

LWZ312 Administrative Law

Credit points:	10	Mode:	External and internal
Assumed knowledge:	It will be assumed that students undertaking this unit have the underpinning content knowledge from LWZ202	Location:	External studies; Casuarina campus
Pre-requisite(s):	(Must have passed 2 units in {LWZ100A, LWZ100B} OR Must have passed 1 units in {LWZ001})	Learning method:	OLR
Year:	2012		
Semester:	Semester 1	Unit coordinator:	Ken Parish
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Unit Description

The aim of this unit is to examine the role of the courts in supervising administrative action. Topics include; theoretical and historical perspectives on administrative law, the scope of judicial review (the bodies which are subject to the principles of judicial review, the actions of these bodies which are amendable to judicial review, who can seek judicial review), grounds for judicial review (including natural justice and legitimate expectations, ultra vires, and jurisdictional error), statutory restrictions on judicial review, delegated legislation and ultra vires, remedies for improper administrative action.

Learning Outcomes

On completion of this unit a student should be able to:

1. Identify, discuss and analyse the major features, principles and case law in both common law judicial review of administrative action and major Commonwealth and State statutory judicial review schemes;
2. Apply judicial review principles and case law in providing legal advice and analysis in hypothetical problem and actual case law situations involving legal challenges to administrative decisions and actions;
3. Develop higher order written and oral communication skills in an administrative law judicial review context, at a level appropriate for professional legal practice;
4. Develop teamwork and leadership skills at a level appropriate for functioning as part of a team in professional legal practice.

Teaching and Learning Strategies

- (1) There is significant emphasis in this subject on collaborative or group learning. Pre-recorded multimedia lecture presentations of approximately 1-1.5 hours in length are provided on each of the 12 topics, along with carefully selected guided readings which bring key issues on all topics to students' attention. Students are expected to have developed a reasonable level of independent study habits whereby they keep up with the required reading of the prescribed texts, key case law and

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additional readings listed for each topic.

- (2) In addition to the pre-recorded multimedia lecture presentation on each topic, there is a live interactive seminar of approximately 1 hour each week (which is also recorded for those who cannot attend), during which the class will “workshop” any issues on the current or recent topics which have emerged as needing extra attention (e.g. from experience in tutorials or posting on the academic queries discussion board).
- (3) Students are required to organise themselves by census date (31 March 2012) into small study groups which meet approximately weekly during semester weeks 5-9 inclusive to study and revise lecture topics collaboratively, write and submit a group answer on a tutorial problem (assessment item 3) and (if desired) prepare together for individually assessed tutorial advocacy or participation exercises (assessment item 2).
- (4) Students each engage in two (2) individually assessed tutorial advocacy or participation exercises (assessment item 2) during weekly tutorial sessions. The exercise may involve a debate topic, “mini-moot” or just active participation in addressing questions on the week’s topic.

Participation

See “Teaching and Learning Strategies” above and “Overview of Assessment” below.

Specific details of individual class times can be obtained by accessing the class timetable at: <http://eagle.ntu.edu.au/ntu/apps/syllabus.nsf/studenttt?OpenForm>

Overview of Assessment

Item	Description/Focus	Value	Relates to learning outcomes
1.	Final exam (see details under assessment item 1 below)	40 %	1, 2, 3
2.	2 x individually assessed tutorial advocacy or participation exercises (each marked out of 5)	10 %	1, 2, 3
3.	Study group written answer to tutorial questions	10 %	1, 2, 3, 4
4.	Major essay/assignment	30 %	1, 2, 3
5.	Tutorial attendance/participation (1 mark per tutorial)	10 %	<i>No specific learning outcome</i>

Special Requirements

Nil

Resources

Required textbook(s)

- Roger Douglas, Douglas & Jones' Administrative Law, 6th edition, Federation Press, 2009
- WB Lane & Simon Young, *Administrative Law in Australia*, Thomson Lawbook Co, 2007

Required textbooks can be ordered from the CDU Bookshop through their website at www.cdu.edu.au/bookshop

Learnline (Online Learning System)

Learnline is Charles Darwin University's on-line learning system.

In this unit, Learnline will be used to:

- provide important announcements about the unit
- distribute lecture slides, and other study
- complete online assessments
- access feedback from tasks and grades for assessable work
- provide a communication point where you contribute to discussions as part of your assessment, and to interact with other students in the unit

You will need to connect to the Internet to access it, at <http://learnline.cdu.edu.au/>

Access to Learnline may not be available until Day 1 of Semester.

