
TABLE OF CONTENTS

PREFACE.....	III
ACKNOWLEDGMENTS.....	V
TABLE OF CASES.....	XXXI
TABLE OF STATUTES.....	XLV
TABLE OF REGULATIONS AND RULES	LIII
TABLE OF URLs	LVII
TABLE OF AUTHORITIES	LXIII

PART 1. OVERVIEW

Chapter I. An Introduction to Administrative Law.....	3
Section 1. An Introductory Example	3
The Problem of Airplane Tarmac Delays	3
Section 2. The Basics	20
Frequently Asked Questions	21
Section 3. Race (and Other Identities) and Administrative Law	32
Section 4. The Tasks of Administrative Law	37
a. Historical Perspectives on the Administrative State	38
b. Legal Perspectives on the Administrative State over Time	42
c. Contemporary Perspectives on the Administrative State	48
Section 5. Teaching and Studying Administrative Law from This Casebook.....	53

PART 2. UNDERSTANDING STATUTES

Chapter II. Statutory Interpretation	57
Section 1. How Statutes Are Made	57
a. The Legislative Process	58
b. Other Participants in the Legislative Process	61
Section 2. Theories of Statutory Interpretation.....	63
The Case of the Negligently Placed Mail	63
a. Textualism	66
West Virginia University Hospitals, Inc. v. Casey	67
Notes	71
Tennessee Valley Authority v. Hill	72
Note	78
Wooden v. United States	79
Notes on Textualism	83
b. Purposivism	89
Church of the Holy Trinity v. United States	91
United Steelworkers v. Weber.....	94
Notes on Purposivism	101
c. The (Uncertain?) Line Between Textualism and Purposivism ...	108
King v. Burwell	108
Concepcion v. United States	116

Notes on the (Uncertain?) Line Between Textualism and Purposivism	124
d. Pragmatic and Dynamic Statutory Interpretation	127
Bostock v. Clayton County	128
Hively v. Ivy Tech Community College	141
Notes on Dynamic Statutory Interpretation	149
Section 3. Tools of Statutory Interpretation	156
a. Dictionaries	156
Taniguchi v. Kan Pacific Saipan, Ltd.	157
Note.....	162
b. Custom and Usage	163
Nix v. Hedden	163
Notes	165
c. Canons of Construction.....	166
(1) Linguistic Canons.....	167
Yates v. United States	168
Lockhart v. United States.....	172
Notes on Linguistic Canons.....	179
(2) Substantive Canons	184
Bond v. United States	185
Notes on Substantive Canons.....	190
(3) The Absurdity Doctrine	196
Public Citizen v. U.S. Dep't of Justice	196
Notes on the Absurdity Doctrine	201
d. Legislative History	202
Babbitt v. Sweet Home Chapter of Communities for a Great Oregon.....	203
Notes on Legislative History	209

PART 3. THE AGENCY AT WORK

Chapter III. Procedural Frameworks for Administrative Action	217
Section 1. Introduction	217
Section 2. The Fundamental Procedural Categories of Administrative Action: Rulemaking and Adjudication.....	220
a. The Constitution	220
Londoner v. Denver.....	220
Bi-Metallic Investment Co. v. State Bd. of Equalization of Colorado	224
Notes on the Londoner/Bi-Metallic Distinction	225
b. The Fundamental Statute	236
Administrative Procedure Act of 1946.....	236
Notes on the APA Definitions	236
Notes on the History of the APA	238
Notes on Interpreting the APA	245
c. Additional Sources of Procedural Constraint.....	252

