

STAT. INTERP, PRINCIPLE OF LEGALITY & PUNISHMENT

STATUTORY INTERPRETATION & PRINCIPLE OF LEGALITY

Acts Interpretation Act 1901 (Cth)

- **Acts Interpretation Acts:** These statutes provide specific rules for interpreting other statutes. They exist at a federal level (*Acts Interpretation Act 1902 (Cth)*) and in each state.
- **Purpose:** They function like a 'dictionary and manual' for interpreting Cth Acts and related instruments. They set out practical rules to guide interpretation.
- *Common examples*
 - Gender-neutral language: Words referencing a gender apply to all genders
 - Singular/plural language: Words in singular form include plural, and vice versa

Key provisions of the Acts Interpretation Act 1901 (Cth)

- **Section 15AA:** Courts should favour interpretations that best achieve the purpose or object of the Act, even if this purpose isn't explicitly stated.
- **Section 15A:** All acts must be read to align with the Constitution, and to avoid exceeding Commonwealth legislative power.
- **Section 15AB:** Courts may refer to extrinsic materials (e.g. second reading speeches, explanatory memoranda) to aid in interpretation when necessary.
- **Role of interpretation acts:** Parliament can establish rules for interpreting its statutes, potentially overriding or coexisting with common law principles. However, statutory rules must still comply with the Constitution.

What is Statutory Interpretation?

- **Definition:** Process by which courts determine the meaning of a statute to apply the law established by Parliament in a binding way.

Interpretation vs Application:

- *Interpretation:* Understanding statute meaning in general terms.
- *Application:* Applying this meaning to the specific case facts.

Process:

- Read statute.
- Interpret general meaning.
- Apply to case facts.

Why is Statutory Interpretation Necessary?

- **Language Ambiguity:** Words may have multiple meanings or technical/legal definitions (e.g., "bank" or "fruit").
- **Inherent Imprecision:** Terms like "offensive" are vague and open to interpretation (*Evans v NSW*).
- **Interpretive Assumptions:** Courts rely on constitutional principles and interpretive presumptions, like the Principle of Legality (statutes don't limit rights unless clearly stated).

Constructional Choice:

- **French CJ:** Courts choose between meanings, constrained by legal criteria (not mere preference), akin to selecting from possibilities like "quantum states" in physics.

Role of Lawyers: Duty to court and client; explore interpretations that serve client's interests without misleading court.

Scenarios for Interpretation (Examples)

- **Wildlife Hunting Prohibition:** Terms like "hunt" and "wildlife" may vary; consider extrinsic materials like legislative debates.
- **Tariffs on Non-Mechanically Propelled Vehicles:** Define "vehicle" for the context, potentially including or excluding items like wheelie bins.

Core Objective of Statutory Interpretation: Legislative Intent

- **Goal:** Determine the meaning Parliament is “taken to have intended” (objective approach).
- **Historical Context:** Courts aim to effectuate Parliament’s will (Ekins & Goldsworthy) as part of judicial restraint.

Reasons for Focusing on Legislative Intent:

- **Communication:** Helps resolve ambiguities.
- **Constitutional Role:** Courts interpret law, respecting Parliament’s lawmaking authority.

Challenges:

- Parliament’s collective nature means “intention” can be complex (no unified mental state).
- Extrinsic materials may only reflect individual or ministerial views, not collective intent.

Key Principles for Interpretation (from *Project Blue Sky*):

- **Text:** Starting point; statutory language is the “first and best evidence” of intent.
- **Context:** Statutory provisions, structure, and purpose provide interpretive guidance.
- **Consequences:** Avoid interpretations that lead to absurd or unjust outcomes.
- **Purpose:** Aligns interpretation with statute’s broader objectives.
- **Canons of Construction:** Presumptions (e.g., statutes don’t operate retrospectively or override common law without clear intent).

Project Blue Sky Guide:

- **Starting Point:** Statutory text.
- **Objective:** Parliament’s intended meaning.
- **Tools for Interpretation:** Use literal meaning, context, consequences, purpose, and canons flexibly to achieve the most suitable interpretation.

