

## CONTENTS

### Chapter 1 Foundations

1. Constitutional Law
2. Constitutionalism and Judicial Review
  - Marbury v Madison* 5 US (1 Cranch) 137 (1803)
  - JR Lucas, *The Principles of Politics* (Clarendon Press, 1966)
  - Cooper v Aaron* 358 US 1 (1958)
  - Alexander Hamilton, *The Federalist (No 78)* in Isaac Kramnick (ed), *The Federalist Papers* (Penguin Books, 1987), 436
3. Separation of Powers
  - Baron de Montesquieu, *The Spirit of the Laws* (transl Thomas Nugent, Hafner Press, 1949)
  - Owen Hood Phillips and Paul Jackson, *Constitutional and Administrative Law* (Sweet and Maxwell, 7th ed 1987)
  - Gerard Carney, “*Separation of Powers in the Westminster System*” *Legislative Studies* (Vol 8, No 2, Autumn 1994), 59
  - Julius Stone, *Social Dimensions of Law and Justice* (Maitland Publications, 1966)
  - President’s Committee on Administrative Management, *Administrative Management in the Government of the United States* (United States Government Printing Office, 1937)
4. Separation of Church and State
  - John Locke, *A Letter Concerning Toleration* (1689) (transl William Popple, 1689; retransl JW Gough and ed R Klibansky, Clarendon Press, 1968)
  - VP Luthera, *The Concept of the Secular State and India* (Oxford University Press, 1964)
  - John Rawls, *Political Liberalism* (Columbia University Press, 1993)
5. Liberalism and the Social Contract
  - John Gray, *Liberalism* (Open University Press, 2nd ed 1995)
  - Thomas Hobbes, *Leviathan, Or the Matter, Forme and Power of a Commonwealth Ecclesiasticall and Civil* (1651; Everyman’s Library, 1914)
  - John Locke, *Two Treatises of Government* (1690; critical edition by Peter Laslett, Cambridge University Press, 2nd ed 1967)
6. Economic Liberalism
  - Kevin Rudd, “The Global Financial Crisis” *The Monthly*, February 2009, 20
7. Governmentality
  - Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-79* (ed Michel Senellart and transl Graham Burchell, Palgrave Macmillan, 2007)
  - Michel Foucault, *Power/Knowledge* (ed Colin Gordon, Harvester Press, 1980)
8. State of Exception
  - Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (transl Daniel Heller-Roazen, Stanford University Press, 1998)
  - Giorgio Agamben, *State of Exception* (transl Kevin Attell, University of Chicago Press, 2005)
  - Jessica Whyte, “Its Silent Working was a Delusion” in Justin Clemens, Nicholas Herron and Alex Murray (eds), *The Work of Giorgio Agamben: Law, Literature, Life* (Edinburgh University Press, 2008) 66
9. Legal Positivism

Hans Kelsen, *Pure Theory of Law* (transl by Max Knight, University of California Press, 1967)

Hans Kelsen, *General Theory of Law and State* (Russell & Russell, 1945)

10. *Grundnorm* and *Coup d'Etat*

FM Brookfield, *Waitangi & Indigenous Rights: Revolution, Law and Legitimation* (Auckland University Press, 1999)

*Madzimbamuto v Lardner-Burke* [1969] 1 AC 645

*Mokotso v HM King Moshoeshoe II* [1989] LRC (Const) 24

*Republic of Fiji v Prasad* [2001] 2 LRC 743

11. Further References

## Chapter 2 The Westminster Constitution

1. Introduction

2. English Constitutional History

(a) Magna Carta

Geoffrey de Q Walker, *The Rule of Law: Foundation of Constitutional Democracy* (Melbourne University Press, 1988)

John Alder, *Constitutional and Administrative Law* (Macmillan, 2nd ed 1994)

Magna Carta (*The Great Charter*) (9 Hen III (1225), as confirmed in 25 Edw I (1297))

(b) Parliament

CF Padfield, *British Constitution Made Simple* (WH Allen, 4th ed 1977)

Frederick Marcham, *A Constitutional History of Modern England, 1485 to the Present* (Harper & Brothers, 1960)

(c) Star Chamber and Common Law Courts

Frederick Marcham, *A Constitutional History of Modern England, 1485 to the Present* (Harper & Brothers, 1960)

JR Tanner, *Tudor Constitutional Documents AD 1485-1603 with an Historical Commentary* (Cambridge University Press, 2nd ed 1930)

Goldwin A Smith, *A Constitutional and Legal History of England* (Scribners, 1955; repr Dorset Press, 1990)

*Prohibitions del Roy* (1607) 12 Co Rep 63; 77 ER 1342

AD Boyer, "Understanding, Authority, and Will': Sir Edward Coke and the Elizabethan Origins of Judicial Review" (1997) 39 *Boston College Law Review* 43

James I, "A Speech in the Starre-Chamber" in CH McIlwain (ed), *The Political Works of James I* (Harvard University Press, 1918), 326

(d) The Bloodless Revolution

PA Joseph, *Constitutional and Administrative Law in New Zealand* (Law Book Co, 1993)

*Bill of Rights 1688* (1 Will & Mary, Sess 2 c 2)

Goldwin A Smith, *A Constitutional and Legal History of England* (Scribners, 1955; repr Dorset Press, 1990)

(e) Limited Government

*Entick v Carrington* (1765) 19 St Tr 1030

*Sommersett's Case* (1772) 20 St Tr 1

(f) Responsible and Representative Government

Patrick Parkinson, *Tradition and Change in Australian Law* (LBC Information Services, 3rd ed 2005)

3. Parliament versus the Courts

*House of Commons Journals* (31 May 1837), Vol 92

*Stockdale v Hansard* (1839) 9 Ad & E 1; 112 ER 1112

*Stockdale v Hansard* (1840) 11 Ad & E 253; 113 ER 411

*The Case of the Sheriff of Middlesex* (1840) 11 Ad & E 273; 113 ER 419

*Bradlaugh v Gossett* (1884) 12 QBD 271

4. The Westminster Constitution

(a) Parliamentary Sovereignty

AV Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 1st ed 1885, 10th ed 1959)

Geoffrey de Q Walker, "Dicey's Dubious Dogma of Parliamentary Sovereignty" (1985) 59 *Australian Law Journal* 276

- Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Clarendon Press, 1999)
- WI Jennings, *The Law and the Constitution* (University of London Press, 5th ed 1959)
- TRS Allan, *Law, Liberty, and Justice: The Legal Foundations of British Constitutionalism* (Oxford University Press, 1993)
- (b) The Rule of Law
- AV Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 1st ed 1885, 10th ed 1959)
- WI Jennings, *The Law and the Constitution* (University of London Press, 5th ed 1959)
- Julius Stone, *Social Dimensions of Law and Justice* (Maitland Publications, 1966)
- International Commission of Jurists, *The Rule of Law in a Free Society – Report of the International Congress of Jurists*, New Delhi 1959 (Geneva, 1959)
- Sir Ninian Stephen, “The Rule of Law” (2003) 22(2) *Dialogue* (Academy of the Social Sciences in Australia) 8
- (c) Reconciling Parliamentary Sovereignty and the Rule of Law
- AV Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 1st ed 1885, 10th ed 1959)
- WI Jennings, *The Law and the Constitution* (University of London Press, 5th ed 1959)
- Eric Barendt, “Dicey and Civil Liberties” [1985] *Public Law* 596
- Potter v Minahan* (1908) 7 CLR 277
- Coco v The Queen* (1994) 179 CLR 427
- R v Home Secretary; Ex parte Pierson* [1998] AC 539
- TRS Allan, *Law, Liberty, and Justice: The Legal Foundations of British Constitutional Law* (Oxford University Press, 1993)
- (d) Constitutional Conventions
- AV Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 1st ed 1885, 10th ed 1959)
- Re Resolution to Amend the Constitution* [1981] 1 SCR 753; (1981) 125 DLR (3d) 1
- Colin Hughes, “Conventions: Dicey Revisited” in Patrick Weller and Dean Jaensch (eds), *Responsible Government in Australia* (Drummond Publishing, 1980)

## 5. Further References

### Chapter 3 Path to Independence

#### 1. Colonisation

- Blankard v Galdy* (1692) 2 Salkeld 411; 91 ER 356
- Anonymous* (1722) 2 Peere Williams 75; 24 ER 646
- William Blackstone, *Commentaries on the Laws of England* (Clarendon Press, 5th ed 1773), Volume I, Introduction, sect 4
- Alex Castles, *An Australian Legal History* (Law Book Co, 1982)
- Mabo v Queensland (No 2)* (1992) 175 CLR 1
- HV Evatt, “The Legal Foundations of New South Wales” (1938) 11 *Australian Law Journal* 409
- Alex Castles, “The Reception and Status of English Law in Australia” (1963) 2 *Adelaide Law Review* 1
- Sir Victor Windeyer, “‘A Birthright and Inheritance’ –The Establishment of the Rule of Law in Australia” (1962) 1 *Tasmanian University Law Review* 635

