

# **SUPPORT de COURS**

**ANGLAIS JURIDIQUE  
SEM 1**

**Droit et Contentieux Publics Approfondis M2  
2018 – 2019**

**Université de Nice - U.F.R. de Droit**

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The purpose of this course in English for Specific Purposes (ESP) is to come to grips with the terminology used in the field of services under Public Law. A sound grasp of the basic concepts in this domain will enable the learner to understand, *inter alia*, some differences between Public law in a codified and common-law legal system, legal services and government procurement issues. Language exercises and definitions incorporated in the text will enhance the understanding of the content.

## 1. COMPARATIVE LAW:

### CONSTITUTIONAL & ADMINISTRATIVE LAW

“It is trite to observe that the past three decades have seen an ‘explosion’ in comparative law. Equally well-worn territory is the fact that constitutional law has been a particular beneficiary of the comparative trend, despite the fact that for much of the twentieth century comparative lawyers tended to avoid public law topics. However, one field of law that has been conspicuously absent from the boom in comparison, at least outside of Europe, is administrative law. This article analyses why the use of comparison has been so vastly different between the two areas of public law. It then surveys some recent developments in administrative law and points to a number of aspects of the field that would benefit from the wider use of comparative methods across the world.”<sup>1</sup>

#### 1.1. Definitions:

Complete the following definitions by choosing the appropriate nouns from the boxes below.

##### a) Comparative law

cultures / relationship / rules / similarities / study / systems

Comparative Law, as a ..... of the ..... between ..... of more than one system, their differences and ....., is a method of comparing legal ..... that produces results relating to the different legal ..... being analysed.

##### b) Constitutional law

affairs / branch / functions / sovereignty / structure / subject

Constitutional law is that ..... of the public law of a state which covers the organisation and ..... of government, the organs and powers of ....., the distribution of political and governmental authorities and ....., the fundamental principles which are to regulate the relations of government and ....., and which prescribes generally the plan and method according to which the public ..... of the state are to be administered.

##### c) Administrative law

agencies / body / decision-making / enforcement / government / scheme

Administrative law is that ..... of law that governs the activities of administrative ..... of government, which can include rule making, adjudication, or the ..... of a specific regulatory agenda and therefore deals with the ..... of the administrative units of ..... (for example tribunals, boards or commissions) that are part of a national regulatory ..... in such areas as police law, international trade, manufacturing, the environment, taxation, broadcasting, immigration and transport.

#### 1.2. COMPARATIVE ADMINISTRATIVE LAW<sup>2</sup>

The field of administrative law is inextricably bound to two phenomena that trace their origins to the nineteenth century: the rise of large state bureaucracies designed to fulfil a complex array of societal needs and the development of liberal democratic norms of social organization and public authority. Much of administrative law can be understood as an attempt to work out the tension inherent in these two phenomena: the recognition that the attainment of public purposes is contingent on a cadre of full-time

<sup>1</sup> Boughey, Janina "Administrative Law: The Next Frontier for Comparative Law" (2013). *International & Comparative Law Quarterly*, Volume 62, issue 1 pp.55-95

<sup>2</sup> Bignami, Francesca. « Comparative administrative law » (Edited by Mauro Bussani, Università degli Studi di Trieste, Ugo Mattei, Università degli Studi di Torino, Italy), Cambridge University Press pp 145-170 <<https://doi.org/10.1017/CBO9781139017206.010>>

employees, paid by the public purse and loyal to the state, and, at the same time, the belief that public authority is legitimate only if embedded in democratic politics and liberal societies. To put it more succinctly, these are the objectives, on the one hand, of neutrality and expertise, and, on the other hand, of democracy and liberal rights.

The common aspiration of making public administration both capable and accountable serves as the springboard for the comparative analysis [...]. The hallmark of modern bureaucracy – the legal guarantees of civil service employment – [... and ...] national variations in the professionalization of administration and contemporary efforts to cut back on civil service guarantees. [...]. Three important types of accountability:

- a) the contestation of administrative action before the courts,
- b) the involvement of organized interests in administrative policymaking, and
- c) informal accountability to the general public through parliamentary ombudsmen and transparency guarantees.

These categories serve as a framework for exploring the similarities and differences that shape contemporary administrative law systems. [It is concluded] with the increasingly important phenomenon of the globalization of administrative law and the rapid migration of administrative principles across legal systems throughout the world, both national and international. [...]

**1.2.3. Study Bignami’s summary (above) and answer these questions.**

**i) What gave rise to the development of administrative law?**

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**ii) What does administrative law entail?**

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**iii) What is the purpose of creating bureaucracy?**

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**iv) What is accountability? Give examples.**

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**v) What do you understand by Globalisation of Administrative law?**

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### 1.3. Comparative Administrative Law: Outlining a Field of Study<sup>3</sup>

1.3.1. Consulting the French text complete the English text by choosing the appropriate words below.

accountability / aims / claim / considers / contested issue / highlight / inquiry / regulatory bodies / test

Comparative administrative law is emerging as a distinct field of ..... after a period of neglect. To demonstrate this ....., the authors summarise their edited volume on the topic - a collection that ..... to stimulate research across legal systems and scholarly disciplines. After a set of historical reflection, the authors consider key topics at the intersection of administrative and constitutional law, including the ..... of administrative independence.

Two further sections ..... tensions between expertise and ....., drawing insights from economics and political science. The essay then ..... the changing boundaries of the administrative state - both the public-private distinction and the links between domestic and transnational ..... , such as the European Union. The essay concludes with reflections on a core concern of administrative law: the way individuals and organisations across different systems ..... and challenge the legitimacy of public authority.

*Le droit administratif comparé est en train de se manifester comme domaine d'étude distinct suite d'une période pendant laquelle il a été négligé. Pour démontrer cette affirmation, les auteurs présentent un sommaire du volume a ce sujet dont ils dirigent la publication - une collection qui vise à stimuler la recherche au sein de divers systèmes juridiques et diverses disciplines d'érudition. Après une série de rejections historiques, les auteurs traitent de questions-clés qui reviennent en même temps du droit administratif et du droit constitutionnel, y compris la question controversée de l'indépendance administrative.*

*Deux autres sections mettent en lumière des tensions entre l'expertise et l'obligation de rendre compte, puisant dans les sciences économiques et politiques. L'article traite ensuite des limites changeantes de l'état administratif- d'une part, quant à la distinction public-privé et d'autre part, quant aux liens entre les organismes de réglementation domestiques et transnationaux, telle que l'Union européenne. L'article se termine avec des réflexions sur une préoccupation de fond du droit administratif : la façon dont les individus et les organisations dans des systèmes différents mettent à l'épreuve et contestent la légitimité de l'autorité publique.*

1.3.2. Study the following sections from Susan Rose-Ackerman's<sup>4</sup> "Comparative Administrative Law: Outlining a Field of Study (APPENDIX 1) and answer the questions.

- Administrative Law as historical institution
- Constitutional structure and administrative law
- Process and policy
- The boundaries of the state: transitional administration in the EU
- Conclusions

<sup>3</sup> Rose-Ackerman, Susan, "Comparative Administrative Law: Outlining a Field of Study" (2010). Faculty Scholarship Series. Paper 4154.

