Course Time and Room:
Monday and Wednesday, 9:00-10:15, Room 108
[see “Schedule of Assignments” below for exceptions]

Professor's Information:
Professor Edward Dawson
Office #252
Office Phone: 618-453-8735
email: edawson@siu.edu

Office Hours/ Availability:
My office hours are Monday through Thursday from 10:20-11:20, unless I inform you in advance I will not be available on a particular day. You are welcome to come by during office hours with questions without making an appointment. You may also request an appointment outside office hours by sending me an email. 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 my email regularly during business hours (9 am-6 pm); outside of those times I may not respond the same day. My assistant is Susan McLaren, susanw@law.siu.edu, and her office is in room 243.

Assigned Texts:

Required:
Linda D. Jellum, Mastering Statutory Interpretation, 2d edition (Carolina Academic Press 2013) ("Mastering")
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 to teach you methods and tools for interpreting statutes and regulations. Learning how to interpret statutes and rules will assist you in most of your upper-level courses, as well as your eventual practice of law, because today most law and especially most new law is based on statutes rather than common law.

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 will begin with an introduction to the legislative process and sources of statutory interpretation. We will then examine and apply leading theories of statutory interpretation. Then, the bulk of the course proceeds through an examination of different methods, sources, and guidelines for interpreting statutory texts. The course concludes with an examination of how administrative agencies
derive regulations from statutes, and how and when courts defer to agencies' interpretation of statutes through rulemaking.

Learning objectives:

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

- Understand the basic process by which legislation is enacted, the components of legislation, and the difference between state and federal legislation;
- Distinguish between common law and statutory law;
- Identify the components and precedential value of a judicial opinion,
- Analyze judicial opinions interpreting statutes to identify rules of statutory interpretation, and apply those rules to new factual contexts;
- Know the difference between the three main theories of statutory interpretation: textualism, intentionalism, and purposivism, and be able to use those theories to interpret a statute;
- Interpret a statute using textual methods at the word, sentence, and section levels;
- Use a statute’s context within a body of statutes (a code) to interpret the statute;
- Articulate different guidelines (canons) for interpreting statutes and apply them to new statutes;
- Apply statutory canons as a group to identify which canons support a particular interpretation of a statute, and how to resolve conflicts between canons;
- 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;
- Use other sources of law to interpret a statute, including common law, conflicting statutes from the same jurisdiction, statutes from other jurisdictions, federal statutes (preemption), and constitutional provisions;
- Distinguish between statutes and regulations;
- Explain the process by which administrative agencies translate statutory requirements into regulations;
- Learn the rules that courts use when deciding whether to defer to administrative agencies' interpretations of statutes, and apply those rules to new contexts.

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

Grades/ Grading Policy:

Your grade in the class will mainly be determined by a final exam, which will be a mixture of multiple choice questions and essay/ short essay questions. Grades will assigned based on the law school's grading policy, which is available at: http://www.law.siu.edu/_common/documents/rules-code/grading.pdf The exam will be on Tuesday, December 8 from 8:15-11:15 am.

Your class participation may affect your grade. I may adjust your grade =/- .3 points based on your class performance and your performance on our written assignments. Participation includes volunteering to speak in class as well as engaging in dialogue with the professor when called upon.
Reading:

For each class, you are expected to do the assigned reading. This weekly schedule below lists the required reading. "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 don’t understand about it.

I also recommend that you "brief" the cases assigned in the Jellum/Hricik textbook. Early in the semester I will explain in class what a case brief is, and post a sample case brief that you may use for cases assigned in this course.

The Jellum/Hricik book is the main text, and contains statutes and cases that we will read and examine to understand the principles and rules of statutory interpretation and regulation. The “Mastering” book is a supplemental text that explains and gives context to the topics we are covering; I suggest you read it after you have read and analyzed the casebook reading.

Assignments:

For many class sessions, you will have an assignment to "prepare" one of the problems in the Jellum and Hricik text. For those assignments, you should read and prepare an answer to the problem. You may want to make notes about your answer, but you will not be required to turn in a written answer at the beginning of class. I may use these problems in class by 1) calling on you individually to explain your answer, 2) short, in-class timed writing exercises that require you to write an answer to the problem and then turn it in, or 3) group exercises where you discuss the answer with your classmates and produce a group answer.

Once during the semester, you will be required to turn in a written assignment that you have prepared outside of class; that assignment is noted in bold as "writing assignment" on the Schedule of Assignments below. You will also complete a timed, in-class practice essay in preparation for the final exam. These assignments will not be graded, but you will receive feedback on them. You must complete both writing assignments in order to receive credit for the course.

