

School of Government

MMPM 502 / MAPP 531 LAW IN THE PUBLIC SECTOR (15 Points)

Trimester Two 2006

COURSE OUTLINE

Contact Details

Course Co-ordinators:

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Course Dates, Times and Location

Module Four:	Wednesday 30 August 2006	8.30am-6.00pm
Module Five:	Wednesday 18 October 2006	8.30am-6.00pm
Module Six:	Wednesday 22 November 2006	8.30am-6.00pm

Location:

The course will be held on the Pipitea Campus of Victoria University of Wellington. You will be advised of your classroom one week prior to the course by email.

Morning tea will be from 10.30am – 11.00am. Lunch (not provided) will be from 12.30pm – 1.30pm and afternoon tea will be from 3.30pm – 4.00pm.

Course assessment will be by an open book optional test, on Saturday 4 November, from 10.00am – 11.00am, and an open book examination, on Saturday 2 December, from 10.00am – 1.00pm. Both will be conducted via email.

Course Objectives

The aim of this course is to examine key working concepts of law relevant to the public service. Particular attention is given to the legal and constitutional context. Case examples form an important part of the course.

The goal is that students better develop:

- understanding of the concept of the rule of law and its practical manifestation in the NZ constitutional system;
- understanding of the main features of Cabinet and parliamentary government;
- understanding of the relationships between legal rules, political structures, Cabinet and other administrative decision making processes, and policy outcomes;
- understanding of the main areas of law relevant to state sector administration;
- ability to analyse problems and seek solutions in a setting governed by public law and other rules of public administration;
- capacity to explain and evaluate central governmental policy and decision making systems.

Course Content

The course is divided into three sections, each taught over a full day. There is substantial use of case studies and examples within all topics.

Module Four will focus on the overall constitutional framework within which New Zealand government takes place. It will cover:

- The concept of the rule of law;
- The roles of the three branches of government, the relationship between them, and changes in the balance of that relationship over time;
- The operation of the executive branch of government, and the role of Cabinet in the legal, political and administrative framework;
- An introduction to judicial review;
- An introduction to human rights, and the NZ Bill of Rights Act 1990.

Module Five will look at aspects of accountability for the executive, and significant and developing bodies of law that affect public sector conduct. It will cover:

- The operation of Parliament, including Parliamentary systems for calling the executive to account and parliamentary privilege;
- The role of Officers of Parliament;
- The operation of the Official Information Act 1982;
- The implications of the Treaty of Waitangi and the place of customary law;
- An introduction to international law and its growing importance for NZ government activity.

Module Six will look at the operation of these legal concepts in daily and personal application for public servants. It will cover:

- The concept of discretion, and its use in the interpretation and application of the law;
- An introduction to employment law concepts in the state sector;
- The complexity of governing with others, including contracting for service delivery and working in partnership with stakeholders;
- The art and craft of regulation, including an introduction to the use of the law in responding to difficult policy problems;
- A discussion of public service ethics, and their significance for the effective practical operation of the core principles discussed in the course.

Expected Workload

The expected workload is, on average:

- (a) approximately 4 hours of preparation time before each module,
- (b) 24 hours of class contact time, and
- (c) approximately 20-30 hours of independent study, in total, before the practice test and the final examination.

Readings

Core readings will be distributed. These are minimum readings. They should be supplemented by a range of material available in libraries and on the internet, as relevant to particular topics of interest. An extended list of possible readings and other references is also provided to assist students wishing to read more widely.

Assessment Requirements

There are three aspects that make up the assessment:

- Attendance and *reasonable* participation is expected at classes – this is not graded, but is a matter of ‘terms’. In exceptional circumstances, candidates may of course be excused attendance with some appropriate agreement on making up the coverage e.g. writing comments on some of the readings. But wherever possible, this should be done in advance, please. Note again: there is no requirement to do the readings before each class, but a reasonable familiarity will assist in meeting the learning objectives.
- A one hour, open book test on Saturday 4 November, 10.00am-11.00am. This test is optional, but students who have chosen to take the test on other courses with this assessment system have found it beneficial practice for the exam – most have done substantially better in the exam as a result.
- A three hour, open book examination on Saturday 2 December 2006, 10.00am – 1.00pm.

