

**STATUTORY INTERPRETATION AND REASONING**  
**Syllabus**  
**Spring 2012**  
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*The last fifty to eighty years have seen a fundamental change in American Law. In this time we have gone from a legal system dominated by the common law, designed by courts, to one in which statutes enacted by legislatures have become the primary source of law.*

— Judge Guido Calabresi, U.S. Court of Appeals  
for the Second Circuit

Welcome to Statutory Interpretation and Reasoning. Much of the 1L curriculum focuses on common law rules extracted from court opinions. But for most lawyers today, reading and interpreting statutes and administrative materials is more important. This course will provide you with an overview of the legislative and regulatory processes that generate those documents. More importantly, it will teach you the theories and doctrines of statutory interpretation used in federal and state courts.

**Course Materials**

The books for this class are: 1) Jellum & Hricik, *Modern Statutory Interpretation* (Carolina Academic Press, 2d ed. 2009); and 2) Eskridge, Frickey & Garrett, *Legislation and Statutory Interpretation* (Foundation Press, 2d ed. 2006). Occasionally there will be additional readings, such as recent court opinions, that will be distributed on TWEN.

**Course Requirements and Objectives**

Your grade will be based primarily on a scheduled final exam. The test is open book/open notes in that you may use the assigned textbooks, readings posted on TWEN, handouts from class, your class notes, and your outline (including one prepared as part of an outline group). You may not use commercial outlines, electronic resources, or other materials.

Participation in class discussion is necessary both for your own understanding of the material and for the benefit of your classmates. I may increase your grade for outstanding participation and lower it for failing to participate adequately or for consistently being unprepared for class.

Regular attendance (at least 80%) is required as a matter of law school and ABA policy.

The learning objectives for the course are for you to understand the theory and doctrine of statutory interpretation so that you can formulate persuasive and lawyerly statutory construction arguments; for you to understand the key aspects of the legislative process, which is the source of statutes; and for you to be able to integrate the information you learn in this class with other practical and analytical skills necessary to the practice of law.

## Office Hours

You are welcome and indeed encouraged to come to my office (BLB, 1st floor) to discuss the material, especially if you are having difficulty. I have regular office hours, but you are welcome to come whenever I am here, which is most of the time.

## Reading Assignments

The materials in the books are drawn from many different subject areas, but the goal is not primarily to find the holdings of the cases – this class isn't about learning the doctrines of environmental law, civil rights, criminal law, etc. Rather, the point is to learn how judges reach their results through the process of statutory reasoning. So you should read the cases carefully with a focus on the reasoning, not so much on the “bottom line” outcome.

In the assignments below, “J&H” means the Jellum & Hricik casebook and “EFG” means the Eskridge, Frickey & Garrett mini-treatise.

The Jellum & Hricik casebook contains one or more practice problems in each chapter. *Where I want you to do a problem as part of your class preparation, I have so indicated below; otherwise you can skip the problems.*

*Assignments are subject to change.*

<u>Class #</u>	<u>Topic/Reading</u>
1	<i>Introduction.</i> J&H Introduction; EFG Ch. 1; <i>Wash. Post</i> article: “2 Little Letters Acquit Man Who Passed Stopped School Bus” (Dec. 1, 2010), <a href="http://www.washingtonpost.com/wp-dyn/content/article/2010/11/30/AR2010113006753.html">http://www.washingtonpost.com/wp-dyn/content/article/2010/11/30/AR2010113006753.html</a> .
<b>I. The Legislative Process</b>	
2	<i>Nuts and Bolts of the Legislative Process.</i> J&H pp. 3-18 (including problem 1-1); <i>San Jose Mercury News</i> article: “How Our Laws in California Are Really Made” (July 10, 2010), <a href="http://www.mercurynews.com/politics-government/ci_15452125">http://www.mercurynews.com/politics-government/ci_15452125</a> .
3 & 4	<i>Theories of the Legislative Process.</i> EFG pp. 19-26, 69-99. <sup>1</sup>

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<sup>1</sup> This is the reading assignment for both class 3 and class 4. Class 3 will focus mainly on the material up to p. 83, and class 4 will focus on the rest.

## II. Statutory Interpretation

### A. Approaches to statutory interpretation

- 5        *Approaches to Statutory Interpretation I: Intent and Purpose.*  
          J&H pp. 43-51;  
          Edited version of *Holy Trinity Church v. United States* (TWEN);  
          Edited version of *United Steelworkers v. Weber* (TWEN);  
          EFG pp. 219-30.
- 6        *Approaches to Statutory Interpretation II: Textualism.*  
          EFG pp. 231-45;  
          Michael Dorf article on legislative history, available at  
          <http://writ.news.findlaw.com/dorf/20100602.html>;  
          Watch 25 minutes of a Scalia/Breyer discussion on statutory interpretation,  
          <http://www.youtube.com/watch?v=-oIBM02Lw7w>. (This link takes  
          you to Part 1 of the debate. Links to the rest of the debate will be on  
          the right side of your screen. You should watch Parts 1 and 2 in full  
          and the first 5 mins. of Part 3, which is 25 minutes of video total. After  
          that, they start talking about constitutional interpretation).
- 7        *Approaches to Statutory Interpretation III: Other approaches (public choice,  
          pragmatic, etc.); continuing debates over interpretive approaches; legislative  
          attempts to direct an interpretive approach.*  
          EFG pp. 245-56;  
          J&H pp. 51-59;  
          Handout on state statutes regarding interpretive method (TWEN).

