

MACQUARIE
UNIVERSITY



FACULTY OF
BUSINESS AND ECONOMICS

**Unit code
BUSL 861**

Financial Services Law

First semester 1, 2011

Department of Accounting and Corporate Governance

MACQUARIE UNIVERSITY
FACULTY OF BUSINESS AND ECONOMICS
UNIT GUIDE

Year and Semester: 2011, Semester 1

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 unit examines the contractual, fiduciary and legislative obligations imposed upon financial service providers, such as financial advisers, stockbrokers and fund managers. Topics examined include Chapter 7 of the *Corporations Act* (Financial Services and Markets), and the consumer provisions in the *Australian Securities and Investments Commission Act*.

The unit aims to develop an understanding of the legal and regulatory aspects of financial services 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.

TEACHING STAFF

Convenor

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CONSULTATION TIMES

W3A 421 Wednesday 5.00 pm - 6.00 pm or by appointment

CLASSES

- There will be a weekly face-to-face class on **Wednesday 6.00-9.00pm in E7B 164.**
- 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 texts:

All students are strongly urged to have access to the following legislation: *Corporations Act 2001* (Cth), and the *Australian Securities and Investments Commission Act 2001* (Cth), which are published by the major law publishers in a single volume.

ALL STUDENTS ARE ADVISED TO PURCHASE ONE OF THE FOLLOWING:

Everett, D., and Mc Cracken, *Banking and Financial Institutions Law*, Thomson-Reuters 7th edn 2009

OR

Baxt, R., Black, A., and Hanrahan, P., *Securities and Financial Services Law*, LexisNexis Butterworths 7th edn 2008

*Gillies, P., *Business Law*, 12th edn, Federation Press, 2004

Hanrahan, P., Ramsay, I., and Stapledon, G., *Commercial Applications of Company Law*, 7th edn, CCH, 2006, chap 21 (Financial Services and Markets) (reproduced in the BUSL861 Readings Volume available in MQ library)

Hutley, P., and Russell, P., *An Introduction to the Financial Services Reform Act*, 3rd edn, LexisNexis, 2005

*Turner, C., *Australian Commercial Law*, 28th edn 2010, Thomson-Reuters

* Latimer, P., *Australian Business Law*, 28th edn 2009, CCH

(*These are useful for an overview of the legal system and the law of contracts).

Also refer to *The Australian Corporations and Securities Law Reports*

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

LEARNING OUTCOMES

At the end of this unit students should be able to:

- 1 Understand the role and nature of financial services law;
- 2 Understand the legal framework of financial services law;
- 3 Have developed some skill at the interpretation of relevant legal instruments;
- 4 Understand legal problems arising in the financial services industry;
- 5 Understand dispute minimization and resolution strategies and mechanisms and
- 6 Understand policy issues underlying the financial services system.

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

FINANCIAL SERVICES AND MARKETS

This unit examines the legal and regulatory framework governing financial products, financial service providers in Australia (ie financial intermediaries), and the financial markets in which they operate. The focus will be on Chapter 7 of the *Corporations Act* (Cth) (Financial Services and Markets), and the unconscionable conduct and consumer protection provisions applicable to financial service providers in Part 2 Division 2 (sections 12AA-12GW) of the *Australian Securities and Investments Commission Act* (Cth). These consumer provisions mirror those found in the *Competition and Consumer Act 2010* (Cth) replacing the *Trade Practices Act 1974* (Cth). Reference will also be made to Chapter 5C of the *Corporations Act*, which deals with managed investment schemes.

The *Corporations Act* will be abbreviated as ‘CA’; and the *Australian Securities and Investments Commission Act* as the ‘ASIC Act’. Texts will be abbreviated thus:

Baxt, Black and Hanrahan, *Securities and Financial Services Law* **BBH**

Gillies, *Business Law* **G**

NB: Everett and McCracken, *Banking and Financial Institutions Law*, Thomson-Reuters. 7th edn 2009 has relevance to all weekly segments hereunder. **EM**

PART 1 WEEKS 1 - 2

OVERVIEW – THE REGULATORY SYSTEM

BBH Chap 1, 2, 3 & 4; EM chaps 1, 2 & 3.

