

SYLLABUS

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 at the end of the previous class or by e-mail. **The syllabus is subject to change. Handouts, problems, and practice exam questions will likely be added, particularly materials that reflect current events. Some readings may also be deleted or shortened.**

You should keep all handouts you receive as part of the course materials. All page numbers in the syllabus refer to the casebook, Eskridge, Frickey & Garrett, *Cases and Materials on Legislation* (4th ed. 2007), unless otherwise noted.

I. INTRODUCTION TO THE LEGISLATIVE PROCESS

A. THE CIVIL RIGHTS ACT OF 1964 IN CONGRESS

1-38	History of the Civil Rights Act of 1964 How a Bill Becomes a Law
Handout	Civil Rights Act Timeline
U.S. Const.	Art. I, §§ 1, 7-9; Art. II, § 1 (first sentence), §§ 2-3
Handout	Problem on the Legislative Process

B. THE CIVIL RIGHTS ACT OF 1964 IN THE COURTS

38-47	Title VII of the Civil Rights Act of 1964 <i>Griggs v. Duke Power Co.</i> (4th Circuit opinion)
Handout	<i>Griggs v. Duke Power Co.</i> , 401 U.S. 424 (1971)
82-104	Perspectives on <i>Griggs</i> <i>United Steelworkers v. Weber</i> and Notes
Handout	Chief Justice Burger's <i>Weber</i> dissent
104-15	<i>Johnson v. Transportation Agency</i> and Notes
Handout	Problem on Sexual Harassment

C. CONTEMPORARY PROBLEMS IN MAKING LAW AND THE BALANCE OF POWER

372-87 Federal Line Item Veto: *Clinton v. City of New York* and
Notes
Handout Materials on Impeachment

II. LIMITATIONS ON THE LEGISLATIVE PROCESS IN THE STATES

A. SINGLE SUBJECT RULE

356-65 Note on Single Subject Rule
Department of Education v. Lewis and Notes
Handout Excerpts from Illinois Cases

B. LINE ITEM VETO

365-72 Note on Line Item Veto
Rush v. Ray and Notes
Handouts on Illinois Amendatory and Line Item Veto

C. DIRECT DEMOCRACY

523-27 Note on Direct Democracy
Handout Materials on California Budgeting Problems
535-43 *St. Paul Citizens for Human Rts. v. City Council* and Notes
Handout *National Pride at Work, Inc. v. Governor of Michigan*

III. ELIGIBILITY TO SERVE IN CONGRESS

A. CONGRESSIONALLY-IMPOSED QUALIFICATIONS

196-208 *Powell v. McCormack* and Notes
Handout Materials on the Appointment of Senators

B. QUALIFICATIONS IMPOSED BY STATES

208-26 *U.S. Term Limits, Inc. v. Thornton* and Notes

IV. THE ETHICS OF DELIBERATION

A. REGULATION OF CAMPAIGN FINANCE

- 235-47 Structures of Campaign Finance and The Constitutional Framework
- 252-61 Campaign Finance after *Buckley* and The Bipartisan Campaign Reform Act
- 286-90 Notes on *McConnell v. FEC* (read through paragraph 3 on p. 290)
- Handout Current issues in campaign finance

B. REGULATION OF CORRUPTION

- 301-11 Bribery Statutes
People ex rel. Dickinson v. Van de Carr and Notes
Extortion and the Hobbs Act
- Handout Materials on Ethics Reform

C. REGULATION OF LOBBYING

- 318-22 Note on the Regulation of Lobbying
- Handout Materials on Lobbying Regulation

V. PULLING THINGS TOGETHER: THE CONSCIENTIOUS LAWMAKER, ACCOUNTABILITY, AND THE CONSTITUTION

- 428-35 Brest, “The Conscientious Legislator’s Guide...” and Notes
- Handout Problem

VI. STATUTORY INTERPRETATION AND IMPLEMENTATION

A. READING A STATUTE

- Handout Current text of Title VII, available at <http://www.eeoc.gov/policy/vii.html> (read well enough to understand basic structure and to address the Problems)
- Handout Problems on Title VII

B. STARE DECISIS

631-46 Note on Stare Decisis and Statutory Precedents
Flood v. Kuhn and Notes

C. THEORIES OF STATUTORY INTERPRETATION: HISTORICAL DEVELOPMENT

1. Introduction and Background

689-707 Hart & Sacks, “The Legal Process” and Notes
Rector, Holy Church v. United States and Notes

2. Legal Process Theories

718-23 Hart & Sacks, “The Legal Process” and Notes
727-29 Notes on Judicial Correction of Legislative Mistakes
United States v. Locke
729-37 Eskridge, “Dynamic Statutory Interpretation”
In the Matter of Jacob
740 n.2-742 Note on Female Juror Cases
737-39 *Li v. Yellow Cab of California* and Notes
744-47 *State of New Jersey v. 1979 Pontiac Trans Am* and Note 1

