

**PPL 891 – Issues in Public Policy:
Law for Public Policymakers and Administrators**

Summer 2018 (Session 1) - Online

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COURSE DESCRIPTION AND OBJECTIVES

This is a master-level seminar that examines how law both empowers and restrains public policymakers. The topic of administrative law has gained increasing attention over the past years, as is especially evident by the trend among law schools to incorporate administrative law into their required core curricula. However, even awareness of the fundamentals of administrative law cannot adequately capture the multi-faceted legal environment in which policy makers, policy advocates, and policy administrators operate on a daily basis. The extent to which policy action is possible is conditional on federal, state, and local legal rules, the prevailing judicial climate in any given jurisdiction, and laws controlling the relationships between levels and branches of government. Moreover, as the policy environment continues to focus on government transparency and accountability, policy makers and administrators must be aware of their responsibilities and potential liabilities for misconduct, while policy advocates likewise need to keep apprised of their rights and opportunities for shaping the actions of government.

In this seminar, we will consider this broad legal context of policymaking. Given the shortness of the semester and range of topics to cover, we inevitably will sacrifice depth for breadth. However, my goal is to provide you with broad exposure to issues and writing styles that are commonly encountered by policy specialists so that you will have a strong point of reference for your future work. In the process, we will also connect academic theory to professional practice to understand how well theory reflects practice and how it can guide your work in policy.

Learning Objectives: The primary goals for this course are as follows:

- 1) Develop a substantive understanding of the administrative law process that can be applied at the federal and state levels.
- 2) Understand the judicial decision-making process as it specifically affects administrative agencies and policy makers.
- 3) Develop a framework for understanding the legal structures of inter-governmental and inter-branch relations, and how those structures affect the range of options available to policy advocates, policy makers, and policy administrators.
- 4) Apply substantive understandings of the legal context and academic theory of policymaking to hypothetical problems and simulated real-world scenarios so as to predict policy outcomes or propose policy solutions.
- 5) Refine skills in reading constitutional law and academic literature.
- 6) Gain exposure to and experience with a variety of professional writing styles.
- 7) Master the process of making and responding to a Freedom of Information Act request.
- 8) Produce an original research idea and carry out a policy analysis that applies course themes to a policy question relevant to student interests.

COURSE FORMAT AND RESOURCES

Format: This is an online course designed to give you maximum flexibility in completing the course requirements. It is a 3 credit course within a condensed semester. If we were meeting in person, we would likely meet three days a week for 7 weeks, for 1 hour and 50 minutes each day. With this in mind, I have structured the class to have 3 lectures/slideshow presentations per week (except the last two weeks, which I have combined so you can focus on your final papers), but I generally limit lectures to last no more than 1 hour. Course materials will be posted on a rolling basis throughout the semester, and you are free to do the readings and view the lectures at your own pace, so long as assignments are submitted on schedule.

Attendance: I consider your work on your weekly writing assignments to reflect your attendance in the course.

Communicating with the Instructor: Because this is an online class, and I will not be on campus this summer, on-campus office hours will not be available. If you have course-material/requirement-related questions, please use the course discussion board. For all other matters, please contact me via e-mail, zalews17@msu.edu. I generally reply to course-related e-mails in the early morning or late evening on weekdays, or on weekends. If you do not receive a reply within this time, you are welcome to send a follow-up. Please

do not wait until the last few hours before an assignment is due to ask me questions about that assignment, as there is no guarantee that I will answer it before the assignment is due.

Computer Access and Help: The course is administered on Desire To Learn (D2L). It is your responsibility to have reliable computer and internet access through the summer. If you have questions about D2L, please visit the D2L help site: <http://help.d2l.msu.edu/>

Accommodations for Students with Disabilities: Michigan State University is committed to providing equal opportunity for participation in all programs, services and activities. Requests for accommodations by persons with disabilities may be made by contacting the Resource Center for Persons with Disabilities at 517-884-RCPD or on the web at <http://myprofile.rcpd.msu.edu>. Once your eligibility for an accommodation has been determined, you will be issued a verified individual services accommodation (“VISA”) form. Please present this form to me at the start of the term and/or two weeks prior to the accommodation date (test, project, etc.). Requests received after this date will be honored whenever possible.

