

Legislation and Statutory Interpretation
Law 266-001 (Day) & 266-003 (Evening)
Spring 2016

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Office hours Monday 5-6pm, or by appointment

Interpretive questions are often at the heart of difficult legal questions. Lawyers regularly face problems with the meaning of words, and in particular, the meaning of statutory text. This course will begin with an introduction to the legislative process and an overview of various descriptive and normative theories of legislation. The materials focus on judicial interpretation, but will also introduce problems of interpretation in the administrative state. The class aims to combine the theory and practical art of statutory interpretation.

Required reading:

ESKRIDGE, FRICKEY, GARRETT & BRUDNEY, *CASES AND MATERIALS ON LEGISLATION AND REGULATION* (West 5th ed. 2014) (“EFGB”)

STEPHEN BREYER, *ACTIVE LIBERTY* (2006)

ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012)

Law review articles on the syllabus can be printed from Westlaw or Heinonline.

Please sign-up for TWEN as I will email students through this site with changes and updates to the reading assignments.

Recommended readings: I will occasionally suggest readings to supplement the coursework and will provide citations in class or post them on TWEN. In addition, a few relevant books have been placed on reserve in the library.

Grading: Your final grade will be based primarily on one final exam (75%). The other 25% will be the average of several short in-class quizzes. On days chosen for quizzes, the quiz will begin promptly at the start of class. The quizzes will be closed book and are designed to test your understanding of the reading assignment. We will discuss the answers to the quiz immediately after it is completed and turned in. If you complete all of the quizzes, I will drop your lowest score. All students are under the honor code not to share the quiz questions or answers with other students.

At my discretion, your final grade may be increased one-half letter grade for exceptional participation or decreased one-half letter grade for failure to prepare.

Class preparation: Thorough preparation for class is required and participation is strongly encouraged. If you are unprepared for class, you must notify me in advance either by email or in person before class begins. You are responsible for complying with the attendance requirements of the Academic Regulations.

Note: No sound or video recording devices of any kind may be used in class.

Reading Assignments

January 11—Introduction to legislation

Required background: EFGB 21-34
EFGB 34-37
EFGB 61-69,79-106

January 18—No class: Martin Luther King Day

January 25—Theories of legislation and government design

Federalist No. 10 and No. 51, available at http://avalon.law.yale.edu/subject_menus/fed.asp
EFGB 38-60

February 1—Problem of legislative meaning

Frank H. Easterbrook, *Statutes' Domains*, 50 U. CHI. L. REV. 533 (1983)
William N. Eskridge, *Gadamer/Statutory Interpretation*, 90 COLUM. L. REV. 609, 609-24 & 632-37 (1990)
SCALIA & GARNER, READING LAW 1-46

February 8—Doctrines of statutory interpretation: Linguistic canons

EFGB 643-652, 657-688
SCALIA & GARNER, READING LAW 167-188, 195-213

February 15—Substantive canons and a critique

EFGB 690-707, 712-719, 725-30, 749-761
SCALIA & GARNER, READING LAW 247-51, 296-302
Recommended: EFGB 749-61

February 22—Stare decisis and legislative responses

EFGB 443-465
EFGB 853-866 [Read *Bob Jones*, EFGB 530-543]
SCALIA & GARNER, READING LAW 252-260

February 29—Theories of statutory interpretation—intentionalism, legal process

EFGB 477-497, 503-514
BREYER, ACTIVE LIBERTY 15-34, 85-101

March 7—No class: Spring recess

March 14—Dynamic statutory interpretation, pragmatism

EFGB 514-529, 543-549, 625-31

William N. Eskridge, *Dynamic Statutory Interpretation*, 135 U. PA. L. REV. 1479 (1987)
[excerpts]

March 21—New textualism

EFGB 551-585

SCALIA & GARNER, *READING LAW* 343-368, 391-398

March 28—Textualism applied and economic theories

EFGB 593-609, 613-624

Frank H. Easterbrook, *Text, History, and Structure in Statutory Interpretation*, 17 HARV. J. L. PUB. POL'Y 61 (1994)

April 4—Use and abuse of legislative history

EFGB 776-777

EFGB 786-815

EFGB 829-832, 846-853

April 11—Legislative history, cont.

EFGB 868-890

Farber & Frickey, *Legislative Intent and Public Choice*, 74 VA. L. REV. 423 (1988)
(introduction and 437-470)

SCALIA & GARNER, *READING LAW* 369-390

April 18—Judicial review of agency interpretations

EFGB 1079-1107

April 21—Issues in agency interpretation

EFGB 1112-1137, 1156-1165

Review session-date tbd

April 26 at 6PM – Final exam

Statutory interpretation is the act or process of interpreting and applying legislation. It is the principles developed by courts for interpreting statutes. This is also referred to as statutory construction. Sometimes the words of a statute have a plain and straightforward meaning. But in most cases, there is some ambiguity or vagueness in the words of the statute which needs to be resolved by the judge. Various tools and methods of statutory interpretation, including traditional canons of statutory interpretation, legislative history, and purpose are used by the judges for finding the meanin