LAW 314

Constitutional Law

S1 Day 2017

Dept of Law

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Disclaimer

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General Information

Unit convenor and teaching staff Unit Convenor Joel Harrison joel.harrison@mq.edu.au Contact via joel.harrison@mq.edu.au W3A Rm 512 11am-12pm, Tuesdays
Credit points 3
Prerequisites 6cp in LAW or LAWS units at 200 level and (admission to LLB or BAppFinLLB or BALLB or BA-MediaLLB or BA-PsychLLB or BBALLB or BComLLB or BCom-ProfAccgLLB or BEnvLLB or BITLLB or BIntStudLLB or BMediaLLB or BPsych(Hons)LLB or BScLLB or BSecStudLLB or BSocScLLB)
Corequisites
Co-badged status
Unit description This unit introduces students to fundamental principles of constitutional law and practice in Australia, including 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. The unit places constitutional principles and doctrines in a wider context by exploring some of the questions that arise in relation to the framework for law and government in Australia. These include: federalism; democracy and citizenship; the rule of law; parliamentary sovereignty; and the relationships among the legislative, executive and judicial powers.

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:

> Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.

Identify constitutional law principles within cases.

Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.

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

Apply constitutional law to new fact problems.

General Assessment Information

Macquarie Law School Assessment Policy

In the absence of a successful application for special consideration due to a disruption to studies, any assessment task submitted after its published deadline will not be graded and will receive a mark of zero. Applications for a Disruption to Studies are made electronically via ask.mq.edu.au and should be accompanied by supporting documentation. Students should refer to the Disruption to Studies policy for complete details of the policy and a description of the supporting documentation required.

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

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

Moderation

Detailed marking guidelines will be made available on iLearn. The convenor moderates all assessments. All Fail research essays and take-home exams are double marked.

Assessment Tasks

Name	Weighting	Hurdle	Due
Tutorial Participation	10%	No	On-going
Research Essay	40%	No	24 April, 5pm
Take-Home Examination	50%	No	13 June, 2pm-6pm

Tutorial Participation

Due: **On-going**
Weighting: **10%**

Internal and external students will be assessed on their participation in tutorial debates, problem-solving, appropriate questioning, and understanding of the materials. This will require preparation before the tutorial – ie completing the required reading and preparing thoughts/ answers to the tutorial materials.

Internal students will be assessed for participation across the sssion. External students will be

assessed during the on-campus session. More information on the structure of the on-campus session will be provided before the session via iLearn.

A detailed marking guideline for tutorial participation will be provided on iLearn.

On successful completion you will be able to:

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Identify constitutional law principles within cases.
- Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
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- Apply constitutional law to new fact problems.

Research Essay

Due: **24 April, 5pm**
Weighting: **40%**

Essays must be submitted in double line spaced text, 12 point font. The word limit is **2,000 words**, excluding footnotes. Footnotes should only be used for references, with no further discussion. Content over 2,000 words will not be marked. A bibliography should not be provided.

The essay must comply with the *Australian Guide to Legal Citation* (3 ed). The Guide is available here <http://mulr.law.unimelb.edu.au/go/AGLC3>

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

The essay question and assessment guidance will be released via iLearn.

On successful completion you will be able to:

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Take-Home Examination

Due: **13 June, 2pm-6pm**
Weighting: **50%**

This is a take-home examination. It will consist of 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 **2pm, Tuesday 13 June** and must submit their answers by **6pm, Tuesday 13 June**. All work is to be submitted via Turnitin on iLearn.

A bibliography is not required. While referencing is required, footnoting is not. Rather, a student may reference for the examination 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*).'

The **word limit** for the examination (including both questions) is **2,500 words**. This is a limit, rather than a target. If a complete answer is given in less than 2,500 words, that is acceptable.

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

Further details and assessment guidance will be provided via iLearn.

As with all Law units, Law 314 has an exception to the assessment policy allowing a take-home examination during the formal exam period.

On successful completion you will be able to:

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Identify constitutional law principles within cases.
- Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- Apply constitutional law to new fact problems.

Delivery and Resources

Each week, one lecture or set of lectures will be pre-recorded and available to students on iLearn. A second on-site lecture will then be given on Wednesdays, 5-6pm. These will take place **Week 1 to Week 12**. While the on-site lecture will be recorded via Echo, you are encouraged to attend in order to ask and answer questions. The schedule of topics to be covered in the lectures, and notes on required readings, will be available in detail on iLearn. A list of covered topics is provided below in the Unit Schedule.

Weekly one hour tutorials begin in **Week 2 and finish in Week 13**. Required readings will be notified on iLearn.

External students have a compulsory two day on-campus session. The dates are available via timetables. The two days will mirror most of the tutorial classes.

The required text is: Peter Gerangelos et al (eds), *Winterton's Australian Federal Constitutional Law: Commentary and Materials* (Thomson Reuters, 3rd ed, 2013). It is available from the

Macquarie University Co-op Bookshop. Additional readings will be available via iLearn or else they will be linked to a publicly available source.

