

STATUTORY INTERPRETATION AND REGULATION

SPRING 2022

Professor: Darren Bush

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Office Hours: Monday, Wednesday, 12:00 p.m. – 1:00 p.m. (in office) 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 (3rd Ed. 2020)(ISBN # 9781454878797).

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. The exam will be a 24-hour take home exam. 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.

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	Handout
2. Justifications for Regulation	1-34
<i>Rules of the Regulatory Game</i>	
3. The Administrative Procedure Act	
• APA Sections 551, 553-557, and 701-706)	Appendix
4. Limitations on Rulemaking	
• Vermont Yankee	887-886
• NRDC v. EPA, 279 F.3d 1180	Handout
• U.S. v. Nova Scotia Food Products	891-898
5. Problems with Rulemaking and Alternatives	
• General Electric v. EPA	Handout
• C&W Fish Co. Inc. v. Fox	Handout
6. Presidential Control of Agency Action	
• Portland Audubon v. Endangered Species	Handout
Limitation of Congressional Control	
• FTC v. Pillsbury	Handout
7. Adjudication Problems	
• PATCO v. FLRA	Handout
• HBO v. FCC	897-902
• NLRB v. Bell Aerospace	Handout
• Epilepsy Foundations v. NLRB	Handout
8. Judicial Review of Agency Action	
• Citizens to Preserve Overton Park v. Volpe	Handout
• State Farm and the “Hard Look”	403-418

9.	Judicial Review of Agency Statutory Interpretation	
•	Chevron, Mead, Skidmore and more	479-484 762-777 779-802

Judicial Interpretation of Statutes

10	Tools of Statutory Construction	145-175
11.	Textual Canons Continued	175-203
12.	Whole Act and Substantive Canons	203-231
13.	Rule of Lenity	231-255
14.	Federalism Clear Statement Rule	255-272
15.	Changed Circumstances	309-322
16.	Non-Delegation Doctrine	122-130

THE COMPLETE LIST OF MANDATORY AND RECOMMENDED SYLLABUS LANGUAGE

The University of Houston or other regulators require the following language. To the extent that the University changes any language in the course of the semester or after this syllabus was drafted, the University's new language governs and not that contained in the syllabus. Should this syllabus fail to include mandatory syllabus language the University requires, that language still applies to the course even if it is not expressly provided in this syllabus.

ABA Mandatory Syllabus 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).

UNIVERSITY OF HOUSTON SYLLABUS LANGUAGE: SPRING 2022

Required Language for Courses with a Face-to Face Component (Received by Professor on 1/11/2022)

Face Covering Policy

To reduce the spread of COVID-19, the University strongly encourages everyone (vaccinated or not) to wear face coverings indoors on campus including classrooms for both faculty and students.

Presence in Class

Your presence in class each session means that you:

- Are NOT exhibiting any [Coronavirus Symptoms](#) that makes you think that you may have COVID-19
- Have NOT tested positive or been diagnosed for COVID-19
- Have NOT knowingly been exposed to someone with COVID-19 or suspected/presumed COVID-19

If you are experiencing any COVID-19 symptoms that are not clearly related to a pre-existing medical condition, do not come to class. Please see [Student Protocols](#) for what to do if you experience symptoms and [Potential Exposure to Coronavirus](#) for what to do if you have potentially been exposed to COVID-19.

Consult the (select: [Undergraduate Excused Absence Policy](#) or [Graduate Excused Absence Policy](#)) for information regarding excused absences due to medical reasons.

Required Language for All Courses (Received by Professor on 1/11/2022)

COVID-19 Information

Students are encouraged to visit the University's [COVID-19](#) website for important information including on-campus testing, vaccines, diagnosis and symptom protocols, campus cleaning and safety practices, report forms, and positive cases on campus. Please check the website throughout the semester for updates.

Vaccinations

Data suggests that vaccination remains the best intervention for reliable protection against COVID-19. Students are asked to familiarize themselves with pertinent [vaccine information](#), consult with their health care provider. The University strongly encourages all students, faculty and staff to be vaccinated.

Reasonable Academic Adjustments/Auxiliary Aids

The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic adjustments/auxiliary aid, please contact [the Justin Dart Jr. Student Accessibility Center](#) (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).

Excused Absence Policy

Regular class attendance, participation, and engagement in coursework are important contributors to student success. Absences may be excused as provided in the University of Houston [Undergraduate Excused Absence Policy](#) and [Graduate Excused Absence Policy](#) for reasons including: medical illness of student or close relative, death of a close family member, legal or government proceeding that a student is obligated to attend, recognized professional and educational activities where the student is presenting, and University-sponsored activity or athletic competition. Under these policies, students with excused absences will be provided with an opportunity to make up any quiz, exam or other work that contributes to the course grade or a satisfactory alternative. Please read the full policy for details regarding reasons for excused absences, the approval process, and extended absences. Additional policies address absences related to [military service](#), [religious holy days](#), [pregnancy and related conditions](#), and [disability](#).

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 [Justin Dart, Jr. Student Accessibility Center](#). 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 Recommended Language (Received by Professor on 1/11/2022)

Resources for Online Learning

The University of Houston is committed to student success, and provides information to optimize the online learning experience through our [Power- On](#) website. Please visit this website for a comprehensive set of resources, tools, and tips including: obtaining access to the internet, AccessUH, and

Blackboard; requesting a laptop through the Laptop Loaner Program; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance contact UHOnline@uh.edu.

UH Email

Please check and use your Cougarnet email for communications related to this course. To access this email, [login](#) to your Microsoft 365 account with your Cougarnet credentials.

Helpful Information

Coogs Care: <https://www.uh.edu/dsaes/coogscare/>

Student Health Center: <https://www.uh.edu/healthcenter/>