

LAWS3041: Contracts II

Newcastle City Precinct
Semester 2 - 2023



THE UNIVERSITY OF
NEWCASTLE
AUSTRALIA

OVERVIEW

Course Description

Contracts II examines the principles of contract law, including the law relating to obligations, content, excuses from performance (invalidating factors and termination) and remedies. Students gain knowledge in the functions of contract law and its limitations, contract theories and the historical background to the law of contract together with the forces which are shaping its development. Overall the course provides students with specialised knowledge of an important area of law and also contributes to the enhancement of legal skills in legal analysis and problem solving.

The course will also focus on the development of skills in the areas of questioning, critical thinking and risk management. These skills will complement and reinforce your understanding of the course content areas and will build your graduate skills portfolio.

Skill Focus

This course will focus on assisting students to develop the following skills:

- Questioning
- Critical thinking
- Risk management

Requisites

To enrol in this course students must have successfully completed LAWS3040 and be active in the Bachelor of Laws (Honours) and associated combined degree programs.

Assumed Knowledge

LAWS1010, LAWS1011, LAWS1020, LAWS1021, LAWS2030 and LAWS2031

Contact Hours

Newcastle City Precinct

Online Activity

Online

1 hour(s) per Week for Full Term

Seminar *

Face to Face on Campus

2 hour(s) per Week for Full Term

* This contact type has a compulsory requirement.

Unit Weighting

10

Workload

Students are required to spend on average 120-140 hours of effort (contact and non-contact) including assessments per 10 unit course.

COURSE OUTLINE

www.newcastle.edu.au

CRICOS Provider 00109J

CONTACTS

Course Coordinator Newcastle City Precinct

Dr Eliezer Sanchez-Lasaballett (Weeks 1 – 4 and 10)
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Dr Kevin Sobel-Read (Weeks 5 – 7)
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(02) 4921 6613
Consultation: please email to make an appointment to chat by Zoom or phone.

Dr Yucong Wang (Weeks 8, 9, 11 and 12)
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Consultation: please email to make an appointment to chat by Zoom or phone.

Teaching Staff If necessary, other teaching staff will be advised on the course Canvas site.

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SYLLABUS

Course Content This course examines the general law of contract and some legislation relating to:

1. Obligations (performance and breach, third parties, assignment)
2. Content (express terms - incorporation, express terms - interpretation, implied terms); excuses for non-performance (invalidating factors - illegality; termination - breach, non-fulfilment of contingent conditions)
3. Remedies (money awards and orders to perform)

Course Learning Outcomes **On successful completion of this course, students will be able to:**

1. Explain, interpret and apply modern Australian contract law, including the policy framework within which it operates.
2. Determine and gather the information needed to support the understanding of a specific problem, clearly presenting and justifying individual views while responding critically and thoughtfully to the ideas of others.
3. Create persuasive legal and factual arguments relating to contract disputes, and form critical judgments about their likely resolution.
4. Demonstrate the ability to manage risk by assessing and formulating possible courses of action and the range of likely outcomes in a context of commercial and business realities.
5. Conduct high-level legal research and analysis of primary legal materials, presenting the results in a logical manner and in clear and concise English.
6. Use questioning strategies to gather the information needed to support understanding and develop research arguments.

Course Materials **Required Casebook: (Essential for this course)**

- M P Ellinghaus, *Australian Cases on Contract 2009 Edition* (distributed by [Lexis Nexis](#) and available to order at [Booktopia](#) and [The School Locker](#). Or you may be able to source a

second-hand copy.

- Additional edited cases in the reading guide that are not in the casebook will be made available on Canvas in the relevant weekly folder.
- Some additional readings will be made available via Course readings on Canvas.

Other textbooks: (We do not refer to a textbook other than the casebook – however some students like to have a broader overview of topic and so may wish to also obtain a textbook on Contracts)

- N C Seddon & R Bigwood, [Cheshire & Fifoot's Law of Contract](#), 11th Australian edition (LexisNexis 2017).
- P Radan, J Gooley, I Vickovich, [Principles of Australian Contract Law](#), 5th edition (LexisNexis 2017).
- L Willmott, S Christensen, D Butler, B Dixon, [Contract Law](#), 5th edition (Oxford University Press 2018).
- A Robertson and J Paterson, [Principles of Contract Law](#), 6th edition (Thomson Reuters 2020).
- J Carter, [Carter's Guide to Australian Contract Law](#), 4th edition (JW Carter Publishing 2022).

