



SCHOOL OF ACCOUNTING & COMMERCIAL LAW

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COML 309 BANKING LAW & REGULATION IN NZ

Trimester One 2005

COURSE OUTLINE

Contact Details

Lecturers:

Mr Palitha De Silva - Academic Co-ordinator
Senior Lecturer in Commercial Law
Room 611 Rutherford House
Phone: (04) 463 6960
Email: palitha.desilva@vuw.ac.nz
Office hours: Monday and Thursday, 10am-12noon

Dr David White
Associate Professor
Room 703 Rutherford House
Phone: (04) 463 5705
david.white@vuw.ac.nz
Office hours: Wednesday and Thursday, 11.20am-12.20pm

By arrangement with the class, practicing lawyers, specialist academics and bankers will be invited to give guest lectures on selected topics. These lectures will be part of or in addition to the lectures given below in the Course Program.

Administration Co-ordinator Ms Jan May
Room 708 Rutherford House
Phone: (04) 463 7465
Email: janet.may@vuw.ac.nz
Office hours: Monday- Friday, 8.30am-5pm

Please see Jan for all general administrative inquiries.

Class Times and Room Numbers

Monday and Thursday 12.40-14.30 in RLWY 501

Lectures:

Lectures are structured assuming that students have done preparatory reading of reference materials indicated in handouts by the lecturer.

Refer to lecture guides provided by lecturers for details of readings, cases, etc for each of the lecture topics given in the Course Program.

Tutorials:

COML 309 will have two tutorial classes (see Course Program). Questions for the tutorials will be handed out at least a week before tutorials commence.

Objectives:

deepening and expansion of knowledge of the subject area;

development of analytical and problem-solving skills through case problem exercises;

development of oral skills through class presentations.

Presentation:

Each student will be expected to give a presentation on topics assigned to him/her by the tutor. Every student is expected to prepare for all tutorial questions by doing the required reading. In the tutorials every student should be able to demonstrate that he/she has prepared for the discussion of all questions.

Course Objectives

Students passing this course should be able to:

1. Explain the nature of the banking environment in New Zealand, any statutory/governmental regulation of banking business and the role of the Reserve Bank in relation to the conduct of banking;
2. Describe and explain the historical development of the legal relationship between a bank and its customers and the implied common law terms that apply to the contract between these two parties;
3. Complete two essays analysing two different areas of the law within the field of banking law.
4. Demonstrate competence in understanding the technical legal rules that apply to domestic and international banking transactions.

Course Content

This course aims to provide an in-depth knowledge of the laws and regulations governing the relationship between a bank and its customers. The role of the Reserve Bank in the registration and supervision of banks in New Zealand, some legal incidents of the bank customer relationship, various domestic and international transactions facilitated by banks and anti-money laundering legislation are some of the topics covered in the course. (See below Course Program).

Readings

The required text for COML 309 is Alan Tyree's *Banking Law in New Zealand*, LexisNexis, 2nd edition, 2003.

There will also be two volumes of case/other material covering the main cases and legal articles discussed in the sessions. These volumes can be purchased from the Student Notes Shop. The first volume will cover topics listed in Part 1 and the second is for the topics in Part 2 (see Course Program). Students are strongly advised to purchase these two volumes.

Other Recommended Text Books:

Pagets, *Law of Banking*, Butterworths, 10th edition, 1989; ("Paget").

E. P. Ellinger, *Modern Banking Law*, Oxford University Press, 1987; ("Ellinger").

Holden, *The Law and Practice of Banking* (in two volumes), Pitman; ("Holden"): Vol. 1, *Banker and Customer*, 4th edition, 1986; Vol 2, *Securities for Bankers' Advance*, 7th edition, 1986.

Chorley and Smart, *Leading Cases in the Law of Banking*, 6th edition, 1990; ("Chorley and Smart").

Weaver & Craigie, *Banker and Customer in Australia* (three volumes), Law Book Co., 3rd edition, 1994; ("Weaver & Craigie").

W S Weerasooriya, *Banking Law and the Financial System in Australia*, Butterworths, 3rd edition, 1993; ("Weerasooriya").

Journals and Periodicals on Banking Law and Regulation

New Zealand

The New Zealand Banker - a quarterly journal, published by the New Zealand Bankers' Institute.

Australia

Journal of Banking and Finance, Law and Practice - a quarterly journal, published by the Law Book Company.

Australian Banking and Finance Law Bulletin - ten issues per year, published by the International Business Communications Pty. Ltd.

The Australian Banker - published monthly, by the Australian Institute of Bankers.

Banking Law and Practice - Conference and Seminar Papers on Banking Issues, published by International Business Communications in association with the Banking Law Association year.

United Kingdom

Butterworths Journal of International Banking and Financial Law - published monthly by Butterworths, London.

Longman, International Banking Law - published monthly by Longman, London.

