

ADMINISTRATIVE LAW
Fall 2016
Thursdays 6:40PM – 9:50PM
Room 202

Professor Jennifer Lee Koh
Office Hours: TBA
(714) 459-1136
jkoh@wsulaw.edu

COURSE DESCRIPTION

Welcome to Administrative Law! This course involves the study of administrative agencies. Whatever you decide to do with your law degree, whether you choose a litigation or transactional practice or even if you use your degree to go into business or become a government official, your clients and you are going to deal with government agencies at the federal, state and local level. Administrative agencies exert tremendous control over public and private enterprises of every variety, including employment, unemployment, retirement, health, communication, immigration, the environment, family relationships, and business competition, to name just a few areas of law. It should come as no surprise that in many ways, administrative agencies actually “govern.”

The course covers three main topics: (1) agency rulemaking, (2) agency adjudication, and (3) judicial review. The underlying themes of the course involve the procedural law regulating how government agencies make decisions, as well as the law related to how federal courts monitor decisions of agencies and hold them accountable. We will also touch upon legislative and executive oversight of government agencies, the central conundrums of governance (such as the tension between administrative efficiency and due process) as well as the importance of historical context. Although comparisons to state (in particular California) administrative law and policy will be raised from time to time, the primary focus of this class is on federal administrative law.

The successful completion of Administrative Law with a final grade of 2.5 or higher will allow students to earn one Foundation Law Point. Administrative Law is an elective course that is a component of the Business Law and Immigration Law Certificate Programs.

COURSE MATERIALS

The following is the course textbook:

Richard Henry Seamon, Administrative Law: A Context and Practice Casebook (2013)

The assigned readings should keep you sufficiently busy and I recommend that you read the assigned material several times before turning elsewhere. If you wish to read supplementary materials to better understand a topic, there are a number of Administrative Law treatises and

hornbooks that summarize the law and concepts covered in class. Please come speak with me if you find yourself confused during the course, especially early on!

LEARNING GOALS¹

After completion of this course, you should be able to competently:

1. Understand, and think critically about, the principles and policies behind our current and past system of administrative law. As noted above, these principles and policies cut across a wide range of practice areas, and the course is geared towards helping you

¹ These learning goals arise out of Western State College of Law's Programmatic Learning Outcomes, and Argosy University's Institutional Learning Outcomes, which are reproduced here: **Western State College of Law Programmatic Learning Outcomes:** (1) Doctrinal Knowledge (Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility); (2) Practice Skills (Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component. (3) Legal Analysis (Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.) (4) Legal Research (Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority. (5) Communication (Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas). (6) Advocacy of Legal Argument (Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.) (7) Client Sensitivity and Cultural Competency (Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.) (8) Legal Ethics (Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues. **Argosy University Institutional Learning Outcomes:** (1) Analytical Reasoning (Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems) (2) Effective Communication (Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation) (3) Information Competency (Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action) (4) Interpersonal Effectiveness (Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals) (5) Personal and Professional Integrity and Ethical Behavior (Demonstrate a multi dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.) (6) Professional Competence (Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession).

identify common themes and problems raised by the administrative state.

2. Analyze principles of administrative law as applied to hypothetical fact patterns (and eventually, to real-life practice after you graduate).
3. Understand the relevance of statutes, regulations, federal court caselaw, agency decisions and other forms of informal adjudication in administrative law.
4. Locate relevant administrative law authorities and to properly cite to those authorities.
5. Communicate, both orally and in writing, appropriate legal and factual arguments in support of each side of opposing positions that frequently arise in the administrative law context.
6. Demonstrate reliability, responsibility, good judgment, self-motivation, hard work, professionalism, courtesy, and critical self-reflection.

GRADING

Your grade will be based on the following:

- ***Class preparation and participation (10% of grade):*** Like the rest of the faculty, I expect you to come to class prepared. I value in-class contributions, and encourage volunteers in class. Professionalism in class also goes towards your class participation grade.
- ***Team Contribution (10% of grade):*** Throughout the course you will be assigned problems and exercises to work on in teams that will be created during the first class. One half of the grade for this section will be assigned based upon the work that the team produces. The other half of this grade will be based upon your contribution to your team's efforts as set out in the evaluations submitted periodically by your team members and my observations during class sessions.
- ***Midterm Examination (20% of course grade):*** 90 minute examination dealing with the first half of the material covered in the course (through agency rulemaking). *The midterm is currently scheduled for Thursday, September 22 during the first half of class.*
- ***Final Examination (60% of course grade):*** Three hours. The final exam will likely consist of a combination of essays, short answers, and multiple choice questions.

CLASS FORMAT, ATTENDANCE AND PARTICIPATION

Law teaching is a cooperative venture. I will commit to being prepared for class and will expect to have thoroughly read and reflected upon the assigned readings, notes and problems. I expect the same of you. This course will work best if our examination of the materials we will study includes a considerable amount of lively and thoughtful class discussion, in which every student participates. I will call on people in various ways, including cold-calling, and highly encourage volunteers. We will engage in a meaningful amount of group work and team-based learning.

Although I will be taking attendance, it is always your own responsibility to keep track of your absences. Absences, if at all occurring, should be reserved for exceptional circumstances. If you have missed or will miss class, please review a classmate's notes and the class Powerpoint slides and see me as soon as possible after the absence if you still have questions about the material. In accordance with the WSCL academic policy and as described in the Student Handbook, a student who misses more than 2 (two) 3-hour class sessions will be withdrawn from class.

