

# ADMIN LAW PROBLEM SOLVING DECISION TREE: EXAM PREP

## The Decision:

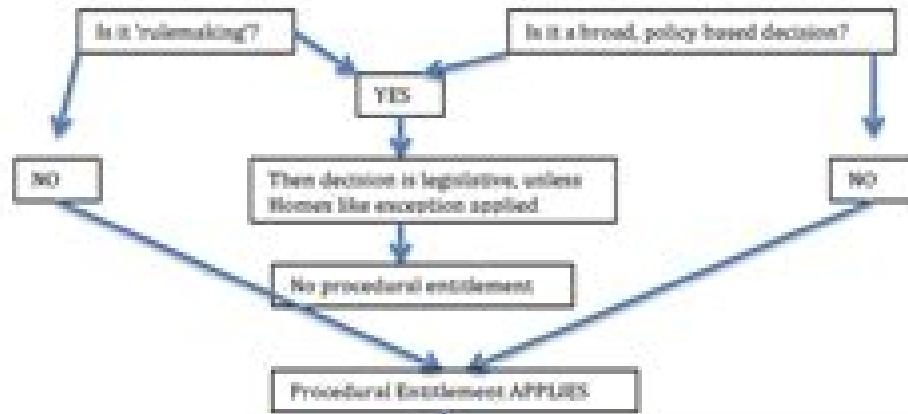
### How was the decision made?



### What was the decision made?



### What is it a 'legislative' decision?



(i) Express the legal decision. Characterise the nature of the legal interpretation, and interpretation about discretion

- Could it be characterised as "free space of discretion"? Hard to be sure, but if so, then it's not a problem.
- Could it be characterised as a constitutional issue? If so, then make it about the constitutionality of a statutory (or regulatory) provision. If statute is unconstitutional, then it's not a problem. If no, then discretion (constitutional or statutory) is a costly concept.

(ii) Procedural or Expertise (discretion). Look at how "free" the decision maker is in the law

- Is this the law that they apply every day, in situations in which they are the experts and have a concern about discretion? If yes, standard of review is reasonable.

(iii) Bring back the Procedural and Institutional Variables. If you want to follow your discretion (make your decision) and keep out the old law (especially the process or absence of a previous claim) in addition to using the standard of review, then

**More Background:** May need to distinguish two types of discretion

- (i) Allow discretion to decide if explore and provide a non-discriminatory (no RATTACHMENT) decision
- (ii) Allow discretion under more drastic conditions if better value should guide the decision (p. 1000) meaning discretion to adopt extreme (heightened) standards

For (i), the decision needs to be based on discriminatory standard of constitutional law

From there, we have discretion to discriminatory discretion that's informed by discriminatory standard

How to attack? How to "package" the error as reasonable, using the blueprint of that concept as developed in Discretion and it.

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