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Template E: Express rights (s 51(xxxi), s 116, s 92, s 117, s 80)

Use this template when a fact pattern raises an express constitutional guarantee. The structure is the same regardless of the right.

Step 1. Identify the right and the law

The law in issue is [section X of the Y Act]. The relevant constitutional guarantee is [s 51(xxxi) just terms / s 116 freedom of religion / s 92 freedom of interstate trade / s 117 out-of-State residents / s 80 jury trial].

Step 2. Apply the elements of the guarantee

Section 51(xxxi) requires that any acquisition of property by the Commonwealth be on just terms. Property is broadly construed (Dalziel; Bank of NSW). Acquisition extends beyond formal title to assumption of indefinite exclusive possession and control (Bank of NSW), and to extinguishment of a cause of action (Georgiadis), but not always to mere extinguishment without a corresponding benefit to another (Mutual Pools). Just terms generally means fair and reasonable compensation (PJ Magennis).

Section 116 prohibits Commonwealth laws (a) establishing any religion, (b) imposing any religious observance, (c) prohibiting the free exercise of any religion, or (d) requiring any religious test for office or public trust. Religion requires belief in a supernatural Being, Thing or Principle, and acceptance of canons of conduct giving effect to that belief (Scientology Case).

Section 92 prohibits laws imposing discriminatory burdens of a protectionist kind on interstate trade and commerce (Cole v Whitfield). The test is whether the burden is reasonably appropriate and adapted to a legitimate non-protectionist end (Castlemaine Tooheys; Betfair).

Section 117 prohibits a State from subjecting a resident of another State to any disability or discrimination that would not apply to a resident of that State (Street v Queensland Bar Association).

Section 80 requires trial on indictment of a Commonwealth offence to be by jury in the State where the offence was committed. The jury must be unanimous (Cheatle).

Step 3. Apply the right to the facts

Applying [the relevant guarantee] to the facts, [identify the element that is in issue]. The law [does / does not] breach the guarantee because [explain].

Step 4. Conclude

For these reasons, the law is [valid / invalid in the relevant respect]. If invalid, consider severance under s 15A.

Part 10: Quick Case Reference

A compressed summary of the most likely cited cases. Memorise the rule for each.

Engineers Case (1920): Constitutional powers are read on their natural meaning. No reserved State powers. No implied immunities (subject to Melbourne Corporation).

Bank Nationalisation Case (1948): Heads of power are construed broadly (Dixon J).

Cole v Whitfield (1988): Section 92 prohibits discriminatory burdens of a protectionist kind. Convention debates admissible to find contemporary meaning.

Lange v ABC (1997): Two-step test for implied freedom of political communication. The freedom is a limit on power, not a personal right.

McCloy v NSW (2015): Reformulated Lange step 2 as a three-step structured proportionality test: suitable, necessary, adequate in balance.

Communist Party Case (1951): Defence power expands and contracts. Recitals cannot create constitutional facts. Stream cannot rise higher than its source.

Tasmanian Dams Case (1983): External affairs supports treaty implementation. Margin of appreciation. Race power may support positive laws for a particular race.

Koowarta (1982): External affairs supports implementation of treaties of international concern. Race power requires a special law specific to a race.

Industrial Relations Act Case (1996): Margin of appreciation test. Treaties must define the regime with sufficient specificity.

Pape v Commissioner of Taxation (2009): Nationhood power constrained by federalism. Recommendations must be specific, not aspirational. A bonus payment is not a law with respect to taxation.

Work Choices Case (2006): Section 51(xx) extends to industrial relations of constitutional corporations. The object of command approach.

Re Dingjan (1995): Section 51(xx) requires actual connection with a constitutional corporation (majority); Gaudron J's dissent influential.

Strickland v Rocla Concrete Pipes (1971): Overruled Huddart Parker. Trading activities of trading corporations are within s 51(xx).

Fencott v Muller (1983): Implied incidental power within s 51(xx). Purpose test applies to shelf companies.

Incorporation Case (1990): Section 51(xx) does not extend to incorporation.

Murphyores (1976): Motive irrelevant to characterisation. Export controls within s 51(i).

Fairfax (1965): A law with operation within a federal field is valid, even if its purpose lies outside power.

Air Caledonie (1988): Definition of tax. Service fee must be a payment for an identified service.

Northern Suburbs Cemetery Reserve Trust (1993): A training guarantee charge is a tax. Multiple characters are permitted.

First Uniform Tax Case (1942): Section 96 allows grants on broad conditions. Political coercion does not equate to legal compulsion.

Second Uniform Tax Case (1957): Section 96 broad but cannot require abdication of State power.

DOGS Case (1981): Section 96 grants subject to s 116. Aid to religion is not "establishing" a religion.

ICM Agriculture (2009): Section 96 cannot be used to circumvent s 51(xxxi).