

### Question 1

a) We first address the issue of characterisation. In characterising a law, we consider the “nature of the rights, duties, powers and privileges which it changes, regulates or abolishes”: *Fairfax v Federal Commissioner of Taxation*<sup>1</sup>. In characterising s 8 of the *Journalism Standards Act 2006* (“the Act”), we refer to the additional duties on publishers of newspapers, any of which are sold interstate. The movement of a tangible thing across State boundaries is “no doubt a necessary part” of trade and commerce among the States (*W & A McArthur Ltd v Queensland*<sup>2</sup>), a power enumerated in s 51(i) of the Australian Constitution. This power has been held to be a non-purposive power (*Murphyores Inc Pty Ltd v Commonwealth*<sup>3</sup>), so even if there were additional purposes behind the passing of s 8 of the Act, such as the regulation of journalism, such factors are irrelevant.

However, s 8 regulates the production of newspapers and not the trade in newspapers per se. We thus rely upon the implied incidental power attached to each head of power including the trade and commerce power (*D’Emden v Pedder*<sup>4</sup>), and it is sufficient to show that the provision is merely appropriate, and not necessary for the exercise of the power (*Nationwide News Pty Ltd v Wills*<sup>5</sup>). In particular, any steps preparatory to trade and commerce, generally labelled as “production”, may be within the implied incidental power if it “beneficially or adversely” affects interstate trade and commerce (*O’Sullivan v Noarlunga Meat Ltd*<sup>6</sup>). Although it is unclear as to the specific nature of the Code of Journalism Ethics, it may be analogous to the situation in *Noarlunga*: the code of ethics may affect the quality of the journalism, which in turn may develop or impair the interstate trade of newspapers. A further stage in the test developed by Fullagar J is the requirement that the process of publishing newspapers for interstate sale is objectively distinct from that of intrastate sale. In this regard, evidence would have to be tendered as to this objective distinction; Fullagar J was clear in restricting the application of the test to the specific factual circumstances, and thus it remains to be seen if “publishing newspapers for interstate sale” is meaningful. However, if a person publishes one newspaper only, then it may be safe to assume that no difference exists in the method of production (as each edition of a newspaper is identical), which if so, would not allow the Commonwealth to regulate such publishers.

---

<sup>1</sup> Per Kitto J in *Fairfax v Federal Commissioner of Taxation* (1965) 114 CLR 1

<sup>2</sup> Per Knox CJ, Isaacs and Starke JJ in *W & A McArthur Ltd v Queensland* (1920) 28 CLR 530

<sup>3</sup> *Murphyores Inc Pty Ltd v Commonwealth* (1976) 136 CLR 1

<sup>4</sup> *D’Emden v Pedder* (1904) 1 CLR 91

<sup>5</sup> *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1

<sup>6</sup> Per Fullagar J in *O’Sullivan v Noarlunga Meat Ltd* (1954) 92 CLR 565

Section 8 also raises issues of mixed production. A case on point is *Redfern v Dunlop Rubber Australia Ltd*<sup>7</sup>, in which it was held that the Commonwealth's power over trade and commerce only extends to intrastate trade and commerce if it is inseparably connected with the interstate or foreign trade and commerce. This would require evidence as to such interconnectedness; for example, it may be shown that unethical journalism permeates newspapers destined for interstate sale if unethical journalism is unchecked at the intrastate level. Practical considerations, as per Menzies J, are relevant, as a publisher may be able to escape the Commonwealth regime by selling some of his newspapers intrastate. Although the facts in *Redfern* are somewhat divergent from those in this case, it cited with approval the dissenting judgment of Owen J in *Swift Australian Co (Pty) Ltd v Boyd Parkinson*<sup>8</sup>.

Hence, the validity of s 8 hinges upon an examination of whether an objectively different method of production can be identified between interstate and intrastate-bound newspapers. Alternatively, the objective distinction is shown, but the interconnectedness is not shown, then it may be able to be read down pursuant to s 15A of the *Acts Interpretation Act 1901* (Cth), to cover only newspapers which are wholly sold interstate. Since Parliament has been quite explicit in its wording ("any of which"), it suggests that such a reading down would not be possible.

