The University of Western Australia
Law School

PROCEDURE
2008

LAWS4021*
LAWS4022*

(*Students should note this Unit is taught over 2 Semesters)
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General Information

Lectures will be delivered on **Monday evenings at 6.00pm** in the Murdoch Lecture Theatre, Arts Building. Students should attend all lectures to gain a comprehensive overview of the unit. Lectures will be recorded and available on audio online.

In addition to lectures, regular written and oral exercises will be set and must be undertaken by students on an individual basis with respect to various tutorial topics. These written exercises and oral exercises will carry 50% of the year's assessment (Written 40% Oral 10%).

Each student will be expected to present four (4) written exercises to be made available in advance to other students in their tutorial group and for assessment by tutors.

In addition, each student will be required to prepare, and be prepared to make and participate in, an oral presentation on four (4) other occasions as discussion leaders. These oral presentations will be on topics other than those that the student will be required to present as written exercises.

Once the tutorial groups have been finalised, usually by the second week of the semester, the tutorial programme will also be published at the Law School or on the Procedure Website. Students will be allocated two written exercises and two oral presentations for each semester.

Due to experiences in previous years of time-tabling and attendance difficulties, the tutorial allocations will be adhered to rigidly. Excuses by students that time-tabling slots clash with full-time employment will not meet with sympathetic reception. It has to be remembered the Procedure Unit forms part of the full-time degree programme, which requires students’ attendance as per 1.2.1.15(1) of the University General Rules, which states, in part:-

**To complete a unit a student must**

(a) meet the faculty’s requirements with respect to attendance at prescribed classes, lectures, seminars, tutorials, practical and clinical practice, and to the sitting of examinations; and

(b) complete assignments and other prescribed work of the unit at a standard acceptable to the faculty; and

(c) obtain a grade of Pass or higher for the unit.

The final component of the total year’s assessment is a three (3) hour examination in November which carries 50% of the year’s assessment. This examination will be set on the full year’s unit and any topic covered during the year could be the subject of a question in the examination.

Students MUST obtain a pass grade in the tutorial work AND the final examination in order to receive a pass grade in the Unit.

Should students experience any problems with these requirements, then please contact me as soon as possible to avoid any misunderstandings.

My Room Number is Law School 2.13 and I will usually be available for personal consultations on Monday afternoons by appointment. However other times can be arranged by appointment by calling 9325 5510 (Fiocco’s Lawyers) or 0418 902 905 or contacting my e-mail: jfiocco@fiocco.com.au

John Fiocco
Unit Coordinator - 3 March 2008
PROCEDURE 2008

Lecture Programme – Content of Lectures*

It will not be possible to cover the whole of the unit in lectures, when only one lecture per week can be delivered. However, the whole of the unit can be covered through a combination of the lectures and the tutorial exercises.

The lectures will cover the unit material in a sequential manner and will examine the development of typical civil actions from the commencement of those actions, through the various pre-trial stages to judgment and enforcement of judgment and the institution of an Appeal. An overview of this process can be obtained from the Manual: 1998 ed. paras [5.000-5.300], which should be read in conjunction with the material in Chapter 2 of P Young and H Selby Pleadings Without Tears in Australia (Sydney: Federation Press, 1997) pp.12-21 (Reserve) and the preliminary reading: Fiocco, John, ‘The Civil Justice System in Western Australia - An Overview’ (available for download on WebCT).

It should be borne in mind that the development of a civil action is not always a “linear” process and consideration will need to be given to some procedures and processes that may play a part in only some litigation proceedings. Good examples of these processes and procedures are summary judgment applications, applications to set aside judgments, applications for Interlocutory Injunctions or applications to strike out an action. Other procedures and processes will be common to almost all civil actions and examples of these are pleadings, discovery, positive case flow management and settlement negotiations. Other procedures and processes are potentially common to all civil litigation and must also be considered. Good examples are enforcement of judgments and appeals.

