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D9730.712

B415-3

ADMINISTRATIVE LAW

Third Edition

Jack M. Beermann

Professor of Law, Boston University School of Law

The *CrunchTime* Series



Wolters Kluwer

Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

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Aspen Publishers
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-0-7355-9011-3

Library of Congress Cataloging-in-Publication Data

Beermann, Jack M.
Administrative law / Jack M. Beermann.—3rd ed.
p. cm. — (Crunchtime series)
Includes index.
ISBN 978-0-7355-9011-3

1. Administrative law—United States—Outlines, syllabi, etc. I. Title.

KF5402.B44 2010b
342.73'06076—dc22

2010038429

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Preface

Thank you for buying this book.

The *CrunchTime* Series is intended for people who want Emanuel quality but don't have the time to use the full-length *Emanuel Law Outline* on a subject. We've designed the series to be used in the last few weeks (or even less) before your final exams.

This book includes the following features, most of which have been extracted from the corresponding *Emanuel Law Outline*:

- **Flow Charts**—We've reduced many of the principles of *Administrative Law* to a series of 13 flow charts, created specially for this book and never published elsewhere. We think these will be especially useful on open-book exams. The flow charts begin on p. 1.
- **Capsule Summary**—This is a 30-page or so summary of the subject. We've carefully crafted it to cover the things you're most likely to be asked on an exam. The Capsule Summary starts on p. 39.
- **Exam Tips**—We've compiled these by reviewing dozens of actual essay and multiple-choice questions asked in past law-school and bar exams, extracting the issues and "tricks" that surface most often on exams. The Exam Tips start on p. 73.
- **Short-Answer Questions and Answers**—These questions are generally in a yes-or-no format, with a "mini-essay" explaining each one. The questions start on p. 95.
- **Multiple-Choice Questions and Answers**—New to this edition, these questions will help you quickly test your knowledge of some basic principles. The questions begin on p. 125.
- **Essay Exam Questions and Answers**—These questions are actual ones asked on law-school exams. They start on p. 133.

We hope you find this book helpful and instructive.

Good luck.

Jack M. Beermann
Boston, Massachusetts
September 2010

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FLOW CHARTS

FLOW CHARTS

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FIGURE 1

APPOINTMENT OF ADMINISTRATIVE OFFICIALS

Use this chart to analyze the constitutionality of the appointment of federal officials.

