Year and Session: 2012 Session 1
Unit convenor: Michael Quilter
Prerequisite: Admission to MCorpGov
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 analyse corporate regulation and governance in Australia and to create an awareness of corporate governance 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. Classes 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

Convenor and Lecturer: Michael Quilter: E4A309 - 98508456 – 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

Classes will progress through the various Lecture Areas referred to in this Unit Guide. There is one seminar each week (time allotted 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, Herzberg and Welsh, Understanding Company Law, Thomson Reuters (Lawbook Co.) 16th ed. 2012. This is referred to as ‘L&H’ herein.

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

The unit will focus on corporate issues and the relevance and effect of the Corporations Act. The 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

Overall, the aim of this unit is to inform and interest students in the mechanisms and principles of corporate regulation in Australia and to create an awareness of corporate issues. Integrated with this coverage will be a focus on corporate governance issues. Within these clear broad aims 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 and framework of the legal system in which corporations function and in which they are governed.
- Understand how companies are formed, their structure and constitution and how these affect the company’s activities and impact on management and governance factors.
- Understand corporate governance and corporate social responsibility issues, in particular as concerns the role and obligations of directors.
- Understand the relationship between directors duties, governance issues and shareholders rights.
- Understand corporate insolvency and related governance issues.
- Develop an interest in, and an understanding of, corporate governance and current corporate issues.
Classes will focus on relevant issues, cases and sections. Together with substantive content matters, and focus on critical thinking, the unit aims to engender and encourage wider learning and professional skills. 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 (workplace skills: critical analysis, client interviews and peer meetings)

**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 exam, 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.
The material in the text provides you with a thorough coverage of the relevant issues. Further research into any of the areas of this unit can be conducted via the various scholarly journals focusing 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:
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
Poulos, E and McCunn, A ‘Pre-pack transactions in Australia’ (2011) 19 Insolv L J 235 [This article reviews mechanisms that may be used to avoid insolvent companies slide into liquidation – see Lecture Areas 10 and 11]
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 outline 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 tests or examinations). 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 class and on iLearn.

1: 
(a) Class test [5%]  
Held in class on 20th March – estimated length 30 minutes - the test will cover Lecture Area 1 to 3 inclusive – the test will be marked in class and accordingly feedback on your performance will be immediate.
(b) Class test [5%]  
Held in class on 22nd May – estimated length 30 minutes - the test will cover Lecture Area 8 and 9 – the test will be marked in class and accordingly feedback on your performance will be immediate.

2: Class test [15%]  
Held in class on 24th April – estimated length 1.5 hours - the test will cover Lecture Area 1 to 6 inclusive.

3: Class presentations [25%]  
Students should regard class presentations as an opportunity to develop an important workplace skill as well as an opportunity to prepare particular areas of the unit in more detail and exhibit critical analysis skills. 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, originality/creativity. Estimated length of presentation: 15-20 minutes.

4: Final exam [50%]  
This will be held at the conclusion of the unit in the formal examination period – the exam will cover Lecture Area 4 to 12 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.
<table>
<thead>
<tr>
<th>Summary</th>
<th>Assessment Task 1</th>
<th>Assessment Task 2</th>
<th>Assessment Task 3</th>
<th>Assessment Task 4</th>
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<tbody>
<tr>
<td>Title/Name</td>
<td>Class tests</td>
<td>Main Class test</td>
<td>Class presentations</td>
<td>Final exam</td>
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<tr>
<td>Description</td>
<td>These tests are closed book and conducted in class. Test 1(a) will cover Lecture Area 1 to 3 inclusive and test 1 (b) will cover Lecture Area 8 and 9</td>
<td>This test is closed book and will cover Lecture Area 1 to 6 inclusive. Its precise format will be advised by class 2 of the unit.</td>
<td>This assessment tests your ability to, address specific areas of the unit and present your research effectively to your class group</td>
<td>This exam is closed book and will cover Lecture Area 5 to 12 inclusive</td>
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<tr>
<td>Due date</td>
<td>Test 1(a) is held on 20th March; Test 1(b) is held on 22nd May</td>
<td>24th April</td>
<td>On the date allocated for the presentation</td>
<td>This will be held at the conclusion of the unit in the formal examination period</td>
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<td>% Weighting</td>
<td>5% X 2 = [10%]</td>
<td>[15%]</td>
<td>[25%]</td>
<td>[50%]</td>
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<tr>
<td>Grading method</td>
<td>Each test will contain short questions. The test will be marked in class</td>
<td>If the test is multiple choice each question will require students to discriminate (decide) between a number of responses to a question and select the appropriate response.</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>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>
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<tr>
<td>Submission method</td>
<td>In class</td>
<td>In class</td>
<td>Throughout session</td>
<td>Formal examination</td>
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<tr>
<td>Feedback</td>
<td>Marked in class and accordingly feedback on your performance will be immediate</td>
<td>Your result (your mark) will be your feedback on your performance and will enable you to assess your progress</td>
<td>Immediate feedback is available from the lecturer</td>
<td>Students will receive their final grade at the conclusion of the unit</td>
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<td>Estimated student workload</td>
<td>Attendance at classes including preparation plus 5+ hours revision for each test</td>
<td>Attendance at classes including preparation plus 20+ hours revision</td>
<td>10+ hours research and preparation plus presenting</td>
<td>Attendance at classes including preparation plus 50+ hours revision</td>
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<tr>
<td>Learning outcomes assessed</td>
<td>Assessment 1</td>
<td>Assessment Task 2</td>
<td>Assessment Task 3</td>
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<tr>
<td>1</td>
<td>The ability to comprehend, digest and apply unit content</td>
<td>The ability to comprehend, digest and apply unit content</td>
<td>Ability to conduct research and communicate results</td>
<td>The ability to comprehend, digest and apply unit content</td>
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<td>2</td>
<td>Awareness, perception and effective note-taking in class</td>
<td>Awareness, perception and effective note-taking in class</td>
<td>The ability to comprehend, digest, apply and relate unit content</td>
<td>Awareness, perception and effective note-taking in class</td>
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<td>3</td>
<td>For Test 1(a): Understand matters in Lecture Area 1-3 including: Characteristics of the various forms of business organisations and legal system; past and present corporate legislative framework; formation of companies and different types of companies; the company constitution and how it affects the company’s activities.</td>
<td>Understand matters in Lecture Area 1-6 inclusive including: Characteristics of the various forms of business organisations and legal system; 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; corporate management issues, in particular the role and obligations of directors.</td>
<td>Understand the specific target outcomes dealt with in each Lecture Area and in particular research, organise and digest specific allotted topics</td>
<td>All of the previous specific target outcomes that are relevant to the coverage of this exam plus: Be aware of corporate governance matters including the impact of relevant ethical issues. 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 and in particular governance aspects.</td>
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## Assessment

