ABOUT THE AUTHOR

Dr Adrian Adams is an entrepreneur, educator and future lawyer whose career has spanned healthcare, property, investment and legal studies. With more than two decades of experience across multiple industries, Adrian has built, owned and operated businesses, advised boards and led teams, giving him a unique and practical perspective on the law and its real-world application.

Adrian is currently completing his Juris Doctor at Bond University on the Gold Coast, Queensland, where he combines his professional experience with a deep passion for legal education. He is committed to helping students understand complex legal subjects clearly, providing structured guidance, practical examples and real-world context to make the law more accessible and engaging.

Through his writing and teaching, Adrian aims to empower the next generation of legal professionals with the knowledge, confidence and problem-solving skills needed to succeed in their studies and future careers.

ABOUT THE BOOK

Constitutional Law in Australia is a practical study guide designed to help law and Juris Doctor students understand the Australian Constitution and its central role in our legal system. The book explains federalism, the separation of powers, legislative power, executive power, judicial power, constitutional interpretation, the implications for rights, and the key High Court authorities that shape Australia's constitutional law.

Each chapter combines clear explanations, real-world context and practical examples, bringing together lectures, forums, tutorials, legislation, cases and worked examples in a structured and accessible format. Complex concepts are broken down into straightforward language, with diagrams, summaries and application questions to help you understand the law and apply it with confidence.

Whether you are studying Constitutional Law as part of your Law degree, Juris Doctor or other legal studies, this book is designed to help you master the key principles, analyse problems critically and prepare for assessments and exams with clarity and confidence.

KEY FEATURES

- Questions-focused chapter coverage
- Cases, legislation and practical application
- Tutorial guidance, case summaries and HD model answers
- Interactive quizzes and chapter crosswords
- Exam-focused revision and study support

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CONSTITUTIONAL LAW IN AUSTRALIA

CONSTITUTIONAL LAW IN AUSTRALIA

LAW & JURIS DOCTOR STUDY GUIDE

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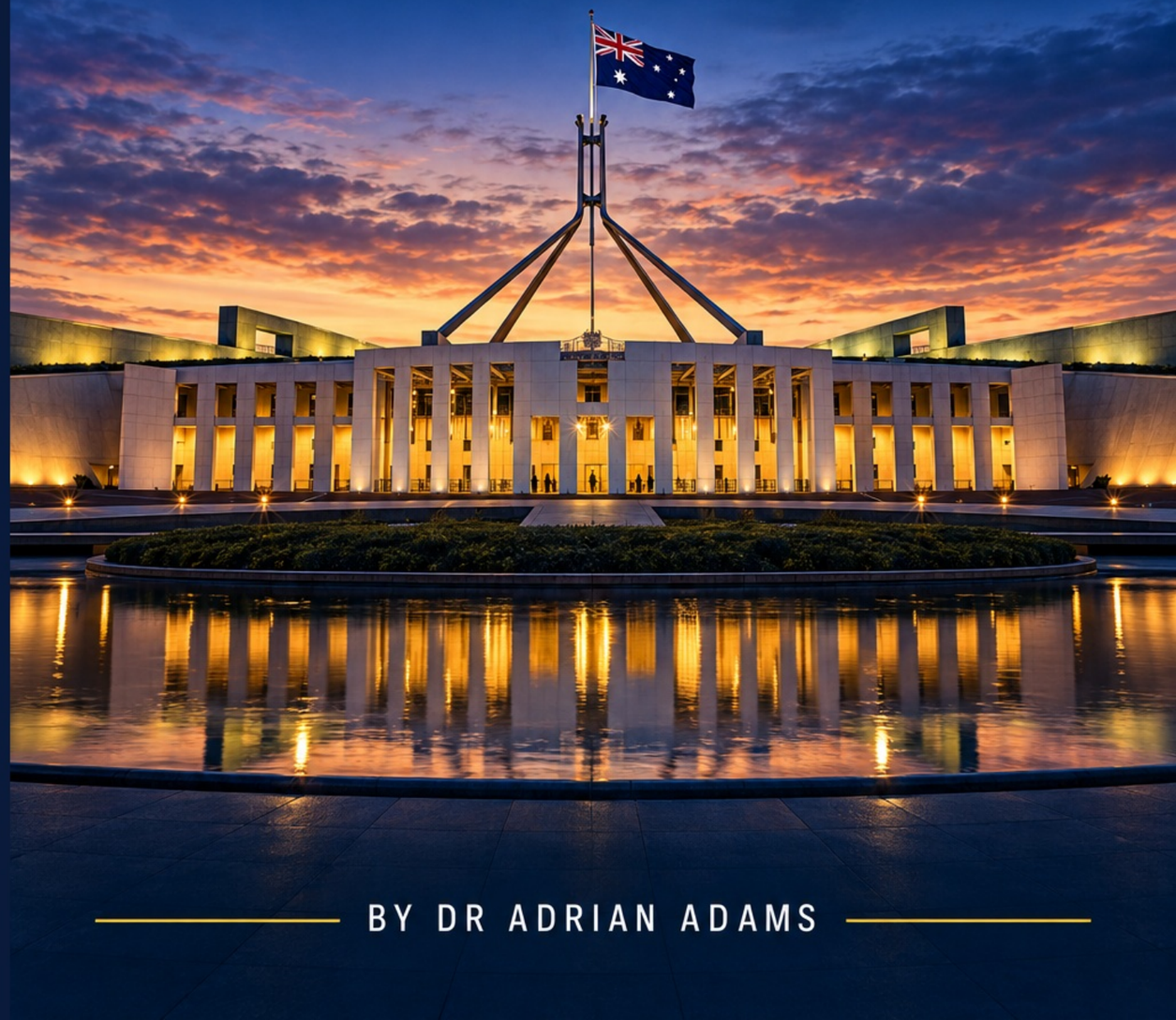

BY DR ADRIAN ADAMS

PREFACE

Preface

By Dr Adrian Adams

This book is dedicated to helping students studying Law, the Juris Doctor, Masters in Business Law and Legal Studies understand **Constitutional Law in Australia**.

Australian Constitutional Law can initially appear abstract. It deals with institutions, governmental power, federalism, legislative competence, executive authority, judicial power and constitutional limitations. Yet behind those principles are real people, political disputes, elections, governments, Indigenous communities, businesses, protesters, migrants, States and institutions whose rights, responsibilities and futures can depend upon how the Australian Constitution is interpreted.

The purpose of this book is therefore not simply to tell students what the Constitution says. It is to teach students **how constitutional law works**. The approach connects forums and lectures with tutorials, constitutional provisions, legislation, cases and authorities. Tutorials are treated as a central teaching tool: they show how an abstract doctrine becomes a factual problem, how to identify the constitutional issue, select the correct power or limitation, apply authority and reach a reasoned conclusion.

Every important constitutional provision is identified precisely. Leading cases are connected to the doctrine for which they matter and explained through proposition, facts, reasoning, outcome and practical examination use. Each substantive chapter finishes with 20 quizzes, 20 short-answer questions, an interactive Across/Down crossword and two High Distinction problem questions with model IRAC answers.

My aim is to make Constitutional Law clearer, structured and accessible without stripping away its intellectual complexity. Students should be able to move from **LECTURE / FORUM → CONSTITUTION → RULE → CASE → TUTORIAL → APPLICATION → CONCLUSION → REVISION** and ultimately learn to solve constitutional problems independently.

Dr Adrian Adams

Publication note. This is an independent study guide and not an official Bond University publication. Course materials are synthesised for learning and revision. Students should verify current law against authoritative sources.

START HERE

Australia's Constitution - Essential Electronic Sources

Australia's Constitution - Parliament of Australia PDF
https://www.aph.gov.au/-/media/05_About_Parliament/52_Sen/523_PPP/2023_Australian_Constitution.pdf

Constitution - Federal Register of Legislation
https://www.legislation.gov.au/constitution

The Australian Constitution online - Parliamentary Education Office
https://peo.gov.au/understand-our-parliament/how-parliament-works/the-australian-constitution/the-australian-constitution-online

Constitutional Law in Australia | 5th Edition Guide
https://store.lexisnexis.com/en-au/products/constitutional-law-in-australia-5th-edition.html

Electronic edition: section references throughout this book link to the section-specific entry in Appendix A. Every Appendix A entry then links to the official Constitution sources above.

HOW TO USE THIS BOOK

How to Study Constitutional Law with This Book

1. Read the chapter overview first. It explains the doctrine in plain language before moving to detail.

2. Open the Constitution as you study. Every major provision in the electronic edition links internally to the section guide and from there to official constitutional sources.

3. Learn cases by proposition. Do not memorise a case name alone. Know the facts, legal issue, rule, reasoning, outcome and the exact situation in which the authority becomes useful.

4. Use the course alignment note. Each chapter states the uploaded forum, lecture or tutorial material on which the chapter is principally based. Where the book supplies supplemental doctrinal synthesis to complete a checklist topic, it says so.

5. Attempt questions before reading answers. Quiz answers, short-answer model responses, crossword answers and HD IRAC answers are deliberately separated onto the next page/section.

6. For problem questions, use a constitutional attack structure. Identify the actor and law; identify the source of power; characterise the law; test all express and implied limits; consider federal interaction; apply cases; address severance or remedy; conclude issue by issue.

7. Use the interactive crossword online. The JUNIQ/Cloudflare version gives instant green/red feedback, Reset and a separate answer page for every chapter.

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8. Chapter 5 - Economic Powers: Trade and Commerce, Taxation and Corporations
9. Chapter 6 - External Affairs, Defence, Race, Territories and Other Heads of Power
10. Chapter 7 - Federalism, s 109 Inconsistency and Intergovernmental Immunities
11. Chapter 8 - Express Constitutional Guarantees and Limitations
12. Chapter 9 - Implied Freedom of Political Communication and Constitutional Freedoms
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14. Chapter 11 - Judicial Power, Chapter III and Separation of Powers
15. Chapter 12 - First Nations Constitutional Issues, Constitutional Change, s 128, Uluru and Treaty
16. Chapter 13 - Final Examination Revision - Whole Course Mixed Problems
17. Appendix A - Constitution & Legislation Guide
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19. Appendix C - Final Exam Attack Sheet
20. Appendix D - Lecture / Forum / Tutorial Alignment Guide
21. Resources
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CHAPTER 1

Constitutional Foundations, Public Power, Federation and Interpretation

Learning chapter - legislation, cases, problem solving and revision

Australian constitutional law is principally concerned with public power: where governmental power comes from, which institution may exercise it, and what legal limits constrain that exercise. The Commonwealth Constitution creates the federal institutions, distributes legislative power between the Commonwealth and the States, establishes a federal judicature, and contains a small number of express guarantees and structural implications.

The Constitution is both a legal text and the framework for a political system. It must therefore be read together with constitutional conventions, responsible government, federalism and the High Court's interpretive methodology. The course materials emphasise that constitutional disputes can appear abstract but have concrete consequences for individuals, communities, governments and institutions.

Federation in 1901 did not create a unitary nation-state. The States retained broad residual legislative power while the Commonwealth Parliament received enumerated powers. The High Court's interpretation of those powers, particularly after the Engineers Case, has profoundly shaped the federal balance.

Key Constitutional Provisions

Provision	Why it matters
ss 1-3	Creation of the Commonwealth Parliament and legislative structure.
ss 7 and 24	Direct popular choice of the Senate and House of Representatives; structural foundation for representative government.
s 51	Enumerated Commonwealth legislative powers.
s 61	Executive power of the Commonwealth.
Ch III / ss 71-80	Federal judicial power and the federal judicature.
s 106	Continuation of State constitutions subject to the Commonwealth Constitution.
s 107	

Provision	Why it matters
	Continuation of State parliamentary powers not exclusively vested in the Commonwealth or withdrawn from the States.
s 128	Formal constitutional alteration by referendum.

Cases for This Chapter

Case / Authority	Proposition and exam use
Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129	Rejected reserved State powers reasoning and promoted a text-focused, broad reading of Commonwealth powers.
Commonwealth v Tasmania (1983) 158 CLR 1	Illustrates broad interpretation of a Commonwealth head of power and the practical consequences of federal constitutional adjudication.
Australian Communist Party v Commonwealth (1951) 83 CLR 1	Classic authority that Parliament cannot conclusively determine the existence of facts needed to support its own constitutional power.
Sue v Hill (1999) 199 CLR 462	Illustrates Australia's constitutional independence and the United Kingdom's status as a foreign power for constitutional purposes.
Lange v Australian Broadcasting Corporation (1997) 189 CLR 520	Shows structural implications drawn from representative and responsible government.

> **Exam method:** identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Constitutional Law Forum One (2026), Forum Two historical overview, and the Commonwealth Constitution.

CHAPTER 1 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Creation of the Commonwealth Parliament and legislative structure.

1. ss 1-3
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Direct popular choice of the Senate and House of Representatives; structural foundation for representative government.

1. ss 7 and 24
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Enumerated Commonwealth legislative powers.

1. s 51
2. s 109
3. s 128
4. s 92

4. Which constitutional provision is most directly associated with: Executive power of the Commonwealth.

1. s 61
2. s 109
3. s 128
4. s 92

5. Which constitutional provision is most directly associated with: Federal judicial power and the federal judicature.

1. Ch III / ss 71-80
2. s 109
3. s 128
4. s 92

6. Which constitutional provision is most directly associated with: Continuation of State constitutions subject to the Commonwealth Constitution.

1. s 106
2. s 109
3. s 128
4. s 92

7. Which constitutional provision is most directly associated with: Continuation of State parliamentary powers not exclusively vested in the Commonwealth or withdrawn from the States.

1. s 107
2. s 109
3. s 128
4. s 92

8. Which constitutional provision is most directly associated with: Formal constitutional alteration by referendum.

1. s 128
2. s 109
3. s 51(xx)
4. s 92

9. Which case is used in this chapter for the following proposition: Rejected reserved State powers reasoning and promoted a text-focused, broad reading of Commonwealth powers.

1. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
2. Commonwealth v Tasmania (1983) 158 CLR 1
3. Australian Communist Party v Commonwealth (1951) 83 CLR 1
4. Sue v Hill (1999) 199 CLR 462

10. Which case is used in this chapter for the following proposition: Illustrates broad interpretation of a Commonwealth head of power and the practical consequences of federal constitutional adjudication.

1. Commonwealth v Tasmania (1983) 158 CLR 1
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Australian Communist Party v Commonwealth (1951) 83 CLR 1
4. Sue v Hill (1999) 199 CLR 462

11. Which case is used in this chapter for the following proposition: Classic authority that Parliament cannot conclusively determine the existence of facts needed to support its own constitutional power.

1. Australian Communist Party v Commonwealth (1951) 83 CLR 1
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Commonwealth v Tasmania (1983) 158 CLR 1
4. Sue v Hill (1999) 199 CLR 462

12. Which case is used in this chapter for the following proposition: Illustrates Australia's constitutional independence and the United Kingdom's status as a foreign power for constitutional purposes.

1. Sue v Hill (1999) 199 CLR 462
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Commonwealth v Tasmania (1983) 158 CLR 1
4. Australian Communist Party v Commonwealth (1951) 83 CLR 1

13. Which case is used in this chapter for the following proposition: Shows structural implications drawn from representative and responsible government.

1. Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Commonwealth v Tasmania (1983) 158 CLR 1
4. Australian Communist Party v Commonwealth (1951) 83 CLR 1

14. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?
2. Is the law politically popular?
3. Did every State consent?

4. Was the law enacted unanimously?

15. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

16. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it
2. Name it without explanation
3. Quote the whole judgment
4. Use it only in the conclusion

17. Which term best matches this description: Constitutional division of governmental authority between Commonwealth and States.

1. Federalism
2. Federalism
3. Judicial power
4. Appropriation

18. Which term best matches this description: 1920 case that transformed interpretation of Commonwealth powers.

1. Engineers
2. Federalism
3. Judicial power
4. Appropriation

19. Which term best matches this description: Primary starting point for constitutional interpretation.

1. Text
2. Federalism
3. Judicial power
4. Appropriation

20. Which term best matches this description: The political union created in 1901.

1. Federation

2. Federalism
3. Judicial power
4. Appropriation

ANSWER PAGE

Chapter 1 - Quiz Answers

1. A - ss 1-3
ss 1-3 is the provision linked to this rule in this chapter.

2. A - ss 7 and 24
ss 7 and 24 is the provision linked to this rule in this chapter.

3. A - s 51
s 51 is the provision linked to this rule in this chapter.

4. A - s 61
s 61 is the provision linked to this rule in this chapter.

5. A - Ch III / ss 71-80
Ch III / ss 71-80 is the provision linked to this rule in this chapter.

6. A - s 106
s 106 is the provision linked to this rule in this chapter.

7. A - s 107
s 107 is the provision linked to this rule in this chapter.

8. A - s 128
s 128 is the provision linked to this rule in this chapter.

9. A - Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129 is the authority connected to that proposition.

10. A - Commonwealth v Tasmania (1983) 158 CLR 1
Commonwealth v Tasmania (1983) 158 CLR 1 is the authority connected to that proposition.

11. A - Australian Communist Party v Commonwealth (1951) 83 CLR 1
Australian Communist Party v Commonwealth (1951) 83 CLR 1 is the authority connected to that proposition.

12. A - Sue v Hill (1999) 199 CLR 462
Sue v Hill (1999) 199 CLR 462 is the authority connected to that proposition.

13. A - Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
Lange v Australian Broadcasting Corporation (1997) 189 CLR 520 is the authority connected to that proposition.

14. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

15. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

16. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

17. A - Federalism
Federalism is the term used in the chapter.

18. A - Engineers
Engineers is the term used in the chapter.

19. A - Text
Text is the term used in the chapter.

20. A - Federation

Federation is the term used in the chapter.

CHAPTER 1 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of ss 1-3.

2. Explain the constitutional significance of ss 7 and 24.

3. Explain the constitutional significance of s 51.

4. Explain the constitutional significance of s 61.

5. Explain the constitutional significance of Ch III / ss 71-80.

6. Explain the constitutional significance of s 106.

7. Explain the constitutional significance of s 107.

8. Explain the constitutional significance of s 128.

9. What is the exam significance of Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129?

10. What is the exam significance of Commonwealth v Tasmania (1983) 158 CLR 1?

11. What is the exam significance of Australian Communist Party v Commonwealth (1951) 83 CLR 1?

12. What is the exam significance of Sue v Hill (1999) 199 CLR 462?

13. What is the exam significance of Lange v Australian Broadcasting Corporation (1997) 189 CLR 520?

14. What is the recommended constitutional problem-solving sequence?

15. Why is issue spotting especially important in constitutional law?

16. How should competing High Court reasoning be handled?

17. Why should constitutional provisions be cited precisely?

18. What does it mean to distinguish a case?

19. Define and explain the significance of Constitution in this chapter.

20. Define and explain the significance of Interpretation in this chapter.

ANSWER PAGE

Chapter 1 - Short Answer Models

1. Explain the constitutional significance of ss 1-3.

ss 1-3: Creation of the Commonwealth Parliament and legislative structure. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of ss 7 and 24.

ss 7 and 24: Direct popular choice of the Senate and House of Representatives; structural foundation for representative government. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 51.

s 51: Enumerated Commonwealth legislative powers. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 61.

s 61: Executive power of the Commonwealth. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. Explain the constitutional significance of Ch III / ss 71-80.

Ch III / ss 71-80: Federal judicial power and the federal judicature. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

6. Explain the constitutional significance of s 106.

s 106: Continuation of State constitutions subject to the Commonwealth Constitution. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

7. Explain the constitutional significance of s 107.

s 107: Continuation of State parliamentary powers not exclusively vested in the Commonwealth or withdrawn from the States. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

8. Explain the constitutional significance of s 128.

s 128: Formal constitutional alteration by referendum. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

9. What is the exam significance of Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129?

Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129: Rejected reserved State powers reasoning and promoted a text-focused, broad reading of Commonwealth powers. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

10. What is the exam significance of Commonwealth v Tasmania (1983) 158 CLR 1?

Commonwealth v Tasmania (1983) 158 CLR 1: Illustrates broad interpretation of a Commonwealth head of power and the practical consequences of federal constitutional adjudication. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

11. What is the exam significance of Australian Communist Party v Commonwealth (1951) 83 CLR 1?

Australian Communist Party v Commonwealth (1951) 83 CLR 1: Classic authority that Parliament cannot conclusively determine the existence of facts needed to support its own constitutional power. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

12. What is the exam significance of Sue v Hill (1999) 199 CLR 462?

Sue v Hill (1999) 199 CLR 462: Illustrates Australia's constitutional independence and the United Kingdom's status as a foreign power for constitutional purposes. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

13. What is the exam significance of Lange v Australian Broadcasting Corporation (1997) 189 CLR 520?

Lange v Australian Broadcasting Corporation (1997) 189 CLR 520: Shows structural implications drawn from representative and responsible government. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

14. What is the recommended constitutional problem-solving sequence?

Identify the challenged law and actor; identify the source of power; characterise the law; test constitutional limitations; consider Commonwealth-State interaction; apply authorities; address severance/remedy; conclude issue by issue.

15. Why is issue spotting especially important in constitutional law?

A single factual scenario can engage several independent validity questions. Missing one head of power, structural implication or express limitation can change the result.

16. How should competing High Court reasoning be handled?

Identify the binding ratio where possible, explain material differences between majority and dissenting reasoning where the course treats them as significant, and apply the current controlling approach.

17. Why should constitutional provisions be cited precisely?

The legal consequence often depends on exact textual language, the level of government to which it applies and any internal qualification in the provision.

18. What does it mean to distinguish a case?

Explain why a factual or legal difference makes the authority less directly controlling while still acknowledging its relevant principle.

19. Define and explain the significance of Constitution in this chapter.

Constitution: The foundational legal instrument of the Commonwealth. Connect the concept to the relevant constitutional text and cases before applying it to facts.

20. Define and explain the significance of Interpretation in this chapter.

Interpretation: The judicial process of determining constitutional meaning. Connect the concept to the relevant constitutional text and cases before applying it to facts.

INTERACTIVE REVISION

Chapter 1 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 1 Active Crossword

Across / Down Vocabulary Clues

1. **FEDERALISM** - Constitutional division of governmental authority between Commonwealth and States.
2. **ENGINEERS** - 1920 case that transformed interpretation of Commonwealth powers.
3. **TEXT** - Primary starting point for constitutional interpretation.
4. **FEDERATION** - The political union created in 1901.
5. **POWER** - Central subject of constitutional law.
6. **COMMONWEALTH** - The federal level of Australian government.
7. **STATES** - Polities retaining residual legislative power after federation.
8. **CONSTITUTION** - The foundational legal instrument of the Commonwealth.
9. **INTERPRETATION** - The judicial process of determining constitutional meaning.
10. **HIGHCOURT** - Final court for constitutional interpretation in Australia.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 1 - Crossword Answers

1. **FEDERALISM** - Constitutional division of governmental authority between Commonwealth and States.
2. **ENGINEERS** - 1920 case that transformed interpretation of Commonwealth powers.
3. **TEXT** - Primary starting point for constitutional interpretation.
4. **FEDERATION** - The political union created in 1901.
5. **POWER** - Central subject of constitutional law.
6. **COMMONWEALTH** - The federal level of Australian government.
7. **STATES** - Polities retaining residual legislative power after federation.
8. **CONSTITUTION** - The foundational legal instrument of the Commonwealth.
9. **INTERPRETATION** - The judicial process of determining constitutional meaning.
10. **HIGHCOURT** - Final court for constitutional interpretation in Australia.

Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

National Civic Education Act

The Commonwealth enacts a statute creating a national civic-education authority. The Act states that because civic education is essential to the Constitution, the authority may regulate all school curricula in Australia. A Queensland school challenges the Act. Advise on the constitutional method for assessing validity.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

Federal Heritage Declaration

A Commonwealth Act declares a local heritage precinct in one State to be of national constitutional significance and prohibits redevelopment. No head of power is identified. Advise the property owner on the correct constitutional analysis.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 1 - HD IRAC Answers

Problem 1: National Civic Education Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Constitutional Foundations, Public Power, Federation and Interpretation.

RULE / LAW

A Commonwealth law must be supported by constitutional power. The court characterises the law by its legal and practical operation and interprets relevant powers consistently with the constitutional text and binding High Court authority. Political importance alone is not a head of power. Key provisions include ss 1-3, ss 7 and 24, s 51, s 61, Ch III / ss 71-80. Key authorities include Amalgamated Society of Engineers v Adelaide Steamship Co Ltd; Commonwealth v Tasmania; Australian Communist Party v Commonwealth; Sue v Hill; Lange v Australian Broadcasting Corporation.

APPLICATION

The statute must therefore be matched to an actual source such as s 51, s 61 with incidental support, or another specific power. A legislative declaration that a matter is constitutionally important cannot manufacture power. If no sufficient connection exists, the law is invalid to that extent; if a power exists, separate prohibitions and implications must then be tested.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result

while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: Federal Heritage Declaration

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Constitutional Foundations, Public Power, Federation and Interpretation.

RULE / LAW

A Commonwealth law must be supported by constitutional power. The court characterises the law by its legal and practical operation and interprets relevant powers consistently with the constitutional text and binding High Court authority. Political importance alone is not a head of power. Key provisions include ss 1-3, ss 7 and 24, s 51, s 61, Ch III / ss 71-80. Key authorities include Amalgamated Society of Engineers v Adelaide Steamship Co Ltd; Commonwealth v Tasmania; Australian Communist Party v Commonwealth; Sue v Hill; Lange v Australian Broadcasting Corporation.

APPLICATION

The statute must therefore be matched to an actual source such as s 51, s 61 with incidental support, or another specific power. A legislative declaration that a matter is constitutionally important cannot manufacture power. If no sufficient connection exists, the law is invalid to that extent; if a power exists, separate prohibitions and implications must then be tested.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 2

Constitutional History, the States, State Constitutions and Manner and Form

Learning chapter - legislation, cases, problem solving and revision

Australian constitutionalism developed from colonial government, gradual self-government, federation and eventual legal independence from the United Kingdom. The Statute of Westminster and Australia Acts are central to understanding how Imperial constraints were removed.

State Parliaments differ fundamentally from the Commonwealth Parliament. They possess plenary legislative power rather than a list of enumerated heads of power. A State law nevertheless remains subject to constitutional constraints, including territorial connection, manner-and-form requirements, inconsistency with valid Commonwealth law and structural limitations.

Manner-and-form provisions permit certain procedural requirements concerning the constitution, powers or procedure of a State Parliament to bind later Parliaments when the legal conditions for entrenchment are satisfied. The course materials emphasise the tension between democratic flexibility and legislative entrenchment.

Key Constitutional Provisions

Provision	Why it matters
Australia Act 1986 (Cth) s 2	Confirms full State legislative power, including extraterritorial operation.
Australia Act 1986 (Cth) s 6	Recognises binding manner-and-form requirements concerning the constitution, powers or procedure of a State Parliament.
ss 106-107	Preserve State constitutions and State powers subject to the Commonwealth Constitution.
s 109	Provides for Commonwealth law to prevail over inconsistent State law.
s 128	Exclusive formal procedure for alteration of the Commonwealth Constitution.

Cases for This Chapter

Case / Authority	Proposition and exam use
Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1	State Parliaments have plenary legislative power subject to constitutional limits.
Pearce v Florenca (1976) 135 CLR 507	A State law with extraterritorial operation requires a real connection with the enacting State.
Attorney-General (NSW) v Trethowan (1931) 44 CLR 395	Classic authority enforcing a referendum-based manner-and-form requirement.
Attorney-General (WA) v Marquet (2003) 217 CLR 545	Enforced an absolute-majority requirement concerning electoral distribution as a manner-and-form requirement.
Sue v Hill (1999) 199 CLR 462	Important authority on Australia's constitutional independence from the United Kingdom.

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Constitutional Law Forum Two (2026), including colonial constitutional development, the Australia Acts, State legislative power and manner-and-form doctrine.

CHAPTER 2 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Confirms full State legislative power, including extraterritorial operation.

1. Australia Act 1986 (Cth) s 2
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Recognises binding manner-and-form requirements concerning the constitution, powers or procedure of a State Parliament.

