

## 2.5 Module 10 Administrative Law

### 2.5.1 Headline information about the module

|   |   |
|---|---|
| <b>Module title</b>   | Administrative Law  |
| <b>Module NFQ level (only if an NFQ level can be demonstrated)</b>  | N/A   |
| <b>Module number/reference</b>  | Module 10   |
| <b>Parent programme(s) the plural arises if there are embedded programmes to be validated.</b>  | LLB (Hons)  |
| <b>Stage of parent programme</b>  | 2   |
| <b>Semester (semester1/semester2 if applicable)</b>   | Semester 1 or Semester 2  |
| <b>Module credit units (FET/HET/ECTS)</b>   | ECTS  |
| <b>Module credit number of units</b>  | 5   |
| <b>List the teaching and learning modes</b>   | Full Time, Part Time  |
| <b>Entry requirements (statement of knowledge, skill and competence)</b>  | Learners to have successfully completed Stage 1 of the programme.   |
| <b>Pre-requisite module titles</b>  | None  |
| <b>Co-requisite module titles</b>   | None  |
| <b>Is this a capstone module? (Yes or No)</b>   | No  |
| <b>Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)</b> | Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College. |
| <b>Maximum number of learners per centre (or instance of the module)</b>  | 60  |
| <b>Duration of the module</b>   | One Semester, 12 weeks  |
| <b>Average (over the duration of the module) of the contact hours per week (see * below)</b>  | 2   |
| <b>Module-specific physical resources and support required per centre (or instance of the module)</b>   | Lecture room with internet access and digital projector.  |

| Analysis of required learning effort    |                               |                                    |                               |                       |                               |                                 |                               |                       |  |                      |
|---|-------------------------------|------------------------------------|-------------------------------|-----------------------|-------------------------------|---------------------------------|-------------------------------|-----------------------|--|----------------------|
| Effort while in contact with staff      |                               |                                    |                               |                       |                               |                                 |                               |                       |  |                      |
| Classroom and demonstration             |                               | Mentoring and small-group tutoring |                               | Other (specify)       |                               | Directed e-learning (hours)     | Independent learning (hours)  | Other hours (specify) | Work-based learning hours of learning effort | Total effort (hours) |
| Hours                                   | Minimum ratio teacher/learner | Hours                              | Minimum ratio teacher/learner | Hours                 | Minimum ratio teacher/learner |                                 |                               |                       |  |                      |
| 24                                      | 1:60                          |                                    |                               |                       |                               |                                 | 101                           |                       |  | 125                  |
| Allocation of marks (within the module) |                               |                                    |                               |                       |                               |                                 |                               |                       |  |                      |
|   |                               |                                    |                               | Continuous assessment | Supervised project            | Proctored practical examination | Proctored written examination | Total                 |  |                      |
| Percentage contribution                 |                               |                                    |                               | 40                    |                               |                                 | 60                            | 100%                  |  |                      |

### 2.5.2 Module aims and objectives

In this Module, learners are enabled to evaluate the lawfulness of decision-making by public bodies, including the exercise of statutory discretion and jurisdiction. Learners are introduced to key concepts and remedies available in Administrative Law, including the doctrine of administrative unreasonableness, legitimate expectation and constitutional (and natural) justice. The Module also examines Judicial Review procedure in Ireland and the key remedies it offers. Learners further examine the development of Judicial Review and the types of decision that may now be challenged under this process.

The Module also provides learners with an understanding of the practical operation of administrative law and judicial review enabling learners to apply the law to hypothetical, factual scenarios. In order to build on this learning, two specific bodies are then selected in the Module to allow learners to analyse the practical operation of Administrative Law from two differing institutional perspectives.

### **2.5.3 Minimum intended module learning outcomes**

On successful completion of this module, learners will be able to:

- (i) Analyse core provisions of administrative law and how they relate to other areas of law;
- (ii) Critique the societal impact of administrative law;
- (iii) Interpret relevant case law and legislation;
- (iv) Evaluate the procedure and principles of judicial review and their nexus with administrative law;
- (v) Apply rules and principles of administrative law to factual scenarios;
- (vi) Employ research skills and communicate effectively on matters of administrative law;

### **2.5.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs**

The main goal of administrative law is to protect the interests of the public as it interacts with government departments and public bodies. It is a vital area of law regulating how the public interact with a range of governmental and public services. Administrative Law also governs the decision-making processes adopted by public bodies. As such, it is a key area of learning with relevance across a range of disciplines and professions.

