

Public Institutions
Spring, 2023
Tuesdays & Thursdays, 9:30 am – 11:00 am
Classroom 1-202

Prof. Sarah Lamdan

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- **Office hours by appointment**
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Course Webpage: <https://www.sarahlamdan.com/public-institutions-2023>.

You can access it via this link or by going to sarahlamdan.com and hovering over the “Classes” tab at the top of the page.

ALL course materials and announcements are on our Course Webpage.

Our Books & Other Materials: Public Institutions: Administrative Law Cases & Materials, <https://opencasebook.org/casebooks/1045-public-institutions-administrative-law-cases-materials/> (Lamdan) is an open access, free online casebook on Harvard’s H2O Casebook platform. You can access the online casebook, and the H2O platform allows you to export a Word document version of the casebook or any of its sections.

COURSE DESCRIPTION

Welcome to Public Institutions. In this class, you will learn how our agencies work, from the procedures they follow to the origins of their lawmaking power. By the end of this course, you will know where the agencies get their authority; how agencies make decisions; what constrains agency discretion; and how agencies fit into our tripartite system of government.

How to Succeed in Our PI Course:

To make the most of our class time together, be sure to **complete our assigned readings**. If there is anything you do not understand in the reading, look to other secondary sources (the additional reading included in our casebook) for additional explanations. Most importantly, do not avoid the tough legal concepts. Instead, seek help from your professors, your teaching

assistants, or a study aid or secondary source that will help you master them. The more you know about administrative law, the more you will be able to use your lawyering skills to monitor, develop, and change government regulations and policies.

After you do the reading, **participate in class**. To ensure that everyone has an opportunity to participate in class, and to guarantee that all of our voices and viewpoints are heard, **I will ask you to sign up to be a discussion leader for at least one of our classes**. The sign-up sheet will be posted in our course Moodle. You will be asked about the case law and legal issues assigned on the day you sign up for. You are allowed to change dates, etc., so long as you lead discussion at least once during the semester.

ASSIGNMENTS/GRADING

Your final grade will be assessed using the following calculation:

- 1) **10% of Grade:** Class Participation (attendance, participation, and leading discussion on assigned days)
- 2) **30% of Grade:** Assignments
 - a) Get to know an agency worksheet (6% of grade) (**Due Thursday, February 2**)
 - b) Expression & Explanations (3 total, each is 8% of grade):
 - i) Rulemaking expression & explanation (**Due Tuesday, February 28**)
 - ii) Adjudication expression & explanation (**Due Thursday, March 30**)
 - iii) Judicial review/delegation of power expression & explanation (**Due Tuesday, April 25**)
- 3) **30% of Grade:** Midterm Exam (**Tuesday, March 16 - in class exam**)
- 4) **30% of Grade:** Final Exam

Assignments will be accompanied by more specific grading instructions provided at the appropriate times during the course. This course is an in-person course. If you are unable to attend class, let Professor Lamdan know before the start of class. You may get notes from a colleague or catch up with Professor Lamdan about any missed in-class discussions. All lessons shared in class (slides, etc.) will be available on our course webpage.

In the event of an extended absence or emergency that interferes with regular attendance, an assignment due date, or an exam, contact the Student Affairs office to ensure that proper accommodations are in place. See STUDENT HANDBOOK, <https://www.law.cuny.edu/wp-content/uploads/page-assets/students/student-handbook/student-handbook-2020-21-08182020.pdf>.

Please also note the law school's academic integrity policy in the STUDENT HANDBOOK, <https://www.law.cuny.edu/about/legal/academic-integrity/>. In this course, as in all courses, you are expected to submit only work that is your own and to attribute external sources properly. The academic integrity policy will be strictly enforced.

OBJECTIVES, LEARNING GOALS, AND EXPECTATIONS

Over the course of the semester students should acquire or refine the following skills:

- Students will understand the role of the administrative state within the U.S. government.
- Students will be familiar with the main procedural requirements that apply to agencies, including rulemaking procedures and procedural due process requirements.
- Students will learn about how federal courts review agencies' decisions, including when and how courts defer to agencies' choices.
- Students will be able to spot administrative law issues in a range of fact patterns and be able to evaluate those issues in light of the APA and other statutes, as well as court opinions.

CLASS ASSIGNMENTS & COURSE SCHEDULE

Reading assignments may be modified based on the pace of the class. I have included the names of the specific cases you will be reading for class. In preparation for class, I expect you to have read the material listed in this schedule. Additional material in the H2O casebook supplements these required readings if you 1) need additional background and clarification on the assigned topic or 2) are interested in learning more about the topic.

