

LEGISLATION

Course Syllabus

Fall 2010 – Law 4
Sunday Afternoons
1:15 – 3:15 p.m.

Instructor:
Remi Stone

Telephone: 612.419.0525
E-mail: remistone@comcast.net
Office Hours By Appointment

REQUIRED TEXTS

1. Davies, *Legislative Law and Process*, 3rd ed. (Thompson * West 2007)
2. Eskridge, Frickey & Garrett, *Legislation and Statutory Interpretation*, 2nd ed. (Thomson * West / Foundation Press 2006)
3. Greenawalt, *Legislation – Statutory Interpretation: 20 Questions* (Foundation Press 1999)
4. FOR DRAFTING REFERENCE: Office of Revisor of Statutes, *Minnesota Revisor's Manual with Styles and Forms*, 2002 ed., available on line at the Revisor's home page with a link to the PDF in the Legislative narrative section of the home page.
See: <http://www.revisor.leg.state.mn.us/>

SUPPLEMENTARY MATERIALS

Supreme Court cases, related statutes, proposed legislation and other related materials will be provided to students via e-mail during the semester.

SCOPE & PURPOSE

Legislation offers students an understanding of the unique processes of developing public policy within the Courts and the legislative arena. The themes of the course include:

1. theories of statutory interpretation
2. sources of statutory interpretation including canons, textual rules, precedential rules, and extrinsic sources; and
3. legislative processes and institutions including legislative intent, creating legislative history, political influences on policy, the role of advocacy, and legislative ethics.

The basic purpose of this course is to develop an understanding of the role of the legislative process has in the creation of law and public policy and the tools by which the Courts interpret statute. Legislation offers students a perspective beyond the traditional justice system. This course will examine the potential for achieving policy goals via statute – as broadly (society in general) or as narrowly (for a single client) as desired.

This course will focus on two fundamental aspects of the policy making. First, is the legislative process – how a bill becomes a law, both technically and practically. Second is statutory construction and interpretation. The integrity of legislatively created public policy is dependent upon statutory construction and its subsequent interpretation.

APPLIED THEORY

Portions of the course will be experiential in nature with basic legislative activities serving as a method for students to practice the theories and realities of legislative process as well as develop an understanding of statutory construction and interpretation.

Bill drafting and policy discussions will be the underpinnings for the experiential aspect of the course. The importance of drafting will be examined more concretely with case studies involving statutory interpretation decisions of the Minnesota Supreme Court decisions, Minnesota statute, and proposed legislation.

One of the delights of the legislative process is the drafting, amending and debating of statute. During this semester, students will identify a Minnesota Statute “needing” change or “needing” to be created. Students will be asked to draft and discuss proposed legislation. Students are expected to discuss the particular public policies being sought and the merits of proposed legislation created or identified in class.

Classroom activity may involve a variety of activities including:

1. Roundtable dialogue on course themes
2. Drafting & legislative process exercises
 - a. Applying drafting cannons
 - b. Assessing the value and potential use of statutory interpretation rules
3. Issue spotting strengths and weaknesses in legislative advocacy and related ethical considerations

ATTENDANCE POLICY, PARTICIPATION, AND CLASS PREPARATION

Legislation is a two-credit-hour class taught once a week. Weekly attendance is essential for continuity for you and your classmates. Attendance and active participation in class dialogue are required for satisfactory completion of the course.

Since this class meets once a week, absences in excess of two will be excessive and may negatively impact your grade or result in a request to withdraw from the class. However, opportunities to pursue make-up work will be granted in the event there is a strong justification for the excessive absence such as illness, injury, death in the family, childbirth, or other analogous circumstances. Make-up work may take the form of a written paper or detailed bill draft. Habitual tardiness to class may also be deemed an absence. Please be on time. You should make every effort contact me prior to class to alert me to a legitimate delay or absence – 612.419.0525 or remistone@comcast.net.

Class participation is essential. The legislative process is founded on the exchange of ideas. The best policy is created when there is a fair and balanced dialogue driving the final legislative product.

Students must be prepared for discussion of the materials, assignments and themes for each day. If, for any legitimate reason, you are not well-prepared, please let me know before

class begins and you will not be called on, however, your participation in class discussion will still be welcomed.

TECHNOLOGY POLICY

Laptop computers & other electronic devices may be used in class to take notes, access course related materials or to aid in classroom activities. However, in no situation should laptops, etc. be used for other purposes, such as text messaging or e-mail.

Nevertheless, in real life, the legislative process depends upon interpersonal relationships; communicating in-person and eye-to-eye with other people is essential. Many people find it rude and disrespectful to use blackberries, laptops, or cell phones during your time with them. Practicing restraint in the classroom will prove to be a practical skill when meeting with clients and policy makers once you leave the academic setting.

GRADES

Subject to the two exceptions below, the grade for the course will be based on:

1. A written final exam – three hour maximum, closed book, self-scheduled – consisting of one question is required. The question will relate to case law becoming a product of statutory interpretation, the construction of “good” statutes, and the impact the legislative process has on case law and public policy. The grade on the scheduled final examination will comprise fifty percent (50%) of the final grade for the course.
2. An essay will comprise twenty-five (25%) of the final grade of the course. The essay, to be completed outside of the classroom, must be a critical discussion about one (or more) of the class themes and what it has taught you about statutory interpretation and the legislative process. The essay should be approximately 10-15 pages in length, typed and double-spaced.

