

## A PRACTICAL APPROACH TO TEACHING AND ASSESSING PART IV OF THE *TRADE PRACTICES ACT 1974* (CTH)

---

*JENNY BUCHAN\* AND KERRY GOTTLIEB\*\**

Business Transactions (BT)<sup>1</sup> is a second-year law course in the Bachelor of Commerce degree (BCom) at the University of New South Wales (UNSW). It is a compulsory part of the degree structure for students majoring in accounting.

As a research-led university, UNSW encourages lecturers to approach teaching in a scholarly way by incorporating current research on student learning in teaching and assessment practices.<sup>2</sup> With these principles in mind, in 2003 the Academic Board of UNSW adopted the *Guidelines on Learning that Inform Teaching at UNSW* (the Guidelines), which is a statement of 16 principles that defines UNSW's approach to teaching in a way that enhances student learning.<sup>3</sup> The Guidelines are based on educational research literature and acknowledged best practice in teaching<sup>4</sup> and are seen as one of the ways UNSW strives to achieve its commitment to excellence in learning and teaching.<sup>5</sup> The Guidelines are not prescriptive, nor is it suggested that lecturers utilise all 16 principles in the development of their courses.<sup>6</sup> It is up to the individual lecturers to incorporate those Guidelines that are relevant and applicable.

---

\* Senior Lecturer, Business Law and Taxation, Australian School of Business, University of New South Wales.

\*\* Sessional lecturer, Business Law and Taxation, Australian School of Business, University of New South Wales.

1 Course Aims:

1. Teach you a methodology for analysing and solving legal problems that you will be able to use throughout your career;
2. Provide a basis for understanding the nature and effect of commercial contracts;
3. Enable you to understand how selected areas of substantive law such as fair trading (consumer protection), competition and bankruptcy impact on commercial activities;
4. Provide a conceptual background to the legal issues involved in buying, running and expanding a business.

Student Learning Outcomes:

1. Be confident and competent in constructing written and oral legal arguments relevant to common commercial problems
2. Be able to analyse legal issues in a logical and structured way (i.e. to identify problems, research relevant sources, propose an outcome and identify possible challenges to the proposed outcome)
3. Recognise that answers to legal problems are not always 'black and white'. You should have a greater understanding of the 'grey' nature of the law; its ability to adapt to 'new' situations.
4. Be aware of the policy choices that underpin and are reflected in business law.
5. Know how, as an individual, you can influence the development of the law as it impacts on your client or business.

2 *Welcome to the Guidelines on Learning that Inform Teaching at UNSW*, University of New South Wales <<http://www.guidelinesonlearning.unsw.edu.au/>> at 29 September 2009.

3 Resolution AB03/80 of the Academic Board of UNSW (2003) University of New South Wales <[http://www.secretariat.unsw.edu.au/acboard/approved\\_policy/Guidelines%20on%20learning%20that%20inform%20teaching.pdf](http://www.secretariat.unsw.edu.au/acboard/approved_policy/Guidelines%20on%20learning%20that%20inform%20teaching.pdf)> at 29 September 2009.

4 Ibid.

5 'About the Guidelines', *Guidelines on Learning that Inform Teaching at UNSW*, University of New South Wales <<http://www.guidelinesonlearning.unsw.edu.au/about.cfm>> at 29 September 2009.

6 'References', *Guidelines on Learning that Inform Teaching at UNSW*, University of New South Wales <<http://www.guidelinesonlearning.unsw.edu.au/references.cfm#guide14>> at 29 September 2009.

This article is concerned with an approach to teaching complex statute-based law, to non-law students in a way that is aligned with the Guidelines. In Part I, the specific issues are identified. In Part II, the goals of the course are described. Part III is a discussion; the success of the assessment is evaluated against the students' understanding of the material, their reactions to the program, and how the program measures up against guidelines for best practice in teaching. In Part IV, broader applications of the teaching and assessment model are identified. Part V is the conclusion.

An understanding of Part IV of the *Trade Practices Act 1974* (Cth) ('TPA') is a part of fulfilling Course Aims 2, 3 and 4 and the assessment described in this article helps meet Student Learning Outcomes 1, 2 and 3.<sup>7</sup>

The students studying accounting at UNSW typically graduated from high school in the top 6%<sup>8</sup> of their year. Many of these high-achieving students will ultimately assume significant responsibility in their chosen fields of business. In their roles as junior managers and junior players in accounting work, and as future leaders in business, an understanding of the restrictive trade practices provisions of the TPA (Part IV) is vitally important. Today's BCom graduates could be placed in a situation where they could breach Part IV if they were not aware of the conduct prohibited by ss 45 to 48 of the TPA. The consequences for them personally of being involved in a breach of Part IV could be serious.

Further, even today, 35 years after the enactment of the TPA, some senior business people are not alert to the ease with which the TPA can be breached.<sup>9</sup> Today's non-law, commerce graduates need to be able to identify conduct that would breach the TPA so they do not find themselves in court as a consequence of following a manager's instructions.

## I. ISSUES FACED

Several challenges need to be acknowledged and addressed in formulating a meaningful program for teaching and assessing Part IV of the TPA within the context of a degree course aimed at non-lawyers.

1. The teaching session at UNSW is 12 weeks, comprising 12 x two-hour lectures and 12 x one-hour tutorials. An effective methodology had to be developed to teach and assess restrictive trade practices satisfactorily in four hours of lectures plus three hours of tutorials. The law of restrictive trade practices is only one part of the BT course that also covers contract law, consumer protection and personal bankruptcy.
2. The restrictive trade practices provisions of the TPA (Part IV) are complex, covering 44 pages of the statute books and comprising five main sections, being ss 45, 46, 47, 48 and 50 TPA. It was decided to focus on ss 45 to 48 as there was insufficient time to do more than introduce s 50<sup>10</sup> in lectures. It is more likely that graduates would be involved as individuals in a situation leading to a breach of ss 45 to 48 than s 50, and there is ample material on the regulator's website<sup>11</sup> about mergers.

<sup>7</sup> Above n1.

<sup>8</sup> *Entry requirements*, Australian School of Business, University of New South Wales <<http://www.asb.unsw.edu.au/futurestudents/undergraduate/Pages/entryrequirements.aspx>> at 29 September 2009.

<sup>9</sup> Prior to becoming an academic, Buchan worked in TPA compliance, consulting to large Australian companies. This experience, together with the steady flow of undertakings companies make to the ACCC under s 87B TPA in response to alleged breaches by corporations and senior managers of Parts IV or V of the TPA (*Undertakings Register (s. 87B)*), Australian Competition & Consumer Commission <<http://www.accc.gov.au/content/index.phtml/itemId/6029>> at 29 September 2009) provides anecdotal support for this seemingly bold claim. Further evidence is provided by successful ACCC initiated prosecutions for breaches of Part IV.

<sup>10</sup> *Trade Practices Act 1974* (Cth) s 50 is a discrete provision concerning mergers.

<sup>11</sup> *Mergers*, Australian Competition and Consumer Commission <<http://www.accc.gov.au/content/index.phtml/itemId/6204>> at 29 September 2009.

