Professor Rick Hasen

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Office Hours: Tu: and Th: 9 am – 10 am

**LEGISLATION- FALL 2015 (LAW 580)**

**COURSE DESCRIPTION AND SYLLABUS**

Introduction

An understanding of legislation and statutory interpretation is increasingly necessary as the influence of statutory law broadens to affect a wide range of legal issues. Solutions to many problems facing today’s lawyer involve either knowledge of how legislation develops in Congress or an understanding of how laws will be interpreted by the judicial and executive branches. Focusing on the federal level, we will examine the contemporary legislative process, including the role of interest groups and the effect of lobbying; the use of legislative history in statutory interpretation; and the legal issues implicated by recent legislative reform proposals. We will also explore topics such as constitutional law and the political theory of representation, campaign finance reform, and direct democracy. We will discuss these issues from legal, economic, and political perspectives, and apply theoretical conclusions to practical examples of actual legislation.

Required Course Materials

1. William N. Eskridge, Jr., Philip P. Frickey, Elizabeth Garrett, and James J. Brudney, Cases and Materials on Legislation (West 5th ed. 2014) (“CB”)

2. Richard L. Hasen, Examples & Explanations: Legislation, Statutory Interpretation, and Election Law (Wolters Kluwer 2014) (“Hasen”)

3. Supplemental readings (listed as “on TWEN”)

NOTE: Class will not meet 9/10 and 9/14. There will be a makeup class on 9/8 from 12-1 pm in Law 3500. We will have a guest speaker (Sen. Joe Dunn) on 12/9.

Course Requirements

**1) Attendance and participation requirements: 20% of course grade**

I expect regular attendance. I will pass around an attendance sheet for you to sign. (It is a violation of the honor code to sign for another student.) Students who miss more than three classes without a valid doctor’s note or excuse approved by the assistant dean for students will have this portion of their grade lowered one increment (e.g., from B+ to B) for each 3 classes missed. I will not take attendance at any make up sessions and these sessions will be videotaped.

I also expect you to participate regularly in class. You will sign up for four class sessions to be “on call” via TWEN. Students who fail to show up or who pass during their “on call” sessions will receive a lower grade, and missing more than one “on-call” day without an approved excuse will result in a failing grade in this part of the course.

**2) Final examination: 80% of course grade**

The final examination will be in 2 parts: Part I (2 hours, 15 minutes) and Part II (1 hour).

Part I is open book and open note; any written materials are allowed. Part I consists of two essays. The first essay, the “statutory interpretation essay,” is worth 50% of your final examination grade (suggested time: 1 hour, 30 minutes). The second essay, the “thought” essay, is worth 25% of your final examination grade (suggested time: 45 minutes).

When Part I ends, there will be a 10 minute exit break.

Part II is closed book and closed note: no written materials are allowed. Part II is the multiple choice portion of the examination consisting of 20 questions in 60 minutes. It is worth 25% of your final examination grade.

**Syllabus (Subject to Revision)**

**Note**: Numbers in parentheses represent the “unit” that I estimate we will cover in a typical 90 minute class meeting. (You should read an entire unit if there are subparts, e.g., 3a and 3b should be read for Unit 3.) These units are merely estimates: some units may take more or less time than one class meeting. You should always stay ½ unit ahead in case we finish the assigned unit early.

Feel free to skip the problems in the Hasen reading if you do not feel you need extra coverage of the topics.

**I. Introduction—Theoretical Models of the Legislative Process**

1. (1) The Story of the Civil Rights Act of 1964 and the Procedures of Statute-Creation, CB 1-21

(2) How a Bill Becomes a Federal Law, CB 21-37, Hasen 19-25, 29 (bottom) - 33

Introductory Problems:

(3a) Title VII race discrimination/agencies materials, CB 61-79

(3b) Title VII sex discrimination materials, on TWEN (skim material; focus on the problems at the end of this material)

1. Descriptive and Normative Theories of Legislation

(4) CB 28-60, Hasen 25-29

C. Applying Theory to an Interpretive Problem

(5) Title VII and affirmative action, CB 79-116 (concentrate on statutory interpretation issues, *not* the substance of Title VII), *Texas Dep’t of Housing and Community Affairs v. Inclusive Communities Project*, on TWEN (skim)

# II. Structural Aspects of the Legislative Process

A. (6) Eligibility to Serve in Congress/Term Limits, CB 171-99, Hasen, 35-46 (top)

B. (7), (8a) Rules Facilitating Legislative Deliberation, CB 306-353, Hasen 46-54

C. (8b) Bribery, Bribery hypotheticals, on TWEN, CB 261-72 (top), Hasen 76-90

D. (9) Campaign Finance, Hasen, 319-65Hasen, Buck Hasen (in Handout)

E. (10) Lobbying, CB 280-305, Hasen 59-76

# III. Direct Democracy as an Alternative to the Legislative Process

A. (11a) Pros and Cons, CB 367-71, 384 (bottom) – 387, Hasen 91-97

B. (11b) Single Subject Rule, CB 381 (bottom) – 384, Hasen 97-105

C. (11c) Financing Qualification Drives, Hasen 105 (bottom) - 109

**IV. Statutes as a Source of Public Policy**

A. (12) Statutes as Principled Law, CB 417-42

B. (13) Stare Decisis, CB 443-61, Hasen 129 (bottom) – 31

# V. Statutory Interpretation: Theoretical Approaches

A. (14) Intentionalism and Purposivism, 477-97, 551-67 (top), Hasen 113-21

B. (15) The New Textualism, CB 568-85, Hasen 122-29

C. (16a) Economic Theories, CB 593 (bottom) – 609, 614-24

D. (16b) Dynamic Interpretation, CB 514-29, 625-29, 638 (bottom) - 41

# VI. Statutory Interpretation: Practical Applications

A. Intrinsic Sources of Interpretation: The Canons

1. (17) Linguistic and Grammatical Aids, CB 643-79, Hasen, 133-53

2. Policy Aids

a. (18a) The Rule of Lenity, CB 690-712

b. (18b) Avoiding Constitutional Problems, CB 712-29 (top)

3. (19a) New Federalism, CB 730-46

4. (19b) Debunking and Defending the Canons, CB 749-58, Hasen 153-62

B. Extrinsic Sources of Interpretation: Legislative History

1. (20a) Introduction, CB 761-76

2. (20b) Historical Background and Committee Reports, CB 776-86 (top)

3. (20c) Hearings and Floor Debates, CB 786-96, Hasen 163-73 (top)

4. (21) Statements by Sponsors, Presidential Signing and Veto Statements, 813 (bottom) – 829, 848 (bottom) – 52 (middle)

5. (22a) Legislative Inaction and Post-Enactment Legislative History, CB 829-48,

Hasen, 173-79 (top)

6. (22b) Interpretation of Ballot Measures, CB 388-391

C. Extrinsic Sources of Interpretation: Interpretation in Light of Other Statutes

1. (23a) Similar statutes, CB 859-68

2. (23b) Subsequent statutes, CB 868-90, Hasen 179-82

D. Extrinsic Sources: Deference to Agency Interpretations (*Chevron* and *Skidmore* Deference)

(24) CB 1073-1105, 1124-27, Hasen, 183-206, *King v. Burwell*, on TWEN