

LEGL3111: Employment Law

Newcastle City Campus

Semester 1 - 2024



THE UNIVERSITY OF
NEWCASTLE
AUSTRALIA

OVERVIEW

Course Description

Governments construct the labour relations framework through legislation and regulation. Employment Law examines the contract of employment and the various sources of law that interact with and have an impact upon the relationship between individual employer and employee; legislation, awards, industrial agreements and the common law of contract. Adopting a problem based learning approach using contemporary case studies accommodates the development of research, analysis and communication attributes.

This course is not available to students who have completed LEGL2004 or LAWS5009 or LAWS6024.

Requisites

Students must have successfully completed LEGL1001. This course replaces LEGL2004. If you have successfully completed LEGL2004 you cannot enrol in this course.

Contact Hours

Seminar

Face to Face On Campus
2 hour(s) per Week for Full Term

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.

Skills Focus

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

Collaboration
Structural Writing Skills
Assess and Use Sources

COURSE OUTLINE

CONTACTS

Course Coordinator **Mr Hugh Arjonilla**

Consultation: Please arrange by email: hugh.arjonilla@newcastle.edu.au

Teaching Staff Other teaching staff will be advised on the course Canvas site.

School Office **Newcastle School of Law and Justice**
5th Floor
NU Space
409 Hunter Street
Newcastle
Law-School@newcastle.edu.au
+61 2 4921 8666

SYLLABUS

Course Content

The major topics to be covered are:

1. Introduction to Employment Law in Australia
2. Distinguishing employment contracts from other legal arrangements for getting work done
3. Overview of sources of law determining employment rights and obligations
4. Minimum statutory entitlements
5. Awards
6. Enterprise agreements
7. Remuneration and leave
8. Loyalty, control, performance management and discipline
9. Unfair work practices
10. Enforcement of obligations and dispute resolution
11. Discrimination and victimisation
12. Work, Health and Safety
13. Termination of employment contracts
14. Remedies for Wrongful and Unfair Termination

Course Learning Outcomes

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

1. Critically analyse the importance of the unique contract which is the contract of employment and its role in determining individual relations between employers and employees in the workplace
2. Demonstrate an integrative understanding of the sources of law which shape the contract of employment
3. Explain how the relationship of employer and employee is identified
4. Define the life cycle of the contract of employment from its formation to its termination
5. Interpret common law obligations owed by employers and employees under the contract and the great impact of statute on this contract
6. Investigate solutions to employment issues and problems based on research and interpretation of current employment legislation.
7. Recognise the legal, social and equity implications of appropriate business practice and ethical conduct.
8. Communicate in written formats appropriate to the discipline, audience and purpose.

Course Materials

Prescribed Text

Students will need to obtain a copy of the following prescribed text: A Stewart, *Stewart's Guide to Employment Law* by A. Stewart (7th ed.), Sydney: Federation Press, 2021.

Legislation

Access to the following legislation will also be useful:

- *Fair Work Act* 2009 (Cth) – available free at www.comlaw.gov.au/ or www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fwa2009114/
- *Industrial Relations Act* 1996 (NSW) - available free at www.legislation.nsw.gov.au/ or www.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_act/ira1996242/

For each topic, the set reading from the prescribed text and the legislation will be set out in Canvas in the week before the relevant seminar. The books and other resources listed below will also be useful in this course. The books are at the Library and other resources will be accessible online via the Library website or the internet.

Recommended Texts:

- *Creighton and Stewart's Labour Law* by Andrew Stewart, Anthony Forsyth, Mark Irving, Richard Johnstone and Shae McCrystal, The Federation Press, 6th edition, 2016
- *The Contract of Employment, 2nd edition* by Mark Irving QC, Lexis Nexis Australia, 2019

Journals

- *Australian Journal of Labour Law*, Lexis Nexis
- *Journal of Industrial Relations*, Sage Publications

Websites

- Fair Work Commission, <https://www.fwc.gov.au/>
- Fair Work Ombudsman, <https://www.fairwork.gov.au/>
- Workplace Express, <http://www.workplaceexpress.com.au/about-workplace-express.php>
- Workplace Info, <https://workplaceinfo.com.au/home>

Recommended Practical Resources

- Fair Work Commission Benchbooks, <https://www.fwc.gov.au/resources/benchbooks>
- LexisNexis Practical Guidance, available through Lexis Advance, https://libguides.newcastle.edu.au/law_secondary_sources/commentary

COMPULSORY REQUIREMENTS

To pass this course, each student must complete ALL of the following compulsory requirements:

Contact Hour Requirements:

There is a compulsory attendance requirement in this course. Attendance at all classes (seminars and workshops) will be monitored and records maintained by the Course Coordinator. 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 CF grade for the course.

