

**MACQUARIE UNIVERSITY
DIVISION OF LAW
STUDY GUIDE**

Year and Semester:	2008, Semester 1 and External
Unit Name:	Trade Practices Law
Unit Code:	BUSL 852
Credit Points:	4
Unit Convenor:	Dr. Niloufer Selvadurai
Lecturers:	Dr. Niloufer Selvadurai (Weeks 1-2 and External) Ben Connors (Weeks 3-12)

Students in this unit should read this study guide carefully at the start of semester. It contains important information about the unit. If anything in it is unclear, please consult one of the teaching staff in the unit.

1. ABOUT THIS UNIT

The unit examines the *Trade Practices Act 1974* (Cth) and related areas of law. Topics dealt with include contracts, arrangements or understandings that restrict dealings or affect competition, contracts, arrangements or understandings in relation to prices, misuse of market power, exclusive dealing, and consumer protection. The role of the Australian Competition and Consumer Commission will be examined in some detail.

2. TEACHING STAFF

- Weeks 1-2 and External: Dr. Niloufer Selvadurai, W3A, 419.
E-mail: niloufer.selvadurai@law.mq.edu.au.
- Weeks 3-12: Ben Connors, W3A, 416
E-mail: ben.connors@law.mq.edu.au.

3. CLASSES AND STUDY TIMES

- Weekly - Wednesdays 6-9pm.
- External – Sunday 9 March 2008, 10-5pm.

4. REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

Prescribed Texts:

Miller, *Annotated Trade Practices Act*, 2006, 27th ed, Thomson (“Miller”).

Gillies, *Business Law*, 12th edn, 2004, 12th ed, Federation Press (“Gillies”).

See page 11 of *Study Guide* for Additional Readings.

5. UNIT WEB PAGE

There is no web page for this unit at present.

6. LEARNING OBJECTIVES

The objectives of this unit are to:

1. Provide an understanding of the fundamental legal principles relating to the operation of the *Trade Practices Act 1974* (Cth).
2. Provide an overview of the institutions that administer such laws;
3. Develop knowledge of specific legislation and cases relating to restrictive trade practices and consumer protection law; and
4. Refine skills of legal analysis through the detailed consideration and application of relevant legislation and case law to hypothetical factual situations.

7. GENERIC SKILLS

In addition to the discipline-based learning objectives, all academic programs at Macquarie seek to develop students’ generic skills in a range of areas. One of the aims of this unit is that students develop their skills in the following:

1. Communication skills;
2. Critical analysis skills;
3. Problem-solving skills; and
4. Creative thinking skills.

8. TEACHING AND LEARNING STRATEGY

The unit will be taught by form of lectures, followed by group discussion times. Students are expected to have completed the required reading prior to attending class, and be willing to participate in discussions on the topics and issues addressed in the lectures.

9. ASSESSMENT

The assessment consists of an assignment. Late assignments will attract a penalty. The current Divisional policy on penalties for lateness is 10% up to 7 days and 20% up to 14 days. Work later than 14 days may not be accepted at the discretion of the convenor.

10. RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OBJECTIVES

The assessment will measure the extent to which the student has gained an understanding of the fundamental legal principles relating to the regulation of corporations, especially financial intermediaries. Additionally, the assessment will assess the student's analytical skills and ability to apply specific statute and case law to factual situations.

11. PLAGIARISM

The University defines plagiarism in its rules: "Plagiarism involves using the work of another person and presenting it as one's own." Plagiarism is a serious breach of the University's rules and carries significant penalties. You must read the University's policies and procedures on plagiarism. These can be found in the *Handbook of Undergraduate Studies* or on the web at: <http://www.student.mq.edu.au/plagiarism>.

The policies and procedures explain what plagiarism is, how to avoid it, the procedures that will be taken in cases of suspected plagiarism, and the penalties if you are found guilty. Penalties may include a deduction of marks, failure in the unit, and/or referral to the University Discipline Committee.

12. UNIVERSITY POLICY ON GRADING

The University requires all Divisions to adhere to a policy relating to the distribution of grades across high distinction, distinction, credit and pass grades. This means that on occasion a student's raw mark for a unit (ie, the total of their marks for each assessment item) may not be the same as that which they receive on their transcript. This is because the total raw mark may be scaled up or down so that the grades of all students in each unit sit within the distribution bands set down by the University. The policy does not require that any number of students are to be failed in any unit.

