

COMMON LAW REMEDIES

PRELIMINARY STUFF:

1. Legislation in question
2. Decision maker
3. Statutory power of decision maker

A) Grounds of review

- I. *Excess of power*
 - a. Narrow
 - i. Substantive – statute does not grant power to decision maker (*London County Council v AG*)
 1. E.g. acting under revoked power, overrides fundamental common law rights, uncertainty
 2. *Shanahan v Scott*
 - ii. Procedural – statute mandating procedures for decision maker weren't followed
 - b. Wide – **power failed to exercise in a proper way**
 - i. Abuse of power
 1. **Irrelevant considerations** when making the decision (*Roberts v Hopwood*). Three elements:
 - a. What matters were taken into consideration?
 - b. Were any considerations deemed by statute as irrelevant? (*Peko-Wallsend*)
 - c. Were these considerations enough to invalidate the decision?
 2. Failure to take account **relevant considerations**. Elements:
 - a. Was there a statutory obligation on DM to consider a relevant consideration?
 - b. Was there a failure by the DM to consider this matter?
 - c. Was this failure enough to invalidate the decision?
 3. **Improper purpose** - must exercise that power only for the purpose for which it was conferred (*Brownells Ltd v Ironmongers' Wages Board*) Elements:
 - a. What was the statutory purpose?
 - b. For what purpose was the power exercised by decision maker?
 - c. consideration of an improper purpose in that case sufficient to **invalidate** the decision?
 4. **Unreasonableness** – so unreasonable no reasonable person could've so exercised the power – *Wednesbury* **NB**: Watch out for merits review!
 - a. Overlaps with other grounds of review
 - ii. Failure to exercise discretionary power: DM must exercise powers on the merits
 - i. Acting under direction of another person - *Bread Manufacturers of New South Wales v Evans*
 - ii. Self-fettering: inflexible application of policy - *Minister for Immigration and Ethnic Affairs v Tagle*
 - iii. Invalid delegation of powers
 1. For delegation to be valid it must be made by a DM with the power to make that decision unless the power has been validly delegated
 2. Delegate must exercise the power independently
- II. *Procedural Fairness* – what does the duty to act fairly require in the case's circumstance? *Kioa v West*

Procedural fairness is (always) implied – unless actual urgency proven

Legal rights protected by procedural fairness:

- Legal rights in real property
- Public sector employment rights