

Administrative Law
University of Florida Levin College of Law
Fall 2022
Syllabus

Law 6520
Holland Hall 180
Class Meetings: Tues/Thurs 1:15 pm to 2:40 pm
Office Hours: Thurs 3 pm to 4 pm (by app't) &
Fri 1:30 pm to 2:30 pm (Zoom)

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Course Description

This course is an introduction to the legal principles and procedures that define the administrative state. Administrative law reaches every corner of modern life. It guides the regulation of labor, immigration, the environment, financial markets, taxation, and prisons—not to mention consumer, occupational, and health safety. It also directs the eligibility and disbursement of public benefits programs, such as Social Security and Medicaid. Using this dizzying array of examples, we will study the sources of law for agency action and examine the ways in which American public law tries to reconcile the practical necessities of a powerful bureaucracy with a democratically accountable national government. We will explore the rationales for delegation to administrative agencies, procedural and substantive constraints on agency adjudication and rulemaking, judicial review of agency actions, and the relationship of agencies to Congress and the President.

Course Objectives & Student Learning Outcomes

After completing this course, students should be able to:

1. Describe the constitutional and statutory foundations of federal administrative law;
2. Demonstrate an understanding of the procedural rules that govern administrative adjudication and rulemaking;
3. Apply doctrinal, strategic, and practical considerations to the process of litigating both against and on behalf of agencies in federal court; and
4. Identify the legal sources of and recent controversies over agencies' relationships with Congress and the President.

Required Course Materials & Workload

The casebook for this course is Mashaw, Merrill, Shane, Magill, Cuéllar, and Parrillo, *Administrative Law: The American Public Law System: Cases and Materials* (8th ed. 2019), available online and at the UF Law bookstore. You are expected to read and be

prepared to discuss all of the assigned reading each class. I supplement the casebook with additional cases and materials, all of which will be available on Canvas.

In accordance with Standard 310 of the American Bar Association's (ABA) standards for law schools, students are expected to devote 2 hours of out-of-class preparation for every 1 credit hour of in-class instruction. Because this course has 3 credit hours of in-class instruction weekly, you should expect to spend approximately 6 hours outside of class reading, preparing, and reviewing the material for our class meetings each week.

Attendance

Attendance is mandatory and an essential part of the course. In accordance with ABA guidance, you are allowed a total of four absences from class, for any reason (including for illness, medical appointments, job interviews, school activities, work tasks, family obligations, and the like). For ease of administration and to respect your privacy, I do not make any differentiation between "excused" or "unexcused" absences. As a result, there is no need to tell me why you will be or were absent from class, so long as you have four or fewer absences total. Only observance of a University-recognized religious holiday does not count toward your four absences, but you must notify me in advance of those religious observance-related absences. Five to six absences may result in a reduction of your final grade. More than six absences could result in preventing you from sitting for the final exam and failing the course. Please do not arrive late to class, leave early, or leave to take a break during class absent extenuating circumstances. Please turn off your phone during class and mute other devices, including your laptop.

Preparing for and Participating in Class

Please keep up with the reading as assigned; if we do not get through everything in a given class, we will pick up where we left off the next day. As a result, review anything we did not get to in the prior class and complete the material as listed on the syllabus for each class. Depending on the pace at which we progress and developments in Washington, D.C., I may delete, add, or adjust the assignments. I do not anticipate changing reading assignments, but if I do, I will give you advanced notice.

I will seek your active participation in our class discussions. I "cold call" using a randomized class list, which just means that I may call on any of you during the class period. As a result, you must be prepared to participate on any given day. "Prepared" means having read the assigned material for that day as well as any material not covered from the prior class. It means that you're ready to discuss the material, but it does not require that you have ready answers for any question that might come up.

While I expect you to come to every class and to come prepared, I recognize, however, that exceptional circumstances may lead you not to have read the material for a particular day. If that happens, I'd much rather you show up unprepared than not show up at all. I just ask that you email me the night before class that you will not be prepared. If you do come unprepared without letting me know, your grade may suffer.

