

**RHODES UNIVERSITY**



**ADMINISTRATIVE LAW B**

**GENERAL INFORMATION SHEET**

**2011**

## **1. Overview**

Administrative Law B is a final year course for the LLB degree. Its purpose is to introduce students to, and familiarize them with the concept of judicial review. Judicial review is a very important method of controlling the exercise of public power. Therefore, the primary focus of Administrative Law B will be on how the courts hold administrative functionaries to the constitutional requirements of lawfulness, reasonableness and procedural fairness.

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

## **2. ASSUMPTIONS OF PRIOR LEARNING**

Administrative Law B builds on Administrative Law A. Therefore, students will be required to transfer the knowledge they acquired in Administrative Law A which concentrated on the theoretical underpinnings of Administrative Law and the control of public power.

It is assumed that students:

- Understand key important provisions of the 1996 Constitution and a clear understanding of Administrative Law A, Constitutional Law and applicable legislation;
- 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:

- Understand the right to a just administrative action in the context of judicial review
- Define judicial review and its purpose
- Apply the requirements of lawfulness, reasonableness and procedural fairness to a set of facts.
- Identify the appropriate procedure and remedies available to persons aggrieved by an administrative action.
- Evaluate the adequacy of the grounds for judicial review and suggest law reforms where necessary.

#### **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 work collaboratively on complex social issues through teamwork.
- 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 in a week. As much as direct lecturing

method will be used for this course. Students remain required to prepare themselves in advance for participation in the discussion by doing appropriate research and reading. 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 of 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. Students' class work component will be assessed on the basis of one assignment or one class test, to be determined.

<b>Specific Outcomes</b> <b><u>Students are expected to be able to:</u></b>	<b>Assessment Criteria</b> <b><u>Students must:</u></b>
1. Define judicial review and its purpose	1.1 Distinguish judicial review from appeal. 1.2 Explain how the tension between these two concepts can be resolved. 1.3 Critically explain the purpose of judicial review/
2. Apply the requirements for lawfulness, procedural fairness and reasonableness to a set of facts	2.1 Describe what each ground of review means. 2.2 Correctly identify which ground(s) of review may be involved in a given situation.
3. Identify the appropriate procedure and remedies available to persons aggrieved by an administrative action	3.1 Select and explain the appropriate procedures for bringing an application for judicial review. 3.2 Analyse the effectiveness of this selected remedy. 3.3 Apply the most appropriate remedy to the given situation.
4. Evaluate the adequacy of the grounds for judicial review and suggest law reforms where necessary	4.1 Describe each ground of review 4.2 Analyse their adequacy. 4.3 Identify shortfalls and make suggestions for law reform where necessary.

Attendance at lectures is therefore compulsory. It is accepted, however, that the ideal of 100% attendance is generally not attainable. A student may miss no more than five lectures for this course. Students are responsible for collecting, retaining and presenting all relevant documents (doctor's letters, etc) in respect of the lectures missed and filling out the necessary LOA (leave of absence) form. A student who misses more than the permissible lectures, has not met the course requirements and as a result no DP certificate will be granted for this course.

**NB NB –ATTENDANCE REGISTERS WILL THUS BE KEPT FOR DP PURPOSES AND STUDENTS SHOULD SUBMIT THE NECESSARY LOA'S FOR MISSING LECTURES.**

## **6. COURSE CONTENT**

### **6.1 Methods of Controlling Administrative Power**

6.1. Internal Controls.

6.2. Legislative Controls.

6.3. State Institutions Supporting Constitutional Democracy.

6.3.1. The Public Protector.

6.3.2. The Human Rights Commission.

6.3.3 The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

6.3.4 The Commission for Gender Equality.

6.3.5 The Auditor General.

6.3.6 The Electoral Commission.

6.4. Public Participation

6.5. The Courts

### **6.2 The Basis for Judicial Review of Administrative Action**

6.2.1 The Inherent Jurisdiction of the Superior Courts.

6.2.2 The Rule of Law and the Principle of Legality.

6.2.3 The Sovereignty and the *Ultra Vires* Doctrine.

6.2.4 Judicial Authority in a Constitutional State.

- 6.2.4.1 Constitutional Values, Fundamental Rights and Administrative Decision-Making.
- 6.2.4.2 Constitutional and Common Law Review Compared.
- 6.4.5.3. PAJA and Judicial Review.

### **6.3 Introductory Topics**

- 6.3.1 Judicial Review Defined
- 6.3.2 Legal Standing (*Locus Standi*)
- 6.3.3 Justiciability

### **6.4 Right of Access to Court**

- 6.4.1 Meaning, Scope, Content & Purpose of the Right
- 6.4.2 Barriers to The Right of Access to Court
  - Ouster Clauses
  - Time limits
  - The Delay Rule
  - The Duty to Exhaust Internal and Extra-Judicial Remedies

### **6.5 The Grounds of Review**

- 6.5.1 Section 6(2)
  - Unauthorised action
  - Unauthorised delegation
  - Bias
- 6.5.2 Section 6(2)(b)
  - A mandatory and material procedure or condition prescribed by an empowering provision was not complied with.
- 6.5.3 Section 6(2)(c)
  - Judicial review of procedurally unfairness.
- 6.5.4 Section 6(2)(d)
  - The action was materially influenced by an error of law.
- 6.5.5 Section 6(2)e)
  - Reasons not authorised by the empowering provision.
  - Ulterior purpose or motive.
  - Irrelevant considerations

- Unauthorised or unwarranted dictates of another person or body.
- Bad faith
- Arbitrarily or capricious decisions.

6.5.6 Section 6(2)(f) & (h)

- Irrational, unreasonable and disproportionate decision-making

6.5.7 Section 6(2)(g)

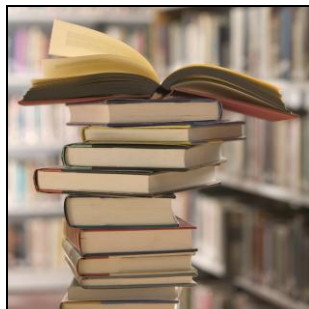
- Failure to take a decision

6.5.8 Section 6(2)(i)

- Action that is otherwise unconstitutional

## 6.6 Procedures and Remedies in Administrative Law

### 7. RESOURCES



In order to assist your preparation for lectures, a list of core readings is provided. However, it is expected that you will read more widely than in the readings listed.

#### **Prescribed:**

- Burns Y & Beukes M *Administrative Law under the 1996 Constitution* Third Edition, 2006
- *Promotion of Administrative Justice Act* 3 of 2000
- *Regulations and rules of procedure*

#### **Recommended:**

- C Hoexter *Administrative Law in South Africa* (2007)
- JR de Ville *Judicial Review of Administrative Action in South Africa* Revised First Edition (2006)

- G Quinot *Administrative Law Cases & Materials* (2008)

**Other:**

- 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 the Democratic South Africa' *Doctoral Thesis* - Rhodes University (June 2002).
- 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)
- MA Fazal *Judicial Control of Administrative Action in India, Pakistan and Bangladesh: A Comparative Study* (2000)
- H Corder & T Maluwa (eds) *Administrative Justice In Southern Africa* (1997).
- PP Craig *Administrative Law* 3<sup>rd</sup> ed (1994)
- L Boulle, B Harris and C Hoexter *Constitutional and Administrative Law I* (1989).
- L Baxter *Administrative Law* (1984).

*Enjoy the course!!*

