
PRESCRIPTION: 211 BUSINESS LAW

Last date for assessing this prescription is 31 December 2008

INTRODUCED 1987
REVISED 1998 (Implemented Semester Two 1999)

AIMS OF SUBJECT

- 1 To enable students to appreciate the legal opportunities, responsibilities and risks that arise in business.
- 2 To provide students with some general legal knowledge relating to the business environment and with the ability to recognise when specialist legal assistance is required.
- 3 To equip students with the ability to recognise and analyse legal problems relating to the business environment.

ASSUMED PRIOR KNOWLEDGE

NZDipBus paper 110 Introduction to Commercial Law or the equivalent.

COURSE LENGTH

The equivalent of 20 National Qualifications Framework credits, with a minimum of 60 class contact hours or the equivalent for open learning/distance tuition.

RESOURCES

Suggested Student References

Bevan, Bill, Brooks, Valerie and Jones, Judi. Understanding business law. Wellington: Butterworths.

Borrowdale, Andrew (ed). Butterworths commercial law in New Zealand. Wellington: Butterworths. Latest edition.

Eagles, Ian and others. Law in business and government in New Zealand. Auckland: Palatine Press. Latest edition.

Hubbard, Jerry, Thomas, Cordelia and Varnham, Sally. Principles of law for New Zealand business. Auckland: Addison Wesley Longman.

New Zealand companies and securities legislation. Auckland: CCH New Zealand. Latest edition.

New Zealand company executives handbook. Auckland: CCH New Zealand. Latest edition.

New Zealand contract and commercial legislation. Auckland: CCH New Zealand. Latest edition.

Skinnon John, and McDermott John (eds). The law of marketing in New Zealand. Lower Hutt: Open Polytechnic of New Zealand.

Watson Susan and others. The law of business organisations. Auckland: Palatine Press. Latest edition.

TIME AND ASSESSMENT SCHEDULE

The prescription assumes a RCAP model of assessment (R = recall, C = comprehension, A = application, P = problem solving). In general, all topics should be assessed at application or problem solving level. Assessment of comprehension should be undertaken only where it is appropriate. Assessment of recall is implicit.

TOPICS	Time in hours	Assessment Weightings (%)	
		min	max
Introduction			
1 Introduction to Business Operation	2	0	0
Business Structure and Finance			
2 Business Structures	3	3	5
3 Business Finance	4	5	8
4 Security over Assets	6	10	15
5 Liens (optional)	1	0	0
Operational Matters			
6 Speciality Business Contracts	8	12	18
7 Intellectual Property and Competition	10	12	18
8 Non-cash Transactions	8	10	15
9 Insurance	5	5	10
10 Debt recovery	7	10	15
Liability and Enforcement			
11 Organisational and Personal Liability	4	5	8
12 Commercial Dispute Resolution	2	3	5
	TOTAL	60	100%

This schedule is a recommendation and guide for tutors, examiners and students. It gives:

- 1 an approximate allocation of time in hours by topic
- 2 an approximate percentage allocation for assessment by section.

Individual teaching institutions should select the order of teaching topics to meet their teaching requirements.

All references to legislation in this prescription refer to the current act governing that area of law. To ensure that the prescription maintains currency, the mention of specific acts has been avoided wherever possible.

TOPICS

All references to legislation in this prescription refer to the current Act and any recent amendments.

The times stated for each topic are suggested class contact hours (whereas the times stated in the Time and Assessment Schedule earlier are total student hours).

INTRODUCTION

1 INTRODUCTION TO BUSINESS OPERATION 6 hours

Learning Outcome

At the conclusion of this topic, students will be aware of the range of legal considerations which impact on the operation of business in New Zealand. The content of this learning outcome is inherent in topics 2 - 12.

Assessment Criterion

Students will be expected to:

- 1.1 Identify the legal issues raised by each of the following topics, and appreciate the interrelationship between them.

Business Structure and Finance

- business structures
- finance for business methods
- security over assets.

Operational matters

- specialty business contracts
- intellectual property and competition
- non-cash transactions
- insurance
- debt recovery.

Liability and enforcement

- organisational and personal liability
- commercial dispute resolution.

Teaching Note

It is suggested that a simple business case study from commencement through to operation be used to illustrate each of the above and to start the course on a practical footing.

The topics listed in 1.1 are explored further in the prescription. At this stage, students merely need an overview in order that they can put the course material in context.

BUSINESS STRUCTURE AND FINANCE

2 BUSINESS STRUCTURES

9 hours

Learning Outcome

At the completion of this topic, students will be able to identify the legal characteristics of various business entities.

Assessment Criteria

Students will be expected to:

- 2.1 Describe the legal characteristics of the following entities:
 - sole traders
 - partnerships
 - companies
 - trusts
 - incorporated societies.
- 2.2 Distinguish between the legal responsibilities and liabilities of each of the above entities.
- 2.3 Analyse the most appropriate structure to meet the needs of a particular business enterprise.

