EMPA 733:
ADMINISTRATIVE LAW

Instructor: Lynita Newswander, PhD
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Email: Lynita.Newswander@usd.edu

Required Text:


Additional readings will be posted on D2L

Course Description:

John Locke once stated that rules are “not to be varied in particular cases, but to have one rule for rich and poor.” Fairness, standardization, and equity are all by-products of living under a system of laws. Due to the rise of the administrative state since the early 20th century, Congress has delegated rulemaking and adjudicative authority to agencies in order to make government operate in a more effective and responsive manner. The ability to make rules and issues orders puts administrators in a very powerful, but precarious situation. With this delegation of legislative and judicial power, issues related to the role of discretion in the civil service and the role of law in administration come into focus. This grant of power to a body of diverse administrators raises the questions of whether it is preferable for them to act more like judges and legislators than executive managers, is it better to manage by a code laws rather than managers, and what is the proper role of public administration in a Constitutional framework that divides and separates power. In the midst of this legal context, administrators are expected to be not only effective, but behave in a manner that fits Constitutional norms. This class deals with these fundamental issues of how administrators create rules that are binding, how they pass down quasi-judicial orders, how they manage in a context of rules and red-tape, and how they are monitored by both Congress and the courts.
Goals:

The purpose of the class is based around understanding and assessing the core functions of administrative law. This is a list of narrow learning objectives that we will concentrate on throughout the semester:

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demonstrate a background in constitutional law and schools of jurisprudence in order to be able to analyze and appraise how the law is formulated and interpreted</td>
<td>Engagement Activity</td>
</tr>
<tr>
<td></td>
<td>Exams</td>
</tr>
<tr>
<td>Examine and evaluate how the administrative theory of Rosenbloom connect not only to administrative law, but to public administration theory and practice</td>
<td>Engagement Activity</td>
</tr>
<tr>
<td></td>
<td>Exams</td>
</tr>
<tr>
<td>Assess how administrators operate in a constitutional order that divides and separates power</td>
<td>Exams</td>
</tr>
<tr>
<td>Be able to illustrate and analyze how administrative agencies authorize their decisions in relation to making rules and issuing orders</td>
<td>Engagement Activity</td>
</tr>
<tr>
<td></td>
<td>Exams</td>
</tr>
<tr>
<td>Be able to distinguish between rulemaking, adjudication, and judicial review in order to evaluate how administrators are checked and balanced</td>
<td>Engagement Activity</td>
</tr>
<tr>
<td></td>
<td>Exams</td>
</tr>
<tr>
<td>Be able to specialize in one area of administrative law</td>
<td>Reaction Paper</td>
</tr>
<tr>
<td></td>
<td>Final Paper</td>
</tr>
</tbody>
</table>

Methods of Assessment:

**Engagement Activities**

You will be placed in groups of five to seven students, which will serve as a forum for group discussion. In this small setting, it is required that students make two substantive comments (or more if you chose) concerning that week’s readings. The first comment must be posted by midnight on Friday of each week. The second comment must be made between Saturday and Sunday. A failure to post on time will result in an automatic 2 point deduction. This means that you post once before Friday night and another time between Saturday and Sunday. Each group will have a discussion board and the instructor will provide questions on a weekly basis to help facilitate discussion and debate. Comments need to be well-thought out. When you agree or disagree with certain points, you must provide substantial reasons; merely saying “I agree” or “I disagree” is not enough. Comments should be at least a paragraph long. The purpose of these groups is to go back-and-forth with other students in order to facilitate the learning process. And remember, please be civil, even in disagreement. Entries for each week are worth a total of 4 points. You will be graded on your interaction with other students and the instructors’ questions and the thoroughness of your responses. In addition, a failure to post for four weeks or eight times will result in failing the class.
In your engagement activities (and for all written communication in this class), please follow the USD’s General Netiquette guidelines found in the CE Online Orientation: http://www.usd.edu/-/media/files/usd-online/online-orientation-guide.ashx?la=en. It is expected that students will write in a formal tone, use complete sentences, and check your spelling.

