

# Law subjects

## Subject descriptions

Note: Assignments may be problems, essays, papers, memorials or any other kind of work as indicated when announced. Where students are allowed to choose their own topics, these must be approved by the lecturer concerned. Assignments must be submitted in duplicate to the Faculty of Law Undergraduate Studies office by 4.30 pm on the due date.

Note: The Faculty of Law reserves the right to cancel any optional subject in which there is a low level of enrolment.

Note: LLB subjects are not available to students studying non-LLB courses.

## Compulsory subjects

### 730-111 Legal Method and Reasoning

**Credit points:** 12.5

**Coordinator:** TBA

**Prerequisites:** None.

**Corequisites:** Principles of Public Law or equivalent.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 1*).

**Description:** The subject uses Torts 'Case Studies' to introduce students to the Australian legal system, major sources of Australian law and a number of foundational legal skills. The Case Studies explore the social context in which several significant legal principles evolve and interact, with particular emphasis placed on substantive personal injury law and the tort of negligence. Other areas of law - for example, aspects of contract law - are briefly considered. Case Studies are selected from among the following:

- How to Read a Case and the Development of a Common Law Principle: Mum to Foetus - Duty of care?
- The establishment of a Legal Principle: Standard of Care at Common Law and under Statute
- The Interaction of Statutes and the Common Law: Professional Responsibility in Negligence in the Medical Context
- The Interaction of Different Legal Regimes: Grievances Against Medical Practitioners - Beyond Negligence
- The Creation of a 'Strict Liability' Statutory Action: Product Liability and Legal Regulation - Beyond Negligence
- The Interaction of Statutes and the Common Law: Damages Assessment: How much are we worth?
- Torts and the Family.

**Assessment:** Two pass/resubmit Skills Assignments (hurdle requirements - due week 4 and week 10), a written assignment of 1500 words 50% (due week 8) and a final open-book examination two hours 50%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Wrongs Act 1958, (*Vic*), latest reprint. • P Butt, P Nygh et al, *Butterworths Concise Australian Legal Dictionary (3rd edition)*, 2004.

### 730-112 Principles of Public Law

**Credit points:** 12.5

**Coordinator:** Ms J Peel & Dr P Nicholson

**Prerequisites:** None.

**Corequisites:** Legal Method and Reasoning or equivalent.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 1*).

**Description:** The subject addresses the following fundamental questions of public law:

- How does law establish and regulate state power? How does law establish and regulate relations between countries?
- What historical influences shaped the current arrangements in Australia? How have different histories led to different results elsewhere?
- What underlying principles shaped the current arrangements in Australia? How have different principles led to different results elsewhere?

It introduces students to the histories, theories, institutions, concepts and principles of domestic public law (in particular Australian public law) and international public law. It provides a foundation for Constitutional Law and Administrative Law, while ensuring that all LLB students are familiar with an essential core of International Law. Topics include:

- Introduction:
  - What are the State and public law?
  - How have the State, public law and the concept of constitutionalism evolved?

- What are the sources of public law?
- Institutions and Structures:
  - Public law principles including the rule of law, representative and responsible government, constitutional conventions, parliamentary sovereignty, the separation of powers and federalism
  - The Legislature
  - The Executive
  - The Judiciary
  - The United Nations
- People and peoples:
  - Australian independence
  - The people and their relationship to the State
  - Law, morality and human rights
  - Anglo-Australian law and indigenous law.

**Assessment:** An online skills exercise (hurdle requirement - due during the first half of semester), a piece of legal writing 2000 words 50% (due week 8) and a final open-book examination two hours 50%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-113 Dispute Resolution

**Credit points:** 12.5

**Coordinator:** Professor C Cameron

**Prerequisites:** Legal Method and Reasoning or equivalent.

**Contact:** Estimated total time commitment of 144 hours. Includes four contact hours per week (*Semester 1, repeat 2*).

**Description:** This subject will introduce students to the theory and practice of dispute resolution. Students will appreciate that many conflicts never become disputes, that many disputes are never litigated, and that many civil cases in which proceedings are commenced are settled without a trial or judgement. The reasons for these various outcomes will be considered. The main stages of the civil litigation process will be analysed, and students will acquire understanding of how adversarial processes work. The essential features of negotiation, mediation, arbitration and other primary dispute resolution options will also be considered. Topics will include:

- the nature of disputes;
- theories of disputing behaviour;
- the similarities and differences between dispute avoidance, prevention, management and resolution;
- the historical development of dispute resolution processes;
- cross-cultural perspectives of dispute resolution processes;
- the stages in the conduct of a civil action, from commencing and defending proceedings to resolution; and
- the relationship between dispute resolution processes, access to justice and law reform.

**Assessment:** Dispute Resolution Skills Exercise 1250 words 10% (due week 5), a written assignment 2250 words 20% (due week 9) and a final open book examination two hours 70%

**Prescribed texts:** Printed materials will be issued by the Faculty of Law

Hunter, Cameron and Henning, *Litigation: Evidence and Procedure (Volume 1)*, Lexis-Nexis Butterworths 2005. • Astor and Chinkin, *Dispute Resolution in Australia (2nd edition)*, LexisNexis Butterworths 2002. • Supreme Court, (*General Civil Procedure*), Rules 2005.

### 730-114 Torts

**Credit points:** 12.5

**Coordinator:** TBA

**Prerequisites:** Legal Method and Reasoning or equivalent.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 2*).

**Description:** This subject considers several private law actions that are classified as torts. It develops and builds upon the skills acquired in 'Legal Method and Reasoning' and continues that subject's examination of substantive legal principles associated with personal injury law. This subject explores statutory regimes as well as common law principles.

The torts selected for study - including assault and battery, property-related torts and negligence - demonstrate different kinds of conduct that can lead to liability. This conduct ranges from intentional acts to careless conduct to strict liability (discussed in detail 'Legal Method and Reasoning'). By exploring the tort of negligence in detail, students consider tortious conduct that is characterised as "careless". Avenues for reform and an evaluation of commentators' views are included in this examination. Topics relevant to the tort of negligence include the following:

- duty to take care;
- the standard of care, and breach of duty;

- causation, legally recognised damage and remoteness of harm;
- defences;
- alternative forms of accident compensation;
- wrongful death - a separate statutory action;
- vicarious liability - relevant to several torts;
- concurrent liability.

**Assessment:** Research assignment 1500 words 50% (due week 7) and a final open-book examination two hours 50%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Luntz H & Hamblly D, *Torts: Cases and Commentary*, 5th ed. 2007 and updated 2007 CD Rom. • Wrongs Act, 1958, (Vic) latest reprint.

### 730-212 Legal Theory

**Credit points:** 12.5

**Coordinator:** Associate Professor P Rush

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week and occasional common lectures (*Semester 1*).

**Description:** Legal Theory offers an introduction to the practice of theorising the place and role of law within Australia and contemporary society and culture. The subject is formulated around central questions in jurisprudence with specific concepts and their analysis being developed by reference to the traditions of legal theory and by reference to contemporary issues. The teaching of the subject is structured around a set of questions or topics that are integral to the study of law. The questions or topics include:

- Interpretation and the rule of law
- Theories of justice
- Theories of sovereignty and modern rule
- The nature and importance of the text to law
- The formation of the subject of law

In any offering of the subject, examples will be drawn from the amongst the following issues:

- The regulation of refugees and asylum seekers
- " The Eichmann trial "
- Anti-terrorism anxieties and legislation
- Graffiti
- the prominence of the statute
- the form and the writ system
- television
- citizenship and human rights
- legal education
- indigenous experiences of sovereignty and law

**Assessment:** Research assignment 2000 words 50% (due in week 10 of semester), a topic outline of the research assignment assessed on a pass/resubmit basis (hurdle requirement - due week 6) and a final closed-book examination two hours 50%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

**Recommended texts:** Davies M, *Asking the Law Question (2nd ed.)*, Law-Book Co. 2002.

### 730-213 Obligations

**Credit points:** 12.5

**Coordinator:** Professor A Robertson

**Prerequisites:** Legal Method and Reasoning; Torts or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 1*).

**Description:** The subject involves a study of the foundations of the law of obligations, structured around the organising principles of consent, wrongs and unjust enrichment. Topics will include:

- the nature of private law obligations and the relationship between obligations and property;
- the nature and foundations of contractual obligations;
- the formation of contracts (the requirements of agreement, consideration, intention to create legal relations, certainty and capacity);
- formalities and the creation of equitable interests in property;
- privity (by whom and against whom contractual obligations are enforceable);
- statutory wrongs (focusing on misleading or deceptive conduct in trade or commerce);

- equitable wrongs (the nature of equity, the principles of estoppel and fiduciary obligations and the creation of equitable interests in property);
- unjust enrichment (the nature of the law of restitution, money claims, claims in respect of services and defences)

**Assessment:** A 2000-word mid-semester take home examination to be completed over four days 40% (due week 6), a reflective essay 1000 words 20% (due week 12) AND a final two hour (reading time 15mins) open-book examination 40%

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Paterson, Robertson & Heffey, *Contract: Cases and Materials*, (10th ed., 2005).

### 730-214 Constitutional Law

**Credit points:** 12.5

**Coordinator:** Sem 1 - Dr K Walker Sem 2 - Dr S Evans

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 1, repeat 2*).

**Description:** This subject continues the analysis of the laws establishing and regulating the Australian state that began in 'Principles of Public Law' and will continue in 'Administrative Law.' It is structured around the fundamental principles of Australian public law - constitutionalism, representative democracy, the separation of powers, federalism and individual rights - and uses them to examine more closely the institutions of Australian government - the courts, legislatures and the executive. (The examination of the executive branch and the principles of responsible government are taken further in Administrative Law). Topics covered include:

- introduction to Australian constitutions and to constitutional law;
- representative democracy:
  - composition, powers and procedures of Australian parliaments and their constituent chambers;
  - political rights and freedoms;
- separation of powers:
  - legislature and executive;
  - judicial power;
- Australian Federalism:
  - key features of the Australian federation;
  - inconsistency of Commonwealth and State law;
  - the federal division of legislative power, including the scope of state legislative power and, in relation to federal legislative power, types of power, interpretation, characterisation, incidental power, selected heads of power for detailed study;
  - the federal division of executive power;
  - the federal division of judicial power including the concept of federal jurisdiction;
  - governmental and inter-governmental immunities: Statutory interpretation and constitutional principles;
  - economic union: finance, trade and free movement in the Australian federal system;
- express rights and freedoms.

**Assessment:** An on-line skills exercise (hurdle requirement - due in the first half of semester), a research essay 2500 words 40% (due in week 8) and a final open-book examination two hours 60% OR presentation of a 20 minute oral argument with written outline of comments (presentation weeks 8 & 9 of semester and written outline due week 8) 40% and a final open book examination three hours 60%

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Blackshield & Williams, *Australian Constitutional Law and Theory: Commentary and Materials*, Federation Press 4th ed. 2006 (abridged edition).

### 730-215 Contracts

**Credit points:** 12.5

**Coordinator:** Associate Professor F Ellinghaus

**Prerequisites:** Legal Method and Reasoning; Torts; Obligations or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 1, repeat 2*).

**Description:** This subject entails study of (a) the content of contracts, (b) invalidating factors, and (c) the termination of contracts. The study of content includes incorporation and interpretation of express and implied terms. The study of invalidating factors includes misinformation (mistake, misrepresentation, misleading conduct); abuse of power (duress, undue influence, third party impropriety, unconscionable dealing, unconscionable conduct); and

illegality. The study of termination includes termination for breach, for failure of condition, by frustration, and by consent.

**Assessment:** A take home examination 1500 words 30% (due week 6) and a final open-book examination two hours 70%

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Ellinghaus, *Australian Cases on Contract*, 2007 ed. Code Press.

### 730-365 Administrative Law

**Credit points:** 12.5

**Coordinator:** Ass Prof B Gaze

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Constitutional Law or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 1, repeat 2*).

**Description:** Administrative Law regulates the relationship between the state and its people, in other words, the relationship between the government and the governed. In particular, it regulates the powers and procedures of the executive branch of government and establishes the mechanisms for ensuring legality, transparency and accountability in executive decision-making. This subject completes the core curriculum's examination of the legal framework of government in Australia. Topics include:

- Introduction:
  - development of executive government and administrative law;
  - identifying and interpreting sources of executive power: constitutions, prerogative, common law, statute, guidelines, policies;
  - scope of executive power, including the federal division of power;
  - types of executive power, including the concept of discretion;
  - the functions of administrative law in regulating executive power;
- accountability for the exercise of executive power:
  - making and scrutiny of delegated legislation;
  - access to information;
  - reasons for Administrative decisions;
  - non-adjudicative review: parliament, the ombudsman and others;
  - tribunals and merits review;
- judicial review of administrative decisions:
  - avenues of judicial review:
    - Commonwealth decisions: the ADJR Act: the *Constitution*; and the *Judiciary Act*;
    - state decisions: 056 statutory 'appeal' provisions and the *Administrative Law Act*;
  - judicial review procedure;
  - standing and accessibility;
  - jurisdictional error;
  - judicial review grounds;
  - remedies and the effect of flawed decisions;
  - excluding/limiting judicial review;
- administrative law in an era of privatisation and outsourcing.

**Assessment:** An online Skills Assignment (hurdle requirement - due in the first half of the semester), a written assignment 2500 words 40% (due week 8) and a final open-book examination three hours 60%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Creyke & McMillan, *Control of Government Action*, LexisNexis, 2005.

### 730-341 Property I: Concepts and Principles

**Credit points:** 12.5

**Coordinator:** Dr J Beard

**Prerequisites:** Torts and the Process of Law I and II; History and Philosophy of Law I and II; Contracts I and II.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 1*).

**Description:** Topics include: the concept of property; the nature, creation, acquisition, disposal, enforceability of property interests in land and goods; possession, ownership, native title, tenure, estates, equitable interests, security interests, joint and common ownership, profits a prendre, easements, restrictive covenants and fixtures, Crown title, Crown powers to deal with land; and licences to use property.

**Assessment:** Written exercise 1500 words 25% (due week 6) and a final open-book examination three hours 75% OR a written exercise 1500 words 25% (due during the examination period) and a research essay 3000 words 75% (due final week of semester).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Sackville & Neave, *Property Law Cases and Materials*, 7th edn, 2004. • Act, *Limitations of Actions Act (Vic)*, 1958. • Act, *Transfer of Land Act 1958*, (Vic).

### 730-342 Property II: Acquisition and Dealings

**Credit points:** 12.5

**Coordinator:** Dr J Beard

**Prerequisites:** Torts and the Process of Law I and II; History and Philosophy of Law I and II; Contracts I and II; Property I: Concepts and Principles.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 2*).

**Description:** Topics include: land tenure; the acquisition, disposal, enforceability, priority, and registration of property interests in law and equity in land; the Torrens land registration system; and legal and equitable remedies.

**Assessment:** Written exercise 1500 words 25% (due week 6) and final examination three hours 75%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Sackville & Neave, *Property Law Cases and Materials*, 7th edn, 2004. • Act, *Transfer of Land Act (Vic)*, 1958.

### 730-366 Property

**Credit points:** 12.5

**Coordinator:** Sem 1-Associate Professor M Tehan 2-TBA

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Obligations; Contracts or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes four contact hours per week (*Semester 1, repeat 2*).

