



LAWS807

Constitutional Law

S1 External 2018

Dept of Law

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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

4

Prerequisites

LAWS803 and LAWS805

Corequisites

Co-badged status

Unit description

This unit analyses the Constitution of the Commonwealth of Australia and the New South Wales Constitution. The Commonwealth Constitution is the founding, national document that sets out the powers of the Commonwealth and its structure of government. During this course, you will consider what that means. You will consider how the constitutional texts are interpreted, analyse practices affecting the operation of government in Australia, and reflect on constitutional change. You will examine what type of legal order Australia has: the fundamental distributions of power in Australia between the states and the Commonwealth; between the legislature, executive, and judiciary; and between the government and individual citizens.

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.

Analyse the legal and political dimensions of contemporary constitutional law controversies.

General Assessment Information

Unless a Special Consideration request has been submitted and approved, (a) a penalty for lateness will apply – two (2) marks out of 100 will be deducted per day for assignments submitted after the due date – and (b) no assignment will be accepted more than seven (7) days (incl. weekends) after the original submission deadline. No late submissions will be accepted for timed assessments – e.g. quizzes, online tests.

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
Case Note	10%	No	7 April, 10pm
Research Essay	40%	No	30 April, 10pm
Take-Home Examination	50%	No	15 June

Case Note

Due: **7 April, 10pm**

Weighting: **10%**

This assessment is designed to meet two goals: (1) demonstrate your understanding of foundational constitutional law concepts and your ability to clearly analyse a case; (2) develop your ability to reflect critically on a constitutional case law, showing a grasp of judicial reasoning and possible arguments in response.

A case note is a form of study guide. It is your summary of the case that notes the major components of the case and provides some critical reflection. An example will be provided on

iLearn. This illustrates the components of case note: legal issue(s); material facts; arguments; holding and reasoning; commentary.

Page Limit: Three pages, double-spaced.

All work is to be submitted via Turnitin on iLearn.

The choice of case for the case note and assessment guidance/marketing guideline will be released via 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.
- Analyse the legal and political dimensions of contemporary constitutional law controversies.

Research Essay

Due: **30 April, 10pm**

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.

The essay question and assessment guidance/marketing guideline will be released via 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.
- Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.

Take-Home Examination

Due: **15 June**

Weighting: **50%**

This is a take-home examination, 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 examination can cover any material in the unit.

Students will be able to access the examination paper on iLearn from **8:45am, Thursday 15 June** and must submit their answers by **1pm, Thursday 15 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.

This is a timed assessment and no late submissions will be accepted.

A bibliography is not required. Footnoting is not required. Rather, a student should provide references 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*).'

e.g. 'As Goldsworthy argues, "[Quote]".' OR 'As Goldsworthy argues, [paraphrase].' [Here, there is no need to reference the source.]

Further details and assessment guidance/marketing guideline will be provided on 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

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. The schedule of topics to be covered in the

lectures is available on iLearn and a list is available below (unit schedule).

Internal students have a weekly 1.5 hour seminar from **week 1** (reading is required for Week 1's seminar).

External students have a **compulsory** two day on campus session and an optional third day. You are strongly encouraged to attend the third day as it covers new material that may be examined.

All students should be aware that seminars contain new material not covered in the lectures. Seminars will not be recorded as these are discussion-based. Seminars will also include practice problem questions.

The required text is: Peter Gerangelos et al (eds), *Winterton's Australian Federal Constitutional Law: Commentary and Materials* (Thomson Reuters, 4th ed, 2017). It is available from the Macquarie University Co-op Bookshop. Additional reading will be available via iLearn or else linked to publicly available sources.

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

All assignments must be submitted electronically via Turnitin.

Unit Schedule

(1) Introduction

(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

Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central \(https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central\)](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central). 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](#)
- [Grade Appeal Policy](#)
- [Complaint Management Procedure for Students and Members of the Public](#)
- [Special Consideration Policy](#) (**Note:** *The Special Consideration Policy is effective from 4 December 2017 and replaces the Disruption to Studies Policy.*)

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

If you would like to see all the policies relevant to Learning and Teaching visit [Policy Central \(https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central\)](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/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/study/getting-started/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.

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

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

- Analyse the legal and political dimensions of contemporary constitutional law controversies.

Assessment task

- Case Note

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

- 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.
- Analyse the legal and political dimensions of contemporary constitutional law controversies.

Assessment tasks

- Case Note
- Research Essay
- Take-Home Examination

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

- 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.
- Analyse the legal and political dimensions of contemporary constitutional law controversies.

Assessment tasks

- Case Note
- Research Essay

- Take-Home Examination

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

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Apply constitutional law to new fact problems.

Assessment tasks

- Case Note
- Research Essay

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

- 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.
- Analyse the legal and political dimensions of contemporary constitutional law controversies.

Assessment tasks

- Case Note
- Research Essay
- Take-Home Examination

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

- 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.

Changes from Previous Offering

The presentation assessment has been dropped in favour of a case note.

Weighting for the case note is 10%; the take-home examination is now 50%.

A new edition of the textbook is required.

Changes since First Published

Date	Description
19/02/ 2018	Dates for assessment had 2017 days of the week
16/02/ 2018	The unit guide still had a reference to the old law school policy re late submissions JH