

Legislation and Regulation - Section A
Fall 2017

Professor: Michael Dworkin

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Office Hours: Mondays & Wednesdays,
9:45 a.m. - 11:00 a.m., 12:45 p.m.- 1:45 p.m. or by appointment
To schedule an appointment, contact Jenny Thomas
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Course Materials: *Legislation and Regulation* (Second Edition), Manning and Stephenson
Various handouts (which will either be posted on TWEN or distributed in class)²

Course Expectations: In this course, you are expected to arrive to class timely and well prepared for class discussion. Your attendance and participation in class exercises and discussions will count towards your final grade. Please note that participation does not simply mean making a comment or asking a question in class. In other words, your participation will be measured by its meaningfulness and utility to the overall discussion. Your failure to participate may result in negative consequences with respect to your final grade. Finally, you should review and must abide by the Vermont Law School Honor Code, which is found in your student handbook.

Class Absences: Class attendance is **required** and absences will affect your class performance, as well as your class participation grade. **Please take special note of the Academic Regulations regarding absenteeism in your Student Handbook.** If you must miss class due to religious observance, serious illness, family emergency or death, please notify me in advance. Absences may be excused with permission if notice is given ahead of time.

Plagiarism: All work you turn in should be your own (with the exception of any projects where you are expected to collaborate with your peers) and include appropriate citations to referenced materials. Even when working in groups, you should not seek outside help with your assignments except to ask the Academic Success Program or the Writing Specialist to review your work.

Grading

¹ The easiest, most reliable and fastest way to reach me is by email. You should allow at least twenty-four (24) hours before expecting to receive a response.

² Any readings labeled “supplemental readings” which have been posted on the class TWEN site are not required, but have been included for those students interested in additional resources.

Grading will be based on a 60 – 100 point score, converted to a letter grade. This score will be based on these elements:

- 1) a short written project (25%),
- 2) a take-home final examination, graded anonymously, (75%) and
- 3) a possible 0 – 6 point premium for in-class contributions.

Grading will be anonymous only on the final exam.

Grading of **Class Performance**

Up to six points of your 60-100 point score will be heavily influenced by the way in which your classroom performance demonstrates knowledge of assigned materials and pre-class thought about their significance. In addition, participation that indicates an ability **to learn from and encourage input from others** will be valued highly. Comments that use an understanding of earlier readings to address later ones are particularly likely to make a favorable impression. Grading class performance is inherently subjective, but my conceptual model is very simple: how happy would an employer be to have had you as part of a taskforce that needed to resolve a hard, uncertain, and important problem?

To help me grade you on class performance, you **must** bring and display an easily readable tent-card with your full name upon it for each class. If you do not do this, your class-performance credit and your overall grade will suffer.

Written Projects: Twenty-five percent (25%) of your base grade in this course will be based on a short written project (900-1,000 words). The due date will be **October 25, 2017**, at the start of class. Substantively, you should outline the significance of a specific topic related to energy and the environment (from a legal perspective) and describe your recommendations for improvements in regard to that topic.

A “Guide Sheet” for writing and grading follows at the end of this syllabus.

A hard-copy of your paper must be handed in at the start of the class on that day. A penalty will be assessed for late papers. If an emergency prevents you from meeting the deadline, you must notify me or the Registrar’s office (tjohnson@vermontlaw.edu) before the due date and time.

Final Examination: The final examination will count for 75% of the base grade. The final exam will be a take-home, multi-day exam with essay topics and short questions. It is likely to require you to consider several of the topics addressed during the course, and may require you to focus on tensions and/or synergies between and among the topics. In other words, if you have not kept up with the readings *throughout* the course, you will have a very difficult time doing well on the final examination.

Class Attendance and Participation: I expect you to attend and be prepared to participate in each class. The course requires a great deal of reading upon demanding subjects; however, **our class time will not be spent merely on going over each day’s assigned material.** Instead, I expect to spend most of our class time in discussions that compare and contrast different readings and that go beyond the texts themselves. That expectation is linked to the fact that this course is not just about learning an accepted body of knowledge; rather, it is about searching for better answers in areas where disagreements are persistent, among both experts and lay-folk.

Importantly, contributing to these discussions is not just a way for you to learn the underlying material; it is also a valuable skill that the course seeks to build – and grade.

Because of this, **class attendance is required**. Absences will affect your class performance rating and thus, your grade. In addition, unexcused absence from ten percent (10%) of the regularly scheduled classes, i.e., from three (3) classes will result in a written warning. Unexcused absences from two (2) additional classes will result in a grade of FWd. (See Academic Regulations). Make-up classes are not a suitable substitute for purposes of attendance. Just telling me that you will miss a class will not convert an unexcused absence into an “excused one”. This statement constitutes the notice required by the Academic Regulations.

If you must be absent due to serious illness or a family emergency, please notify the Registrar’s Office (tjohnson@vermontlaw.edu) which will notify all of your professors. Absences resulting from religious observance, serious illness, and personal emergency will be excused if notice is given in advance or as early as possible, to the Professor or the Registrar. Absences for work, interviewing, exercise, or vacationing will not be excused even if prior notice is given.

