

MACQUARIE  
UNIVERSITY



FACULTY OF  
BUSINESS AND ECONOMICS

**Unit code  
BUSL 862**

**Insurance Law**

**Semester 2, 2011**

Department of Accounting and Corporate Governance

**MACQUARIE UNIVERSITY**  
**FACULTY OF BUSINESS AND ECONOMICS**  
**UNIT GUIDE**

**Year and Semester:** 2011, Semester 2

**Unit Convenor:** Mr John Bourke LL.M (Monash)

**[Prerequisites/Corequisites:]** N/A

**Credit points:** 4

Students in this unit should read this study guide carefully at the start of semester. It contains important information about the unit. If anything in it is unclear, please consult one of the teaching staff in the unit.

#### **ABOUT THIS UNIT**

Examines the concept of insurance, the regulatory framework, formation of contracts of insurance, insurable interest, duty of utmost good faith, effect of misrepresentation, indemnity principle, double insurance, the doctrine of subrogation, claims, standard classes of insurance (such as general, property, life, marine and aviation, and public liability), risk management, self-regulation, and dispute resolution.

#### **TEACHING STAFF**

Convenor and Lecturer in Charge: **Mr John Bourke**  
**Office: Building E4A Room 316**  
**Mobile: 042 253 9361**  
**Email: [John.Bourke@mq.edu.au](mailto:John.Bourke@mq.edu.au)**

#### **CONSULTATION TIMES**

Mondays 5.00 pm - 6.00 pm or by appointment

#### **CLASSES**

There will be a weekly class on:

- Mondays 6-9pm in Room C5C 236
- The timetable for classes can be found on the University website at:  
<http://www.timetables.mq.edu.au/>
- The above details should be checked for possible changes.

## PRIZES

- Not applicable

## REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

### **Prescribed texts:**

All students should purchase the required text:

**Pynt, Greg, Australian Insurance Law---A First Reference, Lexis Nexis Butterworths 2008**

This text gives an excellent overview of the subject.

### Other recommended references:

(Later editions of some of these books may be available)

- ALRC Report No. 20 Insurance Contracts
- Australian & New Zealand Insurance Reporter: CCH Online Commentary (available through library website)
- Birds, J. Modern Insurance Law, (6t ed, 2004).
- Derrington, D, Ashton, R, The Law of Liability Insurance, (2nd ed, 2005)
- Mann, P. and Lewis C. Annotated Insurance Contracts Act, (4th ed, 2003).
- Sutton, K. Insurance Law in Australia, (3rd ed, 1999).

Aust and NZ Insurance Law (e-journal, CCH) (held in library)

Canadian Journal of Insurance Law (e-journal, LexisNexis) (held in library)

Insurance Law Journal (e-journal, LexisNexis) (held in library)

The following have been obtained using the university library online databases and so the electronic citation is provided.

- Bloomfield, J 'Medical defence organisation membership – Not a substitute for malpractice insurance' (1998)10 ILJ LEXIS 21
- Boyd, G 'The duty of disclosure in life insurance: is the balance struck by Part IV of the Insurance Contracts Act appropriate?' (2001)13 ILJ LEXIS 15
- Campbell, N 'Allocation problems in D&O policies: Vero v Baycorp' (2006) 17 ILJ LEXIS 6
- Charrett, D 'Professional indemnity insurance – Do third parties have an interest?' (2003) 14 ILJ LEXIS 1
- Chipperfield, S 'Carrying on an insurance business in Australia – What does that really mean?' (2006) 17 ILJ LEXIS
- Drummond, S 'Misleading or deceptive conduct in insurance' (2002)14 ILJ LEXIS 15.
- Ellis, R 'What are notifiable circumstances?'(2001) 12 ILJ LEXIS 7
- Godfrey, K 'The duty of utmost good faith – the great unknown of modern insurance law', (2002)14 ILJ LEXIS 20
- Hardy, H 'Third party beneficiaries to insurance contracts' (1997) 8 ILJ LEXIS 15
- Hawke, F 'The innocents abroad', (2006) 17 2006 ILJ LEXIS 2
- Otlowski, M 'Australian empirical study into genetic discrimination'(2002) 12 Eubios Journal of Asian and International Bioethics 164, 4
- Rodd, C 'Fraudulent claims and the rights of the innocent co-insured' (1997) 9 ILJ LEXIS9.
- Slingsby, N 'The events of 11 September 2001: Implications for war risk exclusions in aviation insurance', (2002) 14 ILJ LEXIS 19
- Sutherland, K 'An uneasy compromise: An analysis of the effect of a settlement reached

