

Instructor s Manual  
With Test Bank

# **Administrative Law**

Bureaucracy in a Democracy

Second Edition

Daniel E. Hall

---

Copyright © 2001 by Pearson Education, Inc., Upper Saddle River, New Jersey 07458. All rights reserved. Printed in the United States of America. This publication is protected by Copyright and permission should be obtained from the publisher prior to any prohibited reproduction, storage in a retrieval system, or transmission in any form or by any means, electronic, mechanical, photocopying, recording, or likewise. For information regarding permission(s), write to: Rights and Permissions Department.



10 9 8 7 6 5 4 3 2 1  
ISBN 0-13-092836-4

## Table of Contents

Author s Introduction	1
Chapter Outline	3
Answers to Chapter Review Questions and Problems	10
Test Bank	21
Test Bank Answers	47

## **Author s Introduction**

This supplement to *Administrative Law: Democracy in a Bureaucracy* contains a chapter outline, answers to the chapter questions and problems that appear at the end of each chapter, and a test bank. All of the questions in the test bank are of the objective variety, true/false, multiple-choice, and there are a few fill-in-the-blanks.

The reality is that many students, if not most, find administrative law to be thick. As such, incorporation of active learning exercises is a good idea. Attending an administrative hearing when covering chapter four is an example. Web sites that relate to the subject have been included in each chapter and also appear in chapter twelve. You may want to have your students visit these sites and then brief the class on what they found. Of course, case briefing serves this purpose as well. Many new cases appear in this edition. In addition, a few cases have been lengthened. I found (and heard from other instructors) that I had over-edited some of the cases that appeared in the first edition. If you used the first edition of this text, you may want to check all the cases to ensure that you have read them fully, even if they appeared in the first edition.

I also suggest mock events. Both mock administrative hearings and moot appellate court hearings are good tools to teach the law, develop research skills, and strengthen oral and written communication skills.

Daniel E. Hall, J.D., Ed.D.

# Chapter Outline

## Chapter One: Introduction

- 1.1 Administrative Law Defined
- 1.2 Sources of Administrative Law
  - 1.2(a) Constitution
  - 1.2(b) Enabling Laws
  - 1.3(c) Administrative Procedure Act
  - 1.3(d) Executive Orders
- 1.3 Administrative Agencies
  - 1.2(a) The Need for Agencies
  - 1.2(b) Types of Agencies
  - 1.2(c) The History and Size of the Bureaucracy
  - 1.2(d) The Impact of Agencies on Daily Life
- Summary

## Chapter Two: Bureaucracy and Democracy

- 2.1 Democracy and Accountability
  - 2.1(a) Federalism
    - United States v. Brzonkala*
  - 2.1(b) Separation of Powers
  - 2.1(c) Theme
- 2.2 Controlling the Bureaucracy
  - 2.2(a) Presidential Control
    - Clinton v. New York*
  - 2.2(b) Congressional Control
    - INS v. Chadha*
  - 2.2(c) Judicial Control
- Summary

## Chapter Three: Agency Discretion

- 3.1 Introduction
- 3.2 Detriments And Benefits Of Discretion
- 3.3 Limits On Agency Discretion
- 3.4 Examples Of Agency Discretion
  - 3.4(A) Prosecutorial Discretion
    - General Motors V. Federal Energy Regulatory Commission*
  - 3.4(B) Rulemaking And Policy Discretion
    - Chevron V. Natural Resources Defense Council*
    - Gonzalez V. Reno*
  - 3.4(C) Claims And Applications Decisions

- 3.4(D) Protective Action
  - Brock V. Roadway Express*
- 3.4(E) Tests And Inspections Generally
- 3.4(F) Advisory Opinions And Declaratory Orders
- 3.4(G) Mediation And Arbitration
- 3.4(H) Other Action
- 3.5 Conclusion

## **Chapter Four: The Requirement Of Fairness**

### Outline

- 4.1 Due Process In General
- 4.2 Protected Interests
  - 4.2(A) Life
  - 4.2(B) Liberty
  - 4.2(C) Property
    - Entitlements
    - Governmental Employment
      - Perry V. Sindermann*
    - Licenses
    - Utilities
    - Education
      - Goss V. Lopez*
- 4.3 Cost-Benefit Analysis
- 4.4 Notice
- 4.5 Hearing
  - 4.5(A) Where
  - 4.5(B) What
    - Goldberg V. Kelly*
    - Gilbert V. Homar*
    - Ingraham V. Wright*
    - Dixon V. Love*
  - 4.5(C) When
- 4.5(D) Counsel
- 4.6 Equal Protection
  - Fisk Drug Corp. V. Perales*

### Summary

## **Chapter Five: Delegation**

- 5.1 What Is Delegation?

- 5.2 Delegating Legislative Authority
  - United States V. Grimaud*
  - Panama Refining V. Ryan*
  - Touby V. United States*
  - South Dakota V. Department Of Interior*
- 5.3 Delegating Judicial Authority
  - Foley V. Condominium Association*
- 5.4 Delegating To Private Agencies
- 5.5 Delegating Criminal Law Authority
- 5.6 Arrest And Delegation

## **Chapter Six: Agency Rulemaking**

- 6.1 In General
- 6.2 Rulemaking And Adjudication Defined
- 6.3 The Volume Of Rules
- 6.4 Types Of Rules
- 6.5 Rulemaking Procedure
  - 6.4(A) Formal Rulemaking
    - United States V. Florida East Coast R.R.*
  - 6.4(B) Informal Rulemaking
  - 6.4(C) Exempted Rulemaking
  - 6.4(D) Hybrid Rulemaking
    - Vermont Yankee Nuclear Power Corp. V. Natural Resources Defense Council*
  - 6.4(E) Negotiated Rulemaking
  - 6.4(F) Advisory Committees
- 6.6 Revenues
- 6.7 Controlling Rulemaking Authority
  - FDA V. Brown And Williamson, et al.*
- Summary

## **Chapter Seven: Agency Investigations**

- 7.1 Acquiring Information
  - 7.2.1 Recordkeeping And Reporting
    - United States V. Morton Salt Co.*
    - 7.2(A) Fifth Amendment Aspects
    - 7.2(B) Immunity
  - 7.3 Inspections, Tests, And Searches
    - 7.3(A) Fourth Amendment Aspects
      - Camera V. Municipal Court*
    - 7.3(B) Drug, Alcohol And Aids Testing

*Vernonia School District V. Acton*  
7.3(C) Closely Regulated Businesses  
*Donovan V. Dewey*

- 7.4 Subpoenas
  - 7.4(A) Enforcement Of Subpoenas
- 7.5 Parallel Proceedings
- 7.6 Paperwork Reduction Act

**Chapter Eight: Agency Adjudications**

- 8.1 In General
- 8.2 Notice
- 8.3 Parties And Participation
  - 8.3(A) Parties In Interest And Intervention
    - Ashbacker Radio Corp. V. Federal Communications Commission*
  - 8.3(B) Other Methods Of Participation
- 8.4 Discovery
- 8.5 Prehearing Conference
- 8.6 Prehearing Settlement
- 8.7 The Hearing
  - 8.7(A) Evidence Admissibility
    - Legal Residuum Rule
      - Richardson V. Perales*
    - Privileged And Illegal Evidence
      - Ins V. Lopez-Mendoza*
    - Official Notice
  - 8.7(B) Burdens
  - 8.7(C) Standards
    - Steadman V. United States*
    - Woodby V. Ins*
  - 8.7(D) Administrative Law Judges
    - Independence
      - Stephens V. Merit Systems Protection Board*
    - Interest, Bias, And Prejudgment
      - Gibson V. Berryhill*
    - Separation And Combination Of Functions
  - 8.7(E) Counsel And Attorneys Fees
  - 8.7(F) The Decision
    - Institutional Decision
    - Final, Initial, And Recommended Decisions
    - Findings In Formal Adjudications
    - Findings In Informal Adjudications
    - The Right To A Jury In Administrative Proceedings

- 8.7(F) Observing An Administrative Hearing
- 8.8 License Cases
- Conclusion

## **Chapter Nine: Accountability Through Reviewability**

- 9.1 In General
- 9.2 Sources Of Review Authority
  - 9.2(A) Statutory
  - 9.2(B) Nonstatutory
- 9.3 Agency Discretion
  - Lincoln V. Vigil*
  - Heckler V. Chaney*
- 9.4 Standing
  - Association Of Data Processing Service Orgs. V. Camp*
  - 9.4(A) Citizen And Taxpayer
    - Federal Election Commission V. Akins*
  - 9.4(B) Qui Tam Actions
  - 9.4(C) Environmental Cases
    - Sierra Club V. Morton*
  - 9.4(D) Competitor
  - 9.4(E) Consumer
- 9.5 Timing Of Review
  - 9.5(A) Primary Jurisdiction
  - 9.5(B) Exhaustion Of Administrative Remedies
    - Mckart V. United States*
  - 9.5(C) Ripeness
- 9.6 Scope And Standards Of Review
  - 9.6(A) Standard One: De Novo
  - 9.6(B) Standard Two: Substantial Evidence
  - 9.6(C) Standard Three: Arbitrary, Capricious, Abuse Of Discretion
  - 9.6(D) Review Of Legal Conclusions
  - 9.6(E) Review Of Factual Findings
  - 9.6(F) Review Of Discretionary Decisions
  - 9.6(G) Failure To Raise Issues
    - Motor Vehicle Manufacturers Assoc. V. State Farm Mutual*
  - 9.6(H) Alternative Rationale
- 9.7 Review Of Rules
- 9.8 Common Law Doctrines
  - 9.8(A) Res Judicata
  - 9.8(B) Collateral Estoppel
  - 9.8(C) Application To The Government
  - 9.8(D) Equitable Estoppel

