COURSE INFORMATION

Contact information:
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Office hours Wednesdays 3-4 and by appointment. Also, feel free to stop by, call or e-mail, or to speak with me after class. I encourage you to ask questions about things that you did not understand in class or in the reading and to pursue ideas or topics that interest you.

Your grade will be based primarily on a final examination. Attendance is critical to understanding the material and performing well on the final exam. In addition, class participation can help you. It can also hurt you, if you miss class, can’t or won’t participate, or are obviously unprepared. Regular attendance is required. I will pass around a sign-in sheet at the beginning of each class. You are entitled to 5 absences (for any reason) with no effect on your grade. You do not need to tell me why you miss class, but if you exceed 5 absences, I will not be interested in the reasons. I will expect that you have done the assigned reading and are prepared for class.

There will also be a few written assignments, including one involving researching legislative history. These assignments will not be graded. They will, however, count towards your class participation. Failure to complete an assignment or to make a good faith effort on an assignment will be noted.

The final exam will be open book. I will determine later whether it will be in-class or take-home. For the final exam, you will be responsible for all assigned reading, whether or not we discussed it in class, and for all material covered in class discussion and lectures, even if it was not covered in the assigned reading. However, the exam will emphasize the material that I view as important, and you will be able to tell what I think is important by coming to class.

For course announcements and for other useful information please consult the course website accessible from the Chicago-Kent homepage.
The syllabus is divided by assignment, not by class. Some assignments will likely take more than one class period to cover; some may take less. I will announce assignments for each class either in class or by e-mail.

The casebook for the class is Eskridge, Frickey & Garrett, Cases and Materials on Legislation (3d ed. 2001). All page numbers in the syllabus refer to that casebook. There will also be some assigned readings and problems on photocopied hand-outs or via links to on-line resources. Most of these assignments are not noted on this syllabus. I will generally distribute these assignments by e-mail, on my website, or through the bookstore. I will probably also distribute some handouts in class.

You are also required to obtain a copy of the United States Constitution, which you should bring with you to class. When the reading from the casebook refers to a particular constitutional provision, you should read that provision, even if it does not appear on the syllabus. There are numerous resources, on-line and in print, for copies of the Constitution. One on-line resource is through the Government Printing Office, at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_documents&docid=f:sd17.109 or http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_documents&docid=f:sd17.pdf. There is also a copy of the Constitution in Appendix A of the casebook. I recommend that you obtain an additional copy, however, for ease of reference.

For a helpful supplement, you might consult Eskridge, Frickey & Garrett, Legislation and Statutory Interpretation (2d ed. 2006). Several copies are on reserve in the library. It should also be available through the bookstore. This book is not required.

I. INTRODUCTION TO THE LEGISLATIVE PROCESS AND STATUTORY INTERPRETATION

A. THE CIVIL RIGHTS ACT OF 1964 IN CONGRESS

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<tr>
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<tr>
<td>1-38</td>
<td>History of the Civil Rights Act of 1964</td>
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<td>How a Bill Becomes a Law</td>
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<tr>
<td>U.S. Const.</td>
<td>Art. I, §§ 1, 7-9; Art. II, § 1 (first sentence), §§ 2-3.</td>
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B. **The Civil Rights Act of 1964 in the Courts**

38-47  Title VII of the Civil Rights Act of 1964  
81-120  Perspectives on *Griggs*  
*United Steelworkers v. Weber* and Notes  
*Johnson v. Transportation Agency* and Notes  
Handout  Aftermath of *Griggs* and *Weber*  
Handout  Problem on Sexual Harassment

II. **Eligibility to Serve in Congress**

A. **Congressionally-Imposed Qualifications**

189-201  *Powell v. McCormack* and Notes

B. **Qualifications Imposed by States**

201-19  *U.S. Term Limits, Inc. v. Thornton* and Notes

C. **Ballot Access**

*Timmons v. Twin Cities Area New Party* and Notes  
*Munro v. Socialist Workers Party*

III. **The Ethics of Deliberation**

A. **Regulation of Campaign Finance**

227-29  Structures of Campaign Finance  
245-58  Gaps in Regulation  
Political Theories of Campaign Finance Regulation  
262-65  *Colorado Republican Federal Campaign Committee v. FEC*  
Handout  Current issues in campaign finance

B. **Regulation of Corruption**

269-83  Bribery Statutes  
*People ex rel. Dickinson v. Van de Carr* and Notes  
Extortion and the Hobbs Act  
Conflicts of Interest  
*United States v. Nat’l Treasury Employees Union*
C. **Regulation of Lobbying**

285-90  Note on the Regulation of Lobbying
317-22  The Lawyer as Lobbyist

**IV. LIMITATIONS ON THE LEGISLATIVE PROCESS**

A. **Single Subject Rule**

327-35  Note on Single Subject Rule
        *Department of Education v. Lewis* and Notes

B. **Line Item Veto**

335-60  Note on Line Item Veto
        *Rush v. Ray* and Notes
        *Clinton v. City of New York* and Notes

