

Constitutional law week 3 notes assignment

Law



MacArthur Case Simply being a deal which MIGHT result in movement across borders is NOT enough. - There is a need for an express stipulation or necessary implication that goods are to come Try mom Interstate Tort It to De Interstate trace ala commerce. A business in two States is not necessarily doing trade or commerce among the States: Hospital Provident Foundation Case A medical insurance coy was doing business in Victoria and the revering district in NEWS, but the business in Vic is all in Vic and the business in the revering district is all in the revering district. The above reasoning may well apply to overseas trade as ell.

Street v. Old Bar Association HELD: A Barrister who takes some briefs in Sydney and some briefs in Brisbane is not really in interstate trade or commerce because the matters in which he acts in Sydney are purely NEWS matters and the matters on which he was going to act in Brisbane were Old matters. The fact that he gets on a plane b/w them does not make acts of interstate trade or commerce. ELEMENT 3: What is the extent of the Commonwealth Power? Now that we have categorized the subject matter as T&C and Xi's or SO, does it fall within s. 51(1) S. 51 has 2 parts - Must ask: 1.

Does the particular law fall within the Heart of interstate or overseas T. If NO
 2. C could the law fit into the Incidental Area of the power so that it is " with respect to" interstate and overseas trade and commerce. L) HEART of the power " HEART" - laws directly relating to interstate or overseas trade or commerce TEST: per Fairfax 1. What is the nature of the: Rights Duties (erg all exports of fruit must be 50% bananas) Powers OR Privileges 2. That the Law: Changes Regulates Abolishes 3. If they relates to topic, then the law is one with respect to Interstate or Overseas I race ala commerce

Eng - Cow the Law stating " All exports of fruit must contain 50% of bananas" would fall squarely within the heart of s. 51(1). It imposes an obligation or duty to export particular amount of a good. To export is within the heart of " overseas" trade and commerce. 0 Laws PROHIBITING a part of trade or commerce If within heart of power, Commonwealth law can prohibit completely or only on certain condition. 0 The condition need not refer to trade and commerce matters or be limited to areas Murphy ores Regulations prohibited the export of mineral sands on the island = heart of power Unless approval of Minister

Minister would deny approval if the extraction of the concentrates would damage the environment. - Murphy ores sought an injunction against the Minister and a declaration that the Minister could not consider environmental issues when deciding whether or not to approve the export proposal. Held Regulation was characterize as T because it relates to other countries - Once the approval was within the heart, reasons for withholding approval irrelevant. - Therefore it is irrelevant that the criteria has little or no relevance to T. It is enough that the law deals with the permitted topic and does not cease to deal with that topic B factor extraneous to the topic may be taken in a/c in the relaxation of the prohibition. 0 Laws which REGULATE trade or commerce Applies even with respect to import and export, who can be employed (Haddam Parker), conditions of work (R v. Foster) etc Haddam Parker HCI held that the C the Pearl could use the trade and commerce power in order to give preference to union members for employment in loading or unloading ships involved in interstate and international trade - as part of the incidental power. C the also has power to make laws PROTECTING

interstate or overseas trade of E. G. TAP, s. 10 - the secondary boycotts provision as it applies to interstate trade was held to be a law under s. 51(I) - *Seamens' Union v. Utah Development* (see now s. 10(EA)) - law protecting exports from interference by boycotts. 0 The C the can PARTICIPATE in interstate or overseas trade or commerce. The CT has always held that a law with respect to trade and commerce with other countries or among the States includes a law by which the C the authorizes itself to participate in the trade or commerce.

Airlines Nationalization Case Although the C the failed to nationalize the other airlines they were told by the CT that they did have the power to set up a national airline as long as it stuck to interstate or overseas flights under s. 51(I). Case It was held that the C the has the power if it wants to, to set up a Shipping Corporation to engage in interstate or o/s trade and commerce. MANUFACTURING, of itself, is NOT part of interstate trade or commerce, even if the product is all destined for interstate trade: *Cranial v Margarine*. It is preparatory to it. L) Incidental Matters For the law to be within s. 1(I) the C the would have to show that the law is, despite not falling within the heart of the power, one " WITH RESPECT TO" interstate or overseas trade and commerce. This arises where the law at first sight appears to have nothing to do with " interstate or overseas trade and commerce" either because (1) It does not fall directly within what is " trade and commerce" (e. G. Manufacturing) OR (2) because the thing or a activity, while falling within the description of trade and commerce, does not appear to be " interstate" or " overseas" trade and commerce. TEST: - There are THREE ways in which the C the can get law into the periphery. . The law is incidental to; or o; or 3.

