



LAWS11065 Constitutional Law

Term 2 - 2023

Profile information current as at 28/04/2024 07:10 pm

All details in this unit profile for LAWS11065 have been officially approved by CQUniversity and represent a learning partnership between the University and you (our student). The information will not be changed unless absolutely necessary and any change will be clearly indicated by an approved correction included in the profile.

General Information

Overview

LAWS11065 Constitutional law examines the organization, source and limits of Commonwealth and State powers, and the relations between the three branches of government at Commonwealth and State levels. In this unit you will examine State and Commonwealth constitutions and constitutional systems; the constitution and operation of the legislature, executive and judiciary; the relationship between the different institutions of government and the separation of powers; and the relationship between the different levels of government. This unit meets the LPAB requirements for federal and state constitutional law.

Details

Career Level: *Undergraduate*

Unit Level: *Level 1*

Credit Points: 6

Student Contribution Band: 10

Fraction of Full-Time Student Load: 0.125

Pre-requisites or Co-requisites

Co-requisite LAWS11057

Important note: Students enrolled in a subsequent unit who failed their pre-requisite unit, should drop the subsequent unit before the census date or within 10 working days of Fail grade notification. Students who do not drop the unit in this timeframe cannot later drop the unit without academic and financial liability. See details in the [Assessment Policy and Procedure \(Higher Education Coursework\)](#).

Offerings For Term 2 - 2023

- Online

Attendance Requirements

All on-campus students are expected to attend scheduled classes – in some units, these classes are identified as a mandatory (pass/fail) component and attendance is compulsory. International students, on a student visa, must maintain a full time study load and meet both attendance and academic progress requirements in each study period (satisfactory attendance for International students is defined as maintaining at least an 80% attendance record).

Website

[This unit has a website, within the Moodle system, which is available two weeks before the start of term. It is important that you visit your Moodle site throughout the term. Please visit Moodle for more information.](#)

Class and Assessment Overview

Recommended Student Time Commitment

Each 6-credit Undergraduate unit at CQUniversity requires an overall time commitment of an average of 12.5 hours of study per week, making a total of 150 hours for the unit.

Class Timetable

[Regional Campuses](#)

Bundaberg, Cairns, Emerald, Gladstone, Mackay, Rockhampton, Townsville

[Metropolitan Campuses](#)

Adelaide, Brisbane, Melbourne, Perth, Sydney

Assessment Overview

1. **Written Assessment**

Weighting: 40%

2. **Group Work**

Weighting: 10%

3. **Take Home Exam**

Weighting: 50%

Assessment Grading

This is a graded unit: your overall grade will be calculated from the marks or grades for each assessment task, based on the relative weightings shown in the table above. You must obtain an overall mark for the unit of at least 50%, or an overall grade of 'pass' in order to pass the unit. If any 'pass/fail' tasks are shown in the table above they must also be completed successfully ('pass' grade). You must also meet any minimum mark requirements specified for a particular assessment task, as detailed in the 'assessment task' section (note that in some instances, the minimum mark for a task may be greater than 50%). Consult the [University's Grades and Results Policy](#) for more details of interim results and final grades.

CQUniversity Policies

All University policies are available on the [CQUniversity Policy site](#).

You may wish to view these policies:

- Grades and Results Policy
- Assessment Policy and Procedure (Higher Education Coursework)
- Review of Grade Procedure
- Student Academic Integrity Policy and Procedure
- Monitoring Academic Progress (MAP) Policy and Procedure – Domestic Students
- Monitoring Academic Progress (MAP) Policy and Procedure – International Students
- Student Refund and Credit Balance Policy and Procedure
- Student Feedback – Compliments and Complaints Policy and Procedure
- Information and Communications Technology Acceptable Use Policy and Procedure

This list is not an exhaustive list of all University policies. The full list of University policies are available on the [CQUniversity Policy site](#).

Previous Student Feedback

Feedback, Recommendations and Responses

Every unit is reviewed for enhancement each year. At the most recent review, the following staff and student feedback items were identified and recommendations were made.

