LAWS3000
Constitutional Law
Session 1, Online-scheduled-weekday 2023
Macquarie Law School

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# General Information

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| Credit points                   | 10 |

| Prerequisites                   | 20cp in LAW or LAWS units at 2000 level |

| 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](https://www.mq.edu.au/study/calendar-of-dates)

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

- **ULO1**: Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- **ULO2**: Identify constitutional law principles within cases.
- **ULO3**: Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- **ULO4**: Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- **ULO5**: Apply constitutional law to new fact problems.

General Assessment Information
Late Assessment Submission Penalty
Unless a Special Consideration request has been submitted and approved, a 5% penalty (of the total possible mark) will be applied each day a written assessment is not submitted, up until the 7th day (including weekends). After the 7th day, a mark of 0 (zero) will be awarded even if the assessment is submitted. Submission time for all written assessments is set at 11.55pm. A 1-hour grace period is provided to students who experience a technical issue. This late penalty will apply to non-timed sensitive assessment (incl essays, reports, posters, portfolios, journals, recordings etc). Late submission of time sensitive tasks (such as tests/exams, performance assessments/presentations, scheduled practical assessments/labs etc) will only be addressed by the unit convenor in a Special consideration application. Special Consideration outcome may result in a new question or topic.
Assessment Tasks

<table>
<thead>
<tr>
<th>Name</th>
<th>Weighting</th>
<th>Hurdle</th>
<th>Due</th>
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<tbody>
<tr>
<td>Take Home Test</td>
<td>45%</td>
<td>No</td>
<td>05/06/2023 9:00 am-12:00 m (3 hours)</td>
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<tr>
<td>Tutorial Participation</td>
<td>15%</td>
<td>No</td>
<td>Week 13</td>
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<tr>
<td>Essay</td>
<td>40%</td>
<td>No</td>
<td>11/04/2023 by 23:55</td>
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Take Home Test
Assessment Type 1: Quiz/Test
Indicative Time on Task 2: 4 hours
Due: 05/06/2023 9:00 am-12:00 m (3 hours)
Weighting: 45%

A time-limited assessment involving written responses to problems of Constitutional Law

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.

Tutorial Participation
Assessment Type 1: Participatory task
Indicative Time on Task 2: 20 hours
Due: Week 13
Weighting: 15%

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.
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.
- Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- Apply constitutional law to new fact problems.

**Essay**

Assessment Type 1: Essay

Indicative Time on Task 2: 40 hours

Due: 11/04/2023 by 23:55

Weighting: 40%

Students will be required to engage in independent research to present a written response to a particular question of Constitutional Law.

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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1 If you need help with your assignment, please contact:

- the academic teaching staff in your unit for guidance in understanding or completing this type of assessment
- the Writing Centre for academic skills support.

2 Indicative time-on-task is an estimate of the time required for completion of the assessment task and is subject to individual variation

**Delivery and Resources**


**Australian Constitution**

Cases: AUSTLII for High Court Cases and all Australian legislation

Additional readings accessible via LEGANTO.

**Unit Schedule**

**Week I. Australian Constitutionalism: Introduction and History**

Online Lecture. Introduction


Live Lecture Welcome to the unit & A Historical Overview of Australian Constitutional Law and Indigenous Peoples

[1.60] From Colonisation to Federation  [1.10] Indigenous Peoples and the Constitution

**Week II. Judicial Review, Constitutional Interpretation, and Federalism**

Online Lecture. Judicial Review, Constitutional Interpretation, and Proportionality

Judicial Review  [1.175] Judicial Review  Constitutional Interpretation  

Live Lecture. Indigenous Peoples’ Rights Across Constitutional Law

**Week III. The Corporations Power, Federalism, and Characterisation**

Online Lecture. The Corporation Power


Live Lecture. Federalism, Constitutional Law of the States Territories, and Characterisation

Federalism in Australia

Constitutional Law of the States and Territories

Characterisation of Commonwealth Laws
Week IV. The External Affairs Power

Online Lecture. The External Affairs Power


CONCLUSION

Live Lecture. International Law and Constitutional Law

The relationships between international and constitutional law in comparative perspective. Leading cases of the first four weeks

Week V. The Commonwealth Executive

Online Lecture.


Live lecture.


Week VI. Separation of Judicial Power

Online Lecture.


Live Lecture. Federal and State Separation of Powers
Separation of powers at federal level

[6.105] SEPARATION OF JUDICIAL POWERS – STATE

[6.110] The Kable principle and its subsequent application

[6.112] The revival of the Kable principle

[6.115] Persona designata and State judges

[6.120] Required characteristics of State courts

[6.125] The investiture of judicial power in non-judicial bodies at the State level

[6.130] Summary of the Kable doctrine at the State level

[6.135] CHAPTER III AS A SOURCE OF INDIVIDUAL RIGHTS

[6.140] The broader scope of the incompatibility doctrine

[6.145] Legislative usurpation of judicial power

[6.150] Powers to detain

[6.155] Powers of sentencing

[6.160] Retrospective criminal laws

[6.165] Implied right of legal equality

[6.170] Right to a fair trial

[6.175] SEPARATION OF JUDICIAL POWER IN THE TERRITORIES

CONCLUSION

Week VII. Inconsistency

Online Lecture.

[7.10] WHAT IS A “LAW” FOR THE PURPOSES OF SECTION 109?

