

Overview:

- Condition: statute says if X factual situation exists, then the DM can do Y.
 - Question: what is the effect of that condition? What does that do to the ability of the DM to exercise their power?
- What this used to be called, and is still called by Australia and the UK, is jurisdiction of fact: whether fact exists or not goes to whether you can exercise the power you have been delegated.

Re Ripon.

- Facts.
 - War time case.
 - Govt acquiring land for public housing.
 - Govt has a to do this, but cannot acquire empty land that happens to be part of a park or garden.
 - Rich person trying to stop their land being used for this project.
- Lower court.
 - Held: whether land part of a park (within meaning of statute) just a question for the Minister.
- Court of Appeal.
 - "The court has jurisdiction to review a finding of fact on which the existence of its jurisdiction depends – in this case, the question of whether the land was part of a park".
 - The Court can look at it.
 - c.f *Hawkins*: Cooke J engages with this question of jurisdictional fact.

Hawkins.

- Factual background.
 - Equiticorp Group announced it was suspending business.
 - Before that happened, EG requested to put number of companies into statutory management (most subsidiaries of EC, four were different but related companies).
 - Securities Commission recommended to Minister that GG makes Order in Council placing companies under statutory management.
 - EG's challenge: putting those different, but related companies under the same statutory management regime as the EC companies.
- Statutory power. When is the Minister entitled to place an order re: statutory management?
 - Factual conditions:
 - In the public benefit; or
 - Where it is desirable for the protection of shareholders or creditors.
 - Legal conditions:
 - Securities Commission has to recommend this to the Minister.
- Cooke and Richardson JJ both emphasise context in which this power will be exercised.
 - Situation where Minister chooses to exercise power: under urgency.
 - This goes to how you interpret who gets the final say on whether the conditions were satisfied.
- Reviewable?
 - Cooke J.
 - Ultimate question: can the Court even review this?
 - Need to interpret the statutory purpose which factual background of urgency goes to → The Minister gets to judge.
 - Mentions jurisdictional fact.
 - Doesn't like the terminology – really about interpreting who the statute gave the final say to (extent of discretion conferred).
 - SO an issue of statutory interpretation.

- EC also argue unreasonableness.
 - Problem with this argument: EC asked for companies to be included – how can that be unreasonable.
- Richardson J.
 - More detailed-orientated + precise (c.f big picture stuff from Cooke J).
 - Here we find modern approach to non-satisfaction of criteria.
 - "Jurisdiction of fact" is really just a straightforward question of statutory interpretation. On when court intervention appropriate:
 - What Parliament intended is important.
 - "The larger the policy content and the greater the room for the exercise of judgment by the statutory decision maker, the less scope there is for a conclusion that the legislature intended that the Courts by way of judicial review should determine whether the statutory criteria were established as a precondition to the exercise of the statutory power."
 - Background of statute = urgency.
 - Original statute was passed in one night.
 - When the statute was updated, maintained requirement for regulator to provide advice before powers can be used.
 - By its nature, it must be urgent – to have an urgent rearrangement questioned and potentially cancelled months later would undermine the purpose of the statute.
 - Even the nature + wording of the particular criteria is such that you cannot conclude that this is for the courts to decide. What's different here than *Re Ripon* that makes it more appropriate for the DM to resolve?
 - Answer: involves express value judgements, matters of expertise etc.
 - Also: this is a case about what is in the public interest (whether this particular bank busting should be regulated) – this is what we elect politicians for – not why we appoint judges.
 - Constitutional appropriateness stuff.
- Conclusion.
 - As a matter of statutory interpretation, on these evaluative criteria, the final say ought to be with the elected officials + the specialist regulator.
 - No case made for an error of law or unreasonableness either.

Puhlhofer.

- Factual background.
 - Applicants living temporarily in guest house without laundry or cooking clothes.
 - Applicants applied to authority under Housing (Homeless Persons) Act on the ground that they were homeless because the accommodation was inadequate.
- Statutory power + conditions.
 - Housing authority must be satisfied that the person is homeless.
 - Homeless defined under the Act as having no accommodation.
 - Applicants argued that without washing or cooking clothes, didn't have adequate accommodation → homeless.
- Which case applies? Can we second-guess what a park is? Or a public interest decision like *Hawkins*?
 - HL: Parliament intended local housing authorities to be the judge of fact when exercising their functions under the Act.
 - More like *Hawkins*: not appropriate intervene.
 - Morph from strict jurisdictional fact → statutory interpretation.
 - Question: who did Parliament intend to have the final say?

