FOREIGN AFFAIRS LAW
Class 5397; Section 25934
FALL 2015
Professor Emily Berman

Class times: TTh 10:30a.m. – 11:50 p.m. Office Phone: 713-743-2507
Classroom: TUII-111
Office: TUII-228
Office Hours: T 4p-5:30p; W 3p-4:30p, by appt.

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Course Description

This course examines the constitutional and statutory doctrines regulating the conduct of America’s foreign relations. Topics include the distribution of foreign relations powers between 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 pre-emption of state foreign relations activities, and doctrines regulating judicial review in foreign relations cases.

Expectations & Evaluation

Exam: Your grade will be based on one final in-class exam, which 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 December 10, 10a-1p.

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 be ineligible for the participation bump. I will keep track of 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.

Computer Policy: Use of laptops or other electronic devices is permitted for class-related purposes only. Violations of this policy will be treated as unpreparedness. Repeat offenders will be barred from bringing laptops to class.

Assignments & Syllabus

The casebook for this course is CURTIS A. BRADLEY & JACK L. GOLDSMITH, FOREIGN RELATIONS LAW: CASES AND MATERIALS (Aspen Publishers 5th ed. 2014) (hereinafter, “FRL”). There is also a 2015 Supplement available in electronic form (hereinafter “2015 Supp.”). Additional 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 class announcement.
# Syllabus

## Historical and Conceptual Foundations

1. **Constitutional Background & Neutrality Controversy of 1793**  
   [Tuesday, August 25, 2015]  
   - [Class Syllabus; The U.S. Constitution; FRL xxv-xxvii; 1-27]

2. **Nature of U.S. Foreign Relations Authority**  
   [Thursday, August 27, 2015]  
   - [FRL 27-41]

   **Note that the class scheduled for Tuesday, September 1 is cancelled. We will make it up on Friday, September 11.**

## The Role of the Courts in Foreign Relations

3. **Jurisdiction and Justiciability**  
   [Thursday, September 3, 2015]  
   - [FRL 47-71]

4. **The Act of State Doctrine**  
   [Tuesday, September 8, 2015]  
   - [FRL 71-89]

5. **The Presumption Against Extraterritoriality**  
   [Thursday, September 10, 2015]  
   - [FRL 89-110; 2015 Supp. 3-4 (note 10a)]

   **Note that Class 6 will meet on Friday, September 11 (time and location TBD):**

6. **Judicial Deference to the Executive Branch**  
   [Friday, September 11, 2015]  
   - [FRL 110-35]

## Congress and the President in Foreign Relations

7. **Sources of Congressional Power**  
   [Tuesday, September 15, 2015]  
   - [FRL 137-57]
8. **Sources of Executive Power**  
    [Thursday, September 17, 2015]
    ➢ [FRL 157-76]

9. **Relationship Between Congress and the President**  
    [Tuesday, September 22, 2015]
    ➢ [FRL 176-82; 2015 Supp. 7-32 (Zivotafofsky v. Kerry (2015)); 187-90 (notes 1-4); 2015 Supp. 32-33; 34-35 (Zivotafofsky notes 10-10c; 10g); 196-202 (notes 11-16)]

### States and Foreign Relations

10. **Statutory and Treaty Preemption**  
    [Thursday, September 24, 2015]
    ➢ [FRL 203-30]

11. **Dormant and Executive Preemption**  
    [Tuesday, September 29, 2015]
    ➢ [FRL 230-48]

### Treaties and Other International Agreements

12. **Self-Execution and Last-in-Time Rule**  
    [Thursday, October 1, 2015]
    ➢ [FRL 265-87]

13. **Limits on Treaty Power?**  
    [Tuesday, October 6, 2015]
    ➢ [FRL 288-293; 2015 Supp. 37-52 (Bond v. United States); FRL 293-95; 296; 298 (notes 1-3; 7, 12); 2015 Supp. 52-54 (notes 13-13f); 299-300 (notes 14-15)]

14. **Delegation of Authority to International Institutions**  
    [Thursday, October 8, 2015]
    ➢ [FRL 319-339]

15. **Executive Agreements**  
    [Tuesday, October 13, 2015]
    ➢ [FRL 367-386 (through note 4); 2015 Supp. 55-59 (note 15)]
Customary International Law

16. Alien Tort Statute
   [Thursday, October 15, 2015]
   ➢ [FRL skim 391-400, read 410-420, 426-448]

17. Foreign Sovereign Immunity
   [Tuesday, October 20, 2015]
   ➢ [FRL 448-470]

18. Individual Official Immunity
   [Thursday, October 22, 2015]
   ➢ [FRL 470-489]

19. The Charming Betsy Canon & U.S. Court’s Use of Foreign/International Materials
   [Tuesday, October 27, 2015]
   ➢ [FRL 489-510]

International Crime

20. Extraterritorial Application of Federal Criminal Statutes & Piracy
   [Thursday, October 29, 2015]
   ➢ [FRL 524-26, 530-50]

21. Extradition
   [Tuesday, November 3, 2015]
   ➢ [FRL 550-573]

War Powers

22. Congressional War Powers
   [Thursday, November 5, 2015]
   ➢ [FRL 585-606]

23. Presidential War Powers
   [Tuesday, November 10, 2015]
   ➢ [FRL 607-628; 2015 Supp. 64-69 (note 17)]
24. Congress’s Ability to Regulate the President’s Use of Force
   [Thursday, November 12, 2015]
   ➢ [FRL 628-49]

25. Wartime Detention
   [Tuesday, November 17, 2015]
   ➢ [FRL 667-81; 686-89 (only notes 3, 5, 10, 11); 705-13; 713-26 (only notes 1, 3, 5, 6, 7, 11]

26. Interrogation & Targeted Killing
   [Thursday, November 19, 2015]
   ➢ [FRL 761-69; 770-74 (only notes 6, 8, 11, 12); 790-97; 798-804 (only notes 3, 4a, 4b, 4d, 5a, 5b, 5c, 6]