

Victoria Management School

**MBUS 401 Maori Cultural & Intellectual Property Issues**

Trimester 2 - 2007

**COURSE OUTLINE**

**Contact Details**

**Course Coordinator**

Aroha Te Pareake Mead  
Senior Lecturer, Maori Business  
Victoria Management School  
Room RH 1027, Rutherford House  
Phone: 463-6911  
Email: [aroha.mead@vuw.ac.nz](mailto:aroha.mead@vuw.ac.nz)  
Website: [www.vuw.ac.nz/vms](http://www.vuw.ac.nz/vms)

**Teaching Fellow**

Marie Cocker  
Room RH 1031, Rutherford House  
Phone: 463-6021  
Email: [marie.cocker@vuw.ac.nz](mailto:marie.cocker@vuw.ac.nz)

**Class Times and Room Numbers**

Tuesday 14:30 to 17:30  
Room: RWW315

This course has a two-hour open book final examination. The examination period will be from 19<sup>th</sup> October – 10<sup>th</sup> November 2007.

**Course Content**

MBUS 401 is students who have an interest in the commercialization of the Māori/Pacific and indigenous resource base and the growing trend to privatise cultural resources, both tangible and intangible, through intellectual property rights.

The growth of the Maori asset base and the strong entrepreneurial drive within Maori communities has resulted in a need to better understand current business practices and issues and to provide advanced learning opportunities in this rapidly developing field of endeavour. Maori business and organizations must operate and compete in the general business environment while operating with their own framework and philosophical value systems. In recent years the advancement and growth of Maori entities has opened up new horizons of intellectual pursuits.

The same can be said for an expanding number of Pacific culturally based individuals and organizations operating in New Zealand who are drawing on their cultural identities and traditions to establish a niche

in the commercial world. The unique parameters of needing to advance in a competitive economy while retaining core traditional values and practices has opened up new areas of study.

This course introduces the concept of Maori/Pacific Indigenous Collective bio-cultural heritage as a framework for critical analysis of Maori/Pacific indigenous cultural and intellectual property laws and policies. The Course provides an overview of the core elements and values of intellectual property law and then moves into analysis of how commerce and intellectual property laws intersect with culture, nature, traditional knowledge and the human body.

The concept of the “public domain” is explored in detail. Elements of *Sui generis* options for strengthening ‘ipr’ laws are discussed as are alternative mechanisms to ‘ipr’ such as Open Access, Creative Commons, and Customary Laws and practices.

Then, a series of four lectures enables students to focus on specific cases relevant and important at the national level - Maori, the Pacific regional level, the global indigenous level and then finally the international context of UN Treaty bodies or agencies actively involved in developing new standards for indigenous cultural heritage.

### **General Course-related Learning Objectives**

This programme will provide students the opportunity to:

Develop oral, written and IT-related communication skills

- through active participation in tutorial and class discussion
- through the development and presentation of oral and written reports, using narrative, rhetoric and diagrammatic and other schema as forms of presentation
- through formal and informal classroom debate

Develop critical and creative thinking skills

- through exercises and assignments requiring analysis, evaluation, interpretation and synthesis
- through debate and classroom discussion

Develop leadership skills

- through structuring independent study: a project activity, a practicum, an internship etc
- through leading a tutorial, project or group exercise
- through fulfilling spokesperson duties, reporting on a group’s activities or ideas to a class

### **Specific Course-related Student/Learning Objectives**

By the end of this Course students will be able to:

- Be familiar with the core elements of the current intellectual property regime
- Critique models of Maori/Pacific and indigenous cultural protection at different levels of analysis – local, national, regional and international levels.
- Conceptualise and explain the distinction between utilization, appropriation and misappropriation of Maori/Pacific indigenous cultural resources
- Identify and define the social, cultural and economic issues inherent in commercializing Maori/Pacific indigenous cultural resources
- Examine and critique various strategic alternatives for creating Maori/Pacific indigenous cultural identity and intellectual endeavours

### **Expected Workload**

Students can expect the workload to be approximately 10 hrs per week including both scheduled contact time (lectures, one-on-one research appointments) as well as reading, research, assignment and preparation for seminar presentations outside class.

