

## **Course Syllabus**

### **LEGISLATION**

Fall 2010 – Room 105

Tuesday Evenings 6:00 – 7:50 p.m.

#### **Instructor:**

Bruce H. Johnson

Home Telephone: (651) 227-1015

E-mail: [bruce\\_alj@msn.com](mailto:bruce_alj@msn.com)

Office Hours: by appointment

#### **Required Texts:**

Eskridge, Frickey & Garrett, *Cases and Materials on Legislation*, 4th ed. (West Group 2007)

Mikva & Lane, *An Introduction to Statutory Interpretation and the Legislative Process* (Aspen 1997)

Office of Revisor of Statutes, *Minnesota Revisor's Manual with Styles and Forms*, 2002 ed., available on line at:

<http://www.revisor.leg.state.mn.us/>

**Supplementary Materials:** I will be establishing a site for the course on The West Education Network (TWEN). I will be posting this syllabus and other materials on the TWEN site throughout the semester.

#### **Course Description, Goals, and Objectives:**

The goal of this Legislation course is to examine and analyze, from both a constitutional and political standpoint, the processes by which legislative bodies enact statutes and how knowledge of those processes can shed light on how courts later interpret statutes when applying them in particular cases. The course falls naturally into three parts.

Much of the first part of the course (a total of four classes) will examine the legislative process—that is, the internal processes by which bills become law in American legislative bodies. Every legislative body has its own unique character in terms of its formal and informal organizational structures and rules. A legislature's formal structure is defined primarily by constitution, internal rules and custom, but most also have internal political structures that contribute to how they operate. Elections, political agendas, and the personal agendas of individual members also help define how a legislature functions as a body. The result is that each legislative body and even each session of a particular legislature has its own unique dynamics—the ways in which form and function interact to produce bills and to facilitate or prevent enactment of bills. This first part of the course will examine the formal and functional elements of legislatures in theory, in practice, and more concretely in some case studies involving particular federal and state legislation.

Over the years, legislative bodies have developed a number of principles, requirements, and protocols that dictate the form and some of the content of bills and how the contents are arranged and expressed. Some of the requirements relating to bill form are even embedded in the U. S. and state constitutions. The second part of the course will consist of two classes on legislative drafting

that are designed to provide students with a brief introduction to the theory and art of bill drafting—i.e., the raw material of the legislative process. The first class on bill drafting will focus primarily on the formal anatomy of the bills that are introduced in the U. S. Congress and the Minnesota Legislature. The second class will focus on clarity and precision in drafting the texts of bills. Students will also participate in a group bill drafting exercise as part of the group exercises described below.

The third part of the course, comprising more than half of all class time, will be devoted to statutory interpretation, using the Eskridge casebook as source material. That part of the course will begin by examining statutes as a source of public policy and the role of the judiciary in articulating public policy. The principle of *stare decisis* will be considered in some depth. The course will then turn to a discussion of the theoretical underpinnings of the three major approaches to ascertaining legislative intent through statutory interpretation—that is, relying on the language of statutes, on their purposes, or on their legislative histories. Finally, the course will address how judges put those theories into practice when interpreting statutes, including a specific discussion of traditional “canons of statutory construction.”

### **Class Exercises:**

During the first class session, students will be given two class exercise assignments giving them roles to assume as members of the Minnesota House of Representatives. First, each will be assigned as a member of a two- or three-person drafting teams serving in the role of legislative authors. Each drafting team will be required to reach consensus on the subject matter of a new piece of legislation—that is, a “bill” that amends or supplements existing provisions of Minnesota Statutes. Each team will then be required to draft a bill in proper form for introduction in the Minnesota House as proposed legislation.

Second, students will also be randomly assigned to one of two “legislative committees.” Later, in the semester each committee will conduct a half-hour hearing and vote on each of two bills drafted by members of the other committee functioning as legislative authors. Bill authors will be expected to lobby committee members for passage of their respective bills and formally present them to the committee for consideration. Committees are empowered to dispose of the bills they hear in any one of a number of ways, for example, referral to another committee, referral to the House floor for a vote on passage, tabling the bill, or outright killing the bill.

Although the results of the class exercises will form part of the final grade in the course, students will not be graded on the extent or quality of their individual participation during the various exercises. Rather, as part of the final examination, they will be graded on what they can demonstrate as *having learned from their participation* in the exercises and from observing the efforts of other participants. In other words, the exercises are designed to be a learning experience and not a Hamline Law School version of *Survivor*.

### **Grading:**

There will be a scheduled, closed-book final examination consisting of one hypothetical statutory construction problem requiring a narrative summary answer. The grade on the scheduled final examination will comprise **fifty percent (50%)** of the final grade for the course.

The remaining **fifty percent (50%)** of the final grade for the course will be a take-home portion of the final in which students will essentially be asked to discuss how the class exercises may (or may not) have shed additional light on what they learned about the legislative process and statutory interpretation from assigned readings and associated class discussion during the semester. The take-home paper will be more akin to an essay than to a legal research paper. Students will be asked to cover the following topics:

- a. What you learned about the legislative process from your observations and experience as a bill author or from observing the experiences of other bill authors in the class.
- b. What you learned about the legislative process from your observations and experience as a legislative committee member or from observing the experiences of other legislative committee members in the class.
- c. What the class exercises taught you about statutory interpretation, with specific examples if possible.

### **Class Attendance, Participation, and Class Preparation:**

When students graduate and start practicing law they will not have the option of not showing up for court or of not being prepared when they do. Also, your fellow students will be relying on you to be in class for class exercises. Legislation is a two-credit-hour class taught once a week. There will be no consequences for up to two (2) absences during the semester. However, if students are absent from more than two classes, or expect to be, they must contact me, and we will discuss the circumstances and what might be done in the form of makeup work.

