

Statutory Interpretation, Law 6524 (2 credits)
Spring 2023
Syllabus v. 1.0 (1/3/23)

Professor Mark Fenster
fenster@law.ufl.edu and 273-0962
Office: Holland Hall 371

Class meetings:

- T & Th, 9:00-9:55 HH 345

Office hours:

- Tu 4:00-5:00 (online) at <https://ufl.zoom.us/j/3415941766>
- W 3:00-4:00 (in person) &
- by appointment.

Materials

- 1) HILLEL Y. LEVIN, STATUTORY INTERPRETATION: A PRACTICAL LAWYERING COURSE 3d ed. (West Academic Publishing, 2020).
- 2) Course handouts and periodic supplements, generally available at the course's Canvas site.

Course Objectives and Student Learning Outcomes: 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 on how and why legislation is enacted and on statutory interpretation by courts and 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. They will understand how and why statutes are imperfectly drafted and how they are interpreted by attorneys, administrators, legislators, and judges, and they will learn how to formulate and develop arguments in support of or against particular language and interpretations.

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.

Knowledges:

The legislative process, legislation's role in our legal system, and 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 processes of editing, negotiating, and drafting statutes.
- Students identify and describe the basic theories and 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 and why administrative agencies interpret statutes, and how and why courts defer to administrative agencies (or refuse to do so) when the latter interpret statutes.

Skills:
Legislative drafting and statutory interpretation

- The single most important skill the course teaches is the close reading of statutory language in isolation and context.
- Students will also learn the basic concepts and processes of drafting statutory language.
- 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.

Office Hours: My office hours are listed above. I am teaching two courses this semester and will share my office hours with both sets of students. My other course is Contracts and 1Ls tend to use office hours more than 2Ls and 3Ls. Normally, I will invite multiple students from the same course to share their time to facilitate discussion and use our time more efficiently. Tuesday office hours will be via Zoom only. Depending on the state of COVID-19 spread, I may hold in-person office hours outside or request that everyone attending wear masks. I encourage you to use appointments outside of office hours to discuss matters unrelated to the class materials. I will hold individual appointments outside of office hours in-person or remote by agreement.

In Person/ Zoom: Although most class periods this semester will be in-person, I will occasionally hold classes on Zoom, especially when we have visiting speakers. I have not yet decided how I will decide which class will be held in each modality, but I will endeavor to make that decision at least a week in advance. Certain extenuating circumstances about the progress of infection on campus, in the city, and among us may well force us to retreat to Zoom (hint: get yourself vaccinated if you aren't already!). *Note: Unless you receive permission from me prior to class, I will expect that you will leave your camera on if you are joining the class via Zoom, and I will mark absent those who fail to do so.*

Common Courtesy (late arrivals, getting up during class): Please do not arrive late to class or leave class early absent extenuating circumstances. Please be certain to obtain essential items or relieve yourself before class begins. If you think you will need to get up on a regular basis during class, *including because you anticipate that you will need to go to the bathroom*, please choose a seat near one of the exits. I reserve the right to deduct points from your final grade if you engage in behavior that significantly disrupts the learning environment for your classmates. I also reserve the right to lock the doors at the beginning of class and to remove anyone from class who is being disruptive.

Class Preparation: You should arrive in class having read the materials closely. You should expect to spend, on average, approximately two hours preparing for every hour of class. Reading assignments are posted below and I will announce specific class assignments in class and posted on the Canvas page. You should expect to have about 60 pages of reading each week.

Attendance/ Participation: Attendance is required, as per the requirements of both the ABA and the Law School. Each day, I will have at the front of the classroom an attendance chart for you to initial before class begins, and will employ a similar system for classes held remotely.

