



## SCHOOL OF ACCOUNTING & COMMERCIAL LAW

Telephone 463 5383, Facsimile 495 5076. E-mail: [sacl@vuw.ac.nz](mailto:sacl@vuw.ac.nz)

# COML 309 BANKING LAW & REGULATION IN NZ

Trimester One 2007

## 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](mailto:palitha.desilva@vuw.ac.nz)  
Office hours: Wednesday and Thursday, 10am-12noon

Dr David White  
Associate Professor  
Room 703 Rutherford House  
Phone: (04) 463 5705  
Email: [david.white@vuw.ac.nz](mailto:david.white@vuw.ac.nz)  
Office hours: TBA

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 Chloe Thompson  
Room 708 Rutherford House  
Phone: (04) 463 5383  
Email: [chloe.thompson@vuw.ac.nz](mailto:chloe.thompson@vuw.ac.nz)  
Office hours: Monday- Friday, 8.30am-5pm

Please see Ms Chloe Thompson for all general administrative inquiries.

## **Class Times and Room Numbers**

Wednesday and Thursday 15.40-17.30 in GB LT 4

### 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 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 understanding 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, 2<sup>nd</sup> edition, 2003. Students need to have access to this book.

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 covers 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 ("Paget").

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

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

Chorley and Smart, *Leading Cases in the Law of Banking* ("Chorley and Smart").

Weaver & Craigie, *Banker and Customer in Australia* (three volumes), Law Book Co. ("Weaver & Craigie").

W S Weerasooriya, *Banking Law and the Financial System in Australia*, Butterworths ("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.

#### *United Kingdom*

*Butterworths Journal of International Banking and Financial Law* - published monthly by Butterworths, 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 29 March) - 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 23 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 10% 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 2007 Calendar. Terms will be awarded on the last lecture day of the trimester.

### **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.

### ***Communication of Additional Information***

Once you have registered for this course you should be able to connect to Blackboard at <http://blackboard.scs.vuw.ac.nz>. If you are not registered, please contact the FCA office on the ground floor of the Railway West Wing opposite Rutherford House. If you cannot access Blackboard after 48 hours please come to our office at RH708 where we can enrol you on Blackboard.

### **Faculty of Commerce and Administration Offices**

#### **Railway West Wing (RWW) - FCA Student and Academic Services Office**

The Faculty's Student and Academic Services Office is located on the ground and first floors of the Railway West Wing. The ground floor counter is the first point of contact for general enquiries and FCA forms. Student Administration Advisers are available to discuss course status and give further advice about FCA qualifications. To check for opening hours call the Student and Academic Services Office on (04) 463 5376.

#### **Easterfield (EA) - FCA/Education/Law Kelburn Office**

The Kelburn Campus Office for the Faculties of Commerce and Administration, Education and Law is situated in the Easterfield Building - it includes the ground floor reception desk (EA005) and offices 125a to 131 (Level 1). The office is available for the following:

- Duty tutors for student contact and advice.
- Information concerning administrative and academic matters.
- Forms for FCA Student and Academic Services (e.g. application for academic transcripts, requests for degree audit, COP requests).
- Examinations-related information during the examination period.

To check for opening hours call the Student and Academic Services Office on (04) 463 5376.

### **General University Policies and Statutes**

Students should familiarise themselves with the University's policies and statutes, particularly the Assessment Statute, the Personal Courses of Study Statute, the Statute on Student Conduct and any statutes relating to the particular qualifications being studied; see the Victoria University Calendar or go to [www.vuw.ac.nz/policy](http://www.vuw.ac.nz/policy).

For information on the following topics, go to the Faculty's website [www.vuw.ac.nz/fca](http://www.vuw.ac.nz/fca) under Important Information for Students:

- Academic Grievances
- Academic Integrity and Plagiarism
- Student and Staff Conduct
- Meeting the Needs of Students with Impairments
- Student Support

### **Manaaki Pihipihinga Programme**

Manaaki Pihipihinga is an academic mentoring programme for undergraduate Māori and Pacific students in the Faculties of Commerce and Administration, and Humanities and Social Sciences. Sessions are held at the Kelburn and Pipitea Campuses in the Mentoring Rooms, 14 Kelburn Parade (back courtyard), Room 109D, and Room 210, Level 2, Railway West Wing. There is also a Pacific Support Coordinator who assists Pacific students by linking them to the services and support they need while studying at Victoria. Another feature of the programme

is a support network for Postgraduate students with links to Postgraduate workshops and activities around Campus.

For further information, or to register with the programme, email [manaaki-pihipihinga-programme@vuw.ac.nz](mailto:manaaki-pihipihinga-programme@vuw.ac.nz) or phone (04) 463 5233 ext. 8977. To contact the Pacific Support Coordinator, email [pacific-support-coord@vuw.ac.nz](mailto:pacific-support-coord@vuw.ac.nz) or phone (04) 463 5842.

## Course Program Part 1

Lecturer	Week	Lecture	Topic	Due Dates	Tutorial
Palitha De Silva	1	28 Feb	Introduction: the study of Banking Law; bank-customer relationship		
Palitha De Silva		1 March	Library Tour		
Palitha De Silva	2	7 March	Special customers		
Palitha De Silva		8 March	Banks' duty of secrecy	First Assignment question handed out: Thursday 8 March	
Palitha De Silva	3	14 March	Banks' right to appropriate payments; right to combine or set-off; bankers' lien		
Palitha De Silva		15 March	Banks' opinions and investment advice		
Palitha De Silva	4	21 March	Termination of bank-customer relationship; banking industry ombudsman		
Palitha De Silva		22 March	Concept of negotiability; Bills of Exchange Act 1908; law relating to cheques		
Palitha De Silva	5	28 March	The paying bank		Tutorial One questions handed out: Wednesday 28 March
Palitha De Silva		29 March	The collecting bank	First Assignment due: Thursday 29 March by 4 p.m.	
Palitha De Silva	6	4 April	Banks' liability as constructive trustee		
Palitha De Silva		5 April	Tutorial on Topics in Part 1		<b>Tutorial One</b>



## Course Program Part 2

Lecturer	Week	Lecture	Topic	Due Dates	Tutorial
David White	7	25 April	ANZAC DAY HOLIDAY		
David White		26 April	New Zealand banking environment; Reserve Bank Act; functions of the RB – prudential control, registration of new banks etc		
David White	8	2 May	Contd.	Second Essay question handed out: Wednesday 2 May	
David White		3 May	Current payment methods: debit cards, credit cards, smart cards, travellers' cheques		
David White	9	9 May	EFTS, EFTPOS, internet banking; move towards a cashless society		
David White		10 May	Documentary letters of credit		
David White	10	16 May	Contd.		
David White		17 May	Standby letters of credit, performance bonds, international guarantees		
David White	11	23 May	Securities for bank lending: guarantees; other forms of security	Second Essay due: Wednesday 23 May by 4 p.m.	Tutorial Two questions handed out: Wednesday 23 May
David White		24 May	Bank lending; lender liability		
David White	12	30 May	Money laundering		
David White		31 May	Tutorial on Topics in Part 2		<b>Tutorial Two</b>