

JURD7141 Principles of Public Law

Case Book (P-FIRAC)

Every case, A-Z: 54 full P-FIRAC cards + a quick-reference table of 22 more. The Theory and Problems books cite these short names.

Case	Citation	Topic
ACF	(1980) 146 CLR 493	Standing: special interest test
Australian Capital Television (ACTV)	(1992) 177 CLR 106	Implied freedom (origins)
Bancoult (No 2)	[2009] 1 AC 453	Prerogative; courts define scope
Barton v Commonwealth	(1974) 131 CLR 477	Executive power (breadth)
BLF Case	(1986) 7 NSWLR 372 (New South Wales Court of Appeal; Street CJ, Kirby P, Glass, Mahoney and Priestley JJA)	State legislative power; PWGG limits
Boilermakers	(1956) 94 CLR 254	Strict separation of federal judicial power (both limbs)
Brandy	(1995) 183 CLR 245	Non-court body cannot make binding, enforceable determinations
Bropho	(1990) 171 CLR 1	Crown immunity presumption; statutory interpretation
Canavan (Citizenship Seven)	(2017) 263 CLR 284	s 44(i) dual citizenship
Church of Scientology	(1982) 154 CLR 25, 70 (Brennan J) (HCA)	Judicial review and rule of law
Coco	(1994) 179 CLR 427	Principle of legality (clear words)
Coe (No 2)	(1993) 118 ALR 193	Indigenous sovereignty rejected
Communist Party Case	(1951) 83 CLR 1	Rule of law; no bootstrapping
Cooper v Stuart	(1889) 14 App Cas 286 (PC)	Terra nullius (settled colony)
Davis	(1988) 166 CLR 79	Cth executive power (s 61)
De Keyser	[1920] AC 508	Prerogative displaced by statute
Durham Holdings	(2001) 205 CLR 399 (HCA)	State power; deeply-rooted rights
Egan v Chadwick	(1999) 46 NSWLR	Cabinet-documents limit

Case	Citation	Topic
	563 (NSWCA)	
Egan v Willis	(1998) 195 CLR 424 (HCA)	Responsible govt; power to compel documents
Engineers Case	(1920) 28 CLR 129	Interpretation; federal balance
Gallagher (Re)	(2018) 263 CLR 460	s 44(i); reasonable steps
Grollo v Palmer	(1995) 184 CLR 348	Persona designata: consent + incompatibility condition
Hannah v Dalgarno	(1903) 3 SR (NSW) 495	HC inception; s 73
Judiciary and Navigation Acts (Re)	(1921) 29 CLR 257	No advisory opinions
Kable	(1996) 189 CLR 51	Kable doctrine: Ch III, State courts
Kartinyeri (Hindmarsh)	(1998) 195 CLR 337	Race power scope
King v Jones	(1972) 128 CLR 221 (HCA)	s 41 adult fixed at 1901
Kirk	(2010) 239 CLR 531	State Supreme Court supervisory jurisdiction
Lange	(1997) 189 CLR 520	Implied freedom; representative govt
Lee	(2013) 251 CLR 196	Principle of legality; statutory interpretation
Love	(2020) 270 CLR 152	Aliens power; Aboriginal non-alien
Mabo (No 2)	(1992) 175 CLR 1	Native title; sovereignty non-justiciable
Marbury v Madison	5 US (1 Cranch) 137 (1803)	Judicial review (origins)
Marquet	(2003) 217 CLR 545	Manner-and-form under s 6 Australia Act 1986
McCawley	[1920] AC 691 (PC)	State constitutions uncontrolled; ordinary/implied repeal
McCloy	<i>McCloy v New South Wales</i> (2015) 257 CLR 178; [2015] HCA 34 (High Court of Australia)	Implied freedom; structured proportionality
McGinty	(1996) 186 CLR 140	Representative government and voting equality
Melbourne Corporation	(1947) 74 CLR 31	Implied federalism limit (State immunity)
Milirrpum (Gove)	(1971) 17 FLR 141 (NTSC)	Native title (pre-Mabo)
Momcilovic	(2011) 245 CLR 1;	Principle of legality; Charter interpretation

Rule	When a statute covers the field occupied by a prerogative, by express words or necessary implication , the prerogative is displaced / held in abeyance ; the Crown must proceed under the statute and comply with its conditions.
Application	The defence legislation provided a complete code for requisitioning property with compensation. The Crown could not evade that code by reaching back to the prerogative; having taken the hotel, it was bound by the statutory compensation scheme.
Conclusion	Held (unanimously) for the hotel owner: the prerogative was abrogated by the statute covering the field, so compensation was payable . The foundational 'covering the field' displacement rule.

