

LAW314 Constitutional Law

MQ 2017 Sem 1

Covered Topics:

- 1. External Affairs**
- 2. Corporations**
- 3. Inconsistency**
- 4. Interstate Trade**
- 5. Executive Power**
- 6. Executive Power of Appropriation/Spending**
- 7. Executive Power to Contract**
- 8. Executive Detention**
- 9. Judicial Power**
- 10. State Courts and Inconsistency**
- 11. Implied Right to Vote**
- 12. Implied Freedom of Political Communication**
- 13. ATSI**

Tests for Constitutional Law

External Affairs

Constitution	S 51(xxix) – Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to... external affairs.
Test	<p><u>Specificity</u> – <i>Industrial Relations Case</i></p> <ul style="list-style-type: none"> - Act has to be in sync with the treaty with the same regime. <p><u>Proportionality</u> – <i>Tasmanian Dam Case</i></p> <ul style="list-style-type: none"> - Act is in good faith to obligations for treaty - Act is more proportionate with regards to treaty - Act has to identify a purpose of object, itself a legitimate subject of external affairs. <ul style="list-style-type: none"> ▪ The purpose must explain the operation of law to an extent that warrants the overall characterisation of the law as one with respect to external affairs. <ul style="list-style-type: none"> • Relatability/proportionality must be clear and referable to the purpose of the treaty. <p><u>International Concern</u> –</p> <ul style="list-style-type: none"> - The subject matter has to affect international relations – <i>Koowarta Case</i> - Integrity of foreign states may be a subject matter of law with respect to external affairs – <i>Thomas v Mobraay</i>

Corporations

Constitution	S 51 (xx) – 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: foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth
Test	<p>Determining whether the Corporation is a Trading or Financial Corporation:</p> <ul style="list-style-type: none"> - The Activities Test – <i>Adamson's Case</i> <ul style="list-style-type: none"> ▪ Trading activities must be of a significant proportion to the trading corporations <ul style="list-style-type: none"> • Does NOT have to be predominant purpose. - The Purpose Test – <i>Queensland Brails</i>, is sometimes applicable – best to use both Activities and Purposive Test <ul style="list-style-type: none"> ▪ The purpose of the organisation <p>Determining whether the Act is constitutionally valid:</p> <ul style="list-style-type: none"> - The Act significance to the activities, functions, relationships or businesses to constitutional corporations. – <i>Work Choices Case</i> and Gaudron J's dissent in <i>DIngjan</i>. <ul style="list-style-type: none"> ▪ s 51(xx) extends to regulating the persons by and through whom constitutional carry out business functions and activities ▪ s 51(xx) extends to laws protecting the business of constitutional corporations – <i>Actors' Equity</i> case - Object of Command <ul style="list-style-type: none"> ▪ Constitutional corporation is an object of command (law), permitting or prohibiting a trading or financial corporation from engaging in conduct forming relationships.