

Chapter 1 : Administrative discretion - Wikipedia

This chapter provides important insights into the role that judicial discretion plays in the grant of both common law and equitable remedies. It draws on the works of a number of scholars to overcome some stereotypical beliefs and in particular to highlight that: the grant of replicative remedies which originated in the common law jurisdiction involves a degree of discretion; the discretion in.

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.

Chapter 2 : Discretion and Remedies - Oxford Scholarship

wright - discretion with common law remedies There is intellectual pressure being exerted by irks,^ amongst many others, for a decrease in the role of discretion and an increase in the role of rules.

History[edit] The idea of administrative discretion dates back as far as the time of widely known Greek philosopher Socrates in his quest to lay the foundation for philosophical ethics. Socrates determined a general ranking of "universal morals" in order to piece together certain criterion that could test what course of action to take in any immediate situation. He assigned value orders as well as certain "means to ends" that would determine alternatives for ethical philosophical generalization. Andrew Jackson Postage Stamp

US Postal Service When Andrew Jackson took office in , the country was going through radical changes

the scale of government grew extensively which caused the need for an increase in the administrative activity. Jackson brought the bureaucratization of administration. This was known as the "spoils system", in which was a system was in place where presidential administrations had the power of hiring or firing federal workers; this brought a constant change in demands and routines for personnel. Of his additions to the administrative discretion and of bureaucracy as we know it today, one in particular, the creation of The Patent Reform Act of brought about the creation of new offices and adjudicatory administrative boards. Although, perhaps unknowingly, Jackson brought a new age to administrative discretion. Another president who has come in contact with administrative discretion is Madison. In some cases, officials appointed by the presidents abused their powers in administration. There were attempts to control administrative discretion throughout the 19th century, but those attempts overall, failed. Political appointees believed they indeed were law themselves

Jesse Hoyt and his successor Samuel Swartwout for example, notoriously did not comply with the rule to return funds they had collected on behalf of the Federal Government. There was a type of bureaucratic "sprawl": The New Deal emphasized the importance of administrative discretion in government and their processes by expanding the staff of the White House and creating new managerial techniques for the executive. The act came about after the Attorney General appointed a committee to investigate the need for procedural reform. The view was that there was no uniformity in the chaotic bodies to administer anything. The intention was to make sure that the public is protected and safe, with secured proper entitlements. The problem arose as residents receiving financial aid claimed that the New York City officials overseeing and administering these programs terminated their aid without notifying them or holding a hearing. In this case, Administrative Discretion resulted in individualized parameters of what was deemed necessary to convey a termination of aid, instead of a federal standard. Industrial Union Department v. However, this failed to happen. The Secretary did not say or record anywhere that exposure to the substance benzene at 10 ppm parts per million would cause leukemia and exposure to 1 ppm would not Oyez cases. The IRS must exercise discretion in administering the tax law. The IRS oversees a vast system that affects nearly everyone. Since the law is complex and often difficult to interpret, the IRS must draw fine lines in order to properly interpret, apply, and enforce the law. The IRS asked those groups invasive questions that were not normally asked of other groups: The two situational motivations combine to create four types of discretionary situations for law enforcement officials. The four different situations are proactive and reactive law enforcement and proactive and reactive order maintenance. Please improve it by verifying the claims made and adding inline citations. Statements consisting only of original research should be removed. In theory, the public expects administrators to be the exemplary role models of society and follow laws and regulations. Shimer College dialogue transparency "We want dialogue and transparency. In a poll done by Gallup. People were asked if corruption was widespread throughout the government. It can also simply mean that the administration does not attempt to make their information easy to access or understand for the public.

Chapter 3 : Equitable Remedies of Injunctions and Specific Performance |

meaning those remedies available in an equity court. In that light, equity is a system of jurisprudence that originated and developed outside the common law courts of England to furnish.

