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PSCI 523.01: Administrative Law

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Syllabus
Political Science 523
Administrative Law

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Introduction - Administrative Law is the part of American constitutional law that deals with the work of public administrators. Its principles are closely related to the doctrines of separation of powers and due process. The traditional divisions of administrative law are the delegation doctrine (the relationship of an agency to the legislature), judicial review (the relationship of an agency to the courts), rulemaking (the procedures an agency follows when it makes regulations that have the force of law), and adjudication (the procedures an agency follows when it resolves disputes with regulated parties). The learning goals of the course are student understanding of substantive administrative law principles, accurate case analysis, and correct and coherent written expression of this understanding.

Text - Steven Cann, Administrative Law, 4th edition, Sage, 2006 (available through the UM bookstore, 406/243-1234, extension 663; montanabookstore.com)

Class Format and Weekly Assignments - During each of the course's 13 weeks, students will read the assigned pages in the text and the instructor's overview statement, and answer three queries provided by the instructor. Each week, the instructor will respond to student e-mail inquiries and post announcements that address common problems the students have had with the readings. In addition to each week's responses to three queries, students will be responsible for three writing projects explained below and for a final examination.

Required reading - Reading assignments are posted for each of the course's 13 weeks. The assignments are short but at times difficult because of the nature of legal writing. Students should concentrate on the readings mentioned in the instructor's queries and, if necessary, read that material several times to understand its meaning.

Examination - The final examination will be posted before December 2 and will be due via e-mail on or before December 10. The examination will be based on the overview statements and on the parts of the text referenced in each week's queries.

Grading (200 possible points)

Final Examination - 62 points
1st writing project - 20 points
2nd writing project - 20 points
3rd writing project - 20 points
Weekly answers to queries - 78 points (13x6)

A = 188-200; A- = 181-187; B+ = 174-180; B = 167-173; B- = 160-166

C+ = 153-159; C = 146-152; C- = 139-145; D+ = 132-138; D = 125-131; D- = 118-124

Forum – Available to students will be a "Forum," a monitored but ungraded continuing discussion among the students about the content of the course.

Writing Project #1 - Annotated Bibliography

Write a paragraph on each of the following 14 administrative law sources, with each paragraph discussing specifically three things: (1) the work's purpose, (2) the work's organization, and (3) an example of how a public administrator would use a part of the source, which part you specifically name, explain, and cite. All of the works are found in the Montana State Law Library (and other law libraries). Many of the Montana works can be accessed through links at <http://courts.mt.gov/library> (here, pay special attention to "A Guide to Montana Legal Research"). Other public-domain works are available on the Internet at other locations. Besides "A Guide to Montana Legal Research," there are several reference works which can be of assistance; for example, see Robert C. Berring and Elizabeth Edinger, *Finding the Law* and Myron J. Jacobstein et al., *Fundamentals of Legal Research*. The annotated bibliography is due as an attachment via e-mail on or before **September 26**.

Note: If you are not a Montana resident, you can substitute your state's analogous source for numbers 1, 2, 3, 4, 5, and 13 and use your state's libraries and Internet services.

1. Sessions Laws of Montana
2. Montana Code Annotated
3. Montana Reports or State Reporter
4. Pacific Reporter
5. Administrative Rules of Montana
6. United States Statutes at Large
7. United States Code or United States Code Annotated
8. U.S. Reports or Supreme Court Reporter or Lawyers Edition of the U.S. Supreme Court Reports
9. Federal Register
10. Code of Federal Regulations
11. American Jurisprudence or Corpus Juris Secundum
12. K. Davis, *Administrative Law Treatise*, 3rd edition, (1998), or R. Pierce, *Administrative Law Treatise* (2009)
13. Montana Administrative Procedure Act (Montana Code Annotated, 2-4-101)
14. *Administrative Law Review*

Writing Project #2 - Administrative Rules Simulation

Each student will assume that he or she is an employee of the Montana Board of Land Commissioners (MBLC) and will draft for public hearing 2 to 3 pages of proposed rules (double spaced and formatted as an agency's legislative rules) governing "natural areas" on school trust lands. The rules will be written from the three perspectives of fee generation, recreational use, and conservation. They will implement a provision in the Montana Code Annotated (sections 76-12-101 to 123) that authorizes the MBLC to protect through rulemaking school trust lands "possessing significant scenic, educational, scientific, biological, and/or geological values." Each student's draft rules should cover only **one** of the following general topics: (1) over-night camping in natural areas; (2) water recreation in natural areas; (3) winter recreation in natural areas; and (4) hiking and nature viewing in natural areas. Assume that each of these topics is fully within the MBLC's regulatory authority and that generation of recreational fees and conservation are the MBLC's principal concerns. In your draft rules, use "may" for the permissive and "shall" for the mandatory, and - to assign responsibility clearly - use the active voice and not the passive voice. Your work product may be derivative (that is, you can use the Administrative Rules of Montana or another state's set of rules), but it may not be a verbatim lifting of existing regulations. The draft rules are due as an e-mail attachment on or before **October 31**.

Writing Project #3 - Adjudicatory Hearing Simulation

Assume that you are the head of a state agency (your choice) that is not covered by a government-wide personnel policy or by a collective bargaining agreement. You are concerned because your agency lacks a formal policy statement concerning the procedure to be used when terminating the employment of a "permanent" civil service employee, that is, one who is beyond the probationary period. As the head of the agency you are writing a 3-page, double-spaced memorandum to the agency's staff lawyer that includes the agency predicament and your draft of a suggested procedure for a termination hearing and asks for the lawyer's review and comments. The draft procedures you are giving the lawyer should cover specifically the following topics/sections: use of a hearing board and/or hearing officer, the steps in the termination hearing and its degree of formality, the recommendation of the hearing board and/or hearing officer to the agency head, the agency head's final decision and statement of reasons, provision for an administrative appeal, and authorization of judicial review. In your suggested procedures, be sure to use "may" for the permissive and "shall" for the mandatory, use active voice instead of passive voice, and build in a reasonable timetable for the various hearing steps. You may rely on existing agency policies and collective bargaining agreements, but your work product may not be a verbatim lifting from such sources. The work product is due as an attachment via e-mail on or before **November 28**.