Feedback from SUTE data

Feedback

Learning materials can be strengthened to better highlight their utility

Recommendation

Revise learning materials to strengthen their utility and capacity to build knowledge and skills.

Unit Learning Outcomes

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

1. Examine and apply the constitutional law principles through discussion of the Commonwealth's legislative powers, and Commonwealth and state relations.
2. Identify and interpret the appropriate constitutional provisions and case authorities to support the application of constitutional principles to factual legal problems.
3. Critically analyse the scope and application of rights and liberties expressly stated or implied into the Constitution, including those of Aboriginal and Torres Strait Islanders.
4. Communicate effectively through writing or in collaboration with others regarding the impact of High Court decisions on the development of constitutional principles on the character of the federal system in Australia and the separation of powers.

Alignment of Learning Outcomes, Assessment and Graduate Attributes



Alignment of Assessment Tasks to Learning Outcomes

Assessment Tasks	Learning Outcomes			
	1	2	3	4
1 - Communication	•	•	•	•
2 - Problem Solving	•			
3 - Critical Thinking	•	•		•
4 - Information Literacy		•		
5 - Team Work				
6 - Information Technology Competence				
7 - Cross Cultural Competence		•	•	
8 - Ethical practice				
9 - Social Innovation				
10 - Aboriginal and Torres Strait Islander Cultures		•		

Textbooks and Resources

Textbooks

LAWS11065

Prescribed

Australian Constitutional Law: Principles in Movement

Edition: 1 (2022)

Authors: Jonathan Crowe

Oxford University Press

Melbourne , Victoria , Australia

ISBN: 97801903114114

Binding: Paperback

Additional Textbook Information

Please check the Moodle welcome message for any special discounts available from the publisher at Oxford University Press.

IT Resources

You will need access to the following IT resources:

- CQUniversity Student Email
- Internet
- Unit Website (Moodle)
- Webcam and microphone to enable invigilation of exam

Referencing Style

All submissions for this unit must use the referencing style: [Australian Guide to Legal Citation, 4th ed](#)
For further information, see the Assessment Tasks.

Teaching Contacts

Jacob Deem Unit Coordinator

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Nichola Corbett-Jarvis Unit Coordinator

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Schedule

Week 1 - 10 Jul 2023

Module/Topic	Chapter	Events and Submissions/Topic
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Introduction to Australian Constitutional Law: Constitutions and Constitutionalism

We begin by looking at the structure of the unit, what we plan to cover, assessment activities and engagement with each other.

In terms of content, students are introduced to the Australian constitutional system, covering both Commonwealth and state constitutions.

More broadly, we will examine what a constitution is and the philosophical ideal of constitutional law, namely, constitutionalism. We will discuss the central tenets of constitutionalism and its rationale.

Jonathan Crowe, *Australian Constitutional Law: Principles in Movement* (Oxford University Press, 2022) Chapter 1
Constance Y Lee, "Calvinist Natural Law and Constitutionalism" (2014) *Australian Journal of Legal Philosophy* 39(1) 1.

Tutorial 1

Week 2 - 17 Jul 2023

Module/Topic	Chapter	Events and Submissions/Topic
Interpreting Commonwealth Powers In the second week, we turn to examine the Australian constitutional framework. This builds on knowledge you accrued in Introduction to Law and Statutory Interpretation. We begin by revisiting the tripartite separation of powers (horizontal) before delving into the constitutional reality of this separation. We go on to explore the constitutional development of the separation between the three arms of government to examine the practical realities of this ideal.	Jonathan Crowe, <i>Australian Constitutional Law: Principles in Movement</i> (Oxford University Press, 2022) Chapter 3	Tutorial 2

Week 3 - 24 Jul 2023

Module/Topic	Chapter	Events and Submissions/Topic
Legislative Power I: Economic Powers In keeping with the structure of the Constitutional text of Australia, we turn to examine the legislative Heads of Powers (HOP's). HOP's are located in s 51 of the Constitution are concurrent powers which are common to Commonwealth and State Parliaments. However, powers of the states to make laws in respect to these subject matters are severely restricted due to other constitutional provisions. Section 51(xx) has become a massive source of power for the Commonwealth to regulate economic activity.	Jonathan Crowe, <i>Australian Constitutional Law: Principles in Movement</i> (Oxford University Press, 2022) Chapter 4	Tutorial 3

Week 4 - 31 Jul 2023

Module/Topic	Chapter	Events and Submissions/Topic
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Legislative Power II: International Powers

Like the rest of s 51 HOP's, s 51(xxix) is a legislative power held concurrently by the Commonwealth and the states. This particular HOP allows the Commonwealth Parliament to regulate 'external affairs' which has been broadly interpreted by the HC as encompassing: geographical power; treaty power and international relations power.

