



# LAW 888

## International Dispute Settlement

S2 Day 2016

*Dept of Law*

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#### **Disclaimer**

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

## General Information

Unit convenor and teaching staff

Co-convenor

Natalie Klein

[natalie.klein@mq.edu.au](mailto:natalie.klein@mq.edu.au)

Contact via [natalie.klein@mq.edu.au](mailto:natalie.klein@mq.edu.au)

W3A526

Thursdays, 9-10am during teaching weeks or by appointment

Co-convenor

Joanna Mitchell

[joanna.mitchell@mq.edu.au](mailto:joanna.mitchell@mq.edu.au)

Contact via [joanna.mitchell@mq.edu.au](mailto:joanna.mitchell@mq.edu.au)

Wednesdays, 1-2pm during teaching weeks, or by appointment

Credit points

4

Prerequisites

Admission to MIntLawGovPP or MIntEnvLaw or PGDiplntEnvLaw or PGCertIntEnvLaw or LLM or MIntTrdeComLaw or PGDiplntTrdeComLaw or PGCertIntTrdeComLaw or MIntRelMIntTrdeComLaw or 42cp in LAW or LAWS units at 400 or 500 level or (admission to JD and 32cp in LAW or LAWS units at 800)

Corequisites

LAW891

Co-badged status

This unit is co-taught with LAWS588.

Unit description

The intense interaction between different actors in the international system inevitably leads to opposing views on issues, as well as to conflict. This unit will consider traditional non-adversarial dispute settlement in the international system. It will then focus on how various international courts and tribunals resolve disputes in different areas of international law (such as trade, investment, human rights, and international criminal law). Students will be placed in the position of a lawyer deciding on international litigation options. An ongoing question will be the effectiveness of these procedures, and the parties' compliance with the decisions of the different bodies.

## 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:

**UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT:** Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.

**CRITICAL ANALYSIS:** Undertake high-level analysis in discussing, explaining, describing, identifying, formulating and presenting arguments based on independent research and reading of relevant literature. Evaluate and critique from interdisciplinary perspectives the operation of international courts and tribunals and the actions of stakeholders in engaging (or not) with those institutions.

**PROBLEM SOLVING:** Untangle factual problems to elucidate, apply and assess in a sophisticated manner the relevant legal principles in international dispute settlement. Present informed views in oral and written form based on in-depth and broad knowledge acquired through independent and thorough research in and engagement with the unit content.

**EXPANDING GLOBAL PERSPECTIVES:** Discuss knowledgeably, explain, and critique in oral and written form different viewpoints from an international perspective.

**MAINTAINING ETHICAL AND PROFESSIONAL STANDARDS:** Present original and independent work for assessment that conforms with the letter and spirit of the Academic Honesty Policy and the Student Code of Conduct. Conduct yourself as a legal professional through consistent attendance, punctuality, and respectful discourse.

## General Assessment Information

In the absence of a successful application for special consideration due to a disruption to studies, any assessment task submitted after its published deadline will not be graded and will receive a mark of zero. Applications for a Disruption to Studies are made electronically via [ask.mq.edu.au](http://ask.mq.edu.au) and should be accompanied by supporting documentation. Students should refer to the Disruption to Studies policy for complete details of the policy and a description of the supporting documentation required.

Word limits will be strictly applied and work above the word limit will not be marked.

All written assessments in the unit are to be submitted electronically. Plagiarism detection software is used in this unit.

## Assessment Tasks

Name	Weighting	Due
<a href="#"><u>Class Participation</u></a>	10%	Ongoing
<a href="#"><u>Research Essay Questions</u></a>	60%	5pm, Friday, Oct 14
<a href="#"><u>Short Answer Questions</u></a>	30%	5pm Nov 13

### Class Participation

Due: **Ongoing**

Weighting: **10%**

(a) Substantive requirements in relation to class participation

Students will be assessed on the basis of their knowledge, understanding and ability critically to evaluate the issues raised in each topic, as demonstrated through participation in class discussions and responses to assigned questions in the tutorials or oncampus session. Students should be prepared to talk about the assigned readings, provide their own assessment of those readings and lecture content, and contribute to the discussion of questions and problems set in relation to assigned readings and lectures. Students are also to participate in discussions that extend beyond these set questions and readings through their own evaluation of the issues raised.

(b) Formal requirements in relation to class participation

Internal students are to attend all tutorials during the semester and external students are to attend both days of the oncampus session. If you cannot attend and you meet the criteria for Disruption to Studies, you must so apply for approval by one of the Unit Convenors. Applications for Disruption to Studies are made online at [ask.mq.edu.au](http://ask.mq.edu.au) Such an absence will constitute an 'explained absence' and will be taken into consideration in assessing class participation.

Further details on the assignment of tutorial questions to students, the class participation rubric and the assessment methodology will be posted on iLearn.

On successful completion you will be able to:

- UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT: Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.