It is also a required Module for learners wishing to progress to the Honorable Society of King's Inns. This module serves to directly underpin programme learning outcomes 1, 4, 5, 6,10.

### **2.5.5 Information provided to learners about the module**

Learners will receive the following resources and materials in advance of commencement including:

- Learner Handbook;
- Timetable (directly via email);
- Module descriptor;
- Module learning outcomes;
- Assessment strategy;
- Reading materials;
- Class Notes (on a weekly basis).

Additionally, this material will be made available through Moodle, the College Virtual Learning Environment, along with other relevant resources and activities.

### **2.5.6 Module content, organisation and structure**

Administrative Law is a 5 ECTS credit module taught and assessed over one academic semester. The module is delivered over 12 lecture sessions of 2 hours duration for full time and part time learners. They have been articulated using the *Quality and Qualifications Ireland (QQI) Awards Standards for Honours Bachelor of Laws and Master of Laws (July 2014)* and for *Generic Higher Education and Training (July 2014)*.

## Module Curriculum

- Introduction: Historical Background and Administrative Law Fundamentals
- Principles of Judicial Review and Judicial Review Procedure
- Fair Procedures – Audi Alterem Partem
- Fair Procedures – Nemo Iudex in Causa Sua
- Doctrine of Administrative Unreasonableness
- Legitimate Expectation
- Doctrine of Jurisdiction
- Remedies and Reliefs
- Principles of Local Government Law
- Case studies: An Bord Pleanála (The Planning Board); the Office of the Ombudsman

### 2.5.7 Module teaching and learning (including formative assessment) strategy

The module uses participative lectures, which consist of tutorial-style discussions, group work sessions and exercises. The lectures are supplemented by structured on-line resources and directed reading. Formative assessment is provided in the form of interactive exercises such as directed class discussion topics which reference current affairs pertaining to Administrative Law at the time of instruction. Formative assessment is also provided through tutorial-style discussions, group work and exercises. These focus on specific case law and problem-based learning requiring learners to analyse the law and apply it to practical administrative law disputes or issues.

Learners also engage in collaborative work in pairs or small groups to brainstorm what learning has been achieved at the end of lectures. In order to support learners through the examination process, they engage in the answering of sample examination questions and correction of their own or peer's papers, thereby familiarising themselves with the marking criteria. Learners also engage in activities where they draft their own exam questions in order to recap and consolidate a particular topic.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

### 2.5.8 Work-based learning and practice-placement

The Administrative Law module is a class based 5 ECTS credit module and does not require work-based learning and practice placement.

### **2.5.9 E-learning**

Moodle, the College Virtual Learning Environment, is used to disseminate notes, advice, and online resources to support the learners. The learners are also given access to Lynda.com as a resource for reference.

### **2.5.10 Module physical resource requirements**

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module.

Moodle can be accessed in the learner's home, various open labs on campus and in the library.

The College library has a dedicated law section and online legal research tools (Justice One, Westlaw, Hein Online).

### **2.5.11 Reading lists and other information resources**

#### **Primary Reading:**

*Donson, F. & O'Donovan, D. (2015) Law and Public Administration in Ireland, Dublin: Clarus Press.*

*Hogan, G. & Morgan, D. (2010) Administrative Law in Ireland. Dublin: Round Hall*

*Morgan, D. (2012) Administrative Law in Ireland. Dublin: Round Hall*

#### **Secondary Reading:**

*Carolan, E. (2018) Judicial Power in Ireland. Dublin: Institute of Public Administration*

*Biehler, H. (2013) Judicial Review of Administrative Action: A Comparative Analysis. Dublin: Roundhall.*

*Holmes, M. (2014) Administrative Law, Dublin: Thomson Roundhall*

*Craig, P. (2016) Administrative Law. London: Sweet & Maxwell*

*Wade, W. & Forsythe, C. (2014) Administrative Law. Oxford: Oxford University Press*

### **2.5.12 Specifications for module staffing requirements**

Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

### **2.5.13 Module summative assessment strategy**

Theoretical knowledge will be assessed by both continuous assessment (40%) and a summative end of year examination (60%). The continuous assessment shall consist of a written assignment (40%). The examination will consist of both essay and problem style questions. Essay style questions will place emphasis on the demonstration of understanding pertaining to Administrative Law. Problem Style questions will enable learners to apply the principles of Administrative Law to a factual scenario.

