

FUNDAMENTAL FAIRNESS

NATURAL JUSTICE, DUE PROCESS OR BOTH?

Dr EW Lisse

2021-07-21

INTRODUCTION

GUILTY OR INNOCENT?

- Bill Cosby
 - Convicted of Sexual Assault
 - In part due to incriminating statements in a **civil** case
 - **After** DA (as sovereign) declined to prosecute
 - Successor of DA prosecuted **anyway**
 - Superior Court
 - Appeal Unsuccessful
 - Pennsylvania State Supreme Court
 - Appeal Successful
 - Not referred back
 - **Fundamental** Fairness
- Miranda Warning
 - **Procedural** Fairness
 - Stop questioning after invocation

DEFINITIONS

DEFINITIONS

- Civil Law
 - Interprets statutes
 - Invalidation of statutes
- Common Law
 - Similar cases should have similar outcomes
 - Case Law
 - Authorities
 - Roman
 - Natural Justice
 - Interprets statutes
 - Binding (law) (creation)
- Legitimate Expectation

[...] an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice by administrative authorities.

DUE PROCESS

- US Constitution (5th & 14th Amendments)

*No person shall [...] shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or **property**, without due process of law [...] nor shall any State deprive any person of life, liberty, or **property**, without due process of law.*

- State Actors (Against Individuals)
- US Supreme Court
 - Substantial due process
 - Procedural due process
 - Incorporation of the Bill of Rights

NATURAL JUSTICE (DUTY TO ACT FAIRLY)

- Originates in English Law
- Art 6 EU Convention on Human Rights
- Many Countries
 - Similar Protections
- Art 18 Namibian Constitution

Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation [...]

NATURAL JUSTICE (DUTY TO ACT FAIRLY)

- State and Administrative Actors
- Rule Against Bias
 - *Nemo iudex in causa sua*
 - **Fundamental** Fairness
 - Rational Decision Making
- Right To Fair Hearing
 - *Audi alteram partem*
 - **Procedural** Fairness
 - Notice
 - Opportunity to be heard
 - Legal Representation
 - Reasons

FOOD FOR THOUGHT

FOOD FOR THOUGHT

- Must ICANN/PTI abide by Natural Justice?
- Can ICANN/PTI abide by Natural Justice?
- California (Company) Law
 - Affected by / affects any of the above?
- ccTLD *relationship* with US/California Law?
 - Established pre-ICANN?
 - Pre-RFC 1591?
- Subsequent Judicial Proceedings
 - Approval of Natural Justice?
 - Almost Certainly

QUESTION TIME

Questions?