

ADMINISTRATIVE LAW
MICHIGAN STATE UNIVERSITY COLLEGE OF LAW
Professor Michael Sant’Ambrogio

Fall 2015 Syllabus

Class: Tuesday/Thursday: 9:00 a.m. - 10:15 a.m.
Room 474

Professor Michael Sant’Ambrogio (note my office has moved)
Room 367 · (517) 432-6805 · msantamb@law.msu.edu
Office Hours: Tuesdays 11:00 a.m.-12:30 p.m.
Wednesdays 3:00-6:00 p.m.
or by appointment, or just knock

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Teaching Assistant: Jay Lonick
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Course Objectives: This course builds on the foundation of the Regulatory State 1L class to provide you with a deeper understanding of the legal rules and principles that govern the actions of state and federal administrative and regulatory agencies, the rights of regulated parties and public beneficiaries in agency proceedings, and how the legislative, executive, and judicial branches of government shape agency decisionmaking.

Materials: The textbook is MICHAEL ASIMOW & RONALD M. LEVIN, STATE AND FEDERAL ADMINISTRATIVE LAW (4th ed., 2014) (“A&L”). Additional required readings are included in a Supplemental Course Pack (“Supp.”) available under Course Materials on TWEN. Note that I may add or subtract from the assignments listed below, depending on the pace of the course. ***Make sure to check TWEN regularly for reading assignments, class agendas, announcements, and supplemental reading.***

Grading: Eighty percent of your final grade will be based on a three-hour, closed-book, in-class exam, administered in room 474 on December 14, 2015 at 8:30 a.m. The final examination will test your ability to: (1) identify the administrative-law issues in complex fact patterns; (2) display your knowledge of the law, the material facts relevant to each issue, and any practical considerations; and (3) apply the relevant case law to the facts to reach a conclusion about how the issue should be resolved. The exam may also include some multiple choice questions. The remaining twenty percent of your grade will be based on class participation and the Notes Problems, as discussed more fully below.

Class participation: Ten percent of your final grade will be based on class participation. Class participation points will be awarded based on your record of attendance, ability to discuss assigned reading in response to “cold calls,” and your voluntary contributions to class discussions.

You are entitled to one “free pass” from cold calling, for any reason or no reason, but ***you must notify me in advance of class*** by placing a note with your full name, the word “Pass,” and the date, on the podium in front of class.

Notes Problems: Ten percent of your grade will be based on your on-line participation in the Notes Problems Forum on TWEN. Once the drop-add period has passed, students will be assigned to analyze certain problems presented in the Notes and Questions sections of the Casebook. For each class, a group of students (or two) will be responsible for posting an analysis (or two) on the Notes Problems Forum section of the class TWEN page. The rest of the class should read the postings in advance of class and may comment or add to them. Students will be awarded points for the Notes Problems based on their assigned postings and their comments on the postings of other students. The goal is to create an on-line space in which students can deepen their understanding of the material and how to apply the principles of Administrative Law to different fact patterns.

Class Attendance: Pursuant to the American Bar Association (ABA) law school accreditation standards, you may not under any circumstances be absent from more than four class sessions.

Laptop Policy: You are allowed to bring laptops to class solely for the purpose of taking notes and participating in on-line exercises. You are not permitted to use laptops or any other recording device to tape the class. Nor are you permitted to use the Internet during class, except as specifically instructed. If you violate these policies, I reserve the right to lower your grade a category. This policy is partly for your own benefit. Studies have shown that multi-tasking is a myth—it is impossible to perform well on any one task when dividing attention among many. But the policy is also for the benefit of your classmates. The costs of in-class Internet browsing are inevitably externalized onto others—the only thing more distracting than surfing the web is watching someone surf the web.

Class	Topic and Assignment
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I. INTRODUCTION

Class 1: Aug. 25	Introduction to Administrative Law and overview of the course; two views of the Administrative State—Stewart and Eskridge & Ferejohn
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Reading: A&L 1-14; Supp. 1 (Stewart, *The Reformation of American Administrative Law*); and Supp. 2 (ESKRIDGE & FEREJOHN, A REPUBLIC OF STATUTES)

II. AGENCY PROCEDURES

A. The Constitutional Right to a Hearing

Class 2: Aug. 27	Due Process and mass justice
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Reading: A&L 15-26 (*Goldberg*)

- Class 3: Sept. 1 What interests are protected by Due Process? Liberty and property interests

Reading: A&L 26-43 (*Roth; Loudermill*)
- Class 4: Sept. 3 What process is due? The *Mathews v. Eldridge* balancing test

Reading: A&L 43-65 (*Mathews v. Eldridge; Ingraham v. Wright*)
- Class 5: Sept. 8 Due Process and the War on Terror

Reading: Supp. 3 (*Hamdi v. Rumsfeld*)
- Class 6: Sept. 10 The constitutional distinction between rulemaking versus adjudication

Reading: A&L 65-72 (*Londoner; Bi-Metallic; Anaconda Co. v. Ruckelhaus*); Supp. 4 (ELLC Problems)

