

ADMINISTRATIVE LAW
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
FALL 2024 SYLLABUS – LAW 6930– 4 CREDITS

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Office Hours: In office for sure Tues/Wed/Thurs 1:30-3:30 and, after late August, likely in the mornings those days as well, but I don't want legally to promise that in writing at this moment in time. If you need to see me on some other day or time, just let me know and I will make something happen. The electronic office is always open, including weekends, though I will not always respond in real time

CLASS MEETING TIME: Tues/Wed/Thurs 3:30-4:45 PM

CLASSROOM: HH 355-C

COURSE DESCRIPTION AND OBJECTIVES:

This course is a deep study of four key topics in federal administrative law: the role of administrative agencies in the federal constitutional structure, the procedures required for lawful agency action, the standards for judicial review of the substance of agency decisions, and (time permitting) the conditions for availability of judicial review of agency action. The course will also provide a short introduction to the world of statutory interpretation. The focus is on depth rather than breadth, in order to promote *understanding* of the reasons why doctrine looks as it does and to allow students, as future lawyers, to respond accurately and thoughtfully to doctrinal changes in a potentially fluid environment.

STUDENT LEARNING OUTCOMES:

At the end of this course, students should be able to:

- identify relevant legal questions arising in federal agency proceedings,
- apply statutory texts and judicial doctrine to those questions,
- recognize the likely range of legal outcomes in such proceedings,
- have a sense for the forces that shape federal administrative law doctrine, and
- be able to adapt knowledge of current doctrine to changed conditions, at least within a narrow range of plausible future changes in legal frameworks.

REQUIRED READING MATERIALS:

The textbook for this course is Gary Lawson, *Federal Administrative Law* (9th ed. 2022). There is a 72-page supplement that will be available on Canvas. I may also -- publisher permission permitting (since I do not hold the copyright)-- make additional materials from the forthcoming tenth edition of the textbook available on Canvas. That additional material, if it is ever assigned, will not amount to more than a few pages in any given assignment (unless I substitute it for something in the ninth edition or supplement, in which case the volume of reading will be pretty close to a wash). The supplement contains the most important cases and developments from the past three years, so your materials are as current as this business allows.

COURSE EXPECTATIONS AND GRADING EVALUATION:

There will be a four-hour, in-class, open-book exam at the end of the semester. That is the sole grading criterion. There is no class participation component because I do not cold-call students. In the tradition of such luminaries as Oliver Wendell Holmes, Richard Feynman, and Twilight Sparkle, I *lecture* (emphasis in Pony-riginal). As I will explain on Day One, questions and comments are always welcome at any time, but if you rely on the terror of cold-calling to stay attentive – well, may I suggest strong tea or coffee as a next best alternative? In past years, I have experimented with mid-terms, but those experiments have not gone well, so the one-shot final it is.

Given that choice, I will make numerous past exams, and my analysis of and answers to those past exams, available on Canvas. I am willing in principle to make *all* of them available, going back thirty-five years, but looking at more than a few past exams is simply not a productive use of your time, so I will initially put up something around five. That is already more than anyone should reasonably think it necessary to examine. Keep in mind that there have been some *substantial* changes in legal doctrine in recent years, so old “answers” (and old questions) are not necessarily good guides to current law and therefore are not necessarily good guides to future exams. But the old exams at least give a flavor of the *form* of my exams, which is very consistent across time and is not going to change dramatically this year. In addition, at some point in the semester, I will spend about half a class period telling you exactly how I go about writing, reading, and evaluating exams. Because I am new here, I may do that earlier in the semester than I have typically done. In general, I try to be as transparent as possible about exams and exam grading.

OTHER RESOURCES

In addition to the textbook supplement and ridiculous volume of old exams and exam answers that you will find on Canvas, I will also post my class powerpoint slides on Canvas, though sometimes that will happen just minutes before class if I make last-second revisions (which I often do). You *are not* required to read those slides; they are simply there for your convenience, edification, and amusement. I will also put on Canvas a document that I call “FAQs,” which consists of some questions and answers that have arisen over past classes. You *are not* required to read the FAQ document, though I strongly recommend it at some point during the year (maybe reading period?), as it is not a bad study aid. If you tend to panic without a commercial study aid in your hands, Jack Beermann's Emmanuel's and Crunch Time are solid. (Full disclosure: Jack Beermann was my colleague for a quarter century and is a personal friend, but my assessment of his books is purely merit based. They are doctrinally sound.) I honestly doubt whether a commercial study aid will be all that helpful in this course, so I am *not* recommending that you get one, but that is naturally your call. In my humble opinion, class attendance, careful reading, and class notes are going to be *much* more useful in this course than any study aid. Which leads to . . .