Section 3. Constraints on an Agency's Option to Use Either Adjudication or Rulemaking	254
Securities & Exchange Commission v. Chenery Corp. (Chenery I)....	255
Securities & Exchange Commission v. Chenery Corp. (Chenery II)	258
Notes on the Chenery Decisions	263
Notes on the Problem of Retroactivity.....	271
Section 4. Rulemaking and Adjudication in Context: Public Administration and the Tools of Government.....	278
Report of the President's Committee on Administrative Management.....	279
Notes on Public Administration and the Tools of Government	281
Chapter IV. Rulemaking.....	289
Section 1. Introduction	290
5 U.S.C. § 553	291
Notes	292
Section 2. Formal Rulemaking.....	299
United States v. Florida East Coast Railway Co.	300
Notes	305
Section 3. The Requirements of § 553 Notice-and-Comment Rulemaking	312
a. Beyond § 553.....	312
Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.....	312
Notes	321
Notes on the Problems of Finding and Reviewing Contested “General” Facts.....	325
b. Notice	329
Center for Science in the Public Interest v. Perdue.....	329
Notes	335
c. An Opportunity to Comment and a Concise General Statement of a Rule’s Basis and Purpose	340
United States v. Nova Scotia Food Products Corp.....	340
Notes on the Paper Hearing	347
Notes on the Opportunity to Participate	355
Notes on the Concise General Statement of the Rule’s Basis and Purpose	359
Notes on Current Trends and Wrinkles in Notice-and- Comment Rulemaking	364
Section 4. Exceptions to § 553 Notice-and-Comment Requirements	369
a. The Good Cause Exception	369
Mack Trucks, Inc. v. EPA	370
Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania	374
Notes	378
Notes on the Exception’s Prevalence, the Pandemic, and Alternative Forms	388

b.	The Guidance Exception: Interpretive Rules and Policy Statements.....	393
	American Mining Congress v. Mine Safety and Health Administration	394
	National Mining Association v. McCarthy	400
	Notes on Doctrinal Tests and Judicial Review.....	404
	Notes on the Exception's Scope, Desirability, Requirements, and Recommendations	417
	Notes on Revising Interpretive Rules and Deference to Agency Interpretations	425
c.	The Other Exceptions	428
	James V. Hurson Associates, Inc. v. Glickman	428
	National Wildlife Federation v. Snow	431
	Notes on Exceptions for Internal Agency Matters, Proprietary Matters, and Military and Foreign Affairs	433
	Section 5. Getting Rulemaking Started	442
a.	Rulemaking Initiation and Development Within the Agency.....	442
b.	Public Petitions for Rulemaking	446
c.	Negotiated Rulemaking	451
d.	Regulatory Planning and Review.....	455
	Executive Order 12866	455
	Notes	455
	Notes on the Mechanics of Executive Order 12866	461
	Notes on Ongoing Issues with Executive Order 12866 and Potential Changes	470
	Notes on Executive Order 13771.....	478
	Notes on the Paperwork Reduction Act.....	482
	Notes on Cost-Benefit Analysis and Risk Assessment	483
	Section 6. Fairness and Bias in the Decisionmaking Process	493
a.	Ex Parte Contacts	493
	Home Box Office, Inc. v. Federal Communications Commission	494
	Notes	497
b.	An Open-Minded Decisionmaker?	502
	C & W Fish Co., Inc. v. Fox	502
	Notes	504
	Chapter V. Adjudication.....	511
	Section 1. The Institutional Framework of Agency Adjudication	512
	Federal Trade Commission v. Cement Institute	512
	Notes	517
	Section 2. Formal Adjudication.....	526
	Citizens Awareness Network, Inc. v. United States.....	529
	Notes on Citizen Awareness Network's Approach to the APA	535
	Notes on Some Other Features of "Formal Adjudication"	536
	Ludwig v. Astrue.....	541
	Notes on the Integrity of the Record.....	546
	Notes on the Impartiality of the ALJ	554