by an insured with a third party claimant vis-a-vis his or her insurer' (1998) 9 ILJ LEXIS 11.

- Tarrant, J 'Narrow exclusion clause fails to protect insurer' (2006) 17 ILJ LEXIS 5
- Ying, C 'Whose premium is it anyway?' (2001) 13 ILJ LEXIS 14
- Zakrzewski, R 'The nature of a claim on an Indemnity' (2006) 22 JCL LEXIS 4

#### Useful Websites:

- Australian Prudential Regulation Authority: <http://www.apra.gov.au>
- Australian and NZ Insurance Law: (available at [www.lib.mq.edu.au](http://www.lib.mq.edu.au) , CCH Online)
- Australian Competition and Consumer Commission: [www.accc.gov.au](http://www.accc.gov.au)
- Australian Government Department of the Treasury:  
<http://icareview.treasury.gov.au/content/members.asp?NavID=4>
- Australian Securities and Investment Commission:  
<http://www.asic.gov.au/asic/asic.nsf>
- Canadian Journal of Insurance Law: (available at [www.lib.mq.edu.au](http://www.lib.mq.edu.au), LexisNexis)
- Insurance Law Journal: (available at [www.lib.mq.edu.au](http://www.lib.mq.edu.au), LexisNexis)
- Private Health Insurance Administration Council: <http://www.phiac.gov.au/>

#### Online law databases available through the university homepage including:

Case Base facilitates searches for Australian legal materials, and provides links to these. (If a LexisNexis AU is for searching local primary (cases, legislation) and secondary (articles) materials.

LexisNexis affords a facility for searching for primary and secondary materials from a number of jurisdictions. Although it focuses on US materials it is also a good source for materials from other jurisdictions.

Westlaw international also provides a trans jurisdictional search facility for primary and secondary materials.

#### Library Support for Postgraduate Students in Law:

Macquarie University Library offers a wide range of services and resources to postgraduate students. Go to the Library website <http://www.lib.mq.edu.au>. For a complete list of services and resources and for enrolling in Library orientation programs for Law consult the Librarians at the Macquarie Library (below).

Library services include information on borrowing periods, services to distance students, links to IT Help (the Library's IT support service), and links to training information and training course notes.

Postgraduate students are eligible for a number of additional services. These include the Liaison Librarians (LL). The LLs are the first point of contact for Postgraduate students.

There is an LL appointed to each Faculty of the University.

Services offered by your LL include:

- Providing further information on the library services
- Providing individual and group library resource sessions for postgraduate students
- Advising on new database trials being held in the Library
- Advising on appropriate contacts for specific services, such as requesting items not held at the Library from the Document Supply Service
- Preparation of resource guides in print and on the web
- Reference advice (face-to-face, phone and email)

Further information about these services is available from the Postgraduates link, listed under Additional Services on the Library homepage.

## Readings

A volume of reading material has been made available to the MQ Library and is online. A link to same will be provided on Blackboard.

## TECHNOLOGY USED AND RECOMMENDED

- Not applicable

## UNIT WEB PAGE

- To be advised

## LEARNING OUTCOMES

At the end of this unit students should be able to:

- 1 Understand the role and nature of insurance law;
- 2 Understand the legal framework of insurance law;
- 3 Have developed some skill at the interpretation of relevant legal instruments;
- 4 Understand legal problems arising in the insurance industry;
- 5 Understand dispute minimization and resolution strategies in insurance law;
- 6 Understand policy issues underlying the insurance system.

