European Law and Policy in Times of Crisis (LAWJ-1391-50, CRN 31250)
Three Semester Hours
The course will introduce students to basic areas of law and policy in the European Union (EU), with an emphasis on the changes that have been brought about through the management of three important crises: the euro crisis, the refugee crisis, and Brexit. During the first half of the course, we will focus on understanding the basic institutional and legal architecture of the EU, including basic substantive areas of law such as economic freedoms and fundamental rights. During the second half of the course we will study the causes and effects of this “perfect storm” of crises within the EU, and critically evaluate the EU’s regulatory response. The question of the EU’s future will be an organizing axis for our discussions throughout the course.

The course will allow students:

- To develop a solid understanding of the EU’s basic institutions and functioning
- To develop an understanding of the basic debates surrounding the nature of the EU (Is it a state? Is it a federation? Is it something altogether different and new?)
- To familiarize themselves with a selection of important EU legal texts and case law
- To compare styles and forms of legal reasoning (US/EU)
- To develop an understanding of the changes that are currently being brought about through the management of the biggest crises since the EU’s inception
- To develop an understanding of the interaction between legal and political factors in the management of these crises and therefore an understanding of the “law in action” in the context of the EU

Mutual Exclusivity Rule: None

Exam: Take-Home

Professor Tsoukala

International Law I: Introduction to International Law (LAWJ-235-50, CRN 10407)
Three Semester Hours
This introductory course deals with the nature, sources and operation of “public international law,” with some of the most important contemporary challenges to the international legal system, and with the international community’s evolving responses to those challenges. It includes such topics as the law governing treaties and other international agreements; the recognition of states and governments; methods for international dispute resolution including litigation in the International Court of Justice; the United Nations and other international and regional entities; international human rights and international criminal law; law of the sea and international environmental law; and the rules governing the use of force. Some attention is also given to the role of international law in the U.S. legal system; questions of jurisdiction, foreign sovereign immunity and the act of
state doctrine; and the allocation of foreign affairs powers between the President, the Congress, and the Judiciary. We will discuss a few of the most pressing illustrations of the operation – or shortcomings – of the international legal system in the context of current problems or crises. As a first-year elective, this course is intended to offer a contrast or a complement to the bulk of the first year curriculum, by exposing students to dispute resolution mechanisms other than litigation in U.S. courts, including through international courts and tribunals as well as international arbitration.

Mutual Exclusivity Rule: Students may not receive credit for this course and the upperclass course by the same title.

Exam: TBD (Professor Koplow will consult with the class on the first day.)

Professor Koplow

International Law, National Security, and Human Rights (LAWJ-1323-50, CRN 29406)
Three Semester Hours
This course will examine how international law deals with the tension between two highly prominent concerns of the early twenty-first century: protecting national security and protecting human rights. We begin with an overview of basic principles of international law, and of U.S. domestic legal authority for national security activities. We then move to the regime of international law that is devoted to the protection of human rights. This includes treaties dealing with human rights in general; those that address specific subjects, such as genocide, torture, and the use of force by law enforcement officials; customary international law; and international criminal law. Our focus then moves to international humanitarian law, which is the legal regime that governs the use of force. This includes provisions that relate both to when parties may resort to the use of force, and how they must conduct themselves when they do so. We will explore the debate over whether humanitarian law should displace human rights law in situations of armed conflict, or whether the two bodies of law should be applied in ways that reconcile their approaches as much as possible.

The course then turns to counter-terrorism as a vehicle for exploring the interaction of human rights and humanitarian law. To what extent should counter-terrorism be seen as law enforcement, in which case human rights law governs, and to what extent should it be seen as armed conflict, in which case humanitarian law provides primary guidance? If it has elements of both, what should be the respective roles of human rights and humanitarian law in regulating counter-terrorism? We will focus in depth on four topics that raise these questions: targeted killing, cover action and special operations, cyber operations, and criminal prosecution for material support to terrorism.

The course will include extensive use of case studies and problems to explore the complex legal, political, and moral questions that arise with respect to the issues we discuss. In addition, events in the news are sure to provide constant vivid examples of the significance of the concepts that we will be discussing throughout the course. In these ways, the course will provide students with a practical understanding of international law through an in-depth examination of how it operates in a particular field.
Lawmaking: Introduction to Statutory and Regulatory Interpretation (LAWJ-023-50, CRN 32453)
In the first year curriculum, you are taught to “think like a lawyer.” Because of the predominance of common-law subjects in your first year, this means you are taught to think like a “common-law lawyer.” Moreover, you are taught to think this way at the same time that you are also trying to learn the doctrine in those particular areas.

In upper-level courses, however, you will likely turn from common law to law based in statutes and regulations. From tax law to the criminal code, virtually all of modern American law is based on materials produced by legislatures and agencies. Reading and interpreting these materials also requires you to “think like a lawyer,” but like a different lawyer—a “statutory lawyer.”

