

LAWS50087 Comparative Cartel Law

Credit Points:	12.50																											
Level:	5 (Graduate/Postgraduate)																											
Dates & Locations:	This subject is not offered in 2012. 35 hours of seminar classes offered intensively over 7 days, or as 12 weekly 3 hour seminars over a semester.																											
Time Commitment:	Contact Hours: 35 hours. Total Time Commitment: 144 hours.																											
Prerequisites:	<table border="1"> <thead> <tr> <th>Subject</th> <th>Study Period Commencement:</th> <th>Credit Points:</th> </tr> </thead> <tbody> <tr> <td>LAWS50023 Legal Method and Reasoning</td> <td>February</td> <td>12.50</td> </tr> <tr> <td>LAWS50024 Principles of Public Law</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50025 Torts</td> <td>Semester 2</td> <td>12.50</td> </tr> <tr> <td>LAWS50026 Obligations</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50027 Dispute Resolution</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50029 Contracts</td> <td>Semester 2</td> <td>12.50</td> </tr> <tr> <td>LAWS50032 Administrative Law</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50034 Criminal Law and Procedure</td> <td>Semester 1</td> <td>12.50</td> </tr> </tbody> </table>	Subject	Study Period Commencement:	Credit Points:	LAWS50023 Legal Method and Reasoning	February	12.50	LAWS50024 Principles of Public Law	Semester 1	12.50	LAWS50025 Torts	Semester 2	12.50	LAWS50026 Obligations	Semester 1	12.50	LAWS50027 Dispute Resolution	Semester 1	12.50	LAWS50029 Contracts	Semester 2	12.50	LAWS50032 Administrative Law	Semester 1	12.50	LAWS50034 Criminal Law and Procedure	Semester 1	12.50
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Corequisites:	None.																											
Recommended Background Knowledge:	None.																											
Non Allowed Subjects:	None.																											
Core Participation Requirements:	<p>The Melbourne Law School welcomes applications from students with disabilities. It is University and Law School policy to take all reasonable steps to enable the participation of students with disabilities, and reasonable adjustments will be made to enhance a student's participation in the School's programs. The inherent academic requirements for the study in the Melbourne Law School are: The ability to attend classes and actively engage in the analysis of complex materials and debate; The ability to read, analyse and comprehend complex written legal materials and complex interdisciplinary materials; The ability to clearly and independently communicate in writing a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to clearly and independently communicate orally a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to work independently and as a part of a group; The ability to present orally and in writing legal analysis to a professional standard. Students must possess behavioural and social attributes that enable them to participate in a complex learning environment. Students are required to take responsibility for their own participation and learning. They also contribute to the learning of other students in collaborative learning environments, demonstrating interpersonal skills and an understanding of the needs of other students. Assessment may include the outcomes of tasks completed in collaboration with other students. Students who feel their disability will prevent them from participating in tasks involving these inherent academic requirements are encouraged to contact the Disability Liaison Unit: http://www.services.unimelb.edu.au/disability/.</p>																											
Contact:	<p>Melbourne Law School Student Centre Email: law-studentcentre@unimelb.edu.au (mailto:law-studentcentre@unimelb.edu.au) Tel: +61 3 8344 4475</p>																											
Subject Overview:	The effective regulation of cartel conduct (price fixing, output restriction, market sharing and bid rigging between competitors) is now recognised internationally as a distinctive specialty																											

within the broader field of competition law and enforcement. It is regarded as posing the most serious threat to the system of free market competition that underpins economies, domestically and globally. At the same time, it is recognised as posing special challenges for detection and prosecution of offenders by enforcement authorities. In part, this is because, at the most serious end of the spectrum of such conduct, perpetrators go to significant lengths to conceal their activities from authorities and in part because it is increasingly cross-border in scope and effects and hence necessitates substantial cooperation between national and regional authorities to ensure that it is tackled in more than a piecemeal fashion.

This subject is based on the premise that it is no longer sufficient for Australian practitioners and scholars to be familiar with Australian cartel legislation and case law only. A comparative approach, based on an advanced understanding of the key elements of selected overseas jurisdictions, is required. In particular, it is important to appreciate the similarities and differences between the US and EU models. There is also useful scope for comparison on specific issues with jurisdictions such as the UK, Canada and New Zealand. A comparative approach across this complex field will enable Australian practitioners and scholars:

- # To engage in independent critical analysis of the Australian model and identification of areas for and approaches to reform;
- # To participate in specialist debates taking place internationally on the most effective design of cartel laws and institutions and methods of enforcement; and
- # To be prepared to exercise professional judgment in advising clients on the ramifications of cartel conduct that has extraterritorial dimensions and effects.

