

School of Government

GOVT 541
LAW IN THE PUBLIC SECTOR
(15 Points)

Trimester 2 / 2015

COURSE OUTLINE

Names and Contact Details

Course Coordinator: **Dr Matthew S R Palmer QC**
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School Office Hours: 8.30am to 5.00pm, Monday to Friday

Trimester Dates

Monday 6 July – Friday 23 October 2015

Withdrawal from Course

Formal notice of withdrawal must be in writing on a Course Add/Drop form (available from either of the Faculty's Student Customer Service Desks or from the course administrator). Not paying your fees, ceasing to attend lectures or verbally advising a member of staff will NOT be accepted as a formal notice of withdrawal.

1. Your fees will be refunded if you withdraw from this course on or before **Friday 17 July 2015**.

2. The standard last date for withdrawal from this course is **Friday 25 September 2015**. After this date, students forced to withdraw by circumstances beyond their control must apply for permission on an ‘*Application for Associate Dean’s Permission to Withdraw Late*’ including supporting documentation. The application form is available from either of the Faculty’s Student Customer Service Desks or at www.victoria.ac.nz/vbs/studenthelp/publications/Application-for-late-withdrawal-2010.doc.

Class Times and Room Numbers

This course is delivered in a modular format.

Module One:	Thursday 9 July 2015	9.00am – 5.00pm
Module Two:	Thursday 27 August 2015	9.00am – 5.00pm
Module Three:	Thursday 22 October 2015	9.00am – 5.00pm

Locations: Classes will be held on the Pipitea Campus of Victoria University in Wellington and you will be advised of your classroom one week prior to each module by email. The timetable is also available to view on the Victoria University website at www.victoria.ac.nz/students/study/timetables.

Attendance is required at all teaching days

Course Delivery

This course is delivered in a modular format over three days (three ‘modules’) of 6 hours contact time each (18 hours total) between 9.00am and 5.00pm on the days indicated above, supplemented by 6 hours (preparation by reading and discussing course materials in groups beforehand) between module meetings, as detailed below. **Attendance is required at all teaching days for the whole of each day.**

Group Work / Collective Learning

The course requires 6 hours of group work between modules. Before each module, you are required to read the compulsory readings for that module and discuss them in a group, of at least two people in the class, to identify what you consider to be the three most important points from each reading. You will be expected to draw on these points in making oral contributions in the module.

This work is considered part of the class structure, but rather than being accommodated in a longer module day (i.e. 8.30am to 6.00pm), the equivalent of 2 hours per module can be flexibly scheduled by groups of students reading and discussing the course materials in advance of each module.

Expected Workload

The learning objectives set for each course are demanding and to achieve them, candidates must make a significant commitment in time and effort to reading, studying, thinking, and completion of assessment items outside of contact time. Courses vary in design but all require preparation and learning before the first day of the course and regular learning is also necessary (students who leave everything to the last moment rarely achieve at a high level).

Expressed in input terms, on average, the time commitment required usually translates to approximately 150 hours for a 15-point course. Some of that is set contact time. The rest is your study time and we recommend you study weekly for approximately 8-10 hours.

Prescription

An introduction to various aspects of Government as it affects public servants, including administrative law, the Treaty of Waitangi, constitutional law, civil rights and the legal system and method.

Course Learning Objectives

At the end of this course, students will be able to:

1. Explain the principles underlying New Zealand's constitution.
2. Explain the practice of government within the law with attention to the relationships between legal rules, political structures, Cabinet and other decision-making processes and policy outcomes.
3. Analyse problems in the main areas of law relevant to state sector administration, seeking solutions in a setting governed by public law and other rules of public administration.

Course Content and Readings

The course is divided into three sections, each taught over a full day. Students are expected to have read and discussed **in advance**, and will be questioned on, all the readings for each module. All of the required readings will be available on Blackboard. Students are expected to have a good understanding of the New Zealand system of government.