The regulatory system and the sources of law (general law and legislation) will be surveyed. The statutes of principal relevance are the *Corporations Act* (Cth) (Chapter 7 “Financial Services and Markets”), and the *Australian Securities and Investments Commission Act* (Cth) (see Part 2 Division 2 (sections 12A A-12GW) containing the unconscionable conduct and consumer protection provisions applicable to financial service providers – these provisions mirror the consumer protection provisions found in the *Competition and Consumer Act 2010*(Cth)). The principal regulator is the federal Australian Securities and Investments Commission (‘ASIC’). Reference will be made to the structure, role and powers of the ASIC, which are provided for in the *ASIC Act*.

See the **general definitions section** – s761A. Note also the following definitions, including the definitions of – financial product (CA s762Aff). Broadly, a **financial product** is a facility through which, or through the acquisition of which, a person does one or more of:

- 7 makes a financial investment;
- 8 manages a financial risk;
- 9 makes a non-cash payment. Examples of financial investment include buying shares in a company or units in a managed fund (known technically as a managed investment scheme/registered scheme).

Buying real estate is not within the definition.

Examples of managing financial risk are taking out insurance; and hedging a liability by acquiring a futures contract or entering into a currency swap.

Examples of a non-cash payment are: making payments by means of a facility for direct debit of a deposit account; making payments by a facility for the use of cheques; or making payments by means of a purchased payment facility within the meaning of the *Payment System (Regulation) Act 1998*, such as a smart card; or making payments by means of traveller's cheques (whether denominated in Australian or foreign currency).

Certain things are specified not to be financial products, including reinsurance, and any credit facility within the meaning of the regulations, and an interest in a superannuation fund of a kind prescribed by regulations.

Provision of a financial service (CA s766Aff). A person does this when, for example: they provide financial product advice; or deal in a financial product; or make a market for a financial product; or manage a registered scheme (managed fund).

Financial product advice (s766B). A person offers this when they make a recommendation or a statement of opinion, that is intended to influence a person to make a decision in relation to a product, or which could reasonably be expected to have such an influence. The legislation distinguishes between personal advice (ie where the recipient's personal circumstances are taken into account) and general advice. Certain forms of advice are excluded, such advice by a lawyer in the course of giving legal advice.

Financial market (s767A). This is a facility through which offers to buy or sell financial products are regularly made or accepted, etc. An example is a stock exchange.

The concept of **licensing as a mechanism for regulating financial products and intermediaries** will be introduced in this module, but developed in more detail in Part 2 below. It will also be useful in this overview to note the general law (technically, common law and equitable) sources of rights and liabilities of parties involved in services transactions, including:

- 10 The **law of contract**
- 11 The **law of negligence** (virtually defunct given the introduction of the statutory provisions relating to misleading or deceptive conduct)
- 12 **Unconscionable conduct**
- 13 **Undue influence**

It must be stressed, however, that the statutory regime applying to the provision of financial products and services, which includes prohibitions on certain harmful forms of conduct by providers and associated remedies, will often preclude the need for resort to the general law causes of action and remedies (which, if they are raised, will be pursued concurrently with the statutory causes of action).

PART 2 WEEKS 3 – 4

THE LICENSING SYSTEM

BBH chaps 10, 11, 12, 13 & 14; EM chaps 5, 6 & 7

The *Corporations Act* makes provision for the licensing of financial markets and financial service providers. The licensing regime has the usual objectives – ensuring that a licensed person has the skills and capacity to carry out the licensed activity; regulating them in this

activity; and applying sanctions for breach of requirement (and in turn sanctions for unlicensed personnel engaging in conduct which requires a licence).

The *Corporations Act*, Part 7.2 (ss790Aff) deals with the **licensing of financial markets**.

Section 719A provides in effect that a person may only operate, or hold out that a person operates a financial market, if the person has an Australian market licence, or the market is exempt from this requirement.

The following provisions deal with such matters as the **regulation of market licences**, including the licensee's obligations, the obligation to notify ASIC of certain matters, the content of the market's operating rules and procedures, the enforcement of the operating rules, and ASIC's powers in relation to licensees. Provision is made for the **Australian market licence**, including how to get a licence, when a licence may be granted, the conditions on the licence, and licence suspension.