## GRADUATE CAPABILITIES

In addition to the discipline-based learning objectives, all academic programs at Macquarie seek to develop the capabilities the University's graduates will need to develop to address the challenges, and to be effective, engaged participants in their world. This unit contributes to this by developing the following graduate capabilities:

- 1 Discipline Specific Knowledge and Skills
- 2 Critical, Analytical and Integrative Thinking
- 3 Problem Solving and Research Capability
- 4 Creative and Innovative People
- 5 Effective Communication
- 6 Engaged and Ethical Local and Global Citizens
- 7 Socially and Environmentally Active and Responsible
- 8 Capable of Professional and Personal Judgment and Initiative
- 9 Commitment to Continuous Learning
- 10 The ability to generate research outputs that will create new knowledge.

## TEACHING AND LEARNING STRATEGY

The unit consists of seminar-based classes. The techniques of legal reasoning, legal knowledge and a capacity to apply the principles of law to hypothetical fact situations (or 'cases') will be developed through explanation, discussion and essay writing. Students are encouraged to raise real life cases from their professional experience, relevant to the subject matter of the unit.

## SCHEDULE OF TOPICS

### TOPICS 1 & 2: INTRODUCTORY CONCEPTS:

Concept of insurance; structure of industry; regulatory framework; policy considerations informing regulation.

- Gillies, P 'Insurance Law' Business Law, (12 ed, 2004).
- Sutton, K 'Nature of the Contract of Insurance', Insurance Law in Australia, (3 ed, 1999).
- Lewins K & Lo, S 'Striving for Equilibrium: A Critical Analysis of Section 54 of the Australian Insurance Contracts Act' [2003] MurUEJL 20, extract.
- 'Regulation of Insurance: Legislation Regulating Insurance', Halsbury's Laws of Australia, available at [www.lexisnexis.com.au](http://www.lexisnexis.com.au).
- 'Statutory Regulation- Australia', CCH Online Insurance Commentary.
- 'Insurance Contracts Act- Summary', CCH Online Insurance Commentary.

### TOPIC 3: CONCLUDING A CONTRACT OF INSURANCE:

- Sutton, K 'Formation of Contract', Insurance Law in Australia, (3 ed 1999).  
Insurable interest
- 'Insurable Interest', CCH Online Insurance Commentary.  
Utmost Duty of Good Faith
- Derrington, D & Ashton, R 'Utmost Good Faith and Disclosure' in The Law of Liability Insurance, (2 ed, 2005).
- Scott, Tim, 'Implications of Hannover v Sayseng: Third Parties and the Duty of the Utmost Good Faith' (2006) 17 ILJ 48.

### TOPIC 4: DUTY OF DISCLOSURE & MISREPRESENTATION:

- Derrington, D & Ashton, R 'Utmost Good Faith and Disclosure' in The Law of Liability Insurance, (2 ed, 2005.)
- Tay, C 'The duty of disclosure and materiality in insurance contracts – a true descendant of the duty of utmost good faith?' 2002 ILJ LEXIS 7.
- 'Misrepresentation', CCH Online Insurance Commentary.

### TOPIC 5: INDEMNITY, DOUBLE INSURANCE & CONTRIBUTION:

- ACCC, 'Public Liability and Professional Indemnity Insurance: Fifth Monitoring Report', (extracts) January 2005.
- Spigelman J 'Negligence and insurance premiums: recent changes in Australian law' (2003) 11(3) Torts Law Journal 291.

- See also Gillies, P ‘Insurance Law’ extract from Business Law, (12 ed, 2004).  
Double insurance and the doctrine of contribution
- Pynt, G ‘Elf downunder’, 2002 ILJ LEXIS 4.
- ‘Double Insurance’, extract from Halsbury’s Laws of Australia.
- Warrington, J.M ‘9/11 WTC Insurance litigation – Phase two and three,’ 2005 ILJ LEXIS 11
- ‘Contribution and Subrogation’, CCH Online Insurance Commentary

#### **TOPIC 6: SUBROGATION & PRIVITY:**

- ‘Contribution and Subrogation’, CCH Online Insurance Commentary  
Insurance and Privity
- “Rights of Third Parties”, Insurance, Chapter II, General Principles, Halsbury’s Laws of Australia.
- McCarthy, C ‘Third Party Access to Insurance Policies and Joinder of Insurers’, (1999) ILJ LEXIS 12
- See also Sutton, K ‘Formation of Contract’, Insurance Law in Australia, (3 ed,1999).

