BUSN7052 Commercial Law

AUSTRALIAN NATIONAL UNIVERSITY · POSTGRADUATE · OPEN-BOOK EXAM SHEET

Full guide + ask Sia about BUSN7052

SIDE 1/2 ISSUE → RULE/AUTHORITY → APPLICATION → CONCLUSION/REMEDY

2 H WRITING · 15 MIN READING · HYPOTHETICALS · NO MCQ

S2 2026 · roadmap

1 · Exam Map

COURSE.JSON · CLASS SUMMARY

A1 | A2 | A3 30% | FINAL EXAM 50%

Assignment 1 10% · Assignment 2 10% · Assignment 3 30% · Final Exam 50%

PERMITTED MATERIALS · VERBATIM

"The exam will be open book. No special equipment is required. Ebooks are not permitted." *(ANU Class Summary, BUSN7052 Semester 2 2026)*

Reading: mark parties, claims, chronology, jurisdiction and remedies; make a separate issue list for each party. **Writing:** allocate 120 minutes by marks.

ISSUE ? → RULE case / s → APPLY both sides → C emedy

Most words go here ↑
Every material fact must do legal work.

Problem-question spine: state the authority briefly; spend the answer on fact-specific application and remedy.

2 · Authority Before Merits

CH 1–2

TRIGGER	MOVE
Federal power?	s 51 head; corporations s 51(xx), insurance s 51(xiv)
Interstate burden?	s 92: burden → discrimination → legitimate non-discriminatory purpose/proportionality; *Cole v Whitfield*; *Palmer*
Cth/State conflict?	s 109: Commonwealth prevails to inconsistency
ACT law?	territories power s 122; identify ACT statute

Precedent: ratio of higher court in same hierarchy binds; obiter and other-State cases persuade. ACT path: High Court → ACT Supreme Court → Magistrates Court; no intermediate court. **Reverse** = same case on appeal; **overrule** = replace earlier rule; **distinguish** = different material facts.

LEGISLATION + DELEGATED POWER

Route: cabinet approval → drafting/presentation → passage through both houses (ACT, NT and Queensland have one) → assent → commencement. Regulations, ordinances and by-laws must stay within the parent Act; an instrument outside power is *ultra vires*. In an exam, identify the empowering provision, compare the instrument with its purpose and scope, then ask whether parliamentary scrutiny or disallowance controls apply.

STATUTORY READING LADDER

1. ordinary text, definitions and context;
2. choose the meaning best achieving purpose: s 15AA *Acts Interpretation Act 1901* (Cth) / s 139 *Legislation Act 2001* (ACT);
3. s 15AB extrinsic material to confirm meaning, cure ambiguity/obscurity or avoid manifest absurdity;

3 · Negligence Chain

CH 3–4 · RECURRING

DUTY foresee → BREACH ss 42–43 → DAMAGE loss → CAUSE s 45

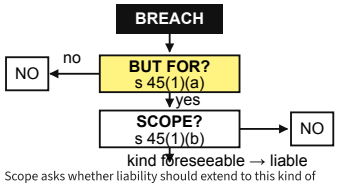
P proves every link

Do not merge breach and causation: a careless act may still fail the s 45 tests.

ISSUE	RULE + AUTHORITY	APPLY
Duty	*Donoghue v Stevenson*; established relationships; otherwise salient features (*Caltex*; *Perre*)	Foreseeability; vulnerability; D control; coherence/policy. Presumed: professional/client, employer/employee, teacher/student, road users, occupier/invitee, supplier/consumer (*Modbury Triangle*).
Breach	s 42 reasonable person in D's position; s 43 calculus	Risk foreseeable + not insignificant; probability (*Bolton*), gravity (*Paris*), burden of precaution, social utility (*Watt*).
Damage	recognised loss	Name injury/property/economic loss; do not assume.

4 · Causation, Defences, Advice

CL(W)A SS 45–46, 95–96



Scope asks whether liability should extend to this kind of harm; s 45(2) preserves common-law principles.

Remoteness: kind of harm foreseeable (*The Wagon Mound*); exact manner need not be (*Hughes*); eggshell plaintiff means full extent once kind is foreseeable (*Smith v Leech Brain*). P bears proof: s 46.

