

LAWS4004: Evidence

Newcastle City Precinct
Semester 1 - 2024



OVERVIEW

Course Description

This course is a detailed exploration of the legal rules governing the adducing of evidence and proof of facts in civil and criminal trials. There will be critical analysis of the theoretical underpinnings of evidence law as used in common law adversarial systems and in particular, case theory and the reasoning process that allows inferences to be drawn from evidence to prove facts. Students will critically analyse the underlying principles for the rules and practices that inform legal fact-finding.

The course is based on the 'Uniform Evidence Law' with the main focus on the *Evidence Act 1995* (NSW). Reference will also be made to the counterpart *Evidence Act 1995* (Cth) and particularly to where there are differences in specific provisions of the legislation. Students will apply specialised cognitive and technical skills to critically analyse the limits of regulation and logical fact-finding in the analysis and interpretation of what are, to the layperson, somewhat instinctual responses to evidence given at trial.

Compulsory Requirements

There is a compulsory attendance requirement in this course Attendance at all classes will be monitored and records maintained by the Course Co-ordinator. In order to satisfy the "Attendance" requirement, students must be present at a **minimum of 80% of scheduled classes** as spelled out in the course outline, unless they are able to demonstrate that their absence falls within the Adverse Circumstances policy. Unless this requirement is met, despite marks awarded in other assessment items, the student will receive a zero mark and a CF grade for the course.

Please note that meeting the attendance rule each week requires meaningful attendance for the **full one hour and fifty minutes** each class. Partial attendance will not meet the attendance requirement for a given class unless prior approval has been given by the Course Coordinator or Lecturer. (To be clear, simply being present for purposes of the roll call does not on its own satisfy the attendance requirement. As such, even if you have been present for the roll call, if you leave early without permission you are agreeing that your attendance will not count for that week.)

Note also that if you miss more than 2 classes for reasons that fall within the University's adverse circumstances policy you may be required to complete additional assessment items to ensure that you have completed the required volume of learning for this course.

Skills Focus

This course will focus on assisting students to develop the following skills:

- Listening Skills
- Oral Communication – legal and non-legal audiences
- Collaboration

Requisites

This course is only available to students enrolled in the Bachelor of Laws and associated combined degree programs or Bachelor of Laws (Honours) and associated combined degree programs.

Assumed Knowledge	LAWS1010, LAWS1011, LAWS1020, LAWS1021, LAWS2030, LAWS3040, LAWS3041, and LAWS4003.
Contact Hours	Newcastle City Precinct Online Activity Online Lecture Video/Learning Activities 1 hour(s) per Week for 12 Weeks Seminar Face to Face on Campus 2 hour(s) per Week for 12 Weeks Tuesday 8am to 10am in Room X-205 OR Tuesday 5pm to 7pm in Room X-202 OR Wednesday 10am to 12noon in Room X-205
Unit Weighting	10
Workload	Students are required to spend on average 120-140 hours of effort (contact and non-contact) including assessments per 10 unit course.

CONTACTS

Course Coordinator	Newcastle City Precinct Professor John Anderson John.Anderson@newcastle.edu.au 02 49217099 Consultation: by email or by appointment during semester
Teaching Staff	Dr Stephenson Chow Stephenson.Chow@newcastle.edu.au 02 40550909 Consultation: by email or by appointment during semester Other teaching staff may be assigned and, if so, students will be advised via the course Canvas site
School Office	The School of Law and Justice Level 5 NUSpace 409 Hunter Street Newcastle Law-School@newcastle.edu.au +61 2 4921 8666

SYLLABUS

Course Content

This course will introduce students to the legal rules governing the adducing of evidence and proof of facts in civil and criminal trials. The course is structured to meet the admission requirements for practice as a legal practitioner in New South Wales and the other Australian States and Territories. Topics covered will include relevance, kinds of evidence, competence and compellability, privileges, adducing evidence in court, the examination of witnesses, burdens and standards of proof, discretionary exclusion of evidence including illegally obtained evidence and judicial warnings as to unreliable evidence. Also, the exclusionary rules relating to admissibility of evidence will be covered, namely, the rule against hearsay and its exceptions, the opinion rule, admissions and confessions, character and credibility, tendency and coincidence, and documentary evidence.

Course Learning Outcomes

On successful completion of this course, students will be able to:

1. Demonstrate knowledge and understanding of the principles and rules of evidence law used in the process of fact-finding in both civil and criminal litigation in New South Wales and in the Federal jurisdiction
2. Demonstrate a developing ability to use legal analysis effectively in application of the relevant principles and rules of evidence law to a range of factual problems.
3. Demonstrate some critical appreciation of the way in which the rules of evidence operate and are applied in the context of the trial process.
4. Demonstrate effective communication skills in the oral seminar discussions and written presentation of assessment tasks based on the course materials.

