

FOREIGN AFFAIRS LAW
Fall 2021: Class 6302; Section 17890
Professor Emily Berman

Class Information:

Meetings: M, W 2:00p.m. – 3:20 p.m.

Location/Zoom link: TBD

Exam: TBD

Professor Information:

Office: TUII-228

Email: eberman@uh.edu

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 national security contexts; (2) engage in legal analysis and reasoning—both written and oral—related to legal issues raised by U.S. foreign affairs policy; (3) evaluate the strength of legal arguments presented on either side of foreign affairs law debates; and (4) assess the efficacy and implications of various doctrines applied in U.S. courts.

I. GENERAL INFORMATION A/K/A LAW SCHOOL IN THE TIME OF COVID-19

To Zoom or Not to Zoom

- We do not yet know whether we will be meeting online or in person.
- I will update the syllabus with logistical information as it becomes available.

Office Hours

- I will be available [TBD].
- If you are unavailable at that time, feel free to email me to schedule an alternative.

Class Blackboard Website

- All class-related materials, including handouts, PowerPoint slides, the syllabus, and links to videos of class will be posted on Blackboard.
- To access our web course on Blackboard:
 - Log into [Access UH](#).
 - In the “University Services” box, click the “Blackboard Learn 9” icon.
 - On the Blackboard site, click [link TBA]
 - You will be automatically enrolled in our web course.
 - The site should be available to you 5-7 days before class starts.
- ♦ Below are some links to useful information about Blackboard:
 - [Information for new Blackboard and CougarNet users](#)
 - [Blackboard help and resources for students](#)
 - [Blackboard support](#)

II. CLASS REQUIREMENTS & GRADING

Assessment

▪ Exam:

- ♦ Your grade will be based on one final three-hour exam, administered via Electronic Bluebook, which will consist of both multiple choice and essay questions, and will be 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**.

▪ Participation:

- ♦ I may “bump” your final grade up/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 themselves of this option more than 3 times during the semester; any student who does so will not be penalized, but will be ineligible for the participation bump.
- ♦ If you fail to attend at least 80% of class meetings, you will be in violation of Law Center policy and may be dropped from the course.

- ♦ Class participation has two elements:

1) A short video:

- Designed to be watched prior to class.
- The video will be about 15 minutes long and will consist of a recap of the previous class and perhaps some introductory information pertinent to the upcoming class.
- Links to these videos will be available on Blackboard.

2) A live class meeting:

- Whether via Zoom or in-person, the synchronous class sessions will be a mixture of lecture, Socratic dialogue, and class discussion.
- I expect you to be prepared for every class and I may call on you at any time.
- There may also be occasional in-class exercises to complete.

****Caveat:** Given the unprecedented circumstances of COVID-19, these course procedures and protocols may change as we learn together what works well and what does not. Please email me feedback or suggestions at any time. In addition, I will periodically seek anonymous feedback to assess how things are going and to solicit any suggested modifications. I promise to carefully consider all student suggestions. In fact, some of the best adjustments I made in the spring came from student suggestions, and they improved the class experience for all of us. I will do my best to incorporate suggestions if they are consistent with my pedagogic goals and will benefit the entire class.

III. MISCELLANEOUS POLICIES AND INFORMATION

Reading Materials:

- The casebook is *Foreign Relations Law* (Bradley and Goldsmith eds, **6th ed.** 2017), ISBN-13: 978-1454876434; ISBN-10: 1454876433. There is a 7th edition of this casebook, but it costs \$300 (\$175 to rent), so we're going to use the older version.
- In addition, the syllabus indicates multiple reading assignments, identified as "Handouts," not contained in the case book.
- Each assignment that is not in the 6th edition of *Foreign Relations Law* will be posted on Blackboard in the Handouts folder.

Assignments:

- Each numbered item on the syllabus is designed to be covered in one class session.
- There might be times, however, when one topic spills over into the beginning of the next class.
- I reserve the right to modify the syllabus. I will notify students of any modification far in advance of any changes.

Preparation: Unless it is labeled as "optional" on the syllabus, you are expected to read all of the material indicated on the syllabus for each class session.

Chosen Names/Preferred Pronouns: I will gladly honor requests to use alternate names or gender pronouns—including non-binary ones such as they/them/theirs. Please advise me of your preference early in the semester so that I may make appropriate changes to my records.

