This is a course in Legislation and Statutory Interpretation. It is divided into three components: the rule of law and democratic governance within the framework of the U.S. Constitution, the legal environment of legislation as a vehicle for implementing policy within that framework, and how courts interpret legislative actions. The scope will be national, while also addressing Missouri law as appropriate.

Learning Outcomes: Learning Objectives and Outcomes. Students will learn:

- the federal and state constitutional frameworks for legislation;
- the legal, policy, practical constraints on legislative decisionmaking;
- the doctrines courts use to interpretive statutes,
- to articulate legal, policy, and practical arguments relating to legislation and statutory interpretation.

Readings: The assigned readings for this course are primarily drawn from the required text for this course, William Eskridge, James Brudney, Josh Chavetz, Philip Frickey, and Elizabeth Garrett, Cases and Materials on Legislation and Regulation; Statutes and the Creation of Public Policy (6th ed. 2019). Additional readings are on Canvas.

Pace: We will cover about 20-30 pages a day -- some days more, some days less -- and generally track the order of the Eskridge book. I expect to spend a day or two on each syllabus topic.

Grading: You have two options for your final grade.

a. Exam only: The exam will be a traditional two-hour law school exam, administered during the regularly scheduled examination period. Under this option, your final grade will be based on the final exam (75 percent) and your class participation (25 percent).

b. Missouri Legislation Project: Under this option, you will choose a piece of Missouri legislation that I approve, follow it to its conclusion, and then write a 5-7 page footnoted paper about the final outcome, based on the principles we discussed in class. Under this option, your final grade will be assigned on the basis of the following allocation: 50 percent exam, 25 percent legislation project, and 25 percent class participation.
**Class Communication:** I use Canvas Announcements as my primary means of communicating with the class. I generally post reading assignments for the week the preceding weekend. If you don’t receive an announcement from me by noon on Monday, you should read the next 20 pages or so pages on the syllabus.

**Class Attendance Policy:** Per ABA accreditation policy for all law school classes, class attendance is generally required, consistent with the Law School’s general attendance policy posted on the Law School website.

I ordinarily have a permissive but meaningful attendance policy on top of the ABA standards. However, in light of the pandemic and the need for extra precaution on matters of public health, I will simply say if you don’t feel well, please don’t come to class. I will be recording the classes on Zoom, but expect that to be suboptimal for any number of possible reasons (visual quality, sound quality, etc). See also the university’s policies with respect to Covid-19.

**Class Participation:** I value your class participation and therefore allocate 25 percent of your grade to participation. I am looking for your engagement, insight, sophistication, and other indicia of mastery. Please note that mere attendance is not participation for purposes of the class participation component of your grade.

That said, I understand that some of you may tend toward introversion or feel uncomfortable participating in class, even when you are prepared. Unfortunately, in our chosen professional we are often required to speak verbally, whether it is to a client, partner, or judge. Please use this class to help develop your skills, comfort, and confidence speaking like a lawyer. You will not be penalized for awkwardness, or even inaccuracy. This is a part of learning. You will only be penalized for lack of engagement. On the other hand, you will, of course, be rewarded for the quality of your participation so it is worth your effort, before and during class. I highly recommend Heidi K. Brown, *The Introverted Lawyer* (2017), for those who may be interested.

**Class Covid Guidance:** The University’s policy is under University Disclosures below and you should be sure to monitor ongoing official announcements during the semester as the situation remains fluid.

I will follow the CDC guidelines for masking and social distancing in the classroom, as they relate to Columbia, and ask you to do the same. The rule of law depends on voluntary compliance with rules, democratic norms, and other guidance by governmental institutions, including the CDC. This principle should be honored and upheld throughout the legal profession, including by students in law school classes. See, e.g. Model Rule of Professional Conduct 8.4 (Maintaining the Integrity of the Legal Profession).

**My Class Style:** I love teaching Legislation and enjoy bringing the fascinating issues they raise to students with clarity, energy, and occasional humor. However, I have come to learn over the years that my class style is not for everyone, and prefer to be up front about that so you can make your own choices about whether this is a class for you.

To begin with, I use a modified version of the Socratic Method and do not spoon feed, provide rubrics, use panels, or other such classroom gimmicks. I do some lecturing in class. But mostly I ask questions because, as I hope you know by now, the questions are much more important than the answers. We learn in law through discussion, the exchange of ideas, and a rigorous process of
respectful critical analysis. In this regard, my job is to help you learn, not to “teach you.”

I use cold-calling, and the best way to avoid it is to volunteer. Otherwise, you will be cold-called—and please know that it is generally not enough to say “I don’t know” or “I am not prepared,” “I didn’t read this case,” or otherwise pass. These are not options for practicing lawyers, and they aren’t for you in this class.

I am deeply committed to my classes, and to you as my students and future members of my profession. I will work very hard to make these materials understandable, relevant, and engaging for you, and to support you as students and as individuals in the process of becoming members of our noble profession. If I am doing my job well, I will challenge you in the process in a way that will deepen your understanding of legislation and statutory interpretation, the law in general, and perhaps yourself as a person as you situate yourself within the challenging terrain of law.

