

Victoria Management School

MBUS 401 Maori Cultural & Intellectual Property Issues

Trimester 2 - 2008

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
Website: www.vuw.ac.nz/vms

Administrator

Tania Loughlin
Level 10 Reception, Rutherford House
Phone: 463 5358
Email: tania.loughlin@vuw.ac.nz

Class Times and Room Numbers

Monday 10:30 – 13:20
Room: RWW414

Trimester Dates: Monday 7 July to Saturday 8 November 2008. This course has a 2-hour final examination at the University at any time during the formal examination period. **Examination dates for trimester two: Friday 17 October to Saturday 8 November 2008.**

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 also explores Maori, Pacific and indigenous epistemologies in terms of cultural identity, and re-claiming control over cultural research and resources.

The first seven lectures provide an overview of the core elements and values of intellectual property law and then move into analysis of how commerce and intellectual property laws intersect with culture, nature and biological diversity, traditional knowledge and the human body.

The concept of the “public domain” and its implications for protection of traditional knowledge is explored. Options to intellectual property rights and attempts to redress the misappropriation of indigenous cultural resources are discussed, 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 and cultural and intellectual property.

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 class discussion;
- The development and presentation of oral and written reports, using narrative, rhetoric and diagrammatic and other schema as forms of presentation;
- Formal and informal classroom debate.

Develop critical and creative thinking skills, through:

- Exercises and assignments requiring analysis, evaluation, interpretation and synthesis;
- Debate and classroom discussion.

Develop leadership skills, through:

- Structuring independent study: a project activity, a practicum, an internship;
- Leading a tutorial, project or group exercise;
- 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. This includes scheduled contact time (lectures, one-on-one research appointments), as well as reading, research, assignments and preparation for seminar presentations. Weekly readings for each lecture require at least 2 ½ hours focussed uninterrupted time.

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 six selected readings and/or case materials for each Lecture will be provided during the first lecture. Most of the weekly readings are chapters from some of the publications listed below. Other readings are accessible on-line and the relevant website references are included. In those cases, where readings can only be provided by hard-copy, these will be distributed in class.

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 are core publications of MBUS401 and are available on 3-day loan through the Commerce Library. Please respect the limited loan period as your fellow Course participants will also need to access these publications for the same Course requirements as you.

Australian Indigenous Knowledge & Libraries/Ed. Martin Nataka and Marcia Langton (2007)

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

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

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

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

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

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

Pacific Genes & Life Patents: Pacific Indigenous Experiences and Analysis of the Commodification & Ownership of Life/ Ed. Aroha Te Pareake Mead and Steven Ratuva (2007)

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

Who Owns Native Culture? Michael F. Brown, Harvard University Press (2003) on order
but the first 33 pages are available as a PDF at: <http://www.williams.edu/go/native/thebook.htm>

As well, a number of selected publications are available to assist you in your research and assignments. Please check MBUS401 'Course reserve' resources in the Commerce Library website regularly, as there are several publications that are currently on order. <http://www.vuw.ac.nz/library/commerce/index.aspx>

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 examination. 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 and deliver a 60 minute class seminar and provide a 700-word Issues/Background paper to be provided to Seminar speakers and participants by the agreed due date; and
- Complete a 3500-4000 word Research Report and prepare and present a 20-minute presentation outlining the key issues and findings of the Report by the due date.
- Sit for the final examination and score no less than 40% (20 marks) of the allocated marks for the examination.

MBUS401 Course Requirements		
Assignments	Assessment	Time Frame
Mid-Course Review Test	10 %	11 August 2008
Assignment: 700-word Issues/ Background paper, plus organize and deliver a 60-minute seminar	30 %	Seminars to be scheduled during weeks 3, 4, 5, 6 and 7
Case Study Report 3500-4000 word Report plus 20 minute presentation	30%	Report to be completed by 22 September presentations to be scheduled during weeks 9 and 10
Final Exam – 2 hour Open Book	30%	date and time to be announced

Assignment topics 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 every day 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 Box Number 17, 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 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.

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: including the work of others will not be considered plagiarism as long as the work 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 penalised 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.

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 - 2008

DAY & TIME: Mondays, 10:30 am – 13:20 pm

LOCATION: Railways Building, Pipitea Campus, RWY414

WEEK	DATE	TOPIC
1.	7 July	Introduction Course Organisation & Objectives Framework for Analysis of Maori/Pacific Indigenous Cultural & Intellectual Property Policy

Who is indigenous? What are some of the other key definitional considerations in indigenous cultural and intellectual property policy? Why are these issues important for Maori, Pacific and indigenous peoples', in terms of their cultures and development? What is a pro-indigenous paradigm?

2.	14 July	Intellectual Property Laws (IPR) 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? What is missing from the existing intellectual property laws in terms of the issues being raised by indigenous peoples, and can these gaps be accommodated through amendments within the existing 'ipr' legal framework? Are those criticising the intellectual property system only the indigenous and marginalised sectors of society?

3.	21 July	Using Culture in Commerce 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? Shouldn't indigenous peoples have a right of veto over who uses culture for commercial purposes, as well as set the terms and conditions of usage?

4.	28 July	Nature and Life Patents The case for and against life patents
-----------	----------------	--

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?

5. 4 August Who Owns Your Body?

Does an individual 'own' their 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 from an indigenous perspective? What are the implications for indigenous peoples of large scale ethnic/race-based human genetic research projects, such as the Human Genome Diversity Project and the Geographic Project in terms of intellectual property rights? Why have indigenous peoples and others been so critical of this area of science and law?

6. 11 August

IN-CLASS MID COURSE TEST (10:45 – 11:45)

The Public Domain & Information Technologies

(12 noon – 13:20)

If matauranga Maori and Pacific/indigenous traditional knowledge has already been published or recorded and is held within Public Libraries and Archives doesn't this mean it is already in the public domain and therefore can be used by anyone? What are the implications of digitisation of public records of matauranga Maori and other traditional knowledge? What role do information technologies have in indigenous knowledge management?

MID TERM BREAK

7. 1 September Options & Attempts to Redress Indigenous Concerns Open Access and Customary Laws

What are some examples of contemporary indigenous models of cultural/intellectual property protection? To what extent are customary laws appropriate for contemporary cultural/intellectual property protection? What does *open source* mean? To what extent are customary laws appropriate for contemporary cultural/intellectual property protection?

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

What does the Wai262 Claim mean for anyone else wanting to use Maori cultural resources? What is Te Toi Iho and how effective is it? Are these two mechanisms sufficient to address the misappropriation of the haka or other wrongful use of Maori images/designs/language and compositions? Does a customary guardianship right of Maori over indigenous flora and fauna transform into a cultural intellectual property right.?

**9. 15 September The Pacific Context
The Pacific Model Laws**

What are the key elements of the two Pacific Model Laws? How are issues around the public domain dealt with in the Model Laws? What about genetic resources that are shared across Pacific country borders, e.g. kava and taro. How can these be owned by just one country? What are some examples of how Pacific communities are dealing with misappropriation of their culture and traditional knowledge?

10. 22 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 (than the Pacific) regions of the world? What are the main issues expressed through indigenous declarations and statements concerning IPR laws and their (in)appropriateness for indigenous bio-cultural resources? How important is the principle of free, prior, informed consent of indigenous peoples as a constructive pathway forward?

**11. 29 September 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? Does the international context provide greater protections and rights for indigenous peoples' cultural and intellectual property than the national level?

12. 6 October Practical Work Experience

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