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Chapter 1 : Remedies in Singapore administrative law - Wikipedia

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History[edit] The constitutional framework and development of administrative law in Australia was highly influenced by legal developments in the United Kingdom and United States. At the end of the 19th century, the British constitutional theorist A. Dicey argued that there should be no separate system of administrative law such as the droit administratif which existed in France. The present administrative law is largely a result of growing concern about control of bureaucratic decisions in the s. In response a set of committees were established in the early s, whose recommendations constituted the basis for what became known as the "New Administrative Law". The most important of these, the Kerr Report, recommended the establishment of a general administrative tribunal which could review administrative decisions on the merits, codification and procedural reform of the system of judicial review , and the creation of an office of Ombudsman. These proposals were put into practice with the passing of a package of federal statutes: Judicial review[edit] The grounds for challenging administrative action were developed at common law [5] and have been codified in the Administrative Decisions Judicial Review Act Dicey observed in Section 75 of the Constitution of Australia provides that the High Court shall have original jurisdiction in matters including " iii in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party" and " v in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth. If, in so doing, the court avoids administrative injustice or error, so be it; but the court has no jurisdiction simply to cure administrative injustice or error. The merits of administrative action, to the extent that they can be distinguished from legality, are for the repository of the relevant power and, subject to political control, for the repository alone. Historically, the courts have generally not inquired into certain classes of administrative actions, such as decisions exercising the vice-regal " prerogative powers " [25] [31] [32] [33] or that involve foreign policy , [34] [29] a declaration of war , national security or the award of official honours. However, there is no general rule preventing this, and the courts sought to focus more on the individual circumstances of application and the nature of the power being used rather than categorical dismissal based on government powers. The AAT can review decisions made by Commonwealth ministers, departments and agencies. In some circumstances, decisions made by state governments, non-government bodies or under Norfolk Island law can also be reviewed. An application for review can be made by, or on behalf of, "any person or persons It is free to file an application for review of a decision listed in section 22 of the Administrative Appeals Tribunal Regulation [1]: They vary in terms of the degree of formality, focus on mediation, procedure and jurisdiction. Victoria established the Victorian Civil and Administrative Tribunal in

Chapter 2 : Exhaustion of Administrative Remedies â€“ Administrative Laws

the law commission (law calendrierdelascience.com 73) report on remedies in administrative law advice to the lord chancellor under section 3 (1) (e) of the law commissions act

Introduction[edit] Supervisory jurisdiction of the High Court[edit] The aim of administrative law is to regulate the executive government by providing remedies which individuals can apply for when challenging administrative actions and decisions, and failures to take action and make decisions. Where the exercise of statutory or other discretionary power by public authorities contravenes the Constitution or is unlawful under administrative law, various remedies may be available when a judicial review action is taken. Public Prosecutor [1] as inherent in nature, that is, deriving from the common law rather than statute. In other words, one High Court judge may not exercise judicial review over a decision by another High Court judge. Remedies[edit] The remedies available in a judicial review action are the prerogative orders â€" the mandatory order formerly known as mandamus , prohibiting order prohibition , quashing order certiorari , and order for review of detention habeas corpus â€" and the declaration , a form of equitable remedy. All these remedies that the High Court may grant are discretionary. A successful claimant has no absolute right to a remedy. In deciding whether to grant a remedy, the Court will take into account factors such as the following: Prerogative orders[edit] The ancient remedies of certiorari, mandamus, prohibition and habeas corpus were originally only available to the British Crown and thus termed prerogative writs, that is, writs that could be issued at the prerogative of the sovereign. In Singapore, the prerogative orders were known by their traditional names until , when the names were modernized. The Subordinate Courts are not empowered to grant prerogative orders. There are no reported cases of quo warranto having been issued in Singapore. Since paragraph 1 still empowers the High Court "to issue to any person or authority any Mandatory orders[edit] A mandatory order is an order of the High Court which commands a public body to perform a public duty, and is usually employed to compel public bodies to exercise the powers given to them. It may be used in combination with another remedy, most commonly a quashing order. In such a case, the quashing order will set aside the unlawful decision, and the mandatory order will require the public body to reconsider the matter. Justices of Kingston, ex parte Davey , [20] it was held: They simply direct them by mandamus to perform their duty. I think also that even where the facts are all admitted, so that in the particular circumstances of a particular case â€" as my brother has pointed out in this case â€" there happens to be but one way of performing that duty, still the mandamus goes to perform the duty, and not to perform it in a particular way. Relying on the above case, the High Court held that it could not grant a mandamus in such terms. Urban Redevelopment Authority , [20] the High Court held that the applicant should not have asked for a mandatory order requiring the Urban Redevelopment Authority to unconditionally approve the redevelopment plan for her property that she sought, and for a processing fee she had paid to be refunded. In , the High Court granted a mandamus now known as a mandatory order to the Society to compel a Disciplinary Committee to investigate charges of wrongdoing against an advocate and solicitor. The appellant, Lim Chor Pee, who was an advocate and solicitor , had been convicted of several income tax offences and had been found to have tampered with a witness. Consequently, three of the six charges against the appellant and a major portion of one other charge did not require investigation by the Disciplinary Committee. Dissatisfied with this decision, the Law Society applied to the High Court for an order of mandamus to direct the Disciplinary Committee to hear and investigate all the six charges against the appellant. It was the duty of the Council of the Law Society to draw up the charges, and the duty of the Disciplinary Committee to hear and investigate the charges properly before the Committee in the statement of case. The Court cited R. It may be granted by the High Court in cases where the applicant is aware that the authority is about to take an unlawful course of action, or to prevent the authority from repeating an unlawful act. Like a quashing order, a prohibiting order is used to help maintain good standards of public administration. Kent Police Authority, ex parte Godden [34] is an instance of a United Kingdom case in which an order of prohibition was issued to avert action that would not have complied with administrative law rules. Godden was therefore placed on sick leave, although his own

