

Professor Seamon
Administrative Law
LAW 907, Sections 01 (Moscow) & 02 (Boise)

Summer 2020
M-F, 12:30 - 1:45 Pac/1:30 - 2:45 Mtn
May 26 - July 2 via Zoom

Syllabus, First List of Assignments, and Objectives for First List of Assignments

Preamble: This might just be the hardest course you will ever love. It will be hard because we will pack 14 weeks' worth of material into less than 6 weeks. It will require, on your part, a *minimum* of 4.25 hours of work every day. It is a course you may come to love, however, because it will open your eyes to an amazing legal realm that very few people, even lawyers, truly understand.

Course Materials:

The materials for this course are:

- (1) a course book: Richard Henry Seamon, Administrative Law: A Context and Practice Casebook (Carolina Academic Press, 2nd ed. 2020), ISBN 978-1-5310-0738-6; and
- (2) "handouts," which will be distributed in class and via BbLearn.

If you feel compelled to consult study aids, I can recommend two:

- William Funk and Richard Seamon, Administrative Law: Examples and Explanations (Aspen 6th ed. 2020). You can find a free copy on the law library database "Wolters Kluwer Online Study Aid Library."
- Linda D. Jellum, Mastering Administrative Law (Carolina Academic Press, 2nd ed. 2018), available for \$35 at the Carolina Academic Press website.

I don't encourage your use of any study aids on administrative law, though, because of the pace of this summer class and the differences in organization and coverage between our course book and the study aids.

Subject Matter and Learning Outcomes of This Course:

Subject matter: This course explores the law governing administrative agencies. The course focuses on federal agencies, but many of the principles governing federal agencies also apply to state agencies.

"Learning Outcomes": The College of Law has established "learning outcomes" to identify what you should get out of your courses and your overall law school experience. Below are the ones relevant to this course. If you ignore the jargon, they can really help you see how this course fits into the bigger picture:

LEARNING OUTCOME 1 – KNOWLEDGE OF LAW AND LEGAL INSTITUTIONS

Graduates will demonstrate knowledge and understanding of substantive and procedural law and legal institutions. Graduates will be able to:

- Demonstrate competence in the substance of U.S. administrative law

LEARNING OUTCOME 2 – LEGAL ANALYSIS AND REASONING

Graduates will demonstrate the capacity to engage in sophisticated legal reasoning and analysis. Graduates will be able to:

- Identify the legal rules and principles applicable to a given context
- Identify legally relevant facts, both known and unknown, in a given legal context
- Identify nature and consequence of ambiguities in the facts in a given context
- Identify the legal rules and principles applicable to a given context
- Identify legally relevant facts, both known and unknown, in a given legal context
- Identify nature and consequence of ambiguities in the facts in a given context
- Construct and support an argument grounded in appropriate legal authority and policy considerations, while recognizing and addressing weaknesses thereof.

LEARNING OUTCOME 3 – ORAL AND WRITTEN COMMUNICATION SKILLS

Graduates will be proficient at communicating complex legal arguments, reasoning, and analysis, both in writing and in oral communication. Graduates will be able to:

- Orally communicate legal arguments effectively and nimbly.

Contacting Me Outside of Class

You can reach me

- on my office phone, 208-885-7061
- on my cell phone, 208-310-1584
- or by email, richard@uidaho.edu

Rather than holding regular office hours, I'll be available for Zoom or phone meetings by appointment, including on the weekends if that's most convenient for you.

Class Attendance and Participation

Class attendance: You must do your best to show up (1) for every class, (2) on time, and (3) prepared to participate. I will do my best to make it worth your while.

You must keep track of your own attendance. If you miss more than *two* classes, you also must: (i) tell me as soon as you miss, or anticipate missing, your third class; and (ii) be prepared to explain and document the reasons for *all* your absences. I reserve the right, if you miss more than two classes, to reduce your course grade. Equally important, if you miss more than two classes, you will miss a ton of great stuff!

Class participation: "Class participation" includes regular, punctual attendance; timely completion of any written homework assignments; being prepared to answer questions when called on at random; and compliance with the course requirements described in this syllabus.

I will involve students in class discussion in three main ways. *First*, I will designate two students to serve as "experts" for each class. *Second*, I will call on students at random and without prior warning to answer questions that anyone who is well prepared should be able to answer. *Third*, I will call on volunteers.

If you are not well prepared for a particular class and therefore wish not to be called on, you may, before class begins, give me advance written or email notice that you need to “take a pass” that day. You may exercise this “pass” option no more than three times during the semester. I do not take “passes” into account in grading. Indeed, I encourage you to use this option, if needed, so neither of us has to worry about calling on you when you are not prepared.

