

School of Accounting and Commercial Law

COML 304 COMPETITION LAW

Trimester One 2008

COURSE OUTLINE

Contact Details

Course Co-ordinator: Associate Professor Yvonne van Roy (Course Co-ordinator)
Room RH 605
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Office hours: Monday 11am – 1pm

Lecturer: Mr David Carter
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Office hours: Tuesday 10.30 – 11.30am

Course Administrator: Hayley Cross
Room RH 708
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Office hours: Monday – Friday 8.30am – 5pm

Class Times and Room Numbers

Lectures: Monday, Thursday, Friday 1.40 – 2.30pm in GB LT4

Tutorials/Workshops: There will be no compulsory tutorials. However, there will be four non-compulsory workshops to assist with exam study, two before the terms test, and two before the final exam. These will be held at the following times and locations:

Workshops before Terms Test:

1)	Thursday 27 March	2.40 – 3.30	RWW222
	Friday 28 March	12.40 – 1.30	RWW414
2)	Monday 7 April	2.40 – 3.30	RWW314
	Thursday 10 April	2.40 – 3.30	RWW222

Workshops before Final Exam:

1) Thursday 15 May	2.40 – 3.30	RWW222
Friday 16 May	12.40 – 1.30	RWW414
2) Thursday 29 May	2.40 – 3.30	RWW222
Friday 30 May	12.40 – 1.30	RWW414

Final Examination:

In exam period 2 - 25 June 2008 (exact time to be advised). The exam will be completely open-book (i.e. students may bring anything they wish into the exam room).

Course Objectives

Aims of the Course:

The aims of this course are to investigate the policy of competition law, including the underlying economic theory and related issues of public welfare, and to make a detailed study of competition legislation in New Zealand, predominantly the Commerce Act 1986 (although the regulatory regimes in telecommunications and electricity will also be considered). There will be some discussion of overseas legislation, in particular the Australian Trade Practices Act 1974.

Course Objectives:

Students passing this course should be able to:

- 1) Explain the social and economic objectives underlying competition law in New Zealand, and to appreciate some of the different views concerning these.
- 2) Understand how the regime for control under the Commerce Act operates (and to some degree also, the Australian Trade Practices Act) and the various regulatory regimes.
- 3) Know how to apply the provisions of the Commerce Act to fact situations.
- 4) Critically assess the judge's reasoning in cases, with respect to the words and underlying policies of the Commerce Act.
- 5) Understand the concerns underlying changes to the Act, and to critically analyse the effectiveness of these changes.

Relationship between Assessment Tasks and the Course Objectives:

The Terms Test will begin to assess objectives 2 and 3; and the Research Essay and the Final Examination will assess all 5 objectives.

Course Content

The course content will follow, as near as possible, the following schedule:

Schedule of Lectures

Monday, Thursday, Friday 1.40 – 2.30pm (Rm GBLT4)		
Feb 25	YvR	1) Introduction to the course, to the Commerce Act 1986
Feb 28	YvR	2) Object of the Act (s1A), Role of the CC, Overview
Feb 29	YvR	3) Discussion case situation
March 3	DC	4) Economics & Competition Law
March 6	DC	5) Economics & Competition Law
March 7	DC	6) Economics & Competition Law
March 10	YvR	7) Introduction to s27, ARA case
March 13	YvR	8) s27 issues - contracts, arrangements, understandings, ss2(8) and 2(9)
March 14	YvR	9) s27 issues – CAUs cont, s3(5), purpose s2(5), effect, likely effect
March 17	YvR	10) s27 issues – relevant market
March 20	YvR	11) s27 issues – substantially lessening competition
March 21		GOOD FRIDAY – No Lecture
March 24		EASTER MONDAY – No Lecture
March 27	YvR	12) s30 price fixing – introduction (Workshop 1, 2.40 – 3.30pm, RWW222)
March 28	YvR	13) ss30 – issues continued (Workshop 1, 12.40 – 1.30pm, RWW414)
March 31	YvR	14) ss31, 32, 33 exceptions, Introduction to s29, Exclusionary Provisions
April 3	YvR	15) s29 issues continued
April 4	YvR	16) s29 issues continued
April 7	YvR	17) Resale Price Maintenance (Workshop 2, 2.40 – 3.30pm, RWW314)
April 10	YvR	18) RPM Issues continued (Workshop 2, 2.40 – 3.30pm, RWW222)
April 11		19) TERMS TEST (compulsory)
APRIL 14 – APRIL 27: MID-TRIMESTER BREAK		
April 28	DC	20) Sector-specific regulation
May 1	DC	21) Sector-specific regulation
May 2	DC	22) Sector-specific regulation
May 5	DC	23) Sector-specific regulation
May 8	DC	24) Sector-specific regulation
May 9	YvR	25) Scope of the Act, ss4, 5, 6, 7; Exceptions s44
May 12	YvR	26) Exceptions, ss45, 43
May 15	YvR	27) Remedies, ss80, 81, 82, 89 etc (Workshop 3, 2.40 – 3.30pm, RWW222)
May 16	YvR	28) Authorisation; Public Benefit (Workshop 3, 12.40 – 1.30pm, RWW414)
May 19	YvR	29) s36 – Taking advantage of market power - introduction
May 22	YvR	30) s36 – Substantial degree of power
May 23	YvR	31) s36 – Taking advantage of. RESEARCH ESSAY DUE (compulsory)
May 26	YvR	32) s36 – Predatory pricing; new Australian provisions
May 29	YvR	33) Business Acquisitions (Workshop 4, 2.40 – 3.30pm, RWW314)
May 30	YvR	34) Business Acquisitions (Workshop 4, 12.40 – 1.30pm, RWW414)

