

MACQUARIE
UNIVERSITY



FACULTY OF
BUSINESS AND ECONOMICS

**Unit code
BUSL 864**

International Banking and Finance 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

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.

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

CONSULTATION TIMES

Fridays 5.00 pm - 6.00 pm or by appointment

CLASSES

There will be a weekly class on

- Fridays 6-9pm in C5A 310
- 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:

Students should purchase the following required text:

Ellinger's Modern Banking Law by Ellinger and others, 5th edition, Oxford University Press.

Other useful texts are:

Ross Cranston, *Principles of Banking Law*, 2nd ed Oxford University Press, 2002

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, R.J., *Payment Systems and other Financial Transactions* (2nd ed. 2003).

Miller, F.H., and Harrell, A.C., *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)

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.

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 international banking and finance law;
- 2 Understand the legal framework of international banking and finance law;
- 3 Have developed some skill at the interpretation of relevant legal instruments;
- 4 Understand legal problems arising in the international banking world;
- 5 Understand dispute minimization and resolution strategies in international banking;
- 6 Understand policy issues underlying the world of international banking.

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

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.
- 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

- Jonathan Macey, 'Commercial Banking and Democracy: The Illusive Quest for Regulation', (2006) 23 *Yale J.*
- 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

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

- 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*, (2nded, 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).

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.

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

	Assessment Task 1	Assessment Task 2	Assessment Task 3
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 presentation.	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 Friday 11 November 2011.
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 international banking and finance law	Understanding of role and nature of international banking and finance law	Understanding of role and nature of international banking and finance law
2	Understanding of the legal framework of international banking and finance law	Understanding of the legal framework of international banking and finance law	Understanding of the legal framework of international banking and finance 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 world of international banking	Understanding of legal problems arising in the world of international banking and their resolution, by focusing on a hypothetical case	Understanding of legal problems arising in the world of international banking
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 world of international banking	Understanding of policy issues underlying the world of international banking	Understanding of policy issues underlying the world of international banking
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

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.businessandeconomics.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

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

Family Name:		Unit Code:	BUSL 864
Given Names:		Date Due:	
		11 November 2011	
Student ID:		Lecturer's Name:	John Bourke
Essay Title:			
<p>"I certify that I am aware of the University's policy on plagiarism (as stated in 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"</p> <p>Signed</p>			
<p>MARKER'S COMMENTS</p>			

