





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?



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.~~



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?





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.