

ADMINISTRATIVE LAW
Spring 2021
Monday 6:40PM-9:50PM
Via Zoom

Professor Lucero Chavez Basilio
Office Hours: Mondays 5pm-6pm
or by Appointment
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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.”

Many administrative agencies are a part of the Executive Branch, and thus under the control of the President of the United States. Another way of thinking about this course is a study into the powers and limitations of the President, and of making sense of the legal framework within which the current President and Administration are operating.

The course covers three main topics: (1) agency rulemaking, (2) agency adjudication, and (3) judicial review. When you hear about administrative agencies, you may hear about the requirement of a period for notice and comment for new rules. We will look at questions like: What should notice look like? What does due process require? What expertise is expected of decision makers and those who appoint them? 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 challenges 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) & supplement (to be posted on Lexis Classroom)

Please note that a new edition of the book was published early last year, however, the material is sufficiently up to date to continue to use the prior version. 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. For current examples of the material we cover in class, you may also find it helpful to skim the Notice & Comment Blog (<http://yalejreg.com/nc/>) from time to time and spend time on administrative agency websites. Please come speak with me if you find yourself confused during the course, especially early on!

LEARNING GOALS¹

¹ These learning goals arise out of Western State College of Law's Programmatic 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**

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 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 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 (15% 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.
- ***Midterm Presentation (20% of course grade):*** Students will be expected to prepare a presentation on a topic from the first half of the material covered in the course (through agency rulemaking). *The presentations are currently scheduled for March 8th.*
- ***Final Examination (65% of course grade):*** Three hours. The final exam will likely be in essay format with components of short answers and multiple choice.

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.

CLASS FORMAT, ATTENDANCE AND PARTICIPATION

Law teaching is a cooperative venture and even more so in a virtual world. 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 (assuming I can figure out break out rooms on zoom!).

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, satisfactory attendance in a course means attending at least 85% of scheduled classes during the semester. Additionally, because the class is given only once a week, a maximum of two (2) class absences is allowed.

Additional Requirements for Students in Zoom Sessions per Western State:

- Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.
- Arrive to class early and dressed as you would to attend an in-person class.
- Your camera must be turned on for the duration of the class. If desired, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera.
- Come prepared, as you would for an in-person class. Participation in Zoom classes is as important as it is during an in-person class session.
- Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.
- If you have to miss a Zoom session, or arrive late or leave early, notify the professor in advance, as you would for an in-person class.
- If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify your professor so other accommodations can be explored.
- Do not post screenshots or recordings of any Zoom classes on social media. Such actions would constitute a violation of the Student Honor Code. If you need access to a recording of the Zoom session, please contact me.

APPOINTMENTS AND OFFICE HOURS

I will hold office hours regularly prior to class on Mondays. You can also schedule an appointment by contacting me directly at Lucero.ucimm@law.ucdavis.edu. I am happy to discuss the course, career paths, law school, crossfit, musicals, Harry Potter, babies and toddlers, immigration law, or anything else of interest to you.

LEXIS CLASSROOM

I will post class-related material, assignments and announcements on Lexis Classroom. I will also post PowerPoint notes from class *after class* on Lexis Classroom. Please be sure that you are registered to use on Lexis Classroom and that you have added yourself to the class if you aren't already registered. 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 #111. 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 Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. 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 throughout 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 will have posted on Lexis Classroom. 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.

Week (Dates)	Topic	Reading	Assignment or Other Notes
1 (1/25)	Welcome to Administrative Law; Administrative-Law Problem Solving; Statutory Research and Analysis in Administrative Law	Chapters 1-3 (pp. 5-60)	Choose an administrative agency that interests you; be prepared to share one thing about that agency with the class.
2 (2/1)	Administrative Procedure Acts; Federal Supremacy & Cooperative Federalism; Intro to Rulemaking; The Distinction between Legislative Rules and Non-Legislative Rules	Chapters 4-7 (pp. 61-146) & supplement	Submit student survey form (distributed in class on 1/25). Find an example of an agency rule to share with the class.
3 (2/8)	Agency Rulemaking Power; Limits on Agency Rulemaking Power Joshua A. Geltzer, Trump's Supreme Court might overturn a doctrine, but that won't destroy the 'administrative state,' LA Times (Aug. 5 2018)	Chapters 8-9 (pp. 147-189) & supplement	

Week (Dates)	Topic	Reading	Assignment or Other Notes
	(available at http://www.latimes.com/opinion/op-ed/la-oe-geltzer-kavanaugh-administrative-state-20180805-story.html#)		
4 (2/16)	CLASS will be on Tuesday due to the Holiday on Monday. The APA as a Source of Procedural Requirements for Agency Rulemaking; Types of Rulemaking under the APA	Chapters 10-11 & supplement	
5 (2/22)	Informal Rulemaking	Chapters 12 -14	
6 (3/1)	Formal Rulemaking; Hybrid Rulemaking; Legal Effect of a Valid Legislative Rule When Published; Introduction to Adjudication and Agency Adjudicatory Power	Chapters 13-14, (skip chapter 15) 16-17 & supplement; Chapter 18 (pp. 369-92)	Come to class with an example of an agency adjudication
7 (3/8)	<u>First half of class:</u> MIDTERM PRESENTATIONS (Through Rulemaking/Chapter 16 only) <u>Second half of class:</u> Limits on Agency Adjudicatory Power (if we have time)	Chapter 18 (pp. 369-92)	
8 (3/15)	Limits on Agency Adjudicatory Power; The Due Process Clauses as Sources of Procedural Requirements for Agency Adjudications Review SPRING BREAK – No Class	Chapters 19-20 (pp. 369- 457) & supplement	Email your responses to exercises on pages 377, 421, 429-430 by COB 3/12.

Week (Dates)	Topic	Reading	Assignment or Other Notes
9 (3/22)	The APA as a Source of Procedural Requirements for Agency Adjudications Formal Adjudications under the APA (Initiation, Prehearing Procedures)	Chapters 21-22 (skip 22.E) (pp. 459-534)	
10 (3/29)	Formal Adjudications under the APA (Initiation, Prehearing Procedures, Hearings)	Chapters 23-24 (pp. 539-588) & supplement	
11 (4/5)	Agency Choice Between Rulemaking and Adjudication Introduction to Judicial Review of An Agency Action	Chapter 25 (pp. 589-611); 17-page handout (on Lexis Classroom)	
12 (4/12)	Introduction to Scope of Judicial Review Judicial Review of Questions of Law	Chapters 31-32 (pp. 759-811) & supplement	
13 (4/19)	“Substantial Evidence” Standard; “Arbitrary and Capricious” Standard	Chapters 33-34 (pp. 813-61)	
14 (4/26)	Specialized Review Situations; Finish Judicial Review;	Chapter 35-36 (pp. 863-890)	
15 (5/3)	Course Wrap Up	Read then-Circuit Judge Gorsuch’s concurrence in <i>Gutierrez-Brizuela v. Lynch</i> (10th Cir. 2016), available at https://www.ca10.uscourts.gov/opinions/14/14-9585.pdf	