Module One: Government

The principles underlying New Zealand's constitution, and how it operates in practice:

A. What is a Constitution?

1. Sir Kenneth Keith, "On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government" in Cabinet Office, *Cabinet Manual 2008*. (online at www.cabinetmanual.cabinetoffice.govt.nz/node/68)
2. Matthew S R Palmer "What is New Zealand's Constitution and Who Interprets it?: Constitutional Realism and the Importance of Public Office-holders" (2006) 17 *Public Law Review* 133-162.
3. Matthew S R Palmer "New Zealand's Constitutional Culture" 22 *New Zealand Universities Law Review* 578-597.

B. Parliament and the Judiciary & the Separation of Powers

4. David McGee, “The Parliament of New Zealand”, Ch. 1, *Parliamentary Practice in New Zealand* (3rd ed. 2005).

C. What is a Government? How are they formed and dissolved?

5. “Elections, Transitions, and Government Formation”, Ch. 6, *Cabinet Manual 2008*.

D. The Operation of Executive Government in Principle and in Practice

6. State Services Commission, “A Guide to New Zealand’s Central Government Agencies”
7. “Ministers of the Crown and the State Sector”, Ch. 3, *Cabinet Manual 2008*.
8. State Services Commission, “Understanding the code of conduct: Guidance for State servants” (SSC, April 2010)
9. State Services Commission, “General Election 2014: Political Neutrality” (SSC, 2014)
10. State Services Commission “Guidance for the 2014 Election Period: State Servants, Political Parties and Elections” (SSC February 2014)
11. Sir Geoffrey Palmer, “The Cabinet, the Prime Minister and the Constitution” (2006) 4 *New Zealand Journal of Public and International Law* 1.
12. Colin James, *The Tie that Binds: the Relationship between Ministers and Chief Executives*, (2002), Chs. 2 and 6.
13. Mark Prebble, “The Everyday Paradox” *With Respect: Parliamentarians, officials, and judges too* (Wellington, Institute of Policy Studies, 2010) Ch. 4.

Module Two: Law

An introduction to the practical operation of law in particular areas important to the operation of government.

A. What is Law? How is it Different from Convention?

1. *Fitzgerald v Muldoon* [1976] 2 NZLR 615 (SC).
2. *Re: Resolution to amend the Constitution* [1981] 1 SCR 753 (SCC).

B. New Zealand Law

3. “Basic Principles of New Zealand’s Legal and Constitutional System”, Ch. 3, *Legislation Advisory Committee Guidelines: Guidelines on Process and Content of Legislation* (2001) (pp 39-58).

C. Legislation and Regulations

4. Legislation Act 2012
5. “Primary and Subordinate Legislation: Concepts and Terminology”, Ch. 1, Ross Carter, Jason McHerron, Ryan Malone, *Subordinate Legislation in New Zealand* (Wellington, LexisNexis, 2013) (pp 1-11).

D. Statutory Interpretation

6. Interpretation Act 1999
7. “Approaches to Interpretation” Ch. 7 Ross Carter, *Burrows and Carter: Statute Law in New Zealand* (5th ed., Wellington, LexisNexis, 2015) (pp. 197-202).
8. Extract from “Purpose” Ch. 8 Ross Carter, *Burrows and Carter: Statute Law in New Zealand* (5th ed., Wellington, LexisNexis, 2015) (pp. 223-249).

E. What Judges Do

9. Extract from “Introduction” Ch. 1, E. W. Thomas, *The Judicial Process: Realism: Pragmatism, Practical Reasoning and Principles* (Cambridge, Cambridge University Press, 2005) (pp. 1-7).

F. Law and Policy

10. Matthew S R Palmer “Thinking about Law and Policy: Lessons for Lawyers” (address to the Crown Law Office and Law Commission, 2006).

G. A Case Study: The Legal Status of the Treaty of Waitangi

11. “The Legal Status and Force the Treaty of Waitangi” Ch. 4, Matthew S. R. Palmer, *The Treaty of Waitangi in New Zealand’s Law and Constitution* (Wellington, VUP, 2008).

Module Three: Government and Law

How law affects government in principle and practice:

A. Law in Executive Government

1. Matthew S R Palmer, “The Law Officers and departmental lawyers” [2011] *New Zealand Law Journal* 333.

B. Judicial review of public decisions

2. *Greenpeace of New Zealand Inc v Electoral Commission* [2014] NZHC 2135

C. Bill of Rights Act 1990

3. *R v Hansen* [2007] NZSC 7, [2007] 3 NZLR 1 (Tipping J).

