

THE UNIVERSITY OF SYDNEY
FACULTY OF LAW

FEDERAL CONSTITUTIONAL LAW (LAWS 3000)
SEMESTER 1, 2006

MID-SESSION ASSIGNMENT
(For all Classes)

INSTRUCTIONS

This assignment is compulsory for all students in all classes.

All questions in this assignment are to be attempted.

This assignment is worth 40% of the final mark in this subject.
(The mark allocation for each question has been noted at the end of each question.)

This assignment covers all topics in the Course Outline up to and including 'Corporations'.

As this is a compulsory assignment, failure to submit will ordinarily result in a failure for this subject (even if a student manages to gain a final examination result which would otherwise enable a final pass mark for this subject).

SUBMISSION

The assignment is due on Friday 5 May 2006. It must be handed in at the Level 12 counter at the Law School in Phillip Street prior to 4pm on the due date. Alternatively, it may be submitted directly to your lecturer in class before that date.

All assignments must have a cover sheet with the student's number, the name of the student's lecturer and class time.

Students must ensure that they keep a copy of their assignment.

(Assignments will not be accepted by email or fax. Assignments may be submitted by mail, provided that the envelope in which they are posted is clearly date-marked on the day of posting, no later than the due date of submission. Proof of posting should be retained by the student. The onus of proof of posting falls on the student. All posted assignments must be clearly addressed to the Faculty of Law, University of Sydney, 173-175 Phillip Street, Sydney 2000 and addressed to the individual lecturer in charge of the student's own class. It is preferred that submission by mail be used as a last resort and only in case events conspire to prevent the student from attending to submit the assignment in person as required above.)

EXTENSIONS:

Extensions will only be granted in cases of illness or misadventure, provided that such events occur before the due date/time for the assignment's submission, and provided that approval for an extension has been granted prior to that date/time by the relevant lecturer. Applications for extensions should be supported by written documentation. (Of course, different considerations may apply if the nature of the illness or misadventure, and the time of its occurrence close to the due date, itself prevents a timely application being made.)

LATE SUBMISSION:

Marks will be deducted for assignments handed in late at the rate of 1 mark per day (from the 40 the assignment is worth).

LENGTH AND FORMAT

Instead of the usual word limit, there will be a **10 page** limit (A4 paper to be used) ***inclusive*** of footnotes. Footnotes are only to be used for citation purposes and must not contain any text beyond that. This is ample length with which to work, and students should remember that the length of the answer does not necessarily reflect its quality.

A case list must be provided in addition at the end of the assignment. This is *not* included in the 10 page limit. It is to be structured around each question answered, so that a separate case list is provided for each of questions 1 – 3 and must only refer to those cases actually mentioned in the assignment.

A bibliography will not be needed for this assignment.

The following specific format requirements are to be observed:

- A4 paper is to be used
- the typing is to be at least 1.5 line spaced.
- The font to be used is Times New Roman 12 pts or a font as close as possible to that; but the minimum font size must be 12pts.
- There is to be 3 cm margin on the left and right of each page, and a 3 cm margin on the top and bottom of each page.
- Each page should be numbered consecutively.
- Footnoting must conform to a standard referencing style.

Any pages beyond 10 pages will not be read by the examiners. Assignments which otherwise do not conform to these requirements will not be marked and students will be required to re-submit the assignment (the examiner will keep a copy of the original version) in conformity with the requirements. These may be subject to the same penalty for lateness in the absence of an adequate explanation as to why the format requirements were not met.

Plagiarism will also be penalised as stated in the Course Outline.

ASSESSMENT CRITERIA

Fail (Below 50%)

Work may fail for any or all of the following reasons:

- Failure to identify at least half of the issues presented in the respective problems or questions
- Failure to provide an analysis of issues identified.
- Inappropriate or irrelevant content.
- Poor grammar, expression or structure, making it difficult or impossible to understand.
- Plagiarism.

Pass (50-64%) Adequate work.

- Correctly identifies the major issues raised by the problem or question.
- Offers an adequate descriptive summary of the issues raised.
- Includes a sound attempt to answer the question, but lacks a full argument or analysis based on the relevant law.
- Uses the relevant law appropriately, but superficially.
- Adequate expression.

Credit (65-74%) Good work.

- Contains no significant errors; identifies and covers the main issues accurately.
- Includes a sound argument or analysis based on the relevant law.
- Relates the law to the facts well.
- Has a clear structure and clear expression.
- Draws relevant conclusions.

Distinction (75-84%): Superior work.

- Has a clear and well articulated approach to the issues.
- Relates the law to the facts at a superior level and achieves a very well-reasoned argument or analysis based on the relevant law.
- Content and structure are well organised in support of conclusions.
- Demonstrates skilled use of the law and provides a well documented argument or analysis.
- Well expressed throughout and free from errors.
- Draws conclusions very well based on the relevant analysis.

High Distinction (85% +): Outstanding work.