Readings

The readings relevant to each topic area will be set out in handouts made available as the course progress. There will be set material to be read in preparation for most lectures. You should make a practice of bringing your relevant materials book and/or legislation (as appropriate) to class.

Set texts:

The Commerce Act 1986 (incorporating all amendments).
Competition Law Materials (2008) – vols I & II.

Recommended Reading:

There are a number of useful reference books on Competition Law held in the Law Library (some on Closed Reserve (C/R)). These include:

- (NZ) Adhar, R, (ed) *Competition Law and Policy in New Zealand* (C/R, Law Library)
- Brookers, *Gault on Commercial Law* – Chapters on the Commerce Act by Y van Roy, L Hampton, M Berry (& others)
- Hampton, L F, Chapter VI (“Competition Law”) of *Butterworths Commercial Law in New Zealand* by Farrar and Borrowdale (4th edn 2000), or Chapters 31 – 37 in *Butterworths Introduction to Commercial Law*, Academic Edition 2005.
- Van Roy, Y, *Guidebook to New Zealand Competition Laws* (2nd edn, CCH, 1991) (Note that this precedes the 2001 amendment)
- (Aust) Taperell, G Q, *Vermeesch, R B and Harland, D J, Trade Practices and Consumer Protection* (C/R, Law Library)
- Miller, R V, *Annotated Trade Practices Act* (C/R, Law Library)
- Heydon, *Trade Practices Law* (Loose-leaf service) (Law Library)
- Corones, S G, *Restrictive Trade Practices Law* (C/R, Law Library)
- Ransom and Pengilley, *Restrictive Trade Practices: Judgements, Materials and Policy* (C/R, Law Library)
- Australian Trade Practices Reports* (CCH) (Law Library)
- (General) Elhauge and Geradin, *Global Competition Law and Economics*, Hart Publishing 2007.

Note that various reports and policies of the Commerce Commission may be found on its website (www.comcom.govt.nz), including:

- The Mergers and Acquisitions Guidelines
- The Leniency Policy (under heading “The Commission”)
- The Co-operation Policy (under heading “The Commission”)

Helpful also is the ACCC website: www.accc.gov.au

Assessment Requirements

The items of assessment for this course are a terms test, a research essay, and a final examination. Students **MUST** do **all three** items of assessment. However, the marks for these items of assessment will be totalled in whichever of the following three ways is most favourable to the student.

EITHER	Terms Test	100 marks
	Research Essay	150 marks
	Final Exam	<u>250 marks</u>
	TOTAL	<u>500 marks</u>

OR	Terms Test	100 marks
	Final Exam	<u>400 marks</u>
	TOTAL	<u>500 marks</u>

(In this case the mark for the Research Essay will not count)

OR	Research Essay	150 marks
	Final Exam	<u>350 marks</u>
	TOTAL	<u>500 marks</u>

(In this case the mark for the Terms Test will not count)

The **Terms Test** will be held on Friday 11th April, 1.40 – 2.30pm (location to be advised).

The **Research Essay** is 2000 words (max), due Friday 23rd May (see attached information).

The **Final Examination** is in June. (Please note that only in exceptional circumstances will approval be given to sit this examination out of time or at another place. You should consult the Student Administration Office for further details.)

ESSAY TOPICS

(Due Friday 23rd May 2008): You may choose **either** topic A **or** topic B

TOPIC A

Critically evaluate the influence of Chicago School Economics and Harvard School Economics on the development of section 27 of the Commerce Act 1986.

In your essay you should refer to relevant case law, articles and/or textbooks.

TOPIC B

Patricia and Andrew are orthodontists practicing in central Wellington. They are not partners, although they operate from the same premises and share some common administration and operational costs under an agreement known as “The Associateship Agreement”. They retain their own patients and the incomes derived from this, and do not share profits or losses. They compete in the market for the provision of orthodontic services (there are 20 orthodontists currently practising in the greater Wellington area).

The Associateship Agreement provides for the following:

- that all new patients not specifically referred to either Patricia or Andrew be directed to which of them as will enable, so far as possible, an equal distribution between Patricia and Andrew of all new patients (both referred and unreferred). In particular, if either Patricia or Andrew had 10 patients more than the other, then they would not supply any orthodontic services to new unreferred patients until both were receiving the same number of new patients.
- that while party to the Agreement, and for three years from the date of ceasing to be a party, neither Patricia nor Andrew would (except with the consent of the other), supply orthodontic services from premises within 20km of the premises jointly used by them.