The CA Part 7.3 (ss820Aff) deals with the **licensing of clearing and settlement facilities**, and their regulation, and the powers of the Minister, ASIC and the Reserve Bank in relation to licensees.

CA Part 7.4 (ss850ff) deals with **limits on involvement with licensees**, including the disqualification of licensees.

CA Part 7.5 deals with **compensation regimes for financial markets**. In general a licensed market through which participants provide services must have a compensation regime (s881A). One such regime is the National Guarantee Fund or NGF (ss887Aff). This fund would cover, for example, defalcations by a stockbroker which result in a client vendor not receiving settlement monies.

CA Part 7.6 (ss910Aff) deals with the **licensing of providers of financial services**. A person who carries on a financial services business (such as a stockbroker or financial planner) must hold an Australian financial services licence (subject to certain exceptions) (s911A). Obligations are imposed on licence holders (such as that they do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly (s912A). The licensing regime is administered by ASIC.

Sections 913Aff deal with **applying for a financial services licence**, the imposing of conditions on licences, and the suspension, variation and cancellation of licences.

A licence holder may give an **authorised representative** (such as an employee or agent (see s910A) written notice authorising the person to provide a specified financial service or services on behalf of the licensee (ss916Aff).

Sections 917Aff deal with the **liability of financial services licensees for representatives**.

Pursuant to s920Aff, ASIC has the **power to ban, and the court the power to disqualify, a person from providing financial services**.

Sections 924Aff deal with **agreements with unlicensed persons relating to the provision of financial services**.

PART 3 WEEKS 5 – 6

FINANCIAL SERVICES DISCLOSURE – FINANCIAL SERVICES GUIDES; PRODUCT DISCLOSURE STATEMENTS(PDS)

BBH chaps 6,7,15; EM chaps 5,9

The *Corporations Act* Part 7.7 (ss940Aff), and Part 7.9 (ss1010A ff) provides for a **financial services and products disclosure regime**. This regime aims to inform prospective investors so that they can make an informed decision regarding investment.

Part 7.7 is headed **Financial services disclosure**. The objective of these provisions is to compel the provider of a financial service (such as units in a managed fund) to provide the prospective retail client (ie, small investor) with a **financial services guide**, as a means for helping to ensure that the client makes informed decisions. The procedures to be followed, and the content of the guide, are closely regulated. In certain cases a **statement of advice** must be given to a retail client (ss944Aff).

Criminal civil liabilities are imposed upon persons for stipulated acts of non-compliance with the disclosure regime (ss952Aff).

Part 7.9 is headed **Financial product disclosure and other provisions relating to issue, sale and purchase of financial products**. It provides in substance that the regulated person, such as an issuer of a financial product, must give the prospective customer a **Product Disclosure Statement (PDS)** for a financial product, in stipulated cases such as where the regulated person provides financial product advice to a person that consists of or includes a recommendation that the person acquire the financial product (s1012A(3)).

A classic example would be a fund manager marketing units in a managed investment scheme (such as an equity fund or property fund) to a prospective purchaser. Secondary trades (involving the transfer rather than the issue of financial product) – for example, sale of shares on the stock exchange – are not in general covered by the PDS regime.

The concept of **financial product** upon which the PDS regime pivots, is defined for the general purposes of Part 7 as including “securities”(most obviously, shares and debentures in corporations) and “interests in registered investment schemes” (ie managed investment schemes, also known as managed funds): see s764A. The concept of financial product is, however, narrowed for the purpose of the PDS regime – the PDS regime is not applicable to securities, in the sense of shares or debentures in corporations: see s1010A which specifically excludes “securities”.

The net result is that **the PDS regime applies to products such as units in managed funds (this is its main role in practice), but not shares and debentures in corporations**. The sale of shares and debentures in corporations on the primary market (ie, newly issued securities) is regulated by the fundraising provisions in the *Corporations Act* (Chapter 6D) – at the core of this parallel regime is the Prospectus which parallels the PDS in relation to managed funds.

Relevant products include managed investment products, certain superannuation products, RSA (retirement savings account) products, investment life insurance products, and certain deposit products.

