LAW 484

Media Law

S1 Day 2015

Dept of Law

Contents

General Information

Unit convenor and teaching staff
Unit Convenor
Dr Roy Baker
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Contact via email
W3A 509
See iLearn page

Credit points
3

Prerequisites
(6cp in LAW or LAWS units at 300 level) or (39cp including MAS214)

Corequisites
(39cp including (ICOM304 or MAS302 or MAS330 or POL302)) or admission 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 BPsych(Hons)LLB or BScLLB or BSocScLLB

Co-badged status

Unit description
While focusing on Australia, this unit takes an international and comparative perspective on key media issues. How do different countries decide who should control the media, as well as what they should and should not show? If we value free speech, how should we regulate material such as political debate, defamation, privacy, pornography, vilification and advertising? How do we hit the right balance between state media control and the right of individuals to free expression? We look at the day-to-day legal restrictions on the media and students get to experience what it is like to advise on media content.

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:

1. Articulate key arguments for and against the suppression of certain forms of expression.

2. Evaluate some ways in which the law regulates speech.

3. Describe some ways in which the law facilitates or hinders the proper role of the media in a democracy.

4. Describe some ways in which the law permits and prevents access to ideas and information.

5. Define some approaches to determining who should control the means of mass communication.

6. Advise in relation to some typical legal problems encountered by journalists and media outlets.

General Assessment Information

In order to pass this unit students need to attain at least 50 marks garnered from the following:

1. weekly quizzes (worth 24 marks in total);
2. the mid-semester written assignment (worth 36 marks);
3. the final take-home examination (worth 40 marks).

Weekly Quizzes

Twelve weekly quizzes will be set. The questions will be made available via iLearn at least one week prior to the deadline for submission of answers. The quizzes will be conducted using iLearn and students must post their responses via iLearn. Answers submitted by email will not be accepted.

Each quiz will consist of two questions, making 24 questions in total. Each question will be worth one mark. Generally speaking, the first question in each quiz will focus on the issues looked at in previous topics, while the second question will tend to relate to the present topic (although this pattern might be varied from time to time). Questions will often (but not necessarily) follow a standard multiple choice format, with students being required to select the best out of a range of possible answers. However, students will also be required to write a short statement justifying their choice of answer.

Marks will be awarded in relation to each quiz question as follows:

- Correct answer selected and adequate justification given: 1 mark
- Correct answer selected but no adequate justification given: 0 mark
- Incorrect answer selected but adequate justification given: 1 mark
- Incorrect answer selected and no adequate justification given: 0 mark

A justification will be deemed adequate only if it fulfils all of the following criteria:

- it displays a sound understanding of the relevant information and concepts covered in the lectures and/or readings;
- it displays an ability to correctly apply that material in answering the question;

- if an answer other than the convenor's preferred answer has been selected then it offers sufficient explanation as to why the selected answer is as good as or better than the convenor's preferred answer;

- it does not exceed 100 words in length, and

- it is provided as part of the student's on-line response to the quiz (ie not as a separate email, etc).

Guidance on writing succinct justifications, as well as examples of what will be deemed adequate and inadequate, can be found in the document entitled *Guide to Answering Quiz Questions*, which can be found on iLearn.

Students only have one opportunity to submit and justify their answers. Once submitted, neither the answer nor the justification can be amended or supplemented.

Answers to each quiz will be released on iLearn immediately after its deadline, with additional feedback being released (via a pdf document posted to iLearn) very shortly thereafter. For that reason, in no circumstances can an extension be granted for submission of answers.

Very occasionally it may be necessary for the convenor to amend a question after its release. This may be because the convenor has spotted an error or unintended ambiguity in the question. In the event of this happening, students who have already submitted an answer to the original question may choose to either be assessed on the basis of the original question or to instead attempt the revised question, in which case they will be assessed on the basis of their answer to the revised question. Questions will not be amended during the 72 hours leading up to the deadline.

Although you will know whether you have a question right immediately after the deadline, you will not know whether you have gained a mark until the justifications have been manually graded. This will be done shortly after the quiz deadline and students will be notified of the results online as soon as possible thereafter. If you wish to challenge a mark then this must be done by email to the convenor within 72 hours of the release of the marks relating to the relevant quiz.

Mid-Session assignment

Date for release of question: 8 am, Wednesday 22 April 2015 (Week 7)

Deadline for student submission: 11 pm, Sunday 3 May 2015 (Week 9)

Students will write an 1,800-word answer in relation to a hypothetical situation. This will relate to Topics 1 to 7 (inclusive). Guidance on how to succeed in relation to the mid-Session assignment will be posted online at the time of the question's release.

