

## Guide for teachers of administrative law

### Introduction

This guide offers suggestions on using the book in teaching and suggestions for designing a syllabus in administrative law. Like the book it is based on my experience teaching law students. I have in mind those who are new to teaching administrative law; I trust that experienced teachers will find something here worth disagreeing with.

More than in most areas of law, the subject leaves the teacher a massive discretion, because there is a wide range of approaches from which students may benefit. There are several particular topics (e.g., the law of public contracts, the law of nuisance, the role of public international law in administrative law, Human Rights Act damages...) that in my opinion could reasonably be made into major parts of a course, or could reasonably be omitted. You can't actually do everything, so you should be creative in deciding what to include.

And then there are vast unwieldy topics (e.g., the negligence liability of public authorities, or control of discretion) in which the students really need you to give some particular, manageable focus to a complex set of problems.

I think the main principle in deciding how to teach the subject is that you should make the most of this discretion that you have. Instead of worrying unduly about what areas of the subject one ought to teach, I think it is best to concentrate on the topics that you find most interesting, with the focus that you find most fruitful. I hope the book will be of use for that purpose.

**Please start by reading the Preface to the book;** it discusses some of the challenges that arise in learning and teaching the subject.

**Note on administrative law courses / public law courses:** Some law schools teach administrative law as part of a single unified course with constitutional law, often calling the course 'Public Law'; or administrative law may be taught by itself (or sometimes part of an advanced 'Public Law' course). The book is designed to be useful in all these teaching models. If you are teaching administrative law as part of a single 'Public Law' course, you might want to assign Chapter 1 of the book, on constitutional principles, as preliminary reading, and Chapter 3 is designed as an introduction to the constitutional importance of human rights adjudication. And then it is probably easiest to deal first with some of the important constitutional law topics that are not addressed in this book (the role of Parliament, the role of conventions in regulating the operation of government, the nature of the European Union and the implications of UK membership and of Brexit, devolution, etc) before getting into administrative law. Then you can assign the rest of the text in the second half of the course; the material addressed in the book ought to build on what the students have done in the earlier part of the course, because of the importance in administrative law of the constitutional principles addressed in Chapter 1 of the book.

### Advice on course design

How much of this sprawling subject should you try to cover, and how can you give it some shape?

I think that every student should learn in depth about **judicial review**, and should also have a sound understanding of the **tribunal system** and the roles of **ombudsmen**. If (like many teachers) you don't like the heavy emphasis that some teachers put on judicial review, Chapters 12 and 13 on tribunals and ombudsmen and Chapter 15 on contract are all huge, and there is certainly enough material to support a course that focuses on the non-judicial-review aspects of the subject.

If (like many other teachers) you think that judicial review is the interesting part, I still recommend spending a serious proportion of the course on tribunals and ombudsmen. This is not just because tribunals and ombudsmen resolve many more disputes than courts do, and have a greater impact on the function of public authorities. And it is not exactly that the students need to understand judicial review by contrast to the alternatives. Tribunals used to be thought of as alternatives to the courts (and the Parliamentary Ombudsman used to be thought of as an alternative to complaining to an MP). In fact, tribunals and ombudsmen have quite specific functions, which are not interchangeable with the functions of courts; I think that it's a mistake to think of judicial review as the all-purpose technique for control of administration. Students can only understand judicial review properly if they see that its purposes are limited.

Now is a particularly good time for close attention to tribunals and ombudsmen in administrative law courses. One reason is that the courts have assumed new, intrusive, and (in the view I offer in the book) unjustified roles in controlling the decisions both of tribunals and of ombudsmen; those developments create very useful opportunities for students to try to understand what tribunals, ombudsmen and courts are for. As for ombudsmen, the past few years have seen the emergence of a new tension between central government and the Parliamentary Ombudsman, which makes the whole thing more exciting for students. And the *Bradley* case offers a very good opportunity to get them thinking about the different roles of courts and ombudsmen. As for tribunals, we have now completed ten years under the new tribunals system. The topic has more coherence now, because the system has more coherence than before 2008, and the Upper Tribunal has become a crucial administrative law institution.

Chapter 15 offers an introduction to the techniques of **new public management**, and (I hope) an insight into ways in which the law needs to adapt to deal responsibly with government action in areas where judicial review in itself can do little to secure just and equitable administration.