Course Materials

Course materials are available in the online modules on Canvas and/or through Course Readings.

The prescribed textbook is:

- John Anderson, *Uniform Evidence Law: Text and Essential Cases* (Federation Press, 4th edition, 2021) [UEL4ed]

Recommended Texts:

- Richard Weinstein, John Anderson, Judith Marychurch and Julia Roy, *Uniform Evidence in Australia* (LexisNexis Butterworths, 4th ed, 2024).
- Stephen Odgers, *Uniform Evidence Law* (Thomson Reuters Lawbook Co., 18th ed, 2023).

SCHEDULE

Week	Seminar Class Dates	Topic	Required Reading from UEL4ed	Further Required Reading – Evidence Act 1995 (NSW)
1	27 & 28 February	1. Getting into Evidence	Intro pp 1-11 Ch 1 pp 12-40	Part 3.1 ss 55-58 Part 4.2 ss 143-145
2	5 & 6 March	2. The Roles of Judge and Jury	Ch 2 pp 41-58 Ch 4 pp 108-163	Part 3.11 ss 135-139. Ch 5 ss 189, 192-192A
3	12 & 13 March	3. Burden and Standard of Proof / Presumptions	Ch 3 pp 59-107	Part 4.1 ss 140-142 Part 4.3 ss 146-162
4	19 & 20 March (Census 22 March)	4. Witnesses and Privileges	Ch 5 pp 164-234	Part 2.1 ss 12-24A Part 3.10 ss 117-134 Ch 5 s 187
5	26 & 27 March	5. Adducing Evidence (a) Examination of Witnesses (b) Failure to give evidence (c) Corroboration and Unreliable Evidence	Ch 6 pp 235-314	Part 2.1 ss 20, 26-46 Parts 4.4 & 4.5 ss 164 - 165B.
6	2 & 3 April (Easter, University Holiday)	NO SEMINAR CLASSES	ASSESSMENT TASK 1- MULTIPLE CHOICE QUIZ	AVAILABLE ONLINE: 9.00am – 9.00pm Thursday 4 April 2024
7	9 & 10 April	6. The Exclusionary Rules: (a) Hearsay	Ch 8 pp 348-457	Part 3.2 ss 59-75
Mid-Semester Recess 15-26 April				
8	30 April & 1 May	6. (b) Opinion Evidence (c) Documentary and Real Evidence	(a) Ch 9 pp 458-510 (b) Ch 7 pp 315-347	(a) Part 3.3 ss 76-80 (b) Part 2.2 ss 47-51 Part 2.3 ss 52-54 Part 4.6 ss 166-169
9	7 & 8 May	6. (d) Admissions (e) Judgments and Convictions	(d) Ch 10 pp 511-572 (e) Ch 11 pp 573-588	(d) Part 3.4 ss 81-90, Part 3.11 ss 138-139 (e) Part 3.5 ss 91-93
10	14 & 15 May	6. (f) Credibility (g) Character	(f) Ch 12 pp 589-639 (g) Ch 13 pp 640-666 ASSESSMENT TASK 2- PROBLEM SOLVING EXERCISE due 17 May	(f) Part 3.7 ss 101A-108C (g) Part 3.8 ss 109-112
11	21 & 22 May	6. (h) Tendency and Coincidence	Ch 14 pp 667-770	Part 3.6 ss 94-101
12	28 & 29 May	6. (i) Identification Evidence	Ch 15 pp 771 – 806	Part 3.9 ss 113 –116
13	4 & 5 June	NO SEMINAR CLASSES	STUDY WEEK	Revise Topics for Exam as advised
Semester 1 Examination Period: 11-22 June				

ASSESSMENTS

This course has 3 assessments. Each assessment is described in more detail in the sections below.

	Assessment Name	Due Date	Involvement	Weighting	Learning Outcomes
1	Online Multiple Choice Quiz	Made available on Canvas on Thursday 4 April [Week 6] (to be completed in 90 minutes maximum)	Individual	20%	1, 2
2	Mid-Semester Problem solving exercise	Problem question released 4.00 pm Friday 3 May [Week 8] Answers due 9.00pm Friday 17 May [Week 10]	Individual	30%	1, 2, 3, 4
3	Formal Open-Book Examination	Date to be advised during Semester 1 Examination Period 11 – 22 June	Individual	50%	1, 2, 3, 4

SAB Approval of Results

To ensure that grades are fair both within and between courses and cohorts, The School of Law and Justice has a rigorous policy of moderating and reviewing assessment. The School Assessment Board (SAB) reviews all final grades before they are released to students, and the SAB process may result in the overall marks of a class being moved up or down by a specific amount, thus impacting individual marks. This is consistent with grading practices in other Law Schools across the country and important to ensure the integrity of assessment. This means that the final grade you are awarded may not be the sum of marks you have received in all assessments

Late Submissions

The mark for an assessment item submitted after the designated time on the due date, without an approved extension of time, will be reduced by 10% of the possible maximum mark for that assessment item for each day or part day that the assessment item is late. Note: this applies equally to week and weekend days.

