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PSCI 523.01: Administrative Law

Lisa Anne Upson

The University Of Montana

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PSCI 523 Administrative Law (online)

University of Montana / CRN 74553 – Section 50
Fall 2017: August 31-December 20, 2017

Instructor

Lisa Upson, J.D.

lisa.upson@mso.umt.edu

Office Hours (virtual): Flexible; email to set up a time to talk

Phone: 805-705-0915 (I prefer email first, but if time is short, please call)

Course Overview

This is a 3-credit 15-week online course. We will use UM's Moodle platform for most course activity. The course will be interactive, particularly in Moodle discussion forums. There will be a handful of written assignments in addition to readings and discussion forums. I will be available throughout the course to answer questions. The course will be practice-oriented but solidly grounded in theory and law, most fundamentally the U.S. Constitution.

Course Content

The purpose of this course is to examine fundamental concepts of law as commonly applied to and by government agencies, sometimes referred to as “the fourth branch” of government because agencies have considerable power. Put another way, the class is an overview of the legal foundation and environment of public administration in the United States.

Administrative law affects almost every aspect of our daily lives, even if we aren't public servants, and often without our noticing. Federal, state and local agencies regulate everything from driving, hospital visits, and drinking water to labor/employment relations, zoning, and air travel, just to name a few, and they are required by law to establish and follow certain procedures in order to do so. Thus, administrative law relates to both the sources and the limits of government agency power (Feldman, 2016).

Public administrators are not only affected by administrative law as citizens but must understand, apply, and often create it in the course of their work. At the center of these responsibilities is the federal Administrative Procedures Act and state equivalents, which govern the nature of administrative lawmaking and execution: the quasi-legislative process of rulemaking, the quasi-judicial process of adjudication, privacy and transparency, and more. In addition to these, key concepts in administrative law include legislative delegation, agency discretion, judicial review, and Constitutional principles such as procedural and substantive due process.

While administrative law occurs at every level of government, in this course we will focus primarily on federal administrative law. Administrative law is procedure and process oriented, so while we won't concentrate on any particular topics such as the environment, transportation, or employment/labor relations, we will come across these and other content areas. We will also briefly review administrative law relative to nonprofit management.

In order to learn administrative law as described here, we will cover an introduction to the American legal system as well as very basic legal and administrative law research. Administrative law is reflected in

many different publications and not always easy to find, so students will learn how to navigate the various sources of documented administrative law.

Student Learning Objectives

- Understand fundamentals of the American legal system.
- Understand the Constitutional principles most relevant to agency action and public administration.
- Understand and apply relevant provisions of federal and state statutes governing agency actions.
- Understand, analyze, and apply notable judicial decisions interpreting and establishing administrative law.
- Demonstrate competence in finding and using sources of administrative law and related publications (includes basic legal research and analysis).
- Understand and apply the major substantive administrative law concepts, including separation of powers, delegation and discretion, rulemaking, adjudication, judicial review, and transparency.
- Understand the essentials of administrative law as applied to nonprofit practice.
- Develop fluency in administrative law terminology and concepts.

Required Text

1. David H. Rosenbloom, Administrative Law for Public Managers, 2nd edition, 2015 (Westview Press).
2. There will be several required readings found in Moodle and on the Internet.

Course Expectations and Requirements

This is a graduate level course; students are expected to demonstrate graduate level skills in research, reading comprehension and analysis, and writing.

Written Work. Since this is an online course, writing will be the primary form of participation and demonstration of your research, reading, and analytical skills. Strong writing skills are essential in public service work as well, so I will grade accordingly. While I do not expect the same level of writing proficiency in the Moodle discussion forums as in writing submissions (forums being slightly less formal and more conversational in some instances), I do expect thoughtful, articulate, and professional posts and responses in the discussion forums.

Additionally, written submissions must meet the following criteria, except as noted differently under specific assignment descriptions:

- Please do not include a title page; put your name and an assignment title in the header.
- Assignments are due by the date/time specified – late assignments will not be accepted.
- All assignments must be turned in electronically in Microsoft Word format. Submission of assignments via e-mail will not be accepted unless specific prior arrangements are made.
- Written work will be evaluated in terms of content/analysis, following instructions, organization, writing/grammar, and APA style when applicable.
- Student collusion is not permitted for individual assignments and will be treated as plagiarism.

