

## **STATUTORY INTERPRETATION AND REGULATION**

### **Syllabus**

**Spring 2013**

**Prof. Bruhl (aabruhl@central.uh.edu)**

Welcome to Statutory Interpretation and Regulation. Much of the 1L curriculum focuses on common law rules extracted from judicial opinions. But for most lawyers today, dealing with statutes and administrative agency materials is more important. This course will introduce you to the legislative and regulatory processes that generate those sources of law, the theories and doctrines of statutory interpretation used in federal and state courts, and the methods of challenging agency action.

### **Course Materials**

The primary text for this course is Bressman, Rubin, and Stack, *The Regulatory State* (1st ed. 2010, Aspen/Wolters Kluwer; looseleaf version available at bookstore). That book will be supplemented by additional readings, such as recent court opinions or excerpts from other books; those supplemental materials will be distributed on TWEN or through my secretary.

### **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 textbook, additional materials I assign, handouts from class, your class notes, and your outline (including one prepared as part of an outline group), all in hardcopy form. During the exam you will not be permitted to use commercial outlines, electronic resources, or other materials you did not help create. If you have questions about what materials are permitted, ask me well before the exam.

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 arguments; for you to understand the methods for controlling agency action; for you to understand the key aspects of the legislative and regulatory processes; 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 this course are drawn from many different subject areas, including environmental law, vehicle safety, civil rights, and criminal law. The aim is not for you to learn the substantive law of those fields. Rather, you should read the cases and other materials with a focus on the reasoning and the principles they represent, not so much on the “bottom line” outcome.

“BRS” is the Bressman/Rubin/Stack casebook.

*Below are reading assignments for roughly the first half of the course. Remaining assignments will be distributed later.*

<u>Class #</u>	<u>Topic/Reading</u>
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### **I. Overview of Legislation and the Regulatory State**

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| 1 | <i>Introduction to the Course.</i><br>BRS Preface;<br>“No vehicles in the park” packet from Eskridge/Gluck/Nourse [available from my secretary].   |
| 2 | <i>The Legislative Process.</i><br>BRS pp. 89-106;<br><i>San Jose Mercury News</i> article: “How Our Laws in California Are Really Made” (July 10, 2010),<br><a href="http://www.mercurynews.com/politics-government/ci_15452125">http://www.mercurynews.com/politics-government/ci_15452125</a> . |
| 3 | <i>Becoming Familiar with Statutes.</i><br>BRS pp. 106-39.   |
| 4 | <i>Administrative Agencies: What They Are and What They Do.</i><br>BRS pp. 1-22.   |
| 5 | <i>Delegation of Authority to Agencies.</i><br>BRS pp. 139-56.   |

### **II. Statutory Interpretation**

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| 6 | <i>Overview of Statutory Interpretation: Tools and Theories.</i><br>BRS pp. 175-88;<br>Watch 25 minutes of a Scalia/Breyer discussion on statutory interpretation, <a href="http://www.youtube.com/watch?v=-oIBM02Lw7w">http://www.youtube.com/watch?v=-oIBM02Lw7w</a> . (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 minutes of Part 3, which is 25 minutes of video total. After that, they start talking about constitutional interpretation). |
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- 7           *Textual Analysis: Ordinary Meaning and Technical Meaning.*  
              BRS pp. 188-201;  
              Texas Code Construction Act/Rules §§ 311.011, 312.002 (TWEN).<sup>1</sup>
- 8           *Overview of Textual Canons (Babbitt v. Sweet Home Chapter).*  
              BRS pp. 201-13.
- 9           *Textual Canons, cont'd.*  
              BRS pp. 213-27;  
              *People v. Vasquez* (TWEN);  
              Texas Code Construction Act/Rules §§ 311.012, 311.016, 312.003,  
              312.012.
- 10          *Textual Canons, cont'd.*  
              BRS pp. 227-39;  
              *Commonwealth v. Smith* (TWEN);  
              Texas Code Construction Act/Rules §§ 311.024, 311.026.
- 11          *Substantive Canons: Rule of Lenity and Doctrine of Constitutional Avoidance.*  
              BRS pp. 239-55;  
              Texas Code Construction Act/Rules § 311.021;  
              Excerpts from Texas Penal Code and Code of Criminal Procedure  
              (TWEN).
- 12          *Substantive Canons, cont'd: Federalism Clear Statement Rules and Various  
Other Canons.*  
              BRS pp. 262-75;  
              Texas Code Construction Act/Rules §§ 311.022, 311.034.
- 13          *Preemption of State Law.*  
              *Wyeth v. Levine* (TWEN); *Villas at Parkside Partners v. City of Farmers  
Branch* (TWEN).
- 14          *Scrivener's Errors and Absurd Results;  
Debate over the Value of the Canons.*  
              BRS pp. 275-85;  
              *Amalg. Transit Union v. Laidlaw Transit Servs.* (TWEN).
- 15          *Statutory Context and Legislative History.*  
              BRS pp. 285-303;  
              Michael Dorf article on legislative history, available at  
              <http://writ.news.findlaw.com/dorf/20100602.html>;
- 16          *Changed Circumstances and Dynamic Interpretation.*  
              BRS pp. 317-30, 356-63.

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<sup>1</sup> We will read various sections of this code in later assignments throughout the course.

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*Topics for the rest of the semester, with specific reading assignments to be announced later:*

### **III. Implementation of Statutes by Agencies**

*Agency Rulemaking.*

*Agency Implementation: Scientific, Economic, and Political Analysis.*

*Other Forms of Agency Action (Adjudication & Guidance Documents).*

### **IV. Control of Agency Action**

*Presidential Control.*

*Congressional Control.*

*Judicial Review of Agency Policymaking: “Arbitrary and Capricious” Review.*

*Judicial Review of Agency Statutory Interpretation (Chevron doctrine).*