**Description:** This subject introduces students to the conceptual framework for understanding the principles of real and personal property and examines the role of law in defining and regulating proprietary relationships. The major substantive focus is on Australian land law. Topics include: the concept of property including possession, ownership and indigenous land interests; the boundaries of property including fixtures and licences to use property; the history of Australian land law; Crown title; Crown powers to deal with land; tenure; estates; security interests; joint and common ownership; profits a prendre; easements; restrictive covenants; the nature, creation, acquisition, disposal, enforceability and registration of property interests in land, especially under the Torrens land registration system; formalities; equitable and legal priorities under the Torrens Land Registration system.

**Assessment:** A written exercise 1500 words 25% (due week 9) and a final open-book examination three hours 75% OR a written exercise 1500 words 25% (due during the examination period) and a research essay 3000 words 75% (due during the examination period).

**Prescribed texts:** Printed Materials will be issued by the Faculty of Law Edgeworth B, Rossiter CJ & Stone MA, *Sackville and Neave Property Law: Cases and Materials (7th edition)*, LexisNexis-Butterworths 2004. • Act, *Transfer of Land Act 1958*, (Vic).

### 730-462 Equity and Trusts

**Credit points:** 12.5

**Coordinator:** TBA

**Prerequisites:** Torts and the Process of Law I and II; History and Philosophy of Law I and II; Contracts I and II; Property I: Concepts and Principles; Property II: Acquisition and Dealings.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour lectures per week (*Semester 1*).

**Description:** Topics include the concept of the trust and its contemporary applications; the distinction between trusts, trust powers and powers; the nature of equity and its history (in outline); a comparison of the trust with other fiduciary relationships; the principles governing the creation of express trusts; the role of public policy in the creation and enforcement of trusts; the principles governing the recognition of trusts for charitable purposes; an analysis of resulting and constructive trusts; the duties of trustees, with special reference to the duty to invest; and remedies for breach of trust, with special reference to the distinction between personal and proprietary remedies.

**Assessment:** Final open-book examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

**Recommended texts:** Heydon & Loughlan, *Cases and Materials on Equity and Trusts (6th edition)*, Butterworths 2002. • Dal Pont, Chalmers and Maxton, *Equity and Trusts: Commentary and Materials (3rd edition)*, Law Book Co. 2004.

### 730-367 Trusts

**Credit points:** 12.5

**Coordinator:** TBA

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Obligations; Contracts; Property or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 2*).

**Description:** This subject allows students to develop an understanding of the law of trusts, including: the concept of the trust and its contemporary applications; the distinction between trusts, trust powers and powers; a comparison of the trust with other fiduciary relationships; the principles governing the creation of express trusts; the role of public policy in the creation and enforcement of trusts; the principles governing the recognition of trusts for charitable purposes; an analysis of resulting and constructive trusts; equitable interests in land; the duties of trustees, with special reference to the duty to invest; and remedies for breach of trust, with special reference to the distinction between personal and proprietary remedies.

**Assessment:** Final open-book examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-368 Criminal Law and Procedure

**Credit points:** 12.5

**Coordinator:** TBA

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week and five 1-hour optional guest lectures (*Semester 1*).

**Description:** The subject studies the legal categories, judicial culture, and socio-historical contexts through which the contemporary attribution of criminal responsibility takes place. The topics covered include: theories of criminal law and the role of criminal law in society; the formal structure of substantive criminal law; the institutional arrangements of criminal procedure and their respective rationales; the law of homicide (murder and manslaughter); the law of non-fatal offences (including sexual offences) against the person; the law of the defences (examples may include self-defence, intoxication, necessity); the law of offences against; the law relating to strict and absolute liability offences; the law of complicity and attempts; and the law of criminal procedure.

Throughout each of these topics, the emphasis is on both the theories and the practices of criminal law.

**Assessment:** Compulsory non-assessed group court visit and report to class, compulsory non-assessed mid-semester test and a final open-book examination three hours 100%.

**Prescribed texts:** Students will be advised by lecturers in their respective stream to purchase one of the following:

Rush & Yeo, *Criminal Law Sourcebook*, 2nd ed. OR • Williams & Waller, *Criminal Law: Text and Cases*, 10th ed.

### 730-453 Remedies

**Credit points:** 12.5

**Coordinator:** Associate Professor A Robertson

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Obligations; Contracts; Property

**Corequisites:** Trusts

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 2*).

**Description:** This subject involves a study of the nature, goals and structure of private law remedies and is organised around the remedial goals of compensation, coercion, restitution and punishment. Topics will include:

- compensation (damages for breach of contract; compensatory remedies under the Trade Practices Act; compensation and damages in equity);
- coercion (specific performance and injunctions);
- restitution (the measure of restitution, rescission, account of profits, equitable proprietary remedies);
- punishment in private law (aggravated and exemplary damages).

**Assessment:** Final open-book examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Tilbury, Noone & Kercher, *Remedies: Commentary and Materials*, 4th ed. 2004.

### 730-454 Legal Ethics

**Note:** Students who have completed 730-112, 730-410, 730-383 or 730-455 are not eligible to enrol in this subject.

**Credit points:** 12.5

**Coordinator:** Ms L Haller

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Dispute Resolution; Obligations or in each case their equivalents.

**NOTE:** For Graduate LLB students (three-year program) Torts will be a corequisite. The Obligations prerequisite will be waived.

**Contact:** Estimated total time commitment of 144 hours (*Semester 2*).

**Description:** Legal Ethics is a practical and critical introduction to ethical decision-making for lawyers. The subject has two main components. Firstly, it introduces different moral approaches to legal ethics, focusing on the justifications for and criticisms of the traditional adversarial advocate approach and alternatives to it. Students will be expected to be able to apply the different moral approaches to fact scenarios and to be able to articulate and explain which approach/es they find most convincing for each scenario and why. Secondly, the course examines the way that lawyers' ethics and conduct are regulated including the co-regulatory disciplinary process, the professional conduct standards that regulate lawyers including those relating to conflicts of interest, confidentiality and duties owed to the court and the general law of lawyering, including obligations in equity, contract and tort as well as procedural obligations in litigation. Students will be expected to be able to identify and resolve ethical issues that arise in legal practice using the professional conduct rules and law of lawyering. Students will also be expected to be able to critically assess the way lawyers' ethics are regulated by these rules against different moral approaches to legal ethics. Finally, the principles of trust accounting are taught and assessed as part of this course.

**Assessment:** Ethics Exercise 2000 words 40% (due week 6) and a take-home examination of 3000 words 60% (to be held over five days in week 10 of semester). Students will be required to complete a 1.5 hour open-book Trust Accounting Examination. This will be marked on a pass/fail basis.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law

### 730-455 Legal Ethics in Context

**Note:** Students who have completed 730-112, 730-410, 730-383 or 730-454 are not eligible to enrol in this subject.

**Credit points:** 12.5

**Coordinator:** Dr Christine Parker

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Dispute Resolution; Obligations or in each case their equivalents.

**NOTE:** For Graduate LLB students (three-year program) Torts will be a corequisite. The Obligations prerequisite will be waived.

**Contact:** Estimated total time commitment of 144 hours. To be taught Intensively (*Not Offered*).

**Description:** Legal Ethics in Context is offered from time to time, is taught in intensive mode by visiting scholars and, when offered, serves as an alternative to the usual subject. Legal Ethics 730-454. Please check at the Undergraduate Studies Office for information regarding when Legal Ethics in Context is likely to be offered.

When offered, Legal Ethics in Context will serve as a practical and critical introduction to ethics decision-making for lawyers in the context of a particular practice context such as Criminal Practice, Public Interest Advocacy, Dispute Management, Corporate and Commercial Practice and Government Lawyering. The subject will always cover core material on legal ethics and professional conduct including (a) different moral approaches to legal ethics, focusing on the justifications for and criticisms of the traditional adversarial advocate approach and alternatives to it; (b) the way that lawyers' ethics and conduct are regulated including the co-regulatory disciplinary process, the professional conduct standards that regulate lawyers including those relating to conflicts of interest, confidentiality and duties owed to the court, and the general law of lawyering including obligations in equity, contract and tort as well as procedural obligations litigation and (c) the principles of trust accounting. The core material will be supplemented and contextualised by reference to one particular practice context from the list above (or similar). The practical context studies will vary from year to year and possibly by stream. Students will focus on the ethical and professional conduct issues raised by that particular practice context, and the practical skills necessary for ethical practice in that context.

**Assessment:** Ethics Exercise 2000 words 40% (due week 6), and take-home examination 3000 words 60% (to be held over five days in week 10 of semester). In addition, students will be required to complete a 1.5 hour open-book Trust Accounting Examination. This will be marked on a pass/fail basis.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

## Optional subjects

### 730-411 Advanced Administrative Law

**Credit points:** 12.5

**Coordinator:** TBA

**Prerequisites:** Principles of Public Law; Constitutional Law; Administrative Law or in each case their equivalents.

**Contact:** Estimated total time commitment 136 hours. Includes two-hours per week attendance at a tribunal hearing of the Commonwealth Administrative Appeals Tribunal or the Victorian Civil and Administrative Tribunal (*Not Offered*).

**Description:** Advanced Administrative Law builds upon the foundation material studies in the compulsory administrative law classes. It seeks to extend students understandings of the theoretical issues underlying the exercise of public power and the way those theories operate in the practice of administrative law. Topics include an introduction to the theoretical issues underlying administrative law, the role of the State, the governmental structures that influence the administrative law system, the principles of good administration and the protection of individual rights. An examination then follows of the nature of discretionary decision-making, and theories of decision-making; practical applications of the theories; the requirement of giving reasons for decisions; freedom of information legislation, both Commonwealth and State and internal and external review of decisions, including the administrative appeals mechanisms; a theoretical review of judicial review; the practice of judicial review, with special reference to the Commonwealth experience; principles expressed in judicial review, including procedural fairness; public law issues such as justifiability, standing and rule-making; and the public/private divide.

**Assessment:** Reflective essay 3500-4500 words (due end of semester) 60% and journal report 1500-3000 words (due mid semester) 40%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-416 Advanced Constitutional Law

**Credit points:** 12.5

**Coordinator:** Dr S Evans

**Prerequisites:** Torts; Principles of Public Law; Constitutional Law; Administrative Law or equivalents.

**Contact:** Estimated total time commitment 144 hours. Includes one 2-hour lecture per week and one 1-hour lecture/presentation per fortnight (*Not Offered*).

**Description:** This subject is about some of the fundamental questions of Australian constitutional law that the High Court has been grappling with in recent years: How do the elements of the Commonwealth fit together to form the Australian nation? And what rights do people in Australia have?

These topics have been chosen to enable students to focus on the most relevant, current and challenging aspects of Australian Constitutional Law. They offer students the chance to deepen and broaden their understanding of Australian constitutional law beyond the core topics covered in Constitutional and Administrative Law. The subject will also include guest lectures from constitutional practitioners and/or judges. It will develop students' practical skills in preparing written advice in constitutional matters, presenting oral argument in constitutional matters and writing outlines of argument in constitutional matters. The principle topics covered will include:

- the constitutional relationship between states, territories and the Commonwealth:
  - the states;
  - the territories;
  - the common law and the Constitution;
  - extraterritoriality and conflicts of laws within Australia;
  - intergovernmental immunities;
  - discrimination and equal treatment;
- the constitutional relationship between governments and people:
  - discrimination and equal treatment;
  - popular sovereignty;
  - citizenship;
  - implied political rights;
  - express rights;
  - due process and the rule of law.

**Assessment:** Written opinion in a constitutional matter 2500 words 50% (due week 9) AND either one written outline of an argument on a constitutional matter 2500 words 50% (due at the start of the examination period) or a one-page skeleton outline of argument and presentation of 20-minute oral argument in a constitutional matter 50% (during the examination period).

**Prescribed texts:** *The Commonwealth Constitution*, (Cth) Australian Government Publishing Service.

### 730-415 Advanced Criminal Law

**Credit points:** 12.5

**Coordinator:** Associate Professor D Wood

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Criminal Law and Procedure or equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes two 2-hours seminars per week (*Semester 1*).

**Description:** The subject is text-based, concentrating on recent articles and books on criminal law. The selection will vary from year to year. Printed materials will be provided where necessary.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 4000-5000 words 100%. Prerequisite of class presentation based on essay, and attendance at half of classes.

**Prescribed texts:** None.

### 730-312 Advanced Legal Concepts

**Credit points:** 12.5

**Coordinator:** Associate Professor D Wood

**Prerequisites:** Legal Method and Reasoning; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes two 2-hour seminars per week (*Not Offered*).

**Description:** The subject draws on developments in the theory of separate doctrinal areas over the past two or three decades, such as the theory of tort, contract, crime, property and administrative law. Recent cross-doctrinal theoretical work has been dominated by law and economics scholars, but there is now a much broader input from philosophers, sociologists, organisational theorists and other social scientists.

The aim is to examine various central concepts and the connections between them. The selection will vary from year to year. Typical concepts are: harm wrongfulness, fault, responsibility, causation, liability, punishment, regulation, restitution, compensation, negligence, intention, fraud and moral luck.

One major theme is the interrelation between different branches of the law, and more generally, the claimed distinction between private and public law. Another major theme is the conflict between economic, justice and other types of explanations of different branches of the law, and the problems these explanations raise. No in depth knowledge of any doctrinal area of law is presupposed.

**Assessment:** Research essay, topic to be selected in consultation with the lecturer, 5000 words in length (due end of semester) 100%. Attendance at at least 75% of classes is a hurdle requirement.

### 730-261 Advanced Legal Philosophy

**Credit points:** 12.5

**Coordinator:** Associate Professor D Wood

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes four contact hours per week (*Not Offered*).

**Description:** The subject concentrates on recent articles and books. The selection will vary from year to year. Printed materials will be provided where necessary.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay, topic to be selected in consultation with the lecturer, between 4000-5000 words in length. Prerequisite of class presentation based on essay, and class attendance in at least 50% of scheduled classes is required.

**Prescribed texts:** None.

### 730-108 Advanced Legal Research

**Credit points:** 12.5

**Coordinator:** Associate Professor D Wood

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Students should keep in regular contact with their supervisors. There are no formal classes. However, students are encouraged to attend lunch-time seminars on research techniques and methods (*Semester 1, repeat 2*).

**Description:** The subject includes study of a selected area of law at an advanced level; the subject allows the student to engage in self-directed research, subject to the supervision of a member of staff with expertise in the student's field of inquiry.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research assignment of 4500-5000 words 100%.

Option to undertake a 10 000-word essay as the assessment for this and one additional 12.5-point optional subject where this subject has a 100% assessment based on a research assignment. The approval of the subject coordina-

tors in both subjects is required. Students may take this option in one semester or over two semesters, in the current academic year.

**Prescribed texts:** None.

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### 730-118 Advanced Legal Research (Year)

**Credit points:** 25

**Coordinator:** Associate Professor D Wood

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 240 hours. Students should keep in regular contact with their supervisors (*Year long*).

**Description:** The subject includes study of a selected area of law at an advanced level; the subject allows the student to engage in self-directed research, subject to the supervision of a member of staff with expertise in the student's field of inquiry.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** 10 000-word research assignment 100%. The approval of the subject coordinator is required.

**Prescribed texts:** None.

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### 730-420 Advocacy

**Note:** This subject has a quota of 48 students.

**Credit points:** 12.5

**Coordinator:** Ms J Horan

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

Students who have completed 730-385 Evidence or 730-457 Evidence and Proof will have first preference to enrol in this subject. Students who are taking 730-385 Evidence or 730-457 Evidence and Proof will have second preference to enrol in the subject.

**Contact:** Five 2-hour lectures, three performance workshops each of approximately 3.5 hours duration (*Semester 1, repeat 2*).

