

LAWS1160 ADMINISTRATIVE LAW EXAM FRAMEWORKS

OVERVIEW

Scope	Jurisdiction	2
	Statutory Restrictions	
	• Privative clauses	6
	• No-invalidity clauses	7
	• Broad, non-compellable powers	8
Grounds of Review	• Time limits	8
	Standing	10
	Reasons	12
	Acting without power	13
	• Agency and delegation	16
Remedies	Error of jurisdictional fact	18
	Procedural fairness	
	• Hearing rule	19
	• Bias rule	20
	Errors in the exercise of discretion	
	• Improper purpose	23
	• Relevant/irrelevant considerations	24
	• Unlawful use of policy	26
	• Unreasonableness	28
	Jurisdictional Error	30
	Remedies	31

JURISDICTION

HIGH COURT

<p>Legislation</p>	<p>S 75(iii) of the Constitution 'All matters in which the Commonwealth, or a person being sued on behalf of the Commonwealth is a part'</p> <p>S 75(v) of the Constitution 'All matters in which a writ of <i>mandamus</i> or <i>prohibition</i> or an <i>injunction</i> is sought against an officer of the Commonwealth'</p> <p>S 73 of the Constitution (Appellate Jurisdiction) The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences:</p> <ol style="list-style-type: none"> of any Justice or Justices exercising the original jurisdiction of the High Court; of any other federal court, or court exercising federal jurisdiction; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council; of the Inter-State Commission, but as to questions of law only; <p>and the judgment of the High Court in all such cases shall be final and conclusive.</p>
	<p>Application</p> <ol style="list-style-type: none"> <u>Was it a matter? (Justiciability)</u> <ul style="list-style-type: none"> McBain – must be a justiciable issue; controversy about rights, duties or liabilities which by the application of judicial power can be quelled; must be real and immediate CSSU – prerogative power is no longer automatically justiciable Peko – not enough that the instant decision might lead to a future decision that would have disadvantage – consider only the direct and immediate effects Stewart v Ronalds – whether a claim is justiciable may also depend on whether the decision relies on 'legal standards' rather than political considerations Peko – matters relating to international relations are considered non-justiciable Re Diftfort – no justiciable matter if the plaintiff seeks an extension of the court's true function into a domain that does not belong to it, namely the consideration of undertakings and obligations depending entirely on political sanctions (Gummow J) <u>Is the applicant seeking one of the listed remedies?</u> <ul style="list-style-type: none"> Mandamus = compels action on a duty Prohibition = prevents action on a decision Injunction = either mandatory or prohibitory <u>Is the applicant seeking review of a decision by an officer of the Commonwealth?</u> <ul style="list-style-type: none"> Yes: <ul style="list-style-type: none"> Ministers and their delegates (Church of Scientology v Woodward) Public servants Tribunal members Statutory office holders (Commonwealth v Westwood) Federal judges CPCF – maritime officer detaining offshore foreign nationals trying to enter Australia without a visa Green v Daniels – officers within Australian government agencies No:

- State officials
- Statutory corporations:
 - *Post Office Agents Association of Australia v Australian Postal Commission* – statutory corporation is not an officer of the Commonwealth
 - *Edensor* – statutory corporation is ‘the Commonwealth’ for the purposes of S 75(iii)
- *Murray v Cormie* – ‘office’ of conceivable tenure, salary
- *Plaintiff M61* – unclear whether this encompasses contractors performing ‘public functions’

Note: if the applicant can potentially seek review in the HC under S 75(v), they should first seek review under S 39B in the FC (same jurisdictional requirements) to preserve their right to appeal to the HC, and avoid the HC remitting the matter back to the FC per S 44(2A) of the *Judiciary Act*

