



LAWS813

Civil and Criminal Procedure

S1 Day 2016

Dept of Law

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General Information

Unit convenor and teaching staff

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Lecturer

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W3A-519

Wednesday, 3PM-4PM

Credit points

4

Prerequisites

LAWS802 and LAWS803 and LAWS806

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, the nature of adversarial disputation, case management, pre-litigation issues and protocols, and pre-trial procedures of originating process, gathering of evidence for trial, class actions and the conduct and disposal of civil proceedings. Select topics in criminal procedure, such as classification of offences, police powers and bail, the conduct of criminal trials and sentencing will be covered. A recurrent theme of the unit is a critical evaluation of access to, and the contemporary 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:

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 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
<u>Civil Class Participation</u>	10%	continuing
<u>Civil Take-Home Examination</u>	40%	13 May 2016, 9AM - DUE 1PM
<u>Criminal Class Participation</u>	10%	Continuing
<u>Court Observation Assignment</u>	30%	Week 11, 24 May 2016, 5pm
<u>Mock Sentencing Exercise</u>	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.

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- 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:

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- 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.

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- 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:

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- 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.

Note: Students unable to attend the group presentation must notify their lecturer and will be assessed by short answer quiz on sentencing procedure, assessed under strict conditions.

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- 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). 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

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

New Assessment Policy in effect from Session 2 2016 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/

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

Disruption to Studies Policy 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/

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.

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

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) 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

IT Help

For help with University computer systems and technology, visit 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

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 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.

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Assessment tasks

- Civil Class Participation
- Mock Sentencing Exercise

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

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- 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
- Mock Sentencing Exercise

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

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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.

Assessment tasks

- Civil Class Participation
- Civil Take-Home Examination
- Criminal Class Participation
- Court Observation Assignment

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:

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

Assessment tasks

- Civil Take-Home Examination
- Court Observation Assignment

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 outcomes

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Assessment tasks

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- Criminal Class Participation
- Mock Sentencing Exercise

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 outcomes

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