

Australian legal studies student tutorial book semester 2

[Parts of the World](#), [Australia](#)



Australian Legal Studies Student Tutorial Book Semester 2 2013 ? Australian Legal Studies Course Semester Two Tutorial Format 1 session of 1.5 hours duration per week There is one tutorial session each week and each session will focus on topics from the previous weeks lecture. For example, in week 2 the tutorial will discuss topics covered in the lecture for week 1. The topics for each weeks lecture and the reading you are expected to do for that lecture are set out in the “ Outline and Reading Guide”. As well as reading from the set textbooks you also need to read the additional readings and resource materials for each unit.

These materials are located in the separate Legal Studies Supplementary Material booklet which accompanies this Tutorial Program. The questions which you will discuss or present in your tutorials are listed in this Tutorial Program. Before each tutorial you must complete the suggested reading for that week and then prepare formal, written answers to the questions. You are expected to take an active part in these tutorials by discussing the topics and by raising questions. You will also be given regular writing and a team oral task to complete in tutorials and are expected to refer to decided cases in your answers.

It is essential that you prepare for these tutorials by completing both the reading and writing tasks. This will ensure your success in the program.

UNSW Foundation Studies 1 ALS Tutorial Book Semester 2 Australian Legal Studies Course Outcomes Rationale Australian Legal Studies introduces students to the Australian constitutional and legal framework. It assumes no

previous knowledge. The course examines some detail of the major topic areas that students can expect to encounter at undergraduate level.

Students will gain a clear awareness of the important institutions and processes in the Australian and Global legal environment and be exposed to current political and legal issues.

Content Outcomes

At the end of the course successful students will have developed an:

- ? understanding of the origins and sources of Australian and International law
- ? understanding of comparative legal systems and the responses of domestic law to global challenges
- ? awareness of how cultural differences impact upon the legal system
- ? appreciation of the impact of law on everyday life and on business operations
- understanding of basic legal terminology and concepts
- ? ability to analyse legal cases and apply the law to a range of situations
- ? awareness of the complexity of legal issues in the global business environment and in the world of e-commerce
- ? awareness of a variety of dispute resolution processes in Australia and from a global perspective

UNSW Foundation Studies 2 ALS Tutorial Book Semester 2 Skills Outcomes

At the end of the course successful students should be:

- ? competent in both oral and written English language communication skills required for successful undergraduate study
- proficient in using a range of communication technologies
- ? able to think critically and analyse problem solving questions in legal studies
- ? able to engage in independent and reflective learning
- ? proficient in locating and using information from a variety of sources
- ? able to work in groups and teams
- ? familiar with teaching and learning styles at Australian universities
- ? able to behave ethically and take responsibility for their own actions and educational outcomes
- ? effective at task and time management
- ? aware of

different cultures and understand alternative viewpoints UNSW Foundation Studies 3

ALS Tutorial Book Semester 2 Student Assessment in Australian Legal Studies Standard Program Assessment schedule Item Duration Weighting Semester 1 exam 1. 5 hours 30% Final exam (Sem. 2 topics only) 2. 5 hours 60% Tutorial Preparation & Participation Full year 10 % (2 x 5%) UNSW Foundation Studies 4 ALS Tutorial Book Semester 2 Semester 1 Exam Weighting: 30% This assessment item examines all units from Semester One. Normally a semester examination consists of multiple choice items and short written responses similar to those asked as tutorial questions. The semester exam covers semester 1 units only. Final Exam Weighting: 60%

This Examination covers all units from Semester Two. Normally the Final Examination consists of multiple choice questions, short written responses and longer essay answers. The final exam covers semester 2 units only. Tutorial Preparation/Participation Weighting: 10 % (2x 5 % per semester) Marks are allocated according to a variety of criteria relating to students overall tutorial performance. Some of these criteria might include: ? the quality of written answers prepared for tutorials and quality of graded writing tasks; ? individual oral presentations on particular tutorial questions as nominated by the tutor; ? co-operation and willingness to participate in and at times lead discussion on particular tutorial questions as nominated by the tutor ? evidence of completion of the required and additional reading; ? punctuality and attendance UNSW Foundation Studies 5 ALS Tutorial Book Semester 2 Australian Legal Studies Oral Presentation Student Feedback

Sheet Student name / tutorial group: Grading Criteria Excellent Very Good
 Satisfactory Not Satisfactory Organisation Evidence of planning Content
 Relevant and accurate Quality Explanation of legal issues and concepts
 Discussion Facilitated and responded to class questions Delivery