FEDERAL COURT

<p>Legislation</p>	<p>Judiciary Act</p> <ul style="list-style-type: none"> • S 39B(1) - ‘Jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth’ • S 39B(1A)(c) - ‘Matters arising under any laws made by the Parliament, other than a matter in respect of which a criminal prosecution is instituted or any other criminal matter’ <p>ADJR Act</p> <ul style="list-style-type: none"> • S 8 – FC and FCC have jurisdiction to determine applications under the Act • S 5(1) – A person who is aggrieved by a decision to which this act applies ... may apply to the FC or FCC for review • S 6(1) – where a person has engaged, is engaging or proposes to engage in conduct for the purposes of making a decision to which this act applies may apply to the FC or FCC for review
<p>Application of Judiciary Act Jurisdiction</p> <ul style="list-style-type: none"> • Same as S 75(v) above • <i>Re McBain</i> – must be against an officer of the Commonwealth, and must be a matter <p>Application of ADJR Act Jurisdiction</p> <ol style="list-style-type: none"> 1. Was it a decision? (S 5) <ul style="list-style-type: none"> • S 3(1) – decision to which this act applies = decision of administrative character made, proposed to be made or required to be made, under an enactment, or by a Commonwealth authority under an enactment <ul style="list-style-type: none"> ○ EXCLUDES decisions made by the Governor-General (c) and Schedule 1 (d) • <i>ABT v Bond</i> - ‘Decision’ refers to administrative activity that is substantive or final or operative, not a step along the way to an ultimate determination • <i>Edelsten v Health Insurance Commission</i> – deciding at what point in the continuum preliminary action becomes a decision requires attention to whether the outcome has an adverse impact on a person’s rights or interests 2. Was it conduct? (S 6) <ul style="list-style-type: none"> • <i>ABT v Bond</i> – ‘conduct’ refers to administrative activity preceding a decision that reveals a flawed procedural process, as opposed to substantive issues 	

3. Was it of administrative character?

- **Burns v Australian National University** – administrative describes decisions neither judicial nor legislative in character (endorsed in **Tang**)
- **Roche Products** lists relevant matters in determining whether legislative or administrative in character, whether:
 - Decision determined rules of general application or whether there was an application of rules to particular cases,
 - Parliamentary control of the decision,
 - Public notification of the making of a regulation,
 - Public consultation and the extent of any such consultation,
 - Broad policy considerations imposed,
 - Regulation could've been varied,
 - Power was executive variation or control,
 - Provision exists for MR
- **Aerolineas Argentinas** – includes the adoption of a policy, making and issue of a specific direction, and the application of a general rule to a particular case in accordance with the requirements of policy or administrative practice

4. Was it made under an enactment?

- Was it an Enactment?
 - **S 3(1)** – **enactment** means:
 - Act (other than exceptions listed in the definition),
 - Ordinance of a Territory other than the ACT,
 - Instrument made under Act or Ordinance
 - **Chittick v Ackland** – 'instrument' must satisfy three requirements: document made 'under an act', document under which decisions of an administrative character may be made, must affect legal rights and obligations
 - Acts may be excluded under **Schedule 1**
- Was it 'under' that Enactment?
 - **Griffith University v Tang** – two criteria must be met:
 - Must be expressly or impliedly required or authorised by the enactment; and
 - Decision itself must itself confer, alter or otherwise affect legal rights or obligations

