

**ADMINISTRATIVE LAW**  
**Law 6520-18518**  
**UF Levin College of Law**  
**Spring 2022**  
**Syllabus**

**Professor Stephanie Bornstein** [she/her]

Holland Hall, Office 310

bornstein@law.ufl.edu

(352) 273-0957

Office Hours: Fri. 10am-12pm & by appointment—see Canvas page for details/locations

Class Meetings: Mon. & Tues., 3:30-4:55pm, Room HH 355B

**OVERVIEW**

Much of law school focuses on the actions of Congress and the courts, yet federal administrative agencies engage in a huge amount of lawmaking and adjudication that affects virtually every area of life. Regardless of your field of legal practice, you will no doubt engage in some way with federal administrative agency action.

This course examines the development of the modern administrative state. We will explore the work of administrative agencies, including the law and procedure that governs agency action on rulemaking and adjudication. We will also cover how administrative agencies are created and controlled, including delegation of authority to agencies, judicial review of agency action, and agencies' relationships to Congress and the President. To learn and apply these concepts, we will consider a variety of policy areas, including labor and employment, health and safety, telecommunications, financial markets, immigration, public benefit programs, and the environment.

**Course Objectives & Student Learning Outcomes**

After completing this course, students should be able to:

1. Describe the constitutional, statutory, and common law foundations of federal administrative agency authority and its relationship to separation of powers among the branches of the U.S. government;
2. Explain the basic principles of administrative law as established in the Administrative Procedure Act, relevant provisions of the U.S. Constitution, and major case law interpreting both;
3. Demonstrate an understanding of the two main types of agency action—rulemaking and adjudication—and the procedural requirements that govern each;
4. Demonstrate an understanding of the scope and standards of judicial review of agency action; and
5. Apply legal doctrine, policy arguments, and strategic considerations to either support or challenge federal administrative agency action on behalf of a client or agency.

## Required Course Materials & Workload

Students are required to register on and keep up with the course Canvas site. Students are also responsible for downloading course-related materials posted there when listed in an assignment or announced in class.

The required casebook for this course is *Gellhorn and Byse's Administrative Law, Cases and Comments* (12th ed. 2018), by Strauss, Rakoff, Metzger, Barron & O'Connell. Students must also download the free 2021 Casebook Update (denoted as "Update" below), posted at the "Casebook Update" link on the course Canvas site. Only select sections from this update are assigned, as indicated in the relevant class reading assignments.

For certain classes, I may assign additional short readings to complement the casebook, denoted as "Posted" below. All "Posted" materials will be available on the course Canvas site by Thursday of the week preceding the relevant class.

You are expected to read and be prepared to discuss all of the assigned reading each class, including all of the "Posted" material and all of the casebook "Notes" assigned; doctrinal information and questions we will discuss in class often appear in the "Notes" section of the casebook.

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 each week, you should expect to spend at least 6 hours outside of class reading and preparing for our class meetings each week.

## Syllabus

The syllabus will be distributed in two parts to allow us to adapt our course pace. The first part of the syllabus contains reading assignments for weeks 1-6 of class, followed by a list of topics planned for coverage in the remainder of the course. The syllabus will be updated with specific reading assignments for weeks 7-14 and posted on the class Canvas site during week 6. In addition, listed reading assignments may be subject to change. Please check the Syllabus page on the Canvas site for updates.

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, with the goal of completing each week's material by the end of the week. You are responsible for both reviewing anything we did not get to in the prior class and completing the material as listed on the syllabus for each class.

## Grades & Class Participation

Regular attendance, preparation, and active participation in classroom discussion are required. Your course in the grade will be based on a final exam (80%), a writing assignment (20%), and class participation.

The final exam (worth 80% of your grade) will be a timed examination, during the regular exam period. More information on the exam will be provided in class.

The writing assignment (worth 20% of your grade) will be a report on a current federal administrative agency. While you will have a choice of agencies about which to write, specific prompts will be provided for you to answer. The report can be no longer than 2000 words and is due no later than Friday, March 4, 2022, at 5pm. More information on the writing assignment will be provided in class and posted on Canvas.

Participation will also be factored into your grade, with excellent participation raising your final course grade by one-third of a letter grade (e.g., from an A- to an A or a B to a B+) where possible within the constraints of the course mandatory mean. Excellent participation means offering a few thoughtful comments or questions in more than half of all classes, listening to and engaging with points raised by other students, and exercising judgment to foster others' participation, too.

### **Attendance**

Attendance is required and an essential part of the course. All students must follow the attendance tracking procedures, which will be explained in class, and are responsible for making sure they have properly recorded their attendance.

