

LLH206
TABLE OF CONTENTS

WEEK 1	1
WEEK 2	8
WEEK 3	17
WEEK 4	20
WEEK 5	29
WEEK 6	35
WEEK 7	43
WEEK 9	50
WEEK 10	57
WEEK 11	64
WEEK 13	71

ADMINISTRATIVE LAW - LLH206 LECTURE NOTES

Week 1 - Introduction to Administrative Law

What is administrative law?

- It is the body of law that regulates executive power, and the relationship between us, as citizens, and the government
- The exercise of executive power must have legal authority and be exercised within the law

Public Law = government decision making

- not to decisions made by the private sector, called 'Public Law'
- therefore, need to determine whether a decision maker is a part of the 'executive', ie. a public authority or public official
- The tripartite nature of government at both state and federal levels – see the SOP slide following...

The separation of powers

- Legislature → makes law
- Executive → administers law
- Judiciary → interprets law

Executive decision making in the SoP....

- Legislature – creates legislation with powers conferred on the Executive to exercise those powers in the form of decision making
- Executive – decisions made by the executive arm of government, includes Ministers, departmental public officers, public officials, public and/or statutory bodies
- Judiciary – role in the review of executive decisions under s 75(iv) Commonwealth of Australia Constitution Act 1900 (the 'Constitution') ('Judicial Review' or 'JR')

Who is the Executive?

- The executive is very large, includes Prime Minister, Department Ministers, individuals who work within the departments
- Therefore, includes:
 - Queen and Governor General
 - Ministers – Prime Minister
 - Ministerial staff
 - The departments and the public service
 - Statutory authorities (e.g. ASIC, ACCC, tribunals)
 - Government Business enterprises, e.g. Australia Post

Who is the Judiciary?

- HCA under s 75(v) Constitution (Cth)
- In recent times HCA jurisdiction has been extended to FCA under Judiciary Act
- Superior courts of record, s 73 Constitution (and under state Constitutions).
- This includes state Supreme Courts such as Qld Supreme Court
- Courts can set aside the decision, if unlawful

Why is Admin Law relevant and important?

- Australians are heavily reliant on the government to provide services and are subject to ever increasing government regulation
- Central concerns of administrative law are to uphold the rule of law and ensuring accountability by government

The components of administrative law

The avenues that are potentially available to challenge an administrative decision are:

- Judicial Review
 - review by court of the legality of decision
- Tribunal (merits) Review
 - appeal before a tribunal on the merits
 - Administrative Appeals Tribunal replaced by Administrative Review Tribunal post Robodebt Commission
- Ombudsman
 - investigation and report (not a review of the decision)
- FOI/RTI
 - right of access to government documents (not a review of the decision)
- Over the course of the Semester, we will deal with these avenues for review of decisions in the order listed above

Statutory Interpretation concepts.....

1. Statutory interpretation – requires consideration of the text, context and purpose of a statute: Project Blue Sky (1998) 194 CLR 355, affirmed in SZTAL v MIBP (2017) 262 CLR 309
2. If the ordinary grammatical meaning is clear, that meaning will ordinarily prevail. However, that meaning will not be clear, if:
 - a. the words are capable of more than one meaning
 - b. the meaning doesn't appear to promote the text, context purpose of the statute (PBS case approach)
3. The courts will attempt to interpret ambiguous provisions:
 - a. In light of the purpose of the legislation (Acts Interpretation Act 1901 (Cth) ('AIA') s 15AA)
 - b. Subject to the Constitution (AIA s 15A)
 - c. Using extrinsic materials if permitted (AIA s 15AB)
 - d. Using common law rules and presumptions if relevant

Approach to interpretation.....

1. Determine the context and purpose of the Act
 - By looking at the Act as a whole
 - By considering extrinsic materials (if permitted)
2. Ascertain the ordinary, grammatical meaning of the provision
3. Is there any ambiguity?
 - If no, stop here – this is the meaning
 - If yes, continue...
4. Resolve ambiguity with reference to Act's subject matter, scope and purpose, apply any CL rules/presumptions (if relevant)

And presumptions as to illegality.....

Presumed intention of Parliament that it will not detract from fundamental principles in absence of clear intention to the contrary:

- Restrict access to the courts: Plaintiff S157/2002 v Cth (2003) 211 CLR 476, [30] – [32] – access to judicial review under s 75(v) Constitution for jurisdictional error in the face of a privative clause
- Deny procedural fairness to persons affected by the exercise of a public power: Saeed v MIC (2010) 241 CLR 252

[watch this space for later in the Semester]

Reminders...for later

1. Constitutional protection to s 75(v) judicial review
2. Statute will always override the common law as integral to sovereignty of Parliament (subject to principle of illegality)
3. Later Acts repeal earlier inconsistent Acts – either expressly or impliedly: Goodwin v Phillips (1908) 7 CLR 1, 7 per Griffith CJ
4. “May” in a statute denotes a discretion; “shall” or “must” denotes a duty

Constitutional Law concepts...

- Constitutional law:
 - Validity of legislation and law-making process (Legislature as branch of government and its role in the making of statute, vis a vis the Constitution)
 - Structure & role of each branch of government, eg, the separation of powers
- Administrative law:
 - Assumption that constitutionally the statute under which a power has been exercised is valid
 - The powers & procedures of the executive
 - The limits or lawfulness of executive action pursuant to statute
- Note the constitutional guarantee of judicial review in s 75(v) of the Constitution.

Administrative law values...

- Think about the values associated with administrative law as a way of justifying your arguments in your essays.