

Course Syllabus

Agriculture Law and Regulation: An In-House Perspective

August 14-18, 2023

Class/Course Number: LAW 6930-14094

Room: Holland Hall 382

Instructor: Pam Howlett

Contact Information: 314/705-2511; pamelahowlett@ufl.edu or pamela.howlett@bayer.com

Class Schedule: This is a compressed course. We will meet the week of August 14 on M, TUE, W, THU at 10:00-1:00 and F at 10:00-12:00.

This course is one credit hour. Please note that ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in class instruction. It is expected that you will spend two hours preparing for every hour of in class instruction.

Office Hours: Given that this is a compressed course, I am available each day in the hour immediately after class. I also encourage you to call or email me if you are having difficulties with, or simply want to clarify your understanding of, any of the materials covered in the readings or in class.

Description of the Course and Course Objective and Learning Outcomes: This course explores the practice of regulatory law (synonymous with “administrative law” in the context of this course) from the practical perspective of an in-house lawyer who focuses on the highly regulated area of agriculture law, and the policy that develops the applicable law. This topic is particularly important in Florida, a key agricultural region.

Florida's 47,500 farms contribute \$137 billion to the US economy annually and export more than \$4 billion in goods to 164 nations. More broadly, the United States economy depends upon agriculture domestically and as a net exporter. The importance of agriculture to the United States is overlaid with the increasing interest in how food is produced and discussions on the best ways to do it, complicated by the fact that less than 2% of Americans are directly connected to agriculture. Therefore, in addition to the significant regulatory focus required by agriculture technology companies, policy issues must be addressed as well.

By the end of this course, students will be able to: (1) understand the basic regulation of agriculture in the United States; (2) understand the practice of regulatory law in the highly regulated industry of agriculture; (3) understand the practice of law in-house; and (4) identify the pathways that could lead to a practice devoted to regulatory/administrative law.

COURSE POLICIES

Attendance: This is a compressed course. Attendance during all class hours is mandatory. Attendance will be taken at each class meeting. Missing classes could impact a student's grade or ability to receive credit for the course. The law school's policy on attendance can be found at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

UNIVERSITY POLICIES

University Policy on Academic Misconduct

UF students are bound by The Honor Pledge, which states: “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: ‘On my honor, I have neither given nor received unauthorized aid in doing this assignment.’” The Honor Code (<https://sccr.dso.ufl.edu/students/student-conduct-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor.

University Policy on Accommodating Students with Disabilities

Students requesting accommodation for disabilities should register first with the Office of the Dean of Students (<https://www.dso.ufl.edu/drc/>). The Office of the Dean of Students will provide documentation to the student who then must provide this documentation to the instructor when requesting accommodation. You must submit this documentation prior to submitting assignments or taking quizzes or exams. Because accommodations are not retroactive, students should contact the Office of the Dean of Students as soon as possible in the semester for which they are seeking accommodation.

Etiquette: Communication Courtesy: All members of the class are expected to follow rules of common courtesy in all email messages, threaded discussions, chats and in class discussions. Please do not disparage or discourage others’ views and participations.

Academic honesty: Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>

Online Course Evaluations: Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete evaluations through the email, they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

GRADING POLICIES

Grading: This class is graded. Each student's final grade will be determined by a final written exam (80%) and class participation (20%).

The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>

EXAM DELAYS AND ACCOMMODATIONS:

The law school policy on exam delays and accommodations can be found [here](#).