In accordance with ABA guidance on acceptable rates of classroom absences, you are generally allowed 5 absences from class total, for any reason, including for job interviews, school activities, work tasks, and illness or medical appointments other than those related to COVID-19. For ease of administration and to respect your privacy, I do not make any differentiation between “excused” or “unexcused” absences, with two exceptions listed below. This means that there is no need to tell me why you will be or were absent from class, so long as you have 5 or fewer absences total.

The two exceptions to this policy are (1) absences for observance of a University-recognized religious holiday and (2) absences due to COVID-19, both of which do not count toward your 5 total absences, so please do notify me of such absences. In addition, please notify me should you have a family or medical situation or an emergency that will require missing more than 5 classes, and we will discuss how to accommodate your situation.

More than 5 absences may negatively affect your final course grade. Students who miss more than 30% of scheduled classes may be prohibited from sitting for the final examination and unable to pass the course.

As a matter of professionalism, you are expected to be on time for class—meaning seated and ready to begin when class starts. Arriving late is disruptive not only to me, but to your fellow students. After 2 late arrivals, each additional late arrival will be counted as a class absence.

### **Use of Laptops**

Students are permitted to use laptops to take notes and participate in class activities during class, however any non-class use of laptops during class is prohibited. Impermissible uses include, but are not limited to, using email or instant messaging programs, visiting social media sites, or any use of the Web. Misuse of laptops during class may result in you losing the privilege of using a laptop in the classroom and may negatively affect the class participation portion of your grade.

Students are strongly encouraged to listen, participate in the discussion, process the material, and take notes accordingly, rather than to try to transcribe everything that is said in class.

### **Office Hours**

Office hours are “drop in” with no appointment needed on Fridays from 10am-12pm, virtually in my Zoom personal meeting room, and by appointment in person or at other times. Please don't hesitate to email me to set up an appointment if needed. Office hour information, including location and links, will be posted on our Canvas page.

## COVID-19 Information

If you are experiencing COVID-19 symptoms (see <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please leave campus immediately. Please use the UF Health screening system and follow the instructions about when you may return to campus (see <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if>). Any related absences will be accommodated (see “Attendance” above).

## Other General Information

### 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 and the Law School’s application of it, available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

### Policy related to make-up exams or other work

The law school policy on delay in taking exams is available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#12>.

### Statement related to accommodations for students with disabilities

Students requesting accommodation for disabilities must first register with the UF Disability Resources Center, <https://disability.ufl.edu/>. Once registered, students will receive an accommodation letter, which the student must then present to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting an accommodation. Students with disabilities should follow this procedure as early as possible in the semester to ensure that you can be accommodated promptly.

### Information on UF Law grading policies

The law school grading policy is available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>. Students receive grade points according to the following scale:

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

### 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. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>.

Students will be notified when the evaluation period opens and can complete evaluations through the email you receive from GatorEvals in your Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

#### Health and Wellness Resources

- U Matter, We Care: If you or someone you know is in distress, please contact [umatter@ufl.edu](mailto:umatter@ufl.edu), 352-392-1575, or visit <https://umatter.ufl.edu> to refer or report a concern and a team member will reach out to the student in distress.
- Counseling and Wellness Center: For information on crisis and non-crisis services, please call 352-392-1575 or visit <https://counseling.ufl.edu>.
- Student Health Care Center: For information to help you find medical care, please call 352-392-1161 or visit <https://shcc.ufl.edu>.
- Office of Victim Services: A victim advocate is available 24 hours a day, 7 days a week to provide support for victims of actual or threatened violence. All services are free and confidential. Please call 352-392-5648 or visit <https://police.ufl.edu/about/divisions/office-of-victim-services>.
- Office for Accessibility and Gender Equity (Title IX): For issues related to sexual misconduct or gender-based harassment, visit <https://titleix.ufl.edu> for resources and additional contact information.

## SCHEDULE OF CLASS TOPICS AND ASSIGNMENTS

### Week 1

#### **1. Tuesday, January 18, 2022**

##### Introduction to Administrative Law

Casebook 3-32 (up to a.)

Casebook Update 1-5

Posted: *U.S. Government Manual Organization Chart*

### Week 2

#### **2. Monday, January 24, 2022**

##### Part I: Agencies at Work

Introduction to the APA; Introduction to Rulemaking and Adjudication

215-226 (up to n. 2)

233(b.)-235 (up to Notes on the History of the APA)

237(n. 2)-240 (up to n. 3)

248(Sect. 2)-260

#### **3. Tuesday, January 25, 2022**

Rulemaking: Notice and Comment Rulemaking

279-304 (up to Notes)

Update 35-37 (up to Sect. 2)

307(n. 6)-311 (up to n. 3)

### Week 3

#### **4. Monday, January 31, 2022**

Rulemaking: Notice and Comment Rulemaking (cont'd)

1467-1468, APA § 553

312(b.)-338 (up to Notes on the Concise...)

