

LAWS50028 Constitutional Law

| Credit Points: | 12.5 | | | | | | | | | | | | | | | |
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| Level: | 5 (Graduate/Postgraduate) | | | | | | | | | | | | | | | |
| Dates & Locations: | 2016, Parkville This subject commences in the following study period/s: Semester 2, Parkville - Taught on campus. | | | | | | | | | | | | | | | |
| Time Commitment: | Contact Hours: 48 hours Total Time Commitment: 144 hours | | | | | | | | | | | | | | | |
| Prerequisites: | Successful completion of all the below subjects: <table border="1" data-bbox="387 544 1485 864"> <thead> <tr> <th>Subject</th> <th>Study Period Commencement:</th> <th>Credit Points:</th> </tr> </thead> <tbody> <tr> <td>LAWS50023 Legal Method and Reasoning</td> <td>February</td> <td>12.50</td> </tr> <tr> <td>LAWS50024 Principles of Public Law</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50026 Obligations</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50027 Dispute Resolution</td> <td>Semester 1</td> <td>12.50</td> </tr> </tbody> </table> | Subject | Study Period Commencement: | Credit Points: | LAWS50023 Legal Method and Reasoning | February | 12.50 | LAWS50024 Principles of Public Law | Semester 1 | 12.50 | LAWS50026 Obligations | Semester 1 | 12.50 | LAWS50027 Dispute Resolution | Semester 1 | 12.50 |
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| LAWS50023 Legal Method and Reasoning | February | 12.50 | | | | | | | | | | | | | | |
| LAWS50024 Principles of Public Law | Semester 1 | 12.50 | | | | | | | | | | | | | | |
| LAWS50026 Obligations | Semester 1 | 12.50 | | | | | | | | | | | | | | |
| LAWS50027 Dispute Resolution | Semester 1 | 12.50 | | | | | | | | | | | | | | |
| Corequisites: | None | | | | | | | | | | | | | | | |
| Recommended Background Knowledge: | None | | | | | | | | | | | | | | | |
| Non Allowed Subjects: | None | | | | | | | | | | | | | | | |
| Core Participation Requirements: | The Melbourne Law School welcomes applications from students with disabilities. It is University and Law School policy to take all reasonable steps to enable the participation of students with disabilities, and reasonable adjustments will be made to enhance a student's participation in the School's programs. The inherent academic requirements for the study in the Melbourne Law School are: The ability to attend classes and actively engage in the analysis 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 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 must possess behavioural and social attributes that enable them to participate in a complex learning environment. Students are required to take responsibility for their own participation and learning. They also contribute to the learning of other students in collaborative learning environments, demonstrating interpersonal skills and an understanding of the needs of other students. Assessment may include the outcomes of tasks completed in collaboration with other students. Students who feel their disability will inhibit them from meeting these inherent academic requirements are encouraged to contact Student Equity and Disability Support. | | | | | | | | | | | | | | | |
| Coordinator: | Prof Adrienne Stone | | | | | | | | | | | | | | | |
| Contact: | Email: law-aso@unimelb.edu.au (mailto:law-aso@unimelb.edu.au) Phone: +61 3 8344 4475 Website: www.law.unimelb.edu.au/jd (http://www.law.unimelb.edu.au/jd) | | | | | | | | | | | | | | | |
| Subject Overview: | This subject continues the analysis of the laws establishing and regulating the Australian state that began in LAWS50024 Principles of Public Law and that will continue in LAWS50032 Administrative Law. It is structured around the fundamental principles of Australian public law – constitutionalism, representative democracy, the separation of powers, federalism and individual rights – and uses them to examine more closely the institutions of Australian government – | | | | | | | | | | | | | | | |

the courts, legislatures and the executive. (The examination of the executive branch and the principles of responsible government are taken further in Administrative Law).

