

MACQUARIE  
UNIVERSITY



FACULTY OF  
BUSINESS AND ECONOMICS

**DEPARTMENT OF BUSINESS LAW**

# STUDY GUIDE

## **BUSL860 BANKING AND FINANCE LAW**

**Semester 1, 2009**

**Credit points: 4 cps**

**Prerequisites/Corequisites: Nil**

**Unit Convenor: Mr John Bourke LLM (Monash)**

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

This Unit examines the nature of banking, the regulatory framework, banker-customer relationship, financial instruments, arrangements used by lenders and investors and the need to minimize risk.

### Unit rationale

The unit aims to develop an understanding of the legal and regulatory aspects of banking and finance law in Australia and to put them in a broader commercial and regulatory context. It will explore the reach of regulation in this area and the underlying policy objectives sought to be served by the law and regulation, such as risk minimisation. It will query whether there is any element of overregulation in the banking industry.

The unit is complemented by BUSL861 Financial Services Law which deals with financial services and markets. The latter unit develops in some detail the licensing and regulation of financial intermediaries including certain bank personnel, and protection of financial consumers. BUSL860 will provide a lead-in for BUSL864 International Banking and Finance Law.

## TEACHING STAFF

Mr John Bourke, Phone: 9850 8454 Mobile: 0422 539 361  
Email: John.Bourke@law.mq.edu.au

Dr Malcolm Quirey, Special Counsel, Piper Alderman Lawyers

## CLASSES AND STUDY TIMES

The unit will be offered in two alternative modes:

Weekly mode: Thursdays 6.00 – 9.00 pm

Intensive mode: Sunday, 1 March 10am-5pm;

Sunday, 29 March 10am-5pm

Please check the timetable prior to commencement of the semester in case there are any changes to these dates and times [www.law.mq.edu.au/html/postgraduate/timetable.htm](http://www.law.mq.edu.au/html/postgraduate/timetable.htm)

## REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

### Prescribed text

All students are strongly urged to purchase one of the prescribed texts:

## EITHER

Everett, D, and McCracken, *Banking and Financial Institutions Law*, 6th edn, Thomson-Law Book Co., 2004 (A later edition is in preparation)

## OR,

Tyree, A, *Banking Law in Australia*, 6<sup>th</sup> edition LexisNexis, 2008

NB: LexisNexis Butterworths have arranged an attractive package of 2 texts: Tyree for 860 and Baxt for 861. Enquire at the Macquarie Coop Bookshop.

## **Recommended Reference Texts**

(Later editions may be available in 2009)

Weaver and Craigie, *Banker and Customer in Australia*, Thomson/LBC (looseleaf/online service)

Mallesons, Stephen Jacques, *Australian Finance Law*, 5<sup>th</sup> edn, Lawbook Co, 2003

Weerasooria, WS, *Bank Lending and Securities in Australia*, 5th edn, LexisNexis 2006

*Journal of Banking and Finance Law and Practice*, Thomson-Law Book

## **Readings**

A volume of reading material will be made available, containing documents relevant to the unit.

## **Websites**

See [www.apra.gov.au](http://www.apra.gov.au)      [www.rba.gov.au](http://www.rba.gov.au)

## **UNIT WEB PAGE**

Study Guides and information on this unit can be found at:

<http://www.law.mq.edu.au/html.postgraduate/studyguides.htm>

## **LEARNING OBJECTIVES**

The objectives of this unit are to develop or enhance an appreciation of:

- The nature and role of the banking industry in Australia;
- The law and regulatory system applying to the industry; and
- The broader commercial environment in which the banking industry operates; and

- The principles and techniques of case interpretation and statutory construction as aids in dealing with legal materials.

The unit will involve completion of a research project, embodied in an essay, which will further develop skills of legal interpretation, analysis and synthesis, and an understanding of the interrelationship between law and policy.

## GENERIC SKILLS

As reflected immediately above, the unit aims at developing or enhancing skills for interpreting the materials of the law, and their analysis and synthesis. In essence, the unit develops verbal reasoning and writing skills in the context of the discipline of law. The unit also aims to develop or enhance an understanding of the interrelationships between law, regulation and policy.

## TEACHING AND LEARNING STRATEGY

The unit consists of seminar-based classes (both in intensive and weekly modes). Students are encouraged to attend classes and to prepare for class. 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. Likewise, they are welcome to propose research project topics which are relevant to their work.

## ASSESSMENT

Assessment consists of an essay of between 5,000-7,000 words, weighted at 100% of unit assessment. Possible topics will be proposed by the unit convener, but students are encouraged to seek, with the convener’s approval, to work on a particular topic. This option would be especially relevant to those with prior legal training or professional exposure to the law, or industry experience.

All students should have their topic approved by the Convenor before 1<sup>st</sup> June 2009. Class participation is encouraged but is not mandatory.

The essay is due on **Monday, 22 June 2009 by 5.00 pm**. If circumstances preclude this, please get the unit convener’s approval for a later submission. Please ensure that the essay cover sheet is filled in.

**NB. Internal students must hand a copy of the essay to the unit convener or Sumi Pilkington in room 341 W3A.**

**External students must post a copy of their essay to COE in the folder provided.**

**DUE DATE: Monday, 22 June 2009, 5.00 pm**

**In addition to providing a hard copy of their assignment, All STUDENTS must email their completed assignment, by the submission date, to the LawPGbox, which will record date, time and name of each email and will provide a backup copy to the Division.**

LawPGbox email: postgrad@law.mq.edu.au

In addition all students are to email all assignments on the submission date to the Law PG box which will record date time and name of each email and will provide a backup copy to the Division. Email to: postgrad@law.mq.edu.au

## RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OBJECTIVES

Assessment is by way of an independent research project, which will foster the acquisition of knowledge specific to the subject matter of the unit, and the development of more general skills of law-focused data searching, analysis, synthesis and written expression.

