

Constitutional Law – Practice Question and Answer

Session: Basic Concepts

Topic: Legal Effects of Pith & Substance, Interjurisdictional Immunity and
Paramountcy

Recommended time: 55 Minutes

Score: 60 Marks

Author: Manuel Akinshola

QUESTION

You are a student-at-law articling with The Honorable Judge G.H. Allen of the Provincial Court of Alberta, in the Civil Division, Edmonton. At yesterday's session was an application by the City of Beaumont for declaratory and injunctive reliefs against Seimer Seas Ltd, a business entity which organizes fishing expeditions across interprovincial rivers and lakes. The City had sought the reliefs against the company alleging that it flouted the City bylaw which prohibited the temporary moorage of boats on the Sabine Lake.

Seimer Seas Ltd had then challenged the constitutional validity of the bylaw on the three grounds of pith and substance, paramountcy and interjurisdictional immunity and also sought declarations. Seimer pointed to the Canada Marine Act and the Navigation Safety Regulations, two federal legislations that already made abundant and comprehensive provisions on limitations and prohibitions as regards anchorage, moorage and other marine activities, arguing that the City Bylaw seeks to do exactly what the federal enactments do and is inconsistent with them.

During lunch, Honorable Judge G.H. Allen had sought your viewpoints as regards the success or otherwise of the company's challenge. You informed him that you agree with the submissions of Seimer Seas Ltd because the bylaw:

- 1) appears to offend the pith and substance doctrine by seeking to regulate marine activities, which is in relation to the federal head of navigation and shipping under s. 91(10),
- 2) offends the doctrine of paramountcy by creating an operational conflict with the federal Canada Marine Act and the Navigation Safety Regulation, two legislations validly made pursuant to Parliament's power over navigation and shipping. And that by making contrary provisions, the bylaw seeks to frustrate or circumvent federal purpose; and
- 3) offends the doctrine of interjurisdictional immunity by trenching on the core of shipping and navigation and substantially impairs this federal power.

The judge noted that your argument seemed impressive and asked, "If ... and that's a BIG IF... if I were to agree with your submissions, what declaratory orders can I then make in favour of Seimer Seas Ltd and what would be the legal effects, if any, of such orders?"

You asked for a short time to provide a response. Prepare a draft of your answer.