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<td><strong>For Test 1(b):</strong> Understand the matters in Lecture Areas 8 and 9 including: Members rights and meeting requirements. Regulation of acquisition and disposal of shares.</td>
<td>Apply the law clearly to analyse and solve problems relating to company law and governance.</td>
<td>Apply the law clearly to analyse and explain matters relating to company law and governance.</td>
<td>Apply the law clearly to analyse and solve problems relating to company law and governance.</td>
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| 5 |  | Develop an interest in, and an understanding of, current corporate issues. |  |

### Graduate capabilities assessed

<table>
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<tr>
<th>1 - Discipline specific knowledge and skills</th>
<th>2 - Critical, analytical and integrative thinking</th>
<th>3 - Problem solving and research capability</th>
<th>4 - Effective communication</th>
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**Final Exam**

A final examination for this unit will be held during the University Examination period.

A final examination is included as an assessment task for this unit to provide assurance that:

i) the product belongs to the student and  
ii) the student has attained the knowledge and skills tested in the exam.
You are expected to present yourself for 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

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

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 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

Where specific materials outside of the text may be relevant students will be directed accordingly

LECTURE AREA 1 – LEGAL SYSTEM, CORPORATE FRAMEWORK AND CORE PRINCIPLES

Contracts; Agency; Associations; Sole Traders; Partnerships

L & H Ch. 2


LECTURE AREA 2 – DIRECTORS AS AGENTS AND THEIR ROLE IN IDENTIFYING CORPORATE LIABILITY

Evolution of modern company and Australian developments:

L & H Ch. 1

Applying for registration and the consequences of incorporation:

L & H Ch. 2

Types of Companies:

L & H Ch. 3

The company constitution and the replaceable rules:

L & H Ch. 4

Company liability in contract, tort and crime:

L & H Ch. 5


LECTURE AREA 3 – RELEVANCE OF GOVERNANCE IN RELATION TO CORPORATE FINANCING AND PAYMENT OF DIVIDENDS

Disclosure to Investors – fundraising:

L & H Ch. 7

Share capital:

L & H Ch. 8

Debentures and Loan Capital:

L & H Ch. 11

Dividends:

L & H Ch. 10

LECTURE AREA 4 – DIRECTORS AND GOVERNANCE ISSUES IN RELATION TO PROCEDURE AND MANAGEMENT

L & H Ch. 12

ASIC Investigation:

L & H Ch. 21

LECTURE AREA 5 – DIRECTORS DUTIES and CORPORATE GOVERNANCE [1] GENERAL LAW (FIDUCIARY) DUTIES

L & H Ch. 13
LECTURE AREA 6 - DIRECTORS DUTIES and CORPORATE GOVERNANCE [2]
STATUTORY DUTIES

L&H Ch. 13

LECTURE AREA 7 – DIRECTORS DUTIES and CORPORATE GOVERNANCE [3]
FINANCIAL AND REPORTING OBLIGATIONS; ASX CORPORATE GOVERNANCE PRINCIPLES

L&H Ch. 13
Financial and Reporting Obligations of Directors:
L&H Ch. 15

LECTURE AREA 8 – THE ROLE OF DIRECTORS DUTIES AND GOVERNANCE IN RELATION TO MEMBERS RIGHTS

Members Meetings:
L&H Ch. 14
Members Rights and the position of the Minority:
L&H Ch. 17

LECTURE AREA 9 – GOVERNANCE IN RELATION TO THE WIDER MARKET: TAKEOVERS; FINANCIAL SERVICES AND MARKETS

Takeovers:
L&H Ch. 18
Financial Services and Markets:
L&H Ch. 19

LECTURE AREA 10 – INSOLVENCY AND GOVERNANCE [1]
CORPORATE RESTRUCTURING

Insolvency
Arrangements and Reconstructions; Receivership; Voluntary Administration
L&H Chs. 22, 23, and 24

LECTURE AREA 11 – INSOLVENCY AND GOVERNANCE [2]
LIQUIDATION

Liquidation - Insolvent trading
L&H Ch. 25 (for insolvent trading Ch. 13)

LECTURE AREA 12 – THE FUTURE OF GOVERNANCE PRACTICES
OVERVIEW AND REVISION