#### 2. The Colonial Legislatures

- R v Burah* (1878) 3 App Cas 889
- Hodge v The Queen* (1883) 9 App Cas 117
- Alex Castles, “The Reception and Status of English Law in Australia” (1963) 2 *Adelaide Law Review* 1

#### 3. Federation

- Patrick Parkinson, *Tradition and Change in Australian Law* (LBC Information Services, 3rd ed 2005)

- George Williams, *Human Rights under the Australian Constitution* (Oxford University Press, 1999)
4. The Colonial Legacy
    - Commonwealth v Kreglinger & Fernau Ltd (Skin Wool Case)* (1926) 37 CLR 393
  5. The Statute of Westminster
    - Geoffrey Sawer, *The Australian Constitution* (AGPS, 2nd ed 1988)
    - (a) Extraterritoriality
      - Pearce v Florenca* (1976) 135 CLR 507
    - (b) Repugnancy
      - Bisticic v Rokov* (1976) 135 CLR 552
      - China Ocean Shipping Co v South Australia* (1979) 145 CLR 172
      - Kirmani v Captain Cook Cruises Pty Ltd (No 1)* (1985) 159 CLR 351
  6. Appeals to the Privy Council
  7. The Australia Act
    - Sue v Hill* (1999) 199 CLR 462
    - Attorney-General (WA) v Marquet* (2003) 217 CLR 545
  8. Popular Sovereignty
    - Sir Owen Dixon, "The Law and the Constitution" (1935) 51 *Law Quarterly Review* 590
    - Geoffrey Lindell, "Why is Australia's Constitution Binding? – The Reasons in 1900 and Now, and the Effect of Independence" (1986) 16 *Federal Law Review* 29
    - George Williams, "The High Court and the People" in Hugh Selby (ed), *Tomorrow's Law* (Federation Press, 1995), 271
    - Helen Irving, "The People and their Conventions" in Michael Coper and George Williams (eds), *Power, Parliament and the People* (Federation Press, 1997), 113
  9. Further References

#### Chapter 4 Indigenous Peoples

1. Introduction
2. Voting Rights and the Constitution
3. Native Title
  - (a) *Mabo*
    - Mabo v Queensland (No 2)* (1992) 175 CLR 1
    - Robert French and Patricia Lane, "The Common Law of Native Title in Australia" (2002) 2 *Oxford University Commonwealth Law Journal* 15
  - (b) Pastoral Leases
    - Wik Peoples v Queensland* (1996) 187 CLR 1
    - Western Australia v Ward (Miriuwung-Gajerrong Case)* (2002) 213 CLR 1
  - (c) The Question of Sovereignty
    - Native Title Act 1993* (Cth)
    - Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422
    - Bodney v Bennell* (2008) 249 ALR 300
    - Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2002* (Human Rights and Equal Opportunity Commission, 2003) (Parliamentary Paper No 41 of 2003)
4. Sovereignty and Self-Determination
  - (a) Sovereignty
    - Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future* (Federation Press, 2003)
    - Coe v Commonwealth (No 2)* (1993) 118 ALR 193
    - Walker v New South Wales* (1994) 182 CLR 45
  - (b) Self-Determination
    - United Nations Declaration on the Rights of Indigenous Peoples 2007* (United Nations General Assembly, A/RES/61/295, 13 September 2007)
    - Worcester v Georgia* 31 US (6 Peters) 515 (1832)
    - Government-to-Government Relations with Native American Tribal Governments* (Presidential Memorandum for the Heads of Executive Departments and Agencies, 29 April 1994)

## (c) Reconciliation

*Draft Australian Declaration Towards Reconciliation*

Council for Aboriginal Reconciliation, *Recognising Aboriginal and Torres Strait Islander Rights* (AGPS, 2000)

Council for Aboriginal Reconciliation, *Reconciliation: Australia's Challenge* (AGPS, 2000)

*Hansard*, House of Representatives, 13 February 2008, No 1, 2008 [167]  
APOLOGY TO AUSTRALIA'S INDIGENOUS PEOPLES

*Constitution Act 1975* (Vic)

Sean Brennan, Larissa Behrendt, Lisa Strelein and George Williams, *Treaty* (Federation Press, 2005)

RS French, "Native Title – A Constitutional Shift?" in Lee, HP, and Gerangelos, P (eds), *Constitutional Advancement in a Frozen Continent* (Federation Press, 2009), 126

## 5. Further References

**Chapter 5 The Federal System**

## 1. Federalism

AV Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 1st ed 1885, 10th ed 1959)

James Bryce, *The American Commonwealth* (Macmillan, 1st ed 1888, 3rd ed 1908)

James Madison, *The Federalist* (No 39) in Isaac Kramnick (ed), *The Federalist Papers* (Penguin Books, 1987)

## 2. Australian Federalism

Constitutional Commission, *Final Report of the Constitutional Commission* (AGPS, 1988), Vol 1

Brian Galligan and Cliff Walsh, "Australian Federalism Yes or No?" in Gregory Craven (ed), *Australian Federation* (Melbourne University Press, 1992), 193

James Gillespie, "New Federalisms" in Judith Brett, James Gillespie and Murray Goot (eds), *Developments in Australian Politics* (MacMillan, 1994), 60

Tony Abbott, *Battlelines* (Melbourne University Press, 2009)

## 3. Co-operative Federalism

## (a) Co-operative Federalism and the Corporations Law

*R v Duncan; Ex parte Australian Iron and Steel Pty Ltd* (1983) 158 CLR 535

*Re Wakim; Ex parte McNally* (Cross-vesting Case) (1999) 198 CLR 511

*R v Hughes* (2000) 202 CLR 535

## (b) Referrals of Power

*R v Public Vehicles Licensing Appeal Tribunal (Tas); Ex parte Australian National Airways Pty Ltd* (1964) 113 CLR 207

*Thomas v Mowbray* (2007) 233 CLR 307

## (c) Powers of the United Kingdom Parliament

*Coastal Waters (State Powers) Act 1980* (Cth)

*Port MacDonnell Professional Fishermen's Assn Inc v South Australia* (1989) 168 CLR 340

## 4. Equal Treatment of States

*Elliott v Commonwealth* (1936) 54 CLR 657

*Cameron v Deputy Federal Commissioner of Taxation* (1923) 32 CLR 68

*Commissioner of Taxation v Clyne* (1958) 100 CLR 246

*Permanent Trustee Australia Ltd v Commissioner of State Revenue* (2004) 220 CLR 388

## 5. The Territories

*Re Governor, Goulburn Correctional Centre; Ex parte Eastman* (1999) 200 CLR 322

*R v Bernasconi* (1915) 19 CLR 629

*Jolley v Mainka* (1933) 49 CLR 242

*Spratt v Hermes* (1965) 114 CLR 226

*Teori Tau v Commonwealth* (1969) 119 CLR 564

*Bennett v Commonwealth* (2007) 231 CLR 91

*Wurridjal v Commonwealth* (2009) 252 ALR 232

*Northern Territory v GPAO* (1999) 196 CLR 553

*New South Wales v Commonwealth (WorkChoices Case)* (2006) 229 CLR

1

## 6. Further References

### Chapter 6 The *Engineers' Case*

#### 1. The Division of Legislative Power

#### 2. Implied Immunity of Instrumentalities

*D'Emden v Pedder* (1904) 1 CLR 91

*Deakin v Webb* (1904) 1 CLR 585

*Municipal Council of Sydney v Commonwealth (Municipal Rates Case)* (1904) 1 CLR 208

*Federated Amalgamated Government Railway and Tramway Service Association v New South Wales Railway Traffic Employees Association (Railway Servants' Case)* (1906) 4 CLR 488

*Attorney-General of NSW v Collector of Customs for NSW (Steel Rails Case)* (1908) 5 CLR 818

*R v Sutton (Wire Netting Case)* (1908) 5 CLR 789

RG Menzies, *Central Power in the Australian Commonwealth* (Cassell, 1967)

#### 3. Reserved State Powers

*R v Barger* (1908) 6 CLR 41

AR Blackshield, "Damadam to Infinities! The Tourneyold of the Wattarfalls" in M Sornarajah (ed), *The South West Dam Dispute: The Legal and Political Issues* (University of Tasmania, 1983), 37

