

Syllabus: Statutory Interpretation and Regulatory Practice

Zachary Bray

University of Houston Law Center, Spring 2023

Tuesday / Thursday, 4:00 p.m. - 5:30 p.m. (Houston time)

Guidelines and Requirements

A. Contact Information and Office Hours

E-Mail: zachary.bray@uky.edu

Phone: (859) 257-1783

Remote Office Hours: After class Tuesdays and Thursdays by Zoom or by appointment.

I will be available by Zoom for anyone who wishes to "drop in" or "hang around" after class on Tuesdays and Thursdays.

I realize that any fixed office hours will be inconvenient for some students, so **you should feel free to schedule a time to meet over Zoom or speak over the phone beyond these regular office hours.** If you wish to schedule such a meeting, please send me an e-mail a day or two in advance so that we can set a mutually convenient time. I generally stop answering questions once the exam period starts to ensure a level playing field.

B. 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. As time permits, the course will also review other elements, such as legislative process or regulatory policy.

C. Required Texts

The required texts are:

- William N. Eskridge, Jr., Abbe R. Gluck, and Victoria F. Nourse, *Statutes, Regulation, and Interpretation: Legislation & Administration in the Republic of Statutes* (2014) [hereinafter "Casebook"], and
- William N. Eskridge, Jr., Abbe R. Gluck, and Victoria F. Nourse, *Supplement to Statutes, Regulation, and Interpretation: Legislation & Administration in the Republic of Statutes* (2021) [hereinafter "Supplement"].

These materials are being used and have been used by other professors who teach this course at the Law Center, including when I taught full-time at the Law Center, so I believe that new and used copies should be readily available to you.

In addition to these texts, I am likely to provide website readings which will be posted to the course website / BlackBoard [hereafter "course website"]. The assignment list posted with this initial syllabus includes only our readings for the first few weeks. It will be supplemented and is subject to change at my discretion. You will be given ample notice of any changes. Of course, you should read each day's assigned materials in advance and be prepared to discuss them in class.

D. Grading and Examination

Your grade for this course will be based primarily on a timed and "open-book" examination at the end of the semester. In addition to the exam, and to the extent consistent with the Law Center's policies and regulations, your in-class attendance, participation, and preparation may modify your grade by one step (e.g., from B to B+, from A to A-). You may take the examination wherever and whenever you want during the spring exam period. The overall grading scale will be determined by the school's curve for courses of this size and type.

By "open-book," I mean that you may refer to anything that you want, whether or not it was assigned for this course. However, it is probably a waste of your exam time, at best, to incorporate material not assigned for this class into the exam answers themselves. Successful performance on the exam will require knowledge of the case law, statutes, practical exercises, and underlying policies and theories discussed in both the assigned readings *and* our class discussions.

The examination itself primarily of issue-spotting essay questions that will require you to analyze various problems associated with the role of statutes and administrative regulation in the practice of law today. To write successful essay answers on this exam, you will need to understand both the theoretical structure of statutory and regulatory law as well as refer specifically to the cases and statutes that we will work through in class. There will also be a limit to the length of the exams—a word cap that is based on the length of good exams from previous years, designed to discourage people from typing for the entire length of the exam.

If you wish to review your exam after the semester is over, I will share redacted model answers (written by other students) with you on an individual basis in addition to discussing my exam key. For a remote course such as this, that means that I will share the redacted, anonymous, model answers through a shared-screen format on Zoom, much like I do with the practice exam questions. I do not circulate exam keys. I never post these model answers online, and I always allow students to opt out from having their exams be used as models, even in individual conversations with other students when I redact all identifying information, including the exam number.

E. Class Participation

I consider every student to be potentially "on-call," all the time, except during review discussions. I welcome volunteers to provide comments and questions on the readings, but everyone will have to participate at some point during this semester, so in addition to calling on students who volunteer, I also call on students randomly to discuss the assigned materials. If you want to be "off-call" for a particular class session, let me know before class and I will consider your request. If you send me an e-mail shortly before class asking to be "off-call," I may not see it: it is wise to give me some advance notice if possible, though I will strive to check my e-mail shortly before class for this reason.

Call is not punitive; I am happy to let people be off-call multiple times during a semester without any impact to their grade, so long as they let me know in advance, and especially if they have some unusual challenges in their lives. On the other hand, if I call on you and you ask to be off-call in the middle of class, then I call that being unprepared, and it may impact your grade. It is so easy, I think, to ask me for waivers from call in advance!

You will not be penalized for wrong answers during class discussion unless they evince a clear lack of preparation. I consider good in-class participation to be anything that both helps your classmates learn and indicates your effort to read and understand the assigned material. When I consider whether to make a positive grade modification, I will consider the overall quality, and not the quantity, of a student's in-class participation.

F. Class Structure

Most class sessions will begin with review of previous material, presented largely as a lecture, by me. Nobody will be on call during the introductory review discussion, although questions are welcome.

After the initial review, I will shift to a short overview discussion of the new material for the day. Once the initial discussion of new material is over, I will shift to questions for you all; I prefer volunteers but will use random call as necessary to make sure everyone is getting involved. How often you are involved depends on many factors: the size of the class, the rate of volunteers, your own volunteerism, and random chance.

We will likely have a few class sessions throughout the semester that will be entirely review—during these sessions, as at the beginning of a regular class, nobody will be on call.

If you get sick or have a significant disruption, then let me know when you can, and we will figure out a response together. If I get sick or have a significant disruption, then I will let you all know as soon as I can. In the event that I need to cancel some classes for sickness, family matters, conference travel, or something else unexpected, my hope is to make these missed classes up, as much as possible, with advance-recorded lectures and optional real-time class discussions. At least, this has been my approach in the past, and if I can continue to use it I will.

