

STATUTORY INTERPRETATION AND REGULATION 2018

Professor: Darren Bush

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Office Hours: Tuesday, Thursday noon – 1:00 p.m. and by appointment

COURSE DESCRIPTION AND REQUIREMENTS

Course Description: This course introduces students to the role of statutes and administrative regulation in the practice of law today. The course covers, as its primary subject, the interpretation of statutes and regulations. This element includes the close reading of one or more complex statutes. The course also covers, as a second element, basic aspects of administrative law: in particular, how agencies implement and enforce statutes and regulations. The course may also include other elements, such as legislative process or regulatory policy.

Required Texts:

- LISA SCHULTZ BRESSMAN ET. AL., THE REGULATORY STATE (2013)(ISBN # 978-1-4548-2268-4).

Course Assessments:

Grades will be determined based upon the following percentages:

- a. *Participation (10%)*. Participation should be regular and of good quality. Participation will include, but should not be limited to, answering questions when called upon to do so. Participation will be discussed in greater detail during the first class session.
- b. *Final Exam (90%)*. You will have a comprehensive final exam consisting of one or two questions. You will be allowed to bring to the exam whatever (inanimate) objects bring you comfort, *except* (i) those prohibited by law or University Policy; (ii) commercial outlines, and; (iii) outlines created by other students (apart from any group outlines created by students consisting entirely of members of this course). The final exam will be discussed in greater detail during the first class session

ABA Required Language:

Learning Outcomes: Through and as a result of this course, students will: (1) demonstrate understanding of the tools of statutory interpretation (see course title); (2) demonstrate understanding of basic issues of administrative law and regulation (see course title) (3) understand judicial review of administrative agencies (implied in course title but see course description) and (4) understand the economic implications of market regulation by stakeholders (e.g., this section of the syllabus).

Services Available To Students

CSD: The University of Houston, when possible and in accordance with 504/ADA Guidelines, will attempt to provide reasonable academic assistance to students who request and require it. Please contact the Center For Students With Disabilities at (713) 743-5400 for more information.

CAPS: Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html.

READING ASSIGNMENTS

Note: All assignments refer to the Casebook described above, unless otherwise noted. I reserve the right to add, delete, or otherwise modify assignments.

<u>Assignment</u>	<u>Pages</u>
<i>Regulatory Regimes and Their Alternatives</i>	
1. Overview of Modern Legislation and Regulation	<i>Handout</i>
2. Justifications for Regulation	81-124
<i>The Rules of the Regulatory Game</i>	
3. The Administrative Procedure Act (APA) (Sections 551, 553-557, and 701-706)	<i>Handout</i>
4. <i>Vermont Yankee</i> NRDC v. EPA, 279 F.3d 1180	845-853 <i>Handout</i>
U.S. v. Nova Scotia Food Products, 568 F.2d 240	<i>Handout</i>
5. General Electric Co. v. EPA, 290 F.3d 377	<i>Handout</i>
C & W Fish Co., Inc. v. Fox, 931 F.2d 1556	<i>Handout</i>
6. Presidential Control of Agency Action Portland Audobon v. Endangered Species Comm., 984 F.2d 1534	657-702 <i>Handout</i>
FTC v. Pilsbury, 354 F.2d 952	<i>Handout</i>
7. PATCO v. FLRA, 685 F.2d 547	<i>Handout</i>
8. NLRB v. Bell Aerospace, 416 U.S. 267	<i>Handout</i>
Epilepsy Foundation v. NLRB, 268 F.3d 1095	<i>Handout</i>
9. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402	<i>Handout</i>
<i>State Farm</i> and the “hard look”	810-823

10.	<i>Chevron, Mead and Skidmore</i>	753-796
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Legislation

11.	Legislative Process	125-165
12.	The Structure of a Modern Statute	166-182
13.	Specificity and Delegation	183-199
14.	Legislative Drafting Techniques	200-222

Judicial Interpretation

15.	Tools of Statutory Construction	223-250
16.	Textual Canons Continued and Whole Act	251-291
17.	Substantive Canons	292-330
18.	Substantive Canons, cont'd, Intent and Purpose-Based Tools	330-373
19.	Tools for Considering Changed Circumstances, Theories of Statutory Interpretation	374-416
20.	Theories of Statutory Interpretation <i>cont'd</i>	417-447
21.	Positive Descriptions of Judicial Behavior	448-471