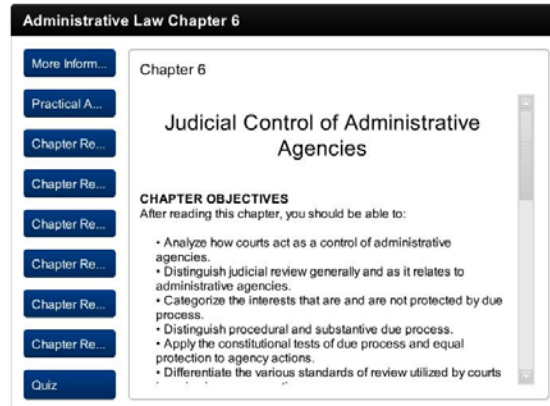


# Administrative Law Chapter 6

## Chapter 6



### Step Text

## Judicial Control of Administrative Agencies

### CHAPTER OBJECTIVES

After reading this chapter, you should be able to:

- Analyze how courts act as a control of administrative agencies.
- Distinguish judicial review generally and as it relates to administrative agencies.
- Categorize the interests that are and are not protected by due process.
- Distinguish procedural and substantive due process.
- Apply the constitutional tests of due process and equal protection to agency actions.
- Differentiate the various standards of review utilized by courts in reviewing agency actions.
- Explain the barriers to judicial review.

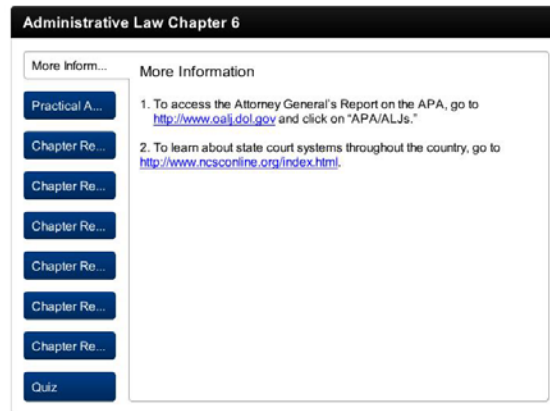
### CHAPTER OUTLINE

Introduction to Judicial Control  
Constitutional Issues and Judicial Review  
Procedural Due Process  
Substantive Due Process

Other Fundamental Rights  
Strict Scrutiny and Rational Basis  
Equal Protection  
Classifications under Equal Protection  
Equal Protection-Race, Strict Scrutiny  
Equal Protection-Fundamental Rights, Strict Scrutiny  
Equal Protection-Gender, Middle Level Scrutiny  
Equal Protection-Illegitimacy, Middle Level Scrutiny  
Equal Protection-Economic and Social Classifications,  
Rational Basis  
Equal Protection-Alienage, Strict Scrutiny and Rational  
Basis  
Equal Protection-Other Classifications, Rational Basis  
Equal Protection and Affirmative Action  
Delegated Power and Judicial Control  
Judicial Control and Agency Discretion  
How Much Judicial Review? Scope of Review  
Judicial Review of Agency Inaction  
Barriers to Judicial Review  
The Statute Precludes Review  
The Decision Is Committed to Agency Discretion  
Exhaustion of Administrative Remedies and Ripeness  
Final Agency Action and Deadlines to Appeal  
Standing  
Primary Jurisdiction  
Other Methods of Judicial Control-Lawsuits

## More Information

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**Administrative Law Chapter 6**

More Inform... More Information

1. To access the Attorney General's Report on the APA, go to <http://www.oalj.dol.gov> and click on "APA/ALJs."
2. To learn about state court systems throughout the country, go to <http://www.ncsconline.org/index.html>.

Practical A...  
Chapter Re...  
Chapter Re...  
Chapter Re...  
Chapter Re...  
Chapter Re...  
Chapter Re...  
Quiz

### ***Step Text***

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## Practical Application Answers

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**Administrative Law Chapter 6**

More Inform... Practical Application Answers

Practical A... **1. A city Housing Authority operates city owned rental property. The Housing Authority issued the following regulation:**

Chapter Re... "Family' means a number of individuals related to the nominal head of the household or to the spouse of the nominal head of the household living as a single housekeeping unit in a single dwelling unit, but limited to the following:

Chapter Re... (a) Husband or wife of the nominal head of the household.

Chapter Re... (b) Unmarried children of the nominal head of the household or of the spouse of the nominal head of the household, provided, however, that such unmarried children have no children residing with them.

Chapter Re... (c) Father or mother of the nominal head of the household or of the spouse of the nominal head of the household.