D. Non-litigation options: the OIA, Ombudsmen and Auditor-General

4. Official Information Act 1982; ss 4, 5, 6, 9, 12-19, 23

5. Ombudsmen Act 1975, ss 13, 18, 19, 27, 30

6. Public Audit Act 2001

E. The Rule of Law

7. Lord Bingham “The Rule of Law” (2007) 66 *Cambridge Law Journal* pp. 67-85.

8. “Three Themes” Ch. 9, Brian Z. Tamanaha *On the Rule of Law: History, Politics, Theory* (Cambridge, Cambridge University Press, 2004) pp. 114-126.

F. Parliament v the Courts: Who is Supreme?

9. Tom Bingham, *The Rule of Law* (Allen Lane, 2010) Ch. 12.

10. Matthew Palmer, “Parliamentary Sovereignty” Appendix F to the Inquiry to Review New Zealand’s Existing Constitutional Arrangements: Report of the Constitutional Arrangements Committee, I.24A pp. 146-152.

G. Case Study: The Canterbury Earthquake Recovery

11. Canterbury Earthquake Response and Recovery Act 2010.

12. Open letter to New Zealanders and their Parliament about the Canterbury Earthquake Recovery Act 2010.

13. Canterbury Earthquake Recovery Act 2011.

14. *Fowler Developments Ltd v Chief Executive of Canterbury Earthquake Recovery Authority* [2013] NZHC 2173, [2014] 2 NZLR 54.

15. *Quake Outcasts v Minister for Canterbury Earthquake Recovery* [2015] NZSC 27.

Recommended Readings

The text that is closest in approach to the way in which the course is conceived and taught is Geoffrey Palmer and Matthew Palmer, *Bridled Power: New Zealand’s Constitution and Government* (4th ed., OUP, 2004). It is not required, but is *recommended*.

Other valuable (and expensive) legal texts you may wish to review are:

- Philip Joseph, *Constitutional and Administrative Law in New Zealand* (4th ed., 2014);
- Ross Carter, *Burrows and Carter: Statute Law in New Zealand* (5th ed., Wellington, LexisNexis 2015),
- Matthew Palmer, *The Treaty of Waitangi in New Zealand’s Law and Constitution* (Wellington, VUP, 2008).

Assessment

The Assessment Handbook will apply to all VUW courses: see www.victoria.ac.nz/documents/policy/staff-policy/assessment-handbook.pdf .

Attendance and reasonable participation at each class is a requirement. It is not graded, but appreciably good or poor participation will be taken into account in the event that the overall mark for the course is on the cusp between two grades.

Attendance at a class will only be excused for truly exceptional circumstances, and not for more than one of the three classes.

25% Class Test 1: There will be a short answer test on **Monday 13 July 2015** comprised of short answer questions based on the readings and the class for module 1. The questions will be put up on Blackboard at 6.00pm; answers are to be submitted by 8.00pm. This test should only take an hour.

25% Class Test 2: There will be a short answer test on **Monday 31 August 2015** comprised of a legal opinion question and an essay question based on the readings and the class for module 2. The questions will be put up on Blackboard at 6.00pm; answers are to be submitted by 8.00pm. This test should only take an hour.

50% Research Paper: A 3,000 word research paper on a topic of the student's choice relating to the course content, due by **5.00pm on Friday 23 October 2015**. Marks will be awarded for: originality and quality of analysis; demonstrated awareness of the interaction of law and government; and structure and writing style. The course coordinator is available to discuss research topics with students individually.

For all three pieces of assessment, you will be notified only if your work is NOT received.

Marks for the tests will be available before the next module class is held.

All assignments and tests should be submitted via Blackboard.

Students should keep a copy of all submitted work.

Note to Students

Your assessed work may also be used for quality assurance purposes, such as to assess the level of achievement of learning objectives as required for accreditation and academic audit. The findings may be used to inform changes aimed at improving the quality of VBS programmes. All material used for such processes will be treated as confidential, and the outcome will not affect your grade for the course.

