

CHAPTER 1

INTRODUCTION TO ADMINISTRATIVE LAW

CHAPTER OBJECTIVES

After reading this chapter, you should be able to:

- Demonstrate a basic understanding of the role that administrative agencies play in U.S. society.
- Understand how and why agencies are created.
- Explain where administrative agencies function within the federal and state systems.
- Trace the historical background that shaped the development of administrative agencies.
- Categorize the types of administrative agencies.
- Examine the areas of law that come within the scope of administrative law.

CHAPTER OUTLINE

Introduction to Administrative Law
Administrative Law and the Constitution
Administrative Law and Separation of Powers
Administrative Law and Federalism
Administrative Law and Administrative Agency Defined
Creation of Agencies, Issues of Separation of Powers, and Delegation
Agency Discretion
Procedural Law and Substantive Law
Sources of Administrative Law
The Constitution
Statutes
Common Law
Executive Orders
Rules or Regulations
Brief Historical Overview
Early Years of the Country—1789–1870s
Populist Era—1870s–1890s
Progressive Era—1890s–1920s
Depression and New Deal—1920s–1930s

Post New Deal and Adoption of Administrative Procedure Act (APA)—1946

Modern Era—1960–present

Types of Agencies

Executive Department or Cabinet Level

Subcabinet

Independent-Agency Type of Commission/Board Type

Regulatory, Social Welfare, Ratemaking

What Agencies Don't Do

TEACHING SUGGESTIONS AND TEACHING TIPS FOR LECTURES

1. Chapter 1 starts out with plain, easy to understand language in order to ease the students into the study of administrative law. In the first lecture, it is a good idea to bring the study of administrative law down to a practical and personal level. Everyone in the class will have an experience with an agency. Ask about the students' experience and use the responses to get into the chapter.
2. Exhibit 1 lists a variety of issues and the agencies that would respond. This can be a source of discussion. For instance, Exhibit 1-1 lists FEMA as an agency that responds to a hurricane. Ask the students to list some other agencies, federal and in their state, that would respond to a hurricane. Exhibit 1-6 can be used here also. Remind the students that administrative agencies are part of the government. Ask the students to name some agencies and discern if they are private or public entities.
3. It is never too early to get the students comfortable with the names of the agencies and their acronyms. Exhibit 1-1 can be a start in that direction.
4. One of the first challenges is to come to grips with the multitude of names, the sheer number of agencies and their functions, and the fact that there are agencies at the local, state, and federal

levels. Many of the exhibits in the chapter can be used to overcome this obstacle by getting the students used to hearing the names of the agencies and discerning their functions.

5. The text next discusses administrative law in the context of the U.S. Constitution. Exhibit 1-2 is a good way for the students to see the entire structure of the federal government and where agencies fit. This can lead to a discussion of some basic constitutional law principles such as separation of powers, checks and balances, the powers of the three branches, and federalism. Note Exhibit 1-3 which lists the powers of the federal and state governments. This can lead into a discussion on how agencies are the “headless fourth branch of government.”
6. As you review the three branches and their powers, ask the students to reconcile that our constitutional system is based on a separation of powers with checks and balances—yet we allow agencies to possess a form of legislative, executive, and judicial power. See Exhibit 1-4; this can lead to a discussion of delegation of power, the enabling act, and how the U.S. Supreme Court has struggled with this issue. Point out now in a general manner that there are controls in place to control agencies. The controls are the subject of Chapter 6, Judicial Control of Administrative Agencies; Chapter 7, Legislative Control of Administrative Agencies; and Chapter 8, Executive Control of Administrative Agencies.
7. Point out that discretion is a cornerstone of administrative law. Discretion is introduced in this chapter. Discretion is covered in detail in Chapter 6 and to a much lesser extent in Chapter 7.
8. After covering some of the constitutional aspects, the chapter gives a definition of administrative law and agency. You can make a choice to lead with this material. Exhibit 1-5 gives a broad reason for the existence of agencies which can be greatly expanded upon.
9. Exhibit 1-7 can be used to show how the Department of Homeland Security was created through the enabling act. Exhibit 1-8 is the organizational chart for the Department of Homeland Security.
10. Exhibit 1-9 gives an overview of the delegation and nondelegation terminology and then leads into a discussion of delegation, followed by Exhibit 1-10, which gives a synopsis of key U.S. Supreme Court cases on delegation. Note that the text refers to *Industrial Union v. American Petroleum Institute* (the benzene case) and *American Textile Manufacturers Institute v. Donovan*.

Industrial Union is excerpted in the text. These cases are used to illustrate the principle that the modern Supreme Court does not strike down statutes on the basis of illegal delegation but will often construe a statute (as it did in the benzene case) to avoid a finding of illegal delegation. These cases also get into the issue of feasibility and cost-benefit analysis. *Amalgamated Meat Cutters and Butcher Workmen v. Connally* is also excerpted in the text.

