

# Legislative & Administrative Processes

Times: MW 9:00–10:15 A.M.

Room: 120

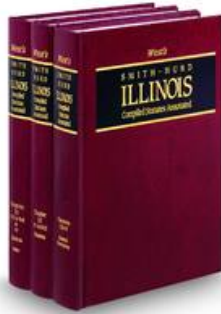
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Office Hours: MW 10:15–11:00 A.M.

Office: 136 & 234

Phone: 618-536-8464



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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 various methods of statutory interpretation and then turn to our primary study of sources of meaning for statute law. Along the way we will also consider some constitutional implications to the statutory interpretive process. Finally, we consider the relationship between statutory interpretation and the administrative state. However, 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 Text

John F. Manning & Matthew C. Stephenson, *Legislation and Regulation*, 3rd ed. (Foundation Press 2017) [[West](#)] [[Amazon](#)]

## Recommended Books

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

Linda D. Jellum, *Mastering Legislation, Regulation, and Statutory Interpretation*, 3rd ed. (Carolina Academic Press 2020) [[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 to obtain a copy for yourself.

I have required the Jellum book in the past and think that it is a very useful resource. In particular, she provides a very helpful linear overview to the interpretive process, including a step-by-step checklist.

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\*, 2nd ed. \(Wolters Kluwer 2019\)](#). In particular, Chapters 1 & 5–8 are directly relevant to our course of study.

### **Goals**

At the conclusion of the course, you should:

- 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.
- Have a basic understanding of the administrative state in order to understand its role in statutory interpretation.
- 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 MyCourses](#) 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.

### **Administrative Assistant**

Michele Tourville                      Office: 133  
[tville@law.siu.edu](mailto:tville@law.siu.edu)                      Phone: 618-453-8761

Please contact Michele if I am unavailable or if you wish to schedule an appointment.

### **Evaluation**

The date and time of the final exam will be announced in due course. It will count for 80% of your course grade, with the remaining 20% attributed to the midterm, scheduled for Tuesday, March 9. Additionally, class participation may positively or negatively affect your grade, +/- 0.3 grade points.

Class participation includes being prepared when called upon to discuss the assigned readings. I may periodically collect case briefs from all or part of the class to ensure that students are completing their out-of-class assignments and are adequately preparing for class discussion.

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 will *not* be recorded; 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. For purposes of this rule, there is no such thing as an “excused absence.” Upon your fourth absence being recorded, I will withdraw you 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, smart phones, electronic tablet, etc., generally should *not* be used in class for any purpose. Because we are learning a skill set, rather than a substantive area of law, you will likely find yourself not taking very many notes in class. Any notes you do need to make can easily be taken with pen and paper.

## Reading Assignments

(subject to change)

CLASS	TOPIC	PAGES*	HANDOUTS
<b>Part I: Introduction to Statutory Interpretation</b>			
Wed., Jan. 20	Basic Problems		First Day Packet
Mon., Jan. 25	Letter vs. Spirit of the Law	33–55	
Wed., Jan. 27	The New Textualism	55–79	
Mon., Feb. 1	Textually-Constrained Purposivism	79–94, 110–16	
<b>Part II: Text, Structure, and Purpose (Intrinsic Sources)</b>			
Wed., Feb. 3	Judicial Correction of Legislative Mistakes	116–21, 135–46	
Mon., Feb. 8	Which “Textual” Meaning?	146–63	
Wed., Feb. 10	Colloquial vs. Dictionary Meaning	163–79	
Mon., Feb. 15	Semantic Canons	272–79	Textual Canons, pp. 1–5
Wed., Feb. 17	Semantic Canons, cont.	310–19	Textual Canons, pp. 6–13
<b>Part III: Legislative History (Extrinsic Sources)</b>			
Mon., Feb. 22	Legislative History		<i>Weber</i>
Wed., Feb. 24	Legislative History, cont.	203–26	
Mon., Mar. 1	Judicial Power and Equitable Interpretation		<i>Bostock</i>
Wed., Mar. 3	Midterm Preparation		
Tues., Mar. 9	MIDTERM EXAMINATION		
<b>Part IV: Substantive Canons (Policy-Based Sources)</b>			
Mon., Mar. 15	Substantive Canons: Constitutional Avoidance	328–53	
Wed., Mar. 17	Substantive Canons: Federalism	353–75	
Mon., Mar. 22	Substantive Canons: Rule of Lenity	399–410	
Wed., Mar. 24	Rule of Lenity, cont., and other canons		<i>Yates &amp; Lockhart</i>
<b>Part V: Statutory Interpretation in the Administrative State</b>			
Mon., Mar. 29	Administrative State and the Delegation Problem	434–72	
Wed., Mar. 31	Notice-and-Comment Rulemaking	702–11, 728–53	

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

Mon., Apr. 5	Judicial Review of Agency Statutory Interpretation	858–65, 899–927	
Wed., Apr. 7	Judicial Review & Questions of Law	963–91	
Mon., Apr. 12	<i>Chevron</i> and Textual Interpretation	991–1010	
Wed., Apr. 14	Deference and Semantic Canons	1010–26	
Mon., Apr. 19	Structure, Context, History in <i>Chevron</i> Analysis	1026–50	
Wed., Apr. 21	<i>Chevron</i> & Major Questions	95–110	
Fri., Apr. 23	<i>Chevron</i> & Substantive Canons	1054–68	
TBD	Final Exam Review Session		

**FINAL EXAMINATION: TBD**