The assessed work breakdown can be seen in the table below.

| No | Description | MIMLOs            | Weighting |
|----|-------------|-------------------|-----------|
| 1  | Exam        | i, ii, iii, iv, v | 60%       |
| 2  | Assignment  | iii, vi           | 40%       |

#### 2.5.14 Sample assessment materials

##### SAMPLE ASSIGNMENT

“While there is no doubt that the doctrine of Legitimate Expectation is similar to and probably founded upon the equitable concept of promissory estoppel...it has in fact been *extended* well beyond the bounds of that doctrine.”

*(Abrahamson v Law Society of Ireland [1996] 1 IR 403, per McCracken J.)*

With reference to the above quotation as well as to relevant case law and statute, critically discuss the development of the law as it relates to Legitimate Expectation in Ireland.

**Marking Criteria** – See Appendix 1

##### Sample Examination

Answer any three of the following questions.

All questions carry equal marks.

##### Question 1

Outline and critically discuss the approach of the Irish courts, under both the Conventional and Non-Conventional Procedures, to determining whether an applicant is entitled to leave for Judicial Review. Your answer should have due regard to relevant case law.

##### **Sample Answer 1**

*This Question requires the students to explain and discuss the specific legal criteria that must be met in order to obtain leave to bring Judicial Review Proceedings under both the Conventional and non-Conventional procedures. In particular, students must be able to identify and explain what both these procedures are and the different legal basis to both: Order 84 RSC (as amended); Section 50, Planning and Development Act 2000 (as amended), Illegal Immigrants (Trafficking) Act 2000. Students must then specifically identify each of the steps that must be satisfied. They must also set out, where applicable, the different tests for each of these steps depending on whether the application is one for Conventional or Non-Conventional JR: (a) Locus Standi; (2) Arguable v Substantial Case (3) Time Limits (4) Alternative Remedies. Students must also refer to relevant caselaw in their answer, in particular: G v DPP 1 IR [1994] 374; Lancefort v An BordPleanala [1999].*

##### Question 2

Kieran owns a farm on the outskirts of Fermoy, County Cork. Cork County Council and the National Roads Authority are proposing to build a (fictitious) inner by-pass around Fermoy. The proposed route will cut through Kieran’s farm. Cork County Council therefore wishes to

acquire Kieran's farm and accordingly have served a Compulsory Purchase Order on Kieran in respect of the farm. Kieran objects to the acquisition as it will severely damage his farming business and his livelihood. Pursuant to statute, a hearing has been arranged between Kieran and Cork County Council in order to adjudicate on his objections to the proposed construction of the by-pass. As part of this process, Kieran attends at the hearing. He is forced to represent himself because the governing legislation does not allow him to have legal representation. Kieran has engaged an expert to assist him in his objection. His expert, Mr. Baldwin, is a leading traffic management engineer who advises Kieran that an outer by-pass would be much more effective than an inner by-pass for Fermoy's traffic management. Kieran seeks to call Mr. Baldwin to present his evidence but Cork County Council refuses this request, stating that they are already satisfied that the inner by-pass is the best solution.

Cork County Council also advises Kieran that they engaged an expert, Mr. Anderson, to investigate his lands and that he has reported back to them that the disturbance to Kieran's farm as a result of the inner by-pass will be minimal. Kieran has never seen this report and requests Cork County Council to facilitate his cross-examination of Mr. Anderson. The County Council refuse this request explaining that Mr. Anderson is not in attendance at the hearing because he had to attend another hearing out of Ireland.

Advise Kieran as to whether in the above circumstances there have been any breaches of his rights to fair (audi alteram partem) procedures.

### **Sample Answer 2**

*This Question requires students to identify (a). the general entitlement of individuals to fair procedures and (b). the ingredients of that entitlement: in particular, the right to sufficient notice and the right to prepare/present your case. Students are also required to refer to relevant caselaw in support of their answer under both headings (a) and (b). In the first part (a), students must be able to identify that this situation directly or potentially affects Kieran's legal/constitutional rights (property). Therefore, the entitlement to natural/constitutional justice under Article 40.3 of Bunreacht na hEireann applies. Better students will also raise Article 6 of the European Convention on Human Rights. Students should also set out the scope of that general entitlement; what a person is entitled to depends on the seriousness of the situation and facts of each case. Under the second heading (b), students must set out and explain the specific ingredients of that entitlement under Irish law, including the criteria relating to sufficient notice/information about a decision, oral hearing, legal representation, witnesses, cross-examination. Having done so, the student must then apply this law to the facts of the problem and advise whether there has been a breach of the right to fair procedures in Kieran's case. In this question, Kieran is entitled to fair procedures because of the proposal to interfere with his legal/constitutional rights (property, right to earn a livelihood). There has been a breach of Kieran's right to fair procedures because, in particular, he is deprived of the right to legal representation; his request to bring a witness is refused; his request to cross-examine a relevant witness (on a material conflict of evidence) is refused.*

