



# LAW 208

## Law, Lawyers and Society

S1 External 2014

*Dept of Law*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Unit Convenor

Lise Barry

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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                  |
|---|-----------|----------------------|
| <a href="#"><u>Tutorial Participation</u></a> | 0%        | weekly               |
| <a href="#"><u>Quiz</u></a>                   | 0%        | 24/3 - 30/3          |
| <a href="#"><u>Reflective Writing</u></a>     | 40%       | Refer to description |
| <a href="#"><u>Ethics problem</u></a>         | 30%       | Friday 9th May 8pm   |
| <a href="#"><u>Exam</u></a>                   | 30%       | Friday 13th June 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.

External students should also undertake the readings and look at the exercises for the tutorials, as this material 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. Preparation and understanding of material:** the student has listened to the lecture, read the required reading and has attempted to link the materials to the lectures, to other course materials

and to their life experience

2. **Ability to think critically about the material:** the student is able to think critically about the materials from different angles and is able to question the materials
3. **Clear expression of ideas:** the student is able to clearly express their ideas about the materials
4. **Engaging with other students:** the student engages with others in the class taking an active role in discussions, role plays, debates and other activities assigned by the tutor. The student responds to others in the class by listening to them, providing constructive feedback and asking questions.
5. **Demonstration of skills:** The student is able to demonstrate communication skills 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 for Special Consideration and be approved by the Unit Convenor. Applications for Special Consideration 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. Students will be given an opportunity to submit remedial work where there are concerns about participation or unexplained absences.

On successful completion 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
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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: **24/3 - 30/3**

Weighting: **0%**

There will be an ungraded 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 at on Monday 24th March at 9am and close on Sunday 30th March at 8pm

All students must attempt the quiz

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

## Reflective Writing

Due: **Refer to description**

Weighting: **40%**

Each week you should reflect on what you have learnt in the Unit. Your reflective writing can focus on any aspect of the course materials including lecture and online resources, tutorial activities or readings. Guidance will be provided about what we are looking for in your entries and you will have a chance to write and grade a practise reflection in class. Your reflective writing will be submitted electronically via Turnitin and marked electronically. Your 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 Friday 18th April** (20%) and includes reflections on Weeks 1 – 6, 1000 words maximum

**Part 2 is due by 8pm on Friday 6th June** (20%) and includes reflections on Week s 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.

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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

## Ethics problem

Due: **Friday 9th May 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.

On successful completion 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

## Exam

Due: **Friday 13th June 8pm**

Weighting: **30%**

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

This online examination will comprise two parts:

Part 1 - Time limited multiple choice exam - 20 questions worth 20%

Part 2 - Short problem question worth 10% - maximum word limit 750 words

The exam will be released at 4pm and is due at 8pm.

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-research.

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

| Week                                   | Lectures  | Tutorials  |
|--|---|--|
| <u>Week 1</u><br>Introduction          | <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>   |
| <u>Week 2</u><br>Intro to Legal Ethics | <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><br/><b>Duties to the client</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><br/><b>Duties to the client</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><br/><b>Duties to the client</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><br/><b>Duties to the client</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><br/><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><br/><b>Duty to the Court cont. and Administration of Justice</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>• Role of the prosecution and defence lawyer</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><br/><b>Duty to uphold the law</b></p>                                | <ul style="list-style-type: none"> <li>• Lawyer's own conduct</li> <li>• Client's unlawful acts</li> <li>• Lawyer's approach to giving advice</li> </ul>  | <ul style="list-style-type: none"> <li>• Extended negotiation practise</li> <li>• Ethics in negotiation</li> </ul>  |
| <p><b><u>Week 10</u></b><br/><b>Costs</b></p>  | <ul style="list-style-type: none"> <li>• Lawyer's duty of costs disclosure</li> <li>• Litigation funding and other fee arrangements</li> <li>• Trusts</li> </ul>  | <ul style="list-style-type: none"> <li>• A model for ethical problem solving</li> </ul>   |



|  |   |   |
|--|---|---|
| <b>Week 11</b><br>Admission to practise, Misconduct and Discipline | <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>                                     |
| <b>Week 12</b><br>Revision, Feedback and Exam Advice               | <ul style="list-style-type: none"><li>• Revision of core ethical duties of the lawyer</li></ul>   | <ul style="list-style-type: none"><li>• Suitability to practice law</li><li>• Revising the unit materials</li></ul> |
| <b>Week 13</b><br>Take home exam                                   | <ul style="list-style-type: none"><li>• Unit evaluation</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

### 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 problem
- 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

## Assessment tasks

- Quiz
- Exam

## 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

## 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 problem
- Exam