

School of Accounting and Commercial Law

## **COML 309 BANKING LAW & REGULATION IN NZ**

Trimester One 2009

### **COURSE OUTLINE**

---

#### **Names and Contact Details**

Lecturer:

Mr Palitha De Silva QSM; LLB, LLM  
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)  
Consultation hours: Tuesday and Thursday, 12.00-14.30

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 Marina Dobrovolskaya  
Room 708 Rutherford House  
Phone: (04) 463 5775  
Email: [marina.dobrovolskaya@vuw.ac.nz](mailto:marina.dobrovolskaya@vuw.ac.nz)  
Office hours: Monday- Friday, 8.30am-5pm  
Please note office closed 10.30-10.45am, and 3.30-3.45pm

Please see Ms Marina Dobrovolskaya for all general administrative inquiries.

#### **Trimester Dates**

The start and the end of the First Trimester in 2009 is Monday 2 March to Wednesday 1 July. Examination dates for Trimester One: Friday 12 June to Wednesday 1 July 2009 (inclusive).

#### **Class Times and Room Numbers**

Tuesday 14.40-16.30 in GB LT 4  
Thursday 14.40-16.30 in GB LT 4

**Withdrawal dates:** Information available via

<http://www.victoria.ac.nz/home/admisenrol/payments/withdrawalsrefunds.aspx>

## **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**

Because it is a small class COML 309 does not have separate tutorial classes. Students are encouraged to bring any questions they may have on material already covered to raise during the time allocated for discussion.

## **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).

## **Course Learning Objectives**

By the end of this course, students 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 analyse an issue within the field of banking law by applying the legal rules that relate to domestic and international banking transactions.

## **Expected Workload**

During the course, students are expected to allocate 240 hours of study for COML 309. This time (ideally spread evenly over the 12 week trimester, mid-trimester break, study-week and exam period) includes attendance at classes, reading and reviewing, doing assignments and preparation of the term test and final exam.

## **Readings**

There is no required text for COML 309. Students need to access the books given under “Reference Text Books” for further clarification of any issues covered in lectures.

There will be two “Course Material” books covering the main cases and legal articles discussed in the lectures. These books can be purchased from the Student Notes Shop. The first book 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 books.

### Reference Text Books:

Alan L. Tyree, *Tyree's Banking Law in New Zealand*, 2<sup>nd</sup> Ed., LexisNexis, 2003 ("Tyree") - Call Number KUQ885 T992 T (Commerce Library); KUQ885 T992 T 2003 (Law Library)

Mark Hapgood (Ed.), *Paget's Law of Banking*, 13<sup>th</sup> Ed., Sweet & Maxwell, 2006 ("Paget") - Call Number (has been ordered by Law Library)

E.P. Ellinger, Eva Lomnicka & Richard Hooley, *Ellinger's Modern Banking Law*, 4<sup>th</sup> Ed., Oxford University Press, 2006 ("Ellinger") - Call Number KD1715 E46 E 2006 (Law Library)

G. A. Weaver et al, *The Law Relating to Banker and Customer in Australia* (four volumes), 3<sup>rd</sup> Ed., Law Book Co, 2003 ("Weaver") - Call Number KU885 W363 L 2003 (Law Library)

W. S. Weerasooriya, *Banking Law and the Financial System in Australia*, 5<sup>th</sup> Ed., Butterworths, 2000 ("Weerasooriya") – Call Number KU885 W398 2000 (Law Library)

M. H. Ogilvie, *Bank and Customer Law in Canada*, Irwin Law, 2007 ("Ogilvie") – Call Number KE999 O348 B 2007 (Law Library)

### **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) - 20%

Assessment 2: A **Class Test** (open book) - 20%

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

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%	
C	50-54%	
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 **Essay** aims 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.

The **Class Test** will test students' understanding of the principles learned in each of the lecture topics, and will also assess the application of those principles to practical situations.

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 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.

### **Examinations**

Students who enrol in courses with examinations are obliged to attend an examination at the University at any time during the formal examination period.

Examination dates for trimester one: Friday, 12 June to Wednesday, 1 July 2009 (inclusive).

### **Penalties**

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

### **Mandatory Course Requirements**

The attention of all students is drawn to the Terms Regulations as set out in the 2009 Calendar.

### **Communication of Additional Information**

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

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 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.

## **Use of Turnitin**

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 mis-referencing, misquotation, and the inclusion of unattributed material, which may be forms of cheating or plagiarism. *At the discretion of the Head of 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](http://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](http://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](http://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](mailto:manaaki-pihipihinga-programme@vuw.ac.nz) or phone (04) 463 6015. 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	Session	Lecture	Topic	Due Dates	
Palitha De Silva	1	3 March	Introduction: the Study of Banking Law; Bank-Customer Relationship		
Palitha De Silva	2	5 March	Special Customers		
Palitha De Silva	3	10 March	<b>Library Tour</b>		
Palitha De Silva	4	12 March	Banks' Duty of Secrecy		
Palitha De Silva	5	17 March	Banks' Right to Appropriate Payments; Right to Combine or Set-Off; Bankers' Lien		
Palitha De Silva	6	19 March	Banks' Opinions and Investment Advice		
Palitha De Silva	7	24 March	Termination of Bank-Customer Relationship	Essay question handed out: Tuesday 24 March	
Guest Lecture	8	26 March	Banking Industry Ombudsman		
Palitha De Silva	9	31 March	Concept of Negotiability; Bills of Exchange Act 1908; Law Relating to Cheques		
Palitha De Silva	10	2 April	Paying Bank		
Palitha De Silva	11	7 April	Collecting Bank		
Palitha De Silva	12	9 April	Banks' Liability as Constructive Trustee		

## Course Program Part 2

Lecturer	Session	Lecture	Topic	Due Dates	
Guest Lecture	13	28 April	New Zealand Banking Environment; Reserve Bank Act; Functions of the RB – Prudential Control, Registration of New Banks etc		
Palitha De Silva	14	30 April	Current Payment Methods: Debit Cards, Credit Cards, Smart Cards, Travellers' Cheques		
Guest Lecture	15	5 May	EFTS, EFTPOS, Internet Banking: Move Towards a Cashless Society		
Palitha De Silva	16	7 May	Documentary Letters of Credit	Essay due: Friday 8 May by 4 p.m.	
Palitha De Silva	17	12 May	Standby Letters of Credit, Performance Bonds, International Guarantees		
Guest Lecture	18	14 May	The Use of DLC, SLC, PB & IG: NZ Experience		
Palitha De Silva	19	19 May	Securities for Bank Lending: Guarantees		
Guest Lecture	20	21 May	Securities for Bank Lending: Other Forms of Security		
Palitha De Silva	21	26 May	Money Laundering		
Guest Lecture	22	28 May	Money Laundering: NZ Experience		
	23	2 June	<b>NO LECTURE</b>		
Palitha De Silva	24	4 June	<b>CLASS TEST (DURING LECTURE TIME)</b>		