Confidence, clarity, resources used Time Frame Kept within time limit 5-10
 min Additional Comments by Tutor: Overall Grade: Date: Signature of Tutor:

UNSW Foundation Studies 6 ALS Tutorial Book Semester 2 Required

Textbooks KEY TO REFERENCES Alderson P (2006) Legal Dictionary for
 Australians, 2nd ed. McGraw-Hill, Sydney. Note: Students are expected to

make ongoing use of their dictionary. Carvan, John (2010) Understanding the

Australian Legal System 6th ed. Lawbook Co. Sydney Chew Charles YC

(2008) Business Law Guidebook 1st ed Oxford Melbourne Australia Australian

Legal Studies Supplementary Material RELEVANT [http://www. eo. gov. au](http://www.eo.gov.au)

(ParliamentaryEducationoffice) [http://www. aph. gov. au](http://www.aph.gov.au) (Australian

Parliament House) [http://www. hcourt. gov. au](http://www.hcourt.gov.au) (High Court of Australia)

[http://www. austlii. edu. au](http://www.austlii.edu.au) (Aust. Legal Information Institute) [http://www. lawlink. nsw. gov. au](http://www. lawlink.nsw.gov.au) (NSW Courts and Tribunals)

[http://www. ipaustralia. gov. au](http://www.ipaustralia.gov.au) (Intellectual Property Australia) [http://www. ahtcc. gov. au](http://www.ahtcc.gov.au) (Aust.

High Tech. Crime Centre) [http://www. acia. org. au](http://www.acia.org.au) (Aust. Centre

International Commercial Arbitration) [http://www. law. unsw. edu. au/centres/klc](http://www.law.unsw.edu.au/centres/klc)(Kingsford legal centre UNSW)

[http://www. comlaw. gov. au](http://www.comlaw.gov.au) (Commercial law) [http://www. business. ov. au](http://www.business.ov.au) (Business Law) [http://www. australiancontractlaw. com](http://www.australiancontractlaw.com) (contract aw)

[http://www. flyingsolo. com. au](http://www.flyingsolo.com.au)

(sole traders) UNSW Foundation Studies 7 ALS Tutorial Book Semester 2

Semester 2 Outline and Reading Guide Unit Lecture topics Reading for

[https://assignbuster.com/australian-legal-studies-student-tutorial-book-](https://assignbuster.com/australian-legal-studies-student-tutorial-book-semester-2/)

[semester-2/](https://assignbuster.com/australian-legal-studies-student-tutorial-book-semester-2/)

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Tutorials 1 Introduction to Commercial Law Legal framework for the operation of a business Alternative business structures Obligations of business owners Chew ch 9 Carvan p. 194-198 SM Corporations Law Concept of legal personality and the corporate veil (Salomon case) Advantages and disadvantages of Incorporation Role and responsibility of company directors (ASIC v Adler)

Remedies for breach of duty 3 Negligence 1 Tort of negligence -Donoghue v Stevenson Duty of care-neighbour principle Standard of care - reasonable person test Causation - but for test Remoteness of damage 4 Chew ch. 8 Carvan ch. 8 SM Negligence 11 Liability for negligent misstatement and pure economic loss Liability of professional advisers Vicarious liability Defences- Contributory negligence Voluntary assumption of risk 5 Chew ch's 10 & 11 Carvan p. 194-198 SM Chew ch. 8 Carvan ch. 8 SM Contracts I Nature of contract law Elements of a contract Offer and acceptance Competition and Consumer Act UNSW Foundation Studies Chew ch. 2 Carvan ch. 7 SM ALS Tutorial Book Semester 2 Unit Lecture topics 6 Reading for Tutorials Contracts II Intention to create legal relations Consideration Remedies for breach of contract 7 International Sales Contracts 1 Contracts and International Trade Vienna Convention of CISG How to negotiate and carry out an export contract 8 SM International Sales Contracts 11 Case Studies Choice of Law rules Proper Law Private International law 9 SM Resolving Business Disputes ADR methods used in commercial disputes Case Study- International business dispute 10 Chew ch. 7 Carvan p. 85-87 Intellectual Property Law

Intellectual Property (IP) concepts IP protection- Aust. and International UGG boots case study 11 SM Carvan p. 201-204 E-Commerce and the Law Case Study- Gutnick v Dow Jones Legal Challenges for the future e. g. identity theft Contracting on-line Cybercrime- defamation, fraud, piracy. 12 13 Chew ch's 3&4 Carvan ch. 7 SM & Chew ch. 7 SM Revision Revision units for Exams M. C. & essay writing skills Review of Sample Exams Sample Exam Booklet Final Exam UNSW Foundation Studies 9 ALS Tutorial Book Semester 2 1 Introduction to Commercial Law Week 2 The following terms and concepts must be understood in the context of the tutorial.

