

Administrative Law  
Spring 2010 - Richards

Put your exam number on each page of the examination if you are handwriting the exam. Do not put your name or any other identifying information on the examination. Read the entire exam before answering any questions. Make sure you have all the pages and that they are all different. Use no more than the space provided. **Do not write answers on the back.** You may use the back for scratch paper. If you are using the computer, each question has a **175**-word limit. These are short answer questions, but not one-sentence answer questions. Read the question carefully and think about your answer before you start writing. **If you use the computer, make sure you number your answers to match the question numbers.**

1. Matthews v. Eldridge is the cornerstone of modern adlaw due process. What are the three factors that the court balanced in the case?

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2. Thinking about *Matthews v. Eldridge*, how is administrative law due process balancing different from due process in criminal law cases?

3. The EPA has decided to promulgate a rule on air pollution caused by oil spills. What are the steps the agency needs to go through to promulgate a rule with the effect of law and to limit the chance it will be successfully challenged?

4. The Landrieu administration recognizes that it has no clue on how to reduce the New Orleans murder rate. However, in a classic diversionary ploy, it decides to focus on quality of life issues: the rat population in the French Quarter. What does the city need to show a judge for a warrant to inspect every business and home in the French Quarter for rats, and what sort of warrant do they need?

5. What is the process to make a claim under the Federal Tort Claims Act and when do you get jurisdiction to go to court?

6. What are the factors the court considers in determining whether a business is pervasively regulated and can be searched for criminal violations without a warrant? (Remember Burger)

7. What factors does the court consider when a guideline is being challenged because the petitioner claims it is being treated as a rule and thus must be promulgated by notice and comment?

8. Structurally, what makes an agency such as the IRS an independent agency? How do the president and congress exercise control over an independent agency?

9. How do the decisions in *Wooley* and *Bonvillian II* affect the ability of agencies under the Central Panel of ALJs to make policy through adjudications? What problems might this cause?

10. What is Justice Breyer's tunnel vision problem on regulations? Can CBA cure this? Use the oil spill as an example.

11. Can courts impose additional requirements such as public hearings that are not required by statute or regulation (Vermont Yankee) and how is hard look review a response to this position?

12. What is administrative issue exhaustion? When will the court waive it?

13. What are the policy issues in requiring the EPA to make rules on greenhouse gasses, rather than allowing the agency to defer to Congress?

14. How did *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971) change the understanding of "committed to agency discretion" and change agency practice?

15. What does it mean to say that FOIA is about access to records and not to information? How is this changing in the electronic world?