In essence, I expect you to treat your obligations to attend and prepare for this class with the same respect you would give a client’s needs if you were their attorney. Please re-read the previous sentence, repeatedly, until you have it firmly in your mind.

Syllabus Reading Assignments

<p>Monday, August 28 Class # 1 Page total: 18</p>	<p><i>Law as a Complex System</i> Reading: Manning and Stephenson, pp. 1117-1135</p> <p>- The Constitution [1117-1135]</p>
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<p>Wednesday, August 30 Class # 2 Page total: 31</p>	<p><i>Introduction to Statutory Interpretation and Legislative Process</i> Reading: Manning and Stephenson, pp. 2-33</p> <ul style="list-style-type: none"> - TVA v. Hill [2-22]
<p>Monday, September 4</p>	<p>NO CLASS: Labor Day</p>
<p>Wednesday, September 6 Class # 3 Page total: 54</p>	<p><i>Cannons of Interpretation; Absurdity Doctrine and others</i> Reading: Manning and Stephenson, pp. 33-78, 116-135</p> <ul style="list-style-type: none"> - Riggs v. Palmer [33-44] - Church of Holy Trinity v. United States [44-55] - West Virginia v. Casey [55-78] - Kirby v. United States [116-120] - Optional Reading: Public Citizen v. US Dept. of Justice [121-135]
<p>Monday, September 11 Class # 4 Page total: 33</p>	<p><i>Ordinary Meaning, Special Meaning, and Context</i> Reading: Manning and Stephenson, pp. 146-179</p> <ul style="list-style-type: none"> - Nix v. Hedden [146-151] - Moskal v. US [151-163] - Smith v. US [163-179]
<p>Wednesday, September 13 Class # 5 Page total: 40</p>	<p><i>The Legislative Process and Legislative History</i> Reading: Manning and Stephenson, pp. 182-190, 203-210, 228-253</p> <ul style="list-style-type: none"> - Train v. Colorado Public Research Interest Group Inc.[182-190] Professor Dworkin will summarize. - Blanchard v. Bergeron [203-210] - Exxon Mobil Corp. v. Allapattah Services [228-241] - Corning Glass Works v. Brennan [241-253]

<p>Monday, September 18</p> <p>Class # 6</p> <p>Page total: 29</p>	<p><i>Semantic Canons</i></p> <p>Reading: Manning and Stephenson, pp. 272-279, and 289-311</p> <p>Assignment: Written Assignment on Statutory Interpretation will be given out in class. Due Wednesday Sept. 27 at the beginning of class. Please bring a hard copy to turn in.</p> <ul style="list-style-type: none"> - McBoyle v. US [272-279] - Gustafson v. Alloyd Company Inc. [289-311]
<p>Wednesday, September 20</p> <p>Class # 7</p> <p>Page total: 27</p>	<p><i>Semantic Canons, cont'd.</i></p> <p>Reading: Manning and Stephenson, pp. 279-289 and 311-328</p> <ul style="list-style-type: none"> - Silvers v. Sony Pictures Entertainment Inc. [279-289] - People v. Smith [311-319] - Circuit City Stores v. Adams [319-328]
<p>Monday, September 25</p> <p>Class # 8</p> <p>Page total: 38</p>	<p><i>Substantive Canons: Avoiding Constitutional Questions and State Sovereignty</i></p> <p>Reading: Manning and Stephenson, pp. 328-35, 353-366</p> <ul style="list-style-type: none"> - NLRB v. Catholic Bishop of Chicago [328-341] - Gregory v. Ashcroft [353-366]
<p>Wednesday, September 27</p> <p>Class # 9</p> <p>Page total: 15</p>	<p><i>Substantive Canons –Preemption of State Law</i></p> <p>Written Assignment Due at the beginning of class. Please bring a hard copy to hand in.</p> <p>Reading: Manning and Stephenson, pp. 375-390</p> <ul style="list-style-type: none"> - Rice v. Sante Fe Elevator Corp. [375-380] - Cipollone v. Liggett Group [380-390]
<p>Monday, October 2</p> <p>Class # 10</p>	<p><i>Review for Mid-Term</i></p>
<p>Wednesday, October 4</p> <p>Class # 11</p>	<p><i>In Class Mid-Term Examination</i></p>
	<p>October 7 – 10 FALL RECESS</p>

