



# LAW 583

## Special Seminar 3

S2 Day 2015

*Dept of Law*

### Contents

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<u>General Information</u>	2
<u>Learning Outcomes</u>	2
<u>Assessment Tasks</u>	3
<u>Delivery and Resources</u>	5
<u>Unit Schedule</u>	7
<u>Policies and Procedures</u>	12
<u>Graduate Capabilities</u>	13

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Unit Convenor

Judith Preston

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N/A

By Appointment

Credit points

3

Prerequisites

6cp in LAW units at 300 level(P) and permission of Executive Dean of Faculty

Corequisites

Co-badged status

Unit description

This unit accommodates the special skills and expertise of visitors to Macquarie Law School or accommodates a unit of study in developmental mode according to the teaching plans of the School. The unit is designed to capture particular expertise and interest of colleagues, both professional and academic. The particular subject area of the unit will change from year to year.

## 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 history and context of environmental dispute resolution (EDR).

Demonstrate an understanding of the theoretical basis of EDR

Critically analyse the role various mechanisms and state and non-state actors in EDR

Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.

Identify the emerging trends and influences shaping EDR.

Propose solutions and reform for the EDR process.

Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting

Engage in a practical problem-based EDR exercise

## Assessment Tasks

Name	Weighting	Due
<a href="#">Quiz</a>	20%	Wednesday 23 September 2015
<a href="#">EDR Practice Exercise</a>	20%	Wednesday 30 September 2015
<a href="#">Research Essay</a>	60%	Monday 9 November 2015

### Quiz

Due: **Wednesday 23 September 2015**

Weighting: **20%**

There will be a short quiz consisting of multiple choice and short answer questions designed to test your understanding of the basic concepts of the unit and to provide early feedback. This quiz is will be available from 9:00am on Monday 21st of September. It is due by 12:00am on Wednesday 23rd of September 2015.

On successful completion you will be able to:

- Demonstrate an understanding of the history and context of environmental dispute resolution (EDR).
- Demonstrate an understanding of the theoretical basis of EDR
- Critically analyse the role various mechanisms and state and non-state actors in EDR

### EDR Practice Exercise

Due: **Wednesday 30 September 2015**

Weighting: **20%**

Students will prepare a short document for litigation - such as an originating application - before a relevant Court or Tribunal in NSW based on a fact scenario. The application will be limited to, say, four pages (with details given at the OCS).

On successful completion you will be able to:

- Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.
- Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting
- Engage in a practical problem-based EDR exercise

## Research Essay

Due: **Monday 9 November 2015**

Weighting: **60%**

The research essay requires students to select a topic from the list of essay topics provided by the Unit Convenor. These will be made available shortly before the OCS. Alternatively, if a student wishes to select his or her own topic, he or she must seek approval of the topic three weeks after OCS (October 9th 2015). The paper should be well-structured including sub-headings where appropriate. The introduction should set out the scope of the paper. You need to include sufficient detail of the specific legal principles or regime and analysis/application of that law. Your conclusion should include recommendations for new law, law reform, further research and/or creative application of the existing law where appropriate. The essay should be fully referenced according to the Australian Guide to Legal Citation. The maximum word length is 4000 words.

On successful completion you will be able to:

- Demonstrate an understanding of the theoretical basis of EDR
- Critically analyse the role various mechanisms and state and non-state actors in EDR
- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.
- Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting

## Delivery and Resources

### Technology used and required:

This unit will use:

iLearn accessed at <http://ilearn.mq.edu.au>

Times and Locations for Lectures and Tutorials:- W6B Tutorial Room 336 on each day of the OCS

For current updates, lecture times and classrooms please consult the MQ Timetables website: <http://timetables.mq.edu.au>

### Teaching and Learning Strategy:

This course is scheduled to run as an intensive course from Thursday October 2 to Saturday October 4, 2014 between 9.00am -5.00pm

The course will be delivered in lectures with provision for group discussion, All students are expected to read the reading materials provided on ILearn and refer to texts recommended prior to the commencement of the OCS.

The moot exercise will be conducted in small groups. The task will be marked as a group task.

### Information:

#### Required and recommended resources:

##### Prescribed

There is no prescribed textbook. All materials for this unit are on e-reserve or accessible via the internet. The Reading List, with details of the materials, is on ILearn.

##### Recommended

In addition to the set reading there are a range of textbooks available from the university library which you may find useful or if you wish to do some extra reading on a particular topic. The following list is not exhaustive and a search of the library catalogue may reveal other useful texts.

