

ADMIN LAW EXAM SUMMARY NOTES

Judicial review as a whole:

1. What Jurisdiction?

- a. *Level of Government*: Commonwealth (HCA/FCA) or State (State Supreme Court).
- b. *Legal Framework*: Constitution s75(v) (HC), Judiciary Act s39B (FCA), ADJR Act 1977 (FCA), or State statutes.

2. Standing?

- a. *Tests*:
 - i. **Common Law**: "Special interest" (e.g., financial, reputational harm).
 - ii. **ADJR Act**: "Person aggrieved" (interests adversely affected).
- b. *Groups*: Public interest orgs (beyond emotional concern), unions (members' interests), competitors (substantial impact).

3. Grounds of Review

- a. **Acting Without Power**: Misconstrued jurisdiction, improper delegation.
- b. **Procedural Errors**: Failure to follow mandatory steps (*Project Blue Sky*).
- c. **Jurisdictional Facts**: Objective (court decides) or subjective (rational basis).
- d. **Procedural Fairness**: Denial of hearing/bias (*Kioa, Ebner*).
- e. **Discretion Errors**: Improper purpose, irrelevant considerations (*Peko*), fettering discretion.
- f. **Unreasonableness/Irrationality**: Decision lacks intelligible justification (*Li*).
- g. *Materiality Required*: Error must impact outcome (*Hossain*).

4. Is it a jurisdictional error?

- a. Is it a jurisdictional error that you can seek remedies for under JA/constitution
- b. Or is it only an error under ADJR → limits remedies

5. Remedies

- a. **Prerogative Writs** (JE required): Certiorari (quash), Mandamus (compel duty), Prohibition (halt action).

- b. **Equitable Remedies:** Declaration, Injunction.
- c. **ADJR Act:** Quash, refer back, or declare rights (no JE needed).

6. **Statutory Restrictions**

- a. **Privative Clauses:** Void for JE (*Plaintiff S157*).
- b. **No-Invalidity Clauses:** May shield non-material errors (*Futuris*).
- c. **Time Limits:** Invalid if restrict constitutional review (*Bodruddaza*).

Key Flow: Confirm jurisdiction → Establish standing → Prove grounds (with materiality) → Select remedy → Check statutory limits.

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DEFINITIONS

Prerogative Writs

- **Mandamus:** compels the exercise of a public duty
- **Certiorari:** quashes certain unlawful action
- **Prohibition:** prohibits a person from acting outside the scope of their powers

Equitable Remedies

- **Injunction:** prevents someone from acting contrary to law.
- **Declaration:** declares the legal rights and obligations of parties.

MERITS REVIEW

Yes courts often prefer to have sought MR first

But

4. Tribunal cannot determine constitutional questions or grant remedies reserved for courts.
5. Cannot be used to question the legality of the law itself
6. Must assume legislation is valid unless otherwise directed.

KEY CASES FOR MERITS REVIEW

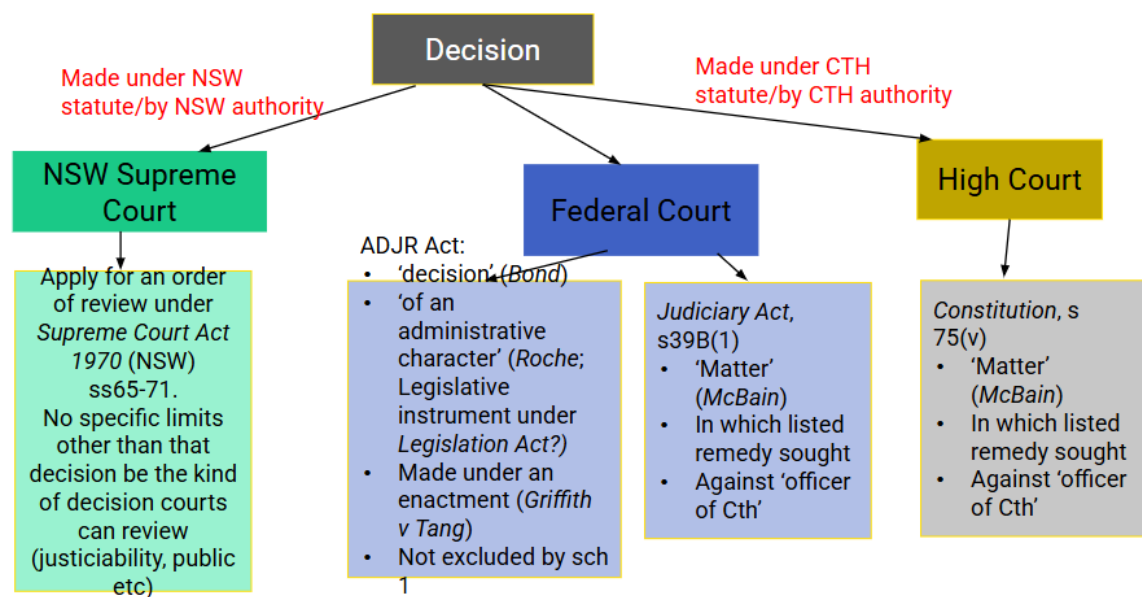
Drake v Minister for Immigration: Merits review is a de novo review; Tribunal must make the correct and preferable decision.

