I. General Course Information.

This course provides a general introduction to modern administrative and regulatory law. The course is intended to be a counterpoint to the courses in the first-year curriculum that examine substantive common law areas such as torts, property and contract. The main difference between this course and first-year common law courses is that the applicable law and policies we will be studying in this course are found primarily in statutes and regulations rather than in judicial decisions. This difference has two important implications. First, although statutes and regulations are similar to common law judicial opinions in that they set forth law and policies having at least some applicability to future conduct, statutes and regulations have traditionally been created and interpreted in a manner quite distinct from the way judges create and interpret judicial opinions. Thus, the first part of this course will be devoted to examining how statutes are created and interpreted.

A second theme of this course concerns institutional allocations of power. In a common law course, most or all of the relevant law has been formulated within one institution, the judiciary. In applying such court-made law and policy, judges feel somewhat free (within the constraints of their own doctrines of stare decisis) to modify, change or abandon the law and policy set by prior courts. Since the courts themselves have created the law and policy, they retain power over it. By contrast, in the administrative and regulatory environment, courts are constantly confronting the question of which institution — Congress, executive branch agencies or the courts — should have (or does have) the power to establish law and policy in a particular area. This issue will be our primary focus in the second part of the course, which will examine the law governing federal administrative agencies. These agencies began to proliferate about a century ago at a time when legal theorists and policy makers sought to build new governmental institutions based not on politics, passion, or litigation, but on a rational “science of administration.” While that goal remains elusive, Congress, agencies and the courts continue to experiment in building the optimal set of institutional relationships between the various components of government.

II. Office Hours; Class Attendance & Participation; and Grading.

My office hours are listed above. Barring some sort of intractable scheduling conflict, I will be in my office during those hours. However, you are always welcome to schedule an appointment with me. In fact, an appointment is better since then you will be guaranteed the time. If you come to general office hours, you might have to wait if someone else has come at the same time. You are also welcome to talk to me after class.
Except for illness and similar exigencies, attendance and concomitant preparation are required for class. Participation is also required for the class, and students are expected to make their best efforts in class participation.

The final grade will be based primarily on a final exam, which will be an open-book, in-class exam. I reserve the right to consider class participation in accordance with NYU’s rules on the subject (see http://www.law.nyu.edu/depts/studentaffairs/publications/handbook/grades.html).

Outline of the Class

The topics to be covered in this class are listed below. Topics I-IV focus on statutory interpretation, although even in this portion of the course we will be considering institutional relationships between the Congress, the courts and, to a lesser extent, the Executive Branch. Topics V-VIII cover the law governing modern administrative agencies.

I. Introduction to Legislative Process and Statutory Interpretation

II. History and Theories of Statutory Interpretation

III. Doctrines of Statutory Interpretation

IV. Relationship Between Legislative and Judicial Processes

V. Introduction to Modern Administrative Law

VI. Administrative Agencies in the Constitutional Scheme

VII. Statutory Constraints on Agency Procedure

VIII. Judicial Review of Agency Action