



# LAW 550

## Litigation

S2 Day 2014

*Dept of Law*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Unit Convenor

Ilija Vickovich

[ilija.vickovich@mq.edu.au](mailto:ilija.vickovich@mq.edu.au)

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W3A 624

Mon 10am-12pm

Credit points

3

Prerequisites

12cp in LAW units at 300 level and (admission prior to 2014 to LLB or BAppFinLLB or BALLB or BA-MediaLLB or BA-PsychLLB or BBALLB or BComLLB or BCom-ProfAccgLLB or BEnvLLB or BITLLB or BIntStudLLB or BScLLB or BSocScLLB)

Corequisites

LAW315 and (LAW406 or LAW456)

Co-badged status

Unit description

This unit examines fundamental aspects of litigation, which deals with principles and rules governing the preparation and conduct of disputes to be heard by courts of law. It covers the principles of civil procedure, and the rules of evidence in civil and criminal matters. Major topics include pre-trial civil procedures, concepts of relevance, privilege and proof, and major aspects of evidence law such as competence and compellability of witnesses, examination of witnesses, hearsay, admissions, opinion, tendency and coincidence, credibility and character evidence and unreliable evidence. Particular attention is paid to current uniform evidence legislation. It also introduces students to issues concerning the nature of adversarial disputation, the ethics of litigation practice, and access to and administration of justice.

## 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:

demonstrate an understanding of the nature and managing principles of civil procedure

demonstrate an understanding of the reasons for and content of pre-trial rules of procedure

demonstrate an understanding of the reasons for and content of trial rules of procedure

demonstrate an understanding of the reasons for and content of the principal rules of evidence

demonstrate an understanding of the reasons for and content of the main exceptions to the principal rules of evidence

critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules

apply the principal procedural and evidentiary rules to factual scenarios and problems.

## General Assessment Information

### Disruption to Study and Special Consideration

If a student suffers a disruption to study which is **'serious and unavoidable'**, he or she may apply for special consideration. In order to do so, the student must meet the criteria under the Macquarie University 'Disruption to Studies' policy and be approved by the Unit Convenor. Applications are made online at [ask.mq.edu.au](http://ask.mq.edu.au). Outcomes for recognized serious and unavoidable disruptions to studies are as set out in the University schedule: [http://www.mq.edu.au/policy/docs/disruption\\_studies/schedule\\_outcomes.html](http://www.mq.edu.au/policy/docs/disruption_studies/schedule_outcomes.html)

If a disruption to study is **not 'serious and unavoidable'**, the approach to special consideration and the impact on your assessment will be as follows:

1. **Attendance for tutorial and on campus session:** You will be marked as absent.
2. **Class Participation**
  - For tutorial: You will receive a zero grade for class participation if there are more than three unauthorized absences
  - For on campus session: You will receive a zero grade for the class participation.
3. **Early Assessment Quiz and Assignment**
  - No submission: You will receive a zero grade for the assessment task.
  - Late submission: You will receive a zero grade for the assessment task.
  - Preparation affected: You will receive a zero grade for the assessment task.
4. **Final Examination**
  - Absence: You will receive a zero grade for the Final Examination.
  - Performance affected: You will receive a zero grade for the Final Examination and no right to sit for a supplementary exam.
  - Preparation affected: You will receive a zero grade for the Final Examination and no right

to sit for a supplementary exam.

## Assessment Tasks

Name	Weighting	Due
<a href="#"><u>Class participation</u></a>	10%	Ongoing
<a href="#"><u>Early assessment</u></a>	10%	Week 4
<a href="#"><u>Assignment</u></a>	30%	18 Sep (int); 8 Oct (ext)
<a href="#"><u>Final exam</u></a>	50%	Week 15

### Class participation

Due: **Ongoing**

Weighting: **10%**

Students will participate in a compulsory one-hour tutorial every week that will provide the opportunity to explore, analyse and apply the principal doctrinal rules covered in lectures. Student must enrol in a tutorial group and attend tutorials only for that group for the rest of the semester. In order to qualify for a class participation mark (10%), internal students must attend at least 9 of the 12 scheduled tutorials in the tutorial group in which they are enrolled. External students will be expected to fulfil the class participation requirements at the On-Campus Session (OCS), which is to be held on Tue 30 Sep and Wed 1 Oct. **Failure to fulfil class participation requirements will result in a zero mark for class participation.**

All external students must make the necessary personal and work arrangements to attend the On Campus Session. In the event of an exceptional and unforeseen inability to attend the On Campus Session, students must contact the unit convenor urgently and also make an application with appropriate evidence under the university's disruption to study policy. If approved, the unit convenor will allocate written work to the student in lieu of attendance. An unauthorised absence from the On Campus Session will provide the unit convenor with grounds to exclude the student from the unit.

