

Topic 2: Manner & Form

Union Steamship case - state law is valid at face value, no need to explore if there are restraints

Kable v Durham - parliament has supreme power @ the state level

S.2 *WA Constitution Act* - peace, order, good government

Extra territorial restrictions:

State's territorial boundaries, land boundary, sea boundary is the low water mark - *Barnes v Cameron*

Extra territorial tests

- Sufficient connection (*Croft v Dunham*)
 - Test is applied liberally (*Pearce v Florenca*)
 - Remote connection is sufficient

Operating beyond state boundaries - WA can still regulate your move if:

- Any person who has relationship with the state (domicile)
- Any person concerned with any act within the state
- Any person concerned w/ any act outside the state which is connected with the state (*Pearce v Florenca*)

5 Ways - S. 6 of the Australia Acts:

1. Manner & form can be in ANY act of parliament
2. The LAW altering that provision must be a law respecting the constitution, powers, or procedure of the parliament - *Trethowan's Case, Comalco, Marquette*
 1. If proposed law fails this test, then it must be valid. Apply this to the LAW, not the manner & form provision!
3. M & F requirements must be mandatory
4. M & F must relate to legislative process - *Comalco*
5. Cannot abdicate legislative powers of state - *Westlakes Case*

Manner & form only valid if its:

- Doubly entrenched – applies to amendment & repeal

Other possibilities of manner & form:

- Reconstituting legislation - *Trethowan*
- Ranasinghe principle - If M & F is in state constitution, it must be valid
- S. 106 of the constitution

Topic 3 - Characterisation & Trade/Commerce

Characterisation - Interpretation

- Identify direct legal effect (characterise each section individually) if it falls within a head of power (S.51)
- Check whether any restriction on that power is infringed

Tools to characterise:

1) *Engineers' Case*

- Law must be interpreted using the natural & ordinary meaning of words (objective test)

- Rejected doctrine of states' reserve powers (*R v Berger*)
- Rejected intergovernmental immunity - *Railway Servants Case*

2) Connotation and Denotation

- Connotation is the fixed meaning of words at 1900 - essential attributes
- Denotation - flexible range of subjects w/ these attributes changing over time (*R v Brislan*)

3) History of drafting

- Permissible to refer to history *Cole v Whitfield*

Process of characterisation:

1) Characterise the law with respect to a head of power - this is a substance test, not mere form

- Identify each direct effect - *Fairfax v FCT* - what does the law oblige you to do?
- *Re Dingjan*
 - Determine each character of law - reference the rights, powers, liabilities, duties & privileges it creates
 - Is it connected to a head of power? e.g. 'with respect to'
- Mere economic connection is insufficient - *WA Airlines Case*

2) Decide whether the direct effect of the law falls within the a) core head of power b) incidental

- There are 2 sources of incidental powers:
 - express incidental power per s.51(xxxix) *Davis v Cth* - these are limited to the execution of powers of those branches of commonwealth
 - implied incidental power in each heads
 - The control of which is necessary to effectuate the main purpose - *Grannall v Marrickville Margarine*
 - Concept of proportionality was rejected in *Leask*

2 forms of severance:

- Cut out invalid part (divisible) *ANA Case*
- Read down provisions so as to fall w/n power - *Western Airlines*

Trade & Commerce power

S. 51(ii) - not just regulates trade & commerce, can allow Cth to engage itself in interstate & overseas trade & commerce

3 Issues:

- Trade & commerce means movement of goods, people & intangibles *W A McArthur*
 - It doesn't include mere manufacture/production - *Grannall*
- Activities of trade & commerce are movement of goods from one state to another & beyond the territorial limits

Murphyores - Cth can regulate import/export of goods into Australia, Parliament can impose any conditions it thinks fit on imports/exports

Implied incidental power test