## Using the book to design a syllabus

Here is the Table of Contents for the book:

### Introduction

1. Administration and the principles of the constitution
2. The rule of law and the rule of judges
3. Human rights law

### Process

4. Due process
5. Impartiality and independence
6. Reasons: process and substance

### Substance

7. Discretion and deference
8. Substantive fairness
9. Errors of law and control of fact finding

### Litigation

10. How to sue the government: judicial processes and judicial remedies
11. Standing: litigation and the public interest

### Administrative justice

12. Tribunals
13. Ombudsmen

## Private law and public authorities

14. Torts

15. Contract

I designed Chapters 1, 2, and 3 as material that the students could usefully read before beginning lectures, classes or tutorials. In most law schools, they ought to have learned how the Human Rights Act works before they come to administrative law, but you will probably still find it necessary at some point to focus on the specific techniques of the Act (it's too easy for them to get an undifferentiated idea that the HRA 'incorporated' the Convention into UK law). I hope that Chapter 3 will be useful for that purpose.

One straightforward way to design a syllabus is to start with judicial review (for reasons that are explained in the Preface, I introduce it in Chapter 2 and then delve into the grounds of judicial review in Chapters 4-9), and then do tribunals and ombudsmen (focusing on the ways in which their techniques of legal control are different from judicial review). But you could equally start with Chapters 12 and 13, if you don't want to start the course by immersing the students in judicial review. Reading Chapters 1 to 3 before embarking on tribunals and ombudsmen is probably especially important in that case.

Chapters 14 and 15 are not very closely connected with each other and you could do them in either order. **Tort liability** of public authorities is huge, but you'll probably decide that the students need to know that, too. Chapter 15 on **contract** addresses some rather diverse problems of new public management; and please note that Chapter 15 includes some important material on the scope of judicial review (how it applies to non-governmental bodies) and the scope of the Human Rights Act (whether governmental bodies can evade the Act by contracting out service provision to bodies that do not count as public authorities for the purpose of s 6).

As for the Chapters on litigation, standing (Chapter 11) provides a relatively neat and self-contained subject that helps the students to focus on the relations between an individual complainant and the standards of public law that control public authorities, and Chapter 10 on the process of judicial review includes some material that I think is important because it shows the limited scope of judicial review. But Chapters 10 and 11 could simply be assigned as reading to add perspective to the work on judicial review, if you don't want to focus on them.

Some teachers like to assign essays on the **theory of public law**. This whole book, in a way, addresses the theory of public law. There are diverse ways of dealing with theory, and in this book, Chapter 1 offers a theory of the subject by setting out its general principles. But it is really hard to get any useful work out of students on abstract questions until they have absorbed a lot of the law. So I would recommend that if you want to set them general questions about the purposes and limits of administrative law, you do it late in their work on the subject, and certainly after they have worked on more than just judicial review. Perhaps you could set them to read the conclusion of each chapter of the text, since the chapter conclusions tend to sum up the theoretical principles. Of course, it wouldn't hurt to assign Chapter 1 (or tell them to look back at it) at the end of the course, at a point when they will have some familiarity with the law.

## Possibilities for a syllabus

[Chapter numbers in square brackets]

Option 1 –heavy on judicial review	Option 2 –light on judicial review
[1-3]: introductory reading <ul style="list-style-type: none"> <li>• Judicial review: Process [4-6]</li> </ul>	[1-3]: introductory reading <ul style="list-style-type: none"> <li>• Tribunals [12]</li> </ul>

<ul style="list-style-type: none"> <li>• Judicial review: Substance [7-9]</li> <li>• (Judicial review procedure and standing [10, 11] can be extra reading or two extra topics)</li> <li>• Tribunals [12]</li> <li>• Ombudsmen [13]</li> <li>• Torts [14]</li> <li>• Contract [15]</li> </ul> <p>(and note that you could take Chapters 7-9 apart into several judicial review topics, including proportionality, legitimate expectations, error of law, error of fact...)</p>	<ul style="list-style-type: none"> <li>• Ombudsmen [13]</li> <li>• Contract [15]</li> <li>• Judicial review: Process [4-6]</li> <li>• Judicial review: Substance [7-9]</li> <li>• Torts [14]</li> </ul>
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**Option 3:** I often think that it would be good to introduce administrative law through a serious study of a particular area, such as the law of planning or terrorism or immigration or tax or education or prisons.... No single field will give a full overview of the subject, so you would have to combine this approach with some elements of option 1 or 2. Option 3 is for the brave: the students may feel at sea. But the potential is to help them face up to a really difficult and interesting point about administrative law: the application of its general principles depends crucially on the particular area of administration.

In any of these options, it is worth considering:

- whether to treat the impact of European Union law (and, after March 2019, the implications of Brexit) as a special topic, or whether to deal with it as it comes up in other areas (see the index heading 'European Union law'), and
- whether to assign an extra topic on theory of public law (see note above).

