

# ADMIN PROCESS Spring 2021 Steve Judge

## Final Exam

This exam consists of 60 questions, equally weighted. This is not a writing exercise. I am testing the extent of your knowledge, not your ability to write a complete sentence. Many questions can be answered in a word or two.

**Read ALL instructions on the exam.** The exam must be submitted to the Registrar's office on May 5<sup>th</sup> by 2:00 PM. Failure to do so will result in the exam being marked as a late submission. If you receive accommodations, please return the exam according to the accommodation granted.

**Exam numbers only.** The grading of examinations is anonymous. **So, you must write or type your examination number on the examination as well as your typed response.** You may not write your name on anything. You may only use your exam number.

**Labeling your answer document.** Label your answer document with: exam number course name final and professor (no commas, dashes, etc.).

**Example:** 000 Admin Pro Final SP 21 Judge

**Emailing the document back to the Registrar.** Place the same "label" in the subject line for your email. 000 Admin Pro Final SP 21 Judge

**Sanitize your document.** If using Word for your document, please sanitize it prior to sending.

Sanitize your document. To sanitize your document in Word:

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Bottom of box, click on INSPECT

Click on Remove to the right of "Document Properties & Personal Information"

Click Close

Click X in upper right corner to close out of screen

Save the Document

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Or

<https://helpdesk.law.wfu.edu/support/solutions/articles/4000108127-microsoft-word-metadata-removal-instructions-mac->

Now you may send to [law.registrar@law.unh.edu](mailto:law.registrar@law.unh.edu) or [Registrar@law.unh.edu](mailto:Registrar@law.unh.edu)

You may consult any existing material you wish while completing this exam, though answers discussing cases, doctrine, or principles that were not assigned or discussed in this course will receive no credit. You must write your entire response, yourself, you may not paste any previously written material into your answers, whether written by you or anyone else.

**A final reminder. You may not work with anyone on this exam; it must be your own work. Failure to do so may result in a Conduct Code Complaint**

Type your responses. Use 14-point Book Antiqua, Cambria, Century, Constantia, or another high-quality serif font appropriate for body text.

If necessary, you can email me with a question about a question. I will either respond to you that I cannot answer, or I will post an announcement to everyone regarding the outcome.

Good luck and have a wonderful summer and career!

Steve

Unless specifically identified, court means SCOTUS.

Congress means the action of the legislature and the president to enact law.

**True or false:**

1. When an agency changes its existing position, it need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate.
2. In all cases, a court is free to substitute its judgment for an agency's.
3. If an agency uses inadequate data to explain the foundation for a rule, the court may speculate about possible explanations and uphold the rule.
4. Where a proper challenge is raised to the agency rulemaking procedures, and those procedures are defective, a court should not accord *Chevron* deference to the agency interpretation.
5. An agency to which Congress has delegated policy-making responsibilities may, within the limits of that delegation, properly rely upon the incumbent administration's views of wise policy to inform its judgments.
6. Review under the APA "arbitrary and capricious" tag line encompasses a range of levels of deference to the agency.

7. It is a better practice for an agency to engage in rulemaking rather than adjudication for a source of generally applicable principles.
8. In *Ass'n of Data Processing Serv. Organizations, Inc. v. Board of Governors of the Federal Reserve System* 745 F.2d 677 (D.C. Cir. 1984), the First Circuit determined that the factual support necessary to satisfy the APA substantial evidence standard is no different than the support necessary to satisfy the APA arbitrary and capricious standard.