#### 4. The *Engineers' Case*

*Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (Engineers' Case)* (1920) 28 CLR 129

*Victoria v Commonwealth (Payroll Tax Case)* (1971) 122 CLR 353

RTE Latham, "The Law and the Commonwealth" in WK Hancock, *Survey of British Commonwealth Affairs: Problems of Nationality 1918-1936* (Oxford University Press, 1937), vol 1, 510

#### 5. Literalism and Legalism

Swearing in of Sir Owen Dixon as Chief Justice (1952) 85 CLR xi

Retirement of Sir Garfield Barwick as Chief Justice (1981) 148 CLR v

JD Heydon, "Theories of Constitutional Interpretation: A Taxonomy" *Bar News: The Journal of the NSW Bar Association* (Winter 2007) 12

AR Blackshield, "The Law" in *Power in Australia: Directions of Change* (Centre for Continuing Education, Australian National University, 1981)

#### 6. The Spirit of the Constitution

*McCulloch v Maryland* 17 US (4 Wheat) 316 (1819)

*Jumbunna Coal Mine NL v Victorian Coal Miners' Association* (1908) 6 CLR 309

#### 7. Further References

### Chapter 7 Constitutional Interpretation

#### 1. Language and Communication

Michael Reddy, "The Conduit Metaphor – A Case of Frame Conflict in Our Language about Language" in Andrew Ortony (ed), *Metaphor and Thought* (Cambridge University Press, 1979), 284

#### 2. Judicial Choice

John Austin, *Lectures on Jurisprudence* (John Murray, 5th ed by Robert Campbell, 1885)

John Chipman Gray, *The Nature and Sources of the Law* (1909; 2nd ed by R Gray, Macmillan, 1921)

Martin Golding, "Principled Decision-Making and the Supreme Court" (1963) 63 *Columbia Law Review* 35

*United States v Carolene Products Co* 304 US 144 (1938)

Daniel Farber, "The Originalism Debate: A Guide for the Perplexed" (1989) 49 *Ohio State Law Journal* 1085

3. The Dead Hand and the Living Tree
  - (a) Use of Historical Materials
 

*Tasmania v Commonwealth and Victoria (Drawbacks Case)* (1904) 1 CLR 329

*Strickland v Rocla Concrete Pipes Ltd (Concrete Pipes Case)* (Transcript of Argument, High Court of Australia)
  - (b) The Intention of the Framers
 

Stanley Fish, “Intention Is All There Is: A Critical Analysis of Aharon Barak’s Purposive Interpretation in Law” (2008) 29 *Cardozo Law Review* 1109

Greg Craven, “Original Intent and the Australian Constitution – Coming Soon to a Court Near You?” (1990) 1 *Public Law Review* 166

*New South Wales v Commonwealth (Work Choices Case)* (2006) 229 CLR 1
  - (c) Textualism
 

JD Heydon, “Theories of Constitutional Interpretation: A Taxonomy” *Bar News: The Journal of the NSW Bar Association* (Winter 2007) 12

*Eastman v The Queen* (2000) 203 CLR 1
  - (d) Incremental Accommodation
 

*Street v Queensland Bar Association* (1989) 168 CLR 461
  - (e) Purposive Interpretation
 

William J Brennan, “Construing the Constitution” (1985) 19 *U C Davis Law Review* 2

Aharon Barak, *Purposive Interpretation in Law* (transl S Bashi, Princeton University Press, 2005)

Andrew Inglis Clark, *Studies in Australian Constitutional Law* (Charles Maxwell, 1901; Legal Books, 1997 reprint)

Sir Anthony Mason, “The Role of a Constitutional Court in a Federation: A Comparison of the Australian and the United States Experience” (1986) 16 *Federal Law Review* 1

*Brownlee v The Queen* (2001) 207 CLR 278

*Re Wakim; Ex parte McNally (Cross-vesting Case)* (1999) 198 CLR 511
  - (f) Strategic Compromise?
 

Jack M Balkin, “Framework Originalism and the Living Constitution” (2009) 103 *Northwestern University Law Review* 549

Jeffrey Goldsworthy, “Originalism in Constitutional Interpretation” (1997) 25 *Federal Law Review* 1
4. Coherence, Integrity and Fidelity
 

Neil MacCormick, “Coherence in Legal Justification” in W Krawietz et al (eds), *Theorie der Normen: Festgabe für Ota Weinberger zum 65. Geburtstag* (Duncker & Humblot, 1984), 37
5. Postmodernity and Postmodernism
 

Jack M Balkin, “What is a Postmodern Constitutionalism?” (1992) 90 *Michigan Law Review* 1966

Jacques Derrida, “Declarations of Independence” (1986) 15 *New Political Science* 7

Stephen Feldman, “Diagnosing Power: Postmodernism in Legal Scholarship and Judicial Practice” (1994) 88 *Northwestern University Law Review* 1046

Michel Rosenfeld, “Deconstruction and Legal Interpretation: Conflict, Indeterminacy and the Temptations of the New Legal Formalism” in Drucilla Cornell, Michel Rosenfeld and David Carlson (eds), *Deconstruction and the Possibility of Justice* (Routledge, 1992), 152

Richard Beardsworth, *Derrida & the Political* (Routledge, 1996)

Jacques Derrida, “Force of Law” in Jacques Derrida, *Acts of Religion* (ed G Anidjar, Routledge, 2002), 230
6. Further References

## Chapter 8 Inconsistency

1. The Meaning of “Invalid”
 

*Carter v Egg and Egg Pulp Marketing Board (Vic)* (1942) 66 CLR 557
2. The Tests of Inconsistency

*Clyde Engineering Co Ltd v Cowburn* (1926) 37 CLR 466  
*Ex parte McLean* (1930) 43 CLR 472  
*Telstra Corporation Ltd v Worthing* (1997) 197 CLR 61  
*Commercial Radio Coffs Harbour v Fuller* (1986) 161 CLR 47  
*Ansett Transport Industries (Operations) Pty Ltd v Wardley* (1980) 142  
 CLR 237  
*Australian Mutual Provident Society v Goulden* (1986) 160 CLR 330  
*APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322  
*Commonwealth v Western Australia (Mining Act Case)* (1999) 196 CLR  
 392

## 3. Self-executing Machine?

## 4. Manufacturing Inconsistency

*West v Commissioner of Taxation (NSW)* (1937) 56 CLR 657  
*Re-establishment and Employment Act 1945 (Cth)*  
*Wenn v Attorney-General (Vic)* (1948) 77 CLR 84  
*Airlines of New South Wales Pty Ltd v NSW (No 2) (Second Airlines Case)*  
 (1965) 113 CLR 54  
*Botany Municipal Council v Federal Airports Corporation* (1992) 175  
 CLR 453  
*Telecommunications Act 1997 (Cth) Schedule 3, Part I, Division 8*  
*Bayside City Council v Telstra Corporation Ltd* (2004) 216 CLR 595  
*Workplace Relations Act 1996 (Cth)*  
*New South Wales v Commonwealth (Work Choices Case)* (2006) 229 CLR  
 1

## 5. Clearing the Field

*Trade Practices Act 1974 (Cth)*  
*R v Credit Tribunal; Ex parte General Motors Acceptance Corporation*  
 (GMAC Case) (1977) 137 CLR 545  
*Viskauskas v Niland* (1983) 153 CLR 280  
*Racial Discrimination Act 1975 (Cth)*  
*University of Wollongong v Metwally* (1984) 158 CLR 447

## 6. Further References

**Chapter 9 Federal Parliament**

## 1. Introduction

## 2. Parliamentary Privilege

*Parliamentary Privileges Act 1987 (Cth)*

## 3. Voting and Elections

## (a) Voting

*Commonwealth Electoral Act 1918 (Cth)*  
*Langer v Commonwealth* (1996) 186 CLR 302

## (b) Express Right to Vote

*King v Jones* (1972) 128 CLR 221  
*R v Pearson; Ex parte Sipka* (1983) 152 CLR 254

## (c) Implied Right to Vote

*Roach v Electoral Commissioner* (2007) 233 CLR 162

## (d) Voter Equality

*A-G (Commonwealth); Ex rel McKinlay v Commonwealth* (1975) 135 CLR  
 1  
*McGinty v Western Australia* (1996) 186 CLR 140

## (e) A Level Playing Field?

*Mulholland v Australian Electoral Commission* (2004) 220 CLR 181

## (f) Territory Senators

*Western Australia v Commonwealth (First Territory Senators Case)* (1975)  
 134 CLR 201  
*A-G (NSW); Ex rel McKellar v Commonwealth* (1977) 139 CLR 527

