

Statutory Interpretation Syllabus v. 0.9 (7/25/18)
Fall 2018
Prof. Mark Fenster
Law 6524/ 2 credit hours

Professor Mark Fenster
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Holland Hall 376
Class: T & W, 9-9:50, Room 345
Office hours: T & W 10-11:30, & by appointment.

Materials

- 1) LINDA D. JELLUM & DAVID CHARLES HRICK, MODERN STATUTORY INTERPRETATION: PROBLEMS, THEORIES, AND LAWYERING STRATEGIES (2d ed. 2009).
- 2) Course handouts and periodic supplements, generally available at course TWEN site.

Course Objectives

The law is increasingly defined by legislative enactments. Legislators, legislative staff, and lobbyists spend much of their time struggling to negotiate and draft statutes, which judges, administrators, and attorneys then spend a significant amount of time attempting to interpret. This course focuses especially on statutory interpretation by courts, but also covers the process of statutory enactment by legislatures and statutory implementation and enforcement by executive branches. The course materials include statutes, appellate decisions, and commentary from the relevant legal and political science literature. Students will gain significant experience reading statutes closely, will understand how and why statutes are imperfectly drafted and how they are interpreted by attorneys, administrators, legislators, and judges, and will learn how to formulate and develop arguments in support of or against particular interpretations.

Evaluation

There will be a three-hour final exam for this course that is scheduled (as of the date of this syllabus), on Thursday, Dec. 6, at 8:30. The final exam will be open-book (you may bring any assigned material and any material you have created), and will be based on the lectures, class discussions, and assigned materials (whether discussed in class or not). The exam will be administered via Examsoft.

In-class participation is a vital aspect of this course, and may be factored into the final calculation of your grade. The first two days of class, I will cold call on any student in the class. You may pass, but I will call on you first the next day of class. After the second day of class, when I circulate a seating chart, I will divide the class into 4-6 sections, depending on the final enrollment number. I will assign one section in advance to each case, and will expect that those pre-assigned for cases will engage in serious preparation and have a thoroughgoing knowledge of the facts, statutes, result, and reasoning in the case they have been assigned.

Student Learning Outcomes

At the conclusion of this course, students who complete the assignments and attend class can expect to have acquired the following knowledge and skills related to statutory interpretation.

Knowledge

Students identify and describe basic principles of statutory interpretation.

- Students identify and describe the legislative process in a constitutional, bicameral system, as well as the text and components of bills and the resulting statutes, and how the process creates “legislative history” that is available from various different sources.

- Students identify and describe the basic schools of textual interpretation and the interpretive tools they bring to bear on statutory text, as well as the bases of their disagreement, and learn to apply and critique them.
- Students identify and describe the most prominent interpretive canons and how they both resolve and create textual ambiguity.
- Students identify and describe how courts treat judicial interpretation of similar statutes in other jurisdictions, and how courts defer to administrative agencies (or refuse to do so) when the latter interpret statutes.

Skills

- The single most important skill the course teaches is the close reading of statutory language in isolation and context.
- Students identify the structure of statutory texts and the relationship between one provision and the entirety of a statute.
- Students develop the skill to apply different interpretive approaches to assist and advocate on behalf of a client.
- Students learn and assess the context in which statutory interpretation occurs—from legislatures in drafting a statute, to administrative agencies and courts (and often both) attempting to enforce it, to private parties attempting to comply with them.
- Students employ these basic skills through problems and cases that range across substantive subject areas, including criminal law, tax, family law, administrative law, and the like.

Class Attendance Policy

I will have a class list at the front of the classroom at the beginning of each period; you should initial your name in the appropriate box if you are familiar with the readings under discussion and prepared to engage in a discussion if I call on you. If you do *not* sign in for 6 or more of our regularly scheduled classes, your grade for the semester will be lowered. Conversely, I reserve the right to increase your final grade for superior classroom participation, both when I call on you and for voluntary participation.

To be “prepared” you must have read the assignment and have made a good faith effort to think through the materials. (Obviously, those who have prepared for the cases they were assigned are prepared and should sign in.) You do not have to have perfect answers to the questions I might pose, but you must be willing to discuss the assigned reading (and prior readings) and work through the questions with the class. If you do sign up as prepared, I call on you, and in my opinion you are not prepared, I reserve the right to lower your final grade an additional point. Also, if you have someone else sign you in and you are not present, I will consider it a violation of the honor code as well as dock your final grade. Please sign up before class begins.

You may not sign in if you arrive late to class.

