

MASSACHUSETTS SCHOOL OF LAW

ADMINISTRATIVE LAW

Syllabus- Fall Semester 2024

Professor Kevin P. Foley

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Casebook: Cass, Diver, Beermann and Mascott, Administrative Law: Cases and Materials, (9th ed., Aspen Publishing 2024). Cases also available through TWEN.

Class Times: Saturday mornings 9:00-11:20 a.m., beginning Saturday, August 23, 2023.

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 Nature and Functions of Administrative Agencies: The Origin and Mandate of Administrative Agencies, Legislative Control of Administrative Agencies, pp. 3-39. 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), Mistretta, 488 U.S. 361 (1989), American Trucking, 531 U.S. 457 (2001), Gundy, 139 S. Ct. 2116 (2019).

The Legislative Veto, Riders, Line Items and Line-Item Veto, Legislative Oversight, Executive Control of Administrative Agencies pp. 40-99. Cases:

Chadha, 462 U.S. 919 (1983), Seattle Audubon Society, 503 U.S. 429 (1992), Clinton, 524 U.S. 417 (1998), Sawyer, 343 U.S. 579 (1952), Buckley, 424 U.S. 1 (1975), Morrison, 487 U.S. 654 (1988).

Class Two: Executive Control of Agencies continued, Appointment and Removal Powers, pp. 100-138.

Cases:

Myers, 272 U.S. 52 (1926), Humphrey's Executor, 295 U.S. 602 (1935), Bowsher, 478 U.S. 714 (1986), Morrison, 487 U.S. 654 (1988), Free Enterprise, 561 U.S. 477 (2010), Elrod, 427 U.S. 347 (1976), Seila Law LLC, 140 S. Ct. 2183.

Judicial Review of Administrative Decisions: Standards of Judicial Review, Arbitrary and Capricious Review of Questions of Fact or Policy, pp. 139-202. Cases:

Overton Park, 401 U.S. 402 (1971), Chenery Corp, 318 U.S. 80 (1943), Morgan, 313 U.S. 409 (1941), Motor Vehicle Manufacturers, 463 U.S. 29 (1983), Dept of Commerce, 139 S. Ct. 2551 (2019), Encino Motor Cars, 136 S. Ct. 2117 (2016), FCC v. Fox, 129 S. Ct. 1800 (2009), Regents of Univ. of CA, 140 S. Ct. 1891 (2020), Mass. v. EPA, 549 U.S. 497 (2007).

Class Three: Judicial Review of Questions of Law, Judicial Deference, pp. 203-259. 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), FDA v. Brown, 529 U.S. 120 (2000), West VA v. EPA, 142 S. Ct. 2587 (2022), Utility Air, 134 S. Ct. 2427 (2014), Brand X Internet, 545 U.S. 967 (2005), Mead, 533 U.S. 218 (2001).

Judicial Deference cont., Judicial Review of Questions of Fact or Policy Under the Substantial Evidence Test, Availability of Judicial Review, Jurisdiction, Formal Adjudication & Informal Rulemaking, pp. 260-322. Cases:

City of Arlington, 569 U.S. 290 (2013), Kilsor, 139 S. Ct. 2400 (2019), NFIB v. OSHA, 142 S. Ct. 661 (2022), Sackett, 143 S. Ct. 1322 (2023), American Hospital, 142 S.Ct. 1896 (2022), 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), Biestek, 139 S. Ct. 1148 (2019), Benzene Case, 448 U.S. 607, (1980).

Class Four: QUIZ 1, Availability of Judicial Review, Jurisdiction, Reviewability, Statutory Preclusions, Committed to Agency Discretion by Law pp. 324-376. Cases:

Norton, 542 U.S. 55 (2004), Chao, 314 F. 3d 143 (3rd Cir. 2002), Johnson, 415 U.S. 361 (1974), Lee, 579 U.S. 261 (2016), McNary, 498 U.S. 479 (1991), Webster, 486 U.S. 592 (1988), Dept Commerce, 139 S. Ct. 2551 (2019).

Reviewability continued, Prosecutorial Discretion, Resource Allocation, Standing, pp. 377-435. Cases:

Heckler, 470 U.S. 821 (1985), Texas v. US, 787 F.3d 733 (2016), Lincoln, 508 U.S. 182 (1993), Assoc of Data Processing, 397 U.S. 150 (1970), Lujan, 540 U.S. 555 (1992), Mass v. EPA, 549 U.S. 497 (2007)

Class Five: Timing of Judicial Review, Exhaustion of Administrative Remedies, Res Judicata and Collateral Estoppel, pp. 436-462. 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).

Guest Speaker:

Class Six: Administrative Choice of Policymaking Instruments, pp. 463-528. Cases:

Londoner, 210 U.S. 373 (1908), Bi-Metallic, 239 U.S. 441 (1915), Storer, 351 U.S. 192 (1956), National Petroleum, 482 F.2d 672 (D.C. Cir. 1973) cert. denied, 415 U.S. 951 (1974), Chamber of Commerce v. NLRB, 721 F.3d 152 (4th Cir. 2013), Heckler v. Campbell, 461 U.S. 458 (1983), SEC v. Chenery, 332 U.S. 194 (1947), Excelsior, 156 N.L.R.B. 1236 (1966), NLRB v. Wyman, 394 U.S. 759 (1969), NLRB v. Bell, 416 U.S. 267 (1974), Morton, 415 U.S. 199 (1974).

