

# Constitutional Law: Case Summaries

## Topic 2: State legislative power

Union Steamship Co v King (1988) 166 CLR 1	
<b>Trigger word</b>	Peace, welfare and good government.
<b>Facts</b>	King was a seaman employed by the appellant company - he developed boilermaker's deafness as a result of working and, under the s46 Workers Compensation Act 1926 (NSW), he wanted a compensation claim for an injury occurring on a ship anywhere in the world. Because it operated extraterritorially, the appellant company argued it wasn't for the 'peace, welfare and good government of NSW'. The Court of Appeal dismissed this argument and it went on to be appealed to the High Court.
<b>Issue</b>	What do the words 'peace, welfare and good government of New South Wales' mean in terms of granting the State powers to make laws?
<b>Decision</b>	Ultimately, the phrase means to convey a general sense of promoting the welfare of the community
<b>Principle</b>	Rejected this argument and said that peace, order and good government were plenary words not a limiting giving of power and they were not limiting. They made this decision because it would otherwise undermine parliamentary sovereignty. Gibbs J said that even if there is a very remote and general connection between the subject matter of the legislation and the State, then this will suffice.
Taylor v A-G of Queensland (1917) 23 CLR 457	
<b>Trigger word</b>	GG and judge.
<b>Facts</b>	The Board was asked whether a Queensland statute authorising the Governor in Council to appoint a judge of the Court of Industrial Arbitration to hold office for seven years, was in fatal conflict with a provision of the 1859 Order in Council and a section of the Constitution Act 1867.
<b>Issue</b>	Power to enact statute?
<b>Decision</b>	It was not, since the legislature of Queensland had power to enact the Queensland statute both under s.5 of the 1865 Act and under clause 22 of the Order in Council.
<b>Principle</b>	Lord Birkenhead compared and contrasted controlled and uncontrolled constitutions: a constitution [is not] debarred from being reckoned as an uncontrolled constitution because it is not, like the British constitution, constituted by historic development, but finds its genesis in an originating document which may contain some conditions which cannot be altered except by the power which gave it birth. It is of the greatest importance to notice that where the constitution is uncontrolled the consequences of its freedom admit of no qualification whatever.'
McCawley v R [1920] AC 691	
<b>Trigger word</b>	Judge tenure
<b>Facts</b>	QLD had a constitution of 1867, in 1916 they enacted the <i>Industrial Arbitration Act</i> (Qld) 1916.
<b>Issue</b>	SC judges appointed for life, yet this act established a court that wanted the court to be staffed by judges with 10 years tenure. Whether this was unconstitutional all depended on whether the QLD constitution was controlled or uncontrolled.

***McCawley v R [1920] AC 691***

<b>Decision</b>	QLD is uncontrolled. An ordinary act of parliament can be overruled by an ordinary law. Found the act was not unconstitutional
<b>Principle</b>	When later legislation is inconsistent with legislation, we assume that parliament knew this and that they were happy to impliedly repeal the earlier legislation.

## Topic 3: Manner and Form Requirements

<b><i>A-G (NSW) v Trethowan (1931) 44 CLR 394</i></b>	
<b>Trigger word</b>	Reconstitution of upper house
<b>Facts</b>	Ss1 said that the upper house cannot be abolished or reconstituted, except in the manner provided in this provision. Section 7 ss2 said a bill regarding abolishing or reconstituting the upper house cannot be presented for royal assent before it has been approved the electors. A Bill in 1917 tried to use the 1908 Act to abolish the Legislative Council. Needed a referendum if going to abolish the upper house. In 1917 a QLD government tried to use the procedure in L1 to abolish the upper house.
<b>Issue</b>	Does the L2 amendment actually come within the scope of L1? Did the Parliament of NSW have the authority to abolish the Legislative Council of NSW without requiring a referendum?
<b>Decision</b>	Yes, the 1930 Bill attempted to abolish the upper house. Reconstitute or alter the composition of the upper house you need a referendum. They attempted to do that.

