Class Meetings: Tuesdays, 5:00 p.m. – 8:00 p.m. in Room 155

Instructor: Nicole E. Negowetti, 312-342-2887, nnegowetti@law.harvard.edu

TA: Hattie Brown, 917-239-5704, emery.brown@tufts.edu

Office Hours: Nicole: by appointment. Hattie: Tuesdays, 3:00 p.m. – 5:00 p.m.

Graduate Credits: 3 credits


Course Description: Food Law & Regulation is a 3-credit interdisciplinary course focusing on food law, an area where many important legal, environmental, economic, and social justice concepts intersect in our society. Students will engage in analysis of the following topics: national regulation of food (production, safety, labeling, and marketing); food and consumer rights; food technology and the law (biotechnology, genetic modification of crops and livestock); food production (including an overview of the farm bill, the National Organic Program, and alternative food systems); water quantity and quality; food, nutrition, and public health; and food justice, including issues of equity, food access, land and labor rights.

The course will introduce students to legal research, analysis, and writing. It will challenge students to understand and analyze a complex regulatory area where problem solving often requires careful assessment of various branches and levels of government (local, state, and federal), administrative authorities, and potential causes of action (statutory and common law). The course also explores the policy issues, intra-governmental relationships, and political dynamics that shape the regulation of food.

Course Objectives: This course is structured to teach substantive law and legal skills to help students understand the national, state, and local legal frameworks for the regulation of food. The course examines a variety of legal tools, including legislation, regulation, and litigation that
affect how food is grown, sold, manufactured, labeled, distributed, transported, and consumed in the United States.

Knowledge, Skills, and Values Learning Outcomes:

A. **Knowledge:** When challenged with a new set of food law facts, by the end of the semester students will be able to:

- **Identify and apply** the relevant legal rules (local, state, federal) and their exceptions;
- **Identify** relevant agencies and **assess** their authority (local, state, and federal) over the outcome;
- **Articulate** the policy goals and judgments made in applicable local, state, and federal law; and
- **Analyze the substantive laws** that impact how food is produced, sold, and consumed in the United States.

B. **Skills:** Throughout the semester, students will:

- **Practice fundamental legal skills such as reading** legal authorities (cases, statutes, and regulations) to **recognize and identify** legal rules, relevant facts, and reasoning to solve problems;
- **Conduct legal research** and **analyze** which legal sources are most relevant to particular issues;
- **Demonstrate their analysis and synthesis** of readings into coherent thoughts and **express those thoughts** in class discussion, debates, and written assignments.

C. **Values:** Throughout the semester, through readings and class participation, students will:

- **Practice professionalism** by being prepared for class, participating in discussions, and reflecting on how the topics relate to the student’s understanding of law.
- **Through class discussions, demonstrate an understanding** of the law as a change agent and reflection of social justice issues such as economic status and environmental health.

**Texts or Materials:** The required text for the course is *Food Law for Public Health* (2016) by Jennifer L. Pomeranz. Additional course readings such as legal cases, statutes, regulations, law review articles, and reports will be posted to Canvas.

**Academic Conduct:** Each student is responsible for upholding the highest standards of academic integrity, as specified in the Friedman School’s Policies and Procedures Handbook and Tufts University policies (http://students.tufts.edu/student-affairs/student-life-policies/academic-integrity-policy). It is the responsibility of each student to understand and comply with these standards, as violations will be sanctioned by penalties ranging from failure on an assignment and the course to dismissal from the school.
Use of Technology in Class: Computers are not permitted in class. Laptop screens can create a barrier between class discussants, discouraging interaction. In order to have open, engaged, and fully participatory discussions, please experience this class without your laptop.

Attendance: Because class participation is a significant component of your grade in this course, attendance is mandatory. Please inform the instructor via email or call with as much notice as possible if you must miss a class.