Topics covered include:

- Introduction to Australian constitutions and to constitutional law;
- Representative Democracy:
 - # Composition, powers and procedures of Australian Parliaments and their constituent chambers;
 - # Political rights and freedoms.
- Separation of powers:
 - # Legislature and Executive;
 - # Judicial power.
- Australian Federalism:
 - # Key features of the Australian federation;
 - # Inconsistency of Commonwealth and State law;
 - # The federal division of legislative power, including the scope of state legislative power and, in relation to federal legislative power, types of power, interpretation, characterisation, incidental power, selected heads of power for detailed study;
 - # The federal division of executive power;
 - # The federal division of judicial power including the concept of federal jurisdiction;
 - # Governmental and inter-governmental immunities: statutory interpretation and constitutional principles;
 - # Economic union: finance, trade and free movement in the Australian federal system.
- Express rights and freedoms.

Learning Outcomes:

On completion of this subject, students should:

Have developed an understanding of:

- # The structure and operation of the Australian Commonwealth and state constitutions, in theory and practice;
- # Core provisions of the Australian Commonwealth and state constitutions, constitutional decisions and constitutional principles;
- # Constitutional skills and techniques, including constitutional interpretation and characterisation;
- # The relevance of constitutional law to how governments address public policy issues and to how Commonwealth legislation is drafted and interpreted;
- # The impact of constitutional law on the individual and different groups within society;
- # The main aspects of practice and procedure in constitutional litigation.

Be able to draw on this understanding to:

- # Describe and critically analyse the fundamental principles of constitutional law;
- # Identify relevant constitutional law decisions and state and critically analyse the legal principles that emerge from them;
- # Critically analyse the relationship between these legal principles and the fundamental principles of constitutional law;
- # Apply constitutional law principles to new fact situations;
- # Develop arguments as to what legal principles should be applied when the relevant constitutional provisions or decisions are unclear or in conflict.

Present these descriptions, analyses and applications of principles in the form of written and oral arguments that are appropriately structured, developed, supported and referenced;

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.

Assessment:

Syndicate and individual interim assessment: Oral presentation in the form of a moot, 40-50 minutes for a 4-5 person syndicate; due in accordance with the assessment schedule, usually

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| | Week 4 (20%) Examination in the form of a take-home examination of 8 hours duration, 4000 words, held during the exam period (80%) Hurdle requirement: Students must receive at least a pass in the take home examination to pass the subject. |
| Prescribed Texts: | Commonwealth Constitution, available at www.comlaw.gov.au ; Constitution Act 1975 (Vic), available at www.dpc.vic.gov.au ; Winterton's Australian Federal Constitutional Law (3rd Edition 2013); Specialist printed materials will also be made available from the Melbourne Law School. |
| 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 |
| Generic Skills: | <p>On completion of the subject, students should have developed the following generic skills:</p> <ul style="list-style-type: none"> # Attitudes towards knowledge that include valuing truth, openness to new ideas and ethics associated with knowledge creation and usage; # The capacity for close reading and analysis of a range of sources; # The capacity for critical and independent thought and reflection; # The capacity to solve problems, including through the collection and evaluation of information; # The capacity to communicate, both orally and in writing; # The capacity to plan and manage time; # The capacity to participate as a member of a team; # Intercultural sensitivity and understanding. <p>In addition, on completion of the subject, students should have developed the following skills specific to the discipline of law:</p> <ul style="list-style-type: none"> # Case reading and analysis, including an ability to: <ul style="list-style-type: none"> - Read complex constitutional cases, including unedited cases in the law reports; - Extract important features from judgments; - Reconcile judgments; - Evaluate the development of legal principles; - Apply legal principles arising from case law to new situations. # Statutory reading, interpretation and analysis, including an ability to: <ul style="list-style-type: none"> - 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: <ul style="list-style-type: none"> - 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: <ul style="list-style-type: none"> - 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: <ul style="list-style-type: none"> - 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 in written and oral form. # Oral communication skills in participating in classroom problem solving and discussion; # An ability to work in groups to solve problems and critically analyse legal materials in a classroom setting. |
| Related Course(s): | Juris Doctor |

Juris Doctor/Master of Business Administration