3. As challenging as it is for students to decipher the long statutory provisions in the time available, the length of many of the relevant judgments is almost more daunting. The key Part IV judgments are made by the High Court and typically number over 100 paragraphs.<sup>12</sup> Today's students are time poor; many are working in professional jobs at the same time as carrying a full-time university course load. A pragmatist will admit that students will generally not read the judgments.

## II. GOALS

In terms of the subject matter, the primary goal is for students to develop a 'gut instinct' about whether there is a risk of breaching Part IV. This primary goal is reflected in the specific learning outcomes for this part of the course as discussed more fully in Part IIA of this article, *Designing the Assessment*, below. The secondary goals are for students to start to develop confidence in presenting to a group of their peers and to understand that in the 'real world' there might be a very short amount of time to convey a very significant message to an audience. These goals relate to the development of graduate attributes as set out in the Guidelines on learning that inform teaching at UNSW.

In accordance with educational best practice, the provision of a range of learning and assessment environments was sought to meet the needs of different types of learners. The aim was to align the assessment practices with the learning activities and learning outcomes for this part of the course.

### *A. Designing the Assessment*

Given the short amount of time available in lectures and tutorials to cover a relatively long and complex part of the TPA, it was necessary to develop a very effective methodology. One of the most influential theories of curriculum design is the theory of constructive alignment (CA) developed by John Biggs. It relates to designing a curriculum in such a way that student learning is enhanced.<sup>13</sup> The theory has two aspects. The first part relates to the theory of constructivism which provides that students learn by constructing meaning through the learning activities. The alignment aspect refers to the teaching methods and assessment tasks being aligned to the desired learning outcomes.<sup>14</sup> If the learning activities and assessment were designed in this way, the students would have a strong prospect of completing the part IV component of the BT course, having acquired the desired knowledge, instincts and skills. In order to put Biggs's theory of CA into practice, it was necessary to first define the intended learning outcomes.

Biggs distinguishes between declarative and functioning knowledge, declarative knowledge being knowledge that can be declared, orally or in writing, whereas functioning knowledge comes when acquired knowledge is understood and able to be applied in future decisions and behaviour.<sup>15</sup> Therefore it was necessary to state the intended learning outcomes in a way which required students to demonstrate their understanding.

In developing the specific learning outcomes for this part of the course it was recognised that commerce students and law students have different needs. Pure commerce students do not need a detailed knowledge of the provisions of the TPA and the relevant cases. Rather, the aim in BT is for the students to acquire a level of knowledge and understanding of the various forms of anti-competitive conduct (restrictive trade practices) prohibited by the TPA and an appreciation of how easy it is for the provisions to be breached. Students successfully acquiring

---

12 See, eg, *Boral Besser Masonry Ltd v Australian Competition and Consumer Commission* [2003] HCA 5; 215 CLR 374; 195 ALR 609; 77 ALJR 623 (7 February 2003), which is 449 paragraphs <<http://www.austlii.edu.au/au/cases/cth/HCA/2003/5.html>> at 29 September 2009.

13 John B Biggs, 'Aligning Teaching for Constructing Learning' (2008) 16(1) *Focus on University Teaching and Learning* 1.

14 *Ibid.*

15 Biggs, above n 13, 2.

this knowledge will be able to identify potential breaches or areas of risk in a workplace and will know how to respond appropriately. It is considered important for students to have a strong sense of the serious ramifications for companies breaching the provisions, both in terms of penalties for the companies and individuals involved and damage to reputation, as well as an appreciation of how prevalent such breaches are.

Once the desired learning outcomes were identified, teaching and learning activities needed to be selected that would achieve these outcomes, and assessment practices needed to be aligned to these outcomes. According to Biggs, all aspects of teaching and assessment should be structured so that students are encouraged to engage in higher-order thinking processes (such as analysis, synthesis and evaluation) to support high-level learning.<sup>16</sup> The idea behind this is that students must be more than passive recipients of knowledge. They should read, write, discuss, debate and problem solve.<sup>17</sup> This is what is referred to in the educational literature as encouraging a deep approach to learning.<sup>18</sup> In contrast, passivity amongst students negatively impacts on their motivational levels and curiosity.<sup>19</sup>

In selecting the teaching and learning practices, it was therefore necessary to focus on encouraging students to engage in these higher-order thinking tasks, and to be cognisant of the process in which students learn as described in the constructivist learning theory. The selected learning activities involved the lectures and tutorials on this topic as well the actual assessment. Students acquire a significant amount of the intended knowledge and skills through the process of completing the assessment which is described below.

### *B. Details of the Teaching and the Assessment*

The first lecture is devoted to placing Part IV within the context of the whole TPA and to exploring concepts of market, market power, arrangement or understanding, and substantial lessening of competition on which the statutory breaches depend. The second lecture explores the specific requirements of ss 45, 46, 47 and 48 of the TPA. Remedies are addressed as a separate part of the course.

Flow charts<sup>20</sup> are distributed to the students and a link to the TPA is provided on the course website. The focus is on the identification of prohibited conduct and appreciating the consequences of a breach. The tutorials that follow the Part IV lectures are devoted to exploring the concepts and practising applying the concepts in the context of problem scenarios.

In the week between the end of the Part IV lectures and the tutorial assessments, a transition is made from Part IV to the next major topic of contract law by discussing legal risk management, legal compliance and due diligence. This equips students to respond to Part B of the week four tutorial assessment task (the Assessment).

The Assessment is undertaken against the background of the preparation in lectures and tutorials above. The Assessment task is set out in full in Appendix 2.

In Part A of the Assessment, students are required to identify a media clipping and to work in pairs to create and deliver a presentation in their weekly tutorial. Students are told that a news release from the regulator, the Australian Competition and Consumer Commission's (ACCC) website is not acceptable in place of a media clipping, as this source presents only the regulator's

<sup>16</sup> Biggs, above n 13, 1.

<sup>17</sup> Charles C Bonwell and James A Eison, *Active Learning: Creating Excitement in the Classroom* 1991 The National Teaching and Learning Forum <<http://www.ntlf.com/html/lib/bib/91-9dig.htm>> at 29 September 2009.

<sup>18</sup> Gibbs G, *Improving the Quality of Student Learning* (1992) 34.

<sup>19</sup> Barbara Gross Davis, *Tools for Teaching: Motivating Students* (1993) University of California Berkeley <<http://teaching.berkeley.edu/bgd/motivate.html>> at 29 September 2009.

<sup>20</sup> See Appendix 1. The flow charts for *Trade Practices Act 1974* (Cth) ss 45, 46, 47 and 48 were supplied by a 2003 sessional tutor, Sally Box, who had been given them by one of her lecturers at UNSW Law School. Kerry Gottlieb drafted the s 46 (1AA) flow chart.

view. A media clipping from the print or electronic media is required as it is likely to present more than one perspective.

The time span for sourcing the media clipping is confined to the six months prior to the Assessment. This restriction serves to highlight the number of recent and current inquiries and ensures that students do not recycle work from the previous session.

The presentation time for each pair of students is limited to two or three minutes. The amount of time available per presentation is determined by the number of students in tutorial groups (typically up to 24), the decision to devote only one 50-minute tutorial to the exercise, and the wish to force students not to waffle. Students are told in lectures that in 'real life' they may only have two or three minutes allocated to them on a board's meeting agenda. They have to use their time slot to maximum effect. Part A is marked out of eight.

