

**Administrative Law (LAW 5201)**

TuTh 2:00pm – 3:15pm (LAW 107)

Professor David Thaw

Office: LAW 303

Phone: 412-624-9004

Email: [dbthaw@pitt.edu](mailto:dbthaw@pitt.edu) (you must include "law5201" in the email subject to ensure it gets to me!)<sup>1</sup>

## *Spring 2016 Syllabus*

*Students are responsible for keeping up-to-date with course information distributed via email and TWEN.*

**Office Hours:** W 3:00pm – 4:00pm, Th 1:00pm – 2:00pm

*(If you have an urgent matter to discuss, please contact me in advance of office hours to ensure I can accommodate you.)*

### **Required Texts/Materials:**

The principal reading assignments can be found in the casebook, *Federal Administrative Law*, 6th ed. (Gary Lawson, ed., 2013) (designated below as "CB"). In addition, there will be certain assigned readings outside the casebook – these will be posted on the course TWEN site. Beyond the assigned readings, the syllabus designates important background readings that are not mandatory but will be extremely useful to your deeper understanding of the assigned materials. I may touch briefly on the background readings in class but only as a means of providing you with some broader context.

Regular access to a computer and the public Internet is a course requirement. *Any student who feels they may not have access to adequate computer and/or Internet facilities **MUST** consult with the Professor **no later than** the second class meeting.*

### **Assignments/Grading:**

No specific background is expected beyond completion of first-year Legislation and Regulation. I recommend that students in their first year wait to take Administrative Law. Students will be graded primarily based on their performance on a final examination at the end of the semester. However, class participation may factor into the final grade. Generally this entails movement no more than one +/- letter grade up or down, however in cases of exceptionally poor in-class participation (e.g., failing to be prepared for all "on-call" scenarios) I reserve the right to make more substantial adjustments to grades.

- **Practice Mid-Term:** *There may be a practice mid-term examination. If there is, it will be evaluated solely on a pass/fail basis for each student makes a "good faith effort" to complete the evaluation.*
- **Exam (tentative plan):** The final exam will be an open-book, take home examination. **Under no circumstances will communication with any person regarding any aspect of the exam<sup>2</sup> be allowed during the examination period.**  
*Do not underestimate the difficulty of a take-home exam like this.*

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<sup>1</sup> Spam filters **ARE** a real problem. Do not assume you are "safe" from spam filters. I reserve the right to treat all emails failing to conform to this standard as "not having been sent." (Emails from students failing to reach me due to spam filters **\*has\*** been a problem at every institution at which I have taught.)

<sup>2</sup> Except such communication with the Office of the Registrar permitted under School of Law policy.

- **Class Participation/"Modified" On-Call System:** I will be using a modified on-call system this semester. Under this system, students will have an approximate idea of when they will be on-call, and the specific system will be announced no later than first class after the end of the drop/add period.

Students who are "on-call" should be *extremely well-prepared* to discuss the material *in detail* and respond to questioning from me (or other students) on the matter. I describe the system as "modified" on-call because I expect that all students will be prepared to discuss the material in an intelligent manner. *I will occasionally and without prior notice call on other students in this regard.*

If I call on you and you are obviously unprepared for class, you will remain/become "on-call" for the following class (in addition to your normal "on-call" day(s)). If you are unprepared two (2) times during the course of the semester, your final course grade will automatically be lowered by 2/3 of a letter grade (e.g., A- to B) *in addition to* any other adjustments.

I understand that life does not stop for Administrative Law. If you are unable to adequately prepare for class, you are allowed to "pass" once during the course of the semester.<sup>3</sup> You must give me prior notice of your intent to "pass." Do not wait for me to call on you to inform me that you are unprepared for class.

*No students will be "on-call" the first week of class.*

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<sup>3</sup> As with all things, in the case of a legitimate conflict (e.g., job interview) please notify me in advance and I will work to accommodate your schedule. In the case of an unforeseeable emergency, please notify me (and if appropriate, the Dean's Office) as soon as possible after class so we can discuss appropriate accommodations.