Assessment and Grading:

Grading for the course will be based on the below distribution:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Contribution to Grade (%)</th>
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</thead>
<tbody>
<tr>
<td>Current Issues Paper</td>
<td>35</td>
</tr>
<tr>
<td>Current Issues Paper Presentation</td>
<td>10</td>
</tr>
<tr>
<td>Briefing Statement</td>
<td>10</td>
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<td>Op-Ed</td>
<td>10</td>
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<tr>
<td>Mock Congressional Hearing</td>
<td>10</td>
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<tr>
<td>Class Participation: includes attendance, participation in class discussions and activities, and discussion questions (explained below).</td>
<td>25</td>
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</tbody>
</table>

Discussion Questions

For most classes, two to four student discussion leaders will each responsible for preparing four to six discussion questions for the class. Students will sign up for these classes at the beginning of the semester. The discussion leaders should post their questions on the Discussion forum on Canvas at least 24 hours prior to class. It is not necessary for the questions to be particularly detailed—they should help your colleagues think critically about the material and consider the legal and political implications of the issues. All students should review the Discussion forum prior to class. The questions will be used to frame our class discussions.

Current Issues Policy Paper

Students will be required to write a 6 – 8 page policy paper (including footnotes) analyzing a current issue related to food law. Policy papers should propose a change to a current law or regulation that affects the food system. Papers should be directed to a particular decision-maker, such as Congress, state legislature, federal agency, local health department, a court, and should thoroughly discuss applicable existing laws. Students should describe how the proposal would be implemented, challenges to implementation, and potential opposition from different interest
groups. If applicable, papers should include discussion of analogous examples from other jurisdictions.

Ideas for papers include: analysis of any current or recently decided or pending food law case (which could include administrative law, product liability, consumer protection, trademark, patent, or other legal issues); analysis of current regulatory proposals (could include restrictions on SNAP to improve health outcomes, food labeling updates, “natural” labeling, dietary guidelines, organic standards, etc.); or analysis of recently passed or proposed legislation (could include reauthorization of child nutrition programs, farm bill, food related aspects of health care reform, food safety incidents or reform).

Papers must be 6–8 pages in length, paginated, double-spaced, with 1-inch margins, using Times New Roman in 12-point font. A cover page with the title of the paper and the student’s name and date is required, as is an alphabetical bibliography of works cited. Neither the cover page nor the bibliography may be counted toward the length of the paper. All assertions must be supported by appropriate substantiation and citation.

**Grading Range:**

A passing grade in the course is B- or better. Course grades will be based on the below (subject to revision during the course):

- **A** > 94%
- **A-** 90 - <94%
- **B+** 87 - <90%
- **B** 84 - <87%
- **B-** 80 - <84%

**Instructions for Submission of Assignments:**

Assignments should be submitted via Canvas. If Canvas is not operational, the assignment should be emailed to the course instructor prior to the time the assignment is due. Students who are unable to complete an assignment or exam on time and are requesting an extension should notify the course director by email prior to the assignment deadline with a brief explanation for why the extension is needed. Assignments received after deadlines without approved extensions will not be accepted or graded.

**Accommodation of Disabilities:**

Tufts University is committed to providing equal access and support to all students through the provision of reasonable accommodations so that each student may access their curricula and achieve their personal and academic potential. If you have a disability that requires reasonable accommodations please contact the Friedman School Assistant Dean of Student Affairs at 617-636-6719 to make arrangements for determination of appropriate accommodations. Please be
aware that accommodations cannot be enacted retroactively, making timeliness a critical aspect for their provision.

Friedman’s on-campus courses may be offered by Tufts WebEx (https://it.tufts.edu/webex) on days when the Boston campus is closed due to weather or a temporary cancellation issue. Students should expect to be notified by email in the event that class is cancelled and will be provided with the WebEx link for students to use for any remote class sessions. Also, any relevant course slides or materials will be made available on Canvas. The WebEx will be recorded and posted on Canvas when completed. If an on-campus Examination/Presentation was scheduled on a day when the Boston campus is closed due to weather or a temporary cancellation issue, the exam/presentation will be rescheduled for an alternate on-campus class session date.

**Diversity Statement:**

We believe that the diversity of student experiences and perspectives is essential to the deepening of knowledge in this course. We consider it part of our responsibility as instructors to address the learning needs of all of the students in this course. We will present materials that are respectful of diversity: race, color, ethnicity, gender, age, disability, orientation, gender identity, socioeconomic status, citizenship, language, or national origin among other personal characteristics.