#### **TOPIC 7: CONSTRUCTION OF TERMS IN INSURANCE CONTRACTS:**

- ‘Standard Cover’, CCH Online Insurance Commentary
- ‘Construction of Policies’, CCH Online Insurance Commentary
- ‘Warranties and Conditions’, CCH Online Insurance Commentary
- ‘Increase of Risk’, CCH Online Insurance Commentary
- ‘Limited effect of Exclusion Clauses’, CCH Online Insurance Commentary
- ‘Different Classes of Insurance’, CCH Online Insurance Commentary
- Trigg, P ‘What is an ‘accident’ under a contract of insurance?’ (2006) 17 ILJ LEXIS 4

#### **TOPIC 8: CLAIMS:**

- ‘Claims ’, CCH Online Insurance Commentary
  - Claims procedures,
  - Notice of Loss
  - Onus of Proof
  - Proof of Loss
  - Causation
  - Fraudulent Claims
- Ellis, R ‘What are notifiable circumstances?’ (2001) 12 ILJ LEXIS 7  
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#### **TOPIC 9: ILLEGALITY, CONFLICT RESOLUTION & INTERIM INSURANCE:**

- ‘Illegality- Public Policy’, CCH Online Insurance Commentary ‘.  
Conflict resolution in insurance cases
- ‘Claims-Notice- Dispute Resolution’, CCH Online Insurance Commentary
- Hill, D, & Waters, P ‘Alternative Dispute Resolution in Australia for Insurance Related Disputes’, 1994 ILJ LEXIS 4
- Derrington, D & Ashton, R ‘Interim Cover’ in The Law of Liability Insurance, (2 ed, 2005).

**TOPIC 10: EXPIRATION, RENEWAL & CANCELLATION OF CONTRACTS:**

- ‘Renewal, Cancellation and Termination,’ CCH Online Insurance Commentary

**TOPIC 11: DISCRIMINATION & REINSURANCE:**

Discrimination law and insurance contracts

- Spiteri, G ‘Genetic testing and its implications for Australian insurance law’ (2000) 7 James Cook University Law Review 96
- Tarr, JA ‘Regulatory approaches to genetic testing in insurance’, (2002) 24 (2) Sydney Law Review 189.

Reinsurance

- ‘Reinsurance’, CCH Online Insurance Commentary
- Hawke, F ‘The innocents abroad’, (2006) 17 (1) Insurance Law Journal 18  
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**RESEARCH AND PRACTICE (DELETE THOSE NOT APPLICABLE)**

- This unit uses research by Macquarie University researchers (references)
- This unit uses research from external sources (references)
- This unit gives you practice in applying research findings in your assignments
- This unit gives you opportunities to conduct your own research.

**RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OUTCOMES**

	<b>Assessment Task 1</b>	<b>Assessment Task 2</b>	<b>Assessment Task 3</b>
Title/Name	Class participation	Class test	Research essay
Description (including length or similar if applicable)			5,000 – 7,500 words
Due date	Continuous	To be advised	Friday 11 November 2011
Weighting	5%	35%	60%
Grading method -marking criteria/standards -expectations in relation to presentation -referencing requirements	Students’ participation in class will be assessed by the quality of their contribution. This element of assessment is aimed at encouraging comprehensive reading and reflection upon the unit content and the testing of issues through discussion. Students may choose to give a class	See under Grades, below. An in-class open book test designed to allow students to demonstrate their comprehension of basic legal concepts relative to this unit.	See under Grades, below. Use of footnotes to indicate sources and include a bibliography. The use of headings and sub-headings as appropriate is recommended as this will assist the organization of the analysis. This assignment is due by 5.00 pm <b>Friday 11</b>



