Year and Session: 2012 Session 1  
Unit convenor: Michael Quilter  
Prerequisite: ACCG851  
Credit points: 4

Students in this unit should read this unit 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**

The aim of this unit is to introduce students to corporate regulation in Australia and to create an awareness of corporate issues. Students will be required to research and prepare specific aspects of the unit and be able to deliver a clear and informed presentation in this regard. Lectures will focus on relevant issues, cases and sections. This is a postgraduate unit and the expectations placed on students will have regard to this fact.

**TEACHING STAFF**

Lecturer and Convenor: Michael Quilter: E4A309, 98598456, michael.quilter@mq.edu.au

**CONTACTING STAFF**

Consultation can be arranged by email or by speaking to your lecturer after class and organising a suitable time. You are encouraged to seek help at a time that is convenient. In special circumstances, an appointment may be made outside regular consultation periods. Staff will not conduct any consultations by email. In order to gain access to staff located at levels 1, 2 and 3 of building E4A for consultation please ring the staff member from the phones available in the lobby (phone numbers of relevant staff members are available next to the phones). Students experiencing significant difficulties with any topic in the unit must seek assistance immediately.

**CLASSES**

There is one lecture per week (allotted time 3 hours). There may be some reorganisation, overlapping, and/or integration of areas to accommodate assessment and unit structure. The timetable for classes can be found on the University web site at: http://www.timetables.mq.edu.au/
REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

Lipton and Herzberg, Understanding Company Law, Thomson Reuters (Lawbook Co.) 16th ed. 2012. This is referred to as L&H herein.

Quilter, The Company Law Notes, Thomson Reuters (Lawbook Co.) 4th ed. 2010. This is referred to as Q herein.

Both above texts can be purchased from the Macquarie University Co-op Bookshop, and are available in the Macquarie University library.

After considering the law of partnership the unit will focus on corporate issues and the relevance and effect of the Corporations Act. Note that certain relevant sections of the Corporations Act are set out in The Company Law Notes 4th edition 2010. Both statutes (the Partnership Act and the Corporations Act) may be viewed in full at www.austlii.edu.au

Useful websites
www.asic.gov.au
www.asx.com.au
www.takeovers.gov.au
www.smh.com.au
www.camac.gov.au
www.lipton-herzberg.com.au

By using www resources students are able to gain a perspective on their studies and be aware of real world situations where company law is relevant. Newspaper coverage of company law gives depth and realism to the formal explanations of the law in texts.

UNIT WEB PAGE

- Unit material is available on the learning management system (iLearn)

LEARNING OUTCOMES

Lectures will focus on relevant issues, cases and sections. Issues such as how to prepare for exams and how to maximise grades will be addressed. Students will be alerted to the importance of skills that will assist learning and problem solving be exposed to basic generic (workplace) skills that will assist in the development of a successful professional career. Examples include:

- responding and communicating in class (workplace skills: teamwork, communication, problem-solving, cooperation and the ability to build and maintain professional relations)
- the ability to comprehend, digest and apply unit content (workplace skills: setting effective and attainable goals, gathering material, creative thinking and exploring new ideas and viewpoints)
- awareness, perception and effective note-taking in lectures (workplace skills: critical analysis, client interviews and peer meetings)
This unit aims to inform students as to relevant aspects of corporate law and practice, particularly in circumstances where law and accountancy overlap. Broadly, the aim of this unit is to introduce students to corporate regulation in Australia and to create an awareness of corporate issues. Within this clear broad aim are several specific target outcomes that will become identifiable as the unit progresses. These will be accomplished as each Lecture Area is covered. The unit aims to assist students to achieve the following specific target outcomes:

* Understand the characteristics of the various forms of business organisations and the corporate legislative framework.
* Understand how companies are formed, different types of companies and the relevance of the company constitution
* Understand corporate management issues, in particular the role and obligations of directors.
* Understand how shareholders rights are protected and the characteristics of company meetings.
* Understand how the Corporations Act regulates acquisition and disposal of shares.
* Understand corporate insolvency in the current regulatory environment.

**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.

The unit aims to contribute to students’ development of the following capabilities: (1) discipline specific knowledge and skills; (2) critical, analytical and integrative thinking; (3) problem solving and research capability; (4) effective communication.