3. Plain Meaning and the New Textualism

752-55 *TVA v. Hill*
763-81 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”
810-11 Notes 1 and 2 on the LSD Case and *Ex Ante* Thinking
(Skim *United States v. Marshall*, 801-10, as needed
to make sense of the Notes)
793 n.2-795 Notes on New Textualism on the Court
Handout Problem on Dynamic Interpretation
781-90 *Chisom v. Roemer*

4. Pragmatic Approaches to Statutory Interpretation

- 830-35 Eskridge and Frickey, “Statutory Interpretation as Practical Reasoning”
Note on the Funnel of Abstraction
- 812-18 Notes on Public-Regarding Goals and Rent-Seeking
Perez v. Wyeth Laboratories, Inc. and Notes
- 811-812 Note 3 on the LSD Case and *Ex Ante* Thinking
Breyer, ACTIVE LIBERTY, pp. 3-20, 85-101, 115-32

5. What Does the Practitioner Do?

Handout: Problem on False Claims Act

D. DOCTRINES OF STATUTORY INTERPRETATION

1. Textual Canons

- 847-68 Introductory Problem
Maxims of Word Meaning and Association
Grammar Canons
The Whole Act Rule
- Handout Textual Canons
- Handout Problems on Textual Canons
- 953-55 Note on Interpretive Directions in Statutes

2. Substantive Canons

- 880-84 Types of Substantive Canons

a. The Rule of Lenity

- 884-903 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

917-20 Notes on the Avoidance Canon
939-41 Note on Congressional Reliance
Handout *NAMUDNO v. Holder*

c. In Pari Materia, Repeal by Implication, and Whole Code Rule

1070-73 *Lorillard v. Pons*
1082-89 *Morton v. Mancari* and Notes
820-30 *FDA v. Brown & Williamson Tobacco Co.* and Notes

d. The Borrowed Statute Rule [if time]

1076-81 *Zerbe v. State* and Note

3. Debate Over Canons

941-52 Llewellyn, "Remarks on the Theory of Appellate Decision..."
Note on Intellectual Warfare Over Canons

E. THE ROLE OF THE COMMON LAW

956-71 Notes and Introductory Problem
Smith v. Wade
Notes on Common Law as Source of Construing Statutes

F. LEGISLATIVE HISTORY

1. Legislative Context

971-81 *Leo Sheep Co. v. United States* and Notes

2. Committee Reports

981-91 *Blanchard v. Bergeron*
Note on the New Textualist Critique of Committee Reports

3. Statements by Sponsors or Drafters of Legislation

- 1000-01 Note
- 1027-35 *Montana Wilderness Ass'n v. United States Forest Service I*
Notes on the First Checkerboard Case
- 1014-20 *Kosak v. United States* and Notes

4. Floor Debates

- 1020-21 Notes on Legislative Deliberation
- Handouts Floor Debate and *Hamdan v. Rumsfeld*

5. Legislative Inaction and Subsequent Legislative History

- 1035-43 Post-Enactment Legislative History
Montana Wilderness Ass'n v. United States Forest Service II
Notes on the Second Checkerboard Case
Legislative Inaction
- 820-30 Review *FDA v. Brown & Williamson Tobacco Co.*
- 1026 Note on Rejected Proposals

6. Ballot Initiatives (Again)

- 1101-03 Note on Interpreting Ballot Initiatives
- Handout Statutory Interpretation and Direct Democracy

G. STATUTORY DRAFTING EXERCISE [IF TIME]

VII. PULLING THINGS TOGETHER: CONTEMPORARY STRUGGLES IN STATUTORY INTERPRETATION AND THE POWER OF THE JUDICIARY, CONGRESS & THE EXECUTIVE

A. ADMINISTRATIVE DELEGATION, INTERPRETATION, AND IMPLEMENTATION

421-28 *Hampton v. Mow Sun Wong* and Notes [if time]
1197-99 *Chevron USA v. Natural Resources Defense Council*
1204-13 *MCI Telecommunications Corp. v. AT&T* and Notes
1269-71 Note on *Chevron* and *Stare Decisis*
1258-61 Note on Deference to Agencies in the State Courts
1213-23 *United States v. Mead Corp.* [if time]
1276-83 Quo Vadis the “*Chevron* Revolution”? [if time]
Breyer, *ACTIVE LIBERTY*, pp. 102-08
Handout Materials on Regulations

B. PRESIDENTIAL SIGNING STATEMENTS AND CLAIMS OF UNCONSTITUTIONALITY

1043-47 Notes on Presidential Signing or Veto Statements
Handout Materials on Presidential Signing Statements