Course Description: This course will study law making and law application by executive departments of government. Using the material covered in the first-year “Legislation and Regulation” course as a foundation, this class will cover a variety of topics, including the legal framework (both constitutional and statutory) that governs administrative adjudication; the proper role of agencies in interpreting statutory and regulatory law; public participation in agency rulemaking; and judicial review of agency decisions. The central theme of the course is how the law manages the tension between “rule of law” values (e.g., procedural regularity, accountability, and substantive limits on arbitrary action) and the desire for flexible, effective administrative governance.

There is no casebook for this course. The principal course reading packet is available from the Copy Center. There is also a separate packet, also available from the Copy Center, containing supplemental excerpts from Manning & Stephenson, Legislation and Regulation (Foundation Press 2010).

SYLLABUS

I. Administrative Adjudication

A. Constitutional Issues

(1) Mon., Sept. 12th – Article III: The Right to a Judicial Forum

   pp. 1-59 (Crowell v. Benson, Northern Pipeline, Thomas v. Union Carbide, CFTC v. Schor)

(2) Tues. Sept. 13th – Due Process: The Right to an Administrative Hearing


   pp. 84-110 (Cement Institute, Withrow v. Larkin, Cinderella Career and Finishing Schools, Ass’n of Nat’l Advertisers)
B. APA Regulation of Agency Adjudication

(4) Tues., Sept. 20th – The APA and Adjudicative Neutrality


(5) Mon., Sept. 26th – When Is Formal Adjudication Required?


pp. 151-179 (Office of Communication of United Church of Christ, Envirocare, Seacoast Anti-Pollution League v. Costle, Castillo-Villagra v. INS; Armstrong v. CFTC)


pp. 180-200 (Universal Camera, Allentown Mack Sales and Service)

(8) Tues., Oct. 4th – Using Rulemaking To Resolve Disputed Facts

pp. 201-222 (Air Line Pilots Ass’n v. Quesada, Yetman v. Garvey, Heckler v. Campbell, FCC v. WNCN Listeners Guild)

[NO CLASS MONDAY, OCT. 10th – COLUMBUS DAY]

(9) Tues., Oct. 11th – Adjudicative Consistency and Administrative Precedent

pp. 223-251 (NLRB v. Weingarten, Brennan v. Gilles & Cotting, United Automobile Aerospace & Agricultural Implement Workers, Shaw’s Supermarkets, Fox Television)

(10) Mon., Oct. 17th – Administrative Retroactivity

Manning & Stephenson pp. 643-656 (SEC v. Chenery Corp.), 660-661, 666-672 (Bell Aerospace v. NLRB; NLRB v. Bell Aerospace)

pp. 252-272 (Laidlaw, Retail, Wholesale, and Department Store Union, Int’l Ass’n of Machinists; Bowen v. Georgetown University Hospital, Smiley)
II. Administrative Interpretations of Law

(11) Tues., Oct. 18th – *Chevron* and Interpretive Canons

Manning & Stephenson pp. 814-831 (*Chevron v. NRDC*), 888-900 (*DeBartolo v. Florida Gulf Coast Building & Trades, Rust v. Sullivan*)

(12) Mon., Oct. 24th – *Chevron’s* Domain

pp. 300-309 (*Adams Fruit Co. v. Barrett, Christensen v. Harris County*)
Manning & Stephenson pp. 919-940 (*United States v. Mead Corporation*)

(13) Tues., Oct. 25th – Deference and Interpretive Consistency

pp. 310-327 (*INS v. Cardoza-Fonseca, Neal v. United States, Nat’l Cable & Telecom Ass’n v. Brand X Internet Services*)

(14) Mon. Oct. 31st – Deference and Overlapping Jurisdiction

pp. 328-341 (*Rapaport, Martin v. OSHRC, Collins v. NTSB*)

(15) Tues., Nov. 1st – Agency Interpretation of Agency Regulations


(16) Mon., Nov. 7th – Complex Questions of Agency Legal Interpretation

pp. 361-413 (*Oregon v. Ashcroft, Gonzales v. Oregon*)

III. External Participation in Administrative Decision-Making

(17) Tues., Nov. 8th – Presidential Oversight of Rulemaking

Manning & Stephenson pp. 548-578

(18) Mon., Nov. 14th – Sub-Delegation of Agency Functions

pp. 414-431 (*Batterson v. Francis, Towne Construction Co., USTA v. FCC; Hilario-Paulino v. Pugh*)
(19) Tues., Nov. 15th – Advisory Committees

pp. 432-475 (Public Citizen, Association of American Physicians & Surgeons v. Clinton, In re Cheney)

(20) Mon., Nov. 21st – Freedom of Information


IV. Access to Judicial Review of Administrative Decisions

A. Standing

(21) Tues., Nov. 22nd – Constitutional Standing


(22) Mon., Nov. 28th – Statutory Standing

pp. 564-604 (ADAPSO v. Camp, Copper & Brass Fabricators Council, Clarke, Air Courier, Bennett v. Spear, NCUA)

B. Reviewability

(23) Tues., Nov. 29th – Statutory Preclusion of Review

pp. 605-618 (Abbot Laboratories v. Gardner, Block v. CNI, Bowen v. Michigan Academy of Family Physicians)

(24) Mon., Dec. 5th – Unreviewable Discretionary Acts

pp. 619-641 (Heckler v. Chaney, Webster v. Doe)