FIRST CLASS ASSIGNMENT

1. Read casebook, pages one through the top of page twelve.

2. Look over material in casebook from pages 372 to 378.

3. THIS IS A TWEN COURSE. PLEASE SIGN ONTO THE TWEN COURSE PROMPTLY.

4. I need volunteers to present the first two cases on the syllabus (IUD v. Amer. Petro and Whitman v. Amer. Trkg.). Please let me know (alpalewicz@verizon.net) if you are willing to present one of these cases. If I do not have volunteers by the Friday before the first class, I will pick the volunteers myself.

Thanks a lot. I look forward to working with you for this course. Al Palewicz
NOTE: THIS IS A TWEN COURSE. ALL STUDENTS SHOULD IMMEDIATELY SIGN ON TO THE TWEN COURSE AND PROVIDE ALL THE INFORMATION NECESSARY TO USE THE TWEN EMAIL AS THE PRIMARY WAY OF CONTACT WITH THE STUDENT

Introduction and background. The Constitutional Issue.
Case Book (CB) Appendix, APA § 551:
Agency, rule, rule making, order, adjudication, agency action. Model State APA [MSAPA] (CB Appendix C) § 1-102 (same definitions); Maryland APA (MdAPA), Maryland Code, State Government Article § 10-101 (entire).
CB pp. 1 to top of 12

THE CONSTITUTIONAL ISSUE EXAMINED:

Delegation of Legislative Power to agencies:
Case Book (CB) pp. 372 to top of 391;
Whitman v. Amer. Trkg. Assn., p. 382
CB p. 388, note 5 only.
Delegation of Adjudicatory Power to Agencies:
CB pp. pp. 398-406 (notes 1, 2, 4, & 5),
CFTC v. Schor, p. 399
Constitutional Procedural Due Process:
Sources of the right to a hearing
Constitutional rights to a hearing: property and/or liberty
CB pp. 14 - top of 26 ,
Goldberg v. Kelly, p. 16
CB PP. 26 - 34 (end of Note 4),
Bd. Of Regents v. Roth, p. 33
CB p.. 36 – 42 (Notes 5 through 8),
Cleveland Bd. v. Loudermill, p. 37
Timing of a Hearing
CB pp. 43 – 53, Notes 1, 2, 3, & 4)
Matthews v. Eldridge, p. 44
Elements of a Hearing
CB pp. 53 - 61 (Notes 1, 4, 6, 7, 8)
Ingraham v. Wright, p. 53
ADJUDICATION

Adjudication-Rulemaking distinction
CB pp. 62 – 66 (Note 3 only)
Londoner v. Kelly, p. 62
Bi-Metallic v. State Board, p. 63
Statutory right to Hearing, basic concerns with adjudication
CB 69 – 77 (Notes 2, 4, & 6)
Dominion Energy, p. 71
United States Lines v. FMC, 584 F.2d 519 (DC Cir. 1978), p. 75
Clardy v. Levi, 545 F.2d 1241 (9 Cir., 1076), p. 77
Limiting the Issues to Which Hearing Rights Apply
CB 84 - 91
Heckler v. Campbell, p. 84
Levine v. Apker, 455 F.3d 71 (2 Cir. 2006), p. 90

The Conflict Between Institutional & Judicialized Decision-Making
CB 91 - 92
Personal Responsibility of Decisionmakers
CB 92 - 98 (Notes only.)
Ex Parte Contacts
CB pp. 98 - 107 (Notes 4, 5, & 6 only.)
PATCO v. FLRA, p. 98
Agency Adjudication & Legislative Pressure
CB pp. 108 - 113 (Notes 4 & 6 only.)
Pillsbury v. FTC, p. 108
D.C. Federation of Civic Ass’ns. V. Volpe, 459 F.2d 1231 (D.C. Cir. 1971), p. 111
Separation of Functions and Internal Agency Communications
CB 113 – 121 (Notes, 1, 4, 5, & 6)
(Skip Alcohol Beverage Control)
Bias: Personal Interest, Prejudgment, Animus
CB 122 – 128 (Notes 1 through 5)
Cinderella v. FTC, p. 123
**Friedman v. Rogers**, 440 US 1, esp. 18-19 (1979), p. 126


**Administrative Judges & Decisional Independence**

CB pp. 128 – 137 (Note state material at 136 – 137)

---

**PROCESS OF ADMINISTRATIVE ADJUDICATION**

**Notice and Parties to Adjudication**

CB 138 – 145 (Notes 1, 3, 4 only)

**Block v. Ambach**, p. 138

**Envirocare of Utah**, 194 F.3d 72 (D.C. Cir. 1999), P. 143

**Investigation & Discovery**

CB pp. 145 – 154 (Notes 1, 2, 3, 4, 5, 6)

**Craib v. Bulmash**, p. 146

**ADR**

CB pp. 155 – 156, briefly.

