

MACQUARIE UNIVERSITY
DIVISION OF LAW
STUDY GUIDE

Year and Semester:	Semester 2 2008
Unit Code & Unit Name:	BUSL 864 International Banking and Finance Law
Credit points:	4
Unit convenor:	Mr John Bourke
Prerequisites/Corequisites:	NIL

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 financing of international trade, international payments systems, foreign currency transactions, international capital markets, treaty provisions relating to financial services, international financial institutions such as the IMF and the World Bank and the resolution of international investment disputes (including the ICSID regime).

The unit complements BUSL860 Banking and Finance Law, which focuses on domestic banking.

2. TEACHING STAFF

Convenor: Mr John Bourke
Phone : mobile 0422539361; 98508454
email: John.Bourke@law.mq.edu.au
Room W3A 421

Professor Gabriel Moens

Dr Rosemary Lucadou-Wells, guest lecturer.

3. CLASSES AND STUDY TIMES

The class will be taught in intensive mode on Saturday, 16 and Sunday, 17 August, 10.00 am-5.00 pm, in C5C 240. There will also be weekly classes on Friday evenings at 6.00 pm, in C5A 229.

4. REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

Prescribed text

- No single text covers this unit. Students may purchase Ross Cranston, *Principles of Banking Law*, 2nd ed, Oxford University Press, 2002. (3rd, ed expected 02/09).

This text tends to focus on UK banking law (which is relevant), but also makes frequent reference to banking regulation in other jurisdictions such as the EU, USA and Japan, and has some coverage of international banking laws topics. Because of this transnational dimension it is worth reading.

- A volume of *compulsory* readings will be distributed.

Recommended texts

Burnett, R, *Law of International Business Transactions*, (3rd ed, 2004).

Darcy, Leo et al, *Schmittoff's Export Trade – The Law and Practice of International Trade*, (10th ed, 2000).

Islam, R, *International Trade Law*, (1999)

Mann, RJ, *Payment Systems and other Financial Transactions*, (2nd ed, 2003).

Miller, FH, and Harrell, AC, *The Law of Modern Payment Systems*, (2003).

Mo, J, *International Commercial Law*, (3rd ed, 2003)

Moens, G, and Gillies, P, *International Trade and Business: Law, Policy and Ethics*, (2nd ed, 2006).

Penn, G, and Haynes, A, *The Law and Practice of International Banking*, 1st ed, Thomson/Sweet & Maxwell, 2002 (out of print) (2nd ed expected 12/08).

Schaffer, R, et al, *International Business Law in its Environment*, (4th ed, 1999).

Useful Websites

- Bank for International Settlements: www.bis.org
- Australian Prudential Regulatory Authority: www.apra.gov.au/
- World Bank . www.worldbank.org
- International Monetary Fund: www.imf.org
- Federal Reserve Board (USA): www.federalreserve.gov
- The EU Single Market:
http://ec.europa.eu/internal_market/payments/crossborder/index_en.htm
- Financial Services Authority (UK)
<http://www.fsa.gov.uk/Pages/index.shtml>
- National Bureau of Economic Research, Cambridge MA www.nber.org

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>

There is no web page for this unit at present.

6. LEARNING OBJECTIVES

The unit aims to provide an understanding of the fundamental principles governing the regulation of international banking and financial transactions, and to refine skills of legal analysis through the detailed consideration and application of relevant international instruments, legislation and case 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 unit will be taught by way of two one-day seminars on Saturday 16th and Sunday 17th August in C5C 240. There will also be weekly classes on Friday at 6.00pm in C5A 229. Students are encouraged to read ahead of class and to participate in discussions on the topics and issues addressed in the lectures.

9. ASSESSMENT

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

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

DUE DATE: Friday 5.00 pm, 28th 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 Postgraduate 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

Topic 1. The Historical Development of the International Financial Market from Bretton Woods to the Present Day

- Richard Myrus, 'From Bretton Woods to Brussels: A legal Analysis of the Exchange-Rate Arrangements of the International Monetary Fund and the European Community' (1994) 62 *Fordham L. Rev* 2095.
- Catherine Schenk, 'Financial Market and Systemic Risk: The Response of Central Banks in the 1960s and 1970s', Address prepared for the International Economic History Congress, Helsinki, May 2006 (Draft only – not for citation).
- W. Ronald Gard, 'George Bailey in the Twenty-First Century: Are We Moving to the Post-Modern Era in International Financial Regulation with BASEL II?', (2006) 8 *Transactions: The Tennessee Journal of Business Law* 161.
- L. Jacobo Rodriguez, 'International Banking Regulation, Where's the Market Discipline in Basel II?' *Policy Analysis* No. 455, (October 15, 2002).
- Paola Bongini, 'The EU Experience in Financial Services Liberalisation', SUERF – The European Money and Finance Forum, Vienna 2003.