While all of these matters and others will be covered in the tutorials, there is insufficient time to cover them all in lectures. Consequently, when the material cannot be covered in a lecture I shall direct you to the references which cover the material. In most cases, it will be contained in the MANUAL or CAIRNS, so you should not have any difficulty having access to the material.

I do not propose to give detailed lectures on applications for summary Judgment (the topic to be covered in Exercise 3) and the setting aside of a default judgment (the topic to be covered in Exercise 4), as these topics are adequately covered in the MANUAL or CAIRNS, as follows:

<table>
<thead>
<tr>
<th>Procedure</th>
<th>MANUAL 1998 ed</th>
<th>CAIRNS 5th, 6th &amp; 7th eds</th>
</tr>
</thead>
</table>

* All of the lectures will be recorded and available on audio online.

John Fiocco
Unit Coordinator
3 March 2008
PROCEDURE 2008

Tutorial Programme

Each week, a tutorial exercise will be required to be undertaken by nominated students, based upon the topics outlined in the lecture schedule. The topic will be available a week in advance on the Procedure website. The tutorial exercise will be considered at a tutorial group comprising of up to 15 students per group.

The procedure followed at the weekly tutorial will involve a nominated student or students, in each group, on a weekly basis, completing a written presentation or leading an oral discussion with reference to the other student's written presentations.

These written presentations must be submitted on the WebCT website by 5pm of the Thursday prior to the week of the Tutorial. No extensions will be permitted. Students handing in work after the deadline will be marked absent and will fail to have their paper marked. Papers which are faxed to the office will NOT be accepted. Papers are NOT to be submitted in hard copy to the general office.

Annexed at the end of those notes are explanatory materials dealing with the operation of WebCT.

In addition to submitting any allocated written assignments, the students allocated the preparation of the written exercise may be required to expand on or defend their papers at the tutorial session. To assist in discussion all members of the tutorial group will be expected to have read in advance the papers to be presented and be prepared to ask questions and participate in any general discussion.

For each tutorial the individually nominated oral discussants will lead discussions on the written papers and will therefore need to consider the exercise in detail. The discussants are expected to demonstrate a sound grasp of the subject area. It is expected that the discussant's comments will be of approximately 10-15 minutes each, although each tutor will regulate the operation of the process in their respective tutorials.

N.B. All students will need to pass BOTH the tutorial work, ie, both written exercises and oral discussions AND the final examination to pass the unit.

N.B. A tutorial attendance record will be kept and any student who without an acceptable reason fails to attend a tutorial on any week could lose up to 10% of year-end marks. Normally only a medical certificate will be considered acceptable evidence for failing to attend. Reasons for absence must be given to the Senior Lecturer in charge (John Fiocco) in writing, NOT to the Tutor.

N.B. If a student fails to attend a tutorial when allocated a discussion (D) or fails to submit a written exercise (P) when allocated a written discussion, the student must make arrangements directly with their tutor to “make up” the discussion or written exercise at another tutorial. This is to ensure that each student satisfactorily completes their tutorial obligations of presenting four (4) written exercises and four (4) oral presentations throughout the two semesters of the Unit. Consequently, in these circumstances a student is required to produce a medical certificate for non attendance AND also make arrangements with their tutor to “make up” either a missed discussion or written exercise. It will only be in exceptional circumstances that a student will be awarded a mark for a missed discussion or written exercise, which is not “made up” during the unit.

N.B. Tutorial registration is in accordance with procedures for ONLINE REGISTRATION.

N.B. Ensure you check your tutorial allocation for the first week of tutorials, commencing Monday, 24 March 2008.
WRITTEN EXERCISES/PRESENTATIONS

The written exercises/presentations are designed to develop a range of skills:

1. Identify a cause or causes of action from a set of assumed facts.

2. Identify and understand the remedy or remedies available to your client, where applicable. The ability to select the most appropriate remedy or remedies is an important practical skill.

3. The ability to provide clear and cogent practical advice to a client.

4. The ability to accurately and efficiently draft the appropriate legal documentation in the context of a Civil Litigation Action.