ACADEMIC DISHONESTY & PLAGIARISM

Academic dishonesty will not be tolerated in this course. Article 2.3.B.2 of the MSU Academic Freedom Report states, “the student shares with the faculty the responsibility for maintaining the integrity of scholarship, grades, and professional standards.” This course will adhere to the policies of the Political Science Department and Michigan State University pertaining to protecting the integrity of scholarship and grades. A complete version of these policies is available at <https://www.msu.edu/~ombud/academic-integrity/index.html>.

Examples of academic dishonesty include, but are not limited to:

- Submitting a paper prepared by another person, in whole or in part, as your own.
- Submitting a paper for this course that is identical, or substantially similar, to one you submitted in another course.
- Copying the work of another, in whole or in part.
- Providing or accepting assistance in completing assignments.
- When working with others, submitting identical work as the person or people with whom you collaborated.
- Including direct quotations or paraphrases of source material without citing the source. [Avoid copying and pasting from electronic sources to prevent this from happening.]

- Failing to cite a source from which you obtained an argument, idea, theory, hypothesis, data, statistical results, or any other material that you are using to support positions taken in your own written work, but which you did not generate based on your own analysis of the materials. [When in doubt, cite.]
- Reproducing lecture notes in written work without properly quoting and citing the notes and instructor.
- Falsely citing a work as representing an argument that it does not.
- Falsifying data or results.

Written assignments in this class are subject to review by plagiarism-detecting software. Penalties for academic dishonesty will range from the student being assigned a grade of “0” for an individual assignment to a grade of “0” for the entire course. Incidents of dishonesty may also be reported to the Department and/or University, which may result in further disciplinary action.

COURSE TEXTS

Required Books to Purchase (Available at MSU Bookstore or online):

Rosenbloom, David H. 2015. *Administrative Law for Public Managers*. 2nd Ed. Boulder: Westview Press. ISBN: 9780813348810 (Paperback)

Langer, Laura. 2002. *Judicial Review in State Supreme Courts: A Comparative Study*. Albany: SUNY Press. ISBN: 9780791452523 (Paperback)

Frug, Gerald E., and David J. Barron. 2008. *City Bound: How States Stifle Local Innovation*. Ithaca: Cornell University Press. ISBN: 9780801479014 (Paperback)

Case Law: All referenced cases will be edited versions posted on D2L. If you are interested in full versions of any of the cases, you can find them on LexisNexis Academic (via the MSU Library electronic resources website) by entering the case citation listed on the syllabus.

Articles, Pamphlets, and Book Chapters: Additional materials referenced in the schedule of readings will be posted on the course D2L site.

COURSE REQUIREMENTS AND GRADING

This course will be graded on a straight points system (Points Earned divided by Points Possible). Course requirements and associated point totals are as follows:

<u>Assignment</u>	<u>Due Date</u>	<u>Points</u>
Applied Assignments		
Week 1 Introduction & Case Briefs	Mon, May 21	50
Week 2 Court Opinion	Tues, May 29	100
Week 3/4 Policy Strategy Memo	Mon, June 11	100
Week 5 FOIA Request & Response	Mon, June 18	100
Week 6/7 Decision-Making Simulation	Tues, June 26	75
Final Paper		
Topic Proposal & Bibliography	Mon, June 4	50
<u>Final Paper</u>	<u>Thurs, June 28</u>	<u>100</u>
		575

Bonus Point Opportunity: Discussion Board – up to 5 points added per week

Grading Scale: The following scale will be used to assign final course grades:

- 4.0 (90-100%)
- 3.5 (86-89.9%)
- 3.0 (80-85.9%)
- 2.5 (75-79.9%)
- 2.0 (70-74.9%)
- 1.5 (65-69.9%)
- 1.0 (60-64.9%)
- 0.0 (<60%)

When considering close cases at the end of the semester (students who are 1% below the next highest final grade), I will consider bumping-up your grade to the next level based on demonstrated effort throughout the semester, timeliness of assignment submission, improvement throughout the semester, and responsiveness to instructor feedback.

Late Work Policy: Assignment deadlines are intended to keep you on track in the course, and to ensure that everybody has equal time to complete assignments. That said, given the compressed nature of this semester and the fact that many of you have substantial outside commitments, I will provide some level of flexibility as follows:

One Free Late Assignment: You may choose to submit ONE assignment (EXCEPT the Final Paper) after the due date/time without any questions asked and without any penalty applied. Your assignment will be considered to be “on time” as long as it is submitted by 5:00 P.M. on Thursday, June 28, 2017. The first assignment for which I have not received your submission by the deadline will be considered as the assignment you have designated as your “one free late” submission.

