

Constitutional Law and the Australian People

PROPERTY RIGHTS 3

- SECTION 51(xxxi) 3
1. DO THE FACTS FALL WITHIN THE SCOPE OF S 51(xxxi)? 4
 2. DOES/DID [X] HAVE A PROPERTY INTEREST? ERROR! BOOKMARK NOT DEFINED.
 3. DOES THE LEGISLATION PURPORT TO AUTHORISE OR EFFECT AN ACQUISITION OF PROPERTY? ERROR!
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4. DOES THE LEGISLATION REPRESENT A REASONABLE MEANS OF ACHIEVING A COMMONWEALTH END THAT MAKES JUST TERMS IRRELEVANT OR INCONGRUOUS BECAUSE 'THE ACQUISITION OF PROPERTY WITHOUT JUST TERMS [WAS] A NECESSARY OR CHARACTERISTIC FEATURE OF THE MEANS PRESCRIBED'? Pg1232 ERROR! BOOKMARK NOT DEFINED.
 5. WERE THE TERMS OF THE ACQUISITION JUST? ERROR! BOOKMARK NOT DEFINED.

FREEDOM OF RELIGION S116 ERROR! BOOKMARK NOT DEFINED.

1. ESTABLISHMENT CLAUSE ERROR! BOOKMARK NOT DEFINED.
2. FREE EXERCISE ERROR! BOOKMARK NOT DEFINED.
3. RELIGIOUS OBSERVANCE ERROR! BOOKMARK NOT DEFINED.
4. RELIGIOUS TEST FOR OFFICE UNDER THE COMMONWEALTH ERROR! BOOKMARK NOT DEFINED.

IMPLIED FREEDOM OF POLITICAL COMMUNICATION ERROR! BOOKMARK NOT DEFINED.

1. IMPLIED DOCTRINES ERROR! BOOKMARK NOT DEFINED.
 2. IMPLIED DOCTRINE OF FREEDOM OF EXPRESSION/SPEECH ERROR! BOOKMARK NOT DEFINED.
 3. IMPLIED FREEDOM OF POLITICAL COMMUNICATION ERROR! BOOKMARK NOT DEFINED.
- LANGE TWO PART TEST**
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 7. DOES THE LEGISLATION SERVE A LEGITIMATE END? ERROR! BOOKMARK NOT DEFINED.
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- BOOKMARK NOT DEFINED.**
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 10. IS THE LAW ADAPTED TO SERVING THE LEGITIMATE END? (IS IT PROPORTIONATE TO THAT END?) ERROR!
- BOOKMARK NOT DEFINED.**

JUDICIAL PROCESS RIGHTS ERROR! BOOKMARK NOT DEFINED.

1. USURPATION ERROR! BOOKMARK NOT DEFINED.
 2. RETROSPECTIVITY ERROR! BOOKMARK NOT DEFINED.
 3. FAIR TRIAL: ERROR! BOOKMARK NOT DEFINED.
 4. IMPARTIALITY, INDEPENDENCE AND INTEGRITY ERROR! BOOKMARK NOT DEFINED.
 5. DETENTION ERROR! BOOKMARK NOT DEFINED.
- NON-JUDICIAL DETENTION** ERROR! BOOKMARK NOT DEFINED.
- EXCEPTIONS** ERROR! BOOKMARK NOT DEFINED.
- 1: NON-PUNITIVE DETENTION ERROR! BOOKMARK NOT DEFINED.
- IMMIGRATION DETENTION ERROR! BOOKMARK NOT DEFINED.
- 2: PUNISHMENT WITHOUT CRIMINAL GUILT [FOUND BY JUDGE/COURT] ERROR! BOOKMARK NOT DEFINED.
 - 3: DETENTION OTHER THAN BY JUDGES / JUDICIAL PROCESS[?] ERROR! BOOKMARK NOT DEFINED.

TRIAL BY JURY ERROR! BOOKMARK NOT DEFINED.

S 80 TRIAL BY JURY	ERROR! BOOKMARK NOT DEFINED.
COMPARISON TO US	ERROR! BOOKMARK NOT DEFINED.
WAIVING RIGHT TO TRIAL BY JURY (<i>BROWN V THE QUEEN</i> (1986) 160 CLR 171)	ERROR! BOOKMARK NOT DEFINED.
JURY UNANIMITY (<i>CHEATLE V THE QUEEN</i> (1993) 177 CLR 541) NOTE OUTCOME: 'READING DOWN'	ERROR!
BOOKMARK NOT DEFINED.	
MAKEUP OF JURY?	ERROR! BOOKMARK NOT DEFINED.
NON-APPEALABILITY OF DIRECTED ACQUITTAL	ERROR! BOOKMARK NOT DEFINED.