<b><i>West Lakes v SA (1980) 25 SASR 389</i></b>	
<b>Trigger word</b>	Special majority
<b>Facts</b>	(L1) SA government and a corporation entered into an agreement but the agreement required the consent of the corporation to alter the agreement (contract). The problem was this agreement was given the force of law. Basically the law could not be changed unless the corporation gave consent to changing it.
<b>Issue</b>	Does the L2 amendment actually come within the scope of L1? Was a requirement that West Lakes Ltd approve of any legislative changes a valid manner and form requirement?
<b>Decision</b>	Held it was not, as it was not entrenched itself (making itself subject to removal), was not likely to be met (making it an unconstitutional limitation), and involved the authority of a non-parliamentary body, which valid manner and form requirements cannot do.
<b>Principle</b>	There will be some point in which a special majority becomes too onerous and it would be seen as a substantive fetter on the later parliament. It will go from being merely procedural to in truth being a substantive fetter that takes away parliaments power to enact that law. Further, if you are trying to get somebody else involved in decision making (some other body), it must be representative in character.

<b><i>AG (WA) v Marquet (2003) 217 CLR 545</i></b>	
<b>Trigger word</b>	Absolute majority
<b>Facts</b>	Concerned an <b>absolute majority</b> (51% of those who can vote to vote in favour). This was a valid manner and form.
<b>Issue</b>	Does the L2 amendment actually come within the scope of L1?
<b>Decision</b>	The L1 spoke about amending electoral distributions. L2 didn't amend that law, they repealed that law and made a new law. Did the scope of L2 actually come from the scope of L1? Answer is yes.
<b>Principle</b>	Have to make sure the two laws are linked. <i>Marquet</i> said that Ranasinghe was not a basis for Australian constitutional law.

***Taylor v AG (Qld) [1917]***

<b>Trigger word</b>	Referendum
<b>Facts</b>	(L1) This act said that if there is a deadlock between the lower and upper house that deadlock gets put to a referendum. If the voters approve the bill at referendum, basically the law bypasses the upper house and goes straight to legal assent. Basically restricting the upper houses power. (L2) A Bill in 1917 tried to use the 1908 Act to abolish the Legislative Council. Needed a referendum if going to abolish the upper house. In 1917 a QLD government tried to use the procedure in L1 to abolish the upper house. If L1 is a valid manner and form the only valid way that L2 can be enacted is through that referendum.
<b>Issue</b>	Does the L2 amendment actually come within the scope of L1?
<b>Decision</b>	Yes, the 1917 Bill attempted to abolish the upper house. The L1 was all about changing the composition of the legislative council and the L2 attempted to abolish the upper house. Connection.

## Topic 4: Executive powers of the Commonwealth

<b><i>Victorian Stevedoring and General Contracting Co. v Dignan (1931) 46 CLR 73</i></b>	
<b>Trigger word</b>	Transport workers act
<b>Facts</b>	Transport Workers Act; 'Notwithstanding anything in any other Act of Parliament, ...shall have the force of law.' GG's power to override legislation. Whether separation of powers prevented handing over this power. Parliament had given the GG very broad powers. All the Act did was give the GG the power to make laws. There were no guidelines regarding how the GG ought to make regulations under this law. Secondly the broad legal regime was not established. Thirdly, the notwithstanding provision expressly authorised the GGs power to override parliamentary legislation.
<b>Issue</b>	Did the separation of powers doctrine prevent the federal parliament from delegating such a broad law making power to the executive to make laws?
<b>Decision</b>	NO. HCA upheld this delegation of law making power. It does describe some limits however on delegating law making power to the executive. Separation of powers did not prevent this delegation of law making power.
<b>Principle</b>	Any delegation of power from parliament to the executive must be 'with respect to' one of the subject matters that the Commonwealth has power over. Parliament has power to delegate. Parliament can hand some of this power to the executive to make delegated legislation.
<b><i>New South Wales v Commonwealth ("Work Choices case") (2006) 229 CLR 1</i></b>	
<b>Trigger word</b>	Work Choices Case
<b>Facts</b>	s356 of the <i>Workplace Relations Act 1996</i> . Not allowed to put "prohibited content" in workplace agreements between employers and employees. But it was too hard to define so they said that they would put prohibited content in regulations. By regulation, the executive got to decide what could be agreed to between an employer and an employee and what could not be agreed to. This was to reduce workers rights.
<b>Issue</b>	P's complained there was a too broad a delegation of legislative power to the executive.
<b>Decision</b>	Majority held that the delegation was valid.
<b><i>Victoria v Commonwealth and Hayden (1975) 134 CLR 338 ('AAP Case')</i></b>	
<b>Trigger word</b>	Australian Assistance Plan (AAP)
<b>Facts</b>	Australian Assistance Plan. Administrative scheme that set up regional councils for social development. The councils were then given money to do their social development and the councils could then give that money to other institutions including state and federal agencies, local agencies, NGO's, volunteer organisations, churches etc.
<b>Issue</b>	Did the Cth executive have the power to administer such a program? Where did this power come from?
<b>Decision</b>	Yes they have the power, but the case of Pape rejects this.
<b>Principle</b>	The outcome of this case is no longer good law. In this topic we care about AAP because it helps define nationhood power and understand the relevance of nationhood power as an alternative basis to executive spending.
<b><i>Williams v Commonwealth (2012) 248 CLR 156 ('Williams No 1')</i></b>	
<b>Trigger word</b>	School chaplains