Professional Air Traffic Controllers Organization v. Federal Labor Relations Authority.....	557
Notes	568
Notes on Interested Agency Staff and Separation of Functions at the Agency Level	569
Notes on Pressure from Other Parts of Government	571
Notes on Relations with Regulated Parties and the Public	574
Section 3. Informal Adjudication	578
Dominion Energy Brayton Point, LLC v. Johnson	579
Notes	582
5 U.S.C. § 555	585
Notes	586
Olivares v. Transportation Security Administration	586
Notes	592
Notes on Informal Adjudication	593
Section 4. Due Process as a Source of Procedural Rights in Adjudication	596
a. The Doctrinal Framework	598
Board of Regents of State Colleges v. Roth	598
Perry v. Sindermann	605
Notes on the Roth and Sindermann Cases	608
Notes on Assessments of the Roth/Sindermann Doctrine	615
Mathews v. Eldridge	616
Notes on How the Mathews v. Eldridge Doctrine Is Constructed	625
Notes on the Problem of Process Before or Process After	629
Notes on What Should Count in the Mathews Three-Part Test	632
b. Applications	636
Kapps v. Wing	636
Notes on the Decision in Kapps v. Wing	645
Notes on an Alternative Line of Doctrine	647
Latif v. Holder	651
Notes on the No-Fly List Issue	663
c. Due Process and “Private” Administration	670
Rendell-Baker v. Kohn	670
Notes on “State Action”	677
Thomas M. Cooley Law School v. American Bar Association	682
Notes on “Common Law Due Process”	688
Chapter VI. Transparency and the Information Age	695
Section 1. Introduction	696
Senate Bill 721: MAR-A-LAGO Act	696
Notes	698
Section 2. Secret Law	704
Cervase v. Office of the Federal Register	705
Notes on Access to Government Decisions	706

Section 3. Freedom of Information Legislation	720
a. FOIA Overview.....	720
The Freedom of Information Act, 5 U.S.C. § 552	720
Notes	722
Notes on Agencies, Records, Requesters, Search, and Harm.....	727
b. FOIA's General Characteristics	734
Milner v. Dep't of the Navy	734
Notes	743
Notes on Comparing FOIA and Traditional APA	744
c. FOIA in Operation	748
Washington Post Co. v. Special Inspector for Afghanistan Reconstruction.....	748
Notes on Exemptions Protecting the Operational Needs of Agencies and the President Inside and Outside of FOIA	757
Notes on Exemptions Protecting Information Supplied to Government	768
Notes on Privacy and Disclosure.....	773
Notes on FOIA Costs, Delays, and Litigation	778
d. The Reverse-FOIA Action.....	783
Chrysler Corp. v. Brown	783
Notes on the Ability of Suppliers to Ensure the Protection of Information They Provide the Government	787
Section 4. Other Transparency Statutes: Sunshine Act, Federal Advisory Committee Act.....	792
Letter to Congress from Federal Communications Commission	792
Notes on the Sunshine Act and Federal Advisory Committee Act	794
Section 5. Information Collection and Disclosure as Regulation	803
a. Information Demands and Inspections	803
b. Resisting Inspection and Information Demands	806
c. OIRA Memo: Disclosure and Simplification as Regulatory Tools	809
Disclosure and Simplification as Regulatory Tools Memorandum	809
Notes on Regulatory Disclosures	814

PART 4. THE AGENCY AND THE CONSTITUTION

Chapter VII. Agency Relationships with Congress, the President, and the Courts: The Structural Constitution	821
Section 1. Introduction	823
a. Is the Administrative State Constitutional?	824
Philip Hamburger, Is Administrative Law Unlawful?	824
Peter L. Strauss, The Place of Agencies in Government: Separation of Powers and the Fourth Branch.....	825
Jerry L. Mashaw, Creating the Administrative Constitution: The Lost One Hundred Years of American Administrative Law.....	827
Gillian E. Metzger, The Supreme Court 2016 Term—Foreword: 1930s Redux: The Administrative State Under Siege	828

Nikolas Bowie & Daphna Renan, The Separation of Powers	
Counterrevolution	829
b. Separation of Powers Methodology	830
Section 2. Congress and Administrative Agencies	835
a. Delegation of Regulatory Power	836
(1) The Constitutionality of Regulatory Delegations.....	837
Gundy v. United States.....	837
Significant Case.....	848
Whitman v. American Trucking Ass’ns, Inc.	848
Notes	850
(2) The Evolution of Nondelegation Doctrine.....	858
Notes on the History of Nondelegation Doctrine.....	863
(3) Alternative Approaches to Nondelegation	867
(4) Competing Reactions to Nondelegation Doctrine.....	873
(5) Delegations to Other Institutional Actors	877
b. Congressional Control of Regulatory Policy	880
(1) Legislation and Vetoes	881
Immigration and Naturalization Service v. Chadha	881
Notes	889
Notes on Direction by Legislation	895
(2) Appropriations and Spending	899
Notes	901
(3) Oversight and Investigations	907
Trump v. Mazars	911
Notes	919
(4) Direct Control over Regulatory Actors.....	927
Significant Case.....	928
Bowsher v. Synar.....	928
Notes	930
Section 3. The President, Administrative Agencies, and the Executive Branch	933
a. Introduction	933
Youngstown Sheet & Tube Co. v. Sawyer	933
Notes	941
b. Appointment and Removal	943
(1) Appointment and Confirmation	943
United States v. Arthrex, Inc.	945
Notes	954
Notes on the Structure and Reach of the Appointments Clause.....	955
Significant Case.....	966
National Labor Relations Board v. Noel Canning.....	966
Notes	970
Notes on Actings, Delegations, and Appointments Reforms	971
(2) The Removal Power.....	979
Notes on the Removal Power over Time	980
Seila Law LLC v. Consumer Financial Protection Bureau.....	989