In Part B of the Assessment,<sup>21</sup> the written component, students are required, again in pairs, to demonstrate that they not only understand the issues but can apply them to a new situation. When the results are posted on the course website, a list of all of the issues identified by the entire cohort is also posted.<sup>22</sup>

### III. DISCUSSION

This Assessment was first conducted in session 2, 2006. Prior to this, Part IV of the TPA was assessed in the traditional way, by informal tutorial questions that carried no marks and which not all students prepared for, and by a problem question in the final exam. Whilst some students answered the exam question well, many did not. We concluded these methods were not effective at engaging all students. This prompted a re-evaluation of how to teach and assess this complex area of law.

The success of the current Assessment can be determined by whether the students acquired the intended knowledge and skills in accordance with current thinking as to best practice in teaching. In the longer term, the Assessment will have succeeded if the 'gut instinct' of former BT students tells them that particular conduct contemplated by their employer or by a client is illegal, and if their response to the proposed conduct is not to proceed with breaching Part IV of the TPA.

#### *A. Reactions to the Program*

The first time this Assessment was conducted, in session 2 of 2006, student feedback was sought. Feedback forms<sup>23</sup> were distributed and collected in lectures. The students responded, overwhelmingly, that they found the Assessment to be an effective learning exercise because it:

- Made me aware of how competition law operates in practice.
- Made me aware of how many competition issues there are affecting Australian business.
- Made me aware of the benefit of knowing a bit about competition law.
- Helped me consolidate my understanding of the principle of competition law.
- I was a little bit nervous at first though, but it's good practice.
- It's really good assessment, helps students to learn the topic with the reality. That was good idea to assess this way. I like it.
- It was a decent presentation for its weighting and good for presenting skills.

---

21 See Appendix 2.

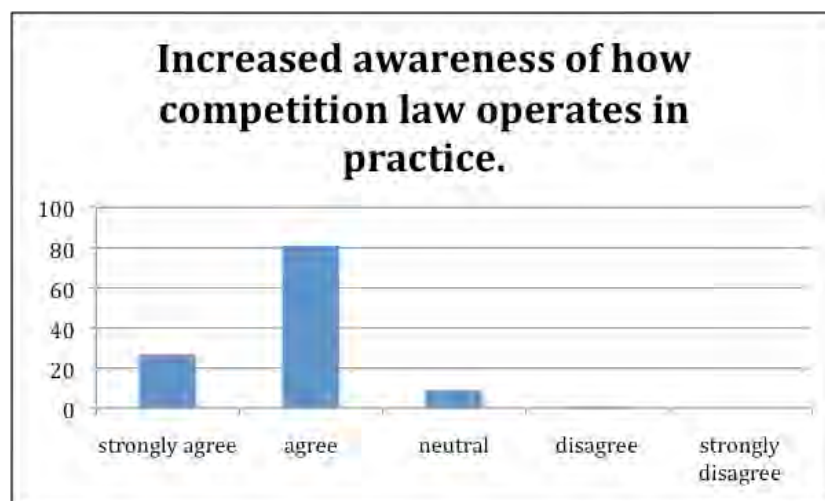
22 See, eg, the feedback in Appendix 3 about the issues that arose in Session 1, 2007.

23 See Appendix 4.

- Made me read and try to relate practical situations to theories of TPA.
- The requirement of a written component made sure people really understood. Presentation not enough.

The main negative comments in 2006 were, firstly, that the range of dates the media clipping was initially confined to meant that there was a lot of repetition and, secondly, that two minutes for the presentation was too short. The first negative was addressed by expanding the band of dates to a six-month window. The length of time available for the presentation was an unavoidable consequence of the number of students in a 50-minute tutorial. The first time the Assessment was trialled, students worked alone; the students now work and present in pairs. The presentation time has been expanded to 3 minutes per pair.

In 2009, a second formal feedback survey<sup>24</sup> was conducted. This time the authors used a more robust methodology than in 2006. A feedback survey instrument (the Survey) was devised that aligned with the Student Learning Outcomes.<sup>25</sup> Instead of distributing the Survey in lectures, it was decided to ask students to complete it in the tutorial the week after the Assessment. This would avoid bias as there could be no undue influence by the lecturer who set the Assessment as she was not a tutor. Completion of the Survey during tutorials also achieved a higher response rate as there is a requirement that students attend 80% of tutorials or risk failing the course. Thus, whilst students can choose not to attend the lectures,<sup>26</sup> most do attend tutorials. Surveys were completed anonymously. They were grouped by tutorial group. Students self-select into tutorials so it is assumed that all tutorials include a representative selection of students. Of the cohort of 314 students<sup>27</sup> enrolled in BT in session 1, 2009, a total of 180 surveys were completed. The responses from a sample of 120 of the 180 (the Sample) were entered into an Excel spreadsheet and analysed. The 120 included at least one tutorial from each tutor and were taken from time slots throughout the day, ranging from the 9am tutorial to the 4pm, and from different days of the week. It is believed that the 120 represent an unbiased sample. Responses to four of the questions on the Survey demonstrated that, as a result of the Assessment, the teaching and learning aims in relation to Part IV have been met.



Ninety two per cent of the students in the Sample strongly agreed or agreed that the Assessment increased their awareness of how competition law operates in practice.

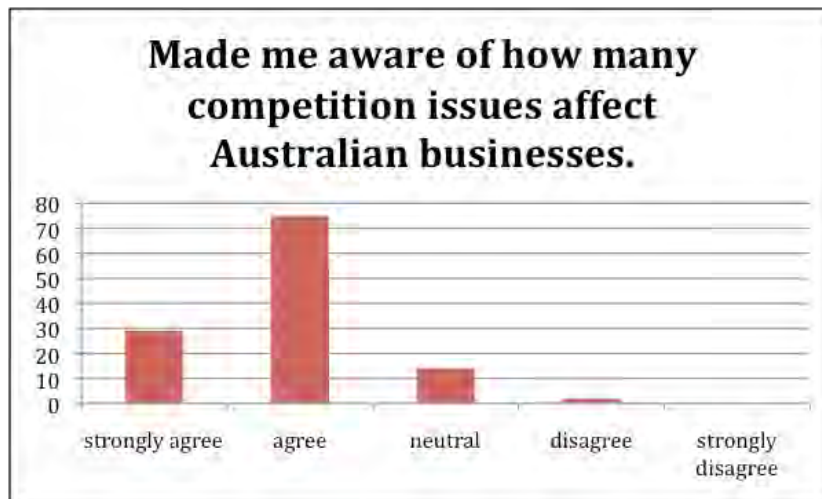
<sup>24</sup> Survey instrument is at Appendix 5.

<sup>25</sup> University of New South Wales, above n 6.