TWEN Page:

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 Schedule of Assignments 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 messages. 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.

Call Policy:

I will call on students at random during our class sessions to ask questions about the reading. 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. If you are unprepared for class you may "note out" by leaving a note at the front of class before it begins, but if you do you may not sign the attendance sheet for the day—that is, "noting out" counts as an absence. If I call on you and you are unprepared or have not done the reading, I may mark you as absent for the day, and may require you to attend a conference with me or a course assistant to discuss class preparation.

**Attendance Policy:**

Attendance will be taken each class by passing around a roll sheet, which you will sign. I encourage you to attend every class. Your maximum number of absences is four. You are responsible for keeping track of your own absences. Being late to class counts as an absence. "Noting out" counts as an absence. If you accumulate more than four absences, you will at a minimum receive a lower grade, and if you have more than six absences, you will not receive credit for the course.

For more information about attendance and absences, please review the school of law's attendance policy, which is available at http://law.siu.edu/_common/documents/rules-code/attendance-rules-ay15-16.pdf.

**Electronic Devices:**

You may use laptops to take notes during class. You may not use laptops or cell phones for non-class purposes, which include web-surfing, texting, chatting, checking email, and social media. Phones must be silenced during class. If you violate these policies, I may prohibit you from using a laptop in class.

**Course Recording:**

Our class sessions will not be recorded by the school, unless required to accommodate a student with a disability. If you want to record them, you may record audio but not video, if you request and receive my permission. See School of Law Honor Code at II.E.g., available at http://www.law.siu.edu/_common/documents/rules-code/honor-code.pdf

**Course Assistants:**

There are two course assistants for this class, who are students who took this class last year. 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 provide you with their names, contact information and office hours during the first week of class.

**Emergency Procedures:**

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/](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—Assistance for Students**

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://salukicares.siu.edu/index.html](http://salukicares.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.
Schedule of Assignments

The schedule below lists the assigned and recommended reading, as well as any assignments, for each class session. "J&H" refers to the Jellum and Hricik case book, and "Mastering" refers to the Jellum supplemental text. 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. I may modify the reading or assignments as the semester goes along; if I do I will give you advance notice of any changes. 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 at the scheduled time, with the following exceptions:

- 1-3 classes early in the semester, when I take a brief paternity leave. I will let you know which classes will be cancelled as soon as I know.
- Monday, September 7, which is Labor Day.
- Wednesday, November 11, which is Veterans Day.
- Monday, November 23, and Wednesday, November 25, which are Thanksgiving break.
- 2-4 makeup classes, to make up for holidays and days I am on leave. After I return from leave, I will announce these makeup days, and distribute an updated syllabus with specific days for each session.

Because the schedule will change early in the semester, the list below only includes dates for the first few class sessions. I will distribute an updated schedule, with dates, later in the semester.

I. Introduction to Course and Legislative Process; Sources and Theories of Interpretation

1. Monday August 24
   Topics: Introduction to Course; Legislative Process (brief overview); Introductory Problem
   Reading:
     -- Syllabus
     -- J&H Introduction xxv-xxx, 3-12 (Stop before problem 1-1)
     -- Mastering pp. 3-18
   Assignment: Prepare to discuss in class the "Vehicles in the Park" problem in Mastering p. 9-12
2. Wednesday August 26
   **Topics:** Legislative Process; Sources of Statutory Interpretation
   **Reading:**
   -- J&H p. 33-44 (Stop at "C. Exploring. . .")
   -- Mastering p. 21-25 (Stop at "D. The Theories. . ."); 55-68 (stop at the end of the last full paragraph on p. 68)
   **Assignment:** Prepare J&H problem 2-1
   **Recommended Reading:**
   -- case brief template (available on TWEN)

3. Monday August 31
   **Topic:** Theories of Statutory Interpretation--Textualism, Intentionalism, Purposivism
   **Reading:**
   -- J&H pp. 44-64 (stop before problem 2-2)
   -- Mastering pp. 25-48

II. Textual Tools for Interpreting Statutes

4. Wednesday Sept. 2
   **Topics:** Text, Plain Meaning, Sources of Word Meaning
   **Reading:**
   -- J&H p. 73-88, 91-92
   -- Mastering p. 79-87 (stop at last line on p. 87).
   **Assignment:** Prepare J&H problems 3-1 and 3-2

[syllabus continues on next page]
Writing Assignment #1. Your writing assignment will be due on the first class day when I return from leave—this may be earlier or later than Labor Day.