Unlike external affairs power, the defence power outlined in section 51(vi) allows the Commonwealth Parliament "to make laws for the peace, order and good government of the Commonwealth" with respect to national defence. This an elastic power which applies more broadly in wartime than in peacetime. The federal executive has control over day-to-day operations regarding military and defence.

Jonathan Crowe, *Australian Constitutional Law: Principles in Movement* (Oxford University Press, 2022) Chapter 5

Tutorial 4

Week 5 - 07 Aug 2023

Module/Topic	Chapter	Events and Submissions/Topic
Conflict of Laws The Constitution of Australia provides processes for resolution where there is a conflict between Commonwealth and State laws. This week, we will discuss the three (3) main ways in which the conflict between Commonwealth and State governments regarding the concurrent powers listed in s 51 may arise. As the Commonwealth law must be within power in order to be valid, this is the first limb to be overcome. If this is the case, s 109 provides a mechanism for resolving the conflict. Under s 109, the Commonwealth law prevails to the extent of inconsistency.	Jonathan Crowe, <i>Australian Constitutional Law: Principles in Movement</i> (Oxford University Press, 2022) Chapter 7	Tutorial 5

Vacation Week - 14 Aug 2023

Module/Topic	Chapter	Events and Submissions/Topic
Break Week		No tutorial

Week 6 - 21 Aug 2023

Module/Topic	Chapter	Events and Submissions/Topic
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The relationship between Commonwealth and State governments is a crucial feature of Australia's constitutional system. If we refer to the tripartite separation of powers between legislative, executive and judicial powers; we can refer to this as a vertical separation of powers embodied in the constitutional ideal of federalism.

Jonathan Crowe, *Australian Constitutional Law: Principles in Movement* (Oxford University Press, 2022) Chapter 7

Legal Problem Solving Due: Week 6
Monday (21 Aug 2023) 5:00 pm AEST

Module/Topic	Chapter	Events and Submissions/Topic
<p>Executive Power</p> <p>The second power in the horizontal separation of powers is executive power. Executive power is vested in the Queen and is exercisable by the Governor-General as the Queen's representative pursuant to s 61. By virtue of s 61, Australia remains a constitutional monarchy with the Queen as our formal Head of State. The convention of responsible government underlies this section of the Constitution of Australia which holds that the Governor General acts on the advice of the Ministers who are, in turn, responsible to the Parliament.</p> <p>We will discuss the practical application of s 61 and its commitment to the constitutional ideal of responsible government in this lecture.</p>	Jonathan Crowe, <i>Australian Constitutional Law: Principles in Movement</i> (Oxford University Press, 2022) Chapter 6	Tutorial 7

Module/Topic	Chapter	Events and Submissions/Topic
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Judicial Power of the Commonwealth

This week, we look at the third of the horizontal heads of power, namely, judicial power. The constitutional power of the courts to decide 'matters' is contained in Chapter III (ss 75-78), which is the reason they are commonly referred to as Chapter III courts.

The High Court has set out several key elements required for a power to be deemed 'judicial.' We will consider the key elements of the definition of judicial power.

Jonathan Crowe, *Australian Constitutional Law: Principles in Movement* (Oxford University Press, 2022) Chapter 8

Tutorial 8

This week is also a great opportunity to contemplate the role of the judiciary on a normative level. It is the arm of government which is tasked with guarding the basic rights of citizens. This nature of this role sheds light on what the judiciary needs in order to properly fulfil its constitutional function.

