such as ringing or talking on mobile phones, is not acceptable and students may be asked to leave the class. More information on student conduct is available at: https://student.unsw.edu.au/conduct

10.4 Occupational Health and Safety

UNSW Policy requires each person to work safely and responsibly, in order to avoid personal injury and to protect the safety of others. For more information, see http://www.ohs.unsw.edu.au/.
10.5 Keeping Informed
You should take note of all announcements made in lectures, tutorials or on the course website. From time to time, the University will send important announcements to your university e-mail address without providing you with a paper copy. You will be deemed to have received this information. It is also your responsibility to keep the University informed of all changes to your contact details.

11 SPECIAL CONSIDERATION
You must submit all assignments and attend all examinations scheduled for your course. You should seek assistance early if you suffer illness or misadventure which affects your course progress.

General information on special consideration for undergraduate and postgraduate courses:
1. All applications for special consideration must be lodged online through myUNSW within 3 working days of the assessment (Log into myUNSW and go to My Student Profile tab > My Student Services > Online Services > Special Consideration). You will then need to submit the originals or certified copies of your completed Professional Authority form (pdf - download here) and other supporting documentation to Student Central. For more information, please study carefully in advance the instructions and conditions at: https://student.unsw.edu.au/special-consideration
2. Please note that documentation may be checked for authenticity and the submission of false documentation will be treated as academic misconduct. The School may ask to see the original or certified copy.
3. Applications will not be accepted by teaching staff. The lecturer-in-charge will be automatically notified when you lodge an online application for special consideration.
4. Decisions and recommendations are only made by lecturers-in-charge (or by the Faculty Panel in the case of UG final exam special considerations), not by tutors.
5. Applying for special consideration does not automatically mean that you will be granted a supplementary exam or other concession.
6. Special consideration requests do not allow lecturers-in-charge to award students additional marks.

12 STUDENT RESOURCES AND SUPPORT
The University and the Business School provide a wide range of support services for students, including:

- Business School Education Development Unit (EDU)
  https://www.business.unsw.edu.au/students/resources/learning-support
  The EDU provides academic writing, study skills and maths support specifically for Business students. Services include workshops, online resources, and individual consultations. EDU Office: Level 1, Room 1033, Quadrangle Building. Phone: 9385 5584; Email: edu@unsw.edu.au.

- Business Student Centre
  https://www.business.unsw.edu.au/students/resources/student-centre
  Provides advice and direction on all aspects of admission, enrolment and graduation. Office: Level 1, Room 1028 in the Quadrangle Building; Phone: 9385 3189.
- **Moodle eLearning Support**
  For online help using Moodle, go to: [https://student.unsw.edu.au/moodle-support](https://student.unsw.edu.au/moodle-support). For technical support, email: itservicecentre@unsw.edu.au; Phone: 9385 1333.
- **UNSW Learning Centre** [www.lc.unsw.edu.au](http://www.lc.unsw.edu.au)
  Provides academic skills support services, including workshops and resources, for all UNSW students. See website for details.
- **Library training and search support services**
  [http://info.library.unsw.edu.au/web/services/services.html](http://info.library.unsw.edu.au/web/services/services.html)
- **IT Service Centre**: Provides technical support for problems logging in to websites, downloading documents etc. [https://www.it.unsw.edu.au/students/index.html](https://www.it.unsw.edu.au/students/index.html) Office: UNSW Library Annexe (Ground floor). Ph: 9385 1333.
- **UNSW Counselling and Psychological Services**
  [https://student.unsw.edu.au/wellbeing](https://student.unsw.edu.au/wellbeing) Provides support and services if you need help with your personal life, getting your academic life back on track or just want to know how to stay safe, including free, confidential counselling. Office: Level 2, East Wing, Quadrangle Building; Phone: 9385 5418.
- **Student Equity & Disabilities Unit** [http://www.studentequity.unsw.edu.au](http://www.studentequity.unsw.edu.au)
  Provides advice regarding equity and diversity issues, and support for students who have a disability or disadvantage that interferes with their learning. Office: Ground Floor, John Goodsell Building; Phone: 9385 4734; Email: seadu@unsw.edu.au
APPENDIX - STYLE GUIDE AND WRITTEN SUBMISSION GUIDELINES

General

1. A written cover sheet must be attached to the Research Assignment. The form of the coversheet is set out in Appendix B.