Electronic Devices

Laptops and tablets are useful devices for law students, but in class, they can be quite distracting to you and the people around you. I ask that you strongly consider not using laptops or other screens in the classroom unless you need to look at course materials not in the casebook. If I detect that you are using a device for something unrelated to the course and/or distracting others, your grade may suffer.

COVID-19 Practices

Although the university is not requiring faculty, staff, and students to wear masks, everyone is welcome to wear masks. I will have spare masks available with me in the classroom so please feel free to ask for them. Most importantly, however, please do not come to class if you feel sick. Recent studies and guidance from the CDC state that both unvaccinated and vaccinated individuals can transmit the current COVID-19 variant. The UF Student Health Center continues to offer vaccines to students at no charge, and we will strongly encourage all students to become vaccinated if they have not already done so. Information is available here:

<https://coronavirus.ufhealth.org/vaccinations-2/vaccine-availability/vaccine-availabilityalachua/#uf>.

Office Hours

My office hours this semester are as follows. On Thursdays from 3 pm to 4 pm, I will meet with students by appointment in my office. You can sign up for a slot on Canvas. On Fridays from 1:30 pm to 2:30 pm, I will be available to meet via Zoom, and students can drop in without an appointment. The Zoom link is available on Canvas.

Review Session

During the reading period, I will hold a review session on Tuesday, November 29th at 1:15 pm via Zoom. The review session is optional. I will not take attendance, but I hope you can attend. My only agenda item will be to answer questions from students. I will first address any questions that you email to me by 5 pm on Sunday, November 27th and then, if time remains, answer questions from students attending. The session will be recorded and posted to Canvas and available to all students until the end of the day before the exam (midnight on Monday, December 5th). When the reading period ends

on Thursday, December 1st, I will not communicate with any students about the course until after the exam period.

Grades and the Final Exam

Regular attendance, preparation, and active participation in classroom discussion are required. Your course in the grade will be based on a final exam, with potential adjustment based on your attendance and participation. The final exam is currently scheduled for Tuesday, December 6th. More information on the exam will be provided in class. The law school grading policy is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-lawstudent-handbook-and-academic-policies>. Students receive grade points according to the following scale:

<u>Grade</u>	<u>Points</u>	<u>Grade</u>	<u>Points</u>	<u>Grade</u>	<u>Points</u>
A (Excellent)	4.00	C+	2.33	D-	0.67
A-	3.67	C (Satisfactory)	2.00	E (Failure)	0.00
B+	3.33	C-	1.67		
B (Good)	3.00	D+	1.33		
B-	2.67	D (Poor)	1.00		

Other Relevant Law School Policies and Practices

Policy related to make-up exams or other work: The law school policy on exam delays and accommodations can be found [here](#).

Recordings of Class: All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. These recordings will be retained only for a short period of time and it is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

Statement related to accommodations for students with disabilities: This class will be accessible to all members of our law school community. Students requesting accommodations for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester. It is important for students to share their accommodation letter with me so we can discuss their access needs as early as possible in the semester.

Student course evaluations: Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students [here](#).

Compliance with UF Honor Code: Academic honesty and integrity are fundamental values of the UF Law School community. Students are expected to understand and comply with the UF Student Honor Code, at <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>, and the Law School's application of it, at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honorcode-and-committee/honor-code>.

Health and Wellness Resources

Law school can be a daunting experience, especially when life outside the law becomes challenging and when you are doing so during a pandemic. UF Law provides resources for your support, and I encourage you to seek help if you have concerns. Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. If you are comfortable doing so, you may also notify me so that I can direct you to further resources.