Update 37(Sect. 2)-41 (through n. 8)

#### **5. Tuesday, February 1, 2022**

Rulemaking: Exceptions to Notice and Comment Rulemaking

386(c.)-392 (up to Putting Items Together)

Update 55-56 (Sect. c.)

343(Sect. 3)-355 (up to n. 3)

Update 45(Significant Case)-49 (up to b.)

Posted: *Materials on OSHA ETS re: COVID-19*

Week 4

**6. Monday, February 7, 2022**

Rulemaking: Interpretive Rules, Guidance, and Policy Statements

- 356(b.)-371 (up to Notes)
- 373(n. 3)-377 (up to n. 5)
- 381(n. 5)-385 (up to n. 5)
- Update 49(b.)-55 (up to c.)

**7. Tuesday, February 8, 2022**

Rulemaking: Exceptions Recap; Initiating Rulemaking

- 392(Putting Items Together)-396 (up to Sect. 4)
- 396(Sect. 4)-403 (up to n. 3)
- 405-406 (Sect. c., n. 1)
- 1496-1512, EO 12866 & EO 13771
- 409(d.)-415 (up to Notes on the Mechanics...)
- Update 56 (Sect. 4.b. and d.)

Week 5

**8. Monday, February 14, 2022**

Rulemaking: Initiating Rulemaking (cont'd); Ex Parte Contacts and the Decisionmaking Process

- 415 (Notes on the Mechanics...)-425 (up to n. 8)
- Update 57-58, 59 (n. 9)
- 444(Sect. 5)-461
- Update 62(Sect. 5)-64

**9. Tuesday, February 15, 2022**

Adjudication: Formal Adjudication

- 1468-1474, APA §§ 554-557
- 463
- 478-487 (up to Notes on Other Features...)
- 492-497 (through n. 1)
- 506-507 (n. 5)
- Update 67-68 (addition to n. 5)
- 508(*Professional Air Traffic Controllers Org.*)-518

Week 6

**10. Monday, February 21, 2022**

Adjudication: Informal Adjudication; Due Process

- 528(Sect. 3)-542 (up to Notes)
- 544(Sect. 4)-546 (up to a.)
- 563(*Mathews*)-574 (up to n. 4)

**11. Tuesday, February 22, 2022**

Adjudication: Due Process cont'd

E-Governance: Internet Disclosure as Regulation; E-Rulemaking

596(*Latif*)-609 (up to n. 2)

748(Sect. 5)-765 (up to b.)

767(n. 2)-771

Update 89(Sect. 5)-91 (up to b.)

\* \* \*

*List of likely topics to be covered in Weeks 7-14  
Specific topics and assignments to be updated and distributed in Week 6*

Week 7

**12. Monday, February 28, 2022**

Part II: Judging the Work of Agencies

Review of Administrative Action: Factual Determinations

**13. Tuesday, March 1, 2022**

Review of Administrative Action: Policy Determinations

**\*FRIDAY MARCH 4, 2022, 5PM - WRITING ASSIGNMENT DUE\***

*Spring Break Week of March 7, 2022*

Week 8

**14. Monday, March 14, 2022**

Review of Administrative Action: Policy Determinations (cont'd)

**15. Tuesday, March 15, 2022**

Review of Administrative Action: Legal Interpretations of Statutes

Week 9

**16. Monday, March 21, 2022**

Review of Administrative Action: Legal Interpretations of Statutes (cont'd)

**17. Tuesday, March 22, 2022**

Review of Administrative Action: Legal Interpretations of Statutes (cont'd)

Week 10

**18. Monday, March 28, 2022**

Access to Judicial Review: Standing

**19. Tuesday, March 29, 2022**

Access to Judicial Review: Reviewability, Timing, and Remedies

Week 11

**20. Monday, April 4, 2022**

Access to Judicial Review: Reviewability, Timing, and Remedies (cont'd)

**21. Tuesday, April 5, 2022**

Part III: Agencies and the Constitution

The Constitution, The Administrative State, and Separation of Powers; Delegation

Week 12

**22. Monday, April 11, 2022**

Delegation (cont'd); Congress and Administrative Agencies

**23. Tuesday, April 12, 2022**

Congress and Administrative Agencies (cont'd); Presidential Control

Week 13

**24. Monday, April 18, 2022**

Presidential Control (cont'd)

**25. Tuesday, April 19, 2022**

Presidential Control (cont'd); Constitutional Frameworks for Administrative Adjudication

Week 14

**26. Monday, April 25, 2022**

Exam Review