

Legislation and Regulation – Section 7
Professor Todd Rakoff
Fall, 2016

Syllabus – Part I

The materials for this course comprise (1) Strauss, Rakoff, Farina & Metzger - Gellhorn and Byse's Administrative Law: Cases and Comments – Eleventh Edition [Casebook] and (2) a set of xeroxed items [Xerox].

I. Construing Statutes

A. An Example

Class 1 – (9/1/16):

Family and Medical Leave Act, [Xerox pp. 1-16]

Class 2 – (9/2/16):

Dillon v. Maryland National Capital Park & Planning Comm'n,
[Xerox pp. 17-24]

B. Text and Purpose

Class 3 – (9/7/16):

Riggs v. Palmer, [Xerox pp. 25-28]
Rector, Etc., of Holy Trinity Church v. United States, [Xerox pp. 29-33]
Tennessee Valley Authority v. Hill, [Xerox pp. 34-44]

Class 4 – (9/8/16):

Blanchard v. Bergeron, [Xerox pp. 45-49]
West Virginia Univ. Hospitals, Inc. v. Casey, [Xerox pp. 50-58]
A. Scalia, A Matter of Interpretation (excerpt), [Xerox pp. 59-69]
S. Breyer, Making Our Democracy Work (excerpt), [Xerox pp. 70-81]

Class 5 – (9/9/16):

Frank Cross, The Theory and Practice of Statutory Interpretation
(excerpt), [Xerox pp. 82-86]
Senate Report No. 103-3, [Xerox pp. 87-137]

C. Usage

Class 6 – (9/14/16):

Nix v. Hedden, [Xerox pp. 138-139]

Corning Glass Works v. Brennan, [Xerox pp. 140-144]

United States v. Locke, [Xerox pp. 145-151]

T. Rakoff, Statutory Interpretation as a Multifarious Enterprise (excerpt),
[Xerox pp. 152-154]

D. Canons of Construction

Class 7 – (9/15/16):

McBoyle v. United States, [Xerox p. 155]

Lockhart v. United States, [Xerox pp. 156-164]

E. The Assumption of Coherence

Class 8 – (9/16/16):

King v. Burwell, [Xerox pp. 165-180]

General Dynamics Land Systems v. Cline, [Xerox pp. 181-188]

F. Changing Circumstances

Class 9 – (9/21/16):

Civil Rights Act of 1866, [Xerox pp. 189-192]

Class 10 – (9/22/16):

Runyon v. McCrary, [Xerox pp. 193-209]

Patterson v. McLean Credit Union, [Xerox pp. 210-219]

II. Establishing Agencies in the Constitutional Framework

III. Procedural Frameworks for Administrative Action

IV. Agency Rulemaking

V. Judicial Review of Agency Action

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Syllabus – Parts II and III

II. Establishing Agencies in the Constitutional Framework

A. The Text

Class 11 – (9/23/16):

Constitution of the United States of America [Casebook pp. 1383-1403]

National Federation of Independent Business v. Sebelius [Xerox pp. 220-231]

B. The President's Authority

Class 12 – (9/28/16):

Executive Order 10340 [Xerox pp. 232-233]

Youngstown Sheet & Tube Co. v. Sawyer [Casebook pp. 563-580]

C. Delegation to the Executive Branch

Class 13 – (9/29/16):

Industrial Union Department v. American Petroleum Inst., [Xerox pp. 234-259]

Class 14 – (9/30/16):

Whitman v. American Trucking Assns., Inc. [Casebook pp. 590-596]

A.L.A. Schechter Poultry Corp. v. United States [Casebook pp. 610-613]

Notes on Delegation [Casebook pp. 619-624]

Lawson, The Rise and the Rise of the Administrative State [Casebook pp. 552-556]

D. Legislative Control of Delegated Power

Class 15 – (10/5/16):

I.N.S. v. Chadha [Casebook pp. 652-668]

Notes on Appropriation and Spending [Casebook pp. 677-685]

E. Appointment and Removal

Class 16 – (10/6/16):

Free Enterprise Fund v. Public Company Accounting Oversight Board
[Casebook pp. 718-733]

Myers v. United States [Casebook pp. 733-736]

Humphrey's Executor v. United States [Casebook pp. 736-737]