- *U Matter, We Care*: If you or someone you know is in crisis, please contact umatter@ufl.edu, (352) 392-1575 (available 24/7), or visit the U Matter, We Care website to refer or report a concern and a team member will reach out to the student in crisis.
- *Counseling and Wellness Center*: Visit the Counseling and Wellness Center website or call (352) 392-1575 for information on crisis services as well as non-crisis services.
- *Student Health Care Center*: Call (352) 392-1161 for 24/7 information to help you find the care you need, or visit the Student Health Care Center website.
- *University Police Department*: Visit UF Police Department website or call (352) 392-1111 (or 9-1-1 for emergencies).
- *UF Health Shands Emergency Room / Trauma Center*: For immediate medical care call (352) 733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; Visit the UF Health Emergency Room and Trauma Center website.

Week 1

Tuesday, Aug. 23rd: **What is Administrative Law? What is an Agency?**

Casebook 1-17 (stop at Section 2)

5 U.S.C. § 551

Part I: What Agencies Do: Adjudication and Rulemaking

Thursday, Aug. 25th: **Introduction to Adjudication and Rulemaking**

319-324 (stop at B.)

436-447 (including *Florida East Coast Railway*) (stop at the end of note 4)

5 U.S.C. §§ 553 – 557

Week 2

Tuesday, Aug. 30th: **The Choice Between Adjudication and Rulemaking**

715-726 (including *Chenery II*)

5 U.S.C. §§ 553 – 557

Thursday, Sept. 1st: **Administrative Adjudication: Constitutional Requirements**

338-339 (stop at end of Friendly's list)

345-359 (including *Goldberg v. Kelly*)

361-370 (including *Mathews v. Eldridge*)

U.S. Const. amends. V, XIV § 1

Week 3

Tuesday, Sept. 6th: **Administrative Adjudication: Statutory Requirements**

451-456

Canvas: *Biestek v. Berryhill*, 139 S. Ct. 1148 (2019)

464 (n.2)-470

478-484

487 (n.4)-490

5 U.S.C. §§ 554 – 557

Thursday, Sept. 8th: **Administrative Adjudication: Statutory Requirements (cont'd)**

490-493

496-506 (all notes except n.2)

506-514 (including *Campbell*)

514-525 (including *Quesada*)
528-532 (Section C. on informal adjudication)
5 U.S.C. §§ 1305, 3105, 3344, 5372, 7521
Canvas: Executive Order 13843 (2018)

Week 4

Tuesday, Sept. 13th: **Administrative Rulemaking: Introduction**

533-544 (including *National Petroleum Refiners*)
549-555
711-715
559-575 (including *Automotive Parts*)
5 U.S.C. §§ 553, 706

Thursday, Sept. 15th: **Administrative Rulemaking: Substantive Judicial Review**

576-584 (including *National Tire Dealers*)
584-603 (including *State Farm*)
5 U.S.C. §§ 553, 706

Week 5

Tuesday, Sept. 20th: **Administrative Rulemaking: Procedural Requirements**

603-609
622-635 (including *Texas*)
635-642 (including *Paralyzed Veterans, Mortgage Bankers*)
646-651
Canvas: Executive Order 13891 (2019)

Thursday, Sept. 22nd: **Administrative Rulemaking: Procedural Requirements (cont'd)**

652-668 (including *Nova Scotia Food Products*)
668-671 (on e-rulemaking)
671-682 (including *Vermont Yankee*)
708-711 (including *Association of National Advertisers*)
Watch: *Vermont Yankee* Lecture (available on Canvas) (15 mins)

Part II: Judicial Review of Agency Action

Week 6

Tuesday, Sept. 27th: **Scope of Review: Presumptive But Limited Review**

887-900 (including *Overton Park* and *Chenery I*)

903-914 (including *Fox Television Stations*)

5 U.S.C. §§ 701-706

Watch: *Overton Park* Lecture (available on Canvas) (30 mins)

Watch: *Chenery I* and *Fox Television* Lecture (available on Canvas) (20 mins)