<sup>4</sup> Yale Law School Legal Scholarship Repository, Faculty Scholarship Series Yale Law School Faculty Scholarship (1-1-2010)

**Vocabulary:** Write the number (#) of the corresponding French translation in the middle columns.

ENGLISH	#	FRENCH
accountability		1. extraction
albeit		2. interface
at stake		3. protestation
backbone		4. subsidiarité
beyond		5. imposer
blocking		6. limiter
boundaries		7. fondamental
drawbacks		8. limites
drawn on		9. au-delà
elsewhere		10. processus
enforcement		11. bien que / quoi que
entities		12. ailleurs
entrenching		13. audiences
extrication		14. inévitablement
hearings		15. judiciaire
in tandem		16. primordial
inevitably		17. politiques
insofar		18. diffuser
interface		19. se conformer
judicial review		20. rarement
judiciary		21. exigences
legitimacy		22. fonctionnaires
network		23. Règle de droit
outcomes		24. comporter
outcry		25. considéré vrai
overarching		26. intervenir
overreaching		27. dépendance
owing to		28. obstruction
policies		29. mise en vigueur

ENGLISH	#	FRENCH
prior to		30. réseau
process		31. en raison de
provisions		32. entraver
public servants		33. contraindre
realm		34. en association avec
reliance		35. dans la mesure où
requirements		36. domaine
right		37. responsabilité
reviewing		38. dispositions
Rule of law		39. en jeu
safeguarding		40. antérieurement à
seek to		41. soutien
seldom		42. entités
spurred		43. chercher à
standing		44. vérifier
subsidiarity		45. désavantages
to check		46. révision
to conform		47. position importante
to constrain		48. tripartite
to enforce		49. dépassement
to entail		50. examen judiciaire
to hamper		51. encourager
to hold true		52. énormément
to narrow		53. résultats
to spread		54. être inscrit
to step in		55. protéger
tripartite		56. puiser (profiter)
underlying		57. droit
vastly		58. légitimité

**Questions: ADMINISTRATIVE LAW AS HISTORICAL INSTITUTION**

1. Give a short explanation why Administrative law is continuously developing.

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2. Are there reasons to believe that Administrative law developed differently in the world?

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3. What are the substantive and procedural distinctions known as today?

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4. What are the differences between codified systems and common-law systems, substantive and procedural distinctions known as today?

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5. Why is East Asia considered “a pioneer in the development of constraints on specifically administrative action?”

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6. How did that East Asian law differ from the Western tradition?

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7. What marked the emergence of administrative modernity in the Western world?

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8. What brought about the changes in the East Asian tradition?

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9. Why did public servants in Europe and the United States not conform to the Weberian<sup>5</sup> type of bureaucracy?

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<sup>5</sup> Max Weber, a German sociologist, argued that bureaucracy constitutes the most efficient and rational way in which one can organise the human activity and that systematic processes and organised hierarchies are necessary to maintain order, maximize efficiency, and eliminate favouritism.

10. Name examples of changes in the functions of the state in the 20<sup>th</sup> century that influenced the development of administrative law.

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**Questions: CONSTITUTIONAL STRUCTURE AND ADMINISTRATIVE LAW**

11. Explain how Administrative law has influenced by differences in constitutional structure across various states.

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12. What is PPT and what is its function?

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13. How does US-focused PPT differ from similar actions in Europe?

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14. How can one reconcile established legal traditions with pragmatic efforts to better balance expertise and accountability with the protection of individual rights?

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**Questions: PROCESS AND POLICY**

15. Why do public agencies promulgate regulations for many different purposes?

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16. Explain why judicial review, except where human rights or other constitutional prescriptions are at stake, does not usually take on the merits of broad policy choices.

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17. How can White House review of regulations help the president control the content of major regulations produced by executive branch agencies?

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18. How does the American approach differ from procedures in Europe?

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19. How can agencies be stopped from adopting measures that benefit narrow interests?

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Questions: THE BOUNDARIES OF THE STATE: TRANSNATIONAL ADMINISTRATION IN THE EU

20. Give examples of entities with regulatory authority that can function beyond the state.

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21. Why do scholars deem Administrative law a s a structure for understanding denationalized regulatory power in the EU?

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22. How do leading European Administrative law scholars aim to make administrative activities of EU bodies more transparent?

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23. What influenced Administrative law in the EU?

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24. Do you think that the increase of transnational networks have put individual rights in jeopardy?

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**Questions: CONCLUSIONS**

25. Give a brief summary of Administrative law.

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26. What are the main aims of Administrative law?

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27. Distinguish between German, English and French approaches.

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28. Distinguish between East Asian and American approaches.

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**ORAL TASKS – Students will be expected to present their opinion on one of the following fields.**

- A. Differences in Administrative law between Common-law countries and France
- B. The Globalisation of Constitutional law
- C. Public-private partnerships (Contracting Out)

**EVALUATION**

Presence and participation in class + ORAL presentation (60%)

Written final task at the end of the course (40%)

**REFERENCES**

Bignami, Francesca. « Comparative administrative law » (Edited by Mauro Bussani, Università degli Studi di Trieste, Ugo Mattei, Università degli Studi di Torino, Italy), Cambridge University Press pp 145-170  
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## APPENDIX 1

*Supra* note 2 refers to: This essay is adapted from our introduction to Susan Rose-Ackerman & Peter L. Lindseth, eds, *Comparative Administrative Law* (Cheltenham UK: Edward Elgar, 2010). That volume resulted from a conference held at Yale Law School in May 2009 with the support of Yale Law School's Oscar N. Ruebhausen Fund.

### II. ADMINISTRATIVE LAW AS HISTORICAL INSTITUTION

Because administrative law is intimately bound up with the development of the modern state, the study of administrative law can usefully begin with historical reflections on its interactions with social and political change over the last two centuries. As a phenomenon in western history, the emergence of administrative law has been intimately tied to the increasing "specificity and subjectivity" of public administrative power since the end of the eighteenth century.<sup>6</sup> In Western Europe, and by extension in North America, "administrative power" and "administrative law" emerged in tandem over the course of the nineteenth century, although at clearly different paces.<sup>7</sup> Moreover, owing to quite different institutional and conceptual starting points, the results of this process often differed as well. The substantive and procedural distinctions are now well known: *Rechtsstaat*/*Etat de droit* enforced by specialized administrative judges in the continental tradition, on the one hand; and Rule of Law enforced by the ordinary judiciary in the Anglo-American tradition, on the other.<sup>8</sup>

Despite these differences, the conjunction between a specifically public administrative power within the state and a body of law to constrain that power holds true more broadly, as the experience of other regions of the world suggests. In East Asia, for example, although the term "administrative law" was unknown prior to contact with the West, the prevailing traditional system of government - with its commands from higher to lower level officials; its proliferation of regulatory mandates; its definition of competences; and its ambition for a "professional, disciplined, meritocratic, and rule-bound" body of public servants - suggests that East Asia may well have been something of a pioneer in the development of constraints on specifically administrative action.<sup>9</sup> Traditional East Asian law lacked, however, a realm of "private" right distinct from the realm of public governance. It is also certainly true that, up to the end of the eighteenth century, old regime monarchies in Europe ruled through a corporatist system of privileges and jurisdictions grounded in conceptions of right (notably "property") that we would today clearly see as private. Nevertheless, it was precisely the progressive extrication of "public" authority from this corporatist old regime by the end of the eighteenth century, as well as the development of a distinct corps of public servants to pursue and defend these new public prerogatives over the course of the nineteenth, that marked the emergence of administrative modernity in the Western world. However, with its eventual contact with the West, East Asian law, through a process of copying (what organizational theorists call isomorphism), began to mimic these basic features of a modern administrative law regime.<sup>10</sup>

Depending on the polity, this emergent corps of public servants in Europe, the United States and elsewhere did not necessarily conform to the Weberian ideal type of bureaucracy.<sup>11</sup> Over the course of the nineteenth century, what united the more bureaucratic forms of administrative power on the European continent with their relatively less bureaucratized counterparts in Britain and North America was the increasing importance of positive law - legislation - in framing the limits of public authority. And as legislatures increasingly democratized,<sup>12</sup> the pressure on the state to intervene in society also increased, whether via a Weberian bureaucracy or other mechanisms. This went along with demands that its agencies and officials operate in a legally constrained, transparent, and accountable fashion.