11. Depending on time, the instructor can get into some of the U.S. Supreme Court cases surrounding the development of administrative agencies. See Exhibit 1-10 for background. Historical background is also provided. See Exhibit 1-11 for historical background.
12. Exhibit 1-12 shows the president's cabinet with subagencies, and Exhibit 1-13 is the organization of the Department of Justice. Take the time to go over these exhibits to illustrate the variety and vastness of the federal agencies. Exhibit 1-14 is a listing of agencies in the Pennsylvania government. You can have the students obtain a similar list in their state.
13. See Exhibit 1-15, which outlines the various types of agencies.
14. It is a good idea from time to time to remind the students of the limits of administrative law. See Exhibit 1-16, which compares administrative law, private disputes, and criminal law.

ANSWERS TO REVIEW QUESTIONS

1. Give some reasons for the importance of administrative law.

Administrative law is important because government agencies issue regulations that have the force of law in virtually all aspects of society. Virtually no part of U.S. society is unaffected by regulations.

2. List and briefly describe the powers possessed by agencies.

Most agencies have legislative power—power to pass regulations that have the force of law; executive power—power to enforce regulations; and judicial power—power to adjudicate as to whether a regulation has been violated.

3. How are agencies created?

Agencies are created by a legislative body through the passage of an enabling act.

4. Discuss the delegation and nondelegation doctrine.

Delegation can be seen as the transfer of power by Congress to an administrative agency. Because Article I of the U.S. Constitution vests legislative power in Congress, constitutional issues have been raised to the legitimacy of administrative agencies. The nondelegation doctrine recognizes this dilemma and concerns itself with the

limits and requirements of a valid delegation of power to an administrative agency.

5. What is agency discretion?

Discretion is the ability possessed by agencies to make choices in the way they do their work.

6. State the historical eras that have characterized the development of administrative law.

ERA	MAJOR FEATURE
Early Years of the Country—1789–1870s	Very little regulation by the federal government or the states.
Populist Era—1870s–1890s	States attempt to regulate business, especially the railroads.
Progressive Era—1890s–1920s	Federal government attempts to regulate corporations and monopolies.
Depression and New Deal—1920s–1930s	New Deal legislation creates numerous agencies.
Post New Deal and Adoption of Administrative Procedure Act (APA)—1946	Congress passes the Administrative Procedure Act (APA) 1946 to institute uniformity in agency functions.
Modern Era—1960–present	Creation of numerous agencies in areas of environmental protection, worker safety, consumerism, and antidiscrimination.

7. What are some of the various types of agencies?

Types of Agencies

Executive Departments

Cabinet Level—Political Appointments by President and Must Be Approved by Senate
Department of Health and Human Services (HHS) (Cabinet)

Centers for Disease Control (CDC) (subcabinet)
 Food and Drug Administration (FDA) (subcabinet and regulatory)

Department of the Interior (Cabinet)

National Park Service (subcabinet)

Department of Justice (DOJ) (Cabinet)

Drug Enforcement Agency (DEA) (subcabinet)
 Federal Bureau of Investigation (FBI) (subcabinet)

Department of Treasury (Cabinet)

Bureau of Alcohol, Tobacco and Firearms (ATF) (regulatory)

Internal Revenue Service (IRS) (regulatory)

Department of Labor (Cabinet)

Occupational Safety and Health Administration (OSHA) (subcabinet and regulatory)

Independent—Two Types

1. Commission or Board

Consumer Product Safety Commission (CPSC) (regulatory)

Equal Employment Opportunity Commission (EEOC) (regulatory)

2. Agency headed by One Person, Called an Administrator

Environmental Protection Agency (EPA) (regulatory)

Generally, members of independent agencies serve fixed terms and cannot be removed except for cause.

8. Describe the scope of administrative law.

Administrative law involves issues between an individual or business concerning the issuance of regulations, enforcement of regulations, and the adjudication of regulations. Administrative law does not involve civil disputes between individuals, nor does it involve the criminal law.

MORE INFORMATION

1. Go to <http://thomas.loc.gov>. Scroll down to Government Resources and click. Then click on Executive Branch. You can then click on the various agencies and subagencies of the federal government.
2. While on <http://thomas.loc.gov>, click on Legislative Process to see a detailed account of how a bill becomes a law.

