Political Science 6230: Administrative Law  
Executive Cohort, Spring 2007

This course will focus on the place of administrative law within the constitutional and legal system in the United States. Administrative law consists of those sections of federal and state law which authorize the rulemaking and adjudicatory functions of executive branch and independent regulatory agencies. As such it is largely technical, dealing primarily with the procedural requirements which agencies must fulfill in order to promulgate regulations, adjudicate disputes, enforce sanctions, or grant licenses. However, administrative law can also be understood as an exciting area of dispute within constitutional and democratic theory. Our readings and discussions will therefore go beyond a simple description of legal processes employed by administrative agencies, and will attempt to explain the functions of such institutions in both historical terms and according to their place in a constitutional democracy. Unlike those institutions explicitly provided for in the Constitution, administrative agencies must constantly justify their powers, and even their very existence, by reference to the statutes which provide them with their powers and to the procedural rules by which they must act. We will also review the rights of public employees and the rules regarding legal liability that affect states, agencies, public officials, and public employees.

Required Materials
Most of our work will start from readings in two books. They are Phillip J. Cooper, Public Law & Public Administration, 4th Ed. Belmont, CA: Thompson Higher Education, 2007, hereafter PLPA; Phillip J. Cooper, Cases on Public Law & Public Administration. Belmont, CA: Thompson Higher Education, 2005, hereafter Cases. Additional material has been provided to you in a packet, hereafter PACK.

Course Requirements
Students must write three papers; two will be in the form of short take-home essay exams, the third is a research paper. The essay exams require that you apply different concepts and theories found in the readings, lectures and class discussion; each essay will be no more than five pages and students will have six days to complete each essay. During the course of the semester, students will be required to prepare a history of an administrative regulation, including its interpretation by the courts. Students should choose a relatively important or controversial regulation to ensure that they will have sufficient materials for this project. I have provided further instructions for this paper in the supplemental materials. An interactive version with hyperlinks to many resources can be found on the Internet version of this syllabus. I will arrange for a tour of the law school’s library during our first weekend to aid you in your research. Please note that a short description of your topic, listing the regulation you will research and other materials which you will use, will be due the third meeting of class.
Grades will be computed as follows:

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<tr>
<th>Classroom Participation</th>
<th>20%</th>
<th>Assigned</th>
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<tr>
<td>Essay 1</td>
<td>20%</td>
<td>May 12</td>
<td>May 18</td>
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<tr>
<td>Essay 2</td>
<td>20%</td>
<td>June 9</td>
<td>June 17</td>
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<tr>
<td>Administrative History Paper</td>
<td>40%</td>
<td>April 28</td>
<td>June 9</td>
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Non-negotiable Policy on Late Papers and Unsubmitted Work

Papers will be accepted until class time on the date due. Late papers will lose one full grade if submitted within a week of due date; after a week, papers may not be graded at all. **Failure to submit any assignment will result in automatic failure of the entire course; there are no exceptions.**

Please note: All work must be submitted through turnitin.com; instructions for submitting work through turnitin.com will be attached to the first assignment. In addition, please submit a hard copy version of the Administrative History Paper in class on June 8.

Participation:
Because we will be basing many of our discussions on the ideas developed in the assigned readings, **you are required to read the assignments before the class session for which they are assigned.** I will assume your knowledge of the material in the readings and you will have great difficulty following lecture or participating in discussion if you are insufficiently prepared. **I reserve the right to call upon any person at any time to explain the facts or reasoning in any assigned reading.** You are expected to brief all of those cases specifically listed below; a guide to writing briefs is attached to the syllabus.

Academic Conduct
All quotes must be cited as such and include a clear reference to the work from which they were drawn; they will otherwise be treated as plagiarism. All use of materials other than course materials must be accompanied by full citations. All work in this course is assigned as individual work: working as groups or teams is strongly discouraged (and may be treated as cheating). You are encouraged to go to the Writing Lab for help with your work, however, you are discouraged from seeking all but the most casual assistance with your writing from others; this includes spouses and other family members. If you intend to submit a paper which significantly draws upon work for another class, or if you are planning on submitting substantially similar papers to both my class and a class for another instructor, you must first receive explicit permission to do so from both myself and the other instructor. **Any form of academic dishonesty will result in a failing grade for the course and other disciplinary action.**

Americans with Disabilities Act Notice: Persons with disabilities requiring special accommodations to meet the expectations of this course should provide reasonable prior notice to the instructor and to the Center for Disability Services, 162 Olpin Union Building, 581-5020 (V/TDD) to make arrangements. Written material in this course can be made available in alternative format with prior notification.

