



# LAWS398

## Civil and Criminal Procedure

S1 Day 2017

*Dept of Law*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Co-convenor

Sonya Willis

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

Contact via E-mail

W3A-523

Monday 11AM-1PM,

Co-convenor

Zara Bending

[zara.bending@mq.edu.au](mailto:zara.bending@mq.edu.au)

Contact via E-mail

W3A-607

Monday 11AM-1PM,

Credit points

3

Prerequisites

(39cp at 100 level or above) 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 of 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 both orally and in writing.

Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.

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

Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.

Develop elementary advocacy skills and the ability to demonstrate learning orally.

## 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.

### **Moderation**

Detailed marking guidelines will be made available on iLearn. The convenors moderate all assessments. All Fail essays and take-home examinations are double marked.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<a href="#">Criminal Class Participation</a>	10%	No	Continuing
<a href="#">Criminal Procedure Quizzes</a>	20%	No	Weeks 2, 3, 4 and 5

Name	Weighting	Hurdle	Due
<u>Court Observation Assignment</u>	20%	No	Week 8, 4 May 2017, 5pm
<u>Civil Class Participation</u>	10%	No	Continuing
<u>Civil Procedure Quizzes</u>	20%	No	Weeks 9, 10, 11 and 12
<u>Civil Take-Home Examination</u>	20%	No	11am Saturday 10 Jun 2017

## Criminal Class Participation

Due: **Continuing**

Weighting: **10%**

For the Criminal Procedure component of the unit, students must volunteer to be on call for one of the criminal procedure tutorials. The final criminal procedure tutorial will be designated a mock sentencing tutorial and students interested in advocacy should select that tutorial as their "on call" tutorial.

Students selecting the mock sentencing will perform the role of either a prosecutor or defence counsel. Students may form pairs. Each pair will present a simple mock sentencing scenario from the NSW Local Court. More information about the mock sentencing exercise will be provided on iLearn.

On successful completion you will be able to:

- Demonstrate a competent level of 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 both orally and in writing.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

## Criminal Procedure Quizzes

Due: **Weeks 2, 3, 4 and 5**

Weighting: **20%**

There will be 4 Criminal Procedure Quizzes each worth 5%. These will be held on Fridays of weeks 2, 3, 4, 5 assessing the content from the preceding week. Each quiz must be completed within an hour of commencement and each quiz will be available from 7:00am-11:00pm on Friday. More information regarding the quizzes will be provided on iLearn.

On successful completion you will be able to:

- Demonstrate a competent level of understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.

## Court Observation Assignment

Due: **Week 8, 4 May 2017, 5pm**

Weighting: **20%**

Students will be required to attend a minimum of four (4) hours of court observation at any combination of New South Wales criminal courts (Local, District and/or Supreme) and 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.

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

The essay is due in Week 8 on Thursday 4 May 2017, 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 of 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 both orally and in writing.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

## Civil Class Participation

Due: **Continuing**

Weighting: **10%**

For the Civil Procedure component of the unit, students must volunteer to be on call for one of the civil procedure tutorials.

The final tutorial will be designated a moot tutorial and students interested in advocacy should select this final tutorial as their "on call" tutorial. Brief mock moots will constitute the participation component for the moot tutorial. More information will be provided on iLearn.

On successful completion you will be able to:

- Demonstrate a competent level of 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 both orally and in writing.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

## Civil Procedure Quizzes

Due: **Weeks 9, 10, 11 and 12**

Weighting: **20%**

There will be 4 Civil Procedure Quizzes each worth 5%. These will be held on Fridays of weeks 9, 10, 11, 12 assessing the content from preceding weeks. Each quiz must be completed within

an hour of commencement and each quiz will be available from 7:00am-11:00pm on Friday. More information regarding the quizzes will be provided on iLearn.

On successful completion you will be able to:

- Demonstrate a competent level of understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.