Failure to disclose exculpatory evidence Abuses of discretion[edit] This section does not cite any sources. Please help improve this section by adding citations to reliable sources. Unsourced material may be challenged and removed. March Prosecutors are given discretion about how they conduct their business. Selective prosecution by race, income, political affiliation, etc. Capture of the grand jury , misusing it as a tool for inquisitorial abuse, or excluding citizen complaints from being heard. Plea bargaining abuses, such as seeking testimony in exchange for leniency. This may solicit perjury or falsified evidence. Tainting of jury pools with public statements by prosecutors that are either inaccurate, exaggerated, unsupported by evidence or that could be inadmissible at trial, and such statements become widely promulgated by the media. Prosecutors causing depositions in a related civil trial which were likely to yield exculpatory evidence , and then "staying" those statements so they cannot be used in a criminal trial. Prosecutors using their Peremptory Challenges to remove from the jury anyone with relevant experience in the complex subjects of a trial. Defense attorneys often use similar tactics. Prosecutors pursuing criminal penalties for selected industry practices in Corporate America when regulatory intervention would be more appropriate. For example, prosecuting a mechanic for minor violations of the Clean Water Act rather than affording the opportunity for the mechanic to correct their error and pay the appropriate fines. Prosecutors using multidefendant trials to get defendants to turn on one another in the courtroom, as judges may be reluctant to allow separate trials in multi-defendant cases. Examples and remedies[edit] The examples and perspective in this article may not represent a worldwide view of the subject. You may improve this article , discuss the issue on the talk page , or create a new article , as appropriate. September Learn how and when to remove this template message In late , the 6th US Circuit Court of Appeals ruled that John Demjanjuk had been a victim of prosecutorial misconduct during a trial in which federal prosecutors withheld evidence. In the murder trial of O. Simpson , the defense argued that Los Angeles Police Department detective Mark Fuhrman had planted evidence at the crime scene. Although Fuhrman denied the allegations, Simpson was found not guilty , although he was later held liable for the deaths in a civil suit filed by the families of the victims. In USA Today August 24, , Francis Fukuyama stated, "[Such defenses lead to] a distrust of government and the belief that public authorities are in a vast conspiracy to violate the rights of individuals. Attorney for the Middle District of Florida , said. She went on to accuse three players of raping her at that party. Making the case even more volatile was the fact that the stripper was black and the three accused players were white. He also made numerous inflammatory statements to the media. The case against the players eventually collapsed; all charges were dropped, and the North Carolina Attorney General took the unusual step of declaring the players innocent. In a Texas man, Michael Morton was released from prison after serving nearly 25 years for the murder of his wife in He was released after DNA evidence pointed to another man as the killer. He was sentenced to spend 10 days in jail and was also disbarred. During that period, judges have cited misconduct by prosecutors as a reason to dismiss charges, reverse convictions, or reduce sentences in 2, cases, according to a study by the Center for Public Integrity released in ; the researchers looked at 11, cases in which misconduct was alleged. Prosecutors have asked judges to stop using the term to refer to an unintentional error, and to restrict its use to describe a breach of professional ethics.

Chapter 4 : Damages are not an adequate remedy: go directly to injunction | IP Draughts

The System of Equitable Remedies discretion, or an emphasis on fairness, can be found to the same degree in law.2 Something important follows from that.

