

MACQUARIE
UNIVERSITY



FACULTY OF
BUSINESS AND ECONOMICS

BUSL301
Corporations Law

Semester 2, 2011

Department of Accounting and Corporate Governance

Year and Semester: 2011 Semester 2

Unit convenor: Michael Quilter

Prerequisite: BUSL250

Credit points: 3

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**. 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.

TEACHING STAFF

Convenor and Lecturer:

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Lecturer:

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Tutors: Your tutor will provide you with contact details

CONSULTATION TIMES

Consultation can be arranged by email or by speaking to your tutor after class and organising a suitable time. Relevant further information will be available on the Unit Blackboard.

You are encouraged to seek help at a time that is convenient to you from a staff member teaching on this unit during their regular consultation hours. In special circumstances, an appointment may be made outside regular consultation hours. Staff will not conduct any consultations by email. You may, however, phone staff during their consultation hours.

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. Students will attend one lecture and one tutorial each week. There may be some reorganisation, overlapping, and/or integration of areas to accommodate assessment and unit structure. **Lectures begin in the first week – tutorials begin in week 2 (see Blackboard link to practice/tutorial questions) – the sequencing of the lecture program and the unit content will allow you to develop your understanding of company law as the unit progresses.** Note that together with the practice/tutorial questions tutorials may cover other issues relevant to the unit.

The timetable for classes can be found on the University web site at:

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

Students must remain in their allocated tutorials.

PRIZES

- There is a prize for the most successful student in this unit.
http://www.businessandeconomics.mq.edu.au/undergraduate_degrees/prizes_scholarships

REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

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

Lipton and Herzberg, Understanding Company Law, Thomson Reuters (Lawbook Co.) 15th ed. 2010. This is referred to as 'L&H' 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 (Blackboard)
- There is no web page for this unit.

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)

Overall, 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.
- * Understand the past and present corporate legislative framework.
- * Understand how companies are formed and different types of companies.
- * Understand the company constitution and how it affects the company's activities.
- * Understand the ways in which a company may raise finance.
- * Understand corporate management issues, in particular the role and obligations of directors.
- * 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.
- * Apply the law clearly to analyse and solve problems relating to company law.
- * Develop an interest in, and an understanding of, current corporate issues.

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) creativity and innovation; (5) **effective communication***; (6) engaged and ethical local and global citizens; (7) socially and environmentally active and responsible; (8) capable of professional and personal judgement and initiative; (9) commitment to continuous learning.

Those graduate capabilities marked with an * will be a focus.

TEACHING AND LEARNING STRATEGY

This unit is taught by way of lectures and tutorials. 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 lectures and reflection on their abilities. The capacity of each student to digest material will vary and accordingly self assessment is necessary. The amount of focussed and effective effort a student puts in to preparation and study will generally be reflected in their performance. 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 exam you have to be able to **use the law to solve problems** [either multiple-choice or written answer style].

Classes should be used by students to test their **understanding of the unit** in an environment where **immediate feedback** is available from the tutor – 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. In a simple economic sense students pay for instruction and should attend classes to get the benefit and help of their lecturer or tutor.

RESEARCH

Both texts for this unit (**The Company Law Notes** and **Understanding Company Law**) are the result of research in relation to the area of company law. **The material in these texts 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 focussing on company law. Examples of journals that can be consulted to follow up matters of interest are: Australian Journal of Corporate Law; Company and Securities Law Journal.

Examples of recent articles in the Australian Journal of Corporate Law that relate to areas of this unit include:

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]

Examples of recent articles in the Company and Securities Law Journal (C&SL J) that relate to areas of this unit include:

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 the examination). Timing of assessment may change if this is necessary as a result of 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 Blackboard.**

Note: In Tutorial 3 students will be given a short exam to allow them to test their knowledge of the unit so far – this will not form part of assessment.

1. Tutorial participation [10%] - tutorials should be used by students to **test their understanding of the unit** in an environment where **immediate feedback** is available from the tutor – students should be prepared to respond to, and ask, questions – being active is an important aspect of both study and professional practice and tutorials will be of more **benefit to all students if they are willing to participate** – the mark for tutorial participation includes the aspect of attendance in that students who do not attend obviously do not participate – and just as in professional practice where you rely on your colleagues, each student carries some responsibility for the success of the group (tutorial) – as such your tutor will award a participation mark based on the performance of the tutorial as a group (as a whole) – hopefully therefore the whole group will perform for the success of all – however where certain students stand out (good or bad) the tutor can take their individual performance into account for the purposes of the finalising of specific participation marks.

2. Mid-semester multiple-choice examination [30%] – date to be advised (please check Blackboard in week 5 of semester to confirm this date) – note that important matters such as examination details will also be advised in lectures - the exam will **cover Lecture Area 1 to 5 inclusive** – the exam 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 in tutorials – 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 tutorials, prepare prior to each tutorial 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 tutor 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.