**Course Topics and Assignment Schedule at a Glance:** This schedule is subject to modification at the instructor’s discretion.

<table>
<thead>
<tr>
<th>WEEK</th>
<th>DATE OF CLASS</th>
<th>COURSE TOPIC</th>
<th>ASSIGNMENTS DUE</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>January 22</td>
<td><em>What is Food Law?</em></td>
<td>Week 1 reading assignments</td>
</tr>
<tr>
<td>2</td>
<td>January 29</td>
<td><em>Introduction to Food Regulation in the United States</em></td>
<td>Week 2 reading assignments Overview of federal regulation of food Overview of state and local regulation of food</td>
</tr>
<tr>
<td>3</td>
<td>February 5</td>
<td><em>Food Labeling Laws and Regulation</em></td>
<td>Week 3 reading assignments Bring 3 food labels to class Research pending food labeling lawsuit</td>
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<tr>
<td>4</td>
<td>February 12</td>
<td><em>Food Safety Regulation &amp; Enforcement</em></td>
<td>Week 4 reading assignments Research FDA warning letters</td>
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<tr>
<td>5</td>
<td>February 19</td>
<td><em>Agriculture &amp; Environmental Law</em></td>
<td>Week 5 reading assignments Briefing statement</td>
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<tr>
<td>Week</td>
<td>Date</td>
<td>Reading Title</td>
<td>Assignment Details</td>
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<tr>
<td>6</td>
<td>February 26</td>
<td><em>Federal, State, and Local Regulation of Water Quality and Quantity</em></td>
<td>Week 6 reading assignments</td>
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<tr>
<td>7</td>
<td>March 5</td>
<td><em>Agricultural Exceptionalism: Right to Farm, Ag-Gag &amp; Veggie Libel Laws</em></td>
<td>Week 7 reading assignments</td>
</tr>
<tr>
<td>8</td>
<td>March 12</td>
<td><em>Labor in the Food System</em></td>
<td>Week 8 reading assignments</td>
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<td>Research impacts of ICE detentions and arrests of farmworkers</td>
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<tr>
<td>9</td>
<td>March 26</td>
<td><em>The Regulation of Genetically Modified Foods and Food Produced Via Biotechnology</em></td>
<td>Week 9 reading assignments</td>
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<td></td>
<td>(No class March 19)</td>
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<td>Research novel food technologies and consider their regulatory frameworks</td>
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<tr>
<td>10</td>
<td>April 2</td>
<td><em>Legal and Regulatory Frameworks for Alternative Food Systems</em></td>
<td>Week 10 reading assignments</td>
</tr>
<tr>
<td>11</td>
<td>April 9</td>
<td><em>Legal and Regulatory Tools to Address Obesity and Food Insecurity in the U.S.</em></td>
<td>Week 11 reading assignments</td>
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<td>Prepare for Congressional Briefing</td>
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<tr>
<td>12</td>
<td>April 16</td>
<td><em>Food Justice and a Right to Food</em></td>
<td>Week 12 reading assignments</td>
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<td>Op-Ed</td>
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<tr>
<td>13</td>
<td>April 23</td>
<td><em>Legal and Regulatory Tools to Address Food Systems Issues</em></td>
<td>Prepare to present policy paper in class</td>
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</tbody>
</table>
Course Schedule, Readings, and Assignments

I. INTRODUCTION TO FOOD REGULATION

Week 1: What is Food Law?

Learning Objectives

1. Define “food law” and “food system.”
2. Identify legal and policy tools that shape the food system.
3. Identify key legal and policy issues in the U.S. food system.
4. Practice reading legal cases and identifying facts, the court’s holding (decision on a particular legal issue), and reasoning.
5. Understand how legal analysis can be utilized to evaluate and solve problems in the food system.
6. Discuss the role of the government in the food system.
7. Discuss how law influences the food system and how the food system influences law.

Required Reading

4. In re Starlink Corn Prods. Liability Litig., 212 F.Supp.2d 828 (N.D. Ill. 2002) (Read to understand the scope and breadth of regulatory agencies and authority – state and federal – that can be involved in a food law case).

