

Just terms

Section 51 (xxxix) of the Constitution governs the Commonwealths abilities to acquire property, but only on just terms. It is an express limitation on all functions of the Commonwealth (Trade Practices Commission v Tooth & Co Ltd). However the High Court held there are a few exceptions to the principle of forfeiture and payment of debt

Paragraph Structure:

- There must be a property
 - There must be an acquisition
 - The acquisition must be inside the scope of s 51 (xxxix).
1. Is it property
 - a. Refers to the whole bundle of rights associated with ownership of the land, and seizing anything of that bundle constitutes property (Minister of State of the Army v Dalziel).
 - b. Later defined as 'extends to innominate and anomalous interests and includes the assumption and indefinite continuance of exclusive possession and control for the purposes of the Commonwealth of any subject of property' (Bank of NSW v Commonwealth)
 - c. Cause of action (Georgiadis v Australian and Overseas Telecommunications Corp)
 - d. Statutory rights? (Health Insurance Commission v Peeverill; Attorney-General (NT) v Chaffey)
 2. Is it acquisition
 - a. Commonwealth need not acquire interest (Trade Practices Commission v Tooth & Co Ltd)
 - b. Regulations may not be acquisition (Trade Practices Commission v Tooth & Co Ltd)
 - c. Not adjusting competing rights (Nintendo v Centronics System)
 - d. Not punishment for a crime (Attorney-General (NT) v Emmerson)
 3. Is it just terms
 - a. 'what is fair and just between the community and the owner of the thing taken' (*Nelungaloo Pty Ltd v Commonwealth (No. 1)*)
 - b. Significant Commonwealth discretion unless so unreasonable cannot find justification in minds of reasonable men (Poulton v Commonwealth (1953))

Whilst at first s 51 (xxxix) appeared to have no effect on territories (Teori Tau v Commonwealth), that decision has recently been overruled by a majority in Wurrildjal v Commonwealth.

Punitive Detention

At first, only criminal guilt determined by the courts could result in punitive detention (*Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs*).

However since 2004, the question on whether detention is punitive or non-punitive is a matter of the purpose of the legislation (*Re Woolley; Ex parte Applicants M276/2000*). A law will not be regarded as punitive unless deterrence is one of the principal objects of the law and the detention can be seen as punishment to deter others.

ACTS INTERPRETATION ACT 1901 - SECT 15AA

In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.