Judicial and Legislative Dialogue

- **Assumed Knowledge:** Parliament drafts with interpretive principles in mind.
- **Rule Flexibility:** Interpretive rules evolve, and courts apply them flexibly to uphold democratic values and the rule of law.
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Objective Framework for Legislative Intention

- Courts adopt an **objective approach**, focusing on what Parliament is “taken to have intended.”
- **Judicial Restraint:** Courts interpret, not make law, adhering to recognised interpretative criteria.

PRESUMPTIONS

Purpose: Presumptions in statutory interpretation help clarify legislative language and protect rights. They guide courts toward legislative intent, assuming Parliament does not intend to override established legal norms unless clearly stated.

Commonly Used Presumptions

Syntactical Presumptions

- **Ejusdem Generis (Of the Same Kind):** General terms following a list are restricted to items similar to the listed items.
 - *Example: Collett v Repatriation Commission* – ‘internment’ spaces were interpreted as confined spaces, excluding open areas.
- **Noscitur a Sociis (Known by its Associates):** Ambiguous terms are understood in the context of surrounding words.
 - *Example: Inland Revenue Commissioners v Frere* – “annual payments” clarified all preceding terms as referring to ‘annual’ items.
- **Expressio Unius est Exclusio Alterius (Mention of One Excludes Others):** If a statute mentions specific items, it implies exclusion of items not mentioned.
 - *Example:* Specific visa requirements apply only to the mentioned visa types, not others.

- **Generalia Specialibus Non Derogant (Specific Over General):** Specific provisions override general ones in case of conflict.

Legal Presumptions

- **No Extraterritorial Effect:** Laws are presumed not to apply outside their jurisdiction unless specified (*Barcelo v Electrolytic Zinc Co*).
- **Constitutional Validity:** Courts interpret statutes to comply with the Constitution whenever possible (*Acts Interpretation Act 1901 (Cth) s 15A*).
- **No Retrospective Operation:** Statutes generally apply prospectively unless explicitly stated (*Maxwell v Murphy*).
- **Mens Rea in Criminal Offences:** Criminal offences typically require intent unless the law specifies strict liability.
- **Respect for Common Law Rights (Principle of Legality):** Assumes statutes do not infringe on fundamental rights (e.g., liberty, access to courts) without clear wording.
- **Procedural Fairness:** Laws are presumed not to deny procedural fairness or limit judicial review.
- **No Alienation of Property Without Compensation:** Presumes Parliament does not intend to take property without compensation.
- **Legal Professional Privilege:** Statutes are assumed not to override client-lawyer confidentiality.

Presumption Against Retrospective Legislation

- **Definition:** Retrospective laws affect actions before the law's enactment, altering past legal outcomes.
- **Rationale:** Retrospective laws are presumed unfair as they may punish previously lawful actions.
- **Variable Application:** Courts are more flexible with retrospective laws if they are beneficial (e.g., expanding eligibility for benefits) rather than penal.
 - *Penal vs Beneficial Statutes:* Penal statutes are interpreted strictly against defendants, while beneficial statutes are read generously.

Presumption of Mens Rea in Criminal Offences

- **Definition:** Mens rea (criminal intent) is presumed in criminal law unless explicitly excluded, ensuring liability only for those aware of their wrongful actions.
- **Key Case – *He Kaw Teh v The Queen*:** High Court confirmed mens rea applies even without express wording, protecting those unaware they were committing a crime (e.g., unknowingly importing narcotics).
 - *Brennan J's Quote:* Mens rea requires either knowledge of the criminal circumstance or a reasonable belief in the innocence of one's actions.
- **Rationale:** Fairness requires awareness of one's actions for criminal responsibility. However, strict liability offences may be created, removing the requirement of intent.

