



# LAWS814

## Evidence

S2 External 2019

*Macquarie Law School*

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### Disclaimer

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## General Information

Unit convenor and teaching staff

Unit Convenor, Lecturer, Tutor

Ilija Vickovich

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6 First Walk 624

Thursday 12.30pm-1.30pm

Credit points

4

Prerequisites

LAWS813

Corequisites

Co-badged status

Unit description

This unit examines the principles and rules of evidence in civil and criminal proceedings under the uniform evidence legislation in New South Wales. Major topics include important aspects of proof, privilege and the adducing of testimonial, documentary and real evidence, as well as unreliable evidence. The principal areas of admissibility of evidence are also examined in detail, including relevance, hearsay and admissions, opinion evidence, tendency and coincidence evidence, credibility and character, as well as identification evidence.

## 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 Demonstrate a detailed and thorough knowledge of legal principles relating to the law of evidence.
- 2 Analyse complex factual situations involving the law of evidence and apply relevant legal principles to solving problems.
- 3 Formulate, present and evaluate oral and written arguments on complex problems and principles related to the law of evidence, drawing upon relevant legal authority and policy

considerations.

4 Apply advanced research skills.

5 Assume responsibility for one's own learning by managing one's time effectively so as to complete and submit correct assessment tasks online.

## General Assessment Information

**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 (including an online quiz), 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 Special Consideration application 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.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Assignment 1</u>	25%	No	9 Sep
<u>Assignment 2</u>	25%	No	11 Oct
<u>Final Examination</u>	50%	No	Thursday 21 Nov

### Assignment 1

Due: **9 Sep**

Weighting: **25%**

Assignment No 1 in this unit is a research paper. The question for Assignment No 1 will be available on iLearn by the end of the first week of semester. Assignment No 1 must be a properly referenced formal response with appropriate analysis and argument supported by relevant legal authorities. It must be typed and kept to a maximum 2,500 words (excluding footnotes and the bibliography). In completing Assignment No 1, students must comply with the Australian Guide to Legal Citation 4th ed. The Guide will be available in iLearn. Assignment No 1 must be uploaded

to Turnitin through the relevant iLearn link.

### 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 without an approved special consideration application. No late submissions will be accepted for timed assessments, e.g. quizzes, online tests, without an approved special consideration application.

Students who have delayed the submission of their assignments will not be able to do so beyond 23 Sep at the latest, and will be allocated new assignments. This is because marked assignments have to be released to the cohort.

Turnitin will accept only ONE assignment, so it is imperative that the final iteration of the assignment is submitted. It is the student's responsibility to submit the correct assignment in ALL units. If a student submits the wrong assignment, they must advise the unit convenor. The late penalty described above will apply to any assignment lodged in these circumstances. It will not be possible to change the assignment after seven days, and a zero mark will be recorded.

On successful completion you will be able to:

- 1 Demonstrate a detailed and thorough knowledge of legal principles relating to the law of evidence.
- 3 Formulate, present and evaluate oral and written arguments on complex problems and principles related to the law of evidence, drawing upon relevant legal authority and policy considerations.
- 4 Apply advanced research skills.
- 5 Assume responsibility for one's own learning by managing one's time effectively so as to complete and submit correct assessment tasks online.

## Assignment 2

Due: **11 Oct**

Weighting: **25%**

Assignment No 2 in this unit will require students to answer a hypothetical problem question or questions, and will be available on iLearn by the end of Week 4 of the semester. Assignment No 2 must be a properly referenced formal response with appropriate analysis and argument supported by relevant authoritative cases and commentary. Assignment No 2 must be typed and must be kept to a maximum 2,500 words (excluding footnotes and the bibliography). In completing Assignment No 2, students must comply with the Australian Guide to Legal Citation 4th ed. The Guide will be available in iLearn. Assignment No 2 must be uploaded to Turnitin through the relevant iLearn link.

### 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 without an approved special consideration application. No late submissions will be accepted for timed assessments, e.g. quizzes, online tests, without an approved special consideration application.

Students who have delayed the submission of their assignments will not be able to do so beyond 25 October at the latest, and will be allocated new assignments. This is because marked assignments have to be released to the cohort.

