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I. THE CONSTITUTION	
A. PURPOSES OF A CONSTITUTION	
1. Established the basic powers and limits of a government and governs the relationship between a government and its citizen 2. Guarantees certain 'rights' or 'freedoms' 3. Outlines the powers and limitation of Federal and State governments 4. Restricts arbitrary power and ensures 'limited government'	
B. WRITTEN AND UNWRITTEN CONSTITUTIONS	
Unwritten Constitution	constitution exists in the form of legislations, judicial decisions, common law principles and traditional conventions . They are more flexible .
Written Constitution	constitution exists as a solemn document which founds a political community , defines its chief political institutions, confers their powers and circumscribes the permissible limits of those powers. They are limited by the words they are expressed in (and the court's interpretation of them), and are more difficult to change .
C. DRAFTING THE CONSTITUTION	
• Drafting & Enactment: The Constitution was drafted by colonial representatives at conventions during the 1890s, approved by voters in separate referenda, and ultimately enacted by the UK Parliament. • Source of Authority: Its legal authority derived from the UK Parliament, but its political legitimacy came from the agreement of colonial representatives and the majority assent of the voters. • System of Government: It combines the Westminster system of responsible government (Ministers are Members of Parliament) with an American-style federal system (power is distributed between federal and state levels). • Federal Model: The federal elements are based more on the American model than the more centralized Canadian model. • Rights and Process: The framers preferred the British constitutional tradition regarding rights. Federation was achieved through pragmatic reform, not armed rebellion.	

II. THE ENGINEERS CASE AND LEGALSIM

A. PRE-ENGINEERS APPROACH

(NOT THAT IMPORTANT **ONLY** HAVE TO KNOW THE **ENGINEERS CASE**)

1. Implied Immunity of Instrumentalities (*Implied Immunity Doctrine*)

The two levels of government operating in the **same geographical territory** must normally be **immune** from each other's laws.

- The reasoning was used to **protect the States and their agencies** from Commonwealth interference.
- Because reciprocal immunity was thought to be '**necessarily implied**' in the very **idea of federalism**.

2. Immunity of Cth from State Laws

<i>D'Emden v Pedder</i> (1904)	Facts: A Commonwealth officer, D'Emden, did not pay State stamp duty Held: State law could not apply because Commonwealth officers and procedures were necessarily immune from State laws .	Griffith CJ: [110] when a State attempts to give its legislative or executive authority an operation which, if valid, would fetter, control, or interfere with, the free exercise of the legislative or executive power of the Commonwealth , the attempt, unless expressly authorised by the Constitution, is to that extent invalid and inoperative.
<i>Deakin v Webb</i> (1904)	Using the same reasoning , the HC held that a Commonwealth minister, Deakin, was not liable to State income tax.	
<i>Webb v Outtrim</i> [1907]	The Privy Council held that <i>D'Emden</i> and <i>Deakin</i> had been wrongly decided.	
<i>Baxter v Commissioners of Taxation</i> (NSW) (1907)	majority of HC responded that their Lordships had spoken without jurisdiction as the case had reached the PC bypassing HC and circumventing s 39 of <i>Judiciary Act</i> 1903 (Cth) , so their decision had no binding force as precedent . The HC, Higgins and Isaacs JJ dissenting, reaffirmed the 'implied immunities' doctrine, this time holding that a Commonwealth customs officer did not have to pay State income tax.	
• <i>Commonwealth Salaries Act</i> 1907 (Cth) made salaries of federal officers taxable by states. This was confirmed in <i>Chaplin v Commissioner of Taxes for South Australia</i> (1911) 12 CLR 375.		

