

**Legislation  
Law 266-001  
Spring 2009  
Tuesday 2-3:50**

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Office hours: Tuesday 4-5:30 or by appointment

Interpretive questions are often at the heart of difficult legal problems. Most of the work done by contemporary lawyers involves drafting, interpreting or challenging statutes, which makes it essential to learn how to read and understand statutes. This course will begin with an introduction to the legislative process and an overview of various descriptive and normative theories of legislation. This will establish the institutional groundwork for the main study of the class – the theory and practical art of statutory interpretation.

**Required reading:**

Eskridge, Frickey & Garrett, *Cases and Materials on Legislation* (West 4<sup>th</sup> ed. 2007) (“EFG”)

*Packet from University Readers.* Packets can be ordered online at [www.universityreaders.com](http://www.universityreaders.com), or by calling 1-800-200-3908.

Law review articles will be linked from the syllabus on TWEN and 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.

**Optional/recommended readings:** I will occasionally suggest readings to supplement the coursework. There is a rich academic literature in this area that may enhance your understanding of the subject. These readings will be mentioned in class or posted on TWEN.

**Requirements:** Final essay exam that will be open-book and open-notes. Class participation is strongly encouraged and will be a component of the final grade.

## **Reading Assignments**

### **January 13 – Introduction to legislation**

Background: EFG 24-37

EFG 38-47

EFG 82-121

### **January 20 – Theories of legislation**

Background: Federalist No. 10, Federalist No. 51

EFG 47-82

### **January 27 – Stare decisis and retroactivity**

EFG 630-646

EFG 649-688

### **February 3 – Theories of statutory interpretation**

EFG 689-721

Stephen Breyer, *Active Liberty* 15-20, 85-101 (packet)

### **February 10 – Theories of statutory interpretation, cont.**

EFG 721-729

EFG 732-749

William N. Eskridge, *Dynamic Statutory Interpretation*, Chapter 4 (packet)

### **February 17 – New textualism**

EFG 749-778

Antonin Scalia, *A Matter of Interpretation* (excerpts) (packet)

Frank H. Easterbrook, *Text, History, and Structure in Statutory Interpretation*, 17 Harv.

J. L. Pub. Pol'y 61 (1994)

### **February 24 – Textualism applied and some economic theories**

EFG 781-830

### **March 3 – Use and abuse of legislative history**

EFG 971-973

EFG 981-1026

### **March 10 – Spring recess: No class**

### **March 17 – Types of legislative history**

EFG 1035-1066

EFG 1081-1100

**March 24 – Legislative history debates**

Frank H. Easterbrook, *Statutes' Domains*, 50 U. Chi. L. Rev. 533, 533-552 (1983)

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

John Manning, *Textualism as a Nondelegation Doctrine*, 97 Colum. L. Rev. 673 (1997)  
(introduction and 706-739)

Richard Posner, *Problems of Jurisprudence* (Chapters 9-10) (packet)

**March 31 – Canons of statutory interpretation**

EFG 847-880

**April 7 – Substantive canons and a critique**

EFG 880-884

EFG 907-922

EFG 941-955

**April 14 – Judicial review of agency interpretations**

EFG 1128-1139

EFG 1185-1224

**April 21 – Various *Chevron* issues**

EFG 1227-1241

EFG 1245-1258

EFG 1270-1283

Review session: date tbd

**May 5 – Final exam**