<table>
<thead>
<tr>
<th>Comments are substantive</th>
<th>2 points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comments respond to instructor and/or peer feedback</td>
<td>2 points</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4 Points</strong></td>
</tr>
</tbody>
</table>

**Reaction Paper**

This two to three page double-spaced paper should examine one particular court case that examines rulemaking, adjudication, judicial review, discretion, or personnel. The selection of the case should revolve around your final paper topic. In writing this paper, you should briefly summarize the majority and dissenting opinions and then focus on analyzing, criticizing, and providing reasons for why you support or reject the court’s argument. The case must not be one we have read in class. **If a student submits a reaction paper with a case we have read or will read, the paper will receive an incomplete.** The student will be given two days to redo the assignment after being notified by email. After this time, the work will be considered late (see late work policy below). Furthermore, I will upload a recommended reading list that will help you find a particular court case after the first test.

**Furthermore, you will also need to include a brief proposal for your final paper** (2 to 3 sentences).

The purpose of this assignment is to help you gain a deeper knowledge of certain areas in administrative law and help you choose a topic for your final paper. Please upload your reaction paper and proposal to the dropbox.

**Research Paper**

Write a 10-12 page double-space paper (title page, abstract, and works cited do not count toward your page limit) that develops a concept from administrative law like informal rulemaking, participation, the hard look doctrine, privacy rights, process, etc. Make sure you do the research and provide an in-depth analysis of your particular area that goes beyond class readings and material. This paper is designed to help you develop your research skills and gain mastery over an administrative area. When you are finished, upload your paper to the dropbox. Also, please see the writing guideline section below for additional requirements. In particular, APA formatting is required. Each paper should be written with 12 Font, Times New Roman, and one inch margins.

**Exams**

There will be two written exams given throughout the course of this class. These are take home exams, and therefore you did not need to find a proctor. The content will be based
on class readings, engagement questions, and overall class discussions. The instructor
will provide you a range of questions to answer. You must answer three of the questions
from the list. Neither exam should exceed 2,000 words; 1,850 is good norm. However,
don’t worry if you are over by a few words. Upload your exam to the dropbox in D2L.
Also, please see the writing guideline section below.

**PhD Students**
If you are a PhD student, please directly email me at the start of the semester. Your
expectations for the class will be slightly different.

**Writing Guidelines (this applies to all writing assignments)**

<table>
<thead>
<tr>
<th>Grade</th>
<th>Assessment</th>
</tr>
</thead>
</table>
| 90-100    | Strong introduction with a clear and compelling thesis  
Body of the paper provides strong arguments and evidence that strengthens the thesis/argument  
A conclusion that rationally connects your evidence with your argument  
Arguments strongly backed up by citing academic works (works cited page is required and done properly)  
APA formatting is required  
12 Font, Times New Roman, One Inch margins, Name on Paper, Saved as a Word Document  
Explains concepts in a thorough manner  
Fits the word or page requirements (title page, optional abstracts, and works cited page do not count as part of word counts or the required page length for assignments)  
Few grammatical errors |
| 80-90     | Good introduction with a clear thesis  
Body of the paper provides solid arguments and evidence that strengthens the thesis/argument  
Conclusion that connects your evidence and your argument  
Arguments backed up by citing academic works (works cited page is required)  
Explains concepts in a decent manner  
Issues with grammatical errors |
| 79 and below | Weak introduction with a confusing thesis  
Body of the paper provides few arguments and evidence that strengthens the thesis/argument  
Conclusion that that does not connect your evidence with your argument  
Does not use APA formatting  
Does not use 12 Font, Times New Roman, One Inch margins  
Does not put name on paper, and does not save as a Word Document |
Regurgitated & Original Work
The research paper and tests are checked by a plagiarism software called Turnitin. Regurgitated work or written material done for another class will not be accepted. Furthermore, any paper that has a Turnitin Similarity percentage of 35% or higher will not be looked at and be considered incomplete. If a student does have a 35% or higher percentage, then he or she will be need to resubmit the paper until it falls beneath this threshold for it be graded (the late policy is still in effect while a student rewrites his or her paper to fall under the 35% standard). Furthermore, just because a score is beneath 35% does not mean that a student has avoided plagiarism. Please cite properly, quote material taken from another source, etc. Finally, look at the academic integrity section below about penalties and process associated with plagiarism.

Late Work
Apart from the engagement activities (please look above to the see late policy for engagement activities), late work will be docked 5% for the first day it is late, 10% for being late on the third day, and 15% for being late on the fifth day. Work submitted after five days will need instructor approval and will have additional deductions and obligations.