I will be preparing name cards for each member of the class and will be handing them out on the first day of class and to any students who subsequently add the class. At the beginning of class, they will be placed on the table near the door for students to pick up. The cards serve multiple functions. They help me learn the names of students more quickly. They will also students learn one another's names. They also serve as evidence of attendance. At the end of class students must place their name cards on a different table in the room. If a card is not picked up and placed on the other side of the aisle, I will assume that the student was not in class.

Some of the cases that will be considered will be factually very complex. I am most interested in having students understand the issues raised by the cases being discussed. So when called on, even though a student may not remember all of the material facts of the case, I will expect students to have sufficient understanding of the facts to be able to discuss how the facts may have shaped the legal issues involved. If I call on a student to discuss a case and the student is not prepared, the student may "pass" without further comment or excuse, but it will mean that the student will be called on again, probably in the next class or two.

### **Reading Assignments:**

The following pages contain the reading assignments and general topics for class discussion during the semester:

**SESSION One — Tuesday, August 24, 2010:**

**Introduction to the Legislative Process**

***Required Reading:***

Mikva: pp. 57-84

Eskridge: pp. 48-54  
pp. 65-74

***Practical Skills Class Exercise:***

Students are assigned to groups for the class exercises.

**SESSION Two — Tuesday, August 31, 2010:**

**The Structure of the Legislative Process**

***Required Reading:***

Mikva: pp. 84-100

Eskridge: pp. 24-38

***Practical Skills Class Exercise:***

Members of Author Groups share their ideas about a topic for a bill amending or supplementing existing provisions of Minnesota Statutes. Author groups will be given 15-20 minutes of class time to discuss topics and select on.

**SESSION Three — Tuesday, September 7, 2010:**

**How a Bill Becomes Law**

***Required Reading:***

Mikva: pp. 101-142

Eskridge: pp. 24-38 (Review)

***Practical Skills Class Exercise:***

Authors will be given some class time to begin drafting their bills consult with the “Revisor” about the form of their bills.

**SESSION Four — Tuesday, September 14, 2010:**

**The Anatomy of a Bill**

***Required Reading:***

Mikva: pp. 143-173

Revisor’s Manual: pp. 33-61  
pp. 227-229

***Practical Skills Class Exercise:***

Authors will be given additional class time to begin drafting their bills consult with the “Revisor” about the form of their bills.

**SESSION Five — Tuesday, September 21, 2010:**

**The Art of Legislative Drafting**

(50-minute presentation by member of The Minnesota’s Revisor’s Office staff)

***Required Reading:***

Revisor’s Manual: pp. 245-266  
pp. 277-295

***Practical Skills Class Exercise:***

Authors will be given class time to begin completing a final “mark-up” their bills.

**SESSION Six — Tuesday, September 28, 2010:**

**Case Studies in the Legislative Process**

(50-minute presentation on the legislative process by a Legislator or former Legislator)

***Required Reading:***

Eskridge: pp. 1-23, 38-47 (32 pp.)

Mikva: pp. 27-41 (14 pp.)

***Practical Skills Class Exercise:***

Chief Authors submit their bills to the “Revisor” for review. (no class time available)

**SESSION Seven — Tuesday, October 5, 2010:**

**The Due Process of Lawmaking;  
Statutes as a Source of Public Policy (I)**

***Required Reading:***

Eskridge: pp. 411-435  
pp. 587-613

***Practical Skills Class Exercise:***

(Temporary hiatus.)

**SESSION Eight — Tuesday, October 12, 2010:**

**Statutes as a Source of Public Policy (I)**

***Required Reading:***

Eskridge: pp. 630-649  
pp. 663-686

***Practical Skills Class Exercise:***

“Revisor” returns bills to Authors with formatting recommendations

**SESSION Nine — Tuesday, October 19, 2010:**  
**Theories of Statutory Interpretation (I)**

***Required Reading:***

Eskridge: pp. 689-721  
pp. 752-755

***Practical Skills Class Exercise:***

Authors submit copies their bills to Committee Chairs (one copy for each Committee Member). Committees are given some class time to allow members to review bills and discuss them informally among themselves. 20

**SESSION Ten — Tuesday, October 26, 2010:**  
**Theories of Statutory Interpretation (II)**  
**Doctrines of Statutory Interpretation (I)**

***Required Reading:***

Eskridge: pp. 755-790  
pp. 847-868

***Practical Skills Class Exercise:***

Authors are given some class time to informally poll and lobby Committee Members concerning their bills.

**SESSION Eleven — Tuesday, November 2, 2010:**  
**[Committee Hearings]**

***Required Reading:***

None.

***Practical Skills Class Exercise:***

Committee hearings on bills - 25 minutes for each bill.

**SESSION Twelve — Tuesday, November 9, 2010:**  
**Doctrines of Statutory Interpretation (II)**

***Required Reading:***

Eskridge: pp. 868-898  
pp. 973-990

***Practical Skills Class Exercise:***

Committee chairs turn in final copies of bills, as amended, if at all, in Committee.

**SESSION Thirteen — Tuesday, November 16, 2010:**  
**Doctrines of Statutory Interpretation (III)**

***Required Reading:***

Eskridge: pp. 991-1014

***Practical Skills Class Exercise:***

All members of class receive copies of all four final amended bills.

Begin class discussion of statutory interpretation problems involving the class's bills.

**SESSION — Thursday, November 23, 2010:**  
**Doctrines of Statutory Interpretation III**

***Required Reading:***

Eskridge: pp. 1014-1049

***Practical Skills Class Exercise:***

Finish class discussion of statutory interpretation problems involving the class's bills.