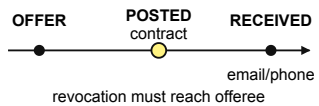
DEFENCE / ISSUE	EFFECT / TEST
Contributory negligence	reduces damages; alcohol presumptions ss 95–96
Voluntary assumption	complete defence: P knew and freely accepted risk; ACT obvious-risk rules generally not a shortcut outside equine activities
Negligent misstatement	*Evatt*: speaker knows trusted for skill/info; knows statement will be acted on; reliance reasonable. *Shaddock* includes information; *Esanda* rejects indeterminate class.
Vicarious liability	employee acting in course of employment; identify status and connection

5 · Formation + Consideration

CH 5

FORMATION GATES

offer + acceptance + consideration + intention + capacity + certainty



revocation must reach offeree before acceptance

Postal rule only where post is invited; instantaneous acceptance generally takes effect on receipt.

QUESTION	RULE / CASE
Offer?	objective commitment; displays usually invitation to treat (*Boots*); specific act-for-promise may be unilateral (*Carlill*).
Still open?	counter-offer kills original; reliable third-party notice revokes (*Dickinson v Dodds*); option needs consideration.
Acceptance?	match offer; silence cannot accept; conduct may (*Brogden*); reward act must be in reliance (*R v Clarke*).
Consideration?	*Dunlop*: from promisee; not past; sufficient, not adequate. Existing duty: *Stilk/Hartley*; practical benefit: *Musumeci*.

6 · Intention, Capacity, Estoppel

CH 6

DOMESTIC / SOCIAL ← → COMMERCIAL

payment · writing · sacrifice / reliance

Ermogenous: assess whole context

Argue both directions from seriousness, payment, formality, sacrifice and relationship; conclude objectively.

Capacity: adult presumed capable. Minor: necessaries at reasonable price; beneficial service contract unless unreasonable (*De Francesco*); continuing contract binds unless disowned; otherwise generally unenforceable against minor. Corporate capacity: s 124. Mental impairment/intoxication: show inability to understand plus other party's knowledge.

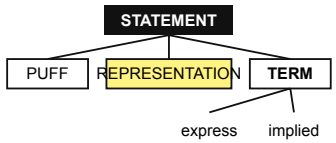
Comparators: sacrifice supported intention in *Todd v Nicol*; a family business promise stayed informal in *Woodward v Johnston*. Electronic receipt generally controls; place of business may select jurisdiction.

EQUITABLE ESTOPPEL · WALTONS STORES V MAHER

1. P assumed a legal relationship or future relationship;
2. D induced that assumption;
3. P acted or abstained in reliance;
4. D knew or intended that reliance;
5. P will suffer detriment if assumption denied;
6. D failed to avoid that detriment.

7 · Terms + Exclusion Clauses

CH 7



Term factors: promissory words, importance, timing, special knowledge and omission from later writing.

Oscar Chess: "I believe" by less expert seller → representation. A collateral contract requires a promissory, consistent promise exchanged for entry into the main contract (*JJ Savage; Van den Esschert*).

Implied in fact: *BP Refinery*—reasonable/equitable; necessary; obvious; clear; consistent with express terms. *Codelfa*: necessity, not mere reasonableness.

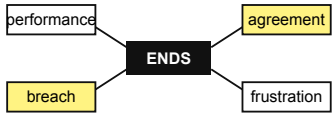
EXCLUSION CLAUSE: TWO GATES

GATE	RULE / AUTHORITY
1 Incorporation	signature binds (*L'Estrange; Toll*) unless effect misrepresented (*Curtis*) or *non est factum*; unsigned term needs reasonable notice before formation.
2 Construction	clear words must cover this breach; contra proferentem; negligence rule (*White v John Warwick*); four-corners limits; *Darlington*.
3 Statute	ACL s 64 guarantees non-excludable; ACT SGA implied terms cannot be excluded.

8 · Consent, Discharge, Remedies

CH 8–9

TRIGGER	DOCTRINE → RESULT
false fact induces	misrepresentation; fraud = knowing/no belief/reckless → rescission + damages; innocent → rescission
shared/different/known error	common/mutual/unilateral mistake; value alone insufficient (*Leaf*); cross-purpose: *Raffles*
threat / trust	duress (*Barton*) / actual or presumed undue influence
known vulnerability exploited	*Amadio*: special disadvantage + knowledge + exploitation; contrast *Kakavas*



Frustration: unforeseen, no-fault supervening event; contract silent; performance impossible, illegal or radically different; unjust to hold parties.

