
Table of Contents

Preface.....	v
Acknowledgments.....	vii
Table of Cases	xix
CHAPTER ONE. INTRODUCTION AND OVERVIEW	1
A. Introduction.....	1
1. Why Another Casebook?.....	1
2. An Overview of Administrative Law	7
3. Course Themes	13
4. What Is an Agency?.....	14
Statutory Interpretation Lessons 1–5	17
B. A Brief History of Administrative Law.....	22
1. Agencies, the Constitution, and the Early Republic	22
2. 1887–1930s.....	28
<i>Woodrow Wilson, The Study of Administration</i>	32
Notes and Questions	37
<i>Frank J. Goodnow, Politics and Administration</i>	40
Notes and Questions	46
3. The New Deal and the APA	47
<i>James Landis, The Administrative Process</i>	49
Notes and Questions	53
4. Consumers, the Environment, and Public Choice	54
5. Modern Developments	56
C. Constitutional Questions	57
<i>Dep’t of Transportation v. Ass’n of American Railroads</i>	57
Notes and Questions	69
<i>Gillian E. Metzger, The Administrative State Under Siege</i>	73
Notes and Questions	77

CHAPTER TWO. RULEMAKING	79
A. Preliminary Matters	79
1. The Rulemaking-Adjudication Distinction	79
2. The Overarching Framework of the APA.....	83
3. Power to Issue Rules	86
<i>National Petroleum Refiners Ass'n v. FTC</i>	87
Notes and Questions	97
Statutory Interpretation Lessons 6–11	99
4. The Use of Rulemaking in Adjudicatory Frameworks.....	103
<i>Heckler v. Campbell</i>	103
Notes and Questions	107
B. Formal Rulemaking	108
<i>United States v. Florida East Coast Ry. Co.</i>	109
Notes and Questions.....	115
Statutory Interpretation Lesson 12.....	117
C. Informal Rulemaking	117
1. Vermont Yankee	119
<i>Vermont Yankee Nuclear Power Corp. v. NRDC</i>	119
Notes and Questions	126
2. Notice Requirement.....	128
<i>Shell Oil Co. v. EPA</i>	128
Notes and Questions	136
3. Opportunity to Comment	138
Problem 2.1	139
4. Concise Statement of Basis and Purpose.....	139
<i>United States v. Nova Scotia Food Products Corp.</i>	140
Notes and Questions	145
5. Disclosing Data.....	146
<i>American Radio Relay League, Inc. v. FCC</i>	147
Notes and Questions	156
6. Ex Parte Communications.....	158
<i>Sierra Club v. Costle</i>	158
Notes and Questions	171
7. Interlude: Freedom of Information Act (FOIA)	172
a. What Are Agency Records?.....	173

Problem 2.2	175
Problem 2.3	175
Problem 2.4	176
b. Exemptions.....	176
Problem 2.5	180
Problem 2.6	180
D. Exemptions from Rulemaking Requirements	181
1. Subject Matter Exemptions	182
2. Good Cause Exemption.....	183
<i>Mack Trucks, Inc. v. EPA</i>	183
Notes and Questions	190
Problem 2.7	192
3. Procedural Rules	193
<i>Air Transp. Ass'n of Am. v. Dep't of Transp.</i>	194
Notes and Questions	198
4. Interpretative Rules.....	199
<i>American Mining Congress v. Mine Safety & Health Administration</i>	200
Notes and Questions	206
5. Policy Statements	211
<i>Pacific Gas & Electric Co. v. Federal Power Commission</i>	212
<i>Community Nutrition Institute v. Young</i>	217
Notes and Questions	221
<i>Texas v. United States</i>	225
Notes and Questions	233
Problem 2.8.....	235
CHAPTER THREE. ADJUDICATION.....	237
A. The Choice of Rulemaking or Adjudication	237
1. The <i>Chenery II</i> Principle	237
<i>SEC v. Chenery Corp. ("Chenery II")</i>	239
Notes and Questions	248
2. The Advantages of Each.....	252
B. Formal Adjudications	255
1. Statutory Overview	255
2. The Prevalence of Formal Adjudications.....	257
3. The Process of Formal Adjudications.....	258