COMPULSORY REQUIREMENTS

In order to pass this course, each student must complete ALL of the following compulsory requirements:

Contact Hour Requirements:

- There is a compulsory attendance requirement in this course. Attendance at all classes (seminars and workshops) will be monitored and records maintained by the Course Coordinator. In order to satisfy the "Attendance" requirement, students must be present at a minimum of 80% of scheduled classes as spelled out in the course outline, unless they are able to demonstrate that their absence falls within the Adverse Circumstances policy. Unless this requirement is met, despite marks awarded in other assessment items, the student will receive a zero mark and a CF grade for the course.
- **Please note** that meeting the attendance rule each week requires meaningful attendance for the full one hour and fifty minutes of each class. Partial attendance will not meet the attendance requirement for a given class unless prior approval has been given by the Course Coordinator or Lecturer. (To be clear, simply being present for purposes of the roll call does not on its own satisfy the attendance requirement. As such, even if you have been present for the roll call, if you leave early without permission you are agreeing that your attendance will not count for that week.)
- **Note also** that if you miss more than two (2) classes for reasons that fall within the Adverse Circumstances, you may be required to complete additional assessment items to ensure that you have met the required volume of learning for this course.

Course Assessment Requirements:

- Assessment 2 - Written Assignment. Pass Requirement - Students must pass this assessment item to pass the course.
- Irrespective of a student's mark in the course, if a student has achieved overall marks greater than 50% in the course but has failed to satisfactorily complete the compulsory course component then a zero mark and fail grade (CF) will be recorded on their transcript.

SCHEDULE

Week	Week Begins	Topic	Learning Activity	Assessment Due
1	17 Jul	Illegality	<ul style="list-style-type: none"> Fitzgerald v F J Leonhardt Pty Ltd (1997) 189 CLR 215 Master Education Services v Ketchell [2008] HCA38 Holdcroft v Market Garden Produce Pty Ltd (2000) QCA 396 SST Consulting Services Pty Ltd v Rieson [2006] HCA 31 International Air Transport Association v Ansett Australia Holdings Ltd [2008] HCA 3 	
2	24 Jul	Third Parties	<ul style="list-style-type: none"> Trident General Insurance v Mc Niece Bros (1988) 165 CLR 107 Port Jackson Stevedoring Pty Ltd v Salmond & Spraggon (Aust) Pty Ltd (1978) 139 CLR 231 Coulls v Bagot's Executor & Trustee Co Ltd (1967) 119 CLR 460 Gate Gourmet Australia Pty Ltd (in liq) v Gate Gourmet (2004) NSWSC149 	
3	31 Jul	Assignment	<ul style="list-style-type: none"> Pacific Brands Sport & Leisure Pty Ltd v Underworks Pty Ltd (2006) 149 FCR 395 Norman v FCT (1963) 109 CLR 9 Shepherd v FCT (1965) 113 CLR 385 	
4	7 Aug	Unit 1 Workshop	Readings TBA	Assessment 1: Research Assessment due Sunday 13 August by 9 PM
5	14 Aug	Express Terms: Incorporation	<ul style="list-style-type: none"> Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41, read only Dawson J [125 – 138]; Gibbs CJ [50 – 63]; Wilson J (first paragraph); Mason J [89 – 90]; Deane J [120] Oceanic Sun Line Special Shipping Company Inc v Fay (1998) 165 CLR 197 Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd [2004] HCA 52 Saleh v Romanous [2010] NSWCA274 (see link in topic folder) 	
6	21 Aug	Express Terms: Interpretation	<ul style="list-style-type: none"> Royal Botanic Gardens and Domain Trust v South Sydney City Council [2002] HCA 5 Darlington Futures Ltd v 	