- **CRITICAL ANALYSIS:** Undertake high-level analysis in discussing, explaining, describing, identifying, formulating and presenting arguments based on independent research and reading of relevant literature. Evaluate and critique from interdisciplinary perspectives the operation of international courts and tribunals and the actions of stakeholders in engaging (or not) with those institutions.
- **PROBLEM SOLVING:** Untangle factual problems to elucidate, apply and assess in a sophisticated manner the relevant legal principles in international dispute settlement. Present informed views in oral and written form based on in-depth and broad knowledge acquired through independent and thorough research in and engagement with the unit content.
- **EXPANDING GLOBAL PERSPECTIVES:** Discuss knowledgeably, explain, and critique in oral and written form different viewpoints from an international perspective.
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## Research Essay Questions

Due: **5pm, Friday, Oct 14**

Weighting: **60%**

Students will be required to research answers to 3 essay questions, out of a choice of 5 questions, about contemporary legal issues related to international dispute settlement and the courts and tribunals resolving those disputes. Each answer is to be a maximum of 1500 words and will be given a mark out of 20, for a total mark out of 60. The questions will be posted on iLearn in Week 3.

Substantive and formal criteria and the marking rubric will be posted on iLearn. The assignment is to be posted via Turnitin on the iLearn site.

On successful completion you will be able to:

- **UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT:** Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.
- **CRITICAL ANALYSIS:** Undertake high-level analysis in discussing, explaining, describing, identifying, formulating and presenting arguments based on independent research and reading of relevant literature. Evaluate and critique from interdisciplinary

perspectives the operation of international courts and tribunals and the actions of stakeholders in engaging (or not) with those institutions.

- **EXPANDING GLOBAL PERSPECTIVES:** Discuss knowledgeably, explain, and critique in oral and written form different viewpoints from an international perspective.
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## Short Answer Questions

Due: **5pm Nov 13**

Weighting: **30%**

Students will be required to respond to questions based on a factual scenario and drawing on content from across the unit and from additional research. The total word length for the assignment must not exceed 2000 words.

Formal and substantive criteria will be posted on iLearn; the assignment is to be submitted via Turnitin on the iLearn site.

On successful completion you will be able to:

- **UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT:** Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.
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## Delivery and Resources

### Technology Used

While iLecture recordings will be made, students are expected to attend the lecture as well as tutorial.

An iLearn page will be available for this unit and include information vital for the successful completion of this unit. Internet access is therefore required to undertake this unit. Topical items will be posted on iLearn for discussion and engagement with the unit content.

### Delivery

The classes in this unit are being taught by Natalie Klein, Joanna Mitchell and John Reid. The Unit Schedule on iLearn indicates which teacher will be taking each topic. The teacher for each week will be responsible for the lectures and tutorials. The unit is being co-convened by Natalie Klein and Joanna Mitchell.

For internal students, this unit will be taught with a two-hour lecture and one hour tutorial. The location and time of classes available for internal students are provided in the University's Timetable.

External students must attend an oncampus session on 30 September-1 October as per attendance requirements for the class participation assessment task.

All students will be expected to participate in online discussions via iLearn.

### Required Text

There is no prescribed text for this unit, but readings will be placed on eReserve and the reading list will be posted on iLearn.

### Recommended Texts

The following texts are highly recommended:

- J.G Merrills, *International Dispute Settlement* (Cambridge University Press, Cambridge, 5th ed, 2011)
- C.Romano et al, *The Oxford Handbook of International Adjudication* (Oxford University Press, Oxford, 2014)
- J Collier and V Lowe, *The Settlement of Disputes in International Law: Institutions and*

*Procedures* (Oxford University Press, Oxford, 1999) [A new edition is underway but not likely to be available for teaching this unit]

- Ruth Mackenzie, Cesare Romano, Yuval Shany, Phillippe Sands, *The Manual on International Courts and Tribunals* (Oxford University Press, Oxford, 2nd ed, 2010).

These texts have all been placed on Reserve at the Library.

#### Recommended Journals and Primary Materials:

Searching for international law articles is most easily facilitated through Lexis-Nexis (International Law Reviews, Combined library), and also through Hein Online. Both databases are available through the Library website. The following journals may be particularly useful:

1. American Journal of International Law
2. Australian Yearbook of International Law
3. British Yearbook of International Law
4. European Journal of International Law
5. Yale Journal of International Law
6. Harvard Journal of International Law
7. Michigan Journal of International Law
8. Virginia Journal of International Law
9. NYU Journal of International Law and Politics
10. International & Comparative Law Quarterly
11. Melbourne University International Law Journal

This list is by no means exclusive. You may also wish to search on the Ebscohost database for political articles and news reports. Research from scholarly books and journals should be preferred over random searches of the internet.

The American Society of International Law has set up an Electronic Information System for International Law, [www.eisil.org](http://www.eisil.org), which provides access to a range of primary documents and further websites on different international law topics. For information on international courts and tribunals, the Project on International Courts and Tribunals, which is run out of NYU Law School, may be of use, and can be found at: [www.pict\\_pcti.org](http://www.pict_pcti.org)

The different international courts and tribunals tend to have their own websites, which include basic information about their functions and often links to judgments and other decisions. The *International Legal Materials* (ILM) also compiles international cases, as well as international treaties and other decisions. It can be searched in the Hein Online database.