Teaching Note

It is anticipated that incorporated societies will be referred to only as a comparative example of a common non-business structure.

A case study may be a useful teaching tool to use when discussing this topic.

Trusts (as a business/trading entity) should be covered in overview only and not to any great depth.

3 BUSINESS FINANCE 12 hours

Learning Outcome

At the completion of this topic, students will understand the sources and uses of external and internal business finance.

Assessment Criteria

Students will be expected to:

- 3.1 Outline the role of finance in business, including the concept of credit.
- 3.2 Describe and evaluate a range of sources of business finance, both short and long term.
- 3.3. List the different ways in which business assets can be acquired or used as security for finance.
- 3.4 Identify characteristics of each form of security that a business can give, with particular emphasis on the following:
 - distinguishing between personal and real property
 - distinguishing between ownership and possession
 - the contractual nature of financing
 - the impact of legislation.

4 SECURITY OVER ASSETS 18 hours

Learning Outcome

At the completion of this topic, students will appreciate the features of each form of security interest, including the documentary and registration requirements (if relevant). Specific reference should be made to mortgages over real property and securities over personal property.

Assessment Criteria

Students will be expected to:

- 4.1 Identify the requirements for documentation and registration of each form of security (including discharge).
- 4.2 Describe the features, including strengths and weaknesses, of each form of security, from the perspective of each of the parties.
- 4.3 Explain the implications of non-compliance with
 - documentation requirements
 - registration requirements.
- 4.4 Outline public access to information registries.

Teaching Note

Personal property security is undergoing major changes at the time of writing. It is anticipated that the key themes of the Personal Property Securities Bill will be integrated into teaching in bill and enacted form.

Use of common documentation creating a security interest is encouraged as a useful tool for student learning.

The subject of repossession under a hire purchase agreement is covered in 10.2 with other debt recovery mechanisms.

5 LIENS (OPTIONAL TOPIC)

3 hours

Learning Outcome

At the completion of this topic, students will be able to identify when a lien can be created, and enforced.

Assessment Criteria

Students will be expected to:

- 5.1 Describe how a contractual lien arises.
- 5.2 Describe the requirements for the creation and extinction of a common law lien, including the rights of the lien holder, and apply these principles to fact situations.

Teaching Note

Common examples of liens such as courier contracts can be integrated into this topic to give it particular relevance for students.

OPERATIONAL MATTERS

6 SPECIALTY BUSINESS CONTRACTS

24 hours

Learning Outcome

At the completion of this topic, students will:

- 1 know and be able to apply legislation relevant to business contracts
- 2 understand the implications of common contractual provisions, including exclusion clauses and restraint of trade clauses

Assessment Criteria

Students will be expected to:

- 6.1 Consider statutory provisions which apply to business contracts - in particular
 - explain when the statute applies
 - describe the effect of the statute, including the effect of non-compliance with statutory requirements.
- 6.2 Describe the effect of clauses commonly found in business contracts, including
 - exclusion clauses
 - restraint of trade clauses.

Teaching Note

Lecturers may consider using the Credit Contracts Act, 1981 and the Hire Purchase Act, 1971 and relevant aspects of the Consumer Guarantees Act, 1993 and the Fair Trading Act, 1986 (to the extent that they are covered in the NZDipBus paper 110 Introduction to Commercial Law) as specific illustrations.

7 INTELLECTUAL PROPERTY AND COMPETITION

30 hours

Learning Outcome

At the completion of this topic, students will understand the legal issues involved when operating in the competitive trading market.

Assessment Criteria

Students will be expected to:

- 7.1 Explain the concept of intellectual property.

- 7.2 Outline the legal rules relating to intellectual property, including
- copyright protection and licensing
 - patents
 - trademarks
 - passing off
 - breach of confidential information, including confidentiality agreements.
- 7.3 Apply the price fixing provisions of the Commerce Act to trading situations.
- 7.4 Describe the nature and business applications of franchising.

Teaching Note

This is a good opportunity for lecturers to bring in the issue of Māori cultural heritage intellectual property rights.

8 NON-CASH TRANSACTIONS

24 hours

Learning Outcome

At the completion of this topic, students will understand the rights and liabilities of parties involved in cheque and other business banking transactions.

Assessment Criteria

Students will be expected to:

- 8.1 Explain the nature of the banker-customer relationship and the duties that arise out of it for both parties, and apply these to fact situations.
- 8.2 Understand the rules relating to cheques, specifically including
- definition of a cheque (with reference to relevant statutory authority)
 - definition of and differentiation between the concepts of negotiability and transferability
 - rights and liabilities of the parties to a cheque, including situations involving a forged signature or fraudulent alteration
 - the effect of crossings on cheques.
- 8.3 Outline the legal effect of automatic transactions, including
- direct credit schedules
 - automatic payments
 - direct debits
 - EFTPOS.