Tutorials will focus on addressing the set Questions in the Tutorial Program, although other tutorial exercises may be distributed from time to time. Because of the minimal time available in tutorials, students will be expected to have attempted the Questions at home in study time and to bring their notes to class where group discussion will take place. Students should be prepared to talk to any of the set Questions when called upon to do so by their Tutor. Grading criteria for the class participation mark will be posted on the iLearn unit web page. Class participation marks will be posted on the iLearn unit web page (in student number order) upon the cessation of classes.

On successful completion you will be able to:

- demonstrate an understanding of the nature and managing principles of civil procedure
- demonstrate an understanding of the reasons for and content of pre-trial rules of procedure
- demonstrate an understanding of the reasons for and content of trial rules of procedure
- demonstrate an understanding of the reasons for and content of the principal rules of evidence
- demonstrate an understanding of the reasons for and content of the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- apply the principal procedural and evidentiary rules to factual scenarios and problems.

## Early assessment

Due: **Week 4**

Weighting: **10%**

This assessment task complies with the University's early assessment policy. Its purpose is to engage students with their unit as soon as possible and to provide an opportunity for early feedback. Internal students will complete this task in their tutorial class in week 4. External students will attempt the test on the first day of the OCS.

The early assessment will test students' incorporation of fundamental concepts of litigation systems and civil procedure. It will test students' knowledge and understanding of materials and readings based on the first three lectures of the semester. The test will be an in-class 20 minute closed book paper quiz comprising twenty (20) multiple choice questions. Each tutorial group will attempt a different but comparable test. Early assessment test marks will be posted on the iLearn unit web page (in student number order) in week 5.

Students who are unable to sit for the test in their enrolled tutorial group in week 4 must contact the unit convenor at the earliest possible opportunity to complete the test at a time and place determined by the unit convenor. They will not be permitted to sit the test in another tutorial class, or in their own group in any subsequent week. Any student who has not completed the test must not be present in their tutorial group at a time when feedback on the test is given by the tutor. If that occurs, the student will not be permitted to sit the test at all and will receive a zero grade for the early assessment task.

On successful completion you will be able to:

- demonstrate an understanding of the nature and managing principles of civil procedure
- demonstrate an understanding of the reasons for and content of pre-trial rules of procedure
- demonstrate an understanding of the reasons for and content of trial rules of procedure

## Assignment

Due: **18 Sep (int); 8 Oct (ext)**

Weighting: **30%**

The Assignment in this unit is compulsory and will be a hypothetical problem question. The assignment question will be available on iLearn in week 2. The assignment must be a properly referenced formal response with appropriate analysis and argument supported by relevant authoritative cases and commentary. It must be kept to a maximum 1,500 words (excluding footnotes) and is to be submitted on the Turnitin link in iLearn. The actual word length must be stated on the assignment. In completing their assignment, students must comply with the *Australian Guide to Legal Citation* (3rd ed). The Guide is available at:

<http://mulr.law.unimelb.edu.au/go/AGLC3>

Assignments lodged out of time will not be marked and will result in a zero grade for the assignment. Students who are seeking an extension of time must contact the unit convenor at the earliest possible opportunity and also lodge an application in accordance with the University's disruption to study policy. If the application is approved by the unit convenor, an extension may be granted. The length of the extension will depend on the extent and nature of the disruption, but extensions are usually limited to maximum of seven days. A failure to submit an Assignment will provide grounds for the unit convenor to have the student excluded from the unit.

On successful completion you will be able to:

- demonstrate an understanding of the reasons for and content of trial rules of procedure
- demonstrate an understanding of the reasons for and content of the principal rules of evidence
- demonstrate an understanding of the reasons for and content of the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- apply the principal procedural and evidentiary rules to factual scenarios and problems.

