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NICK'S LAW NOTES

admin law

Nick's Admin Law

2012-2013 Exam Notes

GENERAL

ESSAY WRITING TIPS
SUMMARY: Summary of what happened in one sentence e.g. _____ applied for a licence but did not get it.
REMEDIES: _____ is seeking judicial review of _____'s decision to _____. Incorporate desired remedies (certiorari/mandamus/prohibition)
GROUNDS OF REVIEW: Give a short summary of your analysis e.g. A has 3 potential grounds for review, but [insert possible ground] is his/her strongest ground whereas [insert possible ground] is weak.

LOCUS STANDI & REMEDIES

LOCUS STANDI

Whether A (individual) has locus standi

On the facts, A appears to have "sufficient" interest in the matter because of the potential abuse of power by [**BODY**] or because he is interested in the legality of the order (*Colin Chan v MITA*)

Whether NGO has locus standi

Public interest suits are generally allowed in UK (*ex p World Development Movement*) but position remains open in Singapore. Given [**CHOOSE FACTORS FROM BELOW**] and the general judicial trend towards encouraging public law litigation, it is likely that NGO would be allowed to bring an action.

- Merits of application
- Vindicating rule of law (relevant since reviewing executive action)
- Likely absence of other challengers
- Nature of breach by public authority
- Prominent role of applicants (expertise)

REMEDIES

PUBLIC LAW (LOOK FOR STATUTORY SOURCE)	PRIVATE LAW (LOOK FOR CONTRACT)
Quashing Order **Mandatory Order (Padfield v Minister of Agriculture)** **Prohibiting Order**	**Declaration** **Injunction** **Damages**

In this case, A will be seeking for a quashing order against the decision by the board to expel him.
In this case, A will be seeking for a declaration against the decision by the club to expel her.

LEAVE

INTERNAL REMEDIES AVAILABLE	IN NORMAL SITUATIONS
Whether leave will be granted even though internal remedies were not exhausted Courts would generally refuse judicial review where adequate alternative remedies are available: *Borissik Svetlana v URA*. On the facts, given that a statutory right of review and appeal exists, the courts may find it improper for the applicant to circumvent the process of appeal, just as it had decided in *Borssik*. However, courts will still allow judicial review notwithstanding the availability of an independent remedy where there are genuine grounds (*MPPP case*). On the facts, it appears that… 1. The remedies **would be inadequate** 2. The appeal **would not be an effective means** of challenging the decision because [**REASON**]. This parallels the case of *MPPP* where a swift means of redress was needed because of the nature of the housing project. 3. Waiting for internal remedies would **severely prejudice the claimant**. This is similar to *Chiam See Tong* where Chiam's ability to run for elections would be affected given that the next internal appear available is in two years' time. 4. There is a potential abuse of discretion or breach of natural justice 5. Issues of law of public importance arise / questions of law	**Whether leave will be granted** On the facts, there seems to be a prima facie case of reasonable suspicion of an administrative illegality (*Linda Lai*) so leave will likely be granted.

JUDICIAL REVIEW OF THE BODY

WHETHER BODY SUBJECT TO JUDICIAL REVIEW

In Singapore, the source of power and the nature of power tests are applied to determine if the body is subject to judicial review (*Manjit Singh*; *UDL Marine*; *Linda Lai*).

PUBLIC POWER (SOURCE OF POWER)

If public body exercising a public power given by statute or delegated legislation (review)

Every exercise of a statutory power is *prima facie* amenable to judicial review (*Manjit Singh* (SGCA2013)). A is a public body exercising a public power granted by [**SOURCE E.G. STATUTE**], thus its decision will be amenable to judicial review because there is a public interest in ensuring that statutory powers are exercised lawfully.

If public body exercising a private power (no review)

_____ is a public body with statutory powers and duties for some purposes but [**THE PARTICULAR DECISION E.G. EXPEL FOR MISCONDUCT**] may be immune from review because it falls outside the ambit of its statutory powers and therefore, the field of public law (*Linda Lai*)

- *PSC v Linda Lai*
  - PSC was a stat body but only acting in capacity as employer in employment contract. Source of power therefore contract and not statute, no JR
  - Terms of employment incorporated the provisions in the Civil Service Instructions Manual but that had no statutory power
- *UDL Marine v JTC*
  - JTC exercising its private contractual rights under the lease; source of DECISION (not power) came from leases and not from statute
  - JTC Act also contained no detailed criteria about how landlord was to exercise its power to lease land
  - **COUNTER**: But one might argue that even if JTC had been exercising its contractual right not to renew the lease, JTC would still have been **concurrently** exercising its statutory power to lease.
  - **MANJIT SINGH IMPLICITLY OVERRULING UDL MARINE**: Since JTC was exercising a statutory power when it decided not to renew the lease, that decision would *prima facie* be amenable to judicial review. JTC is a statutory body discharging the public function of developing industrial land in Singapore.23 Since JTC is clearly a public body, there would exist a public element such that the Attorney-General would not be able to show the **absence** of any. It follows that JTC's decision would have been amenable to judicial review.
- *Datafin*
  - Self-regulating body

Panel for takeovers and mergers; powers came from consensus between the parties – but YES JR on nature of power test (see right)

PRIVATE POWER (NATURE OF POWER)

Although A is a public power, its nature of power may be public and thus be amenable to judicial review (*UDL Marine*).

[1] The public element could still arise because A is **legislatively recognised** and exercises a **function that serves the public interest** (*OKS & Partners Sdn v Tengku Noone Aziz*).

On the facts, A parallels the facts in *Tengku Noone Aziz* [**REPLACE GREY-UNDERLINED FACTS BELOW WITH CASE FACTS**]

- In that case, Malaysian Federal Court overruled the High Court in finding that the Kuala Lumpur Stock Exchange was subject to judicial review. Although it was a company incorporated under the Companies Act, it was a hybrid insofar as it was **legislatively recognised**.
- Its function was to regulate facilities for the conduct of a stock exchange in Malaysia. Hence, it was not merely an "exclusive business club" as the High Court stated, but **served the public interest**.
- Public element was further enhanced in that these statutorily conferred disciplinary powers, which **affected the livelihood of KLSE members**, imposed a **duty to act judicially** on the committee.
- KLSE was a statutorily regulated entity under the Minister's overall direction.
- **Certiorari lay for legislatively regulated private bodies that exercised statutorily conferred powers of consequence to the public interest.**

[2] The public element could still arise because the **nature of its function** is of a public rather than a private nature (*R v Criminal Injuries Compensation Board, ex p Lain*). [**DOES THE BODY SERVE A PUBLIC FUNCTION?**]

- In *Lain*, the Compensation Board was subject to judicial review because it **serves a pubilc function** of determining the payment of compensation and thus determination was a pre-requisite to the actual payment of compensation by the Crown
- Similarly in *Datafin*, CA held that the self-regulatory, non-statutory Panel on Take-overs and Mergers, an unincorporated association without legal personality, was subject to judicial review because it **serves a public function** in protecting investors in the target company during the course of a takeover.

