

School of Accounting and Commercial Law

## COML 308 MARKETING LAW

Trimester Two 2009

### COURSE OUTLINE

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#### Names and Contact Details

<i>Lecturers</i>	<i>Room</i>	<i>Phone</i>	<i>Email</i>	<i>Office Hours</i>
Assoc Prof Yvonne van Roy (Course Co-ordinator)	RH 605	463 6762	<a href="mailto:Yvonne.vanRoy@vuw.ac.nz">Yvonne.vanRoy@vuw.ac.nz</a>	Tuesday 11-1pm
Mrs Susan Corbett	RH 722	463 5480	<a href="mailto:Susan.Corbett@vuw.ac.nz">Susan.Corbett@vuw.ac.nz</a>	Monday 10-12am
<i>Administrator</i>				
Marina Dobrovolskaya	RH 708	463 5775	<a href="mailto:Marina.Dobrovolskaya@vuw.ac.nz">Marina.Dobrovolskaya@vuw.ac.nz</a>	Mon-Fri 8.30-5pm (Note: Office is closed 10.30am-10.45am and 3.30pm-3.45pm.)

#### Trimester Dates

**Teaching Period: Monday 13 July to Friday 16 October 2009**

**End of Year Study Period: Monday 19 October to Monday 26 October 2009**

**Examination Period: Tuesday, 27 October to Saturday 14 November 2009 (inclusive)**

**Note: Students who enrol in courses with examinations should be able to attend an examination at the University at any time during the formal examination period.**

**Withdrawal dates:** Information available via

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

#### Course Content

The Marketing Law course will examine selected legal issues affecting the marketing of a new product, from its inception and development by a firm or individual, to its promotion and distribution to the consumer. Topics covered include:

- the protection of intellectual property in the product
- other laws governing development, promotion, and distribution of the product including privacy law and competition law
- liability towards consumers

#### Course Learning Objectives

By the end of this course, students should be able to:

1. describe the strategic implications (both positive and negative) of commercial laws relating to marketing activities, in particular, consumer laws, laws relating to product liability, and intellectual property laws;

2. apply relevant law to fact situations;
3. critically analyse the case law and academic writings;
4. explain the policy underpinnings, both social and economic, of the laws relating to marketing;
5. illustrate the interplay between business, Government and the law in relation to marketing in “real-life” fact situations.

## **Course Delivery**

### *Lectures*

Monday, Tuesday, Thursday 4.40pm-5.30pm in GBLT2.

### *Tutorials*

Tutorial sign-up will be via website at: <https://signups.victoria.ac.nz> and should be done during the first week of term. The instructions for signing up are attached as page 7 of this Course Outline and will also be posted on the Tutorial Sign-Up section of **Course COML 308** on Blackboard.

The completed tutorial lists will be posted on Blackboard.

There will be 6 tutorial sessions altogether, starting in the third week of the trimester. Please consult the timetable on page 8 of this Course Outline for the scheduled times.

The tutorial programme has been carefully developed to address the course objectives and to cover in depth all of the major topic areas in the course. The tutorials follow the lecture sequence and aim to develop oral and analytical skills. You will be expected to lead the tutorial discussion on topics assigned to you. Everyone can expect to be assigned a topic at least once during the tutorial programme. For *all* tutorials everyone should be able to demonstrate that they have prepared for discussion of all questions.

## **Course Materials**

COML 308 Course Materials (2009)

CCH New Zealand Contract and Commercial Legislation (2009 edition) or Brookers Contract and Commercial Law Handbook (2009 edition). Earlier editions, from 2002 onwards, will also be suitable. Similar and equally acceptable books of legislation are published by Butterworths.

Richard J Varey (et al) New Zealand Law for Marketers, LexisNexis, Wellington, 2009.

### *Research Materials*

The Law Library, located in the Old Government Building, contains some resources you might use for completing the Research Essay. The Law Library is a University resource and is open to students of all Faculties. Library staff will assist with reasonable research requests; however students should be prepared to find most of the materials they need without assistance. Note that the Law Library is a reference library only and no books may be removed from the premises. However photocopying cards may be purchased.

## Expected Workload

The expected workload for this course is approximately 240 hours in total, spread over a 15 week period (the 12 teaching weeks, mid-trimester break, study week and the examination period).

## Materials and Equipment

### *Materials permitted in test and examination*

The Terms Test and the Final Exam are open book and you may bring whatever materials you like into the exam room. **Note:** That during the course additional copies of legislation and/or cases and articles may be distributed during the course. **These should be brought to the terms test and final exam if relevant to the examinable material.**

### *Course Materials and Additional Handouts*

You can purchase the Course Materials from the Student Notes shop. The CCH Contract and Commercial Legislation statute book and the Law of Marketing textbook may be purchased from the University bookshop.

