



DIVISION OF LAW

**LAW 542
ISSUES IN INTERNATIONAL
HERITAGE CONSERVATION**

**LAW 804/859
HERITAGE LAW AND POLICY**

STUDY GUIDE

2008



**MACQUARIE UNIVERSITY
DIVISION OF LAW
STUDY GUIDE**

Year and Semester: 2008

**Unit Code & Unit Name: LAW 804/859 Heritage Law and Policy
LAW 542 Issues in International Heritage
Conservation**

**Credit points: Law 804 6 credit points
Law 859 4 credit points
Law 542 4 credit points**

Unit convenor: Mrs Erika Techera

Students in this unit should read this study guide carefully at the start of semester. It contains important information about the unit. Please contact the Unit Convenor if you require clarification on any aspect of the Unit.

1. ABOUT THIS UNIT

UNIT DESCRIPTION

This unit examines the concept of heritage and the various mechanisms for conservation of both natural and cultural heritage, including underwater heritage, movable heritage and indigenous heritage. International initiatives for heritage conservation are examined and the challenges in developed, developing and socialist market economies to effectively implement such initiatives assessed. Legal regimes for heritage conservation at international, national, state and local levels are examined and case studies are used to illustrate the policy tensions inherent in environmental decision making in this area.

UNIT RATIONALE

Why is heritage conserved? What are the factors which shape decisions as to what constitutes heritage? How is cultural heritage distinguished from natural heritage? The notion of “heritage” is fluid, being both culturally constructed and political in nature. As such, decisions concerning heritage and its conservation are contested at a number of levels. This unit examines these issues against the framework of legal regimes for conservation of natural and cultural heritage, including intangible heritage, underwater heritage and indigenous heritage. International initiatives for heritage conservation are examined and, in particular, the challenges in developed, developing and socialist market

economies to effectively implement such initiatives are assessed. The Australian legal framework (Federal, State and local) for heritage conservation is examined and critiqued with reference to topical case studies.

2. TEACHING STAFF

Convenor: Erika Techera
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Consultation hours are by appointment.

3. CLASSES AND STUDY TIMES

This unit is taught both internally and externally.

Internal students: Attend weekly classes on Monday 9am-11am Room C5A 232 and Friday 4pm-6pm Room X5B 143
Internal students are required to attend eighty-percent (80%) of all classes. If you fail to attend eighty percent of all classes, you will fail the unit. In addition, class participation is a component of this Unit.

External students: Attend an On Campus Session at Macquarie University. **ATTENDANCE AT THE ON CAMPUS SESSION IS COMPULSORY** – failure to attend the OCS will result in a fail result for the Unit. Please sign attendance register at Centre for Open Education upon arrival.

Postgraduate students must attend all three days from 17-19 April 2008.

Undergraduate students must attend two days being 17 and 18 April 2008. The third day is optional (but recommended) for undergraduates.

Location: To be advised

A detailed program for the 3 day on campus session will be uploaded to the WebCT site at the beginning of the semester.

There will be no iLectures for this unit.

4. REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

PRESCRIBED

Readings in Heritage Law and Policy Volumes 1, 2 & 3 (2008) (Edited by Susan Shearing and Erika Techera and available in the Co-op Bookshop).

A detailed Reading Guide will be uploaded to the Blackboard CE6 site at the beginning of the semester outlining prescribed readings for each topic and optional further readings, references and web sites which may assist students in their research. Students will be expected to have accessed and read any prescribed documentation.

RECOMMENDED

In addition to the set reading there are a range of textbooks available from the university library which you may find useful or if you wish to do some extra reading on a particular topic. The following list is not exhaustive and a search of the library catalogue may reveal other useful texts. The library call number for each text is also shown where available. Please note that in consulting these texts they should be read carefully because subsequent developments in international law may mean the text no longer reflects international law. Additional references include:

For students new to the study of law we recommend

- Chisholm and Nettheim, *Understanding Law: An introduction to Australia's Legal System* (2007) Butterworths (KU68 .C48 2007)

Texts

- Graeme Aplin, *Heritage: Identification, Conservation and Management*, Oxford University Press (2002)
- Maurice Evans, *Principles of Environmental and Heritage Law*, Prospect Media Ltd (2000) (KU1700 .E93)
- Ben Boer and Graeme Wiffen, *Heritage Law in Australia*, Oxford University Press (2006) (KU1507 .B64 2006)

Journals

- International journal of heritage studies
- Journal of Cultural Heritage
- International Journal of Nautical Archaeology

In addition the following journals may be useful for research topics

- Heritage Journal
- China Heritage Quarterly
- British Heritage
- American Heritage

