Legislation

SYLLABUS

SPRING 2018

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University of Baltimore
School of Law
INTRODUCTION

This course introduces students to the lawmaking process in the United States. The bulk of modern American law does not consist of judicial opinions. Rather, it is codified in statutes and administrative regulations. While most courses in the first year of law school teach students about the importance of courts and judicial opinions, this course shifts the focus to examine the lawmaking process more holistically. Rather than focus exclusively on courts, it approaches our study of lawmaking by looking at how Congress, the President, administrative agencies, and courts all fit together into our constitutional system of government to create law through statutes.

In seeking to examine how the statutes that govern our society are produced, this course also seeks to introduce students to the tools of statutory construction and interpretation. The readings examine how Congress enacts statutes, how courts interpret them, and how agencies enforce them. We will explore how the canons of statutory construction and the tools of statutory interpretation impact the legislative process, all in an effort to make the lawmaking process more accessible.

As we will see, the skills of drafting and interpreting statutes are as important as that of parsing judicial opinions. Legislation in our society speaks to a wide range of issues. Increasingly, a firm understanding of the lawmaking process and of statutory construction is becoming ever more essential to lawyers. Solutions to many problems facing young lawyers today can be found by gaining an better understanding of how legislation evolves in Congress and in the states, and how it is ultimately interpreted by the courts. To get a handle on these issues, we also need to examine the effects of lobbying and the role played by interest groups in the legislative process. We will study how legislators, judges, administrators, interests groups, and lobbyists approach statutes, and how the constitutional structure of public lawmaking influences and constrains these actors.

The central goal of this course is to help students gain an understanding of the process and principles under which statutes are promulgated, drafted, and interpreted in the United States. By the end of the semester, each student will have developed an understanding of the structure and mechanics of the legislative process in the United States, will have gained some knowledge concerning the tools that courts employ when they adjudicate unclear or indeterminate statutory provisions, and will have a greater appreciation both for the complexities involved in regulating politicians when they engage in public lawmaking as well as an appreciation of the difficulties that courts and agencies often face when they are asked to interpret the laws that Congress makes.

Our casebook for our course will be Abner J. Mikva, Eric Lane, and Michael J. Gerhardt’s Legislative Process (Wolters Kluwer, 4th ed. 2015). We will frequently refer to it as “MLG.”
Students often ask what other books they can read to help their learning. I recommend several. Richard L. Hasen’s Legislation, Statutory Interpretation, and Election Law: Examples & Explanations (Wolters Kluwer, 2014) intelligently summarizes the material we will cover (in addition to some extraneous material on election law). There are also two recent books that offer the perspective of a practitioner in this field. One is Victoria Nourse’s Misreading Law, Misreading Democracy (Harvard University Press, 2016). The other is Robert A. Katzmann’s Judging Statutes (Oxford University Press, 2014). These books contain an intelligent summary of the material we will cover and are helpful and informative. There is also a good hornbook that provides a worthwhile introduction to this field, even though it is somewhat theoretical. This is William N. Eskridge Jr., Philip P. Frickey, and Elizabeth Garrett’s Legislation and Statutory Interpretation (Foundation Press, 2006). None of these books are required; they are merely recommended.

Administrative Matters

Seminar Style: This class constitutes a 3-credit seminar, for which your final grade will be determined by one in-class presentation (30%), by your performance on a final exam (60%), and by the quality of your class participation (10%). More information on grading is found below.

Class Schedule: Our class will meet on Tuesday and Thursday mornings from 9:00 am to 10:15 a.m. in Room 408. I will start each class at 9:00 a.m. and end by 10:15 a.m. Please try to be on time. One of the hallmarks of a successful lawyer is consistent timely performance.

Attendance and Participation: I expect that all students enrolled in this course will attend our class and participate regularly. Your attendance and participation are crucial to making our class a success. If you need to be absent or late, please send me an email ahead of time to let me know the reason. Given that this is a course in which we are aiming to improve your critical thinking skills, I may call on members of the class and ask you to answer questions about the readings or about what we are studying. If you are unprepared or do not know the answer, you may simply say “pass” or “I don’t know the answer.” I will then call on someone else. If you take too many “passes,” I may ask that we speak outside of class. If two students in a row take a “pass,” the third person I call on will not be able to use this exit strategy and must answer the question. So please be considerate of your colleagues in the room. If you are making a serious effort, I won’t care what you think about the material, but I care that you think something. I want you to articulate that something and elaborate on it. I will be interested in the position you are taking and in your ability to make a thoughtful argument for it, no matter what side of the debate you are on.

