

MACQUARIE  
UNIVERSITY



FACULTY OF  
BUSINESS AND ECONOMICS

**Unit code  
BUSL 860**

**Banking and Finance Law**

**First semester, 2011**

**Department of Accounting and Corporate Governance**

**MACQUARIE UNIVERSITY**  
**FACULTY OF BUSINESS AND ECONOMICS**  
**UNIT GUIDE**

<b>Year and semester:</b>	<b>2011, Semester 1</b>
<b>Unit convenor:</b>	<b>Mr John Bourke LLM (Monash)</b>
<b>Prerequisites/Corequisites:</b>	<b>Nil</b>
<b>Credit points:</b>	<b>4 cps</b>

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**

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.

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 BUSL 861 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. BUSL 860 will provide a lead-in for BUSL 864 International Banking and Finance Law.

#### **TEACHING STAFF**

Convenor	<b>Mr John Bourke LLM (Monash)</b> <b>Email:</b> <a href="mailto:John.Bourke@mq.edu.au">John.Bourke@mq.edu.au</a> Phone: 042 253 9361 or 9850 8454 Office: Building W3A Room 421
Postgraduate administrator	<b>Alma Urbiztondo</b> <b>Email:</b> <a href="mailto:alma.urbiztondo@mq.edu.au">alma.urbiztondo@mq.edu.au</a> Phone: 9850 8452 Office: Building W3A Room 438

## CONSULTATION TIMES

W3A 421 Thursday 5.00 – 6.00 pm or by appointment

## CLASSES

- There will be a weekly face-to-face class on **Thursdays 6.00-9.00pm in W6B 345.**
- The timetable for classes can be found on the University website at:  
<http://www.timetables.mq.edu.au/>

## PRIZES

- Not applicable

## 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*, Thomson-Reuters, 7<sup>th</sup> edn 2009.

### OR

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

### Recommended Reference Texts

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

Mallesons, Stephen Jacques, *Australian Finance Law*, Lawbook , 6<sup>th</sup> edn 2008

Weerasooria, W.S., *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 materials has been lodged with the MQ Library and is available also online. Check Blackboard for the appropriate links.

### Relevant Websites

See [www.apra.gov.au](http://www.apra.gov.au) and [www.rba.gov.au](http://www.rba.gov.au) in particular. Other websites of relevance are referred to in the Texts.

## TECHNOLOGY USED AND REQUIRED

- Not applicable

## UNIT WEB PAGE

- To be advised
- Material will be uploaded to Blackboard – which will be accessible from the unit webpage

## LEARNING OUTCOMES

The learning outcomes of this unit are:

- 1 To develop an appreciation of the nature and role of the banking industry in Australia;
- 2 To develop an understanding of the law and regulatory system applying to the industry;
- 3 To enhance an appreciation of the broader commercial environment in which the banking industry operates;
- 4 To develop an awareness of the principles and techniques of case interpretation and statutory construction as aids in dealing with legal materials;
- 5 To develop awareness of policy issues in banking and allied industry problem solving and
- 6 To develop an awareness of the importance of dispute minimization mechanisms on banking and allied industry

## 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 is taught via 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**

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 has 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

Considers 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 BUSL 861 Financial Services Law).

### 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	10 June 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	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

	reflection upon the unit content and the testing of issues through discussion. Students may choose to give a class presentation.		will assist the organization of the analysis. This assignment is due by 5.00 pm Friday 10 June 2011.
Submission method		Lecturer	W3A - 341
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 banking and allied industry sector law	Understanding of role and nature of banking and allied industry sector law	Understanding of role and nature of banking and allied industry sector law
2	Understanding of the legal framework of banking and allied industry sector law	Understanding of the legal framework of banking and allied industry sector law	Understanding of the legal framework of banking and allied industry sector 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 banking and allied industry sector	Understanding of legal problems arising in the banking and allied industry sector and their resolution, by focusing on a hypothetical case	Understanding of legal problems arising in the banking and allied industry sector
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 banking and allied industry sector	Understanding of policy issues underlying the banking and allied industry sector	Understanding of policy issues underlying the banking and allied industry sector
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	Critical, analytical