	presentation.		<b>November 2011.</b>
Submission method		BESS box	
Feedback (type, method, date)	After class participation		
Estimated student workload (hours)	For participation, 4 hours	36 hours	60 hours
Learning outcomes assessed			
1	Understanding of role and nature of insurance law	Understanding of role and nature of insurance law	Understanding of role and nature of insurance law
2	Understanding of the legal framework of insurance law	Understanding of the legal framework of insurance law	Understanding of the legal framework of insurance law
3	Skill at interpretation of relevant instruments	Skill at interpretation of relevant instruments	Skill at interpretation of relevant instruments
4	Understanding of legal problems arising in the insurance industry	Understanding of legal problems arising in the insurance industry and their resolution, by focusing on a hypothetical case	Understanding of legal problems arising in the insurance industry
5	Understanding of dispute minimization and resolution strategies and mechanisms	Understanding of dispute minimization and resolution strategies and mechanisms	Understanding of dispute minimization and resolution strategies and mechanisms
6	Understanding of policy issues underlying the insurance system	Understanding of policy issues underlying the insurance system	Understanding of policy issues underlying the insurance system
Graduate capabilities assessed			
1	Knowledge and industry skills specific to the discipline	Knowledge and industry skills specific to the discipline	Knowledge and industry skills specific to the discipline
2	Critical thinking	Critical, analytical and integrative thinking	Critical, analytical and integrative thinking
3	Effective oral communication	Effective written communication	Effective written communication
4	Creative response to problems	Problem solving and research capacity	Problem solving and research capacity
5	Engaged global consciousness	Engaged global citizenship attitude	The ability to generate research outputs that will

			create new knowledge
6	Ethical local and global consciousness in problem solving	Ethical local and global responsiveness in problem solving	Ethical local and global responsiveness in problem solving
7	Social and environmental consciousness in problem solving	Social and environmental sensitivity in problem solving	Social and environmental sensitivity in problem solving
8	Consciousness of professionalism in decision-making	Capacity to show initiative and judgment	Capacity to use initiative in problem solving
9	Consciousness of the need to continue to update professional knowledge	Awareness of the need to update professional knowledge	Awareness of the necessity to maintain relevant data-based professional knowledge
10	Consciousness of research tools to undertake research	Confidence in the application of research tools	Application of research tools to generate appropriate research outputs

Requests for extensions of time for the submission of essays will need to be justified for example by establishing appropriate medical grounds.

**See Appendix attached marked ‘A’ for essential details of the Assessment requirements.**

## ACADEMIC HONESTY

The nature of scholarly endeavour, dependent as it is on the work of others, binds all members of the University community to abide by the principles of academic honesty. Its fundamental principle is that all staff and students act with integrity in the creation, development, application and use of ideas and information. This means that:

- All academic work claimed as original is the work of the author making the claim

- All academic collaborations are acknowledged
- Academic work is not falsified in any way
- When the ideas of others are used, these ideas are acknowledged appropriately.

Further information on the academic honesty policy can be found in the Macquarie University Academic Honesty Policy at:

[http://www.mq.edu.au/policy/docs/academic\\_honesty/policy.html](http://www.mq.edu.au/policy/docs/academic_honesty/policy.html)

## **GRADES**

Macquarie University uses the following grades in coursework units of study:

HD – High Distinction

D – Distinction

CR – Credit

P – Pass

F – Fail

Grade descriptors and other information concerning grading are contained in the Macquarie University Grading Policy which is available at:

<http://www.mq.edu.au/policy/docs/grading/policy.html>

All final grades in the Department of Accounting and Corporate Governance are determined by a grading committee and are not the sole responsibility of the Unit Coordinator.

Students will be awarded one of these grades plus a Standardised Numerical Grade (SNG). The SNG is not necessarily a summation of the individual assessment components.

The final grade and SNG that are awarded reflect the corresponding grade descriptor in the Grading Policy.

In addition, there is a requirement to pass the final examination to be awarded a final grade of a Pass or a higher grade.

