

PRINCIPLE OF LEGALITY

- Re Bolton; Ex Parte Beane
Courts will not construe a statute to abrogate or suspend a fundamental freedom unless P makes it **unmistakably clear** such intention.
- Coco v The Queen
Express authorization to curtail fundamental rights requires for some manifestation that the legislature has **directed its attention** to consider the abrogation, **and** has **determined upon abrogation**.
 - Courts **should not impute to the legislature, intent to interfere with fundamental rights.**
 - Intention must be **clearly manifested by unmistakable and unambiguous language.**

Protected Rights and Freedoms

Include:

- Right to access to courts
- Immunity from deprivation of property without compensation
- Legal Professional Privilege
- Right to access legal counsel
- No deprivation of liberty, **except by law**
- Right to free speech

Deprivation of Liberty

- Al-Kateb v Godwin

Facts: Al-Kateb, stateless Palestinian, without Visa, placed in immigration detention. Application for protection Visa refused. Unsuccessfully asked to be removed: no country willing to accept him.

Legislative provisions:

- Unlawful non-citizen detained s 196 **must be kept in immigration** until he is (a) removed from Australia, deported, or granted a visa. (Can't be satisfied, upon the facts)
- An officer **must remove** a person **as soon as** **'reasonably practicable'** an unlawful non-citizen

Issue: 'Reasonably practicable'.

Does the **absence of clear, unambiguous words** invoke the presumption that Al-Kateb's liberty should **not be taken** from him indefinitely?

High Court Majority Held 4:3 as per *McHugh, Hayne, Callinan and Heydon JJ*: = **(Literal Approach/Purposive)**

Ratio:

- Not 'reasonably practicable' *now*, may be in *future*
- **PoL:** Provisions are **unambiguous:**
 - **Too clear** to read as being subject to a purposive limitation, or intending to have an affect that does not affect fundamental rights

Minority: as per *Gleeson CJ, Gummow and Kirby JJ:*

- **Alternative interpretation available:**
 - "Must be kept in detention" excludes where removal is not "reasonably practicable"
 - L simply *didn't cover situation* – thus, *did not contemplate and proceed with infringement*

Effect of PoL as per *Kirby J* =

- Compels for a construction that favors this interpretation, as there is a **strong presumption in Common Law, in favor of liberty**
- To impute on legislation, intention to curtail rights, it must be clearly manifested by unambiguous language to demonstrate
 1. P directed attention to curtailment
 2. Consciously decided upon it