



# LAWS805

## Theories of Law and Justice

S2 Day 2017

*Dept of Law*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Convenor

Lukas Opacic

[lukas.opacic@mq.edu.au](mailto:lukas.opacic@mq.edu.au)

W3A 512

Wednesdays 12pm - 1pm

Credit points

4

Prerequisites

((Admission to GradCertLaw or GradDipLaw or LLM or admission to JD after 2014) and corequisite LAWS600)) or (admission to JD in 2014)

Corequisites

Co-badged status

Unit description

In this unit students will consider the central topics of jurisprudence. This involves a rigorous and critical analysis of the nature of law, legal reasoning and judicial decision-making. Debates about the legitimate purpose of the state in redressing socio-economic inequality and whether there is a need for 'rights' are provoked by this analysis. Written and verbal reasoning skills are a focus of development.

## 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:

Analyse the issues at stake in debates about the nature of law, legal reasoning and adjudication.

Assess the strengths and weaknesses of different theories about the nature of law, legal reasoning and adjudication.

Critique legal arrangements and institutions from the normative perspective.

Apply knowledge of theoretical debates in jurisprudence in assessing the reasoning in legal cases and answering hypothetical problems.

Communicate using clear and cogent arguments both orally and in writing.

Participate constructively in discussion and other classroom activities in order to understand, analyse and critique central debate in jurisprudence and law from a normative perspective.

## General Assessment Information

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.

Detailed marking rubrics will be made available on iLearn. All Fail assignments are double marked.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Class participation</u>	10%	No	Ongoing
<u>Assessment 1</u>	40%	No	17 September 11:59 pm
<u>Assessment 2</u>	50%	No	12 November 11:59

### Class participation

Due: **Ongoing**

Weighting: **10%**

Students should have read all the required readings for each week and be prepared to discuss the seminar questions for that week. Class participation marks will be based on frequency and quality of contribution to discussion; evidence of preparation for the seminars; and performance in specific tasks assigned by the tutor. Mere attendance at tutorials is not sufficient to attract marks.

Internal students are required to attend at least 10 of the seminars. External students are required to attend both days of the on-campus session.

An internal student who attends fewer than 10 seminars or an external student who fails to attend all/part of the on-campus session without a successful application for disruption will have

marks deducted for class participation at the discretion of their convenor.

Applications for disruption should be made through AskMQ ([ask.mq.edu.au](http://ask.mq.edu.au)). They should comply with the disruption to studies policy and procedure, to be found at:  
[http://students.mq.edu.au/student\\_admin/manage\\_your\\_study\\_program/disruption\\_to\\_studies/](http://students.mq.edu.au/student_admin/manage_your_study_program/disruption_to_studies/)

On successful completion you will be able to:

- Analyse the issues at stake in debates about the nature of law, legal reasoning and adjudication.
- Assess the strengths and weaknesses of different theories about the nature of law, legal reasoning and adjudication.
- Critique legal arrangements and institutions from the normative perspective.
- Apply knowledge of theoretical debates in jurisprudence in assessing the reasoning in legal cases and answering hypothetical problems.
- Communicate using clear and cogent arguments both orally and in writing.
- Participate constructively in discussion and other classroom activities in order to understand, analyse and critique central debate in jurisprudence and law from a normative perspective.

## Assessment 1

Due: **17 September 11:59 pm**

Weighting: **40%**

Students will be required to write a research paper. Questions will be released on iLearn by the end of week 5.

The word limit for this assignment is 2500 words. Footnotes and the bibliography are not included in the word limit. Students should abide by AGLC3.

NOTE: The due date for **external students only** is **20 September 2017 at 11:59pm**. This is to reflect the fact that the OCS for external students starts on 18 September.

On successful completion you will be able to:

- Analyse the issues at stake in debates about the nature of law, legal reasoning and adjudication.
- Assess the strengths and weaknesses of different theories about the nature of law, legal reasoning and adjudication.
- Apply knowledge of theoretical debates in jurisprudence in assessing the reasoning in legal cases and answering hypothetical problems.
- Communicate using clear and cogent arguments both orally and in writing.

## Assessment 2

Due: **12 November 11:59**

Weighting: **50%**

Students will be required to write a research paper. Questions will be released on iLearn by the end of week 12.

The word limit for this assignment is 3000 words. Footnotes and the bibliography are not included in the word limit. Students should abide by AGLC3.

On successful completion you will be able to:

- Critique legal arrangements and institutions from the normative perspective.
- Apply knowledge of theoretical debates in jurisprudence in assessing the reasoning in legal cases and answering hypothetical problems.
- Communicate using clear and cogent arguments both orally and in writing.

