

MASSACHUSETTS SCHOOL OF LAW

ADMINISTRATIVE LAW

Syllabus- Fall Semester 2020

Professor Kevin P. Foley

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Casebook: Cass, Diver and Beermann, Administrative Law: Cases and Materials, (6th ed., Aspen L. & Bus. 2011). Cases also available through TWEN.

Class Times: Tues. & Thurs. 9:00 – 10:15 p.m., beginning Tuesday, August 25, 2020.

Overview: This course involves study of the regulation by Congress and the courts of the authority of executive officials and agencies to distribute benefits, grant licenses, and set policy. Although the primary focus of the course is federal administrative law, the class will also discuss administrative law in Massachusetts.

Grading: Students can score up to 100 points based upon 3 quizzes worth 5 points each, a mid-term exam worth 25 points, and a final exam worth 60 points. Students will receive a letter grade based upon their total score. All students are expected to attend or virtually attend all classes, complete all assignments and participate in discussions during each class. Grades may be lowered for lack of participation, lack of preparation and failure to be prepared or participate in classes. Students are expected to notify the professor by email in advance of any anticipated absences. Failure to notify the professor in advance of a required absence on the date of a quiz or test may result in a zero for that quiz or test.

*Assignments:

Class One: The Origin and Mandate of Administrative Agencies, Legislative Control of Administrative Agencies, The Problem of Delegation, pp. 3-33. Cases:

Hampton, 276 U.S. 394 (1928), Panama Refining, 293 U.S. 388 (1935), Schechter, 295 U.S. 495 (1935), Yakus, 321 U.S. 414 (1944), American Petroleum, 448 U.S. 607, (1980), American Trucking, 531 U.S. 457 (2001)

Class Two: The Legislative Veto, Line Items and Line Item Veto, Legislative Oversight, Executive Control of Administrative Agencies pp. 34-69. Cases:

Chadha, 462 U.S. 919 (1983), Clinton, 524 U.S. 417 (1998), Buckley, 424 U.S. 1 (1975),

- Class Three: Executive Control of Agencies continued, pp. 69-109. Cases:
 Myers, 272 U.S. 52 (1926), Humphry's Executor, 295 U.S. 602 (1935), Bowsher, 478 U.S. 714 (1986), Morrison, 487 U.S. 654 (1988), Free Enterprise, 130 S. Ct. 3138 (2010), Youngstown, 343 U.S. 579 (1953), Elrod, 427 U.S. 347 (1976)
- Class Four: Standards of Judicial Review, Arbitrary and Capricious Review of Questions of Fact or Policy, pp. 111-154. Cases:
 Overton Park, 401 U.S. 402 (1971), Motor Vehicle Manufacturers, 463 U.S. 29 (1983), FCC v. Fox, 129 S. Ct. 1800 (2009), Mass. V. EPA, 549 U.S. 497 (2007)
- Class Five: Judicial Review of Questions of Law, pp. 155-198. Cases:
 NLRB v. Hearst, 322 U.S. 111 (1944), Skidmore, 323 U.S. 134 (1944), Chevron, 467 U.S. 837 (1984), MCI v. ATT, 512 U.S. 218 (1994), Babbitt, 515 U.S. 687 (1995), Mass v. EPA, 549 U.S. 497 (2007), FDA v. Brown, 529 U.S. 120 (2000), Mead, 533 U.S. 218 (2001)
- Class Six: Judicial Review of Questions of Fact or Policy Under the Substantial Evidence Test, Availability of Judicial Review, Jurisdiction, pp. 199-234. Cases:
 Universal Camera, 79 N.L.R.B. 379 (1948), NLRB v. Universal, 179 F.2d. 749 (2d Cir. 1950), Universal v. NLRB, 340 U.S. 474 (1951), NLRB v. Universal, 190 F.2d 429 (2d Cir. 1951), Benzene Case, 448 U.S. 607, (1980)
- Class Seven: QUIZ 1, Availability of Judicial Review continued, Reviewability, pp. 235-271. Cases:
 Norton, 542 U.S. 55 (2004), Johnson, 415 U.S. 361 (1974), McNary, 498 U.S. 479 (1991), Webster, 486 U.S. 592 (1988)
- Class Eight: Reviewability continued, Standing, pp. 271-309. Cases:
 Heckler, 470 U.S. 821 (1985), Chao, 314 F.3d 143 (3d Cir. 2002), Lincoln, 508 U.S. 182 (1993), Assoc of Data Processing, 397 U.S. 150 (1970), Barlow, 397 U.S. 159 (1970)
- Class Nine: Constitutional Standing, pp. 309-345. Cases:
 Lujan, 540 U.S. 555 (1992), Steel Co., 523 U.S. 83 (1998), Laidlaw 528 U.S. 167 (2000), Mass. V. EPA (again), 549 U.S. 497 (2007)

