

LEGISLATION AND STATUTORY INTERPRETATION

Law 266 (001) – Professor Rabkin – Fall 2023

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Office Hours: 320 Hazel Hall, Tues. 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 22

Introduction: Law and Consequences

Sec. 504 and Implementing Regulations

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

85 - 102: *Steelworkers v. Weber*

Bostock v. Clayton County; *NFIB v. OSHA*

Aug 29

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 5

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.*)

Sept 12

"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; *Biden v. Nebraska* (*Barrett opinion*)

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

Scalia, *Matter of Interpretation* (excerpt)

- Sept 19 **Textual Canons**
 48 - 78 ("Approaches to Legislation" - skim)
 326 – 362 (esp. "No Vehicles," *Nix v. Hedden, Jarecki, Babbit*)
 259 - 73 (*U.S. v. Marshall*)
 851 - 855 (textual canons)
- Sept 26 **Foundational Canons**
 Int'l Law: *Charming Betsy, Morrison v. Nat'l Austr. Bank*
 Lenity: 366 –80 (*McBoyle, Muscarello*)
Judgment of Nuremberg Tribunal
 G. Radbruch, "Statutory Lawlessness"
- Oct 3 **Substantive Canons and Controversy**
 Avoidance: 391 - 404 (*Witkovich, Catholic Bishop*)
 Federalism: 406 - 26 (*Ashcroft, BFP*)
 426 – 38, 439 - 42 (Llewellyn, Sunstein, Minn. Statute)
The Federalist No. 40, No. 41 (last 5 ¶s)
- Oct 17 **Extrinsic Sources – Legislative History**
 459 – 79 (*Leo Sheep, Blanchard*)
 486 - 92 (*Carr*); 497 - 510 (*Pepper*); 512 - 17 (*Kosak*)
 858 - 859 (extrinsic legislative sources)
- Oct 24 **Extrinsic Sources – Background Law**
 443 - 458 (*Smith v. Wade*); 115 - 124 (*Flood v. Kuhn*)
 524 - 40 (*Montana Wilderness, MW II*)
 856 - 57 (continuity); 859 - 64 (Const. based canons)
 864 – 867 (common law canons)
- Oct 31 **Extrinsic Sources – Parallel Provisions**
 564 – 887 (*Cartledge, Lorillard, Ridgway, Zerbe, Morton*)
 865 – 867 (Statute-based, General, Process Canons)
 Vienna Conv. on the Law of Treaties, Arts. 18, 19, 31, 32
Roper v. Simmons
 How to Analyze a Statute (past exam hypothetical)

- Nov 7 **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 14 **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 21 **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.
Biden v. Nebraska