Moving from the nineteenth to the twentieth century, changes in the underlying functions of the state in the twentieth century influenced the development of administrative law.<sup>13</sup> The rise of industry with monopoly power and the privatization of formerly state - controlled sectors produced a demand for the control of

<sup>6</sup> Bernardo Sordi, "Révolution, Rechtsstaat, and the Rule of Law: Historical Reflections on the Emergence of Administrative Law in Europe" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 1.

<sup>7</sup> See e.g. Jerry Mashaw, "Explaining Administrative Law: Reflections on Federal Administrative Law in Nineteenth Century America" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 2.

<sup>8</sup> See e.g. Peter L. Lindseth, "'Always Embedded' Administration: The Historical Evolution of Administrative Justice as an Aspect of Modern Governance" in Christian Joerges, Bo Stråth & Peter Wagner, eds, *The Economy as a Polity: The Political Constitution of Contemporary Capitalism*, (London: UCL Press, 2005).

<sup>9</sup> John Ohnesorge, "Administrative Law in East Asia: a Comparative- Historical Analysis" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 5. Vol. 28(2) 437

<sup>10</sup> *Ibid.*

<sup>11</sup> Nicholas Parrillo, "Testing Weber: Compensation for Public Services, Bureaucratization, and the Development of Positive Law in the United States" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 3.

<sup>12</sup> See e.g. Charles Tilly, *Contention, and democracy in Europe, 1650-2000* (New York: Cambridge University Press, 2003) at 213-217 for "A Rough Map of European Democratization" over the nineteenth and twentieth centuries.

<sup>13</sup> Marco d'Alberdi, "Administrative Law and the Public Regulation of Markets in a Global Age" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 4.

markets to which all developed states responded, albeit in different ways. Moreover, administrative law has sometimes checked populist or democratic demands by giving organized and powerful economic interest groups a way to challenge policy. There is an ongoing tension in the political and historical analysis of administrative law. Public law provisions that are justified as a check on overarching state power can also be a means of entrenching existing private interests. Legal constraints may under some conditions limit the ability of democratic governments to constrain concentrated, monopolistic economic interests.

### III. CONSTITUTIONAL STRUCTURE AND ADMINISTRATIVE LAW

Turning to more present concerns, administrative law has been shaped by differences in constitutional structure across various states - for example, presidential or parliamentary; democratic or authoritarian; federal or unitary; tripartite or more multi-faceted. Constitutional texts and administrative law interact to shape the rights and duties of professional administrators, elected politicians, and judges. Even though public administration and the bureaucracy receive little detailed treatment in the texts of most constitutions, they form the backbone of state functioning.<sup>14</sup>

One way to approach the links between constitutional structure and administrative law is through the lens of political economy, and more particularly through the work of positive political theory [PPT]. Unlike explicitly normative work in constitutional law and political theory, PPT attempts to model state behaviour in terms of the self-interest of the actors involved.<sup>15</sup>

US-focused PPT would predict that parliamentary systems would provide for lower levels of judicial oversight of the administration than presidential systems. PPT explains judicial review in the US as a result of the legislature's desire to check the executive and its inability to do this effectively on its own. Thus, the legislature is the dominant actor that can assign tasks to the courts. In a parliamentary system the same political coalition controls both branches, and so legislators from the majority coalition would not want the courts to intervene to oversee executive action. In contrast to these expectations, comparative analysis finds that courts in the UK, France and Germany are, in fact, quite active in reviewing administrative actions.<sup>16</sup> Either the theory of legislative dominance has limited force, or other factors prevent the government from constraining the courts. The courts themselves seem to be independent actors at least insofar as they assert jurisdiction and oversee the executive. If judges believe that executive discretion needs to be controlled and if the legislature is doing little, they may step in, grant standing to public interest plaintiffs and limit executive power.<sup>17</sup>

Federalism and central/local relations are a key aspect of constitutional administrative structure in both the EU and the US. Strong notions of Member State sovereignty in the EU as well as dual sovereignty in the US make it difficult to carry out a coherent policy in either polity. It is all very well to speak of EU-style subsidiarity as a principle for dividing authority, but if the subordinate governments differ in their capacities and organization, and if they must cooperate to achieve policy goals, then simply allocating tasks down the governmental chain will not work. Both central control and cross-government cooperation are needed as well as local knowledge and implementation.<sup>18</sup>

This raises an important general issue. If the structures of administrative and constitutional law hamper competent policy implementation, how ought one to reconcile established legal traditions with pragmatic efforts to better balance expertise and accountability with the protection of individual rights? One of us has argued elsewhere that this challenge inevitably entails a complex mix of "resistance and reconciliation" - normative resistance animated by those constitutional traditions, on the one hand, but also a necessary degree of reconciliation to the demands for efficient problem solving, on the other.<sup>19</sup> The result, however, will almost certainly be suboptimal if judged by the criteria of either perspective alone.

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<sup>14</sup> Tom Ginsburg, "Written Constitutions and the Administrative State: On the Constitutional Character of Administrative Law" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 7.

<sup>15</sup> For a collection of articles that apply the approach to administrative law see Susan Rose-Ackerman, ed, *Economics of Administrative law* (Cheltenham UK: Edward Elgar, 2007).

<sup>16</sup> M. Elizabeth Magill & Daniel R. Ortiz, "Comparative Positive Political Theory" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 9.

<sup>17</sup> Tom Zwart, "Overseeing the Executive: Is the Legislature Reclaiming Lost Territory from the Courts?" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 10.

<sup>18</sup> Fernanda G. Nicola, "Creatures of the State: Regulatory Federalism, Local Immunities, and EU Waste Regulation in Comparative Perspective" in Rose-Ackerman & Lindseth, *supra* note 2 at ch.11.

<sup>19</sup> Peter L. Lindseth, *Power and Legitimacy: Reconciling I rope and the Nation-State* (Oxford: Oxford University Press, 2010).

## V. PROCESS AND POLICY

Public agencies promulgate regulations for many different purposes. They seek to correct market failures, protect rights, and distribute the benefits of state actions to particular groups - ranging from the poor or disadvantaged minorities to politically powerful industries such as agriculture or oil and gas. Executive policymaking in democracies raises issues of public legitimacy, and this is a central focus of administrative law in the United States where the notice and comment provisions of *the Administrative Procedure Act [APA]* guide the process.<sup>20</sup> These provisions require agencies to provide notice, hold hearings, and give reasons when they issue a rule. The final rule can then be subject to judicial review, which reaches beyond compliance with the procedural demands of the *APA* both to the rational underpinnings of the rule and to its consistency with the implementing statute.

Discussions of "good" policy by social scientists, risk analysts, and other specialists sometimes clash with the focus of American administrative law on transparency and participation. This tension between technical competence and mechanisms to promote legitimacy may be less evident in other legal systems where the law does little to constrain policymaking processes compared with the adjudication of individual administrative acts.<sup>21</sup> Judicial review, except where human rights or other constitutional prescriptions are at stake, does not usually take on the merits of broad policy choices.