Turnitin will accept only ONE assignment, so it is imperative that the final iteration of the assignment is submitted. It is the student's responsibility to submit the correct assignment in ALL units. If a student submits the wrong assignment, they must advise the unit convenor. The late penalty described above will apply to any assignment lodged in these circumstances. It will not be possible to change the assignment after seven days, and a zero mark will be recorded.

On successful completion you will be able to:

- 1 Demonstrate a detailed and thorough knowledge of legal principles relating to the law of evidence.
- 2 Analyse complex factual situations involving the law of evidence and apply relevant legal principles to solving problems.
- 3 Formulate, present and evaluate oral and written arguments on complex problems and principles related to the law of evidence, drawing upon relevant legal authority and policy considerations.
- 5 Assume responsibility for one's own learning by managing one's time effectively so as to complete and submit correct assessment tasks online.

## Final Examination

Due: **Thursday 21 Nov**

Weighting: **50%**

The final examination in this unit will be a take home examination. The final examination will be based on material covered in the unit. Further details about the examinable topics will be provided in advance. The final examination will be in the form of a number of problem style questions. **Students will be able to access the final examination paper on iLearn from 1pm on Thurs 21 Nov and must submit their answers to the final examination paper by 5pm on the same day.** Detailed information about the date, submission details and format of the exam will be provided to students well before the due date.

A student's answers to the final examination questions must not exceed a total of 3,000 words (exclusive of footnotes). This is an upper word limit and a student need not write 3,000 words if he or she can answer the questions adequately in fewer words. A bibliography is not required. If, for justifiable reasons, a student is unable to attempt the take home examination at the above

time, the student should not make any attempt whatsoever. If the student submits a written response, he or she will be marked on that response. The student should instead submit nothing at the required time, but instead contact the unit convenor by email and also apply for special consideration in accordance with the University's Special Consideration Policy, which, if granted, will enable the student to complete an alternative comparable assessment at a time determined by the unit convenor.

On successful completion you will be able to:

- 1 Demonstrate a detailed and thorough knowledge of legal principles relating to the law of evidence.
- 2 Analyse complex factual situations involving the law of evidence and apply relevant legal principles to solving problems.
- 3 Formulate, present and evaluate oral and written arguments on complex problems and principles related to the law of evidence, drawing upon relevant legal authority and policy considerations.
- 5 Assume responsibility for one's own learning by managing one's time effectively so as to complete and submit correct assessment tasks online.

## Delivery and Resources

**DELIVERY AND RESOURCES** Delivery: Day, External

**This unit will use:** iLearn webpage and Echo recorded lectures

**Weekly Lectures (Internal and Distance Students):** 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.

**Weekly Tutorials (Internal Students):** For internal students, weekly one-hour tutorials will commence in Week 2 and go through to week 13. Tutorials will consist of questions for discussion. The questions to be discussed each week are available in the Unit Outline. Tutorials will take place on **Fridays from 12pm to 1pm in 8 Ondaatje 117.**

**On Campus Sessions (Distance Students):** For distance students, there are two consecutive days of on campus sessions. Distance students **must** attend the **on campus sessions (Fri-Sat 27-28 Sep)**. On campus sessions will run from 9-am to 12 noon and 1 pm to 4 pm on each of the three days. Further information about the on campus sessions will be made available in due course.

### Prescribed Text:

Bellew, Arthur, Boas and Chifflet, *Australian Uniform Evidence Law: Principles and Context*, LexisNexis, 2019

### Recommended Texts

- A Ligertwood & G Edmond, *Australian Evidence: A Principled Approach to the Common Law and the Uniform Acts*, 6th ed, LexisNexis, 2017
- Hon D Heydon, *Cross on Evidence*, 11th ed. LexisNexis, 2017
- S Odgers, *Uniform Evidence Law*, 14th ed, Lawbook Co, 2019
- M Kumar, E Peden & S Odgers, *Uniform Evidence Law: Commentary and Materials*, 6th ed, Lawbook Co, 2018
- John Anderson, *Uniform Evidence Law: Text and Essential Cases*, 3rd ed, The Federation Press, 2016
- Fiona Hum et al, *Australian Uniform Evidence Law*, Cambridge UP, 2019

