



DEPARTMENT OF BUSINESS LAW

STUDY GUIDE

BUSL864 INTERNATIONAL BANKING & FINANCE LAW

Semester 2 , 2010

Credit points: 4

Unit Convenor: Mr John Bourke, LL.M (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.

1. ABOUT THIS UNIT

This subject examines the financing of international trade, international payments systems, foreign currency transactions, international capital markets, treaty provisions relating to financial services, international financial institutions such as the IMF and the World Bank and the resolution of international investment disputes (including the ICSID regime).

The unit complements BUSL860 Banking and Finance Law, which focuses on domestic banking.

2. TEACHING STAFF

Unit Convenor/Lecturer in Charge: Mr John Bourke,
Office :W3A Room 421
Phone: 9850 8454; 0422 539 361
E-mail: John.Bourke@law.mq.edu.au.

Adjunct Lecturer : Dr Malcolm Quirey,
Special Counsel
Piper Alderman, Lawyers, Sydney.

Postgraduate Administrator: Lara Hardy, W3ARoom 341
E-mail: lara.hardy@mq.edu.au

3. CLASSES AND STUDY TIMES

The unit will be offered in alternate modes:

Internal Students

- Weekly Fridays 6-9pm in Room C5A310

External Students

- Intensive weekend class on the following days:

Saturday, 21 **and** Sunday, 22 August , from 10.00 am-5.00 pm, in Room C5A 226

Please check the timetable for class times and rooms on the University website at :

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

4. REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

“A” Prescribed text:

- No single text covers this unit. Students may purchase:

Ross Cranston, *Principles of Banking Law*, 2nd ed Oxford University Press, 2002. (3rd ed expected 02/09).

This text tends to focus on UK banking law (which is relevant), but also makes frequent reference to banking regulation in other jurisdictions such as the EU, USA and Japan, and has some coverage of international banking laws topics. Because of this transnational dimension it is worth reading.

Also,

Ellinger’s Modern Banking Law, by Ellinger and ors, 4th ed, Oxford University Press (5th ed on the way) is very useful and may be consulted.

“B” Other recommended texts:

Burnett, R., *Law of International Business Transactions* (3rd ed. 2004)

McCracken and Anna Everett, *Banking and Financial Institutions Law* (7th ed. 2009)

Mallesons Stephen Jaques, *Australian Finance Law* (6th ed. 2008).

Mann, RJ., *Payment Systems and other Financial Transactions* (2nd ed. 2003).

Miller, FH., and Harrell, AC., *The Law of Modern Payment Systems* (2003).

Mo, J., *International Commercial Law* (4th ed. 2009)

Moens, G., and Gillies, P., *International Trade and Business: Law, Policy and Ethics* (2nd ed. 2006)

Murray, C., Holloway, D., and Timson-Hunt, D., *Schmitthoff’s Export Trade – The Law and Practice of International Trade* (11th ed. 2007)

Penn, G., and Haynes, A., *The Law and Practice of International Banking*, 1st ed. Thomson/Sweet & Maxwell, 2002 (out of print) (2nd ed. expected 12/08)

Schaffer, R., et al. *International Business Law in its Environment*, (4th ed. 1999)

Useful Websites

- Bank for International Settlements: www.bis.org
- Australian Prudential Regulatory Authority: www.apra.gov.au/
- World Bank: www.worldbank.org
- International Monetary Fund: www.imf.org
- Federal Reserve Board (USA): www.federalreserve.gov
- The EU Single Market:
http://ec.europa.eu/internal_market/payments/crossborder/index_en.htm
- Financial Services Authority (UK): <http://www.fsa.gov.uk/Pages/index.shtml>
- National Bureau of Economic Research, Cambridge MA: www.nber.org

The online law databases available through the university homepage are very useful. These include:

Case Base facilitates searches for Australian legal materials, and provides links to these. (If a case is not available through one of the commercial reports try the parallel BC..... link.)

Hein Online is for searching journal articles.

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.

Some tips for using these databases – click the Natural Language option; key in fewer rather than more words, so as to provide a wider net for searches (for example, take one distinctive word in the title of a case, if the full title does not get a hit); use AND or & in order to narrow a search (for example, waiver & arbitration will ensure that documents retrieved contain both words).

Worldtradelaw.net –World Trade Organisation dispute resolution materials.

“C” 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>.

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

5. UNIT WEB PAGE

Study guides and information on this unit can be found at:
<http://www.law.mq.edu.au/html/postgraduate/studyguides.htm>

6. LEARNING OBJECTIVES

The unit aims to provide an understanding of the fundamental principles governing the regulation of international banking and financial transactions, and to refine skills of legal analysis through the detailed consideration and application of relevant international instruments, legislation and case law.