Websites

- World Heritage Convention site - <http://whc.unesco.org>
- Convention on the Protection of Underwater Cultural Heritage - http://portal.unesco.org/culture/en/ev.php-URL_ID=2635&URL_DO=DO_TOPIC&URL_SECTION=201.html
- UNESCO Convention for the safeguarding of Intangible Cultural Heritage - <http://www.unesco.org/culture/ich/index.php?lg=EN>
- ICOMOS International Council on Monuments and Sites - www.icomos.org/
- Australian ICOMOS - <http://www.aicomos.com/>
- Australian Government, Dept of Environment, Water, Heritage and the Arts - <http://www.environment.gov.au/heritage>
- NSW Heritage Office - www.heritage.nsw.gov.au/
- NSW Maritime Heritage - <http://maritime.heritage.nsw.gov.au/public/themesInfo.cfm?pagename=Shipwrecks>

Notes

Reference may be made to other heritage legislation in the Reading Guide and students will be expected to have accessed and read the provisions of the legislation specified in the Reading Guide. All legislation used in this unit is available on www.austlii.edu.au. In addition the topics of the unit dealing with international heritage law and comparative domestic implementation/approaches will refer to numerous international conventions and other documents that are accessible on the internet. Key legislation includes:-

International

Convention for the Protection of the World Cultural and Natural Heritage 1972
Convention on the Protection of the Underwater Cultural Heritage 2001
Convention for the Safeguarding of the Intangible Cultural Heritage 2003

Commonwealth:

Environment Protection and Biodiversity Act 1999
Australian Heritage Council Act 2003
Aboriginal and Torres Strait Islander Heritage Protection Act 1984
Protection of Movable Cultural Heritage Act 1986
Historic Shipwrecks Act 1976

New South Wales

Heritage Act 1977
Environmental Planning and Assessment Act 1979
National Parks and Wildlife Act 1974

5. UNIT WEB PAGE

- Study Guides and information on this unit can be found at :
<http://www.law.mq.edu.au/html.postgraduate/studyguides.htm>
- There is also a Blackboard CE6 (formerly WebCT) site for this Unit. This also contains the Study Guide but will also provide access to additional materials such as PowerPoint slides, tutorial questions, quizzes, web links and further readings. This is accessible at <http://learn.mq.edu.au>. When students enrol in this Unit they are automatically granted access to the web site. If you have technical problems please follow the instructions on the web site. But if you cannot log into the site within 5 days of enrolling, then please contact the Unit Convener immediately. Students should access the site at least once a week.

6. LEARNING OBJECTIVES

At the end of this course, students should have developed an understanding of:

- the philosophical and contextual frameworks which shape definitions of heritage
- the scope of natural and cultural heritage, including intangible, indigenous and underwater heritage
- global initiatives to conserve heritage and the challenges to effectively implement such initiatives
- Indigenous heritage issues
- heritage conservation under the Australian legal system at Federal, State and local government levels and in particular the policy rationales which underpin the legal response to heritage.

7. GENERIC SKILLS

In addition to the discipline-based learning objectives, all academic programs at Macquarie seek to develop students' generic skills in a range of areas. One of the aims of this unit is that students develop their skills in the following:

- *Communication skills;*
- *Critical analysis skills;*
- *Problem-solving skills;*
- *Creative thinking skills;*
- *Interdisciplinary skills*

8. TEACHING AND LEARNING STRATEGY

The internal weekly seminars will be taught on an interactive basis with a mini lecture setting the context for discussion of each topic followed by class discussion. Small group

discussions may be used throughout the seminars (internal students) and the on campus sessions (external students). In addition case studies, hypothetical problems and quizzes may be used. The On-Campus Session will be taught as interactive seminars over the three day period similar to the internal seminars.

9. ASSESSMENT

LAW 859:

Class participation	10%	
Assignment 1	40% (3,000 words)	Due 5pm 14th April, 2008
Assignment 2	50% (4,500 words)	Due 5pm 13th June, 2008

LAW 804:

Class participation	10%	
Assignment 1	30% (3,000 words)	Due 5pm 14th April, 2008
Assignment 2	60% (6,500 words)	Due 5pm 13th June, 2008

LAW 542

Class participation	10%	
Assignment 1	40% (3,000 words)	Due 5pm 14th April, 2008
Assignment 2	50% (3,000 words)	Due 5pm 13th June, 2008

Class Participation

As assessment for this unit also includes class participation students should ensure they have completed the required reading for that week before each class, and be prepared to discuss this material in class. Students will not be awarded class participation just for attending class. The following non-exhaustive criteria list will be used to assess your class participation:

- The level of preparedness for each seminar/on campus session gauged by your responses to questions and answers and opinions offered throughout each class
- The level of analysis you display in class
- Your ability to answer questions put directly to you in class
- Your ability to make an educated and legally feasible argument in class
- The way in which you engage in a constructive way with other students and the Convenor in the class
- The quality NOT quantity of your work in class

Please note that the onus to participate in class is on you not on the Convenor. In other words, it is not the job of the Convenor to engage you in discussion so that you may avail yourself of the class participation assessment.