*Students who intend to write a Major Research Paper (MRP) with this course should meet with me during the first two weeks of the class to discuss the requirements of the MRP.*
Schedule of Readings and Discussion

April 27 - Introductory Session and a Brief History of Administrative Law
PLPA: Chap. 4; Appendix 3, Administrative Procedure Act, 658.

April 28 –Congress, Delegation, Executive Discretion, and the Agencies
PLPA: Chap. 7, 263-276; Chap. 9; Chap. 10; Executive Order 12,866, 712; E.O. 12291, 721; E.O. 12,498, 726.
PACK: Massachusetts v. EPA

April 28 - Law Library - Explanation of Administrative History Paper and Tour
PLPA: Chap. 2
PACK: Administrative History Paper Assignment

May 11, 12 – Rulemaking
PLPA: Chap. 5; Appendix 2, EPA and Environmental Justice, 629.

May 12 - Adjudication
PLPA: Chap. 6
Cases: U.S. ex rel Accardi v. Shaughnessy, 21; PATCO v. FLRA, 89.
PACK: Seacoast Anti-Pollution League v. Costle; West Chicago v. NRC; Copanos and Sons v. FDA; Wallace v. Bowen; Intermountain Health Care v. Bd of Review

May 12 - First Essay Assigned - Due May 18 before 5 pm – must be submitted via turnitin.com.

May 25 – Short description of Administrative History topic and preliminary bibliography due.

May 25 - Due Process Rights in Administrative Hearings
Cases: Goldberg v. Kelly, 54; Mathews v. Eldridge, 58; Richardson v. Wright, 63; Cleveland Bd. of Ed. v. Loudermill, 67; Gilbert v. Homar, 76; Schweiker v. McClure, 78; American Manufacturers v. Sullivan, 82.
PACK: D.B. v. Utah Div. of Occupational and Professional Licensing; Bd of Curators v. Horowitz
May 26- Judicial Review of Agency Determinations

**PLPA:** Chap. 7

**Cases:** Lujan v. National Wildlife Federation, 103; Lujan v. Defenders of Wildlife, 106; Citizens to Preserve Overton Park v. Volpe, 113; Chevron v. NRDC, 133 (redux); Rust v. Sullivan, 136; US v. Mead Corp, 138 (redux).

**PACK:** Air Courier Conference v. American Postal Workers; NCUA v. 1st National Bank; Heckler v. Chaney; McCarthy v. Madigan; NLRB v. Hearst Publications; Sierra Club v. Utah Dept. of Environmental Quality.

May 26- Information Issues: Searches, Subpoenas and Government Information

**PLPA:** Chap. 11

**PACK:** Wyman v. James; Trinity Industries v. OSHRC; In re Trinity Industries; NRC v. Common Cause; Critical Mass Energy Project v. NRC; Public Citizen v. US Dept of Justice; National Forest Resources Council v. Espy

June 8 – Administrative History Paper Due at Beginning of Class - must be submitted via turnitin.com and as hard copy.

June 8 - The Rights of Public Employees

**PLPA:** Chap. 12


**PACK:** Utah Dept of Human Services v. Hughes

June 9 - Liability of Public Officials and Agencies

**PLPA:** Chap. 13

**Cases:** Maynor v. Morgan County, 190; Cobell v. Norton, 195; Harlow v. Fitzgerald, 209; Bivens v. Six Unknown Named Agents, 232; Owen v. City of Independence, 237; Bd. of Trustees v. Garrett, 259; Richardson v. McKnight, 267; Correctional Services v. Malesko, 273.