- 8.4 Apply knowledge of transaction disputes, including
- payment countermand
 - wrongful dishonour
 - wrongful payment
 - unauthorised account signatures.
- 8.5 Identify legal issues arising out of the development of electronic commerce, including
- digital signatures
 - internet shopping
 - credit card transactions.

Teaching Note

Lecturers may choose to explain bills of exchange to the extent that this is necessary to understand the concept of negotiability, but cheques should remain the focus of discussion on negotiable instruments.

It may be useful for students if lecturers briefly outline the role of the Banking Ombudsman in disputes between bankers and customers.

9 INSURANCE

15 hours

Learning Outcome

At the completion of this topic, students will be able to identify the key requirements for a valid contract of insurance, and be able to apply the relevant statutory and common law rules to typical fact situations.

Assessment Criteria

Students will be expected to:

- 9.1 Describe the essential elements of a valid insurance contract, with particular reference to
- the process of agreement, together with the necessary documentation
 - the role of the agent and/or broker
 - the effects of the doctrine of utmost good faith
 - the effects of mis-statements and omissions
 - the requirement for an insurable interest
- and apply these to fact situations.
- 9.2 Explain the principles of law applicable to insurance claims, including at least four of the following:
- negligence of the insured
 - doctrine of proximate cause

- consequential losses
- use of exclusion clauses
- notice of loss
- doctrine of utmost good faith
- arbitration rights and the role of the Insurance and Savings Ombudsman

and apply these principles to fact situations.

9.3 Explain how payments are calculated and made under an insurance contract, with particular reference to

- replacement and indemnity values
- the role of average and excess clauses
- consequences of double insurance
- contractual reinstatement
- the principle of subrogation

and to apply these to fact situations.

9.4 Identify and describe the categories of insurance cover relevant to business, including earthquake and accident cover.

10 DEBT RECOVERY

21 hours

Learning Outcome

At the completion of this topic, students will understand the options and procedures available for debt recovery in a business situation.

Assessment Criteria

Students will be expected to:

10.1 Evaluate a range of enforcement procedures available for recovering a debt (from an individual and/or a company) other than bankruptcy, receivership or liquidation.

10.2 Apply the law relating to repossession of assets financed by debt..

10.3 In relation to personal debts

- distinguish between the concepts of insolvency and bankruptcy
- apply the rules relating to adjudication under debtor's and creditor's petitions
- apply the rules relating to the commencement of bankruptcy
- describe the consequences of adjudication of bankruptcy on the bankrupt personally and on his/her property

- describe the rights of the Official Assignee to the bankrupt's property under
 - the doctrine of relation back
 - the provisions for antecedent situations
 and apply these to fact situations.
- explain how discharge of the bankrupt occurs,

10.4 In relation to company debt

- distinguish between the concepts of receivership and liquidation, including the procedures which activate these processes
- demonstrate an understanding of the effect of receivership and liquidation on the operation of a business.

Teaching Note

Lecturers may wish to discuss the alternatives to bankruptcy, such as compromise with creditors, installment orders and so on to put the bankruptcy, receivership and liquidation procedures in context. This will give students an appropriate understanding of the range of procedures available for debt recovery.

LIABILITY AND ENFORCEMENT

11 ORGANISATIONAL AND PERSONAL LIABILITY

12 hours

Learning Outcome

At the completion of this topic, students will demonstrate an understanding of the potential liability of individuals and business enterprises engaging in common and trading activities.

Assessment Criteria

Students will be expected to:

- 11.1 Analyse, in particular circumstances, the potential for liability at both a personal and organisational level, including
- civil and/or criminal liability
 - common law rules
 - equitable rules
- and apply these to fact situations.
- 11.2 Describe the relationship between law, ethics and the business environment.

Teaching Note

This topic is a cumulative analysis of the previous topics, and aims to reinforce student knowledge of the ways in which liability can arise from various actions.

Lecturers may choose to include the following examples when considering the potential for legal liability - negligence, fraud, defamation, personal guarantees for business debts, fiduciary duties, bailments as well as statutory liability under the Resource Management Act, the Health and Safety in Employment or the Privacy Act.

Lecturers may choose to use a study to explore the law/ethics continuum. This may be introduced at any point during the course.

12 Commercial Dispute Resolution

6 hours

Learning Outcome

At the completion of this topic, students will appreciate the alternative structures for resolution of disputes.

Assessment Criteria

Students will be expected to:

- 12.1 Explain the nature and purpose of a dispute resolution clause in a commercial contract.
- 12.2 Demonstrate an understanding of the role of
 - negotiation
 - mediation
 - arbitration
 - out-of-court settlement
 - court based adjudication and tribunalsand apply these to common factual situations.