

Griffith University v Tang (2005) 221 CLR 99

<http://lawcasesummarries.com/knowledge-base/griffith-university-v-tang-2005-221-clr-99/>

Facts

- Ms Tang was a postgraduate student at Griffith University.
- Griffith University derived its legal personhood (eg the right to contract, the function to confer university awards, etc)
- Ms Tang allegedly falsified some data for her thesis.
- The University's committee decided that she had committed academic misconduct and was therefore ineligible to complete her PHD.
- Ms Tang argued that this was a reviewable decision under the *Judicial Review Act 1991* (QLD), specifically that as the

Issue

- Was the decision of the academic committee a 'reviewable decision'?
- Specifically, was the decision made "under an enactment", i.e. the *Griffith University Act 1998*?

Held

- The High Court (Kirby J dissenting) held that no, it was not 'under the enactment'
- The majority of Gummow, Callinan and Heydon JJ held that in order to be 'made under an enactment', then the decision must derive directly from the statute, rather than some other source.
- Specifically, the decision must meet the following two criteria:
 1. The decision must be authorised or required by the statute; and
 2. That decision must affect legal rights or obligations.
- The Court held that the relationship between Ms Tang and the University was not a legal right based contract or directly from the provisions of the Act. It was instead based on "mutual consent".
- Therefore Ms Tang did not establish part (2) of the criteria, as it did not affect legal rights or obligations - just the 'mutual consent' relationship.
- Therefore, the decision was not made "under an enactment"

Significance

- Not every decision that is authorised by a statute will be a 'reviewable decision'. You need to look at the consequences of the decision and whether legal rights and obligations were altered.

Law case summary from www.lawcasesummaries.com