



LAWS399

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

Tutor

Keith Williams

keith.williams@mq.edu.au

TBA

TBA

Credit points

3

Prerequisites

LAWS398

Corequisites

Co-badged status

Unit description

This unit examines and teaches the principles and rules of evidence in civil and criminal matters in New South Wales. The focus is on the uniform evidence scheme, with particular attention given to the Evidence Act 1995 (NSW) and relevant judicial decisions that affect an interpretation of the Act. The course starts with an introduction to litigation systems, and then proceeds to the fundamentals of trials, and the statutory and discretionary powers of courts to control their proceedings. The adducing of testamentary, documentary and real evidence is addressed, as are issues relating to proof and relevance. Detailed coverage is then given to the rules of admissibility relating to hearsay, admissions, opinion, tendency, coincidence, credibility, character and 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:

- explain the reasons for and describe the principal rules of evidence
- explain the reasons for and describe the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal evidentiary rules
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

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.

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>Class participation</u>	10%	No	Ongoing
<u>Early assessment</u>	10%	No	Week 4 (25-26 Aug)
<u>Assignment</u>	30%	No	Monday 30 Sep
<u>Mid-semester assessment</u>	10%	No	Week 9 (12-13 Oct)

Name	Weighting	Hurdle	Due
Final exam	40%	No	Exam period

Class participation

Due: **Ongoing**

Weighting: **10%**

Internal students will participate in a **compulsory one-hour tutorial** every week that will provide the opportunity to explore, analyse and apply the principal doctrinal rules covered in lectures. **Students must enrol in a tutorial group and attend tutorials only for that group for the rest of the semester.** In order to qualify for a class participation mark (10%), internal students must attend at least 9 of the 12 scheduled tutorials in the tutorial group in which they are enrolled. **Failure to fulfil class participation requirements will result in a zero mark for class participation.**

Tutorials will focus on addressing the set questions in the **Study Program**. An On-Call procedure will operate for tutorials and students must register to be on call in one of the weekly tutorials. The class participation mark will be based partly on your performance in the rostered tutorial. Further details will be provided in the first tutorial (week 2).

External students will be expected to fulfil the class participation requirements at the **On-Campus Session (OCS), which is to be held on Tue-Wed 24-25 Sep**. All external students must make the necessary personal and work arrangements to attend the On Campus Session. In the event of an exceptional and unforeseen inability to attend the On Campus Session, students must contact the unit convenor urgently and also make an application with appropriate evidence under the university's special consideration policy. If approved, the unit convenor will allocate written work for the student to complete in lieu of attendance. **Failure to attend the OCS without formal approval will result in a zero mark for class participation.**

On successful completion you will be able to:

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Early assessment

Due: **Week 4 (25-26 Aug)**

Weighting: **10%**

The early assessment task is an **online multiple choice quiz** to take place at the **end of week 4 (Sat 24-Sun 25 Aug)**. 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 will test students' incorporation of fundamental concepts of litigation systems, trial fundamentals and the adducing of testamentary evidence. It will test students' knowledge and understanding of materials and readings based on the first three lectures of the semester. The multiple choice test will consist of 20 multiple choice questions to be completed in 25 minutes. Further instructions to students about completing the quiz online will be posted in due course.

Students who are unable to sit for the test at the designated time **must not attempt it at all** and must make a special consideration application. If it is approved, they may sit for an equivalent paper test by appointment with the unit convenor in his office. **Failure to complete the quiz will result in zero marks for this assessment.**

On successful completion you will be able to:

- explain the reasons for and describe the principal rules of evidence

Assignment

Due: **Monday 30 Sep**

Weighting: **30%**

The Assignment in this unit is compulsory and will be a **hypothetical problem question**. The assignment question will be available on iLearn in week 2. The assignment must be a properly referenced formal response with appropriate analysis and argument supported by relevant authoritative cases and commentary. It must be kept to a maximum 1,700 words (excluding footnotes) and is to be submitted on the Turnitin link in iLearn. The actual word length must be stated on the assignment. In completing their assignment, students must comply with the *Australian Guide to Legal Citation* (4th ed). The Guide will be made available in iLearn.

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 11 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.

