ADMINISTRATIVE LAW

1- SUBJECT DESCRIPTION

Administrative Law is the part of Public Law that studies the organisation, powers and functioning of the instrumental branch of the Executive, the Administration.

With several administrative spheres overlapping in modern legal and political systems (from the supranational to the local), knowledge of the main tools used by Administrations in carrying out their tasks, along with the influence they exert on citizens and businesses, is of critical importance for the practising lawyer, whether aiming at private counseling or working for a public organisation, in particular in an international environment.

The course will seek to provide a sound foundation on the common principles of Administrative Law underpinning the main comparative systems, with a particular focus on those set out at EU-level, drawing up from legal and jurisprudential instruments. It will also sketch the role of Administration in rulemaking; the different instances of direct administrative action; and the administrative activity that characterises certain specific sectors.

2- OBJECTIVES AND SKILLS

It is objective of the course that students:

- Are introduced to the concept and main elements of Administrative Law, as well as the different organizational Administrative models.

- Become familiar with the different sources of Administrative Law, both national and supranational.

- Know the main relevant case law that has shaped up Administrative Law principles at EU level.

- Gain an understanding of the essentials of administrative action, particularly:
  
  - Administrative procedure
  - Principles governing relations between Administration and citizens
  - State liability and right to compensation
  - Review of administrative action
  - Understand the main Administrative Law reflections of certain sectoral trans-european regulation
By the end of the module, students will be expected to:

- Describe the main characteristics of the different Administrative systems.
- Make appropriate use of the different sources of Administrative Law, both Spanish and EU, and properly interpret the relations between them.
- Assess whether the Administration has exceeded its attributions towards citizens or businesses when exerting its powers.
- Discuss the most appropriate ways to enforce correction of administrative misbehaviour.
- Point out the reasons for administrative intervention in certain economic sectors and the implications of such intervention.
- Integrate the relevant knowledge and skills gained with the other main substantive areas of legal professions.

3- CONTENT

The course will comprise 30 sessions and one final session devoted to the Exam.

PART I: BASIC CONCEPTS OF ADMINISTRATIVE LAW

SESSION 1
AN INTRODUCTION TO ADMINISTRATIVE LAW

SESSION 2
ADMINISTRATIVE LAW AND CONSTITUTIONAL LAW
Content: The role of Administrative law within the classic separation of powers.

SESSION 3
INSTITUTIONAL SYSTEMS
Content: Administrative Law and the Administration´s institutional framework. Main organizational models:

SESSION 4
COMPARATIVE SYSTEMS
Content: The US and UK models.

SESSION 5
SOURCES OF ADMINISTRATIVE LAW (EU)
Content: Main legal instruments for Administrative Law from the European perspective. Main instruments for Administrative Action.

SESSION 6
SOURCES OF ADMINISTRATIVE LAW (NATIONAL)
Content: Main legal instruments for Administrative Law from both the Spanish/Member States perspective. Main instruments for Administrative Action.

SESSION 7
Case study and discussion: Van Gend En Loos and Costa Enel
PART II: ADMINISTRATIVE LAW IN ACTION

SESSION 8
ADMINISTRATIVE PROCEDURE
Content: Rationale, principles and phases of the administrative procedure.

SESSION 9
RULEMAKING IN ADMINISTRATIVE LAW
Content: Delegation of powers, drafting process, impact assessment, the debate on the need of less or more regulation.

SESSION 10
SANCTIONING POWERS
Content: principles underlying the legal authority of the Administration to impose penalties. Application to particular procedures. The principle of legality and margin of discretion. Relations with Criminal Law and ECHR. The case of EC Antitrust regulation as an illustrating example of a EU-administrative procedure. General applicable principles, issues on penalty imposing, review. Relevant case law.

