

TABLE OF CONTENTS

	Page
PREFACE	XV
ACKNOWLEDGMENTS	XXI
TABLE OF CASES	XXXIII

PART ONE. INTRODUCTION AND FRAMEWORK

CHAPTER ONE. INTRODUCTION TO THE STUDY OF ADMINISTRATIVE LAW	3
A. Administrative Agencies: Their Growth and Role	4
B. Evaluation of Agency Performance	13
C. An Overview of the Administrative Process	24
1. Administrative Agencies in the American System of Government	24
2. Administrative Methods	27
a. Adjudication	28
b. Rulemaking	30
c. Prosecution	32
d. Investigation	32
e. Informal Action	33
D. The Administrative Procedure Act of 1946	33
E. Judicial Review	38
CHAPTER TWO. LEGISLATIVE AND EXECUTIVE CONTROL OF AD- MINISTRATIVE DISCRETION	43
A. Legislative Control	43
1. The Delegation Doctrine: The Federal Cases	43
Amalgamated Meat Cutters, Etc. v. Connally	62
2. The Legislative Veto	78
3. Delegation in the States	80
Sun Ray Drive-In Dairy, Inc. v. Oregon Liquor Con- trol Commission	81
4. Delegation of Power and Responsible Government ...	86
B. Executive Control—The Role of the President	91
Humphrey's Executor (Rathbun) v. United States ...	96

TABLE OF CONTENTS

PART TWO. THE GOVERNMENT AS REGULATOR: THE PROCESSES AND POLICIES OF ADMINISTRATIVE REGULATION

	Page
CHAPTER THREE. GOVERNMENT AND THE ENVIRONMENT	105
A. Introduction	105
1. Environmental Issues	105
2. Basic Issues in Administrative Policymaking and Ju- dicial Review	116
Citizens to Preserve Overton Park, Inc. v. Volpe	116
a. The Process of Administrative Decisionmaking	123
b. The Function of Administrative Findings and Rea- sons	123
c. Probing the Mind of the Administrator	129
d. Administrative Records and Judicial Review	131
e. Scope of Review	132
B. The National Environmental Policy Act	141
1. Basic Policy and Requirements: The Environmental Impact Statement	142
2. Judicial Review	143
Environmental Defense Fund, Inc. v. Corps of En- gineers	144
3. Critiques of the NEPA Process	158
C. Administrative Policymaking and Judicial Review in Mat- ters of Scientific Controversy	169
1. The Clean Air Act: A Technical Regulatory Statute	169
Union Electric Co. v. EPA	172
2. The Evolution of Informal Rulemaking and the Limits of Judicial Review	180
Ethyl Corp. v. EPA	182
Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.	198
D. Doctrines for Avoiding Judicial Review of the Merits of Agency Decisions	207
1. Nonreviewability	207
Adamo Wrecking Co. v. United States	209
2. Standing to Sue	214
Sierra Club v. Morton	218
Duke Power Co. v. Carolina Environmental Study Group, Inc.	224
3. Ripeness	230
Diamond Shamrock Corp. v. Costle	231
4. Exhaustion of Administrative Remedies	235
Sierra Club v. ICC	239
5. Primary Jurisdiction	249
State ex rel. Norvell v. Arizona Public Service Co.	249

TABLE OF CONTENTS

	Page
CHAPTER THREE. GOVERNMENT AND THE ENVIRONMENT—Cont'd	
E. Excursus on the Role of Government as Manager:	
Federal Lands and Wilderness Policy	256
1. Introduction: The Federal Lands	257
2. Wilderness Preservation	260
3. Administrative and Judicial Roles	264
Minnesota Public Interest Research Group v. Butz	264
CHAPTER FOUR. FEDERAL LICENSING CONTROLS: LICENSING OF	
RADIO AND TELEVISION	275
A. Introduction	275
B. The Regulatory Scheme	280
1. The Origins and Evolution of a Broad Delegation ...	280
2. Constitutional Constraints	288
Columbia Broadcasting System, Inc. v. Democratic	
National Committee	288
3. The Broadcasting Industry	303
4. Basic Elements of Broadcast Station Licensing	307
5. Cable Television	312
C. Formal and Informal Oversight: The Case of Program	
Controls	316
1. General Framework	316
En Banc Programming Inquiry	318
2. Diversity	320
a. The "Network Problem"	320
b. Format Regulation	324
WNCN Listeners Guild v. FCC	324
c. Cable Television	335
Home Box Office, Inc. v. FCC	335
3. Fairness	347
American Security Council Education Foundation	
v. FCC	347
4. Obscenity, Indecency, Violence	356
FCC v. Pacifica Foundation	356
D. The Adjudicatory Process	365
1. Public and Private Rights in Licensing Adjudications	368
Office of Communication of the United Church of	
Christ v. FCC	368
2. Adjudicatory Policymaking and Procedure: Compara-	
tive Hearings	379
Ashbacker Radio Corp. v. FCC	379
Citizens Communications Center v. FCC	383
3. Ex Parte Contacts in Adjudication	400
WHDH, Inc.	401
E. Administrative "Legislation" and the Rulemaking Process	406
1. The Use of Rulemaking to Limit Adjudicative Issues	406
FCC v. National Citizens Committee for Broad-	
casting	408
2. Ex Parte Contacts in Rulemaking	419
Home Box Office, Inc. v. FCC	419