Week 2: Introduction to Food Regulation in the United States

Learning Objectives

1. Discuss the different federal agencies involved in food regulation.
2. Understand the interplay between federal, state, and local regulation of food.
3. Discuss the role of state and local governments in food regulation.
4. Evaluate the role of federal, state, and local government in regulating different aspects of food production, sale, and consumption.
5. Research federal, state, and local government agencies.
6. Present relevant information about food regulation to the class.
7. Understand and explain fundamental Constitutional principles such as separation of powers, preemption, and freedom of speech.
Required Reading

1. Read excerpt from *The Jungle*

2. Pomeranz, Chapters 1-2.


Assignments

1. *Overview of Federal Authorities Involved in Food Law Regulation*: Each student will be assigned a particular federal agency that plays a role in food regulation. Please research the assigned federal agency and prepare to brief the class on:
   a. Major areas of responsibility of your agency
   b. Major laws/regulations that they enforce
   c. “Hot topics” that the agency is involved in
   d. Other issues related to agriculture/food that you noted while researching

2. *Overview of Local & State Authorities involved in Food Law Regulation*: Research the state agencies involved in regulating food and agriculture of 2 of the following states: Massachusetts, California, Texas, Indiana, and New York. Identify each relevant agency, and its regulatory activities and programs. Be prepared to discuss how these agencies complement the federal regulatory system.

II. TRUTH & SAFETY OF FOODS: REGULATION OF LABELING AND CLAIMS

Week 3: *Food Labeling Laws and Regulations*

Learning Objectives

1. Practice closely reading statutes.
2. Practice closely reading legal cases to identify legal issues, holdings, and reasoning.
3. Evaluate holdings of cases and consider the implications of precedent to future cases.
4. Practice legal research of case law.
5. Understand statutory laws and regulations for the labeling of foods.
6. Understand the 1st Amendment constraints on the regulation of food labeling.
7. Understand the scope of the food fraud problem and critically evaluate government responses.
8. Discuss legal, regulatory, and policy strategies to address food fraud.
9. Evaluate best approaches to address food fraud.

Required Reading

1. Pomerantz, Chapter 6

2. 21 U.S.C. §§ 321(f), (k)-(n), (r), 343
3. **FDA’s Food Labeling Guide for Industry** (skim online)


**Assignments**

1. Bring to class labels from at least 2 different food products. Using the FDA’s Food Labeling Guide for Industry, students will work in small groups to imagine the role of food lawyers in advising food company clients about whether the labels are in compliance with existing regulations. Particular attention will be paid to the claims made on the labels and students will discuss whether the use of certain claims (“healthy,” “natural,” “whole grains,” etc.) are misleading.

2. Research one currently pending food labeling lawsuit. Review the pleadings and be prepared to summarize the allegations and analyze the strength of the claims.

**Week 4: Food Safety Regulation & Enforcement**

**Learning Objectives**

1. Understand the complex federal statute and regulations governing food safety.
2. Understand the interplay between federal, state, and local food safety regulation.
3. Evaluate the adequacy of the food safety system in the U.S.
4. Identify problems and challenges of the food safety system.
5. Consider alternatives to ensuring safety of food
6. Understand and evaluate the FDA’s enforcement authority to ensure the safety of food.

**Required Reading**

1. Pomeranz, Chapter 5.
2. 21 U.S.C. §§ 342

Assignment

1. Review at least two FDA warning letters involving food safety/adulteration at https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2017/default.htm and be prepared to discuss the alleged food safety violation, the applicable law, and the FDA’s recommended course of action to correct the violation.

III. FOOD & AGRICULTURE

Week 5: Agriculture & Environmental Law

Learning Objectives

1. Evaluate and understand the environmental impacts of agriculture.
   Understand the legal issues surrounding environmental protection in the U.S.
2. Understand the role of federal, state, and local governments in environmental regulation.
3. Evaluate whether the need for legal and regulatory reform to address the impacts of environmental impacts of agriculture.
4. Practice conducting legal research of statutes and cases.
5. Practice writing persuasively.
6. Practice debating the merits of policy change.