The test and exam operate on a ‘double chance’ basis for those who sit both: your final grade will be the higher of either the final exam mark on its own, or a combined mark with the test comprising 20% and the exam 80%.

Details on the examination

The test and examination will be done via the email and internet - meaning that candidates need to get to a computer and have access to email at the relevant time, do the test/exam and email it back in time.

The relevant scripts will be emailed to each candidate 10 minutes before the scheduled time (i.e. at 9.50am). The completed script must be emailed back in no more than 70 minutes from that time for the test (i.e. at 11.00am) and no more than 190 minutes from that time for the exam (i.e. at 1.00pm).

Students should keep a copy of all submitted work as backup in case of any communication difficulty.

The test and exam are 'open book', so candidates can have access to such pre-prepared and collected resources as are relevant. But every script must still be individually answered and composed in a candidate's own words, and any use of material by others must be appropriately referenced. Every script will be tested via the programmes that pick up plagiarism (see below).

The time for the test is 10.00am – 11.00am on Saturday 4 November 2006

The time for the exam is 10.00am – 1.00pm on Saturday 2 December 2006.

However, in exceptional circumstances, if a person cannot make the exact time, we can discuss individual alternatives. We will, of course, expect, and seek agreement from the class, that no candidate will reveal the contents of any questions until all have completed the assessment.

The formula used for assessment

In assessing this course, 12 questions will be set from the main topic areas that will be established and set out during the course, to function as the key learning/assessment framework for this course. Of those, 9 questions will comprise the final exam. The point is that this is effectively 'directed learning'. You are given the areas of focus. You should prepare 'draft' questions and answers yourselves as part of your post-lecture study. The format used in every single question is the same. It comprises a statement or more or less specificity (e.g. "The rule of law is central to NZ governance"), followed by the instruction: "Do you agree? Give reasons."

Nine of the questions are short, with three being somewhat longer. Hence, the amount of TIME that should be devoted to each question varies between two options: 12 minutes, and 36 minutes. Hence, the instructions for the main examination will read essentially as follows:

This is an Open Book examination. You may use any materials, but all sources should be fully referenced and acknowledged.

You have THREE HOURS to complete this examination.

Answer ALL questions.

(1)-(6) Statement relevant to a topic area ...

Do you agree? Give reasons. 20 marks (12 minutes)

(7)-(9) Statement relevant to a topic area ...

Do you agree? Give reasons. 60 marks (36 minutes)

TOTAL 300 marks (180 minutes), scaled to give a percentage grade.

The format for the test will be the same, but with only 3 questions rather than 9 (of which ONE will be for 36 minutes).

Please read carefully the paragraph below under the headings "Plagiarism, and Assessment Submissions". Due to internet accessibility, all assessment will be checked for plagiarism.

To assist students further, the following is a broad description of the grading system used in this course:

- A range:** Close answer to the question, displaying excellent levels of writing, analysis and *originality* (i.e. interesting thoughts and ideas advanced which are the candidate's), well argued and positioned relative to the literature and issues and coverage of the topic.
- B range:** All the above at good levels; solid understanding of the topic and materials, but with a number of the higher range measures not sufficiently met. Note, very good answers which are basically just compilations of existing materials (even if fully referenced) rather than the person's own thinking, are likely to score in the low B or even C range.
- C range:** Adequate (e.g. no major defects or gaps in expression, answer to question, etc); reasonable understanding of materials and concepts, some low evidence of the person's own contribution.
- D and below:** Insufficient attention to writing and question (e.g. poor expression, many spelling mistakes, major gaps in what was read); poor understanding of materials or question; no real attempt made to produce an answer tied to the question and showing understanding of the issues, or personal thinking about them.

From these broad descriptions, it should be clear that the course expects and rewards the person's own thinking, good expression, and good understanding of the issues. And all this must be tailored to the exact question *at pace* – meaning that preparation is essential, as well as attention to the question. It is therefore expected that you will prepare a range of answers, mostly in your own words but with references already built in, and then tailor such to the final question during the exam itself.