Brandy v HREOC: Tribunals cannot exercise judicial power unless authorised; reinforces distinction from judicial review.

Shi v Migration Agents Registration Authority: Tribunal can consider material not before original decision-maker.

STEP 1: WHO HAS JURISDICTION?

Which court/s have jurisdiction to review the decision?



1 - WHAT LEVEL OF GOVERNMENT?

- Commonwealth Decision? → HCA, FCA - s75(v); JA; ADJR Act
- State Decision? → State supreme court

2 - WHAT LEGAL FRAMEWORK?

Federal before High Court – priority

(A) - CONSTITUTION S75(V) → 'COMMON LAW JUDICIAL REVIEW' - HCA

- Constitutionally entrenched meaning it cannot be removed or limited
- Applies where:
 1. A matter exists ("justiciable controversy" - **McBain**)
 2. Against an officer of the Commonwealth
 3. Relief sought must be: mandamus, prohibition, certiorari, or injunction
 - a. NOTE: These require **jurisdictional error**. See separate section to determine if JE applies.
- **Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476**
 - Migration Act primitive clause tried to oust judicial review
 - Ruled that Parliament cannot oust s 75(v) jurisdiction for jurisdictional error.

(B) - S39B JUDICIARY ACT 1903 → ESSENTIALLY IDENTICAL TO 75(V) - FCA

- Grants original jurisdiction to the FCA – essentially mirrors s75(v). Same requirements as above apply. You should be using this, as it is very rare to apply straight to the High Court.
- Avenue if you want: mandamus, prohibition, certiorari, or injunction

(C) - ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT 1977 (CTH) – FCA

ADJR Act jurisdiction

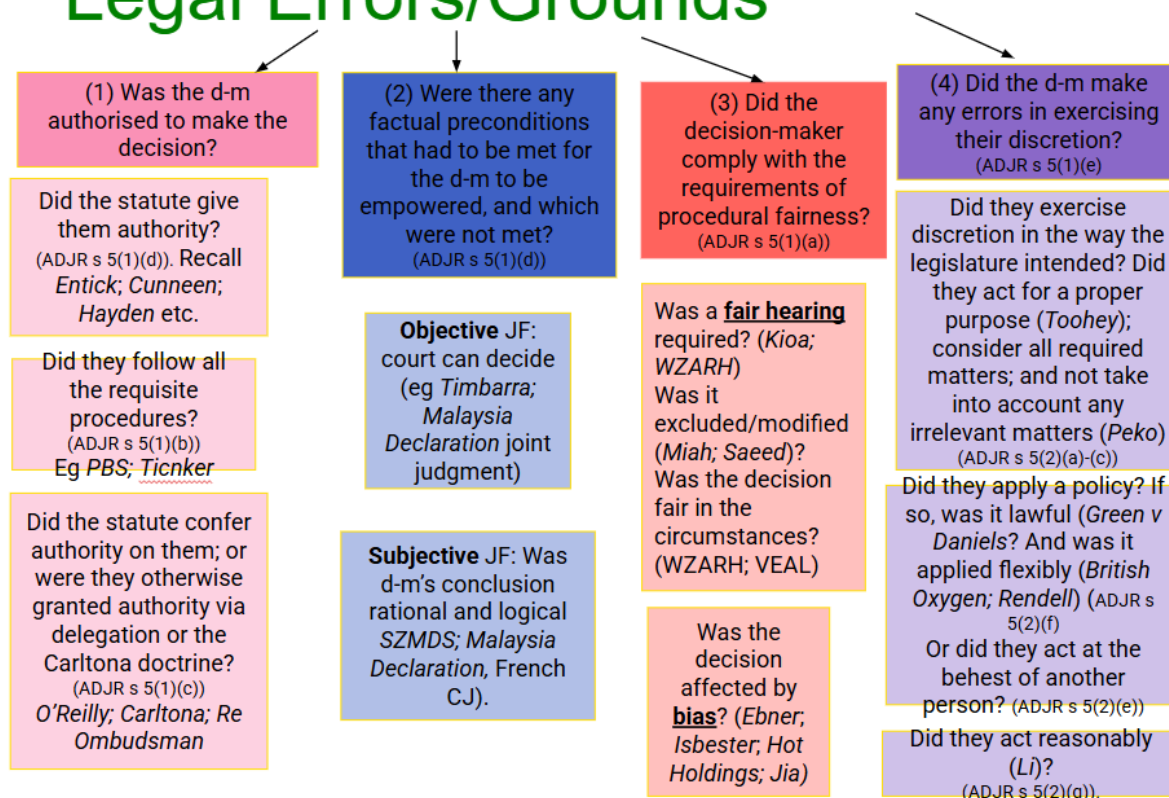
| "decision" | "of an administrative character" | "made under an enactment" |
|---------------------|--|-------------------------------------|
| • <i>Bond v ABT</i> | • <i>Aerolineas Argentinas and Roche</i> | • <i>Griffith University v Tang</i> |