Morrison v. Olson [Casebook pp. 738-742]

Notes [Casebook pp. 742-750]

Class 17 – (10/7/16)

Margaret Hamburg and the FDA (A) [Xerox pp. 260-284]

III. Procedural Frameworks for Administrative Action

A. Rulemaking and Adjudication

Class 18 – (10/13/16):

Londoner v. Denver [Casebook pp. 32-39]

Bi-Metallic Investment Co. v. State Bd. of Equalization [Casebook pp. 39-50]

B. The Fundamental Statute

Class 19 – (10/14/16):

Administrative Procedure Act, Sections 551-559, omitting 552, 552a & 552b
[Casebook pp. 1404-1407 & pp. 1409-1418]

Notes on the APA [Casebook pp. 50-64]

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Syllabus – Part IV

IV. Agency Rulemaking

A. The Basic Structure

Class 20 – (10/19/16)

Introductory Notes on Rulemaking [Casebook pp. 109-119]
Vermont Yankee Nuclear Power Corp. v. NRDC, Inc. [Casebook pp. 119-137]

Class 21 – (10/20/16)

NRDC v. EPA [Casebook pp. 137-143]
U.S. v. Nova Scotia Food Products Corp. [Casebook pp. 143-165]

B. Exceptions

Class 22 – (10/21/16)

General Electric Co. v. EPA [Casebook pp. 178-184]
Center For Auto Safety v. NHTSA [Casebook pp. 185-197]
Note [Xerox pp. 285-286]
Perez v. Mortgage Bankers Association [Xerox pp. 287-297]

C. White House Review

Class 23 – (10/26/16)

Executive Order 12866 [Casebook pp. 1461-1475]
Notes [Casebook pp. 213-226]

Class 24 – (10/27/16)

Sunstein, The Real World of Cost-Benefit Analysis [Xerox pp. 298-342]

D. Adjudication as an Alternative

Class 25 – (10/28/16)

FTC v. Cement Institute [Casebook pp. 333-337]
SEC v. Chenery Corp. [Casebook pp. 386-396]

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Syllabus – Part V

V. Judicial Review of Agency Action

A. Baseline Norms

Class 26 – (11/2/15)

Notes [Casebook pp. 926-927]

Administrative Procedure Act, §§ 701 – 706 [Casebook pp. 1418-1420]

Shaw’s Supermarket, Inc. v. NLRB [Casebook pp. 928-938]

B. Judicial Review of Factual Determinations

Class 27 – (11/3/15)

Universal Camera Corp. v. NLRB [Casebook pp. 938-955]

Association of Data Processing Service Organizations, Inc. v. Board of Governors
of The Federal Reserve System [Casebook pp. 955-964]

C. Beyond the Facts – The Traditional Framework

Class 28 – (11/4/15)

NLRB v. Hearst Publications, Inc. [Casebook pp. 964 – 971]

Skidmore v. Swift & Co. [Casebook pp. 972 – 976]

D. Beyond the Facts – The Current Framework

Class 29 – (11/9/15)

Motor Vehicle Manufacturers Ass’n v. State Farm Mutual Automobile
Insurance Co. [Casebook pp. 991-1013]

Class 30 – (11/10/15)

Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.
[Casebook pp. 1014-1047]

Class 31 – (11/11/15)

Materials relating to 29 C.F.R. §825.11 [Xerox pp. 343-352]

Hackworth v. Progressive Casualty Ins. Co. [Xerox pp. 353-358]

Wolverine World Wide, Inc. [Xerox pp. 359-368]

29 C.F.R. §825.208 [Xerox pp. 369-370]

29 C.F.R. §825.700 [Xerox p. 371]

Class 32 – (11/16/15)

MCI Telecommunications Corp. v. American Telephone and Telegraph Co.
[Casebook pp. 1047-1077; 1088-1091]

Class 33 – (11/17/15)

United States v. Mead Corp. [Casebook pp. 1098-1131]

E. Fitting the Law to Practice

Class 34 – (11/18/15)

Farber & O'Connell "The Lost World of Administrative Law"
[Xerox pp. 372-425]

Class 35 – (11/28/15)

Review [No further assignment]

Class 36 – (11/30/15)

Review [No further assignment]