By the end of this chapter you should be able to: This was known as the concurrent jurisdiction of equity that gave effect to recognised legal or equitable rights by creating new remedies. Before examining these individual remedies it is worth identifying a number of features of equitable remedies in general. The only common law remedy that may be claimed as of right is damages. All other remedies are equitable and are granted at the discretion of the court. Instead, the discretionary nature of the award is tantamount to the court taking into account all relevant matters that lean towards the justice or injustice of granting the remedy. In short, the court takes a holistic view of the circumstances before deciding whether or not to grant the remedy. Factors that are relevant to the court before deciding whether to grant an equitable remedy include whether the remedy at common law is inadequate, whether the conduct of the claimant has been inequitable, whether the availability of the remedy sought may cause undue hardship to the defendant, whether there has been considerable delay in bringing the claim, whether the imposition of the remedy may cause the defendant to suffer undue hardship. This requires the judge to conduct a balancing exercise. On the one hand the judge will weigh up the inconvenience or detriment that will be suffered by the claimant if he were left without an equitable remedy and determine whether this outweighs the hardship that may be suffered by the defendant. The effect is that the exercise of the discretion by the courts, in the context of equitable remedies, has been reduced to a structured set of principles in an effort to achieve justice for all the parties concerned. There are several different types of injunctions. Courts of equity have had the power to grant injunctions for a considerable period of time. Injunctions, like all equitable remedies, are discretionary, but the court will exercise its discretion according to well-established equitable principles. Originally, injunctions were unavailable in the common law courts but s 79 of the Common Law Procedure Act gave such courts the power to issue an injunction instead of awarding damages. This power, entitling a court of equity to award damages, does not mean that the court will be more reluctant to issue an injunction when the circumstances warrant such a remedy. Since the Judicature Acts 1875 both legal and equitable remedies have been available in the same court, but it seems that the template governing the principles that are applicable to injunctions remains the same. The jurisdiction today is laid down in s 37 1 of the Senior Courts Act previously enacted as s 37 1 of the Supreme Courts Act which provides that: The court decided that the act of the defendant was not a violation of any legal right of the claimant and therefore the claim was dismissed. No such legal or equitable right exists 1 I think it right to add that the power given to the Court by sect. For instance, where the damage had already occurred to the claimant and could be rectified by a monetary payment and was not likely to be repeated an injunction may not be granted. Prima facie, a plaintiff, whose rights have been invaded 1 is entitled to relief from this court by way of injunction. The courts are very reluctant in allowing a wealthy defendant to purchase from the claimant the right to continue to commit a wrong. On the other hand, the court may exercise its discretion not to grant an injunction where the damage to the claimant is small, and his loss could be estimated in monetary terms and will provide adequate compensation and the grant of an injunction may be unnecessarily oppressive on the defendant. This requires the court to balance the relative interests of the parties. The owner and occupier sought relief by way of injunction. The trial judge refused injunctive relief and awarded damages. His decision was reversed by the Court of Appeal, which roundly rejected the view that wrongs should be permitted to continue simply because the wrongdoer was able and willing to pay damages. The court gave guidance: At the same time he emphasised that the discretionary nature of this limitation varies with the facts of each case: In any instance in which a case for an injunction has been made out, if the plaintiff by his acts or laches has disentitled himself to an injunction the Court may award damages in its place. So again, whether the case be for a mandatory injunction or to restrain a continuing nuisance, the appropriate remedy may be damages in lieu of an injunction, assuming a case for an injunction to be made out. It is impossible to lay down any rule as to what, under the differing circumstances of each case, constitutes either a

small injury, or one that can be estimated in money, or what is a small money payment, or an adequate compensation, or what would be oppressive to the defendant. This must be left to the good sense of the tribunal which deals with each case as it comes up for adjudication. Each case must be decided upon its own facts; but to escape the rule it must be brought within the exception. In the present case it appears to me that the injury to the Plaintiff is certainly not small, nor is it in my judgment capable of being estimated in money, or of being adequately compensated by a small money payment. There are persons who derive satisfaction from listening to the addresses of the defendant, and the defendant derives satisfaction from delivering these addresses. I cannot conceive why they should be deprived of this innocent pleasure. Nobody is obliged to listen. Nobody is molested – I cannot refuse to make a declaration that the defendant is not entitled, without the consent of the plaintiffs, to hold meetings or deliver addresses, lectures, or sermons on any part of the foreshore in lease from the Crown. But I decline to go further. I decline to grant an injunction. That is a formidable legal weapon which ought to be reserved for less trivial occasions. The relative importance of these factors may vary depending on the type of injunction sought by the claimant. The oppressive nature of the order on the defendant is required to be judged on the date of the application for the grant. The claimant delayed by about two years in seeking an injunction to prevent the defendants from building a house on the plot. At this time the building was at an advanced stage. The court refused the injunction on the ground that the injunction would have been unduly oppressive on the defendants. In reaching that conclusion, the court took into account the conduct of the claimant and defendants, the nature of the trespass and the relevant land. Most cases, like the present, fall somewhere in between. In the present case, the defendants acted openly and in good faith and in the not unreasonable belief that they were entitled to make use of Ashleigh Avenue for access to the house that they were building. At the same time, they had been warned by the plaintiff and her solicitors that Ashleigh Avenue was a private road, that they were not entitled to use it for access to the new house and that it would be a breach of covenant for them to use the garden of No 5 to gain access to No 5A. They went ahead, not with their eyes open, but at their own risk. On the other hand, the plaintiff did not seek interlocutory relief at a time when she would almost certainly have obtained it. She should not be criticised for that, but it follows that she also took a risk, viz that by the time her case came for trial the court would be presented with a fait accompli. The case was a difficult one, but in an exemplary judgment the judge took into account all the relevant considerations, both those which told in favour of granting an injunction and those which told against, and in the exercise of his discretion he decided to refuse it. In my judgment his conclusion cannot be faulted.