## Unit Schedule

Wk	Week Commencing	Lecture Topic	Tutorial Topic
1	29 July	Introduction to Unit; Overview of Litigation Systems	<b>No Tutorial</b>
2	5 August	Trial Fundamentals; Judicial Discretions	<b>1 Introduction to Unit; Overview of Litigation Systems</b>
3	12 August	Adducing Evidence I	<b>2 Trial Fundamentals; Judicial Discretions</b>
4	19 August	Adducing Evidence II	<b>3 Adducing Evidence I</b>
5	26 August	Proof; Relevance	<b>4 Adducing Evidence II</b>
6	2 September	Hearsay Evidence I	<b>5 Proof; Relevance</b>
7	9 September	Hearsay Evidence II	<b>6 Hearsay Evidence I</b>

		<b>Mid-Semester Break</b> <b>[On-Campus Session 27-28 Sep]</b>	
8	30 September	Hearsay Evidence III; Admissions	<b>7 Hearsay Evidence II</b>
9	7 October	Opinion Evidence	<b>8 Hearsay Evidence III; Admissions</b>
10	14 October	Tendency & Coincidence Evidence	<b>9 Opinion Evidence</b>
11	21 October	Credibility & Character Evidence	<b>10 Tendency &amp; Coincidence Evidence</b>
12	28 October	Identification Evidence; Exam Preparation	<b>11 Credibility &amp; Character Evidence</b>
13	4 November	No Lecture	<b>12 Identification Evidence</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](http://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<http://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 published on platform other than [eStudent](#), (eg. iLearn, Coursera etc.) 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) or if you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@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)

If you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@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 - Capable of Professional and Personal Judgment and Initiative

Our postgraduates will demonstrate a high standard of discernment and common sense in their professional and personal judgment. They will have the ability to make informed choices and decisions that reflect both the nature of their professional work and their personal perspectives.

This graduate capability is supported by:

#### Learning outcomes

- 2 Analyse complex factual situations involving the law of evidence and apply relevant legal principles to solving problems.
- 3 Formulate, present and evaluate oral and written arguments on complex problems and principles related to the law of evidence, drawing upon relevant legal authority and policy considerations.
- 5 Assume responsibility for one's own learning by managing one's time effectively so as to complete and submit correct assessment tasks online.

#### Assessment tasks

- Assignment 2
- Final Examination

### 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

- 1 Demonstrate a detailed and thorough knowledge of legal principles relating to the law of evidence.
- 2 Analyse complex factual situations involving the law of evidence and apply relevant legal principles to solving problems.

- 3 Formulate, present and evaluate oral and written arguments on complex problems and principles related to the law of evidence, drawing upon relevant legal authority and policy considerations.

## **Assessment tasks**

- Assignment 1
- Assignment 2
- Final Examination

## **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**

- 1 Demonstrate a detailed and thorough knowledge of legal principles relating to the law of evidence.
- 2 Analyse complex factual situations involving the law of evidence and apply relevant legal principles to solving problems.
- 3 Formulate, present and evaluate oral and written arguments on complex problems and principles related to the law of evidence, drawing upon relevant legal authority and policy considerations.
- 4 Apply advanced research skills.

## **Assessment tasks**

- Assignment 1
- Assignment 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

- 1 Demonstrate a detailed and thorough knowledge of legal principles relating to the law of evidence.
- 2 Analyse complex factual situations involving the law of evidence and apply relevant legal principles to solving problems.
- 4 Apply advanced research skills.

## Assessment tasks

- Assignment 1
- Assignment 2
- Final Examination

## 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

- 1 Demonstrate a detailed and thorough knowledge of legal principles relating to the law of evidence.
- 2 Analyse complex factual situations involving the law of evidence and apply relevant legal principles to solving problems.
- 3 Formulate, present and evaluate oral and written arguments on complex problems and principles related to the law of evidence, drawing upon relevant legal authority and policy considerations.
- 4 Apply advanced research skills.
- 5 Assume responsibility for one's own learning by managing one's time effectively so as to complete and submit correct assessment tasks online.

## Assessment tasks

- Assignment 1
- Assignment 2
- Final Examination

## 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**

- 3 Formulate, present and evaluate oral and written arguments on complex problems and principles related to the law of evidence, drawing upon relevant legal authority and policy considerations.
- 5 Assume responsibility for one's own learning by managing one's time effectively so as to complete and submit correct assessment tasks online.

## **Assessment task**

- Assignment 1