1. Australia Act 1986 (Cth) s 6
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Preserve State constitutions and State powers subject to the Commonwealth Constitution.

1. ss 106-107
2. s 109
3. s 128
4. s 92

4. Which constitutional provision is most directly associated with: Provides for Commonwealth law to prevail over inconsistent State law.

1. s 109
2. s 61
3. s 128
4. s 92

5. Which constitutional provision is most directly associated with: Exclusive formal procedure for alteration of the Commonwealth Constitution.

1. s 128
2. s 109
3. s 51(xx)
4. s 92

6. Which case is used in this chapter for the following proposition: State Parliaments have plenary legislative power subject to constitutional limits.

1. Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1
2. Pearce v Florenca (1976) 135 CLR 507
3. Attorney-General (NSW) v Trethowan (1931) 44 CLR 395
4. Attorney-General (WA) v Marquet (2003) 217 CLR 545

7. Which case is used in this chapter for the following proposition: A State law with extraterritorial operation requires a real connection with the enacting State.

1. Pearce v Florenca (1976) 135 CLR 507
2. Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1
3. Attorney-General (NSW) v Trethowan (1931) 44 CLR 395
4. Attorney-General (WA) v Marquet (2003) 217 CLR 545

8. Which case is used in this chapter for the following proposition: Classic authority enforcing a referendum-based manner-and-form requirement.

1. Attorney-General (NSW) v Trethowan (1931) 44 CLR 395
2. Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1
3. Pearce v Florenca (1976) 135 CLR 507
4. Attorney-General (WA) v Marquet (2003) 217 CLR 545

9. Which case is used in this chapter for the following proposition: Enforced an absolute-majority requirement concerning electoral distribution as a manner-and-form requirement.

1. Attorney-General (WA) v Marquet (2003) 217 CLR 545
2. Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1
3. Pearce v Florenca (1976) 135 CLR 507
4. Attorney-General (NSW) v Trethowan (1931) 44 CLR 395

10. Which case is used in this chapter for the following proposition: Important authority on Australia's constitutional independence from the United Kingdom.

1. Sue v Hill (1999) 199 CLR 462
2. Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1
3. Pearce v Florenca (1976) 135 CLR 507
4. Attorney-General (NSW) v Trethowan (1931) 44 CLR 395

11. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?
2. Is the law politically popular?
3. Did every State consent?
4. Was the law enacted unanimously?

12. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

13. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it
2. Name it without explanation
3. Quote the whole judgment
4. Use it only in the conclusion

14. Which term best matches this description: High Court authority enforcing a State manner-and-form requirement.

1. Marquet
2. Federalism
3. Judicial power
4. Appropriation

15. Which term best matches this description: NSW authority concerning referendum entrenchment.

1. Trethowan
2. Federalism
3. Judicial power

4. Appropriation

16. Which term best matches this description: Description of broad State legislative power.

1. Plenary
2. Federalism
3. Judicial power
4. Appropriation

17. Which term best matches this description: Operation of a State law beyond State borders.

1. Extraterritorial
2. Federalism
3. Judicial power
4. Appropriation

18. Which term best matches this description: Requirement linking an extraterritorial State law to the State.

1. Connection
2. Federalism
3. Judicial power
4. Appropriation

19. Which term best matches this description: 1986 legislation completing major steps in constitutional independence.

1. Australiaact
2. Federalism
3. Judicial power
4. Appropriation

20. Which term best matches this description: Making repeal or amendment subject to special procedure.

1. Entrenchment
2. Federalism
3. Judicial power
4. Appropriation

ANSWER PAGE

Chapter 2 - Quiz Answers

1. A - Australia Act 1986 (Cth) s 2
Australia Act 1986 (Cth) s 2 is the provision linked to this rule in this chapter.

2. A - Australia Act 1986 (Cth) s 6
Australia Act 1986 (Cth) s 6 is the provision linked to this rule in this chapter.

3. A - ss 106-107
ss 106-107 is the provision linked to this rule in this chapter.

4. A - s 109
s 109 is the provision linked to this rule in this chapter.

5. A - s 128
s 128 is the provision linked to this rule in this chapter.

6. A - Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1
Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1 is the authority connected to that proposition.

7. A - Pearce v Florenca (1976) 135 CLR 507
Pearce v Florenca (1976) 135 CLR 507 is the authority connected to that proposition.

8. A - Attorney-General (NSW) v Trethowan (1931) 44 CLR 395
Attorney-General (NSW) v Trethowan (1931) 44 CLR 395 is the authority connected to that proposition.

9. A - Attorney-General (WA) v Marquet (2003) 217 CLR 545
Attorney-General (WA) v Marquet (2003) 217 CLR 545 is the authority connected to that proposition.

10. A - Sue v Hill (1999) 199 CLR 462
Sue v Hill (1999) 199 CLR 462 is the authority connected to that proposition.

11. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

12. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

13. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

14. A - Marquet
Marquet is the term used in the chapter.

15. A - Trethowan
Trethowan is the term used in the chapter.

16. A - Plenary
Plenary is the term used in the chapter.

17. A - Extraterritorial
Extraterritorial is the term used in the chapter.

18. A - Connection
Connection is the term used in the chapter.

19. A - Australiaact
Australiaact is the term used in the chapter.

20. A - Entrenchment
Entrenchment is the term used in the chapter.

CHAPTER 2 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of Australia Act 1986 (Cth) s 2.

2. Explain the constitutional significance of Australia Act 1986 (Cth) s 6.

3. Explain the constitutional significance of ss 106-107.

4. Explain the constitutional significance of s 109.

5. Explain the constitutional significance of s 128.

6. What is the exam significance of Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1?

7. What is the exam significance of Pearce v Florenca (1976) 135 CLR 507?

8. What is the exam significance of Attorney-General (NSW) v Trethowan (1931) 44 CLR 395?

9. What is the exam significance of Attorney-General (WA) v Marquet (2003) 217 CLR 545?

10. What is the exam significance of Sue v Hill (1999) 199 CLR 462?

11. What is the recommended constitutional problem-solving sequence?

12. Why is issue spotting especially important in constitutional law?

13. How should competing High Court reasoning be handled?

14. Why should constitutional provisions be cited precisely?

15. What does it mean to distinguish a case?

16. Define and explain the significance of Connection in this chapter.

17. Define and explain the significance of Australiaact in this chapter.

18. Define and explain the significance of Entrenchment in this chapter.

19. Define and explain the significance of Governor in this chapter.

20. Define and explain the significance of Repugnancy in this chapter.

ANSWER PAGE

Chapter 2 - Short Answer Models

1. Explain the constitutional significance of Australia Act 1986 (Cth) s 2.

Australia Act 1986 (Cth) s 2: Confirms full State legislative power, including extraterritorial operation. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of Australia Act 1986 (Cth) s 6.

Australia Act 1986 (Cth) s 6: Recognises binding manner-and-form requirements concerning the constitution, powers or procedure of a State Parliament. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of ss 106-107.

ss 106-107: Preserve State constitutions and State powers subject to the Commonwealth Constitution. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 109.

s 109: Provides for Commonwealth law to prevail over inconsistent State law. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. Explain the constitutional significance of s 128.

s 128: Exclusive formal procedure for alteration of the Commonwealth Constitution. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

6. What is the exam significance of Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1?

Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1: State Parliaments have plenary legislative power subject to constitutional limits. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

7. What is the exam significance of Pearce v Florenca (1976) 135 CLR 507?

Pearce v Florenca (1976) 135 CLR 507: A State law with extraterritorial operation requires a real connection with the enacting State. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

8. What is the exam significance of Attorney-General (NSW) v Trethowan (1931) 44 CLR 395?

Attorney-General (NSW) v Trethowan (1931) 44 CLR 395: Classic authority enforcing a referendum-based manner-and-form requirement. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

9. What is the exam significance of Attorney-General (WA) v Marquet (2003) 217 CLR 545?

Attorney-General (WA) v Marquet (2003) 217 CLR 545: Enforced an absolute-majority requirement concerning electoral distribution as a manner-and-form requirement. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

10. What is the exam significance of Sue v Hill (1999) 199 CLR 462?

Sue v Hill (1999) 199 CLR 462: Important authority on Australia's constitutional independence from the United Kingdom. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

11. What is the recommended constitutional problem-solving sequence?

Identify the challenged law and actor; identify the source of power; characterise the law; test constitutional limitations; consider Commonwealth-State interaction; apply authorities; address severance/remedy; conclude issue by issue.

12. Why is issue spotting especially important in constitutional law?

A single factual scenario can engage several independent validity questions. Missing one head of power, structural implication or express limitation can change the result.

13. How should competing High Court reasoning be handled?

Identify the binding ratio where possible, explain material differences between majority and dissenting reasoning where the course treats them as significant, and apply the current controlling approach.

14. Why should constitutional provisions be cited precisely?

The legal consequence often depends on exact textual language, the level of government to which it applies and any internal qualification in the provision.

15. What does it mean to distinguish a case?

Explain why a factual or legal difference makes the authority less directly controlling while still acknowledging its relevant principle.

16. Define and explain the significance of Connection in this chapter.

Connection: Requirement linking an extraterritorial State law to the State. Connect the concept to the relevant constitutional text and cases before applying it to facts.

17. Define and explain the significance of Australiaact in this chapter.

Australiaact: 1986 legislation completing major steps in constitutional independence. Connect the concept to the relevant constitutional text and cases before applying it to facts.

18. Define and explain the significance of Entrenchment in this chapter.

Entrenchment: Making repeal or amendment subject to special procedure. Connect the concept to the relevant constitutional text and cases before applying it to facts.

19. Define and explain the significance of Governor in this chapter.

Governor: The Crown representative within a State. Connect the concept to the relevant constitutional text and cases before applying it to facts.

20. Define and explain the significance of Repugnancy in this chapter.

Repugnancy: Former Imperial-law doctrine limiting colonial legislation. Connect the concept to the relevant constitutional text and cases before applying it to facts.

INTERACTIVE REVISION

Chapter 2 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 2 Active Crossword

Across / Down Vocabulary Clues

1. **MARQUET** - High Court authority enforcing a State manner-and-form requirement.
2. **TRETHOWAN** - NSW authority concerning referendum entrenchment.
3. **PLENARY** - Description of broad State legislative power.
4. **EXTRATERRITORIAL** - Operation of a State law beyond State borders.
5. **CONNECTION** - Requirement linking an extraterritorial State law to the State.
6. **AUSTRALIAACT** - 1986 legislation completing major steps in constitutional independence.
7. **ENTRENCHMENT** - Making repeal or amendment subject to special procedure.
8. **GOVERNOR** - The Crown representative within a State.
9. **REPUGNANCY** - Former Imperial-law doctrine limiting colonial legislation.
10. **STATE** - A constituent polity of the Australian federation.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 2 - Crossword Answers

1. **MARQUET** - High Court authority enforcing a State manner-and-form requirement.
2. **TRETHOWAN** - NSW authority concerning referendum entrenchment.
3. **PLENARY** - Description of broad State legislative power.
4. **EXTRATERRITORIAL** - Operation of a State law beyond State borders.
5. **CONNECTION** - Requirement linking an extraterritorial State law to the State.
6. **AUSTRALIAACT** - 1986 legislation completing major steps in constitutional independence.
7. **ENTRENCHMENT** - Making repeal or amendment subject to special procedure.
8. **GOVERNOR** - The Crown representative within a State.
9. **REPUGNANCY** - Former Imperial-law doctrine limiting colonial legislation.
10. **STATE** - A constituent polity of the Australian federation.

Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

Queensland Coastal Protection Act

Queensland enacts a law regulating mining projects in Queensland and in neighbouring States where pollution may reach Queensland waters. A New South Wales operator challenges the law.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

Entrenched Voting Reform

A State Act provides that any future repeal of its rural electoral weighting scheme requires an absolute majority of both Houses. A later Parliament repeals it by ordinary majority. Advise on validity.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 2 - HD IRAC Answers

Problem 1: Queensland Coastal Protection Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Constitutional History, the States, State Constitutions and Manner and Form.

RULE / LAW

State Parliaments have plenary legislative power but remain subject to territorial connection, binding manner-and-form requirements and the Commonwealth Constitution. Under Australia Act s 6, a validly entrenched procedure concerning the constitution, powers or procedure of Parliament can bind a later Parliament. Key provisions include Australia Act 1986 (Cth) s 2, Australia Act 1986 (Cth) s 6, ss 106-107, s 109, s 128. Key authorities include Union Steamship Co of Australia Pty Ltd v King; Pearce v Florenca; Attorney-General; Attorney-General; Sue v Hill.

APPLICATION

Identify whether the challenged operation is genuinely connected to the State and whether the purported entrenchment concerns the constitution, powers or procedure of Parliament. Compare Pearce, Trethowan and Marquet. A mere policy preference cannot automatically entrench itself.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result

while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: Entrenched Voting Reform

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Constitutional History, the States, State Constitutions and Manner and Form.

RULE / LAW

State Parliaments have plenary legislative power but remain subject to territorial connection, binding manner-and-form requirements and the Commonwealth Constitution. Under Australia Act s 6, a validly entrenched procedure concerning the constitution, powers or procedure of Parliament can bind a later Parliament. Key provisions include Australia Act 1986 (Cth) s 2, Australia Act 1986 (Cth) s 6, ss 106-107, s 109, s 128. Key authorities include Union Steamship Co of Australia Pty Ltd v King; Pearce v Florenca; Attorney-General; Attorney-General; Sue v Hill.

APPLICATION

Identify whether the challenged operation is genuinely connected to the State and whether the purported entrenchment concerns the constitution, powers or procedure of Parliament. Compare Pearce, Trethowan and Marquet. A mere policy preference cannot automatically entrench itself.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 3

Representative Democracy, Elections and Parliamentary Structure

Learning chapter - legislation, cases, problem solving and revision

The Constitution does not contain a general bill of democratic rights. Instead, representative democracy is protected through structural text, particularly the requirement in ss 7 and 24 that federal legislators be directly chosen by the people.

Section 41 is historically important but has been interpreted narrowly and does not operate as a general constitutional right to vote. Modern cases such as Roach and Rowe derive limited protection of the franchise from ss 7 and 24, while recognising Parliament's substantial power to regulate elections.

Electoral laws concerning enrolment, voting, ballot design, party registration and political finance can raise direct-choice and implied-freedom issues. The course's Babet case study places these doctrines in the contemporary context of independent candidates and political party advantage.

Key Constitutional Provisions

Provision	Why it matters
s 7	Senators must be directly chosen by the people of each State.
s 24	Members of the House of Representatives must be directly chosen by the people of the Commonwealth.
s 41	Historical protection concerning State voting rights; not a general modern federal franchise guarantee.
s 44	Disqualifications from membership of Parliament.
s 122	Territories power; relevant to territorial representation.
s 128	Referendum process reinforces the constitutional role of the people.

Cases for This Chapter

Case / Authority	Proposition and exam use
King v Jones (1972) 128 CLR 221	Narrow interpretation of s 41 in the context of voting age.
Re Pearson; Ex parte Sipka (1983) 152 CLR 254	Held s 41 did not create a continuing general federal right to vote.
Roach v Electoral Commissioner (2007) 233 CLR 162	Invalidated blanket prisoner disenfranchisement; ss 7 and 24 impose a constitutional limit on removing the franchise.
Rowe v Electoral Commissioner (2010) 243 CLR 1	Invalidated early closure of electoral rolls because of its disproportionate burden on direct popular choice.
Attorney-General (Cth) ex rel McKinlay v Commonwealth (1975) 135 CLR 1	Rejected a strict constitutional requirement of one vote, one value.
Mulholland v Australian Electoral Commission (2004) 220 CLR 181	Considered party-registration and ballot-paper rules under representative-government principles.
Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883	Contemporary authority concerning electoral restrictions, party registration and representative government.

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Constitutional Law Forum Three (Representative Democracy), Babet course materials, and the Commonwealth Constitution.

CHAPTER 3 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Senators must be directly chosen by the people of each State.

1. s 7
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Members of the House of Representatives must be directly chosen by the people of the Commonwealth.

1. s 24
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Historical protection concerning State voting rights; not a general modern federal franchise guarantee.

1. s 41
2. s 109
3. s 128
4. s 92

4. Which constitutional provision is most directly associated with: Disqualifications from membership of Parliament.

1. s 44
2. s 109
3. s 128
4. s 92

5. Which constitutional provision is most directly associated with: Territories power; relevant to territorial representation.

1. s 122
2. s 109
3. s 128
4. s 92

6. Which constitutional provision is most directly associated with: Referendum process reinforces the constitutional role of the people.

1. s 128
2. s 109
3. s 51(xx)
4. s 92

7. Which case is used in this chapter for the following proposition: Narrow interpretation of s 41 in the context of voting age.

1. King v Jones (1972) 128 CLR 221
2. Re Pearson; Ex parte Sipka (1983) 152 CLR 254
3. Roach v Electoral Commissioner (2007) 233 CLR 162
4. Rowe v Electoral Commissioner (2010) 243 CLR 1

8. Which case is used in this chapter for the following proposition: Held s 41 did not create a continuing general federal right to vote.

1. Re Pearson; Ex parte Sipka (1983) 152 CLR 254
2. King v Jones (1972) 128 CLR 221
3. Roach v Electoral Commissioner (2007) 233 CLR 162
4. Rowe v Electoral Commissioner (2010) 243 CLR 1

9. Which case is used in this chapter for the following proposition: Invalidated blanket prisoner disenfranchisement; ss 7 and 24 impose a constitutional limit on removing the franchise.

1. Roach v Electoral Commissioner (2007) 233 CLR 162
2. King v Jones (1972) 128 CLR 221
3. Re Pearson; Ex parte Sipka (1983) 152 CLR 254
4. Rowe v Electoral Commissioner (2010) 243 CLR 1

10. Which case is used in this chapter for the following proposition: Invalidated early closure of electoral rolls because of its disproportionate burden on direct popular choice.

1. Rowe v Electoral Commissioner (2010) 243 CLR 1
2. King v Jones (1972) 128 CLR 221
3. Re Pearson; Ex parte Sipka (1983) 152 CLR 254
4. Roach v Electoral Commissioner (2007) 233 CLR 162

11. Which case is used in this chapter for the following proposition: Rejected a strict constitutional requirement of one vote, one value.

1. Attorney-General (Cth) ex rel McKinlay v Commonwealth (1975) 135 CLR 1
2. King v Jones (1972) 128 CLR 221
3. Re Pearson; Ex parte Sipka (1983) 152 CLR 254
4. Roach v Electoral Commissioner (2007) 233 CLR 162

12. Which case is used in this chapter for the following proposition: Considered party-registration and ballot-paper rules under representative-government principles.

1. Mulholland v Australian Electoral Commission (2004) 220 CLR 181
2. King v Jones (1972) 128 CLR 221
3. Re Pearson; Ex parte Sipka (1983) 152 CLR 254
4. Roach v Electoral Commissioner (2007) 233 CLR 162

13. Which case is used in this chapter for the following proposition: Contemporary authority concerning electoral restrictions, party registration and representative government.

1. Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883
2. King v Jones (1972) 128 CLR 221
3. Re Pearson; Ex parte Sipka (1983) 152 CLR 254
4. Roach v Electoral Commissioner (2007) 233 CLR 162

14. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?
2. Is the law politically popular?
3. Did every State consent?
4. Was the law enacted unanimously?

15. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

16. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it
2. Name it without explanation
3. Quote the whole judgment
4. Use it only in the conclusion

17. Which term best matches this description: Case protecting the constitutional minimum franchise against blanket prisoner disenfranchisement.

1. Roach
2. Federalism
3. Judicial power
4. Appropriation

18. Which term best matches this description: Case invalidating early electoral-roll closure.

1. Rowe
2. Federalism
3. Judicial power
4. Appropriation

19. Which term best matches this description: The right or entitlement to vote.

1. Franchise
2. Federalism
3. Judicial power
4. Appropriation

20. Which term best matches this description: Political principle central to ss 7 and 24.

1. Representation
2. Federalism
3. Judicial power

4. Appropriation

ANSWER PAGE

Chapter 3 - Quiz Answers

1. A - s 7
s 7 is the provision linked to this rule in this chapter.

2. A - s 24
s 24 is the provision linked to this rule in this chapter.

3. A - s 41
s 41 is the provision linked to this rule in this chapter.

4. A - s 44
s 44 is the provision linked to this rule in this chapter.

5. A - s 122
s 122 is the provision linked to this rule in this chapter.

6. A - s 128
s 128 is the provision linked to this rule in this chapter.

7. A - King v Jones (1972) 128 CLR 221
King v Jones (1972) 128 CLR 221 is the authority connected to that proposition.

8. A - Re Pearson; Ex parte Sipka (1983) 152 CLR 254
Re Pearson; Ex parte Sipka (1983) 152 CLR 254 is the authority connected to that proposition.

9. A - Roach v Electoral Commissioner (2007) 233 CLR 162
Roach v Electoral Commissioner (2007) 233 CLR 162 is the authority connected to that proposition.

10. A - Rowe v Electoral Commissioner (2010) 243 CLR 1
Rowe v Electoral Commissioner (2010) 243 CLR 1 is the authority connected to that proposition.

11. A - Attorney-General (Cth) ex rel McKinlay v Commonwealth (1975) 135 CLR 1
Attorney-General (Cth) ex rel McKinlay v Commonwealth (1975) 135 CLR 1 is the authority connected to that proposition.

12. A - Mulholland v Australian Electoral Commission (2004) 220 CLR 181
Mulholland v Australian Electoral Commission (2004) 220 CLR 181 is the authority connected to that proposition.

13. A - Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883
Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883 is the authority connected to that proposition.

14. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

15. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

16. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

17. A - Roach
Roach is the term used in the chapter.

18. A - Rowe
Rowe is the term used in the chapter.

19. A - Franchise
Franchise is the term used in the chapter.

20. A - Representation

Representation is the term used in the chapter.

CHAPTER 3 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of s 7.

2. Explain the constitutional significance of s 24.

3. Explain the constitutional significance of s 41.

4. Explain the constitutional significance of s 44.

5. Explain the constitutional significance of s 122.

6. Explain the constitutional significance of s 128.

7. What is the exam significance of King v Jones (1972) 128 CLR 221?

8. What is the exam significance of Re Pearson; Ex parte Sipka (1983) 152 CLR 254?

9. What is the exam significance of Roach v Electoral Commissioner (2007) 233 CLR 162?

10. What is the exam significance of Rowe v Electoral Commissioner (2010) 243 CLR 1?

11. What is the exam significance of Attorney-General (Cth) ex rel McKinlay v Commonwealth (1975) 135 CLR 1?

12. What is the exam significance of Mulholland v Australian Electoral Commission (2004) 220 CLR 181?

13. What is the exam significance of Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883?

14. What is the recommended constitutional problem-solving sequence?

15. Why is issue spotting especially important in constitutional law?

16. How should competing High Court reasoning be handled?

17. Why should constitutional provisions be cited precisely?

18. What does it mean to distinguish a case?

19. Define and explain the significance of Senate in this chapter.

20. Define and explain the significance of Electorate in this chapter.

ANSWER PAGE

Chapter 3 - Short Answer Models

1. Explain the constitutional significance of s 7.

s 7: Senators must be directly chosen by the people of each State. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of s 24.

s 24: Members of the House of Representatives must be directly chosen by the people of the Commonwealth. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 41.

s 41: Historical protection concerning State voting rights; not a general modern federal franchise guarantee. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 44.

s 44: Disqualifications from membership of Parliament. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. Explain the constitutional significance of s 122.

s 122: Territories power; relevant to territorial representation. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

6. Explain the constitutional significance of s 128.

s 128: Referendum process reinforces the constitutional role of the people. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

7. What is the exam significance of King v Jones (1972) 128 CLR 221?

King v Jones (1972) 128 CLR 221: Narrow interpretation of s 41 in the context of voting age. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

8. What is the exam significance of Re Pearson; Ex parte Sipka (1983) 152 CLR 254?

Re Pearson; Ex parte Sipka (1983) 152 CLR 254: Held s 41 did not create a continuing general federal right to vote. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

9. What is the exam significance of Roach v Electoral Commissioner (2007) 233 CLR 162?

Roach v Electoral Commissioner (2007) 233 CLR 162: Invalidated blanket prisoner disenfranchisement; ss 7 and 24 impose a constitutional limit on removing the franchise. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

10. What is the exam significance of Rowe v Electoral Commissioner (2010) 243 CLR 1?

Rowe v Electoral Commissioner (2010) 243 CLR 1: Invalidated early closure of electoral rolls because of its disproportionate burden on direct popular choice. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

11. What is the exam significance of Attorney-General (Cth) ex rel McKinlay v Commonwealth (1975) 135 CLR 1?

Attorney-General (Cth) ex rel McKinlay v Commonwealth (1975) 135 CLR 1: Rejected a strict constitutional requirement of one vote, one value. Use it by stating the proposition

precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

12. What is the exam significance of Mulholland v Australian Electoral Commission (2004) 220 CLR 181?

Mulholland v Australian Electoral Commission (2004) 220 CLR 181: Considered party-registration and ballot-paper rules under representative-government principles. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

13. What is the exam significance of Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883?

Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883: Contemporary authority concerning electoral restrictions, party registration and representative government. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

14. What is the recommended constitutional problem-solving sequence?

Identify the challenged law and actor; identify the source of power; characterise the law; test constitutional limitations; consider Commonwealth-State interaction; apply authorities; address severance/remedy; conclude issue by issue.

15. Why is issue spotting especially important in constitutional law?

A single factual scenario can engage several independent validity questions. Missing one head of power, structural implication or express limitation can change the result.

16. How should competing High Court reasoning be handled?

Identify the binding ratio where possible, explain material differences between majority and dissenting reasoning where the course treats them as significant, and apply the current controlling approach.

17. Why should constitutional provisions be cited precisely?

The legal consequence often depends on exact textual language, the level of government to which it applies and any internal qualification in the provision.

18. What does it mean to distinguish a case?

Explain why a factual or legal difference makes the authority less directly controlling while still acknowledging its relevant principle.

19. Define and explain the significance of Senate in this chapter.

Senate: Upper House constituted under s 7. Connect the concept to the relevant constitutional text and cases before applying it to facts.

20. Define and explain the significance of Electorate in this chapter.

Electorate: Geographic or political body of voters. Connect the concept to the relevant constitutional text and cases before applying it to facts.

INTERACTIVE REVISION

Chapter 3 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 3 Active Crossword

Across / Down Vocabulary Clues

1. **ROACH** - Case protecting the constitutional minimum franchise against blanket prisoner disenfranchisement.
2. **ROWE** - Case invalidating early electoral-roll closure.
3. **FRANCHISE** - The right or entitlement to vote.
4. **REPRESENTATION** - Political principle central to ss 7 and 24.
5. **DIRECTCHOICE** - Constitutional requirement found in ss 7 and 24.
6. **BALLOT** - Instrument on which voters record electoral choice.
7. **BABET** - 2025 case central to the course case study.
8. **SENATE** - Upper House constituted under s 7.
9. **ELECTORATE** - Geographic or political body of voters.
10. **DEMOCRACY** - Government based on popular political participation and representation.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 3 - Crossword Answers

1. **ROACH** - Case protecting the constitutional minimum franchise against blanket prisoner disenfranchisement.
2. **ROWE** - Case invalidating early electoral-roll closure.
3. **FRANCHISE** - The right or entitlement to vote.
4. **REPRESENTATION** - Political principle central to ss 7 and 24.
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9. **ELECTORATE** - Geographic or political body of voters.
10. **DEMOCRACY** - Government based on popular political participation and representation.

Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

Independent Candidate Ballot Act

The Commonwealth places party logos beside registered-party candidates but prohibits any equivalent identifying description for independents. An independent candidate challenges the law.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

Late Enrolment Ban

Parliament closes the electoral roll immediately upon the issue of writs and estimates that 80,000 otherwise eligible voters will be excluded. Advise on ss 7 and 24.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 3 - HD IRAC Answers

Problem 1: Independent Candidate Ballot Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Representative Democracy, Elections and Parliamentary Structure.

