



**DIVISION OF LAW  
DEPARTMENT OF BUSINESS LAW**

**BUSL 863**

**CORPORATE AND MARKET  
LAW AND REGULATION**

**UNIT OUTLINE & READINGS**

**2008**

**Convenor: Dr Niloufer Selvadurai**



**MACQUARIE UNIVERSITY  
DIVISION OF LAW  
STUDY GUIDE**

**Year and Semester: 2008, Semester 2**

**Unit Name: Corporate and Market Law and Regulation**

**Unit Code: BUSL 863**

**Credit Points: 4**

**Unit Convenor: Dr. Niloufer Selvadurai**

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 corporation and its regulation, internally and in respect of its role in markets, especially financial markets. Topics dealt with include the internal governance of corporations, mergers and acquisitions, and public fundraising. Additionally, the unit considers the application of restrictive trade practices law and consumer protection law. Of special interest is the application of such law to financial intermediaries. The roles of ASIC, ASX and ACCC will be examined.

### **2. TEACHING STAFF**

- Dr. Niloufer Selvadurai (market regulation)  
E-mail: [niloufer.selvadurai@law.mq.edu.au](mailto:niloufer.selvadurai@law.mq.edu.au)
- Mr. Ben Connors (corporate regulation)  
E-mail: [ben.connors@law.mq.edu.au](mailto:ben.connors@law.mq.edu.au)

### **3. CLASSES AND STUDY TIMES**

- Units 1-7: Sunday 3 August 2008, 10am-5pm: Dr. Niloufer Selvadurai
- Units 8-12: Sunday 0 August 2008, 10am-5pm: Mr. Ben Connors

#### 4. REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

### MARKET REGULATION

**Prescribed Text:**

Gillies, *Marketing Law*, 2008, Federation Press (“Gillies”); or  
Miller, *Annotated Trade Practices Act*, 2007, Thomson (“Miller”).

**Statute:**

*Trade Practices Act* 1974 (Cth) available at [www.austlii.edu.au/legis/cth/consol](http://www.austlii.edu.au/legis/cth/consol)

**Additional recommended reference materials:**

Corones & Clarke, *Competition Law in Australia*, 2004, Law Book Co.  
Steinwall, *Trade Practices Act*, 2007, Lexisnexis.

### CORPORATE REGULATION

**Prescribed Text:**

Hanrahan, Ramsay & Stapleton, *Commercial Applications of Company Law*, 2007,  
CCH (“Hanrahan”).

**Statute:**

*Corporations Act* available at [www.austlii.edu.au/legis/cth/consol](http://www.austlii.edu.au/legis/cth/consol)

**The Act is extremely long and it is recommended that a commercially published version be purchased:**

*Australian Corporations and Securities Legislation*, Vol 1, CCH 2008

**Additional recommended reference materials:**

Woodward, Bird & Sievers, *Corporations Law in Principle*, 7<sup>th</sup> edition, Thomson  
Lipton & Herzberg, *Understanding Company Law*, Law Book Co.  
Ford, Ramsay & Austin, *Principles of Corporations Law*, Butterworths.  
Redmond, *Companies & Securities Law*, Law Book Co.

## Online materials:

[www.asic.gov.au](http://www.asic.gov.au)  
[www.austlii.edu.au](http://www.austlii.edu.au)  
[www.asx.com.au](http://www.asx.com.au)  
[www.takeovers.gov.au](http://www.takeovers.gov.au)  
[www.cclsr.law.unimelb.edu.au](http://www.cclsr.law.unimelb.edu.au)  
[www.asa.asn.au](http://www.asa.asn.au)  
[www.lipton-herzberg.com.au](http://www.lipton-herzberg.com.au)

## 5. UNIT WEB PAGE

Study guides and information on this unit can be found at:

<http://www.law.mq.edu.au/html/postgrad/studyguides.htm>

## 6. LEARNING OBJECTIVES

The objectives of this unit are to:

1. Provide an understanding of the fundamental legal principles relating to the regulation of corporations, especially financial intermediaries;
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

- Assessment will be based on an essay of 5,000 (to a maximum of 7,000) words.
- You may choose your topic, subject to the approval of the Unit Convenor. Please e-mail topic to Dr. Niloufer Selvadurai ([niloufer.selvadurai@law.mq.edu.au](mailto:niloufer.selvadurai@law.mq.edu.au)) and obtain approval prior to commencing research.