Due Dates*

<table>
<thead>
<tr>
<th>Assignment</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reaction Paper</td>
<td>April 1</td>
</tr>
<tr>
<td>Research Paper</td>
<td>April 22</td>
</tr>
<tr>
<td>Exam #1</td>
<td>Uploaded on Feb 26 and due on March 4</td>
</tr>
<tr>
<td>Exam #2</td>
<td>Uploaded on April 23 and due on April 30</td>
</tr>
</tbody>
</table>

*All assignments, including engagement activity comments, are due on or before midnight of their respective dates based on CST. Assignments will be graded and returned within two weeks of their respective due dates. Grades and comments will be uploaded to D2L in the dropbox.

Evaluation

<table>
<thead>
<tr>
<th>Assignment</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engagement Activities</td>
<td>Approximately 44 points</td>
</tr>
<tr>
<td>Reaction Paper</td>
<td>10 points</td>
</tr>
<tr>
<td>Research Paper</td>
<td>100 points</td>
</tr>
<tr>
<td>Exam #1</td>
<td>100 points</td>
</tr>
<tr>
<td>Exam #2</td>
<td>100 points</td>
</tr>
</tbody>
</table>
**Grade Allocation**

Points and percentages are allocated based on a letter grade, except for the engagement activities, which is simply a four-point scale. Here is a conversation table:

<table>
<thead>
<tr>
<th>Grade</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>A+</td>
<td>100</td>
</tr>
<tr>
<td>B+</td>
<td>88</td>
</tr>
<tr>
<td>C+</td>
<td>78</td>
</tr>
<tr>
<td>D</td>
<td>65</td>
</tr>
<tr>
<td>A</td>
<td>95</td>
</tr>
<tr>
<td>B</td>
<td>85</td>
</tr>
<tr>
<td>C</td>
<td>75</td>
</tr>
<tr>
<td>F</td>
<td>50</td>
</tr>
<tr>
<td>A−</td>
<td>90</td>
</tr>
<tr>
<td>B−</td>
<td>80</td>
</tr>
<tr>
<td>C−</td>
<td>70</td>
</tr>
<tr>
<td>INC</td>
<td>Contact Professor</td>
</tr>
</tbody>
</table>

**Grading Scale***

- 89.6% and above: A
- 79.6% to 89.5%: B
- 69.6% to 79.5%: C
- 59.6% to 69.5%: D
- 59.5% and below: F

*The professor will not calculate your grade during the semester to project what scores you need in order to get a particular grade. Furthermore, this grading scale is set in stone. For example, this means a final grade of 89.5 or 79.3 will not be rounded up.

**Course Sequencing:**

<table>
<thead>
<tr>
<th>Day</th>
<th>Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tuesday</td>
<td>Start of the academic week; new course readings and listen to weekly lecture</td>
</tr>
<tr>
<td>Wednesday</td>
<td>Office hours</td>
</tr>
<tr>
<td>Thursday</td>
<td></td>
</tr>
<tr>
<td>Friday</td>
<td>Make at least one engagement response on your discussion board by midnight</td>
</tr>
<tr>
<td>Saturday</td>
<td></td>
</tr>
<tr>
<td>Sunday</td>
<td></td>
</tr>
<tr>
<td>Monday</td>
<td>Make second engagement response by midnight; end of academic week</td>
</tr>
</tbody>
</table>

**Expectations:**

**Students**

Students will be expected to understand the course syllabus, follow the course schedule, keep up on the weekly readings, and complete assignments on time. If there is an emergency or conflict with the schedule, students must contact the instructor prior to any scheduling issue. Participation is absolutely necessary, especially in an on-line course and therefore students should be willing to voice their opinions in an appropriate manner.

In addition, students should familiarize themselves with the CE Online Orientation that can be accessed from this link: [http://www.usd.edu/-/media/files/usd-online/online-](http://www.usd.edu/-/media/files/usd-online/online-)
Please take advantage of the technical and student support services that the Division of Continuing Education provides.

**Instructor**
The instructor will be accessible to students through email, office calls, and discussion boards. All phone calls and emails will be replied within 48 hours. The instructor will also provide timely feedback on all examinations and assignments and strive to provide the best educational environment.

**Technology Requirements:**
The University of South Dakota requires that students satisfy certain technology requirements, which can be found in the CE Online Orientation document: [http://www.usd.edu/-/media/files/usd-online/online-orientation-guide.ashx?la=en](http://www.usd.edu/-/media/files/usd-online/online-orientation-guide.ashx?la=en). For this class, students will be expected to need: Office 2010 and Abode Acrobat Reader. Power Point 2010 is critical so you can listen to the lectures.

