

## **LEGISLATION AND REGULATION**

Vermont Law School

Fall 2021

**Instructor:** Prof. Erin Jacobsen

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**Office Hours:** My in-person office hours will be in my SRLC office, Thursdays from 10:00-11:00.

Remote office hours will be on Teams, Tuesdays from 1:00-2:00.

I will also meet with students by appointment, though my availability is often limited, so please try to take advantage of the above scheduled hours.  
Otherwise, please email me should you need to schedule an appointment.

**Class:** Mondays and Thursdays, 2:10 – 3:25

Oakes 012

### **Teaching**

**Assistants:**

We are fortunate to have two fantastic Teaching Assistants for this class, Kyla Schweber and Noy Krivi. Kyla and Noy will have weekly office hours and we will post those times and locations here and on Canvas once the semester begins.

**Description:** Welcome to Legislation and Regulation 2021! I hope this course will provide you with a keen understanding of our structure of government; legislative and regulatory processes and oversight; and the tools that judges use for interpreting statutes and regulations and which lawyers use in advocating for their clients or in helping to shape our laws. This course promises to be challenging, but it is important. You will almost certainly intersect with its subject matter in your future legal careers, and you don't even have to practice administrative law for that to be the case. Many legal strategies and policy efforts arise from creative interpretations of statutes and regulations, and as such, engaging with the text and learning to employ interpretive techniques only serves to make you better law students and savvier future lawyers! Plus we get to enjoy rousing debates

about the Oxford Comma and how to properly measure the weight of LSD. These things matter!

### **Semester**

#### **Overview:**

The course begins with some foundational learning about legislative and regulatory processes and separation of powers. We then turn to the various interpretive theories that inform judges, after which we dive into the many sources and canons of statutory interpretation. The course then turns to agencies and regulations, and then finally to oversight and review of agency actions.

#### **Outcomes:** By the end of this course, you should be able to:

- Explain legislative and regulatory processes and the various components of a statute.
- Describe the hierarchy of the various sources of laws in the U.S.
- Explain our tripartite system of government and the role of separation of powers in statutory interpretation.
- Describe the two ways court approach the concept of separation of powers and how this relates to legislation and regulation.
- Distinguish among the three main theories of statutory interpretation: textualism, intentionalism, and purposivism.
- Understand and apply different canons of interpretation.
- Understand the role of administrative agencies and how their actions are overseen and reviewed by the three branches of government.

#### **Required Course Materials:**

The casebook is:

Linda D. Jellum, *The Legislative Process, Statutory Interpretation, and Administrative Agencies*, Second Edition (Carolina Academic Press 2021) (“CASEBOOK”)

#### **Optional Materials:**

Should you wish to consult additional materials, the following titles are on Course Reserve at the Library Information Desk or available at the Bookstore.

- Jellum, Linda D., *Mastering Legislation, Regulation, and Statutory Interpretation*, 3d edition. Carolina Academic Press, 2020.
- Jellum, Linda D., *Mastering Administrative Law*, 2d edition. Carolina Academic Press, 2018.

- Scalia and Garner, *Reading Law: The Interpretation of Legal Texts*. Thomson/West, 2012.
- Katzmann, Robert A., *Judging Statutes*. Oxford University Press, 2014.

### **Class Website: Canvas**

We will use Canvas for our class platform.

Link: <https://vermontlaw.instructure.com/courses/427>

I will post class-related materials to Canvas, including this syllabus and any updates to it. **Please be sure to check the syllabus and Canvas before beginning any homework assignment.**

### **Grading:**

**Class Participation = 15%**

**In-class Midterm = 25%**

**Final Exam = 60%**

**Extra Credit = up to 3% on top of final grade.**

#### **Class Participation = 15%**

Participation: Class will be lecture- and discussion-oriented. I expect full participation from all students. I will both cold-call on students and call on volunteers. I will keep track of both the quality of your participation and the amount of it.

On the first day of class, we will discuss how to brief a case for this class. Where the reading includes cases (almost always), I expect that you will be prepared to discuss the case in class if called upon and that you will be able to answer questions related to the case, which are often laid out in our casebook directly following the case. You need not spend hours answering each question in the assigned section, but those questions can help you prepare for class and digest the issues.

In addition, I will assign problems and question in the casebook. Be prepared to answer all assigned problems and exercise questions.

Kindness Policy: At its base level, kindness means doing no harm. In the context of this class, that means following all VLS Covid protocols; treating your colleagues and instructors with respect; listening; and refraining from being disruptive or distracting (for example, by using your laptop in class to play video games or shop for a new winter coat). Kindness can also mean helping others. In

this class that might mean being a good study partner, sharing your notes with someone who had to miss class, or being a supportive colleague to someone who is struggling. Finally, kindness also underlies many aspects of professionalism and civility, violations of which undermine your own integrity, the integrity of the profession, and your ability to practice law.

This is not to suggest that being kind and respectful means you must avoid raising opposing viewpoints or expressing confusion or skepticism. On the contrary, voicing opinions, engaging in civil discourse, and asking questions are all critical to your learning, and I look forward to our discussions.