Chapter Re... (d) Notwithstanding the provisions of subsection (b) hereof, a

Quiz

### Step Text

#### 1. A city Housing Authority operates city owned rental property. The Housing Authority issued the following regulation:

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(c) Father or mother of the nominal head of the household or of the spouse of the nominal head of the household.

(d) Notwithstanding the provisions of subsection (b) hereof, a family may include not more than one dependent married or unmarried child of the nominal head of the household or of the spouse of the nominal head of the household and the spouse and dependent children of such dependent child. For the purpose of this subsection, a dependent person is one who has more than fifty percent of his total support furnished for him by the nominal head of the household and the spouse of the nominal head of the household.

(e) A family may consist of one individual.”

**Mary Jones lives in the city together with her son, Dale Jones, Sr., and her two grandsons, Dale Jr. and John Jones, Jr. The two boys are first cousins rather than brothers. Mary Jones received a notice of violation from the Housing Authority, stating that John was an “illegal occupant” and directing her to comply with the ordinance. When she failed to remove him from her home, the city filed a criminal charge. What defense can Mrs. Jones raise to the charge?**

Mrs. Jones can raise the defense that the regulation violates the constitutional right to live as a family. The right was established in the case of *Moore v. City of E. Cleveland*. A court would use the strict scrutiny test and strike the regulation down as an unconstitutional infringement on a fundamental right.

**2. Using the three tests of equal protection analysis, read the following actions of an administrative agency and state the constitutional test that a court would use to analyze the agency action.**

A. A state liquor control agency regulation allows men to apply for a state liquor license at age 25 but women can apply at age 21.

*Middle level or intermediate level scrutiny*

B. A city housing authority institutes an affirmative action plan that requires that 30 percent of all contracts must be awarded to minority groups.

*Strict scrutiny*

C. A state prison system segregates newly arrived prisoners by race and ethnicity.

*Strict scrutiny*

**3. Read the following actions of an administrative agency and state the constitutional test under the due process clause that a court would use to analyze the agency action.**

A. Following the state’s statute, the Marriage License Bureau refuses to issue a license to a same-sex couple.

*Rational basis*

B. A state health board issues a regulation that bans all forms of contraception.

*Strict scrutiny*

**4. For each of the following examples, state the standard of review that a court most likely would apply to a decision of an administrative agency:**

- A. Informal adjudication-Arbitrary and capricious
- B. Informal rulemaking-Arbitrary and capricious
- C. Formal adjudication-Substantial evidence
- D. Formal rulemaking-Substantial evidence
- E. A request under the Freedom of Information Act (FOIA)-De novo

**5. Go to the Web site of your state's court system and do the following:**

A. Diagram your state's court system from the trial court to the highest court in your state.

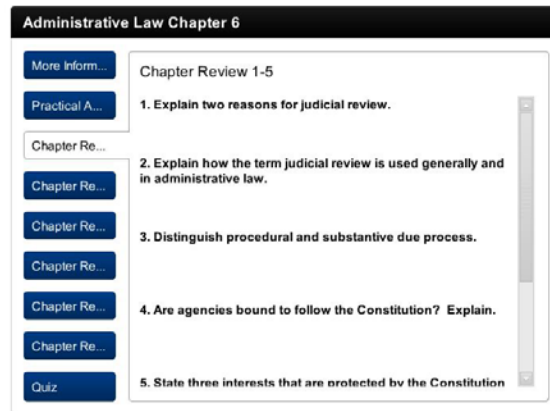
*Answers will vary.*

B. Does your state have a court that deals primarily with appeals from state agencies? If so, state the name of the court.

*Answers will vary.*

## Chapter Review 1-5

5 seconds



**Administrative Law Chapter 6**

Chapter Review 1-5

1. Explain two reasons for judicial review.
2. Explain how the term judicial review is used generally and in administrative law.
3. Distinguish procedural and substantive due process.
4. Are agencies bound to follow the Constitution? Explain.
5. State three interests that are protected by the Constitution

### *Step Text*

**1. Explain two reasons for judicial review.**

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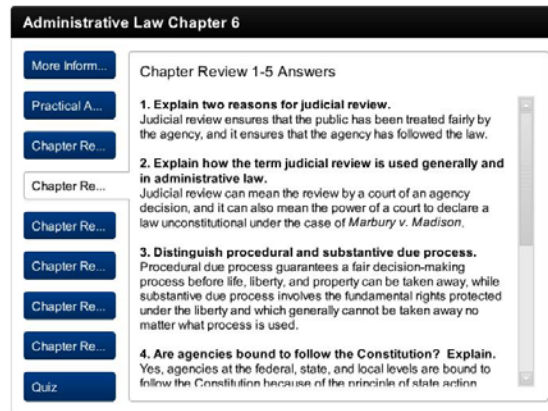
**5. State three interests that are protected by the Constitution under substantive due process and explain how these interests are established.**





