



# LAWS399

## Evidence

S2 Day 2017

*Dept of Law*

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### Disclaimer

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## General Information

Unit convenor and teaching staff

Unit Convenor

Ilija Vickovich

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Contact via [ilija.vickovich@mq.edu.au](mailto:ilija.vickovich@mq.edu.au)

W3A 624

Monday 11am-12pm

Tutor

Keith Williams

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TBA

TBA

Credit points

3

Prerequisites

LAWS398

Corequisites

Co-badged status

Unit description

This unit examines and teaches the principles and rules of evidence in civil and criminal matters in New South Wales. Major topics include both the sources and acceptability of evidence, including rules concerning the burden and standard of proof and technical rules concerning such matters as hearsay, admissions and confessions, illegally obtained evidence and res gestae.

## 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:

explain the reasons for and describe the principal rules of evidence

explain the reasons for and describe the main exceptions to the principal rules of

evidence

critically analyse the appropriateness and fairness of the principal evidentiary rules  
synthesise, evaluate and apply the principal evidentiary rules and their exceptions 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).**

All assessments in the unit are to be submitted electronically. Plagiarism detection software is used in this unit. Assessment marking criteria will be made available on iLearn.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Class participation</u>	10%	No	Ongoing
<u>Early assessment</u>	10%	No	Week 4 (26-27 Aug)
<u>Assignment</u>	30%	No	15 Sep (int); 6 Oct (ext)
<u>Final exam</u>	50%	No	Thursday 9 Nov

### Class participation

Due: **Ongoing**

Weighting: **10%**

**Internal 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. **Students 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. **Failure to fulfil class participation requirements will result in a zero mark for class participation.**

**External students** will be expected to fulfil the class participation requirements at the **On-Campus Session (OCS), which is to be held on Thurs 28 Sep and Fri 29 Sep.** 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 for the student to complete in lieu of attendance. **Failure to attend the OCS without formal approval will result in a zero mark for class participation.**

Tutorials and the OCS will focus on addressing the set Questions in the **Tutorial Program**. 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:

- explain the reasons for and describe the principal rules of evidence
- explain the reasons for and describe the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal evidentiary rules
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

## Early assessment

Due: **Week 4 (26-27 Aug)**

Weighting: **10%**

The early assessment task is an **online multiple choice quiz** to take place at the **end of week 4 (Sat 26-Sun 27 Aug)**. 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, trial fundamentals and the adducing of testamentary evidence. 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 not attempt it at all** and must make a disruption to study application. If it is approved, they may sit for an equivalent paper test by appointment with the unit convenor in his office. **Failure to complete the quiz will result in zero marks for this assessment.**

On successful completion you will be able to:

- explain the reasons for and describe the principal rules of evidence

## Assignment

Due: **15 Sep (int); 6 Oct (ext)**

Weighting: **30%**

The Assignment in this unit is compulsory and will be a **hypothetical problem question**. The 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. It must be kept to a maximum 1,700 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 their 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.

Turnitin will accept only **one submission** so students must ensure what they submit is the final iteration of their assignment. If a student **incorrectly uploads** an assignment for another unit instead of their Evidence assignment, the assignment will not be marked and will result in a **zero grade for the assessment task**.

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- explain the reasons for and describe the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal evidentiary rules
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

## Final exam

Due: **Thursday 9 Nov**

Weighting: **50%**

The end of semester examination in this unit will be a **take-home 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 a choice of hypothetical problems and essay questions. The examination questions will be uploaded to iLearn at a time to be announced and three hours will be provided for students to upload their responses. The take-home exam will be held on the morning of **Thursday 9 Nov** and more details will be provided in due course.

If, for justifiable reasons, a student is unable to attempt the final examination at the above time or their performance in the final examination is adversely affected, they must submit a valid Disruption to Study application with the appropriate supporting evidence. If approved, the student will be allowed to complete an **open-book formal supplementary examination**. The supplementary examination will be held on a date to be determined. In such cases, students must be prepared to attend the supplementary exam outside the official university exam period.

**Any student who does not submit answers to the final examination or supplementary examination, as the case may be, on time or at all, will receive a zero mark for the exam assessment item.**

**FIT TO SIT MODEL** Macquarie University operates under a 'Fit to Sit' model. This means that in sitting an exam and/or in-class test or otherwise submitting an assessment, a student declares themselves fit to do so. Therefore, if a student is feeling unfit to sit the exam or test, or otherwise submit the assessment (as the case may be), they should not do so. If a student sits an exam or test, or otherwise submits an assessment, knowing that they are unfit to do so, they will not be granted Special Consideration.