Final examination

Date for release of exam question: 9 am, Sunday 14 June 2015

Deadline for student submission: 1 pm, Sunday 14 June 2015

There will be a take-home examination which will consist of writing an 1,800 word essay in response to a set question. This may relate to any part of the unit. Guidance on how to succeed

in the final examination will be posted online at least one week prior to the exam question's release.

Assessment Tasks

Name	Weighting	Due
Quizzes	24%	Various
Mid-session assignment	36%	11 pm, 3 May 2015
Final examination	40%	9 am – 1 pm, 14 June 2015

Quizzes

Due: **Various**
Weighting: **24%**

Weekly online quizzes that count towards the student's grade

On successful completion you will be able to:
  • 3. Describe some ways in which the law facilitates or hinders the proper role of the media in a democracy.
  • 4. Describe some ways in which the law permits and prevents access to ideas and information.
  • 5. Define some approaches to determining who should control the means of mass communication.
  • 6. Advise in relation to some typical legal problems encountered by journalists and media outlets.

Mid-session assignment

Due: **11 pm, 3 May 2015**
Weighting: **36%**

Answer to a hypothetical question relating to Topics 1 - 7

On successful completion you will be able to:
  • 6. Advise in relation to some typical legal problems encountered by journalists and media outlets.

Final examination

Due: **9 am – 1 pm, 14 June 2015**
Weighting: **40%**

Four-hour exam which students can complete at home

On successful completion you will be able to:

- 1. Articulate key arguments for and against the suppression of certain forms of expression.
- 2. Evaluate some ways in which the law regulates speech.
- 3. Describe some ways in which the law facilitates or hinders the proper role of the media in a democracy.
- 4. Describe some ways in which the law permits and prevents access to ideas and information.
- 5. Define some approaches to determining who should control the means of mass communication.

Delivery and Resources

Lectures

This unit consists of 12 topics, with one lecture and one tutorial addressing each topic. However, rather than lectures being delivered 'live' in a theatre, recordings are available for download from iLearn (click on the 'Echo 360' logo on the right hand side of the screen). PowerPoint slides accompany each lecture and are also available from iLearn (in .pptx and .pdf format). When listening to lectures, be sure to have the accompanying PowerPoint slides in front of you, since they will be referred to during lectures.

Lectures are intended to give you an overview of the topic, indicate its most important aspects, make the related readings more interesting and accessible and, if necessary, update those readings. It is assumed that you will listen to the lecture prior to embarking on that week's readings.

Readings

The lectures should give you a broad overview of the subject, but it is essential to then develop your understanding by completing the related readings. Readings are divided into 'essential readings' and 'desirable readings'. The 'essential readings' mostly consist of extracts from the prescribed textbook: Australian Media Law by Des Butler and Sharon Rodrick, (4th edn, 2012, Thomson Reuters), ISBN: 978-0-455-22846-4. However, you are expected to read beyond this text and wherever possible you should read the desirable readings.

In addition to completing the readings, you should appropriately consult the primary legal sources referred to in the lecture (ie statutes, cases, etc). At times this will be essential in order to satisfactorily complete the assignments. You are expected to have sufficient research skills to locate and download these primary sources. If you are having problems then consult your tutor.

Tutorials

Having gained a basic understanding of each topic by listening to the lecture, and having developed that understanding through completing the readings, tutorials are your chance to discuss the issues raised, as well as ask questions in order to clear up any lingering doubts as to whether you understand the material correctly. Tutorials are meant to come towards the end of the learning process, not the beginning. Certainly they are not substitutes for listening to the lectures or doing the readings, although if you are totally stumped by even a basic point then there is no shame in raising it in a tutorial.

There will be 13 tutorials during the Session, starting in Week 1. Week 1 tutorials will deal mostly with administrative matters, while each subsequent tutorial will primarily relate to a specific topic. All internal students should register in a tutorial group. Places are available on a first-come, first-served basis. You should attend the tutorial in which you are registered. However, if it proves difficult to do so then you may occasionally attend another tutorial without asking permission.

Please try not to be late arriving at a tutorial. They will start promptly at five minutes after their advertised commencement time and should end at least five minutes before their advertised finishing time (in order to provide time for students and staff to move from one class to another). If you find it difficult to arrive on time because of problems with public transport or with finding a parking space, the solution is to catch an earlier bus or train or set out for the university earlier. None of these constitutes a valid excuse for disrupting classes with repeated tardiness.

