Legislative & Administrative Processes

Times: MW 9:00–10:15 A.M. Room: 108

Instructor: Steven J. Macias Office: 234
Email: smacias@siu.edu Phone: 618-536-8464
Office Hours: MW 4:30–5:00 P.M. or immediately after class

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 Texts
John F. Manning & Matthew C. Stephenson, Legislation and Regulation, 2nd ed. (Foundation Press 2013) [West] [Amazon]
William N. Eskridge, Jr., Interpreting Law: A Primer on How to Read Statutes and the Constitution (Foundation Press 2016) [West] [Amazon]
Peter L. Strauss, Congress at Work: A Documentary Supplement for Courses in Legislation (Foundation Press 2016) [West] [Amazon]
Course Reader from 710 Bookstore (available Thursday, Aug. 18, at the earliest)
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. This year we are using the Eskridge book in its place. It should serve the same purpose of providing you with a narrative overview of the course. Thus, I would hold off on obtaining a copy unless you find that yet another voice would be helpful to you.

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:
- 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 Online 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
Susan McLaren
susanw@law.siu.edu
Office: 249
Phone: 618-453-8738
Please contact Susan if I am unavailable and she will relay any messages to me.

**Evaluation**
The final exam is scheduled for **Friday, December 16, 8:15–11:15 A.M.** It will count for 90% of your course grade, with the remaining 10% attributed to class participation, including our writing assignment coinciding with Weeks 9–10 (details to follow).

Class participation includes being prepared when called upon to discuss the assigned readings. It also includes briefing every assigned case in preparation for class. In order to insure that students are adequately briefing cases, I will periodically collect briefs from a randomly selected group of the alphabet, i.e., L–M or R–S. Collected briefs will be scored out of 5 points. Failure to turn in a brief will count both as a “0” and an absence. Brief scores will be averaged to determine student participation grades.

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)](https://www.law.siu.edu/school-of-law/rules). 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 by Susan McLaren, she will send an email to Associate Dean Behan indicating that you are 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, 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)*

<table>
<thead>
<tr>
<th>CLASS</th>
<th>TOPIC</th>
<th>PAGES*</th>
<th>SUPPLEMENTS†</th>
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<tbody>
<tr>
<td><strong>Part I: Introduction to Statutory Interpretation</strong></td>
<td></td>
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<tr>
<td>Mon., Aug. 29</td>
<td>The New Textualism</td>
<td>44–60</td>
<td></td>
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<tr>
<td>Wed., Aug. 31</td>
<td>Textually-Constrained Purposivism</td>
<td>60–77</td>
<td></td>
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<td>Mon., Sept. 5</td>
<td>Labor Day Holiday</td>
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<td><strong>Part II: Text, Structure, and Purpose (Intrinsic Sources)</strong></td>
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<tr>
<td>Wed., Sept. 7</td>
<td>Judicial Correction of Legislative Mistakes</td>
<td>77–81, 93–101</td>
<td><strong>IL</strong>, Ch. 1–3 (by the end of Part II)</td>
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<tr>
<td>Mon., Sept. 12</td>
<td>What is the Text?</td>
<td>101–15</td>
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<tr>
<td><strong>Part III: Legislative History (Extrinsic Sources)</strong></td>
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<td>Mon., Sept. 26</td>
<td>Legislative History</td>
<td>Weber (CR)</td>
<td><strong>IL</strong>, Ch. 4 (by end of Part III)</td>
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<tr>
<td>Wed., Sept. 28</td>
<td>Legislative History, cont.</td>
<td>145–63</td>
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<tr>
<td>Wed., Oct. 5</td>
<td>IDEA Problem</td>
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<td><strong>Part IV: Substantive Canons (Policy-Based Sources)</strong></td>
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<td>Mon., Oct. 10</td>
<td>Substantive Canons: Constitutional Avoidance</td>
<td>247–67; <em>McDonnell</em> (CR)</td>
<td><strong>IL</strong>, Ch. 6 (by end of Part IV)</td>
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* 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.

† **IL** = Eskridge, *Interpreting Law*; **CW** = Strauss, *Congress at Work*; **CR** = Course Reader from 710
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<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Pages</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mon., Oct. 31</td>
<td>Judicial Review of Agency Statutory Interpretation</td>
<td>738–53</td>
<td></td>
</tr>
<tr>
<td>Wed., Nov. 2</td>
<td>Judicial Review &amp; Questions of Law</td>
<td>753–75</td>
<td></td>
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<tr>
<td>Mon., Nov. 7</td>
<td><em>Chevron</em> and Textual Interpretation</td>
<td>776–91</td>
<td></td>
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<td>Wed., Nov. 9</td>
<td>Deference and Semantic Canons</td>
<td>791–803</td>
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<tr>
<td>Mon., Nov. 14</td>
<td>Structure, Context, History in <em>Chevron</em> Analysis</td>
<td>803–22</td>
<td></td>
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<td>Wed., Nov. 16</td>
<td><em>Chevron</em> &amp; Major Questions</td>
<td><em>King v.</em> <em>Burwell</em> (CR)</td>
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<td>Nov. 19–27</td>
<td>Thanksgiving Vacation</td>
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<tr>
<td>Mon., Nov. 28</td>
<td>Limits on <em>Chevron</em>’s Domain</td>
<td>852–74</td>
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<tr>
<td>Wed., Nov. 30</td>
<td>Final Exam Review</td>
<td><em>CW</em>, pp. 1–59</td>
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**FINAL EXAMINATION:** Friday, December 16, 8:15 A.M.
IMPORTANT DATES *  
Semester Class Begins: .................................................. 08/22/2016  
Last day to add full-term course (without Dean’s signature): 08/28/2016  
Last day to withdraw from the University with a full refund: 09/02/2016  
Last day to drop a full-term course for a credit/refund: ........... 09/04/2016  
Deadline to apply to graduate at the end of this term: ............ 09/16/2016  
Last day to drop a full-term course (W grade, no refund): .......... 10/30/2016  
Final examinations: .................................................... 12/12–12/16/2016  
Commencement: .......................................................... 12/17/2016