**TEACHING AND LEARNING STRATEGY**

This unit is taught by way of lectures/seminars. Practice questions are discussed to enable application of content.

**What is expected of students – criteria for success**

Students should take responsibility for their own learning and this will incorporate reading as required, attendance at classes, developing effective study strategies, reflection on their abilities, and a task oriented approach to assessment – that is, do not think solely about your input (gathering information) think about what will be required, what makes for successful performance in tests and exams, how will you use the law you have studied? There are 2 main components of successful company law study: one is that students must have some knowledge of the core issues of the relevant topics [take short clear notes in lectures, think about your task, involve yourself in classes], the second is that students will only be successful if they can apply what they have learned, that is, in your test, exam or other assessment such as a presentation, you have to be able to use the law to solve problems or to clearly explain issues.
Classes should be used by students to test their **understanding of the unit** in an environment where **immediate feedback** is available from the lecturer – students should be prepared to respond to, and ask, questions – being active is an important aspect of both study and professional practice and classes will be of more **benefit to all students if they are willing to participate**. Students are expected to attend classes. Where any issue arises as to a student’s performance it may be necessary to consider whether the issue of their attendance is relevant.

### RESEARCH

The material in the text is the result of research into company law and provides you with a thorough coverage of the relevant issues. Further research into any of the Lecture Areas of this unit can be conducted via the various scholarly journals which focus on the area. Examples of journals that can be consulted to follow up matters of interest are: Australian Journal of Corporate Law; Company and Securities Law Journal; Insolvency Law Journal.

Examples of current articles in these journals that relate to areas of this unit include:

- Baxt, B ‘Future Directions for Corporate Law: Where are we now and where do we go from here?’ The dilemmas of the modern company director (2011) 25 Aust Jnl of Corp Law 213
- Howes, T ‘Must the captain go down with the ship? The avenues available to directors to protect themselves from liability for insolvent trading’ (2012) 30 C&SLJ 7 [This article analyses defences and strategies available to directors regarding the application of s 588G – see Lecture Areas 10 and 11]
- Harris, J and Hargovan, A ‘Cutting the Gordian knot of corporate law: Revisiting veil piercing in corporate groups’ (2011) 26 Aust Jnl of Corp Law 39 [This article looks at agency relationships and the corporate veil – see Lecture Area 2]
- Von Nessen, P and Herzberg, A ‘James Hardie’s asbestos liability legacy in Australia. Disclosure, corporate social responsibility and the power of persuasion’ (2011) 26 Aust Jnl of Corp Law 55 [This article looks at board decision making and directors’ duties - see Lecture Area 7]
- Stapledon, G and Webster, J ‘The James Hardie appeal decision: Are directors in “safer” waters?’ (2011) 29 C&SLJ 62
- Legg, M and Travers, L ‘Oppression and winding up remedies after the GFC’ (2011) 29 C&SLJ 101 [This article presents an overview of oppression issues – see Lecture Area 8]
- Fitzpatrick, J, Brand, V and Symes, C F “Fit and Proper”: The integrity requirement for liquidators’ (2010) 24 Aust Jnl of Corp Law 244 [This article relates to the requirements to be satisfied before a person is appointed as a registered liquidator and the standards relevant in the Corporations Act – see Lecture Areas 10 and 11]
- Overland, J ‘Corporate liability for insider trading: How does a company have the necessary “mens rea”?’ (2010) 24 Aust Jnl of Corp Law 266 [This article relates to the application of the insider trading provisions to include breaches by companies as ‘insiders’ – see Lecture Area 9]
- Nosworthy, B ‘Directors’ fiduciary obligations: Is the shareholder an appropriate beneficiary?’ (2010) 24 Aust Jnl of Corp Law 282 [This article relates to the issue of who a director’s fiduciary duty will be owed to – see Lecture Area 6]
- Hyland, M ‘Is ASIC sufficiently accountable for its administrative decisions? A question of review’ (2010) 28 C&SL J 32 [This article relates to ASIC’s role and to its ability to disqualify directors - see Lecture Areas 5 and 7]
- Reichel, D ‘Continuous disclosure in volatile times’ (2010) 28 C&SL J 84 [This article relates to the obligation of companies to keep the market informed of their position and particularly the role of directors in this regard - see Lecture Area 4]
Lumsden, A ‘The business judgment defence: insights from ASIC v Rich’ (2010) 28 C&SL J 164 [This article relates to directors duty of care and diligence in s 180 – see Lecture Areas 6 and 7].

RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OUTCOMES

Students are required to obtain knowledge of the relevant law and be able to apply that knowledge in a problem-solving context. This involves the ability to identify and analyse relevant issues. Assessment procedures will test both unit content and application of that content. Assessment will relate to unit content and all assessment tasks are clearly outlined below. Students should consult this Unit Guide to identify relevant readings for each of the Lecture Areas.

Assessment

Note that examinations may incorporate multiple-choice and/or problem-style questions. Unless otherwise advised all examinations are closed book (that is no books, notes etc to be taken into the examination). Timing or form of assessment may change if this is necessary as a result of student numbers, unit structure, reorganisation or University scheduling adjustments. If there is any change to the forms of assessment or to the date of the tests or examinations students will be notified in lectures and on iLearn.

Note: Early in the Unit students will be given a short test to allow them to consider their knowledge of the unit so far – this will not form part of assessment.

1: Class presentation [20%]

Students should regard the class presentation as an opportunity to develop an important workplace skill as well as an opportunity to prepare a particular area of the unit in more detail. Marks for class presentations will be determined by the lecturer based upon their perception of the presentation as having achieved, or otherwise, its purpose (this purpose being to inform and interest the class, showing capability with the requisite area of the law and an ability to communicate and engage). Examples of the type of matters that may be comprised in any discretionary assessment of a presentation include: structure, clarity, content covered at the appropriate level, evidence of research, use of resources or aids, showing and engendering interest in the area, timing (particularly as to the duration of the presentation), currency of the material used, presence, originality/creativity. Estimated length of presentation: 15-20 minutes.

2: Class test [20%]

Held in class on 4th April – estimated length for the conduct and administration of test: 1.5 hours - the test will cover Lecture Area 1 to 5 inclusive – the test will be marked electronically - your marks should be available within 2 weeks – your result (your mark) will be your feedback on your performance and will enable you to assess your progress – individual answer sheets will not be re-assessed and if you are unsure of certain aspects of the areas examined (Lecture Area 1 to 5 inclusive) you should re-read the relevant Topics in the texts and re-visit any practice questions attempted – note that Lecture Areas 1 - 4 will not be re-examined in the final exam but Lecture Area 5 will – you will find that you become more confident with Directors issues in Lecture Areas 6 and 7 and this will reinforce the issues covered in Lecture Area 5 - if you do not perform as well as you would have liked (or merely want to improve your performance) you
should: (a) ensure that you focus on your remaining classes, prepare prior to each class and test your understanding by participating in class discussion; (b) ensure your notes are clear and concise (c) test your understanding of an area by simulating exam conditions, that is try to do questions without looking at books or notes; (d) because the final exam also includes multiple-choice questions practice understanding the concept behind their preparation by drafting your own questions; (e) read all material prescribed for each Lecture Area; (f) consult your lecturer if, once you have completed the reading for an area, you have any questions.

3: Final exam [60%]