## COURSE POLICIES

I will go over these policies in detail on the first day of class, and will not revisit them over the course of the semester.<sup>4</sup> All students are responsible (at all times) for knowing them thoroughly. The choice not to revisit or remind students of these policies is deliberate – it simulates both work environments and the industry standard in "contracts of adhesion" to which we are all subject on an increasingly wide basis throughout our lives.

With that said, the *primary* purpose of these policies is to make clear what I expect of you – and what *you* may expect of *me*. As with all things, they may require some adaptation on your part; I ask your patience in understanding that over the long-term, clear expectations set a working baseline upon which we can all rely. Also as with all things, we will treat each instance on a case-by-case basis.

### **Email Policy/Contacting Me:**

***When emailing me regarding a class matter, you must include the course number (e.g., "law1234" or "infsci1234", without the quotes) .***

As noted in a footnote above, and repeated here to emphasize its importance – this is to ensure teaching-related emails reach me and are properly prioritized. I have had (numerous) instances of emails not reaching me in the past because of spam filters.<sup>5</sup>

All class-related emails **not** following this policy will be treated as "not sent" for grading purposes, and I reserve the right not to respond to any class-related email not following this policy.

Email is a very useful tool which allows rapid, low-transaction-cost, asynchronous communication. That said, it is important to remember that "inbox bandwidth," much like office hours, is a scarce resource. A professor would be just as overwhelmed by 30 substantive email requests in one afternoon as she would by 10 (let alone 30) students showing up at her office with individual questions at the same time.

Accordingly, the following are my expectations regarding email:

- **All students are expected to check their email regularly (and are accordingly accountable).**
- email is not a substitute for in-person discussion during office hours. If you want further explanation of a general topical area, please come to office hours or make an appointment to meet with me or speak by phone.
- email is an excellent method for asking concise, specific substantive questions, as well as procedural or administrative questions. While these are (of course) welcome for real-time discussion, email may be a more suitable resource.
- **Email response time:** While this is never a "fixed" timeline, students should plan for at least a two-business-day response time. If you have a matter which is urgent, please indicate so in the subject line. For all other matters, please plan your work/studying/etc accordingly.

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<sup>4</sup> Unless changes in the semester or opportunities for improvement dictate, in which case students will be given appropriate notice of any changes.

<sup>5</sup> Students interested in learning more about "good email subject practices" for professional environments are welcome – and encouraged – to chat with me during office hours.

### **Laptops/Other Devices:**

I allow laptops and other electronic devices in class when I teach. I find them to provide students useful opportunities to engage material in discussion, reduce waste paper, and – like many of you – I type far faster than I handwrite. Additionally, there are many advantages to having your class notes in electronic form.

That said, I am *extremely well-aware* of the ways in which laptops/devices can become a distraction in class. As such, I reserve the right – at any time and without notice – temporarily or permanently to ban laptops and/or other devices from the classroom if I find students are abusing this privilege and engaging in non-class related activities and/or otherwise being disruptive.

Students wishing to use multiple devices concurrently should be courteous to the space/needs of others.

The use of audible devices, including but not limited to mobile phones, is strictly prohibited in all circumstances.<sup>6</sup> Students violating this policy may be asked to leave. Students violating this policy *are* subject to "The Donut Rule."

### **Course Attendance:**

In accordance with Law School policy, a student attendance sheet will be distributed at the beginning of each class. As you should by now be aware, it is the responsibility of each student to sign the attendance sheet prior to the end of each class period. Students missing more than 20% of the regularly-scheduled class periods for the semester will be certified out of the course by the academic dean. *The Professor has no discretion in this regard.*

Students missing regularly-scheduled classes due to religious observances will be provided appropriate accommodations upon request. (*Important: Please note the "In-Class Recording Policy" as recordings generally will not be provided for this purpose, which may differ from your other classes.*)

### **Students with Disabilities:**

Students who have disabilities who are requesting accommodation, must (per University policy) contact the University Office of Disability Resources and Services (<http://www.drs.pitt.edu>, 140 William Pitt Union, 412-648-7890) and should also contact the Associate Dean of Students in the Law School (Dean Kevin Deasy; deasy@pitt.edu). Please do so as early as possible in the semester.

DRS is the sole entity responsible for verifying disabilities and determining reasonable accommodations. ***The Professor does not have the authority to make determinations regarding such accommodations.*** The Associate Dean of Students oversees the implementation of accommodations.