		and integrative thinking	and integrative thinking
3	Effective oral communication	Effective written communication	Effective written communication
4	Capacity to be involved in problem solving	Problem solving and research capacity	Problem solving and research capacity
5	Engaged global consciousness	The ability to generate research outputs that will create new knowledge	Engaged global consciousness
6	Ethical local and global consciousness in problem solving	Ethical local and global responsiveness in problem solving	Ethical local and global consciousness in problem solving
7	Social and environmental consciousness in problem solving	Social and environmental sensitivity in problem solving	Social and environmental consciousness in problem solving
8	Consciousness of professionalism in decision-making	Capacity to use initiative in problem solving	Consciousness of professionalism in decision-making
9	Consciousness of the need to continue to update professional knowledge	Awareness of the necessity to maintain relevant data-based professional knowledge	Consciousness of the need to continue to update professional knowledge
10	Consciousness of research tools to undertake research	Application of research tools to generate appropriate research outputs	Consciousness of research tools to undertake research

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](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.

Macquarie University’s Academic Senate has a set of guidelines on the distribution of grades across the range from fail to high distinction. Your final result will include one of these grades plus a Standardised Numerical Grade (SNG).

The Standardised Numerical Grade (SNG) is not a summation of the individual assessment components.

To be awarded a specific grade, students are required to perform at an equivalent standard in the assessment task No. 3 and in the overall assessment mark in the unit.

## 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.businessandconomics.mq.edu.au/for/new\\_and\\_current\\_students/undergraduate/admin\\_central/grade\\_appeals](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/procedures.html](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%
2. **A Class Test to be held prior to the mid-Semester break at a date & time to be advised by the Lecturer in Charge:** 35%
3. **A Research Assignment of 5000-7500 words upon ONE only of the following topics:**
  - (a) **Critically evaluate the effects upon the Australian banking and financial services sector of the report to the Government of the day of the findings and recommendations of the Wallis enquiry.**  
**Consider the main features of the ground breaking legislation enacted by Parliament and include in your essay a discussion of the government Regulators. Can their effectiveness be measured in light of this country's experience of the GFC and the response of the Australian Government to 'guarantee' ADI deposits for a period of years? Is the latter evidence of some over-regulation?**
  - (b) **The notion of taking 'security' over assets is of critical importance in the lending activities of banks and other ADIs. Discuss the nature of 'security' and the various forms of security including banker's lien, the various mortgages and charges over tangible and intangible assets and the like relative to corporate securities. Illustrate your response with reference to relevant decided cases. Also consider those scenarios when a bank's securities may come under threat of postponement to the rights of other creditors and sketch out the mechanisms the bank may utilize to prevent this loss.**
  - (c) **Consider the various steps taken by the Australian Parliament to protect the rights of consumers of financial services such as the Uniform Credit Code, the Code of Banking Practice, & the EFT Code.**  
**Then launch into a discussion of the concept of a 'conflict of interest' and the mechanisms brought into existence by Chapter 7 of the *Corporations Act 2001* (Cth) with particular reference to that prohibited conduct known as 'Insider Trading' (see the case of *R v Rivkin* (2003) 45 ACSR 366 ).**  
**After probing the legal issues in *Rivkin's* case decide what advice you would give a public company trading both on its own behalf and also acting for private clients in such matters as company takeovers; in your answer set out the pros and cons of such a device as 'Chinese Walls' to avoid potential conflict.**

**THIS RESEARCH ASSIGNMENT:**

**60%**

**DUE DATE OF RESEARCH ASSIGNMENT: 5.00pm Friday 10 June 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 Postgraduate Box outside ROOM 341 in Building W3A on or before the due date of 10 JUNE 2011.**

## ESSAY COVER SHEET

<b>Family Name:</b>		<b>Unit Code:</b>	<b>BUSL 860</b>
<b>Given Names:</b>		<b>Date Due:</b> <b>10 June 2011</b>	
<b>Student ID:</b>		<b>Lecturer's Name:</b>	<b>John Bourke</b>
<b>Essay Title:</b>			
<p>"I certify that I am aware of the University's policy on plagiarism (as stated in <a href="http://www.student.mq.edu.au/plagiarism/">www.student.mq.edu.au/plagiarism/</a>) 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><b>MARKER'S COMMENTS</b></p>			