Week 9 - 11 Sep 2023

Module/Topic	Chapter	Events and Submissions/Topic
Judicial Power of the States Further to last week's examination of the nature of the judiciary and the constitutional protections it enjoys at the Commonwealth level, we go on to consider judicial independence at the state level. Traditionally, the separation of powers was loosely upheld at the state level and did not strictly apply by virtue of State constitutional texts. State parliaments have plenary powers including the power to override their own constitutions. However, in recent years, the safeguards for judicial independence in states have been seen as necessary extensions of Commonwealth judicial power. Instead of deriving their power from state constitutions, several High Court decisions have found that the doctrine of 'institutional integrity' warrants constitutional safeguards for judicial independence at state level.	Jonathan Crowe, <i>Australian Constitutional Law: Principles in Movement</i> (Oxford University Press, 2022) Chapter 9 Constance Y Lee, "Constitutional Silences and the Doctrine of Institutional Integrity" Chapter 9 in Ananian-Welsh and Crowe, <i>Judicial Independence in Australia</i> (Federation Press, 2016).	Tutorial 9

Week 10 - 18 Sep 2023

Module/Topic	Chapter	Events and Submissions/Topic
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Constitutional Rights I: Express Rights

Constitutional rights (unlike statutory or common law rights) cannot be overridden by either the legislature or the judiciary. These rights often take the form of immunities for individuals or groups of individuals against government action.

There are two types of rights conferred by the Constitution: **express rights** and implied rights. Express rights refer to those constitutional rights which are explicitly stated in the constitutional text.

Jonathan Crowe, *Australian Constitutional Law: Principles in Movement* (Oxford University Press, 2022) Chapter 10

Tutorial 10

Constitutional Law Reflective Blog
Due: Week 10 Monday (18 Sept 2023)
11:59 pm AEST

This week, we will consider the nature of constitutional rights (more broadly) as well as aspects and examples of **express constitutional rights**.

We will discuss case law relating to s 51(xxxi): The right to compensation for any acquisition of property by the Commonwealth, s 92 The right to freedom of interstate trade, commerce and intercourse and s116: the express right to freedom of religion, *inter alia*.

Week 11 - 25 Sep 2023

Module/Topic	Chapter	Events and Submissions/Topic
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Constitutional Rights II: Implied Rights

This week, we turn our focus to **implied constitutional rights**. These are rights at the High Court has found are implied or incidental to the express provisions of the Constitution. We will consider the rationality of 'necessary implications' - those implications which are necessary for a constitutional provision to be effective and 'contextual implications' - those implications that play a key role by virtue of context.

Jonathan Crowe, *Australian Constitutional Law: Principles in Movement* (Oxford University Press, 2022) Chapter 11

Tutorial 11

We will examine the most significant implied constitutional right which is the qualified freedom of political communication as upheld by the High Court in the seminal 1992 cases: *Nationwide News v Wills* and *ACTV v Commonwealth*.

Week 12 - 02 Oct 2023

Module/Topic	Chapter	Events and Submissions/Topic
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Constitutional Change

In the last week, we examine the various ways for amending the Constitution. This is particularly relevant with the forthcoming referendum on establishing a First Nations Voice to Parliament. Section 128 provides a two step process for amending the constitution which is a relatively rigorous amendment process which has only been successfully utilised a handful of times. We will examine one of these instances, where the so-called 'races power' was changed by the 1967 Referendum to delete discriminatory reference to Indigenous people. Another way to effect constitutional change may be through judicial interpretation. As constitutional provisions are often vague, courts will inevitably be required to clarify their scope in applying the provisions to particular cases. Over time, the process of interpretation brings about important constitutional changes. This role of the judiciary to shape constitutional meaning is often controversial. We will end the week by discussing the 'Manner and Form' limitations on constitutional change at state level.

Jonathan Crowe, *Australian Constitutional Law: Principles in Movement* (Oxford University Press, 2022) Chapter 12

Tutorial 12

Assessment Tasks

1 Legal Problem Solving

Assessment Type

Written Assessment

Task Description

This written assessment involves answering two (2) questions based on hypothetical case scenarios.

It will cover any of the topics from **weeks 1-5**.