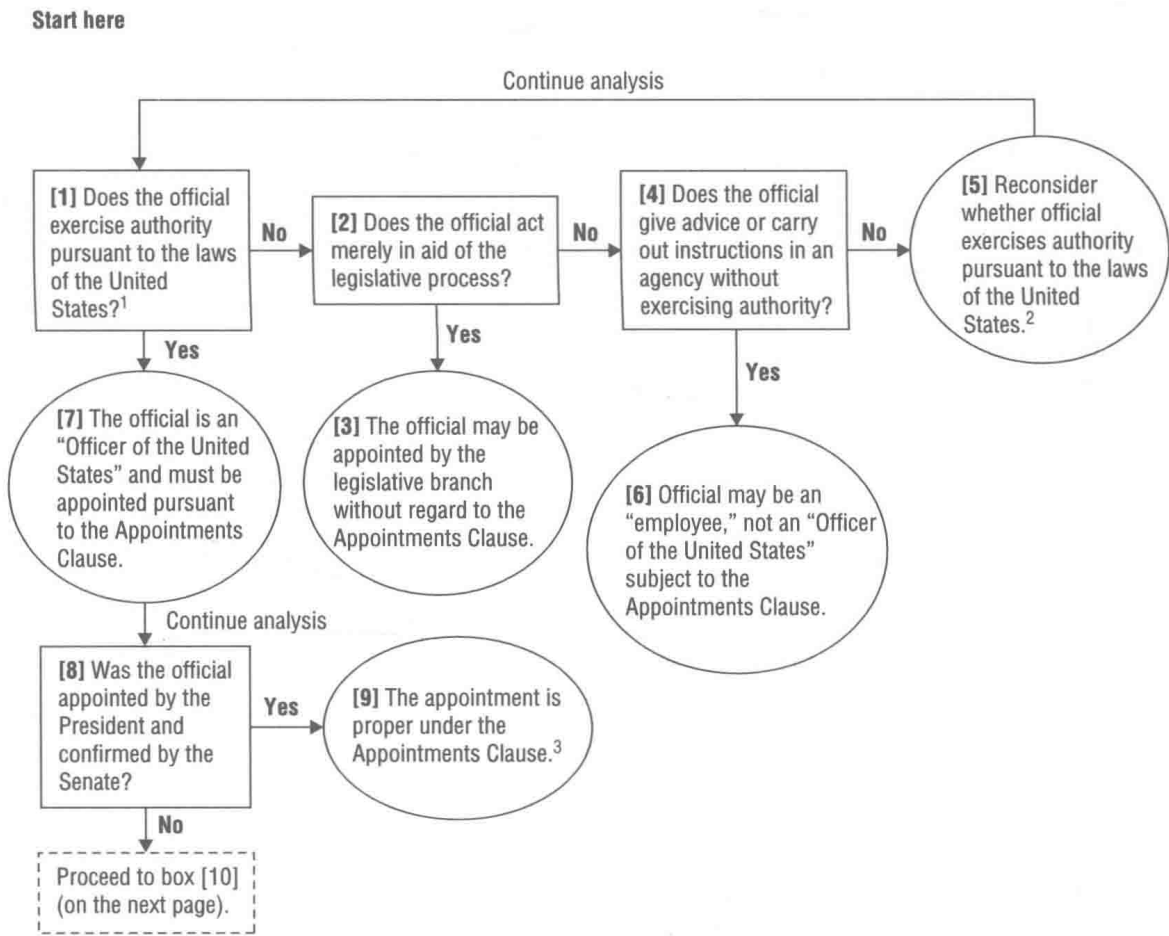
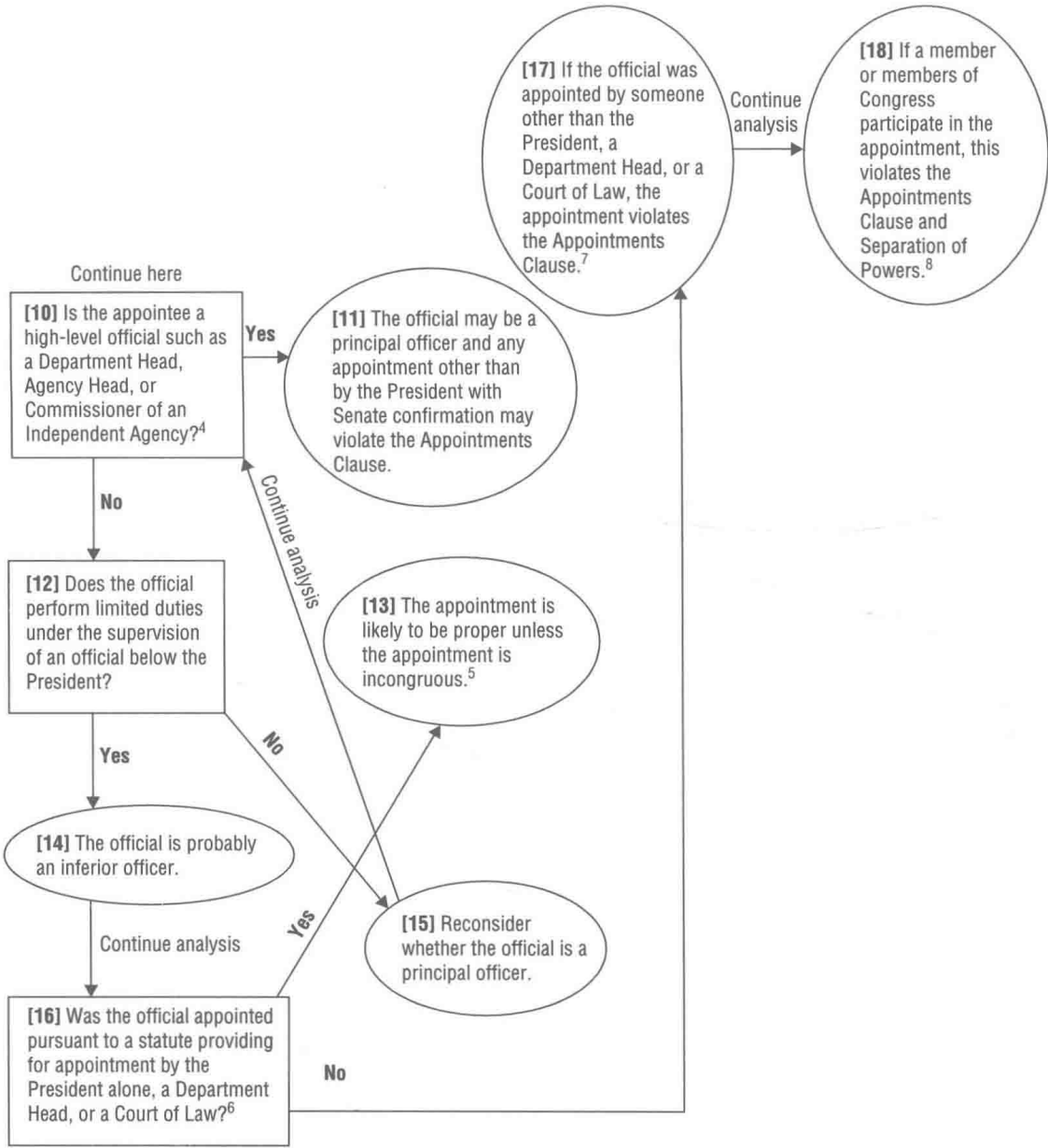