Read the "Problem of the Speluncean Explorers at J&H pp. 65-72. Your assignment is to prepare a bench memo for the "swing vote" whose opinion will determine the case—see J&H p. 72 Question 1. Imagine you work for a justice who sits on the Court with the other Justices who wrote the opinions in the problem. Your Justice must cast the deciding vote, and wants you to write a memo recommending how to vote. The memo should explain how you think your justice should vote, and why. You memo should focus specifically on your recommended interpretation of the statute and your reasons for that recommended interpretation. You can assume your Justice has read the other Justices' opinions before reading your memo, and you should explain your recommendation in the context of the other Justices' views.

The purposes of this writing assignment are to 1) demonstrate your understanding of the different theories of interpretation; 2) apply those theories to a hypothetical case; 3) express a view as to which theory you think is the best way to interpret statutes; and 4) to give me an early opportunity to assess the class’s writing and analytical skills.

--Your memo must be done before you come to class, and turned in at the start of class.
--You should bring a second copy of your memo to class, or be able to view your memo on your laptop, for purposes of class discussion.
--Your memo should be no more than 4 pages, double spaced.
--Your memo should be typed, printed, and stapled
--Your memo should have the following heading:

To: Justice Hamlet  
From: [Your Name]  
Date: [due date]  
Re: Case of the Speluncean Explorers

5. Topic: Ambiguity and Absurdity  
Reading:  
--J&H pp. 93-109 (Stop at "C. Scrivener's Error")  
--Mastering pp. 87-94 (stop at "c. Scrivener's Error")

Assignment: Written Assignment #1 Due

6. Topics: Ambiguity and Absurdity continued; Scrivener's Error  
Reading:  
--J&H pp. 101-102, 109-120;  
--Mastering pp. 94-96, 97-101 (start w/ para. @ bottom of page 97 beginning “Thus, ordinary meaning. . .”)  
Assignment: prepare J&H problems 4-1, and 4-3, skip problem 4-2
7. **Topic**: Punctuation and Grammar in Statutory Interpretation  
**Reading**:  
-- J&H 126-145 (skip the problems, stop at "Notes and Questions")  
-- Mastering pp. 103-120  
**Assignment**: none

**Reading**:  
-- J&H pp. 149-160, 184-188 (start w/ heading 6. and stop before heading 7), 557-559;  
-- Mastering pp. 123-132 (Stop at "3. The Rule Against Surplusage")  
**Assignment**: Prepare J&H problem 6-1

9. **Topic**: Textual Canons pt. II  
**Reading**:  
-- J&H pp. 161-180  
-- Mastering pp. 132-140  
**Assignment**: (skip problem 6-2)

10. **Topic**: Textual Canons pt. III  
**Reading**:  
-- J&H pp. 180-184; 188-195  
-- Mastering pp. 140-143, 168-69 (on exceptions and provisos)  
**Assignments**:  
-- Prepare J&H problem 6-3;  
-- As you read the *Babbitt* case (in J&H) identify as many textual canons as you can, and where specifically in the opinion they are used

11. **Topic**: Role of Components of Statutes  
**Reading**:  
-- J&H pp. 197-219  
-- Mastering pp. 145-161  
**Assignment**: Prepare J&H problem 7-2 (skip problem 7-1)

III. Using Legislative Intent and Statutory Purpose to Interpret Statutes

12. **Topic**: Legislative History  
**Reading**:  
-- J&H pp. 221-239  
-- Mastering pp. 197-203, 207-209  
**Assignment**: Prepare J&H problem 8-1  
**Recommended Reading**: Mastering pp. 55-68
13. **Topics:** Judicial Use and Criticism of Legislative History; Significance of Legislative Silence
   **Reading:**
   --J&H pp. 240-250 (Stop at "problem 8-2"); 253-255, 262-270, (Stop at "B. Legislative Inaction. . ")., 267-277
   --Mastering pp. 207-222, 233-245 (stop at “judges must not presume silence always means agreement”)
   **Assignment:** J&H Problem 9-1

14. **Topic:** Finding and Using Statutory Purpose
   **Reading:**
   --J&H pp. 289-315
   --Mastering pp. 222-231
   **Assignment:** Prepare J&H problem 10-1

15. **Topic:** Using Intent and Purpose to Imply Remedies or Causes of Action into Statutes
   **Reading:**
   --J&H pp. 439-457
   --Mastering p. 339-345
   **Assignment:** Read the model statute I post on TWEN, and come prepared to analyze whether a cause of action should be implied into that statute.

16. **Written Assignment #2:**

   Written Assignment #2 will be a timed, in-class essay exercise that is meant to simulate essay writing on a law school exam. You will be presented with a problem and then be given the class period to read the problem and write an essay answer. I will provide more details on the practice essay in the weeks before it is scheduled; I will also use some class time in the weeks leading up to written assignment #2 to talk about law school exams and how to approach them.

