

Summary of Contents

ADMINISTRATIVE LAW TEXT CORRELATION CHART	i
ADMINISTRATIVE LAW CAPSULE SUMMARY	I
GILBERT EXAM STRATEGIES	(i)

I. SEPARATION OF POWERS AND CONTROLS OVER AGENCIES	
▶ Key Exam Issues	1
A. Separation of Powers	2
B. Delegation of Legislative Power	3
C. Delegation of Adjudicative Power	12
D. Executive Controls over Administrative Action	15
CHART: Summary of Appointments of Officers and Governmental Employees	17
CHART: Summary of Executive Controls over Administrative Action	20
E. Legislative Controls over Administrative Action	20
CHART: Summary of Valid Legislative Controls over Administrative Action	23

II. THE CONSTITUTIONAL RIGHT TO A HEARING	
▶ Key Exam Issues	25
A. Interests Protected by Due Process—Liberty and Property	25
CHART: Summary of Interests Protected by Due Process	32
B. Timing of the Hearing	34
C. Elements of the Hearing	37
CHART: Summary of Timing and Elements of Hearing	41
D. Issues Requiring a Hearing—The Rulemaking-Adjudication Distinction	42

III. FORMAL AND INFORMAL ADJUDICATION UNDER THE ADMINISTRATIVE PROCEDURE ACT	
▶ Key Exam Issues	47
A. Statutory Hearing Rights to Formal Adjudication	47
CHART: When Is a Hearing Required?	48
B. Adjudication Procedure in Informal Adjudication	54
CHART: Formal Adjudication vs. Informal Adjudication—A Summary	56
C. Declaratory Orders	56
D. The Choice Between Adjudication and Rulemaking	57

IV. THE PROCESS OF FORMAL ADJUDICATION	
▶ Key Exam Issues	63
A. The Prehearing Process	63

B.	Open Hearings	66
C.	The Process of Proof at the Hearing	66
	CHART: Summary of Exclusive Record Principle	73
D.	Right of Cross-Examination	73
	CHART: When Cross-Examination Is Not Required	74
E.	Requirement of Findings and Reasons	74
	CHART: Summary of Issues At Each Stage of Formal Adjudication	76
<hr/>		
V.	ADJUDICATORY DECISIONMAKERS	
▶	Key Exam Issues	79
A.	Structure of Adjudicatory Decisions	79
	CHART: Summary of Types of Adjudicatory Decisions	80
B.	Impartiality of Decisionmaker	82
C.	Basis for Decisionmaking	92
D.	Binding Effect on Decisionmakers	95
<hr/>		
VI.	RULEMAKING PROCEDURES	
▶	Key Exam Issues	101
A.	Introduction	102
	CHART: Rulemaking vs. Adjudication—A Summary	104
B.	Controls on Rulemaking	105
C.	Legal Effect of Rules	106
D.	The Informal Rulemaking Process	107
	CHART: Timeline of Typical APA Informal Rulemaking Procedure	108
E.	Exceptions to Informal Rulemaking Requirements	117
	CHART: How Courts Distinguish Between Interpretive and Legislative Rules	123
	CHART: Exception to APA Rulemaking Requirements	125
F.	Impartiality of Rulemakers	125
G.	The Rulemaking Record	127
<hr/>		
VII.	OBTAINING INFORMATION AND ATTORNEY'S FEES	
▶	Key Exam Issues	129
A.	Agency Acquisition of Information	130
	CHART: Subpoena Power in Agency Investigations	131
B.	Constitutional Protection from Agency Information Gathering	134
C.	Freedom of Information Act	137
	CHART: Exemptions Under the Freedom of Information Act	146
D.	Government in the Sunshine Act	147
E.	Attorney's Fees	148
<hr/>		
VIII.	SCOPE OF JUDICIAL REVIEW	
▶	Key Exam Issues	151
A.	Introduction	152
B.	Scope of Review of Questions of Basic Fact	152
C.	Scope of Review of Agency's Legal Interpretations	157
	CHART: Application of the Chevron Doctrine	158
D.	Scope of Review of Application of Law to Fact	165
E.	Scope of Review of Agency Exercises of Discretion	167
	CHART: Scope of Judicial Review—A Summary	173

IX. REVIEWABILITY OF AGENCY DECISIONS—REMEDIES AND PRECLUSION	
▶ Key Exam Issues	175
A. Means of Obtaining Judicial Review	175
CHART: Means of Obtaining Judicial Review	179
B. Sovereign Immunity	180
C. Tort Liability of Government	183
D. Tort Liability of Government Officials	186
E. Statutory Preclusion of Judicial Review	190
F. Commitment to Agency Discretion	192
G. Definitions of “Agency” and “Agency Action”	193

X. STANDING TO SEEK JUDICIAL REVIEW AND THE TIMING OF JUDICIAL REVIEW	
▶ Key Exam Issues	197
CHART: Requirements for Judicial Review—An Approach	198
A. Standing to Seek Judicial Review	199
B. The Timing of Judicial Review	211
CHART: Checklist of Exceptions to the Exhaustion Rule	224

REVIEW QUESTIONS AND ANSWERS	231
EXAM QUESTIONS AND ANSWERS	273
TABLE OF CITATIONS TO THE ADMINISTRATIVE PROCEDURE ACT	303
TABLE OF CASES	305
INDEX	313