Tutorial Participation

Students are expected to respect the learning space afforded by tutorials, as well as their teachers and fellow students. They do this by:

- preparing adequately for each tutorial they attend. This means listening to the lecture, completing the readings and online activities and thinking about the issues covered before you arrive;
- actively participating, which includes answering tutor's questions, making appropriate contributions to discussions and asking relevant questions of the tutor or fellow students as appropriate;
- respectfully listening and responding to views expressed by the tutor and fellow students;
- cooperating in any tutorial activities as directed by the tutor; and
- refraining from indulging in activities unrelated to the tutorial, such as surfing the web, checking text messages, whispering, working on assignments, etc.

NB: it is never a problem to:

- answer questions incorrectly or otherwise display a lack of understanding;
- indicate that you find something difficult to understand;
- disagree with your tutor's views on any topic under discussion.

Tutorials are meant to be non-threatening environments in which students can make mistakes and own up to any difficulties with the material being studied. A tutorial is a place to learn, not just to demonstrate what you have previously learned. While tutors may need to correct

mistakes, every effort will be made to avoid causing any degree of embarrassment. In short, tutors should be highly tolerant of failures to understand, highly intolerant of failures to try to understand.

Changing your tutorial group

It is strongly recommended that you attend the same tutorial group throughout the Session. However, if your circumstances change during the Session and you need to change the day or time when you regularly attend (ie for two or more consecutive weeks) then you should re-register into another tutorial group. If the tutorial group that you wish to join is full then you will need to choose another. Under no circumstances will students be permitted to regularly attend a class in which they are not registered.

General discussion forums

In relation to each of the 12 topics, a discussion forum will be set up on iLearn. Students are encouraged to contribute to these discussions, provided the general rules of etiquette are observed. The forums are intended for discussion relating to the issues we are studying. Please post questions relating to administrative matters to the forum called 'Discussion Forum re Administrative Matters'.

Unit Schedule

General notes:

- *This schedule is liable to change in light of unforeseen circumstances. You will be notified of any changes via iLearn.*
- *Lectures are delivered only via iLearn. Unless notified otherwise, there are no 'live' lectures in this unit.*
- *The prescribed textbook for this unit is:*
  - *Des Butler and Sharon Rodrick,* Australian Media Law *(4th edn, 2012, Thomson Reuters), ISBN: 978-0-455-22846-4*
- *If you want to acquire an additional textbook then I recommend:*
  - *David Rolph, Matt Vitins and Judith Bannister,* Media Law: Cases, Materials and Commentary *(Oxford Uni Press, 1st edition, 2010). ISBN: 978-0-19-555913-2.*
- *Other readings are available from Macquarie University library as a unit reading. You can find them using MultiSearch: http://libguides.mq.edu.au/MultiSearch.*

PART A: FREE SPEECH

- *NB: In Week 1 (23 – 27 February) there will be tutorials. Although there will be no set readings for tutorials in Week 1, they will deal with important introductory and administrative matters. Students are strongly advised to attend.*

Topic 1: The Free Speech Principle

Principles guide policy makers in the design of rules. This lecture asks what principles should govern media law. Should everything be premised on some kind of right to free speech? If so, what do we mean by this right and is it all it is cracked up to be?

- **Deadline for Quiz A: 11.00 pm, Sunday 1 March (Week 2)**
- Dates of tutorials relating to this topic: 2 & 3 March (Week 2)
- Readings:
  - Essential:
    - Butler & Rodrick, chapters 1 and 2, (pp 1 – 26);
    - Frederick Schauer, extract from 'The Free Speech Principle' in *Free Speech: a Philosophical Enquiry*, (1982), 3 – 12 (available from E-Reserve);
    - Frederick Schauer, 'Free Speech and the Good Life' in *Free Speech: a Philosophical Enquiry*, (1982), 47 – 59 (available from E-Reserve).
  - Desirable:
    - Robert Kubey and Mihaly Csikszentmihalyi, 'Television Addiction Is No Mere Metaphor', (23 Feb 2002) 286.2 *Scientific American*, 74 – 81).

Topic 2: Political Expression

This lecture continues to consider the arguments generally used in support of freedom of expression, focussing on the part free speech plays in a healthy democracy. Australia's High Court has given constitutional protection to political expression, but was that a good thing? Looking in particular at the issue of paid political advertising in broadcasting, I argue that the central problem lies in how we habitually conceptualise freedom.