Note: For more detailed information on the above deadlines, please visit: http://registrar.siu.edu/calendars. For add/drop dates that apply to shorter-than-full-term courses, please look at the Schedule of Classes search results at http://registrar.siu.edu/schedule/class/index.html.

FALL SEMESTER HOLIDAYS  
Labor Day Holiday 09/05/2016  
Fall Break 10/08—10/11/2016  
Veterans Day Holiday 11/11/2016  

WITHDRAWAL POLICY ~ Undergraduate only  
Students who officially register for a session must officially withdraw from that registration in a timely manner to avoid being charged as well as receiving a failing grade for those classes. An official withdrawal must be initiated by the student, or on behalf of the student through the academic unit, and be processed by the Registrar’s office. For the proper procedures to follow when dropping courses and when withdrawing from SIU visit: http://registrar.siu.edu/students/withdraw.html

INCOMPLETE POLICY ~ Undergraduate only  
An INC grade may be assigned when, for reasons beyond their control, students engaged in passing work are unable to complete all class assignments for the course. An INC must be changed to a completed grade within one full semester (undergraduates), and one full year (graduate students), from the close of the term in which the course was taken or graduation, whichever occurs first. Should the student fail to complete the remaining course requirements within the time period designated, the incomplete will be converted to a grade of F and such grade will be computed in the student’s grade point average. For more information visit: http://registrar.siu.edu/grades/incomplete.html

REPEAT POLICY  
An undergraduate student may, for the purpose of raising a grade, enroll in a course for credit more than once. For students receiving a letter grade of A, B, C, D, or F, the course repetition must occur at Southern Illinois University Carbondale. Effective for courses taken Summer 2013 or later, only the most recent (last) grade will be calculated in the overall GPA and count toward hours earned. This policy will be applied to all transferrable credit in that only the last grade will be used to calculate grade point average. Only those courses taken at the same institution are considered repeats under this policy. See full policy at http://registrar.siu.edu/students/repeatclasses.html

GRADUATE POLICIES  
Graduate policies often vary from Undergraduate policies. To view the applicable policies for graduate students, please refer to the graduate catalog at http://gradschool.siu.edu/about-us/grad-catalog/index.html

DISABILITY POLICY  
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 contact DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. http://disabilityservices.siu.edu/

PLAGIARISM  
Student Conduct Code: http://srr.siu.edu/student_conduct_code/  

SAFETY AWARENESS FACTS AND EDUCATION  
Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here: http://safe.siu.edu

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 more information on Saluki Cares: call (618) 453-1492, email siucares@siu.edu, or http://salukicares.siu.edu/index.html

SIU’S EARLY WARNING INTERVENTION PROGRAM (EWIP)  
Students enrolled in courses participating in SIU’s Early Warning Intervention Program might be contacted by University staff during a semester. More information can be found at the Core Curriculum’s Overview webpage: http://corecurriculum.siu.edu/program-overview/

EMERGENCY PROCEDURES  
We ask that you become familiar with Emergency Preparedness @ SIU. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts visit: http://emergency.siu.edu/

INCLUSIVE EXCELLENCE  
SIU contains people from all walks of life, from many different cultures and sub-cultures, and representing all strata of society, nationalities, ethnicities, lifestyles, and affiliations. Learning from and working with people who differ is an important part of education as well an essential preparation for any career. For more information visit: http://www.inclusiveexcellence.siu.edu/

LEARNING AND SUPPORT SERVICES  
Help is within reach. Learning support services offers free tutoring on campus and math labs. To find more information please visit the Center for Learning and Support Services website:

Tutoring: http://tutoring.siu.edu/  
Math Labs: http://math.siu.edu/courses/course-help.php

WRITING CENTER  
The Writing Center offers free tutoring services to all SIU students and faculty. To find a Center or Schedule an appointment please visit: http://write.siu.edu/

AFFIRMATIVE ACTION & EQUAL OPPORTUNITY  
Our office's main focus is to ensure that the university complies with federal and state equity policies and handles reporting and investigating of discrimination cases. For more information visit: http://diversity.siu.edu/

MILITARY COMMUNITY  
There are complexities of being a member of the military community and also a student. Drill schedules, calls to active duty, complications with GI Bill disbursement, and other unforeseen military and veteran related developments can complicate academic life. If you are a member of the military community and in need of accommodations please visit Veterans Services at http://veterans.siu.edu/

Additional Resources:  
ADVISEMENT: http://advisement.siu.edu/
SIU ONLINE: http://online.siu.edu/
SALUKINET: https://salukinet.siu.edu/
MORRIS LIBRARY HOURS: http://www.lib.siu.edu/

Fall 2016 R. O’Rourke