An alternative characterisation is that of s 51(xx) of the Constitution, the power with respect to trading, financial or foreign corporations. "A person", which may refer to a legal entity, may be able to be read down to encompass only constitutional corporations. Publishing a newspaper is preparatory to trade, which is a valid conclusion even under the narrow view of s 51(xx): *Tasmanian Dam* case<sup>9</sup>.

**b)** In general, the Commonwealth may not override the Constitution and deem a constitutional fact to bring persons who would otherwise not be able to be regulated under their legislative ambit by creating a statutory fiction: *Herald and Weekly Times Ltd v The Commonwealth*<sup>10</sup>. In this case, the constitutional fact is whether a publisher engages in trade with an interstate publisher. Publishers who do not in fact sell copies to a publisher in another State would otherwise not be subject to s 8; the Commonwealth has no direct power to regulate purely intrastate activities (except with the use of the implied incidental power as discussed below). However, the

---

<sup>7</sup> *Redfern v Dunlop Rubber Australia Ltd* (1964) 110 CLR 194

<sup>8</sup> *Swift Australian Co (Pty) Ltd v Boyd Parkinson* (1962) 108 CLR 189

<sup>9</sup> *Commonwealth v Tasmania* (1983) 158 CLR 1

<sup>10</sup> *Herald and Weekly Times Ltd v The Commonwealth* (1966) 115 CLR 418 as cited in *Actors and Announcers Equity Association of Australia v Fontana Films Pty Ltd* (1982) 150 CLR 169

Commonwealth has the power to legislate for the reversal of the onus of proof, as long as it does not “preclude enquiry” by the judicial system: *Actors Equity*<sup>11</sup>. Section 12 is thus valid, as we can distinguish this case from the facts of *Actors Equity*, because s 12 does not require newspaper publishers to perform an action actively to avoid being drawn into its operation. The burden of proof, “beyond reasonable doubt”, is not unreasonable, as it is used in other facets of the law, although ultimately, it is for the judiciary to decide.

However, it should be noted that s 12 might be valid by use of the implied incidental power attached to the trade and commerce power in s 51(i). The two sections presented, when read together, imply that a purely intrastate publisher may be subject to s 8 if he cannot provide proof as per s 12, but the Commonwealth is able to regulate intrastate trade and commerce if it satisfies certain conditions, as set out in the airline cases. In particular, Barwick CJ in *Airlines (No 2)*<sup>12</sup> held that Commonwealth laws would be valid if the laws protect interstate and foreign trade and commerce. Analogous to the “substantial safety procedure”, the code of ethics might safeguard the newspaper industry by ensuring that it remains an uncontaminated source of news.

**c)** Once again, we are to characterise the law by reference to rights and duties that are modified. A possible characterisation is under s 51(xx), the corporations power, as the section purports to regulate people who deal with trading corporations. There are two issues: firstly, whether it is possible to regulate publishing activities of trading corporations, and secondly, whether it is possible to regulate third parties involved with the publishing activities of trading corporations.

The Commonwealth has been able to regulate at least the trading activities of trading corporations since the *Concrete Pipes* case<sup>13</sup>, after the hiatus in the use of the power following the decision in *Huddart Parker*<sup>14</sup>. The *Concrete Pipes* case left us with two distinct views, generally referred to as the broad and narrow views. The broad view favoured permitting the regulation of any activities of constitutional corporations, while the narrow approach favours the regulation of activities characteristic to that type of constitutional corporation. There has been no clear decision as to the preferred approach (for example, as in *Actors Equity*<sup>15</sup> and *Tasmanian Dam* case<sup>16</sup>).

---

<sup>11</sup> Note 10

<sup>12</sup> *Airlines of New South Wales Pty Ltd v New South Wales (No 2)* (1965) 113 CLR 54

<sup>13</sup> *Strickland v Rocla Concrete Pipes Ltd* (1971) 124 CLR 468

<sup>14</sup> *Huddart, Parker & Co Pty Ltd v Moorehead* (1931) 44 CLR 492

<sup>15</sup> Note 10

<sup>16</sup> Note 9

In applying these views to this case, it is clear that publication by a trading corporation is acceptable under the broad view. The issue when is whether it is acceptable under the narrow view. In the *Tasmanian Dam* case<sup>17</sup>, the narrow view was extended so that it covers at least activities done for the purpose of trade. Here, depending on what is actually being published, publication may be an activity done for the purpose of trade; the publication of writings is analogous to the construction of the dam in the *Tasmanian Dam* case<sup>18</sup>, which was held by the majority to be preparatory to the trade in electricity. Alternatively, it might be argued that the publication of writing is trade per se, for “trade” encompasses such things as the communication of intelligence (*Bank Nationalisation Case*<sup>19</sup>).