Significant Case.....	1002
Free Enterprise Fund v. Public Company	
Accounting Oversight Board.....	1002
Notes	1007
Notes on the Implications for Independent Agencies	1016
c. Presidential Direction of Regulatory Outcomes.....	1022
Executive Order 13998	1023
Notes	1026
(1) The Emergence and Mechanisms of Presidential Directive Authority	1028
(2) The Legal Basis for Presidential Directive Authority	1037
(3) Presidential Directive Authority in Context	1046
d. Internal Separation of Powers	1055
(1) Charting Internal Checks on Executive Power	1056
(2) Assessing the Internal Separation of Powers.....	1062
Section 4. Constitutional Frameworks for Administrative	
Adjudication	1068
Stern v. Marshall	1069
Significant Case	1077
Commodity Futures Trading Commission v. Schor	1077
Notes	1080
Notes on the Public/Private Rights Distinction and the Right to a Jury Trial.....	1091

PART 5. JUDGING THE WORK OF AGENCIES

Chapter VIII. Scope of Review of Administrative Action	1097
Section 1. The Baseline Norm of Legal Regularity	1099
Shaw's Supermarkets, Inc. v. National Labor Relations Board	1099
Notes	1102
Section 2. Support for Agency Decisions	1108
5 U.S.C. § 706	1108
a. Review of the Basic Facts	1109
Universal Camera Corp. v. National Labor Relations Board	1109
Notes on the Substantial Evidence Test.....	1118
Notes on “Arbitrary or Capricious” in Comparison to “Substantial Evidence”	1122
b. Review of the Flow of Reasoning and Judgment	1126
Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co.	1126
Notes on the State Farm Test	1137
Notes on the Background to State Farm	1145
Notes on the Wisdom (or Not) of Serious Arbitrary and Capricious Review	1151
Notes on Cost-Benefit Analysis as a Possible Element of “Arbitrary and Capricious” Review	1155
Notes on “Politics” as a Possible Element of “Arbitrary and Capricious” Review.....	1158

Federal Communications Commission v. Fox Television Stations, Inc.....	1160
Notes	1174
Department of Commerce v. New York	1177
Notes	1187
Section 3. The Framework of the Governing Statutes	1194
a. Historical Building Block Cases.....	1194
National Labor Relations Board v. Hearst Publications, Inc....	1195
Notes	1200
Skidmore v. Swift & Co.....	1201
Notes	1203
b. The Present-Day Framework, Part I: Chevron, the Basics.....	1205
Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.....	1206
Notes	1212
Notes on Chevron's Steps	1213
Notes on the Relationship Between Chevron and State Farm	1218
Notes on the Basis for Chevron's Doctrine	1223
Notes on the Relationship Between Chevron and Judicial Statutory Precedent	1230
Notes on the Practical Impact of Chevron.....	1236
Notes on Chevron and the Approach Agencies Should Use When Interpreting Statutes	1241
Notes on the Challenge to Chevron	1245
c. The Present-Day Framework, Part II: Chevron and Statutory Interpretation	1254
MCI Telecommunications Corp. v. American Telephone and Telegraph Co.....	1254
Notes on the Relationship Between Chevron and the Theories and Tools of Statutory Interpretation	1263
Notes on Judicial Review: Law or Politics?	1274
d. The Present-Day Framework, Part III: Limits on Chevron.....	1283
United States v. Mead Corporation	1283
Notes	1297
Notes on Putting the Mead Test for Chevron Deference into Practice	1298
Notes on the Theory of the Mead Decision	1301
City of Arlington, Texas v. Federal Communications Commission.....	1304
Notes	1320
Massachusetts v. Environmental Protection Agency	1321
Notes	1335
Notes on FDA v. Brown & Williamson Tobacco Corp.....	1338
West Virginia v. Environmental Protection Agency.....	1341
Notes on What Is a "Major Question" Under West Virginia v. EPA	1360
Notes on the Legal Basis for the Major Questions Doctrine	1364

