Except where otherwise indicated, readings are from Lisa Heinzerling and Mark V. Tushnet, *The Regulatory and Administrative State: Materials, Cases, Comments* (2006) (“CB”). Other readings are available on the course website.

I. Introduction

Introductory Note (CB 1)

A. Placing a Value on Exposure to Risk
   Paul Slovic, Perception of Risk, 236 Science 280 (1987) (CB 171-81)
   Paul Slovic, Trust, Emotion, Sex, Politics, and Science: Surveying the Risk Assessment Battlefield, 1997 U. Chi. Legal F. 59 (CB 181-88)
   Comments and Questions (CB 190-92)

B. Courts and Legislatures as Policy-Making Institutions: An Introduction
   Introductory Note (CB 192)
   Lon L. Fuller, The Forms and Limits of Adjudication, 92 Harv. L. Rev. 353 (1978) (CB 192-99)
   Comments and Questions (CB 199-200)

C. Institutional Strengths and Limits
   Comments and Questions (CB 219-21)

II. Statutory Interpretation

A. Statutory Interpretation: Traditional Perspectives
   Introductory Note (CB 319)
   Comments and Questions (CB 327-28)
   Comments and Questions (CB 337-38)
   Comments and Questions (CB 349-50)
B. Some Classic Cases
   Introductory Note (350)
   Church of the Holy Trinity v. United States, 143 U.S. 457 (1892) (CB 351-55)
   Comments and Questions (CB 355-56)
   United States of America v. Marshall, 908 F.2d 1312 (7th Cir. 1990) (CB 356-66)
   Comments and Questions (CB 366)
   Comments and Questions (CB 369)
   Chickasaw Nation v. United States, 534 U.S. 84 (2001) (CB 369-77)
   Comments and Questions (CB 377-78)

C. Statutory Interpretation by Administrative Agencies
   Introductory Note (CB 378-79)
   (CB 379-86)
   Comments and Questions (CB 386-88)
   Food & Drug Administration v. Brown & Williamson Tobacco Corp., 529 U.S. 120
   (2000) (CB 388-411)
   Comments and Questions (CB 412)

D. A New Theory?
   Einer Elhauge, Preference-Estimating Statutory Default Rules, 102 Colum. L. Rev. 2027
   (2002)
   Einer Elhauge, Preference-Eliciting Statutory Default Rules, 102 Colum. L. Rev. 2162
   (2002)

III. From Statutes to Rules

   Introductory Note (CB 415)

A. The Development of Administrative Law
   Introductory Note (CB 415-16)
   1669 (1975) (CB 416-22)
   Comments and Questions (CB 422-25)

B. Rule Making under the Administrative Procedure Act
   Introductory Note (CB 425-27)
   519 (1978) (CB 427-34)
   Comments and Questions (CB 434-36)
   Katherine Q. Seelye, “Flooded with Comments, Officials Plug Their Ears,” New York
   Times, Nov. 17, 2002 (CB 436-38)

   Introductory Note (CB 438)
   Motor Vehicle Manufacturers Assoc. v. State Farm Mutual Automobile Insurance Co.,
   463 U.S. 29 (1983) (CB 438-49)
   Comments and Questions (CB 449-50)
   Comments and Questions (CB 457-59)

IV. Assessing Regulation

   Introductory Note (CB 461)

   A. How Regulation Can Fail: Theory
      Introductory Note (CB 461)
      Comments and Questions (CB 469-70)
      Comments and Questions (CB 478-79)
      Aaron Wildavsky, “Richer Is Safer,” 60 The Public Interest 23 (1980) (CB 479-81)
      Comments and Questions (CB 481-83)

   B. How Regulation Can Fail: Practice
      Comments and Questions (CB 488-89)

   C. What Is Cost-Benefit Analysis?
      Introductory Note (CB 494)
      Nicholas Ashford, Crisis in the Workplace (1976) (CB 497-98)
      Comments and Questions (CB 498)
      Comments and Questions (CB 504-09)

   D. The Case For, and Against, Cost-Benefit Analysis
      Introductory Note (CB 509)
      Comments and Questions (CB 517-18)
      Comments and Questions (CB 532-33)
D. The Case For, and Against, Cost-Benefit Analysis (cont.)

Comments and Questions (CB 541)
Corrosion Proof Fittings v. EPA, 947 F.2d 1201 (5th Cir. 1991) (CB 541-44)
Comments and Questions (CB 544-45)

V. Information Provision

Introductory Note (CB 547)

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Introductory Note (CB 548)
Comments and Questions (CB 557)

B. Generating Information Collectively

Introductory Note (CB 557)
Comments and Questions (CB 560-61)
Comments and Questions (CB 566)

C. California’s Proposition 65: A Case Study in Information Provision

Introductory Note (CB 566-67)
Comments and Questions (CB 570-72)

D. The First Amendment and Information-Based Regulation

Introductory Note (CB 598-99)
International Dairy Foods Association v. Amestoy, 92 F.3d 67 (2nd Cir. 1996) (CB 599-609)
Comments and Questions (CB 609-611)
Concluding Note (CB 611)

E. Information on Processes

VI. Standard Setting

Introductory Note (CB 613)

A. Zero or De Minimis Risk
   Introductory Note (CB 613)
   Les v. Reilly, 968 F.2d 985 (9th Cir. 1992) (CB 613-17)
   Comments and Questions (CB 618)

B. Significant Risk and Feasibility
   Industrial Union Department, AFL-CIO v. American Petroleum Institute, 448 U.S. 607 (1980) (CB 618-33)
   Comments and Questions (CB 633-37)

C. Public Health Standards
   Comments and Questions (CB 642-44)
   Comments and Questions (CB 649)

D. Implementing Standards: Technology and Market-Based Systems
   Introductory Note (CB 649-50)
   Bruce A. Ackerman and Richard B. Stewart, Reforming Environmental Law, 37 Stan. L. Rev. 1333 (1985) (CB 650-62)
   Comments and Questions (CB 662-64)

VII. The Nondelegation Problem

Introductory Note (CB 665-67)
Comments and Questions (CB 673-74)
Comments and Questions (CB 676-77)
Geo-Tech Reclamation Industries, Inc. v. Hamrick, 886 F.2d 662 (4th Cir. 1989) (CB 677-81)
Comments and Questions (CB 681-82)

VIII. Conclusion: Perspectives

A. Traditional Economics
   Julie Graham and Don Shakow, Hazard Pay for Workers: Risk and Reward, 23 Env’t 62 (1981) (CB 47-51)
   John M. Mendeloff, Regulating Safety: A Political and Economic Analysis of OSHA (1979) (CB 51-52)
   Comments and Questions (CB 52)
B. Market-Inalienability
   Introductory Note (CB 53-54)
   Margaret Jane Radin, Market Inalienability, 100 Harv. L. Rev. 1849 (1987) (CB 54-62)
   Comments and Questions (CB 62-63)

C. Unequal Bargaining Power
   Introductory Note (CB 63-64)
   Elinor P. Schroeder and Sidney A. Shapiro, Responses to Occupational Disease: The Role of Markets, Regulation, and Information, 72 Geo. L.J. 1231 (1984) (CB 64-65)
   Comments and Questions (CB 69)
   Comments and Questions (CB 70-71)
   Comments and Questions (CB 98-101)
   Bill New, Paternalism and Public Policy, 15 Econ. & Phil. 63 (1999) (CB 101-04)
   W. Kip Vicusi, Risk by Choice: Regulating Health and Safety in the Workplace (1983) (CB 104-06)
   Comments and Questions (CB 106-08)