I Intergovernmental Immunities — *3*
Queensland Electricity Commission v Commonwealth (1985) — 3
Re Australian Education Union; Ex Parte Victoria (1995) — 4
Victoria v Commonwealth ('Industrial Relations Case') (1996) HCA — 5
Austin v Commonwealth (Judges' Superannuation Case') (2003) HCA — 6

II Commonwealth Executive Power — *8*

A Statutory Powers — **8**
Williams v Commonwealth ("Williams No 2") (2014) — 8

B Non-Statutory Power — **9**
(1) Specific Constitutional Powers — 9
Williams No 1 (2012) HCA — 9
(2) Nationhood Power — 9
Victoria v Commonwealth ('AAP Case') (1975) — 9
Davis v Commonwealth (1988) HCA — 9
(3) Capacities Power — 9
Pape v Federal Commissioner of Taxation (2009) — 10
Victoria v Commonwealth (1975) ('AAP Case') — 11
Williams v Commonwealth (2012) (Williams No 1') — 11

III Boilermaker's Doctrine — *13*
R v Kirby; Ex parte Boilermakers' Society of Australia (1956) HCA — 13
Huddart, Parker & Co Pty v Moorehead (1909) HCA — 14
Precision Data Holdings Ltd v Wills (1991) HCA — 14
Brandy v Human Rights and Equal Opportunity Commission (1995) — 15
Thomas v Mowbray (2007) — 15

A The First Limb of the Boilermaker's Doctrine — **16**
Chu Kheng Lim v Minister For Immigration, Local Government and Ethnic Affairs (1992) — 16
Al-Kateb v Godwin (2004) — 18
NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs [2023] — 19
Alexander v Minister for Home Affairs [2022] — 19

B The Second Limb of the Boilermaker's Doctrine — **21**
(1) State Parliaments prohibited from vesting state judicial power in federal courts — 21
Re Wakim; Ex parte McNally (1999) — 21
(2) Commonwealth Parliament is prohibited from vesting non-judicial power in federal courts. — 22
Wilson v Minister for Aboriginal Affairs (1996) — 22

C State Courts and the Separation of Powers — **23**
Kable v Director of Public Prosecutions (NSW) (1996) HCA — 24
South Australia v Totani (2010) HCA — 26
Wainohu v New South Wales (2011) HCA — 27
Garlett v Western Australia [2022] — 27
(1) Relationship Between Kable and Boilermakers Doctrines — 28

IV Grants Power — *29*

A What sorts of terms and conditions can be imposed on grants? — **29**
South Australia v Commonwealth (1942) ('First Uniform Tax Case'): — 29
Victoria v Commonwealth (1957) 99 CLR 575, 605 ('Second Uniform Tax Case') — 30
Attorney-General (Vic); Ex rel Black v Commonwealth (1981) ("DOGS Case") — 30

B Can the terms and conditions circumvent a limitation on federal legislative power found elsewhere in the Constitution? — **30**
Deputy Federal Commissioner of Taxation (NSW) v Moran (1939) — 31
Moran v Deputy Federal Commissioner of Taxation (NSW) [1940] — 31
ICM Agriculture v Commonwealth (2009) — 31

V Taxation — *33*

A What is Taxation? — **33**
(1) Fee for Service — 33
Air Caledonie International v Commonwealth (1988) — 33
Airservices Australia v Canadian Airlines International — 34
(2) What is public authority for public purposes? — 36
Australian Tape Manufacturers Ass'n v Commonwealth (1993) — 36
Luton v Lessels (2002) — 36

C Excise — **37**
Harper v Minister for Sea Fisheries (1989) — 37
Dennis Hotels Pty Ltd v Victoria (1960) — 38
Hematite Petroleum Pty Ltd v Victoria (1983) — 38
Ha v New South Wales (1997) — 39
Vanderstock v Victoria [2023] — 40

VI Freedom of Interstate Trade and Commerce — *42*
Cole v Whitfield (1988) — 42
Castlemaine Tooheys Ltd v South Australia (1990) — 44
Betfair Pty Limited v Western Australia (2008) — 45

Palmer v Western Australia (2021) 46

VII Freedom of Political Communication ***47***
Nationwide News v Wills (1992) 47
Lange v Australian Broadcasting Corporation (1997) 48
Coleman v Power (2004) 48
Monis v The Queen (2013) 50
Unions NSW v New South Wales (2013) 51

