



# ECFS874

## Legal Risk in Finance

AFC Term 3 CBD 2015

*Dept of Applied Finance and Actuarial Studies*

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#### **Disclaimer**

Macquarie University has taken all reasonable measures to ensure the information in this publication is accurate and up-to-date. However, the information may change or become out-dated as a result of change in University policies, procedures or rules. The University reserves the right to make changes to any information in this publication without notice. Users of this publication are advised to check the website version of this publication [or the relevant faculty or department] before acting on any information in this publication.

## General Information

Unit convenor and teaching staff

Unit Convenor / Lecturer

Susan Edwards

[susan.edwards@mq.edu.au](mailto:susan.edwards@mq.edu.au)

Contact via Email

Credit points

4

Prerequisites

(Admission to MAppFin or PGCertAppFin or GradDipAppFin) and ECFS865

Corequisites

Co-badged status

Unit description

This unit examines common sources of legal risk in financing transactions in Australia, together with possible methods of managing that risk and its impact on price. It explains legal analysis and reasoning and students apply these methods of reasoning to real world problems. The unit considers areas of law including company, contract, property, security and insolvency law, and the main legal duties impacting on the finance industry.

## 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:

Recognise issues which may give rise to legal risk.

Identify relevant legal principles to address those issues.

Explain the legal issues and demonstrate your understanding of those issues by applying them to specific factual situations.

Develop logical arguments based on relevant case law and statute.

## General Assessment Information

To pass this unit (requires a Standardised Numerical Grade of 50 or better) the student must pass the final examination.

**Repeating Students:** Any student who repeats the unit must repeat all assessment tasks, specifically Case Study A and B plus the Final Exam.

## Assessment Tasks

Name	Weighting	Due
<a href="#">Case Study: Part A</a>	20%	Refer to iLearn
<a href="#">Case Study: Part B</a>	20%	Refer to iLearn
<a href="#">Final Exam</a>	60%	Refer to Timetable

### Case Study: Part A

Due: **Refer to iLearn**

Weighting: **20%**

#### Summary of Assessment Task

**Individual / Group:** Individual

**Due Date:** Refer to the Unit's iLearn site

**Grading Method:** Refer to 'Standards Required to Complete the Unit Satisfactorily' section

**Submission Method:** Via Turnitin on iLearn. You should comply with the instructions sheet for the assignment

**Duration:** Refer to Assignment Coversheet

#### Extension Requests:

- If you have extenuating circumstances that prevent you from submitting your assignment by the due date, please make arrangements with your lecturer prior to the due date.
- Unless prior arrangements have been made, any late submission of assignments will automatically be penalised. In the absence of special circumstances, a zero mark will apply.

**NOTE:** Repeating Students: Any student who repeats the unit must repeat all assessment tasks, specifically Case Study A and B plus the Final Exam.

On successful completion you will be able to:

- Identify relevant legal principles to address those issues.
- Explain the legal issues and demonstrate your understanding of those issues by applying them to specific factual situations.
- Develop logical arguments based on relevant case law and statute.

## Case Study: Part B

Due: **Refer to iLearn**

Weighting: **20%**

### Summary of Assessment Task

**Individual / Group:** Individual

**Due Date:** Refer to the Unit's iLearn site

**Grading Method:** Refer to 'Standards Required to Complete the Unit Satisfactorily' section

**Submission Method:** Via Turnitin on iLearn. You should comply with the instructions sheet for the assignment

**Duration:** Refer to Assignment Coversheet

### Extension Requests:

- If you have extenuating circumstances that prevent you from submitting your assignment by the due date, please make arrangements with your lecturer prior to the due date.
- Unless prior arrangements have been made, any late submission of assignments will automatically be penalised. In the absence of special circumstances, a zero mark will apply.

**NOTE:** Repeating Students: Any student who repeats the unit must repeat all assessment tasks, specifically Case Study A and B plus the Final Exam.

On successful completion you will be able to:

- Identify relevant legal principles to address those issues.
- Explain the legal issues and demonstrate your understanding of those issues by applying them to specific factual situations.
- Develop logical arguments based on relevant case law and statute.