Writing is an ongoing process for everyone irrespective of academic program, career stage or skill level. If your writing competency is not at the level needed for this graduate course, I recommend taking advantage of UM's Writing Center.

The University of Montana Writing and Public Speaking Center offers students in all disciplines free support as they write or prepare presentations for any course. Welcoming all students, The Writing Center provides a learning environment where students can engage in supportive conversations about their work and receive feedback at any point during their process. *To make an appointment and learn more about The Writing and Public Speaking Center, visit www.umt.edu/writingcenter or call 243-2266.*

The Writing Center offers the following services for Graduate Students relevant to this class:

- **Individual Consultations by Appointment**
The most effective help offered to all students is one-to-one consultations, to support graduate students as they work on seminar papers, proposals, conference presentations, and thesis/dissertation work. Depending on the project, you meet for half- or full-hour appointments. Many graduate students prefer to set up a recurring appointment with the same consultant.
- **Write-Ins**
Many graduate students appreciate a dedicated, weekly writing time. A Writing Center consultant will be available to help you set writing goals and to answer questions.

Weekly Highlights. The course is set up by weeks, with most weeks (except weeks 1, 2, and 15) running from Monday morning through Sunday night. Each week you will find learning and assignment highlights in Moodle organized by topic or reading for that week. The highlights include important details about assignments, setting out specific requirements for each deliverable.

Discussion Forums. Dialogue in the weekly discussion forums is one of two main forms of participation in this class (written assignments being the other). Through the forum exchanges we all learn from one another’s insights and analysis, exploration and questions. It is essential that students be engaged with other posts by reading and responding (see below for specific expectations).

Moodle. Students are required to check the course site in Moodle at least once/day. (Having taken online courses myself, I can say that participating in discussions is easier when you engage with them frequently.) You can connect to Moodle here: <http://umonline.umt.edu>. If you have technical problems, call UM Online by phone, (406) 243-4999 or email umonline-help@umontana.edu.

Grading. All grades will be posted in Moodle. Below are the course assignments, points available, and the rounded weight attributed to each in calculating your final grade. There are 550 total points available.

1. Discussion Forums (12 at 10 points each): combined 120 points, 22% of final grade
2. Case brief: 100 points, 18% of final grade
3. Paper: 100 points, 18% of final grade
4. Exam: 110 points, 20% of final grade
5. Executive Order/memo: 120 points, 22% of final grade.

The University of Montana uses the plus/minus grading system. To accommodate the plus/minus system the grading scale shown below will be used to reflect your final course grade.

Grade	Point Scale	Point Range	GPA
A	93-100	8 points	4.00
A-	90-92	3 points	3.67
B+	87-89	3 points	3.33
B	83-86	4 points	3.00
B-	80-82	3 points	2.67

Grade	Point Scale	Point Range	GPA
C+	77-79	3 points	2.33
C	73-76	4 points	2.00
C-	70-72	3 points	1.67
D+	67-69	3 points	1.33
D	63-66	4 points	1.00
D-	60-62	3 points	.067
F	59 or lower	N/A	0.00

Assignments

The course is set up on a weekly basis. Most weeks run from Monday through Sunday; however, weeks 1, 2, and 15 are longer than a seven-day period, so pay close attention to the dates and schedule below. Each week will include a combination of required readings, online discussion forums, learning and assignment highlights, and written assignments when applicable. Unless noted otherwise, forum discussions close each Saturday at 11pm and written assignments are due by 11pm on Sundays, and must be submitted in Microsoft Word. **Late assignments are not accepted.** Descriptions of written assignments are below, with additional important details found in the Weekly Highlights.

Discussion with Professor – No points, but required

Sign up immediately for a short phone conversation with your professor in the first two weeks of the term using the google docs link: [Discussion sign up](#). The purpose of this is to make a more personal connection and to get a sense of what your goals, strengths, challenges, interests, etc. are relative to the course and course content.