**Description:** This is a limited enrolment subject in which students will receive intensive exposure to and experience of the theory and practice of court room advocacy. The aim of this subject is to introduce students to practical aspects of litigation including the nature of the adversary process and the role of the advocate, to provide students with an introduction to basic advocacy skills in the context of a trial including presentation, strategies and conceptualisation of a case (how the case will be run), opening and closing address, examination in chief, cross examination, general communication skills; and to provide students with the opportunity of applying those skills in a series of performance workshops.

**Assessment:** Each assessment task will involve students performing a series of advocacy skills: lead evidence in chief; cross examination; deliver and address (either and opening or closing). These tasks will be assessed on the basis of conceptualisation, preparation and communication. Students are required to present a summary of their oral submission in written form. Each student will perform three 7-minute assessment tasks (chief, cross, examination, address), each of which has equal weight (33.3%) and each of which is assessed according to the 40:40:20 scheme set out as follows: Oral Communication 40%; Conceptualisation 40%; Written submission 20%.

**Prescribed texts:** M Perry, *Hampel on Advocacy*; Leo Cussen Institute.

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### 730-467 Agency

**Credit points:** 12.5

**Coordinator:** Dr D Brennan

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Obligations; Contracts; Property or in each case their equivalents.

**Contact:** Estimated total time commitment of 100 to 126 hours. Includes one 2-hour seminar per week (*Not Offered*).

**Description:** Agency arises where one person (the agent) has the power to create legal relations between a person authorising that power (the principal) and another person (a third party). The law of agency plays a significant role throughout commercial law. The subject commences by situating agency both within the system of private law and within a framework of economic policy. From this foundation the subject allows students to develop an understanding of the fundamentals of the law of agency. Those fundamentals: how agency is established between principals and agents; what obligations arise between principals and agents; the nature relations between agents and third parties; the nature relations between principals and third parties; the existence of prominent agency cases (such as those involving corporations and real estate) and the means by which agency is terminated.

**Assessment:** Written problem-solving task 5000 words 100% (due end of semester). Students must complete a 500-word written outline of their pro-

posed answer to the problem-solving task by the end of the ninth week of teaching (hurdle requirement).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law. Simon Fisher, *Agency Law*, 2000, LexisNexis Butterworths.

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### 730-450 Australian Legal History

**Credit points:** 12.5

**Coordinator:** Mr J Waugh

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour seminar per week (*Not Offered*).

**Description:** This subject is a social and political history of Australian law. It explores the role of law in Australian history and the things that have made Australian law distinctive. It covers interconnected chronological themes: the law of colonisation and the convict system; law and the land, including sale and occupation of public land; the framework of government, federation and Australia's relationship to England; equality before the law in relation to gender, sexuality and race; law and state security, including defence and dissent; the law of work; and other topics exploring the characteristics of 19th and 20th century law. Sources and methods in legal history research are also covered.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

Note: Students wishing to complete a 10 000 word research paper may combine this subject with Advanced Legal Research (730-108), with the approval of both subject co-ordinators.

**Assessment:** Research essay 5000 words 100% (due end of semester) OR final examination three hours 100%.

**Prescribed texts:** None.

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### 730-389 Australian Bills of Rights

**Credit points:** 12.5

**Coordinator:** Dr S Evans - Dr C Evans

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Constitutional Law or in each case their equivalents.

**Contact:** Estimates total time commitment of 144 hours. Includes one 2-hour seminar per week (*Not Offered*).

**Description:** Australia has its first Bill of Rights, the ACT Human Rights Act 2004. The Victorian Government appears set to introduce a Charter of Rights and Responsibilities and three other states are actively considering introducing Bills of Rights. Experience from other countries with similar Bills of Rights suggests that these statutes have the potential to transform quite radically the way law is made, interpreted and applies in Australia. This subject will equip students with the knowledge and skills needed to understand, apply and critically assess these Bills of Rights and Human Rights Acts. Topics covered will include: History of Australian Bills of Rights and Human Rights Acts; Overseas models for Australian Bills of Rights and Human Rights Acts including the U.S.A., Canada, New Zealand, South Africa and the UK; Democratic theory and the bill of rights debate; Human rights in the policy process; Parliamentary scrutiny of human rights; Ministerial accountability for human rights; Interpreting legislation to be compatible with human rights; Consequences of legislation being incompatible with human rights; enforcing human rights and remedies for breach of human rights; Human Rights Commissions and related institutions and; entrenching and overriding human rights.

**Assessment:** Participation in a web-based discussion group. Students must submit a minimum of three posts and three responses to other posts totalling at least 1500 words 25% and a take home examination (due during the exam period) 75%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

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### 730-418 Business Taxation

**Credit points:** 12.5

**Coordinator:** Associate Professor A O'Connell

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory, Taxation or in each case their equivalents. Students will find it useful to have completed or be doing concurrently Corporate Law and Equity.

**Contact:** Estimated total time commitment of 120 hours. Includes one 2-hour seminar per week (*Not Offered*).

**Description:** Principles of Business Taxation will build on the core principles of Taxation in a business context. Topics covered will include the principles and policy relating to:

- business tax receipts and deductions;
- taxation of business assets trading stock, depreciable assets, revenue and capital assets of a business;

- Taxation of entities used for business and commercial activities, including partnerships, companies and trusts;
- business tax planning, ethics and anti-avoidance;
- other taxes affecting business.

**Assessment:** A one-hour open-book in-class test 20% (part way through semester) and a final examination three hours 80%. Where the mark for the final examination as a percentage is higher than the mark for the assignment as a percentage, the mark for the subject will be the percentage mark for the examination.

**Prescribed texts:** Deutsch, *Fundamental Tax Legislation*, (ATP, 2006), with CD-rom (or equivalent). • Kobetsky, O'Connell, Stewart, *Income Tax: Text Materials and Essential Cases*, Federation Press, 2005, 5th edition.

### 730-406 Children Rights and the Law

**Credit points:** 12.5

**Coordinator:** Mr J Tobin

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes one 2-hour seminar per week (*Semester 1*).

**Description:** This subject provides a critical examination of the relationship between children, human rights discourse and the law. It consists of two parts. Part A will explore the development of a rights-based approach to matters involving children and involves:

- a consideration of the historical relationships between children and the law
- an evaluation of the concept, theory and philosophy of children's rights; and
- an examination of the way in which domestic and international legal frameworks, principally the Convention on the Rights of the Child, have impacted on the status and treatment of children within society.

Part B will involve a discussion and consideration of contemporary issues concerning children by reference to a rights-based framework. It will explore and critique the content of the relevant legal frameworks and provide an analysis of the extent to which domestic law and policy is consistent with a rights-based approach to matters concerning children. The case studies to be covered will be drawn from areas such as: juvenile justice; child labour; youth homelessness; Indigenous children, culture and violence; child refugees; child prostitution and pornography; the relationship between childhood obesity, eating disorders and the media.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100% (due final day of semester).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-359 Commercial Law in Asia

**Credit points:** 12.5

**Coordinator:** Professor T Lindsey

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Obligations; Contracts or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 +/- 24 hours. Includes one 2-hour lecture per week (*Not Offered*).

**Description:** This subject will examine commercial regulation in at least three of the following Asian countries in the year that it is taught: China, Japan, Korea, Taiwan, Singapore, India, Indonesia, Malaysia, Thailand, the Philippines, East Timor and Vietnam. The subject will include a joint venture hypothetical, which will be expanded each week, to give students experience of managing an investment. The hypothetical is based on actual cases. There is no overlap in content between this subject and the faculty's complementary offerings in Asian law. No knowledge of Asia or Asian languages is assumed for this subject.

Topics covered in the subject will include Asian legal systems: an overview; historical origins, colonial and postcolonial legal orders, civil codes in an Asian setting and transplantation of the common law; current issues in contract and foreign investment regulations; civil procedure; commercial codes and corporate forms; issues in corporate governance, labour organisation and its regulation, competition policy; dispute resolution and reform of legal institutions: current issues in domestic and transnational legal practice; and regional and multilateral regulation affecting commercial transactions including WTO.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research assignment 5000 words 100% OR a final examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-364 Communications Law

**Credit points:** 12.5

**Coordinator:** Associate Professor A Kenyon

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Obligations; Contracts or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes one 3-hour seminar per week (*Not Offered*).

**Description:** Communications Law introduces students to the regulatory framework governing broadcasting and telecommunications in Australia. It focuses on selected topics within three broad areas: broadcasting, telecommunications and the internet. The regulatory frameworks covering these areas are examined in light of the historical policy goals of regulation, legal approaches to freedom of speech, and key works in the extensive literature from media studies and related fields outside law. Example topics include:

- overview of broadcasting, telecommunications and internet industries;
- traditional justifications for electronic communications regulation and legal approaches to speech;
- other disciplinary approaches to communications industries, audiences and regulation;
- self-regulatory models for communications;
- media ownership and control;
- content regulation and classification schemes;
- public broadcasting;
- digital broadcasting;
- access to telecommunications; and
- internet communications regulation.

Note: The research essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Reflective essay 1000 words 10% (due mid semester) and final examination three hours 90% OR reflective essay 1000 words 10% (due mid semester) and research essay 5000 words 90% (due during the examination period).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-346 Comparative Class Actions

**Credit points:** 12.5

**Coordinator:** Prof G Watson

**Prerequisites:** Legal Method and Reasoning; Contracts or in each case their equivalent. Students will find it advantageous to have studied Dispute Resolution.

Enrolment in this subject will be limited to a maximum of 25 students.

**Contact:** Estimated total time commitment of 96 hours. To be taught intensively over the summer period (*Summer semester*).

**Description:** A critical analysis of how various jurisdictions (including Australia) permit or encourage the aggregation of claims by multiple claimants, with an emphasis on class or group actions. The major focus will be the 'Lawyer entrepreneur' class action model adopted in Canada, the USA, Australia and Israel. This model will be compared with group action devices in use in the UK, Sweden and Brazil. Recurring issues will be: (i) how do we afford access to justice for individually no viable claims in the absence of class or group actions; (ii) can class or group action regimes not employing a 'lawyer entrepreneur' model effectively do the job, and; (iii) on balance, as they operate in practice, are class actions a 'good or a bad thing'? Topics to be covered include:

- An introduction and comparative overview
- The prerequisites for class action treatment
- Fee shifting and the 'downside risk' in class action litigation, and what to do about it
- The funding of class actions
- Settling class actions - the 'dark side' of the process
- The trial of class actions
- Aggregate litigation without using class actions: pros and cons
- Res judicata; national and international class actions; parallel and overlapping class actions
- Political and judicial activity aimed at curtailing class actions in the USA
- The attitudes of Australian and Canadian courts (and legislatures) to class actions

While this course is a comparative one, on the completion of it you will have a good understanding of how class actions operate in Australia and how they may develop in the future.

**Assessment:** Class participation and an in-class presentation 20% and a final open book examination three hours 80%

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

**730-440 Comparative Constitutional Law****Credit points:** 12.5**Coordinator:** Dr S Evans**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Constitutional Law; or in each case their equivalents.**Contact:** Estimated total time commitment of 120 hours. Includes one 2-hour of seminars per week (*Semester 2*).**Description:** This subject considers Australian constitutional law in a global context. It asks: What can Australian constitutional law learn from other countries' approaches to major constitutional issues? What can those countries learn from Australia and each other? And how should this comparative exercise be carried out? The issues to be examined will include: making new constitutions in post-conflict situations, the protection of human rights, citizenship and popular sovereignty, federalism, separation of powers, law making processes, and the relationship between constitutional law and private law. Comparisons will be made across a wide range of countries with diverse constitutional traditions, including Commonwealth, European, African and Asian countries as well as the USA.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** One 5000-word paper on a topic to be agreed with the lecturer 100% (due end of semester). The coordinator of the subject welcomes students wishing to complete a 10 000 word research assignment to enrol in the subject in conjunction with 730-108 Advanced Legal Research. Attendance in at least 75% of classes is a hurdle requirement.**Prescribed texts:** Printed materials will be issued by the Faculty of Law. Text TBC.**730-324 Competition Law****Credit points:** 12.5**Coordinator:** Dr C Beaton-Wells**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Obligations; Contracts or in each case their equivalents.**Contact:** Estimated total time commitment of 144 hours. Includes one 3-hour seminar per week (*Semester 1, repeat 2*).**Description:** Competition Law examines the way in which anti-competitive practices are regulated under the *Trade Practices Act 1974* (Cth). The substantive law of relevance is found in Part IV of the Act. The provisions in Part IV seek to promote competition and regulate market power. These objectives are pursued through the regulation of (i) anti-competitive arrangements; (ii) misuse of market power; (iii) exclusive dealing; (iv) resale price maintenance; and (v) mergers and acquisitions. Part IIIA establishes an 'access' regime that will be mentioned but is not considered in detail. Part XIB and XIC contain provisions specific to the telecommunications industry that are not studied in this subject. Economic principles and concepts are an integral part of the *Trade Practices Act*, but no prior knowledge of economics is assumed or required for the purposes of this subject.**Assessment:** Final examination three hours 100%.**Prescribed texts:** Printed materials may be issued by the Faculty of Law.Duns, Davison & Beaton-Wells, *Competition Law: Cases and Materials*, (2nd ed.) 2006 LexisNexis Butterworths.**730-441 Copyright, Patent and Allied Rights****Credit points:** 12.5**Coordinator:** Dr D Brennan**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Contracts; Obligations; Property or in each case their equivalents.**Contact:** Estimated total time commitment of 100-126 hours (non-contact time is estimated at two to three hours per week during the teaching period and 40-60 hours in total during the non-teaching periods). Includes one 3-hour seminar per week (*Semester 2*).**Description:** Copyright, patent and allied rights are legal rights which attach to intangible subject matter (such as creative works, industrial advances or secrets) and, reflecting their increased commercial significance, are fertile growth areas in private law. The subject commences by allowing students to situate these rights within the system of private law and to analyse them within a framework of economic and social policy. From this foundation the subject allows students to develop an understanding of the legal fundamentals of the rights examined. Those fundamentals are: subject matter protected by copyright; requirements for copyright protection; ownership and duration of copyright; direct and indirect infringement of copyright; exceptions and limitations to the exclusive rights of the copyright owner; protection of design; protection of confidential information; inherently patentable subject matter; construction of patent claims; the requirements of patentability; ownership

and duration of patent rights; transfer and exploitation of patent rights; and infringement of patents and defences to patent infringement.

