

Administrative Law
Fall 2011 - Richards

Put your exam number on each page of the examination if you are handwriting the exam. Put your exam number on the first page of the paper exam if you are using the computer. Do not put your name or any other identifying information 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.** You may use the back for scratch paper. Each question has a **130**-word limit. If you are hand writing, do not use tiny writing to significantly exceed this limit. These are short answer questions, but not one-sentence answer questions. Read the question carefully and think about your answer before you start writing. **If you use the computer, make sure you number your answers to match the question numbers.**

Exams are to be turned in to my secretary in room 427. If you use the computer, you must still turn in your paper exam.

1. What did the *Central Green* court find was the key question in establishing whether FCA immunity applies in a case? How does this potentially limit the holding in the 5th Cir. ruling in *Graci* if the same facts as in *Graci* were to occur again?

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2. In *Chamber of Commerce v. U.S. Dept. of Labor*, 174 F.3d 206 (D.C. Cir. 1999), how did OSHA try to "persuade" businesses to comply with guidelines that it did not have the political will to make into rules? Why did the court find this impermissible?

3. When can an agency bind a regulated party without using a notice and comment regulation? (Hint - *Public Citizen v. DHHS*) In this situation, what are the only grounds for attacking the provisions? How is this used by federal agencies without regulatory powers to get states to do what the feds want?

4. Explain how inspections are a form of adjudication. Use restaurant inspections as a specific example.

5. What is the key factor that determines whether an agency must be in the executive branch? What is an example of a Congressional agency? What powers can a Congressional agency exercise?

6. What is an earmark? (Hint – how are earmarks consistent with the founder’s intent?) Can an earmark be enforced in court if the agency does not follow it?

7. How is *Motor Vehicles Manufacturers Assoc. v State Farm* the logical result of *Overton Park*?

8. What do *Roth* and *Sinderman* tell us about the due process rights of public employees? What do they tell us about why LSU has not commented or explained its position on the merits of the Van Heerden case?

9. How does the *Matthews* analysis dovetail with discretionary decision-making as a defense to tort claims against the agency?

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

11. In *FDA v. Brown & Williamson*, the opponents of the regulation say that the FDA's only remedy would be to ban tobacco. What was Breyer's solution to this claim?

12. Why are the ranchers - *Bennett v. Spear*, 520 U.S. 154 (1997) - in the zone of interest, and the mail carriers - *Air Courier Conference of America v. American Postal Workers Union* - are not?

13. In *Mass v. EPA*, how did the court decide whether the EPA had the authority to regulate CO₂?

14. What are the political and administrative tradeoffs between very detailed statutes such as the ADA and statutes that only give general authority to the agency?

15. What does *Portela-Gonzalez* (civilian Navy employee) tell us about common law exhaustion as compared to APA exhaustion?

16. Compare mandamus and the alternative APA 706(1) remedy.

17. Why are an individual's constitutional rights diminished in third party reporting compared to first party reporting? What are examples of unconstitutional first party reporting requirements?

18. What is the standard for judicial review of denials of FOIA requests? How does this support FOIA policy? When will the court defer to the agency in the review of FOIA requests?

19. What are the different reasons an agency might want to make policy through adjudication rather than rulemaking?