

## Legal Methods I, Fall 2023

### Section 1: Professor Ginsburg

#### Course Syllabus

Class meets MTWRF from 11:10-1:00 and 3:10-4:10 in room 101.

#### NO SCREENS (no laptops, no cellphones)

The materials for this course are the coursepack with excerpts from casebook, Ginsburg and Louk, **Legal Methods: Cases and Materials** (5<sup>th</sup> ed. Foundation Press 2020), and 2023 Letter Update. Page numbers below refer to the casebook. Additional material in italics, incorporated in the coursepack or posted to Courseweb.

For translations of legal terminology, consult a legal dictionary (print or online) such as Black's Law Dictionary

<b>Case Law</b>	Background reading: v-vii; 1-30, 69-85 [for your preparation; will not be discussed in class]
Th. Aug. 24	<b>Common Law Reasoning, selected controversies</b> Copyright: 87-99 Privacy: 99-117
F. Aug. 25	Privacy, continued Duty of Care: 117-26
M. Aug. 28	Duty of Care, continued <b>Effect of precedent</b> 126-36; 148-54
Tu. Aug 29	<b>Evolution of a claim</b> 155-83
W. Aug 30	<b>Overruling</b> 183-206 [note: Battalla v. State, pp 167-72, is the subject of the first LPW case briefing assignment]; <i>Dobbs v Jackson Women's Health</i> (US 2022) <b>[Retroactivity: 207-19]</b>
Th. Aug. 31 <b>Statutory Interpretation</b>	Background reading: 30-69 (skim); Levin, <i>The Food Stays in the Kitchen</i> (posted to Courseworks) <b>Stating and resolving statutory issues</b> Problem Cases 1-3: 221-27 A General View: 234-59
F. Sept. 1	<b>Plain meaning rule – The Limits of Literalism:</b> 267-86 <b>Context – The Evil to be Remedied:</b> 374-93; podcast on <i>Adoptive Couple v Baby Girl</i> , <a href="https://www.wnycstudios.org/story/more-perfect-presents-adoptive-couple-v-baby-girl">https://www.wnycstudios.org/story/more-perfect-presents-adoptive-couple-v-baby-girl</a> <i>Postscript: Haaland v. Brakeen</i> (US June 15, 2023) (upholding Congress' authority to legislate with respect to Indian tribes, including to preempt state family law). <a href="https://www.supremecourt.gov/opinions/22pdf/21-376_7148.pdf">https://www.supremecourt.gov/opinions/22pdf/21-376_7148.pdf</a> For additional historical context, see Justice Gorsuch's concurring opinion. <b>PARTY: 6:00-8:00 PM at Prof. Ginsburg's home</b>
<b>Daily Written Assignment (final paper to be submitted Sept. 22)</b>	For each day of the Legal Methods I course, please keep a journal detailing what skills and techniques you perceive you are learning, and how you are reacting to the materials and the classroom experience, as well as to the small-group sessions with your TAs. At the end of the course, please review and synthesize the daily entries to give an overview of how well (or not) you think the course prepared you for law school, what you found most and least pedagogically useful in the course, and how your understanding evolved throughout. ("Everything was wonderful and perfect" or "Everything stunk" or similar peremptory reviews are not helpful responses, and will receive no course credit.) Page limit: 3 pages, single-spaced, normal margins, 12pt type.

## Legal Methods II: Methods of Statutory Drafting and Interpretation

J-Term 2024

Professor Jane Ginsburg

This Legal Methods II course pursues two objectives: in addition to examining the methodologies of interpreting statutes, the course will principally focus on their drafting. In the traditional classroom lecture component of the course, students will work their way through examples of statutory text and legislative history, before addressing how courts and agencies have interpreted those statutes. The experiential aspect of the course will cast students in the roles of statutory drafters, implementers, and interpreters. Working in groups, students will first draft a proposed statute in response to a specified problem. The students next will be assigned the role of the agency ultimately tasked with the statute's enforcement, and in that guise will anticipate issues in the implementation of the draft statute in order to advise the drafters of potential problems, and to recommend solutions. The drafters then will rewrite the statute in light of agency feedback. Finally, students will serve as judges called upon to interpret and apply the now-enacted statutes to specific fact scenarios. By immersing students in different actors' perspectives in the statutory drafting and interpretive process, we aim not only to promote the students' drafting skills, but also to enable them to perceive and appreciate concerns that arise throughout the process – concerns that after-the-fact judicial review may mute. Caselaw and selected secondary authorities on statutory drafting and interpretation complement the students' first-hand experience at drafting and applying statutory text.

