



LAW 550

Litigation

S2 Day 2019

Macquarie Law School

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Disclaimer

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General Information

Unit convenor and teaching staff

Unit Convenor

Keith Williams

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Contact via keith.williams@mq.edu.au

By Appointment

Sonya Willis

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Credit points

3

Prerequisites

12cp in LAW units at 300 level and (admission prior to 2014 to LLB or BAppFinLLB or BALLB or BA-MediaLLB or BA-PsychLLB or BBALLB or BComLLB or BCom-ProfAccgLLB or BEnvLLB or BITLLB or BIntStudLLB or BScLLB or BSecStudLLB or BSocScLLB)

Corequisites

LAW315 and (LAW406 or LAW456)

Co-badged status

Unit description

This unit examines fundamental aspects of litigation, which deals with principles and rules governing the preparation and conduct of disputes to be heard by courts of law. It covers the principles of civil procedure, and the rules of evidence in civil and criminal matters. Major topics include pre-trial civil procedures, concepts of relevance, privilege and proof, and major aspects of evidence law such as competence and compellability of witnesses, examination of witnesses, hearsay, admissions, opinion, tendency and coincidence, credibility and character evidence and unreliable evidence. Particular attention is paid to current uniform evidence legislation. It also introduces students to issues concerning the nature of adversarial disputation, the ethics of litigation practice, and access to and 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:

Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure

Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure

Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure

Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to analysing the law of evidence in a practical context.

Students will demonstrate comprehension of the principal rules of evidence and the exceptions to those rules.

Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence

Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules

Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

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 rigorously applied in this unit.

Special Consideration

If a student suffers a disruption to study which is ‘**serious and unavoidable**’, he or she may apply for special consideration. In order to do so, the student must meet the criteria under the Macquarie University Special Consideration’ policy and be approved by the Unit Convenor. Applications are made online at ask.mq.edu.au. The policy is available at: <https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policies/special-consideration>.

Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Class participation</u>	10%	No	At the OCS
<u>Early assessment</u>	10%	No	Friday 23 August 2019
<u>Civil Procedure Examination</u>	25%	No	Saturday 5 October 2019
<u>Evidence Quiz</u>	10%	No	Friday 18 October 2019
<u>Hypothetical Assignment</u>	30%	No	10 pm Sunday 3 November 2019
<u>Evidence Take home Examination</u>	15%	No	Friday 15 November 2019

Class participation

Due: **At the OCS**

Weighting: **10%**

Students will be expected to fulfil the class participation requirements at the On-Campus Session (OCS). We advise that attendance at the OCS is essential for success in this unit. Tutorials will explore, analyse and apply the principal doctrinal rules covered in lectures. In order to qualify for a class participation mark (10%), students must sign up to be on-call for one tutorial at the OCS. Students will sign up through iLearn. On-call options will include answering questions and moot/mock hearing. Students must attend the OCS on Monday 16 September 2019 and Tuesday 17 September 2019. Students who are unable to attend must apply for a special consideration. If that application is accepted, alternative work will be set in lieu of on-campus attendance.

Further information and grading criteria for the class participation mark will be posted on the iLearn unit web page.

On successful completion you will be able to:

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- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate comprehension of the principal rules of evidence and the

exceptions to those rules.

- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

Early assessment

Due: **Friday 23 August 2019**

Weighting: **10%**

The early assessment task is an online (through iLearn) multiple choice quiz to take place in Week 4, Friday 23 August 2019. This assessment task's purpose is to engage students with their unit early in the session and to provide an opportunity for relatively early feedback. The early assessment task will test students' incorporation of fundamental concepts of litigation systems and civil procedure. It will test students' knowledge and understanding of materials and readings based on the first three lectures of the semester. The quiz will be open from 7am to 7pm but students will have only 30 minutes to complete the quiz from the time they commence. This is a timed assessment and no late submissions will be accepted. Further details will be provided on iLearn.

Students who are unable to sit for the test at the designated time must contact the unit convenor and make a Special Consideration application and, if it is approved, may sit for an equivalent test by appointment with the unit convenor.

On successful completion you will be able to:

- Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure

Civil Procedure Examination

Due: **Saturday 5 October 2019**

Weighting: **25%**

This assessment is an on line examination submitted through Turnitin. It will be a 1.5 hour examination but all students will be given 3 hours to complete the examination in order to accommodate potential IT issues. The examination will run from 9am to 12 midday on Saturday 5 October 2019. This is a timed exam and no late submissions will be accepted. The

examination will test the Civil Procedure Material covered in the first 4 weeks of lectures and the first 4 tutorial topics.

Any student who is unable to complete the mid-semester examination due to exceptional and unforeseen circumstances must contact the unit convenor at the earliest possible opportunity and also make an application, with appropriate evidence, in accordance with the university's Special Consideration policy. If approved, the student will be offered a supplementary exam (which may be by way of viva voce examination) at a time and place determined by the unit convenor.

