

School of Accounting and Commercial Law

COML 304 COMPETITION LAW

Trimester 1, 2014

COURSE OUTLINE

Names and Contact Details

<i>Course Coordinator & Lecturer</i>	Yvonne van Roy yvonne.vanroy@vuw.ac.nz Office Hours: Friday 1.30 – 3.30pm	RH 605	463 6762
<i>Course Administrator</i>	Lucy May lucy.may@vuw.ac.nz Office hours: Monday-Friday, 8.30am-5pm (Note: Office closed 10.30am-10.45am and 3.30pm-3.45pm)	RH 708	463 5775

Trimester Dates

Teaching Period: Monday 3 March – Friday 6 June
Study Period: Monday 9 June – Thursday 12 June
Examination Period: Friday 13 June – Wednesday 2 July (inclusive)

Withdrawal from Course

1. Your fees will be refunded if you withdraw from this course on or before Friday 14 March 2014.
2. The standard last date for withdrawal from this course is Friday 16 May 2014. After this date, students forced to withdraw by circumstances beyond their control must apply for permission on an ‘*Application for Associate Dean’s Permission to Withdraw Late*’ including supporting documentation. The application form is available from either of the Faculty’s Student Customer Service Desks.

Class Times and Room Numbers

Monday, Friday 8.30-9.20am, Government Buildings LT3

Tutorials/Workshops

There will be no compulsory tutorials. However, there will be four non-compulsory workshops to assist with exam study, two before the mid-trimester test, and two before the final exam.

Workshop 1	Friday 4 April	9.30 – 10.20am Location TBA
		10.30 – 11.20am Location TBA
Workshop 2	Friday 11 April	9.30 – 10.20am Location TBA
		10.30 – 11.20am Location TBA
Workshop 3	Friday 23 May	9.30 – 10.20am Location TBA
		10.30 – 11.20am Location TBA
Workshop 4	Friday 6 June	9.30 – 10.20am Location TBA
		10.30 – 11.20am Location TBA

Course Delivery

This course has two lectures each week, with four non-compulsory workshops scheduled prior to the Mid-Trimester Test and the Final Examination. (These tutorials are designed to assist with exam study.)

Expected Workload

The expected workload for this course is 150 hours, spent over the 12 teaching weeks, mid-trimester breaks, study week, and the examination period.

Prescription

The law relating to restrictive trade practices, and business acquisitions under the Commerce Act 1986.

Course Learning Objectives

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

1. explain the social and economic objectives underlying competition law in New Zealand, and analyse some of the different views concerning these;
2. describe the operation of the regime for control under the Commerce Act and the Commerce (Cartels and other Matters) Amendment Bill 2011 (and to some degree also, the Australian Trade Practices Act, recently renamed the Competition and Consumer Act 2010);
3. apply the provisions of the Commerce Act and the cartels provisions of the Commerce (Cartels and other Matters) Amendment Bill 2011 to fact situations;
4. critically assess the reasoning of judges in competition law cases, with respect to the words and underlying policies of the Commerce Act;
5. identify the concerns underlying changes to the Act (and proposed changes), and critically analyse the effectiveness (or likely effectiveness) of these changes.