(*Please note: due to the anonymous grading policy, under no circumstances should students discuss exam accommodations with professors. If an issue arises, please consult with the Associate Dean of Students regarding how to proceed.*)

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<sup>6</sup> I understand that emergency situations can arise – and have had them arise myself. In the event such a legitimate emergency arises requiring that you have access to a mobile phone or similar device during a specific class period, please speak with me prior to that class period.

### **Make-Up Classes:**

If make-up sessions need to be scheduled, the dates will be announced in advance. It is my policy that make-up classes **are** (audio) recorded so students who have conflicts may have the benefit of those materials. While I generally **do not** otherwise record classes (I will discuss this policy in class), students should be aware and expect that make-up classes are subject to audio recording.

*Please note: a "make-up" class is not the same thing as a "rescheduled" class. Rescheduled classes are subject to the In-Class Recording Policy.*

### **In-Class Recording Policy:**

Regularly-scheduled class sessions will not be recorded (in any form). This is to encourage and foster the open exchange of ideas and the learning process – it is the Professor's experience that "observer bias" strongly discourages participation and inquiry, particularly on the part of those most struggling with a topic.<sup>7</sup>

This policy does not apply to make-up sessions or other special class sessions, and these may be recorded upon request of students and/or at the discretion of the Professor. Students wishing to make their own recordings, however, must still obtain the prior written permission of the Professor.

Any student found using an unauthorized recording device will have that device confiscated and will be referred to appropriate University for disciplinary investigation. Class meetings are **not** "Public Meetings." **For the purposes of clarity, consent is not given for audio recording.**

*Students are always free to take still images (pictures) of materials on the board (at the end of class). If materials need to be erased during class, time will be provided for pictures.*

### **"The Donut Rule":**

*(generally this applies to violations of the "audible devices" policy<sup>8</sup>)*

Students violating any course policy are subject to a request that they "make whole" their fellow students by bringing donuts for their fellow students to the next class. This request is self-enforced by students and does not affect grading in any way. A student or students observing a violation may choose to initiate an Enforcement Action against the offender, oral argument for which will be heard after class by an Administrative Law Judge (the Professor, in most instances). The ALJ will make a recommendation to the class as a whole, which is responsible for choosing whether and how to implement that recommendation. *Students may not find regulatory liability if the ALJ finds it absent, nor may they implement a penalty higher than that recommended by the ALJ.*

**Under no circumstances may any student be "compelled" to any sanction under this Rule.**

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<sup>7</sup> Empirical evidence in the fields of Psychology and Sociology generally support this proposition, and students interested in the observation bias phenomenon are free and encouraged to discuss it with the Professor during office hours.

<sup>8</sup> To-date, the only known "other" application of The Donut Rule was to the Professor. Students are invited to attempt to determine the details of the application (perhaps obviously, it wasn't an audible device), but – also perhaps obviously – the Professor will only confirm or deny whether a guess is correct.

## Thoughts on Administrative Law as a Law School Course:

*Why do we care about administrative law? The quickest answer is that in a big, complex bureaucratic nation like ours, all law (including criminal law) eventually involves administrative decisionmaking, and virtually all rights have to be secured in whole or in part through the administrative process. ... [V]irtually every critical government decision that affects our lives – the air we breathe, the water we drink, the bills for our latest hospital stay, the health or safety of our workplaces, the parklands we recreate in, the price of gas – comes out of the administrative process.*  
– Hon. Patricia M. Wald, D.C. Circuit (1997)

*You can't understand the whole until you understand the parts. But you can't understand the parts until you understand the whole.*  
– the “Catch-22” of Administrative Law

Professor Peter Lindseth (University of Connecticut) provides an excellent introduction to Administrative Law, which I have excerpted here. As he describes below, the topics we will cover address how most individuals *actually interact* with the law. While many people in the United States are likely familiar with the concept of “trials,” comparatively few will ever take part in one. By contrast, nearly every U.S. citizen has interacted with Administrative Law. As Professor Lindseth describes:

The administrative process is where “the rubber meets the road” in the modern state. By this I mean it is the principal point of contact between the vast and complex system of regulatory actors and the social interests affected by governmental regulation. Out of the interaction of these actors and interests emerge, as Judge Wald says, “virtually every critical government decision that affects our lives.” Statutes passed by Congress and signed by the President initiate the process, of course. But from an administrative perspective, this sort of enabling legislation is merely the opening gambit in a complex legal and political negotiation over the form and substance of regulatory norms in which regulatory agencies, regulated interests and, to a lesser extent, regulatory beneficiaries play the major roles. The core of administrative law relates to the procedures governing this legal and political negotiation – what we call the “administrative process” – whether in the form of administrative rulemaking or adjudication.