[3] However, the public element could still arise because its powers have **public law consequences** (*Tengku Noone Aziz*) [**DOES IT AFFECT A WIDE SECTION OF THE PUBLIC**].

- On the facts, A's power to [**POWER**] would likely affect a wide section of the public such that a duty to act judicially should be imposed on it. This is similar to *Datafin* where the panel's immense powers were of widespread application, operaets in the public domain, and indirectly affected the rights of citizens through its decisions.

[4] The public element could still arise because its decisions have **public law impact in affecting important individual interests** (*Woon v Hochstadt*; *Kay Swee Pin v SICC*)

- On the facts, the Board's decision could affect [**LIVELIHOOD/VOCATIONAL FUTURE/REPUTATION**] given that it… [**DRAW LINKS TO ONE OF THE BELOW**]
- *Woon v Hochstadt* involved the right to work, which implicated **livelihood issues**. "The Malayan Racing Association" affects the lives of a sizeable portion of the population…[The MRA] monopolize this trade which is significant to the public and some say that they have even taken on the character of an industry.
- In *Haron v SAAA,* the board was a private body fulfilling public functions in athletics and its decisions could affect the **vocational future** of a person, thus giving rise to judicial review.
- In *Kay Swee Pin*, transferable club membership with very high social and economic value as well as individual reputation at sake gave rise to judicial review.

If it is a private company with **no public functions and no statutory powers**, **even if government may own substantial shareholding**, it will still not be subject to judicial review (Gopal Sri Ram JA in *Tang Kwor Ham*).

REVIEWING SUBSIDIARY LEGISLATION AND INFORMAL RULES

WHETHER IT IS A SUBSIDIARY LEGISLATION OR INFORMAL RULE

On the facts, the [**INSTRUMENT**] is a subsidiary legislation as per *s2(1) of Interpretation Act* because 1) it been gazetted/published as per *s23(1) of Interpretation Act* and 2) it determined the content of the law by conferring [**PROVISION/POWER** e.g. assigning the Vigilante Corps civil defence duties], which but for [**INSTRUMENT**] the body would not have possessed (*Cheong Seok Leng v PP*).

WHETHER SUBSIDIARY LEGISLATION IS VALID

The subsidiary legislation is invalid if it is **outside the scope of the parent Act** (*Cheong Seok Leng v PP*) or if it is **unconstitutional**.
The subsidiary legislation is invalid for **want of publication in the Gazette** (*Cheong Seok Leng*).

EXPRESS PURPOSE / MULTIPLE PURPOSES

[**APPLICANT**] could challenge the validity of the subisidary legislation in two ways: first, that the instrument is not within the express purpose of the parent Act, and second, that the dominant purpose of the instrument is not legitimate.

- **Express purpose**: First, on the facts, the purpose of the parent Act is to [**PREVENT MONEY LAUNDERING**] whereas the purpose of the subsidiary legislation is to [**INCREASE SURVEILLANCE**].
    - **Incidental purpose**: However, in Singapore, the instrument need only be incidental to the purpose of the Act in order to be valid (*MM Pillay v PP*). It could be said that the subsidiary legislation's **means** of increasing surveillance **is an end** to preventing money laundering under the parent Act, and would thus be incidental, like in *MM Pillay* where subsidiary legislation's levying of tax served as a means to the end of reducing traffic congestion under the parent Act and was thus held valid.
- **Multiple purpose**: Second, administrative action based upon mixed purposes will be lawful provided that the dominant purpose is a legitimate one (*Westminister Corporation*).
    - At this point, the validity of the instrument hinges on the construction by the courts.
    - If the courts establish that the [**INSTALLATION OF SECURITY CAMERAS**] as a means of [**COMBATING TERRORISM**] was made under 'colour and pretence' of [**PREVENTING MONEY LAUNDERING**], then the instrument would be void for bad faith.

IMPLIED PURPOSE / ALTERNATE WAYS OF REACHING PURPOSE

See below under Illegality.

WHETHER INFORMAL RULES ARE VALID

Grounds of review of informal rules (aka policies) as per *Lines International*:

- **[1] Policy unreasonable in the limited Wednesbury sense** → 'so outrageous in its defiance of logic or accepted moral standards that no sensible person who applied his mind to the question could have arrived at it or that no reasonable person could have come to such a view' [irrelevancy + irrationality]
- **[2] Policy not made known to persons so affected**
- **[3] Fettering of discretion** (see below for more)
    - Whether body is prepared to make exceptions
        - Must have evidence / not a sham
    - Whether body has abrogated its decision-making to another body
        - *City Developments v Chief Assessor (CA):* government agencies can adopt an *integrated and holistic* approach towards the formulation and implementation of government policies because they do not operate insolation [17].
        - *Komoco (CA) at [70]*: Government as an indivisible legal entity when discharging its executive functions and powers.

GROUNDS OF SUBSTANTIVE REVIEW

ILLEGALITY

IMPROPER PURPOSE

It is well-established that exercising a power that the Act does not provide for would be acting improperly and thus the result would be a nullity as the body would have decided a matter that it was not empowered to decide and thus exceeded its vires. A quashing order would be appropriate in such an instance.

[1] Express purpose – can argue accepted in SING	Examples	*Municipal Council of Sydney v Campbell* (not accepted in SING explicitly, but can be used since *Chng* decided that minister's discretion can never be exercised to frustrate the policy of the act) • **Outside of purpose**. **Claimed land to benefit from increment in value of properties**, was outside the purpose of the act which was to remodel and improve the city *PP v MM Pillay* (SGHC1977 – **INCIDENTAL PURPOSE** accepted) However, in Singapore, it seems that an administrative measure **not need to directly relate to the statute's purpose but merely be 'incidental to'** (*PP v MM Pillay*) it. This effectively gives the public body great latitude to manoeuvre and formulate means, which may have only a bare nexus with the statutory purpose. • Nonetheless *PP v MM Pillay* seems to be a one-off case and it is arguable that **in light of the recent political developments towards greater government accountability** *PP v MM Pillay* is weak authority and will not be cited in subsequent cases.
[2] Implied purpose – no case has imported *Ex parte Development* in yet, must argue based on Basis and *Chng*	Principle	***Cue is when body acted unreasonably in exercising power so you would want to imply a concept of 'soundness' or 'reasonableness'* Even if the enabling legislation does not specify the purposes for which discretionary power may be employed, **decision-makers are still held to be constrained by the statutory scheme as a whole**, and by the **purposes IMPLICIT in that scheme**: *Municipal Council of Sydney v Campbell* following *ex parte Fewings*. • Not accepted in SING explicitly, but can be used since *Chng* decided that minister's discretion can never be exercised to frustrate the policy of the act, so similarly implied policy should work since no act should be purposeless.
	Examples	*Ex parte World Development Movement Ltd* (UKQBD1995) aka *Pergau Dam case* • The enabling provision gives the Secretary of State the power to grant financial aid "**for the purpose of promoting the development**" of that country. The court construed the purpose to be "**sound development**" and concluded that the decision to make the grant was unlwaful because, in the view of the court, the grant was economically unsound.
	Criticism	Irvine, *Human Rights, Constitutional Law and the Development of the Englsih Legal System* at 164-165 • By reading an additional requirement into the statute, the court **took away from the decision-maker a considerable degree of autonomy**. • JR should exercise self restraint in this area as it tends to **blur the line between appeal and review**
[3] Multiple purposes	**(A)** Administrative action based upon mixed purposes will be **lawful** provided that the **'dominant purpose' is a legitimate one**: *Wesminster Corporation* (UKHL1905). ○ *Earl of Halsbury*: ▪ No objection to the provision if the access of public conveniences create a form of subway ▪ If the power to make one kind of building was **fraudulently** used for the purpose of making another kind of building, the power given by the Legislature for one purpose could not be used for another: **threshold = fraud** ○ *Lord Macnaughten*: ▪ **In order to make out a base of bad faith**, it msut be shown that the corporation constructed	