## 4. Eligibility for Election

*Commonwealth Electoral Act 1918 (Cth)*  
*Re Webster* (1975) 132 CLR 270  
*Re Wood* (1988) 167 CLR 145  
*Sykes v Cleary* (1992) 176 CLR 77  
*Sue v Hill* (1999) 199 CLR 462

## 5. Resolving Deadlocks

*Cormack v Cope* (1974) 131 CLR 432

*Victoria v Commonwealth & Connor (PMA Case)* (1975) 134 CLR 81

*Western Australia v Commonwealth (First Territory Senators Case)* (1975)  
134 CLR 201

## 6. Further References

**Chapter 10 State Constitutions**

## 1. Introduction

AV Dicey, *Introduction to the Study of the Law of the Constitution*  
(Macmillan, 1st ed 1885, 10th ed 1959)

## 2. State Legislative Power

## (a) Peace, Welfare and Good Government

*Constitution Act 1902* (NSW)

*Building Construction Employees and Builders' Labourers Federation of  
New South Wales v Minister for Industrial Relations (BLF Case)*  
(1986) 7 NSWLR 372

*Union Steamship Co of Australia Pty Ltd v King* (1988) 166 CLR 1

*Durham Holdings Pty Ltd v New South Wales* (2001) 205 CLR 399

Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and  
Philosophy* (Clarendon Press, 1999)

## (b) Constitutional Amendment

*Taylor v Attorney-General of Queensland* (1917) 23 CLR 457

*McCawley v The King* [1920] AC 691

## 3. Manner and Form Requirements

*Constitution Act 1902* (NSW)

*Attorney-General (NSW) v Trethowan* (1931) 44 CLR 395

*South-Eastern Drainage Board (SA) v Savings Bank of South Australia*  
(1939) 62 CLR 603

*Rederiaktiebolaget Amphitrite v The King (The Amphitrite)* [1921] 3 KB  
500

*West Lakes Ltd v South Australia* (1980) 25 SASR 389

*Attorney-General (WA) v Marquet* (2003) 217 CLR 545

## 4. Alternative Procedures

*Constitution Act 1902* (NSW)

*Clayton v Heffron* (1960) 105 CLR 214

*Clayton v Heffron* (1960) 77 WN (NSW) 767

5. The *Ranasinghe* Principle

*Harris v Minister of the Interior* [1952] 2 SALR 428

*Ceylon (Constitution) Order in Council 1946*

*Bribery Commissioner v Ranasinghe* [1965] AC 172

*Attorney-General (WA) v Marquet* (2003) 217 CLR 545

## 6. Further References

**Chapter 11 The Executive**

## 1. The Crown

*Town Investments Ltd v Department of the Environment* [1978] AC 359

*Sue v Hill* (1999) 199 CLR 462

Anne Twomey, "Responsible Government and the Divisibility of the  
Crown" [2008] *Public Law* 742

## 2. The Governor-General

George Winterton, "The Hollingworth Experiment" (2003) 14 *Public Law  
Review* 139

Republic Advisory Committee, *An Australian Republic: The Options*  
(AGPS, The Report of the Republic Advisory Committee, 1993), vol 2

Ian Harris (ed), *House of Representatives Practice* (AGPS, 5th ed 2005)

Statement by the Governor-General, 11 November 1975 in JA Pettifer (ed),  
*House of Representatives Practice* (AGPS, 1981)

Sir Garfield Barwick, Letter of Advice to the Governor-General in JA  
Pettifer (ed), *House of Representatives Practice* (AGPS, 1st ed 1981)

## 3. Executive Power

- (a) Prerogative Power
    - Adam Tomkins, *Public Law* (Oxford University Press, 2003)
    - Sir John Comyns, *A Digest of the Laws of England* (4th ed by Samuel Rose, A Strahan, 1800) vol 6, *sub voce* "Praerogative"
    - Republic Advisory Committee, *An Australian Republic: The Options* (AGPS, The Report of the Republic Advisory Committee, 1993), vol 1
    - Attorney-General v De Keyser's Royal Hotel Ltd* [1920] AC 508
    - R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2009] 1 AC 453
    - Ruddock v Vadarlis (Tampa Case)* (2001) 183 ALR 1
    - Geoffrey Lindell, "The Constitutional Authority to Deploy Australian Military Forces in the Coalition War against Iraq" (2002) 5 *Constitutional Law and Policy Review* 46
  - (b) Nationhood Power
    - Pape v Commissioner of Taxation* (2009) 257 ALR 1
    - Davis v Commonwealth* (1988) 166 CLR 79
    - New South Wales v Commonwealth (Seas and Submerged Lands Case)* (1975) 135 CLR 337
    - World Heritage Properties Conservation Act 1983* (Cth)
    - Commonwealth v Tasmania (Tasmanian Dam Case)* (1983) 158 CLR 1
  - (c) Power Conferred by Statute
    - Hansard*, Senate, 10 June 1931, vol 130
    - Victorian Stevedoring & General Contracting Co Pty Ltd & Meakes v Dignan (Dignan's Case)* (1931) 46 CLR 73
    - New South Wales v Commonwealth (Work Choices Case)* (2006) 229 CLR 1
4. Control of the Executive
- (a) Responsible Government
    - Hugh Emy and Owen Hughes, *Australian Politics: Realities in Conflict* (Macmillan, 2nd ed 1991)
    - Egan v Willis* (1998) 195 CLR 424
  - (b) Constitutional Writs
    - Migration Act 1958* (Cth)
    - R v Hickman; Ex parte Fox and Clinton* (1945) 70 CLR 598
    - Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476
5. Further References

## Chapter 12 The High Court

- 1. The Platonic High Court
  - Hannah v Dalgarno* (1903) 1 CLR 1
- 2. Appointment and Removal of Judges
  - Constitution of the Commonwealth of Australia*
  - (a) Appointment
    - George Williams, "High Court Appointments: The Need for Reform" (2008) 30 *Sydney Law Review* 163
  - (b) Removal
    - AR Blackshield, "The 'Murphy Affair'" in Jocelyne Scutt (ed), *Lionel Murphy: A Radical Judge* (McCulloch Publishing, 1987), 230
- 3. Jurisdiction
  - (a) Appellate Jurisdiction
  - (b) Original Jurisdiction
  - (c) "Matters"
    - In re Judiciary and Navigation Acts* (1921) 29 CLR 257
    - Commonwealth v Queensland (Queen of Queensland Case)* (1975) 134 CLR 298
    - Mellifont v Attorney-General (Queensland)* (1991) 173 CLR 289
    - Croome v Tasmania* (1997) 191 CLR 119
    - Abebe v Commonwealth* (1999) 197 CLR 510
    - Re McBain; Ex parte Australian Catholic Bishops Conference* (2002) 209 CLR 372
  - (d) Standing

*Attorney-General (Vic); ex rel Black v Commonwealth (DOGS Case)*  
(1981) 146 CLR 559

*Combet v Commonwealth* (2005) 224 CLR 494

*Croome v Tasmania* (1997) 191 CLR 119

*Truth About Motorways Pty Ltd v Macquarie Infrastructure Investment Management Ltd* (2000) 200 CLR 591

*Pape v Commissioner of Taxation* (2009) 257 ALR 1

(e) Justiciability

*Bennett v Commonwealth* (2007) 231 CLR 91

*Re Ditfort; Ex parte Deputy Commissioner of Taxation* (1988) 83 ALR 265

*Thorpe v Commonwealth (No 3)* (1997) 144 ALR 677

4. Remedies

(a) Invalidity

*James v Commonwealth* (1939) 62 CLR 339

*Kruger v Commonwealth (Stolen Generations Case)* (1997) 190 CLR 1

(b) Reading Down and Severance

*Acts Interpretation Act 1901* (Cth)

*Workplace Relations Act 1996* (Cth)

*New South Wales v Commonwealth (Work Choices Case)* (2006) 229 CLR 1

5. Deciding Constitutional Cases

(a) Judicial Parsimony

Henry J Abraham, *The Judicial Process* (Oxford University Press, 7th ed 1998)

*Coleman v Power* (2004) 220 CLR 1

(b) Precedent and Overruling

*Australian Agricultural Co v Federated Engine-Drivers & Firemen's Association (Engine-Drivers' Case)* (1913) 17 CLR 261

*John v Federal Commissioner of Taxation* (1989) 166 CLR 417

*Wurridjal v Commonwealth* (2009) 252 ALR 232

Leslie Zines, *The High Court and the Constitution* (Butterworths, 4th ed 1997)