Course Content

Week	Date	Lecture Topic	Workshop
1	3 March	Introduction to the course and the Commerce Act 1986	
	7 March	Object of the Act (s1A), role of the CC, overview	
2	10 March	Introduction to s27, ARA case	
	14 March	s27 issues – Contracts, arrangements, understandings, s2(8) and 2(9)	
3	17 March	s27 issues – CAUs cont, s3(5), purpose s2(5), effect, likely effect	
	21 March	s27 issues – Relevant market, competition	
4	24 March	s27 issues – Substantially lessening competition, s3(2), s3(3); Review of s27	
	28 March	s30 – Price Fixing (Current Law)	
5	31 March	Cartels (Amendment Bill)	
	4 April	Cartels (Amendment Bill) Leniency Programme	Workshop #1
6	7 April	s36 – Taking advantage of market power	
	11 April	s36 – Substantial degree of power	Workshop #2
7	14 April	MID-TRIMESTER TEST (Compulsory)	
	18 April	GOOD FRIDAY	
<i>Mid-Trimester Break 18 April – 4 May (inclusive)</i>			
8	5 May	s36 – “Taking advantage of” (market power)	
	9 May	S36 – SOP 408 Labour Party Proposals	
9	12 May	s36 – Predatory Pricing, Australian Provisions	
	16 May	ss37– Resale Price Maintenance	
10	19 May	s37 and 38 – Resale Price Maintenance (cont)	
	23 May	Exclusive dealing and other vertical arrangements RESEARCH ESSAY DUE (Compulsory)	Workshop #3
11	26 May	Scope of the Act, 4-7; Exceptions, ss43-45	
	30 May	Remedies, ss80, 81 (etc); Amendment Bill	
12	2 June	QUEENS BIRTHDAY	
	6 June	Business acquisitions	Workshop #4

Readings

The readings relevant to each topic area will be set out in handouts made available on Blackboard as the course progresses. There will be set material to be read in preparation for most lectures. You should make a practice of bringing your materials book and/or legislation (as appropriate) to class.

Set texts:

The Commerce Act 1986 (incorporating all amendments).
COML 304 Course Materials (2014)

Recommended Reading:

There are a number of useful reference books on Competition Law held in the Law Library (some on Closed Reserve (C/R)). These include:

(NZ)

- Adhar, R., (ed.) *Competition Law and Policy in New Zealand* (C/R, Law Library)
- Brookers, *Gault on Commercial Law – Chapters on the Commerce Act* by Y. van Roy, L. Hampton, M. Berry (& others)
- Hampton, L.F., Chapter VI (“Competition Law”) of *Butterworths Commercial Law in New Zealand* by Farrar and Borrowdale (4th ed. 2000), or Chapters 31 – 37 in *Butterworths Introduction to Commercial Law*, Academic Edition 2005.
- Sumpter, M. (*et al*), *New Zealand Competition Law and Policy* (CCH New Zealand Ltd 2010).
- Van Roy, Y., *Guidebook to New Zealand Competition Laws* (2nd ed., CCH, 1991) (Note that this precedes the 2001 amendment)

(Aust)

- Taperell, G.Q., Vermeesch, R.B. and Harland, D.J., *Trade Practices and Consumer Protection* (C/R, Law Library)
- Miller, R.V., *Annotated Trade Practices Act* (C/R, Law Library)
- Heydon, *Trade Practices Law* (Loose-leaf service) (Law Library)
- Corones, S G, *Restrictive Trade Practices Law* (C/R, Law Library)
- Ransom and Pengilley, *Restrictive Trade Practices: Judgements, Materials and Policy* (C/R, Law Library)
- *Australian Trade Practices Reports* (CCH) (Law Library)

(General)

- Elhauge and Geradin, *Global Competition Law and Economics*, Hart Publishing 2007.

Note that various reports and policies of the Commerce Commission may be found on its website (www.comcom.govt.nz), including:

The Mergers and Acquisitions Guidelines

The Leniency Policy (under heading “The Commission”)

The Co-operation Policy (under heading “The Commission”)

Helpful also is the ACCC website: www.accc.gov.au

Assessment

From Trimester 1, 2014, a revised Assessment Handbook will apply to all VUW courses: see <http://www.victoria.ac.nz/documents/policy/staff-policy/assessment-handbook.pdf>.

In particular, there will be a new grade scheme, in which the A+ range will be 90-100% and 50-54% will be a C-.

The items of assessment for this course are: a mid-trimester test, a research essay, and a final examination. Students **MUST** do **all three** items of assessment. However, the marks for these items of assessment will be totalled in whichever of the following three ways is most favourable to the student.