### Submission of Essays:

Place a hard copy in the Postgraduate Box outside room 341 in W3A; *or*

Mail a hard copy to Dr. Selvadurai, Division of Law, Macquarie University, NSW 2109.

In addition, all assignments must be mailed to [postgrad@law.mq.edu.au](mailto:postgrad@law.mq.edu.au).

**DUE DATE: Friday 5.00pm 14 November 2008.**

## 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**

### **MARKET REGULATION**

The Marketing Regulation class will, because of time limitations, focus on certain aspects of market regulation (listed below). However this does not preclude you from researching other areas of law for the purpose of your essay.

#### **UNIT 1 – INTRODUCING RESTRICTIVE TRADE PRACTICES LAW**

Gillies, Chapter 9.

##### **The Application of the Trade Practices Act**

Application to “corporations in trade or commerce”

Application to “persons” (non-corporate enterprises)

Prohibitions, notifications and authorisations

##### **“Competition”**

Section 4 definition

Test:

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

##### **Administration of the Act**

Role of ACCC, ACT and Federal Court

#### **UNIT 2 – CONTRACTS, ARRANGEMENTS OR UNDERSTANDINGS THAT RESTRICT DEALINGS OR AFFECT COMPETITION**

Gillies, Chapter 9.

Section 45 (1)

Section 45 (2)

“[E]xclusionary provisions”

“[T]he 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

### **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**

Gillies, Chapter 9.

Section 45A

## **UNIT 4 – MONOPOLISATION**

Gillies, Chapter 11.

Section 46

### **“Market”**

Section 4E definition

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

### **“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

### **“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

**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**

Gillies, Chapter 9.

**Section 96**

**Section 48**

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

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

**Illustrative Cases:**

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

*TPC v Malleys Ltd* (1979) 25 ALR 250

**UNIT 6 – EXCLUSIVE DEALING**

Gillies, Chapter 10.

**Section 47**

Restraints Concerning Supply

Restraints Concerning Acquisition

Third Line Forcing

Restraints Concerning Leases and Licences

**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 – CONSUMER PROTECTION LAW**

Gillies, Chapter 4.

### **Overview**

#### **“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.

#### **Relevance of Silence**

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

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

#### **Illustrative Cases in Banking and Financial Services:**

*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

## **CORPORATE REGULATION**

The Corporate Regulation class will, because of time limitations, focus on certain aspects of market regulation (listed below). However this does not preclude you from researching other areas of law for the purpose of your essay.

## **UNIT 8 – INTRODUCING CORPORATIONS LAW**

Hanrahan, Chapters 1-4.

**The nature and role of a company**

**Overall regulatory regime**

**UNIT 9 – COMPANY MANAGEMENT AND GOVERNANCE**

Hanrahan, Chapters 5-16.

**The roles of members and directors and relations between them**

**UNIT 10 – CORPORATE FINANCE AND FUNDRAISING**

Hanrahan, Chapters 17-19.

**Disclosure to investors and prospectuses**

*Corporations Act*, Chapter 6D

*Fraser v NRMA Holdings Ltd* (1995) 13 ACLC 132

**Share capital**

*Corporations Act*, Chapter 2J

**Maintenance of capital**

*Trevor v Whitworth* [1886-90] All ER 46

*ANZ Executors & Trustees Co Ltd v Quintex Australian Ltd* (1990) 8 ACLC 980

*Re Fowler Vacola Manufacturing Co Ltd* [1996] VR 97

**Preference Shares**

*Corporations Act*, s 254A, Chapter 2H

**Variation of class rights**

*Corporations Act*, s 246B

**Debentures and loan capital**

**Capital reduction**

*Corporations Act*, s 256B and s 257A

## **Membership**

*Corporations Act*, s 231, s 1072G and s 1072F

## **Dividends**

Discretion to pay dividends

*Burland v Earle* [1902] AC 83

*Sanford v Sanford Courier Service Pty Ltd* (1986) 5 ACLC 394

“Profit”