## Readings

There is one assigned text book for this course which is provided to students during the first lecture.

*Pacific Genes & Life Patents: Pacific Indigenous Experiences and Analysis of the Commodification & Ownership of Life*/Aroha Mead & Steven Ratuva, Call of the Earth Llamado de la Tierra and United Nations University Institute of Advanced Studies, Wellington, (2007)

As well a reading list identifying a minimum of four selected readings and/or case materials for each Lecture will be provided during the first lecture. The actual readings will be distributed in class a week in advance of the respective lecture, and also made available through a closed course Reserve folder in the Commerce Library four lectures at a time (i.e. Lectures 1-4, 5-8, 9-12). Students are expected to read the assigned readings before the lectures (refer to Course Schedule) and be prepared for class discussion on their contents.

The following publications are available on 3-day loan through the Commerce Library, and will be referred to throughout the duration of the Course. You are expected to be familiar with these works.

*Art & Cultural Heritage: Law, Policy and Practice*/Barbara T Hoffman

*Manu Tututuru: Maori Treasures & Intellectual Property Rights*/Barry Barclay (2005)

*Tikanga Maori: Living By Maori Values*/Hirini Moko Mead (2003)

*Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities*/Darrell Posey & Graham Dutfield

*Herbal Medicine in Samoa*/ W. Arthur Whistler

*Maori Healing & Herbal*/Murdoch Riley (2003)

*Intellectual Property in New Zealand*/Susy Frankel & Geoff McLay (2002)

*Converging Currents: Custom and Human Rights in the Pacific*/NZ Law Commission (2006)

*Decolonising Methodologies: Research & Indigenous Peoples*/Linda Tuhiwai Smith (1999)

*Art, Cultural Heritage & the Law – Cases and Materials*/Patty Gerstenblith (2004)

## Materials and Equipment

There are no extra materials or equipment for this course.

## Mandatory Course Requirements

MBUS 401 is 70% internally assessed and 30% externally assessed through a final exam. Assessment aims to test a variety of skills and enable students to exhibit their diverse strengths.

### To meet the mandatory requirements for MBUS 401, students are required to:

- Sit and submit the mid-course review test;
- Organise a 60 minute class seminar and provide a 1500-word Issues/Background paper for all Seminar participants by the due date;
- Complete a 2500-word Case Study Report and prepare and present a 30-minute presentation outlining the key issues contained in the case study by the due date;
- Participate in the lectures and seminars; and
- Sit and submit the final examination.

|                   |     |   |
|-------------------|-----|---|
| Assignment        | 20% | 1500-word Issues/Background paper plus a 60-90 minute class seminar                                       |
| Case Study Report | 30% | 2500-word Report plus 30 minute presentation (to be presented either to the class or to a Panel of three) |
| Mid-Course Review | 20% |   |
| Final Examination | 30% |   |

Assignment and report topics and due dates will be distributed to students during the first lecture.

Notice of failure to meet Mandatory Requirements will be emailed to students or posted on the Mezzanine floor notice-board. Students will be expected to check both places for notification.

### **Penalties**

Assignments: Any assignments that are handed in late will receive a penalty loss of 5% for everyday after the due date.

### **Requirement for Written work**

#### ***Marking***

Staff aim to mark assignments promptly and return them to you in plenty of time for you to utilise the feedback in preparing your next assignment. Markers look for professionally presented work displaying a thorough understanding of the topic, a strong argument supported by sound evidence (appropriately referenced) and an ability to evaluate material.

A mark of 50 is a pass and indicates an adequate performance. Most students will meet an ‘acceptable’ standard of work throughout the year and a number will maintain an excellent standard. There are no “quotas” on any of these categories, so make use of the information available to you, and aim for the top.

