

**LEGAL PROFESSION ADMISSION BOARD**

**MARCH 2013**

**AUSTRALIAN CONSTITUTIONAL LAW**

**Time: Three Hours** This paper consists of **six** questions.

Candidates are required to attempt any **four** questions.

No question is compulsory.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **four** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

**This examination is worth 80% of the total marks in this subject.**

**Permitted Materials:** This is a closed book examination. No materials are permitted in the examination room.

Attached to this paper is a copy of the Law Extension Committee's Case List and the Course Outline incorporating appropriate excerpts from the Constitution.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.

*This examination should not be relied on as a guide to the form or content of future examinations in this subject.*



### Question 1

Assume the Commonwealth Government is a signatory to a multilateral agreement called the Convention to Eliminate Economic Discrimination. The Convention in its preamble says:

“It is the inalienable right of all persons to be treated equally regardless of marital status.”

The Convention requires all signatory States to take all reasonable steps to eliminate discrimination on the ground of marital status in the course of economic activity including the provision of housing.

Compliance with the covenants was to be secured through education and in the last resort the ordinary courts of the land.

The Commonwealth Parliament recited the Convention in the preamble to its Property and Economic Activity Act 2012. This Act proceeded to provide for the right to own land and made specific provision that regardless of marital status any resident of a State may apply to the Government of that State for a grant of unalienated Crown land held by the State and that upon proffering a fair price for the land the resident is entitled to a grant of such land.

**Discuss the validity of the Property and Economic Activity Act 2012 (Cth).**

**(Question 2 follows)**



**Question 2**

Assume the Commonwealth Parliament has introduced a Trading and Financial Companies Act 2012. The statute requires inter alia:

- (i) that all trading and financial corporations when seeking incorporation must include a clause that the Board of the company will comprise at least 50% female Directors;
- (ii) that the fees payable to Directors of trading and financial corporations must be those fixed by a Federal Remuneration Tribunal established under the Act.

The Anglican Theological College, a tertiary institution educating Anglican Ministers, proposes to become an incorporated entity and seeks your advice on whether it has to comply with the Trading and Financial Companies Act (Cth) 2012.

The College operates on an annual budget of \$2 million. The funding of its operations comes from donations by the Anglican community and receipt of rents from revenue producing property owned by the College. The College has never made a profit from its operations.

**The College seeks your advice on:**

- (a) the validity of the provisions of the Trading and Financial Companies Act 2012 (Cth) and**
- (b) whether the College must comply with the provisions of the Act set out in (i) & (ii) above.**

**(Question 3 follows)**



### Question 3

Assume that the Commonwealth Parliament relying upon the Commonwealth Constitution s51(xx) introduces legislation that sets up a Corporations Remuneration Tribunal to “hear and determine” the rates of pay to be paid to the Chief Executive Officer of incorporated financial institutions.

The Tribunal comprises a panel of 3 members. The Chair of the Tribunal is a Federal Court judge whilst the other members must have relevant financial experience. Each member is appointed for 7 years.

The Tribunal has extensive powers to gather information and it can require the giving of evidence and the production of documents by relevant officers of the financial corporation. Failure to answer questions or provide documents under the statute constitutes contempt.

When making its determination of the rate of remuneration for the Chief Executive Officer the Tribunal is obliged to have regard to “the economy, the interests of consumers and the interests of the shareholders”.

The statute provides that the determinations of the Tribunal “shall not be challenged or called into question in any court of law”.

X Bank has failed to produce documents as required by the Tribunal. The Tribunal has found it guilty of contempt and imposed a substantial fine on X Bank.

X Bank did not appear before the Tribunal in respect of the contempt proceedings.

**X Bank asks you, can it go straight to the High Court and successfully challenge (a) the powers and functions of the Tribunal and/or (b) have its conviction for contempt set aside?**

**(Question 4 follows)**





#### Question 4

During the summer holiday period local government bodies such as Byron Bay Council have complained to the New South Wales government about its inability to provide appropriate infrastructure to cope with a doubling of its population during the summer holiday season. The Byron Bay Council can demonstrate that the town's population doubles during the peak summer holiday period and the cost of rubbish removal alone imposes a significant burden on the limited resources of the Council.