3. Immunity of State from Cth Laws

<i>Railway Servants' Case</i> (1906)	Doctrine Reaffirmed: The High Court, by majority, reaffirmed the Implied Immunities Doctrine Reciprocity: The Court ruled this immunity worked both ways. Decision: A State railway union could not be registered under a Commonwealth industrial law (s 51(xxxv)) because it would interfere with the State's function.	• Griffith CJ held that running railways was an essential "governmental function" expressly recognized in the Constitution. • Higgins KC dissented, arguing railways were merely ordinary "business undertakings" that could be delegated, not strictly governmental functions.
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Steel Rails Case (1908)	Facts: New South Wales imported steel rails, disputing the Commonwealth's Customs duty based on implied immunities. Decision: The State's argument failed . The Implied Immunities Doctrine cannot override an express provision of the Constitution .	• Griffith CJ held that the power to impose Customs duties is a method of regulating trade and falls under the Commonwealth's exclusive power (s 90). Where the Commonwealth has exclusive power, the implied State immunity cannot apply. Immunity only applies where both the Commonwealth and States have functions to perform.
Engine-Drivers' Case (1911 & 1913)	• Key Shift: The High Court accepted Higgins KC's distinction between ordinary commercial undertakings and strictly governmental functions as the basis for applying the immunity. • Decision: The Melbourne City Council, as an employer, had no immunity from Commonwealth industrial arbitration (s 51(xxxv)) for operating 'land engines' (used for electricity, refrigeration, and manure sales). • Reasoning: These activities were classified as business undertakings, not essential governmental functions, meaning the Commonwealth law could validly apply to the Council's employees.	
Municipalities Case (1919)	• Doctrine Further Limited: The High Court continued to narrow the scope of the immunity. • Decision: Municipal councils were found to have no immunity from Commonwealth interference in the 'making, maintenance, control and lighting of public streets'. • Significance: This showed the Court was increasingly reluctant to characterize local government activities as part of the core, protected governmental functions of the State, further diminishing the Implied Immunities Doctrine.	
4. Reserved State Powers		
<i>The idea was that the Constitution impliedly 'reserved' to the State their traditional areas of law-making power, and hence that the grants of law-making power to the Commonwealth must be narrowly construed so as not to encroach on these traditional powers of the States.</i>		
Exclusive State Powers Examples	• S 51(xxxv): Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State' —industrial disputes confined wholly within one State may be excluded from the scope of the Commonwealth power, and in that sense make them an exclusive State power. • S 51(i): Trade and commerce with other countries, and among the States' has the effect of excluding trade and commerce conducted wholly within one State.	
Peterswald v Bartley (1904)	the HC took a narrow view of the Commonwealth's exclusive power to levy excise duties in s 90, and left intact the NSW brewers' licensing system.	
R v Barger (1908)	Facts: The Excise Tariff Act 1906 (Cth) imposed duties on agricultural implements, with an exemption if manufacturers provided " fair and reasonable " labor conditions .	• Griffith CJ: The law's substance was not taxation, but the regulation of labor conditions, which belongs to the internal affairs of the States and was thus reserved to them. The Court viewed the Commonwealth's attempt to regulate a reserved State matter as an unconstitutional

