



# LAW 208

## Law, Lawyers and Society

S2 Day 2014

*Dept of Law*

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## General Information

Unit convenor and teaching staff

Unit Convenor

Lise Barry

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Contact via [lise.barry@mq.edu.au](mailto:lise.barry@mq.edu.au)

W3A507

TBA - see iLearn page

Credit points

3

Prerequisites

LAW115 and (admission prior to 2014 to LLB or BAppFinLLB or BALLB or BA-MediaLLB or BA-PsychLLB or BBALLB or BComLLB or BCom-ProfAccgLLB or BEnvLLB or BITLLB or BIntStudLLB or BScLLB or BSocScLLB)

Corequisites

Co-badged status

Unit description

This unit focuses on the institutional arrangements of public and private law and the role of the legal profession(s) in their administration. The unit covers the history and profile of the legal profession, the development of ethical reasoning and application of ethical systems to legal practice. Importantly the unit focuses on discrete problems of legal ethics such as confidentiality, access to justice, truth in the adversarial system, conflicts of interest, and relationships between lawyers, clients and society. The unit introduces students to general skills of ethical problem solving and to the importance of sound communication skills for the practise of law.

## Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

## Learning Outcomes

On successful completion of this unit, you will be able to:

Critique the role of the lawyer and law student in Australian society

Recognise different theoretical approaches to legal ethics and relate these approaches to a range of problems and settings

Explain the law of professional responsibility that regulates the practice of law in Australia including duties owed to the client, to the court, practitioners and others, and apply this knowledge to different scenarios

Explain and apply communication skills required for ethical practice, especially listening skills, interviewing skills, cross cultural communication skills and negotiation skills

## Assessment Tasks

Name	Weighting	Due
<u>Tutorial Participation</u>	0%	weekly
<u>Quiz</u>	10%	29/8/14 @ 8pm
<u>Reflective Writing</u>	40%	15/9/14 and 10/11/14 @8pm
<u>Ethics essay</u>	30%	10/10/14 @ 8pm
<u>Exam</u>	20%	14/11/14 @ 8pm

### Tutorial Participation

Due: **weekly**

Weighting: **0%**

**Participation is Pass/Fail. You must pass this aspect of the course in order to pass the Unit.**

Tutorials in this unit only work if all students attend and give the entire group the benefit of their views based upon the readings and their experience.

Specific readings and exercises will be set for each tutorial. The tutorial program is set out on iLearn in a weekly format.

External students will be assessed on their participation at the compulsory on-campus session and should undertake the weekly readings and tutorial preparation as these will form the basis for the activities undertaken at the on campus session. More information on the structure of the on campus session will be provided closer to the time.

You must attend all tutorials. You are required to participate in the tutorial role plays, discussions, debates, reflective exercises and any other activities. Tutors will engage in ongoing assessment of student participation using the following criteria:

1. The student can summarise the readings that were set for the tutorial

2. The student participated in discussions about the lecture and tutorial material set for the week
3. The student is able to clearly express their ideas about the materials in either written form or in class discussion as requested by their tutor.
4. The student engaged with others in the class taking an active role in discussions, role plays, debates and other activities assigned by the tutor. The student responded to others in the class by listening to them, providing constructive feedback and asking questions.
5. The student demonstrated appropriate communication skills in role plays including listening skills, interviewing skills, cross cultural communication skills and negotiation skills.

From time to time, tutors will collect examples of student work completed in tutorials.

If you cannot attend a tutorial you must email your tutor to inform them of your absence. Extended absences from tutorials must meet the criteria under the Macquarie University "Disruption to Studies" policy and be approved by the Unit Convenor. Applications are made online at [ask.mq.edu.au](http://ask.mq.edu.au)

Tutors will raise any concerns about poor participation with the student involved and will provide an opportunity to submit remedial work where there are concerns about participation or unexplained absences.

On successful completion you will be able to:

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- Explain and apply communication skills required for ethical practice, especially listening skills, interviewing skills, cross cultural communication skills and negotiation skills

## Quiz

Due: **29/8/14 @ 8pm**

Weighting: **10%**

There will be a multiple choice quiz in week four of the Unit. This will give students an opportunity to practise the format of the multiple choice questions in the final exam and to test their knowledge of the early unit materials.