In response to these complaints the New South Wales Parliament proposes to introduce legislation to impose a "bed tax" on the providers of commercial accommodation in every town located on the eastern seaboard of New South Wales with a permanent population exceeding 3000 people. The bed-tax will be collected by the accommodation provider at a rate of 20% of the guest's bill and the money collected is to be remitted to the New South Wales government. The revenue raised is to be paid to local government bodies on the basis of costed schemes submitted by local government bodies for improvements to their infrastructure such as roads, pipes and sewers.

The Accommodation Association of NSW ("AA") believes that this new tax will have an adverse impact on the business of its members and is opposed to the new tax.

Byron Bay Council is emphatic that the Council is entitled to financial relief and is anxious that the "bed tax" be introduced.

**The New South Wales government asks you to advise whether it can (or how it might) successfully introduce the proposed "bed-tax".**

**(Question 5 follows)**



### Question 5

Assume the Criminal Law Consolidation Act 2012 (NSW) provides:-

s207c "It is an offence to publish material relating to an ethnic minority group containing statements calculated to libel members of the group either individually or collectively".  
Penalty imprisonment for 5 years.

Brumby is seeking election to the Commonwealth Parliament Senate. His only platform is to terminate the arrival of migrants from India. As part of Brumby's campaign material he is placing posters in shop windows in New South Wales. The posters outline his negative views about Indians and he seeks election to the Senate to stop immigration from India to Australia.

Brumby is arrested by NSW Police and charged under the Criminal Law Consolidation Act 2012 (NSW) s207c.

Brumby seeks your assistance. He says he is exercising his democratic right and also says he is aware of the Posters Act 2012 (Cth) which provides inter alia:

- (i) posters may be displayed in a shop window with the permission of the owner of a shop where a person seeks election either to federal, state or local government; and
- (ii) posters must be of the size and length as prescribed by regulations made pursuant to this Act.

**Advise Brumby whether he is liable to be convicted.**

**(Question 6 follows)**



**Question 6**

Assume the Commonwealth Parliament enacts the Ricegrowers Industry Act 2012. The Act establishes a Board called the Ricegrowers Association Board. The Board is comprised of ricegrowers representatives. The Board is authorised to demand and receive a fee payable by the ricegrower according to the acreage sown. The fees received by the Board are paid into Consolidated Revenue Fund.

The Act also provides:

- (a) a ricegrower will pay 25% less the set fee where the rice grower pays reasonable rates of pay as prescribed by regulation made under this statute;
- (b) a ricegrower will pay 50% less where the planting takes place in rural Queensland; and
- (c) failure to pay the fees within 30 days of written notice that the fees are due is an offence liable to a penalty of \$1000 per day.

A later Appropriation Act provides that an amount equal to the fees charged by the Board shall be applied to underwrite the production of movies at the Fox Film Studio complex located in New South Wales.

**A New South Wales ricegrower does not wish to pay these fees and seeks your advice.**

**END OF PAPER**



## COURSE OUTLINE

### Introduction

#### 1. The *Constitution*

General considerations

Approaches to interpretation and characterisation:-

- a. scope of head of power
- b. characterisation
- c. restrictions

### Federal powers

#### 2. Trade and commerce power: *Constitution*, s 51(i)

s 51: "The Parliament shall, subject to this Constitution, have power to make laws for the peace order and good government of the Commonwealth with respect to:

(i) Trade and commerce with other countries, and among the States."

- a. Understanding what is "trade and commerce"
- b. Overseas trade and commerce
- c. Interstate trade and commerce
- d. Regulation of intrastate trade and commerce

#### 3a. Taxation power: *Constitution*, s 51(ii)

s 51: "The Parliament shall, subject to this Constitution, have power to make laws for the peace order and good government of the Commonwealth with respect to:

...

(ii) taxation; but so as not to discriminate between States or parts of States: ..."

- a. Identification of tax
- b. Characterisation of tax laws
- c. Revenue or regulation
- d. Meaning of discrimination and preference

#### 3b. Provisions in taxation laws: *Constitution*, s 55

s 55: Tax Bills "Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only."