But administrative law is not only about administrative procedure. Once we recognize that administrative appointees and not elected officials are primarily responsible for giving content to the regulatory norms that affect our lives, what does this say about the nature of modern democracy? What should be the role of Congress or the President, as the constitutionally-designated democratic representatives of the “people” as a whole, in overseeing or controlling administrative norm-production? Moreover, what should be the role of the courts in preserving the democratic connection between the elected representatives of the people and administrative decisionmakers? We should care about administrative law not simply because a large number of rules and regulations come out of the administrative process (as Judge Wald emphasizes in the quotation above) but also because the subject focuses our attention on the complex nature of democracy and separation of powers in the modern American state. But, again, administrative law is not only about these democratic and separation-of-powers concerns, no matter how momentous they may be. Administrative law also focuses our attention on a different set of critically important constitutional issues concerning the rights of *individuals* in the face of powerful bureaucracies carrying out their democratic mandates. The Due Process Clause states that the government may not deprive a person of liberty or property without due process of law. In the modern regulatory state, what sorts of interests trigger this due process obligation? For example, do welfare benefits? Are they “property” within the meaning of the Due Process Clause? And if so, how much and what type of process is “due” prior to their deprivation? These are questions that we address in this course as well.

## COURSE SCHEDULE

*This schedule is subject to change. Based on my experience, it is likely to change (slightly) in response to student needs. Students will be advised of changes (usually spending a little extra time on more challenging topics).*

**Thursday, January 7** – no class – rescheduled date to be announced

### **Jan 12 (Tue)**

1. Course Introduction, Administrivia, On-Call Assignments, etc. (***Read Syllabus***)

### **Jan 14 (Thurs)**

2. Introduction to Administrative Law
  - 2.1. The Idiosyncracies of Administrative Law as a Law School Course ("How to Learn Administrative Law") (**Handouts**)
  - 2.2. Agencies
    - 2.2.1. What is an "Agency"? (**CB 1-5**)
    - 2.2.2. Constitutional Authority for Agencies (**CB 5-6**)
    - 2.2.3. Basic Structure of Federal Agencies (**CB 6-9**)
    - 2.2.4. Basic Introduction to the Administrative Procedure Act (**CB 256-257**)
  - 2.3. Basic Agency Functions – Binding (Rulemaking/Adjudication) and Nonbinding Action
    - 2.3.1. Nonbinding Agency Action (**CB 10-11**)
    - 2.3.2. Basic Overview of Rulemaking and Adjudication (**CB 11-14**)

### **Jan 19 (Tue)**

*University Distinguished Lecture by Lt. Gen. Robert E. Schmidle, USMC  
Principal Deputy Director, Cost Assessment and Performance Evaluation  
United States Department of Defense  
(and former Deputy Commander, United States Cyber Command)*

1:45pm,\*\* Location TBA (tentatively scheduled for 2500 Posvar Hall, however this may be subject to change. I will announce in advance any changes.)

\*\* I am aware some students may have conflicts precluding your arrival until 2:00pm. You are strongly encouraged to arrive by 1:45pm (LtGen Schmidle is an excellent speaker!) but if you cannot make it until 2:00pm, please let me know in advance and I will work with you to make appropriate arrangements. Provided you contact me in advance, your class grade will in no way be affected by your inability to make a 1:45pm start time.