**Course Modifications:**
I reserve the right to modify this syllabus.

**Course Policies:**

*Academic Integrity*
The College of Arts and Sciences considers plagiarism, cheating, and other forms of academic dishonesty inimical to the objectives of higher education. The College supports the imposition of penalties on students who engage in academic dishonesty, as defined in the “Conduct” section of the University of South Dakota Student Handbook and South Dakota Board of Regents policy 2-33 [www.sdbor.edu/policy/Documents/2-33.pdf](http://www.sdbor.edu/policy/Documents/2-33.pdf).

No credit can be given for a dishonest assignment. A student found to have engaged in any form of academic dishonesty may, at the discretion of the instructor, be:
- Given a zero for that assignment.
- Allowed to rewrite and resubmit the assignment for credit.
- Assigned a reduced grade for the course.
- Dropped from the course.
- Failed in the course.

*Freedom in Learning*
Under Board of Regents and University policy student academic performance may be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards. Students should be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion,
but they are responsible for learning the content of any course of study for which they are enrolled. Students who believe that an academic evaluation reflects prejudiced or capricious consideration of student opinions or conduct unrelated to academic standards should contact the dean of the college or school that offers the class to initiate a review of the evaluation.

**Disability Accommodation**
Any student who feels s/he may need academic accommodations or access accommodations based on the impact of a documented disability should contact and register with Disability Services during the first week of class or as soon as possible after the diagnosis of a disability. Disability Services is the official office to assist students through the process of disability verification and coordination of appropriate and reasonable accommodations. Students currently registered with Disability Services must obtain a new accommodation memo each semester.

Please note: if your home institution is not the University of South Dakota but one of the other South Dakota Board of Regents institutions (e.g., SDSU, SDSMT, BHSU, NSU, DSU), you should work with the disability services coordinator at your home institution.

Ernetta L. Fox, Director
Disability Services, Room 119 Service Center
(605) 677-6389
Web Site: [www.usd.edu/ds](http://www.usd.edu/ds)
E-mail: [disabilityservices@usd.edu](mailto:disabilityservices@usd.edu)

**Diversity and Inclusive Excellence**
The University of South Dakota strives to foster a globally inclusive learning environment where opportunities are provided for diversity to be recognized and respected.
Schedule of Classes

Jan 8  Matters of Interpretation I
Listen to the audio lecture.

Jan 15  Matters of Interpretation II
Listen to the audio lecture.

Jan 22  Administrative Theory: The Role of Administration in a Constitutional Republic
Listen to the audio lecture.
Rosenbloom, Chapter 1: What is Administrative Law?

Jan 29  Judicial Review I
Listen to the audio lecture.
Rosenbloom, Chapter 6: Judicial and Legislative Review of Administrative Action


FCC v. Fox Television Stations (2009)

Feb 5 Judicial Review II

Listen to the audio lecture.


Massachusetts et al v. EPA (2006)

City of Arlington v. FCC (2013)

Feb 12 Administrative Rulemaking

Listen to the audio lecture.

Rosenbloom, Chapter 3: Administrative Rulemaking


Feb 19  Qualified Immunity


Wood v. Strickland, 420 U.S. 308 (1975)


Lane v. Franks et al. (2014)

Feb 26  Exam #1

March 5  SPRING BREAK

March 12  Adjudication—Property I

Listen to the audio lecture.

Rosenbloom, Chapter 4: Evidentiary Adjudication and Enforcement


Mar 19  Adjudication—Property II

Listen to the audio lecture.


Board of Regents v. Roth, 408 U.S. 564 (1972).
Perry v. Sindermann, 408 U.S. 593 (1972)


Mar 26  Adjudication—Life & Liberty

Listen to the audio lecture.

County of Sacramento v. Lewis, 523 U.S. 833 (1998)

Wisconsin v. Constantineau, 400 U.S. 433 (1971)


April 2  Fourth Amendment

Listen to the audio lecture.


Olmstead v. United States, 277 U.S. 438 (1928)


Kyllo v. United States, 533 U.S. 27 (2001)


April 9  Contracting Out

Listen to the audio lecture.

Administration 35(2): 103-121.


Richardson v. McKnight, 521 U.S. 399 (1997).


April 16 Research, Review, & Writing