REMEDY TRAP ***Rescission restores the parties to their pre-contract positions. Fraudulent misrepresentation also supports damages; innocent misrepresentation at common law does not.***

9 · Sale of Goods Act

SGA 1954 (ACT) · CH 10

Gateway s 6(1): movable goods for money. Excludes services, land, choses in action, barter and leases. Disc software = goods; paid download not (*Gammasonics*).

SECTION	IMPLIED TERM + AUTHORITY
s 17	right to sell; quiet possession; no undisclosed encumbrance — *Rowland v Divall*
s 18	goods correspond with description — *Varley*; *Beale*
s 19	merchantable quality; fitness where purpose disclosed + reliance; undisclosed abnormal sensitivity defeats fitness (*Griffiths*)
s 20	sale by sample

Property/risk: intention governs; unascertained goods cannot pass before ascertainment: s 21, *Healy v Howlett*. s 23 Rule 1: specific deliverable goods pass at contract despite postponed payment/delivery. Risk generally follows property.

Nemo dat s 26(1): non-owner gives no better title. Check estoppel; mercantile intermediary in possession s 26(2)(a), *Folkes*; court order; unavoided voidable title s 27; seller/buyer left in possession s 29. Then remedy: reject for condition, damages, recover price (s 57), or unpaid-seller rights.

10 · ACL Guarantees + Conduct

ACL SCH 2 · CH 11

SGA · every buyer | **ACL · consumer**

s 17 title — ss 51–53
s 18 description — s 56
s 19 quality/fit — ss 54–55

NON-EXCLUDABLE · s 64

Run both statutes where the transaction is a sale of goods and the buyer is also a consumer.

s 3 gateway: check price/ordinary personal, domestic or household acquisition; exclude resupply and goods used up/transformed in trade. ACL includes software (*Valve*). Goods guarantees: title ss 51–53; acceptable quality s 54; fitness s 55; description/sample ss 56–57; manufacturer obligations ss 58–59. Services: due care/skill s 60; fitness/result s 61; exclusions s 63.

FAILURE	REMEDY
Major: s 260	reject and choose refund/replacement s 263; and/or damages s 259(3)–(4)
Not major	supplier may repair, replace, refund or cure title within reasonable time: ss 259(2), 261

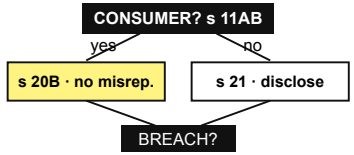
s 18: trade/commerce conduct likely to lead relevant audience into error; context (*Taco Bell*); puffery permitted. Check specific false representation s 29. Run guarantees and misleading conduct separately. Product safety: ss 138–141 losses; s 142 defences; serious human injury/illness/death reporting within two days, ss 131–132.

11 · Insurance Spine

ICA 1984 (CTH) · CH 12

ANSWER ORDER

cover + causation → classify s 11AB → duty → breach → innocent/fraudulent → s 28 consequence → recovery



Classification determines whether the insured must volunteer information the insurer did not ask for.

Utmost good faith: s 13; consequences s 60(1)(a). For non-consumer disclosure, undisclosed change from storage to manufacturing increased fire risk: *Alexander Stenhouse*. Confirm event within cover and causation first (*Leyland Shipping*).

AFTER PAYMENT	RULE
Subrogation	insurer sues wrongdoer in insured's name: s 65; *Castellan*
Double insurance	claim from either insurer, never more than loss: s 76
Underinsurance	apply the policy proportion/average stated in facts

12 · Property, IP, Agency

CH 13 · RECURRING SHORT ISSUES

1 TRUE OWNER
2 OCCUPIER IN CONTROL
3 FINDER
4 OTHERS

Armory protects finder against all but true owner; *Parker* asks whether occupier manifested control; items in land favour occupier (*Elwes*).

ISSUE	FAST RULE
Fixture	degree + purpose of annexation; distinguish fitting/chattel on business sale
Trade mark	registered sign: ss 6, 17, 20; infringement requires use as a trade mark s 120; remedies s 126. If unregistered: passing off + ACL s 18.
Copyright	automatic; original expression, not idea; exclusive reproduction s 31(1), infringement s 36, remedies s 115. Ask human authorship/originality (*Desktop Marketing*; *IceTV*).
Agency	express grant → implied authority from role/circumstances → apparent authority from principal's representation; principal estopped if third party relies on holding out.