In most cases, students will not be required to draft “essay style” answers.

The exercise may require you to draft a court document only.

Where legal analysis is required, it should be presented in a lucid and concise style. In most cases, you will be expected to cite relevant statutory and case law authority.

However, in some situations, such as where you are asked to draft letters of advice to clients, you will be shown approaches which avoid legal “jargon” and legal citations. Some exercises are designed to develop and refine this skill.

ORAL PRESENTATION

The nominated student should have read the written presentations and be prepared to analyse and constructively criticise the work that has been presented. Your sole purpose should not be to criticise. Praise should be given where appropriate.

You will be asked questions in the tutorial, by your Tutor, to test your understanding of the tutorial topic.

Please be prepared to support your opinion or views with authority.

Oral presentations should be structured and presented in a logical and concise style. Use it as an opportunity to develop your skills as an advocate. Indeed, some tutorial topics will require students to make oral submissions to the tutorial group, as if they were in a courtroom.

John Fiocco
Unit Coordinator
3 March 2008
**PROCEDURE 2008**

**First Semester Tutorial Programme**

<table>
<thead>
<tr>
<th>Exercise No.</th>
<th>Week</th>
<th>Week Commencing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1*</td>
<td>13</td>
<td>24 March</td>
</tr>
<tr>
<td>2</td>
<td>14</td>
<td>31 March</td>
</tr>
<tr>
<td>3</td>
<td>15</td>
<td>7 April</td>
</tr>
<tr>
<td>4</td>
<td>16</td>
<td>14 April</td>
</tr>
</tbody>
</table>

* Non Teaching Study Break  
  Week 17: 21-25 April 2008

<table>
<thead>
<tr>
<th>Exercise No.</th>
<th>Week</th>
<th>Week Commencing</th>
</tr>
</thead>
<tbody>
<tr>
<td>5**</td>
<td>18</td>
<td>28 April</td>
</tr>
<tr>
<td>6</td>
<td>19</td>
<td>5 May</td>
</tr>
<tr>
<td>7</td>
<td>20</td>
<td>12 May</td>
</tr>
<tr>
<td>8</td>
<td>21</td>
<td>19 May</td>
</tr>
<tr>
<td>9</td>
<td>22</td>
<td>26 May</td>
</tr>
<tr>
<td>10</td>
<td>23</td>
<td>2 June</td>
</tr>
</tbody>
</table>

**Swot Vac: Week 24: 9-13 June 2008**


**Vacation Weeks 27, 28, 29 & 30 June – 25 July 2008**

* As the first day of tutorials falls on the Easter Monday holiday, students allocated Monday tutorials will not need to attend the first week of tutorials and will commence the Unit with Tutorial No. 2 on Monday 31 March 2008. At this Tutorial, students will be told of make-up arrangements by their tutor for a substitute tutorial.

** Exercise 5 need not be handed in until $5$pm on the Thursday prior to the tutorial.

* There will be no mid-year Procedure exam.

John Fiocco  
Unit Coordinator  
3 March 2008
**PROCEDURE 2008**

**Second Semester Tutorial Programme**

<table>
<thead>
<tr>
<th>EXERCISE NO.</th>
<th>WEEK</th>
<th>WEEK COMMENCING</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>32</td>
<td>4 August</td>
</tr>
<tr>
<td>12</td>
<td>33</td>
<td>11 August</td>
</tr>
<tr>
<td>13</td>
<td>34</td>
<td>18 August</td>
</tr>
<tr>
<td>14</td>
<td>35</td>
<td>25 August</td>
</tr>
<tr>
<td>15</td>
<td>36</td>
<td>1 September</td>
</tr>
<tr>
<td>16</td>
<td>37</td>
<td>8 September</td>
</tr>
</tbody>
</table>