VIII Voting Rights and Safe Access Zones ***52***
McCloy v New South Wales (2015) 52
Clubb v Edwards (2019) 53
Roach v Electoral Commissioner (2007) 55

I Intergovernmental Immunities

1. Does the CW law restrict or burden one or more of the States in the exercise of their constitutional powers? (Austin v Commonwealth (2003))?
    a. Re Australian Education Union (1995)
    b. Austin v Commonwealth (2003)
    c. Industrial Relations Case (1996)
    d. Queensland Electricity Commission (1985)

Queensland Electricity Commission v Commonwealth (1985)

Facts:

- QLD EC (C) was created by the *Electricity Act 1976 (Qld).*
- The Commission:
    - Generated electricity
    - which was distributed by Electricity Boards under State control.
- Employment conditions for workers of both the Commission and the Boards were governed by:
    - QLD legislation +
    - State industrial awards
- 1984: an industrial dispute arose, involving:
    - The Commission,
    - Electricity Boards and
    - Some employees (including members of the Electrical Trades Union).
- During this dispute, QLD legislation was enacted, unilaterally altering employment conditions.
    - Examples:
        - Permitted dismissal of employees,
        - Impose pecuniary penalties for not obeying an instruction to work and
        - Inserted no-strike clauses in employment contracts
- This was a legislative response that strongly favoured the employer (the State).
- 18 April 1985: CW Conciliation and Arbitration Commission found that an industrial dispute existed between:
    - Electrical Trades Union of Australia and
    - the Commission.
- 19 April 1985: other unions blockaded QLD in protest against the QLD legislation.
    - This demonstrated that:
        - The dispute had national ramifications
        - It was no longer an internal QLD matter.
- 31 May 1985, the Conciliation and Arbitration (Electricity Industry) Act 1985 (Cth) commenced.
    - It had very targeted application:
        - S 6(1) applied specifically to the existing QLD electricity dispute between the Commission and the Electrical Trades Union
        - S 6(2) extended it to any future industrial disputes (with unions) involving QLD electricity authority.
    - Additionally, gave the Commission specific powers and duties concerning this dispute.
        i. S 7 required Commission to
            1. Endeavour to settle the industrial dispute
            2. as expeditiously as was appropriate,
            3. having regard to all the circumstances.
        ii. S 8 limited the Commission's power
            1. to dismiss or refrain from determining
            2. industrial disputes to
            3. which a QLD electricity authority was a party.
        iii. S 9 required the Commission's powers in relation to a dispute to which the Act applied to be exercised by a Full bench of the Commission.

Issue: Is Conciliation and Arbitration (Electricity Industry) Act 1985 (Cth) valid?

Held: Majority (Gibbs, Mason, Wilson and Dawson) held the Commonwealth Act entirely invalid.

- Brennan only held s 6(2) invalid.
- Deane held most provisions invalid (including s 6(2)).
    - 2 provisions, including s 6(1) valid.

Mason

Old Formulation of the II Doctrine

1. [Old formulation of the] Intergovernmental immunities doctrine has 2 components:
    a. (1) the prohibition against discrimination which involves the placing on the States of special burdens or disabilities;
    b. (2) the prohibition against laws of general application which operate to destroy or curtail the continued existence of the States or their capacity to function as governments.
        i. The second element of the prohibition is necessarily less precise than the first;
            1. it protects the States against laws which,
                a. complying with the first element because they have a general application,
                b. may nevertheless produce the effect which it is the object of the principle to prevent.

Purpose of the II Doctrine

1. Purpose of the implied limitations is to:
    ii. impose some limit on the exercise of Commonwealth power
    iii. in the interest of preserving the existence of the States as constituent elements in the federation

Some Features of the II Doctrine

1. the principle prohibits discrimination against a particular State and States generally.
    a. Discrimination against a particular State by isolating it from the general law applicable to others falls squarely within the principle.
2. the principle, as Stephen J indicated in Koowarta, protects legislatures as well as executive governments.
3. Not every law which deprives a State of a right, privilege or benefit will amount to discrimination
    a. A law which deprives a State of a right, privilege or benefit not enjoyed by others, to place the State on an equal footing with others, is not a law which isolates the State from the general law.
    b. it may be that action on the part of a State or its agencies may be of such a kind as to call for a special exercise of a particular federal power in circumstances
        i. where that exercise involves no real discrimination against the State.
    c. The prohibition against discrimination operates to strike down laws which apply to agencies of a State as well as to a State itself.
4. There can be no objection to

a. an exercise of the conciliation and arbitration power which establishes a particular:
    i. tribunal or a
    ii. procedure
        1. for the settlement of disputes in one industry,
        2. say the electricity industry.