## Final Exam

Due: **Refer to Timetable**

Weighting: **60%**

### Summary of Assessment Task

**Individual / Group:** Individual

**Due Date:** Refer to Timetable.

Assessments: Different Class Groups have different deadlines. Students should find the timetable and dates relevant to their group at [www.mafc.mq.edu.au](http://www.mafc.mq.edu.au)

**Grading Method:** Refer to 'Standards Required to Complete the Unit Satisfactorily' section

**Submission Method:** As per MAFC Program Rules & Procedures at [www.mafc.mq.edu.au](http://www.mafc.mq.edu.au)

**Duration:** 3 hours plus 10 minutes reading time

**Examination Conditions:**

- The examination is open book. Any material in paper form is permitted.
- Exam times and locations are noted in the unit timetable at [www.mafc.mq.edu.au](http://www.mafc.mq.edu.au).
- Refer to MAFC Program Rules & Procedures at [www.mafc.mq.edu.au](http://www.mafc.mq.edu.au).

**Extension Requests:**

- You are expected to present yourself for examination at the time and place designated in the relevant MAFC Timetable at [www.mafc.mq.edu.au](http://www.mafc.mq.edu.au).
- Deferral of an examination is not permitted, unless special consideration has been approved by the Director of Studies under the University's Disruption to Studies Policy.
- Refer to MAFC Program Rules & Procedures at [www.mafc.mq.edu.au](http://www.mafc.mq.edu.au) for information on the University's Disruption to Studies Policy or non-attendance at an examination.

**NOTE:** Repeating Students: Any student who repeats the unit must repeat all assessment tasks, specifically Case Study A and B plus the Final Exam.

On successful completion you will be able to:

- Recognise issues which may give rise to legal risk.
- Identify relevant legal principles to address those issues.
- Explain the legal issues and demonstrate your understanding of those issues by applying them to specific factual situations.
- Develop logical arguments based on relevant case law and statute.

## **Delivery and Resources**

### **CLASSES**

**Face-to-Face Teaching:** Generally 40 hours

**Timetable:** Detailed timetable for classes are on the Centre's web site [www.mafc.mq.edu.au](http://www.mafc.mq.edu.au)

**Class Changes:**

Students will only be permitted to change classes if authorised by the Applied Finance Centre.

Request for changes must be made:

- By completion of a Change of Unit Form, available on the Centre's web site at [www.mafc.mq.edu.au](http://www.mafc.mq.edu.au); or
- In person by going to reception at the relevant Applied Finance Centre location.

### Consultation Times:

Students who wish to contact any of the teaching staff may do so through:

- The iLearn forums, (especially in relation to general queries that all students may benefit); or
- Individual consultation with the lecturer by email in the first instance, if necessary.

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

Text: Nil

### Lecture Notes:

- Available in printed form and on iLearn. It is crucial that the notes be read in advance of each session.
- The notes form the basis of the **examinable material** for the unit.
- The more time spent attempting to understand the principles before class will usually result in a deeper appreciation of their operation in class and will enable more consideration to be given to their application in the specific case studies. Rereading the notes shortly after the class will generally help to reinforce the material studied.
- For suggestions as to how to prepare for this unit, you should read the section in the Course Guide entitled Preparing for the Course.

**Pre-Unit Materials:** If you are studying in the intensive mode, you will be expected to have read the notes for all sessions to be covered during the particular teaching period.

**Useful References:** (available from the Centre's libraries in Sydney and Melbourne)

- Everett & McCracken, *Banking and Financial Institutions Law*, Law Book Co Sydney (8th ed) 2013
- Latimer P, *Australian Business Law*, CCH Australia (31th ed) 2012
- Mallesons Stephen Jaques, *Australian Finance Law*, Law Book Co Sydney (6th ed) 2008
- Sheedy E & McCracken S (eds), *Derivatives: The Risks That Remain*, Allen & Unwin Sydney 1997

### Assumed Access:

- Access to a computer with word processing capability is assumed, as is general student computer literacy.

