



# LAWS807

## Constitutional Law

S1 External 2016

*Dept of Law*

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#### **Disclaimer**

Macquarie University has taken all reasonable measures to ensure the information in this publication is accurate and up-to-date. However, the information may change or become out-dated as a result of change in University policies, procedures or rules. The University reserves the right to make changes to any information in this publication without notice. Users of this publication are advised to check the website version of this publication [or the relevant faculty or department] before acting on any information in this publication.

## 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) Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- 2) Identify constitutional law principles within cases.
- 3) Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.

- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- 5) Apply constitutional law to new fact problems.
- 6) Identify a contemporary constitutional question and develop a coherent, well-researched argument for presentation.

## Assessment Tasks

| Name                                 | Weighting | Due         |
|--------------------------------------|-----------|-------------|
| <u>Research Essay</u>                | 40%       | 15/05/2016  |
| <u>Presentation</u>                  | 20%       | From Week 5 |
| <u>Final Examination (Take-Home)</u> | 40%       | 17/06/2016  |

### Research Essay

Due: **15/05/2016**

Weighting: **40%**

This is a research essay. You are required to develop an argument (a thesis) on a question of constitutional interpretation. You must conduct your own research beyond the textbook to engage with secondary authority (e.g. journal articles). As the assessment description provides, a good essay will analyse both case law and academic arguments.

Essays must be 2,000 words or less, excluding footnotes. Content over 2,000 words will not be marked.

Footnotes must not include substantive argument (ie only references are permitted). A bibliography should not be provided.

The essay must comply with the *Australian Guide to Legal Citation* (3rd ed). The Guide is available here <<http://mulr.law.unimelb.edu.au/go/AGLC3>>. Essays must be submitted in double line spaced text, 12 point font.

The essay is due **Friday 15 April 2016, 10pm**.

All work is to be submitted via Turnitin on iLearn. Late submissions will not be marked and will receive a grade of 0.

(See iLearn for further details and assessment guidance.)

On successful completion you will be able to:

- 1) Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- 3) Assess different theories of constitutional interpretation and understand their

relationship to different doctrinal positions.

## Presentation

Due: **From Week 5**

Weighting: **20%**

### **For internal students:**

Presentations start in Week 5. You have the option of presenting individually or as a pair.

If you present by yourself, the presentation must be 10 mins long followed by questions and answers.

If you present in a pair, the presentation must be 15 mins followed by questions and answers. For pair-based presentations, you must also each submit in-class before your presentation a (maximum, it could be shorter) two page double-spaced reflection. This reflection will:

- Detail your contribution to the research and presentation – giving yourself a grade of 1-5;
- Detail your partner's contribution to the research and presentation – giving your partner a grade of 1-5;
- Include a reflection on whether and how you worked well as a team or not, and why.

All presentations must include a handout for the class. AV facilities are available.

As an individual or pair, your task will be to:

1. Formulate a question, based on that week's topic, to be discussed before the class. Presenters must check their question with the convenor prior to presenting.
2. Develop a thesis. The individual student or 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 (where relevant); reaching well-reasoned conclusions.
3. Deliver the presentation in a coherent, correct, accessible, and engaging manner; involve the entire presenting group (where relevant); and provide a legally correct and helpful resource for the class.
4. Be able to answer subsequent questions from the convenor and/or class members.

**For external students:** an individual presentation will be required at either the first compulsory on campus session or the final, voluntary on campus session. 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.

(For both internal and external students, see iLearn for further details and assessment guidance.)

On successful completion you will be able to:

- 1) Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- 2) Identify constitutional law principles within cases.
- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- 6) Identify a contemporary constitutional question and develop a coherent, well-researched argument for presentation.

## Final Examination (Take-Home)

Due: **17/06/2016**

Weighting: **40%**

This is a take-home exam, completed online. 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 appealing to constitutional doctrine, principles, and theory. 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 17 June** and must submit their answers by **1pm, Friday 17 June**. All work is to be submitted via Turnitin on iLearn.

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*).'

Late submissions will not be marked and will receive a grade of 0.

(See iLearn for further details and assessment guidance.)

On successful completion you will be able to:

- 1) Analyse central constitutional law concepts, structural features, and implications

arising from the constitutional text.

- 2) Identify constitutional law principles within cases.
- 3) Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- 5) Apply constitutional law to new fact problems.

## Delivery and Resources

Weekly lectures in this unit are 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). From week 5, students will be giving a presentation to the class on that week's topic.

External students have a **compulsory** two day on campus session and an optional third day. You are strongly encouraged to attend all classes. Seminars contain new material not covered in the lectures and not otherwise recorded. They will also include practice problem questions. The on-campus session is also where external students must give their presentation assessment.

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.

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

## 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)

**New Assessment Policy in effect from Session 2 2016** [http://mq.edu.au/policy/docs/assessment/policy\\_2016.html](http://mq.edu.au/policy/docs/assessment/policy_2016.html). For more information visit [http://students.mq.edu.au/events/2016/07/19/new\\_assessment\\_policy\\_in\\_place\\_from\\_session\\_2/](http://students.mq.edu.au/events/2016/07/19/new_assessment_policy_in_place_from_session_2/)

Assessment Policy prior to Session 2 2016 <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy prior to Session 2 2016 <http://mq.edu.au/policy/docs/grading/policy.html>

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

Complaint Management Procedure for Students and Members of the Public [http://www.mq.edu.au/policy/docs/complaint\\_management/procedure.html](http://www.mq.edu.au/policy/docs/complaint_management/procedure.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://www.mq.edu.au/about\\_us/offices\\_and\\_units/information\\_technology/help/](http://www.mq.edu.au/about_us/offices_and_units/information_technology/help/).

When using the University's IT, you must adhere to the [Acceptable Use of IT Resources 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:

#### Assessment task

- 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) Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- 2) Identify constitutional law principles within cases.
- 3) Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- 5) Apply constitutional law to new fact problems.



## Assessment tasks

- Research Essay
- 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) Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- 3) Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- 5) Apply constitutional law to new fact problems.
- 6) Identify a contemporary constitutional question and develop a coherent, well-researched argument for presentation.

## Assessment tasks

- Research Essay
- 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) Identify constitutional law principles within cases.

- 5) Apply constitutional law to new fact problems.

## 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

- 2) Identify constitutional law principles within cases.
- 3) Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- 5) Apply constitutional law to new fact problems.
- 6) Identify a contemporary constitutional question and develop a coherent, well-researched argument for presentation.

## Assessment tasks

- Research Essay
- 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

- 4) Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- 6) Identify a contemporary constitutional question and develop a coherent, well-

researched argument for presentation.

## Changes since First Published

| Date           | Description   |
|----------------|---|
| 21/02/<br>2016 | Assessment dates amended to match description   |
| 21/02/<br>2016 | Month for due dates in assessment box (DD/MM/Y) did not match assessment descriptions. Now changed. |