- Comprehensively identifies and tackles all issues presented.
- Demonstrates an ability to prioritise analysis and anticipate counter arguments.
- Demonstrates an exceptionally well-reasoned argument incorporating a critical approach to the relevant law.
- Is exceptionally well written.
- Conclusions are well drawn and exceptionally supported by the relevant analysis.

FEDERAL CONSTITUTIONAL LAW

ASSIGNMENT: Semester 1, 2006

1. (a) The *Journalism Standards Act* 2006 (Cth) sets out a “Code of Journalism Ethics”.

Section 8 provides:

“Any person who publishes a newspaper any copies of which are sold to a purchaser in another State shall comply with the Code of Journalism Ethics. Penalty: A fine of \$1,000.”

Is s. 8 valid? Why? **[7 marks]**

- (b) Section 12 provides:

“A person who publishes a newspaper shall be deemed to sell copies to a purchaser in another State unless they prove beyond reasonable doubt that they do not.”

Is s. 12 (i.e., s. 8 read with s. 12) valid? Why? **[3 marks]**

- (c) Section 20 provides:

“Any person who writes material for publication (whether or not such publication is sold) by a trading corporation shall comply with the Code of Journalism Ethics. Penalty: A fine of \$500.”

[The Act defines “trading corporation” as a trading corporation within the meaning of s. 51(xx) of the Constitution.]

Is s. 20 valid? Why? **[7 marks]**

- (d) 3CMFM Inc. is an incorporated association with around three thousand members which runs a classical music FM radio station in Melbourne. It is staffed primarily by volunteers, charges a small membership fee to cover administrative costs, and raises funds to support its service by selling donated music books, DVDs, CDs, tapes and records cheaply at periodic “Book and Record Bazaars”. It also produces a newsletter, sent free of charge to members, and sold to others for a small fee to cover the cost of its production.

Sandra Schubert wrote an article for the newsletter and has been charged with breaching s. 20. She claims that s. 20 cannot validly apply to her because CMFM Inc. is not a trading corporation. Is she correct? Why? **[3 marks]**

2. In Art. 5 of the *Greenhouse Gas Emission (GGE) Treaty*, an international treaty ratified by Australia, the parties undertake to:

“(a) Promote the worldwide reduction of greenhouse gases by phasing-out the use of coal in electricity generation and assisting other nations to the maximum extent possible to do likewise; and
(b) Promote environmentally-friendly methods of generating electricity.”

In a Resolution (which Australia supported) commenting on Art. 5, the United Nations General Assembly (UNGA) resolved as follows:

“(a) The purpose of Art. 5 of the *GGE Treaty* would best be served by nations moving to electricity generation by hydro-electric, solar, wind or tidal power;
(b) The generation of electricity by nuclear power produces less greenhouse gas emission than coal-fired electric power generation. Consequently, notwithstanding its own environmental hazards, the purpose of the *GGE Treaty* would be served by nations moving from coal to nuclear generation as an interim measure before moving to the methods of generation mentioned in (a) above.”

China produces 85% of its electricity from coal-fired generators. Reciting the *GGE Treaty*, Australia and China conclude a treaty (ratified by both nations) under which Australia agrees to supply China with 80 million tons of uranium ore per year for ten years.

Purporting to implement the two treaties and the UNGA Resolution above, and reciting the fact that Australia presently produces only 30 million tons of uranium ore annually, the *Nuclear Power Act 2006 (Cth)* s. 10 provides:

“The Minister [for Industry, Tourism and Resources] may authorize a person to mine uranium ore, whereupon that person shall be entitled to mine that ore.”

The *Uranium Mining Act 2000 (Qld)* s. 8 provides that:

“It is an offence to mine uranium ore [in Queensland] without a licence issued by the [Queensland] Minister for Resources”.

Currie Uranium Ltd owns land, including the uranium therein, near Cairns, Queensland. It applies for a licence under the *Uranium Mining Act 2000 (Qld)* but, when that is refused, it proceeds to mine uranium ore without applying for authorization under s. 10 of *Nuclear Power Act 2006 (Cth)*. When prosecuted for breach of the Queensland Act, it argues that the Act is invalid.

Is Currie Uranium Ltd correct? Why?

[12 marks]

3. In *Airlines of NSW Pty Ltd v New South Wales (No. 2)* (1965) 113 CLR 54, 115 Kitto J remarked:

“The Australian union is one of dual federalism, and until the Parliament and the people see fit to change it, a true federation it must remain. This Court is entrusted with the preservation of constitutional distinctions, and it both fails in its task and exceeds its authority if it discards them, however out of touch with practical conceptions or with modern conditions they may appear to be in some or all of their applications. To import the doctrine of the American cases [on federal power to regulate intrastate commerce] into the law of the Australian Constitution would in my opinion be an error.”

Do you agree? Discuss in light of the United States Supreme Court's commerce clause jurisprudence, and consider the role of “federalism” considerations in Australian constitutional interpretation. **[8 marks]**