On successful completion you will be able to:

- Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules

Evidence Quiz

Due: **Friday 18 October 2019**

Weighting: **10%**

This Online Quiz on Friday, 18 October 2019 is worth 10%. The quiz will test the first half of the Evidence aspect of the course; namely Trial Processes, Relevance, Exclusion of admissible evidence and Hearsay. The quiz will be open from 7am to 9pm but students will have only 30 minutes to complete the quiz from the time they commence. This is a timed assessment and no late submissions will be accepted. The quiz will be available through iLearn and further details will be provided on iLearn.

On successful completion you will be able to:

- Students will demonstrate comprehension of the principal rules of evidence and the exceptions to those rules.
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

Hypothetical Assignment

Due: **10 pm Sunday 3 November 2019**

Weighting: **30%**

The Hypothetical Assignment in this unit is compulsory and will focus on the law of Evidence. The hypothetical assignment question will be available on iLearn by Week 7. The assignment must be a properly referenced formal response with appropriate analysis and argument supported by relevant authoritative cases and commentary which extend beyond the reading material provided on iLearn. It must be kept to a maximum 2,000 words (excluding footnotes and bibliography) and is to be submitted on the Turnitin link in iLearn. The actual word length must be stated on the assignment. In completing the assignment, students must comply with the *Australian Guide to Legal Citation* (4th ed). The Guide is available at:

<https://law.unimelb.edu.au/mulr/aglc/about>

Students who are seeking an extension of time must contact the unit convenor at the earliest possible opportunity and also lodge an application in accordance with the University's special consideration policy. If the application is approved by the unit convenor, an extension may be granted.

On successful completion you will be able to:

- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to analysing the law of evidence in a practical context.
- Students will demonstrate comprehension of the principal rules of evidence and the exceptions to those rules.
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

Evidence Take home Examination

Due: **Friday 15 November 2019**

Weighting: **15%**

This take home examination is on Friday, 15 November 2019 and is worth 15%. The examination will take the form of a quiz which will test the second half of the Evidence aspect of the course; namely Opinion Evidence, Tendency and Coincidence Evidence, Credibility and Character Evidence. The examination will be open from 9am to 5pm but students will have only 1 hour to complete the examination from the time they commence. This is a timed assessment and no late submissions will be accepted. The examination will be available through iLearn and further

details will be provided on iLearn.

On successful completion you will be able to:

- Students will demonstrate comprehension of the principal rules of evidence and the exceptions to those rules.
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

Delivery and Resources

DELIVERY AND RESOURCES Delivery: External

This unit will use: iLearn webpage and Echo recorded lectures. Students will require computer and internet access.

Times and Locations for Lectures and Tutorials For current updates, lecture times and classrooms please consult the MQ Timetables website: <http://www.timetables.mq.edu.au>.

Prescribed Texts:

S Willis, *Civil Procedure*, Palgrave MacMillan, 2012

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

Recommended Texts

M Kumar, M Legg and I Vickovich, *Civil Procedure in NSW*, 3rd ed, Thomson Reuters 2016

J Hunter, T Henning, *The Trial; Principles, Process and Evidence*, Federation Press 2015

J Gans, A Palmer, *Uniform Evidence*, 2nd ed, Oxford 2014

N Williams, J Anderson, J Maychurch & J Roy, *Uniform Evidence in Australia*, LexisNexis 2015

Hon D Heydon, *Cross on Evidence*, 10th ed. LexisNexis, 2014

S Odgers, *Uniform Evidence Law*, 12th ed, Thomson Reuters (Lawbook Co), 2016

M Kumar, S Odgers & E Peden, *Uniform Evidence Law: Commentary and Materials*, 5th ed, Thomson Reuters (Lawbook Co), 2015

B Cairns, *Australian Civil Procedure*, 11th ed, Thomson Reuters, 2016

D Bamford, & M Rankin, *Principles of Civil Litigation*, 2nd ed, Thomson Reuters, 2014

Unit Schedule

Topic No.	Topic
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1	Introduction; Overview of Litigation Systems
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2	Civil Procedure I
3	Civil Procedure II
4	Civil Procedure III
5	Proof, Trial Process I
6	Trial process II
7	Relevance; Exclusion of Admissible Evidence
8	Hearsay Evidence
9	Hearsay Evidence; Admissions
10	Opinion Evidence
11	Tendency and Coincidence Evidence
12	Credibility and Character Evidence

Note: Topics 1-6 will be covered on 16 September 2019 and topics 7-12 will be covered on 17 September 2019.

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> or if you are a Global MBA student contact globalmba.support@mq.edu.au

Any application for extensions of time must comply with the information provided in this Unit Guide under 'Assessment Tasks'. An application in accordance with the university's disruption to study policy will be required in all cases.

Students requiring special arrangements for the completion of any assessment task (including the final exam) due to any disability must contact Campus Wellbeing and seek advice. The unit convenor will deal with such cases only with the approval of Campus Wellbeing.

Moderation

Detailed marking rubrics will be made available on iLearn. Fail papers 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>) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

Students with disability who wish to seek special consideration for any assessment item must advise the unit convenor and also formally apply for special consideration for each task.

Student Enquiries

For all student enquiries, visit Student Connect at <ask.mq.edu.au>

If you are a Global MBA student contact 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/.