9.8(E) Laches  
Summary

**Chapter Ten: Public Accountability Through Accessibility**

- 10.1 Accountability Through Accessibility
- 10.2 Freedom Of Information Act
  - 10.2(A) Publication Requirement
    - Failure To Publish
  - 10.2(B) Inspection And Copying Requirement
    - Indexing
    - Failure To Comply
  - 10.2(C) Production Upon Request Requirement
    - Request Procedure
    - What Records?
  - 10.2(D) Foia As Discovery
    - North V. Walsh*
  - 10.2(E) Fees And Waivers
  - 10.2(F) Exemptions
    - National Defense And Foreign Policy
    - Agency Personnel Matters
    - Other Statutes
    - Trade Secrets And Financial Information
    - Agency Memoranda
    - Personnel, Medical, And Files Containing Private Information
      - Department Of Defense V. Federal Labor Relations*
- Authority*
  - Law Enforcement Records
  - Financial Institution Information
  - Geological Information
  - 10.2(G) Judicial Review And Remedies
  - 9.2(H) Congressional Monitoring
- 10.3 Privacy Act
  - 10.3(A) Collection Of Information
  - 10.3(B) Maintaining Records, Publication, And Rules
  - 10.3(C) Disclosure Of Records
  - 10.3(D) Individual Access
  - 10.3(E) Amending Records
  - 10.3(F) Judicial Review And Remedies
    - Civil Actions
      - Ray V. Turner*
    - Criminal Penalties

- 10.3(G) Congressional Monitoring
- 10.4 Government In The Sunshine Act
  - 10.4(A) Exemptions
  - 10.4(B) Judicial Review And Remedies
  - 10.4(C) Congressional Monitoring
- 10.5 Federal Advisory Committee Act
- 10.6 Trade Secrets Act
- 10.7 Privatization And The Public Right To Know
- Summary

## **Chapter Eleven: Accountability Through Liability**

- 11.1 Introduction
- 11.2 Sovereign Immunity
- 11.3 Federal Tort Claims Act And Its Exceptions
  - 11.3(A) Executive Functions
  - 11.3(B) Intentional Torts
  - 11.3(C) Discretionary Function Doctrine
    - Bowers V. City Of Chattanooga*
  - 11.3(D) Scope Of Employment
  - 11.3(E) Public Duty Doctrine
    - Kirk V. City Of Shawnee*
  - 11.3(F) Damages Limitations
- 11.4 Section 1983 Claims
  - 11.4(A) Plaintiffs And Defendants
    - Monell V. Department Of Social Services*
  - 11.4(B) Deprivation And Color Of Law
    - County Of Sacramento V. Lewis*
  - 11.4(C) Remedies, Fees, And Costs
    - Smith V. Wade*
  - 11.4(D) Procedure
  - 11.4(E) Immunities
    - Absolute And Qualified
      - Harlow V. Fitzgerald*
    - Functional Approach
    - Judges
    - Prosecutors
    - Law Enforcement Officers
    - Witnesses And Jurors
    - Public Defenders
    - Legislators
    - Procedure And Immunity Claims
- 11.5 Constitutional Claims
  - Bivens V. Six Unknown Agents*

- 11.6 Common Law Torts And Official Immunity
- 11.7 Tucker Act

## **Chapter Twelve: Researching Administrative Law Issues**

- 12.1 Introduction
- 12.2 The Scope Of Administrative Law
- 12.3 Beginning The Search
- 12.4 Rules Created By The Administrative Agency
- 12.5 Finding Agency Decisions
- 12.6 Searching The Federal Register
- 12.7 Searching The CFR
- 12.8 Computerized Sources For Administrative Law

# Answers To Chapter Review Questions and Problems

## Chapter One

### Review Questions

1. Administrative Procedure Act
2. Procedural
3. No.
4. Social welfare agencies are charged with promoting the general welfare of the people, usually in a particular manner and through redistribution of resources, such as providing food to those who are hungry or assisting unemployed persons in finding employment. Regulatory agencies monitor compliance with programs, administer licensing programs, file enforcement actions, and usually have the authority to proscribe or require certain behaviors. Similar to social welfare agencies, public service agencies provide services to the public. However, this does not ordinarily involve income redistribution and usually is concerned not with individual welfare. Instead, public service agencies typically provide services that advance community needs, such as promoting the arts and sciences.
5. The sources of federal administrative law include the U.S. Constitution, statutes, administrative regulations, executive orders, and the common law.
6. This question calls upon the students to develop their own examples.

### Review Problems

1. Regulatory. Student explanation required.
2. Both. Student explanation required. This problem is intended to demonstrate how an agency may have characteristics of more than one type of agency (social welfare, public service, & regulatory).

## Chapter Two

### Review Questions

1. Independent agencies are free of much of the politics that attends executive agencies. This permits an agency to focus on its mission and the best way to achieve its goals.
2. The primary disadvantage of independence is its counter-democratic nature. Independent agency heads are not as accountable to the people as are agency heads who report to an elected official.
3. The horizontal separation of governmental authority between the federal government and the state governments.

4. The vertical separation of governmental authority between the executive, legislative, and judicial branches.
5. Presidential controls are many, including, but not limited to, the appointment authority, removal authority, policy making through executive order, recommending statutory changes, and direct control.
6. Congress is responsible, *inter alia*, for creating agencies, defining their objectives and authorities, and establishing their budgets.
7. This question calls for the student to enumerate two of the many areas of exclusive federal jurisdiction.
8. This question calls for the student to enumerate two of the many areas of exclusive state jurisdiction.
9. This question calls for the student to enumerate one example of concurrent jurisdiction.
10. Because they possess the authorities of all three branches of government with little oversight in some instances.

### Review Problems

1. The appointments provision is consistent with the Appointments Clause of Art. II, so there is no problem with it. The removal provision limits the president's authority to remove the members of the BRB to cause and requires concurrence of the Senate. The student should focus on the nature of the agency's jurisdiction, as set out in Section Two of the law. It delegates executive, quasi-judicial, and quasi-legislative authorities. As such, the BRB is not a purely executive agency and limiting the president's authority to cause is constitutional. Although the requirement of senatorial concurrence stretches to the edge of the envelope, it is likely constitutional since the BRB performs quasi-legislative and quasi-judicial duties.
2. No. This provision violates the bicameral and presentment clauses. The student should discuss the *Chadha* case.
3. Discussion question.

## **Chapter Three**

### Review Questions

1. Most administrative actions are informal as defined by the APA. Formal processes are the exception.
2. The student were provided with several reasons in the reading. The primary reason is limited resources.
3. An advisory opinion is an agency's interpretation of law. Advisory opinions are often requested by citizens who want to know their obligations or rights in an area regulated or administered by an agency.
4. A declaratory order may be ordered under the APA if necessary to terminate a controversy or remove uncertainty.

5. Student opinions about discretion will differ. However, this question asks the student to explain why too little and too much discretion can both lead to equally unacceptable amounts of unfairness and why some discretion is necessary to achieve the greatest amount of fairness.
6. The student is called upon in this question to explain why very few rules and too many rules both vest significant discretion in an agency official.

#### Review Problems

1. Discussion problem.
2. Discussion problem.

### **Chapter Four**

#### Review Questions

1. Fifth; Fourteenth
2. Strict Scrutiny
3. Notice; hearing
4. C
5. B
6. D
7. F
8. T
9. F
10. F

#### Review Problems

1. First, Jane has an entitlement to insurance benefits because she had a reasonable expectation of receiving the insurance. This entitlement has been wrongfully denied to her, and as such, State should pay 80% or \$40,000.00 of her medical expenses. Second, as a full-time permanent employee Jane has a reasonable expectation of her continued employment. The question then becomes, was the procedure leading to her termination in accordance with due process? It clearly was not, as she was given no notice, and therefore, no opportunity to contest her termination. In this case Jane would not win, as the statute would require her termination. This does not mean that a hearing need not be conducted; it only means that Jane would ultimately lose her case. Jane must be given the opportunity to prove that she did appear to work. In other cases the employee and employer may have been mistaken about the employee's duty station, the employee may have been ordered to not appear by another supervisor, etc. Therefore, at least a post-termination hearing must be conducted. In this case, Jane's termination would be affirmed.
2. Discussion problem.

