

Administrative Law  
Spring 2014 – Richards  
4 Hours

The exam is closed book and closed notes. Put your exam number on each page of the examination if you are **handwriting** the exam. Put your exam number only on the first page of the paper exam if you are **using the computer**. Do not put your name or any identifying information other than your exam number 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.** (If you are using the computer, you may use the whole exam as note paper.) You may use the back for scratch paper.

**Each question has a 75-word limit.** If you are hand writing, you are also bound by the word limit. These are short answer questions. Read the question carefully and think about your answer before you start writing. **If you use the computer, make sure to number your answers to match the question numbers.**

**If you use the computer, you do not have to turn in the paper exam. If you handwrite the exam, turn the exam into my secretary, Linda May, in Room \_\_\_\_.**

1. What are the president's options on vetoing legislation and how may congress override a veto?
  
  
  
  
  
  
  
  
  
  
2. What is the modern test for whether the delegation of power to an agency has been properly done? If the court cannot find enough evidence of congressional intent, does the court treat it as an unconstitutional delegation or is there now another solution?



7. How do independent agencies challenge the theory of separation of powers? (not one sentence)

8. What is the APA definition of a rule?

9. How do we know whether we are looking at a rule or an adjudication?

10. What is required for Sec. 554 notice?

11. How does an inquisitorial process (agency adjudication) differ from an adversarial (court) trial?

12. Why is the problem of ex parte contacts different for ALJs and Article III judges?

13. How does the policy for admitting evidence differ between an Article III jury trial and an ALJ hearing? How is this changed when it is an Article III non-jury trial?

14. Who has the burden of proof in an administrative proceeding? How do you determine who this party is?

15. How are the legal standards for initial licensing different from a license review or revocation?

16. How did the LA SC explain why LA ALJs are not Article V judges and thus do not need to be elected? What did issue *Wooley* leave unresolved that lead to the *Bonvillian* cases?

17. Assume that governor and legislature of Louisiana, following the philosophy of Milton Freedman (a noted free market economist) decide to abolish law licenses and allow anyone to practice law. Do you have any constitutional entitlement to compensation as a licensed lawyer? Think carefully and explain the constitutional basis, if any, for this being different from abolishing a welfare program.

18. Explain each of the three Matthews factors and how the test works.

19. How does the Matthews analysis dovetail with discretionary decisionmaking as a defense to tort claims against the agency?

20. Even if the basic facts are not in issue, what does *Loudermill* tell us about facts in mitigation and explanation? When are mitigation and explanation relevant?

21. What if government employer gives an employee a bad recommendation that causes him to lose a subsequent job? Is this stigma+? What would the employee have to show to get stigma+?

22. Melissa is accused of stealing from another student's locker and is expelled from law school - does she get a hearing? Is the analysis different for flunking out versus being expelled for stealing? Why?

23. What does it mean for an agency to take official notice of information? How can this affect the impartiality of the proceeding? How does this complicate the defendant's ability to get proper judicial review of the process?

24. Why is separation of functions a problem for agencies such as the FCC where decisions are made by the commissioners themselves? What does APA section 554(d) provide in these circumstances?

25. What happened in *Texaco, Inc. v. FTC*, 336 F.2d 754 (D.C. Cir. 1964) that allowed defendants to challenge the decisionmaker? How might this have affected the comments by the EPA Secretary about the BP spill?

26. What rights does a prisoner retain and why should we care?

27. How can you use rulemaking to narrow the issues in adjudications? What is an example from disability law? From our discussion of food inspections?

28. How does "substantial impact" test differ from the "legally binding effect" test? Illustrate this with an example.

29. Why did the court in *Chamber of Commerce v. U.S. Dept. of Labor*, 174 F.3d 206 (D.C. Cir. 1999) find that promising to reduce inspections for complying firms was improper?

30. What are the requirements for Federal notice and comment (informal) rulemaking?



31. What are the requirements for proving proper notice of the contents of a rule? Be specific, using *Chocolate Manufacturers Ass'n v. Block* as an example.
  
  
  
  
  
  
  
  
  
  
32. When the agency relies on scientific evidence to support the record for a rule, what must be published in the register? Is the public entitled to the raw data behind the study the agency relies on? What is the significance of the Shelby Amendments?
  
  
  
  
  
  
  
  
  
  
33. Are contacts with the President ex parte contacts? Are they improper? How did the court resolve the issue in *Sierra Club v. Costle*?
  
  
  
  
  
  
  
  
  
  
34. What are the two permits that are necessary to build and operate a nuclear power plant? How did anti-nuclear activists use the administrative process to attack nuclear power plant construction? What was done recently to streamline the process for permitting a nuclear power plant?

35. When does the APA allow legislative rules to be made without notice and comment?  
(Excluding formal rulemaking.)
36. What is OIRA? What is its role in rulemaking? Which agencies is it able to control?  
Which agencies are beyond its control?
37. What is an unfunded mandate? What are examples? Why are unfunded mandates politically controversial?
38. Indigent rights plaintiffs claim that non-profit hospital does not provide adequate indigent medical care to justify its non-profit tax exemption. They ask the IRS to cancel the hospital's non-profit status. What are they trying to accomplish? What are the standing issues with this case? (*Eastern Kentucky*)

39. How does zone of interests limit standing? How was the zone of interest different between *Hazardous Waste Treatment Council v. Thomas*, 885 F.2d 918 (D.C. Cir. 1989) and *Honeywell International, Inc. v. EPA*, 374 F.3d 1363 (D.C. Cir. 2004)?
40. In *Mass v EPA*, what was the evidence before the court that showed that congress had been aware of global warming?
41. Discuss pre-enforcement review, contrasting *Abbott Labs* with *Toilet Products*.
42. Assume that an agency makes a finding that no regulation is necessary on the energy use of kitchen appliances, and that finding then preempts states from passing their laws or regulations on the subject. Would this require notice and comment, and, if so, what would need to be published?

43. Does going first matter? (*Brand X*) Assume that a court interprets a statute before an agency promulgates regulation under the statute. What would the court need to say about the interpretation to preempt a subsequent regulation by the agency that would conflict with the court's interpretation? Assuming that the court did not say this, must this court defer to the agency if the agency goes against the court's original ruling when it promulgates the regulation?
44. Thinking back to criminal/constitutional law - what do you file if you think your client is being illegally detained on an administrative order? How would you justify the Guantanamo detentions if you were the DOJ when the ACLU used this device to claim that that these detainees were being held unconstitutionally?
45. Assume OSHA has a warrant for a limited search of a business, but goes beyond the limits of the warrant. What can the evidence found in the areas beyond the reach of the search warrant be used for? What use did the court exclude for the evidence? How does the basic rational for differentiating criminal and administrative searches undermine the rational for a strict exclusionary rule for administrative searches?

46. How is sovereign immunity different in Louisiana from the federal model? How does this difference affect the construction of the federal versus state tort claims act, i.e., how is a statute in dereliction of immunity construed differently from a statute creating immunity? (In practical terms, if something is excluded from the statute, how is the outcome different under LA versus federal law?)

47. What is the Court of Claims and what type of claims does it deal with?

48. What is the legal test for qualified immunity? How does immunity provided by qualified immunity differ from the discretionary function exception? Is it broader or narrower?

49. In the movie Well Founded Fear, one of the AJs who was interviewed retired after the movie was done. Name or describe the agent.