Either way, if the narrow approach is taken, s 20 fathoms the regulation of publications that are not “trade”, such as internal publications like staff newsletters, in addition to publications destined for sale, or to be given away to, the public. Section 20 may be able to be read down to restrict the meaning of publications to exclude internal documents. Considering the title of the Act, and the subject matter of the preceding sections, it may be inferred that Parliament’s intention is not to legislate with respect to internal documents.

Alternatively, instead of reading down s 20, let us consider the question of regulation of internal affairs (such as the staff newsletters previously alluded to) of constitutional corporations; this is unresolved. On the narrow view, it is unlikely that the internal publications of trading corporations would be able to be regulated. On the other hand, utilising the test espoused by McHugh J in *Re Dingjan*<sup>20</sup>, if evidence is presented that the regulation of internal publications are significant and do not merely relate to the corporation, then s 20 may be valid under this test as well.

Let us now turn to the consideration of whether people can be regulated with the corporations power. On applying the significance test from *Re Dingjan*<sup>21</sup>, the conduct of outsiders can be regulated if it can be shown that there is a beneficial or detrimental effect to the corporation; for example, if persons who submitted material for publication adhered to the code of conduct, it would simplify compliance for the person publishing the writings. At the very least, s 20 may apply to those natural persons responsible for the trading corporation, if s 20 forms part of a regulatory

---

<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid*

<sup>19</sup> *Commonwealth v Bank of New South Wales* (1949) 79 CLR 497

<sup>20</sup> *Re Dingjan; Ex parte Wagner* (1995) 183 CLR 323

<sup>21</sup> *Ibid*

regime about the conduct trading corporations (*Fencott v Muller*<sup>22</sup>), which may not be the case here, as the Act appears to be prescribing a regime for journalists.

Hence, by the corporations power, it is likely that publications of trading corporations can be regulated, and any persons who write for such publications.

Section 20 may also be valid by the power to regulate over some production in the trade and commerce power in s 51(i). Although the regulation of journalists per se is not directly analogous to slaughterhouses in *Noarlunga*, regulation might have to “enter the factor or the field or the mine”<sup>23</sup>. However, this is dependent upon a reading down of the section to include only interstate or foreign trade and commerce, something that Murphy J in the *Concrete Pipes* case<sup>24</sup> was unwilling to do due to the definition of the trading corporation as per s 51(xx), as we have here.

**d)** Although the Commonwealth does not have power over incorporation<sup>25</sup>, 3CMFM is an association that has been incorporated already, so if it is a trading corporation, then s 20 may apply if it is indeed valid.

According to *Adamson’s* case<sup>26</sup>, the current activities test is preferred over consideration of the purpose of the corporation (assuming the corporation has performed activities), and it requires that the corporation’s trading activities form a “substantial”, “sufficiently significant”, or possibly even just not insignificant, proportion of its activities. In this case, the sale of recorded music and music books by 3CMFM is analogous to the sale of football merchandise in *Adamson’s* case<sup>27</sup>, in that the profits of these activities go towards the funding of the wider organisation and are not merely incidental. As per the *State Superannuation* case<sup>28</sup>, the trading activities do not have to be the dominant activity. Furthermore, the fact that 3CMFM is a radio station may provide another activity with which to use to classify it; television, similar to radio, was directly mentioned as a plausible example of trade in the *Bank Nationalisation Case*<sup>29</sup>.

Hence, although there were only small majorities in *Adamson’s*<sup>30</sup> and the *State Superannuation*<sup>31</sup> cases, we nonetheless conclude that 3CMFM is a trading corporation.

