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PSC 523.01: Administrative Law

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POLITICAL SCIENCE 523
Administrative Law
Fall 1997

Administrative law is the part of public law that deals with the work of public administrators. Its principles are closely related to the constitutional law 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 law), and adjudication (the procedures an agency follows when it resolves disputes). Newer concerns of administrative law are public access to the records of the agencies and the broad informal discretion of bureaucrats.

Text: The Legal Foundations of Public Administration, 2nd edition

Grade: Midterm examination	- 30%	(60 points)
Final examination	- 30%	(60 points)
Essays	- 30%	(60 points)
Attendance and discussion	- 10%	(20 points)

A = 180-200 points
B = 160-179 points
C = 140-159 points
D = 120-139 points
F = 0 -119 points

Reading: approximately 12 pages per class meeting

Writing: Each student will write two analyses of problems that are parts of group projects and an annotated bibliography. Written work will be graded for content (clarity and validity) and writing quality (grammar, syntax, and logical development).

Format: Students are expected to complete reading assignments and participate in class discussion. Class discussion will concentrate on case principles, evolution of doctrine, and practical problems. The instructor will be discussion leader and will lecture as required.

Examination: The midterm examination date will be announced a week in advance. The final examination, which will cover material from the midterm to the end of the course, is scheduled for December 19 at 10:10 a.m.

Instructor: Jim Lopach, LA 348, 243-4829

Political Science 523
Administrative Law
Annotated Bibliography Project

Write a paragraph on each of the following administrative law sources which discusses the work's purpose, organization, and practical application for public administration. For the Administrative Law Review (ALR) source, write a 1,000-word essay that is a summary and critique of an ALR article that pertains to the subject matter of the course. The annotated bibliography is due on September 30.

1. Session Laws of Montana (1), (2)
2. Montana Code Annotated (1), (2)
3. Montana Reporter (1), (2) or State Reporter (2)
4. Pacific Reporter (2)
5. Administrative Rules of Montana (1), (2)
6. United States Statutes at Large (1), (2)
7. United States Code (1), (2) or United States Code Annotated (2)
8. U.S. Reports (1), (2) or Supreme Court Reporter (2) or Lawyers' Edition of the U.S. Supreme Court Reports (2)
9. Federal Register (1), (2)
10. Code of Federal Regulations (1), (2)
11. American Jurisprudence (2) or Corpus Juris Secundum (2)
12. K. Davis, Administrative Law Treatise, 3rd edition (1994) (2)
13. Montana Administrative Procedure Act (MCA, 2-4-101) (1), (2)
14. Administrative Law Review (2)

The following two reference works are on reserve in the Mansfield Library and can be of assistance to you:

Cohen, How to Find the Law, West Publishing Company

Jacobstein and Mersky, Fundamentals of Legal Research, Foundation Press

(1) Available in the Mansfield Library.

(2) Available in the Law Library.

PSc 523
ADMINISTRATIVE LAW
Draft Administrative Rules Project

Problem. The institutional setting is the Montana Board of Land Commissioners (MBLC). Assume that you work in a staff capacity for the Board and the Board has given you the assignment of implementing the rulemaking authorization in MCA 76-12-112 (attached). Accordingly, you are to draft for public hearing proposed rules governing natural areas on school trust lands from the perspectives of fee generation, recreational use, and conservation.

Work product. The work product is a draft of proposed rules concerning which the MBLC, prior to adoption, will hold a public hearing. Each team's product should be approximately eight to ten manuscript pages (double-spaced, standard margins) and formatted as legislative rules. The draft rules should cover the following four or five topics: (1) over-night camping in natural areas; (2) hunting and fishing in natural areas; (3) water recreation in natural areas; (4) winter recreation in natural areas; and (5) hiking and nature viewing in natural areas. Assume that all five of these topics are within the MBLC's authority. Also assume that the MBLC's principal charge is generation of recreational fees. A "real" package of draft rules would include an introductory section concerning statutory authorization and intent, but this section is not part of your assignment.

Task assignment. Each student will work as a member of a team, as assigned by the instructor. Each team member will participate in group deliberation which will consist of planning the team's project, assigning research tasks (reading and interviewing), evaluating the writing of team members, and editing team members' drafts into an integrated unit. The writing of each team member should focus on one of the four or five separate sections of the final work product, should include the identity of its author, and should be approximately two pages in length. In your draft rules, use "may" for the permissive and "shall" for the mandatory and use active instead of passive voice.

Sources. The following sources could be of use to you: interviews with employees of state agencies; pertinent sections of Administrative Rules of Montana, Code of Federal Regulations, and Montana Code Annotated; and a variety of studies and reports concerning natural resource management. Your work product may be derivative, but it may not be a verbatim lifting of existing state and federal regulations.

Due date. The work product is due on November 6.

PSc 523
ADMINISTRATIVE LAW
Adjudicatory Hearing Project

Problem. The setting is a state government agency (your choice) in the executive branch. Assume that the agency is not covered by a government-wide personnel policy or by a collective bargaining agreement. Team members are collectively the head of a division within the executive department and are concerned that the department itself does not have a formal policy statement concerning the procedure to be used when terminating the employment of a civil-service employee who is beyond the probationary period. As a "division head," the team is writing a memorandum to the department's attorney explaining its concern because of the lack of a policy and providing, for the attorney's comment, a draft of a suggested termination procedure.

Work product. Your work product, as a team, is a memorandum from the division head to the department attorney. The memorandum should be between eight and ten manuscript pages in length. Its content and organization should be as follows: (1) your statement of the problem and of your concern; (2) your draft of a suggested adjudicatory procedure for terminating non-probationary, civil service employees that is formatted as you would expect the final policy to appear; and (3) your justification for the procedure's principal characteristics. The key procedural ingredients could include statement of cause, notice requirements, hearing board and/or hearing officer, the hearing itself and its degree of formality, the recommendation of the board and/or hearing officer, final decision and statement of reasons, administrative appeal, and judicial review. In your draft of a suggested procedure, be sure to use the words "may" for the permissive and "shall" for the mandatory, use active instead of passive voice, coordinate and integrate the work products of the team members, and provide a reasonable timetable for the various procedural steps.

Sources. The following sources could be of use to you: the federal and Montana administrative procedure acts; disciplinary and termination sections of public collective bargaining agreements; State of Montana or federal agency personnel policies; Henry J. Friendly, "Some Kind of Hearing," 123 University of Pennsylvania Law Review 1267 (1975); Paul R. Verkuil, "The Emerging Concept of Administrative Procedure," 78 Columbia Law Review 258 (1978); Goldberg v. Kelly, 397 U.S. 254 (1970); Mathews v. Eldridge, 424 U.S. 319 (1976).

Task assignment. You should work as a member of a team, as previously assigned. The team should allocate research (reading and interviewing) and drafting tasks among team members. Each team member should participate in group discussion and in editing the various drafts of the work product. But each student ultimately should be responsible for a discrete, identified part of the total work product. The work product is due on December 4.