## Assessment

A good examination will press the students to make themselves expert in a sufficiently wide range of the important topics. And one of the challenges of the subject is that certain topics are huge and hard to manage (negligence liability and control of discretion are the biggest examples; legitimate expectation is another and of course it is itself an aspect of control of discretion; the effect of the Human Rights Act is another...), and others are rather neat and self-contained (the best examples are standing (Chapter 11), bias (Chapter 5), and reasons (Chapter 6). I don't know what to suggest about this, except to point out that a good exam shouldn't let students get away with revising only the neat self-contained questions. And I recommend, so far as possible, asking questions that require a familiarity with more than one standard topic. The students need to get the picture that the problems that people have with public authorities don't start out with labels attached.

Here's one of the strange features of the subject, by the way: it is hard to write satisfying problem questions. One reason is that administrative law is metalaw - that is, it concerns particular areas of substantive law, so that it is hard to do a problem in administrative law without knowing something about asylum law or planning law or the law controlling policing or local government law or mental health law... And another reason is that in so many interesting problem situations, the parties need to consider much of the material in the book (that is why I was able to use the *Walker* case in Chapter 2 to introduce all the grounds of judicial review). If you find a good solution to the problem of how to write problem questions in administrative law, I hope you'll contact me through the Online Resource Centre.

## Materials

The **Reading** suggested at the end of each chapter is designed to serve as a reading list for the subject.

The cases and legislation listed are available on this website, and they are annotated. Just go to the [front page](#), point to the heading for the chapter in question, and choose 'Notes on key cases' or 'Notes on key legislation'. You may think that the case notes are dangerous because the students should get into the library and read the reports. But the case notes are designed to serve as an indication of why they need to read the case (and as a reminder for revision purposes), so I hope they won't stop the students from reading the reports.

Note that the text of the key legislation and the reports of the key cases are available online from this website.

The cases listed under **Reading** are what I would assign to students before a class or a tutorial. Some teachers like to assign masses of reading (the students won't read it all, of course, but it may raise expectations and make them work harder) and some like to assign only what they think the students really should read. If you assign the cases listed under **Reading**, you will be taking the latter approach.

The scholarly materials are only suggestions! The literature is huge and you may well find that there are other materials that you want your students to read, and you may find some of the materials listed under **Reading** to be unnecessary for your purposes.

## Questions at the end of each chapter

The questions can serve as discussion questions, or can be assigned for practice essays; the guidance on this website is **not** a set of answers but a set of suggestions as to how to deal with the issues that the questions raise (and a set of additional questions). You may find it useful to look at the guidance on questions before discussing them with students; as with the text itself, you may well find that you disagree with the suggestions, and I hope that will make for useful discussion.

## Note on the coverage of topics in the text

I could not include everything!

### Significant omissions:

**Torts** –I'd like to have covered more, particularly because students often end up thinking that negligence is the only interesting or important tort. I think it's very important for them to see the tricky problems of negligence liability in the broader context of tort liability, so I start with trespass to property. But I did not have room to cover everything (or even everything important). I wish I had room for **false imprisonment**, which raises really important questions of the relation between unlawful official action and tort liability. More importantly, I wish I could have addressed **nuisance**. Much that is difficult and important in working out the relations between citizen and state can be addressed by a study of the nuisance liability of public authorities, and if you want to add any topic to those covered in this book, I would recommend the tort of nuisance.

**Restitution:** It is only lack of space that made me omit discussion of the special problems concerning restitution of gains made unjustly by public authorities. They offer a very useful way of addressing the ways in which the legal position of a public authority ought to be the same as the legal position of a private party, and the ways in which it ought to be different. See Rebecca

Williams, *Unjust Enrichment and Public Law* (Hart Publishing, 2010).

**Delegated legislation:** Chapters on delegated legislation are fairly standard in administrative law texts, but this was not an accidental omission. I decided it wouldn't add to the explanation of the subject. Most of the important cases on judicial review of delegated legislation are in the book (*Kruse, Wednesbury, Boddington, Witham...*, though I don't talk much about *Jackson v AG* [2005] UKHL 56, concerning whether legislation under the Parliament Acts is delegated legislation. And I deal with whether it is o.k. for a court to quash a statutory instrument that has been approved by both Houses of Parliament (7.3.4). On the other hand, I don't deal with publication requirements (which of course are relevant to the ideal of the rule of law) or with the techniques of parliamentary control over delegated legislation. Those requirements and techniques are part of administrative law, but in a book that was getting too big they didn't seem to me to be at the centre of it.

That may change after Brexit, as British law and politics will need to control the new techniques that are under consideration for changing the law in areas that had been governed by EU law since 1972. The updates on Brexit on this website will need to address those developments.