

Administrative Law

(Law 116-002)

Office: Hazel 320

Hours: Wed., 4:00 – 5:30 pm or by appointment

E-mail: jrabkin@gmu.edu

Casebook: Cass, Diver et al., *Administrative Law*, 8th ed., 2020 (= CB); Other readings on TWEN

Learning outcomes: Understanding of constitutional constraints on administrative procedure from separation of powers and due process requirements; understanding of process requirements under Administrative Procedure Act; understanding of ongoing disputes regarding proper levels of judicial deference to agency determinations

PART I: THE CONSTITUTIONAL SETTING OF FEDERAL ADMINISTRATION

Jan 19: Introduction: Why administration?

CB 3- 15 (Origins); CB 839 – 40 (Suits Against Officials);

Dicey, Law of the Constitution

Ives v. So. Buffalo RR; NLRB v. Jones & Laughlin Steel Co.

Jan 24: Legislative Control - I

CB 15 – 34 (esp. *Schechter, Am Petrol Inst, Mistretta, Whitman, Gundy*)

CB 620 – 633 (*Schor, Stern*)

Jan 26: Legislative Control – II

CB 35 – 60 (esp. *Chadha, Robertson, Clinton*); 503 – 516 (*Sierra Club, Volpe*)

Jan 31: Executive Control

CB 60 – 91 (*Buckley, Noel Canning, Myers, Humphrey's, Bowsher*)

Opinions of Early U.S. Attorneys General

Feb 2: Political Supervision

CB 92 – 115 (*Morrison, Free Enterprise Fund, U.S. Telecom*)

CB 600 - 607 (Presidential Oversight of Rulemaking)

PART II: ADMINISTRATIVE PROCESS

Feb 7: Business Licensing

CB 856 – 877 (*Ashbacker, Writers Guild, Southwestern Cable*)

Feb 9: Rate Regulation

CB 876– 883 (*MCI Telecom*)

Feb 14: Constitutional Right to Due Process

CB 620 – 664 (*Goldberg, Roth, Arnett, Bishop, Cleveland Bd.*)

Feb 16: Constitutional Requirements of Due Process

CB 664 – 688 (*Mathews, Tumey, Monroeville, Gibson, Cinderella, Withrow*)

Feb 21: Federal Statutory Hearing Requirements

CB 689 – 710 (*Seacoast, Citizens Awareness, So Cal Edison, Armstrong*)

CB 715 – 732 (*Portland Audubon, Assn of ALJs*)

Feb 23: Choice of Policy-Making Instruments

CB 417 – 20 (*Londoner, Bi-Metallic*)

CB 421 – 448 (*Storer, Petroleum Refiners, Chamber of Commerce, Heckler*)

Feb 28: Agency Discretion

CB 449 – 477 (*Chenery, Excelsior, Wyman-Gordon, Bell Aerospace, Ruiz*)

CB 733 -737 (*Pension Benefit Guaranty Corp*)

Mar 2: Rule-making under APA

CB 479 – 502 (*Allegheny-Ludlum, Fla. E. Coast, Care at Home, Nova Scotia, HBO*)

CB 503 – 529 (*Sierra Club, DC Federation, National Advertisers*)

Mar 7: Embellishing APA

CB: 530 – 567 (*NRDC, Vt Yankee, Radio Relay, Family Planning, Hctor, Texas, Lincoln*)

PART III: THE LAW OF JUDICIAL REVIEW

Mar 9: Standards of Judicial Review

CB 117 – 133 (*Overton Park, Chenery, Morgan*)

CB 244 – 263 (*Universal Camera, Biestek*)

Mar 21: Hard Look Review of Policy

CB 134 – 173 (*State Farm, Dept of Commerce, Fox TV, Encino, Mass.*)

Mar 23: Deferential Review on Questions of Law

CB 174 – 192 (*Hearst, Skidmore, Chevron, MCI, Babbit*)

Mar 28: Exceptions to Deference

CB 192 – 243 (*Brown & Williamson, UARG, Brand X, Mead, Arlington, Kisor*)

American Hospital Association v. Becerra

Mar 30: Reviewability

CB 278 – 304 (*Norton, Johnson, Cuozzo, McNary*)

Apr 4: Committed to Discretion

CB 313 – 350 (*Webster, Dept of Comm, Heckler, Texas, Lincoln*)

Apr 6: Standing to Sue

CB 351- 388 (*Data Processing, Lujan, Mass*)

Apr 11: Timing of Judicial Review

CB 388 – 414 (*Abbott Labs, Toilet Goods*)

PART IV: SETTINGS OF DISPUTES

Apr 13: Enforcement

CB 739 – 785 (*Barlow's, Monsanto, Moog, Univ. Rundle, Jackson*)

Apr 18: Private Litigation and Regulatory Enforcement

CB 786 – 806 (*Bennett, Borak, Cort, Cannon, Karahalios*)

Apr 20: Public Access

CB 887 – 927 (*Kissinger, Milner, Sears, Reporters Com'tee*)

Apr 25: Policies Outside Process, Late Developments

OCR Guidance Letter

TBD – Spring Surprises of 2022