Exceeding Word Limit [See The School of Law and Justice, Style Guide on Written Assessment Items]

Where a word limit is set for an assessment item it must not be exceeded by more than 10%.

1. Students must accurately record the word count on the written assessment item cover sheet. Please note that Turnitin also reports a word count for any task submitted through that software.
2. The word count identified in the Course Outline is the absolute word limit for an assessment task. **If a written assessment item exceeds the word limit, the marker will not read beyond the word limit. Any material beyond the word limit will not be** considered in assessing the quality of the assessment item.
3. Footnotes and any bibliography are not included in the word count. However, footnotes must only be used for the purposes of providing references. Footnotes which add commentary will be included in the word count for the written assessment item.

Assessment 1. Online Multiple-Choice Quiz

Assessment Type Quiz

Description

The purpose of the quiz is to test student knowledge and understanding of the material set for study during Weeks 1, 2, 3 and 4 and their ability to apply that knowledge and understanding through analysis of a range of factual problems. Students demonstrate knowledge and understanding of the framework, principles and concepts of evidence law from the course materials and the application of the framework, principles and concepts to a range of factual problems through answers to 15 multiple choice questions in a limited time frame (10 questions worth 1 mark each and 5 questions worth 2 marks each). The duration of the quiz will be 90 minutes.

Questions are randomly selected from the question bank and will involve a test of student knowledge and understanding of the course materials set for study in Topics 1 to 4 (Weeks 1, 2, 3 and 4). Questions include hypothetical problem questions which will require students to apply lateral thinking and legal analysis to solve problems by selecting the most accurate answers in the context of specific factual problems relating to the framework, principles and concepts of evidence law in the trial process.

Weighting 20%

Due Date Made available on Canvas on Thursday 4 April 2024 [Week 6] at 9.00am for a period of 12 hours (to be completed in 1 hour 30 minutes maximum)

Submission Method Online

Assessment Criteria

1. Knowledge and understanding of the principles and rules of evidence law used in the process of fact-finding in both civil and criminal problem scenarios.
2. Ability to analyse and apply relevant principles and rules of evidence law to decide the most accurate answer in a range of factual scenarios.
3. Ability to provide accurate answers in the context of a time limited multiple-choice quiz.

Return Method Results of the quiz as a mark /20 will be published in the Grade Centre at the course Canvas site.

Feedback Provided Upon request for an individual consultation following publication of results.

Assessment 2 Problem solving exercise

Assessment Type Written Assignment -- maximum of 1000 words

Description

The purpose of this assignment is to assess students' progressive knowledge and understanding of the principles and rules of evidence law used in the process of litigation fact-finding together with some critical evaluation of the way in which these rules of evidence operate and are applied in the context of the trial process. Provided with a factual problem, students engage in legal analysis and effectively apply the relevant evidentiary principles and rules to the problem. They apply lateral thinking and analytical problem-solving skills to formulate alternative legal strategies and at least tentatively resolve the issues. They effectively communicate in writing through a synthesis and analysis of primary and secondary legal materials in the context of solving an evidence law problem in a timeframe reflecting the litigation working environment. The problem will be issued via the course Canvas site at 4.00pm on Friday 3 May 2024 (Week 8).

Weighting 30%

Due Date Answers due 9pm Friday 17 May 2024 (Week 10)

Submission Method Electronically via Assignment Submission portal for 'Problem solving exercise' under Assignments Folder at the Course Canvas site. Note that it is the student's responsibility to keep a copy of each assessment task that is submitted.

Assessment Criteria

- ◆ Knowledge and understanding of relevant principles and rules of evidence law in the particular type of litigation.
- ◆ Capacity to identify the issues from the facts and then discuss, and/or analyse the relevant concepts of the law of evidence as applicable.
- ◆ Capacity to formulate alternative legal strategies in discussing or analysing the issues identified.
- ◆ Written communication skills demonstrated: presentation, planning and organisation of answer, clarity and conciseness of expression, spelling, grammar, sentence/paragraph construction and referencing style.

Return Method By release of marks achieved via Grade Centre at the Course Canvas site.

Feedback Provided General feedback will be provided when all papers have been graded. Individual feedback will be provided using Grademark in Turnitin. More detailed feedback is available on request.

Assessment 3 - Examination

Assessment Type Formal Open-book Examination. Written Communication.

Description The purpose of this examination is to test students' cumulative understanding of the principles and rules of evidence law and their ability to apply these rules through legal analysis of a range of factual problems. Students demonstrate knowledge and understanding of the principles and rules of evidence used in the process of fact-finding in both civil and criminal litigation through written answers to hypothetical factual problems. They apply lateral thinking to solve legal problems by discussing which rules of evidence operate and are applied in the context of specific factual problems relating to the trial process.

