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Corporations Power [s51(xx)]

TDC: s10(4)...for the purposes of its trading activities

Gibbs CJ, Mason, Murphy, Brennan and Deane JJ found the law valid (although Gibbs doesn't think the company was a trading corporation)

Principle: Commonwealth has power in non-trading activities of trading corporations used for trading. This extended CW power over non-trading activities. Also established principle of dual characterisation for the head of power. If the regulation is within power, then the incidental power will also be valid e.g. penalties.

Engineers Case: interpret the text literally, give the word its natural meaning.

- 1) Interpret it against the background of the state law
- 2) Constitution is intended to endure, so must be interpreted in a way that it can remain relevant in the future.
- 3) There is limitation on CW power which could be textual restrictions or necessary implications as opposed to vague implications like reserved powers, which was not accepted in this case.

Object of Command test

Strickland v Rocla Concrete Pipes (1971): s51(xx) is free from any restriction found in s51(i), regarding intrastate trade it is ok for the CW law to regulate it. As long as it is regulating trading activities of trading corporations then it is within power and it doesn't matter if it is interstate.

Barwick's Object of Command test: where the law directs its command to a trading corporation, there must be directing its requirements to the corporation. However, just because it happens to apply to a corporation is not sufficient connection to make the law valid under s51(xx) there needs to be a nexus.

Can use corporation power to protect corporations

Fontana Films (1982): Prevented people from doing damage to a trading corporation, the law found to be valid because it was found to be protecting the trading activities of trading corporations, therefore a law that is protecting the trading activities of trading corporations will be valid (in power). Fontana found that laws applying to persons not CC can be valid if there is sufficient connection to the head of power, in this case the connection was protecting the trading corporations.

Justice Stevens on Dual characterisation: the law didn't lose its trading corporation character just because it also referred to industrial relations.

Object of command test

Work Choices case: The concerned law was to transform the industrial relationship with employees, it was held to be valid.

Object of command test: The law has the constitutional corporation (CC) as its object of command i.e. confers a duty/liability/right or privilege only on a CC.

Eg: Section XX 'No constitutional corporation shall' OR Section YY 'No employer shall'; 'Employer is defined as (i) constitutional corporation; (ii) Cth etc etc'

However, if the law is phrased like the following:

Section ZZ 'No person shall'; 'This prohibition extends to constitutional corporations'

In section ZZ, the law merely extends to corporations. Therefore, without more, there will not be a sufficient connection

Sufficient connection to CC

ENDORSED FONTANA FILMS therefore laws applying to person not CC can be valid if there is sufficient connection to the head of power.

Gaudron J: Re Pacific Coal 4 Categories of acceptable connections

1) Activities

2) Relationships

3) Business: such as Provisions imposing duties on others where that action was sufficiently connected with the corporation including regulation of what industrial action can be taken against a commonwealth constitution, regulating advising, encouraging or inciting a corporation to do something or making misrepresentations of the nature of employment of a corporation or controlling entry into a premise occupied by a commonwealth constitution

4) Functions

Valid provisions in work choices

1) provisions regulating the activities of corporations

2) provisions regulating the relationships of constitutional corporations

3) provisions imposing duties on others whose action is sufficiently connects to CC

4) Provisions setting up a registration system for associations

5) Provisions for the incorporation of those associations

Example of cases without sufficient connection

Re Dingjan: Example of a case without sufficient connection, they were just trying to use the corporations as a mere peg/hook for the CW to have power over the matter. The law regulated contracts 'relating to the business of a CC'. The legislation didn't regulate or govern the activities of trading corporations, it regulated the conduct of persons outside the corporations and had not direct impact on the business or CC.

Brennan CJ, Dawson, Toohey and McHugh JJ held that the legislation didn't have a sufficient connection to CC, had to be more 'more than insubstantial, tenuous or distant' (endorsed in Work Choices)

Williams 2: Father was concerned about chaplaincy services in schools, they were getting funding from CW to provide these services.

Reasons for making the law invalid

1. This law didn't regulate those corporations, it just gave them money and that won't give a sufficient connection. It wasn't altering the CC's rights or capacity to do certain things, it wasn't changing the corporations ability to enter into an arrangement
2. Law didn't authorise or regulate any new or different activities or functions or relationships and it wasn't regulating the behaviour of the people working on behalf of the CC.
3. Court might have been concerned the commonwealth was changing the character of the CC and incorporating it, by changing it from a corporation into a CC by giving it money, it was transforming the character of the entity into a CC. Without the money it wouldn't be a trading corporation, so the grant itself was bringing the entity into power., into a trading corporation so it's not enough to form the basis of a sufficient connection. (this was a hypothetical change)

When is a corporation a CC?

Work Choices Case: What is a foreign corporation? A foreign corporation is a corporation formed outside the limits of the Commonwealth

Testing for a trading or financial corporation - Current activities test

Adamson's case (1979): Trading corporation case. The current activities test: (1) A corporation is a trading corporation if trading activities form a sufficiently significant proportion of its overall activities (not the purpose test), cannot be 'so slight and so incidental to some other principal activity'. (2) Only needs to generate revenue, not profit [but only considered if the business generates a revenue].

State Superannuation Board (1982): Financial corporation case. Endorsed Adamson's current activities test. Financial is dealings or transactions in which the subject of the finance is financial such as borrowing or lending money compared to sales and purchase of goods and services which would be under trade.

Fencott v Muller (1983): In regards to shelf companies (no current activity). Mason, Murphy, Brennan and Dean reject the argument that it cannot be a CC because it has no activity. If the company hasn't