Students require access to a computer and a secure and reliable internet provider.

Unit Schedule

(1) Introduction

- Federation; Independence; Constitutionalism

(2) Interpretation and Federal Heads of Power

- Constitutional Interpretation; *Engineers*

(3) External Affairs Power

(4) Corporations Power

(5) Federalism 1

- State Constitutions; State and Federal Law Inconsistency

(6) Federalism 2

- Federal Theory; Financial Relations; Equal Treatment Provisions; Freedom of Interstate Trade

(7) Executive Power

(8) Judicial Power 1

- Separation of Powers; Chapter III; *Boilermakers* First Limb

(9) Judicial Power 2

- *Boilermakers* Second Limb; State Courts and the Incompatibility Doctrine

(10) Express Rights and a Bill of Rights

(11) Implied Rights and Freedoms

(12) Indigenous Peoples of Australia

- Sovereignty; The Race Power; Indigenous Recognition and Referendum

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

Assessment Policy http://mq.edu.au/policy/docs/assessment/policy_2016.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

Disruption to Studies Policy (in effect until Dec 4th, 2017): http://www.mq.edu.au/policy/docs/disruption_studies/policy.html

Special Consideration Policy (in effect from Dec 4th, 2017): https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policies/special-consideration

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/

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.

Macquarie Law School Assessment Policy

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

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

Moderation

Detailed marking guidelines will be made available on iLearn. The convenor moderates all assessments. All Fail research essays and take-home exams are double marked.

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) 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

IT Help

For help with University computer systems and technology, visit 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

Creative and Innovative

Our graduates will also be capable of creative thinking and of creating knowledge. They will be imaginative and open to experience and capable of innovation at work and in the community. We want them to be engaged in applying their critical, creative thinking.

This graduate capability is supported by:

Learning outcomes

- Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.

Commitment to Continuous Learning

Our graduates will have enquiring minds and a literate curiosity which will lead them to pursue knowledge for its own sake. They will continue to pursue learning in their careers and as they participate in the world. They will be capable of reflecting on their experiences and relationships with others and the environment, learning from them, and growing - personally, professionally and socially.

This graduate capability is supported by:

Learning outcomes

- Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.

- Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.

Discipline Specific Knowledge and Skills

Our graduates will take with them the intellectual development, depth and breadth of knowledge, scholarly understanding, and specific subject content in their chosen fields to make them competent and confident in their subject or profession. They will be able to demonstrate, where relevant, professional technical competence and meet professional standards. They will be able to articulate the structure of knowledge of their discipline, be able to adapt discipline-specific knowledge to novel situations, and be able to contribute from their discipline to inter-disciplinary solutions to problems.

This graduate capability is supported by:

Learning outcomes

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

Assessment tasks

- Tutorial Participation
- Research Essay
- Take-Home Examination

Critical, Analytical and Integrative Thinking

We want our graduates to be capable of reasoning, questioning and analysing, and to integrate and synthesise learning and knowledge from a range of sources and environments; to be able to critique constraints, assumptions and limitations; to be able to think independently and systemically in relation to scholarly activity, in the workplace, and in the world. We want them to have a level of scientific and information technology literacy.

This graduate capability is supported by:

Learning outcomes

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Identify constitutional law principles within cases.

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

Assessment tasks

- Research Essay
- Take-Home Examination

Problem Solving and Research Capability

Our graduates should be capable of researching; of analysing, and interpreting and assessing data and information in various forms; of drawing connections across fields of knowledge; and they should be able to relate their knowledge to complex situations at work or in the world, in order to diagnose and solve problems. We want them to have the confidence to take the initiative in doing so, within an awareness of their own limitations.

This graduate capability is supported by:

Learning outcomes

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Identify constitutional law principles within cases.
- Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- Apply constitutional law to new fact problems.

Assessment tasks

- Tutorial Participation
- Research Essay
- Take-Home Examination

Effective Communication

We want to develop in our students the ability to communicate and convey their views in forms effective with different audiences. We want our graduates to take with them the capability to read, listen, question, gather and evaluate information resources in a variety of formats, assess, write clearly, speak effectively, and to use visual communication and communication technologies as appropriate.

This graduate capability is supported by:

Learning outcomes

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

Assessment tasks

- Tutorial Participation
- Research Essay
- Take-Home Examination

Engaged and Ethical Local and Global citizens

As local citizens our graduates will be aware of indigenous perspectives and of the nation's historical context. They will be engaged with the challenges of contemporary society and with knowledge and ideas. We want our graduates to have respect for diversity, to be open-minded, sensitive to others and inclusive, and to be open to other cultures and perspectives: they should have a level of cultural literacy. Our graduates should be aware of disadvantage and social justice, and be willing to participate to help create a wiser and better society.

This graduate capability is supported by:

Learning outcome

- Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.

Assessment tasks

- Tutorial Participation
- Research Essay

Changes from Previous Offering

Tutorial participation is now assessed. An assessed quiz is no longer part of the unit.

Changes since First Published

Date	Description
16/01/2017	Office Hour changed.