



# LAW 550

## Litigation

S2 Day 2016

*Dept of Law*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Unit Convenor

Sonya Willis

[sonya.willis@mq.edu.au](mailto:sonya.willis@mq.edu.au)

Contact via [sonya.willis@mq.edu.au](mailto:sonya.willis@mq.edu.au)

W3A 523

Mon 11am-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 BALLB or BComLLB or BCom-ProfAccgLLB or BEnvLLB or BITLLB or BIntStudLLB or BScLLB or BSecStudLLB 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:

Students will demonstrate an ability to explain and analyse the nature and principles of

civil procedure

Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure

Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure

Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to solving civil procedure problems that are posed to them and relevant to the issues under examination.

Students will demonstrate an ability to explain the reasons for, describe and apply the principal rules of evidence

Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence

Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules

Students will demonstrate an ability to 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 internal student tutorials: You will receive a zero grade for class participation if there are more than three unauthorized absences
  - For external student on campus sessions: 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: Your circumstances will not be taken into account.

#### 4. Final Examination

- Absence: You will receive a zero grade for the Final Examination.
- Performance affected: Your circumstances will not be taken into account.
- Preparation affected: Your circumstances will not be taken into account.

## Assessment Tasks

Name	Weighting	Due
<a href="#"><u>Class participation</u></a>	10%	Ongoing
<a href="#"><u>Early assessment</u></a>	10%	25 August 2016
<a href="#"><u>Research Assignment</u></a>	30%	30 Sep (int); 7 Oct (ext)
<a href="#"><u>Final exam</u></a>	50%	TBA Formal Exam Period

### 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 Thursday 29 Sep and Friday 30 Sep. **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.

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.

On successful completion you will be able to:

- Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, describe and apply the principal rules of evidence
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

## Early assessment

Due: **25 August 2016**

Weighting: **10%**

The early assessment task is an online multiple choice test to take place in week 4, 25 August 2016. This assessment task's purpose is to engage students with their unit early in the session and to provide an opportunity for relatively early feedback. 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 multiple choice test will consist of 20 multiple choice questions to be completed in 20 minutes. Further instructions to students about completing the quiz online will be posted in due course.

Students who are unable to sit for the test at the designated time must contact the unit convenor and make a disruption to study application and, if it is approved, may sit for an equivalent test by appointment with the unit convenor.

On successful completion you will be able to:

- Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure

## Research Assignment

Due: **30 Sep (int); 7 Oct (ext)**

Weighting: **30%**

The Research Assignment in this unit is compulsory and will be a hypothetical problem question. The research 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 which extend beyond the reading material provided on iLearn. 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 the 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.

On successful completion you will be able to:

- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to solving civil procedure problems that are posed to them and relevant to the issues under examination.
- Students will demonstrate an ability to explain the reasons for, describe and apply the

principal rules of evidence

- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

## Final exam

Due: **TBA Formal Exam Period**

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 hours plus reading time will be provided. The University's examination period in Session 2 is from 14 November 2016 to 2 December 2016. 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:

- Students will demonstrate an ability to explain the reasons for, describe and apply the principal rules of evidence
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to 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:**

S Willis, *Civil Procedure*, Palgrave MacMillan, 2012

J Anderson, *Uniform Evidence Law: Text and Essential Cases*, 3rd ed, The Federation Press, 2016

**Recommended Texts**

M Kumar, M Legg and I Vickovich, *Civil Procedure in NSW*, 3rd ed, Thomson Reuters 2016

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

N Williams, J Anderson, J Maychurch & J Roy, *Uniform Evidence in Australia*, LexisNexis 2015

Hon D Heydon, *Cross on Evidence*, 10th ed. LexisNexis, 2014

S Odgers, *Uniform Evidence Law*, 11th ed, Thomson Reuters (Lawbook Co), 2014

M Kumar, S Odgers & E Peden, *Uniform Evidence Law: Commentary and Materials*, 5th ed, Thomson Reuters (Lawbook Co), 2015

B Cairns, *Australian Civil Procedure*, 10th ed, Thomson Reuters, 2013

D Bamford, & M Rankin, *Principles of Civil Litigation*, 2nd ed, Thomson Reuters, 2014

## Unit Schedule

Week	Topic
1	Introduction; Overview of Litigation Systems
2	Civil Procedure I
3	Civil Procedure II
4	Civil Procedure III
5	Trial Process I
6	Trial process II
7	Relevance; Exclusion of Admissible Evidence; Proof
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)

**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).

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://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 outcomes

- Students will demonstrate an ability to synthesise, evaluate and apply the main

exceptions to the principal rules of evidence

- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

## Assessment tasks

- Research Assignment
- Final exam

## 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

- Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, describe and apply the principal rules of evidence
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

## Assessment tasks

- Early assessment
- Research 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:

### Learning outcome

- Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to solving civil procedure problems that are posed to them and relevant to the issues under examination.

### Assessment tasks

- Early assessment
- Research Assignment

## 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

- Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to solving civil procedure problems that are posed to them and relevant to the issues under examination.

- Students will demonstrate an ability to explain the reasons for, describe and apply the principal rules of evidence
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

## **Assessment tasks**

- Class participation
- Early assessment
- Research Assignment
- 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**

- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, describe and apply the principal rules of evidence
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

## **Assessment tasks**

- Class participation
- Early assessment

- Research Assignment
- 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

- Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to solving civil procedure problems that are posed to them and relevant to the issues under examination.
- Students will demonstrate an ability to explain the reasons for, describe and apply the principal rules of evidence
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

### Assessment tasks

- Class participation
- Research Assignment
- Final 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

- Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to solving civil procedure problems that are posed to them and relevant to the issues under examination.
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

## Assessment tasks

- Class participation
- Research Assignment
- Final 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

- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules

### Assessment task

- Class participation

## 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

- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules

## Assessment task

- Class participation

## Changes since First Published

Date	Description
19/08/2016	The time allowed for the examination was altered from "two and a half hours plus reading time" to "two hours plus reading time" in accordance with the new University Assessment Policy for Semester 2 2016 which limits examinations to two hours (excluding reading time) in Schedule 4 2.1. The Examination Date has been changed from "Week 15" to "TBA Formal Exam Period" as the date of the examination is yet to be determined.