



# LAWS807

## Constitutional Law

S1 Day 2015

*Dept of Law*

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## General Information

Unit convenor and teaching staff

Joel Harrison

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Credit points

4

Prerequisites

LAWS805

Corequisites

Co-badged status

Unit description

The state is the most powerful organisation in a western society such as Australia. The principal elements of its internal structure — legislative, executive and judicial — are established and regulated by high-level legal norms, termed 'constitutional law' and mostly contained in a document named "the Constitution". This unit examines the basic structures of representative and responsible government, the structure and content of the Constitution of the Commonwealth of Australia and the relationship between the Commonwealth and the States unit. It then critically examines Australian constitutional law, principally the Commonwealth Constitution and considers alternatives to a federal system such as monarchy, democracy and republic. It considers the Constitution's origins, judicial interpretation and current issues — as well as its prospects, including amendment, extension (such as addition of a bill of rights) and replacement.

## Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

## Learning Outcomes

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

- 1) Research and assess different theories of constitutional interpretation and develop a coherent approach appealing to case law and academic literature.
- 2) Analyse central constitutional concepts, structural considerations, and implications arising from the constitutional text.
- 3) Identify a contemporary constitutional question and develop a coherent, well-

researched argument in collaboration with peers.

4) Evaluate what is necessary for a constitution, assessing current deficiencies and/or strengths in the Commonwealth Constitution.

5) Apply constitutional law to new fact scenarios.

## General Assessment Information

The research essay and final exam must be submitted electronically via Turnitin.

## Assessment Tasks

Name	Weighting	Due
<u>Research Essay</u>	40%	29 April 2015
<u>Group Presentation</u>	20%	Beginning Week 8
<u>Final Examination (Take Home)</u>	40%	12 June 2015

## Research Essay

Due: **29 April 2015**

Weighting: **40%**

This is a research essay. You are required to develop an argument concerning the appropriate method for interpreting the Commonwealth Constitution. You must conduct your own research beyond the textbook. As the assessment description provides, a good essay will analyse both case law and academic arguments. (See iLearn for further details and assessment guidance.)

*The Question:*

‘Each generation reads the Constitution in the light of accumulated experience.’

*Kartinyeri v Commonwealth* (1998) 195 CLR 337, [132] (Kirby J)

Discuss.

*Due:*

29 April 2015, 10pm.

On successful completion you will be able to:

- 1) Research and assess different theories of constitutional interpretation and develop a coherent approach appealing to case law and academic literature.
- 2) Analyse central constitutional concepts, structural considerations, and implications

arising from the constitutional text.

## Group Presentation

Due: **Beginning Week 8**

Weighting: **20%**

### Group Presentation

For internal students: From Week 8, groups will begin the seminar with a 25 minute presentation, followed by questions. Groups will be allocated in Week 1, and presentation weeks will be randomly allocated. AV facilities will be available. As a group, your task will be to:

1. Formulate a question, based on that week's topic, to be discussed and argued before the class. Groups must check their question with the convenor prior to presenting.
2. Develop a thesis. The group must present an argument that answers the question they have chosen. This should include: presenting the question and why it is important; addressing counter-argument; reaching well-reasoned conclusions.
3. Deliver the presentation in a coherent, well-researched, accessible, and engaging manner; involve the entire presenting group; and provide a well-researched resource for the class.
4. Be able to answer subsequent questions from the convenor and/or class members.

For external students: an individual presentation of ten minutes, followed by questions, will be required on either day two of the first compulsory on campus session (9 April) or the final, voluntary on campus session (16 May). Topics will be allocated online; students should then check their chosen question with the convenor. The requirements are the same as those set out above.

See iLearn for further details and assessment guidance, when available.

On successful completion you will be able to:

- 2) Analyse central constitutional concepts, structural considerations, and implications arising from the constitutional text.
- 3) Identify a contemporary constitutional question and develop a coherent, well-researched argument in collaboration with peers.
- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and/or strengths in the Commonwealth Constitution.