This will be held at the conclusion of the unit in the formal examination period – the exam will cover Lecture Area 5 to 11 inclusive – the exam will include both problem-style and multiple-choice questions – to succeed in this exam you will need to have a good grasp of the relevant unit content (the law), be able to analyse and distinguish between alternatives in multiple-choice questions and to be able to identify, analyse and resolve issues arising in a problem-solving format. Estimated length of exam: 2 hours plus 10 minutes reading time.
<table>
<thead>
<tr>
<th>Title/Name</th>
<th>Class presentation</th>
<th>Class test</th>
<th>Final exam</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assessment Task 1</strong></td>
<td>This assessment tests your ability to address a specific area of the unit and present your research effectively to your class group</td>
<td>This test is closed book and will <strong>cover Lecture Area 1 to 5 inclusive</strong></td>
<td>This exam is closed book and will <strong>cover Lecture Area 5 to 11 inclusive</strong></td>
</tr>
<tr>
<td><strong>Description</strong></td>
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<tr>
<td><strong>Due date</strong></td>
<td>On the date allocated for the presentation</td>
<td>4th April (unless otherwise advised)</td>
<td>This will be held at the conclusion of the unit in the formal examination period</td>
</tr>
<tr>
<td><strong>% Weighting</strong></td>
<td>[20%]</td>
<td>[20%]</td>
<td>[60%]</td>
</tr>
<tr>
<td><strong>Grading method</strong></td>
<td>This assessment component is based on students being able to deliver a presentation that is precise as to the relevant law, informative and engaging for the audience</td>
<td>Each question will require students to discriminate (decide) between a number of responses to a question and select the appropriate response. The test may be electronically marked.</td>
<td>The exam may include both problem-style and multiple-choice questions. For the multiple choice questions selection of the appropriate response is required. These questions may be marked electronically. For problem-style questions students must demonstrate a knowledge of the relevant law and an ability to apply such law to answer (resolve, respond to, deal with) the question.</td>
</tr>
<tr>
<td><strong>Submission method</strong></td>
<td>Throughout session</td>
<td>In class</td>
<td>Formal examination</td>
</tr>
<tr>
<td><strong>Feedback</strong></td>
<td>Immediate feedback is available from the lecturer</td>
<td>The exam will be marked electronically. Your mark should be available within 2 weeks and will be an indicator of your performance in the unit to date</td>
<td>Students will receive their final grade at the conclusion of the unit</td>
</tr>
<tr>
<td><strong>Estimated student workload</strong></td>
<td>10+ hours research and preparation plus presenting</td>
<td>Attendance at classes including preparation plus 20+ hours revision</td>
<td>Attendance at classes including preparation plus 50+ hours revision</td>
</tr>
<tr>
<td>Learning outcomes assessed</td>
<td><strong>Assessment Task 1</strong></td>
<td><strong>Assessment Task 2</strong></td>
<td><strong>Assessment Task 3</strong></td>
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<tr>
<td>1</td>
<td>Ability to conduct research and communicate results</td>
<td>The ability to comprehend, digest and apply unit content</td>
<td>The ability to comprehend, digest and apply unit content</td>
</tr>
<tr>
<td>2</td>
<td>The ability to comprehend, digest and relate unit content</td>
<td>Awareness, perception and effective note-taking in lectures</td>
<td>Awareness, perception and effective note-taking in lectures</td>
</tr>
<tr>
<td>3</td>
<td>Understand the specific target outcomes dealt with in each Lecture Area and in particular research, organise and digest specific allotted topic</td>
<td>Understand matters in Lecture Areas 1–5 inclusive including: Characteristics of the various forms of business organisations; past and present corporate legislative framework; how companies are formed and different types of companies; the company constitution and how it affects the company’s activities. Corporate financing and dividends; company management issues, in particular types, removal and disqualification of directors.</td>
<td>Understand matters in Lecture Areas 5-11 inclusive including: Directors duties and the penalties and remedies applicable. Understand how shareholders rights are protected. Understand how the Corporations Act regulates acquisition and disposal of shares. Understand corporate insolvency in the current regulatory environment.</td>
</tr>
</tbody>
</table>
Examinations

A final examination for this unit will be held during the University Examination period. You are expected to present yourself for the examination at the time and place designated in the University Examination Timetable. The timetable will be available in Draft form approximately eight weeks before the commencement of the examinations and in Final form approximately four weeks before the commencement of the examinations. [http://www.timetables.mq.edu.au/exam](http://www.timetables.mq.edu.au/exam)

The only exception to not sitting an examination at the designated time is because of documented illness or unavoidable disruption. In these circumstances you may wish to consider applying for Special Consideration. The University’s policy on special consideration process is available at [http://www.mq.edu.au/policy/docs/special_consideration/policy.html](http://www.mq.edu.au/policy/docs/special_consideration/policy.html)

If a Supplementary Examination is granted as a result of the Special Consideration process the examination will be scheduled after the conclusion of the official examination period. **Note the following:**

1. If a supplementary exam is granted the material from which it drawn will correspond to the original exam, however all other aspects (including: format, length, type and number of questions, style) may differ;
2. Only one supplementary exam will be scheduled.
The Macquarie university examination policy details the principles and conduct of examinations at the University. The policy is available at: http://www.mq.edu.au/policy/docs/examination/policy.htm

**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 can be found in the Macquarie University Academic Honesty Policy at: 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.