- The ADJR Act operates separately from the other two - you can/should argue both. ADJR requires:
 1. **A decision**
 - Must be final, operative and determinative
 - ***Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321***
 - A decision must be substantive, not procedural or preliminary.
 2. **Of an administrative character**
 - Must not be judicial or legislative
 - ***Roche Products v National Drugs and Poisons Schedule Committee (2007)***
 - Decision must apply existing policy to individual facts (administrative), not general rule-making (legislative)
 3. **Made under an enactment**
 - ***Griffith University v Tang (2005) 221 CLR 99***

- ii. S13A
 - 1. Schedule 2
- c. NSW: available once review is sought against a public authority (UCPR (NSW) r59.9)

STEP 4: DO THEY HAVE A GROUND OF REVIEW?

Legal Errors/Grounds



ACTING WITHOUT POWER GROUNDS

GROUND 1: MISCONCEIVING THE NATURE OR THE SCOPE OF POWER

When a decision-maker purports to make a decision that is of a different kind than the decision they are given the power to make.

| Source | Test |
|--|--|
| ADJR Act: S 5(1)(d) = the decision was not authorized by the enactment in pursuance of which it was purported to be | Definition: A decision-maker will misconceive the nature or scope of their power if the statute confers the power to do one thing, and the decision-maker (usually due to an error in statutory construction or a wrong assumption about the nature of the power conferred) does something different, purporting to rely on the power (Swan Hill Corporation v Bradbury). |

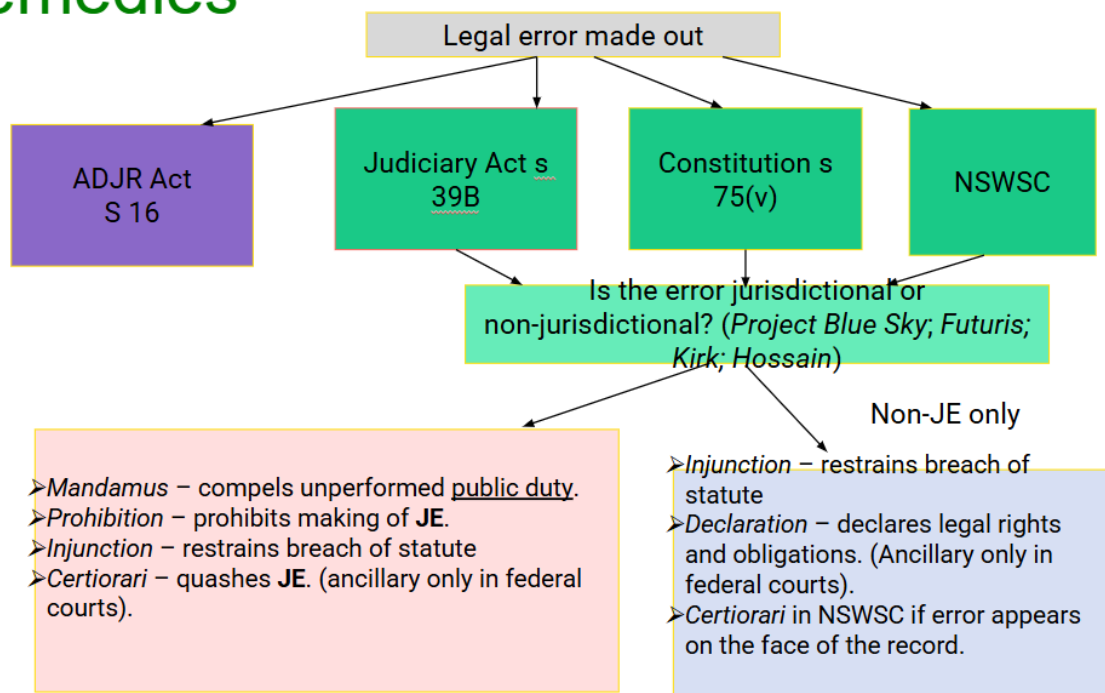
2. Privative clauses may block action.
- 3) Remedies may be available under the ADJR Act.

REMEDIES

Three Frameworks:

- 1 - Prerogative Writs (s 75(v) Constitution, s 39B Judiciary Act)
- 2 - Equitable Remedies (Court based)
- 3 – ADJR Act s16 Remedies

Remedies



1 - PREROGATIVE WRITS (S 75(V) CONSTITUTION, S 39B JUDICIARY ACT)

Has to be JE to access → had to have fulfilled

(A) - MANDAMUS - COMPELS PERFORMANCE OF A PUBLIC LEGAL DUTY

Conditions:

- There must be a clear legal duty to act (**Re RRT; Ex parte Aala (2000)**)
- **Plaintiff M61 (2010)**
 - **Facts:** Offshore review process lacked procedural fairness
 - **Rule:** Even though process wasn't under statute, there was a duty to conduct it lawfully – mandamus appropriate