**Assessment:** A written assignment 2000 words 50% (due mid semester) and a final open-book examination 2 hours 50%.**Prescribed texts:** Printed materials will be issued by the Faculty of Law.McKeough, Stewart & Griffith, *Intellectual Property Law in Australia*, 3rd edn, 2004, LexisNexis Butterworths.**730-413 Corporate Banking and Finance Law****Credit points:** 12.5**Coordinator:** Ms S Steele**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Contracts; Obligations; Property; Corporations Law or in each case their equivalents.**Contact:** Estimated total time commitment of 120 hours. Includes two contact hours per week (*Semester 2*).**Description:** Risk allocations between stakeholders in corporate financial transactions are driven by various legal considerations. An understanding of the fundamental legal issues underpinning any financial transaction is essential for a commercial lawyer to successfully advise banks, corporate borrowers and security providers. The subject begins with a brief overview of the legal risks relating to corporate financial transactions and the objectives of stakeholders in relation to those risks. In the second part of the subject, students will explore the key terms of financing transaction documents that attempt to allocate risk based around a debt finance case study. The third part of the subject will consider elements of risk management, including corporate authorisations, and the decision to take/give security. The fourth part of the subject deals with types of security commonly taken in Australia, in particular, fixed and floating charges and guarantees, and the risk that a borrower will fail to repay. Finally, we will briefly consider some of the legal aspects involved in intercreditor relations. Class discussion will include case studies and hypothetical problems designed to give students an opportunity to practice risk allocation in a legal context. This course complements Retail Banking and Finance Law. Although it is not necessary to enrol in both courses, students who have completed both subjects should have a good understanding of the foundations of retail financial services and corporate financial transactions**Assessment:** A three hour examination 100%.**Prescribed texts:** Printed Materials will be issued by the Faculty of Law Malleon Stephen Jacques, *Australian Finance Law*, 5th ed. 2003.**730-474 Corporate Criminal Law and Regulation****Credit points:** 12.5**Coordinator:** Dr D Blumenthal**Prerequisites:** Criminal Law and Procedure or equivalent.**Corequisites:** Corporations Law.**Contact:** Estimated total time commitment of 144 hours. Includes a minimum of three hours reading and note-taking in preparation for every 2-hour seminar, 50 hours minimum to research and write the essay and a 2-hour seminar per week (*Semester 1*).**Description:** This course will examine the operation of the criminal law within the corporate sphere. In Part 1 the broad social context of corporate and white collar crime will be considered. Part 2 will provide an overview of the theory and practice of corporate regulation in Australia, and will focus particularly on sentencing principles applicable to corporate and white collar criminals. Part 3 will examine in some detail the principles of corporate - as opposed to individual - criminal liability. In Part 4 a range of substantive white collar and corporate criminal offences will be examined for the purposes of illustrating the principles and the conceptual and practical problems outlined in the first parts of the course. This will include an analysis of Australia's insider trading laws, the proposed offence of corporate homicide, the challenges of tobacco litigation, and the problems associated with enforcing environmental laws in the era of globalisation.

Note: The essay in this subject will be regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100% (due final week of semester) OR a final open-book examination three hours.**Prescribed texts:** Printed materials will be issued by the Faculty of Law.**730-426 Corporate Governance in the Mod. Company****Credit points:** 12.5**Coordinator:** Professor G Stapledon**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Constitutional Law; Administrative Law; Contracts; Obligations; Property; Trusts; Corporations Law or in each case their equivalents.**Corequisites:** Equity and Trusts.

**Contact:** Estimated total time commitment of 120 +/- 24 hours. Includes one 2-hour seminar per week (*Semester 2*).

**Description:** Corporate governance is the system by which companies are directed and controlled. This subject focuses on corporate governance in publicly listed companies. Topics include theories of the corporation and their implications for corporate governance; the role of shareholders, directors, management and auditors in corporate governance, with particular emphasis upon the debates relating to the role of institutional shareholders and non-executive directors; the pay for performance debate; international corporate governance, with particular emphasis upon the United States, Japan, Germany and the United Kingdom; the role of regulators in corporate governance; and the role of market forces in corporate governance.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100% (due end of semester) OR final open-book examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-456 Corporations Law

**Credit points:** 12.5

**Coordinator:** TBA

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Obligations; Contracts; Property or in each case their equivalents.

**Corequisites:** Equity and Trusts.

**Contact:** Estimated total time commitment of 144 hours. Includes two 2-hour seminars per week (*Semester 1, repeat 2*).

**Description:** This subject introduces students to corporations law and provides a brief comparison with other forms of association such as partnerships. A particular concern of this subject is with the problems of small business which provide a theme for the functional analysis of basic concepts of corporations law. Particular emphasis is given to the governance of companies, including the relationship between directors and shareholders. None of these topics requires for its study a background in accounting, commerce, or business law. Necessary terms and concepts will be introduced in the subject itself. Topics covered in the subject will fall into four distinct parts.

**Part 1: The Process and Incidents of Incorporation:** Theoretical approaches to corporations law; the development and administration of corporations law; the formation of the company, including the classes of company under the Corporations Act, the privileged position of the private company and an introduction to the corporate constitution; some consequences of corporate personality, corporate groups and corporate crime.

**Part 2: Corporate Finance:** Debt v. Equity; share capital; maintenance of share capital.

**Part 3: Corporate Structure and Governance:** The structure of the company including an examination of the division of power between the corporate organs and some further study of the doctrines governing each organ; the duties and liabilities of directors and officers; shareholder remedies against abuse by directors and other controllers.

**Part 4: Corporate Mortality:** Voluntary administration; receivership; liquidation.

Because the topics covered in Part 4 are given detailed analysis in another subject (730-422 Insolvency Law) our discussion is necessarily limited to an overview of the topics.

**Assessment:** Final open-book examination 3 hours 100% OR a 3000-word essay 30% (due Monday 8th May) and a final open-book examination 2 hours 70% OR an on-line exercise comprising (i) two 375-word interim memoranda and (ii) a final 2250-word essay 30% and a final open-book examination 2 hours 70%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law. Students should obtain a copy of the Corporations Act (2005 ed.) available in the following formats: (i) Butterworths one volume students edition or two volume complete edition; (ii) LawBook Co (Thomson) one volume edition; (iii) CCH one volume student edition or three volume complete edition. Either of the one volume editions is sufficient for this subject.

### 730-397 Crime, Punishment and Legal Genealogy

**Credit points:** 12.5

**Coordinator:** Dr P Rush

**Prerequisites:** Legal Theory; Criminal Law or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour seminar per week and 4 hours of research supervision sessions (*Not Offered*).

**Description:** This subject discusses a series of problems at the intersection of jurisprudence and criminal justice. Its theme is the relation between the origin of law, ethics and politics and historical practices of crime and punishment. This theme is developed by reading the theories of law and genealogy articulated in the work of Nietzsche and Freud, and their interpreters Foucault and Lacan. The first part of the course addresses the genealogical theories of law,

ethics and politics elaborated in the work of Nietzsche and Freud. It does so by closely reading and comparing *On the Genealogy of Morals* and *Civilisation and its Discontents*. The second part of the course explores these theories by studying contemporary problems of law, ethics and criminal justice. In this part, case studies are taken from both substantive criminal law and contemporary practices of policing and punishment. The case studies will be chosen from amongst the following: homicide and the history of common law; dangerousness; legal reason and democracy; sexual assault and the history of manners; imprisonment and detention; policing, political reason and security. The third and final part of the course provides an opportunity for additional case studies to be chosen and presented by students in consultation with the lecturer.

Note: The essay in this subject will be regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** A 5000-word research essay 100% (due end of semester).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

F Nietzsche, *On the Genealogy of Morals*, Cambridge University Press. • S Freud, *Civilisation and Its Discontents*, in Volume 12 of the 'Penguin Freud Library', Penguin Press.

### 730-316 Current Issues in Family Law

**Credit points:** 12.5

**Coordinator:** Prof B Fehlberg

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Family Law or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour seminar per week (*Not Offered*).

**Description:** This subject builds on the material taught in Family Law 730-313 and aims to develop your understanding of family law in its broader social context, including an understanding of the processes of law reform and policy development in this area from an interdisciplinary perspective. The course aims to encourage students to think critically and reflexively about current policy arguments and legal issues in relation to Australian family law, and to consider these in the context of developments in other countries, especially the United Kingdom and Canada. The principal topics to be covered will depend on current law and policy developments, but will be drawn from the following areas:

- the nature of the 'family': current issues (eg. legal recognition of indigenous family practices);
- family law reform processes: current issues (eg. the role of empirical research and lobby groups);
- children: the public law perspective (eg. jurisdictional overlap in the areas of child protection, current issues in child protection, children in detention);
- children: the private law perspective (eg. the drive to regulate post-separation parenting arrangements); and
- financial aspects of family law (eg. current child support issues (such as the contact-child support nexus); superannuation and family law; prenuptial agreements; the on-going relevance of spousal maintenance).

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research assignment 5000 words 100% (due week 12 of semester).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-398 Current Issues in Indonesian Law

**Credit points:** 12.5

**Coordinator:** Professor T Lindsey

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Contracts or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 +/- 24 hours. Includes one 2-hour lecture per week (*Not Offered*).

**Description:** This subject will examine the legal system of Indonesia, the world's largest Muslim country, third largest democracy and fourth most populous state, through recent cases and legal controversies.

Topics covered in the subject will include, among others: Islamisation of laws (and new Islamic Codes in Aceh) constitutional reforms; decentralisation and proto-federalism; human rights reforms and the military; legal responses to terrorism (including the Bali bomb and Embassy bomb trials); narcotics regulation (including Corby and Bali 9 cases); and corruption regulation.

Note: The essay in this subject will be regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100% (due during the first week of the examination period) OR a final three-hour examination 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

**730-396 Discrimination Law and Equality****Credit points:** 12.5**Coordinator:** Associate Professor B Gaze**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts**Corequisites:** Constitutional Law**Contact:** Estimated total time commitment of 120 hours. Includes 3-hours of seminars per week (*Semester 1*).

**Description:** This subject examines the challenges of using law to counter discrimination and critically examines the contribution of anti-discrimination law to reducing inequality. It begins with a review of the concepts of equality and discrimination and the Australian social context. Turning to the legal response, the major focus is on Australian law after an introduction to international law on equality and discrimination, and constitutional protections in other countries for equality or non-discrimination rights. State and Federal anti-discrimination laws and their interpretation and use will be studied primarily through sex discrimination case law, but other grounds of discrimination including race, disability and sexuality will be considered to a lesser extent. (Students with a strong interest in discrimination on these of other grounds, such as age, political or religious belief etc. can use the research paper as an opportunity to study these areas in more detail). The law prohibits discrimination in certain defined situations, but has been subjected to complex and technical interpretations by the judiciary. The effectiveness of the legislation in changing social practices and eliminating discrimination will be evaluated and alternative approaches considered.

**Assessment:** Reflective essay 1500 words 20% (due week 10) and a final examination two-hours 80% OR Reflective essay 1500 words 20% (due week 10) and a Research essay 5000 words 80% (due during the exam period).

Students undertaking a placement: Assessment of placement performance (by external supervisor in consultation with the subject coordinator) 20% AND assignment (on a topic of value to the placement organisation) 2,500 words 40% AND a final examination 1-hour 40%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law**730-445 Environmental Law****Credit points:** 12.5**Coordinator:** Ms J Peel**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Constitutional Law; Administrative Law; Property or in each case their equivalents.**Contact:** Estimated total time commitment of 120 +/- 24 hours. Includes one 2-hour seminar per week (*Semester 1*).

**Description:** The subject aims to give students a basic grounding in environmental law in Australia through the exploration of three main areas: (1) the policy underpinnings of environmental law; (2) the Australian legal framework governing environmental impact assessment; and (3) the international dimension of environmental regulation.

**Assessment:** Research essay 3500 words 65% (due end of semester) and a final open-book examination 2 hours 35% OR a final open-book examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.**730-211 European Civil Law and Impact of the EU****Credit points:** 12.5**Coordinator:** Dr M Vranken**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.**Contact:** Estimated total time commitment of 96 hours. Includes one 2-hour seminar per week (*Semester 2*).

**Description:** Part I of this subject consists of structure and operation of the European civil law:

- historical formation of the civil law (with special emphasis on the Romano-Germanic components of this legal family);
- codes and codification (with special emphasis on the inter-action between legislature, judiciary and scholarship in the law-making process of contemporary European civil law); and
- substantive law: selected issues from, inter alia, the law of torts, contract law, labour law.

Part II consists of legal order of the European Union:

- origins and objectives of the European Union (with focus on the distinction between the ECSC, Euratom, the EEC, the EC, and the EU);
- institutional structure (with emphasis on the role of each institution in the law-making process of the European Union);
- the European Court of Justice (with emphasis on its unique role in ensuring compliance with EU law in the various member states);

- economic dimension of the EU: selected issues from, inter alia, the so-called four freedoms, competition policy, monetary policy;
- social dimension of the EU: selected issues from, inter alia, torts (product liability), contract (consumer protection), labour law (worker participation); and
- relevance for Australia (the traditional civil/common law divide; substantive law).

**Assessment:** Final open-book examination three hours 100%.**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Vranken, *Fundamentals of European Civil Law and Impact of the European Community*, Federation Press, 1997.

**730-457 Evidence and Proof****Credit points:** 12.5**Coordinator:** Associate Prof A Palmer/Dr J Gans**Prerequisites:** Legal Method and Reasoning or equivalent.**Contact:** Estimated total time commitment of 144 hours. Includes three to four hours of lectures per week in semester and intensive in summer (*Semester 1, repeat Summer*).

**Description:** This subject is concerned with the way that lawyers analyse facts, and also with the legal rules that apply to their admissibility as items of evidence in legal cases. The subject deals with the factual analysis of evidence including formulating a theory of the case; describing the inferences relied upon; and assessing the quality of proof. It also deals with central topics in the law of evidence, including relevance and discretionary exclusion; hearsay; the exclusionary rule and exceptions to the rule; opinion evidence; credibility evidence; evidence of other misconduct by the defendant; criminal investigation; and admissions

**Assessment:** A take-home examination 5000 words 100%.

**Prescribed texts:** A Palmer, *Proof and the Preparation of Trials*, Lawbook Co, 2003. • J Gans & A Palmer, *Australian Principles of Evidence*, Cavendish 2nd ed. 2004.

**730-313 Family Law****Credit points:** 12.5**Coordinator:** Professor B Fehlberg**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Property or in each case their equivalents.**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour lecture per week (*Semester 1*).

**Description:** The central aim of this subject is to get you to consider how, why and in whose interests the law intervenes in family relationships. In particular, we will examine and critically evaluate the ways in which the law constructs the family, privileges certain family forms, and regulates the relationships between couples, and between parents and children. The course focuses particularly on the context of relationship breakdown, which is the main area of family law regulation. The course aims to develop your understanding not only of 'black letter' law (case law and statute), but also of family law in its broader social context, including an understanding of the processes of social policy reform. The subject is divided into three topic areas: (i) overview of the family law system; (ii) children and parents and; (iii) financial aspects of relationship breakdown.

**Assessment:** Reflective essay 1500 words 40% (due week 7) and a final open-book examination two hours 60%.

**Prescribed texts:** Printed Materials will be issued by the Faculty of Law Act, *Family Law Act*, (Cth), 1975.

**730-369 Feminist Legal Theory****Credit points:** 12.5**Coordinator:** Professor J Morgan**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.**Contact:** Three hours per week (*Not Offered*).

**Description:** The subject provides a theoretical introduction to feminist engagements with law. It is an applied theory course. After a brief introduction to the broad array of doctrinal areas challenged by feminist approaches, the subject then moves to its central theoretical underpinnings. Here we examine issues like equality between women and men, the public/private dichotomy, differences amongst women and epistemological questions. The theoretical material will then be applied in topics chosen from three thematic areas: women's access to money; women, law and relationships; and gendered harms. The aim in these thematic areas is to break down traditional legal categories and to discover and make connections between the various case studies.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research assignment 5000 words 100%.

**Prescribed texts:** Regina Graycar & Jenny Morgan, *The Hidden Gender of Law*, 2nd edn, Federation Press.

### 730-446 Globalisation and the Law

**Credit points:** 12.5

**Coordinator:** Dr J Beard & Ms S Pahuja

**Corequisites:** If the subject is being taken in the U21 Global Certificate, students must complete Global Citizenship - Global Issues - an on-line subject offered by the University of British Columbia. Otherwise, no pre or co-requisites will apply.

