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Topic 1: Principles of Admin Law

Administrative law is a branch of public law that governs the actions and decisions of government agencies and public officials. Its primary purpose is to regulate the exercise of governmental power, ensuring that decisions made by the executive arm of government comply with the law, are fair, and do not exceed the powers granted by statute.

Key Functions of Administrative Law:

1. **Regulation of Executive Power:** Administrative law ensures that executive actions are performed within the boundaries set by the legislature. It prevents the executive from acting beyond or outside the scope of its legal powers (*ultra vires* doctrine).
2. **Judicial Oversight:** Courts play a crucial role in administrative law by providing mechanisms such as judicial review to ensure that government actions are lawful and fair.
3. **Accountability and Transparency:** Administrative law promotes government accountability and ensures transparency in decision-making processes, allowing for public scrutiny.
4. **Protection of Individual Rights:** It provides citizens with the ability to challenge government decisions that infringe upon their rights, offering remedies when the government exceeds its authority.

Public Law vs Private Law:

Public Law:

- Regulates the relationship between individuals and the state.
- Examples: constitutional law, criminal law, administrative law, international law.
- **Administrative law:** Regulates executive decisions and the actions of public authorities in their relationship with individuals or private entities.

Private Law:

- Regulates relationships between individuals or private entities.
- Examples: contract law, property law, tort law.
- Distinction: **Administrative law** generally involves decisions made by the state that affect individuals, as opposed to private disputes between individuals.

Blurred Lines: Sometimes, these categories overlap. For example, tort claims (a private law domain) can involve government entities (public law) when the state acts negligently or unlawfully in the performance of its functions.

The Foundations of Administrative Law:

1. Entick v Carrington (1765):

- **Facts:** Government agents entered Entick's house and seized his property without any legal justification.
- **Key Principle:** The court held that the executive cannot infringe on individual rights unless expressly authorized by law. Chief Justice Camden stated: "If it is law, it will be found in our books; if it is not to be found there, it is not law."
- **Significance:** This case laid down the principle that executive actions must be backed by law. If government actions lack legal authority, they are considered unlawful, and the government must justify its actions within the bounds of the law. This principle forms the foundation for **judicial review** in administrative law.

2. Ruddock v Vadarlis (2001):

- **Facts:** The Australian government detained asylum seekers on a ship. The case challenged whether the executive had the legal authority to detain individuals in such a manner without statutory backing.
- **Outcome:** The court ruled that the executive had such authority under its **prerogative powers** but clarified that this power must align with statutory law, and any exercise of executive power is subject to judicial oversight.

3. Pape v Commissioner of Taxation (2009):

- **Facts:** This case questioned the government's power to implement an economic stimulus package.
- **Key Issue:** Whether the government's actions had constitutional support under its executive powers.
- **Outcome:** The High Court found that the executive can take extraordinary actions in times of national crisis, but these actions still require justification through either legislative authority or constitutional grounding.

Key Concepts in Administrative Law

1. Lawfulness of Decisions (**Ultra Vires**):

- Administrative decisions must be lawful, meaning they must fall within the scope of powers conferred on the decision-maker by legislation. If a decision exceeds the powers granted by statute, it is deemed **ultra vires** (beyond power) and can be declared invalid by the courts.
- **Case Example:** *Plaintiff S157/2002 v Commonwealth* (2003): This case reinforced that government decisions, even those in areas such as immigration, can be challenged for being beyond the scope of the executive's statutory powers.

2. Procedural Fairness (**Natural Justice**):

- Decision-makers must follow fair procedures when making decisions, especially when those decisions affect individual rights or interests.
- **Principles of Natural Justice:**
 - **Right to be Heard (*Audi Alteram Partem*):** Affected individuals must have the opportunity to present their case before an adverse decision is made.
 - **Rule Against Bias (*Nemo Judex in Causa Sua*):** Decision-makers must be impartial, and decisions should not be tainted by actual or perceived bias.
- **Case Example:** *Kioa v West* (1985) established that administrative decisions impacting individuals' rights require adherence to principles of procedural fairness, including the right to a fair hearing.

3. Judicial Review:

- Courts have the authority to review the lawfulness of administrative decisions through the process of **judicial review**. Judicial review is concerned with the **legality** of decisions, not their merits.
- **Grounds for Judicial Review:**
 - **Illegality:** The decision-maker acted beyond their legal powers.
 - **Irrationality:** The decision was unreasonable to the extent that no reasonable decision-maker would have made it.
 - **Procedural Impropriety:** The decision-making process was unfair or did not comply with statutory procedures.
- **Case Example:** *Minister for Immigration and Citizenship v Li* (2013) redefined unreasonableness, holding that a decision is unreasonable if it lacks an evident and intelligible justification.

4. Merits Review:

- Unlike judicial review, **merits review** involves re-assessing the substance of the decision. Administrative tribunals, such as the Administrative Appeals Tribunal (AAT),

may engage in merits review, looking at whether the “correct” or “preferable” decision was made.

Executive Accountability

Executive accountability refers to the mechanisms that ensure government actions and decisions are lawful, authorized, and transparent. It operates within the broader framework of the **separation of powers**, distinguishing between the roles of the **legislature**, **executive**, and **judiciary**. The executive arm, which is responsible for day-to-day administration and enforcement of the law, must act under the authority provided by the legislature and is held accountable through various legal and political mechanisms.

Key Mechanisms for Executive Accountability:

1. Responsible Government:

- This concept requires that the executive be drawn from and remain accountable to the legislature (parliament). If the executive loses the confidence of the legislature, it can be dissolved or replaced.
- **Case Example: Aerolineas Argentinas:** This case highlights the distinction between the executive and the legislature, emphasizing that the executive, including ministers, must be accountable to the legislature for their actions.

2. Elections:

- Political accountability occurs through regular elections, where the public has the power to hold the government accountable by voting them in or out of office.

3. Judicial Review of Administrative Actions:

- In addition to political mechanisms, administrative law provides avenues for **judicial review**. Courts scrutinize the **legality** of executive actions to ensure they align with statutory and constitutional principles.
- **Merits Review:** Administrative tribunals, such as the Administrative Appeals Tribunal (AAT), can conduct **merits review**, which involves assessing the fairness and reasonableness of executive decisions, beyond just their legality. This ensures that decisions are not only lawful but also substantively fair.

Government Accountability

In democratic systems, accountability mechanisms are designed to ensure that public officials (elected representatives, public servants, police officers, etc.) exercise their powers in the public interest and are answerable to the public for their actions. These mechanisms include:

1. **Parliamentary Scrutiny:** Parliamentary committees have the authority to scrutinize government policies, financial expenditures, and decisions.