This course is about the method of statutory interpretation generally. You will not learn the doctrine of any specific type of law in this class. You will learn the process of how to approach a piece of statutory text, how to diagnose the interpretive problem in the text, and how to answer that problem. You will practice the observant reading of text; you will get a framework for breaking down and thinking about a legal question in any statutory case; and you will practice deploying interpretive tools to answer a question in the way that best “zealously advocates” for your client. This course will prepare you for a first summer of legal work, as well as for upper-level courses that rely extensively on statutory law (such as tax, securities, environmental law, labor law, copyright law, etc.)

The course has three overall goals:

1) To provide you with an understanding of the relationships among legislatures, courts, and agencies. The course will include some basic information on how legislation and regulations get created and on the ways in which power is shared in the “making of law.”

2) To teach you the full toolkit of statutory interpretation so that you can diagnose any interpretation question and bring the right tools to bear on answering that question. This toolkit includes elements of the plain text, canons of interpretation, analysis of intent and purpose, and deference to agencies. By unpacking and analyzing these tools used by courts in various decisions, you will learn how to wield them yourself in order to reach different results.

3) To expose you to the theoretical debates around statutory interpretation. The tools that a judge chooses to use often depend on the judge’s theoretical position on statutory interpretation. Starting with materials that will frame the theoretical debate early in the semester, you will return periodically to questions about theory as you become more proficient in the toolkit.
Mutual Exclusivity Rule: Students may not receive credit for both this course and the upperclass course by the same title or the first-year elective, The Regulatory State.

Exam: Take-Home exam

Professor Westmoreland

Legislation and Regulation (LAWJ1326-50, CRN 32452)
Three Semester Hours
Virtually all contemporary law involves statutes enacted by legislatures and regulatory law produced by administrative agencies. Whatever the body of law—securities, tax, antidiscrimination, telecommunications, consumer protection, intellectual property, employment, education, environmental, energy, labor, tax or criminal justice, to name a few—statutes and regulations provide much if not most of the law. Few constitutional law and federalism issues arise without a regulatory element. Facility with legislation and regulation is hence essential for any lawyer. The course starts with exploration of why regulation is enacted, the diversity of forms of regulation, and how legislation and regulation relate to law created through the common law process. The course then breaks into three basic units, all of which examine legislation and regulation primarily (but not exclusively) through federal law. The first unit examines congressional process, reasons interpretive challenges arise, and the diversity of interpretive methods wielded in disputes over statutory meaning. The second unit turns to the pervasive role administrative agencies play in interpreting, implementing and enforcing statutes. This includes coverage of their procedural options, judicial review of agency process, reasoning, and responsiveness, as well as discussion of the role of cost-benefit analysis and White House review in the regulatory process. The last unit links the first two, examining statutory interpretation in the administrative state. The course closes with analysis of regulatory innovations and review problems.

The class will use the Manning and Stephenson casebook, Legislation and Regulation (2nd edition) (2013) and supplemental materials. The course examination will be a three hour in-class limited open-book examination, allowing use of all class materials, your notes in hard copy, and other materials you played a part in creating and bring to the examination in hard copy, but apart from typing your examination answer in Word, prohibiting access to your hard drive or web based research.

Mutual Exclusivity Rule: Students may not receive credit for both this course and the upperlevel course Administrative Law with Professor Heinzerling (LAWJ-1349). Students may take other sections of Administrative Law in the upperclass curriculum.

Exam: In-Class Exam on May 12, 2017 at 9:00 a.m.

Professor Buzbee

The Regulatory State (LAWJ-1035-50, CRN 21989)
Three Semester Hours
This course introduces students to the modern regulatory state. We will consider the place of agencies in the structure of modern federal government; justifications for regulation against the backdrop of the common law; aspects of congressional decision-making, including the legislative
process, statutory design, and delegation to agencies; statutory interpretation, including both the tools of statutory interpretation and some debates surrounding them; agency implementation of statutes, focusing especially on regulations; and some of the ways that agencies are controlled by the president, Congress, and the courts. The goal of the course to teach you to understand and work with any federal statute or regulation, regardless of its content. The course is designed to give both a theoretical and a practical introduction to the laws and institutions that lawyers confront in their practices every day, whether they are government lawyers or not.

Mutual Exclusivity Rule: Students may not receive credit for both this course and Lawmaking: Introduction to Statutory and Regulatory Interpretation (either the first-year elective or the upperclass course with that name) or the upperclass course Administrative Law with Professor Heinzerling (LAWJ-1349). Students may take other sections of Administrative Law in the upperclass curriculum.

Exam: In-Class Exam on May 12, 2017 at 9:00 a.m.

Professor Pasachoff