

# LAWS40038 Advanced Constitutional Law

<b>Credit Points:</b>	12.50
<b>Level:</b>	4 (Undergraduate)
<b>Dates &amp; Locations:</b>	This subject is not offered in 2011.
<b>Time Commitment:</b>	Contact Hours: One 2-hour lecture per week. Total Time Commitment: 144 hours.
<b>Prerequisites:</b>	Torts; Principles of Public Law; Constitutional Law; Administrative Law or equivalents.
<b>Corequisites:</b>	None.
<b>Recommended Background Knowledge:</b>	None.
<b>Non Allowed Subjects:</b>	None.
<b>Core Participation Requirements:</b>	For the purposes of considering requests for Reasonable Adjustments under the Disability Standards for Education (Cwth 2005), and Students Experiencing Academic Disadvantage Policy, academic requirements for this subject are articulated in the Subject Description, Subject Objectives, Generic Skills, and Assessment Requirements of this entry. The University is dedicated to providing support to those with special requirements. Further details on the disability support scheme can be found at the Disability Liaison Unit website: <a href="http://www.services.unimelb.edu.au/disability/">http://www.services.unimelb.edu.au/disability/</a> .
<b>Contact:</b>	Melbourne Law School Student Centre Email: <a href="mailto:law-studentcentre@unimelb.edu.au">law-studentcentre@unimelb.edu.au</a> (mailto:law-studentcentre@unimelb.edu.au) Tel: +61 3 8344 4475
<b>Subject Overview:</b>	<p>This subject is about some of the fundamental questions of Australian constitutional law that the High Court has been grappling with in recent years: How do the elements of the Commonwealth fit together to form the Australian nation? And what rights do people in Australia have? These topics have been chosen to enable students to focus on the most relevant, current and challenging aspects of Australian constitutional law. They offer students the chance to deepen and broaden their understanding of Australian constitutional law beyond the core topics covered in Constitutional Law. It will develop students' practical skills in presenting oral argument in constitutional matters and writing outlines of argument in constitutional matters. The principal topics covered will include:</p> <ul style="list-style-type: none"> <li># The constitutional relationship between the States, Territories and the Commonwealth;</li> <li># The states;</li> <li># The common law and the Constitution;</li> <li># Intergovernmental cooperation;</li> <li># Discrimination and equal treatment;</li> <li># The constitutional relationship between governments and people;</li> <li># Discrimination and equal treatment;</li> <li># Popular sovereignty;</li> <li># Citizenship;</li> <li># Implied political rights;</li> <li># Express rights;</li> <li># Due process and the rule of law.</li> </ul>
<b>Objectives:</b>	<p>On completion of this subject, students should:</p> <p>Have developed a broader and deeper understanding of the following themes and topics that were introduced in the compulsory core LLB subjects Principles of Public Law and Constitutional Law and their equivalents:</p> <ul style="list-style-type: none"> <li># The structure and operation of the Australian Commonwealth and state constitutions, in theory and practice, in particular in relation to the areas covered in this subject, which have been chosen to enable students to focus on the most relevant, current and challenging aspects of Australian constitutional law;</li> </ul>