Rulemaking, Formal and Informal Models under the APA, pp. 529-580. Cases:

U.S v. Allegheny-Ludlum, 406 U.S. 742 (1972), U.S. v. Florida East Coast RY, 410 U.S. 224 (1973), Chocolate Manufacturers, 755 F.2d 1098 (4th Cir. 1985), Long Island Care, 551 U.S. 158 (2007), U.S. v. Nova Scotia Food, 568 F.2d 240 (2nd Cir. 1977), HBO v. FCC, 567 F.2d 9 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977), Sierra Club, 657 F.2d 298 (D.C. Cir. 1981), District of Columbia Fed Civic Assns, 459 F.2d 1231 (D.C. Cir. 1971), cer denied, 405 U.S. 1030 (1972), Assoc. of National Ad, 627 F.2d 1151 (D.C. Cir. 1979), cert. denied, 447 U.S. 921 (1980).

Class Seven: Rulemaking continued, Statutory Hybrids, Exemptions from APA § 553, Alternative Rulemaking pp. 581-633. Cases:

Natural Resources, 547 F.2d 633 (D.C. Cir. 1976), Vermont Yankee, 435 U.S. 519 (1978), American Radio Relay, 524 F.3d 227 (D.C. Cir. 2008), National Family Planning, 979 F.2d 227 (D.C. Cir. 1992), Hoctor, 82 F.3d 165 (7th Cir. 1996), Texas v. U.S., 787 F.3d 733, affirmed by an equally divided court, 136 S. Ct. 2271 (2016), Lincoln, 508 U.S. 182 (1993), NRDC v. NHTSA, 894 F.3d 95 (2nd Cir. 2018), USA Group Loan, 82 F.3d 708 (7th Cir. 1996).

MIDTERM EXAM

- Class Eight: Strengthening the Analytic Basis of Policymaking, pp. 634-672. Cases:
- American Textile, 452 U.S. 490 (1981), Whitman, 531 U.S. 457 (2001), Entergy Corp, 129 S. Ct. 1498 (2009), Executive Order 13,771, Calvert Cliffs, 449 F.2d 1109 (D.C. Cir. 1971), Vermont Yankee, 435 U.S. 519, 551-554 (1978), Robertson, 490 U.S. 332 (1989), Strycker's Bay, 444 U.S. 223 (1980).
- QUIZ 2, Adjudication, Agency Authority to Adjudicate, Due Process Hearing Rights, pp. 673-720. 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), Stern, 564 U.S. 462 (2011), 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 Nine: Due Process Hearing Rights continued, pp. 721-754. 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), Withrow, 421 U.S. 35 (1975), Seacoast, 572 F.2d 872 (1st Cir. 1978), Dominion Energy, 443 F.3d 12 (1st Cir. 2006).
- Due Process Hearing Rights continued, Statutory Hearing Rights, Procedural Issues pp. 755-796. Cases:
- Citizen's Awareness, 391 F.3d 338 (1st Cir. 2004), Southern CA Edison, 717 F.3d 177 (D.C. Cir. 2013), Armstrong, 12 F.3d 401 (3d Cir. 1993), Envirocare of Utah, 194 F.3d 72 (D.C. Cir. 1999), Portland 984 F.2d 1534 (9th Cir. 1993), Association Admin Law Judges, 594 F. Supp. 1132 (D.D.C. 1984), Pension Benefit Guaranty, 496 U.S. 633 (1990).
- Class Ten: Enforcement and Liability, Government Enforcement, Monitoring, Inspections, Prosecution, Selective Enforcement, pp. 797-844. 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), Ruckelshaus, 467 U.S. 986 (1984), Moog, 355 U.S. 411 (1958), Universal-Rundle, 387 U.S. 244 (1967), G.E v. Jackson, 610 F.3d 110 (D.C. Cir. 2010).
- Government Enforcement continued, Private Litigation and Regulatory Enforcement, pp. 844-864. Cases:

Bennett, 520 U.S. 154 (1997), Scott, 741 F.2d 992 (7th Cir. 1984), Borak, 377 U.S. 426 (1964), Cort, 422 U.S. 66 (1975), Cannon, 441 U.S. 677 (1979), Karahalios, 489 U.S. 527 (1989).

Class Eleven: Private Litigation and Regulatory Enforcement continued, Primary Jurisdiction and Preemption and Liability of Public Entities and Officers, pp. 865-900. Cases:

Abilene, 204 U.S. 426 (1907), Nadar, 426 U.S. 290 (1976), Geir, 529 U.S. 861 (2000), Feres, 340 U.S. 135 (1950), Dalehite, 346 U.S. 15 (1953), Indian, 350 U.S. 61 (1955), U.S. v. S.A. Empresa, 467 U.S. 797 (1984), Berkovitz, 486 U.S. 531 (1988), Gaubert, 499 U.S. 315 (1991), Bivens, 403 U.S. 388 (1971).

QUIZ 3, Indirect Controls; Public Access, pp. 945-1002. Cases:

Kissinger, 445 U.S. 136, Milner, 562 U.S. 562 (2011), Sierra Club, 141 S. Ct. 777 (2021), FBI v. Abramson, 456 U.S. 615 (1982), Reporters Committee, 489 U.S. 749 (1989), ITT World, 466 U.S. 463 (1984).

Class Twelve: Review Part One

Class Thirteen: Review Part Two

Class Fourteen: Review Part Three

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