



# LAWS556

## Succession

S1 Day 2018

*Dept of Law*

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### Disclaimer

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## General Information

Unit convenor and teaching staff

Convenor

Caitriona McCabe

[caitriona.mccabe@mq.edu.au](mailto:caitriona.mccabe@mq.edu.au)

Contact via Email

W3A 519

Wed 1pm - 2pm

Credit points

3

Prerequisites

24cp in LAW or LAWS units

Corequisites

Co-badged status

LAWS556 External

Unit description

This unit explores the law relating to the making and construction of wills; the grant of probate and administration; and the distribution of testate and intestate estates. The provisions of the Family Provision Act 1982 are considered as well as those of the Wills, Probate and Administration Act 1898 (NSW). Emphasis is given to the role of the lawyer in planning the client's affairs in the light of the above legislation. Will drafting, including drafting exercises, to comply effectively with clients' instructions, forms an important part of this unit.

## 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:

1. Describe and explain links between perspectives on property and relationships in the context of succession law.
2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills.
3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes.
4. Advise on competing family claims dealing with testate estates,

intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## General Assessment Information

### Compulsory Text

Croucher, R; Vines, P, *Succession: Families, Property and Death* (LexisNexis, 4th ed, 2013). Available from the Macquarie University Co-op Bookshop.

Recommended additional reference (students are not expected to purchase this reference):

Certoma, GL, *The Law of Succession in NSW* (Thomson Reuters, 4th ed, 2010).

### Lectures

Weekly lectures in this unit will be pre-recorded and available to students on iLearn. Weekly lectures will commence in Week 1 and go through to Week 12.

### Tutorials

Weekly tutorials will be conducted for internal students commencing in week 2 and concluding in week 13 inclusive. Tutorials will be based on the preceding week's materials set out in the weekly schedule on iLearn. References to weekly materials for assessment purposes are based on the iLearn schedule. An On Campus Session is scheduled for Thursday and Friday, the 26th and 27th April 2018 in Room G09, 25a Wallys Walk. Please check the timetable closer to the date for confirmation: [timetables@mq.edu.au](mailto:timetables@mq.edu.au)

Tutorials and the On Campus Session are beneficial but not compulsory.

### Online Units

Online units can be accessed at: <http://ilearn.mq.edu.au/>.

PC and Internet access are required. Basic computer skills (e.g., internet browsing) and skills in word processing are also a requirement.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<a href="#">Online Quiz</a>	30%	No	10th April
<a href="#">Hypothetical Problem Question</a>	20%	No	14th May, 9pm
<a href="#">Research Essay</a>	30%	No	28th May, 9pm
<a href="#">Online Quiz</a>	20%	No	19th June

## Online Quiz

Due: **10th April**

Weighting: **30%**

This quiz will test your understanding of the materials covered in weeks 1 - 4 inclusive. Although the submission portal will remain open from 12pm – 8pm, the quiz is designed to be completed in 1 hour; the 8 hour time span is to accommodate the range of commitments and needs of both internal and external students. It will consist of 15 multiple choice questions some of which will be based on short hypothetical problem questions. When a student accesses the quiz they have 1 hour in which to complete it. The questions and responses available to each student will vary as they will be allocated from a bank of questions, with the order of the responses presented to each student also varying. Answers will be automatically submitted at the end of the hour.

On successful completion you will be able to:

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates, intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## Hypothetical Problem Question

Due: **14th May, 9pm**

Weighting: **20%**

The hypothetical problem question will be based on the materials in weeks 5 - 8 inclusive and will require a response to a hypothetical problem question involving succession law.

Word limit 1500 including footnotes.

Further information and a marking rubric will be available on the question.

On successful completion you will be able to:

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates,

intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## Research Essay

Due: **28th May, 9pm**

Weighting: **30%**

The research essay will require a critical analysis of Succession Law in New South Wales with a view to reform.

Word limit 1500 including footnotes.

Further information on the topic and a marking rubric will be available on iLearn.

On successful completion you will be able to:

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates, intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## Online Quiz

Due: **19th June**

Weighting: **20%**

This quiz will test your understanding of the materials covered in weeks 9 - 12 inclusive.

Although the submission portal will remain open from 12pm – 8pm, the quiz is designed to be completed in 1 hour; the 8 hour time span is to accommodate the range of commitments and needs of both internal and external students. It will consist of 10 multiple choice questions some of which will be based on short hypothetical problem questions. When a student accesses the quiz they have 1 hour in which to complete it. The questions and responses available to each student will vary as they will be allocated from a bank of questions, with the order of the responses presented to each student also varying. Answers will be automatically submitted at the end of the hour.