specialist found that he did not have any psychiatric illness. Subsequently, in January , the police authority informed him that it would be appointing the chief medical officer to assess if he was permanently disabled, for the purpose of determining if he should be compulsorily retired. Thus, an order of prohibition should be issued to prohibit him from carrying out this assessment. However, the alleged loading had not been supervised by the Customs and Excise Department. The principles applicable to certiorari to quash such an order or decision are equally applicable to prohibition. The law in this field has reached the stage where the test as to amenability to prohibition is whether the tribunal concerned is exercising a public duty. As the Director-General was a public officer appointed by statute to discharge public duties, he was subject to an order of prohibition in an appropriate case. He had thus misdirected himself on the law as to the nature of the evidence that was required to be produced to prove the export of the goods. Finally, there had been an insufficient inquiry which had resulted in a failure to take into account relevant considerations, and an investigation that was unfair to the applicant. In Chan Hiang Leng Colin v. In other words, there is no restrictive requirement of standing on the part of an applicant. Consequently the court is prepared to act at the instance of a mere stranger, though it retains discretion to refuse to do so if it considers that no good would be done to the public. Every citizen has standing to invite the court to prevent some abuse of power, and in doing so he may claim to be regarded not as a meddlesome busybody but as a public benefactor. When the case was appealed, the sufficient interest test was upheld by the Court of Appeal. It is the most commonly sought of the prerogative orders in judicial review proceedings. In a case, the Court of Appeal held that a letter containing a determination by the Comptroller of Income Tax that a company was subject to withholding tax amounted only to advice, and so technically the Comptroller had taken no legal action that could be subject to a quashing order. Quashing orders may only be obtained against decisions which have some direct or indirect actual or ostensible legal effect, and not against mere opinions. ACC , [46] the respondent, a locally incorporated company, had arranged to enter into interest rate swap agreements with Singapore banks or Singapore branches of foreign banks on behalf of its offshore subsidiaries. The Comptroller of Income Tax took the position that payments made by the respondent to its subsidiaries pursuant to those swap agreements fell within the ambit of section 12 6 of the Income Tax Act, [47] such that the withholding tax requirements imposed by section 45 of the same statute applied. As the respondent had not complied with the relevant withholding tax requirements with respect to the payments in question, the respondent was required to account to the Comptroller for the amount of tax which should have been withheld. This was conveyed to the respondent in a letter. Thus, technically speaking, there was no determination to quash and the respondent should have applied for a declaration instead. The High Court in Chan Hiang Leng Colin held that to have standing for certiorari, "[i]t was not necessary that the applicant had to have a particular grievance arising out of the order complained about. It was sufficient that there had been an abuse of power which inconvenienced someone. Greater London Council, ex parte Blackburn By it the High Court and the judges of that court, at the instance of a subject aggrieved, command the production of that subject, and inquire into the cause of his imprisonment. If there is no legal justification for the detention, the party is ordered to be released. Minister for Home Affairs , [59] the appellants had been detained without trial under section 8 1 of the Internal Security Act "ISA" [60] for alleged involvement in a Marxist conspiracy to subvert and destabilize the country. The detention orders were subsequently suspended under section 10 of the Act, but the suspensions were revoked following the release of a press statement by the appellants in which they denied being Marxist conspirators. Having applied unsuccessfully to the High Court for writs of habeas corpus to be issued, the appellants appealed against the ruling. In other words, the executive could not insist that the exercise of the discretion was unchallengeable. The exercise of discretion could be reviewed by the court, and the executive had to satisfy the court that there were objective facts justifying its decision. Judges to inquire into the Truth of Facts contained in Return. In all cases provided for by this Act, although the return to any writ of habeas corpus shall be good and sufficient in law, it shall be lawful for the justice or baron, before whom such writ may be returnable, to proceed to examine into the truth of the facts set forth in such return by affidavit If so, the court must assess if the authority has correctly established the existence or otherwise of these facts. Nonetheless, it may be argued that High Court should continue to apply a rule equivalent to section 3 of the Act to orders for