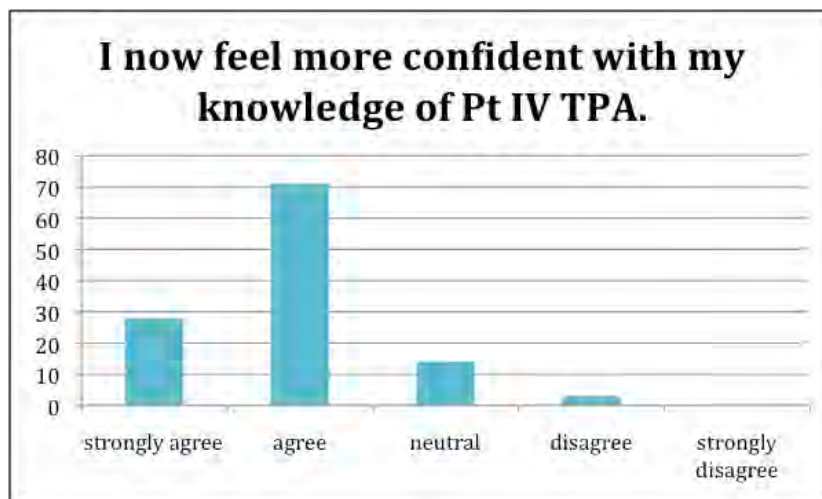
<sup>26</sup> The lectures are recorded, so some students access them remotely.

<sup>27</sup> All of the students present in six tutorials.



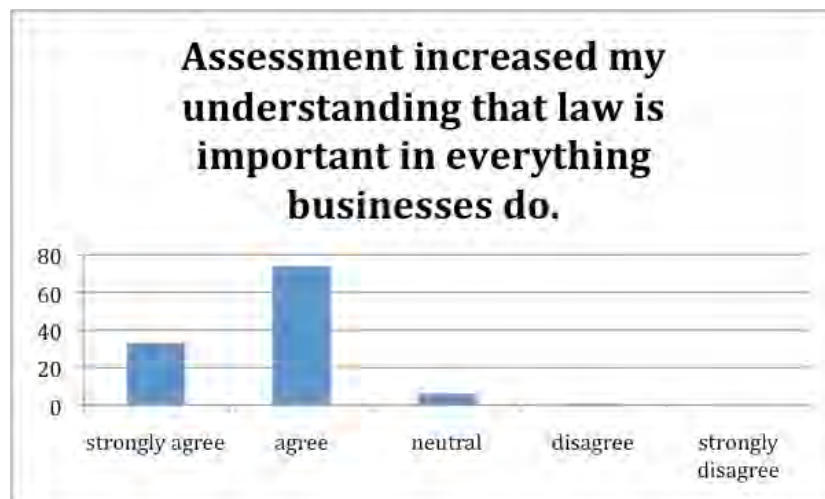


Eighty seven per cent of the Sample stated that the Assessment made them aware of how many competition issues affect Australian businesses. Twelve per cent were neutral on this issue and two individual students disagreed.



Eighty five per cent of the Sample strongly agree or agree that a result of doing the assessment is that they feel more confident with their knowledge of Part IV. Twelve per cent are neutral and three students disagreed.

As lawyers teaching law to non-lawyers, the temptation to ask the students how important they thought law was in business was irresistible. By this stage in their course, students had completed a 12-week prerequisite course. Figure 4 shows the results: 76 per cent strongly agreed or agreed and 23 per cent were neutral. Only one student in the Sample did not agree that law was important in everything businesses do.



The General section of the Survey provided the opportunity for students to make additional comments. Fifty five of the 180 Surveys contained additional comments. The comments in the General section were classified into broad themes and the comments below were indicative of those themes. Responses included;

- Liked having tutor feedback from last year's presentations.<sup>28</sup>
- Encouraged research of current issues.
- The assessment helped me see how the law applied to business in practice and the format/ importance of a memorandum.
- By finding different media coverage issues we learn how the TPA is affecting our normal life.
- A nice initial assessment task for the course.
- I feel that this project has effectively improved my understanding and ability to apply materials we have learnt in lectures. ... practice of oral presentation and writing a memorandum makes me feel more confident with my future working skills.
- Three minutes is really a rush, it's barely a presentation.<sup>29</sup>

Part IV has now been taught and assessed in this way for six semesters. Incremental improvements have been made every session. The Part B instructions are varied in some sessions by asking the students to write the memorandum from the perspective of a compliance officer or as an accountant advising a client in the same industry as that identified in the media clip.

The General section of the Survey also provided a mechanism for students to make suggestions about how to improve the Assessment. In light of the global financial crisis, one student suggested:

It may be interesting for the assessment to include TPA s 50 and cases for mergers and acquisitions; given the market is fundamentally cheap and hence increasing numbers of M&A cases may arise in the near future.

<sup>28</sup> Appendix 6 is the feedback we posted on the course website in week 3, before the assessment was due. It was prepared by Tim Miles, one of the 2008 and 2009 BT tutors.

<sup>29</sup> This and similar observations occurred in only one tutorial group and suggests that the tutor needed to keep the early presenters to time so as not to cause frustration for the later presenters.



This may demonstrate that students are thinking deeply about the legislative provisions and how they apply to the work environment they will be entering.

Tutors are important stakeholders in the BT course. An earlier version of this article<sup>30</sup> was distributed to the BT tutors. It helped them put their teaching into a bigger context and prompted one to observe; ‘Lots of positive thinking has gone into [the article] which is nice as it’s easy to be very cynical about the students and their feelings for law and the tiny time devoted to it.’<sup>31</sup>

#### IV BEST PRACTICE IN TEACHING

In the attempt to incorporate current thinking as to best practice in teaching into the BT course, the Assessment was designed to comply with Biggs’s theory of CA and to incorporate several of the *Guidelines on Learning* that inform teaching at UNSW. Biggs’s theory of CA does in fact underlie several of the Guidelines. As discussed above, Biggs’s theory of CA requires learning and assessment activities to be structured so that students are encouraged to engage in higher-order thinking tasks. This aspect of the CA theory is reflected in the first Guideline which provides: ‘Effective learning is supported when students are actively engaged in the learning process.’<sup>32</sup>

The Assessment requires students to read through various media articles in search of an appropriate assignment choice. In addition, students sit in on the oral presentations of other students<sup>33</sup> and are therefore exposed to a wide variety of situations involving breaches of the TPA which invariably cover several of the anti-competitive provisions. Through these avenues, students’ attention is drawn to the numerous anti-competitive cases that appear in the media on a regular basis and to the various types of conduct that constitute a breach.

Once students have identified the media article they want to use, they are required to engage in higher-order thinking tasks such as analysing the relevant breach, identifying any issues it raises,<sup>34</sup> considering the types of steps companies can take to prevent breaching the relevant prohibition, applying the knowledge gained to a different company, and considering the possible consequences of the breach.<sup>35</sup> By engaging in this process, students should gain a deeper understanding of the relevant section of the TPA, gain an understanding of how easy it is for conduct to fall foul of the provisions, and gain an appreciation of the ramifications of the breach. As mentioned above, in the 2009 Survey, the majority of the Sample agreed that the Assessment increased their awareness of how competition law operates in practice, the Assessment made them aware of how many competition issues affect Australian businesses, and as a result of doing the Assessment they feel more confident with their knowledge of Part IV. This knowledge and awareness acquired by the students through the process of completing the Assessment constitutes the specific learning outcomes identified for this part of the course as discussed above. The general high quality of the assessments submitted also supports the conclusion that BT students have acquired the desired knowledge in an active way and have engaged in the higher-order thinking tasks necessary to ensure that the learning task is an active one. Therefore, the selected learning activities appear to be aligned with, and support, the desired

30 Buchan and Gottlieb, ‘A Practical Approach to Teaching and Assessing Part IV of the Trade Practices Act 1974 (Cth)’ (Paper presented at the Australasian Law Teachers’ Association Annual Conference, Sydney, 6-8 July 2009).