Topic 2. Regulation and Prudential Supervision of Banks in the USA, UK EU and Australia: International Regulatory and Supervisory Convergence

- Ross Cranston, *Principles of Banking Law*, (2nd ed, 2002): Chapters 1-4.
- Jonathan Macey, 'Commercial Banking and Democracy: The Illusive Quest for Regulation', (2006) 23 *Yale J. on Reg.* 1.
- T.J Coyne, 'Banking Regulation: Has the Pendulum Swung Far Enough?' *Economic Papers: Special Edition*, December 2006, 103-110.
- 'The Prudential Supervision Framework', *APRA Annual Report* 2006.
- Di Thomson, Malcolm Abbott, 'Australian Financial Prudential Supervision: An Historical Overview', (2000) 59 (2) *Australian Journal of Public Administration* 75.

- Siobhan Sweeney, 'Basel II's effect on the Australian Market', (2006) 34 *ABLR* 284
- John F Laker, 'Basel II: Observations from Down Under', Address, APRA Chairman, Second Annual Conference on the Future of Financial Regulation, London School of Economics, 6-7 April, 2006.
- Heidi Mandanis Schooner, 'Panel 1(Part 2): A Comparative Analysis of Consolidated and Functional Regulation: Super Regulator: The Role of Central Banks in Bank Supervision in the United States and the United Kingdom', (2003) 28 *Brooklyn J. Int'l L.* 411.
- Heidi Mandanis Schooner, Michael Taylor, 'United Kingdom and United States Responses To the Regulatory Challenges of Modern Financial Markets (2003) 38 *Tex. Int'l L.J.* 317.

Topic 3. International Banking- An Overview

- Ross Cranston, *Principles of Banking Law*, (2nd ed, 2002): Chapters 16-17.

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

- Ross Cranston, *Principles of Banking Law*, (2nd ed, 2002): Chapters 8-10.
- Rhys Bollen, 'A review of the regulation of Payment Facilities', (2005) 16 *JBFLP* 325.

Topic 5. International Lending – Project Finance

- Mallesons Stephens Jaques, *Australian Finance Law*, (5th ed, 2002), Chapter 11.

Topic 6. Domestic and International Debt Capital Markets

- Mallesons Stephens Jaques, *Australian Finance Law*, (5th ed, 2002), Chapter 6.
- Ross Cranston, *Principles of Banking Law*, (2nd ed, 2002): Chapter 12.

Topic 7. Trade Financing- Export Transactions- Letters of Credit

- Gabriel Moens, Peter Gillies, *International Trade and Business: Law Policy and Ethics*, (2nd ed, 2005) Chapter 6.
- ICC Uniform Customs and Practice for Documentary Credits (UCP600).
- Ross Cranston, *Principles of Banking Law*, (2nd ed, 2002): Chapters 11-15.

Topic 8. The International Monetary Fund

- James M. Boughton, ‘The IMF and the Force of History: Ten Events and Ten Ideas that Have Shaped the Institution’ (May 2004 – revised April 2006) IMF Working Paper No. WP/04/75.
- Rosa Maria Lastra, ‘The International Monetary Fund In Historical Perspective’, *JIEL* 2000.3(507).
- Jeremy J. Sanders, ‘The World Bank and the IMF: Fostering Growth in the Global Market (2000) 9 *Currents Int'l Trade L.J.* 37.
- Catherine Lee, ‘To Thine Ownself Be True: IMF Conditionality and Erosion of Economic Sovereignty in the Asian Financial Crisis’, (2003) 24 *U. Pa. J. Int'l Econ. L.* 875.

Topic 9. Regulatory Measures Available to Emerging Market Nations

- Ramit Nagpal, ‘The IMF’s pursuit of Capital Account Convertibility: A developing Country Perspective (2006) 12 *Law & Bus. Rev. Am.* 27.
- Barbara Stallings and Rogerio Studart, *Financial Regulation and Supervision in Emerging Markets: The Experience of Latin America since the Tequila Crisis*, Economic Commission for Latin America and the Caribbean (ECLAC).December 2001.
- Carolyn Currie, ‘Regulatory Failure in Emerging Markets’, Working Paper No 135, May 2004.
- Milena Makich-Macias, ‘The Effect of the International Monetary Fund Bailout on Emerging Growth Countries’, (2001) 26 *Brooklyn J. Int'l L.* 1755
- C. Emre Alper and Ziya Onis, ‘Emerging Market Crises and the IMF: Rethinking the Role of the IMF in light of Turkey’s 2000-2001 Financial Crisis’, Paper presented at the METU International Conference VI, Ankara, Turkey, September 11-14, 2002.

ESSAY COVER SHEET

<p>Please attach cover sheet to every assignment</p>	<p>Surname</p> <p>Given Names <i>The student's name may be filled out by the student. If the name is not filled out by the student could the marker please complete this before returning to the Essay Collection Office. Thankyou!</i></p> <p>Student Number</p>
<p>Tutor's Name</p> <p>Tutorial Time</p> <p>Date Due</p> <p>Unit Number <i>BUSL</i></p>	<p>Essay Title</p> <p>.....</p> <p>.....</p>
<p>“I certify that I am aware of the University’s policy on plagiarism and that this assignment meets those requirements and has not been previously submitted for assessment in any other course of study”</p> <p>Signed</p>	
<p>MARKER’S COMMENTS</p>	

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