C. **Lawmaking by the Most Institutionally-Competent Branch**

391-406  *Hampton v. Mow Sun Wong* and Notes
        Brest, “The Conscientious Legislator’s Guide...” and Notes

D. **Direct Democracy**

499-504  Note on Direct Democracy
509-12   Notes on *St. Paul Citizens for Human Rts. v. City Council* and
        the Fairness of Direct Democracy
556-57   Note on Theories of Democracy
        Handout  Problem on Same Sex Marriage in California

**V. STATUTORY INTERPRETATION AND IMPLEMENTATION**

A. **Stare Decisis**

600-15  Note on Stare Decisis and Statutory Precedents
        *Flood v. Kuhn* and Notes

B. **Theories of Statutory Interpretation**

1. **Introduction and Historical Background**

669-85  Hart & Sacks, “The Legal Process” and Notes
        *Rector, Holy Church v. United States* and Notes
2. **Legal Process Theories**

696-707 Hart & Sacks, “The Legal Process” and Notes

*Shine v. Shine* and Notes

*United States v. Locke* and Notes

707-14 Eskridge, “Dynamic Statutory Interpretation”

*In the Matter of Jacob*

717 n.2-720 Note on Female Juror Cases

714-17 *Li v. Yellow Cab of California* and Notes

722-27 *State of New Jersey v. 1979 Pontiac Trans Am* and Notes

3. **Plain Meaning and the New Textualism**

730-33 *TVA v. Hill*

740-67 Notes on *Hill, Griffin, and the Revival of the Plain Meaning Rule*

*Green v. Bock Laundry Machine Co.* and Notes

Scalia, “A Matter of Interpretation”

*Chisom v. Roemer*

781-83 Notes on the LSD Case and *Ex Ante* Thinking

(Skim *United States v. Marshall*, 773-81, as needed to make sense of the Notes)

4. **Other Approaches to Statutory Interpretation**

Handout Breyer, “Active Liberty”

769 n.2-772 Notes on New Textualism on the Court

784-91 Notes on Public-Regarding Goals and Rent-Seeking

*Perez v. Wyeth Laboratories, Inc.* and Notes

800-05 Eskridge and Frickey, “Statutory Interpretation as Practical Reasoning”

Note on the Funnel of Abstraction

C. **DOCTRINES OF STATUTORY INTERPRETATION**

1. **Textual Canons**

817-36 Introductory Problem

Maxims of Word Meaning and Association

Grammar Canons

The Whole Act Rule

Handout Textual Canons

Handout Problems

918-20 Note on Interpretive Directions in Statutes
2. **Substantive Canons**

848-51 Types of Substantive Canons

**a. The Rule of Lenity**

851-70 The Rule of Lenity

*Muscarello v. United States*
*McNally v. United States*

Notes on *Muscarello, McNally, and the Rule of Lenity*

**b. The Avoidance Canon and Clear Statement Principles**

884 n.2-887 Notes on the Avoidance Canon
907-09 Note on Congressional Reliance

Handout Handout on Clear Statement Principles

**c. In Pari Materia**

1043-49 *Lorillard v. Pons*
1054-61 *Morton v. Mancari* and Notes
791-800 *FDA v. Brown & Williamson Tobacco Co.* and Notes

3. **Debate Over Canons**

909-18 Llewellyn, “Remarks on the Theory of Appellate Decision...”

Note on Intellectual Warfare Over Canons

4. **The Role of Common Law**

920-37 Notes and Introductory Problem

*Smith v. Wade*

Notes on Common Law as Source of Construing Statutes

D. **LEGISLATIVE HISTORY**

1. **Legislative Context**

937-47 *Leo Sheep Co. v. United States* and Notes

2. **Committee Reports**

947-57 *Blanchard v. Bergeron*

Note on the New Textualist Critique of Committee Reports
3. **Hearings and Floor Debates**

   979-95 *Bankamerica Corp. v. United States* and Notes
   Handout Floor Debate and *Hamdan v. Rumsfeld*

4. **Statements by Sponsors or Drafters of Legislation**

   997 Note
   1003-12 *Montana Wilderness Ass’n v. United States Forest Service I*
   Notes on the First Checkerboard Case

5. **Legislative Inaction and Subsequent Legislative History**

   1020-22 Legislative Inaction
   1034-37 Notes on *Bob Jones* and Legislative Inaction
   (Skim *Bob Jones University v. United States*, pp. 1022-33, as necessary to make sense of the Notes.)

6. **Ballot Initiatives**

   1095-96 Note on Interpreting Ballot Initiatives
   Handout Michigan Same Sex Marriage Initiative

E. **CONGRESS AND THE EXECUTIVE: CURRENT STRUGGLES IN STATUTORY INTERPRETATION**

1. **Administrative Interpretation and Implementation**

   1064-80 *Chevron USA v. Natural Resources Defense Council* and Notes
   *MCI Telecommunications Corp. v. AT&T* and Notes
   1092-93 Note on Deference and Canons of Construction
   Handout *Massachusetts v. EPA*, No. 05-1120 (2007)

2. **Presidential Signing Statements**

   995-96 Notes on Presidential Signing or Veto Statements
   Handout Presidential Signing Statements