## Delivery and Resources

### Technology used

This unit will use i-learn and ECHO lectures. Students will be required to interact with online research databases and web-based research tools.

### Classes

All lecture material will be pre-recorded and available on the i-learn site. There will be one seminar per week for internal students (90 minutes each) and three on-campus days for external students (6 hours per day).

For further details about dates, times and venues, please consult the MQ Timetables website: <http://www.timetables.mq.edu.au>

Internal students must attend at least 10 seminars and submit all assignments. External students must attend at least 2 days of on-campus sessions and submit all assignments.

### Required and recommended resources

Prescribed text

Denise Meyerson, *Jurisprudence* (Oxford University Press, 2011).

Other essential reading and supplementary reading

Details available on the i-learn site for LAWS805.

## Unit Schedule

### Part I: Theories of Law

Week 1: Legal Positivism (Austin vs. Hart)

Week 2: Natural Law Theory (Fuller and Finnis)

Week 3: Law as Interpretation (Dworkin)

Week 4: Formalism, American Legal Realism, and the Economic Analysis of Law (Schauer, Leiter, Posner)

Week 5: Critical Perspectives on Law (Marxism, Postmodernism, Feminism)

## **Part II: Theories of Justice**

Week 6: The State of Nature and the Justification of Government (Aristotle, Hobbes, Locke, Rousseau)

Week 7: Utilitarianism (Bentham, Mill)

**Assessment 1 Due:** 17 Sept. 11:59pm.

## **Semester Break (18 Sept. - 1 Oct.)**

Week 8: Liberalism (Rawls)

Week 9: Criticisms of Liberalism 1 - Libertarianism (Nozick)

Week 10: Criticisms of Liberalism 2 - Marxism and Feminism (Marx, MacKinnon, Okin)

Week 11: Criticisms of Liberalism 3 - Communitarianism (Sandel, Walzer)

Week 12: Conservatism and Traditionalism (Burke, Schmitt, MacIntyre)

Week 13: Human Rights and their Critics (Bentham, Marx, Kennedy, Moyn)

**Assessment 2 Due:** 12 Nov. 11:59pm.

## **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).

### Macquarie Law School Assessment Policy

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.

Referencing should comply with the Australian Guide to Legal Citation, unless otherwise stated.

All assessments in this unit are to be submitted electronically. Plagiarism detection software is used in this unit.

## 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

### 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

- Analyse the issues at stake in debates about the nature of law, legal reasoning and adjudication.
- Assess the strengths and weaknesses of different theories about the nature of law, legal reasoning and adjudication.
- Critique legal arrangements and institutions from the normative perspective.
- Apply knowledge of theoretical debates in jurisprudence in assessing the reasoning in legal cases and answering hypothetical problems.
- Participate constructively in discussion and other classroom activities in order to understand, analyse and critique central debate in jurisprudence and law from a normative perspective.

#### Assessment tasks

- Class participation
- Assessment 1
- Assessment 2



## 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

- Analyse the issues at stake in debates about the nature of law, legal reasoning and adjudication.
- Assess the strengths and weaknesses of different theories about the nature of law, legal reasoning and adjudication.
- Critique legal arrangements and institutions from the normative perspective.
- Apply knowledge of theoretical debates in jurisprudence in assessing the reasoning in legal cases and answering hypothetical problems.
- Participate constructively in discussion and other classroom activities in order to understand, analyse and critique central debate in jurisprudence and law from a normative perspective.

### Assessment tasks

- Class participation
- Assessment 1
- Assessment 2

## 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:

### Learning outcomes

- Critique legal arrangements and institutions from the normative perspective.
- Apply knowledge of theoretical debates in jurisprudence in assessing the reasoning in legal cases and answering hypothetical problems.

## **Assessment tasks**

- Assessment 1
- Assessment 2

## **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**

- Assess the strengths and weaknesses of different theories about the nature of law, legal reasoning and adjudication.
- Critique legal arrangements and institutions from the normative perspective.
- Apply knowledge of theoretical debates in jurisprudence in assessing the reasoning in legal cases and answering hypothetical problems.
- Communicate using clear and cogent arguments both orally and in writing.
- Participate constructively in discussion and other classroom activities in order to understand, analyse and critique central debate in jurisprudence and law from a normative perspective.

## **Assessment tasks**

- Class participation
- Assessment 1
- Assessment 2

## **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**

- Critique legal arrangements and institutions from the normative perspective.
- Apply knowledge of theoretical debates in jurisprudence in assessing the reasoning in

legal cases and answering hypothetical problems.

## Assessment tasks

- Class participation
- Assessment 2

## Changes since First Published

Date	Description
08/09/2017	Changed due date of assessment 1 for external students (only) to 20 September 2017.
27/07/2017	Changed consultation times.