Computer Policy: Use of computers or other electronic devices is permitted for class-related purposes only. Violations of this policy will be treated as unpreparedness.

Recording of Class: Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Center for Students with DisABILITIES](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with *anyone* without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Syllabus Changes: Due to the changing nature of the COVID-19 pandemic, please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible through (*specify how students will be notified of changes*).

University Resources: 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) available at convenient times.

READING ASSIGNMENTS

FRL = Foreign Relations Law (Bradley & Goldsmith 6th ed.)

Handout #x = posted on Blackboard

Historical and Conceptual Foundations of Foreign Affairs Law

1. **August 23: Constitutional Background & Neutrality Controversy of 1793**
 - [Class Syllabus (this document); The U.S. Constitution; FRL xxv-xxvii; 1-25]
 - **Optional:** Handout #1 – Curtis Bradley, *What is Foreign Relations Law?*
2. **August 25: Nature of U.S. Foreign Relations Authority**
 - [FRL 25-40]

The Role of the Courts in Foreign Relations

3. **August 30: Jurisdiction and Justiciability**
 - [FRL 44-68; 2017 Supplement 2-3]
4. **September 1: The Presumption Against Extraterritoriality**
 - [FRL 86-107]
5. **September 8: Judicial Deference to the Executive Branch**
 - Handout #2 72-84

Congress and the President in Foreign Relations

6. **September 13: Sources of Congressional Power**
 - [FRL 135-55]
7. **September 15: Sources of Executive Power & When Congress & the President Agree**
 - [FRL 155-84]
8. **September 20: When Congress and the President Disagree**
 - [FRL 184-212 **only** nn. 1-7, 10, 16-18]

States and Foreign Relations

9. **September 22: Statutory and Treaty Preemption**
 - [FRL 217-40]
10. **September 27: Dormant and Executive Preemption**
 - [FRL 240-59; 2017 Supplement 16 (n.15a)]

Treaties and Other International Agreements

11. September 29: Self-Executing Treaties and the Last-in-Time Rule

- [FRL 275-99]

12. October 4: The Treaty Power & Federalism

- [FRL 299-325]

13. October 6: Treaty Interpretation & Reinterpretation

- Handout #3 334-51

14. October 11: Delegation of Authority to International Institutions

- [FRL 345-60 (only nn. 1-4, 6-8, 12, 14)]

15. October 13: Executive Agreements & International Political Commitments

- [FRL 389-407 (through n.3); 410-12 (n.12); 413-17; 418-22 (nn.6-11); 2017 Supplement 19-23]

Customary International Law

16. October 18: Alien Tort Statute

- [FRL *skim* 423-40, *read* 440-52; 454-55 (nn.6-8); 458 (facts of *Kiobel v. Royal Dutch Petroleum Co.*); 464-71; 475-77 (nn.7-8); 478 (n.12)]

17. October 20: Foreign Sovereign Immunity

- [FRL 482-506 (only nn. 1-5, 7-9, 12, 16, 18)]

18. October 25: Individual Official Immunity

- [FRL 506-23 (only nn. 1-3, 6-9, 11-12)]

19. October 27: The *Charming Betsy* Canon & U.S. Courts' Use of Foreign/Int'l Materials

- [FRL 523-33 (only nn. 1-5, 7); 533-45 (only nn. 1-2, 4-6, 8-10, 12)]

International Crime

20. November 1: The Constitution Abroad

- [FRL 549-60 & 609-19]

21. November 3: Extraterritorial Application of Federal Criminal Statutes

- [FRL 560-73 (only nn. 1-2, 4-6, 9)]

War Powers

22. November 8: Congressional War Powers

- [FRL 621-43 (only nn. 1-7, 11-15)]

23. November 10: Presidential War Powers

- [FRL 643-65 (only nn. 1-8, 12-16); 2017 Supplement 29-30]

24. November 15: Congress's Ability to Regulate the President's Use of Force

- [FRL 666-88 (only nn. 1-4, 7-9, 12, 14, 20)]

25. November 17: Wartime Detention & Targeted Killing

- [FRL 743-53 (**through n.4**); 755-56 (**n.7**); 761-62 (**n.12**); 767-70 (**n.15**)]
- [FRL 819-27; 828-33 (**nn.4-5**); 834-35 (**n.7-8**)]

Thanksgiving – November 25-November 27

26. November 29: Spillover/Review Session