	this subway as a means of crossing the street under '**colour and pretence'** of providing public conveniences which were not really wanted at that particular place: **high evidential threshold** • **(B)** This **raises evidential difficulties** particularly if public authorities put forward legitimate purposes in order to mask other, unlawful motives for their action. • **(C)** However, courts, where necessary, **will "go behind" the face of the act in order to determine its true purpose** (*Lord Denning* in *ex parte Soblen* (UKQB1963).
[4] Alternate way of reaching stat purpose	Even if there are alternative methods of achieving a statutory purpose, so long as it is within the purpose, the **authority is entitled to elect between the methods**: *Westminster Bank v MHLG* • Local authority wished to refuse planning permission and had power under two statutes – the *Town and Country Planning Act* (which provided no compensation for refusing) and the *Highways Act* (which provided compensation for road widening works). Landowners sought to enforce the authority's use of the Highways Act to get compensation. However, it was held that Parliament had provided two different ways of preventing development and the authority could legitimately choose either way.

Evidence of an improper purpose: Showing bad faith

Teng Fuh Holdings – very substantial period of inaction that went unexplained constituted a prima facie case of reasonable suspicion of an improper purpose.

If land development case:

Factors to be taken into account when determining whether authority acted for an improper purpose in land development cases: *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue*

- **Change of use of an acquired property and the reason for use** (there may be good reasons for changes and invalid reasons for others)
- **Prolonged inaction or delay in developing the land**

RELEVANCY

Generally, the decision-maker must consider relevant matters and exclude consideration of irrelevant matters (*Anisminic*; *Re Fong Thin Choo*).

Facets of the relevancy doctrine as per Lord Upjohn in *Padfield* (UKHL1968):

- **[1]** **Outright refusal to consider** the relevant matter
- **[2]** **MISDIRECTING HIMSELF IN POINT OF LAW**
  - E.g. in interpreting a legal term of art like **'successor in title'** in *Anisminic*
  - E.g. the notion of **'inefficiency'** simpliciter does not, on its fact, seem congruent with the concept of **negligence**
- **[3]** By taking into account some wholly **irrelevant or extraneous consideration**
  - Can take into account policy reasons but policy must not be based on political considerations which are pre-eminently extraneous as per Farwell LJ in *Rex v Board of Education*
- **[4]** By wholly **omitting to take into account a relevant consideration**

The minister has discretion but **exercise of it must be to promote policy and objectives of the Act** (*Padfield v Minister of Agriculture*, accepted locally *Chng Suan Tze* where court held that **minister's discretion cannot be unfettered such as to frustrate the policy of the act**).

Examples

- In *Padfield v Minister of Agriculture*, the court held that the Minister has clearly **misdirected himself** because his reasons for refusing to refer the appellants' complaint to the committee were 1) the complaint was unsuitable for investigation because it raised wide issues (but s19(6) contemplates the raising of issues so wide that it may be necessary for the Minister to amend a scheme or even to revoke it) and 2) that the Minister owes no duty to producers in any particular region (but nothing in the Act allowed Minister to limit his responsibility)
- **Irrelevant considerations of fitness of houses taken into consideration** when objective of the act was to see that houses were fit for human habitation (*Estate & Trust Agencies*)
- In *Jessie Tan*, court held that the Registrar had placed too much reliance on the trademark registered by JC Penny and failed to consider that 1) JC Penny had not used trademark on any goods in Singapore, 2) its trademark has expired and it has not been renewed, and 3) the applicant had not used the trademark on any items she sold.

LACK OF EVIDENCE (LOW CHANCE OF SUCCEEDING)

In deciding whether one can reasonably come to a decision based on evidence, courts have held that upon proper self-direction in law, the decision-maker must consider relevant matters and exclude from consideration irrelevant matters (*Re Fong Thin Choo* and *Kang Ngah Wei* following *Tameside*). On the facts, the Board appears to have made its decision without evidence.

However, it is noted that the "proper self-direction" formulation is a very intrusive approach towards reviewing facts, because the courts can assess whether a tribunal of fact had given a particular factor sufficient weightage – a wide latitude to substantially retry factual findings falling within the tribunal's purview, eroding tribunal autonomy.

***Compare chances of success to making a decision without any evidence such that it is Wednesbury unreasonable*

FETTERING OF DISCRETION

FETTERING

While an administrative authority is entitled to adopt a general policy to deal with cases coming before it, this could not be **applied in so inflexible a manner** as to ignore material circumstances which might justify treating an individual case as an exceptional one, in the sense of relaxing or changing policy (*British Oxygen v Minister of Technology*; *Lines International*).

Courts remain interested in substance over form. Consequently, even if the decision-maker claims to be willing to depart from the policy, the court would **require evidence that this actually occurs in practice** and, in the absence of such evidence, may draw the inference that the policy is over-rigid (*Komoco*).

- Seen in both HC and CA of *Komoco*, where the courts scrutinise evidence of whether willingness of decision-maker to depart from policy was substance and not form, although the courts came to different results.

ABROGATION

An authority cannot abrogate its own authority or decision-making power by taking orders from other bodies unless it is under a legal duty to do so (*Lines International*; *Komoco*).