**Contact:** Estimated total time commitment of 100 hours. The subject will be taught via the internet. There are no lectures or tutorials. Materials will be accessed on-line with the course divided into modules. Students will require at least 1 hour per week to download resources from the internet. Students will also be expected to spend at least 4 more hours per week on-line reading, watching, listening and/or participating in class activities and interacting with other student's work. Enrolment in this subject is open to students across 5 universities and will be limited to 25 students in total (*Semester 2*).

**Description:** This course forms part of the *U21 Certificate in Global Issues*. It will be offered in conjunction with four other member institutions from the Universitas 21 Network - the University of Auckland, the University of British Columbia, the University of Hong Kong and the University of Nottingham. Lecturers located in Melbourne will teach the course. The course asks students to consider the changing role of law (both domestic and international) in the global economy and will use web-based technology to enact certain global processes, facilitating collaboration and comparative approaches across the globe. The course will be offered in modular format and be designed primarily around role play exercises designed to allow students to engage explicitly with key areas in which global flows are at their most turbulent. These modules will be complemented by selected readings which enable students to develop critical and theoretical frameworks to understand 'globalisation.' Each module will take one or two weeks. Issues covered may include worker migration, global capital flows, the impact of global flows on labour and environmental standards, direct foreign investment, development issues, social movements and resistance and globalisation and terror.

**Assessment:** There will be an on-line exercise which will take place over the duration of the course. It will involve (i) ongoing collaborative tasks totalling 2000 words 50% and (ii) a written assignment 3000 words 50% (due after the on-line component of the course has been completed). In addition there are two hurdle requirements student must meet in order to pass the subject: (i) participation in an orientation exercise designed to introduce students to the class and to the website and how to navigate it; (ii) the quality of participation in on-line discussion.

**Prescribed texts:** All materials will be web-based.

### 730-386 Health and Medical Law

**Credit points:** 12.5

**Coordinator:** Professor L Skene

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 96 hours. Includes one 2-hour lecture per week (*Semester 2*).

**Description:** This subject considers the legal relationship between patients and health care providers. It explains the duty of health care providers to exercise reasonable care in diagnosis, information giving and treatment; and to involve patients in decision making and the extent of a health professional's obligation to respect patients' privacy, to keep information confidential and to allow patients access to their records. The law on surrogate decision making for patients who may not be able to make their own decisions will be discussed; these patients include children, adolescents, intellectually disabled and mentally ill patients and the terminally ill and dying. The law on abortion, child destruction, wrongful birth and wrongful life is examined.

**Assessment:** Final examination three hours 100%.

**Prescribed texts:** L Skene, *Law and Medical Practice: Rights, Duties, Claims & Defences*, 3rd edn, Lexis-Nexis, 2007.

### 730-350 International Human Rights Law

**Credit points:** 12.5

**Coordinator:** Associate Professor D Otto

**Pre or Corequisites:** Legal Method and Reasoning; Principles of Public Law; International Law or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes three hours of seminars per week (*Semester 2*).

**Description:** Human Rights Law introduces students to the key elements of the international system for the protection of human rights and examines its formal and informal interactions with regional human rights mechanisms and

domestic legal systems. The topics covered include: an introduction to the founding instruments of the international system, the Universal Declaration of Human Rights and the two human rights Covenants, and the obligations that they place on States; an overview of the key theories of human rights and of recent critical approaches, including feminist and postcolonial critiques; the operation of the treaty-based and UN Charter-based mechanisms for the enforcement of human rights; the role of human rights non-governmental organisations; the principle of non-discrimination, with particular reference to sex/gender equality; the principle of self-determination, with a focus on the rights of indigenous peoples; the challenges to human rights presented by economic globalisation; and the Australian systems for the protection of human rights. The subject encourages students to engage critically with the material covered and to participate in class discussions.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Reflective essay 1000 words 20% (due week 9) AND either a research essay 5000 words 80% (due end of semester) or a final examination three hours 80%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Steiner & Alston, *International Human Rights in Context*, 3rd edn, Oxford University Press, 2006. • Centre for the Study of Human Rights, *Twenty-Five Human Rights Documents*, Columbia University.

### 730-394 Indigenous People, History and the Law

**Credit points:** 12.5

**Coordinator:** Mr J Waugh/Assoc Professor D Philips

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents. Note: this subject is also available to arts students who have completed 25 points of first-year history.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour seminar per week (*Not Offered*).

**Description:** This history subject is a study of the relationship between indigenous Australians and the law brought to Australia by the British from 1788 onwards. Topics studied will include notions of sovereignty and the state; the position of indigenous people under the criminal law in early white settlement; property law, possession and use of the land; citizenship and political rights; land rights, native title and the courts; criminal law and customary law. In addition to relevant secondary accounts, students will examine primary materials, including court judgments, imperial and colonial enactments, indigenous statements and claims of rights. Students will have good opportunities for independent research into some of these materials.

**Assessment:** Research essay 2500 words 60% (due end of semester); document exercise/book review 1500 words 40% (due mid semester).

### 730-308 Innocence Project

**Note:** This subject has a quota of 16 students.

**Credit points:** 12.5

**Coordinator:** Ms V Stafford

**Prerequisites:** Criminal Law and Procedure; Evidence and Proof or in each case their equivalents.

Enrolment in this subject is limited to 16 students. Students will be required to complete a written application for enrolment. Interviews may also be conducted. Additional selection criteria include:

- academic performance;
- relevant work experience including involvement in community - based activities;
- teamwork experience and skills; and
- capacity and willingness to commit to the time demands of this subject.

Students who are most advanced in their studies will be given priority for enrolment in the subject. The subject will be available to all University of Melbourne Law School students including students in the Melbourne JD.

**Contact:** Estimated total time commitment of 144 hours. Includes three contact hours per week. Contact time for this subject includes a weekly team meeting with the Director and the Project lawyer/s and two full group meetings per semester. The practical nature of this subject requires that students spend much of their non-contact time working on their case files in the Project office. Typically, this involves research, analysis of documents and completion of designated tasks including correspondence and meetings with Project applicants and / or their personal representatives, legal practitioners and relevant experts. Students will also be expected to participate in a compulsory intensive introductory program during the first week of the semester (*Summer semester*).

**Description:** The University of Melbourne Innocence Project is a member of the International Innocence Network and the Australian Innocence Network. It is a university-based, lawyer-instructed, student-resourced and academically-supervised pro bono organisation which investigates claims of wrongful conviction. Similar projects operate in Australia, the United States of Amer-

ica, Canada and the United Kingdom. The Project seeks to identify persons who have been wrongfully convicted and to assist in exonerating and/or freeing them. We take on cases where innocence may be established through the use of DNA technology or other new evidence. Students examine selected case files in order to:

- determine whether the applicant's claim of factual innocence has merit;
- determine whether new evidence is available which may be used to exonerate the applicant;
- work to obtain the exoneration and/or release of wrongfully convicted persons; and may
- correct, expose or educate the public on other types of potential unfairness within the Australian criminal justice system.

The Project promotes a legal culture which champions the defence of the innocent and protects the marginalised and oppressed. Through the involvement of law students, the Project invests in lawyers of the future who uphold the values of truth in justice. The subject highlights the interaction between science, psychology, criminal law and the law of evidence. In addition, it provides an international perspective on wrongful conviction and an opportunity for students to gain a greater understanding of the strengths and weaknesses of criminal justice systems in this and other jurisdictions.

**Assessment:** File management 50%, research essay 40% (due end of semester), summary and reflection 10% (due end of semester).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-422 Insolvency Law

**Credit points:** 12.5

**Coordinator:** Mr M Gronow & Ms K Knights

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Obligations; Contracts; Property or in each case their equivalents.

**Corequisites:** Corporations Law.

**Contact:** Estimated total time commitment of 120 hours. Includes one 2-hour lecture per week (*Semester 2*).

**Description:** An insolvency regime is a necessary part of the legal system in a capitalist economy. That is because a means is needed for dealing with businesses that fail, and individuals who cannot pay their debts. An insolvency regime is required to ensure that in those circumstances the insufficiency of assets is equitably distributed amongst the creditors. To ensure equitable distribution, liquidators and trustees in bankruptcy are given powers to enforce claims to assets and undo past transactions.

Insolvencies often raise legal, practical and theoretical questions of considerable interest, which are by no means confined to a narrow concept of 'insolvency' itself.

This subject involves a practical and theoretical examination of the law of personal insolvency (i.e. bankruptcy), and corporate insolvency. The subject will concentrate on the law currently applicable in Australia. It will, though, touch on foreign and historical insolvency regimes where they throw light on the content, theory and operation of the Australian insolvency system.

The subject will cover the process for placing individuals and companies under the various forms of insolvency administration under the *Bankruptcy Act 1966* and the *Corporations Act 2001*, and what happens when that is done. Because the law of insolvency principally exists to serve economic and social policy objectives, an examination of those objectives and the extent to which they are well served by the current law will be an important part of the subject.

Students will be expected to discuss why the law should be (or not be) as it is, at least as much as what the law is. They will also be expected to discuss what economic and social objectives should be served by the insolvency law, and what reforms might be desirable to make it serve them better than it does. It is hoped that students who complete this subject will have a fuller understanding of how the law serves policy objectives of Government and different interest groups in society.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** A research assignment of 5000 words 100% (due end of semester) or a final examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Act, *Corporations*, 2001. • Key and Murray, *Insolvency: Personal and Corporate Law and Practice*, Thomson/LBC, 5th ed., 2005.

### 730-468 Institutions in International Law

**Credit points:** 12.5

**Coordinator:** Dr A Mitchell

**Prerequisites:** International Law

**Contact:** Estimated total time commitment of 144 hours. The subject will be taught intensively in Geneva over the winter non-teaching period. Enrolment

in the subject will be limited to a maximum of 25 students. Applicants must submit a copy of their most recent academic transcript as well as a one page cover letter and a two page CV highlighting their interest in the subject and previous academic and work experience. Interviews may also be conducted (*Semester 1*).

**Description:** The subject examines the place of international institutions within the international legal order, considering their structure, normative underpinnings, and activities. It focuses on inter-governmental organisations but also considers non-governmental organisations and the role of civil society and national governments in both types of institution. It considers how international institutions reflect conflicting notions of fragmentation and unity in international law. Principal topics to be covered include:

- The role of international institutions in the development of international law.
- Introduction to the key international institutions in Geneva including their history, trends in their mission, influence and importance, and reform proposals.
- The International Law Commission's study on the fragmentation of international law, including the function and scope of the *lex specialis* rule and the question of international organisations as 'self-contained regimes.'
- Inter-organisational cooperation, coordination and conflict in areas including intellectual property, human rights and development.
- Participation and representation in international institutions by governments, business, civil society, and secretariat staff.

**Assessment:** An in-class presentation 10%, class participation 5% and a research essay 5000 words 85% (due October 1). Attendance at 100% of classes is a hurdle requirement to pass this subject.

**Prescribed texts:** Printed Materials will be issued by the Faculty of Law.

### 730-443 International Dispute Settlement

**Credit points:** 12.5

**Coordinator:** Mr B Oswald

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; International Law or in each case their equivalents.

Enrolment in this subject will be limited to a maximum of 25 students.

**Contact:** Estimated total time commitment of 120 hours. Taught intensively over the summer period (*Summer semester*).

**Description:** This subject focuses on methods for resolving international disputes and the institutions involved in such dispute settlement. United Nations, regional and ad hoc institutions will be discussed during the course. The course will focus on current international conflicts as a way of illustrating particular points and in any year will cover a number of the following:

- The United Nations Security Council and General Assembly;
- The International Court of Justice;
- Human Rights;
- International criminal courts;
- The World Trade Organization;
- Non-government actors;
- Informal Dispute resolution.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100% (due end of semester). Students must attend 10/12 classes (hurdle requirement).

**Prescribed texts:** None.

### 730-442 International Economic Law

**Credit points:** 12.5

**Coordinator:** Professor A Orford

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour seminar per week (*Not Offered*).

**Description:** The subject introduces students to the central texts of international economic law and the practice of international economic organisations. It provides an overview of the key agreements covered by the World Trade Organisation, major decisions of its dispute settlement bodies and the policies and practices of the International Monetary Fund and the World Bank. Students also study foundational economic texts, including those of Adam Smith, David Ricardo and John Locke, in order to explore the emergence and transference of economic concepts, such as the basis of property, the distinctive roles of nature and capital in producing wealth, the international division of labour, the nature of economic man, the narrative of development, the economic idea of the nation and the basis of debt. The subject draws on a range of theoretical material to enable close readings of legal texts and institutional practice. Throughout, students are introduced to contemporary debates and

issues in the field of international economic law. These may include: the development of dispute settlement mechanisms and the 'constitutionalisation' of trade law; the implications of harmonisation of national regulation under the SPS agreement and GATS; security as an exception to general principles of trade law; trade and the environment; the use of trade law to promote and protect biotechnology; the TRIPS Agreement, the SPS Agreement and public health; the role of the World Bank in post-conflict reconstruction in East Timor and Iraq; land law reform under IMF and World Bank auspices; trade, human rights and labour standards.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100% (due end of semester) OR a final examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty.

M J Tribilcock & R Howse, *The Regulation of International Trade*, Routledge 2nd edn.

### 730-408 International Humanitarian Law

**Credit points:** 12.5

**Coordinator:** Ms A Duxbury

**Pre or Corequisites:** Students should have completed, or be undertaking International Law.

**Contact:** Estimated total time commitment of 120 +/- 24 hours. Includes one 2-hour seminar per week (*Semester 2*).

**Description:** International law regulates the use of force by determining if and when states have a right to resort to forceful measures, and imposing limitations on the use of armed force if a conflict has commenced. This subject is concerned with the second issue and will cover the following topics:

- the concept and philosophy of international humanitarian law;
- the definition of armed conflict and the relevance of the distinction between international and non-international armed conflict;
- the protection of victims of armed conflict: the wounded, the sick and shipwrecked, and prisoners of war securities regulation;
- the protection of the civilian population, including refugees and displaced persons;
- the role of women in armed conflict;
- restrictions on the means and methods of armed conflict, including restrictions on the types of weapons;
- application of international humanitarian law principles to peace-keeping forces;
- implementation of international humanitarian law: the role of the Red Cross, international organisations, and NGOs;
- enforcement of IHL, including national and international prosecutions for war crimes; and
- development of a permanent mechanism to deal with international crimes: the International Criminal Court.

**Assessment:** Reflective essay 1000 words 20% (due mid semester) and research essay 4000 words 80% (due end of semester) OR reflective essay 1000 words 20% (due mid semester) and a final examination two hours 80%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-307 International Law

**Credit points:** 12.5

**Coordinator:** Mr J Tobin -1; Ass. Prof D Otto - 2

**Prerequisites:** Principles of Public Law.

**Contact:** Estimated total time commitment of 120 +/- 24 hours. Includes three hours of seminars per week (*Semester 1, repeat 2*).

**Description:** This subject will introduce students to the general principles underlying contemporary public international law. It will examine and critically assess issues such as:

- the scope, nature and development of international law;
- sources of international law, principally the treaties and customary international law;
- theories of international law;
- the institutional framework for the development and implementation of international law, including the United Nations system and the international Court of Justice;
- the relationship between international law and domestic law;
- legal personality under international law including the criteria for statehood and the status of non state entities;
- the means of acquiring territory;
- bases of state jurisdictional competence including state and diplomatic immunity;
- state responsibility for wrongful acts under international law;

- the regulation or the use of force and the right to self-defence.