RULE / LAW

Sections 7 and 24 require direct popular choice. Roach and Rowe establish that Parliament may regulate elections but cannot impose unjustified burdens inconsistent with the constitutional system of representative government. Section 41 is not a general modern right to vote. Key provisions include s 7, s 24, s 41, s 44, s 122. Key authorities include King v Jones; Re Pearson; Ex parte Sipka; Roach v Electoral Commissioner; Rowe v Electoral Commissioner; Attorney-General.

APPLICATION

Assess the practical effect on electoral choice, not merely formal neutrality. Ask whether the burden is rationally connected and proportionate to a legitimate electoral purpose. Where party rules structurally advantage registered parties, compare Mulholland and Babet and consider whether the law nevertheless preserves constitutionally sufficient choice.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result

while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: Late Enrolment Ban

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Representative Democracy, Elections and Parliamentary Structure.

RULE / LAW

Sections 7 and 24 require direct popular choice. Roach and Rowe establish that Parliament may regulate elections but cannot impose unjustified burdens inconsistent with the constitutional system of representative government. Section 41 is not a general modern right to vote. Key provisions include s 7, s 24, s 41, s 44, s 122. Key authorities include King v Jones; Re Pearson; Ex parte Sipka; Roach v Electoral Commissioner; Rowe v Electoral Commissioner; Attorney-General.

APPLICATION

Assess the practical effect on electoral choice, not merely formal neutrality. Ask whether the burden is rationally connected and proportionate to a legitimate electoral purpose. Where party rules structurally advantage registered parties, compare Mulholland and Babet and consider whether the law nevertheless preserves constitutionally sufficient choice.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 4

Characterisation and Commonwealth Legislative Power

Learning chapter - legislation, cases, problem solving and revision

A Commonwealth statute is valid only if it is supported by a constitutional source of legislative power. Characterisation is the process of identifying the legal and practical operation of a law and asking whether it bears the constitutionally required connection to a head of power.

The modern approach rejects a single dominant character. A law may possess multiple characters; it is enough that one valid character places the law within Commonwealth power. It is generally no objection that the same law also affects matters beyond Commonwealth legislative competence.

After identifying a supporting power, always check constitutional prohibitions and limitations. This two-stage method - power first, constraints second - is the backbone of Commonwealth validity analysis.

Key Constitutional Provisions

Provision	Why it matters
s 51	Principal list of Commonwealth legislative powers.
s 51(xxxix)	Incidental power, supporting legislation incidental to other Commonwealth powers.
s 52	Exclusive Commonwealth legislative powers over specified subjects.
s 109	Operates after validity is established, where Commonwealth and State laws are inconsistent.

Cases for This Chapter

Case / Authority	Proposition and exam use
	Rejected reserved-powers reasoning and encouraged broad textual construction of Commonwealth powers.

Case / Authority	Proposition and exam use
Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129	
Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1	Confirms that a law may validly affect matters outside Commonwealth power if it is otherwise a law with respect to a valid head of power.
Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397	Connection to a head of power must not be insubstantial, tenuous or distant.
R v Barger (1908) 6 CLR 41	Illustrates the discarded early dominant-character/reserved-powers approach.
Huddart, Parker & Co Pty Ltd v Moorehead (1909) 8 CLR 330	Another early reserved-powers-era authority later overtaken by Engineers.

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Professor Jonathan Crowe guest lecture on Characterisation and Economic Powers, plus course issue-spotting checklists.

CHAPTER 4 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Principal list of Commonwealth legislative powers.

1. s 51
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Incidental power, supporting legislation incidental to other Commonwealth powers.

1. s 51(xxxix)
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Exclusive Commonwealth legislative powers over specified subjects.

1. s 52
2. s 109
3. s 128
4. s 92

4. Which constitutional provision is most directly associated with: Operates after validity is established, where Commonwealth and State laws are inconsistent.

1. s 109
2. s 61
3. s 128
4. s 92

5. Which case is used in this chapter for the following proposition: Rejected reserved-powers reasoning and encouraged broad textual construction of Commonwealth powers.

1. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
2. Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1
3. Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397
4. R v Barger (1908) 6 CLR 41

6. Which case is used in this chapter for the following proposition: Confirms that a law may validly affect matters outside Commonwealth power if it is otherwise a law with respect to a valid head of power.

1. Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397
4. R v Barger (1908) 6 CLR 41

7. Which case is used in this chapter for the following proposition: Connection to a head of power must not be insubstantial, tenuous or distant.

1. Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1
4. R v Barger (1908) 6 CLR 41

8. Which case is used in this chapter for the following proposition: Illustrates the discarded early dominant-character/reserved-powers approach.

1. R v Barger (1908) 6 CLR 41
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1
4. Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397

9. Which case is used in this chapter for the following proposition: Another early reserved-powers-era authority later overtaken by Engineers.

1. Huddart, Parker & Co Pty Ltd v Moorehead (1909) 8 CLR 330
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1
4. Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397

10. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?
2. Is the law politically popular?
3. Did every State consent?
4. Was the law enacted unanimously?

11. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

12. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it
2. Name it without explanation
3. Quote the whole judgment
4. Use it only in the conclusion

13. Which term best matches this description: Process of determining whether a law is with respect to a constitutional head of power.

1. Characterisation
2. Federalism
3. Judicial power
4. Appropriation

14. Which term best matches this description: Modern doctrine allowing a law to have more than one character.

1. Multiple
2. Federalism

3. Judicial power
4. Appropriation

15. Which term best matches this description: Power supporting matters ancillary to an express head of power.

1. Incidental
2. Federalism
3. Judicial power
4. Appropriation

16. Which term best matches this description: Relationship required between law and constitutional power.

1. Connection
2. Federalism
3. Judicial power
4. Appropriation

17. Which term best matches this description: Leading case shifting federal interpretation.

1. Engineers
2. Federalism
3. Judicial power
4. Appropriation

18. Which term best matches this description: Case illustrating multiple characterisation.

1. Murphyores
2. Federalism
3. Judicial power
4. Appropriation

19. Which term best matches this description: Legal question whether legislation is constitutionally authorised.

1. Validity
2. Federalism
3. Judicial power
4. Appropriation

20. Which term best matches this description: Constitutional authority to enact law.

1. Power
2. Federalism
3. Judicial power
4. Appropriation

ANSWER PAGE

Chapter 4 - Quiz Answers

1. A - s 51
s 51 is the provision linked to this rule in this chapter.

2. A - s 51(xxxix)
s 51(xxxix) is the provision linked to this rule in this chapter.

3. A - s 52
s 52 is the provision linked to this rule in this chapter.

4. A - s 109
s 109 is the provision linked to this rule in this chapter.

5. A - Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129 is the authority connected to that proposition.

6. A - Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1
Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1 is the authority connected to that proposition.

7. A - Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397
Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397 is the authority connected to that proposition.

8. A - R v Barger (1908) 6 CLR 41
R v Barger (1908) 6 CLR 41 is the authority connected to that proposition.

9. A - Huddart, Parker & Co Pty Ltd v Moorehead (1909) 8 CLR 330
Huddart, Parker & Co Pty Ltd v Moorehead (1909) 8 CLR 330 is the authority connected to that proposition.

10. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

11. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

12. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

13. A - Characterisation
Characterisation is the term used in the chapter.

14. A - Multiple
Multiple is the term used in the chapter.

15. A - Incidental
Incidental is the term used in the chapter.

16. A - Connection
Connection is the term used in the chapter.

17. A - Engineers
Engineers is the term used in the chapter.

18. A - Murphyores
Murphyores is the term used in the chapter.

19. A - Validity
Validity is the term used in the chapter.

20. A - Power

Power is the term used in the chapter.

CHAPTER 4 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of s 51.

2. Explain the constitutional significance of s 51(xxxix).

3. Explain the constitutional significance of s 52.

4. Explain the constitutional significance of s 109.

5. What is the exam significance of Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129?

6. What is the exam significance of Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1?

7. What is the exam significance of Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397?

8. What is the exam significance of R v Barger (1908) 6 CLR 41?

9. What is the exam significance of Huddart, Parker & Co Pty Ltd v Moorehead (1909) 8 CLR 330?

10. What is the recommended constitutional problem-solving sequence?

11. Why is issue spotting especially important in constitutional law?

12. How should competing High Court reasoning be handled?

13. Why should constitutional provisions be cited precisely?

14. What does it mean to distinguish a case?

15. Define and explain the significance of Connection in this chapter.

16. Define and explain the significance of Engineers in this chapter.

17. Define and explain the significance of Murphyores in this chapter.

18. Define and explain the significance of Validity in this chapter.

19. Define and explain the significance of Power in this chapter.

20. Define and explain the significance of Prohibition in this chapter.

ANSWER PAGE

Chapter 4 - Short Answer Models

1. Explain the constitutional significance of s 51.

s 51: Principal list of Commonwealth legislative powers. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of s 51(xxxix).

s 51(xxxix): Incidental power, supporting legislation incidental to other Commonwealth powers. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 52.

s 52: Exclusive Commonwealth legislative powers over specified subjects. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 109.

s 109: Operates after validity is established, where Commonwealth and State laws are inconsistent. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. What is the exam significance of Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129?

Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129: Rejected reserved-powers reasoning and encouraged broad textual construction of Commonwealth powers. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

6. What is the exam significance of Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1?

Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1: Confirms that a law may validly affect matters outside Commonwealth power if it is otherwise a law with respect to a valid head of power. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

7. What is the exam significance of Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397?

Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397: Connection to a head of power must not be insubstantial, tenuous or distant. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

8. What is the exam significance of R v Barger (1908) 6 CLR 41?

R v Barger (1908) 6 CLR 41: Illustrates the discarded early dominant-character/reserved-powers approach. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

9. What is the exam significance of Huddart, Parker & Co Pty Ltd v Moorehead (1909) 8 CLR 330?

Huddart, Parker & Co Pty Ltd v Moorehead (1909) 8 CLR 330: Another early reserved-powers-era authority later overtaken by Engineers. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

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The legal consequence often depends on exact textual language, the level of government to which it applies and any internal qualification in the provision.

14. What does it mean to distinguish a case?

Explain why a factual or legal difference makes the authority less directly controlling while still acknowledging its relevant principle.

15. Define and explain the significance of Connection in this chapter.

Connection: Relationship required between law and constitutional power. Connect the concept to the relevant constitutional text and cases before applying it to facts.

16. Define and explain the significance of Engineers in this chapter.

Engineers: Leading case shifting federal interpretation. Connect the concept to the relevant constitutional text and cases before applying it to facts.

17. Define and explain the significance of Murphyores in this chapter.

Murphyores: Case illustrating multiple characterisation. Connect the concept to the relevant constitutional text and cases before applying it to facts.

18. Define and explain the significance of Validity in this chapter.

Validity: Legal question whether legislation is constitutionally authorised. Connect the concept to the relevant constitutional text and cases before applying it to facts.

19. Define and explain the significance of Power in this chapter.

Power: Constitutional authority to enact law. Connect the concept to the relevant constitutional text and cases before applying it to facts.

20. Define and explain the significance of Prohibition in this chapter.

Prohibition: Constitutional limit that can invalidate an otherwise supported law. Connect the concept to the relevant constitutional text and cases before applying it to facts.

INTERACTIVE REVISION

Chapter 4 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 4 Active Crossword

Across / Down Vocabulary Clues

1. **CHARACTERISATION** - Process of determining whether a law is with respect to a constitutional head of power.
2. **MULTIPLE** - Modern doctrine allowing a law to have more than one character.
3. **INCIDENTAL** - Power supporting matters ancillary to an express head of power.
4. **CONNECTION** - Relationship required between law and constitutional power.
5. **ENGINEERS** - Leading case shifting federal interpretation.
6. **MURPHYORES** - Case illustrating multiple characterisation.
7. **VALIDITY** - Legal question whether legislation is constitutionally authorised.
8. **POWER** - Constitutional authority to enact law.
9. **PROHIBITION** - Constitutional limit that can invalidate an otherwise supported law.
10. **PURPOSIVE** - Description of heads of power defined by legislative purpose, such as defence.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 4 - Crossword Answers

1. **CHARACTERISATION** - Process of determining whether a law is with respect to a constitutional head of power.
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10. **PURPOSIVE** - Description of heads of power defined by legislative purpose, such as defence.

Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

National Recycling Corporations Act

The Commonwealth regulates employment, packaging, transport and waste practices of all trading corporations to reduce landfill. A corporation argues waste regulation is a State matter.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

Interstate Food Safety Act

A law regulating food production applies to all premises that produce any goods for interstate trade, including local-only production at the same premises. Advise on characterisation and incidental power.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 4 - HD IRAC Answers

Problem 1: National Recycling Corporations Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Characterisation and Commonwealth Legislative Power.

RULE / LAW

Characterisation asks whether, in legal and practical operation, the law is sufficiently connected to a head of Commonwealth power. Multiple characterisation is permitted. The connection must be genuine and not insubstantial, tenuous or distant. Key provisions include s 51, s 51(xxxix), s 52, s 109. Key authorities include Amalgamated Society of Engineers v Adelaide Steamship Co Ltd; Murphyores Inc Pty Ltd v Commonwealth; Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc; R v Barger; Huddart, Parker & Co Pty Ltd v Moorehead.

APPLICATION

Identify every plausible character of the law and every supporting head. It is not fatal that the law also operates on matters usually regulated by States. The challenge succeeds only if no valid character supplies the necessary constitutional connection or if a separate constitutional limitation is infringed.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result

while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: Interstate Food Safety Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Characterisation and Commonwealth Legislative Power.

RULE / LAW

Characterisation asks whether, in legal and practical operation, the law is sufficiently connected to a head of Commonwealth power. Multiple characterisation is permitted. The connection must be genuine and not insubstantial, tenuous or distant. Key provisions include s 51, s 51(xxxix), s 52, s 109. Key authorities include Amalgamated Society of Engineers v Adelaide Steamship Co Ltd; Murphyores Inc Pty Ltd v Commonwealth; Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc; R v Barger; Huddart, Parker & Co Pty Ltd v Moorehead.

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Identify every plausible character of the law and every supporting head. It is not fatal that the law also operates on matters usually regulated by States. The challenge succeeds only if no valid character supplies the necessary constitutional connection or if a separate constitutional limitation is infringed.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 5

Economic Powers: Trade and Commerce, Taxation and Corporations

Learning chapter - legislation, cases, problem solving and revision

The Constitution gives the Commonwealth powerful tools for national economic regulation. The trade and commerce power concerns overseas and interstate trade, while purely intrastate trade ordinarily remains a State matter unless a sufficient incidental connection exists.

The taxation power is broad but subject to textual constraints, including non-discrimination and the procedural rules in ss 53 and 55. Section 90 gives the Commonwealth exclusive power over customs and excise.

The corporations power has become one of the Commonwealth's most significant regulatory powers. It supports laws concerning foreign corporations and trading or financial corporations formed within Australia and, after Work Choices, extends broadly to regulation of their activities, functions, relationships and business operations.

Key Constitutional Provisions

Provision	Why it matters
s 51(i)	Trade and commerce with other countries and among the States.
s 51(ii)	Taxation, but not so as to discriminate between States or parts of States.
s 51(xx)	Foreign, trading and financial corporations.
s 53	Limits Senate power over money and taxation bills.
s 55	Requires taxation laws to deal only with taxation and generally one subject of taxation.
s 90	Exclusive Commonwealth power over customs and excise.
s 99	Prohibits preference to one State or part of a State in laws or regulations of trade, commerce or revenue.
s 96	Conditional grants to States.

Cases for This Chapter

Case / Authority	Proposition and exam use
W & A McArthur Ltd v Queensland (1920) 28 CLR 530	Broad conception of trade and commerce, extending beyond the final act of sale.
O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565	Incidental aspect of s 51(i) allowed regulation of processes sufficiently connected with export trade.
Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54	Commonwealth may reach intrastate operations where sufficiently connected to interstate trade and safety.
Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263	Classic definition of a tax as a compulsory exaction by public authority for public purposes and not payment for services.
Air Caledonie International v Commonwealth (1988) 165 CLR 462	Applied taxation definition and s 55 to an immigration clearance fee.
State Superannuation Board v Trade Practices Commission (1982) 150 CLR 282	Leading authority on financial corporations.
R v Federal Court of Australia; Ex parte WA National Football League (Adamson's Case) (1979) 143 CLR 190	Substantial trading activity may make an entity a trading corporation.
New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1	Confirms the broad reach of the corporations power over constitutional corporations and their relationships.

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Professor Jonathan Crowe guest lecture on Economic Powers and Forum Five review of s 51(i) and s 96.

CHAPTER 5 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Trade and commerce with other countries and among the States.

1. s 51(i)
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Taxation, but not so as to discriminate between States or parts of States.

1. s 51(ii)
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Foreign, trading and financial corporations.

1. s 51(xx)
2. s 109
3. s 128
4. s 92

4. Which constitutional provision is most directly associated with: Limits Senate power over money and taxation bills.

1. s 53
2. s 109
3. s 128
4. s 92

5. Which constitutional provision is most directly associated with: Requires taxation laws to deal only with taxation and generally one subject of taxation.

1. s 55
2. s 109
3. s 128
4. s 92

6. Which constitutional provision is most directly associated with: Exclusive Commonwealth power over customs and excise.

1. s 90
2. s 109
3. s 128
4. s 92

7. Which constitutional provision is most directly associated with: Prohibits preference to one State or part of a State in laws or regulations of trade, commerce or revenue.

1. s 99
2. s 109
3. s 128
4. s 92

8. Which constitutional provision is most directly associated with: Conditional grants to States.

1. s 96
2. s 109
3. s 128
4. s 92

9. Which case is used in this chapter for the following proposition: Broad conception of trade and commerce, extending beyond the final act of sale.

1. W & A McArthur Ltd v Queensland (1920) 28 CLR 530
2. O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565
3. Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54
4. Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263

10. Which case is used in this chapter for the following proposition: Incidental aspect of s 51(i) allowed regulation of processes sufficiently connected with export trade.

1. O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565
2. W & A McArthur Ltd v Queensland (1920) 28 CLR 530
3. Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54
4. Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263

11. Which case is used in this chapter for the following proposition: Commonwealth may reach intrastate operations where sufficiently connected to interstate trade and safety.

1. Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54
2. W & A McArthur Ltd v Queensland (1920) 28 CLR 530
3. O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565
4. Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263

12. Which case is used in this chapter for the following proposition: Classic definition of a tax as a compulsory exaction by public authority for public purposes and not payment for services.

1. Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263
2. W & A McArthur Ltd v Queensland (1920) 28 CLR 530
3. O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565
4. Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54

13. Which case is used in this chapter for the following proposition: Applied taxation definition and s 55 to an immigration clearance fee.

1. Air Caledonie International v Commonwealth (1988) 165 CLR 462
2. W & A McArthur Ltd v Queensland (1920) 28 CLR 530
3. O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565
4. Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54

14. Which case is used in this chapter for the following proposition: Leading authority on financial corporations.

1. State Superannuation Board v Trade Practices Commission (1982) 150 CLR 282
2. W & A McArthur Ltd v Queensland (1920) 28 CLR 530

3. O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565
4. Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54

15. Which case is used in this chapter for the following proposition: Substantial trading activity may make an entity a trading corporation.

1. R v Federal Court of Australia; Ex parte WA National Football League (Adamson's Case) (1979) 143 CLR 190
2. W & A McArthur Ltd v Queensland (1920) 28 CLR 530
3. O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565
4. Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54

16. Which case is used in this chapter for the following proposition: Confirms the broad reach of the corporations power over constitutional corporations and their relationships.

1. New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1
2. W & A McArthur Ltd v Queensland (1920) 28 CLR 530
3. O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565
4. Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54

17. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?
2. Is the law politically popular?
3. Did every State consent?
4. Was the law enacted unanimously?

18. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

19. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it
2. Name it without explanation
3. Quote the whole judgment

4. Use it only in the conclusion

20. Which term best matches this description: Economic activity regulated by s 51(i).

1. Trade
2. Federalism
3. Judicial power
4. Appropriation

ANSWER PAGE

Chapter 5 - Quiz Answers

1. A - s 51(i)
s 51(i) is the provision linked to this rule in this chapter.

2. A - s 51(ii)
s 51(ii) is the provision linked to this rule in this chapter.

3. A - s 51(xx)
s 51(xx) is the provision linked to this rule in this chapter.

4. A - s 53
s 53 is the provision linked to this rule in this chapter.

5. A - s 55
s 55 is the provision linked to this rule in this chapter.

6. A - s 90
s 90 is the provision linked to this rule in this chapter.

7. A - s 99
s 99 is the provision linked to this rule in this chapter.

8. A - s 96
s 96 is the provision linked to this rule in this chapter.

9. A - W & A McArthur Ltd v Queensland (1920) 28 CLR 530
W & A McArthur Ltd v Queensland (1920) 28 CLR 530 is the authority connected to that proposition.

10. A - O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565
O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565 is the authority connected to that proposition.

11. A - Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54
Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54 is the authority connected to that proposition.

12. A - Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263
Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263 is the authority connected to that proposition.

13. A - Air Caledonie International v Commonwealth (1988) 165 CLR 462
Air Caledonie International v Commonwealth (1988) 165 CLR 462 is the authority connected to that proposition.

14. A - State Superannuation Board v Trade Practices Commission (1982) 150 CLR 282
State Superannuation Board v Trade Practices Commission (1982) 150 CLR 282 is the authority connected to that proposition.

15. A - R v Federal Court of Australia; Ex parte WA National Football League (Adamson's Case) (1979) 143 CLR 190
R v Federal Court of Australia; Ex parte WA National Football League (Adamson's Case) (1979) 143 CLR 190 is the authority connected to that proposition.

16. A - New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1
New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1 is the authority connected to that proposition.

17. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

18. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

19. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

20. A - Trade
Trade is the term used in the chapter.

CHAPTER 5 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of s 51(i).

2. Explain the constitutional significance of s 51(ii).

3. Explain the constitutional significance of s 51(xx).

4. Explain the constitutional significance of s 53.

5. Explain the constitutional significance of s 55.

6. Explain the constitutional significance of s 90.

7. Explain the constitutional significance of s 99.

8. Explain the constitutional significance of s 96.

9. What is the exam significance of W & A McArthur Ltd v Queensland (1920) 28 CLR 530?

10. What is the exam significance of O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565?

11. What is the exam significance of Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54?

12. What is the exam significance of Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263?

13. What is the exam significance of Air Caledonie International v Commonwealth (1988) 165 CLR 462?

14. What is the exam significance of State Superannuation Board v Trade Practices Commission (1982) 150 CLR 282?

15. What is the exam significance of R v Federal Court of Australia; Ex parte WA National Football League (Adamson's Case) (1979) 143 CLR 190?

16. What is the exam significance of New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1?

17. What is the recommended constitutional problem-solving sequence?

18. Why is issue spotting especially important in constitutional law?

19. How should competing High Court reasoning be handled?

20. Why should constitutional provisions be cited precisely?

ANSWER PAGE

Chapter 5 - Short Answer Models

1. Explain the constitutional significance of s 51(i).

s 51(i): Trade and commerce with other countries and among the States. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of s 51(ii).

s 51(ii): Taxation, but not so as to discriminate between States or parts of States. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 51(xx).

s 51(xx): Foreign, trading and financial corporations. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 53.

s 53: Limits Senate power over money and taxation bills. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. Explain the constitutional significance of s 55.

s 55: Requires taxation laws to deal only with taxation and generally one subject of taxation. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

6. Explain the constitutional significance of s 90.

s 90: Exclusive Commonwealth power over customs and excise. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

7. Explain the constitutional significance of s 99.

s 99: Prohibits preference to one State or part of a State in laws or regulations of trade, commerce or revenue. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

8. Explain the constitutional significance of s 96.

s 96: Conditional grants to States. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

9. What is the exam significance of W & A McArthur Ltd v Queensland (1920) 28 CLR 530?

W & A McArthur Ltd v Queensland (1920) 28 CLR 530: Broad conception of trade and commerce, extending beyond the final act of sale. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

10. What is the exam significance of O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565?

O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565: Incidental aspect of s 51(i) allowed regulation of processes sufficiently connected with export trade. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

11. What is the exam significance of Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54?

Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54: Commonwealth may reach intrastate operations where sufficiently connected to interstate trade and safety. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

12. What is the exam significance of Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263?

Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263: Classic definition of a tax as a compulsory exaction by public authority for public purposes and not payment for services. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

13. What is the exam significance of Air Caledonie International v Commonwealth (1988) 165 CLR 462?

Air Caledonie International v Commonwealth (1988) 165 CLR 462: Applied taxation definition and s 55 to an immigration clearance fee. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

14. What is the exam significance of State Superannuation Board v Trade Practices Commission (1982) 150 CLR 282?

State Superannuation Board v Trade Practices Commission (1982) 150 CLR 282: Leading authority on financial corporations. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

15. What is the exam significance of R v Federal Court of Australia; Ex parte WA National Football League (Adamson's Case) (1979) 143 CLR 190?

R v Federal Court of Australia; Ex parte WA National Football League (Adamson's Case) (1979) 143 CLR 190: Substantial trading activity may make an entity a trading corporation. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

16. What is the exam significance of New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1?

New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1: Confirms the broad reach of the corporations power over constitutional corporations and their relationships. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

17. What is the recommended constitutional problem-solving sequence?

Identify the challenged law and actor; identify the source of power; characterise the law; test constitutional limitations; consider Commonwealth-State interaction; apply authorities; address severance/remedy; conclude issue by issue.

18. Why is issue spotting especially important in constitutional law?

A single factual scenario can engage several independent validity questions. Missing one head of power, structural implication or express limitation can change the result.

19. How should competing High Court reasoning be handled?

Identify the binding ratio where possible, explain material differences between majority and dissenting reasoning where the course treats them as significant, and apply the current controlling approach.

20. Why should constitutional provisions be cited precisely?

The legal consequence often depends on exact textual language, the level of government to which it applies and any internal qualification in the provision.

INTERACTIVE REVISION

Chapter 5 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 5 Active Crossword

Across / Down Vocabulary Clues

1. **TRADE** - Economic activity regulated by s 51(i).
2. **TAXATION** - s 51(ii) head of power.
3. **CORPORATIONS** - Entities addressed by s 51(xx).
4. **EXCISE** - Exclusive Commonwealth subject under s 90.
5. **INTERSTATE** - Trade among States within s 51(i).
6. **FOREIGN** - One category of corporation under s 51(xx).
7. **FINANCIAL** - Type of constitutional corporation.
8. **TRADING** - Type of constitutional corporation.
9. **WORKCHOICES** - 2006 case confirming broad corporations power.
10. **CALEDONIE** - Case concerning a charge held to be taxation.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 5 - Crossword Answers

1. **TRADE** - Economic activity regulated by s 51(i).
2. **TAXATION** - s 51(ii) head of power.
3. **CORPORATIONS** - Entities addressed by s 51(xx).
4. **EXCISE** - Exclusive Commonwealth subject under s 90.
5. **INTERSTATE** - Trade among States within s 51(i).
6. **FOREIGN** - One category of corporation under s 51(xx).
7. **FINANCIAL** - Type of constitutional corporation.
8. **TRADING** - Type of constitutional corporation.
9. **WORKCHOICES** - 2006 case confirming broad corporations power.
10. **CALEDONIE** - Case concerning a charge held to be taxation.

Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

National Platform Levy

The Commonwealth imposes a compulsory annual levy on every large digital platform, stating that proceeds will fund online-safety regulation. Advise whether the levy is taxation and what procedural rules follow.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

Corporate Workplace Standards Act

The Commonwealth sets workplace, environmental and consumer standards for all trading corporations, including purely intrastate conduct. A State challenges the Act as too remote from corporate status.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 5 - HD IRAC Answers

Problem 1: National Platform Levy

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Economic Powers: Trade and Commerce, Taxation and Corporations.

RULE / LAW

Economic powers are construed according to their text. s 51(i) covers overseas and interstate trade and sufficiently incidental matters; s 51(ii) taxation is broad but subject to ss 53, 55 and non-discrimination; s 51(xx) supports broad regulation of constitutional corporations. Key provisions include s 51(i), s 51(ii), s 51(xx), s 53, s 55. Key authorities include W & A McArthur Ltd v Queensland; O'Sullivan v Noarlunga Meat Ltd; Airlines of New South Wales Pty Ltd v New South Wales; Matthews v Chicory Marketing Board; Air Caledonie International v Commonwealth.