ANZSOG students

ANZSOG candidates taking this course as an elective should note that they take it for 24 points, and not 15 points. Accordingly, the learning outcomes to be achieved by ANZSOG candidates are wider and deeper than those expected for non-ANZSOG candidates. The content of those learning outcomes, and the means whereby they will be assessed, will be negotiated and confirmed with the course co-ordinator *at the start of the course*.

Students should keep a copy of all submitted work.

Penalties

The ability to plan for and meet deadlines is a core skill of both advanced study and public management. Failure to meet deadlines disrupts course planning and is unfair on students who do submit their work on time. It is expected, therefore, that you will complete and hand in the assessments at the times stipulated. ***Marks will be deducted at the rate of 3 for every minute for which the test/exam script is late.***

If ill-health, family bereavement or other personal emergencies prevent you from meeting the deadline for submitting a piece of written work or from attending class to make a presentation, you can apply for and may be granted an extension. You should let your course co-ordinator know as soon as possible in advance of the deadline if you are seeking an extension.

If scripts contain significant unreferenced borrowings, the relevant answers will receive a mark of zero, in addition to any administrative procedures that might be initiated.

Mandatory Course Requirements

To fulfil the mandatory course requirements for this course, you are required to:

1. submit all assignments by the due date, unless you have been granted an extension; and
2. attend all contact sessions of the course. If you are unable to attend a session, you must inform the course co-ordinator as soon as possible and you may be required to submit a further item of assessment.

Communication of Additional Information

Additional information will be communicated by email or in the class directly. Please ensure that up to date email addresses are provided to the Masters Administrator, Darren Morgan, or for information relating to the Faculty of Commerce and Administration, see www.vuw.ac.nz/fca

Faculty of Commerce and Administration Offices

Railway West Wing (RWW) - FCA Student and Academic Services Office

The Faculty's Student and Academic Services Office is located on the ground and first floors of the Railway West Wing. The ground floor counter is the first point of contact for general enquiries and FCA forms. Student Administration Advisers are available to discuss course status and give further advice about FCA qualifications. To check for opening hours, call the Student and Academic Services Office on (04) 463-5376.

Easterfield (EA) - FCA/Education/Law Kelburn Office

The Kelburn Campus Office for the Faculties of Commerce and Administration, Education and Law is situated in the Easterfield Building - it includes the ground floor reception desk (EA 005) and offices 125a to 131 (level 1). The office is available for the following:

- Duty tutors for student contact and advice.
- Information concerning administrative and academic matters.
- Forms for FCA Student and Academic Services (e.g. application for academic transcripts, requests for degree audit, COP requests).
- Examinations-related information during the examination period.

To check for opening hours call the Student and Academic Services Office on (04) 463-5376.

General University Policies and Statutes

Students should familiarise themselves with the University's policies and statutes, particularly the Assessment Statute, the Personal Courses of Study Statute, the Statute on Student Conduct and any statutes relating to the particular qualifications being studied. See the Victoria University Calendar available in hard copy or under 'About Victoria' on the VUW home page at www.vuw.ac.nz.

Student and Staff Conduct

The Statute on Student Conduct together with the Policy on Staff Conduct ensure that members of the University community are able to work, learn, study and participate in the academic and social aspects of the University's life in an atmosphere of safety and respect. The Statute on Student Conduct contains information on what conduct is prohibited and what steps are to be taken if there is a complaint. For information about complaint procedures under the Statute on Student Conduct, contact the Facilitator and Disputes Advisor or refer to the statute on the VUW policy website at www.vuw.ac.nz/policy/studentconduct. The Policy on Staff Conduct can be found on the VUW website at www.vuw.ac.nz/policy/staffconduct.

Academic Grievances

If you have any academic problems with your course, you should talk to the tutor or lecturer concerned; class representatives may be able to help you in this. If you are not satisfied with the result of that meeting, see the Head of School or the relevant Associate Dean; VUWSA Education Co-ordinators are available to assist in this process. If, after trying the above channels, you are still unsatisfied, formal grievance procedures can be invoked. These are set out in the Academic Grievances Policy which is published on the VUW website at www.vuw.ac.nz/policy/academicgrievances.

