

**GRADUATE DIPLOMA IN COMMERCIAL ARBITRATION
VICTORIA LAW SCHOOL
VICTORIA UNIVERSITY**

BLB5555 COMMERCIAL CONTRACTS

Campus City Queen.

Prerequisite(s) Nil.

Content The unit of study gives an overview of the fundamentals of contract law and will enable students to understand the principles and their application to commercial transactions. It will examine the historical development of contract, its place in economic and other theories of law and the impact of globalisation on domestic contract regimes. Topics will include: the principles and theories of contract law and their evolution in common law and international commercial law, the formal requirements for valid contracts and their discharge as well as the factors which may vitiate a contract.

Learning Outcomes Students will have an understanding of the fundamental principles of contract law and be able to apply them to commercial transactions.

Required Reading Carter, J.W. and Harland, D.J., 2002, *Contract Law in Australia*, 4th edition, Butterworths, Sydney. Carter, J.W. and Harland, D.J., 2004, *Cases and Materials on Contract Law in Australia*, 4th edition, Lexis Nexis Butterworths, Sydney.

Recommended Reading Karla, C. Shippey, 2002, *A Short Course in International Contracts: Drafting the International Sales Contract for Attorneys and Non-Attorneys*, World Trade Press, Novato, California.

Class Contact Equivalent to thirty six hours per semester normally to be delivered as a combination of lecture, seminar, tutorial and or/workshop or a delivery mode as approved by the Faculty of Business and Law. Unit of study equal to 12 credit points.

Assessment Research assignment (2500 words), 50%; Final examination, 50%.

BLB5556 ADVANCED ALTERNATIVE DISPUTE RESOLUTION

Campus City Queen.

Prerequisite(s) Nil.

Content This unit of study provides an introduction to processes, other than litigation and arbitration, for resolving disputes. It focuses on negotiation and mediation in the context of current issues producing commercial disputes. Topics include: the theory underlying negotiation and mediation and the contexts in which they are used rather than litigation or arbitration; the causes of commercial conflicts, the roles and objectives of alternative dispute resolution (ADR) processes; the choice between facilitative, advisory and determinative processes; the skills, settings and processes required for finding agreement including identifying and reframing issues; identifying problems in designing and using effective ADR systems; and future trends in ADR.

Learning Outcomes Students will be aware of alternative dispute processes, the processes used within them, the policies on which they rest and the skills

required by professionals acting within them.

Required Reading Spegel, Rogers and Buckley, 1998, *Negotiation: Theories and techniques*, Butterworths, Sydney. Tania Sourdin, 2002, *Alternative Dispute Resolution*, Lawbook Co., Sydney.

Recommended Reading Laurence Boulle and Miryana Nestic, 2001, *Mediation: Principles, Process, Practice*, Butterworths, London. Ruth Charlton, 2000, *Dispute Resolution Guidebook*, LBC, Australia. Hilary Astor and Christine Chinkin, 2002, *Dispute Resolution in Australia*, 2nd Edition, Butterworths, Sydney.

Class Contact Equivalent to thirty six hours per semester normally to be delivered as a combination of lecture, seminar, tutorial and or/workshop or a delivery mode as approved by the Faculty of Business and Law. Unit of study equal to 12 credit points.

Assessment Two practical exercises during the course, 50%; One research paper or case study (2500 words), 50%.

BLB5557 COMMERCIAL ARBITRATION LAW

Campus City Flinders, City Queen.

Prerequisite(s) Nil.

Content This unit of study will cover the law relating to domestic arbitration in a comprehensive compass. It will enable students to gain a knowledge of the law applicable to the initiation and conduct of an arbitration as a form of alternative dispute resolution and the obtaining and enforcement of an arbitral award. Specific topics covered will be matters preliminary to arbitration; disputes that may be referred to arbitration; the arbitration agreement; enforcing the duty to arbitrate; appointment of the arbitrator(s); challenges to the appointment of arbitrators; the Commercial Arbitration Act 1984 and its operation in relation to domestic arbitration; the role of arbitral institutions; what is domestic arbitration as opposed to an international arbitration; the role of the court in respect of arbitration; rules applicable to the conduct of arbitrations; procedural powers of arbitrators; confidentiality of proceedings; the arbitral award; making the award; challenges to the award; enforcement of the award; appeals from arbitrators. The relationship of arbitration to other methods of dispute resolution will form part of the unit of study. The unit of study presupposes a good knowledge of contract and commercial law. In addition to the statutory basis for arbitration in Victoria students will be expected to read and discuss a number of leading cases dealing with arbitration since much of the law of arbitration is contained in the cases.

Learning Outcomes A thorough knowledge of the principles of commercial arbitration law.

