

TRADE AND COMMERCE POWER

- **Section 51 (i).** The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:(i) **trade and commerce with other countries, and among the States;**
- Section 51 (v) postal, telegraphic, telephonic and other like services; s 51 (xii) banking and s 51 (xiv) insurance together with s 51 (xvii) bankruptcy, s 51 (xvi) bills of exchange and promissory notes, s 51 (xviii)(copyright and other form of intellectual property.

ELEMENT 1: Is the subject matter part of “Trade and Commerce”?

The “essence of “trade” is buying and selling: *St. George County Council*

Trade is both:

1. The act of transporting/delivering (at least for reward) : *ANA Case*
2. All commercial arrangements of which transportation is a direct and necessary result form part of trade or commerce : *McArthur*
3. The preliminary mutual communings, negotiation and bargaining oral or written. *McArthur*
4. Intangibles (gas, electricity, visual signs, communication: *Bank Nationalisation case*

ELEMENT2: Is the stuff going “Interstate” T&C? – Must operates outside of state only then Commonwealth can regulate. If within own state, CTH cannot regulate.

- It is ONLY interstate and international trade and commerce which falls under the ambit of s.51(1) (**as opposed to INTRASTATE or local trade or commerce**)
- Therefore, a Cth law which affects interstate trade will be valid.

- **TRANSPORT** - If the law applies to Transport, anything that crosses a border is interstate T&C

- **INTANGIBLES** - The movement of Intangibles (like credit) across borders is i/s

commerce *Bank Nationalisation Case*

*** A business in two States is not necessarily doing trade or commerce among the States:**

Street v. Qld Bar Association

HELD:- A Barrister who takes some briefs in Sydney and some briefs in Brisbane is not really in interstate trade or commerce because the matters in which he acts in Sydney are purely NSW matters and the matters on which he was going to act in Brisbane were Qld matters.

- The fact that he gets on a plane b/w them does not make acts of interstate trade or commerce.

ELEMENT 3: What is the extent of the Commonwealth Power?

- **Now that we have categorised the subject matter as T&C and I/s or OS, does it fall within s.51(1)**
- **“HEART”** - laws directly relating to interstate or overseas trade or commerce

Laws which REGULATE trade or commerce

Huddart Parker v Commonwealth (1931)

Facts: The Commonwealth required union preference in employment to be given on all ships engaged in interstate and international trade

Issue: Was this law within the trade and commerce power?

Held: This is a power incidental to the trade and commerce power and thus valid.

Australian National Airways LTD V Commonwealth (1945)

Facts: The Commonwealth established an airline to fly interstate and international routes

Issue: Does the trade and commerce power allow the Commonwealth to engage in trade and commerce or only to regulate it?

Decision: The Commonwealth may engage in trade and commerce as well as regulate it.