---

<sup>22</sup> *Fencott v Muller* (1983) 152 CLR 570

<sup>23</sup> Per Fullagar J in note 6

<sup>24</sup> Note 13

<sup>25</sup> *New South Wales v Commonwealth (Incorporation Case)* (1990) 169 CLR 482

<sup>26</sup> *R v Federal Court of Australia; WA National Football League, Ex parte (Adamson Case)* (1979) 143 CLR 190

<sup>27</sup> *Ibid*

<sup>28</sup> *State Superannuation Board v Trade Practices Commission* (1982) 150 CLR 282

<sup>29</sup> Note 19

<sup>30</sup> Note 25

## Question 2

Currie Uranium Ltd would not be liable under the State Act if it can be shown that the Commonwealth Act was valid and the State Act is inconsistent with the Commonwealth Act by virtue of s 109 of the Constitution.

Section 51(xxix) of the Constitution gives the Commonwealth the power to make laws with respect to external affairs, such as treaty obligations. In this case, we have the GGE Treaty together with the Resolutions of the General Assembly that support it, as well as the bilateral treaty between Australia and China. The Resolutions can be taken as a source of legislative power; this is by comparison with the *Industrial Relations Act* case<sup>32</sup>, where recommendations from the ILO were acceptable.

A first consideration is whether a treaty is a bona fide treaty: *R v Burgess*<sup>33</sup>. In this case, the fact that the GGE Treaty is an international treaty, the Resolution is from the United Nations, and the Australia-China treaty cited the GGE Treaty, suggests that all three are bona fide treaties, although it is ultimate the decision of the High Court.

Historically, there has been a broad and a narrow view as to the nature of the subject matter that may be addressed in a treaty; in particular, the court was split in the cases of *R v Burgess*<sup>34</sup> and *Koowarta v Bjelke-Petersen*<sup>35</sup>. However, that issue has now been resolved with the majority (Mason, Murphy, Deane and Brennan JJ) in the *Tasmanian Dams* case<sup>36</sup> favouring the broad approach. The broad approach stipulates that as long as the treaty is a bona fide treaty, the Commonwealth's ability to implement the treaty will not be limited by the subject matter. Thus, there are no objections to the Commonwealth's implementation of these three instruments. However, even if the narrow view were to persist (the majority in the *Tasmanian Dams*<sup>37</sup> case being narrow), a coordinated effort to slow warming on a global level might be considered as extra-territorial. Furthermore, although it is unclear in *Tasmanian Dams* as to whether obligations or recommendations can be implemented (such as the recommendation about the path to follow in the Resolution), it has become clear after *Richardson v Forestry Commission*<sup>38</sup> that both may be implemented.

Since the treaties and the Resolution may form the basis of a Commonwealth law, we shall now turn to consider implementation. In the *Tasmanian Dams* case<sup>39</sup>,

---

<sup>31</sup> Note 28

<sup>32</sup> *Victoria v Commonwealth* (1996) 187 CLR 416

<sup>33</sup> *R v Burgess; Ex parte Henry* (1936) 55 CLR 608

<sup>34</sup> *Ibid*

<sup>35</sup> *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168

<sup>36</sup> Note 9

<sup>37</sup> *Ibid*

<sup>38</sup> *Richardson v Forestry Commission* (1988) 164 CLR 261

<sup>39</sup> Note 9

Deane J formulated the margin of appreciation test, which was subsequently adopted in *Richardson*<sup>40</sup>. The *Nuclear Power Act 2006* (Cth) must be in conformity with the provisions of at least one of the instruments, that is, it must be capable of being reasonably considered to be appropriate and adapted. (Since the remainder of the Commonwealth Act is unavailable, it may in fact address the issues raised here.) Although the Commonwealth might submit that the Act stimulates the uranium mining industry and thus increases the volume of uranium being produced, a difficulty exists because the law merely entitles authorised persons to mine uranium ore without making legislative guarantees as to the use of the uranium to combat global warming. Deane J, in the *Tasmanian Dams* case<sup>41</sup>, has suggested that there needs to be reasonable proportionality between the law and the instrument – although not always a helpful measure<sup>42</sup> – and in this case, the fact that uranium could be used, say, medically or militarily, suggests that the Act is not in conformity with the GGE Treaty and the corresponding Resolution. A similar problem belies conformity with the Australia-China treaty, as the Act does not make provisions for an increase in uranium mining. Note that the Commonwealth may not treat its obligations under the Resolution as a new head of power enabling it to pass laws about uranium mining in general<sup>43</sup>.