## Chapter Review 1-5 Answers

5 seconds



The screenshot shows a digital interface titled "Administrative Law Chapter 6". On the left side, there is a vertical menu with buttons labeled "More Inform...", "Practical A...", "Chapter Re...", "Chapter Re...", "Chapter Re...", "Chapter Re...", "Chapter Re...", "Chapter Re...", and "Quiz". The main content area on the right is titled "Chapter Review 1-5 Answers" and contains four numbered questions with their corresponding answers. A vertical scrollbar is visible on the right side of the main content area.

**Chapter Review 1-5 Answers**

- 1. Explain two reasons for judicial review.**  
Judicial review ensures that the public has been treated fairly by the agency, and it ensures that the agency has followed the law.
- 2. Explain how the term judicial review is used generally and in administrative law.**  
Judicial review can mean the review by a court of an agency decision, and it can also mean the power of a court to declare a law unconstitutional under the case of *Marbury v. Madison*.
- 3. Distinguish procedural and substantive due process.**  
Procedural due process guarantees a fair decision-making process before life, liberty, and property can be taken away, while substantive due process involves the fundamental rights protected under the liberty and which generally cannot be taken away no matter what process is used.
- 4. Are agencies bound to follow the Constitution? Explain.**  
Yes, agencies at the federal, state, and local levels are bound to follow the Constitution because of the principle of state action

### Step Text

#### 1. Explain two reasons for judicial review.

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Judicial review can mean the review by a court of an agency decision, and it can also mean the power of a court to declare a law unconstitutional under the case of *Marbury v. Madison*.

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Procedural due process guarantees a fair decision-making process before life, liberty, and property can be taken away, while substantive due process involves the fundamental rights protected under the liberty and which generally cannot be taken away no matter what process is used.

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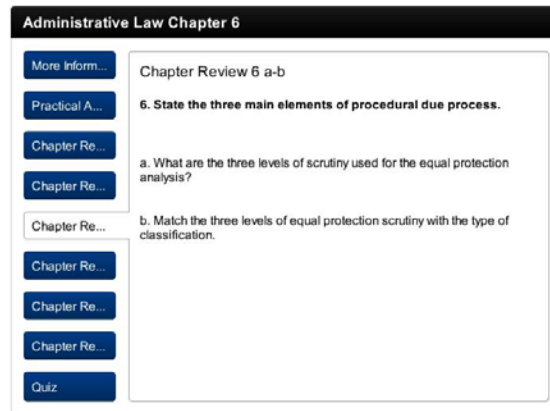
Yes, agencies at the federal, state, and local levels are bound to follow the Constitution because of the principle of state action which only protects individuals from harm caused by actions of the government, not from individuals.

#### 5. State three interests that are protected by the Constitution under substantive due process and explain how these interests are established.

Right to use contraceptives, right to abortion, and the right to marry. These interests are established by Supreme Court cases that have interpreted “liberty” of the Due Process Clause to include these interests.

## Chapter Review 6 a-b

5 seconds



**Administrative Law Chapter 6**

Chapter Review 6 a-b

**6. State the three main elements of procedural due process.**

a. What are the three levels of scrutiny used for the equal protection analysis?

b. Match the three levels of equal protection scrutiny with the type of classification.

### *Step Text*

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## Chapter Review 6 a-b Answers

5 seconds

Administrative Law Chapter 6

Chapter Review 6 a-b Answers

6. State the three main elements of procedural due process.

Notice, a hearing, and a fair judge

a. What are the three levels of scrutiny used for the equal protection analysis?  
*See diagram for answer.*

b. Match the three levels of equal protection scrutiny with the type of classification.  
*See diagram for answer.*

### Step Text

#### 6. State the three main elements of procedural due process.

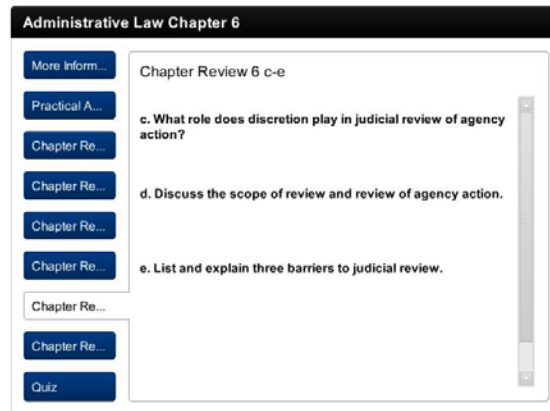
Notice, a hearing, and a fair judge

a. What are the three levels of scrutiny used for the equal protection analysis?  
*See diagram for answer.*

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*See diagram for answer.*

## Chapter Review 6 c-e

5 seconds



Administrative Law Chapter 6

More Inform...