- **Deadline for Quiz B: 11.00 pm, Sunday 8 March (Week 3)**
- Dates of tutorials relating to this topic: 9 & 10 March (Week 3)
- Readings:
  - Essential:
    - Frederick Schauer, 'Free Speech in a World of Private Power' in Tom Campbell and Wojciech Sadurski (eds), *Freedom of Communication* (1994) 1 – 16 (available from E-Reserve);
    - Butler & Rodrick, chapter 4 (part), paras 4.570 – 4.630 (pp 194 – 204);
    - Roy Baker, 'Political Payola: the "Cash for Comment" Scandal and Australia's Protection of Political Speech' (2002) 7.1 *Media & Arts Law Review* 27 – 42 (available from E-Reserve).

Topic 3: Free Speech and the Nation

Historically, the state regulated speech so as to protect itself from its subjects. While to a degree it still does so, in more democratic times attention has switched towards safeguarding national

cohesion. This lecture considers the extent to which states are entitled to regulate speech that vilifies sections of the community, such as racial, ethnic and sexual minorities, and which may lead to internal strife.

- **Deadline for Quiz C: 11.00 pm, Sunday 15 March (Week 4)**
- Dates of tutorials relating to this topic: 16 & 17 March (Week 4)
- Readings:
    - Essential:
        - Butler & Rodrick, chapter 10 (pp 579 – 599);
        - Stanley Fish, 'There's No Such Thing As Free Speech, and It's a Good Thing Too' in H Aram Veeser (ed), *The Stanley Fish Reader* (1999) 145 – 164 (available from E-Reserve);
        - Butler & Rodrick, chapter 9 (part), paras 9.10 – 9.490 (pp 525 – 552).
    - Desirable:
        - Stanley Fish, 'Holocaust Denial and Academic Freedom' (2001) 35 *Valparaiso University Law Review* 499;
        - Richard H Weisberg, 'Fish Takes the Bait: Holocaust Denial and Post-Modernist Theory' 14 *Cardozo Studies in Law and Literature* 131 – 141.

Topic 4: Pornography

If we accept the harm principle then we should not regulate erotica simply in order to safeguard the morals of its consumers. But pornography has been accused of objectifying those who appear in it, particularly women. Indeed, it has been described as nothing more than hate speech directed towards women. Using feminist theory, free speech discourse and the latest findings in neuroscience, this lecture compares various regulatory approaches to sexual content.

- **Deadline for Quiz D: 11.00 pm, Sunday 22 March (Week 5)**
- Dates of tutorials relating to this topic: 23 & 24 March (Week 5)
- Readings:
    - Essential:
        - Regina Graycar and Jenny Morgan (eds), *Hidden Gender of Law* (Foundation Press, 2002) 403-19 (available from E-Reserve);
    - Butler & Rodrick, chapter 9 (part), paras 9.500 – 9.790 (pp 553 – 577).
    - Desirable:
        - Neil Thornton, 'The Politics of Pornography: a Critique of Liberalism and Radical Feminism' (1986) 22(1) *Australian and New Zealand Journal of Sociology*, 25 (available from E-Reserve);
        - Andrea Dworkin and Catherine MacKinnon, Appendix D: 'Model Anti-

pornography Civil-Rights Ordinance', *Pornography and Civil Rights: a New Day for Women's Equality* (Organizing against Pornography, Minneapolis, 1988) (available at http://www.nostatusquo.com/ACLU/dworkin/other/ordinance/newday/TOC.htm);

▪ Norman Doidge, 'Acquiring tastes and loves: What neuroplasticity teaches us about sexual attraction and love' in *The Brain That Changes Itself: Stories of Personal Triumph From the Frontiers of Brain Science* (2007), 93-131 (available from E-Reserve).

PART B: DEFAMATION LAW

Topic 5: Liability for Defamation

In Australia, one of the major legal constraints on journalistic freedom derives from defamation law. Starting off by asking whether any of us are entitled to laws that safeguard our reputations, this lecture considers how the tort of defamation is committed.

- **Deadline for Quiz E: 11.00 pm, Sunday 29 March (Week 6)**
- Dates of tutorials relating to this topic: 30 March & 31 March (Week 6)
- Readings:
    - Essential:
        - ▪ Butler & Rodrick, chapter 3 (part), paras 3.10 – 3.600 (pp 27 – 60);
    - Desirable:
        - ▪ Roy Baker, 'Defamation and the Moral Community' (2008) 13.1 *Deakin Law Review* 1 – 35;
        - ▪ Roy Baker, *Defamation Law and Social Attitudes: Ordinary Unreasonable People* (Edward Elgar, 2011), chapter 8 (pp 290 – 309).