- Class Ten: Timing of Judicial Review, Exhaustion of Administrative Remedies, Res Judicata and Collateral Estoppel, pp. 345-375. Cases:
Abbott Labs, 387 U.S. 136 (1967), Gardner, 387 U.S. 167 (1967), Bethlehem Shipbuilding, 303 U.S. 41 (1938), Mendoza 464 U.S. 154 (1984)
- Class Eleven: Policymaking Instruments, pp. 377- 414. Cases:
Londoner, 210 U.S. 373 (1908), Bi-Metallic, 239 U.S. 441 (1915), National Petroleum, 482 F.2d 672 (D.C. Cir. 1973) cert. denied, 415 U.S. 951 (1974), Excelsior, 156 N.L.R.B. 1236 (1966), NLRB v. Wyman, 394 U.S. 759 (1969), NLRB v. Bell, 416 U.S. 267 (1974)
- Class Twelve: Policymaking Instruments continued, Public Participation in Rulemaking Procedures, pp. 414 – 447. Cases:
Morton, 415 U.S. 199 (1974), Chocolate Manufacturers, 755 F.2d 1098 (4th Cir. 1985), HBO v. FCC, 567 F.2d 9 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977)
- Class Thirteen: Public Participation in Rulemaking Procedures continued, pp. 448-490. Cases:
Sierra Club, 657 F.2d 298 (D.C. Cir. 1981), Assoc. of National Ad, 627 F.2d 1151 (D.C. Cir. 1979), cert. denied, 447 U.S. 921 (1980), Natural Resources, 547 F.2d 633 (D.C. Cir. 1976), Vermont Yankee, 435 U.S. 519 (1978)
- Class Fourteen: MIDTERM EXAM
- Class Fifteen: Exemptions from APA § 553, Alternative Rulemaking, pp. 490-528. Cases:
National Family Planning, 979 F.2d 227 (D.C. Cir. 1992), Hektor, 82 F.3d 165 (7th Cir. 1996), Lincoln, 508 U.S. 182 (1993), USA Group Loan, 82 F.3d 708 (7th Cir. 1996)
- Class Sixteen: Strengthening the Analytic Basis of Policymaking, pp. 528-568. Cases:
American Textile, 452 U.S. 490 (1981), Whitman, 531 U.S. 457 (2001), Entergy Corp, 129 S. Ct. 1498 (2009), Strycker's Bay, 444 U.S. 223 (1980), Vermont Yankee, 435 U.S. 519, 551-554 (1978), Metropolitan Edison, 460 U.S. 766 (1983), Robertson, 490 U.S. 332 (1989)
- Class Seventeen: QUIZ 2, Agency Authority to Adjudicate, Due Process Hearing Rights, pp. 569-605. Cases:
Lessee, 59 U.S. (18 How.) 272 (1855), Crowell, 285 U.S. 22 (1932), Northern Pipeline, 458 U.S. 50, 1982, Commodity, 478 U.S. 833 (1986), Goldberg, 397

U.S. 254 (1970), Roth, 408 U.S. 564 (1972), Perry, 408 U.S. 593 (1972), Arnett, 416 U.S. 134 (1974), Bishop, 426 U.S. 341 (1976)