You should provide written definitions of these concepts. commercial law business entity sole trader partnership franchise company Prepare answers to the following questions using paragraph form. 1. What is the scope of commercial law? How do business and the law work together? (Give an example) 2. Mr. Lee wants to establish a construction business. He seeks your advice about different types of business structures. What are the alternative business structures he may consider? 3. What are the advantages and disadvantages of the following alternative business structures? ? Sole trader ? Partnerships ? Franchise . When establishing a business, what are some of the legal obligations of a business owner? Writing Task What is commercial law? Explain some of the legal obligations of the business owner when establishing and operating business. Student Presentation: Question 2 UNSW Foundation Studies 10 ALS Tutorial Book Semester 2 2 Corporations law Week 3 The following terms and concepts must be understood in the context of the tutorial. You should provide written definitions of these concepts. corporation corporate personality limited

liability unlimited liability corporate veil fiduciary relationship shareholder director perpetual succession Prepare answers to the following questions using paragraph form. 1. What are the advantages and disadvantages of incorporation? 2. Discuss the legal principle of the corporate veil and in your answer refer to the case of *Salomon v Salomon & Co. Ltd* (1897) UK. 3. When would the court lift or ignore the corporate veil? (give examples in your answer) 4. Explain the duties of Mr. Lee as a director of Lee Constructions Ltd. What remedies could the court impose for a breach of these duties? (In your answer refer to *ASIC v Adler* (2002) Writing Task What is the corporate veil?

Explain the circumstances under which the corporate veil could be lifted. (In your answer refer to a decided case) Student Presentation: Question 4 UNSW Foundation Studies 11 ALS Tutorial Book Semester 2 3 Negligence 1 Week 4 The following terms and concepts must be understood in the context of the tutorial. You should provide written definitions of these concepts. tort negligence duty of care standard of care “reasonable (person) test” causation “but for test” remoteness of damage defence Prepare answers to the following questions using paragraph form. 1. Explain the elements of negligence. 2.

Discuss the element of duty of care developed in the landmark case of *Donoghue v Stevenson* (1932). Refer to Lord Atkin’s definition of “Who is my neighbour”? 3. Mr. Lee was having a business lunch at a hotel in Sydney with a client who bought him a can of beer. After drinking some of its contents, he found a fly in the can. When he saw it, he became quite ill. He decides to sue

for compensation. The manufacturer claims that it does not owe the man any duty of care because it did not sell the drink to him. Instead the publican should be liable because he sold the can to him. (i) Identify the type of tort and relevant precedent case. (ii)

If you were the judge, what decision would you make in this case? Explain the ratio of your decision. What are the possible civil defences? (iii) 4. Explain the element of breach of duty with reference to the following cases: Bolton v Stone and Paris v Stepney Borough Council Writing Task What is negligence? Explain briefly the elements which the plaintiff must prove to be successful in a negligence action. (In your answer refer to decided cases) Student Presentation: Question 3 UNSW Foundation Studies 12 ALS Tutorial Book Semester 2 4 Negligence 11 Week 5 The following terms and concepts must be understood in the context of the tutorial.

You should provide written definitions of these concepts. negligent misstatement pure economic loss contributory negligence voluntary assumption of risk vicarious liability Mr. Lee has, for many years, operated a construction business in Sydney. He decided to expand his business but realised that to do so he would need to borrow a significant amount of money. Mr. Lee went to his local branch of the Oright Bank to ask for a loan. He spoke to Barlow, the branch manager. The Oright Bank has an established practice of giving free financial advice to members of the public. Barlow advised Mr.

Lee that the Oright Bank would not grant him a loan and that in any event Mr. Lee's best course of action would be to borrow Swiss francs from the

Bank of Geneva. The Bank of Geneva was lending Swiss francs at a much lower rate than Mr. Lee would have to pay if he borrowed Australian dollars. Acting on this advice, Mr. Lee borrowed one hundred thousand Swiss francs from the Bank of Geneva. Soon after Mr. Lee took out his loan the Australian dollar fell heavily against the Swiss franc. As a result of that fall, Mr. Lee must now repay, in dollar terms, twice as much as his original loan. Mr.