If this is what you are looking for, great. We will have a wonderful experience this semester. If not, I would encourage you to consider taking another course. There are many other good electives you can take to get the credit you require. Please be honest with yourself about why you are here and what you want to get out of this class, and make your decisions about the class accordingly. I will respect those choices and not be offended.

Finally, I have a small favor to ask: There is a tradition at the law school of students giving standing ovations to professors at the end of their classes. I do not particularly like this tradition as it too often seems pro forma and insincere. If you would like to show me how much you liked the class, put good effort into your coursework and participate in class.

**Statement on Political Views:** This course takes place at a time of unprecedented conflict, especially political conflict. Many of you will have political views, sometimes strong ones depending on the issue. Given the intensity and polarization of present political discourse, I expect this dynamic to be especially in play in this class.

It is appropriate in a class of this nature to embrace this conflict rather than avoid it, and to use it to give life to our learning. I will frequently draw on news events around locally, nationally and internationally during the course of our class discussions, and I encourage you to do the same.

I will not hesitate to share my views from time to time, and I encourage you to share yours. From an ideological perspective, I do not care what they are. (See Statement Regarding Intellectual Pluralism below.) In fact, I very much hope that they transcend the political spectrum because it will make for a much more engaging classroom dynamic and a better learning experience for everyone.

My one caveat is that I expect you to articulate your views like a lawyer—thoughtful, reasoned, and respectful. You can expect the same of me. In my opinion, learning how to talk about issues that are intensely charged and subject to fierce disagreement is every bit as important as the substantive content of this course. Use this class as an opportunity to develop or improve your game.

**Comment on these Challenging Times:** This is a very tough time to be a law student. In fact, it’s a very tough time to be or do anything. It’s just a tough time.
In my view, however, tough times are the nature of life in the law, even during good times. In a variety of ways, many of my academic colleagues are lowering their expectations for law students because of the tough situation you are in.

In all candor, I am not, for I believe doing so would sell you short as students and as people, and deprive you of the opportunity to learn what you will need to survive and thrive as a lawyer well after the pandemic is over. Grit and resilience in the face of adversity is what forges the metal of a lawyer. Adaptability, resourcefulness, creativity, and the ability to solve problems -- in the heat of the moment and with a positive and constructive attitude -- are the hallmarks of successful lawyers “in the real world.”

There is no question you have been dealt a tough hand. However, it is no tougher than the hand you will be dealt when the deck of your professional development is reshuffled after you graduate, pass the bar, and enter practice.

Much of life depends on how we approach and respond to it. My humble suggestion is to view the challenges you face this year as the opportunity they present rather than the barriers they can be. If you do, my sense is that many years down the road, when you look back on your career, you will be grateful for having been in law school during these difficult times. That is my personal experience of adversity, and my hope for each of you as we enter the semester.

### Schedule of Classes

#### A. First Principles

**Topic 1. Democracy and the Rule of Law**
- Canvas: Wood, *The Creation of the American Republic*
- Holton, *Unruly Americans*
- Scalia, *The Rule of Law as the Law of Rules* (Recommended)
- Fuller, *The Elements of the Rule of Law* (slide)
- Fuller, *The Morality of Law*
- Tyler, *Does the American Public Accept the Rule of Law?*

**Topic 2. The Separation of Powers**
- Canvas: Article I – *Mistretta v. U.S.*
- Article II – *Yoo, Unitary, Executive, or Both?*
- Article III – *Crowell v. Benson*

**Topic 3. Democratic Governance Within Our Constitutional System**
- Canvas: Rudd, *The Evolution of ... Institutional Competence*
- John Hart Ely, *Democracy and Distrust*

**Topic 4. The Story of the Civil Rights Act of 1964**
- Eskridge: Pages 2-36
Topic 5. Introduction to Statutory Interpretation
Canvas: *Chevron v. NRDC*

B. **Structure of the Legislative Process**

**Topic 6. Bribery and Extortion**
Eskridge, Pages 252-272
Canvas: RSMo. §§ 576.010, 566.200

**Topic 7. Lobbying**
Eskridge: Pages 277-297
Canvas: Missouri Ethics Commission, Guide to Ethics Laws 2021 (skim)
Missouri Ethics Commission, Lobbying Videos (16 minutes, view)
U.S. House of Representatives, Lobbying Disclosure Act (Rev. 2017, skim)

**Topic 8. Generality and the Single-Subject Rule**
Eskridge: Pages 297-305 (skip Lewis and read Missouri case on Canvas instead)
Canvas: Mo. Const., art. III., § 23
*Missouri Coalition for the Environment v. State*

**Topic 9. The Line Item Veto**
Eskridge: Pages 305-306
Canvas: Mo. Const. Art. IV, Sec.26
*Hammerschmidt v. Boone County*

