

## **BASIC PRINCIPLES OF ADMINISTRATIVE LAW**

**FACULTY OF LAWS – 2017**

**ADMINISTRATIVE LAW**

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# Separation Of Powers

**Separation of powers** is the **division of the powers and functions of government** among the three separate arms of government, that is, the **legislature, executive, and the judiciary**.

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# Division Of Powers

- **Legislative powers** .....powers by the **legislature**, which is the body **responsible for law making**.
  - **Executive powers** ..... powers exercisable by the **executive organ of government** in performing particular **act** or giving particular **order** or making **decisions** generally in relation to particular statutory duties **within their competence**.
  - **Judicial powers** ....exercised when there is an existing **dispute** *lis inter partes* (**conflict among people**) between two or more parties .....
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# Division Of Powers

- The **legislature** has **legislative powers** to **make laws** for the country...
  - The **executive** has **powers** to **formulate policies, implements** and enforce the law...
  - The **judiciary interprets** the laws and **adjudicates** over matters brought before it.
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## The Legislature May Give Powers...

- The **legislature gives powers to other persons** or bodies to make necessary laws as applicable. These **laws made by the administrative bodies, agency or authority in exercise of the powers given or delegated to them** by the constitution or enabling statutes, which is referred to as delegated legislation.
  - Examples of these are byelaws, orders, regulations by local governments, departments, corporations and agencies.
  - **BUT “*Delegatus non potest delegare*” .... a delegate may not sub-delegate** his/her authority, power or functions to another person, authority, body or agency.
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# Let Us Reframe.....

The **functions and powers vested on administrative authorities** and public officers are **conferred on them by .....**

- ❑ The constitution... the supreme law of the land
- ❑ By an act of parliament.... state laws or charter establishing such public authority, body agency or corporation.
- ❑ A subsidiary legislation or delegated legislation..... made pursuant to the Act of parliament, thus conferring the said power.

Example: The Development Planning Act (ACT OF PARLIAMENT) gives the power to the Planning Authority (PUBLIC AUTHORITY) to issue development permits

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## WHAT IF?

- ▣ WHAT IF a piece of land purportedly ‘expropriated’ for public purpose but in actual fact transferred to a private business man?

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## Definition Of '*administrative law*'

**NO UNIVERSAL  
DEFINITION**

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## Some Thoughts about '*What Is Administrative Law?*'

- Administrative law **deals with the decision making of administrative units of government** (for example, tribunals, boards or commissions) that are part of a national regulatory scheme in such areas as police law, planning, environment, transport.....

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## Some Thoughts about 'What Is Administrative Law?'

- H. W. R. Wade in his book "Administrative Law," eighth edition, argued that **administrative law** is concerned with **the operation and control of the power of administrative authorities** with **emphasis on functions rather than structure**.
  - He went further, stating that: "**Administrative law is the law relating to the control of governmental powers.**"
  - So, Administrative law is concerned with **how to confine** administrative bodies to their legal role and limit.
  - So, it is a branch of law that aims at **keeping the powers of government within the citizen against their abuse**, and where abused, to provide remedy to the aggrieved citizen.
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## Some Thoughts about '*What Is Administrative Law?*'

- Peter Leyland and Gordon Anthony: It is regarded as the area of governmental powers, which **originate in primary legislation** or in the prerogative. It embodies **general principles** which can be applied to the exercise of the powers and duties of authorities in order to ensure that **the myriad of rules and discretionary powers available to the executive conform to basic standards of legality and, fairness.**
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## Some Thoughts about 'What Is Administrative Law?'

- ...the administrative authorities are given various tasks to execute in accordance the primary duty of each establishment, organisation or body.
  - In discharging their duties, they are vested with **wide powers** some of which are **discretionary** but must be exercised within the purview of the statute, byelaw or any legislation conferring such powers on them...
  - So, **administrative law is the law, which keeps the powers of government within the legal bounds** in order to protect the citizen against the abuse of power and where abused, to provide the remedy for the aggrieved person
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## Some Thoughts about '*What Is Administrative Law?*'

- The functions entrusted to administrative bodies, that is, public officers and administrative authorities are many. Their **powers** are **often great**.
  - Administrative law regulates government or administration such that the agencies do not **arbitrarily exercise their powers** or exceed them. This means that the laws play vital roles in administration.
  - Administrative law acts **as a check** in respect of the unlawful **exercise or abuse** of governmental administrative power.
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## The Way Forward....

**Administrative law must  
therefore observe the rule of  
natural justice.**

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# NATURAL JUSTICE

- Concisely natural justice means: The **inherent right** of a person to a **fair and just treatment** *in the hand of rulers, their agents and other persons*.
  - It embodies principles that facilitate good administrative practice.
  - For instance, **the two rules of natural justice that a man cannot sit on his own case (Nemo Judex in Causa Sua) and that no man can be condemned unheard (Audi Alterem Partem)**.
  - **Example:** a taxi driver cannot be deprived of his licence to operate at an Airport because of an alleged misconduct without first being given a chance to put his side of the case.
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