



# LAWS398

## Civil and Criminal Procedure

S1 Day 2016

*Dept of Law*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Lecturer

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W3A-523

Monday 11AM-1PM, Wednesday 3PM-4PM

Lecturer

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Contact via Email

W3A-519

Wednesday, 3PM-4PM

Credit points

3

Prerequisites

39cp including LAW203

Corequisites

Co-badged status

Unit description

This unit examines the principles of civil and criminal procedure in New South Wales. The unit canvasses general principles of civil procedure, such as pre-trial procedures, the nature of adversarial disputation, ethics of practice and a critical evaluation of the administration of justice, as well as select topics in criminal procedure, such as classification of offences, bail and sentencing.

## 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 a competent level understanding of the principles and stages of civil and

criminal procedure in order to comply with the formal requirements for admission to legal practice.

Communicate an integrated body of procedural law knowledge. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.

Develop, critique and advocate law reform proposals in the area of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. This will develop students' independent research and critical thinking skills.

Solve hypothetical problem questions through the application of procedure legislation and precedent.

Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.

Develop elementary advocacy skills enabling students to demonstrate their learning orally and experience the role of lawyer in the courtroom through mock legal proceedings.

## General Assessment Information

Further information about the assessment criteria for each task will be forthcoming throughout the semester.

### Macquarie Law School Information on Assessment:

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.

## Assessment Tasks

Name	Weighting	Due
<a href="#">Civil Class Participation</a>	10%	Continuing
<a href="#">Civil Take-Home Examination</a>	40%	13 May 2016, 9AM - DUE 1PM

Name	Weighting	Due
<a href="#"><u>Criminal Class Participation</u></a>	10%	Continuing
<a href="#"><u>Court Observation Assignment</u></a>	30%	Week 11, 24 May 2016, 5pm
<a href="#"><u>Mock Sentencing Exercise</u></a>	10%	Between 6-17 June 2016

## Civil Class Participation

Due: **Continuing**

Weighting: **10%**

For the Civil Procedure segment of the course, students must volunteer to be on call for one of the civil procedure tutorials to answer questions in that tutorial as well as attending 70% of classes. One tutorial will be designated a moot tutorial and students interested in advocacy should select that tutorial as their "on call" tutorial. Brief mock moots will constitute the participation component of the assessment for the moot tutorial.

On successful completion you will be able to:

- Demonstrate a competent level understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Communicate an integrated body of procedural law knowledge. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Solve hypothetical problem questions through the application of procedure legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and experience the role of lawyer in the courtroom through mock legal proceedings.

## Civil Take-Home Examination

Due: **13 May 2016, 9AM - DUE 1PM**

Weighting: **40%**

This assessment task will comprise a four-hour open book examination, delivered online. All **CIVIL PROCEDURE** topics studied throughout the course will be examinable.

The exam will contain problem question(s) and mini-essays.

This exam is designed as a standard three hour open book exam. Students should prepare for and organise their time during this exam as if sitting an open-book exam on-campus. Four hours have been allocated to allow for any delay in submitting exam papers by the 1PM deadline. Late submissions will not be marked and will receive a grade of 0.

The submitted examination must comply with any word limits specified in the paper. Content over the word limit will not be marked.

On successful completion you will be able to:

- Demonstrate a competent level understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Communicate an integrated body of procedural law knowledge. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Solve hypothetical problem questions through the application of procedure legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.

## Criminal Class Participation

Due: **Continuing**

Weighting: **10%**

For the Criminal Procedure Component of the Course, students must attend at least 70% of classes in order to pass this assessment task. Engaged and well-informed participation is encouraged. Students who regularly show that they have not only done the readings, but can demonstrate their understanding of course materials, general themes and critical analysis during class, will fully meet the assessment criteria required for this task.

On successful completion you will be able to:

- Communicate an integrated body of procedural law knowledge. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Develop, critique and advocate law reform proposals in the area of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders.

This will develop students' independent research and critical thinking skills.

- Solve hypothetical problem questions through the application of procedure legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.

## Court Observation Assignment

Due: **Week 11, 24 May 2016, 5pm**

Weighting: **30%**

Students will be required to attend eight (8) hours of court observation at a criminal court in New South Wales. Students may choose to perform their observation at either Local, District or Supreme Courts or any of these courts in combination.

Students will be required to observe criminal process in action by attending court, taking notes and observing courtroom procedure. While attending court, students are encouraged to observe not only technical legal process but to critically observe the social, spacial, political and anthropological relationships that take place within the courtroom and the courthouse more broadly. Look carefully at who performs which roles, the manner in which they are executed, the time devoted to courtroom tasks, courthouse architecture as well as the social backgrounds and status of the various actors within the criminal process.

Students must critically assess their findings in a mini-essay, drawing on literature provided in the textbook (Brown & Farrier) as well as through their own independent research. Assignments may focus upon a broad cross-section of procedural issues and observations. Frequently, however, the best answers to this assignment critically investigate only one or two discrete observational issues.

Students will be required to complete a Court Attendance Log documenting their attendance (a Court Attendance Log Sheet can be found on the ilearn webpage).

Essays must be between 1500 words and 2000 words, excluding footnotes. Content over 2000 words will not be marked.

Footnotes must not include substantive argument (ie only references are permitted). A bibliography should not be provided.

The essay must comply with the *Australian Guide to Legal Citation* (3rd ed). The Guide is available here <<http://mulr.law.unimelb.edu.au/go/AGLC3>>. Essays must be submitted in double line spaced text, 12 point font.

The essay is due in Week 11 on Tuesday 24 May 2016, 5pm.

All work is to be submitted via Turnitin on iLearn. Late submissions will not be marked and will receive a grade of 0.

