

	Case	Three Words Reminder	Title of Rules
1	Mabo	Terra nullius Overturn	<ol style="list-style-type: none"> 1. Relationship between domestic and intl. law 2. The justiciability of HCA 3. Native title stuff
2	XYZ	Sex Crime Thailand	<ol style="list-style-type: none"> 1. FISRT question: power to pass? Constitution 2. SECOND: act applies here? Statutory interpretation 3. Test for extraterritoriality in external affairs 4. Using international law to interpret statutes
3	Port	SA and Vic	<ol style="list-style-type: none"> 1. FISRT question: power to pass? Constitution 2. Competing laws between States 3. Extraterritoriality in State level
4	Singh	Australia born Alien	<ol style="list-style-type: none"> 1. Statutory interpretation (constitutional) 2. Separation of powers
5	Sue	Dual Citizen Senator	<ol style="list-style-type: none"> 1. Statutory interpretation (constitutional) 2. Australia's independence and sovereignty
6	Dignan	Blame Delegated Act	<ol style="list-style-type: none"> 1. Delegated legislation 2. Separation of power
7	Nicaragua	Self-justify Harms Oneself	<ol style="list-style-type: none"> 1. Jurisdiction of ICJ 2. Relationship between CIL and treaty 3. State practice and opinio juris 4. Self-defence claim
8	S157	Bangladesh Cannot Appeal	<ol style="list-style-type: none"> 1. Statutory interpretation 2. Judicial review 3. Principle of legality 4. Rule of law
9	Egan	Usher kicked Out	<ol style="list-style-type: none"> 1. Parliamentary privilege 2. Justiciability of the court 3. Responsible government
10	Brown	Opposition challenge allowance	<ol style="list-style-type: none"> 1. Prerogative power 2. Statutory interpretation 3. Government spending
11	Ruddock	Tampa Boat Affair	<ol style="list-style-type: none"> 1. Is there prerogative power in certain field? 2. Test for statutory extinguishment of such power 3. Statutory interpretation
12	CPCF	Choice of Place-to-take	<ol style="list-style-type: none"> 1. Statutory interpretation 2. Statutory extinguishment of prerogative power
13	Bropho	WA Aboriginal activist	<ol style="list-style-type: none"> 1. Crown immunity 2. Statutory interpretation
14	M70	Malaysia not Ready	<ol style="list-style-type: none"> 1. Justiciability of HCA 2. Statutory interpretation 3. Use international obligation to interpret statutes 4. Statutory EXECUTIVE power has limitation
15	Horta	East Timor Plaintiff	<ol style="list-style-type: none"> 1. External affairs power 2. Justiciability of treaty-enacting act – legislation 3. Justiciability of entering into treaty – executive 4. Separation of power

16	Portugal	Indonesia outside ICJ	<ol style="list-style-type: none"> 1. Standing in ICJ 2. Jurisdiction of ICJ
17	Kuczborski	Associational Crime provision	<ol style="list-style-type: none"> 1. Test of standing in public law litigation 2. Separation of power 3. Judicial independence
18	Dietrich	Heroin Carrier Unrepresented	<ol style="list-style-type: none"> 1. Using international law to interpret statutes 2. Using other common law jurisdiction opinions 3. Right to fair trial
19	Slaveski	Refuse twice Pissed-off-VLA	<ol style="list-style-type: none"> 1. Interaction of VLA related Acts 2. Right to Fair Trial 3. Statutory interpretation
20	Hovarth	Australian Police Mistreatment	<ol style="list-style-type: none"> 1. UNHRC's procedure 2. The use of ICCPR 3. UNHRC's function
21	Al-Kateb	Stateless Indefinite Detention	<ol style="list-style-type: none"> 1. No using international law to interpret constitution
22	Marbury	Strike down Repugnant	<ol style="list-style-type: none"> 1. Supremacy of constitution 2. Statutory interpretation (constitutional) 3. Judicial Review

