

**MACQUARIE UNIVERSITY
DIVISION OF LAW
STUDY GUIDE**

Year and Semester:	2008, semester 2
Unit Code:	LAW880
Unit Name:	History of Law in Australia
Credit points:	4
Unit convenor:	Professor Andrew Buck

Students in this unit should read this study guide carefully at the start of semester. It contains important information about the unit. If anything in it is unclear, please consult one of the teaching staff in the unit.

1. ABOUT THIS UNIT

Unit description

- What is Australian law? That question lies at the heart of this unit. The sources of law in New South Wales were first outlined by W.D. McIntyre in 1892, who claimed that the law in New South Wales sprang from three sources: such English law as was in existence before the Constitution Act of 1828, English statutes passed since the Constitution Act of 1828 which apply specifically to New South Wales, and all statutes passed by the local legislature. Scholarly texts which inform legal practice and judicial decisions subsequent to McIntyre have continued to emphasise the importance of the Constitution Act (eg. Butt, 2000, Gray and Edgeworth, 2003). The effect of this emphasis has been to periodise the development of Australian law in such a way as to prioritise the importance of English law in the story of Australian law. Mentally, the effect of the periodisation is not only to affirm in our minds the importance of English law to the development of Australian law, but also to lead us to the period after 1828 to look for evidence of the divergence between English and Australian law. This unit critically examines that prevailing assumption.

Unit rationale

- This project undertakes a detailed analysis of the legal principles and social forces shaping the development of Australian law. It adopts a contextual and comparative method, emphasising the nature of legal change as an historical phenomenon. This unit is designed to introduce students to the historical forces underlying the development of a distinctively Australian jurisprudence.

2. TEACHING STAFF

Unit convenor: Professor Andrew Buck
Room 520, building W3A
Tel: 02- 98507087
Email: andrew.buck@mq.edu.au

3. CLASSES AND STUDY TIMES

- On-campus sessions, Thursday 2 Oct. and Friday 3rd Oct.
- *Note:* Attendance at the on-campus sessions is compulsory for external students. Students who do not attend the on-campus sessions will be ineligible to pass the unit. (Students who have a clash of on-campus sessions for two different units scheduled for the same day should contact the subject convenors for both subjects at the beginning of term so that suitable alternative arrangements can be made.)

4. REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

- Course Materials.

5. UNIT WEB PAGE

The web page for this unit can be found at: <http://learn.mq.edu.au/>

6. LEARNING OBJECTIVES

At the end of this course, students should be able to:

- Explain and discuss critically the contested nature of Australian law.
- Identify and discuss critically the contours of the legal development in Australia.
- Analyse important case law in Australia.
- Identify and discuss critically leading legal historians.
- Demonstrate an awareness of important recent issues respecting Australian legal history.
- Reflect critically on recent legal and theoretical debates over Australian legal history.

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
- Creative thinking skills

8. TEACHING AND LEARNING STRATEGY

- The unit will be taught in an intensive seminar mode in which all students will be strongly encouraged to participate in the critical discussion of issues raised in the readings.

9. ASSESSMENT

1. Literature survey and essay plan: 20%
2. Essay: 80%

Attendance Requirement

External students are required to attend both days of the on-campus sessions. An external student who fails to meet this requirement will be ineligible to pass the course. (Students who have a clash of on-campus sessions for two different units scheduled for the same day should contact the subject convenors of both units at the start of semester so that suitable alternative arrangements can be made.)

Detailed Assessment Requirements

Literature survey and essay plan

- Length: 2,000 words
- Due Date: 5pm Friday 10th October 2008

Essay

- Length: 8,000 words
- Due Date: 5pm Friday 14th November 2008.

Method of submission: *External students:* submit papers to COE.

Essay topics (choose one of the following, OR, you may propose an alternate topic, to be worked in consultation with, and approved by, the convenor):

1. Is Australian law English? Explain your answer, with examples.
2. Was convict New South Wales an autocracy or a free society? Or something else? Explain.
3. Compare the legal status of aborigines and convicts in the early nineteenth century? What conclusions can be drawn?
4. Critically analyse the Rum Rebellion from a legal perspective. Can the rebellion be justified?
5. "The introduction of democracy in New South Wales was followed by the most viscous attack on private enterprise in our history." (John Hirst). What do we mean by "democracy" in NSW in the 1860s?

6. Trace the legal development of bankruptcy law in the nineteenth century. What conclusions can be drawn about the relationship between law, commerce and society during this period?
7. Torrens Title has been called “Australia’s gift to property law”. Critically analyse its importance to Australian law in the nineteenth century.
8. Trace the origins and early development (prior to world war one) of the compulsory arbitration system. What conclusions can be drawn about the relationship between law and politics at the turn of the twentieth century?

Style requirements:

All essays must be typed and double-spaced. All essays must have a cover sheet, which is filled out appropriately. All essays will have a bibliography (which is not counted in the word length). It is the responsibility of all students to keep a copy of their essay. In the event of any dispute about whether an assignment has been submitted you will be expected to produce a copy.

Extensions:

All applications for extension must be directed to the convenor by email, using the subject heading "Request for extension". In your email, briefly explain your circumstances and indicate whether supporting documentation is available and provide a contact phone number. The convenor will reply formally by email. If your request is granted, print out the reply and attach it to your essay. If the reply is not attached, late penalties will apply.

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

10. RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OBJECTIVES

The literature survey and essay plan is designed to test the student’s ability to access and assess legal history research materials, and think critically about the relationship between those materials and the essay. The essay is designed to test student’s ability to engage in scholarly research and the critical analysis of legal history.

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.

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.

The University's policy in relation to appeals against grades can be found in the *Handbook of Undergraduate Studies* for 2008 at pp. 45-46.

ESSAY COVER SHEET

<p>Please attach cover sheet to every assignment</p>	<p>Surname</p> <p>Given Names</p> <p><i>The student's name may be filled out by the student. If the name is not filled out by the student could the marker please complete this before returning to the Essay Collection Office. Thankyou!</i></p> <p>Student Number</p>
<p>Tutor's Name</p> <p>Tutorial Time</p> <p>Date Due</p> <p>Unit Number LAW</p>	<p>Essay Title</p> <p>.....</p> <p>.....</p>
<p>"I certify that I am aware of the University's policy on plagiarism and that this assignment meets those requirements and has not been previously submitted for assessment in any other course of study"</p> <p>Signed</p>	
<p>MARKER'S COMMENTS</p>	