INTRODUCTION

Class 1 (Tuesday, January 17): What is Administrative Law & Introduction to the APA

- Reading: From Casebook Section 1
 - Listen to *Peanut Butter Podcast* Part I (Section 1.1.2)
 - Read *Where do Agencies Come From?: An Overview* (Section 1.2.1)
- Assignment: Complete *Get to Know An Agency Worksheet* (Section 1.2.3) (**Due Thursday, February 2**)

RULEMAKING

Class 2 (Thursday, January 19): Introduction to Rulemaking

- Reading: Casebook Section 2.1 (We will watch *The Regulators* in class, so don't watch it as homework)
 - Read *Congressional Research Service, A Brief Overview of Rulemaking and Judicial Review* pages 1-4 (Section 1.3.3)

- Read 5 U.S.C. § 553 (APA Section 553) (APA is linked in Casebook, Section 1.3.4)

Class 3 (Tuesday, January 24): Initiating Rulemaking (TRAC Factors)

- Reading: Casebook Section 2.2
 - Read *Initiating Rulemaking: An Overview* (Section 2.2.1)
 - *Telecommunications Research & Action Center v. Federal Communications Commission*
 - *Pesticide Action Network North America v. Environmental Protection Agency*

Class 4 (Thursday, January 26): Notice of Rulemaking (Logical Outgrowth Test)

- Reading: Casebook Section 2.3
 - *Chocolate Manufacturers Association of the United States v. Block*
 - *Environmental Integrity Project v. Environmental Protection Agency*
 - Read *Participation in Rulemaking: An Overview* (Section 2.4.2)
- Optional weekend listening: *Peanut Butter Podcast Part II* (Section 1.3.2)

Class 5 (Tuesday, January 31): Formal Rulemaking

- Reading: Casebook Section 2.5
 - Read *Limits on Rulemaking Procedures: An Overview* (Section 2.5.1)
 - *United States v. Allegheny-Ludlum Steel Corp.*
 - *United States v. Florida East Coast Railway Co.*

Class 6 (Thursday, February 2): Limits on Agency Rulemaking

- Reading: Casebook Section 2.6
 - *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*
 - *Massachusetts v. Environmental Protection Agency*
 - ***Get to Know an Agency* assignment is due in our course Moodle.**

Class 7 (Tuesday, February 7): Exceptions to Notice and Comment Rulemaking

- Reading: Casebook Section 2.6
 - Read *Exceptions to Notice and Comment Rulemaking Requirements: An Overview* (Section 2.6.2)
 - *Hawaii Helicopter Operators Association v. Federal Aviation Administration*
 - *State of New Jersey Dep't of Environmental Protection v. Environmental Protection Agency*

Class 8 (Thursday, February 9): Agency Guidance

- Reading: Casebook Section 2.7
 - Read *What is Agency Guidance? An Overview* (Section 2.7.1)
 - *Hector v. U.S. Dep't of Agriculture*
 - *Texas v. United States*

Class 9 (Tuesday, February 14): Beyond § 553 Rulemaking: “Hybrid Rulemaking” and Other Statutory Requirements

- Reading: Casebook Section 2.8
 - Read *Procedural Requirements Beyond the APA* (Section 2.8.1) and *Why are we talking about FOIA here?* (Section 2.8.3)
 - *Corrosion Proof Fittings v. Environmental Protection Agency*
 - *DOJ v. Reporters Committee for Freedom of the Press*

Class 10 (Thursday, February 16): The Line Between Rulemaking and Adjudication

- Reading: Casebook Section 3.1
 - Read *The Line Between Rulemaking and Adjudication: An Overview* (Section 3.1.1) and *CRS Report - Informal Administrative Adjudication - An Overview* pages 1-7 (Section 3.1.3)
 - *Natural Labor Relations Board v. Bell Aerospace Co.*

*****This class will not meet on Tuesday, February 21st and Thursday, February 23rd
(Take these periods to study for midterms and to enjoy some rest!)*****

ADJUDICATION

Class 11 (Tuesday, February 28): Procedural Due Process - When is Due Process Required?