Penalties

The ability to plan for and meet deadlines is a core competency 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 assignments by the due date. Marks will be deducted at the rate of five per cent for every day by which the assignment is late and no assignments will be accepted after five working days beyond the date they

are due. For example, if you get 65% for an assignment, but you handed it in on Monday when it was due the previous Friday, you will get a mark of 50%.

If ill-health, family bereavement or other personal circumstances beyond your control 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 to the due date. You should let your course coordinator know as soon as possible in advance of the deadline (if circumstances permit) if you are seeking an extension. Where an extension is sought, evidence, by way of a medical certificate or similar, may be required by the course coordinator.

Computation of Grades

The translation from numerical marks to letter grades is set by the following grade ranges.

<i>Pass/Fail</i>	<i>Grade</i>	<i>Normal range</i>	<i>Indicative characterisation</i>
Pass	A+	90% - 100%	Outstanding performance
	A	85% - 89%	Excellent performance
	A-	80% - 84%	Excellent performance in most respects
	B+	75% - 79%	Very good performance
	B	70% - 74%	Good performance
	B-	65% - 69%	Good performance overall, but some weaknesses
	C+	60% - 64%	Satisfactory to good performance
	C	55% - 59%	Satisfactory performance
	C-	50% - 54%	Adequate evidence of learning
Fail	D	40% - 49%	Poor performance overall; some evidence of learning
	E	0 - 39%	Well below the standard required
	K	Fail due to not satisfying mandatory course requirements, even though the student's numerical course mark reached the level specified for a pass, usually 50%. A student whose course mark is below 50 should be given a D (40-49) or E (0-39), regardless of whether they met the mandatory course requirements	
Pass	P	Overall Pass (for a course classified as Pass/Fail)	
Fail	F	Fail (for a Pass/Fail course)	

Access to Blackboard

Blackboard is Victoria University's online environment that supports teaching and learning by making course information, materials and other learning activities available via the internet through the myVictoria student web portal. Ensure that you can access Blackboard before the course begins.

To access the Blackboard site for this course:

1. Open a web browser and go to www.myvictoria.ac.nz .
2. Log into myVictoria using your ITS Username (on your Confirmation of Study) and password (if you've never used the Victoria University computer facilities before, your initial password is your student ID number, on your Confirmation of Study, Fees Assessment or student ID card – you may be asked to change it when you log in for the first time).
3. Once you've logged into myVictoria, select Blackboard (from the options along the top of the page) to go to your Blackboard homepage.

4. The “My Courses” section displays the courses you have access to – select the appropriate link to access the course-specific Blackboard site. Please note that only courses that are actually using Blackboard and have been made available to students by their respective course coordinator will be displayed.

If you have any problems gaining access to Victoria University’s computer facilities, such as myVictoria and Blackboard, you should contact the ITS Service Desk on (04) 463 5050 or its-service@vuw.ac.nz . See www.victoria.ac.nz/its/student-services/ for more information.

Power-point slides and other lecture materials that are posted on Blackboard may differ from the presentations used in class, as the copyright rules for archived presentations differ somewhat from those for live presentation.

Academic Integrity, Plagiarism, and the Use of Turnitin

Plagiarism is presenting someone else’s work as if it were your own, whether you mean to or not. ‘Someone else’s work’ means anything that is not your own idea. Even if it is presented in your own style, you must still acknowledge your sources fully and appropriately. This includes:

- material from books, journals or any other printed source
- the work of other students or staff
- information from the Internet
- software programs and other electronic material
- designs and ideas
- the organisation or structuring of any such material.

Acknowledgement is required for *all* material in any work submitted for assessment unless it is a ‘fact’ that is well-known in the context (such as “Wellington is the capital of New Zealand”) or your own ideas in your own words. Everything else that derives from one of the sources above and ends up in your work – whether it is directly quoted, paraphrased, or put into a table or figure, needs to be acknowledged with a reference that is sufficient for your reader to locate the original source.

Plagiarism undermines academic integrity simply because it is a form of lying, stealing and mistreating others. Plagiarism involves stealing other people’s intellectual property and lying about whose work it is. This is why plagiarism is prohibited at Victoria.