13. SCHEDULE OF TOPICS

UNIT 1 – INTRODUCING TRADE PRACTICES LAW

Reading:

Gillies, Chapter 39

Miller, Part I

1.1 Historical Overview

1.2 The Application of the Trade Practices Act

Application to “corporations in trade or commerce”

Application to “persons” (non-corporate enterprises)

Prohibitions, notifications and authorisations

1.3 “Trade or Commerce”

Ku-ring-gai Co-Operative Building Society No 12 (1978) 36 FLR 134

1.4 “Competition”

Re Queensland Co-Operative Milling Association Ltd (1976) 25 FLR 169

1.5 “Market”

Re Queensland Co-Operative Milling Association Ltd (1976) 25 FLR 169

1.6 Administration of the Act

Overview of the regulatory regime

Australian Competition and Consumer Commission

Australian Competition Tribunal

Federal Court

1.7 Authorisations

Sections 88, 90, 90A, 91, 101

UNIT 2 - CONTRACTS, ARRANGEMENTS OR UNDERSTANDINGS THAT RESTRICT DEALINGS OR AFFECT COMPETITION

Reading:

Gillies, Chapter 39

Miller, Part IV

2.1 Section 45

Section 45 (1)

Section 45 (2)

2.2 Key Terms

“Exclusionary provisions”

“Effect of substantially lessening competition”

ACC v Amcor Printing Papers Group Ltd (2000) 169 ALR 344

Rural Press Ltd v ACC (2002) 18 FCR 236

2.3 “Understanding”

Australian Competition and Consumer Commission v CC (NSW) Pty Ltd (1999) 92 FCR 375.

2.4 “Arrangement”

Top Performance Motors Ltd v Ira Berk (Qd) Pty Ltd (1975) 24 FLR 286

2.5 “Substantially Lessening Competition”

Trade Practices Commission v TNT Management Pty Ltd (1985) 58 ALR 423.

2.6 Illustrative Cases:

Pont Data Australia Pty Ltd v ASX Operations Pty Ltd (1990) 21 FCR 385

Acc v Tyco Australia Pty Ltd (2000) ATPR 41-740

TPC v Tubemakers of Australia Ltd (No 2) (1983) 76 FLR 455

TPC v Email Ltd (1980) 43 FLR 383

UNIT 3 – CONTRACTS, ARRANGEMENTS OR UNDERSTANDINGS IN RELATION TO PRICE

Reading:

Gillies, Chapter 39

Miller, Part IV

3.1 Section 45A

3.2 Concept of Purpose or Effect

ACCC v Pauls Ltd [2002] FCA 1586

3.2 Concept of Has or is Likely to Have

TPC v TNT Management Pty Ltd (1985) 6 FCR 1

3.3 Concept of Fixing, Controlling or Maintaining

Radio 2UE Sydney Pty Ltd v Stereo FM Pty Ltd (1983) 68 FLR 70

3.4 Arrangements Promoting Competition

Radio 2UE Sydney Pty Ltd v Stereo FM Pty Ltd (1983) 68 FLR 70

UNIT 4 – MISUSE OF MARKET POWER

Reading:

Gillies, Chapter 39

Miller, Part IV

4.1 Section 46

4.2 “Market”

Section 4E definition

Re Queensland Co-Operative Milling Association Ltd (1976) 25 FLR 169

4.3 “Market Power”

Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd (1989) 167 CLR 177

Melway Publishing Pty Ltd v Robert Hicks Pty Ltd (2001) 205 CLR 1

4.4 “Substantial Market Power”

Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd (1989) 167 CLR

Universal Music Australia Pty Ltd v ACCC [2003] FCAFC 193

4.5 Illustrative Cases:

Pont Data Australia Pty Ltd v ASX Operations Pty Ltd (1990) 21 FCR 385

Natwest Australia Bank Ltd v Boral Gerrard Strapping Systems Pty Ltd (1992) 111 ALR 631

John S Hayes & Associates Pty Ltd v Kimberley-Clark Australia Pty Ltd (1994) ATPR 41-318

UNIT 5 – RESALE PRICE MAINTENANCE

Reading:

Gillies, Chapter 39

Miller, Part IV

5.1 Section 96 and Section 48

5.2 Tests for Determining

Trade Practices Commission v Stihl Chain Saws Pty Ltd (1978) 3 TPR 306

BP Australia v Trade Practices Commission (1986) 66 ALR 148

5.3 Illustrative Cases:

Peter Williamson Pty Ltd v Capitol Motors Ltd (1982) 61 FLR 257

TPC v Malloys Ltd (1979) 25 ALR 250

UNIT 6 – EXCLUSIVE DEALING

Reading:

Gillies, Chapter 39 *or*

Miller, Part IV

6.1 Section 47

6.2 Restraints Concerning Supply

Section 47 (2) and (3)

6.3 Restraints Concerning Acquisition

Section 47 (4) and (5)

6.4 Third Line Forcing

Section 47 (6) and (7)

6.5 Restraints Concerning Leases and Licences

Section 47 (8)

6.6 Illustrative Cases

Monroe Topple & Associates Pty Ltd v The Institute of Chartered Accountants in Australia (2002) FCR 110

ACCC v IMB Group Pty Ltd (in liq) [2002] FCA 402

TPC v Tepeda Pty Ltd (1994) ATPR 41-319

UNIT 7 – PROHIBITION OF ACQUISITIONS THAT WOULD RESULT IN SUBSTANTIAL LESSENING OF COMPETITION

Reading:

