

LA3B5-15 Judicial review and administrative justice

23/24

Department

School of Law

Level

Undergraduate Level 3

Module leader

Helen Toner

Credit value

15

Module duration

10 weeks

Assessment

100% coursework

Study location

University of Warwick main campus, Coventry

Description

Introductory description

This module follows on from 'Law State and Individual' first year module to provide a more advanced freestanding module examining judicial review and administrative justice. It combines rigorous study of judicial review doctrine with contextual analysis of the politics involved in the role of the judiciary in controlling public power, and practice of administrative justice beyond judicial review case doctrine.

Module aims

The module aims to develop a critical and contextual understanding of (1) the law surrounding judicial review (2) the ways in which this process (the judicial control of public power) raises profound political and constitutional questions around the judicial role, separation of powers and the rule of law, and (3) the ways in which administrative justice embraces far more than just judicial review.

Outline syllabus

This is an indicative module outline only to give an indication of the sort of topics that may be covered. Actual sessions held may differ.

Judicial review law - topics might include (1) historical perspective on changing judicial attitudes over time (2) the nature of public power (getting into judicial review) and the exclusivity of JR processes (getting out of judicial review) (3) ouster clauses (4) error of law (5) control of discretion (6) development of new grounds of review including legitimate expectations and proportionality (7) natural justice (8) the function of litigation in public law: standing, public interest litigation and rights approaches vs wrongs approaches.

Judicial review political context topics might include the constitutional basis of judicial review and the role of the judiciary and recent judicial review reforms - excluding JR by stealth?

Broader administrative justice topics might include administrative rulemaking, internal review ombudsman review tribunal justice and possibly also public inquiries.

Learning outcomes

By the end of the module, students should be able to:

- knowledge and understanding 1 - students have knowledge of the main grounds of judicial review
- knowledge and understanding 2 - students have knowledge of the constitutional and political context in which judicial review operates including separation of powers, rule of law, and issues raised by recent attempts to reform judicial review
- knowledge and understanding 3 - students have knowledge of the wider context of administrative justice exemplified by selected topics such as for example administrative review, ombudsman complaints, tribunals
- skills - students are able to research and critically analyse the above topics, drawing on suitable academic and caselaw resources and examples
- students are able to develop and present coherent well argued and evidenced answers to selected topics for discussion, both orally in class and (for summative assessment) in writing an essay

Indicative reading list

Texts: Law and Administration (Harlow and Rawlings 4th edition) supplemented by Craig Administrative law or other administrative law textbook such as Endicott.

Other academic materials: there is a vast range in mainstream legal academic journals all accessible through the library already in electronic format or sometimes in e-books. As an indication some of the resources students might be offered a (non-exhaustive) list might include:

On historical development of Judicial review 'Administrative Law' J. Jowell in The British Constitution in the Twentieth Century V. Bogdanor (ed), (OUP 2003)

On the conceptual basis of Judicial Review and competing models: Craig competing models of Judicial Review (Public Law 1999 p 428) Allan, The constitutional foundations of judicial review: conceptual conundrum or interpretative inquiry? Cambridge Law Journal C.L.J. 2002, 61(1), 87-125

On Legitimate Expectations STUCK AT A CROSSROAD? SUBSTANTIVE LEGITIMATE

EXPECTATIONS IN ENGLISH LAW ALISON L. YOUNG Cambridge Law Journal 2021

On fettering discretion and rulemaking Administrative Discretion, Administrative Rule-making, and Judicial Review Aileen McHarg Current legal Problems 2017, Yoav Dotan Why Administrators should be Bound by their Policies (1997 OJLS).

On standing John McGarry (2014) The Importance of an Expansive Test of Standing, Judicial Review, 19:1, 60-64, Farrah Ahmed Adam Perry Standing and civic virtue Journal Article Law Quarterly Review L.Q.R. 2018, 134(Apr), 239-256

On contextualising other forms of administrative justice Ombudsmen, Tribunals, Inquiries: Re-fashioning Accountability Beyond the Courts Mark Elliott

Cases - again indicative but very much not exhaustive list could include Miller/Cherry (Miller 2) [2019] UKSC 41, Anisminic [1969] 2 AC 147, Privacy International [2019] UKSC 22, R (Evans) v AG [2015] UKSC 21, Osborn v Parole Board [2013] UKSC 61, Ex parte Daly [2001] UKHL 26.

Government materials etc

Independent Review of Administrative law Independent Review of Administrative Law - GOV.UK (www.gov.uk) then subsequent government Consultation Judicial Review Reform - GOV.UK (www.gov.uk) which culminated in the Judicial Review and Courts Act 2022.

Research element

Assessment is by essay which involves an element of independent research

Subject specific skills

Students gain skills of case and doctrinal analysis in this specific administrative justice context.

Transferable skills

Transferrable skills of library research, class discussion, and written presentation skills

Study

Study time

| Type | Required |
|---------------|-----------------------------|
| Lectures | 18 sessions of 1 hour (12%) |
| Seminars | 7 sessions of 1 hour (5%) |
| Private study | 85 hours (57%) |
| Assessment | 40 hours (27%) |
| Total | 150 hours |

Private study description

Students will be expected to engage with set readings and seminar preparation tasks and further independent reading during the course of completing their assessment essay.

Costs

No further costs have been identified for this module.

Assessment

You must pass all assessment components to pass the module.

Assessment group A

| | Weighting | Study time | Eligible for self-certification |
|---|-----------|------------|---------------------------------|
| Assessment component | | | |
| Summative essay | 100% | 40 hours | No |
| Students write an essay on one of three possible essay topics | | | |

Reassessment component is the same

Feedback on assessment

Feedback provided on tabula, formative essay during term feedback will also be provided,

Availability

Pre-requisites

To take this module, you must have passed:

- All of
 - [LA129-30 Law, State and the Individual](#)

Courses

This module is Optional for:

- Year 2 of ULAA-M130 Undergraduate Law

- Year 2 of ULAA-M131 Undergraduate Law (4 Year)
- Year 2 of ULAA-M132 Undergraduate Law (Year Abroad)
- Year 2 of ULAA-M133 Undergraduate Law with French Law
- Year 2 of ULAA-M134 Undergraduate Law with German Law
- Year 2 of ULAA-M136 Undergraduate Law with Humanities (3 Year)
- UPHA-V7MW Undergraduate Politics, Philosophy and Law
 - Year 2 of V7MW Politics, Philosophy and Law
 - Year 3 of V7MW Politics, Philosophy and Law
- Year 4 of UPHA-V7MX Undergraduate Politics, Philosophy and Law (with Intercalated Year)

This module is Unusual option for:

- UPHA-V7MW Undergraduate Politics, Philosophy and Law
 - Year 2 of V7MW Politics, Philosophy and Law
 - Year 3 of V7MW Politics, Philosophy and Law