

RHODES UNIVERSITY



ADMINISTRATIVE LAW

2019



1. Overview

Administrative Law is a final year course for the LLB degree and offered over the whole year as a single course. It aims to enable students to know the important and sophisticated body of law governing the exercise and control of public power in South Africa. Administrative law deals with organs of state and the question of why it is important to distinguish administrative action from other actions of organs of state. How do the legislative, the executive and the judicial actions of the state differs from organs of state and what are the reason for this differentiation and the implication for the effective function of the state administration? What type of administrative actions is there and what are the requirements and implications? What are the requirements in terms of the Constitution, PAJA and the common law for administrative justice?

The Constitution, PAJA and the common law deals with the sources of administrative law, the meaning of administrative justice and administrative action, the requirements (lawfulness, procedural fairness and reasonableness) and appropriate remedies as equally important and interrelated concepts in Administrative Law. 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 will also focus on 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 because the discussions in this course will be informed by the values and principles of the Constitution.

Students in Administrative law should be able to formulate and identify the most appropriate and legally correct administrative action in a given situation. In order to do that, students should be able to identify an administrative action as well as the specific rules of administrative law applicable in the given set of facts. These are general as well as particular rules of administrative law (both statutory as well as common law rules). It includes being able to formulate the most appropriate action in the circumstances and to be able to identify deficiencies in the action, process and procedures.

The main themes of the course will be divided into the following study units:

TOPIC 1 INTRODUCTION – FOUNDING PRINCIPLES OF ADMINISTRATIVE LAW

TOPIC 2 WHAT IS ADMINISTRATIVE ACTION?

- TOPIC 3** DUTIES AND FUNCTIONS OF THE ADMINISTRATOR
- TOPIC 4** THE CONTROL OF ADMINISTRATIVE ACTION
- TOPIC 5** PROCEDURES AND REMEDIES

2. ASSUMPTIONS OF PRIOR LEARNING

It is assumed that students:

- Understand key important provisions of the 1996 Constitution and a clear understanding of the Constitutional Law;
- Can read, analyse 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 and after studying the prescribed materials the students should be able to do 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 critically explain the meaning and content of the right to just administrative action in terms of PAJA;
- Define judicial review and its purpose explain what judicial control over administrative action entails;
- Understand and apply the requirement of lawfulness to a set of facts.
- Understand and apply the requirement of reasonableness to a set of facts.
- Understand and apply the general principles of procedural fairness to a set of facts.
- Explain and understand the right to be given reasons for administrative action.
- Identify the appropriate procedure and remedies available to persons aggrieved by an administrative action.
- To apply the rules and regulations on administrative law to a given hypothetical situation and 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 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. The lecturing method used will include formal lecturing, as well as class discussions based on problems and scenarios that students must prepare. The problem questions will be handed out to students and indicated on the lecture timetable. Students therefore 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. COURSE CONTENT and OUTLINE

TOPIC 1 INTRODUCTION – FOUNDING PRINCIPLES OF ADMINISTRATIVE LAW

- Introduction
- Administrative law concepts
- The sources of administrative law
- Administrative powers

TOPIC 2 WHAT IS ADMINISTRATIVE ACTION?

- The constitutional right to just administrative action
- Administrative action in terms of PAJA

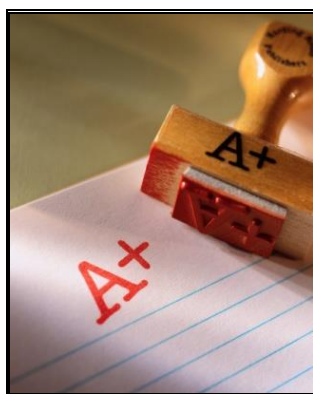
TOPIC 3 DUTIES AND FUNCTIONS OF THE ADMINISTRATOR

- Procedural fairness affecting individuals – sec 3
- Procedural fairness affecting the public – sec 4
- Written reasons – sec 5

