

Administrative Law - Fall 2018 – Richards
4 Hours

The exam is closed book and closed notes. If you are handwriting the exam, put your exam number on each page of the provided paper. Do not put your name or any identifying information other than your exam number on the exam paper. **For all exam takers - make sure to number your answers to match the question numbers.** You may use the exam as scratch paper.

Each question has a word limit. If you are handwriting, you are also bound by the word limit. Count your words if you are in doubt. Legibility is important – print if necessary. Read each question carefully and think about your answer before you start writing. Remember my admonition to not pad your answer with unnecessary general review materials. If you do, you will run out of words. When you are finished, put this two page exam into the box marked **Exams** in the front of the room. **If you are handwriting the exam, when you are finished put your answer sheet in the box in the front of the room labeled Answers.**

Short questions – 75 words or fewer each.

1. What is the fundamental difference between a cabinet agency and an independent agency? What branch of government are independent agencies in?
2. What are the exclusive powers of the House of Representatives?
3. What are the exclusive powers of the Senate?
4. What was the basis for plaintiff's standing in *Monsanto Co. v. Geertson Seed Farms* (the GMO seeds case)?
5. Why doesn't the independent counsel, Robert Mueller, have to be confirmed by the Senate?
6. How is an ALJ's decision in the federal system different from an Article III judge's decision?
7. What is required for Sec. 554(b) notice (notice for an adjudication)?
8. Why is the problem of ex parte contacts different for ALJs and Article III judges?
9. How does the position of Attorney General of Louisiana differ from the Attorney General of the United States as relates to separation of powers/executive control?
10. How does the DAL legislation change the relationship between the agency and the ALJ, i.e., how is the LA system now different from the Federal system?
11. Why is it hard for Louisiana agencies to use adjudications under the DAL to make policy?
12. What is an action for mandamus and why is it such a limited remedy?
13. What do *Londoner v. City and County of Denver*, 210 U.S. 373 (1908) and *Bi-Metallic Investment Co. v. Colorado*, 239 U.S. 441 (1915) tell us about the difference between the required individual due process for an adjudication versus a rule?
14. What was the fight in *Goldberg* over the timing of the hearing, i.e., what was plaintiff's argument for a pre-termination versus post-termination hearing?

15. How did the Welfare Reform Act of 1996 eliminate the right to a hearing on the termination of welfare benefits?
16. Melissa fails administrative law and thus flunks out of law school. She thinks she did a good job on the exam. She does not claim that the anonymous grading system failed. Why no constitutional right to a hearing?
17. What are the steps to promulgating a notice and comment rule?
18. What is the potential presidential control problem with an internal commission inside of an independent agency?
19. What was the redressability problem in *Mass v. EPA*?
20. How does the basic rationale for differentiating criminal and administrative searches undermine the argument for a strict exclusionary rule for administrative searches?

Longer questions – 250 words or fewer.

21. During a recent press conference in the White House press room, President Trump was challenged by a CNN reporter, Jim Acosta. The White House then pulled Acosta's "hard pass" which granted him access to the White House, including the press room. Acosta filed an injunction asking the court to require the White House to return his press pass. The judge issued an order from the bench requiring the White House to return the press pass during the pendency of the proceeding, having not found the White House's claim that Acosta had misbehaved to be credible. The judge based this ruling on a due process violation and made a point of saying that he did not reach any 1st Amendment issues. He then asked for briefing for the permanent injunction hearing. Your assignment is to write a brief, focused statement of the basis for Plaintiff's claim that he was denied adequate due process when his press pass was cancelled.
22. Thinking about the role of the Attorney General and the tension between Trump and Sessions, what is the conflict between the strong unitary executive theory and the appointments clause? Why has this raised questions about the Vacancies Act allowing the appointment of a temporary AG for 210 days?
23. What does Portela-Gonzalez (the civilian employee of the Coast Guard who was contesting her firing) tell us about common law exhaustion as compared to APA exhaustion?
24. The Trump Administration has been asserting that Chevron deference limits the court's review of the record, in effect limiting hard look. Is this correct? Illustrate with the court's sequence of reviewing an agency case.
25. Explain how Fox modifies *State Farm* when reviewing the record on the rescission or modification of a notice and comment rule.

Even longer questions – 500 words or fewer.

26. What is the Mathews test for determining the constitutionally necessary due process in a given case? Contrast this with the standard for determining the constitutionally necessary criminal due process in a given case.
27. Explain the interplay between the various standards for judicial review – Chevron, *King v. Burwell*, *Brown & Williamson*, *Skidmore*, *Hearst*, and *Barnhart*.