---

**THE HEARING**

**Evidence at the Hearing**

CB pp. 156 – 164, (All cases are in Notes)

**Ezeagwuna v. Ashcroft**, 325 F.3d 396 (3d Cir. 2003), p. 161

**Detroit Free Press v. Ashcroft**, 303 F.3d 681 (6th Cir. 2002), p. 163

**Citizens Awareness Network v. United States**, 391 F.3d 338 (1st Cir. 2004), p. 164

(Limits on cross examination only)

**Official Notice**

CB p. 165 (top of page only), pp. 167 – 169 (Notes 1, & 2)

**The Decision Phase: Finding Facts & Stating Reasons**

CB 170 – 176 (skip text case Notes 4 & 6)

**Armstrong v. CFTC**, 12 F.3d 401 (3 Cir., 1973, p. 176

**Effects of Decision:**

**Res Judicata & Collateral Estoppel**

CB pp. 177 – 183 (Notes 4 & 5 only)

**Stare Decisis**

CB pp. 183 - 185

**UAW v. National Labor Relations Board**, p. 183

**Estoppel**

CB pp. 185 – 191,

**Foote’s Dixie Dandy**, p. 185


---

**RULEMAKING**

**Introduction to Rulemaking**

CB pp. 192 – 211 (Skip Notes 4 & 6)

**Nat’l. Petroleum Refiners Assoc. v. FTC**, 482 F.2d 672 (DC Cir. 1973), p. 196

**American Library Assoc. v. FCC**, 466 F.3d 689 (D.C. Cir., 2006, p. 197

**Yesler Terrace Community Council v. Cisneros**, 37 F.3d 442 (9th Cir. 1994)p. 202
Bowen v. G'town Hospital, p. 205
Retail Clerks Union v. NLRB, 466 F.2d 380 (DC Cir. 1972), p. 210

Initiating Rulemaking
CB 211 – 222 (Skip note 1, p. 195, & notes 2, 5, & 8)
Chocolate Manufacturers v. Block, p. 211

Shell Oil Co. v. EPA, 950 F.2d 741 (DC Ct., 1991), p. 221
Public Participation, CB p. 222
Informal Rulemaking, CB 222 – 224
Formal Rulemaking, CB 225 - 229
US v. FEC Rr. p. 2225
Hybrid Rulemaking, CB 230 - 238

Vermont Yankee, p. 231

Procedural Regularity in Rulemaking
CB 239 – 262 (Skip note 4, p. 260)
Home Box Office v. FTC, p. 241
Sierra Club v. Costle, p. 244
Assoc. Nat’l Advertisers v. FTC, p. 255
Findings and Reasons
CB 262 – 271 (Skip National Assoc. case, and notes 1, 2, & 6.)
Automotive Parts & Accessories Ass’n. v. Boyd, 407 F.2d 330 (DC Cir. 1968), p. 268

Issuance & Publication, CB 271 – 280
Powderly v. Schweiker, p. 273
Nguyen v. US, p. 296
Regulatory Analysis CB 280 – 283
Corrosion Proof Fittings v. EPA, p. 281
Negotiated Rulemaking, CB 296 - 297

Exemptions from Rulemaking
CB 305 - 342

Good Cause Exemptions  CB 305 – 312
Jifry v. FAA, p. 306 (Skip notes 2 & 3.)
Exempted Subject Matter, CB 312 – 315, (skip note 3.)
Procedural Rules, CB 316 – 319 (Skip notes 2 & 3.)
Public Citizens v. Dept. of State, p. 316
US DOL v. Kast Metals 744 F.2d 1145 (5th Cir., 1984)
Profs. & Patients v. Shalala, p. 321
Interpretive Rules, CB 333 – 342.
Hoctor v. USDA, p. 333
Required Rulemaking

CB 342 – 350

NLRB v. Bell Aerospace, p. 343
Rulemaking Petitions & Agency Agenda Setting
CB 354 – 363, (notes 1, 2, 3, & 8 only)
Massachusetts v. EPA, p. 355
Waivers of Rules
CB 363 – 370 (Skip note 6.)
WAIT Radio v. FCC, p. 363

Judicial Review
Scope of Review: findings of fact, CB pp. 502 – 505
Substantial Evidence and Clearly Erroneous Tests, CB, pp. 505 – 515, (skip notes 4 & 6.)