Grades and Course Requirements

Overview: Your grade will be based on (1) a midterm, worth up to 25% of your grade; and (2) a 3-hour final exam, worth at least 75% of your grade. The final exam is scheduled for July 7. I also reserve the right to take class participation into account.

Below are the specific rules for what you can, and cannot, use during the midterm and final exams. If any issue is not expressly covered by these rules and a reasonable person would be dubious about it, please check with me before you do anything dubious.

I apologize for the rules’ intricacy. Their intricacy reflects that vague rules or standards for open-book-type exams heighten the risk of Honor Code complaints and student concerns about other students’ use materials during exams. The basic idea behind these rules is to allow you during the exams to use all of the assigned reading material, your class notes, handouts, and an outline, including a typical group outline – but nothing else. Please let me know if you have questions about these rules.

Exam Rules

A. GENERAL RULE: During the exams you may use only:

1. the course book;
2. “handouts” -- i.e., any material distributed to the class, either in class or electronically;
3. your class notes; and
4. any material that you have participated in preparing, such as an outline, flow charts, check lists, etc. You can use this material as long as (a) you had a substantial role in creating the material; and (b) it contains no more than a truly minor amount of material from sources *other than* from items A.1-A.3 or from a current classmate. This provision, A.4, is designed to allow you to use material you made yourself or as part of a study group, with no more than minor material from elsewhere outside the class (e.g., from a commercial study aid).

B. RULE ABOUT CUTTING AND PASTING: The material you use during the exam cannot contain material that you have physically or electronically cut and pasted from anywhere other than the items described in A.1 through A.4. Thus, for example, if you want to include in your outline material from a commercial study aid, you must handwrite it or hand keyboard it into your outline. And, even then, under the “General Rule” above, this outside material can be no more than a truly minor amount.

C. RULE ABOUT MATERIAL FROM PAST YEARS: With one exception described in the next sentence,

during an exam you may not use course material from prior years, including outlines from prior years, other material prepared by prior students, course material that I have distributed to the class in prior years, or course material in the law library's exam archives. You may, however, bring in material from past years if I distribute it to the entire class in the current semester.

Center for Disability Access and Resources (CDAR) Reasonable Accommodations Statement:

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Ideally, students in Moscow and Boise should meet with CDAR by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by CDAR to Associate Deans of Students Katie Ball or Kristina Running for final approval. CDAR serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without CDAR first submitting a recommendation. You may contact CDAR by:

- Calling 208-885-6307
- Emailing cdar@uidaho.edu

It is ultimately the student's responsibility to seek a disability accommodation, and until an accommodation is approved by CDAR and by Associate Dean Ball or Running, no student will be entitled to receive any accommodations. To learn more about CDAR, visit its website at <http://www.uidaho.edu/current-students/cdar>. Moscow students may also visit CDAR in suite 127 of the Pitman Center. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

Recording Class Sessions:

Students may not electronically record classes unless they have the express consent of the instructor, except where the associate dean has allowed recording as a disability accommodation pursuant to a recommendation by CDAR. Recording classes without the instructor's express consent violates the Honor Code. Students recording classes as a disability accommodation must follow procedures set down by CDAR. Students who are unable to attend class for reasons of illness or other exigencies must receive permission from the instructor before classes are recorded on their behalf. Contact the Law Library for recording equipment and information on recording procedures.

University Civility Statement

In any environment in which people gather to learn, it is essential that all members feel as free and safe as possible in their participation. To this end, it is expected that everyone in this course will be treated with mutual respect and civility, with an understanding that all of us (students, instructors, professors, guests, and teaching assistants) will be respectful and civil to one another in discussion, in action, in teaching, and in learning.

Should you feel our classroom interactions do not reflect an environment of civility and respect,

you are encouraged to meet with your instructor during office hours to discuss your concern. Additional resources for expression of concern or requesting support include the Dean of Students office and staff (885-6757), the UI Counseling & Testing Center's confidential services (885-6716), or the UI Office of Human Rights, Access, & Inclusion (885-4285).

Credit Hours for Coursework

In accordance with ABA Standard 310, the College of Law awards one credit hour for experiences that are reasonably designed to involve 50 minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week, or at least the equivalent amount of work for academic activities including simulation, field placement, clinical, and other academic work leading to the award of credit hours.

The course requirements outlined above with respect to materials and assignments, in my professional judgement, are complex enough in nature that it is expected that the amount of out-of-class time it will take students to complete the assignments will meet the rule.