<p>Wednesday, October 11</p> <p>Class # 12</p> <p>Page total: 41</p>	<p><i>Introduction to Administrative Agencies and The Nondelegation Doctrine</i></p> <p>Reading: Manning and Stephenson, pp. 434-438, 458-495</p> <ul style="list-style-type: none"> - JW Hampton v. US [458-474] - ALA Schechter Poultry v. US [475-490] - Whitman v. American Trucking Assins [491-495]
<p>Monday, October 16</p> <p>Class # 13</p> <p>Page total: 37</p>	<p><i>Congressional Control of Agency Lawmaking & Introduction to Appointment and Removal</i></p> <p>Reading: Manning and Stephenson, pp. 528-554, 605-616</p> <ul style="list-style-type: none"> - INS v. Chadha [528-554] - Bowsher v. Synar [605-616]
<p>Wednesday, October 18</p> <p>Class # 14</p> <p>Page total: 39</p>	<p><i>Appointment and Removal</i></p> <p>Reading: Manning and Stephenson, pp. 566-605</p> <ul style="list-style-type: none"> - Meyers v. US [566-586] - Humphrey's Executor v. US [587-605]
<p>Monday, October 23</p> <p>Class # 15</p> <p>Page total: 37</p>	<p><i>Appointment and Removal Continued</i></p> <ul style="list-style-type: none"> - Free Enterprise Fund v. Public Company [645-657] <p><i>Introduction to the Administrative Procedure Act</i></p> <p>Reading: Manning and Stephenson, pp. 645-657, 702-711, 712-727</p> <ul style="list-style-type: none"> - US v. Florida East Coast Railway [712-727]
<p>Wednesday, October 25</p> <p>Class # 16</p> <p>Page total: 25</p>	<p><i>Notice and Comment Rulemaking - Informal Rulemaking</i></p> <p>Reading: Manning and Stephenson, pp. 728-753</p> <ul style="list-style-type: none"> - US v. Nova Scotia Food Products [728-753]

<p>Monday, October 30</p> <p>Class # 17</p> <p>Page total:17</p>	<p><i>Notice and Comment Rulemaking – Supplemental Notice</i></p> <p>Reading: Manning and Stephenson, pp. 753-770 and potential additional case from Autumn 2017.</p> <ul style="list-style-type: none"> - Chocolate Manufactures v. Block [753-770]
<p>Wednesday, November 1</p> <p>Class # 16</p> <p>Page total: 36</p>	<p><i>Alternatives to Rulemaking: Adjudication</i></p> <p>Reading: Manning and Stephenson, pp. 770-806</p> <ul style="list-style-type: none"> - SEC v. Chenery [770-797] - Bell Aerospace v. NLRB [797-799] - NLRB v. Bell Aerospace [799-806]
<p>Monday, November 6</p> <p>Class # 17</p> <p>Page total: 28</p>	<p><i>Lawmaking Through Agency Guidelines and Manuals</i></p> <p>Reading: Manning and Stephenson, pp. 806-834 and handouts</p> <ul style="list-style-type: none"> - Federal Power Commission Order 467 [813-815] - Pacific Gas v. Federal FPC [815-832] - Chamber of Commerce v. US Dept. of Labor [832-834]
<p>Wednesday, November 8</p> <p>Class # 18</p> <p>Page total: 24</p>	<p><i>Interpretive Rules</i></p> <p>Reading: Manning and Stephenson, pp. 834–858</p> <ul style="list-style-type: none"> - American Mining Congress v. Mine Safety & Health Administration [834-844] - Hoctor v. US Dept of Agriculture [844-858]
<p>Monday, November 13</p> <p>Class # 19</p> <p>Page total: 23</p>	<p><i>Introduction to Judicial Review of Agency Decisions</i></p> <p>Reading: Manning and Stephenson, pp. 858-881</p> <ul style="list-style-type: none"> - Ethyl Corp v. EPA [858-881]
<p>Wednesday, November 15</p> <p>Class # 20</p> <p>Page total: 17</p>	<p><i>Judicial (Non)Regulation of Agency Procedures</i></p> <p>Reading: Manning and Stephenson, pp. 882-899</p> <ul style="list-style-type: none"> - VT Yankee Nuclear Power v. NRDC [882-899]

<p>Wednesday, November 20</p> <p>Class # 21</p> <p>Page total: 41</p>	<p><i>The Hard Look Doctrine</i></p> <p>Reading: Manning and Stephenson, pp. 899-940</p> <ul style="list-style-type: none"> - Motor Vehicles Manufacturers v. State Farm [899-940]
<p>Wednesday, November 22</p>	<p>NO CLASS: Thanksgiving Break</p>
<p>Monday, November 27</p> <p>Class # 22</p> <p>Page total: 28</p>	<p><i>Judicial Review of Agency Statutory Interpretation: The Modern Framework</i></p> <p>Reading: Manning and Stephenson, pp. 963-991</p> <ul style="list-style-type: none"> - Chevron v. NLRB [963-991]
<p>Wednesday, November 29</p> <p>Class # 23</p> <p>Page total: 34</p>	<p><i>Limits on Chevron</i></p> <p>Reading: Manning and Stephenson, pp. 1010-1026, 1087-1105</p> <ul style="list-style-type: none"> - Babbitt v. Sweet Home Chapter of Communities [1010-1026] - United States v. Mead [1087-1105]
<p>Monday, December 4</p> <p>Class # 24</p>	<p><i>Understanding Judicial Review of Agency Factual Determinations Versus Agency Interpretations of Statutes</i></p> <p>Reading: Handout and Review</p>
<p>Wednesday, December 6</p> <p>Class # 25</p>	<p><i>Review and Wrap Up: LAST DAY OF CLASS</i></p> <ul style="list-style-type: none"> - Revisit law as a complex system