*Stevens v Head* (1993) 176 CLR 433

*Queensland v Commonwealth (Second Territory Senators Case)* (1977) 139 CLR 585

*Shaw v Minister for Immigration and Multicultural Affairs* (2003) 218 CLR 28

6. Further References

**Chapter 13 The Separation of Judicial Power**

1. The Separation of Federal Judicial Power

*New South Wales v Commonwealth (Wheat Case)* (1915) 20 CLR 54

*Commonwealth Conciliation and Arbitration Act 1904* (Cth)

*Waterside Workers' Federation of Australia v JW Alexander Ltd* (1918) 25 CLR 434

*R v Kirby; Ex parte Boilermakers' Society of Australia (Boilermakers' Case)* (1956) 94 CLR 254

*Attorney-General (Commonwealth) v The Queen* [1957] AC 288

*R v Joske; Ex parte Australian Building Construction Employees & Builders' Labourers' Federation* (1974) 130 CLR 87

*R v Quinn; Ex parte Consolidated Foods Corporation* (1977) 138 CLR 1

2. The Separation of State Judicial Power

*Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51

3. Defining Judicial Power

*Huddart, Parker & Co Pty Ltd v Moorehead* (1909) 8 CLR 330

*R v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361

AR Blackshield, "The Law" in *Power in Australia: Directions of Change* (Centre for Continuing Education, Australian National University, 1981), 171

4. Judicial Power and Administrative Tribunals

*Federal Commissioner of Taxation v Munro* (1926) 38 CLR 153

- Brandy v Human Rights and Equal Opportunity Commission* (1995) 183 CLR 245  
*Attorney-General (Cth) v Breckler* (1999) 197 CLR 83  
*Luton v Lessels* (2002) 210 CLR 333  
*Attorney-General (Cth) v Alinta Ltd* (2008) 233 CLR 542
5. Exceptions to the *Boilermakers' Case*  
*Lane v Morrison* [2009] HCA 29
- (a) Delegation of Judicial Power  
*Harris v Caladine* (1991) 172 CLR 84
- (b) *Persona Designata* Rule  
*Drake v Minister for Immigration & Ethnic Affairs* (1979) 46 FLR 409  
*Hilton v Wells* (1985) 157 CLR 57  
*Telecommunications (Interception) Act 1979* (Cth)  
*Grollo v Palmer* (1995) 184 CLR 348
6. The Incompatibility Doctrine  
*Wilson v Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 189 CLR 1
7. Legislative Usurpation and Interference  
*Liyana v The Queen* [1967] 1 AC 259  
*Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1
8. Further References

## Chapter 14 Judicial and Non-Judicial Detention

1. Introduction  
*Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1
2. The Incompatibility Doctrine  
*Community Protection Act 1994* (NSW)  
*Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51
3. Protective Detention  
*Aboriginals Ordinance 1918* (NT)  
*Kruger v Commonwealth (Stolen Generations Case)* (1997) 190 CLR 1
4. Immigration Detention  
*Migration Act 1958* (Cth)  
*Al-Kateb v Godwin* (2004) 219 CLR 562  
*Behrooz v Secretary of the Department of Immigration and Multicultural and Indigenous Affairs* (2004) 219 CLR 486  
*Re Woolley; Ex parte Applicants M276/2003* (2004) 225 CLR 1  
 Senator Chris Evans, "New Directions in Detention – Restoring Integrity to Australia's Immigration System" Australian National University, 29 July 2008
5. Preventive Detention  
 New South Wales, *Parliamentary Debates* Legislative Assembly, 8 May 1997  
*Baker v The Queen* (2004) 223 CLR 513  
*Fardon v Attorney-General (Queensland)* (2004) 223 CLR 575
6. Further References

## Chapter 15 The Judicial Process

1. Introduction  
 W Harrison Moore, *The Constitution of the Commonwealth of Australia* (Maxwell, 2nd ed 1910, repr Legal Books, 1997)  
*Actors & Announcers Equity Association v Fontana Films Pty Ltd* (1982) 150 CLR 169
2. Retrospectivity  
*Polyukhovich v The Queen (War Crimes Act Case)* (1991) 172 CLR 501
3. Fair Trial  
*Crimes Act 1914* (Cth)  
*Nicholas v The Queen* (1998) 193 CLR 173
4. Equal Justice  
*Leeth v Commonwealth* (1992) 174 CLR 455

- Kruger v Commonwealth (Stolen Generations Case)* (1997) 190 CLR 1
5. Impartiality and Independence  
*Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337  
*Forge v Australian Securities and Investments Commission* (2006) 228 CLR 45  
*Gypsy Jokers Motorcycle Club Inc v Commissioner of Police* (2008) 234 CLR 532  
*Liquor Licensing Act 1997* (SA)  
*K-Generation Pty Ltd v Liquor Licensing Court* (2009) 252 ALR 471  
*International Finance Trust Company v New South Wales Crime Commission* (2009) 261 ALR 220
6. Control Orders  
*Criminal Code (Cth)*  
*Thomas v Mowbray* (2007) 233 CLR 307
7. Further References

## Chapter 16 Characterisation

1. Characterisation  
*United States v Butler* 297 US 1 (1936)  
*Bank of NSW v Commonwealth (Bank Nationalisation Case)* (1948) 76 CLR 1
2. Dual Characterisation  
*Fairfax v Federal Commissioner of Taxation* (1965) 114 CLR 1  
*New South Wales v Commonwealth (Work Choices Case)* (2006) 229 CLR 1  
*Herald & Weekly Times Ltd v Commonwealth* (1966) 115 CLR 418  
*Murphyores Incorporated Pty Ltd v Commonwealth* (1976) 136 CLR 1  
*Actors and Announcers Equity Association v Fontana Films Pty Ltd* (1982) 150 CLR 169
3. Interaction between Heads of Power  
*Pidoto v Victoria* (1943) 68 CLR 87  
*New South Wales v Commonwealth (Work Choices Case)* (2006) 229 CLR 1
4. Subject Matter and Purpose Powers  
*Stenhouse v Coleman* (1944) 69 CLR 457
5. Subject Matter Powers
- (a) Sufficient Connection  
*Re F; Ex parte F* (1986) 161 CLR 376  
*Re Dingjan; Ex parte Wagner* (1995) 183 CLR 323  
*Grain Pool of Western Australia v Commonwealth* (2000) 202 CLR 479
- (b) The Role of Purpose  
*Australian National Airways Pty Ltd v Commonwealth (ANA Case)* (1945) 71 CLR 29
- (c) Incidental Powers  
*D'Emden v Pedder* (1904) 1 CLR 91  
*Grannall v Marrickville Margarine Pty Ltd* (1955) 93 CLR 55  
*Burton v Honan* (1952) 86 CLR 169
6. Purpose Powers and Proportionality  
*Polyukhovich v Commonwealth (War Crimes Act Case)* (1991) 172 CLR 501  
*Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1  
*Leask v Commonwealth* (1996) 187 CLR 579
7. Further References

## Chapter 17 Economics Powers

1. The Trade and Commerce Power
- (a) Scope  
*W & A McArthur Ltd v Queensland* (1920) 28 CLR 530  
*Australian National Airways Pty Ltd v Commonwealth (ANA Case)* (1945) 71 CLR 29  
*R v Burgess; Ex parte Henry* (1936) 55 CLR 608

*Airlines of NSW Pty Ltd v New South Wales (No 2) (Second Airlines Case)*  
(1965) 113 CLR 54

## (b) Incidental Aspect

*Wragg v NSW* (1953) 88 CLR 353

*O'Sullivan v Noarlunga Meat Ltd* (1954) 92 CLR 565

*Attorney-General (WA) v Australian National Airlines Commission* (1976)  
138 CLR 492

*Pape v Commissioner of Taxation* (2009) 257 ALR 1

## 2. The Corporations Power

(a) *Huddart Parker Overthrown*

*Huddart, Parker & Co Pty Ltd v Moorehead* (1909) 8 CLR 330

*Strickland v Rocla Concrete Pipes Ltd (Concrete Pipes Case)* (1971) 124  
CLR 468

## (b) Which Corporations?

*R v Federal Court of Australia; Ex parte WA National Football League*  
(*Adamson's Case*) (1979) 143 CLR 190

*Re Ku-ring-gai Co-operative Building Society (No 12) Ltd* (1978) 22 ALR  
621

*State Superannuation Board of Victoria v Trade Practices Commission*  
(1982) 150 CLR 282