When using the University's IT, you must adhere to the [Acceptable Use of IT Resources Policy](#). The policy applies to all who connect to the MQ network including students.

Graduate Capabilities

Creative and Innovative

Our graduates will also be capable of creative thinking and of creating knowledge. They will be imaginative and open to experience and capable of innovation at work and in the community. We want them to be engaged in applying their critical, creative thinking.

This graduate capability is supported by:

Learning outcomes

- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

Assessment tasks

- Civil Procedure Examination
- Hypothetical Assignment

Capable of Professional and Personal Judgement and Initiative

We want our graduates to have emotional intelligence and sound interpersonal skills and to demonstrate discernment and common sense in their professional and personal judgement. They will exercise initiative as needed. They will be capable of risk assessment, and be able to handle ambiguity and complexity, enabling them to be adaptable in diverse and changing environments.

This graduate capability is supported by:

Learning outcomes

- Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse

the content of pre-trial rules of procedure

- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate comprehension of the principal rules of evidence and the exceptions to those rules.
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

Assessment tasks

- Early assessment
- Civil Procedure Examination
- Hypothetical Assignment

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 outcomes

- Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to analysing the law of evidence in a practical context.
- Students will demonstrate comprehension of the principal rules of evidence and the exceptions to those rules.
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

Assessment tasks

- Early assessment
- Evidence Quiz
- Hypothetical Assignment

- Evidence Take home Examination

Discipline Specific Knowledge and Skills

Our graduates will take with them the intellectual development, depth and breadth of knowledge, scholarly understanding, and specific subject content in their chosen fields to make them competent and confident in their subject or profession. They will be able to demonstrate, where relevant, professional technical competence and meet professional standards. They will be able to articulate the structure of knowledge of their discipline, be able to adapt discipline-specific knowledge to novel situations, and be able to contribute from their discipline to inter-disciplinary solutions to problems.

This graduate capability is supported by:

Learning outcomes

- Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to analysing the law of evidence in a practical context.
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- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
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Assessment tasks

- Class participation
- Early assessment
- Civil Procedure Examination
- Evidence Quiz
- Hypothetical Assignment
- Evidence Take home Examination

Critical, Analytical and Integrative Thinking

We want our graduates to be capable of reasoning, questioning and analysing, and to integrate and synthesise learning and knowledge from a range of sources and environments; to be able to critique constraints, assumptions and limitations; to be able to think independently and systemically in relation to scholarly activity, in the workplace, and in the world. We want them to have a level of scientific and information technology literacy.

This graduate capability is supported by:

Learning outcomes

- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate comprehension of the principal rules of evidence and the exceptions to those rules.
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

Assessment tasks

- Class participation
- Early assessment
- Civil Procedure Examination
- Evidence Quiz
- Hypothetical Assignment
- Evidence Take home Examination

Problem Solving and Research Capability

Our graduates should be capable of researching; of analysing, and interpreting and assessing data and information in various forms; of drawing connections across fields of knowledge; and they should be able to relate their knowledge to complex situations at work or in the world, in order to diagnose and solve problems. We want them to have the confidence to take the initiative in doing so, within an awareness of their own limitations.

This graduate capability is supported by:

Learning outcomes

- Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to analysing the law of evidence in a practical context.
- Students will demonstrate comprehension of the principal rules of evidence and the exceptions to those rules.
- Students will demonstrate an ability to synthesise, evaluate and apply the main exceptions to the principal rules of evidence
- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

Assessment tasks

- Class participation
- Civil Procedure Examination
- Hypothetical Assignment

Effective Communication

We want to develop in our students the ability to communicate and convey their views in forms effective with different audiences. We want our graduates to take with them the capability to read, listen, question, gather and evaluate information resources in a variety of formats, assess, write clearly, speak effectively, and to use visual communication and communication technologies as appropriate.

This graduate capability is supported by:

Learning outcomes

- Students will demonstrate an ability to explain and analyse the nature and principles of civil procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of pre-trial rules of procedure
- Students will demonstrate an ability to explain the reasons for, and describe and analyse the content of trial rules of procedure
- Students will demonstrate an ability to exercise autonomy in their research and writing by extending beyond the provided material to find ideas and information appropriate to

analysing the law of evidence in a practical context.

- Students will demonstrate an ability to apply the principal procedural and evidentiary rules to factual scenarios and problems.

Assessment tasks

- Class participation
- Civil Procedure Examination
- Hypothetical Assignment

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

- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules

Assessment tasks

- Class participation
- Hypothetical Assignment

Socially and Environmentally Active and Responsible

We want our graduates to be aware of and have respect for self and others; to be able to work with others as a leader and a team player; to have a sense of connectedness with others and country; and to have a sense of mutual obligation. Our graduates should be informed and active participants in moving society towards sustainability.

This graduate capability is supported by:

Learning outcome

- Students will demonstrate an ability to critically analyse the appropriateness and fairness of the principal procedural and evidentiary rules

Assessment task

- Class participation

Changes from Previous Offering

The areas of law covered by this course; civil procedure and evidence and the assessment tasks have not changed from 2018.