

Administrative Law (116-001), Spring 2022

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Sketch of the course and learning outcomes: In this course, you will not learn everything you need to know about administrative law. You will learn (or at least have a reasonable opportunity to learn) enough to get started and then continue to learn through higher-level coursework, independent study, and practical application. That is the purpose of the course – to get you rolling toward expertise in:

- (1) the roots of administrative law (by spending a lot of time on some cases and other authorities, and a little bit of time on many others);
- (2) current administrative law doctrine (by, again, spending a lot of time on a few authorities, and a little bit of time on many others);
- (3) spotting and dealing with issues involving administrative law (by spending a good deal of time issue-spotting); and
- (4) generally thinking and acting like a lawyer – critically, constructively, creatively, civilly, ethically, and articulately.

In the classroom, you will engage mostly in two activities: occasionally speaking during discussions of the assigned reading, and often giving other speakers your undivided attention while working, in your own mind, on the same challenges they are working on out loud. Those in-class activities should inspire you to engage in some outside activities, including reading, outlining, thinking about, and discussing the assigned reading, creating, and taking your own practice questions in anticipation of the final exam, and so on. We should, by the way, have some fun as well.

Class sessions and calendars: We will meet on Tuesdays from 9:50 to 11:30 a.m. and Thursdays from 9:50 a.m. to 11:15 a.m. Our law school's website says class runs to 11:15 a.m. both days, but we will go to 11:30 a.m. on Tuesdays because there is always a chance we will have to cancel a class session or two during the semester due to foul weather, instructor unavailability, or whatever. Experience teaches that it is good to avoid early-morning, late-night, and weekend make-up sessions, and by banking a few minutes at the end of each Tuesday class session we can avoid inconvenient make-up sessions. We will balance our calendar near the end of the semester, with any accumulated but unused make-up time subtracted from the remaining schedule. So, if we miss one scheduled class, the April 21 session will be cancelled, and if we miss zero scheduled classes, the April 19 session will be cancelled as well.

Regular office hours: They will be in the classroom right after each Tuesday class session. Attendance will be really, truly optional. I will simply stay in the classroom after the class session formally ends and chat with anyone who hangs around. That means office hours will be on Tuesdays from 11:30 a.m. until whenever we run out of topics or I run out of time. I will not take attendance and will not reward people for attending. It is merely a time for you to have access to me, if you want it. You won't hurt my feelings by not coming. Nor will I be offended if you wander in and out, or show up for a few minutes and leave, or show up only occasionally. It's all good. Also, the agenda is loose. We can talk about adlaw, and we can talk about other topics – life, the universe, and everything else appropriate – if you like. Good nutrition is an important part of a good education, so, you are free to dine during office hours (if COVID-related rules permit), so long as you are quiet about it and clean up after yourself. In fact, you are also free to eat during class, on the same terms. There are several reasons for conducting office hours this way. Here are a few of the more important ones. First, it preserves a level playing field. No one gets special access to the instructor. Second, it improves the quality of answers to questions, because it is not at all uncommon for students to come up with first-rate answers to office hours questions. Yes, office hours are conversations, not just student-instructor Q&A ping-pong matches. Third, it enables people who are reluctant to speak up (at least at the start) to be a part of office hours. It's also perfectly fine to attend office hours and simply listen. Remember: The most useful function of office hours is the challenge of formulating good questions. You don't even need to ask them if you decide not to. Second most useful is participating in developing good answers. Of course, if you need to talk with me about something that is not appropriate for office hours (a personal issue or an ethical concern, or the like), feel free to make an appointment. Finally and very importantly, if you have a concern that you are not comfortable raising with me, you should raise it with Christine Malone (cmalone4@gmu.edu), the impressively knowledgeable, wise, kind, and resourceful Assistant Dean of Student Academic Affairs at our law school. I have worked with Dean Malone for many years and have the highest respect for and trust in her.

Disability accommodations: Disability Services at George Mason University is committed to upholding the letter and spirit of the laws that ensure equal treatment of people with disabilities. Under the administration of University Life, Disability Services implements and coordinates reasonable accommodations and disability-related services that afford equal access to university programs and activities. Students can begin the registration process with Disability Services at any time during their enrollment at George Mason University. If you are seeking accommodations, please visit <http://ds.gmu.edu/> for detailed information about the Disability Services registration process. Disability Services is located in Student Union Building I (SUB I), Suite 2500. Email: ods@gmu.edu | Phone: (703) 993-2474.

For each class session:

- Read, take notes, and think about the assigned material before class, and be prepared to listen and speak. Stay an assignment or two ahead of schedule, just in case.
- Look up words you do not know. Use a good dictionary or two (including a recent edition of *Black's Law Dictionary*, edited by Bryan Garner). Important, interesting, or odd words are good candidates for exam questions.
- You may use silent electronics in class. But bear in mind a few points: (1) there is some evidence that pointing your face toward a speaker (or at least turning in their direction a bit) improves your comprehension and recollection of what the speaker says; (2) the instructor believes the first point is true, believes that even if it isn't true it is still polite, believes that politeness is part of good lawyering, and knows beyond a shadow of a doubt that behaving as though you are trying to model good lawyerly behavior factors in the calculation of participation adjustments in grading for this course; (3) and, finally and ironically, there is some evidence of an inverse relationship between a person's belief that they can multitask and their ability to multitask.