TOPIC 4 THE CONTROL OF ADMINISTRATIVE ACTION

- Extra-judicial/judicial control
- Lawfulness
- Reasonableness
- Procedural fairness

TOPIC 5 PROCEDURES AND REMEDIES



6. ASSESSMENT

Administrative Law is a single course taught over a year. The class component of this course amounts to 50% of the final mark. One 3-hour paper will be written at the end of the year in November, which will account for the remaining 50% of the course mark. Students are assessed for the class work component (50% of the final mark) on the basis of different tasks. Tasks will be formative and summative in nature. The class work mark will consist of the following summative assessment components:

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| • One long class test (written in July) | Out of /40 |
| • 1 assignment (first semester) | Each out of /20 |
| • 1 test (second semester) | |
| • Short Discussion/problem question (one per semester for summative assessment purposes) | Each out of /10 |
| TOTAL | 100 (converted to a class mark out of 50) |

Tests

A longer closed book (semester) test will be written in the first or 2nd week of semester 2 (in July). The test will count 40% towards the class component mark. A second (shorter) test will be written at the end of semester two. This test will count 20% towards the class component mark.

Assignment

There is one assignment for this course during the first semester and the assignment will count 10% towards the class component mark. The topic will be discussed and handed out in class in the beginning of the semester.

Short discussion and problem questions

Problem questions will be included in the course notes or handed out to students and will be based on problems and scenarios that students must prepare, flowing from the main themes addressed in the course. Every problem question will be discussed in class and

feedback will be given. Students need to prepare one problem question per semester for summative assessment. It will be formally assessed by the lecturer for marks and each problem question will count 10% towards the class component mark.

DUE DATES

Assignment 1 (short assignment)

Monday 4 March 2019

@ 8:30

Assignment 2

Monday 13 May 2019

@ 830

Semester test

Semester 2

Week 2 (22-26 July 2019)

COURSE OUTLINE

1 INTRODUCTION – FOUNDING PRINCIPLES OF ADMINISTRATIVE LAW

| Specific Outcomes <u>Students are expected to be able to:</u> | Assessment Criteria <u>Students must:</u> |
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| To critically explain different concepts and principles relating to administrative law and administrative justice in South Africa. | <ul style="list-style-type: none">• Identify the foundational administrative law principles.• Explain the implications and the role of these principles in the exercise and control of public power.• Explain the influence of constitutional democracy and culture of human rights on our administrative law. |
| To define administrative law and its purpose. | <ul style="list-style-type: none">• Analyse different definitions of administrative law.• Determine the scope of administrative law. |
| To identify the sources of administrative law and to explain the development of administrative law in South Africa and other selected jurisdictions. | <ul style="list-style-type: none">• Identify the relevant sources of administrative law. |
| Understand the requirements for the proper exercise of administrative powers and functions | <ul style="list-style-type: none">• Explain the scope of administrative power with reference to express and tacit, discretionary, |

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| | peremptory, original, delegated and executive powers. |
| Assessment tasks: <ul style="list-style-type: none"> • Class discussion (formative assessment) • Theory questions in the test (summative assessment) | |

2 WHAT IS ADMINISTRATIVE ACTION?

| Specific Outcomes <u>Students are expected to be able to:</u> | Assessment Criteria <u>Students must:</u> |
|--|---|
| To critically explain the meaning and content of the constitutional right to just administrative action. | <ul style="list-style-type: none"> • Explain why it is important to distinguish administrative action from other actions of organs of state. • Analyse different definitions of administrative action. • Determine the scope and content of the definition with reference to the common law and relevant legislation. • Apply and interpret the meaning of administrative action with reference to practical examples. |
| To critically explain the meaning and content of the right to just administrative action in terms of PAJA. | <ul style="list-style-type: none"> • Explain the definition of administrative action in s 1 of PAJA, with reference to the following: • the exclusion of certain state action from the definition of s 1; • definition an organ of state in terms of the common law approach and determine if a particular person/body qualifies as an organ of state in terms of this approach; • the exercise of public power by an organ of state or a private body; • the adverse effect of administrative action on rights; • the qualification in the definition that administrative action must have direct external effect. |
| Assessment tasks: <ul style="list-style-type: none"> • Research component assessed in assignment 1 (summative assessment) • Problem questions and scenarios for class discussion (formative and summative assessment) • Problem questions assessed in the test and exam (summative assessment) | |