Following is an Assessment Table summarising the assessment components referred to above:

		Assessment Task 1	Assessment Task 2	Assessment Task 3
Title/Name		Tutorial participation	Mid-semester multiple-choice examination	Final exam
Description		This assessment tests your level of and ability to, participate in tutorial discussion.	This exam is closed book and will cover Lecture Area 1 to 5 inclusive	This exam is closed book and will cover Lecture Area 5 to 11 inclusive
Due date		Throughout semester	To be advised	This will be held at the conclusion of the unit in the formal examination period
% Weighting		[10%]	[30%]	[60%]
Grading method		This assessment component is based on students being active in tutorials. Your tutor will award a mark based on the performance of the tutorial as a group (as a whole). Thus the whole group will perform for the success of all. Where certain students stand out the tutor can take their individual performance into account for the purposes of their participation mark.	Each question will require students to discriminate (decide) between a number of responses to a question and select the appropriate response. The exam will be marked electronically	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 will 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. These questions will be marked by one of the team of markers.
Submission method		Throughout semester	Formal examination	Formal examination
Feedback		Immediate feedback is available from the tutor	The exam will be marked electronically. Your result (your	Students will receive their final grade at the conclusion of the unit

		Assessment Task 1	Assessment Task 2	Assessment Task 3
			mark) will be your feedback on your performance and will enable you to assess your progress	
Estimated student workload		Throughout semester	Attendance at classes including preparation plus 10+ hours revision	Attendance at classes including preparation plus 20+ hours revision
Learning outcomes assessed				
1		Responding and communicating in class	The ability to comprehend, digest and apply unit content	The ability to comprehend, digest and apply unit content
2		The ability to comprehend, digest and apply unit content	Awareness, perception and effective note-taking in lectures	Awareness, perception and effective note-taking in lectures
3		Understand the specific target outcomes dealt with in each Lecture Area	Understand the characteristics of the various forms of business organisations and understand the past and present corporate legislative framework	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.
4		Apply the law clearly to analyse and solve problems relating to company law.	Understand how companies are formed and different types of companies	Apply the law clearly to analyse and solve problems relating to company law
5		Develop an interest in, and an understanding of, current corporate issues.	Understand the company constitution and how it affects the company's activities.	
6			Understand corporate management issues, in particular the role and obligations of directors. Apply the law	

		Assessment Task 1	Assessment Task 2	Assessment Task 3
			clearly to analyse and solve problems relating to company law	
Graduate capabilities assessed				
1a		Discipline specific knowledge and skills	Discipline specific knowledge and skills	Discipline specific knowledge and skills
1b		Effective communication	Problem solving and research capability	Problem solving and research capability
1c		Problem solving and research capability	Critical, analytical and integrative thinking	Critical, analytical and integrative thinking
1d		Critical, analytical and integrative thinking		

Submission of work

Whenever a student presents any work for assessment (mid and final exams and class participation) they should ensure that any applicable conditions are satisfied and that the work, or their involvement, is to the best of their ability. Assessment is an opportunity for students to show that they are interested in the material and that they have successfully developed a method of study and can apply the content studied.

Examinations

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

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: (1) that if a supplementary exam is granted such exam may not necessarily be presented in the same format (style/layout/question-type) as the original exam; (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.

In addition, there is a requirement to pass the final examination to be awarded a final grade of a Pass or a higher grade.

Knowledge of the law, the ability to apply this knowledge and the ability to analyse the relevant issues are key determinates of your performance.

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.

http://www.businessandconomics.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/procedure.html

There is always room to consider a student's special needs in exceptional circumstances, however note that supplementary exams will only be granted in cases where the student suffers severe disruption or has a serious medical condition and does not sit the exam. Please note that even though a medical certificate may be provided the issue of whether a supplementary exam is warranted (and the issue of special consideration generally) remains within the discretion of the convenor of the unit. There is no automatic right to a supplementary exam merely because an application for special consideration has been lodged. Accordingly **students are to ensure that they are prepared and ready to sit the scheduled examinations.**

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 utilising 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.

***See Lecture Areas on following pages**

LECTURE AREAS

LECTURE AREA 1 – COMPARISON OF BUSINESS ORGANISATIONS

Agency; Associations; Sole Traders; Partnerships

Q Topics 1 and 2 L&H Ch.2

Partnership Act: www.austlii.edu.au/au/legis/nsw/consol_act/pa1892154/

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

Corporations Act: www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/

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

LECTURE AREA 6 - DIRECTORS DUTIES and CORPORATE GOVERNANCE

Q Topics 16, 17 and 18

L&H Ch 13

LECTURE AREA 7 - DIRECTORS DUTIES; CORPORATE GOVERNANCE; 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

ASIC Investigation:

Q Topic 21

L&H Ch 21

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)

LECTURE AREA 12 – OVERVIEW AND REVISION

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).