1. Mabo v Queensland 1992

Name	Mabo v Queensland	
One-sentence Story	Meriam people historically living a land-based life on three islands which Queensland legislation annexed in 1879 initiated action from 1982 against the government claiming that they still have title to the land which was not extinguished by the annexation.	
Issue and result	<ol style="list-style-type: none"> Was the three island terra nullius? No. Since it was not terra nullius, how was it acquired? Beyond HCA's jurisdiction to answer, but what HCA can decide is the legal consequence of the acquisition. Do Meriam people have title to the land? Yes, they have native title; claiming native title has limitations. 	
Judges' Rules and logics	What rules to what facts?	Reasoning behind this rule
	<p>Rule 1: The three islands are not terra nullius.</p> <p>Relevant facts:</p> <ol style="list-style-type: none"> Pre-existing laws, 'not the absence of law or barbarian theories underpinning the colonial reception.' The theory of terra nullius was examined by <u>the International Court of Justice in its Advisory Opinion on Western Sahara (1975) ICJR</u>, where it decided that Spain in 1884 when occupied by nomadic peoples was not terra nullius. 	<ol style="list-style-type: none"> Refuse to apply the enlarged standard of terra nullius International law has 'legitimate and important influence on the development of common law' by <u>Brennan J.</u> 'Whatever the justification advanced in earlier days for refusing to recognize the rights and interests in land of the indigenous inhabitants of settled colonies, unjust and discriminatory doctrine of that kind can no longer be accepted' by <u>Brennan J</u>
	<p>Rule 2: The court does not have justiciability towards whether the acquisition of the island is legal.</p> <p>Relevant facts: challenge whether the acquisition of the island is legal</p>	<ol style="list-style-type: none"> 'The acquisition of territory by a sovereign state...cannot be challenged, controlled or interfered with by the courts of that state' <u>Brennan J</u> citing <u>Gibbs J in NSW v Cth 1975.</u> But they can examine the legal consequence that is under their jurisdiction.
	<p>Rule 3: Cth has radical title and Meriam people have native title.</p>	<ol style="list-style-type: none"> Indigenous inhabitants occupied a territory and enjoyed proprietary interests when the Crown acquired sovereignty. Radical title would be subject to native title rights where native title rights were not validly extinguished. Native title originates from the traditional laws and customs by the Indigenous inhabitants - it is not an institute of the common law and hence not alienable by the common law; It can only be alienated by the laws from which it is derived. Native title can be claimed only if continuing connection to the land can be proved and there has been no supervening act of sovereignty - but given dislocation of aboriginal peoples, this will be hard to satisfy.
<p>Rule 4: The two rights can be consistent - as per <u>Brennan J</u> 'the radical title of the Crown is consistent with the native title to the land'.</p>	<ol style="list-style-type: none"> Sovereignty right to a country does not have to mean the sole beneficiary right to all property and land - The Crown can grant other people to use it or profit from it. Radical title means that they can always reclaim at any time. Native title gives aboriginal people a tangible though not equal bargaining position in their deals regarding traditional lands. 	

Usage for EXAM	Under what title can it be used?	More concrete usages
	1. The relationship between domestic law and international law.	1) Legitimate and important influence
	2. The justiciability of HCA	1) The acquisition of a state's territory cannot be challenged by the court of that state.
	3. Native title stuff	1) In Rule 3 & 4 – notice that native title is difficult to achieve and even if meeting the criteria listed in 3(4), still not viable – see Cheryl's Reconciliation.

2. XYZ v Cth 2006

Name	XYZ v Cth	
One-sentence Story	XYZ, an Australian citizen who had sex with a person under 16 in Thailand, breached ss 50BA and 50BC of Crime Act 1914 and he argued that it was not illegal because Australian law could not be applied to him in Thailand.	
Issue and result	1. Can Crime Act 1914 (Cth) ss 50BA and 50BC operate extraterritorially? Yes!	
Judges' Rules and logics	What rules to what facts?	Reasoning behind this rule
	Rule 1 – FIRST question to ask – does the parliament have the power to pass the act? Every Act has a link to Constitution.	1) Head of power under Constitution s 51(xxix) external affairs 2) External affairs ratio established in case <u>Polyukovich v Cth (1991)</u> – external affairs power covers (but not limited to) Australia's relations with other countries; also includes power to make laws with respect to people, places, persons, matters or things outside geographic limits of Australia.
	Rule 2 – SECOND question to ask – does the act apply in this case? Statutory interpretation on why it should or should not apply here. Fact: s 50BA – a person must not, while outside Australia, engage in sexual intercourse with a person who is under 16.	1) The statute is clearly worded to operate extraterritorially – expressly. 2) Application of international law to answer this, <u>Gleeson J quoting Professor Brownlie</u> to prove that this is consistent with international law. i. There should be substantial connection between the subject matter and the source of jurisdiction [crime conduct – nationality – Australia's jurisdiction] ii. Principle of non-intervention in domestic jurisdiction of other states should be observed. 3) State can only legislate extraterritorially if there is a territorial connection with the state – so is 'exercise the full powers associate with sovereignty'.
	Rule 3 – International law's influence on statutory interpretation. ALREADY stated in Rule 2.	
	Rule 4 – Obiter – This may only apply when the citizen returns to Australia	
Usage for EXAM	Under what title can it be used?	More concrete usages
	1. FIRST question – power to pass the act? – go to Constitution	1) Go back to constitution 2) Go for ratios from cases
	2. SECOND question – act applies in this case? – go to statutory interpretation	1) Explicit words to apply it? 2) Implicit necessity to apply it? 3) Any international law consideration?
	3. Test for extraterritoriality in external affairs	1) Sufficient and substantial connection [territory, nationality, treaty, commercial connection etc.] 2) Non-intervention principle
	4. Using international law to interpret statutes	