



# LAWS108

## Law, Lawyers and Society

S1 Day 2015

*Dept of Law*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Unit Convenor

Lise Barry

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

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

W3A507

TBA - see iLearn page

Credit points

3

Prerequisites

LAW115

Corequisites

Co-badged status

This unit is co-badged with Laws108

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

Apply the principles of plain English to written communication

## Assessment Tasks

| Name                          | Weighting | Due                   |
|-------------------------------|-----------|-----------------------|
| <u>Tutorial Participation</u> | 0%        | weekly                |
| <u>Early quiz</u>             | 10%       | 9pm Friday 20th March |
| <u>Ethics essay</u>           | 25%       | 9am Monday 30th March |
| <u>Ethics problem</u>         | 45%       | 9am Monday 11th May   |
| <u>Final Quiz</u>             | 20%       | 9pm Monday 15th June  |

### 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. Tutors may set impromptu quizzes in class or at the on campus session to assess a student's knowledge of the tutorial preparation material.

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
- 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
- Apply the principles of plain English to written communication

## Early quiz

Due: **9pm Friday 20th March**

Weighting: **10%**

This is a time limited quiz of one hour to test student's understanding of the early materials from Weeks 1- Week 4.

Students can open the quiz at any time between 9am and 9pm. They will have one hour to complete the quiz from the time that they open it. When one hour has expired, all saved answers will be automatically submitted.

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

## Ethics essay

Due: **9am Monday 30th March**

Weighting: **25%**

Please refer to iLearn for full details of the essay topic.

This essay will test students understanding of ethics theory. Students will also be assessed on their ability to apply the principles of plain English.

All work is to be submitted via Turnitin on iLearn

Late submissions will not be marked and will receive a score of 0.

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
- Explain and apply communication skills required for ethical practice, especially listening skills, interviewing skills, cross cultural communication skills and negotiation skills
- Apply the principles of plain English to written communication

## Ethics problem

Due: **9am Monday 11th May**

Weighting: **45%**

In this paper students will be required to apply the deliberative model of ethical decision making to resolve a legal ethics problem.

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 apply the principles of plain English.

The maximum word count for this assessment is 2000 words.

All work is to be submitted via Turnitin on iLearn

The complete question and marking guide 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
- Apply the principles of plain English to written communication

## Final Quiz

Due: **9pm Monday 15th June**

Weighting: **20%**

This is a time limited quiz of one hour to test students' understanding of the unit materials.

Students can open the quiz at any time between 4pm and 9pm. They will have one hour to complete the quiz from the time that they open it. When one hour has expired, all saved answers will be automatically submitted.

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* (2nd ed, 2015) 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

## Unit Schedule

| Week                                          | Lectures                                                                                                                                                | Tutorials                                                                                                                                 |
|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Week 1</b><br><b>Introduction</b>          | <ul style="list-style-type: none"> <li>• Introduction to the unit</li> <li>• Assessment information</li> <li>• An overview of the profession</li> </ul> | <ul style="list-style-type: none"> <li>• Tutorials commence in week 2</li> </ul>                                                          |
| <b>Week 2</b><br><b>Intro to Legal Ethics</b> | <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>• Writing and researching for law assessments</li> </ul>            |
| <b>Week 3</b><br><b>Duties to the client</b>  | <ul style="list-style-type: none"> <li>• Retainers</li> <li>• Client capacity</li> <li>• The Cab Rank Rule</li> <li>• Repugnant Clients</li> </ul>      | <ul style="list-style-type: none"> <li>• Plain English principles</li> <li>• The role of the lawyer</li> <li>• Ethics overview</li> </ul> |
| <b>Week 4</b><br><b>Duties to the client</b>  | <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>Week 5</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 continued</li> </ul>                                                                          |
| <p><b>Week 6</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>• Cross cultural understanding</li> <li>• Duty of care</li> <li>• Deliberative model of ethical deliberation</li> </ul> |
| <p><b>Week 7</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>• Confidentiality and Privilege</li> <li>• Conflicts</li> <li>• Fiduciary duties</li> </ul>                             |
| <p><b>Week 8</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>Week 9</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>Week 10</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>• The Lake Pleasant Bodies case</li> <li>• Ethics in criminal law practice</li> <li>• Duties to the court</li> </ul>    |
| <p><b>Week 11</b><br/><b>Admission to practise, Misconduct and Discipline</b></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>• Costs</li> <li>• Access to justice</li> <li>• Lawyers' duty to the community</li> </ul>                               |
| <p><b>Week 12</b><br/><b>Revision, Feedback and Exam Advice</b></p>                   | <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>        | <ul style="list-style-type: none"><li>• Unit evaluation</li><li>• Take home exam</li><li>• No tutorials this week</li></ul> |
| <b>Take home exam</b> |                                                                                                                             |

## 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/)

## Results

Results shown in *iLearn*, or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit [ask.mq.edu.au](http://ask.mq.edu.au).

### Law School Assessment Policy

In the absence of a successful application for Disruption to Studies, late assessments will not be marked and will receive a grade of 0%. Applications for Disruption to Studies are made at [ask.mq.edu.au](http://ask.mq.edu.au)

Word limits are strictly applied and anything beyond the word limit will not be marked.

## 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

### Capable of Professional and Personal Judgement and Initiative

We want our graduates to have emotional intelligence and sound interpersonal skills and to demonstrate discernment and common sense in their professional and personal judgement. They will exercise initiative as needed. They will be capable of risk assessment, and be able to handle ambiguity and complexity, enabling them to be adaptable in diverse and changing environments.

This graduate capability is supported by:

### Learning outcomes

- Critique the role of the lawyer and law student in Australian society
- Apply the principles of plain English to written communication

## 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
- 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

### Assessment tasks

- Tutorial Participation
- Early quiz
- Ethics essay
- Ethics problem
- Final Quiz

## 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 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
- Ethics essay

## Problem Solving and Research Capability

Our graduates should be capable of researching; of analysing, and interpreting and assessing data and information in various forms; of drawing connections across fields of knowledge; and they should be able to relate their knowledge to complex situations at work or in the world, in order to diagnose and solve problems. We want them to have the confidence to take the initiative in doing so, within an awareness of their own limitations.

This graduate capability is supported by:

### Assessment task

- Ethics problem

## 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 outcomes

- 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
- Apply the principles of plain English to written communication

### Assessment tasks

- Tutorial Participation
- Ethics essay
- Ethics problem

## 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
- 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
- Ethics essay
- Ethics problem

## **Changes from Previous Offering**

A number of changes have been made since the last offering:

- The textbook has been revised. The 2015 offering is based on the 2nd edition of the Barry textbook.
- The assessments have changed. There are now two essays and no reflective writing.
- The weekly schedule has been revised and early tutorials focus more on written communication skills.