3 DUTIES AND FUNCTIONS OF THE ADMINISTRATOR

| Specific Outcomes <u>Students are expected to be able to:</u> | Assessment Criteria <u>Students must:</u> |
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| Understand and apply the general principles of procedural fairness to a set of facts. (with reference to section 3, 4 & 5 of PAJA) | <ul style="list-style-type: none"> • Briefly explain the general principle of procedural fairness as it was understood and applied at common law. • Briefly explain the protection of procedural fairness in the Constitution and PAJA. |

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| | <ul style="list-style-type: none"> • Explain the content and meaning of the two essential elements of procedural fairness (the right to be heard and the rule against bias). • Briefly outline and explain the provisions dealing with procedural fairness in PAJA, with reference to the relationship between procedural fairness and the rules of natural justice. • Explain the doctrine of legitimate expectations and indicate with reference to case law how it operates and when it applies. • Distinguish between procedural fairness in respect of administrative action impacting on the rights of a person and administrative action impacting on the public. • Explain the test for bias as stated in PAJA. |
| Explain and understand the right to be given reasons for administrative action. | <ul style="list-style-type: none"> • Explain the importance of reasons for effective decision-making. • Briefly explain the common law position regarding reasons for administrative action • Explain the change introduced by the Constitution in this regard. • Explain the right to reasons for administrative action and indicate how it is provided for in PAJA. • Understand and apply the regulations for the right to reasons. |
| Assessment tasks: <ul style="list-style-type: none"> • Problem questions and scenarios for class discussion (formative and summative assessment) • Problem questions assessed in the test and exam (summative assessment) | |

4 THE CONTROL OF ADMINISTRATIVE ACTION

| Specific Outcomes <u>Students are expected to be able to:</u> | Assessment Criteria <u>Students must:</u> |
|---|---|
| To define judicial review and its purpose and explain what judicial control over administrative action entails. | <ul style="list-style-type: none"> • Distinguish judicial review from appeal. • Explain how the tension between these two concepts can be resolved. • Critically explain the purpose of judicial review. • Briefly explain what control over administrative action entails and what form it can traditionally take. • Briefly explain the most important forms of legislative, administrative and judicial controls. • Identify the most important constitutional public bodies that exercise control over administrative action and briefly set out their functions. |
| Assessment tasks: <ul style="list-style-type: none"> • Theory and discussion questions in the test (summative assessment) | |

