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. In particular, handouts, problems, and practice exam questions will likely be added, as well as 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

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B. The Civil Rights Act of 1964 in the Courts

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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
535-43  *St. Paul Citizens for Human Rts. v. City Council* and Notes
Handout  Materials on Proposition 8

III. **Eligibility to Serve in Congress**

A. **Congressionally-Imposed Qualifications**

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

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

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

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689-708 Hart & Sacks, “The Legal Process” and Notes
Rector, Holy Church v. United States and Notes
Caminetti v. United States and Notes
Fishgold v. Sullivan Drydock and Repair Corp.
Handout Justice McKenna’s Caminetti dissent

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
723-29 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
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**

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   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

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880-84 Types of Substantive Canons
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884-903 The Rule of Lenity
   *Muscarello v. United States*
   *McNally v. United States*
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*Almendarez-Torres v. United States*  
Notes on the Avoidance Canon |  |
| 939-41 | Note on Congressional Reliance |  |
| 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

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*Leo Sheep Co. v. United States* and Notes

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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
   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

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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
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B. Presidential Signing Statements and Claims of Unconstitutionality

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