- a. Operation of the two limbs of s 55
- b. Consequences of breach of s 55

#### 4. Corporations power: *Constitution*, s 51(xx)

s 51: "The Parliament shall, subject to this Constitution, have power to make laws for the peace order and good government of the Commonwealth with respect to:

...

(xx) foreign corporations, and trading and financial corporations formed within the Commonwealth: ....”

- a. Identification of corporation as “trading” and/or “financial” corporation
- b. Ambit of power
- c. Incorporation case
- d. Liquidation
- e. Incidental scope of power

## 5. External affairs power: **Constitution, s 51(xxix)**

s 51: “The Parliament shall, subject to this Constitution, have power to make laws for the peace order and good government of the Commonwealth with respect to:

...

(xxix) External affairs: ...”

- a. Matters within "external affairs"; relations with other countries; matters external to Australia; international law
- b. Treaties and Conventions
- c. Subject matter of treaty; historically the differing views
- d. Implementing the treaty into municipal law
- e. Obligations and/or recommendations
- f. Relationship between treaty and municipal law
- g. Possible limitations
- h. Matters of international concern

## 6. Separation of powers

s 1: “The legislative power of the Commonwealth shall be vested in a Federal Parliament...”

s 61: “The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen’s representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.”

s 71: “The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction ....”

### Boilermakers’ case and its significance: **Constitution, s 71**

#### Executive power of the Commonwealth: **Constitution, s 61**

- a. General considerations
- b. Width of power to delegate legislative authority to executive

#### 7. Judicial power of the Commonwealth: **Constitution, s 71**

s 71: “The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction ....”

s 72: “...The Justices of the High Court and of the other courts created by Parliament –

- (i) Shall be appointed by...
- (ii) Shall not be removed ...
- (iii) Shall receive such remuneration...



*The appointment of a Justice of the High Court shall be for a term expiring upon his attaining the age of seventy years, and a person shall not be appointed as a Justice of the High Court if he has attained that age.*

*The appointment of a Justice of a court created by the Parliament shall be for a term expiring upon his attaining the age that is, at the time of his appointment, the maximum age for Justices of that court and a person shall not be appointed as a Justice of such a court if he has attained the age that is for the time being the maximum age for Justices of that court.*

*Subject to this section, the maximum age for Justices of any court created by the Parliament is seventy years.*

*The Parliament may make a law fixing an age that is less than seventy years as the maximum age for Justices of a court created by Parliament and may at any time repeal or amend such a law, but any such repeal or amendment does not affect the term of office of a Justice under appointment made before the repeal or amendment. ...”*

- a. Identification of judicial power of the Commonwealth.
- b. Factors to distinguish it from non-judicial power
- c. Exceptions to *Boilermakers* – power to delegate; designated person rule; other exceptions
- d. Significance of *Boilermakers*
- e. Practical consequences of separation of powers

### **The judicature: Constitution, Ch III**

#### **8. Federal jurisdiction: Constitution, s 71**

- a. Nature of "federal jurisdiction"
- b. Nature of "matter"

#### **High Court's appellate jurisdiction: Constitution, s 73**

*s 73: “The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences-*

- (i) *Of any Justice or Justices exercising the original jurisdiction of the High Court;*
- (ii) *Of any other federal court, or court exercising federal jurisdiction; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council;*
- (iii) *Of the Inter-State Commission, but as to questions of law only;*

*and the judgment of the High Court in all such cases shall be final and conclusive.*

*But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.*

*Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.”*

- a. Prerequisites for s 73 jurisdiction
- b. Parliamentary power to make exceptions and regulate

**High Court's original jurisdiction: Constitution, s 75(iii) and s 75(v); s 76(76(ii))**

s 75: "In all matters ...

(iii) *In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party ... the High Court shall have original jurisdiction.*

...

(v) *In which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth ... the High Court shall have original jurisdiction."*

s 76: "The Parliament may make laws conferring original jurisdiction on the High Court in any matter ...

