

- Communist Party v Commonwealth (1969) - It purported to deprive the Australian Communist Party of its legal rights and involved the courts - The Communist Party case did not conform to the requirements set out in the constitution – thus it was legally invalid even though the government insisted it was essential - The government acknowledged it was subject to the law - However they did then have a referendum to try and change the constitution (1951) to allow them to ban the communist party, but it failed *The federal parliament is not legally required to observe individual human rights 'The Australian constitution is framed upon the assumption of the rule of law' - Gleeson J 'The constitution is an instrument framed in accordance with many traditional conceptions, to some of which it gives effect, as, for example, in separating the judicial power from other functions of government, others of which are simply assumed. Among these, I think it may fairly be said that the rule of law forms an assumption' - Dixon J 'If the language of an Act of Parliament is clear, its merits and demerits are alike beside the point. It is the law, and that is all.' – Fullagar J Held: - HC confirmed it would review the federal legislation The law did NOT show a connection to a head of power in the Const, and the law was held INVALID → no apparent link to it and 'defence'
Mabo No 2 The legal fiction of an uninhabited territory was finally rejected 1. 1992 - HC recognised existing Indigenous law – 'Native Title' Fell short of questioning the validity of the reception of English law into Australia
Coe v Cth (No 2) Plaintiff sought to argue (on behalf of the Wiradiuri people) that they were a sovereign nation of people, and alternatively
that they were a 'domestic dependant nation' entitled to self-government and full rights to their traditional land Mason CJ rejected these arguments Native title did not recognise that Indigenous Australians were entitled to self-government, or were a free and independent people - He stated the acquisition of sovereignty by the British could not be challenged in Australian courts
Walker v NSW - Walker argued that Indigenous Australians are not bound by British law at all on the basis that they never formally consented to it - CJ rejected
Union Steamship Co - The power to make laws for the 'peace, welfare and good government' is a plenary power - These are not words of limitation - Should be construed expansively - May include extra-territorial law-making power, provided there is a NEXUS (relationship) between the subject matter of the law and the territory
Director of Public Prosecutions v Kirby (1996) - Kable was imprisoned on a custodial basis following the arrest of his wife - Stabbed his estranged wife - Charged with murder but acquitted - He sent threatening messages to his 2 young girls and behaved in a violent manner upon release - Created a preventative Community Protection Act 1994 - It was directed specifically for Kable to keep him imprisoned for things he may do in the future - S3(3) stated that the Act 'authorised the making of a detention order against Gregory Wayne Kable and does not authorise the making of a detention order against any other person' - Majority held Act was invalid due to the fact that it purported to confer a NON-JUDICIAL function on the Supreme Court of NSW - Kable's claim that the legislative power of the NSW parliament was limited by 'fundamental common law rights' was rejected

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Kable () → J&C: 'a fine... of... tutory... l... ma'... t... t... t... gality... ctio... taken purs... to an earlier court order made... that leg... ion, ... on [the... is... on]... s... tume	
Durham Holdings Pty Ltd v W (2001)	
• S5 of... equi... n Act 198... W... ited... coal... aine... certain lands... n • A cap was placed on the amount of compensation that would be paid to certain landowners who were coal mining companies • Durham Holdings was one of the landowners whose coal was acquired and it received \$23,250,000 in compensation (with the cap) → if no cap they would have been entitled to \$93,39ff,32ff	
Held:	
• The court unanimously held that the legislation was valid • Referenced Union Steamship Co v King - o S5 of the Constitution Act 1902 (NSW) holds that the power of the NSW parliament to make laws for the 'peace, order and good government of a territory is as ample and plenary as the power possessed by the Imperial Parliament itself'	
'THE TAMPA CASE'	
▪ MV Tampa rescued 433 asylum seekers near Christmas Island ▪ Australia denied entry; military boarded and transferred them to Nauru and NZ ▪ Vadarlis sought habeas corpus, claiming unlawful detention ▪ Trial judge (North J) found detention unlawful — no authorising executive power ▪ Federal Court majority (French J) upheld government action - o Recognised prerogative power to exclude non-citizens - o Migration Act did not displace that power - o No unlawful detention ▪ Dissent (Black CJ) said statutory regime replaced prerogative power - o Detention unlawful without statutory authority ▪ No appeal to High Court — asylum seekers had already been removed ▪ Later addressed in CPCF (2015) and clarified by Maritime Powers Act 2013 (Cth)	

CPCF v Minister for Immigration¹(2015)	
▪ A Sri Lankan Tamil asylum seeker and 156 others were intercepted by Australian border officials near Christmas Island ▪ After their vessel became unseaworthy, they were detained and taken toward India ▪ They challenged the legality of their detention and removal under Australian law ▪ Majority (French CJ, Crennan, Gageler, Keane JJ): detention was lawful under the Maritime Powers Act 2013 (Cth) ▪ Minority (Hayne, Bell, Kiefel JJ): found no lawful authority under statute or executive power ▪ Case confirmed executive power to detain when authorised by legislation ▪ Key difference from <i>Tampa</i>: no statutory rework e... in th...	
Boilermakers' Case (1956) 106 CLR 161	
Facts:	
▪ Boilermakers' Society of Australia and Metal Trades Association; arbitration process - Commonwealth Court of Conciliation and Arbitration (Conciliation Court) set employment terms and conditions for boilermakers around Australia set up by legis... ▪ Union breached conditions of award; ordered by Arbitration Court to comply with award and cease industrial action ▪ Some members of union failed to comply with the order, Arbitration Court fined union for contempt ▪ Challenged in the High Court	
Argument:	
• The enforcement of awards was a judicial power, and that federal judicial power could not validly be vested in the Arbitration Court, whose principal functions were nonjudicial • The legislation setting up Arbitration Court was held invalid by a majority of 4:3	
Summary:	
• The Cth Constitution prevents Parliament from conferring judicial power on bodies that are not Ch III courts. It also prevents Ch III courts from exercising functions that are not incidental or ancillary to judicial functions	
Reasoning of Court:	
• Provisions of Ch III conferring jurisdiction on the High Court and outlining what powers Parliament can confer on Ch III courts, are carefully drafted and specific. This suggests that the framers intended that other powers could not be conferred on federal courts • Structure of our Constitution is based on the US Constitution, especially those provisions in Ch III. The US SC has held that courts can only exercise judicial functions	