### B. Textual analysis

- 8        *Ordinary Meaning and Technical Meaning.*  
          J&H pp. 73-92 (including problem 3-1; read *Nix v. Hedden* but  
          otherwise don't worry about problem 3-2);  
          Texas Code Construction Act/Rules §§ 311.011, 312.002 (TWEN).<sup>2</sup>
- 9        *Punctuation and Grammar Rules.*  
          - Serial comma rule: Edited version of *People v. Walsh* (TWEN);  
          - Rule of the last antecedent: J&H pp. 131-37 (including problem 5-1);  
          - Other misc. rules: J&H pp. 144-48 (including problem 5-3); Texas Code  
          Construction Act/Rules §§ 311.012, 311.016, 312.003, 312.012.
- 10       *Textual Canons I.*  
          J&H pp. 149-64.

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<sup>2</sup> We will read various sections of this code in later assignments throughout the course.

- 11           *Textual Canons II.*  
              J&H pp. 164-83;  
              J&H p. 188 (read the introductory paragraphs on provisos on p.  
              188 but stop there).
- 12           *Textual Canons III.*  
              - The role of components of a bill: J&H pp. 197-205 (you can skip over  
              *Holy Trinity*, because we have already covered that case);  
              Texas Code Construction Act/Rules § 311.024.  
              - Weaving the textual canons together: Read edited version of *Babbitt v.*  
              *Sweet Home Chapter* (TWEN); bring to class – but don't read –  
              *Kasten v. Saint-Gobain* (TWEN).

- 13           *Departing from the Text: Absurdity and Scrivener's Error.*  
              J&H pp. 93, 102-20 (including problem 4-3).

### **C. Extrinsic aids to interpretation**

- 14           *Use of Legislative History.*  
              *Presentation on Researching Legislative History by Library Staff.*  
              EFG pp. 303-22.

- \* Visit by U.S. Court of Appeals for the Fifth Circuit \*  
              You will be required to attend some of the oral arguments.

- 15           *Statutory Stare Decisis and Legislative Acquiescence.*  
              J&H pp. 253-64, 270-76.

- 16           *The Role of the Common Law.*  
              J&H pp. 397-403, 405-412;  
              Texas Code Construction Act/Rules § 312.006;  
              Edited version of *Steak & Ale of Texas v. Borneman* (TWEN).

### **D. Other topics: substantive canons, conflicting statutes, federalism, etc.**

- 17           *Substantive Canons: The Avoidance Canon.*  
              - Introduction to substantive canons: EFG pp. 341-43, 392-97 (skim this  
              list of canons).  
              - Doctrine of Constitutional Avoidance: EFG pp. 360-67; J&H pp. 465-76  
              (including problem 16-1); Texas Code Construction Act/Rules  
              § 311.021.

- 18           *Rule of Lenity.*  
              EFG pp. 375-82;  
              Edited version of *United States v. Millis* (TWEN);  
              Problem 16-2 (J&H pp. 482-83);  
              Excerpts from Texas Penal Code and Code of Criminal Procedure  
              (TWEN).
- 19           *Federal Preemption of State Law.*  
              [Assignment to be announced.]
- 20           *Federalism Canons.*  
              Edited version of *Gregory v. Ashcroft* (TWEN);  
              EFG pp. 367-75;  
              Texas Code Construction Act/Rules § 311.034;  
              *Wrap-up on Canons.*  
              J&H Appendix A;  
              EFG pp. 382-87.
- 21           *Conflicting Statutes and Implied Repeal.*  
              J&H pp. 363-64, 367-79;  
              Texas Code Construction Act/Rules § 311.026.
- 22           *Effective Dates and Retroactivity.*  
              [Assignment to be announced.]

### **III. Legislative Drafting**

- 23           *Legislative Drafting Exercise*  
              [Assignment to be announced.]
- 24           *Presentation by Attorney from Texas Legislative Council*

### **IV. The Role of Administrative Agencies in Implementing Statutes**

Assignments will be distributed at a later date.

Topics to be covered include:

Agency Enforcement vs. Private Enforcement.  
Different Types of Agency Action (Rulemaking vs. Adjudication).  
Control of Agency Action: Presidential Control, Congressional Control,  
and Judicial Review.  
Deference to Agency Interpretations (*Chevron* doctrine).