(i) *Arising under this Constitution or involving its interpretation.*

(ii) *Arising under any laws made by the Parliament."*

- a. Sections 75-76 specialised original jurisdiction
- b. "Commonwealth" or person within extended phrase "being sued . . ." in s 75(iii)
- c. "Officer of the Commonwealth" and relevant remedies under s 75(v)
- d. Matter "arising under or involving the interpretation of the Constitution" within s 76(i)
- e. When a matter "arises" within s 76(ii)

**Power to define jurisdiction: Constitution, s 77**

s 77: "With respect to any of the matters mentioned in the last two sections the Parliament may make laws:

(i) *Defining the jurisdiction of any federal court other than the High Court:*

(ii) *Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is vested in the courts of the States:*

(iii) *Investing any Court of a State with federal jurisdiction."*

- a. "Any court of a State"
- b. Role of administrative officers and implications of *Harris v Caladine*
- c. Repository of federal judicial power - *Kable v DPP*

**Prohibitions**

**9a. Prohibition of a State from imposing duties of excise etc: Constitution, s 90**

s 90: "On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive ..."

- a. "Excise duty"
- b. What is a duty of excise? The history.
- c. What is excluded?
- d. Reason s90 included in Constitution
- e. The *Dennis Hotels* anomaly and restrictions on it
- f. The broad view has triumphed

**9b. "Absolute freedom" of trade, commerce and intercourse: Constitution, s 92:**

s 92: "On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free..."

- a. The fresh start to the interpretation of s 92 in *Cole v Whitfield*
- b. The application of the fresh start
- c. Absolutely free and legitimate local interest
- d. Marketing legislation

### **Implied freedoms**

#### **10a. The implied freedom of communication**

- a. Freedom of political discussion
- b. The *Lange* modifications
- c. Broad view of political discussion

### **Federalism**

#### **11. Inconsistency between Commonwealth and State laws: *Constitution*, s 109**

s 109: "When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."

- a. "Laws"
- b. "Invalid"
- c. "Inconsistency"

#### **12. Commonwealth-State relations**

- a. Power of the Commonwealth and the States to make laws binding on each other
- b. Commonwealth regulation of States
- c. State regulation of Commonwealth
- d. Does Commonwealth have any general immunity?
- e. Commonwealth subjecting itself to State laws

**CASE LIST****1. Introduction**

*Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (“Engineers’ Case”) (1920) 28 CLR 129  
*Leask v Commonwealth* (1996) 187 CLR 579  
*Melbourne Corporation v Commonwealth* (“Melbourne Corporation Case”) (1947) 74 CLR 31  
*Murphyores Inc Pty Ltd v Commonwealth* (1976) 136 CLR 1  
*Austin v Commonwealth* (2003) 215 CLR 185

**2. Trade and commerce power: Constitution, s 51(i)**

*A-G (WA) v Australian National Airlines Commission* (“Ansett Transport Industries Case”) (1976) 138 CLR 492  
*Airlines of New South Wales v New South Wales (No 2)* (“Second Airlines Case”) (1965) 113 CLR 54  
*Australian National Airways v Commonwealth* (1945) 71 CLR 29  
*Huddart Parker v Commonwealth* (1931) 44 CLR 492  
*Murphyores Inc v Commonwealth* (1976) 136 CLR 1  
*O’Sullivan v Noarlunga Meat* (1954) 92 CLR 565  
*Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1  
*R v Foster: ex parte Eastern and Australian Steamship Co* (1959) 103 CLR 256  
*Redfern v Dunlop Rubber Australia* (“Redfern’s Case”) (1964) 110 CLR 194  
*Wragg v New South Wales* (1953) 88 CLR 353

**3a. Taxation power: Constitution, s 51(ii)**

*Air Caledonie International v Commonwealth* (1988) 165 CLR 462  
*Austin v Commonwealth* (2003) 215 CLR 185  
*Australian Tape Manufacturers Association v Commonwealth* (“Blank Tape Royalty Case”) (1993) 176 CLR 480  
*Elliott v Commonwealth* (1936) 54 CLR 657  
*Fairfax v FCT* (1965) 114 CLR 1  
*Harper v Minister for Sea Fisheries* (1989) 168 CLR 314  
*Logan Downs v FCT* (1965) 112 CLR 177  
*Northern Suburbs General Cemetery Reserve Trust v Commonwealth* (“Training Guarantee Case”) (1993) 176 CLR 555  
*Osborne v Commonwealth* (1911) 12 CLR 321  
*Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1  
*R v Barger* (1908) 6 CLR 41  
*Roy Morgan Research Pty Ltd v Commissioner of Taxation* (2011) 244 CLR 97  
*South Australia v Commonwealth (First Uniform Tax Case)* (1942) 65 CLR 373  
*Victoria v Commonwealth (Second Uniform Tax Case)* (1957) 99 CLR 575