- On the facts, Board appears to have given genuine consideration to A

Examples of delegation

Lines international

- PSA was taking orders from STPB and GSB
- Self-imposed 'condition' or direction to itself that it would take orders from other authorities was held to be a fetter on PSA's discretion

Komoco (SGHC2007)

- Judge held that there was insufficient documentation to support the Registrar's claim that meetings had been held to discuss Komoco's case. Given the lack of evidence, it drew inferences and held that the Registrar was strong influenced by the fact that adopting Customs' valuation was due to policy considerations

Lavender & Sons

- Minister said it was his policy to withhold permission in such cases '**unless the Minister of Agriculture is not opposed'**; since the Min of Agri had not withdrawn his objection, permission was denied.
- **Held**: inflexible attitude + adoption of stated policy has effect of eliminating all material considerations save only the consideration that the Minister of Agricutlure objects = delegated powers

Examples of non-delegation

Registrar of Vehicles v Komoco (SGCA2008)

Court of Appeal found that because the Registrar had genuinely considered Komoco's representation, **she could not possibly have rejected these representations out of deference to Customs, which would constitute an abrogation or non-exercise of her discretion**.

IRRATIONALITY

WEDNESBURY IRRATIONALITY	
Wednesbury unreasonableness as restated in *GCHQ* (accepted in *Chng* and followed in *Lines*): A decision so outrageous in its **defiance of logic** or of **accepted moral standards** that no sensible person who had applied his mind to the question to be decided could have arrived at it.	
No irrationality	*Wednesbury* • Not unreasonable for the corporation to limit the performances to children above the age of 15 *Siah Mooi Guat* (SGHC1988) Fact that Appellant believed she was law abiding did not prove that Minister had done her wrong Fact that Appellant had been sent letters to invite to apply for citizenship was just routine and did not mean that her record was unblemished. **Fact that Minister had not furnished evidence did not matter because the burden was on the Appellant to prove**. HC accepted Deputy Secretary's evidence that he sent all relevant documents to Minister for consideration as well as Minister's assertion that he gave due and carefuly consideration to the appeal before rejecting *Kang Ngah Wei* (SGHC2002) • In applying the *Wednesbury* unreasonableness as qualified by Lord Diplock in *GCHQ*, court held that the **Commander of Traffic Police's decision to revoke Kang's driver's licence because of her asthma condition was not so outrageous that no sensible person could have applied his mind to the question** ○ Traffic police has a duty to act in the interest and safety of drivers. ○ Note: Kang had the opportunity to present further medical evidence to the traffic police under s37(8) of RTA and to take a prescribed medical test to show that she is fit to drive a motor vehicle but she did not make use of it *City Developments Ltd v Chief Assessor* (SGCA2008) • Policy to change made of valuation and increase tax not irrational ○ Meant to prevent hoarding of property by developers in land scarce Singapore • URA (Chief Assessor) and Inland Revenue Authority of Singapore (Chief Planner) are simply two bodies that **oversee different aspects in the management of what is fundamentally a commodity common** to both bodies' purview, viz, land. It is neither irrational nor unreasoanble for govt agencies to adopt an **integrated and holistic approach** towards the formulation as well as the implementation of government policies. ○ // *Komoco* where the court, in holding that Registrar of Vehicles did not fetter discretion in relying on Customs' valuation, observed that the Government is an indivisible legal entity when discharging its executive functions and powers, and that both LTA (in collecting ARF) and Customs (in collecting excise duties) are part of the Government. ○ There is therefore nothing unusual or irrational about the Chief Assessor adopting a policy that is predominantly under the consideration of the Chief Planner.
No irrationality especially when it involves public interest/policy	*Kang Ngah Wei* – safety of other drivers *Siah Mooi Guat* – immigration *City Developments v Chief Assessor* – land scarcity
Yes irrationality found	*AG v Ng Hock Guan* (SGCA2004) • Authorised Officer was irrational and unreasonable • AO biased and prejudiced against evidence of the police officer's witnesses because he thought they would cover up for him. • Self-caution against such evidence had no rational basis, logically he should also have cautioned himself against evidence of the suspect's witnesses. • **Note: court held that AO was irrational but did not actually quote Wednesbury** • **PROCEDURAL IMPROPRIETY**: In fact, court appeared to **subsume irrationality and unreasonableness under natural justice and its corollary element of a fair hearing / fairness** at [27]: "A basic tenet of natural justice is that aperson like the respondent… should be given a fair hearing. This means that the evidence adduced by both sides should be accorded due consideration without any preconceived notion that the evidence of one side or the other is less likely to be truthful."

- On the other hand, **doctrine of patent error of law** appeared to be introduced too at [27]: the court should intervene if "the case contains anything ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law".

Mir Hassan bin Abdul Rahman v AG (SGHC2009)

- HC held that regardless of sale committee's delay in applying for requisite approval, STB's decision to schedule the resumed hearing on 7 Aug '08 is **beyond its mandate** (within 6 months i.e. 1 Aug '08 – point was decided on ground of illegality and held **ultra vires**) and is an **EXERCISE IN FUTILITY** (because the hearing would be after the contractual deadline for en block sale). Thus in such **exceptional** circumstances it was **unreasonable in the** *Wednesbury* **sense**.
    - **Exceptional** because STB's own deadline of six months to make a final order or determination with respect to application for the en block sale was just a few days after the deadline for obtaining STB's approval for en block sale, and STB was in a position to complete the hearing before the contractual deadline
- This is a **CLASSIC CASE OF WEDNESBURY UNREASONABLENESS/IRRATIONALITY** under GCHQ grounds of review **because of its exceptionalism** – after all, the test is that the decision has to be so outrageous in its defiance of logic or of accepted moral standards that no sensible person would have arrived at it.
- Practical decision – case seems to overlap illegality with irrationality despite deciding them separately since the point on irrationality bears elements of illegality

Dr Benjamin George v Majlis (MAHC1995)

- Court held it was irrational to expect applicants to repair hill-slopes they did not own, and deadline of 3 months given was wholly inadequate

LACK OF EVIDENCE

Courts may consider decisions on no evidence as void because

- Decision maker's reasoning was **irrational and unreasonable**: *AG v Ng Hock Guan* (e.g. because of a prejudiced mind / pre-conceived notions)
- There needs to be **sufficient objective evidence** on the basis of which the decision could be reasonably satisfied (*Jessie Tan*, applying *Chng Suan Tze*)
    - If there is no sufficient evidence that can reasonably satisfy the decision-maker, then the court may quash the decision

GROUNDS OF PROCEDURAL REVIEW

FAILURE TO OBSERVE STATUTORY PROCEDURES

Failure to observe statutory procedure is part of procedural impropriety as per Lord Diplock in *GCHQ*.

- CA in *Yong Vui Kong* held that failure by Cabinet to follow procedure set out *in Art 22P(2) of Constitution* when determining whether to advise the President to grant clemency to a person sentenced to death is subject to judicial review.

WHETHER THERE ARE STATUTORY OR CONTRACTUAL PROCEDURAL RIGHTS

Starting point: consider if there are any **statutory procedural rights** (*Re Siah Mooi Guat*) or **contractual procedural rights** (*Peck Constance Emily*)

- Where the right to be heard is specifically conferred by a statute – the statute may lay down several guidelines for a right to hearing [e.g. oral/written]

Whether rules of natural justice applies even where statute is silent

However, absence of statutory procedural right not conclusive**.** Right to be heard **may be implied** by the common law to "**supply the omission of the legislature**" (*Cooper v Wandsworth*, followed locally in *Makhanlall* at [11]) **unless express words in statute authorise such deprivation** (*Makhanlall*).

