

LAWS70424 Judicial Power in Australia

Credit Points:	12.5
Level:	7 (Graduate/Postgraduate)
Dates & Locations:	2015, Parkville This subject commences in the following study period/s: February, Parkville - Taught on campus.
Time Commitment:	Contact Hours: The total class time is between 24 and 26 hours. Total Time Commitment: The pre-teaching period commences four weeks before the subject commencement date. From this time, students are expected to access and review the Reading Guide that will be available from the LMS subject page and the subject materials provided by the subject coordinator, which will be available from Melbourne Law School. Refer to the Reading Guide for confirmation of which resources need to be read and what other preparation is required before the teaching period commences.
Prerequisites:	This subject is an advanced constitutional law subject. It is not appropriate for students who have not previously studied constitutional law.
Corequisites:	None
Recommended Background Knowledge:	Applicants without legal qualifications should note that subjects are offered in the discipline of law at an advanced graduate level. While every effort will be made to meet the needs of students trained in other fields, concessions will not be made in the general level of instruction or assessment. Most subjects assume the knowledge usually acquired in a degree in law (LLB, JD or equivalent). Applicants should note that admission to some subjects in the Melbourne Law Masters will be dependent upon the individual applicant's educational background and professional experience.
Non Allowed Subjects:	None
Core Participation Requirements:	The Melbourne Law Masters welcomes applications from students with disabilities. The inherent academic requirements for study in the Melbourne Law Masters are: The ability to attend a minimum of 75% of classes and actively engage in the analysis and critique of complex materials and debate; The ability to read, analyse and comprehend complex written legal materials and complex interdisciplinary materials; The ability to clearly and independently communicate in writing a knowledge and application of legal principles and interdisciplinary materials and to critically evaluate these; The ability to clearly and independently communicate orally a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to work independently and as a part of a group; The ability to present orally and in writing legal analysis to a professional standard. Students who feel their disability will inhibit them from meeting these inherent academic requirements are encouraged to contact the Disability Liaison Unit: www.services.unimelb.edu.au/disability/
Contact:	For more information: Email: law-masters@unimelb.edu.au (mailto:law-masters@unimelb.edu.au) Phone: +61 3 8344 6190 Website: www.law.unimelb.edu.au/masters (http://www.law.unimelb.edu.au/masters)
Subject Overview:	This subject will explain and critically analyse the principles relating to the exercise of judicial power by federal, state and territory courts. We will start with the fundamental requirements that federal courts may only exercise judicial power, and federal judicial power may only be exercised by certain types of courts. Where is the boundary between judicial and non-judicial power? What is the doctrinal basis for and likely future of the exceptions? What is the boundary between federal and state judicial power? We will consider aspects of the High Court's original and appellate jurisdictions. We then turn to the essential characteristics of state courts, the exercise of federal jurisdiction by state courts, and the recent line of High Court cases striking down laws that detract from the institutional integrity and independence of state courts. Lastly, we consider the particular position of Territory courts. Both instructors regularly advise the Commonwealth and state governments concerning constitutional matters, and appear in the High Court in such matters.

	<p>Principal topics include:</p> <ul style="list-style-type: none"> # The meaning of 'judicial power' # Separation of powers under the Commonwealth Constitution – the propositions that federal courts may only exercise judicial power, and federal judicial power may only be exercised by Chapter III courts # The chameleon principle # Power incidental to judicial power # The 'persona designata' exception, and the concept of functions that are incompatible with the exercise of judicial power # Case studies – the Takeovers Panel (Alinta), and the power to make terrorism control orders (Thomas v Mowbray) # Aspects of the High Court's original and appellate jurisdictions # The exercise of federal jurisdiction by state courts, and accrued jurisdiction by federal courts # The protection of state courts under the Commonwealth Constitution – Kable and cases developing or reformulating the Kable principle; also, Kirk # Territories and judicial power.
Learning Outcomes:	<p>A student who has successfully completed this subject will:</p> <ul style="list-style-type: none"> # Have an advanced and integrated understanding of the principles relating to the separation of federal judicial power # Be able to critically examine, analyse, interpret and assess the exceptions to the separation of powers principles, and be able to advise on how the separation of powers principles are likely to apply in a practical litigation context # Have a sophisticated appreciation of the emerging constitutional protections applicable to State courts and likely future developments in this area # Have an advanced understanding of the various heads of original and appellate jurisdiction of the High Court, and the capacity of Parliament to limit those heads of jurisdiction # Have a detailed understanding of how federal jurisdiction is applied by State courts, and the extent of the accrued jurisdiction of federal courts # Have the cognitive and technical skills to independently examine and analyse existing and emerging legal issues relating to judicial power in the Australian federation # Be able demonstrate autonomy, expert judgment and responsibility as a practitioner and learner in the field of constitutional law.
Assessment:	Take-home examination (100%) (10-13 April) or 10,000 word research paper (100%) (20 May) although completion of the exam is encouraged, and the research paper option is available only with the prior approval of the subject coordinator, on a topic approved by the subject coordinator
Prescribed Texts:	Core subject materials will be provided free of charge to all students. Some subjects require further texts to be purchased. Details regarding any prescribed texts will be provided prior to the commencement of the subject.
Breadth Options:	This subject is not available as a breadth subject.
Fees Information:	Subject EFTSL, Level, Discipline & Census Date, http://enrolment.unimelb.edu.au/fees
Links to further information:	www.law.unimelb.edu.au/subject/LAWS70424/2015
Notes:	This subject has a quota of 30 students. Please refer to the website www.law.unimelb.edu.au/masters/courses-and-subjects/subjects/subject-timing-and-format (http://www.law.unimelb.edu.au/masters/courses-and-subjects/subjects/subject-timing-and-format) for further information about the management of subject quotas and waitlists.