JR

Work out whether there's been unlawfulness (aka illegality, legal error, breach)

Not concerned w/ merits of decision

Pros:
- Ct can reach FINAL decisions re legality of exec decisions
- Important role in regulating exec's ex of power
- Powerful remedies: cert, mandamus - can force remaking of decision
- Oriented strongly to ROL & SOP; largely very coherent w/ those PPLs

Cons:
- No assurance of substantive justice - doesn't guide the cts: no concern re fairness, rather legality
- Limits to jurisdiction   Legality only, not merits
- Mightn't be able to get the remedies (such as *Green*: won, but couldn't get a useful remedy)
- Expensive   Slow   Complex

Intro

Decision

What's the decision?   Who made it?   What power did they rely on to make it?

Which remedies to seek?

Certiorari (ADJR: quashing) <- almost always

Mandamus: only if they applied to govt for sthing (licence/visa/permit etc) & were refused it

Prohib'n: (can leave out if decision = refuse app for licence/visa/permit etc)
- want to prevent a decision being made; OR
- want to prevent a decision being carried into effect (certiorari would do the same)

Injunction: (can leave out if decision = refuse app for licence/visa/permit etc)
- Mandatory ops like mandamus
- Prohibitory ops like prohib'n

Decl'ns state the legal position as b/w the parties (i.e., the decision is invalid).

Anterior Issues

Public/Pvt Divide (Jurisdiction)

JR isn't about supervising the ex of pvt power. It's about supervising the ex of pub power.

Starting position: **pvt actors** aren't subject to JR, but sometimes there may be sthing about it that could cause an extension (*Datafin*)

- *Datafin* (UK case)
  - Panel has no stat/CL/prerog powers. It's just an unincorp'd group of indivs w/ a set of rules (but not legal rules - code isn't leg've instrument or statute). If ppl in industry don't comply w/ the rules, panel tries to discourage them fm doing so (self-reg'n) - but doesn't have any legal powers or enforcement powers. At most, there'd probs be a threat to report breacher to govt dept, which would app the actual legal rules. Govt likes this scheme.

- o Applicant complained about the conduct of their competitors in a takeover bid & were unhappy w/ the Panel's decision. When it was refused leave to seek JR by the HC, it appealed to the Ct of Appeal.
- o Ct: ct had jurisdiction despite no ex of pub power (but found there was no illegality here)
  - ▪ Panel had 'enormous power' & 'giant's strength'
  - ▪ **Source of power** isn't det've (not statutory, not prerog, not CL, etc.) <- don't stop here
  - ▪ **Look at nature** of the power - panel is carrying out a public duty in its reg'ory role. It's clear that the govt relied on the panel (abdication by govt of reg'ory responsibility).
  - ▪ This entity had the **power** to affect the rights of indivs.
  - ▪ This body was under duty to act judicially, i.e. must accord w/ procedural fairness (natural justice)
  - ▪ Its power of moral persuasion was reinforced by govt powers
- *NEAT* (go through Jurisdiction: **ADJR s5** before considering this)
  - o NEAT can't export wheat unless it's given consent by Wheat Export Auth. WEA can't give consent unless given approval by AWBI. AWBI uses its veto power 6 times.
  - o ^Govt policy = 'single desk' (rationale: indiv growers can't export individually)
  - o NEAT apps for JR of WEA & AWBI [gd = inflexible app of govt policy]
  - o Maj: **no jurisdiction**
    - ▪ Source of power to refuse to approve = corps law (which says that a corp has all the powers of an indiv), not statute
    - ▪ [Reflective of *Tang* maj approach]
    - ▪ This is **simply** a pvt corp given a role in scheme of pub reg'n
    - ▪ Emphasis on **pvt** nature of corp.
    - ▪ AWBI is owned by AWBI Ltd and therefore **must act** in its shareholders' interests (cf national interests)
  - o Gleeson CJ (DISSENT): **jurisdiction**
    - ▪ AWBI holds a virtual statutory monopoly on bulk wheat export; can decide who can export wheat; acks that monopoly is in national & growers' interest, but that means its ex of veto power isn't ex of pvt power for pvt interests; it's carrying out a policy in national interest; AWBI isn't just a pvt corp'n. Almost irrelevant that it's a pvt entity.
    - ▪ AWBI has huge power in terms of the statutory scheme, & does so in the national interest; can't just put it outside of JR

Fact/Law (*Agfa*) - Gds (low yield)
Concept: **ct can't** scrutinise/review/overturn ODM's fact-finding

- Rationale: ct's role is to check exec's staying w/in law's confines; JR is a manifestation of the ROL

Ratio: whether or not decision-maker misinterp'd a statute or leg've instrument = q of law

- In *Pozzolanic* & not queried by the HC in *Agfa*:
  - o the meaning of a technical legal term is a q of law.
  - o the q of whether facts fully found fall w/in the provision of a statutory enactment properly construed is generally a q of law <- OBITER
  - o BUT when a statute uses words according to their ord meaning & it's reasonably open to hold that the facts of the case fall w/in those words, the q whether they do/not is a q of fact.
- HC was given 2 other propositions by *Pozzolanic* that it seemed to disagree w/ but didn't decide:

- o In *Pozzolanic*, the FC had said that the ord meaning or non-legal technical meaning of a word is a q of fact. But it also said that the construction of a term whose meaning is established is a q of law.
- o The HC suggested this distinction was artificial b/c the meaning to be given to a word is influenced by the construction of the whole phrase or section & vice-versa: the construction given to a phrase is influenced by the meaning of particular words.
- o Arguably, it seems like the ct might be saying that these are both qs of law.