Whether rules of natural justice applies where discretion is vested in decision-maker

Even where discretion is fully vested in decision-maker, procedure remains a form of limiting discretion (*University of Ceylon v Fernando*).

- University VC was given absolute discretion held that he was allowed to go about the inquiry as he thought fit, but still had to act fairly – duty to act fairly may be different from duty to follow rules of natural justice, but shows that discretion is not limited

INTENSITY OF REVIEW (**KEEP IT SHORT**)

NATURE OF DECISION

Where the decision-maker has a **duty to act judicially** – gives rise to full range of rules of NJ available

- Judicial element **inferred from the nature of the power**: *Ridge v Baldwin*, followed locally in *Makhanlall*.
- No 'super-added duty' to act judicially: arises whenever any body of persons having **legal authority** to determine questions affecting the **rights of subjects**

What fairness requires and what is involved in order to achieve fairness is for the **decision of the courts** as a matter of law" (*Kay Swee Pin*)

GRAVITY OF CONSEQUENCES

Forfeiture

- Deprivation of **livelihood** (*Woon v Hochstadt*) [only possible because of the monopoly]
  - Ruin professional career [*Tan Boon Chee v SMC*]
  - Must be so in Singapore: *SAAA v Haron Mundir* only involved vocational future, so a fortiori deprivation of livelihood is significant.
- Stigma on character
- May **ruin the claimant financially and socially** [*Tan Boon Chee v SMC*]
- Deprivation of **property rights** (*Cooper v Wandsworth*, followed locally in *Makhanlall*, *Kay Swee Pin* at [6])
  - Reputation as elevated to a property right in *Kay Swee Pin*?
- Disciplinary Proceedings – exercise of disciplinary power may impose a **penalty** on him [*Kay Swee Pin* at [6]]
- Expulsion cases [See **Illustrations**]

Expectation

- Arising from **1) express promise** or **2) existence of regular practice** which the claimant can reasonably expect to continue [Lord Fraser in *GCHQ*]; applied in *Re Siah Mooi Guat* and *Borissik Svetlana v URA*.

- Must be clear, unambiguous, and must be made by a person with actual or ostensible authority.
- **Clear statutory words** will override any expectations [*YVK v AG* at [186]]

➢ Legitimate expectations may **arise from past administrative practice**.
- ☑ In *GCHQ* a past consultative expectation practice concerning changes in conditions of service gave rise to a legitimate expectation to be presently consulted.
- ☑ In *AG of Hong Kong v Ng Yuen Shiu* an administrative assurance led an illegal immigrant to believe that before deportation he would be accorded an interview prior to a decision of his case on the merits. He had a legitimate expectation as to the nature of the hearing but not its outcome.
- *Berthelsen v DG of Immigration, Malaysia* (MACA1987) – breach – cf *Siah Mooi Guat*
  - **[1]** Alien has legitimate expectation to be given an opportunity of making representations if permit is revoked before time limit expires; cf expiration where alien would no legitimate expectation.
  - **[2]** When there is a **revocation or cancellation or forfeiture of a subsisting position**, the right to be heard in answer to the charges preferred is a concomitant adjunct to the exercise or implementation of the contemplated action.
  - **[3]** Affirmed *Ng Yuen Shiu*: Accordingly `legitimate expectations` in this context are capable of including expectations which go beyond enforceable legal rights, provided they have some reasonable basis.
  - **Breach** – The position in the present appeal is wholly different: the appellant was lawfully in the country under the sanction of an employment pass validly issued for a stipulated period, and he clearly had a legitimate expectation to be entitled to remain in this country at least until the expiry of the prescribed duration, and any action to curtail that expectation would in law attract the application of the rules of natural justice requiring that he be given an opportunity of making whatever representations he thought necessary in the circumstances.
- ☒ In *Re Siah Mooi Guat*, the High Court distinguished *Ng Yuen Shiu* in holding that the absence of a ministerial promise meant that she had no legitimate expectation to continue to reside in Singapore until the expiry of her re-entry permit.
  - Accordingly, the Court distinguished *Ng Yuen Shiu's* case and *Bethelsen's* case. It held that the **vital difference was that no promise whatsoever was made to the applicant that her stay in Singapore was to be conditioned by any considerations** other than those provided in the Act and the Regulations thereunder. Therefore, no question of any legitimate expectation arises in the applicant's favour.
  - **Reasoning doubtful** since this was a forfeiture case as Siah was a PR. In *Ng Yuen Shiu* the immigrant did not even have a legal right to stay in the country.

➢ Other legitimate expectations
- **Renewal of licence case**: *McInnes v Onslow-Fane*
  - Falls into the intermediate category of "expectation" cases; between "forfeiture" and "application" cases
  - In this case, the plaintiff had no legitimate expectation that his application for a boxers' manager's licence would succeed. Thus, the board, while under a duty to reach an honest conclusion without bias and not in pursuance of any capricious policy, were under no obligation to give the plaintiff an oral hearing or reasons for refusing his application. Also, refusal of a licence did not cast any slur on the plaintiff's character.
- **Re-instatement of jockey [after time of disqualification]**: *Woon v HR Hochstadt*
  - In this case, the plaintiff was held to have a legitimate expectation that his application for a jockey license would be considered and, if rejected, reasons would be given because his livelihood would be deprived by the decision.
  - Lord Denning in *Breen v Amalgamated Engineering and Foundry Workers Union*:
    - If he is a man who has got **some right or interest or some legitimate expectation**, of which it would not be fair to deprive him without hearing or reasons ... the giving of reasons is one of the fundamentals of good administration.
  - ***Legitimate expectations argument**: It is also obvious that before he made his application, he would have known or to a substantial degree have been aware, of the basic criteria as set out under regulation 37.6 or even of the opinion that he had fulfilled them. This was reflected in his letter of application that he was within the weight limit under criteria 10 of regulation 37.
- **Public announcement of inquiry committee**: *Dr Benjamin George v Majlis Perbandaran Ampang Jaya* (MAHC1995)
  - I am of the view that the residents of Highland Towers have a legitimate expectation that the recommendation of the Highland Towers committee would be followed by the respondent before the issuance of the s 83 notices to the applicants… **Fairness requires the applicants with a legitimate expectation to be given a hearing**.
  - The directions in the notices departed from the recommendations of the HTC, without giving any reason or explanation. This amounted to a breach of legitimate expectation rendering notices ultra vires.

CONCLUDE

Summarise points and conclude that intensity of review would be low or high.