The law has a causal or direct effect on; 2. The law is substantially connected Interstate or overseas trade and commerce Therefore, laws “ with respect to X” necessarily includes laws incidental to X, laws having a direct effect on X etc. Bragg Case I) PRODUCTION: Cranial v. Margarine Production is not part offt&C - it is only preparatory to it BUT it does NOT mean the C the could never reach production. - S. 51 extends to allow the C the can in some cases to regulate manufacture or production, where there is a DIRECT CONNECTION for effectuating something within the heart.

Vertical Integration of Steps preceding or following export which are so closely connected that the power extends to control these steps. - Production and preparation - significant effect on international trade - Success of imports also depends on arrangements or advertising and distribution Apple In: Meat case - REACH BACK The C the had some detailed regulations about the export of meat and the conditions under which meat for export could be made. - Hygiene regulations for the manufacture of meat have a lot to do with o/s trade. HELD: The majority held that the regulations were valid. Full eager J. The C the can regulate all matters which affect beneficially or adversely export trade of Australia in any commodity is a legitimate concern of the C the - Includes: Grade and quality PLUS packing, get up, description, label ling, handling and anything that may reasonably likely to affect the export market. - Extend to supervision and control of all acts or processes done or carried out for export’ crone v C the - REACH FORWARD There was a regulation regarding sale of dried fruit in UK- May reach forward to regulate subsequent distribution or sale which forms part offt- C the power does not cease on export

ASS Students' Travel An overseas sale after something has been exported, or overseas steps of a journey after someone has left a country would be under this power or external affairs. 2. INTRASTATE TRADE AND COMMERCE: Horizontal Integration of T&C C the power can reach into intrastate trade or commerce when there is a real connection with interstate. *Swift v. Boyd* Parkinson Suggested that the C the could regulate the whole of commercial activity where IS or SO cannot be separated from intrastate activities. Referred to a factory in N. Old. In an abattoir where some of the product is destined for export and some used in the home State (and there is no way of differentiating b/w them), the C the could regulate absolutely everything done in the abattoirs. - There would be no defense for the o winner if they don't know what it is going to be used for - I. E. Interstate or The C the can regulate all aspects of meat/poultry works where there is intrastate. No separate production line for output intended for the local market. *Red fern v. Dunlap Rubber* There was an agreement b/w the manufacturers of motor vehicle tires, by which they agreed not to supply their produce to a retailer who was selling tires at a discount. Because some of the manufacturers were located in the same state as the retailer It was argued TN at the agreement related to Intrastate trade (wholly within the state (NEWS)). HELD: The argument was rejected by the HCl. They said the legislation will not exceed the s. 51(I) power merely b/c it combined activities which dealt with interstate and intrastate trade. If there is a SINGLE agreement that covers dealings which may be done within NEWS and dealings which may be done b/w NEWS and other States then the C the can regulate that activity. Airlines of NEWS No. 2 Regulations regarding Licensing system covering ALL

air navigation - 98- prohibited use of unlicensed aircraft 199 - Allowed to consider matters concerned with safety, regularly and efficacy of air navigation when issuing License to intrastate airline. HELD: Both were within the incidental area of s. 51(I) because they protected against danger of physical interference with interstate operations.

