

Administrative Law

CALI Lessons:

Adjudicative Rules

The purpose of this lesson is to examine how administrative agencies create "rules," particularly in adjudicative contexts. The goal is to contrast so-called "legislative procedures" with "adjudicative procedures," and then to examine the scope and limits of adjudicative authority. The lesson is intended for students who have studied these issues in class and wish to refine their knowledge.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Administrative Inspections

This lesson deals with the topic of administrative inspections. Governmental officials conduct inspections in a variety of contexts. Some of these inspections are conducted by the police. Others are conducted by special administrative officials charged only with the task of carrying out certain administrative tasks. As we shall see, the United States Supreme Court has developed special rules governing such inspections. In this lesson, we examine those special rules in depth. This lesson is designed for students who have studied these issues in class and who wish to further refine their knowledge.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Administrative Law Judges

Many administrative agencies have their own judicial structures (often referred to as "quasi-judicial" structures). In this lesson, we examine the development of one type of judge used in those structures, the so-called administrative law judge. This lesson is intended for students who have studied these issues in class and who wish to further refine and develop their knowledge.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Article III and Agency Adjudicative Power

This lesson explores the constitutional limitations on agency adjudicative authority stemming from Article III's commitment of the judicial power to Article III courts.

Lesson Completion Time: 50 minutes

Author: Douglas Williams, Professor of Law, St. Louis University School of Law

Basic Structure of the Federal Administrative Procedure Act

This lesson introduces students to the Federal APA with special emphasis on (1) mapping the relationship of its parts and (2) closely examining the text of the principal sections.

Lesson Completion Time: 1 hour

Author: William Andersen, Judson Falknor Professor of Law Emeritus, University of Washington School of Law

Chevron Deference

In this lesson, we explore issues relating to the United States Supreme Court's landmark decision in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). In that case, the Court suggested that courts should "defer" to an administrative agency's interpretation of its governing statute under certain circumstances. The lesson examines the concept of deference, its consistency with other legal principles (e.g., the Court's landmark decision in *Marbury v. Madison*), the meaning and limits of deference, and the various types of deference (e.g., *Skidmore* deference as contrasted with *Chevron* deference). The lesson is intended for students who have studied these issues in class and who wish to refine and expand their knowledge.

Lesson Completion Time: 1 hour (40 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Commencement of Rulemaking

This lesson focuses on issues related to the commencement of legislative rulemaking proceedings. Accordingly, it focuses on how such proceedings are commenced and by whom. It also focuses on rules that are exempt from rulemaking requirements. This lesson is intended for students who have studied these issues in class and wish to refine and further their knowledge.

Lesson Completion Time: 45 minutes

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Committed to Agency Discretion

This lesson deals with the "committed to agency discretion" exception to judicial review. Under the federal Administrative Procedure Act, courts tend to assume that administrative action is subject to review. However, there are several situations when courts will decline to exercise their review authority. One of those situations is the subject of this lesson: when administrative action has been committed to agency discretion by law. This lesson is intended for students who have studied these issues in class and who wish to further refine their knowledge and understanding of these issues.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Constitutional Placement of the Administrative Process

This lesson provides a graphic exploration of the complex and ambiguous placement of the administrative process in our constitutional scheme and the relationship of that process to the legislative, executive and judicial branches.

Please note that this lesson uses flash and is unable to be viewed on a non-windows device. Scoring for this lesson is also unavailable at this time.

Lesson Completion Time: 1 hour

Author: William Andersen, Judson Falknor Professor of Law Emeritus, University of Washington School of Law

Deliberative Process Privilege

This lesson examines the so-called "deliberative process privilege" (DPP) (a/k/a, "predecisional and deliberative privilege"). The DPP is a variant of Executive Privilege, and is applied to protect the confidentiality of administrative communications in various

contexts. This lesson is intended for students who have studied the DPP in class, and who wish to refine and expand their knowledge.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Ex Parte Communications in Administrative Law

This lesson examines the source of ex parte communications in administrative agencies, the typical targets of such communications, and the law which governs them. It treats both formal and informal proceedings and both rulemaking and adjudication procedures. Please note that this lesson uses flash and is unable to be viewed on a non-windows device. Scoring for this lesson is also unavailable at this time.

Lesson Completion Time: 45 minutes

Author: William Andersen, Judson Falknor Professor of Law Emeritus, University of Washington School of Law

Executive Privilege - Presidential Privilege

This lesson focuses on the presidential version of executive privilege. The lesson examines the justifications for the privilege, the requirements for its invocation, and judicial handling of that privilege. The lesson is intended for students who have studied this privilege in class, and who wish to further refine their understanding of the topic.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Formal Rulemaking

This lesson introduces you to the so-called "formal" process for making administrative rules and regulations. Under the federal Administrative Procedure Act, there are two separate and distinct processes for making rules: the "informal" process and the "formal" process. In a prior lesson, we examined the informal process. This lesson examines the formal process in greater detail. The lesson is designed for students who have studied these issues in class and who wish to refine their knowledge and understanding of the issues.