RECORDINGS OF CLASS

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

COURSE SCHEDULE

Day/Time	Date	Topic	Preparation and Focus
Monday 10-1	August 14	Introductions: Personal and course background: (1) Individual introductions (2) What is going on in agriculture today; and (3) Regulatory (administrative) laws that affect agriculture	Watch: <i>Food Evolution</i> movie (52 minute version) Read (see Modules section in Canvas): A background in administrative law (see link): Administrative Law - National Agricultural Law Center (nationalaglawcenter.org) (focus on the overview, biotechnology, pesticides, Endangered Species Act and international trade sections and scan the other internal links to familiarize yourself with the field) Key cases about a regulatory agency's authority (all available as PDFs): <i>Chevron U.S.A., Inc. v. NRDC</i>, 467 U.S. 837 (1984), <i>Auer v. Robbins</i>, 519 U.S. 452 (1997), <i>Skidmore v. Swift & Co.</i>, 323 U.S. 134 (1944) Judicial deference and the future of regulation (brookings.edu) (see link) The regulatory oversight mechanisms for products of biotechnology in the US (see link): https://usbiotechnologyregulation.mrp.usda.gov/biotechnologygov/about/about Why do we need to care about advancing agriculture technology? (see link) Potential Citrus Greening Solutions – Florida Citrus Growers Excerpts from the Federal Seed Act (statue, regulation, guidance) (all available as PDFs) Guest Speaker (virtual): Emily Scholting, Bayer CropScience Corporate Counsel Be prepared to discuss: • Why are you in law school? • Why are you in this class? • Why did I assign the video? What does it have to do with practicing law?

			- An introductory case study: - I am selling a bag of corn seed. I know that I need to test the seed for germination and put the test result on the seed bag label. What do I do if I move the seed from one bag to another? Do I need to do another germination test?
Tuesday 10-1	August 15	A day in the life of an in-house agriculture regulatory lawyer and his/her “clients”	Read (excerpts as assigned in Modules, all in PDF): USDA Regulatory Selections: Plant Protection Act (Sections 7701-7702, 7711-7713, 7734, 7756; Regulations (all); Guide for Requesting Regulatory Status Review (pp. 1-7) NEPA Selections: Sections 4331-4335 EPA Selections: FIFRA Pesticide Law Sections 12-14 from the statute (pp. 73-77); Chapter 2 of the Label Review Manual <i>What is a Pesticide?</i>, and <i>Pesticide Litigation</i> (Chapter 8, Section I and II, pp. 1-9) FDA Selection: <i>Guidance on Consultations Procedures</i> (pp. 1-23) USDA Marketing Selections: see Day 1 materials re Federal Seed Act Florida Fertilizer Law and Regulations: Florida Statute on Agricultural Fertilizers (pp. 1-4, 13-14); Fertilizer Registration and Labeling Guidance (pp. 1-7) Refer to the regulatory mechanism for oversight of products of biotechnology in the US (from Day 1) <i>Monsanto Co. v. Geertson Seed Farms</i>, 561 U.S. 139 (2010) (PDF) Who is an in-house lawyer’s client? (see link) Who Is the Client? The Ethics Rule Implications for In-House Counsel and Outside Counsel (americanbar.org) Guest Speaker (virtual): Dan Kendrick, Bayer CropScience US: Head of Regulatory Affairs Corn Biotech Traits Be prepared to discuss the following case study: A nasty insect attacks corn, ruining the crop. A company develops a new biotech trait that helps prevent the insect from destroying the crop. What does the company need to do to start selling it to farmers?