Durham Holdings v NSW (2001) 205 CLR 399 (HCA)

Procedure	High Court; application for special leave to argue a common-law limit on State legislative power (refused).
Facts	The <i>Coal Acquisition Act 1981</i> (NSW) capped the compensation payable for compulsorily acquired coal (a cap that would have breached s 51(xxxi) had the Commonwealth acquired it). Durham argued a common-law right to just compensation limited the plenary power of the NSW Parliament.
Issue	Does a 'deeply rooted' common-law right to just or adequate compensation operate as a limit on State legislative power?
Rule	State power is plenary and 'peace, welfare and good government' is not a limitation (<i>Union Steamship</i>), the deeply-rooted-rights question being left open. There are unexpressed federal limits on State power flowing from the federal structure and s 106, but a right to 'just' or 'properly adequate' compensation is not among them.
Application	The plurality (Gaudron, McHugh, Gummow and Hayne JJ) accepted federal-structural limits exist but held a just-compensation right 'falls outside that field of discourse', so the compensation cap was within NSW power. Kirby J reached the same result as in the <i>BLF Case</i> (no free-standing common-law limit), relocating any possible limit to implications from the federal Constitution rather than judges asserting a common-law power. The deeply-rooted-rights power thus remains formally 'unexplored'.
Conclusion	Special leave refused ('no prospects of success'): no common-law just-compensation limit on NSW power; the cap stands.

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Egan v Chadwick (1999) 46 NSWLR 563 (NSWCA)

Procedure	After <i>Egan v Willis</i> , the Council again demanded documents (on Sydney's water supply); Egan produced many but withheld some on grounds of privilege and immunity, was again adjudged in contempt and suspended, and the validity of that resolution returned to the NSW Court of Appeal.
Facts	Egan declined to produce Cabinet documents (claiming public interest immunity) and legal advice (claiming legal professional privilege). The Council ordered production of all of them; Egan challenged whether its power reached privileged and Cabinet material.
Issue	Whether the Council's 'reasonably necessary' power to compel documents extended to legal advice, public-interest-immunity material, and Cabinet

Issue	Did those provisions impermissibly burden the implied freedom of political communication, and by what analytical test is the second limb of the <i>Lange</i> question to be answered?
Rule	French CJ, Kiefel, Bell and Keane JJ (joint judgment) recast the second limb of the <i>Lange</i> test (as modified by <i>Coleman v Power</i>) into a structured proportionality analysis. A law that effectively burdens the freedom (question 1) is valid only if its purpose is legitimate, that is, compatible with the constitutionally prescribed system of representative and responsible government (question 2, compatibility testing), and the law is reasonably appropriate and adapted to that end (question 3, proportionality testing). Proportionality is assessed in three stages: suitable (a rational connection to the purpose), necessary (no obvious and compelling, reasonably practicable alternative with a less restrictive effect on the freedom) and adequate in its balance (a value judgment weighing the importance of the purpose against the extent of the restriction). Gageler J and Gordon J agreed in the result but rejected structured proportionality as the required method.
Application	The donation caps and the property-developer ban burdened the freedom by restricting the sources of campaign funds, but served the legitimate anti-corruption purpose of preventing quid pro quo and clientelistic corruption and protecting the integrity and equality of the electoral process; they were rationally connected to that purpose (suitable), no less-restrictive alternative was obvious and compelling (necessary), and the anti-corruption benefit outweighed the limited restriction imposed (adequate in balance).
Conclusion	Challenge dismissed: the impugned provisions were held valid (Nettle J dissenting only on the Div 4A developer ban), and structured proportionality was adopted as the framework for the second <i>Lange</i> limb.

