

**Professor Power
Administrative Law
6 pages**

Exam No. _____

FINAL EXAMINATION

ADMINISTRATIVE LAW

TIME: THREE HOURS

This is a **closed book** examination. It consists of two essay questions. Spend 90 minutes on each question, as the questions will be weighed equally. Question II contains subparts and you should follow the time recommendations for the subparts, as they reflect the weight each will receive in the grading process.

The examination contains 6 pages. Be certain that you have the entire examination. You are required to hand in your copy of the exam along with your examination booklets. Please write your exam number where indicated on this page as well as on each of your exam booklets. On each booklet, please indicate both the number of that particular book in the series of books you write and the total numbers in the series, e.g., Book 2 of 3.

It is essential that your writing be legible. You will not be given credit for illegible answers. **Please write on only one side of each page, and if your handwriting makes it necessary, on every other line.**

If you find it necessary to make any assumption as to law or fact in writing your answer, please state the assumption and explain why you are making it.

I. (90 minutes)

A federal statute prohibits the shipment of wine unless it is:

“labeled in conformity with such rules and regulations, to be prescribed by the Director of the Bureau of Alcohol..., as will prohibit deception of the consumer...”

The legislative history of this law reveals that the members of Congress addressing the measure expressed great confidence in the wisdom of the Director concerning both sound wine-making practices and consumer protection measures. Nevertheless, they did not agree among themselves about all aspects of this law. Remarks made during the debates and the report of the responsible House committee, for example, indicated that the Bureau would be limited to enforcing general industry practices against fly-by-night outfits. These members thought that wine-drinkers were, by and large, a savvy lot who need protection only from departures from standard practices. A number of other members, on the other hand, reported hearing complaints about the practices of some of the industry’s leading companies; for these members, deceptive labeling practices would include any that might confuse an unsophisticated adult about what he or she was purchasing. The Senate Report stated that “the Committee anticipates that the Director will adopt regulations that require wine manufacturers to provide consumers with all information necessary to an informed choice.” As each faction thought that the statutory language stated its view and the bill was adopted by huge majorities in each house, these differences were never resolved by Congress.

The present Bureau Director, Lavinia Grapa, decided that standard nationwide rules imposing strict labeling requirements might be appropriate. She published a Notice of Proposed Rulemaking, which stated that the Bureau intended to establish requirements that each bottle of wine be labeled to state 1) the varieties of grapes used in its production, 2) the name of any additional ingredients, and 3) the nation, state, and county of its production.

Most commenters were businesses in the wine industry or public interest groups concerned with consumer protection. Winemakers generally took the position that the Bureau could impose no standard more stringent than the prevailing industry practice, which was to list only the nation or state of production. They also said additional requirements would be unnecessary and unwise. In support they submitted hundreds of letters from consumers praising the quality of their wines and several copies of publications for wine drinkers that described various wines as “marvelous and worthy” despite lacking the labeling called for by the proposed rules. Some consumer groups, including the Nutrition Defense Fund, submitted comments arguing that the Bureau was legally required to impose very strict disclosure requirements. They noted, for example, that labels should include the name of the winemaker because otherwise purchasers would be unable to evaluate the reputation of the producer. They recounted a number of recent scandals, including one in which bottles of “Litvin’s Kimchi Ambrosia”, a cheap, home-produced cabbage wine, were sold at high prices as “Chateau d’Richard Vin Lit.” The

wine had an unusually high acid level and dozens of people were hospitalized with severe indigestion.

Several months later the Bureau announced its new rules. As proposed, wine would be subject to strict labeling requirements. Labels would have to specify 1) the foreign nation or U.S. state of production, 2) all ingredients amounting to 5% or more, by volume, of the wine, including varieties of grapes, and 3) the acid level of the wine. The statement of basis and purpose published with the new rules stated, in pertinent part, as follows:

“We concluded that it was appropriate to require listing the nation or state of origin so that consumers could determine whether the wine was produced in an area traditionally recognized as a prime grape-growing region. We decided not to require that the county of production be listed. This would discourage people from purchasing wine produced in newly-developed vineyards and would not provide much useful information to consumers. In short, people are entitled to learn whether their wine is from California or Connecticut, or from France or Finland, but not whether it is from County X or County Z. Similarly, we decided to limit the requirement of listing ingredients to those constituting 5% or more of the wine because no commenter stated that total disclosure of contents was necessary to prevent deception, and we therefore do not believe that there is sufficient reason to require total disclosure. A technical study by the Bureau’s chemists indicated that ingredients of less than 5% have no appreciable effect on the safety or taste of wine. We added the acidity labeling requirement in response to comments that noted that certain wines high in acid content, particularly those made with cabbage, may be dangerous to some consumers. We considered reopening the notice and comment process on this issue but decided that it was necessary and appropriate to act immediately in view of the serious health problem.

We rejected the positions of both the participating winemakers and the Nutrition Defense Fund concerning the meaning of our governing statute. The Bureau’s statutory authority gives it broad discretion to decide what information would make wine labels deceptive and how fully producers must disclose bottle contents. The Bureau made its determination by balancing the needs and practices of the wine industry against the needs of consumers for both useful information and protection from sleazy business practices.”