NLRB v. Universal Camera, p. 505
Independent Judgment & De Novo Review, CB 516 -518.
Scope of Review: legal interpretations, CB 519 – 520
The Chevron Doctrine CB 528 – 540 (Skip note 7.)

Chevron USA v. NRDC, p. 528
Statutory Interpretation and the Chevron Doctrine, CA 540 – 553.

FDA v. Brown & Williamson Tobacco Corp., p. 541
Informal Interpretations and the Skidmore Alternative CB 553 – 566.

Skidmore v. Swift, p. 533, 323 US 134, 137-140 (1944)
Christensen v. Harris County, P. 554
U.S. v. Mead Corp., P. 556
Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967 (2005) p. 564

Chevron Doctrine CB 528 – 540

Scope of Review: Discretionary Determinations in Adjudication
CB 566 – 581 (Skip notes 6, 7, 8)
Citizens to Preserve Overton Park v. Volpe, p. 567.
Salamed v. INS, p. 568
Judicial Review of Discretionary Decisions in Rulemaking, CB 582 - 601
Borden v. Comm'r Public Health, p. 589

Reviewability of Agency Decisions
Procedural Elements, CB 603 – 605
Non-Statutory Review: Forms of Action, CB 606 – 608
Damage Actions as a Form of Judicial Review, CB 609 – 615
Recovery of Fees, CB 615 – 619

Preclusion of Judicial Review, CB 619 – 626
Bowen v. Michigan Academy, p. 620
Notes, pp. 622 – 626
Commitment to Agency Discretion, CB 626 – 635
Heckler v. Chaney, p. 626
Notes 1 through 5, pp. 631 – 635
Agency Inaction and Delay, CB 635 – 642
Norton v. Southern Utah Wilderness Alliance, p. 635
Notes pp. 640 – 642
STANDING TO SEEK AND TIMING OF JUDICIAL REVIEW

Standing to Seek Judicial Review, CB pp. 642 – 663
Lujan v. Defenders of Wildlife, p. 645
Notes, pp. 650 – 656
Assoc. of Data Processing Service Orgs. (ADPSO v. Camp, p 657
Notes pp. 660 – 663
Timing of Judicial Review
FTC v. Standard Oil of California (SOCAL), p. 664
Notes, pp. 668 – 670
Exhaustion of Administrative Remedies
Portela-Gonzalez v. Secretary of the Navy, p. 670
Notes, pp. 674 – 680
Ripeness
Abbott Laboratories v. Gardner, p. 681
Notes, pp. 686 - 691

List of Exam Problems For Fact Settings on Exam

<table>
<thead>
<tr>
<th>Problem Set</th>
<th>406</th>
<th>43,10</th>
<th>77,7</th>
<th>98,7</th>
<th>107,7</th>
<th>191,7</th>
</tr>
</thead>
<tbody>
<tr>
<td>240 only</td>
<td>254,7</td>
<td>262,6</td>
<td>311,8</td>
<td>318,5</td>
<td>332,8</td>
<td></td>
</tr>
<tr>
<td>362,10</td>
<td>515,7</td>
<td>540,8</td>
<td>634,7</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Grading structure:
Participation: 10% (All begin with a B. Excellent participation yields an A, poor participation yields a C, substantial lack of participation yields a D.) Students are expected to complete all reading assignments and to participate in class discussion consistently in order to demonstrate they have read and reflected on the issues raised in the material for each class.

