



# LAW 214

## Jurisprudence

S2 External 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

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Monday 11-12

Co-Convenor

Francesca Dominello

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619 W3A

Wednesday 12-13

Credit points

3

Prerequisites

18cp including LAW115 and (admission to LLB or BAppFinLLB or BALLB or BA-MediaLLB or BA-PsychLLB or BBALLB or BComLLB or BCom-ProfAccgLLB or BEnvLLB or BITLLB or BIntStudLLB or BPsych(Hons)LLB or BScLLB or BSecStudLLB or BSocScLLB)

Corequisites

Co-badged status

Unit description

This unit is a philosophically-based introduction to law and legal thought. It has four main objectives. It aims to introduce students to the nature of the Australian legal system; to equip them to think in a theoretical and critical way about the nature of law and legal reasoning; to convey an understanding of some key legal concepts; and to assist them to draw on and apply these reflections in the context of some contemporary legal issues.

## 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:

Analyse central debates in jurisprudence.

Evaluate the law and legal institutions from a normative perspective.

Apply theoretical knowledge to real-life situations and topical controversies.

Communicate using clear and cogent arguments.

Participate constructively in discussion and other classroom activities in order to understand, analyse and critique central debate in jurisprudence and law from a normative perspective.

Develop the ability to build theoretical legal arguments under time pressure.

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

Detailed marking rubrics will be made available on iLearn. All Fail papers are double marked.

## Assessment Tasks

Name	Weighting	Due
<u>Class participation</u>	15%	Ongoing
<u>Quiz</u>	0%	Tutorials in week 4
<u>Assignment</u>	30%	16 September, 11.59 pm
<u>Take home exam</u>	55%	6 November, 5 pm

### Class participation

Due: **Ongoing**

Weighting: **15%**

Students should have read all the required readings for each week and be prepared to discuss the tutorial questions for that week. Class participation marks will be based on frequency and quality of contribution to discussion; evidence of preparation for the tutorials; and performance in specific tasks assigned by the tutor. **MERE ATTENDANCE AT TUTORIALS WILL NOT ATTRACT ANY MARKS.**

Internal students are required to attend at least 10 of the tutorials. External students are required to attend both days of the on-campus session.

An internal student who attends fewer than 10 tutorials or an external student who fails to attend all/part of the on-campus session without a successful application for disruption will have marks

deducted for class participation at the discretion of their tutor.

Internal students who have missed more than 2 tutorials due to disruption are required to meet their tutor during their consultation hour to discuss the material of the missed tutorials. External students who have missed more than 2 hours of the OCS will be required to do this. This can happen during the breaks, or at the end of either day at the OCS, or over the telephone (only if the student misses both days of the OCS).

Applications for disruption should be made through 'Ask'. They should comply with the disruption to studies policy and procedure, to be found at: [http://students.mq.edu.au/student\\_admin/manage\\_your\\_study\\_program/disruption\\_to\\_studies/](http://students.mq.edu.au/student_admin/manage_your_study_program/disruption_to_studies/)

On successful completion you will be able to:

- Analyse central debates in jurisprudence.
- Evaluate the law and legal institutions from a normative perspective.
- Apply theoretical knowledge to real-life situations and topical controversies.
- Communicate using clear and cogent arguments.
- Participate constructively in discussion and other classroom activities in order to understand, analyse and critique central debate in jurisprudence and law from a normative perspective.

## Quiz

Due: **Tutorials in week 4**

Weighting: **0%**

This assessment will require students to answer a comprehension quiz on the readings for weeks 1 - 3. Students will receive feedback on the quiz before census date.

On successful completion you will be able to:

- Analyse central debates in jurisprudence.

## Assignment

Due: **16 September, 11.59 pm**

Weighting: **30%**

**This assignment will require comprehension and critical analysis of some key readings on the nature of law. The word limit for this assignment is 1000 words (footnotes and the bibliography are not included in the word limit). Students should adhere to AGLC3.**

On successful completion you will be able to:

- Analyse central debates in jurisprudence.
- Communicate using clear and cogent arguments.

## Take home exam

Due: **6 November, 5 pm**

Weighting: **55%**

This assignment will require students to think independently, critically and analytically about jurisprudential issues and to provide a clearly written and well-reasoned defence of their views about these issues. There will be three equally weighted questions, requiring answers of 800 words max each. (Footnotes and the bibliography are not included in the word limit). Students should adhere to AGLC3. Because of its weighting, the take home examination is a hurdle assignment.

On successful completion you will be able to:

- Analyse central debates in jurisprudence.
- Evaluate the law and legal institutions from a normative perspective.
- Apply theoretical knowledge to real-life situations and topical controversies.
- Communicate using clear and cogent arguments.
- Develop the ability to build theoretical legal arguments under time pressure.

## Delivery and Resources

### Technology used

This unit will use i-learn and ECHO lectures. Students will be required to use a computer to interact with online research databases and web-based research tools.

### Classes

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

**There is one pre-recorded one-hour lecture per week (available through ECHO lectures) and one live one-hour lecture per week (also available through ECHO lectures).**

Internal students must attend at least 10 tutorials and submit all assignments. Students are not permitted to attend tutorials other than the tutorial group for which they are enrolled. If they do so, their attendance will not be recorded and will not count towards fulfilling the attendance requirement for the unit.

External students must attend both days of the on-campus-session and submit all assignments.

**Students who miss more than two tutorials or 2 hours of the on-campus session without a successful application for disruption will have marks deducted for class participation. If a successful application for disruption is made the student may be required to meet their tutor to discuss the work covered in the missed tutorials.**

### Required and recommended resources

## Prescribed Texts

Denise Meyerson, *Jurisprudence* (Oxford University Press, Melbourne, 2011).

