

LEGISLATION AND REGULATION

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*The editors dedicate this book
to their families*

PREFACE

This casebook is designed for a first-year course on Legislation and Regulation. Harvard Law School introduced such a course as part of a more general package of reforms to the first-year curriculum in September 2006. The purpose of this new required Legislation and Regulation course was to bring the first-year law school curriculum more into line with the realities of modern legal practice and the structure of our legal system—in particular, the centrality of statutes and regulations. The objective of this course is to teach students both how federal statutory and regulatory law is made, and how judges and administrative interpreters construe these legal materials. The course also serves as a foundation for courses in the upper-level curriculum, including Environmental Law, Labor Law, Securities Law, Employment Law, Bankruptcy, Taxation, and numerous other courses in which statutes and regulations are central.

The casebook consists of five chapters. Chapters One and Two focus on the “legislation” element of the course, introducing students to the theory and practice of statutory interpretation. Chapter One introduces classic themes and controversies in statutory interpretation, such as the conflict between a statute’s text and apparent purpose, different approaches to construing statutory language, and the appropriate role of extrinsic materials (particularly legislative history) in statutory interpretation. Chapter Two continues the exploration of the theory and practice of statutory interpretation by examining the role of “canons of construction” (both semantic and substantive) in statutory interpretation.

Chapters Three and Four focus on the “regulation” element of the course, introducing students to the legal architecture that both enables and constrains regulatory policymaking by administrative agencies. Chapter Three explores the constitutional framework of the modern administrative state and presents the core doctrines and practices that structure the relationship between the agencies and the President and Congress. Chapter Four deals with the administrative rulemaking process and related topics, focusing in particular on the legal apparatus established by the Administrative Procedure Act (APA) and the judicial decisions construing that statute.

Chapter Five integrates the “legislation” and “regulation” aspects of the course by focusing on judicial review of agencies’ interpretations of the statutes that they administer. Chapter Five thus revisits many of the issues covered in Chapters One and Two, but in the context of statutes interpreted in the first instance by administrative agencies. This gives students an opportunity to consider the appropriate allocation of interpretative authority between courts and agencies, as well as a chance to consolidate their understanding of some of the core concepts of interpretation found in Chapters One and Two. It also lends itself to review and further consider-

ation of issues pertaining to the appropriate role and function of agencies in our system of government (the central theme of Chapters Three and Four).

A few words on our general approach to constructing this casebook: First, the two of us sought to meld somewhat different perspectives. One of the editors (Manning) takes a more doctrinal, structural, and historical approach to the material. The other (Stephenson) approaches many of the same questions from a more pragmatic, instrumentalist, and social scientific perspective. Each editor is friendly to the other's approach, and we tried to craft a book that blended a broad range of doctrinal, political science, historical, economic, and philosophical perspectives on the cases and materials we selected. Second, we erred on the side of including somewhat more of the principal cases, making the excerpted cases somewhat longer than in other casebooks. Our experience in teaching these materials has been that cutting the cases too much can make the cases harder to understand by disrupting the flow or omitting key elements of the argument. (One style point: In our editing of the principal cases, we indicate with ellipses where we were omitting substantive material, but we generally do not indicate where we omit citations.) Third, we have tried, in the notes following the cases, to give the students context for understanding how the case fits in with the fabric of the law more generally and with related material in the casebook. In so doing, we have tried to make the notes as modular as possible, permitting instructors to assign the ones that most interest them. Finally, we have tried to lay out basic concepts in a way that makes the book accessible for first-years, but we have sought to make the treatment in-depth enough to engage of interest to upper level students as well.

This casebook has been the product of tremendous effort by a large number of people. Neither the book nor the Harvard Legislation and Regulation course would exist without the vision and leadership of Elena Kagan and Martha Minow, who spearheaded the curricular reform and oversaw the development of the course, or without the invaluable contributions of our colleagues David Barron, Jody Freeman, Todd Rakoff, Mark Tushnet, and Adrian Vermeule. We also benefitted tremendously from our colleagues who either spoke to us in during the early development of these materials, or used them in draft form, or both: Rachel Barkow, Einer Elhauge, Jody Freeman, Roderick Hills, David Lewis, David Marcus, Anne Joseph O'Connell Todd Rakoff, Samuel Rascoff, Christina Rodriguez, Peter Strauss, Adrian Vermeule, and Alexander Volokh. We thank our outstanding research assistants—Janet Kim, Leif Overvold, Ryan Park, Paul Ray, Colleen Roh, and Benjamin Snyder—who performed heroic feats of substantive analysis, proofreading, and cite-checking. Their excellent work saved us from error and vastly improved the quality of the book. We are grateful to John Bloomquist, Jim Coates, JoAnn Grinstead, and Robb Westawker of Foundation Press for their good advice, excellent editing, and strong support. We are also grateful to Margaret Flynn and Sarah Davitt for their

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June 2010

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- Trans-Pacific Freight Conference of Japan/Korea v. Federal Maritime Commission, 650 F.2d 1235, 209 U.S.App.D.C. 27 (D.C.Cir.1980), 623, 627
- Trans World Airlines, Inc. v. Franklin Mint Corp., 466 U.S. 243, 104 S.Ct. 1776, 80 L.Ed.2d 273 (1984), 352
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- United States Telephone Ass'n v. F.C.C., 28 F.3d 1232, 307 U.S.App.D.C. 365 (D.C.Cir. 1994), 692
- United Technologies Corp. v. EPA, 821 F.2d 714, 261 U.S.App.D.C. 226 (D.C.Cir.1987), 705
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- Wiener v. United States, 357 U.S. 349, 78 S.Ct. 1275, 2 L.Ed.2d 1377 (1958), 522
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