### Short answer

9. Identify a path a case takes in the federal judiciary to reach SCOTUS.
10. What are the actions SCOTUS can take as a result of its holding?
11. Why were the tariff classifications in *Mead* not entitled to *Chevron* judicial deference?
12. Does the constitution support the authority given by Congress to administrative agencies?  
Explain
13. What is the effect of a party bringing a facial challenge to an agency's interpretation of a statute?
14. How many hypothetical volumes of Gibbon would Justice Souter stand on to change a lightbulb?
15. What is a source of property interests protected by the due process clause of the constitution?
16. Under what circumstances can a doctor's report in an administrative hearing constitute substantial evidence?
17. The APA describes both formal and informal rulemaking and adjudication. Briefly describe the current status we discussed in class for these four components of the APA including the effect that *Florida East Coast Railway* had on them?
18. What deference is given to policy statements, agency manuals or enforcement guidelines during court review?
19. Identify the line of cases a court applies to an agency's binding interpretation of its enabling act.
20. Identify the line of cases a court applies to an agency's interpretation of its own ambiguous rule.
21. What rule of construction is applied to an agency's binding interpretation of a criminal statute?
22. Describe the factors applied by *Kisor* to agency actions.
23. Name and describe 3 canons of construction used in statutory interpretation.
24. In *General Dynamics Land Systems, Inc. v. Cline* 540 U.S. 581 (2004), what supports the holding that the word "age" refers to older employees?
25. Describe *Chevron* deference after *Mead*.
26. Under what circumstances does a court of appeals decision trump an agency construction otherwise entitled to *Chevron* deference?
27. In *Abbott Labs* and *Overton Park*, the court held that there is a "powerful presumption of reviewability" of agency actions. How did the presumption change in subsequent cases?
28. Under what circumstances does the APA limit judicial review of an action committed to agency discretion?
29. Under what circumstances can a federal district court require an agency decisionmaker to testify about the explanation for his/her decision?
30. Describe the factors a court considers in reviewing a change in agency policy.
31. Identify the circumstances under which an agency must provide additional explanation for a change in policy.

32. The APA requires a “concise general statement of basis and purpose,” identify the process applied by the court in *State Farm*.
33. The APA places limits on judicial review. What type of claim is not limited by the APA?
34. If Congress enacted a law that precluded judicial review of constitutional issues, what constitutional principle would a court analyze when a case was brought?
35. Which federal circuit court of appeal’s decisions did I describe as the most persuasive for administrative process?
36. Describe the two components of the burden of proof. Which one does not shift?
37. How much evidence is substantial evidence under the APA?
38. Why did the agency get less deference in *Skidmore*?
39. Does an agency receive deference from a court for interpreting a statute it does not administer?
40. What is the “inescapable feature of the body of congressional legislation authorizing administrative action?”
41. Provide three reasons why Congress may pass an ambiguous statute.
42. When a case presents an issue where Congress has spoken to the precise question at issue, what must a court do?
43. If Congress has not addressed the issue and the agency has not provided an administrative interpretation, what must the court do?
44. If Congress has left a gap in a statute, but has not explicitly delegated authority, may the court substitute its judgment for a reasonable interpretation by the agency?
45. When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency’s policy, rather than whether it is a reasonable choice within a gap left open by Congress, what must a court do?
46. What is administrative gloss?
47. When an agency has adopted different definitions in different contexts over time, what effect does the inaction of Congress have?
48. Which branches of government are accountable to the people?
49. What are the five traditional tools of construction that courts use to give meaning to judicially administered statutes?
50. Name two dictionaries used more frequently by the court in applying the plain meaning rule.
51. Describe two criticisms of the use of legislative history in statutory interpretation.
52. How does the court use the doctrine of constitutional avoidance?
53. What test did the court apply to the proclamation in *Trump v. Hawaii*?
54. What presumption did congress set in the APA for judicial review of an agency decision not to act?
55. Under what circumstances can the presumption be rebutted?
56. The APA requires agencies to allow interested persons to “petition for the issuance, amendment, or repeal of a rule,” and, when such petitions are denied, to give “a brief statement of the grounds for denial.” Under what circumstances can the agency’s decision not to institute rulemaking be overturned?
57. What is the nondelegation doctrine?
58. What are the conditions for a person to become an “Officer of the United States?” Art. II, § 2, cl. 2.
59. What factors identify a federal official as an “inferior officer?”

60. When due process applies, what factors are considered in determining what process is due?