

Characterisation & Trade and Commerce (s51(i)) & Incidental Powers (s51(xxxix)) & Proportionality

Characterisation

“Sufficient Connection”:

- *Stenhouse v Coleman* (1944)
Dixson J – For subject powers the “quality of connection to head of power must be sufficient (one that is not too tenuous, distant or remote)” [471]. For purposive powers the “quality of connection must not only be sufficient but also proportionate” [471].
- *Leask* (1996)
Dawson J – The relevant test of the validity of a law made under one of the substantive heads of power is that of ‘sufficient connection’ with its subject matter [605].
- **Not judge’s discretion** – *Nationwide News Pty Ltd* (1992)
Dawson J – The question is one of sufficient connexion between the law and the head of power and it is not up to the court to judge whether the law is inappropriate or disproportionate [88].

How the Constitution should be interpreted:

- **Golden Rule** – *Engineers’ Case* (1920)
The question was whether a Commonwealth law made under s51(xxxv), conciliation and arbitration, could authorise the making of an award binding 3 governmental employers.
Knox CJ, Issacs, Rich and Starke JJ – In settling the rules of construction the ‘golden rule’ was to read the statute in what seems to be the natural sense [149]. When the text is ambiguous recourse must be had to the context and scheme of the act. 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 [152].
- **Broad Interpretation** – *Jumbunna Coal Mine* (1908)
O’Conner J – Where the question is whether the Constitution has used an expression in the wider or in the narrower sense, the Court should, always lean to the broader interpretation unless there is something in the context or in the rest of the Constitution that the narrower interpretation will best carry out its object and purpose [367].
Also, *Bank Nationalisation Case* (1948)
Dixson J – The ability of the Commonwealth to make laws is not restricted. The legislative power is plenary [334].
Also, *Fairfax* (1965)
Kitto J – Once it appears that a federal law has an actual and immediate operation within a field assigned to the Commonwealth as a subject of legislative power, that is enough. It will fall within the power unless there are further reasons to exclude it [12].
- **Read as a whole and in context of other words** – *Bank Nationalisation Case* (1948)
Latham CJ – The Constitution must be read as a whole and must be read in context of the other words prescribing the other legislative powers [184]