			Delco Australia Pty Ltd (1986) 161 CLR 500 • Ryledar Pty Ltd v Euphoric Pty Ltd (2007) NSWCA 65	
7	28 Aug	Contingent Conditions	<ul style="list-style-type: none"> • Sandra Investments Pty Ltd v Booth (1983) 153 CLR 153 • Gange v Sullivan (1966) 116 CLR 418 • Perri v Coolangatta Investments Pty Ltd (1982) 149 CLR 537 • Immer (No 145) Pty Ltd v Uniting Church in Australia Property Trust (NSW) (1993) 182 CLR 26 • M K & J A Roche Pty Ltd v Metro Edgley Pty Ltd [2005] NSWCA 39, read only [48]-[75] 	
8	4 Sep	Implied Terms	<ul style="list-style-type: none"> • Codelfa Construction Pty Ltd v State Rail Authority of NSW (1982) 149 CLR 337, read only [394] – [407], [345] – [356] • Secured Income Real Estate (Aust) Ltd v St Martins Investments Pty Ltd (1979) 144 CLR 596 • Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur Insurance (Aust) Ltd (1986) 160 CLR 515 • Burger King Corporation v Hungry Jack's Pty Ltd [2001] NSWCA 187, read only [44]-[89], [141]-[429] 	Assessment 2: Research Assessment due Sunday 3 September by 9 PM
9	11 Sep	Termination / Breach	<ul style="list-style-type: none"> • Carr v J A Berriman Pty Ltd (1953) 89 CLR 327 • Associated Newspapers Ltd v Banks (1951) 83 CLR 322 • Burger King Corporation v Hungry Jack's Pty Ltd [2001] NSWCA 187 • Laurinda Pty Ltd v Capalaba Park Shopping Centre Pty Ltd (1989) 166 CLR 623 • Koopahtoo Local Aboriginal Land Council v Sanpine Pty Ltd (2007) HCA 61 • DTR Nominees Pty Ltd v Mona Homes Pty Ltd (1978) 138 CLR 423 • Sopov v Kane Constructions Pty Ltd (2007) VSCA 257 • Foran v Wight (1989) 168 CLR 385 • Almond Investors Limited v Kualitree Nursery Pty Ltd [2011] NSWCA 198 (not in CB) • Tanwar Enterprises v Cauchi [2003] HCA 57 • Stern v McArthur (1988) 165 CLR 489 	

			<ul style="list-style-type: none"> • Legione v Hateley (1983) CLR 406 	
10	19 Sep	Remedies: Damages	<ul style="list-style-type: none"> • Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market (Campbelltown) Pty Ltd [2008] HCA 10 • Bowen Investments Pty Ltd v Tabcorp Holdings Ltd [2008] FCAFC 38 • Commonwealth v Amann Aviation Pty Ltd (1991) 174 CLR 64 • Stuart Pty Limited v Condor Commercial Insulation Pty Ltd [2006] NSWCA 334 • Burns v MAN Automotive (Aust) Pty Ltd (1986) 161 CLR 485 • McCrohan v Harith [2010] NSWCA 67 (not in CB) • Interstar Wholesale Finance Pty Ltd v Integral Home Loans Pty Ltd [2008] NSWCA 310 (not in CB) • Silverbrook Research Pty Ltd v Lindley [2010] NSWCA 357 (not in CB) • Moore v Scenic Tours Pty Ltd [2020] HCA 17 	
Mid-Term Break				
Mid-Term Break				
11	10 Oct	Remedies: Liquidated Damages and Penalties	<ul style="list-style-type: none"> • Ringrow Pty Ltd v BP Australia Pty Ltd [2005] HCA 60 • Esanda Finance Corporation v Plessnig (1989) 166 CLR 131 	
12	17 Oct	Remedies: Specific Performance and Injunction	<ul style="list-style-type: none"> • Dougan v Ley (1946) 71 CLR 142 • JC Williamson Ltd v Lukey and Mulholland (1931) 45 CLR 282 • Turner v Bladin (1951) 82 CLR 463 • Suttor v Gundowda Pty Ltd (1950) CLR 418 • Curro v Beyond Productions Pty Ltd (1993) 30 NSWLR. 337 	
13	24 Oct			Assignment 3: Problem Solving Assignment due Sunday 29 October by 9 PM
Examination Period				
Examination Period				

ASSESSMENTS

This course has 3 assessments. Each assessment is described in more detail in the sections below.