7. GENERIC SKILLS

The skills sought to be developed by the unit include critical analysis skills, and problem-solving skills, focused on the law and its institutions.

8. TEACHING AND LEARNING STRATEGY

Students are encouraged to read ahead of class and to participate in discussions on the topics and issues addressed in the lectures. Marks will be awarded in both the weekly class AND, in regard to External students, in the Intensive weekend for class participation.

9. ASSESSMENT

The assessment is based upon three (3) tasks:

A INTERNAL STUDENTS

- (1) Class Participation 5% of overall assessment
- (2) An in class Examination to be held prior to the mid-Semester recess, the precise date and other information to be provided in class. 45% of overall assessment
- (3) An Essay of 3,500 to 4,500 words on ONE of the following topics: 50% of overall assessment
 1. Discuss the meaning of 'Incoterm' in its application to International Commerce. Refer in your answer to the relationship of Incoterms to the proper law governing a particular transaction with a discussion of decided cases. What is the relationship, if any, between the Incoterms 2000 and UCP600?
 2. Assess the place of Letters of Credit in the International commercial arena. In your answer consider the process of the Letter of Credit transaction and the problems associated with enforcement of parties' rights in a conflict situation. Refer to decided cases.
 3. Assess the role of Banks and other financial institutions and their interbank relationships in International commerce. Consider the rise of the 'conglomerate' Bank with its extension into areas not formerly considered appropriate for Banks. Also touch upon Regulation and Prudential Supervision of Banks and the role of the Central Bank in this area.

The Essay is due on or before 5.00pm Friday 12 November 2010.

Essays received after this date may attract penalties and may not be marked.

B EXTERNAL STUDENTS

- (1) Participation in the Intensive Weekend 5% of overall assessment

AND

- (2) TWO Essays, each of 3,500 to 4,500 words, selected from Topics 1 - 3 above.

These two Essays comprise 95% of the final assessment.

The Essays are due on or before 5.00pm Friday 12 November 2010.

Essays received after this date may attract penalties and may not be marked.

INFORMATION ON SUBMISSION OF ESSAYS FOR ALL STUDENTS:

N.B. For Footnoting and Bibliography use *The Australian Guide to Legal Citation*, available on the Internet. This must be used for Footnoting and referencing generally.

Use Footnotes,
Do not use Endnotes,
Do not use Endnotes,
Provide a full Bibliography,
Include a word count.

Place a hard copy with the completed COVER SHEET attached in the Postgraduate Box outside Room 341 in W3A

OR

Mail a hard copy or copies, with the completed COVER SHEET attached to Mr John Bourke, Department of Business Law, Building W3A, MACQUARIE UNIVERSITY, NSW 2109.

10. RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OBJECTIVES

Completion of the above assessment tasks will foster the acquisition of knowledge specific to the subject matter of the unit, and the development of the more general skills of law-focused data searching, analysis, synthesis and written expression.

11. 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 Postgraduate 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.

12. 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 numbers of students are to be failed in any unit.

13. SCHEDULE OF TOPICS

The link to these Materials will be placed on Blackboard.

Topic 1. The Historical Development of the International Financial Market from Bretton Woods to the Present Day

- Richard Myrus, 'From Bretton Woods to Brussels: A legal Analysis of the Exchange-Rate Arrangements of the International Monetary Fund and the European Community' (1994) 62 *Fordham L. Rev* 2095.
- Catherine Schenk, 'Financial Market and Systemic Risk: The Response of Central Banks in the 1960s and 1970s', Address prepared for the International Economic History Congress, Helsinki, May 2006 (Draft only – not for citation).
- W. Ronald Gard, 'George Bailey in the Twenty-First Century: Are We Moving to the Post-Modern Era in International Financial Regulation with BASEL II?', (2006) 8 *Transactions: The Tennessee Journal of Business Law* 161.
- L. Jacobo Rodriguez, 'International Banking Regulation, Where's the Market Discipline in Basel II?' *Policy Analysis* No. 455, (October 15, 2002).
- Paola Bongini, 'The EU Experience in Financial Services Liberalisation', SUERF – The European Money and Finance Forum, Vienna 2003.

