

AUSTRALIAN CONSTITUTIONAL LAW — ULTRA SUMMARY

TOPIC 1 — CONSTITUTIONAL FOUNDATIONS

Core Principles

Separation of Powers

- Legislature makes laws.
- Executive administers laws.
- Judiciary interprets laws.

Responsible Government

- Executive must maintain confidence of Parliament.

Federalism

- Power divided between Commonwealth and States.

Constitutional Supremacy

- Constitution is the highest law.

Rule of Law

- Government must act according to law.

Key Cases

- *Australian Communist Party v Commonwealth* (1951) 83 CLR 1
- *Engineers* (1920) 28 CLR 129

Exam Formula

Power?

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Source?

↓

Constitutional limit?

↓

Validity

TOPIC 2 — PARLIAMENT

Section 44

Citizenship Cases

- *Re Canavan* (2017) 263 CLR 284
- *Sue v Hill* (1999) 199 CLR 462

Rule:

Dual citizenship may disqualify.

Territory Senators

***Western Australia v Commonwealth* (1975) 134 CLR 201**

Rule:

Territory senators valid under s 122.

Section 57

Double Dissolution

Requirements:

1. House passes Bill
2. Senate rejects/fails
3. Three months
4. House passes again
5. Senate rejects again
6. Double dissolution possible

Cases:

- *Cormack v Cope*
- PMA Case

Section 128

Constitutional amendment requires:

Double Majority

✓ Majority of voters nationally

AND

✓ Majority of States (4/6)

TOPIC 3 — CHARACTERISATION

Universal Exam Formula

Step 1

Identify law

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Step 2

Identify head of power

↓

Step 3

Apply *Engineers*

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Step 4

Operation & effect

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Step 5

Sufficient connection

↓

Step 6

Incidental power

↓

Validity

Engineers Case

Amalgamated Society of Engineers (1920)

Rule:

No reserved State powers.

Interpret constitutional text broadly.

Corporations Power

s 51(xx)

Cases:

- *St George County Council*
- *Fontana Films*
- *Work Choices*

Rule:

Broad power over:

- activities;
- functions;
- relationships;
- business operations

of constitutional corporations.

External Affairs

s 51(xxix)

Cases:

- *Tasmanian Dam*
- *Koowarta*

Rule:

Treaty implementation valid.

Taxation

s 51(ii)

Cases:

- *Matthews*
- *Air Caledonie*

Definition:

Tax = compulsory exaction of money for public purposes.

Incidental Power

s 51(xxxix)

Supports laws reasonably connected to constitutional powers.

TOPIC 4 — FINANCIAL POWERS

Sections

s 81

Consolidated Revenue Fund

s 83

No spending without appropriation

s 96

Conditional grants to States

AAP

Raised question:

Appropriation ≠ spending power.

Pape

Pape v Commissioner of Taxation (2009)

Rule:

Nationhood power may support spending during national emergencies.

Williams (No 1)

Appropriation alone insufficient.

Williams (No 2)

Statutory authority alone insufficient.

Modern Spending Rule

Need:

- ✓ Appropriation
- ✓ Authority
- ✓ Constitutional power

Uniform Tax Cases

Rule:

Commonwealth may dominate taxation using s 96 grants.

Creates:

Vertical Fiscal Imbalance

TOPIC 5 — EXECUTIVE POWER

Section 61

Sources of executive authority:

Constitution

Statute

Prerogative

Nationhood

Prerogative

Examples:

- treaties;
- defence;
- foreign affairs;
- passports.

De Keyser

Statute overrides prerogative.

Nationhood Power

Pape

Requirements:

- national concern;
- national response;
- Commonwealth uniquely suited.

Executive Spending

Williams Rule

Appropriation alone does not authorise spending.

TOPIC 6 — SECTION 109

Exam Formula

Valid Commonwealth law

-

Valid State law

↓

Inconsistency?

↓

Commonwealth prevails

Direct Inconsistency

Clyde Engineering

Can both laws be obeyed?

No = inconsistency.

Rights Inconsistency

Colvin

State law impairs federal right.

Covering the Field

Ex parte McLean

Did Commonwealth intend exclusive regulation?

If yes:

State law inconsistent.

Effect

Butler

State law becomes:

Inoperative

not destroyed.

May revive later.

TOPIC 7 — RIGHTS & FREEDOMS

Australia Has No General Bill of Rights

Express rights:

- s 51(xxxi)
- s 80
- s 92
- s 116
- s 117

Implied:

- IFPC

IFPC

Cases:

- *ACTV*
- *Lange*
- *McCloy*
- *Brown*

Modern IFPC Test

Political communication?

↓

Burden?

↓

Legitimate purpose?

↓

Suitable?

↓

Necessary?

↓

Adequate in balance?

↓

Valid/Invalid

Property Rights

s 51(xxxi)

Cases:

- *Mutual Pools*
- *JT International*

Test:

Property?

↓

Acquisition?

↓

Commonwealth benefit?

↓

Just terms?

Religious Freedom

s 116

Cases:

- DOGS Case
- *Jehovah's Witnesses*

Interpreted narrowly.

Interstate Trade

s 92

Case:

- *Cole v Whitfield*

Test:

Discriminatory burden?

↓

Protectionist?

↓

Invalid

State Residence Discrimination

s 117

Case:

- *Street*

TOPIC 8 — CHAPTER III

Judicial Power

Davison

Determination of rights and liabilities according to law.

Boilermakers

Two Rules:

Only Chapter III courts may exercise judicial power.

Chapter III courts cannot exercise incompatible non-judicial functions.

Judicial Independence

Section 72

Protects:

- tenure;
- salary;
- removal.

Kable Principle

State courts must maintain:

Institutional Integrity

Cases:

- *Kable*
- *Fardon*
- *Totani*
- *Wainohu*

Detention

Lim

Punitive detention = judicial power.

Administrative detention may be permissible.

Chapter III Exam Formula

Judicial power?

↓

Chapter III court?

↓

Boilermakers

↓

Detention?

↓

Lim

↓

State court?

↓

Kable

↓

Institutional integrity

↓

Valid/Invalid

20 CASES MOST LIKELY TO APPEAR IN AN EXAM

1. *Engineers*
2. *Work Choices*
3. *Tasmanian Dam*
4. *Matthews*

5. *Pape*
6. *Williams (No 1)*
7. *Williams (No 2)*
8. *Uniform Tax Case*
9. *Clyde Engineering*
10. *Ex parte McLean*
11. *Lange*
12. *McCloy*
13. *Brown*
14. *JT International*
15. *DOGS Case*
16. *Cole v Whitfield*
17. *Boilermakers*
18. *Brandy*
19. *Lim*
20. *Kable*

ULTIMATE EXAM MEMORY FORMULA

Parliament

↓

Characterisation

↓

Executive Power

↓

Spending Power

↓

Section 109

↓

Rights & Freedoms

↓

Chapter III

↓

Validity

If you memorise the **flowcharts, tests, and 20 cases above**, you will cover the vast majority of issues that arise in a standard Australian Constitutional Law final exam.