For example, one can compare the way politics and policy making interact in the contrasting experience of the US and the EU. In the United States an executive order mandates White House review of major regulations produced in the core executive branch.<sup>22</sup> Such oversight extends beyond the implications of a program for the public budget and measures the costs and benefits for society at large. The cost-benefit approach has, moreover, been particularly influential in the United States, but, a similar technique, called Impact Assessment [IA], is becoming increasingly common in Europe.<sup>23</sup> There is a lively debate in Europe both over substantive review of policy based on economic principles and over the expansion of public participation and transparency requirements to cover rulemaking. However, this debate has had relatively little impact on administrative law, which has been largely silent concerning the policymaking process as opposed to decisions in individual cases.

Those urging greater reliance on economic criteria need to recognize that these approaches can themselves be tools to obtain political advantage. Thus, in the United States, White House review of regulations under cost-benefit criteria can help the president control the content of major regulations produced by executive branch agencies.<sup>24</sup> A tool, which appears neutral on its face, can be manipulated for political ends. This is possible because any cost-benefit analysis involves many judgment calls. Seldom will there be a single "right" answer that anyone trained in the technique will accept.<sup>25</sup> Thus, in a democratic polity cost-benefit analysis and similar technocratic tools, although useful in focusing policy debates, cannot be the sole criteria for choice.

However one views the debate over *process* as a matter of administrative law, it is a key area of contestation in terms of regulatory *policy*. The traditional tension in administrative law between technical expertise and accountability plays out somewhat differently in the US, the EU, and the UK. Courts can act as a counterweight to the prevailing ethos - upholding expertise in the US, and treating claims of expertise with caution in the EU. The UK courts, however, apparently view both public participation and expertise with caution, and they legitimate administrative action based on a Weberian understanding of a hierarchical, professional, politically neutral civil service.<sup>26</sup>

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<sup>20</sup> U.S. *Administrative Procedure Act*, 5 U.S.C. 7 553 - 706.

<sup>21</sup> Susan Rose-Ackerman, *Controlling Environmental Policy: The Limits of Public Law in Germany and the United States*, (New Haven CT: Yale University Press, 1995); Susan Rose-Ackerman, *From Elections to Democracy: Building Accountable Government I Hungary and Poland* (Cambridge UK: Cambridge University Press, 2005).

<sup>22</sup> The current executive order 12866 is available online: Office of Regulation and Regulatory Affairs, OMB <<http://www.reginfo.gov/public/jsp/Utilities/EORedirect.jsp>>. President Obama issued a Vol. 28(2) 441 supplementary executive order 13563 on January 18, 2011. Online: Office of Information and Regulatory Affairs <[http://www.reginfo.gov/jsp/utilities/EO\\_13563.pdf](http://www.reginfo.gov/jsp/utilities/EO_13563.pdf)>.

<sup>23</sup> Jonathan Wiener & Alberto -Alemanno, "Comparing Regulatory Oversight Bodies across the Atlantic: The Office of Information and Regulatory Affairs in the US and the Impact Assessment Board in the EU" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 19.

<sup>24</sup> Elena Kagan, "Presidential Administration" (2001) 114 Harv L Rev 2246.

<sup>25</sup> For c.g., the choice of a discount rate and the proper way to monetize morbidity and mortality are both fraught with controversy even among those committed to the method of cost-benefit analysis. Edward R. Morrison, "Judicial Review of Discount Rates Used in Cost-Benefit Analysis," (1998) 65 U Chicago L Rev 1333; Cass R. Sunstein, "Incommensurability and Valuation in law," (1994) 92 Mich L Rev 779 at 796.

<sup>26</sup> Catherine Donnelly, "Participation and Expertise: Judicial Attitudes in Comparative Perspective" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 21. 442 2010

Many participants in the debate over policy analysis privilege a particular type of expertise derived from science and economics. Others urge more transparent, participatory decision-making processes. The two approaches are compatible so long as state officials recognize that they may not have all the necessary expertise. Participation and transparency can serve not just as rights but also as means to the end of better policy outcomes. Greater public involvement may not only produce more effective policy but also increase the acceptability of the regulatory process both in representative democracies and in entities, such as the European Union, that also seek public legitimacy. As a practical matter, however, regulatory agencies may not move toward greater participation and stronger standards of transparency and reason-giving absent a massive public outcry. In the United States the *APA* arguably arose from congressional effort to constrain delegated policy making under a separation-of-powers system.<sup>27</sup> No such incentives exist in parliamentary systems.<sup>28</sup>

Paradoxically, however, many new regulatory agencies in Europe have introduced accountable procedures on their own initiative even though they are isolated from electoral politics. Case studies from the UK, France and Sweden show that the regulators supported greater public involvement because they needed outside support to survive and could imitate established models in the US and elsewhere.<sup>29</sup> More participatory and transparent processes were seen as a way of increasing their own legitimacy. However, these moves did not always have that effect. Sometimes they simply increased the power of the regulated industry, thus increasing the risk of capture. Agencies reacted to this concern by taking steps to facilitate consumer input.<sup>30</sup>

For policies where a cost-benefit test seems appropriate, one response would be to combine cost-benefit analysis with transparency as a means of blocking agencies from adopting measures that benefit narrow interests. This requirement could have legal force if applied by the courts. As one of us has argued,<sup>31</sup> a judicial presumption in favour of net benefit maximization increases the political costs for narrow groups, which would have to obtain explicit statutory language in order to have their interests recognized by courts and agencies.<sup>32</sup> This proposal raises an important question that is central to the discussion of administrative litigation to which we now turn. What should be the judiciary's role in reviewing the policymaking activities of modern executive branch bodies and regulatory agencies?

## VIII. THE BOUNDARIES OF THE STATE: TRANSNATIONAL ADMINISTRATION IN THE EU

Some entities with regulatory authority operate beyond the state – perhaps internationally, like the GATT/WTO, or regionally and supra-nationally, like the EU. If their decisions affect rights and duties within states, how should we understand that power in legal terms? Should we understand it as a novel kind of "constitutional" authority, perhaps of an emerging proto-state? Or is it best understood as a denationalized extension of "administrative governance" on the national level? We do not pretend to answer these complex questions here, though one of us has argued extensively for an essentially "administrative, not constitutional" understanding of denationalized regulatory power in the EU.<sup>33</sup> Scholars are increasingly looking to administrative law as a framework for understanding the exercise of rulemaking and *adjudicative* power beyond the state.<sup>34</sup>

Nowhere is this truer than in the legal literature on the European Union. Recently, a group of leading European administrative law scholars launched the Research Network on EU Administrative Law [ReNEUAL] that aims to draft a kind of "restatement" or "best practices" for administrative law in the EU. The ReNEUAL project will not only cover the administrative activities of EU bodies strictly speaking, but also those of national bodies implementing EU law. The project extends to the EU's participation in a variety

<sup>27</sup> Mathew D. McCubbins, Roger G. Noll & Barry Weingast "Administrative Procedures as Instruments of Political Control" (1987) 3 *JL Econ & Org* 243.

<sup>28</sup> Terry M. Moe & Michael Cakiwell, "The Institutional Foundations of Democratic Government: A Comparison of Presidential and Parliamentary Systems" (1994) 150 *Journal of Institutional and Theoretical Economics* 171; Rose-Ackerman, *Controlling Environmental Policy*, *supra* note 23 at 7-17.

<sup>29</sup> Dorit Rubinstein Reiss, "Administrative Agencies as Creators of Administrative Law Norms: Evidence from the UK, France, and Sweden" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 22.

<sup>30</sup> For e.g., the Office of Communications (Ofcom) in the UK, or the *Autorité de Régulation de Télécommunications* (ART) in France, opted for increased consumer input in various ways. See *ibid*.

<sup>31</sup> Susan Rose-Ackerman, *Rethinking the Progressive Agenda* (New York: Free Press, 1992).

