ADMINISTRATIVE LAW # 221-02
Fall 2018 Professor Christine Chabot
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Course Logistics
Location: Corboy Law Center Room 106
Day and Time: M/W 10:30-noon
Final Examination: Three-hour take-home exam to be checked out on TWEN and completed at any time during exam period. Please contact Associate Dean Faught if you require accommodations.

Course Description
This course has received a ranking of “highly recommended” from Loyola’s faculty. The course provides essential elements of the future practitioner’s toolkit: students will gain an in-depth understanding of procedures and political structures which govern administrative agencies’ decisions. These agency decisions are of vital importance to multitudes of firms and individuals represented by lawyers.

Students will learn procedures governing agencies’ ability to take away individual liberties, government benefits, and property, as well as procedures which channel policy decisions affecting virtually every sector of the economy. Students will also learn constitutional parameters of the president’s and Congress’s control over agencies and how courts review agency decisions and interpret regulatory statutes.

Required Text

Additional Recommended Reading

Class Attendance & Preparation
You are expected to attend class regularly and be fully prepared to discuss the assigned material. You may take up to 4 unexcused absences. Students with inadequate attendance may have their participation grade lowered or be precluded from taking the final exam.

Grades
Your final grade will be calculated based on:

70% Final Examination (take-home essay exam to be checked out and completed at time of student’s choice during exam period; students must turn in exam within specified time limit to receive credit)

15% Participation in Classroom Discussions (based on level and quality of input)

15% Participation in Evaluative Exercises. I will conduct 3 in-class quizzes on course materials during the semester. The quizzes will measure your ability to identify and evaluate legal rules governing agencies’ decisions and structure.
Access to Students
I want to be as available to you as possible. Please feel free to contact me at cchabot@luc.edu or 847.780.4832 with any questions. If you would like to meet in person, I am available most afternoons following class. Please see me after class or e-mail me to schedule a meeting. My office is in Room 1329.

Educational Goals, Objectives, and Student Learning Outcomes
Loyola University of Chicago School of Law has carefully developed its academic program and classes so that its students achieve a specific set of educational goals, objectives, and student learning outcomes. This class will serve many of those goals, objectives, and outcomes:

1. Students in this class will gain essential knowledge of procedure and political structures which shape administrative agencies’ decisions. Students will demonstrate ability to identify and evaluate legal rules governing administrative agencies’ decisions and structure in a variety of contexts.
2. Students will develop fundamental lawyering skills, giving them ability to counsel private and government clients and address problems faced when advocating before or on behalf of administrative agencies. Particular problem-solving skills include the ability to (a) evaluate strategies for advocating clients’ legal and policy positions before an administrative agency; (b) evaluate desirability of alternative procedures from perspectives of agencies and parties who appear before agencies; (c) understand the importance of non-legal expertise in shaping agencies’ policy decisions; and (b) evaluate strategies for attacking or defending agency decisions on judicial review.
3. Students will hone critical statutory interpretation skills and become equipped with principles governing interpretation of regulatory statutes.
4. Students will continue to develop basic skills giving them the ability to analyze and apply legal rules and pass the bar exam.

Teaching Philosophy
I use an active learning approach, which is generally shown to result in superior learning outcomes. Active learning requires that you be fully engaged in our class discussions and exercises. Class exercises and assignments are designed to enhance your mastery of course materials as well as the fundamental lawyering skills listed above.

In addition, students are not to use laptops or electronic devices for purposes unrelated to class. Improper use of technology can detract from both your own and your classmates’ active learning experience. I also discourage you from using your laptop to transcribe class discussion, and instead recommend that you take notes synthesizing your understanding of key points or questions. I post slides shown in class on TWEN at the end of each week, and I will conduct a review of key materials at the end of the course.