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Mid-semester assessment

Due: **Week 9 (12-13 Oct)**

Weighting: **10%**

The mid-semester assessment task is an **online multiple choice quiz** to take place at the **end of week 9 (Sat 12-Sun 13 Oct)**. This assessment task's purpose is to engage students with further topics related to the adducing and admissibility of evidence. Details of the topics to be covered will be provided to students well in advance of the quiz. The multiple choice test will consist of 20 multiple choice questions to be completed in 25 minutes. Further instructions to students about completing the quiz online will be posted in due course.

Students who are unable to sit for the test at the designated time **must not attempt it at all** and must make a special consideration application. If it is approved, they may sit for an equivalent paper test by appointment with the unit convenor in his office. **Failure to complete the quiz will result in zero marks for this assessment.**

On successful completion you will be able to:

- explain the reasons for and describe the principal rules of evidence
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- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

Final exam

Due: **Exam period**

Weighting: **40%**

The end of semester examination in this unit will be a **formal sit-down open book examination**. It will be based on material covered in the unit (more detailed information will be provided by the unit convenor). **Two hours plus 10 mins reading time will be provided**. The University's **examination period in Session 2 is from 11 to 29 November 2019**.

Students **must be available for examination** at the time and place designated in the University examination timetable. The timetable will be available in draft form approximately eight weeks before the commencement of the examinations and in final form approximately four weeks before the commencement of the examinations.

Any student who is unable to attend the final exam 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 may be permitted to attend any **supplementary exam** that is held for the unit at a time and place determined by the unit convenor. In such cases, students must be prepared to attend the supplementary exam outside the official university exam period.

On successful completion you will be able to:

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- critically analyse the appropriateness and fairness of the principal evidentiary rules
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Delivery and Resources

DELIVERY AND RESOURCES Delivery: Day, External

This unit will use: iLearn webpage and Echo recorded lectures

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 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*, 13th ed, Lawbook Co, 2018

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

Unit Schedule

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

		Mid-Semester Break [On-Campus Session 24-25 Sep]	
8	30 September	Hearsay Evidence III; Admissions	7 Hearsay Evidence II
9	7 October	Opinion Evidence	8 Hearsay Evidence III; Admissions
10	14 October	Tendency & Coincidence Evidence	9 Opinion Evidence
11	21 October	Credibility & Character Evidence	10 Tendency & Coincidence Evidence
12	28 October	Identification Evidence; Exam Preparation	11 Credibility & Character Evidence
13	4 November	No Lecture	12 Identification Evidence

Note: Tutorials commence in week 2

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>). 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 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 Special Consideration 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.

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

- explain the reasons for and describe the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal evidentiary rules
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

Assessment tasks

- Class participation
- 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

- explain the reasons for and describe the principal rules of evidence
- explain the reasons for and describe the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal evidentiary rules
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

Assessment tasks

- Class participation
- Early assessment
- Assignment
- Mid-semester assessment
- Final exam

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:

Assessment tasks

- Class participation
- Early assessment
- Assignment
- Mid-semester assessment

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

- explain the reasons for and describe the principal rules of evidence
- explain the reasons for and describe the main exceptions to the principal rules of evidence
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

Assessment tasks

- Class participation
- Early assessment
- Assignment
- Mid-semester assessment
- Final exam

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

- explain the reasons for and describe the principal rules of evidence
- explain the reasons for and describe the main exceptions to the principal rules of evidence
- critically analyse the appropriateness and fairness of the principal evidentiary rules
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

Assessment tasks

- Class participation
- Assignment
- Mid-semester assessment
- Final exam

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

- explain the reasons for and describe the principal rules of evidence
- explain the reasons for and describe the main exceptions to the principal rules of evidence
- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

Assessment tasks

- Class participation
- Assignment
- Final exam

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

- synthesise, evaluate and apply the principal evidentiary rules and their exceptions to factual scenarios and problems.

Assessment tasks

- Class participation
- Assignment
- Final exam

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:

Assessment tasks

- Class participation
- Assignment
- Final exam

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

- critically analyse the appropriateness and fairness of the principal evidentiary rules

Assessment tasks

- Class participation
- Early assessment
- Assignment