The principal topics that will be addressed in this subject will be:

- # Determining the boundaries of collusion;
- # Designing and applying rules, standards or tests for liability for cartel conduct;
- # Formulating the scope and mechanisms for defences, exceptions or exemptions (both ex ante and ex post);
- # Assessing who should be liable for cartel conduct (corporations, individuals, both);
- # Designing and applying sanctions;
- # Allocating roles and responsibilities to institutions for enforcement of cartel law (both nationally, regionally and internationally);
- # Conferring powers and resources for investigation (issues of sufficiency and constraints);
- # Formulating enforcement policies (in particular, in relation to immunity and cooperation);
- # Assessing the roles of public vs private modes of enforcement of cartel laws and the tensions between them.

Objectives:

On completion of this subject, students should have:

- In relation to each of the comparator jurisdictions, integrated understanding of the following specialised subject-matter:

- # The key elements of the legal framework governing cartel conduct;
- # The roles and constraints of the institutions tasked with enforcement of cartel laws;
- # The policies applied by the enforcement institutions in relation to detection and prosecution of cartel conduct;
- # A capacity to critically compare and analyse the Australian legal framework and enforcement approach applicable to cartel conduct with overseas jurisdictions, as relevant, and to consider recommendations for reform of aspects of the Australian system in light of those comparisons;

- A sophisticated appreciation of, and ability to engage in, the complex theoretical, policy and practical debates taking place internationally in relation to cartel law and enforcement, including:

- # The appropriate legal standard/test governing liability for cartel conduct;
- # The nature and scope of exemptions and defences;
- # The imposition of corporate and/or individual liability;
- # The type of sanctions that should apply (in particular, whether sanctions should be criminal);
- # The design of immunity and cooperation policies and the use of settlements, in particular;
- # The merits of public vs private modes of enforcement and the interface between them;

- A capacity to critically and independently evaluate the scope for and benefits of convergence or harmonisation of cartel law and/or enforcement internationally;

	<p>- Through the assessment involving a research paper, developed specialised skills in self-directed legal research and in the autonomous and creative production of a substantial piece of legal writing that is thoroughly researched and develops arguments in a highly structured, supported and referenced way, with a high degree of original content;</p> <p>- Through the assessment involving class participation, developed specialised skills in oral communication and, in particular, in the articulation at a sophisticated level of arguments and views concerning the subject material.</p>
Assessment:	<p>Class Participation (10%): the mark for class participation will be based on specific responsibility, as a member of a group, for leading discussion in relation to a pre-assigned topic and for facilitating discussion with guest lecturers, as well as for contribution generally to the seminar discussion across the teaching period; Independent Research Paper (90%): students will be required to prepare and submit a 6,000 word research paper on a topic set or approved by the coordinator.</p>
Prescribed Texts:	<p>C Beaton-Wells and B Fisse, Australian Cartel Regulation: Law, Policy and Practice in an International Context (latest edition); Specialist printed materials will also be made available from Melbourne Law School.</p>
Breadth Options:	<p>This subject is not available as a breadth subject.</p>
Fees Information:	<p>Subject EFTSL, Level, Discipline & Census Date, http://enrolment.unimelb.edu.au/fees</p>
Generic Skills:	<p>On completion of the subject, students should have developed their skills in the following areas:</p> <ul style="list-style-type: none"> # Specialist understanding, interpretation, critical reflection, synthesis and comparison of statutory texts relating to cartel law and enforcement from Australia and overseas jurisdictions; # Specialist understanding, interpretation, critical reflection, synthesis and comparison of cases relating to cartel law and enforcement from Australia and overseas jurisdictions; # Analysing, comparing and reflecting critically on policy documents relating to cartel law and enforcement from Australia and overseas jurisdictions; # Generating and evaluating proposals for reform of Australian cartel law and enforcement having regard to international experience; # Developing a research question relevant to this complex field, creatively carrying out research involving diverse international sources, and preparing a substantial piece of writing displaying sophisticated investigation, analysis, synthesis and application of theoretical understanding; # Formulating and articulating views on difficult technical issues relating to cartel law and enforcement in oral discussion, in a manner displaying the development of professional judgment.