ANSWERS TO PRACTICAL APPLICATIONS

1. Go to your state's Web site and do the following:
 - A. Note the agencies of the government and their functions.
Answers will vary depending on the state.
 - B. List all the agencies that are considered part of the governor's cabinet.
Answers will vary depending on the state.
 - C. Make a list of the various independent agencies.
Answers will vary depending on the state.
2. Go to the Web site for the Department of the Interior at <http://www.doi.gov> and answer the following:
Name five subagencies that are included in the Department of Interior.
 - Bureau of Reclamation
 - U.S. Fish and Wildlife Service
 - National Park Service
 - Bureau of Land Management
 - Minerals Management Service
3. Go to the Web site of the Department of Commerce at <http://www.commerce.gov>.
Name five subagencies that are included in the Department of Commerce.
 - Economics and Statistics Administration (ESA)
 - Bureau of the Census
 - Bureau of Economic Analysis (BEA)
 - Economic Development Administration (EDA)
 - International Trade Administration (ITA)
 - Minority Business Development Agency (MBDA)
 - National Oceanic & Atmospheric Administration (NOAA)
 - National Telecommunications and Information Administration (NTIA)

Patent and Trademark Office (PTO)

Technology Administration (TA)

4. In 2004, Congress established a new agency called the Office of the Director of National Intelligence. To obtain the enabling act which created this agency and other information, go to <http://thomas.loc.gov>.
Select the 108th Congress.
Do a bill search for S. 2845.
 - A. Who was the main sponsor of this bill?
Senator Collins
 - B. What was the last major action on the bill?
Became Public Law 108-458

INTERNET EXERCISES FOR MANUAL

1. To obtain a detailed analysis on how a bill becomes a law, go to <http://thomas.loc.gov/home/lawmade.toc.html>.
2. Go to the Web site of the Bureau of Reclamation at <http://www.usbr.gov>.
 - A. Under what Department is this Bureau?
Department of the Interior
 - B. State the top two priorities for the Bureau of Reclamation. Click on the link "About Us" and then click on "Fact Sheet."
The Bureau of Reclamation priorities are to:
 - Operate and maintain projects in a safe and reliable manner, protecting the health and safety of the public and Reclamation employees.
 - Ensure continued delivery of water and power benefits consistent with environmental and other requirements.
 - Honor state water rights, interstate compacts, and contracts to Reclamation users.
 - Play an important role in meeting increasing demands for finite water resources.
 - Enhance effectiveness in addressing complex water management issues in the West.
3. The Congress in September 2001 delegated power to the President to use force against those who attacked the United States on September 11, 2001. To read the resolution that delegated the power to the President, go to <http://thomas.loc.gov>.
Put in a search for the 107th Congress "authorization for the use of military force SJ Res 23."

Authorization for Use of Military Force (Engrossed as Agreed to or Passed by Senate)

SJ 23 ES

107th CONGRESS

1st Session

S. J. RES. 23

JOINT RESOLUTION

To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This joint resolution may be cited as the 'Authorization for Use of Military Force'.

SECTION 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES

(a) IN GENERAL- That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) War Powers Resolution Requirements-

(1) SPECIFIC STATUTORY AUTHORIZATION- Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that

this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) APPLICABILITY OF OTHER REQUIREMENTS- Nothing in this resolution supercedes any requirement of the War Powers Resolution.

Passed the Senate September 14, 2001.

Attest:

Secretary.

Became PL 107-40

TEST BANK

State three powers possessed by administrative agencies.

1. _____
2. _____
3. _____

State the names and function of five federal agencies.

4. _____
5. _____
6. _____
7. _____
8. _____

State four sources of administrative law.

9. _____
10. _____
11. _____
12. _____

T/F

13. Delegations of power from Congress to the agencies are generally unconstitutional.
14. Administrative law touches and concerns most aspects of life in the United States.

Multiple Choice

15. Which of the following is not a power of an administrative agency?
 - a. Rulemaking
 - b. Adjudication
 - c. Punishment for criminal violations
 - d. Executive
16. The cabinet departments such as the Department of Defense can be described as follows:
 - a. Headed by a Congressional appointee
 - b. Headed by a Supreme Court justice
 - c. Headed by a presidential appointee
 - d. None of the above

17. The secretaries of cabinet departments are:
- a. Directly accountable to the President
 - b. Officials who serve at the pleasure of the President
 - c. Responsible directly to the Supreme Court
 - d. Both a and b
18. The function of administrative agencies is:
- a. To provide a check on the power of Congress
 - b. To make and implement rules and regulations to further the intent of the legislature
 - c. To regulate Congressional committees
 - d. None of the above
5. FBI
6. OSHA
7. EEOC
8. DOD
9. The Constitution
10. Executive orders
11. Regulations
12. Statutes
- T/F
13. False
14. True

KEY TO TEST BANK

1. Legislative
2. Executive
3. Judicial
4. CPSC
- Multiple Choice
15. c
16. c
17. d
18. b