### **Jan 21 (Thurs)**

- 2.4. Understanding the Difference Between Rulemaking and Adjudication
  - 2.4.1. *Londoner v. City and County of Denver* (CB 14-20)
  - 2.4.2. *Bi-Metallic Investment Co. v. State Bd. of Equalization of Colorado* (CB 20-22)
  - 2.4.3. Basic Definitions (CB 22-23)
  - 2.4.4. "This is Hard!" – *Lincoln v. Vigil* (CB 23)
  - 2.4.5. *Yesler v. Cisneros* (CB 23-29)
  - 2.4.6. *Assoc. of Irrigated Residents v. EPA* (CB 29-34)

### **Jan 26 (Tue)**

3. Sources of Agency Power – Congressional and Presidential Delegation Under the Constitution
  - 3.1. Interpreting the Constitution – Formalist vs. Functionalist Approaches
    - 3.1.1. Basic Theory of Separation of Powers (CB 41-48)
    - 3.1.2. Separation of Powers in the Industrial Era/Growing Societal Complexity (CB 48-50)
    - 3.1.3. Separation of Powers in a Complex Society – Formalism vs. Functionalism (CB 50-56)

### **Jan 28 (Thurs)**

- 3.1.4. Formalism vs. Functionalism – Disagreement in the U.S. Supreme Court (CB 56-59)
- 3.1.5. *INS v. Chadha* (Separation of Powers – An Admin Law Example) (CB 115-124)
- 3.2. Limits on Delegation of Congressional Power ("Nondelegation Doctrine")
  - 3.2.1. Historical Nondelegation Doctrine
    - 3.2.1.1. *J.W. Hampton, Jr. & Co. v. United States* (CB 65-66)
    - 3.2.1.2. *Panama Refining Co. v. Ryan* (CB 66-69)
    - 3.2.1.3. *A.L.A. Schechter Poultry Corp. v. United States* (CB 69-74)

### **Feb 2 (Tue)**

- 3.2.2. Modern Nondelegation Doctrine – *United States v. Mistretta* (CB 75-85)
- 3.2.3. Are There Any Limits Under the Modern Doctrine? – *Industrial Union Dep't, AFL-CIO v. American Petroleum Inst.* (the "Benzene" case) (CB 86-107)
- 3.2.4. Possible Nondelegation Challenges – *collected case excerpts* (CB 108-114)

### **Feb 4 (Thurs)**

4. General Constitutional Constraints on Agency Action
  - 4.1. Procedural Due Process
    - 4.1.1. Introduction (CB 802-807)
    - 4.1.2. What Interests Trigger Due Process? ("Life, Liberty, Property")



- 4.1.2.1. *Board of Regents of State Colleges v. Roth* (CB 846-854)
- 4.1.2.2. *Perry v. Sinderman* (CB 854-859)
- 4.1.3. How Much Process is Due?
  - 4.1.3.1. *Cleveland Board of Education v. Loudermill* (CB 912-922)
  - 4.1.3.2. *Gilbert v. Homar* (CB 923-929)
  - 4.1.3.3. Further Thoughts on Post-Deprivation Hearings (CB 929-936)

### **Feb 9 (Tue)**

- 4.1.4. The (Quasi-)Modern Split – What Protections Remain?
  - 4.1.4.1. *Goldberg v. Kelly* (CB 833-842)
  - 4.1.4.2. *Mathews v. Eldridge* (CB 900-912)
- 4.2. Separation of Powers
  - 4.2.1. Introduction (CB 243-244)
  - 4.2.2. *Withrow v. Larkin* (CB 244-250)

### **Feb 11 (Thurs)**

- 4.2.3. *Commodity Futures Trading Comm'n v. Schor* (CB 221-227)
- 4.2.4. *Stern v. Marshall* (CB 227-238)
- 4.2.5. Separation of Functions and Problems of Bias (CB 250-255)

### **Feb 16 (Tues)**

- 5. Agency Action ("What can they do with this delegated power?")
  - 5.1. The Administrative Procedure Act (APA)
    - 5.1.1. Introduction to the APA (CB 256-257, re-read)
    - 5.1.2. Structure of the APA (CB 259-263, handouts)
  - 5.2. Formal Rulemaking
    - 5.2.1. Introduction (CB 263-264)
    - 5.2.2. Background of *Florida East Coast Ry.* (CB 264-274)
    - 5.2.3. *United States v. Florida East Coast Ry.* (CB 274-284)