C. Informal Adjudications	265
<i>Citizens to Preserve Overton Park, Inc. v. Volpe</i>	266
Notes and Questions	269
<i>Pensions Benefit Guaranty Corp. v. LTV Corp.</i>	270
Notes and Questions	275
D. The Accardi Principle	277
<i>United States ex rel. Accardi v. Shaugnessy</i>	278
Notes and Questions	281
CHAPTER FOUR. JUDICIAL REVIEW OF AGENCY ACTION	283
A. Judicial Review of Agency Reasoning	284
<i>Motor Vehicle Manufacturers Ass'n of U.S., Inc. v. State Farm Mutual Automobile Insurance Co.</i>	285
Notes and Questions	296
<i>FCC v. Fox Television Stations, Inc.</i>	299
Notes and Questions	311
<i>DHS v. Regents of the University of California</i>	315
Notes and Questions	323
B. Judicial Review of Agency Fact-Finding	324
<i>Universal Camera Corp. v. NLRB</i>	325
Notes and Questions	330
<i>Allentown Mack Sales and Services, Inc. v. NLRB</i>	331
Notes and Questions	340
<i>Ass'n of Data Processing Service Organizations, Inc. v. Board of Governors of the Federal Reserve System</i>	340
Notes and Questions	345
C. Judicial Review of Legal Questions	346
1. From <i>Skidmore</i> to <i>Chevron</i> and <i>Auer</i>	346
<i>Skidmore v. Swift & Co.</i>	347
Notes and Questions	351
<i>Chevron USA, Inc. v. Natural Resources Defense Council, Inc.</i>	353
Notes and Questions	362
<i>Auer v. Robbins</i>	367
Notes and Questions	371
2. The <i>Chevron</i> Two-Step	372
<i>Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs.</i>	373

Notes and Questions	383
<i>Encino Motorcars, LLC v. Navarro</i>	386
Notes and Questions	391
<i>FDA v. Brown & Williamson Tobacco Corp.</i>	392
Statutory Interpretation Lessons 13–16	405
Notes and Questions	406
<i>Massachusetts v. EPA</i>	410
Notes and Questions	426
Statutory Interpretation Lesson 17	428
3. <i>Chevron</i> Step Zero	429
<i>Christensen v. Harris County</i>	429
Notes and Questions	436
<i>United States v. Mead Corp.</i>	438
Notes and Questions	448
<i>City of Arlington, Tex. v. FCC</i>	449
Notes and Questions	458
4. Debating Deference	460
<i>Kisor v. Wilkie</i>	460
Notes and Questions	476
<i>Ilan Wurman, The Specification Power</i>	478
<i>Cass R. Sunstein, Beyond Marbury: The Executive’s Power to Say What the Law Is</i>	485
D. Judicial Review of Agency Discretion and Inaction	489
<i>Webster v. Doe</i>	491
Notes and Questions	504
<i>Heckler v. Chaney</i>	507
Notes and Questions	514
CHAPTER FIVE. LEGISLATIVE POWER AND NONDELEGATION	515
A. Nondelegation: The Early Cases and History	517
B. The Modern Doctrine	526
<i>Panama Refining Co. v. Ryan</i>	526
<i>A.L.A. Schechter Poultry Corp. v. United States</i>	536
Notes and Questions	544
<i>Yakus v. United States</i>	545
Notes and Questions	551

<i>Mistretta v. United States</i>	555
Notes and Questions	566
<i>Whitman v. American Trucking Ass'ns</i>	567
Notes and Questions	573
<i>Gundy v. United States</i>	575
Notes and Questions	593
C. Debating Delegation	595
<i>David Schoenbrod, Power Without Responsibility</i>	595
<i>Jerry L. Mashaw, Greed, Chaos, and Governance</i>	599
<i>Peter H. Schuck, Delegation and Democracy</i>	603
<i>Joseph Postell, Bureaucracy in America</i>	607
D. Delegation and the Separation of Powers	612
<i>INS v. Chadha</i>	612
Notes and Questions	630
<i>Bowsher v. Synar</i>	631
Notes and Questions	641
CHAPTER SIX. THE PRESIDENT AND THE ADMINISTRATION	643
A. Appointments	643
1. Who Is an Officer?	645
<i>Lucia v. SEC</i>	645
Notes and Questions	652
2. Principal or Inferior?.....	653
<i>Morrison v. Olson</i>	653
<i>Edmond v. United States</i>	661
Notes and Questions	665
B. Removals	666
1. “The Executive Power”: 1789–1935.....	666
<i>Myers v. United States</i>	668
Notes and Questions	698
2. The Functionalist Approach: 1935–2010	706
<i>Humphrey's Executor v. United States</i>	707
Notes and Questions	713
<i>Morrison v. Olson</i>	715
Notes and Questions	729