## Other essential reading

Details available on the i-learn site for LAW214.

## Supplementary Readings

There is no single text which covers all of the material dealt with in this unit, but the following books will be useful to you if you would like to read more about the topics. They will also help in the writing of your assignments for this unit. All of these books are on reserve in the Macquarie University Library.

S Berns, *Concise Jurisprudence* (Federation Press, Sydney, 1993).

B Bix, *Jurisprudence: Theory and Context* (5th edn, Sweet and Maxwell, London, 2009).

S Bottomley and S Bronitt, *Law in Context* (3<sup>rd</sup> edn, Federation Press, Sydney, 2006).

R Cotterrell, *The Politics of Jurisprudence* (University of Pennsylvania Press, Philadelphia, 1989).

H Davies and D Holdcroft, *Jurisprudence: Texts and Commentary* (Butterworths, London, 1991).

M Davies, *Asking the Law Question* (3<sup>rd</sup> edn, Law Book Company, Sydney, 2008).

R Dworkin, *Taking Rights Seriously* (Duckworths, London, 1977).

R Dworkin, *Law's Empire* (Harvard University Press, Cambridge, Massachusetts, 1986).

L Fuller, *The Morality of Law* (Revised edn, Yale University Press, New Haven and London, 1969).

S Guest, *Ronald Dworkin* (2<sup>nd</sup> edn, Edinburgh University Press, Edinburgh, 1997).

J W Harris, *Legal Philosophies* (2<sup>nd</sup> edn, Butterworths, London, 1997).

H L A Hart, *The Concept of Law* (2<sup>nd</sup> ed, Clarendon Press, Oxford, 1994).

J M Kelly, *A Short History of Western Legal Theory* (Clarendon Press, Oxford, 1992).

D Lloyd, *Lloyd's Introduction to Jurisprudence* (8<sup>th</sup> edn, Sweet and Maxwell, London, 2008).

H McCoubrey and N D White, *Textbook on Jurisprudence* (2<sup>nd</sup> edn, Blackstone Press Ltd, London, 1996).

J G Murphy and J L Coleman, *The Philosophy of Law* (Revised edn, Westview Press, Boulder, San Francisco, and London, 1990).

D Patterson, *A Companion to Philosophy of Law and Legal Theory* (Blackwell, Oxford, 1996).

J G Riddall, *Jurisprudence* (2<sup>nd</sup> edn, Butterworths, London, 1999).

F Schauer, *Thinking Like a Lawyer* (Cambridge, Mass, Harvard University Press, 2009).

R Wacks, *Understanding Jurisprudence* (Oxford University Press, Oxford, 2005).

## Unit Schedule

Week	Lecture	Tutorial	Assessment
1	Introduction to Jurisprudence	None	None
2	Law and force: Austin vs Hart	Introduction to Jurisprudence	Class participation
3	Contemporary Positivism	Law and force: Austin vs Hart	Class participation
4	Natural Law Theory	Contemporary Positivism	Class participation; quiz.
5	Adjudication I: Formalism vs Purposivism	Natural Law Theory	Class participation
6	Adjudication II: Hart vs Dworkin	Adjudication I: Formalism vs Purposivism	Class participation
7	Realism and the Economic Analysis of Law	Adjudication II: Hart vs Dworkin	Class participation; Assignment
Semester Break			
8	Critical perspectives on the law	Realism and the Economic Analysis of Law	Class participation
9	Rights	Critical perspectives on the law	Class participation
10	Freedom	Rights	Class participation
11	Inequality	Freedom	Class participation
12	Difference	Inequality	Class participation
13	None	Difference	Class participation; take-home exam

## 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/ne>

[w 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).

### MACQUARIE LAW SCHOOL ASSESSMENT POLICY

In the absence of a successful application for special consideration following a 'Disruption to Studies', late assessments will not be marked and will receive a mark of zero.

Word limits will be strictly applied.

Referencing should comply with the Australian Guide to Legal Citation unless otherwise stated.

All written assessments require submission through Turnitin.

## 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.

## 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 outcome

- Evaluate the law and legal institutions from a normative perspective.

### 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 task

- Class participation

### 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**

- Analyse central debates in jurisprudence.
- Evaluate the law and legal institutions from a normative perspective.
- Apply theoretical knowledge to real-life situations and topical controversies.
- Participate constructively in discussion and other classroom activities in order to understand, analyse and critique central debate in jurisprudence and law from a normative perspective.
- Develop the ability to build theoretical legal arguments under time pressure.

## **Assessment tasks**

- Class participation
- Quiz
- Assignment
- Take home 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**

- Analyse central debates in jurisprudence.
- Evaluate the law and legal institutions from a normative perspective.
- Apply theoretical knowledge to real-life situations and topical controversies.
- Participate constructively in discussion and other classroom activities in order to understand, analyse and critique central debate in jurisprudence and law from a normative perspective.
- Develop the ability to build theoretical legal arguments under time pressure.

## **Assessment tasks**

- Class participation

- Quiz
- Assignment
- Take home 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 outcome

- Apply theoretical knowledge to real-life situations and topical controversies.

### Assessment task

- Take home exam

## 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 outcomes

- Analyse central debates in jurisprudence.
- Evaluate the law and legal institutions from a normative perspective.
- Apply theoretical knowledge to real-life situations and topical controversies.
- Communicate using clear and cogent arguments.
- Participate constructively in discussion and other classroom activities in order to understand, analyse and critique central debate in jurisprudence and law from a normative perspective.

### Assessment tasks

- Class participation
- Assignment
- Take home exam

## 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 outcome**

- Evaluate the law and legal institutions from a normative perspective.