### **Question 3**

Amanda sells fur coats at her shop in Dublin and recently brought an unsuccessful case against Barbara before the Financial Claims Court (fictional) in which she sought compensation for damage which she alleged was caused to the shop by Barbara. Two judges, Salmon J. and Rivers J., heard the case. Amanda considers that the judges may have been biased in favour of Barbara. Amanda raised an objection of bias during the case but this was dismissed by the Court. The circumstances supporting Amanda's objection of bias are as follows. Before being appointed as a judge, Salmon J. had, some five years ago, acted as counsel for Barbara in her action against a hospital. He had also previously advised Barbara over a period of twenty years on a long-running dispute between Barbara and her family concerning the ownership of land left by Barbara's grandfather. Furthermore, the barrister representing Barbara in the case against Amanda was the son of Rivers J. During the hearing of the case, Amanda's legal team requested some time to consider documentation provided only that very day by Barbara. Salmon and Rivers JJ. refused to allow a short adjournment for that purpose. It has also since come to light that Rivers J. had put his name to a letter of complaint concerning the sale of fur coats and animal furs in Dublin.

Advise Amanda as to any grounds for seeking to quash the decision of the Financial Claims Court for breach of the *nemo iudex in causa sua* rule.

### **Sample Answer 3**

*In this Question, the student is required to identify the general right to an impartial adjudication of a dispute and the specific legal criteria used to determine if an adjudicator has breached the rule against bias. Students must refer to and apply relevant caselaw in their answer. Students must be able to identify and explain the test for bias in Ireland: including, subjective v objective bias/reasonable perception of bias; material interest; ill-will or malice; relationship with one of the parties; prior knowledge/involvement in the facts & pre-judgment; impropriety in the court proceedings; doctrine of necessity. Important cases include O'Reilly v Cassidy; Bula v Tara Mines (No. 6); Spin Communications Ltd v IRTC; Dublin Well Woman Centre v Ireland. Students should also be able to identify the distinction made between a court "administering justice" and a quasi-judicial body not "administering justice". Students must then apply the law to the facts of the Question given to them. Relevant facts include: Did Amanda's legal team raise the issue during the proceedings? Is the apprehension that Amanda has (due to the longstanding involvement between Salmon J and Barbara) reasonable? How should the role of the River J's son (representing Barbara) be assessed? What is the effect of the letter by Rivers J and his views therein?*

### **Question 4**

*"The O'Keefe standard of administrative unreasonableness review is an inappropriately stringent one, particularly in the context of human rights cases, and has been in need of change for some time."*

Critically discuss the above statement, having due regard to relevant case law (including the Supreme Court decision in *Meadows v. The Minister for Justice, Equality and Law Reform & Others* [2010] 2 I.R. 701).



#### **Sample Answer 4**

*In this Question, the student is required to explain the principle of administrative unreasonableness and how this principle has developed in Ireland over recent decades: administrative irrationality; no reasonable authority could have arrived at the decision. The student is required to have a good knowledge of relevant caselaw and the legal tests that are set out. Students are also required to know and assess the developments in this case law; the test for administrative reasonableness set out in O’Keeffe v An Bord Pleanala must be identified and explained: “no evidence” rule; division of competence between courts and expert bodies. Other important cases in this answer include: Associated Provincial Picture House v Wednesbury Corp [1948]; State (Keegan) v Stardust Compensation Tribunal [1986]. Students should then identify how this test has been refined in recent years (proportionality test) and the purpose behind this refinement: including, Meadows v Minister for Justice [2010]; S(O) v Minister for Justice [2010]. Students are required to give their conclusion on this statement in light of their assessment.*

#### **Question 5**

Monica is a young mother with a three-year-old child. She has been on the social housing list for over four years now and is currently raising her child in a hotel room. There is no privacy or suitable facilities for cooking or washing. Monica is also concerned about strangers coming and going through the hotel at all hours of the night. Through her friend, Sally, who works in a non-Governmental organisation (NGO), Monica has been writing to the Department of the Environment asking the Department what steps they have been taking to deal with this crisis and when she, personally, is likely to receive a suitable housing unit from the Social Housing List. Last Monday, she received a letter back from an official within the Department stating that Housing Policy is a matter solely for the Government and that, if she had any queries about the housing list, she should pursue it with the City Council directly. However, the official did continue to inform her that, due to the pressures currently on public resources, it is unlikely that there will be an improvement in her situation in the near future. Monica is totally shocked by this as she is now very concerned about the effect her current accommodation is having on the health and safety of her child.