The task sheet will be available on Moodle on Friday, 11 August 2023 at 12 PM (AEST) and due on Monday, 21 August 2023 at 5 PM (AEST).

The total word count for all the answers, including references, should not exceed 2,000 words. This word count will be strictly applied.

Any material in excess of the word count will not be considered by the marker.

Any substantive content other than case citations or constitutional provisions in the footnote will not be considered.

Adherence to AGLC4 is required.

Must be submitted via Turnitin in Word Doc. format

Assessment Due Date

Week 6 Monday (21 Aug 2023) 5:00 pm AEST

Online, via Moodle

Return Date to Students

Week 8 Monday (4 Sept 2023)

Feedback on Moodle and/or Gradebook approximately 2-3 weeks after submission.

Weighting

40%

Assessment Criteria

The assessment will be marked according to the following criteria: (1) correct and thorough identification of the legal issue(s) (10%); correct statement of relevant rules/legal principles (30%); compelling and critical analysis and application of the rules and legal principles to the legal issue(s) and the facts (40%); well considered conclusion (10%); high quality language and observance of grammatical and appropriate structures; format, and instructions (10%).

A detailed marking rubric is available on the Moodle site.

Referencing Style

- [Australian Guide to Legal Citation, 4th ed](#)

Submission

Online

Submission Instructions

Link on Moodle

Learning Outcomes Assessed

- Examine and apply the constitutional law principles through discussion of the Commonwealth's legislative powers, and Commonwealth and state relations.
- Identify and interpret the appropriate constitutional provisions and case authorities to support the application of constitutional principles to factual legal problems.
- Communicate effectively through writing or in collaboration with others regarding the impact of High Court decisions on the development of constitutional principles on the character of the federal system in Australia and the separation of powers.

2 Constitutional Law Reflective Blog

Assessment Type

Group Work

Task Description

To complete this assessment, you will be designated a partner at random through the auto-grouping function on Moodle. Grouping will take place after the Census Date. The assessment allows you to display your ability to work with another student in a team, and students should take the initiative to organise and collaborate to complete a law project together.

- This task involves putting a blog article together on the constitutional issue outlined in the task sheet (1,500 words). This groupwork can be separated into sections then delegated OR it can be done wholly as a collaborative project. This is up to you and your partner.

Submission: The blog article must be submitted in your group name and will be marked as a collaborative project. Note: *The final submission should be **a single submission** in Microsoft Word doc. format and posted on Moodle as a group before the due date.

Assessment Due Date

Week 10 Monday (18 Sept 2023) 11:59 pm AEST

Online (via Moodle)

Return Date to Students

Week 12 Monday (2 Oct 2023)

Feedback will be supplied on Moodle and/or Gradebook approximately 2-3 weeks after submission.

Weighting

10%

Assessment Criteria

Collegiality, ability to assist others with their learning.

Writing and communication skills - write in an appropriate style.

Critical thinking abilities.

Further details of assessment details will be posted to Moodle.

Referencing Style

- [Australian Guide to Legal Citation, 4th ed](#)

Submission

Online Group

Submission Instructions

Online (to Moodle), and emailed to team members

Learning Outcomes Assessed

- Examine and apply the constitutional law principles through discussion of the Commonwealth's legislative powers, and Commonwealth and state relations.
- Critically analyse the scope and application of rights and liberties expressly stated or implied into the Constitution, including those of Aboriginal and Torres Strait Islanders.
- Communicate effectively through writing or in collaboration with others regarding the impact of High Court decisions on the development of constitutional principles on the character of the federal system in Australia and the separation of powers.

3 Take Home Examination

Assessment Type

Take Home Exam

Task Description

1. This unit has an invigilated take-home examination of 2.5 hours (150 minutes) duration. Students should consult the Invigilated Take-home Examination Guidelines, College of Law, Criminology and Justice, available from the Laws Moodle site. A requirement of these guidelines is that students must obtain a student card for verification purposes - see https://sportal.cqu.edu.au/_data/assets/pdf_file/0006/1113/Information-Sheet-Student-ID-Card-2017.pdf.
2. Students must also have access to a reliable and adequate internet connection, and a computer, tablet, or laptop equipped with a working webcam, working microphone, Zoom installed and access to the unit Moodle site via an Internet browser.
3. No extensions are permitted for invigilated take-home examinations.
4. Submissions after the deadline has passed will not be accepted and will receive a mark of zero.
5. Failure to attend the invigilated take-home examination will result in a mark of zero.
6. Exam conditions apply to all invigilated take-home examinations.

