

## Craig v the State of South Australia (1995) 184 CLR 163

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### Facts

- Mr Craig was accused of various major indictable offences relating to the theft and arson of a car.
- He appeared in front of the District Court after being refused legal counsel by Legal Aid. The Judge ordered a stay of proceedings due to the *Dietrich* principle, much to the chagrin of the Crown.
- They argued that the District Court had fallen into jurisdictional error and asked for a writ of certiorari.

### Issue

- Had the Judge made a jurisdictional error?

### Held

- This case is significant because of the careful overview it provides about jurisdictional error generally in Australia.
- In a unanimous judgement, the High Court of Australia distinguished between inferior courts and tribunals. In particular, it noted that courts administer the law under the Constitution while tribunals do not, and are generally set up by people without legal training. In this case, the District Court is an inferior court.
- The Court then outlined a number of circumstances where an inferior court could fall into jurisdictional error. This includes:
  - A court decides a case that is beyond its jurisdiction (e.g. a criminal court hears a civil case);
  - A court makes an order that is beyond the remedies available to it (e.g. a court that can only award compensation, orders specific performance)
  - A court does something it is not allowed to do,
- On the other hand, a tribunal may fall into jurisdictional error where it (this list is not exhaustive):
  - Asks the wrong question
  - Ignores relevant material
  - Considers irrelevant material
  - Makes a decision in bad faith
- As you can see, there is a distinction between a jurisdictional error for a tribunal and a court. A court may make issues (such as asking the wrong question or ignoring relevant material) without it becoming a jurisdictional error.
- In this case, the Court had not made a jurisdictional error. It was within the scope of his power to hear the application for a stay and make a decision, which he did. Whether or not the decision was

"right", it was not a jurisdictional error.

- This decision is significant because it tells us a lot about the difference between tribunals and courts. It showed that the bar for a jurisdictional error is usually higher in a tribunal, because judges of inferior courts have the right to decide on issues of law.

### Quote

- "In considering what constitutes 'jurisdictional error', it is necessary to distinguish between, on the one hand, the inferior courts which are amenable to certiorari and, on the other, those other tribunals exercising governmental powers which are also amenable to the writ."
- "If such an *administrative tribunal* falls into an error of law which causes it to *identify a wrong issue, to ask itself a wrong question, to ignore relevant material, to rely on irrelevant material or, at least in some circumstances, to make an erroneous finding or to reach a mistaken conclusion, and the tribunal's exercise or purported exercise of power is thereby affected, it exceeds its authority or powers*. Such an error of law is *jurisdictional error* which will invalidate any order or decision of the tribunal which reflects it."
- "In contrast, the ordinary jurisdiction of a court of law encompasses authority to decide questions of law, as well as questions of fact, involved in matters which it has jurisdiction to determine... [the court explained courts must identify issues, consider what facts are relevant, etc, and sometimes they might get it wrong. This is why we have appeals.] ... *Such a mistake on the part of an inferior court entrusted with authority to identify, formulate and determine such issues and questions will not, however, ordinarily constitute jurisdictional error.*"

### Read more

- The full text of this case is available at <https://jade.io/article/67928>
- A helpful summary of Craig and subsequent decisions about jurisdictional error can be found on Austlii: <http://www.austlii.edu.au/au/journals/AIAdminLawF/2016/27.pdf>

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