3. Discussion problem.

## **Chapter Five**

### Review Questions

1. The granting of legislative, executive, or judicial authority to an agency.
2. The Doctrine of Separation of Powers acts to limit congressional ability to delegate legislative and judicial powers to agencies.
3. Lawmaking and judicial work has become too large for Congress and the courts. In addition, Congress lacks the technical expertise that agencies possess and it is therefore better for agencies to possess some of the lawmaking authority.
4. Claims against the government and other special types of cases may be heard by non-Article III courts under the Public Rights Doctrine. Private parties litigating private rights usually have a right to have their cases heard by Article III courts.
5. President Franklin D. Roosevelt attempted to increase the membership of the court in order to nominate justices who would have been more favorable to his economic recovery scheme. The plan, which was eventually rejected by Congress, was one of the greatest threats to judicial independence in U.S. history.

### Review Problems

1. — 2. The delegation to make rules is constitutional. Congress stated a specific goal and established standards. In this case, the standards are consistent with the stated goal. The delegation of judicial authority is unconstitutional because the magistrates are not answerable to the judicial branch. In this case the executive branch has been delegated too much judicial authority. Similarly, the delegation to set the penalties for violations of the Act is an unconstitutional delegation of legislative authority.  
Note: Geckos are small lizard-type creatures.
3. Discussion question.
4. Yes. Private organizations can be delegated this type of authority. Standard delegation rules apply. In this case, the Legislature established an intelligible principle to guide the agency in its rulemaking by requiring preservation, consideration of the recreational and aesthetic desires of users, and prohibiting commercial use. Further, Legislature prohibited the creation of penal rules.
5. This provision is likely unconstitutional because it delegates an inherent and core judicial function to a private group: the authority to sentence people to imprisonment. The clause requiring conformance with state and federal laws does not save the provision.
6. This provision is also unconstitutional as it does not provide for judicial review.

## Chapter Six

1. *Federal Register*.
2. The authority to promulgate substantive rules comes from Congress through an enabling statute. The authority to issue procedural rules is inherent.
3. Rulemaking; adjudication; rulemaking; adjudication; rulemaking; adjudication; adjudication; rulemaking
4. Trial-type hearing.
5. Notice; opportunity for participation; and the agency must render a decision.
6. Not exempt.
7. Exempt.
8. Not exempt.
9. Exempt.
10. Regulation or Rule.
11. A process whereby interested parties are invited to participate in the development of a proposed rule by an agency. The APA requires the following factors to be considered:
  - a. Is there a need for a rule?
  - b. Are there a limited number of parties that will be significantly affected by the rule?
  - c. Can a committee be formed that will adequately represent those with a significant interest? Will these parties negotiate in good faith?
  - d. It is reasonably likely that the committee will reach a consensus?
  - e. Does the agency have, and will it commit, the necessary resources to permit the committee to do its work?
  - f. Will the process unnecessarily delay the rulemaking process?
  - g. The willingness of the agency to use the rule that is negotiated.
12. Many examples of presidential and congressional controls of rulemaking were provided. The student is called upon to identify two of each.

### Review Problems

1. No rulemaking procedure is required, as this is an interpretive rule.
2. In this case the FDA is transcending interpretation. This is the creation of a set of substantive rules. Therefore, the agency must use a rulemaking procedure. The statute requires a hearing be conducted. However, unless there is some other indication that a full trial-type hearing is to be conducted, the mandate of Congress of a hearing only requires informal rulemaking. Therefore, notice and comment rulemaking is satisfactory.
3. The student must include the language on the record after an opportunity for an agency hearing or something substantially similar to that to satisfy the Senator's desire for an oral hearing. Further, the student should be sensitive to the due process issue which arises from seizing property. Notice and a hearing must be provided by the FCC. Since there is no threat to life or health, the hearing should occur prior to seizure.

4. Discussion question.

## Chapter Seven

### Review Questions

1. An agency may require the disclosure of records when (1) it has jurisdiction over the subject matter; (2) its request is reasonable and not unduly burdensome; and (3) the information sought is not privileged.
2. Derivative use immunity prohibits the government from using the actual information obtained, but permits a prosecution for the crime testified about, if based upon independently obtained evidence. Transactional immunity prohibits a prosecution for a crime testified about, regardless of the source of the information. The Fifth Amendment only requires that derivative use immunity be provided to compel a person to testify.
3. Yes. However, it is modified so that an area inspection warrant may be issued. Also, no warrant is required to inspect closely regulated businesses.
4. To justify a warrantless search of a closely regulated business, the agency must demonstrate that (1) the government has a substantial interest; (2) the warrantless inspection furthers the government's substantial interest; and (3) a reasonable statutory scheme is in place that substitutes for the warrant procedure.
5. An order to appear to testify or to bring documents for inspection (subpoena duces tecum). Also known as a summons.
6. The fact that administrative inspections are not intended to detect criminal conduct; the importance of inspections to health and safety codes; the limited invasion of privacy which results from most administrative inspections; and the lower expectation of privacy that businesses possess.

### Review Problems

1. Discussion question.
2. Discussion question.
3. Here the student should draw on the *Skinner*, *Von Raab*, *Ruston*, *Miller*, and *Vernonia* cases. Because of the risk to passengers and the public at large that is posed by intoxicated airline pilots, a warrantless drug testing system of pilots is constitutional. However, warrantless random drug testing of reservations clerks is likely violative of the Fourth Amendment because they do not pose the same risks as do pilots.
4. The mandatory testing scheme of drivers is similar to that of train operators in *Skinner*. Because it provides for due process, testing in a private and medically sound environment, and because drivers pose a risk to passengers and the public at large, the testing is constitutional. The provision concerning nondrivers is not constitutional. While private employers may choose to have a system in place, the government can

not demand it because there is no compelling governmental need. Similarly, the HIV testing requirement is unlawful for both drivers and nondrivers. Because there is no nexus between driving ability and HIV status, the government does not have a compelling interest in this testing.

## **Chapter Eight**

### Review Questions

1. The APA defines adjudication as all proceedings that result in an order. Orders have been defined negatively as all actions which are not rulemaking.
2. Time; location, nature of the proceeding; the law under which the agency is proceeding; and the basic facts of the case.
3. Friend of the court. Through amicus curiae interested nonparties can express an opinion or make an argument without having to become a party through intervention.
4. The process by which an interested nonparty becomes involved in a pending litigation or proceeding.
5. Discovery is the process of exchanging information between the parties to a proceeding. The chapter discussed depositions, interrogatories, requests for admissions, requests for production of documents, bills of particular, stipulations, the Jencks Act, and the Freedom of Information Act.
6. The APA requires a trial-type hearing whenever another statute specifically requires a hearing to be conducted on the record after an opportunity for a hearing.
7. Burden of proof includes the burden of production and the burden of persuasion.
8. Rotation assignment of cases; salaries are established by the Civil Service Commission; removal only for good cause; and selection from a list of qualified candidates.
9. Formal adjudications must be followed with a decision including a statement of findings and conclusions, and the reasons or basis therefore, on all material issues of fact, law, or discretion presented on the record. Decisions denying requests, applications, or petition in informal adjudications must contain a brief statement of the reasons for the denial.
10. The Rule of Necessity permits a judge(s) to hear a case when normally prohibited to by rules of ethics. The rule is invoked when all available judges would be disqualified. Because there are no alternatives, one of the disqualified judges may sit out of necessity.

### Review Problems

1. Issue one: validity of the notice. The notice is invalid because it does not adequately describe the issues of law and fact to be considered, nor does it state the legal authority and jurisdiction under which the hearing is to be considered.

Issue two: the nature of the hearing. Since the issue was fact-sensitive and the notice did not adequately inform her of the nature of the hearing, Irene should have been permitted a continuance or the opportunity to contact her witnesses. It was a violation of due process to have denied her the opportunity to introduce her evidence.

Issue three: under the APA a full evidentiary hearing was required. Further, a full written decision was required, including a statement of findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion presented on the record. The hearing officer did not comply with this requirement.

2. Discussion question.
3. Allowing a license to lapse when the law provides for a continuation and the licensee has submitted a timely application amounts to a deprivation of a property interest. In such a case no notice of the termination is given and the licensee has been given no opportunity to be heard. The APA prevents this problem by providing for the continuation of the original license until the agency has made a determination of the application for renewal.

