LEGISLATION & REGULATION  
FIRST YEAR ELECTIVE  
Spring 2016  
Prof. William W. Buzbee  
TENTATIVE DRAFT SYLLABUS AS OF OCTOBER 2015

Course Materials

The required materials for the class are JOHN F. MANNING & MATTHEW C. STEPHENSON, LEGISLATION AND REGULATION (2nd ed. 2013), and a handful of supplemental items that will be made available via Canvas.

Assignments

The assignment numbers correspond generally to subjects covered and roughly, but not exactly, to each class meeting. Some assignments may require less or more than one class. I will keep you apprised of my expectations for each upcoming class.

Exam

The course examination will be a three hour in-class limited open-book examination, allowing use of all class materials, your notes in hard copy, and other materials you played a part in creating and bring to the examination in hard copy, but apart from typing your examination answer in Word, prohibiting access to your hard drive or web-based research.

Grading/Class Participation

Your course grade will be determined primarily by your final exam, but I may make adjustments, either upward or downward, in light of exemplary or problematic class attendance, behavior, and participation.

Office Hours

TBA

Contact Information
INTRODUCTION

1. WHY REGULATE?

Materials on Canvas regarding the choice to regulate; regulatory strategy diversity; the relationship of statutory interventions and common law regimes (Johnson Railway decisions)

1. STATUTORY INTERPRETATION

A. Statutory Interpretation: Practice and Theory

2. Introduction to statutory interpretation (TVA v. Hill)
   M&S 2-18
   The inevitability of difficult interpretive questions
   Materials on Canvas

B. Statutory Interpretation: Text and Purpose

3. Legislative process and theories of statutory interpretation (Riggs v. Palmer)
   M&S 18-36 (by lecture)
   Purposes and “absurd results” in statutory interpretation (Holy Trinity)
   M&S 36-44 (for discussion)

4. The New Textualism (West Virginia University Hospitals v. Casey)
   M&S 44-60
   text, context, and purpose
   M&S 60-72
   Dynamic statutory interpretation
   M&S 72-77

5. Judicial correction of legislative mistakes (United States v. Kirby,
   M&S 77-101

6. What is the text? What kind of meaning? Terms of art; Lenity (Nix v. Henden,
   M&S 101-27

C. Legislative History

7. Legislative history and its critics (Blanchard v. Bergeron, Continental Can)
   M&S 136-45, 145-70, 173-75 note 4

8. Other uses of legislative history; judicial power and equitable interpretation
(Corning Glass Works, U.S. v. Marshall)
M&S 175-99

D. Canons of Construction

   M&S 201-15; Supplemental materials

10. Noscitur a Sociis; In Pari Materia; Ejusdem Generis (Gustafson v. Alloyd Company,
    People v. Smith, Circuit City)
    M&S 215-47

11. Substantive canons: constitutional avoidance; clear statements; federalism and
    preemption
    (NLRB v. Catholic Bishop of Chicago, Gregory v. Ashcroft)
    M&S 247-85

II. ADMINISTRATIVE AGENCIES AND THE REGULATORY PROCESS

A. Delegation and the Rise of Regulation

12. The pervasive administrative state; delegation of legislative power; Whitman v.
    American Trucking
    M&S 332-34; 351-56; 358-64; 377-85, top of 390 (first full paragraph)

B. Basics of the Regulatory Process

13. Overview of the regulatory process (U.S. v. Florida East Coast Railway)
    M&S 542-63
    Notice-and-comment rulemaking
    M&S 563-98 (to be trimmed to excerpts)

14. Other agency procedural choices; adjudication (SEC v. Chenery, Hoctor v. U.S. Dep’t
    of Agriculture)
    M&S 598-624

15. Less than notice-and-comment rules (guidance and policy documents)
    M&S 627-647 (through note 5)

16. Executive control of agencies: cost-benefit analysis requirements and debates
    M&S 510-39
C. Judicial Review of Agency Procedure Choices Under the Administrative Procedure Act; Review of Agency Factual Determinations

17. Constraining judicial regulation of agency procedures (*Vermont Yankee v. NRDC*)
   M&S 689-703

18. Judicial review of agency factual determinations and responsiveness; “arbitrary and capricious” review; modern hard look review (*State Farm*)
   M&S 703-35
   Canvas excerpts of *Overton Park*

III. STATUTORY INTERPRETATION IN THE ADMINISTRATIVE STATE

A. Judicial Review of Agency Statutory Interpretation; Chevron

   Skim M&S 738-48, read 749-53 with care

20. Modern approach: *Chevron* (*Chevron v. NRDC*)
   M&S 756-76

21. *Chevron* and textual interpretation (*MCI v. ATT, Babbitt v. Sweet Home*)
   M&S 776-803

B. Chevron’s Domain

22. *Chevron* and substantive canons; preemption and federalism
    (*Edward J. DeBartolo, Rust v. Sullivan, SWANCC*)
    M&S 825-52

23. The limits of *Chevron*’s domain (*U.S. v. Mead*)
    M&S 852-74

    M&S 803-22

IV. REGULATORY INNOVATIONS; REVIEW PROBLEMS
Materials on Canvas