WHERE RULES OF NATURAL JUSTICE DO NOT APPLY

❖ **A. PRELIMINARY PROCEEDINGS**
- **[1]** No right to be heard where sub-committee **merely reports in regard to a complaint**, without condemning the plaintiff: *Law Society of Singapore v Chan Chow Wang*
  - Inquiry committee investigating complaint under no duty to communicate with the plaintiff when submitting report to disciplinary committee
- **[2]** However, where the report has **significant repercussions** (may lead to judicial proceedings) there may be a duty to act fairly: *In Re Pergamon Press*
  - Inspectors appointed under the Companies Act to investigate and report on the affairs of a company
    - Before they condemn/criticise a man – they must give him a fair opportunity to correct/contradict what is said against him
  - An outline of the charge will suffice

❖ **B. NECESSITY** [especially for ***bias***]
- ***Rule***: the disqualification of an adjudicator will not be permitted to destroy the ***only tribunal*** with power to act [*Anwar Siraj v Tan I Fang*]
  - Rationale: to prevent a failure of justice
- Rule **applies** where:
  - There is no other competent tribunal or a quorum cannot be formed without the biased adjudicator [*Chiam See Tong v SDP*]
- Defence **inapplicable** where alternative arrangements can be made: *Anwar Siraj*
  - **[1] Actual bias** can be shown
  - **[2]** Disqualification will still leave a **quorum capable of acting**
  - **[3]** The statute provides an **alternative forum** to the biased tribunal or where the statute contemplates that a **majority of the agency can reach a decision**: *Anwar Siraj v Tang I Fang*
    - JTC had statutory power to relieve the Chairman of his position and appoint a Deputy Chairman or any other member to take his place; thus there is as such no "necessity" for the Chairman to sit on the tribunal.

❖ **C. HIGH LEVEL POLICY MATTERS** – *e.g.* national security and aliens
- Rules of NJ do not apply to aliens [*Re Siah Mooi Guat*]
- National security considerations or war powers (*GCHQ*; *Berthelsen v DG of Immigration, Malaysia*]

❖ **D. LEGISLATION** (law-making process)
- Where body/committee is exercising a legislative function (whether primary or delegated) [*Bates v Lord Halisham*]

❖ **E. WAIVER**
- **Express or implied** (*Ex p Ilchester Parish*)
- Claimant **cannot have deliberately avoided the receipt of notice** [*Peck Constance Emily*]
  - Plaintiff was aware of the said charge and deliberately kept away from the EGM such that she cannot say that she was denied the opportunity to defend the charge or charges made against her at the EGM or that the church board in proceeding in the way it did had acted unfairly against her.

❖ **F. COMPREHENSIVE STATUTORY CODE**
- The more comprehensive the statutory procedural safeguards are, the less willing courts are to intervene [*Wiseman v Borneman*]
- Not conclusive [*Cooper v Wandsworth Board of Works*, *Makhanlall*]
- For Companies [*Peck Constance Emily*]

❖ **G. EXPRESS EXCLUSION BY STATUTE**
- No man was to be deprived of his property without having had an opportunity of being heard, **unless there were express words in the statute authorising deprivation without notice:** *Makhanlall*

❖ **H. MATTERS REQUIRING PROFESSIONAL EXPERTISE**
- *E.g.* doctor's opinion

❖ **I. PRACTICAL DIFFICULTIES**
- *E.g.* referees and umpires need to make decisions on the spot – no requirement of fair hearing

❖ **J. COMPANY MEETINGS**: *Peck Constance Emily*
- Bias does not apply to company or board meetings because:
  - Members have no duty to vote in anyone's interests

- Directors have a duty to vote in the interest of the company and the members as a whole

❖ **K. CLEMENCY POWER**

➢ The nature of the power is devoid of a right to be heard [*YVK v AG]*

RULE AGAINST BIAS

Public confidence in the administration of justice is paramount (*Tang Kin Hwa*) and justice should not only be done but be seen to be done (*R v Sussex Justices, ex p McCarthy*). Thus, both actual and apparent bias is prohibiited because bias is insidious and against public interest (*Yong Vui Kong*).

A. Actual Bias

- *AG v Ng Hock Guan* – 'prejudiced mind which was both irrational and unreasonable'
- Where actual bias is proved, the person concerned must be disqualified [*R v Gough*; *AG v Ng Hock Guan*]
- Very difficult to prove the tribunal was biased in fact: [*R v Gough*, *Re Shankar Alan* at [58]]
  - **Bias is an insidious thing**; one's mind may be unconsciously affected by bias
  - Difficulties in exploring the actual state of mind of a justice or a juryman [**evidentiary difficulties**]

B. Imputed Bias (closed categories): **Pecuniary/Proprietary interest**

- Special category in which the law **assumes bias** – the law raises a constructive presumption of bias [*Rex v Sunderland JJ*]
  - In such cases – irrelevant that there was *in fact* no bias
  - Not necessary to investigate if there was any actual bias, or even any reasonable suspicion, real danger of bias
- **Any direct pecuniary interest**, no matter how small, is sufficient to automatically disqualify a person from adjudication because a person cannot be judge of his own cause
  - Classic example [*Dimes v Grand Junction Canal*] – Lord Chancellor was a shareholder in company which was a party
  - In such cases, the adjudicator must excuse himself / disclose his interest in the matter

C. Imputed Bias (open categories): **Personal or other non-pecuniary interest**

- Starting point: Law should be slow to create new categories in which bias is assumed and there is automatic disqualification [*R v Gough*]
- *Anwar Siraj v Tang I Fang* [1982] 1 MLJ 308 – **personal interest**
  - That the chairman should not have adjudicated in the charges brought against Anwar because he was the one who brought the charges against the plaintiff. Injunction granted to restrain chairman from adjudicating.
- *Ex p. Pinochet Ugarte (No 2)* – **involvement with an organisation that is a party to a case** despite non-pecuniary interest in a non-financial litigation
  - HL in a prominent case has held that the principle of automatic disqualification applies **where the judge is himself a party** or is involved in **promoting a common cause** with one of the parties:
  - Lord Hoffman disqualified as unpaid director and chairperson of Amnesty International Charity
    - Amnesty International was given leave to intervene in the proceedings
  - Although Hoffman not regarded as a party to the appeal – AIC an AI were both parts of a movement working towards the same goals

D. Apparent Bias (reasonable suspicion test)

The test to be applied in determining whether apparent bias has been made out is the **reasonable suspicion test** (*JBJ v Lee Kuan Yew*, *Re Shankar Alan*, *Yong Vui Kong v AG*) i.e. whether a reasonable member of the public sitting in court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the applicant is impossible even though the court itself thought there was no real danger of this on the facts (old test under *Gough*). Rationale for adopting this test is that it would allow court to focus the inquiry from the point of view of the reasonable person observing the proceedings and that it better emphasizes the fundamental principle that justice should not only be done but should be seen to be done (*Re Shankar Alan*).