General Late Assignment Policy: If you submit more than one assignment late, or you submit your final paper late, a late penalty will be applied as follows:

Up to 1 hour late: 5 point reduction

1-6 hours late: 10 point reduction

6-12 hours late: 15 point reduction

12-24 hours late: 20 point reduction

More than 24 hours late: No credit

Exceptions to the late work policy may be granted only for documentable emergencies, religious observances, extended jury/military service, or other circumstances recognized by the University. If you cannot complete an assignment on time and have a legitimate excuse, you must contact me before the assignment is due or as soon thereafter as is possible. I will not look favorably upon highly-delayed retroactive requests for deadline extensions (e.g. attempting to submit late work at the end of the semester without prior arrangements).

Incomplete or Deferred Grades: I do not favor assigning incomplete or deferred grades. I will consider such a request only under the most extreme circumstances that make timely completion of the course impossible.

BRIEF SUMMARY OF ASSIGNMENTS

General Requirements and Policies: All assignments must be type-written in 12-point font, using standard 1-inch or 1.25-inch margins. There are no minimum or maximum length requirements for any assignment other than the final paper, but most assignments will likely be able to be fully developed in 3-5 double-spaced pages. All assignments are due to the appropriate D2L Dropbox folder by 11:59pm (Eastern Daylight Time) on the indicated due date. I will provide graded feedback via the D2L Dropbox feedback feature, usually no later than the Friday after you have turned in the assignment.

Applied Assignments

Week 1 – Case Briefs: You will be asked to write two short case briefs to get you acclimated to the process of reading and analyzing case law, and relating it to broader material.

Week 2 – Court Opinion: Upon completion of our units on administrative law, you will be asked to draft a mock court opinion in response to a hypothetical set of case facts. You will apply relevant case law from course readings and lectures to support your position. Formatting guidelines will be provided, and you will not be expected to engage the assignment at the level of a law student.

Weeks 3 & 4 – Policy Strategy Memo: I will put you in the position of either a policy maker, public administrator, or policy advocacy group leader trying to pursue a policy in a given policymaking context. You will be asked to discuss how you would pursue a hypothetical policy in light of the types of intergovernmental and administrative legal constraints that we have discussed during these weeks.

Week 5 – FOIA Request and FOIA Response: You will be placed in two roles. First, you will be put in the position of a policy advocate seeking public records. I will give you a hypothetical set of facts and you will be asked to draft a one-page letter to an appropriate official seeking records under the Freedom of Information Act related to these facts. Second, you will be placed in the role of a FOIA Coordinator. I will give you a request for records, and will be required to draft a response to the records request informing the requestor whether you are granting or denying each part of the request, and the reasons why you are denying any part of the request.

Weeks 6 & 7 – Administrator Decision-Making Simulation: You will be asked to make firm decisions in response to several scenarios that simulate routine decisions that public administrators must make, but which could create liability for their organization. You will write brief explanations for each of your decisions that reference material presented in readings and lecture.

Paper Topic and Annotated Bibliography for Final Paper (Week 3) – Your regularly scheduled applied assignments will be interrupted during Week 3 so that you can work on developing your final paper. You will submit a brief synopsis of your paper and a subset of your sources for the final paper. Further details are available in the “Annotated Bibliography for Final Paper” link available in the “Final Paper” folder on D2L.

Final Paper: You will write a 5-7 page paper on a policy topic of your choice with reference to the themes of this course. **You will be required to submit a paper topic and annotated bibliography proposal by 11:59 p.m. (EDT) Monday, June 4, 2017. Your final paper is due by 5:00 P.M. (EDT) on Thursday, June 28, 2017.** Please consult the “Final Paper Instructions” on D2L for complete assignment details and guidelines.

Bonus Point Opportunity: Discussion Board: By actively participating in the class discussion board, you can earn up to 5 bonus points per week for Weeks 1-6 that will be added to your weekly assignment scores. Comments on the discussion board must be substantive. To simulate the policymaking environment, I am taking a collective action approach to awarding points. Maximum credit will be awarded to students who not only make their own comments, but also engage other students’ comments and who inspire ongoing conversations about course material. Therefore, by joining the discussion board, you help yourself and your classmates. This also means that, in order to get full points, you need to craft your comments to be substantive enough that other students will be inspired to weigh in on what you are saying. Each week I will pose some suggested questions to help start the discussion. You may respond to these questions or create your own topics for the week. Your comments can ask intelligent questions designed to seek clarification of material, discuss applications of the material to specific policy areas, advance an opinion about the material, discuss relevant personal experiences with the themes of the material, make connections across different weeks’ material, make comparisons to other countries’ policy processes, or pose questions designed to advance our thinking about the material.