Wednesday 10-1	August 16	Law practice in a global agriculture company	Read and watch (all links, no PDFs): <i>Treaties and Conventions:</i> International Union for the Protection of New Varieties of Plants (UPOV): UPOV Lex (review Mission Statement and “Introduction” and “Overview of UPOV” in Overview Section – do NOT read the Convention itself) Convention on Biological Diversity (see link): Home Convention on Biological Diversity (cbd.int); About the Nagoya Protocol (cbd.int) <i>Industry Commitments:</i> Excellence Through Stewardship (for products of biotechnology) (see link): Excellence Through Stewardship: Best Practices in Agricultural Technology (watch YouTube video in “About” section) CropLife International Responsible Use (for pesticides) (see link): Responsible Use CropLife International (scan landing page) <i>What Happens when Countries Don’t Agree</i> (see link): Explainer: What is the US-Mexico GM corn dispute about? Reuters Mexico article on corn ban: https://www.dtnpf.com/agriculture/web/ag/news/article/2023/02/28/high-stakes- mexico-plan-ban-us-gmo MIR 162 Litigation – District Court case <i>Corporate Governance and Social Responsibility</i> (see links): The Legal Risks of Greenwashing Are Real Four Keys for Lawyers When Managing Corporate ESG Disclosures Biodiversity on the Farm: The Importance of Biodiversity and Supporting Ecosystems in Agriculture <u>Guest Speakers (virtual): Bayer CropScience Mexico Law Lead Marco Rivas; Brazil Law Lead Andrea Garcia</u>
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Thursday 10-1	August 17	The unexpected joys of practicing agriculture in-house • Ethics issues • Crisis management • Issue and trends spotting	Read (all links, no PDFs other than case study below): What in-house lawyers need to know about ethics (see link): https://www.acc.com/resource-library/top-ten-things-house-lawyers-need-know-about-ethics Tips for new in-house lawyers (see links): Top Ten Tips to be Successful as a New In-House Counsel (and Beyond) Association of Corporate Counsel (ACC) Top 24 Tips and Considerations for New In-House Counsel Maryland State Bar Association – MSBA Multijurisdictional practice of law (see link): The Application of Unauthorized Practice of Law Regulations to Attorneys Working in Corporate Law Departments (americanbar.org) Mixed legal/business role (see link): “Mixed” Messages: The Perils of Mixing Business and Legal Information in Attorney-Client Communications - Fafinski Mark & Johnson, P.A. (fmjlaw.com) Communications and attorney-client privilege/attorney work product (see link): https://www.forbes.com/sites/alangassman/2019/07/31/e-mail-stands-for-evidence-mail/?sh=6239c8ff44bd Guest Speaker (virtual): Hinnerk Wolters, Broker for Hageman Realty Group, Farm Real Estate and Management Be prepared to discuss: Fictional case study (available as PDF) of a product to boost growth of the ki-berry (a cross of a kiwi and blackberry, which as far as I know does not exist). Consider the elements of today’s conversation as well as the laws and regulations we discussed earlier this week.
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Friday 10-12	August 18	The impact of agriculture policy on laws, regulations and how companies innovate	Read (all links, no PDFs): The Executive Branch Office of Science and Technology Policy: https://www.whitehouse.gov/briefing-room/presidential-actions/2022/09/12/executive-order-on-advancing-biotechnology-and-biomanufacturing-innovation-for-a-sustainable-safe-and-secure-american-bioeconomy/ <i>The role of trade associations</i> (scan these websites): American Seed Trade Association: ASTA The American Seed Trade Association (betterseed.org) BIO: Biotechnology Innovation Organization BIO CropLife America: CropLife America Pesticide Regulations, Food Security & Crops Biological Products Industry Association: Biological Products Industry Alliance Advancing Knowledge About Biopesticides & Biostimulants (bpia.org) American Soybean Association: American Soybean Association - Meeting Agricultural Needs Globally (soygrowers.com) Western Growers: Home - Western Growers Association Western Growers Association (wga.com) National Grain & Feed Association: National Grain & Feed Association (ngfa.org) American Farm Bureau Federation: American Farm Bureau Federation - The Voice of Agriculture Homepage (fb.org) Innovations: USEPA Regulation of new types of biotechnology (see links): Pesticides: Exemptions of Certain Plant-Incorporated Protectants Derived from Newer Technologies (epa.gov) Rep. Panetta Introduces Bipartisan Bill to Bolster Plant Biostimulant Research and Approval Process Congressman Jimmy Panetta (house.gov) Guest speakers (virtual): Rachel Lattimore, General Counsel, CropLife America; Andrew LaVigne, CEO, American Seed Trade Association
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			Be prepared to discuss: • What do the readings suggest about how policies become laws? • Do you think all the stakeholders in the agricultural value chain are aligned on their policy positions? • What do I do if I develop an innovative product for which there is no existing regulatory oversight mechanism?
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Disclaimer: This syllabus represents my current plans and objectives. Those plans may need to change to enhance the class learning opportunity. Such changes, communicated as early as possible, are not unusual and should be expected