



# LAWS13010 Evidence and Proof

## Term 3 - 2017

Profile information current as at 26/05/2022 10:16 pm

All details in this unit profile for LAWS13010 have been officially approved by CQU University and represent a learning partnership between the University and you (our student). The information will not be changed unless absolutely necessary and any change will be clearly indicated by an approved correction included in the profile.

### General Information

#### Overview

This unit is concerned with issues of evidence and proof. The topics covered in the unit include sources and acceptability of evidence. This requires you to access Evidence Acts to understand the technical rules covering evidentiary matters such as hearsay, admissions and confessions, res gestae and evidence obtained by illegal means.

#### Details

Career Level: *Undergraduate*

Unit Level: *Level 3*

Credit Points: 6

Student Contribution Band: 10

Fraction of Full-Time Student Load: 0.125

#### Pre-requisites or Co-requisites

Pre-requisites: LAWS11057 Introduction to Law LAWS11059 Statutory Interpretation LAWS11060 Criminal Law Practice and Procedure

Important note: Students enrolled in a subsequent unit who failed their pre-requisite unit, should drop the subsequent unit before the census date or within 10 working days of Fail grade notification. Students who do not drop the unit in this timeframe cannot later drop the unit without academic and financial liability. See details in the [Assessment Policy and Procedure \(Higher Education Coursework\)](#).

#### Offerings For Term 3 - 2017

- Distance

#### Attendance Requirements

All on-campus students are expected to attend scheduled classes - in some units, these classes are identified as a mandatory (pass/fail) component and attendance is compulsory. International students, on a student visa, must maintain a full time study load and meet both attendance and academic progress requirements in each study period (satisfactory attendance for International students is defined as maintaining at least an 80% attendance record).

#### Website

[This unit has a website, within the Moodle system, which is available two weeks before the start of term. It is important that you visit your Moodle site throughout the term. Please visit Moodle for more information.](#)

## Class and Assessment Overview

### Recommended Student Time Commitment

Each 6-credit Undergraduate unit at CQUniversity requires an overall time commitment of an average of 12.5 hours of study per week, making a total of 150 hours for the unit.

### Class Timetable

#### [Regional Campuses](#)

Bundaberg, Cairns, Emerald, Gladstone, Mackay, Rockhampton, Townsville

#### [Metropolitan Campuses](#)

Adelaide, Brisbane, Melbourne, Perth, Sydney

### Assessment Overview

#### 1. **Written Assessment**

Weighting: 30%

#### 2. **Written Assessment**

Weighting: 30%

#### 3. **Examination**

Weighting: 40%

### Assessment Grading

This is a graded unit: your overall grade will be calculated from the marks or grades for each assessment task, based on the relative weightings shown in the table above. You must obtain an overall mark for the unit of at least 50%, or an overall grade of 'pass' in order to pass the unit. If any 'pass/fail' tasks are shown in the table above they must also be completed successfully ('pass' grade). You must also meet any minimum mark requirements specified for a particular assessment task, as detailed in the 'assessment task' section (note that in some instances, the minimum mark for a task may be greater than 50%). Consult the [University's Grades and Results Policy](#) for more details of interim results and final grades.

## CQUniversity Policies

**All University policies are available on the [CQUniversity Policy site](#).**

You may wish to view these policies:

- Grades and Results Policy
- Assessment Policy and Procedure (Higher Education Coursework)
- Review of Grade Procedure
- Student Academic Integrity Policy and Procedure
- Monitoring Academic Progress (MAP) Policy and Procedure – Domestic Students
- Monitoring Academic Progress (MAP) Policy and Procedure – International Students
- Student Refund and Credit Balance Policy and Procedure
- Student Feedback – Compliments and Complaints Policy and Procedure
- Information and Communications Technology Acceptable Use Policy and Procedure

This list is not an exhaustive list of all University policies. The full list of University policies are available on the [CQUniversity Policy site](#).

## Previous Student Feedback

### Feedback, Recommendations and Responses

Every unit is reviewed for enhancement each year. At the most recent review, the following staff and student feedback items were identified and recommendations were made.