## Final Examination (Take Home)

Due: **12 June 2015**

Weighting: **40%**

This is a take-home exam. It will consist in two questions – one fact pattern problem, asking you to apply constitutional law to a new set of facts; one general essay question asking you to develop an argument. The questions are equally weighted. The exam can cover any material in the unit.

Students will be able to access the examination paper on iLearn from **9am, Friday 12 June** and must submit their answers by **12pm (midday), Friday 12 June**.

A student's answers to the exam questions cannot exceed 3,000 words (combined). This is an upper word limit. A student need not write 3,000 words if he or she can answer the questions in less than 3,000 words. A bibliography is not required. While referencing is required; footnoting is not. Rather, a student may reference for the exam in this manner:

e.g. 'The High Court has held that the race power permits the Commonwealth to pass laws for the benefit or detriment of indigenous persons (*Kartinyeri*).'

On successful completion you will be able to:

- 2) Analyse central constitutional concepts, structural considerations, and implications arising from the constitutional text.
- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and/or strengths in the Commonwealth Constitution.
- 5) Apply constitutional law to new fact scenarios.

## Delivery and Resources

Weekly lectures in this unit will be pre-recorded and available to students on iLearn. These will commence in Week 1 and go through to Week 12 or 13. The schedule of topics to be covered in the lectures is available on iLearn.

We also meet for a weekly 1.5 hour seminar from **week 1** for internals (reading is required for Week 1's seminar). External students will have a compulsory two day on campus session.

The required text is: Gerangelos et al (eds), *Winterton's Australian Federal Constitutional Law: Commentary and Materials* (3 ed 2013, Thomson Reuters). It is available from the Macquarie University Co-op Bookshop. Additional reading will be available via iLearn, e-reserve, or else publicly available.

Students require access to a computer and a secure and reliable server.

## Unit Schedule

See Laws 807 iLearn page.

## Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](#). Students should be aware of the following policies in particular with regard to Learning and Teaching:

Academic Honesty Policy [http://mq.edu.au/policy/docs/academic\\_honesty/policy.html](http://mq.edu.au/policy/docs/academic_honesty/policy.html)

Assessment Policy <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy <http://mq.edu.au/policy/docs/grading/policy.html>

Grade Appeal Policy <http://mq.edu.au/policy/docs/gradeappeal/policy.html>

Grievance Management Policy [http://mq.edu.au/policy/docs/grievance\\_management/policy.html](http://mq.edu.au/policy/docs/grievance_management/policy.html)

Disruption to Studies Policy [http://www.mq.edu.au/policy/docs/disruption\\_studies/policy.html](http://www.mq.edu.au/policy/docs/disruption_studies/policy.html) *The Disruption to Studies Policy is effective from March 3 2014 and replaces the Special Consideration Policy.*

In addition, a number of other policies can be found in the [Learning and Teaching Category](#) of Policy Central.

## Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: [https://students.mq.edu.au/support/student\\_conduct/](https://students.mq.edu.au/support/student_conduct/)

## Results

Results shown in *iLearn*, or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit [ask.mq.edu.au](http://ask.mq.edu.au).

### Additional Macquarie Law School policy on assessment

In the absence of a successful application for special consideration, any assessment task submitted after its published deadline will not be graded and will receive a mark of zero.

Word limits will be strictly applied and work above the word limit will not be marked.

Footnotes are only to be used for referencing. Substantive material in footnotes will not be marked.

All assessments in the unit are to be submitted electronically. Plagiarism detection software is used in this unit.

## Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

## Learning Skills

Learning Skills ([mq.edu.au/learningskills](http://mq.edu.au/learningskills)) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

## Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

## Student Enquiries

For all student enquiries, visit Student Connect at [ask.mq.edu.au](http://ask.mq.edu.au)

## IT Help

For help with University computer systems and technology, visit <http://informatics.mq.edu.au/help/>.