review of detention because of the combined effect of Article 9 2 of the Constitution which should not be regarded as having been abridged unless the legislature has used clear and unequivocal language, [70] and the following principle from Eshugbayi Eleko v. Government of Nigeria [71] stated by Lord Atkin: And it is the tradition of British justice that judges should not shrink from deciding such issues in the face of the executive. Since an order for review of detention is a remedy for establishing the legality of detention, it may not be used to challenge the conditions under which a person is held, if the detention itself is lawful. In the UK context, Lord Scarman disagreed with the suggestion that habeas corpus protection only extends to British nationals, stating in Khera v. Secretary of State for the Home Department; Khawaja v. Secretary of State for the Home Department "Khawaja", , [65] that "[e]very person within the jurisdiction enjoys the equal protection of our laws. There is no distinction between British nationals and others. He who is subject to English law is entitled to its protection. If there is no appropriate authorized Government department, or the person wishing to commence proceedings has reasonable doubt as to which department if any is appropriate, proceedings should be commenced against the Attorney-General. The minister charged with responsibility for the Act [78] is required to publish in the Government Gazette a list stating the Government departments which are authorized departments for the purposes of the Act, and the names and addresses for service of the solicitors for the departments. For this reason, in Chee Siok Chin v. Minister for Home Affairs , [80] decided on that date, the High Court held that instead of instituting the action against the Minister for Home Affairs and the Commissioner of Police , the applicants should have done so against the Attorney-General. Nonetheless, the suit should not be dismissed as this was a procedural irregularity that could be cured by substituting the Attorney-General as the respondent. At the first stage, an applicant must obtain leave to apply for the prerogative order. This requirement prevents unmeritorious applications from being taken against decision-makers by filtering out groundless cases at an early stage to prevent wastage of judicial time, and protects public bodies from harassment, intentional or otherwise. However, the High Court may allow an application for leave to be filed out of time if the delay "is accounted for to the satisfaction of the Judge", [86] as was the case in Chai Chwan v. Singapore Medical Council Public Service Commission , [89] and approved by the Court of Appeal, [82] in the following terms: Once leave is granted, an applicant moves on to the second stage and applies for a prerogative order by filing in the High Court a document called a summons within the legal proceedings already started earlier. This must be done between eight and 14 days after leave to do so is granted by the Court; beyond that, the leave lapses. Where the application relates to court proceedings and is intended to compel the court or a court official to do an act relating to the proceedings, or to quash the proceedings or any order made in them, the documents must be served on the registrar of the court and the other parties to the proceedings. The documents must also be served on the judge if his or her conduct is being objected to. An application must be made to the High Court [95] by way of an ex parte originating summons, supported, if possible, by an affidavit from the person being restrained which shows that the application is being made at his or her instance and explaining the nature of the restraint. If the person under restraint is unable to personally make an affidavit, someone may do so on his or her behalf, explaining the reason for the inability. In addition, the Court may order that the person be released while the application is being heard. Once this has been done, it is for the executive to justify the legality of the detention. A declaration is a pronouncement by a court stating the legal position between the parties to an action, based on the facts that have been presented to the court. Southwark London Borough Council , [] Webster was a parliamentary candidate for the National Front , a far right racial nationalist political party, who wanted to hold an election meeting in a hall owned by Southwark London Borough Council. The court made a declaration that Webster was legally entitled to use the hall at a certain time for the purpose of his election campaign, on the assumption that the local council would obey it. Nonetheless, the local council still refused to allow Webster use of the hall. It was held that a declaration is not a coercive order of the court and, accordingly, refusal to comply with it is not contempt. For instance, in Vince v. Chief Constable of Dorset Police , [] proceedings against the Chief Constable of Dorset Police were brought by the plaintiffs on behalf of members of the Police Federation of England and Wales to, among other things, enable chief constables throughout the country to know where they stood on a question of law with respect to the Police and Criminal Evidence Act , [] namely,

whether it was unlawful to appoint an acting sergeant as a custody officer under section 36 3 of the Act.

Chapter 3 : Judicial Review and Remedies in Public Law - The Student Lawyer

Report on remedies in administrative law: advice to the Lord Chancellor under section 3(1)(e) of the Law Commissions Act, KF G The principles of the administrative law of the United States / by Frank J. Goodnow.