Required Reading Commercial Arbitration Act 1984 (Vic), International Arbitration Act 1974 (Cth)

Recommended Reading David Byrne, 1997 - present (loose-leaf), 'Arbitration' in Harry Gibbs (ed), *Halsbury's Laws of Australia*, Vol 2 (1) pages 38,000-38,662, LexisNexis Butterworths, Sydney. Marcus Jacobs, 1990- present (loose-leaf), *Commercial Arbitration Law and Practice*, Law Book Co, Sydney.

Class Contact One semester, thirty-six hours over a 4-day intensive period. Unit of study equal to 12 credit points.

Assessment Take home examination paper or term paper at the election of candidates.

BLB5558 COMMERCIAL ARBITRATION PRACTICE AND PROCEDURE

Campus City Queen.

Prerequisite(s) BLB5557 Commercial Arbitration Law.

Content The unit of study provides specialised professional education for those working in commercial arbitration. It brings together a range of knowledge and skills that are needed by arbitrators in the running of the arbitral process. These skills include the conduct of preliminary and directions hearings; the conduct of the hearing proper including rulings, awards and costs.

Learning Outcomes A thorough knowledge of the conduct of an arbitration from directions hearing through to the handing down of a final arbitral award.

Required Reading Commercial Arbitration Act 1984 (Vic)

Recommended Reading Marcus Jacobs, 1990 - to present (loose-leaf), *Commercial Arbitration Law and Practice*, Law Book Co, Sydney.

Class Contact Equivalent to thirty six hours per semester normally to be delivered as a combination of lecture, seminar, tutorial and or/workshop or a delivery mode as approved by the Faculty of Business and Law. Unit of study equal to 12 credit points.

Assessment Seminar Participation, 20%; Role Play Moot Arbitration, 80%.

BLB5559 INTERNATIONAL COMMERCIAL ARBITRATION

Campus City Queen.

Prerequisite(s) Nil.

Content This unit of study introduces students to international arbitration and deals with the following topics: the relevant legal instruments creating jurisdiction, the role and work of arbitral institutions, pre-commencement considerations, gathering and dealing with evidence, commencing an arbitration proceeding, nominating and challenging arbitrators, challenging the jurisdiction of the tribunal, interim protective measures, disclosure and discovery, procedural orders and interim awards, oral and written arguments, opening statements, techniques of examination, awards including: *awards on jurisdiction and applicable law, partial awards and final awards, *awards on interest and awards on costs, the correction of awards and additional awards and the enforcement and setting aside of awards.

Learning Outcomes Students will understand and evaluate the role of arbitration in international commercial disputes.

Required Reading Marcus Jacobs, 1992, *International Commercial Arbitration in Australia: Law and Practice*, Law Book Co, Sydney.

Recommended Reading Klaus Peter Berger, 2002, *Arbitration Interactive: A case study for Students and Practitioners*, P Land, New York.

Class Contact Equivalent to thirty-six hours per semester normally to be delivered as a combination of lecture, seminar, tutorial and or/workshop or a delivery mode as approved by the Faculty of Business and Law. Unit of study equal to 12 credit points.

Assessment Two practical exercises during the course, 50%; One research essay or case study (2500 words), 50%.

BLB5560 JUDGEMENT, DECISION AND AWARD WRITING

Campus City Flinders, City Queen.

Prerequisite(s) Nil.

Content Parties who resort to the Arbitral process, whatever its results for them, need assurance that they have a fair hearing. To a small extent, information as to this can come from the conduct of the Arbitrator during the hearing. But the major source of such information is the judgement, decision and award of the Arbitrator. Such documents must accurately disclose the cast of mind of the Arbitrator. They must convey a logical train of thought in the decision making. They must convey that evidence or other materials upon which the Arbitrator has acted and why he has done so. They must convey that evidence or other material upon which the Arbitrator is not prepared to act and why. They must convey a sufficient understanding of the relevant legislation and authorities and the manner in which the Arbitrator has used them in decision making. They must convey a sufficient understanding in the Arbitrator of the Advocates submissions and why some have been upheld and some rejected. Hence the necessity for this unit of study for Arbitrators. It is also necessary for Advocates in that it enable them to detect flaws and errors in judgements and decisions made in the Arbitral process.

Learning Outcomes A thorough knowledge of the principles of judgment, decision and award writing.

Required Reading Commercial Arbitration Act 1984 (Vic)International Arbitration Act 1974 (Cth).

Class Contact One semester, thirty six hours over a 4-day intensive period. Unit of study equal to 12 credit points.

Assessment Take home examination paper or term paper at election of candidate. The writing of a judgement, decision etc upon an agreed set of facts.