

Legislative and Administrative Processes (LAP)
Law 513A, Section 1
Spring 2020

Professor McCubbin

COURSE OVERVIEW AND REQUIREMENTS

Class Time:

Mondays and Wednesdays, 1:30 PM to 2:45 PM
Room 202

Office Hours:

Mondays and Wednesdays, 3 PM to 4 PM
Room 258

Required Textbook: You must have this book:

Linda D. Jellum, THE LEGISLATIVE PROCESS, STATUTORY INTERPRETATION,
AND ADMINISTRATIVE AGENCIES (2016).

You are also responsible for all materials posted on TWEN throughout the semester, including the weekly assignments, after-class information, and so on.

Course Goals and Outline: This course is designed to give you an overview of legislative and regulatory processes and to teach you methods and tools for interpreting statutes and regulations. We will focus primarily on federal statutory and regulatory processes, which serve as a model for many state processes as well. Learning how to interpret statutes and rules is critical for practicing law in our modern era because today most law is based on statutes and regulations. I expect to address the following main topics this semester:

1. The Need for Precision in Statutory Interpretation
2. Federal Government Structure and the Legislative Process
3. Intrinsic (or Textual) Canons of Statutory Interpretation
4. Extrinsic Canons of Statutory Interpretation
5. Policy-Based Canons of Statutory Interpretation
6. Federal Regulatory Process: Introduction to Agencies

7. Agency Rulemaking
8. Judicial Review of Agency Actions

Grading: Your grade will be based on:

1. three short writing exercises, each worth 5% of your grade;
2. a closed-book midterm during the week of March 2-6, worth 20% of your grade; and
3. a closed-book, cumulative final exam during exam week, worth 65% of your grade.

Ungraded Tasks: In addition to the graded items noted above, we will also do several ungraded written exercises that must be satisfactorily completed to receive credit for the course. These exercises will be designed to improve your writing, to hone your analysis of relevant legal concepts, and to give you practice with bar-type questions.

If you miss the deadline for submitting an ungraded task, it will count as an absence (in addition to any absence incurred if you do not come to class when the ungraded task is due).

Student Learning Objectives: At the end of this course, each student should be able to:

- explain the basic process by which legislation is enacted, the components of legislation, and the difference between state and federal legislation;
- distinguish between statutory law and agency regulations;
- use intrinsic (textual) tools of interpretation to give meaning to a statute;
- use extrinsic tools of interpretation to give meaning to a statute;
- use policy-based tools of interpretation to give meaning to a statute;
- explain the basic process that federal agencies must use to adopt regulations; and
- identify and apply the standards of review relevant to different types of challenges to federal agency actions.

Beyond those substantive objectives, there are also several learning objectives related to how I run the class. For example, I use very few PowerPoints; instead, I

present and summarize each day's lessons orally. The objective is for students to learn to take good notes from oral presentations. That activity mimics how attorneys in practice have to listen and take notes as they interview clients, take depositions, participate in negotiations and so on.

Likewise, I call on many different students each day because, as another learning objective, students need to develop the skills to communicate their analysis and arguments extemporaneously ("on the fly"). As part of that, students need to learn to control any nervousness about being called on. Again, this mimics the practice of law since attorneys must regularly respond to questions from a judge, a client, an opposing counsel or others.

In addition, periodically I will require students to talk with one or two other students about the day's lessons, and occasionally students will review each other's written work (with my guidance). The learning objectives are for students to develop the ability to work in teams and to give and receive feedback orally and in writing.

Students are also expected to do writing tasks throughout the semester, with the obvious learning objective of continuing to improve their writing skills.

Students are also expected to arrive in class on time, with an equally obvious objective of students learning to be timely.

Finally, another learning objective is for students to learn to comply with detailed, lengthy instructions – which they will see in the assignments and out in the practice of law when, for example, they file a brief in a court or an application before an administrative agency.

Teaching Assistants: I will have two teaching assistants (TAs) for this class who are students who previously took the course. The TAs will help with feedback on your written assignments. They are also available to answer questions about the course material, assignments, and the like. Early in the semester I will provide you with their contact information and availability.

TWEN: We will be using TWEN to communicate outside the classroom.

Assignments: For each week of classes, I post the assignments on TWEN no later than the Thursday of the prior week and often earlier than that. The assignments for the first two weeks are now posted on TWEN in the “Weekly Assignments” forum.

Tardiness: You are expected to arrive on time to class (with one exception explained below). If you enter class after I begin lecturing, do not sign the attendance sheet. A day on which you arrive late will count as one of your absences.

You will not be penalized for arriving late if, on the morning of a class, we have winter weather making the roads slippery. Under those circumstances, safety is our priority, and you should take your time getting to class.

Class Attendance: Attendance will be taken daily. You are allowed to sign the attendance sheet only if you did the assigned work and are prepared to discuss it.

You are permitted four (4) absences. I make no exceptions for any type of excused absence. For your 5th absence and each absence after that, you will be subject to Law School Rule III.5(g), which calls for you to lose 0.3 points off your final GPA for each absence beyond those allowed or for you to be withdrawn entirely.

Participation in Class; Noting Out: Every day in class I will randomly call on many different students. If I call on you and you are not prepared, you will be marked as absent. In addition, in some classes you will be expected to speak with one or two other students about the day’s assignment.

If you would like to listen to the conversation without being called on, you may note out, as follows:

1. Do not sign the attendance sheet; and
2. Leave me a note on the lectern before class begins with your name and the date.

A day of “noting out” counts as one of your absences.

Distractions: If you engage in behavior that is distracting to me or other students (including using your computer or phone for something unrelated to our course), I can choose, in my discretion, to ban you from (a) using your computer or other device, (b) engaging in the distracting behavior, and/or (c) continuing in the course altogether.

Days of No Class: Occasionally we may not meet if I am out of town or if I have some other conflict. We will make up for any missed sessions with out-of-class exercises that will comply with ABA Standard 310, which specifies the amount of time students must spend on coursework both inside and outside the classroom to earn the three credit hours available in this course.

Workload Expectations: ABA Standard 310 expects that your work for this course outside the classroom will equate to twice as much time as we actually spend in the classroom. Your work outside the classroom includes reading for class, taking notes on the explanatory reading materials, briefing the assigned cases, synthesizing your notes from class each week into an outline or other study product, working on graded or ungraded exercises, memorizing the concepts, and preparing for the exam. Please keep the workload expectation for out-of-class work in mind as we proceed through the semester.

Recording Policy: All sessions of this course will be recorded and available to you for review. You are prohibited from recording the class yourself in any manner, and doing so is a violation of the Honor Code.

Meeting With Me Outside Class: Feel free to drop by my office (Room 258) at any time during the day except when I am preparing for classes. I will be happy to talk with you about the class, the practice of law, or whatever else is on your mind.

No appointment is necessary, but if you want to make sure I am available, it is best to send me an email ahead of time. You may also communicate with me through TWEN or regular email (mccubbin@siu.edu).

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: Disability Support Services (DSS) 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. See: <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.