Although I permit laptops in class, they must be used for classroom purposes only. Using the Internet, chat, Facebook, Twitter, Pinterest, games, or any other electronic device for any other purpose is strictly forbidden and may result in the suspension of laptop privileges for the entire class.

APPOINTMENTS AND OFFICE HOURS

I will hold office hours regularly during the week, but will schedule these office hours after the first week of classes. You can also schedule an appointment by contacting me directly at jkoh@wsulaw.edu. I am happy to discuss the course, career paths, law school, triathlon and half-marathon training, yoga, good eats, immigration, or anything else of interest to you. Please also feel free to come by when my door is open.

BLACKBOARD

I will post class-related material, assignments and announcements on Blackboard, the online program administered by Lexis. I will also post Powerpoint notes from class *after class* on Blackboard. Please be sure that you are registered to use Blackboard. If you have any questions about using this program, or to get registered, please contact the library. They can be reached at (714) 459-1111 or via email.

DISABILITY SERVICES STATEMENT

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** Services Office assists qualified students with disabilities in

acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at csheppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

SYLLABUS

I have provided the topics, assignments, and reading that I expect to cover for the first part of the semester. Keep in mind that it is difficult to anticipate how long it will take to discuss each topic and occasionally we may spend more time on a topic than initially anticipated.

The casebook has a supplement, which I have posted on Blackboard. Please be sure to reference the supplement for updates and changes to the casebook, where noted on the syllabus.

The casebook has a number of exercises designed to help you apply and understand the material. **Unless otherwise specified, you should come to class having prepared your answers to the Chapter Problems and Exercises in the textbook.** In general, the Professional Development Exercises are highly recommended, but not required.

You should expect to spend at least **6 hours** each week outside of class on readings, exercises, note-taking, review, assignments and other class preparation. This is a rough estimate. You will likely find that some weeks you need to spend more (and possibly less) than the estimated amount of time.

Class (Date)	Topic	Reading	Assignment or Other Notes
1 (8/18)	Welcome to Administrative Law; Administrative-Law Problem Solving; Statutory Research and Analysis in Administrative Law	Chapters 1-3 (pp. 5-60)	Bring a printout of the website homepage for an administrative agency that interests you; be prepared to share one thing about that agency with the class.
2 (8/25)	Administrative Procedure Acts; Federal Supremacy & Cooperative Federalism; Intro to Rulemaking; The Distinction between Legislative Rules and Non-Legislative Rules Michael D. Shear, <i>Reshaping Lives, Without Congress</i> , N.Y. TIMES, Aug. 14, 2016	Chapters 4-7 (pp. 61-146) & supplement	Submit student survey form (distributed in class on 8/18). Print and bring to class an example of an agency rule
3 (9/1)	Agency Rulemaking Power; Limits on Agency Rulemaking Power	Chapters 8-9 (pp. 147-189) & supplement	
4 (9/8)	The APA as a Source of Procedural Requirements for Agency Rulemaking; Types of Rulemaking under the APA; Informal Rulemaking	Chapters 10-11; start of Chapter 12 (pp. 191-251) & supplement	
5 (9/15)	Informal Rulemaking; Formal Rulemaking; Hybrid Rulemaking; Legal Effect of a Valid Legislative Rule When Published	Chapters 13-14, 16 (skip Chapter 15) (pp. 289-304; 319-342) & supplement	

Class (Date)	Topic	Reading	Assignment or Other Notes
6 (9/22)	First Half of Class: Midterm Second Half: Introduction to Adjudication	Chapter 17	
7 (9/29)	Agency Adjudicatory Power; Limits on Agency Adjudicatory Power; The Due Process Clauses as Sources of Procedural Requirements for Agency Adjudications	Chapters 18-20.C (pp. 369- 435) & supplement	
8 (10/6)	The Due Process Clauses as Sources of Procedural Requirements for Agency Adjudications; The APA as a Source of Procedural Requirements for Agency Adjudications	Rest of Chapter 20-21 (pp. 435-494) & supplement	
9 (10/13)	Formal Adjudications under the APA (Initiation, Prehearing Procedures, & Hearings)	Chapter 22 (skip 22.E) and 23 (pp. 495-534, 539-561)	
10 (10/20)	Formal Adjudications under the APA (Decisions); Agency Choice Between Rulemaking and Adjudication	Chapters 24-25 (pp. 563-611) & supplement	Come to class with an example, taken from the news in the past year, of an agency adjudication OR rulemaking.
11 (10/27)	Introduction to Judicial Review of An Agency Action; Introduction to Scope of Judicial Review	17-page handout (on Blackboard); Chapter 31 (pp. 759-770)	
12 (11/3)	Judicial Review of Questions of Law; Substantial Evidence Standard	Chapters 32-33 (pp. 771-834) & supplement	

Class (Date)	Topic	Reading	Assignment or Other Notes
13 (11/10)	“Arbitrary and Capricious” Standard; Specialized Review Situations;	Chapters 34-35 (pp. 835-890)	
14 (11/17)	Finish Judicial Review; Course Wrap-up & Practice Exam	Supplemental Reading (TBD)	

Final Exam: TBD