I will strive to record our class sessions and post them to the course website. I reserve all relevant rights of creation and intellectual property in these recordings and all class materials consistent with university and Law Center policy. Additional information about recordings is set forth below in the university and Law Center required and recommended language.

Initial Reading List: Statutory Interpretation and Regulatory Practice

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NOTE: As noted above, this list contains only the reading for the first few class sessions. I reserve the right to delete or modify assignments as well as add to this list.

Introduction: Statutes and Their Implementation, Congress, the President, Agencies, and Courts

1. Casebook, 1-27.
2. Casebook, 29-58.
3. Casebook, 58-80 (through problem 1-2); Supplement, pages 1-5 (stop before reading *King v. Burwell*).
4. Casebook, 83-115.

Mandatory and Recommended Syllabus Language
Statutory Interpretation and Regulatory Practice

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The University of Houston, the Law Center, or other regulators require the following language. To the extent that the University, the Law Center, or other regulators change any language after this syllabus was drafted and required to be submitted, any required new language governs and not that contained in the syllabus. Should this syllabus fail to include mandatory syllabus language the University, Law Center, or other regulators require, then 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).

UH Law Center Required or Recommended Language for All Courses

At the time this syllabus was prepared (December 12, 2022), the required or recommended language below is what the instructor believes is required for all syllabi for the Law Center for the Spring 2023. The instructor will update this language as needed when he receives updated language from the University and/or the Law Center.

COVID-19 INFORMATION

STUDENTS ARE ENCOURAGED TO VISIT THE UNIVERSITY'S [COVID-19](#) WEBSITE FOR IMPORTANT INFORMATION INCLUDING DIAGNOSIS AND SYMPTOM PROTOCOLS, ONCAMPUS TESTING, AND VACCINE INFORMATION. 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](#) AND TO 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).

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 VIA EMAIL.

UNIVERSITY RECOMMENDED LANGUAGE RESOURCES FOR ONLINE LEARNING

THE UNIVERSITY OF HOUSTON IS COMMITTED TO STUDENT SUCCESS, AND PROVIDES INFORMATION TO OPTIMIZE THE ONLINE LEARNING EXPERIENCE THROUGH OUR [POWERON](#) 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.

TITLE IX/SEXUAL MISCONDUCT

PER THE UHS SEXUAL MISCONDUCT POLICY, YOUR INSTRUCTOR IS A “RESPONSIBLE EMPLOYEE” FOR REPORTING PURPOSES UNDER TITLE IX REGULATIONS AND STATE LAW AND MUST REPORT INCIDENTS OF SEXUAL MISCONDUCT (SEXUAL HARASSMENT, NONCONSENSUAL SEXUAL CONTACT, SEXUAL ASSAULT, SEXUAL EXPLOITATION, SEXUAL INTIMIDATION, INTIMATE PARTNER VIOLENCE, OR STALKING) ABOUT WHICH THEY BECOME AWARE TO THE TITLE IX OFFICE. PLEASE KNOW THERE ARE PLACES ON CAMPUS WHERE YOU CAN MAKE A REPORT IN CONFIDENCE. YOU CAN FIND MORE INFORMATION ABOUT RESOURCES ON THE TITLE IX WEBSITE AT [HTTPS://UH.EDU/EQUALOPPORTUNITY/TITLE-IX-SEXUAL-MISCONDUCT/RESOURCES/](https://uh.edu/equalopportunity/title-ix-sexual-misconduct/resources/).

SECURITY ESCORTS AND COUGAR RIDE

UHPD CONTINUALLY WORKS WITH THE UNIVERSITY COMMUNITY TO MAKE THE CAMPUS A SAFE PLACE TO LEARN, WORK, AND LIVE. OUR SECURITY ESCORT SERVICE IS DESIGNED FOR THE COMMUNITY MEMBERS WHO HAVE SAFETY CONCERNS AND WOULD LIKE TO HAVE A SECURITY OFFICER WALK WITH THEM, FOR THEIR SAFETY, AS THEY MAKE THEIR WAY ACROSS CAMPUS. BASED ON AVAILABILITY EITHER A UHPD SECURITY OFFICER OR POLICE OFFICER WILL ESCORT STUDENTS, FACULTY, AND STAFF TO LOCATIONS BEGINNING AND ENDING ON CAMPUS. IF YOU FEEL THAT YOU NEED A SECURITY OFFICER TO WALK WITH YOU FOR YOUR SAFETY PLEASE CALL [713-743-3333](tel:713-743-3333). ARRANGEMENTS MAY BE MADE FOR SPECIAL NEEDS. PARKING AND TRANSPORTATION SERVICES ALSO OFFERS A LATE-NIGHT, ON-DEMAND SHUTTLE SERVICE CALLED COUGAR RIDE THAT PROVIDES RIDES TO AND FROM ALL ONCAMPUS SHUTTLE STOPS, AS WELL AS THE MD ANDERSON LIBRARY, COUGAR VILLAGE/MOODY TOWERS AND THE UH TECHNOLOGY BRIDGE. RIDES CAN BE REQUESTED THROUGH THE UH GO APP. DAYS AND HOURS OF OPERATION CAN BE FOUND AT [HTTPS://UH.EDU/AF-UNIVERSITY-SERVICES/PARKING/COUGAR-RIDE/](https://uh.edu/af-university-services/parking/cougar-ride/).

HELPFUL INFORMATION

COOGS CARE: [HTTPS://UH.EDU/DSA/COOGSCARE/](https://uh.edu/dsa/coogscare/)
STUDENT HEALTH CENTER: [HTTPS://WWW.UH.EDU/HEALTHCENTER/](https://www.uh.edu/healthcenter/)