Office Hours: My office hours are on Tuesdays and Thursdays from 10:15 to 11:00 a.m. I generally have an open door policy and you are free to see me any time I am in my office. I will also stay in the classroom after each lecture to answer any questions you may have. You are also always welcome to schedule an appointment to see me, which will guarantee that I will be in my office and can see you when it is convenient for you. My office is in Room 516. My e-mail address is emazo@ubalt.edu. My phone number is (410) 837-4509. Please feel free to contact me at any time with your questions about our class or about what we are reading and learning.

Laptop Policy: Professors find that class momentum is harmed when they call on a student and that student has no idea what the question is because he or she is distracted by a computer screen. Thus, while I will allow the use of laptops for taking notes, organizing them, and assisting in a student’s preparation for the final exam, I reserve the right to prohibit laptops from our
classroom if students are using them for inappropriate purposes during class time. You are all being put on notice that your use of a laptop in this course depends on not abusing this privilege.

**TWEN:** This is a service hosted by Westlaw that will function as our class listserv and webpage. I will from time to time post additional course materials on TWEN for the whole class, which you can download and read on your own. You should learn how to use this service.

**Grading:** All students in Legislation will be graded on the basis of an in-class presentation, on the basis of a final examination, and on the basis of their class participation during the term. I urge you to pay close attention to this part of the syllabus and to the requirements set out in it.

First, each student will be asked to do one in-class presentation, lasting approximately 45 minutes, to introduce the material that we read for that class. In our first week together, I will ask you to sign up for your presentation week. If you wish, you can pick a partner and do your presentation with another student. The presentation should cover the material that we read for that class and impart it to your colleagues in a thoughtful manner. If you wish, you can create handouts and power point slides as well. One goal of your presentation will be to explain our reading to your classmates and to foster a thoughtful discussion among them. Another will be for you to improve your public speaking and presentation skills. In addition, there will be a final examination at the end of the semester. The final examination is mandatory, and it will be three hours in length. You will be given the questions ahead of time. The final examination itself will be closed book. That means that you will not be allowed to bring your casebook or the notes you have prepared to the final examination room, though you will know the questions on it beforehand. Your in-class presentation will count for 30% of your grade, and exactly 60% of your grade will be based on the final exam. The final 10% of your grade will be based on your class participation during the term. After the final is over, in others words, I may adjust a given grade up or down to reflect class participation.

**Academic Integrity:** Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University of Baltimore or its law school. Violations of academic integrity include, but are not limited to, cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter (including attendance), and impeding the Honor Code. The School of Law’s Honor Code and information about its process is available at [http://law.ubalt.edu/academics/policiesandprocedures/honor_code/](http://law.ubalt.edu/academics/policiesandprocedures/honor_code/).

**Disability Policy:** If you have a documented disability requiring an academic accommodation, please contact Ms. Leslie Metzger in Student Services at (410) 837-5623 or lmetzger@ubalt.edu.

**Title IX Sexual Harassment and Sexual Misconduct Policy:** The University of Baltimore’s sexual harassment and sexual misconduct policies are compliant with federal laws prohibiting discrimination. Title IX requires that faculty, student employees, and staff members report to the university any known, learned, or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating or partner violence, or sexual exploitation or related experiences or incidents. Policies and procedures related to Title IX as well as the University’s nondiscrimination policies can be found at [http://www.ubalt.edu/titleix](http://www.ubalt.edu/titleix).

Faculty at the University of Baltimore are required to remind students of these policies, including by making reference to them in their syllabi and course materials, as I have done here.
The Readings

When doing the readings, please focus on the principle cases that follow each assignment. Following each case, if there are questions in the text, you should read through them as well. I reserve the right to change the readings or to slightly alter the syllabus during the semester if it becomes evident that certain readings should be added (or omitted) for pedagogical purposes.

**Topics and Assignments**

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Evenwel v. Abbott,  
Gill v. Whitford

Unit 15  Qualifications for Office and Term Limits  
p. 393-429

Unit 16  Ballot Access  
p. 429-438; Buckley v. Valeo

Unit 17  Financing Political Campaigns  
p. 438-465; Citizens United

Unit 18  The Relationship with One’s Constituents  
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**Topic Four: Legislative Accessibility**

Unit 19  Lobbyists and Lobbying  
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