*Re Spanish Prospecting Co Ltd* [1908-10] All Er 573

*QBE Insurance Group Ltd v ASC* (1992) 10 ACLC 1490

*Lee v Neuchatel Asphalt Co* (1889) 41 Ch D 1

## **UNIT 11 – FINANCIAL SERVICES, MARKET MISCONDUCT AND TAKEOVERS**

Hanrahan, Chapters 20-21.

### **Takeovers**

Rational for takeover regulation – s 602

Prohibition on takeovers – s 606

Exceptions to takeover prohibition – s 611

Bidder’s statement and target statement – ss 636-638

### **Market misconduct**

*Insider trading*

Elements – s 1043A

When is information generally available? – s 1042C

When is information material? – s 1042D

- Exceptions and defences – Chinese walls: s 1043F
- Knowledge of own activities: s 1043H
- Underwriters: s 1043C
- Legal obligations: s 1043D
- Other party to transaction aware of information: s 1043M

*R v Rivkin* [2003] NSWSC 447; [2004] NSWCCA 7

*Market manipulation*

Section 1041A

*False trading*

Section 1041B

*Misleading or deceptive conduct*

Section 1041H

## **UNIT 12 – INSOVENCY**

Hanrahan, Chapters 25-26.

### **Insolvency**

*Radisson Maine Property (Australia) Pty Ltd* [2004] NSWSC 949

*Corporations Act*, s 95A, s 459C

### **Receivership**

*Corporations Act*, s 1323 or by a creditor

### **Voluntary administration**

Appointment – *Corporations Act*, s 436C, S 436B, s 436A

*Re Ansett Australia Ltd and Menthe (No 3)* [2002] FCA 2

*Osborne Computer Corp Pty Ltd v Airroad Distributors Pty Ltd* (1995) 37 NSWLR 382

*Sons of Gwalia Ltd (administrators appointed) v Margaretic* [2005] FCA 1305

*Australasian Memory Pty Ltd v Brien* (2000) 200 CLR 270

### **Liquidation**

Unfair preferences: *Corporations Act*, s 588FA

Uncommercial transactions: *Corporations Act*, s 588FB

Insolvent transactions: *Corporations Act*, s 588FC

Related party transactions: *Corporations Act*, s 588FE(4)

Transactions to defeat creditors: *Corporations Act*, s 588FE(5)

Unreasonable director-related transactions: *Corporations Act*, s 588FDA

Defence to voidable transactions: *Corporations Act*, s 588FG

Directors liability for insolvent trading: *Corporations Act*, s 588G, 588H, 588J, 588K, 588M, 588R

*Morley v Statewide Tobacco Services Pty Ltd* [1993] 8 ACSR 305

*Metropolitan Fire Systems Pty Ltd v Miller* (1997) 23 ACSR 699

*Hawkins v bank of China* (1992) 10 ACLC 588

*Powell and Duncan v Fryer* (2000) 18 ACLC 480

*Byron v Southern Star Group Pty Ltd* (1997) 15 ACLC 191

*ASIC v Plymin [No 1]* (2003) FLR 124; 46 ACSR 126

# ESSAY COVER SHEET

<p><b>Please attach cover sheet to every assignment</b></p>	<p><b>Surname</b> .....</p> <p><b>Given Names</b> .....</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><b>Student Number</b> .....</p>
<p><b>Lecturer's Name</b></p> <p><b>Lecture Time</b> .....</p> <p><b>Date Due</b> .....</p> <p><b>Unit Number</b>      BUSL 863</p>	<p><b>Essay Title</b> .....</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”</p> <p>Signed .....</p>	
<p><b>MARKER'S COMMENTS</b></p>	

