Legislation & Regulation (Spring 2008, Prof. Stephenson)

COURSE MATERIALS

The casebook for this course is Strauss, Rakoff & Farina eds., Gellhorn and Byse’s Administrative Law – Revised 10th Edition (Foundation Press, 2003). There is also a supplemental materials pack, available from the distribution center and on the course website. Readings from the casebook are denoted “CB,” and readings from the supplement are denoted “Supp.”

SYLLABUS

Part I: Legislation

A. The Legislative Process and Theories of Interpretation

Wed., Jan. 23rd – Introduction to Statutory Interpretation

Supp. 6-29 (United States v. Marshall)

Thurs., Jan. 24th – Text and Purpose

Supp. 30-39 (Riggs v. Palmer, United States v. Kirby, Church of the Holy Trinity v. United States)

Fri., Jan. 25th – Text and Purpose, cont’d

Supp. 40-56 (Public Citizen v. United States Department of Justice, West Virginia Hospitals v. Casey)

Wed., Jan 30th – Ordinary Meaning, Special Meaning, and Context


Thurs., Jan. 31st – The Legislative Process and Legislative History

Supp. 71-80 (Bank One Chicago v. Midwest Bank & Trust, Blanchard v. Bergeron)

[Class cancelled on Fri., Feb. 1st]

Wed., Feb. 6th – The Legislative Process and Legislative History, cont’d

Supp. 81-91 (Matter of Sinclair, Archer-Daniels-Midland v. United States, Exxon Mobil v. Allapattah Services)
B. Canons of Construction

Thurs., Feb. 7th – Semantic Canons

Supp. 92-103 (McBoyle v. United States, Gustafson v. Alloyd Company)

Fri., Feb. 8th – Semantic Canons, cont’d

Supp. 104-116 (Silvers v. Sony Pictures, Circuit City Stores v. Adams)


Thurs., Feb. 14th – Substantive Canons: State Sovereignty


Fri., Feb. 15th – Substantive Canons: Preemption of State Law

Supp. 139-152 (Rice v. Santa Fe Elevator Corp., Cippollone v. Liggett Group)

** Tues., Feb. 19th (10:15 a.m.) – Scope and Application of Substantive Canons

Supp. 153-166 (Spector v. Norwegian Cruise Lines)

Part II: Regulation

A. The Constitutional Position of Administrative Agencies


Supp. 167-171 (EPA guide to the regulatory process)
CB 66-77
Supp. 172-174 (J.W. Hampton & Co. v. United States)
CB 38-55 (Whitman v. American Trucking Associations)

Thurs., Feb. 21st – The Administrative State and the Delegation Problem, cont’d

Fri., Feb. 22\textsuperscript{nd} – Congressional Control of Agencies: The Legislative Veto

CB 192-212 (\textit{INS v. Chadha})

Wed., Feb. 27\textsuperscript{th} – Appointment and Removal of Agency Officials

CB 140-160 (\textit{Myers v. United States, Humprey’s Executor v. United States})

Thurs., Feb. 28\textsuperscript{th} – Appointment and Removal of Agency Officials, cont’d

CB 160-176 (\textit{Morrison v. Olson})

\textbf{B. The Regulatory Process}

Fri., Feb. 29\textsuperscript{th} – The Administrative Procedure Act and the Forms of Agency Action

CB 238-242 (\textit{Londoner v. Denver, Bi-Metallic v. State Board of Equalization})
CB 252-254, 262-264 (APA notes)
CB 1321-1323, 1336-1337, 1340-1344 (APA §§ 551, 553, 556-557)

Wed., Mar. 5\textsuperscript{th} – The Combination of Adjudicative and Prosecutorial Functions

CB 254-261 (\textit{Wong Yang Sung v. McGrath})
Supp. 200-205 (\textit{Marcello v. Bonds})
CB 408-412 (\textit{FTC v. Cement Institute})
CB 1347-1349 (APA §§ 3105, 7521, 5372)

Thurs., Mar. 6\textsuperscript{th} – Using Rules to Resolve Recurring Adjudicative Disputes

Supp. 206-219 (\textit{Heckler v. Campbell, FCC v. WNCN Listeners Guild})

Fri., Mar. 7\textsuperscript{th} – Notice & Comment Rulemaking

CB 1336-1337 (APA § 553)
Supp. 220-224 (\textit{United States v. Florida East Coast Rwy.})

Wed., Mar. 12\textsuperscript{th} – Notice & Comment Rulemaking, cont’d

Supp. 225-231 (\textit{Chocolate Manufacturers Ass’n v. Block})

Thurs., Mar. 13\textsuperscript{th} – Notice & Comment Rulemaking, cont’d

CB 524-540 (\textit{United States v. Nova Scotia Food Products Corp.})
Fri., Mar. 14th – Presidential Involvement in the Rulemaking Process

CB 638-663 (notes on Presidential/OIRA oversight)
CB 1370-1382 (E.O. 12866)
CB 212-221 (notes on Presidential directive authority)
Supp. 232 (E.O. 13422)

Wed., Mar. 19th – Alternatives to Notice & Comment Rulemaking: Adjudication

CB 556-571 (SEC v. Chenery, Bell Aerospace v. NLRB, NLRB v. Bell Aerospace)

Thurs., Mar. 20th – Alternatives to Notice & Comment: Guidance Documents


Fri., Mar. 21st – Alternatives to Notice & Comment: Interpretive Rules

Supp. 244-256 (American Mining Congress v. Mine Safety & Health Administration, Hoctor v. Department of Agriculture)

[SPRING BREAK]

C. Judicial Review

Wed., Apr. 2nd – Introduction to Judicial Review of Agency Decisions

CB 1347 (APA §706)
CB 989-996 (Citizens to Preserve Overton Park v. Volpe)
Supp. 257-267 (Ethyl Corp. v. EPA)

Thurs., Apr. 3rd – Judicial (Non-)Regulation of Agency Procedures

CB 498-510 (Vermont Yankee v. NRDC)

Fri., Apr. 4th – “Hard Look” Review

CB 1002-1026 (Motor Vehicles Mfrs. Ass’n v. State Farm)

Part III: Legal Interpretation in the Administrative State

Wed., Apr. 9th – Review of Agency Statutory Interpretation: Early Cases

Thurs., Apr. 10th – Review of Agency Statutory Interpretation: Modern Framework  
[**ROOM CHANGE: This class will be held in Pound 107**]

   CB 1026-1045 (Chevron v. NRDC)

Fri., Apr. 11th – Deference and Textualist Interpretation: Finding Ambiguity

   CB 1052-1064 (MCI v. AT&T)

Wed., Apr. 16th – Deference, Semantic Canons and Terms of Art

   Supp. 268-280 (Babbitt v. Sweet Home Chapter of Communities for a Great Oregon)

Thurs., Apr. 17th – Deference and Structural/Purposive Interpretation

   Supp. 281-299 (Brown & Williamson Tobacco Corp. v. FDA)

Fri., Apr. 18th – Deference and Substantive Canons

   Supp. 300-309 (DeBartolo v. Florida Gulf Coast Building & Trades, SWANCC v. Army Corps of Engineers)
   CB 1048-1050 (note on Chevron and canons)

Wed., Apr. 23rd – Deference and Substantive Canons, cont’d

   Supp. 310-322 (Smiley v. Citibank, Commonwealth of Massachusetts v. Department of Transportation, Brannan v. United Student Aid Funds)

Thurs., Apr. 24th – Limits on Chevron’s Domain

   CB 1068-1088 (United States v. Mead Corp.)

Fri., Apr. 25th – TBD