The PDS regime does not apply to financial products not issued in the course of a business (s1010B). Other exclusions apply also – small purchases of units (such as by way of reinvestment of distributions in a managed fund) do not require a PDS (s1012E).

The PDS regime specifies the content of the PDS – in substance matters relevant to the making of an informed choice as to whether to invest in units in the managed fund or other financial product must be set out (see ss1013Bff).

Periodic account statements must be supplied to investors in units in managed funds and like products (s1017D).

Ancillary provisions deal with a number of matters, such as advertising financial products (s1018A); and cooling-off periods (s1019A).

Criminal sanctions are provided for specified acts of non-compliance with the disclosure regime (ss1021Aff), and a parallel civil liability regime is provided for (ss1022Aff).

PART 4 WEEKS 7 – 8

MISCELLANEOUS: MARKET MISCONDUCT AND OTHER REQUIREMENTS – REGULATING CONDUCT ASSOCIATED WITH FINANCIAL PRODUCTS AND FINANCIAL SERVICES – DEALING WITH CLIENT’S MONEY, UNCONSCIONABLE CONDUCT – PROHIBITIONS ON HAWKING – MARKET MISCONDUCT SUCH AS MARKET MANIPULATION, MISLEADING OR DECEPTIVE CONDUCT, AND INSIDER TRADING

BBH chaps 15, 17 & 18; EM chaps 2, 3, 6, 9 & 14

The *Corporations Act* Part 7.8 (ss980Aff) and Part 7.10 (ss1040Aff) make provision for conduct connected with financial products and services, other than disclosure.

Part 7.8 is headed **Other provisions relating to conduct, etc, connected with financial products and financial services, other than financial product disclosure.**

It provides for rules governing dealings with client’s money (s981Aff) (installing a traditional trust account regime); financial records and audit (ss987Aff); audit (ss990Aff).

Unconscionable conduct by financial services licensees is prohibited (s991A). Financial services licensees must give priority to clients’ orders (s991B).

The hawking of certain financial products is prohibited, although unsolicited contacts in which products are offered for sale are permitted in certain circumstances. A PDS must be given to the prospective purchaser before a binding contract to acquire a product can be formed (ss992Aff).

Provision is made for the enforcement of obligations in Part 7.8.

Part 7.10 is headed **Market misconduct and other prohibited conduct relating to financial products and financial services**.

Part 7.10 prohibits certain forms of financial market conduct and attaches criminal and civil liability to their commission, including market manipulation (s1041A), false trading and market rigging (s1041B), false or misleading statements (s1041E), misleading or deceptive conduct (civil liability only) (s1041H), and insider trading ((ss1042Aff).

The objective of these provisions is to ensure an orderly and informed market for financial products (including shares and debentures) and services. A **financial market** for these purposes is one where financial products are regularly traded; it does not include one-to-one private transactions such as where a person offers to buy from another specified person (see s767A).

Certain defences are enacted (ss1044Aff).

PART 5 WEEK 9

UNCONSCIONABLE CONDUCT AND CONSUMER PROTECTION IN RELATION TO FINANCIAL SERVICES

BBH chaps 5 & 8; EM chaps 16 & 17; G chap 33 on parallel provisions in the former *Trade Practices Act 1974 (Cth)* now the *Competition and Consumer Act 2010 (Cth)*, Parts IVA and V.

The *Australian Investments and Securities Commission Act 2001 (Cth)* makes provision for **unconscionable conduct and consumer protection in relation to financial services** (Part 2 Division 2 ss12AAff). These provisions set out a range of prohibited forms of conduct which attract civil (and in some cases criminal) liability. (They parallel the unconscionable conduct and consumer protection provisions in the *Competition and Consumer Act 2010 (Cth)*, except that they are confined to conduct in relation to financial services.)

They include unconscionable conduct in relation to financial services (ss12CA, 12CB and 12CC) and misleading or deceptive conduct in relation to financial services (s12DA), (corresponding to Parts IVA and V of the *Competition and Consumer Act 2010 (Cth)*).

Note will be made of the other provisions, and of the enforcement and remedies provisions (ss12GAff).