## Civil Take-Home Examination

Due: **11am Saturday 10 Jun 2017**

Weighting: **20%**

This assessment task will be delivered online from 9:00am to 11:00am, Saturday, 10 June 2017.

All **CIVIL PROCEDURE** topics studied throughout the unit will be examinable.

The exam will be in the form of a problem question.

This exam is designed as a standard one hour open book exam. Students should prepare for and organise their time during this exam as if sitting an open-book exam on-campus. Two hours have been allocated to allow for any delay in submitting exam papers by the 11AM deadline. Multiple submissions will be encouraged. Late submissions will not be marked and will receive a grade of 0.

The final 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 of 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 both orally and in writing.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.

- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.

## Delivery and Resources

### Delivery

LAWS398 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.

Internal LAWS398 students will also attend a weekly tutorial and are strongly encouraged to attend the live lecture on Monday evenings from 5-6pm in the Lotus Theatre as well as accessing the online resources.

External LAWS398 students will attend a two day on campus session and will access the recorded lectures and other online material. External students are welcome to attend the live lecture if they are able to.

### Resources

The following textbooks are required:

- 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);
- Sonya Willis, *Civil Procedure: Law, Principles and Practice* (Palgrave Macmillan Australia, 2012).

## Unit Schedule

Week	Lecture Topic
1	Introduction to Civil and Criminal Procedure and Criminal Process I
2	Criminal Process II
3	Police Powers
4	Bail
5	Sentencing I



6	Sentencing II
7	Exploring key themes of civil procedure
8	ADR and case management
9	Commencing proceedings and pleadings
10	Discovery and privilege
11	Other documentary evidence and interlocutory applications
12	Trials, appeals and enforcement

There will be no tutorials on Week 7 so that students can work on their Court Assignment. In Week 13, only tutorials will be held.

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)

Assessment Policy [http://mq.edu.au/policy/docs/assessment/policy\\_2016.html](http://mq.edu.au/policy/docs/assessment/policy_2016.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 (in effect until Dec 4th, 2017): [http://www.mq.edu.au/policy/docs/disruption\\_studies/policy.html](http://www.mq.edu.au/policy/docs/disruption_studies/policy.html)

Special Consideration Policy (in effect from Dec 4th, 2017): <https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policies/special-consideration>

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.

Detailed marking guidelines will be made available on iLearn. The convenors moderate all assessments. All Fail essays and take-home examinations are double 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

- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.

## Assessment tasks

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

## 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 of 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 both orally and in writing.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.

## Assessment tasks

- Criminal Class Participation
- Court Observation Assignment
- Civil Class Participation

- Civil Take-Home Examination

## 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 both orally and in writing.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

### Assessment tasks

- Criminal Class Participation
- Criminal Procedure Quizzes
- Civil Class Participation
- Civil Procedure Quizzes
- Civil Take-Home Examination

## 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 of 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 both orally and in writing.
- Solve hypothetical problem questions through the application of procedural legislation

and precedent.

- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

## **Assessment tasks**

- Criminal Class Participation
- Criminal Procedure Quizzes
- Court Observation Assignment
- Civil Class Participation
- Civil Procedure Quizzes
- 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 of 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 both orally and in writing.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

## Assessment tasks

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

## 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 of understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

## Assessment tasks

- Criminal Class Participation
- Court Observation Assignment
- 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 both orally and in writing.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

## **Assessment tasks**

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

## **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 of understanding of the principles and stages of civil and criminal procedure in order to comply with the formal requirements for admission to legal practice.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

## Assessment tasks

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

## 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

- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.

## Assessment tasks

- Criminal Class Participation
- Court Observation Assignment
- Civil Class Participation

## Changes from Previous Offering

This year the Criminal Procedure component of the Course will be run first with the Civil Procedure component running second.

In addition, this year compulsory quizzes have been introduced throughout the course to increase the focus on continuous assessment and decrease the weighting of the assignment and exam. It is hoped these changes will reduce the assessment pressure on students and facilitate continuous engagement with the course.