

School of Accounting and Commercial Law

COML 401 ADVANCED COMPETITION LAW

Trimester One 2009

COURSE OUTLINE

Names and Contact Details

Course Co-ordinator: Associate Professor Yvonne van Roy (Course Co-ordinator)
& Lecturer Room RH 605
Telephone: 463 6762
Email: Yvonne.vanRoy@vuw.ac.nz
Office hours: Wednesday 1 - 3pm

Course Administrator: Danielle Van Resseghem
Room RH 708
Telephone: 463 7465
Email: Danielle.VanResseghem@vuw.ac.nz
Office hours: Monday-Friday, 8.30am-5pm
Office closed: 10.30-10.45am and 3.30-3.45pm

Trimester Dates

The start and end dates for the first trimester 2009 is Monday 2 March to Wednesday 1 July 2009.

Class Times and Room Numbers

Monday 13.40pm -16.30pm at RH G01.

Withdrawal dates: Information available via

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

Course Content

The course will consist of analysis and discussion of selected readings and cases involving relevant issues concerning competition law. The first three sessions will consist of a lecture (with some guided case discussion), the next five, a lecture plus a student-led discussion for which 2 or 3 students will have prepared a summary of pertinent points and relevant questions on the assigned case or article for the class to consider and discuss. The following topics should be covered in the lectures:

- 1) The economic Underpinning and objectives of Competition Law, in particular The Commerce Act 1986
- 2) The scope of the Commerce Act, including exemptions/exceptions
- 3) Penalties, authorisations, clearances, and other powers

- 4) Anticompetitive Contracts, Arrangements or Understandings (section 27)
- 5) Price fixing arrangements (sections 30, 31-33)
- 6) Arrangements containing exclusionary provisions (section 29)
- 7) Abuse of market power (section 36)
- 8) Vertical restraints (EDCs, RPM etc).
- 9) Business acquisitions

In the last four sessions of the course students will present their research essays to the class.

Course Learning Objectives

The objective of this course is to investigate in depth selected topics relating to competition law – in particular the law as it relates to New Zealand. 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).
3. Critically analyse and coherently discuss the relevant literature and case law with respect to competition law issues in New Zealand and Australia.
4. Comment critically but constructively on the ideas and arguments put forward by others.
5. Undertake independent study on a chosen topic, and to put together a well-constructed, well-reasoned research essay, and to defend this in class discussion.

Relationship between Assessment Tasks and the Course Objectives:

The Final Exam, Class Contribution and the Assessment and Presentation of Readings and Cases will assess objectives 1-4, and the Research Essay will assess all 5 objectives.

Readings

Texts:

All students must have a copy of The Commerce Act 1986 (incorporating all amendments), and Volumes I and II of the COML 304 Course Materials (which contains much relevant material and cases).

Recommended reading:

Brookers, *Gault on Commercial Law* – Chapter on the Commerce Act (Loose-leaf service).

Hampton, L.F., Chapter VI (“Competition Law”) of *Butterworths Commercial Law in New Zealand*, by Farrar and Borrowdale; or chapters 31-37 in *Butterworths Introduction to Commercial Law, Academic Edition 2005*.

Taperell, G, Vermeesch R, and Harland D, *Trade Practices and Consumer Protection*.

Miller, R, *Annotated Trade Practices Act*.

Corones, S, *Competition Law and Policy in Australia*.

Heydon, *Trade Practices Law* (Loose-leaf Service).

Elhauge and Geradin, *Global Competition Law and Economics*

Articles and cases will be given out in class from time to time, but students are expected to search for suitable articles and cases also. The following websites will be helpful:

www.comcom.govt.nz (Commerce Commission)

www.accc.gov.au (ACCC)

www.austlii.edu.au/au/cases/cth/federal_ct/ (Aust Federal Court Cases)
www.austlii.edu.au/au/cases/cth/HCA/ (Aust HCA cases)
www.austlii.edu.au/au/cases/cth/ACOMPT/ (Aust Competition Tribunal Cases)

Assessment Requirements

The items of assessment for this course include:

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| 1. Short written critique (500 words max) and presentation of selected article or case | 10 marks |
| 2. Summary and Presentation of Research Essay topic | 10 marks |
| 3. Research Essay (due Friday, May 30 th , maximum 5000 words) | 45 marks |
| 4. Final Examination (2 hrs, open book), date TBA | 35 marks |

To pass this course a student must:

- attend and satisfactorily contribute to 75% of sessions;
- complete and gain a satisfactory grade for items 1 – 3 above, and
- gain an overall pass mark over the four assessed items.

Critique and Presentation of Selected Article/s and Summary and Presentation of Selected Case/s

Each student is required to make a presentation of at least one assigned article or case during the course. Students making such presentations are to prepare a brief summary and critique of the article **along with relevant questions for discussion** (max 500 words) and distribute it to other members of the class and to the lecturer on or before the Tuesday immediately preceding the relevant class. If the presentation is of a case, students should prepare a summary of the facts, the findings and the reasoning of the court, **along with relevant questions for discussion** (max 500 words). All students are expected to contribute to all class discussions. For effective discussion on the material in class, it is important that you read and understand the assigned material beforehand.

Research Essay

Each student is required to complete a research essay. This is a major project, focusing on some area of topical interest in competition law or policy (a list of suggested topics will be given out in class, but students may choose another topic with the approval of the lecturer). The essay should be between 4000-5000 words long (maximum 5000 words). Students should choose their essay topic on or before Monday, March 16th. The due date for the first draft of the research essay is Friday, May 8th, and the due date for the final (completed) draft is Friday, June 5th. Students will present a draft of their research essay to the class, along with relevant questions for discussion. This should be distributed to other members of the class and to the lecturer on or before the Tuesday immediately preceding the relevant class.

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 try not to exceed the word limit for your Research Essay by more than 10%. This issue will be discussed (if relevant) when the first draft is submitted, and any penalty notified if necessary.

Mandatory Course Requirements

Students must do all four items of assessment.

Communication of Additional Information

Additional information during this course will be notified during classes, or left in students' pigeonholes (RH 629).

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

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.