

# Sir Anthony Mason Essay Competition 2025 – Questions and Guidance

## Questions and Guidance

Your essay should answer **one** of the four questions.

The following suggestions are provided as potential starting points for your essay. Your essay **need not** engage with all of the suggestions. Indeed, it is not advisable to attempt to do so, given the word limit. Your essay might not engage with any of the suggestions, provided that it **does engage with your selected question**.

Essays will be judged on their merits, including:

- Whether they contain a clear and sustained thesis;
- The extent to which they demonstrate legal knowledge and research;
- The strength of their critical analysis; and
- The quality of their communication.

## Question 1: The Separation of Powers

Having regard to the separation of powers, discuss whether the Administrative Review Tribunal is best categorised as part of the executive or judiciary.

- Students may wish to explore the constitutional and functional differences between judicial and administrative decision-making.
- Students may consider the degree to which the Administrative Review Tribunal operates with judicial independence or is subject to executive direction or policy.
- Discussion may include the persuasive or binding nature of Tribunal decisions and how this positioning reflects on the Administrative Review Tribunal's institutional character.
- Students should consider how the Administrative Review Tribunal interacts with other arms of the executive (such as government departments and ministers) and with the Courts.
- Comparative examples from other jurisdictions or past Australian tribunals (such as the NCAT) may also be instructive.

## Question 2: The Aliens Power

Discuss *ASF17 v Commonwealth* [2024] HCA 19 compared to the High Court's ruling in *NZYQ v Minister for Immigration* [2023] HCA 37.

- Students should identify and analyse the key factual differences between the two cases.
- Students may examine how the High Court interpreted and applied s 51(xix) of the Constitution in each case.
- Discussion could include the continuing impact and relevance of *Love v Commonwealth of Australia* [2020] HCA 3.
- Consider whether these decisions signal a shift or continuity in the Court's approach to constitutional identity and immigration detention powers.
- Students may also wish to reflect on broader implications for Indigenous constitutional recognition and international human rights law.

## Question 3: The Acquisition of Property Power

Discuss the powers under s 51(xxxi) of the Australian Constitution, and the recent development in relation to Native Title as considered in *Commonwealth v Yunupingu* [2023] FCAFC 75.

- Students should discuss the constitutional requirement that acquisitions of property by the Commonwealth must be on "just terms".
- Reference should be made to *Newcrest Mining (WA) Ltd v Commonwealth* (1997) 190 CLR 513 as foundational authority on "just terms".
- Consider how the *Yunupingu* decision develops or clarifies the application of s 51(xxxi), especially in the context of Native Title rights.
- Students may wish to discuss the interplay between statutory land rights schemes, constitutional protections, and evolving understandings of property.
- The broader implications for Indigenous land justice and reconciliation could also be examined.

## Question 4: Recent Developments in Constitutional Law

Discuss and evaluate any significant developments in constitutional law in 2024–2025.

- Students may wish to focus on key High Court decisions handed down in 2024–2025.
- Legislative or political developments with constitutional implications may also be discussed.
- Examples might include developments concerning implied freedoms, structural constitutional principles, or executive accountability.
- Students should critically evaluate the significance of these developments in shaping the trajectory of Australian constitutional law.