	Issue: whether this was a valid law regarding Taxation (s 51(ii)). Decision: The High Court (3:2) held the law invalid. It could not be supported by the Taxation power.	encroachment on State power, even if done via an enumerated power like Taxation.
Union Label Case (1908)	• Rule of Construction: Griffith CJ articulated a fundamental rule of constitutional construction—where the intention to reserve any subject matter to the States is clear, no exception from that reservation can be admitted unless it is expressed in "clear and unequivocal words." This maxim was central to the Reserved Powers Doctrine, which prioritized State power unless the Constitution clearly stated otherwise.	
Huddart, Parker & Co Pty Ltd v Moorehead (1909) (overruled in <i>Concrete Pipes Case</i> (1971))	• Reserved Trade Power: Griffith CJ interpreted the Constitution as implicitly containing an express declaration that the power to make laws regarding intrastate trade and commerce is reserved to the States. • Corporations Power (s 51(xx)): Griffith CJ held that the Corporations power only allows the Commonwealth to prohibit a corporation from entering a field of operation; it does not empower the Commonwealth to control the internal operations of a corporation once it lawfully enters a field, as that control is "exclusively reserved to the States." This severely limited the scope of the Corporations power to protect the States' control over domestic activities.	
B. THE ENGINEERS CASE		
3 Major Developments in Constitutional Interpretation: 1. Overturned the implied immunities doctrine between State & Cth. 2. Overturned the State reserved powers doctrine. 3. Advocated a literalist approach to constitutional interpretation.		
*Engineers Case (1920)	Facts: The case involved a claim by a Commonwealth engineers' union for an industrial award against numerous employers, including three governmental instrumentalities in Western Australia. Issue: Could a Commonwealth law made under the conciliation and arbitration power (s 51(xxxv)) be validly applied to and bind State government employers, given the pre-existing Implied Immunities Doctrine? Holding: YES. The High Court, by majority, overturned both the Implied Immunities Doctrine and the Reserved Powers Doctrine,	Reasoning (The New Rule of Interpretation) • Primacy of Textual Literalism: The Court, led by Isaacs J, mandated that the Constitution must be interpreted by giving effect to the plain and ordinary meaning of its text. If the text is explicit, it is conclusive. • Rejection of Implied Limitations: The Court rejected the previous practice of implying limitations on Commonwealth power based on external political concepts (like "political necessity") or the need to reserve certain powers for the States. • Section 107 Redefined: The Court stated that Section 107 (preserving State powers) does not reserve any power from the Commonwealth that falls within the explicit terms of a Section 51 grant. • Supremacy of Commonwealth Law: The decision affirmed that in areas of concurrent power, Section 109 gives supremacy to every valid Commonwealth law over any conflicting State law.

	finding that the Commonwealth law was valid and binding on the State employers.	Significance - This decision is considered the most significant constitutional landmark in Australia, marking a fundamental shift in the balance of power. - It resulted in a massive centralization of power towards the Commonwealth government. - It ended the decades-long "battle" over the scope of Commonwealth and State power by confirming that the Commonwealth could use its enumerated powers to legislate with respect to State instrumentalities as well as private citizens.
*Academic and Judicial Commentary on the Engineers Case (Essay Question):		
1. The Socio-Political Reality Behind the Legal Change The shift in constitutional interpretation represented by the Engineers Case was not purely about legal text; it reflected a fundamental change in Australia's national identity and needs .		
Emergence of the Nation:	RTE Latham ‘<i>The Law and the Commonwealth</i>’, 1937: the majority view was that the Constitution was intended to create a nation and had succeeded. This perception was profoundly accelerated by the Great War, during which Australia's national status advanced while the States' roles became comparatively static.	
Relevance of the Text:	The majority believed that the "merely contractual view of the Constitution" that protected States' rights was "out of date" and was "stultifying" vital national powers, such as the industrial power. The literal words of the Constitution permitted the broader, national view of the federal relationship that "the times demanded."	
2. A Consequence and Cause of Development The long-term impact of Engineers was seen as both a consequence of past events and a cause of future centralization .		
A New Constitutional Flow:	Windeyer J stated in the <i>Payroll Tax Case</i> (1971): the <i>Engineers</i> Case "diverted the flow of constitutional law into new channels." It was a consequence of the "growing realisation that Australians were now one people and Australia one country" and that national laws might be needed to meet national needs.	
Empowering National Government:	The ruling enabled the Commonwealth to progressively enter, directly or indirectly, into fields that had traditionally been occupied by the States, accelerating the centralization of government functions and legislative power.	
3. The Modern View of Federation The change ushered in by Engineers reframed the understanding of sovereignty in Australia:		
Empowering Self-Government:	Stephen Gageler ‘<i>Beyond the Text: A Vision of the Structure and Function of the Constitution</i>’ (2009): the federation was conceived not as a means of perpetually dividing and constraining government, but as a mechanism for empowering self-government by the people of Australia.	

