

ADMINISTRATIVE LAW
LAW 604-1; FALL 2009
Steve Johnson

SYLLABUS

I. REQUIRED MATERIALS

Our texts are Alfred C. Aman, Jr., ADMINISTRATIVE LAW AND PROCESS (LexisNexis; 2d ed. 2006) and the current Supplement thereto.

II. ADDITIONAL STUDY AIDS

There is vast literature on Administrative Law generally, and there are specialized literatures on the law and practices governing particular administrative agencies. Many of the useful books and articles are identified in notes in our text. In addition, you should find the following helpful:

Alfred C. Aman, Jr., & William T. Mayton, ADMINISTRATIVE LAW (2d ed. 2001) (Thomson/West).

William F. Fox, Jr., UNDERSTANDING ADMINISTRATIVE LAW (5th ed. 2008) (Matthew Bender).

William F. Funk & Richard H. Seamon, ADMINISTRATIVE LAW: EXAMPLES AND EXPLANATIONS (3d ed.)(Aspen).

Peter H. Schuck, FOUNDATIONS OF ADMINISTRATIVE LAW (Lexis).

Peter L. Strauss (ed.), ADMINISTRATIVE LAW STORIES (Foundation).

Ernest Gellhorn & Ronald M. Levin, ADMINISTRATIVE LAW AND PROCESS IN A NUTSHELL (5th ed.)(Thomson/West).

Richard J. Pierce, Jr., ADMINISTRATIVE LAW (Foundation).

John H. Reese, ADMINISTRATIVE LAW DESK REFERENCE FOR LAWYERS (2008) (LexisNexis).

Thomas O. Sargentich (ed.), ADMINISTRATIVE LAW ANTHOLOGY (Anderson/LexisNexis).

Keith Werhan, PRINCIPLES OF ADMINISTRATIVE LAW (Thomson/West).

ABA Section of Administrative Law and Regulatory Practice, A BLACKLETTER STATEMENT OF FEDERAL ADMINISTRATIVE LAW.

William F. Funk, Jeffrey S. Lubbers & Charles Pou, Jr., FEDERAL ADMINISTRATIVE PROCEDURE SOURCEBOOK (4th ed. 2008) (ABA).

Jeffrey S. Lubbers, A GUIDE TO FEDERAL AGENCY RULEMAKING (4th ed. 2008) (ABA).

P. Stephen Gidiere III, THE FEDERAL INFORMATION MANUAL: HOW THE GOVERNMENT COLLECTS, MANAGES, AND DISCLOSES INFORMATION UNDER FOIA AND OTHER STATUTES (2008) (ABA).

III. GRADING

The primary factor will be the final examination, which will be open book and largely or entirely essay in format. In lieu of the final examination, you may write a paper conforming to the length and other requirements generally applicable at the Law School. To exercise this option, you must inform me of the topic of the paper not later than our third class meeting. The exam score or paper score will be raised one level (for example, from B to B+) for students with outstanding class participation.

For too many years, I have seen law students and young lawyers hurt their credibility before judges, clients, and employers by abusing the English language. Reluctantly, I've concluded it is necessary to create a grade-based incentive to move students away from the most egregious barbarisms. Thus, I will subtract points if any of the following appear on your final exam or other graded work: (i) misspelling "receive" or "de minimis," (ii) using the wrong one of these word pairs -- "principle/principal," "there/their," "effect/affect," and "capital/capitol," or (iii) using the phrase "try and [some verb]." There is no such construction. The phrase is "try to [some verb]." Points also will be subtracted for misspelling legal terms of art appearing in the assigned readings.

The extent of the point subtraction depends on the number of barbarisms, but this is not intended as a principal basis of grading. If you aren't sure about the above terms, learn them now, so you won't misuse them on the exam.

The grade may be reduced for students with more than 5 unexcused absences, the extent of the reduction depending on the number of unexcused absences. Pursuant to ABA policy, anyone missing more than 20% of the class meetings may not receive credit for the course.

IV. GENERAL INFORMATION

A. Course Objectives

By the end of this course, you should be able to distinguish among the major types of actions taken by administrative agencies: formal and informal adjudication, formal and informal rulemaking, and other informal actions. You also should be able to identify and apply the major sources of rules limiting agency discretion: the Constitution, Administrative Procedure Act, enabling acts, executive orders, internal rules, and administrative common law. You also should understand the proper roles of, and relations among, agencies, other Executive Branch offices, Congress, and the Courts.