17. **Topic:** Effective Date of Statutes; Retroactivity
   **Reading:**
   --J&H pp. 337-349, 353-361
   --Mastering pp. 165-168 (stop at f.); 184-188 (stop at E.)
   **Assignment:** prepare J&H problem 12-2 (skip 12-1 and 12-3)
18. **Topic:** Avoiding and Resolving Conflicts between Statutes; Borrowed Statutes  
   **Reading:**  
   - J&H pp. 363-379 (Stop at "B. Clear Statement Rule"); 317 (stop at A.), 319-22  
   - Mastering pp. 174-184 (Stop at "D. Retroactive Statutes")  
   **Assignment:** Prepare J&H problem 13-1

19. **Topic:** Borrowed and Parallel Statutes; Statutes and Common Law; "Remedial" Statutes  
   **Reading:**  
   - J&H pp. 328-334, 397-403, 405-412  
   - Supplemental problem materials for problem 14-2 (posted on TWEN)  
   - Mastering pp. 188-192, 336-339 (Stop at "C. Implied Causes. .")  
   **Assignment:**  
   - Prepare J&H problem 14-2, and be ready to present an oral argument in front of the class according to this division:  
     1) if your last name starts with A-K, prepare as though you were the winning party, arguing that your client *should* be able to recover attorneys' fees under the statute;  
     2) if your last name starts with L-Z, prepare as though you were the losing party, arguing that your opponent *should not* be able to recover attorneys' fees under the statute.  
   - We will proceed through several mock arguments in class.  
   - (skip problems 11-1, 11-2, 14-1)

20. **Topics:** Legislative Directives About Interpretation; Severability and Inseverability  
   **Reading:**  
   - J&H p. 497-506, 543-555  
   - Mastering 161-65 (Stop at "d. Effective Date...")  
   **Assignment:** Prepare J&H problem 18-1 (skip problem 16-4)

21. **Topic:** Constitutional Issues and Statutory Interpretation, pt. I  
   **Reading:**  
   - J&H pp. 465-472; 476-492 (Stop at "D. Legislative Efforts...");  
   - Excerpt from *NFIB v. Sebelius* (available on TWEN, and at  
     http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf pp. 31-33);  
   - Mastering p. 96-97, 318-331 (Stop at "4. Clear Statement Rules")  
   **Assignment:** Prepare J&H problem 16-2 (skip problem 16-3)

22. **Topic:** Constitutional Issues and Statutory Interpretation pt. II  
   **Reading:**  
   - J&H pp. 380-95, (Stop at "B. The Rule of Lenity");  
   - Mastering p. 331-336 (Stop at "D. Canons Based On. .")  
   **Assignment:** Prepare J&H problem 13-2—we will have an in-class writing exercise based on this problem
23. Topic: Preemption of State Statutes by Federal Statutes  
   Reading:  
   --J&H pp. 413 (stop at Medtronic), 423 (read only “2. Implied Preemption”)  
   --excerpts from Arizona v. Inter Tribal Council of Arizona and Riegel v. Medtronic, both available on TWEN  
   --J&H pp. 435-438 (problem 14-3)  
   --Mastering p 332-334 (stop at "c. American Indian Treaty Rights")  
   Assignment: J&H problem 14-3 (note that problem 14-3 is complicated and will take substantial time to understand and work through)  

V. The Administrative State, Regulatory Processes, and Judicial Deference to Agency Rulemaking  

24. Topic: Administrative Process and the Regulatory State  
   Reading:  
   --J&H pp. 507-509 (Stop at "1. Chevron's..."), 514-517  
   --Mastering pp. 251-280  

25. Topic: Judicial Deference to Agency Interpretations (Chevron pt. 1)  
   Reading:  
   --J&H pp. 509-525 (Stop at "C. Critically Examining...");  
   --Arlington v. FCC excerpt (posted on TWEN);  
   --Mastering pp. 283-302  
   Assignment: Prepare J&H problem 17-2 (skip 17-1)  

26. Topic: Chevron continued; interaction of judicial and agency interpretations  
   Reading:  
   --J&H pp. 525-538  
   -- King v. Burwell excerpt (posted on TWEN)  
   -- Mastering 302-311  
   Assignment: Create a “flow chart,” attack plan, or list of questions to use when analyzing a Chevron problem  

27. Topic: The Significance of Congressional Response and Inaction After Agency Interpretation  
   Reading:  
   --J&H pp. 270-284 (skip problem 9-1; stop before problem 9-2)  
   -- Mastering pp. 245-248 (start at “One final case in this area. . .”)  

28. Topic: Semester and Exam Review  
   Reading: TBA