Class Eighteen: Due Process Hearing Rights continued, pp. 605-642. Cases:

Cleveland v. Loudermill, 470 Mass. 532 (1985), Ingraham, 430 U.S. 651 (1977), Davis, 424 U.S. 693 (1976), Constantineau, 400 U.S. 433 (1971), O'Bannon, 447 U.S. 773 (1980), Mathews v. Eldridge, 424 U.S. 319, (1976), Tumey, 273 U.S. 510 (1927), Ward, 409 U.S. 57 (1972), Gibson, 411 U.S. 564 (1973), Cinderella, 425 F.2d 583 (D.C. Cir. 1970)

Class Nineteen: Due Process Hearing Rights continued, Statutory Hearing Rights, pp. 643-686. Cases:

Withrow, 421 U.S. 35 (1975), Caperton, 129 S. Ct. 2252 (2009), Portland 984 F.2d 1534 (9th Cir. 1993), Association Admin Law Judges, 594 F. Supp. 1132 (D.D.C. 1984), Heckler, 461 U.S. 458 (1983)

Class Twenty: Guest Speakers: Steven Calder, Esq., Environmental Protection Agency, Enforcement Division and Christopher N. Carroll, Esq. retired counsel of Massachusetts Division of Professional Licensure.

Class Twenty-one: Government Enforcement, pp. 687-726. Cases:

Marshall, 436 U.S. 307 (1978), Franks, 359 U.S. 360 (1959), Camara, 387 U.S. 523 (1967), Colonnade, 397 U.S. 72 (1970), Ruckelhaus, 467 U.S. 986 (1984), Moog, 355 U.S. 411 (1958), Universal-Rundle, 387 U.S. 244 (1967)

Class Twenty-two: Government Enforcement continued, Private Litigation and Regulatory Enforcement, pp. 727-762. Cases:

Wayte, 470 U.S. 598 (1985), GE v. Jackson, 610 F.3d 110 (D.C. Cir. 2010), Scott, 741 F.2d 992 (7th Cir. 1984), Borak, 377 U.S. 426 (1964), Cort, 422 U.S. 66 (1975), Karahalios, 489 U.S. 527 (1989)

Class Twenty-three: Private Litigation and Regulatory Enforcement continued, Liability of Public Entities and Officers, pp. 762-801. Cases:

Abilene, 204 U.S. 426 (1907), Nadar, 426 U.S. 290 (1976), Geir, 529 U.S. 861 (2000)

Class Twenty-four: QUIZ 3, Liability of Public Entities and Officers continued, Suits Against Sovereigns, Suits Against Government Officers, pp. 802-826. Cases:

Feres, 340 U.S. 135 (1950), Dalehite, 346 U.S. 15 (1953), Indian, 350 U.S. 61 (1955), Gaubert, 499 U.S. 315 (1991) Barr, 360 U.S. 564 (1959), Bivens, 403 U.S. 388 (1971), Carlson, 446 U.S. 14 (1980), Bush, 462 U.S. 367 (1983), Pierson, 386 U.S. 547 (1967), Harlow, 457 U.S. 800 (1982), Economou, 438

U.S. 478 (1978), Fitzgerald, 457 U.S. 731 (1982), Proximire, 443 U.S. 111 (1979)

Class Twenty-five: Public Access to Government Records under Freedom of Information Action, Exemptions from FOIA, pp. 915-949.

Kissinger, 445 U.S. 136, NLRB v. Sears, 421 U.S. 132 (1975), FBI v. Abramson, 456 U.S. 615 (1982),

Class Twenty-six: Privacy, Public Access to Administrative Deliberations, pp. 949-972. Cases:

Dept Justice, 489 U.S. 749 (1989), FCC v. ITT 466 U.S. 463 (1984), Common Cause, 674 F.2d 921 (D.C. Cir. 1982)

Class Twenty-seven: Review Part One

Class Twenty-eight: Review Part Two

* All assignments, dates of quizzes, exams, guest speakers subject to change during semester.