31 Email from Jill Vidler to Jenny Buchan, 8 May 2009.

32 *The Guidelines - Overview*, University of New South Wales <<http://www.guidelinesonlearning.unsw.edu.au/overview.cfm>> at 29 September 2009.

33 The oral presentations are performed in the students’ weekly tutorials.

34 For example, why the conduct in question may/may not constitute a breach of the relevant section of the *Trade Practices Act 1974* (Cth). Students were provided with guidance on this in the marking criteria.

35 In the marking criteria given to students, it is suggested that students consider ways to make the board of directors understand the gravity of breaching a section of the *Trade Practices Act 1974* (Cth).

learning outcomes for this part of the course as required by Biggs. This aspect of the CA theory is reflected in Guideline 15 which provides that ‘effective learning is facilitated by assessment practices and other student learning activities that are designed to support the achievement of desired learning outcomes.’<sup>36</sup>

Guideline 5 provides that ‘Learning is more effective when students’ prior experience and knowledge are recognised and built on.’<sup>37</sup> This guideline reflects the constructivist aspect of Biggs’s theory. The constructivist learning theory provides that when students learn, they attempt to construct meaning out of what they are learning by making connections between the new information and their existing knowledge and experiences.<sup>38</sup> As the students are commerce students, many have an interest in reading the financial press for a variety of reasons. Drawing their attention to the numerous articles dealing with anti-competitive conduct that appear in the media places their new knowledge relating to the TPA within the context of their current knowledge and experiences. Also the use of real-world examples helps students relate new information to their everyday lives.<sup>39</sup> This also links in well with Guideline 6 which provides that ‘Students become more engaged in the learning process if they can see the relevance of their studies to professional, disciplinary and/or personal contexts.’<sup>40</sup>

The challenge faced when teaching law to commerce students is that many students only complete the BT course because it is compulsory for students completing a major in accounting, not because they have any desire to do it. This is more likely to result in students taking a superficial approach to learning and failing to properly engage with the subject matter. Through the Assessment, the relevance of law to their future careers is highlighted. Students are required to consider the impact of these laws on how company directors and employees conduct themselves and, by preparing a memorandum to a board of directors; students have an opportunity to engage in the type of tasks they may one day perform in a workplace. By engaging in an authentic task, the students’ learning experience becomes an authentic one.<sup>41</sup> Students value authentic tasks in assessment practices and respect assessment tasks which they feel require the skills that are needed in the workplace.<sup>42</sup> Students become more motivated and engaged as a result of seeing the relevance of what they are doing to their future careers.

Guideline 9 states that ‘students learn in different ways and their learning can be better supported by the use of multiple teaching methods and modes of instruction (visual, auditory, kinaesthetic, and read/write).’<sup>43</sup> The BT course at UNSW averages 350 students per semester, split in to two lecture groups. Due to the numbers in each lecture, the predominant mode of delivery of the lectures favours the visual and auditory learners.<sup>44</sup> The active nature of the

---

36 University of New South Wales, above n 6.

37 Ibid.

38 Lee S Schulman, ‘Taking Learning Seriously’ (1999) 31(4) *Change* 10, 12.

39 Idea sheet – Guideline 5, *Guidelines on Learning that Inform Teaching at UNSW*, University of New South Wales <[http://learningandteaching.unsw.edu.au/content/userDocs/ref4.1\\_guideline5\\_000.pdf](http://learningandteaching.unsw.edu.au/content/userDocs/ref4.1_guideline5_000.pdf)> at 29 September 2009.

40 *The Guidelines – Contextualising Students’ Learning Experiences*, University of New South Wales, <<http://www.guidelinesonlearning.unsw.edu.au/guideline6.cfm>> at 29 September 2009.

41 Ann Carlson, *Authentic Learning: What Does It Really Mean?* Western Washington University <[http://pandora.cii.wvu.edu/showcase2001/authentic\\_learning.htm](http://pandora.cii.wvu.edu/showcase2001/authentic_learning.htm)> at 29 September 2009.

42 *Core Principles of Effective Assessment*, Centre for the Study of Higher Education - University of Melbourne <<http://www.cshe.unimelb.edu.au/assessinglearning/05/index.html>> at 29 September 2009.

43 University of New South Wales, above n 6.

44 Direct instruction with PowerPoint presentations.

Assessment also takes into account the needs of the kinaesthetic learner.<sup>45</sup> Kinaesthetic learners are also supported through the use of real-life examples.<sup>46</sup>

Guideline 3 provides: ‘Activities that are interesting and challenging, but which also create opportunities for students to have fun, can enhance the learning experience.’<sup>47</sup> Students find the preparation of the memorandum to be challenging. Being predominantly accounting, finance and actuarial students who are comfortable with numbers, this type of written assessment takes some students out of their comfort zones. The students are provided with support in the form of guidance on writing a memorandum as well as a list of marking criteria. Nevertheless, students are required to apply themselves and engage in the higher-order thinking tasks as discussed previously.

Although the students feel challenged, the tutors also encourage the students to make the oral presentations fun and enjoyable. Students frequently dress up, use props such as a jar of coffee of the type in dispute, purchased from the retailer that alleged price fixing (Nestle and Aldi session 1 2007) and act out scenes such as impersonating television reporters outside the court case. In session 1, 2009, 54 per cent of the Sample reported that the assessment was fun to do, 38 per cent were neutral as to whether it was fun or not, and nine per cent said it was not fun.

To support the students in completing this assignment, an online discussion forum is established on the course website. Students are encouraged to discuss any questions they have with each other and are also able to address queries directly to the lecturer-in-charge. The lecturer-in-charge monitors the discussion forum and responds promptly to any questions addressed directly to her. By the lecturer-in-charge providing answers to questions through the online forum, all students have access to the same information and no individual student is advantaged or disadvantaged. Students also feel that they have a level of support and are not left to struggle on their own. Guideline 7 provides: ‘If dialogue is encouraged between students and teachers and among students (in and out of class), thus creating a community of learners, student motivation and engagement can be increased.’<sup>48</sup> By the lecturer-in-charge responding to students’ queries in a helpful and respectful way, an environment is created where students feel comfortable to raise questions and contribute to the dialogue. Experience has shown that students tend to explore the issues at a deeper level because they are able to question, probe and clarify any misunderstandings along the way. This also enables students to have dialogue amongst themselves which would otherwise be limited in a class of 350 students. This helps reduce any feelings of alienation amongst students and the tendency for students in the first year or two of study to feel overwhelmed.

