

# JUDICIARY SCAFFOLDS

## Judiciary Scaffold 1: Power vested in **Federal Court**

Where Commonwealth Legislation purports to confer power on a Federal Court (to assess whether the Legislation is constitutionally valid):

<b>1. Identify whether the function is under Federal Jurisdiction</b>	<ul style="list-style-type: none"> <li>Federal Courts can only exercise Federal Jurisdiction</li> <li>Is the power over matters within one of 9 categories of disputes listed in ss 75 and 76? <ul style="list-style-type: none"> <li><b>Yes:</b> Move on</li> <li><b>No:</b> Cannot be conferred to Federal Courts</li> </ul> </li> </ul>
<b>2. Determine whether the Court meets description of Chapter III Court</b>	<ul style="list-style-type: none"> <li>Only bodies meeting description of Courts under Chapter III can exercise Federal Judicial Power → <i>Boilermakers Limb 1</i></li> <li>2 considerations: <ol style="list-style-type: none"> <li>Does it meet requirements under ss 72?</li> <li>Do members of court have characteristics of judges?</li> </ol> </li> <li>Is it a Chapter III Court? <ul style="list-style-type: none"> <li><b>Yes:</b> Can be conferred federal power. Move on.</li> <li><b>No:</b> Cannot be conferred federal power. Legislation invalid</li> </ul> </li> </ul>
<b>3. Determine whether the function being conferred is 'judicial'</b>	<ul style="list-style-type: none"> <li>Chapter III Courts can only exercise judicial powers, or functions <i>incidental</i> to the exercise of judicial power → <i>Boilermakers Limb 2</i></li> </ul>
	<b>3.1. Does the power fall within a recognised category?</b> <ul style="list-style-type: none"> <li>If re punishment/detention – go to <b>3.4</b></li> <li><u>Judicial</u>: Statutory interpretation, determining constitutional validity, reviewing Executive action</li> <li><u>Non-Judicial</u>: Legislative/policy recommendations, appropriation of public revenue</li> <li><b>Yes:</b> Function can be conferred (if judicial) or cannot be conferred (if non judicial)</li> <li><b>No:</b> Go to <b>3.2.</b></li> </ul>
	<b>3.2. Asses Indica</b> <ul style="list-style-type: none"> <li>Need to balance various factors to determine whether, as a whole, the function is 'judicial'</li> <li>Consider: Whether coercive, determination of existing rights/obligations, legally enforceable, application of standards/ procedures</li> <li>Note Chameleon Principle</li> <li>Is the function, on balance, judicial? <ul style="list-style-type: none"> <li><b>Yes:</b> Can be conferred. Go to <b>4</b></li> <li><b>No:</b> Go to <b>3.3.</b></li> </ul> </li> </ul>
	<b>3.3. Is it Incidental to the Exercise of a judicial function?</b> <ul style="list-style-type: none"> <li><b>S 51 (xxxix)</b> extends power of Chapter III Courts to perform functions <i>incidental</i> to the exercise of judicial power (ie which facilitate such)</li> <li>Can the function be characterised as incidental to judicial power? <ul style="list-style-type: none"> <li><b>Yes:</b> Can be conferred. Go to <b>4</b></li> <li><b>No:</b> Cannot be conferred. <b>Is invalid.</b></li> </ul> </li> </ul>
	<b>3.4. Punishment</b> <ul style="list-style-type: none"> <li>Punishment is generally only a valid judicial function where it is made based on <u>an adjudication and finding of criminal guilt</u> → <i>Benbrika</i></li> <li><b>a. Is it punitive?</b> <ul style="list-style-type: none"> <li><u>Detention</u>: Is punishment unless it is (<i>Lim</i>):</li> </ul> </li> </ul>