

Syllabus- Legislative and Administrative Processes
LAW 513A, Section 2
Professor Dawson

Course Time and Room:
Monday and Wednesday, 9:00-10:15, Room 108

Professor's Information:
Professor Edward Dawson
Office #240; email: edawson@siu.edu

Office Hours/ Availability:

My office hours are Monday through Thursday from 1:30-2:30. During office hours, I will be available to take your questions unless I let you know in advance that I will be out on a particular day. You are welcome to come by during office hours to ask questions without making an appointment. You may also request an appointment outside office hours by sending me an email; I am generally in my office most days when I am not teaching class. You can also send me questions by email, but I may ask you to come by if the question isn't easily answered by email. I check email regularly during business hours (9 am-5pm Mon. through Fri.); outside those times I may not respond the same day. My assistant is Cynthia Heisner, heisner@siu.edu, and her office is in room 243.

Assigned Texts:

- Linda Jellum, *The Legislative Process, Statutory Interpretation, and Administrative Agencies* (1st ed. 2016)
- Supplemental materials, as posted on TWEN

Course Overview and Goals:

This course is designed to give you an overview of legislative and regulatory processes and teach you methods and tools for interpreting statutes and regulations. Learning how to interpret statutes and rules will assist you in most upper-level courses, as well as your eventual practice of law, because today most law and especially most new law is based on statutes and regulations.

You will learn about these subjects by reading the texts and the cases and statutes they contain, practicing your skills by working problems in the textbook, discussing the materials and practicing your skills during our class sessions, and completing written assignments.

The course begins with an introduction to the governmental structure, legislative process, and sources of statutory interpretation. We then examine and apply different theories of statutory interpretation. The middle of the course examines different methods, sources, and guidelines for interpreting statutory texts, based on both intrinsic and extrinsic sources. The course concludes with an examination of the regulatory state: what administrative agencies are, how agencies make regulations by interpreting statutes, and how and when courts defer to agencies' interpretation of statutes through rulemaking.

Learning Objectives:

By the end of the course, a student should have learned how to:

1. Understand the constitutional separation of powers and how it affects the enactment and interpretation of statutes;
2. Understand the basic process by which legislation is enacted, the components of legislation, and the difference between state and federal legislation;
3. Distinguish between common law and statutory law;
4. Analyze judicial opinions interpreting statutes and regulations to identify rules of interpretation;
5. Apply rules of interpretation learned from the cases to new/ hypothetical factual contexts;
6. Know the difference between the three theories of statutory interpretation: textualism, intentionalism, and purposivism and understand how each theory directs judges to interpret statutes;
7. Use textual methods to interpret a statute as a whole, and by section, paragraph, sentence, and word;
8. Use a statute's context within a body of statutes (a code) to interpret the statute;
9. Understand what linguistic canons are, and be able to apply them to new statutes;
10. Apply statutory canons as a group to identify which canons support a particular interpretation of a statute, and how to resolve conflicts between canons;
11. Distinguish statutory text from legislative history, identify different levels in the hierarchy of legislative history, use legislative history to interpret a statute, and explain the benefits and drawbacks of using legislative history to interpret statutes;
12. Use canons based on extrinsic sources of law to interpret a statute, including conflicting statutes, common law, and constitutional provisions;
13. Understand what administrative agencies are and do;
14. Distinguish between statutes and regulations;
15. Explain how administrative agencies translate statutory requirements into regulations;
16. Learn the rules courts use when deciding whether to defer to administrative agencies' interpretations of statutes;
17. Apply the rules of regulatory deference as learned from the cases to new/ hypothetical factual contexts.

The exams in this course will be designed to evaluate how well you have mastered these goals.

Reading:

For each class, I expect you to do the assigned reading, as listed below on the weekly schedule. "Doing the reading" means reading the assigned pages, making notes about the cases and other material, working through any assigned problems, and listing any questions you have about the reading. The reading may be challenging or unfamiliar to you, so while the page length of the assignments may be short, you should plan to re-read the material until you believe you understand it, or know specifically what you can't understand about it. In class, I will ask you questions about the reading in class according to the call policy described below.