**Assessment:** Final examination three hours 100% OR written assignment 2000 words 40% (due end of semester) and final examination two hours 60%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Dixon M & McCorquodale R, *Cases and Materials on International Law*, Oxford University Press.

### 730-429 International Business Transactions

**Credit points:** 12.5

**Coordinator:** Professor R Garnett

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Obligations; Contracts or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes three hours of seminars per week (*Semester 1*).

**Description:** Topics include the contracts by which trade in goods takes place (sale, transport, payments, insurance; marketing and licensing structures), distributors, agency, franchising, licensing, transfer of technology; electronic sales; conflict of law issues in international business; and resolution of disputes in international commercial-litigation, arbitration, alternative dispute resolution and the recognition of foreign judgments and awards.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Either a research paper 5000 words 100% (due end of semester) OR final open-book examination three hours 100%.

**Prescribed texts:** Pryles, Waicymyer & Davies, *International Trade Law: Commentary and Materials*, Butterworths, 2nd edn, 2004.

### 730-306 Internet Law

**Credit points:** 12.5

**Coordinator:** Ms K Weatherall

**Prerequisites:** Principles of Public Law; Legal Theory: Obligations; Contracts or in each case their equivalents.

**Contact:** Estimated total time commitment of 100 - 126 hours. Includes twelve 3-hour weekly seminars over the course of the semester (*Semester 1*).

**Description:** The purpose of this subject will be first, to introduce students to the theoretical literature which has considered regulation of the Internet and interactions/transactions occurring over the Internet and other networked technologies. Second, the subject considers 'internet governance' and will enable students to develop some familiarity with the various entities in both the domestic and international spheres which are involved in regulation of the technology of the Internet, and transactions occurring over the medium. Third, the subject will consider a number of specialist areas of law applying to the Internet, or where the development of the Internet has caused a change in legal principles. Topics include theoretical approaches to the Internet; the domain name system, ICANN and UDRP; select issues in E-commerce; privacy and intellectual property. The subject has a comparative focus, with students expected to engage in comparison between Australian approaches to regulation and approaches adopted in other important jurisdictions, in particular the United States, the United Kingdom and the European Union.

**Assessment:** Students must attend at least 75% of seminars (hurdle requirement). Students will be required to participate in the online discussion board with at least one substantive post (on the topic chosen for their reflective essay) and one post in reply (hurdle requirement).

Reflective essay or hypothetical 1500 words 20% (due date will depend on the topic chosen) and a research essay 5000 words 80% (due first day of the exam period) OR final open-book examination two hours 80%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-331 Issues in Chinese Law

**Credit points:** 12.5

**Coordinator:** Mr S Cooney

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes one 2-hour seminar per week (*Semester 1*).

**Description:** This subject is designed to enable students to appreciate fundamental features of Chinese legal systems. The course has three themes. We first examine the distinctive nature and operation of Chinese law, focusing on the PRC legal system. We consider the common claim that law 'doesn't matter' in China. The second theme of the subject is the role of law in China's economic reform process. The final theme is the legal relationship between mainland China, Taiwan and Hong Kong. These themes are developed by considering particular areas of law, such as criminal law, contract law, constitutional and administrative law and labour law. Significant class time will be devoted to discussing how to research and write a paper on Chinese Law.

Note: This essay is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100% (due first day of the examination period).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-327 Issues in Japanese Law

**Credit points:** 12.5

**Coordinator:** Ms S Steele

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents. No knowledge of Japan or Japanese Language is assumed.

**Contact:** Estimated total time commitment of 100 hours. The subject is taught in intensive mode in the summer term (*Summer semester*).

**Description:** Japan is a large creditor nation and its legal system has presented a regulatory and organisational blueprint for developing countries, particularly in Asia. Yet its government is actively seeking economic and social reform through legislative means. This makes it an exciting and challenging time to study Japanese law.

In this subject, we will unpack the stereotypes about Japanese law as we explore topics such as: the periodic adaptation of Japanese law to new challenges; nationality law and demands for new civil rights; expectations of gender and racial equity; dispute resolution and contracting; Japan's use of the death penalty; and the failures and successes of commercial law reform. The subject also considers how you might use your law degree to practise in Japan and the framework regulating practice by non-Japanese in one of the world's largest demand economies for legal services.

Based around a range of English language resources, the subject uses lecturers, seminars, class discussion, hypothetical problems, film, documentaries and the Internet to get inside Japanese law. It offers a stimulating opportunity to consider foreign and comparative law issues in an Asian legal system context.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** If the enrolment is less than 50 students: a research assignment of 5000 words 100% (due end of semester) OR a final examination three hours 100%

or

if the enrolment is more than 50 students: a final examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-414 Jessup Moot

**Credit points:** 12.5

**Coordinator:** Mr C Fenwick & Mr I Malkin

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; International Law or in each case their equivalents.

**Contact:** As arranged (*Summer semester*).

**Description:** The Philip C Jessup International Law Moot Court Competition, co-sponsored by the International Law Students Association and the American Society of International Law, is an annual event involving law students from some 300 law schools in 50 countries throughout the world. Students are required to work as a team to prepare written and oral pleadings involving a hypothetical case brought before the International Court of Justice. The broad area of international law covered in the case is known by the middle of the year and the details of the case become available in September. The subject involves intensive work from the end of November through to mid-February. The Australian part of the competition, where teams from most Australian law schools compete, is held in Canberra in mid-February. The winning and runner-up Australian teams in the oral part of the competition then compete in the international finals held in the USA during April. The winning Australian memorials are also sent to be judged in the final. The team will most likely be selected around July.

**Assessment:** Two written memorials prepared cooperatively by students working together as members of a team 100%.

### 730-315 Jurisprudence

**Credit points:** 12.5

**Coordinator:** Dr P Rush

**Prerequisites:** Legal Theory or equivalent.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour seminar per week (*Not Offered*).

**Description:** Jurisprudence is the study of the traditions through which law appears, is articulated and thought. This subject moves from a consideration of normative and rationalist traditions of legal thought to contemporary theories concerned with legal interpretation, judgement and justice. The theories

will be studied in terms of their accounts of law as the form and idiom of human communication. The first part provides an introduction to the course, its structure and its themes. The second part discusses the extant schools of jurisprudence in terms of the organisation of power and knowledge. It addresses natural law traditions, positivist and realist understanding of the science of law, and critical legal studies and postmodernism. The third and final part studies relations between aesthetics, judgment and justice, and specifically focuses on theories of the rhetoric and literature of law.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research assignment 5000 words 100% (due end of semester).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-401 Labour Rights in International Law

**Credit points:** 12.5

**Coordinator:** Mr C Fenwick

**Pre or Corequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

While some knowledge of international, labour and/or human rights law would be helpful, none of these is a prerequisite. Students who are unsure about whether to enrol should feel free to contact the subject coordinator in advance.

**Contact:** Estimated total time commitment of 144 hours. Includes three contact hours per week (*Semester 1*).

**Description:** The subject aims to familiarise students with the key elements of the international legal system for the protection and promotion of the rights of workers and organised labour. Students will be introduced to the core labour standards that protect workers' basic rights: freedom of association and bargaining, non-discrimination in employment, and freedom from forced labour and harmful child labour. The subject will examine the sources of international labour law and the institutional structures for its development and oversight. These include the International Labour Organisation, the human rights institutions of the Council of Europe, and the law-making powers of the European Union. We will consider theories of international labour regulation and the recent proliferation of international labour laws. This will include the role of non-state actors in both the development and enforcement of international labour law. An important part of this aspect will be to consider the relationship of international labour law to human rights law generally, and to international trade and economic law, including the roles of the World Trade Organisation, the World Bank and the International Monetary Fund. We will conclude by considering the impact of international labour law on domestic legal systems, including Australia in particular.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Reflective essay 1000 words 20% (due mid semester) and research essay 4000 words 80% (due end of semester).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-428 Land, Race and Law in South East Asia

**Credit points:** 12.5

**Coordinator:** Professor T Lindsey

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 +/- 24 hours. Includes one 2-hour lecture per week (*Not Offered*).

**Description:** Indigenous and traditional communities in Southeast Asia face constant challenges in dealing with the western-derived common and civil law legal system inherited from colonialism. The subject looks at how modern plural systems deal with indigenous land rights, ethnic conflict and syaria (Islamic law) in our region.

The first half of the subject introduces students to the basic structure and operation of the Indonesian, East Timor and Malaysian legal systems and their legal inheritances from traditional customary law (or adat), Islamic traditions and from the West. It also introduces students to Islamic jurisprudence and basic concepts of traditional customary law. The second part of the subject examines the practical operation and interaction of Islamic law, traditional customary law and Western-derived systems by focusing on specific areas of law and current problems, including religious violence, racial discrimination and terrorism and Asian history.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Either a research assignment of 5000 words 100% OR final examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-360 Law and Civil Society in Asia

**Credit points:** 12.5

**Coordinator:** Ms S Biddulph & Ms A Whiting

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour lecture/seminar per week (*Not Offered*).

**Description:** This subject analyses the concept of civil society as it relates to the legal systems of states in Northeast and Southeast Asia. This subject introduces and then critiques the concept of civil society and its applicability in contemporary Asian states.

This subject gives students an opportunity to develop a critical appreciation of the concept of civil society and how it is understood and experienced in some of the states in the Asian region including: Malaysia, Singapore, Indonesia, Taiwan, Hong Kong China, Vietnam, and Japan.

This subject will then consider this concept with reference to the themes of gender relations; citizenship and its boundaries; technologies of political communications; the functions of court systems; labour organisations; professional organisations such as lawyers' and bar associations; and other civil society organisations.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100% (due first day of the examination period) or final examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-461 Law and Economics

**Credit points:** 12.5

**Coordinator:** Associate Professor M Richardson

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Obligations; Contracts; Property or in each case their equivalents.

**Contact:** Estimated total time commitment of 120-140 hours. Includes one 2-hour seminar per week (*Not Offered*).

**Description:** This subject is about the use of economics as both a philosophy of law and a methodology of legal analysis. It addresses important trends in the field of law and economics from its 18th and 19th century utilitarian roots to the libertarian inspired Chicago School of the 1960s-80s to the more moderate 'multicultural' perspective versions that now appear to be emerging, and delves into the possible future of the law and economics movement, especially in Australia. The subject aims to be practical as well as theoretical (as does law and economics itself). In particular, basic concepts from law and economics are tested across various substantive areas of law, including aspects of contract, torts and property and especially intellectual property law. Students are encouraged to submit an essay on a topic of their own choice as their assessment and this may extend beyond subjects covered in the classroom component of the subject.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Either research essay 5000 words 100% (due end of semester) OR final examination two hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-391 Law and Indigenous Peoples in Australia

**Credit points:** 12.5

**Coordinator:** Associate Professor M Tehan

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes one 3-hour seminar per week (*Semester 1*).

**Description:** Taking current legal and political controversies in Australian Indigenous affairs as its starting point, the subject examines the legal relationship between Indigenous and non-Indigenous Australians and encourages students to critically analyse the impact of the Anglo/Australian legal system on indigenous Australians. Issues for particular study include indigenous Australian societies both before and after colonisation and their interaction with the colonising legal system, the process of legal colonisation, including the assimilation policies, legal regimes providing access to land and resources particularly native title, domestic and international regimes for protection of indigenous cultural property and heritage, the impact of the criminal justice system on indigenous Australians, and the possibilities for recognition of customary law in a pluralist legal system. Consistent themes throughout the subject will include the significance of land, the role of identity, the relevance of international human rights law, the concept of self-determination, indigenous governance, the significance of treaty and agreement making, the role of law in remedying disadvantage and experiences in other jurisdictions particularly Canada and New Zealand.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Negotiating exercise 20% (due week 10) and either research essay or project 5000 words 80% (due second week of the examination period) OR a final open-book examination three hours 80%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

McRae, Netheim & Bearcroft, *Indigenous Legal Issues*, 3rd edn, Butterworths.

### 730-207 Law and Sexuality

**Credit points:** 12.5

**Coordinator:** Associate Professor K Walker

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes one 2-hour seminar per week (*Not Offered*).

**Description:** The subject focuses on the variety of ways in which law regulates and constitutes sexualities. It aims to provide a theoretical framework which highlights the complexity and contradictions inherent in the construction of sexualities, from an interdisciplinary perspective; to give students a sample of various legal controversies surrounding sexuality; to consider the interaction of gender, class, race and sexuality issues; to consider the relationship between 'queer' theory, lesbian and gay theory and feminist theory; and to consider the relationship between activism and the legal process. Topics covered will include: Identity politics, constructionism/essentialism and queer theory; criminalisation of gay (male?) sex.; criminalisation of (gay?) sadomasochistic sex; regulation of prostitution; regulation of pornography - feminist and queer perspectives; equality and non discrimination; the family as ideology and relationship recognition in Victoria; same-sex and transgender marriage; becoming a parent - access to assisted reproductive services; recognition of gay, lesbian and transgender parenting.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Reflective essay 1500 words 20% (due final day of semester) and research essay 5000 words 80% (due during the examination period).

**Prescribed texts:** None.

### 730-352 Law in the People's Republic of China

**Credit points:** 12.5

**Coordinator:** Ms S Biddulph

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes one 2-hour per week seminar per week (*Not Offered*).

**Description:** This subject encourages students to develop an understanding of the political, social and economic forces which influence the purpose and shape of law in the People's Republic of China. The subject provides students with an overview of the legal system and legal institutions in China. We examine the nature of legal controls over the exercise of state power and the extent to which they are effective. Legal principles that govern relations between citizens and the state and that provide for special treatment of certain groups will also be considered. Developments in the regulation of economic activities such as trade, investment and labour will be discussed. For each of these topics, students will be asked to consider the influence that the changing political and social environment has had on the development and operation of these regulatory regimes.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100% (due end of semester) OR final examination 3 hours 100%. If the enrolment in more than 50 students must sit the examination.

If the enrolment is more than 50 students, students must sit the examination and may not choose to write a 5000 word essay.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-205 Law and Society in Malaysia

**Credit points:** 12.5

**Coordinator:** Ms A Whiting

**Prerequisites:** Principles of Public Law; Legal Theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour lecture/seminar per week (*Not Offered*).

**Description:** This subject gives students the opportunity to develop an appreciation of the historical, political, economic, religious and social context of, and influences upon, the legal system of Malaysia and to reflect upon the commonalities with, and differences from, Australian legal institutions and practices. Topics will include: the colonial sources of Malaysian law; the administration of justice and the independence of the judiciary; the survival of

customary law (adat) and the recognition of indigenous native title to land; the constitutional rights and preventive detention as a response to terrorism; relations between ethnic politics and the law; the administration of Islamic laws in a multi-cultural society; the Anwar Ibrahim trial and its consequences; Non Government Organisations and agitation for law reform; and women's rights claims under a plural legal system.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research assignment 5000 words 100% (due end of semester) OR a final examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-358 Law and Society In South East Asia

**Credit points:** 12.5

**Coordinator:** Assoc Prof T Lindsey, Dr P Nicholson

**Prerequisites:** Principles of Public Law; Legal Method and Reasoning or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 +/- 24 hours. Includes one 2-hour lecture per week (*Semester 2*).

**Description:** This subject examines very different Southeast Asian legal systems selected from Indonesia, Malaysia, East Timor, the Philippines and Vietnam. It aims to provide students with practical insights into the operation of law in Southeast Asia in diverse social and political settings. In each case examination of political, social and historical background leads to study of the legal system and the role of the courts and lawyers and then focuses on specific case studies including human rights, the constitution and the role of the state, ethnicity, gender issues, land rights, religion and religious laws, the role of ideology in law and judicial and extra-judicial approaches to dispute resolution.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Either research assignment 5000-6000 words 100% (due during the examination period) OR final examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law. The following may be useful:

T Lindsey, *Indonesia: Law and Society*, Federation Press, 1999. • Poh Ling Tan, *Asian Legal Systems*, Butterworths.