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| <ul style="list-style-type: none"> Class discussion (formative assessment) | |
| Understand and apply the requirement of lawfulness to a set of facts. | <ul style="list-style-type: none"> Explain the general lawfulness requirement for administrative action as required by the Constitution. Identify the most important provisions in PAJA that deal with lawfulness. Explain the relevance of authority or authorisation for lawfulness of administrative action. Briefly explain what delegation of authority entails and how it determines the lawfulness of administrative action. Explain discretionary powers and how the exercise of such powers can determine the lawfulness of administrative action. Describe the most important principles regarding compliance with prescribed conditions and procedures in taking administrative action. |
| Understand and apply the requirement of reasonableness to a set of facts | <ul style="list-style-type: none"> Identify the common law approach to reasonableness as a ground of review for administrative action and indicate with reference to case law how it applied. Briefly explain the reasonableness requirement for administrative action in the Constitution. Analyse the reasonableness requirement for administrative action in the Constitution and indicate how it is applied in case law. Explain the most important sections in PAJA dealing with reasonableness. |
| Assessment tasks: <ul style="list-style-type: none"> Problem questions and scenarios for class discussion (formative and summative assessment) Problem questions assessed in the test and exam (summative assessment) | |
| Understand and apply the general principles of procedural fairness to a set of facts. | <ul style="list-style-type: none"> Briefly explain the general principle of procedural fairness as it was understood and applied at common law. Briefly explain the protection of procedural fairness in the Constitution and PAJA. Explain the content and meaning of the two essential elements of procedural fairness (the right to be heard and the rule against bias). Briefly outline and explain the provisions dealing with procedural fairness in PAJA, with reference to the relationship between procedural fairness and the rules of natural justice. Explain the test for bias as stated in PAJA. |
| Assessment tasks: <ul style="list-style-type: none"> Problem questions and scenarios for class discussion (formative and summative assessment) | |

- Problem questions assessed in the test and exam (summative assessment)

5 PROCEDURES AND REMEDIES

| Specific Outcomes <u>Students are expected to be able to:</u> | Assessment Criteria <u>Students must:</u> |
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| Identify the appropriate procedure and remedies available to persons aggrieved by an administrative action. | <ul style="list-style-type: none"> • Select and explain the appropriate procedures for bringing an application for judicial review. • Briefly indicate what remedies are available in judicial review proceedings. • Explain the timeframe for instituting judicial review proceedings. • Explain <i>locus standi</i> in relation to judicial review and indicate how the position was altered by the Constitution. • Explain the rule that internal remedies must be exhausted before judicial review of administrative action is sought and illustrate its application with reference to examples. • Explain what remedies are available in judicial review proceedings or other forms of judicial control over administrative action, what is required for each remedy and what relief can be obtained. |
| To apply the rules and regulations on administrative law to a given hypothetical situation and evaluate the adequacy of the grounds for judicial review and suggest law reforms where necessary. | <ul style="list-style-type: none"> • Identify and explain the appropriate principle, rule or regulation. • Critically analyse, evaluate and apply the principle or rule to the facts. • Describe each ground of review and analyse their adequacy. • Identify shortfalls and make suggestions for law reform where necessary. |
| Assessment tasks: <ul style="list-style-type: none"> • Problem questions and scenarios for class discussion (formative and summative assessment) • Problem questions assessed in the test and exam (summative assessment) | |

7. RESOURCES

In order to assist your preparation for lectures, a list of core readings is provided.

Prescribed book:

Cora Hoexter *Administrative Law in South Africa* 2nd edition (2012) Juta & Co [Updates and recent cases will supplement this text and will be discussed in lectures]

Recommended texts:

- Geo Quinot *Administrative Law Cases & Materials* (2008) Juta & Co.
- Yvonne Burns *Administrative Law* 4th edition (2013) LexisNexis Butterworths.
- Geo Quinot (ed) *Administrative Justice in South Africa An Introduction* (2015) Oxford University Press.
- Yvonne Burns & Margaret Beukes *Administrative Law under the 1996 Constitution* 3rd edition (2006) LexisNexis Butterworths.
- JR de Ville *Judicial Review of Administrative Action in South Africa* (2003) LexisNexis Butterworths.
- Iain Currie *The Promotion of Administrative Justice Act: A Commentary* (2nd edition 2007) SiberInk.
- C Plasket "The Fundamental Right to Just Administrative Action: Judicial Review of Administrative Action in a Democratic South Africa" (2002) *Unpublished PHD Thesis*.

8. CONTACT DETAILS

Should you wish to contact the lecturer, Prof Helena van Coller, you may do so via e-mail: h.vancoller@ru.ac.za or at her office on the second floor of the Law Faculty (Room S 6, on the floor of the Attic). Her office telephone number is 046 603 7249.



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