For purposes of awarding bonus points, Discussion Board weeks run from Monday at Midnight through the next Monday at 11:59pm (Eastern Daylight Time). Points will be assigned as of the end of the specific week for which the board has been constructed. Therefore, for example, if we are in Week 2, you can only receive bonus points for posts in the Week 2 discussion, and I will not give retroactive bonus points for Week 1. If you have a comment on a past week’s material, your best strategy is to find a way to link it to the present week so you can get bonus points in the current week’s discussion board.

Discussion Board Bonus Points will be awarded as follows:

5 points: A) You post one comment AND B) one response to another student’s comment, AND C) one of your comments results in a prolonged response chain (a chain of at least 6 comments), OR you make multiple meaningful comments within a prolonged response chain.

4 points: You post one comment AND one response to another student’s comment, AND one of your comments or responses generates a reply.

3 points: You post one comment OR response AND your comment or response generates a reply.

2 points: You post one comment AND one response, but neither generates a reply.

1 point: You post one comment OR response, but it does not generate a reply.

0 points: You do not post a comment or reply, or the comment or reply is off-topic, or demonstrates inadequate engagement of the course material such that it repeats course readings or poses a question readily answered by the week's readings.

SCHEDULE OF TOPICS, READINGS, AND ASSIGNMENTS

Week 1 (Mon, May 14 - Mon, May 21)

Introduction to the Course and Federal Administrative Law

Monday, May 21st: Case Briefs and Introductory e-mail due by 11:59 P.M.

Lecture 1: Syllabus; Course Introduction; How to Read and Brief Case Law

Reading: None

Lecture 2: Constitutional Context of Administrative Law

Reading: Rosenbloom, ch. 1 (all) and ch. 2 (p. 19-41 only)

Mistretta v. U.S., 488 U.S. 361 (1989)

Lecture 3: Statutory Context of Administrative Law

Reading: *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984)

U.S. v. Mead Corporation, 533 U.S. 218 (2001)

[Optional] *Christopher v. SmithKline Beecham Corp.*, 132 S.Ct. 2156 (2012)

(This is a complicated case that will be covered in lecture for illustrative purposes, but you will not be expected to know it in detail.)

Week 2 (Tues, May 22 – Mon, May 28)
The Administrative Policymaking Process

Tuesday, May 29th: Court Opinion due by 11:59 P.M. (The assignment is due Tuesday this week in observance of Memorial Day)

Lecture 4: Agency Rulemaking

Reading: Rosenbloom, ch. 3

Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519 (1978)

Chocolate Manufacturers Association v. Block, 755 F.2d 1098 (4th Cir., 1985)

Lecture 5: Agency Hearings, Adjudication, and Enforcement

Reading: Rosenbloom, ch. 4

Cinderella Career and Finishing Schools v. FTC, 404 F.2d 1308 (1968)

Heckler v. Chaney, 470 U.S. 821 (1985)

Massachusetts v. EPA, 549 U.S. 497 (2007)

Lecture 6: Public Participation in Government; The Open Meetings Act

Reading: [Skim all] Schuette, *Open Meetings Act Handbook*

Week 3 (Tues, May 29 – Mon, June 4)

Judicial Review: Judges as Policy Interpreters and Policy Makers

Monday, June 4th: Paper Topic and Annotated Bibliography due at 11:59 P.M.

Lecture 7: Judicial Review of Agency Actions

Reading: Rosenbloom, ch. 6

Abbott Laboratories, Inc. v. Gardner, 387 U.S. 136 (1967)

Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971)

Lujan v. Defenders of Wildlife, 497 U.S. 871 (1992)

Clapper v. Amnesty International, 133 S. Ct. 1138 (2013)

Lecture 8: Theories of Judicial Behavior

Reading: Langer, ch. 1-3

Lecture 9: Judicial Policy Responsiveness

Reading: Langer, chs. 4-6; conclusion

Week 4 (Tues, June 5 – Mon, June 11)
State Legal Structures and Local Government Regulation

Monday, June 11th: Policy Strategy Memo due at 11:59 P.M.

