**LEGISLATION**

Law 748, Section 550

Spring semester 2014

**Class Policies and Syllabus (as of 1/31/14)**

**Dean Ronald Weich**

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410-837-4458

**Office Hours:**

Wednesdays 3 – 4 PM

I look forward to meeting with students outside of class. You are welcome to stop by my office without an appointment during the weekly time listed above, or you may make an appointment with me by contacting my assistant Linda Lahey at llahey@ubalt.edu.

**Meeting Times:**

This class will meet on Mondays and Wednesdays from 4:45 – 6PM in Room 402 of the Angelos Law Center.

NOTE: **There will not be a class on Wednesday, January 15.** I will decide how to make up this class time after consultation with students.

**Required Text:**

Most of the background reading for this class will be from the casebook *Legislative Process* by former Judge Abner Mikva and Hofstra Law School Dean Eric Lane. Please obtain the 3rd edition of the Mikva/Lane casebook (2009), available from the University of Baltimore bookstore.

Other assigned reading, notably material specific to legislative practice in Maryland, will be made available on this class’s TWEN site. Please check that site regularly for announcements and course materials (you will need a Westlaw password to access it.)

**Course Goals:**

All lawyers today work with statutes. Some lawyers help to write statutes as legislators or legislative aides. Others interpret statutes as judges, judicial clerks or agency officials. Still other lawyers work in private practice or business settings, where they help their clients or employers navigate statutes in litigation, negotiation and other legal settings. The central goal of this Legislation class is to help students gain a greater understanding of the process by which statutes are promulgated, interpreted and drafted.

The semester will have three distinct components: First, we will study the general theory and process of statutory lawmaking, and explore how that theory plays out in the day-to-day work of both the U.S. Congress and the Maryland General Assembly. Second, we will examine methods of statutory interpretation employed by courts, agencies and practicing lawyers. Third, after gaining an understanding of how laws are interpreted, we will consider the task of statutory drafting. Toward the end of the semester, if time permits, we will consider some of the more esoteric aspects of the legislative process such as impeachment and “Speech or Debate Clause” protections.

My experience in this field is based on my work as counsel to three U.S. Senators and my work lobbying Congress for federal agencies and private clients. I intend to supplement my own expertise with guest speakers, especially those who have expertise in Maryland legislative practice.

**Class Policies:**

**Attendance / Participation –** Attendance and participation in class are important. You are expected to come to every class session on time and to stay for the entire class. If you are unable to attend a class, or if you have a pressing need to arrive late or leave early, please send a note to my assistant Linda Lahey (llahey@ubalt.edu) in advance of that class.

In accordance with the law school’s attendance policy, students who have more than fiveabsences (whether excused or unexcused) will be ineligible to complete the course and will receive a grade of WF. If late arrival or early departure causes you to miss a substantial portion of a class, you will be counted as absent.

You are also expected to come to class prepared to participate in the discussion or activities taking place during class time. If I call on you and you are not prepared and have not given me a note, you may be deemed to have been absent for that class period. Please note that being absent or unprepared for class may negatively affect your final grade, as described in the Grading section below.

**Electronic Devices** – You are permitted to use laptops or other electronic devices for note-taking and other class-related purposes. Please respect the classroom environment by refraining from using your laptop to engage in activities not related to class. And of course please turn off your cell phone before class begins.

 **Grading** – There will be a final examination which will be blind-graded. After reviewing the raw grades from the exam, I may raise or lower a student’s grade by one half step (e.g., I may raise the grade from B to B+ or lower the grade from B to B-) based on class participation.

**SYLLABUS**

The outline below sets out the *anticipated* order of topics and reading assignments for the course. This outline will evolve over the course of the semester depending upon the pace of the discussion, the schedules of guest speakers and the interests of the class. Reading material beyond the Mikva/Lane casebook will be added over the course of the semester and will be posted on the class TWEN page. All reading assignments should be completed before the Monday class each week unless I indicate otherwise as we go along.

**WEEK 1 (Mon. 1/13):**

*Introductions and Overview of Class*

Reasons for Studying Legislative Process

Purpose of statutes

Age of Common Law vs. Age of Statutes

**Reading:**

Mikva/Lane pages xxvii – xxviii (Preface to the First Edition); xxix (About the Authors); pages 3-20; pages 21-29.

Robert Caro, Master of the Senate (2003), Chapter 1.

***Note: THERE WILL BE NO CLASSES ON WEDNESDAY JANUARY 15 (due to a conflict on my schedule) AND MONDAY JANUARY 20 (Martin Luther King Jr. National Holiday)***

**WEEK 2 (Wed. 1/22):**

Differences between the legislative process and litigation

Differences between federal and state legislative practices

*Federal legislative process: Structure of Congress*

 Bicameralism

 Committees

 Party caucuses and leadership

**Reading:**

Mikva/Lane, pages 29-34; 81-89; 91-97.

Walter Oleszek, Congressional Procedures and the Policy Process (2014), pages 11-33 (posted on TWEN).

**WEEK 3 (Mon. 1/27 AND Wed. 1/29):**

*Federal legislative process continued: Congressional Rules*

Floor debate (Amendments; role of parliamentarian; filibuster/cloture

Conference committees and other ways to reconcile bills

**Reading:**

Mikva/Lane, 123-129; 240-256; 263-267.

Walter Oleszek, Congressional Procedures and the Policy Process (2014), pages 196-224 and 277-331 (posted on TWEN).