Review templates This review is transcluded from Talk: The edit link for this section can be used to add comments to the review. External links in the text should be removed per WP: As with the related articles, the reader should be informed of the basis of Singapore law in English law. A good place to mention this here might be the first paragraph of the section "Prerogative orders". I think this should be given in the body, perhaps with a little clarification. I do think clarification is needed. I made the same change in the lead. Mike Christie talk - contribs - library A cause of action is a set of facts that legally enable a remedy, but is it really the case that in legal terminology "remedy" can refer to the cause of action? I suspect these record a page break in the original source; if so they should be removed. On a related point, why is the date of 7 Dec given? Presumably because a source gives that date; but can nothing be said about whether the minister has published the required list since then? Added a mention of this. Why did rule Why is Order 15, rule 16 quoted as "on the other hand", when both it and rule The difference between rule Why does the phrase "of right" eliminate the allowability, cited for Re S, that it is "not necessary for the legal right to be vested in the parties"? In contrast, due to the presence of the term of right in the Singaporean legislation, the Singapore court took the view that this more flexible position could not be adopted locally. I suppose what the court meant was that in Singapore the legal right in question must be vested in the parties, but regrettably it did not actually express the point in those terms. What it said was this Karaha Bodas, pp. We were, however, not inclined to adopt the approach of Re S. First, CPR Part This is a new rule and it replaced the old rule that was in pari materia with our O 15 r The new CPR Part In Singapore, the legislation concerning the power to grant declaratory reliefs still includes the requirement that the declaration be one of right. This restriction has been taken out of the English provisions and the English courts therefore, arguably, have more wide-ranging powers than we do. When Lord Diplock made his famous pronouncement in Gouriet, the legislation in force was identical to our O 15 r I think the wording in the article is unsatisfactory as it stands, because a reader is not easily going to follow the argument; and the argument is difficult to make explicit because the court did not make the point about the rights being vested in the parties. Can the wording in the article be modified to reflect more clearly what the court said? Or would it be better to just elide these details? See my comments below in response to your related question. As the article notes, "at common law if My remaining concern here is that the language is rather indefinite: If those are truly just opinions, I think the source of the opinion should be given in the text; if there is consensus that this is the case, then more definite language is called for. Also in that discussion is a mention of the Civil Procedure Rules , which according to that article date from and so postdate Re S. If that article is not inaccurate, then presumably some equivalent to Unfortunately, there is no explanation of this in the Singaporean Karaha Bodas case. I will have to look up the UK case of Re S. This may take a few days as I am swamped with marking. I read Re S and re-read Karaha Bodas. What the Singapore court said was that some scholars had expressed the view that Re S is consistent with the current wording of the Civil Procedure Rules, whereas Singapore still retains the old Order 15, rule It could be argued that since Re S had already taken a liberal view of O. LEAD ; it should be no more than four paragraphs. Perhaps some of the details in the lead can be cut, and two paragraphs combined? Since you gave Smuconlaw close to two months to handle the issues, we should be thanking you for your patience instead! Looking forward to your review of Rule of law doctrine in Singapore! Please take a moment to review my edit. If you have any questions, or need the bot to ignore the links, or the page altogether, please visit this simple FaQ for additional information. I made the following changes:

Chapter 4 : Exhaustion of remedies - Wikipedia

The Law Commission in its Report on 'Remedies in Administrative Law' expressly stated that it was not recommending that the application for judicial review 'should be exclusive in the sense that it would become the only way by which public law issues relating to the legality of the acts or omissions of persons or bodies could be.