CLASS ATTENDANCE AND MAKEUP POLICY:

Attendance in class is required by both the ABA and the Law School. As a result of that requirement, students are allowed two absences during the course of the semester, absent special circumstances. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

ABA OUT-OF-CLASS HOURS REQUIREMENTS:

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. For this course, that amounts to about eight hours per week, corresponding to the slightly less than four hours per week of class time. Much of the reading in this course is pretty dense, so if you are doing it as I will suggest you do it on the first day of class (which will involve integrating the reading with class notes – and trust me that class notes will be crucial in this course), we will all easily meet and beat this requirement, even if you are all fast readers.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS:

This tentative syllabus is offered as a guide to the direction of the course. Actual coverage depends on the pace of the course, my sense of which topics are most salient, and your reactions. But it is a decent guess about which portions of the casebook will get covered (and I can guarantee that significant portions of the casebook *will not* get covered in the available time):

Week One: Introduction to agencies, statutory interpretation, and the rulemaking/adjudication distinction (with a quick glance at procedural due process). LAWSON 1-78 and Supp. 3. *What!!* Eighty pages in the first *week*???? Yes, but calm down, It is not nearly as heavy an assignment as it seems, because you *absolutely should not* try to brief the cases – or even try to understand them, for that matter. I will go over them pretty thoroughly, and you will not need to know their details at this stage. This section of the course is about the big picture; the need to know details will come later. And if history repeats itself, this reading will bleed into the next week as well.

Week Two: The key determinants of administrative law doctrine: Shifting theories of agency behavior, LAWSON 79-84 and Supp. 3-4, and shifting theories of separation of powers. LAWSON 85-105, 335-337. Plus, time permitting (which history suggests is at best 50/50), an introduction to the problem of legislation subdelegation. LAWSON 105-32

Week Three: Legislative subdelegation doctrine and consequences. LAWSON 132-78 (Note: *DO NOT* try to brief or parse pages 132-59 – just gaze at those pages wonderingly and all will be explained in class). Plus, time permitting, an introduction to staffing the administrative state. LAWSON 204-30.

Week Four and likely into Week Five: Staffing and un-staffing the administrative state: Appointment and removal of agency officials. LAWSON 231-313 (and probably including LAWSON 204-30 if I am as far behind in the course at this point as I think I will be).

(What is left of) Week Five: Agency adjudication and the separation of functions. LAWSON 313-17, 338-52 and Supp. 4-19. That reading is one day of class. If I am ahead of my pace (which I do not think has happened in thirty-five years and thus probably will not happen this year), part of the next assignment will move up to this week.

Week Six: Introduction to the Administrative Procedure Act, formal procedures, and the strange saga of sections 556-57. LAWSON 353-394 and Supp. 20.

Week Seven: The even stranger saga of section 553 and informal (and hybrid) rulemaking. LAWSON 400-62 and Supp. 21-22.

Week Eight: Informal adjudication and agency choice of procedural format. LAWSON 511-56 and Supp.23-24. And *maybe* a few words on exemptions from rulemaking procedures. I have a spiel on that topic that I can do without assigning any of the bafflingly incomprehensible cases on pages 462-511, but we'll see.

Week Nine: Introduction to scope of review, judicial review of agency fact-finding, and the pre-history – and possible future – of judicial review of agency legal conclusions. LAWSON 557-74 and Supp. 25-26, LAWSON 575-81, 590-600, then Supp. 26-28 and LAWSON 600-24 and Supp. 28-29..

Week Ten: Judicial review of agency legal conclusions, Supp. 29-68, and agency policy judgments. LAWSON 784-861.

Week Eleven: Judicial review of agency policy judgments continued, LAWSON 861-94, the law-policy-fact divide, LAWSON 901-23, and a re-introduction to procedural due process. LAWSON 925-41 and *skim* 944-66.

Week Twelve: Procedural due process in action. LAWSON 966-84 and Supp. 70-71, LAWSON 985-99, 1010-43.

Week Thirteen: If there is any time left (which I doubt will happen), we will do a whirlwind tour of highlights from Chapter 6, TBD. I categorically promise that nothing from this material, if we in fact cover it, will ever show up on an exam.