B. Administrative Adjudication

- Class 7: Sept. 15 Statutory hearing rights and limitations

Reading: A&L 807-810, 815-821 (APA §§ 551(1), (6), (7), (12), (13); & 554-557); A&L 73-84 (*Dominion Energy*); 93-100 (*Heckler v. Campbell*)
- Class 8: Sept. 17 Institutional versus judicial decisionmaking; ex parte communications; and separation of functions

Reading: A&L 100-137 (*Morgan; PATCO; Pillsbury; Dep't of Alcoholic Beverage Control; Consumer Advocate Division*)
- Class 9: Sept. 22 Investigation and Discovery

Reading: A&L: 167-178 (*Craib v. Bulmash*)

C. Rulemaking procedures

- Class 10: Sept. 24 Introduction to rulemaking under the Administrative Procedures Act (APA); formal versus informal rulemaking

Reading: A&L 809, 814-815 (APA §§ 551(4), (5), & 553); A&L 229-243; 250-259 (*Chocolate Mfrs. Ass'n v. Block*); 272-278 (*Florida East Coast Railway*)

Class 11: Sept. 29 The requirements of APA § 553 and the limits of judicial supervision
Reading: A&L 278-287 (*Vermont Yankee*); Supp. 5 (*Nova Scotia Food*); A&L 262-265 (notes)

Class 12: Oct. 1 The requirements of APA § 553 (cont.)—ex parte contacts; cost benefit analysis and White House regulatory review
Reading: A&L 288-305 (*HBO v. FCC*; *Sierra Club v. Costle*)

D. Exceptions to Notice and Comment Rulemaking

Class 13: Oct. 6 Good cause exemptions; procedural rules; non-legislative rules: policy statements and interpretive rules
Reading: A&L 363-364; 371-374; 378-398 (*PPFCC v. Shalala*; *Hocor v. USDA*); Supp. 6 (*Perez v. Mortgage Bankers Assoc.*)

Class 14: Oct. 8 Agency selection of procedures; waiver of rules
Reading: A&L 398-409 (*NLRB v. Bell Aerospace*)

III. CONSTITUTIONAL LIMITS ON CONGRESSIONAL DELEGATIONS TO AGENCIES

Class 15: Oct. 13 Waivers; delegation of legislative power
Reading: A&L 419-427 (*Wait Radio v. FCC*); 429-450 (*Industrial Union Dept. v. API*; *American Trucking*)

Class 16: Oct. 15 Delegation of adjudicatory power to agencies
Reading: A&L 460-469 (*CFTC v. Schor*); Supp. 8 (*Stern v. Marshall*); Supp. 9 (*Wellness Int'l Network v. Sharif*)

IV. CHALLENGING AGENCY ACTION: THE SCOPE OF JUDICIAL REVIEW

A. Judicial Review of Agency Fact Finding

Class 17: Oct. 20 Judicial review of agency findings of fact in adjudication and rulemaking
Reading: A&L 581-596 (*Universal Camera*); Supp. 10 (*Association of Data Processing Service Orgs.*)

B. Judicial Review of Agency Statutory Interpretation

- Class 18: Oct. 22 The *Chevron* “Two Step”
Reading: A&L 600, 608-634 (*Chevron*; *FDA v. Brown & Williamson*)
- Class 19: Oct. 27 Chevron “Step 0”
Reading: Supp. 11 (*King v. Burwell*); A&L 634-648 (*Christensen*; *Mead*; *Barnhart*)
- Class 20: Oct. 29 The *Skidmore* alternative; agency interpretations of their regulations
Supp. 12 (*Skidmore*); A&L 649- 655 (*Christopher*); Supp. 13 (*Perez v. Mortgage Bankers Assoc.* (concurring opinions))

C. Judicial Review of Agency Policymaking

- Class 21: Nov. 3 Introduction to “hard look” review of agency decisionmaking
Reading: A&L 663; Supp. 14 (*Overton Park*)
- Class 22: Nov. 5 “Hard look” review of agency decisionmaking (cont.)—changes in policy
Reading: A&L 664-689 (*State Farm*); Supp. 15 (*FCC v. Fox*)
- Class 23: Nov. 10 “Hard look” review and changes in policy; the reviewability of agency enforcement decisions
Reading: A&L 691-692; 717-729 (*Heckler v. Chaney*)
- Class 24: Nov. 12 Judicial review of agency inaction
Reading: Supp. 16 (*Mass. v. EPA*); A&L 729-736 (*Norton v. SUWA*)

V. CHALLENGING AGENCY ACTION: THE AVAILABILITY OF JUDICIAL REVIEW

- Class 25: Nov. 17 **A. Standing to Seek Judicial Review**
Introduction to constitutional standing
Reading: 737-739; Supp. 17 (*Allen v. Wright*; *FEC v. Akins*)
- Class 26: Nov. 19 Citizen suits; procedural injuries; zone of interest test
Reading: A&L 739- 753 (*Lujan*)

Fall Break, Nov. 23-27

Capstone Exercises

Class 27: Dec. 1 To be provided

Class 28: Dec. 3 To be provided