<sup>32</sup> See also Cass Sunstein, *Risk and Reason* (Cambridge UK: Cambridge Univ. Press, 2002) at 191-228.

<sup>33</sup> Lindseth, *supra* note 16. See also Peter L. Lindseth, "Democratic Legitimacy and the Administrative Character of Supranationalism: The Example of the European Community" (1999) 99 *Colum L. R.* 628; and Peter L. Lindseth, "Agents without Principals?: Delegation in an Age of Diffuse and Fragmented Governance" in Fabrizio Cafaggi, ed, *Reframing Self-Regulation in European Private Law* (Alphen am den Rijn, Netherlands: Kluwer Law International, 2006).

<sup>34</sup> See e.g. Benedict Kingsbury, Nico Krisch & Richard B. Stewart, "The Emergence of Global Administrative Law" (2005) 68 *Law & Cont Probs* 15; Herwig H.C. Hofmann & Alexander H. Türk, eds, *EU Administration Governance*, (Cheltenham UK: Edward Elgar, 2006); Herwig H.C. Hofmann & Alexander H. Türk, eds, *Legal Challenges in EU Administrative Law: Towards and Integrated Administration* (Cheltenham UK: Edward Elgar, 2009).

of international regulatory and enforcement schemes that can also be understood in administrative law terms.<sup>35</sup>

The process of European integration has not only led to the development of a supranational EU administrative law, but it has also spurred a movement toward a deeply "Europeanized" administrative law on the national level as well. This process of Europeanization has had an impact well beyond those domains where Member States explicitly implement EU law. European integration is increasingly relying on a particular mode of governance - "adversarial legalism" - that was first observed in the United States by the American political scientist Robert Kagan.<sup>36</sup> Adversarial legalism combines centrally formulated prescriptive rules and a diffuse and fragmented process of enforcement which depends crucially on judicial review to ensure compliance. Given its decentralized character, the European Court of Justice has understandably sought to impose some measure of uniformity on national administrative processes in order to ensure effective enforcement of EU rules and standards.

However, a concern arises from the growth of transnational networks – the challenge of safeguarding individual rights as networks spread. The network phenomenon is increasingly global in its scope, although transnational governance in the EU clearly presents the most developed example.<sup>37</sup> In the EU we see clearly the interplay between classic liberal rights (personal freedom, property rights, and other basic interests) and network decisionmaking that affects those rights. The dispersion of decisional power in networks means that one of the central concerns of traditional administrative law - the protection of the individual in the face of overreaching public power - becomes vastly more challenging in the transnational administrative context. In confronting this challenge on a more global scale, the EU example, even with certain admitted complexities and drawbacks, may be helpful in developing models elsewhere.

## IX. CONCLUSIONS

Administrative law exists at the interface between the state and society – between civil servants and state institutions, on the one hand, and citizens, business firms, organized groups, and non-citizens, on the other. Civil service law and bureaucratic organization charts and rules provide the background, but administrative law's essential role is to frame the way individuals and organizations test and challenge the legitimacy of the modern state outside of the electoral process. There are two broad tasks - protecting individuals against an overreaching state and providing external checks that enhance the democratic accountability and competence of the administration. Public law is the product of statutory, constitutional, and judicial choices over time; it blends constitutional and administrative concerns. The Germans speak of administrative law as "concretized" constitutional law,<sup>38</sup> and Americans often call it "applied" constitutional law.<sup>39</sup> The English, with no written constitution, refer to "natural justice" and, more recently, to the *European Convention on Human Rights [ECHR]*. The French tradition of *droit administratif* contains within it a whole conceptual vocabulary - *dualite de juridiction, acte administratif service public* - that has been deeply influential in many parts of the world. East Asia has a long tradition of centralized, hierarchical, and bureaucratic rule - a sort of "administrative law" *avant la lettre*. And yet, in forging its own modern variants, East Asia has also drawn on Western (and particularly German and US) models. Administrative law is one of the "institutions" of modern government, in the sense that economists and political scientists often use that term.<sup>40</sup> It is thus amenable to comparative political and historical study, not just purely legal analysis. The distinction between public and private is essential to administrative law, one that common law jurisdictions long sought to downplay by claiming that the same courts and legal principles should resolve both wholly private disputes and those involving the state. Nevertheless, even in the common law world, debates over the proper role and unique prerogatives of state actors are pervasive. Some scholars still assume that one can compartmentalize regulatory activities and actors

<sup>35</sup> George A. Bermann, "A Restatement of European Administrative Law: Problems and Prospects" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 34.

<sup>36</sup> Kagan, Robert, *Adversarial Legalism: The American Way of Law* (Cambridge, MA: Harvard University Press, 2001); R. Daniel Kelemen, "Adversarial Legalism and Administrative Law in the EU" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 35. Francesca Bignami, "Individual Rights and Transnational Networks" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 37. Vol. 28(2) 447

<sup>37</sup> Francesca Bignami, "Individual Rights and Transnational Networks" in Rose-Ackerman & Lindseth, *supra* note 2 at ch. 37.

<sup>38</sup> See e.g. Fritz Werner, "Verwaltungsrecht als konkretisiertes Verfassungsrecht" (1959) *Deutsches Verwaltungsblatt* 527.

<sup>39</sup> See e.g. William D. Araiza, "In Praise of a *Skeletal APA: Norton v. Southern Utah Wilderness Alliance*, judicial Remedies for Agency Inaction, and the Questionable Value of Amending the APA" (2004) 56 *Admin L. Rev.* 979 at 1002 (noting "the maxim that administrative law is applied constitutional law")

<sup>40</sup> See e.g. Douglass C. North, *Institutions, Institutional Change and Economic Performance* (New York: Cambridge University Press, 1990) at 3-5; James G. March & John P. Olsen. *Rediscovering Institutions: The Organizational Basics of Politics* (New York: Free Press, 1989); James G. March & John P. Olsen. "The Institutional Dynamics of International Political Orders" (1998) 52 *International Organization* 943 at 948. 448 2010

into either a public or a private sphere. This may be analytically convenient, but it does not fit the increasingly blurred boundary between state and society. Recent developments have also strained another familiar distinction, between justice and administration. In Europe, for example, courts regularly apply *the* principle of proportionality - if a policy *interferes* with a right, then it must be designed in the least restrictive way.<sup>41</sup> As a result, courts have begun to impose standards on government policymaking, at least when rights are at stake. Finally, international legal developments are increasingly influencing domestic regulatory and administrative bodies throughout the world.<sup>42</sup> Our collective volume, *Comparative Administrative Law*, tries to take account of current developments in the field. It seeks to illuminate both the historical legacies and the present - day political and economic realities that continue to shape administrative law as we proceed into the twenty - first century. Our efforts are necessarily preliminary and are by no means exhaustive. Nevertheless, we aim to capture the complexity of the field and to distill key elements for comparative study. We look forward to further research and writing as the field grows and develops.

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<sup>41</sup> On the German origins of proportionality analysis and its diffusion throughout Europe and beyond, see Alec Stone Sweet and Jud Mathews, "Proportionality Balancing and Global Constitutionalism" (2008) 47 *Colum J of Transnat'l L* 73-165.

<sup>42</sup> The project in Global Administrative Law centered at New York University, focuses on the administrative law of international organizations, such as the World Trade Organization. Kingsbury *et al*, *supra* note 48. Nevertheless, it often draws on domestic models of the administrative process for inspiration. Our focus is complementary. We emphasize how the practices of multinational and regional bodies have both emerged out of and affected the administrative process in established states.