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v2 · 2026-10-23 · ANU Semester 2 examination period, 5–21 November 2026 (check your personal exam timetable).
Check your unit's exam rules for any limit on what may be brought in.

BUSN7052 Commercial Law · Drills, Traps & Recall

AUSTRALIAN NATIONAL UNIVERSITY · POSTGRADUATE · OPEN-BOOK EXAM SHEET

Full guide + ask Sia about BUSN7052

SIDE 2/2 · FOUR HYPOTHETICAL DRILLS · EXAM TRAPS · FAST-RECALL TABLES · IRAC / ILAC · APPLY EVERY FACT · FINISH WITH REMEDY · S2 2026 · drills

13 · Writing Frame + Timing

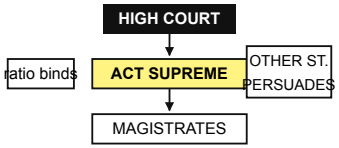
IRAC NOTES · EXAM FORMAT

IRAC / ILAC PARAGRAPH

I Whether [party] can [claim/remedy] because [element]?
R/L Under [section], [test]; *[case]* establishes [single proposition].
A Here, [fact] supports… Conversely… Distinguish/analogise…
C On balance, likely/unlikely; therefore [remedy/defence].

15 MIN READING	120 MIN WRITING
circle verbs; list parties; number chronology; write issue + authority beside facts; flag competing statutes and remedies	budget by marks; one IRAC per issue; spend most time applying; leave a final check for omitted remedy/defence

Argue both sides where a fact admits competing characterisation. A different conclusion can be sound if every element is supported.



First rank the authority; only then apply its proposition.

Drill 1 · Courier Van

WORKED EXAMPLE · CH 3

Facts: courier double-parks for **10 minutes** on a narrow street, hazard lights on; legal loading zone **50 m** away. Cyclist swerves and is hit.

1. **I—duty:** road users are an established duty category; cite *Modbury Triangle* list.
2. **R—breach:** s 42 reasonable courier; risk foreseeable/not insignificant; s 43 probability, gravity, burden, utility.
3. **A:** narrow street makes cyclist/oncoming collision foreseeable; serious harm; walking 50 m is cheap; hazard lights warn but do not remove obstruction; no competing utility shown.
4. **C:** duty likely breached. Then s 45: but for obstruction, would cyclist have swerved? Is this collision within the risk? Consider cyclist/car conduct for contribution or intervening act.

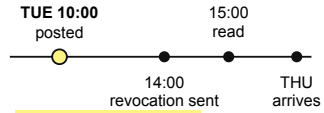
TRAP *"Illegal parking" is not itself the whole negligence analysis; connect the precaution to the harm.*

AUTHORITY	USE IN APPLICATION
Bolton v Stone	very low probability and enormous precaution may justify inaction
Paris v Stepney	known vulnerability increases seriousness and required precaution
Watt v Hertfordshire	life-saving utility may justify greater risk

Drill 2 · Posted Acceptance

WORKED EXAMPLE · CH 5

Facts: Canberra seller invites return-post acceptance. Buyer posts at **10 am Tuesday**. Seller emails revocation at **2 pm**; buyer reads it **3 pm**. Letter arrives Thursday.



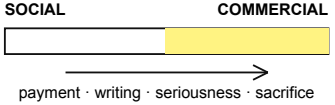
Adams v Lindsell: invited postal acceptance takes effect on posting; revocation must first reach the offeree.

1. **I:** Was there a contract before revocation?
2. **R:** postal rule applies because return post invited; acceptance at posting. Revocation is effective only on communication.
3. **A:** contract formed 10 am; even earliest email receipt at 2 pm is later. Thursday arrival is irrelevant.
4. **C:** binding contract from 10 am Tuesday; revocation fails.

TRAP *The postal rule does not make revocation effective when sent and does not govern email/telephone acceptance.*

Formation & Intention Traps

CH 5–6



Ermogenous: context displaces rigid domestic/commercial presumptions.