Assignment 1

All students must select one of the following assignment questions:

1. *The conservation of cultural heritage, and peoples' access to it, is increasingly being characterised as a human right.* Critically discuss in the context of international law. Your answer should demonstrate your understanding of cultural heritage and international human rights laws that relate to its protection, and include a critical analysis of the current threats to cultural heritage and the ability of international law to protect it.
3. *The World Heritage Convention was one of the first treaties to recognise the principle of the common heritage of humankind and it successfully balances the tensions between state sovereignty and the goal of safeguarding heritage at the global level.* Critically discuss. Your answer should demonstrate your understanding of the concept of the common heritage of humankind, how it is treated in the World Heritage Convention, your analysis of the tensions referred to and a critical evaluation of whether the statement is correct.

Students are expected to research beyond the Unit Reading Materials for the purpose of this assessment component. Students should ensure the scope and focus of their paper is clear in the introduction.

Assignment 2

A list of topics will be uploaded to the Blackboard CE6 site early in the semester. Students are expected to choose from that list. The list will include research topics relating to the areas covered in the course.

Students are expected to research beyond the Unit Reading Materials for the purpose of this assessment component.

Submission of Assignments

Students should ensure that their tutor's name and their tutorial group is provided on the first (cover) page of every assignment. Assignments should be typed – double spaced and in point 12 font. All pages must be firmly stapled or pinned together. The cover sheet attached to the rear of this study guide should be completed and attached to the front of your assignment.

External assignments sent by Australia Post, or by courier must be dispatched by the due date. The cover of the assignment should be date stamped by the post office before dispatch by mail.

Internal students should hand their papers directly to the course convener (her office is W3A 441) or post them in the appropriate box outside W3A 341. **Do not** push assignments under your tutor's door or post them in your tutor's pigeon hole in the Law Division's staff room. These methods of delivery are not secure.

Students are required to email an additional copy of assignments to the Course Convenor. This overcomes any issues in relation to submission date and time and also operates as a back copy of students' work. Students should always make and retain a

backup copy of all pieces of work submitted. It is University policy to place upon the students the onus of producing a copy of work which goes astray.

Word Length

Word length of assignments should be indicated. Word limits should be adhered to. The word length indicated for the assignments is exclusive of footnotes and Bibliography. The word limit should not be exceeded by more than 10%. Excessively long assignments will be penalised.

Citations/Footnotes/Bibliography

All assignments must be footnoted and have a comprehensive Bibliography. Students should use a proper legal citation method in all their written work. Citation of footnotes and references should follow the format set out in the Australian Guide to Legal Citation. Copies of this guide can be downloaded from the University of Melbourne Web site <http://mulr.law.unimelb.edu.au/aglc.asp> or can be purchased from the Co-op Bookshop.

For a model look at any issue of the *Macquarie Journal of International and Comparative Environmental Law* which is available in the library and online at <http://www.law.mq.edu.au/html/MqJICEL/about.htm>.

Late Submission

Illness or serious misadventure may be sufficient excuse, preventing submission on time, but complete details must be notified to tutors, **in writing, before the due date**, and be supported by medical certificate or other appropriate documentation. Pressure of work is generally **not** an acceptable ground for delay. If an extension of time is granted by a tutor, then the assignment must be submitted within this time. An excuse is good for one assignment only, there can be no chain effect.

It is possible to fail the course on penalties.

Note: The current Divisional policy on penalties for lateness is 10% up to 7 days; 20% up to 14 days; work submitted later than 14 days need not be accepted.

Failure to Submit Work or Attend Classes

It should be noted that University regulations require that all classes, assignments and compulsory On-Campus sessions be satisfactorily attended and completed. Non-completion of any piece of work or non-attendance at a compulsory On-Campus Session without sufficient excuse will result in an F grade.

10. RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OBJECTIVES

The first assignment provides students with the opportunity to demonstrate an understanding and critically discuss key theoretical concepts related to heritage conservation and law.

In the second assignment, the research essay will provide students with the opportunity to research further in a specific topic area and think critically about the theoretical and policy issues relevant to heritage law. The problem based question will allow students to demonstrate their understanding of the legal framework, clear issue identification, ability to apply the law to a variety of factual situations and analytical and critical skills.

11. PLAGIARISM

The University defines plagiarism in its rules: "Plagiarism involves using the work of another person and presenting it as one's own." Plagiarism is a serious breach of the University's rules and carries significant penalties. You must read the University's policies and procedures on plagiarism. These can be found in the *Handbook of Undergraduate Studies* or on the web at: <http://www.student.mq.edu.au/plagiarism/>

The policies and procedures explain what plagiarism is, how to avoid it, the procedures that will be taken in cases of suspected plagiarism, and the penalties if you are found guilty. Penalties may include a deduction of marks, failure in the unit, and/or referral to the University Discipline Committee.

