# LAW 484

**Media Law**

S1 External 2015

*Dept of Law*

## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Information</td>
<td>2</td>
</tr>
<tr>
<td>Learning Outcomes</td>
<td>2</td>
</tr>
<tr>
<td>General Assessment Information</td>
<td>3</td>
</tr>
<tr>
<td>Assessment Tasks</td>
<td>5</td>
</tr>
<tr>
<td>Delivery and Resources</td>
<td>7</td>
</tr>
<tr>
<td>Unit Schedule</td>
<td>8</td>
</tr>
<tr>
<td>Policies and Procedures</td>
<td>13</td>
</tr>
</tbody>
</table>

## 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
Dr Roy Baker
roy.baker@mq.edu.au
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 BlntStudLLB or BPsys(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. quizzes (worth 24 marks in total);
2. the mid-semester written assignment (worth 36 marks);
3. the final take-home examination (worth 40 marks).

The assessment scheme in this unit requires students to engage with the unit’s entire syllabus, rather than just study a few out of the twelve topics. To stand any real chance of getting anything better than a bare pass, you are going to have to engage adequately with the quizzes. Doing well in these will make all the difference to your final grade.

**Quizzes**

External students may elect to join Group 1 or Group 2, depending on whether they prefer to be assessed by means of weekly quizzes or by means of two periodic quizzes.

**Group 1 students** will attempt 12 weekly quizzes referred to as Quizzes A to M. These are the same quizzes as will be attempted by internal students. The deadline for each quiz is set out in the Unit Schedule: put simply, one quiz is due each Sunday evening (apart from Quiz G, which falls on a Monday evening). Each quiz consists of two questions, making 24 questions in total. 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. The questions will become available to students once they have successfully completed all on-line activities relating to that week’s topic.

**Group 2 students** will attempt just two quizzes (instead of Quizzes A to M). These will be known as Quizzes Y and Z. The questions making up these quizzes will be different to the ones that make up Quizzes A to M. The deadlines for Quizzes Y and Z are as follows:

- Quiz Y: 11 pm, Wednesday 8 April 2015
- Quiz Z: 11 pm, Sunday 31 May 2015

Quiz Y will consist of 10 questions and will relate to Topics 1 – 5 (inclusive). Quiz Z will consist of 14 questions and will relate to Topics 1 – 12 (inclusive). There will therefore be 24 questions in
total, the same number of questions as in Quizzes A to M.

In the case of Groups 1 and 2 each quiz question will be worth one mark. The quizzes will be conducted using iLearn and students must post their responses via iLearn. Most questions will follow a 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.

The Group 2 assessment scheme is intended for external students who find it difficult to commit to undertaking the same amount of study each week. Even so, students are encouraged to join Group 1 if at all possible. Group 1 assessment is preferable for the following reasons:

1. It is in the student’s interest to study consistently throughout the session. Group 1 assessment encourages this.
2. The answers to Quizzes A to M will be released on a weekly basis, meaning that commencing Week 2 you will develop an idea of how you are progressing in the unit. The answers and accompanying feedback will also develop your learning from the outset. The answers to Quizzes Y and Z will only be released periodically.
Since Group 1 is considered the preferred option then all students will start out in that group. It is incumbent on students to notify me by email if they wish to transfer to Group 2. This must be done by 11 pm on Sunday, 1 March 2015. Failure to notify me by that time will result in you remaining in Group 1 (the default setting). Once students have notified me of their wish to transfer to Group 2 then they will be barred from attempting Quizzes A to M (unless notified otherwise). I cannot accept any transfers from Group 1 to Group 2 (or vice versa) after 11 pm on Sunday, 1 March.

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

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 answer (maximum 1,800 words) 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 answer (maximum 1,800 words) 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**

<table>
<thead>
<tr>
<th>Name</th>
<th>Weighting</th>
<th>Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quizzes</td>
<td>24%</td>
<td>Various</td>
</tr>
<tr>
<td>Mid-session assignment</td>
<td>36%</td>
<td>11 pm, 3 May 2015</td>
</tr>
<tr>
<td>Final examination</td>
<td>40%</td>
<td>9 am – 1 pm, 14 June 2015</td>
</tr>
</tbody>
</table>
Quizzes

Due: Various
Weighting: 24%

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
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.

**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.

**On-Campus Session**

There will be one on-campus session during Session 1 2015:

- Saturday 11 April – Sunday 12 April 2015, 9.30 am – 4.30 pm (covering Topics 1 – 7).