Please note 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.

SCHEDULE

Week	Week Begins	Topic	Learning Activity	Assessment Due
1	26 Feb	Introduction/The National System/Sources of Law	Draw up a framework for the National System/Revision of method for answering legal problems	
2	4 Mar	Determining a Contract of Employment	Draw up a framework/ Answer legal problem question	
3	11 Mar	Making a Contract of Employment	Draw up a framework/ Answer legal problem question	
4	18 Mar	Minimum Standards/National Employment Standards/Modern Awards	Draw up a framework/Research a Modern Award	
5	25 Mar	Enterprise Agreements	Draw up a framework/Research an Enterprise Agreement	Midnight, Sunday 31 March
6	1 Apr	Remuneration	Draw up a framework/ Answer legal problem question	
7	8 Apr	Leave	Draw up a framework/ Answer legal problem question	
Mid Term Break				
Mid Term Break				
8	29 Apr	Loyalty, control, performance management, discipline	Draw up a framework/ Answer legal problem question	
9	6 May	Unfair Work Practices/Enforcement of Obligations/ Dispute Resolution	Draw up a framework/ Answer legal problem question	Midnight, Sunday 12 May
10	13 May	Discrimination and Victimisation	Draw up a framework/ Answer legal problem question	
11	20 May	Work, Health and Safety	Draw up a framework/ Answer legal problem question	
12	27 May	Termination of Employment Contract/ Remedies for Wrongful Termination/Remedies for Unfair Dismissal	Draw up a framework/ Answer legal problem question	
13	3 June	No class		
Examination Period				
Examination Period				

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	Written assignment	Midnight, Sunday 31 March	Individual	25%	1, 3, 5, 6, 7, 8
2	Written assignment	Midnight, Sunday 12 May	Individual	25%	1, 2, 5, 6, 7, 8
3	Time Based Paper	Examination Period	Individual	50%	1, 2, 3, 4, 5, 6, 7, 8

Final Results

To ensure that grades are fair both within and between courses and cohorts, Newcastle Law School 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 time, 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 (See [173] of the University's *Course Management and Assessment Procedure Manual*).

Assessment 1 – Written Assignment

Assessment Type Description

Written Assignment

The assignment will consist of a problem question or a theory question designed to test your knowledge and critical understanding of the complex body of legal rules which governs the employment relationship and your ability to make judgments in the application of those rules to particular fact scenarios. The question will be posted in the Assessments section of the LEGL3111 Canvas site.

Weighting

25%

Due Date

Midnight, Sunday 31 March

Submission Method

Assignments must be submitted to the course Canvas site in Microsoft Word format or using similar word processing software (not as a PDF document). There is no need to submit a paper copy. Since you will not be submitting a paper copy of your assignment, in lieu of the usual assignment cover sheet you should ensure your paper has a title page which includes the title of your assignment, the word count and the academic integrity declaration which will be set out in the assignment instructions. You should read the declaration carefully and ensure you understand what you are declaring before including it on the title page.

Assessment Criteria

You can expect to do well in the assignment if you:

- demonstrate you have developed detailed knowledge and critical understanding of the complex body of law which governs the employment relationship, including contemporary developments in relation to this body of law;
- identify employment law issues relevant to a particular fact scenario and construct logical and persuasive arguments about how the law relevant to those issues (including cases and legislation) might apply to the given facts;
- in the process of setting out these arguments, demonstrate skills in statutory interpretation where appropriate and an ability to identify relevant facts and connect these with similarities and/or differences with the facts in applicable case-law to suggest how key legal issues might be determined;
- write clearly and concisely and structure the analysis in a logical way (using headings where appropriate).