- **If you are “prepared,” I can cold-call on you.** Before I may not review the attendance chart before class, feel free (and without shame) to respond to a cold-call by saying that you did not sign in that day.
- To be “prepared” you must have read the assignment and have made a good faith effort to think through the materials so that I may cold-call on you. You do not have to have perfect answers to the questions we might pose, but you must be willing to discuss the assigned reading (and prior readings) and work through the questions with the class. If I call on you and I believe you are not prepared even though you have signed in as prepared, I reserve the right to lower your final grade. Also, I will consider it a violation of the honor code if you have someone else sign you in and you are not present, and I reserve the right to dock your final grade.
- **If you are not “present and prepared” for 6 or more of our regularly scheduled classes,** your grade for the semester will be adversely affected. Conversely, I reserve the right to increase your final grade for superior classroom participation, both when I call on you and for voluntary participation.
- ***You may not sign in as present and prepared if you arrive late for class or if you forget to sign in before class.***
- If you have a medical reason for missing class, you must contact me ASAP before or soon after class and provide documentation for your absence to be excused. To be excused from class for religious holidays, students must contact me beforehand by e-mail.

Seating: I will circulate a seating chart on the second class meeting. You must occupy the same seat each day. It will help me learn your names—a skill with which I was not born, sadly—and provide some order to the class sessions.

Evaluation, Class Participation: There will be a three-hour final exam for this course that is scheduled (as of the date of this syllabus), on Thursday, May 11. 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 the online exam-taking platform that the law school utilizes. The exam will be worth 100% of your grade and evaluated anonymously, though can be affected by in-class participation.

During the first two days of class, I will cold call on any student in the class. You may pass, but you will be marked absent and I will call on you first the next day of class. **After the first week of class, I will divide the class into two sections, one of which will be on-call Tuesday and the other on Thursday.** I will expect that those on call will engage in serious preparation and have a thoroughgoing knowledge of the facts, statutes, result, and reasoning in the case they have been assigned. I reserve the right to change this approach to cold-calling as circumstances develop over the course of the term.

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 Canvas. 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

I may have to cancel class during the term. If I do, I will plan make-up classes later in the semester that will likely be held on Zoom. I will not take attendance for make-up classes and will make certain they are recorded.

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>

Intellectual Viewpoint Diversity Act: Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

Preferred Name and Pronouns: It is important to the learning environment that you feel welcome and safe in this class and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. You may also change your “Display Name” in Canvas. Canvas uses the “Display Name” as set in myUFL. The Display Name is what you want people to see in the UF Directory. To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select “Directory Profile.” Click “Edit” on the right of the name panel, uncheck “Use my legal name” under “Display Name,” update how you wish your name to be displayed, and click “Submit” at the bottom. This change may take up to 24 hours to appear in Canvas.

Discourse, Inclusion, and the Classroom Ethos: As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. I therefore encourage each of us to:

- commit to self-examination of our values and assumptions,
- speak honestly, thoughtfully, and respectfully,
- listen carefully and respectfully,
- reserve the right to change our mind and allow for others to do the same, and
- allow ourselves and each other to push the boundaries of logic and reasoning both as a means of

exploring our beliefs as well as a method of sharpening our skills as lawyers.

Readings

Although this schedule appears nearly complete and fixed, we may have to shift dates to accommodate guest speakers.

