

ADMINISTRATIVE LAW: CASES AND MATERIALS

J. Beatson and
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Administrative Law

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Cases and Materials

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PREFACE

Our aim in preparing these materials has been to cater for Administrative Law courses in which judicial control of the administration forms a central part while, at the same time, introducing the student to the way administrative bodies work in practice – the ‘administrative process’ approach to the subject. Both the nature of the subject-matter and constraints on the length of the book have meant that we have not been able to include as much material on the administrative process as we would have liked. The main problem is that dealing with such material tends to a greater involvement with the substantive law of a particular context than is possible or even desirable in a collection of materials on the general principles of Administrative Law. The choice is either to concentrate on one area – with obvious dangers of distorting the general picture – or to court the greater danger of a *pot pourri* of points divorced from their context. The wealth of material in the area of social security has meant that, to some extent, we have concentrated on that in dealing with the administrative process. But in view of our wish to illustrate the general principles of Administrative Law, we have selected material which we think will be helpful in evaluating (a) the doctrines imposed by the courts, for instance the requirement that discretion should not be fettered by rules, (b) suggestions for reforms, for instance that legal aid be available in tribunals, and (c) the relative utility of judicial review and other methods of control, such as parliamentary supervision in the case of delegated legislation.

Although we have included Notes to the extracts, this book is meant to be used together with a textbook. We hope that it can be used with any of the Administrative Law textbooks. We have, however, broadly adopted the structure and arrangement used in Professor H. W. R. Wade’s *Administrative Law* in the hope that it will be particularly useful to students who use that book. Not all the topics that are covered in the textbooks are directly transferrable to the casebook format, and we have taken the view that introductory material and descriptions of the types of administrative authority and variety of administrative functions are most appropriately dealt with in a textbook. Much of the material in Parts I and II of Professor Wade’s book is of this nature and is not dealt with by us, although we do refer to it in the Notes. We have, however, included material on the Crown and Crown service in Ch. 14, material on land use planning in Ch. 17, and a separate chapter on the Parliamentary Commissioner for Administration (Ch. 18) will be found in the section on Legislative and Adjudicative Procedures. Restrictions of space have meant that material on the local ombudsman has been omitted. While this is a loss, we feel that the chapter on the Parliamentary Commissioner suffices to show the way ombudsmen work and the advantages and disadvantages of the institution for dealing with maladministration. It

will also be noted that we have not included a specific section on the classification of functions, but deal with this in the General Introduction where we refer the reader to cases extracted which deal with the question.

The fact that this is a casebook rather than a textbook has led to some rearrangement. In the section on Discretionary Power we have departed from Professor Wade's arrangement to a greater extent than elsewhere because we thought it would be useful to have a general introductory chapter to the topic (Ch. 4). We thought that in a casebook the detailed discussion of the judicial review of discretionary power in Chs. 5 and 6 (Retention and Abuse of Discretion) would be clarified by extracts containing a statement of basic principles of the sort found at pp. 347–59 of Professor Wade's book. Some other changes in the order of the material will be found in the chapter on abuse of discretion. More generally, note also that the material on 'acting fairly' is dealt with at the end of Ch. 8 (The Right to a Fair Hearing), the material on estoppel is all in Ch. 5 (Retention of Discretion), that on failure to state reasons is concentrated in Ch. 1 (The Legal Nature of Powers) and discussion of the distinction between law and fact is in Ch. 2 (Jurisdiction over Law and Fact) rather than in Ch. 17 (Statutory Tribunals). In these cases and indeed quite generally we have used headings and the titles of extracts as cross-references to indicate the various contexts in which a particular extract is relevant.