A related issue is that of partial implementation. The Act lacks a clear transition path away from nuclear energy; a benefit – the recommendation to transition towards nuclear technologies – has been coupled with a burden – the ultimate transition towards the environmentally safe technologies – but only one has been legislated for. In this case, the resulting law is not sufficiently stamped with the terms of the GGE Treaty and the Resolution, as it is stated that the use of uranium is in fact hazardous. Unless the other provisions of the Act address these concerns, the law must therefore be invalid: *Industrial Relations Act* case<sup>44</sup>.

The *Industrial Relations Act* case is also authority for the proposition that there is a requirement of specificity, where there must be a regime in the treaty that is of “sufficient specificity to direct the general course to be taken by the signatory states” (per majority). In this case, although the GGE Treaty strives to phase out coal, it does not specify a means by which this can be done; the other provisions may be considered as merely “aspirations” (per Zines, as quoted by the majority). Even when read together with the Resolution, it still allows for a choice as to which path to take – with or without

---

<sup>40</sup> Note 38

<sup>41</sup> Note 9

<sup>42</sup> *Industrial Relations Act* case, Note 32

<sup>43</sup> *R v Burgess*, Note 33

<sup>44</sup> Note 32

uranium as an interim stage. Hence, for these problems, the Act is not valid under any of the instruments.

However, it may also be a law with respect to external affairs if it deals with matters inside Australia that are of sufficient international concern: for example, Stephen J found racial discrimination to be of such a concern in *Koowarta*<sup>45</sup>. Evidence may be tendered as to the international concern raised by Australia mining uranium to reduce greenhouse gas emissions, or for the distribution of the newly mined uranium.

Now, supposing that the Commonwealth Act is valid, we now turn to the issue of inconsistency, where s 109 of the Constitution provides that a State Act inconsistent with a Commonwealth Act is invalid to the extent of the inconsistency. There are two types of tests: direct and indirect.

The indirect test is one of covering the field. An inconsistency may arise where the Commonwealth law, expressly or impliedly, intends to cover the field completely and supersede any other law in the area: *Clyde Engineering Co Ltd v Cowburn*<sup>46</sup>. The characterisation, being wide<sup>47</sup>, is the same for both, that is, uranium mining. It would be convincing if the remainder of the provisions in the Commonwealth Act were compellingly detailed, as in *O'Sullivan v Noarlunga Meat Ltd*<sup>48</sup>. Alternatively, the fact that the three instruments were recited along with the fact of the shortfall in uranium production suggests that it may be the case that it may be able to be implied that the Commonwealth does not intend for States to hinder uranium mining.

The direct test of most relevance is the denial of rights test, where the State is purporting to remove the right conferred by the Commonwealth (*Colvin v Bradley Bros Pty Ltd*<sup>49</sup>) to mine uranium by legislating for a State-based licensing scheme that denies the right to mine unless a State license is obtained. However, this case is distinguished from *Colvin*<sup>50</sup> because the right to mine is conditional. It is in fact more analogous to the Kakariki Case<sup>51</sup>, where it was held that there was no inconsistency because the Commonwealth and State laws were not simultaneously in operation, which is analogous to this case, where Currie Uranium does not possess either State or Commonwealth licenses.

Hence, inconsistency may be made out if the Commonwealth Act is valid, and is found to be covering the field of uranium mining.

---

<sup>45</sup> Note 35

<sup>46</sup> Per Isaacs and Starks JJ in *Clyde Engineering Co Ltd v Cowburn* (1926) 37 CLR 466

<sup>47</sup> Note 6

<sup>48</sup> *Ibid*

<sup>49</sup> *Colvin v Bradley Bros Pty Ltd* (1943) 68 CLR 151

<sup>50</sup> *Ibid*

<sup>51</sup> Note 32

### Question 3

The reluctance of the High Court to extend the ambit of the implied incidental power related to s 51(i) of the Constitution in order to disturb the distinction between intrastate, and interstate and foreign trade and commerce is largely unfounded.

Firstly, let us explore the differences between the ways in which the Australian trade and commerce power and the American equivalent have been construed. Most notably, the United States Supreme Court has found to be within power any legislation that regulates an activity that merely affects interstate or foreign commerce, if it believes the means chosen by Congress were *appropriate*<sup>52</sup>. In contrast, as espoused in *Airlines (No 2)*<sup>53</sup>, the High Court has found it necessary to preserve a distinction between intrastate, and interstate and foreign trade and commerce, with only a power to regulate intrastate air navigation if it secured the safety of the industry. The *Western Australia Airlines* case<sup>54</sup> reiterated that distinction, and held that only physical, and not economic, considerations are to be taken into account for the implied incidental power. In addition, concepts foreign to Australia, commingling<sup>55</sup> and the doctrine of aggregation<sup>56</sup>, have found favour with the Supreme Court.