Academic Integrity and Plagiarism

Academic integrity is about honesty – put simply, it means **no cheating**. All members of the University community are responsible for upholding academic integrity, which means staff and students are expected to behave honestly, fairly and with respect for others at all times.

Plagiarism is a form of cheating which undermines academic integrity. The University defines plagiarism as follows:

The presentation of the work of another person or other persons as if it were one's own, whether intended or not. This includes published or unpublished work, material on the Internet and the work of other student or staff.

It is still plagiarism even if you re-structure the material or present it in your own style or words.

Note: It is, however, perfectly acceptable to include the work of others as long as that is acknowledged by appropriate referencing.

Plagiarism is prohibited at Victoria and is not worth the risk. Any enrolled student found guilty of plagiarism will be subject to disciplinary procedures under the Statute on Student Conduct and may be penalised severely. Consequences of being found guilty of plagiarism can include:

- an oral or written warning
- cancellation of your mark for an assessment or a fail grade for the course
- suspension from the course or the University.

Find out more about plagiarism, and how to avoid it, on the University's website at www.vuw.ac.nz/home/studying/plagiarism.html.

Students with Impairments

The University has a policy of reasonable accommodation of the needs of students with disabilities. The policy aims to give students with disabilities the same opportunity as other students to demonstrate their abilities. If you have a disability, impairment or chronic medical condition (temporary, permanent or recurring) that may impact on your ability to participate, learn and/or achieve in lectures and tutorials or in meeting the course requirements, please contact the Course Co-ordinator as early in the course as possible. Alternatively, you may wish to approach a Student Adviser from Disability Support Services (DSS) to discuss your individual needs and the available options and support on a confidential basis. DSS are located on Level 1, Robert Stout Building, telephone (04) 463-6070, email disability@vuw.ac.nz. The name of your School's Disability Liaison Person is in the relevant prospectus or can be obtained from the School Office or DSS.

Student Support

Staff at Victoria want students to have positive learning experiences at the University. Each Faculty has a designated staff member who can either help you directly if your academic progress is causing you concern, or quickly put you in contact with someone who can. Assistance for specific groups is also available from the Kaiwawao Māori, Manaaki Pihipihinga or Victoria International.

In addition, the Student Services Group (email student-services@vuw.ac.nz) is available to provide a variety of support and services. Find out more at www.vuw.ac.nz/st_services/.

VUWSA employs Education Co-ordinators who deal with academic problems and provide support, advice and advocacy services, as well as organising class representatives and Faculty delegates. The Education Office (telephone (04) 463-6983 or (04) 463-6984, email education@vuwsa.org.nz) is located on the ground floor, Student Union Building.

Manaaki Pihipihinga - Maori and Pacific Mentoring Programme (Faculty of Commerce and Administration)

This is a mentoring service for Maori and Pacific students studying at all levels. Weekly one hour sessions are held at the Kelburn and Pipitea Campuses in the Mentoring Rooms, 14 Kelburn Parade, and Room 210 and 211, Level 2, Railway West Wing. Sessions cover drafting and discussing assignments, essay writing, and any questions that may arise from tutorials and/or lectures. A computer suite networked to Cyber Commons is available for student use.

To register with Manaaki Pihipihinga, please contact one of the following:

Puawai Wereta
Room 210, Level 2
Railway West Wing
Tel. (04) 463-8997
Email: puawai.wereta@vuw.ac.nz

Fa'afai Seiuli
Room 109 B
14 Kelburn Parade
Tel. (04) 463-5842
Email: faafoi.seiuli@vuw.ac.nz

MMPM 502 / MAPP 531 LAW IN THE PUBLIC SECTOR

READING LIST

Module 4: The constitutional balance

The rule of law

- Bill of Rights 1688.
- *Fitzgerald v Muldoon* [1976] 2 NZLR 615

Constitutional structures

- Constitution Act 1986
- White, N, 'Silent exercise of power' and 'Becoming a republic a complex matter' *The Press*, 7 June 2004.
- Hardie-Boys, Sir Michael 'The Role of the Governor-General under MMP' and 'Continuity and Change: the 1996 General Election and the Role of the Governor General' in Simpson, Alan (ed) *The Constitutional Implications of MMP*. School of Political Science and International Relations, VUW, 1998.