If this is your first time using Learnline, click on 'Student Learnline Support' in the left-hand navigation panel BEFORE logging in.

It is recommended that all students have access to regular and reliable broadband access to complete unit requirements.

e-Reserve

e-Reserve allows electronic copies of journal articles, book chapters and lecturer notes that have been recommended by a lecturer as part of their course reading requirements. You can access e-Reserve at <http://www.cdu.edu.au/library/ereserve/index.html>.

This site is password protected. Your CDU student login will provide you access. You can then search for items by Lecturer, Unit Code, Title, Author, keyword, Year or Date if you have that information.

Additional Resources

Apart from the prescribed texts, the following books (or earlier editions of those mentioned above) are useful:

- Michael Head, *Administrative Law – Context and Critique*, Federation Press, 2005;
- Robin Creyke & John McMillan, *Control of Government Action: Text, Cases and Commentary*, LexisNexis Butterworths, 2005;
- Fiona McKenzie, *Administrative Power and the Law*, LexisNexis Butterworths, 2006;
- Mark Aronson & Bruce Dyer, *Judicial Review of Administrative Action*, 3rd edition, Thomson Lawbook Co, 2004;

Pearce's *Delegated Legislation in Australia and New Zealand* (Butterworths, 1977) and the later work by Pearce & *Argument Delegated Legislation in Australia* (Butterworths, 1999) is useful as regards the first part of the course.

The Australian Administrative Law Service (a looseleaf/continuously updated service; consulting editor, D.C. Pearce; general editor, M.N. Allars) covers all major developments in Australian administrative law, as regards both case-law and statutory changes. It is published by LexisNexis Butterworths and is available online for CDU students via CDU law databases at <http://www.cdu.edu.au/library/subjectguides/law/law.html>.

There is a range of reference works, other texts and student aids listed at the [LexisNexis](#) (formerly Butterworths), [Thomson Reuters](#) and [Federation Press](#) web-sites. See especially the legal encyclopedia *Halsbury's Laws of Australia* (LexisNexis Butterworths), which has an excellent chapter on administrative law. Legal publishers' website addresses are:

- <http://www.lexisnexus.com.au/>

- <http://www.thomsonreuters.com.au/legal/default.asp>
- <http://www.federationpress.com.au/>

Public law academic journals

To keep up to date with general developments in Australian administrative law (and to research for assignments) you should refer to: the Australian Journal of Administrative Law; the Public Law Review (published mainly out of The University of Melbourne); and the Federal Law Review (published out of the A.N.U. Law School). The Australian Law Journal is published monthly and is also a good source for identifying developments in administrative law. It also contains, of course, reports of all cases decided in the High Court of Australia. **NB All these journals are held by CDU Library in electronic/online form. Probably the easiest way to access them is via CDU E-Journals Portal at <http://tn3tv8rl4l.search.serialssolutions.com/> .**

**You do not have to buy these texts, but they may be useful additional resources if you have access to them.

Web sites:

See the Web Links area of the subject Learnline website for a comprehensive set of web links related to public law.

Learning Schedule

Duration / Module	Topics	Required readings or student learning activities to be completed	Assessments Due
Week 1 (commences Monday 27/2)	1. Introduction and course overview.	Douglas & Jones chapters 9 Lane & Young: Chp 2, pp. 131 - 139 Readings as per study guide	NA
Week 2 (commences Monday 5/3)	2. The doctrines of narrow substantive and procedural ultra vires .	Douglas & Jones chapters 9 Lane & Young: Chp 2, pp. 131 - 139 Readings as per study guide	NB Tutorials commence semester week 2. Students receive 1 mark for attendance AND participation at each tutorial to a maximum of 10 (assessment item 5).
Week 3 (commences Monday 12/3)	3. Broad ultra vires: abuse of power grounds - improper purposes; relevant and irrelevant considerations, unreasonableness; no evidence.	Douglas & Jones chapters 9 (narrow ultra vires) and 11,	Individual students may elect to be assessed for tutorial