## **Chapter Nine**

### Discussion Questions

1. The writ of prohibition which directs that some act not occur; the writ of mandamus which directs that some act occur; the writ of habeas corpus which directs that a custodian of a person explain the detention; and the certiorari which directs that a file and case be transmitted to for review.
2. The case and controversy requirement of the Constitution, Art. II, sec. 2, requires that a plaintiff have a personal interest in his or her lawsuit.
3. An action filed by a citizen on behalf of the government. As known as private attorney general suits. Normally brought to recover sums defrauded from the government.
4. Discovery is the process whereby the parties to a proceeding exchange information material to the proceeding. Interrogatories, depositions, requests for admission, requests for production of documents, and the Freedom of Information Act were discussed in the chapter.
5. The Doctrine of Exhaustion of Administrative Remedies holds that judicial review is not available until all remedies available at the administrative level have been attempted and completed. The Primary Jurisdiction Doctrine requires courts to refer cases to administrative agencies for initial decision if the issues raised in the case are within the jurisdiction of an agency.
6. Legal decisions are reviewed de novo. The APA provides for three standards of review of factual decisions: de novo, substantial evidence, and arbitrary and capricious.
7. Res Judicata prevents the same case from being reheard. Collateral estoppel prevents

8. the same issues from being relitigated. Equitable estoppel prevents a party from asserting a claim or assuming a position that is contrary to its prior claim or position.
9. All cases arising under the Constitution or laws of the United States may be brought in federal court according to 28 U.S.C. sec. 1331. This statute is an important source of jurisdiction over agency actions.

### Review Problems

1. Taxpayer status alone does not confer standing to challenge an expenditure.
2. TranShipping has standing, as it has an injury in fact (the assessed tax) and is within the zone of interests regulated by the new law. Shipping Union does not have standing, as its interests are too abstract. It does not have an injury in fact.

## **Chapter Ten**

1. The Freedom of Information Act is a federal statute that requires government employees to make government records available to the public unless a statutory exemption applies. The purpose of the FOIA is to protect against secret government and to promote an informed citizenry.
2. National defense and foreign policy; agency personnel matters; when disclosure is required by another statute; trade secrets and financial information; agency memoranda; personnel and medical files; law enforcement records; financial institution information; and geological information.
3. The Privacy Act is a federal statute that prohibits the government from disclosing certain private records and information in its possession. The purpose of the act is to protect the privacy of individuals.
4. Consent from the individual from whom the records concern; to agency officials when necessary for them to perform their functions; when required by the FOIA; routine use; the Bureau of Census; for statistical research; to National Archives; for law enforcement purposes; compelling circumstances; to Congress; To Comptroller; and pursuant to court order.
5. The sunshine law requires government meetings to be open to the public. The purpose is to protect against a secret government and to promote an informed citizenry.

## **Chapter Eleven**

### Review Questions

1. The Sovereign Immunity Doctrine holds that the government is free from liability. The Doctrine continues today in most jurisdictions, however, all states and the federal government have waived immunity in differing degrees.
2. A lawsuit against a government official in an official capacity is the same as suing the government directly. A lawsuit against an official in an individual capacity is

- actually against the person, although damages remedies may be paid by the government if the official is indemnified for the subject matter of the suit.
3. To prove a 1983 claim, a plaintiff must establish: (1) that the defendant while acting under color of law; (2) caused; (3) the plaintiff to be deprived of a right protected by the Constitution or other laws of the United States.
  4. Neither the United States or the state may be sued under 1983. Local governments may be sued, provided it can be proved that the official acted pursuant to custom, ordinance, or policy. Any person, whether federal, state, or local official, may be sued individually under 1983 for acts taken under color of state law that deprive a person of a federally secured right.
  5. Absolute immunity is not concerned with a person's motive or with the reasonableness of a person's behavior. The issue is whether absolute immunity attaches to the function performed. If so, then no further inquiry is necessary because no liability can result. For this reason, absolute immunity is referred to immunity from suit. On the other hand, if the function performed is entitled only to qualified immunity, there must be an inquiry into the reasonableness or motives underlying the act in question. If proper, then no liability attaches. Accordingly, qualified immunity is known as immunity from liability.
  6. Judge and others who perform judicial functions are entitled to absolute immunity. Agency prosecutors are entitled to absolute immunity when performing quasi-judicial functions, such as appearing in court. Prosecutors and judges are entitled to qualified immunity when performing other nonjudicial functions, such as making personnel decisions.
  7. A *Bivens* action is a lawsuit brought directly under the Constitution for violations of a right secured therein.
  8. Officials are absolute immune from common law torts when performing discretionary functions.

### Review Problems

1. Dwayne is entitled to absolute immunity for his appearance in court. For that act his motion for dismissal should be successful. For his acts of stopping and arresting Chuck he is entitled to qualified immunity. For these acts he will not succeed at the dismissal level.
2. General damages and injunctive relief may be awarded, but punitive damages may not.
3. States are not subject to liability under 1983. Local governments may be liable under 1983.
4. Local governments may be liable if it can be proven that the official acted pursuant to ordinance, custom, or policy.

## Chapter Twelve

### Review Questions

1. T
2. Quasi-legislative and quasi-judicial
3. The APA is a state enacted by Congress that sets up rules all administrative bodies must follow.
4. Agency decisions
5. *Federal Register*
6. F
7. U.S. Government Printing Office
8. F
9. F

### Review Problem

You would check the state and federal constitutional law on the issue of freedom of expression (Is how we dress or look constitutionally protected?). You might also check substantive due process under federal and state constitutional law in an attempt to determine if the Legislature passed an unconstitutional statute in creating the agency. The grooming rules passed by the agency should also be examined to determine if bathing is specifically addressed. If not, then it can be argued that the agency has acted outside its enabling authority.

# TEST BANK

## CHAPTER 1

1. Which of the following is the best definition of the field of "administrative law"?
  - a. A body of substantive law which is enforced and administered by administrative agencies.
  - b. A body of law which defines the powers, limitations, and procedures of administrative agencies.
  - c. A body of law that defines the processes used to adjudicate criminals.
  - d. A and C
  
2. Which of the following reasons best explains why administrative agencies are created?
  - a. Agencies are needed to handle the large amount of government work.
  - b. Agencies are established by the Constitution of the United States.
  - c. Agencies are needed for their experience.
  - d. All of the above.
  - e. A and C
  
- 3-5. Characterize the following agencies as either social welfare or regulatory.
  3. An agency created to house and care for orphans.
  4. An agency created to oversee the collection of a tax and prosecute those who fail to pay or underpay the required tax.
  5. An agency created to inspect government-funded housing for safety and construction violations.
  
6. "APA" stands for:
  - a. Administrative Procedure Act.
  - b. Authorized Procedures for Agencies.
  - c. Administrative Procedure Amendments.
  - d. None of the above.
  
7. "Civil rights" is best defined as:
  - a. Rights held by agencies.
  - b. The rights conferred by the APA to people when dealing with administrative agencies.
  - c. Individual or personal rights.
  - d. The right to sue an agency in civil court.

8. Which of the following statements is most true?
- The federal APA applies only to federal agencies..
  - The federal APA applies to all agencies, whether federal or state, since state and local agencies fall under the jurisdiction of the federal counterparts.
  - There is no federal APA.
  - Where there is not state APA, the federal APA applies.
9. When an agency is referred to as being independent, this means:
- That Congress may not alter its mandate.
  - That although it is a government entity, it has its own private funding source.
  - That it may establish its own rules and regulations.
  - That the President has limited control over its operation.
10. T or F            Many states have enacted their own version of federal APA.
11. T or F            An agency's enabling legislation will usually define its objectives and duties, and outline its powers.

## **CHAPTER 2**

1. The division of governmental power between the federal government and state government is known as:
- Separation of powers.
  - Federalism.
  - Neither A or B..
  - A and B.
2. The division of governmental power into three branches of government is known as:
- Separation of powers.
  - Federalism.
  - Neither A or B.
  - A and B.
3. Constitutional checks and balances is achieved by:
- Separation of powers.
  - Federalism.
  - Neither A or B.
  - A and B.

4. What provision of the U.S. Constitution preserves the authority of the states in the federal system?
  - a. Article I.
  - b. Article II.
  - c. Amendment X.
  - d. Amendment XIV.
  
5. Which of the following provisions of the U.S. Constitution has not contributed to the increase in federal authority?
  - a. Commerce Clause.
  - b. Amendment XIV.
  - c. Necessary and Proper Clause.
  - d. Supremacy Clause.
  
6. A federal statute that empowers the U.S. House of Representatives to void individual labor decisions made by the National Labor Relations Board is:
  - a. Unconstitutional as violating the bicameral and presentment clauses.
  - b. Unconstitutional as violating the Supremacy Clause.
  - c. Unconstitutional as violating the Necessary and Proper Clause.
  - d. Constitutional.

### **CHAPTER 3**

1. Which of the following is most true?
  - a. Most agency action can be characterized as formal.
  - b. Most agency action can be characterized as informal.
  - c. Most agency action is prescribed by statute.
  - d. None of the above.
  
2. Which of the following best describes the APA's approach to settlement of complaint cases?
  - a. A person against whom a charge is brought must be given the opportunity to settle the case when permitted by the facts of the case.
  - b. A person against whom a charge is brought has the right to demand of the charging agency an offer of judgement which may be accepted.
  - c. A person against whom a charge is brought has no right to settle, but an agency, at its discretion, may make an offer of settlement.
  - d. None of the above.
  