POLITICAL RIGHTS

ERROR! BOOKMARK NOT DEFINED.

POLITICAL RIGHT: VOTING	ERROR! BOOKMARK NOT DEFINED.
1. EXPRESS RIGHTS	ERROR! BOOKMARK NOT DEFINED.
2. IMPLIED RIGHT TO VOTE	ERROR! BOOKMARK NOT DEFINED.
MUST ANSWER	ERROR! BOOKMARK NOT DEFINED.
RIGHT TO VOTE AND CITIZENSHIP	ERROR! BOOKMARK NOT DEFINED.

RULE OF LAW

ERROR! BOOKMARK NOT DEFINED.

FORMAL	ERROR! BOOKMARK NOT DEFINED.
SUBSTANTIVE	ERROR! BOOKMARK NOT DEFINED.
CONSTITUTION AS MEANING THREE THINGS;	ERROR! BOOKMARK NOT DEFINED.

SECTION 117

ERROR! BOOKMARK NOT DEFINED.

1. IS THE PERSON A SUBJECT OF THE QUEEN AND A RESIDENT IN ANY STATE?	ERROR! BOOKMARK NOT DEFINED.
2. DOES THE SECTION DISCRIMINATE AGAINST THE PERSON?	ERROR! BOOKMARK NOT DEFINED.
3. IS THE DISCRIMINATION PERMISSIBLE?	ERROR! BOOKMARK NOT DEFINED.
4. RUBBERY CONCEPTS / BROAD PRINCIPLES	ERROR! BOOKMARK NOT DEFINED.

SECTION 92

ERROR! BOOKMARK NOT DEFINED.

PRE 1988	ERROR! BOOKMARK NOT DEFINED.
POST 1988	ERROR! BOOKMARK NOT DEFINED.
GIFT	ERROR! BOOKMARK NOT DEFINED.
NOT GIFT	ERROR! BOOKMARK NOT DEFINED.
COLE V WHITFIELD:	ERROR! BOOKMARK NOT DEFINED.
CASTLEMAIN TOOHEYS LTD:	ERROR! BOOKMARK NOT DEFINED.
A) DISCRIMINATION	ERROR! BOOKMARK NOT DEFINED.
B) PROTECTIONISM	ERROR! BOOKMARK NOT DEFINED.
BETFAIR PTY LTD V WA [2008] 11 HELD:	ERROR! BOOKMARK NOT DEFINED.

Column A (all problems)	Column B
Property Rights	Section 80 (essay) – Trial by Jury
Section 116 (religion)	Political rights (problem)
Implied Freedom of Political Communications	Rights and the rule of law (essay)
Judicial process rights	Section 117 (problem)
	Section 92 (essay)

PROPERTY RIGHTS

- Property rights are not phrased as a “rights based approach”
- Head of power of Commonwealth parliament
- Commonwealth parliament can pass law regarding this area in accordance with constitution

Section 51(xxxi)

*“The **acquisition** of property on **just terms** from any State or person for any purpose in respect of which the Parliament has power to make laws”*

Is this property?

Peverill: Brennan J (pg. 243/1236):

- **Not property because:**
 - not assignable
 - No property rights then you cannot pass rights to other people
 - not susceptible of repetitive or continuing enjoyment
 - “can use the book for years”
 - cannot be exchanged for or converted into any kind of property
 - Eg. Book converting to \$5 = property
 - no permanence or stability

Minister of State for the Army v Dalziel (1944) 68 CLR 261

- Facts: Under the *National Security (General) Regulations* (Cth), the Cth took vacant land in Sydney being let by a weekly tenant
 - CTH pass law that allowed them to get vacant or leased property
 - Is a weekly leasing tenant, is that property?
- Rules: wide understanding of ‘property’: **‘any tangible and intangible thing which the law protects under the name of property’**.
 - Even weekly tenant using land (lease) for parking is property interest
 - Case set up broad understanding of property

Victoria v Cth (Industrial Relations Act Case) (1996) 187 CLR 416

- ‘every species of valuable right and interest including choses in action’.
 1. Chose in action: Eg right to sue somebody in tort or contract is a property right

Section 51(xxxi): Property Rights

1. Do the facts fall within the scope of s 51(xxi)?

- ✓ Is this bankruptcy, tax or forfeiture (eg this is not tax...)
- ✓ Most likely the answer is no

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