

### REVISION LECTURE

- Think carefully about time spent. Spend most of time on one ground and then bring up other grounds.
- Not expected to do things in order. May have to jump around a bit.
- Bring up the idea of privative clause early and come back to it again.
- Threshold questions first and then come to grounds.

#### Steps:

#### 1. Jurisdiction

→ Which Jurisdiction are we talking; Cth or NSW → ADJR or CL..

- **CTH Jurisdiction:** Therefore, can bring argument under CL and ADJR.
  - ADJR is preferred → It gives you access to rights, reasons, and remedies
  - If definitely fits under ADJR then use it. but it might not always fit under ADJR so may need to use both.
  - **High Court has original Jurisdiction: S75 constitution:** Three key elements for **s75(v)**.  
**S75(v)** 'In all **matters**: .... in which a **writ** of Mandamus or prohibition or an injunction is sought against an **officer of the Commonwealth**, the High Court shall have original jurisdiction:
    1. **'matter'** (**Re McBain; Ex Part Aus Catholic Bishops Conference**) per Hayne J:
      - 'matter' is more than a legal proceeding – legal controversy
      - Must be an immediate right, duty or liability to be established by the Court's determination
      - Hypothetical questions do not give rise to a matter
      - Federal judicial power has as a core duty to be exercised to 'quell' matters
    2. **Writs/remedy present?**
      - **These errors are called jurisdictional errors**
        - **'quash'** (ie deprive of legal effect) invalid or unlawful administrative decisions (writ of **certiorari**)
        - **prevent** illegal admin acts or decisions (**prohibition**)
        - **require** performance of a duty by an ADM (**mandamus**) → require force of duty.
    3. **'officer of the Cth'?**
      - Gov owned corporation even if performing a public function, open to review under s75(v)
      - **s 75(iii)CC** 1→ CTH as a party – can sue the Cth.
      - Privatization: Issue- Functions v Sources/Structure → **NEAT v AWB** (In Australia, no JR). Cf: **Datafin**.
- **Fed Court Jurisdiction: Common Law** jurisdiction from **S39B Judiciary Act**
  - **s 39B(1)** Mandamus/prohibition/injunction is sought against a Cth officer:
    - a. **1A(a)** Where Cth is seeking an injunction/declaration
    - b. **(b)** Arises under the Constitution or its interpretation
    - c. **(c)** Arises under any laws made by Parliament
- **Fed Court Jurisdiction: Statutory jurisdiction** from **ADJR** → TEST: **S3(1) ADJR**
  - it must be a **decision** of **administrative character** made **under an enactment**. But it can't be a decision made by GG or anything listed under schedule 1.
  - **s 8:** FC have ADJR jurisdiction in circumstances set out in **s5-7**
  - **s 5-7** 'decision (**s5**) or conduct (**s6**) which this Act applies, or failure to make a decision (**s7**), as defined in **s3(1)**
    - **Decision** (**Australian Broadcasting Tribunal v Bond**)
      - Final or operative decision
      - Substantive Determination
    - **Administrative Character** (**Griffith v Tang**)
      - Excludes decisions of legislative or judicial character
      - Matter of statutory construction
      - Administrative: application of general rule to a particular case (**Tooheys**)
      - Weighing up factors – general or specific (**Aerolinas**)
    - **Under an Enactment** (**Griffith v Tang**)- **s3(1)** defines

## Administrative Law

- DM's power comes from legislation
- Expressly or implied authorised by the enactment.
- Must confer, alter or affect legal rights or obligations.
- Tang → don't need to go through it in detail. → don't get extra marks bringing up Tang.
- **THRESHOLD QUESTION:** Is there a **justiciability** issue → here there clearly is no justiciability issue.
  - Justiciability → is this matter appropriate to go to court. (i.e. national security won't be able to)
  - Although may have jurisdiction, it needs to be fit for judicial determination
  - Non-Justiciable issues are matters which are not within the public interest for the court to review the executive nature of decisions
    - A government decision involving the exercise of a prerogative power. **YES - (CCSU)**
    - A cabinet decision. **NO - (Peko)**
    - A decision with a close relationship to national security.
    - A decision made in the conduct of international treaties. **NO - (Peko)** or foreign relations **NO- (Hicks)**

## APPLICATION

- It is clearly a decision of an administrative character made under an enactment. It is not made by the GG or anything listed under schedule 1, therefore we can confidently say it fits under the ADJR Act.
- BUT – if there was a snag – it may not be made under an enactment, or it may not be a decision because **BOND**, it may be a preliminary decision- then you need to be honest.. we could get over these obstacles, but can't say for sure, so therefore going to argue both ADJR and common law.
- Can bring under CL – that's kind of the question for justiciability, can they hear me, is there a particular court need to go to.
- Perfect answer – in theory Jurisdiction is first... if you have already brought up case of ADJR Act, then bring up standing test for ADJR Act is person aggrieved by decision/conduct... and FA is clearly a person aggrieved.
- Jurisdiction → NSW or Cth → ADJR or CL..
- **NSW Jurisdiction:** Only thing can argue is Common Law jurisdiction from **s23C Supreme Court Act 1970:** the court 'shall have jurisdiction which may be necessary for the administration of justice'
  - So then the question of justiciability here is important: main issue → is this a matter which the Supreme Court will allow through its doors? i.e. national security, or **NEAT v Data**, is it a private company not gov. body, then it could be an issue with not allowing you in with CL.. we cant see this as an admin issue because it's a private issue.
    - Public/Private companies- Cannot impose public law obligations on private company while accommodating pursuit of its private/commercial interest (**NEAT**)
    - Rights and expectations - public duty affecting rights of citizens (**Datafin**)

## 2. Standing

- **THRESHOLD QUESTION:** CL argument of standing – does it change the level of standing depending on what remedy you are going after → argument: in theory it makes a difference but what matters here is if it's a private or public right or interest. then go from here.
- **s 3(4) ADJR** - Aggrieved person: interests adversely affected by **s 5** – decision or **s 6** – conduct
  - Special interest- Need for public right to interfere with private right (**ACF v Cth**)
  - Clear financial connection (**Shop Distributive Union Case**)
  - Clear and direct historical connection between than other (**Onus v Alcoa**)
  - Private company – financial (**Bateman's Bay**)
  - Special interest of public interest group- YES (**Northcoast**)
  - Must be personal benefit or detriment (**McGuirk**)
  - Can be similar to large seg of pop (**Dyson**)
  - NO- Must be more than a mere emotional/intellectual concern (**Right to life association**)
  - No requirement of direct LEGAL affect (**Power Engineers**)
- Action cannot be oppressive, vexatious, or abuse of power (**Bateman's Bay**)