When using the University's IT, you must adhere to the [Acceptable Use Policy](#). The policy applies to all who connect to the MQ network including students.

## Graduate Capabilities

### PG - Capable of Professional and Personal Judgment and Initiative

Our postgraduates will demonstrate a high standard of discernment and common sense in their professional and personal judgment. They will have the ability to make informed choices and decisions that reflect both the nature of their professional work and their personal perspectives.

This graduate capability is supported by:

### Learning outcome

- 3) Identify a contemporary constitutional question and develop a coherent, well-researched argument in collaboration with peers.

### Assessment task

- Group Presentation

### PG - Discipline Knowledge and Skills

Our postgraduates will be able to demonstrate a significantly enhanced depth and breadth of knowledge, scholarly understanding, and specific subject content knowledge in their chosen

fields.

This graduate capability is supported by:

## Learning outcomes

- 1) Research and assess different theories of constitutional interpretation and develop a coherent approach appealing to case law and academic literature.
- 2) Analyse central constitutional concepts, structural considerations, and implications arising from the constitutional text.
- 3) Identify a contemporary constitutional question and develop a coherent, well-researched argument in collaboration with peers.
- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and/or strengths in the Commonwealth Constitution.
- 5) Apply constitutional law to new fact scenarios.

## Assessment tasks

- Research Essay
- Group Presentation
- Final Examination (Take Home)

## PG - Critical, Analytical and Integrative Thinking

Our postgraduates will be capable of utilising and reflecting on prior knowledge and experience, of applying higher level critical thinking skills, and of integrating and synthesising learning and knowledge from a range of sources and environments. A characteristic of this form of thinking is the generation of new, professionally oriented knowledge through personal or group-based critique of practice and theory.

This graduate capability is supported by:

## Learning outcomes

- 1) Research and assess different theories of constitutional interpretation and develop a coherent approach appealing to case law and academic literature.
- 2) Analyse central constitutional concepts, structural considerations, and implications arising from the constitutional text.
- 3) Identify a contemporary constitutional question and develop a coherent, well-researched argument in collaboration with peers.
- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and/or strengths in the Commonwealth Constitution.
- 5) Apply constitutional law to new fact scenarios.



## Assessment tasks

- Research Essay
- Group Presentation
- Final Examination (Take Home)

## PG - Research and Problem Solving Capability

Our postgraduates will be capable of systematic enquiry; able to use research skills to create new knowledge that can be applied to real world issues, or contribute to a field of study or practice to enhance society. They will be capable of creative questioning, problem finding and problem solving.

This graduate capability is supported by:

### Learning outcomes

- 2) Analyse central constitutional concepts, structural considerations, and implications arising from the constitutional text.
- 5) Apply constitutional law to new fact scenarios.

### Assessment task

- Final Examination (Take Home)

## PG - Effective Communication

Our postgraduates will be able to communicate effectively and convey their views to different social, cultural, and professional audiences. They will be able to use a variety of technologically supported media to communicate with empathy using a range of written, spoken or visual formats.

This graduate capability is supported by:

### Learning outcomes

- 1) Research and assess different theories of constitutional interpretation and develop a coherent approach appealing to case law and academic literature.
- 3) Identify a contemporary constitutional question and develop a coherent, well-researched argument in collaboration with peers.
- 5) Apply constitutional law to new fact scenarios.

### Assessment tasks

- Research Essay
- Group Presentation
- Final Examination (Take Home)

## PG - Engaged and Responsible, Active and Ethical Citizens

Our postgraduates will be ethically aware and capable of confident transformative action in relation to their professional responsibilities and the wider community. They will have a sense of connectedness with others and country and have a sense of mutual obligation. They will be able to appreciate the impact of their professional roles for social justice and inclusion related to national and global issues

This graduate capability is supported by:

### Learning outcomes

- 3) Identify a contemporary constitutional question and develop a coherent, well-researched argument in collaboration with peers.
- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and/or strengths in the Commonwealth Constitution.

### Assessment task

- Group Presentation