If you are found guilty of plagiarism, you may be penalised under the Statute on Student Conduct. You should be aware of your obligations under the Statute, which can be downloaded from the policy website (www.victoria.ac.nz/home/about/policy/students.aspx). You could fail your course or even be suspended from the University. Plagiarism is easy to detect. The University has systems in place to identify it.

Student work provided for assessment in this course may be checked for academic integrity by the electronic search engine www.turnitin.com . Turnitin is an on-line plagiarism prevention tool which compares submitted work with a very large database of existing material. At the discretion of the Head of School, handwritten work may be copy-typed by the School and subject to checking by Turnitin. Turnitin will retain a copy of submitted materials on behalf of the University for detection of future plagiarism, but access to the full text of submissions will not be made available to any other party.

There is guidance available to students on how to avoid plagiarism by way of sound study skills and the proper and consistent use of a recognised referencing system. This guidance may be found at the following website www.victoria.ac.nz/home/study/plagiarism.aspx . If in doubt, seek the advice of your course coordinator.

Plagiarism is simply not worth the risk.

School of Government Service Standards

Good learning and teaching outcomes for students in School of Government courses depend on many factors, including open, transparent and accountable relationships between teaching and support staff, and students in their various activities. The following service standards indicate some of the key expectations that teaching staff and students can have of each other. In all cases, they represent what the School believes should be ‘normal’ practice; exceptional circumstances can and will be negotiated as required.

Please note that there are University-wide policies relating to assessment – including rights of review and appeal. Details may be found in the Assessment Handbook (which is reviewed and updated from time to time – www.victoria.ac.nz/about/governance/dvc-academic/publications).

In general terms, any concerns that a student or students may have should be raised with the course coordinator in the first instance. If that course of action is not appropriate, the School’s programme support staff will direct you to the relevant Programme Director/Coordinator.

Standards relating to staff timeliness of responses to email and phone queries:

- Email or phone queries from students will be responded to in 48 hours

Standards relating to availability of course materials:

- Students on modular or intensive courses will usually have course materials at least 4 weeks before the course starts
- Students on weekly courses will usually have course materials available on the first day of the course

Standards relating to attendance:

- It is expected that students will attend all contact teaching sessions for a course. If a student is aware that they will be unable to attend part of a course prior to it commencing, they are required to advise the course coordinator. In such a situation, the student may be declined entry into the course.
- Where a course coordinator approves some non-attendance before the class commences, the course coordinator may set additional item(s) of assessment of learning and teaching objectives for the course for students unable to attend. Advice relating to the submission and assessment of any such additional assessment will be provided by the course coordinator.

Variations to the assessment details provided in the course outline:

- Any variation to the assessment details in the course outline will be formally agreed between the course coordinator and students at the earliest possible time, preferably at the beginning of the course.

Standards relating to assignments – turnaround and feedback:

- Unless otherwise agreed between students and the course coordinator, items of assessment will be marked within 15 working days of submission.
- Comments on pieces of assessment will allow students to understand the reasons for the mark awarded, relative to the teaching and learning objectives specified in the course outline, and will usually include advice on how the student can improve their grades in future assignments.

Mandatory Course Requirements

In addition to obtaining an overall course mark of 50 or better, students must submit or participate in all pieces of assessment required for this course.

Any student who is concerned that they have been (or might be) unable to meet any of the MCRs because of exceptional personal circumstances, should contact the course coordinator as soon as possible.

If you cannot complete an assignment or sit a test or examination, refer to www.victoria.ac.nz/home/study/exams-and-assessments/aegrotat .

Communication of Additional Information

Information will be communicated via Blackboard. It is essential, therefore, that you activate your @myvuw.ac.nz email account (the free email account created for you when you enrol and accessed via the myVictoria student web portal) before the start of the course. Once you have activated your @myvuw.ac.nz email account, if you want to receive these emails at your preferred email address (e.g. your home or work email address), you must modify the settings so all emails sent to it are automatically forwarded to your preferred email address. For more information, please go to www.victoria.ac.nz/its/student-services/FAQs.aspx#Email_Forward .

Student Feedback

Student feedback on University courses may be found at www.cad.vuw.ac.nz/feedback/feedback_display.php .

Link to General Information

For general information about course-related matters, go to www.victoria.ac.nz/vbs/studenthelp/general-course-information .