3. Which of the following best describes an advisory opinion?

- a. An opinion issued by a respondent advising an agency of why it is believed the agency has misinterpreted the law.
  - b. An opinion issued by an agency presenting its position in adjudication.
  - c. An opinion issued by an agency stating whether it intends to conduct a prosecution.
  - d. None of the above.
4. Which of the following best describes declaratory judgement?
- a. An opinion issued by an agency to terminate a controversy. It has the effect of an order following adjudication.
  - b. A declaration that a prosecution will be maintained.
  - c. An opinion issued by an agency stating its interpretation of law or policy.
  - d. None of the above.
5. Prosecutorial discretion does not include:
- a. Decisions based upon race.
  - b. Decisions based upon expense of prosecution.
  - c. Decisions based upon likelihood of success.
  - d. None of the above.
6. T or F        Most agency action is informal.
7. T or F        An advisory opinion states an agency's intention to maintain a prosecution.
8. T or F        There are no limits to prosecutorial discretion.

#### **CHAPTER 4**

1. Procedural due process generally requires two actions by the government before a deprivation of life, liberty, or property may occur. These are \_\_\_\_\_ and \_\_\_\_\_.
2. Which of the following best describes the purpose of the Due Process Clauses?
  - a. To protect people from arbitrary and unfair government action.
  - b. To assure that all people are treated similarly by the government
  - c. To provide the government with a mechanism to take a person's property when it's in the government's best interest.
  - d. Both and A and B.
3. Which of the following is most true?

- a. Due process requires that one be given the opportunity to have the representation of legal counsel at all administrative hearings where there is a potential deprivation of life, liberty, or property.
  - b. Due process requires that one be given the opportunity to have the representation of legal counsel at all administrative hearings where there is a potential deprivation of life, liberty, and there is a substantial issue of fact to be determined.
  - c. Due process requires that one be given the opportunity to have the representation of legal counsel at all administrative hearings where there is a potential deprivation of life, liberty, or property and there is a substantial issue of law to be determined.
  - d. Both B and C.
  - e. None of the above.
4. Assume that an administrative regulation prohibits certain religious practices which are determined by an agency to be unsanitary. To be valid the regulation must:
- a. Bear a rational relationship to its purpose.
  - b. Bear a substantial relationship to an important governmental interest.
  - c. Further a compelling governmental interest.
  - d. None of the above.
5. Laws which single-out illegitimate children are tested under which of the following:
- a. Rational relationship test.
  - b. Substantial relationship test.
  - c. Strict Scrutiny test.
  - d. None of the above.
6. Which of the following is most true about a recipient's due process interests in receiving government benefits?
- a. There is no due process interest in receiving government benefits.
  - b. There may be a due process interest in receiving benefits if a "legal right" to those benefits can be established.
  - c. There may be a due process interest in receiving benefits if a "legal entitlement" to those whose benefits can be established.
  - d. None of the above.
7. Which of the following does a permanent government employee have an interest in?
- a. Continued employment.
  - b. Life and health insurance benefits.
  - c. None of the above.
  - d. A and B.
8. T or F Cost benefit analysis in due process involves weighing the interest of an

individual, in receiving further procedures against the government's interest in minimizing further procedures.

9. T or F Due process is static and, therefore, deprivations of life, liberty, or property must comply with identical procedures.
10. T or F In most cases a post-deprivation hearing will satisfy due process.
11. T or F A pre-deprivation hearing must be conducted before a welfare recipient's benefits can be terminated.
12. T or F The existence of a civil remedy (i.e., tort) for an erroneous governmental action, provides additional cause to require a pre-deprivation hearing.
13. T or F While due process does not always require trial-type hearings, one does always have the right to oral argument before an agency.
14. T or F The more a case rests on complex legal issues, the less likely due process will require an oral hearing.
15. T or F The more a case rests on complex factual issues, the less likely due process will require an oral hearing.
16. T or F It is not violative of due process for an agency to take remedial action without first providing notice and hearing in emergency situations.

## CHAPTER 5

1. Which of the following best describes the test used to determine if a statutory delegation satisfies the Delegation Doctrine?
  - a. Agencies may be delegated legislative, executive, or judicial functions, provided they remain accountable to the appropriate branch of government; they must have an intelligible principle from which to act.
  - b. Agencies may not be delegated functions which have traditionally been reserved to one of the three branches of government.
  - c. Agencies may be delegated legislative authority, but not executive or judicial.
  - d. Agencies may be delegated in any function by Congress.
2. Which of the following is the most correct statement?
  - a. An agency may delegate the authority to declare an act criminal and establish the penalty, provided there is an intelligible principle from which the agency can make its determinations.

- b. An agency may be delegated the authority to set penalties, but not declare acts criminal.
  - c. An agency may be delegated the authority to declare an act criminal, but not to establish the appropriate penalty.
  - d. An agency may not be delegated the authority to declare an act criminal or establish penalties.
3. A statute which authorizes the Attorney General to declare an act criminal and establish the penalty therefore is:
- a. Constitutional.
  - b. Unconstitutional, as violence of federalism.
  - c. Unconstitutional, as violative of separation of powers.
  - d. Either B or C.
4. T or F The United States Immigration and Naturalization Service has been lawfully delegated the authority to determine whether an alien is lawfully present in the United States and may punish those who are not, with imprisonment.
5. T or F The purpose of the Doctrine of Separation of Powers is to prevent the centralization of power in one person or group.
6. T or F An administrative agency may be delegated the authority to adjudicate a criminal case.
7. T or F An administrative agency may be delegated the authority to declare an act criminal, provided Congress establishes the punishment of violations.
8. T or F The United States Immigration and Naturalization Service may arrest and detain illegal aliens pending a criminal trial for the crime of illegal presence in the United States.
9. T or F The United States Immigration and Naturalization Service may arrest and detain illegal aliens pending deportation.

## CHAPTER 6

1. Which of the following best describes informal rulemaking?
- a. Notice of the proposed rule must be published in the *Federal Register* and all interested persons may demand a hearing at which all interested persons may express their views about the proposed rule.

- b. Notice of the proposed rule must be published in the Code of Federal Regulations and all interested persons may demand a hearing at which all interested persons may express their views about the proposed rule.
  - c. Notice of the proposed rule must be published in the Federal Register and all interested persons may submit written comments and other information to the agency for consideration.
  - d. Notice of the proposed rule must be published in the Code of Federal Regulations and all interested persons may submit written comments and other information to the agency for consideration.
2. Which of the following is not exempted from the rulemaking provisions of the APA?
- a. Rules concerning military affairs.
  - b. Interpretative rules.
  - c. Rules concerning the regulation of aircrafts, pilots, and airports.
  - d. Rules concerning government personnel issues.
3. Under the APA, final rules must be published at least \_\_\_\_\_ days before becoming effective.
- a. 30
  - b. 60
  - c. 90
  - d. 120
4. A rule which is created pursuant to an informal rulemaking procedure under the APA is to be published and accompanied by:
- a. A concise statement of its basis and purpose.
  - b. A detailed statement of its basis and purpose, including findings and conclusions by the agency.
  - c. Its legislative history.
  - d. Nothing further is required.
5. T or F The Canons of Construction govern an agency's authority to promulgate regulations.
6. T or F Administrative agencies of the United States have an inherent authority to promulgate regulations.
7. T or F As a matter of Constitutional law, agencies must allow citizens participation in the rulemaking process.

8. T or F Even though not required by the Constitution, citizen participation in the rulemaking process is often required by other law.
9. T or F Formal rulemaking is the exception rather than the rule.
10. T or F In informal rulemaking any "interested person" may demand that a hearing be conducted at which all "interested parties" are to be given the opportunity to express their views about a proposed rule.
11. T or F Interpretive rules must be created pursuant to an informal rulemaking procedure.
12. T or F Rulemaking is discretionary, but the development of policy is not.

## CHAPTER 7

1. Which of the following best describes the application of the Fourth Amendment to administrative inspections?
  - a. The Fourth Amendment does not apply.
  - b. The Fourth Amendment applies in the same manner as in criminal cases.
  - c. The Fourth Amendment requires that inspections be conducted reasonably, but no warrant is required in most cases.
  - d. The Fourth Amendment requires that inspections be conducted reasonably and a warrant is required in most cases.
2. Which of the following best describes the application of the Fourth Amendment's probable cause requirement to administrative inspection warrants?
  - a. The Fourth Amendment does not apply.
  - b. The Fourth Amendment applies in the same manner as in criminal cases.
  - c. The Fourth Amendment's probable cause requirement is lowered.
  - d. The Fourth Amendment's probable cause requirement is increased.
3. Which of the following is the best definition of subpoena?
  - a. An order to cease an action or to take an action.
  - b. An order to appear.
  - c. An order permitting a warrantless inspection of a business.
  - d. An order to search an area.
4. Which of the following is not required of an agency before it may conduct a warrantless inspection of a business?
  - a. The business must be closely regulated.