- Take notes in your own words. There is some evidence that taking notes that way (rather than merely transcribing what is said in class) improves your comprehension and recollection of what you hear and see (which might come in handy for the exam). Besides, if you are worried about catching every word during class, don't. All class sessions and office hours will be recorded and posted online.
- Note and follow in-class instruction. If you miss a class (or miss something said in a class you do attend) get notes from a classmate. Make arrangements in advance as a precaution against unanticipated absences (and missed somethings). There is a strong tradition in law of sharing notes with colleagues in need. Be a part of it.

Texts:

Required: Keith Werhan, Principles of Administrative Law (3rd ed. 2019) (free on West Academic via our school's website — ask a librarian if you need help finding it; you can also buy a hard copy online – cheap compared to most law school textbooks).

Suggested: Bryan A. Garner, Black's Law Dictionary (11th ed. 2019 as a book, or 10th ed. 2014 as an app) (not cheap, but worth it).

A few words about law school textbooks: They go out of date fast, because the law is a living, constantly changing creature (or creatures), like the society of which it is (or they are) a part. As we will see during the course, even a relatively recent work, such as the Werhan book, which was written by a first-rate scholar and published just a few years ago, can sometimes benefit from updating. So, do not be surprised if we do some tinkering during our course, and be on the watch for changes in law throughout your career.

Assignments and class schedule:

Entries to the right of a date indicate the reading assignments for that date. Assignments are subject to change based on the pace of the course and the whim of the instructor.

Date	Topic(s)	Werhan reading	other reading
Jan. 18 & 20	Introduction	Chapter 1	Search www.regulations.gov for AMS-FV-14-0087-0001 and read all the documents you find.
Jan. 25 & 27	The Place of Agencies in U.S. Gov't	Chapter 2, §§ 2.1–2.3	Gundy v. U.S., 139 S.Ct. 2116 (2019).
Feb. 1 & 3	The Place of Agencies in U.S. Gov't	Chapter 2, §§ 2.4–2.5	Free Enterprise Fund v. PCAOB, 561 U.S. 477 (2010).
Feb. 8 & 10	Due Process	Chapter 3	Board of Regents v. Roth, 408 U.S. 564 (1972) & Cushman v. Shinseki, 576 F.3d 1290 (Fed. Cir. 2009)
Feb. 15 & 17	Procedural Forms of Agency Action	Chapter 4	5 U.S.C. §§ 551, 552(a)(1), 553–559, 701–706
Feb. 22 & 24	Formal Adjudication	Chapter 5	Grolier Inc. v. FTC, 615 F.2d 1215 (9th Cir. 1980)
Mar. 1 & 3	Informal Rulemaking	Chapter 6, §§ 6.1–6.3	National Black Media Coalition v. FCC, 791 F.2d 1016 (2d Cir. 1986)
Mar. 8 & 10	Informal Rulemaking	Chapter 6, §§ 6.4–6.5	Perez v. Mortgage Bankers Ass'n, 575 U.S. 92 (2015)
Mar. 22 & 24	Judicial Review: How and When	Chapter 7, §§ 7.1–7.2	Bennett v. Spear, 520 U.S. 154 (1997)
Mar. 29 & 31	Judicial Review: How and When	Chapter 7, § 7.3	Sackett v. EPA, 566 U.S. 120 (2012)
Apr. 5 & 7	Judicial Review: What	Chapter 8, §§ 8.1–8.6	U.S. v. Mead Corp., 533 U.S. 218 (2001)
Apr. 12 & 14	Judicial Review: What	Chapter 8, §§ 8.7–8.9	Auer v. Robbins, 519 U.S. 452 (1997)
Apr. 19 & 21	TBD		
May 4	final exam (12:00 p.m.)		

Grades: Your grade will be based on two things – a final exam and class participation. **Final exam:** The exam will be 100% of your grade, unless you earn an adjustment up or down for class participation. The exam will cover the assigned reading and the instructor's remarks in class. It will be a three-hour, six-question, issue-spotter/analysis essay test. It will be open everything (books, notes, internet, etc.), with one exception: You must not interact in any way (in person, in writing, by signing, electronically, telepathically, etc.) with any human being during the exam (except, of course, for the fine people in our law school's Records Office and IT Department, since you may need their help with administrative and technical aspects of the exam). **Class participation:** When determining your grade in the course, the instructor may apply a single-increment adjustment to the exam grade, upward or downward (e.g., from B to B+ or from A- to B+), based on class participation (which includes overall good citizenship) in the course. The easiest ways to improve your chances of an upward adjustment are: (1) when the instructor invites you to speak in class, demonstrate that you have done the assigned reading and thought about it and were paying attention to what was going on in the classroom just before the instructor invited you to speak (yes, you can pass on a question, but it won't help you pass the course); (2) make your replies to the instructor and your comments on contributions of classmates short, on-point, and constructive, and pay attention to others' answers and comments (yes, politeness can affect your grades in law school as well as your career after it); and (3) attend class (yes, a school regulation says, "[i]f a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course" and a "student who is not present for at least 75 percent of a session of the course is absent from that session," but those are merely definitions of the lower bounds of certain minimal performances, and minimal performances merit minimal grades). **One more tip about participation:** Asking the instructor a question that is answered in this syllabus is evidence that you are either not doing the reading or not paying attention.

Academic regulations: They are here: www.law.gmu.edu/academics/regulations. If you have not read them yet, you should!

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