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

- preparing adequately for the OCS. This means listening to the relevant lectures, completing the associated 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 activities as directed by the tutor; and
• refraining from indulging in activities unrelated to the OCS, 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.

On-campus sessions are meant to be non-threatening environments in which students can make mistakes and own up to any difficulties with the material being studied. An OCS 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.

**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:
• If you want to acquire an additional textbook then I recommend:
• Other readings are available from Macquarie University library as a unit reading. You can find them using MultiSearch: [http://libguides.mq.edu.au/MultiSearch](http://libguides.mq.edu.au/MultiSearch).

**Part A: Free Speech**

**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?

- **Group 1:** deadline for Quiz A: 11.00 pm, Sunday 1 March (Week 2)
- **Group 2:** deadline for Quiz Y: 11.00 pm, Wednesday 8 April (during recess)
- 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);
  - Desirable:

**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.

- **Group 1:** deadline for Quiz B: 11.00 pm, Sunday 8 March (Week 3)
- **Group 2:** deadline for Quiz Y: 11.00 pm, Wednesday 8 April (during recess)
- 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);

**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
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.

• Group 1: deadline for Quiz C: 11.00 pm, Sunday 15 March (Week 4)
• Group 2: deadline for Quiz Y: 11.00 pm, Wednesday 8 April (during recess)
• 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;

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.

• Group 1: deadline for Quiz D: 11.00 pm, Sunday 22 March (Week 5)
• Group 2: deadline for Quiz Y: 11.00 pm, Wednesday 8 April (during recess)
• Readings:
  ◦ Essential:
    • Regina Graycar and Jenny Morgan (eds), Hidden Gender of Law (Foundation Press, 2002) 403-19 (available from E-Reserve);
  ◦ Desirable:
    • Andrea Dworkin and Catherine MacKinnon, Appendix D: ‘Model Anti-


**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.*

- Group 1: deadline for Quiz E: 11.00 pm, Sunday 29 March (Week 6)
- Group 2: deadline for Quiz Y: 11.00 pm, Wednesday 8 April (during recess)
- Readings:
  - Essential:
    - Butler & Rodrick, chapter 3 (part), paras 3.10 – 3.600 (pp 27 – 60);
  - Desirable:

**On-Campus Session 11 – 12 April (covering Topics 1 – 7 (inclusive))**

**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.*

- Group 1: deadline for Quiz F: 11.00 pm, Sunday 19 April (Week 7)
- Group 2: deadline for Quiz Z: 11.00 pm, Sunday 31 May (Week 13)
- Readings:
  - Essential:
    - Butler & Rodrick, chapter 3 (part), paras 3.610 – 3.1340 (pp 60 – 121).
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.

- **Group 1:** deadline for Quiz G: 11.00 pm, Monday 27 April (Week 8)
- **Group 2:** deadline for Quiz Z: 11.00 pm, Sunday 31 May (Week 13)
- **Readings:**
  - Essential:
    - Butler & Rodrick, chapter 3 (part), paras 3.1350 – 3.1500 (pp 121 – 131);
    - Butler & Rodrick, chapter 11 (pp 601 – 621);
  - Additional:

### 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.

- **Group 1:** deadline for Quiz H: 11.00 pm, Sunday 3 May (Week 9)
- **Group 2:** deadline for Quiz Z: 11.00 pm, Sunday 31 May (Week 13)
- **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.

- **Group 1:** deadline for Quiz J: 11.00 pm, Sunday 10 May (Week 10)
- **Group 2:** deadline for Quiz Z: 11.00 pm, Sunday 31 May (Week 13)
- **Readings:**
  - Essential:

#### 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.

- Group 1: deadline for Quiz K: 11.00 pm, Sunday 17 May (Week 11)
- Group 2: deadline for Quiz Z: 11.00 pm, Sunday 31 May (Week 13)
- Readings:
  - Essential:

**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.

- Group 1: deadline for Quiz L: 11.00 pm, Sunday 24 May (Week 12)
- Group 2: deadline for Quiz Z: 11.00 pm, Sunday 31 May (Week 13)
- Readings:
  - Essential:

**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.

- Group 1: deadline for Quiz M: 11.00 pm, Sunday 31 May (Week 13)
- Group 2: deadline for Quiz Z: 11.00 pm, Sunday 31 May (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:


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...
Unit guide LAW 484 Media Law

applies to all who connect to the MQ network including students.