Administrative Law
Law 6400 – Section 12
Fall 2014

SYLLABUS

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Office Hours: Tuesdays and Wednesdays, 4:00 - 5:00 pm.
Class Schedule: Tuesdays, Wednesdays, and Thursdays, 2:45 - 3:40 pm. Classes will begin promptly at the appointed time.

Required Texts: 1. Mashaw, Merrill, Shane, Magill, Cuéllar, & Parrillo, Administrative Law (7th ed.)
2. Supplementary Materials (available at the Records Office or my website)

Assignments: An initial list of reading assignments is attached. You should read each assignment before the class in which the assigned material is discussed, think carefully about the reading, and be prepared to participate in class discussion. The assignment numbers do not necessarily correspond to class periods; you will know which assignment you should be on from announcements made during class. However, if at the end of a class we have made substantial progress on the reading assigned so far and no announcement is made, read the next assignment. For the first class, please read assignments 0 and 1 (that’s “1” not “1”).

Requirements: The requirements for all students are: read the assignments in a timely fashion, attend class, participate in class discussion, and take the final exam. Grades will be based primarily on the exam, with classroom participation also considered. Students who are excessively absent will not receive a positive class participation adjustment and may receive a negative class participation adjustment or a grade of No Credit.
Taping of Classes: All requests regarding class taping must be made through the Office of Student Affairs. Students should not ask me about taping of classes. I will not approve taping where the Student Affairs Office has denied a request or where it has referred a student to the professor for permission. I will usually, although not always, approve taping when the Student Affairs Office has determined that the taping request falls within the Law School’s class taping policy. Taping of classes by students is not permitted. I am always happy during my office hours or by other appointment to discuss any topics a student may have missed.

Class Participation: Students will be called on at random during class. Volunteer participation is also encouraged. Students should be prepared to participate each day.

Electronic Devices: All cell phones and other devices that might make noise must be turned off (or otherwise set so as not to make noise) during class. The “vibrate” setting is allowed. Computers that play music or other sounds on start-up may not be started once class has begun. Students whose devices violate this rule may be asked to leave the classroom.

The use of computers to take notes in class is permitted. The use of computers for other purposes during class, such as playing games, accessing the Internet, or reading or sending messages, is distracting to other students and is therefore prohibited. Students who use computers in class must agree to this condition and are on their honor to comply with it.

The use of electronic means to transmit answers to students being asked questions during class is prohibited. Violation of this rule constitutes academic dishonesty.

The use of computers in taking the final examination is strongly encouraged. Students who choose to handwrite their exam are cautioned that words that are not readily legible may be disregarded.

Communication: I sometimes send important messages relating to the course to students by e-mail. This may occur before the first day of class. Students are responsible for checking their official GW e-mail accounts daily throughout the term.

Scheduling: I might need to cancel a few classes in the middle of the semester. Therefore, we will hold advance make-up classes on Monday, September 8, 15, and 22 from 2:45 - 3:40 pm. These classes will be taped.

Examination: The examination will be open book. It may contain a mixture of essay and multiple choice questions.
READING ASSIGNMENTS -- Part 1

The initial list of reading assignments follows. Further reading assignments will be distributed as the term progresses. Further supplementary materials may also be distributed.

Many of the reading assignments listed below contain the name of the principal case (or cases) that form part of the assignment. But the assignment often contains more than just that case.

Abbreviations used below:

- MMS  Mashaw, Merrill, Shane, Magill, Cuéllar, & Parrillo, Administrative Law (7th ed.)
- SM     Supplementary Materials
- APA     Administrative Procedure Act (see MMS App. C)

I. Introduction And Overview

0. Background

*Read this syllabus*, particularly the first two pages. The syllabus contains important information that you are responsible for knowing. Retain this syllabus throughout the term.

It will be assumed many times during the course that you are familiar with the Constitution of the United States. Your knowledge from Constitutional Law should be sufficient. If you have not looked at the Constitution in a while, however, you might wish to refresh your memory of it, particularly the following:

- Article I, §§ 1, 6, 7, and 8
- Article II, § 1, cl. 1
- Article II, §§ 2, 3, and 4
- Article III, §§ 1 and 2
- Amendments V, X
- Amendment XIV, § 1

A. What are administrative agencies?

1. SM 1-14
   *Morrison v. Olson*

B. What do administrative agencies do?

Rulemaking

2. SM 15-22
   APA §§ 551, 553
   *United States v. Storer Broadcasting*
   *FPC v. Texaco*
Adjudication

3. MMS 402-410
   SM 23-27 (skim)
   SM 28-31
   *Goldberg v. Kelly*

C. Judicial review of administrative action

4. MMS 974-979
   APA §§ 702, 706
   *Citizens to Preserve Overton Park v. Volpe*

II. What Are Administrative Agencies?

A. Congress and the Administrative Agencies

Nondelegation

5. MMS 69-75
   SM 32-37
   *Schechter Poultry Corp. v. United States*

6. MMS 75-85
   SM 38
   MMS 95 (last ¶) - 101
   *Amalgamated Meat Cutters v. Connally*
   *Whitman v. American Trucking Ass’ns, Inc.*

The Non-Aggrandizement Principle

7. MMS 109-124 (through end of note 5 after Chadha)
   Optional: MMS 124-129
   *INS v. Chadha*

8. MMS 231-243, plus note 4 following the case on 246-247
   Optional: Other notes following the case on 243-248
   *Bowsher v. Synar*

Statutory Precision

9. MMS 137-149
   *Public Citizen v. Young*
Other Legislative Control Techniques

10. MMS 154-170 (don’t sweat over the details too much, but do take a good look at the description of NEPA, 160-162)
    SM 39-46
    MMS 174-175, 192-201
    Pay attention to the briefly noted cases of Pillsbury Co. v. FTC (MMS 194-195) and D.C. Federation of Civic Associations v. Volpe (MMS 196-197).

B. The President and the Administrative Agencies

Appointment and Removal of Officers

11. U.S. Const., Art. II, § 2-4
    MMS 203-221 (1st ¶)
    Buckley v. Valeo
    Also, review your notes on Bowsher v. Synar

12. MMS 249-275
    SM 47-48
    Optional: Notes 2, 4, and 8 on pp. 275-284
    Humphrey’s Executor v. United States
    Morrison v. Olson
    [You have already read most of Morrison, so review your notes from our prior discussion, refresh your memory of the portions you have already read (be sure to note particularly the way in which the holding differs from that of Humphrey’s Executor), and focus on parts III and IV of the Court’s opinion, which we omitted last time.]

Policy Control

13. This assignment has parts (a) and (b) — read both of them.
    a. Presidential authority, generally
    MMS 207 (I know you’ve seen this page before—read it again!)
    MMS 301 (last ¶) - 315
    Youngstown Sheet and Tube v. Sawyer
    The Jewels of the Princess of Orange

    b. Executive Orders 12,291 and 12,866
    SM 49-50
    MMS 329-333, 337-341
    MMS 1599-1613 [skim, but read §§1(a), 1(b)(6), 3(b), 4(c) (header through 4(c)(1)), 6(b) (header through 6(b)(2))]
    Environmental Defense Fund v. Thomas
C. The Administrative Agencies and the Courts

14. MMS 379-381
   SM 51-65
   *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*

15. MMS 381-390, plus notes 3-5 on 392-394
   SM 66
   *CFTC v. Schor*