Assignments

The ABA Standard above, applied to our summer course, requires you to spend a *minimum* of 3 hours preparing for each class. This means you need to devote *at least* 4.25 hours to this course each weekday, including class-time. To do well in the course, you'll almost certainly need to spend more time than that, for two reasons. *First*, the material builds on itself. If you don't adequately absorb each concept as we cover it in class, this will hinder your learning of later concepts. *Second*, your absorption rate is likely to be less efficient during the accelerated summer schedule than it would be during the regular academic school year. All of this is to say that, you can take this course while holding down an externship or other full-time job, but you better plan on 60-hour work weeks while doing so.

The first list of assignments begins below. The assignment for each class is indicated by a numeral in brackets. We will try to cover one assignment per class. Thus, for example, by the end of the first (holiday-shortened) week of classes we should have completed assignment [4]. If we do not finish an assignment during one class, you should still read all of the next assignment before the next class, unless I tell you otherwise. Each assignment asks you to "prepare" certain pages from the course book. This means that you should not only read the pages but also answer (in your head or, better still, in writing) the questions posed in any exercises, and be prepared to discuss any chapter problems, within the assigned pages.

Three more things about these assignments. *First*, they are tentative; they may be changed by prior announcement in class, by email, or on BbLearn. *Second*, the assignments will be supplemented by in-class handouts or BbLearn postings. Therefore, if you miss a class, you should find out whether I supplemented an assignment during that class. *Third*, unless instructed otherwise, you need not read any of the material on *state* administrative law that is included within the assigned pages. Nor need you read the "Professional Development Reflection Questions" that come at the end of most chapters. (Of course, this is wonderful material that you'll enjoy if your time permits!)

After the list of assignments are objectives for the chapters covered in these assignments. As we reach the end of the first set of assignments, I'll hand out more great assignments!

First List of Assignments

Administrative Law Fundamentals

- [1] Please prepare course book pp. 3-37 (up to "D. Enforcing Limits on Agency Power").
- [2] Please prepare course book pp. 37-63 (up to end of chapter 3). As you encounter citations to the Consumer Product Safety Commission's organic statute in the reading, you should look at the cited provisions, in their entirety, in Westlaw or Lexis, and begin developing familiarity with them.
- [3] Please prepare course book pp. 65-98 (up to bottom of p. 98).
- [4] Please prepare course book pp. 99-130.

Agency Rulemaking

- [5] Please prepare course book pp. 131-164 (up to "2. Modern Federal Delegation Doctrine").
- [6] Please prepare course book pp. 164-198 (up to "Note Introducing 'Open Record' vs. 'Closed Record' Proceedings").
- [7] Please prepare course book pp. 198-234 (up to end of Chapter 10).
- [8] Please prepare course book pp. 235-263 (up to "2. The Implied Requirement ...").
- [9] Please prepare course book pp. 263-296 (up to "E. The Federal Agency Makes the Rule Effective ...").

Objectives for Chapters 1 through 12

Chapter 1. Welcome to Administrative Law!

Objectives for Chapter 1:

- You should be able to understand: what "agencies" are, in the everyday sense of the word; and how and why they are created.
- Also be able to describe in your own words the three main types of things that agencies do, and the three types of power they may be given to do those things.
- You should also begin to develop a sense of the distinction among the legislative-type powers, the executive-type powers, and the judicial-type powers that an agency may be given.

Chapter 2. Administrative-Law Problem Solving; Overview of the Rest of this Book

Objectives for Chapter 2:

- Be able to recall and describe in your own words the three questions posed by most administrative law problems involving agency action, and the three questions posed by those administrative law problems which concern agency failure to act.
- Be able to recall the three potential sources of agency power and which is most common.
- Be able to explain in your own words and to recognize the difference between an “internal” and an “external” limit on agency power.
- Also be able to explain in your own words and begin to gain a sense of how to recognize the difference between substantive and procedural limits on agency action.
- Be able to describe in your own words when, in general terms, an agency will be said to have “discretion.”
- Finally, be able to identify the five sources of control over agency action and to have a general understanding of how those controls operate.

Chapter 3. Statutory Research and Analysis in Administrative Law

Objectives for Chapter 3:

- Be able to explain in your own words the three types of statutes that govern an agency’s powers and duties.
- Also be able to (1) explain in your own words what an agency’s “organic” statute is; and (2) find an organic statute, given the name of the agency.
- Be aware of the distinction between an agency’s organic statute and other agency-specific legislation.
- Having located the agency legislation, be able to read it and annotate it with the eyes and hand of an administrative lawyer.

