

Administrative Law Syllabus – Spring 2018

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- 1. Syllabus:** Reading assignments are set forth in this syllabus. The class-by-class breakdowns and dates represent approximations. During the semester, there will be alterations, deletions and additions. Any changes will be announced in class.
- 2. Texts:** The case book that we will be using is the **7th edition** of Federal Administrative Law by Gary Lawson. I will also supply additional materials. I will discuss optional commercial materials, including those that I think can be --- depending on the source and the manner in which they are used --- helpful and harmful early in the semester. For now, the critical point is that relying on outside sources *instead* of the course materials is to follow a well-worn path to the destinations of delusion (first) and disaster (second).
- 3. Preparation & Participation:** You are expected to read and think about the assigned material before each class. Likewise, you are expected to contribute to the classroom discussions on both a voluntary and involuntary basis. I will call on you. Your participation may impact your grade at the margins. **Given that a number of students will be taking the class for W1 or W2 credit and will not be taking the exam, your day-to-day preparation and participation will be treated as an *especially* important part of your grade. I.e., choosing a paper option in no way relieves you of responsibility for the course material.**
- 4. TWEN:** There is a TWEN page for this course. To register (1) go to lawschool.westlaw.com (2) click on TWEN (3) choose “add course” and add this course. Once you have registered you will have the ability to engage in substantive discussions with your fellow students. I will also use TWEN to post course materials. I encourage you to use the TWEN list serve to discuss substantive matters relating to the course. I may monitor these discussions as a matter of interest, but will not be intervening as a matter of course.
- 5. Attendance:** Regular, on-time attendance is the expectation. Accommodations will be made for compelling circumstances.
- 6. Exams:** Unless you are taking the course for W1 or W2 credit, your grade will turn primarily on a final exam at the end of the semester. More will be said this in due course. I will be covering matters in class that are not part of the readings, and your readings will cover matters that are not covered in class. All of it is fair game for the exam. You will develop a good sense of the relative import of the material as the semester develops, but I will also give some additional guidance on this in the days leading up to the exam.
- 7. Laptops:** As you know, some professors in the school have banned laptops. Personally, I think they are doing you a favor. I have decided, however, that you are allowed to use your laptops in our class for note-taking purposes. Using laptops for other purposes (chatting, emailing, surfing, gaming) is prohibited, mostly because it is distracting for both you and those around you. A compelling articulation of the view that handwritten

note-taking promotes greater overall learning may be found at *Dorf on Law*, http://michaeldorf.org/2006_11_01_archive.html

- 8. Office:** My office (463-7236) is in Room 215. You are welcome to drop by at any time; if I'm in and can't meet with you right away, we'll find a time to do so. My "formal" office hours will be determined early in the semester and I will attempt to coordinate these with your schedules to the extent feasible. You may also make an appointment to meet with me by emailing me.

NB: Reading assignments begin below.

**Prior to January 10, 2018, please sign up on the TWEN signup sheet to indicate whether you are taking this course for W1, W2, or traditional Exam credit.

Assign.	Topic(s)	Reading
1-2	Intro to Agency Functions; Theories of Agency Behavior; <i>Mass. v. EPA</i> (a snap-shot of administrative law). For our 1 st class read pages 1-42 and the <i>MA v. EPA</i> case on 764-773. Class 2 will focus on pages 47-59.	1-42; 47-51; 51-59 (read statutory portion of page 59 in very careful detail); 764-773)
3	Separated (and Balanced) Powers; Formalism vs. Functionalism; Intro to Agencies and Art. I	79-94 (pay extra heed to relevant constitutional provisions)
4-5	Agencies and Art. I (non-delegation doctrine)	97-123; 124-152 (<i>Industrial Union</i> case – largely on your own but not to be skipped)
6	Agencies and Art. I (controlling delegations)	163-187
7-8	Agencies and Art. II (appointment of agency officials)	187-226
9-10	Agencies and Art. II (removal of agency officials)	227-247
11	The "Unitary Executive" theory	261-263
12	Intro and Overview of the APA	303-310 APA on 1173-1185 (Not to be glossed. Arguably, the most difficult reading of the course and commensurably important)

13	Formal Rulemaking – FECR Saga	310-335
14-15	Formal Adjudication	335-350
16	Informal Rulemaking – Vermont Yankee Saga	351-385
17-18	Notice of Proposed Rulemaking; Statement of Basis and Purpose; Statutory Hybrid Rulemaking	388-410
19-22	Exemptions from Rulemaking Procedures	410-458
23-24	Informal Adjudication; Choice Btw Rulemaking & Adjudication: The Chenery Doctrines	460-471; 472-498
25-28	Judicial Review of Agency Legal Interpretations: The Chevron Doctrine	501-694 (over the course of multiple classes with pacing TBD)
29-31	Judicial Review of Agency Policy and Discretion	724-763