**Topic 10. Direct Democracy**
Eskridge: Pages 352-378
Canvas: Materials on Direct Democracy in Missouri
*Arizona State Legislature v. Arizona Independent Redistricting Commission*

C. **Theories of Statutory Interpretation**

**Topic 11. Eclecticism**
Eskridge: Pages 405-425

**Topic 12. Legal Process**
Eskridge: Pages 425-433, 483-499

**Topic 13. The New Textualism**
Eskridge: Pages 500-517

**Topic 14. Economic Theories of Interpretation**
Eskridge: Pages 526-550

**Topic 15. Pragmatic and Critical Theories of Interpretation**
D. Intrinsic Doctrines of Statutory Interpretation

   Topic 16. Ordinary Meaning and Language Canons  
   Eskridge: Pages 581-595

   Topic 17. Maxims of Word Association and Grammar Canons  
   Eskridge: Pages 595-617

   Topic 18. Structural Canons and the Whole Act Rule  
   Eskridge: Pages 617-639

   Eskridge: Pages 649-681

   Topic 20. Debunking and Defending the Canons: Llewellyn’s Thesis  
   Eskridge: Pages 700-713

E. Extrinsic Doctrines of Statutory Interpretation

   Topic 21. The Common Law  
   Eskridge: Pages 713-727

   Topic 22. Other Statutes  
   Eskridge: Pages 816-825

   Topic 23. The Rule Against Implied Repealers  
   Eskridge: Pages 825-835

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University Disclosures

Decreasing the Risk of COVID-19 in Classrooms and Labs
If you have tested positive for COVID-19 or have been identified as someone who needs to quarantine, do not attend class in person until the mandated period for isolation or quarantine has passed. Your instructor will work with you on arrangements to access class material while you are in isolation or quarantine.

Additionally, if you are experiencing any COVID-related symptoms, or are otherwise feeling unwell, do not attend in-person classes and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea.
Instructors or students with concerns about how a student is following any University-mandated COVID-19 policies and protocols should report those concerns to the Office of the Dean of Students. Concerns can be documented on a COVID Safety Measures Reporting Form.

Please note that sub-groups of students may have specific needs during COVID or online learning. One group is international students, who may be participating in class from their home countries and in different time zones. The instructor may be able to make reasonable accommodations to support the success of international students currently living in time zones that differ significantly from that of Columbia, MO. International students are expected to consult with their instructor about possible accommodations as soon as possible after the start of the course.

Please consult Show Me Renewal for further guidelines. This statement will be updated as information changes.

**Statement Regarding Academic Integrity**
Academic integrity is fundamental to the activities and principles of a university. All members of the academic community must be confident that each person’s work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor or the Office of Academic Integrity.

Students are expected to adhere to this honor pledge on all graded work whether or not they are explicitly asked in advance to do so: “I strive to uphold the University values of respect, responsibility, discovery, and excellence. On my honor, I pledge that I have neither given nor received unauthorized assistance on this work.”

**Statement Regarding Students with Disabilities**
The goal of the University of Missouri is to ensure an inclusive learning environment for all students. The University of Missouri Disability Center provides services and accommodations for students to participate fully in the learning experience and to experience equitable evaluation of their performance. Students (including online students) with a documented disability can contact the Disability Center to establish an Accommodation Plan. Documented disabilities include hearing, vision, mobility, learning and attention, psychological health, and physical health. Students’ accommodations are implemented with the input of students to maximize the learning experiences. The MU Disability Center keeps information about a student’s disability confidential.

Please notify me of your eligibility for accommodations as soon as possible. Additionally, if there are aspects of the course that present as barriers, such as inaccessible course content (e.g., learning assessments, PowerPoints, non-captioned videos, images, tables, PDFs) or if you need an immediate accommodation due to an injury, please contact me or the Disability Center as soon as possible.

**Statement Regarding Academic Dishonesty**
Academic integrity is fundamental to the activities and principles of a university. All members of the academic community must be confident that each person’s work has been responsibly and
honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

Statement Regarding Intellectual Pluralism
The University community welcomes intellectual diversity and respects student rights. Students who have questions or concerns regarding the atmosphere in this class (including respect for diverse opinions) may contact the departmental chair or divisional director, the Office of Academic Integrity, or the MU Equity Office.

Statement Regarding Academic Inquiry, Course Discussion and Privacy
When students record something that happens in a course (a lecture, class discussions, meetings, etc.) it has an impact on the rights of the people captured in that recording. For example, the instructor and the University may have rights to the intellectual property contained in that recording. At the same time, another student who may have been recorded has the right to privacy. In order to protect these rights, MU employs a policy (called “Executive Order No. 38”) to govern both situations you may encounter while taking a course – when an instructor allows recordings and when they do not. Instructors should inform students which applies to their course:

- In this class, students may not make audio or video recordings of course activity, except students permitted to record as an accommodation under section 240.040 of the Collected Rules.

- In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded.

If the instructor doesn’t specifically prohibit recording course activity, then the students are allowed to record and the same prohibitions regarding distribution apply.

Students who violate this policy are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.