

**STATUTORY INTERPRETATION AND REGULATORY PRACTICE**  
**Course Number 5378**  
**Section Number 21229**

University of Houston Law Center  
Spring 2022

Prof. Tracy Hester

Class Hours: **Monday - Wednesday 10:30 am to noon**  
**211 TUII**

Office Hours: I'll hold open office hours (including via Zoom) on Tuesdays from 1:30 pm to 4:30 pm. Assuming we can meet safely in person, I can also schedule a time with you in my office at TUII-142.

You can also reach me at 713-743-1152 or [tdheste2@central.uh.edu](mailto:tdheste2@central.uh.edu) to schedule a visit at any other time.

**Course Description:**

While common law decisions and principles have traditionally provided the soul and creative spark of the law, today's practitioners typically look to statutes and administrative materials to guide their legal work. This course will introduce you to the basic processes that generate laws and administrative regulations, the theories and approaches used to interpret and apply those dictates, and various strategies to control or challenge administrative actions within a statutory context.

This course will use a combination of lectures, class discussions, case studies, in-class exercises and sample problems. Where possible, I will introduce real-life ongoing matters and projects to provide an opportunity to wrestle with some of the most active questions in current practice. Last, some of our classes will include guest lecturers who can offer perspectives on the formulation and implementation of laws or regulations.

As an outcome of taking this class, you should be able to assess the legal relevance of key steps in the legislative process as a policy advocate, the strategies and legal

arguments to support interpretations of statutes, and the best legal tactics to influence or challenge federal and state agency actions.

### **Course Materials:**

We will use the following course books:

*Statutes, Regulation, and Interpretation* by W. Eskridge, A. Gluck and V. Nourse (2014)

*2021 Cumulative E-Supplement* to Eskridge's text

We'll also use class handouts and supplemental materials as needed. I'll post these materials on the class Blackboard website. If you are interested in practicing in this area, I'll also point out additional supplemental reference materials for purchase or post them to the website.

In addition, I'll upload to Blackboard video and audio recordings of all of our class lectures and discussions.

### **Assignments**

Our reading assignments will follow the course syllabus, although we may vary a bit in pace and coverage as the semester progresses (i.e., expect changes as we go). Of course, you should read each day's assigned materials in advance and be prepared to discuss them in class.

### **Class Participation**

In general, I will treat you in class the same way that I'd treat you as a new attorney working for me at a law firm. So please be prepared to discuss the readings assigned for that day as well as to think creatively about how to apply those materials to new situations and hypotheticals. I'll make sure that everyone has a chance to participate in the discussion before the semester's end.

You will also have a limited number of opt-outs (no excuses necessary), but pursuant to the Law Center's policies and ABA requirements you can't get credit for the class unless you attend (in person or virtually) at least 80% of the sessions. If we need to cancel any classes, we will reschedule a make-up class as soon as possible. According to the Law Center's policy, we will likely hold the make-up class on a Friday.

## **Assessments and Grading**

Your grade in this class will be based on a final examination. This exam will last for three hours, and it will consist of a combination of multiple choice and essay questions. You can bring your personal notes or outlines that you create, your textbook for this class, and any handouts. No commercial outlines or briefs, please. We'll discuss the test format and other issues later in the semester.

Last, as per Law Center policy, I reserve the right to make adjustments to grades based on attendance and class participation. This adjustment can be upward or downward.

## **Personal Resources**

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](http://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 at convenient locations and hours around campus. Go to [http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html).

## **Discrimination and Sexual Harassment/Misconduct Policy**

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

[http://www.uhsystem.edu/compliance-ethics/\\_docs/sam/01/1d7.pdf](http://www.uhsystem.edu/compliance-ethics/_docs/sam/01/1d7.pdf)  
(antidiscrimination)

[http://www.uhsystem.edu/compliance-ethics/\\_docs/sam/01/1d8.pdf](http://www.uhsystem.edu/compliance-ethics/_docs/sam/01/1d8.pdf)  
(sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

## **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.

I'll record all of our classes unless I specifically notify you otherwise. You may use my recordings for your own studying and notetaking, but the University does not authorize you to share them with *anyone* without my prior written approval. Per University policy, failure to comply with requirements regarding recordings will result in a 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 I may need to modify the course syllabus and may do so at any time. I'll announce these changes as quickly as possible through direct emails to all of you as well as postings to the class BlackBoard site.

I've attached additional syllabus disclosure language from the University of Houston system. Please familiarize yourself with these provisions as well.

