

JURD7141 Principles of Public Law

Complete Exam Notes, Weeks 1 to 10

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The Exam Engine

Align an essay to any prompt · Scaffold any problem question

Contents

Part A: The essay engine (align to any prompt)

Part B: Theme cards (the parts bin)

Part C: Prompt to theme card

Part D: The universal problem method

Part E: Problem micro-scaffolds (with sentence stems)

brought within a short fixed period; combined with facts showing the decision-maker denied a hearing, prejudged the outcome, asked the wrong statutory question, misread the section defining the power, ignored a matter the Act required to be considered, or acted with no evidence of a jurisdictional fact; or a client asking whether a court can still be reached despite the clause.

RUN IT IN THIS ORDER

1. Identify the decision-maker and the forum. An officer of the Commonwealth engages s 75(v) of the Constitution in the High Court, and s 39B(1) of the *Judiciary Act 1903* (Cth) in the Federal Court. A State officer, tribunal or inferior court engages the State Supreme Court's supervisory jurisdiction.
2. State the constitutional starting point: s 75(v) is an entrenched minimum provision of judicial review that Parliament cannot remove or curtail by ordinary legislation, and it exists so that the executive cannot be the final judge of the limits of its own power (*Plaintiff S157*).
3. Construe the clause consistently with the Constitution rather than striking it down: the clause protects a decision 'made under this Act', and a purported decision affected by jurisdictional error is no decision at all, so it falls outside the clause (*Plaintiff S157*). Parliament is presumed not to intend to protect decisions infected by jurisdictional error.
4. Identify the specific error on the facts and name it: breach of natural justice, misconstruction of the provision conferring the power, absence of a jurisdictional fact, failure to consider a mandatory relevant consideration, or acting for an improper purpose.
5. Ask whether that error is jurisdictional: does it go to the existence or scope of the power, so that Parliament cannot have intended a decision affected by it to be valid (a *Project Blue Sky* question about the consequence of non-compliance)? If it is only error within jurisdiction, the clause may still bite.
6. For a State decision, run the *Kirk* analogue: a State privative clause cannot deprive the State Supreme Court of jurisdiction to grant relief for jurisdictional error, because supervisory jurisdiction is a defining characteristic of a Supreme Court and is entrenched through s 73 of the Constitution. It may still protect non-jurisdictional error.
7. Choose the remedy and check that it fits: mandamus where a duty remains unperformed, prohibition where something remains to be done, and an injunction, these three being the writs named in s 75(v), with certiorari available ancillary to them to quash the purported decision. Note that a statutory scheme such as the *Administrative Decisions (Judicial Review) Act 1977* (Cth) can be excluded or limited by statute, whereas s 75(v) and s 39B cannot.
8. Conclude on consequence: the purported decision is invalid, the application remains undetermined according to law, and the decision-maker must decide it again; then deal separately with any time limit in the clause.

SENTENCE STEMS (fill the blanks)

- Section ____ of the ____ Act ____ provides that ____, which is a privative clause, and the question is whether it protects ____'s decision of ____.
- Because ____ is an officer of the Commonwealth, s 75(v) confers original jurisdiction in the High Court that Parliament cannot remove, s 75(v) being an entrenched minimum provision of judicial review (*Plaintiff S157*); the same relief may be sought in the Federal Court under s 39B(1) of the *Judiciary Act 1903* (Cth).
- Read consistently with s 75(v), s ____ protects only a decision in fact made under the Act, and a decision affected by jurisdictional error is not such a decision, so the clause is read down rather than struck down (*Plaintiff S157*).
- The strongest ground here is ____, on the facts that ____, and that error goes to the