### 730-463 Law Reform Project

**Credit points:** 12.5

**Coordinator:** TBA

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Criminal Law and Procedure; Constitutional Law; Administrative Law; Contracts; Obligations; Property or in each case their equivalents.

**Contact:** Two hours per week (*Not Offered*).

**Description:** The subject will contain a core component which studies the nature, history and methodology of the law reform process and its relationship to attempts at harmonisation of law both in Australia and internationally. The subject will also comprise a clinical component in which each student will be involved in a law reform project in a government department, law reform agency or parliamentary committee. The purpose of the clinical component is to develop skills for effective involvement in the law reform process.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100%.

### 730-434 Legal Internship

**Credit points:** 12.5

**Coordinator:** TBA

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory. It is a prerequisite for enrolment in this subject that students be offered a place in an approved internship of a minimum of six weeks full-time. Approval for a particular internship, which may be in Australia or overseas but which must involve substantive legal work, is required in writing from the subject coordinator.

**Contact:** No contact hours (*Semester 1, repeat 2, Summer*).

**Description:** The Melbourne Law School recognises that many of its students take the opportunity to engage in significant and exciting law-related work during their time at the Law School.

Legal Internship allows students to gain credit for research arising out of their work in an approved internship of at least six weeks of full-time work in an approved organisation. Students gain credit for a substantial research essay involving critical legal research and analysis on a topic developed by the student during or after their approved internship.

Examples of approved internship organisations include international organisations, government departments, non-government organisations, and law reform bodies. The internship must involve substantive legal work. The student must organise, prior to obtaining approval from the Coordinator and formal enrolment in the subject, an academic staff member from the Law School to act as supervisor for the writing of the substantial research paper which forms the basis of assessment in the subject. Students may choose to combine Legal Internship with Advanced Legal Research, with approval of the coordinators of both subjects and their supervisor.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Students will be required to complete a brief report on the Internship experience and a 5000-word research essay 100% (due on the first day of the examination period in which the internship is undertaken).

### 730-348 Media Law

**Credit points:** 12.5

**Coordinator:** Associate Professor A Kenyon

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Obligations or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes three hours of lectures/seminars per week (*Semester 1*).

**Description:** Media Law critically evaluates key legal areas that affect the content of media publications and broadcasts. It includes a selection of the following topics: free speech; civil defamation; court reporting and contempt of court; offensive publications and classifying publications; contempt of parliament; the Australian Press Council and other self-regulatory measures; and privacy. The subject takes a comparative approach to many topics, in particular defamation law.

Note: The research essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** A memorandum of advice 1500 words 20% and a final examination 3 hours 80% OR a memorandum of advice 1500 words 20% and research essay 5000 words 80% (due end of semester).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

Kenyon A, *Defamation: Comparative Law and Practice*, UCL Press (2006).

### 730-464 Migration Law

**Credit points:** 12.5

**Coordinator:** Associate Professor K Rubenstein

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Constitutional Law; Administrative Law or in each case their equivalents.

**Contact:** Two hours per week. Attendance at one session of the Refugee and Immigration Law Centre or one hearing at the Migration Review Tribunal (*Not Offered*).

**Description:** Topics include an outline of the issues affecting immigration law; state sovereignty, the history of Australian immigration policy and an introduction to concepts such as permanent residence, change of status, refugees etc.; an analysis of the constitutional power of the Commonwealth to legislate in this area; a review of the basic structure of the Migration Act prior to 1989 and changes since; an examination of the different categories of visas and entry permits such as permanent residency and temporary residency, and of the grounds for change of status; the position of refugees with special reference to the International Convention and Australian decisions on refugee status; deportation and compliance; merits review and the avenues of judicial review; immigration in the Federal Court; and the relevance of notions of citizenship and multiculturalism to immigration.

**Assessment:** Reflective essay 4000-4500 words 50% (due end semester) and a journal report 2500-3000 words 50% (due mid semester).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-469 Negotiation Theory and Practice

**Credit points:** 12.5

**Coordinator:** Professor C Cameron

**Prerequisites:** Legal Method and Reasoning; Torts; Contracts; Dispute Resolution or in each case their equivalents.

Other selection criteria: students will be required to complete a brief written application for admission to this subject. The application will address the following criteria: academic performance, interest in teamwork and commitment to meet the attendance requirement (see below 'Description' and 'Assessment'). Students who are closest to the completion of their degree will be given priority for admission to the subject. The subject will be available to all University of Melbourne Law students.

**Contact:** Estimated total time commitment of 144 hours. Intensive during the summer period (*Summer semester*).

**Description:** This will be a limited enrolment subject in which students will get intensive exposure to and experience of the theory and practice of negotiation and mediation. Topics covered will include the place of negotiation and mediation in dispute resolution systems, theories of conflict and disputing behavior, models of negotiation and mediation, similarities and differences between two-party and multi-party disputes, court annexed mediation programs, issues of privilege and confidentiality, cultural factors influencing dispute resolution processes and choices, using and confronting power in mediation and negotiation contexts and ethical practice. Relevant law reform and policy issues will be explored, especially in relation to the interface between formal litigation, negotiation and mediation. Students will participate in seminar discussions and will also plan for and conduct negotiations and mediations. Students will work in teams and will receive teamwork skills training.

This will be an optional subject in which negotiation and mediation performances will be a significant component of subject delivery and assessment. Many of these skills performances and assessments will be done in teams. Teamwork, including teamwork skills training, will therefore be an integral component of the subject. For this reason, attendance will be compulsory unless suitable prior arrangements are made and approved by the subject coordinator. Enrolment will be limited to a maximum of 24 students (1) to enhance the value to students of the group work dimension of the subject and (2) to accommodate the resource demands of frequent feedback on, and assessment of, performance-based negotiation and mediation skills.

**Assessment:** Two negotiation and mediation skills performances (including written plans 1250 words) 50% and a take home examination 2500 words 50%. Attendance at classes is a hurdle requirement.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-438 Philosophical Approaches to Equity

**Credit points:** 12.5

**Coordinator:** Mr M Harding

**Prerequisites:** Equity and Trusts or equivalent

**Contact:** Estimated total time commitment of 144 hours. Includes three hours of seminars per week (*Semester 2*).

**Description:** The traditional approach to equity concentrated on the historical development of doctrines and remedies in the English Court of Chancery. This subject takes a different approach to equity. It aims to reveal the philosophical foundations of equitable doctrines and remedies. What goals and purposes do they serve? Are they justified morally and, if so, how? In seeking answers to such questions, the subject also aims to supply a theoretical framework within which equitable doctrines and remedies may be evaluated and arguments for reform assessed.

Topics to be covered include:

- The nature of equity I: whether the judge exercising equitable jurisdiction plays a role different from that of the judge exercising common law jurisdiction
- The nature of equity II: whether there is anything philosophically distinct about equity: what, if anything, sets equity apart from contract, tort and unjust enrichment?
- The nature of the trust and the application of philosophical principles, such as autonomy, charity and distributive justice, to the trust
- The philosophical foundations of fiduciary relationships and obligations and other equitable doctrines, such as equitable estoppel and the doctrines of undue influence and unconscionable dealing
- The nature and purposes of equitable remedies
- The nature and purposes of equitable defences such as delay and good faith purchase for value without notice

**Assessment:** Research essay 5000 words (due week 12) 100%

**Prescribed texts:** Printed Materials will be issued by the Faculty of Law

### 730-493 Principles of Construction Law

**Credit points:** 12.5

**Coordinator:** Mr Matthew Bell

**Prerequisites:** Obligations; Remedies, Contracts; Torts or in each case their equivalent.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour lecture and one 1-hour tutorial per week (*Semester 1*).

**Description:** This subject provides a grounding in the specialist legal and commercial knowledge required in order to practice as a construction lawyer in Australia and overseas. This involves, primarily, the application to specific construction circumstances of principles of contract and negligence (including the detailed construction law treatment of defective work, failures to complete on time and variations to workscope).

A knowledge of how other areas of law and commerce impact upon the work of a construction lawyer will also be gained, including in respect of: contract drafting, the role and nature of standard forms, bases for commercial negotia-

tion, project procurement, trade practices, insurance, litigation and alternative dispute resolution.

A site visit to a construction project is included in order to gain an understanding of how the principles of construction law are applied in practice.

**Assessment:** Research assignment 2500 words 30% (due mid semester) and a final open book examination 2-hours 70%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-399 Principles of International Taxation

**Credit points:** 12.5

**Coordinator:** Mr M Kobetsky

**Prerequisites:** Taxation Law

**Contact:** Estimated total time commitment of 100 hours. Includes one 2-hour seminar per week (*Semester 2*).

**Description:** The subject will introduce students to:

- the fundamental principles of international taxation law;
- the general operation of international tax treaties;
- the 'arms length principle' applicable to international transfer pricing;
- the policy issues faced by nation states in protecting national tax bases while providing relief from double taxation of international transactions, and the methods by which Australia and other nation states address these policy issues;
- the policy issues faced by nation states in controlling international tax avoidance, and the methods by which Australia and other nation states address these policy issues;
- the policy issues faced by nation states in constructing international tax rules which maintain tax revenues and tax equity at the national level, while promoting international trade and investment, and the methods by which Australia and other nation states address these policy issues.

**Assessment:** A one-hour open-book in-class test 10% (to be held after the mid-semester break) and a final examination three hours 90%.

**Prescribed texts:** Deutsch, *Fundamental Tax Legislation*, ATP 2006, with CD-ROM (or equivalent). • Kobetsky, O'Connell, Stewart, *Income Tax: Text, Materials and Essential Cases*, Federation Press 2005, 5th ed.

### 730-436 Principles of Labour Law

**Credit points:** 12.5

**Coordinator:** Dr J Howe

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal theory or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes three hours of lectures per week (*Semester 1*).

**Description:** This subject provides a detailed overview of the legal regulation of work relationships in Australia, in an industrial, social and political context. Historical and theoretical perspectives are used. The subject examines how work relationships are regulated through a contractual paradigm, and statutory regimes designed to ensure the fair and non-discriminatory treatment of workers, and reasonably safe work practices. Also examined are key aspects of the Howard Coalition Government's 1996 Workplace Relations Act, including the significant 'Work Choices' amendments enacted in late 2005. Topics include:

- Various aspects of the common law contract of employment, including emerging ideas of employment as based on mutual trust and confidence
- Statutory provisions regarding discrimination in employment and occupational health and safety
- Statutory standards under the Workplace Relations Act regarding unfair dismissal, minimum wage rates, hours of work and leave
- the regulation of employment rights and working conditions by awards, collective agreements and individual 'AWAs' under the Workplace Relations Act
- The constitutional framework for Australian labour law

A number of thematic issues will be developed. These will be chosen for their currency and relevance, and may include the phenomenon of casualisation, and work and family conflict.

**Assessment:** Research essay 5000 words 100% (due end of semester) OR a final open-book examination three hours 100%. Students are required to complete a work-book containing answers to class problems by the final week of semester (hurdle requirement).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-404 Private International Law

**Credit points:** 12.5

**Coordinator:** Professor R Garnett

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Obligations; Contracts or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes three hours of seminars per week (*Semester 2*).

**Description:** Private International Law (sometimes called Conflict of Laws) deals with the situation where a private legal dispute litigated in a court of the forum has an international or interstate element. The subject deals with the principles in relation to three main matters. First, the circumstances when the court exercises jurisdiction. Secondly, the circumstances in which a foreign or interstate judgement will be recognised or enforced by the courts of the forum. Thirdly, the rules which govern which law should apply to the resolution of the dispute in contracts and torts. Whether the application of the relevant principles differ as between international and interstate disputes (including the role of full faith and credit), characterisation, the distinction between substance and procedure and the interpretation of the statutes of the forum, are considered in the course of dealing with the issues mentioned above. The subject also covers the non-application of foreign law on grounds of public policy.

**Assessment:** Either research assignment not exceeding 3000 words 33.3% (due final week of semester) and a final open-book examination two hours 66.6% OR final open-book examination three hours 100%.

**Recommended texts:** Davies, Ricketson & Lindell, *Conflict of Laws: Commentary and Materials*, Butterworths, 1997.

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### 730-475 Public Interest Lawyering

**Credit points:** 12.5

**Coordinator:** TBA

**Prerequisites:** Legal Method and Reasoning; Torts; Constitutional Law; Administrative Law; Dispute Resolution or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour seminar per week (*Semester 2*).

**Description:** This subject will introduce students to how law is used and practiced in the public interest and seek to build the knowledge and competencies required of students who wish to work in this area. The seminars are based around 3 broad themes: (1) the relationship between the public interest and lawyering; (2) the various models available for the delivery of public interest lawyering services and their underlying theories such as a rights based approach to service delivery and (3) public interest lawyering skills and strategies such as communicating with clients, interviewing skills, general advocacy skills, submission writing and litigation in both domestic and international forums. Students will have the opportunity to interact with and to learn from a variety of lawyers and advocates who practice in the public interest arena.

This subject will have an enrolment cap of 24 students

**Assessment:** A written assignment 1000 words 20% (due week 6) and a second written assignment 4000 words 80% (due end of semester).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

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### 730-437 Refugee Law

**Credit points:** 12.5

**Coordinator:** Dr M Foster

**Prerequisites:** Principles of Public Law; Constitutional Law; Administrative Law or in each case their equivalent. Students will find it advantageous to have studied or be studying International Law.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour seminar per week (*Semester 2*).

**Description:** This subject will introduce students to both international and domestic aspects of refugee law. The subject will begin with an historical introduction to international refugee law, before turning to consider the key international instruments for the protection of refugees including the Refugee Convention and Protocol (including the role of the UNHCR); regional instruments; customary international law; and international human rights treaties. The course concentrates primarily on the 1951 Convention, exploring the key controversies in interpreting the refugee definition and extent of international protection afforded to refugees. Examination of these issues will involve reference to comparative case-law, particularly from superior courts in other common law countries (including the US, Canada and the UK). This provides a framework for considering the implementation of the Refugee Convention in Australian domestic law. The course will examine constitutional power with respect to 'aliens' and the relevant provisions of the Commonwealth Migration Act 1958, focusing particularly on the procedures for decision-making in Australian refugee law, including merits review before the RRT and judicial review of administrative decisions. Specific topics in domestic law will include the detention of asylum seekers and the "Pacific solution". The course will conclude by considering proposals to reformulate the international refugee protection regime.

**Assessment:** Research assignment 5000 words 100% (due end of semester). Attendance at 75% of classes and one class presentation is a hurdle requirement to pass this subject.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

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### 730-405 Unions, Bargaining and Industrial Action

**Credit points:** 12.5

**Coordinator:** Mr S Cooney

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory. Normally a student would have or be undertaking 730-436 Principles of Labour Law. Students who are unsure about whether to enrol should feel free to consult the subject coordinator in advance.