#### For students new to the study of law or in need of a refresher we recommend:

Michelle Sanson, David Worswick and Thalia Anthony, *Connecting with Law* (Oxford University Press 2nd Edition 2010 )

Trischa Mann (ed), *Australian Law Dictionary* (Oxford University Press, 2009).

#### The following text is an excellent aid for academic writing and university study in general:

Jean Brick, *Academic Culture: A Students Guide to Studying at University* (NCELTR Publications 2009)

#### Other relevant texts include:

L S Bacow and M Wheeler, *Environmental Dispute Resolution* (Plenum Press, 1984).

Gerry Bates, *Environmental Law in Australia*, (LexisNexis Butterworth's, 8th ed, 2013)

U Beyerlin, et al (eds), *Ensuring Compliance with Multilateral Environmental Agreements: A Dialogue*

between Practitioners and Academia (Martinus Nijhoff Publishers, 2006).

D E Fisher, *Australian Environmental Law* (Thomson Reuters,3rd edition,2014).

Michael Freeman, *Alternative Dispute Resolution* (New York University Press, 1995).

Rosemary Lyster, et al, *Environmental and Planning Law in NSW* (Federation Press,#rd edition 2012). Brian J Preston, *Environmental Litigation* (Law Book, 1989).

Roger Sidaway, *Resolving Environmental Disputes: From Conflict to Consensus* (Earthscan, 2005).

Tania Sourdin, *Alternative Dispute Resolution* (Thomson Reuters, 4th ed, 2012).

David Spencer and Samantha Hardy, *Dispute Resolution in Australia: Cases, Commentary and Materials* (Thomson Reuters, 2nd ed, 2009).

David Spencer, *Essential Dispute Resolution* (Cavendish Publishing, 2nd ed,2005)

Michael Legg(ed),*The Future of Dispute Resolution*, (Lexis Nexis Butterworths,2013)

**(Please note that in consulting these texts they should be read carefully because subsequent developments may mean the text no longer reflects the current law.)**

**Some useful journals are:**

Australasian Dispute Resolution Journal

Environmental and Planning Law Journal

Commercial Dispute Resolution Journal

International Journal of Sociology and the Law

Journal of Dispute Resolution

Journal of environmental law and litigation

Journal of International Arbitration

Local Government Law Journal

Negotiation Journal

Ohio State journal on dispute resolution

Pepperdine dispute resolution law journal

Willamette journal of international law and dispute resolution

**Websites:**

Austlii - [www.austlii.edu.au](http://www.austlii.edu.au)

Land and Environment Court - <http://www.lawlink.nsw.gov.au/lec>

Environmental Defenders Office - <http://www.edo.org.au>

**Changes since the last offering of the unit:**

There is no assessment for class participation and the research essay is a set topic.

**Other Material:**

Comprehensive reading and resources for the unit will be available on ILearn.

## **Unit Schedule**

### **Day 1 of the OCS – 16 September 2015**

9.00-10.30

1 Introduction – Administration, Introductions, Course Aims and Themes

2 Characteristics of Environmental Disputes

10:30-11.00

Morning Tea Break

11:00-12:30

3 Overview of Environmental Dispute Mechanisms

- Litigation
- Conciliation
- Mediation

4 Overview of the Court System & Tribunals

The Judicial System – Hierarchy etc

Specific bodies:

- Land & Environment Court
- Federal Court
- Court of Appeal
- Local Court
- Tribunals
- Administrative Appeals Tribunal
- NSW Civil and Administrative Tribunal
- Planning & Assessment Commission
- Case Study – Planning & Assessment Commission v Land & Environment Court

12:30-1.30

Lunch

1:30-3.00

5 Types of Environmental Disputes - Merits Review, Judicial Review and Civil Enforcement

3:00-3:30

Afternoon Tea

3:30-5:00

6 Remedies

- Merits - approve, approve with conditions, overturn
- Judicial Review – void & remit
- Civil Enforcement – injunction, declaration, Court thinks fit
- Criminal – fine, gaol
- Additional Court Orders – restoration & remediation, publicity, payment to environmental organisation



- Common law – damages, prohibition, certiorari, mandamus
- Discretion

## Day 2 of the OCS - 17 September 2015

### 9.00-10.30

#### 7 Limitations

- Merits – costs, limited availability
- Judicial review - privative clause, costs, decision-maker can remake
- Civil Enforcement – investigative powers
- Case Studies
  - Judicial review – Carlton United Brewery case, Catherine Hill Bay case
  - Merits – Bulga, Gerroa or Ulan, Newcastle Speleological, Ashton
  - Civil Enforcement – Delta, Maules Creek
  - Mediation – Yass, Dargues Reef

