

ADMINISTRATIVE LAW

FALL SEMESTER 2009

Professor:

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Objectives: The objective of this course is to help each student understand the powers, responsibilities, and limitations on the executive branch and how to participate in and influence its decisions.

Introduction: Even though the United States Constitution merely alludes to administrative agencies within the executive branch, one would be gravely mistaken to assume that the Founders did not find administrative agencies to be an important and necessary part of government in the new Republic. For example, the First Congress established the Department of War, the Department of the Treasury, the Department of Foreign Affairs, the Post Office, the Patent Office, the Office of the Attorney General, and the United States Attorneys offices. Over time, executive branch agencies have increased in size, specialization, and power to deal with the increasing complexity of problems facing the Union. However, the growth of executive agencies has caused some to question the constitutionality of executive actions, especially where executive agencies make law but are not elected by the people. Consequently, Congress and the President have taken action to limit the scope of agency power. These laws that both authorize agencies to act and provide limitations to their authority constitute “administrative law.”

Given how absolutely boring all of that sounds, many students wonder why they must take “administrative law.” The truth is that any government body, non-profit organization, or private company will deal with an executive-branch agency’s rules and orders. To accomplish the mission of your government agency or private organization, you absolutely NEED TO KNOW the powers that are given to administrative agencies and how you can influence the use of those powers to accomplish the mission of your organization. This is why you must take administrative law, and that is what I will teach you to do.

Grading:

A = 100-94%	A- = 93-90%	
B+ = 89-86%	B = 85-82%	B- = 81-78%
C+ = 77-74%	C = 73-70%	C- = 69-66%
D+ = 65-62%	D = 62-59%	D- = 58-55%
F = 55 % >		

¹ Pursuant to government ethics rules, I have to tell you that I am teaching this course in my personal capacity, and the things I say do not necessarily reflect the views of the United States, the U.S. Department of Justice, the U.S. Attorney General, the President, or any other government agency.

Academic Honesty:

Academic dishonesty will not be tolerated. The University of Utah and I expect students to adhere to generally accepted standards of academic conduct. Academic misconduct is defined in the University's student code as follows: "Academic dishonesty' includes, but is not limited to cheating, misrepresenting one's work, inappropriately collaborating, plagiarism, and fabrication or falsification of information." Each of the aforementioned terms is defined in the University's Student Code and is available on the University's web site. In academic writing, it is required that all sources from which ideas and words are drawn be fully acknowledged and cited.² Also, no student should represent someone else's work as his/her own. Therefore, make sure that you use quotation marks to indicate the use of someone else's writing or words in your own work, and provide a full citation that identifies the author(s), title, publisher, year published, and page(s) at which the quotation may be found. If you use sources from the World Wide Web, make sure to include the full web address for the specific work and the day on which you last accessed the information. When in doubt of the proper citation form, consult a style manual, and be sure to use one style consistently throughout any given paper.

Please be advised that because academic honesty is so important, severe sanctions exist to punish proven cases of academic dishonesty. Expectations of honesty are especially high for graduate students. If you have any concerns as to the proper standard of honesty, please consult the instructor prior to engaging in the questionable activity.

Americans with Disabilities Act Notice: Persons with disabilities requiring special accommodations to meet the expectations of this course should provide reasonable prior notice to the instructor and to the Center for Disability Services, 162 Olpin Union Building, 581-5020 (V/TDD) to make arrangements. Written material in this course can be made available in alternative format with prior notification.

Class Procedure: Since this is not a law school class, I will not torture you with the Socratic Method. With that said, law cannot be learned through reading and lecture alone. Law is learned as it is discussed from different points of view. Although there will be some lecture, most of class will be spent discussing the reasoning of various legal and policy positions in a given case. We will deal with some controversial topics, which will cause strong feelings for or against a particular legal position during our class discussions. Students should feel free to respectfully voice their reasoned legal opinions without fear of being mocked or scorned. Accordingly, eye rolling, sighing loudly, or laughing out of disgust for another's legal position will NOT be tolerated, and if severe enough, may result in a loss of participation points.

² A citation should also be given when using someone else's idea(s) or concept(s), even if you are not quoting directly from their work.

Texts:

1. Administrative Procedure and Practice, Funk et al., (Thompson-West 2006) (hereinafter “Casebook”).
2. Selected Federal and State Administrative and Regulatory Laws, 2007 Edition (Thompson-West, 2007) (hereinafter “Statute Book”).
3. Administrative Law, Pierce, (Foundation Press 2008) (hereinafter “Supplement”).

Assigned Readings:

Class 1 (August 25, 2009): **Introduction to Administrative Law**

Statute Book: 1-21

Casebook: 1-32

Supplement: 1-6

Class 2 (September 1, 2009): **Agency Structure**

Casebook: 520-81

Supplement: 7-17; 133-48

Class 3 (September 8, 2009): **Rulemaking**

Statute Book: 9 (definition of a “rule”), 10-11

Casebook: 48-51; 62-90; 344-67

Class 4 (September 15, 2009): **Rulemaking**

Statute Book: 22-36; 83-90; 100-19; 146-56; 203-09

Casebook: 91-155;

Supplement: 57-86

PICK A PROPOSED RULE IN EITHER THE STATE OR FEDERAL SYSTEM AND PROVIDE A DETAILED, INTELLIGENT COMMENT ON IT. PROVIDE ME WITH A COPY OF YOUR COMMENT BY THE END OF THE SEMESTER.

Class 5 (September 22, 2009): **Adjudication**

Statute Book: 6-7 (Amends. V, XIV); 11-13 (5 U.S.C. § 554); 14-16 (5 U.S.C. §§ 556, 557)

Casebook: 194-283; 319-33

Supplement: 18-52

Class 6 (September 29, 2009): **Adjudication**

Casebook:

Supplement: 18-52 (if you haven’t read it already)

Class 7 (October 6, 2009): **MIDTERM EXAM BRING BLUE BOOKS**

(October 13, 2009) **FALL BREAK NO CLASS**

Class 8 (October 20, 2009): **Judicial Review—Constitutional Constraints to Jurisdiction**

Statute Book: 6 (Article III)
Casebook 407-436; 503-519
Supplement: 117-132

Class 9 (October 27, 2009): **Judicial Review—Waiver of Sovereign Immunity**

Statute Book: 18-21 (to 5 U.S.C. § 706)
Casebook: 436-503
Supplement: 96-116

Class 10 (November 3, 2009): **Judicial Review—Merits and Deference**

Casebook: 160-189; 283-318; 388-406
Supplement: 87-91

Class 11 (November 10, 2009): **Inspections, Reports, & Subpoenas**

Casebook: 582-645
Supplement: 149-51

Class 12 (November 17, 2009): **GUEST SPEAKER**

Class 13 (November 24, 2009): **Public Access to Agency Process**

Statute book: 37-49; 56-82; 134-45
Casebook: 648-715
Supplement: 152-159

Class 14 (December 1, 2009): **Agency and Personal Liability for Agency Employees**

28 U.S.C. § 1983 (materials will be provided)
Bivens (materials will be provided)
Federal Tort Claims Act
Estoppel--Casebook: 367-383
Equal Access to Justice Act: 716-58

Class 15 (December 8, 2009)

FINAL EXAM BRING BLUE BOOKS