

STATUTORY INTERPRETATION & REGULATION

Syllabus—Spring 2018

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Course overview

This course addresses two related and foundational questions: What processes give rise to law? And what does written law mean? These are questions of enormous practical significance. While the first-year law curriculum focuses primarily on common-law doctrines extracted from judicial opinions, lawyers today spend far more time dealing with statutes (i.e., laws enacted by legislatures) and regulations (i.e., laws promulgated by administrative decisions). And because laws are often, in Justice Ginsburg's phrasing, "ambiguous or obscure," the application of these statutes requires lawyers to deploy a range of techniques designed to resolve competing interpretations of both statutes and regulations.

This course's learning outcomes are to gain a strong understanding of the legislative and administrative processes that generate statutes and regulations, the theories and doctrines of statutory interpretation used in federal and state courts, and how interpretation of statutes plays out in the regulatory state.

Class meetings

We will meet Tuesdays and Thursdays from 10.30am-11.50am in Room **TBA**.

Required text

The text for this course is Eskridge, Gluck & Nourse, *Statutes, Regulation, and Interpretation: Legislation and Administration in the Republic of Statutes* (2014). Please feel free to purchase any used copies of this book you find online, or via the exchange I created with UHLC students who are interested in selling their used copies.

All page numbers in the syllabus refer to this text, and are indicated as "EGN." Any other readings not included in the EGN book will be made available on TWEN.

Class discussion

The structure of class sessions will be dialogic (though not strictly Socratic), and your participation in the discussion is both required and encouraged. I expect students to carefully

prepare the assigned reading, which includes cases, statutory sections, law review articles, other academic articles, book chapters, and popular media.

To facilitate our class discussion, we will use discussion panels instead of an on-call system. I will arrange panels using Sign Up Genius shortly after our first class meeting, and will explain how this system works in our first class meeting. If you don't sign up by **Friday, January 19**, I will send a reminder to sign up, and after that will randomly assign you to under-enrolled panels by the end of the following day. Please sign up for only one class session.

The panels will correspond to substantive material, which will likely (though not certainly) be covered on the day indicated in the syllabus. When we cover the material for which you are responsible, you should have prepared it extensively and should expect to be called on. And while members of each panel will be my "go-to" people for that topic, I reserve the right to call on any member of the class. Students with outstanding participation beyond their panel assignment will be eligible for an upward adjustment of a partial letter grade (e.g., from B to B+). Being unprepared for your panel assignment will result in a grade reduction.

I will make available prior to each class meeting a series of questions that will guide our class discussions. These questions should serve as a useful guide for reading and preparing for class, and also give an indication of my expectation for what we will discuss in class.

EGN problems

On some days designated for course review, I have assigned particular problems from the EGN text as part or all of the class assignment. There will be no panels for those days, so I will expect everyone to prepare these problems carefully and be ready to discuss them. On regular class meeting days when there is panel, if the reading assignment includes any EGN problems, please be sure to prepare these as carefully as the rest of the reading.

Attendance

Attendance is mandatory, and will be taken every class through distribution of an attendance sheet. As long as you sign the attendance sheet personally before I give it to my assistant after class, you will be credited with attendance. This is true even if you arrive late.

If, however, you do not personally initial the sign-in sheet during or immediately after class, you will be considered absent. This is true even if (as may well be the case) the attendance sheet does not circulate to you during class, or if you simply forget to initial the sheet. I will always have the attendance sheet at the podium after class for anyone who has not had a chance to sign it, and I will wait outside class for several minutes for the same purpose.

UHLC's Honor Code applies to initialing the attendance sheet. Students may initial only their own names, not those of other students, and initialing the name of other students is

considered a violation of the Honor Code. Lack of preparation, early departure, late arrival, or inappropriate behavior may result in your being marked absent.

UHLC strictly applies the ABA requirement that no student can receive credit for a class from which they have been absent more than 20% of the time. If you are absent in excess of 20% of our course meetings, I will refer the matter to the academic dean, which may result in administrative withdrawal. Substantial absences accumulated short of the 20% threshold may serve as a basis for grade reduction (see below). It is the responsibility of students to keep track of their own absences.

Assessment

The grade for this course will be primarily determined by a three-hour, open book final examination. The examination will consist of both an essay and a multiple choice portion. The date of the exam is Tuesday, May 1, 2018 from 9am-12pm.

I may adjust your grade up or down in the event of extraordinarily good or poor class participation, as described above. I may adjust your grade down in the event of excessive absences, also as described above.

Laptops and other electronic devices

I do not ban laptops in class, but I am concerned about the negative impact they can have on learning and class atmosphere. If I call on you and you are obviously paying more attention to the internet than to our class discussion, it may result in your being assessed as unprepared. And if you find that a classmate's use of their laptop is especially distracting, please feel free to let me know about this concern.

Classes will be recorded as well as live-streamed, and the video recordings will be made available online. See the TWEN discussion boards for the link to the recordings. Given the availability of this resource, I ask that you not record the classes yourselves, unless necessary for a disability accommodation that we have discussed beforehand.