Practical A...

Chapter Re...

Chapter Re...

Chapter Re...

Chapter Re...

Chapter Re...

Chapter Re...

Chapter Re...

Chapter Re...

Quiz

Chapter Review 6 c-e

c. What role does discretion play in judicial review of agency action?

d. Discuss the scope of review and review of agency action.

e. List and explain three barriers to judicial review.

### *Step Text*

**c. What role does discretion play in judicial review of agency action?**

**d. Discuss the scope of review and review of agency action.**

**e. List and explain three barriers to judicial review.**

## Chapter Review 6 c-e Answers

5 seconds

Administrative Law Chapter 6

Chapter Review 6 c-e Answers

c. What role does discretion play in judicial review of agency action?

Discretion is the power that agencies possess to act within the general guidelines set out by the legislature and includes the power and ability to make decisions on issues. When a legislature delegates rulemaking power, executive power, and judicial power to an agency, it is granting much discretion to the agency, so that the agency can perform its mandates as directed by the legislature. Statutes cannot provide what

### Step Text

#### **c. What role does discretion play in judicial review of agency action?**

*Discretion is the power that agencies possess to act within the general guidelines set out by the legislature and includes the power and ability to make decisions on issues. When a legislature delegates rulemaking power, executive power, and judicial power to an agency, it is granting much discretion to the agency, so that the agency can perform its mandates as directed by the legislature. Statutes cannot provide what agencies can do in every instance. Agencies need flexibility to solve the problem at hand.*

*Too much discretion leaves an agency with no guidelines to follow. Too little discretion ties the hands of the agency, and flexibility and efficiency are compromised.*

#### **d. Discuss the scope of review and review of agency action.**

*Courts are empowered to review agency actions to correct errors of the agency. The scope of review sets the standard as to how closely the court will examine the agency action. For example, de novo review is a complete review, while the arbitrary and capricious only requires a rational basis for the agency action. For further answer, see the diagram.*

Questions of Law: High standard of review.

Whether the agency has violated the Constitution:

- a. Procedural due process

- b. Substantive due process
- c. Other constitutional issues

*Chevron* deference-Whether the agency has exceeded its power or misinterpreted the statute under which it operates.

**e. List and explain three barriers to judicial review.**

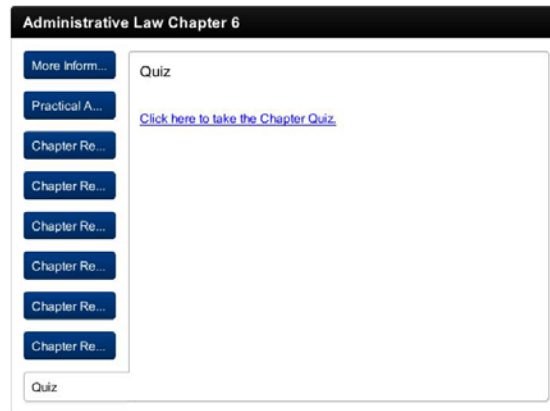
*Exhaustion of administrative remedies*-the principle that a court will not exercise judicial review before the review procedures inside the agency are completed.

*Standing*-a person's right to bring a claim because he or she is directly affected by the issues raised.

*Primary jurisdiction*-the principle that even if a court has the power to hear a case, if the case involves issues that are better decided by an administrative agency, the court will give the agency the first opportunity to resolve the issue.

## Quiz

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The screenshot shows a user interface for 'Administrative Law Chapter 6'. On the left side, there is a vertical list of buttons: 'More Inform...', 'Practical A...', 'Chapter Re...', 'Chapter Re...', 'Chapter Re...', 'Chapter Re...', 'Chapter Re...', 'Chapter Re...', and 'Chapter Re...'. The main content area on the right contains the text 'Quiz' at the top, followed by a blue hyperlink that reads 'Click here to take the Chapter Quiz.'. At the bottom left of the main content area, there is a small button labeled 'Quiz'.

### ***Step Text***

[Click here to take the Chapter Quiz.](#)