

# Constitutional Law Exam Notes

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## Characterising State Law:

- The State Constitution characterizes formula words: power to make laws with respect for the peace, order/welfare and good government
- HC in **Union Steamship Co of Australia Pty Ltd v King (1988) HCA 55, 9-10:**
  - Such a power is a plenary power...are not words of limitations plenary means not subject to limitations or exception
- Therefore the State legislature has power to enact the Act/statute
- Look to any limitations

## Characterising Territories Law

- **Capital Duplicators Pty Ltd v Australian Capital Territory [1992] HCA 51; 177 CLR 248:**
  - Parliamentary plenary powers to grant of self government to territories, who are given power for peace, order/welfare and good government
  - Look to any limitations

## Territories Power

- s 122 – Government of territories
  - may make laws for the government of any territory...may allow representation of such territory in either HoP to the extent and on terms it sees fit
- **Berwick Ltd v Gray** – once a sufficient connection established between law and territory, then plenary power to legislate
- **Land Council v Cth (1986)** – can still make laws over self-governing territories
- **Spratt v Hermes** - not expressly subject to the rest of the constitution; now recognizes limitations
- **NT v GPAO (1999)** Cth law prevails
  - No longer disallow territory law, must legislate to make it inoperative

## Implied Incidental Power

- **Grenall v Marrickville Margarine Pty Ltd (1995) 93 CLR 55**
  - Attached to every express grant of power in the Constitution is an implied grant wide enough to make the express grant effective
- **Nationwide News Pty Ltd v Wills (1992) Proportionality Test**
  - Reasonably appropriate and adapted
- Sanctions fall under implied incidental power, look to discretions if for corporation or individual