Chapter 4. Administrative Procedure Acts (APAs)

Objectives for Chapter 4:

- Be generally familiar with the purposes of the federal APA and state APAs.
- Be familiar enough with the contents and organization of the federal APA that you can readily locate the provisions containing: (a) the definitions; (b) the procedures for formal and informal rule making; (c) the procedures for formal adjudication; (d) the procedures for some informal adjudications; and (e) the judicial review provisions.
- Also be able readily to locate the APA provisions addressing the federal APA’s relationship to other laws and judicial review.
- Given an administrative law problem, be able to write out in your own words the three questions for determining the relevant APA’s applicability to that problem.

- Be able to explain in your own words why, to understand the APA, one must understand the distinction between rulemaking and adjudication.
- Be able readily to locate the federal APA provisions that define “rule” and “order,” and to determine whether a particular agency action is a rule, an order, or neither.
- Be able to explain in your own words what the “*Londoner/Bi-Metallic* distinction” is, what it is for, and how it relates to APAs’ distinctions between rulemaking and adjudication.
- Finally, given a particular agency action, be able to analyze whether the action is likely to be classified as legislative or adjudicative for procedural due process purposes under the *Londoner/Bi-Metallic* distinction.

Chapter 5. Administrative Law, Federal Supremacy, and Cooperative Federalism

Objectives for Chapter 5:

- Be able to identify situations to which the rule of intergovernmental immunity arguably applies and to analyze such situations to determine whether action involving federal operations is indeed immune from state control.
- Be able to identify when a federal statute subjects federal entities to state or local laws.
- Be able to define “cooperative federalism program” in your own words and to explain, in a general way, what laws govern such programs.

Chapter 6. Introduction to Agency Rulemaking

Objectives for Chapter 6: Have general familiarity with:

- (1) how the problem solving framework of Chapter 2 applies to agency rulemaking;
- (2) the different reasons why an agency may decide to make a rule; and
- (3) the different roles lawyers play in rulemaking

Chapter 7. The Distinction between Legislative Rules and Non-Legislative Rules

Objectives for Chapter 7:

- Be able to distinguish legislative rules from non-legislative rules.
- Be able to recall the two main types of non-legislative rules.
- Be able to determine whether a particular federal statute grants power to make legislative rules.

- Have a general understanding of the difference between the terms “legislative rule” and “substantive rule.”
- Finally, be able to identify the types of rules to which the federal APA’s definition of “rule” refers.

Chapter 8. Agency Rulemaking Power

Objectives for Chapter 8:

- Be able to recognize when a federal law arguably implicates the delegation doctrine that is rooted in the separation-of-powers doctrine or the private delegation doctrine that is rooted in due process.
- When such a law does arguably implicate either such doctrine, be able to analyze whether the law does, in fact, violate the doctrine under the material that we study.
- Also be able to identify situations in which a statute might be interpreted to avoid a delegation problem.

Chapter 9. Limits on Agency Rulemaking Power

Objectives for Chapter 9:

- Be able in your own words (or drawings) to summarize a comprehensive framework for analysis of limits on, and requirements for an agency’s exercise of, power to make legislative rules.
- Be able to explain in your own words the “*Vermont Yankee* principle” and to relate it to the comprehensive framework.
- Be able to recognize when an argument to a court, or a ruling by a court, arguably violates the *Vermont Yankee* principle and, when so, to analyze whether the argument or ruling does indeed violate that principle.

Chapter 10. The APA as a Source of Procedural Requirements for Agency Rulemaking

Objective for Chapter 10:

- Given a particular federal agency rule and the relevant agency legislation and agency rules, be able to determine whether the federal APA applies to that rule.

Chapter 11. Types of Rulemaking under the APA

Objectives for Chapter 11: Given a particular federal agency rule and the relevant agency legislation, be able to determine whether the rule must be promulgated through informal, formal, or hybrid rulemaking procedures.

Chapter 12. Informal Rulemaking

Objectives for Chapter 12:

- Given a particular federal agency rule that is subject to informal rulemaking, be able to determine whether the rule was promulgated in accordance with § 553(b), as construed by the federal court case law that we study. In particular, be familiar enough with the *Portland Cement* requirement and the “logical outgrowth” rule that you can identify and analyze arguable violations of the requirement and the rule in a particular rulemaking.
- Be able to locate the provision in the Freedom of Information Act (FOIA) that authorizes FOIA requests, and have general familiarity with the use of FOIA requests by lawyers participating in federal agency rulemaking.
- Given a particular federal agency rule that is subject to informal rulemaking, be able to determine whether the rule was promulgated in accordance with § 553 (c) and (d), as those provisions have been construed by the federal courts. In particular, be able to determine whether, and if so how, a particular “back-channel communication” affects the validity of a rule made through informal rulemaking.