*Fencott v Muller* (1983) 152 CLR 570

*Commonwealth v Tasmania (Tasmanian Dam Case)* (1983) 158 CLR 1

## (c) What Aspects or Activities?

*Actors and Announcers Equity Association v Fontana Films Pty Ltd* (1982)  
150 CLR 169

*World Heritage Properties Conservation Act 1983* (Cth)

*Commonwealth v Tasmania (Tasmanian Dam Case)* (1983) 158 CLR 1

*Re Dingjan; Ex parte Wagner* (1995) 183 CLR 323

*New South Wales v Commonwealth (Work Choices Case)* (2006) 229 CLR  
1

## (d) Incorporation

*New South Wales v Commonwealth (Incorporation Case)* (1990) 169 CLR  
482

## 3. Further References

**Chapter 18 Defence Power**

## 1. The Nature of the Power

*Andrews v Howell* (1941) 65 CLR 255

*Stenhouse v Coleman* (1944) 69 CLR 457

## 2. War

Brian Galligan, *Politics of the High Court* (University of Queensland Press,  
1987)

Lynn Beaton, "The Importance of Women's Paid Labour: Women at Work  
in World War II" in Margaret Bevege, Margaret James and Carmel  
Shute (eds), *Worth Her Salt: Women at Work in Australia* (Hale &  
Iremonger, 1982), 84

*Victorian Chamber of Manufactures v Commonwealth (Women's*  
*Employment Case)* (1943) 67 CLR 347

## 3. Post-War

*R v Foster* (1949) 79 CLR 43

## 4. Peace

*Commonwealth v Australian Commonwealth Shipping Board* (1926) 39  
CLR 1

*Attorney-General (Vic) v Commonwealth (Clothing Factory Case)* (1935)  
52 CLR 533

## 5. Military Justice

*Re Tracey; Ex parte Ryan* (1989) 166 CLR 518

*Re Colonel Aird; Ex parte Alpert* (2004) 220 CLR 308

## 6. Cold War: The Communist Party Case

*Communist Party Dissolution Act 1950* (Cth)

*Australian Communist Party v Commonwealth (Communist Party Case)*  
(1951) 83 CLR 1

*Marcus Clark & Co Ltd v Commonwealth (Capital Issues Case)* (1952) 87  
CLR 177

7. Terrorism and National Security

*Thomas v Mowbray* (2007) 233 CLR 307

8. Further References

**Chapter 19 International Law and the External Affairs Power**

1. Introduction

2. International Law and the Australian Legal System

*Gerhardy v Brown* (1985) 159 CLR 70

*Kruger v Commonwealth (Stolen Generations Case)* (1997) 190 CLR 1

*Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273

*Re Minister for Immigration and Multicultural Affairs; Ex parte Lam*  
(2003) 214 CLR 1

3. International Law and Constitutional Interpretation

*Kartinyeri v Commonwealth (Hindmarsh Island Bridge Case)* (1998) 195  
CLR 337

*Re Colonel Aird; Ex parte Alpert* (2004) 220 CLR 308

*Al-Kateb v Godwin* (2004) 219 CLR 562

4. External Affairs

(a) Relations with Other Countries

*R v Sharkey* (1949) 79 CLR 121

*New South Wales v Commonwealth (Seas and Submerged Lands Case)*  
(1975) 135 CLR 337

*Thomas v Mowbray* (2007) 233 CLR 307

(b) Matters External to Australia

*Polyukhovich v Commonwealth (War Crimes Act Case)* (1991) 172 CLR  
501

*Horta v Commonwealth* (1994) 181 CLR 183

(c) International Law

*Polyukhovich v Commonwealth (War Crimes Act Case)* (1991) 172 CLR  
501

5. Implementing Treaties

(a) Entering into Treaties

Hilary Charlesworth, Madelaine Chiam, Devika Hovell and George  
Williams, "Deep Anxieties: Australia and the International Legal  
Order" (2003) 25 *Sydney Law Review* 423

(b) First Approaches

*R v Burgess; Ex parte Henry* (1936) 55 CLR 608

- (c) The Expanding Power
  - Koowarta v Bjelke-Petersen* (1982) 153 CLR 168
  - Commonwealth v Tasmania (Tasmanian Dam Case)* (1983) 158 CLR 1
  - World Heritage Properties Conservation Act 1983* (Cth)
  - Convention for the Protection of the World Cultural and Natural Heritage*  
Opened for signature 16 November 1972; entered into force 17  
December 1975; (1972) 11 *International Legal Materials* 1358 Article  
34
  - Commonwealth v Tasmania (Tasmanian Dam Case)* (1983) 158 CLR 1
  - Sir Daryl Dawson, “The Constitution – Major Overhaul or Simple Tune-  
up?” (1984) 14 *Melbourne University Law Review* 353
  - Ian Callinan, *The Lawyer and the Libertine* (Central Queensland University  
Press, 1997)
- (d) The Power Confirmed
  - Richardson v Forestry Commission* (1988) 164 CLR 261
  - Victoria v Commonwealth (Industrial Relations Act Case)* (1996) 187 CLR  
416
- (e) International Recommendations
  - Pape v Commissioner of Taxation* (2009) 257 ALR 1

## 6. Further References

### Chapter 20 The Immigration and Aliens Powers

- 1. The White Australia Policy
  - R v Wilson; Ex parte Kisch* (1934) 52 CLR 234
- 2. “Once an immigrant always an immigrant”
  - Potter v Minahan* (1908) 7 CLR 277
  - The Sydney Morning Herald* 21 March 1923 [13] IRISH DELEGATES  
REPUBLICAN ENVOYS. PROTESTS IN MELBOURNE. MELBOURNE,  
Tuesday.
  - R v Macfarlane; Ex parte O’Flanagan and O’Kelly (Irish Envoys’ Case)*  
(1923) 32 CLR 518
  - Immigration Act 1901* (Cth)
  - Ex parte Walsh and Johnson; In re Yates* (1925) 37 CLR 36
  - O’Keefe v Calwell* (1949) 77 CLR 261
  - R v Director-General of Social Welfare; Ex parte Henry* (1975) 133 CLR  
369
- 3. Naturalisation and Aliens
  - (a) Citizenship
    - Moving Forward ... Improving Pathways to Citizenship* A report by the  
Australian Citizenship Test Review Committee, August 2008  
Appendix 1 – Terms of reference of Review
    - Kim Rubenstein, “Citizenship and the Centenary – Inclusion and Exclusion  
in 20th Century Australia” (2000) 24 *Melbourne University Law  
Review* 576
    - Barry Hindess, “Multiculturalism and Citizenship” in Chandran Kukathas  
(ed), *Multicultural Citizens: The Philosophy and Politics of Identity*  
(Centre for Independent Studies, 1993), 33
    - Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*  
(Basic Books, 1983)
  - (b) Persons Born in Britain
    - Nolan v Minister for Immigration and Ethnic Affairs* (1988) 165 CLR 178
    - Re Patterson; Ex parte Taylor* (2001) 207 CLR 391
    - Re Minister for Immigration and Multicultural Affairs; Ex parte Meng Kok  
Te* (2002) 212 CLR 162
    - Shaw v Minister for Immigration and Multicultural Affairs* (2003) 218  
CLR 28
  - (c) Persons Born in Australia
    - Human Rights Commission Report No 10, *The Human Rights of  
Australian-Born Children: A Report on the Complaint of Mr and Mrs  
RC Au Yeung* (Parliamentary Paper No 80 of 1985)
    - Australian Citizenship Act 2007* (Cth)
    - Singh v Commonwealth* (2004) 222 CLR 322

## 4. Further References

**Chapter 21 The Races Power**

## 1. Introduction

## 2. “Special laws”

*Koowarta v Bjelke-Petersen* (1982) 153 CLR 168

*World Heritage Properties Conservation Act 1983* (Cth)

*Commonwealth v Tasmania (Tasmanian Dam Case)* (1983) 158 CLR 1

## 3. Native Title

*Western Australia v Commonwealth (Native Title Act Case)* (1995) 183 CLR 373

*Native Title Act 1993* (Cth)

*Wurridjal v Commonwealth* (2009) 252 ALR 232

## 4. For the Benefit of a Race?

*Hindmarsh Island Bridge Act 1997* (Cth)

*Kartinyeri v Commonwealth (Hindmarsh Island Bridge Case)* (Transcript of Argument, High Court of Australia, 5 February 1998)

*Kartinyeri v Commonwealth (Hindmarsh Island Bridge Case)* (1998) 195 CLR 337

## 5. Further References

**Chapter 22 The Industrial Relations Power**

## 1. Introduction

## 2. “Conciliation and arbitration”

*R v Commonwealth Court of Conciliation and Arbitration; Ex parte Whybrow & Co* (1910) 11 CLR 1