Discussion Forums – 10 points each week (total 120 points, 22% of final grade)

Students are expected to stay on schedule with the weekly material. This is necessary for participation in the online discussions. Questions are designed to have you reflect on the weekly highlights, reading materials, and any relevant professional experiences you've had to express your thoughts, key learnings, insights, questions, etc. You must enter the Discussion Forum more than once per week. The first entry should be your response(s) to the required questions. Your second (and subsequent) entry should be to dialogue relative to your peers' postings.

Each week I will post up to five questions for students to respond to and discuss from Monday through Saturday. Unless otherwise noted, each student must choose at least 2 questions to respond to and discuss.

The Discussion Forum requires active student participation, which means students must:

1. Respond to the forum questions presented (at least two each week); and
2. Respond to other student responses – not all other student responses, but demonstrating active engagement across the second half of the week, by Saturday at 11pm.

While you do not need to use APA style in your posts, you should at least reference the author(s) for material or ideas that are not your own.

If you are curious as to how you are doing with your Discussion Forum responses during the semester, check your weekly grades in Moodle, and/or contact the instructor to set up a time to talk. Here are some

general grading guidelines in addition to the two requirements above:

A level – Respond to at least two of the questions posted by the instructor and actively engages with classmates in the discussion forum. These responses are clearly articulated with good sentence structures, correct grammar and spelling. Such responses do not state, “I agree” or “I like what you’ve said.” The student presents a perspective or analysis, with support, or thoughtful feedback or questions. A rough length guideline is at least 200 words for original question responses and less for responses to others’ comments. Posts are made earlier in the week, such as by Thursday night, with responses/dialogue following Friday and Saturday. Moreover, evidence or references are used from course readings.

B-C range – Respond to one of the questions posed by the discussion leaders and are somewhat engaged with the class about questions for the week, or respond to two questions but with short text or little analysis. These responses may have a few grammatical and spelling errors or may not be clearly presented. The student attempts to articulate the main points, but the explanation is not clear enough or simply repeats what an author said. Length may be insufficient. The student may primarily express (dis)agreement with little support. The student submits later in the week and/or only engages once.

D and below – Occasional or periodic response to discussion questions. Does not post enough original responses or engage very much with others’. Responses are not clear and do not contain correct sentence structure or grammar. The student does not present comprehension of the readings, and the response is made late on Saturday, which does not provide enough time to discuss with classmates.

Case Brief – 100 points; 18% of final grade

For this assignment, students will read and analyze the landmark Administrative Law Supreme Court decision *Schechter Poultry v. U.S.* and write a case brief. You will find in Moodle a paper on case briefing to guide you through the briefing process.

In no more than 4-5 pages double-spaced, include the following in your brief:

- Title and citation
- Concise description of the essential facts of the case
- The legal issues or questions
- Decision(s)/holding(s)
- Reasoning/rationale of the court’s decision
- Your concurrence or dissent (agree or not? Explain)

The skill of briefing includes taking a voluminous decision and boiling it down to a short summary. You will be evaluated on this as well as your accuracy in re-stating the items above and your overall writing.

Paper – 100 points, 18% of final grade

In a 4-5 page paper, discuss why the adjudication process should be reformed (what, why, and how), supporting your position using course material.

Exam – 110 points, 20% of final grade

The exam can be found in Moodle. There are three questions; one required and one you will choose from the remaining two. Your exam responses (total) 4-5 pages and should apply course material.

Executive Order Draft and Memo – 120 points, 22% of final grade

For your final project, you serve as a Policy Assessment Manager in the Executive Office of the President, Office of Management and Budget (OMB). You have been asked by the Director of OMB Policy Assessment to evaluate federal government transparency laws and associated rules, and to draft a proposed executive order (for consideration by the President) that would affect, change, or supplement existing transparency laws/regs. You will accompany your proposed executive order with a memo of support explaining why you are proposing the contents of your executive order. This does not have to be (but can be) related to any current political or administrative issue (your proposed order can simply reflect what you think should be changed). Refer to Rosenbloom's transparency discussion as well as his discussion of various executive orders. Also, peruse current or past executive orders (easy to find online).

Course Schedule

There are three places where the class weeks do not correspond to a 7-day calendar period: Week 1, Week 2, and Week 15 (which includes finals week). Weeks 3 through 14 are standard class weeks starting on Monday and ending on Sunday night. Please pay close attention to dates/days specified and assignment deadlines since no late assignments are accepted.