Monica shows the letter to her friend, Sally, who informs her that her personal and family rights are protected under Bunreacht na hEireann 1937 and that Monica should take legal action to challenge this. Sally also informs Monica that she is aware that other parties had succeeded in the past in obtaining an Order against the State declaring that the State had breached their constitutional rights and that secure accommodation should be provided to them. Monica now comes to your firm for legal advice. She wishes to know whether she can challenge the policy of the State regarding Housing by way of Judicial Review in the courts. Since she is also very concerned about legal costs, she also wants to know whether she can enforce any order in her favour against the State. Citing relevant case law, advise Monica.

### **Sample Answer 5**

*This Question deals with the topic of Remedies and Unconstitutionality. It requires students to identify and explain the issue of the principle of the Separation of Powers and the effect this has on the reliefs available to the court in judicial review applications. In particular, students are required to identify and discuss in detail the role of Mandatory and Declaratory Reliefs in constitutional actions against the Executive; students must identify and explain the special position of Administrative/Executive policy concerning the use of public resources. Students should be able to explain the concepts of Distributive and Commutative Justice: O'Reilly v Limerick Corporation. Students are then required to identify and explain the purpose of Declaratory Orders and the manner in which they are used by the courts: O'Donoghue v Minister for Health; Doherty v Government of Ireland; FN v Minister for Education. Students are then required to explain and discuss the use of Injunctions; the manner in which they are used by the courts in the context of Executive/Administrative Policy and the tests that have been applied by the courts including changes in those tests: Comerford v Minister for Education [1997]; O'Donoghue v Minister for Health [1996]. Students are required to identify and explain the difference between Mandatory and Prohibitive Injunctions. Students are required to explain the circumstances when the courts are willing to grant Mandatory Injunctions/orders against the Executive in terms of the expenditure and allocation of public resources: DB v Minister for Justice [1999] 1 ILRM 93; TD v Minister for Education [2000] 3 IR 62; O'Reilly v Limerick Corporation [1989] ILRM 181; Cronin v Minister for Education [2004] 3 IR 205; Doherty v Government of Ireland [2010] IEHC 369. Particular reference to the test as outlined by Kelly J in DB v Minister for Justice is required as well as the manner in which this test was later considered by the Supreme Court. Students are then required to apply the law outlined to the particular facts of the case and draw relevant and clear conclusions from their analysis.*

### **Question 6**

*"[F]airness, if it is to mean anything, must include fairness of outcome and this is why the doctrine of legitimate expectations has emerged as a distinct application of the concept of abuse of power in relation to substantive as well as procedural benefits." Delany, Judicial Review of Administrative Action, 2<sup>nd</sup> ed. (Dublin: Thomson Round Hall, 2009)*

Critically discuss the extent to which the Doctrine of Legitimate Expectation achieves this aim. Your answer should have due regard to relevant case law.

### **Sample Answer 6**

*In this Question, students are asked to discuss how Legitimate Expectation achieves fairness of outcome in administrative decision-making. Students are required to identify and discuss the development of the remedy and the ingredients that must be met in order for it to apply to a given situation: Webb v Ireland [1988]; Tara Prospecting v Minister for Energy; Abrahamson v Law Society. Important ingredients to be identified and discussed include: a public statement by a public body amounting to a representation; conveyed to an identifiable person or group of persons; reasonable to rely on such representation: Glencar v Mayo County Council (No. 2)*

*[2002]; Power v Minister for Social and Family Affairs [2007]. The student must then identify and explain the two ways in which LE may operate: procedural expectation; substantive expectation. Better students will identify that reliance on the expectation may not be to the detriment of a person: Daly v Minister for the Marine [2001]. Better students will also be able to identify that LE does not apply to statute: Clinton v Minister for Justice, Equality & Law Reform [2010]. The issue of reliefs for LE must then be referred to by students, including the right to damages: Lett v Wexford Borough Council [2012].*