Lesson Completion Time: 45 minutes

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Freedom of Information Act

This lesson focuses primarily on the federal Freedom of Information Act. The lesson begins with an overview on the origins of the Act and its basic structure. The lesson then examines threshold questions that a user of the Freedom of Information Act must consider, and key questions for analysis and application. This lesson examines which agencies are subject to the Freedom of Information Act, whether the document sought is a "record" under the Act, and finally, are any exemptions applicable.

Lesson Completion Time: 50 minutes

Author: Phillip Sparkes, Assistant Professor of Law, Northern Kentucky University, Salmon P. Chase College of Law

Growth of the Modern Administrative State

Over the last century, the administrative bureaucracy has grown dramatically in size and influence. In this lesson, we examine some of the reasons for that growth. This lesson is intended for students who have studied these issues in class, and who wish to refine and enhance their knowledge.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Hearing Procedures Required by Due Process - The Basic Analysis

This lesson presents a schematic flowchart or algorithm illustrating one approach to determining whether due process applies to a particular agency hearing and, if it does, how one determines what procedures are required and the time at which they must be made available. It references several of the basic Supreme Court cases (Goldberg, Roth, Perry, Goss, Mathews, etc.).

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Lesson Completion Time: 45 minutes

Author: William Andersen, Judson Falknor Professor of Law Emeritus, University of Washington School of Law

Hybrid Rules

In this lesson, we examine the hybrid rulemaking process. In other words, we examine rules that are not created through the formal rulemaking process (as that process is defined in the federal Administrative Procedure Act (APA)), or by a strictly informal

process (again, as defined by the APA), but by a process that is somewhere between formal and informal processes. The lesson is intended for students who have studied these issues in class, and who wish to further refine their knowledge.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Informal Rulemaking

This lesson examines the "informal" rulemaking process.. Under the Administrative Procedure Act, this type of rulemaking is also called "notice and comment" rulemaking. In this lesson, we examine the procedural steps that an administrative agency must follow in order to create a valid "informal" rule. This lesson is intended for students who have studied these issues in class, and wish to further refine their knowledge.

Lesson Completion Time: 45 minutes

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Introduction and Sources of Authority for Administrative Law

This exercise begins with some general background questions to help students place administrative agencies within the greater Constitutional scheme. These questions also address the various powers agencies wield, and the ways they are created. Then the exercise examines several print and online directory sources that offer specific details on individual agencies; it goes on to briefly discuss procedural rules, policy statements, and the process of promulgating regulations. The exercise concludes with review questions.

Lesson Completion Time: 30-45 minutes

Authors: Deborah Paulus-Jagrig, Educational Services/Reference Librarian, New York University School of Law and Clare Willis, Reference Librarian, Chicago-Kent School of Law

Judicial Review of Agency Inaction Under the Federal Administrative Procedure Act

This lesson addresses two general questions covered in a typical administrative law course: (1) under what circumstances does the federal Administrative Procedure Act authorize judicial review of claims that an agency's inaction violates the Administrative Procedure Act; and (2) what is the scope of judicial review of such claims?

Lesson Completion Time: 45 minutes

Author: Douglas Williams, Professor of Law, St. Louis University School of Law

Judicial Review of Rulemaking

In this lesson, we explore issues relating to judicial review of an agency's issuance of a "legislative" rule -- a rule issued as a result of the federal Administrative Procedure Act's rulemaking procedures. After briefly noting the differences between so-called "formal" and "informal" rulemaking procedures, the lesson examines the standards of review applicable to each type of procedure. Thus, the lesson focuses on the "substantial evidence" test, the "arbitrary and capricious" test, and the requirement of an adequate explanation. The lesson is intended for students who have studied these issues in class and who wish to refine and expand their knowledge.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Presidential Appointment Power

This lesson focuses on the presidential power to appoint executive branch officials. It focuses on the scope of the presidential power, congressionally imposed limits on that power, and potential infringements of the power by Congress and the judiciary. This lesson is intended for students who have studied these issues in class, and who wish to further refine their knowledge.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Questions About Agency 'Guidance Materials'

This lessons covers the costs and benefits of agency guidance and advice. Please note that this lesson uses flash and is unable to be viewed on a non-windows device. Scoring for this lesson is also unavailable at this time.

Lesson Completion Time: 25 minutes

Author: William Andersen, Judson Falknor Professor of Law Emeritus, University of Washington School of Law

Ratemaking by Administrative Agencies

Because so many fundamental administrative law cases involve ratemaking, a feel for this process is a useful adjunct to the study of administrative law. The program considers why we allow agencies to set prices in some markets, how agencies determine the total revenue needed by the regulated company, and how the burden of producing that revenue

is allocated among different classes of ratepayers. The program focuses on classic "cost of service" ratemaking, with some brief mention of reform efforts under way in many areas.

