Administrative Law

An Overview
What is Administrative Law?

• It is a branch of Public Law.
• The law relating to the control of governmental power.
• It is our generation’s answer to legislative and judicial inadequacies
• A study of the pathology of power in a developing society.
• It is concerned with the following five questions:
  1. What sort of powers does the administration exercise at present?
  2. What are the limits of those powers?
  3. What are the ways by which the administration is kept within those limits?
  4. What are the procedures followed by administrative authorities in the exercise of those powers?
  5. What are the remedies available to an individual as against the administration?
Reasons for the growth of Administrative Law

• Changing role of government
• Intensive form of government
• Inadequacy of legislative process
• Inadequacy of judicial system
• Constitutional governance
• Establishment of Regulatory Agencies
• Conferring discretionary powers
• Surveillance of Executive and Administrative Action
• Judicial activism and Public Interest Litigation
Contents of Administrative Law

• Definition, nature and scope of Administrative law
• Basic Concepts of Administrative Law
• Classification of Administrative Action
• Delegated Legislation
• Administrative Adjudication
• Discretionary Powers of Administration
• Principles of Natural Justice
• Judicial Review of Administrative Action
• Remedies against Administrative Action
• Liability of Government
• Maladministration and its Remedies
• Public Enterprises
Theories as to the nature of Administrative Law

• **Red light theory:** Administrative law is the control of the administration. Power is dangerous. Where there is power, there is room for abuse and misuse. Hence the need for control.

• **Green light theory:** the function of Administrative Law is to describe governmental powers and to examine how they can be made more efficient and effective. Accepts the desirability of governmental powers.
Basic concepts of Administrative Law

• Rule of Law
• Separation of powers
• Judicial Review
Classification of Administrative Action

• Legislative function
• Quasi-judicial function
• Administrative function
• Ministerial function
Delegated Legislation: Reasons for its growth

• Pressure upon Parliamentary time
• Technicality of the subject matter
• Need for flexibility
• State of emergency
Delegated Legislation:
Nature of Power Conferred

• Commencement clause
• Supplying details
• Power of inclusion and exclusion
• Power of extension and application
• Power of suspension
• Power of modification
• Power to remove difficulties clause
• Power to prescribe punishments
• Power to impose tax
Control of Delegated Legislation

Legislative control
- Pre-natal control
- Post-natal control: Laying on the table
  - Scrutiny Committees

Judicial control
- Where Parent Act is ultravires the Constitution
- Where delegated legislation is ultravires the Constitution
- Where delegated legislation is ultravires the Parent Act
- Unreasonableness
- Malafide
- Sub-delegation
- Retrospective operation
- Exclusion of judicial review
Grounds for Judicial Review

• Illegality
• Irrationality
• Procedural impropriety
• proportionality
Remedies

Private Law Remedies
  Civil Suits
  Injunctions
  Declaratory relief etc.

Public Law Remedies (writs)
  Habeas Corpus
  Quo warranto
  Mandamus
  Certiorari
  Prohibition etc.