# Check your Vocabulary for Law – a workbook for users<sup>43</sup>

## Useful figures of speech:

### I. Multiple meanings

Some words have more than one meaning. For example a party is a person involved in a legal dispute (“*One of the parties to the dispute has died*”) but it is also a political organization (“*Lincoln was a member of the Republican party*”). Can you identify the following eight words? Two or three meanings are given for each word.

1. This word means:
  - a meeting or a series of meetings: “*There is a democratic \_\_\_\_\_ in August.*”
  - an international treaty: “*All the countries agreed to a new arms \_\_\_\_\_.*”
  - the way something is usually done: “*We have a \_\_\_\_\_ that the President enters first.*”
2. This word means:
  - money invested or borrowed: “*You don’t pay off the \_\_\_\_\_ until the end of the loan period.*”
  - a person or company represented by agents: “*The agent has come to London to see his \_\_\_\_\_.*”
  - person responsible for something: “*Whose name appears on the contract as \_\_\_\_\_ ?*”
3. This word means:
  - something which is for sale: “*This \_\_\_\_\_ is very attractively priced.*”
  - a section of a legal agreement: “*If you look at \_\_\_\_\_ 7 of the contract you’ll see why.*”
4. This word means:
  - an area of land: “*The \_\_\_\_\_ is 100 square kilometres.*”
  - property left by a dead person: “*His \_\_\_\_\_ was worth \$1.5m.*”
5. This word means:
  - proper, correct: “*We will not release the documents without \_\_\_\_\_ procedure being followed.*”
  - owed: “*The next payment is \_\_\_\_\_ on the 5<sup>th</sup> of October.*”
  - expected to arrive: “*He isn’t \_\_\_\_\_ until seven o’clock.*”
6. This word means:
  - to say something clearly: “*I \_\_\_\_\_ now that my client is completely innocent.*”
  - independent country: “*All citizens have obligations to the \_\_\_\_\_.*”
7. This word means:
  - special attention: “*I took a particular \_\_\_\_\_ in this case.*”
  - money paid for the use of money: “*What is the current rate of \_\_\_\_\_ ?*”
  - ownership of shares in a company: “*He has a majority \_\_\_\_\_ in a newspaper.*”
8. This word means:
  - to put into words or diagrams: “*You must \_\_\_\_\_ the idea more clearly.*”
  - very fast: “*I’ll send the papers to you \_\_\_\_\_.*”

<sup>43</sup> David Riley (1996)

## II. Useful verbs

All the verbs in the box relate to legal matters. The first one serves as example.

acquitted / adjourn / appeal / arbitrate / convicted / disclaimed / dismiss / dropped / exonerate / fined / issue / overturn / pleaded / preclude / ~~reach~~ / rescind / sentenced / sued / testify / withhold

1. The jury was unable to **reach** a unanimous decision.
2. The policeman warned him that it was illegal to \_\_\_\_\_ evidence.
3. Unfortunately the committee has had to \_\_\_\_\_ its earlier decision on the use of local government premises.
4. This tribunal will now \_\_\_\_\_ until tomorrow at ten a.m.
5. Are you ready to \_\_\_\_\_ in court that this is what happened?
6. The company is going public and they are going to \_\_\_\_\_ 25,000 shares.
7. This evidence is hearsay and I call upon the court to \_\_\_\_\_ it.
8. The management and the union could not agree and they called in an industrial tribunal to \_\_\_\_\_.
9. The accused \_\_\_\_\_ guilty to all charges.
10. The court \_\_\_\_\_ him £25,000 for obtaining money by false pretences.
11. After consideration, the plaintiff (claimant) \_\_\_\_\_ the case against his neighbour.
12. Two of the men were sent to prison, but the judge \_\_\_\_\_ the third.
13. He \_\_\_\_\_ all knowledge of the robbery until £25,000 in cash was found in his house.
14. He says his innocent and he's going to \_\_\_\_\_ to the supreme court against the decision.
15. This agreement does not \_\_\_\_\_ further agreements between these parties in the future.
16. My client intends to appeal and I am sure that a higher court will \_\_\_\_\_ this sentence.
17. The judge \_\_\_\_\_ him to three years imprisonment.
18. After the accident he \_\_\_\_\_ the company for £50,000 in damages.
19. The judge \_\_\_\_\_ the driver from all responsibility for the accident.
20. She was \_\_\_\_\_ of manslaughter and sent to prison for eight years.

### IIIa). Prepositions

The twenty sentences in this exercise contain mistakes. They are all in the prepositions and there are three types:

MISSING PREPOSTION (MP)	I spoke ^ him about this last week.	<b>to</b>
WRONG PROPOSITION (WP)	We're meeting again <del>in</del> ^ Tuesday.	<b>on</b>
UNNECESSARY PREPOSITION (UP)	I'll telephone <del>to</del> you tomorrow.	<b>Ø</b>

Find the mistakes and correct them.

<b>SENTENCE</b>	MP WP UP	✓
1. It says in the newspaper that's he's been evading of income tax.		
2. The prosecution tried to discredit at the defence witness.		
3. I am writing in behalf of Mr. and Mrs. Smith.		
4. I would like to report of a theft.		
5. He was awarded £100,000 to compensate of the damages caused by the manufacturer.		
6. The directors of the firm were accused insider trading.		
7. If you don't tell me you'll be charged to withholding evidence.		
8. In view of your failure to pay, I have instructed to my solicitors to start to start proceedings immediately.		
9. We have referred your question at the tribunal and hope to have an answer for you in the next few days.		
10. After six months in prison she will be eligible to parole.		
11. The next national holiday falls in a Monday.		
12. They decided to sue at the landlord for failure to maintain the property.		
13. During the appeal he claimed that the original judge had been biased in favour to the plaintiff.		
14. The defendant was negligent to carrying out his duties as a trustee.		
15. The company was declared to be of a state of insolvency.		
16. My client disagrees with clause 6 of the contract which expressly forbids to sales in the USA.		
17. The judge ruled that her evidence was inadmissible and it was expunged the report.		
18. Does the bill include of VAT or is that extra?		
19. The judge acquitted to the husband but imposed a £250 fine on the wife.		
20. He was found guilty of all charges and sentenced five years in prison.		

### IIIb). Prepositions in LAW

Every area of English has its own special use of prepositions. Law is no exception.

**Below are some typical legal phrases. What preposition do you use with the following phrases?  
against / for / of / to /**

1. to accuse someone ..... something.	5. to be entitled ..... compensation.
2. to be liable ..... something.	6. to bring a case ..... someone.
3. to sentence someone ..... a punishment.	7. to be guilty ..... an offence.
4. to claim damages ..... something.	8. to fine someone ..... something.

Brieger, N. 2006: Professional English - Law. Pearson, Essex.

**IV. Phrasal verbs** are common in conversational English. Read the definitions on the right and use the phrasal verbs to complete the sentences.