Cabinet government

- Cabinet Manual 2001 (extracts):
 - pp 1-6, St Hon Sir Kenneth Keith 'On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government'
 - pp 13-19, 'Ministers of the Crown: Appointment, Role and Responsibilities'
 - pp 34-42, 'The Relationship between Ministers and Public Service Officials'
 - pp 43-48, 'Cabinet Decision Making: Principles and Procedures'
- White, N 'Deconstructing Cabinet Collective Responsibility' *Policy Quarterly* (Vol 1, No 4) Institute of Policy Studies, VUW, 2005.

Judicial review

- Crown Law Office, *Judge over your Shoulder: A Guide to Judicial Review of Administrative Decisions*. Crown Law, Wellington, 1 March 2005.
- *Dunne v CanWest* [2005] NZAR 577 (HC)
- *Daniels v Attorney-General* High Court, M1615-SW99, 3 April 2002, Baragwanath J; *Attorney-General v Daniels* Court of Appeal 84/02, 19/02/03, Keith J.

Bill of Rights

- New Zealand Bill of Rights Act 1990.
- *Simpson v Attorney-General (Baigent's case)* [1994] NZLR 667.
- Attorney General reports under section s 7 of NZBORA on:
 - Aquaculture Reform Bill
 - Care of Children Bill

Parliamentary sovereignty and the entrenchment debate

- Palmer, M, Geiringer, C and White, N 'Parliamentary Sovereignty' from House of Representatives, *Inquiry to review New Zealand's existing constitutional arrangements -Report of the Constitutional Arrangements Committee* AJHR, I.24A, 2005, appendix F.
- Cullen, M 'Parliamentary supremacy over fundamental norms', speech to Public Law Conference: *Parliament: Supremacy over Fundamental Norms?* Legislative Council Chamber, Parliament, 29 October 2004.
- Cooke of Thorndon, Lord 'The Role of Judges' in James, C (ed) *Building the Constitution*, Institute of Policy Studies, VUW, 2000. pp 371 – 381.

Module 5: Accountability, and developing areas of law

Parliament

- Parliament Briefs:
 - New Zealand House of Representatives ‘What is Parliament’ *Parliament Brief*, Office of the Clerk, November 2005.
 - New Zealand House of Representatives ‘Parliament and the General Election’ *Parliament Brief*, Office of the Clerk, July 2005.
 - New Zealand House of Representatives ‘Government Accountability to the House’ *Parliament Brief*, Office of the Clerk, June 2004.
 - New Zealand House of Representatives ‘The Legislative Process’ *Parliament Brief*, Office of the Clerk, June 2004
 - New Zealand House of Representatives ‘Parliamentary Privilege’ *Parliament Brief*, Office of the Clerk, April 2006.
 - New Zealand House of Representatives ‘Select Committees’ *Parliament Brief*, Office of the Clerk, April 2006.
 - New Zealand House of Representatives ‘Parliamentary Publications’ *Parliament Brief*, Office of the Clerk, June 2004.
- *Begg v Attorney-General* [1999] 2 NZLR 615
- House of Representatives, *Draft agreement on policing functions within the parliamentary precincts – Report of the Privileges Committee*. AJHR, I.17E, March 2004.
- House of Representatives, *Question of privilege on the action taken by TVNZ in relation to its chief executive, following evidence he gave to the Finance and Expenditure Committee – Interim report of the Privileges Committee*. AJHR, I.17A, April 2006.

Officers of Parliament

- Public Audit Act 2001 (key sections)
- Ombudsmen Act 1975 (key sections)

Official information

- Official Information Act 1982 (key sections)
- Office of the Ombudsmen, *Report of the Ombudsman, Mel Smith, upon the action of the Department of Labour in regard to an Official Information Act complaint by Sarah Boyle, of the Office of the Leader of the Opposition*. Wellington, 24 February 2004.
- Taylor, Kevin ‘Treasury costs student loan plan at \$924m’ *New Zealand Herald*, 15 September 2005
- New Zealand Labour Party Press Release ‘Student Loans policy easily affordable’ Wednesday 14 September 2005. www.scoop.co.nz/stories/PA0509/S00387.htm

