

LAWS2011 Federal Constitutional Law - Final Scaffold 2026 S1

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Topic D - Corporations Power (s 51(xx)) (HEAD OF POWER)**I. Is the entity being regulated a constitutional corporation?****1. [General principle] Parliament has the power to make laws with respect to constitutional corporations (s 51(xx))**

- a. This is a power with respect to **constitutional corporations**. A constitutional corporation is a foreign corporation, or trading or financial corporation within the limits of the Commonwealth s 51(xx)
- b. [X] is [**likely/not likely**] to be a constitutional corporation such that Parliament [**may be/may not be**] capable of regulating with respect to [X].

2. Is it a foreign corporation?

- a. A foreign corporation is a corporation that has formed outside the limits of the Commonwealth
Incorporation Case

3. Is it a trading corporation or financial corporation?

- a. [Ltd] On the facts, it is clear that [X Ltd] is a constitutional corporation such that Parliament is capable of regulating with respect to [X].
- b. [Incorporated under Statute] On the facts, [X] has been incorporated under statute and as such Parliament is capable of regulating with respect to [X].
- c. [Other] The issue is whether [X] is a constitutional corporation such that Parliament is capable of regulating with respect to [X].

i. Is it a corporation?

1. Whether [X] is a corporation does not depend on any parliamentary intention to create or not create a corporation *Communications Union v Queensland Rail*
2. The determinative factor is whether [X] has a distinct legal personality from the persons operating [X] *Communications Union v Queensland Rail*.
 - a. I.e. Is it an independent right and duty bearing entity?

ii. Is it a trading or financial corporation?

1. [X] will be regarded as a trading corporation when its trading activities form a sufficiently significant proportion of its overall activities *Adamson's Case*
 - a. The fact that a corporation does not generate a profit is not determinative *Adamson's Case*.
2. Is [X's] trading activities a significant proportion of overall activities?
 - a. The trading activities do not need to be the predominant and characteristic activity, it is sufficient that it forms a significant part of overall activities *State Superannuation*
 - b. It also does not matter for what purpose the trading activities were undertaken *State Superannuation; Tasmanian Dams*
 - c. What 'significant' constitutes has been regarded liberally, this is a low threshold:
 - i. Red Cross regarded as a trading corporation by operating stalls and shops *E v Australian Red Cross*
 - ii. University regarded as a trading corporation where its trading revenues amounted to 18% of total revenue *Quickendon v O'Connor*
 - iii. Sporting club was regarded as a trading corporation where it produced income from ticketing, sale of merchandise *Adamson's Case*
 - iv. A commission created by Tasmania was regarded as a trading corporation because it engaged in the sale of electricity even though it

Topic E - Races Power (s 51(xxvi)) (HEAD OF POWER)**I. Introduction****1. [General principle]**

- a. The question is whether [LAW] can be characterised as a law with respect to the people of any race for whom it is deemed necessary to make special laws and therefore within a head of power pursuant to **s 51(xxvi)**.

II. Is [X] a race?**1. [General principle]**

- a. The term race 'is not a precise concept' but there are a number of factors which [**may/may not**] support that [X] is a race **Tasmanian Dam Case**

2. What are the factors that suggest [X] is a race?

- a. Tutor notes (Joel): Suggests to start analysis for this section for the counterargument why X would not be a race and provide rebuttals to ultimately conclude that X is a race.

b. Are there biological factors which indicate that X is a race? **Tasmanian Dam Case**

- i. This is not a matter of 'proving ultimate genetic ancestry' but rather may be indicated by 'colour', 'national origin' or 'ethnic origins'.
- ii. This is strongly suggested when a particular biological element that is 'an essential element of membership of a race' is given rather than acquired.
 1. E.g. Possibility of conversion into a particular religious group would suggest that the particular religious group is not a race.
 2. C.f. Situation where the particular biological element that is characteristic is acquired by lineage (being born into a particular racial group).

