

ADMINISTRATIVE AGENCIES

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ADMINISTRATIVE AGENCIES and PROCEDURES

type of agency: **executive v. independent**

SEPARATION OF POWERS FOR ADMINISTRATIVE AGENCIES INTERNALLY AND EXTERNALLY

Legislative	=	make laws
Executive	=	enforce laws
Judicial	=	interpret laws

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SEPARATION OF POWERS: INTERNAL, Legislative

RULE MAKING: APA &/or Enabling Act

- 1) **Procedural Rules**
dates and forms for filing
- 2) **Interpretive Rules**
not binding as law
- 3) **Legislative Rules**
binding as law: APA
formal rule making
trial-like
only use evidence "on the record"
informal rule making
notice and written comments
may use evidence off the record

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EXTERNAL SEPARATION OF POWERS (i.e., control)

EXECUTIVE

- appointment
- budget
- executive order

LEGISLATIVE

INTELLIGIBLE PRINCIPLE

NO legislative veto

- appropriation
- appointment
- oversight

JUDICIAL REVIEW

(see next slides)

**EXTERNAL SEPARATION OF POWERS
JUDICIAL REVIEW OF ADMINISTRATIVE ACTION**

1. REVIEWABLE

- strong presumption: APA
- unless Enabling Act
- provides clear exemption

Final "order"

- executive
- legislative
- judicial

2. EXHAUST

ALL ADMINISTRATIVE REMEDIES

**EXTERNAL SEPARATION OF POWERS
JUDICIAL REVIEW OF ADMINISTRATIVE ACTION**

3. STANDING TO SUE

- injury in fact
- AND
- zone of protected interest

EXTERNAL SEPARATION OF POWERS
JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

4. SCOPE OF JUDICIAL REVIEW

- A. PROCEDURES
- B. SCOPE OF AUTHORITY
- C. QUESTIONS OF LAW,
COURTS ARE THE EXPERTS
- D. SUBSTANCE OF AGENCY ACTION

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EXTERNAL SEPARATION OF POWERS
JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

4. SCOPE OF JUDICIAL REVIEW

- A. PROCEDURES
APA & Enabling Act & rules
- B. SCOPE OF AUTHORITY
 - 1. Constitution
 - 2. Congress
 - 3. Agency's
INTELLIGIBLE PRINCIPLE
 - 4. Officer
 - 5. Action
- C. QUESTIONS OF LAW
courts are the experts

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EXTERNAL SEPARATION OF POWERS
JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

4. SCOPE OF JUDICIAL REVIEW

- D. SUBSTANCE OF AGENCY ACTION
agency is the experts on the facts

Scope of discretion
=

- Standard for review and reversal
De Novo
- De Novo on the Record
- Substantial Evidence
on the Record
- Arbitrary and Capricious

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