

Legislative & Administrative Processes

Times: MW 9:00–10:15 A.M.

Room: 202

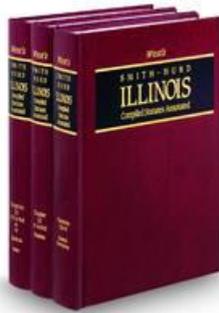
Instructor: Steven J. Macias

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Office Hours: MW 10:15–11:15 A.M.

Office: 234

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Description

This first-year course is designed to introduce you to statutory law and help you to contextualize your common law courses (i.e., contracts, torts, criminal law, property) within the modern administrative state. The course is also designed to lay a framework that you will easily be able to call upon when you take upper-level statutory courses, such as environmental law, bankruptcy, tax, healthcare, intellectual property, etc. We begin the course with an introduction to the constitutional basis of the administrative state, then we turn to the art of statutory interpretation. In no sense is our introduction to administrative law a substitute for the upper-level Administrative Law course, which all students should seriously consider taking at some point in their final two years of law school.

Required Texts

John F. Manning & Matthew C. Stephenson, *Legislation and Regulation*, 3rd ed.

(Foundation Press 2017) [[West](#)] [[Amazon](#)]

William N. Eskridge, Jr. & James Brudney, *Documents Supplement* (West 2011) [[West](#)]

[[Amazon](#)]

Bryan A. Garner, *Black’s Law Dictionary, Fifth Pocket Edition* (Thomson Reuters 2016)

[[Thomson Reuters](#)] [[Amazon](#)] (or a comparable dictionary that you can bring to class)

Recommended Books

Any good Constitutional Law supplement will be helpful for the first half of the course. In particular, I'd recommend [Chemerinsky, *Constitutional Law*](#), which you'll also find helpful when you take Constitutional Law next year.

For the second half of the course, you will find the following helpful:

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (West 2012) [[Thomson Reuters](#)] [[Amazon](#)]

Linda D. Jellum, *Mastering Statutory Interpretation*, 2nd ed. (Carolina Academic Press 2013) [[CAP](#)] [[Amazon](#)]

As you will soon learn, Justice Scalia was a driving force behind the recent focus on statutory interpretation in the law school curriculum. His book provides a clear explanation of the major canons of interpretation along with illustrative examples of the canons in action. One can profitably read the book without subscribing to any particular method of interpretation. I will frequently refer to the relevant sections during class discussions, so it will be in your interest either to obtain a copy for yourself or use the multiple copies that are on reserve in the library.

I have required the Jellum book in the past and think that it is a very useful resource.

For those looking for more practice problems than are provided in the course materials, I suggest [Richard L. Hasen, *Legislation, Statutory Interpretation, and Election Law: Examples and Explanations* \(Wolters Kluwer 2014\)](#). In particular, Chapters 1 & 5–8 are directly relevant to our course of study.

Goals

At the conclusion of the course, you should:

- Understand the constitutional issues raised by the existence of executive agencies within the administrative state.
- Be able to explain how federal agencies are consistent with the constitutional principle of separation of powers.
- Be able to explain how the various branches of government exert control over executive agencies.
- Have a solid understanding of the dominant methods of statutory interpretation.
- Know how to uncover the purpose of a statute.
- Understand the role and place of canons of interpretations.
- Have a basic familiarity with legislative history, including the variety of sources and how to successfully make arguments therefrom.
- Understand the basics of *Chevron* deference.
- Be able to systematically approach a statutory interpretation problem from beginning to end.

Webpage

We will use the [SIU D2L](#) webpage for our course. You should check it often, as I will post course material, class slides, and announcements without any particular notice. I will also use the webpage to send out emails. You are responsible for reading those emails.

Not checking your email and not reading the posted announcements are *not* valid excuses for missing important information.

Evaluation

The final exam is scheduled for **Friday, May 3, 8:15 A.M.** It will count for 70% of your course grade, with the remaining 30% attributed to the midterm exam.