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Lesson Completion Time: 1 hour

Author: William Andersen, Judson Falknor Professor of Law Emeritus, University of Washington School of Law

Researching Federal Administrative Regulations

This lesson will teach law students and practitioners how to research and efficiently locate the rules and regulations promulgated by federal administrative agencies. This is a skill that will be important to a lawyer practicing law in any area, especially those areas for which Congress has delegated significant authority to administrative agencies. The lesson focuses on the official sources of this information: the Federal Register, the Code of Federal Regulations, and their related materials. However, the knowledge gained from this lesson should be applicable to any version of federal regulations available in a law library.

Researching Federal Administrative Regulations is organized into four subject categories: Introduction, Sources of Information, Updating Regulatory Information, and Researching Regulations. Each subject is further organized into one or two specific topics. Each topic represents an independent lesson module containing instructional text and exercises. For example, the Sources of Information category contains lesson modules for the Federal Register and the Code of Federal Regulations. Each of these modules first presents relevant material on the use of the resource and then provides the student with a quiz.

This lesson structure allows for a variety of learning approaches. The student may systematically go through the lesson, module by module, or may select those topics of most interest and/or least knowledge. Additionally, the lesson begins with a Skills Assessment Quiz. This quiz is designed to help the user to determine a base knowledge of federal regulatory research. It covers the most essential information for the regulatory researcher and that which should be gained from the lesson. At the end of the lesson, students will have an opportunity to retake the Skills Assessment Quiz and discover how effective the modules have been in improving their knowledge.

Lesson Completion Time: 2-3 hours

Author: Sheri Lewis, Director, University of Chicago School of Law Library

Scope of Judicial Review of Agency Decisions

This lesson graphs a systematic way of thinking about the varying levels of intensity with which courts review agency decisions. It considers the various statutory and common law review formulas, the type of agency proceedings to which they apply, and how they are interpreted.

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Lesson Completion Time: 0.5 - 0.75 hours

Author: William Andersen, Judson Falknor Professor of Law Emeritus, University of Washington School of Law

Standing (Constitutional Issues) Introduction

A critical issue that arises in many administrative cases is the question of constitutional standing to litigate. At its most basic, standing is the requirement that a litigant must have a sufficient interest in the outcome of the litigation in order to be entitled to sue. This lesson provides an introduction to constitutional standing issues and provides the basis for more in depth review in subsequent lessons. The lesson is intended for students who have studied these issues in class and who wish to further refine their knowledge.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Standing (Specialized Issues)

This lesson examines several status issues that arise in standing cases. In a prior lesson, we examined two contexts in which individuals might seek standing: taxpayer standing and citizen standing. In this lesson, we examine two other situations that may arise: the right of associations to sue on behalf of their members, and the rights of individuals to assert the interests of third parties. This lesson is intended for students who have studied these issues in class and who are seeking to further refine their knowledge and grasp of the area.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

Standing: Causation

Article III of the United States Constitution requires a plaintiff to establish "standing" in order to sue in federal court. In addition to showing an injury-in fact, plaintiff must also show "causation" and "redressability." In other words, plaintiff must show that defendant is the "cause" of the injury, and that the injury will be redressable by a favorable judicial decision. In this lesson, we examine the requirement of causation (and, to a lesser extent, the requirement of redressability) in an attempt to determine what it means and how it is applied in particular cases. The lesson is intended for students who have studied this topic in class, and who wish to refine their knowledge of the topic.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville

The Availability of Judicial Review

This lesson introduces students to the law governing circumstances in which judicial review of actions, and inaction, of federal administrative agencies is available and when it may be restricted or unavailable. The lesson explores questions of jurisdiction, and rights of review principally under the Administrative Procedure Act.

Lesson Completion Time: 1.25. hours (1.75 with essay)

Author: Douglas Williams, Professor of Law, St. Louis University School of Law

Three Models of Agency Adjudication

This lesson presents a graphic examination of agency decisionmaking processes designed to illustrate their basic features and to highlight the design and drafting strategies which can optimize such qualities as expertise and objectivity in administrative decisionmaking. Please note that this lesson uses flash and is unable to be viewed on a non-windows device. Scoring for this lesson is also unavailable at this time.

Lesson Completion Time: 10 - 15 minutes

Author: William Andersen, Judson Falknor Professor of Law Emeritus, University of Washington School of Law

Unlawful Delegation

The subject of "unlawful delegation" of powers is an important issue in both constitutional and administrative law. Not infrequently, Congress attempts to delegate its legislative authority to an administrative agency or to the courts. Sometimes, Congress attempts to delegate judicial power to administrative agencies. In this lesson, we explore

the legality of such delegations. This lesson is intended for students who have studied these issues in class, and wish to refine their knowledge.

Lesson Completion Time: 45 minutes (25 minutes without the essay)

Author: Russell Weaver, Professor of Law and Distinguished University Scholar, Louis D. Brandeis School of Law at the University of Louisville