<b>Williams v Commonwealth (2012) 248 CLR 156 ('Williams No 1')</b>	
<b>Facts</b>	W had an issue with the Commonwealths funding of school chaplains in public schools. Did the executive have power to spend money on chaplains and contract people to do this job. Important because on this case, the spending was not authorised by legislation
<b>Issue</b>	Did the executive have power to spend money on chaplains and contract people to do this job?
<b>Decision</b>	Majority held that The Commonwealth does not have unlimited autonomous power to enter into contracts and to spend like other people. The K was not authorized by legislation, it had to come within the inherent power of the executive to contract. Concerned that if Cth could enter into K's they could fetter the powers of future executives.
<b>Williams v Commonwealth (2012) 248 CLR 156 ('Williams No 2')</b>	
<b>Trigger word</b>	School chaplains
<b>Facts</b>	If <i>Williams (No 1)</i> is correct, are the regulations valid under s 51(xx) head of power?
<b>Issue</b>	What head of power was this act linked to?
<b>Decision</b>	<i>Williams (No 1)</i> confirmed and strengthened. Six judges agreed. Unanimous HC decision. The Executive needs legislation authorisation to spend, at least where the expenditure is outside the nationhood power, or the prerogative power. Before cases there was unlimited autonomous power to contract/spend, via inherent executive powers. After there is no unlimited autonomous executive power to spend/contract. Executive needs specific authorisation to spend.
<b>Plaintiff M68/2015 v Minister for Immigration and Border Protection (2016)</b>	
<b>Trigger word</b>	Nauru detention centre. Authority?
<b>Facts</b>	Detained in Nauru. P challenged the constitutionality of his detention in Nauru. Understand that there is an intergovernmental agreement for detention. Australia funds the detention centres and they are run by private entities contracted by the Australian government.
<b>Issue</b>	Where is the authority to do this? (no bill of rights)
<b>Decision</b>	Lim not relevant. Nothing to say about the validity of actions of the Commonwealth participating in the detention of an alien by another state. Merely participating in Nauru's detention of these people.
<b>CPCF v Minister for Immigration and Border Protection (2015) 255 CLR 514</b>	
<b>Trigger word</b>	Sri Lankan turn back case
<b>Facts</b>	P were Sri Lankan who were on an Indian flagged ship. Intercepted by Australian authorities who had reasonable grounds to assume that the Indian ship with the Sri Lankan people on board were going to Australia to seek asylum. This is a <u>turn back case</u> .
<b>Issue</b>	Was there false imprisonment by the Commonwealth for this month? If there was statutory authorisation for the detentions this would be fine, but if non-statutory authorisation to detain there is a problem as this is prohibited under the Limb principle.
<b>Decision</b>	The actions were valid under s 72(4) Maritime Power Act 2013 (Cth) which gave the executive the power to detain. The claim dismissed