#### Feedback from John Milburn

##### Feedback

In term 1, 2017 for LAWS13010, I used UCROO as the primary online discussion platform for students. UCROO is an online discussion platform that is, in my view, more user-friendly and interactive than Moodle discussion forums. I believe students received UCROO well, although it was a new learning experience for many students.

##### Recommendation

Consider the ongoing use of UCROO as a supplementary discussion forum to Moodle.

## Unit Learning Outcomes

### On successful completion of this unit, you will be able to:

1. Interpret and apply common law and statutory rules of evidence in the Queensland and Commonwealth jurisdiction, including indigenous perspectives
2. Identify and discuss ethical challenges in the application of Evidence Law, particularly in relation to cross-examination technique, and the use of privilege
3. Critically analyse a body of evidence and discuss its admissibility and probative value
4. Research and present relevant cases and statutory sources, to utilise evidence law and its authoritative interpretation to respond to realistic legal problems
5. Use creative and analytical thinking skills to identify appropriate evidence to support legal propositions in a trial setting.

LAWS13010 Evidence and Proof meets the Priestley 11 requirement for Evidence.

## Alignment of Learning Outcomes, Assessment and Graduate Attributes



### Alignment of Assessment Tasks to Learning Outcomes

Assessment Tasks	Learning Outcomes				
	1	2	3	4	5
1 - Written Assessment - 30%	•	•	•	•	•
2 - Written Assessment - 30%	•	•	•	•	•
3 - Examination - 40%	•	•	•	•	•

### Alignment of Graduate Attributes to Learning Outcomes

Graduate Attributes	Learning Outcomes				
	1	2	3	4	5

Graduate Attributes	Learning Outcomes				
	1	2	3	4	5
1 - Communication					•
2 - Problem Solving	•	•	•	•	•
3 - Critical Thinking	•	•	•	•	•
4 - Information Literacy					•
5 - Team Work					
6 - Information Technology Competence					
7 - Cross Cultural Competence					
8 - Ethical practice					
9 - Social Innovation					
10 - Aboriginal and Torres Strait Islander Cultures					

### Alignment of Assessment Tasks to Graduate Attributes

Assessment Tasks	Graduate Attributes									
	1	2	3	4	5	6	7	8	9	10
1 - Written Assessment - 30%	•	•	•	•						
2 - Written Assessment - 30%	•	•	•	•						
3 - Examination - 40%	•	•	•	•						

## Textbooks and Resources

### Textbooks

LAWS13010

#### Prescribed

##### Queensland Evidence Law

Edition: Third (2014)

Authors: Field, David

LexisNexis Butterworths

Chatswood, NSW, Australia

ISBN: 9780409337419

Binding: Paperback

LAWS13010

#### Supplementary

##### Rules of Evidence in Australia, Text and Cases

Edition: Second (2007)

Authors: Arenson, Kenneth and Bagaric, Mirko

LexisNexis Butterworths

Chatswood, NSW, Australia

ISBN: 9780409324204

Binding: Paperback

#### Additional Textbook Information

The textbook by Field is absolutely essential for the study of LAWS13010. The casebook by Arenson and Bagaric is recommended, but not essential.

[View textbooks at the CQUniversity Bookshop](#)

### IT Resources

#### You will need access to the following IT resources:

- CQUniversity Student Email
- Internet
- Unit Website (Moodle)
- UCROO
- Zoom access will be required for the first assignment

## Referencing Style

All submissions for this unit must use the referencing style: [Australian Guide to Legal Citation, 3rd ed](#)

For further information, see the Assessment Tasks.

## Teaching Contacts

**Anthony Marinac** Unit Coordinator

[a.marinac@cqu.edu.au](mailto:a.marinac@cqu.edu.au)

## Schedule

### Week 1 - 06 Nov 2017

Module/Topic	Chapter	Events and Submissions/Topic
Principles of Evidence	Compulsory: Field Ch. 1. Optional: Casebook pp. 14-27.	

