

Administrative Law Fall 2007

Sample (terse) answers

1. For separation of powers purposes, how does the organization of the executive branch in Louisiana and most states differ from that of the federal government?

There is no single/unitary head of the executive branch.

2. Why did the LA Supreme Court in Wooley allow the legislature to take away the powers of the insurance commissioner but would not let the legislature give the ALJs in the Department of Administration the right to make final, binding decisions?

The legislature controls the power and funding of agencies.

Giving ALJs the power to make final decisions would violate separation of powers.

3. What is test to determine whether an official is an officer of the United States or an inferior officer of the United States?

Thus, the Court classified independent counsels as "inferior" officers based on the nature and scope of their duties and the fact that they were removable by a higher executive official. - Morrison v. Olson.

4. What function requires that an agency be part of the executive branch? What is an example of a congressional agency and what sort of things can it do?

Enforcement

CBO - issue reports, do investigations.

5. How does the role and control of the Attorney General of Louisiana differ from the Attorney General of the United States?

The LA AG is independent of the executive branch.

6. What are the fundamental differences between an adjudication and a rulemaking?

Adjudication - retrospective - specific parties, specific facts

Rulemaking - prospective - applies to all persons in the class equally.

7. Explain how an inspection classifies as an adjudication?

It determines specific facts about a specific party.

The party gets due process by being able to explain their side during the inspection.

8. How does the "substantial evidence" standard change the Residuum Rule?

The residuum rule required that there be some evidence that was not hearsay.

The substantial evidence rule requires that the record as a whole provide substantial evidence to support the finding, without a specific requirement that some not be hearsay.

9. With the Pillsbury case in mind, what is the allowable role of Congress in ongoing adjudications, which could include a constituent's social security disability determination?

A congressman or hearing can ask for a status report, but cannot attempt to interfere with the proceeding.

10. How can rulemaking be used to improve the efficiency of adjudications? Use an example from a case.

Rulemaking can be used to narrow the issues that are subject to adjudication.

Establishing the criteria for disability determinations.

11. Why do some political theorists worry that agency rulemaking can undermine democracy?

Agency heads wield power from all three branches but are not elected and directly accountable to the voters.

12. What is Justice Breyer's tunnel vision problem on regulations and how can CBA be used to mitigate this problem?

While additional regulatory requirements may not cost much individually, they can be very costly when taken together.

CBA makes the agency look at the total cost of regulation.

13. Using an example, explain the limits to making public policy with CBA.

CBA has trouble with intangible benefits such as health or preserving the environment.

Congress will not set a value for human life so it is impossible to do CBA for human lives.

14. What factors should indicate to a reviewing court that an agency interpretation of law is probably correct?

How did the agency arrive at the interpretation - notice and comment rulemaking or an informal process? Less process - more scrutiny.

Is it reasonable?

15. What is the finality problem with reviewing non-legislative rules, i.e., guidelines, letter rulings, etc.? Think about what would be necessary to find a letter a final action.

If they are not binding on the agency or the party, then they are not a final ruling for judicial review.

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

Issues taken to judicial review have to be presented to the agency.

It can be waived in proceeding where it is expected that individuals will present their case to the agency without legal help.

17. How do the primary jurisdiction doctrine and exhaustion doctrine differ?

Primary jurisdiction is deciding whether the court hears the case first when both the court and the agency have jurisdiction.

Exhaustion requires that that the agency hear the case first.

18. Explain the Chevron analysis in *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (U.S. 2000).

The court stopped at step one, finding that Congress did not intend for the FDA to regulate tobacco, despite the language of the statute.

19. Assume you are defending a nursing home from criminal charges arising on the failure of the nursing home to properly evacuate the residents after Katrina. Assume that the state required the nursing home to have an evacuation plan for its residents and that the nursing home passed its most recent state inspection before Katrina. What do you argue is the legal basis for using this as a defense and why does this being a criminal case change the usual rule for relying on agency advice?

While you generally cannot rely on agency actions to avoid the regulations, they are evidence of good faith which defeats mens rea in criminal cases.

20. Can the government release information that is subject to a FOIA exemption? What are the limits on this release?

Yes, unless the release is prohibited by another law.