Chapter 5 : Prosecutorial misconduct - Wikipedia

Prosecutorial Misconduct and Constitutional Remedies Prosecutorial Misconduct and Constitutional Remedies, of that authority is the discretion the criminal.

Constitutional position[edit] The English constitutional theory, as expounded by A. Dicey , does not recognise a separate system of administrative courts that would review the decisions of public bodies as in France, Germany and many other European countries. Instead, it is considered that the government should be subject to the jurisdiction of ordinary Common Law courts. At the same time, the doctrine of Parliamentary sovereignty does not allow for the judicial review of primary legislation primarily Acts of Parliament. This limits judicial review in English law to the decisions of officials and public bodies, and secondary delegated legislation, against which ordinary common law remedies, and special " prerogative orders ", are available in certain circumstances. The constitutional theory of judicial review has long been dominated by the doctrine of ultra vires , under which a decision of a public authority can only be set aside if it exceeds the powers granted to it by Parliament. The role of the courts was seen as enforcing the "will of Parliament" in accordance with the doctrine of Parliamentary sovereignty. However, the doctrine has been widely interpreted to include errors of law [1] and of fact and the courts have also declared the decisions taken under the Royal Prerogative to be amenable to judicial review. Procedural requirements[edit] Under the Civil Procedure Rules a claim application for judicial review will only be admissible if permission leave for judicial review is obtained from the High Court , which has supervisory jurisdiction over public authorities and tribunals. Permission may be refused if one of the following conditions is not satisfied: The application must be made promptly and in any event within three months from the date when the grievance arose. The applicant must have sufficient interest in a matter to which the application relates. The application must be concerned with a public law matter, i. However, the Court will not necessarily refuse permission if one of the above conditions is in doubt. It may, in its discretion, examine all the circumstances of the case and see if the substantive grounds for judicial review are serious enough. The purpose of the letter is to identify the issues in dispute and to avoid litigation where possible. The protocol specifies a template for the letter. It is usual to allow 14 days for a response. Styling of the claimant[edit] Unlike other civil proceedings in English courts, in judicial review court papers the claimant is styled as The Queen on the application of Claimant X or King when reigning. Technically a judicial review is brought by the Crown, on the application of the claimant, to ensure that powers are being properly exercised. In R v Panel for Takeovers and Mergers Ex p Datafin [] 1 QB , the Court of Appeal held that a privately established panel was amenable to judicial review because it in fact operated as an integral part of a governmental framework for regulating Mergers and Takeover, while those affected had no choice but to submit to its jurisdiction. Ouster clauses[edit] Sometimes the legislator may want to exclude the powers of the court to review administrative decision, making them final, binding and not appealable R Cowl v Plymouth City Council. However, the courts have consistently held that none but the clearest words can exclude judicial review. The courts however do uphold time limits on applications for judicial review. They could not originate their action under the general civil law procedure, because that would be avoiding the procedural safeguards afforded to public authorities by the judicial review procedure, such as the requirement of sufficient interest, timely submission and permission for judicial review. However, a defendant may still raise public law issues as a defence in civil proceedings. So for example, a tenant of the public authority could allege illegality of its decision to raise the rents when the authority sued him for failing to pay under the tenancy contracts. He was not required to commence a separate judicial review process Wandsworth London Borough Council v Winder If an issue is a mix of private law rights, such as the right to get paid under a contract, and public law issues of the competence of the public authority to take the impugned decision, the courts are also inclined to allow the claimant to proceed using ordinary civil procedure, at least where it can be demonstrated that the public interest of protecting authorities against frivolous or late claims has not been breached Roy v Kensington and Chelsea and Westminster Family Practitioner Committee , Trustees of the Dennis Rye Pension Fund v Sheffield City Council Grounds for review[edit] In Council of Civil Service

