Syllabus- Legislative and Administrative Processes  
LAW 513A, Section 002  
Professor Dawson

Course Time and Room:

Monday and Wednesday, 9:00-10:15, Room 204

Office Hours Time and Room:

Monday and Wednesday 2:30-4:00, Office #252

Professor's Information and Availability:

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

You don’t need to make an appointment to come see me during office hours. You may also request an appointment outside office hours by email, or stop in anytime I’m in my office and the door is open. 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) during the week (M-F); 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:

- 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 legislative process and sources of statutory interpretation. We then examine and apply leading theories of statutory interpretation. The bulk/
middle of the course examines different methods, sources, and guidelines for interpreting statutory texts. The course concludes by examining how administrative agencies make regulations by interpreting 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 then apply those rules to new factual contexts;
- Know the difference between the three theories of statutory interpretation: textualism, intentionalism, and purposivism and how to use those theories to interpret a statute;
- Interpret a statute using textual methods as a whole, and by section, paragraph, sentence, and word;
- 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 factual 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. The exam will be on Friday, December 16 from 8:15-11:15 am. The final exam will be a **closed-book** exam. I will assign grades will assigned based on the law school's grading policy, which is available at:

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 being prepared when called on, as well as volunteering to speak in class, and giving your best effort on the ungraded writing assignments.

Reading:

For each class, I expect you to do the assigned reading, as listed below on the Schedule of Assignments. “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.

I also recommend that you “brief” the cases assigned in the Jellum/Hricik 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.

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. I also have supplemental readings for certain classes; those supplemental readings will be posted on TWEN.

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 individually 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 #1” on the Schedule of Assignments below. Finally, you will also complete an in-class timed practice essay in preparation for the final exam, which is noted on the syllabus as “Writing Assignment #2.” 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.

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 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 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.

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:

I will take attendance 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 significantly 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-ay16-17.pdf

Workload Expectations:

As a reminder, ABA and SIU standards define a “credit hour” as one hour of direct instruction, and at least two hours of out-of-class student work. This means that for a three-hour class, like this class, you should expect each week to spend six hours on class preparation, which includes reading and preparing any required assignments.

Electronic Devices:

You may use a laptop 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. They will hold office hours each week and I will let you know during the first week of class where and when those office hours will be held.

Teris Swanson, teris.swanson@siu.edu

Katharine Yuhas, katieyuhas@siu.edu

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/. 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://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 based on our progress through the material; 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 except for Monday September 7, which is Labor Day, and during Thanksgiving Break (Nov. 21 and 23). We will have a makeup class to make up for the class missed for Labor Day; I will give you more information on that during the semester.

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

1. Monday August 22
   Topics: Introduction to Course; Legislative Process (brief overview); Introductory Problem
   Reading:
   --Read this syllabus
   --J&H Introduction xxv-xxx, 3-12 (Stop before problem 1-1)
   --Mastering pp. 3-18
   Assignment: Be prepared to discuss the “Vehicles in the Park” problem in Mastering p. 9-12

2. Wednesday August 24
   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 29
   Topic: Theories of Statutory Interpretation--Textualism, Intentionalism, Purposivism
   Reading:
   --J&H pp. 44-64 (stop before problem 2-2)
   --Mastering pp. 25-48
Writing Assignment #1, which is based on the theories of statutory interpretation we cover on the 29th, will be due on Friday, September 9th. I will hand out the writing assignment in class on Monday the 29th, and also post it on TWEN. The assignment sheet will include instructions for submitting the assignment.

II. Textual Tools for Interpreting Statutes

4. Wednesday August 31
   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

Monday, Sept. 5—No Class—Labor Day

5. Wednesday, September 7
   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”)

Friday, September 9—Writing Assignment #1 is Due.

6. Monday, September 12
   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. Wednesday, September 14
   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

8. Monday, September 19
   Topic: Textual Canons pt. I
   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. Wednesday, September 21
   Topic: Textual Canons pt. II
   Reading:
      --J&H pp. 161-180
      --Mastering pp. 132-140
   Assignment: (skip problem 6-2)

10. Monday, September 26
    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 mark where specifically in the opinion they are used

11. Wednesday, September 28
    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. Monday, October 3
    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. Wednesday, October 5
    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. **Monday, October 10**  
**Topic:** Finding and Using Statutory Purpose  
**Reading:**  
--J&H pp. 289-315  
--Mastering pp. 222-231  
**Assignment:** Prepare J&H problem 10-1

15. **Wednesday, October 12**

**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.

16. **Monday, October 17**  
**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.

IV. **Other Sources of Interpretation**

17. **Wednesday, October 19**  
**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. **Monday, October 24**  
**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. **Wednesday, October 26**  
**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-J, 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 K-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. **Monday, October 31**  
**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. **Wednesday, November 2**  
**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* (posted on TWEN);  
--Mastering p. 96-97, 318-331 (Stop at “4. Clear Statement Rules”)  
**Assignment:** Prepare J&H problem 16-2 (skip problem 16-3)

22. **Monday, November 7**  
**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
23. **Wednesday, November 9**  
**Topic:** Preemption of State Statutes by Federal Statutes  
**Reading:**  
-- J&H p. 413 (stop at Medtronic), 423 (read only “2. Implied Preemption”)  
-- excerpts from Arizona v. Inter Tribal Council of Arizona and Riegel v. Medtronic, both posted on TWEN  
-- J&H pp. 435-438 (problem 14-3)  
-- Mastering pp. 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. **Monday, November 14**  
**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. **Wednesday, November 16**  
**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. **Monday, November 28**  
**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:** Over the break, create a “flow chart,” attack plan, or list of questions to use when analyzing a Chevron problem

27. **Wednesday, November 30**  
**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. **Makeup Class**—we will have a makeup class that is a review session; I will announce the date and time later in the semester.  
**Topic:** Semester and Exam Review  
**Reading:** TBA