PART 6 WEEK 10

MANAGED INVESTMENT SCHEMES

BBH chap 16; EM chap 5

Provision is made for **Managed investment schemes** in Chapter 5C (ss601EAff) of the *Corporations Act*.

The concept of managed investment scheme – known colloquially as managed funds or (in earlier times) unit trusts – includes such entities as unlisted equity funds, cash management funds, property trusts, hedge funds and agricultural schemes such as unit trusts formed to sell interests in pine tree plantations. A common feature is the pooling of money from investors, who are given “units” in the underlying business, such as units in a trust owning a portfolio of shares (ie, in effect investors become part-owners of interests in this pool of shares). They have historically been structured as trusts, and they can still be, but the trust must, under current law, be managed by a corporation.

The Chapter 5C regime provides for the registration of a managed investment scheme by ASIC; and for the management of the scheme by a public company (‘the responsible entity’) holding an Australian financial services licence. Statutory duties are imposed upon the management company and its officers and employees. Provision is made for changing the manager.

Provision is made for the constitution of the registered scheme, and for other matters of governance; for members’ rights to withdraw from a scheme, and for related party transactions, for winding up and deregistration.

As noted in Part 3, units or other interests in a managed fund must be marketed via a PDS.

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	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

	reading and reflection upon the unit content and the testing of issues through discussion. Students may choose to give a class presentation.		recommended as this 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 financial services law	Understanding of role and nature of financial services law	Understanding of role and nature of financial services law
2	Understanding of the legal framework of financial services law	Understanding of the legal framework of financial services law	Understanding of the legal framework of financial services 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 financial services industry	Understanding of legal problems arising in the financial services industry and their resolution, by focusing on a hypothetical case	Understanding of legal problems arising in the financial services industry
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 financial services system	Understanding of policy issues underlying the financial services system	Understanding of policy issues underlying the financial services system
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	Critical, analytical and integrative

		thinking	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.

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.

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%
2. A class Test administered by the Lecturer in Charge at a date and time to be advised before the mid-semester break. 35%
3. A Research Assignment of 5000-7500 words on ONE of the following topics:
 - (a) Set out the key concepts in the regulatory reforms introduced into the *Corporations Act 2001* (Cth) by the Australian Parliament, with particular reference to the legal meanings of 'provision of a financial service' and its corollary a 'financial product'. These definitions as set out in the *Corporations Act 2001* are critical to understanding what issues?
Consider the consequences of dealing, etc in a financial product, discussing firstly the circumstances which require the obtaining of a License before embarking on a financial activity, giving prominence to the Australian Financial Services License (AFSL), the obligations of an AFSL holder and the sanctions that may be imposed by ASIC for breach of same.
Second, discuss the Disclosure regime set up under the Act; describe the various Disclosure documents mandated by the Act in relation to the provision of financial services giving the content of each document, stating who prepares same and to whom it is given and, if defective, what redress the consumer has for loss or damage incurred.
What is the role of ASIC in these situations?

Finally assess why these reforms were needed and give your views as to whether they have been successful.
 - (b) Consider the case of a financially distressed company and set out what recourse it has under the *Corporations Act 2001* to take steps to recover and return to full trading strength. Assume that this company has exhausted its security from its lender Bank and that a further loan will not be forthcoming.
Discuss such options as Voluntary Administration.
Also, consider the advantages and disadvantages of a 'debt for equity' swap (see *Babcock and Brown* case which will be referred to in lectures).
 - (c) Discuss with examples and reference to decided cases the concept of 'Fiduciary Duty'.
Differentiate the ordinary Banker/Customer relationship - see the old case of *Foley v Hill* – but explain how the relationship may be enlarged into one of a 'fiduciary' nature depending on circumstances. Further, discuss in relation to the financial services industry, the importance of avoiding conflicts of interest. In particular consider the provisions of the *Corporations Act 2001* in relation to

(x) the 'insider trading' prohibition and
(y) attempts by ASIC to prosecute errant companies and individuals noting particularly the case of *ASIC v Citigroup*, which will be referred to in lectures.

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

Family Name:		Unit Code:	BUSL 861
Given Names:		Date Due:	10 June 2011
Student ID:		Lecturer's Name:	John Bourke

Essay Title:

"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"

Signed

MARKER'S COMMENTS