	Assessment Name	Due Date	Involvement	Weighting	Learning Outcomes
1	Research Assessment	Sunday 13 August by 9:00 PM	Individual	33%	1, 2, 3, 6
2	Research Assessment*	Sunday 3 September by 9:00 PM	Individual	33%	1, 2, 3, 5
3	Problem-Solving Assignment	Sunday 29 October by 9:00 PM	Individual	34%	1, 2, 3, 4

* This assessment has a compulsory requirement.

To ensure that grades are fair both within and between courses and cohorts, Newcastle Law School has a rigorous policy of moderating and reviewing assessment. The School Assessment Board (SAB) reviews all final grades before they are released to students, and the SAB process may result in the overall marks of a class being moved up or down by a specific amount, thus impacting individual marks. This is consistent with grading practices in other Law Schools across the country and important to ensure the integrity of assessment. This means that the final grade you are awarded may not be the sum of marks you have received in all assessments.

Late Submissions The mark for an assessment item submitted after the designated time on the due date, without an approved extension of time, will be reduced by 10% of the possible maximum mark for that assessment item for each day or part day that the assessment item is late. Note: this applies equally to week and weekend days.

Assessment 1 – Strategic Analysis Task

Assessment Type	Research Assignment
Description	This task is primarily an exercise in doctrinal (case law) research and strategic analysis (asking questions) in the context of contract law. You will be provided with a fact scenario that requires you to frame the relevant legal issues to provide an appropriate solution. You will need to perform research in order to support your factual and legal assessment as well as your proposed solution. More information will be provided after the start of the semester
Weighting	33%
Due Date	Sunday 13 August by 9:00 PM
Submission Method	Electronic submission via Turnitin in Canvas before or on due date and time
Assessment Criteria	Marking guide/rubric will be provided together with questions and more detailed instructions and added to assessment section in Canvas
Return Method	SpeedGrader in Canvas
Feedback Provided	Individual feedback will be provided using SpeedGrader in Canvas General feedback will be provided when all papers have been graded via Canvas/in class

Assessment 2 – Critical Thinking Task

Assessment Type	Research Assignment
Description	This task is primarily an exercise in doctrinal (case law) research and in critical thinking in the context of Contract law. You will be provided with a fact scenario that requires resolution of relevant legal issues. You will need to perform research in order to support your proposed resolution. More information will be provided at the beginning of Module 2.
Weighting	33%
Compulsory Requirements	Pass Requirement - Students must pass this assessment item to pass the course. Students will be given the opportunity to reattempt this assessment in the following circumstances: <ul style="list-style-type: none"> If a student fails the Research Task but has made a genuine attempt and has passed all other assessments in the course, the student may re-attempt the research assessment at the end of the semester. The following rules will apply: <ul style="list-style-type: none"> Students will only be permitted one opportunity to re-attempt the research assessment; The maximum grade available for the research assessment on a re-attempt is 50% of the total mark for that assessment (however, students who pass on their re-attempt may achieve a higher overall grade in the course, depending on the results of their other assessments); and

- The Course Coordinator will set a new research assessment question for any student entitled to re-attempt the assessment.

Due Date	Sunday 3 September by 9:00 PM
Submission Method	Electronic submission via Turnitin in Canvas before or on due date and time
Assessment Criteria	Marking guide/rubric will be provided together with questions and more detailed instructions and added to assessment section in Canvas
Return Method	SpeedGrader in Canvas
Feedback Provided	Individual feedback will be provided using SpeedGrader in Canvas. Additional personalised feedback will be provided in feedback meetings on request. General feedback will be provided when all papers have been graded via Canvas.
Opportunity to Reattempt	Students may be eligible to re-attempt this assessment on consultation with the Course Coordinator.

Assessment 3 – Managing Risk

Assessment Type	Problem-Solving Assignment
Description	This task requires you to answer legal problems that cover topics drawn from the materials in Weeks 8-12. In addition to assessing your knowledge of the relevant content and your problem-solving skills, this task requires you to demonstrate your ability to manage risk by assessing consequences and formulating possible courses of action and the range of likely outcomes for a client.
Weighting	34%
Due Date	Sunday 29 October by 9:00 PM
Submission Method	Electronic submission via Turnitin in Canvas before or on due date and time
Assessment Criteria	Marking guide/rubric will be provided together with questions and more detailed instructions and added to assessment folder
Return Method	Gradebook in Canvas
Feedback Provided	General feedback will be provided on request after Final Grades have been released.