2. The Research Assignment has a maximum word limit of 2000 words. A word count must be recorded on the cover sheet. Written answers must be kept to the prescribed word limit. A word limit does not include footnotes or bibliography. If material submitted exceeds the prescribed limit the marker may require you to revise and edit the work to the prescribed requirements, and/or stop marking at the word limit.

3. You MUST also keep a hard copy all of your written papers.

4. A margin of at least 2.5 cm should be left along the left hand side of each page.

5. Written answer papers must be either clearly written or typed. Typing should be double spaced, no smaller than 12 point font and on one side of the page only.

6. The preferred binding of the written answer is a single staple in the top left hand corner. No other binding is required. Written answers presented in any other form of binding may be removed from that binding to facilitate marking. In such circumstances the additional binding will not be returned to you.

7. Computer or printer failure is not an acceptable special circumstance for an extension of time. You are expected to make back-up copies of your written answer and have contingency plans for any potential printing problems.

Footnotes, Quoting and Copying

1. Footnotes allow the reader to quickly and easily find the exact place in the source material to which the footnote refers.

2. In the course of the written answer you will need to cite relevant authorities. These may be a case precedent, the views of an author, a piece of legislation or an article. The source of the proposition or idea that is used must be acknowledged. For example, you do not quote the opening page of a website if your quotation comes from another page. You must quote the exact, complete, location of the page on the web where you found the material.

3. All sources must be acknowledged by a footnote at the foot of the page where:

   a) the source is being directly quoted;
   b) an argument or proposition in that source is being paraphrased;
   c) the source is being used as authority to support a student's proposition or argument;

Footnotes that represent digressions from the main argument should be kept to a minimum.

Bibliography

For the Research Assignment, all texts, articles and other sources you use in the preparation of your work should be listed in a bibliography at the end of the written answer.

Wikipedia

Students should take extreme care when using Wikipedia. Wikipedia is prepared by unknown
authors and is often wrong. While Wikipedia may, on occasion, be useful as a starting point when approaching a completely unfamiliar topic, it is unacceptable as a source for University assignments. If a decision is made to consult Wikipedia, students must research further and check and cite the source used by Wikipedia in their assignment rather than Wikipedia itself. Students who use Wikipedia as a source for written assessment tasks without researching further and checking the sources used will have marks deducted.

Referencing Books

1. Books should be cited as per the following example:
   Paul Latimer Australian Business Law (CCH Australia, 30th ed, 2011 [insert page number])

2. If the text is discussing a case then the reference should be:

Cases

1. Cases should be cited as per the following example:
   Esanda Finance Corporation Ltd v Peat Marwick Hungerfords (1997) 188 CLR 241

2. If citing a particular judge you should reference it as
   Esanda Finance Corporation Ltd v Peat Marwick Hungerfords (1997) 188 CLR 241, [insert page number], [if applicable, insert judge name in brackets]

Legislation

Acts should be cited as follows:

1. Competition and Consumer Act 2010 (Cth) [insert section number]

2. Civil Liability Act 2002 (NSW) [insert section number]

Websites

1. If you want to reference discussion from a database like CCH or Butterworths Online it should be cited as per the following example:
   CCH Australian Trade Practices Law Reporter at [insert paragraph number]

2. If the commentary talks about a case then the reference should be cited as follows:
   Esanda Finance Corporation Ltd v Peat Marwick Hungerfords (1997) 188 CLR 241 as cited in CCH Torts Law Reporter at [insert paragraph number]

MIRAT Method For Legal Problems

You should use the MIRAT method when answering legal problems for this course.