**PACK:** Frank v. State of Utah, Johnson v. Salt Lake City; U.S. v. S.A. Empressa (Varig Airlines)

June 9 – Summing up and Looking Ahead

**PLPA:** Chap. 14

June 9 - Second Essay Assigned - Due June 17 before 5 pm. Must be submitted via turnitin.com
HOW TO BRIEF A CASE

DETERMINE ON A FORMAT AND STICK TO IT: Structure is essential to a good brief. It enables you to arrange systematically the related parts that are scattered throughout most cases, thus making manageable and understandable what might otherwise seem to be an endless and unfathomable sea of information. There are, of course, an unlimited number of formats that can be utilized. However, it is best to find one that suits your needs and stick to it. Consistency breeds both efficiency and the security that when called upon you will know where to look in your brief for the information you are asked to give.

Nevertheless, it is important that a brief contain the following:

TITLE, CITATION, AND VENUE

CONCISE RULE OF LAW: A statement of the general principle of law that the case illustrates. Determining the rule of law of a case is a procedure similar to determining the issue of the case. Avoid being fooled by red herrings; there may be a few rules of law mentioned in the case excerpt, but usually only one is the rule with which the casebook editor is concerned. The techniques used to locate the issue, described below, may also be utilized to find the rule of law. Generally, your best guide is the chapter heading. It is a clue to the point the casebook editor seeks to make and should be kept in mind when reading every case in the respective section.

FACTS: A synopsis of only the essential facts of the case, i.e. those bearing upon or leading up to the issue. The facts entry should be a short statement of the events that led one party to initiate legal proceedings against another in the first place. While some cases conveniently state the salient facts at the beginning of the decision, in other instances they will have to be culled from hiding places throughout the text, even from concurring and dissenting opinions. Some of the “facts” will often be in dispute and should be so noted. Conflicting evidence may be briefly pointed up. It is impossible to tell what is relevant until the entire case is read, as the ultimate determination of the rights and liabilities of the parties may turn on something buried deep in the opinion. The facts entry should seldom be longer than five sentences.

ISSUE: A statement of the general legal question answered by or illustrated in the case. For clarity, the issue is best put in the form of a question capable of a yes or no answer. In reality, the issue is simply the Concise Rule of Law put in the form of a question.

The major problem presented in discerning what is the issue in the case is that an opinion usually purports to raise and answer several questions. However, except for rare cases, only one such question is really the issue in the case. Collateral issues not necessary to the resolution of the matter in controversy are handled by the court by language known as obiter dictum or merely dictum. While dicta may be included later in the brief, it has no place under the issue heading.

To find the issue, the student again asks who wants what and then goes on to ask why did that party succeed or fail in getting it. Once this is determined, the “why” should be turned into a question.

Since many issues are resolved by a court in coming to a final disposition of a case, the casebook editor will reproduce the portion of the opinion containing the issue or issues most relevant to the area of law under scrutiny. A noted law professor gave this advice: “Close the book; look at the title on the cover.” The same rule applies to chapter headings designating sub-areas within the subjects. It is also most important to remember to read the notes and questions at the beginning and end of a case to determine what the editors wanted the student to have gleaned from it.
HOLDING AND DECISION: This section should succinctly explain the rationale of the court in arriving at its decision. In summarizing the reasoning of the court, it should always include an application of the general rule or rules of law to the specific facts of the case. Hidden justifications come to light in this entry; the reasons for the state of the law, the public policies, the biases and prejudices, those considerations that influence the justices' thinking and, ultimately, the outcome of the case. At the end, there should be a short indication of the disposition or procedural resolution of the case. You may wish to put this portion of the brief in outline form.

CONCURRING AND DISSENTING OPINIONS: Note the major objections to, and qualifications placed on, the court’s opinion. What are the key points of difference? Do you agree with the criticisms expressed? You should very briefly outline the reasoning in the dissents and concurrences.

USE OF PRECEDENT; EFFECT ON LATER CASES: You should relate how the rule of law discernible from this case compares with that derived from earlier and later cases. Where does this case fit in the series of cases which has shaped the relevant portion of the law?

Adapted from the Casenotes Publishing Website.