Re (A) v Croydon London Borough Council:

- Factual background.
 - A + M arrived in the UK, claimed asylum as children.
 - Ages disputed – decision-maker ultimately decided that they weren't children.
 - Importance:
 - Statute says that where there is a children in need, must provide accommodation to them.
 - Home Secretary adopts different policies in relation to asylum seekers who are under 18.
 - Less likely to be deported, locked up in immigration detention.
- Conditions (+ statutory power) to receive aid under Act.
 - Child.
 - In need.
 - Section 17(10): taken to be a child in need if e.g unlikely to achieve a reasonable standard of health, is disabled etc.
 - NB: not technically a definition just taken into account in working out whether someone is in need.
- Can the courts interfere?
 - High Court + Court of Appeal: no – up to the decision-maker.
 - Supreme Court: on child condition.
 - Defined in a hard-edge fashion in the statute – a person under 18.
 - On what basis: factually difficult to determine – social assessment + medical assessment difficult to work out BUT in terms of law: binary definition.
 - c.f being in need is a more soft-edged decision.
 - But may seem slightly artificial – respondent argued that phrase by itself has a particular meaning – can't be separated from more objective meaning.
 - Lady Hale (can intervene on whether or not someone is a child): Parliament contemplated the distinction between them.
 - Act previously said "in the assessment of the local authority is a child" → "child".
 - Change in statutory drafting.
 - Other statutes that talk about children + same Children's Act have a power to lock up other children – if on the basis that they appear to be a child – could easily challenge on habeas corpus - because of the use of "child" in the statute + elsewhere → suggests that that question, of whether someone is a child or not, is intended to have a harder legal meaning.
 - All of this is decided on the basis of statutory interpretation.
- Does this fit within jurisdictional fact?
 - Interesting that case decided on statutory interpretation + not this.
 - Supreme Court: act is about children so if there is such a thing as jurisdictional fact, whether someone is a child is certainly that.

Discount Brands:

- Factual background.
 - Discount wanted to open a shopping centre – applied to the North Shore City Council.
 - Westfield + Northcote challenged the decision because they did not consent to this + were affected by this.
 - Under the RMA, not everyone has to give their consent for things to be built.
 - Why was consent necessary here?

- Requirement under s 93 to notify (can only get out of this if satisfied that there is only a minor adverse impact on people).
- Conditions: "adequate information".
 - "Once a consent authority is satisfied that it has received **adequate information**, it shall ensure that notice of every application for a resource consent made to in accordance with the Act is..."
 - Sequential: can't put out a notice under the logical progression of this section until you are satisfied that you have adequate information.
 - Can't decide that doesn't need to be notified until you've had adequate information.
- Can the court interfere?
 - Before it can proceed under s 93, the Court needs to know (a) whether the adverse effect of the proposed activity is more than minor; and (b) written approval has been obtained from every person whom the authority is satisfied may be adversely affected by the granting of the resource effect.
 - To ensure that this is a practical requirement, nature of what you're allowed to notify for is such that you won't have many people who are directly affected.
 - Sounds evaluative?
 - Like *Hawkins* and *London Borough* where the courts don't intervene? Why can the courts interfere here?
 - Point of notification is to let people who might be affected to participate in the process – if not worked out correctly – bypassing the statutory scheme by choosing to notify → undermining the statutory scheme if not done properly.
 - On this basis: courts look at this and decide the DM didn't have enough information.

Summary:

- Will defer on things it tends to defer on + look at things it tends to look at.
- Fits in with general approach of courts re: how they see their role.

Recap:

- Sometimes called jurisdictional fact BUT per Cooke J: best seen as a Q of statutory interpretation about who Parliament intended to have the final say about whether the condition was satisfied.
- *Re Repon*: hard-edged fact orientation – typically Courts can look at in terms of error of law.
- *Hawkins*: where value judgments are involved, likely properly given to the DM'er.
 - About public benefit, whether things necessary → value judgements by DM (+ statutory scheme of urgency) → not intended that Courts should second-guess those judgments.
- *London Boroughs* case: two distinctions Court makes when they are going to intervene + when they will leave it up to the DM'er.
 - Hard-edged facts: Court will step in -definition, something measured by a legal yardstick.
 - About justiciability – whether courts are competent to rule on it.
 - "child"
 - Value judgment: leave to officials.
 - "in need"
- Another type of condition that the courts will intervene for in *Discounts Broad*: requirement that before a decision not to notify a consent, that the consenting authority is required to have sufficient information.
 - Seen as enforceable criteria as decision not to notify means procedural protections afforded to people wouldn't be available - wouldn't have a chance to have a say – court thought this was important enough to intervene.