Required Reading

2. Blake Hurst, The Omnivore’s Delusion: Against the Agri-Intellectuals (July 30, 2009).

Assignment

1. Briefing Statement: The EPA, FDA, and USDA are convening an interagency task force to evaluate the impacts of agriculture on the environment and the need for regulatory reform. Students will be placed into groups to research and discuss a variety of environmental impacts of agriculture in the U.S., including pesticide runoff, pesticide resistance, waste of food, loss of pollinators, degradation of land, and loss of biodiversity. Each student should research their assigned issue and write two – three paragraphs generally describing the particular environmental issue and its causes. Write another paragraph or two that describes how the
federal government currently regulates the issue. Then, make a persuasive argument as to whether the current policy should be changed and if so, how the regulations should be reformed. Your entire assignment must be less than three pages double-spaced. Submit your assignment via Canvas by **Monday, February 18 at 5 p.m.** Students should be prepared to present their proposals in class. See [https://www.foodfarmingssustainability.com/agriculture--the-environment](https://www.foodfarmingssustainability.com/agriculture--the-environment) for helpful resources.

**Week 6: Federal, State, and Local Regulation of Water Quality and Quantity**

**Learning Objectives**

1. Understand legal issues surrounding water quality and quantity in the U.S.
2. Understand the role of federal, state, and local governments in water regulation.
3. Discuss and evaluate U.S. water policy and its relationship to agricultural policy.
4. Discuss and debate recent issues involving water quality affecting vulnerable populations.
5. Understand the relationship between food, water, and energy and its impact on the U.S. food system.
6. Practice reading cases to identify legal issue, holding, and reasoning.
7. Consider the impact of case law precedent on future policies and laws that address water quality issues.

**Required Reading**


**Week 7: Agricultural Exceptionalism: Right to Farm, Ag-Gag & Veggie Libel Laws**

**Learning Objectives**

1. Understand the special legal protections afforded to agricultural production facilities.
2. Evaluate the necessity of special legal protection for agricultural production facilities.
3. Consider the impacts of ag-gag and veggie libel laws on consumers, farmers, animals, and activists.
4. Evaluate and debate the legality of ag-gag laws.
5. Understand and evaluate the impact of industrial animal agriculture on the environment, worker health, social justice, and animal welfare.
6. Understand the impact of right to farm laws on rural communities.
7. Evaluate the rationale for right to farm laws.

Required Reading

1. Iowa Code § 352.1 to 352.12 (Iowa Right-to-Farm Statute)
3. Select one other state’s right-to-farm law, available here: http://nationalaglawcenter.org/state%20compilations/right-to-farm/. Read to notice the differences and similarities between the laws in Iowa, North Carolina, and your selected state.
4. Kristine A. Tidgren, Iowa Supreme Court Issues Key Ag Nuisance Ruling, The Ag Docket (June 23, 2018).

Week 8: Labor in the Food System

Learning Objectives

1. Identify and understand the federal agencies, statutes, regulations, and policies that govern labor in the food system.
2. Evaluate the working conditions of food systems workers, including agricultural laborers, slaughterhouse and food processing facility workers, grocery store workers, and restaurant and food service workers.
3. Understand the impacts of immigration policies on food system workers.
4. Understand the special legal protections in labor law afforded to agriculture.
5. Evaluate the necessity of special legal protection for agriculture in labor law.
6. Evaluate proposals to reform labor and employment laws to better protect food systems workers.

Required Reading


**Assignment**

Research news stories from the past year about the different impacts to farms, farmworkers and their families, consumers, and the economy of ICE (Immigration and Customs Enforcement) arrests and detentions of farmworkers. Be prepared to discuss the impacts and issues surrounding the immigration policy in class.

**Week 9: The Regulation of Genetically Modified Foods and Food Produced Via Biotechnology**

**Learning Objectives**

1. Identify and understand the federal agencies, statutes, regulations, and policies that govern the safety and labeling of foods produced via biotechnology.
2. Understand the legal significance and difference between laws and policies that govern food biotechnology.
3. Evaluate the adequacy of the U.S. regulatory system in overseeing biotech food products.
4. Research emerging technologies and evaluate whether the U.S. regulatory system is prepared to oversee the development, safety, and sale of these food products.
5. Engage in legal analysis by applying existing regulatory frameworks concerning biotechnology to new applications.
6. Compare and evaluate the U.S. regulatory system with that of the European Union and other countries.

