

**Administrative Law
Fall 2003 - Richards**

Name that case!

1. In this case the agency tried to supplement an inadequate record in a adjudication with briefs when the case was on appeal to the courts.

Overton Park v. Volpe

2. This is the classic new property case which granted hearing rights before the termination of welfare benefits.

Goldberg

3. This is the case that put major limits on the case from question 2, allowing the agency to use a cost benefit analysis to limit hearing rights. It introduced the improvement in the accuracy of the proceeding as a factor to consider when deciding on the level of due process.

Matthews

4. The court rejected the rulemaking in this case because the proposed rule did not give the industry sufficient notice of the provisions of the final rule.

Chocolate Manufacturers

5. This case established that the state could require people to be vaccinated against smallpox.

Jacobson

6. In this case a congressman stepped over the line when trying to influence an agency's ruling in an adjudication that was in process.

Pillsbury

7. The court deferred to the judgment of the university in this case, making it very difficult for students to attack university academic decisions.

**Board of Curators of the U. of Mo. V. Horowitz
(Horowitz case)**

8. This case ended the legislative veto.

INS v. Chadha

9. This case required the joining of competing license applications.

Ashbacker

10. This case prevented the DOT from withdrawing a final rule without going through the notice and comment process.

Motor Vehicle Manufacturers

General questions

11. ~~What is the process for requesting a hearing for a notice and comment rule under the Federal APA?~~

Ambiguous question - not graded

12. What do you need to get a hearing for a notice and comment rule under the LA APA?

"(a) Afford all interested persons reasonable opportunity to submit data, views, comments, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument must be granted if requested within twenty days after publication of the rule as provided in this Subsection, by twenty-five persons"

13. If you do not like an emergency rule in LA, what do you ask for to contest it?

"(3) The validity of an emergency rule or fee may be determined in an action for declaratory judgment in the district court of the parish in which the agency is located."

14. What are the Chevron step one grounds for challenging a notice and comment rule promulgated under the Federal APA?

Did Congress give specific guidance?

15. Assume that you lose in question 14, what do you need to persuade the court to beat a regulation under Chevron step two?

Is the agency rule reasonable under the enabling act?

16. Which Chevron step did the tobacco case (FDA v. Brown & Williamson Tobacco Corp.) turn on?

Two - was it a reasonable interpretation?

17. 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?

18. HHS uses ALJs to make social security disability determinations. What is the judicial standard the court should use when deciding whether to accept a factual determination by an ALJ in such as proceeding?

Arbitrary and capricious

19. 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**

20. Federal agents break into your client's house and beat her up. What type of action would you bring? (Named for a case)

Bivens

21. The Baton Rouge Parish sheriff breaks into your client's house and beats her up. What federal law would you use to sue for damages?

42 USC 1983

22. Your client has been wrongly convicted by a prejudiced judge and sent to Angola for life. You eventually convince the federal courts to release her and overturn the conviction. What is her legal recourse against the judge?

None

23. A U.S. Postal Service truck runs into your client when the driver does not check his mirror before backing up. What law would you use to bring this claim?

FTCA

24. When you bring the claim from question 23, what do you have to do before you file the lawsuit?

File an administrative claim

25. What were the plaintiffs able to show that allowed them to win in Berkowitz which they could not show in the airline inspection case?

That the agency violated its own rule

26. What are two reasons to use a FOIA request rather than discovery?

No need to have a lawsuit, no notice, no limits - any two of the three

27. Your client wants classified information. What exemption will the DOD use to deny your FOIA request?

Exemption one

28. Your client wants the medical records of a patient at the VA hospital. What FOIA exemption controls release of these records?

Exemption six

29. Congress passes a new environmental protection law that abolishes the zone on interest test for cases under the law, allowing any person to challenge agency actions under the law. Is this constitutional?

yes

30. Congress passes a new environmental protection law that abolishes the case or controversy test for cases under the law, allowing businesses to file for declaratory judgments on whether their practices are legal under the act. Is this constitutional?

no

31. Louisiana passes an emergency quarantine law that allows SARS carriers to be locked up by order of the health director. There are no specific review provisions in the statute. What proceeding do you bring to ask the court to review your client's confinement?

Habeas corpus

32. 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.

33. What is easier to get disqualified for bias, an Article III judge or an ALJ?

Article III judge

34. What is an Interim-final rule?

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

35. What is the magic language for formal rulemaking?

Only when rules are required by statute to be made on the record after opportunity for an agency hearing

36. What is the test for probable cause for administrative subpoenas?

Probable cause is satisfied if the subpoenaed documents are relevant to the inquiry

37. When is there a self-incrimination defense to an administrative subpoena?

When the purpose of the regulation is to substitute for a criminal law

38. In Louisiana, is the determination of an ALJ binding in a subsequent criminal trial on the same facts?

No in Nov 2003.

39. What is an unfunded mandate?

The costs of complying with a regulation that are not paid by the government.

40. What does the God Squad do?

Determines if a species is on the endangered species list.