

LAWS50032 Administrative Law

Credit Points:	12.50
Level:	5 (Graduate/Postgraduate)
Dates & Locations:	2011, Parkville This subject commences in the following study period/s: Semester 1, Parkville - Taught on campus. Seminars.
Time Commitment:	Contact Hours: 48 hours, 2x2-hour seminars per week. Total Time Commitment: 144 hours.
Prerequisites:	LAWS50023 Legal Method and Reasoning; LAWS50024 Principles of Public Law; LAWS50025 Torts; LAWS50026 Obligations; LAWS50027 Dispute Resolution; LAWS50028 Constitutional Law; LAWS50029 Contracts; LAWS50030 Property; LAWS50031 Legal Theory.
Corequisites:	None.
Recommended Background Knowledge:	None.
Non Allowed Subjects:	None.
Core Participation Requirements:	The Melbourne Law School welcomes applications from students with disabilities. It is University and Law School policy to take all reasonable steps to enable the participation of students with disabilities, and reasonable adjustments will be made to enhance a student's participation in the School's programs. The inherent academic requirements for the study in the Melbourne Law School are: The ability to attend classes and actively engage in the analysis of complex materials and debate; The ability to read, analyse and comprehend complex written legal materials and complex interdisciplinary materials; The ability to clearly and independently communicate in writing a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to clearly and independently communicate orally a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to work independently and as a part of a group; The ability to present orally and in writing legal analysis to a professional standard. Students must possess behavioural and social attributes that enable them to participate in a complex learning environment. Students are required to take responsibility for their own participation and learning. They also contribute to the learning of other students in collaborative learning environments, demonstrating interpersonal skills and an understanding of the needs of other students. Assessment may include the outcomes of tasks completed in collaboration with other students. Students who feel their disability will prevent them from participating in tasks involving these inherent academic requirements are encouraged to contact the Disability Liaison Unit: http://www.services.unimelb.edu.au/disability/ .
Coordinator:	Prof Cheryl Saunders
Contact:	Melbourne Law School Student Centre Email: law-studentcentre@unimelb.edu.au (mailto:law-studentcentre@unimelb.edu.au) Tel: +61 3 8344 4475
Subject Overview:	Administrative law regulates the relationship between the state and its people, in other words, the relationship between the government and the governed. In particular, it regulates the powers and procedures of the executive branch of government and establishes the mechanisms for ensuring legality, transparency and accountability in executive decision-making. This subject completes the core curriculum's examination of the legal framework of government in Australia. In doing so, it builds on and assumes the knowledge gained in all earlier compulsory subjects including Principles of Public Law and Constitutional Law. In addition to examining the key elements of Australian administrative law, this subject will analyse its application in selected areas of legislative regulation or policy implementation to assess how administrative law is meeting the challenges of privatisation, security pressures, and the adoption of human rights protection. It will also pay particular attention to the advanced development of student skills in statutory interpretation, in the particularly challenging context of administrative law. Matters covered include:

Introduction

- # Development of executive government and administrative law
- # Types of executive power, including the concept of discretion
- # The functions of administrative law in regulating executive power

Accountability for the exercise of executive power

- # Making and scrutiny of delegated legislation
- # Access to information
- # Reasons for administrative decisions
- # Non-adjudicative review: Parliament, the Ombudsman and others
- # Tribunals and merits review

Judicial review of administrative decisions

- # Avenues of judicial review
 - Commonwealth decisions: the ADJR Act; the Constitution; and the Judiciary Act
 - State decisions: O56, statutory 'appeal' provisions and the Administrative Law Act
- # Judicial review procedure
- # Standing and accessibility
- # Jurisdictional error
- # Judicial review grounds
- # Remedies and the effect of flawed decisions
- # Excluding / limiting judicial review

Administrative law in a changing policy context:

- # Adjusting to privatisation and outsourcing
- # Approaches to regulation, control and accountability
- # Security concerns and the rule of law
- # The impact of human rights protection on government powers and administrative law

Objectives:

On completion of this subject, students should:

- Have developed an understanding of:
 - # The structure and operation of executive government in Australia;
 - # The fundamental principles of effective governance and accountability for the exercise of government power;
 - # Some theoretical perspectives on administrative law, including the relationship between administrative law and governance and the foundations of judicial review;
 - # The structure and operation of the Australian administrative law systems, including their constitutional, statutory and common law bases; their institutions; their principles and their remedies;
 - # The difference between judicial review and merits review and the kinds of arguments that may be made in each context;
 - # The importance of statutory construction and interpretation in the exercise and supervision of government powers, and the major techniques and aids used;
 - # The way in which government policies are given effect through legislation and how the legislative and administrative law framework affects their implementation;
 - # The main aspects of practice and procedure in administrative law;
 - # The major challenges to the development of administrative law and accountability in Australia today.
- Be able to draw on this understanding to:
 - # To find, state and apply the rules and principles of administrative law;
 - # Describe and critically analyse the fundamental principles of administrative law;
 - # Identify relevant administrative law cases and statutes, and state and critically analyse the legal principles that emerge from them;
 - # Apply the techniques of statutory construction and interpretation to mount and evaluate arguments about the interpretation of statutes conferring powers and authorising government actions;

	# Critically analyse the relationship between these legal principles and the fundamental principles of administrative law; # Apply these legal principles to new fact situations to construct arguments about: - The merits of government decisions that may be put in the context of merits review of those decisions; - The legality of government decisions that may be put in the context of judicial review of those decisions # Develop arguments about which legal principles should be applied when the relevant provisions or decisions are unclear or in conflict; # Present these descriptions, analyses and applications of principles in the form of written arguments that are appropriately structured, developed, supported and referenced.
Assessment:	1,500-word Practical Exercise, due in accordance with a common JD assessment schedule designed to ensure regular and reasonable spacing of assessment tasks (25%);3-hour supervised examination, during the University examination period (75%).
Prescribed Texts:	Printed materials will be available from Melbourne Law School.
Breadth Options:	This subject is not available as a breadth subject.
Fees Information:	Subject EFTSL, Level, Discipline & Census Date, http://enrolment.unimelb.edu.au/fees
Generic Skills:	On completion of the subject, students should have developed the following generic skills: # Attitudes towards knowledge that include valuing truth, openness to new ideas and ethics associated with knowledge creation and usage; # The capacity for close reading and analysis of a range of sources; # The capacity for critical and independent thought and reflection; # The capacity to solve problems, including through the collection and evaluation of information; # The capacity to communicate, both orally and in writing; # The capacity to plan and manage time; # The capacity to participate as a member of a team; # Intercultural sensitivity and understanding. In addition, on completion of the subject, students should have developed the following skills specific to the discipline of law: Case reading and analysis, including an ability to: # Read complex administrative law cases, including unedited cases in the law reports; # Extract important features from judgments; # Reconcile judgments; # Evaluate the development of legal principles; # Apply legal principles arising from case law to new situations. Statutory reading, interpretation and analysis, including an ability to: # Use the Federal Register of Legislative Instruments to locate Commonwealth legislation; # Identify and advise on the requirements for consultation, publication and tabling of delegated legislation and the disallowance process; # Identify the version of statutory provisions in force at a particular date; # Extract important features from statutes; # Identify and analyse discretionary decision-making powers conferred by statute; # Use, interpret and apply statutory provisions to new situations; # Distinguish discretionary powers and provisions that operate automatically; # Identify the statutory and non-statutory pre-conditions for the exercise of discretionary powers; # Identify the purpose of statutory provisions and the purposes for which discretionary powers may be exercised. Legal analysis and problem-solving, including an ability to: # Critically analyse legal rules with reference to fundamental principles;

- # Identify and analyse administrative law issues arising in complex fact situations;
- # Apply administrative law principles and statutory provisions to unfamiliar fact situations;
- # Develop and present an appropriately structured and supported legal argument;
- # Prepare appropriately structured, developed, supported and referenced documents (such as pleadings and submissions) used in administrative law proceedings in courts and tribunals.

Legal research skills, including an ability to:

- # Find case law;
- # Find statutes and subordinate legislation;
- # Use the Federal Register of Legislative Instruments;
- # Identify the version of statutory provisions in force at a particular date.

Legal writing skills, including an ability to:

- # Use case law as part of legal analysis;
- # Use statutes as part of legal analysis;
- # Identify and summarise legal principles;
- # Identify and summarise fundamental principles;
- # Use proper referencing and citation;
- # Present an appropriately structured and supported complex legal argument;
- # Draft appropriately structured, developed, supported and referenced documents (such as pleadings and submissions) used in administrative law proceedings in courts and tribunals.

Oral communication skills in participating in classroom problem solving and discussion;

An ability to work in groups to solve problems and critically analyse legal materials in a classroom setting;

Have enhanced general cognitive skills in relation to reading and comprehending legal materials; logical analysis and reasoning; legal research and writing; application of legal principles to factual situations; identifying relevant factual information; identifying and considering options to resolve legal problems; drawing on the knowledge of other disciplines to understand and resolve legal issues.

Related Course(s):

Juris Doctor