The use of the online discussion forum also meets the requirements of Guideline 13 which provides that ‘Learning can be enhanced through appropriate use of information and communication technologies.’<sup>49</sup> Further, Guideline 14 provides that ‘Learning cooperatively with peers – rather than in an individualistic or competitive way – may help students develop interpersonal, professional and cognitive skills to a higher level.’<sup>50</sup> Learning cooperatively enriches the students’ learning experience by exposing the students to several perspectives and insights and enables students to develop a more considered response to the problem question.<sup>51</sup>

---

45 Each student attends a small group tutorial once a week to work through problem-based questions. This type of instruction also assists the kinaesthetic learner.

46 Idea sheet – Guideline 9, *Guidelines on Learning that Inform Teaching at UNSW*, University of New South Wales <[http://learningandteaching.unsw.edu.au/content/userDocs/ref4.1\\_guideline9\\_000.pdf](http://learningandteaching.unsw.edu.au/content/userDocs/ref4.1_guideline9_000.pdf)> at 29 September 2009.

47 University of New South Wales, above n 6.

48 Ibid.

49 Ibid.

50 Ibid.

51 Idea sheet – Guideline 14, *Guidelines on Learning that Inform Teaching at UNSW*, University of New South Wales <[http://learningandteaching.unsw.edu.au/content/userDocs/ref4.1\\_guideline14\\_000.pdf](http://learningandteaching.unsw.edu.au/content/userDocs/ref4.1_guideline14_000.pdf)> at 29 September 2009.

By requiring students to work in pairs for the Assessment, as well as by encouraging the use of the online discussion forum, cooperative learning amongst our students is supported.

Guideline 10 provides that ‘Clearly articulated expectations, goals, learning outcomes, and course requirements increase student motivation and improve learning.’<sup>52</sup> Students are given marking criteria for both the oral presentation and the written piece, therefore making the lecturer’s expectations clear and apparent. The feedback provided after the Assessment is also linked to these criteria. Unambiguous expectations are highly valued by students in assessment tasks.<sup>53</sup>

There has been an increasing emphasis in both higher education and in the vocational education sector on the need for graduates to acquire generic skills. It is perceived that the disciplinary knowledge acquired through education and training is not on its own sufficient to equip students for the workplace and for lifelong learning. Therefore students are required, in addition to disciplinary knowledge, to acquire and develop generic skills such as logical and analytical reasoning, problem solving, effective communication skills and teamwork, to name a few. These skills are highly regarded by employers and are seen as of increasing importance in the employability of graduates.<sup>54</sup> Guideline 12 deals with graduate attributes. It provides: ‘Graduate attributes – the qualities and skills the university hopes its students will develop as a result of their university studies – are most effectively acquired in a disciplinary context.’<sup>55</sup> In 2003, the Academic Board of UNSW approved a statement of graduate attributes.<sup>56</sup>

The Assessment assists in the development of the UNSW graduate attributes<sup>57</sup> in the following ways:

- By having students consider how to structure work practices to avoid breaching the law, an engagement with the relevant disciplinary knowledge is fostered in its interdisciplinary context;<sup>58</sup>
- By requiring students to analyse the media article in question, determine any lessons that can be learnt and apply them to another company, students are helped to develop the capacity for analytical and critical thinking, and for creative problem solving;<sup>59</sup>
- Through requiring students to recognise ways to avoid breaches of the TPA and to be creative in their oral presentations, the capacity for enterprise, initiative and creativity is fostered;<sup>60</sup>
- By requiring students to work in pairs and encouraging them to work collaboratively in the online discussion forums, opportunities to develop the skills required for collaborative and multidisciplinary work are provided;<sup>61</sup> and

---

52 University of New South Wales, above n 6.

53 Carlson, above n 41.

54 Paul Hager, Susan Holland and David Beckett, ‘Enhancing the Learning and Employability of Graduates: The Role of Generic Skills’ (Position Paper No 9, Business Higher Education Round Table, 2002) 9.

55 University of New South Wales, above n 6.

56 Resolution AB03/67 of the Academic Board (2003) University of New South Wales <[http://www.secretariat.unsw.edu.au/acboard/approved\\_policy/graduate\\_attributes.pdf](http://www.secretariat.unsw.edu.au/acboard/approved_policy/graduate_attributes.pdf)>.at 29 September 2009.

57 Ibid. In the resolution of the UNSW Academic Board it was expressed that the statement of graduate attributes has meaning when expressed in the context of the relevant discipline and therefore it is up to each faculty to contextualise the various attributes. The Australian School of Business developed its graduate attributes, which are aligned to the UNSW graduate attributes. See *Alignment of Australian School of Business Graduate Attributes 2008 with the UNSW Graduate Attributes* (2008) University of New South Wales <[http://www.docs.fce.unsw.edu.au/fce/EDU/unsw\\_and\\_asb\\_graduate\\_attributes.pdf](http://www.docs.fce.unsw.edu.au/fce/EDU/unsw_and_asb_graduate_attributes.pdf)> at 29 September 2009.

58 UNSW graduate attribute 2, above n 6.

59 UNSW graduate attribute 3, above n 6.

60 UNSW graduate attribute 6, above n 6.

61 UNSW graduate attribute 9, above n 6.

- Through working on an oral presentation and a written memorandum, students have the opportunity to develop skills for effective communication.<sup>62</sup> In the formal feedback survey conducted in 2009, 76 per cent of the students said that the preparation of the draft memorandum helped them develop their written communication skills.

The Assessment is designed to provide opportunities for the development of these graduate attributes as well as to acquire subject specific knowledge and skills, and therefore meets the requirements of Guideline 12.

## V BROADER APPLICATIONS OF THE TEACHING AND ASSESSMENT MODEL

The core components of the model for teaching and assessment described in this article are: non-law students who all need to gain an understanding of complex, statute-based law taught within a short space of time in a course structure that includes lectures and smaller tutorials. The students' future careers will see them operating in an environment where there is an assertive and well-funded regulator that is charged with prosecuting breaches of the specific statute, and educating the public through these prosecutions and through ongoing regular media attention.

In Australia it is suggested that this teaching and assessment model could readily be applied to teaching Part V of the TPA, which concerns 'Consumer Protection' and accounted for 69 per cent of the litigation commenced by the ACCC in 2004/05.<sup>63</sup> It could also be a useful model for courses on statutory remedies using Part VI of the TPA. It would also be applicable in a comparative law course where, for example, the regulation of anti-trust in the United States was compared with the ACCC's approach in Australia and that of the Commerce Commission in New Zealand.

The BT Students Learning Outcomes numbered 4 and 5 are not specifically addressed by the Assessment but the model could be extended to a discussion of policy underpinning statutes. This would be especially appropriate at times when there is significant policy debate concerning amendments to numerous statutes relevant to commerce students.<sup>64</sup>

## VI CONCLUSION

In the space of four hours of lectures and three hours of tutorials, the BT students have been exposed to the theory of competition law and to a number of live examples. They have worked as a group, albeit a small group of two, read the business press, developed an appreciation of the fact that the law does relate strongly to their future careers, and become much more aware of a very important area of the law. They have had practice at presenting to a group. They have developed a real sense of the importance and relevance of Part IV of the TPA to their future in the commercial world.