		12, 13 (broad ultra vires abuse of power) Lane & Young: Chp 2, pp. 143 - 179 Readings as per study guide	participation (assessment item 2) in any week starting week 3, and will be expected to submit for assessment in two (2) separate weeks during the semester
Week 4 (commences Monday 19/3)	4. Broad ultra vires: failure to exercise discretion grounds - unauthorised sub-delegation; inflexible application of policy; decision made at direction or behest of another person; estoppel in administrative law?	Douglas & Jones chapter 10 (fettering discretion grounds) Lane & Young: Chp 2, pp. 137 - 142 Readings as per study guide	
Week 5 (commences Monday 26/3)	5. Judicially reviewable errors by inferior courts and tribunals - jurisdictional error and the development of the <i>Anisminic</i> doctrine	Douglas & Jones chapter 18 Lane & Young: Chp 2, pp. 180 - 193 Readings as per study guide	NB Mid-term break is 10-13 April 2012 – no classes that week (NB Easter is 6-9 April)
Week 6 (commences Monday 2/4)	6. The Australian approach to <i>Anisminic</i> ; fact/law distinction; the "jurisdictional fact" doctrine	Douglas & Jones chapter 18 Lane & Young: Chp 2, pp. 180 - 193 Readings as per study guide	Group tutorial answer (assessment item 3) may be undertaken on any tutorial question/s from week 6 onwards (by each group's choice) and must be submitted by email by the Sunday immediately following the week in which the tutorial problem/questions were tackled in class
Week 7 (commences Monday 16/4)	7. Error of law on the face of the record; privative clauses; review of jurisdictional error and related doctrines	Douglas & Jones chapters 18, 12 (parts 1 and 2) Lane & Young: Chp 2, pp. 180 - 204 Readings as per study guide	
Week 8 (commences Monday 23/4)	8. Natural justice - When will natural justice be implied at common law? (implication test); development of the "legitimate	Douglas & Jones chapters	

	expectation" principle; the modern Australian test for implication of duty to observe procedural fairness	14, 15 Lane & Young: Chp 2, pp. 103 - 125 Readings as per study guide	
Week 9 (commences Monday 30/4)	9. Natural justice – the modern Australian test for implication of duty to observe procedural fairness; qualifications to the implication test	Douglas & Jones chapters 14, 15 Lane & Young: Chp 2, pp. 103 - 125 Readings as per study guide	Major assignment (assessment item 4) due Friday 4 May
Week 10 (commences Monday 7/5)	10. Natural justice – the content of procedural fairness; reasonable apprehension of bias	Douglas & Jones chapters 15, 16, 17 Lane & Young: Chp 2, pp. 115 - 130 Readings as per study guide	
Week 11 (commences Monday 14/5)	11. Standing in administrative law	Douglas & Jones chapter 22 Lane & Young: Chp 2, pp. 205 - 220 Readings as per study guide	
Week 12 (commences Monday 21/5)	12. Administrative law remedies; some aspects of ADJR	Douglas & Jones chapters 20, 21 (remedies) Lane & Young: Chp 2, pp. 44 – 56 (remedies); pp. 57 – 100 (ADJR) Readings as per study guide	

Assessment Item 1

Description/Focus: Final exam

Value: 40 % of total assessment

Due date:

Invigilated exam during final exam period at end of semester

Length: 120 minutes writing time; 20 minutes reading time

Task: Mix of problem and essay-style question

Preparation:	Weekly study and revision of each topic, both individually and in study groups
Presentation:	In exam booklets provided at exam venue
Assessment criteria:	As per assessment rubrics found on LW312 Learnline site.

Assessment Item 2

Description/Focus:	2 x individually assessed tutorial advocacy or participation exercises (each marked out of 5)
Value:	10 %
Due date:	Students may nominate for assessment in any two (2) tutorials from semester week 3 onwards. Note that only 6-8 students maximum can be assessed in any given tutorial. Generally speaking nominations will be sought at the beginning of each tutorial and the first 6-8 volunteers will be assessed. Thus there can be no absolute guarantee that you will be able to be assessed in any given week.
Length:	Not applicable
Task:	Students will be assessed on both their preparation for and participation in the tutorial, which may be a problem-based session conducted in adversarial "mini-moot" format, or a debate, or discussion and answers to ordinary tutorial questions on the week's topic. For debates and mini-moots teams will be formed and students will prepare for 20-30 minutes in a breakout room before the debate or mini-moot.
Preparation:	Weekly study and revision of each topic, both individually and in study groups
Presentation:	See above
Assessment criteria:	Participation and preparation on the topic as assessed by the tutor at the end of the tutorial. "Thinking on your feet" and responding to any additional questions from the tutor will form a significant part of the assessment.