- **APPLICATION**: On the facts of the present case, a perception of bias might well have arisen at the time of the hearing, since observers would know only that Bert's wife had left him for William – presumably common knowledge in view of the widespread 'publicity' that the affair created – and would therefore be very likely to apprehend bias on the part of Bert

But test only applies to judicial or quasi-judicial decisions. It appears that a **less onerous test will be used for administrative decisions** [*YVK v AG* at [124]].

- In *Yong Vui Kong*, Court of Appeal reiterated that the test to be applied is the "reasonable suspicion" test but held that where a

Minister made a public statement on the Government's policy on any issue, the **rule against bias ought not to be applied to him** as though he were a judicial officer or a quasi-judicial officer **should he later be required to exercise his discretion** on a matter relating to that policy. Otherwise, no Minister would be able to speak on any governmental policy in public lest his statement be construed as a predetermination of any matter, which he might subsequently have to decide in connection with the policy in question.

RIGHT TO FAIR HEARING

Focus on **overall fairness**. Procedural requirements required to achieve fairness depends on intensity of review.

Fair notice	What should notice be given of	*Kay Swee Pin v SICC* • **Any evidence** put before the tribunal • **Specific material relevant** to the decision • **Any further evidence** that the tribunal comes in possession of after the close of the hearing This is all linked to allowing the party to comment on the charges/evidence
	Apply	**TIMELY NOTICE**: Plaintiff should be given sufficient time to effectively prepare his defence • ☑ *Mohd Aziz v PKMS*: membership termination – summoned before Disciplinary Committee 2 days after being informed of it • ☑ *Stanfield Business v MOM*: MOM had not given S notice of the charge; interviews with S and N had been conducted separately by MOM. • ☑ *Ridge v Baldwin*: No specific charge was formulated against the officer **CHARGES / ALLEGATIONS**: Cannot be vague; an officer could not be lawfully dismissed without first being told what was alleged against him and then hearing his defense. • ☑ *Chiam See Tong v SDP*: In this case, the plaintiff was not told of the real grievance against him, either in the notice of the inquiry, or when he appeared at the inquiry. • ☑ *SAAA v Haron Mundir*: court held that Haron had not been told adequately of the case he had to meet – the disciplinary committee was working on a much broader brief than had been revealed to Haron. • ☑ *Ridge v Baldwin*: No specific charge was formulated against the officer **NOTICE OF (PREJUDICIAL) EVIDENCE THAT IS BEFORE THE TRIBUNAL**: • ☑ *SS Kanda v Govt of Federation of M'sia*: The adjudicating officer had received a report and read it before the hearing, but the applicant did not receive that report But **CLAIMANT CANNOT HAVE DELIBERATELY AVOIDED THE RECEIPT OF NOTICE**: The Court accepted the dicta in *Stevenson v Utd Road Tpt Union* that "A case may be of so uncomplex a character and the **issues may be so well known to all parties** concerned that no more particular notice of any charges may be required, an opportunity for the party of whom complaint is made to state his case being sufficient." • ☒ *Peck Constance Emily*: plaintiff was aware of the said charge and deliberately kept away from the EGM such that she cannot say that she was denied the opportunity to defend the charge or charges made against her at the EGM or that the church board in proceeding in the way it did had acted unfairly against her.
Right to be heard		**[1]** When a justiciable issue arises, the decision-maker must give the parties a fair opportunity to present their cases and to correct or contradict any relevant statements prejudicial to them. • ☒ *Kay Swee Pin*: Appellant was not given opportunity to respond to general committee about the discrepancies in her marriage certificate. Furthermore, disciplinary committee had heard her and found her explanation credible so general committee should have asked itself why the former had concluded so. **[2]** However, it may not be necessary for a public authority to provide a formal opportunity for a person to make representations before a decision is taken if the person is already aware of the matter and has been given chances to act on

<table>
<tr><td></td><td colspan="4">it.
• ☑ Dow Jones Publishing Co (Asia) v AG: Held that failure to give appellants opportunity to be heard was not unfair because Minister had already issued a warning to the appellant; the appellant had been given many opportunities to publish a letter from the MAS responding to articles published in its newspaper; and, from an earlier case involving Time magazine, the appellant was aware that the circulation of its newspaper might be cut if it declined to publish the MAS's letter.</td></tr>
<tr><td>Right to unbiased tribunal</td><td colspan="4">• No fair opportunity where some adjudicators walked in and out of hearings, did not stay the course of proceedings and did not hear all the evidence and submissions [Tan Boon Chee v Medical Council of Singapore]
• No fair opportunity given when applicant was subjected to a 'humiliating interrogation and personal attack' and no real effort was made to find out the full story (Haron Mundir)
• Oral hearing may be required if the matter is complex or the other party has been heard orally; not impliedly excluded</td></tr>
<tr><td rowspan="5">Knowledge of evidence/ chance to cross examine</td><td colspan="4">• This is deduced from the main elements of NJ from Stansfield
• Party must have notice – KSP v SICC then says that notice includes notice of evidence
○ And this is all so that the party can answer the charges against him e.g. by rebutting evidence
• As a matter of reciprocity – if one side is allowed to cross-examine, the other should be allowed to as well: Howe Yoon Chong v Chief Assessor
• May be available where plaintiff makes a request, but no requirement to volunteer such a suggestion to him: University of Ceylon v Fernando
• Consider other factors [seminar hypo]:
○ E.g. tribunal no power of sup poena (power to call witnesses) – less likely right to cross-ex will be implied</td></tr>
<tr><td colspan="4">Note balance between fairness and efficiency
• Oral hearing and cross examination is very time consuming and expensive</td></tr>
<tr><td>No breach</td><td>University of Ceylon v Fernando</td><td>Student still knew of charge against him and could answer to it.</td><td>Evidence was taken when student was not around – but he had been adequately informed of charges against him in prior meeting.</td></tr>
<tr><td></td><td></td><td>No right to be for the tribunal to inform/suggest to applicant to cross examine</td><td>Ap did not cross examine – but had not asked to do so either, would have been different if he had asked.</td></tr>
<tr><td>Breach</td><td>Tan Boon Chee v Medial Council</td><td>Persons who have not seen and heard a witness are incapable of ascertaining the value of his evidence.</td><td>Conduct of members of the medical council was improper – walking in and out during the giving of evidence, and various members absent on various days.</td></tr>
<tr><td>Legal representation</td><td colspan="4">Discretionary, no inherent legal right – depends on whether natural justice will require it in the circumstances: Kok Seng Choon v Bukit Turf Club