### **Feb 18 (Thurs)**

- 5.3. Informal Rulemaking
  - 5.3.1. Introduction (CB 306-307)
  - 5.3.2. *Vermont Yankee Nuclear Power Corp. v. NRDC* (CB 321-332)
  - 5.3.3. *Connecticut Light & Power Co. v. NRC* (CB 332-344)

### **Feb 23 (Tue)**

- 5.3.4. Notice of Proposed Rulemaking (CB 344-345)
  - 5.3.4.1. *American Radio Relay League v. FCC* (CB 345-359)
- 5.3.5. Statement of Basis and Purpose (359-362)

- 5.4. Exceptions to Procedural (Rulemaking) Requirements
  - 5.4.1. Procedural Rules (**CB 366-367**)
    - 5.4.1.1. *Air Transport Ass'n of America v. Dep't of Transportation* (**CB 367-375**)
  - 5.4.2. Interpretive Rules and Policy Statements (**CB 375-378**)
    - 5.4.2.1. *U.S. Telephone Ass'n v. FCC* (**CB 378-381**)
    - 5.4.2.2. *Professionals & Patients for Customized Care v. Shalala* (**CB 381-390**)
  - 5.4.3. (For) "Good Cause" (**CB 403-405**)
    - 5.4.3.1. *U.S. v. Dean* (**CB 405-413**)

### **Feb 25 (Thurs)**

- 5.5. Informal Adjudication
  - 5.5.1. Introduction (**CB 413-414**)
  - 5.5.2. *Citizens to Preserve Overton Park v. Volpe* (**CB 414-420**)
  - 5.5.3. *Pension Benefit Guarantee Corp. v. LTV* (**CB 420-426**)
- 5.6. Formal Adjudication
  - 5.6.1. Introduction (**CB 288-289**)
  - 5.6.2. *City of West Chicago, Illinois. v. NRC* (**CB 289-295**)
  - 5.6.3. *Seacoast Anti-Pollution League v. Costle* (**CB 295-300**)

### **Mar 1 (Tues)**

- 5.6.4. *Chemical Waste Mgm't, Inc. v. U.S. EPA* (**CB 300-306**)
- 5.7. Choosing Between Rulemaking and Adjudication
  - 5.7.1. The Strange Saga of *Chenery* (collected actions/cases) (**CB 426-457**)

### **Mar 3 (Thurs)**

- 6. Agency Supervision
  - 6.1. What is Agency Supervision? (**lecture**)
  - 6.2. Appointment
    - 6.2.1. Introduction (**CB 140-144**)
    - 6.2.2. *Buckley v. Valeo* (**CB 144-152**)
    - 6.2.3. *Morrison v. Olson* (**CB 159-178**)

\*\* Saturday, March 5 – Sunday, March 13 – Spring Recess (No Classes)

### **Mar 15 (Tue)**

- 6.3. Removal
  - 6.3.1. Introduction (**CB 178-190**)
  - 6.3.2. *Myers v. United States* (**CB 180-184**)
  - 6.3.3. *Humphrey's Executor v. United States* (**CB 184-188**)
  - 6.3.4. *Morrison v. Olson* (**CB 190-200**)

- 6.3.5. *Free Enterprise Fund v. Public Company Accounting Oversight Board* (CB 200-216)

**Mar 17 (Thurs)**

- 6.4. Congressional Oversight, Appropriations, and the Legislative Veto
- 6.4.1. Introduction – Congressional Oversight of Agencies (CB 114-115, 126-131)
- 6.4.2. *INS v. Chadha* (re-read, CB 115-124)
- 6.4.3. *Clinton v. City of New York* (re-read, CB 109-110)

**Mar 22 (Tues)**

7. Judicial Review of Agency Action (Agency Supervision by the Courts)
- 7.1. Judicial Review of Agency Legal Conclusions
- 7.1.1. Introduction (CB 457-464)
- 7.1.2. *Chevron v. National Resources Defense Council, Inc.* (CB 532-541)
- 7.1.3. *Skidmore v. Swift & Co.* – (i.e., "When *Chevron* does not apply") (CB 527-532)
- 7.1.4. So When Does *Chevron* Apply? (CB 551-553)
- 7.1.4.1. *United States v. Mead* (CB 575-592)
- 7.1.4.2. *Gonzales v. Oregon* (CB 592-608)
- 7.1.4.3. *Christopher v. SmithKlineBeecham Corp.* (CB 553-565)