APPLICATION

Classify the regulated transaction or entity first. For a levy, ask whether it is a compulsory exaction for public purposes rather than payment for identifiable services. For corporations, determine constitutional-corporation status and whether the law regulates activities or relationships sufficiently connected to that corporation.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result

while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: Corporate Workplace Standards Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Economic Powers: Trade and Commerce, Taxation and Corporations.

RULE / LAW

Economic powers are construed according to their text. s 51(i) covers overseas and interstate trade and sufficiently incidental matters; s 51(ii) taxation is broad but subject to ss 53, 55 and non-discrimination; s 51(xx) supports broad regulation of constitutional corporations. Key provisions include s 51(i), s 51(ii), s 51(xx), s 53, s 55. Key authorities include W & A McArthur Ltd v Queensland; O'Sullivan v Noarlunga Meat Ltd; Airlines of New South Wales Pty Ltd v New South Wales; Matthews v Chicory Marketing Board; Air Caledonie International v Commonwealth.

APPLICATION

Classify the regulated transaction or entity first. For a levy, ask whether it is a compulsory exaction for public purposes rather than payment for identifiable services. For corporations, determine constitutional-corporation status and whether the law regulates activities or relationships sufficiently connected to that corporation.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 6

External Affairs, Defence, Race, Territories and Other Heads of Power

Learning chapter - legislation, cases, problem solving and revision

The external affairs power has several recognised dimensions: geographically external matters, relations with other countries, and implementation of sufficiently specific treaty obligations. The course materials also discuss the contested idea of matters of international concern.

The defence power is purposive and elastic. Its practical breadth expands in wartime and contracts in peacetime. The Communist Party Case demonstrates that national-security assertions do not automatically establish constitutional validity.

Other important powers include the race power, the territories power and the aliens power. Their interpretation has been central to Indigenous constitutional questions, territorial governance, citizenship and migration.

Key Constitutional Provisions

Provision	Why it matters
s 51(vi)	Defence of the Commonwealth and States and control of forces.
s 51(xix)	Naturalisation and aliens.
s 51(xxvi)	Special laws for the people of any race for whom it is deemed necessary to make special laws.
s 51(xxix)	External affairs.
s 122	Government of Commonwealth territories.

Cases for This Chapter

Case / Authority	Proposition and exam use
New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337	External affairs extends to matters geographically external to Australia.
Polyukhovich v Commonwealth (1991) 172 CLR 501	Majority treated physical externality as sufficient for s 51(xxix).
R v Burgess; Ex parte Henry (1936) 55 CLR 608	Early treaty-implementation authority under external affairs.
Koowarta v Bjelke-Petersen (1982) 153 CLR 168	External affairs supported federal racial-discrimination legislation implementing a treaty.
Commonwealth v Tasmania (1983) 158 CLR 1	Broad treaty-implementation limb of external affairs.
Victoria v Commonwealth (Industrial Relations Act Case) (1996) 187 CLR 416	Treaty obligations require sufficient specificity and implementing laws must be reasonably capable of being appropriate and adapted to the treaty.
Australian Communist Party v Commonwealth (1951) 83 CLR 1	Defence power did not validate the Communist Party Dissolution Act merely through legislative assertion.
Thomas v Mowbray (2007) 233 CLR 307	Upheld federal control-order legislation and illustrates modern security reasoning.
Kartinyeri v Commonwealth (1998) 195 CLR 337	Important, divided authority concerning the race power.
Love v Commonwealth (2020) 270 CLR 152	Held Aboriginal Australians satisfying the relevant test could not be treated as aliens for s 51(xix).

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Constitutional Law Forum Five, Forum One Indigenous constitutional materials, and Forum Three territories discussion.

CHAPTER 6 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Defence of the Commonwealth and States and control of forces.

1. s 51(vi)
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Naturalisation and aliens.

1. s 51(xix)
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Special laws for the people of any race for whom it is deemed necessary to make special laws.

1. s 51(xxvi)
2. s 109
3. s 128
4. s 92

4. Which constitutional provision is most directly associated with: External affairs.

1. s 51(xxix)
2. s 109
3. s 128
4. s 92

5. Which constitutional provision is most directly associated with: Government of Commonwealth territories.

1. s 122
2. s 109
3. s 128
4. s 92

6. Which case is used in this chapter for the following proposition: External affairs extends to matters geographically external to Australia.

1. New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337
2. Polyukhovich v Commonwealth (1991) 172 CLR 501
3. R v Burgess; Ex parte Henry (1936) 55 CLR 608
4. Koowarta v Bjelke-Petersen (1982) 153 CLR 168

7. Which case is used in this chapter for the following proposition: Majority treated physical externality as sufficient for s 51(xxix).

1. Polyukhovich v Commonwealth (1991) 172 CLR 501
2. New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337
3. R v Burgess; Ex parte Henry (1936) 55 CLR 608
4. Koowarta v Bjelke-Petersen (1982) 153 CLR 168

8. Which case is used in this chapter for the following proposition: Early treaty-implementation authority under external affairs.

1. R v Burgess; Ex parte Henry (1936) 55 CLR 608
2. New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337
3. Polyukhovich v Commonwealth (1991) 172 CLR 501
4. Koowarta v Bjelke-Petersen (1982) 153 CLR 168

9. Which case is used in this chapter for the following proposition: External affairs supported federal racial-discrimination legislation implementing a treaty.

1. Koowarta v Bjelke-Petersen (1982) 153 CLR 168
2. New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337
3. Polyukhovich v Commonwealth (1991) 172 CLR 501
4. R v Burgess; Ex parte Henry (1936) 55 CLR 608

10. Which case is used in this chapter for the following proposition: Broad treaty-implementation limb of external affairs.

1. Commonwealth v Tasmania (1983) 158 CLR 1
2. New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337
3. Polyukhovich v Commonwealth (1991) 172 CLR 501
4. R v Burgess; Ex parte Henry (1936) 55 CLR 608

11. Which case is used in this chapter for the following proposition: Treaty obligations require sufficient specificity and implementing laws must be reasonably capable of being appropriate and adapted to the treaty.

1. Victoria v Commonwealth (Industrial Relations Act Case) (1996) 187 CLR 416
2. New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337
3. Polyukhovich v Commonwealth (1991) 172 CLR 501
4. R v Burgess; Ex parte Henry (1936) 55 CLR 608

12. Which case is used in this chapter for the following proposition: Defence power did not validate the Communist Party Dissolution Act merely through legislative assertion.

1. Australian Communist Party v Commonwealth (1951) 83 CLR 1
2. New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337
3. Polyukhovich v Commonwealth (1991) 172 CLR 501
4. R v Burgess; Ex parte Henry (1936) 55 CLR 608

13. Which case is used in this chapter for the following proposition: Upheld federal control-order legislation and illustrates modern security reasoning.

1. Thomas v Mowbray (2007) 233 CLR 307
2. New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337
3. Polyukhovich v Commonwealth (1991) 172 CLR 501
4. R v Burgess; Ex parte Henry (1936) 55 CLR 608

14. Which case is used in this chapter for the following proposition: Important, divided authority concerning the race power.

1. Kartinyeri v Commonwealth (1998) 195 CLR 337
2. New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337

3. Polyukhovich v Commonwealth (1991) 172 CLR 501
4. R v Burgess; Ex parte Henry (1936) 55 CLR 608

15. Which case is used in this chapter for the following proposition: Held Aboriginal Australians satisfying the relevant test could not be treated as aliens for s 51(xix).

1. Love v Commonwealth (2020) 270 CLR 152
2. New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337
3. Polyukhovich v Commonwealth (1991) 172 CLR 501
4. R v Burgess; Ex parte Henry (1936) 55 CLR 608

16. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?
2. Is the law politically popular?
3. Did every State consent?
4. Was the law enacted unanimously?

17. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

18. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it
2. Name it without explanation
3. Quote the whole judgment
4. Use it only in the conclusion

19. Which term best matches this description: Head of power in s 51(xxix).

1. Externalaffairs
2. Federalism
3. Judicial power
4. Appropriation

20. Which term best matches this description: International agreement capable of supporting implementing legislation.

1. Treaty
2. Federalism
3. Judicial power
4. Appropriation

ANSWER PAGE

Chapter 6 - Quiz Answers

1. A - s 51(vi)
s 51(vi) is the provision linked to this rule in this chapter.

2. A - s 51(xix)
s 51(xix) is the provision linked to this rule in this chapter.

3. A - s 51(xxvi)
s 51(xxvi) is the provision linked to this rule in this chapter.

4. A - s 51(xxix)
s 51(xxix) is the provision linked to this rule in this chapter.

5. A - s 122
s 122 is the provision linked to this rule in this chapter.

6. A - New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337
New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337 is the authority connected to that proposition.

7. A - Polyukhovich v Commonwealth (1991) 172 CLR 501
Polyukhovich v Commonwealth (1991) 172 CLR 501 is the authority connected to that proposition.

8. A - R v Burgess; Ex parte Henry (1936) 55 CLR 608
R v Burgess; Ex parte Henry (1936) 55 CLR 608 is the authority connected to that proposition.

9. A - Koowarta v Bjelke-Petersen (1982) 153 CLR 168
Koowarta v Bjelke-Petersen (1982) 153 CLR 168 is the authority connected to that proposition.

10. A - Commonwealth v Tasmania (1983) 158 CLR 1
Commonwealth v Tasmania (1983) 158 CLR 1 is the authority connected to that proposition.

11. A - Victoria v Commonwealth (Industrial Relations Act Case) (1996) 187 CLR 416
Victoria v Commonwealth (Industrial Relations Act Case) (1996) 187 CLR 416 is the authority connected to that proposition.

12. A - Australian Communist Party v Commonwealth (1951) 83 CLR 1
Australian Communist Party v Commonwealth (1951) 83 CLR 1 is the authority connected to that proposition.

13. A - Thomas v Mowbray (2007) 233 CLR 307
Thomas v Mowbray (2007) 233 CLR 307 is the authority connected to that proposition.

14. A - Kartinyeri v Commonwealth (1998) 195 CLR 337
Kartinyeri v Commonwealth (1998) 195 CLR 337 is the authority connected to that proposition.

15. A - Love v Commonwealth (2020) 270 CLR 152
Love v Commonwealth (2020) 270 CLR 152 is the authority connected to that proposition.

16. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

17. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

18. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

19. A - Externalaffairs
Externalaffairs is the term used in the chapter.

20. A - Treaty
Treaty is the term used in the chapter.

CHAPTER 6 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of s 51(vi).

2. Explain the constitutional significance of s 51(xix).

3. Explain the constitutional significance of s 51(xxvi).

4. Explain the constitutional significance of s 51(xxix).

5. Explain the constitutional significance of s 122.

6. What is the exam significance of New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337?

7. What is the exam significance of Polyukhovich v Commonwealth (1991) 172 CLR 501?

8. What is the exam significance of R v Burgess; Ex parte Henry (1936) 55 CLR 608?

9. What is the exam significance of Koowarta v Bjelke-Petersen (1982) 153 CLR 168?

10. What is the exam significance of Commonwealth v Tasmania (1983) 158 CLR 1?

11. What is the exam significance of Victoria v Commonwealth (Industrial Relations Act Case) (1996) 187 CLR 416?

12. What is the exam significance of Australian Communist Party v Commonwealth (1951) 83 CLR 1?

13. What is the exam significance of Thomas v Mowbray (2007) 233 CLR 307?

14. What is the exam significance of Kartinyeri v Commonwealth (1998) 195 CLR 337?

15. What is the exam significance of Love v Commonwealth (2020) 270 CLR 152?

16. What is the recommended constitutional problem-solving sequence?

17. Why is issue spotting especially important in constitutional law?

18. How should competing High Court reasoning be handled?

19. Why should constitutional provisions be cited precisely?

20. What does it mean to distinguish a case?

ANSWER PAGE

Chapter 6 - Short Answer Models

1. Explain the constitutional significance of s 51(vi).

s 51(vi): Defence of the Commonwealth and States and control of forces. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of s 51(xix).

s 51(xix): Naturalisation and aliens. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 51(xxvi).

s 51(xxvi): Special laws for the people of any race for whom it is deemed necessary to make special laws. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 51(xxix).

s 51(xxix): External affairs. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. Explain the constitutional significance of s 122.

s 122: Government of Commonwealth territories. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

6. What is the exam significance of New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337?

New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337: External affairs extends to matters geographically external to Australia. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

7. What is the exam significance of Polyukhovich v Commonwealth (1991) 172 CLR 501?

Polyukhovich v Commonwealth (1991) 172 CLR 501: Majority treated physical externality as sufficient for s 51(xxix). Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

8. What is the exam significance of R v Burgess; Ex parte Henry (1936) 55 CLR 608?

R v Burgess; Ex parte Henry (1936) 55 CLR 608: Early treaty-implementation authority under external affairs. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

9. What is the exam significance of Koowarta v Bjelke-Petersen (1982) 153 CLR 168?

Koowarta v Bjelke-Petersen (1982) 153 CLR 168: External affairs supported federal racial-discrimination legislation implementing a treaty. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

10. What is the exam significance of Commonwealth v Tasmania (1983) 158 CLR 1?

Commonwealth v Tasmania (1983) 158 CLR 1: Broad treaty-implementation limb of external affairs. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

11. What is the exam significance of Victoria v Commonwealth (Industrial Relations Act Case) (1996) 187 CLR 416?

Victoria v Commonwealth (Industrial Relations Act Case) (1996) 187 CLR 416: Treaty obligations require sufficient specificity and implementing laws must be reasonably capable of being appropriate and adapted to the treaty. Use it by stating the proposition

precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

12. What is the exam significance of Australian Communist Party v Commonwealth (1951) 83 CLR 1?

Australian Communist Party v Commonwealth (1951) 83 CLR 1: Defence power did not validate the Communist Party Dissolution Act merely through legislative assertion. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

13. What is the exam significance of Thomas v Mowbray (2007) 233 CLR 307?

Thomas v Mowbray (2007) 233 CLR 307: Upheld federal control-order legislation and illustrates modern security reasoning. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

14. What is the exam significance of Kartinyeri v Commonwealth (1998) 195 CLR 337?

Kartinyeri v Commonwealth (1998) 195 CLR 337: Important, divided authority concerning the race power. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

15. What is the exam significance of Love v Commonwealth (2020) 270 CLR 152?

Love v Commonwealth (2020) 270 CLR 152: Held Aboriginal Australians satisfying the relevant test could not be treated as aliens for s 51(xix). Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

16. What is the recommended constitutional problem-solving sequence?

Identify the challenged law and actor; identify the source of power; characterise the law; test constitutional limitations; consider Commonwealth-State interaction; apply authorities; address severance/remedy; conclude issue by issue.

17. Why is issue spotting especially important in constitutional law?

A single factual scenario can engage several independent validity questions. Missing one head of power, structural implication or express limitation can change the result.

18. How should competing High Court reasoning be handled?

Identify the binding ratio where possible, explain material differences between majority and dissenting reasoning where the course treats them as significant, and apply the current controlling approach.

19. Why should constitutional provisions be cited precisely?

The legal consequence often depends on exact textual language, the level of government to which it applies and any internal qualification in the provision.

20. What does it mean to distinguish a case?

Explain why a factual or legal difference makes the authority less directly controlling while still acknowledging its relevant principle.

INTERACTIVE REVISION

Chapter 6 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 6 Active Crossword

Across / Down Vocabulary Clues

1. **EXTERNALAFFAIRS** - Head of power in s 51(xxix).
2. **TREATY** - International agreement capable of supporting implementing legislation.
3. **DEFENCE** - Purposive head of power in s 51(vi).
4. **RACE** - Head of power in s 51(xxvi).
5. **TERRITORIES** - Subject of s 122.
6. **ALIENS** - Subject of s 51(xix).
7. **KOOWARTA** - Treaty-implementation and racial-discrimination case.
8. **TASMANIANDAM** - Major external-affairs case concerning World Heritage.
9. **POLYUKHOVICH** - Externality case involving retrospective war-crimes legislation.
10. **COMMUNISTPARTY** - Case limiting reliance on asserted national-security facts.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 6 - Crossword Answers

1. **EXTERNALAFFAIRS** - Head of power in s 51(xxix).
2. **TREATY** - International agreement capable of supporting implementing legislation.
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7. **KOOWARTA** - Treaty-implementation and racial-discrimination case.
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10. **COMMUNISTPARTY** - Case limiting reliance on asserted national-security facts.

Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

Global Wetlands Convention Act

Australia ratifies a treaty requiring protection of wetlands of international ecological value. Parliament prohibits development of a wetland not yet formally listed under the treaty. Advise on s 51(xxix).

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

National Security Association Act

During heightened geopolitical tension, Parliament authorises the Executive to declare organisations unlawful if it is satisfied they threaten national security, without judicial review. Advise on defence power and constitutional limits.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 6 - HD IRAC Answers

Problem 1: Global Wetlands Convention Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in External Affairs, Defence, Race, Territories and Other Heads of Power.

RULE / LAW

External affairs supports geographically external matters, foreign relations and implementation of sufficiently specific treaty obligations through measures reasonably capable of being appropriate and adapted. Defence is purposive and varies with circumstances. Other powers must be analysed according to their own text and cases. Key provisions include s 51(vi), s 51(xix), s 51(xxvi), s 51(xxix), s 122. Key authorities include New South Wales v Commonwealth; Polyukhovich v Commonwealth; R v Burgess; Ex parte Henry; Koowarta v Bjelke-Petersen; Commonwealth v Tasmania.

APPLICATION

For treaty implementation, identify the treaty obligation, specificity and conformity between the obligation and legislation. For defence, test the objective connection between the measure and defence conditions rather than accepting legislative assertions. For race, territories or aliens, identify the person or subject and any constitutional limitation.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result

while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: National Security Association Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in External Affairs, Defence, Race, Territories and Other Heads of Power.

RULE / LAW

External affairs supports geographically external matters, foreign relations and implementation of sufficiently specific treaty obligations through measures reasonably capable of being appropriate and adapted. Defence is purposive and varies with circumstances. Other powers must be analysed according to their own text and cases. Key provisions include s 51(vi), s 51(xix), s 51(xxvi), s 51(xxix), s 122. Key authorities include New South Wales v Commonwealth; Polyukhovich v Commonwealth; R v Burgess; Ex parte Henry; Koowarta v Bjelke-Petersen; Commonwealth v Tasmania.

APPLICATION

For treaty implementation, identify the treaty obligation, specificity and conformity between the obligation and legislation. For defence, test the objective connection between the measure and defence conditions rather than accepting legislative assertions. For race, territories or aliens, identify the person or subject and any constitutional limitation.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 7

Federalism, s 109 Inconsistency and Intergovernmental Immunities

Learning chapter - legislation, cases, problem solving and revision

Federalism requires both levels of government to operate within a single constitutional system. Where valid Commonwealth and State laws conflict, s 109 renders the State law inoperative to the extent of inconsistency.

Inconsistency can arise because simultaneous obedience is impossible, because one law confers a right or privilege that the other removes, or because Commonwealth legislation shows an intention to cover the field. Always establish the validity of each law before applying s 109.

Federal structure also limits discriminatory or structurally destructive legislation directed at the States. The Melbourne Corporation principle protects the continued capacity of State governments to function as governments within the federation.

Key Constitutional Provisions

Provision	Why it matters
s 109	Commonwealth law prevails over inconsistent State law to the extent of inconsistency.
ss 106-107	Preserve State constitutions and powers within the federal structure.
s 114	Restricts State and Commonwealth taxation of each other's property and certain military matters.
s 117	Prohibits certain discrimination based on State residence.

Cases for This Chapter

Case / Authority	Proposition and exam use
Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466	Classic direct-inconsistency authority; impossible simultaneous obedience and rights-based reasoning.

Case / Authority	Proposition and exam use
Ex parte McLean (1930) 43 CLR 472	Early articulation of field inconsistency.
Victoria v Commonwealth (Kakariki Case) (1937) 58 CLR 618	Illustrates inconsistency analysis where Commonwealth law intends a complete regulatory scheme.
Melbourne Corporation v Commonwealth (1947) 74 CLR 31	Foundation of the implied limitation protecting States from discriminatory or structurally impairing Commonwealth laws.
Austin v Commonwealth (2003) 215 CLR 185	Modern formulation of the Melbourne Corporation principle, focusing on impairment of State functions.
Commonwealth v Cigamatic Pty Ltd (in liq) (1962) 108 CLR 372	Historically important intergovernmental immunity doctrine concerning State laws affecting Commonwealth prerogatives.

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Course issue-spotting checklists in Forums Two, Three and Five identify inconsistency and intergovernmental immunities as core validity constraints. The doctrinal synthesis below completes those course checklists.

CHAPTER 7 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Commonwealth law prevails over inconsistent State law to the extent of inconsistency.

1. s 109
2. s 61
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Preserve State constitutions and powers within the federal structure.

1. ss 106-107
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Restricts State and Commonwealth taxation of each other's property and certain military matters.

1. s 114
2. s 109
3. s 128
4. s 92

4. Which constitutional provision is most directly associated with: Prohibits certain discrimination based on State residence.

1. s 117
2. s 109
3. s 128
4. s 92

5. Which case is used in this chapter for the following proposition: Classic direct-inconsistency authority; impossible simultaneous obedience and rights-based reasoning.

1. Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466
2. Ex parte McLean (1930) 43 CLR 472
3. Victoria v Commonwealth (Kakariki Case) (1937) 58 CLR 618
4. Melbourne Corporation v Commonwealth (1947) 74 CLR 31

6. Which case is used in this chapter for the following proposition: Early articulation of field inconsistency.

1. Ex parte McLean (1930) 43 CLR 472
2. Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466
3. Victoria v Commonwealth (Kakariki Case) (1937) 58 CLR 618
4. Melbourne Corporation v Commonwealth (1947) 74 CLR 31

7. Which case is used in this chapter for the following proposition: Illustrates inconsistency analysis where Commonwealth law intends a complete regulatory scheme.

1. Victoria v Commonwealth (Kakariki Case) (1937) 58 CLR 618
2. Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466
3. Ex parte McLean (1930) 43 CLR 472
4. Melbourne Corporation v Commonwealth (1947) 74 CLR 31

8. Which case is used in this chapter for the following proposition: Foundation of the implied limitation protecting States from discriminatory or structurally impairing Commonwealth laws.

1. Melbourne Corporation v Commonwealth (1947) 74 CLR 31
2. Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466
3. Ex parte McLean (1930) 43 CLR 472
4. Victoria v Commonwealth (Kakariki Case) (1937) 58 CLR 618

9. Which case is used in this chapter for the following proposition: Modern formulation of the Melbourne Corporation principle, focusing on impairment of State functions.

1. Austin v Commonwealth (2003) 215 CLR 185
2. Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466
3. Ex parte McLean (1930) 43 CLR 472
4. Victoria v Commonwealth (Kakariki Case) (1937) 58 CLR 618

10. Which case is used in this chapter for the following proposition: Historically important intergovernmental immunity doctrine concerning State laws affecting Commonwealth prerogatives.

1. Commonwealth v Cigamatic Pty Ltd (in liq) (1962) 108 CLR 372
2. Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466
3. Ex parte McLean (1930) 43 CLR 472
4. Victoria v Commonwealth (Kakariki Case) (1937) 58 CLR 618

11. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?
2. Is the law politically popular?
3. Did every State consent?
4. Was the law enacted unanimously?

12. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

13. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it
2. Name it without explanation
3. Quote the whole judgment
4. Use it only in the conclusion

14. Which term best matches this description: Conflict between valid Commonwealth and State laws addressed by s 109.

1. Inconsistency
2. Federalism
3. Judicial power
4. Appropriation

15. Which term best matches this description: Leading direct inconsistency case.

1. Cowburn
2. Federalism
3. Judicial power

4. Appropriation

16. Which term best matches this description: City in the name of the key State-immunity case.

1. Melbourne
2. Federalism
3. Judicial power
4. Appropriation

17. Which term best matches this description: Structural division and coexistence of two levels of government.

1. Federalism
2. Federalism
3. Judicial power
4. Appropriation

18. Which term best matches this description: Shorthand for Commonwealth intention to exhaustively regulate a subject.

1. Coverfield
2. Federalism
3. Judicial power
4. Appropriation

19. Which term best matches this description: Protection derived from federal structure.

1. Immunity
2. Federalism
3. Judicial power
4. Appropriation

20. Which term best matches this description: Modern Melbourne Corporation authority.

1. Austin
2. Federalism
3. Judicial power
4. Appropriation

ANSWER PAGE

Chapter 7 - Quiz Answers

1. A - s 109
s 109 is the provision linked to this rule in this chapter.

2. A - ss 106-107
ss 106-107 is the provision linked to this rule in this chapter.

3. A - s 114
s 114 is the provision linked to this rule in this chapter.

4. A - s 117
s 117 is the provision linked to this rule in this chapter.

5. A - Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466
Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466 is the authority connected to that proposition.

6. A - Ex parte McLean (1930) 43 CLR 472
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8. A - Melbourne Corporation v Commonwealth (1947) 74 CLR 31
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9. A - Austin v Commonwealth (2003) 215 CLR 185
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10. A - Commonwealth v Cigamatic Pty Ltd (in liq) (1962) 108 CLR 372
Commonwealth v Cigamatic Pty Ltd (in liq) (1962) 108 CLR 372 is the authority connected to that proposition.

11. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

12. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

13. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

14. A - Inconsistency
Inconsistency is the term used in the chapter.

15. A - Cowburn
Cowburn is the term used in the chapter.

16. A - Melbourne
Melbourne is the term used in the chapter.

17. A - Federalism
Federalism is the term used in the chapter.

18. A - Coverfield
Coverfield is the term used in the chapter.

19. A - Immunity
Immunity is the term used in the chapter.

20. A - Austin

Austin is the term used in the chapter.

CHAPTER 7 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of s 109.

2. Explain the constitutional significance of ss 106-107.

3. Explain the constitutional significance of s 114.

4. Explain the constitutional significance of s 117.

5. What is the exam significance of Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466?

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11. What is the recommended constitutional problem-solving sequence?

12. Why is issue spotting especially important in constitutional law?

13. How should competing High Court reasoning be handled?

14. Why should constitutional provisions be cited precisely?

15. What does it mean to distinguish a case?

16. Define and explain the significance of Coverfield in this chapter.

17. Define and explain the significance of Immunity in this chapter.

18. Define and explain the significance of Austin in this chapter.

19. Define and explain the significance of Cigamatic in this chapter.

20. Define and explain the significance of State in this chapter.

ANSWER PAGE

Chapter 7 - Short Answer Models

1. Explain the constitutional significance of s 109.

s 109: Commonwealth law prevails over inconsistent State law to the extent of inconsistency. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of ss 106-107.

ss 106-107: Preserve State constitutions and powers within the federal structure. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 114.

s 114: Restricts State and Commonwealth taxation of each other's property and certain military matters. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 117.

s 117: Prohibits certain discrimination based on State residence. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. What is the exam significance of Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466?

Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466: Classic direct-inconsistency authority; impossible simultaneous obedience and rights-based reasoning. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

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Austin v Commonwealth (2003) 215 CLR 185: Modern formulation of the Melbourne Corporation principle, focusing on impairment of State functions. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

10. What is the exam significance of Commonwealth v Cigamatic Pty Ltd (in liq) (1962) 108 CLR 372?

Commonwealth v Cigamatic Pty Ltd (in liq) (1962) 108 CLR 372: Historically important intergovernmental immunity doctrine concerning State laws affecting Commonwealth prerogatives. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

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Explain why a factual or legal difference makes the authority less directly controlling while still acknowledging its relevant principle.

16. Define and explain the significance of Coverfield in this chapter.

Coverfield: Shorthand for Commonwealth intention to exhaustively regulate a subject. Connect the concept to the relevant constitutional text and cases before applying it to facts.

17. Define and explain the significance of Immunity in this chapter.

Immunity: Protection derived from federal structure. Connect the concept to the relevant constitutional text and cases before applying it to facts.

18. Define and explain the significance of Austin in this chapter.

Austin: Modern Melbourne Corporation authority. Connect the concept to the relevant constitutional text and cases before applying it to facts.

19. Define and explain the significance of Cigamatic in this chapter.

Cigamatic: Intergovernmental immunity case. Connect the concept to the relevant constitutional text and cases before applying it to facts.