Weighting 50%

Due Date The final examination will be administered as a 3-hour (+ 30 minutes reading time) formal open-book examination on a date to be fixed during the Semester 1 Examination Period.

Submission Method Handwritten in Examination Booklets in Invigilated Examination Room

Assessment Criteria

- ◆ Knowledge and understanding of the principles and rules of evidence law used in the process of fact-finding in both civil and criminal problem scenarios.
- ◆ Level of sophistication in ability to analyse and apply relevant principles and rules of evidence law to prepare and present opinions on complex evidence problem scenarios.
- ◆ Ability to interpret the principles and rules of evidence law in the formulation and evaluation of alternative legal strategies.
- ◆ Ability to present planned, well organised, accurate, clear and concise written answers in the context of a take-home and time limited examination.

Feedback Provided No feedback is provided in relation to this assessment item apart from a final course mark. Students can request an appointment with the examiners for individual feedback on their performance in the examination following the release of final course marks.

ADDITIONAL INFORMATION

Grading Scheme

This course is graded as follows:

Range of Marks	Grade	Description
85-100	High Distinction (HD)	Outstanding standard indicating comprehensive knowledge and understanding of the relevant materials; demonstration of an outstanding level of academic achievement; mastery of skills*; and achievement of all assessment objectives.
75-84	Distinction (D)	Excellent standard indicating a very high level of knowledge and understanding of the relevant materials; demonstration of a very high level of academic ability; sound development of skills*; and achievement of all assessment objectives.
65-74	Credit (C)	Good standard indicating a high level of knowledge and understanding of the relevant materials; demonstration of a high level of academic achievement; reasonable development of skills*; and achievement of all learning outcomes.
50-64	Pass (P)	Satisfactory standard indicating an adequate knowledge and understanding of the relevant materials; demonstration of an adequate level of academic achievement; satisfactory development of skills*; and achievement of all learning outcomes.
0-49	Fail (FF)	Failure to satisfactorily achieve learning outcomes. If all compulsory course components are not completed the mark will be zero. A fail grade may also be awarded following disciplinary action.

*Skills are those identified for the purposes of assessment task(s).

Communication Methods

Communication methods used in this course include:
Announcements on Canvas, Discussions posts, and Email

Course Evaluation

Each year feedback is sought from students and other stakeholders about the courses offered in the University for the purposes of identifying areas of excellence and potential improvement.

Oral Interviews

As part of the evaluation process of any assessment item in this course an oral examination may be conducted. The purpose of the oral examination is to verify the authorship of the material submitted in response to the assessment task. The oral examination will be conducted in accordance with the principles set out in the [Oral Examination Guidelines](#). In cases where the oral examination reveals the assessment item may not be the student's own work the case will be dealt with under the [Student Conduct Rule](#).

Academic Misconduct

All students are required to meet the academic integrity standards of the University. These standards reinforce the importance of integrity and honesty in an academic environment. Academic Integrity policies apply to all students of the University in all modes of study and in all locations. For the Student Academic Integrity Policy, refer to <https://policies.newcastle.edu.au/document/view-current.php?id=35>.

**Adverse
Circumstances**

The University acknowledges the right of students to seek consideration for the impact of allowable adverse circumstances that may affect their performance in assessment item(s). Applications for special consideration due to adverse circumstances will be made using the online Adverse Circumstances system where:

1. the assessment item is a major assessment item; or
2. the assessment item is a minor assessment item and the Course Co-ordinator has specified in the Course Outline that students may apply the online Adverse Circumstances system;
3. you are requesting a change of placement; or
4. the course has a compulsory attendance requirement.

Before applying you must refer to the Adverse Circumstance Affecting Assessment Items Procedure available at:

<https://policies.newcastle.edu.au/document/view-current.php?id=236>

The 'HELP for Students' tab in UoNline contains important information that all students should be familiar with, including various systems, policies and procedures.

There are a variety of pressures on law students, and being able to perform well academically under pressure, without excessive stress will contribute to enhanced outcomes in wellbeing and academic results. Reach out to support services and learn ways to maintain your mental health, deal with stress and common issues like perfectionism, procrastination and anxiety.

To access UON support: <https://www.newcastle.edu.au/current-students/support/personal>

Ph: 4921 6622 or email: counselling@newcastle.edu.au

For support outside of office hours call the University Crisis Support Line on 1300 653 007 or for chat SMS 0488 884 165.

For immediate support contact Lifeline 24/7 on 13 14 11 or <https://www.lifeline.org.au/>

This course outline was approved by the Head of School. No alteration of this course outline is permitted without Head of School approval. If a change is approved, students will be notified and an amended course outline will be provided in the same manner as the original.

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