**NB: NO TUTORIALS FIRST WEEK OF SECOND SEMESTER**

**Non – Teaching Break: Week 38: 15-19 September 2008**

<table>
<thead>
<tr>
<th>Exercise</th>
<th>Week</th>
<th>Commencing</th>
</tr>
</thead>
<tbody>
<tr>
<td>17*</td>
<td>39</td>
<td>22 September</td>
</tr>
<tr>
<td>18</td>
<td>40</td>
<td>29 September</td>
</tr>
<tr>
<td>19</td>
<td>41</td>
<td>6 October</td>
</tr>
<tr>
<td>20</td>
<td>42</td>
<td>13 October</td>
</tr>
<tr>
<td>21</td>
<td>43</td>
<td>20 October</td>
</tr>
</tbody>
</table>

**Swot Vac: Week 45: 3-7 November 2008**

<table>
<thead>
<tr>
<th>Exercise</th>
<th>Week</th>
<th>Commencing</th>
</tr>
</thead>
</table>

**EXAMS: 10 November – 21 November 2008**

(Annual 3 Hour Examination)

* Exercise 17 need not be handed in until 5pm on the Thursday prior to the tutorial.

John Fiocco  
Unit Coordinator  
3 March 2008
PROCEDURE 2008

Text Books and Statutory Material

Text Books

1. **Civil Procedure in Western Australia: A Practice Manual.** The Manual specifically relates to courts exercising jurisdiction in Western Australia, including the Federal Court. Students will be advised of the availability of this Text Book, either electronically or in a CD version.

2. **SEAMAN - Civil Procedure; Western Australia-Three (3) Volumes** cover the Supreme, District and Magistrates Court in detail. Available in electronic form on Butterworths website.

3. **CAIRNS - Australian Civil Procedure** 5th, 6th 2004 and 7th Eds. 2007 Law Book Co. *(recommended for purchase).*


5. **CCH Australian High Court and Federal Court Practice** - 3 volumes. Available electronically.

Statutory Material

Students will require the following statutory material for reference during lectures, tutorials and the final examination. **Arrangements are being made for students to have copies of some of these materials.** However, students could either purchase their own personal copies of this material or obtain access to it, in order to have copies of the statutory material, for use during the unit and the final examination. This material can either be retained in electronic or hardcopy form. All of this statutory material can also be found in SEAMAN (above).

- **Supreme Court Act 1935.**
- **District Court of Western Australia Act 1969.**
- **Magistrates Court Act 2004 (No 47 of 2004).**
- **Magistrates Court (Civil Proceedings) Act 2004 (No 48 of 2004).**
- **Rules of the Supreme Court 1971.**
- **Rules of the District Court 2005.**
- **Magistrates Court (Civil Proceedings) Rules 2005.**
- **Magistrates Court (Minor Cases Procedure) Rules 2005.**
- **Magistrates Court (General) Rules 2005.**
- **Service and Execution of Process Act 1992 (Commonwealth).**
Use of the references below should be made for assistance but checked against the relevant Western Australian Court Rules, as there is an increasing divergence between Western Australian Rules and other jurisdictions.

(a) Williams - *Supreme Court Practice* (Victoria) - Butterworths.
(b) Bullen and Leake and Jacobs - *Precedents of Pleadings* 12th and 13th editions Sweet and Maxwell.
(c) Britts - *Pleading Precedents* - 1990.
(d) Odgers - *Principles of Pleadings and Practice in Court Actions in High Court of Justice* - 21st, 22nd and 23rd Editions - Sweet and Maxwell.
(e) White *Book of Annual Practice - The Supreme Court* 1997 - Sweet and Maxwell.
(f) Atkins *Encyclopaedia of Court Forms* (2nd Ed) 41 Vols and Index - Butterworths.
(g) Chitty and Jacobs - *Queens Bench Forms* 21st Edition - Sweet and Maxwell.
(h) Jacob and Goldrein - *Pleadings, Principles and Practice* – 1990 Sweet and Maxwell.

All of these References can be found either on Open Reserve or in the Reference Collection. Other References will be provided throughout the unit.

Other References will be made available throughout the unit on Open Reserve or WebCT.

