ADMINISTRATIVE LAW (LAW 7010): SYLLABUS

[last revised: October 4, 2009]

Prof. Edmundson
Fall 2009
WF 10:30-11:45 (3 credit hours)
Room 330
Google Group: GSU Admin Law
home page: http://groups.google.com/group/gsu-admin-law
email address gsu-admin-law@googlegroups.com

My office: 458 ULB; phone 404 413 9167

Text: Breyer, Stewart, Sunstein and Vermeuele, *Administrative Law and Regulatory Policy* (6th ed.) and *2009 Supplement*
Recommended: Fox, *Understanding Administrative Law*

The Goals of this Course

Some day someone may give you a knowing wink and say, "Legislatures and courts don't make law: *agencies* do." This view is an exaggeration, but just barely. Thus, you might suppose, knowing administrative law must be like owning a sophisticated breed of attack dog, like a rottweiler. But you may find that the law school course in Administrative Law looks more like a platypus, made up of unrelated body parts that seem to belong to other animals.

Our course will deal with a number of issues, such as separation of powers and due process, that would be at home in a course on Constitutional Law. It will also deal with some jurisdictional doctrines that fit well into a course on Federal Courts. It will deal in depth with a procedural statute, the Administrative Procedure Act ("APA"), but in substantive settings formed by other statutes, such as the Clean Air Act, which we will look at only glancingly, to provide a context.

This diversity may seem confusing but, in a nutshell, Administrative Law is the law governing the creation of, powers of, and limitations upon administrative agencies of all sorts. It is not the substantive law made by agencies or for agencies, such as labor law, environmental law, etc.

Because of the breadth of our subject, the focus is on federal law and federal constitutional constraints on federal and state agencies --not on state agencies nor, for that matter, any particular federal agency. Our goal will be to understand and be able to make use of the legal concepts that define what has been called "the bureaucratic state."

The Grading System Explained

Your final grade will be based largely upon a final examination. The only other factor that may influence your final grade is class participation. The final will be an open-book, open-notebook, blind-graded, essay-style examination. It will cover only the material included in this syllabus. It will test your ability to identify and analyze legal issues in one or more detailed hypothetical situations. It is not intended to test your ability merely to memorize by rote or to philosophize.

In recent years, the average grade in the several sections of Administrative Law has been in the low-80s. The mean grade in this course will be in this vicinity.

Assignments

Date	Topic	Reading [page count in brackets]
8/19	Introduction	1-29 [29]
8/21	"Nondelegation" Doctrine I	31-52 [21]
8/26	"Nondelegation" Doctrine II	53-74 [21]
8/28	Appointment and Removal I	74-83 [9]
9/2	Appointment and Removal II	83-102 [19]
9/4	Executive Supervision	102-22 [20]
9/9	Agency Adjudication	123-39 [13]
9/11	Combination of Functions	693-709 [16]
9/16	Reviewing Factfinding and Policy	191, 204-19 [16]
9/18	*Chevron* and Reading Statutes	228-52 [25]
9/23	*Chevron*'s Scope ["step 0"]	259-70; supp. 15-27 [23]
9/25	Reading *Chevron* "step 1"	270-84; 289-301 [26]
9/30	Reading *Chevron* "step 2"	322-46 [24]
10/2	"Arbitrary and Capricious" Review	347-68 [19]
10/7	"Hard Look" Review	368-84 [16]
10/9	*no class meeting*	
10/14	Policymaking by Rule	479-94 [15]
10/16	Policymaking by Order	495-514 [19]
10/21	Policymaking by "the Book"; Fair Notice	514-27 [13]
10/23	Participation in Rulemaking	527-38 [11]
10/28	*Vermont Yankee*	538-44 [6]
10/30	§553 Exemptions	544-63 [19]
11/4	Due Process and Protectable Interests	620-39 [19]

11/6	What Process Is Due?	647-66 [19]
11/11	Judicial Review and Remedies	747-69 [22]
11/13	Reviewability and Preclusion	775-89 [14]
11/18	Reviewability and Discretion	789-813 [24]
11/20	Standing to Sue	Supp. 24-31 and 34-37 [10]
11/24	Pre-enforcement Review, FOIA	892-99, 681-90 [16]

Departures from this schedule can be expected to occur. *Please be aware that each assignment includes the APA sections it references*. The text of the APA appears as an appendix to the casebook.

Attendance policy

Due to the H1N1 influenza pandemic, you are not expected to come, and you are specifically asked *not* to come to class when you feel sick or someone with whom you are in close contact seems sick. You are also reminded of the following recommendations from the Centers for Disease Control (an administrative agency!):

1) Cover your nose and mouth with a tissue when you cough or sneeze.
2) Throw the tissue in the trash after you use it.
3) Wash your hands often with soap and water, especially after you cough or sneeze. Alcohol-based hand cleaners are also effective.
4) Avoid close contact with sick people.
5) Avoid touching your eyes, nose or mouth. Germs spread this way.
6) If you get influenza-like illness symptoms, stay home from work or school except to seek medical care and limit contact with others to keep from infecting them.

Because absences due to illness or conflicting family, legal, military or business duties are routinely excused, *you are encouraged **NOT*** to telephone or e-mail me to ask that such an absence be excused.

Laptop Policy

Laptops, notebook computers and smartphones are permitted to be used in the classroom, but only for the purposes of a) note-taking or b) instant-messaging other members of class on matters directly relevant to the current classroom discussion. Web browsing and game playing are strictly forbidden. Remember the Honor Code.

Office Hours

My office hours are individualized to fit your needs. My office is 458 ULB. My telephone number is 404 413 9167. All e-mail pertaining to the course's subject matter and procedures should be addressed to the discussion list.