EITHER	Mid-Trimester Test	100 marks
	Research Essay	150 marks
	Final Exam	<u>250 marks</u>
	TOTAL	<u>500 marks</u>

OR	Mid-Trimester Test	100 marks
	Final Exam	<u>400 marks</u>
	TOTAL	<u>500 marks</u>

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

OR	Research Essay	150 marks
	Final Exam	<u>350 marks</u>
	TOTAL	<u>500 marks</u>

(In this case the mark for the Mid-Trimester Test will not count)

- **The Mid-Trimester Test will be held on Monday 14 April during lecture time (8.30am GBLT1)**
The test is an open book test. You may bring any material you wish into the test room.
- **The Research Essay is 2000 words (max), due on Friday 23 May by 2pm.**
See below for more information.
- **The Final Examination is during the examination period.**
The final examination will be for TWO hours and is an open book exam. You may bring any material you wish into the exam room.

Research Essay

Suppose the facts in *New Zealand Magic Millions Ltd v Wrightson Bloodstock Ltd* [1991] INZLR 731 occurred in 2013.

Required

- 1) Discuss the case which New Zealand Magic Millions would argue under section 36 of the Commerce Act 1986 and its chances of success. If you think that the decision of the court would be different to the judgement in 1990, critically discuss the reasons for this.
- 2) Critically discuss whether the decision of the court in (1) above would be different if the amendments to section 36 proposed in SOP408 (to the Commerce (Cartels and other Matters) Amendment Bill) had been passed and were operative.

Note:

- The New Zealand Magic Millions case is on p382 of your course material book.
- SOP408 is on p226 of course materials book.

Basic Requirements for Your Essay

1. There should be an introduction and a conclusion, clearly headed as such.
2. Do not grossly exceed the word limit (10% tolerance is acceptable) - *after this point the work will not be marked.*
3. The due date will be strictly adhered to. However, if you consider you have a good reason for not meeting this deadline, please see the course co-ordinator as soon as you know you will have this problem. Otherwise, the penalty will be 5% per day (after the due date).
4. All ideas or quotations from another work must be referenced. You could either use footnotes (for guidance, look at the way this is done in the chapters and articles included in the materials books), or use the APA system you were shown in FCOM 111. Remember to include the page reference, not just the title of the work being referenced. *Do not quote the course materials books as a reference – quote the original source of the work you are referencing.*
5. There should be a bibliography, listing the sources of information you have used for your essay; (note that a bibliography is not a substitute for referencing).
6. Provide a separate cover sheet that shows (a version is available on Blackboard under Assessments):
 - a. The Title
 - b. Your Name
 - c. The Course Code
7. Leave a 2 inch (5 cm) margin, to enable room for comments.
8. Write clearly or type your work.
9. Do not plagiarise (see <http://www.victoria.ac.nz/home/study/plagiarism> for further information). Plagiarism is defined there as “the presentation of the work of another person or other persons as if it were one’s own work, whether intended or not. This includes published and unpublished work, material on the Internet and the work of other students and staff”. If you want to include a passage from another person’s work, use quotation marks at the beginning and end of the passage, then include the appropriate reference. If you want to include the ideas of another person, but not their exact words, you must include a reference to that person’s work (but no quotation marks are necessary).

Penalties

(See “Basic Requirements for Your Essay”, above).

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

submitted to Turnitin. A copy of submitted materials will be retained 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.

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. The final examination for this course will be scheduled at some time during the following period:

Friday 13 June – Wednesday 2 July (inclusive)

Mandatory Course Requirements

All three items of assessment are mandatory, i.e. the Mid-Trimester Test, the Research Essay and the Final Exam.

Note: You will receive a fail grade if you do not receive at least 40% over the Mid-Trimester Test and Research Essay combined.

Class Representative

A class representative will be elected in the first class, and that person's name and contact details made 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.

Communication of Additional Information

Additional information concerning this course will be provided:

- a) in lectures, *and*
- b) on Blackboard, *or*
- c) you can obtain hard copies of course handouts from the Handouts Area (in the lift area on the 7th floor of Rutherford House).

Link to general information

For general information about course-related matters, go to

<http://www.victoria.ac.nz/vbs/studenthelp/general-course-information>

Note to Students

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 academic audit. The findings may be used to inform changes aimed at improving the quality of VBS programmes. All material used for such processes will be treated as confidential, and the outcome will not affect your grade for the course.