On successful completion you will be able to:

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates, intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## Delivery and Resources

### *Late Submission Penalty*

Unless a Special Consideration request has been submitted and approved, (a) a penalty for lateness will apply – two (2) marks out of 100 will be deducted per day for assignments submitted after the due date – and (b) no assignment will be accepted more than seven (7) days (incl. weekends) after the original submission deadline. No late submissions will be accepted for timed assessments – e.g. quizzes, online tests.

## Unit Schedule

**LECTURE SCHEDULE, SEMESTER 1, 2018 - SUBJECT TO REVISION: CHECK ILEARN FOR DETAILED SCHEDULE**

TOPIC	Week commencing 2018	ISSUES
1	26/2	Introduction to the Unit What is Succession Law?; Succession Law as a reflection of societal theories.
2	5/3	Family Provision: History, Jurisdiction & Eligibility
3	12/3	Family Provision: Priority of Competing Claims
4	19/3	Family Provision: The Court's Criterion & Approach
5	26/3	Intestacy and Spouses
6	2/4	Intestacy and Other Relationships, Estates of Indigenous Persons and Bona Vacantia
7	9/4	Formal Requirements of Wills and the Dispensing Power
		<b>MID SEMESTER BREAK – ON CAMPUS SESSION 26th and 27th April</b>

8	30/4	Capacity and Undue Influence
9	7/5	Life Estates and Other Testamentary Trusts
10	14/5	Rectification and Construction of Wills
11	21/5	Ademption, Lapse and Equitable Doctrines
12	28/5	Revocation and Alteration of Wills
13	4/6	<b>NO LECTURE THIS WEEK</b>

## Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central>). Students should be aware of the following policies in particular with regard to Learning and Teaching:

- [Academic Appeals Policy](#)
- [Academic Integrity Policy](#)
- [Academic Progression Policy](#)
- [Assessment Policy](#)
- [Fitness to Practice Procedure](#)
- [Grade Appeal Policy](#)
- [Complaint Management Procedure for Students and Members of the Public](#)
- [Special Consideration Policy](#) (**Note:** *The Special Consideration Policy is effective from 4 December 2017 and replaces the Disruption to Studies Policy.*)

Undergraduate students seeking more policy resources can visit the [Student Policy Gateway](https://students.mq.edu.au/support/study/student-policy-gateway) (<https://students.mq.edu.au/support/study/student-policy-gateway>). It is your one-stop-shop for the key policies you need to know about throughout your undergraduate student journey.

If you would like to see all the policies relevant to Learning and Teaching visit [Policy Central](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/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/study/getting-started/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](#).

## 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:

### Assessment task

- Research Essay

### 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 outcome**

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates, intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## **Assessment tasks**

- Online Quiz
- Hypothetical Problem Question
- Research Essay

## **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 outcome**

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates, intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated

independent research.

## Assessment tasks

- Hypothetical Problem Question
- Research Essay
- Online Quiz

## 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 outcome

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates, intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## Assessment tasks

- Online Quiz
- Hypothetical Problem Question
- Research Essay
- Online Quiz

## 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 outcome

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates, intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## Assessment tasks

- Online Quiz
- Hypothetical Problem Question
- Research Essay
- Online Quiz

## 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 outcome

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates, intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## Assessment tasks

- Online Quiz
- Hypothetical Problem Question
- Research Essay
- Online Quiz

## 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

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates, intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## Assessment tasks

- Online Quiz
- Hypothetical Problem Question
- Research Essay
- Online Quiz

## 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 outcome**

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates, intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## **Assessment tasks**

- Online Quiz
- Hypothetical Problem Question
- Research Essay
- Online Quiz

## **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**

- 1. Describe and explain links between perspectives on property and relationships in the context of succession law. 2. Analyse case law on the Succession Act 2006 (NSW) and apply to the validity and interpretation of wills. 3. Critically evaluate the law on family provision and apply family provision legislation to complex factual situations involving estate disputes. 4. Advise on competing family claims dealing with testate estates, intestate estates and partial intestacy. 5. Assess the various legal principles to give appropriate advice on wills. 6. Communicate arguments related to the area of Succession Law effectively to a range of audiences. 7. Conduct sophisticated independent research.

## **Assessment tasks**

- Research Essay

- Online Quiz