<b>Week 2 - 13 Nov 2017</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
Relevance and Admissibility	Compulsory: Field Ch. 1, pp. 4-17. Optional: Casebook pp.1-12.	
<b>Week 3 - 20 Nov 2017</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
Methods of Proof	Compulsory: Field Ch. 2, pp. 52-27 and Ch. 3. Optional: Casebook pp.28-34.	
<b>Week 4 - 27 Nov 2017</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
Oral Evidence	Compulsory: Field Ch. 5 and Ch. 6, pp. 199-206. Optional: Casebook pp.34-104.	
<b>Vacation Week - 04 Dec 2017</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
<b>Week 5 - 11 Dec 2017</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
Examination of Witnesses	Compulsory: Field Ch. 6 up to page 199. Optional: Casebook pp. 110-192.	
<b>Week 6 - 18 Dec 2017</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
Documentary and Real Evidence	Compulsory: Field Ch. 10. Optional: Casebook pp. 363-384 and 387-405.	<b>Oral evidence assignment</b> Due: Week 6 Friday (22 Dec 2017) 11:45 pm AEST
<b>Week 7 - 01 Jan 2018</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
Hearsay	Compulsory: Field Ch. 9, pp. 275-286. Optional: Casebook pp.408-414.	
<b>Week 8 - 08 Jan 2018</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
Admissions and Confessions	Compulsory: Field Ch. 9, pp. 296-299. Optional: Casebook pp. 453-468 and Ch. 12.	
<b>Week 9 - 15 Jan 2018</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
Other exceptions to the Hearsay Rule	Compulsory: Field Ch. 9, pp. 286-296. Optional: Casebook Ch. 10.	
<b>Week 10 - 22 Jan 2018</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
Circumstantial Evidence	Compulsory: Field Ch. 7. Optional: Casebook Ch. 5.	<b>Experiential Assignment</b> Due: Week 10 Friday (26 Jan 2018) 12:00 am AEST
<b>Week 11 - 29 Jan 2018</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
Opinion Evidence	Compulsory: Field Ch. 11, pp. 343-364. Optional: Casebook Ch. 11.	
<b>Week 12 - 05 Feb 2018</b>		
<b>Module/Topic</b>	<b>Chapter</b>	<b>Events and Submissions/Topic</b>
Criminal Procedure and Evidence	No reading for this week	

## Review/Exam Week - 12 Feb 2018

Module/Topic	Chapter	Events and Submissions/Topic
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## Exam Week - 12 Feb 2018

Module/Topic	Chapter	Events and Submissions/Topic
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## Assessment Tasks

### 1 Oral evidence assignment

#### Assessment Type

Written Assessment

#### Task Description

Students will be required to form groups of two, and to make a 30 minute appointment with the lecturer by Zoom, at a convenient time in Week 6 or the Vacation Week.

One student will be the prosecutor and one student will be the defence counsel, in relation to a witness.

The witness statement and briefing will be posted in Week 2 of term.

Each student is to develop between ten and twenty questions to put to that witness, following the rules of evidence.

Those questions must be submitted through Moodle by the due date. Students will then question the witness, played by the Lecturer, in realtime via Zoom.

#### Assessment Due Date

Week 6 Friday (22 Dec 2017) 11:45 pm AEST

#### Return Date to Students

Week 9 Monday (15 Jan 2018)

#### Weighting

30%

#### Assessment Criteria

An assessment rubric will be posted to the Moodle site. The criteria are:

1. Understanding of the brief and facts.
2. Understanding of the concept of relevance, and application to the formulation of questions.
3. Demonstrated understanding of the rules applying to different forms of examination.
4. Ability to use oral examination to assist with the formulation of a case.
5. General skills of advocacy.
6. General understanding of evidence law.

#### Referencing Style

- [Australian Guide to Legal Citation, 3rd ed](#)

#### Submission

Online

#### Submission Instructions

Written questions should be submitted through Moodle, however most of the grade will be assessed from the oral examination exercise.