Euro Money - a monthly journal on the world's capital and money markets.

The Banker - fourteen issues per year, published by The Financial Times, London.

Journal of Business Law - monthly journal, published by Butterworths.

United States

Banking Law Journal

Canada

Banking and Finance Law Review

Government reports and other publications on the New Zealand Banking Industry

Reserve Bank Bulletin - a quarterly bulletin, published by the Reserve Bank of New Zealand.

Materials and Equipment

Students can purchase the COML 309 Materials (two volumes) from the Student Notes shop at Pipitea Campus.

Assessment Requirements

Assessment for the course will consist of the following:

Assessment 1: A 2000-word **essay** (the question for the essay will be given by the lecturer) (Due 11 April) - 20%

Assessment 2: A 2000-word **essay** (students may, subject to approval, answer a question chosen by them in this essay or answer the question given by the lecturer) (Due 16 May) - 20%

Assessment 3: A Three-hour **Final Examination** (open book) - 60%

The minimum course requirements which you must satisfy in order to earn **TERMS** (the right to sit the final examination or to be assessed for a final grade) are:

1. The completion of the two essays; and
2. Attendance and satisfactory participation at both tutorials

In order to secure a pass in COML 309 students will be required to obtain a mark of 40% or better in the Final Examination and an overall mark of at least 50%.

Grades are awarded as follows:

A+	85% and over
A	80-84%
A-	75-79%
B+	70-74%

B	65-69%	
B-	60-64%	
C+	55-59%	
<u>C</u>	<u>50-54%</u>	
D	40-49% }	Fail
E	Below 40% }	“

To obtain a grade in the “A” or higher “B” range a student will be expected to have read relevant articles and cases beyond the indicated essential reading and to demonstrate an ability to bring an advanced level of analytical and critical skills to bear on the questions raised.

The **Essays** aim to develop students’ research skills and deepen knowledge in a selected area of law. It requires the undertaking of personal research and provides scope for demonstrating original analysis as well as technical legal skills.

Students are required to strictly adhere to the **Essay Instructions and Guidelines** which will be included with the handout containing the Essay topic. Essays are to be placed in the box labeled “COML 309”.

Extensions to the due date for submitting essays will only be granted in exceptional circumstances (e.g. ill health, bereavement or other circumstances beyond your control). “Pressure of work” whether for full- or part-time students will not be accepted as exceptional circumstances. Students seeking an extension should contact the Academic Coordinator of the course and should produce a doctor’s certificate or other documentary evidence to support their application for extension.

Late essays (excluding authorised extensions) will have 5% deduction from the marks given for the essay.

The **Final Examination** aims to assess the students’ overall understanding of the basic concepts, principles and rules of selected examinable topics lectured in class throughout the entire course and their application to fact situations. The test will consist of essay-type as well as problem-type questions.

Materials brought to your Final Examination may include, amongst other materials, legislation, *COML 309 Materials*, and personal notes taken during the paper.

Penalties

Please see below the General University Policies and Statutes, page 6 of this Course Outline.

Mandatory Course Requirements

Attainment of terms requires completion of all pieces of in term assessment: two essays plus attendance at both tutorials (see “Assessment” above). The attention of all students is drawn to the Terms Regulations as set out in the 2005 Calendar. Terms will be awarded on the last lecture day of the trimester, 27 May.

Communication of Additional Information

Additional information concerning this course will be posted on the Blackboard. Students are encouraged to regularly read any notices that appear on the Blackboard regarding administrative and academic matters throughout the term.

General University Policies and Statutes

Students should familiarise themselves with the University's policies and statutes, particularly those regarding assessment and course of study requirements, and formal academic grievance procedures.

Student Conduct and Staff Conduct

The Statute on Student Conduct together with the Policy on Staff Conduct ensure that members of the University community are able to work, learn, study and participate in the academic and social aspects of the University's life in an atmosphere of safety and respect. The Statute on Student Conduct contains information on what conduct is prohibited and what steps can be taken if there is a complaint. For queries about complaint procedures under the Statute on Student Conduct, contact the Facilitator and Disputes Advisor. This Statute is available in the Faculty Student Administration Office or on the website at: www.vuw.ac.nz/policy/StudentConduct.

The policy on Staff Conduct can be found on the VUW website at: www.vuw.ac.nz/policy/StaffConduct.

Academic Grievances

If you have any academic problems with your course you should talk to the tutor or lecturer concerned or, if you are not satisfied with the result of that meeting, see the Head of School or the Associate Dean (Students) of your Faculty. Class representatives are available to assist you with this process. If, after trying the above channels, you are still unsatisfied, formal grievance procedures can be invoked. These are set out in the Academic Grievances Policy which is published on the VUW website: www.vuw.ac.nz/policy/AcademicGrievances.