### **Course Schedule**

**Large Group Lecture:** Monday Jan 8-Thursday Jan 11: 10:00 AM – 1:00 PM; Friday Jan 12 10:00 AM – 12:00 PM, room WJW 207

**Small Group Drafting Sessions:** Monday Jan 8-Thursday Jan 11: 2:00-5:00, Friday Jan 12: 12:10-2:00.

Rooms in JGH and WJW assigned as follows:

Group 1, JGH 908; Group 2, JGH 502; Group 3, JGH 602; Group 4, JGH 646;  
Group 5, WJW 101; Group 6, WJW 103; Group 7, WJW 415; Group 8, WJW 416

### **Course Syllabus**

The required readings for this course are in a coursepack available at the Bookstore. The coursepack consists of excerpts from the Casebooks (Ginsburg & Louk, *Legal Methods: Case Analysis and Statutory Interpretation*, 5<sup>th</sup> edition 2020 and Ginsburg & Louk, *Legislation: Interpreting and Drafting Statutes in Practice and in Theory* (2020) and 2023 Letter Update). Further, optional, readings (indicated on the syllabus) will be posted to Courseworks. Student-drafted ordinances, administrative agency reports, and judicial decisions will all be posted to Courseworks.

**NO SCREENS (laptops, cellphones, etc) permitted in the morning sessions.** Laptops will be needed in the afternoon drafting sessions.

**Background (will not be expressly reviewed in class but referenced throughout):**

**Background for the Morning Session:**

**Overview of Legislation and the Legislative Process** [pp. 1-27]

**Resolving Statutory Issues-A General View:**

*Heydon's Case* and typology [pp. 27-33]; Canons of Statutory Construction [pp. 33-41]

**Background for the Afternoon Session:**

Considerations for Legislative Drafting [pp. 293-97]

M. 1/8	<p><b><u>Morning (10:00 a.m. – 1:00 p.m.):</u></b> <b>Reading Statutory text: Problem Cases:</b> Problem Cases 1-4 [pp. 41-52] <b>Two Prevailing Approaches to Interpretation: Purposivism and Textualism:</b> Manning and Leval excerpts [pp. 52-60]; Alien Contract labor statute and <i>Holy Trinity</i> cases [pp. 60-71]; <i>US v Marshall</i> (read in conjunction with the Note on Judge Posner's review of Scalia and Garner, <i>Reading Law</i>) [pp. 71-76]; The Plain Meaning Rule versus the "Evil to be Remedied": <i>Yates v. U.S.</i> [pp. 77-94] <b>[Clerkships lunch 1:00-2:00]</b> <b><u>Afternoon (2:00 – 5:00 p.m.):</u></b> <b>Preliminary Markup Hearing:</b> Students will be organized into 8 groups and presented with a statutory drafting problem. Working as a legislative body, each group will draft a proposed statute that addresses the problem. [<b>Assignment 1:</b> pp. 298-302]</p>
Tu. 1/9	<p><b><u>Morning (10:00 a.m. – 1:00 p.m.):</u></b> <b>Statutory Definitions Sections:</b> <i>McBoyle v. U.S.</i> [pp. 95-96] (skim) <b>Sources of Ordinary Meaning and Usage:</b> Dictionary Definitions; David Foster Wallace, <i>Tense Present</i> (excerpt) [pp. 96-105]; John McWhorter, <i>The Secret Lives of Words</i>, <a href="https://www.nytimes.com/2023/01/10/opinion/words-language-meaning-evolution.html?searchResultPosition=1">https://www.nytimes.com/2023/01/10/opinion/words-language-meaning-evolution.html?searchResultPosition=1</a> (link posted to Courseworks) [optional]; <i>Muscarello v. U.S.</i> [pp. 105-16] <b>Interpreting Statutes Implemented by Agencies:</b> Administrative Law Overview [pp. 116-23]; Agency Interpretation of Statutes: <i>Chevron v. Natural Resources Defense Council</i> [pp. 123-34]; Major Questions Doctrine: <i>West Virginia v. EPA</i> (2022) [pp. 134-72] <b><u>Afternoon (2:00 – 3:30 p.m.) — Agency Commission Review &amp; Report:</u></b> <i>Each group will now sit as an agency reviewing a different group's draft statute (the statutes will have been posted to Courseworks Monday evening). The groups will prepare a written report identifying potential questions and enforcement concerns, as well as providing suggested amendments and recommendations to resolve identified interpretive issues. Assignment 2A</i> [pp. 302-04] <b><u>Afternoon (3:30 – 4:00 p.m.)</u></b> <i>The groups will change roles, resuming as legislators in order to review each group's agency report on the other's draft statute. Assignment 2B</i> [pp. 304-05] <b><u>Afternoon (4:00 – 5:00 p.m.) — Joint Committee Hearing:</u></b> <i>The two paired groups will discuss potential concerns, questions, and comments</i></p>

