



# LAWS813

## Civil and Criminal Procedure

S1 Day 2019

*Macquarie Law School*

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#### **Disclaimer**

Macquarie University has taken all reasonable measures to ensure the information in this publication is accurate and up-to-date. However, the information may change or become out-dated as a result of change in University policies, procedures or rules. The University reserves the right to make changes to any information in this publication without notice. Users of this publication are advised to check the website version of this publication [or the relevant faculty or department] before acting on any information in this publication.

## General Information

Unit convenor and teaching staff

Co-convenor (civil procedure)

Sonya Willis

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

6 First Walk 520

Wednesday 12-2pm

Co-convenor (criminal procedure)

Andrew Burke

[andrew.burke@mq.edu.au](mailto:andrew.burke@mq.edu.au)

6 First Walk 622

Tuesday 2-3pm

Credit points

4

Prerequisites

LAWS802 and LAWS803 and LAWS806

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, the nature of adversarial disputation, case management, pre-litigation issues and protocols, and pre-trial procedures of originating process, gathering of evidence for trial, class actions and the conduct and disposal of civil proceedings. Select topics in criminal procedure, such as classification of offences, police powers and bail, the conduct of criminal trials and sentencing will be covered. A recurrent theme of the unit is a critical evaluation of access to, and the contemporary administration of, justice.

## 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. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.

Understand the themes and theories of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. Ability to consider and critique current procedural processes. This will develop students' 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. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.

Develop elementary advocacy skills enabling students to demonstrate their learning orally and have the opportunity to experience the role of lawyer in the courtroom through mock legal proceedings.

## General Assessment Information

Further information about the assessment criteria for each task will be forthcoming throughout the semester.

**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.**

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. Any instances of plagiarism will be referred to the Faculty of Arts' Hearings Committee for disciplinary action. This may have adverse consequences for students wishing to be admitted as a solicitor after graduation. Students who are unclear as to the definition of plagiarism should re-read the Academic Integrity Policy (link below in Policies and Procedures).

With respect to the Court Observation Assignment, students are required to complete and submit a Court Attendance Log. Any deliberate inaccuracies in this log will constitute fabrication under the Academic Integrity Policy (link below in Policies and Procedures). Any instances of fabrication will be referred to the Faculty of Arts' Hearings Committee for disciplinary action. This may have adverse consequences for students wishing to be admitted as a solicitor in due

course.

Blind marking is used in this unit. When marking in Turnitin, the marker is unable to see the name of the student. Please do not use your name in the file name of assignments that you submit to Turnitin, or include your name in the assignment itself.

### Moderation

Detailed marking guidelines will be made available on iLearn. Assessments for Fail grade students will be double marked.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Criminal Class Participation</u>	10%	No	Continuing
<u>Criminal Procedure Quizzes</u>	15%	No	Weeks 3, 4, 5 and 7
<u>Court Observation Assignment</u>	25%	No	Week 8, Monday 29th April, 5pm
<u>Civil Class Participation</u>	10%	No	Continuing
<u>Civil Procedure Quizzes</u>	15%	No	Weeks 9, 10, 11 and 12
<u>Civil Take-Home Examination</u>	25%	No	3pm Tuesday 11th June

### 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 consist of mock sentencing submissions or bail applications, and students interested in advocacy should select that tutorial as their 'on call' tutorial. More information about the mock sentencing and bail exercises 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. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Understand the themes and theories of procedural law, identifying and interpreting key

legislative provisions and identifying key stakeholders. Ability to consider and critique current procedural processes. This will develop students' 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. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and have the opportunity to experience the role of lawyer in the courtroom through mock legal proceedings.

## Criminal Procedure Quizzes

Due: **Weeks 3, 4, 5 and 7**

Weighting: **15%**

There will be four Criminal Procedure Quizzes, each worth 5%. Each student's three highest quiz marks will constitute the 15% total contribution to the final grade. The lowest quiz mark will be disregarded. The quizzes will be available through iLearn on Fridays of weeks 3, 4, 5 and 7. Each quiz will assess content from the preceding week/s. Each quiz must be completed within an hour of commencement and each quiz will be available from 7:00am on Friday to 7:00am on Saturday. More information regarding the quizzes will be provided on iLearn. This is a timed submission and no late submissions will be accepted.

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.
- Understand the themes and theories of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. Ability to consider and critique current procedural processes. This will develop students' independent research and critical thinking skills.
- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.

## Court Observation Assignment

Due: **Week 8, Monday 29th April, 5pm**

Weighting: **25%**

Students will be required to undertake a minimum of six (6) hours of court observation at a New South Wales criminal court or courts as directed, and critically assess certain findings in a short essay, drawing on literature provided in the textbook as well as their own independent research. Detailed instructions will be provided on iLearn.