- b. The government must have a substantial interest.
  - c. The government must have credible evidence of a violation of law by the business.
  - d. The warrantless inspection must further the government's substantial interest.
  - e. There must be a reasonable statutory scheme which substitutes for the warrant procedure.
5. Which of the following justifies reducing the Fourth Amendment's requirements in the administrative context?
- a. The health and safety concerns of the government.
  - b. The lower expectation of privacy in businesses.
  - c. The increased effectiveness of enforcement resulting from such reductions.
  - d. Both A and B.
  - e. A, B, and C.
6. Health Inspector Wendy enters Luvs Hamburgers and sits at a dining table. From that vantage she examines the floor, lighting, and salad bar for code violations. What is required under the Fourth Amendment before she may conduct such an inspection?
- a. The Fourth Amendment does not apply.
  - b. A warrant.
  - c. While she is not required to have a warrant, she must have probable cause to believe a violation exists.
  - d. While she is not required to have a warrant, she must be operating under a reasonable statute authorizing the inspection.
7. Nortack Manufacturing, Inc. is being investigated by a regulatory agency for manufacturing a product which allegedly violates safety standards. There is a statute which provides administrative, civil, and criminal remedies for manufacturing dangerous products. The regulatory agency has subpoenaed the company's design and manufacturing records. The corporate-management refuses to produce the information claiming the privilege against self-incrimination. Which of the following is true?
- a. The claim is valid.
  - b. The claim is valid, as the records are sought in an administrative proceeding, not criminal.
  - c. The claim is invalid, as the Fifth Amendment's privilege against self-incrimination is not applicable in administrative cases.
  - d. The claim is invalid, as the Fifth Amendment's privilege against self-incrimination does not protect corporations.
8. T or F            The APA provides that all federal agencies may conduct inspections "whenever a warrant is issued or the inspection is conducted without a warrant and a recognized exception to the warrant requirement of the Fourth Amendment to the United States.

9. Which of the following forms of immunity provides the greatest protection to a declarant in the Fifth Amendment context?
  - a. Derivative use.
  - b. Transactional.
  - c. Situational.
  - d. None of the above.
10. T or F A privilege to be free from self-incrimination may be overturned by the government by granting transactional immunity.
11. T or F A privilege to be free from self-incrimination may be overturned by the government by granting use immunity.
12. T or F A privilege to be free from self-incrimination may be overturned by the government by derivative immunity.
13. T or F Generally, companies are not required to disclose trade secrets to agencies through routine reporting.
14. T or F Common law privileges, such as lawyer-client, are not applicable to agency requests for information.

## **CHAPTER 8**

1. Which of the following is the definition of adjudication under the APA?
  - a. All actions which are not rulemaking.
  - b. All actions which result from a hearing where the parties are permitted to make argument or present evidence.
  - c. All actions which result from a hearing on the record.
  - d. None of the above.
2. Which of the following is more characteristic of rulemaking than adjudication?
  - a. The result may include sanctions under individuals.
  - b. The focus is on future events and conduct.
  - c. The goal is the resolution of a dispute.
  - d. Specific individuals are involved.
3. Which of the following is not required for adequate notice of hearing under the APA?
  - a. Counsel for the agency must be stated.
  - b. Time of the hearing.
  - c. A statement of the law under which agency is acting.

- d. A statement of the basic facts of the case.
4. Which of the following is not a method of discovery?
- a. Interrogatories.
  - b. Depositions.
  - c. Amicus Curiae.
  - d. Requests for Admissions.
5. Which of the following statements best characterizes the APA's approach to the right to counsel?
- a. All parties are entitled to counsel.
  - b. Those parties which have property interest at issue may have counsel at a hearing.
  - c. Those parties which have either a property interest or liberty interest at issue may have counsel at a hearing.
  - d. Parties may only have counsel at a hearing when approved by the officer presiding over the hearing.
6. Which of the following best describes the procedure for disqualification of an ALJ under the APA?
- a. An affidavit must be filed with the agency head. If denied, the decision is immediately appealed to a court of law.
  - b. An affidavit must be filed with the ALJ. If denied, the decision is immediately appealed to the agency. If denied again, the decision is immediately appealed to a court of law.
  - c. An affidavit must be filed with the agency head. If denied, the decision may be appealed when the case is concluded.
  - d. An affidavit must be filed with ALJ. If denied, the decision may be immediately appealed to the agency. If denied again, the decision may be appealed when the case is concluded.
7. Following an informal adjudication when an application is denied, the agency is required to:
- a. Issue a written decision containing a detailed statement of the facts and law which support the decision
  - b. Make an oral decision at the conclusion of the hearing.
  - c. Issue a written decision containing a brief statement of the reasons for denial.
  - d. Issue a written statement of denial.
8. Following a formal adjudication, the agency is required to:

- a. Issue a written decision containing a statement of findings and conclusions on all material issues of fact, law, or discretion.
  - b. Make an oral decision at the conclusion of the hearing and follow such with a detailed written statement of the material facts and law which support the decision.
  - c. Issue a written decision containing a brief statement of the reasons for denial.
  - d. Issue a written statement of denial.
9. What is the purpose of separation of functions in the administrative process?
- a. To promote efficiency of agency resources.
  - b. To promote fairness.
  - c. To avoid confusion within agencies.
  - d. None of the above.
10. Separation of functions:
- a. Is assured by the Due Process Clauses of the Constitution.
  - b. Is assured by statute.
  - c. Both A and B.
  - d. None of the above.
11. T or F The Rule of Necessity provides that when necessary an agency may render a decision without any required findings and conclusions.
12. Tor F Intervention refers to the process by which a nonparty to a proceeding becomes involved as a party.
13. Tor F A trial-type hearing must be conducted whenever a statute requires a "hearing."
14. T or F Discovery is identical in the federal courts and federal administrative agencies.
15. T or F The Jencks Act provides that governmental officials who are engaged in a prosecutorial function must disclose the prior statements of government witnesses after the witness has testified.
16. T or F The Legal Residuam Rule requires agencies to have more than hearsay evidence to support a decision.
17. T or F The APA provides that the Federal Rules of Evidence, which are applied in federal courts, are applicable in federal administrative hearings.
18. T or F Generally, the exclusionary rule applies to administrative cases.
19. T or F An ALJ may take official notice of any fact which is more likely true than not.

20. T or F De novo is a standard of review which requires an affirmation if substantial evidence to support a decision exists.
21. T or F Generally, an ALJ may consult with agency officials about a case without the other party present, provided the ALJ's intent is to learn more about the case.
22. T or F An ALJ's decision is not final.
23. T or F An appeal of an ALJ's initial decision is reviewed by the agency head de novo.
24. T or F A denial of a claim in an informal adjudication must be accompanied by a detailed statement of the law and facts supporting the denial.
25. T or F The Rule of Necessity permits an agency to take action without providing notice and hearing in emergency circumstances.

## CHAPTER 9

1. In common law which of the following writs could be issued by a court ordering an administrative agency to take some action?
  - a. Habeas Corpus.
  - b. Mandamus.
  - c. Prohibition.
  - d. Certiorari.
2. In common law which of the following writs could be issued by a court ordering an administrative agency to refrain from taking some action?
  - a. Habeas Corpus.
  - b. Mandamus.
  - c. Prohibition.
  - d. Certiorari.
3. In common law which of the following writs could be issued by a court ordering an agency to bring a person into custody before the court to determine the lawfulness of the detention?
  - a. Habeas Corpus.
  - b. Mandamus.
  - c. Prohibition.
  - d. Certiorari.
4. In common law which of the following writs could be issued by a court to an inferior court ordering it to transmit a file and case for review?

- a. Habeas Corpus.
  - b. Mandamus.
  - c. Prohibition.
  - d. Certiorari.
5. Which of the following best describes the concept of a standing?
- a. A person who files a lawsuit must have a tangible personal interest in the case.
  - b. A person who files a lawsuit must either have a personal interest in the case or be asserting a public interest.
  - c. Cases must be filed in the district in which the defendant resides.
  - d. None of the above.
6. A statute which prohibits judicial review of constitutional issues raised in the administrative context is likely to be:
- a. Constitutional, if Congress has adequately explained why a review should not be permitted.
  - b. Constitutional in all cases.
  - c. Constitutional, if approved by the President.
  - d. Unconstitutional.
7. To satisfy the Standing Doctrine, a plaintiff must establish an "injury in fact" and:
- a. Residence in the district where the lawsuit is pending.
  - b. That the defendant was the proximate cause of the plaintiff's injury.
  - c. That the interests asserted by the plaintiff are within the zone of interests protected or regulated by the law in question.
  - d. That the plaintiff's injuries are economic in nature.
8. A statute which permits citizens to bring a lawsuit on behalf of the government to recover money stolen or defrauded from the government is known as:
- a. Private Attorney General actions.
  - b. Qui Tam actions.
  - c. Both A and B.
  - d. None of the above.
9. Which of the following is most true concerning non-economic injuries?
- a. Not adequate to confer standing.
  - b. Confer standing on individuals harmed and special interest groups.
  - c. Confer standing only upon individuals harmed.
  - d. None of the above.

