Lawmaking
Spring 2016
Westmoreland

1) January 21: Introduction
   a) Kotila v. Kentucky (excerpts)
   b) In-class exercise on reading and writing
2) January 25: Class Cancelled for Snow
3) February 1: Introduction to Congress
   b) S. Constitution (excerpts)
4) February 4:
   a) Interpretation Theory 101:
      i) Ciardi, “How Does a Poem Mean?” (excerpts) [Note: You should just skim this for the ideas.]
      ii) Frost
         (1) “Stopping by Woods on a Snowy Evening” [Note: You should study this for the tools the poet uses.]
         (2) “Span of Life” [Note: You should study this for the tools the poet uses.]
      iii) Basics of Legislative Materials
         (1) The MASH Act
            a) As Introduced [Note: Skim for structure of legislation, not for content.]
            b) Report [Note: Skim for structure of report, not for content.]
            c) House Consideration (Congressional Record) [Note: Skim.]
            d) Senate Consideration (Congressional Record) [Note: Skim.]
            e) Public Law [Note: Skim for format and references.]
         (2) Questions about Interpreting the MASH Act
            a) [Note: Use only the materials that are on Courseware. You need do no further research. I have posted a link on Courseware to the Public Health Service Act for your background. Note that this link is to an ENORMOUS PDF. Do not attempt to print it.]
            (3) Section, Subsection, Paragraph, Subparagraph…..
5) February 8:
   a) Basics of Legislative Materials (cont’d)
      i) Dachshund Appreciation Act
      ii) Congress.gov Questions
   b) Theory 101 (cont’d)
      i) Walker, “Judicial Tendencies in Statutory Construction” (excerpts)
      ii) Stevens, “The Shakespeare Canon of Statutory Interpretation (excerpts) [Note: Skim this only for the basic ideas about statutory interpretation; read the arguments about Shakespeare only for their entertainment value.]
   c) Introduction to Text
      i) Price v Time (excerpts)
      ii) MCI v. ATT (excerpts)
6) February 18: Text in Context
   a) Smith v. US (excerpts)
   b) Bob Jones v. US (excerpts)
7) February 22: Text through Canons
   a) Text through Canons
      i) Llewellyn (excerpts)
      ii) Eskridge (excerpts)
   b) Introduction to Purpose
      i) Holy Trinity v US (excerpts)
8) February 25: Text with Purpose
   a) Text Clear, But Purpose Contradicts
      i) United Steel Workers v Weber (excerpts)
      ii) Shine v Shine (excerpts)
   b) Text Ambiguous but Purpose Clarifies
      i) McDonald v. Santa Fe Trail Transportation (excerpts)
      ii) Hearings on the Confirmation of John Roberts (excerpts)
      iii) Braschi v. Stahl (excerpts)
9) February 29: Text and Purpose at Odds
   a) Text Clear and Purpose Irrelevant
      i) National Petroleum Refiners Association v. FTC (excerpts)
      ii) Oncale v. Sundowner Offshore Services
   b) Absurd Result
      i) TVA v Hill (excerpts)
      ii) Griffin v Oceanic Contractors (excerpts)
10) March 14:
    a) Interpretation Summary
       i) Waxman v. Evans
          (1) Brief for Plaintiffs
          (2) Brief for Defendants
          (3) Judgment
       ii) Graphic of Major Tools of Statutory Interpretation
       iii) Outline of Major Tools of Statutory Interpretation
    b) Sample Administrative Materials
       i) Section 2713 of the Affordable Care Act
       ii) Interim Regulation (August 2011) [Note: Skim this only for structure and format]
       iii) Final Regulation (February 2012) [Note: Skim this only for structure and format]
11) March 17:
    a) Deference Basics
       i) Skidmore v. Swift (excerpts)
       ii) Chevron v. NRDC (excerpts)
       iii) Auer v. Robbins (excerpts)
    b) Deference (Examples)
       i) Chevron v. Echazabal (excerpts)
       ii) General Dynamics v. Cline (excerpts)
       iii) March 21
    c) Deference (More Steps)
       i) US v. Mead (excerpts)
       ii) Gonzales v. Oregon (excerpts)
    d) Outline of Deference [In Files]
12) March 28: Step Back from Deference
    a) Zuni v. Department of Education (excerpts)
    b) Massachusetts v. EPA (excerpts)
    c) Decke v. Northwest Environmental Defense Center (excerpts)
    d) Christopher v. SmithKline (excerpts)
    e) King v. Burwell (excerpts on deference)
13) March 31: The Torture Memos--Note: Everyone On Call; EXTRA NOTE: Much of this material regards practices that are quite disturbing; read it with caution.
    a) “Memorandum for Alberto Gonzales,” (August 1, 2002) [NOTE: Read Section I (pp. 1-13),
       Section III (pp. 22-27), Section V.B. (pp. 33-35), and Section VI (pp. 39-49)]
    b) “Memorandum for James B. Comey,” (December 30, 2004)
14) April 4: Theory 102
    a) Scalia, “A Matter of Interpretation (excerpts)
    b) Eskridge Review of “A Matter of Interpretation” [Note: Skim for critiques, not for specific cases
       or examples]
c) Posner, “The Incoherence of Antonin Scalia”

15) April 11:
   a) Theory 102 (cont’d)
      i) Marmor, “The Immorality of Textualism”
      ii) Gluck, “Obamacare Subsidies as Textualism’s Big Test”
          http://www.scotusblog.com/2014/11/symposium-the-grant-in-king-obamacare-subsidies-as-
          textualisms-big-test/ (Links to an external site.)
   b) Theory 103
      i) Sunstein, “Interpreting Statutes in the Regulatory State” (excerpts) [Note: Skim for ideas
          about a framework for interpretation, not for specific new tools.]

16) April 14: Theory 104
   a) Rosenkranz, “Federal Rules of Statutory Interpretation” (excerpts)

17) April 18: Theory and Practice
   a) Gluck and Bressman, “Statutory Interpretation from the Inside” (excerpts)
       http://www.stanfordlawreview.org/sites/default/files/Gluck_Bressman_65_Stan._L._Rev._901.pdf (Li
       nks to an external site.)

18) April 25: Recent and Breaking Cases [NOTE: I think neither of these cases introduces tools that we
      have not covered. They illustrate the usage of tools and the significance of the choice of tools. King is
      an important case that has had a lot of discussion. Yates is (as far as I know) not an important case but
      a good overview of some tools (and where else might you see "One Fish, Two Fish" in a footnote?)
      Please read King but you can skim Yates.]
   a) King v. Burwell (excerpts) [in Files]
   b) Yates v. US (excerpts) [in Files]

19) April 28: Course Review