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

The assignment is due in Week 8 on Monday 29th April, 5pm.

All work is to be submitted via Turnitin 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. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Understand the themes and theories of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. Ability to consider and critique current procedural processes. This will develop students' independent research and critical thinking skills.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and have the opportunity to experience the role of lawyer in the courtroom through mock legal proceedings.

## 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. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Understand the themes and theories of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. Ability to consider and critique current procedural processes. This will develop students' 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. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and have the opportunity to experience the role of lawyer in the courtroom through mock legal proceedings.

## Civil Procedure Quizzes

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

Weighting: **15%**

There will be four Civil Procedure Quizzes each worth 5%. Each student's three highest quiz marks will constitute the 15% total contribution to the final grade. The lowest quiz mark will be disregarded. These will be available through iLearn 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 on Friday to 7:00am on Saturday. More information regarding the quizzes will be provided on iLearn. This is a timed assessment and no late submissions will be accepted.

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.
- Understand the themes and theories of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. Ability to consider and critique current procedural processes. This will develop students' independent research and critical thinking skills.
- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case

law through critical analysis using academic commentary.

## Civil Take-Home Examination

Due: **3pm Tuesday 11th June**

Weighting: **25%**

This assessment task will be delivered online from 12:00pm to 3:00pm, Tuesday 11th June 2019.

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

The exam will comprise a problem question.

This exam is designed as a standard 1.5 hour open book exam. Students should prepare for and organise their time during this exam as if sitting an open-book exam on-campus. Three hours have been allocated to allow for any delay in submitting exam papers by the 3pm deadline. Multiple submissions are encouraged. Late submissions will not be marked and will receive a grade of 0.

The 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. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.

## Delivery and Resources

### Delivery

Students will require access to reliable broadband internet and a computer to access iLearn, and 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 including recorded lectures.



LAWS813 internal students will attend a 1 hour weekly tutorial which begins in Week 1. Students are also welcome to attend the LAWS398 live lecture on Wednesdays from 3-5pm in the Mason Theatre.

LAWS813 external students will attend two days of on campus session, on Tuesday 23rd and Wednesday 24th April. Attendance is compulsory. If you are unable to attend due to illness or misadventure, then you must apply for Special Consideration via [ask.mq.edu.au](http://ask.mq.edu.au). If Special Consideration is granted then you will be set alternative work in lieu to determine your class participation mark. If you do not attend, and are not granted Special Consideration, your class participation mark will be zero.

### 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

## 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 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](https://ask.mq.edu.au) or if you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@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)

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

- 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. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Understand the themes and theories of procedural law, identifying and interpreting key

legislative provisions and identifying key stakeholders. Ability to consider and critique current procedural processes. This will develop students' independent research and critical thinking skills.

- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and have the opportunity to experience the role of lawyer in the courtroom through mock legal proceedings.

## **Assessment tasks**

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

- 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. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and have the opportunity to experience the role of lawyer in the courtroom through mock legal proceedings.

## Assessment tasks

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

- 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. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Understand the themes and theories of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. Ability to consider and critique current procedural processes. This will develop students' 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. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and have the opportunity to experience the role of lawyer in the courtroom through mock legal proceedings.

## **Assessment tasks**

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

## **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**

- 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.
- Understand the themes and theories of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. Ability to consider and critique current procedural processes. This will develop students' 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

## **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

- Communicate an integrated body of procedural law knowledge. Students will be expected to engage with the curriculum through oral and written modes of communication including active and informed participation in class discussions.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation. In particular, students will be required to understand the operation of legislation and its interaction with case law through critical analysis using academic commentary.
- Develop elementary advocacy skills enabling students to demonstrate their learning orally and have the opportunity to experience the role of lawyer in the courtroom through mock legal proceedings.

## Assessment tasks

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

- 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.
- Understand the themes and theories of procedural law, identifying and interpreting key legislative provisions and identifying key stakeholders. Ability to consider and critique current procedural processes. This will develop students' independent research and critical thinking skills.

- Develop elementary advocacy skills enabling students to demonstrate their learning orally and have the opportunity to experience the role of lawyer in the courtroom through mock legal proceedings.

## **Assessment tasks**

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

## **Changes from Previous Offering**

The online quizzes have changed from being worth 20% - with all four counting - to being worth 15% with the best three of four determining the total mark.

The Court Observation Report and the civil procedure Take-Home Examination have both increased in weighting from 20% to 25% to better reflect their significance and difficulty.

The lectures have changed from one hour to two hours.

## **Changes since First Published**

Date	Description
31/01/2019	Final Examination 12:00pm-3:00pm 11 June 2019.