## **GRADING APPEALS AND FINAL EXAMINATION SCRIPT VIEWING**

If, at the conclusion of the unit, you have performed below expectation, and are considering lodging an appeal of grade and/or viewing your final exam script, please refer to the following website which provides information about these processes and the cut-off dates in the first instance. Please read the instructions provided concerning which constitutes a valid ground for appeal before appealing your grade.

[http://www.businessandconomics.mq.edu.au/for/new\\_and\\_current\\_students/undergraduate/admin\\_central/grade\\_appeals](http://www.businessandconomics.mq.edu.au/for/new_and_current_students/undergraduate/admin_central/grade_appeals).

## **SPECIAL CONSIDERATION**

The University is committed to equity and fairness in all aspects of its learning and teaching. In stating this commitment, the University recognises that there may be circumstances where a student is prevented by unavoidable disruption from performing in accordance with their ability. A special consideration policy exists to support students who experience serious and unavoidable disruption such that they do not reach their usual demonstrated performance level. The policy is available at:

[http://www.mq.edu.au/policy/docs/special\\_consideration/procedures.html](http://www.mq.edu.au/policy/docs/special_consideration/procedures.html)

## **STUDENT SUPPORT SERVICES**

Macquarie University provides a range of academic Student Support Service. Details of these services can be accessed at:

<http://www.student.mq.edu.au>.

## **IT CONDITIONS OF USE**

Access to all student computing facilities within the Faculty of Business and Economics is restricted to authorised coursework for approved units. Student ID cards must be displayed in the locations provided at all times.

Students are expected to act responsibly when utilizing University IT facilities. The following regulations apply to the use of computing facilities and online services:

- Accessing inappropriate websites or downloading inappropriate material is not permitted. Material that is not related to coursework for approved unit is deemed inappropriate.
- Downloading copyright material without permission from the copyright owner is illegal and strictly prohibited. Students detected undertaking such activities will face disciplinary action, which may result in criminal proceedings.
- Non-compliance with these conditions may result in disciplinary action without further notice.
- Students must use their Macquarie University email address to communicate with staff as it is University policy that the University issued email account is used for official University communication

## APPENDIX 'A'

The assessment is three-fold consisting of

1. Class participation. 5% 5%
2. A class Test administered by the Lecturer in Charge at a date and time to be advised before the mid-semester break. 35%

A Research Assignment of 5000-7500 words on one topic to be selected from a list of topics handed out in class by the lecturer in charge.

**THIS RESEARCH ASSIGNMENT: 60%**

**DUE DATE OF RESEARCH ASSIGNMENT: 5.00pm Friday 11 November 2011**

### Information for submission of Research Assignments for all students:

For instruction on how to FOOTNOTE and compiling a BIBLIOGRAPHY consult *The Australian Guide to Legal Citation* available on the internet.

### In summary:

- Use copious FOOTNOTES wherever you take another person's words into your Essay. FOOTNOTING gives the authority from which you have taken another's work and gets you out of a lot of potential trouble.
- Always use FOOTNOTES and NOT ENDNOTES, please.
- PROVIDE a full BIBLIOGRAPHY
- INCLUDE a WORD COUNT.

### Submission of your assignment:

- COMPLETE and SIGN the Cover Sheet.
- PLACE the Assignment in the BESS box in Building E4B on or before the due date of 11 NOVEMBER 2011.



**ESSAY COVER SHEET**

<b>Family Name:</b>		<b>Unit Code:</b>	<b>BUSL 862</b>
<b>Given Names:</b>		<b>Date Due:</b>	
		<b>11 November 2011</b>	
<b>Student ID:</b>		<b>Lecturer's Name:</b>	<b>John Bourke</b>
<b>Essay Title:</b>			

"I certify that I am aware of the University's policy on plagiarism (as stated in [www.student.mq.edu.au/plagiarism/](http://www.student.mq.edu.au/plagiarism/)) and that this assignment meets those requirements and has not been previously submitted for assessment in any other course of study"

Signed .....

**MARKER'S COMMENTS**