M (material facts)
I (issues)
R (legal rules)
A (apply legal rules to the facts) –
T (state a tentative conclusion)

Materially relevant facts – these will include:
* relevant people/ places/ events
• Time line / chronology of events.

Do not simply re-state the question, it is a waste of words and does not show you understand the case. Do not write anything under this heading in your final paper; just use it for your draft.

Identify the Issues (legal) – It is clearest if you follow each legal issue through to tentative conclusion stage before starting analysing the next legal issue. This helps ensure you do not miss anything, eg

• It is a problem about a contract – (and further break down issues)
• Tort – (and further break down by reference to relevant torts)

Rules (legal) -
• Eg: Breach of contract – what has to exist for this action to be available to the plaintiff?
• The rules will be found in:-
  o Precedent – past authoritative cases
  o statutes

Apply the law to the facts -
• It is only by doing this competently that you move from a moderate paper to a truly good paper.
  o Include in this part of the answer any relevant cases that need to be distinguished.

Reach a Tentative conclusion -
• This is the best conclusion you can reach with the facts as you know them. In the High Court a final conclusion would be arrived at. In court, both plaintiff and defendant’s cases would be fully argued.

Meticulous clerical review. After printing out your answers for the last time reread them and make sure they are clerically correct. Some things to watch:
• Spelling and grammatical errors
• Incomplete or incorrect bibliographical and case citations
• If you edit to achieve the word limit by wholesale cutting then you must check that the answer still flows logically and still makes sense.
• Footnotes at the foot of the wrong page, following removal of a sentence without re-paginating.
• If your English is not strong, the EDU can provide assistance.
• Use formal language, not spoken English written down.
• Do not use Latin expressions that you do not understand. Do not use slang.

in other words …….

When answering exam and seminar questions your aim should be to READ THE QUESTION CAREFULLY and be sure you understand what is asked. Then:
• identify the relevant facts, i.e., what are the parties disagreeing about?
• identify the relevant law (case law or legislation) to resolving the problem;
• identify the relevant legal principles and briefly state the law (noting any case law or legislative authority where applicable);
• apply the law to the facts; and
• come to a conclusion, paying particular attention at this point to what was actually asked in the question.

For instance where you have identified that a particular contract law question involves an issue about whether a contract has in fact been formed, your answer might look like this:

“A contract is not formed until an offer has been accepted: Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256.”
[This is the statement of law.]

“Because X never in fact accepted Y’s offer (indeed he flatly rejected it, stating ‘no sale’), there is no contract between X and Y.”
[This is the application of the law to the facts.]
It is your application of the law to the facts that demonstrates to the marker that you understand the legal problem. Therefore be mindful of the need to apply the law to the facts when preparing for classes.

There is no need to write lengthy or verbose answers to legal problems. Your exam answers should be no longer than the answers to your seminar questions. Remember that your aim should simply be to ensure that the marker is aware that you understand the relevant legal framework and have developed a solution to the problem based on that framework.

When answering a question, either for a seminar or in an exam, do not:

- make emotional or subjective statements;
- provide non-legal answers (so make sure you include “relevant” law);
- “pad” out a question (if you find you have written significantly less words than the question warrants, based on either the set word limit or the exam time allocated to this question, you may be missing important issues);
- begin with a conclusion in your opening paragraph and then spend the rest of your answer trying to justify it, or state a contrary conclusion in your final paragraph;
- try to make your conclusion on every issue conform with what you think is the likely outcome of a problem question (problem questions contain a number of issues, some of which will favour the losing party);
- restate the facts of a question;
- be subjective (always be objective);
- have a conclusion which is not supported by legal argument (in other words, check what you wrote);
- copy your notes, the text etc without explaining their relevance;
- forget to give references where applicable (don’t plagiarise, so state where the work came from if it is not your own).

Based on pp vii and viii, Gibson, Rigby, Tamsitt “Commercial Law in Principle” 1st ed, Law Book Co. 2001