## Final exam

Due: **Week 15**

Weighting: **50%**

The end of semester examination in this unit will be a formal sit-down open book examination. It will be based on material covered in the unit (more detailed information will be provided by the unit convenor). The examination will provide choice between hypothetical and essay questions. Two and a half hours plus reading time will be provided. The University's examination period in Session 2 is from 17 November 2014 to 5 December 2014. Students must be available for examination at the time and place designated in the University examination timetable. The timetable will be available in draft form approximately eight weeks before the commencement of the examinations and in final form approximately four weeks before the commencement of the examinations.

Any student who is unable to attend the final exam due to exceptional and unforeseen circumstances must contact the unit convenor at the earliest possible opportunity and also make an application, with appropriate evidence, in accordance with the university's disruption to study policy. If approved, the student may be permitted to attend any supplementary exam that is held for the unit at a time and place determined by the unit convenor. In such cases, students must be prepared to attend the supplementary exam outside the official university exam period.

On successful completion you will be able to:

- demonstrate an understanding of the reasons for and content of the principal rules of evidence
- demonstrate an understanding of the reasons for and content of the main exceptions to the principal rules of evidence
- apply the principal procedural and evidentiary rules to factual scenarios and problems.

## Delivery and Resources

**DELIVERY AND RESOURCES** Delivery: Day, External

**This unit will use:** iLearn webpage and Echo recorded lectures

**Times and Locations for Lectures and Tutorials** For current updates, lecture times and classrooms please consult the MQ Timetables website: <http://www.timetables.mq.edu.au>.

### Prescribed Texts:

D Boniface, M Kumar & M Legg, *Principles of Civil Procedure in NSW*, 2<sup>nd</sup> ed, Lawbook Co, 2012

J Anderson & P Bayne, *Uniform Evidence Law: Text and Essential Cases*, 2nd ed, The Federation Press, 2009

### Recommended Texts

A Ligertwood & G Edmond, *Australian Evidence: A Principled Approach to the Common Law and the Uniform Acts*, 5th ed, LexisNexis, 2010

J Anderson, N Williams & L Clegg, *The New Law of Evidence: Annotation and Commentary on the Uniform Evidence Acts*, 2nd ed, LexisNexis 2009

Hon D Heydon, *Cross on Evidence*, 8th ed. LexisNexis, 2009

S Odgers, *Uniform Evidence Law*, 9th ed, Lawbook Co, 2010

M Kumar, S Odgers & E Peden, *Uniform Evidence Law: Commentary and Materials*, 3rd ed, Lawbook Co, 2009

B Cairns, *Australian Civil Procedure*, 8th ed, Lawbook Co, 2009

D Bamford, A Leaver & M Rankin, *Principles of Civil Litigation*, Lawbook Co, 2010

## Unit Schedule

Week	Topic
1	Introduction; Overview of Litigation Systems
2	Civil Procedure I
3	Civil Procedure II
4	Privilege and Confidentiality; Proof
5	Trial Process I
6	Trial process II
7	Relevance; Exclusion of Admissible Evidence
8	Hearsay Evidence
9	Hearsay Evidence; Admissions
10	Opinion Evidence
11	Tendency and Coincidence Evidence
12	Credibility and Character Evidence

Note: tutorials commence in week 2

## 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/)

Any application for extensions of time must comply with the information provided in this Unit Guide under 'Assessment Tasks'. An application in accordance with the university's disruption to study policy will be required in all cases.

Students requiring special arrangements for the completion of any assessment task (including the final exam) due to any disability must contact Campus Wellbeing and seek advice. The unit convenor will deal with such cases only with the approval of Campus Wellbeing.

### Macquarie Law School Assessment Policy

Word limits in Macquarie Law School assessments are strictly applied. The word limit does not include footnotes or bibliographies where they are required. Unless explicitly indicated otherwise, referencing must comply with the current version of the *Australian Guide to Legal Citation*. In the absence of a successful application for special consideration, any assessment task submitted after its published deadline will not be graded and will receive a mark of zero.

## 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.

Students with disability who wish to seek special consideration for any assessment item must

advise the unit convenor and also formally apply for special consideration for each task.

