

**MACQUARIE UNIVERSITY  
DIVISION OF LAW  
STUDY GUIDE**

<b>Year and Semester:</b>	<b>Second Semester, 2008</b>
<b>Unit Code &amp; Unit Name:</b>	<b>BUSL862 Insurance Law</b>
<b>Credit points:</b>	<b>4</b>
<b>Unit convenor:</b>	<b>Mr John Bourke (contact details below)</b>
<b>Prerequisites / Corequisites:</b>	<b>NIL</b>

Students in this unit should read this study guide carefully at the start of semester. It contains important information about the unit. If anything in it is unclear, please consult one of the teaching staff in the unit.

### **1. ABOUT THIS UNIT**

Examines the concept of insurance, the regulatory framework, formation of contracts of insurance, insurable interest, duty of utmost good faith, effect of misrepresentation, indemnity principle, double insurance, the doctrine of subrogation, claims, standard classes of insurance (such as general, property, life, marine and aviation, and public liability), risk management, self-regulation, and dispute resolution.

### **2. TEACHING STAFF**

**Convenor:** **Mr John Bourke**  
Phone: 042 253 9361            9850 8454  
Email: John.Bourke@law.mq.edu.au  
Room: W3A 421

### **3. CLASSES AND STUDY TIMES**

Classes will be held weekly during the semester, on Mondays, at 6.00 pm in C5C 236. There will also be an intensive session on the following dates: Sunday 24<sup>th</sup> August and Sunday 31<sup>st</sup> August 2008 in C5C 240.

The class time will be spent reviewing and discussing the materials identified for reading, within light of unit objectives.

Some fictional case-based problems will be considered, on the basis that the law is better understood in its application to factual situations. The review of the case decisions will reinforce this approach.

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

<http://www.timetables.mq.edu.au> and also at [www.law.mq.edu.au](http://www.law.mq.edu.au)

#### **4. REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS**

- There is no required text.
- The prescribed course materials is:

Gillies P & Kapterian G, (ed) *BUSL862 Insurance Law Course Materials* (Macquarie University, 2008), which will be distributed.

#### **Other recommended references:**

- ALRC Report No. 20 *Insurance Contracts*
- *Australian & New Zealand Insurance Reporter: CCH Online Commentary* (available through library website)
- Birds, J. *Modern Insurance Law*, (6<sup>th</sup> ed, 2004).
- Derrington, D, Ashton, R, *The Law of Liability Insurance*, (2<sup>nd</sup> ed, 2005)
- Kelly, D. and Ball, M. L. *Insurance Legislation Manual*, (3<sup>rd</sup> ed, 1995).
- Mann, P. and Lewis C. *Annotated Insurance Contracts Act*, (4<sup>th</sup> ed, 2003).
- Sutton, K. *Insurance Law in Australia*, (3<sup>rd</sup> ed, 1999).

*Aust and NZ Insurance Law* (e-journal, CCH) (held in library)

*Canadian Journal of Insurance Law* (e-journal, LexisNexis) (held)

*Insurance Law Journal* (e-journal, LexisNexis) (held)

#### **Other recommended Articles**

The following have been obtained using the university library online databases and so the electronic citation is provided.

- Bloomfield, J 'Medical defence organisation membership – Not a substitute for malpractice insurance' (1998)10 ILJ LEXIS 21
- Boyd, G, 'The duty of disclosure in life insurance: is the balance struck by Part IV of the Insurance Contracts Act appropriate?' (2001)13 ILJ LEXIS 15

- Campbell, N ‘Allocation problems in D&O policies: Vero v Baycorp’ (2006) 17 ILJ LEXIS 6
- Charrett, D ‘Professional Indemnity Insurance – Do third parties have an interest?’ (2003) 14 ILJ LEXIS 1
- Chipperfield, S ‘Carrying on an insurance business in Australia – What does that really mean?’ (2006) 17 ILJ LEXIS 1
- Drummond, S ‘Misleading or deceptive conduct in insurance’ (2002)14 ILJ LEXIS 15.
- Ellis, R ‘What are notifiable circumstances?’(2001) 12 ILJ LEXIS 7
- Godfrey, K ‘The duty of utmost good faith – the great unknown of modern insurance law’, (2002)14 ILJ LEXIS 20
- Hardy, H ‘Third Party Beneficiaries to Insurance Contracts’ (1997) 8 ILJ LEXIS 15
- Hawke, F ‘The innocents abroad’, (2006) 17 2006 ILJ LEXIS 2
- Otlowski, M ‘Australian Empirical Study into Genetic Discrimination’(2002) 12 Eubios Journal of Asian and International Bioethics 164
- Rodd, C ‘Fraudulent Claims and the Rights of the Innocent Co-insured’ (1997) 9 ILJ LEXIS 9.
- Slingsby, N ‘The events of 11 September 2001: Implications for war risk exclusions in aviation insurance’,(2002) 14 ILJ LEXIS 19
- Sutherland, K ‘An Uneasy Compromise: An Analysis of the Effect of a Settlement Reached by an Insured with a Third Party Claimant vis-a-vis his or her Insurer’ (1998) 9 ILJ LEXIS 11.
- Tarrant, J, ‘Narrow exclusion clause fails to protect insurer’ (2006) 17 ILJ LEXIS 5
- Ying, C ‘Whose premium is it anyway?’ (2001)13 ILJ LEXIS 14
- Zakrzewski, R ‘The nature of a claim on an Indemnity’ (2006) 22 JCL LEXIS 4