The quiz will be open on Friday 29th August at 9am and close on Friday 29th at 8pm

All students must attempt the quiz

On successful completion you will be able to:

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## Reflective Writing

Due: **15/9/14 and 10/11/14 @8pm**

Weighting: **40%**

Students are asked to reflect on the unit materials, making links between their past experiences, their learning in this unit and their future goals. The reflective writing can focus on any aspect of the course materials including lecture and online resources, tutorial activities or readings. Reflective writing will be submitted electronically via Turnitin and marked electronically. Reflections must include references to scholarly sources outside of the textbook materials.

You must submit reflective writing in 2 parts:

**Part 1 is due by 8pm on Monday 15th September** (20%) and includes reflections on Weeks 1 – 6, 1000 words maximum

**Part 2 is due by 8pm on Monday 10th November** (20%) and includes reflections on Weeks 7 – 12, 1000 words maximum

The word limits will be strictly applied and any work beyond the word limit will not be marked. The word count does not include footnotes. There is to be no substantive content in your footnotes.

Reflections are to be submitted in Word format, not pdf files.

Papers should be typed in a font of at least size 12 with line spacing of at least 1.5.

Reflective writing should be fully referenced according to the Australian Guide to Legal Citation (3<sup>rd</sup> edition). All work should comply with the Policies and Procedures outlined in this Unit Guide. Late submissions will not be marked.

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apply this knowledge to different scenarios

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## Ethics essay

Due: **10/10/14 @ 8pm**

Weighting: **30%**

In this paper students will be asked to make a personal response to a question of legal ethics. Students will be required to be familiar with a variety of models of applied legal ethics in order to justify their personal ethical decision making choices.

Student responses are expected to be well researched and to reference both the law and theory of professional responsibility for lawyers.

Students will also be assessed on their written communication skills, particularly their ability to write in plain English.

The maximum word count for this assessment is 1500 words.

Assessments will be submitted online via Turnitin and must comply with the Macquarie University Policy on Academic Honesty and the Macquarie Law School Assessment policy.

The complete question will be released on iLearn.

Late submissions will not be marked.

On successful completion you will be able to:

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- Explain the law of professional responsibility that regulates the practice of law in Australia including duties owed to the client, to the court, practitioners and others, and apply this knowledge to different scenarios
- Explain and apply communication skills required for ethical practice, especially listening skills, interviewing skills, cross cultural communication skills and negotiation skills

## Exam

Due: **14/11/14 @ 8pm**

Weighting: **20%**

## The final exam will test students' knowledge of the law of professional responsibility.

This online examination will be a time-limited, multiple choice exam.

The exam will be released at 4pm on Friday 14th November and submissions will close at 8pm. Students will have one hour to complete the exam.

On successful completion you will be able to:

- Recognise different theoretical approaches to legal ethics and relate these approaches to a range of problems and settings
- Explain the law of professional responsibility that regulates the practice of law in Australia including duties owed to the client, to the court, practitioners and others, and apply this knowledge to different scenarios

## Delivery and Resources

There are no "live" lectures for this unit. This unit is delivered via online learning content and a weekly two hour tutorial from weeks 2-12 for internals and a compulsory two day on campus session for external students.

The required text is: Lise Barry (ed) *Lawyers: Roles, Skills and Responsibilities* (2013) Thomson Reuters. Available from the Macquarie University Co-op Bookshop

Additional reading will be available via iLearn and e-reserve.

Students require access to a computer and a secure and reliable server. All Unit requirements and a weekly teaching and reading schedule are outlined in iLearn.

All assessments are to be submitted electronically via Turnitin

There have been changes to the assessment regime since the last offering of this Unit.

Week	Lectures	Tutorials
<u>Week 1</u> The lawyers' place in society	<ul style="list-style-type: none"><li>• Introduction</li><li>• Perceptions of Lawyers</li><li>• An overview of the profession</li></ul>	<ul style="list-style-type: none"><li>• Tutorials commence in week 2</li></ul>

