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Topic 10: JR Remedies

Table of Contents

1. What are the different types of judicial remedies (relief)?	2
1.1 THE REMEDIAL LANDSCAPE	2
1.2 Orders Following Successful Review – Part 3 JR Act/ADJR Act	2
1.3 The Discretionary Nature of s 30 Orders	3
1.4 Declare and Direct Powers	3
<i>Park Oh Ho v Minister for Immigration and Ethnic Affairs (1989) 167 CLR 637, 644-645</i>	3
2. The Prerogative Writs	3
2.1 What the Writs Do	3
2.2 The Place of the Writs Today	4
2.3 Prohibition and Certiorari – Common Features	4
<i>R v The Electricity Commissioners [1924] 1 KB 171, 205 (Atkin LJ)</i>	5
2.4 Certiorari for Non-Jurisdictional Error of Law on the Face of the Record	5
<i>Craig v South Australia (1995) 184 CLR 163, 180-183</i>	5
2.5 Mandamus	5
2.6 Matters Common to All the Prerogative Writs	6
3. Equitable Remedies – Declarations	6
<i>Dyson v The Attorney-General [1911] 1 KB 410</i>	6
3.1 Source of Power (Qld and Federal)	7
3.2 Breadth and Availability	7
3.3 Limits on Availability	7
<i>Ainsworth v Criminal Justice Commission (1992) (Mason CJ, Dawson, Toohey and Gaudron JJ)</i>	7
3.4 Declarations and Non-Jurisdictional Errors of Law	8
<i>Punton v Ministry of Pensions and National Insurance (No 2) [1964] 1 WLR 226, 234-237</i>	8
3.5 Standing, Time Limits, and Discretion	8
4. Equitable Remedies – Injunctions	9
4.1 Source of Power (Qld and Federal)	9
4.2 Availability in Administrative Law	9
4.3 Classification	9
4.4 The Test for Interlocutory Injunctions	10
<i>Beecham Group Ltd v Bristol Laboratories Pty Ltd (1968) 118 CLR 618, 622-623</i>	10
<i>American Cyanamid Ltd v Ethicon Ltd [1975] AC 396, 407-408 (Lord Diplock)</i>	10

<i>Australian Broadcasting Corporation v O'Neill (2006) (Gummow and Hayne JJ; Gleeson CJ and Crennan J agreeing)</i>	10
4.5 Balance of Convenience	10
4.6 A Public Law Adjustment?	10
<i>Castlemaine Tooheys Ltd v South Australia (1986) 161 CLR 148, 153 (Mason ACJ)</i>	10
4.7 Undertaking as to Damages	11
<i>Central Queensland Speleological Society Incorporated v Central Queensland Cement Pty Ltd [1989]</i>	11
4.8 Standing and Time Limits for Injunctions	11
4.9 Injunctions to Enforce the Law	11
<i>Gouriet v Union of Post Office Workers [1978] AC 435, 481 (Lord Wilberforce)</i>	11
5. Collateral Challenge	12
6. Exam Application Checklist	12
6.1 Choosing the Right Remedy	12
6.2 Master Case List	12

Topic 10: JR Remedies

1. What are the different types of judicial remedies (relief)?

- **Common law prerogative writs:** mandamus, prohibition and certiorari (note habeas corpus)
- **Constitutional remedies:** per s 75(v) Constitution – writ of mandamus or prohibition or an injunction
- **Statutory remedies:** statutory orders under JRA 1991, AD(JRA) 1977 or Judiciary Act 1903
- **Equitable remedies:** injunction and declaration

Remedies are the means by which the courts may enforce legal rights, protect interests, and ensure fairness and justice for parties;

No compensation for unlawful action by public entities (unless some private law wrong also committed e.g. nuisance, deprivation of liberty)

1.1 THE REMEDIAL LANDSCAPE

Successful judicial review requires two components:

1. **Legal Error:** Establishing a ground of review (e.g., *ultra vires*, bias, unreasonableness).
2. **Remedies:** Obtaining an order from the court to redress that error.

Remedies are **discretionary**. Even if an applicant proves a legal error, a court may refuse to grant a remedy if, for example, the error was trivial, the delay was unreasonable, or the remedy would be futile.

1.2 Orders Following Successful Review – Part 3 JR Act/ADJR Act

JR Act s 30 (ADJR Act s 16 equivalent) sets out the Supreme Court's powers – available only where there is a "decision to which Part 3 applies".

Section 30 has three parts: sub-s (1) **DECISIONS**; sub-s (2) **CONDUCT**; sub-s (3) **FAILURES TO DECIDE**.