## **TECHNOLOGY USED AND REQUIRED**

Unit iLearn Site:

- Found by logging on to iLearn [ilearn.mq.edu.au](http://ilearn.mq.edu.au), then clicking on **Legal Risk in Finance**.
- This is where you will find links to forums, downloadable resources and other important information.
- The forums allow you to communicate with other students and lecturer(s) and may provide supplementary material.
- You are requested to post your questions to the forum at least 24 hours prior to the assignment submission date or the examination date. Questions posted after that time may not be answered. **Please try to not leave your questions to the last few days.**

#### Important Notice:

- It is important that you familiarize yourself with the Unit's iLearn site.
- Students should check iLearn regularly (minimum twice a week and prior to all lectures) and look for updates and distribution of materials (including case studies) related to the unit or assessments and, if relevant, participate in forum discussions.

## Unit Schedule

### PART 1 - WHAT SHOULD I KNOW BEFORE ENTERING A FINANCE TRANSACTION?

#### 1. WHAT IS LEGAL FRAMEWORK?

**Content:** Discussion of topical legal issues by way of introduction to a consideration of how legal rules operate in finance and as a starting point for more general consideration of ethical implications. Sources and scope of finance law. Methods of analysis of case law and statute.

#### 2 & 3. WHO CAN I DEAL WITH?

**Content:** Types of legal vehicles: individual, company, trust, partnership, joint venture. Capacity of these vehicles and actual and ostensible authority of those acting on their behalf (including finance directors and financial controllers). Analysis of statutory protection.

#### 4. WHEN DO I HAVE A DEAL?

**Content:** Formation of a contract. Analysis of concepts of offer, acceptance and certainty.

#### 5. IS THE DEAL ENFORCEABLE?

**Content:** Enforceability of a contract. Analysis of concepts of intention, consideration, vitiating factors and form.

#### 6. WHAT ARE MY DUTIES AND MY LIABILITY IF THE TRANSACTION GOES WRONG?

**Content:** Sources of duty and liability in contract, tort, equity and statute for individuals and companies with focus on breach of contract; the duty of care; the fiduciary relationship; and

statutory prohibitions on misleading and deceptive conduct.

## 7. HOW DO I DEAL WITH PROPERTY?

**Content:** The legal concept of property. Analysis of the nature of property, interests in it, and methods of dealing with it.

### REVIEW

**Content:** Examination of a case study, consolidating work in Sessions 1-7 on how to analyse legal issues.

## PART 2 - WHAT FACTORS AFFECT THE STRUCTURING OF THE FINANCE TRANSACTION?

### 8 & 9. HOW MIGHT I STRUCTURE AN SECURED FACILITY?

**Content:** Analysis, by way of example, of various financing structures, with focus on establishment of relationships and consequential potential liability. Methods of participation in such structures, such as sub-participation; assignment; novation.

### 10. WHAT SECURITY MIGHT I TAKE?

**Content:** Security taken over property

### 11. WHAT FURTHER SECURITY CAN BE TAKEN?

**Content:** Security taken by way of contract only or by operation of law.

### 12. WHAT IS THE IMPACT OF INSOLVENCY?

**Content:** Concepts of voluntary administration and liquidation. Impact on financing structures; the pari passu rule; and anti-avoidance provisions. Analysis of subordination structures by way of example.

### 13. ANALYSING LEGAL ISSUES IN PART 2

**Content:** Examination of a case study, consolidating work in Sessions 8-12 on how to analyse legal issues.

## Learning and Teaching Activities

### Strategy

The Master of Applied Finance degree adopts a deep teaching and learning strategy, in which Students acquire and retain knowledge and also are able to make sense of the issues and concepts and apply them in the “real world”. The degree relies heavily on student engagement and participation by: (a) Continuous learning throughout the semester. This is encouraged through a combination of students undertaking prescribed reading throughout the units and / or completion of practice problems, case studies, assignments, class presentations etc and interaction via forums in the unit’s iLearn site; and (b) Assessments, which enable the student to demonstrate his / her understanding of the learning objectives achieved through the continuous learning.



