

## Legal Elements Fall 2011

Professor John Parry

### *Introduction*

Legal Elements is a short course about the ways in which courts make legal rules (the common law process) and the ways in which they interpret rules made by legislatures (statutory interpretation) and administrative agencies. The course provides an important foundation for your legal education in several ways. First, it will prepare you for your other first year classes. For example, Torts is a common law-based course. The Contracts class covers legal rules that come both from the common law and from statutes. Civil Procedure devotes a great deal of time to the Federal Rules of Civil Procedure, which are in many ways similar to statutes. Upper level courses in such things as criminal law, environmental law, and tax focus extensively on statutes.

Second, Legal Elements will introduce you to the methodology of legal interpretation. As such, the course not only gets you started in your legal education but also gives you the skills to handle your advanced classes and to keep up with legal developments after you graduate from law school.

Third, some of your (optional) reading will consider the idea of “the rule of law,” and you will also encounter in this class bits of history, legal theory, and other topics that are highly relevant to the study and practice of law. You will have the opportunity to explore these topics more fully in other classes, particularly upper level classes.

In order to get the most out of this class, you must do the reading – and you must do it before class. I will call on people in class (including people who have not raised their hands), and I will expect you to be prepared to give some kind of answer. Do not worry too much about whether the answer is correct (and also rest assured that I am not trying to embarrass you). Often, my questions will get at the ambiguities in a case or statute, so that there may not be a clearly correct answer at all. The goal is to have you engage with the material “on your feet” (something lawyers have to do quite a lot), in addition to engaging with it on your own time as you prepare for class.

As you will discover in your other courses after Legal Elements is over, many legal issues are settled or straightforward, but a great deal of uncertainty and ambiguity remains in the law. You need to learn how to develop arguments about what the cases and statutes mean – or rather, the various meanings that they might have – because that is much of the work that lawyers do. To that end, you must attend class. As you will discover, and as the foregoing ought to suggest, much of the learning in law school occurs in the classroom during the dialogue among the professor and students.

### *Readings*

Jane C. Ginsburg, *Legal Methods: Cases and Materials* (Foundation Press, 3<sup>rd</sup> ed. 2008) [hereinafter cited as “CB” – for casebook] – available in the bookstore or through on-line retailers

Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press 2004) [hereinafter cited as “Tamanaha”] – distributed by email as a pdf

### *Class Schedule*

- 1) Days 1 through 7 (Monday-Friday of the first week and Monday and Tuesday of the second week): we will meet in Room 3 from 1 to 4 p.m., with a break or two along the way
- 2) Day 8 (Wednesday of the second week): you will meet from 12:30 to 2 p.m. in smaller groups for a program on professionalism (room to be announced), and then we will all meet in Room 3 for a regular (but short) class from roughly 2:15 to 3:30.
- 3) Day 9 (Thursday of the second week): we will meet in Room 3 from 1 to 2:30 p.m. to catch up and review for the exam.
- 4) Day 10 (Friday of the second week): exam

### *Policy on Internet and Cell Phone Use*

I expect you to turn your cell phone(s) off during class unless you have a good reason (such as child care, family illness, or the like) to keep it on. I also expect that, although many of you will use laptops to take notes, you will not use them (either alone or in conjunction with a cellphone) to access the internet during class except for a class-related purpose. That means no emailing, texting, facebooking, surfing, or similar activities – and note that “class-related purpose” does not include emailing, texting or otherwise contacting fellow students about what is happening in class.

### *Grades*

Your grade will be based on a 3 hour final examination. The exam is closed book; you may not bring any notes or course materials to the exam. There will be a page limit for your answers. I will score the exams on a pass-fail basis.

### *Instructions*

- 1) Each reading on the syllabus corresponds to a specific numbered class session, which means that the syllabus assumes we will cover each set of readings in one class. The fit between readings and class sessions could change as we move through the materials, but unless I tell you otherwise, you should assume that your assignment for the next class will be the next set of readings on the syllabus.
- 2) Where the readings include problems or hypotheticals, you should assume that they will be an important part of class on that day.

3) The selections from Brian Tamanaha’s book are optional. We will not discuss the book in class, but I encourage you to read the assigned excerpts. They provide perspectives, not so much on the specific topics of each class, but instead on the larger goals of the legal system.

*Syllabus*

<u>Class # and Date</u>	<u>Topic</u>	<u>Reading</u>
1 – Mon., 8/15	Case Law: The Common Law Process	CB 2-29, 76-87, 103-108
<p><b>Note for Class #1: CB 2-29 describes the common law, the federal and state judicial systems, and the way a case evolves. You should read this quickly and then refer back to it as you need to. The rest of the reading is opinions in three appellate court cases. We will begin by “briefing” the first case. There is a lot of information in the cases, and you should focus on the general points that this case makes. For all three cases, be prepared (1) to describe what the cases are about and (2) to address the questions that follow the cases. Don’t worry about whether your answers are right or wrong – it is the purpose of this class to help you answer those questions.</b></p>		
2 – Tues., 8/16	Case Law: Precedent	CB 110-119, 122-27, 135-39, 91 [description of the reasoning in Murray], 140-162
3 – Weds., 8/17	Case Law: Overruling and Retroactivity	CB 163-190, 193-195, 213-223 [through problem 3]; Tamanaha 1-6
4 – Thurs., 8/18	Introduction to Statutes	CB 29-60, 238-39 [stop before problem 1], 247 n.2, 239-47 [through n.1]; Tamanaha 32-46
<p><b>Note for Class #4: CB 29-60 is another introductory reading that provides a wealth of detail. You should read it quickly and refer back to it as necessary.</b></p>		
5 – Fri., 8/19	Statutes: A General View and Plain Meaning	CB 249-69, 280-85, 295-298, 306-320; Tamanaha 91-101
6 – Mon., 8/22	Statutes: Context and Legislative Responses to Court Interpretations	CB 365-388, 446-60; Tamanaha 102-113
7 – Tues., 8/23	Statutes and Administrative Agencies	CB 60-65, 389-436; Tamanaha 114-126

8 – Weds. 8/24	Part 1 (12:30-2 p.m.) Ethics and Professional Responsibility	Handout
	Part 2 (2:15-3:30 p.m.) Retroactive Application of Statutes	CB 461-65, 484-520; Tamanaha 137-141
9 – Thurs., 8/25	Catch-up and Review	Reading TBA
10 – Fri., 8/26	Exam	