CONTENTS

хi

ADM	INISTRATIVE AGENCIES AND INISTRATIVE LAW
A. Wha	t Is Administrative Law?
	Gilmore v. Lujan
	Notes
	Warren, Administrative Law in the Political System Notes
B. Adm	inistrative Agencies
	Federal Administrative Procedure Act
	Notes
	Department of Transportation v. Association of American Railroads
	Notes
С. Турс	es of Agencies
	Notes
	Warren, Administrative Law in the Political System
	Table 1.1. James Q. Wilson's Four Periods of Bureaucratic Growth
	Regulatory Program of the United States Government
	Notes
	ncies and Accountability
1. A	gency Accountability and Congress
	Immigration and Naturalization Service v. Chadha
	Notes
2. C	ongressional Review Act
	United States v. Nasir
	Notes
	New Energy Economy Inc. v. Martinez Notes
3 A	gency Accountability and the Courts
J. 11	Johnson v. United States Railroad Retirement Board
	Notes

ALCB_2022_FM.indd 11 12/18/21 2:32 PM

	4.	Agency Accountability and the President	47
		Notes	47
		a. Appointment	50
		Lucia v. Securities and Exchange Commission	50
		Notes	57
		United States v. Arthrex, Inc.	60
		Notes	79
		b. Removal	80
		Humphrey's Executor v. United States	80
		Notes	83
		Morrison v. Olson	86
		Notes	90
		Free Enterprise Fund v. PCAOB	92
		Notes	101
2	DEI	LEGATION OF POWERS	105
	A. Le	egislative Power	106
	1.	Separation and Delegation	107
		The Panama Refining and Schechter Poultry Cases	110
	3.	Post-1935 Federal Cases	111
		Whitman v. American Trucking Ass'ns	119
		Notes	123
		Gundy v. United States	124
		Notes	138
	4.	State Delegation of Legislative Power	142
		Krielow v. La. Dep't of Agric. & Forestry	142
		Notes	147
	5.	Delegation and Standards: Coda	150
	B. Ju	dicial Power	152
	1.	The United States Constitution and Judicial Power	152
		Debate on Federal Trade Commission Act	152
		Notes	153
		Thomas v. Union Carbide Agricultural Products Co.	154
		Notes	156
		Stern v. Marshall	<i>163</i>
		Notes	171
		Granfinanciera S.A. v. Nordberg	172
		Notes	176
	2.	State Constitutions and Judicial Power	177
		McHugh v. Santa Monica Rent Control Board	177
		Notes	182
		People v. Davis	185
		Notes	188
		Chapter 2 Problem	189

ALCB_2022_FM.indd 12 12/20/21 4:37 PM

IN	IV	ESTIGATIONS AND PRIVACY	191
A.	In	vestigations and Inspections	192
	1.	Voluntary Disclosure	193
		In re Pacific Pictures Corp.	194
		Notes	198
	2.	Compulsory Disclosure	199
		a. Administrative Searches and Their Scope	199
		Camara v. Municipal Court of the City and County of San Francisco	200
		Notes	202
		Platteville Area Apartment Ass'n v. City of Platteville	<i>203</i>
		Notes	207
		b. Warrantless Searches and Inspections	209
		New York v. Burger	209
		Notes	215
		City of Los Angeles v. Patel	215
		Notes	220
		c. Subpoenas	221
		FTC v. American Tobacco Co.	223
		Notes	224
		Texas Lawyers Insurance Exchange v. Resolution Trust Corp.	226
		Notes	230
		d. The Role of the Fifth Amendment	232
		Shapiro v. United States	232
		Notes United States v. Hubbell	236 236
		Notes	230 241
_	_		
В.		ivacy and Access to Information	242
	1.	The Freedom of Information Act	242
		National Archives and Records Administration v. Favish	243
		Notes	248
		American Immigration Lawyers Ass'n v. Executive Office for	
		Immigration Review	251
	_	Notes	256
	2.	The Privacy Act	256
	0	Notes	257
	3.	Privacy and the U.S. Constitution	257
		Whalen v. Roe NASA v. Nelson	258
			259 265
_	~	Notes	
C.	G	overnment in Sunshine	266
		Government in Sunshine Act	266
		Notes	269
		Chapter 3 Problem	270

