



LAWS398

Civil and Criminal Procedure

S1 External 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

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Contact via E-mail

6 First Walk 520

Wednesday 12-2pm

Co-convenor (criminal procedure)

Andrew Burke

andrew.burke@mq.edu.au

Contact via E-mail

6 First Walk 622

Wednesday 1-2pm

Credit points

3

Prerequisites

(39cp at 100 level or above) including LAW203

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, such as pre-trial procedures, the nature of adversarial disputation, ethics of practice and a critical evaluation of the administration of justice, as well as select topics in criminal procedure, such as classification of offences, bail and sentencing.

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 both orally and in writing. Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved 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 including comprehension of the interpretation of statute through case law and academic commentary.

Develop elementary advocacy skills and the ability to demonstrate learning orally.

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).

For 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 after graduation.

Moderation

Detailed marking guidelines will be made available on iLearn. The convenors moderate all assessments. All Fail essays and take-home examinations are 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 29 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 both orally and in writing.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved 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 including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

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.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.

Court Observation Assignment

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

Weighting: **25%**

Students are required to undertake a minimum of four (4) 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 through their own independent research. Detailed instructions will be provided on iLearn.

Students will be required to complete a Court Attendance Log documenting their attendance. A blank Court Attendance Log Sheet and further instructions will be provided on iLearn.

The essay is due at the beginning of 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:

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criminal procedure in order to comply with the formal requirements for admission to legal practice.

- Communicate an integrated body of procedural law knowledge both orally and in writing.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

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 both orally and in writing.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved 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 including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

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.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.

Civil Take-Home Examination

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

Weighting: **25%**

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

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

The exam will be in the form of 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. The examination will be submitted through Turnitin via a link on iLearn. Three hours have been allocated to allow for any delay in submitting exam papers by the 3pm deadline. Multiple submissions are encouraged with students expected to have submitted their first draft by 1:30pm. This is a timed assessment and no late submissions will be accepted.

The examination does not have a specific word limit but succinctness will be rewarded.

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 both orally and in writing.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.

Delivery and Resources

Delivery

Students will require access to reliable broadband internet and a computer for access to 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.

There is a weekly 2-hour lecture at 3pm Wednesdays in the Mason Theatre.

Internal LAWS398 students will also attend weekly tutorials which begin in Week 1.

External LAWS398 students will attend a two day on campus session on Saturday 13th and Sunday 14th 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. 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 or if you are a Global MBA student contact 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) 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

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

- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved 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

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

- 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 both orally and in writing.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved 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
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- Civil Take-Home Examination

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

- Communicate an integrated body of procedural law knowledge both orally and in writing.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

Assessment tasks

- Criminal Class Participation
- Criminal Procedure Quizzes
- Civil Class Participation
- Civil Procedure Quizzes
- Civil 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

- 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 both orally and in writing.
- Solve hypothetical problem questions through the application of procedural legislation

and precedent.

- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

Assessment tasks

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

- 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 both orally and in writing.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved 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 including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

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- Civil Procedure Quizzes
- Civil 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

- 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.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

Assessment tasks

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

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

- Communicate an integrated body of procedural law knowledge both orally and in writing.
- Solve hypothetical problem questions through the application of procedural legislation and precedent.
- Demonstrate competence in techniques of statutory interpretation including comprehension of the interpretation of statute through case law and academic commentary.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

Assessment tasks

- Criminal Class Participation
- Criminal Procedure Quizzes
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- Civil Class Participation
- Civil Take-Home Examination

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 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.
- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.
- Develop elementary advocacy skills and the ability to demonstrate learning orally.

Assessment tasks

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

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

- Demonstrate understanding of the themes and theories of procedural law, identification and interpretation of the key legislative provisions and key stakeholders. Develop the ability to consider and critique current procedural processes including Improved independent research and critical thinking skills.

Assessment tasks

- Criminal Class Participation
- Court Observation Assignment
- Civil Class Participation

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 Exam 12:00pm -3:00pm 11 June 2019
30/01/2019	Change to consultation time for Dr Sonya Wills