It is far different nowadays. In the interests of protecting the public and regulating the economy, the state intervenes to a very consisiderable degree in the lives of its citizens. The law provides for controls over prices, restrictive practices and planning. A variety of discretionary grants, most notably in the area of industrial development, is available, as is a wide range of benefits in the spheres of health, social welfare, education and redundancy. With many of these the courts could have no concern; it is not their function to entertain appeals from decisions of administrative bodies. However, it is the business of the courts to ensure that administrative actions and decisions are taken in accordance with law. Indeed, access to the High Court would appear to be one of the unspecified personal rights guaranteed by the Constitution1. To take but a few examples, limits have been placed on administrative discretion2; a judicial power to compel disclosure of administrative files has been established3; and the right to a fair hearing has been vindicated in several different contexts4. The substantive law, then, is generally adequate to present needs and will doubtless be developed by the courts to cope with future requirements. While some of these overlap, the correspondence is not complete and this gives 1 See Macauley v. Minister for Posts and Telegraphs [] I. Attorney General [] I. Minister for Local Government [] I. In re Haughey [] I. Minister for Defence [] I. Yet that choice may be critical, for if one applies for the wrong remedy the suit will be dismissed on that procedural ground alone. No such difficulty would arise were it possible to seek alternative remedies in the same proceedings, but the current system does not allow for this. While the present system of remedies offers such relief, it does not do so in the most effective manner possible. A ruling that an administrative decision is invalid may be obtained either by seeking an order of certiorari or by proceedings for a declaration. They differ in their effect, since certiorari operates to quash the decision complained of, while a declaration, as its name implies, merely declares the true legal position. In many instances this distinction may not matter, since a public authority is hardly likely to ignore a judicial declaration of the law. In such situations the declaration may be inappropriate, for should the administrative decision be incompatible with the law as declared by the court, there would be no means of resolving the ensuing impasse. It will quash the administrative decision, thereby conferring implicit authority to reconsider the matter. But the scope of this order is uncertain and it is not clear that it would extend to all the situations in question. There is an additional factor. The person who seeks a ruling that a decision is invalid and damages for loss consequent upon that decision faces a problem. If the decision he complains of is one for which certiorari seems the safer remedy, he must first seek that. Having thus obtained the annulment of the decision he must then institute fresh proceedings for damages; under the current law it is not possible to add a claim for damages to an application for certiorari. If, on the other hand, the decision he assails is within the scope of the declaration, his position is more favourable. There is no bar to seeking damages and a declaration in the same proceedings. The remedy of prohibition is appropriate in some such cases, that of the injunction in others. Here too uncertainty 6 The English Court of Appeal refused to make a declaration in such circumstances in Punton v. Ministry of Pensions and National Insurance No. It is necessary to opt for one or other and the choice of the wrong remedy will involve starting all over again. Furthermore, damages may be sought together with an injunction; but it is not possible to join a claim for damages with an application for prohibition. The first is the classic form of relief and has an extensive scope; the latter is becoming popular, no doubt because of its greater flexibility. The two orders do not correspond completely and the line of demarcation between them has not yet been worked out. It is thus possible that a litigant could apply for the one only to discover that the other was alone appropriate. The choice may thus be crucial, but it must be made; for once again these two remedies cannot be sought in the alternative. In addition, it is not possible to seek damages and mandamus in the same proceedings, but there is nothing to prevent one from coupling a claim for damages with an application for a mandatory injunction. Reform is essential and relatively simple. It will

then be for the judge to decree that form of relief, including where appropriate an order for payment of damages, which seems best adapted to the particular case. Certiorari, declaration, prohibition, injunction and mandamus are dealt with under the four headings of a scope, b procedure, c time limits and d locus standi. The mandatory injunction and procedure by way of quo warranto, as well as the title of proceedings, are also examined. Chapter 6 deals with reforms made in other jurisdictions and the suggestions for reform sketched in the present Chapter are more fully elaborated. Chapter 7 summarises the recommendations made in Chapter 6; and the General Scheme of a Bill to implement the recommendations is set out in Chapter 8. The existence of two separate remedies is due mainly to historical causes, but this does not mean that each is capable of doing the work of the other. In some cases certiorari alone would be competent while in others a declaration would be exclusively appropriate. A prime example is an invalid expulsion from a club, trade union, or business or professional association. This may be contested only by proceedings for a declaration. It is well established that certiorari will not issue to a body whose authority springs from contract; it lies only to bodies which derive their powers from statute or the common law. Aston University [] 2 Q. Templeman [] 3 All E. However, it is possible that certiorari will lie where a university is established by statute. But their scope has been extended far beyond this, as Atkin L. It is to be noted that both writs deal with questions of excessive jurisdiction, and doubtless in their origin dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as a Court of Justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognised as, Courts of Justice. Judge Sweeney [] I. The Special Criminal Court is also an inferior court for this purpose: Electricity Commissioners [] 1 K. This passage was cited with approval in State Colquhoun v. Certiorari is available in three distinct situations: The jurisdiction of the Adoption Board to make an order has been challenged by both methods. The reason is technical. The declaration is an appropriate remedy where a decision is void. This obtains in situations a and b above. Ireland not yet reported, Supreme Court, 9 March An Bord Uchtala [] Ir. An Bord Uchtala [] I. Hence it can be declared ultra vires so that it loses its legal efficacy as against the plaintiff. But in situation c the error is within jurisdiction. Unless the decision-maker has power to rescind or vary his initial determination, any declaration that might be granted could prove useless. Mr Walsh exercised his statutory right of appeal to the Minister for Local Government, who issued a sealed order upholding the surcharge. The prosecutor now sought certiorari to quash this order. The former Supreme Court refused to grant it. Giving the judgment of the Court, Murnaghan J. This order, however, did not fall into that category. The person who or body which took that decision is thus free to consider the matter afresh. This is probably due to the fact that the Oireachtas, when conferring decision-making powers, often provides specifically for an appeal on a point of law to the High Court. Ministry of Pensions No. Wade, Administrative Law 4th ed. The point does not appear to have been canvassed in Loftus and Others v. Attorney General not yet reported, Supreme Court, 11 May The plaintiffs sought to have their organisation registered as a political party under the provisions of the Electoral Act This was refused by the Registrar and their appeal to the Appeal Board was dismissed. The Supreme Court held that the Appeal Board had been properly constituted, but that it had misinterpreted the relevant Act, and granted declarations accordingly. But it is to be noted that section 13 8 c of the Act provides that: Some statutes go further and provide for a full-blooded appeal to the High Court against an administrative decision: Nonetheless situations arise where no such statutory right of appeal is available. It has issued to the Adoption Board17, the Land Commission18 and other adjudicative bodies. Irish Land Commission [] I. Wexford Corporation [] I. Minister for Health [] I. It had previously been understood that certiorari could issue only if there was something akin to a decision or determination. Nonetheless, it appears that certiorari would, in an appropriate case, issue to quash such a decision as it does under the corresponding scheme in England In this respect it is appropriate to quote some recent observations of Kenny J: The strength of this great remedy is its flexibility. Labour Court [] I. Fair Trade Commission 99 I.