<p><b><u>Week 2</u></b></p> <p><b>Legal ethics and professional regulation</b></p>	<ul style="list-style-type: none"> <li>• Introduction to legal ethics</li> <li>• Regulation of the legal profession</li> </ul>	<ul style="list-style-type: none"> <li>• Assessment Overview</li> <li>• Reflective learning</li> <li>• Activity – reflective writing and assessment</li> </ul>
<p><b><u>Week 3</u></b></p> <p><b>Duty to the client - retainers</b></p>	<ul style="list-style-type: none"> <li>• Establishing a retainer</li> <li>• Duties under the retainer</li> <li>• Client capacity</li> <li>• The Cab Rank Rule</li> <li>• Terminating a retainer</li> <li>• Repugnant Clients</li> </ul>	<ul style="list-style-type: none"> <li>• The role of the lawyer</li> <li>• Overview of rules</li> <li>• Overview of ethical frameworks for lawyers</li> <li>• Who is my client</li> </ul>
<p><b><u>Week 4</u></b></p> <p><b>Duty to the client - fiduciary duties and the duty of care</b></p>	<ul style="list-style-type: none"> <li>• Fiduciary duties</li> <li>• Duty of care – professional standards</li> <li>• Barrister immunity</li> </ul>	<ul style="list-style-type: none"> <li>• Overview of client communication issues</li> <li>• Reflective listening</li> </ul>
<p><b><u>Week 5</u></b></p> <p><b>Duties to the client - conflicts of interest</b></p>	<ul style="list-style-type: none"> <li>• Conflicts</li> </ul>	<ul style="list-style-type: none"> <li>• Client interview skills</li> </ul>
<p><b><u>Week 6</u></b></p> <p><b>Duties to the client - confidentiality and privilege</b></p>	<ul style="list-style-type: none"> <li>• Confidentiality</li> <li>• Legal Professional Privilege</li> </ul>	<ul style="list-style-type: none"> <li>• Interview skills continued</li> <li>• Cross cultural understanding</li> </ul>
<p><b><u>Week 7</u></b></p> <p><b>Duties to the court</b></p>	<ul style="list-style-type: none"> <li>• Lawyer as an officer of the Court</li> <li>• Duty of candour</li> <li>• Dealing with witnesses</li> <li>• Abuse of process</li> </ul>	<ul style="list-style-type: none"> <li>• Written communication skills</li> </ul>
<p><b><u>Week 8</u></b></p> <p><b>Ethics in criminal law and negotiations</b></p>	<ul style="list-style-type: none"> <li>• Role of the prosecution and defence lawyer</li> <li>• Lawyer's approach to giving advice</li> </ul>	<ul style="list-style-type: none"> <li>• Negotiation – interest based bargaining</li> <li>• BATNAS and WATNAS</li> </ul>
<p><b><u>Week 9</u></b></p> <p><b>Duty to the community</b></p>	<ul style="list-style-type: none"> <li>• The lawyer's role in the administration of justice</li> <li>• Is there a duty to do pro bono work?</li> <li>• Access to justice</li> </ul>	<ul style="list-style-type: none"> <li>• Extended negotiation practise</li> <li>• Ethics in negotiation</li> </ul>



<p><b>Week 10</b> Costs and duty to account</p>	<ul style="list-style-type: none"> <li>• Lawyer's duty of costs disclosure</li> <li>• Litigation funding and other fee arrangements</li> <li>• Duty to account</li> </ul>	<ul style="list-style-type: none"> <li>• A model for ethical problem solving</li> </ul>
<p><b>Week 11</b> Admission to practise, Misconduct and Discipline</p>	<ul style="list-style-type: none"> <li>• Requirements for admission – good fame and character</li> <li>• Misconduct within practice</li> <li>• Misconduct outside the law</li> <li>• Discipline</li> </ul>	<ul style="list-style-type: none"> <li>• The Lake Pleasant Bodies Case</li> </ul>
<p><b>Week 12</b> The future of the legal profession</p>	<ul style="list-style-type: none"> <li>• Reflecting on changes in the profession</li> </ul>	<ul style="list-style-type: none"> <li>• Suitability to practice law</li> <li>• Revising the unit materials</li> </ul>
<p><b>Week 13</b> Revision</p>	<ul style="list-style-type: none"> <li>• Unit evaluation and revision</li> <li>• Take home exam</li> <li>• No tutorials this week</li> </ul>	

## Unit Schedule

Weekly lectures of one hour in Weeks 1-13.

Weekly tutorials of two hours from Weeks 2-12 inclusive

## Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](#). Students should be aware of the following policies in particular with regard to Learning and Teaching:

Academic Honesty Policy [http://mq.edu.au/policy/docs/academic\\_honesty/policy.html](http://mq.edu.au/policy/docs/academic_honesty/policy.html)

Assessment Policy <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy <http://mq.edu.au/policy/docs/grading/policy.html>

Grade Appeal Policy <http://mq.edu.au/policy/docs/gradeappeal/policy.html>

Grievance Management Policy [http://mq.edu.au/policy/docs/grievance\\_management/policy.html](http://mq.edu.au/policy/docs/grievance_management/policy.html)

Disruption to Studies Policy [http://www.mq.edu.au/policy/docs/disruption\\_studies/policy.html](http://www.mq.edu.au/policy/docs/disruption_studies/policy.html) *The Disruption to Studies Policy is effective from March 3 2014 and replaces the Special Consideration Policy.*

In addition, a number of other policies can be found in the [Learning and Teaching Category](#) of Policy Central.