There are some plausible explanations for the differences between the interpretations of the two clauses. For example, the Australian Constitution has more express powers than its American equivalent; the Commonwealth has explicit powers over banking, insurance and industrial relations, while Congress does not. In addition, there is the practical reality that Australia is physically different to the US, in the nature of the economy and the vastly greater number of States that might place greater emphasis on interstate trade.

However, as noted by Zines<sup>57</sup>, the text of the Constitution does not suggest, by itself, any reasons why such divisions should be maintained, and why the reasoning of the Supreme Court with respect to the trade and commerce clause should not be adopted in Australia. In particular, all that the Constitution offers are the subject and the words “with respect to”. There has been dissent from within Australian case law as well. Murphy J in the *Western Australia Airlines* case<sup>58</sup> found the distinction arbitrary, commenting that the Constitution does not explicitly mention intrastate trade and

---

<sup>52</sup> *Heart of Atlanta Motel, Inc v United States* 379 US 241 (1964); *Hodel v Virginia Surface Mining and Reclamation Association* 452 US 264 (1981)

<sup>53</sup> Note 12

<sup>54</sup> *Attorney-General (WA) (Ex rel Ansett Transport Industries (Operations) Pty Ltd) v Australian National Airlines Commission (Western Australian Airlines Case)* (1976) 138 CLR 492

<sup>55</sup> For example, *United States v Wrightwood Dairy Co* 315 US 110 (1942)

<sup>56</sup> For example, *Wickard v Filburn* 317 US 111 (1942)

<sup>57</sup> Zines, L., “The High Court and the Constitution”, 4<sup>th</sup> ed, Butterworths, Sydney, 1997

<sup>58</sup> Note 54

commerce, and thus does not expect a rigid separation. He continues to argue that the physical and economic considerations are all relevant in construing whether a provision may be covered under the implied incidental power, as they must be all “taken into account in assessing what is reasonably necessary for the particular end in view”. Although this does not necessary support the importation of the American ideas about the trade and commerce power, these are cogent arguments as to the abolition of any arbitrary distinctions regulating intrastate, and interstate and foreign activities.

Federalism, in general, is concerned with the distribution of power between the Commonwealth and the States, and while it could be said that the fundamental basis of federalism would ensure that the States retain a substantial area of legislative power, that is not necessary the case. In fact, using federalism to justify the distinctions being maintained by the High Court is inadequate, as economic activity is “not that be-all and end-all of existence”<sup>59</sup>; Australia’s federal character is not in jeopardy. In fact, the notion of federalism as preserving a set of powers for the States was abolished in *Engineers*<sup>60</sup>; as Murphy J commented in the *Western Australian Airlines* case<sup>61</sup>, the maintenance of the supposed divisions “keeps the pre-*Engineers* ghosts walking”.

Some have argued that the trade and commerce power has been sufficiently flexible and kept up to date with the changing context outside of the courtroom. Mason, writing extra-judicially<sup>62</sup>, believes while, that the interpretation of the power is sufficiently flexible to keep up with technological advances that have changed the face of interstate trade, the power should not change like a “chameleon”. Although certainty is important in the law, this does not justify the reasons why the American decisions cannot be imported into Australian law; Mason merely asserts that such expansions are undesirable. While on the surface, the US decisions may appear to have a tenuous or remote connection with interstate or foreign commerce, the Supreme Court has recognised limits to the growth of the power<sup>63</sup>, and in response, it could be said that the court should not rely upon such arbitrary distinctions as the physical and the economic.

Zines<sup>64</sup> suggests that there cannot be any valid criticism of Kitto J’s judgment due to our system of judicial review. However, as demonstrated, despite there being some prima facie differences between the two systems, the text of the Constitution, and the flaws in the arguments involving federalism and that the power is sufficiently expansive, suggest that there is scope for the importation of the American jurisprudence.