PRINCIPLE OF LEGALITY

The **Principle of Legality** is a key statutory interpretation presumption safeguarding fundamental common law rights. Courts presume that Parliament does not intend to limit or remove these rights unless clearly expressed. This principle requires precise legislative language to curtail rights, as general or ambiguous terms are insufficient.

Key Case: *Coco v The Queen*

- **Court's Emphasis:** The High Court (Mason CJ, Brennan, Gaudron, and McHugh JJ) stressed that **fundamental rights** require clear, unambiguous legislative intent to be limited:
 - **Quote:** "[T]he courts should not assume that Parliament has intended to interfere with fundamental rights" unless the intention is expressed "by unmistakable and unambiguous language."
 - **Implication:** General terms are inadequate to override rights; the language must directly address the specific right.
- **Historical Roots:** Originating from *Somerset v Stewart* (1772), this principle underscores that rights as fundamental as **freedom from enslavement** cannot be implied by general language but require explicit statutory backing.

Rights Protected by the Principle of Legality

Rights commonly protected include:

- **Private Property**
- **Liberty and Freedom of Movement**
- **Fair Trial and Procedural Fairness**
- **Freedom of Expression and Freedom of Religion**
- **Access to Courts**
- **Criminal Law Principles** (e.g., **double jeopardy**)

The principle adapts to evolving common law, enabling courts to recognise new fundamental rights. However, its flexibility raises issues, as it vests courts with power to define “fundamental” rights instead of Parliament.

Rationale for the Principle of Legality

Originally, the principle assumed Parliament did not intend to infringe on fundamental rights without explicit terms. As O’Connor J expressed in *Potter v Minahan*:

- **Quote:** “It is in the last degree improbable that the legislature would overthrow fundamental principles without expressing its intention with irresistible clearness.”

Recent interpretation, however, assigns the principle a **normative function**:

- **Enhancing Legislative Process:** Requiring explicit language to limit rights encourages Parliament to consider rights directly and fosters **transparency** (*Coco v The Queen*).
- **Ensuring Accountability:** Courts demand that Parliament openly acknowledge limitations on rights, reinforcing democratic responsibility (*R v Secretary for State; Ex parte Simms*).

This modern approach treats the principle as a democratic safeguard, promoting clarity and direct responsibility by Parliament.

Rebutting the Presumption

To override the presumption, Parliament must use “**unmistakable and unambiguous language**” (*Coco*). Courts require specific wording to indicate a clear intent to limit rights.

- **Example: *Lacey v Attorney-General (Qld)* (2011)**
 - **Facts:** Qld’s Criminal Code allowed the Court of Appeal “unfettered discretion” in varying sentences.
 - **Court’s Holding:** Despite a second reading speech suggesting broad discretion, the High Court applied the principle of legality, holding that statutory words must be unmistakably clear when affecting **liberty**.
 - **Outcome:** Without explicit language, Parliament was assumed not to intend unrestricted sentencing discretion, thereby protecting fair trial principles.
- **Contrasting Example: *Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd***
 - **Facts:** Provisions limited judicial review for quick-dispute resolutions in the building industry.
 - **Court’s Holding:** Here, the High Court upheld limited review, reasoning that unrestricted review would conflict with the statute’s purpose of quick resolution.
 - **Outcome:** The court inferred intent to restrict review without explicit language, showing flexibility based on the statutory purpose.

Coco v The Queen [1994] HCA 15 – listening device - ‘unmistakeable and unambiguous language’

FACTS: Under s 43(1) of the *Invasion of Privacy Act 1971 (Qld)*, it was illegal to record a private conversation without authorisation. Police could obtain judicial approval for using listening devices, but the statute did not expressly permit entry or trespass on private property. Police, authorised by a judge, used a listening device at Mr Coco’s premises, gaining access by pretending to be telecom repair workers. Coco challenged this, arguing the Act did not authorise trespass.

HELD: HCA ruled in favour of Coco, holding that the judicial authorisation did not extend to permitting trespass.