Legality vs Merits (remedies)

Quin per Brennan J: MR is role of exec, not cts. Exec is equipped to do it. Cts aren't.

Cts' role is to expose & enforce the law, not to administer it (that's exec's job). MR would undermine jud'l insulation - "JR provides no remedies to protect interests, falling short of enforceable rights, which are apt to be affected by the lawful ex of exec/admin've power"

- While UK's started to incorp merits into JR, this absolutely isn't the direction Aus will go.

Green

Ct finds DG applied unlawful policy - G wants pyt, but **ct can't** give this remedy as it'd be MR (would be ct <u>doing exec's job</u> - DG needed to be satisfied that G was unemployed & taking reasonable steps to find work)

- Instead, ct gives 2 decl'ns (but didn't declare her eligible to pyt in arrears, as this would be J intruding into exec's realm) -> exec had to go through dm process again

*NOTE: had MR been available at the time, it would've been a better avenue for her

1. Justiciability (only mention if contentious; low yield)

Concept

Justiciability is about whether the matter of concern which has been brought to the ct is suitable for judicial det'n/eval.

Free-standing principle of admin law or 'an expedient shorthand for expressing the concl'n reached by applying other principles of public law' (eg, standing, jurisdiction, remedies)?

A particular concern has been that the ex of judicial power be restricted to cases that req a det'n of legal rights & interests or claims made by an indiv. It follows that matters which depend on political as opposed to legal stds are non-justiciable.

App

National security or High Lvl Policing Matters - *CCSU* (UK case)

Ct: **non-justiciable** - decision to not follow the consultation process (as req'd by law) for creating instrument that prohib'd govt workers fm unionising was consid'd to be a <u>political decision connected to national security</u> (would've invoked strikes); ct couldn't decide this due to the involvement of political consids

Hypo dispute, Entering Int'l Treaty - *Peko-Wallsend*

Govt cabinet's decision of applying to put park in world heritage listing was **non-justiciable** <u>despite</u> being made under <u>prerog power (no statute)</u> b/c:

- <u>No legal rights/interests currently at stake: it was a hypo dispute</u>. This decision was only an app.
- To enter into an int'l treaty heavily involves <u>political matters</u>:
  - o Consids re environment, economy, ATSI rights, etc.

- o I.e. cabinet had weighed up a # of *political* matters
- o Ct won't enter into an eval of political matters. Ct wants to only eval *legal* matters.

2A. Jurisdiction

ANTERIOR ISSUE
Pub/Pvt Divide (BUT GO THROUGH ADJR S5 FIRST)

ADJR

Enabling s: s 8
(1) FC has jurisdiction to hear apps made under this act
(2) ^Same for FCC [which is probs a quicker process; it's where most JR apps will begin]

Review decision: S 5 (HIGH YIELD); go through this before considering NEAT (pub/pvt divide)
(1) A pers aggrieved by a decision to which this Act apps may app to the FC/FCC for an order of review; what's 'a decision to which this Act applies'? S 3(1):

1. **EXCLUSIONS** (LOW YIELD): Decision
   - Made by <u>GG</u>: s 3(1) definition of decision para (c) [EXAMPLE: can challenge decision made under reg, but can't directly challenge the reg itself (decision to make the reg) if it was made by the GG. Also, can't challenge decision to make regs as they are of <u>leg've char</u> (step 3: admin've char); thus, if this is 1 of the gds to be raised, it can't be done via ADJR]
   - Listed in <u>Sch 1</u>: s 3(1) definition of 'decision', para (d)
   - Excl'd by way of a reg made under s 19 - [don't need to know]
2. '**Decision**': <u>Illustrations in ss 3(2), (3) (but illustrations ONLY);</u> *Bond* TEST - 2 definitions accepted (i.e. not ALL decisions will meet these definitions! Esp smaller decisions along the way):
   - A: <u>narrow</u>
     - o Decision provided for under a statute
     - o Final/op've, & det've of the issue of fact falling for consid; &
     - o Substantive (not procedural)
       - ▪ Substantive: affects ppl's rights/interests - e.g.: decision to grant/refuse licence/visa; decision about someone's tax liability; decision to grant/refuse planning approval, etc
       - ▪ Procedural: whether/when/where a hearing's held, whether it's adjourned, the means by which a dm comms w/ an affected person (email vs post etc), date on which docs are sent out, format of docs which are sent out, etc.
     - o [CASE: decision 6]
   - B: <u>slightly wider</u>
     - o Not final/op've, but expressly provided for under the enactment; &
     - o Substantive (not procedural)
     - o [CASE: decision 5]
   - RATIONALE:
     - o Statutory interp'n: purposes of act, etc. -> whole point is to make it easier for ppl to gain access to JR; not purpose for ADJR to be bogged down by wide interp
     - o Wide interp -> looking at facts & looking at merits
   - CASE DECISIONS:
     1. Decision that Bond had paid off Sir Joh in relation to a defo action Joh had against 1 of Bond's media companies – so that Bond could successfully do business in Qld
     2. Decision that Bond had threatened to use his media coy to broadcast dmging info about a bsns competitor