Your answer must be submitted as a Word doc. and you must save the document on your computer using the following naming convention: SURNAME_First Name [unit name] Take Home

The exam contains two questions. You must answer both.

The questions will be worth a maximum of 25 marks each. The weighting is 50%.

Examinable topics are as follows:

- 1) Judicial Power: the Commonwealth
- 2) Judicial Power: the States
- 3) Express Constitutional Rights (s 92)
- 4) Implied Constitutional Rights
- 5) Constitutional Change: the Commonwealth

Assessment Due Date

Exam Week Monday (16 Oct 2023) 11:45 pm AEST

During the University examination period (TBA)

Return Date to Students

Grades will be released on Certification of Grades date: 3 November 2023.

Weighting

50%

Assessment Criteria

The assessment will be marked according to the following criteria: (1) correct and thorough identification of the legal issue(s) (10%); correct statement of relevant rules/legal principles (30%); compelling and critical analysis and application of the rules and legal principles to the legal issue(s) and the facts (40%); well considered conclusion (10%); high quality language and observance of grammatical and appropriate structures; format, and instructions (10%). A detailed marking rubric is available on the Moodle site.

Referencing Style

- [Australian Guide to Legal Citation, 4th ed](#)

Submission

Online

Learning Outcomes Assessed

- Examine and apply the constitutional law principles through discussion of the Commonwealth's legislative powers, and Commonwealth and state relations.
- Identify and interpret the appropriate constitutional provisions and case authorities to support the application of constitutional principles to factual legal problems.
- Critically analyse the scope and application of rights and liberties expressly stated or implied into the Constitution, including those of Aboriginal and Torres Strait Islanders.

Academic Integrity Statement

As a CQUniversity student you are expected to act honestly in all aspects of your academic work.

Any assessable work undertaken or submitted for review or assessment must be your own work. Assessable work is any type of work you do to meet the assessment requirements in the unit, including draft work submitted for review and feedback and final work to be assessed.

When you use the ideas, words or data of others in your assessment, you must thoroughly and clearly acknowledge the source of this information by using the correct referencing style for your unit. Using others' work without proper acknowledgement may be considered a form of intellectual dishonesty.

Participating honestly, respectfully, responsibly, and fairly in your university study ensures the CQUniversity qualification you earn will be valued as a true indication of your individual academic achievement and will continue to receive the respect and recognition it deserves.

As a student, you are responsible for reading and following CQUniversity's policies, including the [Student Academic Integrity Policy and Procedure](#). This policy sets out CQUniversity's expectations of you to act with integrity, examples of academic integrity breaches to avoid, the processes used to address alleged breaches of academic integrity, and potential penalties.

What is a breach of academic integrity?

A breach of academic integrity includes but is not limited to plagiarism, self-plagiarism, collusion, cheating, contract cheating, and academic misconduct. The Student Academic Integrity Policy and Procedure defines what these terms mean and gives examples.

Why is academic integrity important?

A breach of academic integrity may result in one or more penalties, including suspension or even expulsion from the University. It can also have negative implications for student visas and future enrolment at CQUniversity or elsewhere. Students who engage in contract cheating also risk being blackmailed by contract cheating services.

Where can I get assistance?

For academic advice and guidance, the [Academic Learning Centre \(ALC\)](#) can support you in becoming confident in completing assessments with integrity and of high standard.

What can you do to act with integrity?



Be Honest

If your assessment task is done by someone else, it would be dishonest of you to claim it as your own



Seek Help

If you are not sure about how to cite or reference in essays, reports etc, then seek help from your lecturer, the library or the Academic Learning Centre (ALC)



Produce Original Work

Originality comes from your ability to read widely, think critically, and apply your gained knowledge to address a question or problem