[7.15] MEANING OF “INVALIDITY”

[7.20] TESTS FOR INCONSISTENCY

[7.25] IMPOSSIBILITY OF SIMULTANEOUS OBEDIENCE

[7.30] CONFERRAL OF RIGHTS

[7.35] INDIRECT INCONSISTENCY

[7.40] COVERING THE FIELD

[7.45] Identification of the “field”

[7.50] Overlapping fields: The subject matter approach

[7.55] Commonwealth intention to cover the field

[7.60] Express intention

[7.65] IMPLIED INTENTION

[7.70] INCONSISTENT CRIMINAL LAWS

REASSESSING THE TESTS FOR INCONSISTENCY

CONCLUSION

Live Lecture. Leading Cases I.

Week VIII. Intergovernmental Immunities

Online Lecture

[8.10] PRELIMINARY ISSUE: CROWN IMMUNITY

[8.15] THE EARLY LAW:

[8.20] THE ENGINEERS CASE: ABANDONMENT OF IMPLIED IMMUNITIES

[8.25] COMMONWEALTH LEGISLATIVE POWER OVER THE STATES

[8.30] The State Banking case

[8.35] Discriminatory laws

[8.40] Indirect discrimination

[8.45] “Rational” discrimination

[8.50] Prohibition on the impairment or curtailment of a State’s capacity to function as a government


[8.60] STATE LEGISLATIVE POWER OVER THE COMMONWEALTH

[8.65] The folly of Cigamatic: Reciprocity abandoned

[8.70] The “affected by” doctrine

[8.75] Section 64 of the Judiciary Act

[8.80] The criminal law exception

[8.85] A reformulation of Cigamatic: The Residential Tenancies Tribunal case

CONCLUSION

Live Lecture: Leading Cases II.

Week IX. Excise Duties, Spending Government Revenue – The Grants and Appropriations Powers

Online Lecture. Excise Duties

[9.10] DEFINITION OF A “TAX”


[9.20] The differing views regarding the purpose of s 90

[9.25] History of the definition of “excise”: From Peterswald to Parton

[9.30] Exceptions to the broad view

[9.35] The “criterion of liability” approach

[9.40] Consumption taxes

[9.45] THE MODERN CASES

Live Lecture. Grants and Appropriation and Expenditure


Week X. Freedom of Interstate Trade, Commerce, and Intercourse

Online Lecture.


Live Lecture. Leading Cases III.

Week XI. Express Rights

Online Lecture.


Live Lecture.


Week XII. Implied Political Rights and Freedoms


Live Lecture.
FREEDOM OF POLITICAL COMMUNICATION

The source of the freedom

The scope of the freedom

The first stage of the Lange test: What is "political communication"?

The second stage of the Lange test: Limits to the implied freedom

Revisiting the second stage of Lange; the cases of McCloy and Brown

Operation of the freedom

The nature of the freedom

FREEDOMS OF MOVEMENT, ASSOCIATION AND PARTICIPATION

CONSTITUTIONAL PROHIBITIONS ON DISCRIMINATION

Direct and indirect discrimination

“Reasonable” discrimination

The limited nature of constitutional prohibitions on discrimination.

Macquarie University policies and procedures are accessible from Policy Central (https://policies.mq.edu.au). Students should be aware of the following policies in particular with regard to Learning and Teaching:

- Academic Appeals Policy
- Academic Integrity Policy
- Academic Progression Policy
- Assessment Policy
- Fitness to Practice Procedure
- Assessment Procedure
- Complaints Resolution Procedure for Students and Members of the Public
- Special Consideration Policy

Students seeking more policy resources can visit Student Policies (https://students.mq.edu.au/support/study/policies). It is your one-stop-shop for the key policies you need to know about throughout your undergraduate student journey.

To find other policies relating to Teaching and Learning, visit Policy Central (https://policies.mq.edu.au) and use the search tool.

Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: https://students.mq.edu.au/admin/other-resources/student-conduct

Results

Results published on platform other than eStudent, (eg. iLearn, Coursera etc.) 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 or if you are a Global MBA student contact globalmba.support@mq.edu.au

https://unitguides.mq.edu.au/unit_offerings/157522/unit_guide/print
Academic Integrity

At Macquarie, we believe academic integrity – honesty, respect, trust, responsibility, fairness and courage – is at the core of learning, teaching and research. We recognise that meeting the expectations required to complete your assessments can be challenging. So, we offer you a range of resources and services to help you reach your potential, including free online writing and maths support, academic skills development and wellbeing consultations.

Student Support

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

The Writing Centre

The Writing Centre provides resources to develop your English language proficiency, academic writing, and communication skills.

- Workshops
- Chat with a WriteWISE peer writing leader
- Access StudyWISE
- Upload an assignment to Studiosity
- Complete the Academic Integrity Module

The Library provides online and face to face support to help you find and use relevant information resources.

- Subject and Research Guides
- Ask a Librarian

Student Services and Support

Macquarie University offers a range of Student Support Services including:

- IT Support
- Accessibility and disability support with study
- Mental health support
- Safety support to respond to bullying, harassment, sexual harassment and sexual assault
- Social support including information about finances, tenancy and legal issues
- Student Advocacy provides independent advice on MQ policies, procedures, and processes

Student Enquiries

Got a question? Ask us via AskMQ, or contact Service Connect.
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.