If any student is, in the opinion of the instructor, not prepared for class on any particular day when called upon, he or she will be marked as absent. Students may “note out” of class for any particular day, but they must not sign the attendance sheet for that day. **NO STUDENT MAY “NOTE OUT” DURING THE FINAL TWO WEEKS OF CLASS!**

Attendance Policy

I do not recommend that you miss *any* classes. However, you are permitted four absences in accordance with the Attendance Rules specified in the [School of Law Rules III.5\(f\)–\(g\)](#). Individual class sessions recordings will *not* be distributed; thus, it is imperative that you be in regular attendance.

If you miss more than four classes, *for whatever reason*, you will be withdrawn from the course.

Workload Expectations

The American Bar Association (“ABA”) law-school-accreditation standards contain a formula for calculating the amount of work that constitutes one credit hour. According to the general requirement of Standard 310, “a ‘credit hour’ is an amount of work that reasonably approximates 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 (including one week for final exams) or the equivalent amount of work over a different amount of time.” Applying the ABA standard to this 3-credit hour class, you should plan on spending a total of **9 hours per week (3 in classroom instruction and 6 preparing on your own) on course-related work.**

Laptops and Other Electronic Devices

Laptop computers should *not* be used in class for any purpose. Click [here](#) and [here](#) to see why. The same prohibition applies to electronic tablets, smart phones, and other similar devices.

University Announcements

<https://pvcaa.siu.edu/forms/syllabus-attachment-spring-2019.pdf>

Reading Assignments

(subject to change)

CLASS	TOPIC	PAGES*	SUPPLEMENT†
Part I: Constitutional Principles of the Administrative State			
Mon., Jan. 14	Introduction to Subject Matter	2–22	
Wed., Jan. 16	Constitutional Background	434–58	
Mon., Jan. 21	MLK Holiday—No Class		
Wed., Jan. 23	Delegation I	458–72	
Mon., Jan. 28	Delegation II	472–502	
Wed., Jan. 30	Legislative Veto	528–52	
Mon., Feb. 4	Appointments Clause	552–66	
Wed., Feb. 6	Recess Appointments		<i>Noel Canning</i>
Mon., Feb. 11	Removal Power I	566–605	
Wed., Feb. 13	Removal Power II	605–19	
Mon., Feb. 18	Removal Power III	619–45	
Wed., Feb. 20	Removal Power IV	645–62	
Mon., Feb. 25	Overview of the Regulatory Process	701–27	
Wed., Feb. 27	Notice-and-Comment Rulemaking	728–53	
Mar. 4–8	Midterm Week – No Classes		
Fri., Mar. 8	Midterm 10:00–11:30 A.M.		
Part II: Statutory Interpretation in and out of the Administrative State			
Mar. 9–17	Spring Vacation		
Mon., Mar. 18	Which “Textual” Meaning is the Right One?	146–63	
Wed., Mar. 20	Colloquial vs. Dictionary Meaning	163–79	225–35
Mon., Mar. 25	Judicial Review of Agency Statutory Interpretation: <i>Chevron</i>	963–91	
Wed., Mar. 27	<i>Chevron</i> and Textual Interpretation	991–1010	
Mon., Apr. 1	Semantic Canons	272–79	Textual Canons (pp. 1–5 of handout)
Wed., Apr. 3	Semantic Canons, cont.	310–19	Textual Canons (pp. 6–13 of handout)
Mon., Apr. 8	<i>Chevron</i> , Semantic Canons and Terms of Art	1010–26	209–24
Wed., Apr. 10	Legislative History		<i>Weber</i>
Mon., Apr. 15	Legislative History, cont.	203–28,	262–69

* All pages in this column refer to the Manning & Stephenson casebook. Always start or stop reading at the natural breaks on the listed initial and final pages.

† Numbers in the second column refer to pages in the *Documents Supplement*. All other supplements will be handed out in class.

		1050-53	
Wed., Apr. 17	Substantive Canons: Constitutional Avoidance	328-53	236-61
Mon., Apr. 22	<i>Chevron</i> & Constitutional Avoidance	1054-68	
Wed., Apr. 24	Substantive Canons: Federalism	353-75, 1068-79	
Make-up class	Substantive Canons: Rule of Lenity	399-410	<i>Yates & Lockhart</i>

FINAL EXAMINATION: Friday, May 3, 8:15 A.M.