20. Define and explain the significance of State in this chapter.

State: Government protected as a continuing constitutional entity. Connect the concept to the relevant constitutional text and cases before applying it to facts.

INTERACTIVE REVISION

Chapter 7 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 7 Active Crossword

Across / Down Vocabulary Clues

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2. **COWBURN** - Leading direct inconsistency case.
3. **MELBOURNE** - City in the name of the key State-immunity case.
4. **FEDERALISM** - Structural division and coexistence of two levels of government.
5. **COVERFIELD** - Shorthand for Commonwealth intention to exhaustively regulate a subject.
6. **IMMUNITY** - Protection derived from federal structure.
7. **AUSTIN** - Modern Melbourne Corporation authority.
8. **CIGAMATIC** - Intergovernmental immunity case.
9. **STATE** - Government protected as a continuing constitutional entity.
10. **COMMONWEALTH** - Federal government whose valid law prevails under s 109.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 7 - Crossword Answers

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Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

Plastic Packaging Laws

A Commonwealth law permits certified reusable packaging nationwide. A State law prohibits that same packaging material entirely. A company complies with the Commonwealth scheme but is prosecuted under State law.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

State Judges Payroll Tax

The Commonwealth imposes a special payroll levy only on State judicial officers and senior State public servants. A State challenges the law.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 7 - HD IRAC Answers

Problem 1: Plastic Packaging Laws

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Federalism, s 109 Inconsistency and Intergovernmental Immunities.

RULE / LAW

s 109 applies only where both laws are otherwise valid. Inconsistency may arise from impossible simultaneous obedience, impairment of a Commonwealth right or permission, or Commonwealth intention to cover the field. The Melbourne Corporation principle restrains Commonwealth laws that discriminate against States or impair their capacity to function as governments. Key provisions include s 109, ss 106-107, s 114, s 117. Key authorities include Clyde Engineering Co Ltd v Cowburn; Ex parte McLean; Victoria v Commonwealth; Melbourne Corporation v Commonwealth; Austin v Commonwealth.

APPLICATION

Compare the operative commands of each law. If one permits what the other prohibits, or the Commonwealth scheme is intended to be exhaustive, the State law is inoperative to the extent of conflict. For State-immunity issues, focus on discriminatory targeting and practical impairment of governmental functions.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result

while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: State Judges Payroll Tax

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Federalism, s 109 Inconsistency and Intergovernmental Immunities.

RULE / LAW

s 109 applies only where both laws are otherwise valid. Inconsistency may arise from impossible simultaneous obedience, impairment of a Commonwealth right or permission, or Commonwealth intention to cover the field. The Melbourne Corporation principle restrains Commonwealth laws that discriminate against States or impair their capacity to function as governments. Key provisions include s 109, ss 106-107, s 114, s 117. Key authorities include Clyde Engineering Co Ltd v Cowburn; Ex parte McLean; Victoria v Commonwealth; Melbourne Corporation v Commonwealth; Austin v Commonwealth.

APPLICATION

Compare the operative commands of each law. If one permits what the other prohibits, or the Commonwealth scheme is intended to be exhaustive, the State law is inoperative to the extent of conflict. For State-immunity issues, focus on discriminatory targeting and practical impairment of governmental functions.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 8

Express Constitutional Guarantees and Limitations

Learning chapter - legislation, cases, problem solving and revision

The Australian Constitution contains relatively few express rights. Many provisions are better understood as limitations on legislative power or structural guarantees rather than personal rights in the broad bill-of-rights sense.

Section 51(xxxi) both grants a power to acquire property and conditions that power on just terms. Section 80 guarantees jury trial for Commonwealth offences tried on indictment, but Parliament retains substantial control over whether an offence is indictable. Sections 92, 116 and 117 impose additional limitations concerning interstate freedom, religion and State residence.

In problem solving, the first task is to identify exactly whose interest or freedom is affected, whether the constitutional provision applies to the relevant level of government, and whether the challenged law falls within the text and doctrine of the guarantee.

Key Constitutional Provisions

Provision	Why it matters
s 51(xxxi)	Acquisition of property on just terms for a purpose within Commonwealth power.
s 80	Trial on indictment of Commonwealth offences must be by jury.
s 92	Interstate trade, commerce and intercourse shall be absolutely free, as constitutionally interpreted.
s 116	Commonwealth limits concerning establishment of religion, religious observance, free exercise and religious tests.
s 117	Protection against certain disabilities or discrimination based on residence in another State.

Cases for This Chapter

Case / Authority	Proposition and exam use
Minister for the Army v Dalziel (1944) 68 CLR 261	Broad conception of property for s 51(xxxi).
Bank of New South Wales v Commonwealth (1948) 76 CLR 1	Important acquisition-of-property authority.
Commonwealth v Tasmania (1983) 158 CLR 1	Shows that regulation or sterilisation does not automatically amount to an acquisition without a corresponding benefit.
Wurridjal v Commonwealth (2009) 237 CLR 309	s 51(xxxi) applies in the territories context.
Commonwealth v Yunupingu (2025) 99 ALJR 519	Modern authority on native title and acquisition of property.
Kingswell v The Queen (1985) 159 CLR 264	s 80 depends on whether Parliament provides trial on indictment.
Cole v Whitfield (1988) 165 CLR 360	Modern interpretation of s 92 focusing on discriminatory burdens of a protectionist kind.
Adelaide Company of Jehovah's Witnesses Inc v Commonwealth (1943) 67 CLR 116	Major s 116 and defence-power authority.
Street v Queensland Bar Association (1989) 168 CLR 461	Leading s 117 authority on discrimination based on State residence.

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Tutorial Eight full answer guide and course issue-spotting checklists identifying ss 51(xxxi), 80, 92, 116 and 117 as recurring constitutional constraints.

CHAPTER 8 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Acquisition of property on just terms for a purpose within Commonwealth power.

1. s 51(xxxi)
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Trial on indictment of Commonwealth offences must be by jury.

1. s 80
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Interstate trade, commerce and intercourse shall be absolutely free, as constitutionally interpreted.

1. s 92
2. s 109
3. s 128
4. s 80

4. Which constitutional provision is most directly associated with: Commonwealth limits concerning establishment of religion, religious observance, free exercise and religious tests.

1. s 116
2. s 109
3. s 128
4. s 92

5. Which constitutional provision is most directly associated with: Protection against certain disabilities or discrimination based on residence in another State.

1. s 117
2. s 109
3. s 128
4. s 92

6. Which case is used in this chapter for the following proposition: Broad conception of property for s 51(xxxi).

1. Minister for the Army v Dalziel (1944) 68 CLR 261
2. Bank of New South Wales v Commonwealth (1948) 76 CLR 1
3. Commonwealth v Tasmania (1983) 158 CLR 1
4. Wurridjal v Commonwealth (2009) 237 CLR 309

7. Which case is used in this chapter for the following proposition: Important acquisition-of-property authority.

1. Bank of New South Wales v Commonwealth (1948) 76 CLR 1
2. Minister for the Army v Dalziel (1944) 68 CLR 261
3. Commonwealth v Tasmania (1983) 158 CLR 1
4. Wurridjal v Commonwealth (2009) 237 CLR 309

8. Which case is used in this chapter for the following proposition: Shows that regulation or sterilisation does not automatically amount to an acquisition without a corresponding benefit.

1. Commonwealth v Tasmania (1983) 158 CLR 1
2. Minister for the Army v Dalziel (1944) 68 CLR 261
3. Bank of New South Wales v Commonwealth (1948) 76 CLR 1
4. Wurridjal v Commonwealth (2009) 237 CLR 309

9. Which case is used in this chapter for the following proposition: s 51(xxxi) applies in the territories context.

1. Wurridjal v Commonwealth (2009) 237 CLR 309
2. Minister for the Army v Dalziel (1944) 68 CLR 261
3. Bank of New South Wales v Commonwealth (1948) 76 CLR 1
4. Commonwealth v Tasmania (1983) 158 CLR 1

10. Which case is used in this chapter for the following proposition: Modern authority on native title and acquisition of property.

1. Commonwealth v Yunupingu (2025) 99 ALJR 519
2. Minister for the Army v Dalziel (1944) 68 CLR 261
3. Bank of New South Wales v Commonwealth (1948) 76 CLR 1
4. Commonwealth v Tasmania (1983) 158 CLR 1

11. Which case is used in this chapter for the following proposition: s 80 depends on whether Parliament provides trial on indictment.

1. Kingswell v The Queen (1985) 159 CLR 264
2. Minister for the Army v Dalziel (1944) 68 CLR 261
3. Bank of New South Wales v Commonwealth (1948) 76 CLR 1
4. Commonwealth v Tasmania (1983) 158 CLR 1

12. Which case is used in this chapter for the following proposition: Modern interpretation of s 92 focusing on discriminatory burdens of a protectionist kind.

1. Cole v Whitfield (1988) 165 CLR 360
2. Minister for the Army v Dalziel (1944) 68 CLR 261
3. Bank of New South Wales v Commonwealth (1948) 76 CLR 1
4. Commonwealth v Tasmania (1983) 158 CLR 1

13. Which case is used in this chapter for the following proposition: Major s 116 and defence-power authority.

1. Adelaide Company of Jehovah's Witnesses Inc v Commonwealth (1943) 67 CLR 116
2. Minister for the Army v Dalziel (1944) 68 CLR 261
3. Bank of New South Wales v Commonwealth (1948) 76 CLR 1
4. Commonwealth v Tasmania (1983) 158 CLR 1

14. Which case is used in this chapter for the following proposition: Leading s 117 authority on discrimination based on State residence.

1. Street v Queensland Bar Association (1989) 168 CLR 461
2. Minister for the Army v Dalziel (1944) 68 CLR 261
3. Bank of New South Wales v Commonwealth (1948) 76 CLR 1
4. Commonwealth v Tasmania (1983) 158 CLR 1

15. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?

2. Is the law politically popular?
3. Did every State consent?
4. Was the law enacted unanimously?

16. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

17. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it
2. Name it without explanation
3. Quote the whole judgment
4. Use it only in the conclusion

18. Which term best matches this description: Condition attached to acquisition of property under s 51(xxxi).

1. Justterms
2. Federalism
3. Judicial power
4. Appropriation

19. Which term best matches this description: Interest protected by s 51(xxxi).

1. Property
2. Federalism
3. Judicial power
4. Appropriation

20. Which term best matches this description: Mode of trial required by s 80 for trials on indictment.

1. Jury
2. Federalism
3. Judicial power
4. Appropriation

ANSWER PAGE

Chapter 8 - Quiz Answers

1. A - s 51(xxxi)
s 51(xxxi) is the provision linked to this rule in this chapter.

2. A - s 80
s 80 is the provision linked to this rule in this chapter.

3. A - s 92
s 92 is the provision linked to this rule in this chapter.

4. A - s 116
s 116 is the provision linked to this rule in this chapter.

5. A - s 117
s 117 is the provision linked to this rule in this chapter.

6. A - Minister for the Army v Dalziel (1944) 68 CLR 261
Minister for the Army v Dalziel (1944) 68 CLR 261 is the authority connected to that proposition.

7. A - Bank of New South Wales v Commonwealth (1948) 76 CLR 1
Bank of New South Wales v Commonwealth (1948) 76 CLR 1 is the authority connected to that proposition.

8. A - Commonwealth v Tasmania (1983) 158 CLR 1
Commonwealth v Tasmania (1983) 158 CLR 1 is the authority connected to that proposition.

9. A - Wurridjal v Commonwealth (2009) 237 CLR 309
Wurridjal v Commonwealth (2009) 237 CLR 309 is the authority connected to that proposition.

10. A - Commonwealth v Yunupingu (2025) 99 ALJR 519
Commonwealth v Yunupingu (2025) 99 ALJR 519 is the authority connected to that proposition.

11. A - Kingswell v The Queen (1985) 159 CLR 264
Kingswell v The Queen (1985) 159 CLR 264 is the authority connected to that proposition.

12. A - Cole v Whitfield (1988) 165 CLR 360
Cole v Whitfield (1988) 165 CLR 360 is the authority connected to that proposition.

13. A - Adelaide Company of Jehovah's Witnesses Inc v Commonwealth (1943) 67 CLR 116
Adelaide Company of Jehovah's Witnesses Inc v Commonwealth (1943) 67 CLR 116 is the authority connected to that proposition.

14. A - Street v Queensland Bar Association (1989) 168 CLR 461
Street v Queensland Bar Association (1989) 168 CLR 461 is the authority connected to that proposition.

15. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

16. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

17. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

18. A - Justterms
Justterms is the term used in the chapter.

19. A - Property
Property is the term used in the chapter.

20. A - Jury
Jury is the term used in the chapter.

CHAPTER 8 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of s 51(xxxi).

2. Explain the constitutional significance of s 80.

3. Explain the constitutional significance of s 92.

4. Explain the constitutional significance of s 116.

5. Explain the constitutional significance of s 117.

6. What is the exam significance of Minister for the Army v Dalziel (1944) 68 CLR 261?

7. What is the exam significance of Bank of New South Wales v Commonwealth (1948) 76 CLR 1?

8. What is the exam significance of Commonwealth v Tasmania (1983) 158 CLR 1?

9. What is the exam significance of Wurridjal v Commonwealth (2009) 237 CLR 309?

10. What is the exam significance of Commonwealth v Yunupingu (2025) 99 ALJR 519?

11. What is the exam significance of Kingswell v The Queen (1985) 159 CLR 264?

12. What is the exam significance of Cole v Whitfield (1988) 165 CLR 360?

13. What is the exam significance of Adelaide Company of Jehovah's Witnesses Inc v Commonwealth (1943) 67 CLR 116?

14. What is the exam significance of Street v Queensland Bar Association (1989) 168 CLR 461?

15. What is the recommended constitutional problem-solving sequence?

16. Why is issue spotting especially important in constitutional law?

17. How should competing High Court reasoning be handled?

18. Why should constitutional provisions be cited precisely?

19. What does it mean to distinguish a case?

20. Define and explain the significance of Yunupingu in this chapter.

ANSWER PAGE

Chapter 8 - Short Answer Models

1. Explain the constitutional significance of s 51(xxxi).

s 51(xxxi): Acquisition of property on just terms for a purpose within Commonwealth power. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of s 80.

s 80: Trial on indictment of Commonwealth offences must be by jury. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 92.

s 92: Interstate trade, commerce and intercourse shall be absolutely free, as constitutionally interpreted. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 116.

s 116: Commonwealth limits concerning establishment of religion, religious observance, free exercise and religious tests. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. Explain the constitutional significance of s 117.

s 117: Protection against certain disabilities or discrimination based on residence in another State. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

6. What is the exam significance of Minister for the Army v Dalziel (1944) 68 CLR 261?

Minister for the Army v Dalziel (1944) 68 CLR 261: Broad conception of property for s 51(xxxi). Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

7. What is the exam significance of Bank of New South Wales v Commonwealth (1948) 76 CLR 1?

Bank of New South Wales v Commonwealth (1948) 76 CLR 1: Important acquisition-of-property authority. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

8. What is the exam significance of Commonwealth v Tasmania (1983) 158 CLR 1?

Commonwealth v Tasmania (1983) 158 CLR 1: Shows that regulation or sterilisation does not automatically amount to an acquisition without a corresponding benefit. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

9. What is the exam significance of Wurridjal v Commonwealth (2009) 237 CLR 309?

Wurridjal v Commonwealth (2009) 237 CLR 309: s 51(xxxi) applies in the territories context. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

10. What is the exam significance of Commonwealth v Yunupingu (2025) 99 ALJR 519?

Commonwealth v Yunupingu (2025) 99 ALJR 519: Modern authority on native title and acquisition of property. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

11. What is the exam significance of Kingswell v The Queen (1985) 159 CLR 264?

Kingswell v The Queen (1985) 159 CLR 264: s 80 depends on whether Parliament provides trial on indictment. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

12. What is the exam significance of Cole v Whitfield (1988) 165 CLR 360?

Cole v Whitfield (1988) 165 CLR 360: Modern interpretation of s 92 focusing on discriminatory burdens of a protectionist kind. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

13. What is the exam significance of Adelaide Company of Jehovah's Witnesses Inc v Commonwealth (1943) 67 CLR 116?

Adelaide Company of Jehovah's Witnesses Inc v Commonwealth (1943) 67 CLR 116: Major s 116 and defence-power authority. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

14. What is the exam significance of Street v Queensland Bar Association (1989) 168 CLR 461?

Street v Queensland Bar Association (1989) 168 CLR 461: Leading s 117 authority on discrimination based on State residence. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

15. What is the recommended constitutional problem-solving sequence?

Identify the challenged law and actor; identify the source of power; characterise the law; test constitutional limitations; consider Commonwealth-State interaction; apply authorities; address severance/remedy; conclude issue by issue.

16. Why is issue spotting especially important in constitutional law?

A single factual scenario can engage several independent validity questions. Missing one head of power, structural implication or express limitation can change the result.

17. How should competing High Court reasoning be handled?

Identify the binding ratio where possible, explain material differences between majority and dissenting reasoning where the course treats them as significant, and apply the current controlling approach.

18. Why should constitutional provisions be cited precisely?

The legal consequence often depends on exact textual language, the level of government to which it applies and any internal qualification in the provision.

19. What does it mean to distinguish a case?

Explain why a factual or legal difference makes the authority less directly controlling while still acknowledging its relevant principle.

20. Define and explain the significance of Yunupingu in this chapter.

Yunupingu: 2025 case involving native title and s 51(xxxi). Connect the concept to the relevant constitutional text and cases before applying it to facts.

INTERACTIVE REVISION

Chapter 8 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 8 Active Crossword

Across / Down Vocabulary Clues

1. **JUSTTERMS** - Condition attached to acquisition of property under s 51(xxxi).
2. **PROPERTY** - Interest protected by s 51(xxxi).
3. **JURY** - Mode of trial required by s 80 for trials on indictment.
4. **INTERCOURSE** - Word used in s 92 alongside trade and commerce.
5. **RELIGION** - Subject of s 116.
6. **RESIDENCE** - Basis of discrimination addressed by s 117.
7. **COLE** - First word of the leading modern s 92 case.
8. **DALZIEL** - Case giving property a broad meaning.
9. **YUNUPINGU** - 2025 case involving native title and s 51(xxxi).
10. **INDICTMENT** - Trigger for s 80 jury guarantee.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 8 - Crossword Answers

1. **JUSTTERMS** - Condition attached to acquisition of property under s 51(xxxi).
2. **PROPERTY** - Interest protected by s 51(xxxi).
3. **JURY** - Mode of trial required by s 80 for trials on indictment.
4. **INTERCOURSE** - Word used in s 92 alongside trade and commerce.
5. **RELIGION** - Subject of s 116.
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7. **COLE** - First word of the leading modern s 92 case.
8. **DALZIEL** - Case giving property a broad meaning.
9. **YUNUPINGU** - 2025 case involving native title and s 51(xxxi).
10. **INDICTMENT** - Trigger for s 80 jury guarantee.

Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

Coastal Acquisition Scheme

The Commonwealth extinguishes a long-term statutory licence and grants the exclusive benefit to a Commonwealth corporation without compensation. Advise the licence holder under s 51(xxxi).

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

Federal Protest Offence

A new Commonwealth offence carrying five years imprisonment is expressly declared to be tried summarily. An accused demands a jury under s 80. Advise.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 8 - HD IRAC Answers

Problem 1: Coastal Acquisition Scheme

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Express Constitutional Guarantees and Limitations.

RULE / LAW

Express guarantees have precise textual scope. s 51(xxxi) requires an acquisition of property and a corresponding benefit or interest on just terms; s 80 applies to Commonwealth trials on indictment; ss 92, 116 and 117 have distinct doctrinal tests. Key provisions include s 51(xxxi), s 80, s 92, s 116, s 117. Key authorities include Minister for the Army v Dalziel; Bank of New South Wales v Commonwealth; Commonwealth v Tasmania; Wurridjal v Commonwealth; Commonwealth v Yunupingu.

APPLICATION

Identify the claimant's exact proprietary interest or protected status. Regulation or economic loss alone is not necessarily acquisition. For s 80, determine whether the offence is tried on indictment. Apply the specific doctrine rather than treating these provisions as a general bill of rights.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: Federal Protest Offence

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Express Constitutional Guarantees and Limitations.

RULE / LAW

Express guarantees have precise textual scope. s 51(xxxi) requires an acquisition of property and a corresponding benefit or interest on just terms; s 80 applies to Commonwealth trials on indictment; ss 92, 116 and 117 have distinct doctrinal tests. Key provisions include s 51(xxxi), s 80, s 92, s 116, s 117. Key authorities include Minister for the Army v Dalziel; Bank of New South Wales v Commonwealth; Commonwealth v Tasmania; Wurridjal v Commonwealth; Commonwealth v Yunupingu.

APPLICATION

Identify the claimant's exact proprietary interest or protected status. Regulation or economic loss alone is not necessarily acquisition. For s 80, determine whether the offence is tried on indictment. Apply the specific doctrine rather than treating these provisions as a general bill of rights.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 9

Implied Freedom of Political Communication and Constitutional Freedoms

Learning chapter - legislation, cases, problem solving and revision

The implied freedom of political communication is not a personal right to free speech. It is a constitutional restriction on legislative and executive power derived from the system of representative and responsible government established by the Constitution.

The modern inquiry asks whether a law burdens political communication, whether its purpose is compatible with representative government, and whether the law is proportionate to that purpose. Structured proportionality - suitability, necessity and adequacy in balance - is central to modern analysis, although judicial approaches can differ.

The course materials repeatedly connect the freedom to protest laws, electoral restrictions, political donations and contemporary party-system concerns. Context matters because a formally neutral law can operate in ways that burden meaningful political participation.

Key Constitutional Provisions

Provision	Why it matters
ss 7 and 24	Textual foundation for representative government and direct popular choice.
s 64	Responsible government context through ministerial membership of Parliament.
s 128	Popular participation in constitutional alteration contributes to the structural implication.

Cases for This Chapter

Case / Authority	Proposition and exam use
Lange v Australian Broadcasting Corporation (1997) 189 CLR 520	Modern constitutional foundation and two-stage framework for the implied freedom.
Coleman v Power (2004) 220 CLR 1	

Case / Authority	Proposition and exam use
	Political communication may be insulting or provocative and still fall within the freedom.
McCloy v New South Wales (2015) 257 CLR 178	Introduced structured proportionality into the modern test.
Brown v Tasmania (2017) 261 CLR 328	Invalidated aspects of anti-protest legislation as a disproportionate burden on political communication.
Comcare v Banerji (2019) 267 CLR 373	Confirms the freedom is a limit on power, not an individual free-speech right.
Unions NSW v New South Wales (2019) 264 CLR 595	Political finance restrictions can impose disproportionate burdens.
Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883	Contemporary electoral-law authority central to the course case study.

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Forum Three, Forum Five case-study guidance, Tutorial Eight, Tutorial Nine and Babet materials.

CHAPTER 9 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Textual foundation for representative government and direct popular choice.

1. ss 7 and 24
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Responsible government context through ministerial membership of Parliament.

1. s 64
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Popular participation in constitutional alteration contributes to the structural implication.

1. s 128
2. s 109
3. s 51(xx)
4. s 92

4. Which case is used in this chapter for the following proposition: Modern constitutional foundation and two-stage framework for the implied freedom.

1. Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
2. Coleman v Power (2004) 220 CLR 1
3. McCloy v New South Wales (2015) 257 CLR 178
4. Brown v Tasmania (2017) 261 CLR 328

5. Which case is used in this chapter for the following proposition: Political communication may be insulting or provocative and still fall within the freedom.

1. Coleman v Power (2004) 220 CLR 1
2. Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
3. McCloy v New South Wales (2015) 257 CLR 178
4. Brown v Tasmania (2017) 261 CLR 328

6. Which case is used in this chapter for the following proposition: Introduced structured proportionality into the modern test.

1. McCloy v New South Wales (2015) 257 CLR 178
2. Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
3. Coleman v Power (2004) 220 CLR 1
4. Brown v Tasmania (2017) 261 CLR 328

7. Which case is used in this chapter for the following proposition: Invalidated aspects of anti-protest legislation as a disproportionate burden on political communication.

1. Brown v Tasmania (2017) 261 CLR 328
2. Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
3. Coleman v Power (2004) 220 CLR 1
4. McCloy v New South Wales (2015) 257 CLR 178

8. Which case is used in this chapter for the following proposition: Confirms the freedom is a limit on power, not an individual free-speech right.

1. Comcare v Banerji (2019) 267 CLR 373
2. Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
3. Coleman v Power (2004) 220 CLR 1
4. McCloy v New South Wales (2015) 257 CLR 178

9. Which case is used in this chapter for the following proposition: Political finance restrictions can impose disproportionate burdens.

1. Unions NSW v New South Wales (2019) 264 CLR 595
2. Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
3. Coleman v Power (2004) 220 CLR 1
4. McCloy v New South Wales (2015) 257 CLR 178

10. Which case is used in this chapter for the following proposition: Contemporary electoral-law authority central to the course case study.

1. Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883
2. Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
3. Coleman v Power (2004) 220 CLR 1
4. McCloy v New South Wales (2015) 257 CLR 178

11. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?
2. Is the law politically popular?
3. Did every State consent?
4. Was the law enacted unanimously?

12. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

13. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it
2. Name it without explanation
3. Quote the whole judgment
4. Use it only in the conclusion

14. Which term best matches this description: Foundational modern implied-freedom case.

1. Lange
2. Federalism
3. Judicial power
4. Appropriation

15. Which term best matches this description: Structured proportionality case.

1. Mccloy
2. Federalism
3. Judicial power

4. Appropriation

16. Which term best matches this description: Tasmanian anti-protest case.

1. Brown
2. Federalism
3. Judicial power
4. Appropriation

17. Which term best matches this description: First central inquiry in implied-freedom analysis.

1. Burden
2. Federalism
3. Judicial power
4. Appropriation

18. Which term best matches this description: Must be compatible with representative government.

1. Purpose
2. Federalism
3. Judicial power
4. Appropriation

19. Which term best matches this description: First proportionality sub-stage.

1. Suitability
2. Federalism
3. Judicial power
4. Appropriation

20. Which term best matches this description: Asks whether an obvious and compelling less restrictive alternative exists.

1. Necessity
2. Federalism
3. Judicial power
4. Appropriation

ANSWER PAGE

Chapter 9 - Quiz Answers

1. A - ss 7 and 24
ss 7 and 24 is the provision linked to this rule in this chapter.

2. A - s 64
s 64 is the provision linked to this rule in this chapter.

3. A - s 128
s 128 is the provision linked to this rule in this chapter.

4. A - Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
Lange v Australian Broadcasting Corporation (1997) 189 CLR 520 is the authority connected to that proposition.

5. A - Coleman v Power (2004) 220 CLR 1
Coleman v Power (2004) 220 CLR 1 is the authority connected to that proposition.

6. A - McCloy v New South Wales (2015) 257 CLR 178
McCloy v New South Wales (2015) 257 CLR 178 is the authority connected to that proposition.

7. A - Brown v Tasmania (2017) 261 CLR 328
Brown v Tasmania (2017) 261 CLR 328 is the authority connected to that proposition.

8. A - Comcare v Banerji (2019) 267 CLR 373
Comcare v Banerji (2019) 267 CLR 373 is the authority connected to that proposition.

9. A - Unions NSW v New South Wales (2019) 264 CLR 595
Unions NSW v New South Wales (2019) 264 CLR 595 is the authority connected to that proposition.

10. A - Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883
Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883 is the authority connected to that proposition.

11. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

12. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

13. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

14. A - Lange
Lange is the term used in the chapter.

15. A - Mccloy
Mccloy is the term used in the chapter.

16. A - Brown
Brown is the term used in the chapter.

17. A - Burden
Burden is the term used in the chapter.

18. A - Purpose
Purpose is the term used in the chapter.

19. A - Suitability
Suitability is the term used in the chapter.

20. A - Necessity
Necessity is the term used in the chapter.

CHAPTER 9 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of ss 7 and 24.