## **Student Code of Conduct**

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: [https://students.mq.edu.au/support/student\\_conduct/](https://students.mq.edu.au/support/student_conduct/)

## **Additional Macquarie Law School policy on assessment**

In the absence of a successful application for special consideration, any assessment task submitted after its published deadline will not be graded and will receive a mark of zero.

Word limits will be strictly applied and work above the word limit will not be marked. Footnotes are only to be used for referencing. Substantive material in footnotes will not be marked.

All assessments in the unit are to be submitted electronically. Plagiarism detection software is used in this unit.

## **Student Support**

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

## **Learning Skills**

Learning Skills ([mq.edu.au/learningskills](http://mq.edu.au/learningskills)) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

## **Student Services and Support**

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

## **Student Enquiries**

For all student enquiries, visit Student Connect at [ask.mq.edu.au](http://ask.mq.edu.au)

## **IT Help**

For help with University computer systems and technology, visit <http://informatics.mq.edu.au/help/>.

When using the University's IT, you must adhere to the [Acceptable Use Policy](#). The policy applies to all who connect to the MQ network including students.

## Graduate Capabilities

### Commitment to Continuous Learning

Our graduates will have enquiring minds and a literate curiosity which will lead them to pursue knowledge for its own sake. They will continue to pursue learning in their careers and as they participate in the world. They will be capable of reflecting on their experiences and relationships with others and the environment, learning from them, and growing - personally, professionally and socially.

This graduate capability is supported by:

#### Assessment task

- Reflective Writing

### Discipline Specific Knowledge and Skills

Our graduates will take with them the intellectual development, depth and breadth of knowledge, scholarly understanding, and specific subject content in their chosen fields to make them competent and confident in their subject or profession. They will be able to demonstrate, where relevant, professional technical competence and meet professional standards. They will be able to articulate the structure of knowledge of their discipline, be able to adapt discipline-specific knowledge to novel situations, and be able to contribute from their discipline to inter-disciplinary solutions to problems.

This graduate capability is supported by:

#### Learning outcomes

- Critique the role of the lawyer and law student in Australian society
- Explain the law of professional responsibility that regulates the practice of law in Australia including duties owed to the client, to the court, practitioners and others, and apply this knowledge to different scenarios

#### Assessment tasks

- Tutorial Participation
- Quiz
- Reflective Writing
- Ethics essay
- Exam

### Critical, Analytical and Integrative Thinking

We want our graduates to be capable of reasoning, questioning and analysing, and to integrate

and synthesise learning and knowledge from a range of sources and environments; to be able to critique constraints, assumptions and limitations; to be able to think independently and systemically in relation to scholarly activity, in the workplace, and in the world. We want them to have a level of scientific and information technology literacy.

This graduate capability is supported by:

### **Learning outcome**

- Critique the role of the lawyer and law student in Australian society

## **Effective Communication**

We want to develop in our students the ability to communicate and convey their views in forms effective with different audiences. We want our graduates to take with them the capability to read, listen, question, gather and evaluate information resources in a variety of formats, assess, write clearly, speak effectively, and to use visual communication and communication technologies as appropriate.

This graduate capability is supported by:

### **Learning outcome**

- Explain and apply communication skills required for ethical practice, especially listening skills, interviewing skills, cross cultural communication skills and negotiation skills

## **Assessment tasks**

- Tutorial Participation
- Reflective Writing
- Ethics essay

## **Engaged and Ethical Local and Global citizens**

As local citizens our graduates will be aware of indigenous perspectives and of the nation's historical context. They will be engaged with the challenges of contemporary society and with knowledge and ideas. We want our graduates to have respect for diversity, to be open-minded, sensitive to others and inclusive, and to be open to other cultures and perspectives: they should have a level of cultural literacy. Our graduates should be aware of disadvantage and social justice, and be willing to participate to help create a wiser and better society.

This graduate capability is supported by:

### **Learning outcomes**

- Critique the role of the lawyer and law student in Australian society
- Recognise different theoretical approaches to legal ethics and relate these approaches to a range of problems and settings

## Assessment tasks

- Tutorial Participation
- Quiz
- Reflective Writing
- Ethics essay
- Exam