**Note:** there is a requirement that to be awarded a final grade of a Pass, or a higher grade, a student must pass the final exam.

**GRADING APPEALS AND FINAL EXAMINATION SCRIPT VIEWING**

If, at the conclusion of the unit, you have performed below expectations, 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 what constitutes valid grounds for appeal before appealing your grade.
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 benefit of the special consideration policy is only available to students who can demonstrate satisfactory progress in the unit including attaining 50% of the marks available prior to their application for special consideration. The policy is available at:
http://www.mq.edu.au/policy/docs/special_consideration/procedure.html

STUDENT SUPPORT SERVICES

Macquarie University provides a range of Academic Student Support Services. 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 using University IT facilities. The following regulations apply to the use of computing facilities and online services:

- Accessing inappropriate web sites 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 addresses to communicate with staff as it is University policy that the University issued email account is used for official University communication.
LECTURE AREAS

LECTURE AREA 1 – COMPARISON OF BUSINESS ORGANISATIONS

Agency; Associations; Sole Traders; Partnerships
Q Topics 1 and 2 L&H Ch.2


LECTURE AREA 2 - HISTORY AND LEGISLATIVE FRAMEWORK, REGISTRATION AND TYPES OF COMPANIES

Evolution of modern company and Australian developments:
Q Topic 3 L & H Ch.1
Applying for registration and the consequences of incorporation:
Q Topic 5 L & H Ch.2
Types of Companies:
Q Topic 4 L & H Ch.3


LECTURE AREA 3 - THE COMPANY CONSTITUTION AND THE RELATIONSHIP BETWEEN THE COMPANY AND OUTSIDERS

The company constitution and the replaceable rules:
Q Topic 6 L&H Ch. 4
Company liability in contract, tort and crime:
Q Topics 7 and 8 L&H Ch. 5
Promoters and pre-registration contracts:
Q Topic 9 L&H Ch. 6

LECTURE AREA 4 - CORPORATE FINANCING and DIVIDENDS

Disclosure to Investors – fundraising: Q Topic 11 L&H Ch. 7
Share capital: Q Topic 12 L&H Ch. 8
Membership: Q Topic 10 L&H Ch. 9
Debentures and Loan Capital: Q Topic 14 L&H Ch. 11
Dividends: Q Topic 13 L&H Ch. 10

LECTURE AREA 5 - DIRECTORS and MANAGEMENT

Q Topic 15 L&H Ch. 12
ASIC Investigation:
Q Topic 21 L&H Ch. 21
LECTURE AREA 6 - DIRECTORS DUTIES and CORPORATE GOVERNANCE

Q Topics 16, 17 and 18 L&H Ch. 13

LECTURE AREA 7 - DIRECTORS DUTIES; FINANCIAL and REPORTING OBLIGATIONS; AUDIT

Duties of directors and other officers (continued):

Q Topics 16, 17 and 18 L&H Ch. 13

Financial and Reporting Obligations of Directors:

Q Topic 19 L&H Ch. 15

The Role of Auditors and Issues of Audit Liability:

Q Topic 20 L&H Ch. 16

LECTURE AREA 8 - MEETINGS AND MEMBERS RIGHTS

Members Meetings:

Q Topic 23 L&H Ch.14

Members Rights and the position of the Minority:

Q Topic 22 L&H Ch.17

LECTURE AREA 9 – TAKEOVERS; FINANCIAL SERVICES AND MARKETS

Takeovers:

Q Topic 24 L&H Ch. 18

Financial Services and Markets:

Q Topic 25 L&H Ch. 19

LECTURE AREA 10 – RESTRUCTURING & LIQUIDATION (PART 1)

Insolvency

Arrangements and Reconstructions; Receivership; Voluntary Administration

Q Topics 26, 27, 28 and 29 L&H Chs.22, 23, and 24

LECTURE AREA 11 - RESTRUCTURING AND LIQUIDATION (PART 2)

Liquidation - Insolvent trading

Q Topic 30 L&H Ch. 25 (for insolvent trading Ch.13)

There are short summaries of each of the Lecture Areas in this Unit at the end of the related Topic in The Company Law Notes (Q).