### Useful Websites

- **Australian Prudential Regulation Authority:** <http://www.apra.gov.au>
- **Australian and NZ Insurance Law:** (available at [www.lib.mq.edu.au](http://www.lib.mq.edu.au) ,CCH Online)
- **Australian Competition and Consumer Commission:** [www.accc.gov.au](http://www.accc.gov.au)
- **Australian Government Department of the Treasury:** <http://icareview.treasury.gov.au/content/members.asp?NavID=4>
- **Australian Securities and Investment Commission:** <http://www.asic.gov.au/asic/asic.nsf>
- **Canadian Journal of Insurance Law:** (available at [www.lib.mq.edu.au](http://www.lib.mq.edu.au), LexisNexis)
- **Insurance Law Journal:** (available at [www.lib.mq.edu.au](http://www.lib.mq.edu.au), LexisNexis)
- **Private Health Insurance Administration Council:** <http://www.phiac.gov.au/>

## 5. UNIT WEB PAGE

Study guides and information on this unit can be found at:

<http://www.law.mq.edu.au/html/postgraduate/studyguides.htm>

## 6. LEARNING OBJECTIVES

The objectives of this unit are to develop an understanding of the fundamental legal principles of insurance law and its institutions and their regulation, and of the policies guiding the application and development of insurance law.

## 7. GENERIC SKILLS

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

## 8. TEACHING AND LEARNING STRATEGY

The classes will take the form of a seminar in both the weekly and intensive sessions. Students are encouraged to read ahead of class.

## 9. ASSESSMENT

Assessment will be based on an essay of 5,000 (to a maximum of 7,000) words.

The lecturers will suggest some possible topics. Otherwise, you may choose your topic, subject to approval by the unit convener.

### **Submission of essays:**

Internal students – place a hard copy of the essay in the PG box outside room W3A 341.

External students – submit by post if this is more convenient, either by way of the COE folder provided, or mail directly to the unit convener (Law Division, Macquarie University, NSW 2109).

In addition, assignments must be emailed to [postgrad@law.mq.edu.au](mailto:postgrad@law.mq.edu.au)

**DUE DATE: Friday 5.00 pm 28<sup>th</sup> November 2008.**

## 10. RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OBJECTIVES

Assessment is by way of an independent research project, which will foster the acquisition of knowledge specific to the subject matter of the unit, and the development of the more general skills of law-focused data searching, analysis, synthesis and written expression.

## 11. PLAGIARISM

The University defines plagiarism in its rules: “Plagiarism involves using the work of another person and presenting it as one's own.” Plagiarism is a serious breach of the University's rules and carries significant penalties. You must read the University's policies and procedures on plagiarism. These can be found in the *Handbook of Undergraduate Studies* or on the web at: <http://www.student.mq.edu.au/plagiarism/>

The policies and procedures explain what plagiarism is, how to avoid it, the procedures that will be taken in cases of suspected plagiarism, and the penalties if you are found guilty. Penalties may include a deduction of marks, failure in the unit, and/or referral to the University Discipline Committee.

## 12. UNIVERSITY POLICY ON GRADING

The University requires all Divisions to adhere to a policy relating to the distribution of grades across high distinction, distinction, credit and pass grades. This means that on occasion a student's raw mark for a unit (ie, the total of their marks for each assessment item) may not be the same as that which they receive on their transcript. This is because the total raw mark may be scaled up or down so that the grades of all students in each unit sit within the distribution bands set down by the University. The policy does not require that any number of students are to be failed in any unit.

## 13. SCHEDULE OF TOPICS

### Topics 1 & 2: Introductory Materials:

Concept of insurance; structure of industry; regulatory framework; policy considerations informing regulation.

- Gillies, P, ‘Insurance Law’ extract from *Business Law*, (12<sup>th</sup> ed, 2004).
- ‘Nature of the Contract of Insurance’, extract from *Insurance Law in Australia*, K Sutton, (3<sup>rd</sup> ed, 1999).
- Lewins K & Lo, S, “Striving for Equilibrium: A Critical Analysis of Section 54 of the Australian Insurance Contracts Act” [2003] MurUEJL 20, extract.
- ‘Regulation of Insurance: Legislation Regulating Insurance’, *Halsbury’s Laws of Australia*, available at [www.lexisnexis.com.au](http://www.lexisnexis.com.au).

- Extract, ‘Statutory Regulation- Australia’, *CCH Online Insurance Commentary*.
- ‘Insurance Contracts Act- Summary’, *CCH Online Insurance Commentary*.

