

RHODES UNIVERSITY



ADMINISTRATIVE LAW A

2011

1. OVERVIEW

Administrative Law A is a penultimate year course for the LLB degree. It aims to enable students to know and understand the important and sophisticated body of law governing the exercise and control of public power in South Africa. Further, Administrative Law A is designed so as to form a solid foundation as far as the knowledge and skills which students will be required to have for a successful completion of Administrative Law B. To realize this end, Administrative Law A begins by familiarizing students with the theoretical underpinnings of the subject as a whole. In this light, concepts such as the rule of law, constitutional supremacy and values of constitutional democracy, the principle of legality, the definition of an administrative action and the idea of an open, accountable and transparent administration are examined.

The course then continues to briefly examine the history and development of administrative law in South Africa. The distinction between exercises of power by the state and other similar bodies exercising public power and exercises of legislative and judicial power, on the one hand, and exercises of public and private power on the other will be thoroughly examined. The course concludes by examining various legal and other mechanisms to control the exercise of public power.

A reasonable knowledge of constitutional law and a thorough understanding of the Constitution of the Republic of South Africa, 1996 (Constitution) is most certainly an advantage for an understanding of Administrative Law. This is so because the discussions in this course will be informed by the values and principles of the Constitution.

2. ASSUMPTIONS OF PRIOR LEARNING

It will be assumed that all students:

- Understand key important provisions of the 1996 Constitution and a clear understanding of the Constitutional Law;
- Can read, analyze and extract the relevant information from the case law and other sources;
- Have ability to communicate effectively in the medium of instruction.

3. OUTCOMES

3.1 Specific Outcomes

At the end of the course the students should be able to demonstrate the following:

- To critically explain different concepts and principles relating to administrative law and administrative justice in South Africa.
- To define administrative law and its purpose.
- To identify the sources of administrative law and to explain the development of administrative law in South Africa and other selected jurisdictions.
- To critically explain the meaning and content of the constitutional right to just administrative action.
- To evaluate the instruments containing administrative law rules as they currently exist.
- To analyse and evaluate the exercise of powers and functions by administrators.
- To apply the rules and regulations on administrative law to a given hypothetical situation.

3.2. Critical Outcomes

Apart from the knowledge and skills which relate specifically to Administrative law, the following are the skills that are central to the study and practice of the law which this course intends to enhance, namely:-

- Ability to collect, understand and analyse information from various sources of information (cases, legislation and journal articles).
- To communicate effectively through class debates and presentations.
- The ability to explain in writing, the principles of law in legal and social contexts.
- To use technology for legal research (for example, Jutastat, typed assignments, internet searches and many more).

4. TEACHING METHOD

From the very beginning it must be mentioned that the course will be critical and forward-looking. However, it will naturally involve a detailed discussion of the current law through contact hours. There will be two contact hours per week. As much as the direct lecturing method will be used for this course, students are required to prepare themselves in advance for participation in the discussion by doing appropriate research and reading, including the reading of cases before they are discussed in class. Student's preparation should be such that s/he is equipped, if so asked, to lead the discussion of the topic. This approach will ensure that students learn to think critically and not merely absorb information.

5. ASSESSMENT

The class component for this course amounts to 30% of the final mark. A longer closed book exam, which will be written at the end of the semester, will account for the remaining 70% of the course mark.

The class work component will be assessed on the basis of one assignment and one class test.

Specific Outcomes <u>Students are expected to be able to:</u>	Assessment Criteria <u>Students must:</u>
1. Critically explain different concepts and principles underlying administrative justice.	1.1 Identify the foundational administrative law principles of 1.2 Explain the implications and the role of these principles in the exercise and control of public power 1.3 Explain the influence of constitutional democracy and culture of human rights on our administrative law.
2. Explain the development of administrative law in South Africa and other jurisdictions.	2.1 List and describe the features of administrative law in pre 1994 legal order. 2.2 Explain the role played by our courts at different stages during this period (pre-1994) to control the exercise of public power. 2.3 Explain the role played by our courts to develop our administrative law in prior 1994.