There is no charge for class handouts, and limited spare copies of these will be made available. Most handouts will also be available on Blackboard.

## Assessment Requirements

The items of assessment for this course are a terms test, a research report, and a final examination. Students **must do all three items of assessment** and are required to obtain at least 40% average mark for the Terms Test and the Research Report. The marks for the items of assessment will be totalled in whichever of the following three ways is most favourable to the student.

<b>EITHER</b>	Terms Test	100 marks	20%
	Research Report	150 marks	30%
	Final Exam	<u>250 marks</u>	50%
	TOTAL	<u>500 marks</u>	100%

<b>OR</b>	Terms Test	100 marks	20%
	Final Exam	<u>400 marks</u>	80%
	TOTAL	<u>500 marks</u>	100%

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

<b>OR</b>	Research Report	150 marks	30%
	Final Exam	<u>350 marks</u>	70%
	TOTAL	<u>500 marks</u>	100%

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

**The Terms Test is an open book test, to be held during lecture time on Thursday 20 August. Further details are to be advised. Test details are to be advised.**

**The Research Report is 2000 words (max), due 5.30pm Thursday 1<sup>st</sup> October (see attached information).**

### *Research Report (Please note that this is compulsory)*

The research report is due by 5.30pm on Thursday 1 October 2009. Reports should not exceed 2000 words (not including footnotes which should be limited to referencing and citations). You will need to do research beyond the recommended reading and course materials.

You should pay particular attention to the requirements for adequate references and citations in order to avoid the appearance of plagiarism.

**The Final Examination is in October/November. It is an open book examination.**

The final examination for this course will be scheduled at some time during the period from Tuesday 27 October to Saturday 14 November 2009.

*Note: Your assessed work may also be used for quality assurance purposes, such as to assess the level of achievement of learning objectives as required for accreditation and audit purposes. The findings may be used to inform changes aimed at improving the quality of FCA programmes. All material used for such processes will be treated as confidential, and the outcome will not affect your grade for the course.*

**Research Topic**

XYZ Ltd has just purchased the New Zealand master franchise for a home pet feeding service, Precious Pets Services (PPS), currently operating in Australia, but now expanding into New Zealand. (The services include home feeding, vet visits, dog walking, home sitting, cage cleaning, and other related services). Before entering into any agreements with prospective franchisees in New Zealand, XYZ Ltd is anxious to obtain advice as to its obligations under the Fair Trading Act 1986, especially given the recent decision of the New Zealand Court of Appeal, in *David & Anor v TFAC Ltd* [2009] NZCA44 which discussed these matters (The case is attached to this Course Outline).

Required:

- (a) With particular regard to the view of the Court of Appeal in *David & Anor v TFAC Ltd*, advise XYZ Ltd about how best to avoid liability under the Fair Trading Act 1986 with respect to its dealings with prospective franchisees.

(100 Marks)

- (b) One commentator has called the decision of the Court of Appeal in *David & Anor v TFAC Ltd* “A victory for common sense”, adding that:

“While a court will never sanction misleading or deceptive conduct by franchisors, the decision also shows that courts will generally respect the sanctity of a contract entered into by ‘consenting adults’. In this sense, if full disclosure and independent advice have been received by a franchisee, the relationship between a franchisor and franchisee should not be treated as a ‘special case’, but as a commercial relationship between informed parties negotiating from position of equality.”

*Patrick Casey, “A Question of Common Sense”, NZ Lawyer, Issue 112, 15 May 2009, pp.12-13*

Required:

Keeping in mind the purpose of the Fair Trading Act 1986, comment critically on the above statement.

(50 Marks)

*Basic Requirements for your Report*

1. Do not grossly exceed the word limit (10% tolerance is acceptable) – after this point the work will not be marked. Please state your word count on the front page of the Report.
2. Note that spelling, punctuation and format also form a component of the mark, although marks are not awarded for a fancy folder or clip art!! A staple in the top left corner is sufficient.

3. As the report topic is available in the first week of lectures, the due date will be strictly adhered to. Extensions will not be granted after the due date unless in exceptional circumstances, and late reports will have a flat 5% penalty deducted per day late. (For example, a mark of 67% would become 62% if a day late). Reports can of course be handed in early.

4. Use footnotes to reference all ideas or quotations from another work. For guidance, look at the way this is done in your text.

5. Please include a bibliography of all research sources that you have used for writing your report.

6. Provide a separate cover sheet that shows:

The Title

Your Name

The Course Code

The word count

7. Leave a 2 inch (5 cm) margin and adequate spacing, to enable room for comments.

8. Write clearly or type your work.

9. Do not plagiarise.

10. Please hand your report in an Essay box assigned to COML 308 on Mezzanine Floor of RH.

### **Mandatory Course Requirements**

In addition to obtaining an overall mark of 50% or more, students must:

1. Sit the Terms Test.

2. Submit a Research Report (and obtain at least 40% average mark for the Terms Test and the Research Report).

3. Attend and participate in at least 4 of the 6 tutorials.

### **Communication of Additional Information**

Additional information concerning this course will be posted on Blackboard.