The following broad indicative characterisations of grade will apply in grading:

|       |   |
|-------|---|
| A+    | excellent performance in all respects   |
| A     | excellent performance in almost all respects  |
| A-    | excellent performance in many respects  |
| B+    | very good, some aspects excellent   |
| B, B- | good but not excellent performance  |
| C+, C | work satisfactory overall but inadequate in some respects   |
| D     | poor performance overall, some aspects adequate   |
| E     | well below the required standard  |
| K:    | Failure to achieve mandatory course requirements and have achieved at least an average "C" over all the assessment. Note this is a failing grade. |

### ***Presentation***

All assignments should be typed and double-spaced with an adequate margin on the left-hand side of the page for markers’ comments. Write on only one side of the page.

### **Handing in of Assignments**

Assignments should be submitted, in hard copy form in the boxes located on the Mezzanine floor. Assignments received after that time will be deemed to be late, and must be handed to Reception, Level 10, Rutherford House.

**All Hand-Ins** should have: an Assignment Cover Sheet stating your name, the course name, lecturers name, assignment name and number, a word count and due date. You should also put page numbers on each page, and use in-text referencing and include a list of references at the end. Preferred referencing style is APA system. You can access the information from the online VUW library site ( <http://www.vuw.ac.nz/library/resources/virtualref.shtml#style>

Students will prepare two copies of each hand-in and keep the second copy for their own reference. Students must also keep an electronic copy of their work

### **Communication of Additional Information**

Additional information or any changes to this course will be conveyed to students either during lecture times, via email, or on the Maori Business notice board located on the Mezzanine Floor Rutherford House.

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

#### Railway West Wing (RWW) - FCA Student Administration Office

The Student Administration 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 office on (04) 463 5376.

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

The Kelburn Campus Office for the Faculties of Commerce & Administration 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.
- FCA Student Administration forms (e.g. application for academic transcripts, requests for degree audit, COP requests).
- Examinations-related information during the examination period.

Check with the Student Administration Office for opening times (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.

### **Te Herenga Waka Marae: The University Marae**

The marae provides a tūrangawaewae (a standing place where Māori custom prevails) for the students and staff of Victoria University to promote, disseminate and maintain the use of te reo and tikanga Māori. A primary role of the Marae is to be a support facility that enhances the teaching, learning and cultural needs of Māori at the University. The marae is situated at: 46 Kelburn Parade, Kelburn Campus. During University trimesters terms, the Marae provides a wholesome lunch at the nominal fee of \$4 for students and \$5 for staff and visitors. This service is provided Monday to Thursday between 12:00pm and 12:30pm. For further information refer to: <http://www.vuw.ac.nz/marae/>

## **MBUS 401 – MAORI CULTURAL & INTELLECTUAL PROPERTY ISSUES LECTURE SCHEDULE - 2007**

DAY & TIME: Tuesdays, 14:40pm – 17:30pm

LOCATION: RWY315

| <b>WEEK</b> | <b>DATE</b> | <b>TOPIC</b>   |
|-------------|-------------|--|
| 1.          | 10 July     | Introduction<br>Course Organisation & Objectives<br>Framework for Analysis of Maori/Pacific Indigenous Cultural and Intellectual Property Policy |

Who is indigenous? What is the difference between cultural and intellectual property? How do indigenous property rights fit within other rights e.g. human, environmental, Treaty of Waitangi and/or other constitutional rights? Why is this important for Maori, Pacific and indigenous peoples, cultures and development?

|    |         |   |
|----|---------|---|
| 2. | 17 July | Intellectual Property Laws (IPR)<br>An overview of the primary intellectual property laws (Copyright, Trademark, Plant Variety Rights, Patents) |
|----|---------|---|

What are the core elements/values of Intellectual Property laws? How does one activate an intellectual property right and what does it actually mean in practical terms? To what extent are Maori/Pacific Indigenous organisations beneficiaries or victims of IPR? Do the existing 'ipr' law adequately address the issues being raised by Maori/Pacific indigenous individuals and organisations?

|    |         |   |
|----|---------|---|
| 3. | 24 July | Using Culture in Commerce<br>Maori/Pacific Indigenous Branding within and outside cultural membership |
|----|---------|---|

Who owns culture? Can culture be stolen? What is the difference between members and non-members of Maori/Pacific Indigenous cultures using cultural images, designs, sounds, and other creations for commercial purposes? How can Maori/Pacific Indigenous entities maximise cultural branding?