Unions v Minister for the Civil Service [] AC , Lord Diplock summarised the grounds for reversing an administrative decision by way of judicial review as follows: Illegality Procedural impropriety Legitimate expectation The first two grounds are known as substantive grounds of judicial review because they relate to the substance of the disputed decision. Procedural impropriety is a procedural ground because it is aimed at the decision-making procedure rather than the content of the decision itself. Those grounds are mere indications: There are no hard and fast rules for their classification, but the most common examples of cases where the courts hold administrative decisions to be unlawful are the following: The decision is made by the wrong person unlawful sub-delegation [edit] If the law empowers a particular authority, e. Where a decision is made by a properly empowered department within a local council, s. Error of law or error of fact[edit] The court will quash a decision where the authority has misunderstood a legal term or incorrectly evaluated a fact that is essential for deciding whether or not it has certain powers. So, in R v Secretary of State for the Home Department, ex parte Khawaja [] AC 74, the House of Lords held that the question whether the applicants were "illegal immigrants" was a question of fact that had to be positively proved by the Home Secretary before he could use the power to expel them. The power depended on them being "illegal immigrants" and any error in relation to that fact took the Home Secretary outside his jurisdiction to expel them. However, where a term to be evaluated by the authority so broad and vague that reasonable people may reasonably disagree about its meaning, it is generally for the authority to evaluate its meaning. For example, in R v Hillingdon Borough Council ex Parte Pulhofer [] AC , the local authority had to provide homeless persons with accommodation. The applicants were a married couple, who lived with their two children in one room and applied to the local authority for aid. The local authority refused aid because it considered that the Pulhofers were not homeless and the House of Lords upheld this decision because whether the applicants had accommodation was a question of fact for the authority to determine. The decision maker went beyond their power: They decided to charge people to use it. The court held they went beyond their power by trying to benefit commercially from something that was supposed to be for everyone. Section 1 of the Overseas Development and Co-operation Act empowered the Secretary of State for Foreign Affairs to assign funds for development aid of economically sound projects. The Secretary assigned the funds for a project to construct a power station on the Pergau River in Malaysia see Pergau Dam which was considered as uneconomic and not sound. The House of Lords held that this was not the purpose envisaged by the enabling statute and the Minister therefore exceeded his powers. Ignoring relevant considerations or taking irrelevant considerations into account[edit] This ground is closely connected to illegality as a result of powers being used for the wrong purpose. In R v Somerset County Council Ex parte Fewings the local authority decided to ban stag hunting on the grounds of it being immoral. In Padfield v Ministry of Agriculture, Fisheries and Food , the Minister refused to mount an inquiry into a certain matter because he was afraid of bad publicity. In R v Inner London Education Authority, ex parte Westminster City Council , [14] the London Education Authority used its powers to inform the public for the purpose of convincing the public of its political point of view. In all these cases, the authorities have based their decisions on considerations, which were not relevant to their decision making power and have acted unreasonably this may also be qualified as having used their powers for an improper purpose. Note that the improper purpose or the irrelevant consideration must be such as to materially influence the decision. Where the improper purpose is not of such material influence, the authority may be held to be acting within its lawful discretion. Hence in R v Broadcasting Complaints Commission, ex parte Owen [] QB , the Broadcasting authority refused to consider a complaint that a political party has been given too little broadcasting time mainly for good reasons, but also with some irrelevant considerations, which however were not of material influence on the decision. Fettering discretion[edit] An authority will be acting unreasonably where it refuses to hear applications or makes certain decisions without taking individual circumstances into account by reference to a certain policy. When an authority is given discretion, it cannot bind itself as to the way in which this discretion will be exercised either by internal policies or obligations to others. Even though an authority may establish internal guidelines, it should be prepared to make exceptions on the basis of every individual case. Unlike illegality and procedural impropriety, the courts under this head look at the merits of the decision, rather than at the procedure by which it was arrived at or the legal basis on