I recommend that you “brief” the cases assigned in the Jellum textbook. Early in the semester I will review what a case brief is, how briefing cases for LAP differs from other classes, and post a sample case brief you may use for cases assigned in this course. I also have supplemental readings for certain classes; those supplemental readings will be posted on TWEN as noted on the weekly schedule below. That reading is fair game for call in class.

Class Attendance:

I will take attendance each class by passing around a roll sheet, which you will sign. You are allowed four absences for this course. Being significantly late to class counts as an absence. “Noting out” counts as an absence. As described in the call policy in the next section, being unprepared in class can count as an absence.

Since the material for this course is challenging, I recommend you not miss class unless it is truly necessary. If you maximize your absences, it can affect your participation grade. If you are at or near the absence limit but feel that extraordinary circumstances account for your absences, you can see me and explain. You are responsible for keeping track of your own absences. If you accumulate more than four absences, you may receive a lowered grade, or not receive credit for the course at all, as required by the school’s attendance policy, which is available here:

http://law.siu.edu/_common/documents/rules-code/attendance-rules-ay17-18.pdf

It explains, among other things, the penalties for exceeding the absence limit, which can include a grade reduction or withdrawal from the course.

Call and Attentiveness Policy:

I will call on students using a random call list—once you have been called on you won’t be eligible to be called on again until I have been through the entire list, at which point I will generate a new, random list. When called on, you should be prepared to discuss the facts of assigned cases, and answer questions about your analysis of the cases and understanding of the topics covered in the reading. You should also (but not exclusively) be prepared to answer any of the “points for discussion” or “hypothetical questions” posed in the textbook reading for that class. If the assigned reading includes a problem, and that problem is not the subject of an assignment that was due prior to class, I may also call on one or more students to discuss the problem.

You may “note out” before class by giving me a note or telling me that you are not prepared to be on call; noting out counts as an absence. If I call on you and you are unprepared or have not done the reading, I will mark you as absent for that class, the absence will count towards the limit for the semester, and you will remain on the call list. Being unprepared when called upon will also affect your class participation grade, as explained in the grading section below. So, the advantage of noting out is that it will not affect your grade in the course, unlike being called on and not being prepared.

If I observe that you are doing something on your computer or other device that is distracting other students, I will warn you once by email and if I observe it again will disallow your use of the computer or other device during class.

Recording Policy:

Classes will be recorded; the recordings will be available by request. To access a recording of a class, email me the request and I will send you the link. Watching a recording of a class does not count to satisfy an absence unless necessary to accommodate a disability or unless you request and receive my approval.

Assignments and Problems:

The weekly schedule lists a number of assignments, most of which are taken from or based on problems in the text. When there is an assignment, you will be required to complete it before class and turn it in via TWEN. Before the first assignment is due I will explain how you should electronically submit an assignment. If the assigned reading includes a problem but no assignment is due that day, you should prepare by reading and thinking about the problem; sometimes we will discuss these in class using call, and other times we will use them for an in-class exercise. These assignments and problems will count towards your class participation grade, as described below under “Grades.” **Any assignment you submit must have your name and the date on the document in order for you to receive credit for it.**

Grades:

Your grade will be determined by a combination of your performance on a midterm, your performance on the final exam, and your class participation (including completion of assignments). The midterm will count for 20% of your grade, the final for 60%, and class participation/ assignments will count for 20%. Grades for the course will be assigned based on the law school grading policy, which is available at:

http://www.law.siu.edu/_common/documents/rules-code/grading-rules-ay17-18.pdf

The midterm will be during the 8th week of the semester (March 4-8), and the specific date and time will be given to you before the beginning of the semester. It will consist of one short essay and several multiple-choice questions. It will be a **closed-book** exam. I will provide you individual feedback on your essay answers as well as an opportunity to meet with me to discuss your answer.

The final exam will be on Friday, May 3, at 8:15-11:15 AM. It will be a mixture of multiple choice questions and essay questions. The final exam will be a **closed-book** exam. The final exam will be cumulative, that is, it will cover material from the entire semester.

