

Cases

A

***Al-Kateb v Godwin* (2004) 208 ALR 124 High Court of Australia**

Facts:

- Unlawful non-citizen (as defined by s 14 of *Migration Act 1958* (Cth)) subjected to mandatory administrative detention
- Although he had asked to be removed from Australia, his visa application having been unsuccessful, no other country was prepared to accept him and this was believed to be unlikely to change in the reasonably foreseeable future

Issue: Whether the appellant was entitled to an order direction his release from detention or whether he could be detained indefinitely

Judgement:

(4:3)

(McHugh, Hayne, Callinan and Hayne JJ):

- Appellant not entitled to be released
- Words of the statute too clear to permit the presumption that Parliament does not interfere with fundamental rights to influence the outcome

(Gleeson CJ, dissenting):

- 'Courts do not impute to the legislature an intention to abrogate or curtail certain human rights or freedoms .. unless such an intention is clearly manifested by unambiguous language'
- 'A statement concerning the improbability that Parliament would abrogate fundamental human rights by the use of general or ambiguous words is not a factual prediction ... In a free society, under the rule of law, it is an **expression of a legal value, respected by the courts, and acknowledged by the courts to be respected by Parliament**'

Importance:

- Shows how statute can override presumption

Although this didn't lead to successful court case, all judges agreed that liberty is a fundamental right.

B

• ***Beckwith v The Queen* (1976) 135 CLR 569, 576 (Gibbs J):**

- 'The rule formerly accepted, that statutes creating offences are to be strictly construed, **has lost much of its importance in modern times**. In determining the meaning of a penal statute **the ordinary rules of construction must be applied**, but if the