Academic Integrity and Plagiarism

Academic integrity is about honesty – put simply it means **no cheating**. All members of the University community are responsible for upholding academic integrity, which means staff and students are expected to behave honestly, fairly and with respect for others at all times.

Plagiarism is a form of cheating which undermines academic integrity. Plagiarism is **prohibited** at Victoria.

The University defines plagiarism as follows:

Plagiarism is presenting someone else's work as if it were your own, whether you mean to or not.

'Someone else's work' means anything that is not your own idea, even if it is presented in your own style. It includes material from books, journals or any other printed source, the work of other students or staff, information from the Internet, software programmes and other electronic material, designs and ideas. It also includes the organization or structuring of any such material.

Plagiarism is not worth the risk.

Any enrolled student found guilty of plagiarism will be subject to disciplinary procedures under the Statute on Student Conduct (www.vuw.ac.nz/policy/studentconduct) and may be penalized severely. Consequences of being found guilty of plagiarism can include:

- an oral or written warning
- suspension from class or university
- cancellation of your mark for an assessment or a fail grade for the course.

Find out more about plagiarism and how to avoid it, on the University's website at: www.vuw.ac.nz/home/studying/plagiarism.html.

Students with Disabilities

The University has a policy of reasonable accommodation of the needs of students with disabilities. The policy aims to give students with disabilities an equal opportunity with all other students to demonstrate their abilities. If you have a disability, impairment or chronic medical condition (temporary, permanent or recurring) that may impact on your ability to participate, learn and/or achieve in lectures and tutorials or in meeting the course requirements, then please contact the Course Coordinator as early in the course as possible. Alternatively you may wish to approach a Student Adviser from Disability Support Services to confidentially discuss your individual needs and the options and support that are available. Disability Support Services are located on Level 1, Robert Stout Building, or phoning 463-6070, email: disability@vuw.ac.nz. The name of your School's Disability Liaison Person can be obtained from the Administrative Assistant or the School Prospectus.

Student Support

Staff at Victoria want students' learning experiences at the University to be positive. If your academic progress is causing you concern, please contact the relevant Course Co-ordinator, or Associate Dean who will either help you directly or put you in contact with someone who can.

The Student Services Group is also available to provide a variety of support and services. Find out more at www.vuw.ac.nz/st_services/ or email student-services@vuw.ac.nz.

VUWSA employs two Education Coordinators who deal with academic problems and provide support, advice and advocacy services, as well as organising class representatives and faculty delegates. The Education Office is located on the ground floor, Student Union Building, phone 463 6983 or 463 6984, email education@vuwsa.org.nz.

Course Program Part 1

Lecturer	Week	Lecture	Topic	Due Dates	Tutorial
Palitha De Silva	1	21 Feb	Introduction: the study of Banking Law; bank-customer relationship		
Palitha De Silva		24 Feb	Special customers		
Palitha De Silva	2	28 Feb	Library Tour		
Palitha De Silva		3 March	Banks' duty of secrecy		
Palitha De Silva	3	7 March	Banks' right to appropriate payments; right to combine or set-off; bankers' lien	First Assignment question handed out: Monday 7 March	
Palitha De Silva		10 March	Banks' opinions and investment advice		
Palitha De Silva	4	14 March	Termination of bank-customer relationship; banking industry ombudsman		
Palitha De Silva		17 March	Concept of negotiability; Bills of Exchange Act 1908; law relating to cheques		
Palitha De Silva	5	21 March	The paying bank		Tutorial One questions handed out: Monday 21 March
Palitha De Silva		24 March	The collecting bank		
Palitha De Silva	6	11 April	Banks' liability as constructive trustee	First Assignment due: Monday 11 April by 5 p.m.	
Palitha De Silva		14 April	Tutorial on Topics in Part 1		Tutorial One

Course Program Part 2

Lecturer	Week	Lecture	Topic	Due Dates	Tutorial
David White	7	18 April	New Zealand banking environment; Reserve Bank Act 1989; functions of the RB – prudential control, registration of new banks		
David White		21 April	Contd.	Second Essay question handed out: Thursday 21 April	
David White	8	25 April	ANZAC DAY HOLIDAY		
David White		28 April	Current payment methods: debit cards, credit cards, smart cards, travellers' cheques		
David White	9	2 May	EFTS, EFTPOS, internet banking; move towards a cashless society		
David White		5 May	Documentary letters of credit		
David White	10	9 May	Contd.		
David White		12 May	Standby letters of credit, performance bonds, international guarantees		
David White	11	16 May	Securities for bank lending: guarantees; other forms of security	Second Essay due: Monday 16 May by 5 p.m.	Tutorial Two questions handed out: Monday 16 May
David White		19 May	Bank lending; lender liability		
David White	12	23 May	Money laundering		
David White		26 May	Tutorial on Topics in Part 2		Tutorial Two