10. When is an agency action "committed to discretion by law" and nonreviewable under the A.P.A?
  - a. Whenever Congress has failed to establish sufficient standards from which an agency's actions can be reviewed.
  - b. Whenever Congress has clearly articulated the agency's duty and standards from which it is to act.
  - c. Whenever Congress has not delegated an authority to an agency, but the agency has assumed the responsibility through regulation.
  - d. None of the above.
  
11. A Qui Tam lawsuit is:
  - a. A lawsuit brought by the government on behalf of a citizen.
  - b. A lawsuit brought by a special interest group on behalf of an individual.
  - c. A lawsuit brought by a citizen on behalf of the government.
  - d. None of the above.
  
12. The Doctrine of Primary Jurisdiction requires:
  - a. That claims denied by an agency must be appealed within the agency before being appealed to a court.
  - b. That lawsuits be filed in the judicial district where an agency's home office resides.
  - c. That lawsuits between private parties be filed with an agency first, if some agency has jurisdiction over the subject matter in dispute.
  - d. That an agency be given notice by a plaintiff before it is sued in a court.
  
13. Which of the following does not support requiring exhaustion of administrative remedies?
  - a. It promotes judicial economy.
  - b. Protects agency autonomy and independence.
  - c. Permits an agency to learn from its own errors.
  - d. Protects judicial autonomy and independence.
  
14. Which of the following is not an exception to the Doctrine of Administrative Remedies?
  - a. Social welfare claims.
  - b. Criminal cases.
  - c. Civil rights claims.
  - d. If there has been unreasonable delay in an administrative proceeding.

15. Which of the following standards of review do federal courts apply to issues of law decided by administrative tribunals?
- Arbitrary and Capricious.
  - Substantial correctness.
  - De novo.
  - No review if the issue is one within an agency's expertise.
16. Which of the following standards of review do federal courts apply to administrative formal rulemaking?
- Arbitrary and Capricious.
  - Substantial evidence.
  - De novo.
  - No review if the issue is one within an agency's expertise.
17. Collateral estoppel is also known as:
- Claim preclusion.
  - Issue preclusion.
  - Bar and merger.
  - A and C.
18. If an action is "committed to agency discretion," the appropriate standard of review is:
- Arbitrary and Capricious.
  - Substantial evidence.
  - De novo.
  - No review is available.
19. T or F An order from a court to an administrative agency to transmit a file and case for review is known at common law as mandamus .
20. T or F The standing requirement is a product of the Constitution's "case or controversy" requirement.
21. T or F The Doctrine of Exhaustion of Administrative Remedies is inapplicable when an administrative appeal would be inconvenient.
22. T or F Decisions of law by administrative tribunals are reviewed de novo by courts.
23. T or F Under the arbitrary and capricious standard, an agency's acts are subject to more exacting scrutiny than under the substantial evidence standard.

24. T or F When applying the substantial evidence test, courts are to examine the entire record and determine if the agency's actions are reasonable.
25. T or F Decisions made out of an informal adjudication are tested under the substantial evidence standard.

## CHAPTER 10

1. Which of the following best describes the FOIA's approach to disclosure of government documents?
- All information and documents must be disclosed upon request.
  - All information and documents must be disclosed unless the government can establish that an exception applies.
  - Information and documents need be disclosed only when a person can establish that there is a specific statute permitting disclosure.
  - Disclosure of information and documents is never required.
2. Which of the following agency actions does not have to be published under the APA?
- Final opinions in adjudications.
  - B . Descriptions of agencies' field organizations.
  - Statements of policy.
  - Procedural rules.
3. A request for disclosure under the FOIA is valid only if:
- It includes a specific description of the information or document sought.
  - A reasonable person could identify what is being sought.
  - An agency employee familiar with the records sought can identify what is being sought.
  - None of the above.
4. An agency must respond to a FOIA request, excluding weekends, holidays, or extensions, within:
- Ten days.
  - Fifteen days.
  - Twenty days.
  - Thirty days.
5. A denial of a FOIA request by an agency head, upon appeal from a lower agency official's decision, may:

- a. Not be appealed.
  - b. Be appealed to a United States District Court.
  - c. Be appealed to a United States Court of Appeals.
  - d. Be appealed to the President of the United States.
6. If information is sought for a commercial purpose, an agency may charge the requester for:
  - a. Copying expenses.
  - b. Review and search expenses.
  - c. A and B.
  - d. Neither A nor B.
7. If information is sought for an educational purpose, an agency may charge the requester for:
  - a. Copying expenses.
  - b. Review and search expenses.
  - c. A and B.
  - d. Neither A nor B.
8. If information sought in a FOIA request falls into one of the exemptions, an agency:
  - a. Must not disclose.
  - b. Must disclose.
  - c. May file an action in a United States District Court for a protective order.
  - d. May disclose or not disclose.
9. Upon judicial review of an agency's refusal to disclose information requested under the FOIA:
  - a. The burden of proving that an exemption applies falls on the agency.
  - b. The burden of proving that the agency must disclose is upon the requester.
  - c. There is no judicial review of an agency's refusals to disclose.
  - d. None of the above.
10. Which of the following is not a "record" as defined in the Privacy Act?
  - a. Photograph.
  - b. Fingerprints.
  - c. Social Security number identifying a person.
  - d. None of the above
11. In regard to the collection of information, the Privacy Act requires:

- a. That the information be necessary to accomplish a lawful agency purpose.
  - b. That the information may not be private in nature.
  - c. That the information be necessary to accomplish a lawful agency purpose and not be private in nature.
  - d. None of the above.
12. The standard of review, applied by United States District Courts, applied to appeals of FOIA and Privacy Act claim is:
- a. Substantial evidence.
  - b. Arbitrary and Capricious
  - c. De novo.
  - d. No judicial review is available.
13. The purpose of the Government in the Sunshine Act is:
- a. To make government meetings public.
  - b. To make government documents available to the public.
  - c. A and B.
  - d. Neither A or B.
14. Under the Government in the Sunshine Act, an agency headed by a single individual is required:
- a. To make his deliberations public.
  - b. To make his deliberations public if he consults other agency officials.
  - c. To make his deliberations public, unless he has good cause to keep them confidential.
  - d. None of the above.
15. Under the Privacy Act an individual:
- a. Has a right to review records concerning himself.
  - b. Has a right to review records concerning himself if disclosure is required under the FOIA.
  - c. Has not right to review records concerning himself.
  - d. None of the above.
16. T or F Information and documents possessed by the federal government are presumed to be available to the public under the FOIA.
17. T or F A procedural rule which is required to be published under the FOIA and is not used against an individual if timely actual notice of the rule is provided.

18. T or F Appeals of agencies' refusals to provide information requested under the FOIA must be brought to the United States Court of Appeals in Washington, D.C.
19. T or F Information collected by agencies from private citizens or corporations may not be acquired by others through the FOIA.
20. T or F A record concerning national defense or foreign policy is exempt from disclosure under the FOIA only if the President, after a review of the document, declares it confidential.
21. T or F A lawsuit brought by an agency to prevent the disclosure of information under the FOIA is commonly known as a "reverse FOIA" action.
22. T or F Generally, a person has the right to review records maintained about him/her by an agency under the Privacy Act.
23. T or F The standard of review applied to FOIA and Privacy Act appeals is de novo.
24. T or F Violations of the Privacy Act may result in either civil or criminal penalties.
25. T or F Violations of the FOIA may result in either civil or criminal penalties.

## CHAPTER 11

1. Under the Federal Tort Claims Act, which of the following has the United States waived immunity?
  - a. An assault and battery committed by a driver for an agency.
  - b. An assault and battery committed by an agent of the Federal Bureau of Investigation.
  - c. An act of slander by an agent of the Federal Bureau of Investigation.
  - d. None of the above.
2. The Civil Rights Act of 1871 was enacted to enforce the:
  - a. Fifth Amendment.
  - b. Thirteenth Amendment.
  - c. Fifteenth Amendment.
  - d. None of the above.
3. Under the Civil Rights Act of 1871 violations of:
  - a. Federal constitutional rights may be vindicated.

- b. Federal statutory rights may be vindicated.
  - c. Both A and B.
  - d. Neither A nor B.
4. Which of the following may not be sued under the Civil Rights Act of 1871?
- a. A State.
  - b. The United States.
  - c. A state officer in his/her official capacity.
  - d. A state officer in his/her individual capacity.
5. For a local form of government to be liable under/1983 for an official's actions a plaintiff must prove:
- a. That the official acted on the behalf of the government.
  - b. That the official acted on behalf of the government and pursuant to an established custom, policy, or other law.
  - c. That the official acted on the behalf of the government and was the highest officer in his department.
  - d. That the official acted on the behalf of the government or himself
6. Which of the following forms of relief is not available against local forms of government under the Civil Rights Act of 1871?
- a. Actual damages.
  - b. Punitive damages.
  - c. Declaratory relief.
  - d. Injunctive relief.
7. To prove a Civil Rights Act of 1871 claim, a plaintiff must prove:
- a. That the defendant acted under color of law.
  - b. That the defendant caused the plaintiff to be deprived of a constitutional or other federal right.
  - c. Both A and B.
  - d. Neither A nor B.
8. Which of the following best describes the color of law requirement under the Civil Rights Act of 1871?
- a. An act must be required or approved by state statute to be under color of law.
  - b. An act must be required or approved by federal statute to be under color of law.
  - c. An act must be required or approved by either federal or state statute to be under color of law.
  - d. None of the above.

