# Administrative Law Review Materials – Richards – Fall 2019

# Chapters 1&2

# The Evolution of Administrative Law

## Does the Constitution provide a clear framework for administrative law?

## How was this driven by the founders’ vision of the future United States and the role of the federal government?

## What are the major historical events (geopolitical, not legal) of the 20th Century that lead to the development of the modern administrative state?

# The Modern Administrative State

## What are the three branches of the US Governments?

## Who are the only nationwide office holders?

## Does the US Constitution require that the states have the same branches and separation of powers as the federal government?

# Agencies are Established by the Legislature

## How can Congress shape and control agencies?

## How does the nature of the legislative grant of powers to an agency (general, specific, contingent) affect the discretion of the agency and executive branch?

## The president has national security powers directly from the constitution – what are the congressional tools to control these powers?

# Executive Control

## What is the test for whether an agency must be in the executive branch?

## What is the example a non-executive branch agency and what does that agency do?

# Art II, sec. 2, cl 2 - the Appointments Clause

## What are principal officers and how must they be appointed?

## What are inferior officers and how may they be appointed?

## Does the Appointments Clause provide for acting secretaries?

## How would you analyze whether a given federal official is an inferior or principal officer?

## What creates an independent agency?

## How are they usually structured?

## Why does Congress create independent agencies?

## In which branch of the government are independent agencies located?

## What are examples of independent agencies?

## What are the Appointment’s Clause issues with independent agencies?

## Why might an independent agency headed by only 1 person be especially problematic under the Appointments Clause?

## Removal Wrap Up

### What is the general rule for who can remove a principal or inferior officer?

### What if the statute says an officer of the US serves until removed for good cause, but does not specify a term of office?

### Think about how civil service jobs with provide for employment during times of good behavior can be squared with your answer?

# Executive Power

## What is an Executive Order (EO)?

## Which agencies are traditionally seen as not bound by an EO?

### Why is this?

## What are the limits on what the president can do by Executive Orders?

## What is the Unitary Executive theory?

## What is the Appointment’s clause argument against the Unitary Executive?

# Non-Delegation Doctrine

## In very simple terms, what is the Non-Delegation Doctrine?

## What is the "intelligible principle" test and how has it replaced the Non-Delegation Doctrine?

## What if the Court cannot find an "Intelligible Principle?"

### This is all you need to know about the Non-Delegation Doctrine

# What are the Limits on Delegated Powers to Adjudicate?

## The main limit on what power can be delegated by legislature to an administrative agency is when that delegation allows an agency to make decisions reserved to Article III judges. The most obvious example is determining guilt for criminal punishment.

## Assume a city wants to move its traffic ticket system from the criminal courts to an administrative system.

### What would it have to change about the penalties?

### What legal rights could it reduce to save money in the administrative system?

# Congressional Control of Agencies

## Buckley v. Valeo, 424 U.S. 1 (1976)

### Original process for selecting members of the Federal Election Commission (FEC)

#### Two members appointed by the President pro tempore of the Senate,

#### two by the Speaker of the House, and

#### two by the President (all subject to confirmation by both Houses of Congress), and

#### the Secretary of the Senate and the Clerk of the House as ex officio nonvoting members

### What is the Appointments Clause problem?

## How does Impeachment work and what is its administrative cost, i.e., how disruptive is it of Congressional work?

### Why does this make it of limited effectiveness for agency oversight?

## The Legislative Veto - INS v. Chadha, 462 U.S. 919 (1983)

### What is the legislative veto as used in this case?

### What is Bicameralism?

### What was the Great Compromise?

### How is selection of senator different from house members?

### How does the legislative veto violate bicameralism?

### What is the president’s role once legislation has passed the house and senate?

### What if he does not sign it?

### What is a presidential veto?

### What is a line item veto?

### Does the US Constitution allow a line item veto?

## When may the House of Representatives Act Unilaterally?

## When may the Senate Act Unilaterally?

## What is the Only Congressional Joint Resolution with Legal Effect? (Hint, we have not used it since the 1940s)

## What is an Earmark?

## Can an Earmark be enforced in court?