Lecture 10: Theories of Urban Policymaking; Principles of Local Government Law

Reading: Frug and Barron, chs. 1-3

Lecture 11: Property Taxation

Reading: Frug and Barron, ch. 4

Abbas v. City of Dearborn, unpublished opinion per curiam of the Michigan Court of Appeals, Docket No. 307084 (Dec. 27, 2012).

[Optional] Mullins, Daniel R. 2004. "Tax and Expenditure Limitations and the Fiscal Response of Local Government: Asymmetric Intra-Local Effects." *Public Budgeting and Finance* (Winter 2004): 111-147.

Lecture 12: Land Use Policy

Reading: Frug and Barron, ch. 5

Week 5 (Tues, June 12 – Mon, June 18)
Government Transparency / The Freedom of Information Act

Monday, June 18th: FOIA Request and Response due at 11:59 P.M.

Lecture 13: FOIA – Defining a "Public Record;" Processing Requirements; Liability

Reading: Rosenbloom, ch. 5

Michigan FOIA Handbook

Overview (p. 2-8) [skim]

FOIA Sec. 15.231-15.233 Sec. 3 (p. 8-11)

FOIA Sec. 15.236 Sec. 10 (p. 20-22)

U.S. House of Reps, *A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records*, p. 21-24; 55-59

Amberg v. City of Dearborn, 497 Mich. 28 (2014)

Whittaker v. Oakland County Sheriff, MI COA Docket No. 329545 (2016)

Lecture 14: FOIA Disclosure Exemptions; HIPAA and the Federal Privacy Act

Reading: MI FOIA Handbook:

FOIA Sec. 15.243 – 15.244 (p. 25-32)

U.S. House of Reps, *A Citizen's Guide...* p. 15-21; 25-33

ESPN, Inc. v. Michigan State University, 311 Mich. App. 662 (2015)

U.S. DOJ v. Reporters Ctte. for Freedom of the Press, 489 U.S. 749 (1989)

[Optional] U.S. Dept. of HHS *Summary of the HIPAA Privacy Rule*

Lecture 15: Making and Responding to FOIA Requests

Reading: MML FOIA Handbook:

FOIA Sec. 15.233 Sec. 4 – 15.236 (p. 11-22)

U.S. House of Reps, *A Citizens Guide...* p. 7-14.

Weeks 6 and 7 (Tues, June 19 – Thurs, June 28)

Public Administrators as Arbiters of Individual Rights;

Suing the Government and its Employees

Tuesday, June 26th: Administrator Decision-Making Simulation due by 11:59 P.M.

Thursday, June 28th: Final Deadline for any "One Free Late" Assignment by 5:00 P.M.

Thursday, June 28th: Final Paper Due at 5:00 P.M.

Lecture 16: Administrative Search and Seizure

Reading: Rosenbloom, ch. 2 (p. 48-60) [introduces material for entire week]

Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967)

Donovan v. Dewey et. al., 452 U.S. 594 (1980)

United States v. Dunn 480 U.S. 294 (1987)

Lecture 17: Employment Discrimination and Sexual Harassment

Reading: *Fuhr v. School District of Hazel Park* 131 F. Supp 2d 947 (E.D. Mich. 2002)

Radtko v. Everett, 442 Mich. 368 (1993)

Galeski v. City of Dearborn 435 Fed. Appx. 461 (6th Cir. 2011)

Burns v. McGregor Electronic Ind. Inc. 955 F.2d 449 (8th Cir. 1992)

Lecture 18: First Amendment Rights in the Workplace

Reading: *Pickering v. Board of Education*, 391 U.S. 563 (1968)

Rankin v. McPherson, 483 U.S. 378 (1987)

Tucker v. California Dept. of Education, 97 F.3d 1204 (9th Cir. 1996)

San Diego v. Roe, 543 U.S. 77 (2004)

Garcetti v. Ceballos, 547 U.S. 410 (2006)

Lecture 19: Governmental Liabilities and Immunities I: Constitutional Violations

Reading: Harrington, Christine B. and Lief H. Carter. 2015. "Liability." Ch. 11 in *Administrative Law & Politics: Case and Comments*, 5th ed. Los Angeles: Sage.

Lecture 20: Governmental Liabilities and Immunities II: Torts

Reading: [Optional] Johnson, Rosati, Schultz, & Joppich, P.C. 2015. "Michigan Governmental Immunity Update."