*Australian Boot Trade Employees Federation v Whybrow & Co (No 2)* (1910) 11 CLR 311

*Waterside Workers’ Federation of Australia v Commonwealth Steamship Owners’ Association* (1920) 28 CLR 209

*Re Pacific Coal Pty Ltd; Ex parte Construction, Forestry, Mining and Energy Union (CFMEU Case)* (2000) 203 CLR 346

## 3. “Industrial Disputes”

*R v Coldham; Ex parte Australian Social Welfare Union (CYSS Case)* (1983) 153 CLR 297

## 4. “Beyond the limits of any one State”

*Caledonian Collieries Ltd v Australasian Coal and Shale Employees’ Federation (No 1)* (1930) 42 CLR 527

*Re Australian Education Union; Ex parte Victoria* (1995) 184 CLR 188

## 5. Paper Disputes

*The Felt Hatters’ Case* (1914) 18 CLR 88

*Caledonian Collieries Ltd v Australasian Coal and Shale Employees’ Federation (No 2)* (1930) 42 CLR 558

*Burwood Cinema Ltd v Australian Theatrical and Amusement Employees’ Association* (1925) 35 CLR 528

*Metal Trades Employers Association v Amalgamated Engineering Union* (1935) 54 CLR 387

*R v Kelly; Ex parte Victoria* (1950) 81 CLR 64

## 6. Further References

**Chapter 23 Taxation and Excise**

## 1. The Taxation Power

## (a) What is a Tax?

*Air Caledonie International v Commonwealth* (1988) 165 CLR 462

*Australian Tape Manufacturers Association Ltd v Commonwealth* (1993) 176 CLR 480

*Northern Suburbs General Cemetery Reserve Trust v Commonwealth* (1993) 176 CLR 555

*Luton v Lessels* (2002) 210 CLR 333

## (b) Fees for Services

*Air Caledonie International v Commonwealth* (1988) 165 CLR 462

*Airservices Australia v Canadian Airlines International Ltd* (1999) 202 CLR 133

(c) Arbitrary Exactions

*MacCormick v Federal Commissioner of Taxation* (1984) 158 CLR 622

*Deputy Federal Commissioner of Taxation v Truhold Benefit Pty Ltd* (1985) 158 CLR 678

*Austin v Commonwealth* (2003) 215 CLR 185

(d) No Tax is Levied

*Pape v Commissioner of Taxation* (2009) 257 ALR 1

2. Excise Duties

(a) First Approaches

*Peterswald v Bartley* (1904) 1 CLR 497

John Stuart Mill, *Principles of Political Economy* (1848; Longmans Green & Co, 1936) Book V, Ch 3

(b) Widening Views of “excise”

*Matthews v Chicory Marketing Board (Vic)* (1938) 60 CLR 263

*Parton v Milk Board (Vic)* (1949) 80 CLR 229

(c) The Tangled Web of *Dennis Hotels*

*Dennis Hotels Pty Ltd v Victoria* (1960) 104 CLR 529

(d) Alcohol, Tobacco and Petrol

*Dickenson’s Arcade Pty Ltd v Tasmania* (1974) 130 CLR 177

*Hematite Petroleum Pty Ltd v Victoria* (1983) 151 CLR 599

(e) The Grip of Precedent

*Philip Morris Ltd v Commissioner of Business Franchises (Vic)* (1989) 167 CLR 399

*Capital Duplicators Pty Ltd v Australian Capital Territory (No 2)* (1993) 178 CLR 561

(f) The States Lose \$5 Billion

*Ha v New South Wales* (1997) 189 CLR 465

3. Further References

## Chapter 24 Appropriation and Grants

1. The Appropriation Power

(a) “Purposes of the Commonwealth”

*Attorney-General (Vic); Ex rel Dale v Commonwealth (First Pharmaceutical Benefits Case)* (1945) 71 CLR 237

*Wong v Commonwealth* (2009) 236 CLR 573

(b) The AAP Case

*Appropriations Act (No 1) 1974* (Cth) 4. Australian Assistance Plan

*Victoria v Commonwealth and Hayden (AAP Case)* (1975) 134 CLR 338

(c) Controls on Government Expenditure

(d) The Nine Hundred Dollar Question

*Pape v Commissioner of Taxation* (2009) 257 ALR 1

2. The Grants Power

(a) The Early Cases

*Victoria v Commonwealth (Federal Roads Case)* (1926) 38 CLR 399

*Deputy Federal Commissioner of Taxation (NSW) v WR Moran Pty Ltd* (1939) 61 CLR 735

*WR Moran Pty Ltd v Deputy Commissioner of Taxation for New South Wales* [1940] AC 838

(b) The Uniform Tax Cases

*South Australia v Commonwealth (First Uniform Tax Case)* (1942) 65 CLR 373

*Victoria v Commonwealth (Second Uniform Tax Case)* (1957) 99 CLR 575

(c) Federal Financial Relations

Russell Mathews, *Revenue Sharing in Federal Systems* (Centre for Research on Federal Financial Relations, Australian National University, Research Monograph No 31, 1980)

Department of Treasury and Finance, Government of Western Australia, *Discussion Paper on Commonwealth-State Financial Relations: An Economic and Financial Assessment of How Western Australia Fares* (2006)

2008 Intergovernmental Agreement on Federal Financial Relations

(d) Limits?

*Attorney-General (Vic); Ex rel Black v Commonwealth (DOGS Case)*  
(1981) 146 CLR 559

3. Further References

## Chapter 25 Intergovernmental Immunities

1. Intergovernmental Immunities

*Australian Railways Union v Victorian Railways Commissioners (ARU Case)* (1930) 44 CLR 319

*Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (Engineers' Case)* (1920) 28 CLR 129

*West v Commissioner of Taxation (NSW)* (1937) 56 CLR 657

2. Commonwealth Laws and the States

(a) The *Melbourne Corporation* Principle

*Melbourne Corporation v Commonwealth* (1947) 74 CLR 31

*Victoria v Commonwealth (Payroll Tax Case)* (1971) 122 CLR 353

(b) Restatement: Two Principles

*Commonwealth v Tasmania (Tasmanian Dam Case)* (1983) 158 CLR 1

*Queensland Electricity Commission v Commonwealth* (1985) 159 CLR 192

*Re Lee; Ex parte Harper* (1986) 160 CLR 430

*Re State Public Services Federation; Ex parte Attorney-General (WA)*  
(1993) 178 CLR 249

*Re Australian Education Union; Ex parte Victoria* (1995) 184 CLR 188

*Victoria v Commonwealth (Industrial Relations Act Case)* (1996) 187 CLR 416

(c) Restatement: One Principle

*Austin v Commonwealth* (2003) 215 CLR 185

*Clarke v Commissioner of Taxation* (2009) 258 ALR 623

*New South Wales v Commonwealth (Work Choices Case)* (2006) 229 CLR 1

3. State Laws and the Commonwealth

*Pirrie v McFarlane* (1925) 36 CLR 170

*In re Foreman & Sons Pty Ltd; Uther v Federal Commissioner of Taxation (Uther's Case)* (1947) 74 CLR 508

*Commonwealth v Cigamic Pty Ltd (In Liquidation)* (1962) 108 CLR 372

*Essendon Corporation v Criterion Theatres Ltd* (1947) 74 CLR 1

*Commonwealth v Bogle* (1953) 89 CLR 229

RP Meagher and WMC Gummow, "Sir Owen Dixon's Heresy" (1980) 54  
*Australian Law Journal* 25

*Re Residential Tenancies Tribunal (NSW); Ex parte Defence Housing Authority (Henderson's Case)* (1997) 190 CLR 410

4. Further References

## Chapter 26 Civil and Political Freedoms

1. Human Rights

Louis Henkin, *The Age of Rights* (Columbia University Press, 1990)

*Universal Declaration of Human Rights 1948*

*International Covenant on Civil and Political Rights Adopted* 16 December 1966; entered into force 23 March 1976; 999 UN Treaty Series 171

*International Covenant on Economic, Social and Cultural Rights Adopted* 16 December 1966; entered into force 3 January 1976; 993 UN Treaty Series 3

2. Trial by Jury

*R v Federal Court of Bankruptcy; Ex parte Lowenstein* (1938) 59 CLR 556

*Kingswell v The Queen* (1985) 159 CLR 264

*Cheng v The Queen* (2000) 203 CLR 248

*Cheatle v The Queen* (1993) 177 CLR 541

3. Freedom of Religion

*Krygger v Williams* (1912) 15 CLR 366

*Adelaide Company of Jehovah's Witnesses Inc v Commonwealth (Jehovah's Witnesses Case)* (1943) 67 CLR 116