## Student Participation

Students participate in this unit by: (a) Attending lectures and participating in class discussion; (b) Before each class, completing the recommended readings of notes and text, and working systematically through suggested problem sets; (c) Interacting on the unit's iLearn site; and (d) Completing all assessment tasks and exams. On average the unit will require students to complete, for every hour of class time, approximately 3 hours private study.

## 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).

Students should also consult the MAFC Program Rules & Procedures found at <http://www.mafc.mq.edu.au>

## 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 enquiry service (MAFC-specific)

For all student enquires, please contact [studentsupport@mafc.mq.edu.au](mailto:studentsupport@mafc.mq.edu.au)

## 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.

## Learning Skills

Learning Skills ([http://www.students.mq.edu.au/support/learning\\_skills/](http://www.students.mq.edu.au/support/learning_skills/)) 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 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

### PG - Capable of Professional and Personal Judgment and Initiative

Our postgraduates will demonstrate a high standard of discernment and common sense in their professional and personal judgment. They will have the ability to make informed choices and decisions that reflect both the nature of their professional work and their personal perspectives.

This graduate capability is supported by:

## Learning outcomes

- Recognise issues which may give rise to legal risk.
- Identify relevant legal principles to address those issues.
- Explain the legal issues and demonstrate your understanding of those issues by applying them to specific factual situations.
- Develop logical arguments based on relevant case law and statute.

## Assessment tasks

- Case Study: Part A
- Case Study: Part B
- Final Exam

## PG - Critical, Analytical and Integrative Thinking

Our postgraduates will be capable of utilising and reflecting on prior knowledge and experience, of applying higher level critical thinking skills, and of integrating and synthesising learning and knowledge from a range of sources and environments. A characteristic of this form of thinking is the generation of new, professionally oriented knowledge through personal or group-based critique of practice and theory.

This graduate capability is supported by:

## Learning outcomes

- Recognise issues which may give rise to legal risk.
- Identify relevant legal principles to address those issues.
- Explain the legal issues and demonstrate your understanding of those issues by applying them to specific factual situations.
- Develop logical arguments based on relevant case law and statute.

## Assessment tasks

- Case Study: Part A
- Case Study: Part B
- Final Exam

## PG - Research and Problem Solving Capability

Our postgraduates will be capable of systematic enquiry; able to use research skills to create new knowledge that can be applied to real world issues, or contribute to a field of study or practice to enhance society. They will be capable of creative questioning, problem finding and problem solving.

This graduate capability is supported by:

## Learning outcomes

- Recognise issues which may give rise to legal risk.
- Identify relevant legal principles to address those issues.
- Explain the legal issues and demonstrate your understanding of those issues by applying them to specific factual situations.
- Develop logical arguments based on relevant case law and statute.

## Assessment tasks

- Case Study: Part A
- Case Study: Part B
- Final Exam

## PG - Engaged and Responsible, Active and Ethical Citizens

Our postgraduates will be ethically aware and capable of confident transformative action in relation to their professional responsibilities and the wider community. They will have a sense of connectedness with others and country and have a sense of mutual obligation. They will be able to appreciate the impact of their professional roles for social justice and inclusion related to national and global issues

This graduate capability is supported by:

## Learning outcomes

- Recognise issues which may give rise to legal risk.
- Identify relevant legal principles to address those issues.
- Explain the legal issues and demonstrate your understanding of those issues by applying them to specific factual situations.
- Develop logical arguments based on relevant case law and statute.

## Assessment tasks

- Case Study: Part A
- Case Study: Part B
- Final Exam

## Changes from Previous Offering

The Academic Policies section of this Unit Guide was updated in March 2014.

The Extension Requests section of this Unit Guide was updated in June 2014.

## Important Notice

This Unit Guide may be subject to change. The latest version is on the Centre's web site [www.mq.edu.au/unitguides/mq.edu.au/unit\\_offerings/52214/unit\\_guide/print](http://www.mq.edu.au/unitguides/mq.edu.au/unit_offerings/52214/unit_guide/print)

[afc.mq.edu.au](http://afc.mq.edu.au).