**3b. Provisions in taxation laws: Constitution, s 55**

*Air Caledonie International v Commonwealth* (1988) 165 CLR 462  
*Australian Tape Manufacturers Association v Commonwealth* (1993) 176 CLR 480  
*Cadbury-Fry-Pascall v FCT* (1944) 70 CLR 362  
*Collector of Customs (NSW) v Southern Shipping Co* (1962) 107 CLR 279  
*Luton v Lessels* (2002) 210 CLR 333  
*Permanent Trustee Australia Pty Ltd v Commissioner of State Revenue* (2004) 220 CLR 388 (pars 55-74)  
*Re Dymond* (1959) 101 CLR 11  
*State Chamber of Commerce and Industry v Commonwealth (Fringe Benefits Tax Case)* (1987) 163 CLR 329

**4. Corporations power: Constitution, s 51(xx)**

*Actors and Announcers Equity Association of Australia v Fontana Films ("Actors Equity Case")* (1982) 150 CLR 169  
*Commonwealth v Tasmania ("Tasmanian Dam Case")* (1983) 158 CLR 1  
*Re Dingjan; ex parte Wagner ("Dingjan's Case")* (1995) 183 CLR 323  
*Fencott v Muller* (1983) 152 CLR 570  
*New South Wales v Commonwealth ("Incorporation Case")* (1990) 169 CLR 482  
*New South Wales v Commonwealth; Western Australia v Commonwealth* (2006) 229 CLR 1 ("Work Choices Case")  
*R v Australian Industrial Court: ex parte C L M Holdings* (1977) 136 CLR 235  
*R v Federal Court of Australia: ex parte Western Australian National Football League ("Adamson's Case")* (1979) 143 CLR 190  
*State Superannuation Board v Trade Practices Commission* (1982) 150 CLR 282  
*Strickland v Rocla Concrete Pipes ("Concrete Pipes Case")* (1971) 124 CLR 468  
*Victoria v Commonwealth ("Industrial Relations Act Case")* (1996) 187 CLR 416

**5. External affairs power: Constitution, s 51(xxix)**

*Airlines of New South Wales v New South Wales (No 2) ("Airlines No 2")* (1965) 113 CLR 54  
*Bradley v Commonwealth* (1973) 128 CLR 557  
*Commonwealth v Tasmania ("Tasmanian Dam Case")* (1983) 158 CLR 1  
*Koowarta v Bjelke-Petersen* (1982) 153 CLR 168  
*New South Wales v Commonwealth ("Seas and Submerged Lands Act Case")* (1975) 135 CLR 337  
*Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1  
*Polyukhovich v Commonwealth ("War Crimes Act Case")* (1991) 172 CLR 501  
*Queensland v Commonwealth ("Tropical Rainforest Case")* (1989) 167 CLR 232  
*R v Burgess: ex parte Henry* (1936) 55 CLR 608  
*R v Poole: ex parte Henry (No 2)* (1939) 61 CLR 634  
*Richardson v The Forestry Commission* (1988) 164 CLR 261  
*Victoria v Commonwealth ("Industrial Relations Act Case")* (1996) 187 CLR 416

**6a. Executive power Constitution, s 61**

*Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1  
*Victorian Stevedoring and General Contracting Co and Meakes v Dignan* (1931) 46 CLR 73  
*Williams v Commonwealth* (2012) 86 ALJR 713

**6b. Separation of powers: Constitution, s 71**

*Harris v Caladine* (1991) 172 CLR 84

*Hilton v Wells* (1985) 157 CLR 57

*R v Joske: ex parte Australian Building Construction Employees and Builders Labourers Federation* (1974) 130 CLR 87