ALCB_2022_FM.indd 13 12/18/21 2:32 PM

R	ULES AND RULEMAKING	271
A.	Terminology and Rulemaking	271
	Schwartz, Administrative Terminology and the Administrative Procedure Act	271
	Warren, Administrative Law in the Political System	275
	Morales v. California Dep't of Corrections and Rehabilitation	276
	Notes	280
В.	Distinguishing Rules and Orders	281
	Paralyzed Veterans of America v. Secretary of Veterans Affairs	281
	Cordero v. Corbisiero	285
	Notes	285
C.	Substantive/Legislative Rules: The Force and Effect of Law	287
	1. Defining Legislative Rules	287
	Anthony, Interpretive Rules, Policy Statements, Guidances, Manuals, and the Like—Should Federal Agencies	
	Use Them to Bind the Public?	287
	2. The Authority to Promulgate Legislative Rules	288
	In re Permanent Surface Mining Regulation Litigation	288
	Notes	292
	3. The Force and Effect of Legislative Rules	293
	Reuters Ltd. v. FCC	293
	Notes	297
	Bowen v. Georgetown University Hospital	297
	Notes	302
D	. Nonlegislative Rules	30 3
	1. Defining Nonlegislative Rules	303
	Anthony, Interpretive Rules, Policy Statements, Guidances, Manuals, and the Like—Should Federal Agencies Use Them to	
	Bind the Public?	303
	Comment: Procedural Rules	304
	Warshauer v. Solis	<i>30</i> 5
	Notes	310
	Electronic Privacy Info. Ctr. v. United States Dep't of Homeland Security	311
	Notes	317
	2. Is It Binding? Distinguishing Between Legislative and Nonlegislative Rules	318
	Anthony, Interpretive Rules, Policy Statements, Guidances, Manuals, and the Like—Should Federal Agencies Use Them to	310
	Bind the Public?	318
	Comments	320
	COMMICING	04

ALCB_2022_FM.indd 14 12/18/21 2:32 PM

	Contents	XV
Е.	Cost-Benefit Analysis	323
	Executive Order 13563—Improving Regulation and	
	Regulatory Review	323
	Notes	326
	Business Roundtable v. SEC	327
	Notes	335
F.	Publication and Estoppel	336
	Federal Crop Insurance Corp. v. Merrill	336
	Notes	338
	Office of Personnel Management v. Richmond	340
	Notes	347
G.	Rulemaking Procedure	349
	Federal Administrative Procedure Act	349
	Notes	350
	Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense	
	Council	356
	Notes	363
	United States v. Florida East Coast Railway	364
	Notes	371
H.	Rulemaking and Due Process	374
	Bi-Metallic Investment Co. v. State Board of Equalization	374
	Notes	375
	In re Appeal of Stratton Corp.	377
	Notes	381
	Association of National Advertisers v. FTC	382
	Notes	387
	Additional Procedures: Reg-Flex	388
	§604. Final Regulatory Flexibility Analysis U.S. Telecom Ass'n v. FCC	388
	Notes	<i>389</i> 391
I.	Rulemaking by Adjudication	391
	NLRB v. Wyman-Gordon Co.	391
	Notes	399
J.	Rulemaking and the Internet	402
	Section 206 of the E Government Act of 2002	402
	Moxley, E-Rulemaking and Democracy	403
	Gedid, Administrative Procedure for the Twenty-First Century:	
	Introduction to the 2010 Model State Administrative	4.5.0
	Procedure Act	410
	Chapter 4 Problem	411

ALCB_2022_FM.indd 15 12/18/21 2:32 PM

5]	RIG	HT TO BI	E HEARD	413
1	4. P	rivileges		413
		Smit	h v. Liquor Control Commission	413
		Note	-	415
]	B. E i	ntitlements		419
			cess Revolution	419
	1.		berg v. Kelly	419
			nan, Reason, Passion and "the Progress of the Law"	424
		Note	9	426
			kpark Entertainment, Inc. v. Taft	427
		Note	-	430
		Frier	ndly, Some Kind of Hearing	431
	2.	Flexible Due	•	432
		Goss	v. Lopez	432
		Note	S	438
		Math	news v. Eldridge	440
		Note	S	449
		Rean	ns v. Irvin	450
			er v. Rogers	456
		Note		462
	3.		ng Scope of Property and Liberty Interests	464
		a. Property I		464
			man v. Shinseki	464
			n of Castle Rock v. Gonzales	468
		Note		47]
		b. Liberty In		472
			rich v. Board of Regents ion v. Columbia Correctional Institution	472 475
		Note		478
	C. E :	xceptions to D	ue Process Requirements	479
		_	strative Process/No Facts to Be Found	479
	1.		nrake v. Iowa Law Enforcement Academy	479
		Note	· · · · · · · · · · · · · · · · · · ·	481
	2.	Waiver		483
			onal Independent Coal Operators' Ass'n v. Kleppe	483
		Note	1 11	486
	3.	Postponed H	earings and Emergency Cases	487
		_	cell v. Department of Agriculture	487
		Note	1 0	488
		Liber	rtas Classical Ass'n v. Whitmer	490
		Note	s	492
		Chap	oter 5 Problem	494