Office hours & open door policy

I hold office hours on Tuesdays from 1.30-3.30pm. During office hours, I will presumptively be available to talk to any students who drop by on an informal basis. If any student wants to reserve a specific fifteen-minute block to meet with me during that time, email me ahead of time and I will reserve that time to meet with that student exclusively.

I realize this time will not be free for all of you due to other conflicts. If you are unable to meet during my office hours, I welcome office meetings outside normal office hours, and to set one up simply email me and we'll work out a mutually agreeable time. I can also schedule virtual

meetings either by phone or Skype, including on weekends if necessary. If you want to set up one of the latter meetings, let me know and I will share my contact information with you once we have set a time.

Finally, I also have an open door policy, so that if my door is open, you should feel free to come on in to discuss issues related to class. If my door is closed, you can still knock to see if I am around, but chances are that I'll be unavailable. And as a general rule, I tend to be unavailable in the several hours before any class I teach in order to do final preparation. You are also most welcome ask me questions via email or post questions to the TWEN discussion boards.

TWEN

I will maintain a course TWEN page. It will host course documents (latest updated syllabus, PowerPoint slides from class, problem sets) and provide a forum to which you are all invited to post to discuss procedural and substantive issues from the class. You are responsible for remaining up to date on any information posted to TWEN, so be sure to check it frequently, and consider setting up email alerts for new postings to the site.

Professionalism and expectations

I expect that you meet the basic expectations of any professional during our class meetings: Show up on time; stay physically and mentally present throughout class; and arrive prepared when necessary.

I understand that over the course of the term, unexpected issues will arise that may very rarely make it impossible to meet these expectations. If reasons beyond your control require you to arrive late or leave early on occasion, please do so respectfully so the rest of the class is not disrupted.

Finally, I will not strictly enforce these expectations, but I do reserve the right to raise the issue with you and/or reduce your grade if there are repeated violations or if class is disrupted as a result.

Teaching assistant

Peyton Craig, an outstanding student from my spring 2016 StatReg class, has generously agreed to be the teaching assistant for our course. Peyton will also hold regular office hours [time/place TBA]. Peyton may also help to host exam reviews and other sessions throughout the semester.

COURSE TOPICS AND READING

I. Introduction to Statutes and the Regulatory State

Date	Topic	Reading
1.16	Basic principles of statutes and regulations	EGN 1-27 (Problems 1, 2, 4)
1.18	Reading statutes I	No reading
1.23	Reading statutes II	No reading

II. The Legislative Process

Date	Topic	Reading
1.25	How the legislative process works	EGN 33-58
1.30	Finishing legislative mechanics; theories of the legislative process	EGN 58-79
2.1	Guest speaker: Legislative director Donna Warndorf	N/A
2.6	Section I-II review	EGN 53, 80 (Problems 1-1, 1-2, 1-3)

III. Approaches to Statutory Interpretation

Date	Topic	Reading
2.8	Legislative intent	EGN 299-318

III. Approaches to Statutory Interpretation (cont'd)

Date	Topic	Reading
2.13	Legislative purpose	EGN 328-48
2.15	Plain meaning and the new textualism	EGN 349-64; 397-409
2.20	Pragmatism	EGN 423-45
2.22	Section III review	EGN 333, 386 (Prob. 4-2, 4-3) Handouts

IV. Doctrines of Statutory Interpretation

Date	Topic	Reading
2.27	Textual canons I: word meaning and grammar	EGN 447-64
3.1	Textual canons II: the whole act rule	EGN 464-90
3.6	Guest speakers: Justice Busby & Judge Rosenthal	N/A
3.8	Substantive canons: the rule of lenity, constitutional avoidance	EGN 490-510; 512-17

IV. Doctrines of Statutory Interpretation (cont'd)

Date	Topic	Reading
3.20	Critiques of canons; continuity-based and coherence canons	EGN 560-75
3.22	Statutory interpretation in contemporary context	<i>King</i> (TWEN)
3.27	Part IV review	Assigned problems

V. Implementation of Statutes by Agencies

Date	Topic	Reading
3.29	Agency rulemaking; presidential control of rulemaking via OMB; cost-benefit analysis	EGN 713-35
4.3	Judicial review of agency policymaking (“arbitrary and capricious” review)	EGN 735-56
4.5	Finishing arbitrary & capricious review; adjudication v. rulemaking; judicial review of adjudication	EGN 756-61; 777-800
4.10	Informal adjudications; agency inaction	EGN 801-37

V. Implementation of Statutes by Agencies (cont'd)

Date	Topic	Reading
4.12	Agency guidance documents	EGN 838-52
4.17	<i>Chevron</i> and judicial deference to agency interpretations	EGN 855-57; 860-70; 872-76
4.19	Finishing <i>Chevron</i> ; the <i>Mead</i> doctrine	EGN 876-907
4.24	Agency deference & <i>stare decisis</i>	EGN 912-24
4.26	Part V review	Assigned problems