I. THE CONTEXT AND SOURCES OF ADMINISTRATIVE LAW

Week 1: Thursday, Aug. 31-Saturday, Sept. 9 – Introductions, Overview of Administrative Law

Readings:

1. Syllabus (Moodle)
2. Rosenbloom, pp. 1-16 (chapter 1)
3. Find an easily readable version of the Administrative Procedures Act of 1946 (United States Code Title 5, Chapter 5, Subchapter II); you will refer to this several times during the semester. Skim the Act, and read closely sections 551 (definitions), 553 (rulemaking), and 554 (adjudication)
4. Weekly Highlights (Moodle)

Written Assignment: Forum discussions (close at 11pm Saturday, Sept. 9th)

Other Assignment: Sign up for a 5 minute phone call with Professor Upson – Sign-up is in Google doc: [Discussion sign up](#).

Week 2: Sunday, Sept. 10-Sunday, Sept. 17 – Introduction to the American Legal System, Separation of Powers

Readings:

1. Introduction to the legal system (Moodle)
2. The U.S. Constitution: Art. I, Sections 1, 8-10; Art. II, Sections 2-3; Art. III, Sections 1-2; Art. IV, Section 1; the Bill of Rights (Amendments I-X); and Amendments XI, XIV, XVI (Moodle).
3. Rosenbloom, pp.19-34 (separation of powers)
4. Rosenbloom, pp. 153-159 (court system overview)
5. Weekly Highlights

Written Assignment: Discussions (close at 11pm Saturday)

Other Assignment: If you have not yet had your short phone call with your professor, you will have it this week. You should already have signed up for your discussion.

Week 3: Monday, Sept. 18-Sunday, Sept. 24 – Federalism and Constitutional principles

Readings:

1. Rosenbloom, pp.35-60
2. Read provisions of the U.S. Constitution as cited by Rosenbloom in the reading.
3. Weekly Highlights

Written Assignment: Discussions (close at 11pm Saturday)

Week 4: Monday, Sept. 25-Sunday, Oct. 1 – Sources and documentation of Administrative Law

Readings:

1. Rosenbloom, pp. 190-191
2. Federal AdLaw, Federal Register 101, FR-CFR research guide, and Unified Agenda (Moodle)
3. Regulations.gov: How to Use and FAQs under “Help” menu (top); eRulemaking Program and Agencies under “About Us” (found at bottom)
4. Weekly Highlights

Written Assignment: Discussions (close at 11pm Saturday)

Week 5: Monday, Oct. 2-Sunday, Oct. 8 – Case analysis/briefing

Readings:

1. How to Brief a Case (Moodle)
2. A.L.A. Schechter Poultry Corp. v. U.S., 295 U.S. 495 (1935)
3. Weekly Highlights

Written Assignment: Case brief/analysis due by Sunday, 11pm (No forum discussion)

II. ADMINISTRATIVE LAW PROCESSES

Week 6: Monday, Oct. 9-Sunday, Oct. 15 – Rulemaking

Readings:

1. Federal Administrative Procedures Act, section 553
2. Rosenbloom, pp. 63-86
3. Montana Secretary of State, Administrative Rules of Montana, Declaration of General Purpose, 1.1.101 (Moodle)
4. Find and read Montana Administrative Procedures Act, MCA Title 2, Ch. 4: Part 1, sections 2-4-101, 102, and 103; Part 2; and Part 3, sections 2-4-302 through 2-4-309.
5. Weekly Highlights

Written Assignment: Discussions (close at 11pm Saturday)

Week 7: Monday, Oct. 16-Sunday, Oct. 22 – Rulemaking: Sources and Documentation

Readings:

1. The Rulemaking Process (Moodle)
2. Starting with either the Federal Register (federalregister.gov) or Regulations.gov, search for a proposed rule on a topic of interest to you. Now locate the proposed rule on the other site. Read the material relating to the proposed rule.
3. Weekly Highlights

Written Assignment: Discussions (close at 11pm Saturday)

Week 8: Monday, Oct. 23-Sunday, Oct. 29 – Adjudication

Readings:

1. Federal Administrative Procedures Act, section 554
2. Rosenbloom, pp. 89-121
3. Weekly Highlights

Written Assignment: Discussions (close at 11pm Saturday)