Code of Conduct
The Loyola University Chicago School of Law Code of Conduct shall govern all aspects of this class. See www.luc.edu/law/fyi/pdfs/Code_of_Conduct.pdf.
Preliminary Schedule of Assignments (I will update reading assignments throughout the semester):

I. INTRODUCTION

Introduction to Administrative Law and Due Process in Administrative Adjudication

Class 1: For our first class, please read and be prepared to discuss the three short articles linked below, all of which raise important questions about the Trump Administration’s efforts to deconstruct the administrative state. Topics include the tradeoffs between health and safety benefits of agency regulations and the costs they impose on businesses, recent efforts to roll back major environmental regulations, and a perspective on the extent of recent rollbacks across all areas of regulation.

Class 2: Pp. 1-11, 15-16 (Londoner, Bi-Metallic, begin reading on page 15 with problem 1-3)

II. ADJUDICATION

Due Process:
- Timing and Elements of a Due Process Hearing
- Interests Protected by Due Process Hearing Rights


Class 4: Pp. 68-75; 89-97 (Roth, Sandin v. Conner)


Class 6: Pp. 142-50; pp. 80-83 (Ingraham v. Wright, note on Town of Castle Rock v. Gonzales)

Formal and Informal Adjudication and the Administrative Procedure Act

Class 7: Pp. 195-96 (Introduction); 203-05; 212-16 (Dominion Energy); 220 (Note 3-114); 248-55 (Greenwich Collieries); APA §§ 554, 556, and 557, Appendix

Class 8: Pp. 206-211; 255-61 (Withrow v. Larkin); 267-74 (Grolier)

Class 9: Pp. 275-89 (PATCO), 289-94 (Cinderella); (skim Overton Park at pp. 295-302)
III. RULEMAKING

Introduction to Rulemaking, Notice and Comment Procedures; Exceptions

Class 10: 359-60 (What is a Rule?); 386-98 (Chocolate Mfrs. Ass'n and Nova Scotia); APA §§ 551(4)-(7) & 553, Appendix


Class 12: Cost-benefit analysis and executive orders on rulemaking, pp. 716-20, E.O. 12,866, Trump’s Executive Order 13771 (2-for-1):


Class 15: Agencies’ choice of procedures and due process in rulemaking; pp. 473-82 (Chenery II); Ass’n of American Railroads v. U.S. Dept. of Transportation (read only Part III.A.)

IV. CONGRESSIONAL AND EXECUTIVE CONTROL OVER AGENCY ACTION

Delegation of Power to Agencies

Class 16: American Trucking v. EPA, 175 F.3d 1027 (D.C. Cir. 1999) (read only paras. 2-4, 9-17, 27); pp. 561-68 (Supreme Court American Trucking)

Vetoes and Direct Controls

Class 17: Pp. 509-24 (I.N.S. v. Chadha), Congressional Review Act

Presidential Direction of Regulatory Outcomes; Appointment of Officers

Class 18: U.S. Constitution. Art. II, § 2, cl. 2; Lucia v. SEC (Justice Kagan’s majority opinion only)

Power to Remove Officers

Class 19: Pp. 681-85 (Humphrey’s Executor); 689-96 (Morrison v. Olson); Note on Executive Power and PHH v. CFPB
Open Government

Class 20: Pp. 1013-16; 1036-44 (*Navy v. Milner*); skim FOIA, App. pp. C-1 (552(a)(1) & (2), C-8-C-9 (exceptions in 552(b)), see remainder of assignment for this class posted under Judicial Review

V. JUDICIAL REVIEW

Availability of Judicial Review, Standing and Timing

Class 20, continued: Pp. 903-11 (*Heckler v. Chaney*); *Massachusetts v. EPA* (read ONLY the Intro, Parts I-II and Parts V-VIII); APA § 701-02, Appendix


Standards of Review: Questions of Fact, the Substantial Evidence Standard, the Arbitrary and Capricious Standard, and Questions of Law


Class 24: Arbitrary and capricious review; pp. 869-70; 872-90 (*State Farm, FCC v. Fox*)

Class 25: Questions of law; pp. 763-72 (*Hearst*); 775-82 (be sure to read *Chevron*! carefully)

Class 26: Statutory interpretation Pp. 795-810 (*Brown & Williamson*); Note 8-27 (pp. 784-89)

Class 27: Step Zero, Pp. 772-74 (*Skidmore*); 821-27 (*Mead*)

Class 28: Review