3.	The Return of Formalism?	730
	<i>Free Enterprise Fund v. PCAOB</i>	730
	Notes and Questions	745
	<i>Seila Law v. Consumer Financial Protection Bureau</i>	745
	Notes and Questions	769
C.	Presidential Control of Agencies and Officers	772
	<i>Elena Kagan, Presidential Administration</i>	773
	Notes and Questions	782
	<i>Executive Order 12,866</i>	783
	Notes and Questions	791
D.	Debating Presidential Control	791
	<i>Alexander Hamilton, The Federalist No. 70</i>	792
	<i>Martin S. Flaherty, The Most Dangerous Branch</i>	795
	<i>Peter L. Strauss, The Place of Agencies in Government</i>	801
CHAPTER SEVEN. AGENCY ADJUDICATIONS, ARTICLE III, AND DUE		
	PROCESS	805
A.	Article III Limits	805
1.	Judicial Power and Executive Branch Adjudications.....	805
2.	Birth of the Modern Era.....	811
	<i>Crowell v. Benson</i>	811
	Notes and Questions	820
3.	A (Partial) Return to Formalism?.....	824
	<i>Northern Pipeline Construction Co. v. Marathon Pipe Line Co.</i>	825
	Notes and Questions	841
	<i>Commodity Futures Trading Comm'n v. Schor</i>	843
	Notes and Questions	851
4.	Synthesis.....	853
B.	Due Process	855
1.	When Does Due Process Apply?.....	856
	<i>Londoner v. Denver</i>	856
	<i>Bi-Metallic Investment Co. v. State Bd. of Equalization</i>	858
	Notes and Questions	859
	<i>Goldberg v. Kelly</i>	861
	Notes and Questions	871
	<i>Wisconsin v. Constantineau</i>	872

Notes and Questions	874
<i>Board of Regents of State Colleges v. Roth</i>	874
Notes and Questions	880
Problem 7.1.....	880
2. Debating the Due Process Revolution.....	882
3. What Process Is Due?	891
<i>Mathews v. Eldridge</i>	891
Notes and Questions	899
<i>Cleveland Bd. of Education v. Loudermill</i>	900
Notes and Questions	909
Problem 7.2	909
CHAPTER EIGHT. REVIEWABILITY	911
A. Non-APA Causes of Action	912
1. Common Law, Officers, and Sovereign Immunity.....	912
2. Injunctions	917
3. Mandamus and Declaratory Judgments	922
4. Special Statutory Causes of Action.....	924
B. The APA Cause of Action	926
1. Presumption of Review	929
2. The Zone of Interests Test.....	930
<i>Association of Data Processing Service Organizations, Inc. v. Camp</i>	931
Notes and Questions	937
<i>National Credit Union Admin. v. First Nat. Bank & Trust Co.</i>	940
Notes and Questions	953
3. Statutory Preclusion of Review.....	955
<i>Johnson v. Robison</i>	956
Notes and Questions	958
<i>Block v. Community Nutrition Institute</i>	959
Notes and Questions	966
<i>Bowen v. Michigan Academy of Family Physicians</i>	967
C. Constitutional Standing	971
<i>Lujan v. Defenders of Wildlife</i>	972
Notes and Questions	991
<i>Massachusetts v. EPA</i>	993
Notes and Questions	1006

Problem 8.1	1006
D. Timing (I): Finality and Exhaustion	1006
1. Finality.....	1007
<i>Bennett v. Spear</i>	1007
<i>Sackett v. EPA</i>	1011
Notes and Questions	1015
2. Exhaustion	1016
<i>McKart v. United States</i>	1019
Notes and Questions	1026
<i>McGee v. United States</i>	1027
Notes and Questions	1032
<i>McCarthy v. Madigan</i>	1032
Notes and Questions	1039
E. Timing (II): Preenforcement Injunctions	1041
1. Injunctions Since <i>Ex Parte Young</i>	1042
2. Expansion: Modern Ripeness Doctrine	1044
<i>Abbott Laboratories v. Gardner</i>	1045
Notes and Questions	1051
<i>Toilet Goods Ass'n, Inc. v. Gardner</i>	1053
Notes and Questions	1056
<i>Reno v. Catholic Social Services</i>	1057
Notes and Questions	1064
3. Other Examples of Inadequate Remedies at Law	1064
<i>Mathews v. Eldridge</i>	1065
Notes and Questions	1069
<i>Thunder Basin Coal Co. v. Reich</i>	1069
Notes and Questions	1079
<i>Free Enterprise Fund v. PCAOB</i>	1081
Notes and Questions	1083
<i>Elgin v. Department of Treasury</i>	1085
Notes and Questions	1096
<i>Sackett v. EPA</i>	1097
4. Debating “Universal” Injunctions.....	1100
<i>Samuel L. Bray, Multiple Chancellors: Reforming the National Injunction</i>	1100
Notes and Questions	1116
<i>Amanda Frost, In Defense of Nationwide Injunctions</i>	1119

APPENDIX A. THE CONSTITUTION OF THE UNITED STATES	1135
APPENDIX B. THE ADMINISTRATIVE PROCEDURE ACT	1157
Title 5, U.S. Code, Chapter 5 Administrative Procedure.....	1157
Title 5, U.S. Code, Chapter 7 Judicial Review.....	1169
APPENDIX C. STEAMBOAT ACT OF 1852	1173
10 Stat. 61 (Aug. 30, 1852)	1173
APPENDIX D. INTERSTATE COMMERCE ACT OF 1887	1195
24 Stat. 379 (Feb. 4, 1887).....	1195
INDEX	1209