Topic 6: Defamation Defences and Remedies

Continuing our analysis of defamation law, this lecture looks at the defences available to media outlets that cause damage to reputation, and asks whether those reputations are overly protected.

- **Deadline for Quiz F: 11.00 pm, Sunday 19 April (Week 7)**
- Dates of tutorials relating to this topic: 20 & 21 April (Week 7)
- Readings:
    - Essential:
        - ▪ Butler & Rodrick, chapter 3 (part), paras 3.610 – 3.1340 (pp 60 – 121).

Topic 7: Alternatives to Defamation

In this lecture I ask whether the tort of defamation is a broken tort, and whether the issue of

protection of reputation is not better addressed through other forms of legal action, such as the tort of injurious falsehood or negligence, or a new action for breach of privacy.

- **Deadline for Quiz G: 11.00 pm, Monday 27 April (Week 8)**
- Dates of tutorial relating to this topic: 28 April (Week 8: 27 April is a public holiday)
- Readings:
  - Essential:
    - Butler & Rodrick, chapter 3 (part), paras 3.1350 – 3.1500 (pp 121 – 131);
    - Butler & Rodrick, chapter 11 (pp 601 – 621);
  - Additional:
    - David Rolph, Matt Vitins and Judith Bannister, *Media Law: Cases, Materials and Commentary* (Oxford Uni Press, 1st edition, 2010), (available from E-Reserve), chapter 9 (pp 352 – 398).

PART C: PRIVACY

Topic 8: Access to Information

This lecture considers the extent to which the law both facilitates and hinders journalists' access to information, as well as its distribution via the media.

- **Deadline for Quiz H: 11.00 pm, Sunday 3 May (Week 9)**
- Dates of tutorials relating to this topic: 4 & 5 May (Week 9)
- Readings:
  - Essential:
    - Butler & Rodrick, chapter 7 (pp 395 – 446).

Topic 9: Privacy of Information and Communications

Controversy over phone hacking by journalists has exploded in the UK in recent years, has led to the closure of one of the country's oldest newspapers and could even threaten the Murdoch empire as we know it. This lecture considers whether the same thing could happen in Australia.

- **Deadline for Quiz J: 11.00 pm, Sunday 10 May (Week 10)**
- Dates of tutorials relating to this topic: 11 & 12 May (Week 10)
- Readings:
  - Essential:
    - Butler & Rodrick, chapter 8 (part), paras 8.10 – 8.440 (pp 447 – 473).

Topic 10: Personal Privacy

Historically, the common law never offered a remedy specifically designed to protect personal privacy. With the development of a more intrusive press, disquiet over this omission has become increasingly vocal. This lecture compares developments in the law of privacy in Australia with those overseas, particularly in Europe, where laws protecting privacy have a longer pedigree.

- **Deadline for Quiz K: 11.00 pm, Sunday 17 May (Week 11)**
- Dates of tutorials relating to this topic: 18 & 19 May (Week 11)
- Readings:
  - Essential:
    - Butler & Rodrick, chapter 8 (part), paras 8.450 – 8.1130 (pp 473 – 523).

PART D: MEDIA CONTROL

Topic 11: Broadcasting Regulation

Of all Australian media, television and radio have been the most tightly regulated in recent decades. With advances in technology, particularly digital broadcasting and the internet, justifications for retaining the traditional structure of regulation have become increasingly strained. This lecture considers the argument for and against rigorous government intervention in broadcasting and asks whether it is time to set television and radio free.

- **Deadline for Quiz L: 11.00 pm, Sunday 24 May (Week 12)**
- Dates of tutorials relating to this topic: 25 & 26 May (Week 12)
- Readings:
  - Essential:
    - Butler & Rodrick, chapter 14 (part), paras 14.10 – 14.1450 (pp 715 – 853).

Topic 12: Media Ownership

There is little point in freedom of expression if there is only one man talking. This lecture looks at how Australian law seeks to guarantee at least a modicum of media diversity, and why those efforts have been under attack in recent years.

- **Deadline for Quiz M: 11.00 pm, Sunday 31 May (Week 13)**
- Dates of tutorials relating to this topic: 1 & 2 June (Week 13)
- Readings:
  - Essential:
    - Butler & Rodrick, chapter 15 (pp 865 – 910).

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

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

Disruption to Studies Policy 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/

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.

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) 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

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.