Chapter 5 : Australian administrative law - Wikipedia

Remedies in Administrative Law. Current project status. Usually recommendations for law reform but can be advice to government, scoping report or other.

Indeed, the Administrative Court has considerable leeway when assessing whether or not relief should be given to the claimant. Public law is the branch of law which deals with the legal principles that govern public bodies. Whilst public law issues can often be remedied through recourse to Ombudsmen and complaint procedures, this article will focus solely on the relief that judicial review can offer an individual aggrieved by a decision made by a public body. When a proposed claimant makes an application for judicial review, he must, amongst other things, fill in a claim form. One of the sections of the claim form requires him to stipulate what remedy he is asking the court to provide. In summary, the following remedies are available for the court to grant the claimant if his application for judicial review is successful: A Discretionary Remedy Judicial review is a discretionary remedy. This means that just because a claimant establishes that a public body has erred in law, he is not automatically entitled to the remedy he seeks, or indeed, any remedy at all. The discretion of the court in deciding whether to grant any remedy is a wide one. It can take into account many considerations, including the needs of good administration, delay, the effect on third parties, the utility of granting the relevant remedy. The discretion can be exercised so as partially to uphold and partially quash the relevant administrative decision or act. In addition to these factors, the Administrative Court may also consider the following when exercising its discretion: Quashing orders A quashing order is a form of court order by which the Administrative Court quashes the decision challenged in the judicial review. The defendant is at liberty to make the same decision again, however, given that its decision-making process has already been scrutinised, it is more likely to make a lawful decision the second time around. It is important to note that the Civil Procedure Rules CPR state that where a quashing order is made, the court is not compelled to remit the decision. Quashing orders are used to quash decisions of the criminal courts for example, decisions as to convictions or sentencing and also decisions of the executive for example, planning decisions. Mandatory orders A mandatory order requires the defendant in judicial review proceedings to do something, namely, to carry out the duty that it is obliged to execute by law. An example of where a mandatory order may be an appropriate remedy, is if the claim is grounded on the assertion that a court has wrongly declared that it has no jurisdiction and therefore fails to consider a particular matter. Under these circumstances, if a mandatory order is given, the court in question, by virtue of the order, is compelled to make the decision it failed to make in the first place. The Administrative Court has the discretion to not make a declaration. Prohibiting orders A prohibiting order prevents a public body or court from acting beyond its powers in the future. Prohibiting orders are particularly useful as they may be sought to prevent a decision being made in excess of jurisdiction, even if there is a right to appeal the decision. Injunctions Injunctions are often sought as interim relief in judicial review proceedings. There are various types of injunctions, but in essence, injunctions can either compel a party to do something or prohibit a party from doing something. Declarations Declarations are statements in which a High Court judge clarifies the law through stating the law as an order. They are central to the purpose of judicial review, since judicial review in itself aims to ensure that decisions are made lawfully. Declarations help decision makers make lawful decisions because they often provide much needed clarification on matters of law. Section 31 2 of the SCA states the circumstances in which a declaration may be granted: A declaration may be made or an injunction granted under this subsection in any case where an application for judicial review, seeking that relief has been made and the High Court considers that, having regard to: Such a declaration however, can only be made after the court has attempted to read the primary legislation in a way that is compatible with the European Convention on Human Rights. Declarations of incompatibility made by the Administrative Court are rare given that Section 3 of the HRA states that the court must strive to interpret legislation in a way that is compatible with the Convention so far as is possible to do so. Even if the Administrative Court cannot construe the primary legislation in a way that is compatible with the Convention, this does not automatically mean that a declaration of incompatibility should be made.

Damages Section 31 4 of the SCA gives the Administrative Court the power to award damages monetary compensation at the conclusion of a judicial review, if: Damages can only be granted if another judicial review remedy is being sought. That is to say, in judicial review proceedings, damages cannot be requested on their own. There is no general right to damages for breaches of public law. Damages in judicial review cases may be claimed in three limited situations: Such a variation can only be made if there has been a successful application for a quashing order according to Section 43 1 of the SCA.