Use of Computers in Class

I expect and encourage the use of computers in class for activities related to class, including taking notes and referring to readings from TWEN. I will not, however, tolerate the use of computers for activities unrelated to the class (e.g., e-mail, instant messaging, web surfing, game playing, shopping). I reserve the right to call on people whom I sense are engaging in unauthorized computer use during class, and to lower their final grades, *even if they have not signed in as present and prepared.*

Class Cancellation Policy

At present, I do not foresee cancelling class this semester. If I find that I must cancel a class, I will schedule a makeup class at a mutually agreeable time. I will endeavor to give as much warning as possible about a

cancellation, and will not take attendance at any full make-up classes.

Policy Related to Make-up Exams or Other Work

The law school policy on delay in taking exams can be found at:

<http://www.law.ufl.edu/students/policies.shtml#12>.

University Policy on Academic Misconduct

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

Statement Related to Accommodations for Students with Disabilities

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation.

Online Course Evaluation

Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

Information on Levin College of Law Grading Policies

The Levin College of Law grading policy is available at: <http://www.law.ufl.edu/students/policies.shtml#9>.

Workload/ Class Preparation

It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

Readings*

<u>Class #</u>	<u>Date</u>	<u>Assignment</u>	<u>Topic</u>
<u>Introduction</u>			
1.	8/14	Available from TWEN	Bond v. U.S., 134 S.Ct. 2077 (2014): only majority and Scalia dissent
<u>Legislative Process</u>			
2.	8/15	<ul style="list-style-type: none"> • 3-12, and • Read one or both of the following: <ul style="list-style-type: none"> • The Senate’s account of the legislative process (http://www.senate.gov/legislative/common/briefing/Senate_legislative_process.htm) or • the House’s account (an edited version of which is available in the Course Materials page of the TWEN site. 	Legislative Process 1
3.	8/21	<ul style="list-style-type: none"> • 19-25, 30-31 (omit <i>Lutz v. Foran</i>) • <i>State v. Thompson</i>, 750 So. 2d 643 (Fla. 1999) • “Theories of Legislation and the Legislative Process,” in Course Materials page. 	Legislative Process 2
<u>Overview of Interpretation</u>			
4.	8/22	33-51	Sources and Approaches
5.	8/28	51-65	Debates and Disagreements
6.	8/29	65-72	Case of the Speluncean Explorers

Statutory Text and Its Limits

7.	9/4	73-82, 84-87, <i>Cocchiarella v. Driggs</i>	Plain and Technical Meanings
8.	9/5	93-109	Absurdity & Ambiguity
9.	9/11	115-119, 126-136, <i>Ward v. State</i>	Ambiguity (continued) & Punctuation

Textual Canons

10.	9/12	137-138, 143-144 (problem 5-2), 149-160 (exclude problem 6-1)	Grammar & Canons 1
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* This schedule is subject to change, with reasonable notice, based on the availability of guest speakers.

11.	9/18	161-172, <i>Gulfstream Park Racing v. Tampa Bay Downs</i> , 948 S.2d 599 (Fla. 2006)	Canons 2
12.	9/19	172-181, 183 n.3-184 (Problem 6-3); <i>PW Ventures v. Nichols</i> , 533 S.2d 281 (Fla. 1988)	Canons 3
13.	9/25	<i>Yates v. US</i> , 135 S.Ct. 1074 (2015)	Visit of Judge John Badalamenti
14.	9/26	184-188, 191-195, 211-216	Canons 4, Definitions

<u>Legislative History/ Acquiescence</u>			
15.	10/2	221-234	Legislative History (1)
16.	10/3	238-252	Legislative History (2)
17.	10/9	TBA	Visit of Rep. Ben Diamond
18.	10/10	253-276 (<i>excluding</i> Problem 9-1)	Post-Interpretation Legislative Silence (1)
19.	10/16	276-288 (<i>including</i> Problem 9-1)	Post-Interpretation Legislative Silence (2)

<u>Conflicts of Jurisdiction/ Statutes of Legal Hierarchy</u>			
20.	10/17	317-335	Judicial Interpretations from Other Jurisdictions
21.	10/23	397-406, <i>Golf Channel v. Jenkins</i> , 752 S.2d 561 (Fla. 2000), 412 (Problem 14-2)	Statutes in Derogation of Common Law & Remedial Statutes

<u>The Role of (Federal) Administrative Agencies</u>			
22.	10/24	507-514, 525-533	“ <i>Chevron</i> Deference”
23.	10/30	<i>Michigan v. EPA</i> , 135 S.Ct. 2699 (2015)	<i>Chevron</i> ’s application
24.	10/31	533-542	<i>Chevron</i> and the agency-judicial relationship

<u>Review/ Application (subject to change)</u>			
25.	11/6	Recent FL SC decision	<i>Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee</i> , 189 So.3d 120 (Fla. 2016)
26.	11/7	Current USSC case	<i>Mount Lemmon Fire District v. Guido</i> (tentative)

Exam Review

27.	11/13	Course Materials	Review Problem
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