	<p>2.4 Identify the problems encountered by the courts in 1994 to develop administrative law in South Africa.</p> <p>2.5 Identify and explain the role played by other stakeholders (government and private institutions) to improve the state of administrative law in South Africa.</p>
3. Define Administrative Law and the sources of administrative law	<p>3.1 Analyse different definitions of administrative law.</p> <p>3.2 Determine the scope of administrative law.</p> <p>3.3 Identify the relevant sources of administrative law</p>
4. To critically explain the meaning and content of the constitutional right to just administrative action.	<p>4.1 Analyse different definitions of administrative action</p> <p>4.2 Determine the scope and content of the definition with reference to the common law and relevant legislation</p> <p>4.3 Apply and interpret the meaning of administrative action with reference to practical examples</p>
5. Evaluate the instruments containing administrative law rules.	<p>5.1 Identify and explain the instruments containing administrative law rules.</p> <p>5.2 Analyse their adequacy.</p> <p>5.3 Identify shortfalls and make suggestions for law reform where necessary.</p>
6. To analyse and evaluate the exercise of powers and functions by administrators.	<p>6.1 Identify and explain the different powers and functions exercised by administrators.</p> <p>6.2 Identify and explain the content and requirements for fair procedures.</p> <p>6.3 Evaluate the exercise of powers by administrators with reference to the requirements of fairness</p>
7. To apply the rules and regulations on administrative law to a given hypothetical situation.	<p>7.1 Identify and explain the appropriate principle, rule or regulation</p> <p>7.2 Critically analyse, evaluate and apply the principle or rule to the facts.</p>

6. COURSE CONTENT

1. ADMINISTRATIVE LAW CONCEPTS

- Background and introduction to administrative law and administrative law concepts

2. SOURCES OF ADMINISTRATIVE LAW

- Discussion and introduction to the principles and applicable legal rules which apply to administrative law, including legislation, the common law, judicial precedent and so forth.

3. SOUTH AFRICAN ADMINISTRATIVE LAW - Pre-1994

4. THE CONSTITUTIONAL RIGHT TO JUST ADMINISTRATIVE ACTION

- Introduction and brief comparative discussion
- Interim and 1996 Constitutional provisions
- Content of section 33

5. ADMINISTRATIVE ACTION

- Administrative action in terms of the Promotion of Administrative Justice Act (PAJA)
- Introduction to PAJA
- Overview of the Act
- What is “administrative action”?
 - (a) a Decision . . .
 - (b) of an administrative nature . . .
 - (c) made under an empowering provision . . .
 - (d) not specifically excluded by the Act . . .
 - (e) made by an organ of state or by a person or body exercising a public power or performing a public function . . .
 - (f) that adversely affects the rights of any person . . .
 - (g) that has a ‘direct, external legal effect’.

6. EXERCISE OF POWERS AND FUNCTIONS BY ADMINISTRATORS

- General administrative powers, duties and functions
- The administrator’s duty to act fairly
 - Decisions affecting individuals
 - Decisions affecting groups / sections of the public

7. REASONS FOR ADMINISTRATIVE ACTION

7. RESOURCES

In order to assist you in preparing for lectures a list of core readings is provided. However, it is expected of you to read more widely.

Prescribed text

- Y Burns & M Beukes *Administrative Law under the 1996 Constitution* Third Edition (2006).

Recommended texts

- C Hoexter & R Lyster *The New Constitutional and Administrative Law II* (2002);
- C Plasket 'The Fundamental Right to Just Administrative Action: Judicial Review of Administrative Action in a Democratic South Africa' (2002) *Unpublished PHD Thesis*;
- C Hoexter *Administrative Law in South Africa* (2007) ;
- GE Devenish, K Govender and D Hulme *Administrative Law and Justice in South Africa* (2001);
- I Currie & J Klaaren *The Promotion of Administrative Justice Act Benchbook* (2001);
- H Corder & T Maluwa (eds) *Administrative Justice In Southern Africa* (1997).

Notes

You will receive a full set of notes at the beginning of the course. These notes include a list of relevant cases for each topic.

8.CONTACT DETAILS

Should you wish to contact the lecturer, Prof NMI Goolam, you may do so via e-mail at n.goolam@ru.ac.za or visit his office on the second floor of the Law Faculty (Room S2). His telephone number is 046 603 7248.

ENJOY THE COURSE