### 10:30-11.00

#### Morning Tea Break

### 11:00-12:30

#### 8 Overview of public interest litigation

- Standing
- Security for Costs
- Costs – Protective Costs Orders, Public Interest Test
- Undertaking for damages
- Expert /Concurrent evidence
- Legal Aid
- Specialist Court – public interest and accessibility mandate, public interest jurisprudence
- SLAPP Suits

12:30-1.30

Lunch

1:30-3.00

9 From Genesis to Judgment – Practicing in the Land & Environment Court

3:00-3:30

Afternoon Tea

3:30-5:00

10 Litigation – Guest Lecturer: A Barrister’s Perspective on Advocacy (TBC)

### **Day 3 of the OCS - 18 September 2015**

9.00-10.30

11 Overview of Mediation/Conciliation

- Theory & Principles
- In Practice – NCAT, LEC
- Case Studies

10:30-11.00

Morning Tea Break

11:00-12:30

12 Mediation – Mediating in Environmental Disputes: Lessons, Tips & Pitfalls (TBC)

12:30-1.30

Lunch

1:30-3.00

### 13 International Developments

- International Tribunals
- Specialist Courts in other Jurisdictions
- Case Study – Whales Litigation

### 14 Future trends

3:00-3:30

Afternoon Tea

3:30-5:00

### 15 Science in the Court Room

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## 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).

## Extensions and penalties for late submission

**There may be circumstances to warrant late submission of written assessments or attend classes in the OCS. If students wish to obtain an extension of time or exemption from attendance in class, a written application must be made with appropriate written evidence in support, to the Convener at least one week before the due date.**

**Failure to submit work on time or attend any part of classes in the OCS without written approval may be grounds for failure to satisfactorily complete the requirements of this unit and may result in an "F" grade.**

## Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

## Learning Skills

Learning Skills ([mq.edu.au/learningskills](http://mq.edu.au/learningskills)) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

## Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

## Student Enquiries

For all student enquiries, visit Student Connect at [ask.mq.edu.au](http://ask.mq.edu.au)

## IT Help

For help with University computer systems and technology, visit <http://informatics.mq.edu.au/help/>.

When using the University's IT, you must adhere to the [Acceptable Use Policy](#). The policy applies to all who connect to the MQ network including students.

## Graduate Capabilities

### 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

- Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.
- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.

### Assessment task

- EDR Practice Exercise

### 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

- Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.
- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.
- Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting
- Engage in a practical problem-based EDR exercise

## Assessment tasks

- EDR Practice Exercise
- Research Essay

## 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:

## Learning outcomes

- Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.
- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.

## Assessment task

- Research Essay

## 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 history and context of environmental dispute resolution (EDR).
- Demonstrate an understanding of the theoretical basis of EDR
- Critically analyse the role various mechanisms and state and non-state actors in EDR
- Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.
- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.

## Assessment task

- EDR Practice Exercise

## 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

- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.

## Assessment tasks

- Quiz
- Research Essay

## Problem Solving and Research Capability

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

This graduate capability is supported by:

## Learning outcomes

- Propose solutions and reform for the EDR process.
- Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting
- Engage in a practical problem-based EDR exercise

## Assessment tasks

- Quiz
- EDR Practice Exercise
- Research Essay

## 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

- Engage in a practical problem-based EDR exercise

### Assessment tasks

- EDR Practice Exercise
- Research Essay

## Engaged and Ethical Local and Global citizens

As local citizens our graduates will be aware of indigenous perspectives and of the nation's historical context. They will be engaged with the challenges of contemporary society and with knowledge and ideas. We want our graduates to have respect for diversity, to be open-minded, sensitive to others and inclusive, and to be open to other cultures and perspectives: they should have a level of cultural literacy. Our graduates should be aware of disadvantage and social justice, and be willing to participate to help create a wiser and better society.

This graduate capability is supported by:

### Learning outcomes

- Demonstrate an understanding of the history and context of environmental dispute resolution (EDR).
- Demonstrate an understanding of the theoretical basis of EDR



- Identify the emerging trends and influences shaping EDR.

## 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 outcomes

- Critically analyse the role various mechanisms and state and non-state actors in EDR
- Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.
- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.