TABLE OF CONTENTS

	Page
CHAPTER FIVE. CONTROL BY PROSECUTION: POLICING ADVERTISING AND OTHER BUSINESS CONDUCT	432
A. Introduction	432
1. Origins of the Federal Trade Commission	434
2. The FTC's Consumer Protection Role	435
3. Statutory Authority	438
4. Organization and Procedures	440
B. The Legal Standard	442
1. Introductory Issues	442
a. The First Amendment and Advertising	442
Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.	442
b. The Desirability of Government Intervention	451
2. "Deceptive Acts or Practices"	464
a. The Standard: Capacity to Deceive	465
Charles of the Ritz Distrib. Corp. v. FTC	465
b. Elements of a False Advertising Case	469
c. Application of the Standard	472
3. Unfairness	474
a. The Power of Equity	474
FTC v. Sperry & Hutchinson Co.	474
b. Substantiation	479
Pfizer, Inc.	479
C. Acquiring, Disclosing, and Protecting Information	485
1. Agency Acquisition of Information	486
a. Subpoenas and Required Reports and Records	486
In Re FTC Line of Business Report Litigation	496
b. Administrative Inspections	498
Marshall v. Barlow's Inc.	500
2. Public Access to Government Information	504
a. The Freedom of Information Act	504
NLRB v. Sears, Roebuck and Co.	506
Federal Open Market Comm. v. Merrill	511
NLRB v. Robbins Tire and Rubber Co.	522
b. The Government in the Sunshine Act	528
3. Protecting Sensitive Information Held by the Government	529
a. The Privacy Act	529
b. The Freedom of Information Act	530
Chrysler Corporation v. Brown	530
c. Agency Adjudications	537
4. Agency Publicity	539
FTC v. Cinderella Career & Finishing Schools, Inc.	540

TABLE OF CONTENTS

	Page
CHAPTER FIVE. CONTROL BY PROSECUTION: POLICING ADVERTISING AND OTHER BUSINESS CONDUCT—Cont'd	
D. Enforcement Processes	544
1. Informal Enforcement Procedures	544
a. Consent Settlements	544
b. Advisory Opinions	545
c. Interpretive Rules: "Industry Guides"	546
2. Trade Regulation Rules: Statutory Hybrid Rulemaking	547
Children's Advertising, Proposed Trade Regulation Rulemaking and Public Hearing	554
Association of National Advertisers, Inc. v. FTC	560
3. Adjudication	581
a. Prosecutorial Discretion	581
FTC v. Universal-Rundle Corp.	582
b. Intervention	584
Firestone Tire & Rubber Co.	584
c. The Process of Proof: Hearsay and Official Notice	587
Dayco Corp. v. FTC	589
4. FTC Remedies	595
a. The Negative Order	595
b. Affirmative Disclosure	596
c. Corrective Advertising	597
Warner-Lambert Co. v. FTC	598
Warner-Lambert Co. v. FTC	603

PART THREE. GOVERNMENT AND THE INDIVIDUAL: RIGHTS AND FREEDOMS IN THE WELFARE STATE

CHAPTER SIX. OCCUPATIONAL LICENSING	611
A. Introduction	611
B. Constitutionality: "Economic Freedom" as a Protected Right	619
1. The Tradition of Tolerance	619
Williamson v. Lee Optical Co.	619
2. First Amendment Inroads on the Tradition of Tolerance	631
Bates v. State Bar of Arizona	631
3. The State Courts and Economic Freedom	639
Isakson v. Rickey	641
Chapel v. Commonwealth	648
C. Licensing Procedures and Standards	653
1. Procedural Due Process	653
Hornsby v. Allen	655
2. Standards	658
Schware v. Board of Bar Examiners	659
Cord v. Gibb	665

TABLE OF CONTENTS

	Page
CHAPTER SEVEN. PUBLIC EMPLOYMENT	668
A. Introduction	668
B. The Privilege Doctrine and Its Demise	673
C. Substantive Rights of Public Employees	680
1. General Rights of Expression	680
Pickering v. Board of Education	680
2. Political Activities	685
Elrod v. Burns	688
3. Appearance and Conduct	695
Kelley v. Johnson	695
D. The Responsibilities of Public Employees: Tort Liability	699
Butz v. Economou	699
Mt. Healthy City School Dist. v. Doyle	718
E. Procedural Rights of Public Employees: Defining In- terests Protected by Due Process	721
Board of Regents v. Roth	725
Perry v. Sindermann	730
Bishop v. Wood	738
CHAPTER EIGHT. WELFARE ADMINISTRATION	751
A. Introduction	751
B. The Requisites of Due Process: The Right to a Pre- termination Hearing	751
Goldberg v. Kelly	752
Mathews v. Eldridge	761
C. Substantive Rights and Standards	775
Dandridge v. Williams	776
United States Dept. of Agriculture v. Murry	779
CHAPTER NINE. EDUCATIONAL ADMINISTRATION (HEREIN OF STU- DENT RIGHTS)	789
A. Introduction	789
B. Procedural Due Process	790
Goss v. Lopez	790
Ingraham v. Wright	796
Board of Curators v. Horowitz	805
C. Substantive Limits on Regulation of Student Conduct	815
1. Speech	815
Tinker v. Des Moines School Dist.	815
2. Other Conduct	819
Lai v. Board of Trustees of East Carolina Univ.	819

TABLE OF CONTENTS

**PART FOUR. THE ADMINISTRATIVE PROCESS:
NEW DIRECTIONS**

	Page
CHAPTER TEN. REGULATORY REFORM	825
A. Introduction	825
B. Redefining the Scope of Regulation	827
C. Improving Oversight of the Agencies	847
1. By Congress	848
2. By the President	855
3. By the Courts	864
D. Procedural Reforms	865
1. Cost-Benefit Analysis	865
2. Amending the APA	874
E. The Administrative Process in Transition	881

APPENDIX

Selected Constitutional and Statutory Provisions	885
Index	955

*