

Administrative Law -- Professor Bhagwat

GENERAL INFORMATION

- Class Times:** Mondays, Wednesdays, and Thursdays, 10:40 A.M. - 11:30 A.M.
Room G
- Office:** 198 McAllister, Room 216
Telephone: (415) 565-4675
e-mail: bhagwata@uchastings.edu
- Office Hours:** Mondays and Wednesdays, 2:45 P.M. to 4:00 P.M.
I am also happy to make an appointment to see anyone outside of regularly scheduled office hours, or to talk to anyone who stops by my office, subject to other time demands.
- Final Exam:** Limited Open Book, In-Class Examination. More details will follow towards the end of the semester.
- Grading:** Your final grade will be based primarily on the final exam. However, I reserve the right to adjust grades up or down by a half-grade (*e.g.*, B+ to A-) to reflect extraordinary contributions to class discussion, or extraordinary disinterest, respectively. Downward departures will be based on failure to participate in class discussion and/or an unusually high numbers of absences.
- Assignments:** See attached Syllabus

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SYLLABUS

Short-forms used:

Casebook = Strauss, Rakoff and Farina, *Gellhorn & Byse's Administrative Law* (rev. 10th ed.)

APA = *The Administrative Procedure Act*, reprinted in Casebook, pp.1321-1354

I. Introduction to Administrative Law

Casebook, pp. 7-34

APA, §551

Casebook, pp. 238-276

Londoner v. Denver

Bi-Metallic Investment Co. v. State Bd. Of Equalization of Colorado

Wong Yang Sung v. McGrath

Dickinson, Acting Commissioner of Patents and Trademarks v. Zurko

II. The Constitutionality of the Administrative State

A. Delegation of Legislative Power

Casebook, pp. 35-77

American Trucking Association v. EPA

Whitman v. American Trucking Association

B. Delegation of Judicial Power

Casebook, pp. 118-138

Commodity Futures Trading Corporation v. Schor

C. Appointments, Removal, and Formal Separation

Casebook, pp. 138-191

Myers v. United States

Humphrey's Executor v. United States

Morrison v. Olson

Bowsher v. Synar

D. Congressional Power Over Agencies

Casebook, pp. 191-212

INS v. Chadha

Casebook, pp. 222-224, 233-237

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E. Presidential Power Over Agencies

Casebook, pp.212-222

III. Adjudication by Administrative Agencies

A. Formal Adjudication

APA, §§554, 556, 557

Casebook, pp. 322-334

Seacoast Anti-Pollution League v. Costle

Handout: *Chemical Waste Management v. U.S.E.P.A.*

Casebook, pp. 334-351

Office of Communication of the United Church of Christ v. FCC

Envirocare of Utah v. Nuclear Regulatory Commission

Casebook, pp. 351-374

Castillo-Villagra v. INS

Armstrong v. Commodity Futures Trading Commission

B. Informal Adjudication

APA, §555

Casebook, pp. 470-478

Pension Benefit Guaranty Corporation v. LTV Corporation

IV. Rulemaking by Administrative Agencies

A. Introduction to Rulemaking

APA, §553

Casebook, pp. 483-493

B. Procedural Requirements in Informal Rulemaking

1. General Requirements

Casebook, pp. 493-519

Sugar Cane Growers Cooperative of Florida v. Ann M. Veneman

Vermont Yankee Nuclear Power Corp. v. NRDC

2. Notice

Casebook, pp. 519-524

Natural Resources Defense Council v. USEPA

3. Comment

Casebook, pp. 524-540

United States v. Nova Scotia Food Products Corp.

4. “Concise General Statement of Basis and Purpose”

Casebook, pp. 540-551

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Independent U.S. Tanker Owners Committee v. Dole

C. Choice of Rulemaking Versus Adjudication and Retroactivity

Casebook, pp. 556-574

SEC v. Chenery Corp.

Bell Aerospace Co. v. NLRB

NLRB v. Bell Aerospace Co.

Casebook, pp. 574-586

Epilepsy Foundation of Northeast Ohio v. NLRB

Bowen v. Georgetown University Hospital

D. Executive Order 12866 and The Rise of the Cost/Benefit State

Casebook, pp. 1370-1382

Executive Order 12866

Casebook, pp. 609-611, 614-627

Casebook, pp. 638-646

E. Exceptions to the Notice-and-Comment Requirement

Casebook, pp. 705-732

Air Transport Association of American v. FAA

General Electric Company v. EPA

V. Access to Judicial Review

A. Introduction: Modes of Review

Casebook, pp. 1099-1117

APA, §§701-705

B. Constitutional and Statutory Standing

Casebook, pp. 1117-1139

Allen v. Wright

Association of Data Processing Service Organizations v. Camp

C. The Presumption of Reviewability

Casebook, pp. 1181-1188

Abbott Laboratories v. Gardner

D. Exceptions to Reviewability

Casebook, pp. 1209-1224

Webster v. Doe

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E. The Timing of Review

Casebook, pp. 1238-1253 (through Note 2)

VI. The Scope of Judicial Review

A. Introduction: General Standards and the Requirement of Consistency

Casebook, pp. 902-915

Shaw's Supermarkets, Inc. v. NLRB

B. Review of Agency Factual Determinations

Casebook, pp. 936-973

Universal Camera Corp. v. NLRB

Allentown Mack Sales and Service v. NLRB

Association of Data Processing Service Organizations v. Board of Governors of the Federal Reserve System

C. Review of Determinations "Beyond the Facts"

1. The Road to *Overton Park*

Casebook, pp. 978-1002

NLRB v. Hearst Publications

Skidmore v. Swift & Co.

Citizens to Preserve Overton Park v. Volpe

2. Modern "Hard Look" Review and the Problem of "Ossification"

Casebook, pp. 1002-1026

Motor Vehicle Manufacturers Association of the United States v.

State Farm Mutual Automobile Insurance Co.

3. The *Chevron* Doctrine

Casebook, pp. 1026-1091

Chevron, U.S.A. v. NRDC

MCI Telecommunications Corp. v. AT&T

United States v. Mead Corporation

If Time Permits:

VII. Procedural Due Process

A. History and the *Goldberg v. Kelly* Revolution

Casebook, pp. 767-800

Bailey v. Richardson

Cafeteria & Restaurant Workers Union v. McElroy

Goldberg v. Kelly

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B. What Interests Trigger Due Process?

Casebook, pp. 800-819 (through Note 6)

Board of Regents of State Colleges v. Roth

Perry v. Sindermann

Casebook, pp. 823-828 (through Note 2)

Meachum v. Fano

C. What Process is Due?

Casebook, pp. 837-851

Mathews v. Eldridge

Casebook, pp. 872-884

Cleveland Board of Education v. Loudermill

VIII. Bias and Improper Influence Affecting Agency Personnel

A. In Adjudication

Casebook, pp. 423-435

Professional Air Traffic Controllers Organization v. FLRA

Casebook, pp. 443-456

Portland Audubon Society v. The Endangered Species Committee

Pillsbury v. FTC

B. In Rulemaking

Casebook, 663-673

Home Box Office v. FCC

Casebook, pp. 684-698

Sierra Club v. Costle

IX. The Freedom of Information Act

A. The General Scope of FOIA

Casebook, pp. 733-748

NLRB v. Sears, Roebuck & Co.

B. Exemptions to FOIA

Casebook, pp. 748-762

Critical Mass Energy Project v. NRC

Chrysler v. Brown