John Fiocco  
Unit Coordinator  
3 March 2008
## Procedure 2008

### Lecture & Tutorial Programme

#### First Semester

<table>
<thead>
<tr>
<th>Week</th>
<th>Date</th>
<th>Lecture No</th>
<th>Lecture Topic</th>
<th>Tutorial Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Mar 3</td>
<td>1</td>
<td>Introduction to Unit (administration only)</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Mar 10</td>
<td>2</td>
<td>Civil Procedure-Concepts Jurisdiction and Preliminary Considerations</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Mar 17</td>
<td>3</td>
<td>Civil Procedure-Concepts Jurisdiction and Preliminary Considerations</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Mar 24</td>
<td>4</td>
<td>Commencement of Proceedings, including Parties (NB: Special Lecture by Library Staff regarding Research Materials for the unit)</td>
<td>1</td>
</tr>
<tr>
<td>14</td>
<td>March 31</td>
<td>5</td>
<td>Entry of Appearance Default Judgment and related matters</td>
<td>2</td>
</tr>
<tr>
<td>15</td>
<td>April 7</td>
<td>6</td>
<td>Summary Judgment and related matters</td>
<td>3</td>
</tr>
<tr>
<td>16</td>
<td>April 14</td>
<td>No Tutes</td>
<td>NON-TEACHING STUDY BREAK</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>April 21-25</td>
<td>7</td>
<td>Service of Process</td>
<td>4</td>
</tr>
<tr>
<td>18</td>
<td>April 28</td>
<td>8</td>
<td>Pleadings - Introduction</td>
<td>5</td>
</tr>
<tr>
<td>19</td>
<td>May 5</td>
<td>9</td>
<td>Pleadings – Continued (Statement of Claim)</td>
<td>6</td>
</tr>
<tr>
<td>20</td>
<td>May 12</td>
<td>10</td>
<td>Defence, Set Off and Counterclaim</td>
<td>7</td>
</tr>
<tr>
<td>21</td>
<td>May 19</td>
<td>11</td>
<td>Challenging Pleadings - Discontinuance</td>
<td>8</td>
</tr>
<tr>
<td>22</td>
<td>May 26</td>
<td>12</td>
<td>To be announced</td>
<td>9</td>
</tr>
<tr>
<td>23</td>
<td>June 2</td>
<td>13</td>
<td>To be announced</td>
<td>10</td>
</tr>
<tr>
<td>24</td>
<td>June 9</td>
<td></td>
<td>Swotvac Begins</td>
<td></td>
</tr>
<tr>
<td>25/26</td>
<td>June 16</td>
<td></td>
<td>Internal Examinations Begin (No Procedure Examination)</td>
<td></td>
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</tbody>
</table>