2. Explain the constitutional significance of s 64.

3. Explain the constitutional significance of s 128.

4. What is the exam significance of Lange v Australian Broadcasting Corporation (1997) 189 CLR 520?

5. What is the exam significance of Coleman v Power (2004) 220 CLR 1?

6. What is the exam significance of McCloy v New South Wales (2015) 257 CLR 178?

7. What is the exam significance of Brown v Tasmania (2017) 261 CLR 328?

8. What is the exam significance of Comcare v Banerji (2019) 267 CLR 373?

9. What is the exam significance of Unions NSW v New South Wales (2019) 264 CLR 595?

10. What is the exam significance of Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883?

11. What is the recommended constitutional problem-solving sequence?

12. Why is issue spotting especially important in constitutional law?

13. How should competing High Court reasoning be handled?

14. Why should constitutional provisions be cited precisely?

15. What does it mean to distinguish a case?

16. Define and explain the significance of Purpose in this chapter.

17. Define and explain the significance of Suitability in this chapter.

18. Define and explain the significance of Necessity in this chapter.

19. Define and explain the significance of Balance in this chapter.

20. Define and explain the significance of Political in this chapter.

ANSWER PAGE

Chapter 9 - Short Answer Models

1. Explain the constitutional significance of ss 7 and 24.

ss 7 and 24: Textual foundation for representative government and direct popular choice. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of s 64.

s 64: Responsible government context through ministerial membership of Parliament. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 128.

s 128: Popular participation in constitutional alteration contributes to the structural implication. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. What is the exam significance of Lange v Australian Broadcasting Corporation (1997) 189 CLR 520?

Lange v Australian Broadcasting Corporation (1997) 189 CLR 520: Modern constitutional foundation and two-stage framework for the implied freedom. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

5. What is the exam significance of Coleman v Power (2004) 220 CLR 1?

Coleman v Power (2004) 220 CLR 1: Political communication may be insulting or provocative and still fall within the freedom. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

6. What is the exam significance of McCloy v New South Wales (2015) 257 CLR 178?

McCloy v New South Wales (2015) 257 CLR 178: Introduced structured proportionality into the modern test. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

7. What is the exam significance of Brown v Tasmania (2017) 261 CLR 328?

Brown v Tasmania (2017) 261 CLR 328: Invalidated aspects of anti-protest legislation as a disproportionate burden on political communication. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

8. What is the exam significance of Comcare v Banerji (2019) 267 CLR 373?

Comcare v Banerji (2019) 267 CLR 373: Confirms the freedom is a limit on power, not an individual free-speech right. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

9. What is the exam significance of Unions NSW v New South Wales (2019) 264 CLR 595?

Unions NSW v New South Wales (2019) 264 CLR 595: Political finance restrictions can impose disproportionate burdens. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

10. What is the exam significance of Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883?

Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883: Contemporary electoral-law authority central to the course case study. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

11. What is the recommended constitutional problem-solving sequence?

Identify the challenged law and actor; identify the source of power; characterise the law; test constitutional limitations; consider Commonwealth-State interaction; apply authorities; address severance/remedy; conclude issue by issue.

12. Why is issue spotting especially important in constitutional law?

A single factual scenario can engage several independent validity questions. Missing one head of power, structural implication or express limitation can change the result.

13. How should competing High Court reasoning be handled?

Identify the binding ratio where possible, explain material differences between majority and dissenting reasoning where the course treats them as significant, and apply the current controlling approach.

14. Why should constitutional provisions be cited precisely?

The legal consequence often depends on exact textual language, the level of government to which it applies and any internal qualification in the provision.

15. What does it mean to distinguish a case?

Explain why a factual or legal difference makes the authority less directly controlling while still acknowledging its relevant principle.

16. Define and explain the significance of Purpose in this chapter.

Purpose: Must be compatible with representative government. Connect the concept to the relevant constitutional text and cases before applying it to facts.

17. Define and explain the significance of Suitability in this chapter.

Suitability: First proportionality sub-stage. Connect the concept to the relevant constitutional text and cases before applying it to facts.

18. Define and explain the significance of Necessity in this chapter.

Necessity: Asks whether an obvious and compelling less restrictive alternative exists. Connect the concept to the relevant constitutional text and cases before applying it to facts.

19. Define and explain the significance of Balance in this chapter.

Balance: Final proportionality judgment. Connect the concept to the relevant constitutional text and cases before applying it to facts.

20. Define and explain the significance of Political in this chapter.

Political: Kind of communication constitutionally relevant. Connect the concept to the relevant constitutional text and cases before applying it to facts.

INTERACTIVE REVISION

Chapter 9 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 9 Active Crossword

Across / Down Vocabulary Clues

1. **LANGE** - Foundational modern implied-freedom case.
2. **MCCLOY** - Structured proportionality case.
3. **BROWN** - Tasmanian anti-protest case.
4. **BURDEN** - First central inquiry in implied-freedom analysis.
5. **PURPOSE** - Must be compatible with representative government.
6. **SUITABILITY** - First proportionality sub-stage.
7. **NECESSITY** - Asks whether an obvious and compelling less restrictive alternative exists.
8. **BALANCE** - Final proportionality judgment.
9. **POLITICAL** - Kind of communication constitutionally relevant.
10. **FREEDOM** - Structural constitutional implication, not a personal right.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 9 - Crossword Answers

1. **LANGE** - Foundational modern implied-freedom case.
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3. **BROWN** - Tasmanian anti-protest case.
4. **BURDEN** - First central inquiry in implied-freedom analysis.
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8. **BALANCE** - Final proportionality judgment.
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10. **FREEDOM** - Structural constitutional implication, not a personal right.

Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

Parliament Precinct Exclusion Act

A Commonwealth law permits police to exclude any person displaying signs critical of government policy from a 2 km zone around Parliament House during sitting weeks.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

Independent Advertising Cap

Electoral law caps independent-candidate advertising at one quarter of the amount effectively available to registered political parties. Advise an independent candidate.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 9 - HD IRAC Answers

Problem 1: Parliament Precinct Exclusion Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Implied Freedom of Political Communication and Constitutional Freedoms.

RULE / LAW

The implied freedom is a restriction on power derived from representative government, not a personal right. The modern analysis asks: effective burden; compatible legitimate purpose; and proportionality, including suitability, necessity and adequacy in balance. Key provisions include ss 7 and 24, s 64, s 128. Key authorities include Lange v Australian Broadcasting Corporation; Coleman v Power; McCloy v New South Wales; Brown v Tasmania; Comcare v Banerji.

APPLICATION

Political protest and electoral communication plainly fall within protected communication. Scrutinise whether the law targets political expression, whether its stated purpose is constitutionally compatible, and whether less restrictive practical alternatives exist. Compare Lange, McCloy, Brown and Babet.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: Independent Advertising Cap

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Implied Freedom of Political Communication and Constitutional Freedoms.

RULE / LAW

The implied freedom is a restriction on power derived from representative government, not a personal right. The modern analysis asks: effective burden; compatible legitimate purpose; and proportionality, including suitability, necessity and adequacy in balance. Key provisions include ss 7 and 24, s 64, s 128. Key authorities include Lange v Australian Broadcasting Corporation; Coleman v Power; McCloy v New South Wales; Brown v Tasmania; Comcare v Banerji.

APPLICATION

Political protest and electoral communication plainly fall within protected communication. Scrutinise whether the law targets political expression, whether its stated purpose is constitutionally compatible, and whether less restrictive practical alternatives exist. Compare Lange, McCloy, Brown and Babet.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 10

Executive Power, Responsible Government, Spending and Nationhood

Learning chapter - legislation, cases, problem solving and revision

Section 61 is the constitutional root of Commonwealth executive power. The Executive exercises statutory powers, prerogative powers, ordinary legal capacities and a limited nationhood power. The Prime Minister and Cabinet operate mainly through convention rather than detailed constitutional text.

Commonwealth spending requires careful separation of appropriation from substantive authority. Sections 81 and 83 concern the Consolidated Revenue Fund and appropriation, but do not themselves supply unlimited executive power to spend. Pape and the Williams cases are essential authorities.

The nationhood power supports enterprises and activities peculiarly adapted to national government, especially where coordinated national action is required, but it is not a general power to do anything of national political importance.

Key Constitutional Provisions

Provision	Why it matters
s 61	Executive power of the Commonwealth.
s 62	Federal Executive Council.
s 64	Appointment of Ministers and responsible-government link to Parliament.
s 81	Consolidated Revenue Fund and appropriation.
s 83	No money drawn from Treasury except under appropriation made by law.
s 51(xxxix)	Incidental legislative support for execution of constitutional powers, including aspects of nationhood power.

Cases for This Chapter

Case / Authority	Proposition and exam use
Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73	Broad delegation of legislative power to the Executive can be constitutionally valid.
Ruddock v Vadarlis (2001) 110 FCR 491	Prerogative power and statutory displacement in the executive context.
Pape v Commissioner of Taxation (2009) 238 CLR 1	Appropriation is not itself substantive spending power; nationhood power supported the GFC response on the facts.
Williams v Commonwealth (No 1) (2012) 248 CLR 156	Executive contracting and spending require constitutional and statutory authority beyond mere appropriation.
Williams v Commonwealth (No 2) (2014) 252 CLR 416	Confirmed limits on legislative attempts to validate executive spending programs.
Davis v Commonwealth (1988) 166 CLR 79	Nationhood power supported national Bicentenary activities but disproportionate restrictions could still be invalid.

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Tutorial Nine (Week Eleven) - Forum Seven study notes and IRAC answers; Forum Two and Forum Three responsible-government materials.

CHAPTER 10 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Executive power of the Commonwealth.

1. s 61
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Federal Executive Council.

1. s 62
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Appointment of Ministers and responsible-government link to Parliament.

1. s 64
2. s 109
3. s 128
4. s 92

4. Which constitutional provision is most directly associated with: Consolidated Revenue Fund and appropriation.

1. s 81
2. s 109
3. s 128
4. s 92

5. Which constitutional provision is most directly associated with: No money drawn from Treasury except under appropriation made by law.

1. s 83
2. s 109
3. s 128
4. s 92

6. Which constitutional provision is most directly associated with: Incidental legislative support for execution of constitutional powers, including aspects of nationhood power.

1. s 51(xxxix)
2. s 109
3. s 128
4. s 92

7. Which case is used in this chapter for the following proposition: Broad delegation of legislative power to the Executive can be constitutionally valid.

1. Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73
2. Ruddock v Vadarlis (2001) 110 FCR 491
3. Pape v Commissioner of Taxation (2009) 238 CLR 1
4. Williams v Commonwealth (No 1) (2012) 248 CLR 156

8. Which case is used in this chapter for the following proposition: Prerogative power and statutory displacement in the executive context.

1. Ruddock v Vadarlis (2001) 110 FCR 491
2. Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73
3. Pape v Commissioner of Taxation (2009) 238 CLR 1
4. Williams v Commonwealth (No 1) (2012) 248 CLR 156

9. Which case is used in this chapter for the following proposition: Appropriation is not itself substantive spending power; nationhood power supported the GFC response on the facts.

1. Pape v Commissioner of Taxation (2009) 238 CLR 1
2. Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73
3. Ruddock v Vadarlis (2001) 110 FCR 491

4. Williams v Commonwealth (No 1) (2012) 248 CLR 156

10. Which case is used in this chapter for the following proposition: Executive contracting and spending require constitutional and statutory authority beyond mere appropriation.

1. Williams v Commonwealth (No 1) (2012) 248 CLR 156
2. Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73
3. Ruddock v Vadarlis (2001) 110 FCR 491
4. Pape v Commissioner of Taxation (2009) 238 CLR 1

11. Which case is used in this chapter for the following proposition: Confirmed limits on legislative attempts to validate executive spending programs.

1. Williams v Commonwealth (No 2) (2014) 252 CLR 416
2. Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73
3. Ruddock v Vadarlis (2001) 110 FCR 491
4. Pape v Commissioner of Taxation (2009) 238 CLR 1

12. Which case is used in this chapter for the following proposition: Nationhood power supported national Bicentenary activities but disproportionate restrictions could still be invalid.

1. Davis v Commonwealth (1988) 166 CLR 79
2. Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73
3. Ruddock v Vadarlis (2001) 110 FCR 491
4. Pape v Commissioner of Taxation (2009) 238 CLR 1

13. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?
2. Is the law politically popular?
3. Did every State consent?
4. Was the law enacted unanimously?

14. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

15. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it
2. Name it without explanation
3. Quote the whole judgment
4. Use it only in the conclusion

16. Which term best matches this description: Arm of government principally addressed by Chapter II.

1. Executive
2. Federalism
3. Judicial power
4. Appropriation

17. Which term best matches this description: Limited non-statutory executive power for genuinely national activities.

1. Nationhood
2. Federalism
3. Judicial power
4. Appropriation

18. Which term best matches this description: Legal authorisation to draw money from Treasury.

1. Appropriation
2. Federalism
3. Judicial power
4. Appropriation

19. Which term best matches this description: GFC stimulus and nationhood-power case.

1. Pape
2. Federalism

3. Judicial power
4. Appropriation

20. Which term best matches this description: School chaplaincy litigation on executive spending.

1. Williams
2. Federalism
3. Judicial power
4. Appropriation

ANSWER PAGE

Chapter 10 - Quiz Answers

1. A - s 61
s 61 is the provision linked to this rule in this chapter.

2. A - s 62
s 62 is the provision linked to this rule in this chapter.

3. A - s 64
s 64 is the provision linked to this rule in this chapter.

4. A - s 81
s 81 is the provision linked to this rule in this chapter.

5. A - s 83
s 83 is the provision linked to this rule in this chapter.

6. A - s 51(xxxix)
s 51(xxxix) is the provision linked to this rule in this chapter.

7. A - Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73
Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73 is the authority connected to that proposition.

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Ruddock v Vadarlis (2001) 110 FCR 491 is the authority connected to that proposition.

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Pape v Commissioner of Taxation (2009) 238 CLR 1 is the authority connected to that proposition.

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Williams v Commonwealth (No 1) (2012) 248 CLR 156 is the authority connected to that proposition.

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Williams v Commonwealth (No 2) (2014) 252 CLR 416 is the authority connected to that proposition.

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Davis v Commonwealth (1988) 166 CLR 79 is the authority connected to that proposition.

13. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

14. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

15. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

16. A - Executive
Executive is the term used in the chapter.

17. A - Nationhood
Nationhood is the term used in the chapter.

18. A - Appropriation
Appropriation is the term used in the chapter.

19. A - Pape
Pape is the term used in the chapter.

20. A - Williams
Williams is the term used in the chapter.

CHAPTER 10 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of s 61.

2. Explain the constitutional significance of s 62.

3. Explain the constitutional significance of s 64.

4. Explain the constitutional significance of s 81.

5. Explain the constitutional significance of s 83.

6. Explain the constitutional significance of s 51(xxxix).

7. What is the exam significance of Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73?

8. What is the exam significance of Ruddock v Vadarlis (2001) 110 FCR 491?

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13. What is the recommended constitutional problem-solving sequence?

14. Why is issue spotting especially important in constitutional law?

15. How should competing High Court reasoning be handled?

16. Why should constitutional provisions be cited precisely?

17. What does it mean to distinguish a case?

18. Define and explain the significance of Cabinet in this chapter.

19. Define and explain the significance of Ministers in this chapter.

20. Define and explain the significance of Dignan in this chapter.

ANSWER PAGE

Chapter 10 - Short Answer Models

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s 61: Executive power of the Commonwealth. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of s 62.

s 62: Federal Executive Council. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 64.

s 64: Appointment of Ministers and responsible-government link to Parliament. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 81.

s 81: Consolidated Revenue Fund and appropriation. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. Explain the constitutional significance of s 83.

s 83: No money drawn from Treasury except under appropriation made by law. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

6. Explain the constitutional significance of s 51(xxxix).

s 51(xxxix): Incidental legislative support for execution of constitutional powers, including aspects of nationhood power. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

7. What is the exam significance of Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73?

Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73: Broad delegation of legislative power to the Executive can be constitutionally valid. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

8. What is the exam significance of Ruddock v Vadarlis (2001) 110 FCR 491?

Ruddock v Vadarlis (2001) 110 FCR 491: Prerogative power and statutory displacement in the executive context. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

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Pape v Commissioner of Taxation (2009) 238 CLR 1: Appropriation is not itself substantive spending power; nationhood power supported the GFC response on the facts. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

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17. What does it mean to distinguish a case?

Explain why a factual or legal difference makes the authority less directly controlling while still acknowledging its relevant principle.

18. Define and explain the significance of Cabinet in this chapter.

Cabinet: Central executive body not expressly created by the Constitution. Connect the concept to the relevant constitutional text and cases before applying it to facts.

19. Define and explain the significance of Ministers in this chapter.

Ministers: Officeholders addressed by s 64. Connect the concept to the relevant constitutional text and cases before applying it to facts.

20. Define and explain the significance of Dignan in this chapter.

Dignan: Delegated-legislation authority. Connect the concept to the relevant constitutional text and cases before applying it to facts.

INTERACTIVE REVISION

Chapter 10 - Across & Down Crossword

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Launch Chapter 10 Active Crossword

Across / Down Vocabulary Clues

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3. **APPROPRIATION** - Legal authorisation to draw money from Treasury.
4. **PAPE** - GFC stimulus and nationhood-power case.
5. **WILLIAMS** - School chaplaincy litigation on executive spending.
6. **PREROGATIVE** - Residual common-law powers of the Crown.
7. **CABINET** - Central executive body not expressly created by the Constitution.
8. **MINISTERS** - Officeholders addressed by s 64.
9. **DIGNAN** - Delegated-legislation authority.
10. **RESPONSIBLE** - Type of government linking Ministers to Parliament.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 10 - Crossword Answers

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Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

National Mental Health App

The Commonwealth Executive signs a $500 million contract for a national mental-health app. Parliament has appropriated money but no statute authorises the program and no obvious s 51 head applies.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

National Commemoration Symbols Act

Parliament creates a national anniversary authority and makes unauthorised use of its logo punishable by imprisonment. Advise on nationhood power and proportionality.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 10 - HD IRAC Answers

Problem 1: National Mental Health App

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Executive Power, Responsible Government, Spending and Nationhood.

RULE / LAW

s 61 supports execution of the Constitution and laws, prerogative/common-law capacities and limited nationhood functions. ss 81 and 83 concern appropriation, but appropriation alone does not supply substantive spending authority. Pape and Williams require a valid constitutional and statutory foundation. Key provisions include s 61, s 62, s 64, s 81, s 83. Key authorities include Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan; Ruddock v Vadarlis; Pape v Commissioner of Taxation; Williams v Commonwealth; Williams v Commonwealth.

APPLICATION

Separate the existence of appropriated funds from authority to enter the contract or program. Identify a head of legislative power or a narrow s 61 basis. For nationhood, ask whether the activity is peculiarly adapted to national government and whether the means chosen are proportionate.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result

while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: National Commemoration Symbols Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Executive Power, Responsible Government, Spending and Nationhood.

RULE / LAW

s 61 supports execution of the Constitution and laws, prerogative/common-law capacities and limited nationhood functions. ss 81 and 83 concern appropriation, but appropriation alone does not supply substantive spending authority. Pape and Williams require a valid constitutional and statutory foundation. Key provisions include s 61, s 62, s 64, s 81, s 83. Key authorities include Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan; Ruddock v Vadarlis; Pape v Commissioner of Taxation; Williams v Commonwealth; Williams v Commonwealth.

APPLICATION

Separate the existence of appropriated funds from authority to enter the contract or program. Identify a head of legislative power or a narrow s 61 basis. For nationhood, ask whether the activity is peculiarly adapted to national government and whether the means chosen are proportionate.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 11

Judicial Power, Chapter III and Separation of Powers

Learning chapter - legislation, cases, problem solving and revision

Chapter III vests Commonwealth judicial power in courts meeting constitutional requirements. The Constitution imposes a strict separation between federal judicial power and non-judicial bodies in a way that does not identically apply to legislative and executive functions.

Punitive detention is ordinarily an exclusively judicial function. Executive detention can be valid where it is authorised by law and genuinely directed to a non-punitive, administrative or protective purpose. Duration, necessity and objective connection to that purpose are critical.

The Kable doctrine protects the institutional integrity of State courts because State courts may be invested with federal jurisdiction. Chapter III also protects supervisory jurisdiction and judicial review through cases such as Kirk and Plaintiff S157.

Key Constitutional Provisions

Provision	Why it matters
s 71	Vests judicial power of the Commonwealth in the High Court and other federal courts and courts invested with federal jurisdiction.
s 72	Tenure and remuneration protections for federal judges.
s 75(v)	Original High Court jurisdiction where mandamus, prohibition or injunction is sought against an officer of the Commonwealth.
s 80	Jury trial in federal trials on indictment.
Ch III	Structural framework for federal judicial power.

Cases for This Chapter

Case / Authority	Proposition and exam use
Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1	Punitive detention is ordinarily judicial; administrative detention may be valid if genuinely non-punitive.

Case / Authority	Proposition and exam use
NAAJA v Northern Territory (2015) 256 CLR 569	Short protective detention upheld; duration and purpose matter.
Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42	Important analysis of executive detention and objective connection to statutory purpose.
NZYQ v Minister for Immigration (2023) 280 CLR 137	Indefinite immigration detention became unconstitutional where removal was not reasonably foreseeable.
Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51	State courts cannot be given functions incompatible with their institutional integrity as repositories of federal jurisdiction.
Kirk v Industrial Court (NSW) (2010) 239 CLR 531	State Supreme Courts must retain supervisory jurisdiction for jurisdictional error.
Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476	s 75(v) protects a minimum entrenched provision of judicial review against Commonwealth officers.

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Tutorial Nine Chapter III detention materials and course checklists identifying strict separation of Commonwealth judicial power and Kable incompatibility.

CHAPTER 11 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Vests judicial power of the Commonwealth in the High Court and other federal courts and courts invested with federal jurisdiction.

1. s 71
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Tenure and remuneration protections for federal judges.

1. s 72
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Original High Court jurisdiction where mandamus, prohibition or injunction is sought against an officer of the Commonwealth.

1. s 75(v)
2. s 109
3. s 128
4. s 92

4. Which constitutional provision is most directly associated with: Jury trial in federal trials on indictment.

1. s 80
2. s 109
3. s 128
4. s 92

5. Which constitutional provision is most directly associated with: Structural framework for federal judicial power.

1. Ch III
2. s 109
3. s 128
4. s 92

6. Which case is used in this chapter for the following proposition: Punitive detention is ordinarily judicial; administrative detention may be valid if genuinely non-punitive.

1. Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1
2. NAAJA v Northern Territory (2015) 256 CLR 569
3. Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42
4. NZYQ v Minister for Immigration (2023) 280 CLR 137

7. Which case is used in this chapter for the following proposition: Short protective detention upheld; duration and purpose matter.

1. NAAJA v Northern Territory (2015) 256 CLR 569
2. Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1
3. Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42
4. NZYQ v Minister for Immigration (2023) 280 CLR 137

8. Which case is used in this chapter for the following proposition: Important analysis of executive detention and objective connection to statutory purpose.

1. Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42
2. Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1
3. NAAJA v Northern Territory (2015) 256 CLR 569
4. NZYQ v Minister for Immigration (2023) 280 CLR 137

9. Which case is used in this chapter for the following proposition: Indefinite immigration detention became unconstitutional where removal was not reasonably foreseeable.

1. NZYQ v Minister for Immigration (2023) 280 CLR 137
2. Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1
3. NAAJA v Northern Territory (2015) 256 CLR 569
4. Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42

10. Which case is used in this chapter for the following proposition: State courts cannot be given functions incompatible with their institutional integrity as repositories of federal jurisdiction.

1. Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51
2. Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1
3. NAAJA v Northern Territory (2015) 256 CLR 569
4. Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42

11. Which case is used in this chapter for the following proposition: State Supreme Courts must retain supervisory jurisdiction for jurisdictional error.

1. Kirk v Industrial Court (NSW) (2010) 239 CLR 531
2. Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1
3. NAAJA v Northern Territory (2015) 256 CLR 569
4. Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42

12. Which case is used in this chapter for the following proposition: s 75(v) protects a minimum entrenched provision of judicial review against Commonwealth officers.

1. Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476
2. Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1
3. NAAJA v Northern Territory (2015) 256 CLR 569
4. Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42

13. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?
2. Is the law politically popular?
3. Did every State consent?
4. Was the law enacted unanimously?

14. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

15. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it
2. Name it without explanation

3. Quote the whole judgment
4. Use it only in the conclusion

16. Which term best matches this description: Type of Commonwealth power vested by Chapter III.

1. Judicial
2. Federalism
3. Judicial power
4. Appropriation

17. Which term best matches this description: Doctrine protecting institutional integrity of State courts.

1. Kable
2. Federalism
3. Judicial power
4. Appropriation

18. Which term best matches this description: Case protecting supervisory jurisdiction of State Supreme Courts.

1. Kirk
2. Federalism
3. Judicial power
4. Appropriation

19. Which term best matches this description: Liberty restriction central to the punitive/protective cases.

1. Detention
2. Federalism
3. Judicial power
4. Appropriation

20. Which term best matches this description: Character normally requiring exercise by a court.

1. Punitive
2. Federalism
3. Judicial power
4. Appropriation

ANSWER PAGE

Chapter 11 - Quiz Answers

1. A - s 71
s 71 is the provision linked to this rule in this chapter.

2. A - s 72
s 72 is the provision linked to this rule in this chapter.

3. A - s 75(v)
s 75(v) is the provision linked to this rule in this chapter.

4. A - s 80
s 80 is the provision linked to this rule in this chapter.

5. A - Ch III
Ch III is the provision linked to this rule in this chapter.

6. A - Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1
Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1 is the authority connected to that proposition.

7. A - NAAJA v Northern Territory (2015) 256 CLR 569
NAAJA v Northern Territory (2015) 256 CLR 569 is the authority connected to that proposition.

8. A - Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42
Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42 is the authority connected to that proposition.

9. A - NZYQ v Minister for Immigration (2023) 280 CLR 137
NZYQ v Minister for Immigration (2023) 280 CLR 137 is the authority connected to that proposition.

10. A - Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51
Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51 is the authority connected to that proposition.

11. A - Kirk v Industrial Court (NSW) (2010) 239 CLR 531
Kirk v Industrial Court (NSW) (2010) 239 CLR 531 is the authority connected to that proposition.

12. A - Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476
Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476 is the authority connected to that proposition.

13. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

14. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

15. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

16. A - Judicial
Judicial is the term used in the chapter.

17. A - Kable
Kable is the term used in the chapter.

18. A - Kirk
Kirk is the term used in the chapter.

19. A - Detention
Detention is the term used in the chapter.

20. A - Punitive
Punitive is the term used in the chapter.

CHAPTER 11 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of s 71.

2. Explain the constitutional significance of s 72.

3. Explain the constitutional significance of s 75(v).

4. Explain the constitutional significance of s 80.

5. Explain the constitutional significance of Ch III.

6. What is the exam significance of Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1?

7. What is the exam significance of NAAJA v Northern Territory (2015) 256 CLR 569?

8. What is the exam significance of Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42?

9. What is the exam significance of NZYQ v Minister for Immigration (2023) 280 CLR 137?

10. What is the exam significance of Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51?

11. What is the exam significance of Kirk v Industrial Court (NSW) (2010) 239 CLR 531?

12. What is the exam significance of Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476?

13. What is the recommended constitutional problem-solving sequence?

14. Why is issue spotting especially important in constitutional law?

15. How should competing High Court reasoning be handled?

16. Why should constitutional provisions be cited precisely?

17. What does it mean to distinguish a case?

18. Define and explain the significance of Jurisdiction in this chapter.

19. Define and explain the significance of S157 in this chapter.

20. Define and explain the significance of Chapteriii in this chapter.

ANSWER PAGE

Chapter 11 - Short Answer Models

1. Explain the constitutional significance of s 71.

s 71: Vests judicial power of the Commonwealth in the High Court and other federal courts and courts invested with federal jurisdiction. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of s 72.

s 72: Tenure and remuneration protections for federal judges. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 75(v).

s 75(v): Original High Court jurisdiction where mandamus, prohibition or injunction is sought against an officer of the Commonwealth. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 80.

s 80: Jury trial in federal trials on indictment. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. Explain the constitutional significance of Ch III.

