

LLAW2213 – Admin Judicial Review - Exam Notes

Identify on work paper the issues – eg the questions to be addressed
Then ascertain the principles that would apply
Then identify the cases/statutes that apply
Apply the law to the facts of the problem
Come to a conclusion

Justiciability

Week 1

Road Map

- 1) Is it state or federal?
- 2) Is the decision justiciable or reviewable?
- 3) If so, are grounds made out? The grounds are..
 - Excess or lack of jurisdiction (ultra vires)
 - Breach of procedural fairness (fair hearing/ bias)
 - Error of law
- 4) If so, does the applicant have standing?
- 5) Has the applicant applied for the right relief?
- 6) If so, will the court exercise its discretion in their favour and grant relief?

Although some powers exist at common law (eg the prerogative) most powers are statutory.

How to analyse a statutory provision

- 1) Identify decision maker
- 2) Identify permissible conclusion (ie decision)
- 3) Does the statute lay down a procedure to be followed? (notice, hearing etc)
- 4) Does the statute lay down substantive factors to be taken into account in making the decision

1 & 2 are always included, 3 & 4 may not be

Questions to ask of a problem

Which area is it (judicial review or statutory interpretation)

What happened in this question?

1. Who are the decision makers (eg – The Minister, The commission, the secretary)
2. What did they decide? (eg – to grant a visa, to revoke a passport, to convene a hearing)
3. What procedure, if any, did they follow?
4. What factors did they take into account?

Covers both statutes and common law prerogative powers (eg, to appoint a QC, grant a pardon)

Step 1: Is it State or Federal?

The decision made to _____ was administratively made by _____ under _____ (statute?). The nature of the power exercised to make this decision is a State/Federal statutory (?) power under _____ Act. The responsible Minister for this Act is _____ (?). Therefore, judicial review should be at State/Federal (statute) law under common law (State)/ ADJR Act 1977 or s75(v) of the Constitution (Federal).

If SA (State) Law:

- Nature of the power exercised to make the decision = prerogative/statutory at State (SA).
- Judicial review at: common law (because its prerogative)
- The court that may entertain an application for review = Supreme Court (undertakes judicial review in SA)
- Court Jurisdiction from: Supreme Court Civil Rules 2006 (SA) pt 3.

If Federal (Commonwealth) law:

Nature of the power exercised to make the decision = prerogative/statutory at Federal

Judicial review at: common law if prerogative and ADJR if statutory

Court that can entertain an application for review = Federal Court

Court jurisdiction from: Judiciary Act 1903 (Cwth) s398; Federal Court of Australia Act 1976 (cwth) as 19,32; ADJR Act 1977 (cwth); The Constitution ss77(i), 76(ii).

Step 2: is the matter justiciable?

State

Covers the lower courts – eg. District court and below

Federal

ADJR Act 1977 (Cwth)

Covers administrative matters arising under enactment only

Therefore does not cover common law powers or judicial matters

There are 4 steps to go through in order to determine whether ADJR can be used... There must be a:

- 1) Decision
 - ABT v Bond (1990) 94 ALR 1
 - A decision is normally: final, operative, determinative & substantive
- 2) Of an administrative character
 - Phosphate Resources v Commonwealth (2001) 12 FCR 170
 - Eg. Cannot be legislative or judicial in character – must be administrative in character
 - Administrative means: the application of law to a particular situation or class of situations
- 3) Arising under an enactment
 - ANU v Burns (1982) 64 FLR 166
 - Excludes matters arising under a contract
- 4) And the decision or decision maker must not be in the excluded categories in the schedules to the ADJR Act 1977(Cth)
 - Eg. Excludes the governor general (s3(1))
 - If you cannot use ADJR then get straight to the point and state that

s75(v) of the Const.

- The HCA may issue prohibition, mandamus or an injunction against any officer of the commonwealth – known as const writs
- Not so limited
- Use if cannot use ADJR Act
- Remember that one of the ADJR provisions apply
- Privative clause cannot take away the HCA's powers of review under s75(v)
- Plaintiff s157 v Cth (2003) 211 CLR 476

Officer of the Commonwealth

ACCS v AMC (2015) 326 ALR 521 (Fed Court)

- What is and isn't an officer of the commonwealth
- Officer of the commonwealth includes judicial officers: eg – judges of the federal court and the family court, ministers etc.
- Does not include a corporate body
- Tribunals created by parliament and the paid salary officers of such tribunals are officers of the cwth
- A university is not an officer of the cwth

The Issues

Reviewability

Held that there was no blanket restriction on review of the prerogative.

Some prerogatives eg civil service employment were reviewable

Others were not: eg foreign affairs, military/defence matters

Grounds