	<p>(approximately half an hour per statute, switching roles). <b>Assignment 2C</b> [p. 305]</p>
W. 1/10	<p><b>Morning (10:00 a.m. – 1:00 p.m.): Interpreting Statutes in Light of</b>  <b>... the Statute’s Legislative History:</b> <i>SEC v. Robert Collier</i> [pp 173-78]; <i>Bank One</i> (skim) [pp. 178-83]; Katzmann <i>Judging Statutes</i> (excerpt) [pp. 183-88]  <b>... Changed Circumstances:</b> <i>Commonwealth v. Maxwell</i> [pp. 188-92]; <i>Commonwealth v. Welosky</i> [pp. 192-98]; Title VII Case Study; <i>Bostock v. Clayton County</i> [pp. 198-246]  Optional reading posted to Courseworks: oral arguments in <i>Bostock</i> and <i>Harris Funeral Homes</i></p> <p><b>Afternoon (2:00 – 5:00 p.m.) — Final Markup Hearing:</b>  <i>Groups will meet individually to amend their draft statutes and “enact” a final statute in light of the issues raised by the reviewing agency group’s report and comments. Commission members will make “floor statements” advancing interpretations that favor their constituencies. Assignments 3A and 3B</i> [p. 306] <b>[Networking night 6:30- ]</b></p>
Th. 1/11	<p><b>Morning (10:00 a.m. – 1:00 p.m.): [Lily Vaamonde on experiential learning, 10 min]</b>  <b>The Contexts of Statutes and their Interpretation: Interpreting Statutes in Light of . . . Judicial Interpretations of that Statute (convergence of statutory and common law methods):</b> <i>Smith v. U.S.</i> [pp. 246-57]; <i>Bailey v. U.S.</i> [pp. 257-66]; <i>Watson v. U.S.</i> [pp. 266-72]</p> <p><b>... Scrivener’s Errors:</b> <i>In re Adamo</i> [pp. 272-80]</p> <p><b>Afternoon (2:00 – 5:00 p.m.) — Judicial Application of Statutes to Fact Patterns</b>  The legislative record for each statute (draft statutes, agency reports, revised statutes, floor statements) will be posted to Courseworks Wednesday evening; each group should in advance of the next class review the record of the statute that the group will be interpreting.</p> <p><i>Each group will now sit as a court adjudicating a fact pattern requiring interpretation of a different group’s enacted statute. Drawing on the statute, agency report, and related legislative history, the court will produce a short, written opinion (and possible concurrences and/or dissents) resolving the interpretive challenges. Assignments 4A and 4B</i> [pp. 307-08]</p>
F. 1/12	<p><b>Judging Statutes</b></p> <p><b>Morning session (10:00 a.m. – 12:00 p.m.): Guest Participant: David Louk</b>  Reread the Typology of Legal Methods for Statutory Interpretation in light of your experience drafting and interpreting statutes [pp. 29-33]</p> <p>How Judges Understand the Relationship Between Legal Methods of Interpretation, Legislation, and the Legislative Process: Abbe R. Gluck &amp; Richard Posner, <i>Statutory Interpretation on the Bench: A Survey of Forty-Two Judges on the Federal Courts of Appeals</i> [pp. 280-91]</p>

All groups' draft statutes, related legislative history, and enacted statutes [previously posted to Courseworks]; Judicial interpretations of the statutes (posted to Courseworks Thursday evening): In addition to your paired groups' statutes and their judicial interpretations, please review at least one other group's statutes and corresponding judicial interpretations.

*The last class will discuss the problems, issues, and considerations of judicial and administrative interpretation presented by each of the drafted statutes, first as a whole, then in breakout groups:*

**Breakout sessions (12:10 – 2:00 p.m.):** The ordinance-drafting team and the team of judges that interpreted the drafting team's ordinance will meet to discuss whether the judges correctly understood the ordinance, and – to the extent the judges did not give effect to the drafters' intent – how the drafters might have written the ordinance more clearly to express their objectives. Drafters should identify portions of the opinions they believe misinterpreted the statute or perceived the statute differently from the drafters, and ask why the judges ruled the way they did. The teams then will switch roles so that the other team's ordinance and opinion receive the same scrutiny.

**4:00-6:00 PARTY at Prof. Ginsburg's home**