

Victoria Management School

**MBUS 401 Maori & Indigenous Cultural & Intellectual
Property Issues**

Trimester 2 - 2011

COURSE OUTLINE

Contact Details

Course Coordinator/Lecturer

Aroha Te Pareake Mead
Senior Lecturer, Maori Business
Victoria Management School
Room RH 1027, Rutherford House
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Administrator

Tania Loughlin
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Class Times and Room Numbers

Monday 10:30 – 13:20
Room: RHG - 03
Study Period: Monday 17 October – Thursday 20 October
Examination Period: Friday 21 October – Saturday 12 November (inclusive)

Withdrawal from Courses:

Your fees will be refunded if you withdraw from this course on or before **22 July 2011**

The last date for withdrawal from this course is the three-quarter point of the teaching period, i.e. **Friday 23 September**. After that date, permission to withdraw requires the permission of the Associate Dean (Students) as set out in section 8 of the Personal Courses of Study Statute
<http://policy.vuw.ac.nz/Amphora!~~policy.vuw.ac.nz~POLICY~000000001743.pdf>

To apply for permission, fill in the Late Withdrawal form available from either of our Student Customer Service Desks.

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 five 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.

The next two lectures focus on the recently released report of the Treaty of Waitangi Tribunal on the WAI-262 Claim. A Contemporary claim often referred to as the ‘Taonga’ claim or the ‘indigenous flora and fauna claim’ that has significant implications for Maori and the Crown.

The remaining lectures enable students to focus on how these issues impact on indigenous peoples globally and also to learn about the international context of UN Treaty bodies or agencies actively involved in developing new standards for indigenous cultural heritage and cultural and intellectual property.

Work placement experience will be offered to students with relevant organizations (Crown and/or Maori) to learn how they are dealing with cultural and intellectual property policy issues.

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 etc
- 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 up to six selected readings and/or case materials for each Lecture will be provided. 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 exam. 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:

- Organise as a group a 90 minute public seminar and provide a 700-word Issues/Background paper to be provided to Seminar speakers and participants by the agreed due date;
- 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 and submit the final exam.

MBUS401 Course Requirements		
Assignments	Assessment	Time Frame
Assignment: 700-word Issues/Background paper, plus organize a public 90-minute seminar	40 %	Seminar to be scheduled sometime between lectures 4-9
Case Study 3500-4000 word Report plus 20 minute presentation	30%	Report to be completed by <u>23 September</u> presentations to be scheduled during lectures 11 and 12
Final Exam – 2 hour	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 to Tania Loughline at the Rutherford House, Level 10 Reception. Electronic copies should be sent to the Course Coordination at: aroha.mead@vuw.ac.nz

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. As well regular updates will be posted on Blackboard.

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 compares submitted work with a very large database of existing material. At the discretion of the Head of School, handwritten work may be copy-typed by the School and subject to checking by Turnitin. 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.

Class Representative

A class representative will be elected in the first class, and that person's name and contact details will be available to VUWSA, the Course Coordinator and the class. The class representative provides a communication channel to liaise with the Course Coordinator on behalf of students.

Faculty of Commerce and Administration Offices

Railway West Wing (RWW) - FCA Student Administration Office

The Student Administration 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 office on (04) 463 5376.

Easterfield (EA) - FCA/Law Kelburn Office

The Kelburn Campus Office for the Faculties of Commerce & Administration and Law is situated in the Easterfield Building - it includes the ground floor reception desk (EA005) and offices 125a to 131 (Level 1). The office is available for the following:

- Duty tutors for student contact and advice.
- Information concerning administrative and academic matters.
- FCA Student Administration forms (e.g. application for academic transcripts, requests for degree audit, COP requests).
- Examinations-related information during the examination period.

Check with the Student Administration Office for opening times (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.vuw.ac.nz/policy.

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

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

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 5233 ext. 8977. 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 /PACIFIC INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY ISSUES

LECTURE SCHEDULE – 2011

DAY & TIME: Mondays, 10:30 am – 13:20 pm
LOCATION: Rutherford House Ground Floor, RHG-03

WEEK	DATE	TOPIC
1.	11 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.	18 July	Intellectual Property Laws (IPR) An overview of the primary intellectual property laws (Copyright, Trademark, Plant Variety Rights, Patents)
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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.	25 July	Using Culture in Commerce Maori/Pacific Indigenous Branding within and outside cultural membership
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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. 1 August Nature and Life Patents
The case for and against life patents
Who Owns Your Body?**

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?

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 Genographic Project in terms of intellectual property rights? Why have indigenous peoples and others been so critical of this area of science and law?

**5. 8 August The Public Domain, The Commons &
Information Technologies**

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?

**6. 15 August The Maori Context: The Wai 262:
Indigenous Flora and Fauna Claim
Part One**

The first two Chapters of the Treaty of Waitangi Tribunal’s Report on WAI262 “Ko Aotearoa Tenei” examines the issues of intellectual property in Taonga works and Taonga species. What are taonga works and taonga species and why do they matter to Maori? What were the Tribunal’s findings and did they get it right?

MID TERM BREAK 22 August – 4 September

**7. 5 September The Maori Context: The Wai 262:
Indigenous Flora and Fauna Claim
Part Two**

What does the Wai262 Claim mean for anyone else wanting to use Maori cultural resources? Chapter 6 and 7 of the Tribunal’s Report on WAI-262, “Ko Aotearoa Tenei” examines Crown agencies that have core responsibilities for New Zealand’s (including Maori) culture, heritage, education and science, and the issue of rongoa (traditional Maori healing). How has the

Tribunal dealt with the balance between the cultural rights of Maori and the citizenship rights of all New Zealanders in terms of policy development and legislation, access and benefit sharing>

8. 12 September The Pacific Model Laws & 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?

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?

**9. 19 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? What did the Waitangi Tribunal find in relation to Maori participation in international processes?

Friday, 23 September 2011	CASE STUDY REPORT DUE
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**10. 26 September Class Case Study Presentations
Or Practical Work Experience**

**11. 3 October Class Case Study Presentations
Or Practical Work Experience**

12. 10 October Review of Course Material

Please note that while the lecture dates and times are fixed, the weekly topics might be amended according to the availability of guest lecturers and host organisations for work experience, as well as negotiation with MBUS 401 students on priority lectures before the Wai-262 Seminar.