- The court emphasised that **unauthorised entry onto private property constitutes trespass** unless explicitly permitted by legislation.
- **Interpretive Presumption:** Courts presume that legislation does not authorise otherwise tortious conduct (such as trespass) without “**unmistakable and unambiguous language**” (*Coco*).

- **Application of the Principle of Legality:** The Act allowed for listening devices in certain cases but did not clearly authorise police entry onto private property. Without explicit statutory language, the court refused to imply such a power.

Evans v NSW [2008] FCAFC – WYD Day ‘annoyance’ vs ‘inconvenience’

FACTS: The case concerned the validity of **clause 7** of the *World Youth Day Regulation 2008 (NSW)* (WYD Reg), enacted under the *World Youth Day Act 2008 (NSW)* (WYD Act), and whether it was within the scope of the Act’s regulation-making power. Section **58** of the **WYD Act** authorised the Governor to make regulations “necessary or convenient” for the Act’s purposes, specifically referring to “regulating the use by the public of, and the conduct of the public on, World Youth Day venues and facilities.” **Clause 7 of the WYD Reg** allowed an authorised person to direct any individual in a WYD area to cease conduct that:

- (a) posed a risk to safety,
- (b) caused annoyance or inconvenience to WYD participants, or
- (c) obstructed a WYD event.
 - A maximum penalty of 50 penalty units applied to those who did not comply.

HELD: The Federal Court scrutinised whether ‘annoyance’ and ‘inconvenience’ as grounds for restriction were within the Act’s scope and purpose, focusing particularly on the principle of legality and freedom of speech.

Interpretation of s 58 of the WYD Act:

- The court held that **s 58** conferred broad regulatory power but required that regulations be reasonably necessary for carrying out the WYD Act’s purpose. The regulatory power was constrained to align with the Act’s scope and objectives.

Application of the Principle of Legality:

- **Freedom of Speech:** The court highlighted freedom of speech as a fundamental common law right, essential to a free state, which could not be limited by imprecise or broad statutory language.
- **Freedom of Religion:** Given the religious nature of the WYD event, the court recognised freedom of religious expression as a significant common law right relevant in this context.

Interpretation of Clause 7 and Limiting Principle:

- **Annoyance:** The court found “annoyance” too vague and overly broad, as it could encompass minor, subjective irritations, and thus risked disproportionately infringing on free expression without a clear legislative mandate.
- **Inconvenience:** The court deemed “inconvenience” to be more objective, as it typically referred to observable impacts like disruptions in movement or communication. Thus, it was a more justifiable ground for restricting conduct under the **WYD Act**, as it aligned with maintaining order without overreaching into freedom of expression.

Outcome:

- The court upheld the provision of clause 7 that restricted conduct causing “inconvenience,” viewing it as reasonable within the regulatory scope.
- It invalidated the provision regarding “annoyance,” finding it lacked a clear statutory basis and disproportionately limited free speech.

NAAJA v NT [2015] HCA 41 – 4hr + detention

FACTS: The plaintiffs challenged **Division 4AA** of **Part VII of the Police Administration Act (PA Act)**, which allowed NT police to detain individuals for up to four hours without a warrant for minor offences. Detention could extend if the individual was intoxicated. The second plaintiff, an Aboriginal woman, was held under this provision for almost 12 hours before receiving an infringement notice for minor offences. The plaintiffs argued that this provision amounted to unconstitutional punitive detention by the executive, violating common law rights and principles of judicial oversight.

ISSUES:

- **Statutory Interpretation and the Principle of Legality:**
 - The plaintiffs contended that the **PA Act** should be interpreted narrowly to avoid infringing on fundamental rights like personal liberty, invoking the principle of legality, which presumes that Parliament does not intend to limit rights without clear language.

Constitutional Validity:

- The plaintiffs argued that **Division 4AA** conferred punitive detention powers on the executive, traditionally a judicial function, thus infringing on the separation of powers.

Detention Purpose and Character:

- The plaintiffs asserted that **Division 4AA** authorised punitive rather than administrative detention, encroaching on the judiciary's exclusive role in imposing punishment.

