

ADMINISTRATIVE LAW
LAW 700, Section 511

SYLLABUS

Professor Kimberly N. Wehle
Spring 2018

Welcome! This course is about the law and procedures governing federal agencies. In the broadest sense, this body of law deals with the delegation of power to federal agencies, the procedural requirements agencies must follow to function effectively, and the limitations on agency power.

Administrative agencies affect virtually every aspect of modern life. Agencies regulate in areas as diverse as public health and safety, energy, air and water quality, consumer protection, labor law, taxation, securities markets, telecommunications, immigration, workplace safety, and welfare benefits – to name but a few. We rely on administrative agencies to deal with some of the most pressing national issues of the day, ranging from terrorism to corporate scandals to natural disasters. Government lawyers are essential to the day-to-day functioning of every agency, and most lawyers in private practice (particularly those in and around D.C.) find themselves dealing with an administrative agency at some point in their careers.

The course is designed to equip you to work effectively in the administrative context and to think broadly about how the administration of law through bureaucratic entities relates to the political theory underlying the Constitution. Moreover, this class aims to help you critically assess and make informed contributions to the current debates concerning regulation.

We will not study the substantive law of any particular area. For instance, we will not study securities regulations enforced by the Securities and Exchange Commission or environmental laws enforced by the Environmental Protection Agency. These kinds of specialized topics are covered elsewhere in the law school curriculum. We will study the procedures that all agencies use in taking actions that affect private parties. In other words, this is a course about the procedural framework governing the work of federal agencies, rather than the substantive law in a particular regulatory field, similar to the way that Civil Procedure is a course about litigation procedures rather than the governing substantive law (e.g., tort or contract). Accordingly, as with Civil Procedure, this is not a course for which the

big picture will likely come together for you until the end of the semester, so please be patient. It *will* come together.

A. CLASS TIMES

Class will be held on Mondays and Wednesdays from 10:30 -11:45 a.m. Room 603.

B. ASSIGNED READING

1. The assigned text for this class is Funk, Shapiro & Weaver, Administrative Law and Practice: Problems and Cases (Thompson West 5th ed. 2014).
2. We will study the Administrative Procedure Act (“APA”), 5 U.S.C. § 551 et seq., in detail. A version of the statute will be posted in .pdf form on TWEN. Please print it, carefully read the assigned portions as indicated on the syllabus, and bring it to each class. The APA is also at the end of the casebook.
3. There will be occasional handouts that are required reading. They are either listed on the outline of assignments or will be announced as required reading during class and posted on TWEN. You must enroll in TWEN for this course.

C. OPTIONAL READING

Funk & Seamon, Administrative Law: Examples & Explanations (4th ed. 2011). No readings will be assigned from this book, but students may find it helpful. Because one of its authors is also an author of the assigned casebook, the material is covered in a similar manner.

D. ATTENDANCE

Please be on time for class.

Absent special circumstances, please do not leave the classroom during class, including when we are doing group exercises.

According to law school policy, 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 allowable absences will get a zero for class professionalism (see Part G, below), and may in addition lose up to a half letter grade for the final grade in the class (e.g., a B to a B-). Alternatively, the student may be compelled to withdraw from the course, or may be barred from sitting for the final exam. A student who is compelled to withdraw or is barred from sitting for the final exam may receive an "F" in the course. Attendance will be taken at the beginning of each class.

The sole means of establishing attendance is by signing the attendance sheet. Students are responsible for making sure that they sign the attendance sheet each day. Please do not approach me after I have left the classroom or on some later date and tell me that you were in class on a particular day. If you forget to sign in, **or you come in more than 5 minutes late without having contacted me before class**, you will be counted as absent for that day.

E. CLASS PARTICIPATION

Class will be conducted by calling on volunteers and asking various questions of the material. **If all volunteers have spoken I will call on other students at random.**

You will need to prepare carefully in order to participate in class discussion, which is required in this course. Preparing the material in advance and coming to class is also the single best thing you can do to learn the material and perform well on the exam. But most importantly, preparation and participation are the most basic elements of professional competence.