**Contact:** Estimated total time commitment of 120 hours. Includes one 3-hour seminar per week (*Semester 2*).

**Description:** This subject examines the regulation of Australian workplaces in the aftermath of the Federal Government's Work Choices legislation. The subject focuses on the issues of freedom of association and the right to organise unions, bargaining over employment conditions, and controls over industrial action. The subject will include an examination of competing policy objectives, a historical overview of Australian workplace regulation, an analysis of international legal principles and a comparative study of the law in jurisdictions such as the United States, New Zealand and the United Kingdom. The subject will conclude with a consideration of new and innovative models or workplace regulation appropriate for contemporary forms of work. Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research assignment 5000 words 100% (due first day of examination period) OR a reflective essay 1500 words 40% (due first day of the exam period) and a final open-book examination 2 hours 60%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

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### 730-265 Reproductive Rights and Sexual Health

**Credit points:** 12.5

**Coordinator:** I Malkin & W Larcombe

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law or in each case their equivalent

**Contact:** Estimated total time commitment of 120 hours. Includes three hours of seminars per week (*Not Offered*).

**Description:** This subject investigates law's role in protecting and promoting reproductive rights and sexual health. The subject first introduces relevant historical and contemporary perspectives and practices; legal principles, institutions and frameworks; and a range of regulatory strategies designed to protect and promote reproductive rights and sexual health. We then examine selected case studies that highlight contemporary issues in reproductive rights and sexual health. The case studies will vary from year to year and may draw on the following areas of law: family, tort, medical and human rights. Case studies will be chosen from the following topics:

(i) Access to sex education, contraception and infection prevention (ii) HIV/AIDS, STIs: rights and regulatory frameworks (iii) Abortion and embryo destruction (iv) Wrongful birth and wrongful life (v) Discrimination and service provision (vi) Reproductive technologies and genetic screening (vii) Reproductive rights and sexual health at international law The final part of the subject provides an opportunity for students to present their research on an approved topic.

**Assessment:** Research assignment 5000 words 100% (due week 12). Attendance and participation in at least 75% of classes is a hurdle requirement for this subject.

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### 730-321 Restitution

**Credit points:** 12.5

**Coordinator:** Professor M Bryan

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Obligations; Contracts or in each case their equivalents.

**Contact:** Estimated total time commitment of 108 hours. Includes three hours of lecture/seminars per week (*Semester 2*).

**Description:** This subject provides an analysis of the law of unjust enrichment in Australian law. Students will examine the various unjust factors recognised by courts or discussed by theorists, such as mistake, compulsion and failure of consideration. The various forms of enrichment will be studied and the differences between restitution for money and restitution for services explored. Defences to restitutionary claims and restitutionary remedies, both personal and proprietary, will also be covered.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Either an optional research essay 5000 words 100% (due final week of semester) OR final examination three hours 100%.

**Prescribed texts:** Sharon Erbacher, *Restitution: Text, Cases and Materials*, Cavendish Publishing.

**730-439 Retail Banking and Finance Law****Credit points:** 12.5**Coordinator:** Mr. A. Ham**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Contracts; Obligations; Property or in each case their equivalents.**Corequisites:** Equity and Trusts**Contact:** Three hours per week (*Not Offered*).**Description:** The financial sector occupies a unique place in the economy. Few commercial or consumer transactions do not have a financial aspect. Furthermore, rapid changes in technology and the regulation of financial markets have significantly affected the relationship between banks and their customers.

The activities of banks typically include making loans, taking deposits, and facilitating payments. The emphasis in this subject is on the taking of deposits and the operation of traditional and electronic payment systems, particularly in a consumer context.

The subject begins with a brief overview of the regulation and supervision of the Australian banking system. In the second part of the subject students will explore the central aspects of the banker-customer relationship, including the impact of recent financial services reforms under Chapter 7 of the Corporations Act, and banks' obligations of privacy and confidentiality. The third part of the subject deals with the regulation and operation of payment methods or systems, particularly electronic payment mechanisms (such as credit cards, direct debt arrangements and smart cards). Finally we will consider proposals for reform of the law and regulation of consumer banking and finance transactions.

**Assessment:** A three-hour examination 100%.**Prescribed texts:** Printed materials will be issued by the Faculty of Law. Mallesons Stephen Jaques, *Australian Finance Law*, 5th edn, 2003.**730-435 Special Topics in Intellectual Property****Credit points:** 12.5**Coordinator:** Associate Professor M Richardson**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Obligations; Contracts; Property or in each case their equivalents.**Contact:** Estimated total time commitment of 120-140 hours. The subject will be taught intensively in the summer semester (*Summer semester*).**Description:** The principle topics covered will include:

- theories of intellectual property and overview of relevant sources of protection;
- the intellectual property/competition law interface;
- protection of digital information and databases;
- intellectual property and the internet;
- international standards including TRIPs; and
- the future of intellectual property law.

Note: The essay in this subject is regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100% (due end of semester).**Prescribed texts:** Printed materials will be issued by the Faculty of Law.**730-403 Takeovers and Securities Regulation****Credit points:** 12.5**Coordinator:** Associate Professor A O'Connell**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Constitutional Law; Administrative Law; Obligations; Contracts; Property or in each case their equivalents.**Corequisites:** Corporations Law.**Contact:** Estimated total time commitment of 96 hours. Includes two hours of lectures per week (*Semester 2*).**Description:** This subject is intended to introduce students to aspects of takeovers and securities regulation including regulation of takeovers under the *Corporations Act* and other related legislation; statutory regulation of financial services products and providers; regulations of and by the stock exchange; public offerings of securities; and the role of the regulatory authorities in relations to takeovers and securities.**Assessment:** Written work totalling 2000 words 30% (due week 6) and final examination two hours 70%.**Prescribed texts:** (Cth), *Australian Corporations Legislation*, 2007. • Woodward, Bird & Sievers, *Corporations Law - In Principle*, 7th edition, LBC 2005.**730-407 Taxation****Credit points:** 12.5**Coordinator:** Ms M Stewart**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents. Students will find it advantageous to have studied, or be studying, Equity and Trusts and Corporations Law.**Contact:** Estimated total time commitment of 96 hours. Includes one 2-hour lecture and one 1-hour tutorial per week (*Semester 1*).**Description:** The subject is intended to introduce law students to Australia's tax system including the income tax and Goods and Services Tax. It then focuses on the principles of income taxation and the policy issues in the design of an income tax including issues of equity, efficiency and simplicity in the tax law and the progressive income tax rate structure. The core of the subject is an examination of the principles, statutory and case law of the income tax including assessable income, capital gains, fringe benefits, deductible expenses and anti-avoidance provisions.**Assessment:** A policy essay 1500 words 25% (due week 6), a written exercise 1500 words 25% (due week 10) and a final examination two hours 50%.**Prescribed texts:** *Current Tax Legislation*, CCH or ATP.Deutsch (ed), *Fundamental Tax Legislation (ATP)*, 2007 (of CCH or Lexis equivalents). • Kobetsky, Krever, O'Connell & Stewart, *Income Tax: Text, Materials and Essential Cases*, Federation Press (6th edition), 2006.**730-262 Tax Welfare and Society****Credit points:** 12.5**Coordinator:** Ms M Stewart**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts or in each case their equivalents. Students may find it advantageous to have studied or be concurrently studying Taxation Law.**Contact:** Estimated total time commitment of 120 hours. Includes one 2-hour seminar per week (*Semester 1*).**Description:** Taxing and spending are core functions of government. They are also central ways that our society, through the state, seeks to encourage economic growth, to provide welfare for the disadvantaged, and to direct our work, consumption, saving and investment behavior. Taxes and expenditures affect most of our major economic and life decisions about work, family, education, housing, an ageing society and the environment. This subject examines the law and policy at the intersection of tax, welfare, government expenditure and regulation in respect of key topics of our times. The subject will first provide an analysis of core issues in respect of tax, expenditure and regulatory policy. It will then examine the law and policy on specific current topics, addressing the themes and life decisions set out above, bringing a critical analytical perspective to bear on these issues.

Note: The essay in this subject is regarded as a substantial piece of legal writing.

**Assessment:** Two Response Papers based on the class readings 10% to be allocated by the subject coordinator and a research essay 5000 words 90% (due end of semester) OR Two Response Papers based on the class readings 10% to be allocated by the subject coordinator and a take home examination 90% (to be held final week of semester)**Prescribed texts:** Printed Materials will be issued by the Faculty of Law**730-335 Trade Marks and Related Rights****Credit points:** 12.5**Coordinator:** Ms K Weatherall**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Obligations; Contracts; Property or in each case their equivalents.**Contact:** Estimated total time commitment of 100-126 hours. Includes one 2-hour lecture per week plus 6 tutorials in weeks 7-12 (*Semester 1*).**Description:** This subject is concerned with intellectual property law - legal rights attaching to intangible subject matter - as it relates to marketing and the rights of traders to protect their goodwill and reputation. The course examines the laws which regulate the use of trade marks, names, logos and other trade indicia used to promote goods and services. The course will situate these laws in a framework of economic and social policy. The course will include consideration of:

- trade marks registered under the *Trade Marks Act*1995 (Cth): a study of the principles of law relating to the *Trade Marks Act*1995, including the methods for obtaining, maintaining, exploiting and protecting registered trade marks;
- passing off and related actions: this part of the course involves a study of other legal mechanisms for protecting trade insignia and commercial reputation. These means include the common law actions for passing off, and

those provisions of the *Trade Practices Act 1974* (Cth) (and equivalent state legislation) which proscribe misleading and deceptive conduct; and

- other special cases: other systems for protecting commercial reputations and get-up: such as the Geographical Indications system, and the UDRP (relating to domain names).

**Assessment:** Written assignment 2000 words 30% and a final open-book examination two hours 70%

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

**Recommended texts:** Printed Materials will be issued by the Faculty of Law  
McKeough, Stewart & Philip, *Intellectual Property Law in Australia*, 3rd edn, Butterworths. • S Ricketson and M Richardson, *Intellectual Property: Cases, Materials and Commentary (3rd ed.)*, LexisNexis Butterworths 2005.

### 730-263 Trauma, Justice and Psychoanalysis

**Credit points:** 12.5

**Coordinator:** Associate Professor P Rush

**Prerequisites:** Legal Theory or equivalent.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour seminar per week (*Not Offered*).

**Description:** This course introduces a psychoanalytic theory of law in order to explore various ways of understanding injury and of responding to the demands of injustice. Drawing on the concept of trauma (events that overwhelm and defy understanding), the course is organised around three themes: experience of injury, ethics of testimony, narratives of responsibility and community. After examining a psychoanalytic and broadly interdisciplinary theory of trauma, the course considers the relevance of this theory for an understanding of legal responses to situations of political injustice and their aftermath. The situational case studies will include a selection from the following:

- Legal responses to the destruction of the European Jewry during World War II and its aftermath.
- Memory and the Times of Transitional Justice: Criminal Justice, Truth and Reconciliation. Examples include cases before the international criminal court and ad hoc international criminal tribunals, as well as from transitional moments in South Africa, Argentina, Timor L'Este, Chile.
- Australian indigenous peoples and historical injustice: genocide, deaths in custody, the stolen generations.
- Political Violence and Peace Processes in Ireland.
- Reparation movements.
- Torture and Truth.
- Sexual Politics and Sexual Injury.

Note: The essay in the subject will be regarded as a substantial piece of legal writing for honours purposes.

**Assessment:** Research essay 5000 words 100% (due end of semester).

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-466 Trust Accounts#

**Credit points:** 6.25

**Coordinator:** TBA

**Prerequisites:** This subject is designed for those seeking admission to practice in the state of Victoria. It is available only through the Community Access Program (CAP) to those who have completed or are currently completing a Law degree.

**Contact:** Students will attend lectures that constitute the Trust Accounting component of the subject 730-454 or 730-455. Estimated total time commitment is 24 hours, 6-8 of which are lectures/seminars (*Semester 2*).

**Description:** Trust Accounting fulfils the Priestly 11 requirement that candidates to admission to the legal profession in Australia should have studied 'basic principles of trust accounting.' In the LLB and JD degree programs in the Law School, Trust Accounting is part of the Legal Ethics subjects. This subject will be available only to CAP students allowing them to fulfil the Priestly 11 requirement without enrolling in the full legal ethics subject.

**Assessment:** Pass/Fail open-book examination (100%)

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-322 United Nations Law and Practice

**Credit points:** 12.5

**Coordinator:** Dr D Blumenthal

**Prerequisites:** Principles of Public Law or equivalent

**Corequisites:** International Law

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour seminar per week and one full day simulation (*Semester 2*).

**Description:** The United Nations is probably the boldest experiment in international relations in the modern era. It is a body of critical importance in the

international political and legal arena, particularly with respect to its primary aim of maintaining international peace and security. The subject aims to give students an understanding of the UN's role, structure and operation from both a legal and practical standpoint. To this end, the subject will examine the law and operation of the UN with primary reference to the Arab-Israeli conflict, as this long-standing conflict provides a revealing case study of the successes and failures of the UN since its inception, and of the challenges that the UN will face in the future.

**Assessment:** Research memorandum related to simulation exercise 40% (due mid semester) and a final open book examination 3-hours 60%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.

### 730-491 Violence, Women and the Law

**Credit points:** 12.5

**Coordinator:** Dr W Larcombe

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Criminal Law or in each case their equivalents.

**Contact:** Estimated total time commitment of 120 hours. Includes one 2-hour seminar per week (*Semester 2*).

**Description:** This course examines the role of law in responding to the issue of violence against women. The subject reviews current data, theory and typologies of gendered violence. It will examine a range of regulatory strategies. The emphasis may vary from year to year. The range of responses examined will be selected from criminal law, family law, tort law and international law. The subject will explore the historical development of policy responses and include an examination of contemporary and innovative approaches to violence against women.

Topics will be chosen from the following areas: (i) Terminology and classification; (ii) Available data on prevalence and impact of violence; (iii) theoretical perspectives and critiques; (iv) the political, social and economic context; (v) Law's role in regulating violence.

**Assessment:** Research essay 5000 words 100% (due in week 12). Attendance in at least 75% of classes is a hurdle requirement to pass this subject.

### 730-264 WTO: Dumping, Subsidies and Safeguards

**Credit points:** 12.5

**Coordinator:** Dr A Mitchell & Dr T Voon

**Prerequisites:** Legal Method and Reasoning; Principles of Public Law or in each case their equivalents.

**Contact:** Estimated total time commitment of 144 hours. Includes one 2-hour seminar per week (*Semester 1*).

**Description:** This subject will examine the imposition by Members of the World Trade Organization (WTO) of anti-dumping, countervailing and safeguard measures to deal with the injurious effects of imports from other WTO Members, as well as Members' granting of subsidies. This is an area of vital practical interest to Australia and other countries in the region and throughout the world. It also provides the focus for some of the most fascinating and important disputes ever decided in the WTO, particularly in recent years. Currently, more than half of all WTO disputes relate to trade remedies. Principal topics to be covered:

- Introduction to trade remedies (anti-dumping, countervailing measures, and safeguards) including history, trends in their use, arguments for and against their use.
- Introduction to trade remedies and subsidies within the context of the WTO.
- Rules on the imposition of anti-dumping measures in the WTO (primarily the 'Anti-Dumping Agreement').
- Rules on the imposition of subsidies and countervailing measures in the WTO (primarily the SCM Agreement).
- Rules on the imposition of safeguard measures in the WTO (primarily the Agreement on Safeguards).
- WTO dispute settlement decisions (by Panels and the Appellate Body) concerning these rules and their application.
- Negotiations in the Doha Development Round for improvements to these rules.

**Assessment:** Attendance in at least 75% of classes (hurdle requirement) and a Research essay 5000 words 100% (due during the exam period) OR a final open book examination three hours 100%.

**Prescribed texts:** Printed materials will be issued by the Faculty of Law.