TRAP	CORRECTION
shelf advert = offer	usually invitation to treat; customer offers at checkout (*Boots*)
"open until Friday" irrevocable	only if option supported by consideration
returned item earns unknown reward	act not in reliance on offer (*R v Clarke*)
family promise never binding	objective whole context; sacrifice may support intention (*Todd v Nicol*)
no consideration = no route	test *Waltons* estoppel if clear induced assumption + reliance/detriment

EXCLUSION CLAUSE SPEED-RUN

1. **When formed?** Fix contract time before asking whether notice arrived.
2. **Signed?** *L'Estrange/Toll*; test misdescription (*Curtis*) or *non est factum*.
3. **Unsigned?** Was reasonable notice given before formation, especially for an unusual clause?

Drill 3 · Café Grinder

COURSE WORKED EXAMPLE

Facts: Nadia pays **$2,800** for a commercial espresso grinder used in her café. It jams repeatedly within **one month**. Seller says all guarantees are excluded.

GOODS · SGA	OUTSIDE SGA
movable chattel	paid download
software on disc	portrait commission
sale for price	hospital blood
	company shares

ACL definition also includes software

Start with the transaction gateway; then run the SGA and ACL in parallel if consumer status is established.

1. **ACL s 3:** $2,800 is below both figures recorded in the guide; Nadia buys to use, not resell or use up in production → likely consumer.
2. **Guarantee:** repeated jams after one month support unacceptable quality, s 54. Match SGA s 19 merchantable quality.
3. **Exclusion:** ineffective—ACL s 64; ACT SGA implied terms cannot be excluded.
4. **Remedy:** classify major under s 260. If major, reject and choose refund/replacement s 263; if not, supplier gets reasonable time to remedy under ss 259(2), 261.

Conclusion: likely consumer + s 54 and s 19 breach; exclusion fails; remedy turns on major failure.

SGA	ACL
s 17 title	ss 51–53
s 18 description	s 56
s 19 quality / fit	ss 54–55
s 20 sample	s 57

PLEAD EACH STATUTE

Do not write "consumer law instead of SGA"; both can attach to one defective sale.

Consumer Traps

CH 11

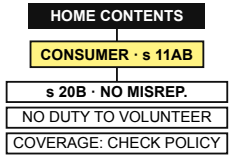
WRONG SHORTCUT	CORRECT MOVE
cheap business input = consumer	resupply/use-up/transform exclusions still apply; café beans bought for use-up fall outside
supplier chooses remedy always	consumer chooses refund/replacement after major failure and rejection
s 18 needs a consumer	it regulates conduct in trade/commerce; analyse audience + likely error independently
product safety covers pet death	guide says provisions concern harm to humans

MISLEADING CONDUCT MINI-IRAC

Drill 4 · Home Contents Policy

WORKED EXAMPLE · CH 12

Facts: physiotherapist insures home contents. Form asks about burglaries; she answers truthfully. It does not ask about equipment; she does not mention **$9,000** clinic gear stored at home. Burglary occurs.



Do not import the broader s 21 duty into a consumer insurance contract.

1. **Cover first:** policy wording may or may not cover business gear; keep separate.
2. **Classify:** home contents for household points to consumer insurance under s 11AB.
3. **Duty:** s 20B not to misrepresent, rather than s 21 disclosure.
4. **Apply:** truthful burglary answers; no equipment question; no apparent misrepresentation.
5. **Conclusion:** insurer's "you should have volunteered it" invokes a duty she did not owe; actual cover remains open.

Insurance Trap Grid

EVERY SUPPLIED PAST FINAL

TRIGGER	WRITE
business policy	likely non-consumer → s 21 disclosure; do not default to s 20B
use changes after inception	*Alexander Stenhouse*: storage → manufacturing raised fire risk; non-disclosure
question answered falsely	breach; classify innocent s 28(3) / fraudulent s 28(2); state consequence supported by facts
wrongdoer caused loss	after payment, subrogation s 65
two policies	s 76: choose insurer, no double recovery

FINISH *Excellent insurance answers say what is recoverable, not merely which duty was breached.*

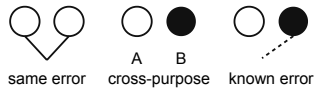
FULL CLAIMS SEQUENCE

Start with wording and causation (*Leyland Shipping*), then s 13 good faith. For non-consumer cover, s 21 reaches relevant unasked matters and changed use. Classify breach as innocent s 28(3) or fraudulent s 28(2); use the underwriting evidence—*Lindsay* is fact-sensitive. After payment, distinguish subrogation from s 76 double insurance.