Unified Accountability:	Conflicts between the Commonwealth and the States are not viewed as conflicts between "warring sovereigns." Instead, they are seen as disputes between "institutional functionaries" who are all legally answerable to a unified Crown and politically answerable to a unified Australian people. This perspective reinforces the idea that the constitutional text should be interpreted to serve the unified national polity.		
C. THE JUMBUNNA PRINCIPLE			
<i>The Constitution should be construed broadly unless the text or the context of the Constitution indicates that a narrower interpretation will best carry out its object and purpose.</i>			
McCulloch v Maryland (1819) - US Case	Rule of Interpretation (Marshall CJ): laid down the classic statement for determining the validity of federal legislation: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." Significance: This ruling greatly expanded the power of the US Congress by affirming the doctrine of implied powers. It establishes that if Congress legislates for a legitimate end granted by the Constitution (an enumerated power), it <u>can use any appropriate means to achieve that end, even if the means themselves are not explicitly listed</u>		
Jumbunna Coal Mine NL v Victorian Coal Miners' Association (1908)	<table border="0"> <tr> <td data-bbox="358 647 1151 1190"> - The Australian High Court's ruling in Jumbunna affirmed a <u>similar approach to the construction of the Commonwealth's enumerated powers</u>, particularly the industrial arbitration power (s 51(xxxv)). Facts & Issue: The validity of the Commonwealth Conciliation and Arbitration Act 1904 (Cth) was challenged on two grounds: that it allowed the registration of unions confined to a single state, and that it defined "industry" too broadly (to include cooks and hairdressers). Holding: The High Court held the legislation valid on both counts, rejecting the argument for a narrower interpretation of the Commonwealth's power. </td><td data-bbox="1151 647 2139 1190"> Rule of Broad Construction (O'Connor J): The Court adopted a principle of broad and liberal construction for Commonwealth powers. Justice O'Connor stated that when interpreting a constitution that is "broad and general in its terms, intended to apply to the varying conditions which the development of our community must involve," <u>the Court should "always lean to the broader interpretation"</u> unless the text or context clearly indicates a narrower reading. Significance: This ruling cemented the idea that the words of the Constitution <u>should be interpreted in their ordinary, wide sense to allow the Commonwealth to meet the evolving needs of the nation.</u> It laid the groundwork for the future expansion of Commonwealth power, a theme that would be decisively affirmed in the <i>Engineers Case</i> twelve years later. </td></tr> </table>	The Australian High Court's ruling in Jumbunna affirmed a <u>similar approach to the construction of the Commonwealth's enumerated powers</u>, particularly the industrial arbitration power (s 51(xxxv)). Facts & Issue: The validity of the Commonwealth Conciliation and Arbitration Act 1904 (Cth) was challenged on two grounds: that it allowed the registration of unions confined to a single state, and that it defined "industry" too broadly (to include cooks and hairdressers). Holding: The High Court held the legislation valid on both counts, rejecting the argument for a narrower interpretation of the Commonwealth's power.	Rule of Broad Construction (O'Connor J): The Court adopted a principle of broad and liberal construction for Commonwealth powers. Justice O'Connor stated that when interpreting a constitution that is "broad and general in its terms, intended to apply to the varying conditions which the development of our community must involve," <u>the Court should "always lean to the broader interpretation"</u> unless the text or context clearly indicates a narrower reading. Significance: This ruling cemented the idea that the words of the Constitution <u>should be interpreted in their ordinary, wide sense to allow the Commonwealth to meet the evolving needs of the nation.</u> It laid the groundwork for the future expansion of Commonwealth power, a theme that would be decisively affirmed in the <i>Engineers Case</i> twelve years later.
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D. LEGALISM

1. Legalism

Deriving all sources and reasoning from the legal doctrines. It sees law' as a discrete, self-contained entity, above concerns such as morality or politics.