## Unit Schedule

A full Unit Schedule will be posted on iLearn. The topics covered in this unit include:

- History of international dispute settlement in international law
- Proliferation of international courts and tribunals
- Negotiation, mediation and conciliation
- Individuals in international dispute settlement
- Judges, advocates, participants
- Jurisdiction and admissibility
- Provisional measures
- Intervention and third parties
- Contentious proceedings
- Interactions with national courts
- Advisory opinions and other judicial functions
- Remedies and reparations
- Enforcement and compliance

## 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)

**New Assessment Policy in effect from Session 2 2016** [http://mq.edu.au/policy/docs/assessment/policy\\_2016.html](http://mq.edu.au/policy/docs/assessment/policy_2016.html). For more information visit [http://students.mq.edu.au/events/2016/07/19/new\\_assessment\\_policy\\_in\\_place\\_from\\_session\\_2/](http://students.mq.edu.au/events/2016/07/19/new_assessment_policy_in_place_from_session_2/)

Assessment Policy prior to Session 2 2016 <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy prior to Session 2 2016 <http://mq.edu.au/policy/docs/grading/policy.html>

Grade Appeal Policy <http://mq.edu.au/policy/docs/gradeappeal/policy.html>

Complaint Management Procedure for Students and Members of the Public [http://www.mq.edu.au/policy/docs/complaint\\_management/procedure.html](http://www.mq.edu.au/policy/docs/complaint_management/procedure.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).

## Disruption to Studies

When a student suffers a disruption to study which is 'serious and unavoidable' they 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 to the policy - [http://www.mq.edu.au/policy/docs/disruption\\_studies/schedule\\_outcomes.html](http://www.mq.edu.au/policy/docs/disruption_studies/schedule_outcomes.html)

## 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://www.mq.edu.au/about\\_us/offices\\_and\\_units/information\\_technology/help/](http://www.mq.edu.au/about_us/offices_and_units/information_technology/help/).

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

Students in this unit are expected to have access to internet sources to engage with learning and teaching in the unit and to prepare their assessment tasks.

## Graduate Capabilities

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

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

This graduate capability is supported by:

#### Learning outcome

- MAINTAINING ETHICAL AND PROFESSIONAL STANDARDS: Present original and independent work for assessment that conforms with the letter and spirit of the Academic Honesty Policy and the Student Code of Conduct. Conduct yourself as a legal professional through consistent attendance, punctuality, and respectful discourse.

#### Assessment tasks

- Class Participation
- Research Essay Questions
- Short Answer Questions

### PG - Discipline Knowledge and Skills

Our postgraduates will be able to demonstrate a significantly enhanced depth and breadth of knowledge, scholarly understanding, and specific subject content knowledge in their chosen fields.

This graduate capability is supported by:

#### Learning outcomes

- UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT: Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.
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## **Assessment tasks**

- Class Participation
- Research Essay Questions
- Short Answer Questions

## **PG - Critical, Analytical and Integrative Thinking**

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

This graduate capability is supported by:

## **Learning outcomes**

- **UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT:** Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.
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## **Assessment tasks**

- Class Participation
- Research Essay Questions
- Short Answer Questions

## PG - Research and Problem Solving Capability

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

This graduate capability is supported by:

### Learning outcomes

- **CRITICAL ANALYSIS:** Undertake high-level analysis in discussing, explaining, describing, identifying, formulating and presenting arguments based on independent research and reading of relevant literature. Evaluate and critique from interdisciplinary perspectives the operation of international courts and tribunals and the actions of stakeholders in engaging (or not) with those institutions.
- **PROBLEM SOLVING:** Untangle factual problems to elucidate, apply and assess in a sophisticated manner the relevant legal principles in international dispute settlement. Present informed views in oral and written form based on in-depth and broad knowledge acquired through independent and thorough research in and engagement with the unit content.

### Assessment tasks

- Class Participation
- Research Essay Questions
- Short Answer Questions

## PG - Effective Communication

Our postgraduates will be able to communicate effectively and convey their views to different social, cultural, and professional audiences. They will be able to use a variety of technologically supported media to communicate with empathy using a range of written, spoken or visual formats.

This graduate capability is supported by:

### Learning outcome

- **PROBLEM SOLVING:** Untangle factual problems to elucidate, apply and assess in a sophisticated manner the relevant legal principles in international dispute settlement. Present informed views in oral and written form based on in-depth and broad knowledge acquired through independent and thorough research in and engagement with the unit content.

## Assessment tasks

- Class Participation
- Research Essay Questions
- Short Answer Questions

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

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

This graduate capability is supported by:

### Learning outcome

- EXPANDING GLOBAL PERSPECTIVES: Discuss knowledgeably, explain, and critique in oral and written form different viewpoints from an international perspective.

## Assessment tasks

- Class Participation
- Research Essay Questions

## Changes since First Published

Date	Description
24/07/2016	The assessment due date for the research assignment has been corrected to read Friday Oct 14 rather than Friday Oct 15, as the latter does not exist this year.