Return Method

Papers will be marked electronically and comments and feedback will be made available on the course Canvas site (See advice concerning feedback under "Additional Information")

Feedback Provided below).
As above.

Assessment 2 – Written Assignment

Assessment Type	Written Assignment
Description	The assignment will consist of a problem question or a theory question designed to test your knowledge and critical understanding of the complex body of legal rules which governs the employment relationship and your ability to make judgments in the application of those rules to particular fact scenarios
Weighting	25%
Due Date	Midnight, Sunday 12 May
Submission Method	Assignments must be submitted to the course Canvas site in Microsoft Word format or using similar word processing software (not as a PDF document). There is no need to submit a paper copy. Since you will not be submitting a paper copy of your assignment, in lieu of the usual assignment cover sheet you should ensure your paper has a title page which includes the title of your assignment, the word count and the academic integrity declaration which will be set out in the assignment instructions. You should read the declaration carefully and ensure you understand what you are declaring before including it on the title page.
Assessment Criteria	You can expect to do well in the assignment if you: <ul style="list-style-type: none">• demonstrate you have developed detailed knowledge and critical understanding of the complex body of law which governs the employment relationship, including contemporary developments in relation to this body of law;• identify employment law issues relevant to a particular and construct logical and persuasive arguments about how the law relevant to those issues (including cases and legislation) might apply to the given question;• write clearly and concisely and structure the analysis in a logical way (using headings where appropriate).
Return Method	Papers will be marked electronically and comments will be made available on Canvas.
Feedback Provided	As above

Assessment 3 - Time-based paper

Assessment Type	Time Based Paper - consisting of problem and essay-style questions.
Description	The final paper will consist of two parts. Part A will consist of a number of short answer questions designed to test knowledge of the course materials and will be worth 20% of your total mark for the course. Part B will consist of problem type questions designed to test legal problem solving technique and will be worth 30% of your total mark for the course.
Weighting	50%
Due Date	During the formal examination period
Submission Method	N/A
Assessment Criteria	Part A - Short Answer Questions. You can expect to do well if: <ul style="list-style-type: none">• You are able to clearly and succinctly identify the course material required to answer the question.• You demonstrate good knowledge of the course material and the ability to use this knowledge in answering the question. Part B - Problem Solving Questions. You can expect to do well if: <ul style="list-style-type: none">• You have clearly identified and described the relevant issue(s) with reference to the relevant legal topic or sub-topic area.• You have identified the relevant source of law for the topic or sub-topic that has been identified in the issues section. (The source of law may be an Act of Parliament or the general law (case law) or a combination of both). You have explained the elements of any relevant test or rule with reference to the relevant primary authority (legislative provisions or case law)• You have applied each of the elements of the rule or test to the relevant facts and presented a logical argument for each element which explains how you think the rule should be applied to the facts• You have referred to any relevant case law and explained how the decision in the case supports your argument (this may involve comparing and/or contrasting the

- facts in a particular case from the facts in the problem question you are answering)
- Your argument is logically sequenced so that it clearly supports your conclusion and if necessary you have clearly stated any assumptions you have made if the facts in the problem question do not provide you with enough information to reach a clear conclusion
 - Your conclusion addresses (answers) both the legal issues and the question itself and is supported by the arguments you have made earlier in your assignment.
 - You display clear and logical written expression.

Return Method N/A
Feedback Provided No

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 ©	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:

- Communication in scheduled classes;
- Course Canvas site
- Email (where appropriate).

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.

Feedback Provided

University policy requires at least one form of individualised feedback to students per course. Individual feedback may be offered on more than one assessment item and will be dependent on factors that include class size and the nature of the assessment item.

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 You are entitled to apply for special consideration because adverse circumstances have had an impact on your performance in an assessment item. **This includes applying for an extension of time to complete an assessment item.** Prior to applying you must refer to the *Adverse Circumstances Affecting Assessment Items Procedure*, available at <https://policies.newcastle.edu.au/document/view-current.php?id=236>. All applications for Adverse Circumstances must be lodged via the online Adverse Circumstances system, along with supporting documentation.

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

Wellness Contacts 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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