|   |         |  |
|---|---------|--|
| 4 | 31 July | Nature and Life Patents<br>The role of the life sciences and biotechnology in terms of indigenous cultures |
|---|---------|--|

Who owns nature/biological diversity? Who owns traditional knowledge about nature/biological diversity? What happens when traditional knowledge is taken from its culture of origin and privatised through 'ipr', e.g. for food products, pharmaceuticals, nutraceuticals and beauty products? When a PVR or patent is applied to a traditional crop such as *kava*, *taro*, *kumara*, *basmati* rice, what does this mean for customary owners/users?

5. 7 August Who Owns Your Body?

What are some of the ethical issues raised through the assertion of intellectual property rights over human genes, tissues and other human genetic materials? What about large scale race-based human genetic research projects, such as the Human Genome Diversity Project and the Genographic Project who state that IPR will not be applied to their research? What was the Hagahai patent about? Why have indigenous communities been so critical of this area of science and law?

6. 14 August **IN-CLASS MID COURSE TEST (14:45 – 15:45)**

16:00 – 17:30 The Public Domain

What is the public domain? If matauranga Maori and Pacific/indigenous traditional knowledge has already been published/recorded doesn't this mean it is already in the public domain and therefore can be used by anyone? Isn't the public domain a good thing that can also benefit Maori/Pacific and indigenous cultures? Can't customary 'owners' of knowledge maintain an inter-generational interest irrespective of whether it is deemed to be in the public domain?

#### **MID TERM BREAK**

7. 4 September Sui Generis & Alternative IPR options  
Open Access, Creative Commons & Collective Bio-cultural Heritage  
Customary Laws, FPIC

Would innovation be stifled if intellectual property rights could not be asserted? Is Open Access advantageous or disadvantageous to Maori/Pacific indigenous cultural interests? How does Creative Commons work? What are some examples of traditional Maori/Pacific Indigenous models of cultural/intellectual property protection?

8. 11 September The Maori Context: The Wai 262:  
Indigenous Flora and Fauna Claim & Te Toi Iho (Maori Trademark)

What is the Wai262 claim about? What does the Claim mean for anyone else wanting to use Maori cultural resources? What is Te Toi Iho and how effective is it? Will these two mechanisms address the misappropriation of the haka or other wrongful use of Maori images/designs/language/compositions?

9. 18 September The Pacific Context  
The Pacific Model Laws & The Pacific Plan

What are the key elements of the two Pacific Model Laws? How can the Pacific Model Laws and the Pacific Plan provide greater protection for Pacific culture-based companies operating in NZ? The illegal copying of videos, DVDs and music CDs is a significant problem experienced by Pacific artists and musicians. What can be done to prevent this? What about resources that are shared across country borders, e.g. kava and taro. How can these be owned by just one country?

10. 25 September The Global Indigenous Context

Misappropriation of indigenous culture and cultural knowledge is a global problem. What are some examples of cases of indigenous cultural misappropriation in other regions of the world? What are the main issues expressed through indigenous declarations and statement concerning IPR laws and their appropriateness for indigenous cultural resources? What are some examples of indigenous businesses using IPR law constructively and successfully.

11. 2 October The International Context  
CBD, WIPO, UNESCO, GATT TRIPs

What are the key elements of the Convention on Biological Diversity, and in particular Article 8(j)? What are the expected outcomes of the WIPO-IGC process? What are some of the options being considered in the review of the GATT TRIPs Article 27? What mechanisms does UNESCO provide for cultural heritage protection?

12. 9 October Final Lecture Review of Course Material

Please note that while the lecture dates and times are fixed, the weekly topics might be amended according to the availability of guest lecturers.

Lectures will explore the four questions identified in this Lecture Schedule. Except on those lecture dates where students will be leading a seminar, most lectures will comprise the following format: a 60 minute lecture, a 15 minute audio-visual, a 45 minute guest presentation, a 30-minute structured discussion lead by students, a 15 minute general discussion and a 15 minute break, or variations of the same thereof.