Assessment Item 3

Description/Focus:	Study group written answer/s relating to any tutorial topics from semester week 6 onwards.
Value:	10 %
Due date:	Group answer must be submitted by email by the Sunday immediately following the week in which the tutorial problem/questions were tackled in class
Length:	2,000 words
Task:	Essay or problem-style answers to questions concerning any tutorial topic from week 6 (topic 5) onwards. Students are expected to research and write these answers collaboratively in 3-5 person study groups which will be formed at the end of semester week 4 (census date). Study groups will be expected to self-regulate and divide up the research and writing task in an appropriate manner between group members, compiling your draft using the Learnline wiki facility (whose operation will be explained to students). Note however that all group members take responsibility for the final product. Thus it is YOUR responsibility to review all students' draft contribution and where necessary revise them to ensure an adequate standard of final answer.
Preparation:	See above.
Presentation:	Essay or problem-style answers (the latter in IRAC format)

Assessment criteria: As per assessment rubrics found in Learnline site assessments area. NB The group answer itself will be assessed out of 6 marks and all group members will receive the same mark (except group members who have been ejected under the MIA student procedures – see Learnline site). The other 4 marks under this assessment item will be assessed individually in accordance with the lecturer's assessment of the student's contribution to the group primarily based on each student's contribution to writing the group answer on the group Learnline wiki.

Assessment Item 4

Description/Focus: Major assignment/essay
Value: 30 %
Due date: NA
Length: 2,500 words maximum
Task: Students are expected to research and write a fully referenced essay on an administrative law judicial review topic which will be allocated during semester week 1.
Preparation: Research as per legal research methodology taught throughout the B Laws program
Presentation: As per Australian Guide to Legal Citation 3rd edition
Assessment criteria: As per assessment rubrics found in Learnline site assessments area

Assessment Item 5

Description/Focus: Tutorial attendance (1 mark per tutorial)
Value: 10 %
Due date: NA
Length: NA
Task: Tutorial attendance marks are designed to provide a small but tangible incentive to actually attend tutorials each week. Tutorials are the most important teaching and learning opportunity in this subject. Naturally students MUST attend tutorials in at least 2 separate weeks during the semester to nominate for participation assessment (assessment item 2). However attendance in itself earns 1 mark to a maximum of 10. However students will only be marked present if they are able to hear and make themselves heard at all times during the tutorial. A student who does not respond at any point during the tutorial will have their attendance mark cancelled. Failure to demonstrate any meaningful engagement with the topic when asked a question may also result in cancellation of an attendance mark i.e. you must be present and paying attention. Students unable for good reason accepted by the lecturer to attend in a given week may be given an opportunity to submit written answers by email. However arrangements for this must be made in advance.
Preparation: NA
Presentation: NA
Assessment criteria: See above

Please download Assignment Cover Sheet here:

<http://www.cdu.edu.au/library/access/AssignmentSubmission.html>

CDU Graduate attributes

CDU graduate attributes refer to those skills, qualities and understandings that should be acquired by students during their time at the University regardless of their discipline of study. (See <http://www.cdu.edu.au/teachingandlearning/gradattributes.html>).

In this unit, the following graduate attributes are developed:

Attribute	Description	Learning outcomes
Acquisition	Can identify, retrieve, evaluate and use relevant information and current technologies to advance learning and execute work tasks.	1, 2, 3
Application	Is an efficient and innovative project planner and problem solver, capable of applying logical and critical thinking to problems across a range of disciplinary settings and has self-management skills that contribute to personal satisfaction and growth.	1, 2, 3
Creativity	Can conceive of imaginative and innovative responses to future orientated challenges and research.	1, 2, 3
Knowledge base	Has an understanding of the broad theoretical and technical concepts related to their discipline area, with relevant connections to industry, professional, and regional and indigenous knowledge.	1, 2, 3
Communication	Demonstrates oral, written, and effective listening skills as well as numerical, technical and graphic communication skills in a cross generational environment.	1, 2, 3, 4
Team work	Has a capacity for and understanding of collaboration and co-operation within agreed frameworks, including the demands of inter-generational tolerance, mutual respect for others, conflict resolution and the negotiation of productive outcomes.	4
Social responsibility	Is able to apply equity values, and has a sense of social responsibility, sustainability, and sensitivity to other peoples, cultures and the environment.	NA
Flexibility	Can function effectively and constructively in an inter-cultural or global environment and in a variety of complex situations.	NA
Leadership	Can exercise initiative and responsibility, taking action and engaging others to make a positive difference for the common good.	4