Definition	Verbs & definitions
1. The company ACT has been <b>broken up</b> into seven autonomous divisions.	1. <b>break down:</b> to stop because of failure
2. He had a factory which manufactured cheap sports clothes which he _____ as high-quality designer goods.	2. <b>break in:</b> to go into a building by force in order to steal
3. He ___ all of us ___ with his promise of quick profits and low risks.	3. <b>break off:</b> to stop a discussion or negotiation
4. He was caught _____ a clothes shop at night.	4. <b>break up:</b> to divide a company into separate units
5. He _____ the meeting with a vote of thanks to the chairman.	5. <b>bring forward:</b> to change to an earlier date
6. I'm very busy on Wednesday: can I ___ our meeting _____ to Tuesday?	6. <b>hand down:</b> to give to the next generation through inheritance
7. John is leaving in June and there will be a gap of one month before the new manager _____.	7. <b>hold up:</b> (a) to rob from a bank or vehicle using weapons, (b) to stay at a high level (c) to delay
8. Management and unions could not agree and Negotiations _____ at midnight yesterday.	8. <b>pass off:</b> to pretend something is not what it is to cheat a customer
9. Payment will be _____ until the contract is signed.	9. <b>put down:</b> to pay as a deposit
10. Shares in ACT have increased in price by 35 pence with the news that they are going to be _____ by Giant PLC.	10. <b>put into:</b> invest
11. The car was still under guarantee when it _____.	11. <b>take in:</b> to trick, to deceive
12. The company was insolvent and the court ordered it to Be _____.	12. <b>take over:</b> (a) to start to do something in place of someone else, (b) to buy a company
13. The share price _____ well through the summer and then fell in September.	13. <b>wind up:</b> (a) to end a meeting, (b) to put a company into liquidation
14. They are accused of _____ a security van and stealing £45,000.	
15. This watch was _____ to me from my great-grandfather.	
16. When he lost his job he _____ his savings _____ opening a design studio.	
17. You have to _____ £200 _____ now and then pay £100 a month for eighteen months.	

V. Word association

# Partnerships

Some words form “partnerships.” For example, we talk about income tax and not revenue tax. Both forms are grammatically correct, but only the first is normally used.

Match the verbs on the left with the nouns on the right to make ten partnerships. Some verbs will go with more than one noun.

VERBS	NOUNS
1. break	a) a case
2. commit	b) a market
3. cross examine	c) a fee
4. charge	d) an interest
5. declare	e) a law
6. enter	f) a crime
7. avoid	g) a verdict
8. hear	h) terms
9. negotiate	i) a witness
10. return	j) taxes

Complete these sentences using the partnerships from the exercise above, like in the example given below.

1. You must know that you are ***breaking the law*** when you park on the pavement.
2. The merger will only go ahead if the two companies can \_\_\_\_\_ they are both happy with.
3. After two hours deliberation the jury \_\_\_\_\_ of not guilty.
4. We are going to \_\_\_\_\_ with a revolutionary new product next month.
5. A good accountant can save you money by finding ways to \_\_\_\_\_.
6. We have \_\_\_\_\_ the case for the prosecution, which depends on an unreliable identification.
7. When she was \_\_\_\_\_ he contradicted his earlier testimony.
8. I am innocent; I did not \_\_\_\_\_ you accuse me of.
9. During the recent debate on this matter Mr. Allen failed to \_\_\_\_\_. : he is a director of the company bidding for the contract.
10. Most solicitors do not \_\_\_\_\_ for the first consultation.

## VI. Opposites - prefixes

English often uses prefixes to create opposites. There are several different prefixes which are used. Choose the right prefix for each of the adjectives in the box and write it into the table, e.g. *inadmissible*: evidence which is *inadmissible* will not be accepted (admitted) by a court.

ADMISSIBLE CAPABLE COMPETENT  
 CONFIRMED CORRECT DEPENDENT INSURED JUST  
 LAWFUL LEGAL LEGITIMATE MORAL MOVABLE PERFECT PROFESSIONAL  
 PROPER RECONCILABLE RECOVERABLE REGULAR RELEVANT  
 RELIABLE SANE SOLVENT VALID

il-	im-	in-	ir-	un-
1.	1.	1. <i>inadmissible</i>	1.	1.
2.	2.	2.	2.	2.
	3.	3.	3.	3.
	4.	4.	4.	4.
		5.		5.
		6.		6.
		7.		
		8.		

**Use twelve of the adjectives in the table to complete these sentences.**

- Hearsay evidence – evidence which a witness has heard from another source – is *inadmissible* in a court of law.
- Can you check these accounts? Some of the figures seem to be \_\_\_\_\_.
- The witness was completely \_\_\_\_\_: she kept changing her story.
- It is \_\_\_\_\_ for a lawyer to enter into personal relations with a client.
- We returned the goods to the supplier because they were \_\_\_\_\_.
- That's very interesting, but \_\_\_\_\_: can you please comment only on this case?
- There are rumours of a takeover, but they are still \_\_\_\_\_.
- It is \_\_\_\_\_ to sell tobacco without a licence.
- He could not pay his debt and was declared \_\_\_\_\_.
- This document is \_\_\_\_\_ without the signature of a witness.
- The director of the company has left the country permanently and I'm afraid the debt is now \_\_\_\_\_.
- At twenty-one she left home and became \_\_\_\_\_.

## VII. Latin pair-up

Many Latin expressions are used in British law, for example *corpus delicti* is the proof that a crime has been committed. Match words from the two boxes, A and B, to make 15 legal expressions which fit the definitions in the list. Each expression should consist of a word from Box A followed by a word from Box B, e.g. *bona fide*.