#### Second Semester

<table>
<thead>
<tr>
<th>Week</th>
<th>Date</th>
<th>Lecture No</th>
<th>Lecture Topic</th>
<th>Tutorial Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>July 28</td>
<td>14</td>
<td>Third Party Procedure Amendment of Pleadings</td>
<td>No Tutes</td>
</tr>
<tr>
<td>32</td>
<td>Aug 4</td>
<td>15</td>
<td>Interlocutory Injunctions</td>
<td>11</td>
</tr>
<tr>
<td>33</td>
<td>Aug 11</td>
<td>16</td>
<td>Discovery / Notices to Admit</td>
<td>12</td>
</tr>
<tr>
<td>34</td>
<td>Aug 18</td>
<td>17</td>
<td>Interrogatories / Entry for Trial</td>
<td>13</td>
</tr>
<tr>
<td>35</td>
<td>Aug 25</td>
<td>18</td>
<td>CMC List Case Flow Management Compromises &amp; Settlements</td>
<td>14</td>
</tr>
<tr>
<td>36</td>
<td>Sept 2</td>
<td>19</td>
<td>Other Originating Processes</td>
<td>15</td>
</tr>
<tr>
<td>37</td>
<td>Sept 8</td>
<td>20</td>
<td>Federal Court &amp; Federal Magistrates Court, Federal Jurisdiction -Practice and Procedure</td>
<td>16</td>
</tr>
<tr>
<td>38</td>
<td>Sept 15</td>
<td>No lecture</td>
<td>Non-Teaching Period</td>
<td>No Tutes</td>
</tr>
<tr>
<td>39</td>
<td>Sept 22</td>
<td>21</td>
<td>Enforcement of Judgments – part I</td>
<td>17</td>
</tr>
<tr>
<td>40</td>
<td>Sept 29</td>
<td>22</td>
<td>Enforcement of Judgments part II (subject to change)</td>
<td>18</td>
</tr>
<tr>
<td>41</td>
<td>Oct 6</td>
<td>23</td>
<td>Appeals</td>
<td>19</td>
</tr>
<tr>
<td>42</td>
<td>Oct 13</td>
<td>24</td>
<td>Costs, including Security for Costs</td>
<td>20</td>
</tr>
<tr>
<td>43</td>
<td>Oct 20</td>
<td>25</td>
<td>Final Week Tutorials – No lecture (Last Tute)</td>
<td>21</td>
</tr>
<tr>
<td>44</td>
<td>Oct 27</td>
<td>-</td>
<td>Final Week – No lectures No formal tutorials – Revision tutorials (optional)</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Nov 3</td>
<td>-</td>
<td>Swotvac Begins</td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Nov 10</td>
<td>-</td>
<td>Examination Period Begins</td>
<td></td>
</tr>
</tbody>
</table>

(Date To be Fixed)
Support materials for the Procedure unit will be available to you on the World Wide Web. They will be administered through a program called WebCT. You can access lecture materials and other useful resources by logging-on to the WebCT site, via a campus computer or from your home computer. You must visit this site regularly to improve your learning and revision of unit content.

You can reach the WebCT site directly by entering

http://webct.uwa.edu.au

into your web browser. At the WebCT Welcome screen, you can check the list of units available to you on-line. The site also contains helpful information on the tools available and how to use them.

Once you have logged on to WebCT you can choose a guided tour within the program on how to use WebCT. If you would like to learn more about WebCT you can visit their official web site at http://www.webct.com which will give you some useful links.

The links for unit materials are self-explanatory:

Use the DISCUSSIONS tab to post exercises to your group or download students’ exercises in preparation for discussion during tutorials.

When you have finished using WebCT, be sure to quit completely from the browser that you are using, otherwise other people may have access to your account.

We hope that you will enjoy your unit and the opportunity to undertake this unit on-line using WebCT.

If you experience any problems or have any queries relating to WebCT, please email cheryl.macfarlane@uwa.edu.au.
GENERAL RULES, POLICIES AND PROCEDURES FOR ALL LAW UNITS

The Law School has a range of rules, policies and procedures that apply to all units unless expressly varied by the unit coordinator. They should be read in conjunction with this unit outline. A summary of the general rules, policies and procedures can be found at

http://www.lawstudents.law.uwa.edu.au/

or in hard copy available from the Law School office, ground floor, Law Link Building.

As the rules, policies and procedures are updated from time to time, students should ensure that they consult the latest version. The version applicable to this unit is the January 2008 edition.

The summary of the general rules covers the following:

◊ Ethical Scholarship, Academic Literacy and Academic Misconduct
◊ Academic Conduct Essentials (ACE)
◊ Equity and Diversity in the Law School
◊ Use of Inclusive Language
◊ Students with Special Needs
◊ Lectopia
◊ Where to Direct your Enquiries
◊ Contacting Staff in the Law School
◊ Assignments:
  o How to submit your Assignment
  o Obtaining an Assignment Cover Page – the Assignment Cover Page Generator
  o Extensions
  o Late Submission of Assignments
  o Exceeding Word or Page limit
  o Handing back and collecting assignments
◊ Assessment:
  o Deferred Exams
  o Requests for Special Consideration
  o Supplementary Exams
  o Appeals Against Academic Assessment
  o Scaling