Mastering Administrative Law

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For Mary Ann
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Series Editor’s Foreword

The Carolina Academic Press Mastering Series is designed to provide you with a tool that will enable you to easily and efficiently “master” the substance and content of law school courses. Throughout the series, the focus is on quality writing that makes legal concepts understandable. As a result, the series is designed to be easy to read and is not unduly cluttered with footnotes or cites to secondary sources.

In order to facilitate student mastery of topics, the Mastering Series includes a number of pedagogical features designed to improve learning and retention. At the beginning of each chapter, you will find a “Roadmap” that tells you about the chapter and provides you with a sense of the material that you will cover. A “Checkpoint” at the end of each chapter encourages you to stop and review the key concepts, reiterating what you have learned. Throughout the book, key terms are explained and emphasized. Finally, a “Master Checklist” at the end of each book reinforces what you have learned and helps you identify any areas that need review or further study.

We hope that you will enjoy studying with, and learning from, the Mastering Series.

Russell L. Weaver
Professor of Law & Distinguished University Scholar
University of Louisville, Louis D. Brandeis School of Law
Foreword

Administrative law is something of an exotic in the law school curriculum. That is, the subject is unknown to most students, the field is full of acronyms, alphabet soup initials, and insider jargon. Moreover, most students have had little direct experience with regulatory bodies. All of this can make the subject seem daunting.

But wait! There are two things you need to think about before you get daunted. First, the field is increasingly a vital subject for most lawyers. You can’t really function in today’s legal world without some introduction to this field, so the time you invest in getting a sense of the subject will not be wasted. And it is an exciting place for a lawyer to be. Administrative law professionals, whether inside government or outside, tend to work at the cutting edge. Administering the same old, same old policies doesn’t usually require lawyers. But when the agency or the private client wants to try something new, something different, something innovative, that’s when your phone rings.

Answering that phone will introduce you to the variety of roles lawyers play in this field. To agency executives and private clients, lawyers are crucial interpreters of the law, specialists on procedural requirements, drafters, critical arbiters of policy analysis and, of course, advocates in courtrooms and many other places. With this skill set, these professionals are usually at the center of the action, are invited to the meetings that really count. For an elaboration of these professional roles inside government, see McGarrity, The Role of Government Attorneys in Regulatory Agency Rulemaking, 61 LAW & CONTEMP. PROBS. 19 (1998).

Second, you should know that administrative law is ultimately a practical subject. When one is dealing with really important matters (think of banking regulation, civil rights, labor/management issues, workplace safety, environmental protection, monetary policy, health care, etc.) there is simply too much at stake to allow endless research or infinite doctrinal refinement. Yes, good regulatory policy must rest on solid research and intelligent principles, but the store must also be kept open. Like the experienced administrative lawyer, you should not be paralyzed by doctrinal complexity. Understand it. But don’t let it trap you in a box you can’t get out of if more practical reso-
olutions emerge from your thinking. Answers that work are always necessary and usually sufficient.

Finding answers that work may require consideration of multiple perspectives. Effective and workable administrative law doctrines must be consistent with legislative wishes, efficient in the day-to-day work of the executive branch and the independent agencies, sensitive to the attitudes and culture of regulated parties, and ultimately administrable by the courts. These institutions may have different needs and different resources and finding doctrine that works tolerably well for most of them at a given time is one of the real challenges of the field. It is a challenge worthy of the best minds.

So welcome to the field of administrative law. It is sometimes intellectually difficult but always professionally rewarding. It will, without doubt, be a growth experience for you.
Preface

This work is intended for the student or the foreign lawyer in need of a short introduction to the U.S. system of administrative law. Rather than being a contribution to the larger theoretical literature, it attempts to identify central principles in understandable form, and to organize them so that their essential functions are clear. The discussion is accompanied by a number of classroom-tested graphics that should help visualize important doctrinal relationships.

Three essential acknowledgements. I must first note that my students have helped me understand the conceptual difficulties this subject presents the beginner. If this volume is of assistance to future students, it is largely because of what I have been taught by past students.

Second, this book is a survey and necessarily pushes hurriedly through some very deep topics. I owe a heavy debt to the many scholars that have dealt, more adequately than I could have done, with specific aspects of the topic. Several members of that community have also given me the benefit of comments on parts of the manuscript. I would like especially to thank Michael Asimow, Jeff Lubbers, Richard Murphy, and Katherine Watts. I offer the usual caveat exempting them from responsibility for the final product, though their comments resulted in changes which in my view make the book a much better book.

Finally, I have been fortunate in having Kelly Ruhlig as my assistant during the manuscript production process. She contributed greatly—with professional skill, grace, and a sense of humor.

William R. Andersen
Seattle, Washington
November 2009
About the Author

William Andersen is the Judson Falkner Professor of Law at the University of Washington Law School where, over many years, he has taught both Constitutional Law and Administrative Law. Before joining the Washington faculty, Professor Andersen served as Associate General Counsel of the Federal Aviation Administration. Since joining the faculty, he has continued to write and speak on administrative law nationally and internationally, has produced a set of CALI computer tutorials on administrative law and was a principal drafter of the Washington State Administrative Procedure Act.