Recovery: indemnity prevents profit; double insurance caps recovery at the loss; underinsurance uses the stated average/proportion.

14 · Contract Trap Bank

CH 7–9



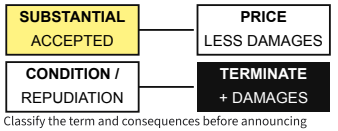
Two yellow excavators, each party meaning a different one: mutual mistake; no objective agreement, as in *Raffles*.

FACTS	ANSWER
retiree: "I believe 90,000 km"; written contract silent; dealer knows more	likely representation, not term: opinion words, month before, no special knowledge, omission; *Oscar Chess*
valet gives exclusion receipt after keys/payment	notice after formation → not incorporated
vulnerable parents guarantee child's failing company; bank knows/exploits	*Amadio* unconscionability; prove all three elements
seller's earlier statement later becomes false	silence exception: duty to correct, *With v O'Flanagan*
frustrating event merely makes bargain dearer	not enough; must become impossible/illegal/radically different; *Codelfa*

Performance Drill

WORKED EXAMPLE · CH 9

Caterer promises food for **100** guests at **$6,000**, supplies **85**; client buys **$400** pizzas; all food eaten. Exact performance is usual (*Re Moore; Landauer*), but accepted substantial performance is arguable. Client pays **$6,000 − $400 = $5,600**, rather than nothing.



Classify the term and consequences before announcing termination.

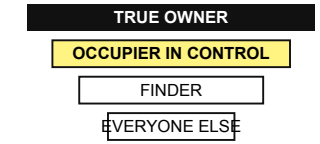
Remedy checks: expectation/reliance; *Hadley* remoteness; mitigation. ACT frustration releases future duties; past losses remain unless consideration totally fails.

DISCHARGE CLASSIFIER

ROUTE	EXAM TEST
Performance	exact; then trifling defect, accepted substantial performance, prevention or divisible bargain
Agreement	term, mutual termination, release, waiver, novation
Breach	condition; repudiation; serious intermediate breach; warranty → damages only
Frustration	unforeseen no-fault event; contract silent; impossible, illegal or radically different

15 · Property + IP Drill Bank

CH 13 · RECURRING



Buried **40 cm** gold coin: item is in land, so homeowner outranks landscaper finder (*Elwes*), subject to true owner.

HYPOTHETICAL CUE	ISSUES + AUTHORITY
cleaner finds valuable item while clearing rubbish	found in course of employment → employer; *Wiley v Synan; Byrne v Horne*; still seek true owner
item loose on public lounge/shop floor	*Parker*: occupier beats finder only if prior manifested control
fan prints registered band logo on unsold home shirt	s 120 requires use as trade mark; likely not; still test copyright artistic work
copied unregistered trading name	passing off + ACL s 18; audience and likely deception
text produced without human author	copyright originality/human authorship issue: *Desktop Marketing; IceTV*
employee sells beyond internal limit but title/card says salesperson	implied authority may suffice; otherwise principal's representation → apparent authority/estoppel

16 · One-Line Authority Bank

FAST RECALL

AUTHORITY	PROPOSITION
Cole v Whitfield	s 92 targets discriminatory interstate burdens
Wormald v Cafton	purpose/extrinsic speech; "household" humans, not pets
Bolton v Stone	tiny probability + heavy precaution → no breach
Paris v Stepney	known vulnerability raises gravity/precaution
Wagon Mound	foreseeable kind of harm
Ermogenous	objective intention from whole context
Codelfa	implied term needs necessity; frustration radically different
Taco Bell	s 18 misleading is factual and contextual
Alexander Stenhouse	undisclosed change of use increased fire risk
Armory / Parker / Elwes	finder title / occupier control / item in land

Last 90 Seconds

SUBMISSION CHECK

- Every issue has an authority; every authority has one proposition.
- Every statutory claim starts at its gateway and ends at remedy.
- Negligence has separate duty, breach, damage and causation.
- Consumer status comes before guarantees; insurance classification before duty.

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v2 · 2026-10-23 · ANU Semester 2 examination period, 5–21 November 2026 (check your personal exam timetable).

Flip back for the issue roadmap.