Your participation score will be assessed based on your completion of the assignments as listed on the weekly schedule below, performance on call, and your participation in class discussion and group exercises.

There are 10 assignments on the weekly schedule that are due before the beginning of class. You will get 1 point for completing each of them. You will submit them on TWEN, before the class for which they are assigned. Your assignment **must have your name and the date on it in order for you to receive credit for it.** For these assignments, you do not have to get all of the answers right to get credit; my standard for credit will be whether your submission demonstrates that you read the assigned material and made a sincere effort to answer the questions posed. If your answers demonstrate that you did not understand the material, I may ask you to revise and resubmit in order to get credit.

The remaining 10 participation points will be based on how attentive you are in class, how you perform when called on in class to discuss a case or a problem from the reading, and your degree of effort when we discuss problems or conduct group exercises in class. If you are unprepared when called on you will, in addition to being marked absent for the day, lose two points from your participation grade.

If you are absent on a day when I would have called on you, I will call on you during the next class you are present; you will not be penalized if you are prepared when I call on you then. If you are absent and unable to turn in or complete in class one of the assignments listed on the weekly schedule, you may be allowed to turn it in for credit if you notify me and request permission *in advance* of the deadline.

You do not have to volunteer to speak or ask questions outside of class to get full points for participation; you do have to complete the assignments, be prepared when you are called on, and participate in or complete during class the exercises we will use to build understanding of the material.

Workload Expectations:

The American Bar Association standards for accrediting law schools define “a “credit hour” as an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class, meaning that we will spend two 75-minute blocks of time together each week. The amount of assigned reading and out of class preparation should take you about 3 hours for each class session and 6 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 9 hours per week (3 in class and 6 preparing for class) on course-related work.

Plagiarism and Collaboration

You are welcome to collaborate in preparing for class, in working on the assignments that are due for certain classes as noted on the weekly schedule, and in discussing and giving answers to any group exercises we may do in class. Collaboration means working together to answer questions, or comparing one’s own answers against another student’s answers. It is not ok for one student to copy another student’s answers for an assignment or for students to divide up an assignment and copy each other’s answers to the other parts. Doing either of those things would be considered by me to be an honor code violation by both the copier and by the person whose answers were copied.

The exams in this class are closed-book and no outside sources or collaboration with other students are allowed.

Communication:

There is a TWEN page for this course, and you should sign up for it. TWEN is an online course management system; the TWEN website is at <https://lawschool.westlaw.com/twen/>. On the TWEN page I will post copies of course documents (like this syllabus), as well as any powerpoints or other materials I use in class. I will also sometimes post required, supplementary reading on the TWEN page, as noted on the weekly schedule below. I will also use TWEN to send messages to the class, including updates or changes to this syllabus. For all of these reasons, **it is very important that you sign up for the page and check it for updates**. If you have questions about signing up for the TWEN page, you may contact the librarians, or the course assistants for this course, about how to sign up.

I also use email to communicate with students in the class. You are responsible for checking your email relating to this course and for making sure you are receiving emails for the class.

Teaching Assistants:

I will have one or two teaching assistants for this class, who are students who previously took this class. Course assistants will help with feedback on your written assignments, and are available to answer your substantive questions about the course material and your administrative questions about assignments, exams, or missed classes. I will during the first week of class provide you with their contact information and availability.

Weekly Schedule

The schedule below lists the assigned reading, as well as any assignments, for each class session. “Jellum” refers to the case book. The sessions are organized within an outline format that is intended to give you an overview of how each session fits into the larger structure of the course. I may adjust the assignments may change depending on how fast we move through the material; I will give you advance notice of changes and update the syllabus as we go. I may also assign additional reading or distribute problems to be worked in advance of class. If I do I will give you advance notice in class and post the material on TWEN in advance of the day for which it is assigned. When the last page of the assignment has a heading or a case that begins on that page and carries forward past the assigned pages, stop reading at that heading or case. If you have a question about the reading for any class, you may ask me or the course assistants.