B. Students with Disabilities

The Disability Resource Center (DRC) coordinates all academic accommodations for students with documented disabilities. The DRC is the official office to review and house disability documentation for students, and to provide them with an official Academic Accommodation Plan to present to the faculty if an accommodation is warranted. The DRC strongly encourages faculty to provide accommodations only if and when they are in receipt of said plan. Faculty should not provide students accommodations without being in receipt of this plan.

UNLV complies with the provisions set forth in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, offering reasonable accommodations to *qualified students with documented disabilities*. If you have a documented disability that may require accommodations, you will need to contact the DRC for the coordination of services. The DRC is located in the Student Services Complex (SSC), Room 143, and the contact numbers are: VOICE (702) 895-0866, TTY (702) 895-0652, FAX (702) 895-0651. For additional information, please visit: <http://studentlife.unlv.edu/disability/>

C. Office Hours and Contact Information

I will announce my office hours during the first week of class. My e-mail address is steve.johnson@unlv.edu and my telephone number is 895-4990.

D. Copyright Rules

The University requires all members of the University Community to familiarize themselves and to follow copyright and fair use requirements. You are individually and solely responsible for violations of copyright and fair use laws. The University will neither protect nor defend you nor assume and responsibility for employee or student violations of fair use laws. Violations of copyright laws could subject you to federal and state civil penalties and criminal liability as well as disciplinary action under University policies. To help familiarize yourself with copyright and fair use policies, the University encourages you to visit its copyright web page at: <http://www.unlv.edu/committees/copyright>.

E. Writing Assistance

One-on-one or small group assistance with writing is available free of charge to UNLV students at the Writing Center, located in CDC-301. Although walk-in consultations are sometimes available, students with appointments will receive priority assistance. Appointments may be made in person or by calling 895-3908. The student's Rebel ID Card, a copy of the assignment (if possible), and two copies of any writing to be reviewed are requested for the consultation. More information can be found at: <http://writingcenter.unlv.edu/>.

V. ASSIGNMENTS

Please prepare the following Text readings for the indicated classes. Always check if there is a corresponding portion in the Supplement and, if there is, read that too. Many readings include problems. We typically will not go over the problems in class, but they may be helpful to you as review and study tools.

INTRODUCTION

August 20

Introduction: Text pp. 1-26.

AGENCY ADJUDICATION – DUE PROCESS CONSTRAINTS

August 25

Applicability of procedural due process: Text pp. 65-69; 72-88; 105-114.

August 27

Requirements of procedural due process: Text pp. 124-138; 154-176; 187-190.

September 1

Substantive due process: Text pp. 177-186; 190-195. Supplement pp. 1-15.

AGENCY ADJUDICATION – STATUTORY CONSTRAINTS

September 3

Adjudication under the APA and enabling acts: Text pp. 190-195; 199-207; 220-244; Appendix B (skim). Supplement pp. 19-23.

September 8

Adjudication under the APA and enabling acts: Text pp. 245-277.

September 10

Adjudication under the APA and enabling acts: Text pp. 277-283; 290-316.

AGENCY RULEMAKING

September 15

Rulemaking: Text pp. 319; 323-354.

September 17

Rulemaking: Text pp. 355-396.

September 22

Rulemaking versus adjudication & negotiated rulemaking: Text pp. 396-433; 501-509.

INFORMAL AGENCY ACTION

September 24

Informal action: Text pp. 435-466; 471-474.

September 29

ADR: Text pp. 476-500; Appendix F (skim); Appendix G (skim).

LEGISLATIVE CONTROL OVER AGENCIES

October 1

Legislative controls generally and delegation: Text pp. 515-550; 625 & 635-37.

October 6

Delegation doctrine: Text pp. 550-563; 567-82; 589-616.

EXECUTIVE CONTROL OVER AGENCIES

October 8

Appointment and removal: Text pp. 638-80.

October 13

Executive oversight: Text pp. 680-726.

JUDICIAL CONTROL OVER AGENCIES

October 15

Doctrines of review and deference: Text pp. 726-768.

October 20

Deference: Text pp. 769-802.

October 22

Deference and scope of review: Text pp. 803-824. Supplement pp. 25-37.

October 27

Exclusions from review and standing: Text pp. 825-860.

October 29

Standing and timing of review: Text pp. 860-881. Supplement pp. 39-65.

November 3

Timing of review and proper forum: Text pp. 882-917.

OPEN GOVERNMENT

November 5

FIOA: Text pp. 919-962; Appendix C (skim).

November 10

FOIA, FACA, Sunshine Act, and Privacy Act: Text pp. 964-1002; Appendices D and E (skim).

November 12

Review of course. Please come armed with your questions.