#### Learning Outcomes Assessed

- Interpret and apply common law and statutory rules of evidence in the Queensland and Commonwealth jurisdiction, including indigenous perspectives
- Identify and discuss ethical challenges in the application of Evidence Law, particularly in relation to cross-examination technique, and the use of privilege
- Critically analyse a body of evidence and discuss its admissibility and probative value
- Research and present relevant cases and statutory sources, to utilise evidence law and its authoritative interpretation to respond to realistic legal problems
- Use creative and analytical thinking skills to identify appropriate evidence to support legal propositions in a trial setting.

#### Graduate Attributes

- Communication
- Problem Solving
- Critical Thinking
- Information Literacy

## 2 Experiential Assignment

### Assessment Type

Written Assessment

### Task Description

**Word limit:** 2000 words (absolute maximum – do not exceed 2000) excluding footnotes.

To complete this assignment you will need to obtain a copy of the 1958 movie *Twelve Angry Men*, starring Henry Fonda. It is available for purchase on iTunes for about \$12, or can be purchased through retailers such as JB Hi-Fi. Many local DVD hire places will also have a copy in the Classics section. You may also be able to find dodgy copies on YouTube, but ensure you are watching the 1958 black and white version, not the 1990s remake or films of the various stage productions.

*If obtaining a copy of the DVD is beyond your means then please contact me. We can either make arrangements for you to borrow mine, or I have an alternative assignment question available. I am not making that question public at this time because I don't want to seem like I am offering a choice – my strong preference would be for everyone to do the *Twelve Angry Men* assignment. When this subject has been run previously, all students have been able to get a copy of the movie. If you wish some additional resources, the screenplay for the movie can readily be located online in PDF form.*

**It is important to cite QUEENSLAND LAW authorities for your answers.**

**Questions (Every question should be attempted, with a maximum of 100 words for all but the last question, and an overall maximum of 2000 words)**

#### Question One

Pretend for a moment that you were the Defence counsel, and that you had thought through the full range of issues considered by the jury. Write an excerpt from your closing address, explaining why the defendant should be acquitted.

#### Question Two

In the early scenes of the movie, we hear the judge concluding his instructions to the jury. He sets out the standard of proof which must be met in the case. Are you happy with his instructions to the jury? If yes; explain why it was important for the judge to give these instructions. If no, rewrite those instructions to show what you think the judge ought to have said.

#### Question Three

In his instructions, the judge makes it clear that the jury cannot appeal for clemency: if the accused is convicted, the death penalty will be pronounced. From a practical perspective, do you think this changes the threshold of "reasonable doubt"? Did the fact that the case was a death-penalty case affect the jurors' assessment of the evidence?

#### Question Four

Juror 3 states "I'd slap those tough kids down before they start any trouble." Why is a bias such as this important in the context of evidence law? Reflect generally on the theme of prejudice in this movie.

#### Question Five

Juror 12, speaking of the prosecutor, states "I thought he was really sharp, the way he hammered his points home one by one in logical sequence." Reflect on the importance of formal logic in the presentation of evidence. In the end, in a jury trial, is an appeal to logic more important than an appeal to emotion?

#### Question Six

Juror 3 states "The kid's a dangerous killer, you could see it." Is this merely bias, or is it based upon a legitimate assessment of proper evidence? If it is based on evidence, what sort of evidence? What are the dangers of this form of evidence?

#### Question Seven

Juror 10 says, of the Defendant's socio-economic group, "You can't believe a word they say. You know that. I mean, they're born liars." What aspect of evidence law is under assessment here? If you were the Defence counsel, how might you circumvent this view?

#### Question Eight

Juror 2 believes in the defendant's guilt because "Nobody proved otherwise." Juror 8 replied "Nobody had to prove otherwise. The burden of proof's on the prosecution." To what extent do you think the general public understands this?



**Question Nine**

Juror 3 states "These are facts. You can't refute facts." Is he right?

**Question Ten**

Juror 7 lists the previous offences committed by the Defendant. What sort of evidence is this? Would it be admissible in Queensland?