McGinty v Western Australia (McGinty's Case) (1996) 186 CLR 140

Procedure	Constitutional challenge commenced in the High Court's original jurisdiction: James McGinty (WA Labor Opposition Leader) and co-plaintiffs sought declarations that Western Australia's malapportioned electoral distribution laws were invalid, determined by the Full Court of six (Deane J not sitting).
Facts	At the 1993 WA State election, enrolments per seat varied sharply between metropolitan and rural districts: in the Legislative Assembly, Wanneroo held 26,580 voters against Ashburton's 9,135, and in the Legislative Council the North Metropolitan quota (34,161) dwarfed the Mining and Pastoral quota (9,097). This malapportionment was entrenched by laws including the <i>Acts Amendment (Electoral Reform) Act 1987</i> (WA).
Issue	Do the Commonwealth <i>Constitution</i> and/or the <i>Constitution Act 1889</i> (WA) (in particular s 73(2)(c)) imply a guarantee of equal voting power ('one vote, one value') that invalidates WA's malapportioned State electorates?
Rule	Representative government is not a free-standing source of constitutional limitation: any implication must be grounded in the text and structure of the relevant <i>Constitution</i> , not an overarching concept of 'representative democracy' (Brennan CJ, 168-170; Dawson J). The phrase 'directly chosen by the people' in ss 7 and 24 does not mandate equality of voting power or equal-sized electorates, so one vote, one value is not entrenched (majority: Brennan CJ, Dawson, McHugh and Gummow JJ, affirming <i>McKinlay</i>). But representative government is not static: Toohey J (201), Gaudron J (221-222) and Gummow J (286-7) accepted that, by today's standards, a system denying universal adult franchise (eg excluding women or a racial minority, or imposing a property or educational qualification) would now fall short of a choice 'by the people'.

Stephens v West Australian Newspapers Ltd (1994) 182 CLR 211 (HCA)

Procedure	HCA (decided with <i>Theophanous v Herald & Weekly Times</i>).
Facts	WA members of Parliament sued in defamation over newspaper criticism of their conduct; the defendants pleaded a freedom-of-political-communication defence. The question was whether an implied freedom protected discussion of WA State political matters.
Issue	Did an implied freedom of political communication operate at the State level, and could it be sourced in the State Constitution?
Rule	A freedom of communication about government and political matters is implied from representative government; in WA it was reinforced by the 'double entrenchment' of representative government in the <i>Constitution Act 1889</i> (WA), so the freedom operated as an implied limit on State legislative power derived from the State Constitution (as well as from the Commonwealth implication).
Application	The freedom extended to discussion of WA State political matters, so the defence was available.
Conclusion	A rare instance of a structural implication sourced in a State Constitution; illustrates double entrenchment producing a substantive limit.

Sue v Hill (1999) 199 CLR 462

Procedure	Heard by the High Court sitting as the Court of Disputed Returns.
Facts	Heather Hill, elected as a One Nation senator for Queensland, was a dual citizen of the United Kingdom. Her eligibility was challenged under s 44(i) (allegiance to a 'foreign power').
Issue	Is the United Kingdom a 'foreign power' within s 44(i)?
Rule	Yes. After the <i>Australia Act 1986</i> the United Kingdom retains no legislative, executive or judicial power in or over Australia, so it is a 'foreign power' for s 44(i). Australia's legal independence is complete; only the shared Crown remains.
Application	Hill was a subject and citizen of a foreign power and so was incapable of being chosen as a senator.
Conclusion	Disqualified. The clearest judicial statement that Australia is now fully legally independent of the UK.

Sykes v Cleary (No 2) (1992) 176 CLR 77

Procedure	Petition to the High Court sitting as the Court of Disputed Returns after the 1992 Wills by-election.
Facts	Phil Cleary won the by-election for Wills (Bob Hawke's old seat). He was a Victorian State secondary-school teacher on leave without pay and resigned about a week after the poll, but on nomination day and election day he was still an 'officer' under the <i>Teaching Service Act 1981</i> (Vic). The runners-up, Delacretaz and Kardamitsis, were naturalised Australians who still held Swiss and Greek citizenship.
Issue	Was Cleary disqualified under s 44(iv) (office of profit under the Crown), and were the runners-up disqualified under s 44(i)?
Rule	Cleary held an 'office of profit under the Crown' within s 44(iv): the bar