

LEGISLATION AND STATUTORY INTERPRETATION

Law 266 (001) – Professor Rabkin – Fall 2022

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Office Hours: 322 Hazel Hall, Wed. 4:00 – 5:30 PM

All page references to Eskridge, Frickey, Garrett, *CASES AND MATERIALS ON STATUTORY INTERPRETATION* (West, 2012); all other readings on TWEN

Learning Outcomes: Familiarity with accepted canons of interpretation; understanding of competing approaches to statutory interpretation; awareness of how competing interpretive methods reflect differing philosophies of law

Aug 23

Introduction: Law and Consequences

S.C. AG's Office on Law of State Seal

85 - 102: *Steelworkers v. Weber* (or on TWEN)

King v. Burwell; *Bostock v. Clayton County*

Aug 30

Classical Theories of Law and Courts

Thomas Aquinas, Questions on Law (*Summa* excerpts)

Thomas Hobbes, *Leviathan*, Ch. 13, 17, 26 (excerpts)

John Austin, *Province of Jurisprudence Determined* (excerpts)

John Locke, *Second Treatise*, §134-142, 199, 201 - 204

William Blackstone, *Commentaries*, Vol. I, Intro, Sec. 2

Sept 6

Older American Theories

The Federalist, No. 78; MT, "On Postage Rates"

Joseph Story, *Discourse on Inauguration as Dane Professor*

Riggs v. Palmer

135 - 152 (esp. *Holy Trinity Church, Caminetti v. U.S.*) (or TWEN)

Sept 13

"Legal Process" Theory and the Textualist Challenge

164 - 183 (esp. *Shine, Locke, Jacob*)

197 - 203 (*TVA v. Hill*); 214 - 31 (*Bock Laundry*)

P.G.A. Tour v. Martin

24 - 38 ("How a Bill Becomes a Federal Law")

Scalia, *Matter of Interpretation* (excerpt)

Sept 20	Textual Canons 48 - 78 ("Approaches to Legislation" - skim) 326 – 362 (esp. "No Vehicles," <i>Nix v. Hedden</i> , <i>Jarecki</i> , <i>Babbit</i>) 259 - 73 (<i>U.S. v. Marshall</i>) 851 - 855 (textual canons)
Sept 27	Foundational Canons Int'l Law: <i>Charming Betsy</i> , <i>Morrison v. Nat'l Austr. Bank</i> Lenity: 366 –80 (<i>McBoyle</i> , <i>Muscarello</i>) <i>Judgment of Nuremberg Tribunal</i> G. Radbruch, "Statutory Lawlessness"
Oct 4	Substantive Canons and Controversy Avoidance: 391 - 404 (<i>Witkovich</i> , <i>Catholic Bishop</i>) Federalism: 406 - 26 (<i>Ashcroft</i> , <i>BFP</i>) 426 – 38, 439 - 42 (Llewellyn, Sunstein, Minn. Statute) <i>The Federalist</i> No. 40, No. 41 (last 5 ¶s)
Oct 18	Extrinsic Sources – Legislative History 459 – 79 (<i>Leo Sheep</i> , <i>Blanchard</i>) 486 - 92 (<i>Carr</i>); 497 - 510 (<i>Pepper</i>); 512 - 17 (<i>Kosak</i>) 858 - 859 (extrinsic legislative sources)
Oct 25	Extrinsic Sources – Background Law 443 - 458 (<i>Smith v. Wade</i>); 115 - 124 (<i>Flood v. Kuhn</i>) 524 - 40 (<i>Montana Wilderness</i> , <i>MW II</i>) 856 - 57 (continuity); 859 - 64 (Const. based canons) 864 – 867 (common law canons)
Nov 1	Extrinsic Sources – Parallel Provisions 564 – 887 (<i>Cartledge</i> , <i>Lorillard</i> , <i>Ridgway</i> , <i>Zerbe</i> , <i>Morton</i>) 865 – 867 (Statute-based, General, Process Canons) Vienna Conv. on the Law of Treaties, Arts. 18, 19, 31, 32 <i>Roper v. Simmons</i> How to Analyze a Statute (past exam hypothetical)

- Nov 8 **Statutory Implementation in the Administrative State**
644 – 654 (skim); 667 - 81, 686 - 93 (skim);
655 - 664 (*Cort, Cannon, Thompson, Franklin, Davis*)
Trump v. Hawaii
- Nov 15 **Judicial Deference to Agency Legal Interpretations**
715 – 753 (*GE v. Gilbert, Chevron, MCI, Mead*)
282 – 292 (*FDA v. Brown & Williamson*)
867 - 70 (Specific Statutory Subject Areas)
- Nov 22 **Exceptions to Judicial Deference**
755 – 788 (charts, *Gonzalez, Coeur Alaska*)
804 – 815 (*Geier, Wyeth*)
817 – 822 (*Hamdan*); 823 - 31 (chart)
Encino v. Navarro; Dept. of Commerce v. N.Y.
Kisor v. Wilkie; W. Va. V. EPA