### **Academic Integrity and Plagiarism**

<http://www.victoria.ac.nz/home/study/plagiarism.aspx>

### **General University Policies and Statutes**

<http://www.victoria.ac.nz/home/about/policy/academic.aspx>

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

<http://www.victoria.ac.nz/fca/studenthelp/Contactus.aspx>

### **Manaaki Pihipihinga Programme**

[http://www.victoria.ac.nz/st\\_services/mentoring/](http://www.victoria.ac.nz/st_services/mentoring/)

## Detailed Tutorial Signup Instructions

1. Go to the signup website at: <https://signups.victoria.ac.nz>
2. Enter your SCS username and password to login the system.
3. The “Signup Home” page opens. It displays all courses you are enrolled for and that use the S-Cubed Tutorial & Workshop Signup system. Click on the course you wish to sign up for.
4. The selected course page opens. It will show the course contact and brief details of the signup instructions. A “key” is provided at the bottom that explains all buttons and what they do.
5. The schedule of tutorials includes the day/time, location, maximum group size, and spaces left in the tutorial sessions.
6. If there are spaces left in a particular session, you will see the “ENROL” button next to it. You can click this button to enrol yourself into that tutorial session.
7. If there are NO more spaces left in a particular session, you will see the “JOIN WAITLIST” button, if available. You can click this button to join the waitlist for that tutorial session. Please note that you will be removed from any other waitlist you may have joined earlier. If somebody withdraws from this session, you will automatically be moved up the waitlist or enrolled into the session. In this case you are enrolled in the session; an email will be sent to you if you are enrolled into the session from a waitlist.
8. You can only “JOIN WAITLIST” if you have already enrolled in one of the other available sessions. In other words, “ENROL” in one session and then you can choose to join the waitlist for another preferred session.
9. You can choose to “WITHDRAW” from a session you have already enrolled for. You can also choose to “CANCEL WAITLIST” to remove yourself from a particular waitlist.
10. A “FULL” button indicates all seats and waitlist are full for that tutorial session. You must choose another session.
11. More details on the various buttons are available in the “Key” section at the bottom of the signup page.
12. You should “ENROL” in only ONE tutorial session and may “JOIN WAITLIST” for only ONE other tutorial session.
13. You can login and signup (or change your signup) anytime before the **closing date of the tutorial signup. You will NOT be able to sign up or change your choice after the tutorial signups have closed.**
14. You can view/confirm details of the sessions you are enrolled and waitlisted for, such as day/time and location by clicking on “My Signups” on the left hand menu.
15. Click on “Support” on the left hand menu if you are having problems.

This online signup system is available around the clock over the internet. Any requests after this date will need to be manually handled by the course administrator. You will need to submit a written application stating the reason why you were not able to sign up on time using the online system, along with other relevant documentation such as medical certificate etc.

Finally, **you must always attend the tutorial sessions that you have signed up for.** If you attend a different session, your attendance may not be recorded.

**COML308 Timetable 2009 (Mon, Tues, Thurs 4.40pm-5.30pm), GBLT2**

Week 1 Starting Monday 13 July	SC	Introduction; Overview of Course. IP Law	No Tutorial
Week 2 Starting Monday 20 July	SC	IP Law	No Tutorial
Week 3 Starting Monday 27 July	SC	IP Law Events Management	Tutorial 1 (SC)
Week 4 Starting Monday 3 August	YvR	Consumer Law CG Act	Tutorial 2 (SC)
Week 5 Starting Monday 10 August	YvR	Consumer Law FT Act	Tutorial 3 (YvR)
Week 6 Starting Monday 17 August	YvR	Consumer Law FT Act <b>Terms Test – 20<sup>th</sup> August</b>	No Tutorial
<b>Mid Trimester Break 24 August – 6 September</b>			
Week 7 Starting Monday 7 September	YvR	Consumer Law Self Regulation of Advertising Unsolicited G/S	No Tutorial
Week 8 Starting Monday 14 September	YvR	Door to Door Sales Act Anti-Comp Conduct in the Market Place	Tutorial 4 (YvR)
Week 9 Starting Monday 21 September	YvR	Anti-Comp Conduct in the Market Place	No Tutorial
Week 10 Starting Monday 28 September	SC	Information Privacy <b>Research Report due 5.30pm Thursday 1<sup>st</sup> October</b>	Tutorial 5 (YvR)
Week 11 Starting Monday 5 October	SC	Labelling, Packaging and Safety	Tutorial 6 (SC)
Week 12 Starting Monday 12 October	SC	Marketing Agreements, Franchising	No Tutorial