

Administrative Law — Master Summary

The Big Picture

Administrative Law regulates the exercise of **executive power**.

The central question throughout the subject is:

Has the decision-maker acted within the limits of the power conferred by Parliament?

Administrative law is concerned with:

- legality;
- accountability;
- procedural fairness;
- jurisdictional limits;
- review mechanisms.

It is **not concerned with whether a decision was correct or desirable**.

Administrative Law Exam Framework

For virtually every problem question:

1. Jurisdiction

Can the court hear the matter?

Review pathways:

- Common law judicial review
- Constitutional review (Constitution s 75(v))
- Federal Court review (Judiciary Act 1903 (Cth) s 39B)
- ADJR Act review

2. Justiciability

Is the issue suitable for judicial determination?

Reviewable:

- legality

- statutory powers
- procedural fairness

Usually non-reviewable:

- high policy
- purely political questions
- cabinet deliberations

3. Standing

Can the applicant bring the claim?

Common law:

- Special interest (*Australian Conservation Foundation v Commonwealth* (1980) 146 CLR 493)

ADJR Act:

- Person aggrieved

4. Reviewability

Is there:

- a decision?
- conduct?
- failure to decide?

Must usually be:

- administrative in character
- made under an enactment

Key cases:

- *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321
- *Griffith University v Tang* (2005) 221 CLR 99

5. Grounds of Review

This is where most marks are awarded.

6. Jurisdictional Error

Does the error invalidate the exercise of power?

7. Remedies

What relief should the court grant?

Topic 4 — Scope of Power

Jurisdictional Facts

A jurisdictional fact must exist before power can lawfully be exercised.

Objective Jurisdictional Facts

Court determines whether the fact actually exists.

Cases:

- *Timbarra Protection Coalition Inc v Ross Mining* (1999) 46 NSWLR 55
- *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135

Subjective Jurisdictional Facts

Decision-maker must be satisfied of something.

Courts review whether satisfaction was formed lawfully.

Cases:

- *R v Connell; Ex parte Hetton Bellbird Collieries Ltd* (1944) 69 CLR 407
- *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611

Delegation

Power must be exercised by the authorised person.

Key case:

- *Carltona Ltd v Commissioner of Works* [1943] 2 All ER 560

Topic 5 — Improper Exercise of Power

Relevant and Irrelevant Considerations

Decision-makers must:

- consider mandatory matters;
- avoid prohibited matters.

Key case:

- *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24

Relevance is determined by statutory construction.

Improper Purpose

Power must be exercised for the purpose Parliament intended.

Key case:

- *Samrein Pty Ltd v Metropolitan Water Sewerage & Drainage Board* (1982) 41 ALR 467

Fettering Discretion

Policies may guide decisions.

Policies cannot dictate decisions.

Acting Under Dictation

Decision-maker must exercise independent judgment.

Unreasonableness

Traditional

- *Wednesbury* unreasonableness

Modern

- *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332

Question:

Is there an evident and intelligible justification?

Irrationality

Key case:

- *SZMDS*

Decision must not be illogical or irrational.

Topic 6 — Procedural Fairness

Two rules:

1. Hearing Rule

Person must have:

- notice;
- disclosure;
- opportunity to respond.

Key case:

- *Kioa v West* (1985) 159 CLR 550

2. Bias Rule

Decision-maker must be impartial.

Key case:

- *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337

Test:

Would a fair-minded observer reasonably apprehend bias?

Exclusion

Procedural fairness applies unless clearly excluded.

Cases:

- *Miah*
- *Saeed*

Practical Injustice

Key case:

- *Re Minister for Immigration; Ex parte Lam* (2003) 214 CLR 1

Topic 7 — Jurisdictional Error

The most important topic.

A jurisdictional error occurs where the decision-maker exceeds statutory authority.

Classic Categories

Craig v South Australia (1995) 184 CLR 163

Includes:

- asking wrong question;
- ignoring relevant question;
- misunderstanding law;
- exceeding authority.

Constitutional Protection

Commonwealth

- *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476

State

- *Kirk v Industrial Court of NSW* (2010) 239 CLR 531

Materiality

Not every error invalidates.

Key case:

- *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123

Question:

Could compliance realistically have produced a different outcome?

Topic 8 — Remedies

Certiorari

Quashes unlawful decision.

Mandamus

Compels performance of duty.

Prohibition

Prevents excess of jurisdiction.

Injunction

Restrains unlawful conduct.

Declaration

Clarifies legal rights.

Remember:

Relief is discretionary.

Topic 11 — Privative Clauses

Hickman Principle

R v Hickman; Ex parte Fox and Clinton (1945) 70 CLR 598

Historically protected some decisions.

Modern Position

Plaintiff S157

Jurisdictional error cannot be protected.

Kirk

State Supreme Court review is constitutionally protected.

Topic 12 — Merits Review

Judicial review asks:

Was the decision lawful?

Merits review asks:

What is the correct or preferable decision?

Key case:

- *Drake v Minister for Immigration and Ethnic Affairs* (1979) 46 FLR 409

Tribunals may:

- affirm;
- vary;
- set aside;
- remit.

Topic 13 — Ombudsman and FOI

Ombudsman

Investigates:

- maladministration;
- unfairness;
- delay;
- poor administration.

Cannot usually invalidate decisions.

FOI

Promotes:

- transparency;
- accountability;
- access to information.

Often assists later review proceedings.

The 10 Cases You Must Know

Case	Principle
<i>Quin</i>	Legality not merits
<i>Bond</i>	Meaning of decision
<i>Tang</i>	Under an enactment
<i>ACF</i>	Standing
<i>Peko-Wallsend</i>	Relevant considerations
<i>Kioa</i>	Procedural fairness
<i>Ebner</i>	Bias
<i>Craig</i>	Jurisdictional error
<i>Kirk</i>	Constitutional protection
<i>Hossain</i>	Materiality

One-Sentence Summary of the Entire Subject

Administrative law ensures that executive decision-makers exercise statutory power according to law by providing mechanisms to review legality, procedural fairness, jurisdictional limits and administrative accountability.