- Tuesday 1/17: Introduction to the class
 - Readings:
 - syllabus;
 - Casebook, pp. 1-7, including Exercise 1-1;
 - *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020).
 - View: Canvas videos called “Class Intro” (discusses main themes and syllabus).
- Thursday, 1/19: Introduction to the Legislative Process
 - Readings:
 - Skim “How Our Laws Are Made: Learn About the Legislative Process,” congress.gov, available at <https://www.congress.gov/resources/display/content/How+Our+Laws+Are+Made+-+Learn+About+the+Legislative+Process> [Note, however, that the video series below are good alternatives to this reading, which goes into more detail than we need.]
 - View:
 - The first three videos in the Khan Academy series “[Structures, Powers, and Functions of Congress](#)”: “How a Bill Becomes Law,” “The House of Representatives in Comparison to the Senate,” and “Senate Filibusters, Unanimous Consent, and Cloture.”
 - The final two videos in Congress’s series “[The Legislative Process](#)”: “Resolving Differences” and “Presidential Actions.”
 - Lectures on Canvas: “The Legislative Process” and “Theories of Legislation” (note: slides are available via Canvas).
- Tuesday, 1/24: Visit of Florida Rep. Fentrice Driskell (63rd House District)
 - Florida House of Representatives, “[How an Idea Becomes a Law](#)”
 - Further readings TBA
- Thursday, 1/26: *United Steelworkers v. Weber*
 - Reading: Casebook, pp. 9-14, 33-58
- Tuesday, 1/31: Precedent and Statutory Interpretation: *Johnson* and *Flood*
 - Reading: Casebook: pp. 59-102
- Thursday, 2/2: Interpretive Theories in Action
 - Casebook, pp. 149-158, 170-183
- Tuesday, 2/7: Overview of Interpretive Theories
 - View: video on Interpretive Theories (link from Canvas)
 - Casebook, pp. 135-148, including Exercise IV.1
 - Lon L. Fuller, *The Case of the Speluncean Explorers in the Supreme Court of Newgarth*, 4300, 112 HARV. L. REV. 1851 (1999) (Canvas)
- Thursday, 2/9: (More) Interpretive Theories in Action
 - Casebook, pp. 184-228
- Tuesday, 2/14: Practical Tools: Fun with Vehicles
 - Casebook, pp. 247-259 (including Exercises V.1 and V.2)
- Thursday, 2/16: Statutory Text (1)
 - Casebook, pp. 260-264
 - *U.S. v. Bond* (Canvas)

- Tuesday, 2/21: Statutory Text (2)
 - *Smith v. US, Bailey v. US, Watson v. US* (all in one file named *Smith/ Bailey/ Watson*); *Maddox v. State* (Canvas site)
- Thursday, 2/23: Statutory Text (3)
 - Casebook, pp. 332-342, *Nix v. Hedden* (Canvas site)
- Tuesday, 2/28: Interpretive Canons (1)
 - Casebook, pp. 264-265 (Surplusage) and 267-268 (*Expressio Unius*); *Feld v. Robert & Charles Beauty Salon*; *PW Ventures v. Nichols* (Canvas site)
- Thursday, 3/2: Interpretive Canons (2)
 - Casebook, pp. 265-267 (*Noscitur a Sociis* and *Ejusdem Generis*); *People v. Vasquez* (Canvas site) and *In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Medical Conditions* (Canvas site)
- Tuesday, 3/7: The Whole Act Rule and exercise
 - Casebook, pp. 269-271, 325-331; *Rhyne v. K-Mart Corp*
 - Casebook exercise, p. 272
- Thursday, 3/9: Succeeding Statutes and Absurdity
 - Casebook, pp. 273-277; *Estate of Winn*; *Zedalis v. Foster*; *U.S. v. Fontaine* (all on Canvas site)
- Tuesday, 3/21: Playing with Textualism (1)
 - Casebook, pp., 363-381
- Thursday, 3/23: Playing with Textualism (2): Visit of Judge John Badalamenti
 - Casebook, pp. 309-324
- Tuesday, 3/28: Substantive Canons: Constitutional Avoidance and the Rule of Lenity
 - Casebook, pp. 382-383; recall *Bond*; and Casebook, pp. 396-423
- Thursday, 3/30: Legislative History
 - Casebook, pp. 446-452, 467-480
- Tuesday, 4/4: Judicial Review of Administrative Agency Interpretations (1)
 - Casebook, pp. 481-493
 - Thomas W. Merrill, “The Story of Chevron: The Making of an Accidental Landmark” (Canvas) (pp. 254-260, 266-283)
 - Video lecture: “Judicial Review of Administrative Agency Interpretations” (Canvas)
- Thursday, 4/6: Judicial Review of Administrative Agency Interpretations (2)
 - *Rust v. Sullivan* (Canvas)
- Tuesday, 4/11: Textualism, Administrative Agencies, and Legislative History and the Precursor to the “Major Questions” Doctrine
 - Casebook, pp. 502-517
- Thursday, 4/13: Final cases (1)
 - Casebook, pp. 538-550, *Almond Alliance of California v. Fish & Game Commission* (Canvas)
- Tuesday, 4/18: Final Cases (2)
 - *Niz-Chavez v. Garland* (Canvas)
- Thursday, 4/20: Exam discussion and review problem.
 - To be posted on Canvas.