In the area of remedies the particularly fluid state of the law since the recent reforms has caused problems. After the manuscript had been submitted, the decision of the House of Lords in *O'Reilly v. Mackman* was reported. We were able to retrieve the manuscript and, under pressure of time, to insert extracts from Lord Diplock's speech in Ch. 10 and to take some account of the implications of this important decision in other parts of the book. At that stage, it was, however, not possible to deal in the body of the book with the distinction between 'public' law and 'private' law which that case has made particularly important; but the publishers kindly allowed us to do this in a short Appendix. As will be seen, there are some difficulties with the distinction and although it had appeared in the case law before *O'Reilly v. Mackman*, for instance, in *Anns v. Merton L.B.C.*, it was less important. For those reasons, we referred to 'Administrative Law' rather than 'Public Law' in the body of the book. Moreover, in respect of some topics, such as the availability of 'ordinary' remedies (Ch. 9), we have taken the view that it is too early to predict the precise effect of *O'Reilly's* case with confidence and have kept material that may in the event turn out to be no longer apposite in a book on Administrative Law, although, as mentioned above, some changes have been made. For example, we did decide to delete the extracts from *Punton (No. 2)*. Before the decision in *O'Reilly v. Mackman*, we had taken the view that despite the introduction of the application for judicial review, enabling an applicant to seek either a prerogative remedy or declaratory relief by one procedural form, and the fact that errors of law were more likely to be found to be jurisdictional (see p. 53 *infra*), it was not altogether clear that the controversy about the availability of declaratory relief for non-jurisdictional

errors of law on the face of the record – the *Punton* (No. 2) problem – was no longer a live issue: see for instance the reasoning in *Re Tillmire Common, Heslington* [1982] 2 All E.R. 615 at p. 622. However, the fact that the application for judicial review is now for most purposes the exclusive procedure in ‘public’ law cases made it clear to us that we could no longer justify an extract from *Punton* (No. 2). We have therefore only dealt with it in a Note.

Many friends and colleagues have helped us in the preparation of these materials. We owe particular debts to Tony Honoré for suggesting the idea, to Professor Wade for his encouragement and for kindly letting us see the proofs of the 5th edition of his book, to David Williams for reading the entire manuscript and for his valuable comments, to Eric Barendt, Peter Cane, Paul Craig, David Pannick and Adrian Zuckerman for help and suggestions on specific points and to Jane Macdonald for preparing the Tables and the Index. We, of course, remain responsible for our mistakes and misjudgments. We also owe debts of a different kind to Adam Hodgkin and the Oxford University Press for forbearance and almost limitless patience, and to our families for their cheerful tolerance of us during the preparation of the book.

We have endeavoured to take account of cases reported and material available before July 1982 although, as well as the House of Lords decision in *O'Reilly v. Mackman*, we managed to take some account of *Chief Constable of the North Wales Police v. Evans*. We were also able to include some cases at the proofs stage. The Appendix contains short notes on *R. v. B.B.C., ex p. Lavelle*; *Davy v. Spelthorne B.C.*; *R. v. Secretary of State for the Home Department, ex p. Khawaja*; *R. v. Knightsbridge Crown Court, ex p. The Aspinall Curzon Ltd.*; *R. v. Boundary Commission, ex p. Foot*; *R. v. I.R.C., ex p. Preston*; *R. v. Rochdale M.B.C., ex p. Cromer Ring Mill Ltd.*; *Attorney General for Hong Kong v. Ng Yuen Shiu*; *Cheall v. A.P.E.X. and Air Canada v. Secretary of State for Trade* (No 2). Unfortunately it did not prove possible to take into account the Health and Social Services and Social Security Adjudications Act 1983 which received the Royal Assent on 13 May 1983. When in force, this Act will, *inter alia*, provide for adjudication officers who will perform the functions of insurance officers appointed under the Social Security Act 1975, benefit officers appointed under the Supplementary Benefits Act 1976, and supplement officers appointed under the Family Income Supplements Act 1970. (See p. 546 n. 9.) Of particular importance to this book, since it contains many references to supplementary benefits appeal tribunals, is the provision to be found in para. 2 of Sch. 8 to the Act. This establishes social security appeal tribunals which will take over the functions of local tribunals under the Social Security Act 1975 and of appeal tribunals under the Supplementary Benefits Act 1976. References to supplementary benefits appeal tribunals will in particular be found in Chs. 4, 5, and 16.

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1 June 1983

J.B.
M.H.M.

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