It is the responsibility of the student to determine whether they are fit to sit an examination or test or otherwise submit an assessment, or whether a Disruption to Studies claim should be submitted for non-participation.

A student's sitting an examination or test or otherwise submitting an assessment will not preclude the student from being granted Special Consideration if the student can demonstrate that:

- they were unfit to make reasonable judgement on their fitness to undertake the assessment, due to mental illness or other exceptional circumstances;
- they were taken ill during the assessment (in the case of an examination or test); or
- other exceptional circumstances beyond their control vitiated the Fit to Sit declaration.

On successful completion you will be able to:

- explain the reasons for and describe the principal rules of evidence
- explain the reasons for and describe the main exceptions to the principal rules of evidence
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions 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 Text:

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

### Recommended Texts

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

J Anderson, N Williams & L Clegg, *The New Law of Evidence: Annotation and Commentary on the Uniform Evidence Acts*, 2nd ed, LexisNexis 2009

Hon D Heydon, *Cross on Evidence*, 8th ed. LexisNexis, 2009

S Odgers, *Uniform Evidence Law*, 9th ed, Lawbook Co, 2010

M Kumar, S Odgers & E Peden, *Uniform Evidence Law: Commentary and Materials*, 3rd ed, Lawbook Co, 2009

B Cairns, *Australian Civil Procedure*, 8th ed, Lawbook Co, 2009

D Bamford, A Leaver & M Rankin, *Principles of Civil Litigation*, Lawbook Co, 2010

## Unit Schedule

Wk	Week Commencing	Lecture Topic	Tutorial Topic
1	31 July	Introduction to Unit; Overview of Litigation Systems	<b>No Tutorial</b>
2	6 August	Trial Fundamentals; Judicial Discretions	<b>1 Introduction to Unit; Overview of Litigation Systems</b>
3	13 August	Testamentary Evidence	<b>2 Trial Fundamentals; Judicial Discretions</b>

4	20 August	Documentary Evidence; Real Evidence	<b>3 Testamentary Evidence</b>
5	27 August	Proof; Relevance	<b>4 Documentary Evidence; Real Evidence</b>
6	4 September	Hearsay Evidence I	<b>5 Proof; Relevance</b>
7	11 September	Hearsay Evidence II; Admissions	<b>6 Hearsay Evidence I</b>
		<b>Mid-Semester Break</b> <b>[On-Campus Session 28-29 Sep]</b>	
8	2 October	Tendency and Coincidence Evidence	<b>7 Hearsay Evidence II; Admissions</b>
9	9 October	Opinion Evidence	<b>8 Tendency and Coincidence Evidence</b>
10	16 October	Credibility Evidence	<b>9 Opinion Evidence</b>
11	23 October	Character Evidence	<b>10 Credibility Evidence</b>
12	30 October	Identification Evidence	<b>11 Character Evidence</b>
13	6 November	No Lecture	<b>12 Identification Evidence</b>



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)

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).

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

- explain the reasons for and describe the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal evidentiary rules

- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

## **Assessment task**

- Class participation

## **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**

- explain the reasons for and describe the principal rules of evidence
- explain the reasons for and describe the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal evidentiary rules
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

## **Assessment tasks**

- Class participation
- Early assessment
- 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:

## **Assessment tasks**

- Class participation
- Assignment
- Final exam

## 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

- explain the reasons for and describe the principal rules of evidence
- explain the reasons for and describe the main exceptions to the principal rules of evidence
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

### Assessment tasks

- Class participation
- 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

- explain the reasons for and describe the principal rules of evidence
- explain the reasons for and describe the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal evidentiary rules
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

### Assessment tasks

- Class participation

- 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

- explain the reasons for and describe the principal rules of evidence
- explain the reasons for and describe the main exceptions to the principal rules of evidence
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

### Assessment tasks

- Class participation
- Assignment

## 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 outcome

- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

### Assessment task

- Class participation

## 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:

### **Assessment tasks**

- Class participation
- 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**

- critically analyse the appropriateness and fairness of the principal evidentiary rules

### **Assessment tasks**

- Class participation
- Early assessment