

Administrative Law  
Fall 2004 - Richards  
Key

- 1) Pillsbury Co. v. FTC

**Specific congressional direction to an agency to affect the outcome of an ongoing adjudication is grounds for overturning the adjudication. (not really an ex parte contacts problem)**

- 2) Buckley v. Valeo

**Violates separation of powers for Congress to control appointment of commissioners to an independent agency.**

- 3) Chocolate Manufacturers Ass'n v. Block

**The final rule failed and had to be repromulgated because it was not a logical outgrowth of the proposed rule.**

- 4) Motor Vehicle Manufacturers v State Farm Mutual Auto

**This case prevented the DOT from withdrawing a final rule without going through the notice and comment process or otherwise clearly stating the reasons for their action.**

- 5) Reguero v. Teacher Standards and Practices Commission

**This was an employment termination hearing. The court rejected the residuum rule requiring that agency actions be based on a residuum of evidence that would be admissible in a trial and subsisted the substantial evidence rule.**

- 6) HUD v. Rucker

**The federal hearing requirement could be satisfied by an eviction hearing at the state level.**

- 7) Zinermon v. Burch

**Cannot claim negligence as a sham to avoid a hearing when there is an ongoing deprivation of rights.**

- 8) Humphrey's Executor v. United States

**First case to recognize independent agency. President could not remove commissioner except for cause**

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- 9) Bi-Metallic Investment Co. v. State Board of Equalization

**Bimetallic - rate setting = rule making = no due process hearing rights**

- 10) Londoner v. Denver

**Londoner - individual allocation = adjudication = due process hearing rights**

General Questions

11) What are the three factors the court looks at to determine if an association has standing to bring a claim on behalf of its members?

**Purpose of the association**

**does any member have standing**

**does it require individual damage determinations or other participation by individual members?**

12) Why did Congress require de novo review of agency rulings on FOIA requests?

**Because the policy of FOIA is to encourage disclosure and de novo review prevents the agency from using its discretion to withhold information.**

13) What part of an agency ruling on a FOIA request is entitled to deference?

**Rulings on physical access to records and the difficulty and cost of retrieving them.**

14) How does a restaurant inspection meet the hearing requirement of allowing the regulated party to put on evidence to support its case?

**You get to talk to the inspector and explain your situation as the inspection is being conducted.**

15) In state actor institutions, why is there a greater due process right for non-academic discipline than for academic failure?

**Because there are no clear standards for reviewing academic discipline - no law to apply (Horowitz). There are objective standards for non-academic discipline issues.**

16) In Van Harken, the city decriminalized its parking ticket system to allow administrative review of tickets. What change in procedure did this allow that saved the city a lot of money?

**Doing away with the right of confrontation meant that police officers did not have to be at the hearing.**

17) What was the main advantage to the Nuclear Regulatory Commission of setting standards for atomic waste disposal through rulemaking?

**No longer an issue in adjudications for individual licenses, so it saved time and streamlined the process of approval.**

18) What is a safety value in a matrix regulation?

**A provision allowing the decision maker to do an individual fact finding if the party does not fit into the matrix.**

19) What is an agency summary judgment?

**A decision on stipulated facts without a hearing**

20) What did the drug manufacturer have to show in the FDA drug licensing case on grandfathered drugs to avoid an agency summary judgment?

**Studies showing that the drug was safe and effective in order to show a contested issue of fact to justify a hearing.**

21) The district attorney wants to force your client to turn over his personal diary where he has written his innermost secrets, including the crimes he has committed. Does this violate his privilege against self-incrimination and what is your reason?

**Self-incrimination does not extend to documents, only compelled testimony. This was not a required record keeping, so no Marchetti issues. There could be a self-incrimination depending on how they force the person to hand over the diary, as opposed to the diary itself.**

22) What is collateral estoppel - issue preclusion?

**Issues decided by the court, that are essential to the judgment (not dicta), are settled as to subsequent actions between the same parties on the same facts.**

23) What is non-acquiescence?

**When a Federal agency ignores a court decision and re-litigates it in other federal circuits or state courts.**

24) When a hearing panel of experts, such as board of medical examiners, uses its own expertise to take notice of facts, such as the standard for medical care, what must it put in the record?

**Enough information to explain its decision so that it can be reviewed by a court.**

25) What is rulemaking ossification?

**When legal and political concerns slow down rulemaking so much that it loses its flexibility.**

26) What APA section defines a rule?

**APA 551(4)**

27) How is interpretive guidance different from a rule?

**Only explains what the law means, it does not change legal duties. It is not binding on the agency while a rule is binding on the agency.**

28) Why is formal rulemaking so time consuming?

**It requires a hearing and public participation by all interested parties.**

29) What is a direct final rule?

**Agency proposes a rule to become final in a set period unless adverse comments are received.**

30) What is an interim-final rule?

**A rule where comment is taken after rule is in effect.**

31) What did Varig Airlines come out differently than Berkowitz?

**The rule in Varig allowed testing of a sample and Berkowitz required every batch to be tested. (Or something to indicate that in Varig the FAA has the discretion to test a sample of planes while in Berkowitz the FDA had limited its discretion with a rule that required testing every batch of vaccine.)**

32) U.S. Customs issues a letter ruling classifying Daytimers as diaries for tariff purposes. What is the level of deference when a court is reviewing this classification?

**How persuasive is it?**

33) In question 32, why is the letter ruling treated differently from a notice and comment rule?

**Not intended to be general - applies only to one party, not based on public input.**

34) What was the Great Compromise at issue in Chadha?

**Basing the senate on states and the house on population.**

35) When may Houses of Representatives act unilaterally?

**Bill of Impeachment, proposing spending bills (either will do)**

36) Under the Constitution, who may appoint inferior officers?

**The President alone, the Courts of Law, or the Heads of Departments.**

37) How are the roles of courts and agencies different when resolving political questions?

**The court must be neutral, The agency should carry out the executive's policies, making it inherently political.**

38) What is the test for qualified immunity when the law the official is acting under is declared unconstitutional after the action is taken?

**Is the conduct "objectively reasonable"? There can only be liability for constitutional violations if the right is "clearly established"**

39) What does APA § 702 provide?

**A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.**

40) How do primary jurisdiction and exhaustion differ?

**Exhaustion is when the agency has primary jurisdiction and the court is recognizing it. Primary jurisdiction is when the court and the agency both could hear the case and the court defers to the agency.**