Factors to consider as per R v Sec of State for Home Department, Ex p Tarrant
1. The seriousness of any allegations made to any potential penalty
2. Whether points of law are likely to arise
3. The capacity of the particular individual to present his or her own case
4. Whether it will be necessary to cross-examine witnesses whose evidence has not been disclosed in advance
5. The need for reasonable speed in making the adjudication
6. The need for fairness as between all persons who may appear before the tribunal</td></tr>
<tr><td>Duty to give reasons?</td><td colspan="2">MLY: recognized</td><td colspan="2">Woon Kwok Cheng v Hockstadt
• Duty to give reasons because Pf had legitimate expectation that if his application were rejected, reasons should be given

In exceptional cases, reasons should be given as a matter of fairness: MPPP case</td></tr>
</table>

	ENG: No general duty but maybe in certain crcumstances	*Doody v SS for Home Department* No general duty, Bbt in the circumstances it may be appropriate to imply such a duty Takes into account • Character of decision making body • Framework in which the decision making body operates • Whether fairness requires these additional procedural safeguards However, there is a **progressive trend in English law towards a duty to give reasons**, as one of the fundamentals of good administration: *Breen v Amalgamated Engineering* • Duty to give reasons may be **implied where there is some right/interest or legitimate expectation** where it would not be fair to deprive a man without a hearing or reasons given (followed in *Hochstadt*)
	SING: No general duty	No general common law duty to give reasons: *Re Siah Mooi Guat*

EFFECT OF DENIAL OF NATURAL JUSTICE

- Effect on decision: better view of the authorities is that the **decision is void as it is an error of law that goes to jurisdiction** [*Ridge v Baldwin, SS Kanda*]
- No need to show that the defect of NJ caused actual prejudice [*Annamunthodo v Oilfield Workers' Trade Union*]
- Whether a defect of NJ is "curable" on appeal
    - Defect in decision at first instance must be cured by the appeal procedure. *Vasudevan Pillai v SCC*
    - Eg: where an appeal is a rehearing *de novo* *Ridge v Baldwin*, *Vasudevan Pillai v SCC* (SGPC)
        - Later decision [appeal] will be valid if the whole matter is reconsidered afresh after affording the person affected a proper opportunity to present his case
        - Note: involves annulling the impugned decision before making a new decision

SCOPE OF REVIEW

ONLY LEGALITY, NO MERITS

Judicial Review only extends to examining the legality of a decision, not its merits [*Wong Rayney v Law Society of Singapore*]

- Formal and not substantive – court cannot substitute its decision for that of the tribunal
- Court does not look into the decision itself but the decision-making progress
- However, note that if review is drawn too narrowly, the tribunal may become a power unto itself and adjudicate upon matters widely different from those which the legislature intended and yet be free from control

LEGISLATIVE LIMITS ON JUDICIAL REVIEW

❖ Circumventing legislative exclusion of review:

➢ **A. "OUSTER" CLAUSES** – *e.g. "not subject to challenge in any Court"*

- The ouster clause should be **construed strictly** and does not protect **purported determinations/decisions** (as opposed to actual) which are **nullities** (*Anisminic*, applied in *Re Yee Yut Ee*)
  - Based on the 'ultra vires' theory – tribunals must confine themselves within powers specially committed to them by the Act and it is for the courts to decide on the construction of the statute which defines the area of a tribunal's jurisdiction
  - **Refer to section on **Jurisdictional v Non-Jurisdictional Errors**.
  - Where there is excess or lack of jurisdiction /fraud/ collusion/ breach of natural justice/ improperly constituted tribunal → the purported decision is a **nullity** and will not be protected
    - ◈ Note: all (relevant) errors of law go towards jurisdiction [see above]
- ***Distinguishing***
  - If Parliament's intention is clearly for the decision-maker to be the final arbiter [*e.g.* ISA and National Security; *Teo Soh Lung v Minister for Home Affairs*]
- **Unconstitutionality**:
  - Art 93 vests **judicial power** in the Supreme Court.
  - There is a suggestion that **ouster clauses are unconstitutional for contravening Art 93 for ousting supervisory jurisdiction of the courts**, an aspect of judicial power.
  - The fact that anti-subversion laws are constitutionally declared to be valid notwithstanding the consistency with Art 93 lends support to the argument that they are unconstitutional, such that a **notwithstanding clause was deployed to immunise them from illegality** (*Chan CJ extra-judicially*).
- **EVAL**: This is be preferred, given that we **observe a constitutional supremacy**; the rationale behind JR should transcend the ultra vires theory and rest on a more free-standing basis of judicial rule as a general check on administrative action (*Thio*)
- **EVAL**: The concept of **non-justiciability is sufficient to restrain courts from reviewing matters of high policy** (Menon JC in *Review Publishing*)
- Question is: do we leave it to the political representative or an unelected judge
- ***Private bodies*** cannot oust the jurisdiction of the courts – contrary to public policy. Restrictions are null and void (*Kay Swee Pin* at [10]).
- Q: what if the ouster clause only applies to the appeal, and not the first-instance decision? If the court does review (notwithstanding a non-exhaustion of internal remedies) then this would circumvent the ouster?

➢ **B. FINALITY CLAUSES** – *e.g.* "an award shall be final and conclusive"

- Only final on the facts and not the law, clause not effective to protect decision from review by *certiorari* where there is jurisdictional defect, etc. [*R v Medical Appeal Tribunal ex p. Gilmore*, adopted in *Re Yee Yut Ee* at [24]]

➢ **C. "NO CERTIORARI" CLAUSES** – *e.g.* "shall not be subject to certiorari"

- Court may still issue *certiorari* if jurisdictional defect can be established, etc. [*Re Yee Yut Ee* citing *Anisminic* and *ex p Gimore*]

➢ **D. SUBJECTIVELY WORDED CLAUSES** – *e.g.* "where X is satisfied that…"

- ****SEE ABOVE ON 'LACK OF EVIDENCE'**
- Test is objective: requires sufficient evidence on the basis of which the decision could be reasonably satisfied [*Tan Jessie v Minister for Finance* at [19], applying *Chng Suan Tze v MHA*]
  - If there is no sufficient evidence that can reasonably satisfy the decision-maker, then the court may quash the decision [*Jessie Tan v MoF*]
- *Lines International*: If the **substantial** reason for the exercise of discretion was irrelevant (eg: gambling on high seas is not illegal), then the exercise of discretion may be unreasonable.

- **Precedent fact category**: provision may be a question of fact requiring evidence that must justify decision [yes/no] (*Re Fong Thin Choo* at [33])
- **Non-precedent fact category**: Apply Irrationality test [see *GCHQ* **irrationality**]

➢ **E. 'CONCLUSIVE EVIDENCE' CLAUSE**

- Court can still step in if there was proof the government authority had acted in bad faith (*Teng Fuh Holdings v Collector of Land Revenue*)

NATURE OF SUBJECT LIMITING JUDICIAL REVIEW

- **National security** issues not justiciable
  - Where the relevant decision ***in fact*** was based on national security considerations – not justiciable [*Chng Suan Tze* affirming *GCHQ*]
- Matters involving **high policy** (clemency powers – *Yong Vui Kong v AG*)