HELD:

Majority Opinion (French CJ, Kiefel, and Bell JJ):

- The High Court found Division 4AA invalid. It held that, under the principle of legality, legislation authorising **detention must be clear in intent to restrict personal liberty**. Since Division 4AA lacked clarity in purpose and provided no judicial oversight, it permitted arbitrary detention that could be punitive in nature, conflicting with constitutional protections.
- The Court highlighted that any power enabling such detention must include sufficient procedural safeguards to prevent it from becoming punitive, reinforcing the judiciary's exclusive role in adjudicating punishment.

Gageler J's Dissent:

- Justice Gageler argued that Division 4AA reduced the courts to an administrative role, undermining judicial independence. He viewed the provision as enabling "punitive executive detention" in a way that compromised the judiciary's role as the final arbiter of justice, thus violating the separation of powers.

Purpose of Division 4AA:

- Introduced to streamline policing through "paperless arrests" for minor offences, Division 4AA aimed to reduce police paperwork and administrative delays. However, the plaintiffs argued this provision lacked clear procedural limits, transforming an administrative measure into a tool for punitive detention.

Conclusion:

- The High Court invalidated Division 4AA, ruling it exceeded the NT legislature's power and allowed arbitrary detention without judicial oversight, violating constitutional protections of personal liberty.
- This decision underscored that statutory provisions restricting fundamental rights, particularly liberty, must be explicit and operate within constitutional limits, affirming the judiciary's role in safeguarding individual rights against executive overreach.

PUNISHMENT

- **Exclusive Judicial Power:** Under Chapter III, only courts can adjudicate criminal guilt and impose punitive measures.
- **Non-Punitive Executive Detention:** Executive detention can be permissible if it serves a non-punitive, legitimate purpose, such as immigration control or public health, and is "reasonably capable of being seen as necessary" (*Lim v Minister of Immigration*).

Analytical Framework: Punitive vs. Non-Punitive Detention

Detention as Default Punishment:

- **Lim Principle:** Detention is generally considered punitive unless it serves a legitimate non-punitive purpose.
- **Non-Punitive Purposes:** Includes purposes necessary for quarantine, immigration processing, and public safety.

Test for Non-Punitive Detention (*Lim*):

- **Necessary for Non-Punitive Purpose:** Detention without a court order must be "reasonably capable of being seen as necessary" for achieving a non-punitive goal.

Key Cases and Principles

Punitive vs. Non-Punitive Detention

- ***Lim v Minister for Immigration* (1992):** Established detention is punitive unless necessary for a non-punitive purpose, such as deportation or processing immigration applications.
- ***Falzon v Minister for Immigration* (2018):** Detention for visa cancellations isn't punitive if aimed at facilitating deportation.
- ***NZYQ v Minister for Immigration* (2023):** Updated *Lim*; indefinite detention is punitive if removal is unlikely (detention must meet factual non-punitive objectives).

- **AJL20 v Commonwealth (2021)**: Lawful detention requires legitimate purpose (e.g., deportation); detention must comply with statutory requirements like removal "as soon as practicable."
Preventive and Protective Detention
- **Minister for Home Affairs v Benbrika (2021)**: Federal preventive detention for community protection isn't punitive if focused on preventing harm, not punishing past acts.
- **Garlett v Western Australia (2022)**: Upheld preventive detention under state law as non-punitive if aimed at reducing community risk, not as punishment.
- **Benbrika v Minister for Home Affairs (2023)**: Judicial oversight required for any punitive actions post-conviction, such as citizenship revocation, maintaining judiciary's exclusive domain over punishment.
Judicial Power and Punishment
- **Al-Kateb v Godwin (2004)**: Non-citizen detention may be non-punitive if aimed at exclusion or deportation, but NZYQ later refined this, emphasizing factual objectives.
- **ACMA v Today FM (2015)**: Administrative sanctions (e.g., license cancellations) aren't punitive if regulatory in nature.
- **Alexander v Minister for Home Affairs (2022)**: Citizenship revocation based on criminal conduct constitutes punishment, exclusively a judicial power.
- **Benbrika v Minister for Home Affairs (2023)**: Reinforced Alexander's ruling that punishment related to criminal conduct, such as citizenship revocation, falls solely within the judiciary's remit.