Lee now claims that Barlow was negligent in not warning him of the risks of currency fluctuation and in not advising him to take out insurance to protect himself from those risks. He wishes to take legal action against the Oright Bank to recover his loss. Write a report to advise Mr. Lee of his chances of success based on the tort of negligence. (In your answer refer to decided cases such as Hedley Byrne, Shaddock, Esanda.) You will need to consider these issues: a) b) c) d) e) f) g) Is the Oright Bank liable for damage caused by Barlow's negligence? Did Mr. Lee suffer pure economic loss? Does the Oright Bank owe Mr.

Lee a duty of care? If so, has the Bank breached its duty? If so, did the bank's breach cause Mr. Lee's loss? Is Mr. Lee's loss too remote? What are possible defences which the Oright bank can argue? Writing Task (Mandatory): Connie case (provided by tutor) Student Presentation: None UNSW Foundation Studies 13 ALS Tutorial Book Semester 2 5 Contracts 1 Week 6 The following terms and concepts must be understood in the context of the tutorial. You should provide written definitions of these concepts. offer acceptance agreement contract invitation to treat breach Competition and Consumer Act 2010

Prepare answers to the following questions using paragraph form. 1. Identify and discuss the essential elements of a valid contract. (In your answer distinguish between simple and formal contracts under seal) 2. Explain the rules of offer and acceptance. (In your answer distinguish between an offer and an invitation to treat) 3. Analyse the case of *Carlill v Carbolic Smoke Ball Co* 1893. Discuss the facts, issue, arguments of both sides and decision in this case. Consider the relevance of the Competition and Consumer Act 2010 (previously the Trade Practices Act) S18 if the case was being heard today. 4.

Mr. Lee sees the following advertisement in a magazine: “ Use Hair Loss Restorer daily for 10 weeks and your hair will regrow to its original thickness, if not a full refund is guaranteed! ” Mr. Lee purchases the product, uses it as directed, however his hair continues to fall out! He claims a refund but the company refuses to pay. Advise Mr. Lee as to his rights under the Law of Contract. (In your answer refer to one decided case) Writing Task: Bargain Stores case study (provided by the tutor) Student Presentation: Question 4 UNSW Foundation Studies 14 ALS Tutorial Book Semester 2 6 Contracts 11 Week 7

The following terms and concepts must be understood in the context of the tutorial. You should provide written definitions of these concepts. intention to create legal relations consideration remedy damages specific performance Prepare answers to the following questions using paragraph form. 1. How important is intention to enter into legal relations in contracts? Refer to *Balfour v Balfour* (1919) and *Merritt v Merritt* (1970) in your answer. 2.

Explain the difference between adequate and sufficient consideration. Refer to decided cases. 3. Where there has been a breach of contract, what remedies are available to the innocent party? Refer to examples in your answer) 4. Mr. Lee has lost his dog and has placed an advertisement in the local newspaper offering to pay a reward of \$50 to anyone who finds his dog, Spot. Bob, who has not seen the advertisement, finds Spot. He reads Spot's collar and returns the dog to Mr. Lee. Is Bob entitled to the reward? Don has also lost his dog and similarly places an advertisement notifying a reward. He offers \$100 for the return of his dog, Fido. Harry, the local dog catcher (whose job involves retrieving and impounding stray dogs and promptly notifying their owners), sees the advertisement.

Later Harry finds Fido and returns him to Don. Is Harry entitled to the reward? Writing Task Coming of Age Designs case study (provided by tutor) Student Presentation: Tutorial Question 4 UNSW Foundation Studies 15 ALS Tutorial Book Semester 2 7 International Sales Contracts 1 Week 8 The following terms and concepts must be understood in the context of the tutorial. You should provide written definitions of these concepts. proper law Vienna Sales Convention(CISG) conflict of laws private International Law Prepare answers to the following questions using paragraph form. 1. What are the 3 basic legal questions for Mr.

Lee to consider when entering into a contract with an overseas supplier of machinery for his construction company? 2. What are the aims and main provisions of the Vienna Sales Convention (CISG)? 3. Explain the different types of contracts which can be used for international sales of goods and

services. 4. Explain the special features of international sales contracts. (In your answer refer to examples) Writing Task What is an international sales contract? Explain briefly the basic legal questions which must be considered when entering into an international sales contract. Student Presentation: Tutorial Question 2 UNSW Foundation Studies 6 ALS Tutorial Book Semester 2 8 International Sales Contracts 11 Week 9 The following terms and concepts must be understood in the context of the tutorial. You should provide written definitions of these concepts. fundamental breach damages letter of credit nachfrist notice Prepare answers to the following questions using paragraph form. 1. What are the key issues to consider when problem solving a dispute over an international sales contract? 2. Discuss the following cases in terms of proper law of the contract: Oceanic Sun Line Special Shipping v Fay (1988) Amin Rasheed Shipping Corp. v Kuwait Ins Co (1984) 3.