Thursday, Sept. 29th: **Scope of Review: Political Interference and Pretext**

150-157 (including *Pillsbury, D.C. Federation, American Public Gas, Aera Energy*)

683-702 (including *Sierra Club v. Costle*)

900-903 (notes on Census case)

Canvas: *United States Dep't of Commerce v. New York*, 139 S. Ct. 2551 (2019)

Week 7

Tuesday, October 4th: **Scope of Review: Statutory Interpretation**

916-932 (including *Chevron*)

Thursday, Oct. 6th: **Scope of Review: Statutory Interpretation (cont'd)**

933-943 (including *Mead, Barnhart, City of Arlington*)

943-950 (including *Gonzales v. Oregon*)

925-926 (note 3) (*Brand X*)

445-447 (note 4)

Week 8

Tuesday, Oct. 11th: **Scope of Review: Rule Interpretation**

Canvas: Note on *Auer v. Robbins*

Canvas: *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019)

950-961 (including notes on *Kisor*)

Thursday, Oct. 13th: **Scope of Review: Findings of Fact**

978-999 (including *Universal Camera, Safe Extensions*)

Week 9

Tuesday, Oct. 18th: **Availability of Review: Preclusion and Reviewability**

1025-1030

1051-1069 (including *Webster v. Doe*)

1074-1085 (including *Chaney*, note on *Bachowski*)

5 U.S.C. §§ 701-706

Thursday, Oct. 17th: **Availability of Review: Preclusion and Reviewability (cont'd)**

1093-1111 (including *Massachusetts v. EPA*)

1112-1118 (including *Southern Utah Wilderness Alliance*)

Canvas: *Department of Homeland Security v. Regents of the University of California*,
140 S. Ct. 1891 (2020)

Week 10

Tuesday, Oct. 25th: **Availability of Review: Timing**

1122-1131 (including *Hawkes*)

1131-1151 (including *Abbott Labs, Toilet Goods*)

1151-1163

Thursday, Oct. 27th: **Availability of Review: Standing**

1228-1239 (including *Lujan*)

1252-1263 (including *Laidlaw*)

1263-1277 (including *Massachusetts v. EPA*)

1277-1282

Part III: Legislative and Executive Control of Agencies

Week 11

Tuesday, November 1st: **Congress: The Non-Delegation Doctrine**

41-47

62-73 (including *American Trucking*)

Canvas: *Gundy v. United States*, 139 S. Ct. 2116 (2019)

73-79 (notes on *Gundy*)

U.S. Const. art. I § 1

Thursday, November 3rd: **NO CLASS**

Week 12

Tuesday, November 8th: **Congress: The Major Questions Doctrine**

Canvas: Note on *NFIB v. OSHA*, 142 S. Ct. 661 (2022)

Canvas: Note on *Alabama Assoc. of Realtors v. HHS*, 141 S. Ct. 2485 (2021)

Canvas: *West Virginia v. EPA* (2022)

Thursday, November 10th: **Congress: The Legislative Veto & Other Means of Influence**

86-105 (including *Chadha*)

123-128

137-150

Week 13

Tuesday, November 15th: **Agencies' Relationships to the President: Appointment & Removal**

206-223 (including *Morrison*, note on *Edmond*)

U.S. Const. art. II § 1, cl. 1; § 2, cl. 2

Canvas: *Seila Law v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183 (2020)

Canvas: Note on *Collins v. Yellen*, 141 S. Ct. 1761 (2021)

Thursday, November 17th: **Agencies' Relationships to the President: Appointment & Removal (cont'd)**

Canvas: Note on *Lucia v. SEC*, 138 S. Ct. 2044 (2018)

Canvas: *United States v. Arthrex*, 141 S. Ct. 1970 (2021)

and current cert. petitions

Watch: Lecture on Presidential Control & OIRA (available on Canvas) (30 mins)

Reading Period

Tuesday, November 29th: **Review Session (via Zoom)**

Exam Period

Tuesday, December 6th: **Final Examination**