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

Course Materials

The materials for this course are:


2. “Handouts,” which will be distributed in class and via BbLearn.

As you may know, there is a study aid for administrative law that I co-wrote with William Funk: Administrative Law: Examples and Explanations (Aspen 5th ed. 2016). I don’t recommend you buy this study aid, for three reasons. (1) It covers subjects we won’t cover in our class. (2) It covers some subjects differently from the way we will cover them in our class. (3) There is a copy on reserve in the law library that you can use for free. If you nonetheless want to buy a copy, I recommend you buy a used copy of the 4th edition.

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**

My office is Room 210C. Room 210C is on the second floor of the law building, down a short hallway the entrance to which is off the main hallway of faculty offices. This small spur lies between the entrance to the Idaho Law Review office and a pair of rest rooms.

My office hours this fall are:

- Tuesdays and Thursdays, 8 – 11 am

These are just the times during the week when I promise to be in the office and available to talk with students (barring unavoidable other commitments, which I will try to announce in advance). Please feel free to come by any other time you like, and, if I am not free to speak with you just then, we can set up an appointment. You may also call me at 208-885-7061; e-mail me at richard@uidaho.edu; or leave a note in the Ziploc bag on the bulletin board outside my office door. I enjoy talking with students!

**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.

I will hand out an attendance sheet that you must sign to prove your attendance. You should keep track of your own absences. If you miss more than three classes, you must: (i) let me know as soon as possible; and (ii) be prepared to explain and document the reasons for all your absences. I reserve the right, if you miss more than three classes, to reduce your course grade. Equally important, if you miss more than three 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 (including the rules set out below about the in-class use of laptops and electronic devices). In addition, “class participation” includes your voluntary contributions to class discussion. In this regard, quality (not quantity) counts. I particularly appreciate a willingness to ask – and to listen to – what may seem to you to be “stupid” or “obvious” questions. To reinforce that listening skill, I regularly base exam questions on questions, comments, or hypotheticals posed by students in class.

I will involve students in class discussion in two main ways. **First**, 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. **Second**, I will call on volunteers. In addition, I may occasionally use panels of “experts” who will be designated in advance to prepare particularly carefully for an upcoming assignment.

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 pass. 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.

Our class will generally meet at its regularly scheduled times. Right now, though, I know of three classes that I need to reschedule because of other commitments: We **DON'T HAVE CLASS ON:**

- Wednesday, October 3, when I'll be traveling to New York with a moot court team (Wish us luck!)
- Friday, October 5, when I'll still be in New York with the team
- Friday, October 12, when I travel to a relative's wedding

We will make up these classes during designated make-up times. I'll announce the make-ups and post them on BbLearn as soon as possible. I'll also give as much advance notice as possible if I need to reschedule any other classes. Because I know make-ups are a challenge, I will record them, and you need not count it as an absence if you must miss a make-up.

**Grades and Course Requirements**

*Overview:* Your grade will be based on (1) a midterm, worth up to 25% of your grade; and (2) a 4-hour final exam, worth at least 75% of your grade. I also reserve the right to take class participation into account, and will provide an opportunity for earning extra credit.

Below are the specific rules for what you can, and cannot, use during the midterm and final exam. 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 it. 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 of exam-room materials.

**Quiz and Exam Room Rules**

A. **GENERAL RULE:** You may bring into the room, for use during the quizzes and final exam, only:

1. the course book, the federal Administrative Procedure Act, and other assigned material;

2. any other 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 bring this material into the exam room 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 bring in material you made yourself or as part of a study group, with no more than minor material from elsewhere outside the class (e.g., a commercial study aid).

**B. RULE ABOUT CUTTING AND PASTING:** The material you bring into the exam room 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
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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, you may not bring, into the exam room, material from prior years, including outlines from prior years, other material prepared by prior students, material that I have distributed to the class in prior years, or material in the law library’s exam archives. You may, however, bring in material from prior years if I distribute it to the entire class in the current year.

Whew! The basic idea behind these rules is to allow you to bring into the exam 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.

Use of Laptop and Other Electronics in Class

Learning suffers when students use computers and other electronic devices during class for anything unrelated to class. Accordingly, I restrict their use in this class. Specifically, you may use laptops during class only to take notes for this class and view websites to which I direct you during class. You will be breaking the rules, and acting unprofessionally, if you use laptops or other electronic devices to read or write email, view websites to which I’ve not directed you, or send text messages. I reserve the right to lower your course grade, and take disciplinary measures, for any of this conduct. I’m a bear about this because I care about your learning.

I strongly encourage you to consider taking handwritten notes instead of using a computer to take notes. Recent studies consistently show that handwriting your notes helps you learn more and remember what you learn better than keyboarding your notes.

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 Dean Dodge 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 Dean Dodge, 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 Dean of Students 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 first list of assignments begins on the next page. The assignment for each class is indicated by a numeral in brackets. We will try to cover one assignment per class. 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. Therefore, if you miss a class, you should find out whether I modified an assignment or handed out anything in 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.

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 read course book pp. 5-31 (up to “C. Limits on Agency Power”). Also be prepared to discuss in class the problems and exercises in those pages. Finally, please print out and bring to class with your name on it the front page from the website of an administrative agency that you want to learn more about. As part of your class participation grade, I’ll ask that you hand this in, and, during the semester, ask you to do more, short assignments about your chosen agency.

[2] Please read course book pp. 32-56 (up to bottom of p. 56). 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.


[4] Please read course book pp. 82-107 (up to "B. When Must State and Local Agencies and Officials Obey Federal Law?"). On the day we begin this assignment, bring to class a piece of paper with your name on it that (a) identifies the organic law that creates your chosen agency and (b) describes how you found this law. If you can't find your agency's organic law, nonetheless describe the research steps that you took.

Agency Rulemaking

[5] Please read course book pp. 107-133 (up to "C. To Make Legislative Rules, an Agency Needs Statutory Power to Make Legislative Rules").


[7] Please read course book pp. 160-186 (up to bottom of p. 186). On the day we begin this assignment, bring to class a piece of paper with your name on it that (a) explains whether your chosen agency has the power to make legislative rules; (2) if so, identifies the statutes granting that power; and (3) describes how you found these statutes. If your agency has no such power, or you can't find it, nonetheless describe the research steps that you took.


[9] Please read course book pp. 214-238 (from "D. Step 2 of Analysis, Continued …" up to "E. Types of Rulemaking Under State APAs").

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 (p. 243)

Objective 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.