Application Summary: When assessing the nature of detention:

- **Lim Principle** for non-punitive purposes.
- Ensure detention is necessary and incidental to a legitimate, non-punitive goal (e.g., immigration or public safety).
- **Principle of Exclusivity:** Only courts can impose punishment related to criminal conduct.

Lim v Minister for Immigration [1992] HCA 64

FACTS: The *Migration Act* authorised executive detention of non-citizen asylum seekers ("designated persons") until removal or issuance of an entry permit. Cambodian asylum seekers detained under these provisions challenged the detention as an executive exercise of judicial power, potentially breaching Ch III of the Constitution.

ISSUE: Did executive detention of asylum seekers under the *Migration Act* constitute an exercise of judicial power, contrary to Ch III?

HELD: The High Court unanimously upheld the detention provisions, finding no breach of Ch III as the detention served a legitimate, non-punitive purpose within the executive's administrative scope.

- **Detention as an Incident of Judicial Power:** Brennan, Deane, and Dawson JJ affirmed that adjudging and punishing criminal guilt is "essentially and exclusively judicial in character" (at [27]). However, detention is not always punitive; it may be lawful if non-punitive and serving an administrative function.
- **Exceptions to Non-Judicial Detention for Citizens:** Non-judicial detention of citizens is generally impermissible except in specific cases, such as quarantine, mental health, parliamentary contempt, or military discipline.
- **Alien Detention under s 51(xix):** The "aliens" power in s 51(xix) of the Constitution allows detention of non-citizens for deportation or entry permit processing. Non-judicial detention of aliens is valid if it is "reasonably capable of being seen as necessary for the purposes of deportation or necessary to enable an application for an entry permit to be considered" (at [33]). Thus, detention is justified as long as it serves these non-punitive immigration objectives.
- **Clarification in Falzon v Minister for Immigration and Border Protection:** In *Falzon*, the Court later refined this principle, emphasising that the test does not require proportionality but only a "reasonable necessity" for detention to achieve the legislative purpose of facilitating exclusion or deportation.

Falzon v Minister for Immigration [2018] HCA 2

FACTS: Falzon, a long-term resident and non-citizen with a permanent visa, faced deportation after a conviction for cannabis trafficking. With no Australian citizenship and no recent connection to Malta, his country of origin, Falzon was detained pending deportation. He argued that his detention, based on his criminal record and visa cancellation, was punitive, constituting additional punishment, and that a proportionality assessment should apply under *Lim*.

ISSUE: Was Falzon's detention punitive, thus breaching Ch III, or was it permissible under the *Migration Act* as part of the deportation process?

END OF TOPIC SAMPLE

STATE LEGISLATIVE POWER SCAFFOLD

1. Identify and State the Issue

- "The primary issue is whether [State Parliament] has the legislative power to enact [specific law or legislative matter]."
- "This involves determining whether the subject matter of the law falls within the jurisdictional powers of the State Parliament as defined by the Australian Constitution and relevant statutory provisions."

2. Establish the Source of State Legislative Power

- **Step 2(a): Confirm Plenary Power**
 - "Under the Constitution Act [relevant State ([s 51 NSW](#))] and bolstered by [s 2\(2\) of the Australia Act 1986](#) (as noted by the HCA in [Durham Holdings](#)), [State Parliament] has plenary power to make laws for the 'peace, order, and good government' of the State."
 - "According to [Union Steamship Co of Australia v King \(1988\)](#), this phrase grants State Parliaments wide discretion, equivalent to the power of the UK Parliament."
 - "In [Durham Holdings](#), the High Court reaffirmed that State legislative power allows for significant discretion, including the power to legislate compensation terms without judicially enforceable requirements for 'just' compensation unless it conflicts with specific constitutional constraints."
- **Step 2(b): Discuss any Historical Limitations on Legislative Power**
 - "Although 'peace, order, and good government' may suggest a policy-based limitation, judicial interpretation affirms that State Parliaments hold full legislative power without substantive review by courts on policy grounds."