9. Which of the following cannot be the basis of a 1983 action?
- An illegal search and seizure.
  - A beating of a prisoner by a corrections officer.
  - A refusal to obtain medical care for a prisoner.
  - None of the above.
10. If a 1983 action is originally filed in a state court and the defendant prefers to be in federal court, he:
- Has a right to petition to remove the case to a United States district court.
  - Has a right to petition to remand the case to a United States district court.
  - Has a right to petition for federal pendent jurisdiction.
  - Has no right to have the case heard in federal court.
11. Which of the following is the best definition of pendent jurisdiction?
- A state court may hear a federal law claim if a valid state law claim is asserted.
  - A federal court may hear a state law claim if a valid federal claim is asserted that arises from the same set of facts.
  - A or B.
  - Neither A nor B.
12. Which of the following is not an exception to the requirement that federal courts exercise pendent jurisdiction?
- The parties are entitled to a jury trial on the state law claim.
  - The state claim involves novel legal issues.
  - The state claim predominates the lawsuit.
  - The federal claims are all dismissed by the federal court.
13. Absolute immunity is best defined as:
- Freedom from being sued for performing certain functions.
  - Freedom from liability for performing certain functions.
  - Freedom from being sued when performing certain functions and acting in good faith.
  - Freedom from compensatory damages, but not punitive damages.
14. Qualified immunity is best defined as:
- Freedom from being sued for performing certain functions.
  - Freedom from liability for performing certain functions.
  - Freedom from being sued for performing certain functions while acting in good faith.

- d. Freedom from compensatory, but not punitive damages.
15. For which of the following acts is the official in question entitled to qualified immunity?
- A federal prosecutor appears before a judge seeking an ex parte issuance of an arrest warrant knowing the information contained in the submitted affidavit is false.
  - A judge issues a search warrant knowing that insufficient evidence exists to establish probable cause.
  - A judge issues a search warrant believing probable cause exists, but an appellate court later determines otherwise.
  - A judge discharges an employee for what is later determined an improper reason.
16. For which of the following acts is the official in question entitled to absolute immunity?
- A federal prosecutor appears at a trial and makes untrue statements about a defendant.
  - A federal prosecutor invades the privacy of applicants for positions within the prosecutor's office by conducting an invasive background investigation.
  - A judge discharges an employee for an improper reason.
  - A prosecutor personally executes a search warrant, but violates the Fourth Amendment in the process.
17. If a person's Fourth Amendment rights are violated by a state officer, a claim:
- May be brought under the Civil Rights Act of 1871.
  - May be brought directly under the Constitution of the United States.
  - A and B.
  - Neither A nor B.
18. If a federal official is sued for intentional infliction of distress, the official:
- Is entitled to absolute immunity under the Doctrine of Official Immunity for ministerial acts.
  - Is entitled to qualified immunity under the Doctrine of Official Immunity for ministerial acts.
  - Is entitled to absolute immunity under the Doctrine of Official Immunity for discretionary acts.
  - Is entitled to qualified immunity under the Doctrine of Official Immunity for discretionary acts.
19. For which of the following acts may the United States be liable under the Federal Tort Claims Act?
- An assault by an agent of the Federal Bureau of Investigation.
  - A false arrest by an agent of the Immigration and Naturalization Service.

- c. Both A and B.
  - d. Neither A nor B.
20. The United States Court of Claims has jurisdiction over:
- a. Federal civil rights cases.
  - b. Federal constitutional torts.
  - c. Federal contract cases.
  - d. None of the above.
21. T or F A lawsuit against a government official in his/her individual capacity is tantamount to a lawsuit against the government.
22. T or F A lawsuit against a government official in his/her official capacity is tantamount to a lawsuit against the government.
23. T or F Under the Federal Tort Claims Act the government is not liable for the discretionary acts of its officials.
24. T or F States may be sued under the Civil Rights Act of 1871.
25. T or F The United States may be sued under the Civil Rights Act of 1871.
26. T or F Local forms of government may be sued under the Civil Rights Act of 1871.
27. T or F Claims of qualified immunity are resolved by motions for dismissal under F.R.Civ.R 12.
28. T or F There is a right to have a jury decide damage claims brought under the Civil Rights Act of 1871.
29. T or F There is a right to have a jury decide injunctive relief claims under the Civil Rights Act of 1871.
30. T or F A Deputy United States Marshall is entitled to qualified immunity for a lawsuit arising out of the arrest of a fugitive.

## CHAPTER 12

1. Looseleaf services publish \_\_\_\_\_ concerning certain areas of law such as equal employment law and energy law.
2. Agency rules are first published in what source?
3. T or F Agency decisions are kept in uniform format.

4. T or F Rules adopted by an agency become part of the Administrative Procedure Act.
5. When researching administrative rules, it is important to check the \_\_\_\_\_ of the *Federal Register* to determine if the rule found in the *Code of Federal Regulations* has been amended or repealed.

## TEST BANK ANSWERS

### CHAPTER 1

- |                   |               |      |       |
|-------------------|---------------|------|-------|
| 1. B              | 4. regulatory | 7. C | 10. T |
| 2. E              | 5. regulatory | 8. A | 11. T |
| 3. Social welfare | 6. A          | 9. D |       |

### CHAPTER 2

1. B
2. A
3. D
4. C
5. B
6. A

### CHAPTER 3

- |      |      |
|------|------|
| 1. B | 5. A |
| 2. A | 6. T |
| 3. D | 7. F |
| 4. A | 8. F |

### CHAPTER 4

- |                     |      |       |       |
|---------------------|------|-------|-------|
| 1. notice & hearing | 5. B | 9. F  | 13. F |
| 2. A                | 6. C | 10. T | 14. T |
| 3. D                | 7. E | 11. T | 15. F |
| 4. C                | 8. T | 12. F | 16. T |

### CHAPTER 5

- |      |      |      |
|------|------|------|
| 1. A | 4. F | 7. F |
| 2. C | 5. T | 8. T |
| 3. C | 6. F | 9. F |

## CHAPTER 6

- |      |      |      |       |
|------|------|------|-------|
| 1. C | 4. A | 7. F | 10. F |
| 2. C | 5. F | 8. T | 11. F |
| 3. A | 6. T | 9. T | 12. F |

## CHAPTER 7

- |      |      |      |       |       |
|------|------|------|-------|-------|
| 1. C | 4. C | 7. E | 10. T | 13. T |
| 2. C | 5. B | 8. F | 11. F | 14. F |
| 3. B | 6. A | 9. B | 12. T |       |

## CHAPTER 8

- |      |       |       |       |       |
|------|-------|-------|-------|-------|
| 1. A | 6. C  | 11. F | 16. T | 21. F |
| 2. B | 7. C  | 12. T | 17. F | 22. T |
| 3. A | 8. A  | 13. F | 18. F | 23. T |
| 4. C | 9. B  | 14. F | 19. F | 24. F |
| 5. A | 10. B | 15. T | 20. F | 25. F |

## CHAPTER 9

- |      |       |       |       |       |
|------|-------|-------|-------|-------|
| 1. B | 6. D  | 11. B | 16. B | 21. F |
| 2. C | 7. C  | 12. C | 17. B | 22. T |
| 3. A | 8. C  | 13. D | 18. D | 23. F |
| 4. D | 9. C  | 14. A | 19. F | 24. T |
| 5. A | 10. A | 15. C | 20. T | 25. F |

## CHAPTER 10

- |      |       |       |       |       |
|------|-------|-------|-------|-------|
| 1. B | 6. C  | 11. A | 16. T | 21. F |
| 2. A | 7. A  | 12. D | 17. T | 22. T |
| 3. C | 8. D  | 13. A | 18. F | 23. T |
| 4. A | 9. A  | 14. D | 19. F | 24. T |
| 5. B | 10. D | 15. A | 20. F | 25. F |

## CHAPTER 11

- |      |       |       |       |       |
|------|-------|-------|-------|-------|
| 1. B | 7. C  | 13. A | 19. C | 25. F |
| 2. D | 8. D  | 14. B | 20. C | 26. T |
| 3. C | 9. D  | 15. D | 21. F | 27. F |
| 4. D | 10. A | 16. A | 22. T | 28. T |
| 5. B | 11. B | 17. C | 23. T | 29. F |
| 6. B | 12. A | 18. C | 24. F | 30. T |

## CHAPTER TWELVE

1. Agency decisions
2. *Federal Register*
3. F
4. F
5. List of sections affected