Otherwise they would not be able to effectively regulate overall interstate and overseas airline travel (Owe use same airports etc)- Able to control safety aspects of intrastate - air traffic unique - Must consider the nature of the activity. Economic Considerations The C the can't authorize smearing within a State as part of interstate flights for economic reasons: WA Airlines Case s. BIB allowed the Commonwealth to transport passengers or goods between 2 points in one state - This was because it lead to efficient, competitive and profitable conduct of the business of the C the. HELD: Invalid under s. 51(I) BUT valid under s. 22 If they wanted to fly Perth-Kilgore-Adelaide, this is part of an interstate flight and the P-K part being intrastate is not directly within the C the power and the majority held that there is not sufficient connection with the inanimateness. BUT can authorize smearing within State as part of State-Territorial flight for economic reasons. S. 122 Power is more plenary TWO distinctions to be drawn: 1. Where talking about interstate flights - the C the can regulate intrastate aspects if it relates to safety but they can't regulate economic aspects or give themselves an economic advantage, simply for profitability. This distinction evaporates when not talking about State-to-State but talking about State-to-Territory. 2. C the can authorize smearing within a State as part of a State-Territory flight for economic reasons (e. G. Perth-Port Headland if Perth-Darwin would otherwise be

uneconomical) – s. 122 powers more “ plenary’. ELEMENT 4: Are there any Limits on the law?? T “ preference” 99. The C the shall not, by any law or regulation of trade, commerce, (or revenue) give preference to one State or any part thereof over another State or any part thereof.

S. 51(I) is subject to s. 99 This law (s. 99) applies only to C the Sub-Element 1: Law must be one with respect to Trade or Commerce Sub-Element 2: Give Preference.... What is a “ preference”? Refer above Tangible advantage of a commercial character to one state over another A law ill give preference when it provides different rules for different parts of Australia. However, a law, which contains a uniform rule whose operation and effect differ throughout Australia, is treated as neither administrating nor giving preference. *Convoy v Carter* *CARS v. Irving* (PC, 1906) The first C the Customs tariff exempted goods that had already been subject to the payment of tariffs as the Hyde entered the States. – The PC held that the tariff did not breach s. 99, on the grounds that looking at the text of the rules in the tariff, the rules were general and were to apply to all States. *James v. C the* (1928) Interstate delivery of dried fruit was prohibited except if licensed by a prescribed State authority. – The Act only prescribed State authorities in respect of four of the States.

This was held to give preference *Cameron v. FACT* (1923) Tax regulations applying to income from farmers tried to make a shortcut, by prescribing a value. They were set differently for the States because the market value was different for the States. This was held to discriminate. An argument that the prescribed values represented the fair value of each type in each State was rejected as irrelevant, the fact is they are different. *Crone v. C the* (1935) <https://assignbuster.com/constitutional-law-week-3-notes-assignment/>

Dried Fruits Board had 2 reps from VIC, one each from other dried-fruits States, none from T as and Old. This was held not to be discrimination because the section only says who the Board members are, not prescribing prices or regulations for the members of the States. *Convoy v. Carter* (1968) A Poultry levy was imposed on n eons. I Ana act could make an arrangement Tort levies to be paid to State Egg Board. -Challenged regulation but it was valid anyway because made under that section. But then further provision that State Board could “ garnishee” levy out of money it held for producer. - The HCl split 3: 3 on h ether this was merely a product of different circumstances, or of a different rate. - E. G. *Enemies J.* Said that s. (1)(b) exposed the farmers in a State where an arrangement had been made to a particular disadvantage at law, to which poultry farmers in another state were not exposed, therefore an unlawful preference. - *Taylor J.* On the other hand said that any difference b/w taxpayers in one State and taxpayers in another State arose from the fact that arrangements had not been made with all States so that s. 6(1)(b) would be incapable of application in some State and this is NOT discrimination. Therefore, in theory, different rules for different States are prohibited, but uniform rules whose operation and effect differ are today.

In practice this produces some odd outcomes. Sub-Element: Between States or any part thereof” Dicta in *Barer v. C* the suggest ‘ parts of States’ is synonymous with localities. - WRONG *Elliott v. C* the Special regulations to apply only in Sydney, Melbourne, Brisbane, Newcastle, Port Adelaide - Gave employers more control over who worked for them). HELD It was argued that this law was administrating b/w parts of States. - Rich, Stake, J] and Lat ham

CA said that the regulation was valid because it was incriminating b/w ports, not selected as parts of States or cities.

What is the purpose of s. 99? Object of section is to protect States from Discrimination of an improper or punitive nature Especially small states from Mac of House of Reps If you want to look to see if a particular statute is in breach of s. 99, you would look at the purpose. The decision in Elliott can be Justified on this ground - ports were picked out because they were the principal export ports - and they weren't all in big States or all in small States - not picked out because of what States they were in.