**Question Eleven**

At one point, the murder weapon (a knife) is brought into the jury room, and Juror 8 then produces a similar knife. What sort of evidence is the murder weapon? How do you feel about Juror 8's actions in purchasing and producing the knife?

**Question Twelve**

The defendant claims to have been thrown down a set of stairs by Detectives, and to have been interviewed alone, with the corpse of his father in the next room. During his interview, the defendant may have made admissions against his own interests. Should any of the evidence from the police interviews have been admitted? Why or why not?

**Question Thirteen**

At one point jurors 8 and 4 argue about whether the knife used in the murder was the same knife purchased by the defendant. Juror 8 says "It's possible!" that the knives were different. Juror 4 replies "... but not very probable." Do you believe at this point, by acknowledging that it was "possible but not probable" that the knives were different, Juror 4 had formed reasonable doubt?

**Question Fourteen**

The jury spends some time considering the evidence of the old man downstairs. Considering his testimony, which of the limitations of oral evidence seem to be at play? (There may be more than one)

**Question Fifteen**

The jury requests, and is given, a diagram of the apartment. What sort of evidence is this, and why is it classified that way? What would have had to happen, within the court room, for this evidence to be admitted?

**Question Sixteen**

After examining the apartment diagram, the jurors conduct an exercise to see if the old man could have made it to the door in time. Let us pretend this re-enactment took place in the courtroom, not the jury room. What sort of evidence would this have been? If you were the Defence lawyer, would you have objected? How do you feel about this occurring in the jury room?

**Question Seventeen**

Much is made of the defendant allegedly shouting "I'll kill you!" However, the evidence of what he said was given by another witness. Why was this not hearsay?

**Question Eighteen (300 words)**

What, in your opinion, was the most compelling evidential issue in helping the jury to change their minds? At what point in the logical progression of the movie did the tide turn, and eventual acquittal become inevitable?

**Assessment Due Date**

Week 10 Friday (26 Jan 2018) 12:00 am AEST

**Return Date to Students**

Week 12 Friday (9 Feb 2018)

**Weighting**

30%

**Assessment Criteria**

The criteria and weighting are as follows.

- Identification of primary issues (5 marks)
- Demonstrated understanding of the subject matter (10 marks)
- Application of facts to law (5 marks)
- Clear conclusion and answer to each question (5 marks)
- Analytical ability (2 marks)
- Use of reference sources (1 mark)
- Vocabulary and grammar (2 marks)

I assess students on their ability to demonstrate thinking, writing and presentation skills, to comprehend the material, to process the material and to provide a critical analysis and logical discussion of the law. Students are required to communicate clearly, logically and in a concise manner. I expect you to present material in a professional manner. Please paginate shall paper and used correct spelling and grammar. You must appropriately reference and attribute the work of others.

#### Fail

You will have shown evidence of the following:

- the written expression is poor and difficult to understand
- the answer is poorly organised
- referencing is generally inadequate
- lack of familiarity with the legislation and its application
- failure to identify and address the issues in the question
- reasoning and application demonstrated is poor

#### Pass

You will have:

- made a conscientious attempt to address the topic and/or answer the question
- shown evidence of having done the required reading and of having understood the reading
- presented a reasonable argument to back up your conclusions
- demonstrated a reasonable level of spelling and grammatical usage
- used referencing but this may need improvement
- issues that may need to be identified and addressed in more depth

#### Credit

You will have:

- addressed the topic and/or answered the question directly
- presented soundly based arguments and backed these up with reasons
- gone beyond description to analysis of key issues
- used the English language well
- shown evidence of reading widely
- demonstrated understanding of the reading
- used referencing that is satisfactory

#### Distinction

You will have:

- met the above criteria for a credit
- demonstrated the attainment of a high degree of understanding of the concepts of the course
- demonstrated deep insight into the application of knowledge and skills acquired to complex theoretical and practical situations
- used referencing correctly
- made reference to all appropriate legislation

#### High Distinction

You will have:

- met the above criteria for a distinction
- demonstrated the attainment of an outstanding level of achievement regarding the objectives of this course
- demonstrated an interesting and/or original approach/idea/argument
- demonstrated mastery of the relevant referencing system
- ensured your conclusions are backed by well-reasoned arguments demonstrating a detailed insight and analysis of issues
- ensured your references are made to the appropriate legislation for particular issues

#### Referencing Style

- [Australian Guide to Legal Citation, 3rd ed](#)

#### Submission

Online

**Submission Instructions**

I will only accept online submission of your work. Upload your work in a Word document (not PDF). I expect student to present their assignment work on time. Take care with your submission. Avoid obvious mistakes, such as basic spelling and grammatical errors. Read your paper out aloud, word by word. It is slow however; it may be a productive exercise. Alternatively, or in addition, ask a friend to read your material. Generally, you should submit one document (even if the assessment is in two or more parts) and ensure that your name is included in the name of the saved document.

**Learning Outcomes Assessed**

- Interpret and apply common law and statutory rules of evidence in the Queensland and Commonwealth jurisdiction, including indigenous perspectives
- Identify and discuss ethical challenges in the application of Evidence Law, particularly in relation to cross-examination technique, and the use of privilege
- Critically analyse a body of evidence and discuss its admissibility and probative value
- Research and present relevant cases and statutory sources, to utilise evidence law and its authoritative interpretation to respond to realistic legal problems
- Use creative and analytical thinking skills to identify appropriate evidence to support legal propositions in a trial setting.

**Graduate Attributes**

- Communication
- Problem Solving
- Critical Thinking
- Information Literacy

## Examination

**Outline**

Complete an invigilated examination

**Date**

During the examination period, at a CQUniversity examination centre

**Weighting**

40%

**Length**

120 minutes

**Details**

Dictionary - non-electronic, concise, direct translation only (dictionary must not contain any notes or comments).

Open Book

## Academic Integrity Statement

As a CQUniversity student you are expected to act honestly in all aspects of your academic work.

Any assessable work undertaken or submitted for review or assessment must be your own work. Assessable work is any type of work you do to meet the assessment requirements in the unit, including draft work submitted for review and feedback and final work to be assessed.

When you use the ideas, words or data of others in your assessment, you must thoroughly and clearly acknowledge the source of this information by using the correct referencing style for your unit. Using others' work without proper acknowledgement may be considered a form of intellectual dishonesty.

Participating honestly, respectfully, responsibly, and fairly in your university study ensures the CQUniversity qualification you earn will be valued as a true indication of your individual academic achievement and will continue to receive the respect and recognition it deserves.

As a student, you are responsible for reading and following CQUniversity's policies, including the [Student Academic Integrity Policy and Procedure](#). This policy sets out CQUniversity's expectations of you to act with integrity, examples of academic integrity breaches to avoid, the processes used to address alleged breaches of academic integrity, and potential penalties.

### What is a breach of academic integrity?

A breach of academic integrity includes but is not limited to plagiarism, self-plagiarism, collusion, cheating, contract cheating, and academic misconduct. The Student Academic Integrity Policy and Procedure defines what these terms mean and gives examples.

### Why is academic integrity important?

A breach of academic integrity may result in one or more penalties, including suspension or even expulsion from the University. It can also have negative implications for student visas and future enrolment at CQUniversity or elsewhere. Students who engage in contract cheating also risk being blackmailed by contract cheating services.

### Where can I get assistance?

For academic advice and guidance, the [Academic Learning Centre \(ALC\)](#) can support you in becoming confident in completing assessments with integrity and of high standard.

### What can you do to act with integrity?



#### Be Honest

If your assessment task is done by someone else, it would be dishonest of you to claim it as your own



#### Seek Help

If you are not sure about how to cite or reference in essays, reports etc, then seek help from your lecturer, the library or the Academic Learning Centre (ALC)



#### Produce Original Work

Originality comes from your ability to read widely, think critically, and apply your gained knowledge to address a question or problem