Overview

This course will familiarize you with the legislative process, the role of executive branch agencies, and how courts interpret legislation and agency actions.

Most lawyers will spend their careers dealing with statutes and regulations at least much as the common law doctrines that are taught in the first-year law curriculum. A number of your upper-level law courses will involve subject areas that are entirely statutory. As a lawyer, you may be called upon not only to advocate particular interpretations of current law, but to interact with a legislative or administrative body that has the power to change the law (or decide your client's fate in other ways). Yet the processes by which statutes and regulations are enacted are not well understood by many practitioners.

In this course we will discuss, among other things:

- the basic structure of federal and state government and the separation of powers
- justifications for regulation
- the nuts and bolts of the legislative process
- the politics of the legislative process
- the role of executive branch agencies
- direct democracy (the "Oregon system")
- how judges deal with statutes and regulations (from theoretical issues to practical "canons of construction")

Reading

The required textbook for this course is Bressman, Rubin, & Stack, *The Regulatory State* (Aspen 2d ed) ("BRS"). As an additional and very readable resource, I recommend Richard L. Hasen, *Legislation, Statutory Interpretation, and Election Law: Examples and Explanations* (Wolters 2014). The syllabus will be continuously updated and posted on TWEN; please check that site regularly.

Grading, Attendance, and Participation

The law school's attendance policy applies. Your grade will be determined by a final exam, subject to adjustment of a half-grade based on your class participation. You will find that the reading is accessible and engaging and should lead to interesting class discussions, but that depends on you. Please keep up with the assignments and be ready to discuss them. Twice during the semester you may give me advance notice that you are not prepared for class;
provided you give me that notice by noon on the day of class (email is fine), I will not expect your participation that day and your grade will not be affected.

Contact information

I do not have an office on campus. I work close by, however, and I am more than happy to set up a time to meet with you or talk by phone. You are also free to email me anytime with questions or comments about the course. I can be reached at chris.garrett@ojd.state.or.us.

**SYLLABUS**

I. **Introduction and Overview**

   **Class 1: 1/10/17**

   1. BRS Preface, pp. xxi-xxiv
   2. Schoolhouse Rock: "I'm Just a Bill" (3-minute video available on Youtube).
   3. Read the "No Vehicles in the Park" handout on TWEN.

   **Class 2: 1/12/17**

   1. BRS Ch. 1 pp. 1-11
      - part IV of majority opinion
      - part IV of Roberts dissent
      - Scalia dissent

II. **Why Regulation?**

   **Class 3: 1/17/17**

   1. BRS Ch. 2 pp. 81-97

   **Class 4: 1/19/17**

   1. BRS Ch. 2 pp. 98-123

III. **Legislative Process**

   **Class 5: 1/24/17**

   1. BRS Ch. 3 pp. 125-42
(Note: please bring the flowchart or have it on screen for discussion in class)

Class 6: 1/26/17

1. "Oregon Legislative Process Overview" handout on TWEN
2. BRS Ch. 3 pp. 142-66

Class 7: 1/31/17

1. BRS Ch. 3 pp. 166-83

Class 8: 2/2/17

1. BRS Ch. 3 pp. 183-200

IV. Statutory Interpretation by Courts

Class 9: 2/7/17

1. BRS Ch. 3 pp. 211-22 (finish legislative process)
2. BRS Ch. 4, pp. 223-50 (begin statutory interpretation)

Class 10: 2/9/17

1. BRS Ch. 4 pp. 250-65

Class 11: 2/14/17

1. BRS Ch. 4 pp. 265-92

Class 12: 2/16/17

1. BRS Ch. 4 pp. 292-334

Class 13: 2/21/17

1. BRS Ch. 4 pp. 341-59
2. BRS Ch. 4 pp. 374-86

Class 14: 2/23/17

1. BRS Ch. 4 pp. 334-40
2. BRS Ch. 4 pp. 401-36

Class 15: 2/28/17

PGE v. BOLI, 317 Or 606 (1993)
Young v. State, 161 Or App 32 (1999)
State v. Gaines, 346 Or 160 (2009)

V. Statutory Implementation by Agencies

Class 16: 3/2/17

1. BRS Ch. 1 pp. 11-15, 48-79

Class 17: 3/7/17

1. BRS Ch. 5 pp. 473-504

Class 18: 3/9/17

1. BRS Ch. 5 pp. 524-53

Class 19: 3/14/17

1. BRS Ch. 5 pp. 553-71
2. BRS Ch. 5 pp. 576-92

Class 20: 3/16/17

1. BRS Ch. 5 pp. 592-610
2. BRS Ch. 5 pp. 643-56

VI. Control of Agency Action

Class 21: 3/21/17

1. BRS Ch. 6 pp. 657-77

Class 22: 3/23/17

1. Skim BRS Ch. 6 pp. 703-09
2. Read BRS Ch. 6 pp. 709-53
NO CLASS MARCH 28, MARCH 30 (SPRING BREAK)

NO CLASS APRIL 4

Class 23: 4/6/16
1. BRS Ch. 6 pp. 753-84

Class 24: 4/11/16
1. BRS Ch. 6 pp. 785-801, 810-23

VII. Direct Democracy

Class 25: 4/13/16
1. Materials in "Direct Democracy" folder on TWEN
   a. Or Const Art IV section 1
   b. Excerpt of Kadderly v. City of Portland
   c. 2016 Initiative & Referendum Manual (skim this only -- to develop a
      sense of the process, timelines, and players)
   d. "The People's Will" (from The Economist)
   e. Three short news articles