

ASPEN CASEBOOK SERIES

ADMINISTRATIVE LAW

Third Edition

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For Ying Juan.

John M. Rogers

For Carol.

Michael P. Healy

For Ron, Sr., Barbara, and James, with thanks and
appreciation for your support over the years.

Ron Krotoszynski, Jr.

PREFACE

The third edition of the *Administrative Law* casebook is intended to meet several objectives. First, we hope to accomplish the core goal of the first edition of the text. That goal was described in the preface to the first edition:

This book is designed to serve as a streamlined workhorse for professors who like to teach out of cases and to focus on the principles underlying core doctrines. It lets the cases speak for themselves, with a minimum of editorializing text. This approach gives professors and students alike the opportunity to reconcile the principles of the case, each in his or her own way.

The third edition accordingly retains the organizational structure of the first edition. That structure is dictated by the four fundamental components of administrative law: (1) procedural requirements for agency adjudication; (2) procedural requirements for, and other issues related to, agency rule-making; (3) separation-of-powers issues related to administrative agencies; and (4) judicial review of agency action. The authors' experience is that the course is most successful when taught in this order and the third edition of the text adheres to this order for presenting the materials. The four components are, however, presented in chapters that are largely independent. Instructors may change the order of presentation to conform to their own judgment about the optimal order of presentation.

While adhering to the organizing principles and structure of the first edition, this new edition has been revised to account for developments in administrative law that have occurred since the second edition was published. The revised text includes as lead cases the recent Supreme Court decisions in *Stern v. Marshall*, *Free Enterprise Fund v. Public Company Accounting Oversight Board*, and *Talk America, Inc. v. Michigan Bell Telephone Co.* The book also includes *National Cable & Telecommunications Ass'n v. Brand X Internet Services* as a lead case, providing a capstone case for the standards of judicial review. Notes have been revised to address how the Obama Administration has employed presidential signing statements and revised Office of Management and Budget review of rulemaking. Throughout the text, questions and notes for students have been added to reflect the insights of decisions in recent cases, including *American Elec. Power Co. v. Connecticut*; *Milner v. Department of the Navy*; *FCC v. Fox Television Stations, Inc.*; *Mayo Foundation for Medical Educ. and Research v. United States*; *New Process Steel v. N.L.R.B.*; *Arizona Christian School Tuition Org. v. Winn*; and *Thompson v. North American Stainless, LP*.

The third objective of the new text is to provide opportunities for students to apply their understanding of administrative law principles in new legal contexts. The third edition retains the series of "Theory Applied Problems" at the conclusion of different sections of the text. These problems allow students to test their understanding of the principles of administrative law.

Although the text includes significant changes with new lead cases, we have sought to ensure that the materials included in the third edition may be taught in a three-hour course. Meeting this objective has meant that some materials have been removed from previous editions. When we have made a significant change by heavily editing or removing materials, we will be including the omitted material on the web site for the text. Faculty who have adopted the text may use those materials no longer contained in the third edition by printing the pages from the web site.

Finally, we wish to acknowledge in this preface the debt that we also acknowledged in the preface to the earlier editions. That debt is owed to the teachers of administrative law and authors of administrative law texts who have affected our understanding of this subject. That group of law professors has grown since the date of publication of the first edition, because we are now indebted to the adopters of the text who have helped us to revise and, we hope, improve it in this third edition.

John Rogers
Michael Healy
Ronald Krotoszynski

January 2012

ADMINISTRATIVE LAW

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CHAPTER

1

Introduction

A. OVERVIEW OF THE WORK AND PLACE OF ADMINISTRATIVE AGENCIES IN OUR SYSTEM OF GOVERNMENT

Administrative law involves the study of the place of administrative agencies in the American legal system. Agencies, of course, do what government does. Government taxes, spends, builds, paves, educates, punishes, regulates, and so on. Those who actually do this work are agents of the government, hence the word *agencies*. In a sense, they are necessary if government is to do anything.

The need for government action, at all, and the appropriate government agent to take action when warranted, may vary in different contexts. Should government do a lot or leave most matters to the market and thereby preserve more freedom? When government does not leave something to the market, why not? What theory or theories justify changing what otherwise would be the market result?

When matters are not best left to the market, why not legislate a general standard and simply let courts enforce civil liability, without creating agencies? If there are good reasons not to leave the details to the courts, why can't Congress just set specific and detailed requirements in areas where regulation is warranted?

The following case excerpts introduce the principal public-policy contexts in which a need has been recognized for specialized agencies to undertake government action. These selections also raise, in a preliminary way, some of the important legal themes that will be developed through the remainder of the course.

INTERSTATE COMMERCE COMMISSION v. CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY CO.

167 U.S. 479 (1897)

MR. JUSTICE BREWER . . . delivered the opinion of the court.

. . . In view of its importance, and the full arguments that have been presented, we have deemed it our duty to re-examine the question [of the powers of the Interstate Commerce Commission under the Interstate Commerce Act]