*Church of The New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983)  
154 CLR 120

*Kruger v Commonwealth (Stolen Generations Case)* (1997) 190 CLR 1  
*Attorney-General (Vic); Ex rel Black v Commonwealth (DOGS Case)*  
(1981) 146 CLR 559

4. Rights of Out-of-State Residents

*Henry v Boehm* (1973) 128 CLR 482

*Street v Queensland Bar Association* (1989) 168 CLR 461

*Goryl v Greyhound Australia Pty Ltd* (1994) 179 CLR 463

*Sweedman v Transport Accident Commission* (2006) 226 CLR 362

5. Further References

**Chapter 27 Economic Freedoms**

1. Freedom of Interstate Trade, Commerce and Intercourse

(a) Isaacs, Dixon and Barwick

*The Seizure of Wheat Case* Parliamentary Papers No 69 of 1914-1915  
(Session 1914-17, Vol 2, 1113)

*New South Wales v Commonwealth (Wheat Case)* (1915) 20 CLR 54

*Duncan v Queensland* (1916) 22 CLR 556

*W & A McArthur Ltd v Queensland* (1920) 28 CLR 530

*Ex parte Nelson (No 1)* (1928) 42 CLR 209

*James v Cowan* (1930) 43 CLR 386

*James v Commonwealth* [1936] AC 578

*O Gilpin Ltd v Commissioner for Road Transport & Tramways (NSW)*  
(1935) 52 CLR 189

*R v Vizzard; Ex parte Hill* (1933) 50 CLR 30

*Australian National Airways Pty Ltd v Commonwealth (ANA Case)* (1945)  
71 CLR 29

*Bank of NSW v Commonwealth (Bank Nationalisation Case)* (1948) 76  
CLR 1

*Commonwealth v Bank of New South Wales (Bank Nationalisation Case)*  
[1950] AC 235

*McCarter v Brodie* (1950) 80 CLR 432

*Hughes and Vale Pty Ltd v New South Wales* (1953) 87 CLR 49

*Grannall v Marrickville Margarine Pty Ltd* (1955) 93 CLR 55

*Samuels v Readers' Digest Association Pty Ltd* (1969) 120 CLR 1

*Permewan Wright Consolidated Pty Ltd v Trewwhitt* (1979) 145 CLR 1

*Miller v TCN Channel Nine Pty Ltd* (1986) 161 CLR 556

(b) The Whitfield Thunderbolt

*Cole v Whitfield* (1988) 165 CLR 360

“Interview with Sir Garfield Barwick” New South Wales Bar Association,  
*Bar News* (Summer 1989), 9

(c) Cole's New World

*Bath v Alston Holdings* (1988) 165 CLR 411

*Castlemaine Tooheys Ltd v South Australia* (1990) 169 CLR 436

*Betfair Pty Ltd v Western Australia* (2008) 234 CLR 418

(d) “Intercourse” among the States

*Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1

*AMS v AIF* (1999) 199 CLR 160

*APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322

2. Acquisition of Property on Just Terms

(a) “Property”

*Minister of State for the Army v Dalziel* (1944) 68 CLR 261

(b) “Acquisition”

*Attorney-General (Commonwealth) v Schmidt* (1961) 105 CLR 361

*Nintendo Co Ltd v Centronics Systems Pty Ltd* (1994) 181 CLR 134

*Mutual Pools & Staff Pty Ltd v Commonwealth* (1994) 179 CLR 155

*Health Insurance Commission v Peverill* (1994) 179 CLR 226

*Georgiadis v Australian and Overseas Telecommunications Corporation*  
(1994) 179 CLR 297

*Newcrest Mining (WA) Ltd v Commonwealth* (1997) 190 CLR 513

*ICM Agriculture Pty Ltd v Commonwealth* [2009] HCA 51

*Airservices Australia v Canadian Airlines International Ltd* (1999) 202 CLR 133

*Wurridjal v Commonwealth* (2009) 237 CLR 309

(c) “Just Terms”

*Grace Bros Pty Ltd v Commonwealth* (1946) 72 CLR 269

*Commonwealth v Tasmania (Tasmanian Dam Case)* (1983) 158 CLR 1

*Wurridjal v Commonwealth* (2009) 237 CLR 309

3. Further References

## Chapter 28 Freedom of Political Communication

1. Introduction

2. The Murphy Catalyst

*Ansett Transport Industries (Operations) Pty Ltd v Commonwealth* (1977) 139 CLR 54

*Miller v TCN Channel Nine Pty Ltd* (1986) 161 CLR 556

3. A Freedom of Political Communication

*Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1

*Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106

4. Defamation: The Constitutional Solution

*Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104

*Stephens v West Australian Newspapers Ltd* (1994) 182 CLR 211

5. Defamation: The Common Law Solution

*McGinty v Western Australia* (1996) 186 CLR 140

*Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520

*Roberts v Bass* (2002) 212 CLR 1

6. Further References

## Chapter 29 Freedom of Political Communication Applied

1. Expressive Conduct

*Wildlife (Game) (Hunting Season) Regulations* (Statutory Rules No 27 of 1994 (Vic))

*Levy v Victoria* (1997) 189 CLR 579

2. The Politics of Protest

*Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199

*Brown v Classification Review Board (Rabelais Case)* (1998) 154 ALR 67

*Coleman v Power* (2004) 220 CLR 1

John Stuart Mill, *On Liberty* (1st ed, Parker, 1859; 4th ed, Longmans, 1869); reprinted in JM Robson (ed), *Essays on Politics and Society* by John Stuart Mill (*Collected Works of John Stuart Mill*, vol 18, University of Toronto Press, 1977), 213

3. Electoral Matters

*Mulholland v Australian Electoral Commission* (2004) 220 CLR 181

4. The Judicial Process

*Herald & Weekly Times Ltd v Popovic* (2003) 9 VR 1

*John Fairfax Publications Pty Ltd v O’Shane* (2005) Australian Tort Reports ¶81-789

*APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322

Ronald Sackville, “How Fragile are the Courts? Freedom of Speech and Criticism of the Judiciary” (2005) 31 *Monash University Law Review* 191

5. The Test for Invalidity

*Mulholland v Australian Electoral Commission* (2004) 220 CLR 181

6. Movement and Association

*Kruger v Commonwealth (Stolen Generations Case)* (1997) 190 CLR 1

*Mulholland v Australian Electoral Commission* (2004) 220 CLR 181

7. Further References

## Chapter 30 Constitutional Change

1. Introduction

2. Amending the Constitution

Scott Bennett, *The Politics of Constitutional Amendment* (Parliamentary Research Service, Commonwealth Parliament, Research Paper No 11 2002-03)

3. An Australian Republic?

Republic Advisory Committee, *An Australian Republic: The Options* (AGPS, The Report of the Republic Advisory Committee, 1993), vol 1  
 George Williams, "Why Australia Kept the Queen" (2000) 63 *Saskatchewan Law Review* 477

Constitution Alteration (Establishment of Republic) 1999

*YES/NO Referendum '99* (Australian Electoral Commission, 1999)

Mark McKenna, Amelia Simpson and George Williams, "With Hope in God, the Prime Minister and the Poet: Lessons from the 1999 Referendum on the Preamble" (2001) 24 *University of New South Wales Law Journal* 401

Constitution Alteration (Preamble) 1999

Helen Irving, "The Republic Referendum of 6 November 1999" (2000) 35 *Australian Journal of Political Science* 111

Michael Kirby, "The Australian Referendum on a Republic – Ten Lessons" (2000) 46 *Australian Journal of Politics & History* 510

4. A Bill or Charter of Rights?

The Constitution of the United States of America

*Constitution of the Republic of South Africa*

*Human Rights Act 1998* (UK)

George Williams, *A Charter of Rights for Australia* (University of New South Wales Press, 2007)

Standing Committee on Law and Justice, *A NSW Bill of Rights* (New South Wales Parliament, Report No 17, October 2001)

*Report of the ACT Bill of Rights Consultative Committee, Towards an ACT Human Rights Act* (2003)

*Human Rights Act 2004* (ACT)

5. Further References

**Appendix**

1. Australian Constitution
2. *The Colonial Laws Validity Act 1865* (Imp)
3. *Statute of Westminster Adoption Act 1942* (Cth)
4. *Australia Act 1986* (Cth)
5. Justices of the High Court of Australia
  - (a) The Justices
  - (b) Composition of the Court
6. Outcomes in Constitutional Referenda