Common Cause v. Biden (D.D.C. 2012) ([*http://sblog.s3.amazonaws.com/wp-content/uploads/2012/12/Sullivan*-filibuster-ruling-12-21-12.pdf](http://sblog.s3.amazonaws.com/wp-content/uploads/2012/12/Sullivan-filibuster-ruling-12-21-12.pdf)

Weich, *Fixing the Filibuster*, Baltimore Sun (March 10, 2013) ([http://www.baltimoresun.com/news/opinion/bs-ed-filibuster-20130310,0,3254997.story](http://www.baltimoresun.com/news/opinion/bs-ed-filibuster-20130310%2C0%2C3254997.story))

**I am aware that the assigned reading for Week 3 is fairly voluminous. Feel free to skim the reading from the Oleszek book, which is very detailed and need not be mastered in depth.**

**WEEK 4 (Mon. 2/3 and Wed. 2/5):**

Monday 2/3: I have sent an email previewing the class on Monday 2/3. For this class session, you should read only three things:

* Common Cause v. Biden (D.D.C. 2012) (linked above).
* Weich, *Fixing the Filibuster*, Baltimore Sun (March 10, 2013) (linked above)
* Yeomans, *Nuke ‘Em, Harry: Why Democrats Should Kill the Filibuster*, Politico (November 20, 2013) (separately posted on TWEN)

Wednesday 2/5:

*Forces that influence legislatures: The Executive Branch*

Role of Executive Branch in development of legislation

 Veto / pocket veto / line item veto

**Reading:**

Walter Oleszek, Congressional Procedures and the Policy Process (2014), pages 33-40 (posted on TWEN).

Examples of Department of Justice Communications with Congress on Pending Bills (posted on TWEN)

Mikva/Lane, pages 572-589.

**WEEK 5 (Mon. 2/10 and Wed. 2/12):**

*Forces that influence legislatures: Lobbyists and the Regulation of Lobbying*

*Nominations / recess appointments*

*Legislative Oversight*

*Budget / Appropriations process*

**Reading:**

Robert Kaiser, So Damn Much Money: The Triumph of Lobbying and the Corruption of American Government (2010), pages to be assigned.

Mikva/Lane, 459-462; 480-504; 519-524.

Noel Canning v. NLRB, 705 F.3d 490 (D.C. Cir.)

Richard Goodwin, Remembering America (1988), chapter 3

**WEEK 6 (Mon. 2/17 and Wed. 2/19):**

*Maryland legislative practice*

**Reading:**

“The Legislative Process” from the website of the Maryland General Assembly:

<http://dls.state.md.us/data/libandinfser/libandinfser_docandpub/Legislative-Process.pdf>

*Skim only*: “The 90 Day Report: A Review of the 2013 Legislative Session” by the Maryland Department of Legislative Services: <http://mgaleg.maryland.gov/Pubs/legislegal/2013rs-90-day-report.pdf>

**WEEK 7 (Mon. 2/24 and Wed. 2/26):**

*Statutory Interpretation*

 Traditional Principles; Intrinsic Aids

Retroactive + prospective application of statutes

 Rule of Lenity

 Severability

**Reading:**

Schwartz and Conn*, The Court of Appeals at the Cocktail Party: The Use and Misuse of Legislative History*, 54 Maryland Law Review 432 (1995)

Antonin Scalia, A Matter of Interpretation, pages 29-37 (1997)

James Coleman v. Soccer Association of Columbia (Maryland Court of Appeals, July 9, 2013) (<http://www.mdcourts.gov/appellate/coa/2013/9a12.pdf>)

**WEEK 8 (Mon. 3/3 AND Wed. 3/5):**

*Statutory Interpretation continued*

Role of Legislative History

 Private rights of action

**Reading:**

Landgraf v. USI Film Products, 511 U.S. 244 (1994)

State Commission on Human Relations v. Amecom Division, 278 Md. 120 (1976)

**WEEK 9 (Mon. 3/10 AND Wed. 3/12):**

*Statutory Interpretation in Criminal Statutes*

 Void for Vagueness Doctrine

 Rule of Lenity

**Reading:**

Chapman v. US, 500 U.S. 453 (1991)

***SPRING BREAK***

**WEEK 10 (Mon. 3/24 and Wed. 3/26):**

*Legislative Drafting*

**Reading:**

Mikva/Lane pages 55-79

Skim “Principles of Legislative Drafting Manual 2014” published by the MD Department of Legislative Services (<http://dls.state.md.us/data%5Clegandana%5Clegandana_bildra%5Clegandana_bildra_bildraman%5CDrafting-Manual.pdf>)

Arthur Rynearson, Legislative Drafting Step by Step (2013), pages to be assigned.

William Statsky, Legislative Analysis and Drafting (1984), pages to be assigned.

**WEEK 11 (Mon. 3/31 and Wed. 4/2):**

*Legislative Ethics*

**Reading:**

Mikva/Lane, pages to be assigned.

*Skim only:* “The Ethics Guide” compiled by the Maryland General Assembly Joint Committee on Legislative Ethics (<http://mgaleg.maryland.gov/Pubs/LegisLegal/2013rs-ethics-guide.pdf>

**WEEK 12 (Mon. 4/7 and Wed. 4/9):**

*Referenda / Initiatives / Constitutional Amendments*

**WEEK 13 (Mon. 4/14 and Wed. 4/16):**

*Speech or Debate Clause*

**Reading:**

Mikva/Lane, pages to be assigned.

**WEEK 14 (Mon. 4/21 and Wed 4/23):**

*Impeachment*

**Reading:**

Hastings v. U.S., 837 F. Supp. 3 (D.D.C. 1993)

**WEEK 15 (Mon. 4/28):**

*Review Session; Class Summation*