During the semester, we will have class **every Monday and Wednesday** except for Monday January 21, which is Martin Luther King, Jr., Day, and during Spring Break (March 11 and 13).

I. Introduction to Course and Course Themes

Introduction to the course and course procedures. We will overview the course themes of legislative process, statutory interpretation, and the “regulatory state.”

1. Monday, January 14, 2019

Topic: Introduction to Course; Introduction to Statutory Interpretation

Reading:

- Syllabus
- Jellum pp. 3-17; Jellum pp. 707-710
- The discussion will focus on the material at 3-17; the material at 707-710 is an outline/overview of the topics we will cover this semester.

II. Government Structure, Legislative Processes, and Theories of Statutory Interpretation

We will overview/ review of the separation of powers and federal structure of American government, with special attention to how the structure of government directs and affects the enactment, execution, and interpretation of statutes.

2. Wednesday, January 16, 2018

Topic: Separation of Powers

Reading:

- Jellum pp. 19-47

3. Wednesday, January 23, 2018

Topics: Legislative Processes; Intro to Interpretive Sources and Theories

Reading:

- Jellum pp. 51-71; 83-88

4. Monday, January 28, 2018

Topics: Theories of Statutory Interpretation, pt. 1 – Textualism and Intentionalism

Reading:

- Jellum pp. 88-110

5. Wednesday, January 30, 2018

Topic: Theories of Statutory Interpretation pt. 2—Purposivism; Theories exercise

Reading:

- Jellum pp. 111-137

Assignment #1:

- Complete, and submit by the beginning of class, an assignment based on the “Speluncean Explorers” problem. The problem and assignment will be posted on TWEN. (If you want to read the full/ classic/ longer version of the problem, it is at Jellum pp. 137-148, but you do not need to and are not required to read that version to complete the assignment.)

III. Statutory Interpretation—Intrinsic Sources.

We examine how courts use “intrinsic sources”—things that are part of the statute itself—to interpret a statute.

6. Monday, February 4, 2018

Topics: Textual interpretation; plain and technical meaning; sources of word meaning

Reading:

- Jellum pp. 149-74, 178-180
- Be prepared to discuss problem 5, at pp. 178-80

7. Wednesday, February 6, 2018

Topics: Ambiguity and Absurdity

Reading:

- Jellum pp. 181-192, 195-205

8. Monday, February 11, 2018

Topics: Assignment on Ambiguity/ Absurdity; Scrivener’s Error and Constitutional Avoidance; Punctuation

Reading:

- Jellum pp. pp. 208-223; 223-228, 230-33

Assignment #2: Prepare and submit by the beginning of class an assignment based on problem 6A at pp. 208-210. I will post the assignment on TWEN

9. Wednesday, February 13, 2018

Topics: Punctuation (cont’d) and Grammar; Linguistic Canons pt. 1

Reading:

- Jellum pp. 233-240, 251-263
- Be prepared to discuss problem 7 on page 252

10. Monday, February 18, 2018

Topic: Linguistic canons, pt. 2.

Reading:

- Jellum pp. 263-288

11. Wednesday, February 20, 2018

Topics: Linguistic canons, pt. 3

Reading:

- Jellum pp. 288-307

Assignment #3: Prepare, and submit by the beginning of class, the assignment based on problem 8 that I will post to TWEN in advance of class.

12. Monday, February 25, 2018

Topics: Components

Reading:

- Jellum pp. 309-341
- **Assignment #4:** Complete, and submit by the beginning of class, an exercise on statutory components, to be posted on TWEN

13. Wednesday, February 27, 2018

Topic: Catch up and Midterm Review

Reading:

- Practice essay question—posted on TWEN
- **Assignment #4:** Complete, submit by the beginning of class, an exercise on statutory components, to be posted on TWEN

Week of Monday, Mar. 4- Friday, Mar. 8

MIDTERM EXAM (Date and Time TBA)

SPRING BREAK= March 9-March 17

IV. Statutory Interpretation: Extrinsic Sources

We examine the use of extrinsic sources—sources beyond the text of the statute itself—to interpret a statute.

