

## LAWS1021 – PUBLIC LAW – SUMMARY NOTES

### Summary of cases/principles

#### Topic 1

- 'Peace, welfare and good government' are not words of limitation – Union Steamship v King
- UK is a 'foreign power' as they no longer retain any residual influence on legislative, executive or judicial processes in Australia – Sue v Hill
- Political legitimacy still derived as long as people have had reasonable opportunity to become aware of rules; even if not everyone participates – Parker v South Eastern Railway
- Ultimate sovereignty lies in the body responsible for amending the Constitution – McGinty v WA
- Constitution is a living document – Roach v Electoral Commissioner

#### Topic 2 – Constitutional Amendment

- States have power to regulate their own Constitution – McCawley v The King

##### *C'th Manner and Form*

- Parliamentary sovereignty – imperial parliament cannot limit its own sovereignty but it can confer power on a subordinate legislature to do so – Attorney General (NSW) v Trethowan
- "a legislature has no power to ignore conditions of law-making that are imposed by the instrument which itself regulates its power to make laws" – Bribery Commissioner v Ranasinghe

##### *NSW Manner and Form*

- 'constitution, powers and procedure' of legislature – South Eastern Drainage Board (SA) v Savings Bank of South Australia
- Purported abdication of legislative power – West Lakes Ltd v SA
- Constitution = nature and composition; not only laws which abolish a House or its representative nature but also those which add to it – Attorney General (WA) v Marquet

#### Topic 3 – The Legislature and Representative Democracy

- Implied freedoms protect from power that would undermine the Const. – representative government – Lange v Australian Broadcasting Corporation; ACTV v Commonwealth
- s 7 and s 24 protect the freedom of people to exercise a free and informed choice as electors – Lange v Australian Broadcasting Corporation; ACTV v Commonwealth
- Implied rights can be curtailed if appropriate to a legitimate legislative purpose – Langer's case
- s 41 – dead letter provision – no express right to vote – R v Pearson; ex parte Sipka
- ss 8, 9, 24, 29, 30 and 31 – Wide discretion – Const. only prescribes the irreducible minimum requirements for representative government – Mulholland v AEC

##### *'One vote, one value'*

- No 'one vote, one value' but distribution can't be so grossly disproportionate as to challenge notion of direct election – Ex rel McKinlay v Commonwealth
- 'One vote, one value' does not apply to States – McGinty v WA

## Important sections

### Topic 1

#### ***Statute of Westminster:***

s 2: CLVA shall not apply to any law by Parliament of a Dominion – no law shall be void on the ground that it is repugnant

s 3: Parliament of a Dominion has full power to make laws having extraterritorial effect

s 4: UK Parliament not to legislate for a Dominion except by request and consent of the Dominion

#### ***Australia Acts:***

s 1: removed power of UK to legislate for Australia (incl. with “request and consent”)

s 2: confirmed plenary power of States to make laws for “peace, order and good government”

s 3 (1): removed repugnancy provisions

s 6: manner and form

s 7: Queen to be directly advised by state premier with respect to state matters

s 11: termination of appeals to UKPC

s 15: Australia Act and remaining parts of SOW entrenched

### Topic 2 – Constitutional Amendment

s 128: referendum to amend Constitution – majority of electors and a majority of electors in a majority of states

#### **Manner and Form: s 6 of Australia Acts:**

*Notwithstanding sections 2 and 3(2) above, a law made after the commencement of this Act by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whether made before or after the commencement of this Act.*

### Topic 3 – The Legislature and Representative Democracy

s 7: “The Senate shall be ... directly chose by the people of the State ...”

- Equal number of senators from each State
- Parliament can legislate to increase or reduce no of senators for each State, but must maintain equal representation of original States at no fewer than 6

s 24: “The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth ...”

- Proportionate to population

## Problem Questions – Check-lists

### Manner and Form

#### NSW:

Power: s 6 of Australia Acts

1. Doubly entrenched?
2. Purported abdication of power? (*West Lakes Ltd v SA*)
3. Is the amending law re the 'constitution, powers or procedure' of the Parliament? (*South Eastern Drainage Board (SA) v Savings Bank of SA*)
  - a. Not judiciary or any other body
  - b. *If not*, query whether *Ranasinghe principle applies*, or s 106
4. Consequences?

#### Commonwealth:

1. Discuss parliamentary sovereignty – *Attorney General v Trethowan*
2. Power: Ranasinghe principle
  - a. Is it an instrument which regulates the body's power to make laws?

### Electoral/Voting

1. Does the law operate as a disqualification from voting? Cf. *Rowe*
2. Is there a substantial reason? Cf. *Roach*
  - a. Reasonably appropriate and adapted to serve an end which is compatible with the maintenance of representative democracy
  - b. Connected to their ability to exercise right to vote/participate in electoral process

No 'one vote, one value' – but, is it 'grossly disproportionate'?

ss 7-9, 24, 29-31 only prescribe the irreducible minimum requirements for representative government

### Judicial Power

1. Is a judicial power being given to a non-judicial body?
2. Is a court being given non-judicial powers not incidental to their judicial functions?
  - a. If so,
    - i. Is it persona designata? (*Drake v Minister for Immigration & Ethnic Affairs*)
      1. Judge's consent? (*Grollo v Palmer*)
      2. Compatible with judge's performance of judicial functions?
      3. Compatible with judiciary's discharge of its responsibilities?
    - ii. Is it compatible with the court's institutional integrity? (*Momcilovic*)
3. Decisional independence?

### Control orders:

1. Is the court receiving some sort of discretion in the matter? Cf. decisional independence – important even if judge performing actions as persona designata (*Fardon v AG (Qld)*)
2. If ex parte, is there some sort of confirmation procedure? (*Thomas v Mowbray*)