- **Pros:** keeps the judiciary and judicial decisions **away from political influences, preventing politicisation of judges**. It upholds the very basis of judicial functions, which is to interpret and apply the law, not engage in politics.
- **Cons:** it is an **illusion to think that judges are not influenced by politics and morality**. Legal materials confront the judges with need for choice, and in making that choice, the judge necessarily engages in personal/political decision-making. It cloaks the policy and bias with objectivity. It also makes it difficult to create and protect new rights that have no basis in existing law.
- **Legalist judges:** Dixon (insisted on "strict and complete legalism"); Gleeson (in reaction to Mason Court's progressiveness).
- **The Engineers Case** insisted that 'the one clear line of judicial inquiry as to the meaning of the Constitution **must be to read it naturally in the light of the circumstances in which it was made, with knowledge of the combined fabric of the common law and the statute law which preceded it.**' This approach is generally regarded as a victory of legalism.
- **Definition and Application:** former **Chief Justice Sir Garfield Barwick (post-1981)**—the approach is to "take the words, you decide on the Commonwealth power, and you do not decide on the Commonwealth power looking over your shoulder as to what effect your decision will have on State power." **The Constitution itself will "take care of that."**
- **The Problem with Legalism:** Though often presented as objective. **Stone** demonstrated that the method relies on "**categories of illusory reference,**" arguing that legal doctrine alone cannot provide predetermined solutions. Instead, **ambiguous terms and alternative starting points force the judge to make personal, evaluative choices to apply the law.**
- **Demise of Strict Legalism:** By **1986, Sir Anthony Mason** acknowledged that the High Court was **moving away from "strict and complete legalism"** towards a **more policy-oriented constitutional interpretation**. Legalism was seen by modern commentators, like **Stephen Gageler**, as an "**emphatic statement of the obscure,**" stating that while legalism can tell us how to interpret, it cannot explain why any important constitutional principle takes the form that it does.

2. Judicial Activism and Proceduralism

The shift away from strict legalism **opened the door to debates about Judicial Activism** and the role of the judge.

- **Judicial Activism vs. Restraint:** **Robert French, 'Judicial Activists - Mythical Monsters?' (2008):** emphasized that much of the discussion around "judicial activism" is actually a **debate about the separation of legislative, executive, and judicial power**. He notes that labels like 'activist' or 'legalistic' are often unhelpful and misleading attempts to simplify complex judicial careers.
- **Proceduralism:** This interpretive theory suggests that **judicial action (or "activism") cannot legitimately defend substantive social or political values**. However, it can **legitimately be deployed in defense of the social and political procedures**—like the democratic process itself—by which conflicts over substantive values are managed. Critics, however, **argue that the distinction between substantive and procedural values is impossible to sustain in practice.**

3. Originalism
Originalism is another theory often proposed to counter alleged judicial activism by seeking the original intent of the framers.
• The Objection: A recurrent objection is that the "original intention" may not be historically recoverable and may never have existed in a clear, unequivocal form. Furthermore, critics contend that originalism, while aiming for greater objectivity, can sometimes mask a conservative political agenda.
E. OTHER INTERPRETATIVE METHODS: THE DEAD HAND/LIVING TREE
1. Use of Historical Materials
The unanimous decision in <i>Cole v Whitfield</i> (1988) marked a key turning point, reinterpreting Section 92 and relaxing the restriction on historical materials. <i>Cole v Whitfield</i> established that historical materials are aids to contextual understanding, but they are not a substitute for the text of the Constitution itself. • Permitted Purpose: The Convention Debates can now be used, but only for a limited, objective purpose: to identify the contemporary meaning of the language used at the time of Federation, the subject to which that language was directed, and the general objectives of the movement toward federation. • Forbidden Purpose (No Original Intent): The Debates cannot be used to enforce the "subjective intended scope and effect..." which the founding fathers subjectively intended the section to have." The focus remains on the text's objective meaning at the time, not the framers' personal intentions.
2. The Intention of the Framers
Originalism: <i>the interpretation of the Constitution should adhere to its 'original intent or the original understanding of its text.</i> • Textual originalism: <i>how the words would have been understood by literate and informed persons at the time of their utterance or publication</i> • Intentional originalism: <i>what the original author had in mind. It has no imperative; it doesn't go anywhere; it just specifies where you already are when you try to figure out where to go next. (Stanley Fish 2008)</i> • The High Court's Stance: The High Court (HC) has made it clear that it is willing to countenance textual originalism (which focuses on the original public meaning of the words at the time of enactment), but not intentional originalism. • Intentional Originalism Defined: This theory is an attempt to establish what was the subjective intention of the framers. Appeals to what was actually said in the Convention Debates of the 1890s are usually instances of this approach, and such arguments usually fail. • The Purist Critique (Craven): According to legal scholar Greg Craven, a judge committed to the purist theory of intentional originalism would view the framers' intention as the "grail." For such a judge, the words of the Constitution would merely be a tool for discerning that intention, and the intention should ultimately "overcome the deficient words." • Judicial Rejection of Intent— In <i>NSW v Commonwealth (Work Choices Case)</i> (2006): the majority of the High Court emphatically rejected the pursuit of the framers' subjective intention, stating that such an inquiry is, "much more often than not... to pursue a mirage (illusion)."
3. Textualism
• The focus is exclusively on the constitutional text. There is no attempt to discover the subjective intentions of the authors; the goal is simply to establish the objective meaning the language would have had according to the general understandings of the time it was enacted. • Reading the Constitution as a Statute: The Constitution must be construed as a statute: read as a whole to give effect to the object and purpose its language expresses, and interpreted in the light of the historical circumstances surrounding its enactment (JD Heydon, 'Theories of Constitutional Interpretation: A Taxonomy' [2007]:).