**Thursday, March 24** – no class – rescheduled date to be announced

**Mar 29 (Tue)**

- 7.1.5. *Chevron* Step 1: How Clear is "Clear"? (CB 608-610)
- 7.1.5.1. *FDA v. Brown & Williamson Tobacco Corp.* (CB 641-657)
- 7.1.5.2. *Zuni Public School Dist. No. 89 v. Dep't of Education* (CB 610-628)
- 7.1.5.3. *Sierra Club v. EPA* (CB 657-665)
- 7.1.6. *Chevron* Step 2: How Reasonable is "Reasonable"? (CB 665-669)
- 7.1.6.1. *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.* (CB 669-676)

**Mar 31 (Thurs)**

- 7.2. Judicial Review of Agency Factual Conclusions
- 7.2.1. Judicial Review of Formal Proceedings ("Substantial Evidence") (CB 464-465)
- 7.2.2. *Universal Camera Corp. v. NLRB* (CB 465-476)
- 7.2.3. *Kimm v. Dep't of the Treasury* (CB 476-482)
- 7.2.4. Judicial Review of Informal Proceedings ("Arbitrary & Capricious") (CB 492-493)
- 7.2.5. *Ass'n of Data Processing Serv. Orgs., Inc. v. Bd. of Governors of the Federal Reserve System* (CB 493-501)

### **Apr 5 (Tue)**

- 7.3. Judicial Review of Agency Policymaking Discretion
  - 7.3.1. Introduction (**CB 695-706**)
  - 7.3.2. *Motor Vehicle Manufacturers Ass'n v. State Farm* (**CB 715-726**)
  - 7.3.3. *Massachusetts v. EPA* (**CB 734-743**)
  - 7.3.4. *Judulang v. Holder* (**CB 743-752**)

### **Apr 7 (Thurs)**

- 8. Availability of Judicial Review (Justiciability)
  - 8.1. Introduction (**CB 936-937**)
  - 8.2. Preclusion ("Whether")
    - 8.2.1. Introduction (**CB 955**)
    - 8.2.2. Express Preclusion (**CB 955-960**)
    - 8.2.3. Implied Preclusion (**CB 960**)
      - 8.2.3.1. *Block v. Community Nutrition Inst.* (**CB 960-965**)
    - 8.2.4. "Committed to Agency Discretion by Law" (**972-974**)
      - 8.2.4.1. *Webster v. Doe* (**CB 974-984**)
    - 8.2.5. Political Questions (**lecture**)
      - 8.2.5.1. *Baker v. Carr* (**lecture/handout, TBD**)
  - 8.3. Standing ("Whom")
    - 8.3.1. Introduction (**CB 989-990**)
    - 8.3.2. *Allen v. Wright* (**lecture/handout, TBD**)
    - 8.3.3. *United States v. Richardson* (**lecture/handout, TBD**)

### **Apr 12 (Tue)**

- 8.4. Timing – Exhaustion/Finality/Ripeness/Mootness ("When")
  - 8.4.1. Introduction – Exhaustion (**CB 1053-1055**)
    - 8.4.1.1. *Darby v. Cisneros* (**CB 1063-1069**)
  - 8.4.2. Introduction – Finality (**CB 1069-1070**)
    - 8.4.2.1. *FTC v. Standard Oil Co.* (**CB 1070-1076**)
  - 8.4.3. Introduction – Ripeness (**CB 1086-1087**)
    - 8.4.3.1. *Abbott Laboratories v. Gardner* (**CB 1087-1091**)
  - 8.4.4. Introduction – Mootness (**lecture**)
    - 8.4.4.1. Case Excerpts (**lecture**)
    - 8.4.4.2. *Friends of the Earth v. Laidlaw* (**CB 1005-1010**)

**Apr 14 (Thurs)** – *unassigned (see below)*

**Apr 19 (Tue)** – (In-Class) Review Session

**Rescheduled Class** – "Special Topics" Day – date TBA

*As mentioned before, in the Professor's experience it is highly likely that the schedule will change based on student needs. Usually this means dedicating additional time to more complex concepts.*

*For this reason, the remaining unassigned class sessions are intended to provide extra time to accommodate such changes.*