The result is, as expected, lawsuits galore. Two are consolidated before you, a federal district judge. One is a suit by Rose Chablis Inc., a winemaker that claims that the rules adopted are procedurally invalid, constitutionally invalid, in excess of the Bureau’s legal authority, and unjustified by the facts. The other is a suit by the Nutrition Defense Fund, which claims that the rules are unlawful because they do not require that labels disclose all ingredients and the producer. During discovery, Director Grapa stated that the rules were adopted “based on the

record of comments received during the rulemaking” and her own “great deal of personal experience in wine evaluation and selection.”

Write an opinion ruling on the two lawsuits.

II. (90 minutes)

During the spring of 1989 oil is discovered in Long Island Sound. After several test wells are dug it becomes obvious that this is the largest single oil reservoir ever discovered. Oil is also found in parts of Connecticut, Rhode Island and New York that adjoin Long Island Sound. The product, nicknamed Connecticut Crude, is exceptionally valuable and inexpensive to produce. Texans weep; heating oil customers sob with joy. Oil production companies flock to the federal government seeking permission to sink oil production wells. As usual, the federal government doesn't know what to do.

A. Congress reacted by creating a new federal agency, the Long Island Sound Oil Management Company (LISOMA). The statute setting up LISOMA provides that it is to be headed by an administrator appointed by the President and confirmed by the Senate and House. The agency's duties include the following:

- 1) to license the production and sale of Connecticut Crude consistent with the public interest, convenience and necessity;
- 2) to insure, to the greatest extent feasible,
 - a) that Connecticut Crude is produced with a minimal amount of environmental damage, and
 - b) that production not exceed demand;
- 3) to adopt reasonable rules and regulations to implement the agency's authority.

The Administrator, B.P. Ashland, wants to adopt several regulations right off the bat. They include:

- 1) Any person or business enterprise may apply for a license to drill for oil. Each license will be for a one-year period and be renewable for subsequent one-year periods.
- 2) In order to minimize harm to the aquatic environment of the Long Island Sound area, and in order to minimize the impact on the financial markets in petroleum, no more than 100 licenses will be issued and no individual licensee may produce more than 1,000

barrels per day of Connecticut Crude.

3) Violation of any rule concerning oil production may result in license revocation.

You are LISOMA's General Counsel. Advise Ashland concerning whether the agency is authorized to adopt these regulations and, assuming such authority exists, the appropriate procedures for their adoption. **(30 minutes)**

B. Assume that these regulations are valid and in force (i.e., any problems you discovered in the statute or regulations have been corrected). On July 2, 1989, the Fairfield Advocate publishes the following story:

Digging for Dollars

“Hundreds of U.B. law students go to school every day listening to the steady bang-bang-bang of construction equipment behind Carlson Hall. The school says: ‘We’re building a new law school building.’ Well-informed insiders say something else. In reality this is an oil well, and the Petro Construction Company is really a wholly-owned subsidiary of the Getty-Richfield Oil Co. (Get-Rich). Get-Rich is pumping oil from this well secretly because it is already pumping its authorized 1,000 barrels a day from other wells in the area.”

Administrator Ashland wants to revoke Get-Rich's license for this behavior. He knows that some kind of hearing will be necessary but has a few other questions since LISOMA has never before revoked anyone's license. Who presides? Is the Fairfield Advocate story legal evidence (even though it is hearsay that would not be admissible in court) and maybe even enough by itself to justify a revocation? May the court temporarily suspend Get-Rich's license while all this is going on? May LISOMA send inspectors to U.B. to look for traces of oil at the construction site? Does the University of Bridgeport have a right to participate in the hearings?

Answer him. **(30 minutes)**

C. The hearing was held. Get-Rich admitted that its subsidiary, the Petro Construction Co., pumped oil from the law school construction site. It convinced the presiding officer, however, that this was a mere byproduct of its legitimate construction activities and that the oil was not refined into heating oil or gasoline for sale but was instead placed in storage tanks and was to be used only in case of a future oil shortage.

The presiding officer ruled that Get-Rich violated the regulations but that the violation was not willful and should not result in revocation of Get-Rich's license. She held, however, that under the regulations all production “counts” against the 1,000 barrel per day limitation and that all future production from the law school site must be included in Get-Rich's 1,000 barrel per day quota. In short, she let Get-Rich off with a warning.

Several companies file suits challenging the presiding officer's decision. Get-Rich sues, challenging the declaration that future production at U.B. counts against its 1,000 barrel quota. The Ho-Hum Construction Company, which is pumping oil from a construction site in Westport, also challenges the ruling as erroneously applying the regulation. The Lake Placid Oil Co. challenges the ruling because the presiding officer refused to revoke Get-Rich's license. LISOMA recently denied Lake Placid a license, stating only that "All 100 licenses have already been issued."

You, as General Counsel, are responsible for defending the agency in each of these lawsuits. Make your arguments, keeping in mind that the agency wins if you can convince the court to deny judicial review. **(30 minutes)**

THE EXAM IS OVER. HAVE A GOOD HOLIDAY!