Treaty of Waitangi

- Te Puni Kokiri, *He Tirohanga o Kawa ki te Tiriti o Waitangi*, 2001 (extracts)
 - pp 10-12, the texts of the Treaty of Waitangi
 - pp 25-46, Historical Background
 - pp 73-106, The principles of the Treaty as expressed by the Courts and the Waitangi Tribunal
- Palmer, M, “The Treaty of Waitangi in Legislation” (2001) NZLJ 207.
- Ladley, A, ‘The Treaty and Democratic Government’ *Policy Quarterly*, (Vol 1, No 1), Institute of Policy Studies, VUW, 2005.
- White, N & Ladley, A ‘Claims to Treaty and other Rights: Exploring the Terms of Crown-Maori Negotiation’ *Policy Quarterly*, (Vol 1, No 2), Institute of Policy Studies, VUW, 2005.
- ‘NZ Maori Council v Attorney-General’ (summary) in McDowell, Morag & Webb, Duncan *The New Zealand Legal System: Structures, processes & legal theory* (3rd ed) Lexis Nexis Butterworths, Wellington, 2002. pp 208 – 215.

Foreshore and seabed

- Davies, Briony ‘Staking our Claim to the Beach’ *Counsel*, Chapman Tripp, 1 August 2003.
- *Ngati Apa & Other v Attorney-General* [2003] 3 NZLR 643.
- Ministry of Justice *The Foreshore and Seabed Act 2004*. Wellington, 2004.
- Attorney General’s report under s 7 NZBORA on the Foreshore and Seabed Bill
- Committee on the Elimination of Racial Discrimination Report on the *Foreshore and Seabed Act 2004*, 66th session, 17 February-11 March 2005.
- Economic and Social Council, *Report of the Special Rapporteur on human rights and fundamental freedoms of the indigenous people, Rodolfo Stavenhagen – Mission to New Zealand*. United Nations Commission on Human Rights, Sixty-second session. E/CN.4/2006/78/Add.3, 13 March 2006.

International law

- Palmer, G and Palmer, M, *Bridled Power*, 4ed, OUP, 2004, ch 18, ‘International law.’
- *Ashby v Minister of Immigration* [1981] 1 NZLR 222
- *RAMSI: Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga Concerning the Operation and Status of the Police and Armed Forces and Other Personnel Deployed to Solomon Islands to Assist in the Restoration of Law and Order and Security*, signed 24 May 2003.
- Summary of the litigation involving Ahmed Zaoui

Module 6: Working with the law in daily application

Discretion and the law

- Solicitor General ‘Prosecution guidelines’(1992)
- House of Representatives, *Questions of privilege relating to the application of section 55(1)(c) of the electoral Act 1993 to Hon Harry Duynhoven – Report of the Privileges Committee*. AJHR, I.17C, August 2003.
- Waldron, “How Dodgy was Duynhoven” (2004) 10 *Otago Law Review* 631.
- Materials on the Electoral Act and pledge card investigation
 - Electoral Act 1993: extracts on election expenses
 - Extract from the Parliamentary Members’ Handbook of Services (November 2003), section 1.3
 - National Party Press Release ‘Taxes wasted on Labour’s pledge card’ Monday, 5 September 2005, 2:09 pm.
 - New Zealand Police ‘No prosecutions for electoral complaints’ National News Release, 4:01pm 17 March 2006
 - The ‘pledge card’
- *Hopkinson v Police* [2004] 3 NZLR 704

Employment in the state sector

- *Rankin v Attorney-General in respect of the State Services Commissioner* [2001] 1 ERNZ 476

Governing with others

- Controller and Auditor General, *Report of the Controller and Auditor-General on Inquiry into the Ministry of Health’s contracting with Allen and Clarke Policy And Regulatory Specialists Limited*, December 2005.
- Report of the Community and Voluntary Sector Working Group, April 2001.
- Cribb, Jo ‘Agents or Stewards? Contracting with Voluntary Organisation’ *Policy Quarterly* (Vol 2, No 2) Institute of Policy Studies, 2006.

Public sector ethics

- Code of conduct