Both the content and teaching goals have been met – the students will graduate with an appreciation of the seriousness of breaching Part IV of the TPA, all students in the course have had an opportunity to learn about the TPA in a style that suits their learning style, be it visual, auditory, kinaesthetic or read/write, and we have taught and assessed this part of the course in a way that enhances student learning. Success in the longer term will be measured by an absence of the BT students' names from the ACCC website, and from Part IV cases in the Federal Court.

---

62 University of New South Wales, above n 6.

63 Graeme Samuel, Chair, Australian Competition and Consumer Commission Our focus – Your future (Speech delivered at the Society of Consumer Affairs Professionals Annual Conference, 14 October 2005) 5.

64 Since the Rudd Labour Government was elected, there has been a frenzy of legislative review in areas such as tax, workplace relations and consumer protection.

APPENDIX 1 – FLOW CHARTS FOR SECTIONS 45-48 TPA

**S45 –[Horizontal]**

**Contracts, arrangements or understandings that restrict dealings or affect competition**

1. Is there a contract, arrangement or understanding?
  - Mutuality between the parties, not necessarily formal
  - “meeting of the minds”

**YES**

2. Between corporations who are at the same level on the supply chain. Eg. “competitors”.

**YES**

3. That has or is likely to have the purpose or effect of **SLC**

- 1) What is the market
- 2) Probable nature of the market “but for” SLC.
- 3) What is lost v what would have been.
- 4) The market as a whole, not one competitor.

**NO**

4. Did the contract, arrangement or understanding contain

Exclusionary Provisions  
S4D (per se)

**YES**

Price fixing  
S45A (per se)

**YES**

Secondary boycott  
(that also SLC)

**YES**

**Contravention of s 45**



**S46**  
**Misuse of Market Power**

- 1) Does the corporation have market power?
- ability to raise prices without losing business
  - (Boral)? But does not need absolute freedom from
  - constraint by conduct of competitors (s46(3C))
  - ability to behave in a manner different to what a competitive market would allow (QWI)?

- 2) Did they take advantage of that power?  
Could you have behaved in the same manner without market power (Boral/Melway)?



- 3) For a proscribed purpose?
- substantial purpose (s4F)
  - establish by inference (s46(7))
  - what is the purpose, not EFFECT

YES

- 4) is there a causal link between the conduct and purpose?
- or is it the exercise of a legitimate right?
  - is the causal link an exercise of market power?

YES

**Contravention of s46**

**46(1AA)**

**Misuse of Market Power**

- 1) Does the corporation have a substantial share of the market?  
- Have regard to the number and size of competitors (s46(1AB))

**YES**

- 2) Did they supply goods or services for a sustained period at a price less than relevant cost of supplying?

**YES**

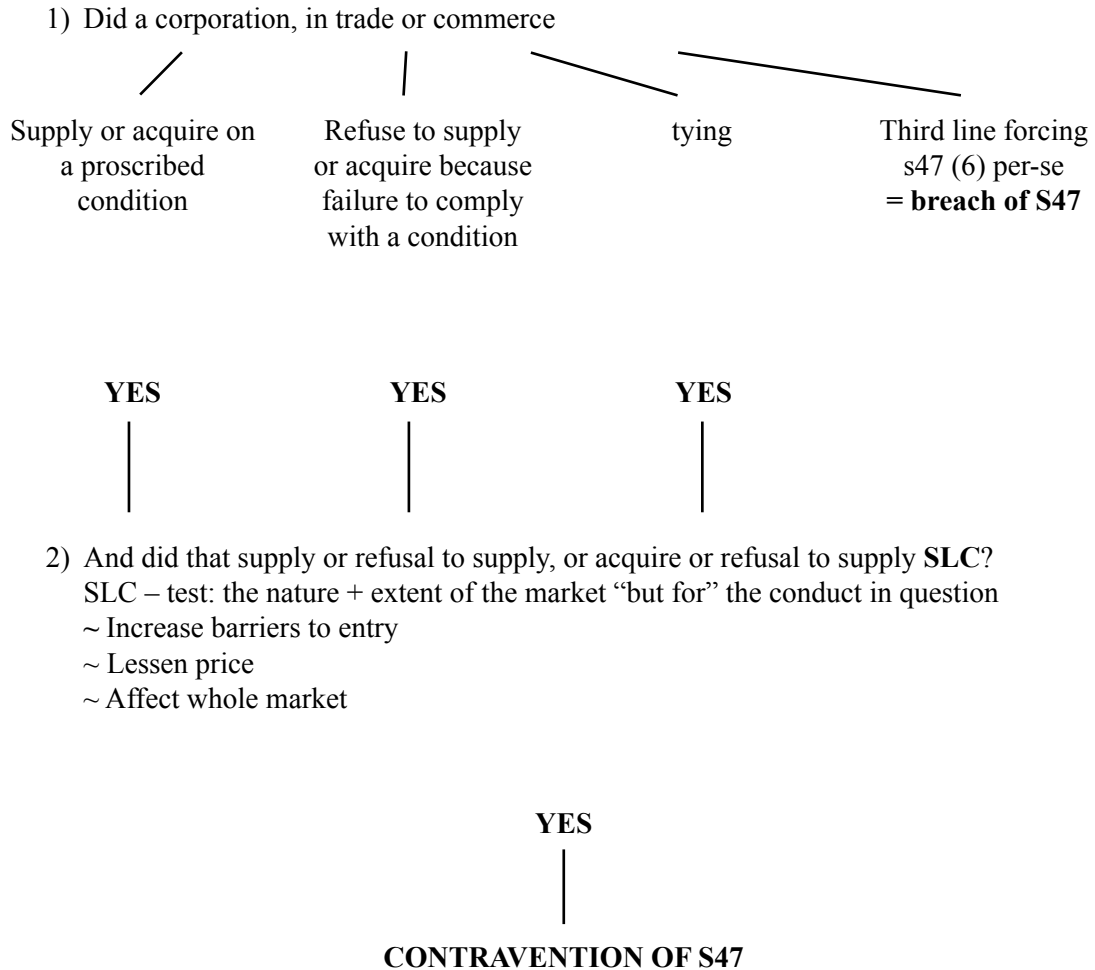
- 3) For a proscribed purpose?

**YES**

**Contravention of s46(1AA)**

**S47 [Vertical Dealing]**

**Exclusive Dealing**



**S48 [Vertical]**

**Resale Price Maintenance**

1) Did the corporation attempt to induce a person not to sell the supplier's products or services at a price less than specified?	<b>YES</b>
2) Did they <b>"make it known"</b> that they wouldn't supply goods unless they were sold at a certain price? A commitment to the future i.e.: a threat to discontinue supply unless agrees to sell below a price.	
3) Did they <b>withhold supply</b> ? Was the RPM the substantial reason for withholding supply?	<b>YES</b>
4) Were the prices genuinely <b>"recommended price"</b> . S96(3)(6)	<b>NO</b>
5) Does the <b>"loss leader defence"</b> apply? S98(2) ~ Discounting products to attract people into a store to buy other products. ~ Must discount at less than the cost of acquiring.	

