

# WESTERN STATE COLLEGE OF LAW

## ADMINISTRATIVE LAW – FALL 2021

### Syllabus and Policies

#### **Professor Michi Kono**

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Office hours: late afternoon and evening appointments available by phone, video, or in person

#### **Required Book**

**Richard Henry Seamon, Administrative Law: A Context and Practice Casebook (2013)** Please note that a new edition of the book was published early last year. However, the material is sufficiently up to date that we will continue to use the prior version. You *must* bring the text to every class.

#### **Course Coverage**

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 Objectives**

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

- 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.
- Analyze principles of administrative law as applied to hypothetical fact patterns (and eventually, to real-life practice after you graduate).
- Understand the relevance of statutes, regulations, federal court caselaw, agency decisions and other forms of informal adjudication in administrative law.
- Locate relevant administrative law authorities and properly cite to those authorities.
- 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.
- Demonstrate reliability, responsibility, good judgment, self-motivation, hard work, professionalism, courtesy, and critical self-reflection.

### **Examinations and Grading**

Administrative Law is a graded course. Your grade will be based on your performance on a midterm and final examination. The midterm will be multiple choice and short answer. The final will be a timed essay, which will require you to apply knowledge from the entire course to solve an Administrative Law problem. The midterm will count 30%; the final will count 70%. However, if your score on the final is higher, your final will count 100%. Additional grade points will be awarded for class participation.

**PLEASE READ THE FOLLOWING INFORMATION CAREFULLY.**

**Attendance and Participation**

Students must attend class regularly, read the required reading, and brief any cases in the text. **A student who is not prepared will be considered absent for that class.** There is no “free pass” policy for this course.

A student in the night section can be absent no more than **two** class sessions. **A student who exceeds the limit will be dropped from the course and receive a failing grade.** One class may be made up - after a showing of reasonable excuse for absence - by submitting written answers to the problems for the week. Additional makeup class sessions may be offered during the semester, depending on circumstances occasioned by Covid-19 and related public health concerns. However, no makeup class sessions are guaranteed. You are responsible for keeping an accurate count of your absences.

Students will be awarded “participation points” for volunteering to discuss cases, and demonstrating superior preparation and knowledge of the case. Similarly, students will be docked “participation points” if they are called upon and are unprepared. Participation points above expectation will be converted to additional grade points, up to 0.2.

**Promptness**

Classes will begin promptly at the scheduled time. I will usually arrive in the classroom by 6:00. The time before class will be free time to ask questions or seek clarification on the subject matter. Please be seated and ready to start at the beginning of the class. Students who arrive late disrupt the learning process for others.

**Food and Drink**

Due to the starting time of evening classes, I have no problem if you need to eat during class. However, please be respectful of others.

**Computer Use**

You may use a personal computer during class **for note taking only**. You may not be on the Internet, check email, text, play games, etc.

**Time Requirements for Class Preparation and the Study of Administrative Law**

ABA Standard 310 (b) (1) requires that students spend at least two hours of outside study time for every course credit hour. **This means you must devote *at least six hours each week* to the study of remedies outside the classroom.**

## Reading Assignments

The following assignments are from the casebook. You should read the entire week's assignment before the first class in that week. I may assign additional problems that are not in the casebook. Read the corresponding sections in the recommended books to gain a fuller knowledge of the topics.

<u>Week</u>	<u>Topic and Assignment</u>
1 August 24	<b>Overview: Major categories; statutory review</b> Chapters 1-3 (5-60)
2 August 31	<b>APA and Federal Supremacy; Rulemaking versus Adjudication</b> Chapters 4-5 (61-113)
3 Sept 7	<b>Rulemaking and Power</b> Chapters 6-8 (117-165)
4 Sept 14	<b>Limits on Rulemaking; APA Rulemaking</b> Chapters 9-11 (167-241)
5 Sept 21	<b>Informal Rulemaking</b> Chapters 12-14 (243-304)
6 Sept 28	<b>Adjudication and Power</b> Chapters 17-18 (345-392)
7 Oct 5	<b><u>Midterm Examination</u></b>
8 Oct 12	<b>Limits on Adjudicatory Power</b> Chapters 19-20 (393-457)
9 Oct 19	<b>APA Requirements for Adjudications</b> Chapters 21 (459-494)
10 Oct 26	<b>APA Hearings and Decisions</b> Chapters 23-24 (539-588)
11 Nov 2	<b>Judicial Review</b> Chapter 27 (639-641), Chapter 32 (771-811)
12 Nov 9	<b>Substantial Evidence Standard</b> Chapter 33 (813-834)

13	Nov 16	<b>Arbitrary and Capricious Standard</b> Chapter 34 (835-862)
14	Nov 23	Final review
15		Reading week
16		Final Examination

## **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. Dean Espinoza's phone number and email address are: (714) 459-1117; [despinoza@wsulaw.edu](mailto: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](mailto:aeasley@wsulaw.edu) or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

### **Western State College of Law – Programmatic Learning Outcomes**

**Western State College of Law's curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:**

**(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.