STATE SUPREME COURTS

Legislation	<p>Note: powers under SS 65 – 75A of the Supreme Court Act</p> <ul style="list-style-type: none">• S 65 – Order to fulfil duty• S 66 – Injunction• S 67 – receiver• S 68 – damages in case of equitable relief• S 69 – proceedings in lieu of writs• S 70 – Ouster of office <p>S 69 of the Supreme Court Act (NSW)</p> <p>(1) Where formerly—</p> <p>(a) the Court had jurisdiction to grant any relief or remedy or do any other thing by way of writ, whether of prohibition, mandamus, certiorari or of any other description, or</p> <p>(b) in any proceedings in the Court for any relief or remedy any writ might have issued out of the Court for the purpose of the</p>
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	<p>commencement or conduct of the proceedings, or otherwise in relation to the proceedings, whether the writ might have issued pursuant to any rule or order of the Court or of course,</p> <p>then, after the commencement of this Act—</p> <p>(c) the Court shall continue to have jurisdiction to grant that relief or remedy or to do that thing; but</p> <p>(d) shall not issue any such writ, and</p> <p>(e) shall grant that relief or remedy or do that thing by way of judgment or order under this Act and the rules, and</p> <p>(f) proceedings for that relief or remedy or for the doing of that thing shall be in accordance with this Act and the rules.</p> <p>(3) The jurisdiction of the Court to grant any relief or remedy in the nature of a writ of certiorari includes, if the Court is satisfied that the ultimate determination of a court or tribunal in any proceedings has been made on the basis of an error of law that appears on the face of the record of the proceedings—</p> <p>(a) jurisdiction to quash the ultimate determination of the court or tribunal, and</p> <p>(b) if the Court determines that, as a matter of law, only one particular determination should have been made by the court or tribunal, jurisdiction to make such judgment or orders as are required for the purpose of finally determining the proceedings.</p>
<p>Application</p> <ol style="list-style-type: none"> 1. <u>Does the Court have the characteristics of a State Supreme Court?</u> <ul style="list-style-type: none"> • Kirk – Jurisdiction is guaranteed by the Constitution because Chapter III assumes the existence in each state of a Supreme Court and because that jurisdiction was one of their ‘defining characteristics’ at Federation 2. <u>Is there a privative clause in operation?</u> <ul style="list-style-type: none"> • Kirk – privative clauses cannot be read to alter the character of a state Supreme Court so that it ceases to meet the constitutional description 	

STATUTORY RESTRICTIONS ON JUDICIAL REVIEW

PRIVATIVE CLAUSES

Function	<ul style="list-style-type: none"> Statutory provision which purports to exclude the power or jurisdiction of courts to hear and determine JR proceedings, grant JR remedies or otherwise 'call into question' administrative decisions PCs cannot remove the <i>constitutionally protected</i> supervisory role of the HC and State SCs for review of JE <ul style="list-style-type: none"> ADJR Act and Judiciary Act jurisdictions are creatures of statute, thus, can be removed by Parliament If these jurisdictions are removed by a PC, review is likely still available per the Constitutionally entrenched review jurisdiction of the HC All PCs are read in the context of S 75 of the Constitution, and the entrenched minimum provision of JR in state courts
Statutory Examples	<p>S 474 of the Migration Act 1958</p> <p>S 179 of the Industrial Relations Act 1996</p>
Case Principles	<p>Plaintiff S157 – effect of a privative clause is to be determined by a process of statutory interpretation</p> <ul style="list-style-type: none"> No general rule as to the effect of privative clauses: <ul style="list-style-type: none"> Must be ascertained from its terms Effect will depend entirely on the outcome of its reconciliation with other provisions Must have regard to whole legislative instrument Two rules of construction which apply: <ul style="list-style-type: none"> If there is opposition between the Constitution and any provision, it should be resolved by adopting an interpretation consistent with the constitution that is fairly open Presumed that parliament does not intend to cut down the jurisdiction of the Courts Where a general PC is found in a statute, it may be unlikely that such a clause will be construed as 'expanding' the jurisdiction of the d-m beyond the limits which the specific provisions conferring that power otherwise appear to fix Centrality and protective purpose of the jurisdiction of this Court places significant barriers in a way of legislative attempts ... to impair JR of administrative action PC cannot protect against a failure to make a decision required by the legislation in which that clause is found or against a decision which, on its face, exceeds jurisdiction Constitutional underpinning of JR as a power with constitutional protection that cannot be removed by parliament 3 bases upon which the clause should be read down: <ul style="list-style-type: none"> S 75(v) limits the powers of Parliament to restrict JR and statutes should be read comfortably with the constitution Gleeson CJ – legislation should be read on a basis that JR is a fundamental right and means of upholding the ROL In law, a decision vitiated by JE is no decision at all <p>Kirk – clause not invalid, but read down so as not to prevent review of JE</p> <ul style="list-style-type: none"> Distinction between JE and non-JE in the Australian constitutional context marks the relevant limit on State legislative power