SESSION 11
CASE STUDY AND DISCUSSION: MENARINI AND KME

PART III: THE GENERAL PRINCIPLES OF ADMINISTRATIVE LAW

SESSION 12
REVIEW OF ADMINISTRATIVE ACTION
Content: Available instruments at both administrative and judicial level. Comparative models. EU and Spanish systems.

SESSION 13
GENERAL PRINCIPLES OF ADMINISTRATIVE ACTION (GENERAL ASPECTS)
Content: Legal and jurisprudential foundations for administrative actions.

SESSION 14
GENERAL PRINCIPLES OF ADMINISTRATIVE ACTION (I)
Content: Administrative prerogative and balancing principles: the principle of good administration.

SESSION 15
GENERAL PRINCIPLES OF ADMINISTRATIVE ACTION (II)
Content: Right of defence

SESSION 16
GENERAL PRINCIPLES OF ADMINISTRATIVE ACTION (III)
Content: Legitimate expectations. Transparency and accountability.

SESSION 17
CASE STUDY AND DISCUSSION: DEUTSCHE TELEKOM AND TELEFÓNICA
SESSION 18
STATE LIABILITY FOR INFRINGEMENTS OF ADMINISTRATIVE LAW
Content: State liability for infringements of national and EU law, the critical role of the European Court of Justice

PART IV: SEMINAR: ADMINISTRATIVE LAW IN PRACTICE

SESSION 19
DRAFT WRITTEN OBSERVATIONS TO A REQUEST FOR A PRELIMINARY RULING

SESSION 20
ORAL PLEADINGS AND DECISION

For these two sessions the students will be provided with an actual request from a Spanish Court for a preliminary ruling by the European Court of Justice on an issue regarding EU Administrative Law and its general principles. The students will be divided in three groups (claimants, defendants and court) and will be expect to submit written observations, plead orally and draft the final judgment

PART V: OTHER FORMS OF ADMINISTRATIVE ACTION

SESSION 21
PUBLIC PROCUREMENT (I)
Content: Main elements of EU Procurement Directives. The scope of Transparency and non-discrimination principles. Class of contracts by object: works, services, concessions.

SESSION 22
PUBLIC PROCUREMENT (II)

SESSION 23
THE RIGHT TO COMPENSATION FOR ADMINISTRATIVE ACTION
Content: Main elements of pecuniary satisfaction to particulars on the grounds of Administrative Action. Eminent domain.

PART IV: THE ADMINISTRATIVE LAW OF TRANS-NATIONAL POLICIES

SESSION 24
ADMINISTRATIVE ACTION AND THE FULFILLMENT OF THE SINGLE MARKET: SERVICES
Content: Better Regulation and Smart Public action in context: The case of free movement of services. The Bolkenstein Directive and ex-ante administrative authorizations

SESSION 25
ADMINISTRATIVE INTERVENTION IN NETWORK INDUSTRIES
Content: rationale for ex ante administrative and regulatory intervention in network industries. Common principles to relevant EU Directives and Regulations in energy, telecoms, and post sectors.
SESSION 26
ADMINISTRATIVE PROTECTION OF THE ENVIRONMENT
Content: main EU environmental regulation. Justification, objectives. The particular case of greenhouse effect regulation and emission-trading schemes as an example of multi-purpose administrative intervention.

SESSION 27
ADMINISTRATIVE LAW IN FINANCIAL MARKETS
Content: The role of independent agencies during the crisis, bail outs and other forms of administrative intervention

SESSION 28
GENERAL REVIEW

FINAL TWO SESSIONS
EXAM

4- METHODOLOGY AND ECTS WEIGHTING

4.1 TEACHING METHODOLOGY

The course on Administrative Law is intended to provide a solid understanding of this critical area of Public Law. The course will place a strong emphasis on the legal principles that underpin the system and their relevance both in the day to day exercise of administrative powers by the Administrations and their ex post review by Administrative Courts.

The course is comprised of 30 sessions (lectures). The teaching method will be a Socratic method, where the professor will guide the students through the relevant legal questions by briefly summarizing the main relevant issues and thus enquiring the students to put forward their views with regard to the relevant lectures assigned for that session which will include both academic writings and cases from the European Courts.