Gillies, Chapter 39

Miller, Part IV

7.1 Terms of s 50

7.2 “Substantially Lessening Competition”

Trade Practices Commission v Aust Iron & Steel Pty Ltd (1990) 22 FCR 305

7.3 Illustrative Cases

QIW Retailers Ltd v Davids Holdings Pty Ltd (No 3) 42 FCR 255

UNIT 8 – MISLEADING OR DECEPTIVE CONDUCT

Reading:

Gillies, Chapter 39

Miller, Part V

8.1 Section 52

8.2 “Misleading or Deceptive Conduct”

Parkdale Custom Built Furniture Pty Ltd v Paxu Pty Ltd (1982) 149 CLR 191

Taco Co of Australia v Taco Bell Pty Ltd (1982) 42 ALR 177

8.3 Reasonable Person Test

Parkdale Custom Built Furniture Pty Ltd v Paxu Pty Ltd (1982) 149 CLR 191

8.4 Relevance of Silence

Commonwealth Bank of Australia v Mehta (1991) 23 NSWLR 84

Fraser v NRMA Holdings Pty Ltd (1994) 52 FCR 1

8.5 Opinions

Heydon v NRMA Ltd [2000] NSWCA 374

8.6 Disclaimers

Butcher v Lachlan Elder Realty Pty Ltd (2004) 218 CLR 592

8.7 Advice

Global Sportsman Pty Ltd v Mirror Newspapers Ltd (1984) 2 FCR 82

8.8 Advertising

Stuart Alexander & Co (Interstate) Pty Ltd v Blenders Pty Ltd (1981) 53 FLR 307

8.9 Illustrative Cases

Travel Compensation Fund v Fry (2003) ATPR 46-227

Sweetman V Bradfield Management Services Pty Ltd (1994) ATPR 41-290

Adour Holdings Pty Ltd (in liq) v Commonwealth Bank of Australia (1991) ATPR 41-147

Warnock v ANZ Banking Group (1989) ATPR 40-928

Chiarabaglio v Wespac Banking Corporation (1989) ATPR 40-971

UNIT 9 – FALSE OR MISLEADING REPRESENTATIONS

Reading:

Gillies, Chapter 39

Miller, Part V

9.1 Section 53

9.2 Concept of “False”

Murphy v Farmer (1988) 165 CLR 19

Given v CV Holland (Holdings) Pty Ltd 29 FLR 212

9.3 Illustrative Cases

ACCC v Cadbury Schweppes Pty Ltd [2004] FCA 516

ACCC v Optell Pty Ltd [1998] FCA 602

ACCC v Wizard Mortgage Corp Ltd [2002] FCA 1317

ACCC v Dell Computers Pty Ltd [2002] FCA 434

Siddons Pty Ltd v Stanley Works Pty Ltd (1990) ATPR 41-044

UNIT 10 – OFFENCES, ENFORCEMENT AND REMEDIES

Reading:

Gillies, Chapter 39

Miller, Part VI

10.1 Offences relating to Unfair Practices – Section 75AZB

10.2 Offences relating to Product Safety and Product Information – Section 75AZS

10.3 Other Offences

10.4 Available Remedies

ADDITIONAL READING

Section 45

Vary, M “Price Fixing: Flawed Past, Uncertain Future” (1995) 3 TPLJ 126.

Pengilley, W *Trade Associations, Fairness and Competition*, 1981, Law Book Co Ltd.

Section 46

Edwards, “The Perennial Problem of Predatory Pricing” (2002) 30 ABLR 170

Seah, “ Fair Competition and Unfair Predation” (2001) 9 TPLJ 236

Hardy, “Misuse of Market Power- Purpose or Effect?” (1997) 5 TPLJ 114

Pengilley, “Misuse of Market Power – Future Problems” (1994) 2 TPLJ 27

Section 47

Landrigan, “Vertical Price and Non- Price Restraints in Australia and the US” (1997) 25 ABLR 312

Hank and Williams, “The Treatment of Vertical Restraints under the TPA” (1987) 15 ABLR 147

Section 48

Schreiber, Taylor and Donald, *Resale Price Maintenance*, 1998, Law Book Company Ltd

ESSAY COVER SHEET

<p>Please attach cover sheet to every assignment</p>	<p>Surname</p> <p>Given Names</p> <p><i>The student's name may be filled out by the student. If the name is not filled out by the student could the marker please complete this before returning to the Essay Collection Office. Thankyou!</i></p> <p>Student Number</p>
<p>Tutor's Name</p> <p>Tutorial Time</p> <p>Date Due</p> <p>Unit Number ...BUSL 852</p>	<p>Essay Title</p> <p>.....</p> <p>.....</p> <p>.....</p>

“I certify that I am aware of the University’s policy on plagiarism and that this assignment meets those requirements and has not been previously submitted for assessment in any other course of study”

Signed

MARKER’S COMMENTS