Case recitals: 15%
TWEN Quizzes (Min. 4) 20%

EXAM:
55%

CLASS INSTRUCTIONS:
From time to time I will point out material that is important for the exam. Make a note of it. All the assigned text material is material for the exam. All TWEN material is material for the exam. All class presentation and discussion is material for the exam. You should be aware of and familiar with all the material posted under Course Materials on the TWEN site. (continued on next page)
For all class assignments you will be graded on your ability to present the procedural history and the facts of the material/case coherently, to identify clearly the issues involved, to present succinctly the associated, relevant legal principles and their sources, to describe and analyze effectively the holding(s)/conclusion(s) in the material/case, and to deal with questions and discussion points raised by the class or by the Professor during your presentation.

Attendance Policy

*If you anticipate an attendance problem, discuss it with me as soon as possible. Most situations can be worked out to everyone’s satisfaction; but only if we discuss the matter before it becomes a problem.*

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (5 class periods for this course) may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of WA (administrative withdrawal) or a grade of WF (withdrawal failure). This policy is consistent with American Bar Association Standards for Law Schools.

Religious Holidays

It is the policy of the University of Baltimore School of Law to respect students’ observance of their major religious holidays. Students not attending class because they are observing religious holidays are to be given absences up to the maximum number of allowable absences if they notify the professor in advance.

Students shall be given an opportunity, whenever possible, to make up within a reasonable time any academic assignments or tests that are missed due to individual participation in religious observances. Arrangements should be made to make up missed assignments or tests with the faculty member(s) in advance of the specific holiday. In addition, faculty is encouraged to video or audio record classes in which students have been excused for religious reasons. Where video or audio recording is an adequate substitute for class and the student views or listens to the recording, and notifies the Professor by email that the video recording has been watched, the student shall be deemed to have attended the class.

Standards for Administration of Attendance Policy

Attendance will be taken at the beginning of each class. A student who is present but unprepared for class may be treated as absent if the instructor announces at the beginning of the semester that unprepared students are treated as absent. (This part of the syllabus is the announcement described in the preceding sentence.) Likewise, a student who arrives late for class may, at the discretion of the instructor, be marked absent. (Anyone more than five minutes late for any class will be marked absent for that class.) Where video or audio recording is an adequate substitute for class and the student views or listens to the recording, and notifies the Professor by email that the video recording has been watched, the student shall be deemed to have attended the class.
Quiz Policy: Quizzes will cover material from the textbook only, and from the first five cases scheduled for the evening of the quiz. Quizzes are open book exams. Quizzes will be open on TWEN from 7:35 PM to 7:55 PM on the night they are given. Only FIVE MINUTES are allotted for the taking of the quiz during the period it is open. Quizzes will be open again from 6:00 PM to 9:00 PM the following evening. Anyone who was absent from the class in which the quiz was given is to take it during the open period the following evening. ANYONE WHO CANNOT DO THIS MUST EMAIL ME WITHIN 48 HOURS OF THE ORIGINAL QUIZ TIME TO LET ME KNOW A ONE HOUR TIME WINDOW WITHIN FOUR DAYS OF THE ORIGINAL QUIZ WHEN THAT PERSON CAN TAKE THE QUIZ ON TWEN. I will open the quiz for them at that time.

ANYONE WHO DOES NOT TAKE THE QUIZ THE EVENING AFTER IT IS GIVEN IN CLASS, OR MAKE ARRANGEMENTS WITH ME WITHIN 48 HOURS OF THE ORIGINAL QUIZ TIME FOR AN ALTERNATE TIME WILL RECEIVE A GRADE OF ZERO FOR THAT QUIZ.

Administrative Law--3 credits


Analysis of federal administrative agencies, including their legislative and judicial nature, congressional delegation of powers, promulgation of regulations, adjudication and judicial review. Emphasis will be on the Federal Administrative Procedure Act. [Open enrollment]
The goals of this course include introducing students to the origins and procedures of the practice of Administrative Law at the federal level. Students will also deal with the substantive law of federal administrative practice, to the extent it has been developed both in the Administrative Procedure Act and in court cases interpreting the APA since its passage.
All students are subject to the Academic Integrity Policy of the University of Baltimore School of Law at all times during this course.
Notice of class cancellation will be sent to students by the TWEN email system, and will be posted on the classroom door.

Students should bring laptop computers to class. Laptop use for exams will be limited to typing the examination by means of the University’s installed software for this purpose.

THIS IS A WESTLAW TWEN COURSE. PLEASE SIGN ONTO THE COURSE RIGHT AWAY.