	<ul style="list-style-type: none"> <li># Constitutional skills and techniques, including constitutional interpretation and characterisation;</li> <li># The relevance of constitutional law to how governments address public policy issues and to how Commonwealth legislation is drafted and interpreted;</li> <li># The impact of constitutional law on the individual and different groups within society;</li> <li># The different ways in which constitutional disputes arise and the factors that affect their resolution;</li> <li># The main aspects of practice and procedure in constitutional litigation.</li> </ul> <p>Be able to draw on this understanding at an advanced level:</p> <ul style="list-style-type: none"> <li># To describe and critically analyse the fundamental principles of constitutional law;</li> <li># To identify relevant constitutional law decisions and state and critically analyse the legal principles that emerge from them;</li> <li># To critically analyse the relationship between these legal principles and the fundamental principles of constitutional law;</li> <li># To apply constitutional law principles to new fact situations;</li> <li># To develop arguments as to what legal principles should be applied when the relevant constitutional provisions or decisions are unclear or in conflict;</li> <li># To present these descriptions, analyses and applications of principles in the form of written and (optionally) oral arguments that are appropriately structured, developed, supported and referenced, in particular in the form of a written opinion, an outline of argument and (optionally) an oral argument on a constitutional matter.</li> </ul> <p>Have enhanced general cognitive skills in relation to reading and comprehending legal materials; logical analysis and reasoning; legal research and writing; application of legal principles to factual situations; identifying relevant factual information; identifying and considering options to resolve legal problems; drawing on the knowledge of other disciplines to understand and resolve legal issues.</p>
<b>Assessment:</b>	One 2,500 word written assignment (50%) due week 7;One 1 page skeleton outline of argument and presentation of 15 minute oral argument in a constitutional matter (50%) during the examination period;Hurdle requirement: Attendance at 75% of lectures.
<b>Prescribed Texts:</b>	The Commonwealth Constitution (Cth) Australian Government Publishing Service;Printed materials will be available from the Melbourne Law School.
<b>Breadth Options:</b>	This subject is not available as a breadth subject.
<b>Fees Information:</b>	Subject EFTSL, Level, Discipline & Census Date, <a href="http://enrolment.unimelb.edu.au/fees">http://enrolment.unimelb.edu.au/fees</a>
<b>Generic Skills:</b>	<p>On completion of the subject, students should have developed the following generic skills:</p> <ul style="list-style-type: none"> <li># Attitudes towards knowledge that include valuing truth, openness to new ideas and ethics associated with knowledge creation and usage;</li> <li># The capacity for close reading and analysis of a range of sources;</li> <li># The capacity for critical and independent thought and reflection;</li> <li># The capacity to solve problems, including through the collection and evaluation of information;</li> <li># The capacity to communicate, both orally and in writing;</li> <li># The capacity to plan and manage time;</li> <li># The capacity to participate as a member of a team;</li> <li># Intercultural sensitivity and understanding.</li> </ul> <p>In addition, on completion of the subject, students should have developed the following generic skills specific to the discipline of law beyond the level reached in the core subjects Principles of Public Law and Constitutional Law and their equivalents:</p> <p>- Case reading and analysis, including an ability to:</p> <ul style="list-style-type: none"> <li># Read complex constitutional cases, including unedited cases in the law reports;</li> <li># Extract important features from judgments;</li> <li># Reconcile judgments;</li> <li># Evaluate the development of legal principles;</li> </ul>

- # Apply legal principles arising from case law to new situations.
- Statutory reading, interpretation and analysis, including an ability to:
  - # Extract important features from statutes (and in particular constitutions);
  - # Use, interpret and apply statutory (and in particular constitutional) provisions to new situations;
  - # Apply the distinct principles of constitutional interpretation.
- Legal analysis and problem-solving, including an ability to:
  - # Critically analyse legal rules with reference to fundamental principles;
  - # Identify and analyse constitutional issues arising in complex fact situations;
  - # Apply constitutional principles and provisions to unfamiliar fact situations;
  - # Develop and present an appropriately structured and supported legal argument.
- Legal research skills, including an ability to:
  - # Find primary historical sources relevant to constitution-making and amendment;
  - # Find case law;
  - # Find statutes and constitutions;
  - # Find secondary sources;
  - # Identify the most relevant and up-to-date primary and secondary sources and justify the research process.
- Legal writing skills, including an ability to:
  - # Use case law as part of legal analysis;
  - # Use statutes and constitutions as part of legal analysis;
  - # Use secondary sources as part of legal analysis;
  - # Identify and summarise legal principles;
  - # Identify and summarise fundamental principles;
  - # Use proper referencing and citation;
  - # Present an appropriately structured and supported complex legal argument.
- Oral communication skills in:
  - # Participating in classroom problem solving and discussion;
  - # (Optionally) presenting an oral argument on a constitutional question for assessment.
- An ability to work in groups to solve problems and critically analyse legal materials in a classroom setting.