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Exhaustion of Administrative Remedies Exhaustion of Administrative Remedies A litigant should exhaust any prescribed administrative remedies available before seeking judicial review. Where relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to the courts. Until that recourse is exhausted, the suit is premature and must be dismissed[i]. For instance, in Reiter v. This reversed the decision of the district court and held that the unreasonable practice defense did not have to be referred first to the Interstates Commerce Commission in a suit brought by respondents, a motor carrier and others, to collect tariff rates. Respondents sued petitioners to collect undercharges on shipments made by respondents. On appeal, respondents argued that payment of the tariff rate was a prerequisite to litigating the rate reasonableness issue. The court held that petitioners could assert a claim under 49 U. Respondents argued that the doctrine of primary jurisdiction required petitioners initially to present their unreasonable-rate claims to the Interstate Commerce Commission rather than to a court. The Court remanded the case because neither the appeals court or the district court made the express determination required under Fed. The Court reversed the judgment of the appeals court, and remanded the case for further proceedings. Moreover, the basis for a judicially imposed issue-exhaustion requirement, even in the absence of a statute or agency regulation requiring issue exhaustion, is analogous to the rule that appellate courts do not consider arguments not raised before trial courts. Both parties moved for summary judgment. The claimant alleged disability due to fibromyalgia and lower back pain. The decision of the Commissioner was affirmed. The exhaustion rule serves a legitimate state interest in requiring parties to exhaust administrative remedies before proceeding to court, thereby preventing an overworked court from considering issues and remedies that were available through administrative channels. It also encourages the use of more economical and less formal means of resolving disputes and is credited with promoting accuracy, efficiency, agency autonomy, and judicial economy. In the words of Justice Stone, in Hansberry v. In such cases where the interests of those not joined are of the same class as the interests of those who are, and where it is considered that the latter fairly represent the former in the prosecution of the litigation of the issues in which all have a common interest, the court will proceed to a decree. Where courts discern that the interests of the plaintiffs are in significant part antagonistic to those of the class he purports to represent, they decline to entertain the action as a class action[ii]. Requirements of administrative issue exhaustion are largely creatures of statute. The doctrine of exhaustion of administrative remedies is one among related doctrines that govern the timing of federal court decision-making of paramount importance to any exhaustion inquiry is congressional intent. Thus, where Congress specifically mandates, exhaustion is required, and where Congress has not clearly required exhaustion, sound judicial discretion governs. Conversely, a litigant seeking judicial review of a final agency action under the Administrative Procedure Act need not exhaust available administrative remedies unless exhaustion is expressly required by statute or agency rule[iii]. Litigants may not, by refusing or neglecting to submit issues of fact to administrative agencies, bypass them, and call upon the courts to determine matters properly determinable originally by the agencies. In administrative law parlance, such claimant may not obtain judicial review because he or she has failed to exhaust administrative remedies. Exhaustion does not merely require the plaintiff to initiate the prescribed administrative procedures, but also to pursue them to their appropriate conclusion and await their final outcome before seeking judicial intervention. While a person need not carry out the order of an administrative agency in order to pursue the administrative remedy to the end,the mere fact that an order is being enforced does not necessarily establish that the administrative process has been completed so as to permit judicial relief. The classic example of failure to exhaust an administrative remedy is the failure to appeal from an administrative decision to a higher tribunal within the administrative system. A party does not exhaust its administrative remedies just because an agency has denied its motion to dismiss a complaint. The refusal to reconsider issuance of the complaint does not render the complaint a definitive

action for which judicial review is available. Failure to exhaust administrative remedies is generally an affirmative defense subject to waiver. It may be held to have been waived if not raised in the trial court. An agency may expressly waive the exhaustion requirement before the reviewing court. In cases where exhaustion of administration remedies is not required by statute, the exhaustion requirement is discretionary with the courts. Failure to exhaust remedies is not an absolute bar to judicial consideration and must be applied in each case with an understanding of its purposes and of the particular administrative scheme involved. Judicially excusing the requirement may also occur when: Administrative agencies have neither the power nor the competence to pass on the constitutionality of statutes. However, the exhaustion requirement is not rendered inoperable solely by the fact that a party applying for judicial relief urges that there has been a violation of constitutional rights. If relief may be granted on nonconstitutional grounds, the necessity of deciding constitutional issues may be avoided and exhaustion may be required. However, if recourse to the administrative process is insufficient to fully and satisfactorily protect the constitutional rights in question, exhaustion is not required. In the latter instance a strong showing both of the inadequacy of the prescribed administrative procedure and of impending harm are necessary to justify the short-circuiting of the administrative process. Exhaustion of administrative remedies also may not be required where an agency ordinance or rule is attacked as unconstitutional on its face[vi]. Quality, OK 94 Okla.