## PLAGIARISM

The University defines plagiarism in its rules: “Plagiarism involves using the work of another person and presenting it as one’s own.” Plagiarism is a serious breach of the University’s rules and carries significant penalties. You must read the University’s policies and procedures on plagiarism. These can be found in the Handbook of Undergraduate Studies or on the web at: <http://www.student.mq.edu.au/plagiarism/> The policies and procedures explain what plagiarism is, how to avoid it, the procedures that will be taken in cases of suspected plagiarism, and the penalties if you are found guilty. Penalties may include a deduction of marks, failure in the unit, and/or referral to the University Discipline Committee.

If you take and use the work of another person without clearly stating or acknowledging your source, you are falsely claiming that material as your own work and committing an act of PLAGIARISM. This is a very serious violation of good practice and an offence for which you will be penalized. If you do any of the following in an assignment, or in any piece of work which is to be assessed, ***without clearly acknowledging your source(s) for each quotation or piece of borrowed material*** you are guilty of PLAGIARISM.

YOU WILL BE GUILTY OF PLAGIARISM IF YOU:

- Copy out part(s) of any document, including computer and web-based material;
- Use or extract someone else’s concepts or experimental results or conclusions, even if you put them in your own words;
- Copy out or take ideas or summarise from the work of another student, even if you put the borrowed material in your own words;
- Submit substantially the same final version of any material as a fellow student. On occasions, you may be encouraged to prepare your work with someone else, but the final form of the assignment you hand in must be your own independent endeavour.

There is nothing wrong in using the work of others as a basis for your own work, nor is it evidence of inadequacy on your part, provided you do not attempt to pass off someone else's work as your own.

## **LIBRARY SUPPORT SERVICES**

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>. 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. Information about these is available from the Postgraduates link, listed under Additional Services on the Library homepage.

Additional services for Macquarie postgraduate students include the Academic Outreach Librarians (AOLs). The Academic Outreach Librarians are the first point of contact for Postgraduate students. There is an Academic Outreach Librarian appointed to each Division of the University.

## **UNIVERSITY POLICY ON GRADING**

The University requires all Divisions to adhere to a policy relating to the distribution of grades across high distinction, distinction, credit and pass grades. This means that on occasion a student's raw mark for a unit (ie, the total of their marks for each assessment item) may not be the same as that which they receive on their transcript. This is because the total raw mark may be scaled up or down so that the grades of all students in each unit sit within the distribution bands set down by the University. The policy does not require that any number of students are to be failed in any unit.

## **SCHEDULE OF TOPICS**

### **Precis of Topics**

Everett and McCracken will be denoted EM

Tyree – T

Weerasooria – W

### **1. OVERVIEW OF THE REGULATORY SYSTEM**

**WEEKS 1-2**

EM chaps 1-3; T chap 1; W chaps 1-6

Under this heading the regulatory framework for the banking industry, including governing legislation and industry regulators such as APRA (Australian Prudential Regulation Authority), ASIC (Australian Securities and Investments Commission), the ACCC (Australian Competition and Consumer Commission) and the RBA (Reserve Bank of Australia) will be reviewed. Chapter 7 of the *Corporations Act* (Financial

Services and Markets), dealing with financial products, will be briefly reviewed (this topic is developed in more detail in BUSL861 Financial Services Law).

**2. FINANCIAL MARKETS AND INSTRUMENTS WEEKS 3-4**

EM chaps 5-7; W chaps 7-9

Examines the various markets and systems for trading in securities, such as the OTC (over the counter) system, the ASX (Australian Stock Exchange, which recently merged with the Sydney Futures Exchange), the bills market, and the payments and settlements system.

**3. BANKING; BANK-CUSTOMER RELATIONSHIP WEEKS 5-6**

EM chaps 8-9, T chaps 2,5,6,10, W chaps 20-24; article by Gillies: “ANZ and Karam” in Course Materials

Examines the nature of banking for legal purposes, and the bank-customer relationship and legal rights and liabilities arising out of this relationship.

**4. PAYMENT INSTRUMENTS, INCLUDING CHEQUES WEEK 7**

EM chaps 11-14; T chaps 4, 7,8; W chaps 1-13

Examines negotiable instruments including bills of exchange, cheques and letters of credit.

**5. ELECTRONIC BANKING WEEK 8**

EM chap 10; T chap 9; W chap 9

Examines electronic funds transfer (EFT) – mechanisms such as eftpos, credit cards, phone and internet banking, and the associated clearing systems.

**6. SECURED LOANS – TAKING SECURITY OVER ASSETS WEEK 9**

EM chaps 15-19; T chap 11

Why security is important, nature of security, forms of security including banker’s lien, mortgages over real property, mortgages over personal property (bills of sale), securities over intangible property such as shares, guarantees, and corporate securities such as floating charges and debentures.

**7. CONSUMER PROTECTION WEEK 10**

EM chap 9; T chap 10; W chap 14-16

Overviews the *Uniform Credit Code*, the *Code of Banking Practice*, the *EFT Code of Conduct*, the Banking Ombudsman, and briefly notes the financial consumer protection

provisions in Chapter 7 of the *Corporations Act* (which are examined in detail in BUSL8861 Financial Services Law).



## ESSAY COVER SHEET

<b>Family Name:</b>		<b>Unit Code:</b>	<b>BUSL860</b>
<b>Given Names:</b>		<b>Date Due:</b>	<b>5pm Monday, 22 June 09</b>
<b>Student ID:</b>		<b>Tutor's Name:</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