

FOREIGN AFFAIRS LAW
Spring 2018: Class 6302; Section 22794
Professor Emily Berman

Class times: T, Th 10:30a.m. – 12:00 p.m.
Classroom: TBD
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Office Hours: **TBD**

Course Description

This course examines constitutional and statutory doctrines regulating the conduct of America's foreign relations. Topics include the distribution of foreign relations power among the three branches of the federal government, the status of international law in U.S. courts, the nature of the treaty power, the validity of executive agreements, the role of states in foreign relations activities, and doctrines regulating judicial review of cases implicating foreign relations.

Learning Outcomes

Through and as a result of this course, students will: (1) develop an understanding of substantive law applicable in various foreign affairs contexts; (2) engage in legal analysis and reasoning—both written and oral—related to legal issues raised by U.S. foreign policy; (3) evaluate the strength of legal arguments presented on either side of foreign-affairs debates; and (4) assess the efficacy and real-world implications of various foreign-affairs doctrines applied in U.S. courts.

Assessment

Your final grade will be based primarily on an open book **exam** at the end of the semester. Grades may be adjusted for exceptionally strong or poor **class participation**.

Exam: The exam will consist of both multiple choice and essay questions, and will be limited open book—you may refer to your class notes, any assigned reading material, and any study guides or outlines that you participated in generating. The exam is scheduled for **TBD**.

Class Participation: I may “bump” your final grade up or down one “iteration” (e.g., B+ to A- or to B) based upon your class participation. In class, I will use a combination of cold calling and volunteers. I expect you to be prepared for every class. If you are unable to attend or to prepare for a particular class, let me know **before class**, preferably via e-mail, and I will refrain from calling on you that day. My presumption is that no student will need to avail him- or herself of this option more than **3 times** during the semester; any student who does so will be **ineligible** for the participation bump.

Attendance

You are expected to attend all class sessions. If you fail to attend at least 80% of class meetings you will be in violation of both ABA and Law Center policy and may be dropped from the course. If you fail to attend more than **3 classes**, you will not be penalized, but you will be **ineligible** for the participation bump. I track attendance by passing around a sign-in sheet at each class meeting. It is an honor code violation to sign in for another student. Late arrivals may be treated as absences.

CAPS

A reminder that 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 (http://www.uh.edu/caps/outreach/lets_talk.html) that is available at convenient locations and hours around campus.

Computer Policy

Use of laptops or other electronic devices is permitted for class-related purposes only. Violations of this policy may be treated as unpreparedness.

Assignments & Syllabus

The casebook for this course is CURTIS A. BRADLEY & JACK L. GOLDSMITH, FOREIGN RELATIONS LAW: CASES AND MATERIALS (Aspen Publishers 6th ed. 2017) (hereinafter, “FRL”). Each numbered assignment below is intended to be covered in one class meeting. Supplementary readings, if any, will be made available online and/or via email. All reading assignments are required unless otherwise noted. I reserve the right to modify the syllabus; students will be alerted to any syllabus changes via email and in-class announcement.

SYLLABUS

Historical and Conceptual Foundations of Foreign Affairs Law

1. Constitutional Background & Neutrality Controversy of 1793

- [Class Syllabus (this document); The U.S. Constitution; FRL xxv-xxvii; 1-25]
- **Optional handout:** Curtis Bradley, *What is Foreign Relations Law?*

2. Nature of U.S. Foreign Relations Authority

- [FRL 25-40]

The Role of the Courts in Foreign Relations

3. Jurisdiction and Justiciability

- [FRL 44-68]

4. The Act of State Doctrine

- [FRL 69-86]

5. The Presumption Against Extraterritoriality

- [FRL 86-107]

6. Judicial Deference to the Executive Branch

- [FRL 119-33]

Congress and the President in Foreign Relations

7. Sources of Congressional Power

- [FRL 135-55]

8. Sources of Executive Power & When Congress and the President Agree

- [FRL 155-84]

9. When Congress and the President Disagree

- [FRL 184-TBD]

States and Foreign Relations

10. Statutory and Treaty Preemption

- [FRL 217-40]

11. Dormant and Executive Preemption

- [FRL 240-59]

Treaties and Other International Agreements

12. Self-Execution and Last-in-Time Rule

- [FRL 275-99]

13. The Treaty Power & Federalism

- [FRL 299-325]

14. Delegation of Authority to International Institutions

- [FRL 345-60]

15. Executive Agreements

- [FRL 389-413]

Customary International Law

16. Alien Tort Statute

- [FRL *skim* 423-40, *read* 440-TBD; 458-TBD]

17. Foreign Sovereign Immunity

- [FRL 482-506]

18. Individual Official Immunity

- [FRL 506-23]

19. The *Charming Betsy* Canon & U.S. Court's Use of Foreign/International Materials

- [FRL 523-45]

International Crime

20. Extraterritorial Application of Federal Criminal Statutes & Piracy

- [FRL 560-86]

21. Extradition

- [FRL 586-608]

War Powers

22. Congressional War Powers

- [FRL 621-43]

23. Presidential War Powers

- [FRL 643-65]

24. Congress's Ability to Regulate the President's Use of Force

- [FRL 666-88]

25. Wartime Detention

- [FRL 743-TBD]

26. Interrogation & Targeted Killing

- [FRL 805-TBD]