Although there is no reference in the Agreement to the level of fees to be charged, both Patricia and Andrew use identical scales of professional fees. When Andrew makes a change to his fees scale, he gives Patricia a copy of this information, and shortly afterwards Patricia changes her fees scale accordingly.

Patricia and Andrew have been contacted by the Commerce Commission, which expresses concern that their conduct is in contravention of sections 27 and 29 of the Commerce Act 1986. Patricia and Andrew contend that there is no contravention because their conduct does not substantially lessen competition in a market, that there is no agreement between them fixing prices, and that anyway they are covered by an exemption in s44 of the Act. Advise Patricia and Andrew.

BASIC REQUIREMENTS FOR YOUR ESSAY

1. There should be an introduction and a conclusion, clearly headed as such.
2. Do not grossly exceed the word limit (10% tolerance is acceptable) - *after this point the work will not be marked.*
3. The due date will be strictly adhered to. However, if you consider you have a good reason for not meeting this deadline, please see the course co-ordinator as soon as you know you will have this problem. Otherwise, the penalty will be 5% per day (after the due date).
4. To reference the ideas or quotations from another work, use footnotes (for guidance, look at the way this is done in the chapters and articles included in the materials books), or use the APA system you were shown in FCOM 110. Remember to include the page reference, not just the title of the work being referenced. *Do not quote the course materials books as a reference* – quote the original source of the work you are referencing.
5. There should be a bibliography, listing the sources of information you have used for your essay; (note that a bibliography is not a substitute for referencing).
6. Provide a separate cover sheet that shows:
 - The Title
 - Your Name
 - The Course Code

7. Leave a 2 inch (5 cm) margin, to enable room for comments.
8. Write clearly or type your work.
9. Do not plagiarise (see p108 of the University Calendar for further information). Plagiarism is defined there as “the presentation of the work of another person or other persons as if it were one’s own work, whether intended or not. This includes published and unpublished work, material on the Internet and the work of other students and staff”. If you want to include a passage from another person’s work, use quotation marks at the beginning and end of the passage, then include the appropriate reference. If you want to include the ideas of another person, but not their exact words, you must include a reference to that person’s work (but no quotation marks are necessary).

Penalties

(See “Basic Requirements for Your Essay”, above).

Mandatory Course Requirements

All three items of assessment are mandatory, i.e. the Terms Test, the Research Essay and the Final Exam. *Note that you will receive a fail grade if you do not receive at least 40% over the Terms Test and Research Essay combined.*

Communication of Additional Information

Additional information concerning this course will be provided:

- (i) in lectures and posted on the Commercial Law course noticeboard on the Mezzanine Floor of the Rutherford House Building, and
- (ii) on the **Blackboard** web-based software. The login is at <http://blackboard.vuw.ac.nz>. Your initial username and password are your SCS username and Student ID, and
- (iii) you can obtain hard copies of course handouts from the Handouts Area (near the lift area on the 7th floor of Rutherford House).

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 on the ground floor (EA005). This counter is the first point of contact for :

- 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.

Notice of Turnitin Use

(All courses which make use of Turnitin must inform students prior to collection of work for assessment. The following paragraph (modified as necessary for particular circumstances) should appear in course outlines.)

Student work provided for assessment in this course may be checked for academic integrity by the electronic search engine <<http://www.turnitin.com>>. Turnitin is an on-line plagiarism prevention tool which identifies material that may have been copied from other sources including the Internet, books, journals, periodicals or the work of other students. Turnitin is used to assist academic staff in detecting misreferencing, misquotation, and the inclusion of unattributed material, which may be forms of cheating or plagiarism. *At the discretion of the School, handwritten work may be copy typed by the School and subject to checking by Turnitin.* You are strongly advised to check with your tutor or the course coordinator if you are uncertain about how to use and cite material from other sources. Turnitin will retain a copy of submitted materials on behalf of the University for detection of future plagiarism, but access to the full text of submissions will not be made available to any other party.

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.victoria.ac.nz/home/about/policy/students.aspx

For information on the following topics, go to the Faculty's website www.victoria.ac.nz/fca under Important Information for Students:

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

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. The University defines plagiarism as follows:

The presentation of the work of another person or other persons as if it were one's own, whether intended or not. This includes published or unpublished work, material on the Internet and the work of other students or staff.

It is still plagiarism even if you re-structure the material or present it in your own style or words.

Note: It is however, perfectly acceptable to include the work of others as long as that is acknowledged by appropriate referencing.

Plagiarism is prohibited at Victoria and is not worth the risk. Any enrolled student found guilty of plagiarism will be subject to disciplinary procedures under the Statute on Student Conduct and may be penalized severely. Consequences of being found guilty of plagiarism can include:

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

Find out more about plagiarism, and how to avoid it, on the University's website:

www.victoria.ac.nz/home/studying/plagiarism.html

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 or phone (04) 463 6015. To contact the Pacific Support Coordinator, email pacific-support-coord@vuw.ac.nz or phone (04) 463 5842.
or phone (04) 463 5842.