Explain the possible remedies for a breach of an international sales contract. 4. Lee Constructions Ltd. an Australian company, entered into a contract with Cologne Park Pty. Ltd. a German manufacturer of cranes, to purchase two new machines. The parties agreed that the payment would be by letter of credit but at the time of shipment the buyer had not obtained any letter of credit. Advise the seller as to their legal rights. Writing Task: Jill and Wen case study (provided by the tutor) Student Presentation: Tutorial Question 3 UNSW Foundation Studies 17 ALS Tutorial Book Semester 2 9 Resolving Business Disputes Week 10

The following terms and concepts must be understood in the context of the tutorial. You should provide written definitions of these concepts. Alternative dispute resolution (ADR) Negotiation Mediation Conciliation Arbitration Independent expert appraisal Litigation Aust. Commercial Disputes Centre (ACDC) Aust. Centre for International Commercial Arbitration (ACICA) Prepare answers to the following questions using paragraph form. 1. What is a commercial dispute? (In your answer refer to examples) 2. Lee Constructions Ltd. has a dispute with a supplier of concrete which is necessary to complete a new building in the city.

He may experience a loss of \$5 million if the building is not completed on time. Outline possible methods which could be used to settle this dispute. 3. What are the advantages and disadvantages of ADR methods when used in the resolution of a consumer dispute between a landlord and a tenant? 4. What would be some of the problems of using litigation to settle an international commercial dispute? What are the advantages of Arbitration? Writing Task What is ADR? What would be some of the problems of using litigation to settle a consumer dispute between a builder and a customer? Student Presentation: Tutorial Question 2

UNSW Foundation Studies 18 ALS Tutorial Book Semester 2 10 Intellectual Property Law Week 11 The following terms and concepts must be understood in the context of the tutorial. You should provide written definitions of these concepts. intellectual property (IP) copyright trademark trade secret patent registered design IP Australia infringement Prepare answers to the following questions using paragraph form. 1. What is Intellectual property? Give

examples of different types. (In your answer refer to the UGG BOOT case study) 2. How can an effective intellectual property management strategy give Lee Constructions a competitive advantage? . Lee Constructions have expanded operations overseas and seek advice about international IP protection. How can the company protect its IP assets overseas? 4. Lee Constructions Ltd. have launched ? a new trademark, ? a new chemical which quick dries poured concrete, ? a new aluminium pylon, ? a software package for a design of buildings. Advise the company as to how it can prevent competitors from copying these IP assets. What possible remedies may be available for infringement? Writing Task How can an effective IP strategy improve the market share and profit of a company? Student Presentation: Tutorial Question 4

Internet Sites [http://www. ipaustralia. gov. au](http://www.ipaustralia.gov.au) <http://www. copyright. org. au> <http://www. wipo. org> UNSW Foundation Studies 19 ALS Tutorial Book Semester 2 11 E- Commerce & the Law Week 12 The following terms and concepts must be understood in the context of the tutorial. You should provide written definitions of these concepts. cybercrime defamation fraud contracts on-line identity theft Prepare answers to the following questions using paragraph form 1. Mr. Lee is a victim of ‘ identity theft’ and has money withdrawn from his bank accounts without his knowledge. How does the law in Australia deal with these types of offences? . Discuss the legal issue in *Gutnick v Dow Jones & Co Inc* (2002) and possible legal remedies. 3. Why is increasing use of the internet providing legal challenges to business? (give examples in your answer) 4. When engaging in e-commerce, what issues should be considered when entering into contracts on-line? Writing Task

Explain the legal issue and significance of the decision in *Gutnick v Dow Jones & Co. Inc.* Student Presentation: Tutorial Question 4 UNSW Foundation Studies 20 ALS Tutorial Book Semester 2 12 & 13 Revision Week 13 Revision ? Review of sample examinations ? Multiple choice questions Exam essay writing ? Using precedents UNSW Foundation Studies 21 ALS Tutorial Book Semester 2 UNSW Foundation Studies 22 ALS Tutorial Book Semester 2 UNSW Foundation Studies UNSW Foundation Studies UNSW Sydney NSW 2052 Australia Telephone: 61 2 9385 5396 Facsimile: 61 2 9662 2651 Email: foundation.edu. au Web: www. ufs. unsw. edu. au UNSW Foundation Studies is an education group of UNSW Global Pty Limited, a not-for-profit provider of education, training and consulting services and a wholly owned enterprise of the University of New South Wales ABN 62 086 418 582 CRICOS