The course will devote significant attention to understand administrative action and the principles that guide it, the role of the administration in setting public policy and the interaction between administrative law and regulated industries.

The course will be approached from the perspective of practicing attorney and students are expected to develop by the end of the course a set of analytical tools that allows them to be able to dissect the relevant facts in an administrative law case, to identify the general principles that are applicable, the policy and other relevant aspects of law involved and the drafting and critical skills to put those elements into context to plead a case before a Court.

In order to achieve this goal, the course will allocate at least two sessions to prepare a moot court case in which a case pending before the European Court of Justice regarding administrative law (including European and national aspects, as well as further policy implications) will be given to the students who will be divided in three different groups (complainant, defendant and Court).

Students are expected to attend all sessions and to read all the relevant materials before each session. Students will be questioned repeatedly in class as part of the lecturing process.
4.2 ECTS WEIGHTING

6 ECTS = approximately 180 hours of dedication for an average student

<table>
<thead>
<tr>
<th>Tutorials (preparation, assistance and participation)</th>
<th>Hours dedicated</th>
<th>ECTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 sessions of 1.25 hours each, multiplied for factor 3 for preparation (86 hours)</td>
<td>2.9</td>
<td></td>
</tr>
<tr>
<td>Case studies</td>
<td>3 sessions of 1.25 hour each multiplied for factor 4 for preparation (15 hours)</td>
<td>0.5</td>
</tr>
<tr>
<td>Seminar</td>
<td>2 sessions of 1.25 hours each multiplied for factor 12 for preparation (30 hours)</td>
<td>1</td>
</tr>
<tr>
<td>Exam</td>
<td>2 session of 1.25 hours each, multiplied for factor 20 for preparation (50 hours)</td>
<td>1.7</td>
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</tbody>
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5- EVALUATION SYSTEM

5.1. GENERAL OBSERVATIONS

Class attendance is compulsory and an unjustified absence of more than 30% of the classes will result in a mark of 0.0 for the subject and will directly pass to the 3rd examination session. Students must do the readings and the assigned tasks for each class. Class participation is essential in order to pass the course.

5.2. EVALUATION AND WEIGHTING CRITERIA

The grade will be adjusted based on the following criteria:

1. Attendance, attitude, and class participation: 10%.
2. Seminar and case studies: 30%.
3. Exam: 60%.

1. Class participation will include the comments, discussions, and questions and answers exchanged during tutorials. Effective comprehension of the assigned readings is an essential factor for the evaluation of class participation, and readings might be tested.

2. Case studies/individual assignments will include, as instructed by the professor, the preparation and handing in of summaries, papers, or essays, as well as the oral presentation and discussion of case materials, either individually or in group. Evaluation will depend on the depth, quality, clarity and reasoning skill.

3. The exam will be essay-type and consist on a written explanation or consideration of a particular aspect (or a question involving several matters) of Administrative Law. This written part of the exam may be supplemented by a case study in the form chosen by the professor. Evaluation will depend on breadth of knowledge, depth of analysis and argument presentation.
5.3. GRADING IN EXTRAORDINARY EXAM PERIOD

The extraordinary exam period will require the student to pass an exam. The professor may also require the satisfaction of additional requirements.

The final grade of the student in the extraordinary exam period will be adjusted according to the following rules:

1. Each student has up to two callings for examination along two consecutive years. Any student not complying with the attendance percentage required shall skip the first and second calling and passes directly to the third examinations session (extraordinary exam period).

2. Outside the above situation, students having failed the course upon first calling pass to the second examination period.

3. The maximum qualification that a student can achieve through the extraordinary exam shall not exceed 8 out of 10.

Students facing their 3rd or 4th examination session must contact the professor during the first two weeks of the course, in order for an ad hoc program of study to be designed if needed.