

## Review Questions

Feb. 27, 2014

1. How did the D.C. Circuit use the doctrine of absurd results in reaching its decision to uphold EPA's Tailoring Rule in *Coalition for Responsible Regulation of Industry v. EPA*?
  - a. EPA properly applied the doctrine of absurd results because using the Clean Air Act's naked statutory thresholds for major sources would have required millions of smaller emitters of greenhouse gases to get permits.
  - b. EPA properly applied the doctrine of absurd results because EPA could properly regulate a subset of facilities that emitted greenhouse gases and postpone regulating smaller sources to avoid the absurd result of impossible administrative burdens.
  - c. EPA did not properly apply the doctrine of absurd results because EPA could not choose an interpretation of the statute that led to absurd results, and then depart from the statutory language to avoid that absurd result, if another interpretation would avoid that absurd result in the first place.
  - d. A and B.
  - e. None of the above.
  
2. Which judicial action best demonstrates the doctrine of scrivener's error?
  - a. A court determines that Congress erroneously overlooked an administrative interpretation of a statute when it reauthorized that statute, and therefore Congress did not mean to adopt that interpretation by reference.
  - b. A court rules that Congress used the wrong year in specifying a deadline of "April 15, 2013" for tax filings in 2015.

- c. A court holds that Congress intended to allow claims submitted on Dec. 31, 2013 if the statute required submittals “prior to Dec. 31.”
  - d. B and C.
  - e. All of the above.
3. To deal with the rampant use of off-label use of prescription drugs to enhance academic performance (Ritalin, Modafinil, Adderall), Congress passes a law that disqualifies any student from federal financial aid if they submit a sample that tests positive for these substances (and they do not have a legitimate prescription for those drugs). Some colleges begin to require drug tests as part of their financial aid applications, and these drug tests include analyses of hair samples – which can yield data on historical drug use for up to 12 months (or, in some cases, much longer).
- A student is disqualified from financial aid because of a hair sample result that indicated use of cognitive enhancers prior to the passage of the law, and she files a lawsuit challenging application of the law to her financial aid request. Which of the following courses will a federal court most likely taken when applying statutory interpretative canons?
- a. The law does not apply to the student because of the rule of lenity.
  - b. The law does not apply to the student because the presumption against retroactivity disfavors that interpretation (assuming Congressional intent is not otherwise clearly stated).
  - c. The law would apply to the student because the remedial purpose canon overrides the presumption against retroactivity.
  - d. A and C.
  - e. None of the above.