Accordingly, "passing" when called on or informing me that you did not prepare the particular material are not acceptable practices in this class. If you are unable to provide the basic facts of a problem or a case when called on, I will assume you are not prepared. That said, I realize that you are juggling lots of competing responsibilities as law students. **If you are unprepared for class at some point during the semester, please notify me in advance of class and I will not call on you that day.** I do not need to hear your reasons for being unprepared. Please use this policy sparingly.

I will consider you prepared if you come to class (a) on time (b) having read and thought about the material and you (c) demonstrate a good faith effort to respond to my questions when I call on you and (d) participate fully in small group work.

I understand that some people are more comfortable than others voluntarily raising a hand to participate. If you are one of those people, you can still do well if you are fully prepared when I call on you. I recommend that you try to push yourself out of your comfort zone and raise your hand when you feel particularly strong on a subject. **If you email me or let me know in advance that you would like to discuss a particular problem, case or topic, I will be sure to call on you that day so that you can participate when you are feeling confident.**

F. PREPARATION FOR CLASS

The casebook is oriented toward the actual practice of administrative law. It contains numerous problems designed to help you learn and apply the legal principles we will cover. The syllabus specifies which problems we will cover in class. Please come to each class prepared to respond to the assigned problems. This will require doing more than simply reading the assigned pages of text. Although you are not expected to have the “right” answers to the problems in advance of class, you are expected to have thought through the problems and problem materials very carefully and come to class with your analysis. Although not mandatory, putting your answer in writing is the best way to prepare for class discussion of the problems. It is also immensely helpful for exam preparation. I encourage you to work with other students for this purpose.

The problems consist of exam-type hypotheticals followed by so-called “Problem Materials.” The Problem Materials consist of cases, statutes, regulations, and other sources that you must read and apply in order to answer the problem. For Problem 2-1 on page 55, for example, you must read the Problem Materials on pages 56-63 and apply them to the hypothetical.

G. CLASS CANCELLATION

If I must cancel a class, notices will be sent to students via email. If there is inclement weather, students should visit the University of Baltimore web page or call the University’s Snow Closing Line at (410) 837-4201. If the University is not closed, students should presume that classes are running on the normal schedule.

H. LAPTOP POLICY

Laptops are fine for note-taking on a word processing program and for accessing the casebook in electronic format. Otherwise, please do not use the internet or email during class. Of course, I have no way of monitoring or enforcing this policy. My assumption is that students will comply in good faith. **No laptops are allowed during class if we have guest speakers, as a courtesy to the speaker.**

I. GRADING

Your grade in this course will be based on:

- a final exam (70%);
- a *Chevron* “framework” assignment (10%); details TBA
- a writing assignment (20%); details posted on TWEN

The exam will be open book. You may bring hard copies of any document or book into the exam.

I do not have sample exams and answers for your review, but we will do worksheets throughout the semester to reinforce the material and thus prepare you for the exam.

I reserve the right to increase or decrease your final grade by a half step (e.g., B+ to a B or B+ to an A- based on your preparation for class and compliance with the policies set forth in this syllabus.

The School of Law Honor Code applies to this class.

J. OFFICE HOURS

Room 1014. See me after class or send an email to schedule an appointment. I am happy to discuss any questions or concerns that you have related to this course or law school and practice in general. I will schedule formal office hours during the pre-exam study period.

K. OUTLINE OF ASSIGNMENTS

The following outline sets forth the order of assignments.

I will give you advance notice of guest speaker visits and post supplemental reading assignments on the portal.

There will be times when we will not get through an entire assignment in a single class period. In those circumstances, please re-read the remaining material for the next class in addition to preparing the next assignment on the syllabus. In other words, if I call on you at the beginning of class on a Wednesday, it is not acceptable to decline to discuss the remaining material from Monday's class because you haven't read it in a while.

Given the numerous variables that can affect the pace and order in which we move through the material, the syllabus is subject to modification as the semester progresses. I will keep you posted.

* * *

Introduction

- January 17: Carefully read the syllabus. Read pp. 1-36.
- January 22: Re-read pp. 1-4. Read pp. 36-49 and APA § 551. Prepare Problems 1-1 through 1-7. Prepare Fund for Animals, Inc. v. Rice chart [posted on TWEN].

Rulemaking

Rulemaking Initiation

- January 24: Read pp. 51-68 and APA §§ 553, 555, 706. Prepare Problems 2-1 and 2-2.