*The Boilermakers Case* (1956) 94 CLR 254; (1957) 95 CLR 529

*Waterside Workers Federation of Australia v J W Alexander* (1918) 25 CLR 434

*Wilson v Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 189 CLR 1

**7. Judicial power of the Commonwealth: Constitution, s 71**

*Attorney-General (Cth) v Breckler* (1999) 197 CLR 83

*Attorney-General (Cth) v Alinta* (2008) 233 CLR 542

*Brandy v Human Rights and Equal Opportunity Commission ("Brandy's Case")* (1995) 183 CLR 245

*Cominos v Cominos* (1972) 127 CLR 588

*Farbenfabriken Bayer Aktiengesellschaft v Bayer Pharma* (1959) 101 CLR 652

*Huddart Parker v Moorehead* (1909) 8 CLR 330

*Lane v Morrison* (2009) 239 CLR 230

*Precision Data Holdings v Wills* (1991) 173 CLR 167

*R v Commonwealth Industrial Court: ex parte Amalgamated Engineering Union Australian Section ("Shearer's Case")* (1960) 103 CLR 368

*R v Davison* (1954) 90 CLR 353

*R v Joske: ex parte Australian Building Construction Employees and Builders Labourers Federation* (1974) 130 CLR 87

*R v Quinn: ex parte Consolidated Foods* (1977) 138 CLR 1

*R v Spicer: ex parte Australian Builders Labourers Federation* (1957) 100 CLR 277

*R v Spicer: ex parte Waterside Workers Federation of Australia* (1957) 100 CLR 312

*R v Trade Practices Tribunal: ex parte Tasmanian Breweries* (1970) 123 CLR 361

*Re Tracey: ex parte Ryan* (1989) 166 CLR 518

*Rola Co (Australia) v Commonwealth* (1944) 69 CLR 185

*Thomas v Mowbray* (2007) 233 CLR 307

**8a. Courts and federal jurisdiction: Constitution, s 71**

*R v Bevan: ex parte Elias* (1942) 66 CLR 452

*In re Judiciary and Navigation Acts* (1921) 29 CLR 257

*Re Wakim; ex parte McNally* (1999) 198 CLR 511

*R v Hickman; ex parte Fox and Clinton* (1945) 70 CLR 598

*The Marriage Act Case* (1962) 107 CLR 529

**8b. High Court's appellate jurisdiction: Constitution, s 73**

*Cockle v Isaksen* (1957) 99 CLR 155

*Mellifont v A-G (Q)* (1991) 173 CLR 289

*O'Toole v Charles David* (1990) 171 CLR 232

*Smith Kline and French Laboratories (Australia) v Commonwealth* (1991) 173 CLR 194

**8c. High Court's original jurisdiction: Constitution, ss 75, 76****(1) Section 75(iii)**

*Bank of New South Wales v Commonwealth* (1948) 76 CLR 1  
*Inglis v Commonwealth Trading Bank* (1969) 119 CLR 334  
*R v Collins: ex parte ACTU-Solo Enterprises* (1976) 50 ALJR 471  
*Repatriation Commission v Kirkland* (1923) 32 CLR 1  
*Toowoomba Foundry v Commonwealth* (1945) 71 CLR 545

**(2) Section 75(v)**

*Bodruddaza v Minister for Immigration and Multicultural Affairs* (2007) 228 CLR 651  
*Plaintiff S157/2002 v Commonwealth of Australia* (2003) 211 CLR 476  
*R v Cook; ex parte Twigg* (1980) 147 CLR 15  
*R v Drake-Brockman: ex parte National Oil* (1943) 68 CLR 51  
*R v Murray: ex parte Commonwealth* (1916) 22 CLR 437  
*Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82

**(3) Section 76(i)**

*A-G (NSW) v Commonwealth Savings Bank* (1986) 160 CLR 315  
*James v South Australia* (1927) 40 CLR 1

**(4) Section 76(ii)**

*Felton v Mulligan* (1971) 124 CLR 367  
*R v Commonwealth Court of Conciliation and Arbitration: ex parte Barrett* (1945) 70 CLR 141  
*Watson v FCT* (1953) 87 CLR 353