**Required Reading**


**Assignment**

1. Research 1 or 2 novel applications of biotechnology for use in foods and analyze the benefits of these technologies, as well as potential risks to the environment and human health. Consider how these novel technologies will be regulated under the Coordinated Framework. Be prepared to share your analyses with the class.

**Week 10: Legal and Regulatory Frameworks for Alternative Food Systems**

**Learning Objectives**

1. Understand the law and regulations governing the National Organics Program.
2. Identify current issues regarding organic foods.
3. Evaluate the proposed and withdrawn animal welfare rules for the organics program.
4. Define “alternative food systems.”
5. Consider the merits of alternative food systems and how legal frameworks can support those systems.
6. Identify legal and regulatory challenges of urban agriculture.
7. Propose changes to laws and regulations to promote more sustainable food production.

**Required Reading**

1. National Organics Program—An Overview, National AgLaw Center

2. USDA, Organic Regulations (skim to understand the requirements for organic production and labeling).


7. Lynn Curry, *Certified “organic” livestock are supposed to have outdoor access. In practice, they don’t*, New Food Economy (Nov. 9, 2017).


**IV. HEALTH, NUTRITION & HUNGER**

**Week 11: Legal and Regulatory Tools to Address Obesity and Food Insecurity in the U.S.**

**Learning Objectives**

1. Understand the influence of law and regulation on obesity and food insecurity in the U.S.
2. Understand and explain laws and regulations governing food marketing.
3. Evaluate and debate the use of legal tools—legislation, regulation, and litigation—to address obesity in the U.S.
4. Evaluate the use of legal tools to address food insecurity in the U.S.
5. Consider the appropriate role for the federal, state, and local government in addressing obesity and food insecurity issues.
6. Utilize advocacy skills to represent an interest group in a mock Congressional hearing.

**Required Reading**

1. Pomeranz, Chapters 7, 8, and 9.


**Assignment**

Prepare for in-class Congressional Hearing about legislative solutions to the obesity epidemic. Students will represent different interest groups such as public health non-profits, food industry, academics, and libertarians and offer legislative solutions to address childhood obesity in the U.S.
Students should prepare a 3 minute statement that summarizes their proposal and why it is likely to be effective. Other students will ask questions following the opening statements.

V. FOOD JUSTICE, EQUITY, AND THE FUTURE OF FOOD

Week 12: Food Justice and a Right to Food

Learning Objectives

1. Identify inequality across the food system.
2. Define “food justice” and understand how the concept applies to the U.S. food system.
3. Identify legal frameworks that result in food injustice.
4. Propose solutions for new legal and regulatory frameworks to promote food justice.
5. Understand the concept of a “right to food.”
6. Distinguish a “right to food” framework from U.S. legal, regulatory, and policy approaches to food system issues.
7. Apply a right to food to pressing problems in the food system, e.g., food insecurity, obesity, labor issues, and land loss.

Required Reading


Assignment

1. Write an Op-Ed (300-500 words) that addresses these questions: What does food justice mean and what’s your vision for the future of the food system? What would it mean to apply a right to food framework to food law in the U.S.? Submit your op-ed by Tuesday, April 16 at 10 a.m. via Canvas. Be prepared to share your ideas in class.

Week 13: Legal and Regulatory Tools to Address Food Systems Issues

Learning Objectives
1. Analyze food systems legal issues discussed throughout the semester and discuss the role of law and policy to address one of those issues.

2. Present proposal and justifications for it to classmates.

3. Evaluate classmates’ proposals to food systems issues and ask questions regarding implementation, evaluation, challenges, alternatives, etc.

Assignments

1. Policy paper due **by 5 p.m. on April 22 via Canvas**.

2. During class, each student will have 10 minutes to present his/her policy paper and answer questions from the class.