Formal and Informal Rulemaking

- January 29: Read pp. 94-111; 134-35, notes 3-6 only. Review APA §§ 553, 706. Prepare Problem 2-5.

January 31: Read pp. 90-94, 111-14. Read Ammex, Inc. v. United States (posted on TWEN). Review APA §§ 553, 556, 557, 706. Prepare Problem 2-6.

Hybrid Rulemaking

February 5: Read pp. 128-45. Prepare Problem 2-7.

Judicial Review of Rulemaking

February 7: Read pp. 145-62. Review APA § 706. Prepare Problem 2-8.

February 12: Read pp. 162-87; 331-33 (through note 2). Review APA § 706. Prepare Problem 2-9. Skip Problem 4-3.

Exceptions to Rulemaking

February 14: Read pp. 73-77, 86-90. Review APA §§ 552(a)(1)(D) (at pp. 857-58 of the casebook), 553, 706. Prepare Problem 2-4.

Nonlegislative Rules

February 19: Read pp. 339-54, 358-63. Prepare Problems 4-5, 4-6, and 4-7.

February 21: Read pp. 363-79, 382-84 (skip note 3). Prepare Problems 4-8 and 4-9.

Judicial Review of Nonlegislative Rules

February 26: **Guest speaker**, Michael Hayes, Director, Office of Labor-Management Standards, U.S. Department of Labor; Associate Professor of Law, University of Baltimore. Assignment TBA.

February 28: Read pp. 384-406. Read Fournier v. Sebelius (posted on TWEN). Prepare Problem 4-10.

Writing assignment: Draft comments due on TWEN.

Adjudication

Formal Adjudications

March 5: **Prepare *Chevron* Framework (assignment posted on TWEN)**. Bring two hard copies to class. Read pp. 189-207 and APA §§ 554, 555, 556, 557.

Judicial Review of Formal Adjudications

March 7: Read pp. 278-81, 297-304. Re-read APA § 706. Prepare Problem 3-8.

Writing assignment: Responses to comments due on TWEN.

Due Process and Informal Adjudications

March 12: Read pp. 241-49. Read Goldberg v. Kelly (on TWEN) and U.S. Constitution, Amendments 5 and 14 (available online).

March 14:¹ Read pp. 249-64 (through note 1); 266-74. Prepare Problems 3-4 & 3-5.

Writing assignment: Final comment due on TWEN and on Regulations.gov.

NO CLASS ON MARCH 19 OR 21 DUE TO SPRING BREAK.

March 26: **Guest speaker**, Michele Gilman, Professor of Law, University of Baltimore School of Law; Director, Saul Ewing Civil Advocacy Clinic; Co-Director, Center on Applied Feminism. Prepare reading posted on TWEN for this date.

¹ No class on March 19 or 21 due to Spring Break.

Judicial Review of Informal Adjudications

March 28: Read pp. 304-11. Review APA § 706. Prepare Mid-Semester Review Problem [posted on TWEN].

Threshold Objections to Judicial Review

Justiciability Doctrines: Standing

April 2: Read pp. 407-39, APA § 702, and U.S. Constitution Article III, §§ 1-2 (available on Westlaw or Lexis). Prepare *Lujan/Akins* Chart [posted on TWEN].

April 4: TBA

Zone of Interests & Ripeness

April 9: Read pp. 489-498, 527-38. Read APA §§ 702-704. Prepare Problems 5-7 (consider NEPA only) & 5-10. For the facts of *Abbott Laboratories v. Gardner*, please also read pp. 456-57 (top).

APA Exceptions to Judicial Review

April 11: Read pp. 454-79. Review APA §§ 701-702. Prepare Problems 5-4 and 5-5.

April 16: Bring hard copy of final comment to class.

Finality and Exhaustion

April 18: Read pp. 503-27. Read APA §§ 702-704. Prepare Problems 5-8 & 5-9.

The Constitution and Agency Structure

Nondelegation Doctrine

April 23: Read pp. 543-58. Prepare Problem 6-1.

Appointment and Removal

April 25: Read pp. 585-95, 602-25. Prepare Problems 6-6 & 6-8.
Read U.S. Constitution, Article II (available online).

Final Review Session

April 30: Prepare Course Framework Assignment (posted on TWEN).