3. Determine Constitutional Limitations on State Legislative Power

- **Step 3(a): Check for Exclusive Federal Powers**
 - "Under the Australian Constitution, certain powers are exclusively vested in the Commonwealth Parliament (e.g., matters under [s 52](#)). If the State law overlaps with these areas, it may be outside the State's jurisdiction."
 - "The specific area of [describe area, e.g., 'taxation of federal entities'] may fall exclusively within Commonwealth jurisdiction, as indicated by [any relevant constitutional sections, e.g., [s 52](#)]."
- **Step 3(b): Consider [s 109](#) Inconsistency**
 - "[Section 109](#) of the Australian Constitution provides that when State and Commonwealth laws conflict, Commonwealth law will prevail, rendering the State law inoperative to the extent of inconsistency."
 - "In this case, it is necessary to determine if there is a direct inconsistency between the [State law] and [Commonwealth law], such as conflicting provisions or coverage of the same subject matter."

4. Evaluate the [Kable](#) Doctrine on Judicial Independence

- "The [Kable](#) Doctrine restricts State Parliaments from enacting laws that compromise the institutional integrity of State courts, as established in [Kable v DPP \(NSW\) \(1996\)](#)."
- "If the legislation requires State courts to perform functions incompatible with judicial independence (such as acting under the executive's direction), it may be invalid under the [Kable](#) Doctrine."
- "In assessing the [Kable](#) principle, I will consider whether the [State legislation] imposes non-judicial functions that undermine the court's independence or institutional integrity within the federal judicial system."

5. Consider Extraterritorial Application of State Laws

- **Step 5(a): Explain the Sufficient Connection Test**
 - "State Parliaments may enact extraterritorial laws if there is a 'sufficient connection' to the State, as seen in [Union Steamship Co of Australia v King \(1988\)](#) and [Pearce v Florenca \(1979\)](#)."
 - "Here, [State law's] extraterritorial scope will be valid if there is a connection between the conduct or individuals affected and the State's interests, such as economic impact or environmental effects."

- **Step 5(b): Apply the Connection Test**
 - "In this instance, [describe how the issue relates to the State's interests]. This establishes a sufficient connection to justify the law's extraterritorial application."
- 6. Address Any Implications of Fundamental Rights or the Principle of Legality (see Topic 8)**
 - "Although State Parliaments have broad power, certain rights may be protected by the principle of legality, requiring clear legislative language to limit fundamental rights."
 - "Applying the principle of legality, a court may interpret the [State legislation] as intending not to override fundamental rights unless explicitly stated."
 - "Here, [describe how rights might be affected], and if the law lacks explicit terms to restrict these rights, the court may lean towards a rights-preserving interpretation."
 - *Durham Holdings* re property rights and compensation
 - "Following *Durham Holdings*, although there is a principle of legality presuming Parliament does not intend to interfere with fundamental rights (like just compensation), this presumption is rebuttable. Here, clear language in [the State law] to limit compensation rights may overcome the principle of legality."
 - "The High Court in *Durham Holdings* highlighted that while Parliament is expected to consider justice and fairness, such considerations remain political, not judicially enforceable limits."
- 7. Conclusion and Final Assessment**
 - **Summarise Findings:**
 - "Based on the analysis above, [State Parliament] likely [does/does not] have the jurisdiction to enact [specific law]. The legislation appears [consistent/inconsistent] with the constitutional constraints on State legislative power."
 - **State Outcome:**
 - "Accordingly, [State law] would likely be upheld as valid [or] could be invalidated due to [specific reasons, e.g., inconsistency with federal law, lack of jurisdiction]

END OF SCAFFOLD SAMPLE