Macquarie University holds a licence to the plagiarism detection software, turnitin®. This software may be used at the discretion of the Convenor, and electronically compares your work to that of your classmates, previous students from Macquarie and other universities, material available on the Internet, and both freely available and subscription-based electronic journals. You can read more about turnitin® at www.copyright.mq.edu.au/plag.html

12. UNIVERSITY POLICY ON GRADING

The University requires all Divisions to adhere to a policy relating to the distribution of grades across high distinction, distinction, credit and pass grades. This means that on occasion a student's raw mark for a unit (ie, the total of their marks for each assessment item) may not be the same as that which they receive on their transcript. This is because the total raw mark may be scaled up or down so that the grades of all students in each unit sit within the distribution bands set down by the University. The policy does not require that any number of students are to be failed in any unit.

13. SCHEDULE OF TOPICS

The Unit will be divided into three sections:

- Part 1 Theoretical and conceptual issues (weeks 1-2)
- Part 2 International heritage law and conservation issues

- Part 3 Australian approaches to heritage protection

A detailed reading list will be uploaded to the Blackboard CE6 site at the commencement of the semester.

CLASS SCHEDULE FOR INTERNAL -WEEKLY CLASSES

WEEK 1- INTRODUCTION

Class 1 (Monday 25 February)

Introduction to the Unit and explanation of assessment and course structure

Class 2 (Friday 29 February)

Topic 1 - Introduction to heritage and its meaning

WEEK 2-THEORETICAL BASES FOR HERITAGE CONSERVATION IN LAW

Class 1 (Monday 3 March)

Topic 2 - The theoretical bases for conservation of heritage

Class 2 (Friday 7 March)

Topic 2 - The theoretical bases for conservation of heritage

WEEK 3 – INTERNATIONAL HERITAGE LAW FRAMEWORK

Class 1 (Monday 10 March)

Topic 3 - Background to the international treatment of heritage

Class 2 (Friday 14 March)

Topic 3 - Historical evolution of the international heritage law framework

WEEK 4- WORLD HERITAGE CONVENTION

Class 1 (Monday 17 March)

Topic 4 – The World Heritage Convention

CLASSES CANCELLED FRIDAY 21 AND MONDAY 24 MARCH – EASTER

Class 2 (Friday 28 March)

Topic 4 – Implementation of the World Heritage Convention case study

WEEK 5 - INTANGIBLE CULTURAL HERITAGE

Class 1 (Monday 31 March)

Topic 5 - The UNESCO Convention on the Safeguarding of Intangible Cultural Heritage

Class 2 (Friday 4 April)

Topic 5 - International issues: Implementation and Enforcement

WEEK 6 - MOVEABLE CULTURAL HERITAGE

Class 1 (Monday 7 April)

Topic 6 - International protection of moveable cultural heritage

Class 2 (Friday 11 April)

Topic 6 - Cultural heritage and war

MID SEMESTER BREAK

WEEK 7-UNDERWATER CULTURAL HERITAGE

Class 1 (Monday 28 April)

Topic 6 - International issues: Convention on the Protection of Underwater Cultural Heritage and heritage in international waters

Class 2 (Friday 2 May)

Topic 6 – Case Study: Domestic protections for underwater cultural heritage

WEEK 8- HERITAGE AND WETLANDS

Class 1 (Monday 5 May)

Topic 7 – Ramsar Convention and its interaction with the World Heritage Convention

Class 2 (Friday 9 May)

Topic 7 – Case study: Protecting archaeology in wetlands

WEEK 9-COMPARATIVE APPROACHES TO DOMESTIC PROTECTION OF HERITAGE

Class 1 (Monday 12 May)

Topic 8 – Protection of built heritage in Asia

Class 2 (Friday 16 May)

Topic 8 – Protection of intangible and tangible moveable cultural heritage

WEEK 10 - INDIGENOUS HERITAGE

Class 1 (Monday 19 May)

Topic 9 – International issues: Conceptions of the value of Indigenous Cultural Heritage,
Identification and repatriation of remains

Class 2 (Friday 23 May)

Topic 9 - State and Federal protection of Indigenous Heritage in Australia

WEEK 11 - AUSTRALIAN APPROACHES - COMMONWEALTH

Class 1 (Monday 26 May)

Topic 10 - The Commonwealth Heritage Law Regime

Class 2 (Friday 30 May)

Topic 10 - Case Studies

WEEK 12-AUSTRALIAN APPROACHES – STATE (NSW)

Class 1 (Monday 2 June)

Topic 11 - NSW Heritage Act

Class 2 (Friday 6 June)

Topic 11 - Current issues in heritage conservation in NSW