Week 9: Monday, Oct. 30-Sunday, Nov. 5 – Adjudication Reform

Written Assignment: Paper due by Sunday, 11pm (no forum discussion)

Week 10: Monday, Nov. 6-Sunday, Nov. 12 – Transparency

Readings:

1. Rosenbloom, pp. 123-149
1. Weekly Highlights

Written Assignment: Discussions (close at 11pm Saturday)

Week 11: Monday, Nov. 13-Sunday, Nov. 19 – Judicial Review of Agency Action

Readings:

1. Federal APA, Chapter 7: sections 701-706
2. Rosenbloom, pp. 151-184
3. Weekly Highlights

Written Assignment: Discussions (close at 11pm Saturday)

Week 12: Monday, Nov. 20-Sunday, Nov. 26 (Thanksgiving week) – Judicial Review: Chevron

Readings:

1. Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984)
2. Weekly Highlights

Written Assignment: Discussions (close at 11pm Saturday)

III. ADMINISTRATIVE LAW APPLICATIONS

Week 13: Monday, Nov. 27-Sunday, Dec. 3 – Exam

Written Assignment: Exam paper due by Sunday 11pm (no forum discussion)

Week 14: Monday, Dec. 4-Sunday, Dec. 10 – Nonprofit Administrative Law

Readings:

1. Nonprofit Overview and MT Nonprofit Association P&P Guidelines (Moodle)
2. Review www.mtnonprofit.org/resourcelibrary
3. Weekly Highlights

Written Assignment: Discussions (close at 11pm Saturday)

Week 15: Monday, Dec. 11 through Finals week (ends Wednesday, Dec. 20) – Final Project, Staying Current

Reading:

Rosenbloom, pp. 185-193

Written Assignments:

1. Discussions (close at 11pm Saturday, Dec. 16)
2. Executive Order draft and memo, due by Wednesday, Dec. 20, 11pm

University/Class Policies

Please be familiar with the following University or class policies:

Disability Assistance: The University of Montana does not discriminate against qualified students with disabilities. If a student would like to discuss the availability of accommodations, or any other matter relating to their disability, please contact [Disability Services for Students](#). We will work with you to provide an appropriate modification.

Incompletes or Withdrawals for the Course: If for some reason the course is not working out for you please adhere to the University's policies for the last day to drop a class.

Late Assignments: Students are expected to submit all work by the date/time specified in the course calendar. Any exceptions to this must be approved by the instructor 72 hours before the date in question or be a clear emergency. Students must complete all assignments to receive a grade for the course.

University Attendance Policy: Students who are registered for a course but do not participate in the first two class forums/requirements may be required by the instructor to drop the course. This rule allows for early identification of class vacancies and to permit other students to add classes. Students must complete a drop form or drop the course in [Cyber Bear](#) to avoid receiving a failing grade. Students who know they will be absent, cannot participate or submit assignments should contact the instructor in advance.

Wikipedia: This online source is not reliable and should not be cited in any course assignment. The goal is to become accustomed to using scholarly sources for all work in any of your courses.

Academic Dishonesty (Plagiarism): Students must follow the University's policies for [academic conduct](#). The University's Graduate School Plagiarism Warning states:

Plagiarism is the appropriation or imitation of the language, ideas, and thoughts of another author and representing them as one's original work. It is a particularly intolerable offense in the academic community and is strictly forbidden. Students who plagiarize may fail the course and may be remanded to Academic Court for possible suspension or expulsion. Students must always be very careful to acknowledge any kind of borrowing that is included in their work. This means not only borrowed wording but also ideas. Acknowledgement of whatever is not one's own original work is the proper and honest use of sources. Failure to acknowledge whatever is not one's own original work is plagiarism. ([UM Graduate School Degree Standard B6.000](#))

All work submitted must be your own; no duplicate work (work completed for another class) will be accepted. Acts of cheating or plagiarism will result in a grade of zero (0) for the assignment. Moreover, acts of plagiarism will also be reported to the Academic Court. To avoid acts of plagiarism, cite each reference or source you use and give proper credit for the ideas, opinions, and findings of others. When you are using the exact words of others, you must use quotation marks and include the page number where you found the quote in your citation.