### **Week 1 (January 19)**

Introduction to class statutory exercise

Assignment: Eskridge 1-27

### **Week 2 (Jan. 24, 26)**

How the Federal Legislative Process Works; Details of the Federal Legislative Process

Assignment: Class 1 Eskridge 29-58

Class 2 Eskridge 58-80, Problem 1-2

### **Week 3 (March 31, Feb. 2)**

The Rise of Alternative Law-Making

Assignment: Class 1 Eskridge 83-115

Class 2 Eskridge Supp. 1-24  
Filibuster reform materials

### **Week 4 (Feb. 7, 9)**

Introduction to Statutory Interpretation: Legislative Intent and Legislative Purpose; Legislative Purpose: Textualism and Plain Meaning

Assignment: Class 1 Eskridge 299-318

Class 2 Eskridge 318-348

## **Week 5 (Feb. 14, 16)**

Legislative Purpose; New Textualism; Institutional Context for Statutory Interpretation

Assignment:	Class 1	Eskridge Supp.	349-370 69-74
	Class 2	Eskridge	386-409; 430-445

## **Week 6 (Feb. 21, 23)**

The Current State of Textualism

Canons of Statutory Interpretation: Where Do They Come From?; Introduction to Textual Canons

Assignment:	Class 1	Supp.	74-108 ( <i>Bostock</i> )
	Class 2	Eskridge Supp.	447-471 178-179

## **Week 7 (Feb. 28, March 2)**

Whole Act Rule and other canons; Rule of Lenity

Assignment:	Class 1	Eskridge Supp.	471-490 179-195
	Class 2	Eskridge Supp.	490-512 196-207

## **Week 8 (March 7, 9)**

Constitutional Avoidance and Major Questions Canon

Clear Statement Federalism Rule; Wrap-up on Judicial Statutory Interpretation

Assignment:	Class 1	Eskridge Supp.	512-520 207-220
	Class 2	Eskridge Supp.	532-552 220-222

## **SPRING BREAK WEEK!**

## **Week 9 (March 21, 23)**

Statutory Interpretation in Light of Changed Circumstances; Rule Against Implied Repeals

Use of Legislative History in Interpretation

Assignment:	Class 1	Eskridge	552-569, 576-599
	Class 2	Eskridge Supp.	601-16, 630-35, 653-58, 674-85 223-232, 236-238

## **Week 10 (March 28, 30)**

Introduction to Regulatory Practice: Delegation of Authority and Congressional Control of Delegation, and the President's "Take Care" Duties.

Executive Authority and Role in Statutory Formation: Hiring and Firing

Assignment:	Class 1	Eskridge Supp.	129-155 31-46
	Class 2	Eskridge Supp.	155-168 46-59

### **Week 11 (April 4, 6)**

How Agencies Turn Statutes Into Action.

Judicial Review of Agency Policy Making

Assignment:	Class 1	Eskridge	181-217
	Class 2	Eskridge Supp.	711-734 241-242

### **Week 12 (April 11, 13)**

Substantive Judicial Review of Agency Rules

Agency Adjudications and Formal Agency Rulemaking

Assignment:	Class 1	Eskridge	735-755
	Class 2	Eskridge Supp.	756-763, 777-800 242-254

### **Week 13 (April 18, 20)**

Agency Rulemaking and Agency Inaction; Review of Informal Agency Guidance and Determinations; Introduction to Judicial Deference on Agency Interpretations

Assignment:	Class 1	Eskridge	801-817, 823-837
	Class 2	Eskridge	838-843, 855-871



## Week 14 (April 25, 27)

Judicial Deference to Agency Interpretations; *Skidmore-Chevron-Mead* and Current Efforts to Reverse *Chevron*; Future Directions

Assignment:	Class 1	Eskridge Supp.	892 n.3 - 924 269-273 <i>NFIB v. OSHA</i> (OSHA vaccine mandate decision)
	Class 2	Eskridge Supp.	924-939 306-317 ( <i>Kisor v. Wilkie</i> )

We will schedule a voluntary review session for final exam after our final class session (most likely Friday, April 29).

## **UH SYSTEM SYLLABUS PROVISIONS**

### **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.

### **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 suggest 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).

### **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).

### **Resources for Online Learning**

The University of Houston is committed to student success, and provides information to optimize the online learning experience through the UH 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](mailto: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.

### **Webcams**

Access to a webcam is required for students participating remotely in this course. Webcams must be turned on (state when webcams are required to be on and the academic basis for requiring them to be on). (Example: Webcams must be turned on during exams to ensure the academic integrity of exam administration.)

### **Honor Code Statement**

Students may be asked to sign an honor code statement as part of their submission of any graded work including but not limited to projects, quizzes, and exams: " I understand and agree to abide by the provisions in the University of Houston Law Center Honor Code. I understand that academic honesty is taken very seriously and, in the cases of violations, penalties may include suspension or *expulsion from the University of Houston.*"

### **Helpful Information**

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

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