

LAW5014: ADMINISTRATIVE LAW

EXAM NOTES FINAL

DECISION TREE – ORDER OF ANALYSIS

STEP 1	JURISDICTION – Can the court hear the challenge? (Topic 2)
STEP 2	STANDING – Can the applicant bring the challenge? (Topic 3)
STEP 3	REASONS – Has the applicant obtained reasons? (Topic 4)
STEP 4	GROUNDINGS OF REVIEW – Is there a legal error? (Topics 5–7)
STEP 5	REMEDIES – What relief is available? (Topic 8)
STEP 6	PRIVATIVE CLAUSES – Has Parliament tried to oust review? (Topic 9)
STEP 7	MERITS REVIEW – Is tribunal review available/preferable? (Topic 10)

TOPIC 2: JURISDICTION TO CONDUCT JUDICIAL REVIEW

NOTE:

Two pathways: (A) Common law / s 75(v) / s 39B; (B) ADJR Act. Address both where Commonwealth decision is involved.

2.1 – COMMON LAW / s 75(v) / s 39B JURISDICTION

STEP 1

Is there a MATTER?

WRITE:

A matter requires a justiciable controversy about rights, duties or liabilities capable of determination by judicial power. Hypothetical questions give rise to no matter (Re McBain; Ex parte Australian Catholic Bishops Conference, Hayne J). Justiciable controversies concern the rights and duties of parties and the powers of those who hold public office.

Insert Facts:

Here, the decision has caused [concrete harm / loss / legal disadvantage] to [P]. This is a concrete controversy, not hypothetical. Therefore, there is a matter (Re McBain).

STEP 2

Is the respondent an OFFICER OF THE COMMONWEALTH?

WRITE:

Relief must be sought against an officer of the Commonwealth. Includes departmental Secretaries, Ministers, delegates exercising Commonwealth statutory power.

Insert Facts:

Here, [decision-maker] is a Commonwealth [Secretary / Minister / statutory delegate] acting in official capacity under Commonwealth legislation. Therefore, an officer of the Commonwealth.

STEP 3

Is at least one REMEDY available?

WRITE:

Jurisdiction turns on availability of effective relief. Satisfied where at least one recognised remedy is available:

- Certiorari – quash a decision with legal consequences (Hot Holdings v Creasy; Roberts v Hopwood; Ex parte Jia).
- Prohibition – restrain continued or proposed exercise of public power (R v Australian Stevedoring Industry Board; Annetts v McCann).
- Mandamus – compel exercise of a public duty; unlikely where power is discretionary (Padfield v Minister of Agriculture; R v Anderson; Ex parte Ipec Air).
- Injunction – restrain unlawful action (Ansett v Commonwealth).
- Declaration – state legal rights/liabilities without coercive effect (Samrein; Wednesbury; Ridge v Baldwin; Jack v Manukau).

Insert Facts:

Here, at least one remedy is available – [certiorari to quash / prohibition to restrain / declaration as to validity]. Therefore, this limb is satisfied.

STEP 4

Is the matter JUSTICIABLE?

WRITE:

Court may refuse to hear a matter as non-justiciable. Considers: source of power (constitutional/prerogative vs statutory); status of decision-maker (PM/Cabinet vs departmental officer); nature of power (national security = 'par excellence a non-justiciable question' – Council of Civil Service Unions v Minister for the Civil Service, Lord Diplock); whether issue is real or hypothetical (Re McBain; Hicks v Ruddock).

NOTE:

Difficult to argue non-justiciability: 'right of access to the King's Court must not be lightly refused'.

STEP 5

Which COURT?

WRITE:

- High Court: original jurisdiction under s 75(v) Constitution (mandamus, prohibition, injunction against officer of Commonwealth).
- Federal Court: s 39B(1) Judiciary Act 1903 (Cth). Also s 39B(1A): declarations/injunctions; matters arising under Constitution; matters under Commonwealth laws.
- s 44(2A) Judiciary Act – HC may remit to FC.

2.2 – ADJR ACT JURISDICTION

NOTE:

Four essential requirements: (1) decision or conduct; (2) administrative character; (3) made under an enactment; (4) person aggrieved.

STEP 1

Is there a DECISION or CONDUCT?

WRITE:

s 5 – review of a decision. s 6 – review of conduct. s 7 – review of failure to make a decision.
 A reviewable 'decision' is generally final or operative and determinative of the issue – not a step along the way (Australian Broadcasting Tribunal v Bond, Mason CJ). It must be one for which statute provides. A decision is substantive; conduct is procedural.
 s 3(2) – lists examples of decisions with quality of finality (making/suspending/revoking orders; giving/refusing certificates; issuing/refusing licences; imposing conditions; declarations/demands; retaining articles; doing or refusing to do anything).
 s 3(3) – reports or recommendations may be deemed decisions.
 s 3(5) – 'conduct' includes anything preparatory, including taking evidence or holding an inquiry.

Insert Facts:

Here, the [decision/conduct] is [final and determinative (Bond) / a mere step in the reasoning / procedural in character]. Therefore it is a [decision under s 5 / conduct under s 6].

STEP 2

Is it of an ADMINISTRATIVE CHARACTER?

WRITE:

Describes decisions made by Ministers, public servants, agencies in executing Commonwealth laws. NOT of judicial character. NOT of legislative character (does not create a new rule of general application – applies existing rules to individual cases).

Insert Facts:

Here, the decision applies existing rules to [P] in an individual case. It is regulatory, not legislative. Therefore administrative in character.

STEP 3

Is it made UNDER AN ENACTMENT?

WRITE:

'Enactment' includes an Act and an instrument (rules, regulations, by-laws) (s 3).

Two criteria – BOTH must be met (Griffith University v Tang):

- (1) Expressly or impliedly required or authorised by the enactment;
- (2) The decision itself confers, alters or otherwise affects legal rights or obligations.

In Tang, termination of a PhD candidature did not affect legal rights under the University Act – merely terminated a 'consensual' relationship.

Insert Facts:

Here, the decision is [authorised by s X] (criterion 1). It [affects [P]'s legal rights by directing what they may/may not do] (criterion 2). Both Tang criteria are met. Therefore, made under an enactment.

STEP 4

Is the applicant a PERSON AGGRIEVED? (see Topic 3)

WRITE:

s 3(4) – 'a person whose interests are adversely affected' – same as common law test (Tooheys v Minister for Business and Consumer Affairs).