---

<sup>59</sup> Note 57

<sup>60</sup> *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129

<sup>61</sup> Note 54

<sup>62</sup> Mason, A., “The Australian Constitution: 1901-1988”, (1988) 62 ALJ 752

<sup>63</sup> For example, *United States v Lopez* 514 US 549 (1995)

<sup>64</sup> Note 57

## Federal Constitutional Law Assignment

Enoch Lau  
SID: 200415765

### Case List

#### Question 1(a)

<i>Fairfax v Federal Commissioner of Taxation</i> (1965) 114 CLR 1
<i>W &amp; A McArthur Ltd v Queensland</i> (1920) 28 CLR 530
<i>Murphyores Inc Pty Ltd v Commonwealth</i> (1976) 136 CLR 1
<i>D'Emden v Pedder</i> (1904) 1 CLR 91
<i>Nationwide News Pty Ltd v Wills</i> (1992) 177 CLR 1
<i>O'Sullivan v Noarlunga Meat Ltd</i> (1954) 92 CLR 565
<i>Redfern v Dunlop Rubber Australia Ltd</i> (1964) 110 CLR 194
<i>Swift Australian Co (Pty) Ltd v Boyd Parkinson</i> (1962) 108 CLR 189
<i>Commonwealth v Tasmania</i> (1983) 158 CLR 1

#### Question 1(b)

<i>Herald and Weekly Times Ltd v The Commonwealth</i> (1966) 115 CLR 418
<i>Actors and Announcers Equity Association of Australia v Fontana Films Pty Ltd</i> (1982) 150 CLR 169
<i>Airlines of New South Wales Pty Ltd v New South Wales (No 2)</i> (1965) 113 CLR 54

#### Question 1(c)

<i>Strickland v Rocla Concrete Pipes Ltd</i> (1971) 124 CLR 468
<i>Huddart, Parker &amp; Co Pty Ltd v Moorehead</i> (1931) 44 CLR 492
<i>Commonwealth v Tasmania</i> (1983) 158 CLR 1
<i>Actors and Announcers Equity Association of Australia v Fontana Films Pty Ltd</i> (1982) 150 CLR 169
<i>Commonwealth v Bank of New South Wales</i> (1949) 79 CLR 497
<i>Re Dingjan; Ex parte Wagner</i> (1995) 183 CLR 323
<i>Fencott v Muller</i> (1983) 152 CLR 570
<i>O'Sullivan v Noarlunga Meat Ltd</i> (1954) 92 CLR 565

## Federal Constitutional Law Assignment

Enoch Lau  
SID: 200415765

### Question 1(d)

<i>Strickland v Rocla Concrete Pipes Ltd (1971) 124 CLR 468</i>
<i>New South Wales v Commonwealth (Incorporation Case) (1990) 169 CLR 482</i>
<i>R v Federal Court of Australia; WA National Football League, Ex parte (Adamson Case) (1979) 143 CLR 190</i>
<i>State Superannuation Board v Trade Practices Commission (1982) 150 CLR 282</i>
<i>Commonwealth v Bank of New South Wales (1949) 79 CLR 497</i>

### Question 2

<i>State Superannuation Board v Trade Practices Commission (1982) 150 CLR 282</i>
<i>Victoria v Commonwealth (1996) 187 CLR 416</i>
<i>R v Burgess; Ex parte Henry (1936) 55 CLR 608</i>
<i>Koowarta v Bjelke-Petersen (1982) 153 CLR 168</i>
<i>Commonwealth v Tasmania (1983) 158 CLR 1</i>
<i>Richardson v Forestry Commission (1988) 164 CLR 261</i>
<i>Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466</i>
<i>Colvin v Bradley Bros Pty Ltd (1943) 68 CLR 151</i>
<i>O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565</i>

### Question 3

<i>Heart of Atlanta Motel, Inc v United States 379 US 241 (1964)</i>
<i>Hodel v Virginia Surface Mining and Reclamation Association 452 US 264 (1981)</i>
<i>Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54</i>
<i>Attorney-General (WA) (Ex rel Ansett Transport Industries (Operations) Pty Ltd) v Australian National Airlines Commission (Western Australian Airlines Case) (1976) 138 CLR 492</i>
<i>United States v Wrightwood Dairy Co 315 US 110 (1942)</i>
<i>Wickard v Filburn 317 US 111 (1942)</i>
<i>Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129</i>