c. Can ethnic origins suggest that X is a race? **Tasmanian Dam Case**

- i. The difficulty in identifying a particular genetic distinction in the case of [X race] can be resolved by an analysis of ethnic origins, that is, factors that are recognisable externally.
- ii. Factors to look at include:
 1. Physical similarities
 2. Common history
 3. Common religion or spiritual beliefs
 4. Common culture
- iii. Case examples to compare by analogy:
 1. In **Mandla v Dowell Lee** - Determined that Sikh was a race for constitutional purposes based on the physical similarities, religious beliefs, geographical origins.
 2. In **King Ansell** - NZ authority which accepted that Jewish people were a racial group.
 3. **R(E) v JFS Governing Body** also affirmed that Jewish people were a racial group.
 4. C.f. Previous exam where the 'racial group' were people from France. Likely conclusion would be that French people are not a race > French people are determined by their citizenship status rather than any biological or common ethnic origin.

3. An analysis of the above factors strongly suggests a conclusion that [X race] is one that possesses a sense of identity among members of [X race].

- a. [**If unlikely a race**] In the alternative, even if [X race] was to be regarded as a race for constitutional purposes, the following question is whether the law has a special effect on that race, either in its terms or operation.

Topic F1 - Taxation (ss 55(ii), 55, 90) (HEAD OF POWER)**I. Does [Law] provide for a tax?****1. [General principle]**

- a. *S 51(ii)* confers the Parliament power to make laws with respect to taxation. As such, [LAW] may be a law with respect to taxation where it provides for a tax.

2. [START WITH POSITIVE CRITERION] Is it a compulsory exaction of money by a public authority for public purposes enforceable by law?

- a. Prima facie, a law will generally provide for a tax where the law imposes a compulsory exaction of money by a public authority for public purposes *Matthews*. The way that a law has been characterised in legislation as either a tax or other form of exaction is not determinative *Australian Tape Manufacturers*.
- b. **Is there a compulsory exaction?**
- i. There is clearly a compulsory exaction provided for by [LAW] as [PERSONS SUBJECT] are mandated to make payment under the law.
 - ii. [If not payment of money] It has not been decided whether [E.g. taking of assets] can constitute a tax as it is not an exaction of money. Dicta in *Air Caledonie* suggests however that it is possible for a tax to take other forms rather than the exaction of money. The [taking of assets] is analogous to an exaction of money given that the [LAW] is depriving [THOSE APPLICABLE] of [SOMETHING] that is of monetary value.
 - iii. But consider **III. Is it an arbitrary exaction**
- c. **By a public authority?**
- i. [NO PUBLIC AUTHORITY] Here, it is unclear whether [COLLECTING AUTHORITY] is a public authority. There has been dispute as to whether an exaction by a non-public authority can constitute a tax (See *McHugh J dissent in Australian Tape Manufacturers*). However, the majority in *Australian Tape Manufacturers* affirmed the possibility that a non-public authority can be empowered to exact money as a tax where it is for public purposes raised in the dicta of *Air Caledonie*.
 1. **Application:** As such consider **Is there a public purpose?**
 2. In *Australian Tape Manufacturers* - the statutory collecting authority was a private company.
 3. In *Air Caledonie* - The collecting authority were the airlines and not a government authority.
 - ii. [PUBLIC AUTHORITY] On these facts, [Collecting Authority] is a public authority.
- d. **Is there a public purpose?**
- i. An exaction may be regarded as for a public purpose where it can be regarded as a 'solution to a complex problem of public importance'. *Australian Tape Manufacturers*.
 - ii. Here, the exaction made is arguably for the public purpose because [Complex Problem of Public Importance on facts].
 1. A public purpose does not necessarily need to be in the public interest *Roy Morgan*
 2. [Payment into CRF] Consider whether payment is made to the Consolidated Revenue Fund of the Commonwealth.
 - a. Not every payment into the consolidated revenue fund is necessarily a tax *Luton v Lessels*, and not every payment that is made elsewhere is not necessarily a tax *Australian Tape Manufacturers*. However, a receipt of funds into the CRF prima facie, establishes that the charge is for a public purpose,