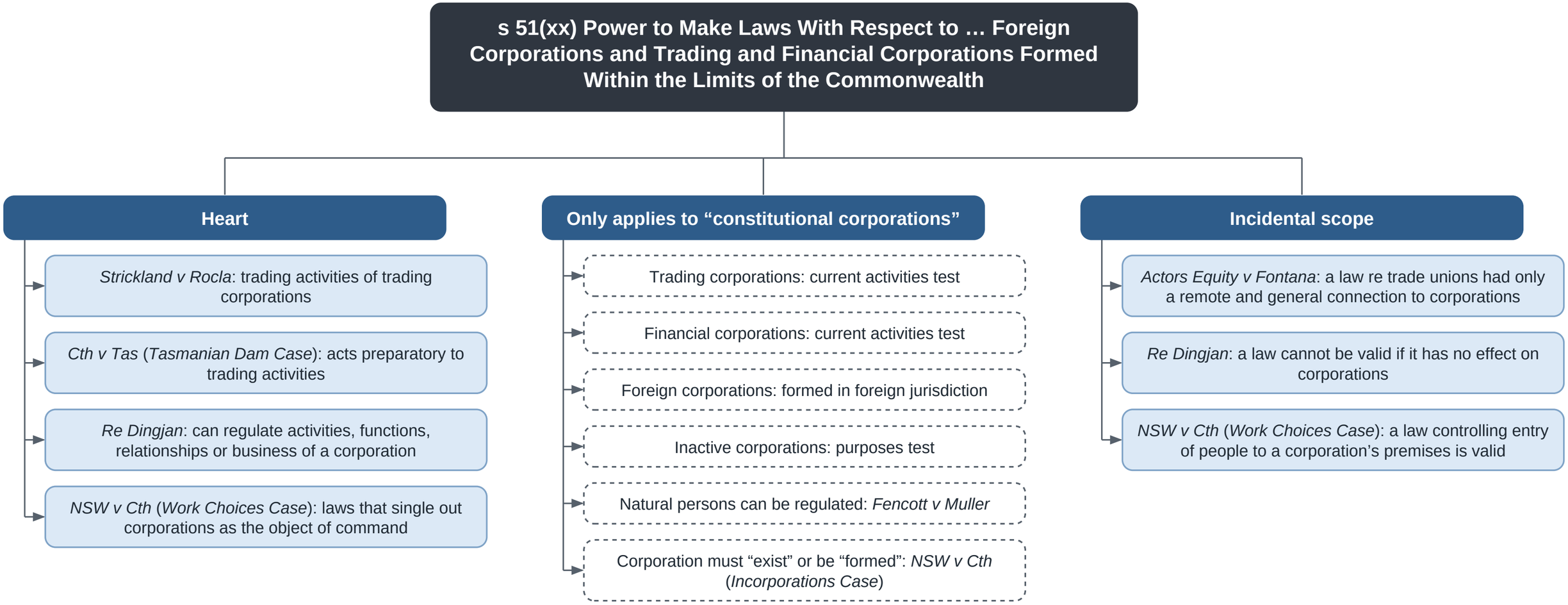
Australian Constitutional Law Case notes

Case	Facts	Held
Commonwealth/State relations		
***R v Smithers* (1912)** **s92** **Interstate intercourse** **Free movement of peoples**	NSW law regarding recently convicted criminals entering the state.	Held that the act was invalid as it restricted the freedom of interstate intercourse. Two judges referred to s92, the other stated the mere act of federation reduces the ability of state to restrict the movement of peoples across state borders. **The people in and of Australia are free to pass and repass through every part of the federation.**
***Attorney-General (WA) v Australian National Airlines Commission* (1976)** **S51(i)** **Trade and commerce** **Intrastate** **Regulate and participate** **Blend means Cth can**	Intrastate travel of Cth airline that needed to stop twice in WA	Where no distinction can be made between interstate and intrastate aspects (e.g., safety of air navigation), **the entire field has to be regulated by the Commonwealth.** **S51(i) not only power to regulate but to participate**
***Melbourne Corporation v Commonwealth* (1947)** **S51(xiii)** **Banking** **State/fed relations** **Limits to fed powers over states**	Fed wanted to make WW2 powers over banking permanent	Any Cth law that is otherwise valid under a head of power in section 51 or some other part of the Constitution will be invalid if it denies the ability of a State to govern itself or the federal structure of the Commonwealth or singles out any one State. A law is invalid if it: • Places a special burden on the states; and • Significantly impairs, curtails or weakens the capacity of states or state agencies to exercise their constitutional powers or functions **There are limits on the scope of express Cth legislative powers.**
***Elliott v Commonwealth* (1936)** **S99 no preference to a state** **Commercial advantage not discrimination**	Seaman licencing system. Specified ports in 4/6 states.	S 99 does not prohibit differentiation or discrimination. S 99 only comes into effect if a tangible commercial advantage is granted to a state. Discrimination does not mean preference over another.

***Fortescue Metals Group Limited v The Commonwealth* (2013)** **S99 No preference to a state** **Commercial advantage not discrimination**	Mining tax	The court confirmed that a Commonwealth tax will not be invalid merely because different conditions in different States result in the tax operating differently between those States.
***Cole v Whitfield* (1988)** **92 freedom of interstate trade** **Protectionist or discriminatory trade test**	Tas crayfish under minimum size	Test to determine whether a law discriminates against interstate trade in a protectionist fashion: 1. there must be a burden on interstate trade (eg price restrictions, quota, limits). 2. The burden must discriminate against interstate trade. The discrimination must be of a protectionist kind (eg looking after the intrastate trade)
Corporations power		
***Work Choices Case* (2006)** **S51(xx) corporations power** **Limit on States**	The elimination of State and Territory workplace relations legislation. Prescribe minimum terms and conditions of employment regardless of the existence of an intrastate industrial dispute.	Held that the legislation was valid. The High Court found that the corporations power could support the legislation. The High Court also held that the legislation could validly limit State powers and did not interfere with State constitutions or functioning.
***Adamson's Case* (1979) 143 CLR 190** **S51(xx) corporations power** **Meaning of trading activities and trading corporation**	Indigenous football player wanted to change clubs between WA and SA.	"trading activities" are those that involve some form of buying and selling, and generate revenue, regardless of whether carried out at a profit. Does not have to be the dominant activity rather just not insubstantial. Can be a sporting, religious or government body.
Inconsistency/cover the field		
***Hume v Palmer* (1926) 38 CLR 441** **S109 inconsistency** **Cth will prevail** **Cover the field**	Laws over sea navigation had forbid same activity but with different penalties	Cth law and will prevail when same subject matter but divergent over sanctions imposed.
***Blacklock's Case* (1974) 131 CLR 338** **S109 inconsistency**	Damage to Cth property	a difference in penalties is enough to make a law inconsistent – especially when cth seeks to cover the field.

Corporations Power



Judicial Power