Case	Citation	Topic
	[2011] HCA 34 (High Court of Australia)	
Nationwide News	(1992) 177 CLR 1 (High Court of Australia)	Implied freedom of political communication
New South Wales v Kable	(2013) 252 CLR 118	Superior-court order valid until set aside; detention lawful
New South Wales v Wojciechowska	[2025] HCA 27	NCAT power administrative not judicial; Ch III not engaged
Palmer v WA	(2021) 274 CLR 286	Rule of law as interpretive aid
Patriation Reference	[1981] 1 SCR 753 (SCC)	Conventions (recognise, not enforce)
Plaintiff M68	(2016) 257 CLR 42	Executive power: prerogative vs capacity
Plaintiff S157	(2003) 211 CLR 476	Rule of law; entrenched JR (s 75(v))
Potter v Minahan	(1908) 7 CLR 277	Principle of legality (origins)
Project Blue Sky	(1998) 194 CLR 355	Statutory interpretation (text/context/purpose)
Quin (A-G (NSW) v)	(1990) 170 CLR 1 (HCA)	JR = legality, not merits
Roach	(2007) 233 CLR 162 (HCA)	Implied franchise; substantive limit
Rowe	(2010) 243 CLR 1 (HCA)	Implied franchise; procedural; ratchet
Sipka (Ex parte)	(1983) 152 CLR 254	s 41 spent; no express right to vote
Stephens	(1994) 182 CLR 211	State-Constitution implied freedom; double entrenchment (WA)
Sue v Hill	(1999) 199 CLR 462	Legal independence; foreign power
Sykes v Cleary (No 2)	(1992) 176 CLR 77	s 44(i)/(iv) disqualification
Tasmanian Breweries	(1970) 123 CLR 361	Definition of judicial power (Kitto J)
Taylor v A-G (Qld)	(1917) 23 CLR 457	Representative legislature may abolish a House
Trethowan	(1931) 44 CLR 394	State manner-and-form; s 7A double entrenchment
Union Steamship	(1988) 166 CLR 1	State legislative power (plenary)
Walker	(1994) 182 CLR 45	No parallel Indigenous criminal law
Webster (Re)	(1975) 132 CLR 270	s 44(v) pecuniary interest

mean **no Australian legislature is truly sovereign**, even though the system runs day to day on Westminster conventions.

A5. Parliamentary sovereignty and its limits

DICEY

Parliament has 'the right to make or unmake any law whatever': (i) any law on any subject; (ii) no Parliament can bind a successor; (iii) the courts apply the latest Act and cannot review it for content.

THE DEBATE

- *Goldsworthy*: a single ultimate law-making power, grounded in representation and consent; limiting Parliament is 'a cure much more dangerous than the highly improbable disease'.
- *Dicey's limits*: external (political, the ballot box) and internal (moral, shared sentiment); neither is a legal limit. Dicey splits the **legal** sovereign (Parliament) from the **political** sovereign (the electorate).
- *Allan*: sovereignty rests on a 'deeper constitutional morality'; if Parliament undermined the democratic basis of institutions, 'political morality might direct judicial resistance rather than obedience'.

THE AUSTRALIAN TWIST

No Australian legislature passes Dicey's test in full (Goss: 'no legislature in Australia is sovereign'). At State level *Union Steamship v King* confirms 'peace, welfare and good government' is plenary, but reserves whether rights 'deeply rooted in our democratic system' limit power. The franchise cases (*Roach*, *Rowe*) show ss 7 and 24 entrenching a democratic minimum Parliament cannot remove.

A6. Federation and federalism

WHY FEDERATE, AND HOW

Federation (1901) was a pragmatic bargain among six self-governing colonies: free trade, defence and national identity, against the obstacles of tariff policy and small-state fears. The fix for the small states was an **equal-representation Senate**. Federalism then means enumerated Commonwealth powers, a residue to the States, a judicial umpire, federal supremacy (s 109), and rigid entrenchment (s 128).

MODELS AND ADVOCATES

- United States: the 'incomparable model' (Dixon); residue left with the States (cf Canada's BNA Act 1867, residue to the centre).
- Switzerland: the referendum mechanism behind s 128.
- *Galligan, Knopff and Uhr*: 'a federal constitution is itself a bill of rights'.

ESSAY: DOES FEDERALISM PROTECT RIGHTS?

B&W are sceptical: the libertarian defence is long on assertion and short on evidence. It is hard to find any real federal component to rights protection in Australia, and the division of power left minority-rights areas (public morality, and control of Indigenous peoples even after 1967) in State hands, where States' rights were rarely a friend to Aboriginal communities. Better view: federalism enhances **participation** (double democracy, voice and exit) more