Attendance: I will take attendance each class. If you cannot attend class, please try to let me know ahead of time. That said, letting me know in advance does not automatically create an excused absence. Please familiarize yourself with the VLS attendance policy, which this class follows. You can find the policy in your 2021-2022 Student Handbook on pp. 31-32 under Academic Regulation II(A).

If you have more than one unexcused absence, your class participation grade will suffer. Please come speak with me if you are struggling to attend class and keep up with your obligations.

**Exams:**

**Mid-term exam = 25%**

The mid-term exam will take place during our class period on Monday, October 4th. We will have a review session before the exam, during our regular class period on Thursday, September 30th. The exam will be closed book.

**Final exam = 60%**

The final exam will take place during Exam week. We will have a review session the last day of class. The exam will be closed book.

**Extra Credit:**

Students will have two opportunities to earn extra credit over the course of the semester. Students can earn up to an additional three percentage points on top of their final grade. To earn the maximum points, you need to complete both extra credit opportunities and do well on both.

**Schedule of Assignments:**

Please see the attached list of Topic Coverage and Assignments.

**Please note that the assignments list is a living document and subject to change! Always check the list before embarking on your homework.**

## TOPICS AND ASSIGNMENTS LIST

Class	Date	Topics	Readings/Viewings	Prepare for class
INTRODUCTION				
1	8/30	Intro to the Course and to Statutory Interpretation; Components of a Statute; Briefing a Case for this course	<u>Jellum:</u> Ch. 1, pp 3-13; 18-28	<i>Vehicles in the Park</i> Hypo, <i>Jellum</i> , pp 24-29. Just prepare Question 1 for this hypo on p. 28 (Ambulance in the park).
LEGISLATIVE PROCESSES AND SEPARATION OF POWERS				
2	9/2	Legislative Processes; Separation of Powers: Formalism and Functionalism	<u>Jellum:</u> Ch. 2, pp. 31-top of 35; bottom of 47-52; Ch. 3, pp. 79-88; 103-106  <u>Watch:</u> <i>How a Bill Becomes a Law</i> , <a href="https://www.youtube.com/watch?v=FBpdxEMeIR0">https://www.youtube.com/watch?v=FBpdxEMeIR0</a>	<i>Test Your Understanding</i> , <i>Jellum</i> , p. 118
THEORIES OF INTERPRETATION; INTRINSIC SOURCES				
3	9/9	INTRINSIC SOURCES: Plain and Ordinary Meaning; Technical Meaning (Ch. 4)	<u>Jellum:</u> Ch. 4, pp. 121-137; 140- 145; 148-151	Problem 4B, <i>Jellum</i> , pp. 156-158

4	9/13	THEORIES OF STATUTORY INTERPRETATION: Textualism	<i>Jellum:</i>  Ch. 6, pp. 191-mid 199; 209-212; mid-228-230  <i>Watch:</i> The 2015 Scalia Lecture, A Dialogue with Justice Elena Kagan on the Reading of Statutes,  <a href="https://www.youtube.com/watch?v=dpEtszFT0Tg">https://www.youtube.com/watch?v=dpEtszFT0Tg</a>	Test Your Understanding, <i>Jellum</i> , p. 207;  Problem 6A, <i>Jellum</i> , pp. 207-top of 209.
5	9/16	THEORIES OF STATUTORY INTERPRETATION: Intentionalism and Purposivism	<i>Jellum:</i>  213-228	Test Your Understanding, <i>Jellum</i> , p. 248-249;  Problem 6B, <i>Jellum</i> , pp. 249-253.
6	9/20	CHOOSING AMONG ORDINARY MEANINGS: Ambiguity and Constitutional Avoidance	<i>Jellum</i> , pp. 269-297	
7	9/23	REJECTING ORDINARY MEANING:  Absurdity and Scrivener's Error	<i>Jellum</i> , pp. 300-318	Test Your Understanding, <i>Jellum</i> , pp. 317-318
8	9/27	INTRINSIC SOURCES: Punctuation and grammar	<i>Jellum:</i> pp. 159-174; 177-185	Problem 5A, <i>Jellum</i> , pp. 167-168.
MIDTERM REVIEW and MIDTERM EXAM				

9	9/30	REVIEW for MIDTERM	REVIEW YOUR OUTLINE AND MATERIALS	Come to class with questions.
10	10/4	In-class MIDTERM EXAM	STUDY FOR EXAM	EXAM
<b>SUMMARY JUDGMENT HEARING</b>				
11	10/8	<b>NO CLASS on Thurs, Oct. 7th. Instead, homework due on Thursday night and then attend Summary Judgment hearing on the VLS mural case on Friday, October 8<sup>th</sup>. (Hearing is on campus.)</b>	<p>EXTRA CREDIT OPPORTUNITY ONE:</p> <p>Ahead of Friday's hearing, please read the materials and assignment posted on Canvas about the case. Responses due by 11:59 pm on Thursday night.</p>	<p>EXTRA CREDIT:</p> <p>Assignment posted on Canvas regarding the VLS mural/VARA case.</p> <p>Due by 11:59 pm Thurs, 10/7.</p>

**NOTES:**

- FALL RECESS: October 11th and 12th. Enjoy! See you on Thursday, October 14th.
- Remainder of this schedule posted by 9/30/21.
- Looking ahead: don't forget that Wednesday, November 3d follows Monday class schedule, so we also have class that day.