Chapter 7 : Criminal, civil and administrative laws

Constitutional and Administrative Law 12 - Remedies Page 1 of 23 PART XII - REMEDIES I Remedies A Introduction Remedies concern the outcome of an application for judicial review of administrative action.

Three types of law are commonly used to regulate environmental matters: Criminal law â€" which creates criminal offences for harming the environment Civil law â€" which gives regulators and affected people the right to take action to manage and stop environmental harms Administrative law â€" which gives people the right to challenge government decision making by bringing judicial review or merits review proceedings. For more information, read our Fact Sheet about Judicial review and merits review. Criminal law Serious environmental crimes are punishable by criminal law. Criminal offences can occur under Northern Territory laws and Commonwealth laws. Criminal laws typically impose a fine or a jail sentence if a person is found to be guilty of having committed an offence. The court may also make orders requiring offenders to publicise the fact that they have committed an environmental offence, or make good any environmental damage. Criminal law in the Northern Territory There are a wide range of criminal offences for causing harm to the environment under Northern Territory laws. Criminal offences can be categorised in three ways: Crimes â€" these are criminal offences for which the penalty is imprisonment for more than 2 years Simple offences â€" these are criminal offences for which the penalty is imprisonment for 2 years or less Regulatory offences â€" these are also criminal offences for which the penalty is imprisonment for 2 years or less. These three ways of categorising criminal offences determine how a defendant can be convicted in court. A defendant can only be prosecuted and convicted for a crime on indictment. This means that a judge and jury must hear the case. However, for simple offences and regulatory offences, a defendant can be convicted summarily. This means that a single judge can hear the case. Because the penalties for criminal offences for causing harm to the environment vary, some criminal offences for causing environmental harm are crimes and others are simple offences. You may also find that some offences are described as environmental offences. This means that the penalty for an environmental offence is set by the Environmental Offences and Penalties Act. This Act standardises the penalties for causing serious environmental harms, material environmental harms and environmental nuisances. There are 4 levels of environmental offences. They correlate to 4 levels of penalties under the Environmental Offences and Penalties Act. This means that an environmental offence level 1 would be categorised as a crime. The Act that creates the criminal offence will set the penalty for the offence. The Penalty Units Act sets out the dollar value of a penalty unit. For more information, read our Fact Sheet on Penalties. In some cases, only designated officers of a government department are able to bring prosecutions. In other cases, it may be possible for third parties, such as members of the public, to bring prosecutions. This is called a private prosecution. It is always necessary to look at the relevant Act to check whether there is a right for a member of the public to commence prosecutions and find out whether or not you need to get consent from an officer of a government department. The right to bring a private prosecution must usually be exercised in the public interest. The Director of Public Prosecutions may intervene in matters and bring legal proceedings to an end if he or she does not think that a private prosecution is in the public interest. Criminal law of the Commonwealth Breaches of certain Commonwealth environmental laws can also give rise to criminal offences. Civil law Civil enforcement is a type of enforcement that can be conducted by regulators, or in some situations members of the public, in the civil courts. This is a lower standard of proof than in the criminal courts. Remedies under the civil law are also different to criminal law. Instead of punishment and deterrence, the purpose of civil laws is often to compensate for or remediate environmental damage. In the Northern Territory, the main civil enforcement remedies are: Pollution abatement notices[iv] â€" these require a person to take specific action within a specified time. For example, to take action to prevent pollution or to clean up polluted land. Environmental audits [vi] â€" these can require assessments to be conducted into: Damages â€" this is an award of money paid to a person as compensation for a loss or injury they have suffered. Injunctions â€" this is an order to stop an activity before environmental damage occurs or is made worse. The Lands, Planning and Mining Tribunal hears cases concerning mining, exploration, land titles,

ownership of licence areas, heritage, and water. Civil law of the Commonwealth At the Commonwealth level, the Environment Protection and Biodiversity Conservation Act also provides civil remedies. Civil penalties â€" fines for breaking the law Injunctions â€" a court order that stops someone doing an activity Environmental audits Remediation of environmental damage Cases concerning breaches of civil and criminal Commonwealth environmental laws are heard in the Federal Court of Australia. Administrative law Decisions made by a government Minister, government department, or a statutory authority are called administrative decisions. When administrative decisions are made, the decision-maker must follow the correct legal process. If the legal process is not followed, the decision may be open to legal challenge. There are two main types of legal challenge. These are called judicial review and merits review. For more information, read our Fact Sheet on Judicial review and merits review.

Chapter 8 : Administrative, Civil, Criminal Remedies

And note the following book chapter extracted in the Study Guide pp Stephen Gageler, 'Administrative Law Judicial Remedies' in Groves and Lee (eds), Australian Administrative Law: Fundamentals, Principles and Doctrines ()

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Basics of Administrative Law o research and report (Bureau of Labor Statistics) â€¢ Remedies against agency.