The essay is due on _____, 2010 by _____ p.m. (closing time) in the Registrar’s Office. Failure to turn in the essay by the deadline will result in a penalty of one-half grade on the final grade for the course.

3. Bill drafting exercises and individual participation will comprise twenty-five percent (25%) of the final grade of the course. Three elements will be weighted. They are:
 - a. Demonstrated technical skill in drafting bills and amendments consistent with the *Minnesota Revisor’s Manual*
 - b. Demonstrated understanding of the legislative process
 - c. Creative problem solving in developing public policy

Grades may be adjusted upward by one grade increment (e.g. from a C+ to a B-) for significant contributions to classroom discussion. These entail contributions beyond mere apparent good preparation. To warrant consideration for upward adjustment, contributions must reflect significant thought about the assigned materials and classroom “applied theory” exercises. ***Extensive contributions are not the equivalent of significant contributions.*** In addition, grades may be adjusted downward by one grade increment (e.g. from a B- to a C+) for repetitious lack of preparation for classroom discussion.

LEGISLATION

Readings, Assignments, Exercises

Fall 2010 – Law 4
Sunday Afternoons
1:15 – 3:15 p.m.

Instructor:
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Date & Topic	Reading	Assignment / Exercise
Class # 1 August 15 Introduction: The Legislative Process, Policy & Statutory Interpretation	Davies, pp. 295-329 Eskridge, pp. 1-17, 389-397 Greenwalt, pp. xvii-7	How a bill becomes a law...
Class # 2 August 22 The Legislative Process I: Theories of Representation	Davies, pp. 15-54 Eskridge, pp. 19-68	
Class # 3 August 29 The Legislative Process II: Theories of the Legislative Process	Davies, pp. 55-93 Eskridge, pp. 69-116	
September 5	Labor Day / No Class	

<p>Class #4 September 12</p> <p>The Legislative Process III: Legislative Structures</p>	<p>Davies, pp. 201-242</p> <p>Eskridge, pp. 163-217</p> <p>Greenwalt, pp. 9-28</p>	<p>Consider:</p> <p>Are statutes mandatory?</p>
<p>Class # 5 September 19</p> <p>Statutory Interpretation I: Theories of Statutory Interpretation</p>	<p>Eskridge, pp. 219-256</p> <p>Greenwalt, pp. 29-34</p> <p>To be e-mailed:</p> <ul style="list-style-type: none"> • Karl Llewellyn (1950) • John Simonette (2001) 	<p>Consider:</p> <p>Are statutes fixed or evolutionary?</p>
<p>Class # 6 September 26</p> <p>Statutory Interpretation II: The Role of Text & Precedent in Statutory Interpretation *emphasis on stare decisis *</p>	<p>Eskridge, pp. 257-294</p> <p>Greenwalt, pp. 201-211; 227- 249</p>	<p>Consider:</p> <p>How should post enactment events impact a statute's interpretation?</p>
<p>Class # 7 October 3</p> <p>Statutory Interpretation III: Extrinsic Sources for Statutory Interpretation</p>	<p>Eskridge, pp. 295-340</p> <p>Greenwalt, pp. 77-89; 145- 159; 171-200</p>	<p>Consider:</p> <p>Whose intent counts?</p>
<p>Class # 8 October 10</p> <p>Statutory Interpretation IV: Substantive Canons of Statutory Interpretation</p>	<p>Eskridge, pp. 341-387</p> <p>Greenwalt, pp. 213-226</p>	<p>Consider:</p> <p>Are legislators omniscient?</p>
<p>Class # 9 October 18</p> <p>Legislative Drafting</p>	<p>Davies, pp. 137-200; 279-294</p> <p>Revisor's Manual, pp. 1-31, 32-61 (substance), 61-93 (drafting examples)</p>	
<p>October 24</p>	<p>Mid-term Break / No Class</p>	

<p>Class # 10 October 31</p> <p>Policy & Politics I: Campaign Finance, Advocacy & Ethics</p>	<p>Davies, pp. 94-136; 243-278</p> <p>To be e-mailed:</p> <ul style="list-style-type: none"> • Citizens United v FEC • David Shultz – White Case Revisited (2010) MN Bench & Bar 	<p><u><i>Republican Party of Minnesota et al v. White, Chairperson, Minnesota Board of Judicial Standards</i></u></p> <p>Case Docs: www.law.cornell.edu/supct/html/01-521.ZO.html</p> <p><u>BILL DRAFT DUE!</u> <u>MINUS 10 POINTS IF LATE</u></p>
<p>Class # 11 November 7</p> <p>Supremes, Statutes, & Legislative Proposals I: Case Studies</p>	<p>To be e-mailed:</p> <ul style="list-style-type: none"> • US v. Stevens (2009) • MN v. Peck (2009) • MN v. Carufel (2010) • Krummenacher v. City of Minnetonka / Liebeler (2010) & related materials 	
<p>Class # 12 November 14</p> <p>Supremes, Statutes, & Legislative Proposals II: How a Bill Becomes a Law (search, monitor, history, etc.)</p>	<p>Continuation of Above Readings</p>	<p>In Class: Minnesota legislative process – bill search, monitoring, history – www.leg.state.mn.us</p>
<p>Class # 13 November 21</p>	<p>Drafting Summary; Wrap-up; Evaluations</p>	<p>In Class: Present draft bills, discuss policy goals, potential supporters & opponents, anticipated committee jurisdiction, observations about statutory drafting & how it differs from traditional legal writing</p>