14. Monday, March 18, 2018

Topic: Conflicts between Statutes

Reading:

- Jellum pp. 373-387
- Supplemental case on pre-emption (posted on TWEN)

Assignment #5: Submit assignment based on problem 10A (pp. 393-95); the assignment will be posted on TWEN

15. Wednesday, March 20, 2018

Topic: Enactment Context (Legislative History)

Reading:

- Jellum pp. 409-410, 412-420, 427-44

16. Monday, March 25, 2018

Topic: Purpose; Post-Enactment Context

Reading:

- Jellum pp. 451-465
- Prepare problem 12 at pp. 463-465. We will have an in-class exercise in which I will ask for volunteers to give a short oral argument about the fate of the “Placitas horses”

17. Wednesday, March 27, 2018

Topic: Post-Enactment Context (cont’d)

Reading:

- Jellum pp. 467-487, 491-95

Assignment #6: Prepare, and submit by the beginning of class, an assignment based on problem 13 (pp. 493-95). I will post the assignment on TWEN in advance of class.

18. Monday April 1, 2018

Topic: Policy-Based Canons--Constitutional

Reading:

- Jellum pp. 497-506, 510-512, 521-533
- Supplemental case on Rule of Lenity, on TWEN

19. Wednesday April 3, 2018

Topics: Policy Based Canons—Constitutional (cont’d) and Prudential

Reading:

- Jellum pp. 533-538, 541-551

Assignment #7: I will post on TWEN a problem which we will use as a group exercise in class; you will get credit for the assignment by participating in the group exercise.

V. Agencies and Regulation

We examine the creation, powers, and oversight of administrative agencies, and then examine the role of agencies in interpreting statutes, and the reasons that courts give deference to agencies' interpretation of statutes.

20. Monday, April 8, 2018

Topic: Introduction to Agencies and Regulation

Reading:

- Jellum pp. 561-585, 592 (problem 16)
- Be prepared to discuss problem 16 as an instance of the application of “nondelegation doctrine”

21. Wednesday, April 10, 2018

Topic: Oversight of Agencies

Reading:

- Jellum pp. 593-620
- As you read *TVA v. Hill*, try to identify all of the rules/ canons that the majority and dissent use to support their positions—this is a good way to review the material we have covered across the semester.

22. Monday, April 15, 2018

Topic: Agency Deference – The *Chevron* Doctrine

Reading:

- Jellum pp. 633-649, 657-660

Assignment #8: Prepare, and submit by the beginning of class answers to a set of questions, which I will post on TWEN, about problem 18B at pp. 657-660 of the Jellum book

23. Wednesday, April 17, 2018

Topic: Application and Evolution of *Chevron* deference: *Chevron* “step zero”

Reading:

- Jellum pp. 661-688

24. Monday, April 22, 2018

Topic: *Chevron* cont'd, review on agency deference

Reading:

- Jellum pp. 690-698, 446-450 (problem 11)
- Excerpt from *Arlington v. FCC*, to be posted on TWEN

Assignment #9: Create a study tool such as a “flow chart,” attack plan, or list of questions to use when analyzing a *Chevron* problem. Then take that tool and apply it to problem 11 at pp. 446-450 (disregard the textbook’s instruction to prepare a brief; instead, use your tool to lay out the outline of an answer to an essay question that asked you whether a court should uphold the suit filed by the NPA.). Submit by the beginning of class, via TWEN, a document that includes your study tool and the results of applying it to problem 11.

25. Wednesday, April 24, 2018

Topic: Semester Review

Reading: Jellum pp. 707-718

Assignment #10: Submit on TWEN by the beginning of class at least one question you have about the course material or about the exam. You are welcome to submit more than one question if you have them. If you have no questions, then you can submit instead an outline of topics from the course that is at least a page and no more than 3 pages long. I will answer all questions either in our review during the last class, or in a supplemental slideset or video.

Emergency Procedures:

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at www.bert.siu.edu, Department of Safety's website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

Disability Support Services:

Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. <http://disabilityservices.siu.edu/>. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations.

Saluki Cares:

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.