On successful completion you will be able to:

- Demonstrate a competent level understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Develop, critique and advocate law reform proposals in the area of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. This will develop students' independent research and critical thinking skills.

## Mock Sentencing Exercise

Due: **Between 6-17 June 2016**

Weighting: **10%**

Students are required to form groups of three. Each student will perform the role of either a magistrate, prosecutor or defence counsel within their group. Each group will be presented with a simple mock sentencing scenario from the NSW Local Court. Students will be expected to perform their respective roles in their group in the Macquarie University Moot Court. Students will be required to analyse procedural law and facts relevant to their scenario.

Each student will have a strict time limit of 5 minutes to either make submissions on sentence (as either prosecution or defence counsel) or deliver a sentence with brief reasons for your decision (as magistrate).

Tip: Performance of this task will be greatly enhanced by observing pleas-in-mitigation in the Local Court during the court observation exercise. Pleas-in-mitigation usually occur at the Local Court on most days of the week between 9:30 AM and 1 PM.

More information about this exercise will be provided throughout the course.

On successful completion you will be able to:

- Demonstrate a competent level understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Communicate an integrated body of procedural law knowledge. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Develop, critique and advocate law reform proposals in the area of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. This will develop students' independent research and critical thinking skills.
- Solve hypothetical problem questions through the application of procedure legislation and precedent.

- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and experience the role of lawyer in the courtroom through mock legal proceedings.

## Delivery and Resources

This unit has an online presence on iLearn, Macquarie's online learning management system ([ilearn.mq.edu.au](http://ilearn.mq.edu.au)). Students will require access to reliable broadband internet and a computer. More information is available at:

[www.mq.edu.au/iLearn/student\\_info/index.htm](http://www.mq.edu.au/iLearn/student_info/index.htm)

Students will also be required to use a computer to interact with online research databases and web-based research tools.

The unit has a blended mode of delivery. Students are required to access online materials and resources.

### Resources

The following textbooks are required:

- Sonya Willis, *Civil Procedure: Law, Principles and Practice* (Palgrave Macmillan Australia, 2012);
- Brown, Farrier, McNamara, Steel, Grewcock, Quilter and Schwartz, *Criminal Laws: Materials and Commentary on Criminal Law and Process in NSW* (The Federation Press, 6th Edition, 2015).

## Unit Schedule

Students are referred to the iLearn page for this unit for further details.

## 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).

## **Law School Assessment Policy**

In the absence of a successful application for Disruption to Studies, late assessments will not be marked and will receive a grade of 0%. Applications for Disruption to Studies are made online at [ask.mq.edu.au](http://ask.mq.edu.au)

Word limits are strictly applied and anything beyond the word limit will not be marked.

## **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 outcomes

- Develop, critique and advocate law reform proposals in the area of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. This will develop students' independent research and critical thinking skills.
- Solve hypothetical problem questions through the application of procedure legislation and precedent.

### Assessment tasks

- Civil Class Participation
- Criminal Class Participation
- Mock Sentencing 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**

- Demonstrate a competent level understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Communicate an integrated body of procedural law knowledge. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Develop, critique and advocate law reform proposals in the area of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. This will develop students' independent research and critical thinking skills.
- Solve hypothetical problem questions through the application of procedure legislation and precedent.

## **Assessment tasks**

- Civil Class Participation
- Mock Sentencing Exercise

## **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**

- Communicate an integrated body of procedural law knowledge. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and experience the role of lawyer in the courtroom through mock legal

proceedings.

## Assessment tasks

- Court Observation Assignment
- Mock Sentencing Exercise

## 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 a competent level understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Communicate an integrated body of procedural law knowledge. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Solve hypothetical problem questions through the application of procedure legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and experience the role of lawyer in the courtroom through mock legal proceedings.

## Assessment task

- Civil Take-Home Examination

## Critical, Analytical and Integrative Thinking

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

have a level of scientific and information technology literacy.

This graduate capability is supported by:

## **Learning outcomes**

- Demonstrate a competent level understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Communicate an integrated body of procedural law knowledge. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Develop, critique and advocate law reform proposals in the area of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. This will develop students' independent research and critical thinking skills.
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- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and experience the role of lawyer in the courtroom through mock legal proceedings.

## **Assessment tasks**

- Civil Class Participation
- Civil Take-Home Examination
- Criminal Class Participation
- Mock Sentencing Exercise

## **Problem Solving and Research Capability**

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

This graduate capability is supported by:

## **Learning outcomes**

- Demonstrate a competent level understanding of the principles and stages of civil and

criminal procedure in order to comply with the formal requirements for admission to legal practice.

- Develop, critique and advocate law reform proposals in the area of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. This will develop students' independent research and critical thinking skills.
- Solve hypothetical problem questions through the application of procedure legislation and precedent.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and experience the role of lawyer in the courtroom through mock legal proceedings.

## **Assessment tasks**

- Civil Class Participation
- Civil Take-Home Examination

## **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**

- Communicate an integrated body of procedural law knowledge. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Solve hypothetical problem questions through the application of procedure legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and experience the role of lawyer in the courtroom through mock legal proceedings.

## **Assessment tasks**

- Civil Class Participation

- Civil Take-Home Examination
- Criminal Class Participation
- Court Observation Assignment
- Mock Sentencing Exercise

## 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 a competent level understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Develop, critique and advocate law reform proposals in the area of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. This will develop students' independent research and critical thinking skills.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and experience the role of lawyer in the courtroom through mock legal proceedings.

### Assessment tasks

- Criminal Class Participation
- Court Observation Assignment

## Socially and Environmentally Active and Responsible

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

This graduate capability is supported by:

### Learning outcome

- Develop, critique and advocate law reform proposals in the area of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders.

This will develop students' independent research and critical thinking skills.

## **Assessment task**

- Court Observation Assignment