Ch III: Structural framework for federal judicial power. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

6. What is the exam significance of Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1?

Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1: Punitive detention is ordinarily judicial; administrative detention may be valid if genuinely non-punitive. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

7. What is the exam significance of NAAJA v Northern Territory (2015) 256 CLR 569?

NAAJA v Northern Territory (2015) 256 CLR 569: Short protective detention upheld; duration and purpose matter. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

8. What is the exam significance of Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42?

Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42: Important analysis of executive detention and objective connection to statutory purpose. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

9. What is the exam significance of NZYQ v Minister for Immigration (2023) 280 CLR 137?

NZYQ v Minister for Immigration (2023) 280 CLR 137: Indefinite immigration detention became unconstitutional where removal was not reasonably foreseeable. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

10. What is the exam significance of Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51?

Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51: State courts cannot be given functions incompatible with their institutional integrity as repositories of federal jurisdiction. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

11. What is the exam significance of Kirk v Industrial Court (NSW) (2010) 239 CLR 531?

Kirk v Industrial Court (NSW) (2010) 239 CLR 531: State Supreme Courts must retain supervisory jurisdiction for jurisdictional error. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

12. What is the exam significance of Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476?

Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476: s 75(v) protects a minimum entrenched provision of judicial review against Commonwealth officers. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

13. What is the recommended constitutional problem-solving sequence?

Identify the challenged law and actor; identify the source of power; characterise the law; test constitutional limitations; consider Commonwealth-State interaction; apply authorities; address severance/remedy; conclude issue by issue.

14. Why is issue spotting especially important in constitutional law?

A single factual scenario can engage several independent validity questions. Missing one head of power, structural implication or express limitation can change the result.

15. How should competing High Court reasoning be handled?

Identify the binding ratio where possible, explain material differences between majority and dissenting reasoning where the course treats them as significant, and apply the current controlling approach.

16. Why should constitutional provisions be cited precisely?

The legal consequence often depends on exact textual language, the level of government to which it applies and any internal qualification in the provision.

17. What does it mean to distinguish a case?

Explain why a factual or legal difference makes the authority less directly controlling while still acknowledging its relevant principle.

18. Define and explain the significance of Jurisdiction in this chapter.

Jurisdiction: Legal authority of a court to decide matters. Connect the concept to the relevant constitutional text and cases before applying it to facts.

19. Define and explain the significance of S157 in this chapter.

S157: Short identifier for major s 75(v) judicial-review case. Connect the concept to the relevant constitutional text and cases before applying it to facts.

20. Define and explain the significance of Chapteriii in this chapter.

Chapteriii: Constitutional chapter establishing federal judicature. Connect the concept to the relevant constitutional text and cases before applying it to facts.

INTERACTIVE REVISION

Chapter 11 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 11 Active Crossword

Across / Down Vocabulary Clues

1. **JUDICIAL** - Type of Commonwealth power vested by Chapter III.
2. **KABLE** - Doctrine protecting institutional integrity of State courts.
3. **KIRK** - Case protecting supervisory jurisdiction of State Supreme Courts.
4. **DETENTION** - Liberty restriction central to the punitive/protective cases.
5. **PUNITIVE** - Character normally requiring exercise by a court.
6. **PROTECTIVE** - Possible non-punitive character of executive detention.
7. **JURISDICTION** - Legal authority of a court to decide matters.
8. **S157** - Short identifier for major s 75(v) judicial-review case.
9. **CHAPTERIII** - Constitutional chapter establishing federal judicature.
10. **INTEGRITY** - Institutional quality protected by Kable doctrine.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 11 - Crossword Answers

1. **JUDICIAL** - Type of Commonwealth power vested by Chapter III.
2. **KABLE** - Doctrine protecting institutional integrity of State courts.
3. **KIRK** - Case protecting supervisory jurisdiction of State Supreme Courts.
4. **DETENTION** - Liberty restriction central to the punitive/protective cases.
5. **PUNITIVE** - Character normally requiring exercise by a court.
6. **PROTECTIVE** - Possible non-punitive character of executive detention.
7. **JURISDICTION** - Legal authority of a court to decide matters.
8. **S157** - Short identifier for major s 75(v) judicial-review case.
9. **CHAPTERIII** - Constitutional chapter establishing federal judicature.
10. **INTEGRITY** - Institutional quality protected by Kable doctrine.

Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

48-Hour Security Detention

A Commonwealth authority may detain a person for 48 hours after that person has already been removed from a restricted event area, solely because the person failed to obey an earlier direction.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

State Court Secret Order Act

A State law requires its Supreme Court, on the Attorney-General's application, to impose a preventive detention order on a named person using secret material the person can never see or answer.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 11 - HD IRAC Answers

Problem 1: 48-Hour Security Detention

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Judicial Power, Chapter III and Separation of Powers.

RULE / LAW

Chapter III reserves Commonwealth judicial power to courts. Punitive detention is ordinarily judicial; executive detention must be genuinely non-punitive and reasonably necessary for a legitimate administrative purpose. Kable prevents State courts being given functions incompatible with institutional integrity. Key provisions include s 71, s 72, s 75(v), s 80, Ch III. Key authorities include Chu Kheng Lim v Minister for Immigration; NAAJA v Northern Territory; Plaintiff M68/2015 v Minister for Immigration; NZYQ v Minister for Immigration; Kable v Director of Public Prosecutions.

APPLICATION

Characterise the real function and effect. If detention continues after its protective purpose has been achieved, it increasingly looks punitive. For State-court schemes, ask whether the court is required to act as an instrument of the executive, deny ordinary judicial process or undermine public confidence in its decisional independence.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result

while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: State Court Secret Order Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Judicial Power, Chapter III and Separation of Powers.

RULE / LAW

Chapter III reserves Commonwealth judicial power to courts. Punitive detention is ordinarily judicial; executive detention must be genuinely non-punitive and reasonably necessary for a legitimate administrative purpose. Kable prevents State courts being given functions incompatible with institutional integrity. Key provisions include s 71, s 72, s 75(v), s 80, Ch III. Key authorities include Chu Kheng Lim v Minister for Immigration; NAAJA v Northern Territory; Plaintiff M68/2015 v Minister for Immigration; NZYQ v Minister for Immigration; Kable v Director of Public Prosecutions.

APPLICATION

Characterise the real function and effect. If detention continues after its protective purpose has been achieved, it increasingly looks punitive. For State-court schemes, ask whether the court is required to act as an instrument of the executive, deny ordinary judicial process or undermine public confidence in its decisional independence.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 12

First Nations Constitutional Issues, Constitutional Change, s 128, Uluru and Treaty

Learning chapter - legislation, cases, problem solving and revision

First Nations constitutional issues expose the deep relationship between sovereignty, federation, race, territory, property, citizenship and constitutional change. The Constitution as enacted in 1901 reflected exclusions and assumptions of its era, some of which have been altered through referendum and judicial development.

The race power, territories power and aliens power have generated major litigation affecting Indigenous Australians. Kartinyeri, Wurridjal, Love and Yunupingu demonstrate different dimensions of constitutional power, property and Indigenous status.

Section 128 provides the formal mechanism for constitutional alteration. The Uluru Statement from the Heart proposed Voice, Treaty and Truth as a reform sequence. The 2023 referendum did not insert the proposed Voice provisions into the Constitution, but the Uluru Statement and treaty debates remain central to contemporary Australian constitutional discourse.

Key Constitutional Provisions

Provision	Why it matters
s 51(xxvi)	Race power.
s 51(xix)	Aliens power; relevant to Love.
s 51(xxxi)	Just terms and Indigenous property interests.
s 122	Territories power.
s 128	Constitutional alteration by referendum.
former s 127	Repealed provision historically excluding Aboriginal people from population counts for specified constitutional purposes.

Cases for This Chapter

Case / Authority	Proposition and exam use
Kartinyeri v Commonwealth (1998) 195 CLR 337	Divided authority on whether the race power can support laws detrimental to a racial group.
Wurridjal v Commonwealth (2009) 237 CLR 309	Just-terms guarantee can constrain Commonwealth laws for territories.
Love v Commonwealth (2020) 270 CLR 152	Aboriginal Australians satisfying the relevant test cannot be treated as aliens for s 51(xix).
Commonwealth v Yunupingu (2025) 99 ALJR 519	Native title interests can constitute property and s 51(xxxi) constrains acquisition under the territories power.
Commonwealth v Tasmania (1983) 158 CLR 1	World Heritage litigation also demonstrates interaction between federal power and Aboriginal cultural heritage.
Attorney-General (WA) v Marquet (2003) 217 CLR 545	Kirby J discussed the constitutional significance of the people and s 128 in the context of Australian constitutional sovereignty.

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Forum One Indigenous constitutional materials; Forum Two constitutional history; prescribed/ recommended Uluru Statement and Treaty resources.

CHAPTER 12 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Race power.

1. s 51(xxvi)
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Aliens power; relevant to Love.

1. s 51(xix)
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Just terms and Indigenous property interests.

1. s 51(xxxi)
2. s 109
3. s 128
4. s 92

4. Which constitutional provision is most directly associated with: Territories power.

1. s 122
2. s 109
3. s 128
4. s 92

5. Which constitutional provision is most directly associated with: Constitutional alteration by referendum.

1. s 128
2. s 109
3. s 51(xx)
4. s 92

6. Which constitutional provision is most directly associated with: Repealed provision historically excluding Aboriginal people from population counts for specified constitutional purposes.

1. former s 127
2. s 109
3. s 128
4. s 92

7. Which case is used in this chapter for the following proposition: Divided authority on whether the race power can support laws detrimental to a racial group.

1. Kartinyeri v Commonwealth (1998) 195 CLR 337
2. Wurridjal v Commonwealth (2009) 237 CLR 309
3. Love v Commonwealth (2020) 270 CLR 152
4. Commonwealth v Yunupingu (2025) 99 ALJR 519

8. Which case is used in this chapter for the following proposition: Just-terms guarantee can constrain Commonwealth laws for territories.

1. Wurridjal v Commonwealth (2009) 237 CLR 309
2. Kartinyeri v Commonwealth (1998) 195 CLR 337
3. Love v Commonwealth (2020) 270 CLR 152
4. Commonwealth v Yunupingu (2025) 99 ALJR 519

9. Which case is used in this chapter for the following proposition: Aboriginal Australians satisfying the relevant test cannot be treated as aliens for s 51(xix).

1. Love v Commonwealth (2020) 270 CLR 152
2. Kartinyeri v Commonwealth (1998) 195 CLR 337
3. Wurridjal v Commonwealth (2009) 237 CLR 309
4. Commonwealth v Yunupingu (2025) 99 ALJR 519

10. Which case is used in this chapter for the following proposition: Native title interests can constitute property and s 51(xxxi) constrains acquisition under the territories power.

1. Commonwealth v Yunupingu (2025) 99 ALJR 519
2. Kartinyeri v Commonwealth (1998) 195 CLR 337
3. Wurridjal v Commonwealth (2009) 237 CLR 309
4. Love v Commonwealth (2020) 270 CLR 152

11. Which case is used in this chapter for the following proposition: World Heritage litigation also demonstrates interaction between federal power and Aboriginal cultural heritage.

1. Commonwealth v Tasmania (1983) 158 CLR 1
2. Kartinyeri v Commonwealth (1998) 195 CLR 337
3. Wurridjal v Commonwealth (2009) 237 CLR 309
4. Love v Commonwealth (2020) 270 CLR 152

12. Which case is used in this chapter for the following proposition: Kirby J discussed the constitutional significance of the people and s 128 in the context of Australian constitutional sovereignty.

1. Attorney-General (WA) v Marquet (2003) 217 CLR 545
2. Kartinyeri v Commonwealth (1998) 195 CLR 337
3. Wurridjal v Commonwealth (2009) 237 CLR 309
4. Love v Commonwealth (2020) 270 CLR 152

13. The correct first question when testing a Commonwealth Act is generally:

1. Is there a supporting head of power?
2. Is the law politically popular?
3. Did every State consent?
4. Was the law enacted unanimously?

14. A constitutional problem answer should normally:

1. Identify issues, state authority, apply the law and conclude
2. Begin with remedies only
3. List cases without applying them
4. Assume every Commonwealth law is valid

15. When a case is cited in an exam answer, the strongest use is to:

1. State its legal proposition and apply or distinguish it

2. Name it without explanation
3. Quote the whole judgment
4. Use it only in the conclusion

16. Which term best matches this description: 2017 Statement from the Heart.

1. Uluru
2. Federalism
3. Judicial power
4. Appropriation

17. Which term best matches this description: Proposed representative body put to referendum in 2023.

1. Voice
2. Federalism
3. Judicial power
4. Appropriation

18. Which term best matches this description: Agreement-making process discussed in First Nations constitutional reform.

1. Treaty
2. Federalism
3. Judicial power
4. Appropriation

19. Which term best matches this description: Third element of the Uluru reform sequence.

1. Truth
2. Federalism
3. Judicial power
4. Appropriation

20. Which term best matches this description: Mechanism required by s 128 to alter the Constitution.

1. Referendum
2. Federalism
3. Judicial power
4. Appropriation

ANSWER PAGE

Chapter 12 - Quiz Answers

1. A - s 51(xxvi)
s 51(xxvi) is the provision linked to this rule in this chapter.

2. A - s 51(xix)
s 51(xix) is the provision linked to this rule in this chapter.

3. A - s 51(xxxi)
s 51(xxxi) is the provision linked to this rule in this chapter.

4. A - s 122
s 122 is the provision linked to this rule in this chapter.

5. A - s 128
s 128 is the provision linked to this rule in this chapter.

6. A - former s 127
former s 127 is the provision linked to this rule in this chapter.

7. A - Kartinyeri v Commonwealth (1998) 195 CLR 337
Kartinyeri v Commonwealth (1998) 195 CLR 337 is the authority connected to that proposition.

8. A - Wurridjal v Commonwealth (2009) 237 CLR 309
Wurridjal v Commonwealth (2009) 237 CLR 309 is the authority connected to that proposition.

9. A - Love v Commonwealth (2020) 270 CLR 152
Love v Commonwealth (2020) 270 CLR 152 is the authority connected to that proposition.

10. A - Commonwealth v Yunupingu (2025) 99 ALJR 519
Commonwealth v Yunupingu (2025) 99 ALJR 519 is the authority connected to that proposition.

11. A - Commonwealth v Tasmania (1983) 158 CLR 1
Commonwealth v Tasmania (1983) 158 CLR 1 is the authority connected to that proposition.

12. A - Attorney-General (WA) v Marquet (2003) 217 CLR 545
Attorney-General (WA) v Marquet (2003) 217 CLR 545 is the authority connected to that proposition.

13. A - Is there a supporting head of power?
A Commonwealth law requires constitutional legislative authority before limitations and inconsistency are considered.

14. A - Identify issues, state authority, apply the law and conclude
Constitutional problem solving requires issue spotting, authority, application and conclusion.

15. A - State its legal proposition and apply or distinguish it
Authorities earn analytical value when their propositions are applied to facts.

16. A - Uluru
Uluru is the term used in the chapter.

17. A - Voice
Voice is the term used in the chapter.

18. A - Treaty
Treaty is the term used in the chapter.

19. A - Truth
Truth is the term used in the chapter.

20. A - Referendum

Referendum is the term used in the chapter.

CHAPTER 12 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of s 51(xxvi).

2. Explain the constitutional significance of s 51(xix).

3. Explain the constitutional significance of s 51(xxxi).

4. Explain the constitutional significance of s 122.

5. Explain the constitutional significance of s 128.

6. Explain the constitutional significance of former s 127.

7. What is the exam significance of Kartinyeri v Commonwealth (1998) 195 CLR 337?

8. What is the exam significance of Wurridjal v Commonwealth (2009) 237 CLR 309?

9. What is the exam significance of Love v Commonwealth (2020) 270 CLR 152?

10. What is the exam significance of Commonwealth v Yunupingu (2025) 99 ALJR 519?

11. What is the exam significance of Commonwealth v Tasmania (1983) 158 CLR 1?

12. What is the exam significance of Attorney-General (WA) v Marquet (2003) 217 CLR 545?

13. What is the recommended constitutional problem-solving sequence?

14. Why is issue spotting especially important in constitutional law?

15. How should competing High Court reasoning be handled?

16. Why should constitutional provisions be cited precisely?

17. What does it mean to distinguish a case?

18. Define and explain the significance of Yunupingu in this chapter.

19. Define and explain the significance of Love in this chapter.

20. Define and explain the significance of Kartinyeri in this chapter.

ANSWER PAGE

Chapter 12 - Short Answer Models

1. Explain the constitutional significance of s 51(xxvi).

s 51(xxvi): Race power. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of s 51(xix).

s 51(xix): Aliens power; relevant to Love. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 51(xxxi).

s 51(xxxi): Just terms and Indigenous property interests. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 122.

s 122: Territories power. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. Explain the constitutional significance of s 128.

s 128: Constitutional alteration by referendum. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

6. Explain the constitutional significance of former s 127.

former s 127: Repealed provision historically excluding Aboriginal people from population counts for specified constitutional purposes. In a problem, identify whether the provision

grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

7. What is the exam significance of Kartinyeri v Commonwealth (1998) 195 CLR 337?

Kartinyeri v Commonwealth (1998) 195 CLR 337: Divided authority on whether the race power can support laws detrimental to a racial group. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

8. What is the exam significance of Wurridjal v Commonwealth (2009) 237 CLR 309?

Wurridjal v Commonwealth (2009) 237 CLR 309: Just-terms guarantee can constrain Commonwealth laws for territories. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

9. What is the exam significance of Love v Commonwealth (2020) 270 CLR 152?

Love v Commonwealth (2020) 270 CLR 152: Aboriginal Australians satisfying the relevant test cannot be treated as aliens for s 51(xix). Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

10. What is the exam significance of Commonwealth v Yunupingu (2025) 99 ALJR 519?

Commonwealth v Yunupingu (2025) 99 ALJR 519: Native title interests can constitute property and s 51(xxxi) constrains acquisition under the territories power. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

11. What is the exam significance of Commonwealth v Tasmania (1983) 158 CLR 1?

Commonwealth v Tasmania (1983) 158 CLR 1: World Heritage litigation also demonstrates interaction between federal power and Aboriginal cultural heritage. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

12. What is the exam significance of Attorney-General (WA) v Marquet (2003) 217 CLR 545?

Attorney-General (WA) v Marquet (2003) 217 CLR 545: Kirby J discussed the constitutional significance of the people and s 128 in the context of Australian constitutional sovereignty. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

13. What is the recommended constitutional problem-solving sequence?

Identify the challenged law and actor; identify the source of power; characterise the law; test constitutional limitations; consider Commonwealth-State interaction; apply authorities; address severance/remedy; conclude issue by issue.

14. Why is issue spotting especially important in constitutional law?

A single factual scenario can engage several independent validity questions. Missing one head of power, structural implication or express limitation can change the result.

15. How should competing High Court reasoning be handled?

Identify the binding ratio where possible, explain material differences between majority and dissenting reasoning where the course treats them as significant, and apply the current controlling approach.

16. Why should constitutional provisions be cited precisely?

The legal consequence often depends on exact textual language, the level of government to which it applies and any internal qualification in the provision.

17. What does it mean to distinguish a case?

Explain why a factual or legal difference makes the authority less directly controlling while still acknowledging its relevant principle.

18. Define and explain the significance of Yunupingu in this chapter.

Yunupingu: 2025 native title and just-terms authority. Connect the concept to the relevant constitutional text and cases before applying it to facts.

19. Define and explain the significance of Love in this chapter.

Love: 2020 aliens-power case concerning Aboriginal Australians. Connect the concept to the relevant constitutional text and cases before applying it to facts.

20. Define and explain the significance of Kartinyeri in this chapter.

Kartinyeri: Hindmarsh Island Bridge case concerning race power. Connect the concept to the relevant constitutional text and cases before applying it to facts.

INTERACTIVE REVISION

Chapter 12 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 12 Active Crossword

Across / Down Vocabulary Clues

1. **ULURU** - 2017 Statement from the Heart.
2. **VOICE** - Proposed representative body put to referendum in 2023.
3. **TREATY** - Agreement-making process discussed in First Nations constitutional reform.
4. **TRUTH** - Third element of the Uluru reform sequence.
5. **REFERENDUM** - Mechanism required by s 128 to alter the Constitution.
6. **RACE** - Head of power in s 51(xxvi).
7. **YUNUPINGU** - 2025 native title and just-terms authority.
8. **LOVE** - 2020 aliens-power case concerning Aboriginal Australians.
9. **KARTINYERI** - Hindmarsh Island Bridge case concerning race power.
10. **NATIVETITLE** - Traditional rights and interests in land recognised by Australian law.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 12 - Crossword Answers

1. **ULURU** - 2017 Statement from the Heart.
2. **VOICE** - Proposed representative body put to referendum in 2023.
3. **TREATY** - Agreement-making process discussed in First Nations constitutional reform.
4. **TRUTH** - Third element of the Uluru reform sequence.
5. **REFERENDUM** - Mechanism required by s 128 to alter the Constitution.
6. **RACE** - Head of power in s 51(xxvi).
7. **YUNUPINGU** - 2025 native title and just-terms authority.
8. **LOVE** - 2020 aliens-power case concerning Aboriginal Australians.
9. **KARTINYERI** - Hindmarsh Island Bridge case concerning race power.
10. **NATIVETITLE** - Traditional rights and interests in land recognised by Australian law.

Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

Cultural Heritage Override Act

The Commonwealth enacts a law under s 51(xxvi) removing heritage protections only from a named Indigenous community to facilitate a major project. Advise on the race power and other constitutional issues.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

Constitutional Recognition Bill

Parliament passes a Bill purporting to insert a new chapter into the Constitution after approval by both Houses but without a referendum. Advise on s 128 and explain the correct alteration process.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 12 - HD IRAC Answers

Problem 1: Cultural Heritage Override Act

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in First Nations Constitutional Issues, Constitutional Change, s 128, Uluru and Treaty.

RULE / LAW

First Nations constitutional issues engage the text of specific powers and formal constitutional change. s 128 is mandatory for alteration of the Commonwealth Constitution. Race, territories, aliens and just-terms doctrines must be applied in light of the controlling cases. Key provisions include s 51(xxvi), s 51(xix), s 51(xxxi), s 122, s 128. Key authorities include Kartinyeri v Commonwealth; Wurridjal v Commonwealth; Love v Commonwealth; Commonwealth v Yunupingu; Commonwealth v Tasmania.

APPLICATION

Identify the precise source of power and the status or property interest affected. A statute cannot amend the Constitution merely because Parliament supports the reform. For race-power questions, address Kartinyeri and any other applicable limitation; for native title acquisitions, address Yunupingu and s 51(xxxi).

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result

while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: Constitutional Recognition Bill

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in First Nations Constitutional Issues, Constitutional Change, s 128, Uluru and Treaty.

RULE / LAW

First Nations constitutional issues engage the text of specific powers and formal constitutional change. s 128 is mandatory for alteration of the Commonwealth Constitution. Race, territories, aliens and just-terms doctrines must be applied in light of the controlling cases. Key provisions include s 51(xxvi), s 51(xix), s 51(xxxi), s 122, s 128. Key authorities include Kartinyeri v Commonwealth; Wurridjal v Commonwealth; Love v Commonwealth; Commonwealth v Yunupingu; Commonwealth v Tasmania.

APPLICATION

Identify the precise source of power and the status or property interest affected. A statute cannot amend the Constitution merely because Parliament supports the reform. For race-power questions, address Kartinyeri and any other applicable limitation; for native title acquisitions, address Yunupingu and s 51(xxxi).

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

CHAPTER 13

Final Examination Revision - Whole Course Mixed Problems

Learning chapter - legislation, cases, problem solving and revision

This chapter is deliberately mixed. Constitutional examination problems rarely announce the doctrine. The task is to determine whether the challenged law is State or Commonwealth legislation, identify the source of power, identify every constitutional constraint, apply the cases by analogy and distinction, and reach a disciplined conclusion.

Use the attack sequence: identify the law and actor; identify legislative or executive source of power; characterise the law; test every relevant limit; check federal interaction; consider remedies and severance; then conclude issue by issue.

The questions in this chapter draw across the entire course. Do not answer them as isolated definitions. Treat each one as an opportunity to connect provisions, cases and problem-solving methodology.

Key Constitutional Provisions

Provision	Why it matters
ss 7 and 24	Representative democracy and direct popular choice.
s 51	Commonwealth heads of power.
s 51(xxxi)	Just terms.
s 61	Executive power.
s 80	Jury trial.
s 92	Interstate freedom.
s 96	Grants to States.
s 109	Inconsistency.
s 116	Religion.
s 122	Territories.

Provision	Why it matters
s 128	Constitutional alteration.
Ch III	Judicial power and institutional limits.

Cases for This Chapter

Case / Authority	Proposition and exam use
Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129	Interpretation and federal power.
Roach v Electoral Commissioner (2007) 233 CLR 162	Representative government and franchise.
New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1	Corporations power.
Commonwealth v Tasmania (1983) 158 CLR 1	External affairs and just terms context.
Australian Communist Party v Commonwealth (1951) 83 CLR 1	Defence, constitutional facts and rule of law.
Melbourne Corporation v Commonwealth (1947) 74 CLR 31	Federal structural immunity.
Lange v Australian Broadcasting Corporation (1997) 189 CLR 520	Implied freedom.
Pape v Commissioner of Taxation (2009) 238 CLR 1	Executive spending and nationhood.
Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1	Judicial power and detention.
Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51	State courts and institutional integrity.
Kartinyeri v Commonwealth (1998) 195 CLR 337	Race power.
Commonwealth v Yunupingu (2025) 99 ALJR 519	Native title and just terms.
Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883	Electoral regulation and representative government.

Exam method: identify the constitutional issue first, state the controlling provision and authority, apply the legal test to each material fact, address the strongest counter-argument, and conclude on validity.

Course alignment: Whole-course synthesis of Forums, guest lecture, tutorials, case-study material and constitutional provisions used throughout Chapters 1-12.

CHAPTER 13 REVISION

20 Quiz Questions

Attempt all questions before turning to the answer page.

1. Which constitutional provision is most directly associated with: Representative democracy and direct popular choice.

1. ss 7 and 24
2. s 109
3. s 128
4. s 92

2. Which constitutional provision is most directly associated with: Commonwealth heads of power.

1. s 51
2. s 109
3. s 128
4. s 92

3. Which constitutional provision is most directly associated with: Just terms.

1. s 51(xxxi)
2. s 109
3. s 128
4. s 92

4. Which constitutional provision is most directly associated with: Executive power.

1. s 61
2. s 109
3. s 128
4. s 92

5. Which constitutional provision is most directly associated with: Jury trial.

1. s 80

2. s 109
3. s 128
4. s 92

6. Which constitutional provision is most directly associated with: Interstate freedom.

1. s 92
2. s 109
3. s 128
4. s 80

7. Which constitutional provision is most directly associated with: Grants to States.

1. s 96
2. s 109
3. s 128
4. s 92

8. Which constitutional provision is most directly associated with: Inconsistency.

1. s 109
2. s 61
3. s 128
4. s 92

9. Which constitutional provision is most directly associated with: Religion.

1. s 116
2. s 109
3. s 128
4. s 92

10. Which constitutional provision is most directly associated with: Territories.

1. s 122
2. s 109
3. s 128
4. s 92

11. Which case is used in this chapter for the following proposition: Interpretation and federal power.

1. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
2. Roach v Electoral Commissioner (2007) 233 CLR 162
3. New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1
4. Commonwealth v Tasmania (1983) 158 CLR 1

12. Which case is used in this chapter for the following proposition: Representative government and franchise.

1. Roach v Electoral Commissioner (2007) 233 CLR 162
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1
4. Commonwealth v Tasmania (1983) 158 CLR 1

13. Which case is used in this chapter for the following proposition: Corporations power.

1. New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Roach v Electoral Commissioner (2007) 233 CLR 162
4. Commonwealth v Tasmania (1983) 158 CLR 1

14. Which case is used in this chapter for the following proposition: External affairs and just terms context.

1. Commonwealth v Tasmania (1983) 158 CLR 1
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Roach v Electoral Commissioner (2007) 233 CLR 162
4. New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1

15. Which case is used in this chapter for the following proposition: Defence, constitutional facts and rule of law.

1. Australian Communist Party v Commonwealth (1951) 83 CLR 1
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Roach v Electoral Commissioner (2007) 233 CLR 162

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

16. Which case is used in this chapter for the following proposition: Federal structural immunity.

1. Melbourne Corporation v Commonwealth (1947) 74 CLR 31
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Roach v Electoral Commissioner (2007) 233 CLR 162
4. New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1

17. Which case is used in this chapter for the following proposition: Implied freedom.

1. Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Roach v Electoral Commissioner (2007) 233 CLR 162
4. New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1

18. Which case is used in this chapter for the following proposition: Executive spending and nationhood.

1. Pape v Commissioner of Taxation (2009) 238 CLR 1
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Roach v Electoral Commissioner (2007) 233 CLR 162
4. New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1

19. Which case is used in this chapter for the following proposition: Judicial power and detention.

1. Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
3. Roach v Electoral Commissioner (2007) 233 CLR 162
4. New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1

20. Which case is used in this chapter for the following proposition: State courts and institutional integrity.

1. Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51
2. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129

3. Roach v Electoral Commissioner (2007) 233 CLR 162
4. New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1

ANSWER PAGE

Chapter 13 - Quiz Answers

1. A - ss 7 and 24
ss 7 and 24 is the provision linked to this rule in this chapter.

2. A - s 51
s 51 is the provision linked to this rule in this chapter.

3. A - s 51(xxxi)
s 51(xxxi) is the provision linked to this rule in this chapter.

4. A - s 61
s 61 is the provision linked to this rule in this chapter.

5. A - s 80
s 80 is the provision linked to this rule in this chapter.

6. A - s 92
s 92 is the provision linked to this rule in this chapter.

7. A - s 96
s 96 is the provision linked to this rule in this chapter.

8. A - s 109
s 109 is the provision linked to this rule in this chapter.

9. A - s 116
s 116 is the provision linked to this rule in this chapter.

10. A - s 122
s 122 is the provision linked to this rule in this chapter.

11. A - Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129 is the authority connected to that proposition.

12. A - Roach v Electoral Commissioner (2007) 233 CLR 162
Roach v Electoral Commissioner (2007) 233 CLR 162 is the authority connected to that proposition.