### **Topic 3: Concluding a Contract of insurance:**

#### **Contracts of Insurance:**

- Sutton, K ‘Formation of Contract’, extracts from *Insurance Law in Australia*, (3<sup>rd</sup> ed,1999).

#### **Insurable interest:**

- ‘Insurable Interest’, *CCH Online Insurance Commentary*.

#### **Utmost Duty of Good Faith:**

- Derrington, D & Ashton, R ‘Utmost Good Faith and Disclosure’ in *The Law of Liability Insurance*, (2<sup>nd</sup> ed, 2005).
- Scott, Tim, ‘Implications of Hannover v Sayseng: Third Parties and the Duty of the Utmost Good Faith’ (2006) 17 *ILJ* 48.

### **Topic 4:**

#### **Duty of Disclosure**

- Derrington, D & Ashton, R, ‘Utmost Good Faith and Disclosure’ in *The Law of Liability Insurance*, (2<sup>nd</sup> ed, 2005.)
- Tay, C ‘The duty of disclosure and materiality in insurance contracts – a true descendant of the duty of utmost good faith?’ 2002 *ILJ LEXIS* 7.

#### **Misrepresentation**

- ‘Misrepresentation’, *CCH Online Insurance Commentary*.

### **Topic 5: Indemnity, Double Insurance and Contribution**

#### **Indemnity Insurance**

- ACCC, ‘Public Liability and Professional Indemnity Insurance: Fifth Monitoring Report’,(extracts) January 2005.
- Spigelman J, ‘Negligence and insurance premiums: recent changes in Australian law’ (2003) 11(3) *Torts Law Journal* 291.
- See also Gillies, P, ‘Insurance Law’ extract from *Business Law*, (12<sup>th</sup> ed, 2004).

#### **Double insurance and the doctrine of contribution**

- Pynt, G, ‘Elf downunder’, 2002 *ILJ LEXIS* 4.
- ‘Double Insurance’, extract from *Halsbury’s Laws of Australia*.
- Warrington, J.M. ‘9/11 WTC Insurance litigation – Phase two and three,’ 2005 *ILJ LEXIS* 11
- ‘Contribution and Subrogation’, *CCH Online Insurance Commentary*

## **Topic 6: Subrogation and Privity**

### **Subrogation**

- ‘Contribution and Subrogation’, *CCH Online Insurance Commentary*

### **Insurance and Privity**

- “Rights of Third Parties”, Insurance, Chapter II, General Principles, *Halsbury’s Laws of Australia*.
- McCarthy, C ‘Third Party Access to Insurance Policies and Joinder of Insurers’, (1999) ILJ LEXIS 12
- See also Sutton, K ‘Formation of Contract’, extracts from *Insurance Law in Australia*, (3<sup>rd</sup> ed,1999).

## **Topic 7: Construction of terms in insurance contracts**

- ‘Standard Cover’, *CCH Online Insurance Commentary*
- ‘Construction of Policies’, *CCH Online Insurance Commentary*
- ‘Warranties and Conditions’, *CCH Online Insurance Commentary*
- ‘Increase of Risk’, *CCH Online Insurance Commentary*
- ‘Limited effect of Exclusion Clauses’, *CCH Online Insurance Commentary*
- ‘Different Classes of Insurance’, *CCH Online Insurance Commentary*
- Trigg, P “What is an ‘accident’ under a contract of insurance?” (2006) 17 ILJ LEXIS 4

## **Topic 8: Claims**

- ‘Claims’, *CCH Online Insurance Commentary*
  - Claims procedures,
  - Notice of Loss
  - Onus of Proof
  - Proof of Loss
  - Causation
  - Fraudulent Claims
- Ellis, R, ‘What are notifiable circumstances? (2001) 12 ILJ LEXIS 7

## **Topic 9: Illegality, Conflict Resolution and Interim Insurance**

### **Illegality**

- ‘Illegality- Public Policy’, *CCH Online Insurance Commentary* ‘.

### **Conflict resolution in insurance cases**

- ‘Claims-Notice- Dispute Resolution’, *CCH Online Insurance Commentary*

- D Hill, P, Waters, “Alternative Dispute Resolution in Australia for Insurance Related Disputes”, 1994 ILJ LEXIS 4

#### **Interim insurance**

- Derrington, D & Ashton, R, ‘Interim Cover’ in *The Law of Liability Insurance*, (2<sup>nd</sup> ed, 2005).

#### **Topic 10: Expiration, renewal and cancellation of contracts**

- ‘Renewal, Cancellation and Termination,’ *CCH Online Insurance Commentary*

#### **Topic 11: Discrimination and Reinsurance**

##### **Discrimination law and insurance contracts**

- Spiteri G, ‘Genetic testing and its implications for Australian insurance law’ (2000) 7 James Cook University Law Review 96
- Tarr, JA ‘Regulatory approaches to genetic testing in insurance’, (2002) 24 (2) Sydney Law Review 189.

##### **Reinsurance**

- ‘Reinsurance’, *CCH Online Insurance Commentary*
- Hawke, F ‘The innocents abroad’, (2006) 17 (1) Insurance Law Journal 18