Baxter v Commissioners of Taxation (NSW) (1907)	This early case established that the literal text is not the only source of meaning; historical context is essential. • Principle Established: The Court must consider the "relevant historical facts" surrounding the Constitution's enactment. • Purpose of Historical Inquiry: This inquiry is required to reveal 3 key elements for interpretation: 1) What the framers were supposed to have known at the time (late 19th century). 2) The object of the advocates of Australian federation. 3) The "mischief and defect" that the constitutional provision was intended to remedy (i.e., the problem the section was designed to solve). • Significance: Even in the early, Reserved Powers era, the High Court accepted that understanding the historical context and the purpose of a provision was crucial to its legal meaning.
Eastman v The Queen (2000)	Justice McHugh's observations summarize the modern High Court's mature approach, affirming the use of history while emphasizing the Constitution's nature as a flexible national framework. • Rejection of Strict Literalism: The traditional approach is correctly described as textualism or semantic intentionalism, not literalism. Interpretation involves considering the words' natural sense, the document's context, and the consequences of particular readings. • Focus on Objective Intention: The goal is always to find the objective intention of the makers—the meaning the words would have conveyed to the public at the time of enactment—not the subjective beliefs of individual framers. • The Malleable Framework: The Constitution's key concepts are typically stated at a level of abstraction or generality high enough to be "infused with the current understanding" of those concepts. • Responsive to Contemporary Circumstances: The application (and sometimes even the meaning) of a provision can be informed by "contemporary circumstances." This recognizes the framers' intent for the Constitution to endure, be responsive, and relevant to changing conditions. • Significance: The Constitution is therefore NOT a "rigid blueprint" but a "broad framework" capable of adjusting to circumstances they could not have foreseen.
4. Incremental Accommodation	
<i>Offer ways of adjusting meaning of language to accommodate later developments - the core/essence/connotation of the word stays the same, but its periphery/characteristics/denotation may change as it applies to new circumstances.</i>	
Street v Queensland Bar Association (1989)	In this case, Justice Dawson articulated the accepted method for ensuring constitutional words have a fixed, objective meaning yet can apply to new, unforeseen developments. • The Technical Distinction: ○ Connotation (Fixed Meaning): The "fixed connotation" refers to the core attributes or essential characteristics signified by the words. This meaning is fixed at 1900 (the time of enactment) and does not change. ○ Denotation (Changing Application): The "denotation" refers to the things or concepts to which those fixed attributes apply in the real world. This may differ from time to time.