13. A - New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1
New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1 is the authority connected to that proposition.

14. A - Commonwealth v Tasmania (1983) 158 CLR 1
Commonwealth v Tasmania (1983) 158 CLR 1 is the authority connected to that proposition.

15. A - Australian Communist Party v Commonwealth (1951) 83 CLR 1
Australian Communist Party v Commonwealth (1951) 83 CLR 1 is the authority connected to that proposition.

16. A - Melbourne Corporation v Commonwealth (1947) 74 CLR 31
Melbourne Corporation v Commonwealth (1947) 74 CLR 31 is the authority connected to that proposition.

17. A - Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
Lange v Australian Broadcasting Corporation (1997) 189 CLR 520 is the authority connected to that proposition.

18. A - Pape v Commissioner of Taxation (2009) 238 CLR 1
Pape v Commissioner of Taxation (2009) 238 CLR 1 is the authority connected to that proposition.

19. A - Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1
Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1 is the authority connected to that proposition.

20. A - Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51
Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51 is the authority connected to that proposition.

CHAPTER 13 REVISION

20 Short Questions

Write your own response before moving to the next page.

1. Explain the constitutional significance of ss 7 and 24.
2. Explain the constitutional significance of s 51.
3. Explain the constitutional significance of s 51(xxxi).
4. Explain the constitutional significance of s 61.
5. Explain the constitutional significance of s 80.
6. Explain the constitutional significance of s 92.
7. Explain the constitutional significance of s 96.
8. Explain the constitutional significance of s 109.
9. Explain the constitutional significance of s 116.
10. Explain the constitutional significance of s 122.
11. Explain the constitutional significance of s 128.
12. Explain the constitutional significance of Ch III.

13. What is the exam significance of Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129?

14. What is the exam significance of Roach v Electoral Commissioner (2007) 233 CLR 162?

15. What is the exam significance of New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1?

16. What is the exam significance of Commonwealth v Tasmania (1983) 158 CLR 1?

17. What is the exam significance of Australian Communist Party v Commonwealth (1951) 83 CLR 1?

18. What is the exam significance of Melbourne Corporation v Commonwealth (1947) 74 CLR 31?

19. What is the exam significance of Lange v Australian Broadcasting Corporation (1997) 189 CLR 520?

20. What is the exam significance of Pape v Commissioner of Taxation (2009) 238 CLR 1?

ANSWER PAGE

Chapter 13 - Short Answer Models

1. Explain the constitutional significance of ss 7 and 24.

ss 7 and 24: Representative democracy and direct popular choice. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

2. Explain the constitutional significance of s 51.

s 51: Commonwealth heads of power. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

3. Explain the constitutional significance of s 51(xxxi).

s 51(xxxi): Just terms. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

4. Explain the constitutional significance of s 61.

s 61: Executive power. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

5. Explain the constitutional significance of s 80.

s 80: Jury trial. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

6. Explain the constitutional significance of s 92.

s 92: Interstate freedom. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

7. Explain the constitutional significance of s 96.

s 96: Grants to States. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

8. Explain the constitutional significance of s 109.

s 109: Inconsistency. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

9. Explain the constitutional significance of s 116.

s 116: Religion. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

10. Explain the constitutional significance of s 122.

s 122: Territories. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

11. Explain the constitutional significance of s 128.

s 128: Constitutional alteration. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

12. Explain the constitutional significance of Ch III.

Ch III: Judicial power and institutional limits. In a problem, identify whether the provision grants power, limits power, or supplies a structural rule, then connect it to the relevant authority and facts.

13. What is the exam significance of Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129?

Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129: Interpretation and federal power. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

14. What is the exam significance of Roach v Electoral Commissioner (2007) 233 CLR 162?

Roach v Electoral Commissioner (2007) 233 CLR 162: Representative government and franchise. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

15. What is the exam significance of New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1?

New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1: Corporations power. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

16. What is the exam significance of Commonwealth v Tasmania (1983) 158 CLR 1?

Commonwealth v Tasmania (1983) 158 CLR 1: External affairs and just terms context. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

17. What is the exam significance of Australian Communist Party v Commonwealth (1951) 83 CLR 1?

Australian Communist Party v Commonwealth (1951) 83 CLR 1: Defence, constitutional facts and rule of law. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

18. What is the exam significance of Melbourne Corporation v Commonwealth (1947) 74 CLR 31?

Melbourne Corporation v Commonwealth (1947) 74 CLR 31: Federal structural immunity. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

19. What is the exam significance of Lange v Australian Broadcasting Corporation (1997) 189 CLR 520?

Lange v Australian Broadcasting Corporation (1997) 189 CLR 520: Implied freedom. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

20. What is the exam significance of Pape v Commissioner of Taxation (2009) 238 CLR 1?

Pape v Commissioner of Taxation (2009) 238 CLR 1: Executive spending and nationhood. Use it by stating the proposition precisely, identifying the factual analogy or distinction, and explaining how that affects validity.

INTERACTIVE REVISION

Chapter 13 - Across & Down Crossword

The active crossword is hosted with the JUNIQ Cloudflare book. Click below in the electronic edition. The print edition can use the clue list as a vocabulary exercise.

Launch Chapter 13 Active Crossword

Across / Down Vocabulary Clues

1. **CHARACTERISATION** - First major step in testing a Commonwealth law.
2. **FEDERALISM** - System dividing power between Commonwealth and States.
3. **REPRESENTATIVE** - Type of government reflected in ss 7 and 24.
4. **EXTERNALAFFAIRS** - s 51(xxix) head of power.
5. **CORPORATIONS** - s 51(xx) subject.
6. **JUSTTERMS** - Condition in s 51(xxxi).
7. **INCONSISTENCY** - s 109 doctrine.
8. **EXECUTIVE** - Power rooted in s 61.
9. **JUDICIAL** - Power vested by Chapter III.
10. **REFERENDUM** - Required by s 128 for formal constitutional alteration.
11. **KABLE** - State-court institutional integrity doctrine.
12. **LANGE** - Implied-freedom authority.

Answers are deliberately on the next page.

ANSWER PAGE

Chapter 13 - Crossword Answers

1. **CHARACTERISATION** - First major step in testing a Commonwealth law.
2. **FEDERALISM** - System dividing power between Commonwealth and States.
3. **REPRESENTATIVE** - Type of government reflected in ss 7 and 24.
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11. **KABLE** - State-court institutional integrity doctrine.
12. **LANGE** - Implied-freedom authority.

Open the separate electronic crossword answer page

HIGH DISTINCTION PRACTICE

2 Constitutional Problem Questions

Attempt both before reading the model answers on the next page.

Problem 1

Clean Elections and Security Act 2030

The Commonwealth regulates corporate political donations, excludes unregistered independents from certain ballot descriptors, authorises 72-hour executive detention for protest near polling places, and appropriates money for a national election-security authority. Advise on all major constitutional issues.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

Problem 2

Green Transition Federation Scheme

The Commonwealth uses external affairs, corporations and grants powers to implement a climate treaty; a State passes contrary energy legislation and imposes a levy on Commonwealth project land. A native title group also alleges compulsory acquisition without just terms. Advise all parties.

Task: Advise all relevant parties. Identify every constitutional provision, doctrine and authority engaged and explain the likely outcome.

MODEL ANSWER PAGE

Chapter 13 - HD IRAC Answers

Problem 1: Clean Elections and Security Act 2030

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Final Examination Revision - Whole Course Mixed Problems.

RULE / LAW

Use the whole-course attack structure: validity source, characterisation, express and implied limits, federal interaction, Chapter III, executive authority and remedy. Multiple issues can coexist and must be answered separately. Key provisions include ss 7 and 24, s 51, s 51(xxxi), s 61, s 80. Key authorities include Amalgamated Society of Engineers v Adelaide Steamship Co Ltd; Roach v Electoral Commissioner; New South Wales v Commonwealth; Commonwealth v Tasmania; Australian Communist Party v Commonwealth.

APPLICATION

Work systematically through every plausible issue. Do not allow one strong power to obscure independent limits such as ss 7/24, s 51(xxxi), s 109, Chapter III, Melbourne Corporation or the implied freedom. State alternative conclusions where a factual assumption changes the doctrinal result.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result

while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

Problem 2: Green Transition Federation Scheme

ISSUE

Whether the challenged law or executive action is constitutionally valid under the principles in Final Examination Revision - Whole Course Mixed Problems.

RULE / LAW

Use the whole-course attack structure: validity source, characterisation, express and implied limits, federal interaction, Chapter III, executive authority and remedy. Multiple issues can coexist and must be answered separately. Key provisions include ss 7 and 24, s 51, s 51(xxxi), s 61, s 80. Key authorities include Amalgamated Society of Engineers v Adelaide Steamship Co Ltd; Roach v Electoral Commissioner; New South Wales v Commonwealth; Commonwealth v Tasmania; Australian Communist Party v Commonwealth.

APPLICATION

Work systematically through every plausible issue. Do not allow one strong power to obscure independent limits such as ss 7/24, s 51(xxxi), s 109, Chapter III, Melbourne Corporation or the implied freedom. State alternative conclusions where a factual assumption changes the doctrinal result.

CONCLUSION

On balance, the strongest conclusion depends on the identified head of power and the specific constitutional limitation. A High Distinction answer should state the likely result while acknowledging any genuinely contestable step and explaining the consequence of invalidity, inoperability or severance.

APPENDIX A

Constitution & Legislation Guide

Every recurring section reference in the electronic book links to its specific entry here.

ss 1-3 - Establish the Commonwealth Parliament and the legislative structure at the opening of Chapter I.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

Australia Act 1986 (Cth) s 2 - Confirms the full legislative powers of State Parliaments, including extraterritorial operation.
Official Australia Act 1986 - Federal Register of Legislation

Australia Act 1986 (Cth) s 6 - Manner-and-form requirements for certain State laws respecting the constitution, powers or procedure of State Parliaments.
Official Australia Act 1986 - Federal Register of Legislation

Former s 127 - Historical constitutional provision concerning Aboriginal people in population counts; repealed by the 1967 referendum.
Official Constitution - Federal Register of Legislation · Parliament PDF

s 7 - The Senate - senators directly chosen by the people of each State.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 24 - House of Representatives - members directly chosen by the people of the Commonwealth.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 41 - Historical voting-right provision.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 44 - Disqualification from Parliament.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 51(i) - Trade and commerce.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 51(ii) - Taxation.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 51(vi) - Defence.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 51(xix) - Naturalisation and aliens.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 51(xx) - Corporations.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 51(xxvi) - Race power.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 51(xxix) - External affairs.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 51(xxxi) - Acquisition of property on just terms.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 51(xxxix) - Incidental power.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 52 - Exclusive powers of Commonwealth Parliament.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 53 - Powers of the Houses in relation to legislation.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 55 - Tax laws.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 61 - Executive power.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 62 - Federal Executive Council.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 64 - Ministers of State.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 71 - Judicial power and courts.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 72 - Judges' appointment, tenure and remuneration.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 75(v) - Original High Court jurisdiction against officers of the Commonwealth.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 80 - Trial by jury.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 81 - Consolidated Revenue Fund.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 83 - Money drawn from Treasury only under appropriation.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 90 - Exclusive customs and excise.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 92 - Interstate trade, commerce and intercourse.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 96 - Financial assistance to States.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 99 - No preference between States in trade, commerce or revenue laws.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 106 - Saving of State constitutions.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 107 - Saving of State parliamentary powers.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 109 - Inconsistency between Commonwealth and State laws.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 114 - States and Commonwealth not to tax each other's property; military restrictions.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 116 - Religion.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 117 - Rights of residents in States.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 122 - Government of territories.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

s 128 - Mode of altering the Constitution.
Official Constitution - Federal Register of Legislation · PEO online Constitution · Parliament PDF

APPENDIX B

Cases & Authorities - Online Links

Case links open an AustLII High Court search for the authority. Verify the authorised report and current treatment before assessment or publication.

1. Adelaide Company of Jehovah's Witnesses Inc v Commonwealth (1943) 67 CLR 116
   Major s 116 and defence-power authority.
2. Air Caledonie International v Commonwealth (1988) 165 CLR 462
   Applied taxation definition and s 55 to an immigration clearance fee.
3. Airlines of New South Wales Pty Ltd v New South Wales (No 2) (1965) 113 CLR 54
   Commonwealth may reach intrastate operations where sufficiently connected to interstate trade and safety.
4. Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129
   Rejected reserved State powers reasoning and promoted a text-focused, broad reading of Commonwealth powers.
5. Attorney-General (Cth) ex rel McKinlay v Commonwealth (1975) 135 CLR 1
   Rejected a strict constitutional requirement of one vote, one value.
6. Attorney-General (NSW) v Trethowan (1931) 44 CLR 395
   Classic authority enforcing a referendum-based manner-and-form requirement.
7. Attorney-General (WA) v Marquet (2003) 217 CLR 545
   Enforced an absolute-majority requirement concerning electoral distribution as a manner-and-form requirement.
8. Austin v Commonwealth (2003) 215 CLR 185
   Modern formulation of the Melbourne Corporation principle, focusing on impairment of State functions.
9. Australian Communist Party v Commonwealth (1951) 83 CLR 1
   Classic authority that Parliament cannot conclusively determine the existence of facts needed to support its own constitutional power.
10. Babet v Commonwealth; Palmer v Commonwealth (2025) 99 ALJR 883
    Contemporary authority concerning electoral restrictions, party registration and representative government.
11. Bank of New South Wales v Commonwealth (1948) 76 CLR 1
    Important acquisition-of-property authority.
12. Brown v Tasmania (2017) 261 CLR 328
    Invalidated aspects of anti-protest legislation as a disproportionate burden on political communication.

13. Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1

    Punitive detention is ordinarily judicial; administrative detention may be valid if genuinely non-punitive.

14. Clyde Engineering Co Ltd v Cowburn (1926) 37 CLR 466

    Classic direct-inconsistency authority; impossible simultaneous obedience and rights-based reasoning.

15. Cole v Whitfield (1988) 165 CLR 360

    Modern interpretation of s 92 focusing on discriminatory burdens of a protectionist kind.

16. Coleman v Power (2004) 220 CLR 1

    Political communication may be insulting or provocative and still fall within the freedom.

17. Comcare v Banerji (2019) 267 CLR 373

    Confirms the freedom is a limit on power, not an individual free-speech right.

18. Commonwealth v Cigamatic Pty Ltd (in liq) (1962) 108 CLR 372

    Historically important intergovernmental immunity doctrine concerning State laws affecting Commonwealth prerogatives.

19. Commonwealth v Tasmania (1983) 158 CLR 1

    Illustrates broad interpretation of a Commonwealth head of power and the practical consequences of federal constitutional adjudication.

20. Commonwealth v Yunupingu (2025) 99 ALJR 519

    Modern authority on native title and acquisition of property.

21. Davis v Commonwealth (1988) 166 CLR 79

    Nationhood power supported national Bicentenary activities but disproportionate restrictions could still be invalid.

22. Ex parte McLean (1930) 43 CLR 472

    Early articulation of field inconsistency.

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

    Another early reserved-powers-era authority later overtaken by Engineers.

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

    State courts cannot be given functions incompatible with their institutional integrity as repositories of federal jurisdiction.

25. Kartinyeri v Commonwealth (1998) 195 CLR 337

    Important, divided authority concerning the race power.

26. King v Jones (1972) 128 CLR 221

    Narrow interpretation of s 41 in the context of voting age.

27. Kingswell v The Queen (1985) 159 CLR 264

    s 80 depends on whether Parliament provides trial on indictment.

28. Kirk v Industrial Court (NSW) (2010) 239 CLR 531

    State Supreme Courts must retain supervisory jurisdiction for jurisdictional error.

29. Koowarta v Bjelke-Petersen (1982) 153 CLR 168

External affairs supported federal racial-discrimination legislation implementing a treaty.

30. Lange v Australian Broadcasting Corporation (1997) 189 CLR 520
    Shows structural implications drawn from representative and responsible government.
31. Love v Commonwealth (2020) 270 CLR 152
    Held Aboriginal Australians satisfying the relevant test could not be treated as aliens for s 51(xix).
32. Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263
    Classic definition of a tax as a compulsory exaction by public authority for public purposes and not payment for services.
33. McCloy v New South Wales (2015) 257 CLR 178
    Introduced structured proportionality into the modern test.
34. Melbourne Corporation v Commonwealth (1947) 74 CLR 31
    Foundation of the implied limitation protecting States from discriminatory or structurally impairing Commonwealth laws.
35. Minister for the Army v Dalziel (1944) 68 CLR 261
    Broad conception of property for s 51(xxxi).
36. Mulholland v Australian Electoral Commission (2004) 220 CLR 181
    Considered party-registration and ballot-paper rules under representative-government principles.
37. Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1
    Confirms that a law may validly affect matters outside Commonwealth power if it is otherwise a law with respect to a valid head of power.
38. NAAJA v Northern Territory (2015) 256 CLR 569
    Short protective detention upheld; duration and purpose matter.
39. NZYQ v Minister for Immigration (2023) 280 CLR 137
    Indefinite immigration detention became unconstitutional where removal was not reasonably foreseeable.
40. New South Wales v Commonwealth (Seas and Submerged Lands Case) (1975) 135 CLR 337
    External affairs extends to matters geographically external to Australia.
41. New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1
    Confirms the broad reach of the corporations power over constitutional corporations and their relationships.
42. O'Sullivan v Noarlunga Meat Ltd (1954) 92 CLR 565
    Incidental aspect of s 51(i) allowed regulation of processes sufficiently connected with export trade.
43. Pape v Commissioner of Taxation (2009) 238 CLR 1
    Appropriation is not itself substantive spending power; nationhood power supported the GFC response on the facts.
44. Pearce v Florenca (1976) 135 CLR 507
    A State law with extraterritorial operation requires a real connection with the enacting State.
45. Plaintiff M68/2015 v Minister for Immigration (2016) 257 CLR 42

Important analysis of executive detention and objective connection to statutory purpose.

46. Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476

    s 75(v) protects a minimum entrenched provision of judicial review against Commonwealth officers.

47. Polyukhovich v Commonwealth (1991) 172 CLR 501

    Majority treated physical externality as sufficient for s 51(xxix).

48. R v Barger (1908) 6 CLR 41

    Illustrates the discarded early dominant-character/reserved-powers approach.

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

    Early treaty-implementation authority under external affairs.

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

    Substantial trading activity may make an entity a trading corporation.

51. Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc (2003) 214 CLR 397

    Connection to a head of power must not be insubstantial, tenuous or distant.

52. Re Pearson; Ex parte Sipka (1983) 152 CLR 254

    Held s 41 did not create a continuing general federal right to vote.

53. Roach v Electoral Commissioner (2007) 233 CLR 162

    Invalidated blanket prisoner disenfranchisement; ss 7 and 24 impose a constitutional limit on removing the franchise.

54. Rowe v Electoral Commissioner (2010) 243 CLR 1

    Invalidated early closure of electoral rolls because of its disproportionate burden on direct popular choice.

55. Ruddock v Vadarlis (2001) 110 FCR 491

    Prerogative power and statutory displacement in the executive context.

56. State Superannuation Board v Trade Practices Commission (1982) 150 CLR 282

    Leading authority on financial corporations.

57. Street v Queensland Bar Association (1989) 168 CLR 461

    Leading s 117 authority on discrimination based on State residence.

58. Sue v Hill (1999) 199 CLR 462

    Illustrates Australia's constitutional independence and the United Kingdom's status as a foreign power for constitutional purposes.

59. Thomas v Mowbray (2007) 233 CLR 307

    Upheld federal control-order legislation and illustrates modern security reasoning.

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

    State Parliaments have plenary legislative power subject to constitutional limits.

61. Unions NSW v New South Wales (2019) 264 CLR 595

    Political finance restrictions can impose disproportionate burdens.

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

Treaty obligations require sufficient specificity and implementing laws must be reasonably capable of being appropriate and adapted to the treaty.

63. Victoria v Commonwealth (Kakariki Case) (1937) 58 CLR 618

    Illustrates inconsistency analysis where Commonwealth law intends a complete regulatory scheme.

64. Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73

    Broad delegation of legislative power to the Executive can be constitutionally valid.

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

    Broad conception of trade and commerce, extending beyond the final act of sale.

66. Williams v Commonwealth (No 1) (2012) 248 CLR 156

    Executive contracting and spending require constitutional and statutory authority beyond mere appropriation.

67. Williams v Commonwealth (No 2) (2014) 252 CLR 416

    Confirmed limits on legislative attempts to validate executive spending programs.

68. Wurridjal v Commonwealth (2009) 237 CLR 309

    s 51(xxxi) applies in the territories context.

APPENDIX C

Final Exam Attack Sheet

1. **Who acted?** State Parliament, Commonwealth Parliament, Executive, court or statutory authority?
2. **What is challenged?** Identify the exact section, action or legal consequence.
3. **Source of power.** Commonwealth law needs a head of power; State law starts from plenary power.
4. **Characterisation.** What is the law about in legal and practical operation? Are there multiple characters?
5. **Express limits.** Check ss 51(xxxi), 80, 92, 116, 117 and any text-specific qualification.
6. **Structural limits.** Check ss 7/24, Melbourne Corporation, Chapter III/Kable, implied freedom.
7. **Federal interaction.** If valid State and Commonwealth laws coexist, check s 109.
8. **Executive authority.** For spending, detention, contracts or prerogative action, identify the statutory/constitutional source.
9. **Cases.** Apply by analogy and distinction; do not merely list.
10. **Consequence.** Invalidity, inoperability, severance, injunction, prohibition, declaration or other constitutional relief.
11. **Conclusion.** Give a clear result for every issue and party.

APPENDIX D

Lecture / Forum / Tutorial Alignment Guide

Chapter 1: Constitutional Foundations, Public Power, Federation and Interpretation
Constitutional Law Forum One (2026), Forum Two historical overview, and the Commonwealth Constitution.

Chapter 2: Constitutional History, the States, State Constitutions and Manner and Form
Constitutional Law Forum Two (2026), including colonial constitutional development, the Australia Acts, State legislative power and manner-and-form doctrine.

Chapter 3: Representative Democracy, Elections and Parliamentary Structure
Constitutional Law Forum Three (Representative Democracy), Babet course materials, and the Commonwealth Constitution.

Chapter 4: Characterisation and Commonwealth Legislative Power
Professor Jonathan Crowe guest lecture on Characterisation and Economic Powers, plus course issue-spotting checklists.

Chapter 5: Economic Powers: Trade and Commerce, Taxation and Corporations
Professor Jonathan Crowe guest lecture on Economic Powers and Forum Five review of s 51(i) and s 96.

Chapter 6: External Affairs, Defence, Race, Territories and Other Heads of Power
Constitutional Law Forum Five, Forum One Indigenous constitutional materials, and Forum Three territories discussion.

Chapter 7: Federalism, s 109 Inconsistency and Intergovernmental Immunities
Course issue-spotting checklists in Forums Two, Three and Five identify inconsistency and intergovernmental immunities as core validity constraints. The doctrinal synthesis below completes those course checklists.

Chapter 8: Express Constitutional Guarantees and Limitations
Tutorial Eight full answer guide and course issue-spotting checklists identifying ss 51(xxxi), 80, 92, 116 and 117 as recurring constitutional constraints.

Chapter 9: Implied Freedom of Political Communication and Constitutional Freedoms
Forum Three, Forum Five case-study guidance, Tutorial Eight, Tutorial Nine and Babet materials.

Chapter 10: Executive Power, Responsible Government, Spending and Nationhood
Tutorial Nine (Week Eleven) - Forum Seven study notes and IRAC answers; Forum Two and Forum Three responsible-government materials.

Chapter 11: Judicial Power, Chapter III and Separation of Powers
Tutorial Nine Chapter III detention materials and course checklists identifying strict separation of Commonwealth judicial power and Kable incompatibility.

Chapter 12: First Nations Constitutional Issues, Constitutional Change, s 128, Uluru and Treaty
Forum One Indigenous constitutional materials; Forum Two constitutional history; prescribed/recommended Uluru Statement and Treaty resources.

Chapter 13: Final Examination Revision - Whole Course Mixed Problems
Whole-course synthesis of Forums, guest lecture, tutorials, case-study material and constitutional provisions used throughout Chapters 1-12.

Source discipline: course materials are the primary teaching basis. Where the book completes a course checklist with standard constitutional doctrine not fully captured in the files located for this build, that synthesis is labelled in the chapter source note.

RESOURCES

Core and Recommended Resources

Commonwealth of Australia Constitution Act / Australian Constitution
Federal Register of Legislation · Parliament PDF · PEO online Constitution

Quick & Garran, Annotated Constitution of the Australian Commonwealth (1901)

Sarah Joseph & Melissa Castan, Federal Constitutional Law: A Contemporary View (6th ed, 2024)

Gerard Carney, The Constitutional Systems of the Australian States and Territories (2006)

Uluru Statement from the Heart
https://ulurustatement.org/the-statement/view-the-statement/

George Williams & Harry Hobbs, Treaty (2nd ed, 2020)

Carney - Chapter 2: Constitutional Evolution of the States

Carney - Chapter 6: Manner and Form

Constitutional Law in Australia | 5th Edition Guide
https://store.lexisnexis.com/en-au/products/constitutional-law-in-australia-5th-edition.html

BIBLIOGRAPHY

Bibliography

Primary constitutional and legislative materials

Commonwealth of Australia Constitution Act / Australian Constitution.

Australia Act 1986 (Cth).

Commonwealth Electoral Act 1918 (Cth).

Course materials

Bond University Constitutional Law 2026 course forums, tutorials, guest lecture materials and case-study materials supplied by the author for this study guide.

Books and commentary

John Quick and Robert Randolph Garran, *Annotated Constitution of the Australian Commonwealth* (1901).

Sarah Joseph and Melissa Castan, *Federal Constitutional Law: A Contemporary View* (6th ed, 2024).

Gerard Carney, *The Constitutional Systems of the Australian States and Territories* (2006).

George Williams and Harry Hobbs, *Treaty* (2nd ed, 2020).

First Nations National Constitutional Convention, *Uluru Statement from the Heart* (2017).

Cases

See Appendix B for the full case and authority guide and online research links.