- Reading: Casebook Section 3.2
 - Read *When is Procedural Due Process Required?* (Section 3.2.1)
 - *Londoner v. Denver*
 - *Bi-Metallic Investment Co. v. State Board of Equalization of Colorado*
- **First Expression and Explanation assignment due.**

Class 12 (Thursday, March 2): Procedural Due Process - Property Interests

- Reading: Casebook Section 3.2.4
 - *Goldberg v. Kelly*
 - *Board of Regents of State Colleges v. Roth*

Class 13 (Tuesday, March 7): Procedural Due Process - Liberty Interests

- Reading: Casebook Sections 3.2.5
 - *Paul v. Davis*
 - *Codd v. Velger*
 - Read: *If Procedural Due Process is Required, How Much Process is Due?* (Section 3.2.6.2)
 - *Mathews v. Eldridge*
 - Listen to Peanut Butter Podcast Part III (Section 3.2.6.1) over weekend (optional)

Class 14 (Thursday, March 9): Procedural Due Process - What Procedures are Required? [THIS CLASS WILL BE ON ZOOM, NOT IN PERSON]

- Reading: Casebook Section 3.2.6
 - *Cleveland Board of Education v. Loudermill*
 - *Sierra Club v. Costle* (Are ex parte communications allowed?)

Class 15 (Tuesday, March 14): Reviewing Agency Adjudication & Introduction to Judicial Review

- Reading: Casebook Section 3.2.8
 - Read: *Reviewing Agency Adjudication - A Brief Overview* (Section 3.2.8.1) and *Judicial Review of Agency Actions: An Overview* (Section 4.1.1)
 - *Torres v. Mukasey*
 - MIDTERM REVIEW

Class 16 (Thursday, March 16): Midterm (Multiple Choice About Rulemaking Procedures)

Tuesday, March 21 & Thursday, March 23 = SPRING BREAK

JUDICIAL REVIEW OF AGENCY ACTIONS

Class 17 (Tuesday, March 28): Judicial Review of Agencies' Statutory Interpretations (*Chevron*)

- Reading: Casebook Section 4.1
 - Read *Chevron Doctrine Limits: Force of Law Requirement* (Section 4.2.3)
 - *Chevron v. Natural Resources Defense Council, Inc.*
 - *United States v. Mead Corp.*
 - *Skidmore v. Swift*

Class 18 (Thursday, March 30): *Chevron* Limitations: *Mead* Force of Law Requirement & Major Questions Doctrine

- Reading: Casebook Section 4.2
 - *Christensen v. Harris County*
 - Read *Major Questions Doctrine* (Section 4.2.4)
 - *West Virginia v. EPA*
- Second *Expression and Explanation* assignment due.

Class 19 (Tuesday, April 4): Judicial Review of Other Agency Actions (Arbitrary & Capricious Review)

- Reading: Casebook Section 4.3
 - Read: *Arbitrary & Capricious Review (The "Hard Look" Doctrine)* (Section 4.3.1)
 - *Citizens to Preserve Overton Park v. Volpe*
 - *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance*

*****April 6 = PASSOVER - NO CLASS*****

JUDICIAL REVIEW OF AGENCY ACTIONS: REQUIREMENTS FOR REVIEW

Class 20 (Tuesday, April 11): Reviewability Requirement - Agency Action

- **Reading:** Casebook Section 5.2
 - Read *Judicial Review Requirements: An Overview* (Section 5.1.1)
 - *Lujan v. National Wildlife Federation*
 - *Norton v. Southern Utah Wilderness Alliance*

Class 21 (Thursday, April 13): Reviewability Requirement - Finality

- **Reading:** Casebook Section 5.3
 - *Bennett v. Spear*
 - *United States Army Corps of Engineers v. Hawkes Co., Inc.*

SEPARATION OF POWERS: POLITICAL CONTROL OF AGENCIES

Class 22 (Tuesday, April 18): Legislative Control of Agencies

- **Reading:** Casebook Section 6.1
 - Read *Overview: Legislative Delegations of Authority* (Section 6.1.2) and *Overview: Congressional Review of Agency Decisions* (Sections 6.1.5)
 - *Whitman v. American Trucking Associations, Inc.*
 - *Immigration and Naturalization Service v. Chadha*

Class 23 (Thursday, April 20): Executive Control of Agencies

- **Reading:** Casebook Section 6.2
 - Read *Executive Oversight of Agency Decisions: An Overview* (Section 6.2.1.1)
 - *Lucia v. Securities and Exchange Commission*
 - *Morrison v. Olson*
- **Third *Expression and Explanation Assignment* Due**

Class 24 (Tuesday, April 25): Wrap-up and **FINAL REVIEW**

FINAL EXAM: To Be Determined