

ADMINISTRATIVE LAW: SYLLABUS, FALL 2013 – First Assignments

Professor Vern R. Walker

Course Description: This course provides a study of the processes of decision-making by administrative agencies and their control by legislators and courts. It centers on the tension between the need for delegation of power to agencies sufficient to ensure effective government and the need to limit that power and protect the citizen from government oppression. The course focuses particularly on administrative procedure and deals with the concept of administrative discretion and the constitutional, statutory and common-law doctrines that control discretion in administrative decision-making. Also considered are contemporary issues that bear upon the fairness of governmental action, e.g., right to notice and hearing, confrontation of witnesses, ex parte communications, institutional decisions, combination of functions.

CONTACT INFORMATION

Office: Room 106, in the southwest corner of the main floor of the library

Email: Vern.R.Walker@Hofstra.edu

Telephone (but email is preferred): (516) 463-5165

Regular office hours will be announced; to avoid conflicts, please make appointments with my administrative assistant, even for meetings during office hours

Administrative Assistant: Joyce A. Cox, Room 038U, in the basement of the library

Email: Joyce.A.Cox@Hofstra.edu

Telephone (but email is preferred): (516) 463-6339

GRADING AND ATTENDANCE POLICY

This is an examination course, and your grade on the final examination will be the basis for your final grade in the course. Participation in class discussion is required, and the quality of your participation may raise or lower your final grade in the course.

In addition, attendance at class is required. **You must notify me about and explain all absences from class, using email.** Unexcused absences may result in a lowering of your grade. Moreover, being absent for more than 6 class-hours in this 3-credit course, even if explained, may result in a lowering of your grade.

EXAMINATION NOTE: The examination will probably be an “open book” exam. If it is, **YOU ARE REQUIRED TO BRING TO THE EXAMINATION YOUR OWN COPIES OF ALL STATUTORY AND ADMINISTRATIVE MATERIALS (U.S.C., C.F.R., FED.REG.) THAT ARE ASSIGNED AS READINGS IN THE COURSE SYLLABUS.** You may also

bring to the examination other materials, as you wish, such as judicial decisions.

In addition, the law school, the New York State Court of Appeals and the American Bar Association require law students to be in good and regular attendance during the academic year for the courses in which they are registered. To comply with these rules, you must attend at least 85% of the regularly-scheduled classes in this course. Thus, you may miss no more than 6 class-hours in this 3-credit course.

I will provide sign-in sheets for each regularly-scheduled class, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

If you exceed the permitted absences by failing to sign in, you may be administratively withdrawn from the course. No prior notice may be given, and you will receive notification from the Office of Academic Records indicating the withdrawal. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

If you believe you must be absent from class for more than the permitted number of hours, you should contact the Office of Student Affairs as soon as possible. Accommodations may be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception must be accompanied with appropriate documentation.

NOTICE: In order to ensure equal access and knowledge for all students, and to reduce anxiety during the exam period, I will answer absolutely no questions about the material for the course or about the exam after the last class has concluded, regardless of how the question is posed to me (e.g., orally or by email). Make sure you have asked me all of your questions prior to the last class.

COURSE OUTLINE AND READING ASSIGNMENTS

The course will be administered through Blackboard.

Required Text: William F. Fox, UNDERSTANDING ADMINISTRATIVE LAW (LexisNexis, Sixth Edition, 2012), ISBN: 978-1-4224-9865-1. Pages of assigned readings are to this text, unless otherwise indicated.

Other assigned materials should be downloaded from Blackboard (when the syllabus so indicates), otherwise from Westlaw, Lexis, or other online databases. **NOTE:** When downloading published court decisions, it is preferable to obtain the West Reporter Image (pdf version), so that everyone has the same pagination.

Date Topic and Assignment

8/19 Introduction to Agencies, and External Controls on Agencies
Pages 1-35 from the Fox text.

PART I: THE PROBLEM OF DELEGATING LEGISLATIVE POWERS TO AGENCIES

Topics Include: Separation of Powers; Role of Agencies; Complexity of the Regulatory Task

8/21 Industrial Union Department, AFL-CIO v. American Petroleum Institute, 448 U.S. 607 (1980) ("Benzene Case"); pages 35-54 from the Fox text. Read the edited version of the Benzene Decision available for download from the course materials on Blackboard.

8/26 Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S.Ct. 2778 (1984). Read Parts I-II, VI-VII.

8/28 Whitman v. American Trucking Associations, Inc., 531 U.S. 457, 121 S.Ct. 903 (2001). Read everything except Part IV of the Opinion of the Court.

9/2 **Labor Day: No Class**

9/4 United States v. Mead Corp., 533 U.S. 218, 121 S.Ct. 2164 (2001): read the opinion of the Court. Also read pages 347-61 in the Fox text.

9/9 Arlington v. FCC, 569 U.S. ___, 133 S.Ct. 1863 (2013). Additional topic for class: Analytic Methodology: Extracting Rules and Making Arguments

PART II: THE RULEMAKING PROCESS

Topics Include: Informal vs. Formal Rulemaking Procedures; Substantive vs. Procedural Rules; Interpretative Rules

PART III: ADMINISTRATIVE ADJUDICATION

Topics Include: Informal vs. Formal Adjudication Procedures; Scope of Judicial Review; Administrative Enforcement Proceedings

PART IV: ADDITIONAL PROCESS RULES FOR JUDICIAL REVIEW

Topics Include: Preliminary Matters of Jurisdiction, Standing, Finality, Exhaustion and Ripeness