**8d. Investing State courts with federal jurisdiction: Constitution, s 77(iii)**

*Commonwealth v Hospital Contribution Fund of Australia* (1982) 150 CLR 49  
*Harris v Caladine* (1991) 172 CLR 84 (**s77(ii)**)  
*Kable v Director of Public Prosecutions NSW* (1996) 189 CLR 51

**9a. Duties of excise: Constitution, s 90**

*Capital Duplicators v Australian Capital Territory (No 2)* (1993) 178 CLR 561  
*Dennis Hotels v Victoria* (1960) 104 CLR 529  
*Dickenson's Arcade v Tasmania* (1974) 130 CLR 177  
*Gosford Meats v New South Wales* (1985) 155 CLR 368  
*Ha v New South Wales* (1997) 189 CLR 465  
*H C Sleigh v South Australia* (1977) 136 CLR 475  
*Harper v Victoria* (1966) 114 CLR 361  
*Hematite Petroleum v Victoria* (1983) 151 CLR 599  
*Logan Downs v Queensland* (1977) 137 CLR 59  
*Matthews v Chicory Marketing Board (Victoria)* (1938) 60 CLR 263  
*Parton v Milk Board (Victoria)* (1949) 80 CLR 263

**9b. Freedom of inter-state trade: Constitution, s 92**

*Barley Marketing Board (NSW) v Norman* (1990) 171 CLR 182  
*Bath v Alston Holdings* (1988) 165 CLR 411  
*Befair Pty Ltd v Western Australia* (2008) 234 CLR 418  
*Castlemaine Tooheys v South Australia* (1990) 169 CLR 436  
*Cole v Whitfield* (1988) 165 CLR 360  
*Sportsbet Pty Ltd v New South Wales* [2012] HCA 13 (30 March 2012)

**10. Implied freedoms**

*Aust Capital Television v Commonwealth (No 2)* (1992) 177 CLR 106  
*Lange v Australian Broadcasting Corp* (1997) 189 CLR 520  
*Nationwide News v Wills* (1992) 177 CLR 1

**11. Inconsistency of laws: Constitution, s 109**

*Airlines of New South Wales v New South Wales (No 2)* ("Second Airlines Case") (1965) 113 CLR 54  
*Ansett Transport Industries (Operations) v Wardley* (1980) 142 CLR 237  
*Clyde Engineering Co v Cowburn* (1926) 37 CLR 466  
*Colvin v Bradley Bros* (1943) 68 CLR 151  
*Commercial Radio Coffs Harbour v Fuller* (1986) 161 CLR 47  
*Dickson v The Queen* (2010) 241 CLR 491  
*Ex parte McLean* (1930) 43 CLR 472  
*O'Sullivan v Noarlunga Meat* (1954) 92 CLR 565  
*R v Credit Tribunal: ex parte General Motors Acceptance Corporation, Australia* (1977) 137 CLR 545  
*Viskauskas v Niland* (1983) 153 CLR 280  
*Wenn v A-G (Vic)* (1948) 77 CLR 84  
*Wollongong University v Metwally* (1984) 158 CLR 447

**12. Commonwealth – State relations**

*Amalgamated Society of Engineers v The Adelaide Steamship Co* ("Engineers Case") (1920) 28 CLR 129  
*Austin v Commonwealth* (2003) 215 CLR 185  
*Australian Coastal Shipping Commission v O'Reilly* (1962) 107 CLR 46  
*Clarke v Federal Commissioner of Taxation* (2009) 258 CLR 272  
*Commonwealth v Cigamic* (1962) 108 CLR 372  
*Commonwealth v Tasmania* ("Tasmanian Dam Case") (1983) 158 CLR 1  
*Melbourne Corporation v Commonwealth (Melbourne Corporation Case)* (1947) 74 CLR 31  
*Pirrie v McFarlane* (1925) 36 CLR 170  
*Queensland Electricity Commission v Commonwealth* (1985) 159 CLR 192  
*Re The Residential Tenancies Tribunal of NSW and Henderson; Ex parte The Defence Housing Authority* ("Hendersons Case") (1997) 190 CLR 410  
*Victoria v Commonwealth* (1971) ("Payroll Tax Case") 122 CLR 353  
*West v Commissioner of Taxation* (1937) 56 CLR 657