FIGURE 1 (cont.)

APPOINTMENT OF ADMINISTRATIVE OFFICIALS



NOTES TO FIGURE 1

APPOINTMENT OF ADMINISTRATIVE OFFICIALS

¹ This is the standard for determining whether an official is an "Officer of the United States" who may be appointed only pursuant to the Appointments Clause. See *Buckley v. Valeo*, 424 U.S. 1 (1976).

² There are two categories of federal officials to whom the Appointments Clause does not apply: those acting merely in aid of the legislative process (who may be appointed by Congress or a subset of its members) and those who have no actual authority but rather are merely government "employees." A federal official not in one of those two categories is probably an Officer of the United States to whom the Appointments Clause applies.

³ Absent legislation to the contrary, the model in the Appointments Clause for appointing all Officers of the United States is appointment by the President and confirmation by the Senate. See U.S. Const., Art. II, §2, cl. 2.

⁴ High-level officials such as Department Heads and Independent Agency Commissioners are "Principal" or "Superior" Officers, and they must be appointed by the President with Senate confirmation. If an official has limited responsibilities and is under the supervision of an executive branch official below the President, the official is probably an Inferior Officer for whom the

Appointments Clause allows an alternative method of appointment. See *Morrison v. Olson*, 487 U.S. 654 (1988), *Edmond v. United States*, 520 U.S. 651 (1997).

⁵ The Supreme Court has stated that a statute providing for the appointment of an inferior officer by someone other than the President or that officer's Department Head may be void if there is incongruity between the identity of the appointing official and the duties of the appointee, for example, if Congress designates the Secretary of the Interior as the official with authority to appoint Assistant United States Attorneys.

⁶ The Appointments Clause allows Congress to specify by statute that Inferior Officers may be appointed by the President alone, by a Department Head, or by a Court of Law. In the absence of such a statute, presidential appointment with Senate confirmation is required.

⁷ Only those officials named in the Appointments Clause may participate in the appointment of inferior officers.

⁸ As a corollary to the note above, because Congress or any subset of Congress is not named in the Appointments Clause, a member or members of Congress may not participate in the appointment of Inferior Officers. In addition, it probably would violate separation of powers for Congress to participate in the appointment of Executive Branch officials.

FIGURE 2

REMOVAL OF EXECUTIVE OFFICIALS

Use this chart to analyze whether restrictions on the removal of officers of the United States are constitutional.