Application

5. CW law violates this doctrine:
    a. But when the Parliament singles out disputes in the electricity industry to which agencies of the State of Queensland are parties and subject them to special procedures
        i. it discriminates against the agencies of the State by subjecting them to a special disability in isolating them from the general law contained in the Principal Act.
6. It is not to the point that parties to the dispute other than the Queensland electricity authorities are subjected to the same procedures.
    a. They are subjected to those procedures if, and only if, the dispute could result in an award that would be binding on a Queensland authority
    b. This regime is tailored for Queensland authorities, as distinct from the general run of employers in the industry.
        i. Law is discriminatory even if it subjects some others to that special burden
            1. A law may discriminate against a State even if it subjects some others (e.g. private employers) as well as agencies of the State to a special burden or disability.
                a. This is the effect of the Act.
7. The Act discriminates against QLD by singling out disputes to which employers in that State are parties, those employers being for the most part authorities brought into existence by the State.
8. It is significant that the Act applies in the first instance to the dispute found to exist on 18 April to which no private employer in Queensland is a party.

	Regular Employees	High level employees
Number + identity	Protected	Protected
Terms +conditions	Not	Protected

Re Australian Education Union; Ex Parte Victoria (1995)

Facts:

- One aspect of Vic government's budgetary strategy in 90s was to reduce considerably the size of the State's public sector.
    - Eg. through a substantial reduction in public sector employees.
- Vic Parliament enacted the Employee Relations Act 1992 (Vic) and Public Sector Management Act 1992 (Vic) to replace the:
    - State conciliation and arbitration system and
    - State awards with individual employer-employee agreements.
- Public employees' state awards were terminated and replaced by individual employment agreements, incorporating terms and conditions in Victorian regulations.
- Voluntary severance packages were offered to Victorian government schoolteachers and health workers.
- Historically, State government employees' employment T&Cs had been regulated by State (not federal) industrial awards.
- However, the employees' unions now sought for their members coverage and protection of **federal awards** by:
    - requesting the Australian Industrial Relations Commission under the *Industrial Relations Act 1988 (Cth),*
    - to make a finding that:
        1. an industrial dispute (within s 51(xxx)) existed and
        2. that there was a federal award covering Victorian government employees.

Issue: Can the *Industrial Relations Act 1988* (Cth), based on s 51(xxxv)) (Conciliation and arbitration power), constitutionally bind State governments and their employees?

Held:

Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh (Dawson J dissenting) held that:

1. there was an interstate industrial dispute;
2. Constitutional:
    a. making federal awards binding States and their employees in relation to minimum wages and conditions
3. Unconstitutional
    a. awards in relation to:
        i. employment qualifications and eligibility and employment appointment and termination, at least on redundancy grounds
        ii. employment terms and conditions of State Ministers, ministerial assistants and advisers, departmental chief executive officers, senior office holders, State parliamentary officers and State judges.

Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh

Law

1. Rejects the discrimination argument.
    a. ***The prosecutor (VIC) submitted*** that the statements in the *Tasmanian Dam Case*, when they refer to impairment of a State's capacity "to function as a government", extend to ***any impairment of capacity to exercise government functions***.
        i. Our rejection of the submissions made by the prosecutor
            1. as to the scope and content of the implied limitation leads us to express the scope and content of the limitation in this way.
            2. The limitation consists of two elements:
                a. (1) the prohibition against discrimination which involves the placing on the States of special burdens or disabilities ("the limitation against discrimination") and
                b. (2) the prohibition against laws of general application which operate to destroy or curtail the continued existence of the States or their capacity to function as governments.
2. critical to that capacity of a State is the right to determine:
    a. the number and identity of the persons whom it wishes to employ,
    b. term of appointment of such persons and
    c. number and identity of the persons whom it wishes to dismiss with or without notice from its employment on redundancy grounds

1. The States' capacity to function as governments would not be impaired by the operation of federal awards
    a. made in respect of most of the employees sought to be covered by the logs of claims,
    b. at any rate if the award provisions were confined **to minimum wages and working conditions**
2. Also critical to a State's capacity to function as a government is its ability,
    a. not only to determine the number and identity of those whom it wishes to engage at the higher levels of government,
    b. but also to determine the terms and conditions on which those persons shall be engaged.
        i. Hence:
            1. Ministers,
            2. ministerial assistants and advisers,