which it was founded. The question to ask is whether the decision "makes sense". In many circumstances listed under "illegality", the decision may also be considered irrational. Proportionality[edit] Proportionality is a requirement that a decision is proportionate to the aim that it seeks to achieve. Proportionality exists as a ground for setting aside administrative decisions in most continental legal systems and is recognised in England in cases where issues of EU law and human rights are involved. However, it is not as yet a separate ground of judicial review, although Lord Diplock has alluded to the possibility of it being recognised as such in the future. At present, lack of proportionality may be used as an argument for a decision being irrational. Statutory procedures[edit] An Act of Parliament may subject the making of a certain decision to a procedure, such as the holding of a public hearing or inquiry, [17] or a consultation with an external adviser. Courts distinguish between "mandatory" requirements and "directory" requirements. A breach of mandatory procedural requirements will lead to a decision being set aside for procedural impropriety. Breach of natural justice[edit] See also: Natural justice The rules of natural justice require that the decision maker approaches the decision making process with "fairness". What is fair in relation to a particular case may differ. Below are some examples of what the rules of natural justice require: The rule against bias[edit] Further information: Any person that makes a judicial decision - and this includes e. If such interest is present, the decision maker must be disqualified even if no actual bias can be shown, i. The minimum requirement is that the person gets the chance to present his case. If the applicant has certain legitimate expectations , for example to have his licence renewed, the rules of natural justice may also require that they are given an oral hearing and that their request may not be rejected without giving reasons. Duty to give reasons[edit] Unlike many other legal systems, English administrative law does not recognise a general duty to give reasons for a decision of a public authority. Where it is not, common law may imply such a duty and the courts do so particularly with regard to judicial and quasi-judicial decisions. Considerations of legitimate expectations: When an individual or a group has been led to think that certain steps will apply. When an individual or a group relies on a policy or guidelines which govern an area of past executive action. In a leading case on the latter point, Ms Coughlan, having been badly injured in a car accident, was promised a "home for life" by the health authority when she was transferred from the hospital to a care home. There is some authority for the proposition that the courts employ a normative legal concept of "moral desert". The following remedies are available in proceedings for judicial review:

Chapter 6 : Chapter 5 - Circular 92 | U.S. Copyright Office

Before examining these individual remedies it is worth identifying a number of features of equitable remedies in general. The only common law remedy that may be claimed as of right is damages. All other remedies are equitable and are granted at the discretion of the court.

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Infringement of copyright 3 a Anyone who violates any of the exclusive rights of the copyright owner as provided by sections through or of the author as provided in section A a , or who imports copies or phonorecords into the United States in violation of section , is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter other than section , any reference to copyright shall be deemed to include the rights conferred by section A a. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright. Injunctions a Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright. Impounding and disposition of infringing articles 4 a 1 At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable— A of all copies or phonorecords claimed to have been made or used in violation of the exclusive right of the copyright owner; B of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced; and C of records documenting the manufacture, sale, or receipt of things involved in any such violation, provided that any records seized under this subparagraph shall be taken into the custody of the court. The protective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in such records is not improperly disclosed or used. Any references in paragraphs 2 through 11 of section 34 d of the Trademark Act to section 32 of such Act shall be read as references to section of this title, and references to use of a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services shall be read as references to infringement of a copyright. Damages and profits 5 a In General. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section , if the infringer was: B Nothing in this paragraph limits what may be considered willful infringement under this subsection. Criminal offenses 6 a Criminal Infringement. Limitations on actions 7 a Criminal Proceedings. Notification of filing and determination of actions a Within one month after the filing of any action under this title, the clerks of the courts of the United States shall send written notification to the Register of Copyrights setting forth, as far as is shown by the papers filed in the court, the names and addresses of the parties and the title, author, and registration number of each work involved in the action. If any other copyrighted work is later included in the action by amendment, answer, or other pleading, the clerk shall also send a notification concerning it to the Register within one month after the pleading is filed. Remedies for alteration of programming by cable systems 9 a In any action filed pursuant to section 3 , the following remedies shall be available: Liability of States, instrumentalities of States, and State officials for infringement of copyright 10 a In General. Limitations on liability relating to material online 11 a Transitory Digital Network Communications. A the name, address, phone number, and electronic mail address of the agent. B other contact information which the Register of Copyrights may deem appropriate. The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the Internet, and may require payment of a fee by service providers to cover the costs of maintaining the directory. B i Subject to clause ii , a notification from a copyright owner or from a person

authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions of subparagraph A shall not be considered under paragraph 1 A in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent. A A physical or electronic signature of the subscriber. B Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled. C A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled. B If the service provider qualifies for the limitation on remedies described in subsection a , the court may only grant injunctive relief in one or both of the following forms: Whether a service provider qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection, and shall not affect a determination of whether that service provider qualifies for the limitations on liability under any other such subsection. Determination of reasonable license fees for individual proprietors 12 In the case of any performing rights society subject to a consent decree which provides for the determination of reasonable license rates or fees to be charged by the performing rights society, notwithstanding the provisions of that consent decree, an individual proprietor who owns or operates fewer than 7 nonpublicly traded establishments in which nondramatic musical works are performed publicly and who claims that any license agreement offered by that performing rights society is unreasonable in its license rate or fee as to that individual proprietor, shall be entitled to determination of a reasonable license rate or fee as follows: Such proceeding shall commence in the applicable district court within 90 days after the service of such copy, except that such day requirement shall be subject to the administrative requirements of the court. At the discretion of the court, the proceeding shall be held before a special master or magistrate judge appointed by such judge. Should that consent decree provide for the appointment of an advisor or advisors to the court for any purpose, any such advisor shall be the special master so named by the court. Such presumption shall in no way affect a determination of whether the rate is being correctly applied to the individual proprietor. Such proceeding, including such review, shall be concluded within 6 months after its commencement. Also, the table of sections was amended to reflect that change. See also note 12, *infra*. The Satellite Home Viewer Act of amended section by adding subsection e. In , the Copyright Remedy Clarification Act amended section a by adding the last two sentences. The Visual Artists Rights Act of also amended section a as follows: I at A and The Fraudulent Online Identity Sanctions Act of amended section c by adding a new subparagraph 3. The Visual Artists Rights Act of amended section by adding subsection f. See also note 3 in Appendix K. The Prioritizing Resources and Organization for Intellectual Property Act of amended section by revising subsection b in its entirety. This section was originally designated as section However, because two sections had been enacted into law in , a technical amendment redesignated this as section See also note 2, *supra*.

Chapter 7 : Seminar: Judicial Discretion and Proprietary Remedies | Law

The discretion given to the trustee can provide a gateway for added liability, and the creation of a trust should take the twin concerns of trustee discretion and trustee liability into as much.

Damages are not an adequate remedy: It looks so different from most of the clauses in the agreement. Some lawyers gloss over it, recognising it as a standard piece of legal verbiage. Other lawyers, particularly in the UK, are uneasy about it, and sometimes seek to water it down. Yet the clause persists in thousands, if not millions, of confidentiality agreements across the globe. Some typical manifestations of the clause follow. The first is from a UK template found on the internet that appears to be based on a PLC document. The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief including without limitation injunctive relief concerning any threatened or actual breach of any of the provisions of this agreement. Money damages would not be [a] sufficient remedy for any breach by either party. The non-breaching party shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. In other words, if a party breaches the confidentiality obligations, the other party is entitled to an injunction. When deciding whether to grant an injunction, the court considers various factors, including whether an injunction is necessary. If the breach can be adequately compensated with a financial award, the court might decide that an injunction is not necessary. IP Draughts doubts whether clauses of this kind have much value under English law. The award of injunctions forms part of what is known as the law of equity. Equitable remedies are generally at the discretion of the court. Clauses of this kind smack of telling the court what it must do. This change takes some of the impertinent sting out of the clause and is usually accepted by the other party. It seems, however, that some US courts take a different approach. The case of *Martin Marietta Materials Inc v. Vulcan Materials Company* concerned the interpretation and enforcement of a confidentiality agreement that included the words quoted above. In the words of Chancellor Strine at first instance in this case: According to this law firm article, the approach of Delaware state law differs from that of US federal law on this point. The authors discuss the federal case of *Riverside Publishing Co.* It first recognized that circuit and district courts have declined to presume irreparable harm based on a contract clause. So, it seems there is some point to these clauses after all, in some US courts. There is, therefore, a good reason for including such a clause if it increases the likelihood of an injunction being granted. IP Draughts is not familiar with the word contractarian. Some US lawyers with whom IP Draughts has discussed similar issues eg see the recent debate on Adams on Contract Drafting here seem to consider that agreeing to a remedy in a contract sets up some kind of estoppel. However, the law in this area is not clear or simple and some of the leading English cases were decided the late Lord Denning who liked to stretch the law, and was not always followed by more conservative judges.

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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.

Chapter 9 : Judicial Review and Remedies in Public Law - The Student Lawyer

Equitable remedies are designed to be ancillary to common law remedies; they supplement the common law and are invoked only where the common law remedy is so inadequate as to warrant their application.