Notes on the Relationship Between the Major Questions Doctrine and Other Key Statutory Interpretation Issues	1367
Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers	1370
Note.....	1376
Notes on Canons of Construction and Chevron	1376
Notes on Federalism and Agency Action	1379
Notes on Chevron and Agency Interpretations of Criminal Law.....	1386
e. Agency Interpretations of Agency Regulations.....	1391
Kisor v. Wilkie	1391
Notes on Agencies' Interpretations of Their Own Regulations	1407
Chapter IX. Access to Judicial Review: Justiciability	1413
Section 1. Standing.....	1414
a. The Basic Doctrinal Framework	1414
Lujan v. Defenders of Wildlife.....	1414
Notes on Lujan and the Basic Standing Framework	1422
Notes on Standing Doctrine's Constitutional Basis.....	1425
b. Defining Injury in Regulatory Settings	1431
(1) The Requirement of Particularized Injury	1431
Federal Election Commission v. Akins	1431
Notes	1435
(2) The Requirement of Concrete and Imminent Injury	1438
TransUnion LLC v. Ramirez	1438
Notes	1445
(3) Procedural Rights.....	1450
Summers v. Earth Island Institute.....	1450
Notes	1453
Notes on Procedural Rights	1454
c. Causation and Redressability in Regulatory Settings	1456
(1) The Impact of Sanctions and Incentives.....	1457
Allen v. Wright	1457
Notes	1462
(2) Probabilities, Risk, and Incrementalism	1469
Notes	1472
d. Governmental Standing	1473
e. Standing Under the APA.....	1478
National Credit Union Admin. v. First Nat'l Bank & Trust Co.....	1478
Notes	1483
Section 2. Reviewability, Timing, and Remedies.....	1489
a. Methods of Obtaining Review	1490
(1) Special Statutory Review.....	1490
(2) General Statutory Review	1492
(3) "Nonstatutory" Review.....	1492

b.	Preclusion of Judicial Review	1495
(1)	The Presumption That Agency Action Is Reviewable	1496
	Abbott Laboratories v. Gardner	1496
	Notes	1500
	Note on the Constitutionality of Precluding Review.....	1503
(2)	Statutory Preclusion of Review	1506
	Bowen v. Michigan Academy of Family Physicians	1506
	Significant Case.....	1510
	Block v. Community Nutrition Institute	1510
	Notes	1512
(3)	Committed to Agency Discretion by Law.....	1518
	Webster v. Doe.....	1518
	Notes	1523
	Notes on the Reviewability of Agency Refusals to Act.....	1527
c.	Timing of Review.....	1533
(1)	Exhaustion of Administrative Remedies	1534
	Darby v. Cisneros	1534
	Notes	1535
(2)	Finality.....	1539
	Sackett v. EPA.....	1540
	Notes	1542
(3)	Ripeness	1545
	Abbott Laboratories v. Gardner	1545
	Toilet Goods Ass'n, Inc. v. Gardner.....	1545
	Notes	1546
d.	Remedies.....	1550
(1)	Injunctive and Declaratory Relief	1551
	Notes on the Availability of Injunctive Relief and Remand Without Vacatur	1553
	Notes on Nationwide Injunctions and Vacatur of Rules....	1559
(2)	Suits for Damages	1567
	Appendix	1571
	Constitution of the United States of America.....	1571
	Administrative Procedure Act	1589
	Freedom of Information Act	1604
	Government in the Sunshine Act	1620
	Executive Order 12866	1622
	INDEX	1635