ADDITIONAL INFORMATION

Grading Scheme

This course is graded as follows:

Range of Marks	Grade	Description
85-100	High Distinction (HD)	Outstanding standard indicating comprehensive knowledge and understanding of the relevant materials; demonstration of an outstanding level of academic achievement; mastery of skills*; and achievement of all assessment objectives.
75-84	Distinction (D)	Excellent standard indicating a very high level of knowledge and understanding of the relevant materials; demonstration of a very high level of academic ability; sound development of skills*; and achievement of all assessment objectives.
65-74	Credit (C)	Good standard indicating a high level of knowledge and understanding of the relevant materials; demonstration of a high level of academic achievement; reasonable development of skills*; and achievement of all learning outcomes.
50-64	Pass (P)	Satisfactory standard indicating an adequate knowledge and understanding of the relevant materials; demonstration of an adequate level of academic achievement; satisfactory development of skills*; and achievement of all learning outcomes.
0-49	Fail (FF)	Failure to satisfactorily achieve learning outcomes. If all compulsory course components are not completed the mark will be zero. A fail grade may also be awarded following disciplinary action.

*Skills are those identified for the purposes of assessment task(s).

Late Submissions

The mark for an assessment item submitted after the designated time on the due date, without an approved extension of time, will be reduced by 10% of the possible maximum mark for that assessment item for each day or part day that the assessment item is late. Note: this applies equally to week and weekend days.

Communication Methods	Communication methods used in this course include: Canvas (announcements, emails, comments), UoN email, and face-to-face.
Course Evaluation	Each year feedback is sought from students and other stakeholders about the courses offered in the University for the purposes of identifying areas of excellence and potential improvement.
Oral Interviews (Vivas)	As part of the evaluation process of any assessment item in this course an oral examination (viva) may be conducted. The purpose of the oral examination is to verify the authorship of the material submitted in response to the assessment task. The oral examination will be conducted in accordance with the principles set out in the Oral Examination (viva) Procedure . In cases where the oral examination reveals the assessment item may not be the student's own work the case will be dealt with under the Student Conduct Rule .
Academic Misconduct	All students are required to meet the academic integrity standards of the University. These standards reinforce the importance of integrity and honesty in an academic environment. Academic Integrity policies apply to all students of the University in all modes of study and in all locations. For the Student Academic Integrity Policy, refer to https://policies.newcastle.edu.au/document/view-current.php?id=35
Adverse Circumstances	<p>The University acknowledges the right of students to seek consideration for the impact of allowable adverse circumstances that may affect their performance in assessment item(s). Applications for special consideration due to adverse circumstances will be made using the online Adverse Circumstances system where:</p> <ol style="list-style-type: none">1. the assessment item is a major assessment item; or2. the assessment item is a minor assessment item and the Course Co-ordinator has specified in the Course Outline that students may apply the online Adverse Circumstances system;3. you are requesting a change of placement; or4. the course has a compulsory attendance requirement. <p>Before applying you must refer to the Adverse Circumstance Affecting Assessment Items Procedure available at: https://policies.newcastle.edu.au/document/view-current.php?id=236</p>
Important Policy Information	The 'HELP for Students' tab in UoNline contains important information that all students should be familiar with, including various systems, policies and procedures.
Wellness Contacts	<p>There are a variety of pressures on law students, and being able to perform well academically under pressure, without excessive stress will contribute to enhanced outcomes in wellbeing and academic results. Reach out to support services and learn ways to maintain your mental health, deal with stress and common issues like perfectionism, procrastination and anxiety.</p> <p>To access UON support: https://www.newcastle.edu.au/current-students/support/personal Ph: 4921 6622 or email: counselling@newcastle.edu.au</p> <p>For support outside of office hours call the University Crisis Support Line on 1300 653 007 or for chat SMS 0488 884 165.</p> <p>For immediate support contact Lifeline 24/7 on 13 14 11 or https://www.lifeline.org.au/</p>

This course outline was approved by the Head of School. No alteration of this course outline is permitted without Head of School approval. If a change is approved, students will be notified and an amended course outline will be provided in the same manner as the original.

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