<b>BOX A</b>
BONA CAVEAT COMPOS DOLI
HABEAS INTER INTER IPSO
OBITER PER PRIMA SUI TOTIES
VICE VIVA

<b>BOX B</b>
ALIA CAPAX CAPITA CORPUS
DICTA EMPTOR FACIE FACTO
<del>FIDE</del> GENERIS MENTIS QUOTIES
VERSA VIVOS VOCE

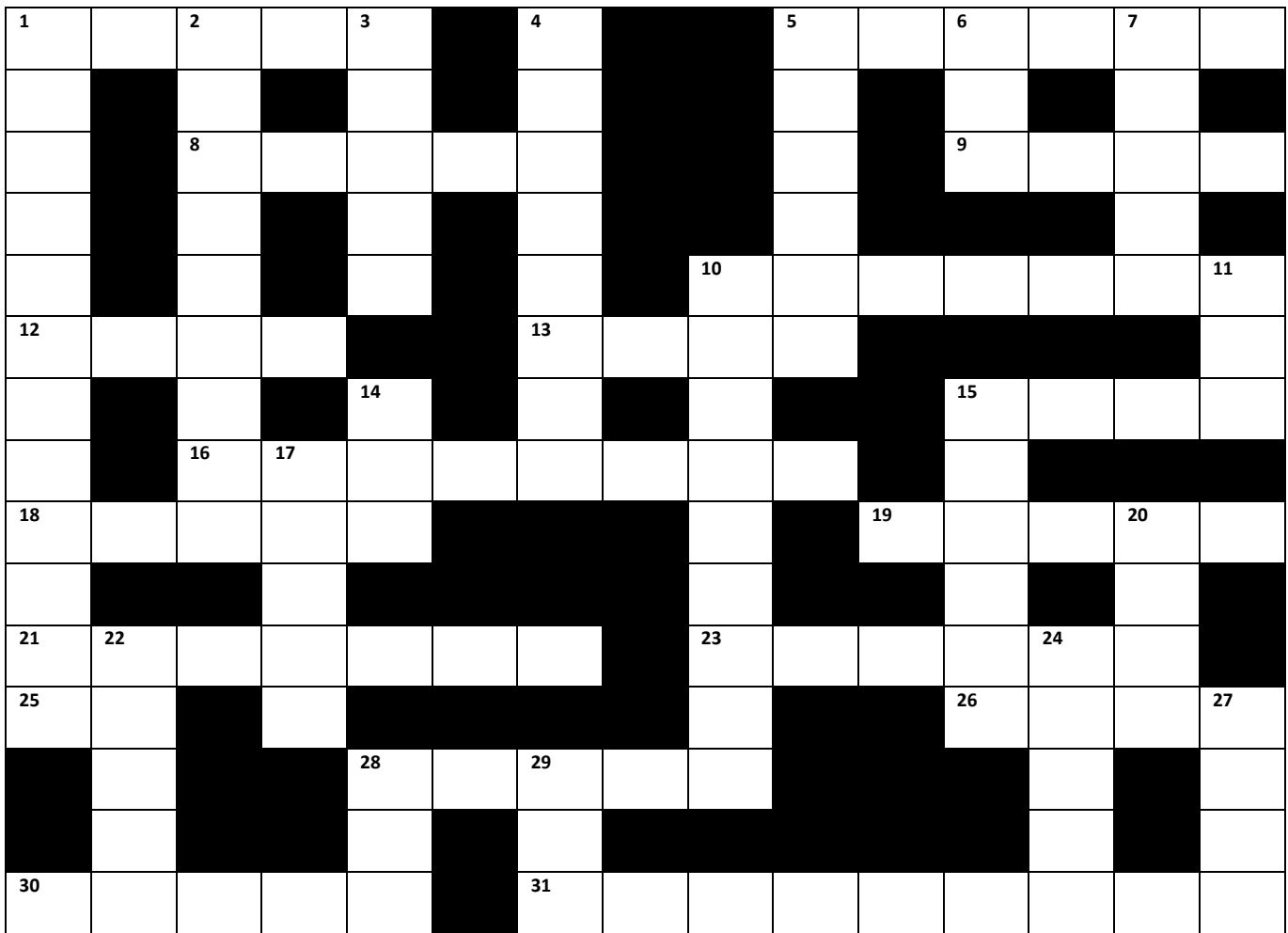
### Definitions

1. in good faith	<i>bona fide</i>
2. among other things	
3. the buyer is responsible for checking a purchase	
4. things which are said in passing	
5. in the opposite way	
6. by speaking	
7. sane	
8. in a class of its own	
9. as often as necessary	
10. between living people	
11. a legal remedy against wrongful imprisonment	
12. by this fact, in itself	
13. capable of crime	
14. for each person	
15. as things seem at first	

### List of common legal doublets – LEGAL PAIRS

care and attention	goods and chattels	null and void
cease and desist	have and hold	over and above
covenant and agree	heirs and successors	part and parcel
deem and consider	hue and cry	perform and discharge
demise and lease	indemnify and hold harmless	power and authority
depose and say	keep and perform	sale or transfer
due and payable	kind and nature	sole and exclusive
final and conclusive	law and order	successor and assigns
fit and proper	legal and valid	to have and to hold
free and clear	let or hindrance	terms and conditions
from now and henceforth	lewd and lascivious conduct	then and in that event
full faith and credit	liens and encumbrances	true and correct
furnish and supply	make and enter into mind and memory	will and testament

## VIII. Legal crossword



Across

Down

1. To mention or write about something.  
We \_\_\_\_\_ to your letter (5)
5. To take something which is being offered  
– to say yes (6)
8. The place where a trial is held (5)
9. Wrong done to someone (4)
10. Separate into sections – “The two companies \_\_\_\_\_ the market between them.”
12. One hour, two weeks, half past two... (4)
13. To encourage someone to commit a crime –  
“To aid and \_\_\_\_\_” (4)
15. Twelve people who must decide (4)
16. People who succeed to an inheritance (4)
18. \_\_\_\_\_ after/by/for/from/in ... (5)
19. Older than eighteen (5)
21. To be against something – “The police have decided to \_\_\_\_\_ your application for bail.” (6)
23. Decide the value –  
“I \_\_\_\_\_ this company as being worth £1bn.” (7)
25. Opposite of yes (2)
26. John married my mother after her divorce:  
he’s my \_\_\_\_\_-father” (4)
28. Before second (5)
30. Independent nation – say clearly (5)
31. Innocent (3,6)
4. Placing on an official list – “\_\_\_\_\_ of a trademark” (12)
2. An exact copy of a document – possibly electronically transmitted (9)
3. Unfair, inexact, approximate: “This is a case of \_\_\_\_\_ justice.”(5)
4. A person who brings a lawsuit against another (8)
5. Opposite of convict: “, the jury decided to \_\_\_\_\_ the defendant because there was insufficient evidence” (6)
6. To reduce suddenly – “We are going to \_\_\_\_\_ all our prices by 25%”(3)
7. Latin expression meaning “by itself” (3,2)
10. The person accused of the crime –  
the person who is sued (9)
11. Twenty-four hours (3)
14. The number of years a person has been alive (3)
15. Decides (5)
17. Mistake (5)
20. Not to win (3)
22. That’s an interesting \_\_\_\_\_, but I don’t agree with your argument.” (5)
24. To take something which is not yours (5)
27. To ask – very formally (4)
28. Money paid for a service (3)
29. To manage – “After my father dies I’ll \_\_\_\_\_ the company” (3)



## IX. Anagrams

Read the definitions and put the letters in order to make fifteen words connected with the law. Write the words in the grid to find the mystery, as is shown in the first one: an *accomplice* is a person who helps another person to perform a criminal act.

1.			A	C	C	O	M	P	L	I	C	E			
2.															
3.															
4.															
5.															
6.															
7.															
8.															
9.															
10.															
11.															
12.															
13.															
14.															
15.															

1. Criminal's assistant ..... ACCCEILMOP
2. Maker of illegal fires ..... AINORSST
3. A company – the commercial spirit ..... EEEINPRRST
4. Save from danger ..... CEERSU
5. A country and the people living in it ..... AINONT
6. Suggest that something should be done ..... CDEEMMNOR
7. A person who is supported financially by someone else ..... ADDEENNPT
8. Having a legal duty to do something ..... ABDEGILOT
9. Not able to pay debts ..... EILNNOSTV
10. An official occasion ..... CEEMNORY
11. Kept out, not included ..... CDDEELUX
12. Income, money earned, especially from taxation ..... EEENRUV
13. To go to law ..... AEGIILTT
14. Concerning money ..... AACFIILNN
15. A type of lawyer ..... CIILORST

**Mystery Phrase: *impolite - in a legal context***

## X. Navigating documents

### *Legal adverbs*

There are adverbs which are typical of legal documents. In fact, some of them are *only* used in legal documents such as contracts. They are used to refer clearly to specific times and places in and around documents. Most are formed using *here* and *there*.

Here means this document - the one you are reading

There means that document - the one which is being discussed, not the one you are reading

Some adverbs with here and there are listed below. Match them to the correct definitions, e.g. *hereafter* is used to talk about future time: what will happen after the document is written and signed: "*This house will hereafter be the property of Mr. Jackson.*"

### *Here*

- |                |  |
|----------------|--|
| 1. hereafter   | a. accompanying this document                              |
| 2. hereby      | b. appearing somewhere in this document                    |
| 3. herein      | c. following this document                                 |
| 4. hereinafter | d. in the future – from the production of this document on |
| 5. hereof      | e. listed later in this document                           |
| 6. hereto      | f. mentioned in this same section of this document         |
| 7. heretofore  | g. previous to the production of this document             |
| 8. hereunder   | h. relating to this document or part of it                 |
| 9. herewith    | i. resulting from this document                            |
- 

### *There*

- |                  |   |
|------------------|---|
| 1. thereafter    | a. accompanying that document                     |
| 2. thereby       | b. appearing somewhere in that document           |
| 3. therefore     | c. following that document                        |
| 4. therein       | d. for that reason or purpose                     |
| 5. thereafter    | e. from the production of that document until now |
| 6. thereinbefore | f. in the time before that document was produced  |
| 7. thereinunder  | g. listed later in that document                  |
| 8. thereof       | h. mentioned in that section of that document     |
| 9. thereto       | i. mentioned previously in that document          |
| 10. thereto fore | j. relating to that document                      |
| 11. therewith    | k. resulting from that document or decision       |