

Administrative Law – LAW 116
Syllabus
Spring 2024

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**This course meets from 9:50-11:15 a.m. on Tuesdays and Thursdays.*

Course Objectives: By the end of this course, students should have a basic understanding of separation of powers issues related to federal administrative agencies' position within our three-branch governmental structure. This course also consists of the study of the administrative process of government within both executive and independent agencies. The federal Administrative Procedure Act will be emphasized, with particular attention devoted to agency adjudicative and rulemaking powers and statutory requirements for acquiring judicial review of agency action. Constitutional topics include separation of powers, Article II appointments and removal requirements, nondelegation principles, due process, and standing/mootness/ripeness issues related to acquiring judicial review of agency action.

Office Hours: I will hold office hours on Tuesdays from 11:30-1:30 p.m. In addition, I encourage students to contact me by email or telephone. Students also may post questions to our course TWEN site. I reserve the right to post to TWEN any substantive student questions emailed to me (with the student's name redacted) that I feel would benefit the entire class. I am most likely to post to TWEN student questions that arise close to final exam time, to ensure that all students have access to the same substantive answers regarding content that might be covered on the exam.

Class Schedule:

Tuesdays & Thursdays, 9:50-11:15 a.m.

Required Materials:

Cass Diver Beermann Freeman, Administrative Law: Cases and Materials, 8th Edition, Wolters Kluwer 2020 ("CDBF"). Online 2023 Update.

Examination/Grades:

Grades will be based primarily on the final examination, which is scheduled for Tuesday, April 30, at noon. The exam will consist primarily of essay questions and will be "open book."

Course Participation/Grades:

Although grades will be based primarily on the final examination, class participation may also impact a student's final grade. Based on the quality of class participation, I reserve the right to adjust a student's final grade up or down by one step (e.g., from "B" to "B+" or "A" to "A-"). All students are expected to be prepared for each class and to provide high-quality participation. In-class discussions will rely on a mix of voluntary participation and Socratic cold-calling. In accordance with mandatory law school policy, class attendance also is required. Students missing

more than 20 percent of class sessions, for any reason, will not receive credit for the course in accordance with mandatory law school policy. Students missing more than 25 percent of any particular class session are counted as absent on that date. You do not need to provide me with notice of when you will miss class.

Reading Assignments: Following are the reading assignments for class organized by topic and date.

I. Agencies: Their Origins, Forms, and Functions

Theories of Agencies & Delegation, CDBF 6-34 & 2023 Update 5-6 (*January 16*)

The Legislative Veto & Appropriations, CDBF 35-57 (*January 18*)

Executive Command & Appointment, CDBF 60-64 & 71-84; 2023 Update 7-15 (*January 23*)

Removal, CDBF 85-90 note 2; 2023 Update 16-20; CDBF 92-103; 2023 Update 25-26 (*Arthrex*) (*January 25*)

II. Judicial Review of Administrative Decisions

Judicial Review: Standards & the Basis for Review, CDBF 119-133 (*January 30*)

Arbitrary and Capricious Review, CDBF 134-158 (*February 1*)

Changes in Policy, Inaction, & Early Review of Questions of Law, CDBF 158-179; 2023 Update 27-30 (*February 6*)

Chevron and Step One, CDBF 180-199; 2023 Update 31-37 (*February 8*)

Chevron Step Two, *Brand X*, & “Step Zero,” CDBF 200-228 (*February 13*)

Agency Interpretations of its Rules & Intro to Factual “Substantial Evidence” Review, 229-250; 2023 Update 47-52 (*February 15*)

“Substantial Evidence” Standard & Remedies, CDBF 250-276 (*February 20*)

III. Availability of Judicial Review

“Agency Action” and Preclusion, CDBF 278-296; 2023 Update 53 (*February 22*)

Preclusion & Commitment to Agency Discretion, CDBF 297-328; 2023 Update 53-54 (*February 27*)

Prosecutorial Discretion & Resource Allocation, CDBF 329-350 (*February 29*)

Standing, 351-361 & 378-388 CDBF; 2023 Update 54-55 (*March 12*)

Timing: Ripeness & Exhaustion, 388-410 CDBF; 2023 Update 57-58 (*March 14*)

IV. Choice of Policymaking Instruments

Due Process & Policy by Rule, CDBF 418-441 (*March 19*)

Policy by Rule & Policy by Adjudication, CDBF 442-465 (*March 21*)

Informal Policy & Intro to Rulemaking, CDBF 466-481 (*March 26*)

V. Rulemaking

APA Procedure, Explanation, & the Record, CDBF 482-501 (*March 28*)

Political Influence & Impartiality, CDBF 503-529 (*April 2*)

“Hybrid” Procedures & Exemptions, CDBF 530-541 & 547-560 (*April 4*)

Exemptions, Stays, & Alternative Models, CDBF 554-579; Instead of note 2 on p. 571, 2023 Update 59-60 (*April 9*)

VI. Adjudication

Agency Authority to Adjudicate & Due Process, CDBF 620-651 (*April 11*)

Due Process Requirements, CDBF 664-688 (*April 16*)

Statutory Hearing Requirements, CDBF 689-710 (*April 18*)