

## Hester, Tracy

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**To:** C\_Law\_Class\_SP20-HESTER-Statutory-Interpretation-and-Regulation  
**Cc:** Hicks, Justin K  
**Subject:** Statutory Interpretation - Emailed Questions

I hope all of you are staying safe, and feeling prepared for your final exams!

Thanks to all of you who sent in questions in review for the Statutory Interpretation exam. As promised, I've collated the questions and provided answers below. I'll also post them to the website.

Please remember that you can start your three-hour final exam session at your convenience, but the deadline to complete your exam is Saturday, May 2.

Best wishes, and have a great summer!

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1. *I now feel more comfortable with Chevron and Mead. However, I am very confused about where those play a part in Auer and Kisor. Where does a court start using Chevron/Mead when it is interpreting an agency's own interpretation of its regulation?*

*Kisor* did not overrule *Auer*, but Justice Kagan's opinion did limit *Auer* by importing elements of the *Chevron* analytical framework. So you'll once again start with the court scrutinizing the regulatory language for ambiguity – and if there's none, then the court determines the meaning of the regulation. If the regulation's ambiguity survives this gauntlet, then the court will still weigh whether the agency's interpretation is reasonable. The Court also noted that the agency must actually exercise its statutory authority when writing the regulations (e.g., *Mead*), and the regulations must lie within an area of the agency's actual expertise (e.g., *Gonzalez v. Oregon*). While *Kisor* therefore did not expressly strike down *Auer* and require application of the *Chevron* framework to an agency's interpretations of its own regulations, the framework is now strikingly similar.

2. *I was wondering whether we needed to type our exam answer in the same exam document that we have downloaded or if our answer should be a separate doc or if this even matters.*

The final exam will be in .pdf format. Just type your own answer with the word processing software of your choice. Include your multiple-choice answers in the same document with your essay answer.

3. *Thanks for the review session. Was the session by chance recorded?*

Yes, we recorded it, and there should now be a Zoomlink session on the class website.

4. *Could you do a quick run-through of all the important cases we should focus our efforts on for the exam? I wrote down a total of nine cases from when you listed them last week, but I would immensely appreciate a quick refresher of them.*

There's no canonical list. In short, there are certain cases that effectively embody the legal principle that you cite them for: *Chevron*, *Bob Jones*, *TVA v. Hill*, *Mead*, *Skidmore*, *Auer*, *Kisor*, *Gregory v. Ashcroft*, *Gonzalez v. Oregon*, *Brand X*. It

will save you time and allow you to shortcut a lengthy description to say, for example, “*Chevron* deference” or “*Gregory v. Ashcroft*’s federal clear statement principle.” But if you get the concept correct, I won’t take off points for not citing the corollary case (unless it’s really, really obvious).

5. *Would it be possible for you to just give us some sort of idea of what you expect us to demonstrate on the test to obtain a passing grade?*

Bottom line – I won’t change my grading expectations. If you would have gotten a C-, D+, or D-, it’s still a pass in my book. But please give your best effort, and don’t disrespect my intelligence – otherwise, you’re shortchanging yourself and wasting effort.