Topic 2. Regulation and Prudential Supervision of Banks in the USA, UK EU and Australia: International Regulatory and Supervisory Convergence

- Ross Cranston, *Principles of Banking Law*, (2nd ed, 2002): Chapters 1-4.
- Jonathan Macey, 'Commercial Banking and Democracy: The Illusive Quest for Regulation', (2006) 23 *Yale J. on Reg.* 1.
- T.J Coyne, 'Banking Regulation: Has the Pendulum Swung Far Enough?' *Economic Papers: Special Edition*, December 2006, 103-110.
- 'The Prudential Supervision Framework', *APRA Annual Report 2006*.
- Di Thomson, Malcolm Abbott, 'Australian Financial Prudential Supervision: An Historical Overview', (2000) 59 (2) *Australian Journal of Public Administration* 75.
- Siobhan Sweeney, 'Basel II's effect on the Australian Market', (2006) 34 *ABLR* 284
- John F Laker, 'Basel II: Observations from Down Under', Address, APRA Chairman, Second Annual Conference on the Future of Financial Regulation, London School of Economics, 6-7 April, 2006.
- Heidi Mandanis Schooner, 'Panel 1(Part 2): 'A Comparative Analysis of Consolidated and Functional Regulation: Super Regulator: The Role of Central Banks in Bank Supervision in the United States and the United Kingdom'', (2003) 28 *Brooklyn J. Int'l L.* 411.
- Heidi Mandanis Schooner, Michael Taylor, 'United Kingdom and United States Responses To the Regulatory Challenges of Modern Financial Markets' (2003) 38 *Tex. Int'l L.J.* 317.

Topic 3. International Banking- An Overview

- Ross Cranston, *Principles of Banking Law*, (2nd ed, 2002): Chapters 16-17.

Topic 4. Payments and Payment Systems: Money and Payment, Domestic International Funds Transfer, Settlement, Clearing and Netting, Risks and Responsibilities.

- Ross Cranston, *Principles of Banking Law*, (2nd ed, 2002): Chapters 8-10.
- Rhys Bollen, 'A review of the regulation of Payment Facilities', (2005) 16 *JBFLP* 325.

Topic 5. International Lending – Project Finance

- Mallesons Stephens Jaques, *Australian Finance Law*, (5th ed, 2002), Chapter 11.

Topic 6. Domestic and International Debt Capital Markets

- Mallesons Stephens Jaques, *Australian Finance Law*, (6th ed, 2002), Chapter 6.
- Ross Cranston, *Principles of Banking Law*, (2nd ed, 2002): Chapter 12.

Topic 7. Trade Financing- Export Transactions- Letters of Credit

- Gabriel Moens, Peter Gillies, *International Trade and Business: Law Policy and Ethics*, (2nd ed, 2005) Chapter 6.
- ICC Uniform Customs and Practice for Documentary Credits (UCP600).
- Ross Cranston, *Principles of Banking Law*, (2nd ed, 2002): Chapters 11-15.

Topic 8. The International Monetary Fund

- James M. Boughton, 'The IMF and the Force of History: Ten Events and Ten Ideas that Have Shaped the Institution' (May 2004 – revised April 2006) IMF Working Paper No. WP/04/75.
- Rosa Maria Lastra, 'The International Monetary Fund In Historical Perspective', *JIEL* 2000.3(507).
- Jeremy J. Sanders, 'The World Bank and the IMF: Fostering Growth in the Global Market' (2000) 9 *Currents Int'l Trade L.J.* 37.
- Catherine Lee, 'To Thine Ownself Be True: IMF Conditionality and Erosion of Economic Sovereignty in the Asian Financial Crisis', (2003) 24 *U. Pa. J. Int'l Econ. L.* 875.

Topic 9 Regulatory Measures Available to Emerging Market Nations

- Ramit Nagpal, 'The IMF's pursuit of Capital Account Convertibility: A developing Country Perspective' (2006) 12 *Law & Bus. Rev. Am.* 27.
- Barbara Stallings and Rogerio Studart, *Financial Regulation and Supervision in Emerging Markets: The Experience of Latin America since the Tequila Crisis*, Economic Commission for Latin America and the Caribbean (ECLAC).December 2001.
- Carolyn Currie, 'Regulatory Failure in Emerging Markets', Working Paper No 135, May 2004.
- Milena Makich-Macias, 'The Effect of the International Monetary Fund Bailout on Emerging Growth Countries', (2001) 26 *Brooklyn J. Int'l L.* 1755
- C. Emre Alper and Ziya Onis, 'Emerging Market Crises and the IMF: Rethinking the Role of the IMF in light of Turkey's 2000-2001 Financial Crisis', Paper presented at the METU International Conference VI, Ankara, Turkey, September 11-14, 2002.

DEPARTMENT OF BUSINESS LAW

ESSAY COVER SHEET

(Please attach cover sheet to every assignment)

Surname:		Student Number:	
Given Name:			
Lecturer	Mr John Bourke		
Date Due:		Unit Number:	
Essay Title:			
<p>“I certify that I am aware of the University’s policy on plagiarism and that this assignment meets those requirements and has not been previously submitted for assessment in any other course of study”</p> <p>Signed</p>			
Marker’s Comment			