ALCB_2022_FM.indd 16 12/18/21 2:32 PM

XV	1

EVIDEN	ITIARY HEARINGS AND DECISIONS	497
	Warren, Administrative Law in the Political System	497
A. Parties	in Interest and Intervention	498
	APA Section 554(c) Office of Communication of the United Church of Christ v. FCC Notes Sarasota County Public Hospital v. Department of Health Notes	498 499 505 <i>506</i> 508
B. Notice a	and Pleadings	509
	Comments Yellow Freight System v. Martin Notes	509 <i>511</i> 514
C. Nature	of Hearing	517
	Johnson Newspaper Corp. v. Melino Notes	517 520
D. Counsel		521
	Comments Federal Administrative Procedure Act	521 522
E. From Ex	caminers to Administrative Law Judges	524
	Guerrero v. New Jersey Notes	<i>524</i> 525
	Administrative Conference of the United States, Federal Administrative Law Judge Hearings Notes	526 528
F. Bias		529
	Caperton v. A. T. Massey Coal Co. Notes	<i>529</i> 539
	1616 Second Ave. v. State Liquor Authority	540
	Notes Federal Administrative Procedure Act	543
	Rosa v. Bowen	544 <i>545</i>
	Notes	549
G. Combin	ation of Functions	550
	Withrow v. Larkin	550
	Beer Garden v. State Liquor Authority	555
	Notes Federal Administrative Procedure Act	557 558
H. Evidenc		560
	Comments	560
	Federal Administrative Procedure Act	560

ALCB_2022_FM.indd 17 12/18/21 2:32 PM

7

	Wagstaff v. Department of Employment Security	562
	Notes	564
	Richardson v. Perales Notes	565 572
I. Burden of I		
		57 4
	Director, Office of Workers' Compensation Programs v. Greenwich Collieries	574
	Notes	579
J. Illegally Ob	otained Evidence	580
	Powell v. Secretary of State	580
	Notes	582
K. Decision Pr	rocess	58 4
	Federal Administrative Procedure Act	584
	Notes	585
	FCC v. Allentown Broadcasting Corp.	586
	Notes Eads v. Secretary of Health and Human Services	588 589
	Notes	591
L. Decisions a	and Findings	59 2
	Adams v. Board of Review of Indus. Comm'n	592
	Notes	596
	Federal Administrative Procedure Act	596
M. Reconsider	ration	598
	ICC v. Brotherhood of Locomotive Engineers	598
	Notes	601
	Chapter 6 Problem	602
HIDICIAL	DEXTIENAT	605
JUDICIAL	Warren, Administrative Law in the Political System	605
	Notes	606
A. Judicial Rev	view and Statutory Silence	608
	Stark v. Wickard	608
	Notes	612
B. Statutory P	reclusion	613
	Department of Environmental Protection v. Civil Service Commission	614
	Notes	616
C. APA and Re	eview of Discretion	618
	Heckler v. Chaney	618
	Notes	623

ALCB_2022_FM.indd 18 12/18/21 2:32 PM

	Content	s xix
	Massachusetts v. EPA	626
	Notes	628
D.	Standing	628
	APA §702. Right of Review	628
	Lujan v. Defenders of Wildlife	629
	Notes	633
	Bennett v. Spear	635
	Notes	639
E.	Primary Jurisdiction	641
	Farmers Insurance Exchange v. Superior Court	641
	Notes	650
F.	Exhaustion of Administrative Remedies	651
	Comments	651
	1. Application of the Exhaustion Doctrine	652
	McCarthy v. Madigan	652
	Notes	658
	2. The Exhaustion Doctrine and the APA	661
	APA §704. Actions Reviewable	661
	Darby v. Cisneros	662
	Notes	666
	3. Issue Exhaustion	668 668
	Sims v. Apfel Notes	672
G.	Ripeness for Review	674
	Abbott Laboratories v. Gardner	674
	Notes	675
	National Park Hospitality Ass'n v. Department of Interior	676
Н.	Scope of Review	680
	APA \$706. Scope of Review	680
	1. Substantial Evidence Rule	680
	Comments	680
	Universal Camera Corp. v. NLRB	682
	Notes 2. Arbitrary and Capricious	688 691
	2. Arbitrary and Capricious Citizens to Preserve Overton Park v. Volpe	691
	Notes	693
	Motor Vehicle Manufacturers Ass'n v. State Farm	695
	Federal Communication Commission v. Fox Television Stati	
	Notes	702
	Department of Commerce v. New York	703
	Notes	712

ALCB_2022_FM.indd 19 12/18/21 2:32 PM

	Department of Homeland Security v. Regents of the Univers	sity
	of California	713
	Notes	721
	Comments: State Scope of Review	722
3. Age	ency Delay	723
	APA §706. Scope of Review	723
	Heckler v. Day	723
	Notes	728
4. The	e Doctrine of Statutory Deference	728
	Skidmore v. Swift & Co.	729
	Chevron v. Natural Resources Defense Council	730
	Notes	735
	United States v. Mead Corp.	739
	Notes	746
	King v. Burwell	747
	Notes	749
	Pereira v. Sessions	751
	Notes	754
5. The	e Doctrine of Regulatory Deference	755
	Kisor v. Wilkie	755
	Notes	765
	Chapter 7 Problem	768
Appendix 1	A: Federal Administrative Procedure Act	771
	B: Freedom of Information Act	785
Table of Ca		793
•	uolo	
Index		807

ALCB_2022_FM.indd 20 12/18/21 2:32 PM