Students should read the Unit Guide carefully at the start of semester. It contains important information about the unit. If anything is unclear, please consult one of the unit lecturers.

## Standards Required to Complete the Unit Satisfactorily

### University Policy on Grading:

- Macquarie University's Academic Senate has established a Grading Policy available at <http://www.mq.edu.au/policy/docs/grading/policy.html>. Your final result will include:
  - A grade ranging from Fail to High Distinction; and
  - A Standardised Numerical Grade (SNG). A SNG is not a summation of the individual assessment components, but is allocated on the basis of the performance in all assessment items, providing the examination component is passed.
- It is important to note:
  - The Policy does not require that a minimum or maximum number of students are to be failed in any unit;
  - Grades will not be allocated to fit a predetermined distribution; and
  - The process of allocating SNGs does not change the rank order of marks among students who pass the unit.

### Specific Unit Grading:

- To pass this unit (requires a Standardised Numerical Grade of 50 or better) the student must pass the final examination.
- All final grades in the Applied Finance Centre are determined by a grading committee and are not the sole responsibility of the unit convenor.
- The core criteria used to assess student work in this unit are:
  - Knowledge and understanding: Understanding key ideas, knowledge and use of concepts.
  - Application: Ability to apply theoretical ideas and frameworks in practice and in a critically reflective way.
  - Reasoning and analysis: Ability to analyse, use critical reasoning and principles to formulate a position, balancing theory and personal reflection.
  - Professional literacy and research: Understanding of professional factors (language and landscape) and ability to undertake appropriate research.

- Communication and presentation: Ability to communicate and present effectively (written and oral, as relevant).
- Use of mathematical and statistical ideas: Ability to use mathematical and statistical ideas, methods and formulae appropriately.
- Performance in relation to each of these criteria are assessed against the University’s grading descriptors:

Grade	Expectation
High Distinction	Provides consistent evidence of deep and critical understanding in relation to the learning outcomes. There is substantial originality and insight in identifying, generating and communicating competing arguments, perspectives or problem solving approaches; critical evaluation of problems, their solutions and their implications; creativity in application as appropriate to the discipline.
Distinction	Provides evidence of integration and evaluation of critical ideas, principles and theories, distinctive insight and ability in applying relevant skills and concepts in relation to learning outcomes. There is demonstration of frequent originality in defining and analysing issues or problems and providing solutions; and the use of means of communication appropriate to the discipline and the audience.
Credit	Provides evidence of learning that goes beyond replication of content knowledge or skills relevant to the learning outcomes. There is demonstration of substantial understanding of fundamental concepts in the field of study and the ability to apply these concepts in a variety of contexts; convincing argumentation with appropriate coherent justification; communication of ideas fluently and clearly in terms of the conventions of the discipline.
Pass	Provides sufficient evidence of the achievement of learning outcomes. There is demonstration of understanding and application of fundamental concepts of the field of study; routine argumentation with acceptable justification; communication of information and ideas adequately in terms of the conventions of the discipline. The learning attainment is considered satisfactory or adequate or competent or capable in relation to the specified outcomes.
Fail	Does not provide evidence of attainment of learning outcomes. There is missing or partial or superficial or faulty understanding and application of the fundamental concepts in the field of study; missing, undeveloped, inappropriate or confusing argumentation; incomplete, confusing or lacking communication of ideas in ways that give little attention to the conventions of the discipline.

**Review of Grade and final examination Script viewing:**

- A student who has been awarded a final grade for a unit and who does not believe it is an accurate reflection of their performance, and has grounds for such a claim and can demonstrate those grounds, may apply to have their grade reviewed.
- For information on requesting a review of grade and/or viewing your final exam script, please refer to the University’s Grade Appeal Policy at <http://www.mq.edu.au/policy/docs/gradeappeal/policy.html> and MAFC Program Rules & Procedures at <http://www.mafc.mq.edu.au>.