**NO**

**Contravention of s48**

APPENDIX 2 – THE ASSESSMENT TASK

*Part A*

1. Identify a current issue concerning a **breach** or **possible breach** of one or more of sections 45, 46, 47 or 48 (NOT s 50) Part IV *Trade Practices Act* 1974 (Cth) that has been discussed in the media since 1 September 2007.<sup>65</sup>
2. Bring a media clipping about the issue to the tutorial and be prepared to deliver (in pairs) a 3 minute presentation of the issues it raises.
3. Present this in your tutorial AND

*Part B*

1. Each student hand to your tutor as the written part of your first assignment:

A memo prepared by you, as the compliance manager of an organisation, to your Board of Directors, setting out lessons your company needs to learn from the incident in question and steps your company needs to take to ensure it does not run the risk of breaching the relevant section of the TPA. (You can choose which company you work for – at the top of your memo describe the company and the industry it operates in – note: this is not included in the 200 word limit). Please attach a copy of the media clipping to your assignment (also not included in the 200 word limit).

NOTE:

- Maximum props for in-tutorial presentation – 1 overhead.
- Maximum length of written summary - 200 words.
- A signed first assignment coversheet (see back of course outline) must be attached to the assignment.

---

<sup>65</sup> The date is the first date after the end of the previous session's week 4 assessment.

APPENDIX 3

Dear session 1 2007 LEGT 2721 students

Thanks for putting a good effort into the first assignment, especially those of you who really hunted to source a novel article, and to all who completed a feedback form for this first assignment.

The 2 minutes time limit was a challenge that most of you rose to brilliantly. Some students commented that 2 minutes was too short, but in the real world that may be all you get. For those who went over time, please adhere strictly to future time limits in consideration to your peers.

Average mark for presentation = 3.6/5

Average mark for written = 3.5/5

Most students passed both oral and written. However, a few students lost marks in the written section for not following the instructions. This manifested itself in:

- Choosing an article that was 12 months old.
- Choosing an article from another country and not making the link to Australian law.
- Failing to address the written as a separate piece of work to the oral presentation.

You may be surprised at the number of companies and others facing pt IV TPA issues so far in 2007. You identified the following, so although some of you heard about Jurlique a lot, there were many other stories that arose in the identified time span.

**General issues and sectors**

- ‘Energy network’ letter to the editor
- Immunity for being first to tell the regulator about the breach.
- Reform of s 46 TPA
- Surgeons
- Wool mulesing

**Aviation sector**

- British Airlines and Virgin Atlantic collusion re fuel surcharge
- Macquarie Bank and Sydney Airport
- Qantas:
  - Terminal space spat with Virgin
  - Freight price (s 45)
  - Cartel action with 7 overseas airlines
  - Maintenance and operations division (s 48 resale price maintenance)

**Other companies attracting media attention re pt IV TPA.**

Aussie Home Loans – mortgage brokers  
(s 47 exclusive dealing)

Baxter Healthcare – crown immunity

Bone Timber v JAG timber

Cadbury Schweppes/ Amcor/ Visy

Cambur Industries – re kitchens

CEPUnion (s 45E)

Jurlique (resale price maintenance)

Loy Yang

Nestle and Aldi

Nielsen Media Research

Petrol price – Caltex and Shell

Samsung (price fixing)

Santos/ Queensland gas

Telstra

- Blocking access (s 46 market power)
- Soul Communication
- and Foxtel
- increasing wholesale prices

Tooltechnics (resale price maintenance)



APPENDIX 4 – 2006 FEEDBACK FORM

**FEEDBACK - LEGT 2721 WEEK 4 ASSESSMENT –  
PART IV – COMPETITION PROVISIONS OF THE TRADE PRACTICES ACT.**

I am looking for feedback on the Week 4 assessment tasks.

**First – the presentation in your tutorial.** Please circle **ALL** the responses that are appropriate.

- I found it an effective learning exercise because it:
  - a. Made me aware of how the competition law operates in practice
  - b. Made me aware of how many competition issues there are affecting Australian business.
  - c. Helped consolidate my understanding of the principles of competition law.
  - d. Made me aware of the benefit of knowing a bit about competition law.
  - e. I was surprised that, although several people chose the same issue, they each put a fresh interpretation on it so it was not boring.
  - f. It was fun.
  - g. Helped me get over my fear of presenting to a group of peers
  - h. Was good to get one piece of assessment out of the way early in the session.
  - i. Helped me get to know my classmates.
  - j. (other +ve comments) .....
  - .....
  - .....
  
- It was not effective as a learning exercise for me because:
  - a. I did not understand the instructions
  - b. I could not find a suitable article
  - c. I was bored because so many people chose the same article
  - d. I could not hear the presentations
  - e. I do not see the relevance of the task.
  - f. (other –ve comments) .....
  - .....
  - .....

**Second, the written assessment.** Please circle **ALL** the responses that are appropriate

- I found it a useful exercise because it:
  - a. Forced me to think about the issue in the context of my own future business.
  - b. (other +ve outcome) .....
  - .....
  
- I did not find it helped me understand the relevance of the competition law for an accountant or a business person because:  
(any –ve aspect of the assessment)  
.....  
.....

**General**

Add any suggestions here please to help Jenny decide how to improve this assessment in future courses.

APPENDIX 5 – 2009 FEEDBACK FORM

**Feedback - LEGT2721 week 4 assignment - Part IV – Competition provisions of the TPA**

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
<b>The assessment overall</b>					
The assessment made me aware of how competition law operates in practice					
The assessment made me aware of how many competition issues there are affecting Australian businesses					
I found it interesting to read about different competition law cases in the media					
This assessment felt relevant to my future career					
Having completed this assessment, I now feel more confident with my knowledge of Part IV of the TPA					
The assessment increased my understanding of how law is important in everything businesses do					
The assessment was challenging					
The assessment was fun to do					
<b>The oral presentation</b>					
The presentation gave me the opportunity to work on my presentation skills					
The presentation gave me an opportunity to be creative in ensuring that the presentation would be memorable					
<b>The memorandum</b>					
It was helpful having a draft memorandum on the course website					
Preparing the memorandum helped me develop my written communication skills					

**General**

Please provide any other positive features of this assessment, as well as any suggestions to help us improve this assessment in future courses.

APPENDIX 6

*I. Oral presentation*

- Slides – some students put too much material on the slides. Better to have a few points. Questions are good.
- Reading verbatim from notes. Suggested students pause and ask a question or summarise without reading from notes.
- Speaking too quickly, especially when reading from notes.

*II. Written presentation*

- Signed cover sheet?
- Within word limit?
- Not all information given about media article – eg author, source and date should be given – Students should attach a copy of the article to the memorandum.
- Footnotes – students tend to put important information in footnotes rather than text.
- Colloquial expressions should be avoided – eg ‘in hot water’
- Subject heading –should be specific and not general (eg, s 48 of TPA not TPA)
- Directors’ personal liability should be flagged as possible compliance issue. (This will be covered in detail in week 8 lectures)
- Over-use of bold in sentences (headings are better)
- Make it clear whether discussing fictitious company or the one in media article
- Define when first use an acronym – eg Retail Price Maintenance (RPM)
- Some media articles are from law firm websites –not strictly media articles.
- Case law – have students referred to?