## 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

- demonstrate an understanding of the nature and managing principles of civil procedure
- demonstrate an understanding of the reasons for and content of pre-trial rules of procedure
- demonstrate an understanding of the reasons for and content of trial rules of procedure
- demonstrate an understanding of the reasons for and content of the principal rules of evidence
- demonstrate an understanding of the reasons for and content of the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- apply the principal procedural and evidentiary rules to factual scenarios and problems.

#### Assessment tasks

- Class participation
- Early assessment
- Assignment
- Final exam

## Commitment to Continuous Learning

Our graduates will have enquiring minds and a literate curiosity which will lead them to pursue knowledge for its own sake. They will continue to pursue learning in their careers and as they participate in the world. They will be capable of reflecting on their experiences and relationships with others and the environment, learning from them, and growing - personally, professionally and socially.

This graduate capability is supported by:

### Assessment tasks

- Class participation
- Assignment
- Final exam

## 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

- demonstrate an understanding of the nature and managing principles of civil procedure
- demonstrate an understanding of the reasons for and content of pre-trial rules of procedure
- demonstrate an understanding of the reasons for and content of trial rules of procedure
- demonstrate an understanding of the reasons for and content of the principal rules of evidence
- demonstrate an understanding of the reasons for and content of the main exceptions to the principal rules of evidence
- apply the principal procedural and evidentiary rules to factual scenarios and problems.

### Assessment tasks

- Class participation
- Final exam

## Critical, Analytical and Integrative Thinking

We want our graduates to be capable of reasoning, questioning and analysing, and to integrate and synthesise learning and knowledge from a range of sources and environments; to be able to critique constraints, assumptions and limitations; to be able to think independently and systemically in relation to scholarly activity, in the workplace, and in the world. We want them to have a level of scientific and information technology literacy.

This graduate capability is supported by:

### Learning outcomes

- demonstrate an understanding of the reasons for and content of pre-trial rules of procedure
- demonstrate an understanding of the reasons for and content of trial rules of procedure
- demonstrate an understanding of the reasons for and content of the principal rules of evidence
- demonstrate an understanding of the reasons for and content of the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- apply the principal procedural and evidentiary rules to factual scenarios and problems.

### Assessment tasks

- Class participation
- Final exam

## 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:

### Learning outcomes

- demonstrate an understanding of the nature and managing principles of civil procedure
- demonstrate an understanding of the reasons for and content of trial rules of procedure
- demonstrate an understanding of the reasons for and content of the principal rules of evidence
- demonstrate an understanding of the reasons for and content of the main exceptions to

the principal rules of evidence

- apply the principal procedural and evidentiary rules to factual scenarios and problems.

## **Assessment tasks**

- Class participation
- Assignment

## **Creative and Innovative**

Our graduates will also be capable of creative thinking and of creating knowledge. They will be imaginative and open to experience and capable of innovation at work and in the community. We want them to be engaged in applying their critical, creative thinking.

This graduate capability is supported by:

## **Learning outcomes**

- demonstrate an understanding of the reasons for and content of the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- apply the principal procedural and evidentiary rules to factual scenarios and problems.

## **Assessment task**

- Class participation

## **Effective Communication**

We want to develop in our students the ability to communicate and convey their views in forms effective with different audiences. We want our graduates to take with them the capability to read, listen, question, gather and evaluate information resources in a variety of formats, assess, write clearly, speak effectively, and to use visual communication and communication technologies as appropriate.

This graduate capability is supported by:

## **Learning outcome**

- apply the principal procedural and evidentiary rules to factual scenarios and problems.

## **Assessment task**

- Class participation

## **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:

### Assessment tasks

- Class participation
- Assignment

## Socially and Environmentally Active and Responsible

We want our graduates to be aware of and have respect for self and others; to be able to work with others as a leader and a team player; to have a sense of connectedness with others and country; and to have a sense of mutual obligation. Our graduates should be informed and active participants in moving society towards sustainability.

This graduate capability is supported by:

### Learning outcome

- critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules

### Assessment tasks

- Class participation
- Early assessment

## Changes since First Published

Date	Description
16/07/2014	Disruption to Study and Special Consideration